

**CLAUSE 4.6 EXCEPTION TO DEVELOPMENT  
STANDARD**

**Height of Building Variation**

**LOT 51 DP 9853  
2 Montague Street  
North Manly**

Clause 4.6 (Height of Building)  
2 Montague Street North Manly

#### **Clause 4.6 Exception to Development Standard**

#### **2 Montague Street North Manly**

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## 1 Introduction

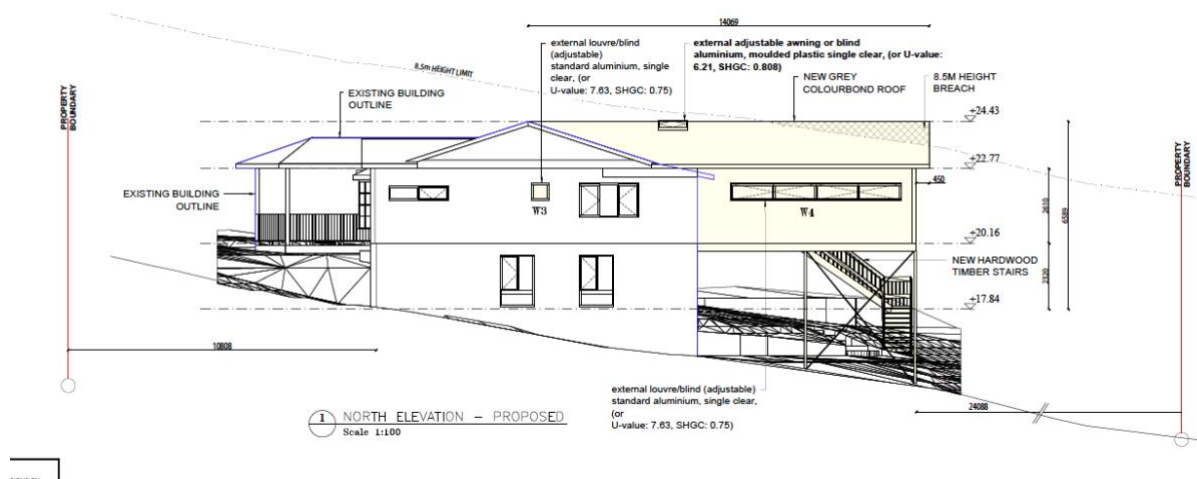
This clause 4.6 report accompanies a development application for alterations and additions to an existing dwelling at 2 Montague Street North Manly

## 2 Clause 4.3 Height of Buildings - Variation Request

**Maximum height: 8.5m**

**Proposed/existing height: 9.3m**

**Variation Requested: 0.8m**



The request seeks exception to a development standard under clause 4.6 - Exceptions to Development Standards of Warringah Local Environmental Plan 2011. The development standard for which a variation is sought is that of Height of Building restriction contained within Clauses 4.3. The variation is extremely minor and is a result of the slope of the land and floor height of the existing dwelling that is located on site.

The variation has been prepared in accordance with the NSW Department of Planning and Infrastructure (DP & I) guideline *Varying development standards: A Guide*, August 2011, and has incorporated as relevant, principles identified in the *Wehbe v Pittwater Council [2007] NSWLEC 827*

Clause 4.6 Exceptions to development standards establishes framework for varying development standards applying under a local environmental plan.

Objectives to clause 4.6 at 4.6(1) are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Clause 4.6(3)(a) and 4.6(3)(b) require that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Clause 4.6(4)(a)(i) and (ii) require that development consent must not be granted to a development that contravenes a development standard unless the:

*(a) the consent authority is satisfied that:*

- (i) the applicants written request has adequately address the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

Clause 4.6(4)(b) requires that the concurrence of the Secretary be obtained and clause 4.6(5) requires the Secretary in deciding whether to grant concurrence must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

A detailed assessment has been carried out below:

## **2.1 What is the Development Standard proposed to be varied?**

Clause 4.3 of the Warringah LEP provides the following development standard in relation to height of buildings.

*(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

### **Objectives of clause 4.3**

The objectives of clause 4.3 are as followed:

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

## **2.2 Clause 4.6(3)(a) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?**

In determining this, the 5 Part test established in *Wehbe v Pittwater Council [2007] NSWLEC 827* has been utilised as a guide

### **1. Is the proposal consistent with objectives of the standard notwithstanding non-compliance;**

The proposal, despite non-compliance with Clause 4.3(2) of the Warringah LEP, is considered to remain consistent with the underlying objective of the development standard as follows:

**Objective A:** *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

**Comment:** The proposed alterations and additions to the dwelling compatible with the height and scale of surrounding developments. The non compliance is due to the design of the new additions to maintain the floor height of the ground floor plan with the new additions. The design of the additions of the dwelling is to utilise the existing dwelling and to minimise costs for the renovation. It is considered that the proposed building is compatible with the height and scale of surrounding development and it does not result in negative impacts on the overshadowing or privacy impacts of neighbouring dwellings.

**Objective B:** *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*

**Comment:** The proposed development will not impact views and will remain visual privacy and solar access for neighbouring dwellings.

**Objective C:** *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments*

**Comment:** The proposed development does not cause an impact on the scenic quality of the coastal or bush environment.

**Objective D:** *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities*

**Comment:** The proposed development does not cause a visual impact when viewed from any public places.

**2. Is the underlying objective or purpose of the standard not relevant to the development and therefore compliance is unnecessary;**

The underlying objective or purpose of the Standard is relevant. As demonstrated above, the proposal retains consistency with the objectives of Clause 4.3 of Warringah Council LEP, despite non-compliance.

**3. Would the underlying object of purpose be defeated or thwarted if compliance was required and therefore compliance is unreasonable;**

The underlying objectives or purpose of the standard would not be defeated or thwarted if compliance was required, however, as outlined above consistency with objectives is achieved despite noncompliance.

**4. Has the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;**

The standard has not been abandoned or destroyed however it is noted from Council's Clause 4.6 Variations register that the Council regularly grants consent for development despite a non compliance with the Height of Buildings' clause 4.3.

**5. Is the zoning of the particular land unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary.**

The zoning of the land is appropriate for the site.

**Clause 4.6(3)(b) - Are there sufficient environmental planning grounds to justify contravening the development standard?**

The proposed development is considered to appropriately address and respond to the relevant matters for consideration under S4.15(1) of the EP&A Act 1979.

Specifically, it is considered that the development has been designed in accordance with the objectives outlined in section 1.3 of the EP&A Act 1979 as followed:

***Object (b)** to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*

**Comment:** The proposed development is general alterations and additions to an existing dwelling that will allow the owners of the dwelling to utilise their house without the need to demolish and rebuild.

The proposed extension has been designed to minimise the impact on the site and on the adjoining neighbours.

***Object (g)** to promote good design and amenity of the built environment,*

**Comment:** The proposed development has been designed to improve the appearance of the dwelling through architectural features but not result in a visually intrusive development. It is noted that the design of the alterations and additions is in context to the character of the area.

It is considered that there are sufficient environmental planning grounds to justify the non-compliance with the development standard as provided above. Additionally, the development complies with the outcomes of the R2 Low Density Residential zone.

**2.3 Clause 4.6(4)(a)(ii) - Is the proposed development in the public interest because it is consistent with the objectives of the standard and zone as set out above.**

There is public benefit in maintaining a degree of flexibility in specific circumstances, particularly when site constraints warrant a variation and the development is still able to achieve the outcomes of the control. In the current case, strict compliance would limit the development potential of the site and limit the lifestyle of the occupants of the dwelling. As identified above, the development achieves the outcomes of the development standard and is considered to be in the public interest.

### **3 Conclusion**

As provided above, the development complies with the outcomes of the development standard and is considered to be in the public interest. Strict compliance with this control is deemed unnecessary and restricts the use of the site by the owner due to the site constraints. It is considered that the development results in a good planning and design outcome for the property and the community.