

**CLAUSE 4.6 VARIATION – HEIGHT OF BUILDING
ALTERATIONS AND ADDITIONS
TO EXISTING FOUR STOREY APARTMENT
FOR UNIT 5, 20 DOWLING STREET QUEENSCLIFF
13 NOVEMBER 2020**

This statement constitutes a request for variation to a development standard, made under Clause 4.6 of Warringah Local Environmental Plan 2011 for Northern Beaches Council.

The objectives of Clause 4.6 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.

For this to occur, the Development Application is to be supported by a written application that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case. This application should be read in conjunction with the Development Application drawings and Statement of Environmental Effects as prepared by Mark Hurcum Design Practice.

As outlined during the Pre-DA meeting and confirmed in the Pre-DA minutes, it was not initially considered necessary for this application to include a Clause 4.6. The minutes state *"Pursuant to Clause 4.67(3) on the EP&A Act 1979, the provisions contained within the WLEP 2011 do not apply to an existing use."* It was requested however that why technically this did not apply, the Applicant was encouraged to address the zone objectives and building height development standard objectives in the SOEE in justifying for the additional building bulk and scale. This was done in the SEE submitted with the application.

1.0 ZONING OF THE LAND

The subject site is zoned R2 Low Density Residential

2.0 OBJECTIVES OF THE ZONE

The objectives of zone are as follows:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

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3.0 STANDARD TO BE VARIED

The standard to be varied is Part 4, Clause 4.3 of LEP 2014, which sets the maximum building height for a building as shown on the Building Height Map.

The maximum building height for 20 Dowling Street Queenscliff is 8.5 metres (WLEP 2011).

4.0 OBJECTIVES OF THE DEVELOPMENT STANDARD TO BE VARIED

The objectives of this clause are as follows:

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) to minimise any overshadowing of neighbouring properties,*
- (d) to allow for the reasonable sharing of views,*
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

5.0 EXTENT OF VARIATION TO THE STANDARD

The extent of the non-conformity is described graphically on the North (A201) and South (A202) elevations, Section A-A (A221) and Shadow Elevations No. 16 Dowling Street (SK03). These drawings show the non-conformity of both the existing dwelling and the proposed works. This report should be read in conjunction with these drawings.

Maximum possible height:	8.5m (WLEP 2011)
Maximum existing height:	11.9m
Maximum proposed height:	11.6m

It is important to note that the existing building exceeds the 8.5m maximum building height. The proposed works do not exceed the ridge height of the existing building.

The entire of the top floor is above the 8.5m height limit. As noted at Pre-DA however pursuant to Clause 4.67(3) of the EPA Act 1979 the provisions within the WLEP 2011 do not apply to an existing use. Therefore assessment of height is a merit assessment.

**6.0 HOW STRICT COMPLIANCE WITH THE DEVELOPMENT STANDARD IS
UNREASONABLE OR UNNECESSARY IN THIS PARTICULAR CASE?**

Strict compliance with this development standard is unreasonable given, as demonstrated above, the proposed unit renovation is to an existing building that already breaches the height limit. Strict compliance to the standard would preclude **any** development of this unit, even despite the fact that there are no environmental impacts resulting from the proposed development. The proposed works are created entirely below the existing ridge line, therefore not worsening the height non-compliance, and it also occupies the same existing footprint, therefore not making the building any greater impact on the site. As demonstrated below, the proposed works does not impact views, privacy or reduce direct sunlight to the living areas of the Southern neighbours (No.16 Dowling Street).

The proposed building's height and scale are consistent with the **existing** character of this part of the Queenscliff locality, even if by current zoning this is technically supposed to be a low-density area. Unless the entire building was demolished then any development of this site would not be able to comply with the desired future character of the locality. It is clearly unachievable to assume this site or similar neighbouring sites will ever see a backwards development or de-intensification will occur that would be in line with the R2 zoning.

It can be argued therefore that the proposal does not cause any negative impacts to the public area or neighbours and that despite the technical non-compliance of the WLEP height control it can be considered appropriate. As such, strict compliance with the control is both unreasonable and unnecessary.

**7.0 THERE ARE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY
CONTRAVENING THE DEVELOPMENT STANDARD**

Clause 4.6 requires the departure from the development standard to be justified by demonstrating that there are sufficient environmental planning grounds to justify contravening the development standard. As demonstrated below, there are no negative impacts resulting from the proposed works: Overshadowing, Privacy and View Loss have all been assessed and found to be no issue.

Bulk and Scale:

The height control primarily is used to protect against undesirable impacts resulting from an inappropriate bulk and scale. The height of the additional roof in this instance is well below the existing roof ridge and as such does not represent an obtrusive extension of the existing bulk and scale.

Overshadowing:

The impact of additional height was considered one of the factors to address due the *possibility* of overshadowing the neighbour. In consideration of this the height of the southern edge of the extension was kept in alignment with the existing gutter line – which is quite low. The extension utilises a skillion roof arrangement and a sloping ceiling so that for the new Lounge area and WC the southern ceiling height is 2.3m and it angles up to 3m.

A survey of the site and neighbour was completed. The proposed scheme was modelled to determine the extent of shadow impact. This found that while the works do overshadow the neighbouring residential flat building at No.16, the existing building already casts shadow onto these units and the additions do not reduce further any sunlight into living room windows.

7.0 THERE ARE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY
CONTRAVENING THE DEVELOPMENT STANDARD (CONTINUED)

Most of the windows of the Unit building at No.16 facing the subject site are bathroom or bedroom windows and the main living windows face East and West out the Western end of the property or over Dowling Street. As demonstrated clearly in the elevational shadow diagrams, the additional mid-winter shadow falls on wall area of the adjacent building to the south and does not cause a reduction in sunlight to any windows. This was determined at Pre-DA to be a critical factor in determining the impact of the proposed additions and with this analysis complete it is submitted that the shadow impact is not a reason to refuse approval.

View Loss:

The building sits at the crown of the road overlooking Oliver Street. The only views that may be affected by the development would be from the first floor of No.16, however they have a constructed a solid privacy screen along the subject site side of their unit. There is no view loss resulting from the proposal.

Privacy Impacts:

The proposed works occupy a very large open roof terrace outside of Unit 5. In constructing the proposed works, this fills in a large portion of this space and there is only one small highlight window in the extension and one highlight window in the Bedroom to replace the West facing window. As such the works do not increase any privacy impacts – in fact it reduces the possibility of overlooking.

8.0 COMPLIANCE WITH THE OBJECTIVES PERTAINING TO STANDARD TO BE VARIED

As demonstrated below, all objectives of the Standard are met.

- (a) *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*

The proposed building's height and scale are consistent with the **existing** character of the Queenscliff locality, even if by current zoning this is technically supposed to be a low-density area. Unless the entire building was demolished then any development of this site would not be able to comply with the **desired future** character of the locality. It is clearly unachievable to assume this site or similar neighbouring sites will ever see a backwards development or de-intensification will occur that would be in line with the R2 zoning.

As shown in the 3D perspectives (SK04) the proposed addition integrates behind the structure of the existing unit. The third floor addition is set back from the existing balcony balustrade to reduce its scale when viewed from the rear road below.

The objective is maintained.

8.0 COMPLIANCE WITH THE OBJECTIVES PERTAINING TO STANDARD TO BE VARIED
(CONTINUED)

- b) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

The proposed dwelling is similar in scale and design to the neighbouring property on the southern side of Dowling Street. The works will also not be particularly visible from public areas due to being set back from the existing balcony edge on the North and West.

The objective is maintained.

- c) *to minimise any overshadowing of neighbouring properties,*

As noted above, the works do have the potential to overshadow the neighbouring residential flat building at No.16, however the existing building already casts shadow onto these units. Most of the windows facing the subject site are bathroom or bedroom windows and the main living windows face East and West out the Western end of the property or over Dowling Street. A survey of the site and neighbour has been completed and elevational sun shadowing undertaken. As demonstrated clearly in the elevational shadow diagrams, the additional mid-winter shadow falls on wall area of the adjacent building to the south and does not cause a reduction in sunlight to any windows. This was determined at Pre-DA to be a critical factor in determining the impact of the proposed additions and with this analysis complete it is submitted that the shadow impact is not a reason to refuse approval.

As noted above, this potential was recognised early and is the reason for retaining the very low eaves along that side of the extension. This was vindicated by the shadow analysis.

The objective is maintained.

- d) *to allow for the reasonable sharing of views,*

The building sits at the crown of the road overlooking Oliver Street. The only views that may be affected by the development would be from the first floor of No.16, and they have a privacy screen along the subject site side of their unit.

The objective is maintained.

- e) *to encourage buildings that are designed to respond sensitively to the natural topography,*

The proposed alteration and addition does not affect the existing conditions of the natural topography.

The objective is maintained.

**8.0 COMPLIANCE WITH THE OBJECTIVES PERTAINING TO STANDARD TO BE VARIED
(CONTINUED)**

- f) *to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

The proposed dwelling has been designed to minimise any adverse visual impact on the natural environment through a combination of form and materials and sympathetic finishes that respects the surrounding environment. In addition, the subject site is not a heritage item and not located within a heritage conservation area.

The objective is maintained.

9.0 CONCLUSION

It is submitted that a variation to Warringah Council LEP 2011 is appropriate for this project. The proposal does not adversely impact the neighbouring properties whilst complying with all objectives of the standard and providing suitable accommodation for the occupants.

Further, as noted by Council at the Pre-DA, *“Pursuant to Clause 4.67(3) on the EP&A Act 1979, the provisions contained within the WLEP 2011 do not apply to an existing use.”*

As demonstrated above, strict compliance with this standard is unreasonable and unnecessary to apply to this Development Application and adequate environmental planning controls apply to be able to justify a variation to this standard.

Approval should not therefore be withheld as a result of the non-compliance with the Height Standard.