

18<sup>th</sup> September 2019

**Supplementary Statement of Environmental Effects/ updated  
clause 4.6 variation request (height of buildings)**

**Alterations and additions to create shop top housing**

**142 Sydney Road, Fairlight**

Pursuant to Clause 4.3 of MLEP 2013 the height of a building on the subject land is not to exceed 8.5 metres in height. The objectives of this control are as follows:

- (a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) *to control the bulk and scale of buildings,*
- (c) *to minimise disruption to the following:*
  - (i) *views to nearby residential development from public spaces (including the harbour and foreshores),*
  - (ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*
  - (iii) *views between public spaces (including the harbour and foreshores),*
- (d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) *to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Building height is defined as follows:



Clause 4.6(3) states that consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (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) states consent must not be granted for development that contravenes a development standard unless:

- (a) *the consent authority is satisfied that:*
  - (i) *the applicant's written request has adequately addressed 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*
- (b) *the concurrence of the Director-General has been obtained.*

Clause 4.6(5) states that in deciding whether to grant concurrence, the Director-General 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 Director-General before granting concurrence.*

## **Claim for Variation**

### **Zone and Zone Objectives**

The subject property is zoned B1 Neighbourhood Centre pursuant to MLEP 2013 with commercial premises and shop top housing permissible in the zone with consent. The stated objective of the B1 zone are as follows:

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*

Shop top housing is defined as one or more dwellings located above ground floor retail premises or business premises.

The development incorporates a dwelling located wholly above ground floor retail/ business premises. Accordingly, the development is appropriately defined as shop top housing and permissible with consent in the zone.

The proposed development meets the relevant zone objective by providing a greater level of retail/ business floor space than that currently located on the site which will *serve the needs of people who live or work in the surrounding neighbourhood.*

Accordingly, there are no statutory zoning or zone objective impediment to the granting of approval to the proposed development.

### **Height of Buildings Standard and Objectives**

The standard, associate objectives and extent of non-compliance have previously been identified. Having regard to the stated objectives it is considered that strict compliance is both unreasonable and unnecessary for the following reasons:

- (a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

Response: Development within the site's visual catchment, and within the 8.5 metre height precinct, is eclectic in nature and currently in transition with a number of older 1 and 2 storey commercial and mixed-use buildings being replaced with more contemporary 2 and 3 level shop top housing building forms.

We note that the building displays a compliant 2 storey building form to Sydney Road with such height below that established by both immediately adjoining properties with the building form stepping down at the rear in response to the topographic characteristics of the site. The non-compliant area of building is generally confined to the central portion of roof form which is set well back from the street and to that extent not readily discernible in a streetscape context. The resultant built form is consistent with the desired future character of the locality being a 2 storey built form presentation to the street.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development by virtue of its height offensive, jarring or unsympathetic in a streetscape and urban context. In this regard, it can be reasonably concluded that the development is compatible with surrounding and nearby development and accordingly the proposal is consistent with this objective.

*(b) to control the bulk and scale of buildings,*

Response: The non-compliant building height element will not be visually prominent as viewed from the street and does not unreasonably contribute to the bulk and scale of the development as viewed from surrounding properties.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development, in particular the non-compliant portions of the building, offensive, jarring or unsympathetic in a streetscape context. The proposal is consistent with this objective.

*(c) to minimise disruption to the following:*

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores),*

Response: Having undertaken a detailed site and context analysis and identified available view lines over the site we have formed the considered opinion that the non-compliant portion of the development will not give rise to any adverse public or private view affectation. The proposal is consistent with this objective.

*(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

Response: The accompanying shadow diagrams prepared by the project architect demonstrate that the proposed development will maintain at least 4 hours of solar access to the north facing principal living rooms and adjacent private open space areas of the immediately adjoining residential properties. Further, the non-compliant portion of the development will not give rise to unacceptable shadowing impact to the adjacent public domain. In this regard, the proposal will maintain adequate sunlight access and accordingly is consistent with this objective.

*(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Comment: N/A

In our opinion, there are sufficient environmental planning grounds to justify the variation it being noted that the non-compliance can be directly attributed to the topography of the land and the desire to create a roof pitch and clerestory window design which allows light to penetrate deep within the upper level floor plate proposed. Such outcomes are consistent with objectives 1.3(c) and (g) of the Act.

### **Conclusions**

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- a) that the site specific and contextually responsive development is consistent with the zone objectives, and
- b) that the site specific and contextually responsive development is consistent with the objectives of the building height standard, and
- c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- d) that having regard to (a), (b) and (c) above that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and
- e) that given the design quality of the development, and the developments ability to comply with the zone and building height standard objectives that approval would not be antipathetic to the public interest, and
- f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

As such we have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

Yours faithfully

**Boston Blyth Fleming Pty Ltd**



**Greg Boston**

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**Director**