

Clause 4.6 - Request to vary a development standard

1.1 Introduction

Part 4 of the Warringah Local Environmental Plan 2011 provides, at clause 4.6, exceptions to development standards. Clause 4.6 states:

- (1) The objectives of this clause 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.*
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development 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.*
- (4) Development 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 Secretary has been obtained.*
- (5) In deciding whether to grant concurrence, the Secretary 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.*
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note. When this Plan was made it did not contain Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU6 Transition or Zone R5 Large Lot Residential.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:*
 - (a) a development standard for complying development,*
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) clause 5.4.*
- (8A) Also, this clause does not allow development consent to be granted for development that would contravene a development standard for the maximum height of a building shown on the Height of Buildings Map on land shown on the Key Sites Map as the Dee Why Town Centre.*

The document represents a written request, pursuant to clause 4.6(3), to vary the development standard relating to building height within Warringah LEP 2011.

1.2 Extent of variation

The site is identified within Council's Height of building map.

The relevant building height control is 8.5 metres.

The existing 2018 approved dwelling was approved for 8.9 metres.

The proposed dwelling exceeds the building height control by 600mm and the existing approved dwelling by 200mm.

1.3 Justification

This provisions of section 4.6 of WLEP provide for a degree of flexibility in applying development standards and recognise the need to achieve better outcomes by allowing some flexibility in particular circumstances.

This application seeks favourable consideration by council on the basis that compliance is unreasonable and unnecessary in this circumstance.

The proposed dwelling is predominantly a height of approximately 7000mm. The elevated section of the dwelling comprises approximately 15m² of floor space. This very small component of the building represents the section exceeding the 8.5m building height.

The objectives of the Warringah LEP building height standard, found at clause 4.3, are achieved as follows:

Objective 1(a): to ensure that buildings are compatible with the height and scale of surrounding and nearby development

The predominant form of buildings within the golf estate to the north (The Greenway) is a contemporary two storey dwelling with heights approximating or greater than 8.5m. The building form observed in Eurabba Road is mixed but the dominant form is a contemporary two storey dwelling. The proposed dwelling, including the proposed building height, is compatible with surrounding and nearby buildings (see attached images).

The scale of the proposed development is generally in keeping with, or less than, the immediately surrounding dwellings and related development and notwithstanding the technical non-compliance the proposed development achieves the intent of Objective 1(a).

The building height exceedance is not likely to result in any perceived disparity between the proposed dwelling and the majority of dwellings in the locality .

Objective 1(b): to minimise visual impact, disruption of views, loss of privacy and loss of solar access

The site of the proposed dwelling is screened by established vegetation on three sides and includes additional plantings on the south-east side as part of the proposed development. The proposed dwelling is situated generally equidistant from the north-west and south-east property boundaries and this achieves the maximum side setback. There is no loss of solar access to neighbours and negligible visual impact or loss of privacy due to existing vegetation and the proposed additional screening vegetation. Views from neighbouring properties follow the landfall to the south-west and the proposed dwelling will not intrude on those lines of sight at all.

The building height exceedance will not result in any meaningful visual impact on neighbours, including view or privacy. There is nil solar access impact as a result of the exceedance.

A diagram of the contour lines for the subject property and surrounding land is provided as a guide to view lines. It is noted that neighbours to the west have a view shed (to the south-east) generally consistent with subject property and the proposed dwelling will therefore not result in view loss. Neighbours to the east have a view shed rotated slightly more to the south and this means that the proposed dwelling will not result in any loss of view relative to the principal fall line and view direction.

Objective 1(c): to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments

The dwelling has been sited on an existing cleared area of the lot and will not reduce the scenic quality of Warringah's coastal and bush environments. The driveway alignment has also been selected to reduce the loss of mature trees, as a means of maintaining the local scenic quality.

Objective 1(d): to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities

The proposed dwelling will not be visible from the nearest public places, being Eurabba Road.

Furthermore, one of the primary design aims for the dwelling is to achieve a sufficient roof pitch to minimise the accumulation of leaves and vegetation debris for fire hazard mitigation. One of the performance criteria found within section 4.3.5 of RFS *Planning for Bushfire Protection* in relation to building design is "to minimise the risk of bushfire attack".

The RFS notes, in *Planning for Bushfire Protection* (p 42), that the design of a building can be of critical importance in terms of the potential for accumulation of debris and exposure of the building to bush fire attack.

Dwelling forms: The Greenway



Dwelling forms: The Greenway



Dwelling forms: Eurabba Road



Site contours

