

CLAUSE 4.6: EXCEPTION TO DEVELOPMENT STANDARDS STATEMENT

Alterations and additional storey to an existing dwelling house

Site:

12 Horning Parade

Manly Vale NSW 2093

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JOB No. MVHP12

Dated:

12th October 2021

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1.0 INTRODUCTION

This Clause 4.6: Exception to Development Standards Statement has been prepared by MILEHAM Design & Build (MD&B). MD&B has expertise in Architecture, Construction and Property Development. We are registered Architects (Registration number 10030) and Licenced Builders (Licence number 272736C).

This Statement is to accompany a Development Application to Northern Beaches Council for alterations and an additional storey to an existing dwelling house as well as demolition and construction of a garage.

2.0 DETAILS OF THE PROPOSAL

The proposed development is for the alterations of the existing ground storey to the forward half of the building, and the construction of a new second storey above the forward half of the house. The proposed development is also for the demolition and construction of a new garage at the front of the property.

3.0 CLAUSE 4.6 DEVELOPMENT STANDARD EXCEPTION

The proposal seeks development standard exception from Warringah Local Environmental Plan 2011 Part 4 Section 4.3 (2) Height of Buildings. The clause reads as follows:

4.3 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.

As per Section 4.3 (2) the maximum height shown for the land on the Height of Buildings Map is 8.5m above the existing ground level to the highest point of the building. The proposed building at its highest point being the ridgeline of the building is 8.45m above the existing ground level and does not exceed the building height limit of 8.5m. However, the proposal seeks an exemption for 6m² of the northern eave of the roof over level 1 to exceed the maximum height, this is because the site topography falls dramatically across the site from south to north. The proposed northern eave of roof over level 1 will have a maximum 8.99m height above the existing ground level at the exceeds Clause 4.3 (2) by 490mm or a 5.8% variance to the control, thereby within the limits of a Clause 4.6 request. This is illustrated on Architectural Drawings A.04.2 Section B and A.04.3 Section C – Max Building Height by MILEHAM Design & Build dated 11th June 2021.

The reason for the height of the roof exceeding the maximum height is the change in topography across the site is that it falls in the region of 3-4m from south to north across the approximate 10m width of the site and an approximate 5-6m fall from the southwest to northeast of the overall site. The existing first floor is

positioned close to the existing ground level to the south of the block (the topography as mentioned falls sharply across the site to the north), and it is proposed to add a first-floor addition as the building footprint of the house is currently not large enough to accommodate the client's growing family. The option of building under is not feasible as the extensive rock shelf would need to be excavated and this is not economically and environmentally preferable nor is it structurally a good option.

Based on the above reasoning it is unreasonable and unnecessary – in our opinion – to comply with the height of buildings limit of 8.5m for the small area of the Northern roof eave. In ***Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 (“Initial Action”) (applying Wehbe v Pittwater Council)*** Preston CJ ruled the following point for establishing that compliance with the clause is unreasonable or unnecessary:

Establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The objective of the development standard are as follows:

4.3 Height of buildings

(1) The objectives of this clause are as follows—

- (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.**

We are of the opinion the proposed design and does not unreasonably or unnecessarily contravene the objectives of the clause. Further grounds were as ruled in 'Initial Action' for establishing that compliance with the clause is unreasonable or unnecessary were:

Establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable.

Based on the above, we draw council's attention to DA 2009/1588 in which a similar proposal was approved by Warringah Council on 9th March 2010. We would like this prior submission to be also taken into consideration by Northern Beaches Council when determining this Clause 4.6 Variation request.

In keeping with the ruling by Preston CJ in 'Initial Action'. The grounds relied on by the applicant in the written request under cl 4.6(3)(b) must be "environmental planning grounds" by their nature. The phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the Objects of Act in Part 1, Section 1.3 of Environmental Planning and Assessment (EPA) Act 1979. We extract the relevant objectives of the act and the grounds that we believe the proposal should be approved in establishing that compliance with the height of buildings clause is unreasonable or unnecessary:

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

in allowing the family to maintain adequate housing as it grows with sensible development

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

through the development extending upwards onto the existing structure reducing economic costs limiting unreasonable burden on the family and minimising environmental impact through the existing natural rock that the existing house is situated on.

(c) to promote the orderly and economic use and development of land,

this development emphasises growth that is responsible and respectful to the surrounding urban and natural environment in that it is a small part of the roof that will exceed the maximum height of buildings clause.

(d) to promote the delivery and maintenance of affordable housing,

by choosing an economically responsible solution for measured development to address family need

(e) to protect the environment including conservation of...., native animals and plants, ecological communities and their habitats,

the decision to extend upwards as opposed to the alternative of excavating into the natural rock formation and creating irreversible damage

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

the proposed design promotes good design and amenity by maintaining at it's highest point – compliance with the height of building clause – and only proposing non-compliance to an area of the roof that is unfortunate due to a natural rock formation that cannot be landscaped or built into. Thereby meeting the family's social needs whilst respecting the surrounding

environment through economically sound decision making that leads to good design outcomes.

The contravention of the Warringah LEP 2011 clause 4.3 (2) is due to the extreme nature of the topographical environment on which the lot is sited, and it is - in our opinion - an unnecessary and unreasonable expectation in this case for the proposed design to be required to comply with the control in order to satisfy the objectives as listed under of the Warringah LEP 2011 Part 4 Clause 4.3(1) and the Objects of Act as listed under the EPA Act Part 1 Clause 1.3 as cited above without this contravention occurring. As such we request that Council grants an exception to the development standard for this reason.