

LEP Clause 4.6 Request – DA2019/0349

25 Ballyshannon Road, Killarney Heights

25.07.19

Preamble

This application requests a variation to the Building Height of LEP Clause 4.3 Under LEP Clause 4.3 a maximum height of 8.5m above natural ground is permissible.

The objective of LEP Clause 4.6 is to provide a degree of flexibility in applying certain development standards and to achieve better outcomes through this flexibility.

In accordance with the NSW LEC judgement on *Initial Action Pty Ltd v Woollahra Municipal Council [2018]*, the applicant's written request to contravene a development standard should demonstrate two matters. First, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Secondly, that there are sufficient environmental planning grounds to justify contravening the development standard. This request addresses both matters.

Nature of Non-Compliance.

The proposed development is one storey when viewed from Ballyshannon Road on the North boundary. By virtue of the slope of the site, it becomes 2 storey for the Southern portion of the dwelling furthest from the street.

As shown on submitted elevation DA4 and long section DA14, there is a minor non compliance in the South East corner of the dwelling for a portion of the roofed living room deck.

Due to the cross fall of the land, no such non compliance exists on the South West Corner.

It should be noted that the non compliance exists over a very small portion of enclosed space, and that this issue only relates primarily to an open deck.

The maximum extent of the non compliance at the Southern edge of the roof over the deck is approximately 780mm (approx 9.1%)

Further, it is important to note that the vast majority of the dwelling is well below the 8.5m height limit.

Exception to LEP Clause 4.3 – Building Height

Objectives of LEP Clause 4.3 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.*

In accordance with the decision of *Wehbe v Pittwater Council* the applicant seeks to establish that 'the objectives of the development standard are achieved notwithstanding non-compliance with the standard'

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

- The proposed development is smaller in scale than the neighbouring dwelling to the West. It is of a similar scale to the dwelling to the East.
- The proposed development is also consistent in scale with dwellings opposite on Ballyshannon road.
- The proposed development does not contravene any other development standards or controls in either the DCP or LEP.

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

- The area of non compliance is the South East Corner of the dwelling which has no overshadowing impact on neighbouring properties.
- Shadow diagrams are attached to the application, which demonstrate the very minor impact of the proposal.
- View studies were conducted from neighbouring properties as part of the preparation of the Development Application. These studies demonstrate that there is no loss of view for neighbours and that the proposal is entirely in keeping with the planning principles established by *Warringah Council vs Tenacity*.
- Due to the gable roofed form of the Eastern side of the proposed renovation, a view corridor is created which does not currently exist. Views from the street are improved by the proposed development.
- There is no impact on the privacy of neighbours to be created by the non compliant portion of roof.

(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.

- The visual impact of the non compliant portion of the proposal is virtually non existent when viewed from the street. It is on the opposite side of the dwelling. There are no neighbours to the South. The proposal improves the appearance of a currently dilapidated South façade of the existing dwelling.
- The proposal responds sensitively to the topography, and is broken into two halves in order to minimise visual bulk.

In addition to the above it should be noted that, in *Wehbe v Pittwater Council*, the height standard along the Southern frontage of Ballyshannon Road in the vicinity of the proposed development has been 'virtually abandoned' ... 'by the Council's own decisions in granting development consents that depart from the standard'. There are numerous dwellings that demonstrate non compliance with the height standard. While many of these are historical, and possibly approved for good reasons due to the local topography, it would seem clear that to require strict adherence to the height standard in this case is unreasonable or unnecessary.

Environmental Planning and Assessment Act 1979 No 203 – 1.3 Objects of Act

The Environmental Planning and Assessment Act 1979 No 203 identifies a series of criteria to be achieved to permit development. The list below outlines these objects and the proposed developments related adherence to these objects to demonstrate that the proposed development is consistent with the Objects of this Act. The objects are as follows:

(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,

- Not applicable to this clause 4.6 Request.

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

- Not applicable to this clause 4.6 Request.

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

- Not applicable to this clause 4.6 Request.

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

- Not applicable to this clause 4.6 Request.

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

- Not applicable to this clause 4.6 Request.

(f) to promote the sustainable management of built and cultural heritage(including Aboriginal cultural heritage),

- Not applicable to this clause 4.6 Request.

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

- The identified area of non-compliance on the south-eastern corner of the gable roof promotes good design and amenity of the built environment through the following factors:

- Consistency with DCP D11.1 – Roofs should complement the roof pitch and forms of the existing buildings in the streetscape
- Consistency with DCP D11.4 - Roofs shall incorporate eaves for shading
- Colourbond Roofs and deep eaves are synonymous with that of the Australian design language and vernacular.
- The visual impact is considered to be virtually non-existent.
- The height and scale is consistent with the neighbouring dwellings and other properties within the locality.
- The design actually offers a better view corridor for the dwellings on the north of Ballyshannon Road.

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

Not applicable to this clause 4.6 Request.

(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

Not applicable to this clause 4.6 Request.

(j) to provide increased opportunity for community participation in environmental planning and assessment.

Not applicable to this clause 4.6 Request.

Summary

In accordance with the principles in the non compliance with LEP Clause 4.3 should be supported by Council as it is minor in nature, primarily relates to an eave over outdoor deck, does not create any amenity concerns, is in keeping with the objectives of the clause and allows for a dwelling which makes a more positive contribution to the locality by being well under the allowable scale in other areas.