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Planning &
Development

CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARD

Maximum Floor Area of Secondary Dwelling (Clause 6.10)

13 Cumberland Avenue
Collaroy

Clause 4.6 Exception to Development Standard

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1 Introduction

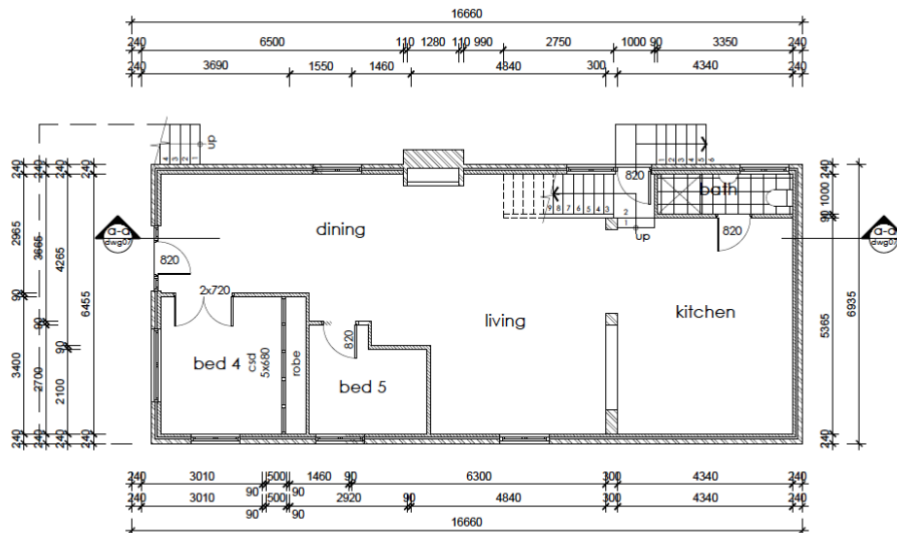
This clause 4.6 report accompanies a development application for the authorisation of an existing secondary dwelling.

2 6.10 Development for the purposes of secondary dwellings in Zones R2 and R3 - Variation Request

Maximum GFA Permitted: 75sqm

Proposed/existing GFA of secondary dwelling: 100sqm

Variation Requested: 25sqm



The request seeks exception to a development standard under clause 4.6 - Exceptions to Development Standards of Warringah Local Environmental Plan 2011. The development standard for which a variation is sought is that of maximum floor area of the secondary dwelling restriction contained within Clauses 6.10. The variation is minor in terms of impact and it is considered that strict compliance with the development standard is difficult as the area is existing and difficult to modify to achieve compliance. It is considered that if the development were to comply the overall impact of the secondary dwelling would not change.

The variation has been prepared in accordance with the NSW Department of Planning and Infrastructure (DP & I) guideline *Varying development standards: A Guide*, August 2011, and has incorporated as relevant, principles identified in the *Wehbe v Pittwater Council [2007] NSWLEC 827*

Clause 4.6 Exceptions to development standards establishes framework for varying development standards applying under a local environmental plan.

Objectives to clause 4.6 at 4.6(1) 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.*

Clause 4.6(3)(a) and 4.6(3)(b) require that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

*(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)(a)(i) and (ii) require that development consent must not be granted to a development that contravenes a development standard unless the:

(a) the consent authority is satisfied that:

*(i) the applicants written request has adequately address 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*

Clause 4.6(4)(b) requires that the concurrence of the Secretary be obtained and clause 4.6(5) requires the Secretary in deciding whether to grant concurrence 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.*

A detailed assessment has been carried out below:

2.1 What is the Development Standard proposed to be varied?

Clause 6.10 of the Warringah LEP provides the following development standard in relation to the maximum floor area for a secondary dwelling.

(3) Despite clause 5.4 (9), development consent may be granted for development for the purposes of a secondary dwelling on land to which this clause applies if—

(a) the total floor area of the secondary dwelling does not exceed 75 square metres, and

(b) the consent authority is satisfied that the secondary dwelling will be located entirely within an existing principal dwelling that contains no other secondary dwelling.

Objectives of clause 6.10

The objectives of clause 6.10 are as followed:

The objective of this clause is to ensure that secondary dwellings on land to which this clause applies are of low impact and without adverse effects on the specific ecological, social and aesthetic values of the land.

2.2 Clause 4.6(3)(a) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

In determining this, the 5 Part test established in *Wehbe v Pittwater Council [2007] NSWLEC 827* has been utilised as a guide

1. Is the proposal consistent with objectives of the standard notwithstanding non-compliance;

The proposal, despite non-compliance with Clause 6.10(2) of the Warringah LEP, is considered to remain consistent with the underlying objective of the development standard as follows:

The objective of this clause is to ensure that secondary dwellings on land to which this clause applies are of low impact and without adverse effects on the specific ecological, social and aesthetic values of the land.

Comment: The proposed secondary dwelling is considered to be a very low impact and contains no adverse effects on the environmental or the amenity of neighbouring properties. The fit out of the lower ground floor as a secondary dwelling allows the owners to have their children live with them without having to make substantial changes to the existing dwelling.

2. Is the underlying objective or purpose of the standard not relevant to the development and therefore compliance is unnecessary;

The underlying objective or purpose of the Standard is relevant. As demonstrated above, the proposal retains consistency with the objectives of Clause 6.10 of Warringah Council LEP, despite non-compliance.

3. Would the underlying object of purpose be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

The underlying objectives or purpose of the standard would not be defeated or thwarted if compliance was required, however, as outlined above consistency with objectives is achieved despite noncompliance.

4. Has the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;

The standard has not been abandoned or destroyed.

5. Is the zoning of the particular land unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary.

The zoning of the land is appropriate for the site.

Clause 4.6(3)(b) - Are there sufficient environmental planning grounds to justify contravening the development standard?

The proposed development is considered to appropriately address and respond to the relevant matters for consideration under S4.15(1) of the EP&A Act 1979.

Specifically, it is considered that the development has been designed in accordance with the objectives outlined in section 1.3 of the EP&A Act 1979 as followed:

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

Comment: The proposed development is the use of the lower ground floor as a secondary dwelling and will have a positive social and environmental impact on the area.

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

Comment: The proposed use of the lower ground floor as a secondary dwelling is a good design outcome as it uses a previously unused space for the purpose of separate habitation for the children of the owners.

It is considered that there are sufficient environmental planning grounds to justify the non-compliance with the development standard as provided above. Additionally, the development complies with the outcomes of the R2 Residential zone as provided:

Objective: *To provide for the housing needs of the community.*

The development provides further amenity for the occupant of the dwelling.

Objective: *To provide for a variety of housing types and densities.*

The development provides a secondary dwelling within the principal dwelling resulting in a variety of housing types.

Objective: *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The development provides suitable accommodation for the children of the owners to allow them to meet the day to day needs.

2.3 Clause 4.6(4)(a)(ii) - Is the proposed development in the public interest because it is consistent with the objectives of the standard and zone as set out above.

There is public benefit in maintaining a degree of flexibility in specific circumstances, particularly when site constraints warrant a variation and the development is still able to achieve the outcomes of the control. In the current case, strict compliance would limit the development potential of the site and limit the lifestyle of the occupants of the dwelling. As identified above, the development achieves the outcomes of the development standard and is considered to be in the public interest.

3 Conclusion

As provided above, the development complies with the outcomes of the development standard and is considered to be in the public interest. Strict compliance with this control is deemed unnecessary and restricts the use of the site by the owner due to the site constraints. It is considered that the development results in a good planning and design outcome for the property and the community.