

**APPLICATION MADE UNDER CLAUSE 4.6 OF WARRINGAH LOCAL
ENVIRONMENTAL PLAN 2011 TO VARY A DEVELOPMENT STANDARD.**

DEVELOPMENT APPLICATION

Alterations and additions
13 Carolyn Avenue
BEACON HILL
NSW 2100
Lot 7 DP 205199

For R Maiolo

November 7 .2022

Approval is sought to vary a development standard set out in Warringah LEP 2011

THE STANDARD TO BE VARIED IS: BUILDING HEIGHT

1.0 INTRODUCTION

Approval is sought to vary the Development Standard for Building Height set out in Clause 4.3 of the LEP on the grounds set out below. - in accordance with Clause 4.6 of the Warringah LEP

2.0 VARIATION PROPOSED

The Building Height map referred to in Clause 4.3.(2) of the Warringah LEP 2011 sets a maximum building height for the site of 8.5 metres.

Building height in metres is defined in the Warringah LEP 2011 as:

"The vertical distance from the ground level (existing) to the highest point of the building".

The maximum permissible building height for the site is shown on the map as 8.5 metres.

The proposed development will result in a maximum building height of 8.808 metres measured from ground level internally to the main ridge.

The building does not exceed 8.5 metres in height measured above existing ground level on each of the external elevations.

The non- compliance occurs within the building envelope and is not visible externally. It arises from the proposal to lower the floor level of the Lower ground floor of the building to provide a BCA compliant floor to ceiling height in habitable areas located here.

3.0 CLAUSE 4.6 ASSESSMENT

3.1.1 CLAUSE 4.6(1) OBJECTIVES OF CLAUSE 4.6

- a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development*

And

- b) *to achieve better outcomes from and for development by allowing flexibility in particular circumstances,*

3.1.2 CLAUSE 4.6(2) DEVELOPMENT CONSENT MAY BE GRANTED.

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.

Under section 1.4 of the Environmental Planning and Assessment Act 1979 Building Height is defined as a development standard. It is not excluded from operation.

3.1.3 CLAUSE 4.6(3) CONSENT AUTHORITY TO CONSIDER WRITTEN SUBMISSION.

This application constitutes a written submission that seeks to justify contravention of the development standard by demonstrating that:

- a) *Compliance 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.*

3.1.4 CLAUSE 4.6(4) CONSENT AUTHORITY TO BE SATISFIED.

The Consent Authority must be satisfied that:

a)

- (i) *the applicant's written request has adequately addressed the matters required to be*

satisfied 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*

These matters are addressed below.

LEP Clause 4.6 (3)(a)

That compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

The maximum building height shown for the land on the “Height of Building Map” is 8.5 metres

The proposed work seeks inter alia to convert an existing storage room located at lower ground floor level that is currently used by the owner for a space to pursue her leisure activity of quilting into guest accommodation . This frees up space on the ground floor for conversion to a large sewing room able to accommodate her quilting and other sewing equipment.

The work requires lowering of the existing floor level at LGFL by 560 mm in order to achieve a BCA compliant floor to ceiling height for a habitable room. This results in a maximum height of building measured internally to the ridge of the rebuilt first floor of 8.808 metres. (Exceeding the maximum permissible height of 8.5 metres by 308 mm).

Had the existing floor height in this lower ground floor area been retained the proposed building height would be 8.248 Metres. I.e well within the maximum permissible height.

In both instances the external appearance and height measured from ground at external walls would remain the same. I.e within the 8.5 metre height.

It is submitted therefore that compliance with the Development Standard is unreasonable and unnecessary in this case as the objectives of the control are satisfied.

- (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.*

Wehbe v Pittwater (2007) NSW LEC 827- 5 part test.

This is applied to demonstrate that compliance with a development Standard is unreasonable or unnecessary.

It is not necessary to establish all of the tests or “ways”. One may suffice.

In this case the first test is established as discussed and demonstrated above.

FIRST	The objectives of the standard are achieved notwithstanding non-compliance.
SECOND	The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
THIRD	The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

FOURTH	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 or unreasonable.
FIFTH	The zoning of the particular land is 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 objectives of the zone (Residential R 2) are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

The variation to building height sought is in accord with these zone objectives for the reasons set out below that detail why strict compliance with the development standard is unnecessary in this instance.

Objective 1:

The variation does not adversely impact on the capacity of the dwelling to meet the housing needs of the community. It has no impact on the low density residential environment and is minor in nature being limited to building height measured within the building envelope.

Objective 2:

Not applicable. The variation applies to existing residential development.

Objective 3:

The proposed variation is compatible with the existing environmental and built character of Warringah (now Northern Beaches LGA). It involves a deviation from the LEP height limit when measured within the building envelope, arising from a lowering of the floor level at Lower ground Floor. It does not impact on appearance, scale, or general character of the dwelling within the context of the built character of Warringah (now Northern Beaches) and the locality.

The objectives of clause 4.3 Height of Buildings are:

- to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- to manage the visual impact of development when viewed from public places such as parks and reserves, roads, and community facilities.*

The variation to building height sought is in accord with these height objectives for the reasons set out below that detail why strict compliance with the development standard is unnecessary in this instance.

Objective (a)

The deviation from the LEP height limit occurs within the building envelope and does not impact on the height scale of the subject building when viewed externally nor that of the residential area in which the work is located.

Objective (b)

The deviation from the LEP height limit that occurs within the building envelope does not have any effect on visual impact. The visual impact of the development would be no different if the existing floor level of the Lower Ground Floor of the building was unaltered.

It has been demonstrated that the proposed development will not adversely impact on privacy, give rise to loss of view or unreasonable loss of solar access.

Objective (c)

The deviation from the LEP building height limit that occurs within the building envelope does not give rise to any adverse impacts on Warringah's (now Northern Beaches) coastal and bush environments. It is not located directly adjacent to coastal areas or to bushland .

Objective (d)

The deviation from the LEP building height limit that occurs within the building envelope does not give rise to any adverse visual impact of the development when viewed from public spaces such as parks, and reserves, roads and community facilities.

It is submitted therefore that taking into consideration the existing topography, the characteristics of the existing building and the nature and objectives of the proposed work and the fact that the non-compliance occurs within the building envelope and does not impact on external bulk height and scale of the building, strict compliance with the development standard Building Height is unreasonable and unnecessary.

LEP Clause 4.6.(3)(b)

That there are sufficient environmental planning grounds to justify contravening the development standard.

The aspect of the development that contravenes the development standards (height of building) occurs within the building envelope and arises from the proposal to lower the floor level of the Lower Ground floor of the building. It does not impact on height bulk and scale of the building when viewed externally.

- a) Characteristics of the existing building and site constraints.
 - o The existing building contains accommodation on 3 levels.
 - o The steep fall of the site from south to north has enabled a garage and storage areas to be located at lower ground floor level.
 - o Lower ground floor ceiling heights are currently less than the minimum BCA requirement for habitable spaces.

- It is proposed to locate guest accommodation at this level freeing up space at ground floor level for the owner's use for her leisure activity of quilting and sewing.
- This is able to be addressed by lowering the existing floor level without giving rise to any building height impacts that are visible externally,

As discussed above, this contravention, due to its minimal nature does not impact on the objectives of the zone in which the dwelling is located, nor on the objectives of the standard to be varied: Building Height.

This contravention does not give rise to adverse impacts on the neighbourhood, the streetscape, or the amenity of surrounding dwellings.

Clause 4.6(4) (a)

The proposal is consistent with the objectives of the standard and the zone objectives for the reasons discussed above.

It is submitted that the development is in the public interest because it is consistent with the objectives of the development standard (height of building) and the objectives of the R2 zone.

CONCLUSION

It is demonstrated that strict compliance with the building standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify contravening the development standard



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