



yours locally

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General Manager
Northern Beaches Council
PO Box 82
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Attention: Assessing Officer – Jordan Davies

Dear Sir/Madam

PROPERTY: NO. 602 WARRINGAH ROAD, FORESTVILLE
PROPOSAL: DA2019/0936 – CONSTRUCTION OF A DWELLING HOUSE, TO
BE USED AS AN EXHIBITION HOME
SUBJECT: CLAUSE 4.6 VARIATION TO LEP HEIGHT PROVISION

The proposal provides for a maximum height of 9.194m and a minimum maximum height of 8.894m at the front of the dwelling, exceeding the maximum permitted control of 8.5m. It would be appreciated if Council would consider the following request for a variation under the provisions of Clause 4.6 of Warringah Local Environmental Plan 2011 during further assessment of this application:

Warringah Local Environmental Plan 2011

Clause 4.6 Exceptions to development standards

- (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 Director-General has been obtained.
- (5) In deciding whether to grant concurrence, the Director-General 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 Director-General before granting concurrence.

In order to clarify the extent of the matters required to be addressed within a request for a variation under Clause 4.6, consideration has been given to the following case law:

Wehbe v Pittwater [2007] NSWLEC827

Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC90

Randwick City Council v Micaul Holdings Pty LTD [2016] NSWLEC7

Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSW LEC118

Review of these cases indicates that a request for a variation under the provisions of Clause 4.6 is more onerous than previously required under SEPP 1. The case of Randwick v Micaul indicates that Council, as the consent authority, maintains a high level of discretion with regard to the level of justification required in order to support a variation request. The following must be demonstrated to Council's satisfaction within the justification provided:

- Compliance with the objectives of the development standard;
- Compliance with the objectives of the zone;
- That the development is unreasonable or unnecessary in the circumstances of the case;
- Sufficient environmental planning grounds that are particular to the circumstances of the proposed development.

This submission individually addresses each of the above requirements below as per the cited case law.

Compliance with the objectives of the development standard

The proposed two storey dwelling has a maximum height of 9.194m, which reduces to 8.894m at the front of the dwelling, the maximum permitted height of building within Clause 4.3 of Warringah Local Environmental Plan 2011 is 8.5m. The proposed design of the roof therefore exceeds Councils requirement by 8.16% at the rear and 4.6% at the front, these variations are not anticipated to be highly noticeable from the streetscape or surrounding properties.

The proposed maximum height does not impact upon the dwelling being able to achieve the objectives of the zone or the objectives of the development standard. The proposal is considered to have a positive impact on the streetscape character of the area as the contemporary dwelling will enhance the streetscape.

The dwelling continues to meet objectives of the building height controls as it is considered consistent with the site constraints, will not detract from the prevailing building height or desired future streetscape character of the area. The bulk and scale of the building is broken up through articulation and stepped design and no significant views are lost as a result of the height increase.

In this instance it is believed that the proposed maximum building height provision is capable of achieving the objectives of the development control despite the variation in the following manner:

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

The proposed dwelling is surrounded by development of differing scales and form. It is not anticipated that the proposed height of the dwelling will likely have any detrimental impact upon the adjoining development and will remain compatible in terms of bulk and scale.

Whilst numerically the dwelling exceeds the maximum building height, the proposed dwelling will remain in keeping with the streetscape character, through the appropriate pitch and design.

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

The dwelling is capable of complying with the relevant solar access provisions as shadows will be predominantly cast over the increased side setback and will not have any impact upon the adjoining neighbor to the south. Solar access is well maintained despite the increased height of the dwelling and will allow suitable sunlight into the POS and living areas.

Minimal windows are proposed to the upper floor, and where provided have been suitably treated and are not likely to provide opportunities for overlooking as they are appropriately designed, setback and offset from adjoining properties.

The proposed dwelling is suitably setback from adjoining POS areas and the increased height will not have any detrimental impact upon solar access into the POS areas of the adjoining properties. The articulation provided to the dwelling will ensure the visual amenity of adjoining residents will be maintained through ensuring the dwelling does not have excessive visual bulk.

Due to the topography of the area, no impact is anticipated on views and the proposed dwelling will not have any detrimental affect upon views to or from the adjoining public place.

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

The proposed dwelling is located within a residential area and will not impact upon the scenic quality of the coastal or 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 proposed dwelling is well articulated and provides a stepped design and to ensure the visual bulk and scale of the dwelling is minimised when viewed from surrounding properties and public areas. The high quality design and appropriate colours and materials ensure the dwelling is a suitable addition to the street.

Compliance with the objectives of the zone

The objectives of the R2 Zone 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 proposed two storey dwelling will remain in keeping with the scale and character of the surrounding developments and has been designed to retain a high level of amenity for adjoining residents. The dwelling remains consistent with other low density dwellings. Residents will still be able to carry out a range of activities provided by the appropriate landscape area and private open space, without affecting adjoining properties.

The detached dwelling is in keeping with the low residential environment and provides a contemporary design with sufficient landscaping to retain the landscape character of the area. The extent of the variation is not considered to be detrimental to the surrounding area and the high level of articulation through the front façade and secondary elevation of the dwelling reduces the visual bulk as viewed from the street.

As the dwelling remains to meet the requirements for low density residential living without any detrimental impact on the amenity of the surrounding sites, the development is found to achieve the objectives of the R2 Low Density Residential Zone.

Development is unreasonable or unnecessary in the circumstances of the case

The requested variation to the maximum building height provision is considered to be a reasonable and appropriate design outcome for the following reasons:

- The development is noted to generally achieve Council's controls. The dwelling (once converted to a residential dwelling) will provide a suitable design that is appropriate for future residents.
- The variation relates to exceedance in building height that does not have any impact upon the dwellings ability to meet with the objectives of the Height of Buildings development standard or the R2 Low Density zone.
- The increase in height will not have an excessive impact upon the streetscape or adjoining properties and is considered to result in an appropriate outcome for the residents needs. It would seem unreasonable and unnecessary to require compliance with the height of building control in this instance.

Sufficient environmental planning grounds that are particular to the circumstances of the proposed development

Variations under the provisions of Clause 4.6 are understood to be permitted in circumstances where the non-compliant development is found to be able to meet with the objectives of the zone, but does not expressly need to result in a better outcome than a compliant proposal (Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSW LEC118). In this case, the proposed dwelling is considered to meet with the objectives of the zone, and it is trusted the Clause 4.6 request has been adequately addressed in this instance.

The proposed height variation will not result in any detrimental impact beyond that of a compliant proposal and in this case, the design prepared by Clarendon Homes is considered suitable and the overall ridge height will not appear as out of place between the adjoining properties.

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Numerical provisions such as building height are considered to be in force as a guide to achieve the objectives of the control. In this instance the objectives of the building height control are achieved, despite the increase in building height.

It is requested that Council favourably consider this variation due to the minimal impact upon the surrounding properties and the public places. The proposed height will not have any detrimental impact beyond that of a compliant proposal.

Should you require any further information or clarification with regard to this matter prior to determination please do not hesitate to contact the undersigned on Ph: 9002 9654.

A handwritten signature in cursive script, appearing to read 'Dean', written in dark ink.

Jessica Dean
Town Planner
Local Consultancy Services