



Date: 10 September 2018

Application to vary a development standard under clause 4.6 of the Warringah Local Environment Plan 2011 (WLEP 2011)

Land at 128 Queenscliff Rd Queenscliff

1. What is the name of the environmental planning instrument that applies to the land?

Warringah Local Environment Plan 2011 (WLEP 2011)

2. Zoning of the land?

Zoning Zone R2 Low Density Residential

3. What are the objectives of Zone?

1 Objectives of zone

- 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.*

3 Permitted with consent

Bed and breakfast accommodation; Boarding houses; Boat sheds; Building identification signs; Business identification signs; Child care centres; Community facilities; Dwelling houses; Educational establishments; Emergency services facilities; Environmental protection works; Exhibition homes; Group homes; Health consulting rooms; Home businesses; Hospitals; Places of public worship; Recreation areas; Respite day care centres; Roads; Veterinary hospitals

4. What is the development standard being varied?

Height

5. Under what clause is the development standard listed in the environmental planning instrument?

Clause 4.3 Height

6. What are the objectives of the development standard?

(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.

(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.

(2A) If the Map specifies, in relation to any land shown on that map, a Reduced Level for any building on that land, any such building is not to exceed the specified Reduced Level

7. What is the numeric value of the development standard in the environmental planning instrument?

Height 8.5 meters

8. What is the numeric value of the development standard in the development application?

By our measurement 8.57 meters which is 70 mm above the standard. Council suggests the height is 9 meters. If this is taken as the standard, then the height is 500 mm over the standard. Even at this height, this building can be approved as being 6 % above the height standard.

9. What is the percentage variation?

Less than 0.82% by our measurement, 6% by Council assessment.

10. How is the strict compliance with the development standard unreasonable or unnecessary in this particular case?

- i. It is unreasonable to expect strict compliance with the standard as the variation is caused by the steep slope on the land at this location.
- ii. Any non-compliance is limited to a small area on the southern elevation of the building.
- iii. The existing house exceeds 8.5 meters in height.
- iv. Strict compliance is unnecessary as all of the objectives of the R2 Zoning in the WLEP2011 can be achieved.

11. How is strict compliance hinder the attainment of the object as specified in Section 5(a) (1) and (11) of the Act.

Strict compliance with the control would not hinder the attainment of the object as specified in Section 5(a) (1) and (11) of the Act.

12. Is the development standard a performance based control?

The height standard is not a performance based control.



13. Would strict compliance with the standard, in your particular case, be unreasonable and unnecessary?

Strict compliance would be unreasonable and unnecessary because the area of non-compliance is caused by the sloping nature of the lot.

14. Additional matters to address.

14 (a) Matters of Significance for State or regional planning.

Noncompliance with the WLEP(2011) Height standard will not raise matters of significance for State or regional planning.

14 (b) Any public benefit in maintaining the standard.

No.

14 (c). Objectives of the standard.

This application fulfils the objective of the standard.

14 (d). Underlying purpose not relevant.

The underlying purpose is achieved by the project fulfilling the objectives of the standard.

15 Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118

Council has asked us to comment on recent decisions from LEC, known generally under the heading of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

This decision has been put aside by several recent cases. It probably is irrelevant in this matter.

In any event, the original case asks that a variation under a Clause 4.6 submission to be shown as neutral in its effect. This addition of one bedroom plus balcony to an existing house has no effect on any part of the built environment, so is neutral in effect.



16. Conclusion

We suggest that there are sufficient grounds to justify contravening the development standard. This project fulfils all other WLEP 2011 standards and objectives. We request this clause 4.6 variation to allow consent for the dwelling as submitted be accepted and the development application approved.

We note that the Secretary of the Department of Planning and Environment is the concurrence authority'

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