Appendix A

Clause 4.6 Justification

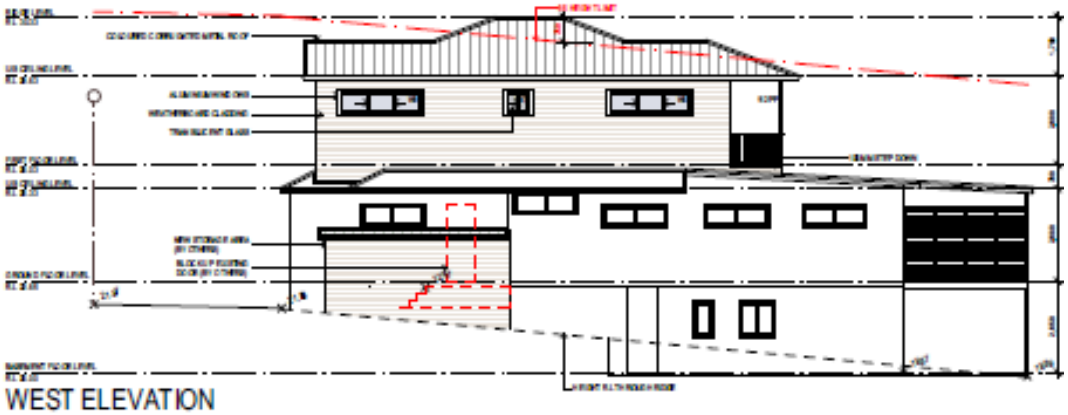
No 1 Bellevue Parade North Curl Curl

Introduction - Content of the clause 4.6 request

Clause 4.3 of the Warringah LEP 2011 relates to Building height. The maximum permissible building height for the subject site is 8.5m.

The proposed development has a maximum building height of 9.25m being non-compliant with the maximum allowable building height for the subject site by 0.75m or 9.12%.

Given the above non-compliance with clause 4.3 of the LEP, consideration of the matter is given pursuant to the provisions of clause 4.6 of the LEP for completeness.



The objectives of clause 4.6 of the LEP 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 of the LEP notably is designed to provide **flexibility when applying development standards particularly when the variation of the standard enables a better development outcome**.

The proposed increase in building height arrives owing to the fall in the land and the elevated nature of the existing ground floor of the dwelling.

A degree of flexibility to the application of the FSR development standard is warranted in this instance.

It is significant to note that the variation does not result in excessive floor space ratio or development density. The variation does not manifest in an overdevelopment of the site. The existing dwelling is structurally sound and retains quality floor space worthy of retention. The location of the upper level as proposed is logical and appropriately relates to the street, rear yard and neighbouring dwelling circumstances.

Clause 4.6 of the instrument provides flexibility when applying development standards.

The proposed development has been architecturally designed to provide a well composed building that provides good amenity for future occupants, which respects the amenity of existing and future neighbouring development and which is compatible with the emerging character and development pattern of the locality.

No adverse planning consequences (shadowing, privacy, visual impact, urban design/streetscape, heritage, neighbourhood character) arise from the variation with the proposed development sitting comfortably on-site within the required setbacks. Rather, in this particular case the variation facilitates a good design outcome in terms of amenity, streetscape and built form.

The provision of a flat roof profile can be provided to achieve numerical compliance, however such would appear disjointed and lack architectural expression.

For reasons expressed in this submission the 'flexibility' provided by clause 4.6 of the LEP facilitates design outcome that does not impact on any adjoining property despite the proposed variation to the building height standard.

(2) 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.

Comment:

The height development standard is not expressly excluded from the operation of clause 4.6.

(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.

Objectives of development standard

The objectives of the height control development standard are:

(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.

The subject site is zoned to accommodate low density residential and the immediate precinct does contain dwellings built on similar sized lots which contain similarly scaled dwellings and larger dwellings on the northern side of the road. The proposed dwelling is proportionate with its site boundaries and will be consistent in this regard.

There will be no disruption of views, loss of privacy or significant loss of solar access given the site context and orientation.

There will be no erosion of bushland or scenic quality.

Compliance unnecessary

The proposed development proffers alternative means of achieving the objective of the minimum building height standard. The surrounding precinct maintains sloping land and regular detached dwellings in the zone.

Pitched roofs are common in the precinct.

The proposed development achieves the desired residential character without comprising the amenity of the surrounding area in terms of visual impacts and solar access. A pitched roof is proposed in this instance and considered necessary.

The minor exceedance of the building height standard does not result in a building that is excessively bulky particularly as a typical two storey elevation is generated to the street frontage.

The containment of the proposed addition within the footprint of the dwelling is preferred relative to extending the dwelling into the green spaces/recreational area at the rear or into the front setback.

The non-compliance will not given rise to adverse impacts, which would affect neighbouring.

As the development proffers alternative means of achieving the objectives of clause 4.3 based on the site context, strict compliance is unnecessary.

Compliance unreasonable

There would be no purpose served if strict compliance was required by the consent authority.

As will be detailed in subsequent parts of this request the variation does not manifest in any adverse planning consequences in terms of streetscape, neighbourhood character or amenity (shadowing and privacy). There are no adverse 'flow on' non compliances or adverse environmental impacts arising from the variation in this instance.

A compliant development (building height) would have a similar performance in regards to overshadowing and bulk/scale. A flat roof profile could be provided to achieve compliance with the standard. Such would appear disjointed with the lower roof profile and is not the preferred outcome from an architectural perspective.

Despite the building height variation, a standard floor space ratio is achieved facilitating the orderly and economic development of the land.

No particular benefit would be derived from the application of the standard in this instance (rather compliance would result in negative urban design outcomes); strict compliance is therefore unreasonable.

The proposed design is effectively a better and more cost effective outcome than that of the approved design.

Environmental planning grounds

A written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

The term "environmental planning grounds" is broad and encompasses wide environmental planning grounds beyond the mere absence of environmental harm or impacts : Tuor C in *Glenayr Avenue Pty Ltd v Waverley Council* [2013] NSWLEC 125 at [50].

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1008, Pearson C held at [60] that environmental planning grounds as identified in cl 4.6 must be particular to the circumstances of the proposed development on a site. This finding was not disturbed on appeal (Pain J in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 & Meaher JA; Leeming JA in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248.

In this particular case the variation to the building height control does not impact on the ability of the proposal to accord with all other development standards and controls.

Compliance with the building height control in this instance would not achieve any additional architectural integrity or urban design merit of the development, as previously discussed.

Having regard to the above there are well founded environmental planning grounds to vary the development standard in this instance.

(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 Planning Secretary has been obtained.

Comment:

The objectives of the R2 low density 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.*

Comment:

The matters required to be demonstrated by subclause (3) have been adequately addressed.

The proposed development will be in the public interest because it is consistent with the objective of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The proposed development is consistent with the objectives as follows:

The proposed development provides for the construction of a standard and well proportioned upper level addition. The development has been site specifically designed and will positively contribute to the streetscape and enhance the streetscape relative to the existing built form on the site. A general upgrade of the existing built form will also occur.

The proposed development assists in establishing the desired future character for the locality.

The proposed development is well contained on-site and will not result in significant adverse amenity impacts on adjoining properties.

The proposed development provides an appropriate low-density infill development and contemporary construction.

There has been a progressive change in the built character of the locality with a number of older style dwellings being replaced with new contemporary two and three level dwellings.

The height mass and scale of the development is compatible with that of other development in the locality.

The design solution respects the development pattern of the locality (the spatial arrangement of buildings having regard to side, rear and street building setbacks) maintaining the rhythm of the street.

The proposed height variation is of no consequence in respect of this objective. Approval of the proposed development will have no adverse impact on any other nearby development opportunities.

It is expected that the Council will obtain the concurrence of the Director-General as required (possibly through delegation).

The proposed height encroachment does not result in any significant view loss, loss of privacy or overshadowing in the context of the site.

There are no adverse heritage impacts associated with the proposed development. The height and scale of the development is typical within the residential context.

Standard floor to ceiling height is proposed over two levels inclusive of a standard roof pitch.

Having regard to the above the proposal is consistent with the objectives of the height control and the objectives of the zone.

(b) the concurrence of the Director-General has been obtained.

Comment:

It is expected that the Council will obtain the concurrence of the Director-General as required (possibly through delegation).

(5) In deciding whether to grant concurrence, the Planning Secretary 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 Planning Secretary before granting concurrence.

Comment:

The proposed variation does not raise any matter of significance for State or regional environmental planning.

There is no public benefit that would be achieved by maintaining the development standard or compromised by approving the building as proposed.

Conclusion

No adverse matters arise in respect of the above considerations.

In view of the above, the proposed variation from the development standard is reasonable in this instance. A typical pitched roof profile is proposed maintaining a consistent built form with other dwellings in the vicinity and appropriately addressing site circumstances.

Prepared by: Nigel White

Bachelor of Applied Science (Environmental Planning)

March 2022