

## Clause 4.6 request – building height control

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**Request for exception under clause 4.6 of Warringah Local Environmental Plan 2011**  
to clause 4.3 of *Warringah Local Environmental Plan 2011*

**Premises:** No. 44 Greycliffe Street, Queenscliff

**Proposal:** Alterations and additions to an existing dwelling house and construction of a swimming pool.

**Control:** Building height

The control provides that the maximum building height for a building on the site is 8.5 metres. The following definitions from WLEP 2011 are relevant:

***building height (or height of building)** means –*

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

*including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

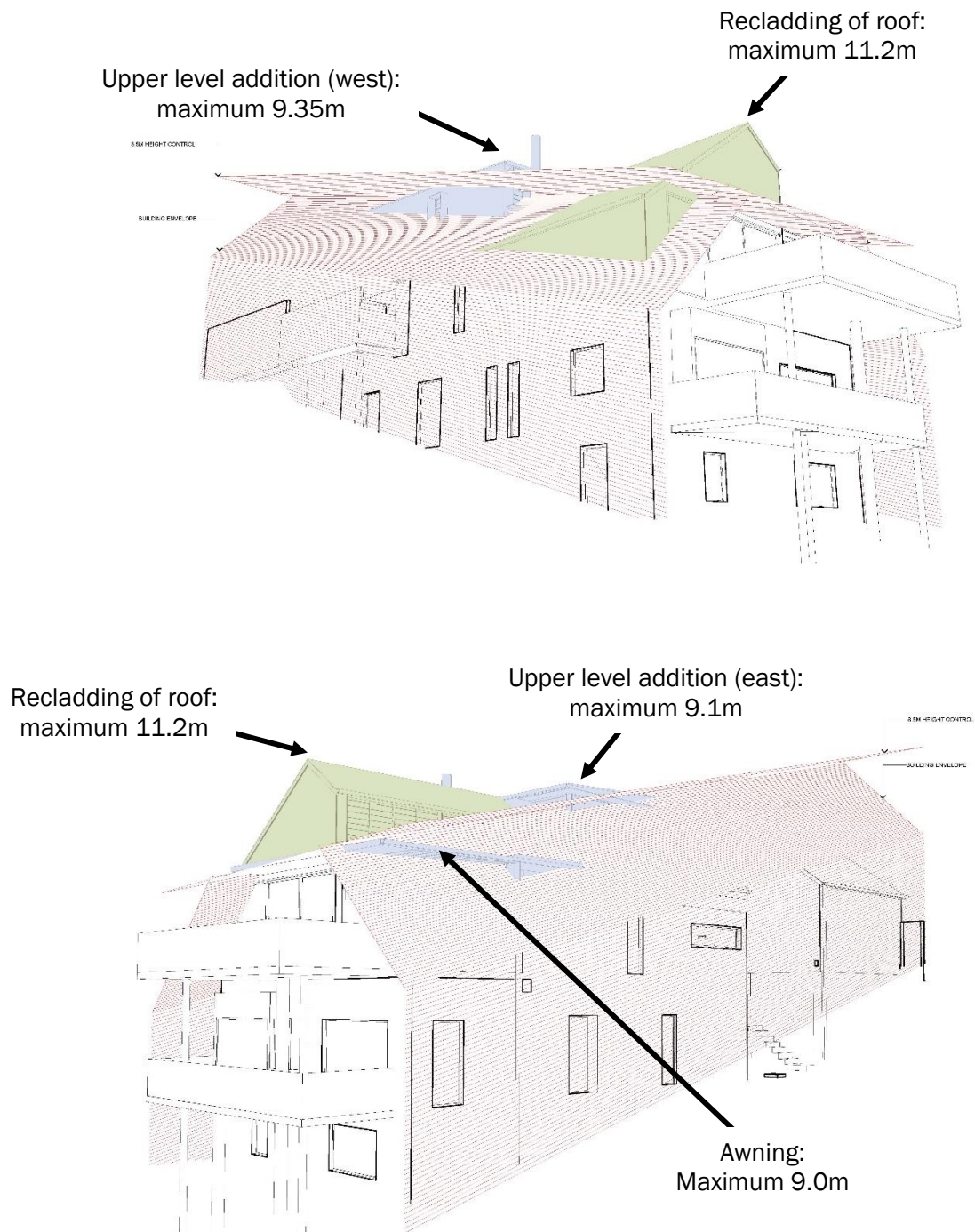
***ground level (existing)** means the existing level of a site at any point.*

The existing dwelling house has a maximum building height of 11.2 metres, measured to the ridge of the roof at its southern end. The proposal is to replace the existing roof cladding so these works breach the building height control. The recladding of the roof retains the existing building height of 11.2 metres.

The proposal also involves the addition of an upper level bedroom, robe and ensuite. These works partly exceed the building height control. The maximum height of these works is 9.35 metres at the southern end of the roof over the upper level on the western elevation.

An awning is proposed over a small part of the south-facing balcony appurtenant to the main living areas. The maximum building height of the awning is 9.0m.

The following diagrams show the elements of the proposal that exceed the building height control:



It is noted that the proposed flue is specifically excluded from the definition of building height in WLEP 2011 and is not a matter that requires a written variation under clause 4.6 of WLEP 2011.

#### Introduction:

Clause 4.6(1) of WLEP 2011 states:

(1) *The objectives of this clause 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.*

To utilise the flexibility provided by clause 4.6 of WLEP 2011 it is necessary for the applicant to demonstrate:

- (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.*

In addition, Council must be satisfied that:

- (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.*

In exercising delegation from the Director-General of the Department of Planning, Council 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.*

This clause 4.6 request has been structured in accordance with the approach adopted by the Court in *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46 and also considers the ways in which a SEPP 1 objection can be sustained as listed in *Webhe v Pittwater Council* [2007] NSWLEC 827 at [26] and the judicial guidance provided in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

**1. Is the planning control in question a development standard?**

Clause 4.3 of WLEP 2011 is attached as Appendix 1

The definition of “development standards” in Section 4(1) of the Environmental Planning and Assessment Act 1979 is attached as Appendix 2.

Clause 4.3 is a development standard as it fixes a requirement for the height of a building.

**2. What is the underlying object or purpose of the standard?**

The underlying objects of the standard are stated in clause 4.3(1) to be:

- (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.*

**3. Is compliance with the development standard consistent with the objectives of clause 4.6?**

- Compliance would necessitate an inflexible application of the development standard in circumstances where the development otherwise satisfies the objectives of the control.
- Compliance would only be achievable by removing substantial parts of the existing building to lower the existing roof. This is impractical, would reduce residential amenity, and is contrary to principles of environmentally sustainable development.

**4. Does non-compliance with the development standard raises any matter of significance for State or regional environmental planning?**

No.

**5. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?**

Compliance with the development standard is unreasonable and unnecessary for the following reasons:

**5(a). Achievement of the underlying objectives of the standard**

- The proposal does not increase the existing maximum building height, with the recladding of the roof replacing an existing structure of the same height. The recladding will, however, improve the appearance of the building.
- The surrounding area comprises a mix of architectural styles and is interspersed with larger and taller residential flat buildings. The proposed additions will not result in a building that is incompatible with the height and scale of nearby development.
- The topography of all land on the lower side of Greycliffe Street in the vicinity of the site slopes steeply down towards Manly Lagoon and the typology of all the dwelling houses is to have access at street level and then provide accommodation that follows the topography of the land. Upper levels are not unusual. The proposal is for an upper level that is partly within the existing roof form and is sited away from Manly Lagoon to minimise its height, bulk and scale. The proposed additions will not result in a building that is incompatible with the height and scale of neighbouring development.

- Reasonable view sharing is maintained. This issue is discussed in detail in the Statement of Environmental Effects. Views of Manly Lagoon and glimpses of the Pacific Ocean are retained for neighbouring and nearby dwelling houses.
- Reasonable levels of privacy are maintained. The upper level Juliette balcony does not have sight lines to the eastern neighbour's private open space or windows. The "squaring off" of the main balcony replaces an existing structure and so does not lead to a change in privacy impacts.
- The proposal retains sunlight to neighbouring properties that is in excess of the requirements of *Warringah Development Control Plan 2011*. There is no impact on the principal private open space of neighbouring dwellings. Sunlight to the glazed surfaces living areas is maintained at reasonable levels, noting that this is not a matter that is required by WDCP 2011.
- The proposal will improve the appearance of the dwelling house by upgrading what is currently a somewhat dated (1980's) appearance. The development will enhance the scenic quality of the area.
- The proposal will improve the appearance of the dwelling house when viewed from Manly Lagoon and adjacent reserves by upgrading the building and finished surfaces. The additions are sited on the northern end of the building, away from Manly Lagoon and, consequently, any visual impact is minimised and the additions will blend into the general urban backdrop. The impact when viewed from Greycliffe Street is minimised and views over the building are maintained.

**5(b). Is the standard relevant to this development?**

The applicant does not rely upon this method of demonstrating that compliance with the development standard is unreasonable or unnecessary.

**5(c). Would the underlying objective be defeated or thwarted if compliance was required?**

The applicant does not rely upon this method of demonstrating that compliance with the development standard is unreasonable or unnecessary.

**5(d). Has the development standard been abandoned or destroyed by Council's own actions?**

The applicant does not rely upon this method of demonstrating that compliance with the development standard is unreasonable or unnecessary.

**5(e). Is the zoning of the particular land unreasonable or inappropriate?**

The applicant does not rely upon this method of demonstrating that compliance with the development standard is unreasonable or unnecessary.

**6. Are there sufficient environmental planning grounds to justify varying the development standard?**

The following environmental planning grounds justify the proposal:

- (a) The proposal will improve the amenity of the dwelling house by providing additional accommodation and enhancing the liveability of the private open spaces and living areas. The breach of the building height control is required to enable this improved amenity to be achieved.
- (b) The proposal will improve the appearance of the building. In particular, it is necessary to breach the building height control in order to reclad the existing roof.
- (c) The proposal represents environmentally sustainable development by the extending the usable life of the building. This can only be achieved by maintaining the existing built elements including the existing roof. Recladding the existing roof, which will extend the life of the building, can only be achieved by breaching the building height control.
- (d) The proposal represents environmentally sustainable development by providing excellent natural cross ventilation and internal access to sunlight. This objective would be stymied by compliance with the building height control which would may reduce floor to ceiling heights or restrict the room reconfiguration necessary to provide natural cross ventilation and access to daylight.
- (e) The proposal represents environmentally sustainable development because the narrow awning over part of the southern deck appurtenant to the living area provides passive weather and sun protection.
- (f) The proposal has been designed to minimise the breaches of the building height control. The site slopes steeply from north to south and the additions are sited on the northern part of the building where the breach of the control can be minimised.
- (g) Providing additional accommodation under the existing building is not desirable from an environmental planning perspective because it would require additional excavation and the resulting accommodation would have poor amenity in terms of natural cross ventilation and access to daylight.
- (h) Providing additional accommodation outside the existing building footprint is not desirable from an environmental planning perspective as it would reduce the amount of landscaped area, resulting in a greater dominance of built form over landscape, a “hardening” of the appearance of the development, and a reduction in the ability of the site to permit the infiltration of rainwater.

**7. Is the proposal consistent with the objectives of the zone?**

The site is zoned R2 Low Density Residential. The objectives of the 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 proposal is consistent with these objectives for the following reasons:

- ✓ It provides for the housing needs of the community within a low density residential environment.
- ✓ It increases the landscaped area and provides additional plantings to enhance the landscaped setting of the development. The part of the site adjacent to Manly Lagoon is retained as landscaped area to contribute to the harmony of the development with the natural environment.

**8. Is the exception request well founded?**

For the reasons given above the exception request is considered to be well founded.



Geoff Goodyer  
6 October 2020

## Appendix 1

### Clause 4.3 of WLEP 2011

#### 4.3 Height of buildings

- (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 Height of Buildings 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.

## Appendix 2

### Definition of “development standards”

***development standards*** means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,
- (b) the proportion or percentage of the area of a site which a building or work may occupy,
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,
- (d) the cubic content or floor space of a building,
- (e) the intensity or density of the use of any land, building or work,
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,



- (h) the volume, nature and type of traffic generated by the development,
- (i) road patterns,
- (j) drainage,
- (k) the carrying out of earthworks,
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,
- (m) the provision of services, facilities and amenities demanded by development,
- (n) the emission of pollution and means for its prevention or control or mitigation, and
- (o) such other matters as may be prescribed.