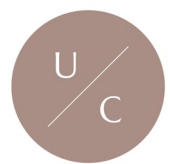


URBAN & CO.

Clause 4.6 Variation

77 Ballyshannon Road Killarney Heights

Alterations and additions to existing dwelling house.



**REQUEST PROVIDING GROUNDS FOR VARIATION TO HEIGHT OF BUILDINGS
DEVELOPMENT STANDARD PURSUANT TO CLAUSE 4.3 OF WARRINGAH LEP
2011**

WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011

4.6 – Exceptions to Development Standards

- (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.
- (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.
- (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 Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the 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

<p>(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.</p> <p>(6) ...</p> <p>(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).</p> <p>(8) This clause does not allow development consent to be granted for development that would contravene any of the following:</p> <p>(a) a development standard for complying development,</p> <p>(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,</p> <p>(c) clause 5.4.</p>

Response:

This document establishes the written request as referred in clause 4.6(3) with relation to the proposals very minor breach in Building Height. The NSW Department of Planning and Infrastructure has provided guidance on how to prepare clause 4.6 variations, this document has been based on these guidelines.

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

Warringah Local Environmental Plan 2011 (WLEP2011)

2. What is the zoning of the land?

77 Ballyshannon Road Killarney Heights is zoned R2 – Low Density Residential

3. What are the objectives of the zone?

1. Objectives of Zone
<ul style="list-style-type: none"> 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 proposed development is consistent with these objectives. The proposed development is for a single dwelling house, providing a low-density development which is consistent with the adjoining properties as well as the streetscape.

4. What is the development standard being varied?

WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011		
4.3	HEIGHT OF BUILDINGS	
	(1)	<p>The objectives of this clause are as follows—</p> <ul style="list-style-type: none"> (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.

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

Clause 4.3 – Height of Buildings of the Warringah Local Environmental Plan 2011.

6. What are the objectives of the development standard?

4.3 Building Height – Objectives
<p>1. The objectives of this clause are as follows:</p> <ul style="list-style-type: none"> (e) to ensure that buildings are compatible with the height and scale of surrounding and nearby development, (f) to minimise visual impact, disruption of views, loss of privacy and loss of solar access, (g) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments, (h) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

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

Building Height: 8.5m

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

8.9m

9. What is the percentage variation (between the proposal and the environmental planning instrument?)

Existing	Proposed
N/A%	4.7%

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

As stated in Preston CJ in *Wehbe V Pittwater Council* (2007) NSWLEC 827 the following five points are addressed in demonstrating that compliance with the development standard is unreasonable or unnecessary:

- a) **The objectives of the development standard are achieved notwithstanding the non-compliance with the standard**

Comment: The objectives of clause 4.3 are outlined in part 6 of this report however, the following objectives have been addressed in detail below:

- (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 has a fall from the street to the rear boundary. Therefore, as there is a transitional nature of development along Ballyshannon Road, the proposed development has been designed to ensure that this streetscape value is maintained. It is also noted that The proposed development is consistent with the existing properties either side.

In addition to this, the proposed development does not impact on any significant views of the adjoining properties. No overlooking or overshadowing impacts have been identified.

Overall, it is considered that due to the nature of the streetscape and its sloping nature, the proposed development has been designed to ensure that the best outcome is achieved as a result of this development.

As identified within the amended drawings, the proposed development in its current form is compatible and entirely tangible with the existing streetscape character and built form of Ballyshannon Road. The Streetscape character of Ballyshannon Road also consists of a large number of dwellings matching the bulk and scale of the proposed development,

- b) The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary:

Not applicable

- c) The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable:

If compliance was required, the proposed development would not achieve the objectives of the zone. The design put forward has taken into consideration the objectives of the zone and provided a design which is consistent with the streetscape character. It is also noted that the sloping nature of the site requires there to be a minimal variation in height.

- d) The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard:

A number of variations have been granted in regard to the Height of Buildings within the Warringah Local Government Area. The nature of the street sloping from west to east means that in order for a transitional nature to occur, variations need to be permitted.

- e) The zoning of the land was unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to the land.

Not applicable.

- f) How would strict compliance hinder the attainment of the objectives specified within section 5(a)(i) and (ii) of the act?

Strict compliance would result in a negative impact on the subject site and the wider area, meaning that an inconsistent streetscape character would be the result.

11. Is the development standard a performance-based control? Give details:

The Height of Buildings control is a performance-based control, with objectives that demonstrate compliance.

12. Would strict compliance with the standard, in your particular case be unreasonable or unnecessary? Why?

As discussed throughout this report, strict compliance with this control would not be the most appropriate use, as the streetscape slopes from east to west, meaning that in order to meet this requirement and to create an additional level the design would be restricted in nature and prohibit any form of development occurring.

Strict compliance with this standard would be unreasonable and unnecessary for the following reasons:

- Streetscape character is maintained as well as improved;
- Sloping nature of streetscape reduces any chance of future development
- In order to cater for the needs of modern day living, additional area is required on the first floor
- No significant views will be interrupted

Are the sufficient environmental planning grounds to justify contravening the development standard, give details:

The proposed development provides sufficient environmental planning grounds to vary this standard. As the subject site is not a level block of land and slopes quite significantly, in order to achieve the needs of modern day living, a variation in the building height is required. It is also noted that the proposed Floor Space Ratio is compliant with Council's controls, meaning that the floor area and overall size of the proposed development is suitable. Ballyshannon Road provides a number of different aspects within the streetscape, the design that has been formulated meets the minimum living standards for dwellings in this area as well as meeting the objectives of the zone and the LEP.

This report concludes that the environmental impacts generated by the proposal, whether considered individually or cumulatively in the context of the site and broader area, are not significant and therefore the application warrants the support of Council and the issue of development consent. The proposal made in this application is considerate and relative to the site's immediate context of the residential area. The critical findings of this report are that:

- The proposed development is restricted by the sloping nature of the land;
- A number of dwellings within Ballyshannon Road currently present a high level of bulk and scale, this development will not be adding to this as it is set back;
- The proposed development has given consideration to neighbouring lots and does not provided a negative impact on the streetscape character;
- No significant views will be lost by the adjoining sites,
- The overall design is considered to be suitable for the streetscape and will be consistent with other dwellings in the area.
- A large number of variations to the building height have been granted in this area,

In general, the development proposals of this particular site are considered to be acceptable, as it does not compete with the integrity or character of the surrounding area. The nature of the site, including its location, topography, zoning, and physical attributes make it an ideal candidate for the proposed redevelopment. Furthermore, as the proposal does not detract from the streetscape or the inherent nature of the residential area it is our assertion that this development application should be supported.