
Sent: 13/05/2022 1:14:03 PM
Subject: FW: Objection to DA 2021/1636 Clause 4.6 Submission to Vary Height of Buildings above Maximum
Attachments: Clause46_Variations.pdf;

Dear Daniel,

Attached are our objections to the amended Clause 4.6 submission for DA 2021/1636, to vary the height of the building above the Maximum Building Height Standard. The submission contains serious inaccuracies.

Best regards,

Tony

Objections to Amended Clause 4.6 Submission Dated 3 May 2022

We have already submitted detailed objections to the initial Clause 4.6 submission. The comments here relate to the changes in the new Clause 4.6 submission. The changes in the new submission **are shown in red**. Our objections are in blue.

2.0 Warringah Local Environmental Plan 2013 ("WLEP")

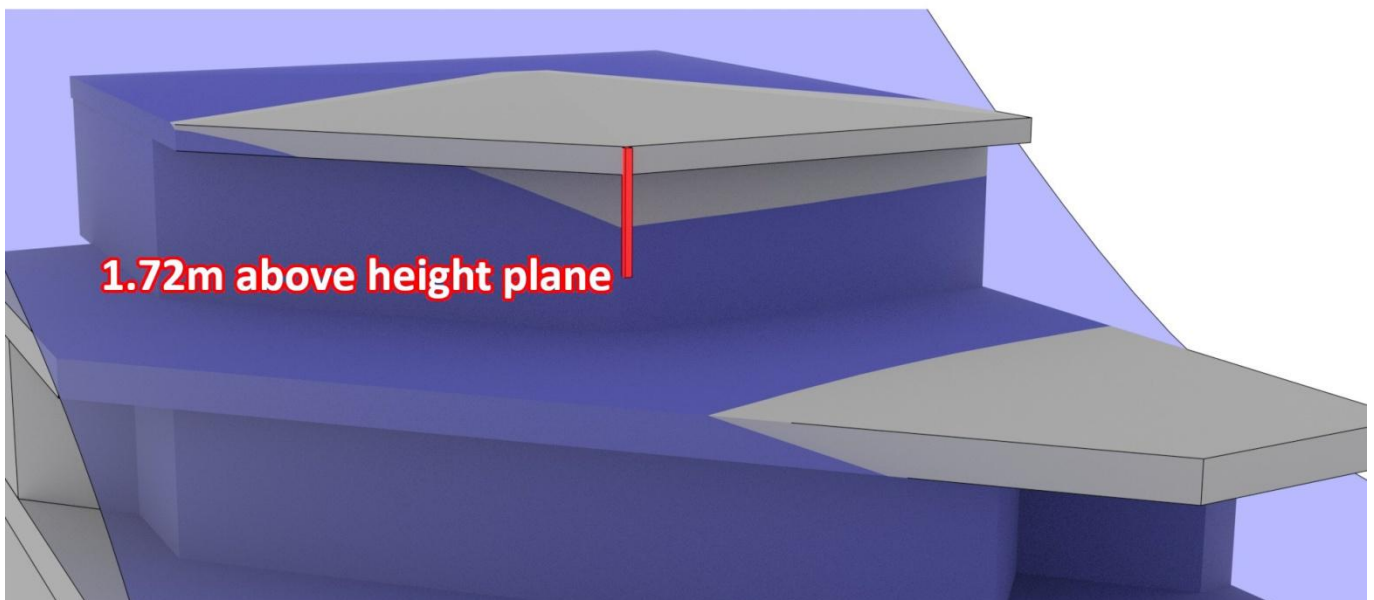
2.1 Clause 4.3 - Height of buildings

...

In this regard, it has been determined that the proposed works have a maximum building height of **8.6 metres** at its highest point as depicted on the architectural plans **which exceeds the standard by 100m 1.18%**. The extent of the breach relates to terrace element at the upper level with new works proposed to the existing slab and planter boxes which minorly extend past the 8.5m. The existing development on site coupled with the steep undulating topography makes providing an accurate overall building height challenging in this instance. This clause 4.6 is provided out of an abundance of caution due to the inability to provide absolute certainty that the proposed works are compliant with the development standard. The ground level (existing) has been determined based on Court judgements and surveyed levels.

The claim of 8.6 metres is incorrect. It is **not** based on the DA's surveyed levels as claimed. **The DA does not use its own survey plan data points, from 3 sides around the building.** The proposed works have a maximum height above existing ground level of 10.22 metres. **This exceeds the standard by 1.72 metres, or 20%.** The non compliance can be seen from the red height pole in the 3D height plane drawing below.

8.5m Maximum Building Height Based on Existing Ground Level using DA's survey points



Our height plane is based on survey points **taken directly from the DA's survey plan**. Multiple survey points at the existing ground level at the East, South and West sides of the building have been used. Points on the South and West are from the top of the existing rubble fill. The East side is an unexcavated and unmodified relatively flat natural rock shelf. There is no "challenge" in using the DA's own survey. If "an abundance of caution" should be used in using the survey data submitted by the DA, perhaps "caution" should be used in assessing other DA claims.

GROUND LEVEL



There is "an abundance of certainty" that the proposed works are **not** compliant with the building height standard. The Clause 4.6 submission is an attempt to bypass the DA's non-compliance with height regulations. Non compliances are large and extensive.

The reason for the non-compliances, is the DA's plan to demolish the top level but keep part of the floor, in order to use the existing structure's high ceilings. This is contrary to the principles of view sharing.

Note that the planter boxes mentioned do **not** contribute to "landscaped area" because they are less than 1 metre deep or less than 2 metres square. They should not contravene the maximum building height.

There is no justification for varying the LEP when the DA's own survey is available!

...

4.0 Request for variation

4.1 Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

...

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

Response: The height and built form proposed are consistent with that established by the adjoining dwelling houses and the prevailing height of residential development generally within the site's visual catchment.

The works will not significantly alter the existing scale of development on the site. The proposed works will lift the roof height to the upper level to improve the amenity of internal spaces and utilise much of the dead terrace space currently on site. The dwelling will still **present** as a multi storey that is reflective of the topography of the area. Development along this escarpment is characterised by multi storey dwellings which step down the steep topography.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the proposed development by virtue of its roof form and building height offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment.

The proposal is consistent with this objective

The dwelling will present as a multi storey building of greatly increased size and bulk. Currently the existing house presents to the public on Freshwater Beach, as a 3 storey structure, with a pool below and a garage well above and partially hidden by vegetation. The DA will present as a 6/7 storey structure with an

additional 3 storeys down the natural cliff face. It is a massive increase creating a visual impact totally out of keeping with its surroundings.

The impact of the building is to the public on Freshwater Beach, not from the “streetscape”.

The proposal is not compatible in height and scale with surrounding and nearby dwellings. It does **not** meet the requirement.

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

Response: The building form and height has been appropriately distributed across the site to minimise disruption of views to nearby residential development from surrounding public spaces. View analysis has been undertaken which demonstrates that existing water and land interface views enjoyed by neighbouring properties will be largely unaffected.

Having regard to the view sharing principles established by the Land and Environment Court of NSW in the matter of Tenacity Consulting v Warringah [2004] NSWLEC 140 **as they relate to an assessment of view impacts** and that the proposed additions will not give rise to any unacceptable public or private view affectation with the ocean and horizon views maintained from all properties located to the south along Crown Road. View impacts have been minimised and a view sharing outcome achieved.

We have already presented how the development adversely impacts our views of the iconic Freshwater Beach and ocean. We have presented how skilful design by reducing hallways and walkways on the top level, can minimise our view loss.

...

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

Response: The dwelling will not significantly alter the built form as it sits within the context of the coastal escarpment. The new addition creating a connection between the garage and the dwelling will be obscured behind the main dwelling and not give rise to any unreasonable visual impact concerns. The existing geometry of the floor plates have been redesigned to present a more coherent **built form** presentation and will improve the scenic quality of the coastal setting. The enhancement of landscaping on the site will soften and screen the dwelling when viewed from the public domain.

The building in the DA will have an adverse impact on the coastal and bush environment, with its massive increase in bulk and failure to meet the 40% landscaping requirements.

Landscaping is not “enhanced” as claimed. It is diminished. There is nothing to “screen the dwelling when viewed from the public domain” on Freshwater Beach. The building will appear as a massive scar on the hillside.

4.2 Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

...

The design has made concerted effort to be ensure new elements are respectful of the 8.5m height limit with the offending elements relating to upgrade works to existing slab and including planters to the terrace. The dwelling is largely compliant with the height standard however the sloping topography, cross falls and the existing development on site make it challenging to accurately determine existing ground level and overall height however the proposal is still worthy on merit. The minor breaching areas do not contribute to any unreasonable amenity impacts with regard to views, overshadowing or privacy.

The building in the DA attempts to maximise height by demolishing the top level but retaining part of the top floor to justify the building's existing excessive ceiling heights. This is the cause for the 20% non compliance of the 8.5 metre building height.

The building has large and extensive height non compliances.

It is not "challenging to accurately determine existing ground level". We have used the many survey points at ground level on the West, South and East sides of the building in the DA's own survey plan, to construct height plane drawings. There is no "merit" in using fake levels to contravene regulations.

A 20% non compliance in maximum height is not "minor" as claimed. It directly causes our view loss of Freshwater Beach from our lounge room.

Conclusion

- No justification is given for not using the Existing Ground Level defined in LEP 2011
- No justification is given for not using the ground survey points in the DA's own survey plan at the West, South and East sides of the building, defining Existing Ground Levels.
- Existing ground levels show large (up to 1.72 metres or 20%) and extensive non compliance with the maximum building height.
- Non compliance with maximum building height causes loss of views of the iconic Freshwater Beach for us.