

STATEMENT OF ENVIRONMENTAL EFFECTS

55 SURFERS PARADE, FRESHWATER

**CONSTRUCTION OF DWELLING ALTERATIONS/ADDITIONS
& SWIMMING POOL**

**PREPARED ON BEHALF OF
SketchArc**

DECEMBER 2020

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1. INTRODUCTION

This application seeks approval for the construction of alterations/additions to an existing dwelling and new swimming pool on Lot 10, Section 2 in DP 5466 which is known as **No. 55 Surfers Parade, Freshwater**.

In preparation of this development application consideration has been given to the following:

- Environmental Planning & Assessment Act, 1979.
- Warringah Local Environmental Plan 2011.
- Warringah Development Control Plan 2011.

The following details and documents have been relied upon in the preparation of this document:

- Survey Plan prepared by CMS Surveyors Pty Ltd, Job No. 19144, dated 12/03/20.
- Architectural Plans prepared by SketchArc, Project No. 2018, Revision D and dated 18/12/2020.
- BASIX Certificate #A402200 and dated 16 December 2020.
- Stormwater Management Plan prepared by Michal Korecky, Drawing No. 20103, Issue 1 and dated 21/12/20.
- Waste Management Plan.

This Statement describes the subject site and the surrounding area, together with the relevant planning controls and policies relating to the site and the type of development proposed. It provides an assessment of the proposed development against the heads of consideration as set out in Section 4.15 of the Environmental Planning and Assessment Act 1979. As a result of that assessment it is concluded that the development of the site in the manner proposed is considered to be acceptable and is worthy of the support of the Council.

2. SITE DESCRIPTION AND LOCALITY

The subject site is identified as Lot 10, Section 2 in DP 5466 which is known as 55 Surfers Parade, Freshwater. The site is located at the northern side of Surfers Parade with a street frontage of 10.06. The site has an area of 404.7m² with a depth of 40.235m. The locality is depicted in the following map:



Site Location Map

The site is currently occupied by a single storey rendered brick dwelling with a tiled roof. A swimming pool is located in the rear yard. A detached shed and spa are located in the rear yard. A rendered masonry wall with timber slat infills is erected along the front boundary. A concrete driveway adjacent to the eastern boundary provides access to an at grade parking space within the front setback. There are two immature street trees located within the Surfers Parade road reserve.

The site is depicted in the following photographs:



View of Subject Site from Surfers Parade



Rear View of Existing Dwelling

The existing surrounding development comprises a mix of one and two storey detached residential dwellings on generally similar sized allotments to the subject site, interspersed with some three storey residential flat buildings. More recent development comprises larger two storey dwellings of modern appearance.

The subject site and existing surrounding development is depicted in the following aerial photograph:



Aerial Photograph of Locality

3. THE DEVELOPMENT PROPOSAL

This proposal seeks approval for the construction of alterations and additions to an existing including a new first floor. A new swimming pool is also proposed. The development is to be constructed of a lightweight cladding to the upper level with rendered masonry being retained at ground level. A new colorbond metal pitched roof will be provided. The existing front fence will be altered to provide for sandstone capped piers and base with timber slat infills.

At ground floor, a small portion of the rear of the dwelling is to be demolished and replaced with a new deck extending the length rear elevation of the dwelling. This deck is setback 900mm to the western side boundary. Privacy screening is provided to both side elevations of the deck. The remaining works at this level are within the existing footprint and provide for a more useable floor plan. A new entry door to the front elevation and slimline splashback window to the kitchen on the eastern elevation are proposed.

A new first floor level will be provided to provide for bedrooms and bathrooms. The first floor is provided with setbacks consistent with the ground floor level. Setbacks of at least 900mm and 1.33m are provided to the western and eastern side boundaries. A setback of 16.888m is provided to the rear boundary as measured from the wall of the upper-level addition, with the lower level deck setback 12.888m to the rear boundary.

A new swimming pool is proposed in the rear yard and provides for a setback of 1.36m to the western boundary and 2.944m to the rear northern boundary.

The proposal also provides for stormwater disposal to discharged to the street gutter via a new rainwater tank in accordance with Council controls. This is detailed in the Stormwater Management Plan prepared by Michal Korecky.

The proposal will result in the following numerical indices:

Site Area:	404.7m ²
Landscaped Area:	138.21m ² or 34.15%

4. ZONING & DEVELOPMENT CONTROLS

The proposed development is identified as development requiring the consent of the Council under the provisions of the Environmental Planning and Assessment Act 1979, as amended. The following is an assessment of the proposal against the relevant provisions of the Act and all of the relevant planning instruments and policies of Warringah Council.

4.1 Planning for Bushfire Protection 2006

The subject site is not identified as bushfire prone land on Council's Bushfire Prone Land Map and therefore the provisions of Planning for Bushfire Protection 2006 do not apply.

4.2 Warringah Local Environmental 2011

The Warringah Local Environmental Plan 2011 (LEP 2011) came into effect on Friday 9 December 2011.



Extract of Zoning Map

The site is zoned R2 Low Density Residential. Development for the purposes of alterations/additions to an existing dwelling house are permissible in this zone with the consent of Council. The following Development Standards specified in the LEP are relevant to the proposed development:

Clause	Development Standard	Proposal	Compliance
4.3 Height	8.5m	8.908m	See Appendix A

The following provisions are also relevant:

Clause 6.4 Development on Sloping Land

The site is classified as Class A on Council's Landslip Map and therefore no further information is required in this regard.

There are no other provisions of the Warringah Local Environmental Plan 2011 that apply to the proposed development.

4.3 Warringah Development Control Plan 2011

The Warringah Development Control Plan (DCP) has been prepared by Council and was due to come into effect upon the gazettal of the LEP 2011. The new DCP contains detailed planning controls that support LEP 2011.

The following table provides a summary of the relevant controls of the DCP:

Clause	Requirement	Compliance
B1 – Wall heights	7.2m	Yes Proposed wall height is approximately 6.8m
B2 – Number of storeys	Not Applicable	Not Applicable
B3 - Side Boundary Envelope	Building envelope 45 degrees from 5m. Eaves up to 675mm are an allowable encroachment	The proposal results in a minor non-compliance as depicted on the sections. This is considered justified in this instance for the following reasons: <ul style="list-style-type: none"> • The site is very narrow, being only 10.06m in width. As such compliance is difficult to achieve.

Clause	Requirement	Compliance
		<ul style="list-style-type: none"> • The proposal maintains the setbacks to existing ground level. • The setbacks provided are consistent with the surrounding properties including other two store dwellings. • Given the north-south allotment, the proposal does not result in any unreasonable overshadowing. The proposal continues to provide at least 3 hours of solar access to private open space and north facing windows areas of the adjoining properties. • The proposal results in a development that is compatible with the existing streetscape.
B4 – Site Coverage	Not Applicable	Not Applicable
B5 - Side Boundary setbacks	Minimum: 0.9m	Yes Setbacks of at least 0.9m are provided to both side boundaries.
B7 – Front Boundary Setbacks	Minimum 6.5m	Proposal provides for a setback of 6.389m to the Surfers Parade frontage as measured from the wall of the dwelling. This is considered appropriate as the new first floor provides for a setback consistent with the existing ground level. Requiring an increased setback would not serve any benefit.

Clause	Requirement	Compliance
	Secondary frontage 3.5m	The dwelling is appropriately articulated through the use of balconies, varied setbacks and a change in external finishes. Further the setbacks provided are compatible with the established building line in this portion of Surfers Parade. Not Applicable
B9- Rear Boundary Setbacks & B10 Merit Assessment of Rear Setbacks	6.5m	Not applicable
B11 – Foreshore Building Setback	Not applicable	Not Applicable
B12 – National Parks Setback	Not applicable	Not Applicable
B13 – Coastal Cliffs Setback	Not applicable	Not Applicable
B14 – Main Roads Setback	Not applicable	Not Applicable
B15 – Minimum Floor to Ceiling Height	Not applicable	Not Applicable
C2 – Traffic, Access and Safety	Vehicular crossing to be provided in accordance with Council's Vehicle Crossing Policy	Yes The proposal utilises the existing vehicular cross over.
C3 – Parking Facilities	Garages not to visually dominate façade	The proposal retains the existing at grade parking space. There is no option for additional parking on site.

Clause	Requirement	Compliance
	Parking to be in accordance with AS/NZS 2890.1	
C4 - Stormwater	To be provided in accordance with Council's Stormwater Drainage Design Guidelines for Minor Developments & Minor Works Specification.	Yes The proposal provides for all collected stormwater to drain to the street gutter in accordance with Council controls and the Stormwater Management Plan submitted with the application.
C5 – Erosion and Sedimentation	Soil and Water Management required	Yes A Soil Erosion Management Plan has been prepared and forms part of the submission to Council.
C6 - Building over or adjacent to Constructed Council Drainage Easements	Not Applicable	Not Applicable
C7 - Excavation and Landfill	Site stability to be maintained	Yes Minimal excavation proposed.
C8 – Demolition and Construction	Waste management plan required	Yes Waste Management Plan submitted.
C9 – Waste Management	Waste storage area to be provided	Yes There is sufficient area on site for waste and recycling bins.
D1 – Landscaped Open Space and Bushland	Min 40% Landscaped Area to be maintained	The proposal provides for a landscaped area of 138.21m ² or 34.15% of the site.

Clause	Requirement	Compliance
		<p>Whilst this does not strictly comply with the numerical controls it is considered justified in this instance for the following reasons:</p> <ul style="list-style-type: none"> • The non-compliance is approximately 23m². This is a minimal amount. The proposal provides for good areas of landscaping both within the front setback and the rear yard. • The proposal does not require the removal of any significant vegetation. • The proposal will not result in stormwater runoff to the adjoining properties. All collected stormwater is being discharged to street gutter in accordance with the Stormwater Management Plan and Council controls. • The proposal provides for appropriate setbacks and open space and is comparable to the existing surrounding development in terms of site cover and landscaping. • It is not considered that amending the plan to provide an additional landscaped area of 20sqm would serve any purpose.

Clause	Requirement	Compliance
D2 - Private Open Space	Dwelling houses with three or more bedrooms Min 60m ² with min dimension 5m	Yes Proposed dwelling provides for ample private open space in the rear yard. This open space is directly accessible from the living areas and deck and is relatively level.
D3 - Noise	Mechanical noise is to be attenuated to maintain adjoin unit amenity. Compliance with NSW Industrial Noise Policy Requirements	Not Applicable
D4 – Electromagnetic Radiation	Not Applicable	Not Applicable
D5 – Orientation and Energy Efficiency	Dwellings to be orientated to receive northern sun Appropriate construction to enhance thermal properties and ventilation/natural cooling Compliance with SEPP (BASIX) requirements	Yes The proposed dwelling additions/alterations will receive good solar access throughout the year. A BASIX certificate has been issued and forms part of the submission to Council.
D6 – Access to sunlight	The controls require that sunlight to at least 50% of the private open space of both the subject and adjoining properties' private open space receives not less than three hours sunlight between 9am – 3pm on 21 June winter solstice.	Yes Given the north-south orientation the proposal does not result in any unreasonable overshadowing. Shadow diagrams have been prepared which depict compliance with the controls of this clause.

Clause	Requirement	Compliance
D7 - Views	View sharing to be maintained	Yes The subject site and surrounding properties do not enjoy any significant views.
D8 - Privacy	This clause specifies that development is not to cause unreasonable overlooking of habitable rooms and principle private open space of adjoining properties.	Yes The proposed additions have been designed to ensure privacy of the adjoining properties is maintained. The proposal provides for all high use living areas on the ground level, with the upper level providing for only bedrooms and bathrooms. These are not high use living areas and will not reduce privacy to the adjoining properties. The proposal provides for privacy screens on both the side elevations of the ground floor deck to improve privacy. The first-floor decks are located on the front façade and do not provide views into the adjoining habitable areas or private open space.
D9 – Building Bulk	This clause requires buildings to have a visual bulk and architectural scale that is consistent with structures on nearby properties & not to visually dominate the street.	Yes The proposal provides for a two-storey dwelling which is compatible with the existing surrounding development.

Clause	Requirement	Compliance
D10 – Building Colours and materials	External finishes and colours sympathetic to the natural and built environment	Yes External finishes selected to be compatible with the existing surrounding development and the natural environment.
D11 - Roofs	The LEP requires that roofs should not dominate the local skyline.	Yes The proposal provides for a conventional pitched roof form which is compatible with the variety of roof forms in the locality.
D12 – Glare and Reflection	Glare impacts from artificial illumination minimised. Reflective building materials to be minimized.	Yes The proposal will not result in unreasonable glare or reflection.
D13 - Front Fences and Front Walls	Front fences to be generally to a maximum of 1200mm, of an open style to complement the streetscape and not to encroach onto street.	Existing fencing is upgraded and does not exceed the existing height.
D14 – Site Facilities	Garbage storage areas and mailboxes to have minimal visual impact to the street Landscaping to be provided to reduce the view of the site facilities.	Yes There is ample area on site for storage and site facilities.
D15 – Side and Rear Fences	Side and rear fences to be maximum 1.8m and have regard for Dividing Fences Act 1991.	Yes

Clause	Requirement	Compliance
D16 – Swimming Pools and Spa Pools	Pool not to be located in front yard or where site has two frontages, pool not to be located in primary frontage. Siting to have regard for neighbouring trees.	Yes Pool is in rear yard and will not have a detrimental impact on the neighbours.
D17 – Tennis Courts	N/A	Not Applicable
D18 - Accessibility	Safe and secure access for persons with a disability to be provided where required.	Not Applicable
D19 – Site Consolidation in the R3 and IN1 Zone	Not Applicable	Not Applicable
D20 – Safety and Security	Buildings to enhance the security of the community. Buildings are to provide for casual surveillance of the street.	Yes The dwelling will continue to provide a good outlook of dwelling approach and street.
D21 – Provision and Location of Utility Services	Utility services to be provided.	Yes Existing facilities on site.
D22 – Conservation of Energy and Water	A BASIX Certificate is required.	Yes
D23 - Signs	Not Applicable	Not Applicable
E1 – Private Property Tree Management	Arboricultural report to be provided to support development where impacts to trees are presented.	Not Applicable
E2 – Prescribed Vegetation	Not identified on map	Not Applicable
E3 – Threatened species, populations, ecological communities	Not identified on map	Not Applicable

Clause	Requirement	Compliance
E4 – Wildlife Corridors	Not identified on map	Not Applicable
E5 – Native Vegetation	Not identified on map	Not Applicable
E6 - Retaining unique environmental features	Unique or distinctive features within a site to be retained	Not Applicable
E7 – Development on land adjoining public open space	N/A – not identified on map	Not Applicable
E8 – Waterways and Riparian Lands	Not identified on map	Not Applicable
E9 – Coastline Hazard	Not identified on map	Not Applicable
E10 – Landslip Risk	Identified on map as A	No further information required.
E11 – Flood Prone Land	Not Applicable	Not Applicable

There are no other provisions of the DCP that apply to the proposed development.

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5. EP & A ACT - SECTION 4.15

The Provisions of any Environmental Planning Instruments

The proposal is subject to the provisions of the Warringah Local Environmental Plan 2011. The site is zoned R2 Low Density Residential under the provisions of the LEP. Construction of alterations and additions to an existing dwelling house is permissible with the consent of Council in this zone. It is considered that the provisions of this document have been satisfactorily addressed within this report and that the proposal complies with the relevant provisions.

There are no other environmental planning instruments applying to the site.

The Likely Impacts of the Development

It is considered that the development will provide for additions to an existing dwelling without any detrimental impact on the environment, social and economic status of the locality.

The Suitability of the Site for the Development

The subject site is zoned R2 Low Density Residential and the construction of dwelling alterations/additions in this zone is permissible with the consent of Council. The resultant dwelling is of a bulk and scale that is consistent with the existing surrounding development.

For these reasons it is considered that the site is suitable for the proposed development.

The Public Interest

It is considered that the proposal is in the public interest in that it will provide for additions to an existing dwelling that are consistent with other development in this locality without impacting the amenity of the adjoining properties or the public domain.

6. CONCLUSION

This application seeks approval for the construction of a dwelling alterations and additions and a swimming pool. As demonstrated in this report the proposal is consistent with the aims and objectives of the Warringah Local Environmental Plan 2011. The proposed dwelling does not have any detrimental impact on the amenity of the adjoining properties or the character of the locality.

It is therefore considered that the proposed construction of dwelling alterations/additions at **No. 55 Surfers Parade, Freshwater** is worthy of the consent of Council.

Natalie Nolan
Grad Dip (Urban & Regional Planning) Ba App Sci (Env Health)
Nolan Planning Consultants
December 2020

APPENDIX A

OBJECTION PURSUANT TO CLAUSE 4.6 OF WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011

VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM BUILDING HEIGHT AS DETAILED IN CLAUSE 4.3 OF THE WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011

For: Dwelling Additions/Alterations
At: 55 Surfers Parade, Freshwater
Owner: SketchArc
Applicant: SketchArc

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Warringah Local Environmental Plan 2011. In this regard it is requested Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of the Warringah Local Environmental Plan 2011 (WLEP 2011).

2.0 Background

Clause 4.3 restricts the height of a building within this area of the locality and refers to the maximum height noted within the "*Height of Buildings Map*."

The *Height of Building Map* identifies the site as being within the 8.5m maximum height limit.

This clause is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposed additions provide for a maximum height of approximately 8.908m which does not comply with the numerical standards of this clause. The proposal represents a maximum non-compliance of 0.408m or a 4.8% variation.

3.0 Purpose of Clause 4.6

The Warringah Local Environmental Plan 2011 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 118* have been considered in this request for a variation to the development standard.

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The development will achieve a better outcome in this instance as the proposal provides for a roof form consistent with the existing dwelling and character of the locality without having any detrimental impact. Requiring strict compliance with the building height control would require an alteration to the roof form and dwelling design which would not serve any benefit. It is considered that the proposal is consistent with the objectives of Clause 4.6.

5.0 Onus on Applicant

Clause 4.6(3) provides that:

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.*

This submission has been prepared to support our contention that the development adequately responds to the provisions of 4.6(3)(a) & (b) above.

6.0 Justification of Proposed Variation

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument should be assessed in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 11* & *Samadi v Council of the City of Sydney [2014] NSWLEC 1199*.

Paragraph 27 of the judgement states:

Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)).

The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

Precondition 1 - Consistency with zone objectives

The site is located in the R2 Low Density Residential Zone. The objectives of the R2 zone are noted as:

- *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.*

Comments

It is considered that notwithstanding the extent of the non-compliance with the maximum building height control the proposed additions to the existing dwelling will be consistent with the individual Objectives of the R2 Low Density Residential zone for the following reasons:

The proposal provides for alterations and additions to an existing detached dwelling. The proposal does not provide for additional housing and retains the low-density residential environment. The existing locality is characterised by large multi-storey dwellings comprising a variety of architectural styles.

The non-compliance with the height controls does not require the removal of any significant vegetation, and the existing landscaping within the front setback is being retained. The resultant dwelling is compatible with the bulk and scale of the surrounding development.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum building height control, whilst maintaining consistency with the zone objectives.

Precondition 2 - Consistency with the objectives of the standard

The objectives of Clause 4.3 are articulated at Clause 4.3 (1):

- (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.*

It is considered that the objectives have been achieved for the following reasons:

- The proposal provides for a two storey dwelling that is compatible with the existing surrounding development which comprises a mixture of single and two storey dwellings.
- The proposal does not result in the loss of any significant views. The subject and surrounding properties do not currently enjoy any significant views.
- The proposal has been designed to ensure privacy of the adjoining properties. This has been achieved by locating all high use living areas on the ground floor and providing privacy screening to the deck adjacent to the living areas.
- Shadow diagrams have been submitted that demonstrate that adjoining properties will receive in excess of the minimum 3 hour solar access on the winter solstice.
- The site and the proposed development are not visible from any coastal or bushland areas. Therefore the proposal will not have any impact on the scenic quality of the coastal or bushland areas.

- The proposal results in a two storey dwelling that is considered an appropriate outcome in this locality and will not have a detrimental visual impact when viewed from Surfers Parade.

Precondition 3 - To consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides for additions and alterations to an existing dwelling house, which are constrained by the siting and floor levels of the existing building. Furthermore, the proposal does not have any detrimental impacts.

In the Wehbe judgment (*Wehbe v Warringah Council [2007] NSWLEC 827*), Preston CJ expressed the view that there are 5 different ways in which a SEPP 1 Objection may be well founded and that approval of the Objection may be consistent with the aims of the policy. These 5 questions may be usefully applied to the consideration of Clause 4.6 variations: -

1. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*

Comment: Yes. Refer to comments under 'Justification of Proposed Variation' above which discusses the achievement of the objectives of the standard.

2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

Comment: It is considered that the purpose of the standard is relevant but the purpose is satisfied.

3. *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

Comment: Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development.

Furthermore, it is noted that development standards are not intended to be applied in an absolute manner; which is evidenced by clause 4.6 (1)(a) and (b).

4. *the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

Comment: Not applicable.

5. *the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Comment: The development standard is applicable to and appropriate to the zone.

For the above reasons it would therefore be unreasonable and unnecessary to cause strict compliance with the standard.

Precondition 4 - To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed

Due to the site of the existing dwelling and existing floor levels, the proposed additions ridge will exceed the maximum height required by Clause 4.3.

The development is justified in this instance for the following reasons:

- The development does not result in a significant bulk when viewed from either the street or the neighbouring properties.
- The proposal does not obstruct any views from surrounding properties.

Having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for maximum building height.

In the recent 'Four2Five' judgement (*Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does **not** mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard", it is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

The recent appeal of *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February of this year the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

While the judgment did not directly overturn the *Four2Five v Ashfield* decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligation is to be satisfied that "the applicant's written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ...and that there are sufficient environmental planning grounds to justify contravening the development standard." He held that this means:

"the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary".

Accordingly, when assessed against the relevant Objects of the Environmental Planning & Assessment Act 1979, (NSW) outlined in s1.3, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

- The proposal provides for additions to an existing dwelling with an elevated ground floor level.
- The proposal is considered to promote good design and amenity to the local built environment as appropriate amenity, solar access and privacy will be maintained for the neighbouring properties.
- The minor non-compliance with the height control, which is restricted to the ridge line does not have any detrimental impacts on the adjoining properties or when viewed from the public domain. Strict compliance with the control would not serve any benefit.

The above are the environmental planning grounds which are the circumstances which are particular to the development which merit a variation to the development standard.

7.0 Conclusion

This development proposed a departure from the maximum building height development standard.

This variation occurs as a result of the siting of the existing building and sloping topography of the site.

This written request to vary the maximum building height specified in Clause 4.3 of the Warringah LEP 2013 adequately demonstrates that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum building height control would be unreasonable and unnecessary in the circumstances of this case.

Natalie Nolan
NOLAN PLANNING CONSULTANTS