

STATEMENT OF ENVIRONMENTAL EFFECTS

139 HEADLAND ROAD, NORTH CURL CURL

**PROPOSED DEMOLITION AND CONSTRUCTION OF A NEW
DWELLING AND SWIMMING POOL**

**PREPARED ON BEHALF OF
LEWIS & WELLS**

NOVEMBER 2019

TABLE OF CONTENTS

1.	INTRODUCTION	3
2.	BACKGROUND	4
3.	SITE DESCRIPTION AND LOCALITY	5
4.	THE DEVELOPMENT PROPOSAL	8
5.	ZONING & DEVELOPMENT CONTROLS	9
6.	EP&A ACT – SECTION 4.15	20
7.	CONCLUSION	21

1. INTRODUCTION

This application seeks approval for the demolition of the existing dwelling and the construction of a new two storey dwelling and swimming upon land at Lot 6 in DP 13900 which is known as **No. 139 Headland Road, North Curl Curl**.

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 Sydney Surveyors, Ref No. 15447, dated 24/10/2017.
- Architectural Plans prepared by Angela Steyn & Co, Revision J.
- BASIX Certificate #1026886S, dated 13 August 2019.
- Site Drainage Concept Plans prepared by Michal Korecky, Drawing No. 19068, Issue 1 and dated 30/9/19.
- Geotechnical Risk Analysis & Management Report prepared by Jack Hodgson Consultants Pty Ltd, Ref No. MT31618 and dated 27 November 2018.

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. BACKGROUND

A Pre-lodgement Meeting (PLM2018/0068) was held with Council on 3 May 2018. The following issues were discussed:

Rear Setback – the deck in the pre-lodgement plans encroached the 6.0m rear setback control. The plans have been amended and the proposal now complies with the rear setback controls.

Views – This has been discussed in the Statement of Environmental Effects.

Parking – The existing driveway on the adjoining road reserve is not acceptable as access to the new dwelling. A revised access arrangement to provide a driveway that is perpendicular to Headland Road is required. The plans submitted with this application provide for a new driveway and double garage integrated into the dwelling design.

Height – The pre-DA notes provided:

As the proposal involves the construction of a new dwelling house, the building heights will be measured from the Australian Height Datum (i.e. an extrapolation of the natural ground level), based on the survey data provided) not the existing ground level.

Sufficient long and cross-section of the proposed dwelling will be required with any development application to confirm that the development can meet the Building Height standard.

The height has been measured in accordance with the above and the only projection beyond the building height development standard in the chimney which has been addressed in a Clause 4.6 Variation in Appendix 1.

Side Boundary Envelope – The plans have been amended and only a small portion of the eave of the upper bedrooms encroach the envelope. Eaves are an allowable encroachment.

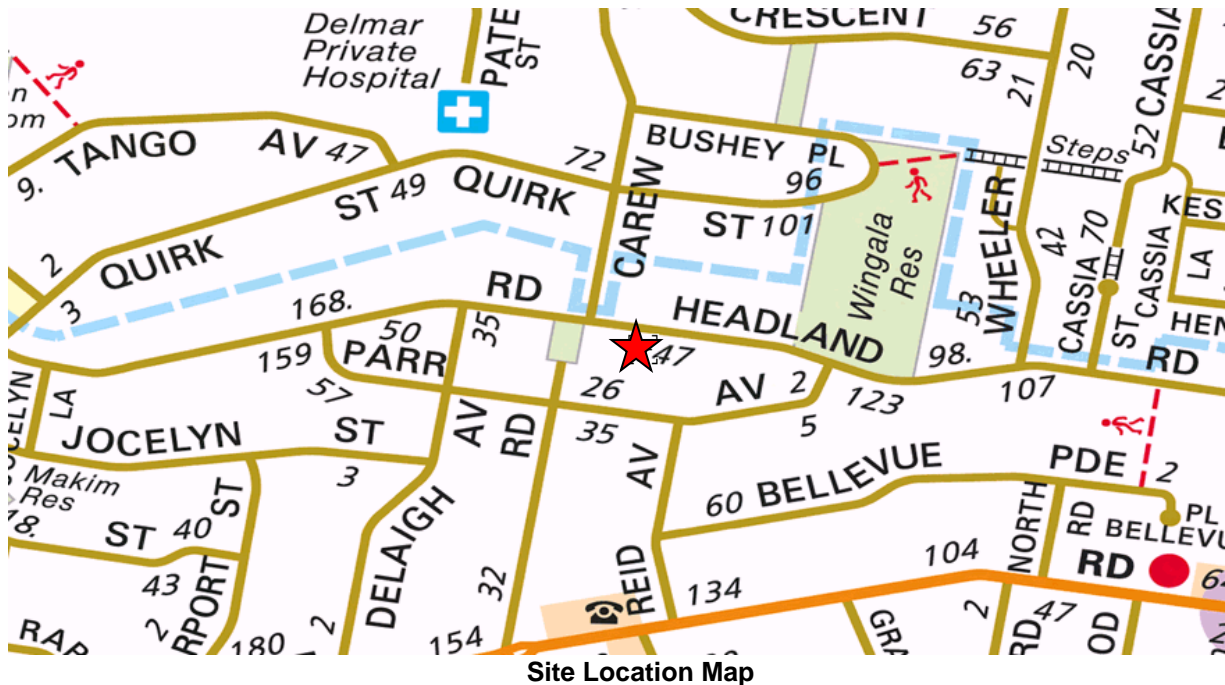
Front Setback – The wall of the dwelling is setback 6.5m. A non-trafficable grate overhang encroaches the setback. However this is a feature of the dwelling and assists in articulation and modulation.

Landscaped Area – The proposal has been amended to achieve a landscaped area of 40% of the site. This complies with the DCP controls.

It is considered that the issues raised at the Pre-Lodgement Meeting have been addressed.

3. SITE DESCRIPTION AND LOCALITY

The site is identified as Lot 6 in DP 13900 which is known as 139 Headland Road, North Curl Curl. The property is located on the southern side of Headland Road with a total area of 567m². The sites northern boundary has a frontage to Headland Road of 14.325m and the site has a depth of 39.625m. The site is depicted in the following locality map:



The site has a steep fall from the street frontage (RL 44.0) towards the rear southwest corner (RL 35.12) with a total fall of approximately 9m. The site is currently occupied by a single storey clad dwelling with pitched tiled roof and storage/laundry facilities below. There is currently no formal parking provided on site. Concrete driveway tracks traverse the road reserve with informal parking on the road reserve. There is no significant vegetation on site.

The site is depicted in the following photographs:



View of Subject Site from Headland Road

The existing surrounding development comprises mainly two and three storey detached residential dwellings the majority of which are designed and orientated to maximise views to the south and southeast.

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



Aerial Photograph of Locality

4. THE DEVELOPMENT PROPOSAL

This proposal seeks approval for the demolition of the existing dwelling and the construction of a new three storey dwelling and swimming pool. The dwelling is to be constructed of a mixture of rendered brickwork and cladding with a low pitched metal roof. The proposal also incorporates stormwater drainage and landscaping.

The wall of the dwelling is located a setback of 6.5m to the street frontage. Setbacks from both side boundaries range from 0.9m. A setback of more than 6m is provided to the rear southern boundary.

A new concrete driveway and vehicular crossing will be incorporated into the development. The driveway will be provided with a setback of 3.446m to the western side boundary.

The dwelling has been designed to step down the site. The dwelling will essentially comprise the following:

Entry Level: Entry, study, lounge, WC and two car garage with storage.

Lower Level 1: 4 bedrooms (main with ensuite), bathroom, family, dining and kitchen.

Lower Level 2: Rumpus room, bathroom, storage, cellar.

The proposal provides for a new swimming pool to be located adjacent to the eastern side boundary. The pool is provided at lower level 1 and setback 900mm from the eastern side boundary. A privacy screen is to be provided along the eastern elevation of the pool.

All collected stormwater will be discharged to a proposed easement over No. 16 Parr Avenue which ultimately disperses to Parr Avenue. A signed agreement from the owners of No. 16 Parr Avenue is included in **Appendix 2** of this report.

The site will be appropriately landscaped in accordance with Council controls.

The proposal will result in the following numerical indices:

Site Area: 567.628m²

Landscaped Area: 226.174m² or 40%
(as defined)

5. 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.

5.1 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 a dwelling house is permissible in this zone with the consent of Council. The following provisions of the LEP are relevant to the proposed development:

Clause	Development Standard	Proposal	Compliance
4.3 Height	8.5m	Maximum 9.6m to top of chimney – building complies	Clause 4.6 Variation included in Appendix 1 .

Clause 6.4 Development on Sloping Land

The subject site is identified as Area B on Council's Landslip Risk Map. A Preliminary Geotechnical Report has been prepared which in summary provides:

The site and the proposed development can achieve the Acceptable Risk Management criteria outlined in Landslip Risk Management 2007, published by the Australian Geomechanics Society, provided the recommendations given in Section 10 are undertaken.

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.

5.2 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	Wall height approximately 8.5m. The height is direct result of the slope of the site and some excavation provided. This element is appropriately setback from the side boundary (1.36m). All elevations of the building are well articulated and generally present as a two-storey dwelling. The proposal has been designed with considered location of rooms and windows to ensure appropriate privacy to the adjoining properties.

Clause	Requirement	Compliance
		The overall height of the building will sit below the ridge of the adjoining building No. 141 Headland (RL50.19). Further the proposal provides for reasonable sharing of views as discussed later in this report.
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	Yes Eaves are an allowable encroachment.
B4 – Site Coverage	Not Applicable	Not Applicable
B5 - Side Boundary setbacks	Minimum: 0.9m	Yes Setbacks of at least 0.9m provided.
B7 – Front Boundary Setbacks	Minimum 6.5m	Yes The proposal provides for a setback of 6.5m to the front boundary. It is noted that this is compatible with the existing streetscape, which provides for varied front setbacks and both adjoining properties providing reduced front setbacks.

Clause	Requirement	Compliance
B9- Rear Boundary Setbacks& B10 Merit Assessment of Rear Setbacks	6m rear setback required The rear boundary setback may be encroached by swimming pools and outbuildings which, in total, do not exceed 50% of the rear setback area	Yes The proposal is setback greater than 6m to the rear boundary.
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 A new vehicular crossing and driveway is provided to comply with Council controls.
C3 – Parking Facilities	Garages not to visually dominate façade Parking to be in accordance with AS/NZS 2890.1	Yes Proposal provides for a double garage which is integrated into the dwelling design and located behind the required building line.
C4 - Stormwater	To be provided in accordance with Council's Stormwater Drainage Design Guidelines for Minor Developments & Minor Works Specification.	Yes All collected stormwater will discharge to a proposed easement which ultimately disperses to Parr Avenue.

Clause	Requirement	Compliance
		An agreement to the easement is included in Appendix 2 .
C5 – Erosion and Sedimentation	Soil and Water Management required	Yes A Site 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 Some excavation is required to accommodate the lower level. A Preliminary Geotechnical report has been prepared in support of the application. The excavation is appropriately setback from the boundary and does not have any detrimental impact on trees.
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	Yes Proposal provides for a landscaped area of 40% of the site.

Clause	Requirement	Compliance
D2 - Private Open Space	Dwelling houses with three or more bedrooms Min 60m ² with min dimension 5m	Yes The site currently provides for more than 100m ² of private open space. This open space is directly from the lounge room and receives good solar access.
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 site is orientated north south. The proposed dwelling 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 to the adjoining properties.

Clause	Requirement	Compliance
D7 - Views	View sharing to be maintained	<p>The proposal has been designed to ensure appropriate view sharing. The proposal complies with the Council's boundary setbacks and generally complies with the maximum height controls, with the exception of the chimney which does not result in any loss of views. The proposal has also be designed to step down the site and incorporates a flat roof form to minimise bulk and overall height. The proposal maintains appropriate view sharing including oblique views.</p>
D8 - Privacy	This clause specifies that development is not to cause unreasonable overlooking of habitable rooms and principle private open space of adjoining properties.	<p>Yes</p> <p>The proposal has been designed to ensure an appropriate level of privacy is maintained to the adjoining properties. This has been achieved by orientating high use living areas to the south. Privacy screens and considered window location and design ensure that privacy will be maintained.</p>

Clause	Requirement	Compliance
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 has been designed to complement the surrounding properties in bulk and scale. This has been achieved by ensuring the bulk and scale that is compatible with more recent development in the immediate vicinity. It is noted that the proposal presents as a single storey dwelling from the street and steps down the site. The dwelling is well articulated on all facades to reduce bulk and scale.
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 low pitched roof which minimises bulk and scale and is compatible with the existing surrounding development.
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.

Clause	Requirement	Compliance
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.	Not Applicable.
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 New facilities will be provided on site and integrated into the design of the dwelling.
D15 – Side and Rear Fences	Side and rear fences to be maximum 1.8m and have regard for Dividing Fences Act 1991.	Not Applicable
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 The pool is located behind the front building line. The pool is provided with a privacy screen and landscaping along the eastern elevation to prevent overlooking and ensure an appropriate presentation to the adjoining property.
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

Clause	Requirement	Compliance
D20 – Safety and Security	Buildings to enhance the security of the community. Buildings are to provide for casual surveillance of the street.	Yes The building provides a good outlook of the driveway and site approach.
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	Building identification signage to be appropriate for proposed use and not to impact on amenity of surrounding locality. Signs not to obscure views or potentially hazardous road features or traffic control devices.	Not Applicable
E1 – Private Property Tree Management	Arboricultural report to be provided to support development where impacts to trees are presented.	Not Applicable Works do not require the removal of any indigenous vegetation.
E2 – Prescribed Vegetation	Not identified on map	Not Applicable
E3 – Threatened species, populations, ecological communities	Not identified on map	Not Applicable
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

Clause	Requirement	Compliance
E8 – Waterways and Riparian Lands	N/A – not identified on map	Not Applicable
E9 – Coastline Hazard	Not identified on map	Not Applicable
E10 – Landslip Risk	Identified on map as part B	Yes A preliminary geotechnical report has been provided.
E11 – Flood Prone Land	Not identified on map	Not Applicable

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

6. 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 a new 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 new dwelling will not have 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 a new dwelling house 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. The proposal does not result in the removal of any significant vegetation.

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 a new single dwelling that is consistent with other development in this locality without impacting the amenity of the adjoining properties or the public domain.

7. CONCLUSION

This application seeks approval for the construction of a new dwelling house. 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 demolition of the existing dwelling and construction of a new two storey dwelling and swimming pool upon land at **No. 139 Headland Road, North Curl Curl** is worthy of the consent of Council.

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October 2019

**APPENDIX ONE
CLAUSE 4.6 VARIATION
VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM
BUILDING HEIGHT REQUIRED BY CLAUSE 4.3 OF THE WARRINGAH LOCAL
ENVIRONMENTAL PLAN 2011**

For: Proposed New Dwelling
At: 139 Headland Road, North Curl Curl
Applicant: Lewis and Wells

Introduction

This Clause 4.6 variation is a written request to vary a development standard to support a development application for construction of a new dwelling at **139 Headland Road, North Curl Curl**.

The specified maximum building height under Clause 4.3 (1) of the Warringah Local Environmental Plan 2011 (the LEP) is 8.5m. The development proposes a departure from this numerical standard and proposes a maximum height of 9.6m. It is noted that this height is measured to the top of the chimney with the actual building complying with the height controls.

This building height requirement is identified as a development standard which requires a variation under Clause 4.6 of the Warringah Local Environmental Plan 2011 (the LEP) to enable the granting of consent to the development application.

Background

Clause 4.3 restricts the height of a building within this and refers to the maximum height noted within the “Height of Buildings Map.”

The relevant building height for this locality is 8.5m and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposal incorporates a chimney pipe which extends above the roof height of the dwelling to a maximum of approximately 9.6m in height. The non-compliance relates only to the chimney with the building complying with the height controls.

The proposal is considered acceptable and there are sufficient environmental planning grounds to justify contravening the development standard.

The controls of Clause 4.3 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

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.

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 non-compliance relates only to the chimney with the remainder of the dwelling complying with the height controls, as defined. The chimney is required to extend beyond the roof form. It is considered that this design achieves a better outcome and that flexibility is required in this instance.

Further the proposal achieves the objectives of the R2 Zone which 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.*

As sought by the zone objectives, the proposal will provide for a new detached dwelling house which will retain the low-density residential environment. The proposal will provide for an appropriate landscape setting which has been achieved by ensuring compliance with the landscape controls and providing appropriate landscaping.

The non-compliance is towards the rear of the dwelling and will not be visible from the public domain.

Notwithstanding the non-compliance with the maximum height control, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood.

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.

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* [2011] NSWLEC 1199.

Paragraph 27 of the Samadi 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 the proposed development will be consistent with the zone objectives for the following reasons:

- The proposal provides for a single detached dwelling which retains the low density residential environment.
- The proposal does not require the removal of any significant vegetation and there is sufficient area on site for additional landscaping. It is noted that the site complies with the minimum landscaped controls of the Warringah DCP.

Accordingly, it is considered that the site may be developed with a minor 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):

- (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.*

Comments

The proposal results in a dwelling that is compatible in terms of height and bulk with the existing surrounding development. The dwelling structure complies with the maximum height control, with only the chimney extending beyond the 8.5m height limit. The chimney is not visible from the street or public domain. The dwelling will present as a part single and part two storey dwelling when viewed from Headland Road. The dwelling is well articulated on facades to minimize bulk and scale. The resultant dwelling is of comparable height and bulk, particularly when compared to the more recent development in Headland Road and the adjoining dwelling No. 141 Headland Road which has a ridge height of RL50.19. The proposal is consistent with objective 1(a).

The proposal has been designed to ensure appropriate view sharing and maintain solar access and privacy. This has been discussed extensively in the main body of the Statement of Environmental Effects. View sharing has been accommodated by stepping the dwelling down the site and providing for a low pitched roof form. This will ensure that views from the upper level of No. 141 Headland Road can be gained over the rear of the proposed dwelling. Given the orientation of the allotment, the proposal will not result in unreasonable overshadowing, with the majority of shadow cast over the rear yard of the subject site. Privacy has been ensured to the adjoining properties by the appropriate orientation of rooms and the location and design of windows and privacy screens. The proposal achieves objective 1(b).

The proposed development will not be prominent from any bushland or coastal areas. The site is well separated from any foreshore or bushland area. The proposal achieves objective 1(c).

When viewed from the public domain, the proposal will present as a part one and part two storey dwelling. This is compatible with the existing surrounding development. The dwelling is well articulated on the front façade and includes modulation and an appropriate selection of external finishes. The proposal achieves objective 1(d).

Accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

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 the construction of a new dwelling which predominantly complies with the maximum building height. The only area of non-compliance is the chimney which is required to extend above the roof form. The non-compliance is very minor and is only a chimney structure which is not visible from the street.

The chimney does not result in any overshadowing nor impact on bulk or the amenity of the adjoining properties. Further the chimney does not obstruct any existing views. Given the minor non-compliance being only a chimney structure 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

Council's controls in Clause 4.3 provide a maximum overall height of 8.5m for the subject development.

The dwelling house built form complies with the height controls, it is just the chimney structure that extends beyond the maximum height. In this regard the chimney which has a width of only 300mm extends to a height of approximately 9.6m in height.

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

- The dwelling structure complies with the height controls, it is only the chimney that exceeds the development standard.
- The chimney is ancillary required structure. It has a width of only 300mm and is not visible from the street. Further the chimney does not result in any loss of views, solar access or privacy of the adjoining properties.
- The non-complying chimney does not result in any unreasonable bulk or scale.
- The development will maintain a compatible scale relationship with the existing residential development in the area. Development in the vicinity comprises a mix of original housing stock and more prominent large two and three storey dwellings.

- The extent of the proposed new works where they are not compliant with Council's maximum height control do not present any significant impacts in terms of view loss for neighbours, loss of solar access or unreasonable bulk and scale.

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, in regard to the proposed development at 139 Headland Road, 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 chimney is required to extend above the roof form.
- The variation to the height control is inconsequential as it will not result in any unreasonable impact to the streetscape and the amenity of neighbouring properties.
- The non-compliance relates only to a chimney which is an ancillary structure with a width of only 300mm.

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

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.

Conclusion

This development proposed a departure from the maximum building height development standard, with the proposed dwelling complies with the height control with the chimney exceeding the development standard with a maximum overall height of approximately 9.6m.

This variation occurs as a result of requiring a chimney to extend beyond the roof form.

This objection to the maximum building height specified in Clause 4.3 of the Warringah LEP 2011 adequately demonstrates that 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.

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