

STATEMENT OF ENVIRONMENTAL EFFECTS

Alterations and additions to the
existing first floor and attic levels to
accommodate bar/ function and
recording studio floor space and
associated amenities

Harbord Beach Hotel

**29 – 31 MOORE ROAD
FRESHWATER**



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Statement of Environmental Effects

Alterations and additions to the existing first floor and attic levels to accommodate bar/function and recording studio floor space and associated amenities

Harbord Beach Hotel

29 – 31 Moore Road, Freshwater

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1.0 INTRODUCTION

This document forms a component of a development application proposing alterations and additions to the existing first floor and attic levels of the existing hotel premises to accommodate bar/function and ancillary recording studio floor space and associated amenities. These works form the final stage of an overall upgrade of the hotel premises to provide enhanced amenity for hotel patrons, ancillary recording space for local artists and improved environmental performance in terms of acoustics, off street parking and operational management.

The additional bar and function floor space will provide greater flexibility in the distribution of patrons within the hotel premises in line with the increased spatial awareness/ expectation of patrons as a consequence of the current Covid 19 pandemic.

Whilst the application seeks to increase the existing capacity of the premises by 50 patrons, such increase is off-set through the provision of 8 additional off-street car parking spaces and the introduction of a minibus service which will operate between Manly CBD and the subject premises during peak trading periods. The additional patron capacity and associated car parking/patron transportation arrangements have been addressed in the accompanying traffic and parking assessment prepared by Colston Budd Rogers & Kafes Pty Limited.

The majority of works are contained within the established building envelope with the exception of alterations required to the south-eastern area of the existing roof to accommodate disabled lift access to the attic level of the development. The balance of external works is limited to the replacement/ upgrading of existing doors and fenestration and the installation of balcony/ courtyard acoustic measures to achieve required acoustic performance criteria. The ongoing operation of the premises is addressed in the accompanying Operational Plan of Management.

The application is accompanied by an acoustic report prepared by AKA Acoustics detailing the applicable acoustic criteria that needs to be achieved in terms of the glazing, acoustic screens and ongoing operational requirements with the acceptability of the works, having regard to the properties listing as an item of Local heritage significance, addressed in the accompanying Heritage Impact Statement prepared by Weir Phillips Heritage and Planning.

In preparation of this document, consideration has been given to the minutes arising from formal pre-DA discussions with Council and the following statutory considerations:

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

Architectural drawings including plans, sections and elevations have been prepared in relation to the development proposed. The application is also accompanied by an acoustic report, traffic/ parking statement, access report, fire safety certificate, Heritage Impact Statement, operational plan of management, waste management plan and kitchen and bar fit-out plans and specifications.

The development responds appropriately to the development standards contained within Warringah Local Environmental Plan 2011 (WLEP) and the built form guidelines contained within Warringah Development Control Plan as they relate to the works proposed.

Whilst the proposal requires the consent authority to give favourable consideration to a height of buildings variation, strict compliance has been found to be unreasonable and unnecessary having regard to the particular circumstances of the case including the maintenance of an appropriate heritage conservation outcome and the general paucity of streetscape and residential amenity impacts. Sufficient environmental planning grounds existing to support the variation proposed with the accompanying clause 4.6 variation request well founded.

Having given due consideration to the relevant considerations pursuant to section 4.15(1) of the Environmental Planning & Assessment Act 1979 (the Act) it has been demonstrated that the proposed development succeeds on merit and is appropriate for approval.

2.0 SITE DESCRIPTION AND LOCATION

The subject site is legally described as Lots 1 - 5, DP 7022, No 29 Moore Road and Lot 13, DP 7022, No 31 Moore Road, Freshwater. The site is “L” shaped having primary frontage and address to Moore Road of approximately 54 metres, secondary frontage to Charles Street of approximately 56 metres, tertiary frontage to Undercliff Road and a total area of approximately 2641.2 square metres. The site and its location are depicted in Figure 1 below.



Source: SIX Maps

Figure 1 – Aerial location/ context photograph

The subject property is occupied by a 2 storey hotel known as the Harbord Beach Hotel. The State Heritage Inventory Listing Sheet provides the following statement of significance for the subject property:

A rare example of an inter-war hotel building which shows influences of the Californian bungalow style. Historically provides evidence of the early development of social & recreational facilities to serve the growing population. Local landmark.

The ground floor level of the premises has recently undergone extensive refurbishment pursuant to development consent DA2020/0468.

The hotel building is located on the north western corner of the site with at-grade parking adjacent to the Undercliff Road frontage. A drive-thru bottle shop is located on the eastern portion of the site with vehicular access from Charles Street and egress via Moore Road. The main entry to the hotel for patrons is from the Moore Road frontage.



Figure 2 – Subject property as viewed from Moore Road



Figure 3 – Subject property as viewed from Undercliff Road

Immediately surrounding development is residential in nature comprising a mixture of detached dwelling houses interspersed by dual occupancy and residential flat development. Freshwater Local Centre and Freshwater beach are located within short walking distance of the site.



Figure 4 – Photograph depicting residential development located on the high side of Undercliff Road to the south of the subject site



Figure 5 – Photograph depicting residential development located on the western side of Charles Street to the west of the subject site



Figure 6 – Photograph depicting development located on the southern side of Moore Road to the east of the subject site

3.0 PROPOSED DEVELOPMENT

The subject application proposes alterations and additions to the existing first floor and attic levels of the existing hotel premises to accommodate bar/function and ancillary recording studio floor space and associated amenities. The works are depicted on the following plans prepared by Alexander and Co:

A (BASE BUILD)	DA-AXX-001	SITE & ROOF - EXISTING & DEMOLITION PLAN
	DA-A01-001	FIRST FLOOR - EXISTING & DEMOLITION PLAN
	DA-A02-001	SECOND FLOOR - EXISTING & DEMOLITION PLAN
D (PLANS)	DA-D00-011	GROUND FLOOR - GENERAL ARRANGEMENT PLAN
	DA-D01-011	FIRST FLOOR - GENERAL ARRANGEMENT PLAN
	DA-D02-011	SECOND FLOOR - GENERAL ARRANGEMENT PLAN
	DA-DXX-011	SITE & ROOF - PROPOSED PLAN
E (ELEVATIONS)	DA-EXX-011	OVERALL BUILDING - EXTERNAL ELEVATIONS 01 & 02
	DA-EXX-021	OVERALL BUILDING - EXTERNAL ELEVATIONS 03 & 04
F (SECTIONS)	DA-FXX-011	OVERALL BUILDING SECTIONS 01
	DA-FXX-021	OVERALL BUILDING SECTIONS 02
	DA-FXX-031	OVERALL BUILDING SECTIONS 03
	DA-FXX-041	OVERALL BUILDING SECTIONS 04

The scope of the works can be summarised as follows:

First floor internal alterations

- Remove the interior walls and ceiling.
- Insertion of 300mm sound insulation between the ceiling of the first floor and the sound studio within the attic space.
- Introduction of a modified first floor plan to include bar, kitchen, office, sanitary facilities.
- Replacement of aluminium windows with timber framed windows detailed to match original windows.
- Introduction of a reflected ceiling plan to interpret former layout of hotel accommodation.
- Termination of existing stairs.
- Reconfirmation and upgrade of the stairs and lift area to the rear to the south east corner of the building.

Proposed attic alterations

- Roof addition to the southern wing of the building to include a recording studio, lounge and bar area within the attic of the building.

- External alteration of the southern wing roof form to raise the roof height and incorporate a dormer window to the western side.

The additional bar and function floor space will provide greater flexibility in the distribution of patrons within the hotel premises in line with the increased spatial awareness/ expectation of patrons as a consequence of the current Covid 19 pandemic.

The application also seeks to increase the existing capacity of the premises by 50 patrons, with such increase off-set through the provision of 8 additional off-street car parking spaces and the introduction of a minibus service which will operate between Manly CBD and the subject premises during peak trading periods.

The majority of works are contained within the established building envelope with the exception of alterations required to the south-eastern area of the existing roof to accommodate disabled lift access to the attic level of the development. The balance of external works is limited to the replacement/ upgrading of existing doors and fenestration and the installation of balcony/ courtyard acoustic measures to achieve required acoustic performance criteria. The ongoing operation of the premises is addressed in the accompanying Operational Plan of Management.

The application is accompanied by an acoustic report prepared by AKA Acoustics detailing the applicable acoustic criteria that needs to be achieved in terms of the glazing, acoustic screens and ongoing operational requirements with the acceptability of the works, having regard to the properties listing as an item of Local heritage significance, addressed in the accompanying Heritage Impact Statement prepared by Weir Phillips Heritage and Planning.

4.0 STATUTORY PLANNING FRAMEWORK

4.2 Warringah Local Environmental Plan 2011

4.1.1 Zoning

The site is zoned R2 Low Density Residential pursuant to the provisions of Warringah Local Environmental Plan 2011. Whilst pubs are prohibited in the zone Schedule 1 – Additional permissible uses of WLEP contains the following provisions:

14 Use of certain land at 29 Moore Road, Freshwater

- (1) This clause applies to land at 29 Moore Road, Freshwater, being Lots 1–5, Section 1, DP 7022 and Lot 13, Section 1, DP 7022, shown as “Area 14” on the Additional Permitted Uses Map.*
- (2) Development for the purposes of pubs is permitted with consent.*

A pub is defined as follows:

pub means licensed premises under the Liquor Act 2007 the principal purpose of which is the retail sale of liquor for consumption on the premises, whether or not the premises include hotel or motel accommodation and whether or not food is sold or entertainment is provided on the premises.

The existing premises is appropriately defined as a pub and therefore permissible with consent in the zone. The proposed works are ordinarily ancillary and incidental to the existing hotel/ pub use and as such are permissible in the zone with development consent.

In this regard, the equipment contained within the proposed recording studio will be supplied by the hotel with this space able to be hired out for casual use by local recording artists who, like the balance of the patrons within the premises, will be able to take advantage of available food and beverage offerings. This space is no different to other spaces within the premises available for casual hiring by patrons of the hotel. Accordingly, such use is appropriately described as ancillary and incidental to the existing hotel/pub use and therefore permissible with consent.

4.1.2 Height of Buildings

Pursuant to Clause 4.3 of WLEP the height of a building on the subject land is not to exceed 8.5 metres in height. The objectives of this control 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.*

Building height is defined as follows:

building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

Ground level (existing) is defined as follows:

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

It has been determined that the raise roof element in the south-eastern corner of the building will have a maximum height above ground level existing, measured at its ridgeline, of between 9.8 metres at its southern end and 10.7 metres at its northern end. This represents a non-compliance of between 2.2 metres (25%) and 1.3 metres (15%). The building height breaching elements are depicted in Figures 7, 8, 9 and 10 over page.

We note that the existing ridgeline in this location has been increased by 950mm to accommodate the lift shaft and associated overrun providing disabled access to the attic level of the development.

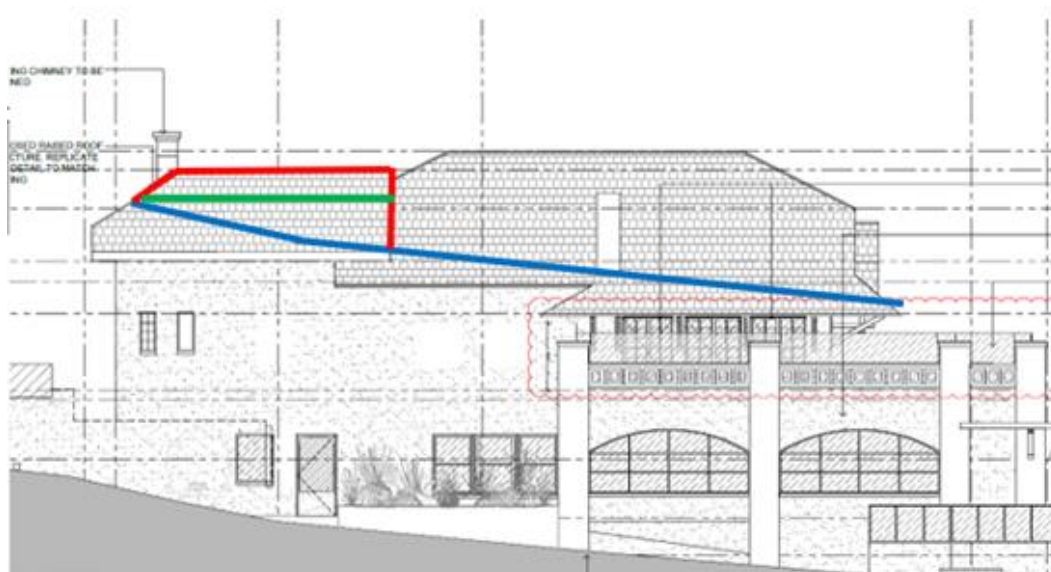


Figure 7 – Plan extract eastern elevation showing the height non-compliance based on ground level (existing). The blue line shows the 8.5 metre height standard, the red line the extent of proposed new works located above the height standard and the green line the existing building ridge height in this location.

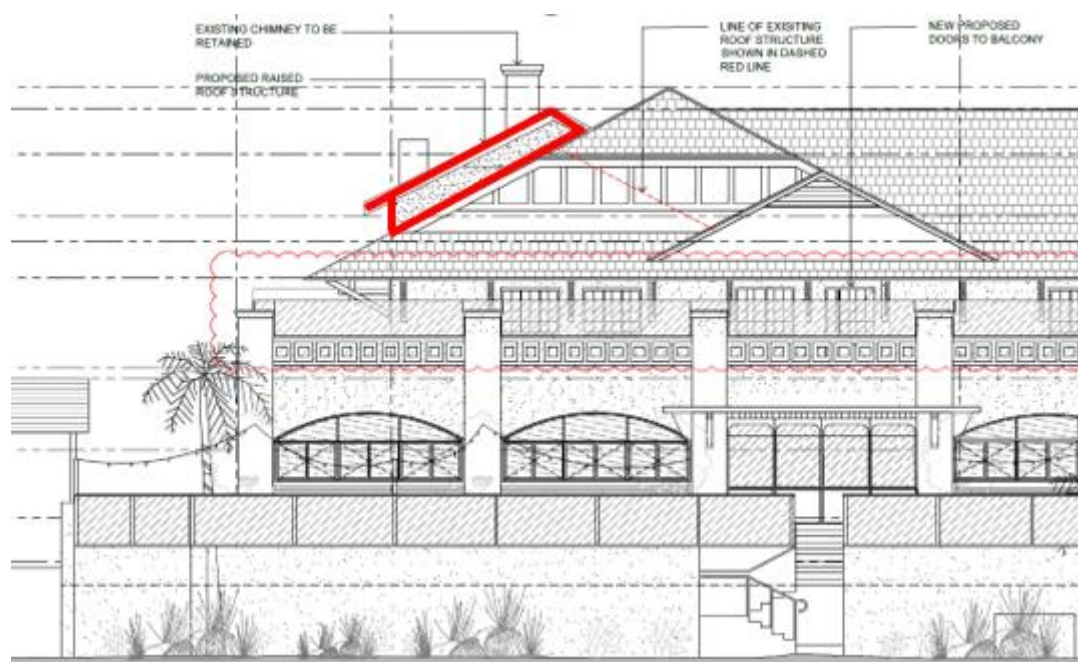


Figure 8 – Plan extract northern elevation showing the height non-compliance based on ground level (existing). The red line shows the extent of proposed new works located above the height standard as viewed from this elevation.

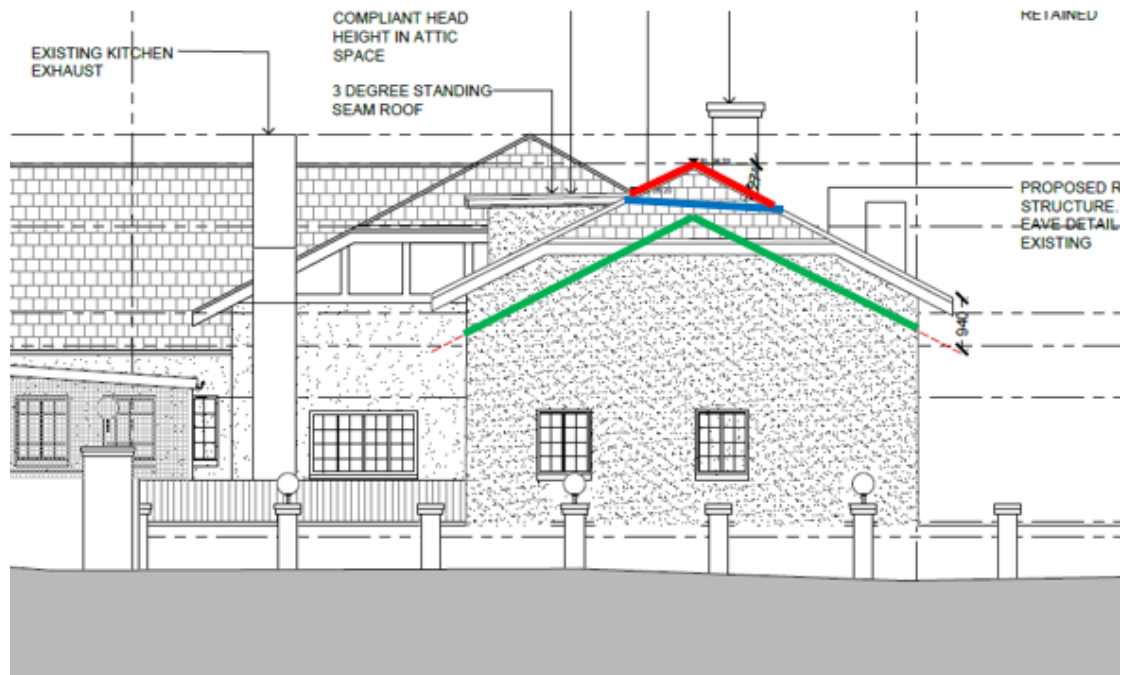


Figure 9 – Plan extract southern elevation showing the height non-compliance based on ground level (existing). The blue line shows the 8.5 metre height standard, the red line the extent of proposed new works located above the height standard and the green line the existing building ridge line in this location.



Figure 10 – Plan extract western elevation showing the height non-compliance based on ground level (existing). The blue line shows the 8.5 metre height standard, the red line the extent of proposed new works located above the height standard and the green line the existing building ridge line in this location.

We note that the areas of non-compliance are limited to the relatively small portion of roof form with the non-compliant building elements continuing to sit well below the height established by the balance of the building roof form.

Clause 4.6 of MLEP 2013 provides a mechanism by which a development standard can be varied and to that extent a clause 4.6 variation request has been prepared and is at Attachment 1. Such request demonstrates that the development is consistent with the objectives of the zone, consistent with the objectives of the building height standard and as such strict compliance is both unreasonable and unnecessary. Further, sufficient environmental planning grounds exist to justify the variation sought. The 4.6 variation request is well founded.

4.1.3 Heritage Conservation

Pursuant to clause 5.10 WLEP 2011 development consent is required for any of the following:

- (a) *demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance):*
 - (i) *a heritage item,*
 - (ii) *an Aboriginal object,*
 - (iii) *a building, work, relic or tree within a heritage conservation area,*

The stated objectives of this clause are as follows:

- (a) *to conserve the environmental heritage of Manly,*
- (b) *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) *to conserve archaeological sites,*
- (d) *to conserve Aboriginal objects and Aboriginal places of heritage significance.*

The accompanying Heritage Impact Statement prepared by Weir Phillips Heritage and Planning confirms that the exiting hotel is identified within Schedule 5 of WLEP as an item of Local significance with the State Heritage Inventory Listing Sheet containing the following statement of significance for the subject property:

A rare example of an inter-war hotel building which shows influences of the Californian bungalow style. Historically provides evidence of the early development of social & recreational facilities to serve the growing population. Local landmark.

The accompanying Statement of Heritage Impact contains the following summary having regard to an assessment against the applicable statutory considerations:

The proposal respects the heritage significance by means of the retention of the appearance of the building from Moore Road. This will ensure that the building will continue to be read as an Inter-war era building.

The proposed addition is sympathetic to the character of the building for the following reasons:

- *The height of the addition has been minimised to ensure that it sits below the ridge height of the principal roof form and will be in keeping with the character of the building.*
- *The roof addition has been designed to reflect the appearance, shape and form of the existing roof and will not over shadow or detract from the Inter-war characteristics of the building. Furthermore, the addition will match the pitch, form and material finish of the existing roof in order to minimise its appearance and ensure that it does not detract from the heritage values of the place.*
- *The location of the addition to the southern (rear) elevation in an area away from the publicly viewable component of the building will maintain the presentation of the building to Moore Road.*
- *The lift well, lift overrun and extended fire stair have been located to the rear of the building elevation in an area which contains few original decorative details.*
- *The external appearance of the Moore Street elevation will be enhanced through the removal of the intrusive aluminium framed window which will be replaced with sound proof alternatives detailed to match that of the first floor windows seen in Figure 9 of this report.*

The proposed alterations to the interior of the building respect the heritage significance of the building by:

- providing an ongoing use of a currently underutilised space. The building no longer provides holiday due to changes in the travel industry. Accordingly, the first floor has been used for a range of secondary purposes such as storage, offices and staff change rooms. The proposed works will facilitate the activation of the underutilised spaces which will provide additional income stream for the building which can be used to assist with the ongoing upkeep and maintenance of the place.*
- Interpreting the former floor plan this will enable the space to be adaptively reused whilst providing a means of demonstrating the former layout. Accordingly, the proposed reflected first floor ceiling plan is sympathetic to the heritage values of the place.*
- enabling the continuation of the use of the item as a place of entertainment which is its original and best use. Accordingly, the social significance of the place will be maintained and enhanced.*

Based on the above it is considered that the proposed works will have a minimal and acceptable impact on the significance of the Harbord Beach Hotel. The proposed works will have no impact on the historic, aesthetic, social significance of the building and its landmark qualities

CONCLUSIONS

This Heritage Impact Statement has been prepared in conjunction with a Development Application for alterations and additions to No. 29 Moore Road, Freshwater. The existing building on the subject site is a two storey Inter-War hotel. The building is a locally listed heritage item.

The proposed works to modify the interior of the first floor and addition to the rear of the subject property will have no impact on the significance of the nearby heritage listed Freshwater Restaurant.

The proposed works fulfil the objectives for alterations and additions to a heritage listed item, in the vicinity of heritage items set out by the Warringah LEP 2011 and the Warringah DCP 2011.

4.2 Warringah Development Control Plan

The following section of this report will detail the proposals performance when assessed against the applicable WDCP provisions.

Part B - Built Form Controls

As previously indicated, the majority of works are contained within the established building envelope with the exception of alterations required to the south-eastern area of the existing roof to accommodate disabled lift access to the attic level of the development. The balance of external works is limited to the replacement/ upgrading of existing doors and fenestration and the installation of balcony/ courtyard acoustic measures to achieve required acoustic performance criteria. The additional building height has been addressed previously in this report with the accompanying clause 4.6 variation request justifying the building height variation proposed in the south-eastern corner of the existing building.

Part C - Siting Factors

Having regard to these provisions we note:

- The additional bar and function floor space will provide greater flexibility in the distribution of patrons within the hotel premises in line with the increased spatial awareness/ expectation of patrons as a consequence of the current Covid 19 pandemic.
- Whilst the application seeks to increase the existing capacity of the premises by 50 patrons, such increase is off-set through the provision of 8 additional off-street car parking spaces and the introduction of a minibus service which will operate between Manly CBD and the subject premises during peak trading periods. The additional patron capacity and associated car parking/patron transportation arrangements have been addressed in the accompanying traffic and parking assessment prepared by Colston Budd Rogers & Kafes Pty Limited.
- The existing stormwater disposal and waste management arrangements are not altered.
- The site is of adequate size and geometry to ensure that all building materials and construction waste will occur on site with no impacts on traffic or on street parking.

Part D - Design

Having regard to these provisions we note:

- The application is accompanied by an acoustic report prepared by the Acoustic Group detailing the applicable acoustic criteria that needs to be achieved in terms of the glazing and mechanical plant installations. The upgrading works proposed, which involves the replacement of old mechanical plant with new plant, will improve the acoustic performance of the premises and ensure compliance with the applicable noise criteria.
- The proposed works will not give rise to any adverse residential amenity impacts in terms of views, privacy or solar access.
- The application is accompanied by an accessibility report prepared by Trevor R Howse detailing the developments acceptability having regard to the applicable legislative requirements.
- An updated operational plan of management also accompanies this application.

Part E - Natural Environment

Having regard to these provisions we note:

- The established landscape regime is maintained with no impact to trees or vegetation.
- No excavation is proposed.

Council can be satisfied that the proposal will not give rise to any adverse environmental, streetscape, residential amenity or heritage conservation impacts.

4.3 Matters for Consideration Pursuant to Section 4.15(1) of the Environmental Planning and Assessment Act 1979 as amended

The following matters are to be taken into consideration when assessing an application pursuant to section 4.15(1) of the Act.

The provision of any planning instrument, draft environmental planning instrument, development control plan or regulations.

The development responds appropriately to the development standards contained within Warringah Local Environmental Plan 2011 (WLEP) and the built form guidelines contained within Warringah Development Control Plan as they relate to the works proposed.

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economical impacts in the locality.

Context and Setting

i) *What is the relationship to the region and local context on terms of:*

- *the scenic qualities and features of the landscape?*
- *the character and amenity of the locality and streetscape?*
- *the scale, bulk, height, mass, form, character, density and design of development in the locality?*
- *the previous and existing land uses and activities in the locality?*

The proposed works will achieve the standards and controls set out in the LEP and the applicable DCP.

ii) *What are the potential impacts on adjacent properties in terms of:*

- *relationship and compatibility of adjacent land uses?*
- *sunlight access (overshadowing)?*
- *visual and acoustic privacy?*
- *views and vistas?*
- *edge conditions such as boundary treatments and fencing?*

The proposed works will have no adverse amenity impact on the adjacent properties.

Access, transport and traffic

Would the development provide accessibility and transport management measures for vehicles, pedestrians, bicycles and the disabled within the development and locality, and what impacts would occur on:

- *travel demand?*
- *dependency on motor vehicles?*
- *traffic generation and the capacity of the local and arterial road network?*
- *public transport availability and use (including freight rail where relevant)?*
- *conflicts within and between transport modes?*
- *traffic management schemes?*
- *vehicular parking spaces?*

The proposed refurbishment works do not represent an intensification of use of the existing premises with existing hours of operation, patron capacity and associated parking not altered as a consequence of the works proposed.

Public domain

No change.

Utilities

Existing utility services will adequately service the development.

Flora and fauna

No change.

Waste

Normal commercial and trade waste collection will continue to apply.

Natural hazards

The site is not affected by any known hazards.

Economic impact in the locality

The proposed development will have a positive economic benefit through temporary employment creation during construction.

Site design and internal design

i) Is the development design sensitive to environmental conditions and site attributes including:

- *size, shape and design of allotments?*
- *the proportion of site covered by buildings?*
- *the position of buildings?*
- *the size (bulk, height, mass), form, appearance and design of buildings?*
- *the amount, location, design, use and management of private and communal open space?*
- *landscaping?*

The majority of works are contained within the established building envelope with the exception of alterations required to the south-eastern area of the existing roof to accommodate disabled lift access to the attic level of the development. The balance of external works is limited to the replacement/ upgrading of existing doors and fenestration and the installation of balcony/ courtyard acoustic measures to achieve required acoustic performance criteria.

ii) How would the development affect the health and safety of the occupants in terms of:

- *lighting, ventilation and insulation?*
- *building fire risk – prevention and suppression/*
- *building materials and finishes?*
- *a common wall structure and design?*
- *access and facilities for the disabled?*
- *likely compliance with the Building Code of Australia?*

The application is accompanied by an access report and Fire Safety Certificate detailing the developments acceptability having regard to the applicable legislative requirements.

Construction

i) What would be the impacts of construction activities in terms of:

- *the environmental planning issues listed above?*
- *site safety?*

Normal site safety measures and procedures will ensure that no site safety or environmental impacts will arise during construction.

An operational plan of management also accompanies the application.

The suitability of the site for the development.

Does the proposal fit in the locality?

- *are the constraints posed by adjacent developments prohibitive?*
- *would development lead to unmanageable transport demands and are there adequate transport facilities in the area?*
- *are utilities and services available to the site adequate for the development?*

The adjacent development does not impose any development constraints. The site is well located with regards to utility services and public transport.

Are the site attributes conducive to development?

The site has no special physical or engineering constraints is suitable for the proposed development.

Any submissions received in accordance with this Act or the regulations.

It is envisaged that any submissions made in relation to the proposed development will be appropriately assessed by Council.

The public interest.

The development is consistent with the adopted planning regime as it is reasonably applied to the existing hotel premises and to that extent is in the public interest.

5.0 CONCLUSION

The works the subject of this application form the final stage of an overall upgrade of the hotel premises to provide enhanced amenity for hotel patrons, ancillary recording space for local artists and improved environmental performance in terms of acoustics, off street parking and operational management.

The additional bar and function floor space will provide greater flexibility in the distribution of patrons within the hotel premises in line with the increased spatial awareness/ expectation of patrons as a consequence of the current Covid 19 pandemic.

Whilst the application seeks to increase the existing capacity of the premises by 50 patrons, such increase is off-set through the provision of 8 additional off-street car parking spaces and the introduction of a minibus service which will operate between Manly CBD and the subject premises during peak trading periods. The additional patron capacity and associated car parking/patron transportation arrangements have been addressed in the accompanying traffic and parking assessment prepared by Colston Budd Rogers & Kafes Pty Limited.

The majority of works are contained within the established building envelope with the exception of alterations required to the south-eastern area of the existing roof to accommodate disabled lift access to the attic level of the development. The balance of external works is limited to the replacement/ upgrading of existing doors and fenestration and the installation of balcony/ courtyard acoustic measures to achieve required acoustic performance criteria. The ongoing operation of the premises is addressed in the accompanying Operational Plan of Management.

The acceptability of the works, having regard to the properties listing as an item of Local heritage significance, is addressed in the accompanying heritage impact statement prepared by Weir Phillips Heritage and Planning. This report contains the following commentary:

The proposal respects the heritage significance by means of the retention of the appearance of the building from Moore Road. This will ensure that the building will continue to be read as an Inter-war era building.

The proposed addition is sympathetic to the character of the building for the following reasons:

- *The height of the addition has been minimised to ensure that it sits below the ridge height of the principal roof form and will be in keeping with the character of the building.*

- *The roof addition has been designed to reflect the appearance, shape and form of the existing roof and will not over shadow or detract from the Inter-war characteristics of the building. Furthermore, the addition will match the pitch, form and material finish of the existing roof in order to minimise its appearance and ensure that it does not detract from the heritage values of the place.*
- *The location of the addition to the southern (rear) elevation in an area away from the publicly viewable component of the building will maintain the presentation of the building to Moore Road.*
- *The lift well, lift overrun and extended fire stair have been located to the rear of the building elevation in an area which contains few original decorative details.*
- *The external appearance of the Moore Street elevation will be enhanced through the removal of the intrusive aluminium framed window which will be replaced with sound proof alternatives detailed to match that of the first floor windows seen in Figure 9 of this report.*

The proposed alterations to the interior of the building respect the heritage significance of the building by:

- *providing an ongoing use of a currently underutilised space. The building no longer provides holiday due to changes in the travel industry. Accordingly, the first floor has been used for a range of secondary purposes such as storage, offices and staff change rooms. The proposed works and will facilitate the activation of the underutilised spaces which will provide additional income stream for the building which can be used to assist with the ongoing upkeep and maintenance of the place.*
- *Interpreting the former floor plan this will enable the space to be adaptively reused whilst providing a means of demonstrating the former layout. Accordingly, the proposed reflected first floor ceiling plan is sympathetic to the heritage values of the place.*
- *enabling the continuation of the use of the item as a place of entertainment which is its original and best use. Accordingly, the social significance of the place will be maintained and enhanced.*

Based on the above it is considered that the proposed works will have a minimal and acceptable impact on the significance of the Harbord Beach Hotel. The proposed works will have no impact on the historic, aesthetic, social significance of the building and its landmark qualities

CONCLUSIONS

This Heritage Impact Statement has been prepared in conjunction with a Development Application for alterations and additions to No. 29 Moore Road, Freshwater. The existing building on the subject site is a two storey Inter-War hotel. The building is a locally listed heritage item.

The proposed works to modify the interior of the first floor and addition to the rear of the subject property will have no impact on the significance of the nearby heritage listed Freshwater Restaurant.

The proposed works fulfil the objectives for alterations and additions to a heritage listed item, in the vicinity of heritage items set out by the Warringah LEP 2011 and the Warringah DCP 2011.

Whilst the proposal requires the consent authority to give favourable consideration to a height of buildings variation, strict compliance has been found to be unreasonable and unnecessary having regard to the particular circumstances of the case including the maintenance of an appropriate heritage conservation outcome and the general paucity of streetscape and residential amenity impacts. Sufficient environmental planning grounds existing to support the variation proposed with the accompanying clause 4.6 variation request well founded.

Having given due consideration to the relevant considerations pursuant to section 4.15(1) of the Act has been demonstrated that the proposed development is appropriate for approval.



Greg Boston
B Urb & Reg Plan (UNE) MPIA
B Env Hlth (UWS)
Director

Attachment 1

Clause 4.6 variation Request – Height of buildings

Clause 4.6 variation request – Height of buildings
Alterations and additions to the existing first floor and attic levels to
accommodate bar/function and recording studio floor space and
associated amenities
29 – 31 Moore Road, Freshwater

1.0 Introduction

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

2.0 Warringah Local Environmental Plan 2011 (WLEP)

2.1 Clause 4.3 - Height of buildings

Pursuant to Clause 4.3 of Warringah Local Environmental Plan 2011 (WLEP) the height of a building on the subject land is not to exceed 8.5 metres in height. The objectives of this control 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.*

Building height is defined as follows:

building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

Ground level (existing) is defined as follows:

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

It has been determined that the raise roof element in the south-eastern corner of the building will have a maximum height above ground level existing, measured at its ridgeline, of between 9.8 metres at its southern end and 10.7 metres at its northern end. This represents a non-compliance of between 2.2 metres (25%) and 1.3 metres (15%). The building height breaching elements are depicted in Figures 1, 2, 3 and 4 below and over page.

We note that the existing ridgeline in this location has been increased by 950mm to accommodate the lift shaft and associated overrun providing disabled access to the attic level of the development.

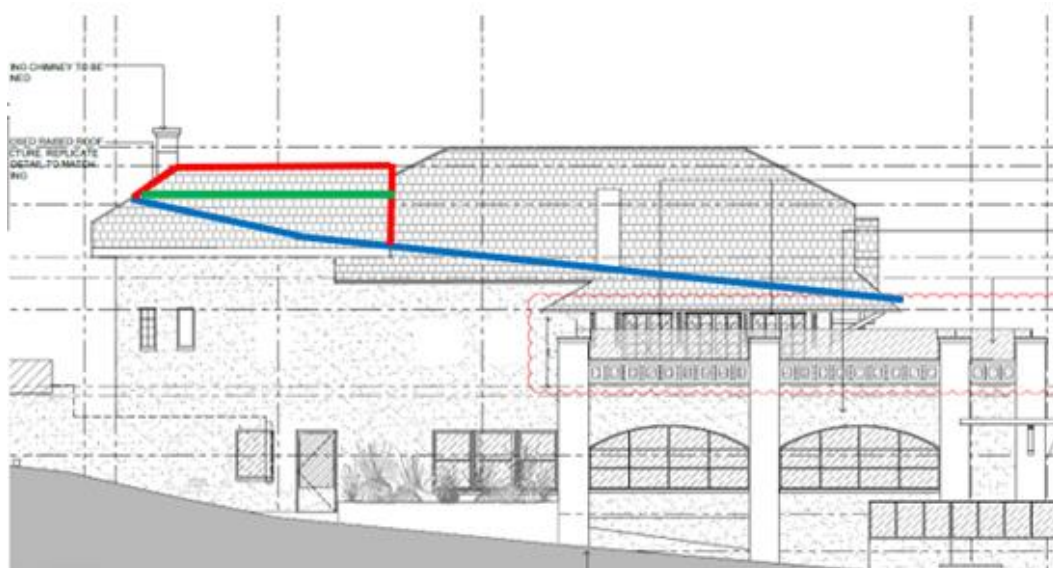


Figure 1 – Plan extract eastern elevation showing the height non-compliance based on ground level (existing). The blue line shows the 8.5 metre height standard, the red line the extent of proposed new works located above the height standard and the green line the existing building ridge height in this location.

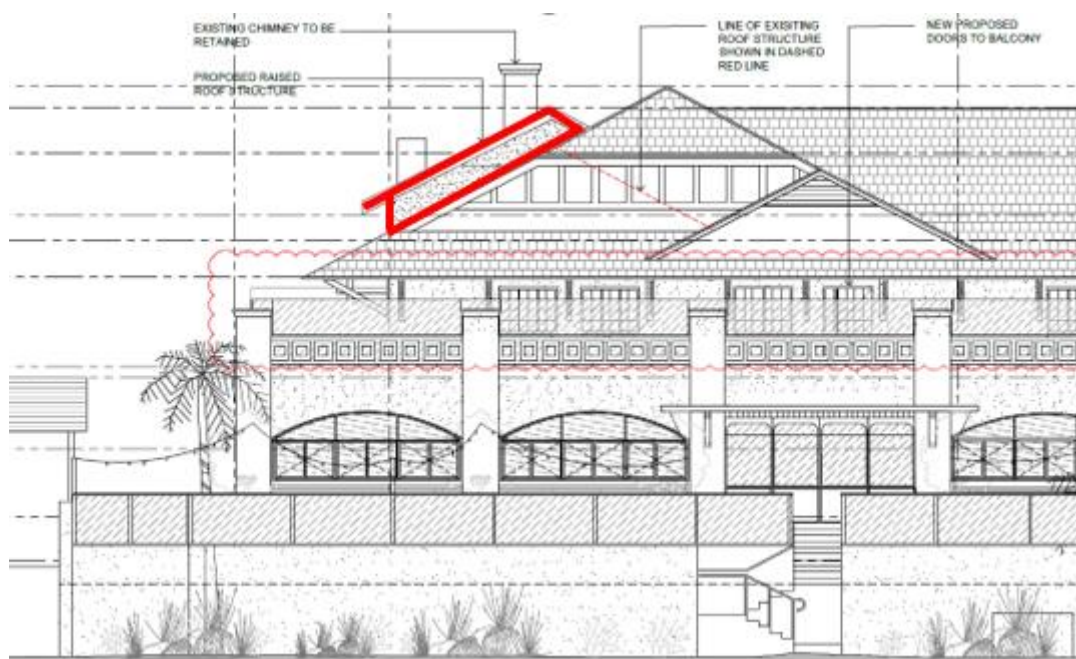


Figure 2 – Plan extract northern elevation showing the height non-compliance based on ground level (existing). The red line shows the extent of proposed new works located above the height standard as viewed from this elevation.

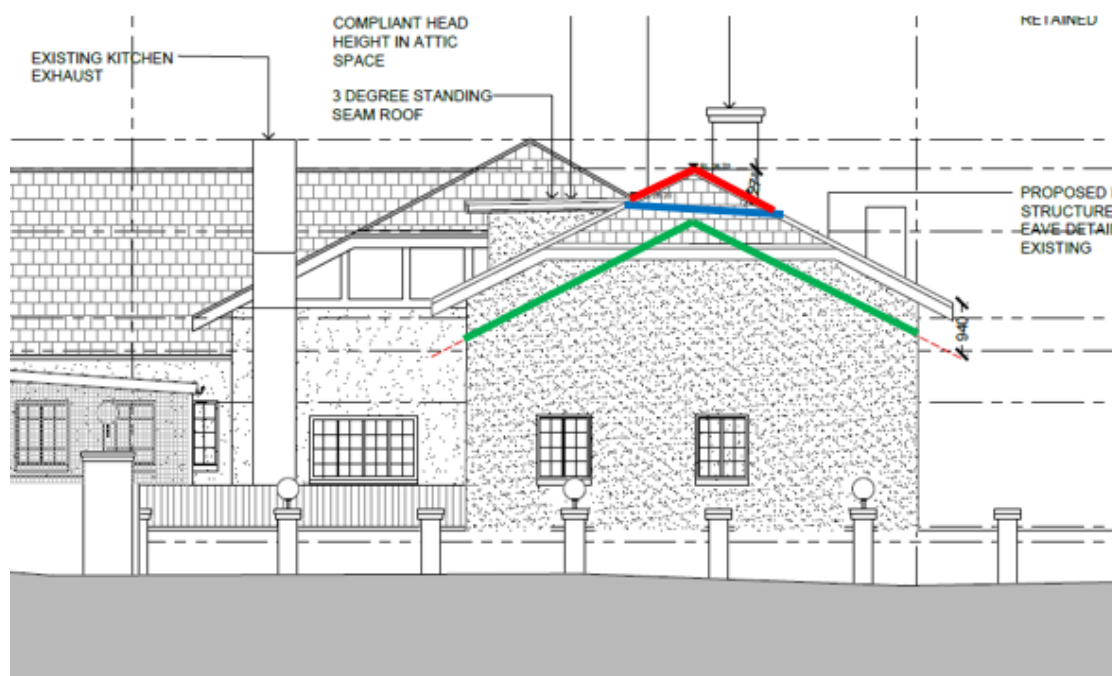


Figure 3 – Plan extract southern elevation showing the height non-compliance based on ground level (existing). The blue line shows the 8.5 metre height standard, the red line the extent of proposed new works located above the height standard and the green line the existing building ridge line in this location.



Figure 4 – Plan extract western elevation showing the height non-compliance based on ground level (existing). The blue line shows the 8.5 metre height standard, the red line the extent of proposed new works located above the height standard and the green line the existing building ridge line in this location.

We note that the areas of non-compliance are limited to the relatively small portion of roof form with the non-compliant building elements continuing to sit well below the height established by the balance of the building roof form.

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of WLEP provides:

- (1) *The objectives of this clause are:*
- (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 decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner. At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of WLEP provides:

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.

This clause applies to the clause 4.3 WLEP Height of Buildings Development Standard.

Clause 4.6(3) of WLEP provides:

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.*

The proposed development does not comply with the height of buildings provision at 4.3 of WLEP which specifies a maximum building height however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of WLEP provides:

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 Planning Secretary has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]).

The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation* 2000, the Secretary has given written notice dated 5th May 2020, attached to the Planning Circular PS 18-003 issued on 5th May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of WLEP provides:

- (5) *In deciding whether to grant concurrence, the Director-General must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

As these proceedings are the subject of an appeal to the Land & Environment Court, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act.

Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of WLEP from the operation of clause 4.6.

3.0 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51].*

The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.3 of WLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 WLEP and the objectives for development for in the zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of WLEP?

4.0 Request for variation

4.1 Is clause 4.3 of WLEP a development standard?

The definition of “development standard” at clause 1.4 of the EP&A Act includes a provision of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*

Clause 4.3 WLEP prescribes a height provision that seeks to control the height of certain development. Accordingly, clause 4.3 WLEP is a development standard.

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

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the height of buildings standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

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

Comment: The consideration of building compatibility is dealt with in the Planning Principle established by the Land and Environment Court of New South Wales in the matter of *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191. At paragraph 23 of the judgment Roseth SC provided the following commentary in relation to compatibility in an urban design context:

- 22 *There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.*

The question is whether the building height breaching elements contribute to the height and scale of the development to the extent that the resultant building forms will be incompatible with the height and scale of surrounding and nearby development. That is, will the non-compliant building height breaching elements result in a built form which is incapable of coexisting in harmony with surrounding and nearby development to the extent that it will appear inappropriate and jarring in a streetscape and urban design context.

In terms of the established built form circumstance on the subject property we note that the existing hotel building presents as a two story building with variable pitched roof form sitting above the level of Moore Road. The property as viewed in the round is depicted in Figures 5 and 6 below and over page.



Figure 5 – Subject property as viewed from Moore Road



Figure 6 – Subject property as viewed from Undercliff Road

Immediately surrounding development is residential in nature comprising a mixture of detached dwelling houses interspersed by dual occupancy and residential flat development. Freshwater Local Centre and Freshwater beach are located within short walking distance of the site.



Figure 7 – Photograph depicting residential development located on the high side of Undercliff Road to the south of the subject site



Figure 8 – Photograph depicting residential development located on the western side of Charles Street to the west of the subject site



Figure 9 – Photograph depicting development located on the southern side of Moore Road to the east of the subject site

I note that the relatively minor increase in building height in the south-eastern corner of the building is not result in any significant increase in actual or perceived height, bulk or scale as depicted in the 3D render comparison at Figure 10 below and the 3D render at Figure 11 over page.



Figure 10 – Comparison images showing the increased roof level in the south-eastern corner of the existing hotel premises and relatively minor additional height and scale



Figure 11 – 3D render demonstrating that the south-eastern roof addition will not be readily discernible as viewed from Moore Road

These images demonstrate that notwithstanding the building height breaching elements that the overall height and scale the hotel building as viewed from the surrounding public and private domains is not significantly altered to the extent that it would be perceived as inappropriate or jarring in a streetscape and urban design context.

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 height and scale of the roof additions, notwithstanding the building height breaching elements, offensive, jarring or unsympathetic in a streetscape and urban context. In this regard, it can be reasonably be concluded that, notwithstanding the building height breaching elements, the development is capable of existing together in harmony with surrounding and nearby development.

Notwithstanding the building height breaching elements, the resultant development is compatible with the height and scale of surrounding and nearby development and accordingly the proposal achieves this objective.

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

Comment: In relation to visual impact, I rely on the analysis detailed in response to objective (a) to confirm that the building height breaching roof form elements will not give rise to any unacceptable visual impact.

Visual impacts have been minimised through the adoption of a characteristically pitched roof form which has been designed in consultation with the project heritage consultant to ensure that it provides for a complimentary and compatible built form outcome having regard to the heritage significance of the existing building.

In relation to the disruption of views, having inspected the site and its surrounds to identify potential view corridors across the site, and noting that the building height breaching roof elements proposed sit below the ridge height established by the primary north-south running ridgeline associated with the existing hotel premises, I have formed the opinion that the non-compliant building height elements proposed will not give rise to unacceptable view impact.

In relation to the minimisation of privacy loss, I note that the non-compliant building height elements will not give rise to any adverse privacy impacts.

In relation to solar access, the shadow diagrams at Attachment 1 demonstrate that shadows from the building height breaching roof elements fall predominantly within the subject site throughout the day with no unacceptable non-compliant shadowing impacts arising from the building height non-compliant elements proposed. Solar access impacts have been minimised.

In this regard, I have formed the opinion that the design of the development has minimised visual impacts, disruption of views, loss of privacy and loss of solar access and accordingly this objective is achieved notwithstanding the building height breaching elements.

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

Comment: The non-compliant building height elements will not be readily discernible as viewed from any coastal or bushland environments.

In any event, notwithstanding the height building breaching elements, the height, bulk and scale of the building will not be perceived as inappropriate or jarring have regard to the form of development located within the same visual catchment, with the building height breaching elements not giving rise to adverse impact on the scenic quality of Warringah's coastal and bush environments. This objective is achieved notwithstanding the building height breaching elements proposed.

- (d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

Comment: To the extent that the non-compliant building height elements are visible from public places for the reasons previously outlined I am satisfied that the height, bulk and scale of the building will not be perceived as inappropriate or jarring have regard to the height bulk and scale of surrounding development in the relatively minor nature of the building height breaching elements proposed which take the form of a complimentary and compatible pitched roof form.

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, in particular the building height breaching elements proposed, offensive, jarring or unsympathetic in a streetscape context. The building height breaching elements will not give rise to unacceptable visual impacts when viewed from any public places.

Having regard to the above, the non-compliant component of the building will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the building height standard. Given the developments consistency with the objectives of the height of buildings standard strict compliance has been found to be both unreasonable and unnecessary under the circumstances.

Consistency with zone objectives

The subject property is zoned R2 Low Density Residential pursuant to WLEP 2011. The developments consistency with the stated objectives of the zone are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*

Response: This objective is not relevant.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Response: The building height variation will facilitate the provision of disabled lift access to the ancillary recording space for local artists located within the existing pitched roof form. This ancillary recording space will be available for use by local residents and to that extent approval of the building height variation will facilitate the attainment of this objective.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Response: the application does not propose any change the established landscape regime and accordingly this objective is satisfied.

The proposed development, notwithstanding the height breaching elements, achieve the objectives of the zone.

The non-compliant component of the development, as it relates to building height, demonstrates consistency with objectives of the zone and the height of building standard objectives. Adopting the first option in *Wehbe* strict compliance with the height of buildings standard has been demonstrated to be is unreasonable and unnecessary.

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

In Initial Action the Court found at [23]-[24] that:

As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.

The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.

The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

Sufficient environmental planning grounds

Sufficient environmental planning grounds exist to justify the height of buildings variation namely the fact that the variation facilitates disabled lift access to the existing attic level of the heritage listed building being the most appropriate location for a lift structure given the heritage significance of the building and its associated fabric.

Whilst the extent of non-compliance could be removed through the introduction of a flat roof form, the complementary and compatible pitched roof form responds appropriately to the heritage listing of the subject property.

I consider the proposal to be of a skilful design which responds appropriately and effectively to the heritage constraints of the site. The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(c)).
- The proposal promotes the sustainable management of built and cultural heritage by facilitating disabled lift access to the existing attic level floor space within a characteristically pitched roof form (1.3(f)).
- The development represents good contextually appropriate heritage sensitive design (1.3(g)).
- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test.

The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

There are sufficient environmental planning grounds to justify contravening the development standard.

4.4 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the R2 Low Density Residential zone

The consent authority needs to be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

"The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii)."

As demonstrated in this request, the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

4.5 Secretary's concurrence

By Planning Circular dated 5th May 2020, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a nonnumerical standard, because of the greater scrutiny that the LPP process and determinations are subject to, compared with decisions made under delegation by Council staff.

5.0 Conclusion

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

- (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.*

As such, I have formed the considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

Boston Blyth Fleming Pty Limited



Greg Boston
B Urb & Reg Plan (UNE) MPIA
Director

Attachment 1 Shadow diagrams

