

APPENDIX A

Exception to Development Standard under Clause 4.6
of Warringah Local Environmental Plan 2011(WLEP 2011)
to vary the prescribed height limit under Clause 4.3 of WLEP 2011
10 Talgara Place Beacon Hill

Prepared by



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EXCEPTIONS TO THE DEVELOPMENT STANDARDS

Proposal – The proposal involves a development application for a detached three storey house with fire place and chimney flue and garage with swimming pool.

Property – 10 Talgara Place Beacon Hill

Standard – Exception relates to the development standard contained within Warringah Local Environment Plan 2011 relating to;

1.0 Clause 4.3 - Height of Buildings

1.0 POLICY AND GUIDELINES FOR ITS APPLICATION

Clause 4.6 – Exceptions to the development standards under Warringah Local Environment Plan 2011 (LEP), permits flexibility in the application of development standards where it can be shown that strict compliance is justified by NOT contravening the subject development standard by demonstrating, the following under Clause 4.6 (3) (a) and (b);

- (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 relevant justification is the identification of the objective of the particular standard to be varied and whether or not the proposed development is consistent with the underlying objectives or purpose of that standard and with the broader planning objectives for the locality. It is not sufficient merely to demonstrate that a proposed development will have no harmful environmental effects, or that it is compatible with existing surrounding development where such development does not comply with a development standard or is inconsistent with the broader planning objectives.

2.0 DEVELOPMENT STANDARD SOUGHT TO BE VARIED

2.1 Clause 4.3 (2) – Height of Buildings

(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.*

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

(2A) If the Height of Buildings Map specifies, in relation to any land shown on that map, a Reduced Level for any building on that land, any such building is not to exceed the specified Reduced Level.

Under the provisions of clause 4.3 (2) of the LEP, the subject land has a maximum height of 8.5 metres. The roofline of the proposed development is under the maximum height limit of 8.5m. However, the chimney flue yields a height of 9.32 metres which is, an increase over the permissible of 820mm. In order for the flue to function effectively – the height cannot be reduced.

3.0 ZONE OBJECTIVES – CONSIDERATION

Prior to the consideration of Clause 4.6, the zone objectives first need to be addressed and the permissibility of the development proposal resolved. The R2 objectives are reproduced below:

“Zone R2 – Low Density Residential

“1 Objectives of the zone

Objectives of zone

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment – The proposed building work in the form of the chimney flue is a minor breach of the height limit and is consistent with the objectives of LEP 2011. The proposed increase over the height limit provides an appropriate chimney flue height so that it is high enough above the main roof ridge height to ensure that smoke is directed away from where it might be harmful to neighbours and prevent the subject house from filling with smoke.

The proposal meets the above objective of *providing the community with a low-density residential environment* – as the dwelling itself does not exceed the height limit and is consistent with the low- density dwelling typology in the area.

The proposed chimney height does not affect *other land uses that provided facilities or services to meet the day to day needs of the residents*. The chimney height provides the necessary height to ensure building code compliance for safe and efficient use of the fire place.

The proposal meets the above objective of *ensuring that low density residential environments are characterised by landscape settings that are in harmony with the natural environment* – as the dwelling itself does not exceed the height limit - it is considered to be consistent with the low-density dwelling typology set in a natural landscape setting that is typical of the Warringah area.

The proposed chimney flue and associated fire place offer increased amenity for the occupants while maintaining an appropriate built form that is consistent with the bulk and scale of surrounding developments and the objectives of the R2 Zone. The dwelling as it presents to the street front is compliant with the LEP Height controls – it is only a portion of the chimney flue that exceeds the LEP control.

4.0 CONSIDERATIONS under CLAUSE 4.6 of LEP 2011

4.1 What is the underlying objective or purpose of the standard?

Clause 4.3 – Building Heights

(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.*

Comment – If Council insisted on strict compliance with Clause 4.3(2) of the LEP, such a decision would hinder the attainment of the above objectives of the development standard in that:

- The subject building sits on extremely sloping block – while the proposal is compatible with the height and scale of the surrounding and nearby development and the building and roof form comply with the 8.5m height limit – a portion of the chimney flue does not comply. If the Council were to insist upon limiting the height of the chimney flue – this would result in occupants being unable to have a properly functioning flue to their fire place. This would be incompatible with the development in the area as there are many sloping blocks and it is desirable to have a chimney flue and it is also necessary that the chimney flue is a safe distance above the main ridge line.
- The proposed chimney flue height sits over the main ridge line towards the rear slope of the roof facing the rear yard towards the centre of the roof. It is a slender flue and has minimal visual impact, does not disrupt any views, does not cause any loss of privacy or loss of solar access.
- As the proposed chimney flue sits towards the centre of the building footprint – it appears wholly related to the dwelling and is typical of other dwellings with chimney flues in the surrounding and nearby area. As the chimney flue relates to the dwelling – it is not set against a Warringah's coastal and bushland environment. The chimney flue does not appear out of place, nor does it have an adverse impact on the scenic qualities of the area.
- The proposed chimney flue, when viewed from the public domain, such as the street front or the public reserve on the northern side of Talgara Place, would only just be visible as it sits over the main ridge line and to the rear of the roof. It is therefore not regarded as visually intrusive when viewed from the roadway or public domain.
- Should the consent authority not support the non-compliance of the height of the chimney flue given the circumstances of the case, then such an action would be unreasonable and discourage the promotion and co-ordination of the orderly and economic use, and development of the subject site;
- The proposed development meets with the relevant Urban Design Criteria contained within DCP 2011;

- The proposal overall is of high quality architectural detail and built form, and will positively contribute to the streetscape.

Therefore, it is our opinion that the proposed building works are in the public interest as it is consistent with the abovementioned objectives.

4.2 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

In determining whether a development standard should be set aside to permit the granting of development consent, it must be demonstrated that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case having regard to the stated and underlying objectives and intent of the standard and the broader planning objectives of the locality.

Clause 4.6 (3) (a) and (b) of the LEP is reproduced below;

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

1. Consideration of Clause ‘(a) – that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case’.

Comment – The proposed height of the chimney full above the LEP 8.5m will be 0.82m (820mm). The departure from the maximum building height will not give rise to any significant impacts to adjoining properties in terms of loss of sunlight, loss of privacy and are the building and roof line is generally contained within the present and approved building envelope. The following design elements demonstrate compliance with Warringah LEP and DCP and positively contribute to the dwelling’s embellishment;

- The proposed building works are such that they maintain adequate pervious areas to assist with stormwater runoff supplemented by the existing stormwater system this, minimising any risk to the environmental amenity of the immediate area;
- There is generous landscaping for passive recreation and stormwater absorption;
- The proposed development is uniform with adjoining and surrounding development, including those surrounding contemporary development. Thus, the streetscape and residential amenity for future occupants will be maintained.
- There is no increase over the allowable FSR of 0.5:1 or 50% (367m²) with the proposal only reaching 0.34:1 or 34% (250.91m²)
- The proposal meets the minimum landscape requirement of 40%.
- The proposal does not exceed the maximum site coverage of 33.3%.
- The minimum required sunlight is maintained to adjoining properties.

- The variation of development standards relating to the building height in the manner proposed does not give rise to any matters of significance for State or regional environmental planning, or in relation to matters of significance for State Planning Policies or Ministerial directives and the public benefit.

Overall, as the proposal meets with the above-mentioned controls and the roof and building are below the 8.5m height limit – it would be unreasonable for the Council to deny the establishment of a functioning fireplace and chimney flue though imposing the 8.5m height limit to the chimney flue given the overall compliance of the proposal and the minimal impact the excess flue height has in the environmental planning context.

2. Consideration of Clause ‘(b) – that there are sufficient environmental planning grounds to justify contravening the development standard’.

Comment – The request for an exemption for the excess height of the chimney flue is reasonable for a functioning chimney flue as mentioned above, given the circumstances of the site and the minimal environmental impact the proposal has.

Furthermore, there are sufficient environmental planning grounds to justify contravening the development standard as the topography is extremely steep making full compliance more difficult. As demonstrated; the proposal does not have any detrimental impact on views, privacy, sunlight nor significantly diminish the streetscape and therefore there are further environmental planning grounds to justify contravening the development standard.

As the proposed flue is located beyond the main ridge away from the street front and generally within the approved building envelope in terms of setbacks and overall LEP building height maximum – with the exception of the minor non-compliance of 820mm. When viewed from the street front and public domain – it would be difficult to see the chimney flue as the ridge of the roof would partially obscure part of the chimney that is over the 8.5m height limit – further reducing the impact of the proposed chimney flue. As a result the proposal is not visibly dominant from the public place (the street front or reserves to the north of Talgara Place or visually dominant from adjoining properties and is therefore not contributing to any notion of the proposal being an overdevelopment of the site when compared with the objectives of the development standard or surrounding developments. In terms of environmental impact, we consider that there is no detrimental impacts on the natural environment outside the existing building footprint or any cumulative impact on land adjoining or further afield.

Overall, the increase in height for the chimney flue is acceptable in the context of the proposed dwelling and does not contribute to any unfavourable impact to the neighbourhood and as demonstrated there are sufficient environmental planning grounds to justify contravening the development standard.

4.3 Granting of development consent

For council to be satisfied, Clause 4.6 (4) of the LEP is to be considered against the development proposal, Clause 4.6 (4) is reproduced;

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause(3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(c) The concurrence of the Director – General has been obtained.

Comment – The written request to council for consideration of a variation to the building height development standard has appropriately addressed subclause (3) and has demonstrated that the proposed building works are not in conflict with the public interest as the architectural contrast with existing and new design is in harmony with surrounding residential context therefore, not inconsistent with the intent of the development standard and the objectives within the R2 – Low Density Residential Zone.

4.4 Is the exception to the development standard well founded?

For all the above reasons, the exception is well founded and supports an application for consent to an amended proposal, which is non-compliant with the building height under Clause 4.3 (2) of LEP 2011. The proposed development will provide for a positive contribution to the area and for future occupants and will not give rise to any significant environmental impact on the natural or man-made surroundings, adjoining or surrounding properties. This is largely due to continuing overall building height for the dwelling and roof with a minor area of non-compliance for the chimney flue only.

The flexibility provided by Clause 4.6 (1) of the LEP is appropriate under the circumstances and strict compliance with the said development standard is unreasonable. Accordingly, the above non-compliance is therefore well founded.

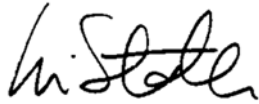
5.0 CONCLUSION

The proposed development meet Council's relevant planning objectives for the site, environmental amenity and protection, and Council's policies on economical sustainable development. Accordingly, the overall proposal is considered consistent with the said development standard for the reasons outlined above.

The proposed development satisfies Clause 4.6 (3) of the LEP in that it is consistent with the proper management, current development approval and conservation of the natural, man-made resources of the land in accordance with the objectives of the Environmental Planning and Assessment Act 1979. Therefore, compliance with the building height development standard is therefore, unreasonable in the circumstances of the case, and refusal of the development application on the stated matters is not warranted.

For the reasons set out above, the proposed departure from the building height development standards is well founded.

Yours sincerely,



Lisa Strudwick B.Arch (hons) Nom. Architect 7689

Director

