

## **REQUEST FOR A VARIATION TO DEVELOPMENT STANDARDS**

### **CLAUSE 4.3 MAXIMUM BUILDING HEIGHT PURSUANT TO CLAUSE 4.6 OF WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011 AMENDMENT B – AUGUST 2020**

#### **NEW DWELLING No. 41-43 BEACH ROAD, COLLAROY**

#### **1. Introduction**

Clause 4.6 of Warringah Local Environmental Plan 2011 (WLEP 2011) allows for flexibility in the application of certain development standards to achieve *“better outcomes for and from development by allowing flexibility in particular circumstances.”*

The original natural ground level of the site at 41-43 Beach Road has been the subject of substantial alteration near the southern boundary and includes nearby excavation for a large swimming pool that is to be removed. The excavated area containing the existing swimming pool and surrounding pool platform results in an existing ground level within this area that is between 0.8m and 1.8m lower than the existing ground level around the pool platform. A retaining wall separates both areas.

As requested by Council, straight lines were drawn between the bottom of the retaining wall and the higher adjacent ground levels to assess the proposal against the Clause 4.3 Maximum Building Height Control.

Under this condition, as it has been shown on the latest “Amendment E” lodged plans, the proposal is fully compliant with the Clause 4.3 Maximum Building Height Control.

However, under Council’s recommendation, we have prepared this Clause 4.6 submission assuming the relative level of the existing pool platform RL 9.56 as the natural ground level to assess the proposal against the Clause 4.3 Maximum Building Height Control.

In this case, a minimal portion of the second storey extends marginally (0.11 m) more than 8.5m above the level of the existing pool platform (RL 9.56).

If the pool and associated platform had been removed and the pool area filled back to the previous ground level, prior to submission of the Development Application for the new house, there would be no building height encroachment.

Where a proposal exceeds a development standard in the Local Environmental Plan it is necessary it is necessary to submit a WLEP clause 4.6 submission for a variation to the subject development standard, in order to enable development consent to be issued.

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## **2. The relevant development standard**

Clause 4.3 of WLEP 2011 sets out requirements in relation to height of buildings. Sub-clause 4.3(2) requires that a building on any land is not to exceed the maximum height shown for land on the Height of Buildings Map. The maximum building height for the subject land, as shown on this Map is 8.5m. Building height is measured as height above existing ground level, to the highest point of the building.

## **3. Requested variation to the standard**

The proponent seeks an increase in building height of up to 0.11m above the clause 4.3 maximum building height of 8.5m for a small triangular portion of the first floor level southern wall, to allow this.

The height encroachment is not visible from Beach Road, nor readily seen from the foreshore or neighbouring residential properties. The height encroachment has no impact on streetscape or the character of the locality. The height encroachment also has no impact on neighbour views, outlook, privacy, or solar access. The height encroachment is located more than 8.8 m from the closest boundary, being the southern side boundary.

The height encroachment only arises because of the excavated level of the existing platform around the swimming pool below the southern side of the proposed new dwelling. This is essentially an "artificial" encroachment and would not exist if height is measured to the existing ground level around the pool platform area.

The issue of assessing building height encroachments and associated impacts on sites where the existing ground level is an excavated level have been addressed by the Land and Environment Court in proceedings *2015 – NSWLEC 1189 Stamford Property Services Pty Ltd v City of Sydney*. This judgement noted that the requirement to measure building height from existing ground level poses particular challenges where existing buildings occupy almost the entire site and the site has previously been excavated to accommodate, in this case, a basement level. Excavation from a pool has a similar outcome to excavation for a basement.

In such circumstances the Court considered it appropriate to apply a ground plane across the site drawn from ground lines at the boundaries of the site. This ensures a practical application of the height standard. Applying this extrapolated ground level methodology in the case of 41-43 Beach Road, would utilise the existing ground level around the pool, in which case the encroaching section of the master bedroom would be more 0.93 m below the 8.5m height control.

## **4. Requirements of clause 4.6 – Exceptions to development standards**

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,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.”*

Clause 4.6(3) requires that a request to contravene the control, to demonstrate:

- “(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.”*
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In considering whether to grant consent for a development that contravenes a development standard, a consent authority must be satisfied that:

- “(i) the applicant’s 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 to be carried out, and*
- (iii) the concurrence of the Secretary has been obtained.*

These matters are addressed below in Sections 5 and 6.

## **5. Compliance with the development standard is unreasonable or unnecessary**

It is considered that enforcing compliance would be unreasonable and unnecessary in this case, for the following reasons.

The proposal achieves the objectives of the height control.

The objectives of the control are noted and commented upon below: The

objectives for the height control are as follows:

- (a) To ensure 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.*

The proposal achieves the above objectives as detailed in the following assessment.

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

The proposed new building is compatible with the height and scale of the more recently constructed contemporary 2 storey dwellings in the locality. Removing the offending portion of height encroachment would be imperceptible in terms of the height and scale of the proposed building.

The southern elevation of the proposed dwelling has been designed to include articulation in the form of triangular elements extending south from the primary wall to provide visual interest and create opportunities for windows to face south east to take advantage of views towards Collaroy Basin and Long Reef, rather than directly south to towards 29 Beach Road, thus minimising privacy impacts to this property.

The triangular shapes are a feature on both wings of the dwelling and are particularly useful in providing articulation to the longer elevations of the building.

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

The component of the building that encroaches above the building height control has minimal visual impact, does not disrupt any existing views or outlook, and does not reduce neighbour privacy or solar access.

The component of the building that encroaches above the height control cannot be seen from Beach Road or from most vantage points from the foreshore. The extent of encroachment is so minor that it has minimal if any visual impact, where it can be seen from the foreshore or the neighbouring property to the south. Landscaping and level differences further mitigate visual impact from these viewing locations.

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

The southwest portion of the master bedroom, where it extends above the 8.5m height limit has no impact on the scenic quality of Warringah's coastal environment. The height encroachment is very minor and located almost 15 m from the foreshore boundary of the site. There is no bushland environment near the site.

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

Visual impact has been addressed above. There is no visual impact to Beach Road or any community facilities and minimal visual impact, as viewed from the foreshore reserve and beach.

Given the excavated nature of the site below the articulated element to the master bedroom, the substantial setback to boundaries, the context and topography of the site and the positive architectural outcome arising from including articulated building forms along a relatively long southern elevation, it is considered that the proposal meets objectives of the maximum building height control.

#### The proposal achieves the objectives of the R2 Low Density Residential Zone

The zone objectives of the R2 Low Density Residential Zone are noted and commented upon below:

The zone objectives for the B4 Mixed Use Zone are as follows:

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

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

The proposal achieves these objectives as detailed in the following assessment.

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

The proposed new dwelling maintains the existing low-density residential environment of the site and locality and provides a built form consistent with a prestige location offering high quality views. The requested minor height variation does not conflict with the low-density residential character or environment of the locality.

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

The proposal is for residential development. Accordingly, Objective (b) in relation to other land uses is not applicable.

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

The proposed development provides ample landscaped area. Existing trees along the foreshore and proposed landscaping combine to maintain the landscaped setting, as viewed from the foreshore. The proposed minor height encroachment have no material impact on the landscaped setting or natural environment.

The proposed development achieves the objectives of the R2 Low Density Residential Zone to substantially the same extent as the proposed dwelling would, if designed with no height encroachment.

#### Compliance would result in a poorer planning outcome

One of the objectives of Clause 4.6 is to allow better outcomes to be achieved. In this case, as discussed above, a better architectural, urban design and occupant amenity outcome is achieved by allowing a minor height breach, facilitating articulation to a relatively long southern elevation and enabling a window to be angled southeast towards the water view, rather than more directly south towards No. 29 Beach Road.

Redesigning the southern elevation to avoid any height encroachment of the master bedroom would result in all the articulated elements along the southern elevation being reduced in size to ensure consistency in presentation. Such an outcome would compromise the architectural integrity of the southern elevation, reduce potential for south easterly water views and result in less visual interest and articulation to this elevation.

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Amending the design to achieve strict numerical compliance offers no benefits in terms of urban design, planning, architectural or amenity outcomes.

#### Lack of impact

As noted in the above discussion, despite the numerical height non-compliance, the environmental and visual qualities of the locality, streetscape and amenity of surrounding properties will be maintained to substantially the same extent as a development that is of a numerically compliant height.

The extent of the non-compliance is very minor, representing a very small component of the building and a height encroachment of 11 cm. There is no adverse impact arising from this minor height encroachment.

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

The numerical height non-compliance of up to 11 cm in a small corner of the master bedroom results in no increase in environmental impact compared to a complying height. The non-compliance is essentially artificial in nature, as it arises from the excavated area of the existing swimming pool. Where it not for this excavation, the height encroachment would not exist. In such circumstances it is more appropriate to assess building height in the context of the prevailing ground level around the pool. In such circumstances allowing some variation in the height control is justifiable, particularly where a better planning outcome is achieved.

Council must also be satisfied that the proposal meets the objectives of the standard and the objectives of the subject zone. As discussed above the proposal meets the objectives of the height standard and as detailed in the SEE and in this clause 4.6 submission, also meets the objectives of the R2 Low Density Residential Zone.

Also, in acting in the Secretary's concurrence role, Council 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.*

In relation to (a), the proposed breach is very minor and is not of any State or regional significance. In relation to (b), there is no public benefit from maintaining the standard as there is no adverse impact on the public domain or neighbour amenity, the proposal is generally consistent with other relevant planning controls and a better planning outcome is achieved. Building height standards should be applied with some degree of flexibility on excavated and sloping sites. Such an approach is in the interest of orderly and efficient development of land.

As noted above enforcement of the control would result in a poorer planning outcome, which is not in the public interest.

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In relation to (c), there are no other matters that require consideration.

## **Conclusion**

The proposed building form and height is compatible with the more recently constructed contemporary 2 storey dwellings in the locality. The proposal achieves the objectives of the building height control and the objectives of the R2 Low Density Residential Zone, notwithstanding the minor numerical height non-compliance arising from the excavated ground level in the location of the existing swimming pool.

The development, in the form proposed, provides for an appropriate building typology and density, with no material environmental impacts and is consistent with the objects of the EP&A Act. Requiring compliance is unreasonable and unnecessary in this case, as it would not result in any material benefit and in relation to architecture, urban design or amenity.

Some flexibility with respect to the application of the building height control on sloping and/or excavated sites is appropriate, particularly in circumstances where a substantial boundary setback is provided to the element of the built form that extends above the height control and the extent of encroachment is very minor. Flexible application of the building height control development standard allows an improved architectural outcome that contributes positively to the character of the proposed dwelling and the locality, with no material impact on neighbour amenity or the environment. The requested variation to the 8.5m maximum building height standard is appropriate and worthy of support.

**Virginia Kerridge**

**Director**

**Virginia Kerridge Architect**

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