
Sent: 15/10/2020 4:31:35 PM
Subject: Objection MOD 2020/0488
Attachments: Attachment_2_-_Amended_Clause_4.6_written_request_to_vary_Clause_4.3_Height_of_Building_Martin_Lowensohn.pdf;

Dear Sir Madam,

please see attached my objection. Please explain me the supporting letter from Boston Blyth Fleming lodged with the council to support DA 2017/0446 mentioning height of the building, when later on they pretend that they didn't know about it ??? How is this even possible ?? If this MOD is going to be approved I will join rest of the residents in class action against council and proceed to Land and Environment Court.

Regards Martin Lowensohn

17 October 2017

The General Manager
Northern Beaches Council (Central)

Attention: Luke Perry – Senior Planner

Dear Luke,

Development Application DA 2017/0446

Updated clause 4.6 variation request – Height

Alterations and Additions to an Existing Hospital

9 & 14 Patey Street and 64 & 66 Quirk Street, Dee Why

Pursuant to clause 4.3 WLEP the height of any building on the land shall not exceed 8.5 metres above existing ground level as detailed on the heights of building map. The stated 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.*

The dictionary to the LEP defines building height to mean:

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

We confirm that the proposed works have a maximum building height of 10.7 metres in the north-western corner of the proposed additions with the extent of non-compliance quickly reducing as the land rises to the south as depicted in section BB at Figure 7 below. The diagram demonstrates that a majority of the breach is within 10% of compliance. The balance of eastern wing running in an east-west direction sits comfortably below the height control as depicted in Section AA in Figure 8 over page.

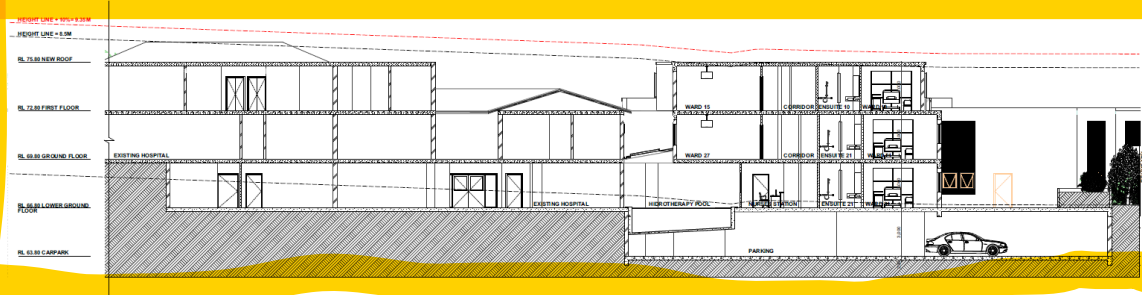


Figure 1 – Section AA showing extent of building height standard

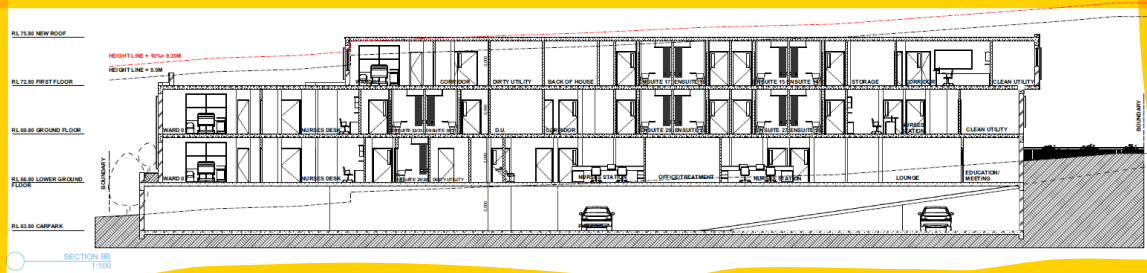


Figure 2 – Section BB showing extent of building height standard

Clause 4.6 provides a mechanism by which a development standard can be varied. 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.*

Pursuant to clause 4.6(2) 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 Height of Buildings Development Standard.

Clause 4.6(3) states that consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Clause 4.6(4) states 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 Director-General has been obtained.*

Clause 4.6(5) states that 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.*

Claim for Variation

Zone and Zone Objectives

The permissibility of the development and its consistency with the zone objectives has been addressed at section 4.2.1 of this report. The Consent Authority can be satisfied that the development is permissible with consent and not antipathetic to the zone objectives as outlined.

Building Height Objectives

The development responds to the building height objectives as follows:

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

Comment: Given the sites R2 Low Density Residential zone surrounding development is characterised by 1 and 2 storey detached dwelling houses. The site is also located within 150 metres of R3 Residential zone land on the northern side of Delmar Parade with such land occupied by 3, 4 and 5 storey residential flat buildings. St Lukes Grammar School is located 400 metres to the west of the site with such residential flat and institutional building forming components of the overall character of the immediate locality.

In this regard, I have formed the considered opinion that the height, bulk and scale of the development including its part 3 storey form is consistent with the height and scale of larger institutional and residential flat development located within proximity of the site.

In relation to the proposals compatibility with adjoining 2 and 3 storey building forms we note that the design, operational requirements and floor space needs of a contemporary private hospital are disparate to those of a dwelling house with both and uses permissible with consent in the zone. Compatibility and its assessment is dealt with in the planning principle established by the Land and Environment Court in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191. In this judgement Senior Commissioner Roseth indicated:

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 the difference in these attributes increases, harmony is harder to achieve.

Where compatibility between a building and its surroundings is desirable, its 2 major aspects are physical impact and visual impact. In order to test whether a proposal is

compatible with its context, two questions should be asked. Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council (2005) NSW LEC 191* we are of the opinion that the impacts arising from the building height to neighbouring dwellings in terms of overshadowing, privacy and visual bulk are acceptable given the design initiatives adopted including appropriate spatial separation, deep soil perimeter landscape opportunity, fixed privacy screening and the highly articulated and modulated building facades proposed.

The development is fully compliant with the building height standard where it adjoins Quirk Street and the properties to the east of the site. The non-compliant building element will be visible from Patey Street and surrounding properties however given its location to the south of these properties it will not give rise to any shadowing impact at any time throughout the day. In fact, compliant levels of solar access are maintained to all surrounding development on 21st June.

We have also formed the considered opinion that the non-compliant portion of building height will not give rise to any unacceptable or unmanageable visual privacy impacts nor will it impact on any views available from surrounding properties. The proposed building height breach will not impact the reasonable development potential or amenity of any adjoining property.

Further, we are of the opinion that most observers would not find the non-compliant building height portion of the development offensive, jarring or unsympathetic in a streetscape context. Accordingly, it can be reasonably concluded that the proposal is compatible with its surroundings.

Having regard to the planning principle established by *Veloshin v Randwick City Council [2007] NSWLEC 428* this is not a case where the difference between compliance and non-compliance is the difference between good and bad design.

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

Comment: This objective is clearly not defeated as discussed in response to objective (a) above.

- (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 will not be readily discernible as viewed from the street and is not visible from any coastal or bush environments.

In this regard, it is considered that the proposal, where it exceeds the 8.5 metre height limit to the rear of the site on Patey Street it is consistent to and compatible with the height of the recently constructed surrounding buildings and is representative of the desired future character of the area. The proposal is such that there will be no adverse scenic quality or visual amenity impacts arising. This objective is not defeated.

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

Comment: The non-compliant building height to the will not be readily discernible as viewed from the primary road frontage with the building compliant with the 8.5 metre height limit to Quirk Street. The visual impact of the development as viewed from Patey Street is considered acceptable given the articulation and modulated building facade and recessed upper level building element as depicted in Figure 9 below. This objective is not defeated.



Figure 3 – Proposed additions as viewed from Patey Street

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development, in particular the area of non-compliance, offensive, jarring or unsympathetic in a streetscape context.

We have formed the considered opinion that the proposal will maintain appropriate residential amenity in terms of solar access and privacy and will not give rise to any adverse public or private view affectation. In this regard, the development satisfies the objectives of the height of buildings standard.

Further, having regard to the judgement in the matter of Four2Five Pty Limited v Ashfield Council [2015] NSWCA 248 we have formed the considered opinion that there are sufficient environmental planning grounds to justify contravening the development standard.

In this regard, we note that the development is generally compliant with the building height along Quirk Street, with the non-compliance to a significant extent, arising as the consequence of the landform falling away towards Patey Street and the need to match the existing hospital floor levels.

In accordance with Clause 4.6(5) the contravention of the development standard does not raise any matter of significance for State or regional environmental planning with the public benefit maintained by Council's adoption of a application specific merit based assessment as it relates to building height within the 8.5 metre height precinct in which the site is located.

Conclusions

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- a) that the site specific and contextually responsive development is consistent with the zone objectives, and
- b) that the site specific and contextually responsive development is consistent with the objectives of the building height standard, and
- c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- d) that having regard to (a), (b) and (c) above that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and
- e) that given the design quality of the development, and the developments ability to comply with the zone and building height standard objectives that approval would not be antipathetic to the public interest, and
- f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning; and

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

We trust that this submission comprehensively addresses the outstanding issues and will enable the favourable reporting and ultimate determination of the application. Please do not hesitate to contact me should you wish to discuss any aspect of this submission.

Yours sincerely

BOSTON BLYTH FLEMING PTY LTD



Greg Boston

B Urb & Reg Plan (UNE)

Director

Sydney 14/10/2020

Re: Objection against Building MOD 2020/0488 14 Patey St, Dee Why

Dear Sir/ Madam,

This is objection against above application lodged by the developer to retain illegally installed roof air-conditioning units, mechanical acoustic wall and ducts and motors.

We feel extremely upset and disappointed with behavior of the developer to try to bend the rules all the time during the process of this development.

The architects and engineers for this project would have known full well in advance that the design of this building entailed A/C units and Mechanical venting to be placed somewhere. By not displaying them on Architectural drawings they have falsely presented the property with what everyone believed was its final height. This has allowed them to add a full level to this money-making project at the greater cost to all the neighbors rights to private amenity and quiet living.

The original Determination panel restricted the height of this development after careful consideration of the impact on neighboring properties and overwhelming negative public response of the neighbors.

Please do not let them to override that decision and treat all the neighbors like second-class citizens that have no say and no rights against an arrogant developer, with money seeking loopholes to get his way.

This has been deliberately left off from original DA because the developer knew that it would not get approved and has used this type of application as a loophole. This is deceptive behavior and we believe that this application should be rejected in its entirety and an order be issued to remove the ducts vents and A/C Units.

- This is already a 3-story building in the middle of 1 or 2 story residential housing. By adding these vents and A/C units on top with 3 m height long wall in front, will increase the height from 3 levels to 4 levels.
- We are also very concerned about the noise pollution from not only the A/C units but also the ventilation units. These units will be operating at all times of day and night. Because the building is much higher than the surrounding properties, the noise will travel quite a distance. The so-

called acoustic wall (which not only greatly increases the bulk and scale of this absurd building) is not going to mitigate the noise to any sufficient level in a predominantly domestic area. We can hear conversation of individual workers 4 properties away, so when all units are fully working this is going to be like a factory running 24 hours a day.

- The illegally installed metal Air-conditioning units are so terrible looking and visible from every side, giving this property a heavy industrial look that is not consistent with the current residential houses appeal. Lots of new developments have been built in the local area including apartments, schools, shops and medical centers. All of those were able to incorporate their A/C units and mechanical vents within the structure so well that they are not visible at all, to make that property appealing and presentable as well as reducing noise levels to satisfactory levels.
- Another issue is the light that reflects from the A/C units and mechanical vents is like a mirror on top of the roof during the day that reflects light all around neighboring properties.

We demand that the council show some compassion to the residents (who are also voters and ratepayers!) and reject this rather sneaky application to get away with illegal works.

Please contact me on 0417676824 should you wish to discuss

Regards MARTIN LOVENSON

65B QUIRK ST
DEE WHY NSW 2099.

