

CLAUSE 4.6 – VARIATION REQUEST
TO
MAXIMUM HEIGHT OF BUILDINGS
DEVELOPMENT STANDARD
UNDER CLAUSE 4.3 OF WARRINGAH LOCAL
ENVIRONMENTAL PLAN 2011
FOR
ALTERATIONS AND ADDITIONS
TO EXISTING DWELLING
AT
105 ARTHUR STREET FORESTVILLE

LANCE DOYLE
B.AppSc (UWS), M.Plan (UTS), RPIA, EPLA
REGISTERED PLANNER
DOYLE CONSULTING GROUP

TABLE OF CONTENTS

1.0	INTRODUCTION	3
2.0	DEVELOPMENT STANDARD AND THE VARIATION SOUGHT	6
3.0	THE OBJECTIVES OF THE PROPOSED DEVELOPMENT	8
4.0	IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?	9
6.0	WILL THE PROPOSAL BE IN THE PUBLIC INTEREST?	10
7.0	IS THE EXCEPTION TO THE DEVELOPMENT STANDARD WELL FOUNDED?	11

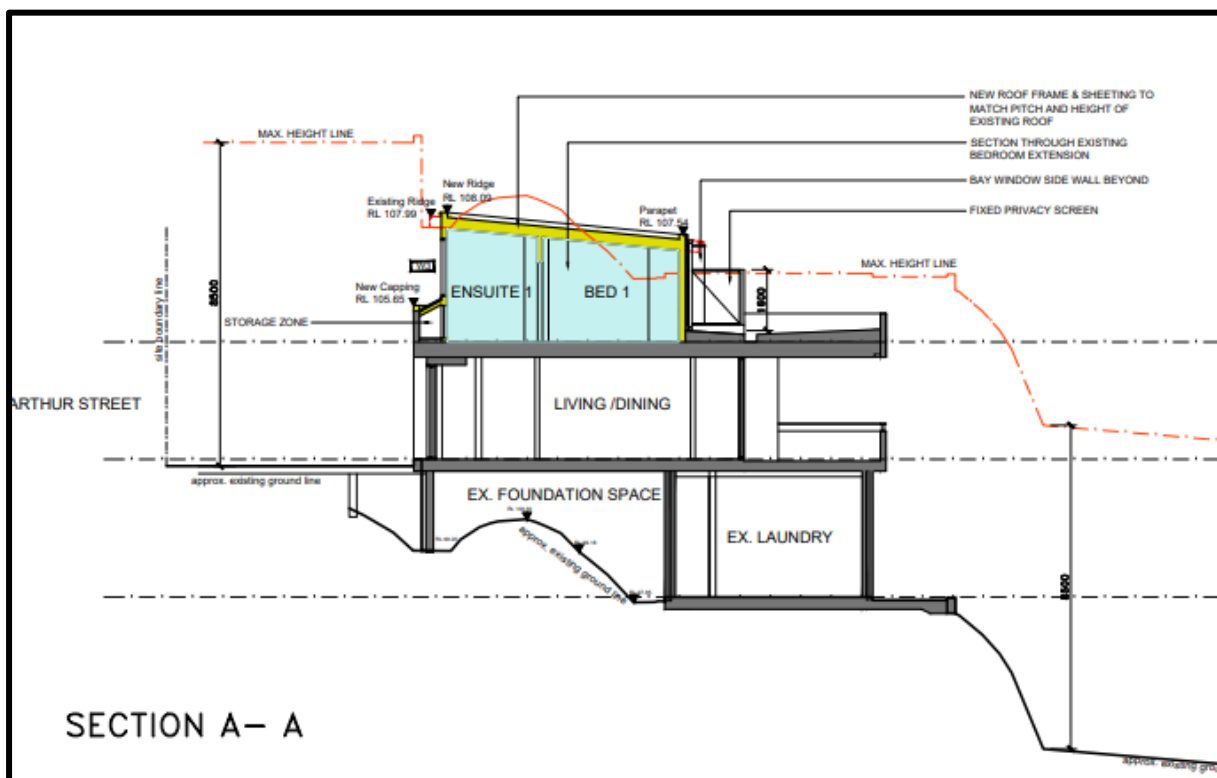
CLAUSE 4.6 – EXCEPTION TO A DEVELOPMENT STANDARD IN RELATION TO CLAUSE 4.3(2) MAXIMUM BUILDING HEIGHT OF THE WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011

1.0 INTRODUCTION

This written request is made pursuant to the provisions of Clause 4.3(2) of the Warringah Local Environmental Plan 2011 for alterations and additions to the existing dwelling at 105 Arthur Street Forestville.

The purpose of clause 4.6 is to allow the consent authority to consider a proposal that, for a variety of reasons does not comply with the 8.5 m height control which is regarded as a development standard.

The subject proposal is breaching the maximum 8.5 m height development standard due to an excavated area within the foundation area of the existing dwelling. This clause 4.6 request is submitted to Council for abundant caution as it is not clear from Council's controls whether the proposal is compliant with this control or not.



As can be readily understood from the above section through the proposal, the alterations and additions are compliant in part and non-compliant in part and therefore the clause 4.6 request is submitted for Councils consideration.

Clause 4.6 – Exceptions to Development Standards

4.6 Exceptions to development standards

(1) The objectives of this clause 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.

(2) 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.

(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.

(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 for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Secretary 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 Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note.

When this Plan was made it did not include all of these zones.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,

(c) clause 5.4.

RESPONSE

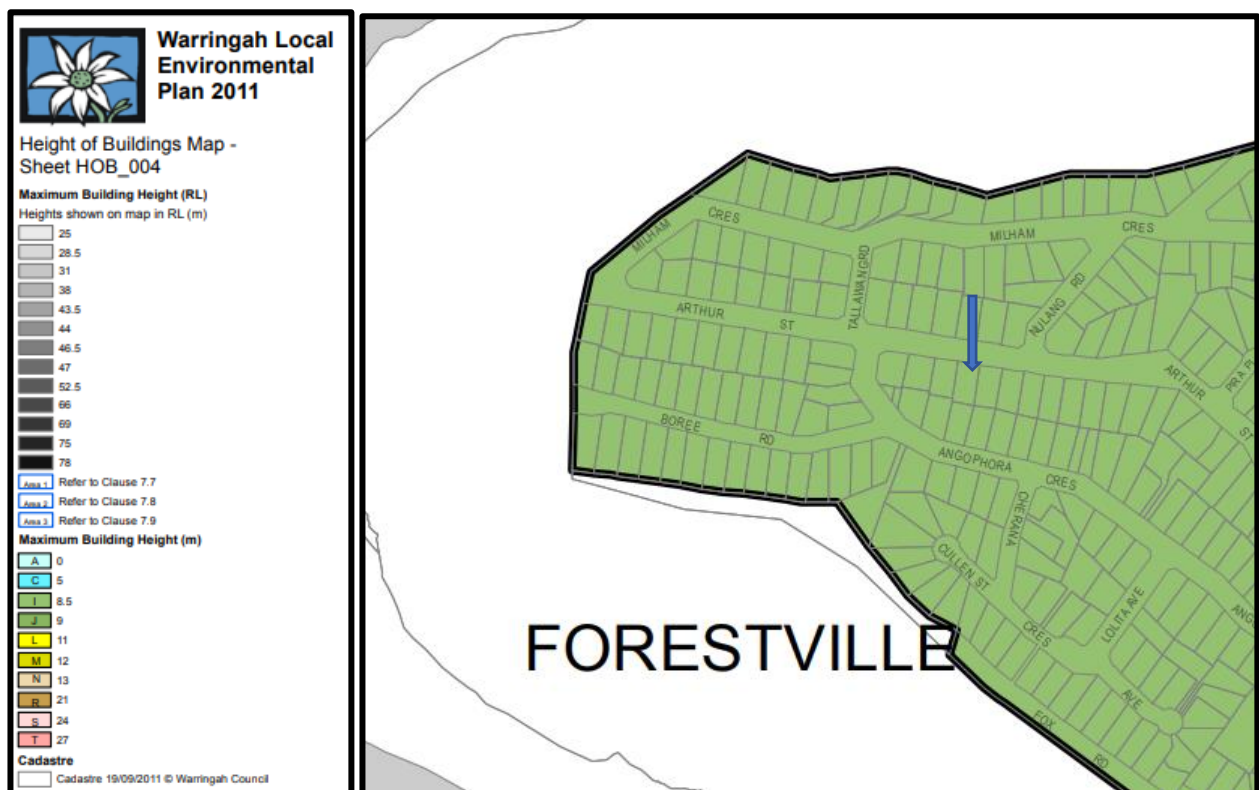
Clause 4.3(2) Height of Buildings, of the Warringah Local Environmental Plan 2011 is a development standard.

This request is composed and informed by decisions of the Land and Environment Court and in particular the judgments in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009, *Four2Five Pty Ltd v Ashfield Council*

[2015] NSWLEC 90, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Micaul Holdings Pty Ltd v Randwick City Council* [2015] NSWLEC 1386, *Moskovich v Waverley Council* [2016] NSWLEC 1015 and *Wehbe v Pittwater Council* [2007] NSWLEC 827. The submission addresses the requirements of Clause 4.6.

This written application seeks an exception to a development standard as it could be seen that the proposal will breach the development standard as prescribed within the Maps component of the Warringah Local Environmental Plan 2011 as illustrated in the following Section 2.0.

2.0 THE DEVELOPMENT STANDARD AND THE VARIATION SOUGHT

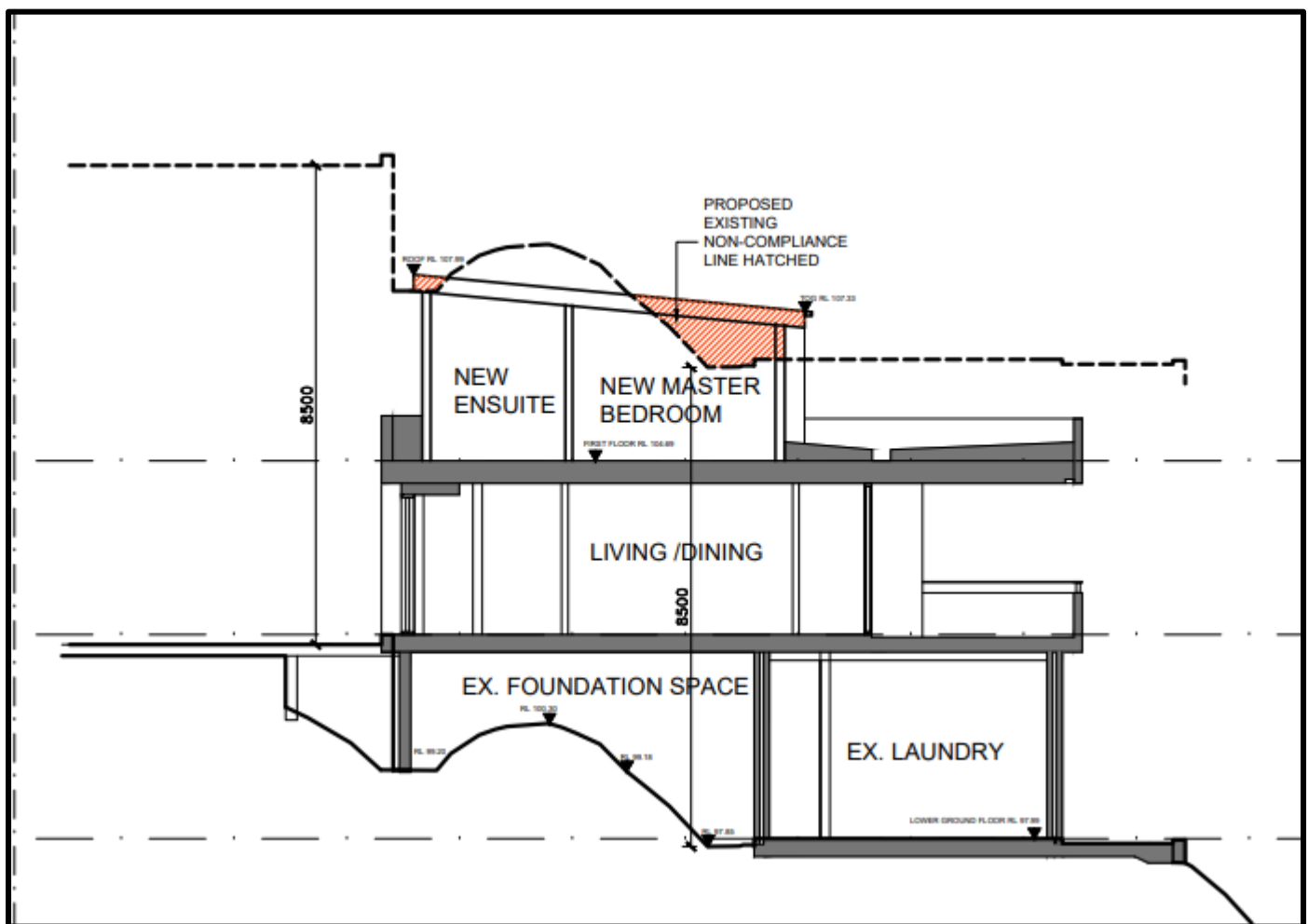


**EXTRACT FROM WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011 –
HEIGHT OF BUILDINGS MAP PRESCRIBING 8.5M MAXIMUM BUILDING HEIGHT
WITH SUBJECT SITE INDICATED**

COMMENT

The subject site as identified within the Maps incorporated within the Warringah Local Environmental Plan 2011 prescribe a development standard of a maximum building height of 8.5metres.

The following extract from the architectural details illustrate the proposed finished roof ridge height. The extent of the potential breach is tempered by the fact that, if the internal ground level is used as the existing ground level the proposal is substantially compliant.



SECTION THROUGH PROPOSAL

3.0 THE OBJECTIVES OF THE DEVELOPMENT STANDARD

4.3 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.*

RESPONSE

The proposal addresses the above Objectives as follows-

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

The subject proposal is entirely compatible with the height and scale of surrounding and nearby development as evidenced by the comparative heights and configurations of the adjacent site to the west of the subject site containing a three level dwelling.

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

The proposal by virtue of its minimal contribution to building bulk does not materially impact upon views, privacy or solar access.

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

The proposed alterations under the subject development application are unlikely to be identified from any of Warringah's coastal or 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 minor change to the upper level will be almost imperceptible from any parks reserves roads or community facilities within the locality.

4.0 IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

The subject proposal seeks to construct an extension to an existing upper-level component of the existing dwelling in a manner that is entirely consistent with the existing upper-level built form.

The subject additional works are only non-compliant by virtue of the fact that the subfloor area has been reconfigured in terms of the ground levels to this area and as such result in a potential interpretation of the height control being breached.

5.0 ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

The subject proposal does not offend any of the objectives under the R2 Low Density Residential zone as the proposal assists in providing for the housing needs of the community and does not prevent the attainment of the objectives for providing facilities or services that meet the day to day needs of residents nor does the proposal result in any loss of landscaped area.

6.0 WILL THE PROPOSAL BE IN THE PUBLIC INTEREST?

In accordance with Clause 4.6(4)(a), Development Consent must not be granted to a development that contravenes a Development Standard unless Council is satisfied in relation to certain matters as follows;

- (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.*

RESPONSE

This written request has addressed the relevant components under subclause 3 and the public interest is served by the provision of a consistent built form albeit (potentially) breaching the height control however the lack of material impacts and the provision of a consistent built form results in a proposal that supports the public interest.

7.0 IS THE OBJECTION TO THE DEVELOPMENT STANDARD WELL FOUNDED?

I believe that the proposal is well founded and makes it clear that the additional floor area albeit potentially breaching the development standard, is a necessary outcome to achieve a uniform building height and typology without materially impacting upon views, building bulk or solar access.

A handwritten signature in black ink, appearing to read 'Lance Doyle', is centered on the page. The signature is fluid and cursive, with a large initial 'L' and 'D'.

LANCE DOYLE
REGISTERED PLANNER
M. PLAN (UTS) B. APP SC. (UWS) RPIA

Dated: AUGUST 2021