Application to Vary a Development Standard

18 – 22 Dale Street, Brookvale

The purpose of this submission is to formally request a variation to the Height of Buildings control pursuant to Clause 4.6 of the NBC (Warringah) LEP 2011.

1. What is the name of the environmental instrument that applies to the land?

NBC (Warringah) LEP 2011

2. What is the zoning?

General Industrial

3. What are the objectives of the zone?

- To provide a wide range of industrial and warehouse land uses.
- To encourage employment opportunities.
- To minimise any adverse effect of industry on other land uses.
- To support and protect industrial land for industrial uses.
- To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.
- To enable a range of compatible community and leisure uses.
- To maintain the industrial character of the land in landscaped settings.

4. What is the development standard being varied?

Height of Buildings

5. Under what clause is the standard listed?

Clause 4.3

6. What are the objectives of the standard?

(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.

7. What is the numeric value of the development standard in the environmental planning instrument?

13.02m

8. What is the proposed numeric value of the development standard in your development application?

11.0m

9. What is the percentage variation?

16.8%

10. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

In Wehbe v Pittwater Council [2007] NSW LEC 827, Chief Judge of the Land and Environment Court, Preston J recast the long standing 5 point test for consideration of a SEPP 1 objection set out in Winten Property Group Ltd v North Sydney Council (2001). The aim of this test is to determine whether requiring compliance with the standard would be unreasonable or unnecessary in the circumstances. The Chief Judge advised that the requirement to demonstrate that an objection is well founded could be satisfied in any of the following ways:

1. the objectives of the standard are achieved notwithstanding non-compliance with the standard;

2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

4. the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing form the standard and hence compliance with the standard is unnecessary and unreasonable;

5. the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable and unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

The objectives of the standard have been achieved. The proposed Vergolas will not add to the height of the approved building. The awnings are consistent with the prevailing building height and streetscape character of the area. The roof form is an open structure and fits well into the topography of the allotment without adding to the bulk or scale of the building.

There is no impact in terms of view sharing from adjacent neighbours or public areas and with the awning built over an approved terrace area its add no additional height to the approved building.

The awning has minimal impact with regard to privacy and solar access enjoyed by adjacent properties. It maintains adequate sunlight access to private open spaces and to habitable rooms of the adjacent dwellings and the building itself.

In terms of the zone objectives, the locality surrounding the site is displaying evidence of a renewal process, with medium to high density residential developments. The bulk and scale of the proposed development is generally consistent with most residential buildings in the locality. The proposed awning has been designed to meet the day to day needs of tenants and will provide an active use of the shared common open space of the dwelling.

The objectives of the Height of Buildings control remain relevant, and the proposed development is generally consistent with, or not antipathetic to, the objectives of the Height of Buildings control, notwithstanding the numerical variation.

11. How would strict compliance hinder the attainment of the objects specified in Section 5(a) (i) and (ii) of the Act?

Strict compliance with the height control in this instance would hinder greatly the tenants/resident's right to an active use of the open space of the building. The proposed shade structures provide shelter and protection from the weather, contributing the protection of the health and safety of the occupants. The proposed Vergolas do not change or add to, the existing and approved building height.

12. Are sufficient environmental planning grounds to justify contravening the development standard?

The proposed awning certainly achieves the objectives of the standard. As the height of the building remains the same as prior to the proposed awning, together with the reasons set out above, it is considered that sufficient environmental planning grounds have been met to justify contravening the development standard in this instance.

The Environmental Planning and Assessment Act 1979

Objectives:

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
(c) to promote the orderly and economic use and development of land,
(d) to promote the delivery and maintenance of affordable housing,
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
(g) to promote good design and amenity of the built environment,
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
(j) to provide increased opportunity for community participation in environmental planning and assessment.

How are the objectives of the Act being met in this instance?

The proposed Vergolas is are an open, steel, ecologically sustainable structure that will have minimal long-term effect on the environment. They will be built over an existing hardstand terrace area and has no detrimental effect on neighbouring properties with regard to view sharing, solar access or privacy. It's a high-quality designed and constructed awning that will enhance the occupants use of the private open space of the dwelling.

Conclusion

This application has shown that there are sufficient environmental planning grounds to justify contravening the development standard and that the development standards relating to building height are unreasonable and unnecessary in this instance.

The proposed will sit over an existing and approved terrace and will not increase the height of the existing and approved building. The proposed is consistent with that of the existing building and will have no adverse effect to the solar access, streetscape or the distinctive character of the area. It is consistent with the objectives of the standard and the objectives for development within the zone.

It is considered that the development will not compromise the planning intent for the site or the character and amenity of the surrounding area. This application has shown justification that the requirements as set out in the decision of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 have been met, to enable council to determine the application.

As part of this assessment, reference is made to Commissioner Roseth in Pathburn v North Sydney [2005] NSWLEC 444 where the Senior Commissioner expressed, in terms of the planning principle that deals with impacts on neighbouring properties, the following:

"One should balance the magnitude of the impact with the necessary and reasonableness of the proposal that creates it. An impact that arises from a reasonable or necessary proposal should be assessed differently from an impact of the same magnitude that arises from an unreasonable or unnecessary proposal.

An impact that arises from a proposal that fails to comply with a planning control is much harder to justify than one that arises from a complying proposal. People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime."

In this instance, the proposal will not have detrimental amenity impacts on the adjacent allotments in regard to loss of solar access or views resulting from the non-compliance.

In general terms, compliance with the Height of Buildings control is unreasonable or unnecessary in these particular circumstances, and there are sufficient environmental planning grounds to justify the proposed variation to the Height of Buildings control.