

## **Clause 4.6 – Exception to Maximum Height of Buildings Development Standard Proposed Dwelling Alterations/Additions 73 Hay Street, Collaroy**

### **Introduction**

The subject site is identified as Lot 12, Section 11 in DP 7392 which is known as 73 Hay Street, Collaroy. The site is located on the eastern side of Hay Street to the south of its intersection with Hayman Lane. The site is a rectangular shaped allotment with an area of 696.8m<sup>2</sup>, a street frontage of 15.24m and a depth of 45.72m.

The non-compliance with the height of building development standard is a direct result of the floor levels of the existing dwelling and providing for a pitched roof form to match the existing dwelling. The non-compliance does not result in any detrimental impacts to the adjoining properties.

The proposal seeks approval for a variation to the maximum height of building (Height of Buildings) development standard in clause 4.3 of the Warringah Local Environmental Plan 2011.

### **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.*
- (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.*

The Height of Buildings Map indicates that the maximum building that applies to the Site is 8.5m.

The proposal results in a maximum building height of 8.87m, a non-compliance of 0.37m or 4.35% variation.

This clause 4.6 written request has been prepared having regard to clauses 4.3 and 4.6 of the Warringah Environmental Plan 2011 and recent judgments of the Land and Environment Court. It is concluded that the variation is well founded.



## **1. Objectives of Clause 4.6**

The objectives of Clause 4.6 of the LEP 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.*

## **2. The standard to be varied is a Development Standard to which Clause 4.6 applies**

Clause 4.3 of the Warringah Local Environmental Plan 2011 is contained within Part 4 and is titled Development Standards to be complied with. I am of the opinion that the wording of the clause is consistent with previous decisions of the Land & Environment Court in relation to matters which constitute development standards.

Clause 4.3 does not contain a provision which specifically excludes the application of clause 4.6 and vice a versa.

I consider that clause 4.3 is a development standard to which clause 4.6 applies.

## **3. Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case**

Sub-clause 4.6(3) sets out the matters that must be demonstrated by a written request seeking to justify a contravention of the relevant development standard:

- (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.*

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC118, Preston CJ sets out ways to demonstrate that compliance with a development standard is unreasonable or unnecessary, although he emphasised that his list was not exhaustive. These include:

- The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

- The underlying objective or purpose of the standard is not relevant to the development.
- The underlying objective or purpose would be defeated or thwarted if compliance was required.
- The standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard or
- The zoning of the land was unreasonable or inappropriate such that the standards for that zoning are also unreasonable or unnecessary.

The proposal results in a dwelling that presents as two storeys when viewed from the streetscape and public domain. This is comparable with the existing surrounding development in the immediate vicinity. The proposed height is appropriate for the scale of the Collaroy locality, with the front portion of the dwelling complying with the height controls. It is only the rear portion of the additions that do not comply.

The proposed additions have been carefully designed to present as a two storey dwelling with the non-complying component of the roof form behind the front facade.

The objectives of the Height of Buildings standard are set out in clause 4.3(1) of Warringah Local Environmental Plan 2011:

- (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 objectives of the building height standard is achieved notwithstanding and because of the non-compliance, in light of the following:

- a. The proposal presents as a two storey dwelling when viewed from Hay Street. This is compatible with the existing locality and the desired future character. The proposed additions provide for a roof form of the same pitch as the existing dwelling which results in a non-compliance with the height standard. The proposal complies with objective (a).
- b. Shadow diagrams have been prepared and submitted with the application. The proposed additions do not result in any significant overshadowing. The proposed additions provide for an appropriate visual outcome. The front elevation is provided with good articulation with varied setbacks. The proposal will not disrupt existing views from the surrounding properties. The proposal achieves objective (b).
- c. The proposed additions will not be visible from the coast or bushland areas. The proposal complies with objective (c)

- d. When viewed from the street the proposal provides for an appropriate presentation with this elevation provided with good articulation. The proposal complies with objective (d).

Compliance with the standard is unreasonable because, the underlying objective or purpose of the standard would be defeated or thwarted if compliance was required.

The non-compliance with the height controls is a result of the levels and location of the existing dwelling on site and adopting a roof pitch of the existing dwelling. A complying addition would reduce the ridge height of the rear ridge which would not serve any benefit.

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

The non-compliance is a direct result of the levels of the existing dwelling a desire to provide a roof to complement the existing dwelling. The non-complying portion is very minor being only 370mm and located at the rear of the site and not visible from the street. Reducing the rear roof form to ensure compliance with the height control would not have any impact on views or bulk and scale.

The area of non-compliance is very minor and is not discernible from the public domain.

No unreasonable impacts upon the amenity of the adjoining properties particularly in relation to visual and acoustic privacy or overshadowing result from the non-compliant height of building.

The amended design promotes an objective of the Environmental Planning and Assessment Act 1979 section 1.3 in that the proposal will provide for the “good design and amenity of the built environment”.

The contravention is justified by the following environmental planning grounds:

- The site is constrained by the existing dwelling and the adopted floor levels. The proposed additions reduce the extent of the existing non-compliance.
- The area of non-compliance is not visible from the street and does not result in any detrimental impacts.

#### **5. Is the proposed development 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.**

The proposed development is consistent with the objectives of the Height of Buildings development standard, which is demonstrated in the analysis in section 3.

The proposed development is also consistent with the R2 Low Density Residential Zone objectives in Warringah Local Environmental Plan 2011.

The objectives for the R2 – Low Density Residential zone are:

- *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.*

Objective 2 and 3 are not applicable. The proposal is consistent with the first objective given that:

1. The proposal provides for the housing needs of the community within a low density residential environment via the provision of additions to an existing detached dwelling house.

As the proposal is consistent with the relevant objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential Zone the proposed development is considered to be in the public interest in satisfaction of clause 4.6(4)(a)(ii).

**6. Whether contravention of the development standard raises any matter of significance for State or regional environmental planning.**

Sub-clause 4.6(4) requires that the consent authority is satisfied that the concurrence of the Planning Secretary has been obtained and sub-clause 4.6(5) enumerates matters that the Planning Secretary must consider in deciding whether to grant concurrence.

The Planning Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002, that the Planning Secretary's concurrence may be "assumed" for exceptions to development standards, subject to certain conditions contained in the notice.

Further, it is my opinion that contravention of the standard does not raise any matters of significance for State or Regional environmental planning and there is no identifiable public benefit in maintaining the development standard.

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