

Clause 4.6 – Exception to Maximum Height of Buildings Development Standard Proposed Dwelling Alterations/Additions 150 Queenscliff Road, Queenscliff

Introduction

The subject site is identified as Lot 6 in DP 8260 which is known as 150 Queenscliff Road, Queenscliff. The site located on the southern side of Queenscliff Road with the rear southern boundary fronting Aitken Avenue. The site is steeply sloping with a fall of approximately 16.7m from the front northeast corner to the rear southwest corner.

The non-compliance with the height of building development standard is a direct result of the significant slope of the site, previous excavation and floor levels of 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 9.34m, a non-compliance of 0.84m or 9.8% 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 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.*

- (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 are achieved notwithstanding and because of the non-compliance, in light of the following:

- a. The proposal presents as a single storey dwelling when viewed from Queenscliff Road and as two storeys with subfloor area when viewed from Aitken Avenue. The proposed additions reduce the existing overall height from RL20.35 to RL19.00, a reduction of 1.35m through the introduction of a flat roof form. This is compatible with the existing surrounding development, with No. 152 Queenscliff Road to the west comprising a large three storey dwelling with low pitched roof and the adjoining eastern property, No. 146-148 Queenscliff Road, consisting of a large three storey residential flat building. The site is located within a portion of Queenscliff Road, that is characterised by a mixture of original housing stock, large two and three storey dwellings and multi level residential flat buildings. 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 with a well-articulated form and aesthetic external finishes.
The proposal will not disrupt existing views from the surrounding properties. The proposal has been designed to maintain views to the adjoining properties. The development on the northern side of Queenscliff Road are well elevated above street level and the proposed works given the change in levels will not obstruct existing views from these properties.

The development to the east of the site, No. 146-148 Queenscliff Road is a residential apartment building which is well elevated and separated from the proposed development. Views from these apartments are towards the east and southeast over Manly Lagoon and Queenscliff Beach. The views from these apartments will not be affected by the proposed development.

The proposal achieves objective (b).

- c. The subject site is located to the north of Manly Lagoon. The proposal will improve the presentation to Aitken Avenue which fronts Manly Lagoon. This has been achieved by activating the streetscape. The additions to the dwelling are well setback from Aitken Avenue and the overall reduction in height is a positive planning outcome. The proposal complies with objective (c).
- d. The site is visible from both Queenscliff Road and Aitken Avenue. The presentation to Queenscliff Road is a single storey dwelling with a new flat roof to replace the existing pitched roof form.

The presentation to Aitken Avenue is improved as discussed above in response to objective (c). 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 significant slope of the site, the previous excavation and location of the existing dwelling on site. The site has a total fall of 16.7m and previous excavation has been carried out. The proposal seeks to reduce the non-compliance with the building height. The existing dwelling has a large pitched roof form with a height of RL20.35 with the proposed additions incorporating a new lower pitched roof form with a height of RL 19.0. As such the non-compliance is unreasonable given the reduction in the height of the existing building.

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

The non-compliance is a direct result of the significant slope of the site and the design of the existing dwelling. The proposed additions result in a significant reduction in the existing building height by 1.35m. The proposal will improve the existing non-compliance and will reduce bulk and scale.

No unreasonable impacts upon the amenity of the adjoining properties particularly in relation to visual and acoustic privacy, views 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 significant slope with a total fall of approximately 16.7m from the Queenscliff Road frontage towards the Aitken Road frontage. The existing dwelling exceeds the building height development standard and the proposed additions reduce the existing non-compliance.
- The area of non-compliance is not prominent in the streetscape and does not result in any detrimental impacts. The reduction in the existing building height will improve the presentation to the public domain.

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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October 2022