

Development Control	Comment	Complies?
	helps minimise excavation. The geotechnical report confirms that ground conditions are suitable for the proposed development.	
6.4 Development on sloping land	The site is within Area B – Flanking slopes 5% - 25%. The average gradient of the site is 17%. The geotechnical report identifies measures to effectively manage land slip risk, stormwater & ground water.	Yes

Clause 4.6 request for variation of building height standard

Clause 4.6 of WLEP2011 enables approval of a development notwithstanding that it does not comply with a development standard if:

- a written request has been made which demonstrates that:
 - compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - that there are sufficient environmental planning grounds to justify contravening the development standard;
- the development will be in the public interest because it is consistent with the objectives of the standard and the objectives of the zone.

Request is hereby made for approval of a proposed non-compliance with the building height standard of WLEP2011. The requirements of Clause 4.6 are addressed below in support of this request.

Identification of standard

Clause 4.3(2) of WLEP2011 provides that building height is not to exceed the maximum height shown on the building height map. The site is within an area subject to a maximum building height of 8.5m.

Proposed variation

Building height is defined in WLEP2011 as:

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.

The proposed development has a maximum building height of 10m (northern elevation of Block D). This represents a 1.5m (17.6%) variation of the standard. The northern elevation of Block C also exceeds the building height standard, though by a lesser amount, and very minor corner parts of Blocks B, C & D on their southern elevation. The eastern elevation of Block E has a maximum height of 9.4m.

Objectives of the standard

The development is consistent with the objectives of the standard set out in Clause 4.3(1) of WLEP2011, as detailed below:

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

Comment:

The bulk of the development has a building height below the 8.5m standard. It is only the downhill portions of each building which contravene the standard due to the steep and irregular slope of the land (average 17%).

Surrounding development includes townhouses adjoining to the south, dwelling houses to the north and west, 3-5 storey residential flat buildings to the north, commercial buildings to the east and high-rise mixed use to the north-east.

As previously noted in this SEE, the approach set out in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191 has been adopted by the Land & Environment Court as its "Planning Principle" on the compatibility of a proposal with surrounding developments. *Project Venture* makes the point that compatibility does not mean sameness.

The height and scale of the proposed buildings are comparable to large, modern two and three storey dwelling houses in the locality.

Their height is similar to the townhouses adjoining to the south and their scale is less due to the townhouses being grouped closely together, giving the impression of a continuous built form (refer **Photos 8 & 11**).

The proposed height and scale is less than the Allure apartments at 2-10 Mooramba Rd (cnr May Rd) which are subject to an 11m height standard (**Photos 13 & 14**).

The development is therefore considered to have a height and scale that is compatible with surrounding development in the required sense of capable of existing together in harmony.

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

Comment:

The majority of the development is within a battleaxe block (No613) which does not have direct street exposure. Together with proposed landscaping around the perimeter of the lot, this separation will assist in minimising the visual impact of the development.

The development will have some impact on views available from neighbouring development, particularly the townhouses adjoining to the south. However it is inevitable that any significant development on No613 (even one that was fully compliant with the building height standard) will affect views from the townhouses, as No613 is largely vacant at present and the townhouses have an elevated position overlooking the site. The sections of building which do not comply with the height standard do not appreciably increase this view impact.

Similarly, any significant development on No613 will affect the privacy and solar access available to the townhouses. Again, this is largely an impact of the compliant portions of the development and is not exacerbated by the non-compliant parts.

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

Comment:

The development does not affect 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.*

Comment:

As noted above, the internal location of the majority of the development within a battleaxe lot, together with the proposed perimeter landscape screening, will reduce the visual impact of that part of the development to an acceptable level.

The buildings fronting May Rd and Moorilla St have a form comparable to large, modern dwelling houses.

The materials and finishes are consistent with those used in contemporary development throughout the area.

The visual impact of the development is therefore considered to be satisfactory and the proposed minor non-compliances with building height do not adversely affect this satisfactory impact.

Objectives of the zone

It was shown in **Table 6** above that the proposal is consistent with the zone objectives.

Justification of the contravention

It is considered that the proposed variation is justified on the basis that compliance is unnecessary and unreasonable in the circumstances of the case and there are sufficient environmental planning grounds supporting the variation, as detailed below:

- the non-compliances are minor and do not create a height or scale that is incompatible with surrounding development;
- the non-compliances are a direct consequence of the slope of the land. The extent of non-compliance has been reduced to the minimum possible extent by dividing the development into a series of separate buildings. Each building steps down the slope and the upslope portion has been recessed into the hillside to the maximum extent that can be achieved while maintaining good amenity;
- the non-compliance does not create or exacerbate amenity impacts on neighbouring properties;
- achieving strict compliance would require the buildings to be excavated deeper into the ground or ceiling heights to be reduced which would reduce the amenity of rooms.

The public interest

As the proposal has been shown to be consistent with the objectives of the development standard and the zone, it is considered to be within the public interest. The public interest is also considered in Section 4.7 of this SEE which concludes that the development will promote the public interest in a more general sense, principally by increasing the supply of accommodation that will be more affordable and flexible than that provided in the area.

Having regard to the above, it is considered that the proposed variation is well founded and has resulted in a superior planning outcome than would be achieved if strict compliance with the standard was required.

No other provisions of WLEP2011 of relevance to the proposed boarding house have been identified. It is concluded that the proposal satisfies all relevant provisions of WLEP2011.

4.2 Proposed planning instruments – s4.15(1)(a)(iii)

There are no draft LEPs identified in the Department of Planning & Environment's *LEPs Online System* that are relevant to this proposal.

4.3 Provisions of development control plans – s4.15(1)(a)(iii)

4.3.1 Warringah Development Control Plan 2011

The DCP provides more detailed controls for development which supplement the primary development standards of the LEP. The DCP does not have controls applying specifically to boarding houses. However the main built form standards apply to all types of development permissible in the zone and therefore are relevant to the extent that they do not contradict the prevailing standards of ARHSEPP.

An assessment of the development's compliance with the main relevant provisions of the DCP is provided in the table at **Attachment 2**. It is noted that the proposal complies with all relevant controls of the DCP other than B3 - Side Boundary Envelope.

This non-compliance is relatively minor and considered to be well supported for reasons outlined below.

B3 Side Boundary Envelope

The objectives of the side boundary envelope control are:

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*