nbp

request to vary

a development standard

REQUEST TO VARY A DEVELOPMENT STANDARD (Amended)

20 SUNRISE ROAD
PALM BEACH NSW 2108

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introduction

This request to vary a development standard is made by Northern Beaches Planning on behalf of John Daubney to accompany the lodgement of a development application for the construction of a secondary dwelling at 20 Sunrise Road, Palm Beach (**site**). This request is made pursuant to clause 4.6 of Pittwater Local Environmental Plan 2014 (**PLEP 2014**) and with regard to relevant case law.

standard to be varied

Clause 4.3 of PLEP 2014 limits the height of development on a site in accordance with that nominated on the Height of Buildings Map of PLEP 2014. With respect to the subject site, the maximum height of buildings is 8.5m above ground level (existing).

However, despite subclause (2), subclause (2FA) of clause 4.3 of PLEP 2014 limits the height of a detached secondary dwelling on land within the C4 Environmental Living zone to 5.5m.

The maximum building height prescribed for a detached secondary dwelling by clause 4.3(2FA) of PLEP 2014 is a development standard, as defined by the Environmental Planning and Assessment Act (EP&A Act):

> ***development standards*** *means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: …*
>
> *(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work…*

Accordingly, the provisions of clause 4.6 of PLEP 2014 can be applied.

Pursuant to clause 4.6(2) of PLEP 2014, consent may be granted for development even though the proposal contravenes a development standard prescribed by an environmental planning instrument. Whilst this clause does not apply to those standards expressly excluded from this clause, the height of buildings development standard of clause 4.3(2FA) of PLEP 2014 is not expressly excluded and thus, the provisions of clause 4.6 can be applied in this instance.

extent of the proposed breach

The proposed secondary dwelling has a maximum building height of 7.87m, representative of a 2.37m or 43% variation to the 5.5m maximum building height prescribed. The height non-compliance is not carried across the entirety of the building, but is limited to minor sections of the building, as demonstrated in the Architectural Plans and as shown in Figure 1.

Figure 1 – 5.5m Height Blanket Diagram
Source: Northern Beaches Drafting

unreasonable or unnecessary

Pursuant to clause 4.6(3)(a) of PLEP 2014, consent can only be granted if the consent authority is satisfied that the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard.

The proposed development is consistent with the objectives of the height of buildings development standard, as prescribed by clause 4.3(1) of PLEP 2014, as follows:

(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

Comment: The desired future character of the Palm Beach Locality is identified in clause A4.4 of P21 DCP, which states the following with respect to height and scale:

> *The locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape… Future development will maintain a building height limit below the tree canopy, and minimise bulk and scale.*

The resultant secondary dwelling will sit below the canopy of nearby canopy trees and is stepped in response to the slope of the site. The height non-compliance arises due to the fall of the land and the light-weight construction method proposed, whereby pier and post construction is to be employed to minimise site disturbance and maintain the natural fall of the land.

As concluded in the matter of *HPG Mosman Projects Pty Ltd v Mosman Municipal Council* [2021], the desired future character of the locality can be evaluated by reference to matters other than the development standards that determine the building envelope for the site, including the existing development that forms the built context of the site.

The height and scale of the development is recessive and secondary to nearby buildings and is commensurate with that of nearby secondary dwellings in the visual catchment of the site (such as that at 13A Ocean Road).

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

Comment: The height and scale of the resultant dwelling is compatible with surrounding dwellings. Consistent with the findings of the NSW LEC in the matter of *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191, to be compatible in an urban design context is to be capable of existing in harmony together. The resultant dwelling will sit harmoniously in its context on the high side of Ocean Road, and most observers would not find the height or bulk of the proposed development to be offensive, jarring or unsympathetic in this particular context.

(c) to minimise any overshadowing of neighbouring properties,

Comment: The application is supported by shadow diagrams which confirm that the proposed development will not result in any unreasonable impacts upon adjoining properties with regard to solar access. In particular, the non-compliant elements do not result in unreasonable overshadowing of adjoining areas of private open space or windows of living rooms.

(d) to allow for the reasonable sharing of views,

Comment: The portions of the dwelling that extend above the 5.5m height plane do not result in any unreasonable impacts upon existing views, with views to the beach to be retained over the proposed development.

(e) to encourage buildings that are designed to respond sensitively to the natural topography,

Comment: The structure is to be predominantly supported on pier and post construction to minimise site disturbance and sit lightly on the land. The floor plate is somewhat irregularly shaped to avoid impacts upon existing rock outcrops on the site.

(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

Comment: The proposed secondary dwelling is highly articulated and is to be finished in dark colours to blend with the surrounding natural environment. Existing landscaping will be complemented by additional proposed landscaping to soften the visual impact of the secondary dwelling as seen from both the street and the beach. The proposal will not result in any adverse visual impacts upon the surrounding natural environment.

As such, strict compliance with the maximum building height development standard is unreasonable and unnecessary in the circumstances of this case.

sufficient environmental planning grounds

Pursuant to clause 4.6(3)(a) of PLEP 2014, consent can only be granted if the consent authority is satisfied that the applicant has demonstrated that there are sufficient environmental planning grounds to justify contravention of the standard. The specific environmental planning grounds to justify the proposed contravention of the building height development standard are as follows:

1. **Slope of the land**

   The land falls steeply from the Sunrise Road frontage down towards Ocean Road. Considerable effort has gone into the design of the proposed secondary dwelling to ensure that the building is responsive to the constraints of the site and that it sits lightly on the land. The location of the proposed secondary dwelling was selected as it provides a comparably level building platform in amongst the exposed rock outcrops which are to remain undisturbed.

   Pier and post construction is proposed, which not only avoids excessive excavation and retaining walls, but it more practical from a construction perspective given the constraints associated with access. As a consequence of the proposed construction methodology, the floor level sits slightly above existing ground level, and when combined with the fall of the land, results in minor exceedances of the prescribed building height plane.

Allowing for the development to appropriately respond to the individual context of the site, including the irregular terrain of the site, promotes good design and amenity of the built environment, and the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants, consistent with objectives (g) and (h) of the EP&A Act.

Overall, there are sufficient environmental planning grounds to justify contravention of the building height development standard.

conclusion

Overall, the consent authority can be satisfied that this written request has adequately addressed all relevant matters and that the provisions of clause 4.6 of PLEP 2014 have been met. As such, there is no jurisdictional impediment to the granting of consent in relation to the proposed breach of the height of buildings development standard.

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