

## Clause 4.6 Exceptions to Development Standards.

100 Hilltop Road Avalon Beach NSW 2107

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### 4.3 Height of Buildings and D1.11 Building Envelope.

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#### Pittwater LEP 2014. 4.3 Height of buildings.

- (1) The objectives of this clause are as follows.
  - (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality.
  - (b) to ensure that buildings are compatible with the height and scale of the surrounding and nearby developments.
  - (c) to minimise overshadowing of neighbouring properties.
  - (d) to allow for the reasonable sharing of views.
  - (e) to encourage buildings that are designed to respond sensitively to the natural topography.
  - (f) To minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

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#### **Justification for meeting the objectives of 4.3 Height of Buildings/Building Envelope D.1.11.**

- (a) The building has been designed to present as a single storey dwelling from the public view on Hilltop Road and has been kept to two and (part) three storeys at the rear with the development descending down the steep site. The prominent view is from the street, so the design, colours and materials used ensure that it is consistent with the desired character of the locality.
- (b) The existing dwelling to the North East is a modest single storey timber cottage set well down its site and surrounded by mature trees and vegetation which ensures it is not visible from the public view while the existing dwelling to the South is a three storey brick residence with a swimming pool and a carport at the front of the dwelling with one corner sited on the front boundary line. To construct a dwelling that would be compatible with the dwelling to the North East would not be practical. The roof height of the proposed development at its highest point is **RL 77.40** as can be seen on the plan survey while the roof height of the three storey dwelling to the South West at its highest point is **RL 77.67**, that is 270mm above the height of the proposed development. The proposed development will be compatible with the height and scale of this dwelling.
- (c) Due to its location to the North East of the proposed development and its orientation to the West, overshadowing on this dwelling will not occur, notwithstanding the side boundary setback from the proposed development on this side is 2.50m. A large boundary setback to the existing dwelling to the South West (6.30m), a large boundary setback from the proposed development (5.09) at its further point and similar

heights for both dwellings ensures that overshadowing on this side is kept to the minimum.

- (d) Presenting as a single storey dwelling from the public view, generous boundary setbacks, locating the development to the front of the site to maximise the North Easterly views from the dwelling to the South West, keeping the building footprint, bulk and scale to the minimum ensures that there are reasonable sharing of views. The existing dwelling to the North East orients to the West so will not be effected by the proposed development.
  - (e) The building has been designed to sit lightly on the site without major excavation, cut and fill or demolition of natural rock outcrops. The building steps down from Hilltop Road to mirror the natural steep topography of the land while retaining the rock outcrops and natural environment. This ensures that the development responds sensitively to the natural topography.
  - (f) The design, shape and form of the proposed development with its single storey appearance to the public view, use of natural materials and clean lines ensures that there is minimal adverse visual impact on the natural environment.
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**The objectives of the Zone C4 Environmental Living are:**

- 1. To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
  - 2. To ensure that residential development does not have an adverse effect on those values.
  - 3. To provide for residential development of a low density and scale integrated with the landform and landscape.
  - 4. To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.
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**Justification for meeting the objectives of the Zone C4 Environmental Living.**

- 1. Presenting as a single storey dwelling from the public view, minimal excavation for footings, no cut and fill, no demolition of rock outcrops and a minimal footprint means the dwelling meets this objective.
- 2. The bulk and scale of the building is low-impact and consistent with the planning objectives of the zone and locality.
- 3. The proposal provides for a single residential dwelling and character with building structures at a height, bulk and scale consistent with the sloping site, the adjoining dwelling to the South West and the locality. The existing visual character of the area is compatible.

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4. The proposal makes excellent use of this very steep site and retains a large portion of the land in a natural state with compatible landscaping. The dwelling will sit comfortably in a landscaped setting.
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#### Site Constraints for Noncompliance, (2D) and D1.11

**1. The slope of the land longitudinally.**

The top of the crib retaining wall at the front of the site adjoining Hilltop Road, which is the natural ground level there, has an **RL of 74.75** while the **RL** at ground level in line with the highest rear part of the proposed development where the major breach of compliance occurs is **61.72**. This converts to a fall in the slope of 13.03 metres over a horizontal distance of **15.74** metres. This means that the slope from the ground level at the front of the development, to the ground level in line with the highest part of the development at the rear is **39.62 Degrees. (Elevation Grade Calculations and plan with relevant RL's are Included with this submission.)**

**2. The slope of the land across the site.**

The existing **RL** at ground level on the **North Eastern** side of the proposed development where the minor height breach occurs is **65.86** while the existing **RL** on the **South Western** side of the proposed development where the major height breach occurs is **61.72**. This translates to a fall across the site at that point of **4.14 metres. (Plan with relevant RL's are included with this submission.)**

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#### The objectives of Clause 4.6

1. The objectives are:
  - (a) To provide an appropriate degree of flexibility in applying certain development standards to particular development.
  - (b) To achieve better outcomes for and from development by allowing flexibility in particular circumstances
2. Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
3. Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written

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#### The Objectives of Clause 4.6

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.
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#### Response;

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1. (a) Apart from the height/envelope breaches the proposal complies in all respects. This particular development has been designed to keep the footprint to the minimum and retain as much of the sensitive site as possible while accommodating the residents amenity, all on a steeply sloping sensitive site so flexibility in this instance in regard to the height breaches is appropriate for this particular development.

(b)The extent of the height/envelope breach varies as the land drops down and across the site. To the North East the height breach goes from **0mm to 2.850mm** while the breach to the South West is exaggerated by the fall across the site and goes from **1.850mm to 5.650mm. (Two elevation plans showing the breaches are included with this submission.)** There are no negative impacts on either public or private views and the proposal complies with the planning objectives for view sharing. Bulk and scale are consistent with the locality, it being noted that the existing dwelling in the locality vary considerably in architectural style , size bulk and scale. The height breaches will not give rise to any adverse residential amenity impacts- view loss, overshadowing, privacy or visual bulk.

Flexibility is appropriate and should be applied in this circumstance to achieve sensitive architectural design and amenity for the residents while resulting in no negative impacts on neighbours and locality.

3. (a) (b) Compliance with the standard is unreasonable, unnecessary in the circumstances of the case and there are sufficient environmental grounds to justify contravening the development standard.

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

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1. The proposal is specifically designed to respond to this steeply sloping site and is an excellent response utilising the slope to advantage, concentrating recreation amenity within and on the dwelling without otherwise occupying an increased building footprint at the expense of open space. The open space provided in this proposal is generous and of benefit to the environment and local amenity.
  2. Strict compliance with the height/envelope control would serve no useful purpose as the proposal does not result in environmental or amenity issues.
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The proposed dwelling has been designed to comply with the Draft Future Liveable Housing design H8F1 and to accommodate the residents and their need for a dwelling that is suitable for a member that has mobility issues and is:

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- (a) **Easy to enter.** The carparking/carport has been designed to give direct and level access to the dwelling without the need for steps. To achieve this essential requirement the rear portion only of the roof/walls on level three exceed the standard, the extent of the breach varies as the land drops down significantly from Hilltop Road and also drops down significantly across the site.
  - (b) **Easy to navigate in and around.** A passenger lift has been included for access to the three levels in addition to the three sets of stairs and access/egress points are included to the three levels as the site is classified as Flame Zone.
  - (c) **Capable of easy and cost effective adaptation.** The level access to the dwelling and the lift access to the three levels ensures the dwelling is adaptable for the owners in their future years.
  - (d) **Responsive to the changing needs of the occupants.** With level access to the dwelling, lift access to all three levels and level access to the outdoor entertaining areas the changing needs of the occupants have been satisfied.
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#### **Response.**

A requirement to strictly comply with the controls is unnecessary and would result in negative impacts with no apparent benefits being achieved. The variations sought will result in no loss of views or negative environmental impacts. Taking into consideration the site constraints and the efforts to preserve as much natural elements on the site as possible, minimum excavation works with the minimum site cover, the extensive

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replanting and maintenance program as detailed in the landscape plan by Andrew Davies, Landscape designer, the sympathetic design of the development and the enhancement of the streetscape means there are sufficient environmental planning grounds to justify contravening the standards.

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<b>4.6. Proposed Variation Summary.</b>	<b>Height of Buildings.</b>
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Is the planning control in question a numerical standard?	Yes.
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Is the non-compliance relating to the clause requirement a **Numerical** and/or

Performance based variation?	Numerical
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LEP Requirement.	8.50 Metres
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<b>Proposed breach. (1)</b>	One roof/wall section (NE) going from 0 to 2.85 Metres
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Numerical variation as a % variation to the requirement. (NE)	33.50%
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Average variation (NE)	16.76%
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<b>Proposed breach. (2)</b>	One roof/wall section (SW) going from 1.85 to 5.65 Metres
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Numerical variation as a % variation to the requirement. (SW)	66.60%
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Average variation (SW)	44.10%
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### **Conclusion**

The vertical drop of 4.52m from the top of the existing crib wall to the site proper on the South western side of the site, the longitudinal steepness of the site throughout the length of the proposed development 39.62 Degrees, the falls across the site, the aim to preserve as much of the natural elements of the site as possible and the aim to keep excavation works to the absolute minimum means the development is noncompliant with 4.3 and D1.11. (The existing three storey dwelling to the South West has been constructed slightly higher at the same point as the proposed development for the same reasons, the slope on that site is similar to the slope on the site of the proposed development.)

With such a difficult site we would expect Council to afford some latitude for the breaches on this proposed development.

**Amended on: 06 February 2023.**