



BLACKWATTLE

PLANNING

CLAUSE 4.6 Request for variation
PITTWATER LEP 2014
HEIGHT OF BUILDINGS

for alterations and additions to a
dwelling, construction of a
swimming pool, and landscaping

6 & 7 Kara Crescent
Bayview

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1.0 Introduction

This Clause 4.6 Request for Variation to the Height of Buildings development standard under Pittwater Local Environmental Plan 2014 (PLEP 2014) is prepared by Blackwattle Planning in support of a Development Application for alterations and additions to a dwelling, construction of a swimming pool, and landscaping at 6 & 7 Kara Crescent Bayview Heights to be submitted to Northern Beaches Council.

The Development Application includes the following components:

Level 0

- Excavate and retain landform to create new lift space
- Relocate stair
- Various changes to openings
- Reconfiguration of floor space to create new gym facilities
- New brick columns to replace existing
- Convert existing swimming pool to water tank and landscape over

Level 1

- Construct new wing comprising entry and foyer, leading to new living, kitchen and dining areas to north west of existing structure
- New terrace and pergola structures to east and west of new wing
- Reconfigure internal walls and openings of existing structure to create new study 1 and bed 1 and lift access within existing floor space
- Construct study 2 within the existing entry area
- Relocate internal stair access
- Remove existing awnings over existing terraces
- Demolish existing shed, extend and join existing driveway
- Construct porte cochère
- Construct new swimming pool, associated facilities, and adjoining lawn and landscaping
- Construct new cloister garden and Loggia

Level 2

- Demolish existing high pitched roof, dormers , and internal walls
- Construct new flat roof and parapet over level below, solar panels, and new metal pitched roof over bath 1 below
- Construct new planter to eastern elevation at this level adjoining pergola. Extend floor space over southern end and central area of footprint, including partially over new northern wing, to provide 4 bedrooms and 4 bathrooms
- Extend lift access to this level, including to central pergola area and new terrace 4 over Level 1
- Construct new metal roof over at reduced pitch

This document should be read in conjunction with the Statement of Environmental Effects prepared by Blackwattle Planning.

Through this document it is demonstrated that compliance with the Height of Buildings Development Standard of PLEP 2014 is unreasonable and unnecessary in the circumstances of this case and that there are sufficient environmental planning grounds to justify the contravention of the development standard.

2.0 Pittwater LEP 2014

The site comprises No.s 6 & 7 Kara Crescent, Bayview. No. 6 Kara Crescent forms the northern portion of the development site and has previously supported a dwelling which has recently been demolished. No. 7 Kara Crescent adjoins directly to the south. This portion of the site currently accommodates a dwelling over three levels, swimming pool, tennis court and minor outbuildings within a formal lawn and landscaped setting.

Together the two lots form a development parcel of 8594sqm, accessed from the cul de sac turning circle of Kara Crescent.

Under **Clause 2.2** of PLEP 2014, the site has a split zoning of part C4 Environmental Living and part R5 Large Lot Residential as shown in Figure 1 below. The works to construct alterations and additions to the dwelling on No. 7 Kara Crescent is located wholly on that portion of the land zoned R5 Large Lot Residential.

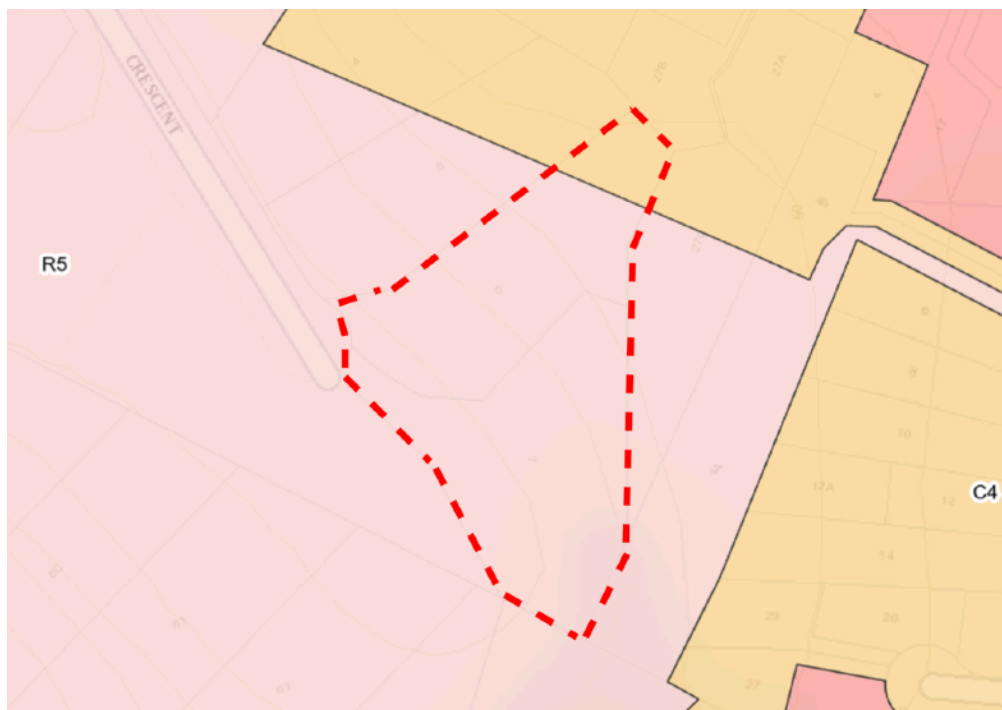


Figure 1: PLEP 2014 Zoning map showing the split zoning of the site within both the R5 Large Lot Residential and the C4 Environmental Living Zones

Source: NSW Planning Portal

Clause 4.3 of PLEP 2014 restricts the height of development on the site in accordance with the Height of buildings Map (at Figure 2 below) to 8.5m. Clause 4.3 is a development standard.

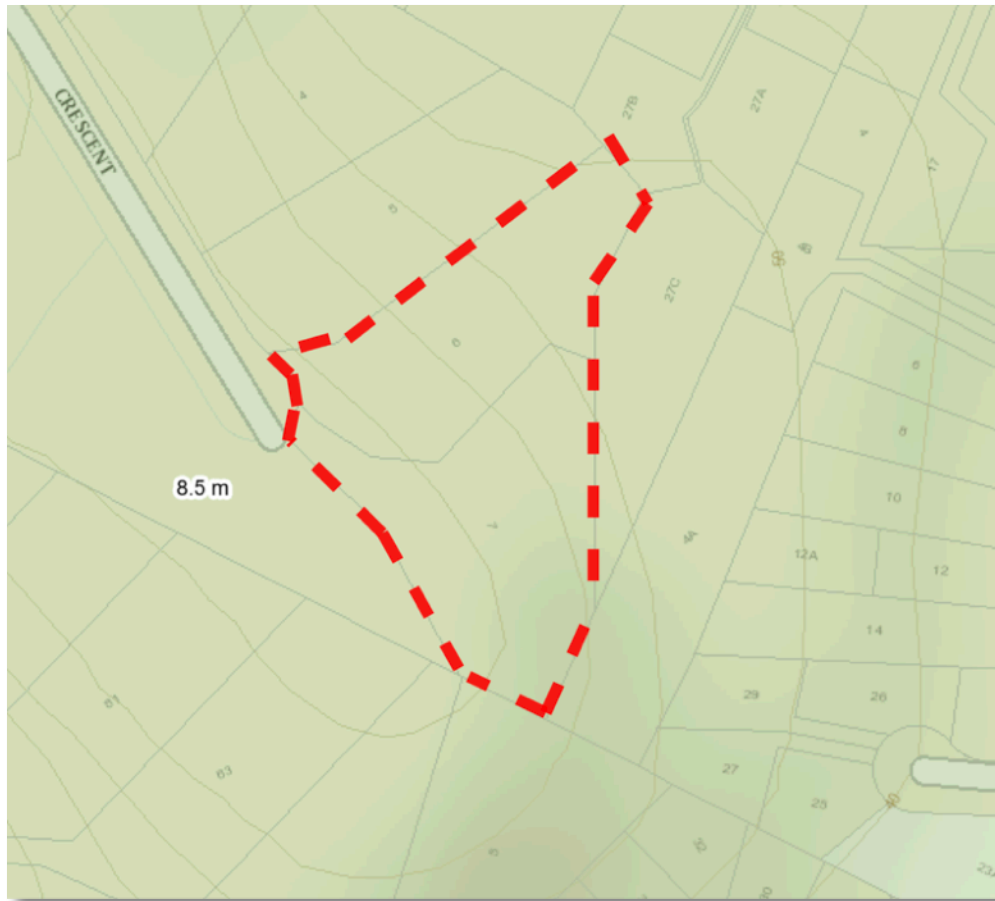


Figure 2: The site outlined in red on map indicating Category I, 8.5m Height limit,
Source: NSW Planning Portal

Clause 4.6 of PLEP 2014 enables the consent authority to grant consent to development even though the development does not comply with a development standard. The purpose of the Clause is to allow flexibility in the application of certain development standards which may in turn result in better outcomes.

3.0 Variation to Clause 4.3 Height of buildings

This written request seeks to justify the variation to Clause 4.3 Height of buildings development standard in PLEP 2014.

PLEP 2014 defines building height as follows:

building height (or **height of building**) means—

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to 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 maximum height achieved by the proposed new additions at Level 2 is 10.44m. The variation to the 8.5m Height of buildings development standard sought is 22%. This calculation has utilised the interpretation of **building height** as outlined in *Merman Investments Pty Ltd v Woollahra Municipal Council 2021*.

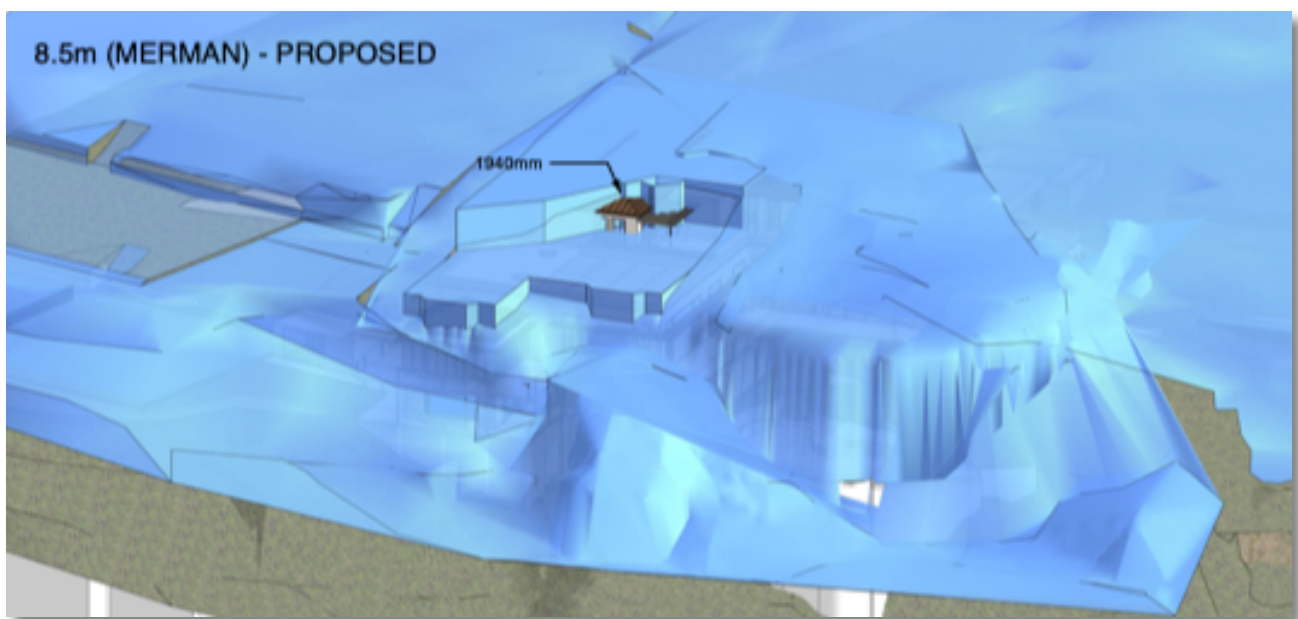


Figure 3: Plan showing extent of height breach under *Merman Investments* interpretation of **building height**. **Source:** Campbell Architecture

4.0 **Clause 4.6 Exceptions to Development standards**

The objectives of Clause 4.6 are set out in subclause (1) as follows:

- (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.*

Decisions of the NSW Land and Environment Court have established that Clause 4.6(1) is not an operational clause.

Clause 4.6(2) is the enabling clause that permits development consent to be granted to a development that contravenes a development standard imposed by PLEP 2014. As the Height of Buildings is a development standard and is not expressly excluded from the operation of the clause, a variation may be granted, subject to the remaining subclauses of Clause 4.6 being satisfied.

4.1 Clause 4.6(3) of PLEP 2014 provides that:

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.*

This written request addresses these requirements in turn, having regard for relevant key decisions of the NSW Land and Environment Court that have informed the approach to the application of Clause 4.6

4.2 **Clause 4.6(3)(a) demonstrating that *compliance with the development standard is unreasonable or unnecessary in the circumstances of the case***

The decision in *Wehbe v Pittwater Council 2007* establishes five ways that an applicant may commonly demonstrate that this clause is achieved. The decision also establishes that it may be sufficient to establish only one way.

The first of those pathways is to demonstrate that *the objectives of the development standard are achieved notwithstanding non-compliance with the standard*. This request relies on this pathway.

The objectives of the Height of Buildings development standard are set out below, together with a discussion of how the objectives are met by the proposal, notwithstanding the variation to the standard.

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

The site is located within the Bayview Heights. Pittwater 21 DCP provides a locality statement setting out the desired character of the locality. Parts of the statement relevant to a single dwelling are as follows:

Desired Character

The Bayview Heights locality will remain a low-density rural residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape.

...

Care will need to be taken with future developments to ensure that outbuildings and ancillary recreational structures do not dominate the natural landscape and bushland setting.

Future development will maintain a building height limit below the tree canopy, and minimise bulk and scale. Such development will need to consider its impact upon the slope of the land both from a hazard point of view (landslip & bushfires) and visually, especially when viewed from outside the locality such as the Pittwater waterway and Mona Vale valley.

Existing and new native vegetation, including canopy trees, will be integrated with the development. Development shall maintain generous spatial separation of the built form and low site coverage on large lots. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandas and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.

A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, and to enhance wildlife corridors. Fencing where provided, shall enable the native fauna to pass through yet contain livestock animals where needed.

Comment: The desired character is well met by the design proposed noting the reduction in density arising from developing only one dwelling over the 2 allotments. The distribution of structure within the building footprint brings the existing dwelling into greater consistency with the requirements to *step down the slope* with roof forms at higher RL's being located centrally as far as possible from boundaries.

An outbuilding is removed by the design, and the footprints of two dwellings reduced and consolidated into one, and positioned over the already disturbed area of the land.

Significant mature canopy on the site is almost entirely retained, providing a scale and backdrop which ensures the built structures remain secondary to the bushland context.

The dwelling is predominantly two storeys and the existing high pitched roof forms replaced with low parapets and low profile hipped forms to reduce apparent scale.

With the reduction in density and consolidation of building footprint, substantial setbacks are created to other allotments and dwellings and the overall landscape area of the site is significantly increased.

The exposure of the site at the elevated location results in the need for appropriate protection in the form of pergolas and covered recreation spaces at both levels. The design increases the overall modulation of the existing dwelling and uses contemporary forms which simplify the design.

The existing canopy is recognised as a significant asset on the site and is almost entirely retained. The footprint of the new wing extends over areas already disturbed and formally landscaped, reducing any impact upon the extensive rock outcropping and substantial sandstone boulders which are a feature of the site.

Overall, the new design will sit comfortably and less obtrusively in the bushland setting.

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

Comment: Being on large lots, dwellings in the immediate locality of Kara Crescent are generally constructed over larger footprints and maintain two storey forms. The proposed dwelling is entirely consistent with this character. The third level of the existing dwelling in the form of the easterly pitched gables is largely removed from the design in favour of floor space set back into the site where it retains only a two storey presentation.

4.2.3 *(c) to minimise any overshadowing of neighbouring properties,*

Comment: Shading of neighbours is minimal because of the optimal orientation of the dwelling, its reduced overall height at its eastern edge, and the extensive spatial separation arising from the larger lot area. Shadow diagrams demonstrate that no additional shadow impacts upon neighbours are created by the proposed works.

4.2.4 *(d) to allow for the reasonable sharing of views*

Comment: The generous setbacks, combining of allotments, and general location of the site at the apex of the cul de sac mean that the dwelling will not interrupt view lines to the panoramic views obtained. The orientation of No. 5 Kara Crescent is predominantly towards the northern and western views over the Pittwater waterway, the Newport and Bilgola escarpment and towards the Central Coast. Visually, the closest remaining neighbour is No. 8 Kara Crescent which is oriented towards the south away from the development site and well separated spatially. The dwelling on this site is recently demolished.

The orientation of allotments, generous spatial separation, and the form of the land and canopy mean that there is limited visibility of either the existing or proposed dwelling on the site from either adjoining neighbours or the public domain.

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

Comment: The redistribution of floor area and structure from the eastern portion of the existing dwelling to above the western and central parts of the footprint brings a greater stepped result and responds appropriately to the sudden level changes under the existing building.

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

Comment: Increased stepping in the proposed building form reduces the visual presentation of the building as viewed from key vantage points in the surrounding local area. The retention of canopy, concentration of built form in a single location over the two lots, and increased area for landscaping provide a significantly improved outcome in relation to visual impacts relative to the natural environment.

4.2.7 Conclusion under Clause 4.6 (3)(a)

Having regard to the consistency of the proposed development with the objectives of the Height of Buildings development standard, compliance with the standard is found to be unreasonable and unnecessary in the circumstances.

4.3 **Clause 4.6(3)(b) demonstrating that *there are sufficient environmental planning grounds to justify contravening the standard***

Clause 4.6(3)(b) requires that *sufficient environmental planning grounds* be demonstrated to justify contravening the development standard. As established in relevant caselaw, the sufficient grounds must relate to the circumstances of the proposed development and focus on the relevant aspect of the development that contravenes the standard.

In this case, that part of the proposal which exceeds the development standard is the small portion of structure of level 2, being bed 3 and the pergola structure proposed over the adjoining terrace.

The environmental planning grounds that justify the exceedance of the development standard are as follows:

Level change within footprint

- The breaching part of the structure extends over a sudden level change at the ground levels under the building directly beneath this point. Plan level 0 (shown on DA02 below) plots the existing and proposed lower level floor space extending beyond the rock edge. At this point, the structure is built around an existing boulder which indicates the ground level change through the building footprint. An excerpt of Plan DA02, and photos of the rock boulder at that level are shown below:

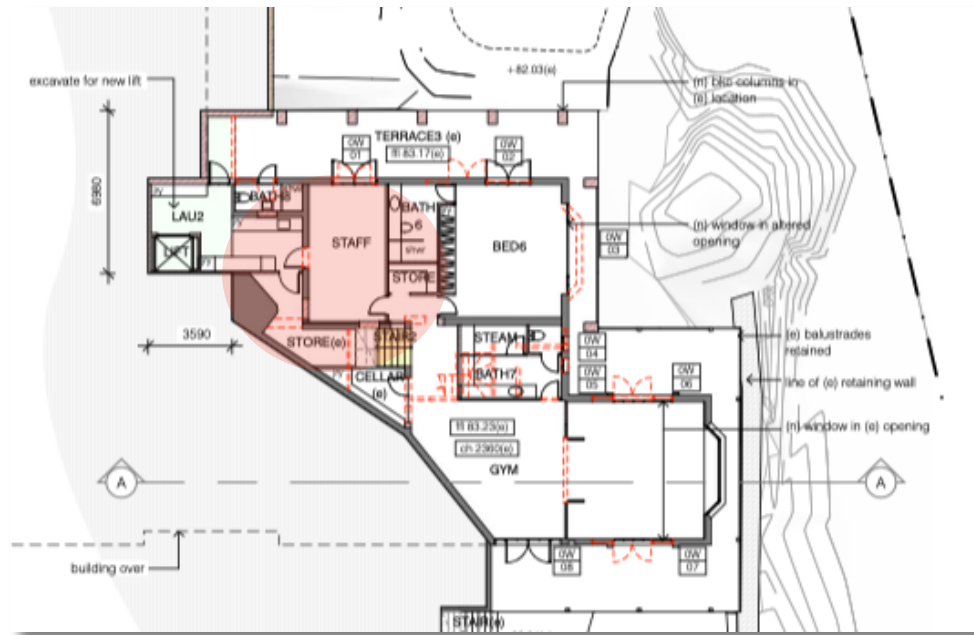


Figure 4: The red circle indicates the area where bed 3 and the adjoining pergola extend beyond the rock formation creating the sudden level change in ground line. **Source:** Plan 02 excerpt Campbell Architecture, annotated by Blackwattle Planning.



Figure 5: Rock outcropping at the level change within the building footprint immediately below the location of Bed 3 and pergola above **Source:** Campbell Architecture

Isolated exceedance

- The exceedance is isolated to the portion of level 2 that extends beyond the level change. This part of the structure sits in the context of the remaining floor space at level 2 which is fully complying. The location of the breach, surrounded and below the complying remainder of level 2 means that the breach of the height of buildings development standard will not be perceived as such. The level change under the building is not evident externally, and Bed 3 and the adjoining pergola will read as integrated into the remaining. two storey and otherwise compliant dwelling.

Absence of impact

- Following on from the above argument, and noting the large lot context of this site and its immediate locality, the breaching element (which is lower than other compliant parts of the roofline) will cause no impact. The height exceedance sits centrally within the existing building footprint and will cause no overshadowing, privacy or view impact. As complying and taller elements of level 2 occur immediately to the west of Bed 3 and pergola above the higher ground line, the breaching element creates no additional scale as viewed from anywhere in the locality.
- To require the removal of Bed 3 and the pergola would serve no meaningful purpose given the absence of impact.

Improved compliance when compared to existing

- The removal of structure at the eastern edge of the dwelling and distribution of floor space to above the central and western part of the footprint greatly increases the level of compliance with the 8.5m height limit, and successfully steps the building in line with the slope of the land.
- Importantly, this design assists in recessing the higher elements of the structure to ensure they are less prominent on the ridgeline. The extent to which compliance with the height limit is improved by the proposal is best demonstrated by comparison of the height blanket diagrams below:

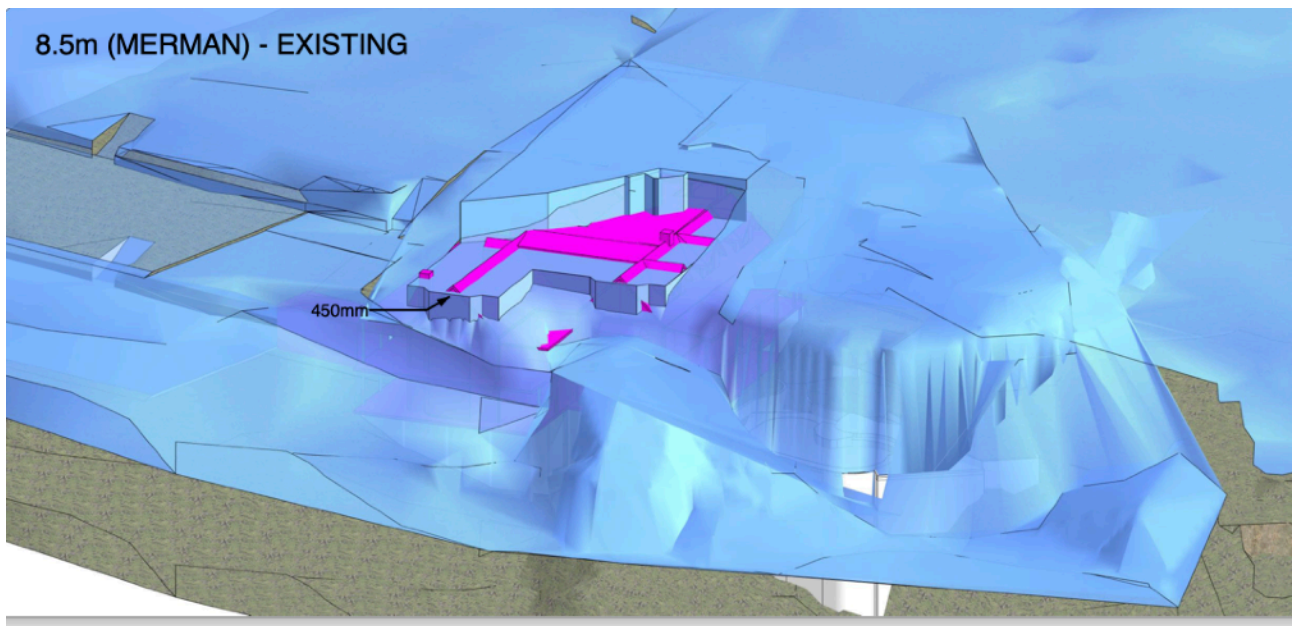


Figure 14: Non-compliance with 8.5m height limit of existing building
Source: Campbell Architecture

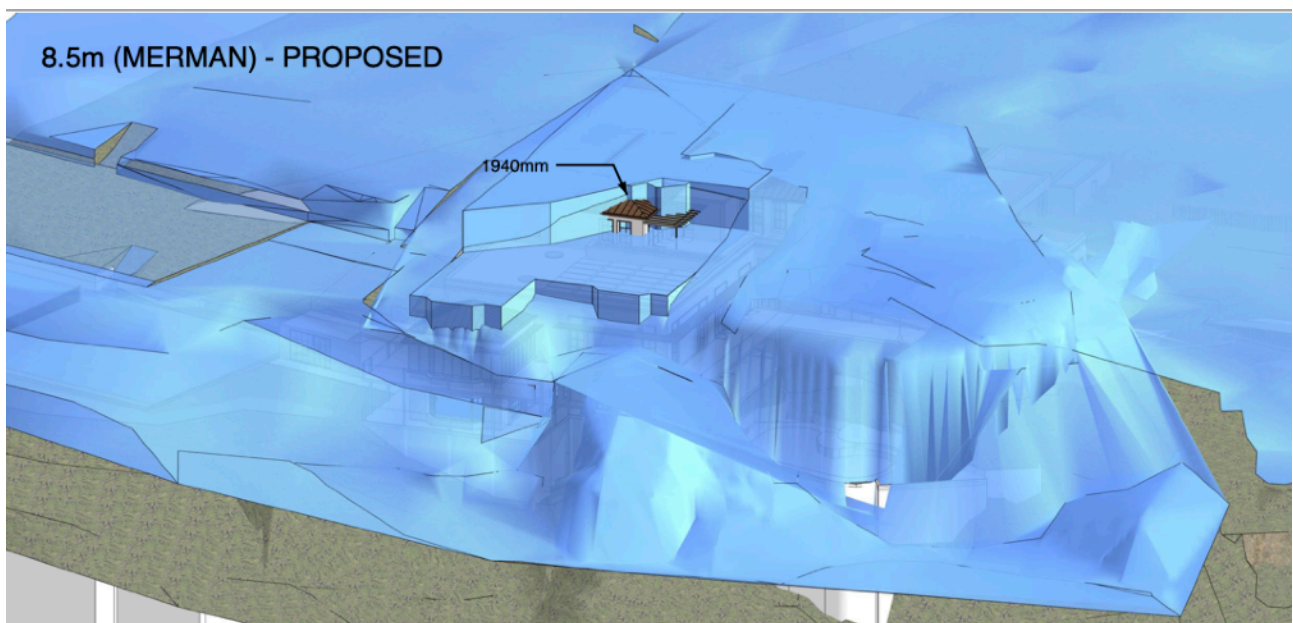


Figure 15: Reduced extent of non-compliance with 8.5m height limit of proposed building
Source: Campbell Architecture

4.3.1 Objects of the Environmental Planning and Assessment Act

In demonstrating sufficient environmental planning grounds, it is noted that notwithstanding the contravention of the maximum height standard, the design fulfils the following objects of the Environmental Planning and Assessment Act 1979:

(g) to promote good design and amenity of the built environment,

The proposed changes and additions to the existing dwelling comprise a substantial improvement to the responsiveness of the dwelling to the natural landform. The redistribution of floor space to the west to step down the landform, together with more discreet parapet and hipped roof forms is a positive design contribution to the overall presentation of the dwelling. Increased amenity will arise from the substantial return of land to landscape on the combined site.

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment.

An improved functionality, aesthetic, and response to the environmentally sensitive ridgeline location results in an overall increase in ecologically sustainability for this site.

4.3.2 Conclusion under Clause 4.6(3)(b)

We believe the above environmental planning grounds are sufficient to justify the exceedance of the height of buildings development standard in these specific circumstances.

4.4 **Clause 4.6(4)(a)(i) The written request adequately addresses the matters required to be demonstrated by subclause (3)**

This written request comprehensively addresses the matters required to be demonstrated by subclause (3).

4.5 **Clause 4.6(4)(a)(ii) The proposed development will be 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**

4.5.1 Consistency with objectives of development standard

As outlined in paragraphs 4.2 of this document, the proposed development notwithstanding the exceedance of the height limit is found to be consistent with the objectives of the Height of buildings development standard.

4.5.2 Consistency with objectives of the Zone

The objectives the **C4 Environmental Living Zone** are met by the proposed development as follows:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values; and*
- *To ensure that residential development does not have an adverse effect on those values.*

The demolition of a previous dwelling at No. 6 Kara Crescent and a combining of the lots to form a single development site supporting just one dwelling will clearly minimise visual impacts upon neighbouring dwellings and upon the scenic visual catchment within which the site sits. The decision to combine the two allotments and to retain substantial existing structure on No. 7 Kara Crescent reduces the already low impact circumstances and provides a unique opportunity to enhance the special visual and biodiversity values of the site.

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

The removal of significant structure from the eastern projecting portion of the existing dwelling substantially reduces the presentation of scale on this site, which has a wide catchment in its elevated position. The retention of vegetation in both the eastern and northern foreground and the backdrop of considerable mature canopy means the proposed extended dwelling retains a highly vegetated context. In particular canopy trees to the northwest of the site provide significant scale which ensure the proposal remains secondary to the bushland setting.

- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

The increased landscaped area that arises from the demolished dwelling on No. 6 Kara Crescent, together with the concentration of built form within already disturbed areas of the site allows the habitat value of the combined site to be significantly enhanced.

The objectives of the **R5 Large Lot Residential Zone** are met by the proposed development as follows:

- *To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.*

The increased opportunity for native landscaping on the site is captured by this proposal and structure is concentrated and located centrally on the site. The scale of the dwelling is reduced at its most prominent edge, and needed floor space occupies the footprint of existing structure of the current formalised garden curtilage.

- *To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.*

The single dwelling over two allotments provides the adjoining land additional spatial separation which reduces already minimal amenity impacts in the immediate locality. The site and proposed design will be less obtrusive in the landscape and recessive as viewed from nearby foreshore areas. The surrounding urban areas will benefit from the dwelling being less prominent in the landscape and well integrated with the surrounding canopy.

- *To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.*

No such increase in demand for public services or facilities will arise from the proposed development.

- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

The site has a split zone at its northern corner and currently transitions from the R5 Large Lot Residential Zone to the C4 Environmental Living Zone along its eastern and northern edge. The additional spatial separation provided by the combining of the lots enhances this transition and respects the increased sensitivity of the ridgeline location of the existing dwelling.

- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

No other land uses are proposed, and the additional spatial separation between development can only benefit any such uses proposed on adjoining lots into the future.

4.6 Clause 4.6(4)(b) The concurrence of the Planning Secretary has been obtained

Concurrence is obtained from the Secretary of the Department of Planning in these circumstances through Planning Circular dated 5 May 2020 which established concurrence can be assumed for variations exceeding 10% where a Local Planning Panel is the Consent authority. Advice from the DPIE dated 2 November 2021 permits Clause 4.6 variations greater than 10% to building height to be determined by Council staff under delegation in accordance with Council procedures.

5.0 Conclusion

This document demonstrates that the required tests contained in Clause 4.6 have been met by the proposed development. In particular, that:

- Compliance with the Height of Buildings development standard is unreasonable and unnecessary in the circumstances of the case given that the objectives of Clause 4.3 Height of Buildings have been met; and,
- Sufficient environmental planning grounds have been demonstrated to justify the contravention of the development standard; and,

- The proposed development is found to be in the public interest given its consistency with the objectives of the development standard and objectives of both the C4 Environmental Living zone and R5 Large Lot Residential Zone.

In these circumstances the consent authority can be satisfied that it is appropriate to apply the flexibility permitted under Clause 4.6 of PLEP 2014 to vary the Height of Buildings development standard of PLEP 2014 to the extent proposed.



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