

4.6 VARIATION - HEIGHT

NEW DWELLING HOUSE

16 HILLCREST AVE MONA VALE - DWELLING

REV - 22-02-2025

SMITH & TZANNES

TITLE	4.6 Variation - Height
PROJECT	16 Hillcrest Ave MONA VALE - DWELLING [XX_XXX]
CLIENT	
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1. PURPOSE

This report has been prepared by Smith & Tzannes on behalf of the applicant Damien Hannes to support a Development Application for alterations to an existing dwelling house. The report details the request to the consent authority to vary the development standards for this application.

In this request we demonstrate that:

- a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
- b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

This variation statement is to be read in conjunction with the Statement of Environmental Effects and other drawing submitted as part of the application

2. VARIATION TO DEVELOPMENT STANDARD (CLAUSE 4.6)

Clause 4.6 of Pittwater Local Environmental Plan (LEP) allows Council (the consent authority) to grant consent for development even though the development contravenes a development standard contained in the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better development outcomes.

3. STANDARD TO BE VARIED

Clause 4.3 (2) – Height of Buildings where the development standard requires a maximum floor space ratio of 8.5m – as indicated on the map.

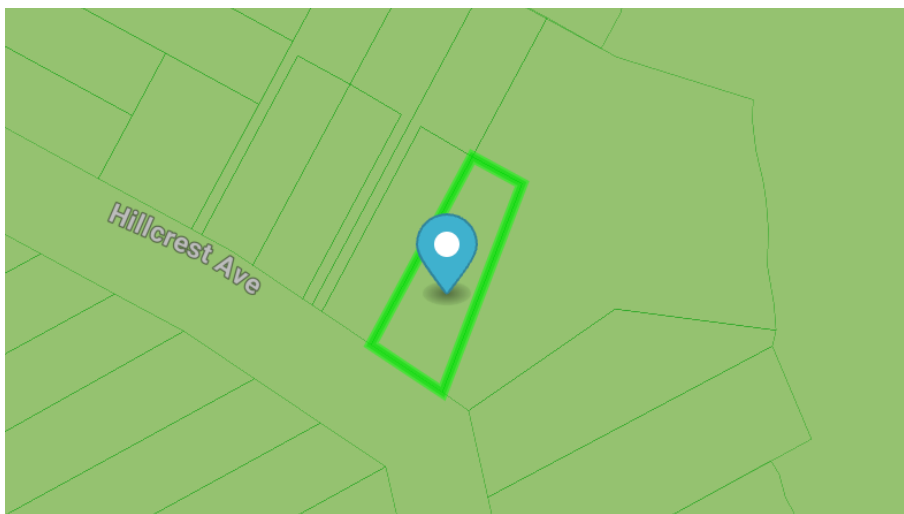


FIGURE 1: PITTWATER LEP HEIGHT MAT

THE VARIATION

The development has a maximum height of 10.04m

The existing dwelling house has a height of 10.04m. The proposed development does not increase the height of the existing dwelling. The new roof if provided slightly below the existing parapet height.

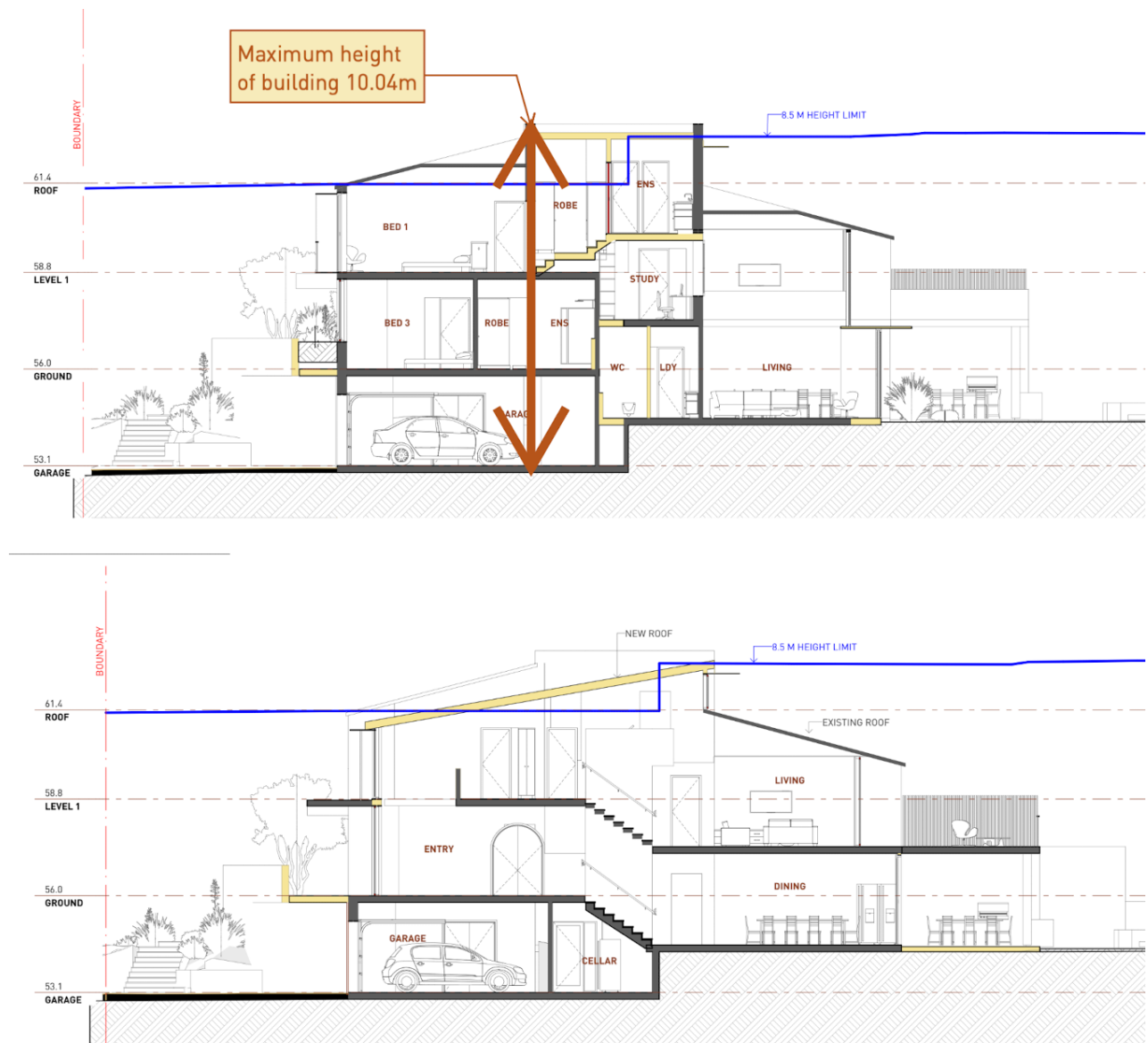


FIGURE 2: SECTION THROUGH DWELLING SHOWING PARTS OF THE BUILDING ABOVE THE 8.5M HEIGHT LIMIT – POINT OF MAXIMUM HEIGHT INDICATED ON SECTION.

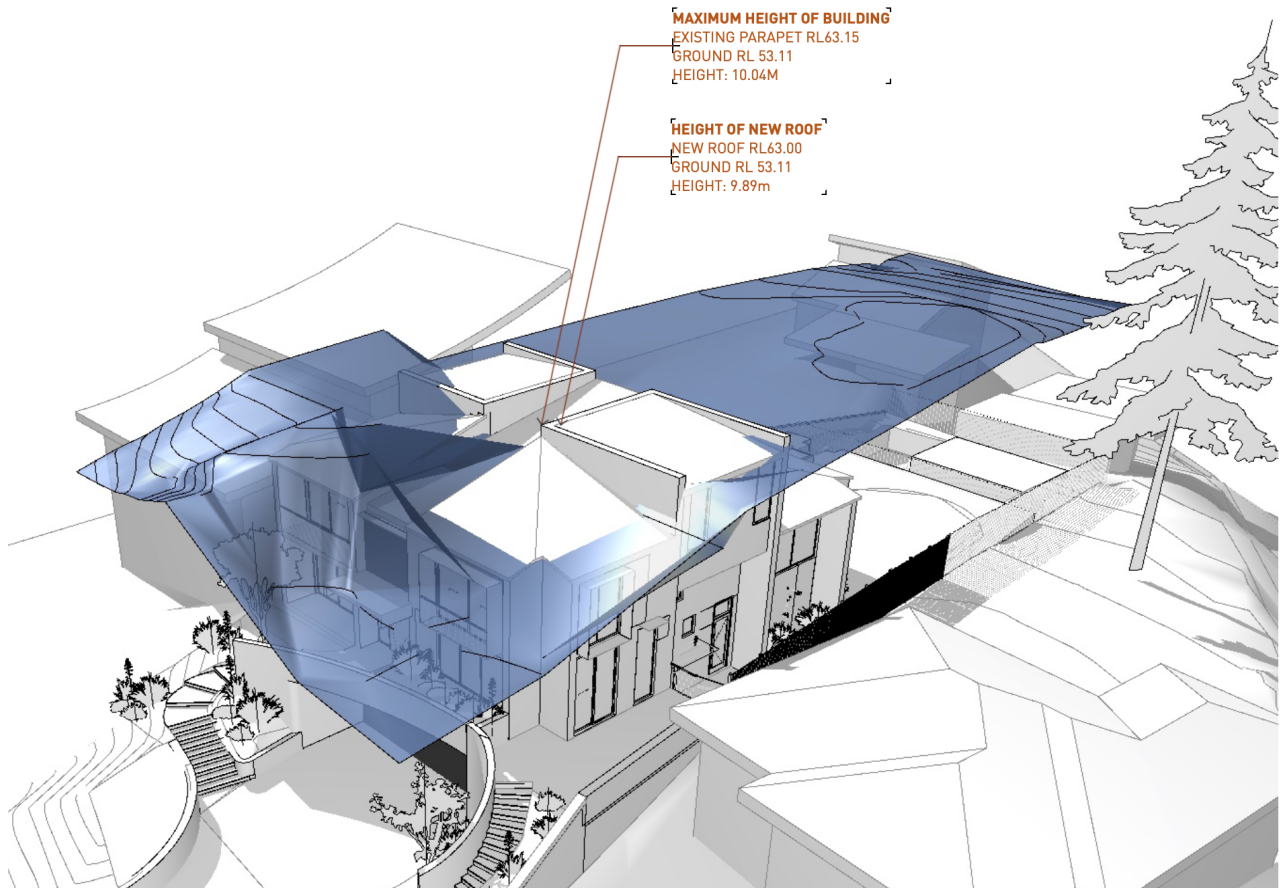


FIGURE 3: HEIGHT BLANKET SHOWING MAXIMUM HEIGHT OF BUILDING

4. JUSTIFICATION – COMPLIANCE IS UNNECESSARY OR UNREASONABLE

When considering whether a development standard is appropriate and or necessary, the consent authority must take into account the nature of the proposed variation, the site specific context and the design of the proposed development. In this instance it is considered unnecessary to require strict compliance with the standard as:¹

¹ In *Wehbe V Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways five different ways in which an objection may be considered unreasonable or unnecessary:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

- the proposal achieves the objectives of the standard notwithstanding the non-compliance (Whebe 1)
- the underlying objective or purpose is not relevant to the development, such that compliance is unnecessary

CONSISTENT WITH OBJECTIVES OF CLAUSE 4.3

Despite the non-compliance with the development standard the proposed development is consistent with the objectives of cl. 4.3 In particular:

- the height is consistent with the existing character of the area as it retains existing built form and does not exceed the existing maximum height and hence it is also compatible with the height and scale of the existing context.
- the new additions allow for retention of existing views
- overshadowing of neighbouring properties is similar to the existing shadow impacts
- the proposal retains its current response to the natural topography

COMPLIANCE IS UNNECESSARY AS THE PURPOSE OF THE HEIGHT CLAUSE IS NOT RELEVANT TO THIS APPLICATION

The proposal comprises minor alterations and additions, these additions are contained within the outer envelope of the existing building. The existing building exceeds the height limit.

The new work does not increase the maximum height of building of the existing dwelling house. The new work is contained below the parapet of the existing building

The height of building is in part affected by the existing excavation of the site for the existing garage that is located partly below ground.

The purpose of the clause is to control the maximum height of new work – not the maximum height of existing buildings. As the new work is contained within the envelope the application of this clause is not entirely relevant to the application.

It would be an unreasonable planning outcome to require the existing dwelling house to be reduced in height to require compliance with the development standard.

5. ENVIRONMENTAL PLANNING GROUNDS

SITE AND CONTEXT

Site context is a key consideration when determining the appropriateness and necessity of a development standard. The existing dwelling houses is proposed to be retained. The dwelling presents as a part 2, part 3 storey building to the street. This is consistent with other dwellings in the street. The new work is located behind the The existing parapet that defines the maximum height of building. The new work is only visible at oblique angles when viewing the dwelling along the side boundaries.

It would be an absurd planning outcome to require the existing dwelling house to be reduced in height to require compliance with the development standard.

6. SUMMARY

It is considered that compliance with the standard is unnecessary in these particular circumstances as

- the existing building contains the part of the structure that is the maximum height of building
- new works are contained within the walls and below the parapet of the existing structure
- the proposed development is consistent with the objectives of the standard
- the proposed additions are sympathetic and character with the scale of the existing dwelling.

Approval for the minor departure from the development standard will not be detrimental to the surrounding area and results in a rational outcome for the site enabling the sustainable reuse of the existing dwelling house for contemporary living.