



*request to vary  
a development standard*



## REQUEST TO VARY A DEVELOPMENT STANDARD

22 HILLCREST AVENUE  
MONA VALE NSW 2103

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## *introduction*

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This request to vary a development standard is made by Northern Beaches Planning on behalf of Zlat and Becc Jovanov to accompany the lodgement of a development application for alterations and additions to an existing dwelling house at 22 Hillcrest Avenue, Mona Vale (**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*

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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).

The maximum building height prescribed by clause 4.3 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 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*

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The proposed development has a maximum building height of 9.08m, representative of a 508mm or 6% variation to the 8.5m maximum building height prescribed. The height non-compliance is limited to a minor portion of the proposed upper floor roof form as shown in Figures 1 and 2.

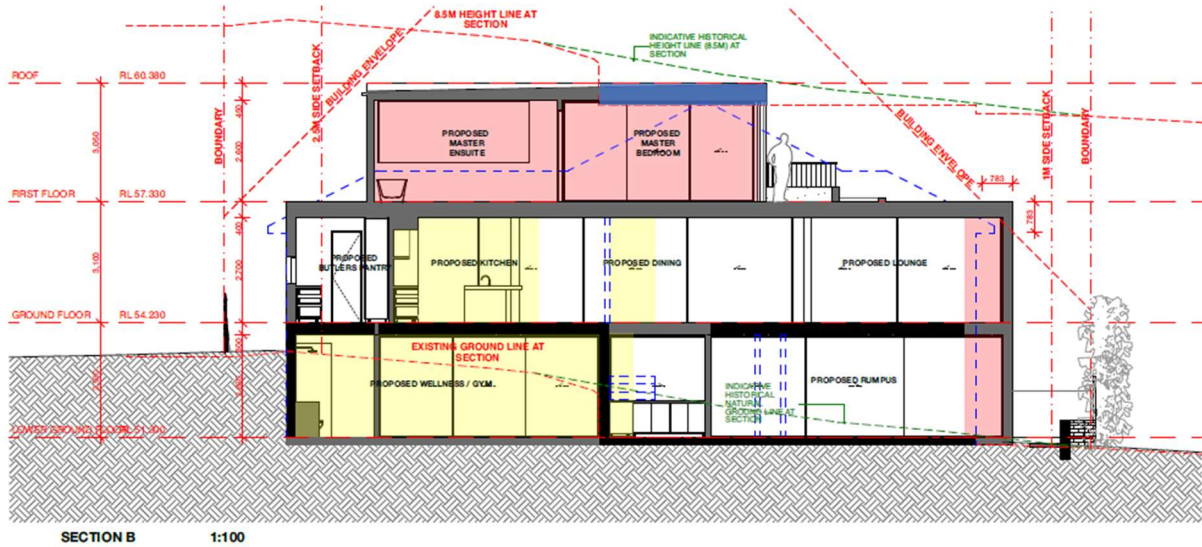


Figure 1 – Section B, with the height non-compliance highlighted in blue  
 Source: Rama Architects

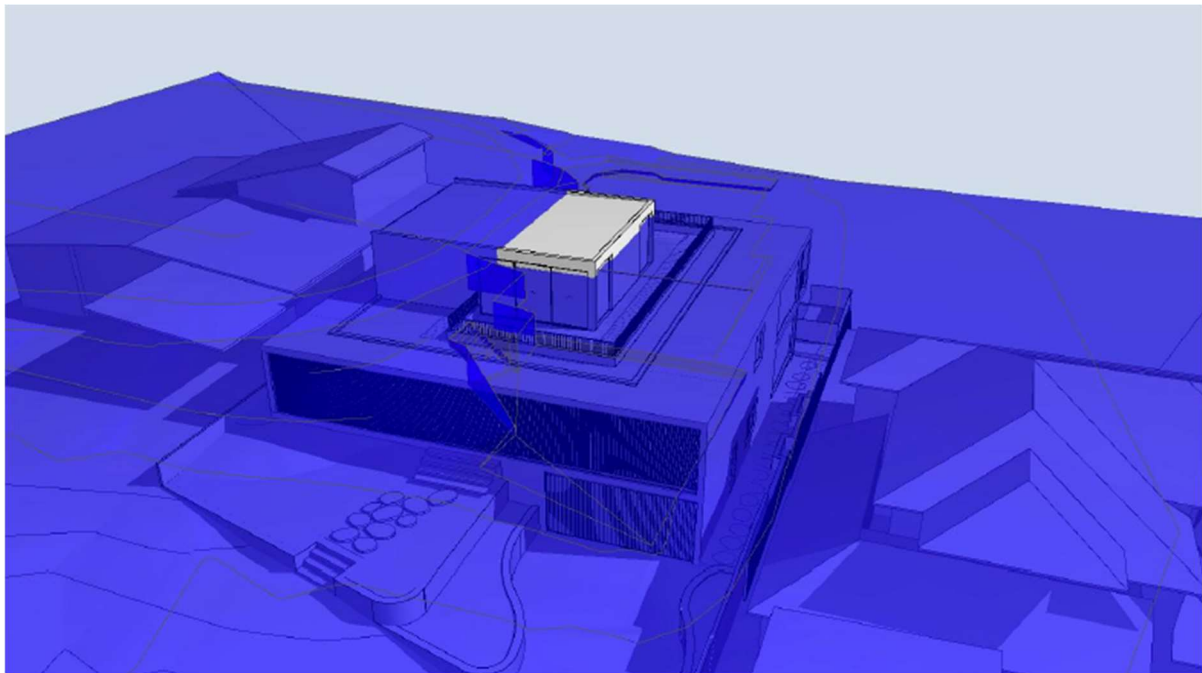


Figure 2 – Building Height Plane Diagram (measured to ground level (existing))  
 Source: Rama Architects

*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 Mona Vale 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 dwelling will sit below the canopy of proposed surrounding canopy trees and is stepped in response to the slope of the site. Whilst the dwelling reaches a maximum of three storeys in any one place, the three storey element is setback from the front and rear facades and is appropriately minimised.

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 commensurate with that of surrounding and nearby properties, a considerable proportion of which present with three storeys to Hillcrest Avenue, as shown in Figures 3-5.



Figure 3 – A three storey dwelling at 30 Hillcrest Avenue  
Source: NBP



Figure 4 – A three storey dwelling at 16 Hillcrest Avenue  
Source: NBP



Figure 5 – Three storey dwellings at 40 and 42 Hillcrest Avenue  
Source: NBP

- (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 Hillcrest Avenue, and most observers would not find the height or bulk of the proposed development to be offensive, jarring or unsympathetic in this context.

The height of the dwelling is akin to that of existing dwelling on the site, with the proposed upper floor addition maintained 300mm below the existing ridgeline.

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

Comment: The application is supported by shadow diagrams by Rama Architects 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 properties, with shadows associated with the proposed upper floor wholly maintained within the boundaries of the subject site.

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

Comment: The portions of the dwelling that extend above the 8.5m height plane do not result in any unreasonable impacts upon existing views from neighbouring dwellings.

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

Comment: The height of the development is stepped in response to the natural fall of the land. Whilst excavation is proposed, the degree of excavation is entirely commensurate with that which has been approved and undertaken on sloping sites throughout the immediate locality and the wider LGA.

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

Comment: The dwelling is stepped in response to the fall of the land and is highly articulated. Landscaping, both at-grade and within integrated planters, is also proposed to soften the visual impact of the dwelling as seen from both the street and the waterway. 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 floor space ratio standard are as follows:

## 1. Existing excavation

The height breach occurs where the proposed upper roof form is situated over the excavated footprint of the existing dwelling. In accordance with the findings of the NSW LEC in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, the prior excavation of the site within the footprint of the existing building which distorts the height plane can properly be described as an environmental planning ground within the meaning of clause 4.6(3)(b) of PLEP 2014.

As shown by the green line in Figure 6 and the height plane diagram to natural ground at Figure 7, the proposal is maintained below the height plane when measured from assumed natural ground levels (being the interpolated levels between existing ground levels around the perimeter of the dwelling).

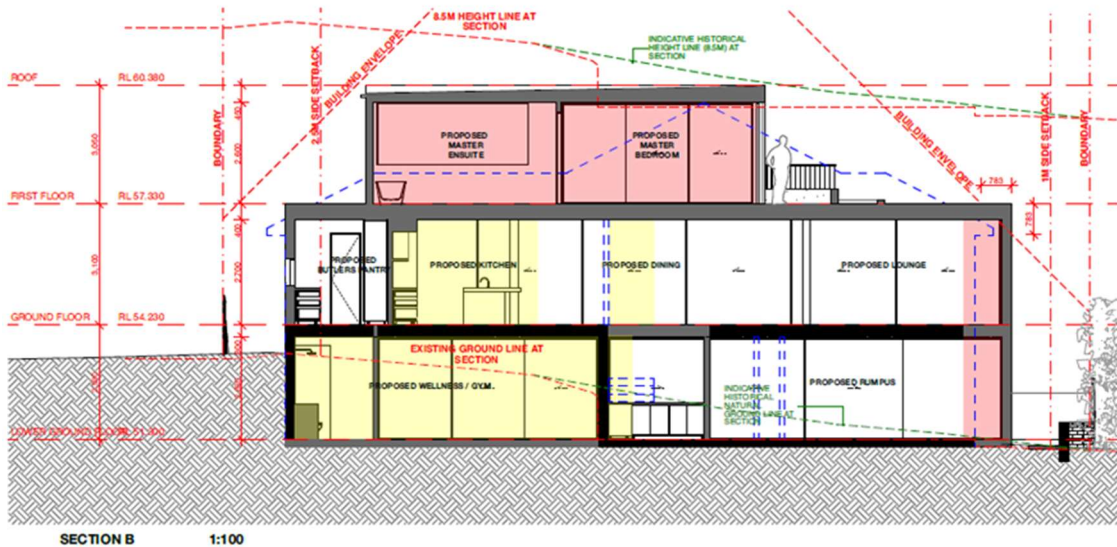


Figure 6 – Section B, with the assumed pre-existing natural ground line in green  
Source: Rama Architects



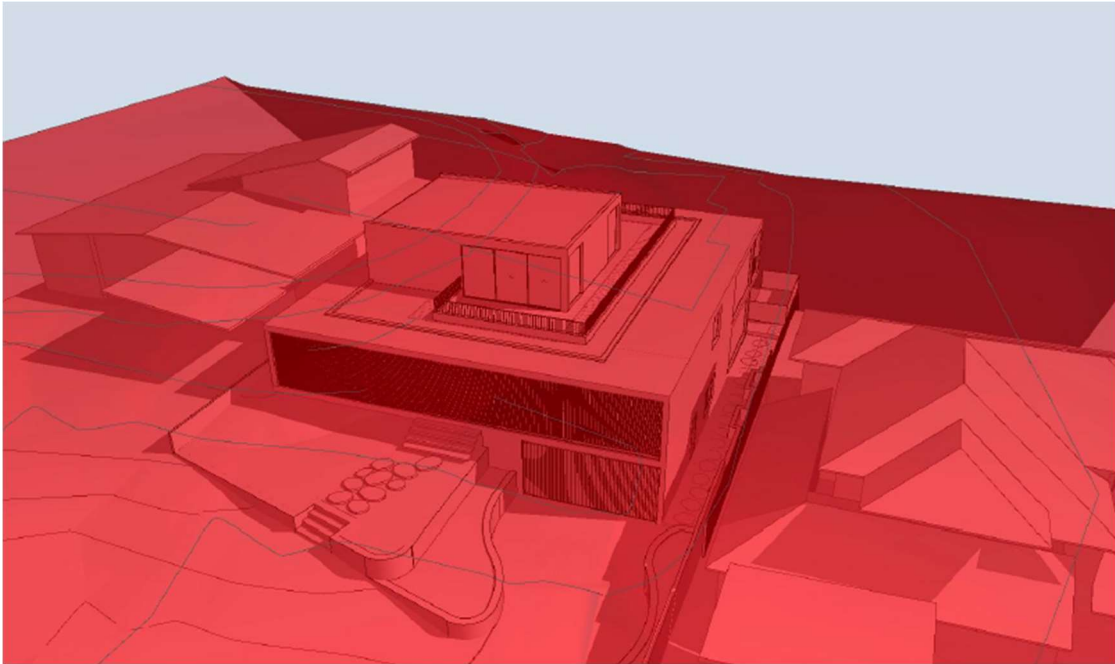


Figure 7 – Building Height Plane Diagram (measured to assumed pre-existing ground levels)  
Source: Rama Architects

## 2. Slope of the land

The site experiences a cross fall, from the upper north-western side boundary down towards the lower south-eastern side boundary. The slope of the land is a contributory factor to the non-compliance, with a greater proportion of the upper floor maintained well below the 8.5m height plane compared to the minor portion that protrudes below it (as shown in Figure 8).

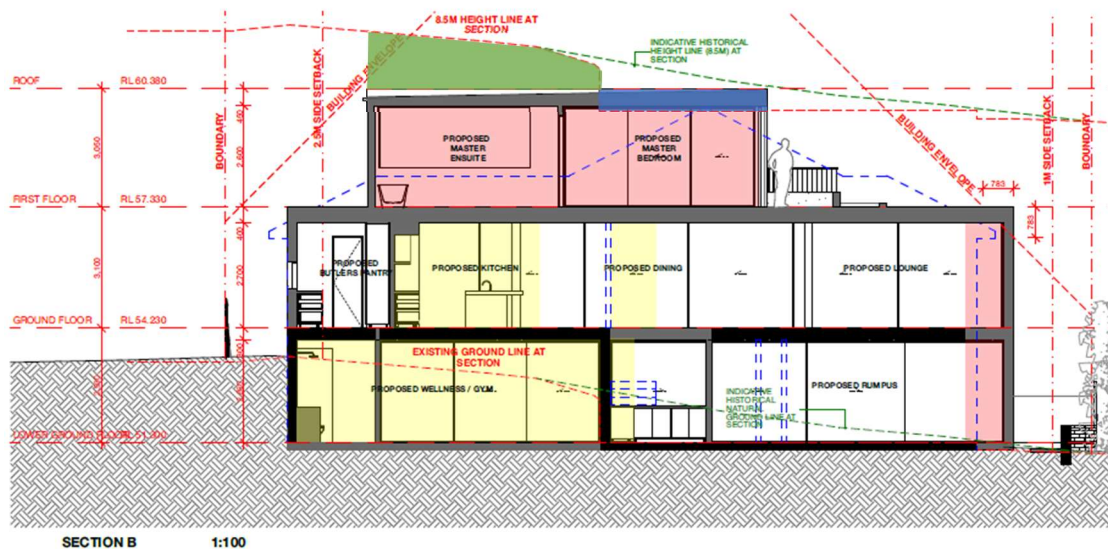


Figure 8 – Section B, with balance of compliance highlighted in blue and green  
Source: Rama Architects

### 3. Context

The site is surrounded by large dwellings, a number of which have a three storey presentation to Hillcrest Avenue, as demonstrated in Figures 3-5. The proposed upper floor addition also replaces an existing pitched roof with a ridgeline that is 300mm higher than that proposed. As such, the proposal technically results in a reduction to the maximum height of the dwelling compared to that which currently exists.

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.

Furthermore, allowing for a variation to the height plane that is consistent with the height and scale of nearby development promotes the orderly and economic development of the land, consistent with objective (c) of the EP&A Act.

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

### *conclusion*

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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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