

**APPLICATION MADE UNDER CLAUSE 4.6 OF PITTWATER LOCAL
ENVIRONMENTAL PLAN 2014 TO VARY A DEVELOPMENT STANDARD.**

DEVELOPMENT APPLICATION

Alterations and additions
19 Powderworks Road
BEACON HILL
NSW
Lot 61, Section 5 DP 6462

For F Cristaudo

May 26 2023

Approval is sought to vary a development standard set out in Pittwater LEP 2014

THE STANDARD TO BE VARIED IS: BUILDING HEIGHT

1.0 INTRODUCTION

Approval is sought to vary the Development Standard for Building Height set out in Clause 4.3 of the LEP on the grounds set out below. - in accordance with Clause 4.6 of the Pittwater LEP

2.0 VARIATION PROPOSED

The Building Height map referred to in Clause 4.3.(2) of the Pittwater LEP 2014 sets a maximum building height for the site of 8.5 metres.

Building height in metres is defined in the Pittwater LEP 2014

(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

The maximum permissible building height for the site is shown on the map as 8.5 metres. The proposed development will result in a maximum building height of metres measured from assumed ground level under the main ridge to the main ridge of <8.5 metres.

However, due to the site topography, the maximum heights of the building above ground level at parts of the rear of the dwelling will be:

- 8.980 metres measured from the top of the eastern side of the northernmost gutter of the roof to the first floor verandah.
- 8.886 metres measured from the roof at the northern end of the eastern wall.
- 8.621 metres measured from the top of the western side of the northernmost gutter of the roof to the first floor verandah.

All these variations occur at the northern end of the building, due to the steep fall of the site from the street (south) to the rear boundary (north). Building height at the Southern end of the building (facing the street) is well under 8.5 metres in height. As is demonstrated below the variation requested to building height will not result in a development that fails to satisfy the objectives of the control (Height) or the objectives of the zone (R2).

REFER TO BUILDING HEIGHT DIAGRAMS APPENDIX 1

3.0 CLAUSE 4.6 ASSESSMENT

3.1.1 CLAUSE 4.6(1) OBJECTIVES OF CLAUSE 4.6

The objectives of this clause are 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.*

3.1.2 CLAUSE 4.6(2) DEVELOPMENT CONSENT MAY BE GRANTED.

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.

Under section 1.4 of the Environmental Planning and Assessment Act 1979 Building Height is defined as a development standard. It is not excluded from operation.

3.1.3 CLAUSE 4.6(3) CONSENT AUTHORITY TO CONSIDER WRITTEN SUBMISSION.

This application constitutes a written submission that seeks to justify contravention of the development standard by demonstrating that:

- a) Compliance 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.*

3.1.4 CLAUSE 4.6(4) CONSENT AUTHORITY TO BE SATISFIED.

The Consent Authority must be satisfied that:

- a)*
 - (i) the applicant's written request has adequately addressed the matters required to be satisfied by subclause (3)*
 - and*
 - (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.*
- and*
- b) The concurrence of the secretary has been obtained*

These matters are addressed below.

LEP Clause 4.6 (3)(a)

That compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

It is submitted that compliance with the Development Standard is unreasonable and unnecessary in this case as the objectives of the control are satisfied.

- (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 surrounding and nearby development,*
- (c) to minimise any 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.*

Wehbe v Pittwater (2007) NSW LEC 827- 5 part test.

This is applied to demonstrate that compliance with a development Standard is unreasonable or unnecessary.

It is not necessary to establish all of the tests or “ways”. One may suffice.

In this case the first test is established as discussed and demonstrated in this document.

FIRST	The objectives of the standard are achieved notwithstanding non-compliance.
SECOND	The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
THIRD	The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
FOURTH	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 or unreasonable.
FIFTH	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 would be unreasonable or unnecessary.

The objectives of the zone (Residential R 2) are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

The variation to building height sought is in accord with these zone objectives for the reasons set out below that detail why strict compliance with the development standard is unnecessary in this instance.

Objective 1:

The variation does not adversely impact on the capacity of the dwelling to meet the housing needs of the community. It has no impact on the low density residential environment . It does better enable the dwelling to meet the needs of its occupants.

Objective 2:

Not applicable. The variation applies to existing residential development.

Objective 3:

Not applicable. The variation applies to existing residential development..

The objectives of clause 4.3 Height of Buildings are:

- 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 surrounding and nearby development,*
- (c) to minimise any 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.*

The variation to building height sought is in accord with these height objectives for the reasons set out below that detail why strict compliance with the development standard is unnecessary in this instance.

Objective (a)

The variation in building height occurs at the rear of the dwelling and is located well away from the rear boundary and nearby dwellings. It is relatively minor in nature, is not visible from the public domain and does not impact on the existing and desired character of the locality.

Objective (b)

Due to the steep south -north fall of the local topography, coupled with a gentler fall west to east and the varying ages and styles of nearby dwellings, surrounding development displays variation in height and scale, whilst preserving landscape features and an open outlook.
The proposed work is compatible with this .

Objective (c)

Shadow diagrams submitted with this application for development consent demonstrate that the additional overshadowing arising from this work will not impact on living areas or private open space of adjoining properties.

Objective (d)

The proposed variation in building height will not affect views currently available to properties located on the South side of Powderworks Road due to the steep fall of land from south to north. Dwellings on the south side of Powderworks Road opposite the subject site are located above street level.

The development variation in building height will also not adversely impact on views to the East available to no 21 adjoining.

REFER TO THE VIEW LINE DIAGRAM. APPENDIX 2

Objective (e).

Notwithstanding the proposed variation in building height at the rear of the dwelling, the dwelling still retains a sense of "stepping down" the site with the roofed ground floor verandah remaining at lower level beyond the first floor extension.

From the street little of the existing ground floor is visible below the first floor extension, enabling the building to present as a relatively low scale structure within the streetscape.

REFER TO THE BUILDING BULK VIEWED FROM POWDERWORKS ROAD DIAGRAM .APPENDIX 3.

Objective (f).

The building is not located within a heritage conservation area, nor is it located in the vicinity of a heritage item. Visual impact on the natural environment in the locality is minimised due to existing topography, the retention of existing vegetation, aided by the articulation of the first floor western wall. The surrounding landscape remains visually dominant.

LEP Clause 4.6.(3)(b)

That there are sufficient environmental planning grounds to justify contravening the development standard.

The aspect of the development that contravenes the development standards (height of building) occurs for part only of the building at the rear of the building due to the site topography,

a) Characteristics of the existing building and site constraints.

- The existing dwelling is modest in size, containing only 2 bedrooms at ground floor level, one of which is used as a study. A room at lower ground floor level is also used as a study. (The dwelling occupants each require a study area as they work several days a week from home.)
- The proposal would result in a dwelling containing 3 bedrooms with 2 studies one of which also contains the stairs to the first floor.
- The site has a steep fall to the south, with a relatively modest building footprint preserving a significant portion of the site as landscaped area.
- The existing building footprint and landscaped area contributes to the visual dominance of the natural environment in the locality.
- With the exception of the carport, side setbacks are generous and in excess of the minimum requirements of the DCP. Front and rear setback are also in excess of minimum requirements.
- The proposed work retains the existing building footprint and landscaping by providing additional accommodation in a first floor addition, with additional

side setbacks to the western boundary thus retaining the visual dominance of the natural environment in the locality.

As discussed above, this contravention, due to its nature and location does not impact on the objectives of the zone in which the dwelling is located, nor on the objectives of the standard to be varied: Building Height.

This contravention does not give rise to adverse impacts on the neighbourhood, the streetscape, or the amenity of surrounding dwellings.

Clause 4.6(4) (a)

The proposal is consistent with the objectives of the standard and the zone objectives for the reasons discussed above.

It is submitted that the development is in the public interest because it is consistent with the objectives of the development standard (height of building) and the objectives of the R2 zone.

CONCLUSION

It is demonstrated that strict compliance with the building standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify contravening the development standard.

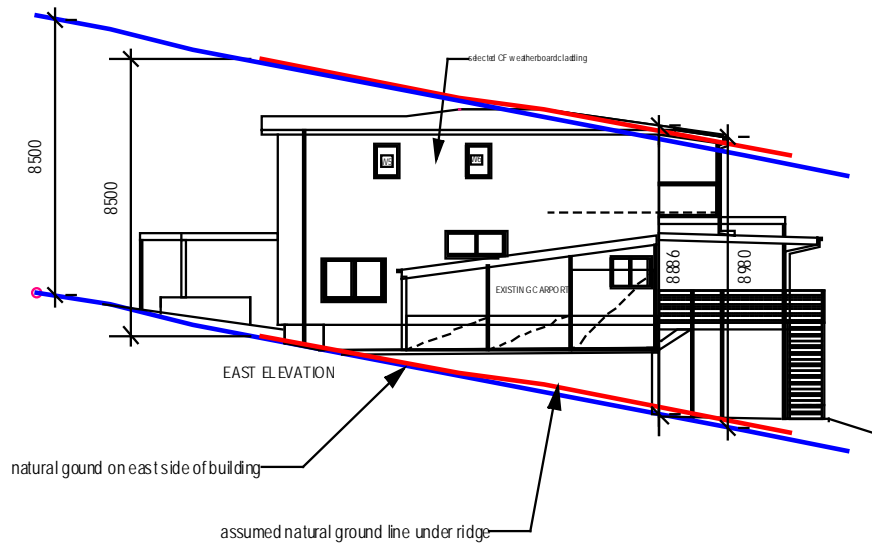
A handwritten signature in black ink, appearing to read 'Judith Kubanyi', is positioned above the printed name and firm name.

Judith Kubanyi
KUBANYI ARCHITECTS

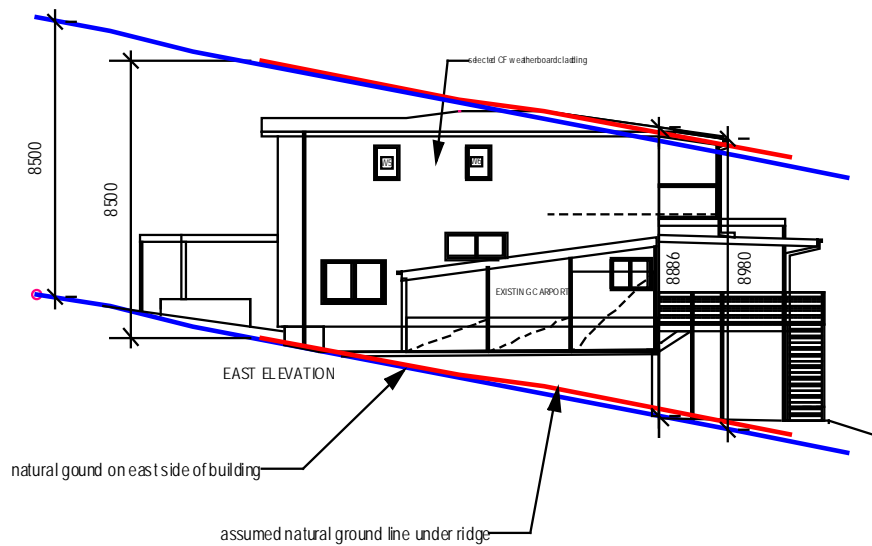
May 26 2023

APPENDIX 1

BUILDING HEIGHT DIAGRAMS



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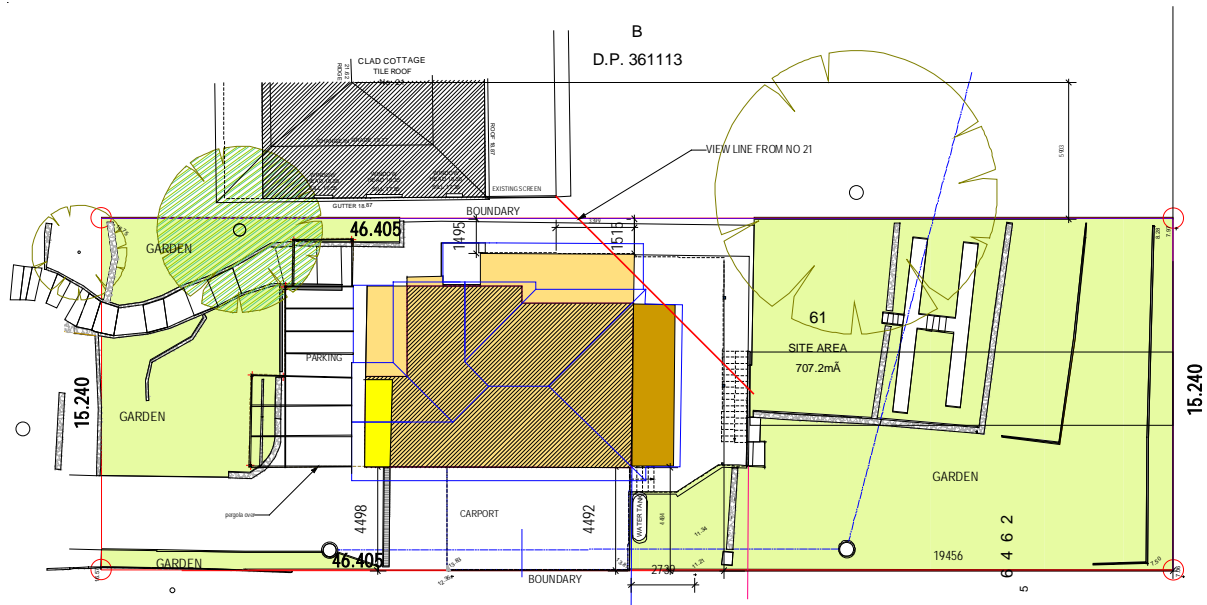


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APPENDIX 2

VIEW LINE DIAGRAM



APPENDIX 3

BUILDING BULK VIEWED FROM POWDERWORKS ROAD



