



*request to vary
a development standard*



REQUEST TO VARY A DEVELOPMENT STANDARD

78 CHISHOLM AVENUE

AVALON BEACH NSW 2107

Disclaimer

This report has been prepared on the basis of information available at the date of publication. Whilst attempts have been made to ensure the accuracy of the information in this document, Northern Beaches Planning accepts no responsibility or liability for any errors, omissions or resultant consequences including any loss or damage arising from reliance on information in this publication or referenced in this publication. Reproduction of this report (or part thereof) is not permitted without prior permission from Northern Beaches Planning.

introduction

This request to vary a development standard is made by Northern Beaches Planning on behalf of David and Patricia Stanners in relation to a development application for alterations and additions to an existing dwelling at 78 Chisholm Avenue, Avalon Beach. This request is made pursuant to clause 4.6 of Pittwater Local Environmental Plan (**PLEP 2014**) and with regard to relevant case law.

standard to be varied

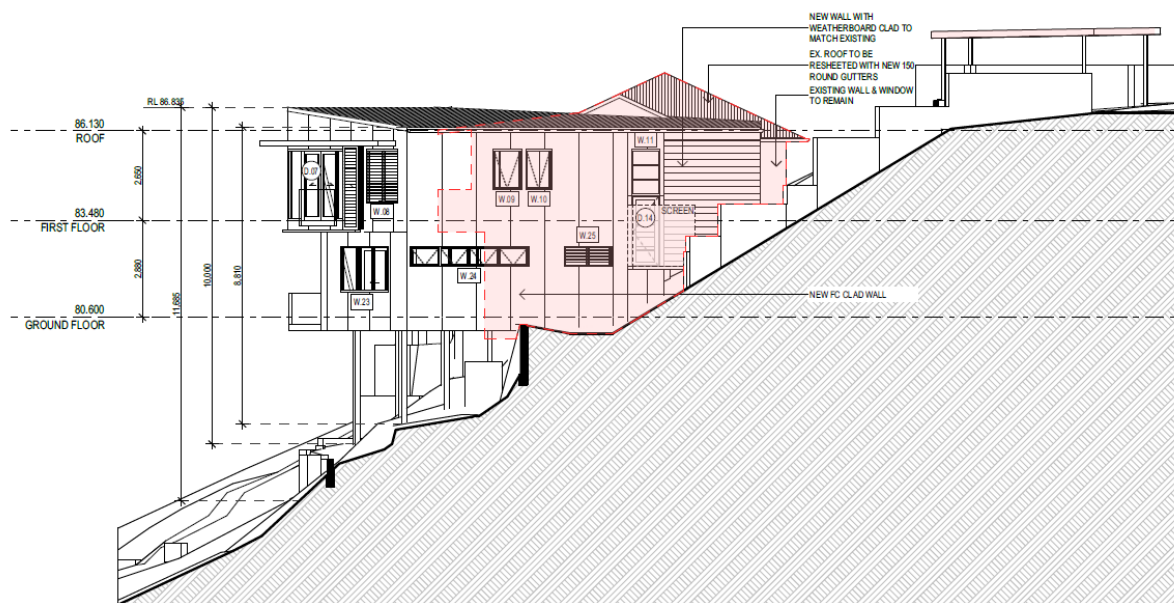
With a maximum building height of 11.685m, the proposed development is non-compliant with the 8.5m maximum building height prescribed by clause 4.3 of PLEP 2014. The maximum building height is a development standard, as defined by the EP&A Act, and as such, the provisions of clause 4.6 of PLEP 2014 can 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 building height 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

The proposed development reaches a maximum height of 11.685m, representative of a 3.185m or 37.5% variation to the 8.5m maximum building height development standard. The maximum height occurs where the western edge of the proposed upper level roof eave extends beyond an existing retaining wall in the rear yard, specifically at the north-western corner of the master bedroom. The degree of non-compliance reduces quickly as you move further away from the western edge of the building in response to the significant slope of the slope, with strict compliance achieved at a maximum distance of 3.8m from the western edge of the upper level projecting eave.

The extent of non-compliance with the 8.5m maximum building height development standard is highlighted in the Architectural Plans prepared by EJE Architecture, extracts of which are provided in Figures 1 and 2, below.



Pursuant to clause 4.6(4) of PLEP 2014, consent can only be granted if the consent authority is satisfied that the applicant's written request to vary the development standard has addressed the criteria of clause 4.6(3) of PLEP 2014. Clause 4.6(3)(a) of PLEP 2014 requires the applicant to demonstrate 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 building height 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 Avalon Beach Locality is identified in clause A4.1 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 development has a maximum height of two storeys in any one place and sits in a landscaped setting. The pole style development ensures that there is minimal site disturbance, and in turn, minimal disruption of surrounding vegetation, ensuring that the development is appropriately integrated with the landscape.

A number of significant canopy trees are located on the site and surrounding land, and the resultant development will remain below the canopy of these surrounding trees.

The proposed development is well articulated, with a relatively modest footprint. The majority of the non-compliant element is associated with a light-weight roof that projects over an elevated deck. The architectural style of the additions is consistent with other pole style homes within the locality, which is a largely consequence of the significant slope of the land.

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

Comment: 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 non-compliant portion of the development does not give rise to any unreasonable impacts upon surrounding properties or nearby public land. Whilst the development results in

additional overshadowing of the property to the south, the adjoining property retains in excess of 3 hours of direct sunlight to areas of open space and windows of living rooms.

The height of the development does not give rise to any unacceptable visual or acoustic impacts, noting that the height in some way benefits the amenity of the property to the south, by creating greater spatial separation in the vertical plane to avoid any sense of overlooking between properties.

Visually, the resultant development also sits comfortably on the land between the upper adjoining dwelling to the north at 76 Chisholm Avenue and the lower adjoining dwelling to the south at 80 Chisholm Avenue, and the scale of the development is not dissimilar to both adjoining dwellings that comprise two storey dwellings partially elevated on posts/piers.

Whilst the maximum height of the development is increased as a result of the proposed works (due to the slope of the land), the new roof forms are maintained below the maximum RL of the existing roof that is to be retained, such that the new works will not appear to be non-compliant as seen from the public domain.

Overall, the proposal is compatible with the height and scale of nearby development.

(c) to minimise any overshadowing of neighbouring properties,

Comment: The proposed development will result in additional overshadowing of the adjoining property to the south at 80 Chisholm Avenue throughout the day in mid-winter. However, as demonstrated by the Shadow Diagrams prepared by EJE to accompany the application, more than 3 hours of direct sunlight will be maintained to the primary area of private open space and windows associated with living rooms between 9am and 3pm, such that compliance with the requirements of P21 DCP is nonetheless achieved.

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

Comment: As a result of an inspection of the site and review of the Architectural Plans by EJE Architecture, it is unlikely that the proposal will result in any unreasonable impacts upon views, noting that views from adjoining properties are not obtained over the portion of the site where the development is to occur.

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

Comment: The proposed development has been designed to allow for the current occupants of the dwelling to age in place, with the primary living area and master bedroom located on the one level. Whilst this results in a breach to the height plane, the non-compliance occurs due to the significant slope of the land and the levels of the existing dwelling, as opposed to an excessive or extravagant floorplan.

The proposed pole style design solution is highly responsive to the topography of the land, with minimal site disturbance on the environmentally sensitive site.

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

Comment: The proposed development is well articulated, with deep balconies and awnings on the western façade to promote self-shading and to ensure that the development is recessive to vegetation as seen from the Pittwater Waterway. Furthermore, the light-weight construction methodology of the proposed additions ensures that site disturbance is minimised to allow for the retention of all existing vegetation on the site.

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

Clause 4.6(3)(b) of PLEP 2014 requires the applicant to demonstrate 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 height standard are as follows:

1. Topography

The subject site is extremely steep, with a fall of approximately 18m from the street frontage down to the rear, and a slope in excess of 38%. The impact that the slope of the land has upon the height of development is acknowledged by PLEP 2014 by virtue of clause 4.3(2D), which provides a 10m height limit for limited portions of dwellings on land with a slope in excess of 30%.

Upon review of the provisions of clause 4.3(2D) of PLEP 2014, the 10m variation would be reasonably applied in this instance, noting that the slope of the land qualifies, the portion of the development that protrudes above the height plane is reasonably described as minor, and consistency with the height objectives is nonetheless achieved.

Whilst the development extends 1.685m above the 10m height limit, the area/portion of the roof eave above the 10m height plane is comparably nominal, as highlighted in Figure 2, above.

Compliance with the 10m height limit of 4.3(2D) of PLEP 2014 would avoid the rigour of clause 4.6, however it would not result in a better planning outcome. Rather it would result in an irregular shaped roof form or an unnecessary cut out centrally along the western edge of the roof plane in response to the levels of an existing retaining wall, at a point in the building that is not visible from Chisholm Avenue or either dwelling to the north or south.

The steep terrain of the land somewhat restricts access between the primary internal living area on the upper level and the primary area of private open space within the rear yard of the property. The proposed development seeks to rectify this problem by providing an area of covered open space to the west of the existing upper level living area, consistent with the provisions of clause C1.7 (Private Open Space) of P21 DCP, which prescribes that dwellings are to be designed so that private open space is directly accessible from living areas enabling it to function as an extension of internal living areas.

2. Characterisation of development

The proposed development is appropriately characterised as alterations and additions, and can be broken into three separate components, namely:

- the northern extension for the kitchen at the upper floor and an ensuite at the lower floor,
- the southern extension for the master bedroom at the upper floor and a third bedroom and bathroom on the lower floor, and
- the provision of elevated decks to the western façade at both the upper and lower floors.

These components have been designed to align with the client's brief:

- to provide all primary living areas and a master suite at the upper level, to allow the occupants of the dwelling to age in place, and
- to provide both shade from the western sun and an accessible area of private open space adjacent to the upper level living areas.

The proposed additions are relatively modest, resulting in a three bedroom dwelling on a significantly sloping site where the existing dwelling is primarily retained. The depth of the upper floor is comparably limited and cannot be described as excessive or overly generous in its proportions, particularly when compared to the size and scale of immediately surrounding dwellings and those within the Avalon Beach locality as a whole.

The proposed development is a genuine claim for alterations and additions to the existing dwelling and the non-compliance with the building height can be equally attributed with the need to marry with the levels of the existing dwelling and the significant slope of the land.

Allowing for the development to appropriately respond to the Applicant's circumstances and the individual context of the site, including the levels of the existing dwelling and the steep 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 arises as a result of the need/desire to more readily comply with the provisions of Council's DCP 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.

Under the provisions of clause 4.6(4)(a) of PLEP 2014, consent must not be granted to a proposal that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for the zone in which the development is to be carried out.

As identified above, the proposed development is consistent with the objectives of the building height development standard. Furthermore, the proposal is consistent with the objectives of the C4 Environmental Living zone, as follows:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

Comment: The proposed development does not give rise to any unreasonable environmental impacts and maintains consistency with both the existing and desired future character of the Avalon Beach Locality and the Chisholm Avenue streetscape. The proposed development will sit harmoniously on the site and in its wider context.

- *To ensure that residential development does not have an adverse effect on those values.*

Comment: The proposed development will not have any adverse impacts upon the special values of the site. Specifically, the proposal does not result in any adverse impacts upon the surrounding natural environment, with minimal site disturbance and no vegetation removal. Furthermore, the visual impact of the development remains minimal, with appropriate articulation and shade elements to ensure that the dwelling remains secondary to landscaping as seen from the waterway.

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

Comment: The resultant development remains a single dwelling, consistent with the low density character of the locality. The proposed pole-style additions ensure that site disturbance is minimised and the resultant development is of an architectural style that is characteristic of the steeply sloping locality.

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

Comment: The proposed development allows for vegetation on the site to be maximised, with no removal of existing vegetation.

Council can be satisfied that the proposal is in the public's interest, in so far as it is consistent with both the objectives of the zone and the objectives of the maximum height limit.


concurrence

Pursuant to clause 4.6(4) of PLEP 2014, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained. In accordance with Council's DDP Charter (in response to advice received from the Department of Planning, Industry and Environment, dated 2 November 2021), applications for Class 1 buildings with a variation greater than 10% to the building height development standard within PLEP 2014 may be determined by the DDP.

As such, the Secretary's concurrence can be assumed by the DDP in this instance.

conclusion

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 building height development standard.



Rebecca Englund
B Arch Studies | M Plan

Director | Northern Beaches Planning