

**REQUEST FOR A VARIATION TO DEVELOPMENT STANDARD**

**CLAUSE 4.3 MAXIMUM BUILDING HEIGHT PURSUANT TO  
CLAUSE 4.6 OF PITTWATER LOCAL ENVIRONMENTAL PLAN  
2014**

**ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING  
AT 20 PALM BEACH ROAD, PALM BEACH.**

**MODIFIED ROOF FORM IN SOUTH EASTERN CORNER OF THE  
SITE**

**1. Introduction**

Clause 4.6 of Pittwater Local Environmental Plan 2012 (PLEP2014) allows for flexibility in the application of certain development standards to achieve *"better outcomes for and from development by allowing flexibility in particular circumstances."*

The proponent seeks approval for a new modified section of roof which is proposed in part, to extend above the maximum permitted building height of 8.5m. The subject land and neighbouring sites are steeply sloping, which has resulted in many dwellings exceeding the maximum height limit due to the topography of the land.

As detailed in this clause 4.6 submission, strict numerical compliance with the clause 4.3 maximum 8.5m building height is unreasonable and unnecessary in the circumstances and a better planning outcome is achieved, by supporting the requested variation. Notwithstanding the height encroachment, the proposal achieves the objectives of the building control applying to the site and the E4 Zone objectives, without impacting on neighbour amenity, the environment or the streetscape.

This assessment has taken into consideration judgements contained in Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 11 and Samadi v Council of the City of Sydney [2014] NSWLEC 1199 and RebelHM Pty Ltd Neutral Bay v North Sydney Council [2019] NSWLEC 130.

**2. The relevant development standard**

Clause 4.3 of PLEP2014 sets out requirements in relation to height of buildings and prescribes a maximum building height of 8.5m for the subject land. Building height is measured as height above existing ground level, to the highest point of the building. The building height standard is designed to provide for a building scale of predominantly 2 storeys, with potential for an attic level above the second storey. The

predominant height of buildings within the immediate locality is 2 to 3 storeys.

The relevant objectives of this clause are;

#### *4.3 Height of buildings*

*(1) The objectives of this clause are as follows—*

- (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.*

### **3. Requested variation to the standards**

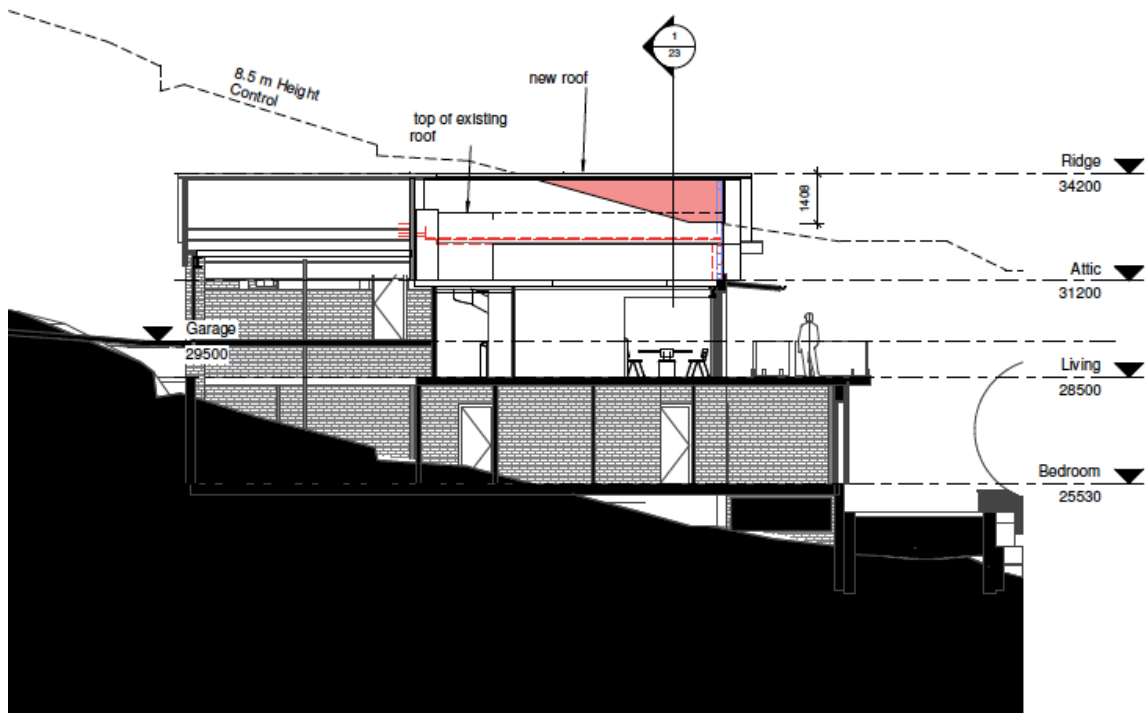
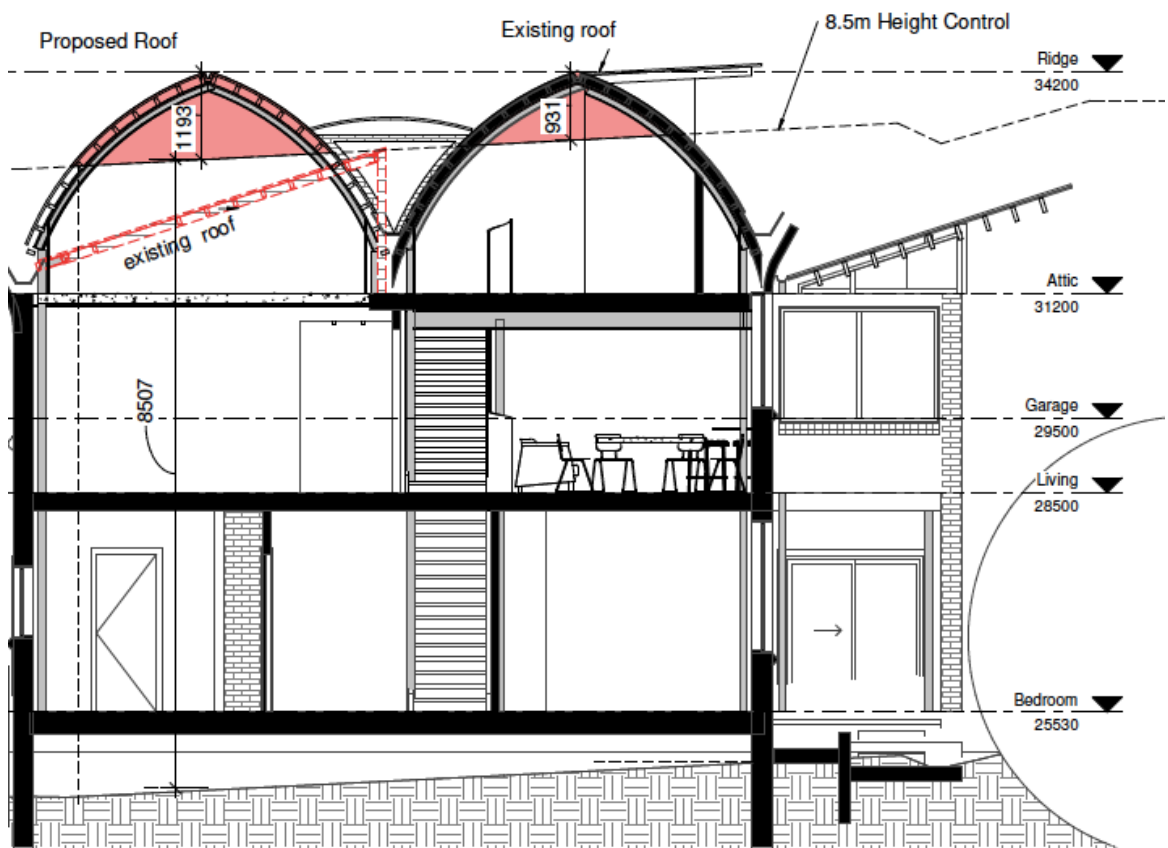
The proponent seeks an increase in maximum building height to allow for a maximum height of 10.27 metres. This occurs in the apex of the roof and is at the same height (RL) as the existing roof. Due to the topography, which falls from west to east with a fall of approximately 22%, the apex of the roof rises above the maximum height limit because the roof sits above the established building platform which in turn sits over the falling topography.

The greatest building height encroachment arises from the proposed apex of the roof as shown on the drawings. An extract of the drawings is provided in Figure 1 and Figure 2. The apex of the modified roof is located away from the side boundaries. The shape, height and form match the existing and distinctly shaped vaulted roof forms present on the dwelling. As shown in the Figures below, the new modified roof is to be a continuation of the existing roof. Therefore, to ensure architectural integrity, the same ridgeline RL must be carried through. As the roof reaches the rear of the dwelling where the land below falls away, the height exceeds the maximum 8.5 metre limit however it is consistent with the existing height of the vaulted roof of the dwelling.

The roof contributes to the character of this part of Palm Beach and the colours, materials and form are recessive in nature and reduce the prominence of the roof when viewed from afar. The proposal will integrate into the existing roofscape. The overall generally modest extent of height exceedance is illustrated in the drawing shown in red below, in Figures 1 and 2.

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**Figure 1 –Building Height Encroachment shown in section**



Height long section1  
1 : 100

**Figure 2 – Building Height Encroachment shown in plan view.**

#### **4. Requirements of clause 4.6 – Exceptions to development standards**

##### **Objectives of clause 4.6**

The objectives of clause 4.6 of the PLEP 2014 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."*

The development will achieve a better outcome in this instance as the site will provide for slightly increased additional floorspace within a modified roof form proposed at the rear of the site, which:

- complements the existing dwelling,
- increases amenity for the occupants,
- maintains all landscaped areas around the dwelling,
- is already largely screening by large trees which surround the site and when viewed from the east is screened by existing built forms and;
- does not result in adverse impacts to any surrounding property,
- is consistent with the stated objectives of the E4 Environmental Living Zone, which are noted as:

- a) *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- b) *To ensure that residential development does not have an adverse effect on those values.*
- c) *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- d) *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

The proposed modified roof form at the rear of the dwelling will be located over the existing building footprint and will provide a bulk and scale which is in keeping with the existing building and surrounding development, with a palette of materials and finishes which is consistent with the existing dwelling, in order to provide for high quality development that will enhance and complement the locality.

Notwithstanding the non-compliance of the proposed dwelling with the maximum overall height the new roof form will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood. The siting of the proposed development will mitigate any adverse impacts of overshadowing and loss of views for any neighbouring properties.

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## **5. That compliance with the development standard is unreasonable or unnecessary**

Clause 4.6(3) requires that a request to contravene the control, to demonstrate:

- "(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."*

In considering whether to grant consent for a development that contravenes a development standard, a consent authority must be satisfied that:

- "(i) the applicant's request has adequately addressed the matters required to be demonstrated 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 to be carried out, and*
- (iii) the concurrence of the Secretary has been obtained.*

These matters are addressed below in **Sections 5 and 6**.

Several decisions from the Land and Environment Court over recent years have provided guidance on how variations under Clause 4.6 of the Standard Instrument including *Initial Action Pty Ltd vs Woollahra Municipal Council* [2018] NSWLEC 11 and *Samadi v Council of the City of Sydney* [2014] NSWLEC 1199. This

It is considered that enforcing compliance would be unreasonable and unnecessary in this case, for the following reasons which are a written response in addressing to (i) above.

### **The Public Interest**

#### ***Consistency with zone objectives***

The proposal achieves the objectives of the E4 Environmental Living Zone. The zone objectives of the E4 Zone are noted and commented upon below:

- a) To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
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The proposal is considered to be low key as it retains the use of the site as a single detached dwelling, the dwelling remains well screened from its neighbours by the retention of all perimeter plantings and retains a low profile on the slopes given its existing (and proposed) bulk, height and scale.

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

This assessment has concluded that the proposal will not have an adverse effect on these values. The proposal is a low density development within a landscaped site and is consistent with the locality.

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

The site will continue to support landscaping on and around its boundaries. The proposed modified roof form sits over the existing footprint of the dwelling.

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

The proposed modified roof form will have no impact upon foreshore vegetation and wildlife corridors.

### ***Consistency with the objectives of the standard***

The proposal achieves the objectives of the maximum building height control.

The objectives of the building height control are noted and commented upon in the following assessment.

The objectives for the height control are as follows:

- (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*
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The proposal achieves the above objectives as detailed in the following assessment.

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

The proposal is consistent with the existing height and scale of the existing building and that of the surrounding development. The dwelling is a maximum of two stories and is relatively modest in size when compared to many surrounding dwellings. The proposed alteration to the roof will not result in the loss of any landscaped area around the dwelling as the proposal is confined to the footprint of the building.

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

Building bulk, scale and height is similar to the existing established built form on the site and on surrounding dwellings. As a consequence, the dwelling will not be visually obtrusive in the streetscape, or as viewed from the eastern side (Ocean Avenue). The new modified roof will not be visually dominant when viewed from outside the site as it will be the same height as the current roof, which cannot be easily seen.

Proposed bulk and scale substantially accords with the bulk and scale anticipated by the development controls and is generally consistent with prevailing built form, particularly when measured against the newer dwellings in the locality.

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

Shadow diagrams demonstrate that there is no unreasonable overshadowing as a result of the small encroachment.

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

The proposal allows for the retention of views across the property. Refer to Figure 8 of the SEE.

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

The existing building responds to the natural topography with only a small encroachment of the roof over the 8.5 metre height limit as shown on the drawings. The proposal seeks to emulate the same shape, form and height and therefore will encroach the height limit to a similar extent.

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

The proposed modified roof form is of the same colours and finishes as the existing building which are recessive and are not dominate in the view of the site.

### ***Compliance would result in a poorer planning outcome***

One of the objectives of Clause 4.6 is to allow better planning outcomes to be achieved. In this case a substantially better planning outcome is achieved by allowing for some flexibility in relation to the building and wall height controls.

Locating the new floor area within a modified roof form which is wholly over the footprint of the building complements established building alignments, optimises landscaping on the site, maintains established streetscape and eliminates any increase in building footprint.

Relocating any of the proposed floor area to any other part of the site would reduce the landscaped area of the site or alter the generous front setback of the dwelling to the street.

Lowering the whole of the building is not possible to enable compliance due to the established building platform and would substantially increase the extent of excavation and disrupt the compatible levels between the ground floor level and the level of the rear yard. Pushing the roofline back so that it complies would be out of alignment with the other vaulted roof and not be a good urban design outcome.

Retaining the roof profile as it currently exists does not present an opportunity to increase the amenity of the attic space which can be achieved with minimal gain in terms of building bulk and scale. The opportunity for a family to remain in a home and to increase amenity and accommodation where it has been shown to have a minimal environmental impact and produces an excellent design outcome is a good planning outcome.

A superior planning outcome is achieved by allowing some flexibility to maximum building on this steeply sloping site.

### ***Lack of impact***

As noted in the above discussion and in the Statement of Environmental Effects, despite the modest numerical building and height non-compliance, the environmental and visual qualities of the locality, streetscape and amenity of surrounding properties will be maintained to substantially the same extent, as a development that is of a numerically compliant building height.

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## **6. There are sufficient environmental planning grounds to justify contravening the development standard**

The planning objectives of the subject development standards seek to achieve predominantly two storey dwellings with a pitched roof form. The proposal achieves the objectives of this development standard in the context of a steeply sloping site, where a better planning outcome has already been achieved by concentrating development on the more gently sloping portion of the site. However, where the building overlaps a fall in the topography, there are parts of the building where the roof exceeds the control. This is shown in Figures 1 and 2 above. The new modified roof exceeds the height control in the same area of the site due to the drop in the topography below. The proposed dwelling is two storey in form, with the increased habitable area located within an attic form. As shown in the sections provided, there is sufficient head height within the attic which complies with the height limit of 8.5 metres however the design integrity of the building relies on the new modified roof form matching that of the existing dwelling.

Strict application of the maximum building height standard would result in changes to the design that result in a less satisfactory planning outcome from a visual point of view. A positive planning outcome is achieved in this instance by not strictly complying with the building and wall height standard, as demonstrated in this clause 4.6 submission and in the Statement of Environmental Effects.

Supporting a building design that suitably responds to site constraints and context, without adversely impact on the environment, character or amenity of the locality is appropriate and by also providing for a better planning outcome, justifies contravening the subject development standard in this instance.

Council must also be satisfied that the proposal meets the objectives of the standards and the objectives of the subject zone. The proposal meets the objectives of the maximum building height standard, as discussed above and as detailed in the SEE and also meets the objectives of the E4 Environmental Living Zone.

Also, in acting in the Secretary's concurrence role, Council must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - (b) the public benefit of maintaining the development standard, and*
  - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*
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In relation to (a), the proposed height variations are generally minor and are not of any State or regional significance.

In relation to (b), there is no public benefit from maintaining the standard as there is no adverse impact on the public domain or neighbour amenity, the proposal is generally consistent with other relevant planning controls and a better planning outcome is achieved. Building height standards should be applied with some degree of flexibility on excavated and sloping sites. Such an approach is in the interest of orderly and efficient development of land.

As noted above enforcement of the control would result in a poorer planning outcome, which is not in the public interest.

In relation to (c), there are no other matters that require consideration.

When assessed against the relevant Objects of the Environmental Planning & Assessment Act 1979, (NSW) outlined in s1.3, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

The proposed new modified roof form on the existing dwelling will result in a dwelling which is compatible in scale to its surrounding neighbours, which promotes the orderly & economic use of the land (cl 1.3(c)).

Similarly, the proposed alterations and additions to the existing dwelling will provide for an appropriate level of family accommodation and improved amenity within a built form which is compatible with the streetscape of Palm Beach Road, which also promotes the orderly and economic use of the land (cl 1.3(c)).

The proposal is considered to promote good design and amenity to the local built environment as appropriate views, solar access and privacy will be maintained for the neighbouring properties (cl 1.3(g)).

## **7. Conclusion**

This development proposes a departure from the maximum building height control, with the proposed new addition having a maximum building height of 10 .27 metres. The existing building already exceeds this control in the same area of the site due to the shape of the roof.

This variation occurs as a result of the sloping topography of the site and the established building platform already on the site.

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This objection to the maximum building height control specified in Clause 4.3 of the Pittwater LEP 2014 adequately demonstrates that that the objectives of the standard will be met and that strict compliance with the maximum building height would be unreasonable and unnecessary in the circumstances of this case.

The bulk and scale of the proposed development is appropriate for the site and locality. The proposed building form and height is consistent with the established 2 to 3 storey building scale in the locality and is compatible with the existing and desired future character and streetscape, as envisaged in the planning controls for the Palm Beach locality and the E4 Environmental Living Zone.

The development, in the form proposed, responds to site topography and the siting of neighbouring dwellings and provides for an appropriate building typology, density, scale and height, with no material environmental, streetscape or amenity impacts. The proposal is consistent with the objects of the EP&A Act. Requiring 100% compliance is unreasonable and unnecessary in this case, as it would not result in any material benefit and in relation to urban design or amenity. As demonstrated in this submission, requiring strict numerical compliance would create a less desirable planning outcome.

Some flexibility with respect to the application of the building and height control is appropriate on sloping sites and where development context, such as the form and location of the established built form suggests a more considered application of development standards. The additional building height, above the nominated standards is modest in extent. The only material height encroachment relates to the apex of the roof form which arises from a drop in the level of the land at this location. The proposed modified roof form is entirely located over the existing building footprint and seeks to mimic the same shape and form of the existing vaulted roof in order to provide a satisfactory urban design outcome.

The additional building height has no material effect on perceived building bulk and scale, the desired future character of the area, the streetscape, or the residential amenity of neighbouring properties.

The proposal achieves the objectives of the E4 Environmental Living Zone and the building standard, despite the numerical non-compliance. The requested modest variation to the 8.5m maximum building height standard is appropriate and worthy of support.

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**Ingham Planning Pty Ltd**  
**February 2020, revised May 2020.**

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