

# **Clause 4.6 Variation Request Clause 4.3 Height of Buildings**

**7 MINKARA ROAD, BAYVIEW Lot 40 DP 28908**

**Date:** 22nd July 2019

**Prepared By:** Stephen Crosby & Associates Pty. Ltd.  
PO Box 204, Church Point, NSW 2105

**For:** J. Dick

## **INTRODUCTION**

This Clause 4.6 request is submitted to Northern Beaches Council in support of Development

Application no. 2019/0055 for a proposed new dwelling house, with swimming pool and spa, and driveway and carport at 9 Minkara Rd Bayview.

Clause 4.6 of the Pittwater Local Environmental Plan 2014 enables Northern Beaches Council to grant consent to the development even though the dwelling contravenes a development standard. The clause aims to provide flexibility in applying certain development standards to achieve better outcomes for and from the development.

This Clause 4.6 variation request relates to the development standard for height under clause 4.3 of the Pittwater LEP 2014.

This clause 4.6 variation request demonstrates that compliance with the height standard is unreasonable and unnecessary in the circumstances of this case, and there are sufficient environmental planning grounds to justify contravention of the standard.

This clause 4.6 variation request demonstrates that the proposed development:

- Satisfies the objectives for development standard clause 4.3 PLEP 2014 Building Height,
- Satisfies the objectives of the RU2 Rural Landscape zone under PLEP 2014,
- Is consistent with applicable state and regional planning policies,
- Provides for a better planning outcome,
- Has sufficient environmental planning grounds to permit the variation, and
- Is in the public interest.

The DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.3 of the Pittwater LEP 2014.

#### VARIATION TO CLAUSE 4.3 HEIGHT OF BUILDINGS

Clause 4.3(2) of the Pittwater LEP 2014 states, "The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map". The maximum height on this map for this site is 8.5m.

In accordance with the definition of "building height" in PLEP 2014 the proposed development has a maximum building height of 9.8m, noted in Council's assessment Ref 2019/392742, being the tallest part of the proposed southern roof ridge from the ground. The variation to the PLEP maximum height is 1.3m for the building, and 1.4m for the chimney noted in definitions of building height as excluded.

#### JUSTIFICATION FOR CONTRAVENTION OF THE DEVELOPMENT STANDARD

**Clause 4.6(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant to justify the contravention of the development standard by demonstrating:**

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

**Clause 4.6(4) Development consent must not be granted for development that contravenes a development standard unless:**

(a) the consent authority is satisfied that:

(i) the applicants written 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 proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

**CLAUSE 4.6(3)(a) COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY**

The objectives of the standard are achieved notwithstanding non-compliance with the standard. The objectives of the standard 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.

**Objective (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 for a residential dwelling house of two to three stories, stepping down the site and excavated into the hillside to maintain the building height limit of 8.5m. The variation to the height standard is for a small section of the southern facade at its eastern end where the wall height exceeds the 8.5m height limit by 0.4m, and the roof eaves overhang exceeds the 8.5m height limit by 1.3m. The chimney on the south facade exceeds the height limit by 1.4m however chimneys are excluded from building height as defined in the PLEP 2014.

The bulk and scale of the proposed dwelling house is consistent with other larger residential dwellings on the larger Rural Landscape zoned site in the immediate vicinity, and the AVO Aged Care Facility opposite the site, where residential buildings are of two to three stories.

The proposed residential dwelling house shall sit into the hillside with its roof ridges below the tree canopy and 54m from the street alignment. The existing woodland vegetation to be retained on site beyond the required bushfire asset protection zone shall ensure the dwelling is screened from the road and properties on the other side of Minkara Road.

The ridge point that exceeds the 8.5m building height limit is 50m from the neighbouring property boundary to the south and the retained existing natural woodland vegetation shall screen the

dwelling from this site.

By creating a dwelling house of two to three stories the accommodation can be provided on a reduced footprint thereby reducing the extent of asset protection zones and maximising the extent of existing natural vegetation to be retained on site.

The proposal includes environmental measures such as rainwater harvesting and reuse, sustainable effluent irrigation reducing the environmental impact.

The proposal is not in any heritage or conservation area.

The proposal includes one standard residential driveway crossing, approved by Council's Engineering Department, with no other impacts of pedestrian or traffic movement in the neighbourhood.

As, such, the proposal's height, whilst seeking a variation to the height control, still results in a development which is consistent with the expectations for land in the Bayview, and remains consistent with the desired character of the Ingleside locality.

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

The proposal is considered compatible with the height and scale of nearby development with many two storey residential dwellings in the locality and the Minkara Aged Care Facility across Minkara Road having up buildings to three stories in height.

The significant distances between the proposed dwelling and its site boundaries, and adjoining buildings, reduces the visual significance of the height variation affecting a small part of one of the two wings of the building.

The significant existing tree cover between the site of the proposed dwelling house and the lot boundaries shall ensure the building will only be visible in small part, if at all, from neighbouring properties rendering it compatible with the other buildings in this bush locality.

The design, siting, scale and proposed uses result in an overall development which is capable of existing together in harmony with its immediate and wider environment, being adjacent to natural environment, as well as residential properties in the surrounding area.

Harmony is achieved between the proposed development and surrounding land uses, as well as the character of the area through height, bulk and scale, which are sympathetic to development in the locality.

The development proposes to maintain the existing natural woodland vegetation beyond the areas of the site to be used for the residence with its required bushfire asset protection zone (APZ), the on-site wastewater drain field, driveway and carport.

The proposal has been designed to be compatible with its context and surrounding development and is therefore consistent with the Planning Principle for compatibility. The proposed development is in harmony with the buildings surrounding it and will not have any undue physical impacts on surrounding sites.

**Objective (c) to minimise any overshadowing of neighbouring properties.**

The proposal will not result in any overshadowing of neighbouring properties due to the large distances, over 50m to the lot boundaries to the east and south, and the rising slope of the site to the west.

Therefore, the variation to the height limit does not result in any overshadowing on neighbouring properties.

**Objective (d) to allow for the reasonable sharing of views.**

Due to the location of this site being just below the Bayview ridgeline, the proposed development, and the minor variation to the height limit, do not result in any view impacts, allowing for the reasonable sharing of views.

The proposal does not interrupt or obstruct any significant views to or from the site or Minkara Road, making the proposed development consistent with this objective.

**Objective (e) to encourage buildings that are designed to respond sensitively to the natural topography.**

The proposed development has been designed to respond sensitively to the natural topography, which slopes steeply away from a level area just below the escarpment along the western site boundary. The dwelling house has been designed to step down the site to respond to the topography as can be seen on the Northern and Southern Elevations on drawings 2416 - DA06A and DA07A.

Dropping the building in the south-west corner to comply with the building height control would create an amenity issue for the occupants as it would create a step in the finished floor levels between the kitchen and adjacent dining room on the ground floor. This would be replicated above in the main bedroom and bathroom and dressing room above on the first floor.

The height variation is largely limited to minor roof elements and can be seen on the South Elevation on drawing 2416 - DA06A.

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

Creating a dwelling house of two to three stories allows the accommodation to be provided on a reduced footprint thereby reducing the extent of asset protection zones and the impact on the natural environment.

The site is not in a heritage conservation area, and does not contain heritage items.

**COMPLIANCE WITH CLAUSE 4.3(2D) of PLEP 2014**

Clause 4.3(2D) of PLEP 2014 states:

(2D) Despite subclause (2), development on land that has a maximum building height of 8.5m shown for that land on the Height of Buildings Map may exceed the height of 8.5m, but not be more than 10.0m if:

(a) the consent authority is satisfied that the portion of the building is minor, and

(b) the objectives of this clause are achieved, and

(c) the building footprint is situated on a slope in excess of 16.7 degrees, and

(d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.

The subject site, whilst meeting most of the criteria, does not meet the criterion under (2D) (c) therefore the maximum building height is 8.5m for the site.

However, given the proposal meets the majority of the criteria and only falls short of item (c) to a minor extent, it is considered that this is a further reason, specific to this site, which renders compliance with the 8.5m development standard unreasonable and unnecessary in the circumstances of this case.

#### **Clause 4.3(2D)**

The maximum permitted height for development on this site is 8.5m under the Height of Buildings Map. The maximum height of the proposed development is 9.8m and therefore does not exceed 10.0m.

#### **Objective (a) the consent authority is satisfied that the portion of the building is minor.**

The extent of the variation is minor, and is for a minor portion of the roof elements in the S-E corner of the dwelling.

#### **Objective (b) the objectives of this clause are achieved.**

Refer to CLAUSE 4.6(3)(a) COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY.

#### **Objective (c) the building footprint is situated on a slope in excess of 16.7 degrees.**

The dwelling has been sited to minimise impacts of the natural environment of the site and whilst the slope of the site in the area of the dwelling does not exceed 16.7 degrees the slope immediately adjacent to the dwelling exceeds 20 degrees. It is considered weight should be given to the varying sloping nature of the site in determining that compliance with the 8.5m height standard is unreasonable.

#### **Objective (d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.**

The proposal has been sited and designed to take into account the slope of the land to minimise the need for cut and fill and to minimise impacts on the natural vegetation.

Given the proposal meets the majority of the criteria and only falls short of item (c) to a minor extent it is considered that this is further reason, unique to this site, which renders compliance with the 8.5m development standard unreasonable in the circumstances of the case.

CLAUSE 4.6(3)(b) ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

In our opinion there are sufficient environmental planning grounds to justify contravening the maximum height development standard in Clause 4.3 of PLEP 2014. Those grounds are:

**Ground 1: Environmental site constraints.**

As outlined previously in this report and the Statement of Environmental effects submitted with the DA, the extent of development on this site is limited by a number of environmental constraints. These include:

- Significant natural vegetation including canopy trees and ground cover plants.
- The steeply sloping topography on a large part of the site.
- Bushfire constraints.
- Effluent disposal and irrigation constraints.
- Visual impact considerations.

The proposal has sought to deal with the issues raised by each of these constraints. In doing so, meeting the requirements of the future occupants whilst also responding to these constraints results in a minor variation to the height limit. The amenity of future occupants is afforded by minimising level changes for the ground and upper floor, but requires a minor variation of the height limit to achieve it.

**Ground 2: Minimising impact on the natural environment.**

The main driver in the proposed development's design has been the need to maintain the unique and distinct landforms and landscape features of the site. Measures to minimise the developments overall impact include:

- Rainwater storage and reuse systems, including swimming pool water filtration for reuse,
- Sustainable on-site effluent treatment and irrigation
- Minimising the development envelope and hence, ecological footprint.

The result is a development design which results in a minor height variation to the height limit by addressing key environmental issues affecting the site.

**Ground 3: Compliance with Clause 4.3(2D) of PLEP 2014**

Given the proposal meets the majority of the criteria and only falls short of item (c) to a minor extent it is considered that this is further reason, unique to this site, to support a variation to the 8.5m building height limit. Compliance with the 8.5m height limit is unreasonable and unnecessary in the circumstances of this case.

CLAUSE 4.6(4)(a)(ii) IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE ZONE AND DEVELOPMENT STANDARD.

**Consistency with the objectives of the development standard.**

The proposed development is consistent with the objectives of the height of buildings standard in clause 4.3, for the reasons discussed previously in CLAUSE 4.6(3)(a) COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY.

**Consistency with the objectives of the zone.**

The proposed development is consistent with the underlying objectives of the RU2 Rural

Landscape zone. The primary driver of the variation is the result of designing a dwelling house with minimal impact on the natural environment whilst maximising occupant amenity. The large majority of the site shall be left in its natural bushland state, with adequate vegetation screening to minimise the visual impact on the development on neighbouring sites or public spaces like Minkara Road.

The provision of a single family home with its associated amenities shall have a minimal impact on public services or public facilities in the area, and shall have a minimal impact of vehicle traffic along Minkara Road. Road access has been approved by Council with a previous consent for a driveway and vehicle crossing into Minkara Road.

The location of the proposed dwelling and swimming pool, with the asset protection zone, will have a positive impact on bushfire protection for neighbouring properties by providing a water source for fire fighting and reducing fuel loads in the immediate vicinity.

The proposed development is of good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying the requirement that the proposal, and the height limit standard variation, are in the public interest.

### **Overall public interest.**

The proposed development is considered to be in the public interest for the following reasons:

- Dwelling houses are a specifically permissible use of the site and consistent with the character of the Ingleside locality.
- The proposal includes bushfire protection and mitigation measures such as water tanks and a swimming pool providing a water source for fire fighting.
- The resultant dwelling with its wastewater irrigation area and asset protection area reduces bushfire fuel loads and provides a bushfire buffer to neighbouring residential properties including the Minkara Aged Care Facility across Minkara Road.

On the basis of the above, we believe that the consent authority can be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the development standard for building height contained in clause 4.3 of the PLEP 2014, and with the objectives of the RU2 Rural landscape zone under the PLEP 2014.

### **CONCLUSION**

The assessment above demonstrates that compliance with the maximum building height development standard in Clause 4.3 of the PLEP 2014 is unreasonable and unnecessary in the circumstances of this case and that the justification is well founded. It is considered that the variation allows an orderly and economic use and development of the land, and that the structure is of good design that will reasonably protect and improve the amenity of the surrounding built environment.

This clause 4.6 variation demonstrates that, notwithstanding the variation to the maximum building height development standard, the proposed development:

- Satisfies the objectives of the development standard for height of buildings in clause 4.3 of PLEP 2014,
- Satisfies the objectives of the RU2 Rural Landscape zone under PLEP 2014,
- Provides for a better outcome,
- Has sufficient environmental planning grounds to permit the variation, and



- Is in the public interest.

As such, the Development Application may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the PLEP 2014.

**STEPHEN CROSBY**