

Clause 4.6 – Exception to a Development Standard (Height of Buildings) under Clause 4.3(2) of Pittwater Local Environmental Plan 2014

For Property

1156 Barrenjoey Road Palm Beach

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CLAUSE 4.6 – EXCEPTION TO A DEVELOPMENT STANDARD IN RELATION TO CLAUSE 4.3(2) – HEIGHT OF BUILDINGS OF THE PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

1.0 INTRODUCTION

This written request is made pursuant to the provisions of Clause 4.6 of Pittwater Local Environmental Plan (PLEP) 2014. A variation is sought in relation to the Height of Buildings Development Standard of Clause 4.3(2) and associated maps of the PLEP, in relation to the proposed demolition of the existing dwelling and the erection of a new dwelling at 1156 Barrenjoey Road Palm Beach (subject site).

Clause 4.6 – Exceptions to Development Standards

- (1) 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.*
- (2) 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.*
- (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 that seeks 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) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) the consent authority is satisfied that:*

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- (i) the applicant's 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 Director-General has been obtained.*
 - (5) In deciding whether to grant concurrence, the Director-General 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.*
 - (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- Note.** *When this Plan was made it did not include all of these zones.*
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
 - (8) This clause does not allow development consent to be granted for development that would contravene any of the following:*
 - (a) a development standard for complying development,*
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to*

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which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4.

COMMENT

This written application seeks an exception to a development standard as the proposal will exceed, in part, the Height of Buildings Development Standard (8.5m above existing ground level) of Clause 4.3(2) of the PLEP 2014 and maps thereunder.

2.0 THE DEVELOPMENT STANDARD AND THE VARIATION SOUGHT

Clause 4.3 – Height of Buildings

(2) 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.

COMMENT

The subject site is located on the Height of Buildings Map (*Height of Buildings Map: Sheet HOB_003*) under the Pittwater Local Environmental Plan. A maximum building height of 8.5m above existing ground level applies to lands within the area “I” on the above Map..



Extract from Pittwater Local Environmental Plan 2014

The following definition of development standard is applicable to the proposal as it is clear that the maximum height limit of 8.5 m is a development standard as defined on the following page –

***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*

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fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) the cubic content or floor space of a building,*
- (e) the intensity or density of the use of any land, building or work,*
- (t) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles.*
- (h) the volume, nature and type of traffic generated by the development,*
- (i) road patterns,*
- 0) drainage,*
- (k) the carrying out of earthworks,*
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) the provision of services, facilities and amenities demanded by development,*
- (n) the emission of pollution and means for its prevention or control or mitigation, and*
- (o) such other matters as may be prescribed.*

3.0 THE OBJECTIVES OF THE DEVELOPMENT STANDARD

The purpose of the Height of Buildings Development Standard is stated in the objectives in Clause 4.3(1) of the PLEP, and is as follows;

Clause 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.*

COMMENT

The proposal is generally consistent with the above objectives as the proposal, by virtue of the fact that the majority of the roof is below the height limit, will remain consistent with the desired character, will remain compatible with the surrounding developments, result in no adverse overshadowing of neighbouring properties, allows for reasonable view sharing, responds, where not constrained by the existing footprint, sensitively to the existing topography and will minimise the potential visual impacts on the natural environment.

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2.0 IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

The following circumstances are relevant to the proposal and support the view that compliance with the development standard for height is unreasonable in the circumstances.

It should also be carefully noted that the proposal although breaching the height control in part, is well below the height limit for majority of the built form and the breach only occurs for a small southern portion of the ridgeline.

The proposal, although breaching the height control will not result in any material impacts in terms of view loss, overshadowing or excessive bulk.

I am therefore of the view that the proposal by virtue of the fact that the majority of the roof area is below the maximum height and that part of the proposal which breaches height control is minor (150mm) and will have no material adverse impacts, is reasonable and compliance with the height control in this case is unnecessary.

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4.0 ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

As described above, the lack of material impacts in terms of view loss, overshadowing, bulk and scale, and the fact that the proposal will be well below the height limit for the majority of the roof area justifies the partial breach of the height control.

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6.0 WILL THE PROPOSAL BE IN THE PUBLIC INTEREST?

In accordance with Clause 4.6(4)(a), Development Consent must not be granted to a development that contravenes a Development Standard unless Council is satisfied in relation to certain matters as follows;

(a) the consent authority is satisfied that:

(i) the applicant's 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 Director-General has been obtained.

COMMENT

The matters required to be addressed by subclause (3) are addressed in Parts 4 and 5 of this submission and are consistent with the objectives of the E4 Environmental Living zone as follows:

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

COMMENT

The proposal will not offend these objectives as the proposal will still enable the protection management and restoration of areas with special ecological scientific, cultural or aesthetic values in the locality whilst at the same time providing residential development of a low density and scale which will not project above the skyline line surrounding the subject site and will satisfactorily integrate with the landscape.

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8.0 IS THE OBJECTION TO THE DEVELOPMENT STANDARD WELL FOUNDED?

I believe that the objection is well founded and the breach of the standard being minor with no material impacts is well founded and worthy of support.

LANCE DOYLE

TOWN PLANNER

Dated: December 2015