

Clause 4.6 Variation to Development Standards (Height of Buildings)

728 Barrenjoey Road, Avalon Beach NSW 2107

Proposed Alterations and Additions to Existing Dwelling

OVERVIEW

Clause 4.6 exists within the Pittwater Local Environmental Plan 2014 (*PLEP2014*) and the standard Instrument to allow for consideration of variations specific to development standards contained within the LEP. Given the large and varied demographic and topographic within NSW differing variations are allowed within LEP's to allow for exceptions of development standards.

The objectives of the Clause 4.6 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.*

It is requested that a Clause 4.6 variation at 728 Barrenjoey Road, Avalon Beach is considered by council when considering Clause 4.3 Height of Buildings. The minor variation of the height of buildings will result in an improved planning outcome when compared to the existing limit of 8.5. The minor variation of **5%** still allows the development to achieve the underlying purpose of the standard.

CLAUSE 4.6 VARIATION TO DEVELOPMENT STANDARDS

| 4.6 | Exceptions to development standards | |
|-----|-------------------------------------|---|
| | (1) | (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) | (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) | (3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that— (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and (b) there are sufficient environmental planning grounds to justify the contravention of the development standard. <i>Note—</i> The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b). |
| | (4) | (4) The consent authority must keep a record of its assessment carried out under subclause (3). |
| | (5) | (Repealed) |
| | (6) | (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 C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 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. <i>Note—</i> When this Plan was made it did not include all of these zones. |
| | (7) | (Repealed) |

| | | |
|--|-----|--|
| | (8) | (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 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, (caa) clause 5.5. |
|--|-----|--|

This application therefore submits a written request, as detailed below, seeking to justify the contravention of Clause 4.3 of *PLEP2014*. The NSW Department of Planning and Infrastructure has provided guidance on how to prepare Clause 4.6 variations, this document has been based on these guidelines.

1. Description of the site

The site is at 728 Barrenjoey Road, Avalon Beach NSW 2107 and can be legally identified as Lot 53 in DP 11909. The site spans approximately 866.3 sqm.

The site is bounded by residential properties and overlooks Careel Bay Playing Fields to the west, with Barrenjoey Road forming the primary boundary. The existing dwelling is set back from the road, surrounded by mature gum trees, ensuring privacy and alignment with local setback controls. Vehicular access to the site is provided via a driveway leading to a lock-up garage, while pedestrian access is available directly from Barrenjoey Road to the main entrance of the dwelling.

2. Describe the proposed development

The proposed development is the alteration and additions to existing dwelling including a new second storey addition, internal alterations and additions and the construction of a new front deck and entry.

3. What is the environmental planning instrument/s you are seeking to vary?

Pittwater Local Environmental Plan 2014

4. What is the site's zoning

The site is zoned C4 – Environmental Living.

5. Identify the development standard to be varied

Clause 4.3 (2) the maximum height of building.

| Height of Buildings | | |
|---------------------|-----|---|
| 4.3 | | The objectives of this clause are as follows— |
| | (1) | (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. |
| (2) | The height of a building on any land is not to exceed the maximum height shown for the land on the <i>Height of Buildings Map</i> . |

6. Identify the type of development standard

Numerical

7. What is the numeric value of the development standard in the environmental planning instrument?

The maximum height of building for the subject site is **8.5m**.

8. What is the difference between the existing and proposed numeric values? What is the percentage variation (between the proposal and the environmental planning instrument)?

| Height of Buildings | | | |
|---------------------|-------------------------------|-----------------|----------------------|
| Current Height | Maximum Height under MLEP2013 | Proposed Height | Percentage Variation |
| 6.690m | 8.5m | 8.925m | 0.425m = 5% |

9. Visual representation of the proposed variation (if relevant)



Figure 1 – Screenshot of Longitudinal Section

10. How is the compliance with the development unreasonable or unnecessary in the circumstances of this particular case?

1. **Topography of the site** – The development site features a significant slope, and strict adherence to the site's natural contours would not only be impractical but also make compliance with height controls unfeasible, given the physical constraints imposed by the topography.
2. **Compliance with other controls** – The proposal is compliant with FSR and other built on area controls showing adherence to key objectives, so enforcing strict height adherence would be unreasonable.
3. **Impact on adjoining sites** – If the proposal was to comply with the height of building controls, the impact on amenity of the adjoining sites would remain unchanged, as such it would be unnecessary to comply.
4. **Improved modern living standards** – The proposal allows for better modern living standards by providing improved internal amenity, if compliant it would unnecessarily decrease the quality of the bedroom created.

- a. *Are the objectives of the development standard achieved notwithstanding the non-compliance? (Give details if applicable)*

The objective of this clause is:

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

Comment: The proposed roof addition to the first-floor retains much of the existing gable roof form from the existing building. The roof extension is located towards the rear of the building and the non-compliance is not recognisable from Barrenjoey Road. The roof extension does not affect the existing streetscape which satisfies the objective of the desired future streetscape character for the subject site in accordance with the PLEP2014.

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

Comment: The addition of the proposed gable roof extension ensures that the proposed building is compatible with the height and scale of surrounding and nearby development by maintaining a consistent architectural form that aligns with the local streetscape. The gable roof design complements the pitched rooflines commonly found in the area, harmonising with the scale and proportions of neighbouring properties. This approach ensures the building integrates seamlessly into its context without appearing visually dominant or out of character.

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

Comment: The proposed roof addition does not create any excessive additional shadow over the adjacent public or private open space. The proposal continues to provide sunlight access to private open spaces and to habitable rooms of adjacent dwellings just like the existing dwelling. Hence, the non-compliance satisfies the objective.

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

Comment: The proposed roof extension has been carefully positioned to avoid any impact on existing views from neighbouring properties or public areas. The extension ensures that key views, including those of Careel Bay and surrounding landscapes from the dwellings along Dolphin Crescent behind the site, remain unobstructed. The design has been developed to respect view-sharing principles and maintain the visual amenity for neighbouring properties.

(e) to ensure the height and bulk of any proposed building or structure in a recreation or conservation zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment: The roof extension has been designed with a strong emphasis on preserving the natural features of the site. The modest increase in height aligns with the existing topography and does not disrupt the surrounding vegetation or bushland. This careful consideration ensures that the development integrates harmoniously with the local environment and does not conflict with the surrounding conservation values.

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

Comment: The design of the roof extension minimises any visual impact by adopting a low-profile form that complements the existing building. The choice of materials and finishes ensures the extension blends seamlessly with the existing structure, preserving the character of the site and surrounding area. The development does not intrude on the visual amenity of the natural environment or any nearby heritage elements, maintaining a balanced and cohesive streetscape.

- b. *Are the underlying objectives or purpose of the development standard not relevant to the development? (Give details if applicable)*

Comment: Not applicable.

- c. *Would the underlying objective or purpose be defeated or thwarted if compliance was required? (Give details if applicable)*

Comment: Not applicable.

- d. *Has the development standard been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard? (Give details if applicable)*

Comment: Not applicable.

- e. *Is the zoning of the land unreasonable or inappropriate so that the development standard is also unreasonable or unnecessary? (Give details if applicable)*

Comment: Not applicable.

It is to note that not all 5 conditions listed above a) – e) must be satisfied for a Clause 4.6 written request. Satisfaction of one condition is sufficient. The purpose of this written request is focusing on the objectives of the development standard and how they are achieved notwithstanding the non-compliance of this proposal.

11. Are there sufficient environmental planning grounds to justify contravening the development standard?

The proposal has demonstrated that it enables reasonable view sharing and solar access for adjoining neighbouring sites, whilst minimising overshadowing and potential impact on privacy. Moreover, it is compatible with the height and scale of existing surrounding development, namely the streetscape of Barrenjoey Road and the desired future character of the area. As such, there are no environmental planning grounds to not enable the proposed minimal variation to the development standard.

CONCLUSION

In conclusion, the proposed height variation at 728 Barrenjoey Road, Avalon Beach is a thoughtfully designed response to the site's inherent topographical challenges. The 5% variation from the 8.5m height limit aligns with the objectives of Clause 4.3 of the Pittwater Local Environmental Plan 2014, ensuring the development is consistent with the desired character of the area and compatible with nearby buildings. The design has been carefully crafted to minimise overshadowing, preserve view-sharing, and maintain harmony with the existing streetscape, while also enhancing the internal amenity of the dwelling. Additionally, compliance with all other relevant planning controls demonstrates that the proposal remains aligned with broader environmental and planning principles.

This minor variation is well-justified on environmental planning grounds, as it accommodates modern living standards while respecting the visual and environmental qualities of the locality. The development achieves an appropriate balance between functionality, compliance, and preserving the area's amenity, ensuring no adverse impacts on neighbours or the surrounding environment. As such, the proposal represents a reasonable and practical outcome that warrants the support and approval of the council.