



Appendix 1 – Clause 4.6 Variation Overall Height

It is requested that Council consider the following request for a variation under the provisions of Clause 4.6 of Pittwater Local Environmental Plan 2014 (PLEP2014) during assessment of this application:

Pittwater Local Environmental Plan 2014

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.*

Clause 4.6 of the LEP - Exceptions to development standards provides the opportunity for Council to vary the controls based on the merits of the application. It is considered that the current application satisfies the Clause 4.6 criteria in the LEP, and therefore should be supported, as detailed below.

- (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.*

The overall height development standard is not expressly excluded from the operation of 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 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*

As discussed below, it is unreasonable and unnecessary to require compliance with the overall height control as all key Clause 4.6 requirements are satisfied despite the non-compliance.



The proposed first floor addition complies with the maximum permitted building height however the existing built form that it being retained as part of the development has a height of 9.95m requiring a variation to the height of buildings provisions. It is considered that the application, and in particular the proposed building height, should be supported as:

The subject site is zoned 'C4 Environmental Living' under Clause 2.1 of the MLEP2013.

The objectives of the zone are:

- *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.*

The proposed development can satisfy the objectives of the zone as it complements the existing residential setting. Residential amenity can be maintained by the proposed development as the site is within an area intended for this form of development.

The proposed development is compatible with the existing and future character of the locality. The development is designed to provide a high level of amenity for adjoining residents whilst considering the natural constraints of the site.

The siting of the alterations and additions is in the most appropriate location, which minimises disturbance and follows a similar development density evident throughout the area.

The proposed dwelling is considered to meet the objectives of the C4 Zone.

The objectives of Clause 4.3 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.*

The objective of this control is understood to be a measure to ensure the dwelling does not have an unreasonable impact on adjoining properties or the streetscape by way of overshadowing, overlooking or visual bulk.

The 1.45m non-compliance is the direct result of the development retaining the existing non-compliant building height and the topography of the allotment. With a moderate fall through the site, it is difficult to site retain the existing development without a level of non-compliance to the height provisions. It is considered that some level of variation is anticipated on allotments such as the subject site where the allotment has a fall from the street and the need to retain the existing built form of the existing dwelling. Thus, providing a compliant addition is considered acceptable without the need to provide a compliant building height to the existing built form would render re-development of the existing dwelling unviable.

The proposed addition has been designed with consideration given to the existing topography on the site and the existing overall streetscape character. The proposed design incorporates an extension to first floor to provide a master bedroom suite and thus provide enhanced internal amenity.

The required variation will not detrimentally impact on the amenity of the adjoining properties given the articulated design, adequate side and rear setbacks and building separation distances along with the reasonable level of solar access to living areas and private open space areas of the adjoining properties. The windows proposed to the first floor extension have been appropriately offset from neighbouring windows and are able to be screened via landscaping to ensure they do not present opportunities for overlooking. The shadows cast by the proposed development will not have an overall negative impact upon the adjoining properties. Whilst there is still some overshadowing, the POS of the southern adjoining property will have a reasonable level of solar access throughout the day.

The façade and material choices of the proposed development are in keeping with the existing dwelling and complement the existing character of the street which contains two and three storey



dwelling of varied architectural styles. The proposed non-compliance relates to the rear of the dwelling however remains below the maximum ridge height of the existing dwelling to ensure it will not pose detrimental impacts to the dwelling's overall streetscape appearance.

The proposed first floor extension has been designed in keeping with the existing dwelling in terms of materials, articulation and roof form to ensure the dwelling retains its existing streetscape character. The visual bulk of the development as viewed from the adjoining dwellings is not considered to be excessive as the proposed addition is provided with a compliant height and the area of non-compliance relates to the existing structure only. The proposed works are provided with appropriate setbacks and articulation throughout the design in addition to the existing and proposed landscaping to further reduce the bulk of the development. As there is no perceived impact on the streetscape character of the area or the amenity of adjoining properties beyond that of a compliant proposal, the dwelling is considered to be able to meet the objectives of the height control despite the numerical non-compliance.

In the circumstances of this particular case, it is considered that strict compliance with the overall height requirements of Pittwater Local Environmental Plan 2014 is considered unreasonable and unnecessary as the alterations and additions are provided with a compliant building height and the non-compliance relates to the existing built form which is unchanged by the proposed development. The proposed alterations and additions have been designed to reduce the height as much as possible, whilst still providing a design which is in keeping with the existing dwelling and the residents' needs. The height non-compliance is the direct result of the existing non-compliant building height and the topography of the allotment, and remains consistent with the development theme in the surrounding area. Despite the non-compliance the proposed development can still attain the objectives of the Environmental Planning and Assessment Act 1979, C4 Environmental Living zone and the subject development standard.

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The requested variation relates to Clause 4.3(2) as shown below:

(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.



The subject site is identified to have a maximum building height of 8.5m.

In this instance the proposed development provides a maximum building height of 9.95m, requiring a 1.45m variation to the development standard. The proposed addition is provided within a compliant building height of 8.5m and remains below the non-compliant building height of the existing dwelling. The requested variation is restricted to the centre of the dwelling and is the result of the topography of the allotment.

The non-compliant building height is considered to have minimal impact on the overall development in terms of bulk and scale appearance, due to the proposed addition remaining below the maximum building height provisions and being of a reasonable scale. The proposed alterations and additions are not considered to be excessive in size, having been designed to complement the existing dwelling and including extensive articulation. The proposed development is in keeping with surrounding developments in an area where the overall height control appears to have been abandoned with regards to existing built forms due to the topography of the sites. Further the proposed development provides a suitably sized dwelling in keeping with developments of the surrounding area.

The proposed alterations and additions retain a three storey dwelling on the allotment. The proposed development is a reasonable development for the site as three storey dwellings are considered to be a suitable use of the land. The variation directly relates to the topography of the land and the provision of an addition above the existing dwelling walls for structural integrity. Reducing the overall building height of the existing dwelling is not considered feasible as the reduction in existing built form height would detrimentally impact the amenity of the development and render redevelopment of the dwelling unviable.

Despite the variation, the proposed low density residential land use is considered to be an orderly and economic use and development of the land in an established residential area where increased residential dwelling has set a theme for dwellings in this area of Avalon Beach.

The variation will result in maintenance of the existing building height as the proposed works are provided with a compliant building height. The proposed alterations and additions are considered to have minimal impact on the existing dwelling design that already exceeds building height limits. The proposed development is not considered to be excessive in size and provides a suitably sized addition to an existing dwelling in keeping with developments in the surrounding area.



Whilst the existing dwelling is numerically non-compliant with the height of buildings control, the proposed addition is provided with a compliant building height and is not anticipated to detrimentally impact the streetscape or surrounding developments by way of solar access or privacy. Furthermore, the proposed development will result in an improved amenity and streetscape appearance as a result of the urban renewal development and by ensuring that the bulk and scale of the development is consistent with the existing dwelling.

The objects of the Environmental Planning and Assessment Act 1979 are understood to be as follows:

1.3 Objects of Act

The objects of this Act are as follows—

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

Most relevant objects to this development are objects 1.3(c), 1.3(g) and 1.3(h) as outlined above.

The proposed development relates to alterations and additions to an existing dwelling within a residential setting. Allowing extension of an existing dwelling, despite the numerical non-compliance with the height of buildings provisions, ensures that the dwelling can be retained on the site whilst



providing improved internal amenity. Further, allowing the existing building height to be retained whilst the proposed addition is provided with a compliant height ensures that the proposed development enhances the amenity of the existing dwelling which is considered to promote orderly and economic use and development of the land.

Allowing the alterations and additions within residential areas ensures that a range of dwelling and development types are available for residential occupation. The design of the proposed development is for the alteration and addition to an existing built form which promotes good design through improved functionality of the floor plan. Further the proposed alterations and additions provide increased areas within the design ensuring that the amenity of the development is enhanced as a result of the development.

The design of the proposed development has given consideration to the streetscape locality, surrounding development along with the orientation of the allotment during the design process. The development is located to the front of the dwelling however has been designed in keeping with the existing dwelling design in terms of materiality, scale, articulation and roof form to ensure the streetscape character of Cabarita Road is maintained. Consideration of these key aspects promotes good design through a high quality architectural development. Further the proposed alterations and additions have been designed to provide a high level of amenity to the development and future occupants of the dwellings.

Whilst “environmental planning grounds” are not separately defined within the EP&A Act 1979 the proposed development is considered to provide orderly and economic use and development of the land through retention of an existing dwelling. Further the proposal meets good design principals and enhanced amenity of the dwelling through additional living spaces without detrimentally impacting the surrounding development by way of visual bulk, privacy, amenity and solar access.

(4) Development consent must not be granted for development that contravenes a development standard unless—

(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 Planning Secretary has been obtained.

The proposal is able to satisfy 3(a) and 3(b) as discussed above, therefore the proposed development is considered to be in the public interest. Further the proposed alterations and additions are orderly and economic use and development of the land whilst providing good design and amenity for the occupants of the development.

(5) In deciding whether to grant concurrence, the Planning Secretary 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 Planning Secretary before granting concurrence.*

There is considered to be no public benefit in refusing the application (for the reasons stated above) so as to ensure that full compliance with the maximum height of buildings control is achieved. The contravention of the standard does not raise any matters of state or regional significance nor would it be detrimental to the site or surrounding area.

Accordingly, Council's agreement is sought to the proposed variation in maximum overall building height for the site.