



*request to vary
a development standard*



REQUEST TO VARY A DEVELOPMENT STANDARD

955 BARRENJOEY ROAD
PALM BEACH NSW 2108

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introduction

This request to vary a development standard is made by Northern Beaches Planning on behalf of Cadence & Co to accompany the lodgement of an application for alterations and additions to the existing dwelling at 955 Barrenjoey Road, Palm Beach (**site**). This request is made pursuant to clause 4.6 of Pittwater Local Environmental Plan 2014 (**PLEP 2014**) and with regard to relevant case law.

standard to be varied

Clause 4.3 of PLEP 2014 limits the height of development on a site in accordance with that nominated on the Height of Buildings Map of PLEP 2014. With respect to the subject site, the maximum height of buildings is 8.5m above ground level (existing).

The maximum building height prescribed by clause 4.3 of PLEP 2014 is a development standard, as defined by the Environmental Planning and Assessment Act (EP&A Act):

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

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work...

Accordingly, the provisions of clause 4.6 of PLEP 2014 can be applied.

Pursuant to clause 4.6(2) of PLEP 2014, consent may be granted for development even though the proposal contravenes a development standard prescribed by an environmental planning instrument. Whilst this clause does not apply to those standards expressly excluded from this clause, the height of buildings development standard of clause 4.3 of PLEP 2014 is not expressly excluded and thus, the provisions of clause 4.6 can be applied in this instance.

extent of the proposed breach

The proposed development has a maximum building height of 10m, representative of a 1.5m or 17.6% variation to the 8.5m maximum building height prescribed. The height non-compliance is limited to the western edge of the proposed upper floor roof form as shown in Figures 1 and 2.

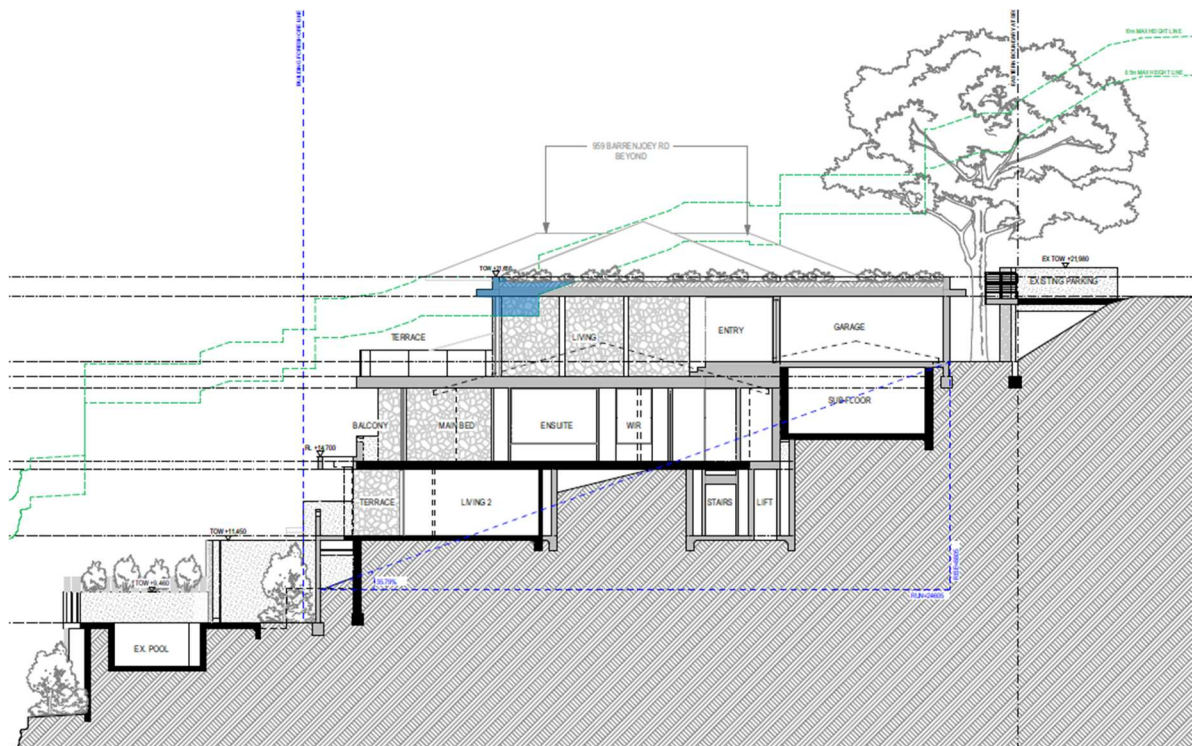


Figure 1 – Section A, with the height non-compliance highlighted in blue
Source: Cadence & Co

Source: Cadence & Co



Figure 2 – Building Height Control Diagram
Source: Cadence & Co

Source: Cadence & Co

unreasonable or unnecessary

Pursuant to clause 4.6(3)(a) of PLEP 2014, consent can only be granted if the consent authority is satisfied that the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard.

The proposed development is consistent with the objectives of the height of buildings development standard, as prescribed by clause 4.3(1) of PLEP 2014, as follows:

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

Comment: The desired future character of the Palm Beach Locality is identified in clause A4.4 of P21 DCP, which states the following with respect to height and scale:

The locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape... Future development will maintain a building height limit below the tree canopy, and minimise bulk and scale.

The resultant dwelling will sit below the canopy of surrounding canopy trees and is stepped in response to the slope of the site. Whilst the dwelling reaches a maximum of three storeys in any one place, the three storey element is setback from the front and rear facades and is appropriately minimised.

As concluded in the matter of *HPG Mosman Projects Pty Ltd v Mosman Municipal Council* [2021], the desired future character of the locality can be evaluated by reference to matters other than the development standards that determine the building envelope for the site, including the existing development that forms the built context of the site.

The height and scale of the development is commensurate with that of surrounding and nearby properties, which are demonstrated in Figure 3. All three dwellings to the north have three storey elevations of equal width presenting to the waterway and feature large variations of the building height standard.



Figure 3 – The subject site and neighbouring dwellings as seen from the waterway
Source: Cadence & Co

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

Comment: The height and scale of the resultant dwelling is compatible with surrounding dwellings. Consistent with the findings of the NSW LEC in the matter of *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191, to be compatible in an urban design context is to be capable of existing in harmony together. The resultant dwelling will sit harmoniously in its context on the low side of Barrenjoey Road, and most observers would not find the height or bulk of the proposed development to be offensive, jarring or unsympathetic in the waterfront context.

It is also relevant to note that the adjoining three storey dwelling at 959 Barrenjoey Road was approved with a height of 10m above existing ground levels, as shown on the Approved Plans referenced in N0811/06.

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

Comment: The application is supported by shadow diagrams which confirm that the proposed development will not result in any unreasonable impacts upon adjoining properties with regard to solar access. In particular, the non-compliant elements do not result in unreasonable overshadowing of adjoining properties.

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

Comment: The portions of the dwelling that extend above the 8.5m height plane do not result in any unreasonable impacts upon existing views, with views to Pittwater retained over the proposed development.

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

Comment: The height of the development is stepped in response to the natural fall of the land. Whilst excavation is proposed, the degree of excavation is entirely commensurate with that which has been approved and undertaken on sloping sites throughout the immediate locality and the wider LGA.

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

Comment: The dwelling is stepped in response to the fall of the land and comprises a range of different roofs forms and awnings to manipulate light and shade across the rear façade. Landscaping, both at-grade and within integrated planters, is also proposed to soften the visual impact of the dwelling as seen from both the street and the waterway. The proposal will not result in any adverse visual impacts upon the surrounding natural environment.

As such, strict compliance with the maximum building height development standard is unreasonable and unnecessary in the circumstances of this case.

sufficient environmental planning grounds

Pursuant to clause 4.6(3)(a) of PLEP 2014, consent can only be granted if the consent authority is satisfied that the applicant has demonstrated that there are sufficient environmental planning grounds to justify contravention of the standard. The specific environmental planning grounds to justify the proposed contravention of the floor space ratio standard are as follows:

1. Slope of the land

The land falls considerably from the Barrenjoey Road frontage down towards the waterway. The slope of the land is a contributory factor to the non-compliance, with a greater proportion of the upper floor maintained well below the 8.5m height plane compared to the minor portion that protrudes below it (as shown in Figure 4).

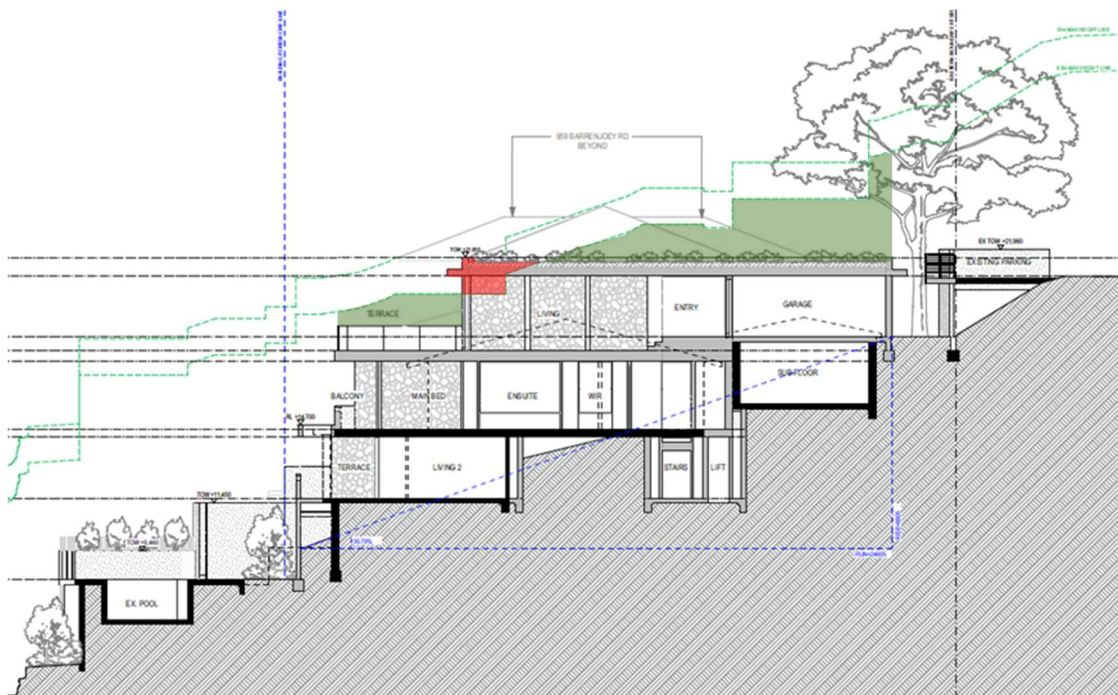


Figure 4 – Section A, with balance of compliance highlighted in red and green
Source: Cadence & Co

2. Context

The site is surrounded by large dwellings, the majority of which exceed the 8.5m height limit. In particular, the adjoining dwelling at 959 Barrenjoey Road was approved with a maximum height of 10m as measured to assumed natural ground levels (Figure 5), and the dwelling at 961 Barrenjoey Road also recently secured consent for alterations and additions resulting in a dwelling exceeding 10m in height as measured to assumed natural ground levels (Figure 6). It is noted that the extent of exceedance would likely be greater than that shown, noting that the height plane is now measured to ground level (existing).

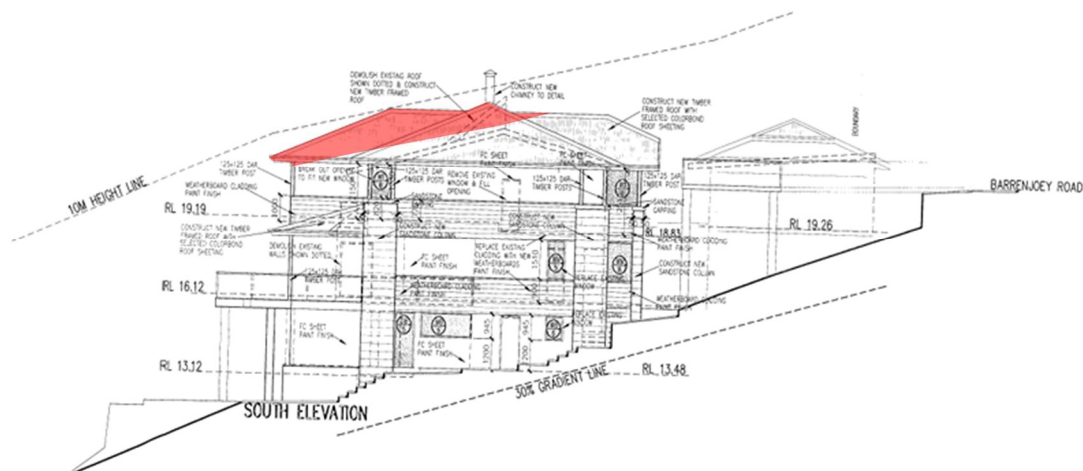


Figure 5 – Extract of the Approved Plans for 959 Barrenjoey Road
with exceedance of 8.5m (to assumed ground) shown in red
Source: Northern Beaches Council DA Tracker



Figure 6 – Extract of the Approved Plans for 961 Barrenjoey Road, with exceedance of 8.5m (to assumed ground) shown in red
Source: Northern Beaches Council DA Tracker

Further, the maximum RL of the proposed dwelling (RL 21.65m AHD) sits well below that of the neighbouring dwelling at 959 Barrenjoey Road (RL23.79m AHD) and of the dwelling further to the north at 961 Barrenjoey Road (RL 23.295m AHD), ensuring that the non-compliance will not be perceived from the public domain (as it is recessive to that of neighbouring dwellings in the same alignment and along the same contours).

Allowing for the development to appropriately respond to the individual context of the site, including the irregular terrain of the site, promotes good design and amenity of the built environment, and the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants, consistent with objectives (g) and (h) of the EP&A Act.

Furthermore, allowing for a variation to the height plane that is consistent with the height and scale of nearby development promotes the orderly and economic development of the land, consistent with objective (c) of the EP&A Act.

Overall, there are sufficient environmental planning grounds to justify contravention of the maximum height development standard.

conclusion

Overall, the consent authority can be satisfied that this written request has adequately addressed all relevant matters and that the provisions of clause 4.6 of PLEP 2014 have been met. As such, there is no jurisdictional impediment to the granting of consent in relation to the proposed breach of the height of buildings development standard.



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