



yours locally

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Assessing Officer – Caitlin Hopper  
Parramatta City Council

DA: DA/405/2023  
PROPERTY: NO. 140 ALFRED STREET, HARRIS PARK  
PROPOSAL: SINGLE STOREY DWELLING, WITH ATTIC.  
SUBJECT: CLAUSE 4.6 VARIATION TO MAXIMUM HEIGHT OF BUILDINGS

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Local Consultancy has been engaged by McDonald Jones Homes to provide a letter of variation request to the maximum building height for the single storey dwelling with attic at the above subject site. This requires a variation to Clause 4.3 Height of Buildings.

The requirement under CI 4.3 is that the maximum height of buildings for the site is not an overall height, but an RL level – 11mRL. The proposal has an overall RL height of 12.505m RL requiring a variation to Councils control. It is requested Council consider the following request for variation to Clause 4.3 Parramatta LEP under the provisions of Clause 4.6 during the continued assessment of this application.

#### Clause 4.3 Height of Buildings

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Clause 4.6 of Parramatta Local Environment Plan (LEP) 2023 is intended to provide an appropriate level of flexibility in applying development standards to development to achieve a better outcome in certain circumstances.

Subclause (2) states:

“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.”

This allows a variation to be sought to development standards under Clause 4.6. In accordance with Subclauses (3), (4) and (5) the following written request seeks to:

- Justify contravention of the maximum building height development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds particular to the circumstances of the proposed development and the subject site to justify the contravention;

- Demonstrate that the proposed development will be in the public interest as it remains consistent with the objectives for development in the R3 Medium Density Residential zone as well as the objectives of the building height development standard;
- Demonstrate that the contravention of the building height development standard does not raise any matter of significance for State or regional environmental planning; and
- Consider the public benefit of maintaining the building height development standard.

#### NSW Land and Environment Case Law

In order to clarify the extent of the matters required to be addressed within a request for a variation under Clause 4.6, consideration has been given to the following case law:

Wehbe v Pittwater [2007] NSWLEC827

Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC90

Randwick City Council v Micaul Holdings Pty LTD [2016] NSWLEC7

Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSW LEC118

Review of these cases indicates that a request for a variation under the provisions of Clause 4.6 is more onerous than previously required under SEPP 1. The case of Randwick v Micaul indicates that Council, as the consent authority, maintains a high level of discretion with regard to the level of justification required in order to support a variation request.

The following request provides an assessment of the proposed variation to the maximum building height with respect to the test methodology and requirements outlined within the relevant Case Law and requirements of NSW Councils.

#### Introduction and Description of the development standard to be varied

The Environmental Planning Instrument that applies to the land is Parramatta Local Environmental Plan 2023 (PLEP). The subject site is zoned R3 Medium Density Residential and a variation is sought to 'Clause 4.3 Height of buildings', specifically subclause (2) which states that the maximum height of a building is not to exceed the maximum height shown on the land as per the Height of Buildings map.

The maximum permitted building height as per the height of buildings map is 11m RL, requiring the ridge level of the dwelling not to exceed 11m, not an overall height of 11m. The proposed dwelling provides a maximum height of 7.744m, however a ridge level of 12.505m RL, due to the attic design for shelter in place requirements as the site is identified as being within the flood planning area.

The maximum height proposed requires a variation of 1.505m to the maximum height of buildings therefore results in a percentage variation of 13.7%. The exception to the development standard is requested as a direct result of the flood planning requirements and result of the attic being used as a shelter in place area for the dwelling.

What are the objectives of the development standard to be varied?

- (1) The objectives of this clause are as follows—
- (a) to provide appropriate height transitions between buildings,
  - (b) to ensure the height of buildings is compatible with the height of existing and desired future development in the surrounding area,
  - (c) to require the height of future buildings to be appropriate in relation to heritage sites and their settings,
  - (d) to reinforce and respect the existing character and scale of low density residential areas,
  - (e) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,
  - (f) to preserve historic views,
  - (g) to maintain satisfactory sky exposure and daylight to—
    - (i) existing buildings in commercial centres, and
    - (ii) the sides and rear of tower forms, and
    - (iii) key areas of the public domain, including parks, streets and lanes.

Compliance with the objectives of the development standard

The proposed maximum RL height of 12.505m does not impact upon the dwelling being able to achieve the objectives of the zone or the objectives of the development standard. The proposal is not considered to have any impact upon the streetscape character as the minor increase to the roof height is minimal in nature and does not present as excessive in bulk and/or scale.

- (a) to provide appropriate height transitions between buildings,

The overall bulk of the dwelling will remain generally in keeping with surrounding properties, remaining a single storey dwelling, with attic feature that will not present as having excessive visual bulk. This will ensure the transition of height between dwellings in the area is maintained and the incorporation of an attic refuge area will not impact detrimentally upon the streetscape.

- (b) to ensure the height of buildings is compatible with the height of existing and desired future development in the surrounding area,

While the height of the dwelling exceeds the control, the general scale of the dwelling will maintain compatibility with the existing and likely future dwellings within the streetscape and surrounding area.

- (c) to require the height of future buildings to be appropriate in relation to heritage sites and their settings,

The subject site and development is located opposite a Heritage Conservation area. There is no direct impact between the heritage items in the conservation area and the subject dwelling. Minimal sightlines will be impacted as a result of the subject development. There is minimal visibility between heritage sites and settings and the proposal.

- (d) to reinforce and respect the existing character and scale of low density residential areas,

The subject proposal will maintain the existing low scale residential character of the area, being a single storey dwelling with an attic will not be incompatible with surrounding development. While numerically the proposal requires a variation to the control, the single storey design will reinforce and respect the single storey character of the area.

- (e) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,

The proposal requires an increased floor level to accommodate flood planning requirements. The raised floor level has been offset with privacy screening to the side elevation windows and obscure glazing to the attic windows is provided to reduce any privacy impacts as a result of the development. The proposal is considered to be a high quality design that will reduce the visual impact of the development through articulation. The shadows cast as a result of the proposal will not be significantly reduced should the overall height be reduced. The proposed development maintains solar access to the rear POS areas of the adjoining site, with no significant windows facing the north of the adjoining property.

- (f) to preserve historic views,

No historic views impacted.

- (g) to maintain satisfactory sky exposure and daylight to—  
(i) existing buildings in commercial centres, and  
(ii) the sides and rear of tower forms, and  
(iii) key areas of the public domain, including parks, streets and lanes.

The proposed dwelling is unlikely to impact upon any sky exposure or daylight to the above listed areas. The subject dwelling is within a medium density residential area, and remains of a similar scale to surrounding properties.

#### Compliance with the objectives of the zone

The objectives of the R3 Zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide opportunities for people to carry out a reasonable range of activities from their homes if the activities will not adversely affect the amenity of the neighbourhood.*

- *To provide a range of community facilities that serve the needs of people who live in, work in and visit residential neighbourhoods.*

The dwelling has been designed to retain a high level of amenity for adjoining residents and the streetscape, and the high quality design will ensure the dwelling enhances the streetscape. Residents will still be able to carry out a range of activities, without affecting adjoining properties.

The two storey dwelling will provide for the needs of the residents, whilst maintaining the medium density residential area. The minor increase to the height of the dwelling is not anticipated to limit or disturb views and will not be out of character with the overall area. The dwelling provides for a transition of height between dwelling houses and larger building within the vicinity and provides a missing middle. The design of the dwelling will be in keeping with the quality of the built environment, with landscaped areas appropriately maintained throughout the site.

The dwelling remains a medium density design that maintains suitable landscaped areas around the site. As the dwelling remains able to meet the requirements for the medium density environmental living without any detrimental impact on the amenity of the surrounding sites, the development is found to achieve the objectives of the R3 Medium Density Residential Zone.

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The requested variation to the maximum building height provision is considered to be a reasonable and appropriate design outcome for the following reasons:

- The development standard objectives and zone objectives are able to be maintained despite contravention to the numerical requirement.
- The proposed development responds to the flood constraints on the site as well as providing a suitable refuge area within the attic space. The variation to the maximum permitted height will not detrimentally impact upon privacy or shadows cast, ensuring the amenity of the adjoining properties is maintained.
- The proposed dwelling responds to the constraints on the site and maintains suitable ceiling heights and bulk to avoid any adverse impacts upon adjoining properties or the environment.
- The application had a pre-lodgment meeting where it was discussed the attic space needed to have a suitable ceiling level to be considered a refuge area and this resulted in the variation to the height. As the height variation will not have any unreasonable impact, the benefits of having a refuge area are considered to outweigh any perceived negative impacts as a result of the height.
- The increase in height will not have an excessive impact upon the streetscape or adjoining properties and is considered to result in an appropriate outcome for the residents needs.
- The dwelling is well designed and will remain consistent with the existing and future character of Alfred Street.

- The ceiling heights provided are not excessive and are minimized as much as possible whilst meeting with the requirements of the residents and maintaining internal amenity. Any further reduction would have a detrimental impact upon internal amenity and the dwelling design overall.
- As mentioned above, the building height variation is largely the result of the floor level requirements and refuge area as a result of the site being flood affected. Minimal impact as a result of the minor roof protrusion is anticipated and therefore, the variation is requested to be considered in this instance.

Sufficient environmental planning grounds that are particular to the circumstances of the proposed development

There are sufficient environmental planning grounds in these circumstances to justify contravening the building height development standard. The development is not considered to be overdevelopment of the site and sufficient grounds for the variation are provided below:

- The development proposed is able to maintain the objectives of the R2 Zone, as well as the objectives of development standards Clause 4.3 Height of buildings.
- The proposal is a well considered, high quality design solution that sensitively responds to the site context and character and scale of the surrounding built form to ensure the privacy, view sharing and solar access of the subject site and surrounding properties is maintained.
- The height variation does not result in any detrimental impact upon surrounding properties or public areas.
- As the height variation will not have any unreasonable impact, the benefits of having a refuge area are considered to outweigh any perceived negative impacts as a result of the height.
- The ceiling heights provided are minimized as much as possible whilst meeting with the requirements of the residents and maintaining a suitable internal amenity. Any further reduction would have a detrimental impact upon internal amenity and the dwelling design overall.
- The height variation is largely the result of the site constraints. This requires an increased floor level. The overall height of the dwelling is breached as a result of the increased floor level and maintenance of streetscape character. The dwelling is considered to be a reasonable addition to the street and will not have a detrimental impact upon bulk and scale.

In determining if there are sufficient environmental planning grounds the Initial Action judgment considers that it is appropriate to apply the Objectives of Section 1.3 of the EP&A Act in order to demonstrate that the grounds exist to warrant a variation.

The objectives of 1.3 are listed along with a comment with respect to compliance in the table below.

Objective	Comment
<i>(a) to promote the social and economic welfare of the community and a better</i>	This object is not relevant to this development.

<i>environment by the proper management, development and conservation of the State's natural and other resources.</i>	
<i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment.</i>	The proposal will facilitate an ecologically sustained development given that no negative impact on environmental and social considerations are present. This in turn will serve to offer the ongoing sustainment of the economic health of the area.
<i>(c) to promote the orderly and economic use and development of land.</i>	The proposed development will maintain the orderly and economic use of the land by providing a development and land use that is consistent with that envisaged by Council through zoning.
<i>(d) to promote the delivery and maintenance of affordable housing.</i>	This object is not relevant to this development.
<i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats.</i>	There is no anticipated impact upon any threatened species of ecological communities.
<i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage).</i>	This object is not relevant to this development.
<i>(g) to promote good design and amenity of the built environment.</i>	The proposed development is a high quality design that remains a suitable built form and scale to be aesthetically appropriate. The proposed development is considered to appropriately respond to the established and changing character of the development identified within both the immediate and broader context. The development maintains the amenity of the area through a suitable design.
<i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.</i>	The proposed development will comply with all relevant BCA codes and will promote the health and safety of occupants.
<i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State.</i>	This object is not relevant to this development.
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i>	The proposed development has been publicly notified to meet with this objective.

Based on the above, the consent authority can be satisfied that the proposed development remains consistent with the Objects of the Act despite the variation to the minor height breach.

Does the development remain within the public interest?

There is overall public benefit in maintaining the development standards, however, there is also benefit to providing flexibility in specific circumstances. Strict compliance with the development standards would waive the opportunity to provide a superior design outcome that is in keeping with the height, scale and character of the surrounding built form and maintains internal amenity.

Council approves development applications which depart from the building height development standard with larger percentage variations than that of the proposed, subject to satisfactory environmental performance. On balance, the proposed variation to the building height development standard is considered to be an appropriate use of the provisions of Clause 4.6.

Conclusion

The contravention of the development standard in this case will not raise any issues of State or regional planning significance as it relates to local and contextual site conditions. The dwelling will provide for the housing needs of the residents by improving functionality and amenity while retaining the low density character of the built form which will in turn assist in meeting local housing demand.

Variations under the provisions of Clause 4.6 are understood to be permitted in circumstances where the non-compliant development is found to be able to meet with the objectives of the zone, but does not expressly need to result in a better outcome than a compliant proposal. In this case, the proposed height of the dwelling is considered to meet with the objectives of the zone and provides for a suitable design given the dwelling is located on a raised finished floor level.

Numerical provisions such as building height are considered to be in force as a guide to achieve the objectives of the control. In this instance the objectives of the building height control are achieved through the proposed siting of the dwelling, despite the increase in building height. The variation is not anticipated to result in any detrimental impact to surrounding properties and despite the minor variation is largely compliant with Councils controls.

It is requested that Council consider this variation due to the minimal impact upon the surrounding properties and the public places. The proposed height will not have any detrimental impact beyond that of the existing dwelling or a compliant proposal.

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The variation is not considered to result in any impact that would warrant strict compliance with the height controls. It is considered that such modifications would have no apparent benefit that is not already achieved.



Numerical provisions such as height of buildings are considered to be in force as a guide to achieve the objectives of the control. In this instance the objectives of the control are achieved, despite the variation to the lot size.

It is requested that Council consider this variation during the assessment of the development application.

Local Consultancy Services Pty Ltd  
October 2023