

Architectural Designer Amani Salameh
B. Design in Architecture at UTS
Master of Architecture at UTS



General Manager
Development Assessment Division
Canterbury Bankstown City Council
66-72 Rickard Rd,
Bankstown, NSW 2212

DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION
OF A TWO STOREY ATTACHED DUAL OCCUPANCY WITH
BASEMENT, SWIMMING POOL, FRONT FENCE AND TORRENS
SUBDIVISION
FOR
10 RELIANCE AVENUE, YAGOONA, NSW 2199

Clause 4.6 – Exception to Development Standards (wall height)

The following variation under Clause 4.6 – Exception to development standards submission has been made to accompany a development application submission to the New City of Canterbury Bankstown Council for a proposed two storey dwelling attached dual occupancy with basement, swimming pool and Torrens subdivision.

Bankstown Local Environmental Plan 2015, is council's main planning control to enhance residential development in the City of Bankstown. The LEP provides for objectives, zones, and core development standards.

In this regard, it is requested that Council support a variation with respect to compliance with the maximum building height requirements of Clause 4.3(2B)(b) of the Bankstown Local Environmental Plan (BLEP). Clause 4.3 of Bankstown Local Environmental Plan 2015 states:

4.3 Height of buildings

(1) The objectives of this clause are as follows:

- (a) to ensure that the height of development is compatible with the character, amenity and landform of the area in which the development will be located,*
- (b) to maintain the prevailing suburban character and amenity by limiting the height of development to a maximum of two storeys in Zone R2 Low Density Residential,*
- (c) to provide appropriate height transitions between development, particularly at zone boundaries,*
- (d) to define focal points by way of nominating greater building heights in certain locations.*

(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.

(2B) Despite subclause (2), the following restrictions apply to development on land in Zone R2 Low Density Residential:

(a) for a secondary dwelling that is separate from the principal dwelling—the maximum building height is 6 metres and the maximum wall height is 3 metres,

(b) for a dwelling house or a dual occupancy—the maximum wall height is 7 metres,

(c) for multi dwelling housing and boarding houses:

(i) the maximum building height for a dwelling facing a road is 9 metres and the maximum wall height is 7 metres, and

(ii) the maximum building height for all other dwellings at the rear of the lot is 6 metres and the maximum wall height is 3 metres

The proposed development is for the demolition of a single dwelling and construction of a two storey dwelling attached dual occupancy with basement, swimming pool and cabana development at 10 Reliance Avenue, Yagoona, NSW 2199 under the provisions of the BLEP 2015. The development will result in a minor non-compliance where the walls of the proposed dwelling will have a maximum wall height of:

- Approximately **7.067m** at the highest point on the South West corner viewing from the East Elevation,
- Approximately **7.183m** at the highest point on the North West corner viewing from the West Elevation,
- Approximately **7.895m** on the North West corner, 8.18m on the South West corner viewing from the West Elevation
- Approximately **8.64m** at the highest point measuring from the middle ridge of the roof feature viewing from the West Elevation,

which will exceed the maximum wall height of 7m specified under Clause 4.3(2B)(b).

The height of the walls is only due to the design feature of the front and the walls supporting the skillion roof design. The wall height variation happens due to the dramatic fall of the natural ground line in the front of the subject site. The dramatic fall is approximately **4m** from the South East boundary corner to the North West boundary corner of the subject site. The land has a sharp drop of **1.5m** starting from the building line (**RL 46.12**) to the front boundary line (**RL 44.61**). To minimise any unnecessary excavation to the land, the proposed basement has been designed relevantly to the existing RL to provide easy access to parking space. By maintaining the approximate existing RL level, the wall height of the West Elevation (Façade View) of the dwelling has exceeded the MAX. wall height requirements by 1640 mm at the highest point which is in the middle the front facade. Ground floor is designed to sit above basement and align with the backyard natural ground line. Thus, the ground floor is visually sitting on the natural ground line from the North elevation, South elevation and East elevation.

The neighbour property No. 12 on the Northern side has the ridge RL of 55.13 and the neighbour property No. 8 on the Southern side has the ridge RL 54.55. The proposed property at No. 10 Reliance Avenue, Yagoona has the max. ridge RL the at 55.33 in the middle part of the front facade. Thus, the proposed property will be visually proportion to the neighbours and the streetscape.

The external wall height to the underside of the eaves of the proposed dwelling at any other points is well under the allowed 7m wall height. The variation cannot be addressed through an alternate roof but can be addressed with lowered ceiling heights but we are of the view that this would result in a building of inferior design quality. The variation will result

in an environmental outcome that is consistent with the intent of the LEP and the character of the local area established by the existing surrounding development (please note that the wall height at the eaves / gutter line is less than 7m, and thus compliant with BLEP). The variation from the numerical standard is minor and reasonable and is only to facilitate the construction of a dual occupancy that enhances the character of the streetscape and neighborhood. The design complements the streetscape with its modern architectural elements. As is demonstrated in the shadow study, this non-compliance does not cause any loss of amenity to the neighboring dwellings in terms of overshadowing, privacy or bulk/massing.

The following paragraphs 2–7 provide an analysis of the objection following the format of the Winten1 five part test.

Sub-clause 4.6(3) of LEP 2013 provides for variation to development standards as follows:

(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.

For the reasons set out below, the merits of the application should properly be considered in the context of sub-clause 4.6(3)(A) and (B)

2. Is the planning control in question a development standard?

It is considered that the height of buildings control is a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

Specifically, Clause 4.3(2B)(b) states that:-

Clause 4.3(2B)(1)

(2B) Despite subclause (2), the following restrictions apply to development on land in Zone R2 Low Density Residential:

...

- (b) for a dwelling house or a dual occupancy—the maximum wall height is 7 metres,

The planning control meets the definition of a development standard under Section 4 of the Environmental Planning and Assessment Act.

3. What is the underlying object or purpose of the development standard?

The purpose of the development standard is to regulate the bulk and scale of developments.

The relevant objective is at Clause 4.3 of the BLEP which states:-

Clause 4.3

(1) The objectives of this clause are as follows:

- (a) to ensure that the height of development is compatible with the character, amenity and landform of the area in which the development will be located,

- (b) to maintain the prevailing suburban character and amenity by limiting the height of development to a maximum of two storeys in Zone R2 Low Density Residential,
- (c) to provide appropriate height transitions between development, particularly at zone boundaries,
- (d) to define focal points by way of nominating greater building heights in certain locations.

4. Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979?

The aim of the policy is to provide flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in Sections 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979. These objects are:-

"(a) to encourage:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,"*

Providing flexibility in the application of the height of buildings control will result in development that is consistent with objectives 5(a)(i) and (ii) of the Act.

The proposed development represents an orderly development of the land with a positive outcome for the locality. If the objection is not supported, it would prevent consent to an otherwise acceptable and reasonable development, therefore it is considered that if the Objection is not supported it would hinder the attainment of the objects of the Act. The variation is required to preserve the architectural integrity of the roof design which is suited to the dual occupancy design.

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

The customary and accepted approach to sustaining variations to development standards is to assess the proposed variance against the relevant objectives of the particular development standards. In this case, the objectives of the height of building controls are to be related back to the zone objectives found under Clause 4.3(1) as stated above.

In this case, it is considered that compliance with the development standard would be unreasonable and unnecessary for the following reasons which are relevant to the objectives of the development standard and the operation of the subject clause:-

Objective A

to ensure that the height of development is compatible with the character, amenity and landform of the area in which the development will be located,

Comment:

The building conforms to the topography of the site with a resulting wall height at the sides and rear of under 7m and the facade wall height exceeding 7m mainly along the centre of the building and common wall length.

The height of the development is nevertheless compatible with the general character of the area which, by observation, appears to exhibit occasional similar height anomalies and

new built form. The proposed development satisfies Objective A

Objective B

to maintain the prevailing suburban character and amenity by limiting the height of development to a maximum of two storeys in Zone R2 Low Density Residential,

Comment:

The height variance is not of a sufficient magnitude to conclude that the development does not maintain the prevailing suburban character and amenity of the zone. The site has a favourable orientation. Consequently the height variance has no material or appreciable impact on solar access and amenity of adjoining properties.

The proposed development satisfies Objective B.

Objective C

To provide appropriate height transitions between development, particularly at zone boundaries.

Comment:

The site is not affected by a zone boundary since the surrounding area is similarly zoned R2-Low Density Residential.

The proposed development satisfies Objective C.

Objective D

To define focal points by way of nominating greater building heights in certain locations.

Comment:

The development will have a defined focal point in the rear part of the building where the height transition occurs. The height increase in the transition zone assists the legibility of the development as two distinct, albeit attached, dwellings. The proposed development satisfies Objective D.

6. Are there sufficient environmental planning grounds to justify contravention of the development standard?

The proposal would be consistent with the objectives of the R2 Low Density Residential zone in that it demonstrates suitability of the site for the topography, using careful planning and design strategies to reduce the environmental impact of the development.

The proposal will satisfy the objectives of the development standard, despite the numerical non-compliance, as well as the objectives of the R2 Low Density Residential zone in which the land is located. The proposed development presents a well considered modern design for the Site.

The height non-compliance is created by a design choice ultimately due to the walls supporting the skillion roof design and rear feature. It will, therefore, have no negative impact on the streetscape. The neighbouring dwellings (as shown in the streetscape elevation) are not affected by this. The design proposed for the proposed dual occupancy, presents a more refined bulk, as the height does not appear to dominate the streetscape.

In the circumstance of this development application, the proposed building remains well within the 9 metre Height of Buildings development standard is well founded and should be supported as it has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of LEP 2015. A delicate balance between increased density and compatibility to existing surrounding development has been achieved by reduction of bulk, use of appropriate colours, landscaping and other architectural treatment. No intrusion to privacy, blocking of solar access and overshadowing of adjacent properties is expected as a result. The impact to the local character is not any different to any existing or future development in the area. The development will be in the public interest because it would provide a better

planning outcome for the proposed dwelling internally while at the same time being consistent with the objectives of the development standard and the objectives of the R2 Low Density Residential zone.

There are sufficient environmental planning grounds for the contravention given that a building envelope with multiple steps internally would create a worse urban design outcome.

7. Is the objection well founded?

In the Wehbe2 judgment, Preston CJ expressed the view that there are 5 different ways in which an Objection may be well founded and that approval of the Objection may be consistent with the aims of the policy:-

1. the objectives of the standard are achieved notwithstanding non-compliance with the standard;

Comment: Yes. Refer to comments under Part 5 above which discusses the achievement of the objectives of the standard.

2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

Comment: It is considered that the purpose of the standard is relevant but the purpose is satisfied.

3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

Comment: Compliance does not defeat the underlying object of the control however compliance would prevent the approval of an otherwise supportable development. Development standards are not intended to be applied in an absolute manner.

4. the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;

Comment: Not applicable.

5. the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and **compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.**

Comment: The development standard is applicable to and appropriate to the zone. In our opinion, for the reasons stated, the objection is considered to be well founded.

8. Conclusion

This Clause 4.6 Exception to Development Standards has been prepared to address a variation sought for the facade wall height and the height of the common wall of the de-attached dual occupancy development. The principal reasons for the support of the height variance are:-

- While a compliant design can be produced, the architectural integrity of the roof design would be compromised leading to a less favourable outcome. The current roof design is compatible with the proposed facade and building design.

- The design of the building is site responsive taking advantage of the topography. This results in a wall height which supports the skillion roof design, however the wall height at the eaves / gutter line is less than 7m.
- The area of the building affected by the height variation is minor (Refer to side elevations).
- The height variance does not adversely affect the solar access available to adjoining properties although the site does have an inevitable shadowing orientation, however the wall height at the gutter line is less than 7m.
- The resultant development does not contradict the general residential character within the subject R2 Low Density Residential zone.
- The proposal is also generally consistent with Council's controls in terms of the desired streetscape outcomes. It is therefore considered both unreasonable and unnecessary that the development must strictly comply with the development standard.
- Lastly, if the objection is found by Council to be well founded as described at Part 6 of this report, we request that council support the variation to the development standard and grant consent to the development application.

Kind Regards,

A handwritten signature in black ink, appearing to read 'Amani'.

Amani Salameh | Building Designer

DEZCON

m: 0423 908 060

e: info@dezcon.net