

Request for Variation to a Development Control and Supporting Information

This request is to accompany a development application lodged with Council where the development does not meet the development control(s) contained with the Richmond Valley Development Control Plan (RVDCP) 2021, and a variation to such control(s) is sought.

Application of the DCP and Variations

Under the *Environmental Planning & Assessment Act 1979*, Development Control Plans (DCP's) are required to be applied flexibly, and consent authorities are required to allow for alternate solutions to DCP requirements so that otherwise permissible development may be carried out. The role of the DCP is to give effect to an environmental planning instrument (EPI) by supporting the aims of the instrument, the range of permitted development under the EPI and the objectives of applicable land use zones.

Council will consider variations to the development controls set out in the DCP where a proposed development can otherwise demonstrate that it achieves the applicable planning objectives. Council will consider variations to the DCP provisions as set out below:

- a. Where a proposal does not comply with a particular development control, applicants may propose an alternative solution. In some circumstances, variations can produce improved and innovative solutions for particular site.
- b. A written variation request must:
 1. Identify the development control that is to be varied and detail the extent of variation proposed;
 2. Identify the general and/or specific objectives of that control and how the variation complies with the objectives;
 3. Justify why the specific provisions of the policy do not make appropriate provisions with regard to the subject application; and
 4. Demonstrate why compliance with the provisions of this DCP is unreasonable or unnecessary in the particular circumstances of the case.

Note: Variations to a development control(s) will only be considered where the specific development objective can be met.

The following section is required to be completed as part of any development application where a variation is sought to a development control(s) contained within the RVDCP 2021. Alternatively, the listed questions may be addressed within a Statement of Environmental Effects (SEE) document lodged with the development application. Further documentation may be attached to support your submission.

1. What is the development control(s)? (specify)

There are 2 proposed variations that are both intrinsically linked to each other, being:

- proposed in-ground swimming pool (being an ancillary structure) situated within the building line to Carrabeen Street
- proposed 1.8m high rendered block decorative fence to provide security to the pool on part of the front boundary (to Carrabeen Street) – to satisfy the requirements of the *Swimming Pools Act 1992* and *Swimming Pools Regulation 2018*

Part A-6.1.7 – Street Setbacks for Detached Ancillary Development

Street setbacks for all other ancillary development (excluding garages and semi enclosed carports) are to be 6.0m to a primary road and/or 3.0m to a secondary or parallel road.

Part A-6.2.3 – Fencing in the R1 and RU5 Zones

Solid form front fences shall have a maximum height of 1.2m from natural ground level at any point. Solid form fencing includes: block, masonry, paling, lapped and capped and sheet or panelled fences.

Higher front fences, such as those used to shield dwellings from the noise of classified road, where they are not part of the character of the streetscape, will only be considered on merit.

Where such fencing is warranted, fences shall be a maximum of 1.8m from natural ground level at any point and set back from the property boundary by a distance equivalent to the height of the fence. Landscape planting is to be provided between the fence and the boundary, with a mature height of at least 1.5m.

2. Provide details of the extent of variation (i.e. what is the non-compliance? Is it minor or extensive? Percentage of variation between your proposal and the development control)

The proposed variations are considered to be such that when assessed on merit, are not significant and are not such that can readily be reported on a numerical or percentage basis. As stated above, both of the proposed variations are intrinsically linked with the 1.8m high front fence being required to satisfy the swimming pool fencing requirements.

3. What are the objectives of the development control(s)?

Street Setbacks for Detached Ancillary Development:

- (a) Ancillary development is consistent with the desired character and setting within the street.*
- (b) Vehicle parking structures do not dominate the streetscape.*
- (c) To achieve the general objectives for ancillary development.*

Overall Objectives for Ancillary Development:

- (1) Balance the ability of the individual residents to erect ancillary structures which contribute to their enjoyment of their property while protecting the amenity and acoustic and visual privacy of neighbours.*
- (2) Ensure that ancillary structures are compatible with the established character, scale and setting of the locality.*
- (3) Minimise the potential environmental impacts of ancillary development.*
- (4) Manage the cumulative impact of ancillary development, particularly the visual impact when viewed from the public domain and neighbouring properties.*
- (5) Ensure new ancillary development minimises overshadowing, view loss and visual intrusion for neighbouring properties.*

Fencing in the R1 and RU5 Zones:

- (a) To ensure that fences and courtyard walls:*
 - Do not become a dominant built element in the streetscape;*
 - Provide a sense of territory, privacy, noise reduction and safety for residents,*
 - Retain the sense of safety in the street that pedestrians gain from the casual observation by residents;*
 - Do not impact on the safe movement of vehicles and pedestrians; and*
 - Retain opportunities for casual social interaction in the community.*

4. How does the proposed variation comply with those objectives listed above?

The proposed swimming pool, paved surrounds and front fence:

- have been fully integrated into the design and layout of the new dwelling (and resultant dual occupancy)
- will provide a significant contribution to the amenity and enjoyment of the new dwelling and will not have any adverse impacts on the amenity, acoustic and/or visual privacy of any neighbours – they are situated on the southern side of the new dwelling and front Carrabeen Street and are not proximate to any adjacent dwellings on adjoining properties
- do not comprise/relate to a vehicle parking structure and will not dominate the streetscape and will not impact or comprise on-site car parking or access to/from the subject land and dual occupancy dwellings
- are compatible with and will not adversely impact or compromise the established character, scale and setting of the locality
- will not have any adverse environmental impacts
- will not be highly visible in the local landscape or streetscape
- will not have any adverse visual impacts when viewed from the public domain and/or neighbouring properties
- will not resulting in any overshadowing, view loss or visual intrusion of any neighbouring properties
- will not be a dominant built element in the streetscape – the fence has an indent and a length of 9m over a boundary having a length of 36.21m (being 25%)
- will provide a high level/sense of territory privacy, noise reduction, safety and security for residents
- will maintain a reasonable level of passive surveillance of the road and road verge for pedestrians – a high level of visibility is available from the proposed double storey dwelling, which contains 1 x front door and 2 x windows on the ground floor and 8 x windows on the first floor facing Carrabeen Street
- will not have any adverse impacts on the safe movement of vehicles and/or pedestrians
- will not compromise the opportunity for casual social interaction with the un-fenced front yard of the new dwelling (containing the front door, garage and driveway) having a length of approx. 10m

5. Please provide justification/reasoning as to why the development control(s) does not make specific provision in relation to your proposal/does not enable you to achieve the outcome you are seeking?

The swimming pool has been situated in a location that:

- fronts Carrabeen Street and is physically and spatially removed from any adjacent dwellings
- has a north and easterly aspect and will receive good solar access
- adjoins/forms part of the private open space area for the new dwelling, being contiguous with the covered alfresco patio that opens on the dining/family room
- will provide increased amenity and enjoyment for future residents
- will not have any adverse impacts on the natural or man-made environment

The proposed solid front fence will not cast shadows over any adjoining private property and fronts the road and grass verge/footpath.

6. Demonstrate why compliance with the development control(s) is unreasonable or unnecessary in your particular circumstance.

The proposed fence:

- is a decorative rendered block wall with an indent that is provided for articulation and planting
- is for a relatively short length/small component of the Carrabeen Street frontage of the site and will thus not be dominant in the local streetscape
- provide a high level of territory, privacy, security and amenity for the dwelling and swimming pool (as well as compliance with pool fencing regulations)
- is compatible with a number of other front fences in the locality (as detailed below in Section 7)
- is not proximate to any dwellings on any adjoining lots
- will not adversely impact or compromise the safety and efficiency of the local road and pedestrian networks including movements to/from the site

7. Any other considerations?

Solid front fences (some of which are masonry and are situated on the front boundary) exist on the following properties in the local area:

- 53 Beech Street
- 57 Beech Street
- 61 Beech Street
- 32 Heath Street
- 35 Heath Street

A swimming pool in the front building setback (including some solid front fencing) exists on the following properties in the local area:

- 53 Beech Street
- 2 Booyong Street
- 4 Booyong Street
- 75 Heath Street
- 4 Flame Street
- 3 Seamist Land
- 21 Terrace Street
- 2 Ocean Street
- 4 Ocean Street

Subject Land and Applicant Details

Subject Land: Lot 10 Sec 33 DP 758403, No. 51 Beech Street, Evans Head

Applicant: Ardill Payne & Partners – Paul Snellgrove – Ardill Payne & Partners

Date: 29th February 2024