

dcp variation - private open space dwelling b

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 within 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)

Part A-3.7 – Principal Private Open Space

1. *The area of principal private open space provided for each dwelling is:*
 - *At least 16m² with a minimum length and width of 3m for a 1 or 2 bedroom dwelling;*
 - *At least 25m² with a minimum length and width of 3m for a dwelling containing 3 or more bedrooms (or 2 bedrooms and a study).*
2. *The principal private open space is located behind the building line.*
3. *The principal private open space is located adjacent to the living room, dining room or kitchen to extend the living space.*

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 variation is considered to be such that when assessed on merit, is not significant and is not such that can readily be reported on a numerical or percentage basis.

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

Objective (a) in respect of Design Criteria 1 above:

“Dwellings provide appropriately sized private open space which is usable, meets the needs of occupants and enhances residential amenity.”

Objective (b) in respect of Design Criteria 2-4 above:

“Principal private open space area is appropriately located to enhance livability for residents.”

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

Dwelling B has been provided with an expansive private open space area to its eastern side, which is considered to be such that is appropriately sized and located such that it is fully usable and will more than meet the needs of the occupants and will enhance the residential amenity and livability for residents, having regard to the circumstances of the case, viz:

- the area to the east of the dwellings has effective overall dimensions of approx. 5.5m (W) x 18.5m (L) and an area of >100m²
- contains an in-ground swimming pool that is behind a fence that is setback 1.8m from Paddon Street, but is in front of the building line
- has an area with dimensions of approx. 5.5m (W) x 12m (L) that is behind the building line that contains a covered/roofed BBQ area that has dimensions of approx. 3.3m (W) x 7.5m (L)
- has been fully integrated into the overall design and layout of both of the new dwellings
- has been situated to maximise the northern and eastern aspect and provide optimum solar access opportunities, particularly to the swimming pool and deck
- will provide a significant contribution to the amenity and enjoyment of the dwelling and will not have any adverse impacts on the amenity, acoustic and/or visual privacy of any neighbours
- 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 dwelling
- due to the fact that the subject land is flood liable and habitable rooms have to be above flood (and thus on the first floor), it is not possible for it to be located adjacent to the living room, dining room or kitchen
- the dwelling has been provided with a large north facing first floor deck (dimensions of 2.46m x 7.53m) which opens onto the kitchen/living and is an effective to extension of the living space

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 Paddon Street and is physically and spatially removed from any adjacent lots
- has a north aspect and will receive optimum solar access
- adjoins/forms part of the private open space area for the new dwelling, being contiguous with the covered BBQ area and lawn
- will provide significantly increased amenity and enjoyment for future residents
- will not have any adverse impacts on the natural or man-made environment

The private open space area that is behind the building line (that contains the covered outdoor BBQ area has total dimensions of approx. 5.5m (W) x 12m (L) and an area of 66m², which significantly exceeds the required 25m² area and 3m x 3m dimension.

The covered BBQ area has a total area of approx. 25m² which is 25% of the total area of the private open space area to the east of the dwelling (which has an overall area of approx. 100m²).

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

Due to the long boundary of the subject land running east-west and fronting Paddon Street, it is highly desirable to site the pool so that it faces the road and will receive optimum solar access and is not proximate to any adjoining lots.

Further, the pool forms an integral component of the private open space and will not be highly visible in the local landscape or streetscape.

The subject lot is flood liable and thus all habitable floors have to satisfy minimum floor levels and it is therefore not possible for the private open space area to be adjacent to the living room, dining room or kitchen.

7. Any other considerations?

There are no other considerations additional to those identified above.

Subject Land and Applicant Details

Subject Land: Lot 8 DP 1290626, No. 22 George Street, Broadwater

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

Date: 23rd April 2024