



*request to vary  
a development standard*



## REQUEST TO VARY A DEVELOPMENT STANDARD

85 WOODLAND STREET  
BALGOWLAH HEIGHTS NSW 2093

October 2025

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## introduction

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This request to vary a development standard is made by Northern Beaches Planning on behalf of Matt Donnelly to accompany the lodgement of a development application for alterations and additions to an existing dwelling at 85 Woodland Street, Balgowlah Heights (**site**). This request is made pursuant to clause 4.6 of Manly Local Environmental Plan 2013 (**MLEP 2013**) and with regard to relevant case law.

## standard to be varied

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Pursuant to clause 4.3(2) of MLEP 2013, the height of any building is not to exceed the maximum height shown for the land on the Height of Buildings Map, being 8.5m with respect to the subject site.

The maximum building height is a development standard, as defined by the 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...*

Pursuant to clause 4.6(2) of MLEP 2013, 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 building height development standard of clause 4.3(2) of MLEP 2013 is not expressly excluded and thus, the provisions of clause 4.6 can be applied in this instance.

## extent of the proposed breach

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The proposed development reaches a maximum height of 9.2m, representative a maximum variation of 0.7m or 8% variation of the 8.5m maximum height development standard clause 4.3 of MLEP 2013. The extent of non-compliance with the 8.5m building height development standards is highlighted in the Architectural Plans by Action Plans, including the Long Section on DA12 which is extract in **Figure 1** on the following page.

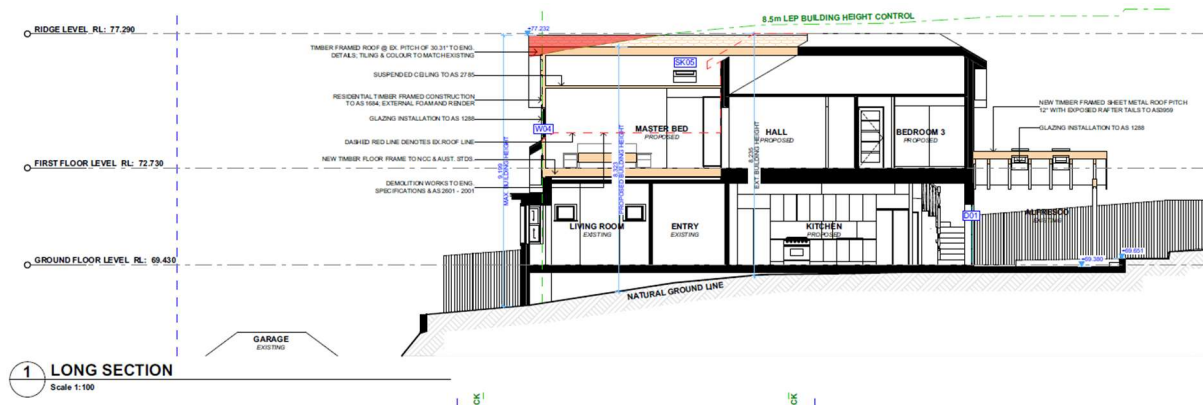


Figure 1 – Extract of the Long Section on DA12, with the portion of the building above the 8.5m height standard in red  
Source: Action Plans & NBP

*unreasonable or unnecessary*

Pursuant to clause 4.6(4) of MLEP 2013, consent can only be granted if the consent authority is satisfied that the applicant's written request to vary the development standard has addressed the criteria of clause 4.6(3) of MLEP 2013. Clause 4.6(3)(a) of MLEP 2013 requires the applicant to demonstrate 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 and as confirmed in the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, 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.

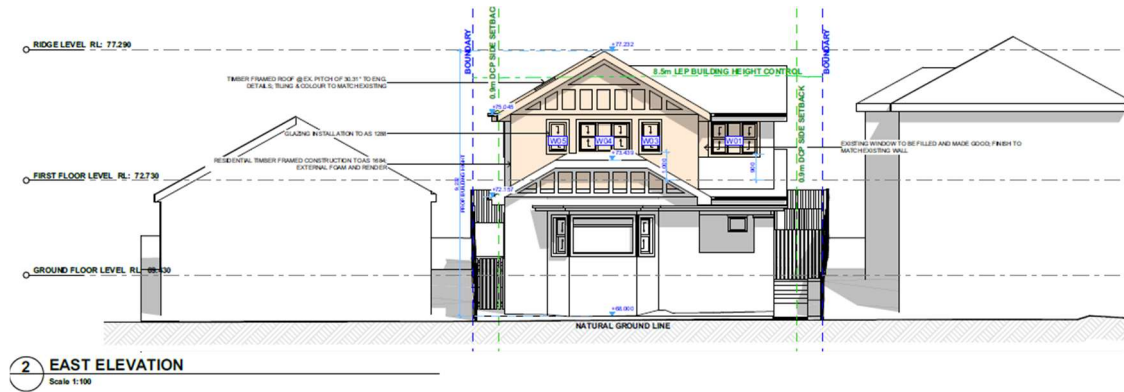
The proposed development is consistent with the objectives of the building height development standard, as prescribed by clause 4.3(1) of MLEP 2013, as follows:

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

Comment: As demonstrated by the East Elevation (**Figure 2**), the height of the proposed development sits comfortably in the streetscape setting.

As discussed in the Surrounding Development planning principle developed by the NSW LEC in the matter of *Project Venture Developments Pty Ltd v Pittwater Council* [2005] NSWLEC 191, compatibility is different from sameness and as such, buildings do not need to be the same height to be compatible or capable of existing together in harmony.

Nonetheless, the proposal maintains the ridgeline of the existing dwelling and is lower than that of the adjoining two storey dwelling to the north at 87 Woodland Street.



**Figure 2 – Extract of the East Elevation on DA11**  
**Source: Action Plans**

- (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*

Comment: The height non-compliance does not result in any adverse visual impacts as seen from the public domain, with the height of roof form consistent with buildings along the high side of Woodland Street. Further, the height non-compliance is centralised on the site, such that impacts to adjoining properties associated with overlooking and overshadowing are avoided.

- (c) *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*

Comment: The proposed development is compatible with the form and scale of existing and likely future development and will not be visually offensive in the streetscape context. The proposal is a high-quality design that is appropriately responsive to the desired future character of the locality and which will positively contribute to the streetscape.

- (d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,*

Comment: The proposed development is well articulated and is in keeping with both the height of the existing dwelling and other dwellings along the high side of Woodland Street, such that the non-compliance will not be readily perceived.

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*

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Clause 4.6(3)(b) of MLEP 2013 requires the applicant to demonstrate 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 height standard are as follows:

### **1. Slope of the land**

The non-compliance can be largely attributable to the slope of the land, with a fall of more than 7.6m along the length of the site. The majority of the development sits well below the maximum height plane, offsetting the minor variation proposed.

### **2. Alterations and additions**

The proposal seeks consent for alterations and additions to the existing dwelling, with the retention of existing ground and first floor levels. The non-compliance occurs where the existing ground floor is slightly elevated above ground, to account for the slope of the land.

### **3. Lack of Impact**

The breach associated with the pitched roof form is relatively minor, with a maximum exceedance of 700mm or 8%. In consideration of the scale of the development as a whole, the proposed variation is reasonably described as minor. The non-compliant elements do not attribute to any unreasonable impacts upon the amenity of future occupants of the development, neighbouring sites or the wider public domain.

Consistent with the findings of Commissioner Walsh in *Eather v Randwick City Council* [2021] NSWLEC 1075 and Commissioner Grey in *Petrovic v Randwick City Council* [2021] NSWLEC 1242, the particularly small departure from the actual numerical standard and absence of impacts consequential of the departure constitute environmental planning grounds, as it promotes the good design and amenity of the development in accordance with the objects of the EP&A Act.

Allowing for the development to appropriately respond to the individual context of the site, including the slope of the land and the levels of the existing dwelling, promotes good design and amenity of the built environment, and the proper construction and maintenance of buildings, consistent with objectives (g) and (h) of the EP&A Act.

Furthermore, allowing for a variation to the height plane that is compatible with the height and scale of nearby future 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*

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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 MLEP 2013 have been met. As such, there is no jurisdictional impediment to the granting of consent in relation to the proposed breach of the building height development standard.



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