

**CLAUSE 4.6 VARIATION REQUEST  
FOR  
HEIGHT OF BUILDING DEVELOPMENT STANDARD  
CLAUSE 4.3 OF WARRINGAH LEP  
AT  
6 STEPHEN STREET, BEACON HILL**

**Prepared for  
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## INTRODUCTION

This Clause 4.6 (cl.4.6) Variation Request is prepared in support of a Development Application (DA) for alterations and additions to the existing dwelling house at 6 Stephen Street, Beacon Hill and seeks to vary Clause 4.3 of the Warringah Local Environmental Plan 2011(LEP) with regard to the Height of Building Development Standard.

This written cl. 4.6 Variation Request has been prepared in accordance with cl.4.6 – Exception to Development Standards of the LEP, and the NSW Department of Planning and Infrastructure (now DPIE), ‘Varying development standards: A Guide’, August 2011 (NSW guide to varying development standards).

## DEVELOPMENT STANDARD TO BE VARIED

### *Clause 4.3 Height of buildings*

**Comment:** An 8.5 metre height control applies to the subject site as shown on the LEP Height of Buildings Map.

## PROPOSED DEVELOPMENT

The proposed development, as set out in the Statement of Environmental Effect, seeks alterations and additions to the existing dwelling house to:

- Extend the front elevation by 1.2m to allow for new open plan design.
- Insert new windows and sliding doors to extended front elevation.
- Extend the balcony at the front elevation.
- Extend the existing rear roofed deck for comfortable family and entertaining use readily accessing the rear lawn area.
- Add additions at first floor level, with the design following the renovated ground floor. Open plan interior and extended balcony to the south side off the new family room.
- The additions and alterations enable increasing the size of the bedrooms, living room and family room for improved usable space.

- Extend the 2- car space garage to provide more space needed for extra family trade vehicles, home workshop, and storage areas.

## **CLAUSE 4.6 VARIATION REQUEST TO VARY CLAUSE 4.3 OF THE SYDNEY LEP – HEIGHT OF BUILDINGS**

Clause 4.3 of the LEP provides a degree of flexibility in applying development standards to development proposed to achieve better outcomes for and from the development.

The NSW guide to varying development standards includes a template at appendix 3. This Clause 4.6 Variation Request has been prepared in accordance with this guide:

### **1. What is the name of the environmental planning instrument that applies to the land?**

Warringah Local Environmental Plan 2011.

### **2. What is the zoning of the land and what are the objectives of the zone?**

#### ***Zone R2 Low Density Residential***

##### ***1 Objectives of zone***

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

### **3. Identify the Development Standard to which this Clause 4.6 Variation applies?**

The development standard sought to be varied by this cl.4.6 Variation Request is Height of Buildings (cl. 4.3 of the LEP).

#### 4. What are the objectives of the development standard?

##### **Clause 4.3 Height of buildings**

*(1) The objectives of this clause are as follows—*

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

*(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](#).*

*(2A) If the [Height of Buildings Map](#) specifies, in relation to any land shown on that map, a Reduced Level for any building on that land, any such building is not to exceed the specified Reduced Level.*

#### 5. What is the numeric value of the development standard in the environmental planning instrument?

The development standard is 8.5 metres in accordance with Clause 4.3(2).

#### 6. How do the existing and proposed numeric values relate to the development standard and what is the percentage variation?

<b>Height of Building</b>			
<b>Current Height of Building (m)</b>	<b>Maximum Height of Building under LEP</b>	<b>Level of non-compliance</b>	<b>Percentage Variation</b>
7.21m	8.5 m	8.58m - Front Wall – exceeds by 80mm	0.94%
		9.230m Front Wall at 5 m back – exceeds by 730mm	8.59%

		8.7m - Front Wall at 9m back – 200mm	2.35%
		8.52 m - Rear family room wall – 20mm	0.24%

## 7. Application of Clause 4.6 of the LEP

### 4.6 Exceptions to development standards

- (1) *The objectives of this clause are as follows—*
  - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *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. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (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.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless—*
  - (a) *the consent authority is satisfied that—*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

- (b) the concurrence of the Planning Secretary has been obtained.*
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—*
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*

**Comment:** This cl.4.6 Variation Request is applying on these grounds, in accordance with the following five requirements:

1. Subject to a written request from the applicant that seeks to justify the contravention of the development standard (clause 4.6(3)).

**Comment:** This cl.4.6 Variation Request meets the requirements for a written request.

2. That written request must seek to justify contravention of the standard by demonstrating that:

- Compliance with the development standard is unreasonable or unnecessary in particular circumstances of the case (clause 4.6(3)(a)); and
- That there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)).

**Comment:** Appropriately addressed in Parts 8 and 9 of this Request.

3. The consent authority must consider the written request.

**Comment:** This is the responsibility of the consent authority in considering this Request.

4. The consent authority must be satisfied that:

- The written request has adequately addressed the matters that are required to be demonstrated, i.e. compliance is unreasonable and unnecessary and sufficient environmental planning grounds (clause 4.6(4)(a)(i)).
- The development is in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out grounds (clause 4.6(4)(a)(ii)).

**Comment:** This is the responsibility of the consent authority to assess the information in Parts 8, 9 and 10 of this Request.

5. Concurrence to the variation must have been obtained from the Director-General grounds (clause 4.6(4)(b)).

**Comment:** The Director-General has issued a blanket concurrence to variations to development standards where the variation is made pursuant to an environmental planning instrument which contains clause 4.6 in the form contained in the standard template or in similar terms.

**8. How is compliance with the development standard unreasonable or unnecessary in the circumstances of this particular case?**

The NSW Land and Environment Court in *Four2Five Pty LTD v Ashfield Council* [2015] NSWLEC 90, considered how this question may be answered and referred to the earlier Court decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827. The court provided five tests that can be applied to establish whether compliance with the development standard is unreasonable or unnecessary.

**Test 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard.**

As outlined below, the proposed development will achieve the objectives of the development standard notwithstanding non-compliance with the numerical requirements.

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

**Comment:** The proposed development does not exceed the maximum height limit across the entire development. The degree of variation is due to the topography of the land which includes an unusual recession in the centre of the site, resulting in the non-compliance with Cl. 4.3.

The relatively modest non-compliance would not be viewed as out of character in the surrounding residential environment. A two storey dwelling on the site is in keeping with neighbouring built form and the height and scale of the proposed development would be compatible with the surrounding and nearby development, meeting objective (a) of Cl. 4.3 of the LEP.

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

**Comment:** As set out in the Statement of Environmental Effects, the new proposed additions, alterations and roof structure is tiered in form, stepping in from the east high side to the roof ridge, allowing afternoon sunlight to reach the east side property. This also reduces the effect of bulk and scale in the building.

The new roof planes will have minimal pitch to help minimize the overall height, bulk and scale.

Privacy is maintained with all new windows to the ground floor east side being high-light windows to ensure privacy to number 8 Stephen Street, Beacon Hill.

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

**Comment:** The design of the proposed development is sympathetic to the character of the surrounding environment as detailed under objectives (a) and (b).

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

**Comment:** The design of the proposed development is sympathetic to the character of the surrounding environment as detailed under objectives (a) and (b).

**Test 2: The underlying object or purpose of the standard is not relevant to the development and compliance is unnecessary**

**Comment:** The underlying purpose of the standard is to control the height of dwellings in this location to ensure that new development is appropriate in its context. However, this test is not strictly applicable to the proposed development as the development meets the objectives of the standard notwithstanding the minor non-compliance.

**Test 3: The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is**



**unreasonable.**

**Comment:** Not applicable to the proposal.

**Test 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 to the proposal.

**Test 5: The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.**

**Comment:** Not applicable to the proposal.

**9. Are there sufficient environmental planning grounds to justify contravening the development standard?**

**Comment:** There are sufficient environmental planning grounds to justify contravening the development standard for the following reasons:

- The development proposed is permissible with consent within the R2 Zone and is consistent with the relevant objectives.
- The siting, bulk, scale and massing of the proposed development is appropriate in the setting of the subject site. The degree of variation is modest and due to the unusual topography of the site.
- The proposed development would not give rise to any harmful impacts on neighbouring amenity.
- The proposed development would not be viewed as out of character from the streetscene or surrounding environment.

**10. Is the proposed development, despite the contravention to the development standard, in the public interest?**

**Comment:** As outlined in Parts 8 and 9 of this Report, the proposed development meets the objectives of the zone and the development standard in accordance with Cl.4.6 (4) (a) (ii). For these reasons, the proposed development is in the public interest.

**11. Is there any other relevant information to be considered in order to justify varying the development standard?**

**Comment:** The proposed development meets all the other relevant development standards of the LEP.

## **CONCLUSION**

It is requested that council support the proposed variation to Clause 4.3 of the Warringah LEP 2011 for the reasons set out in this report.