

10 Nooal Street, Newport – Alterations and Additions to Dwelling house

Clause 4.6 Variation Statement – December 2019



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INTRODUCTION

1. Overview

This Clause 4.6 Variation request has been prepared in support of the development application for the proposed alterations and additions to the dwelling house at 10 Nooal Street, Newport.

This Clause 4.6 Variation has been submitted in conjunction with the Statement of Environmental Effects (SEE) that assessed the proposed works as described above. The request for variation of the development standard has been prepared in accordance with the requirements of Clause 4.6 of the Pittwater LEP 2014 (PLEP 2014) which has the following aims and objectives:

- 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.*

The proposed variations to development standards for the proposed development are in relation to Clause 4.3 Height of Buildings of the PLEP 2014. In summary the following variations are proposed:

Pittwater LEP 2014 Clause	PLEP 2014 Development Standard	Proposed Development Non Compliance	% of Variation
Clause 4.3 Height of Buildings	Maximum Height 8.5m	The proposal results in a maximum Height of Building of 9.235m	8.6%

In accordance with Clause 4.6 of the PLEP 2014 Council is required to consider the following:

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.*

This Clause 4.6 Variation request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards.

THE STANDARDS BEING OBJECTED TO

2. Relevant Development Standards

The development standards being requested to be varied are Clause 4.3 Height of Buildings of the PLEP 2014.

2.1 The objectives/underlying purpose of the clause

A key determination of the appropriateness of a variation to a development standard is the proposal's compliance with the underlying objectives and purpose of the development standard. Therefore, while there is a specified numerical control for Clause 4.3 Height of Buildings, the objectives and underlying purpose behind each of the development standards are basic issues for consideration in the development assessment process.

Section 3 of this Clause 4.6 Variation addresses the proposed variation to Clause 4.3 Height of Building development standard.

2.2 Proposed Variation to Standards

The proposed variations to development standards for the proposed development are in relation to Clause 4.3 Height of Buildings of the PLEP 2014. In summary, the following variations to development standards are proposed:

Pittwater LEP 2014 Clause	PLEP 2014 Development Standard	Proposed Development Non Compliance	% of Variation
Clause 4.3 Height of Buildings	Maximum Height 8.5m	The proposal results in a maximum Height of Building of 9.235m	8.6%

PROPOSED VARIATION TO CLAUSE 4.3 HEIGHT OF BUILDING

3. Overview

Pursuant to Clause 4.6 of PLEP 2014, we hereby seek exception to the 8.5m height of building standard applicable pursuant to Clause 4.3 of PLEP 2014. Clause 4.6(4)(ii) requires that such a request must establish that the proposed contravention is consistent with the objectives of the standard and the zone.

The proposed variation to the height of building standard is a result of the provision of the proposed alterations and additions. The proposed variation to the 8.5m height standard seeks an additional 735mm for over the height standard to a very minor portion of the rear elevation, the equivalent of a 8.6% increase to the maximum permitted height of building standard.

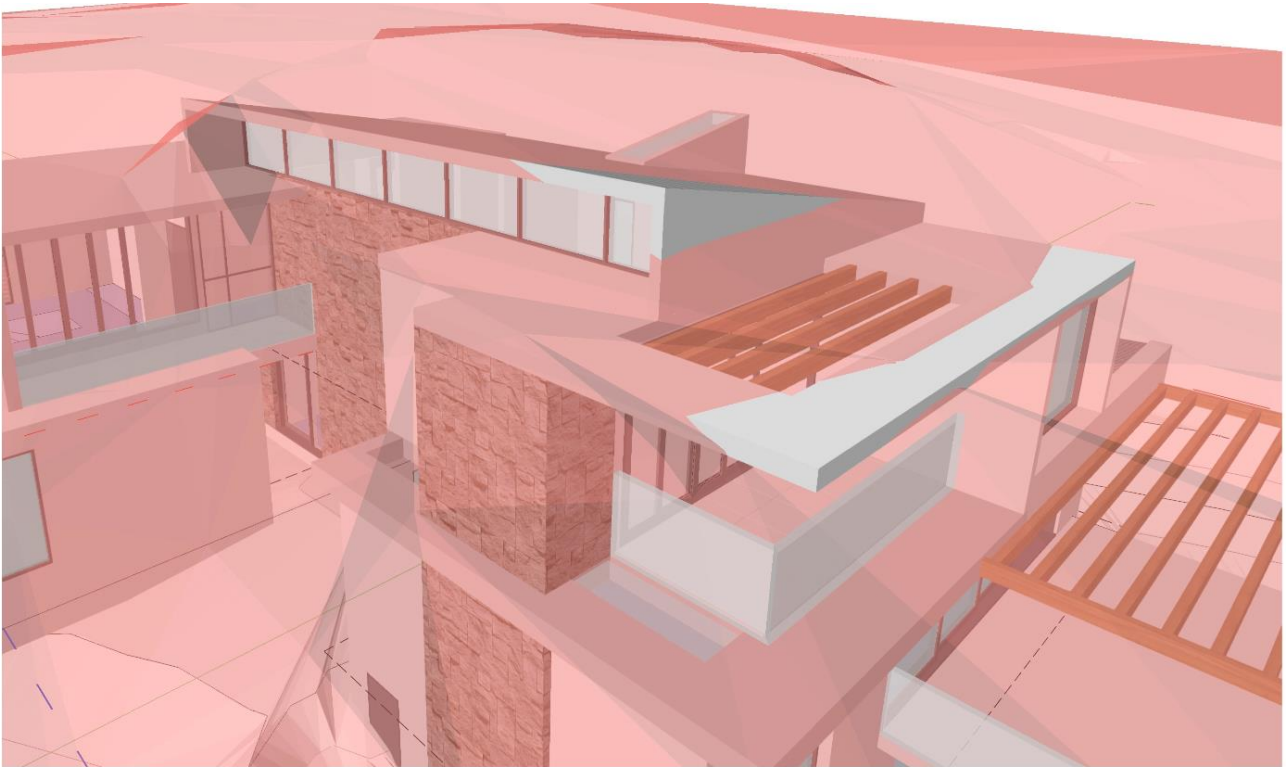


Figure 1: The extent of the non compliance shown in white.

3.1 Objectives of the Standard

The objectives of the Clause 4.3 Height of Building standard of the PLEP 2014 are as follows:

- (a) *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) *to minimise any overshadowing of neighbouring properties,*
- (d) *to allow for the reasonable sharing of views,*



(e) to encourage buildings that are designed to respond sensitively to the natural topography,

(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

Notwithstanding the proposed variation to the standard, the proposed development is nevertheless consistent with these objectives:

(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

- The proposed building is consistent with the prevailing building height. Furthermore, the element of the proposal that represents its highest point is the roof of the proposed master bedroom ensuite which will not be visible from the streetscape. The majority of the building has a lesser height. The portion of the building that exceeds the maximum height standard contributes to the numerical non-compliance.
- The proposed variation to the 8.5m height standard seeks an additional 735mm for over the height standard to a very minor portion of the rear elevation, the equivalent of a 8.6% increase to the maximum permitted height of building standard.
- The proposed building forms part of the urban backdrop when viewed from the Pittwater and its foreshores. The building will have no perceptible impact on views to nearby residential development from public places.
- The proposal reflects the topographic landscape, stepping down with the slope of the land.
- The desired streetscape is maintained through the generous front setback and provision of existing landscaping.

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

- The proposal has a bulk that is commensurate with the expected outcomes of the planning controls and a scale that is less than its neighbours.
- The breaches of the building height relate to relatively minor elements of the building and the majority of the building is substantially below the building height control.
- The proposed building envelope is consistent with the existing building envelope and other similar development. The proposal results in an addition through the provision of a first floor on top of the existing building envelope.
- The bulk and scale of the proposal is consistent with this style of residential building which is common for residential areas.
- In light of the proposal's contribution to achieving the desired future character of the area, a reduction of building height would serve no material planning purpose, other than numerical compliance with a generic Council control.
- The proposal will not have any impact on the existing streetscape as the additional height is largely set away from the street.
- Other aspects of the design further reduce the bulk of the building, including a variety of finished surface materials and colours, and varying setbacks.

(c) to minimise any overshadowing of neighbouring properties,

- The shadow diagrams provided demonstrate that only minor overshadowing will occur in the morning.

(d) *to allow for the reasonable sharing of views,*

- The Land and Environment Court has established “planning principles” in relation to impacts on views from neighbouring properties. In *Tenacity Consulting P/L v Warringah Council* (2004) NSWLEC 140 Roseth SC, states that “the notion of view sharing is involved when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment”.
- No views will be impacted upon by the proposed new dwelling or the height non-compliance, especially given the elevated nature of the dwellings on the eastern side of Nooal Street.

(e) *to encourage buildings that are designed to respond sensitively to the natural topography,*

- The proposed existing building is set into the natural topography of the site, and the proposed addition respects this topography.. This objective is achieved.

(f) *to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

- The proposed building forms part of the urban backdrop when viewed from Pittwater and its foreshores.
- Furthermore the site is not located within a heritage conservation area and is not adjacent any heritage items.

3.2 Objectives of the Zone

The site is currently zoned E4 Environmental Living zone under the Pittwater LEP 2014. The proposed development results in alterations and additions to the existing dwelling house, and is therefore considered permissible within the E4 zone, as outlined in the accompanying SEE.

The proposed works are consistent with the E4 zone objectives in that:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

The proposed development is acceptable in terms of its impacts on the ecological and aesthetic values.

- *To ensure that residential development does not have an adverse effect on those values.*

The proposed development is acceptable in terms of its effects on values.

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*


The proposal integrates with the sloping nature of the site, and remains low density in scale.

- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

The proposal is considered to be consistent with this objective. The proposal will not impact upon the nearby riparian and foreshore vegetation and wildlife corridors.

3.3 Establishing if the Development Standard is Unreasonable or Necessary

In *Wehbe v Pittwater Council* [2007] NSWLEC 827 Preston CJ set-out the five ways of establishing that compliance with a development standard is unreasonable or unnecessary in support of justifying a variation:

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1. *Establish that compliance with the development standard is unreasonable or unnecessary because **the objectives of the development standard are achieved notwithstanding non-compliance with the standard.***
 2. *Establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*
 3. *Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*
 4. *Establish that 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.*
 5. *Establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary".*

3.4 Establishing if the Development Standard is Unreasonable or Necessary

In applying the tests of **Wehbe v Pittwater Council** [2007] NSWLEC 827, only one of the above rationales is required to be established. Notwithstanding the proposed variation, as demonstrated in Sections 3.1 and 3.2, the proposed development is consistent with the underlying objectives of the standard for Height of Building and the E4 zone of PLEP 2014.

3.5 Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

The variation to the development standard for Height of Building is considered well founded because, notwithstanding the proposed non-compliance with Height of Building standards:

- The proposed development is consistent with the underlying objective or purpose of the standard as demonstrated in **Section 3.1**.
- The proposed maximum height of building is appropriate for an E4 zone that primarily consists of residential development.
- The proposed building is consistent with the prevailing building height. Furthermore, the element of the proposal that represents its highest point is the roof of the proposed master bedroom ensuite which will not be visible from the streetscape. The majority of the building has a lesser height. The portion of the building that exceeds the maximum height standard contributes to the numerical non-compliance.
- The proposed building envelope is consistent with the existing building envelope and other similar development.
- The bulk and scale of the proposal is consistent with this style of residential building which is common for residential areas.
- The proposed building provides an appropriate height, bulk and scale to the site and is largely compliant with PLEP 2014 height provisions.
- The proposal will not have any impact on the existing streetscape or the foreshore character and appearance.

- View sharing is retained as a result of the proposed building height.
- In light of the proposals contribution to achieving the desired future character of the area, a reduction of building height would serve no material planning purpose, other than numerical compliance with a generic Council control.
- The proposal will add to delivering a mix of well-designed housing that meets the needs of Sydney's growing population unique family dwellings to meet the changing population needs.
- The proposed development will not impact on the amenity of adjoining occupiers.
- The proposed development will not result in any unreasonable privacy intrusion or loss of daylight access to adjacent properties.

3.6 Overview

This exception to the development standard demonstrates that the proposed variation to building height standard should be supported because:

- The proposed new alterations and addition to the residential building and its built form and character are consistent with the underlying objectives of the standard.
- The proposed variation to the 8.5m height standard seeks an additional 735mm for over the height standard to a very minor portion of the rear elevation, the equivalent of a 8.6% increase to the maximum permitted height of building standard.
- The proposed variation allows for the provision of improved residential accommodation, for family housing.
- The proposed variation does not result in any unreasonable privacy, sunlight, view loss or visual impacts.
- The proposed variation to the standard does not raise any matter of significance for State or regional environmental planning.
- There is no public benefit in maintaining strict compliance with the standard.
- Strict application of the standard is therefore unreasonable and unnecessary in the circumstances of the case.

Overall, it is considered that the proposed variation to the maximum height of building control (8.6%) is entirely appropriate and can be clearly justified having regard to the matters listed within PLEP Clause 4.6.

3.7 Conclusion

It is requested that council supports the proposed variation to Clause 4.3 of the PLEP 2014 for the following reasons:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
- There are sufficient environmental planning grounds to justify contravening the development standard.
- The proposed variation allows for the provision of improved residential accommodation, for family housing.
- No unreasonable environmental impacts are introduced as a result of the proposal.
- There is no public benefit in maintaining strict compliance with the standards.