



# **Pittwater LEP 2014 Clause 4.6 Exceptions to Development Standards – Building Height**

Alterations and Additions to an Existing Dwelling at

**No. 44 Sunrise Road,  
Palm Beach**

Prepared for:  
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**PITTWATER LOCAL ENVIRONMENTAL PLAN (LEP) 2014  
CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS**

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**APPLICANT'S NAME:** Thomas Hamel & Associates  
**SITE ADDRESS:** No. 44 Sunrise Road, Palm Beach  
**PROPOSAL:** Alterations and additions to an existing dwelling

**1. (i) Name of the applicable planning instrument which specifies the development standard:**

Pittwater Local Environmental Plan (LEP) 2014

**(ii) The land is zoned:**

C4 Environmental Living. The objectives of the C4 Environmental Living Zone are as stated:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

**(iii) The number of the relevant clause therein:**

Clause 4.3 – Height of Buildings which is stated as follows:

- (1) *The objectives of this clause are as follows–*
  - (a) *To ensure that any building, by virtue of its height and scale, is consistent with the desired future 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.*
- (2) *The height of a building on any land is not to exceed the maximum building height shown for the land on the Height of Buildings Map.*
- (2A) *Despite clause (2), development on land–*
  - (a) *At or below the flood planning level or identified as “Coastal Erosion/Wave Inundation” on the Coastal Risk Planning Map, and*
  - (b) *That has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map, may exceed a height of 8.5m, but not be more than 8 metres above the flood planning level.*
- (2B) *Despite subclause (2), development on area of land–*
  - (a) *At or below the flood planning level or identified as “Coastal Erosion/Wave inundation” on the Coastal Risk Planning Map, and*
  - (b) *That has a maximum building height of 11 metres shown for that land on the Height of Buildings Map, may exceed a height of 11 metres, but not be more than 10.5 metres above the flood planning level.*

- (2C) Despite subclause (2), development on an area of land shown in Column 1 of the table to this subclause and identified as such on the Height of Buildings Map, may exceed the maximum building height shown on the Height of Buildings Map for that land, if the height of the development is not greater than the height shown in the opposite that area in Column 2.

<b>Column 1</b> <b>Area</b>	<b>Column 2</b> <b>Maximum height above the flood planning level</b>
Area 1	11.5 metres
Area 2	8.5 metres on the street frontage and 10.5 metres at the rear
Area 3	8.5 metres
Area 4	7 metres

- (2D) Despite subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map may exceed a height of 8.5 metres, but not more than 10 metres if-
- The consent authority is satisfied that the portion of the building above the maximum height shown on that land on the Height of Buildings Map is minor, and
  - The objectives of this clause are achieved, and
  - The building footprint is situated on a slope that is in excess of 16.7 degrees (that is 30%), and
  - The building are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.
- (2E) Despite subclause (2), development for the purposes of shop top housing on land identified as "Area 5" on the Height of Buildings Map may have a height up to 10 metres if the top floor of the building is setback a minimum of 6 metres from the boundary to the primary street frontage.
- (2F) Despite subclause (2), development on land identified as "Area 6" on the Height of Buildings Map must not exceed 8.5 metres within the area that is 12.5 metres measured from the boundary of any property fronting Orchard Street, Macpherson Street, Warriewood Road or Garden Street.
- (2FA) Despite subclause (2), the maximum height for a secondary dwelling or a rural worker's dwelling in Zone E4 Environmental Living or Zone RU2 Rural Landscape is 5.5 metres if the secondary dwelling or rural worker's dwelling is separate from the principal dwelling.
- (2FB) Despite subclause (2), in the case of a dual occupancy (detached), the maximum height for the dwelling that is furthest back from the primary street frontage of the lot is 5.5 metres.
- (2G) In this clause-
- flood planning level** means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metres freeboard, or other freeboard determined by an adopted floodplain risk management plan.
- floodplain risk management plan** has the same meaning as it has in the Floodplain Development Manual (ISBN 0 7347 5476 0), published in 2005 by the NSW Government.

This Clause 4.6 Exception to Development Standards should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by GSA Planning.

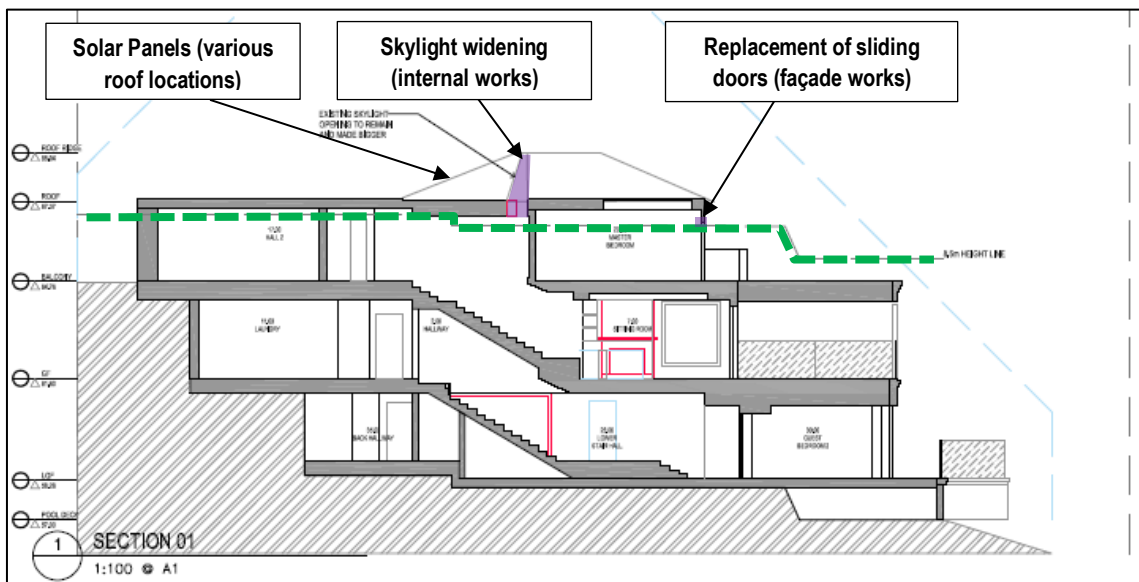
## 2. Overview

This Clause 4.6 Exception to Development Standards has been prepared in accordance with the most recent case law. In our opinion, the variation achieves the objectives of the zone and development standard and has demonstrated there are sufficient environmental planning grounds to justify contravening the development standard.

### 3. Specify the nature of Development Standard sought to be varied and details of variation:

The development standard to which this request for variation relates is Clause 4.3 of the LEP – Height of Buildings. This Clause operates in conjunction of the Height of Buildings Map which indicates a maximum height of 8.5 metres applies to the subject site. Clause 4.3(2D) permits a height of up to 10 metres on sites with a maximum height standard of 8.5 metres, given requirements relating to Clause 4.3(D)(a) – (d) are achieved (refer previous page). As the site does not meet the requirements of Clause 4.3(D) (namely the minimum slope of the building footprint), the 8.5 metre LEP height standard applies.

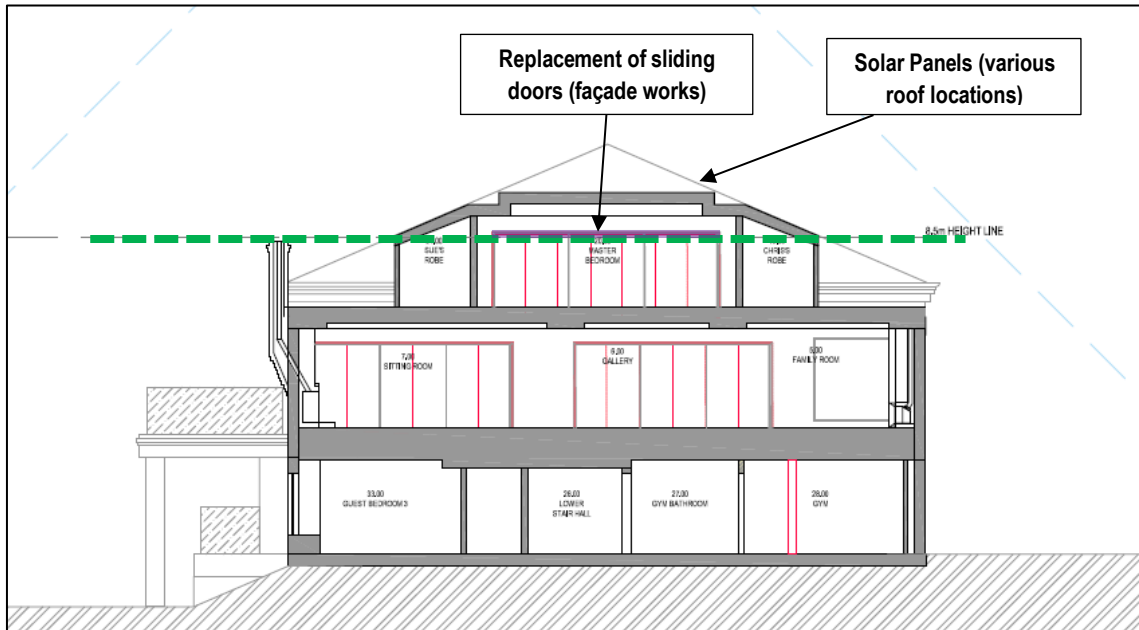
The proposed alterations and additions make modest changes to the existing building on site, which remains as a two to three storey dwelling with a pitched roof. The dwelling is subject to an existing height non-compliance, being 10.93 metres in height (see **Figure 1 and 2** below and on the following page), which is 2.43 metres above the maximum height of 8.5m per the Height of Buildings map. As the existing Level 3 and the roof are partially above the height standard, some minor proposed works to this level restrained to replacement of the rear sliding door system; internal widening of the skylight; and addition of new solar panels, inevitably do not comply with the maximum permitted height.



Source: Thomas Hamel & Associates

..... 8.5m LEP Maximum Height

**Figure 1: Existing and Proposed Height  
(Section 01)**



Source: Thomas Hamel & Associates

..... 8.5m LEP Maximum Height

**Figure 2: Existing and Proposed Height  
Section 02**

Importantly, the proposed works above the 8.5m LEP height standard will not alter the existing maximum building height or envelope. Therefore, the proposed alterations and additions are considered minor in nature and will not result in any adverse impacts on the amenity of adjoining sites.

#### 4. Consistency with Objectives of Clause 4.6

The objectives of Clause 4.6 seek to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development. In the Court determination in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] 236 LGERA 256 (*Initial Action*), Preston CJ notes at [87] and [90]:

*Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...In any event, Clause 4.6 does not give substantive effect to the objectives of the clause in Clause 4.6(a) or (b). There is no provision that requires compliance with the objectives of the clause.*

However, it is still useful to provide a preliminary assessment against the objectives of the Clause. The objectives of Clause 4.6 and our planning response are as follows:

- Objective (a)* to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- Objective (b)* to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Flexibility is sought in the application of the building height development standard to the proposed development in the circumstance of this particular case. Achieving strict compliance would not be possible, as the existing dwelling house presents a departure from the building height development standard applicable to the subject site, as set out in the Pittwater LEP 2014.

The minor proposed works to the façade at Level 3; the increased skylight void within the roof form; and the new solar panels to the roof that are above the LEP height standard are modest and have been designed to enhance residents' amenity. There is no discernible impact on the current style or appearance of the dwelling, or the existing height, bulk and scale. Importantly, the alterations and additions are contained wholly within the existing building envelope and maximum height. Accordingly, the proposal will preserve existing views from the street and surrounding development, solar access, and privacy for surrounding development, regardless of the technical height non-compliance.

The contemporary upgrades will maintain the existing appearance of the façade when viewed from the public and private domain. The new solar panels are situated away from the front roof plane and will generally be screened by existing landscaping from neighbouring dwellings. Therefore, the works are unlikely to be readily discernible when viewed from neighbours, the street, or the foreshore.

Accordingly, flexibility in this circumstance will achieve a better planning outcome for and from the development. Importantly, the proposal will not alter the existing building height.

## 5. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The Clause states, inter alia:

- (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.*

This written request justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances; and there are sufficient environmental planning grounds to justify the non-compliance. These matters are discussed in the following sections.

### 5.1 Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 (*Wehbe*), Preston CJ established five potential tests for determining whether a development standard could be considered unreasonable or unnecessary. This is further detailed in *Initial Action* where Preston CJ states at [22]:

*These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

It is our opinion that the proposal satisfies Test 1 established in *Wehbe* and for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant test will be considered below.



## Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard;

Despite the proposed development's non-compliance with the applicable building height development standard, the proposal achieves the desired low-density character of the area. The proposal provides a height, bulk and scale that is generally consistent with that envisaged by Council's controls. Reasons why the proposed development achieves the objectives of the building height standard are explained below.

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

'Desired future character' is not defined in the LEP. In *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115 [63] ('SJD'), Preston CJ states, inter alia:

*...the desired future character of the neighbourhood or area can be shaped not only by the provisions of WLEP, including the development standards themselves, but also other factors, including approved development that contravenes the development standard.*

Accordingly, the desired future character is shaped by the text and context of the LEP and recent approvals in the vicinity. Each of these will now be discussed. The relevant clauses in the LEP which relate to urban character and built form are:

- a. *The zoning of the land (Clause 2.2 and the Land Zoning Map);*
- b. *The zone objectives and land use table (Clause 2.3); and*
- d. *The development standards in Part 4:*
  - i. *Clause 4.3 Height of Buildings and Height of Buildings Map which prescribes a maximum height of 8.5m.*

The C4 Environmental Living Zone envisages a range of uses. These uses which are permissible with development consent are:

*Bed and breakfast accommodation; Boat sheds; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dwelling houses; Environmental protection works; Group homes; Health consulting rooms; Home-based child care; Home industries; Jetties; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Respite day care centres; Roads; Secondary dwellings; Tank-based aquaculture; Water recreation structures.*

The proposed alterations and additions to the existing dwelling will remain consistent with the permissible uses of the C4 Zone. The proposed works will enhance occupants' amenity and have no impact on the overall character and appearance of the dwelling when viewed from neighbouring sites and the public domain. The proposal will be consistent with the zone objectives, as detailed in Section 6 of this report.

While the proposal results in a technical departure from the building height provisions of the Pittwater LEP 2014, this development standard is considered to be less applicable in the circumstances of this case, as the existing building was constructed prior to the implementation of the subject standard. The building will remain as a predominantly two to three storey dwelling with a pitched roof, with the design of the proposed alterations and additions maintaining the existing building height, architectural style and scale when viewed from surrounding dwellings and the public domain. Therefore, the proposal is consistent with the desired future character of the Palm Beach locality.

The height variation will facilitate upgrades to the amenity of the dwelling, while remaining consistent with the surrounding context of development in the Palm Beach locality. According to the Northern Beaches Council Clause 4.6 Variations Register and the DA Tracker, there are a number of recent approvals for alterations and additions to an existing dwelling in the Palm Beach Locality which have resulted in departures from the building height development standard. While it is acknowledged that each development is assessed on its own merits, it is still relevant to consider developments which have been approved by Council for similar reasons as this application. Such examples include, inter alia:

- No. 62 Florida Road, Palm Beach (DA 2022/0042), approved 2 November 2022, for alterations and additions to a dwelling house including a swimming pool and cabana with a studio. The justification was that despite the height variation, the proposed bulk and scale is appropriate for the site and locality, with no significant impacts on existing views and outlooks.
- No. 1120 Barrenjoey Road, Palm Beach (DA 2022/0925), approved 28 September 2022, for alterations to additions to a dual occupancy to create a dwelling house. The justification was that despite the height variation, the proposal continues to provide low-impact residential development of an appropriate bulk and scale, maintains the landscaped character and has no detrimental amenity impacts.
- No. 20 Palm Beach Road, Palm Beach (DA 2020/0214), approved for alterations and additions to a dwelling house. The justification was the height variation is a result of an existing non-compliance, and the proposal provides an appropriate bulk and scale, with no amenity or streetscape impacts.

These approvals also inform the desired future character of the Palm Beach Locality, and demonstrate appropriate circumstances to permit a height non-compliance. In particular, DA 2020/0214 at No. 20 Palm Beach Road reflects a similar scenario to that proposed in the subject DA, where the height variation was the result of an existing non-compliance and did not result in any amenity or streetscape impacts.

The new works which are situated above the building height limit relate to minor internal, façade and roof works only, and are compatible with the height, bulk and scale of the existing built form and surrounding context. The variation is similar to recent approvals nearby the subject site. Therefore, the height and scale is consistent with the desired future character of the area in accordance with *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115 [63].

**(b) To ensure that buildings are compatible with the height and scale of surrounding and nearby development.**

The surrounding area and nearby development is predominantly characterised by two and three storey dwelling houses, with a mix of pitched and flat roof forms. As indicated, the proposal is of a compatible height, bulk and scale to surrounding development in the Palm Beach locality. The well-designed alterations and additions will retain the two to three storey built form and appearance of the site from the public and private domain.

The proposed alterations and additions above the LEP height are positioned within the existing roof form, and like-for-like at the rear façade of the dwelling. The works are designed to enhance natural light and ventilation internally to the dwelling. Importantly, as these works will be contained within the existing building envelope and maximum height, the proposal will retain compatibility with the height and scale of surrounding and nearby development.



**(c) To minimise overshadowing of neighbouring properties.**

As the proposed works above the building height standard are contained within the existing building envelope and height, it will maintain existing levels of solar access to adjacent properties. Accordingly, shadow diagrams have not been prepared, as no additional overshadowing is anticipated as a result of the technical height departure.

**(d) To allow for reasonable sharing of views.**

The subject site and adjoining development enjoy panoramic land and water views to the north, east and west. The proposed works above the building height standard are contained within the existing building envelope and below the maximum existing height, with existing dense landscaping to be retained on the subject site. Accordingly, any potential views and outlooks across the subject site from neighbouring dwellings will be retained as existing, with equitable sharing of views maintained.

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

The existing dwelling has a stepped design which responds to the challenging site topography. The technical building height departure at Level 3 and part of the roof will retain the shape, form and height of the existing building, with no excavation proposed as part of the alterations and additions, only removal of some topsoil. Accordingly, the proposed works and area above the height standard will not affect the existing building height non-compliance, and maintains the existing dwelling's response to the underlying topography.

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

The proposed works above the height limit do not generate any further site disturbance, or loss of landscaped area. The subject site is within the vicinity of heritage items along Sunrise and Barrenjoey Roads. Given the near-identical appearance of works above the height standard, and compatible bulk and scale of the alterations and additions, the proposal will not adversely impact the heritage significance of nearby heritage items.

Accordingly, although the proposal will result in a technical exceedance of the building height development standard, this is due to an existing non-compliance. The proposal is unlikely to have any adverse impacts as the design is similar to the existing situation, consistent with the surrounding context, and will maintain the amenity of neighbouring properties and the public domain.

## **5.2 There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard**

The proposal is permissible in the C4 Environmental Living Zone, is consistent with the relevant zone objectives and satisfies an 'unreasonable and unnecessary' test established by the court in *Wehbe*. There are sufficient environmental planning grounds to justify the building height non-compliance as it is a result of an existing building height non-compliance, and will facilitate improvements to the functionality and amenity of the existing dwelling. This is further discussed below.

## Existing Variation

The building height non-compliance is a function of the existing development on-site, with the dwelling being constructed prior to the implementation of the current applicable height standard. The proposed works above the building height standard will be contained within the existing building envelope. The proposed variation to the height standard will enable upgrading works to be undertaken to the existing dwelling, which will improve natural light and ventilation to the upper level, and the longevity of the built form. Further, as the proposed works above the height standard remain within the overall external envelope and below the existing maximum height, no additional height to the existing built form is proposed.

Proposed works to the upper-portion of Level 3 of the dwelling result in a minor technical exceedance of the height standard due to the existing non-compliance. The modest alterations and additions result in no increase to the maximum building height, and will not alter the visible height, bulk and scale when viewed from the public or private domain. Therefore, in our opinion, the existing variation to the height of buildings development standard results in a technical departure for the proposed works.

## 6. Clause 4.6(4)(a) Requirements

Clause 4.6(4)(a) guides the consent authority's consideration of this Clause 4.6 variation request. It provides that:

- (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*

The applicant submits that the consent authority can be satisfied of each of the requirements of Clause 4.6(4)(a), for all the reasons set out in this written request, and having regard to the site and locality.

In our opinion, the proposal achieves the objectives of the building height development standard, as already demonstrated; and the C4 Environmental Living Zone, as discussed below:

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

**Response:** The proposal retains the low-impact residential character through providing modest alterations and additions to the existing dwelling. Given the minor nature of works and technical height non-compliance, the proposed works above the building height standard will not detrimentally impact on the surrounding ecological, scientific and aesthetic values of the area.

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

**Response:** The proposed works above the height standard will not have adverse ecological impacts, by maintaining the existing building envelope, landscape area, and maximum height.

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

**Response:** The proposal will retain the existing single dwelling on-site, with modest alterations and additions. The proposed works above the height standard will retain the existing building envelope and height, along with the building's stepped design in response to the sloping topography. The proposal will also preserve existing landscaped areas across the subject site.

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

**Response:** Due to the location of the subject site, the additional height will not have a direct influence on riparian and foreshore vegetation. In any case, the proposal generally has considered nearby wildlife corridors through preserving the heavily vegetated character of the site, particularly to the rear.

Accordingly, in our opinion, the proposal complies with the relevant objectives of the LEP, is in the public interest and should be supported.

## 7. Clauses 4.6(4)(b) and 4.6(5) Requirements

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning and Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

Under Clause 55 of the Environmental Planning and Assessment Regulation 2021, the Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standard in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice. While the proposal exceeds the development standard by over 10%, the Planning Circular provides for the Local Planning Panel to assume concurrence.

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (*Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at [100] and *Wehbe* at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

- (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 Secretary before granting concurrence.*

The proposal is not considered to raise any matter of significance for State or regional environmental planning. The building height variation will enhance the amenity and functionality of the existing dwelling without significantly, unreasonably or unacceptably impacting neighbouring properties. The proposal will not result in any additional effects in terms of solar access, privacy or views.

The public benefit of maintaining the development standard is not considered significant given that regardless of the non-compliance, the proposal will appear consistent in the streetscape. As indicated, the well-designed works meet the C4 Environmental Living Zone and building height development standard objectives, as well as maintaining neighbours and local amenity.

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted. The non-compliance contributes to a quality development which is consistent with the desired character of the precinct and is, in our opinion, in the public interest.

## 8. Conclusion

This written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. This is summarised in the compliance matrix prepared in light of *Initial Action* (see **Table 1** on the following page).

We are of the opinion that the consent authority should be satisfied that the proposed development will be in the public interest because it achieves the objectives of the standard and the objectives of the C4 Environmental Living Zone pursuant to the LEP. On that basis, the request to vary Clause 4.3 should be upheld.

Table 1: Compliance Matrix

Para (Initial Action)	Requirement	Section of this Report	Summary	Satisfied
10	Is it a development standard (s.1.4)	1	Yes	
11	What is the development standard	1	Clause 4.3: Height of Buildings	
12	What is the control	1 & 2	8.5m	
14	<b>First Precondition to Enlivening the Power –</b> Consent authority must form 2 positive opinions:		Both positive opinions can be formed as detailed below.	YES
15, 25	<b>1<sup>st</sup> Positive Opinion –</b> That the applicant’s written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3). There are two aspects of that requirement.	5	The Clause 4.6 variation has adequately addressed both matters in Clause 4.6(3) by providing a detailed justification in light of the relevant tests and planning considerations.	YES
16-22	<b>First Aspect is Clause 4.6(3)(a) -</b> That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Common ways are as set out in <i>Wehbe</i> .	5.1	The proposal satisfies Tests 1 <i>Wehbe</i> : <ul style="list-style-type: none"> <li>The objectives of the standard are achieved notwithstanding the non-compliance with the standard.</li> </ul>	YES
23-24	<b>Second Aspect is Clause 4.6(3)(b) –</b> The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under Clause 4.6(4)(a)(i) that the written request has adequately addressed this matter. The environmental planning grounds must be “sufficient” in two respects: <ol style="list-style-type: none"> <li>The environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.</li> <li>The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole.</li> </ol>	5.2	Sufficient environmental planning grounds include, inter alia: <ul style="list-style-type: none"> <li>The building height variation is a function of the existing building height; and improves internal amenity for residents.</li> </ul>	YES
26-27	<b>2<sup>nd</sup> Positive Opinion –</b> That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out.	6	The proposed development achieves the objectives of the building height development standard as addressed under Test 1 of <i>Wehbe</i> . The proposal also achieves the objectives of the C4 Environmental Living Zone.	YES

28-29	<b>Second Precondition to Enlivening the Power –</b> That the concurrence of the Secretary has been obtained [Clause 4.6(4)(b)]. On appeal, the Court has the power to grant development consent, subject to being satisfied of the relevant matters under Clause 4.6.	7	As the relevant matters for consideration under Clause 4.6 have been satisfied as outlined above, the Council can grant development consent.	YES
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