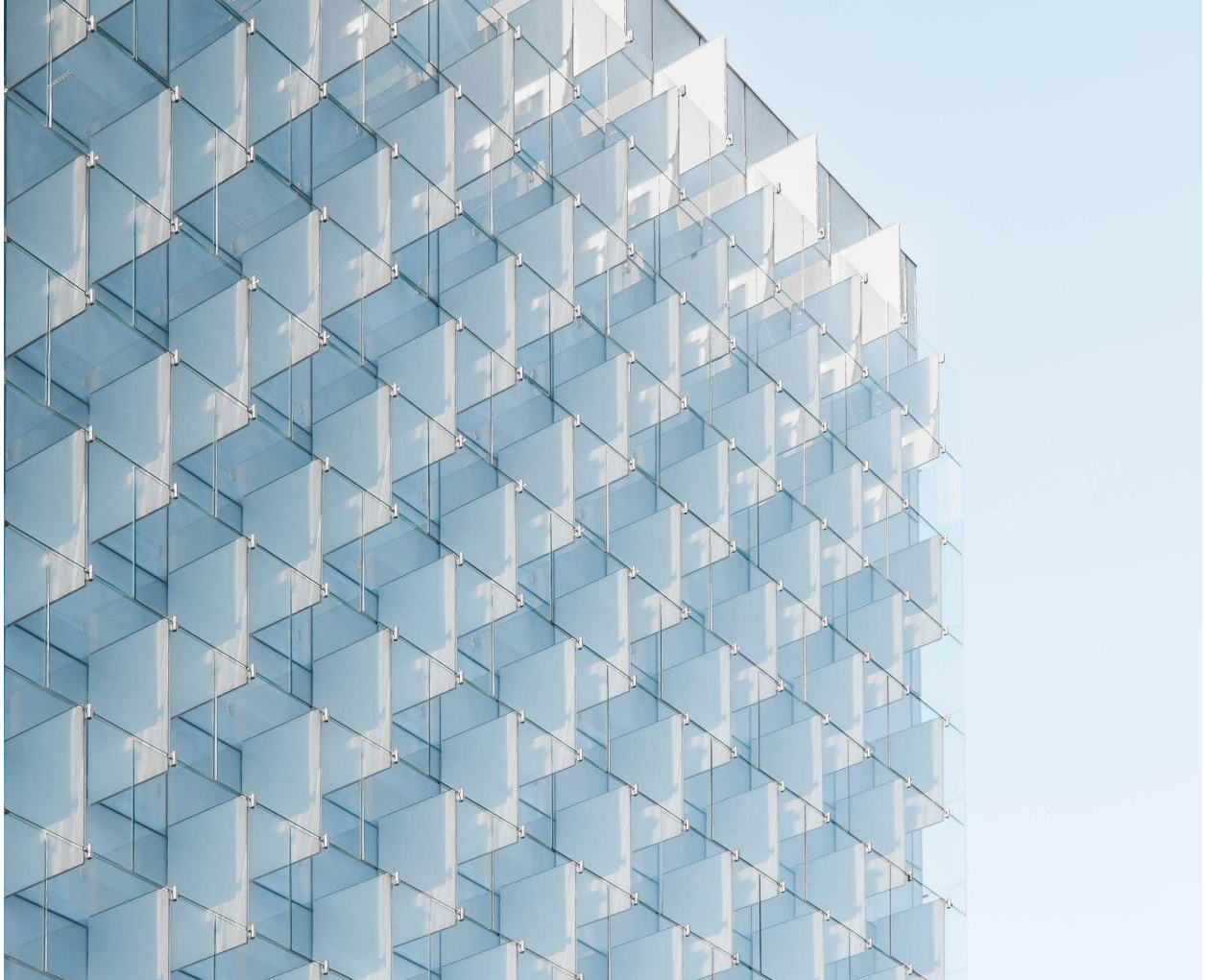


WILLOWTREE PLANNING



17 December 2024

Ref: WTJ24-354
Contact: Bhavesh Taunk



CLAUSE 4.6 VARIATION REQUEST HEIGHT OF BUILDING - CLAUSE 4.3

**ALTERATIONS AND ADDITIONS TO THE EXISTING REGISTERED CLUB
(PITTWATER RSL CLUB)**

80-82 Mona Vale Road, Mona Vale
Lot 52 DP1237461




—
Prepared by Willowtree Planning Pty Ltd
on behalf of Pittwater RSL

Clause 4.6 Variation Request – Height of Building

Alterations and additions to the existing registered club (Pittwater RSL)
80-82 Mona Vale Road, Mona Vale (Lot 52 DP1237461)



In the spirit of reconciliation and recognition, Willowtree Planning acknowledges the Traditional Owners of this Country throughout Australia and their continuing and ongoing connections to land, waters and community. We show our respect to Elders – past and present. We acknowledge that we stand on this Country which was and always will be recognised as Aboriginal Land. We acknowledge the Traditional Owners of the Lands in this Local Government Area, belonging to the local Aboriginal People, where this proposal is located upon.

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PART A PRELIMINARY

1.1 INTRODUCTION

This Clause 4.6 Variation Request has been prepared in support of a Development Application (DA) for alterations and additions to the existing registered club at 80-82 Mona Vale Road, Mona Vale, legally described as Lot 52 in Deposited Plan 1237461 (the Site).

The proposed development seeks approval to upgrade and modernise the existing registered club known as Pittwater RSL Club (the Club) on the Site to enhance its facilities, access, and overall functionality (the Proposal). The Proposal includes the following scope of works:

- Internal layout modifications to improve the functionality of club facilities;
- Installation of new signage and façade improvements to enhance visual appeal;
- Upgraded access features, including a new lift, escalator, and staircase to improve accessibility; and
- Reconfiguration of the parking area, including entry point adjustments, new accessible car parking spaces, and boom gates for improved security and traffic flow at the basement entrance

The majority of the Site is zoned R2 Low Density Residential, with a portion of the Site zoned SP2 Infrastructure along the Mona Vale Road boundary, under the Pittwater Local Environmental Plan 2014 (PLEP 2014). Registered Clubs are typically prohibited in the R2 zone, however, Schedule 1, Clause 11 of PLEP 2014 provides for additional permitted uses on the Site, which prescribes that development for the purpose of a registered club is permitted with development consent. Registered Club means a club that holds a club licence under the Liquor Act 2007. The Pittwater RSL Club is a registered club under the Liquor Act 2007 (Licence No. 300229564) and is therefore permitted with consent within the R2 zone.

This Clause 4.6 Variation Request is made pursuant to Clause 4.6 of PLEP 2014 to vary the maximum building height development standard prescribed by Clause 4.3 of PLEP 2014. The Proposal includes the installation of solar panels and a sawtooth roof with new glazing, reaching a height of 11.49m above ground level (existing). This exceeds the maximum building height development standard of 8.5m prescribed by PLEP 2014 by 2.99m, or 35.17%.

It is noted that the existing building already exceeds the height limit with a height of 13.6m, and the Proposal does not increase the existing maximum building height for the Site. Importantly, the work focuses solely on the addition of a new roof with glazing and solar panels to enhance energy efficiency and solar access. The glazing allows greater natural light to enter the building, reducing the need for artificial lighting, while the solar panels provide renewable energy to support sustainable operations. No additional habitable space or significant visual impact is introduced through these works.

This Variation Request has been developed in accordance with Clause 4.6 of PLEP 2014, taking into account relevant planning controls, site-specific characteristics, and the broader objectives of sustainable development. It concludes that the proposed variation, though non-compliant with the maximum height standard, is reasonable and justified in achieving the principles of orderly and sustainable development, as outlined in the Environmental Planning and Assessment Act 1979 (EP&A Act).



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1.2 RATIONALE OF VARIATION FROM DEVELOPMENT STANDARDS

This Variation Request has been submitted to address the variation to Clause 4.3 – Height of Building of PLEP 2014 and has been prepared in accordance with the requirements of Clause 4.6 of PLEP 2014. Clause 4.6 of PLEP 2014 has the following 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.*

Clause 4.6 of PLEP 2014 facilitates exceptions to strict compliance with development standards in certain circumstances. Clause 4.6(3) states (our emphasis added):

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 demonstrates that the proposed works exceeding the 8.5m height standard, specifically the installation of new solar panels and a sawtooth roof with glazing at a height of 11.49m are justified. These works exceed the height standard by 2.99m (35.17%) but do not increase the overall height of the existing building, which currently reaches 13.6m (refer to **Figure 1** below)

The proposed height variation is minor and necessary for functional improvements that align with the objectives of PLEP 2014. The works are designed to enhance energy efficiency and natural lighting without adverse visual, privacy, or overshadowing impacts on neighbouring properties. Given these factors, there are sufficient environmental planning grounds to justify the height variation, as the Proposal aligns with the zoning objectives and enhances the Club's functionality without detrimental effects on the surrounding area.



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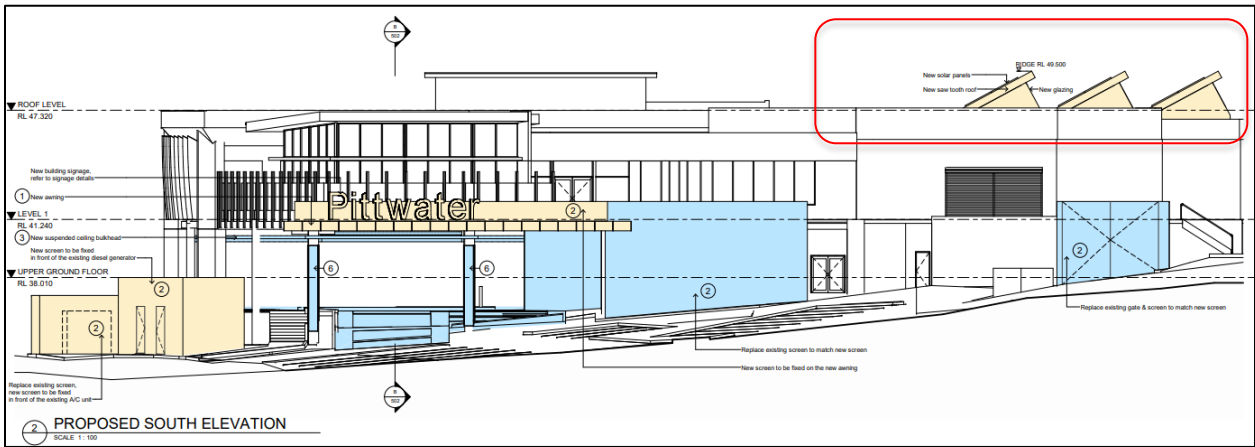


Figure 1: Building Elevation with proposed roof (Source: Bergstrom Architects, 2024)

1.3 DEVELOPMENT STANDARD VARIATION

Under the provisions of Clause 4.3 of PLEP 2014, the Site is subject to a maximum building height of 8.5m. The Proposal involves the installation of a new sawtooth roof with glazing and solar panels, reaching a height of 11.49m. **TABLE 1** below provides a summary of the variation.

TABLE 1. CLAUSE 4.3 OF PLEP 2014 VARIATION SUMMARY			
PLEP 2014	PLEP 2014 Development Standard	Proposed height	Proposed Variation
Clause 4.3	8.5m	11.49m	2.99m or 35.17%

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PART B THRESHOLDS THAT MUST BE MET

2.1 INTERPRETING CLAUSE 4.6

Clause 4.6 of PLEP 2014 facilitates exceptions to strict compliance with development standards in certain circumstances. Clause 4.6(3) states (our emphasis added):

Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

- (a) **compliance with the development standard is unreasonable or unnecessary** in the circumstances, and*
- (b) there are **sufficient environmental planning grounds to justify the contravention** of the development standard.*

*Note— The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be **accompanied by a document setting out the grounds** on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b)*

Accordingly, a successful Clause 4.6 variation must satisfy the below:

Clause 4.6(3) notes that the consent authority must be satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the following:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Cl 4.6(3)(a)); and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard (Cl 4.6(3)(b)).*

To this end the environmental planning grounds advanced in the written request must justify the contravention, not simply promote the benefits of carrying out the development as a whole: *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15].

In the decision of *Rebel MH v North Sydney Council* [2019] NSWCA 130 (**Rebel**) Payne JA held (our emphasis added):

*“Although it was unnecessary finally to decide the correct construction of cl 4.6(4) in Al Maha, I agree with the construction advanced in that case by Basten JA, with whom Leeming JA agreed, at [21]-[24]. **Properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).** Clause 4.6(3) requires the consent authority to have “considered” the written request and identifies the necessary evaluative elements to be satisfied. To comply with subcl (3), the request must demonstrate that compliance with the development standard is “unreasonable or unnecessary” and that “there are sufficient environmental planning grounds to justify” the contravention. It would give no work to subcl 4.6(4) simply to require the consent authority to be*



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satisfied that an argument addressing the matters required to be addressed under subcl (3) has been advanced."

Accordingly, a consent authority must be satisfied:

- That the Clause 4.6 variation application addresses the matters in Clause 4.6(3); and
- of those matters itself which means that there is greater scope for a consent authority to refuse a Clause 4.6 variation.

These matters are addressed in **Section 4.3** and **Section 4.4** of this Variation Request.

This Variation Request has been prepared under Clause 4.6 to request a variation to the maximum height of building development standard prescribed by Clause 4.3 of PLEP 2014.



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PART C STANDARDS BEING OBJECTED TO

3.1 OVERVIEW

The Site is zoned R2 Low Density Residential and is subject to the underling objectives of the varied standard as well as the R2 zone under PLEP 2014.

3.2 CLAUSE 4.3 – MAXIMUM HEIGHT OF BUILDINGS CONTROL UNDER PLEP 2014

Clause 4.3 of PLEP 2014 identifies the following objectives:

- 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 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.*

Clause 4.3 of PLEP 2014 identifies the following height control relevant to the Site:

- 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*

Pursuant to Clause 4.6, the Proposal seeks a variation to the maximum permitted building height of 8.5m.



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PART D PROPOSED VARIATION TO STANDARDS IN CLAUSE 4.3 OF PLEP 2014

A key determinant of the appropriateness of a Clause 4.6 variation to a development standard is the Proposal's consistency with the underlying objectives and purpose of that development standard and the zone.

Importantly, the word consistent has been interpreted as 'compatible' or 'capable of existing in harmony'. *Kingsland Developments Australia Pty Ltd City of Parramatta Council* [2018] NSWLEC 1241.

4.1 OBJECTIVES OF THE STANDARD

Clause 4.3 of PLEP 2014 sets out specific objectives of the development standard. Therefore, consideration has been given to the objectives of Clause 4.3 in **TABLE 2** below:

TABLE 2: CONSISTENCY WITH THE CLAUSE 4.3 OBJECTIVES	
Objective	Response
(a) <i>To ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality</i>	The Proposal maintains the existing height of the building, ensuring consistency with the established character of the area. The addition of the sawtooth roof with glazing and solar panels is a minor change that enhances the Club's functionality without disrupting the scale or form typical of the locality.
(b) <i>To ensure that buildings are compatible with the height and scale of surrounding and nearby development</i>	The existing building already exceeds the height limit, reaching 13.6m, and the Proposal does not increase the building's height beyond the existing maximum. The Proposal focuses solely on the addition of a new roof with glazing and solar panels to enhance energy efficiency and solar access. The upgrades respect the overall scale of surrounding developments, and the new roof design is in harmony with nearby buildings, ensuring compatibility with the existing built environment.
(c) <i>To minimise any overshadowing of neighbouring properties</i>	The design of a new roof structure minimises overshadowing by maintaining the existing building's height. The sawtooth roof and glazing will allow additional light to penetrate into the building, supporting energy efficiency and solar access without causing increased shadowing on neighbouring properties.
(d) <i>To allow for the reasonable sharing of views</i>	The Proposal does not obstruct existing views of the neighbouring properties due to the height exceedance of the new roof structure. The location and position of the new roof design ensures that neighbouring properties retain their views.
(e) <i>To encourage buildings that are designed to respond sensitively to the natural topography</i>	The Proposal respects the Site's topography by adhering to the building's existing footprint and height.



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TABLE 2: CONSISTENCY WITH THE CLAUSE 4.3 OBJECTIVES

Objective	Response
	No additional excavation or earthwork regarding is required, and the new additional roof design is confined within the existing roof and complements the natural landform, ensuring minimal disruption to the Site's topographical integrity. The
<i>(f) To minimise the adverse visual impact of development on the natural environment, heritage conservation areas, and heritage items</i>	The new roof structure is designed to blend with the existing architecture, limiting its visual impact. The sawtooth roof with solar panels is a sustainable addition that enhances the building's aesthetic and energy efficiency, while glazing allows for improved natural light. The Proposal does not impact any heritage conservation areas or heritage items, preserving the site's visual harmony with its surroundings.

4.2 OBJECTIVES OF THE ZONE

The Site is zoned R2 Low Density Residential pursuant to PLEP 2014. Therefore, consideration has been given to the R2 zone objectives in **TABLE 3** below:

TABLE 3: CONSISTENCY WITH THE R2 ZONE OBJECTIVES

Objective	Response
<i>To provide for the housing needs of the community within a low density residential environment</i>	The Proposal contributes to the local community's needs by enhancing the existing facility as a social hub for local residents. By upgrading the Club's facilities and accessibility, the development supports community engagement and well-being, catering to the recreational needs of the local population while remaining consistent with the low-density character of the area.
<i>To enable other land uses that provide facilities or services to meet the day-to-day needs of residents</i>	The upgraded Club facilities, including improved access features and modernised amenities, directly address the daily needs of residents by providing recreational and social services. The addition of features like a new lift and escalator enhances accessibility, ensuring that the facility is welcoming to all community members, including those with disabilities.
<i>To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses</i>	The proposed modifications are consistent with the low intensity and scale of development typical of the R2 zone. The new roof structure and solar panels are designed to complement the existing building and blend with the surrounding residential environment. The improvements do not introduce any high-impact or incompatible uses, ensuring that the character of the area is maintained.



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4.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

Subclause 4.6(3)(a) and the judgement in *Four2Five Pty Ltd v Ashfield Council* (refer to Section 2.1) highlight the need for the proponent to demonstrate how the relevant development standard is unreasonable or unnecessary in the circumstances.

In the context of this Proposal, strict compliance with Clause 4.3 (2) of PLEP 2014 is considered to be both unnecessary and unreasonable. Enforcing strict compliance with the building height standard would significantly constrain the proposed development, leading to:

- The current maximum building height of 11.49m for the new sawtooth roof is below the existing height of surrounding building structures, which makes it necessary for functional upgrades and to enhance the overall aesthetic appeal of the building. Strict compliance would inhibit essential improvements in design and utility.
- The Proposal aims to provide significant enhancements, including improved natural light access and ventilation through the innovative sawtooth design. These enhancements, which positively impact the building's functionality and visual appeal, would be severely limited by strict adherence to the height standard.
- The proposed sawtooth roof design respects the existing building's form and character, integrating with the architectural language of the area without introducing new volumes or excessive bulk that could disrupt the locality's character. Strict compliance would necessitate alterations that could detract from the building's existing contribution to the neighbourhood.

Strict compliance with the prescribed standard is unnecessary as:

- The Proposal adheres to the objectives of the height standard by maintaining the overall character of the streetscape and preserving the neighbourhood's aesthetic. The design avoids additional bulk and scale, respecting the surrounding context while minimising any adverse visual or environmental impacts.
- By proposing work at height of 11.49m for enhancing the building's functionality and aesthetics through the sawtooth roof, the Proposal achieves a superior outcome that aligns with surrounding desired character and adds value to both the property and the local community without conflicting with the intent of the development standard.

Court's Findings in *Wehbe v Pittwater Council*:

In accordance with the Court's findings in *Wehbe v Pittwater Council* [2007] NSWLEC 827, the most commonly invoked way to establish that compliance with the development standard is unreasonable or unnecessary is because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

TABLE 2 of this Variation Request have set out the detailed assessment against the objectives of the development standard and also accordingly, adopted test 1 in *Wehbe* to establish that compliance is



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unreasonable or unnecessary because the objectives of the maximum building height controls are satisfied notwithstanding the variation.

The Proposal does not conflict with the intent of the development standard and zone as demonstrated above, notwithstanding the proposed numeric variation. The proposed variation is well justified as:

- The Proposal enhances the overall amenity of the area by upgrading the building's design and functionality, aligning with the local character and enhancing the streetscape.
- It effectively utilises the height allowance to maintain the site's viability and supports the local economy through increased accessibility and functionality.
- The Proposal respects the existing architectural significance of the Site, contributing to broader conservation goals without undermining the development standard's intent.

Given these justifications, the proposed Clause 4.6 Variation is considered acceptable. The development represents a more efficient and contextually appropriate use of the Site, and the objectives of the relevant clause and the R2 zone would be upheld. Therefore, strict compliance with the building height development standard is unreasonable and unnecessary in the context of this Proposal.

4.4 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

There are several environmental planning grounds that justify the proposed variation to the building height standard under Clause 4.3 of PLEP 2014 in this particular context:

- The Proposal includes the innovative sawtooth roof design, which is intended to enhance natural light penetration and ventilation throughout the building. These modifications are crucial for improving the functionality of the space and addressing the needs of residents, particularly those with mobility and sensory requirements.
- The proposed sawtooth roof design offers a visually appealing upgrade to the building's facade, integrating with the existing streetscape. By enhancing the architectural character while preserving key aesthetic features, the Proposal contributes positively to the overall character and appearance of the locality.
- The additional height required for the sawtooth roof is necessary only for practical enhancements and does not significantly alter the building's scale or introduce excessive bulk. The Proposal ensures an efficient use of the existing height limit while maintaining the existing building's architectural integrity.
- The Proposal does not significantly obstruct views from neighbouring properties. The additional height does not introduce new visual or privacy issues, and therefore aligns with the zone objective of minimising negative impacts on adjacent properties.



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- The proposed upgrades foster a sense of community and support local planning goals by promoting sustainable building practices and encouraging the use of natural resources.

Given these considerations, the proposed variation to the building height standard is well-justified. It addresses practical and community needs while maintaining respect for the existing built environment and aligning with planning goals. The Proposal meets the objectives of Clause 4.6(3)(b) of PLEP 2014, demonstrating that the variation serves the public interest and supports the development’s overall planning objectives.

4.5 OBJECTIVES OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

All planning determinations made under the EP&A Act are required to be made with regard to the objects of the Act in accordance with section 1.3 of the EP&A Act. **TABLE 4** below assesses the proposed development against the objects of the EP&A Act.

TABLE 4: EP&A ACT OBJECTIVES	
Objective	Response
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources,	The development is designed to enhance community welfare by improving the living conditions and accessibility for residents. The upgraded facilities will cater to diverse community needs, contributing to the overall well-being of the locality. Additionally, the proposed enhancements are expected to increase property values, benefiting the local economy.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	The design integrates economic, environmental, and social considerations, emphasizing energy efficiency and resource conservation. The sawtooth roof will enhance natural lighting and ventilation, reducing reliance on artificial heating and cooling systems, thus minimizing the development’s carbon footprint
(c) to promote the orderly and economic use and development of land,	The Proposal represents an efficient use of the existing site by optimising the building’s design and functionality while adhering to planning regulations. The enhancements align with the local planning objectives, promoting the orderly development of the area.
(d) to promote the delivery and maintenance of affordable housing,	While the Proposal primarily focuses on improving a existing building, the upgrades indirectly support affordable housing objectives by enhancing the site’s functionality and attractiveness. A well-maintained and modernized Club facility



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TABLE 4: EP&A ACT OBJECTIVES

Objective	Response
	contributes to the overall quality of the local environment, which can positively impact nearby residential areas.
<i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</i>	The Proposal will not have any adverse impact on the environment including threatened and other species of native animals and plants, ecological communities and their habitats.
<i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i>	The Proposal does not involve any works to any item of heritage significance and is therefore consistent with this clause.
<i>(g) to promote good design and amenity of the built environment,</i>	The sawtooth roof design not only enhances the aesthetic appeal of the building but also improves the overall amenity of the area. The thoughtful architectural approach ensures that the development is visually harmonious with the surrounding environment.
<i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i>	By modernising the structure and improving the accessibility and functionality, the Proposal supports the health and safety of occupants and ensures the building's long-term maintenance and sustainability.
<i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</i>	The Proposal is considered to be local development for which the consent authority will be Northern Beaches Local Planning Panel.
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i>	The DA is subject to the relevant public notification requirements.

4.6 MATTERS OF STATE AND REGIONAL SIGNIFICANCE

The proposed non-compliance with Clause 4.3(2) of PLEP 2014 will not give rise to any matters of significance for State or regional environmental planning. They will also not conflict with any State Environmental Planning Policy or Ministerial Directives under section 9.1 of the EP&A Act.

Planning Circular PS 08-014, issued by the former NSW Department of Planning, requires that all development applications including a variation to a standard of more than 10% be considered by the Local Planning Panel rather than under delegation. It is noted that this proposed variation exceeds 10% and would be required to be determined by the Northern Beaches Local Planning Panel.



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4.7 SUMMARY

For the reasons outlined above, it is considered that the variation to Clause 4.3(2) of PLEP 2014 is well-founded in this instance and is appropriate in the circumstances. The Variation Request is considered to be well-founded for the following reasons as outlined in Clause 4.6 of PLEP 2014 and relevant case law:

- The Proposal is consistent with the objectives of the particular standard and the objectives of the standard are achieved notwithstanding the non-compliance with the standard (refer to **Section 4.1**).
- The Proposal is consistent with the objectives for development within the zone to provide appropriate housing with a high quality of amenity (refer to **Section 4.2**).
- Strict compliance with the development standard is unreasonable and unnecessary in the circumstances (refer to **Section 4.3**).
- There are sufficient environmental planning grounds to justify contravening the development standard (refer to **Section 4.4**).
- The Proposal is consistent with the objectives of the Environmental Planning and Assessment Act 1979 (refer to **Section 4.5**).
- The Proposal does not give rise to any matter of significance for the State or regional environmental planning and is consistent with the visions and objectives of the relevant strategic plans (refer to **Section 4.6**).

Overall, it is considered that the proposed variation to the building height standard is entirely appropriate and can be clearly justified having regard to the matters listed within Clause 4.6 of PLEP 2014.



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PART E CONCLUSION

For the reasons outlined above, it is requested that Council support the Variation Request, which seeks approval for non-compliance with Clause 4.3 of 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 standards;
- The Proposal will capitalise on the Subject Site's full planning potential;
- The Proposal satisfies the objectives of the R2 zone and Clause 4.3 of PLEP 2014;
- No unreasonable environmental impacts are introduced as a result of the Proposal; and
- There is no public benefit in maintaining strict compliance with the standards.

Given the justification provided above, the Variation Request is well founded and should be favourably considered by Northern Beaches Council.

