



**PARKER SCANLON**

Surveying, Town Planning, Bushfire Assessment, Project Management

# Request to vary a development standard under Clause 4.6 of LEP

Installation of Manufactured Home, Construction  
of Veranda, and Associated Works

Lot 2/DP 1237847 at 128A Elanora Road, Elanora  
Heights

**Prepared by:**  
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**Our Reference: S12117**  
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## **Introduction**

This document has been prepared as a request to vary a Development Standard under Clause 4.6 of the LEP for the installation of a manufactured home, the construction of a veranda, and associated works at 128A Elanora Road, Elanora Heights.

The below Clause 4.6 variation is prepared pursuant to Clause 4.6 of the *Pittwater Local Environmental Plan 2014* (PLEP 2012) pertaining to the 'height of buildings' standard that applies to 128 Elanora Road, Elanora Heights. This variation request must be reviewed in conjunction with Building Plans prepared by Manor Group (MG469G, dated 30/10/2019, see **Attachment A**).

Clause 4.6(3) of PLEP 2014 states the requirements of an objection, which must demonstrate:

- (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.*

Clause 4.6(4)(a) of PLEP 2014 states that consent must not be granted for a development that contravenes a development standard, unless the consent authority is satisfied that Clause 4.6(3) is addressed, 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.*

This proposal has been prepared with consideration given to the following:

- Clause 4.6 of PLEP 2014;
- 'Varying Development Standards: A Guide', published by the Department of Planning and Infrastructure in August 2011; and
- The key considerations for assessing development standards, as outlined in the *Wehbe v Pittwater Council [2007] NSWLEC 827*.

## **Summary:**

The proposal is largely compliant with the height of buildings development standard, as set out in PLEP 2014, with the exception of a small part of the house, where the peak of the roof projects outside the parameters of the 8.5m standard to a height of 9m (0.5m higher than the maximum height of building standards). Adjoining properties will endure little impact as a result of this non-compliance, when compared to the compliant building bulk and form of the proposed dwelling. Therefore the impact of the variation is deemed negligible.

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

*Pittwater Local Environmental Plan 2012 (NLEP)*

**2. What is the zoning of the land?**

E4 Environmental Living

**3. What are the objectives of the zone?**

- *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.*

**4. What is the development standard being varied?**

The development standard being varied is Clause. 4.3(2) 'Height of Buildings' of PLEP.

**5. Under what clause is the development standard listed in the environmental planning instrument?**

Clause 4.3

**6. What are the objectives of the development standard?**

The objectives of Clause 4.3(1) are:

- (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.*

**7. What is the numerical value of the development standard in the environmental planning instrument?**

8.5m (in height) – as identified in PLEP 2014 Height of Building Map – Sheet HOB\_013.

**8. What is the proposed numerical value of the development standard in your development?**

The height of buildings for the proposed dwelling is 9m (see **Attachment A**).

**9. What is the percentage variation (between your proposal and the environmental planning instrument)?**

The proposed dwelling involves a 5.6% variation to the development standard; and

**10. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?**

Only a small proportion of the dwelling (6m out of 23m) is over the height of building standards of 8.5m, and the average height exceedance variation within the 6m distance is approximately 0.2m. The overall impacts are therefore minimal in terms of the buildings size and bulk.

Moreover, pursuant to Clause 4.3(1) (a) & (b), the development proposal's scale makes a positive contribution to the built form in the locality, and still enables reasonable solar access to all adjoining developments.

In addition, due to the orientation of the lot, the shadow of the proposed dwelling is likely to fall within the site for most part of the day and the potential overshadowing of neighbouring properties is likely to be negligible, thereby meeting the objectives of Clause 4.3(1) (c).

Furthermore, pursuant to Clause 4.3(1) (d), the proposed dwelling is unlikely to have any adverse impacts on the sharing of views. In addition, the proposed dwelling is designed to respond sensitively to the natural topography, thereby meeting the objective of 4.3(1) (e).

Moreover, with reference to Council's zoning objectives identified previously in Section 3, proposal assists in providing a low-impact residential development, while respecting the amenity and character of surrounding natural and built environment.

Overall, the objectives of the height of building standard are still satisfied in this instance.

**11. How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act.**

The *Webb* decision references *Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979*, which needs to be considered when assessing a variation to a development standard. *Section 5(a)(i) and (ii)* are identified below:

*(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*

*(ii) the promotion and co-ordination of the orderly and economic use and development of land,*

The items specified above will not be compromised or contravened by the proposed variation. Due to the existing urban fabric and context surrounding the proposed development, the height variation will not stand out in isolation. The proposed development is an orderly and economic use of the land and in doing so, does not compromise the objects of *Section 5a(i) and (ii)* of the *EP&A Act 1979*. Furthermore the 0.1 to 0.5m variation will be difficult to distinguish due to the setback and position of the proposed dwelling, when observed from the streetscape and public domain. **Attachment A** identifies the minor variation when compared to Council's development standard (Clause. 4.3).

**12. Is the development standard a performance based control? Give details.**

No.

**13. Would strict compliance with the standard, in your particular case, be unreasonable and unnecessary? Why?**

See Part 10.

**14. Are there sufficient environmental planning grounds to justify contravening the development standard? Give details.**

The proposal does not undermine the objectives of the height of building standard, despite its non-compliance, as only a small part of the building exceeds the prescribed height. Moreover, the height of building objectives pursuant to Clause 4.3(1) are still achieved, notwithstanding the non-compliance.

With the exception of height of building standard, the proposal is generally compliant with the provisions of the *Pittwater LEP 2014* and *Pittwater DCP 2014*. Strict compliance with this standard is unwarranted because non-complying variation contributes little to the overall building bulk and its negligible overshadowing that it presents. The proposal matches the low-density established context, and is thereby orderly development that meets both community and user needs, and accounts for the site's environmental constraints.

The proposal respects the amenity, heritage and character of the surrounding development and environment.

Furthermore, the site is not flood or bushfire prone, and the proposal will not generate adverse acid sulfate soil conditions within the subject site or in the surrounding locality.

In summary, the proposal is: -

- an orderly development of the land, in accordance with the objectives of the EP&A Act;
- unlikely to have detrimental environmental or social impacts;
- likely to generate positive short term, and facilitate long term economic impact;
- reinforces an appropriate land use in the locality;
- able to be undertaken in a controlled manner with minimal environmental impacts;
- not likely to create any land use conflicts; and
- not likely to adversely impact upon the amenity of the locality.

Accordingly, in this instance there are sufficient environmental planning grounds to justify contravening the height of building standard prescribed by Clause 4.3 of the *Pittwater Local Environmental Plan 2014*.

**Attachment A: Identification of Building Envelope in relation to height of building standard (8.5m height)**

