

Clause 4.6 Variation to Height of Building Development Standard

For Construction of a New Residence

at

32 Garden Street.
NORTH NARRABEEN NSW 2101

for

Zac and Shiva Ford



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ENERGY EFFICIENT BUILDING DESIGN

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0.00 INTRODUCTION

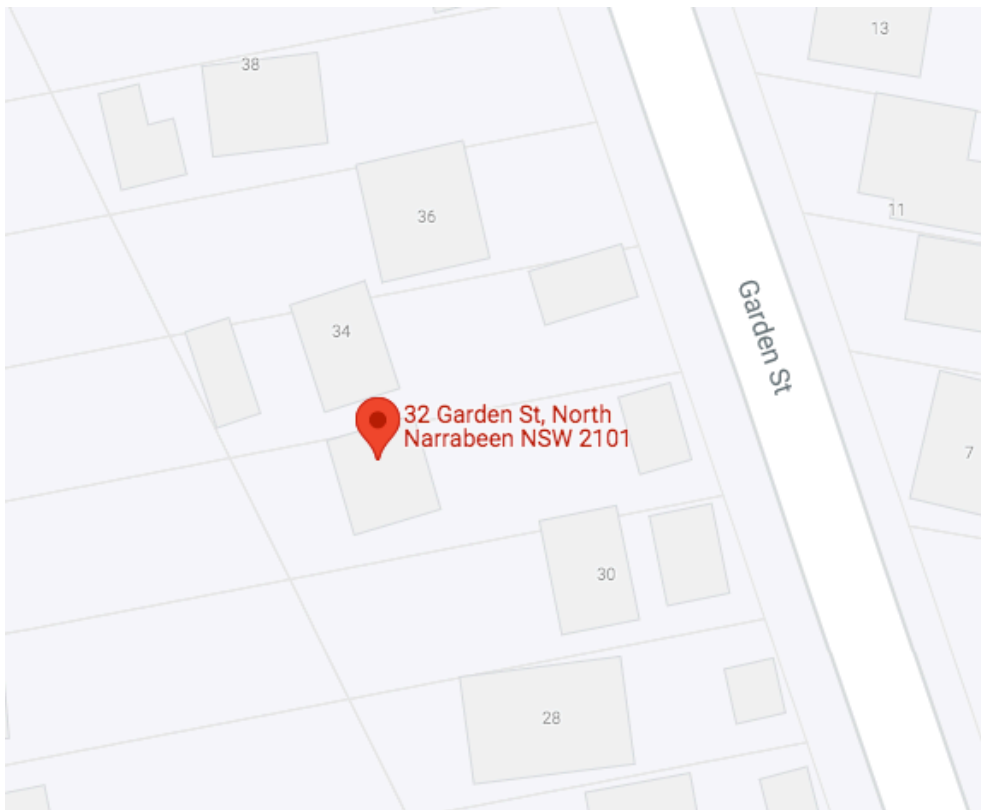
This Clause 4.6 Variation to Height of Building Development Standard accompanies the development application for the proposed new residence at No 32 Garden Street, North Narrabeen. This statement seeks to demonstrate that the height variation to this proposal is minor and remains consistent with Pittwater LEP and with Council's objectives.

1.00 THE EXISTING SITE

1.01 Site

The proposed new residence is located on the western side of Garden Street in the residential neighbourhood of North Narrabeen. The site currently has an existing residence and this will be demolished to make way for the new home.

Site Address: No 32 Garden Street, North Narrabeen.



LOCATION PLAN

1.02 Local Authority

The local authority for this site is:

Northern Beaches Shire Council

Planning officer location

725 Pittwater Road

Dee Why NSW 2099 Australia

Phone: 1300 434 434

Email: council@northernbeaches.nsw.gov.au

1.03 Planning Controls

Planning controls used for the assessment of this Development Application are:

- Pittwater Local Environment Plan (PLEP)
- Pittwater Development Control Plan (PDCP)

1.04 Development

The Development Application seeks approval for the construction of a new residence, and associated civil and landscaping works



OVERHEAD VIEW OF THE SITE

2.00 THE PROPOSAL

2.01 Features of the Proposal

An existing residence occupies the site and is accessed by a pathway leading from the driveway. This site is a steep block sloping up from the street with a small storage shed at the front driveway and a hard stand for the parking of cars. The existing residence is situated high up on the block with a large garden to the front.

The new residence has been designed to capitalise on the environmental aspects of the site with due regard to sun and view towards the front of the property without interfering with the neighbours.

It is proposed that a residence designed by “Parkwood Modular Homes” be provided. An entry to the new residence at a lower level with two Bedrooms, a Bathroom and a new Laundry will be provided. A stair leading to the upper level with a Master Bed, Study Kitchen, Dining room and Living room will be provided with a new terrace overlooking the front garden and the street.

3.00 AUTHORITY TO VARY A DEVELOPMENT STANDARD

3.01 STANDARD TO VARY A DEVELOPMENT

The objectives of clause 4.6 seek to recognise that in particular circumstances, strict application of development standards may be unreasonable or unnecessary. The clause provides objectives and a means by which a variation to the standard can be achieved as outlined below. 4.6 Exceptions to development standards

3.02 DEVELOPMENT STANDARD TO BE VARIED

A variation is requested to clause 4.3 which specifies the maximum height of buildings. This is a Development standard as defined by S1.4 of the Environmental Planning and Assessment Act 1979 (EPAAct)

Clause 4.3 (2) requires:

(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.

3.02 HEIGHT OF BUILDING ON THIS SITE

The height limits of the new development are to be within the provisions as shown in Section 4.4 of Pittwater LEP and provisions of Pittwater DCP.



EXTRACT FROM HEIGHT LIMITATION MAP

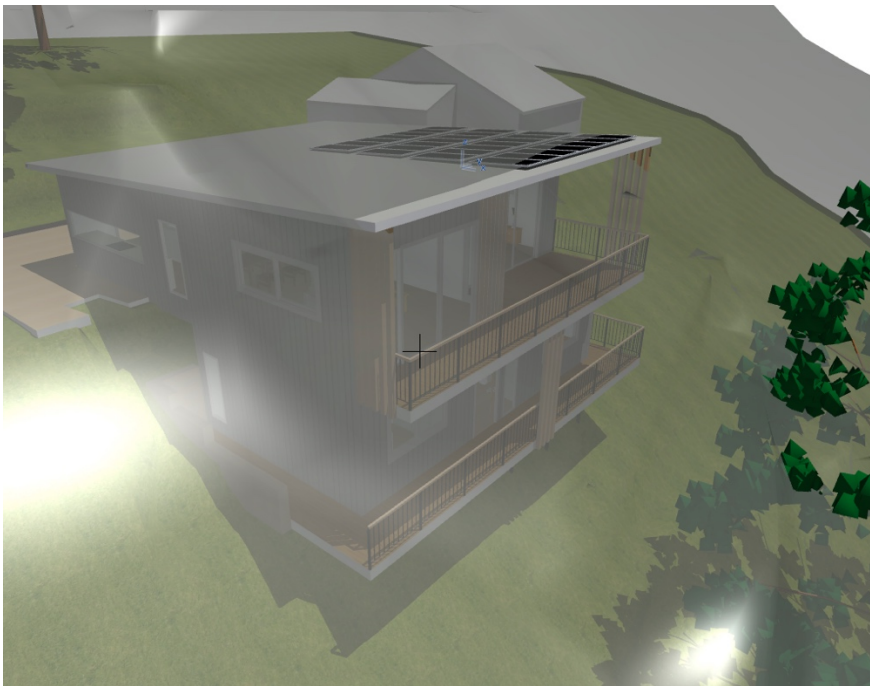
Height limitation for this site is to be 8.5 metres

The SEPP Dictionary provides the following relevant definitions:

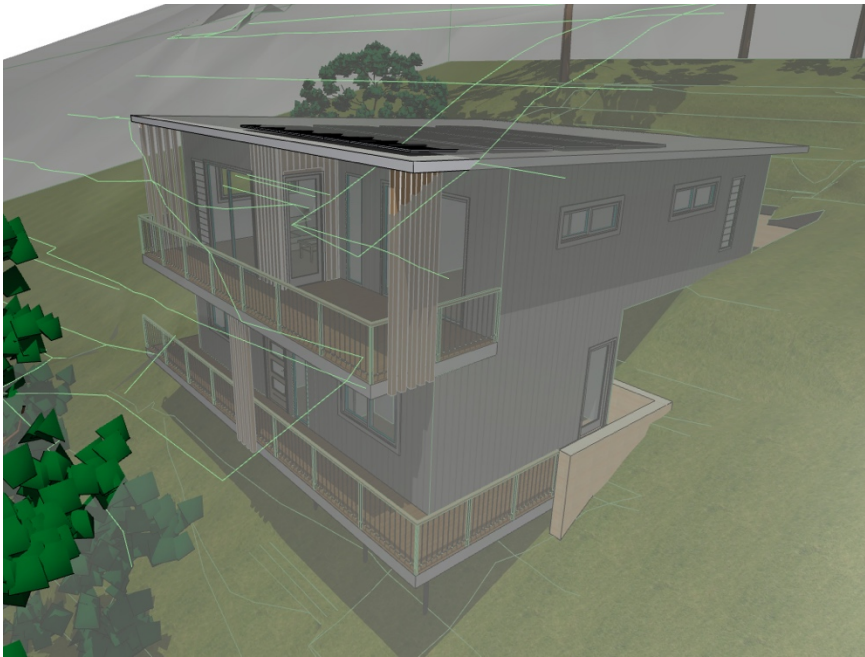
- ground level (existing) means: -
the existing level of a site at any point
- building height (or height of building) means: -
the vertical distance between ground level (existing) at any point to the highest point of the building, including plant and lift overruns, but
excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

3.03 EXTENT OF THE VARIATION

The extent of the variations proposed have been calculated by the architect and are depicted on a 3D image included with the architectural plans



View of the home from the South



View of the home from the North

The extent of the variations is associated to the edge of the terrace roof.
The variations to the height standard are numerically minor.

Sothern end of the roof:	0.098m extending horizontally 0.175m
Northern end of the roof:	0.414m extending horizontally 0.645m.

3.04 ASSESSMENT

The following sections discuss the grounds for the variation to clause 4.3 against the relevant provisions of clause 4.6.

Clause 4.6 states:

- (1) The objectives of this clause are as follows—
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless—
 - (a) the consent authority is satisfied that—
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Planning Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

The use of Clause 4.6 to enable an exception to this development control is appropriate in this instance and the consent authority may be satisfied that all requirements of Clause 4.6 have been satisfied in terms of the merits of the proposed development.

Is compliance with the Development Standard Unreasonable or unnecessary.

In the decision of *Wehbe vs Pittwater Council* (2007) LEC 827, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy.

The five possible ways are as follows:

First

The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard. The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable.

Second

A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary. (not applicable)

Third

A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. (not applicable)

Fourth

A fourth way is to 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. (not applicable)

Fifth

A fifth way is to 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. (not applicable)

In respect of the building height standard, the first method is invoked

Objectives of Height of Buildings. Clause 4.3

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.

Justification for variation to standards

- 1) Variation is slight and does not change the objectives of the standard
The objectives of the standard have been maintained in this development. The departure is slight and will not have any impact on the design and character of the neighbourhood.
- 2) Variation has no impact on the neighbour's properties and will not affect the amenity of the neighbouring homes. The slight departure of the height of building will have not impact on the comfort benefit and use of the neighbouring residences.
- 3) There is no additional overshadowing of the neighbours that will cause a loss
The additional shadow on to the residence of No 30 is negligible and will not cause additional significant loss
- 4) There is no loss of view from neighbours.
The additional height does not result in the loss of view from the surrounding buildings.
- 5) Scale has been maintained for the building
The additional height above the height limit is small and bulk and scale is consistent with the objectives of the standard. Height and scale is not inconsistent with the surrounding and nearby development. The location of the new home high up on the block allows for distance from the street and a further reduction in bulk and scale of the residence.

4.00 CONCLUSION

This proposal is considered suitable for the site and provides a balance between amenity and outdoor space. The proposed residence at No 32 Garden Street, North Narrabeen is sympathetic and consistent with the existing character of the surrounding streetscape and residential density of Northern Beaches. The proposed design solution provides a private residence that is both architecturally and environmentally responsive to the needs of the site and local community. Wall materials, window orientation, natural daylight and ventilation combine to greatly improve the immediate and future amenity of this residence. It is considered that the height departure is minor and does not interfere with the amenity of the neighbours or the community.

Application.

It is considered that this Clause 4.6 Variation Request adequately addresses the relevant heads of consideration under Subclause 4.6(3) of the PLEP 2014 and that the exceptions to Clause 4.3 HOB of the Pittwater LEP 2014 are worthy of support in this instance and appropriate in the circumstances of the case.