

10.6. Variation to Development Standards Q4 2022/23 Financial Year

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ATTACHMENTS	1. Exceptions to Development Standards 2022-2023 Q4 [10.6.1 - 2 pages]
CSP LINK	3. Our Innovative City 3.2 North Sydney is smart and innovative 3.3 Distinctive sense of place and design excellence 5. Our Civic Leadership 5.2 Strong civic leadership and customer focussed services

PURPOSE:

The Department of Planning and Environment mandates certain reporting requirements for the application of Clause 4.6 (of the North Sydney Local Environmental Plan) variations to development standards as they apply to the determination of determination of development applications. The purpose of this report is to address those requirements for Quarter 4 of the 2022/23 financial year.

EXECUTIVE SUMMARY:

- When assessing a development application, any variation to a “development standard” contained in the North Sydney LEP 2013 (NSLEP) greater than 10% must be reported to the North Sydney Local Planning Panel (NSLPP) for determination.
- The Department of Planning and Environment requires that “a report of all variations approved under delegation by a Council must be provided to a meeting of the Council at least once each quarter”.
- Of 116 applications determined in Quarter 4 (Q4), there were ten approved variations pursuant to clause 4.6 of the NSLEP 2013: three approved by NSLPP, two under delegated authority in accordance with Ministerial directions, and a further five accepted under delegation in accordance with expanded delegations given by the Panel.

RECOMMENDATION:

1. THAT the report be received.

Background

This report is required to be presented to Council in accordance with Statutory requirements outlined in the EPA Act and Regulations. The Department of Planning and Environment's Circular (PS 18-003) sets out certain procedural and reporting requirements for the processing of clause 4.6 and State Environmental Planning Policy 1 variations to development standards. This report addresses those requirements for Quarter 4 of the 2022/23 financial year.

Report

Any variation to a development standard contained in the North Sydney Local Environmental Plan 2013 (NSLEP) greater than 10% must be reported to the North Sydney Local Planning Panel for determination. Variations under 10% can be determined by Council's Assessment Planners under delegated authority. The 10% threshold is set by the Minister for Planning. The Panel has also given limited delegation to staff to determine variations of more than 10% for existing buildings where there is no increase in the overall envelope.

The Planning Circular further provides that, to ensure transparency and integrity in the planning framework, the monitoring and reporting measures outlined below must be followed when development standards are being varied:

1. Proposed variations to development standards cannot be considered without a written application objecting to the development standard and dealing with the matters required to be addressed by the relevant instrument;
2. A publicly available online register of all variations to development standards approved by the consent authority or its delegates is to be established and maintained. This register must include the development application number and description, the property address, the standard to be varied, and the extent of the variation;
3. A report of all variations approved (including under delegation) must be submitted via NSW Planning Portal within four weeks of the end of each quarter (i.e., March, June, September, and December) in the form provided by the Department; and
4. A report of all variations approved under delegation from a council must be provided to a meeting of the council at least once each quarter.

Points 2 and 3 above have been completed in a timely manner. The publicly available online register of all variations to development standards can be found on the following link:

[Exceptions to our Development Standards – North Sydney Council \(nsw.gov.au\)](https://www.nsw.gov.au/exceptions-to-our-development-standards-north-sydney-council).

The Department of Planning and Environment have received the report within the required time period.

The table in Attachment 1 addresses dot point 4 of the Planning Circular. It is of note that over the period, several accepted variations were purely technical in nature as they arise from new or altered work on buildings which already exceed the development standards set by the NSLEP 2013.

Attachment 1 details the tabulated Development Standard variations approved for Quarter 4 (Q4) of the 2022/23 financial year.

Of 116 applications determined in Quarter 4 (Q4), there were ten approved variations pursuant to clause 4.6 of the NSLEP 2013: three approved by NSLPP, two under delegated authority in accordance with Ministerial directions and a further five accepted under delegation in accordance with expanded delegations given by the Panel.

Consultation requirements

Community engagement is not required.

Financial/Resource Implications

There are no financial or resource implications associated with the report.

Legislation

Planning Circular PS 18-003 sets out certain procedural and reporting requirements for the processing of variations to development standards under Clause 4.6 of North Sydney Local Environmental Plan 2013 and State Environmental Planning Policy No 1- Development Standards. These provide an avenue for applicants to request that development standards be varied upon demonstration that they are unreasonable and/or unnecessary and that there are sufficient environmental planning grounds to justify the variation.

Council DA reference number	Lot number	DP number	Apartment/Unit number	Street number	Street name	Suburb/Town	Postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Concurring authority	Date DA determined dd/mm/yyyy
356/2022	7	80728		1	Earle Street	Cremorne	2090	1: Residential - Alterations & additions	NSLEP 2013	R2 Low Den Res	Building Height	The building has an existing roof ridge height of 10.64m that fails to comply with the permissible height limit of 8.5m, however this will be unchanged by this proposal. The proposed height of the rear roof extension results in a maximum variation of 200mm from the development standard. The 8.5m height limit for this site is variable in levels given the existing natural fall and topography of the sit. As a result, the existing and proposed non-compliance with the height limit only relate to the top of the first floor level at the northern end and do not comprise the entirety of the proposed works. Furthermore, on merit the amenity impacts of the development are considered to be acceptable and is compliant with Council's other controls. The proposal is therefore considered to be acceptable on merit within the site circumstances, with no significant adverse impacts to the amenity and privacy of neighbouring properties and is considered a reasonable improvement to the existing building.	200mm (2.35%)	Delegated Approved, Delegation granted by panel to determine technical variations arising out of existing circumstances.	3/04/2023
2/2022	2	933485		127	Willoughby Road	Crows Nest	2065	9: Mixed	NSLEP 2013	MU1 Mixed Use	Building Height & Floor Space Ratio	Pursuant to the provisions of Clause 4.6 of the North Sydney Local Environmental Plan 2013 ("the LEP"), the Panel is satisfied that the written requests to the contravention of the Height of Buildings development standard in clause 4.3 and Clause 6.6 (1) (c) of the LEP, adequately address the required matters in clause 4.6 of the LEP. In the opinion of the Panel the written requests demonstrates that compliance with the development standard is unnecessary in the circumstances of the case and the written requests identified sufficient environmental planning grounds to justify the contraventions. Further, the Panel considers that the development is in the public interest because it is generally consistent with the objectives of the standard and the zone objectives.	2.8m & 16.9m2	NSLPP Approved	7/06/2023
60/2022	33	8933		58	Cowdroy Avenue	Cammeray	2062	1: Residential - Alterations & additions	NSLEP 2013	C4 Env Living	Building Height	The request made in accordance with clause 4.6 of the LEP is considered to adequately demonstrate that strict compliance with the maximum height of building standard is unnecessary, as the objectives of the standard are achieved despite the contravention. The request also demonstrated sufficient environmental planning grounds to vary the development standard.	2.25m (26.7%)	NSLPP Approved	3/05/2023
328/2022	11	27417		36	Milray Avenue	Wollstonecraft	2065	1: Residential - Alterations & additions	NSLEP 2013	C4 Env Living	Building Height	The assessment demonstrates that the modified non compliant elements of the development will not give rise to any material or adverse impacts with regard to the objectives of Clause 4.3 Building Height of NSLEP 2013. It is considered that there are sufficient environmental planning grounds to justify contravention of the development standard. The objectives of the height control will be achieved despite the variation. On this basis the request for variation is well founded and it would be unreasonable to require compliance in the circumstances of the case.	0.75m	Delegated Approved	4/04/2023
269/2022	2	SP 14746	2	5	East Avenue	Cammeray	2065	1: Residential - Alterations & additions	NSLEP 2013	R2 Low Den Res	Building Height & Dual Occupancy Lot Size	BH - The written request has demonstrated how the proposed development conforms to and reflects the slope of the land. The proposed development does not seek to alter the existing ground levels or slope of the land which falls from the south and west and has been historically terraced with excavation to the site to allow for the construction of the current buildings. The breaching element, being the roof form, is located centrally on the existing building and would not be overly perceivable from the public domain. The retention of the pitched roof form, containing the new floor space, allows the building to present with largely the same massing as the existing building. DOLS - Notwithstanding the existing non-compliance, the proposed development would not defeat the purpose of the provisions and does not seek to overdevelop the site, particularly as demonstrated by the relatively limited site coverage of 36% on a site where a maximum site coverage of 45% is permitted.	1.3m (15.2%) & 29.7%	Delegated Approved- Delegation given by panel for existing circumstances.	16/03/2023

340/2022	2	431003		72	Kurraba Road	Neutral Bay	2089	6: Residential - Other	NSLEP 2013	R2 Low Den Res	Building Height	The existing building has a maximum height of 9.7m and exceeds the maximum permitted building height. All proposed works are contained either below the maximum permitted building height or within the existing roof cavity where the building exceeds the maximum permitted building height. The variation is considered to be a technical variation and would be imperceptible and have no material impact. Pursuant to the provisions of Clause 4.6 of the North Sydney Local Environmental Plan 2013 ("the LEP"), the Panel is satisfied that the written request to the contravention of the Height of Buildings development standard in clause 4.3 of the LEP, adequately addresses the required matters in clause 4.6 of the LEP. In the opinion of the Panel the written request demonstrates that compliance with the development standard is unnecessary in the circumstances of the case and the written request identifies sufficient environmental planning grounds to justify the contravention. Further, the Panel considers that the development is in the public interest because it is generally consistent with the objectives of the standard and the zone objectives.	1.2m	NSLPP Approved	5/04/2023
133/2023	101	882641		8	Victoria Street	McMahons Point	2060	1: Residential - Alterations & additions	NSLEP 2013	R3 Med Den Res	Building Height	The proposed development involves a maximum height of 9.86m, which generally results from the intended replacement of an existing dormer within the attic level that also features a height of 9.86m. Notably, the ridge of the current roof of the semi-detached dwelling has a height of 10.1m, which represents an exceedance of 1.6m (18.8%). The proposed height of 9.86m represents a 1.36m or 16% variation to the maximum height of buildings development standard. The majority of the proposed components are situated on the ground and first floor portions of the building and are fully compliant with the maximum height provision. The written request has adequately addressed subclause (3) and, subject to satisfying conditions, is considered to be in the public interest because it is consistent with the relevant development standard and the objectives of the zone.	1.36m (16%)	Delegated Approved - Delegation given by Panel for existing circumstances.	14/06/2023
174/2022	11	6622		16	Shirley Road	Wollstonecraft	2065	1: Residential - Alterations & additions	NSLEP 2013	C4 Env Living	Building Height	The proposed works involving internal reconfigurations, construction of a first-floor balcony and five skylight additions will have a maximum height of 9.3m that fail to comply with the permissible height limit of 8.5m in accordance with clause 4.3 in NSLEP 2013 and will exceed the permissible height by 0.8m (9.4%). However, the proposed works will remain below the existing height of the building at RL43.04 by 0.24m. The written request seeking a variation to the building height control is considered to be well founded, has demonstrated that compliance with the standard is unreasonable and unnecessary in the circumstances of the case and has provided sufficient environmental planning grounds which support the request.	0.8m (9.4%)	Delegated Approved	9/06/2023
1/2023	33	2798		176	Walker Street	North Sydney	2060	12: Community facility	NSLEP 2013	SP2 Education Est	Building Height	The existing height of the schoolhouse building is 8.945m, which represents a 5.2% pre-existing variation to the maximum building height development standard. The proposed skylights will sit below the existing maximum height of the schoolhouse. The written request seeking a variation to the building height control is considered to be well founded, has demonstrated that compliance with the standard is unreasonable and unnecessary in the circumstances of the case and has provided sufficient environmental planning grounds which support the request. While there is a breach to the building height standard by 0.58% (50mm), the proposal is consistent with the objectives of the building height control and the SP2 Educational Establishment zone. The application can be considered under Council delegation.	50mm (0.58%)	Delegated Approved, Delegation granted by panel to determine technical variations arising out of existing circumstances.	21/04/2023
53/2023	3	SP 64939	3	4	Queens Avenue	McMahons Point	2060	1: Residential - Alterations & additions	NSLEP 2013	R3 Med Den Res	Building Height	The written request acknowledges the departure of the proposal from the height of building standard of 8.5m and measured the departure from the standard to the existing roof ridge at 11.75m. The proposal works would have a height of 10.75m to the proposed W1 and W2 windows on the southeast and southwest elevation of the Living/Dining level that represents a 2.25m or 26.5% variation. The written request seeking a variation to the building height control is considered to be well founded, has demonstrated that compliance with the standard is unreasonable and unnecessary in the circumstances of the case and has provided sufficient environmental planning grounds which support the request. While the breach to the building height standard exceeds a 10% variation, it is consistent with the objectives of the building height control and the R3 Medium Density Residential zone.	2.25m (26.5%)	Delegated Approved, Delegation granted by panel to determine technical variations arising out of existing circumstances.	9/05/2023