

8.9. Variations to Development Standards - 2021/2022 Q4 Reporting Period

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ATTACHMENTS:

1. 2021-2022 Q 4 DPIE Clause 4.6 Variations [8.9.1 - 3 pages]

PURPOSE:

Planning Circular PS 18-003 sets out certain procedural and reporting requirements for the processing of Cl4.6 and SEPP1 variations to development standards. This report addresses those requirements for Q4 2021/2022.

EXECUTIVE SUMMARY:

Any variation to a development standard of greater than 10% in assessing a development application must be reported to the North Sydney Local Planning Panel for determination. Variations under 10% can be decided by Assessment Staff under delegated authority. The Panel has also given limited delegation to staff to determine variations of more than 10% which relate to existing buildings. The Planning Circular provides that to achieve transparency and integrity in the planning framework, the following monitoring and reporting measures must be followed:

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 to developmentstandards@planning.nsw.gov.au within four weeks of the end of each quarter (i.e. March, June, September and December) in the form provided by the Department.
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.

Attached are the tabulated Development Standard variations approved for Quarter 4 (Q4) of the financial year 2021/22. Of 141 applications determined in the quarter, 13 approved variations in total are reported, 7 by the North Sydney Local Planning Panel, 6 under delegated authority, with 2 requests refused by the Local Planning Panel.

FINANCIAL IMPLICATIONS:

There are no financial implications associated with the report.

RECOMMENDATION:

1. THAT the Variations to Development Standards – 2021/22 Q4 Reporting Period report be received.

LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

- 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

BACKGROUND

This report is required to be presented to Council in accordance with Statutory requirements outlined in the EPA Act and Regulations.

CONSULTATION REQUIREMENTS

Community engagement is not required.

DETAIL

Planning Circular PS 18-003 sets out certain procedural and reporting requirements for the processing of variations to development standards under Clause 4.6 and State Environmental Planning Policy No 1- Development Standards. Such variations are required to be reported Quarterly to Council for its information.

Any variation to a development standard of greater than 10% must be reported to the North Sydney Local Planning Panel for determination. Variations under 10% can be decided by the 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% which relate to existing buildings which results in no increase in 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. The 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 to developmentstandards@planning.nsw.gov.au within four weeks of the end of each quarter (i.e. March, June, September and December) in the form provided by the Department.
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.

The table attached to this report addresses dot point 4 of the Planning Circular. It is of note, over the period, several variations allowed are purely technical in nature as they arise from new or altered work on buildings which already exceed the development standards set by the relevant Planning instruments.

It is a general practice that variations to development standards which result in a significantly greater yield than that envisaged by the planning controls are guided towards the Planning Proposal process.

Attached are the tabulated Development Standard variations approved for Quarter 4 (Q4) of the financial year 2021/22. Of 141 applications determined in the quarter, 13 approved variations in total are reported, 7 by the North Sydney Local Planning Panel, 6 under delegated authority. 2 requests were refused by the Local Planning Panel.

The report is enhanced in detail to that required by the Planning Circular, as it provides information regarding those approved by the North Sydney Local Planning Panel as well as those approved under delegation.

This report was previously presented to Council through the Planning and Legal Services Committee. This report does not contain confidential information and may be discussed in public.

| 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 |
|-----------------------------|------------|-----------|------------------------|---------------|-------------------|----------------|----------|--|-----------------------------------|-----------------|-----------------------------------|---|---------------------|--|-------------------------------|
| 22/22 | 1 | 937768 | | 18 | The Avenue | North Sydney | 2060 | 1: Residential - Alterations & additions | NSLEP 2013 | R2 Low Den Res | Building Height | While the first-floor addition does entail a very minor non-compliance at the eastern end with the maximum permitted height limit as required in NSLEP 2013, the overall scale of the of the addition has been designed to be sympathetic to the original dwelling without resulting in significant impacts upon adjoining properties. | 300mm (3.5%) | Delegated Approved | 4/05/2022 |
| 42/22 | 1 | SP 44295 | 1 | 39 | Lower Bent Street | Neutral Bay | 2089 | 1: Residential - Alterations & additions | NSLEP 2013 | R4 High Den Res | Minimum Lot Size | The non-compliance with the minimum lot size requirement for attached dual occupancy developments is unchanged by this proposal as this DA relates to relatively minor alterations and additions to an existing dual occupancy that has been in place since 1989. Furthermore, the amenity impacts of the development are considered to be acceptable and, subject to conditions, is compliant with Council's other controls in Part B of NSDCP 2013. The proposed works have been designed to be sympathetic to the existing building through the use of a submissive scale and matching materials. The proposal is therefore considered to be acceptable within the site circumstances. | 5.49% | Delegated Approval | 7/04/2022 |
| 428/21 | 4 | 217138 | | 26 | Chuter Street | McMahons Point | 2060 | 1: Residential - Alterations & additions | NSLEP 2013 | R3 Med Den Res | Building Height | The proposed breach to the building height development standard is unlikely to create any matter of significance for State or regional environmental planning. Furthermore, there is unlikely to be any public benefit in maintaining strict compliance with the building height control. In conclusion, the amended written request seeking a variation to the building height control is considered to be well founded as it has demonstrated that compliance with the standard is unreasonable and unnecessary in the circumstances of the case. | 210mm | Delegated Approved | 9/06/2022 |
| 18/22 | 0 | SP 4701 | | 74-76 | Upper Pitt Street | Kirribilli | 2061 | 1: Residential - Alterations & additions | NSLEP 2013 | R4 High Den Res | Building Height | The proposed lift shaft would not cause any loss of views as it is located externally within an internal corner of the existing building and is flanked on either side by the north eastern and north western projections of the building form. The height of the proposed lift shaft is also below the height of the existing building. Additionally, it would not cause any additional overshadowing as it is located externally within an internal corner of the existing building and is flanked on either side by the north eastern and north western projections of the building form. | 27.69m (230.75) | Delegated Approved; Delegation given by NSLPP to determine applications where building height variation exceeds 10% and is caused by the height of existing structure. | 22/07/2022 |
| 350/21 | 1 | 87984 | | 40 | Victoria Street | McMahons Point | 2060 | 1: Residential - Alterations & additions | NSLEP 2013 | R3 Med Den Res | Building Height | The proposed works would not result in any increase to the height of the existing building, and the resulting development would remain consistent with the character of the locality. In conclusion, the written request seeking a variation to the building height control is considered to be well-founded as it has demonstrated that compliance with the standard is unreasonable and unnecessary in the circumstances of this case. The breaches to the building height do not offend the objectives of the building height control and the R3 Medium Density Residential Zone. | 1.01m (11.88%) | Delegated Approved; Delegation given by NSLPP to determine applications where building height variation exceeds 10% and is caused by the height of existing structure. | 31/05/2022 |

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| 425/21 | 33 | 4389 | 14 | Milson Road | Cremorne Point | 2090 | 1: Residential - Alterations & additions | NSLEP 2013 | R2 Low Den Res | Building Height | Given that the works have already been constructed at the subject site, a clause 4.6 written statement seeking a variation to the development standard concerned with building height is technically not required. However, the applicant has submitted a clause 4.6 for abundant caution. It is considered that there are sufficient environmental grounds to support the clause 4.6 written statement given that the "as built" works would achieve the objectives of the standard and there is sufficient public interest in terms of providing additional amenity for the residents of the dwelling without causing an unreasonable impact upon adjoining properties and/or the streetscape. | 4m | Delegated Approved | 19/05/2022 |
| 436/21 | 69 | 17495 | 46 | Crows Nest Road | Crows Nest | 2065 | 1: Residential - Alterations & additions | NSLEP 2013 | R2 Low Den Res | Building Height | The request is supported on the grounds that the height of the additions and alterations demonstrate full compliance with the maximum height of buildings provision and that the only portion of the building that is non-compliant is the roof of the existing dwelling, which is proposed to be retained. The proposed development achieves the objectives of the maximum building height development standard and the R2 – Low Density Residential Zone. | 450mm (5%) | NSLPP Approved | 4/05/2022 |
| 379/21 | 0 | SP 1927 | 1 | Warung Street | McMahons Point | 2060 | 1: Residential - Alterations & additions | NSLEP 2013 | R3 Med Den Res | Building Height | The Panel, in addition to the reasons in the Council Officer's report, the Panel considered that the number of breaches to planning controls and guidelines was symptomatic of an unsatisfactory development in the circumstances. The development would be an inappropriate and uncharacteristic intrusion in the heritage conservation area particularly given its highly prominent location, the prevailing landscape character of the sandstone rock face, the visibility of the site to Sydney Harbour and considering its location adjacent to a neighbouring heritage item. | 3.2m (38%) | NSLPP Refused | 1/06/2022 |
| 205/21 | 49 | 11773 | 23 | Wheatleigh Street | Crows Nest | 2065 | 4: Residential - New multi unit | NSLEP 2013 | R3 Med Den Res | Building Height | The Panel determined to approve the written request for variation to the height standard. 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 in relation 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. | 1m | NSLPP Approved | 25/05/2022 |
| 122/21 | 16 | 17443 | 1 | Baden Road | Kurraba Point | 2089 | 2: Residential - Single new dwelling | NSLEP 2013 | R3 Med Den Res | Building Height | The Panel notes that the exceedance in height generally does not contribute to view loss in the context of the extent and totality of views retained. It is also noted that some improvements will occur where the existing building is to be demolished. The Panel accepts the removal of the existing chimney together with the increased western setback, assists in view sharing and the shape of the roof is a better built form outcome to a flat roof. | 600mm (6.81%) | NSLPP Approved | 6/04/2022 |
| 427/21 | 0 | SP 50406 | 4 | East Avenue | Cammeray | 2062 | 1: Residential - Alterations & additions | NSLEP 2013 | R2 Low Den Res | Building Height | The Panel considers the Clause 4.6 to be well founded, and it is satisfied that the proposal has good planning grounds to justify the contravention. The Panel also considers that the proposal is acceptable subject to the conditions included in the recommendation. | 2.88m (33.9%) | NSLPP Approved | 4/05/2022 |

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|--------|-----|---------|--|-----|------------------|------------|------|--|------------|----------------|-----------------|---|---------------|-----------------------------|-----------|
| 413/21 | 2 | 19883 | | 1B | Samora Avenue | Cammeray | 2062 | 1: Residential - Alterations & additions | NSLEP 2013 | R2 Low Den Res | Building Height | The Panel is satisfied that the written request in relation to the contravention of the Height of Buildings development standard in clause 4.3 of the LEP 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 will be in the public interest because it is consistent with the objectives of the standard and the zone objectives. | 2.09m | NSLPP Approved | 6/04/2022 |
| 269/21 | 100 | 615583 | | 372 | Military Road | Cremorne | 2090 | 9: Mixed | NSLEP 2013 | B4 Mixed | Building Height | The Panel is satisfied that the written request in relation to the contravention of the Height of Buildings development standard in clause 4.3 of the LEP 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 will be in the public interest because it is consistent with the objectives of the standard and the zone objectives subject to the imposition of appropriate conditions. | 1.99m | NSLPP Deferred Commencement | 6/04/2022 |
| 353/21 | 1 | 1110849 | | 11 | Bennett Street | Cremorne | 2090 | 3: Residential - New second occupancy | NSLEP 2013 | R2 Low Den Res | Building Height | The Panel is not satisfied that the written request in relation to the contravention of the Height of Buildings development standard in clause 4.3 of the LEP adequately addresses the required matters. In the opinion of the Panel the written request does not demonstrate that compliance with the development standard is unnecessary in the circumstances of the case and the written request does not identify sufficient environmental planning grounds to justify the contravention. Further, the Panel considers that the development will be inappropriate and will not be in public interest because it is consistent with the objectives of the standard and the zone objectives. | 2.49m | NSLPP Refused | 4/05/2022 |
| 371/21 | 1 | 706914 | | 102 | Carabella Street | Kirribilli | 2061 | 1: Residential - Alterations & additions | NSLEP 2013 | R2 Low Den Res | Building Height | The Panel is of the opinion that the proposal would provide improved amenity for the residents of the subject site without causing any unreasonable impacts to adjoining properties and/or the Conservation Area. | 1.8m (21.17%) | NSLPP Approved | 4/05/2022 |