

10.3. Variation to Development Standards Q3 2022/23 Financial Year

AUTHOR	Jenny Gracey, Team Leader Administration Services
ENDORSED BY	Marcelo Occhiuzzi, Director Community, Planning and Environment
ATTACHMENTS	1. Department of Planning and Environment Clause 4.6 2022-2023 Q3 [10.3.1 - 3 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 development applications. The purpose of this report is to address those requirements for Quarter 3 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 133 applications determined in Quarter 3 (Q3), there were 13 approved variations pursuant to clause 4.6 of the NSLEP 2013: nine approved by NSLPP, one by Sydney North Planning Panel (SNPP), two under delegated authority in accordance with Ministerial directions, and a further two accepted under delegation in accordance with expanded delegations given to 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 3 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 reports 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 3 (Q3) of the 2022/23 financial year.

Of 133 applications determined in Quarter 3 (Q3), there were 13 approved variations pursuant to clause 4.6 of the NSLEP 2013: nine approved by NSLPP, one by Sydney North

Planning Panel (SNPP), two under delegated authority in accordance with Ministerial directions, and a further two accepted under delegation in accordance with expanded delegations given to 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
292/2022	0	SP 14697		4	Ben Boyd Road	Neutral Bay	2089	1: Residential - Alterations & additions	NSLEP 2013	R4 High Den Res	Building Height	The building has a maximum height of 16.13-16.42m (4.13-4.42m or 34.41-36.83%) that fails to comply with the permissible height limit of 12m in accordance with Clause 4.3 in NSLEP 2013, however this will be unchanged by this proposal. Due to the natural fall of the site, a large section of the building's southern end, including most of the top level, are above the 12m high limit. The proposed works to the unit on the top level (Unit 5) will be located at a maximum height of 13.2m, representing a variance of 1.2m (10%). The Clause 4.6 statement submitted demonstrates that in the particular circumstances of the case that strict compliance is unreasonable and unnecessary, and that there are sufficient environmental planning grounds to justify the variation.	1.2m (10%)	Delegated Approved, Delegation granted by panel to determine technical variations arising out of existing circumstances.	21/02/2023
352/2022	1	SP 44295	1	39	Lower Bent Street	Neutral Bay	2089	1: Residential - Alterations & additions	NSLEP 2013	R4 High Den Res	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, with no significant additional height, bulk, or scale, nor any significant adverse impacts to the amenity and privacy of neighbouring properties, and is considered a reasonable improvement to the existing building notwithstanding the existing non-compliance.	5.49%	Delegated Approved, Delegation granted by panel to determine technical variations arising out of existing circumstances.	17/01/2023
212/2022	1	103072		131	Alexander Street	Crows Nest	2065	8: Commercial / retail / office	NSLEP 2013	MU1 Mixed Use	Building Height	The written request adequately demonstrates that compliance is unreasonable and that there are sufficient environmental planning grounds to breach the standard. The proposal is in the public interest because it is consistent with the relevant objectives of the development standard and of the applicable zone and does not introduce any issues of regional significance.	44%	Delegated Approved, Delegation granted by NSLPP 01/02/2023 subject to Condition AA1 being met.	24/02/2023
286/2022	2	SP 88170	2	9-11	Waiwera Street	Lavender Bay	2060	1: Residential - Alterations & additions	NSLEP 2013	R3 Med Den Res	Building Height	The dwelling has an existing height non-compliance at the south-side tower of the building, used as an internal-light well. The subject new works is subject to this non-compliance, however, does not add to the existing height, nor does it alter the existing building form, scale, or massing.	2m (23.5%)	Delegated Approved, Delegation granted by panel to determine technical variations arising out of existing circumstances.	22/03/2023
365/2022	4	865650		54D	Cowdroy Avenue	Cammeray	2062	1: Residential - Alterations & additions	NSLEP 2013	C4 Env Living	Building Height	The environmental planning grounds are considered to be sufficient to justify the minor variation in the circumstances. The variation relates to the proposed privacy screening to be constructed in conjunction with the otherwise compliant balcony extension. The proposed works respond to the recent development being undertaken on the adjoining property and ensure that mutual privacy is maintained between the dwellings, whilst having an acceptable impact on the amenity of the dwellings with respect to the potential view impacts and overshadowing caused by the structure.	0.46m (5%)	Delegated Approved	16/03/2023

204/2022	1	794832	175-177	Ben Boyd Road	Neutral Bay	2089	12: Community facility	NSLEP 2013	SP2 Education Est.	Building Height	The Panel notes the site falls from north to south through the length of the footprint of proposed Building L and the site also falls from west to east. The Panel concurs with Council that the proposed location of Building L has regard to the fall of the land and the design seeks to minimise cut and fill thereby reducing the potential height of the building. Further, the multi-storey form of Building L minimises the building footprint having the intended effect of increasing available outdoor space for students. The Panel concurs with Council that the written request demonstrates that compliance with the development standard would be unreasonable and unnecessary as the objectives of the standard are achieved notwithstanding the variation, and that there are sufficient environmental planning grounds to justify the variation in the circumstances of the case. The land where the height variations occur is zoned SP2 Infrastructure (Educational Establishment). The Panel agrees the acceptance of the height variation would be in the public interest as the proposed development is consistent with the objectives of the standard and the objectives of the SP2 Infrastructure (Educational Establishment) zone.	5.65m	SNPP Approved	29/03/2023	
142/2022	45	10291	44	Ellalong Road	Cremorne	2090	1: Residential - Alterations & additions	NSLEP 2013	C4 Env Living	Building Height	The Panel has determined that 'Deferred Commencement' consent should be granted to address a reduction in the bulk of the building by changes to the large north-east pitched roof area over the carport and upper level first floor bedroom area. At the same time while the amended plans require a reduced upper floor level, this space can reasonably be reconfigured to accommodate three bedrooms, and include a separate carport with a link to the dwelling for protection in inclement weather.	1.7m (20%)	NSLPP Approved, Deferred Commencement	1/02/2023	
107/2022	A	441271	11	Bank Street	North Sydney	2060	1: Residential - Alterations & additions	NSLEP 2013	R2 Low Den Res	Building Height	The proposed dormer additions will not increase the maximum height of the existing roof and will be predominately contained within the existing roof profile. The proposed development will have no adverse impact on the established heritage significance of the Union, Bank and Thomas Streets Heritage Conservation Area or the setting of and available views to and from the heritage and contributory items within it. The proposed height non-compliance will not result in any adverse impacts upon the amenity of surrounding residences, including privacy, solar access, view loss or unreasonable sense of enclosure.	0.5m (5.9%)	Delegated Approved, Delegation granted by panel to determine technical variations arising out of existing circumstances.	9/01/2023	
335/2022	0	SP 5460	95A	Ridge Street	North Sydney	2060	1: Residential - Alterations & additions	NSLEP 2013	R4 High Den Res	Building Height	The proposed work for the air-conditioning units would have a height of approximately 39m that fails to comply with the permissible height limit of 12m in accordance with clause 4.3 in NSLEP 2013. This is below the height of the existing building from natural ground level (existing) which is at a height of 51.13m. The Clause 4.6 submission is acceptable in the circumstances as the variation is existing and no material additional impact results from this application.	225%	Delegated Approved, Delegation granted by panel to determine technical variations arising out of existing circumstances.	13/02/2023	
382/2022	43	SP 47991	43	41	Rocklands Road	Wollstonecraft	2065	1: Residential - Alterations & additions	NSLEP 2013	R4 High Den Res	Building Height	The proposed works on is located below the existing height of the residential building and will not contribute to a further increase in height. The written request provided has demonstrated that strict compliance is unreasonable and unnecessary in the circumstances of the case. 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.	5.5m (45.8%)	Delegated Approved, Delegation granted by panel to determine technical variations arising out of existing circumstances.	14/02/2023

12/2023	59	SP 58146	9D	22	Ross Street	Wollstonecraft	2065	1: Residential - Alterations & additions	NSLEP 2013	R4 High Den Res	Building Height	The proposed works would not represent any substantial increase to the height of the existing building and will match the existing design and colours of pergolas on adjoining unit dwellings. The proposed work will not create an adverse impact from the street in terms of views and amenity from the streetscape and the resulting development would remain consistent with the high-rise residential character of the site. 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.	15m (125%)	Delegated Approved, Delegation granted by panel to determine technical variations arising out of existing circumstances.	2/03/2023
74/2022	137	10291		12	Shellbank Parade	Cremorne	2090	1: Residential - Alterations & additions	NSLEP 2013	C4 Env Living	Building Height	extend above the maximum height of the existing dwelling on the site. The non-compliant elements are located at the rear of the dwelling and as such are not visible from Shellbank Parade. The proposed works do not extend beyond the rear setback of the existing dwelling. 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 consistent with the objectives of the standard and the zone.	3.4m	NSLPP Approved	15/03/2023
130/2022	B	405794		4	Honda Road	Kurraba Point	2089	1: Residential - Alterations & additions	NSLEP 2013	R2 Low Den Res	Building Height	The written request demonstrated that compliance with the development standard is unnecessary in the circumstances of the case and sufficient environmental planning grounds exist to justify the contravention. The development is in the public interest because it is generally consistent with the objectives of the standard and the zone objectives.	2%	NSLPP Approved, Deferred Commencement	1/03/2023