

## 10.8. Variation to Development Standards Q1 Financial Year 2023/2024

<b>AUTHOR</b>	Jenny Gracey, Team Leader Administration Services
<b>ENDORSED BY</b>	Marcelo Occhiuzzi, Director Community, Planning and Environment
<b>ATTACHMENTS</b>	1. Exceptions to Development Standards Q1 2023/24 [10.8.1 - 3 pages]
<b>CSP LINK</b>	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 1 of the 2023/24 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 current 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 102 applications determined in Quarter 1 (Q1), there were 14 approved variations pursuant to clause 4.6 of the NSLEP 2013: six approved by NSLPP, one deferred commencement by NSLPP, one under delegated authority in accordance with Ministerial directions, and six accepted under delegation in accordance with expanded delegations given by the Panel.
- Of the 102 applications determined in Quarter 1 (Q1), there were three refused variations pursuant to clause 4.6 of the NSLEP 2013: two refused by NSLPP and one refused under delegated authority in accordance with Ministerial directions.

### 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 Environmental Planning and Assessment 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 1 of the 2023/24 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 1 (Q1) of the 2023/24 financial year.

Of 102 applications determined in Quarter 1 (Q), there were 14 approved variations pursuant to clause 4.6 of the NSLEP 2013: six approved by NSLPP, one deferred commencement by NSLPP, one under delegated authority in accordance with Ministerial directions and six accepted under delegation in accordance with expanded delegations given by the Panel.

Of the 102 applications determined in Quarter 1 (Q1), there were three refused variations pursuant to clause 4.6 of the NSLEP 2013: two refused by NSLPP and one refused under delegated authority in accordance with Ministerial directions.

On 15 September 2023, reforms to Clause 4.6 were announced by the Department of Planning and Environment. The reforms respond to the Independent Commission Against Corruption's Operation Dasha report, which recommended changes to make the planning system more transparent and corruption-resistant. The reforms announced include simplifying Clause 4.6 of the Standard Instrument LEP and the reporting requirements of any variations, to provide more certainty about when and how development standards can be varied. These reforms came into effect for applications lodged 1 November 2023.

Information regarding these reforms can be found on NSW Planning Portal on the following link: [Variations review | Planning \(nsw.gov.au\)](#)

### **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
234/2022	1	805649		89	Wycombe Road	Neutral Bay	2089	1: Residential - Alterations & additions	NSLEP 2013	R2 Low Den Res	Building Height	It is considered that the written request has demonstrated that there are sufficient environmental planning grounds to justify non-compliance with the development standard. In particular it is noted that the works that are above the height limit are entirely contained within the existing main building and do not create any additional visual bulk and scale, or amenity impacts for adjoining properties. It is also concurred with that the works above the height limit will also not have any impact upon the existing density or use of the use, or have any impact upon the character of the surrounding area and the heritage significance of the dwelling.	750mm (8.82%)	Delegated Approved	13/07/2023
339/2022	1	1257269		12	Bertha Road	Cremorne	2090	1: Residential - Alterations & additions	NSLEP 2013	R2 Low Den Res	Building Height	It is considered that the written request has demonstrated that there are sufficient environmental planning grounds to justify non-compliance with the development standard. In particular it is noted that the works that are above the height limit are entirely contained within the existing main building and do not create any additional visual bulk and scale, or amenity impacts for adjoining properties. It is also concurred with that the works above the height limit will also not have any impact upon the existing density or use of the use, or have any impact upon the character of the surrounding area and the heritage significance of the dwelling.	3.38m (39.76%)	Delegated Approved-Delegation given by panel for existing circumstances.	27/07/2023
207/2023	28	SP77880	407	151	Military Road	Neutral Bay	2089	9: Mixed	NSLEP 2013	MU1 Mixed Use	Building Height	It is considered that the written request has demonstrated that there are sufficient environmental planning grounds to justify non-compliance with the development standard. In particular it is noted that the works that are above the height limit are entirely contained within the existing footprint of the building within the centre of the site and do not highly visible additional visual bulk and scale, or create significant amenity impacts for adjoining properties. It is also concurred with that the works above the height limit will also not have any impact upon the existing density or use of the dwelling, or have any impact upon the character of the surrounding area.	2.57m (16.06%)	Delegated Approved-Delegation given by panel for existing circumstances.	5/09/2023
222/2023	0	SP344		1-3	Elamang Avenue	Kirribilli	2061	1: Residential - Alterations & additions	NSLEP 2013	R4 High Den Res	Building Height	It is considered that the written request has demonstrated that there are sufficient environmental planning grounds to justify non-compliance with the development standard. In particular it is noted that the works that are above the height limit are entirely contained within the existing main building and do not create any additional visual bulk and scale, or amenity impacts for adjoining properties. It is also concurred with that the works above the height limit will also not have any impact upon the existing density or use of the use, or have any impact upon the character of the surrounding area and the curtilage of any nearby heritage item.	14.397m (119.97%)	Delegated Approved-Delegation given by panel for existing circumstances.	28/09/2023
186/2023	B	337583		27	Elamang Avenue	Kirribilli	2061	1: Residential - Alterations & additions	NSLEP 2013	R2 Low Den Res	Building Height	The Panel carefully considered the view impacts arising from the development and is aware of the conditions of the previous development approval relating to this issue. The Panel notes this application provides for view sharing from the living areas of adjoining properties and is satisfied that the view intrusion is minor and reasonable in the circumstances given the views are diagonally across two side boundaries from units on the street side. The Panel is satisfied on a merits assessment the minor impact would not warrant refusal of the application.	1.724m (20.28%)	NSLPP Approved	6/09/2023

51/2023	4	SP18845		5	Little Wonga Road	Cremorne	2090	1: Residential - Alterations & additions	NSLEP 2013	R2 Low Den Res	Building Height	<p>The building is an existing approved dual occupancy and alterations are proposed only within the physical limits of the existing approved structure. Due to the sloping nature of the site, the rear elevation has a height of 6.89m while the front elevation has a height of 13.86m. There is no new works proposed above the approved roof height of the existing building.</p> <p>Pursuant to the provisions of clause 4.6 of the North Sydney Local Environmental Plan 2013, the Panel is satisfied that the written request to contravene 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.</p> <p>In the opinion of the Panel the written request demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and the written request identified 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 development standard and the objectives of the zone</p>	5.36m (63%)	NSLPP Approved	6/09/2023
5/2022	2	303346		24	East Crescent Street	McMahons Point	2060	4: Residential - New multi unit	NSLEP 2013	R4 High Den Res	Building Height	<p>The Panel has considered the representations, both verbal and in writing, made by the submitters. The Panel also undertook a site inspection to understand the context of the area and has the benefit of the Council Officer's Assessment report. After careful deliberation, the Panel is satisfied the proposed development has sufficient merit to warrant approval in the R4, 'High Density Residential Zone'. The Panel accepts the Officer's Assessment Report that the view impacts from adjoining properties are acceptable in the context of the total extent of views obtained from those properties. The Panel determines the application is worthy of approval and meets the objectives of the zone, while mitigating adverse impacts on adjoining properties, in an area where change to higher density would be anticipated by the zoning.</p>	1.67m (13.9%)	NSLPP Approved	6/09/2023
115/2023	1	929395		115	Holt Avenue	Cremorne	2090	4: Residential - New multi unit	NSLEP 2013	R3 Med Den Res	Building Height	<p>In accordance with section 4.47 (4) Environmental Planning &amp; Assessment Act, 1979 (EP&amp;A) the North Sydney Local Planning Panel, exercising the functions of Council as the consent authority, refuses to grant development consent to Development Application No. 115/23 for demolition of 3 dwelling houses and associated works, and construction of a 3-storey residential flat building of 16 dwellings on land at 115, 117, 119 Holt Avenue Cremorne. The Council having been notified by the approval body, the Heritage Council of NSW, that approval will not be granted to the application, in accordance with section 63(2) Heritage Act 1977. The above legislative requirements direct that the application be refused.</p>	2.45m (28%)	NSLPP Refused	2/08/2023
359/2022	21	SP60522	21	1	McDougall Street	Kirribilli	2061	1: Residential - Alterations & additions	NSLEP 2013	R4 High Den Res	Building Height	<p>The proposed works will sit below the maximum building height of the existing building, however, would have a height of 17.35m (RL 43.25), which still fails to comply with the permissible height limit of 12m in accordance with clause 4.3 in NSLEP 2013, resulting in a height breach of 5.35m (44.6%). The proposed height of the external staircase is considered to be in keeping with the existing built form ensuring that the staircase will sit below the existing maximum height of the building. The variation sought is considered to be well founded and in the public interest as there will not be any direct or adverse environmental impacts generated by the variation.</p>	5.35m (44.6%)	Delegated Approved-Delegation given by panel for existing circumstances.	1/08/2023
291/2022	0	SP19383		15	Allister Street	Cremorne	2090	4: Residential - New multi unit	NSLEP 2013	R4 High Den Res	Building Height	<p>The variations occur towards the southern portion of the roof form of the proposed building and are greatest towards the southwestern corner of the building. The variations are partly caused by the lift over run and solar panel array which are located above the roofline. The variations do not give rise to additional yield and are a reflection of the roof form and services where the proposed building is located on a sloping site. In the opinion of the Panel the written request demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and the written request identified 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 development standard and the objectives of the zone.</p>	1.98m (16.5%)	NSLPP Deferred Commencement	5/07/2023

112/2023	6	SP87918	6	19	Belmont Avenue	Wollstonecraft	2065	1: Residential - Alterations & additions	NSLEP 2013	R4 High Den Res	Building Height	It is noted that the height variation relates to a small portion of roof above the new enclosed structure. Any privacy impacts associated with this structure have been addressed by the design and through conditions imposed. The Panel is satisfied the proposal is satisfactory with no significant impacts on the built or natural environments, subject to conditions.	0.55m (4.58%)	NSLPP Approved	6/09/2023
357/2022	1	202869		63	Victoria Street	McMahons Point	2060	1: Residential - Alterations & additions	NSLEP 2013	E3 Productivity Support	Building Height	In consideration of the written request made by the Applicant pursuant to Clause 4.6 of the North Sydney Local Environmental Plan 2013, the Panel is not satisfied that compliance with the development standard contained in Clause 4.3 – Maximum Height of Buildings of NSLEP 2013 is well founded. The consent authority has identified that there are no sufficient environmental planning grounds which have been identified which would justify contravening the development standard. The consent authority has identified that the proposed development is not in the public interest as it fails to achieve consistency with the relevant objectives of Clause 4.3 – Maximum Height of Buildings and the E3 - Productivity Support zone under NSLEP 2013.	1.48m (17.4%)	NSLPP Refused	2/08/2023
113/2023	17	SP83350		24	Alfred Street South	Milsons Point	2061	1: Residential - Alterations & additions	NSLEP 2013	MU1 Mixed Use	Building Height	The Clause 4.6 submission is considered to be well founded in the circumstances as there are no adverse material impacts that result from this application. The submission is considered to have demonstrated the achievement of the objectives of the MU1 Mixed Use zone on the basis that the proposal is less than the height of surrounding residential flat buildings and improves amenity for the occupants of the dwelling while not adversely impacting view, solar access or privacy for surrounding properties. The written request 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.	1.83m (18.3%)	Delegated Approved- Delegation given by panel for existing circumstances.	6/07/2023
401/2022	0	SP5118		99	Kurraba Road	Kurraba Point	2089	1: Residential - Alterations & additions	NSLEP 2013	R4 High Den Res	Building Height	The existing building does not comply with the development standard, having a maximum variation of 1.896m (15.75%). The proposal will raise the height of the roof in order to enable insulation to be laid within the roof cavity and improve the roof pitch. There is negligible change to the shape and form of the roof. The written request has satisfactorily demonstrated that compliance with the development standard in unreasonable and unnecessary because the proposed development complies with the objectives of the standard and that there are sufficient environmental planning grounds to justify the variation.	1.994m (16.61%)	Delegated Approved- Delegation given by panel for existing circumstances.	9/08/2023
235/2022	B	338032		4	Warung Street	McMahons Point	2060	1: Residential - Alterations & additions	NSLEP 2013	R3 Med Den Res	Building Height	The Panel is satisfied the development will not adversely impact the conservation area and is generally consistent with the planning controls and guidelines. Furthermore, the Panel is of the view that privacy and amenity for adjoining residents is reasonably maintained.	4.17m (49%)	NSLPP Approved	2/08/2023
403/2022	3	318311		41	Carter Street	Cammeray	2062	2: Residential - Single new dwelling	NSLEP 2013	R2 Low Den Res	Building Height	The building exceeds the maximum height of building stipulated in Clause 4.3 of NSLEP 2013, which is also contrary to Provision Pt. sl.4.7 of NSDCP 2013. A written request pursuant to Clause 4.6 'Exceptions to development standards' has not been provided within the development application to justify the contravention of the development standard. The new building is inconsistent with surrounding dwellings and would appear from Carter Street as a significantly larger dwelling and does not reflect the existing context that comprises a low density residential area, contrary to objectives L and 3 for the R2 Low Density Residential zone.	0.2m	Delegated Refused	28/07/2023
9/2023	4	SP10924	4	35	Murdoch Street	Cremorne	2090	1: Residential - Alterations & additions	NSLEP 2013	R3 Med Den Res	Building Height	The Panel is satisfied the heritage conservation area will not be impacted and the proposed development is consistent with the character of the existing building, subject to the conditions as recommended.	9.8m (15%)	NSLPP Approved	2/08/2023