

Attachment C

Clause 4.6 – Height of Buildings



Clause 4.6 Variation

Height of Buildings

82 City Road Chippendale

DEVELOPMENT STANDARD ATTRIBUTES	
Environmental Planning Instrument	Sydney Local Environmental Plan 2012 ¹
Zoning	R1 – General Residential
Standard to be varied	Height of Buildings - Clause 4.3
Development Standard	Maximum height 9m
Proposal	Maximum height 10.4m
Variation	1.4m or 15.6%

OBJECTIVES	
Zone Objectives	<ul style="list-style-type: none">• To provide for the housing needs of the community.• To provide for a variety of housing types and densities.• To enable other land uses that provide facilities or services to meet the day to day needs of residents.• To maintain the existing land use pattern of predominantly residential uses.
Development Standard Objectives (Height of Buildings)	<p>(a) to ensure the height of development is appropriate to the condition of the site and its context,</p> <p>(b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,</p> <p>(c) to promote the sharing of views,</p> <p>(d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,</p> <p>(e) in respect of Green Square:</p> <p>(i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and</p> <p>(ii) to ensure the built form contributes to the physical definition of the street network and public spaces.</p>

¹ NSW Government Legislation website – legislation.nsw.gov.au
Current version for 8 March 2019 to date (accessed 10 May 2019)

Clause 4.6(3)

(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.

Cl.4.6(3)(a) - Unreasonable or unnecessary

The position that compliance with the development standard is unreasonable or unnecessary may be demonstrated in one or more of the ways offered by *Wehbe V Pittwater Council (2007) NSWLEC 827 Preston CJ*. In this particular case, consistent with that decision, it can be demonstrated that the objectives of the development standard are achieved notwithstanding non-compliance with the standard, as below (emphasis added):

“43 The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”
Wehbe V Pittwater Council (2007) NSWLEC 827 Preston CJ

The achievement of the specific objectives is outlined below:

Objective (a) - to ensure the height of development is appropriate to the condition of the site and its context

The height breach in this case is caused by a replacement dormer window at the rear of a terrace building that forms part of a contributory group of buildings. A dormer window is anticipated on terraces with high vaulted ceilings and/or attics and in this case has been designed to meet the criteria in the Council’s DCP, having a set down from the principal ridge of the roof of 200mm and set in from the edges of the building by 975mm so that it extends 4 metres across the roof plane.

The dormer responds to the condition of the site to allow for an improvement to the amenity of the attic level rooms and stairwell by introducing additional light, ventilation and internal ceiling heights to the existing boarding rooms in the attic. The dormer responds to the surrounding context of contributory buildings by its complementary design to other dormer extensions in the conservation area. The extension remains below the maximum height of the existing building, noting the ridge is 200mm above

the dormer and the parapet walls on either side are another 390mm above the ridge. As such, the proposal does not alter the actual maximum height of the building.

In this regard, the proposed dormer achieves this objective of the zone.

Objective (b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas

The Heritage Impact Statement accompanying the application concludes that:

The proposal will have a limited and acceptable impact on the significance of the place, the surrounding conservation area and the heritage items in the vicinity and largely complies with the relevant heritage controls in the SDCP.

There are also no view impacts or adverse shadow impacts caused by the proposed dormer.

The existing built form transitions down from the front of the site to the rear laneway. The proposed dormer retains this transition despite the height breach and is read as a subservient feature in the roofscape.

In this regard, the proposed dormer achieves this objective of the zone.

Objective (c) to promote the sharing of views

There are no views across the site and the dormer is located entirely within the foreground of the existing pitched roof.

In this regard, the proposed dormer achieves this objective of the zone.

Objective (d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas

The maximum height of the building remains unchanged by the proposal and the minor additional volume it occupies does not affect the general transition of building height from Central Sydney to the adjoining area.

In this regard, the proposed dormer achieves this objective of the zone.

Objective (e) in respect of Green Square:

(i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and

(ii) to ensure the built form contributes to the physical definition of the street network and public spaces.

Not applicable.

Cl.4.6(3)(b) - Sufficient environmental planning grounds

The feature of the proposal that breaches the height development standard is limited to the dormer window addition. These traditional extensions to terrace buildings are typically, as is evident in this case, without material impact upon the surrounding properties in terms of solar access, overlooking, views or bulk/scale generally.

Despite the lack of impact on their surroundings, the dormers significantly increase the amenity afforded to the building through increased ceiling heights, solar access and ventilation. The bulk of the structure is consistent with the desired character of the area, noting its form aligns with the DCP controls that require it to be set behind and below the main roof form and in from the edges.

Clause 4.6(4)

(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 Secretary has been obtained.

Cl.4.6(4)(a)(i) - Adequately addressing subclause 3

The Council can be satisfied that the reasons expressed above in this request adequately address the matters required by subclause 3.

Cl.4.6(4)(a)(ii) - The public interest

The proposal is in the public interest as it has been demonstrated that it is consistent with the objectives of the standard for the reasons previously expressed.

Zone objectives

In relation to the objectives of the zone, the proposal:

- “provides for the housing needs of the community” in that it retains and improves an existing boarding house and therefore meets the housing need of affordable rental accommodation in areas of high amenity;
- “provides for a variety of housing types and densities” by including a range of room sizes within the boarding house, in a setting amongst other boarding houses, share houses, single dwellings and apartments;
- whilst it does not provide for “other land uses that provide facilities or services to meet the day to day needs of residents”, it is focussed on housing choice and therefore does not contravene this objective; and
- “maintains the existing land use pattern of predominantly residential uses” by retaining the boarding house use that has existed on the site for over 100 years.

Varying the height control in this instance has no negative public interest implications, does not undermine the integrity of the Council controls and does not set an undesirable precedent.

Cl.4.6(4)(b) - Concurrence of the Secretary

The Council may assume the required Director-General’s concurrence provided that it has considered all of the relevant matters under Clause 4.6 as expressed above.

Conclusion

This statement demonstrates that in this particular case a variation pursuant to clause 4.6 of the LEP is justified as there are sufficient environmental planning grounds to exceed the standard and that strict compliance would be unreasonable and unnecessary. As such, the consent authority can be satisfied that the above justification adequately addresses clause 4.6(3) of the LEP, as required by clause 4.6(4)(a)(i).

The proposal will be in the public interest because it is consistent with the objectives of the Height of Buildings standard and the objectives of the R1 zone and provides a reasonable environmental planning outcome for the site, satisfying clause 4.6(4)(a)(ii).

There are no matters of State or regional planning significance as a result of the non-compliance, satisfying clause 4.6(5)(a). There is also no public benefit in maintaining the development standard in this particular case given the proposal meets the zone and development standard objectives and has no unreasonable impact on the amenity of the locality generally or the adjoining properties, satisfying clause 4.6(5)(b).

The variation therefore is acceptable having regards to the considerations under clause 4.6 of the LEP.