



Application to Vary a Development Standard
Pursuant to Clause 4.6 of the Standard Instrument

Variation to Clause 4.3 (2) and (2C) Height of Buildings
Alterations and additions to an existing two storey dwelling house
and proposed in-ground swimming pool and boatshed at the rear

5 Villiers Road, Padstow Heights NSW 2211



Client:	Sam and Loretta Khoury
Project No:	24103
Date:	January, 2025
Prepared By:	Nikola Verusheski

Title	Version	Prepared By	Checked by	Date
Variation to a Development Standard	1	NV	EE	January, 2025
Variation to a Development Standard	2	NV	EE	April, 2025

1 APPLICATION DETAILS

The details of the proposal in summary are:

The proposed development is for alterations and additions to the existing two-storey dwelling house.

The request relates to vary Clause 4.3 (2) and (2C) Height of Buildings of the CBLEP 2023, the building height and the maximum wall height for dwelling house in Zone R2 Low Density.

Note: This document is prepared pursuant to the amendment to the Standard Instrument LEP Order (Amending Order) the amendment of Environmental Planning and Assessment Regulation 2021 (Regulation Amendment) and amendments to environmental planning instruments through the State Environmental Planning Policy Amendment (Exceptions to Development Standards) 2023 (Amending SEPP) dated 1 November 2023.

2 PROPOSED VARIATION(S)

The applicant seeks approval for the following variation to the following development standards contained within the Canterbury-Bankstown Local Environmental Plan 2023:

2.1. OBJECTIVES OF THE PLAN

Clause 1.2 Aims of the Plan

The particular aims of this Plan are as follows	
(aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,	NOT APPLICABLE
(a) to manage growth in a way that contributes to the sustainability of Canterbury-Bankstown,	COMPLIES
(b) to protect landforms and enhance vegetation, especially foreshores and bushland, in a way that maintains the biodiversity values and landscape amenity of Canterbury-Bankstown,	COMPLIES
(c) to identify, conserve and protect the Aboriginal, natural, cultural and built heritage of Canterbury-Bankstown,	COMPLIES
(d) to provide development opportunities that are compatible with the desired future character and amenity of Canterbury-Bankstown,	COMPLIES
(e) to restrict development on land that is sensitive to urban and natural hazards,	COMPLIES
(f) to provide a range of residential accommodation to meet the changing needs of the population,	COMPLIES
(g) to provide a range of business and industrial opportunities to encourage local employment and economic growth and retain industrial areas,	COMPLIES
(h) to create vibrant town centres by focusing employment and residential uses around existing centres and public transport,	COMPLIES
(i) to provide a range of recreational and community service opportunities and open spaces to meet the needs of residents of and visitors to Canterbury-Bankstown,	COMPLIES
(j) to achieve good urban design in terms of site layouts, building form, streetscape, architectural roof features and public and private safety,	COMPLIES

(k) to ensure activities that may generate intensive car usage and traffic are located near public transport that runs frequently to reduce dependence on cars and road traffic,	COMPLIES
(l) to consider the cumulative impact of development on the health of the natural environment and waterways and on the capacity of infrastructure and the road network,	COMPLIES
(m) to support healthy living and enhance the quality of life and the social well-being and amenity of the community,	COMPLIES
(n) to ensure development is accompanied by appropriate infrastructure,	COMPLIES
(o) to promote ecologically sustainable development.	COMPLIES

- Clause 4.3 Height of Buildings

Requirement	Provided	Variation	% Variation
Clause 4.3(2) Building Height (Max. 9m)	13.1m for existing rear elevation	YES	45% existing
Clause 4.3(2C) Wall Height (max 7m)	13.1m for existing rear elevation	YES	45% existing

3 HEADS OF CONSIDERATION PURSUANT TO CLAUSE 4.6 OF THE STANDARD INSTRUMENT

(1) Objectives Of the Clause

(1A) To provide an appropriate degree of flexibility in applying certain development standards to particular development.

Response:

The purpose of this aim is to allow for developments with pre-existing constraints preventing full compliance with the CBLEP2023 to still achieve a well-thought out and responsive design. The subject site is located on a steep terrain and has a rear slope by 14.68%. The 4.6 Variation gives the opportunity for the existing non-compliant wall heights and building heights to remain.

(1B) To achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Response:

The variation to the wall height allows for an appropriately designed two storey dwelling house which responds to the need for better quality houses and demand. The proposed two storey element is recessed and will not result in any adverse impacts to the adjoining sites and locality. In addition the new extension also complies with the building and wall height development standards.

(2) Development consent may subject to this clause, be granted.

For development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Response:

Noted – the proposed variation is for Clause 4.3 (2) and (2C) under the CBLEP2023.

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:

(3A) Compliance with the development standard is unreasonable or unnecessary in the circumstances, and

Response:

The NSW Land and Environment Court in *Four2 Five Pty LTD v Ashfield Council [2015] NSWLEC 90*, considered how this question may be answered and referred to the earlier Court decision in *Wehbe v Pittwater Council [2007] NSWLEC 827*. The court provided five tests as follows that can be used as prompts to answer the above question in relation to your application.

Note: These five tests are not exhaustive of the ways in which you might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. You do not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, you can demonstrate that compliance is unreasonable or unnecessary in more than one way.

Test 1:

The objectives of the standard are achieved notwithstanding non-compliance with the standard:

Height of buildings

(1) The objectives of this clause are as follows:

(a) To establish the height of development consistent with the character, amenity and landform of the area in which the development will be located,

Response:

The proposed first floor addition has been redesigned to comply with the CBLEP2023. As seen in figure 1 the adjoining properties at No.3 and No.7 Villiers Road are two storey dwellings. Given the steep slope of the site, the roof at no.7 Villiers Roads sits higher then proposed max wall height and building height at front façade of the subject site.

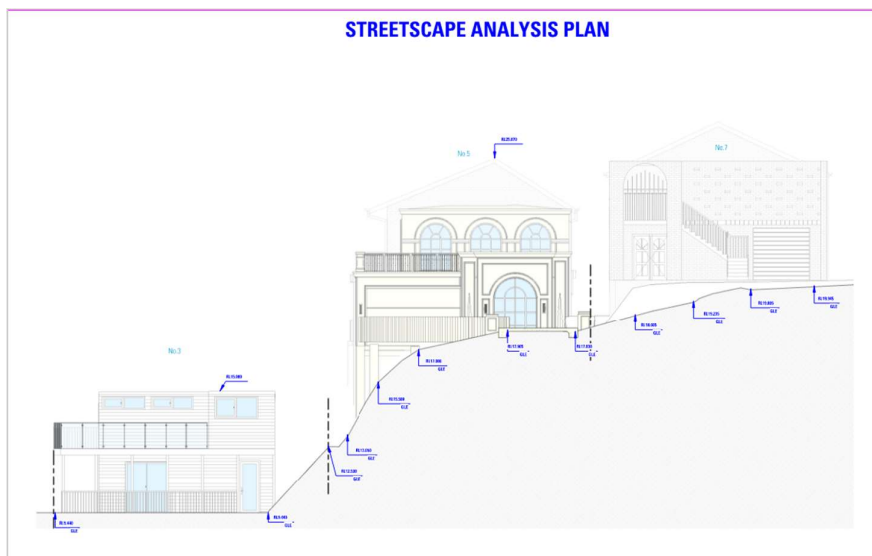


Figure 1: Streetscape analysis plan

The pitched roof and existing non-compliances located on the rear elevation is existing and the height of building or wall will not be altered under this DA.

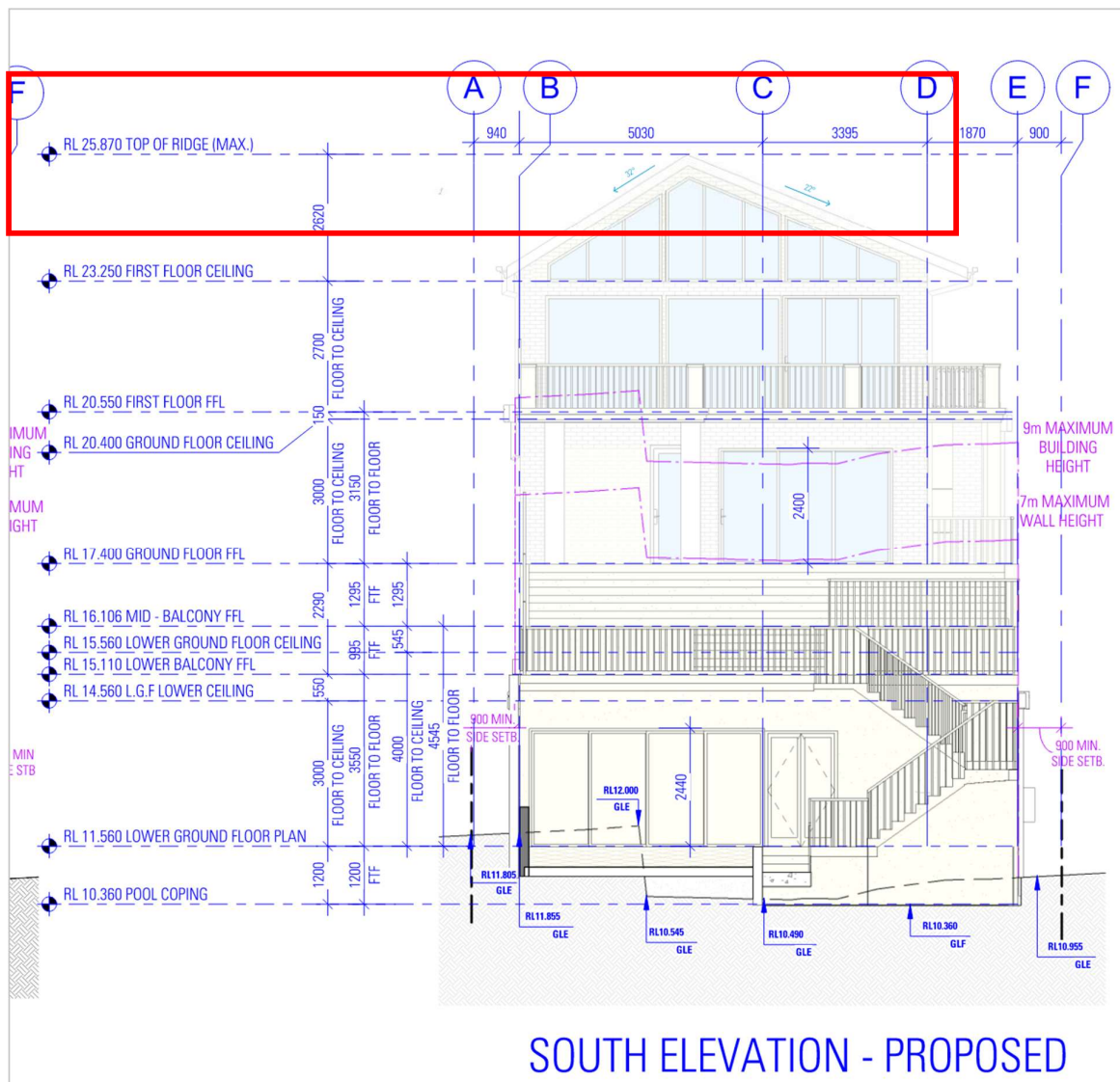


Figure 2: South Elevation (rear) of proposed development

The proposal complies with other planning controls including floor space ratio, solar access and private open space. In this case, sufficient amenity of the residents has been provided.

(b) To maintain the prevailing suburban character and amenity by limiting the height of development to a maximum of 2 storeys in Zone R2,

Response:

The site is located in a low-density residential area with a mix of one or two storey dwelling houses along Villiers Road. Villiers Road is a larger streetscape with 80+ properties located along the street (figure 3). There is an introduction of newer developments along the streetscape consisting of a modern composition and roof styles. The proposed development supports this transition and will contribute to the prevailing suburban character.

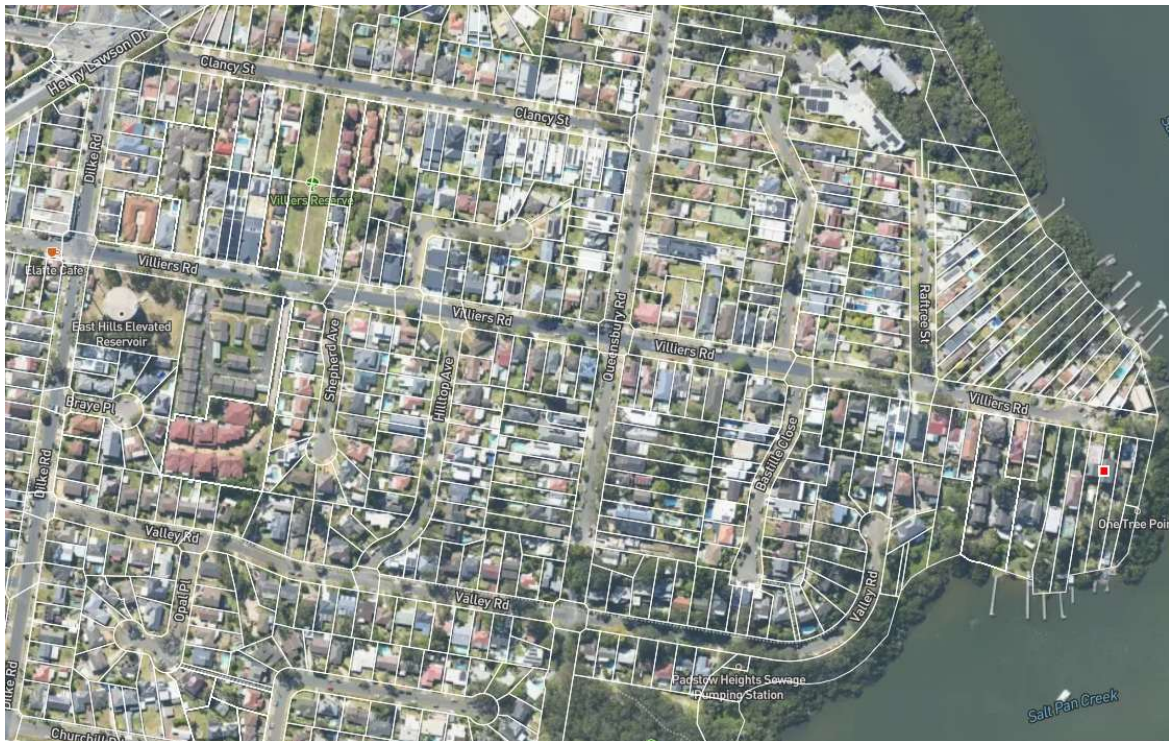


Figure 3: Satellite view of subject site area and locality

The height of the development does not exceed two storeys at given point of the design. As the proposal is contained to two (2) storeys, the proposal satisfies Objective (b) and is compliant with the desired future character described in this objective.

(c) To provide appropriate height transitions between development, particularly at zone boundaries,

Response:

This has now been addressed with the amend plans, which demonstrate the proposed front elevation to be compliant with the CBELP2023.

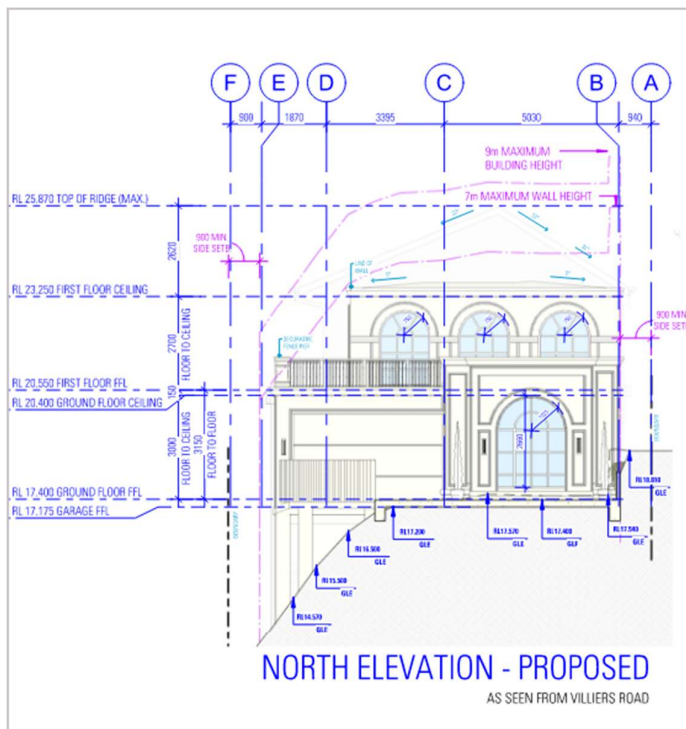


Figure 4: North Elevation (front) of proposed development

(d) To minimise overshadowing to existing buildings and open space,

Response:

The proposal will not have any privacy or overshadowing impacts on the neighbouring properties. No.3 is very low in comparison to the proposal.

(e) To minimise the visual impact of development on heritage items and heritage conservation areas,

Response:

No heritage items and heritage conservation areas in the near vicinity of the proposal.

(f) To support building design that contributes positively to the streetscape and visual amenity of an area.

Response:

The proposal will achieve high quality urban form and is compatible with the surrounding built form context. Also, subject site will improve the streetscapes visual amenity.

Test 2:

The underlying object or purpose of the standard is not relevant to the development and compliance is unnecessary:

Response:

The objectives of Clause 4.3 (2) and (2C) are to preserve the low-density residential character of the R2 zone by regulating building height, limiting the maximum height to 9 meters and the maximum wall

height to 7 meters for a dwelling house. The site has a rear slope of 14.68%, which influences the building design and its compliance with these height controls.

Regarding the front elevation, the proposed wall height is now compliant with the CBLEP2023.

For all other elevations, the non-compliance with wall and building height is a result of existing conditions, with no further changes proposed. Given the existing site topography and the constraints of the current built form, achieving full compliance with the height controls is not feasible for the site.

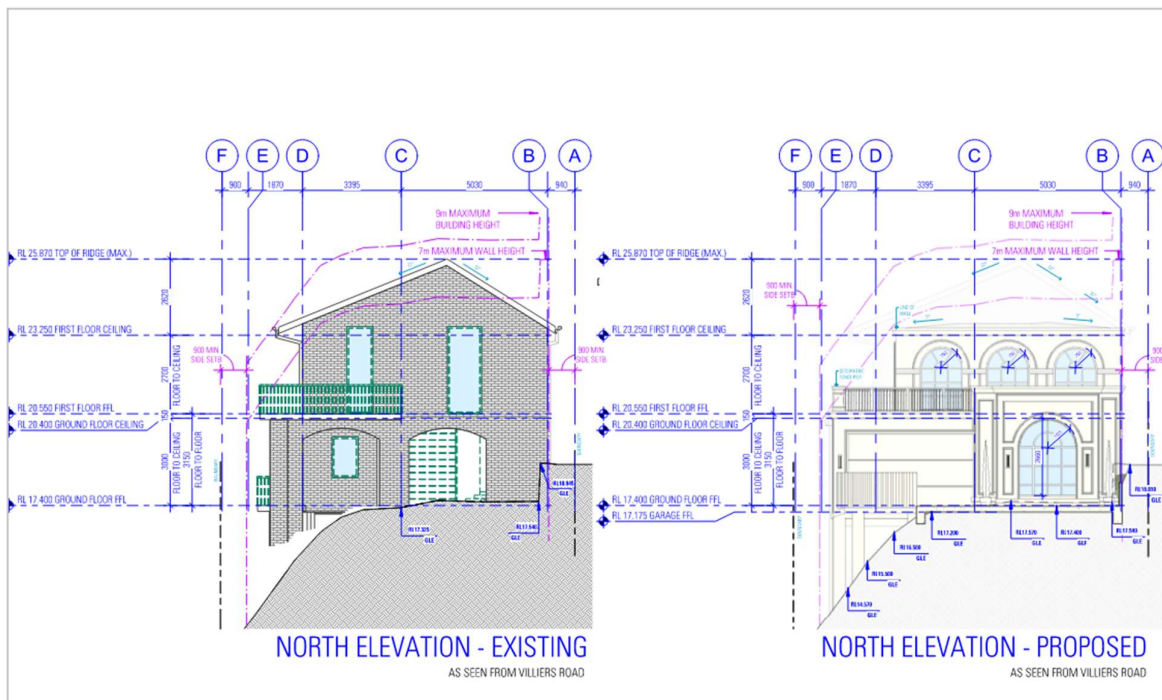


Figure 5: Existing and Proposed North Elevation (front facade)

Test 3:

The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable:

Response:

It would be unreasonable to attempt to achieve compliance as the existing ground floor and RLs are proposed to remain. Any attempt to achieve compliance would result in the need for a brand-new build which is not considered within the scope of the project.

Test 4:

The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable:

Response:

Not applicable

Test 5:

The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone:

Response:

Not applicable as zoning is appropriate.

The breach of the development standard happens as a result of the Development Application responding to the unique constraints of the site. We understand that the Local Environmental Plan (LEP) have been made to apply to the whole Canterbury-Bankstown local government area in general. However, every site is unique and the LEP and DCP could not be suitable for every single lot, we believe that council should assess this project based on merits and good urban design outcomes that are achieved.

The strict compliance of wall height would be both unreasonable and unnecessary. This is due both to the circumstances that give rise to the variation and the lack of any resultant impacts. This resultant building form of two storey dwelling is clearly within the scale envisaged by the planning controls. It retains a scale in keeping with these controls and the existing and anticipated urban design outcomes in this low-density area.

(3B) There are sufficient environmental planning grounds to justify the contravention of the development standard.

Response:

The maximum building height is 9m and the maximum wall height 7m under CBLEP 2023. The site already breaches these controls with the greatest variation at the rear elevation (13.1m for both the building and wall height). This variation is proposed to remain as existing along the rear and side elevations with no changes to roof ridgeline (RL25.870). The proposed front addition has also been amended now to comply with the CBELP2023.

The non-compliance does not take any floor space ratio, result in more than 2 storeys, or cause any adverse impacts.

The proposal also promotes to retain and improve the existing dwelling rather than a new build, which can often be more costly and generate more waste during construction. The proposed alterations and additions will also offer incentive and showcase the benefits of upgrading dwelling stock to the neighbouring sites.

Note: The requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

Response:

Noted

(5) Repealed

Response:

Noted

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small

Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if;

(6A) The subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(6B) The subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Response:

Not applicable to the proposal as the site is located in R2 Low Density Residential.

(7) Repealed

Response:

Noted

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated, (ba) clause 4.4, to the extent that it applies to land in Zone B4 that has a maximum floor space ratio of 3:1,

(c) clause 5.4,

(caa) clause 5.5,

(ca) clause 6.27.

Response:

Not applicable to the proposal.

4 CONCLUSION

For the above reasons, it is considered pursuant to Clause 4.6 of CBLEP 2023 this written request addresses that strict compliance with the minimum wall height is unreasonable and unnecessary particular to the circumstance of the case and there are sufficient environmental planning grounds to justify the contravention. Notwithstanding, the development has also demonstrated an outcome that is ideal in consistent with the objectives of Clause 4.6 of the CBLEP 2023.