



CLAUSE 4.6 VARIATION TO 'WALL HEIGHT' DEVELOPMENT STANDARD

Prepared for Mr Rabadi - 2 Carnation Avenue Bankstown

23 JANUARY 2023

JADARA PLANNING

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1. Introduction

This is a Clause 4.6 Variation Request ('the Request') prepared on behalf of Mr. Issa Rabdi, the owner of the site known as No 2 Carnation Avenue in Bankstown (the site). Mr Rabadi is also the applicant for the proposed development application (DA) that this Request relates to.

The Request seeks an exception from the prescribed wall height development standard for the site under clause 4.3 of *Bankstown Local Environmental Plan 2015* (BCLEP). The request to vary the standard is made pursuant to clause 4.6 o BLEP.

The report provides information in relation to:

1. The site and its local context
2. Proposed development
3. Development standard that is proposed to be varied
4. Assessment and justification of the proposed variation

2. The site and local context

The site is irregular in shape. North & North east frontages consist of 26.315m to Carnation Avenue and South Terrace, and, 5.95 to South Terrace. The South Eastern

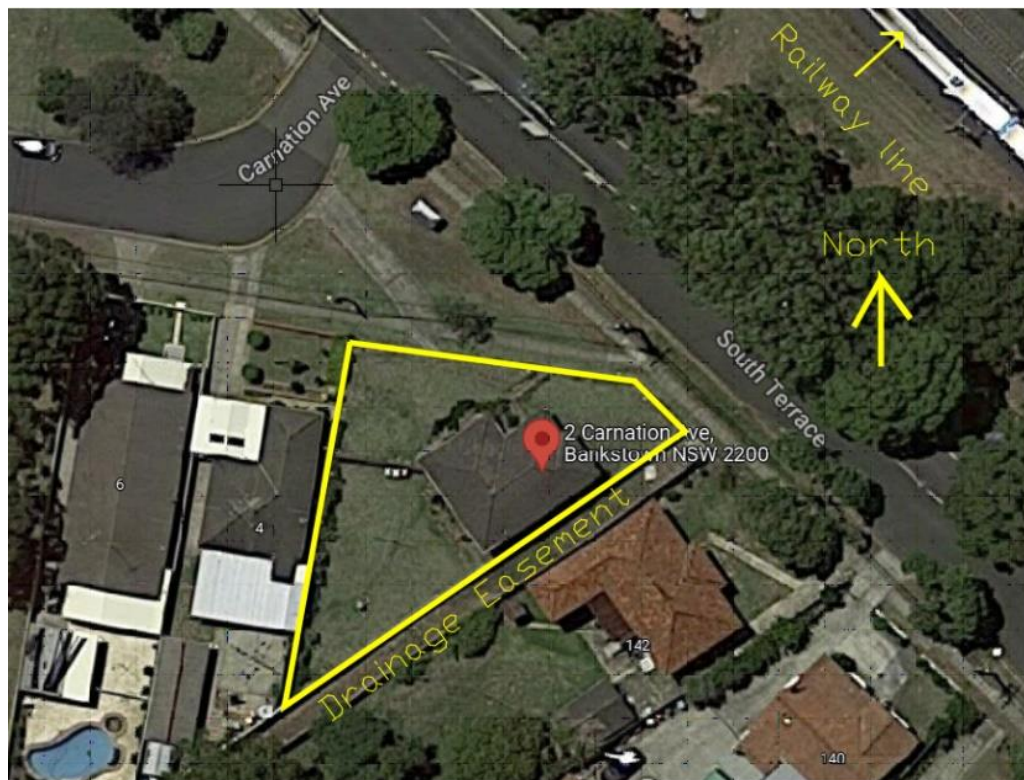


Figure1 Aerial view of the subject site

boundary's length is about 43.42m, with South boundary of 33.67m. The overall site area is approx. 562.132 m². The site is slightly sloping from front down to back.

South of the site is a Council owned drainage easement (600mm pipe) that runs parallel along the entire length of the southern boundary of the site (Figure 1).

The site is also affected by an overland flowpath for excess stormwater runoff from the upstream catchment and associated with the Council drainage system located south of the site.

The site is within close proximity to the Sydenham Bankstown Railway corridor.

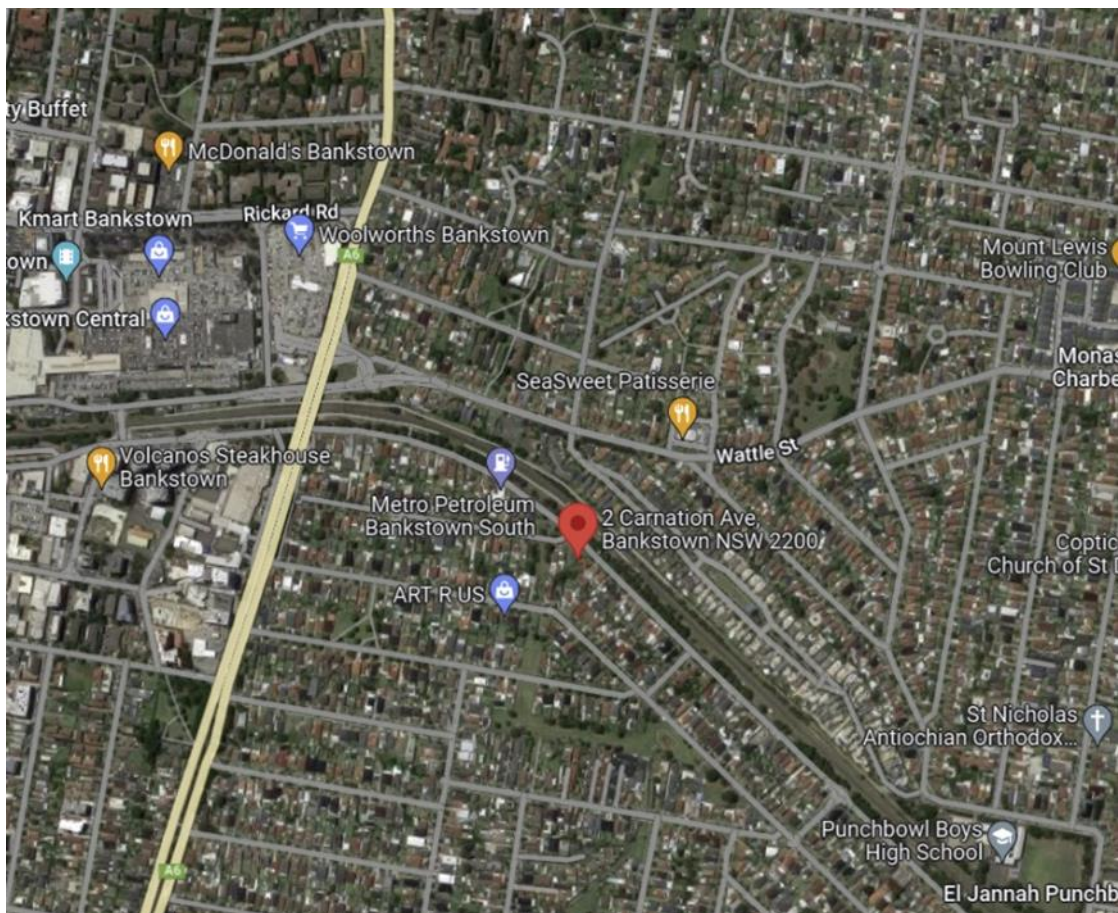


Figure 2 Aerial view - site locality

3. Proposed Development

This Clause 4.6 Variation Request has been prepared to accompany a development application for the construction of a secondary dwelling with an attached garage on the subject site. The secondary dwelling is proposed to be located behind the principal dwelling on site with a total floor area of 60 square metre (not including the area of the attached garage).

The proposed secondary dwelling has the following design configuration:

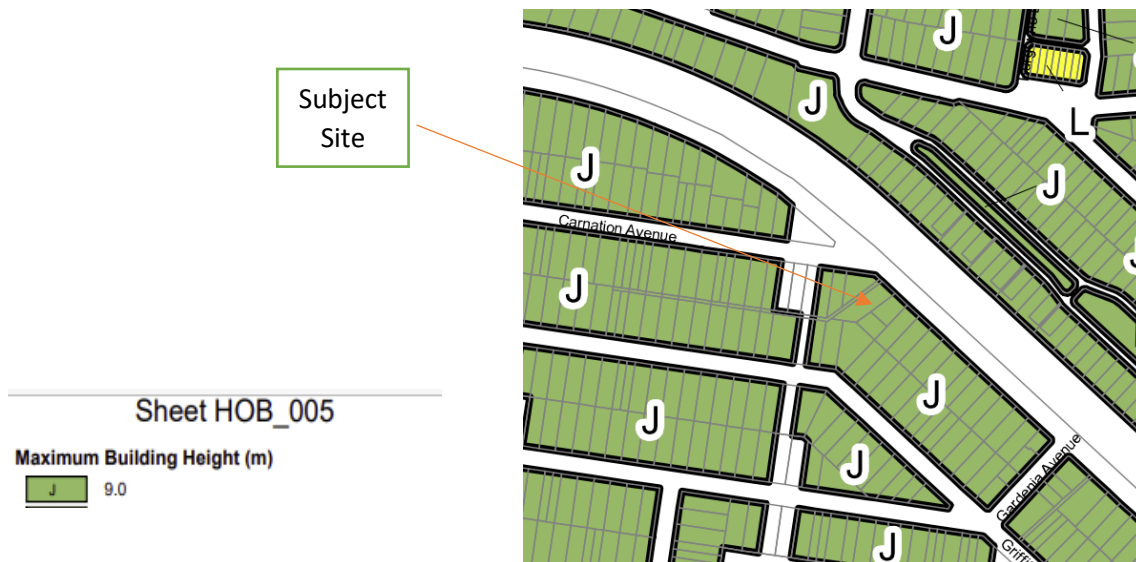
- A living room, open plan kitchen & dining area

- 3 Bedrooms with builds in robes
- One bathroom with laundry area
- Outdoor private space
- Setbacks, small backyard & green areas

4. Development standard –Wall Height

This section of the report identifies the development standard which is proposed to be varied, including the extent of the contravention. A detailed justification for the proposed variation is provided in Section 5 of this Statement.

Clause 4.3(2) of BLEP sets out the maximum building height for development as shown on the Height of Buildings Map. The site is subject to a maximum building height of 9 metres as shown in **Figure 3**.



However, within Clause 4.3 Height of buildings, a restriction applies to the height of the wall withing secondary dwellings.

A copy of Clause 4.3 Height of building of the BLEP is provided below. The parts that are relevant to this DA are provided in a blue colour font below:

4.3 Height of buildings

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

- to ensure that the height of development is compatible with the character, amenity and landform of the area in which the development will be located,
- to maintain the prevailing suburban character and amenity by limiting the height of development to a maximum of two storeys in Zone R2 Low Density Residential,

- (c) to provide appropriate height transitions between development, particularly at zone boundaries,
- (d) to define focal points by way of nominating greater building heights in certain locations.

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

(2A) Despite subclause (2)—

- (a) for land in Zone B2 Local Centre—if a lot is in “Area 1” as identified on the Height of Buildings Map and has a width of less than 20 metres at the road frontage, the maximum building height is 17 metres, and
- (b) for land in Zone B6 Enterprise Corridor—if a lot is in “Area 2” as identified on the Height of Buildings Map and has an area less than 5,000 square metres, the maximum building height is 11 metres.

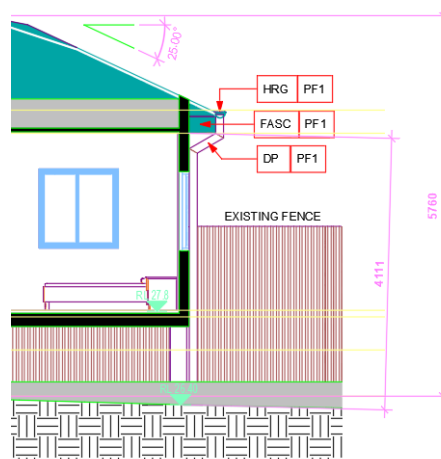
(2B) Despite subclause (2), the following restrictions apply to development on land in Zone R2 Low Density Residential—

- (a) for a secondary dwelling that is separate from the principal dwelling—the maximum building height is 6 metres and the maximum wall height is 3 metres,
- (b) for a dwelling house or a dual occupancy—the maximum wall height is 7 metres,
- (c) for boarding houses—
- (i) the maximum building height for a dwelling facing a road is 9 metres and the maximum wall height is 7 metres, and
- (ii) the maximum building height for all other dwellings at the rear of the lot is 6 metres and the maximum wall height is 3 metres.

(2C) In this clause, wall height means the vertical distance between ground level (existing) and the underside of the eaves at the wall line or the top of the parapet or the flat roof (whichever is the highest)

5. Proposed Variation to Development Standard – Wall Height

The proposed development presents a varied wall height of a maximum of 4.1metres at the deepest corner of the site (South west corner of the site), which is 1.1metre above the required wall height for the secondary dwelling. The noncompliance with the wall height ranges from about 23% (700mm to 36% (1100mm) because the site slopes to the rear of the property. The non-compliance came about because the floor level of the proposed development needed to be raised to address flooding requirements.



However, **it is important to also note that the proposed secondary dwelling complies with the maximum building height of 6 metres under the same clause (Clause 4.1 (2B) of the BLEP).**

6. Assessment of the proposed variation

Clause 4.6 of BLEP includes provisions that allow for exceptions to development standards in certain circumstances. An assessment of Clause 4.6 of BLEP are addressed in the Table Below:

Table 1: Clause 4.6 Exceptions to development standards of Bankstown Local Environmental Plan 2015

Clause:	Comments
(1) The objectives of this clause are as follows—	
(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,	For this particular proposed development, the site is subject to stormwater overflow path, that needs to be maintained. As such, there need to be flexibility in applying the wall height standard in order to respond to this matter. To maintain the flowpath of the stormwater with minimum disturbance to the existing site slope and to avoid flooding, there is a need to raise the finished floor level of the secondary dwelling to a minimum of 500mm above the 100 year ARI flood level of RL26.8 . The finished floor level of the proposed secondary dwelling is designed at RL27.8, to respond to this engineering requirement and the slope of the site.
(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.	Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a DA that does not comply with certain development standards, where it can be shown that

Clause:	Comments
	<p>flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.</p> <p>The noncompliance with the wall height standard will achieve a better outcome in this particular instance for the site and its surrounding. If the proposed development were to comply with the 3-metre wall height standard it would potentially block the stormwater flowpath which would in turn cause flooding to the proposed development and adjoining residential properties.</p>
(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.	The wall height development standard is not expressly excluded from the operation of this clause.
(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—	The applicant requests that the consent authority consider this report as a written request to vary the wall height development standard.
<p>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</p> <p>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</p>	<p>In this particular instance, it is unreasonable to require the applicant to comply with the 3-metre wall height development standard, as this will mean that the secondary dwelling slab will not be raised to allow the stormwater to escape to the drainage easement. In addition, this will impact on the existing flowpath, that Council's engineers requested to be maintained. Copy of part of the Council advice is below:</p> <p><i>'The site will be subject to stormwater inundation from this overland flowpath during large storm events. Refer to the attached "100 Year ARI Flood Extent Maps from Salt Pan Creek Catchment Study" showing the flood contours to m AHD**.</i></p> <p><i>Provision should be made on site, and at boundary fences, for this stormwater runoff to pass unobstructed over the site. Stormwater flowing naturally onto the site must not be impeded or diverted.</i></p> <p><i>The estimated 100 year ARI* flood level at the site is <u>RL 26.8m</u> AHD** (rear of the site).'</i></p> <p><i>For this development, a flood /overland flow study to determine the 100 year ARI water surface level is not necessary.</i></p> <p><i>The Development Application submission shall be based on an AHD datum for</i></p>

Clause:	Comments
	<p>levels where sites are affected by overland flow / flooding. Refer Bankstown Council's Development Engineering Standards***. The proposed development including floor levels, shall comply with the development controls specified in Part B12 Schedule 5, of Bankstown's Development Control Plan 2015 - Catchments Affected by Stormwater Flooding.</p> <p><u>Habitable floor levels are to be at least 500mm above the 100-year ARI* flood level at the site adjacent proposed buildings.</u></p>
<p>(4) Development consent must not be granted for development that contravenes a development standard unless—</p> <p>(a) the consent authority is satisfied that—</p> <p>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</p> <p>(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</p>	<p>This clause 4.6 request demonstrates that compliance with the required wall height development standard prescribed for the site in clause 4.3 (2B) of BLEP is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify the requested variation and that the approval of the variation is in the public interest.</p> <p>Assessment against the objectives of Clause 4.3 is provided under section 7 of this report.</p>
<p>(b) the concurrence of the Planning Secretary has been obtained.</p> <p>(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.</p>	<p>Given that the requested variation is more than 10%, the consent authority for this DA will be the Cumberland Local Planning Panel.</p> <p>As such, the concurrence of the Secretary may be assumed to have been granted for the purpose of this variation request in accordance with the Department of Planning Circular PS 18-003 'Variations to development standards', dated 21 February 2018.</p>
<p>(5) In deciding whether to grant concurrence, the Planning Secretary must consider—</p>	<p>There is no matter of significance for regional environmental planning or state matter that is relevant to the proposed development.</p>


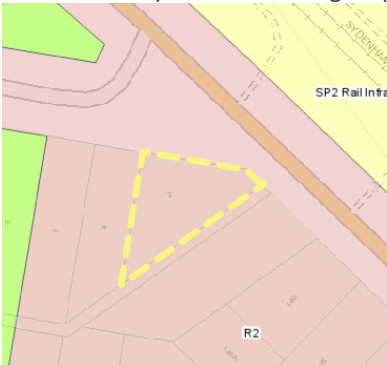
Clause:	Comments
(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and (b) the public benefit of maintaining the development standard, and	There is no public benefit of marinating the development standard. The intention of limiting the wall height is to ensure that secondary dwellings within residential neighborhoods are of appropriate scale and bulk. Raising the building wall height by 1.1 metres to address flooding, will not result in a bulky development. On the contrary, in this instance, complying with wall height will potentially adversely affect the public, as it would mean that the proposed development would not be designed in accordance with the advice provided by Council's engineers, thus impacting stormwater management.
(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— (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or (b) 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.	This clause is not applicable

In accordance with clause 4.6(3), the applicant requests that the wall height development standard for the secondary dwelling be varied as it is in response to an advice received from Council's flood engineers in relation to stormwater management of the site.

7. Objectives of Clause 4.3 Height of buildings

The objectives of the height of buildings development standard under clause 4.3 of BLEP are presented in the Table below. An assessment of the consistency and evaluation of the proposed development with each of the objectives is provided in the column opposite to each objective.

Objective	Comments/Assessment
(a) to ensure that the height of development is compatible with the character, amenity and landform of the area in which the development will be located,	The subject site is located within Bankstown suburb on land zoned R2 Low Density Residential Zone under the BLEP. The area surrounding the site is characterised by low density residential houses, with the majority of these houses being single storey detached dwellings.

	 <p>Figure 4: Photo of houses adjacent to the subject site fronting Carnation Avenue</p> <p>The overall building height of the proposed development does not exceed the required building height of 6 metres for detached secondary dwellings under Section 4.3 (2B) of the BCLEP. The proposed secondary dwelling is single story. As such, it is considered that the proposed development is compatible with the character, amenity and landform of the area. In addition, the proposed secondary dwelling does not impact on the residential amenity of neighboring properties by way of overshadowing and privacy.</p>
<p>(b) to maintain the prevailing suburban character and amenity by limiting the height of development to a maximum of two storeys in Zone R2 Low Density Residential,</p>	<p>The proposed development is of a single storey structure.</p>
<p>(c) to provide appropriate height transitions between development, particularly at zone boundaries,</p>	<p>The proposed development is not located on a zone boundary. Refer to zoning map below:</p> 

8. Conclusion

This written request shows that strict compliance with the 3-metre wall's height development standard contained within clause 4.3 (2B) of the BLEP is unreasonable and unnecessary in the circumstances of the case.

There is sufficient environmental planning reasoning to justify the proposed variation and the proposed variation is considered to be in the public interest for the following reason:

1. While the request is to vary the subject development standard (wall height) by 36% sounds excessive, in this particular instant, the variation in fact is only an additional height of 1.1 metres at the most (at the deepest corner of the site).
2. The proposal, notwithstanding the non-compliance with the wall height requirement, complies with the maximum 6 metres building height and in fact is 300mm below the that.
3. The noncompliance with the wall height will result in a better planning outcome than strictly complying with the requirement in this particular case, as it is a requirement to address stormwater management and flooding on site.
4. The proposed secondary dwelling will deliver an additional affordable dwelling, which is much needed within the Sydney metropolitan areas.
5. There are no adverse environmental impacts arising from the proposed variation including overshadowing and privacy.
6. The non-compliance with the required wall height is not resulting in additional storey on site. The proposed building will maintain the appearance of a one storey building.
7. There is no impact on the neighbourhood character.
8. The proposed non-compliance with the wall height standard will not result in any matter of significance for State or regional environmental planning

For the reasons outlined above, the clause 4.6 request is well-founded in my opinion. The request to vary the required maximum wall height of the proposed secondary dwelling from 3 metres to 4.1 metres is in response to an engineering requirement by Council's engineers to address stormwater and flooding matters within the site and its surroundings, and there for the compliance with the standard is unreasonable, and is not in the public interest.

DISCLAIMER

This report is dated 23 January 2023. This report has been prepared using information and drawings prepared by a third party, and Jadara Planning is not responsible for the accuracy of information obtained from third parties' plans/drawings.

This report has been prepared in good faith. Jadara Planning is not liable for any errors or omissions, including in information provided by the applicant/owner.

This report has been prepared with due care and diligence and the statements and opinions given in this report are given in good faith and in the reasonable belief that they are correct and not misleading, subject to the limitations mentioned above.

Jadara Planning does not guarantee that the consent authority will agree with the professional opinion provided in this report and take no responsibility nor liability in the event, the consent authority does not agree with the provided opinion.