



STATEMENT OF ENVIRONMENTAL EFFECTS

RESTROSPECTIVE APPROVAL
CONVERSION OF DETACHED GARAGE TO SECONDARY
DWELLING

132 WILBUR STREET
GREENACRE NSW 2190
LOT 90 DP 11603

1 INTRODUCTION

This Clause 4.6 Variation Statement has been prepared by In House Town Planning. It is submitted to Canterbury-Bankstown Council in support of a Development Application (DA) for the retrospective approval of the conversion of an existing garage to a detached secondary dwelling on the site at 132 Wilbur Street, Greenacre. The previous garage on the site had an external wall height that exceeded 3m and the existing floor to ceiling heights were followed in the extended portion of the secondary dwelling to achieve a functional and liveable floor area. The structure now exceeds the maximum permissible external wall height limit for secondary dwellings under Clause 4.3(2B) of the Canterbury-Bankstown Local Environmental Plan 2023 (CBLEP 2023).

Clause 4.6 of the CBLEP 2023 enables Canterbury-Bankstown Council to grant consent for development even though the development contravenes the height development standard. The Clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clauses 4.6(3) requires the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development standard. Clause 4.6(4)(a) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied:

- > That the applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- > That the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- > That the 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 has been carried out.

The consent authority's satisfaction in respect of those matters must be informed by the objectives of Clause 4.6, which are to provide an appropriate degree of flexibility in the application of the relevant controls and to achieve better outcomes for and from the development in question by allowing flexibility in particular circumstances.

The Land and Environment Court has established a set of factors to guide assessment of whether a variation to development standards should be approved. The original approach was set out in the judgment of Justice Lloyd in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89 in relation to variations lodged under State Environmental Planning Policy 1 – Development Standards (SEPP 1). This approach was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe). While these cases referred to the former SEPP 1, the analysis remains relevant to the application of Clause 4.6(3)(a).

In accordance with the CBLEP 2023 requirements, this Clause 4.6 Variation Statement identifies the following:

- > The development standard to be varied.
- > The variation sought.
- > Establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
- > Demonstrates there are sufficient environmental planning grounds to justify the contravention.
- > Demonstrates that the variation is 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 has been carried out.
- > Provides an assessment of the matters the Secretary is required to consider before providing concurrence.

This Clause 4.6 Variation Statement relates to the development standard for maximum external wall height under Clause 4.3(2B) of the CBLEP 2023 and should be read in conjunction with the Statement of Environmental Effects (SEE) submitted with the application. This document demonstrates that compliance with the maximum external wall height development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the standard.

This Clause 4.6 Variation Statement sufficiently demonstrates that:

- > There are sufficient environmental grounds to justify the contravention. The external wall height variation does not generate any unacceptable environmental impacts in respect of overshadowing or wind and will not impact on view lines and vistas from the public domain.
- > The external wall height exceedance is existing on the site and the extended portion of the secondary dwelling has followed the existing floor to ceiling height.
- > The single storey form and location of the secondary dwelling at the rear of the site means that it is almost entirely screened from adjoining residential properties by existing fencing and landscaping within the site boundaries.
- > Detached secondary dwellings are characteristic of the surrounding streetscapes including the adjoining property at 130 Wilbur Street, Greenacre. The development is therefore consistent with the rhythm of built form throughout the streetscape and has been sensitively designed to have the least visual impact when viewed from adjoining properties and the public domain.
- > The breach of external wall height is not in relation to any usable or habitable floor area. Therefore, the portion of the development located above the external wall height limit does not contain any windows or openings that will provide for direct view into adjoining properties or result in privacy concerns, noting that the secondary dwelling is single storey in form and is generally screened from all nearby residential buildings.
- > Notwithstanding the external wall height variation, the development remains consistent with the objectives of the height standard and the R2 – Low Density Residential zone.
- > The external wall height variation will not be perceivable from the public domain and as such the development will have an appropriate impact, in terms of its scale, form and massing.
- > The development achieves compliance with all other provisions of the CBLEP 2023 including land use zoning and floor space ratio.
- > The development achieves general compliance with the general provisions and objectives for secondary dwelling development under the Canterbury-Bankstown Development Control Plan 2023 (CBDPC 2023) and does not preclude the existing dwelling house achieving compliance with the relevant dwelling house controls.
- > The development is in the public interest as the variation to the external wall height control will enable the orderly and efficient use of the land, in accordance with the objectives of the Environmental Planning and Assessment Act 1979 (EP&A Act) and the Canterbury Bankstown Draft Affordable Housing Strategy.

2 VARIATION TO DEVELOPMENT STANDARD

2.1 DEVELOPMENT STANDARD TO BE VARIED

This Clause 4.6 Variation Statement seeks to justify contravention of the development standard set out in Clause 4.3(2B) of the CBLEP 2023. Clause 4.3(2B) states the following:

4.3 Height of buildings

(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,

Clause 4.3(2B)(a) above requires the maximum external wall height for a detached secondary dwelling to be no greater than 3m.

2.2 NATURE OF VARIATION SOUGHT

The maximum external wall height of the secondary dwelling is 3.651m which results in a variation of 651mm or 17.831% to the development standard. The departure from the external wall height control is demonstrated on the Architectural Plans submitted with this application and shown below.

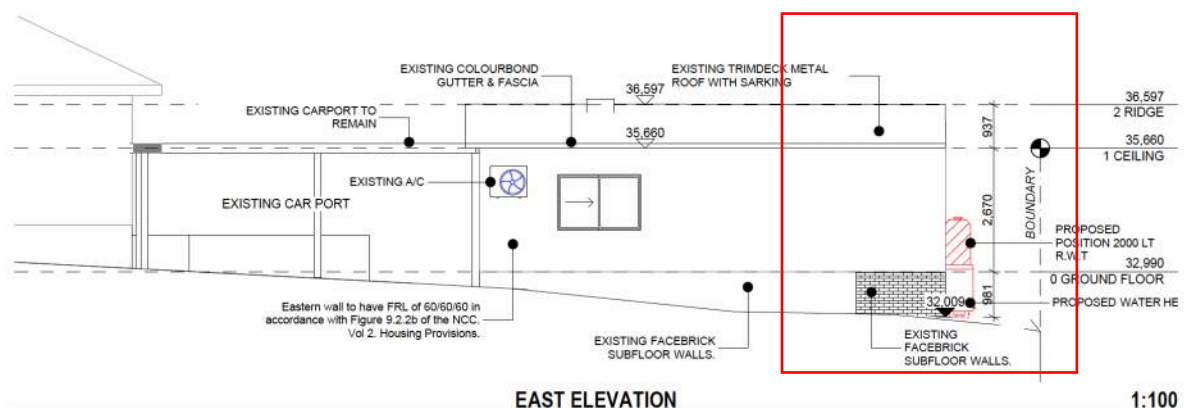


Figure 1: Non-Compliance

In this instance, the variation to the external wall height limit control relies on Clause 4.6 - *Exception to Development Standards* of the CBLEP 2023.

3 JUSTIFICATION FOR CONTRAVENTION OF THE STANDARD

Clause 4.6(3) of the CBLEP 2023 provides that:

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.*

Further, Clause 4.6(4)(a) of the CBLEP 2023 provides that:

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.*

Assistance in the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court and the NSW Court of Appeal in:

- > *Wehbe v Pittwater Council [2007] NSW LEC 827; and*
- > *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009.*

The relevant matters contained in Clause 4.6 of the BLEP 2015, with respect to the maximum external wall height development standard, are each addressed below, including with regard to these decisions.

3.1 CLAUSE 4.6(3)(a): COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE AND UNECCESARY IN THE CIRCUMSTANCES OF THE CASE

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. The five methods outlined in *Wehbe* include:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard.*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.*
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.*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary, is the first method listed above. It is argued that the development satisfies each of the relevant objectives of Clause 4.3(1) of CBLEP 2023 as demonstrated below.

- 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 secondary dwelling is single storey in form in keeping with the predominant built form characteristics of the streetscape including the existing dwelling house on the site. The secondary dwelling has a maximum building height of 4.588m which is considerably less than the permissible maximum building height of 6m for secondary dwellings under Clause 4.3(2B) of the CBLEP 2023. As demonstrated by the image below, the secondary dwelling has limited visibility when viewed from the streetscape due to the existing carport, and is also predominately screened from adjoining residential properties to the north, east and west by existing fencing and landscaping within the site boundaries. The final development maintains an appropriate balance between the built form, landscaped areas and private open space for both the dwelling house and secondary dwelling, thereby achieving the objectives of development in the R2 zone under the CBLEP 2023 and the CBDP 2023.



Whilst the external wall height control is placed to ensure that the future character of the locality is maintained, the departure from the control in this instance is a direct result of converting an existing structure to a secondary dwelling and proposing a small addition that follows the existing floor to ceiling heights to achieve a functional and liveable floor plan. The secondary dwelling does not result in unreasonable bulk and massing when viewed from the streetscape and adjoining properties.

- 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,***

As discussed above, the secondary dwelling is single storey in form and therefore sits well below the maximum permissible building height and number of storeys. The overall form and location of the secondary dwelling at the rear of the site ensures that the final development does not result in adverse impacts to adjoining residential buildings, or buildings in the vicinity of the site, in terms of views, loss of privacy, overshadowing or visual intrusion. The final development achieves the solar access requirements stipulated under the CBDP 2023 both on the site and for adjoining properties.

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

As discussed above, the development sits well below the maximum building height limit for the site and is highly compatible with the form and location of other detached secondary dwelling developments in the locality, including the adjoining property at 130 Wilbur Street, Greenacre. The design of the secondary dwelling including pitched roof profile and external finishes is in keeping with the built form character of the streetscape and reflects the architectural styling of the dwelling house without directly mimicking it.

d) to define focal points by way of nominating greater building heights in certain locations.

The final development is highly compatible with the desired characteristic of the locality and achieves a complaint overall building height that is intended for the residential zoning of the land. As discussed throughout this report, the external wall height limit is unavoidably breached due the existing floor to ceiling heights of the garage. Despite the departure from the development standard, the secondary dwelling has limited visual impacts on the streetscape and adjoining properties and will not result in overshadowing or impacts to neighbourhood views.

3.2 CLAUSE 4.6(3)(b): ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

The following site-specific environmental grounds further justify the variation to the maximum external wall height control:

- > The variation is minor in the context of the site and is isolated northern portion of the secondary dwelling which has the least visual impact on the streetscape and adjoining residential properties. As detailed on the Architectural Plans submitted with this application, the secondary dwelling sits well within the compliant building height limit.
- > The variation only covers a very small proportion of the wider subject site and has been positioned on the building to avoid obstruction of views from the surrounding streetscape.
- > The external wall height variation will not generate any unacceptable adverse environmental impacts in respect of overshadowing or wind impacts. The final development maintains an appropriate level of solar access to adjoining living and private open space areas due to the single storey form of the secondary dwelling and location at the rear of the site.
- > Notwithstanding the external wall height variation, the final development continues to satisfy the objectives of Clause 4.3 of the CBLEP 2023 as demonstrated above.
- > The external wall height is necessary in achieving compliant floor to ceiling heights for the secondary dwelling and affording a high level of amenity for the residents.
- > The breach of external wall height is not in relation to any usable or habitable floor area. Therefore, the portion of the development located above the external wall height limit will not contain any windows or openings that will provide for direct view into adjoining properties or result in privacy concerns.
- > The variation will not result in a development that is out of character with that envisioned by Canterbury-Bankstown Council. The final development including principal and secondary dwelling presents to the streetscape and adjoining properties as a well-designed and cohesive development.

3.3 CLAUSE 4.6(3)(a)(ii): IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE ZONE AND DEVELOPMENT STANDARD

The development is in the public interest as it achieves the below objectives of the R2 – Low Density Residential zone by providing a form of low impact residential development that is in keeping with adjoining land uses and does not detract from the visual quality of the streetscape. The external wall height variation is in the overall public interest as it provides for the highest and best use of the site, is in keeping with the rhythm of development throughout the streetscape by way of building envelopes, will not adversely impact on significant trees or vegetation and will promote the orderly and efficient use of land in accordance with the objects of the EP&A Act.

4 OTHER MATTERS FOR CONSIDERATION

Under clause 4.6(5) of the CBLEP 2023, in deciding whether to grant concurrence, the Director-General must consider the following matters:

5. *In deciding whether to grant concurrence, the Secretary must consider:*
- 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*
 - c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

These matters are addressed in detail below.

4.1 **CLAUSE 4.6(5)(a): WHETHER CONTRAVENTION OF THE DEVELOPMENT STANDARD RAISES ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING**

The variation of the maximum external wall height development standard does not raise any matter of significance for State or Regional planning.

4.2 **CLAUSE 4.6(5)(b): THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD**

There is no public benefit in maintaining the development standard in terms of State and Regional planning objectives. As noted in the preceding sections, the additional external wall height generally reflects the height of development throughout the locality and the non-compliance is existing on the site and has not been exacerbated by the conversion of the garage to a secondary dwelling. The development does not appear out of character when viewed from the public domain and does not give rise to any significant adverse environmental impacts.

4.3 **CLAUSE 4.6(5)(c): ANY OTHER MATTERS REQUIRED TO BE TAKEN INTO CONSIDERATION BY THE DIRECTOR-GENERAL BEFORE GRANTING CONCURRENCE.**

There are no other relevant matters requiring consideration.

6 CONCLUSION

The assessment above sufficiently demonstrates that compliance with the maximum external wall height development standard contained in Clause 4.3(2B) of the CBLEP 2023 is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner. The development, including external wall height variation, has been constructed in harmony with adjoining buildings and the characteristics of the surrounding locality to ensure that the works do not compete with the integrity of the streetscape.

This Clause 4.6 Variation Statement demonstrates that, notwithstanding the non-compliance with the maximum external wall height development standard, the variation:

- > Is consistent with the objectives of Clause 4.3 of the CBLEP 2023.
- > Is minor in nature and relates only to a small portion of the secondary dwelling with the least visual impact on the streetscape and adjoining properties.
- > Will promote the orderly and efficient use of land, in accordance with the objectives of the Act.

It is therefore demonstrated that the DA may be approved in accordance with the flexibility allowed under Clause 4.6 of the CBLEP 2023.