

WRITTEN REQUEST TO CONTRAVENE A DEVELOPMENT STANDARD

Clause 4.6 – Canterbury-Bankstown Local Environmental Plan 2023

Property Address

9 Queensbury Road
Padstow Heights NSW 2211

Legal Description

Lot A in Deposited Plan 409706

Applicant

Morgan Building Design Pty Ltd

Prepared For

Morgan Building Design Pty Ltd

Prepared By

Urbanacorp
Planning | Design | Project Management

Date

July 2026

1. INTRODUCTION

This Written Request has been prepared pursuant to **Clause 4.6 of the Canterbury-Bankstown Local Environmental Plan 2023** in support of a Development Application seeking consent for the construction of a new two-storey dwelling house with an attached double garage, covered alfresco and in-ground swimming pool at **9 Queensbury Road, Padstow Heights NSW**.

Clause 4.6 provides flexibility in the application of development standards where strict compliance would be unreasonable or unnecessary in the circumstances of a particular case and where sufficient environmental planning grounds exist to justify the contravention.

This Written Request accompanies the Development Application and should be read in conjunction with:

- Statement of Environmental Effects;
- Architectural Plans;
- Site Survey;
- Site Specific Flood Report;
- Stormwater Drainage Plans;
- Arborist Report;
- BASIX Certificate; and
- Supporting engineering documentation.

The purpose of this request is to justify a variation to the prescribed wall height development standard contained within **Clause 4.3 – Height of Buildings** of the Canterbury-Bankstown Local Environmental Plan 2023.

2. CLAUSE 4.6 – EXCEPTIONS TO DEVELOPMENT STANDARDS

Clause 4.6 permits development consent to be granted for development that contravenes a development standard where the consent authority is satisfied that:

(a) compliance with the development standard is unreasonable or unnecessary in the circumstances; and

(b) there are sufficient environmental planning grounds to justify the contravention.

This Written Request addresses each of these statutory requirements and demonstrates that the proposed variation is justified on its planning merits.

The development standard sought to be varied is **not excluded** from the operation of Clause 4.6.

3. SITE AND PROPOSED DEVELOPMENT

3.1 Site Description

The subject site is located at **9 Queensbury Road, Padstow Heights** and comprises a vacant residential allotment having an area of **632.30m²** with a frontage of approximately **12.573 metres**.

The land is zoned **R2 – Low Density Residential** under the Canterbury-Bankstown Local Environmental Plan 2023 where dwelling houses are permissible with development consent.

The site exhibits a significant natural fall of approximately **4.94 metres from the front boundary towards the rear**, presenting a substantial design constraint that has directly influenced the architectural response.

In addition, the site is affected by **flood planning controls**, requiring the proposed dwelling to adopt elevated finished floor levels in accordance with the recommendations contained within the accompanying Site Specific Flood Report.

The site is also identified within the mapped coastal environment. These matters have been comprehensively addressed within the supporting consultant documentation accompanying the Development Application.

3.2 Proposed Development

Development consent is sought for:

- Construction of a new two-storey dwelling house;
- Attached double garage;
- Covered rear alfresco;
- In-ground swimming pool;
- Associated landscaping;
- Stormwater drainage works;
- Earthworks;
- Tree removal as identified within the Arborist Report; and
- Ancillary residential site works.

The dwelling has been specifically designed to respond to the site's topography and flood planning requirements while maintaining consistency with the established residential character of the locality.

4. DEVELOPMENT STANDARD TO BE VARIED

The proposed variation relates to **Clause 4.3 – Height of Buildings** of the Canterbury-Bankstown Local Environmental Plan 2023.

While the proposal complies with the prescribed **maximum building height of 9.0 metres**, the proposed wall height exceeds the prescribed **7.0 metre wall height**.

Development Standard	Requirement	Proposed
Maximum Building Height	9.00 m	8.40 m
Maximum Wall Height	7.00 m	8.40 m

Extent of Variation

Item	Value
Variation	1.40 m
Percentage Variation	20%

5. HOW IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THIS CASE?

Clause 4.6(3)(a) requires the consent authority to be satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances.

The accepted approach for assessing this question originates from **Wehbe v Pittwater Council [2007] NSWLEC 827**, which establishes a number of ways in which compliance with a development standard may be unreasonable or unnecessary.

This Written Request demonstrates that the proposed variation satisfies the first Wehbe principle, namely that **the objectives of the development standard are achieved notwithstanding the numerical non-compliance**.

Further, requiring strict compliance with the prescribed wall height would produce an inferior planning outcome by increasing excavation, retaining structures and environmental disturbance without delivering any corresponding planning benefit.

Accordingly, compliance with the development standard is unreasonable and unnecessary in the particular circumstances of this site.

5.1 Objectives of Clause 4.3 – Height of Buildings

The objectives of Clause 4.3 are:

- To establish the maximum height of buildings.
- To ensure future development has regard to the existing and desired future character of the locality.
- To minimise visual impacts, disruption of views, loss of privacy and loss of solar access.

Each objective is addressed below.

(a) To establish the maximum height of buildings

The proposal fully complies with the prescribed **maximum building height of 9.0 metres**, achieving a maximum building height of **8.40 metres**.

The variation sought relates solely to the wall height component of the control and does not result in any exceedance of the overall building height envelope envisaged by the Local Environmental Plan.

Accordingly, the proposal remains entirely consistent with the primary purpose of Clause 4.3, namely establishing an overall limit on the scale of development.

The numerical variation to wall height does not undermine this objective, as the overall building mass remains below the maximum permissible building height.

(b) To ensure future development has regard to the existing and desired future character of the locality

The proposed dwelling has been designed having regard to the established and evolving residential character of Padstow Heights.

The development incorporates:

- compliant front setbacks;
- articulated façades;
- generous landscaping;
- appropriate building separation;
- contemporary architectural detailing; and
- a built form compatible with surrounding residential development.

Importantly, the increased wall height is not the result of an oversized building or excessive bulk.

Rather, it is a direct consequence of:

- the site's natural fall of approximately **4.94 metres**; and
- finished floor levels required to satisfy flood planning requirements.

The proposal follows the site's natural topography instead of artificially modifying the land to achieve numerical compliance.

Consequently, the visual presentation of the dwelling remains entirely consistent with the desired future character of the locality.

(c) To minimise visual impacts, disruption of views, loss of privacy and loss of solar access

The proposal has been designed to ensure that the variation does not result in unacceptable impacts upon adjoining residential properties.

The accompanying architectural plans demonstrate that:

- the dwelling remains below the maximum permissible building height;
- compliant setbacks are maintained;
- appropriate building articulation reduces perceived bulk;
- landscaping softens the built form;
- privacy is maintained through considered window placement; and
- solar access to adjoining properties remains acceptable.

The additional wall height does not translate into increased visual dominance or unreasonable amenity impacts.

Instead, the variation enables the dwelling to respond appropriately to the site's physical constraints while maintaining acceptable planning outcomes.

Accordingly, the objectives of Clause 4.3 continue to be achieved notwithstanding the proposed variation.

5.2 Why Strict Compliance is Unreasonable

In the circumstances of this particular site, requiring strict compliance with the prescribed **7.0 metre wall height** would produce a poorer planning outcome.

Unlike a relatively flat residential allotment, the subject site exhibits a significant natural fall of approximately **4.94 metres** from the street towards the rear.

Furthermore, the site is affected by flood planning controls, requiring elevated finished floor levels to ensure the development satisfies the recommendations contained within the accompanying Site Specific Flood Report.

These two site-specific constraints significantly influence the design of the dwelling.

To achieve strict compliance with the prescribed wall height would necessitate one or more of the following:

- substantial excavation across the site;
- increased retaining walls;
- greater disturbance of natural ground levels;
- increased removal of soil;
- more extensive engineering works;
- additional construction impacts; and
- a less responsive relationship between the building and the site's natural topography.

Such an outcome would not improve the planning merits of the proposal.

On the contrary, it would increase environmental disturbance and engineering intervention while producing no measurable improvement in streetscape presentation, residential amenity or neighbourhood character.

The proposed design instead adopts a site-responsive approach that follows the existing landform and accommodates the required flood planning levels.

This represents a more appropriate planning outcome than one achieved solely through numerical compliance with the wall height development standard.

Accordingly, strict compliance with the prescribed wall height would be unreasonable and unnecessary in the circumstances of this case.

5.3 Summary

Having regard to the objectives of Clause 4.3 and the particular characteristics of the subject site, it is evident that the proposed variation does not undermine the purpose of the development standard.

The proposal:

- complies with the overall maximum building height;
- maintains compatibility with surrounding residential development;
- protects residential amenity;
- responds appropriately to the site's significant topography;
- accommodates required flood planning levels;
- reduces unnecessary excavation and retaining; and
- achieves a superior environmental and planning outcome.

Accordingly, the objectives of the development standard are achieved notwithstanding the proposed variation, and compliance with the prescribed wall height is unreasonable and unnecessary in the circumstances of the case.

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