

Clause 4.6 Variation Request Height of Buildings (Clause 4.3) Woollahra Local Environmental Plan 2014

6 & 8 Queens Avenue
Vaucluse NSW 2030

Submitted to Woollahra Council
On Behalf of Mr Jin Lin

Report Revision History

Revision	Date	Prepared by	Reviewed by	Verified by
Draft	N/A	James Kingston <i>Project Planner</i>	Stephen Kerr <i>Executive Director</i>	Stephen Kerr <i>Executive Director</i>
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This document is preliminary unless approved by a Director of City Plan Strategy & Development

CERTIFICATION

This report has been authorised by City Plan Strategy & Development, with input from a number of other expert consultants, on behalf of the Client. The accuracy of the information contained herein is to the best of our knowledge not false or misleading. The comments have been based upon information and facts that were correct at the time of writing this report.

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1. Introduction

This is a formal written request that has been prepared in accordance with clause 4.6 of the Woollahra Local Environmental Plan (WLEP) 2014 to support a development application submitted to Woollahra Council for the demolition of the existing dwelling at 8 Queens Avenue, amalgamation of the two existing allotments, construction of a new dwelling located in approximately the location of the dwelling to be demolished, restoration and adaptation of the existing historic dwelling 'Villa Igiea' on the western portion of the site (6 Queens Avenue), shared basement parking facilities, a new swimming pool for the two dwellings and associated landscaping works. The proposed works are described in detail in the SEE that accompanies this application.

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development. As the following request demonstrates, a better planning outcome would be achieved by exercising the flexibility afforded by Clause 4.6 in the circumstances of this application.

The development standard that this request seeks approval to vary is the Height of Buildings control in Clause 4.3 of the WLEP 2014. The numeric value of the Height of Buildings control in Clause 4.3 of the WLEP 2014 is 9.5m.

The development standard is not specifically excluded from the operation of Clause 4.6 of the WLEP.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal¹.

In Sections 3 and 4 of this request, we have explained how flexibility is justified in this case in terms of the matters explicitly required by clause 4.6 to be addressed in a written request from the applicant. In Sections 4, 5, 6 and 7 we address, where relevant and helpful, additional matters that the consent authority is required to be satisfied of when exercising either the discretion afforded by Clause 4.6 or the assumed concurrence of the Secretary.

¹ Relevant decisions include: *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46; *Wehbe v Pittwater Council* [2007] NSWLEC 827; *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009; *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90; *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248; and *Moskovich v Waverley Council* [2016] NSWLEC 1015.

2. Extent of variation

The variation relates to work that will occur above the 9.5m height limit on or within 'Villa Igiea', being the heritage listed dwelling at 6 Queens Ave. This building is being retained and restored due to its heritage significance, as discussed within the statement of environmental effects (SEE), the heritage impact statement (HIS) and the conservation management strategy (CMS) that accompany this application.

Specifically, the work occurring above the 9.5m height limit includes the following:

- Relocation of internal walls within the top floor of 'Villa Igiea'. The topmost parts of some of these walls exceed the height limit; and
- Replacement of air-conditioning condensers located on the rooftop mechanical plant deck. The mechanical plant deck is surrounded by hipped roofs on all four sides and the condensers will be located below the ridge height of the roof. As such they will not be externally visible.

The section shown in Figure 1 illustrates where the 9.5m height limit dissects the 'Villa Igiea'. Figure 2 illustrates the internal alterations proposed on the topmost floor. Figure 3 shows the roof and location of the mechanical plant deck relative to the hipped roofs and ridges.

While the work described above takes place above the 9.5m height limit, and therefore breaches the maximum building height control in a technical sense, the proposal does not increase the existing maximum building height of 'Villa Igiea'.



Figure 1 - Section depicting 9.5m height limit (Drawing No. 3002 prepared by Tzannes)

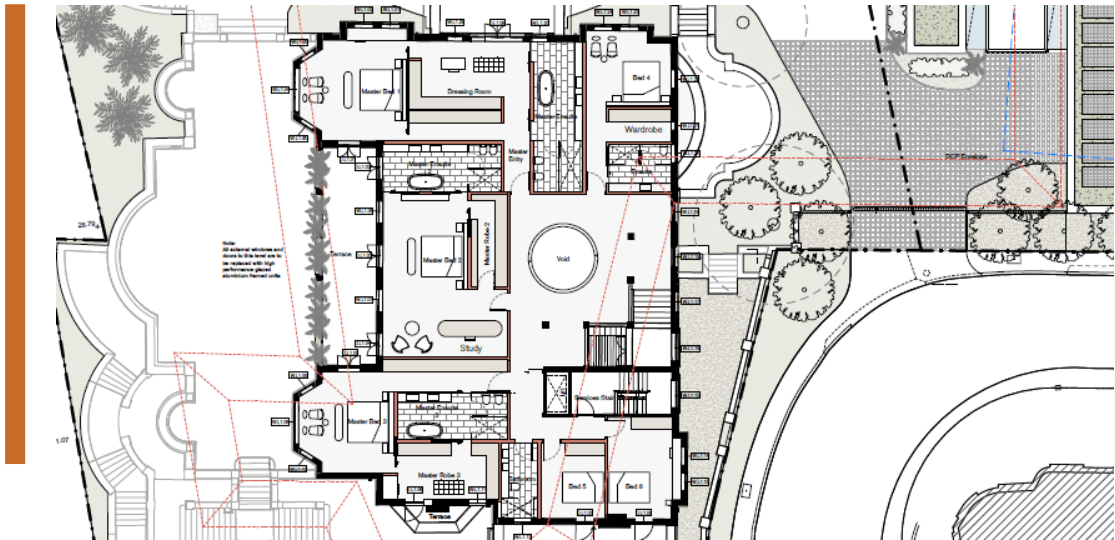


Figure 3 - Proposed internal alterations in topmost floor (Drawing No. 1102 prepared by Tzannes)

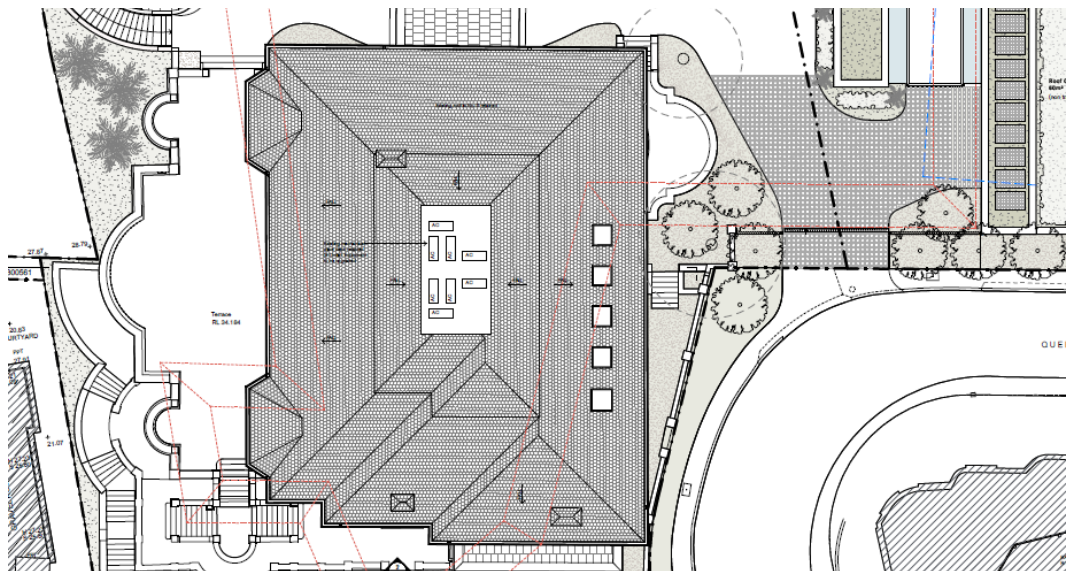


Figure 2 - Roof plan (Drawing No. 1103 prepared by Tzannes)

3. Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case. [cl. 4.6(3)(a)]

Compliance with the Height of Buildings development standard is unreasonable or unnecessary in the circumstances of this case because, as explained in Table 1 (below), the objectives of the development standard are achieved, notwithstanding non-compliance with the standard².

Table 1 - Achievement of Development Standard Objectives

Objective	Discussion
(a) to establish building heights that are consistent with the desired future character of the neighbourhood	The DCP compliance table, prepared by CPSD, that accompanies this application describes the consistency of the proposal with the desired future character of the Vaucluse West Precinct in response to Section B1.10.2 of the Woollahra Development Control Plan (WDCP) 2015. 'Villa Igiea' is an important element of the existing and the desired future character of the neighbourhood. The proposed work does not alter the external appearance or the existing maximum building height of 'Villa Igiea'. The proposed work facilitates the restoration and adaptation of the heritage listed dwelling to achieve contemporary standards of residential amenity. The building height of the proposal is, therefore, consistent with the future character of the locality. Additionally, the design integrity and future residential amenity of the building on the western portion of the site are contingent upon the completion of the proposed upgrade works specified in Section 2 of this variation request.
(b) to establish a transition in scale between zones to protect local amenity	This proposal is consistent with the anticipated scale of the zone. The new building on the eastern portion of the site is proposed below the height limit with detailed consideration of an appropriate scale and form for the location. The building on the western portion of the site (to which this variation request relates), is proposed to be retained and conserved due to its heritage significance. The proposed upgrade works to this building do not affect its scale or the amenity of the surrounding locality.
(c) to minimise the loss of solar access to existing buildings and open space	<p>The proposed works to the exterior of the building on the western portion of the site (to which this variation request relates) will not impact solar access to existing buildings and open space in any way. Due to the western orientation of the site the additional shadows generated by the building on the eastern portion of the site will be cast within the site and on Queens Avenue.</p> <p>The new dwelling on the eastern portion of the site will result in minor additional shadow on the driveway of No. 10 Queens Avenue and to a lesser extent the eastern boundary of No. 18</p>

² In *Wehbe v Pittwater Council* [2007] NSWLEC 827 Preston CJ identified 5 ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary and that it is sufficient for only one of these ways to be established. Although the decision concerned SEPP 1, it remains relevant to requests under clause 4.6 as confirmed by Pain J in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, notwithstanding that if the first and most commonly applied way is used, it must also be considered in 4.6(4)(a)(ii). The 5 ways in *Wehbe* are: 1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard; 2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary; 3. The objective would be defeated or thwarted if compliance was required with the consequence that 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 the standard is unreasonable and unnecessary; or 5. The zoning of the land is unreasonable or inappropriate.

	<p>Vaucluse Road at 3pm in mid-winter. This shadow impact has been minimised by the flat roof and well-articulated first storey design of the new building on the eastern portion of the site. The building on this portion of the site is also well below the 9.5m height limit, with a maximum height of 7.83m.</p> <p>For these reason the proposal is consistent with Council's desire to minimise the loss of solar access to existing buildings and open space.</p>
(d) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion	<p>The proposed works to the exterior of the building on the western portion of the site (to which this variation request relates) will not impact new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion in any way.</p> <p>The potential impact of the new building on the eastern portion of the site on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion is discussed in Section 6 of the SEE that accompanies this application. The SEE concludes that any impacts derived from the new building are reasonable. It is once more reiterated that the new building on the eastern portion of the site is located 1.67m below the 9.5m height limit. For more detail refer to the SEE that accompanies this application.</p>
(e) to protect the amenity of the public domain by providing public views of the harbour and surrounding areas	<p>Due to the steep topography of the site this application does not impact the amenity of the public domain or impact public views of the harbour and surrounding areas.</p>

4. There are sufficient environmental planning grounds to justify contravening the standard. [cl. 4.6(3)(b)]

Non-compliance with the Height of Buildings development standard occurs because of works that are required to restore and adapt the existing heritage listed dwelling to provide contemporary standards of amenity. As established in the HIS, these works do not adversely affect the heritage significance of 'Villa Igiea'. The HIS, prepared by Urbis, summarises this in response to Clause 5.10(4) of the WLEP. This response is extracted below.

"The proposed works to the subject listed "Villa Igiea", and the proposed demolition and redevelopment works to 8 Queens Avenue, are not considered to impact detrimentally on the heritage significance of the item for the following reasons:

- (a) The proposed works do not propose any major alterations to the external elevations of "Villa Igiea" and so will not alter the aesthetic integrity or design of the subject item. Minor changes are restricted to a small number of double door additions (reinstating two sets of French doors in their original location to the upper level east facing terrace, and adding two new sets of French doors to the ground floor loggia).*
- (b) The majority of proposed works to "Villa Igiea" are located internally, confined within the existing footprint of the building. These works, including the extended lower ground floor, and first floor reconfiguration, will not be discernible from the exterior of the property, and will address amenity issues including disable access (upgrade of the existing lift and dumb waiter space to provide compliant access, reconfiguration of first floor bedrooms). As such, from the exterior, "Villa Igiea" will continue to be read in its existing form, scale and design.*
- (c) The proposed works will not obscure "Villa Igiea" within its existing setting, and will not obscure sight lines to or from the principal façades of the building.*
- (d) While the extent of proposed internal reconfiguration is not ideal, the subject dwelling "Villa Igiea" has been substantially modified from its original form, layout and design in the 1970s and 2007, and further modification is required to address disabled access and amenity issues. Other works are being undertaken which will enhance the significance of the remaining internal fabric, such as reinstatement of fireplaces and retention of significant features including the hall stair. The principal rooms of the building including the hall, living room, dining room, office and proposed family room will maintain their proportions and scale.*
- (e) The existing dwelling at 8 Queens Avenue is of no heritage significance and can be demolished. The existing dwelling does not contribute to the character of the streetscape and is of no architectural merit. The demolition of this dwelling provides for an opportunity to construct an architecturally distinctive building appropriate for this prestigious setting.*
- (f) The proposed dwelling at 8 Queens Avenue will be recessive to "Villa Igiea" with only a ground floor and small 'pod like' first floor visually discernible, and will not obscure views from the principal elevations of "Villa Igiea". This new building will provide a contemporary contrast to*

“Villa Igiea” so as to distinguish itself from the heritage item whilst including elements of an understated, simple form and scale.

- (g) *The proposed pool area and cantilevered landscaped garden ensure that the setting, curtilage and views of “Villa Igiea” are not disrupted by ancillary structures and imposing landscaping.”*

As discussed earlier, the proposed works that exceed the 9.5m height limit are not externally visible nor do they increase the existing maximum building height of the dwelling. In this regard, they have no adverse environmental impacts.

If the works were not completed and the proposed internal alterations were not carried out above the 9.5m height limit the amenity of future occupants would be detrimentally impacted. This detrimental impact would be incurred for seemingly no additional benefit in terms of heritage conservation or external environmental impacts. Moreover, if the proposal were to exclude works above the height limit, this would simply delay an inevitable need to upgrade the facilities of the building, incurring an unacceptable cost on the owner of the site in the future, or alternatively causing the heritage listed dwelling to be allowed to fall into disrepair.

For the above reasons, there are sufficient environmental planning grounds to justify minor internal alterations and external upgrade works above the 9.5m height limit due to the absence of resultant environmental impacts and the necessity to provide a contemporary level of residential amenity on a site of this nature.

5. The proposal will be in the public interest because it is consistent with the objectives of the standard and the objectives of the zone. [cl. 4.6(4)(a)(ii)]

In section 2 (above), it was demonstrated that the proposal is consistent³ with the objectives of the development standard. The proposal is also consistent with the objectives of the zone as explained in Table 2 (below).

Table 2 - Consistency with Zone Objectives

Objective	Discussion
To provide for the housing needs of the community within a low density residential environment	The proposal does not alter the capacity of the site to provide for the housing needs of the community. The proposal is consistent with the ability of the existing site to accommodate for the housing needs of the community within a low density residential environment.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	The site will operate as a dual occupancy and will be capable of satisfying the day to day needs of future occupants by providing for recreational facilities and appropriate landscaping with minimal impact on surrounding residences.
To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.	The DCP compliance table, prepared by CPSD, that accompanies this application describes the proposals consistency with the desired future character of the Vauclose West Precinct in response to Section B1.10.2 of the Woollahra Development Control Plan (WDCP) 2015.
To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.	As discussed earlier, 'Villa Igiea' is an important element of the existing and the desired future character of the neighbourhood. The proposed work does not alter the external appearance or the existing maximum building height of 'Villa Igiea'. The proposed work facilitates the restoration and adaptation of the heritage listed dwelling to achieve contemporary standards of residential amenity. The height and scale of the proposal is, therefore, consistent with the future character of the locality. The new building proposed on the eastern portion of the site is 1.67m below the 9.5m maximum building height nominated within the WLEP 2014. Additionally, the floorplate of the site is compliant, as illustrated on the planning calculation plans prepared by Tzannes and detailed throughout the DCP compliance table that accompanies this application. Therefore, in its consistency with the height and scale anticipated by the controls the proposal is of a height and scale that achieves the desired future character of the neighbourhood.

As can be seen from Table 2, the proposal is consistent with the objectives of the standard and the objectives of the zone, and is therefore in the public interest.

³ In *Dem Gillespies v Warringah Council* [2002] LGERA 147 and *Addenbrooke Pty Ltd v Woollahra Municipal Council* [2008] NSWLEC the term 'consistent' was interpreted to mean 'compatible' or 'capable of existing together in harmony'.

6. Contravention of the development standard does not raise any matter of significance for State or regional environmental planning. [cl. 4.6(5)(a)]

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application.

7. There is no public benefit of maintaining the standard [cl. 4.6(5)(b)]

There is no public benefit⁴ in maintaining strict compliance with the development standard given that there are no unreasonable impacts that will result from the variation to the Height of Buildings and hence there are no public disadvantages. Alternatively, maintaining and upgrading the heritage significance of the building on the western portion of the site provides a substantial public advantage.

We therefore conclude that the benefits of the proposal outweigh any disadvantage and as such the proposal will have an overall public benefit.

8. Conclusion

This Clause 4.6 variation request demonstrates, as required by Clause 4.6 of the WLEP 2014, that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- There are sufficient environmental planning grounds to justify the contravention;
- The development achieves the objectives of the development standard and is consistent with the objectives of the R2 Low Density Residential Zone;
- The proposed development, notwithstanding the variation, is in the public interest and there is no public benefit in maintaining the standard; and
- The variation does not raise any matter of State or Regional Significance.

On this basis, therefore, it is considered appropriate to exercise the flexibility provided by Clause 4.6 in the circumstances of this application.

⁴ *Ex Gratia P/L v Dungog Council (NSWLEC 148)* established that the question that needs to be answered to establish whether there is a public benefit is "whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development"