



# CLAUSE 4.6 VARIATION STATEMENT

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ALTERATIONS AND ADDITIONS TO EXISTING DWELLING HOUSE

24 BERKELEY CLOSE  
BEROWRA HEIGHTS NSW 2082  
LOT 15 DP 219738

# 1 INTRODUCTION

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This Clause 4.6 Variation Statement has been prepared by In House Town Planning. It is submitted to Hornsby Shire Council in support of a Development Application (DA) for alterations and additions to an existing dwelling house located at 24 Berkeley Close, Berowra Heights proposing a variation to the maximum building height limit.

Clauses 4.6 of the Hornsby Local Environmental Plan 2013 (HLEP 2013) enables Hornsby Shire 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 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.

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 HLEP 2013 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 proposed 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 proposed to be 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 building height under Clause 4.3 of the HLEP 2013 and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Cape Cod Australia. This document demonstrates that compliance with the maximum 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 proposed height variation does not generate any unacceptable environmental impacts in respect of overshadowing or wind and will not significantly impact on view lines and vistas from the public domain.
- There are site specific environmental grounds which justify the minor breach, due mainly to the existing site topography that falls not only from the front to the rear of the site in the order of 58cms, but also from the western to the eastern boundary. The height of building control of 8.5m is therefore unavoidably breached in achieving a suitable and cohesive design outcome, and the breach is exacerbated by the existing topography in the immediate area.
- Notwithstanding the proposed height variation, the proposed development remains consistent with the objectives of the height standard and the R2 – Low Density Residential zone.
- The proposed height variation will not be highly perceivable from the public domain and as such the proposed development will have an appropriate impact, in terms of its scale, form and massing.
- The proposed development is in the public interest as the variation to the 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).

## 2 PROPOSED VARIATION

### 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 of the HLEP 2013. Clause 4.3(2) requires that 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. The site is subject to a maximum building height of 8.5m as shown on the Height of Buildings Map below.

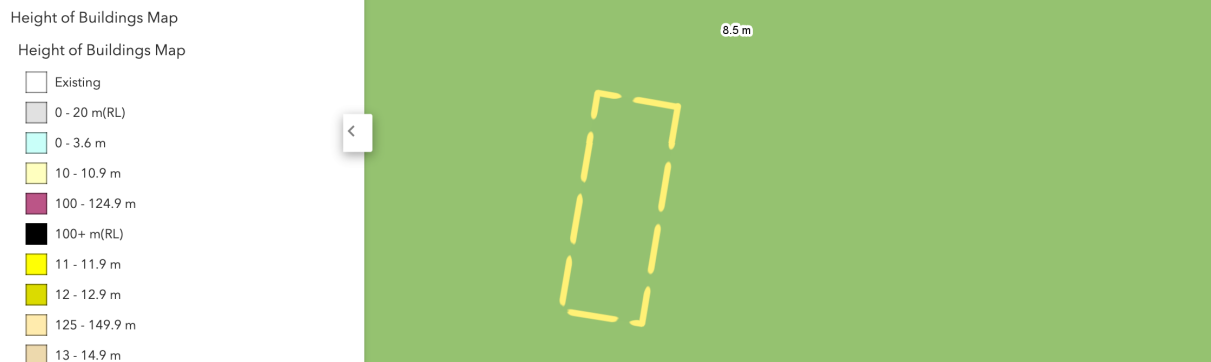


Figure 1: Height of Buildings Map (Hornsby Local Environmental Plan 2013)

### 2.2 NATURE OF VARIATION SOUGHT

Due to the steeply sloping nature of the land, the maximum building height for the development is determined in accordance with Figure 3.1(a) of the HDCP 2013 shown below. While the height control is placed to ensure that the character of the locality is maintained, applying the control to a site with dramatic changes from both the front boundary to the rear and between the side boundaries can inevitably result in departures from the control in order to achieve a uniform and functional building envelope and maintain compliance across all other development standards.

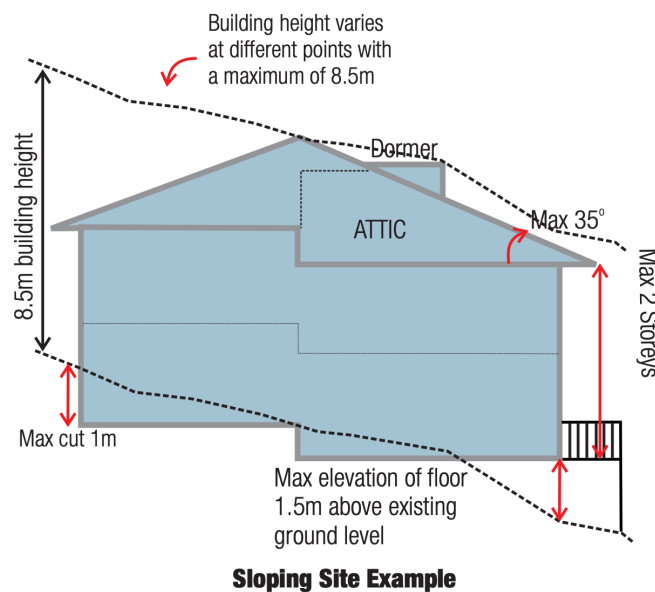
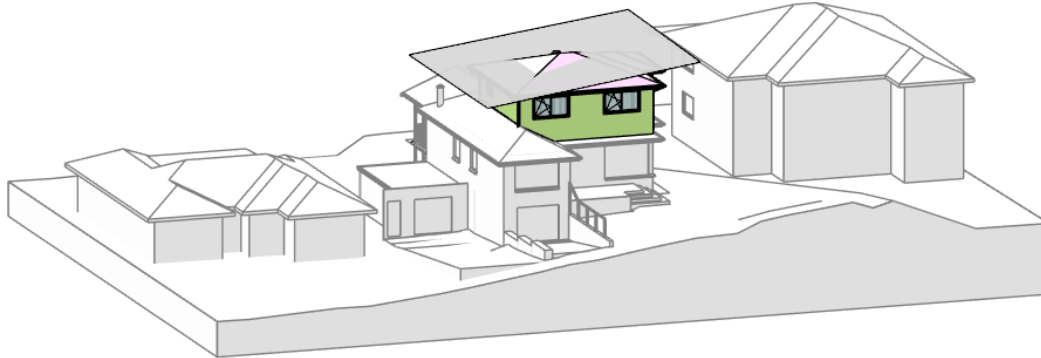


Figure 2: Maximum Building Height Calculation (HDCP 2013)

The departure from the height control is in the order of 58cms and is isolated to a very minor portion of the new roof form proposed above the first floor addition, where the existing topography in relation to the host structure

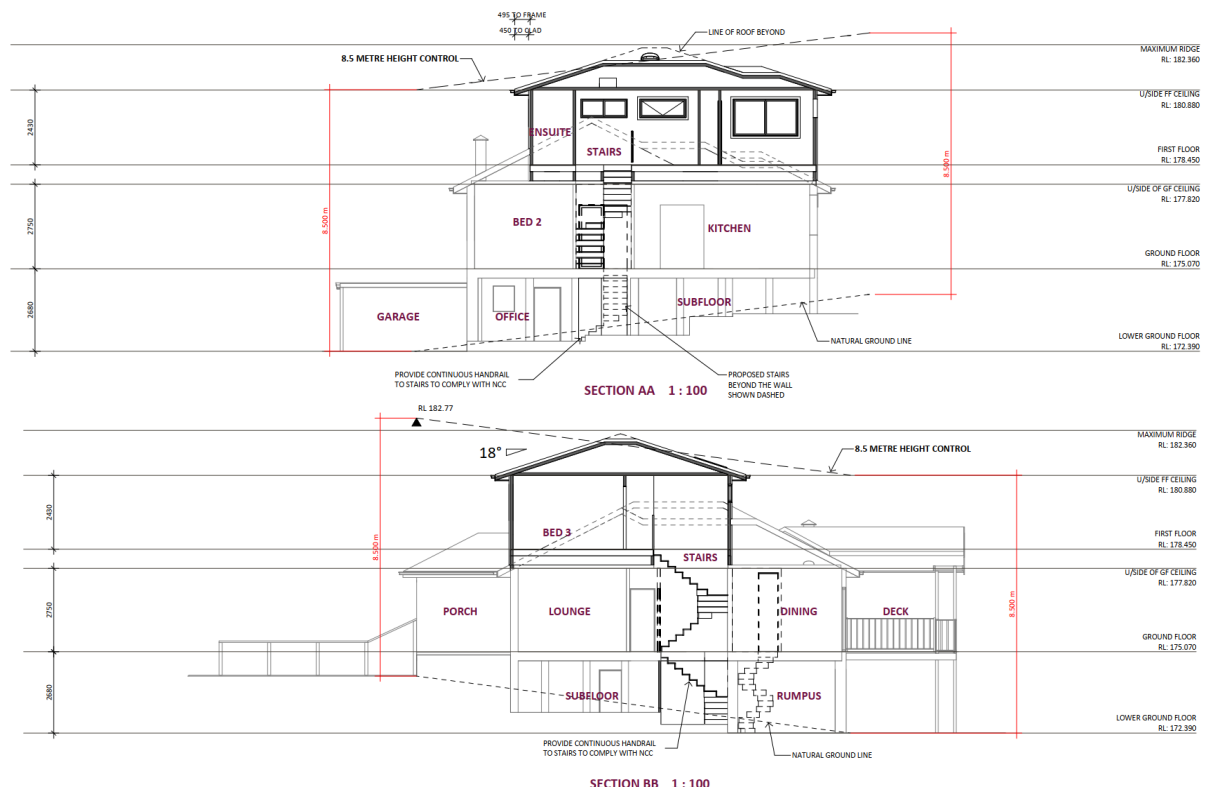
is at its lowest point. This portion of the building does not contain any windows or openings that would provide for overlooking of adjoining private open space areas or direct view into habitable rooms. This area is shown in the Height Plane Diagram at **Figure 3** below.



**Figure 3:** Location of Proposed Variation

As demonstrated by the Architectural Plans submitted with this application and the Section Plans shown below, the remaining areas of the proposed development are fully compliant with the prescribed maximum building height control. It is also noted that the proposed development has been amended from the initial design to reduce the floor area, which is now predominately situated on the sub-floor and maintains the two storey appearance of the dwelling. The reduction in floor area ensures that the final development achieves compliance with the solar access provisions of the HDCP 2013, particularly in relation to the adjoining property at Number 22 Berkeley Close, Berowra Heights when viewing the 3pm Elevation Shadows.

In this instance, the variation to the height of buildings control relies on Clause 4.6 - *Exception to Development Standards* of the HLEP 2013.



**Figure 4:** Section Plans

### 3 JUSTIFICATION FOR CONTRAVENTION OF THE STANDARD

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Clause 4.6(3) of the HLEP 2013 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 HLEP 2013 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 HLEP 2013, with respect to the maximum building 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 UNNECESSARY 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 proposed development satisfies each of the relevant objective of Clause 4.3(1) of HLEP 2013 as demonstrated below.

***a) to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.***

The proposed development has been designed in harmony with the streetscape, proposing alterations and additions to the existing dwelling house that are contained entirely within the established building envelope on the site. The predominant built form of dwellings along the Berkeley Close streetscape is split-level dwellings up to two storeys in height that follow the sloping gradient of the land. There are numerous examples of dwellings in the immediate vicinity of the site that have been approved for alterations and additions similar to the development proposed, as detailed below.

- 10 Berkeley Close, Berowra Heights – Alterations and first floor addition
- 16 Berkeley Close, Berowra Heights – Alterations and first floor addition
- 17 Berkeley Close, Berowra Heights – Alterations and first floor addition
- 26 Berkeley Close, Berowra Heights – Alterations and first floor addition
- 37 Berkeley Close, Berowra Heights – Alterations and first floor addition

The proposed development has been designed in harmony with the streetscape, proposing an upper floor addition that is recessed behind the front building line of the dwelling house below to maintain a consistent street rhythm with adjoining properties. The surrounding streetscape comprises of an eclectic mix of architectural styles and forms, ranging from single and two storey dwellings that likewise accommodate an upper floor component.

To the immediate east of the subject site at 22 Berkeley Close, Berowra Heights is a two storey dwelling house that follows the sloping gradient of the land. The ridgeline of the adjoining building when viewed from the streetscape sits well above the existing maximum ridgeline of the subject dwelling as shown in **Figure 3** below. At the completion of works, the height of the subject building will generally appear consistent with the adjoining building despite the non-compliance with the maximum building height provision, due to the consistent slope of the street downwards from east to west.



**Figure 3:** Streetscape View of 22 & 24 Berkeley Close, Berowra Heights

To the immediate west of the subject site at 26 Berkeley Close, Berowra Heights is a single storey dwelling house with a lower ground floor level garage, similar to the existing built form on the subject site. The dwelling is almost entirely screened by dense vegetation within the front setback of the site and so the building provides little to no contribution to the inherent value or built form characteristics of the streetscape. The proposed upper floor addition is recessed behind the existing ground floor building elevations and maintains a considerable setback distance to the adjoining dwelling, thereby alleviating any potential overshadowing or overlooking impacts. The final development reflects the roof form characteristics of the adjoining dwelling to create a respectful dialogue between the two buildings, despite limited views of this dwelling from the public domain.





**Figure 4:** Streetscape View of 26 & 24 Berkeley Close, Berowra Heights

The proposed development achieves a highly sympathetic design outcome, with the first floor addition integrating seamlessly with the host structure below and reflecting the general characteristics of the adjoining buildings. The recessed nature of the addition will ensure that it appears as sub-ordinate to the original dwelling and does not dominate that site or the streetscape.

The proposed departure from the maximum building height control is not considered likely to result in adverse impacts to adjoining buildings, or buildings in the vicinity of the site, in terms of views, loss of privacy, overshadowing or visual intrusion. The Shadow Diagrams submitted with the application clearly demonstrate that the final development achieves the solar access requirements stipulated under the HDCP 2013 both on the site and for adjoining properties. The steeply sloping nature of the land and the location of adjoining dwellings ensures that the encroaching roof form does not significantly overshadow the living or private open space areas of these properties or compromise their ability to attain a suitable level of solar access to the internal areas.

In *Tenacity Consulting v Warringah Council* (Tenacity Consulting) the Court provided a four-step assessment process to guide whether or not view sharing is reasonable. In doing so, the Court also gave some helpful guidance as to what should be considered as part of each step of an assessment. The four steps provided by the Court in *Tenacity Consulting* is as follows:

**Step One** - Assessment of the views to be affected.

The proposed development was designed with consideration of the value of existing views and given the locality, existing views are generally limited to neighbourhood views. Given the local street topography being a consistent east to west fall of land, modest lot widths and the presence of numerous two storey dwellings in the immediate area, the streetscape is an environment where a degree of obstruction to views is inevitable. Analysis of the streetscape identifies that there are no significant public views from the site or adjoining properties. It is surmised that adjoining developments would also have similar views from the front rooms or rear balconies as the subject dwelling. As the land slopes significantly from east to west, it is expected that any sites to the east of the subject site will be located at a higher level than the final building. As a result, development to the east will generally maintain their neighbourhood views.

**Step Two** – Consideration from what part of the property the views are obtained.

As discussed above, the surrounding streetscape does not benefit from significant views and potential impacts to neighbourhood views are limited to first floor windows and projecting balconies of surrounding properties. Due to the orientation of these buildings, the steeply sloping nature of the streetscape and the location of the subject building envelope, the proposed impacts are considered to be negligible.



### **Step Three** – Assessment of the extent of the impact.

The proposed development has been designed to minimise view loss from the public domain and to adjoining and adjacent properties as much as possible whilst still providing opportunities for improved views from the development site. Given the local street topography being a consistent fall from east to west and to the rear, buildings are predominately stepped down the land and therefore maintain visual corridors to the neighbourhood. The proposed development will not significantly impact on existing views from surrounding buildings.

### **Step Four** – Assessment of the reasonableness of the proposal that is causing the impact.

The proposed development is entirely reasonable as it is in keeping with the built form characteristics of the surrounding streetscape and the value of the locality. The encroaching building height is a direct result of the dramatic topography of the land and will not generate any adverse environmental impacts beyond what is currently experienced on the site.

It is therefore considered that the proposed development is appropriate for the site in consideration of the judgement of *Tenacity Consulting v Warringah Council*.

### **Alternative Options**

It is important to note that other design options for the upper floor addition were explored as part of the design process, however these were not considered feasible when taking into account the established residential characteristics of the streetscape, the constraints of the site and the built form provisions of the HDCP 2013.

#### *Landscaping*

A lower ground or ground floor extension was avoided in order to preserve the existing landscaped areas on the site and achieve compliance with the landscape requirement under the HDCP 2013. Presently there is 541.11m<sup>2</sup> or 57.9% landscaped area on the site and a lower ground or ground floor extension presenting three bedrooms, an ensuite and living space would have potentially decreased this amount to less than the required 30%. By diminishing the existing landscaped areas on the site, the development would not be in keeping with the desired outcomes under Part 3.1.3 of the HDCP 2013:

- a) *Landscaping that integrates the built form with soft landscaping and retains and enhances the tree canopy.*
- b) *Development that retains existing landscape features.*

#### *Cut and Fill*

A lower ground or ground floor extension would have also required a significant level of excavation or fill due to the sloping topography of the site. Figure 3.1(a) of the HDCP 2013 shown above demonstrates that the maximum permissible level of cut or fill on a site is 1m. In order to achieve a functional floor plan, greater than 1m of excavation or fill would be required at the rear of the building to enable a flat building envelope that integrates with the existing lower ground or ground floor level. Excavation of this nature on the site would be at odds with prescriptive measures under Part 3.1.1(b) of the HDCP 2013:

- b) *Buildings should respond to the topography of the site by:*
  - *minimising earthworks (cut and fill), and*
  - *siting the floor level of the lowest residential storey a maximum of 1.5 metres above natural ground level.*

The environmental impacts of the earthworks would far outweigh the negligible impact that would result from exceeding the maximum building height provision.

## *Setbacks*

An extension of the ground or lower ground floor level would also potentially result in a non-compliance with the prescribed front and rear setback distances and would not respect the established building lines of the streetscape. There is a clear pattern of development throughout the streetscape, with buildings contained to the front portion of the site and the rear portion occupied by extensive landscaping and open space. The development as proposed achieves a front and rear setback that is compatible with adjoining properties and therefore achieves the desired outcome of Part 3.1.2 of the HDCP 2013:

### *a) Setbacks that are compatible with adjacent development and complement the streetscape.*

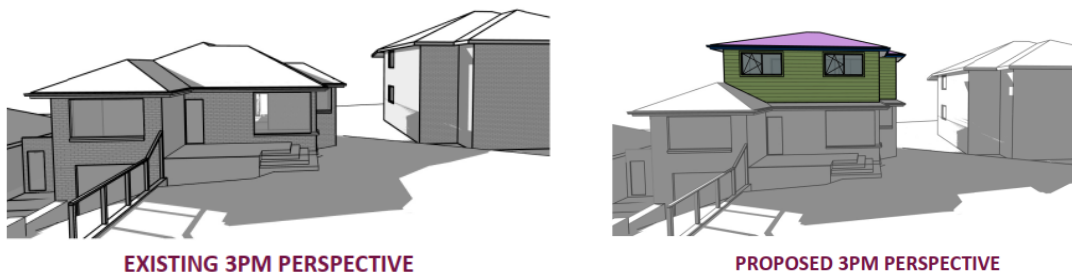
An extension above the existing garage is not feasible in achieving a functional internal layout, with suitable bedroom sizes and a desirable configuration that achieves optimal solar access. Locating the first floor addition above garage may have resulted in unreasonable overshadowing impacts to the adjoining single storey dwelling at 26 Berkeley Close, Berowra Heights that is set below the subject building due to the slope of the streetscape from east to west. The development has been designed in accordance with the desired outcomes and prescriptive measures of Part 3.1.5 of the HDCP 2013 set out below, by achieving an appropriate level of solar access on the site and maintaining the required level of solar access to adjoining properties. 3D Shadow Diagrams are submitted with this application and shown below.

### *Desired Outcome*

- a) Dwelling houses designed to provide solar access to open space areas.*
- b) Development designed to provide reasonable sunlight to adjacent properties.*

### *Prescriptive Measures*

- a) On 22 June, 50 percent of the required principal private open space area should receive 3 hours of unobstructed sunlight access between 9am and 3pm.*
- b) On 22 June, 50 percent of the required principal private open space on any adjoining property should receive 3 hours of unobstructed sunlight access between 9am and 3pm.*



**Figure 4:** 3D Shadow Diagrams

Furthermore, due to the existing internal configuration of the development, a rear extension to the lower ground floor level comprising three bedrooms, ensuite and living space would not be desirable as it would require access through the rumpus room. The owner wishes to preserve their private open space area at the rear of the site and retain as much soft landscaping as possible to soften the appearance of the building and achieve a continuous landscape corridor with adjoining properties.

## *Roof Form*

The development design was established on the basis of the prescriptive measures for roof forms under Section 3.11 of the HDCP 2013, which states the following:

- d) Low pitched roofs with wide eaves are encouraged for compatibility with streetscape character and sun control.*

- e) The roof should have a maximum pitch of 35 degrees, except if a steeper roof pitch is more consistent with the existing character of the locality.*

The proposed roof form has been sensitively designed to ensure consistency with the prevailing pitched roof forms of buildings throughout the streetscape. The non-compliance with the building height provision is experienced within the pitch of the roof form, however, if a flat roof form was proposed the development would appear out of character with the existing dwelling house as well as the surrounding streetscape and would be inconsistent with the above provisions of the HDCP 2013.

Further, it is understood that the minimum first floor level ceiling height provision for a dwelling house is 2.4m. The proposed addition features a ceiling height 2.43m and so any reduction in the building height would result in a non-compliance with the ceiling height control and would significantly impact on the functionality and amenity of the first floor addition for the residents.

#### *Building Character and Form*

In accordance with the provisions of Part 4.8 of the HDCP 2013, the design, height and siting of the proposed development effectively responds to its site context taking into account both natural and built form features. The design has particular regard to the topography of the land in order to avoid cut and fill associated with dwelling construction. The development achieves the objectives for building character and form in the following ways:

- b) The final development responds to both its natural and built context, by achieving a first floor addition that is contained wholly within the existing building envelope, does not require excavation and does not involve the removal of any trees or vegetation.
- c) The final development reflects the built form characteristics of the existing dwelling and the surrounding streetscape, particularly in relation to the pitched roof form, façade materials and window design.
- d) The overall scale, form and articulation of the development will not appear out of character in the context of the streetscape. All existing areas of landscaping on the site are retained as they contribute to the visual quality of the locality.
- e) The proposal maintains the orientation of the dwelling to the streetscape and enables overlooking and casual surveillance of the public domain through the first floor façade windows.

The immediate area has numerous examples of dwelling houses with two or three storey components of similar or greater scale. While the height control is placed to ensure that the future character of the locality is maintained, the departure of the height control in this instance is a direct result of the inherent nature of adding to an existing dwelling on a site with significant changes in elevation. The control is therefore considered only a guide directed towards relatively level sites however applying the control to a site with dramatic changes will inevitably create a departure from the control. While the proposed addition seeks to build higher than the numerical control, the residential surroundings will not allow extreme departures for future developments where residential dwellings will continue to dominate the streetscape.

It is therefore considered necessary to contravene the maximum building height control in order to provide a functional and aesthetic first floor addition, with suitable ceiling heights and roof undulations that break up the visual bulk of the development when viewed from the public domain. The breach of building height relates only to the roof form and is not in relation to any usable or habitable floor area, therefore the portion of the development located above the maximum building height will not contain any windows or openings that will provide for direct view into adjoining properties or result in privacy concerns. The final development will present to the public domain as a traditional two storey dwelling house that is sympathetic of adjoining buildings and achieves an appropriate balance between the built form, landscaped areas and private open space.

### **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 proposed variation to the maximum height control:

- The proposed variation is minor in nature, in the order of 58cms, and is isolated to the roof section of the proposed addition where the existing topography in relation to the host structure is at its lowest point. As detailed on the Architectural Plans submitted with this application, the remaining areas of the built form are fully compliant with the maximum building height control under Clause 4.3 of the HLEP 2013.
- The proposed variation only covers a small proportion of the site and has been centrally within the building footprint to maintain a considerable setback to adjoining building and to avoid obstruction of views from the surrounding streetscape, noting that views are limited to neighbourhood views.
- The proposed height variation will not generate any unacceptable adverse environmental impacts in respect of overshadowing or wind impacts. This is clearly demonstrated by the Shadow Diagrams submitted with this application, with the development maintaining an appropriate level of solar access to adjoining living and private open space areas through the incorporation of suitable setback distances to the side and rear property boundaries. The location of the proposed first floor level behind the front building line and side elevations of the host structure ensures overshadowing of properties to the east and west is avoided.
- Notwithstanding the proposed height variation, the final development continues to satisfy the objectives of the maximum building height control as demonstrated above.
- The complying building envelope is significantly compromised by the sloping topography of the land. It is therefore considered necessary to contravene the maximum building height control in order to provide a functional and aesthetic first floor level with a roof profile that reflects the existing dwelling house to ensure that the final development does not present as a piecemeal building when viewed from adjoining properties and the public domain.
- The breach of building height relates only to a small portion of the roof form and is not in relation to any usable or habitable floor area. Therefore, the portion of the development located above the maximum building height will not contain any windows or openings that will provide for direct view into adjoining properties or result in privacy concerns.
- The proposed variation will not result in a development that is out of character with that envisioned by Hornsby Shire Council. The final development will present to the public domain as a traditional split-level dwelling house that is sympathetic of adjoining buildings and achieves an appropriate balance between the built form, landscaped areas and private open space.

### **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 proposed development is in the public interest as it achieves the below objectives of the R2 – Low Density Residential zone by contributing to a form of low impact residential development that is in keeping with adjoining land uses and will not adversely affect the aesthetic value of the land and the surrounding locality. The proposed development is located within the established building envelope on the site to respect the building lines of the streetscape and retain a significant amount of vegetation within the rear portion of the site for the amenity of the residents and the scenic quality of the streetscape. The proposed first floor addition is appropriately stepped in from the ground floor building envelope below to limit potential impacts in terms of views to and from the public domain. The design of the development is in keeping with the established residential characteristics of the streetscape and will improve the sites presentation to the surrounding streetscape and when viewed from the water as a result of sympathetic architectural styling combined with appropriate landscaping works.

The proposed height variation is in the overall public interest as it provides a significant improvement to the existing dwelling house, is in keeping with the predominant built form characteristics of the streetscape, maintains the existing architectural styling of the host structure 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

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Under clause 4.6(5) of the HLEP 2013, 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 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 height proposed generally reflects the height of development throughout the locality and the non-compliance is due to the sloping nature of the site. The development will 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

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The assessment above sufficiently demonstrates that compliance with the maximum building height development standard contained in Clause 4.3 of the HLEP 2013 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 height variation, has been designed in harmony with adjoining buildings to ensure that the proposed 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 height development standard, the proposed height variation:

- Is consistent with the objectives of Clause 4.3 of the HLEP 2013.
- Is consistent with the guiding principles of *Tenacity Consulting v Warringah Council* in terms of view loss.
- Is minor in nature and relates only to the proposed roof form of the first floor addition.
- Will enhance the streetscape in relation to scale, materials and external treatments.
- 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 with the variation as proposed in accordance with the flexibility allowed under Clause 4.6 of the HLEP 2013.