

**Clause 4.6 Statement Seeking to Vary the Strict Application of Clause 4.3 of the  
Hornsby Local Environmental Plan 2013**

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2<sup>nd</sup> May 2022

**Property:** 30 Balaclava Road, Berowra NSW 2081

**Development:** Alterations and additions to an existing dwelling

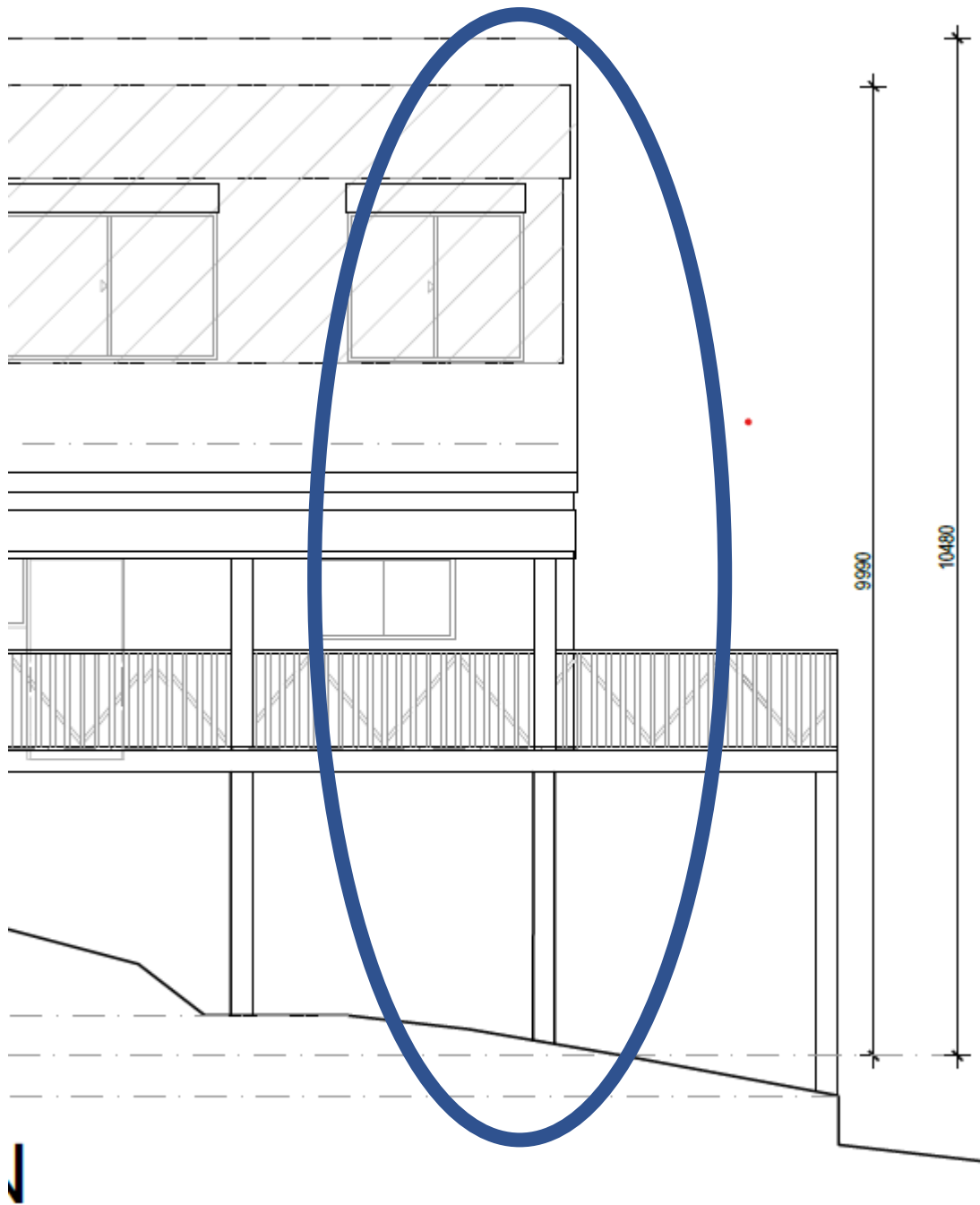
**Development standard:** Clause 4.3 – Height of Buildings of the Hornsby Local Environmental Plan 2013

**Introduction**

The purpose of this Clause 4.6 Statement, prepared pursuant to ‘Clause 4.6 – Exception to development standards’ of the Hornsby Local Environmental Plan 2013 (HLEP2013), is to seek a variation of the maximum 8.5 metre building height limitation prescribed by ‘Clause 4.3 – Height of Buildings’ of the HLEP2013. Clause 4.3 is a development standard as prescribed by the *Environmental Planning and Assessment Act, 1979* and its associated Regulations and may only be varied through the successful demonstrating that the development is consistent with the assessment criteria set out under Clause 4.6.

**Area of non-compliance**

This Development Application proposes a maximum building height of 9.99m, a variation of 1,490mm, equating to a 17.5% percent departure from the development standard in question. This non-compliance occurs at the eastern end of the proposed addition, as shown in Figure 1 below.



**Figure 1:** Location of the proposed height non-compliance.

### **Assessment**

This Clause 4.6 statement has been prepared having due consideration to the matters set out for consideration under Clause 4.6 of the HLEP2013 as well as relevant case law developed within the NSW Land and Environment Court. This consideration is set out in the following:

#### **Clause 4.6(1) – Objectives of the Clause**

The objectives of Clause 4.6 are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The proposal is consistent with the objectives of Clause 4.6. Clause 4.6 exists to allow flexibility in circumstances where strict compliance with a development standard may otherwise unreasonably hinder the attainment of a reasonable development outcome. As is outlined within this statement, the site is subject to such a circumstance. However, the development has been designed in a manner that will not compromise the surrounding environment or result in a poor planning precedent that may otherwise challenge the integrity or relevance of the building height development standard.

Clause 4.6(3-a) – Application of the development standard is unreasonable or unnecessary in the circumstances of the case

The strict application of the development standard is not considered to be reasonable or necessary in this instance. As is evident from the survey plan, a visual inspection of the subject site and the surrounding streetscape, the site is subject to a significant crossfall. This crossfall is such that an approximate difference of 3 metres exists between the natural ground level at the western end of the building (around RL194.00) in comparison to that at the eastern end (RL191.00). If the proposal were to take place on a level allotment, the departure from the development standard would arguably not occur and therefore, the variation can be viewed as largely technical in nature. As is articulated below, the proposal is void of undue environmental impact and consequently, requiring numerical compliance to be achieved without any material net benefit to the surrounding environment is not 'reasonable' or 'necessary' to ensure the integrity of the built form character within the locality is maintained.

This development is in keeping with the low-density residential character and environment, desired by the Council in this area, and the proposal meets all of the objectives of the zone. As demonstrated in the Statement of Environmental Effects, submitted with this application, the proposal generally meets all other planning controls, which reflects that this is a minor addition. However, as a result of the unique topography of the site, a portion of the proposed first floor addition exceeds the height control.

The alternative complying solution would create in an irregular and unappealing development form with the dormer window not being symmetrical on the roof and the floor space being restricted for the occupants. Rather, the designer has appropriately designed the proposed addition by considering the overall form of the building. The proposal will provide a high quality of living and amenity to the occupants of the dwelling with minimal external impact.

Analysis of the impact of the addition on neighbouring properties or on the streetscape reveals it will not create any adverse environmental or amenity related impacts, specifically:

1. No view loss There are no view corridors to be impacted.

2. No impact on privacy. There is no impact on privacy of the occupants and to the occupants of the neighbouring dwellings.

3. Complies with solar access requirements The proposal achieves more than the 50% requirement of sunlight to the private open space of the adjoining property to the south between 9am and 3pm on 21 June. Please refer the shadow diagrams provided with the application.

Furthermore, there is no increase of the existing building in this proposal, as with the nature of a dormer window development it is integrated in to the existing roof. The development has no negative consequences because of this minor non-compliance. The development meets the objectives of the development standard, and therefore strict compliance with the development standard would be unreasonable and unnecessary.

Clause 4.6 allows Council to vary a control where a written request is made by an applicant demonstrating that two criteria are met. The criteria to be satisfied is that: a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and b) That there are sufficient environmental planning grounds to justify contravening the standard. In this circumstance, it is unreasonable and unnecessary to strictly comply with the building height control given that the resulting addition will be absent of any additional negative environmental or planning outcomes.

The merit - based justification provided in this request provides strong evidence that the proposed dormer windows development to be integrated into the existing roof will provide clear positive outcomes, and is designed with sympathy to the existing building and Council's development standard. The proposed development ultimately results in a planning outcome that meets Council's desired intent for the area.

It is argued that the variation deserves support as it has no negative (and no significantly noticeable) impact on the streetscape, the surrounding locality and the neighbouring properties.

Clause 4.6(3-b) – there are sufficient environmental planning grounds to justify contravening the development standard

There are numerous environmental planning grounds justifying a contravention of the development standard in this instance. These are outlined in the following:

- the proposed addition will take place at the rear of the dwelling and will not be immediately discernible from the public realm. In addition to this, the site faces an area of bushland to the rear that is not populated and as such, cannot be considered to result in a development that would otherwise be overbearing when viewed from the rear of the site
- at the western end, the proposed addition will be within the maximum height allowance of Clause 4.3 and will not be of any undue visual bulk and scale when viewed from the adjacent property (28 Balaclava Street)
- at the eastern end, although a non-compliance will exist, the non-compliant building form will be well setback from the common boundary shared with 32 Balaclava Street and will not result in any adverse bulk or scale impact. This particularly notes that, when viewed from this property, only a small area of new building fabric (approximately 3m<sup>2</sup> in area) will be visible. This is not significant in the context of the visual presentation of the existing eastern elevation of the subject dwelling

- an observation of the character of development within the visual catchment of the site shows that dwellings within this part of Balaclava Street are constructed in a manner that reflects the significantly sloping topography, with dwellings up to three storeys in height presenting to the street. In this sense, the proposed variation cannot be considered to result in a development that is uncharacteristic of its surrounds
- the form of the building will not be significantly altered. The proposal is limited to a moderate first floor addition that is of compliant floor space ratio, taking place below and behind the existing ridge line. Moreover, the proposal will take place within the existing building footprint, will not require the removal of any significant vegetation, and will not result in any material impacts to neighbouring solar access, privacy or general amenity

Clause 4.6(4-a-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

The proposed variation to the building height development standard will not compromise the achievement of the objectives of the zone within which the site is contained or the standard itself.

The objective of Clause 4.3 is as follows:

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

As demonstrated above, the site is subject to a significant constraint being a substantial cross-fall. However, the development outcome sought does not compete with this constraint in any manner that may otherwise result in an adverse impact to the surrounding environment. As shown through compliance with the floor space ratio maximum, the proposal does not seek to overutilize the development potential of the site and will not be of any material impact upon the infrastructure capacity of the locality. Therefore, the proposal is consistent with the objective Clause 4.3

The objectives of the 'R2 – Low Density Residential' zoning within which the site is contained are as follows:

- *To provide 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 proposal will provide a moderate addition to an existing dwelling that is in no way dominate or apathetic to the context of its surrounds. This addition is associated with a low density, detached single dwelling that will provide an improved living environment for its occupants. As such, the proposal is consistent with the first objective of the zone.

The second objective of the zone is not relevant to the proposal in that the site will be used for the primary intention of the 'R2 – Low Density Residential' zoning, being a single, detached dwelling.

Clause 4.6(5-a) – Concurrence of the planning Secretary – Any state or regional planning matters raised by contravening the standard

There are no state or regional planning matters that will result as an outcome of allowing a departure from the development standard.

Clause 4.6(5-b) – Concurrence of the planning Secretary – the public benefit of maintaining the development standard

There is no net public benefit to requiring strict compliance with the development standard in this instance. The standard itself is of importance in terms of providing a clear guideline for what generally constitutes an acceptable building height in a low density residential environment. However, the site is subject to a unique circumstance that lends itself to a variation of the standard where this can be achieved without an adverse environmental impact. This has been demonstrated within the design put forward by this Development Application.

Clause 4.6(8) – Exceptions to the application of Clause 4.6

The proposal does not relate to any form of development nominated by this sub-clause.

## **Conclusion**

Having consideration of the points advanced above, it is considered that allowing for a variation to the strict application of 'Clause 4.3 – Height of Buildings' of the Hornsby Local Environmental Plan 2013 is reasonable in this instance.