

TWEED SHIRE COUNCIL

CLAUSE 4.6 VARIATIONS REGISTER 2020

DA Reference No.	Lot No.	DP No.	Street No.	Street Name	Suburb/Town	Postcode	Environmental Planning Instrument	Development Standard to be Varied	Justification of Variation	Extent of Variation	Concurring Authority	Date DA Determined
DA20/0639	3	73828	3/32-34	Kamala Crescent	CASUARINA	2487	Tweed Local Environmental Plan 2014	Clause 4.6 - Exceptions to Development Standards	The existing building height is above 9m being 10.7m and the proposal will not increase the existing building height. The control is therefore unreasonable.	18.88% variation to the 9m LEP height limit. Total height of 10.7m proposed.	Tweed Shire Council under assumed concurrence	17/12/2020
DA20/0267	242	1033384	13	Muskheart Circuit	POTTSVILLE	2489	Tweed Local Environmental Plan 2014	Clause 4.3 - Heights of Buildings	10.3% variation to 9m building height under Clause 4.3 of Tweed LEP 2014	10.3%	Tweed Shire Council under assumed concurrence	25/11/2020
DA20/0489	2	26293	30	Boomerang Street	KINGSCLIFF	2487	Tweed Local Environmental Plan 2014	Clause 4.3 - Heights of Buildings	The proposed development of a dual occupancy seeks a variation to Clause 4.3 Height of Buildings. The proposed development has a building height of 9.5m from existing ground level which is 0.5m above the height limit onsite of 9m.  With respect to the above, the proposal is considered to satisfy the provision of Clause 4.6 and the 5.5% (0.5m) variation to the 9m height control is considered to be satisfied.	5.5%	Tweed Shire Council under assumed concurrence	24/11/2020
DA20/0271	108	237806	2	Ivory Crescent	TWEED HEADS	2485	Tweed City Centre Local Environmental Plan 2012	Clause 4.4 - Floor Space Ratio	The proposed Residential Flat Building exceeds the maximum prescribed Floor Space Ratio under Clause 4.4 of TCCLEP 2012.  Clause 4.4 (2) requires a maximum Floor Space Ratio of 1.8:1. This equates to a maximum gross floor area of 1,342.98m, with the proposal incorporating 1,428mof gross floor area.  The maximum extent of the variation sought is 85.02mor 6.3%.	6.3%	Tweed Shire Council under assumed concurrence	19/11/2020
DA19/0866	28	778340	36	Martinelli Avenue	BANORA POINT	2486	Tweed Local Environmental Plan 2014	Clause 4.3 - Heights of Buildings	Variation to the maximum building height for Secondary Dwelling  16.27 % variation (increase) to the maximum building height  TLEP 2014 Max building Height - 9m  Proposed building height - 10.465m to the top of building	16.27%	Tweed Shire Council under assumed concurrence	10/11/2020
DA20/0388	156	852450	15	Sierra Vista Boulevard	BILAMBIL HEIGHTS	2486	Tweed Local Environmental Plan 2014	Clause 4.3 - Heights of Buildings	The proposed variation is 0.571m above the maximum building height of 9m being 6.34%.	The variation sought is 0.571m above the maximum 9m, a variation of 6.34%.	Tweed Shire Council under assumed concurrence	01/10/2020
DA20/0352	23	235189	3	Vulcan Street	KINGSCLIFF	2487	Tweed Local Environmental Plan 2014	Clause 4.3 - Heights of Buildings	A 87mm variation to the maximum building height of 9m under Clause 4.3 of the Tweed LEP 2014 for a small portion of the south-eastern corner of the proposed third storey addition. See delegated report for further info.	9.6%	Tweed Shire Council under assumed concurrence	13/08/2020
DA20/0403	7036	1054009	60	Boundary Street	TWEED HEADS	2485	Tweed City Centre Local Environmental Plan 2012	Clause 4.3 - Heights of Buildings	The applicant is relying on Clause 4.6 to seek a variation to the 10m Height of Building standard on the site to allow for the temporary installation of a 35m high ferris wheel. This represents an exceedance of the height limit by 25m or a 250% variation.  To approve the application, Council must consider a written request from the applicant which seeks to justify the variation 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.  The applicant's response is considered to be adequate. The structure is temporary and will be on the site for a period of 5.5 weeks. There are not anticipated to be any adverse impacts associated with the proposal, which by its very nature, needs to exceed the 10m height limit to function as an observation device.  It is considered that the applicant's written request adequately addresses the matters required to be demonstrated by subclause (3).  Council must also be satisfied that proposed development will be in the public interest because it is consistent with the objectives of the particular standard (Clause 4.3 in this instance) and the objectives for development within the zone in which the development is proposed to be carried out (Zone RE1).  In this regard it is considered that both the objectives of the Height of Building Standard and the objectives for Zone RE1 can be met.  As stated above, the objectives for Clause 4.3 Height of Building are:  (a) to establish the maximum height for which a building can be designed; (b) to ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity, (c) to ensure that taller development is located in more structured urbanised areas that are serviced by urban support facilities, (d) to encourage greater population density in less car-dependant urban areas,	Maximum Building height - 10m; Proposed structure - 35m; Exceedance of 25m or 250% of standard	Tweed Shire Council under assumed concurrence	10/08/2020

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									<p>(e) to enable a transition in building heights between urban areas comprised of different characteristics,</p> <p>(f) to limit the impact of the height of a building on the existing natural and built environment,</p> <p>(g) to prevent gross overshadowing impacts on the natural and built environment.</p> <p>The proposal is temporary and will not contribute to the urban character nor detract from the long term amenity of the area.</p> <p>While the building height standard on the site is 10m, the height controls in the wider area facilitates the construction of buildings up to 49.5m, and as such the temporary installation will not be incongruent with the wider urban landscape.</p> <p>The nature and location of the structure is such that it will not result in any significant overshadowing.</p> <p>The objectives for Zone RE1 are:</p> <p>To enable land to be used for public open space or recreational purposes.</p> <p>To provide a range of recreational settings and activities and compatible land uses.</p> <p>To protect and enhance the natural environment for recreational purposes.</p> <p>It is considered that the proposal will satisfy these objectives, and as such will be in the public interest.</p> <p>As set out in Planning Circular PS18-003 where the variation to a development standard is greater than 10%, the concurrence of the secretary may be assumed by the consent authority (being the elected members but not a delegate of Council).</p> <p>In accordance with subclause (5), in deciding whether to grant concurrence, Council must consider:</p> <p>(a) Whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and</p> <p>(b) The public benefit of maintaining the development standard, and</p> <p>(c) Any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.</p> <p>The proposal is not considered to raise any issues of state or regional significance, being generally consistent with any state environmental planning policies relevant to the site.</p> <p>There is not considered to be any public benefit in maintaining the 10m height standard in this instance.</p> <p>There are no other matters considered to be of significance. The application was referred to Queensland Airport Limited who raised no objection to the height or any associated impacts (such as lighting).</p> <p>As such it is recommended that the Clause 4.6 variation be supported.</p>			
DA20/0029	451	1040725	22	Bottlebrush Drive	POTTSVILLE	2489	Tweed Local Environmental Plan 2014	Clause 4.3 - Heights of Buildings	Vary the 9.0m building height by .21 of a metre on account of the 12.49 degree site slope to enable a portion of the rear verandah to exceed the building height limit.	2.3%	Tweed Shire Council under assumed concurrence	06/08/2020
DA19/0737	378	250956	7	Razorback Road	TWEED HEADS	2485	Tweed Local Environmental Plan 2014	Clause 4.3 - Heights of Buildings	<p>The proposed development seeks a variation to Clause 4.3 Height of Buildings. With the proposed development having a building height of 9.85m which is 0.85m above the height limit onsite of 9m.</p> <p>4.6 Exceptions to development standards</p> <p>(1) The objectives of this clause are as follows:</p> <p>(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,</p> <p>(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</p> <p>Comment: The subject application meets the objectives of this clause. By applying a degree of flexibility to the building height due to the characteristics of the site a better planning outcome can be achieved. Due to the steep topography of the site lowering the building through excavation would cause greater environmental disturbance from earthworks and require further vegetation removal to enable machinery access. Allowing the building to remain as proposed, which is slightly raised from ground level excludes the need for screening of the under croft for bushfire compliance which results in a better aesthetic outcome for planning design.</p> <p>(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.</p>	The proposed development seeks a variation to Clause 4.3 Height of Buildings. With the proposed development having a building height of 9.85m which is 0.85m above the height limit onsite of 9m. This is a variation of 9.4% to building height onsite.	Tweed Shire Council under assumed concurrence	29/06/2020

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									<p>Comment: The proposed development seeks a variation to Clause 4.3 Height of Buildings under the TLEP 2014. Clause 4.3 is not expressly excluded from the operation of Clause 4.6 therefore the application or the variation can be considered. The proposed building height is 9.85m which is a variation of 0.85m to the building height under the Tweed LEP 2014. It should be noted that the total area that exceeds the building height is only 7.5m<sup>2</sup> which is 3.75% of the entire building footprint.</p> <p>(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:</p> <p>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</p> <p>Comment: Council officers are satisfied that the provisions of Clause 4.6(3)(a) have been met, having considered the written request from the applicant that seeks to contravene clause 4.3 of the TLEP 2014.</p> <p>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</p> <p>Comment: Council officers are satisfied that the provisions of Clause 4.6(3)(b) have been met, in that the applicant has provided sufficient planning grounds to justify contravening clause 4.3 of the TLEP 2014. Court cases dealing with applications to vary development standards resulted in the Land and Environment Court setting out a five part test for consent authorities to consider when assessing an application to vary a standard to determine whether the objection to the development standard is well founded. The items of the five part test have been considered in relation to the application and found to have satisfied the test.</p> <p>1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;</p> <p>The site is located in an existing Residential Area. A review has found the application was able to satisfy the objectives of the zone notwithstanding the variation to building height.</p> <p>2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;</p> <p>The total area requiring variation is minimal is only 7.5m<sup>2</sup> of the roof, meaning most of the design is compliant with the building height for the site. The secondary dwelling is located at the lower part of the site towards.</p>			
DA20/0167	468	755740	35	Fingal Road	FINGAL HEAD	2487	Tweed Local Environmental Plan 2014	Clause 4.3 - Heights of Buildings	<p>The applicant seeks approval to vary the building height requirement of 9m under the provisions of clause 4.3 of the Tweed LEP 2014 to permit the roof of the master bedroom to exceed the height limit by 500mm at its apex.</p> <p>The Applicant advises that the height of the dwelling house was raised to accommodate the minimum habitable floor level of RL 3.3 AHD as required in DCP A3 resulting in the protrusion of part of the roof above the 9m limit.</p> <p>In addition to this requirement the following issues are considered to be relevant to this application;</p> <ul style="list-style-type: none"> <li>* the encroachment is for a pyramid shaped portion of the roof to the master bedroom with a maximum height of 500mm,</li> <li>* the remainder of the dwelling will observe the 9m height limit,</li> <li>* the increase in roof height is not likely to result in any significant adverse impact on the adjoining allotment,</li> <li>* the roof pitch to the master bedroom is considered to be integral to the architectural design of the dwelling which will provide a contemporary tropical pavilion impact on the streetscape which is consistent with the desired development outcome for Fingal Head.</li> </ul> <p>The Application to modify the 9m height limit under clause 4.3 of the Tweed LEP to permit the apex of the roof to the master bedroom to extend to a height of 9.5m is supported.</p>	The proposal is to construct a new dwelling house which will have a height of 9.5m for a minor part of the roof. The extent of the variation is 500mm which is less than a 10% variation.	Tweed Shire Council under assumed concurrence	28/05/2020
DA20/0169	288	31041	81	Lakeview Terrace	BILAMBIL HEIGHTS	2486	Tweed Local Environmental Plan 2014	Clause 4.3 - Heights of Buildings	<p>Variation to Maximum Building Height to facilitate the construction of a two storey dwelling on a sloping block. The variation is for a small portion of the roofline only.</p> <p>Clause 4.3- Height of Buildings</p> <p>Maximum allowable Height- 9 Metres</p> <p>Proposed Height- 9.7metres</p>	A variation of 700mm above the 9 metre height limit is proposed. The variation is for a small portion to the South Eastern facade of the building. This equates to a variation of 7.7%.	Tweed Shire Council under assumed concurrence	14/05/2020
DA19/0397	2	1085558	5	Razorback Road	TWEED HEADS	2485	Tweed Local Environmental Plan 2014	Clause 4.3 - Heights of Buildings	<p>Dwelling 3 (marked R3 on plans) measures 9.544m and dwelling 4 (marked R4 on plans) measures 9.547m, meaning the development seeks a variation of 0.547m. This represents a 6.08% variation to the height control.</p>	6.08% variation	Tweed Shire Council under assumed concurrence	08/05/2020

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DA19/0698	13	624535	23	Lundberg Drive	SOUTH MURWILLUMBAH	2484	Tweed Local Environmental Plan 2014	Clause 16 - Heights of Buildings	Variation to Maximum Building Height to facilitate filling the site in anticipation of a PMF. TEP2014 Maximum Building Height: 10m  Proposed Building Height: 10.35m  Variation of 350mm or 3.5% variation.	3.5% variation to the Maximum Building Height for Proposed Building Two. Maximum Building Height is 10m - Proposed Building Two proposes a height of 10.35m.	Tweed Shire Council under assumed concurrence	03/04/2020
DA19/0830	207	1122768	35	Kite Crescent	SOUTH MURWILLUMBAH	2484	Tweed Local Environmental Plan 2014	Clause 4.3 - Heights of Buildings	Clause 4.6 Variation to the Tweed Local Environmental Plan 2014 in regards to the Height of Buildings Map regarding the 1.95m height variation be supported and the concurrence of the Director-General of the Department of Planning be assumed.	11.95%	Tweed Shire Council under assumed concurrence	07/02/2020