



Council name: PORT STEPHENS COUNCIL  
 Start Date: 1/07/2017  
 End Date: 30/09/2017  
 Enter 'Nil' for no variations

Council DA reference number	Lot number	DP number	Apartment/Unit number	Street number	Street name	Suburb/Town	Postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Concurring authority	Date DA determined dd/mm/yyyy
016-2016-00000856-001	LOT: B DP: 369677	369677		65	Donald ST	NELSON BAY	2315	Residential - New multi unit	PSLEP	R3 MEDIUM DENSITY RESIDENTIAL	4.3	Clause 4.6 – Exceptions to development standards - An exception is requested to Clause 4.3 Height of buildings which nominates a maximum height limit of 15m for the subject site. The maximum height of the building application seeks to exceed this development standard by 5.7m. The assessment against Clause 4.6 has been carried out below. Clause 4.6(3): Clause 4.6(3) states that any variation to a development standard must demonstrate the following: Objective (a) (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case In the Wehbe decision, Preston CJ set out five (5) ways in which an objection to a development standard can be supported: 1. the objectives of the standard are achieved notwithstanding non-compliance with the standard; The objectives of Clause 4.3 are as follows: (a) to ensure the height of buildings is appropriate for the context and character of the area, (b) to ensure building heights reflect the hierarchy of centres and land use structure. A detailed summary of the context and character of the Nelson Bay town centre is described under the NB Strategy. The NB Strategy identifies the location of the site as being positioned on the western edge of the Nelson Bay Town Centre. The NB strategy describes Nelson Bay Centre as being positioned within a 'unique natural context sitting within a basin, or amphitheatre, where residential and tourist apartment developments are located on the upper levels of the basin (including the wester fringe). The height of the building is considered to be appropriate for the context and character of the locality. The design of the building originally submitted incorporated design considerations into the building design to ensure that the proposal is analogous with surrounding development. The use of earthy materials and modulation of sections, reduces the apparent height and scale.	5.7m	Council	11/07/2017
016-2017-00000477-001	LOT: 47 DP: 24943	24943		37	Christmas Busl	NELSON BAY	2315	Other	PSLEP	R2 LOW DENSITY RESIDENTIAL	4.6 and 4.1B	0.62m and 43sqm Clause 4.6 – Exceptions to Development Standards Variation to Clause 4.1B An exception is requested to Clause 4.1B Minimum Lot Sizes for Dual Occupancies. The provision requires a minimum lot size for the construction of detached dual occupancies and nominates the lot size of 600m2. As the subject site comprises only 557m2, the applicant sought a variation from the development standard. The variation represents 43m2 or 7%. The applicant has prepared a submission on in accordance with the requirements outlined in Clause 4.6. Clause 4.6(3): Clause 4.6(3) states that any variation to a development standard must demonstrate the following: Objective (a) (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case Justification is provided below to support the proposed variation to the development standard. It is requested that the development standard of minimum lot size for detached dual occupancies be varied in this instance. In the Wehbe decision, Preston CJ set out five (5) ways in which an objection to a development standard can be supported. The only applicable principle is that 'the objectives of the standard are achieved notwithstanding non-compliance with the standard'. The objective of Clause 4.1B is to to achieve planned residential density in certain zones. It is considered that the proposal represents a minor variation in lot size for the proposed development, being 43m2 or 7%. The proposed development will still achieved the planned residential density in the R2 zone. It can be argued that the proposed density is acceptable as the site is able to accommodate the proposed development, as it is: • compliant with the majority of building setbacks contained in the DCP, • safe access is proposed from Christmas Bush Avenue, and	0.62m and 43sqm	Council	08/09/2017