

FILE NO: PSC2018-02573-007

TITLE: EXCEPTIONS TO DEVELOPMENT STANDARDS

OWNER: DIRECTOR COMMUNITY FUTURES

1. PURPOSE:

1.1 The purpose of this policy is to provide guidance on the application and administration of Clause 4.6 Exceptions to development standards in the Port Stephens Local Environmental Plan 2013 (PSLEP).

2. CONTEXT/BACKGROUND:

2.1 Clause 4.6 Exceptions to Development Standards enables development standards such as minimum lot sizes, height and floor space ratio to be varied in certain circumstances. This is a compulsory clause included in all local environmental planning instruments across NSW.

2.2 Clause 4.6 Exceptions to Development Standards aims to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for and from development in particular circumstances.

3. SCOPE:

3.1 This policy applies to development applications in the Port Stephens local government area.

3.1 The policy relates specifically to the following Council functions:

- a) Assessment of development applications
- b) Review of provisions in the PSLEP and strategic planning.

4. DEFINITIONS:

4.1 An outline of the key definitions of terms included in the policy.

Development application	An application for consent to carry out development, but does not include an application for a complying development certificate.
Development consent	Approval to carry out development the subject of a development application.

Development standards The Environmental Planning and Assessment Act 1979 includes a legal definition of 'development standards' (See section 1.4).

Development standards are provisions in an environmental planning instrument that guide development to be carried out in accordance with particular requirements under certain circumstances. For example maximum building heights in residential areas, or minimum lot sizes for subdivision in rural areas.

Development standards are a means to achieve a particular environmental planning objective in an area. Clause 4.6 of the PSLEP provides flexibility to allow planning objectives to be met by varying development standards in certain circumstances.

Clause 4.6 of the PSLEP applies when applications are made for exceptions to development standards.

Environmental planning instrument A legal instrument that guides development, such as a Local Environmental Plan (e.g. the PSLEP).

5. STATEMENT:

5.1 This policy sets out the processes that apply when development applications are lodged that seek to vary development standards using Clause 4.6 of the PSLEP. Applicants are advised to refer to the Policy prior to lodging a development application that includes an application under Clause 4.6.

5.2 This policy aims to create opportunities for greater transparency and community participation when decisions are made to vary development standards and to achieve better decision making through robust assessments. It seeks to ensure the assessment and administration of applications to vary development standards includes consideration of the principles established by the NSW Land and Environment Court and the strategic planning context.

5.3 This policy adopts transparent reporting and other recommendations issued by the NSW Department of Planning and Environment and the NSW Independent Commission Against Corruption.

5.4 Council will implement the following actions:

5.4.1 Development applications that include a request under Clause 4.6 Exceptions to Development Standards of the PSLEP must be accompanied by the Clause

- 4.6 Application Form or similar format in accordance with section 35B of the Environmental Planning and Assessment Regulation 2021 (EPA Reg).
- 5.4.2 Council will exhibit the Clause 4.6 written request accompanying a development application when advertising or notifying an Application.
- 5.4.3 Development applications accompanied by a Clause 4.6 written request will be assessed in accordance with Guide to exclusions from clause 4.6 of the Standard Instrument (NSW Department of Planning and Environment).
- 5.4.4 Development applications which include a Clause 4.6 written request seeking to vary a development standard by greater than 10% will be determined by the Council (per NSW Department of Planning and Environment Fact Sheet: Upcoming changes related to clause 4.6 of the Standard Instrument).
- 5.4.5 Council will update the NSW Planning Portal with variation requests as required by NSW Department of Planning and Environment Fact Sheet: Upcoming changes related to clause 4.6 of the Standard Instrument.
- 5.4.6 The Development Assessment and Compliance team will refer development standards that are the subject of frequent development consents that include exceptions to development standards to the Strategic Planning team for review. A review will be carried out to ensure the development standards in the PSLEP remain relevant to achieving the environmental planning objectives in an area.

6. RESPONSIBILITIES:

- 6.1 Development Assessment and Compliance team (development application assessment).
- 6.2 Strategic Planning team (policy review and local environmental plan review).

7. RELATED DOCUMENTS:

- 7.1 Clause 4.6 Application Form.
- 7.2 Port Stephens Local Environmental Plan 2013 (NSW).
- 7.3 Environmental Planning and Assessment Act 1979 (NSW).
- 7.4 Guide to exclusions from clause 4.6 of the Standard Instrument (NSW Department of Planning and Environment).
- 7.5 NSW Department of Planning and Environment Fact Sheet: Upcoming changes related to clause 4.6 of the Standard Instrument
- 7.6 Corruption Risks in NSW Development Approval Process: Position Paper (NSW Independent Commission Against Corruption).
- 7.7 Development Assessment Internal Audit Tool (NSW Independent Commission Against Corruption).

Policy

- 7.8 Port Stephens Council Discussion Paper – Progress of the Nelson Bay Town Centre & Foreshore Strategy.
- 7.9 Environmental Planning and Assessment Regulation 2021 (EPA Reg).

CONTROLLED DOCUMENT INFORMATION:

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EDRMS container No.	PSC2018-02573-007	EDRMS record No.	24/11163
Audience	Councillors, staff and the community		
Process owner	Strategy and Environment Section Manager		
Author	Strategic Planning Coordinator		
Review timeframe	3 years	Next review date	14 November 2026
Adoption date	25 September 2018		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1.	25 September 2018	Strategic Planning Coordinator	First draft version placed on public exhibition in February 2018. Updated to new template to include paragraph numbering. 5.4.4 – Updated following public exhibition period.	095
2.	9 February 2021	Strategic Planning Coordinator	References to Planning Circulars and version control has been updated. Updated review date to reflect new policy review process.	007
3.	14 November 2023	Principal Strategic Planner	OWNER – Updated to Director Community Futures 2.1 – Added 'is a compulsory', removed 'is'. 4 – Added '1.4' 5.1 – Removed 'the', added 'using', removed 'under'.	269

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			<p>5.4.1 – Added ‘or similar format in accordance with section 35B of the Environmental Planning and Assessment Regulation 2021 (EPA Reg).</p> <p>5.4.2 – Added ‘written request’, removed ‘application form’.</p> <p>5.4.3 – Removed ‘application form’, added ‘written request’, remove ‘Varying Development Standards: A Guide (published August 2011 by the former NSW Department of Planning and Infrastructure)’, add ‘Guide to exclusions from clause 4.6 of the Standard Instrument (NSW Department of Planning and Environment)’.</p> <p>5.4.4 – Removed ‘application form’, added ‘written request’, added (per NSW Department of Planning and Environment Fact Sheet: Upcoming changes related to clause 4.6 of the Standard Instrument).</p> <p>5.4.5 Remove ‘Council will maintain a register of development consents that have included exceptions to development standards and the information will be made publicly available’, add ‘Council will update the NSW Planning Portal with variation requests as required by NSW Department of Planning and Environment Fact Sheet: Upcoming changes related to clause 4.6 of the Standard Instrument’.</p> <p>5.4.5 – Replace with 5.4.6 due to complete clause removal.</p>	

Version	Date	Author	Details	Minute No.
			<p>7.4 – Remove ‘Varying Development Standards: A Guide (Former NSW Department of Planning and Infrastructure’, add ‘Guide to exclusions from clause 4.6 of the Standard Instrument (NSW Department of Planning and Environment)’.</p> <p>7.5 – Remove ‘NSW Department of Planning and Environment Circular PS 08-003 Variations to Development Standards’ add ‘NSW Department of Planning and Environment Fact Sheet: Upcoming changes related to clause 4.6 of the Standard Instrument’.</p> <p>7.9 – Add ‘Environmental Planning and Assessment Regulation 2021 (EPA Reg)’.</p> <p>Controlled document information has been updated including process owner, author and dates. Version history updated to reflect changes.</p>	