



Australian  
Institute of  
Architects

# VARYING DEVELOPMENT STANDARDS: A CASE FOR CHANGE EIE FEEDBACK



NSW DEPARTMENT OF PLANNING, INDUSTRY & ENVIRONMENT



**NSW CHAPTER**

Submission issued 12 May 2021

## ABOUT THE INSTITUTE

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The Australian Institute of Architects (the Institute) is the peak body for the Architectural profession in Australia. It is an independent, national member organisation with around 12,500 members across Australia and overseas including 3,000 members in the NSW Chapter.

The Institute exists to advance the interests of members, their professional standards and contemporary practice, and expand and advocate the value of Architects and Architecture to the sustainable growth of our communities, economy and culture.

The Institute actively works to maintain and improve the quality of our built environment by promoting better, responsible and environmental design.

## PURPOSE

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- This submission is made by the Australian Institute of Architects (the Institute) to provide feedback on the Varying Development Standards EIE
- At the time of this submission the National President is Alice Hampson FRAIA<sup>1</sup> and the NSW Chapter President is Laura Cockburn FRAIA
- The Chief Executive Officer is Julia Cambage and the NSW State Manager is Kate Concannon.

## CONTACT DETAILS

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<sup>1</sup> Fellow of the Royal Australian Institute of Architects.

## CLAUSE 4.6 RESPONSE TO EIE

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### Introduction

The Australian Institute of Architects (the Institute) concurs with the Department of Planning, Industry and Environment (DPIE) that the use of Clause 4.6 has become more complex and difficult than intended. The interpretation of Clause 4.6 by consent authorities and the Land and Environment Court has led to some uncertainty and concern.

The Institute welcomes the review of Clause 4.6. We recognise this clause has an important role to play, particularly when development standards have no mechanism to differentiate between requirements based on the individual characteristics of one site from another. Site specific conditions are especially important when FSR and height are concerned, and Clause 4.6 should ensure development is designed appropriately for its context.

The Institute recognises the difficulties which have been elucidated by recent ICAC investigations. We commend the DPIE's intent to restore balance and transparency through this review.

### Our feedback

- We support the proposed Council reporting responsibilities to increase decision transparency
- We believe Clause 4.6 should focus on context-based objective tests and criteria which are not subject to varied interpretation
- We support the removal of the *'unreasonable and unnecessary test'* from Clause 4.6
- We support the proposal that development should demonstrate compliance with essential criteria which align with the strategic planning objectives of the area, the relevant development standard and the land use zone
- When considering an improved planning outcome or variation consideration should be given to how the proposal is situated within the context. (We note the recent decision by Clay C in SJD DB2 Pty Ltd v Woollahra Municipal Council - NSW Caselaw [60-113] which considered the application of 4.6 with particular regard to its context which differed in nature to the planning controls specified)
- We suggest the desired future character should be established in reference to both the existing context and the planning controls
- We support the removal of *assumed concurrence* - it is our experience that this clause has never been operative in practice. The planning panels now operate in the role of oversight.

## Additional feedback – Clause 5.6

- One of the most common variations to development standards of concern to our members is height and the application of the current definition of the height of a building. Often the existing ground plane has been modified and does not reflect the future ground plane or the height standard has not been developed to allow sufficient space above the top floor for interesting roof forms or parapets. Clause 5.6 Architectural Roof Features of the Standard Instrument is rarely used as it can be challenging to apply. The requirement uses the description ‘decorative element’ and the interpretation of this clause by Council and the Land and Environment court can be problematic.

For example: a roof is not considered decorative as it has a functional purpose. Additionally, in some contexts a pitched roof may be preferable to better align with the character of the area in which it sits. We suggest this clause allows protrusions above the height limit that contribute to the design quality of the proposal and accommodates variations in the ground plane across the site. We further suggest it should be made clear that development that exceeds the height plane and is consistent with this clause would not then require a Clause 4.6 variation.