

Northern Development Assessment

CLAUSE 4.6 REQUEST FOR VARIATION OF THE HEIGHT OF BUILDINGS STANDARD UNDER CLAUSE 4.3(2FA) OF PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

**TO ACCOMPANY
DEVELOPMENT APPLICATION**

**FOR
PROPOSED DEMOLITION OF EXISTING DWELLING, CONSTRUCTION OF A NEW
DWELLING, SECONDARY DWELLING, SWIMMING POOL, CARPORT AND BOATSHED**

**AT
252 HUDSON PARADE, CLAREVILLE
LOT 59 DP 13760**

Prepared By

DAVE MOODY

B.Plan. (UNSW), Dipl. Build. & Const. (MIBT), MPIA.

0401 450 989

dave@ndassessment.com.au

www.ndassessment.com.au

Suite 11, 303 Barrenjoey Road,

Newport NSW

2106.

Clause 4.6 Request – Height: 252 Hudson Parade, Clareville

1.0 INTRODUCTION

This request is made under the provisions of Clause 4.6 of Pittwater Local Environmental Plan 2014 (LEP 2014).

This Clause 4.6 Request has been prepared in relation to the Height of Buildings Standard under Clause 4.3 of LEP 2014 in support of a Development Application (DA) seeking approval for “*proposed demolition of an existing dwelling, construction of a new dwelling, secondary dwelling, swimming pool, carport and boatshed* on land described as Lot 59 DP 13760, 252 Hudson Parade, Clareville (subject site).

The Objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes arising from a proposed development.

For the reasons referred to in this Clause 4.6 Request, I consider that variation of the Height of Buildings Standard in the circumstances of this DA would achieve a better planning outcome, rather than requiring strict adherence to the height of Buildings Standard.

Clause 4.6 of LEP 2014 allows a Consent Authority to grant a variation to a Development Standard as prescribed below.

4.6 Exceptions to development standards

(1) *The objectives of this clause 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.*

(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.*

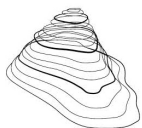
(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*

(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.*

(4) *Development consent must not be granted for development that contravenes a development standard unless—*

(a) *the consent authority is satisfied that—*



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- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (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, and*
- (b) the concurrence of the Planning Secretary has been obtained.*
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—*
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) the public benefit of maintaining the development standard, and*
 - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—*
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

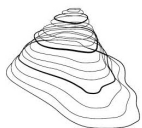
Note—

When this Plan was made it did not include all of these zones.

- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following—*
 - (a) a development standard for complying development,*
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) clause 5.4,*
 - (caa) clause 5.5.*

In the case of *Al Maha Pty Ltd v Strathfield Council* [2017] NSWLEC 1083, Presiding Commissioner C Dickson of the Land and Environment Court (Court) held that:

“[63] It is clear from a reading of cl 4.6 of LEP 2012 that the onus is on the applicant to meet the tests of cl 4.6 in seeking flexibility to the Height or FSR standards by demonstrating that the breaches of the two development standards are justified. Ms Ogg provided a written request under cl 4.6(3) which seeks to justify the contravention of the FSR Standard (FSR Request).



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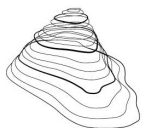
[64] In Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7, Preston CJ outlines that Commissioners on appeal exercising the functions of the consent authority have power to grant consent to developments that contravene the building height standard, or the FSR standard (cl 4.6(2)). However, they cannot grant such a development consent unless they:

- (1) are satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii))*
- (2) are satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii))*
- (3) have considered a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with they are satisfied that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6 (4)(a)(i)).*
- (4) have considered a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl. 4.6(3)(b) and cl 4.6(4)(a)(i)).”*

In addition to the abovementioned Court judgments, there are other relevant Court judgements relating to the application of a Clause 4.6 Request including, but not limited to, Winton Property Group v North Sydney Council [2001] NSW LEC 46, Wehbe v Pittwater Council [2007] NSW LEC 827, Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC 90, and Moskovich v Waverley Council [2016] NSW LEC 1015.

Given the above judgment of his Honour, Chief Judge Preston, which was followed by Presiding Commissioner C Dickson, this Clause 4.6 Request seeks to address the matters raised in (1) - (4) above and the provisions of Clause 4.6 of LEP 2014.

I note that the Height of Buildings Development Standard is not specifically excluded from the operation of Clause 4.6 of LEP 2014.



2.0 THE DEVELOPMENT STANDARD AND THE VARIATION SOUGHT

4.3 Height of buildings

4.3 Height of buildings

(1) *The objectives of this clause are as follows—*

- (a) *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) *to minimise any overshadowing of neighbouring properties,*
- (d) *to allow for the reasonable sharing of views,*
- (e) *to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) *to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

Comment:

Clause 4.3 entitled “*Height of Buildings*” applies to the proposed development.

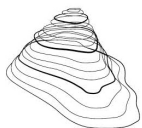
The Height of Buildings Standard applicable to the proposed secondary dwelling on the subject site is 5.5m under LEP 2014, pursuant to Clause 4.3(2FA).

I note that the proposed residential dwelling remains below the maximum Height of Buildings Standard of 8.5m. The proposed carport and secondary dwelling will result in breaches of the Height of Buildings Standard.

I note that an 8.5m standard applies to the carport, whilst a standard of 5.5m applies to the secondary dwelling.

The maximum RL of the proposed secondary dwelling is RL 33.150. This results in a maximum building height of 8.302m when measured from the southern edge of the proposed pergola over the deck and a maximum height of 7.015m when measured from the top of the external wall of the southern facade. This results in a maximum breach of 50.9% of the Height of Buildings Standard.

I note that the proposed secondary dwelling will be wholly contained beneath the carport and will not be readily visible from the street. The proposed pergola over the deck of the secondary dwelling, which provides the greatest level of breach of the 5.5m height standard is a light weight open structure which is not proposed to be covered. The breaching elements of the secondary dwelling emerge due to the significant slope in topography on the subject site,

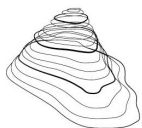


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particularly in the northern portion of the property. I note that the slope of the land located directly beneath the proposed secondary dwelling and associated deck is approximately 65%.

Despite this breach, I consider that variation is very reasonable. I should note that the Land and Environment Court has held on previous occasions that the degree of the breach is not the ultimate determining factor in the deciding whether to support a request for variation of a Development Standard.

This Clause 4.6 Request seeks to demonstrate that compliance with the Height of Buildings Development Standard is unreasonable or unnecessary by reference to the first test in *Wehbe*, that is that the objectives of the standard are achieved notwithstanding the non-compliance with the Height of Buildings Development Standard.



3.0 PROPOSAL WILL BE IN PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE DEVELOPMENT STANDARD

The proposed development will be in the public interest because it is consistent with both the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out. The subject site is located within the C4 Environmental Living Zone.

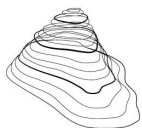
The objectives of the C4 Environmental Living Zone are as follows:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

Comment:

The proposed development complies with the relevant Objectives of the C4 Zone as follows;

- The proposed development will result in a low impact residential development within an area of potential special ecological, scientific and aesthetic value. This is reflected in the supporting reports accompanying this DA and for the reasons outlined in this SEE. The proposed development will not result in an adverse impact on these values.
- The proposed development retains the existing low density residential nature of the site, noting that the existing single storey cottage is to be replaced by a 2 storey residential dwelling, which itself complies with the Height of Buildings Standard, front, side and rear setback controls and Landscaped Area requirements. Furthermore, the proposed cut and fill for the development has been limited in order to ensure that the proposed design responds to the topography of the subject site, ensuring it is integrated with both the landform and the landscape.
- The proposed development will provide vehicle access and on-site parking to the subject site which is currently lacking. Furthermore, the parking and vehicle access has been designed to ensure minimal impact to the subject site and incorporates affordable housing directly below in an effort to further reduce the potential impact of the proposed development.
- The proposed development has been designed in such a way as to limit the impact on significant trees and vegetation on the subject site. I note that of the 19 trees evident on the subject site, 17 will be retained. The 2 trees to be removed are due to the proposed carport and driveway and the proposed inclinor. A number of design options were investigated in order to try and retain these trees, however, retention was ultimately not possible. I note that the removal of the tree at the front boundary is required in order to allow vehicle access to the subject site, whilst the removal of the tree at the southern



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end of the site is required in order that the proposed inclinator can services the entirety of the property.

- The proposed development provides a greater than required level of Landscaped Area and a significant volume of green roofed area. I note that the proposed green roofs incorporate a 400mm soil depth and seek to further offset the net loss of vegetation across the site, despite the compliant level of Landscaped Area proposed at ground level.
- Furthermore, a landscape plan was prepared by Kingfisher Urban Ecology in order to further improve the quality of landscaping on the subject site. Therefore, it is considered that the proposed development will enhance foreshore vegetation and wildlife corridors.

The proposed development ensures the residential dwelling remains sympathetic to the existing streetscape and the Environmental Living Zone. These design elements ensure that the proposed development, when viewed from the street, complements the identified streetscape.

Based on Clause 4.3 of LEP 2014, the relevant Objectives of the Height of Buildings Standard for buildings in Zone C4 – Environmental Living Zone are as follows:

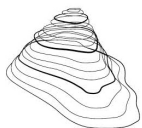
- ((a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) to minimise any overshadowing of neighbouring properties,*
- (d) to allow for the reasonable sharing of views,*
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

Comment:

The Height of Buildings Standard applicable to the subject site is 5.5m pursuant to Clause 4.3 under LEP 2014.

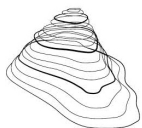
Despite the breach of the Height of Buildings Development Standard, I consider that the proposed secondary dwelling complies with the following relevant objectives of this clause;

- The proposed secondary dwelling is considered to be consistent with the desired future character of the locality due to the following;
- I note that the desired future character encourages secondary dwellings “for more compact and affordable housing with minimal environmental impact in appropriate locations.” The proposed secondary dwelling is to be located underneath the proposed carport in order to reduce the potential loss of landscaping through minimising site coverage, ensuring both a compact design and minimal environmental impact.
- The proposed secondary dwelling will remain below the existing tree canopy located within the norther portion of the subject site when viewed from the streetscape and adjoining properties.



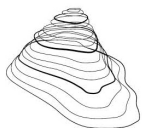
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- The proposed secondary dwelling is to be located underneath the proposed carport in order to assist the secondary dwelling in “harmonising with the natural environment.” The location of the secondary dwelling underneath the proposed carport ensures that no additional landscaping, trees or vegetation are required to be removed elsewhere on the property.
- The breaching portion of the proposed secondary dwelling is located to the south and will not be visible from the streetscape, in fact, the entirety of the secondary dwelling will not be readily visible from the streetscape.
- The proposed pergola over the deck of the secondary dwelling, whilst resulting in the greatest level of breach of the 5.5m Height Standard, provides facade modulation as requested in the Desired Future character of the Area. The proposed pergola is a light weight open structure which will not enclose the deck.
- The design elements outlined above ensure that the proposed secondary dwelling does not result in any unreasonable impacts on the visual amenity, natural flora and fauna, heritage and social values of the Pittwater Foreshore.
- The proposed secondary dwelling is compatible with the height and scale of surrounding and nearby development. I note that the secondary dwelling provides a height of only 3.24m from finished floor level to the top of the proposed pergola (or floor level of the carport above). The breach in height is a result of the topography of the site only.
- The proposed secondary dwelling, contained entirely underneath the proposed carport does not result in any unreasonable overshadowing impact to adjoining properties as evidenced by the Shadow Diagrams accompanying this DA.
- Due to the location of the subject site, the proposed development maintains the reasonable sharing of views. I note that the properties to the east and west of the subject site are orientated to the south to capture views of Pittwater and these views are not impacted. The properties located on the opposite side of Hudson Parade sit significantly higher than the subject site and will therefore not be unreasonably impacted by the proposed development. Furthermore, the proposed breaching portions of the secondary dwelling are situated lower than the street level, to assist in the maintenance of views over the structure. The proposed secondary dwelling will not be visible from properties on the opposite side of Hudson Parade.
- The proposed secondary dwelling has been designed to respond sensitively to the natural topography of a steeply sloping site by locating the structure immediately underneath the proposed carport, whilst being elevated on ‘stilts; to reduce the built form and to ensure no significant changes to the natural topography.
- The proposed secondary dwelling has minimised the potential for adverse visual impact due to its location immediately underneath the proposed carport, with the only extension of this footprint being the proposed elevated deck with open pergola over. Furthermore, the properties to the east and west are orientated to the south to capture views of Pittwater ensuring that the potential View Impact of the structure to these properties is minimised.



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- Despite the orientation of the adjoining properties facing south, the proposed deck of the secondary dwelling has incorporated privacy screening to the eastern and western elevation in order to further reduce any potential perceived Overlooking Impact.



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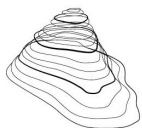
4.0 IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

For the reasons outlined in this Clause 4.6 Request and the accompanying SEE, I consider that the compliance with the height of Buildings Standard under LEP 2014 is unreasonable and unnecessary in the circumstances of the proposed development.

The steps to considering in assessing whether compliance with the height of Buildings Development Standard is unreasonable or unnecessary were confirmed in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (**Initial Action**) and are summarised below:

1. The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved, notwithstanding non-compliance with the standard: *Wehbe v Pittwater Council* [2007] NSWLEC 827 (**Wehbe**) at [42] and [43].
2. A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: *Wehbe* at [45].
3. A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: *Wehbe* at [46].
4. A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: *Wehbe* at [47].
5. A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: *Wehbe* at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in *Wehbe* at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.
6. These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

For the purposes of this request, it is my opinion that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are

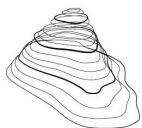


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achieved, notwithstanding non-compliance with the standard, consistent with the “first way” as set out in Step 3 above.

I wish to particularly note the following points: -

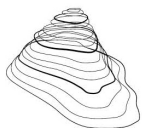
- The breaching elements of the proposed secondary dwelling emerge due to the significant slope in topography on the subject site, particularly in the northern portion of the property. I note that the slope of the land located directly beneath the proposed secondary dwelling and associated deck is approximately 65%.
- The proposed development is consistent with the relevant objectives of the Height of Buildings development standard expressed by clauses 4.3 LEP 2014.
- The proposed development achieves the relevant Objectives of the C4 Environmental Living Zone.
- The proposed development will not result in any unreasonable environmental impacts upon the amenity of neighbouring properties in terms of visual bulk, privacy, overshadowing and view sharing.
- The proposed development satisfies the relevant tests established in *Wehbe v Pittwater Council* (2007) 156 LGERA 446.
- The proposed development will be consistent with the surrounding residential character of the area and will contribute to the variety of housing and help meet demand for housing in the locality.
- The overall bulk, scale and streetscape elements of the proposed development are compatible with the existing and desired future character of the locality.
- The underlying objective would be thwarted if strict compliance with the Height of Buildings development standard was applied as the development satisfies the objectives or purpose of the standard, despite the non-compliance. The development allows a more efficient use of land and provides improved amenity within the existing dwelling, contributing to the variety and availability of housing types in the area.
- For the reasons outlined in the accompanying SEE and this Clause 4.6 Request, I consider that the proposed development results in a range of Positive Outcomes relating to the breaching element:
 - i. The proposed secondary dwelling will provide “for more compact and affordable housing with minimal environmental impact in an appropriate location.” The proposed secondary dwelling is to be located underneath the proposed carport in order to reduce the potential loss of landscaping through minimising site coverage, ensuring both a compact design and minimal environmental impact.
 - ii. The proposed secondary dwelling will not be readily visible from the street due to its location underneath the proposed carport.
 - iii. The proposed development provides a greater than required level of Landscaped Area and a significant volume of green roofed area including a vegetated edge incorporated into the design of the carport. I note that the proposed green roofs incorporate a 400mm soil depth and seek to further offset the net loss of



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vegetation across the site, despite the compliant level of Landscaped Area proposed at ground level.

- iv. Due to the location of the subject site, the proposed development maintains the reasonable sharing of views. I note that the properties to the east and west of the subject site are orientated to the south to capture views of Pittwater and these views are not impacted. The properties located on the opposite side of Hudson Parade sit significantly higher than the subject site and will therefore not be unreasonably impacted by the proposed development. Furthermore, the proposed breaching portions of the secondary dwelling are situated lower than the street level, to assist in the maintenance of views over the structure. The proposed secondary dwelling will not be visible from properties on the opposite side of Hudson Parade.
- v. The proposed secondary dwelling has minimised the potential for adverse visual impact due to its location immediately underneath the proposed carport, with the only extension of this footprint being the proposed elevated deck with open pergola over. Furthermore, the properties to the east and west are orientated to the south to capture views of Pittwater ensuring that the potential View Impact of the structure to these properties is minimised.



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5.0 ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

For the reasons outlined in this Clause 4.6 Request and the SEE, I consider that there are strong environmental planning grounds to justify variation of the Height of Buildings Standard.

The adjectival phrase “*environmental planning grounds*” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the Environmental Planning and Assessment Act (the Act), including the Objects in Section 1.3 of the Act.

Clause 4.6(3)(b) requires the Applicant to demonstrate that there are sufficient Environmental Planning Grounds to contravene the development standard.

In *Initial Action* the Court found at [23]-[24] that:

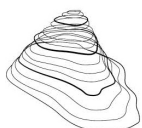
23. As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “*environmental planning grounds*” by their nature: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]. The adjectival phrase “*environmental planning*” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.
24. The environmental planning grounds relied on in the written request under cl 4.6 must be “*sufficient*”. There are two respects in which the written request needs to be “*sufficient*”. First, the environmental planning grounds advanced in the written request must be sufficient “*to justify contravening the development standard*”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.

The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].

For the reasons outlined in this Clause 4.6 Request, I consider that the compliance with the Height of Buildings Standard under LEP 2014 is unreasonable and unnecessary in the circumstances of the proposed development.

I note the following environmental grounds or, in other words, the Positive Outcomes arising from the proposed development and the breach of the Height of Buildings Standard:

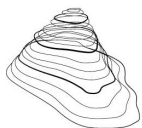
- The proposed development is permissible within the C4 Environmental Living Zone and is consistent with the relevant zone objectives. It retains the existing residential use of



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the site and provides an improved dwelling that is consistent with the density objective for the zone.

- The proposed secondary dwelling will provide “for more compact and affordable housing with minimal environmental impact in an appropriate location.” The proposed secondary dwelling is to be located underneath the proposed carport in order to reduce the potential loss of landscaping through minimising site coverage, ensuring both a compact design and minimal environmental impact.
- The proposed secondary dwelling will not be readily visible from the street due to its location underneath the proposed carport.
- The proposed development provides a greater than required level of Landscaped Area and a significant volume of green roofed area including a vegetated edge incorporated into the design of the carport. I note that the proposed green roofs incorporate a 400mm soil depth and seek to further offset the net loss of vegetation across the site, despite the compliant level of Landscaped Area proposed at ground level.
- Due to the location of the subject site, the proposed development maintains the reasonable sharing of views. I note that the properties to the east and west of the subject site are orientated to the south to capture views of Pittwater and these views are not impacted. The properties located on the opposite side of Hudson Parade sit significantly higher than the subject site and will therefore not be unreasonably impacted by the proposed development. Furthermore, the proposed breaching portions of the secondary dwelling are situated lower than the street level, to assist in the maintenance of views over the structure. The proposed secondary dwelling will not be visible from properties on the opposite side of Hudson Parade.
- The proposed secondary dwelling has minimised the potential for adverse visual impact due to its location immediately underneath the proposed carport, with the only extension of this footprint being the proposed elevated deck with open pergola over. Furthermore, the properties to the east and west are orientated to the south to capture views of Pittwater ensuring that the potential View Impact of the structure to these properties is minimised.



6.0 STATE OR REGIONAL ENVIRONMENTAL PLANNING SIGNIFICANCE AND THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD

Clause 4.6 (5) relates to matters for consideration by the Secretary as to “*whether contravention of the Development Standard raises any matter of significance for State or regional environmental planning.*”

In deciding whether to grant concurrence, the Planning Secretary must consider—

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

Would non-compliance raise any matter of significance for State or regional planning?

The non-compliance does not raise any other matter of significance for State or regional planning.

Is there a public benefit of maintaining the development standard?

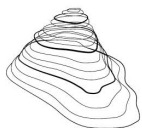
I consider that there is no public benefit associated with maintaining strict compliance with the development standard;

- The proposed development results in a range of positive outcomes as outlined in this Clause 4.6 Request and accompanying SEE.
- The breach of the Height of Buildings Standard is very minor and the proposed alterations and additions do not result in any unreasonable environmental impacts.
- The proposed alterations and additions incorporate an attractive palate of colours and materials.
- I consider that, when viewed from the street, the proposed alterations and additions will result in an improvement in the visual aesthetics of the existing building.

Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?

There are no additional matters that need to be considered in exercising the assumed concurrence of the Secretary.

The contravention of the Height of Buildings Standard in the circumstances of this application does not raise any matter of significance for State or regional environmental planning.



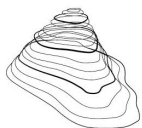
7.0 IS THE OBJECTION TO THE DEVELOPMENT STANDARD WELL FOUNDED?

This Clause 4.6 Request has demonstrated and justified that:

- The proposed development satisfies the relevant objectives of the Height of Buildings development standard and Objectives of the C4 Environmental Living Zone; and
- Sufficient environmental planning grounds have been established to justify the non-compliance, given the range of positive outcomes and the absence of adverse environmental impacts upon neighbouring properties and the public domain, relative to the Height of Buildings non-compliance.

I consider that this objection is well founded for the reasons outlined in this Clause 4.6 Request and the accompanying SEE. I again note the range of positive outcomes which are listed below:

- The proposed development is permissible within the C4 Environmental Living Zone and is consistent with the relevant zone objectives. It retains the existing residential use of the site and provides an improved dwelling that is consistent with the density objective for the zone.
- The proposed secondary dwelling will provide “for more compact and affordable housing with minimal environmental impact in an appropriate location.” The proposed secondary dwelling is to be located underneath the proposed carport in order to reduce the potential loss of landscaping through minimising site coverage, ensuring both a compact design and minimal environmental impact.
- The proposed secondary dwelling will not be readily visible from the street due to its location underneath the proposed carport.
- The proposed development provides a greater than required level of Landscaped Area and a significant volume of green roofed area including a vegetated edge incorporated into the design of the carport. I note that the proposed green roofs incorporate a 400mm soil depth and seek to further offset the net loss of vegetation across the site, despite the compliant level of Landscaped Area proposed at ground level.
- Due to the location of the subject site, the proposed development maintains the reasonable sharing of views. I note that the properties to the east and west of the subject site are orientated to the south to capture views of Pittwater and these views are not impacted. The properties located on the opposite side of Hudson Parade sit significantly higher than the subject site and will therefore not be unreasonably impacted by the proposed development. Furthermore, the proposed breaching portions of the secondary dwelling are situated lower than the street level, to assist in the maintenance of views over the structure. The proposed secondary dwelling will not be visible from properties on the opposite side of Hudson Parade.
- The proposed secondary dwelling has minimised the potential for adverse visual impact due to its location immediately underneath the proposed carport, with the only extension of this footprint being the proposed elevated deck with open pergola over. Furthermore, the properties to the east and west are orientated to the south to capture views of Pittwater ensuring that the potential View Impact of the structure to these properties is minimised.



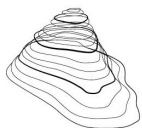
8.0 CONCURRENCE OF DIRECTOR GENERAL

- (4) Development consent must not be granted for development that contravenes a development standard unless—*
- (b) the concurrence of the Planning Secretary has been obtained.*
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—*
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) the public benefit of maintaining the development standard, and*
 - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*

Comment:

The Department issued Planning Circular No. PS18-003 (dated 21st February 2018) which notified Council of arrangements “...where the Director General’s concurrence may be assumed for exceptions to development standards under environmental planning instruments which adopt clause 4.6...of the Standard Instrument...”

Clause 64 of the EPA Regulations provide that Council may assume the Director General’s [Secretary’s] concurrence for exceptions to Development Standards, thus satisfying the terms of this provision.

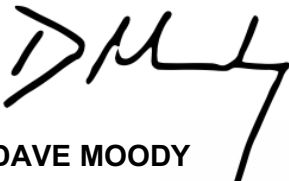


9.0 CONCLUSION

Notwithstanding the breach of the Height of Buildings Standard, I consider that this request for variation of the Height of Buildings Standard is well founded.

I consider that the proposed development, notwithstanding the breach of the Height of Buildings Standard, will not have an unreasonable adverse impact on adjoining properties or the public domain and will result in a range of Positive Outcomes outlined in this Clause 4.6 Request and the accompanying SEE.

For the reasons provided within this Clause 4.6 request and accompanying SEE, variation of the Height of Buildings is supported. The Clause 4.6 request has adequately addressed the matters required under clause 4.6 of LEP 2014. Furthermore, it has been established that the proposed development would be in the public interest as it is consistent with the objectives of the Height of Buildings Development Standard and the Objectives of the C4 Environmental Living Zone.



DAVE MOODY

B.Plan. (UNSW), Dipl. Build. & Const. (MIBT), MPIA.

0401 450 989

dave@nda.live

www.nda.live

Suite 11, 303 Barrenjoey Road, Newport NSW 2106

