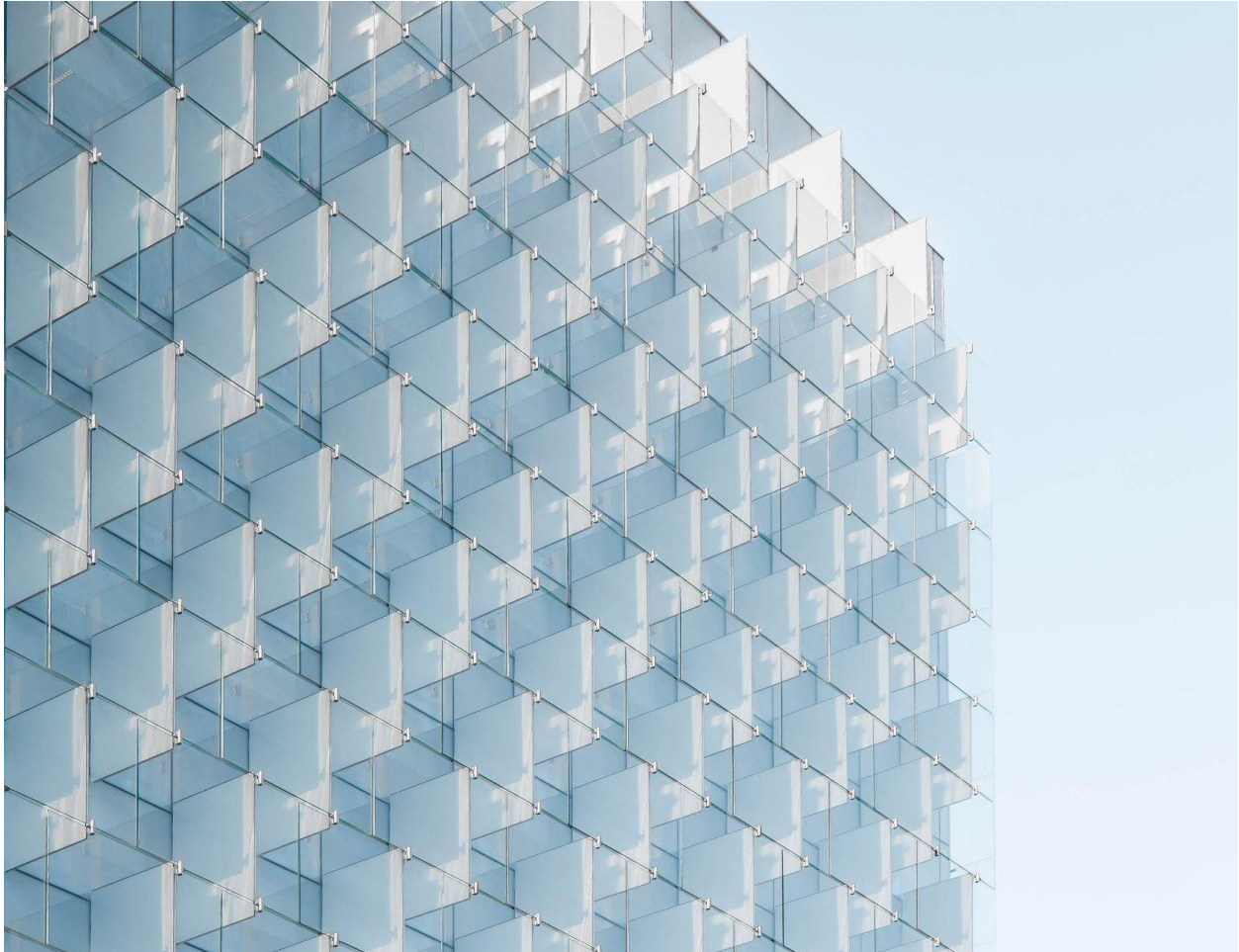


# WILLOWTREE PLANNING



26 September 2022

Ref: WTJ21-074  
Contact: Richard Seaward



## CLAUSE 4.6 VARIATION REQUEST HEIGHT OF BUILDING

### PROPOSED ALTERATION AND ADDITIONS TO BELROSE SUPA CENTRE

4 - 6 Niangala Close, Belrose  
Lot 1 DP1104786

—

Prepared by Willowtree Planning Pty Ltd  
on behalf of HMC Capital

ACN: 146 035 707 ABN: 54 146 035 707  
Suite 4, Level 7, 100 Walker Street  
North Sydney, NSW 2060

enquiries@willowtp.com.au  
willowtreeplanning.com.au  
02 9929 6974



## Clause 4.6 Variation

Proposed Alteration and Additions to Belrose Supa Centre  
4 - 6 Niangala Close, Belrose



DOCUMENT CONTROL TABLE			
Document Reference:	WTJ21-074-v2		
Contact	Richard Seaward		
Version and Date	Prepared by	Checked by	Approved by
Version No. 1 - 15/09/2022	Richard Seaward Senior Town Planner	Chris Wilson Managing Director	Chris Wilson Managing Director

*In the spirit of reconciliation and recognition, Willowtree Planning acknowledges the Traditional Owners of this Country throughout Australia and their continuing and ongoing connections to land, waters and community. We show our respect to Elders - past and present. We acknowledge that we stand on this Country which was and always will be recognised as Aboriginal Land. We acknowledge the Traditional Owners of the Lands in this Local Government Area, belonging to the local Aboriginal People, where this proposal is located upon.*

© 2022 Willowtree Planning Pty Ltd

*This document contains material protected under copyright and intellectual property laws and is to be used only by and for the intended client. Any unauthorised reprint or use of this material beyond the purpose for which it was created is prohibited. No part of this work may be copied, reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system without express written permission from Willowtree Planning (NSW) Pty Ltd.*



## Clause 4.6 Variation

Proposed Alteration and Additions to Belrose Supa Centre  
4 - 6 Niangala Close, Belrose



## TABLE OF CONTENTS

<b>PART A PRELIMINARY</b> .....	<b>3</b>
1.1 Introduction .....	3
1.2 Rationale For Variation From Development Standards.....	3
1.3 Development Standard Variation .....	4
<b>PART B THRESHOLDS THAT MUST BE MET</b> .....	<b>5</b>
2.1 Interpreting Clause 4.6 .....	5
<b>PART C STANDARDS BEING OBJECTED TO</b> .....	<b>8</b>
3.1 Overview .....	8
3.2 Clause 4.3 - Height Of Buildings Under Wlep2011 .....	8
3.3 Proposed Variation To Development Standards.....	8
<b>PART D PROPOSED VARIATION TO STANDARDS IN CLAUSE 4.3 OF WLEP2011</b> .....	<b>10</b>
4.1 Objectives Of The Standard .....	10
4.2 Objectives Of The Zone.....	12
4.3 Establishing If The Development Standard Is Unreasonable Or Unnecessary.....	13
4.4 Sufficient Environmental Planning Grounds To Justify Contravening The Development Standard .....	14
4.5 Objectives Of The Environmental Planning And Assessment Act 1979 .....	15
4.6 Public Interest.....	17
4.7 Matters Of State And Regional Significance.....	17
4.8 Public Benefit In Maintaining The Standard.....	18
4.9 Summary.....	18
<b>Part E Conclusion</b> .....	<b>19</b>

## TABLES

Table 1: Clause 4.3 of WLEP2011 Variation Summary	4
Table 2: Consistency with the Clause 4.3 Objectives	10
Table 3: Consistency with the C4 Environmental Living Zone Objectives	11
Table 4: EP&A Act Objectives	14



## Clause 4.6 Variation

Proposed Alteration and Additions to Belrose Supa Centre  
4 - 6 Niangala Close, Belrose



## PART A PRELIMINARY

### 1.1 INTRODUCTION

This Clause 4.6 variation request (Variation Request) has been prepared in support of a Development Application (DA) for the proposed alterations and additions to Belrose Supa Centre at 4 - 6 Niangala Close, Belrose, (Lot 1 DP1104786) (the Site).

The Site is zoned B7 Business Development pursuant to the *Warringah Local Environmental Plan 2011* (WLEP2011) and is located within the Northern Beaches Local Government Area (LGA). The proposed development is permissible with consent within the B7 Business Development zone as an additional permitted use pursuant to Clause 3 of Schedule 3 of the WLEP2011 and is considered contextually appropriate. The proposal is generally consistent with the objectives and provisions of WLEP2011, with the exception of Clause 4.3 - Height of Buildings, for which this Variation Request is sought.

This Variation Request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards prescribed under WLEP2011. It considers various planning controls, strategic planning objectives and existing characteristics of the Site, and concludes that the proposed building height, despite the non-compliance, is the best means of achieving the objectives of encouraging orderly development of the Site under the *Environmental Planning and Assessment Act 1979* (EP&A Act).

### 1.2 RATIONALE FOR VARIATION FROM DEVELOPMENT STANDARDS

This Variation Request has been submitted to assess the proposed non-compliance with Clause 4.3 - Height of Buildings of WLEP2011 and has been prepared in accordance with the requirements of Clause 4.6 of WLEP2011 which includes the following objectives:

- (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.

Under the provisions of Clause 4.3 of WLEP2011, the Site is subject to a maximum building height of **11m**; however, the existing building is **constructed to a maximum building height of 19.2m**. This proposal comprises built form which ranges up to 19m in height; this is within the building height range as approved under **DA2014/1369**.

The development in its proposed built form and scale will provide Large Format Retail (LFR) GFA to an established specialised retail location. In addition, the development's form and scale complement the pattern of development.

The non-compliance will not have an adverse impact on the surrounding locality and is a direct result of the existing slope of the Site. The built form is compatible and accords with the prevailing pattern of development of the Belrose Supa Centre which contains an existing roof extension (approved under



## Clause 4.6 Variation

Proposed Alteration and Additions to Belrose Supa Centre  
4 - 6 Niangala Close, Belrose



**DA2014/1369** which is setback from the parapet of the façade and is not materially viewable from the streetscene along Forest Way.

The scale of the works proposed need to be assessed having regard to the established height and scale of the existing building. To that extent there is no increase in height beyond that already established on site and the works have been designed to provide for an integrated outcome to the established facility

### 1.3 DEVELOPMENT STANDARD VARIATION

Under the provisions of Clause 4.3 of WLEP2011, the Site is subject to a maximum building height of **11m**. The proposal will result in a building height of **up to 19.27m (already approved) with built form under this variation up to 19m**. **Table 1** below provides a summary of the variation.

TABLE 1: CLAUSE 4.3 OF WLEP2011 VARIATION SUMMARY			
WLEP2011 Clause	WLEP2011 Development Standard	Minimum Setback Proposed	Proposed Development Non-Compliance
Clause 4.3 - Height of Buildings	Maximum height of 11m	6.1m from the parapet	The proposal seeks consent for a maximum building height of 19m which is a 72% variation from the development standard. However, the development standard has already been exceeded by 75% pursuant to <b>DA2014/1369</b> .

The proposed development represents the most efficient use of the Site and responds to the existing environmental constraints in comparison to a compliant building height development.

Accordingly, this Clause 4.6 variation to building height seeks to extend the extension which was approved under **DA2014/1369**; it does not seek to add further height than what has already been approved. the built form of the extension will maintain the building setback from the parapet of the façade accord with the existing pattern of development at the Site.



## Clause 4.6 Variation

Proposed Alteration and Additions to Belrose Supa Centre  
4 - 6 Niangala Close, Belrose



## PART B THRESHOLDS THAT MUST BE MET

### 2.1 INTERPRETING CLAUSE 4.6

Clause 4.6 of WLEP2011 facilitates exceptions to strict compliance with development standards in certain circumstances. Clause 4.6(3) states (our emphasis added):

*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.*

In addition, Clause 4.6(4) states that (our emphasis added):

*Development consent must not be granted for development that contravenes a development standard unless:*

- (a) **the consent authority is satisfied** that:
  - (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 Secretary** has been obtained.*

Further to the above, Clause 4.6(5) states the following (our emphasis added):

*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.*

Accordingly, a successful Clause 4.6 variation must satisfy three limbs explained below:

*First Limb – cl 4.6(4)(a)(i)*



## Clause 4.6 Variation

Proposed Alteration and Additions to Belrose Supa Centre  
4 - 6 Niangala Close, Belrose



Clause 4.6(4)(a)(i) provides that the consent authority must be satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

These are as follows:

- a. that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Cl 4.6(3)(a)); and
- b. that there are sufficient environmental planning grounds to justify contravening the development standard (Cl 4.6(3)(b)). To this end the environmental planning grounds advanced in the written request must justify the contravention, not simply promote the benefits of carrying out the development as a whole: *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15].

In the decision of *Rebel MH v North Sydney Council* [2019] NSWCA 130 (**Rebel**) Payne JA held (our emphasis added):

*"Although it was unnecessary finally to decide the correct construction of cl 4.6(4) in Al Maha, I agree with the construction advanced in that case by Basten JA, with whom Leeming JA agreed, at [21]-[24]. **Properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).** Clause 4.6(3) requires the consent authority to have "considered" the written request and identifies the necessary evaluative elements to be satisfied. To comply with subcl (3), the request must demonstrate that compliance with the development standard is "unreasonable or unnecessary" and that "there are sufficient environmental planning grounds to justify" the contravention. It would give no work to subcl 4.6(4) simply to require the consent authority to be satisfied that an argument addressing the matters required to be addressed under subcl (3) has been advanced."*

Accordingly, the consent authority must be satisfied that this Variation Request demonstrates that both compliance is unreasonable or unnecessary in the circumstances of the case and sufficient environmental planning grounds exist to justify the breach of the height control by the proposed development.

The matters identified in the First Limb are addressed in **Sections 4.3** and **4.4** of this Variation Request.

### Second Limb - clause 4.6(4)(a)(ii)

Clause 4.6(4)(a)(ii) provides that the consent authority must be satisfied that the proposed development will be in the public interest because it is consistent with:

- a) the objectives of the particular development standard; and
- b) the objectives for development within the zone in which the development is proposed to be carried out.

The matters identified in the Second Limb addressed in **Sections 4.1 4.2** and **4.6** of this Variation Request.

### Third Limb - clause 4.6(4)(b)



## Clause 4.6 Variation

Proposed Alteration and Additions to Belrose Supa Centre  
4 - 6 Niangala Close, Belrose



Clause 4.6(4)(b) requires that concurrence of the Secretary of the NSW Department of Planning, Industry and Environment has been obtained.

Clause 4.6(5) outlines the matters to be considered by the Planning Secretary in deciding whether to grant concurrence.

The matters identified in the Third Limb are addressed in **Sections 4.7** and **4.8** of this Variation Request.





## Clause 4.6 Variation

Proposed Alteration and Additions to Belrose Supa Centre  
4 - 6 Niangala Close, Belrose



## PART C STANDARDS BEING OBJECTED TO

### 3.1 OVERVIEW

The Site is zoned B7 Business Development and is subject to the underling objectives of the varied standard.

### 3.2 CLAUSE 4.3 – HEIGHT OF BUILDINGS UNDER WLEP2011

Clause 4.3 of WLEP2011 identifies the following objectives:

- (1) *The objectives of this clause are as follows—*
- (a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
  - (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
  - (c) *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
  - (d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities*

Pursuant to Clause 4.6, the proposal seeks exception to the maximum permissible Height of Building of 11m.

### 3.3 PROPOSED VARIATION TO DEVELOPMENT STANDARDS

The DA seeks approval for the proposed alterations and additions to an existing residential dwelling (Proposal) at 4 - 6 Niangala Close, Belrose (Lot 1 DP1104786). The Site is subject to a maximum building height of 11m. The development proposes a maximum building height of up to **19m** (noting that the maximum height of the building as **existing is 19.27m**) according, this variation does not seek to increase the maximum height as already approved, however, it seeks to include additional built form over the 11m approved height and below the 19.27m as existing.

It is noted that the works proposed need to be assessed having regard to the established height and scale of the existing building. To that extent there is no increase in height beyond that already established on site and the works have been designed as commensurate with the existing scale and built form of the existing building.

The height of the existing building already exceeds the height standard contained within the WLEP11. The initial assessment report for the development of the Supa Centre site noted that the height was not antipathetic to the height and scale of buildings within the Austlink Park; it avoided the need for non productive site excavation and by concentrating development towards the southern portion of the site



## Clause 4.6 Variation

Proposed Alteration and Additions to Belrose Supa Centre  
4 - 6 Niangala Close, Belrose



which enabled the conservation of Duffys Forest vegetation at the intersection of Mona Vale Road and Forest Way.

Given the absence of compliance of the current development with the height standard of the WLEP2011 the increase in building height proposed by this application, of itself provides no precedent. Compliance with the height of building control is not possible.

Notwithstanding the Austlink locality due to its topography and associated with individual characteristics of several developed sites includes instances of variation to the height standard. Within the context of the height and scale of the existing building and that of surrounding buildings the variation is considered to be minor and appropriate and without detriment to the objectives that underpin the zoning of the land or of the height control.

Therefore in consenting to the original development exceeding the 11m height standard, it is no longer possible for the development to conform to the standard of the WLEP2011.



## Clause 4.6 Variation

Proposed Alteration and Additions to Belrose Supa Centre  
4 - 6 Niangala Close, Belrose



## PART D PROPOSED VARIATION TO STANDARDS IN CLAUSE 4.3 OF WLEP2011

Clause 4.6(4)(a)(ii) requires that a request to vary a development standard must establish that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the zone. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018]NSWLEC 118 at 27

Importantly, the word consistent has been interpreted as 'compatible' or 'capable of existing in harmony'. *Kingsland Developments Australia Pty Ltd City of Parramatta Council* [2018]NSWLEC 1241 at 20.

### 4.1 OBJECTIVES OF THE STANDARD

A key determinant of the appropriateness of a Clause 4.6 Variation to a development standard is the proposal's compliance with the underlying objectives and purpose of that development standard.

Clause 4.3 of WLEP2011 sets out specific objectives with regards to height. Those objectives under WLEP2011 are responded to below in **Table 2**:



**Clause 4.6 Variation**

Proposed Alteration and Additions to Belrose Supa Centre  
4 - 6 Niangala Close, Belrose



TABLE 2: CONSISTENCY WITH THE CLAUSE 4.3 OBJECTIVES	
Objective	Response
<p><i>to ensure that buildings are compatible with the height and scale of surrounding and nearby development,</i></p>	<p>The proposed development, by virtue of its height, is consistent with the prevailing pattern of development within the Austlink Business Park.</p> <p>The built accords with the established built form at the Site comprising a 6.1m setback from the parapet of the front façade inline with the existing rooftop development.</p> <p>The proposed development is of a design and form consistent with the prevailing pattern of development and will not result in adverse impacts on the locality when viewed from the public domain.</p> <p>The initial assessment report for the development of the Supa Centre site noted that the height was not antipathetic to the height and scale of buildings within the Austlink Park and thus given this proposal does not seek to increase the height its impact on the character and locality of the area will not be impacted upon.</p> <p>The proposed development is consistent with the height and scale of the existing development and prevailing pattern of development.</p> <p>This extension to the rooftop addition to the building does not seem to add additional height to the Site. furthermore, it is noted that any additional bulk will be in accordance with the prevailing pattern of development at the Site. - the built form will accord with the established building setbacks and is located in a position as to not be materially viewable from the streetscene.</p>
<p><i>to minimise visual impact, disruption of views, loss of privacy and loss of solar access</i></p>	<p>As demonstrated in the architectural plans submitted with the Development Application (DA), the proposed development will not result in any unreasonable overshadowing impacts surrounding the Site.</p>
<p><i>to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,</i></p>	<p>The proposed development has appropriately considered the slope of the Site to and has been designed to ensure the built form responds to the natural topography and minimises impacts to the surrounding properties.</p> <p>The site has been identified as partially being sloped &lt;5° (Area A) and partially containing flanking slopes of 5° to 25° (Area B) on the Landslip Risk Map, the proposal would not alter the existing topography of the site. Therefore, no changes to the risk of landslides or stormwater discharged are anticipated.</p> <p>The development of the Site over the 11m height control avoids the need for non-productive site excavation; concentrating development towards the southern</p>



**Clause 4.6 Variation**

Proposed Alteration and Additions to Belrose Supa Centre  
 4 - 6 Niangala Close, Belrose



TABLE 2: CONSISTENCY WITH THE CLAUSE 4.3 OBJECTIVES	
Objective	Response
	<p>portion of the site which enabled the conservation of Duffys Forest vegetation at the intersection of Mona Vale Road and Forest Way.</p>
<p><i>to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.</i></p>	<p>A Visual Impact Assessment has been prepared by Geoscapes with the aim of evaluating and assessing the potential visual impacts of the proposed development on its surroundings. The assessment takes into account the viewpoints of the project from various angles and distances, and evaluates the potential impact on the landscape, cultural heritage, and visual amenity of the area.</p> <p>When assessing the visual impact of a proposed development on the surrounding views, several factors were considered, including the size, shape, color, and location of the development. The assessment identifies and evaluates the visual changes that may occur in the area as a result of the development.</p> <p>The VIA concludes that the resultant development would have:</p> <ul style="list-style-type: none"> <li>- No impact when viewed from viewpoint 1</li> <li>- A negligible impact when viewed from viewpoint 2;</li> <li>- A minor impact when viewed from viewpoint 3;</li> <li>- A moderate / minor impact when viewed from viewpoint 4.</li> </ul> <p>The assessment considers the location and scale of the proposed development in relation to Viewpoint 4. It is noted that the Site is set within Bushland and the visual impact is limited to the additional bulk to the rooftop. It is noted the extension is of the same scale as the existing building and the bulk is setback from the parapet as to not appear over-dominant and/or overbearing.</p> <p>As setout throughout this Clause 4.6, the height limit is breached on account of the levels of the Site which slope away from Forest Way.</p> <p>The building draws its character from the blocked built form of the existing façade and this extension seeks to continue the prevailing architectural language of this building within the setting.</p>

**4.2 OBJECTIVES OF THE ZONE**



## Clause 4.6 Variation

Proposed Alteration and Additions to Belrose Supa Centre  
4 - 6 Niangala Close, Belrose



The Site is zoned B7 Business Development pursuant to WLEP2011. Therefore, consideration has been given to the B7 zone objectives in **Table 3** below:

<b>TABLE 3: CONSISTENCY WITH THE B7 BUSINESS DEVELOPMENT ZONE OBJECTIVES</b>	
<b>Objective</b>	<b>Response</b>
<i>To provide a range of office and light industrial uses.</i>	The development relates to the existing Supa Centre site which comprises Large Format Retail (LFR) which was approved under previous consents. The use of the Site as LFR (included within the definition of Specialised Retail) is permitted at the Site as an additional permitted use; as such the land use is consistent with the objective.
<i>To encourage employment opportunities</i>	The use of the Site as LFR is permitted at the Site as an additional permitted use and provides retail and employment opportunities; as such the land use is consistent with the objective.
<i>To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.</i>	The land use as LFR is not inconsistent with this objective.
<i>To create business park employment environments of high visual quality that relate favourably in architectural and landscape treatment to neighbouring land uses and to the natural environment</i>	The development to the rooftop extension is such that it seeks to avoid development of Duffys Forest vegetation at the intersection of Mona Vale Road and Forest Way.
<i>To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of adjoining or nearby residential land uses.</i>	The development to the rooftop is within the footprint of the existing building and will be setback from the parapet of the façade as to not materially impact on the prevailing built form or pattern of development at the Site.

### 4.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

Subclause 4.6(3)(a) and the judgement in *Four2Five Pty Ltd v Ashfield Council* (refer to **Section 2.1**) emphasise the need for the proponent to demonstrate how the relevant development standard is unreasonable or unnecessary in the circumstances.

In view of the particular circumstance of this case, strict compliance with Clause 4.3 of WLEP2011 cannot be achieved and is considered to be both unnecessary and unreasonable. Should strict compliance with the development standard be enforced, the proposed development would be constrained in improving the development potential of the existing Supa Centre. The non-compliance is not likely to have an adverse impact on the area and simply seeks to extend the existing built form in a pattern consistent with the existing development. The proposed non-compliance seeks to accommodate additional built form which is commensurate in height and scale with the surrounding pattern of development within the Austlink Business Park.



## Clause 4.6 Variation

Proposed Alteration and Additions to Belrose Supa Centre  
4 - 6 Niangala Close, Belrose



In accordance with the Court's findings in *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) the way to establish that compliance with the development standard is unreasonable or unnecessary is because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

We have set out above a detailed assessment against the objectives of the development standard and adopted the first test in *Wehbe* to establish that compliance is unreasonable or unnecessary because the objectives of the height controls are satisfied notwithstanding the variation.

The proposal does not conflict with the intent of the development standard and zone objectives as demonstrated above, notwithstanding the proposed numeric variation. The proposal is consistent with the objectives of the B7 Business Development.

The abovementioned justifications are considered valid, and in this instance the proposed Clause 4.6 Variation is considered to be acceptable. The proposed development represents a more efficient use of the Site. The objectives of the relevant clause, B7 Business Development zone are met by the proposed development.

Furthermore, the height of building control at the Site has already been breached and the built form proposed accords with the prevailing setback from the parapet of the façade. Accordingly, the application of the height of buildings development standard is therefore unreasonable and unnecessary in response to the proposed development.

### 4.4 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

The Variation Request is considered well founded because, notwithstanding the proposed non-compliance with the maximum permitted building height:

- The proposal is entirely consistent with the underlying objectives and purposes of the standard, as demonstrated in Section 4.1
- The proposal is entirely consistent with the underlying objective or purpose of the B7 Business Development zone, as demonstrated in **Sections 4.2 and 4.3;**
- Compliance with the standard would be unreasonable and unnecessary for the reasons outlined in **Section 4.3;**



## Clause 4.6 Variation

Proposed Alteration and Additions to Belrose Supa Centre  
4 - 6 Niangala Close, Belrose



- The proposed non-compliance results in a built form and land use, which is permitted at the Site.
- The proposal is consistent with the desired future character of the Site within the surrounding locality and generally complies with the relevant built form controls;
- The proposal has been designed to be sympathetic and respectful to the existing surrounding amenity and local character, particularly regarding visual bulk, privacy and overshadowing whilst expanding on the existing functional residential building Site.

For the reasons outlined above, it is considered that the variation to the height of buildings control under Clause 4.3 is appropriate and can be clearly justified having regard to the matters listed within clause 4.6(3)(b) under WLEP2011.

## 4.5 OBJECTIVES OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

All planning determinations made under the EP&A Act are required to be made with regard to the objects of the Act in accordance with section 1.3 of the EP&A Act. **Table 4** below assesses the proposed development against the objects of the EP&A Act.





## Clause 4.6 Variation

Proposed Alteration and Additions to Belrose Supa Centre  
4 - 6 Niangala Close, Belrose



**TABLE 4: EP&A ACT OBJECTIVES**

Objective	Response
<i>(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,</i>	The proposal will positively contribute to the specialised retail use on the Site within the Northern Beaches LGA. The proposal can furthermore be progressed without any significant environmental impacts.
<i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,</i>	The proposal avoids the need for non productive site excavation and by concentrating development towards the southern portion of the site which enabled the conservation of Duffys Forest vegetation at the intersection of Mona Vale Road and Forest Way.
<i>(c) to promote the orderly and economic use and development of land,</i>	The proposal allows for the development of the Site in accordance with the objectives of B7 Business Development zone pursuant to WLEP2011.
<i>(d) to promote the delivery and maintenance of affordable housing,</i>	The proposal will not impact the delivery and maintenance of affordable housing.
<i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</i>	The proposed development has been sited, resulting in minimal impacts on the surrounding environment.
<i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i>	The existing Site is not identified as a Heritage Item, within a heritage conservation area or as containing Aboriginal or cultural heritage significance. The proposal will not impact any Aboriginal or cultural heritage significance of the surrounding land.
<i>(g) to promote good design and amenity of the built environment,</i>	The proposal will be constructed out of complementary materials to the existing rooftop extension and will be setback from the parapet of the façade.
<i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i>	The proposal can be constructed and maintained without health and safety risks to future tenants.
<i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</i>	The DA is required to be determined by Northern Beaches Council.
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i>	The DA is subject to the relevant public notification requirements.



## Clause 4.6 Variation

Proposed Alteration and Additions to Belrose Supa Centre  
4 - 6 Niangala Close, Belrose



### 4.6 PUBLIC INTEREST

Clause 4.6(4)(a)(ii) requires the proposal to 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.

**Sections 4.1** and **4.2** above demonstrate how the proposal is consistent with the objectives of the development standards, as well as the B7 zone objectives under WLEP2011.

In *Lane Cove Council v Orca Partners Management Pty Ltd (No 2)* [2015] NSWLEC 52, Sheahan J referred to the question of public interest with respect to planning matters as a consideration of whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development.

The proposal provides the following public benefits:

- Providing employment-generating opportunities to the region during both the construction and operational phases of the proposal;
- Supporting retail uses within the Belrose locality through the provision of services and facilities that meet the day to day needs of the workers in the area; and
- Facilitating the operation of the building which supports the use of the site as a bulky goods centre.

There are no identifiable public disadvantages which will result from the proposal in terms of amenity impacts on adjoining uses and streetscape or environmental impacts on the locality.

The proposal is considered to be in the public interest.

### 4.7 MATTERS OF STATE AND REGIONAL SIGNIFICANCE

The non-compliance with Clause 4.3 of WLEP2011 does not give rise to any matters of significance for the State or regional environmental planning. The non-compliance does also not conflict with any State Environmental Planning Policies or Ministerial Directives under section 9.1 of the EP&A Act.

Planning Circular PS 08-014, issued by the former NSW Department of Planning, requires that all development applications including a variation to a standard of more than 10% be considered by full Council rather than under delegation. It is noted that this variation does not seek to increase the height of the building above the existing building height.



## Clause 4.6 Variation

Proposed Alteration and Additions to Belrose Supa Centre  
4 - 6 Niangala Close, Belrose



### 4.8 PUBLIC BENEFIT IN MAINTAINING THE STANDARD

Strict compliance with Clause 4.3 of WLEP2011 will result in:

- Providing a less efficient development which would result in the contrived development of the Site; and
- Preventing the Site being developed to its full potential.

As such, there is no genuine or identifiable public benefit to be achieved in maintaining the height of building development standard for the Site. Furthermore, the height of building control has already been breached under development consent **DA2014/1369**.

### 4.9 SUMMARY

For the reasons outlined above, it is considered that the variation to Clause 4.3 of WLEP2011 is well-founded and appropriate in the circumstances. Furthermore, the Variation Request is considered to be well-founded for the following reasons as outlined in Clause 4.6 of WLEP2011, *Four2Five Pty Ltd v Ashfield Council* and *Wehbe v Pittwater Council*:

- Compliance with the development standard is unreasonable and unnecessary in the circumstances (refer to **Section 4.3** as part of the First Limb satisfied);
- There are sufficient environmental planning grounds to justify contravening the development standard (refer to **Section 4.4** as part of the First Limb satisfied);
- The development is in the public interest (refer to **Section 4.6** as part of the Second Limb satisfied);
- The development is consistent with the objectives of the particular standard (refer to **Section 4.1** as part of the Second Limb satisfied);
- The development is consistent with the objectives for development within the zone and long term strategic intentions to provide employment generating land use (refer to **Section 4.2** as part of the Second Limb satisfied);
- The development does not give rise to any matter of significance for the State or regional environmental planning and is consistent with the visions and objectives of the relevant strategic plans (refer to **Section 4.7** as part of the Third Limb satisfied);
- The public benefit in maintaining strict compliance with the development standard would be negligible (refer to **Section 4.8** as part of the Third Limb satisfied); and
- The objectives of the standard are achieved notwithstanding the non-compliance with the standard.

Overall, it is considered that the variation to the height of building development standard is appropriate and is justified having regard to the matters listed within Clause 4.6 of WLEP2011.



## Clause 4.6 Variation

Proposed Alteration and Additions to Belrose Supa Centre  
4 - 6 Niangala Close, Belrose



## PART E CONCLUSION

For the reasons outlined above, it is requested that Council support the Variation Request, which seeks approval for non-compliance with Clause 4.3 of WLEP2011 for the following reasons:

- Compliance with the development standard is unreasonable and unnecessary in the circumstances of the case;
- There are sufficient environmental planning grounds to justify contravening the development standards;
- The Proposal will capitalise on the Site's full planning potential;
- The Proposal satisfies the objectives of the B7 Business Development zone and Clause 4.3 of WLEP2011;
- No unreasonable environmental impacts are introduced as a result of the proposal; and
- There is no public benefit in maintaining strict compliance with the standards.

Council should be satisfied that the Variation Request has addressed and meets the requirements of clause 4.6 and should be favourably considered by Council.

