

# Northern Development Assessment

**CLAUSE 4.6 REQUEST FOR VARIATION OF THE HEIGHT OF BUILDINGS STANDARD  
UNDER CLAUSE 4.3 OF MANLY LOCAL ENVIRONMENTAL PLAN 2013**

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**TO ACCOMPANY  
DEVELOPMENT APPLICATION**

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**FOR  
PROPOSED ALTERATIONS AND ADDITIONS TO AN EXISTING RESIDENTIAL DWELLING**

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**AT  
77 CASTLE CIRCUIT, SEAFORTH  
LOT 33 DP 200638**

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: 77 Castle Circuit, Seaforth

### 1.0 INTRODUCTION

This request is made under the provisions of Clause 4.6 of Manly Local Environmental Plan 2013 (LEP 2013).

This Clause 4.6 Request has been prepared in relation to the Height of Buildings Standard under Clause 4.3 of LEP 2013 in support of a Development Application (DA) seeking approval for “alterations and additions to an existing residential dwelling” on the property known as 77 Castle Circuit, Seaforth (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 2013 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—*

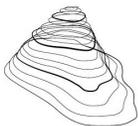
- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(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—*



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*(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 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 E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 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 land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition or Zone R5 Large Lot Residential.*

*(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,*
- (ca) clause 6.15,*
- (cb) a development standard on land to which clause 6.19 applies.*



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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).*

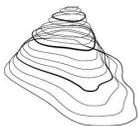
*[64] In *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7, Preston CJ outlines that Commissioners on appeal exercising the functions of the consent authority have power to grant consent to developments that contravene the building height standard, or the FSR standard (cl 4.6(2)). However, 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 2013.

I note that the Height of Buildings Development Standard is not specifically excluded from the operation of Clause 4.6 of LEP 2013.



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### 2.0 THE DEVELOPMENT STANDARD AND THE VARIATION SOUGHT

#### 4.3 Height of buildings

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

(a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

(b) *to control the bulk and scale of buildings,*

(c) *to minimise disruption to the following—*

(i) *views to nearby residential development from public spaces (including the harbour and foreshores),*

(ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*

(iii) *views between public spaces (including the harbour and foreshores),*

(d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

(e) *to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

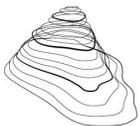
(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

#### **Comment:**

The proposed alterations and additions incorporate a lift and addition in the form of a Parent's Lounge, both of which result in breaches in the Height of Buildings Standard. I note that the remainder of the proposed development remains well below the Maximum Height of Buildings Standard of 8.5m.

The maximum height of the proposed development will be 11.342m relating to the proposed lift, noting that this structure has been positioned to allow continuous access across all existing levels of the dwelling and is incorporated into the existing building façade, terminating below the existing Second Level roof form. The proposed Parent's Lounge will have a maximum building height of 9.703m at its northernmost edge, whilst the balustrading on the associated deck will have a maximum building height of 9.835m

This results in a 33.48% breach of the Height of Buildings Standard for the proposed lift, 15.7% for the balustrade and 14% for the Parent's Lounge. 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.



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Furthermore, I note that in order to determine the maximum building height, the following measurements have been taken from existing excavated areas which contribute to the staggered nature of the existing development, which follows the topography of the subject site;

- The Parent’s Lounge – Measured from the Ensuite and Storage Area adjoining the Master Bedroom at First Floor. Noting that the majority of the Parent’s Lounge complies with the 8.5m Height Standard until the minor overlap with the Ensuite and Storage area at First Floor.
- The Balustrade – Measured from the Storage Area and Gym at Ground Floor noting that this deck maintains the height of the existing Second Floor roof form.
- The Lift – I note that the proposed lift has been incorporated into the existing dwelling façade and at its highest point, remains below the roof form of the second floor roof.

I consider that the breach of the Height of Buildings Standard does not contribute to the perceived bulk, scale and height of the proposed development. I note the judgement by Commissioner O’Neill of the Court in *Bettar v Council of the City of Sydney [2014] NSWLEC 1070 (Bettar)*. In the *Bettar* judgement, there was a sunken basement level with the public footpath at a higher level. Commissioner O’Neill adopted the level of the “*footpath at the boundary*” because it “*bears a relationship to the context and overall topography*”.

A similar scenario was considered by Acting Commissioner Bindon in *Nicola v Waverley Council [2020] NSWLEC 1599 (Nicola)*.

The decision in *Nicola* is an example of where the *Bettar* method was applied to levels contained within the subject site which are the subject of the development application.

In this case, applying *Betta* and *Nicola*, if one views the subject site from adjoining properties to the east and west (75 and 79 Castle Circuit), the perceivable breach is significantly reduced. When viewed from the east, the breaches of the Height of Buildings Standard would be perceived as follows;

- The Parent’s Lounge – The maximum breach would be only 689mm measured at the northernmost edge.
- The Balustrade – The maximum breach would be 1.712m, again noting that this deck is located at the existing height of the Second Floor roof form and is required to be at least 1m in height for BCA Compliance.
- The Lift – The maximum breach would be 2.27m. I note that the proposed lift remains below the existing Second Floor Roof Form to which it provides access.

When viewed from the west, the breaches of the Height of Buildings Standard would be perceived as follows;

- The Parent’s Lounge – Fully compliant and remaining significantly below the Maximum 8.5m Height Line.
- The Balustrade – Fully compliant and remaining significantly below the Maximum 8.5m Height Line.



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- The Lift – Very minor breach of the northernmost edge of the lift and otherwise compliant.

Furthermore, I note that when the proposed development is viewed from the south, it will only appear as a 2 storey development. When viewed from the north at the level of Castle Circuit, the proposed Parent's Lounge has been significantly recessed back from the roof form of the Level below ensuring it will not be readily visible from the street.



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### 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 R2 Low Density Residential Zone.

The objectives of the R2 Low Density Residential zone are as follows:

- *To provide for the housing needs of the community within a low-density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

#### **Comment:**

The proposal is consistent with the objectives of the R2 Low Density Residential zone, assisting in providing for the housing needs of the community within a low density residential environment.

The proposed alterations and additions comply with the relevant Objectives of the R2 Zone as follows;

- The proposed alterations and additions will provide for improved parking and access to the site, whilst removing traffic from the single lane shared driveway and providing additional off-street parking. Furthermore, the proposed alterations and additions will provide improved accessibility throughout the site through the introduction of the lift.
- The proposed alterations and additions result in an improved bedroom and living area within the residential dwelling. The improved bedroom and living area serve the needs of the current occupants of the subject site providing for the housing needs within the community.
- The proposed alterations and additions contribute to the variety of housing types and densities within the immediate area. The proposed alterations and additions ensure that the existing residential form of housing is retained, allowing for improved amenity for current and future occupants of the subject site without any unreasonable amenity impacts to adjoining properties.
- The proposed alterations and additions ensure the residential dwelling remains sympathetic to the existing streetscape. These design elements ensure that the proposed development, when viewed from the street complements the identified streetscape.

Based on Clause 4.3 of LEP 2013, the relevant Objectives of the Height of Buildings Standard for buildings in Zone R2 – Low Density Residential zone are as follows:

*(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*



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- (b) to control the bulk and scale of buildings,*
- (c) to minimise disruption to the following—*
  - (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
  - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
  - (iii) views between public spaces (including the harbour and foreshores),*
- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

### **Comment:**

The Height of Buildings Standard applicable to the subject site is 8.5m pursuant to Clause 4.3 under LEP 2013.

Despite the breach of the Height of Buildings Development Standard, I consider that the proposed alterations and additions comply with the following relevant objectives of this clause;

- The proposed alterations and additions will provide for a building height and roof form that is consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality.
- The degree of breach of the Height of Buildings Standard is significantly contributed to by the topographic landscape and the excavated, stepped nature of the existing dwelling. I note that the proposed alterations and additions incorporate significant setbacks modulation to assist in breaking up the built form.
- The proposed alterations and additions will provide improved living areas as well as providing access throughout the dwelling.
- The proposed alterations and additions do not result in the disruption of any of the following;
  - i. Views to nearby residential development from public spaces (including the harbour and foreshores),
  - ii. Views from nearby residential development to public spaces (including the harbour and foreshores),
  - iii. Views between public spaces (including the harbour and foreshores),
- I note that the Owner of 77 castle Circuit provided photographs from 85, 87, 89 and 91 Castle Circuit looking towards the subject site in order to confirm the lack of potential view loss from these properties as a result of the proposed Parent's Lounge. I note that these properties all sit to the south and south-east of the subject site and are situated further upslope ensuring significantly elevated views across the subject site. The topography of the area and the location of the proposed Parent's Lounge ensure that the existing views from these properties to the north and north-west will not suffer any unreasonable view loss. Furthermore, the photographs confirmed that existing significant



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trees and vegetation between the sites will further ensure that the proposed Parent's Lounge is screened from view.

- I note that the Parent's Lounge addition has been sunken into the roof form of the existing development in order to reduce the overall height. Furthermore, this addition has been significantly recessed from the northern leading edge of the roof form below in order to minimise the potential for visual impact when viewed from the north.
- The significant setback of the proposed Parent's Lounge from the north edge of the roof form below ensure that no unreasonable view loss from the adjoining property at 79 Castle Circuit will occur.
- As evidenced by the Shadow Diagrams accompanying this DA, the proposed alterations and additions will not result in any unreasonable overshadowing to adjoining properties.
- The subject site is not located within a recreation or environmental protection zone, however, I note that the height and bulk of the breaching portions of the proposed alterations and additions do not result in any conflict that requires the removal of any significant trees or vegetation or any excavation/significant changes to the existing topography.



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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 2013 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 proposed development is consistent with the relevant objectives of the height of Buildings development standard expressed by clauses 4.3 LEP 2013.
- The proposed development achieves the relevant Objectives of the R2 Low Density Residential 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 Height of Buildings standard, despite the non-compliance. The development allows a more efficient use of land and provides for improved living areas and access throughout 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:
  - i. The proposed alterations and additions maintain the residential use of the residential dwelling and provide for a built form that is of a bulk and scale consistent with the existing and desired streetscape character.
  - ii. The proposed alterations and additions do not result in a development that obscures important landscape and townscape features.
  - iii. The proposed alterations and additions maintain an appropriate visual relationship between new development and the existing character and landscape of the area. I note that no significant trees or vegetation are required to be removed as a result of the increase in overall building height.
  - iv. The proposed alterations and additions ensure no unreasonable adverse environmental impacts on the use or enjoyment of adjoining land and the public domain as they do not require any excavation (except for the proposed garage) and maintain the existing topography of the subject site. Furthermore, as noted above, no significant trees or vegetation are required to be removed as a result of the increase in overall height.



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- v. The proposed alterations and additions do not result in any unreasonable overshadowing, overlooking, view loss, view impact or acoustic/visual privacy impact.
- vi. The proposed development is contextually appropriate to the area and is considered to result in a positive contribution to the streetscape and character of the area in terms of massing and architectural expression.
- vii. The proposed development maintains the existing views over the subject site.
- viii. The proposed development results in an improvement in passive surveillance of Castle Circuit.
- ix. There will be no increase in carparking demand as a result of the proposed development. The proposed garage is considered to be a positive element to the streetscape, providing off street parking and reducing traffic along the single lane shared driveway which previously provided vehicle access to the subject site.
- x. The proposed development is of a high standard of architectural design, incorporating attractive colours and materials.
- xi. The proposed alterations and additions do not represent an overdevelopment of the subject site. I note that the Open Space and Landscaped Area requirements of Council remain compliant with both the numerical requirements and objectives following the proposed alterations and additions.



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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].

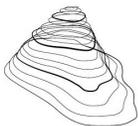
For the reasons outlined in this Clause 4.6 Request, I consider that the compliance with the Height of Buildings Standard under LEP 2013 is unreasonable and unnecessary in the circumstances of the proposed development.

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:



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- i. The proposed alterations and additions maintain the residential use of the residential dwelling and provide for a built form that is of a bulk and scale consistent with the existing and desired streetscape character.
- ii. The proposed alterations and additions do not result in a development that obscures important landscape and townscape features.
- iii. The proposed alterations and additions maintain an appropriate visual relationship between new development and the existing character and landscape of the area. I note that no significant trees or vegetation are required to be removed as a result of the increase in overall building height.
- iv. The proposed alterations and additions ensure no unreasonable adverse environmental impacts on the use or enjoyment of adjoining land and the public domain as they do not require any excavation (except for the proposed garage) and maintain the existing topography of the subject site. Furthermore, as noted above, no significant trees or vegetation are required to be removed as a result of the increase in overall height.
- v. The proposed alterations and additions do not result in any unreasonable overshadowing, overlooking, view loss, view impact or acoustic/visual privacy impact.
- vi. The proposed development is contextually appropriate to the area and is considered to result in a positive contribution to the streetscape and character of the area in terms of massing and architectural expression.
- vii. The proposed development maintains the existing views over the subject site.
- viii. The proposed development results in an improvement in passive surveillance of Castle Circuit.
- ix. There will be no increase in carparking demand as a result of the proposed development. The proposed garage is considered to be a positive element to the streetscape, providing off street parking and reducing traffic along the single lane shared driveway which previously provided vehicle access to the subject site.
- x. The proposed development is of a high standard of architectural design, incorporating attractive colours and materials.
- xi. The proposed alterations and additions do not represent an overdevelopment of the subject site. I note that the Open Space and Landscaped Area requirements of Council remain compliant with both the numerical requirements and objectives following the proposed alterations and additions.



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### 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 reduced when applying the method of *Betta* and *Nicola*. Even if the method established in these judgements is not applied, the proposed alterations and additions do not result in any unreasonable environmental impacts.
- The proposed alterations and additions are of an attractive palate of colours and materials.
- I consider that, when viewed from the street, the proposed alterations and additions will result in a significant 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.



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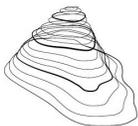
### 7.0 IS THE OBJECTION TO THE DEVELOPMENT STANDARD WELL FOUNDED?

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 R2 Low Density Residential 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:

- i. The proposed alterations and additions maintain the residential use of the residential dwelling and provide for a built form that is of a bulk and scale consistent with the existing and desired streetscape character.
- ii. The proposed alterations and additions do not result in a development that obscures important landscape and townscape features.
- iii. The proposed alterations and additions maintain an appropriate visual relationship between new development and the existing character and landscape of the area. I note that no significant trees or vegetation are required to be removed as a result of the increase in overall building height.
- iv. The proposed alterations and additions ensure no unreasonable adverse environmental impacts on the use or enjoyment of adjoining land and the public domain as they do not require any excavation (except for the proposed garage) and maintain the existing topography of the subject site. Furthermore, as noted above, no significant trees or vegetation are required to be removed as a result of the increase in overall height.
- v. The proposed alterations and additions do not result in any unreasonable overshadowing, overlooking, view loss, view impact or acoustic/visual privacy impact.
- vi. The proposed development is contextually appropriate to the area and is considered to result in a positive contribution to the streetscape and character of the area in terms of massing and architectural expression.
- vii. The proposed development maintains the existing views over the subject site.
- viii. The proposed development results in an improvement in passive surveillance of Castle Circuit.
- ix. There will be no increase in carparking demand as a result of the proposed development. The proposed garage is considered to be a positive element to the streetscape, providing off street parking and reducing traffic along the single lane shared driveway which previously provided vehicle access to the subject site.
- x. The proposed development is of a high standard of architectural design, incorporating attractive colours and materials.



## Clause 4.6 Request – Height: 77 Castle Circuit, Seaforth

- xi. The proposed alterations and additions do not represent an overdevelopment of the subject site. I note that the Open Space and Landscaped Area requirements of Council remain compliant with both the numerical requirements and objectives following the proposed alterations and additions.



## Clause 4.6 Request – Height: 77 Castle Circuit, Seaforth

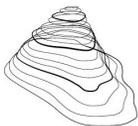
### 8.0 CONCURRENCE OF DIRECTOR GENERAL

- (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 21<sup>st</sup> 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.



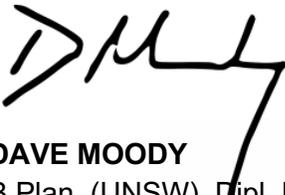
## Clause 4.6 Request – Height: 77 Castle Circuit, Seaforth

### 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 2013. 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 R2 Low Density Residential Zone.



**DAVE MOODY**

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

0401 450 989

[dave@nda.live](mailto:dave@nda.live)

[www.nda.live](http://www.nda.live)

Suite 11, 303 Barrenjoey Road, Newport NSW 2106

