

# Northern Development Assessment

**CLAUSE 4.6 REQUEST FOR VARIATION OF THE HEIGHT OF BUILDINGS STANDARD  
UNDER CLAUSE 4.3(2) OF WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011**

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**TO ACCOMPANY  
DEVELOPMENT APPLICATION**

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**FOR  
PROPOSED ALTERATIONS AND ADDITIONS TO AN EXISTING RESIDENTIAL FLAT BUILDING  
LIMITED TO REPLACEMENT OF EXISTING CLADDING ONLY**

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**AT  
14 FEDERAL PARADE, BROOKVALE  
SP 71340**

Prepared By

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## Clause 4.6 Request – Height: 14 Federal Parade, Brookvale

### 1.0 INTRODUCTION

This request is made under the provisions of Clause 4.6 of Warringah Local Environmental Plan 2011 (LEP 2011).

This Clause 4.6 Request has been prepared in relation to the Height of Buildings Standard under Clause 4.3 of LEP 2011 in support of a Development Application (DA) seeking approval for proposed alterations and additions to an existing residential flat building – limited to replacement of existing cladding only, on land described as SP 71340, 14 Federal Parade, Brookvale (The 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 2011 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—*

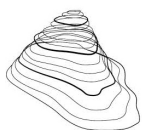
*(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

*(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 to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*

*(a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and*



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*(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.*

### **Note—**

*The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).*

*(4) The consent authority must keep a record of its assessment carried out under subclause (3).*

*(5) (Repealed)*

*(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 contain Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU6 Transition or Zone R5 Large Lot Residential.*

*(7) (Repealed)*

*(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,*

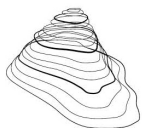
*(ba) clause 4.4, to the extent that it applies to land identified on the Key Sites Map as Site F, Site G, Site H or Site I,*

*(c) clause 5.4,*

*(caa) clause 5.5.*

*(d) (Repealed)*

*(8A) Also, this clause does not allow development consent to be granted for development that would contravene a development standard for the maximum height of a building shown on the Height of Buildings Map on land shown on the Centres Map as the Dee Why Town Centre.*



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*(8B) Despite subclause (8A), development on Site C or Site E may exceed the maximum height of building shown on the Height of Buildings Map if the maximum height is allowable under clause 7.14.*

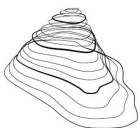
In the case of *Al Maha Pty Ltd v Strathfield Council* [2017] NSWLEC 1083, Presiding Commissioner C Dickson of the Land and Environment Court (Court) held that:

*“[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)).”*

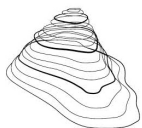
In addition to the abovementioned Court judgments, there are other relevant Court judgements relating to the application of a Clause 4.6 Request including, but not limited to, *Winton Property Group v North Sydney Council* [2001] NSW LEC 46, *Wehbe v Pittwater Council* [2007] NSW LEC 827, *Four2Five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



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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 2011.

I note that the Height of Buildings Development Standard is not specifically excluded from the operation of Clause 4.6 of LEP 2011.



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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 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.*

#### **Comment:**

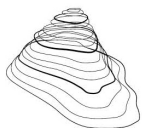
Clause 4.3 entitled “*Height of Buildings*” applies to the proposed development.

The Height of Buildings Standard applicable to the proposed development on the subject site is 8.5m under LEP 2011, pursuant to Clause 4.3(2).

I note that the development does not result in any changes to the existing building height, retaining all existing RLs and setbacks. However, the maximum height of the existing residential flat building already sits higher than the Height of Buildings Standard of 8.5m, with a minor portion of the roof form of Structure A located 140mm above the Development Standard and a minor portion of the roof form of Structure B being located 275mm above the Development Standard. The existing height of the residential flat building results in the proposed replacement cladding works required to minor portions of the roof form of Structure A & B will be in breach of the 8.5m Height of Buildings Standard. The maximum building height of the proposed work is 8.775m in height. The proposed development results in a breach of the Development Standard by 3.2% consistent with the breaching elements of the roof form.

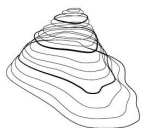
Despite this breach, I consider that variation is very reasonable. I should note that the Land and Environment Court has held on previous occasions that the degree of the breach is not the ultimate determining factor in the deciding whether to support a request for variation of a Development Standard.

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*,



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that is that the objectives of the standard are achieved notwithstanding the non-compliance with the Height of Buildings Development Standard.



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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 R3 Medium Density Residential Zone.

The objectives of the R3 Medium Density Residential Zone are as follows:

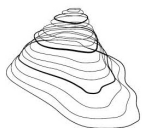
- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that medium density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*
- *To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.*

#### **Comment:**

The proposed development involves alterations and additions to an existing approved residential flat building which is permitted with consent in the R3 Medium Density Residential zone under Warringah LEP 2011.

The proposed works, being replacement of existing cladding remains in keeping with the relevant Objectives of the R3 Zone, noting the following;

- The proposed development provides for the housing needs of the community within a medium density residential environment ensuring that the replacement of the cladding complies with BCA/NCC requirements and Australian Standards.
- The proposed development maintains the medium density form of housing within the residential environment.
- The proposed development has no impact on the existing landscape setting evident within the subject site.
- The proposed refurbishment will result in a development that retains the existing height, bulk and scale of development assisting in maintaining a scale of development in





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keeping with that of the existing streetscape whilst maintaining a high standard of urban design and residential amenity.

The proposed development ensures the residential development remains sympathetic to the existing streetscape and the medium-density residential environment. These design elements ensure that the proposed development, when viewed from the street, remains in keeping and complements the identified streetscape.

Based on Clause 4.3 of LEP 2011, the relevant Objectives of the Height of Buildings Standard for buildings in Zone R3 – Medium Density Residential Zone are as follows:

*(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,*

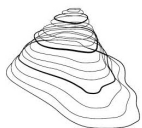
*(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

### **Comment:**

The Height of Buildings Standard applicable to the subject site is 8.5m pursuant to Clause 4.3 under LEP 2011.

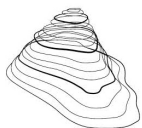
Despite the breach of the Height of Buildings Development Standard, I consider that the proposed development complies with the following relevant objectives of this clause;

- Despite the breach of the Height of Buildings Development Standard, I consider that the proposed development complies with the following relevant objectives of this clause;
- The proposed development will maintain a building height and form that is consistent with the existing structure ensuring the topographic landscape, prevailing building height and desired future streetscape character in the locality remains unchanged.
- The proposed development ensures the existing residential flat building remains compatible with adjoining development and the visual impact of buildings remains unchanged when viewed from adjoining properties, the street, waterways and public reserves.
- The proposed development will not impact the existing landscape setting.
- The proposed development will not result in any additional overshadowing or solar access impacts to adjoining properties or the public domain.



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- The proposed development will not result in unreasonable privacy impacts for current or future residents, nor adjoining properties or the public domain.
- 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 foreshore),
  - ii. Views from nearby residential development to public spaces (including the foreshore),
  - iii. Views between public spaces (including the foreshore).



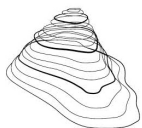
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### 4.0 IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

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 2011 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



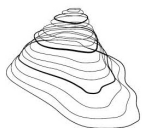
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the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

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

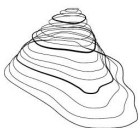
I wish to particularly note the following points: -

- The breaching elements of the proposed works replace existing structures ‘like for like’ in terms of heights, setbacks and scale. The only perceivable change will be the material of the cladding, which remain consistent with existing and surrounding development.
- The proposed development is consistent with the relevant objectives of the Height of Buildings development standard expressed by clauses 4.3 LEP 2011.
- The proposed development achieves the relevant Objectives of the R3 Medium 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 maintain the variety of housing and help meet demand for housing in the locality.
- The overall bulk, scale and streetscape elements of the proposed development remain unchanged and 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 maintains the efficient use of land and provides improved amenity within the existing development, maintaining 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:



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- i. The proposed development will provide safe compliant cladding in keeping with the bulk, scale and character of the existing development.
- ii. The minor nature of the works ensure no unreasonable amenity impacts to adjoining properties or the public domain.
- iii. Due to the location of the proposed works generally above existing ground level, there will be no changes to the existing topography or landscaped areas within the subject site. These elements ensure no impacts on existing trees or vegetation.



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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.

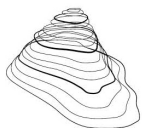
The adjectival phrase “*environmental planning grounds*” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the Environmental Planning and Assessment Act (the Act), including the Objects in Section 1.3 of the Act.

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].

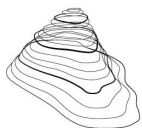


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For the reasons outlined in this Clause 4.6 Request, I consider that the compliance with the Height of Buildings Standard under LEP 2011 is unreasonable and unnecessary in the circumstances of the proposed development.

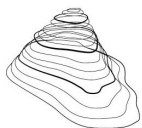
I note the following environmental grounds or, in other words, the Positive Outcomes arising from the proposed development and the breach of the Height of Buildings Standard:

- The breaching elements of the proposed works replace existing structures ‘like for like’ in terms of heights, setbacks and scale. The only perceivable change will be the material of the cladding, which remain consistent with existing and surrounding development.
- The proposed development is consistent with the relevant objectives of the Height of Buildings development standard expressed by clauses 4.3 LEP 2011.
- The proposed development achieves the relevant Objectives of the R3 Medium 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 maintain the variety of housing and help meet demand for housing in the locality.
- The overall bulk, scale and streetscape elements of the proposed development remain unchanged and 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 maintains the efficient use of land and provides improved amenity within the existing development, maintaining 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:
  - iv. The proposed development will provide safe compliant cladding in keeping with the bulk, scale and character of the existing development.
  - v. The minor nature of the works ensure no unreasonable amenity impacts to adjoining properties or the public domain.



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- vi. Due to the location of the proposed works generally above existing ground level, there will be no changes to the existing topography or landscaped areas within the subject site. These elements ensure no impacts on existing trees or vegetation.





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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.

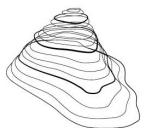
#### **Is there a public benefit of maintaining the development standard?**

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 existing and the proposed development will not result in any changes to existing heights and will not result in any unreasonable environmental impacts.
- The proposed development incorporate an attractive palate of colours and materials consistent with the existing development and locality.
- I consider that, when viewed from the street and adjoining development, the proposed development will result in an improvement in the visual aesthetics compared to the existing building.

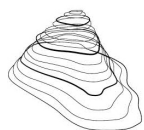
#### **Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?**

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



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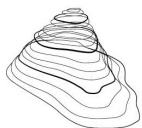
### 7.0 IS THE OBJECTION TO THE DEVELOPMENT STANDARD WELL FOUNDED?

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 R3 Medium 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.

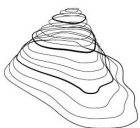
I consider that this objection is well founded for the reasons outlined in this Clause 4.6 Request and the accompanying SEE. I again note the range of positive outcomes which are listed below:

- The breaching elements of the proposed works replace existing structures ‘like for like’ in terms of heights, setbacks and scale. The only perceivable change will be the material of the cladding, which remain consistent with existing and surrounding development.
- The proposed development is consistent with the relevant objectives of the Height of Buildings development standard expressed by clauses 4.3 LEP 2011.
- The proposed development achieves the relevant Objectives of the R3 Medium 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 maintain the variety of housing and help meet demand for housing in the locality.
- The overall bulk, scale and streetscape elements of the proposed development remain unchanged and 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 maintains the efficient use of land and provides improved amenity within the existing development, maintaining the variety and availability of housing types in the area.



#### Clause 4.6 Request – Height: 14 Federal Parade, Brookvale

- 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:
  - vii. The proposed development will provide safe compliant cladding in keeping with the bulk, scale and character of the existing development.
  - viii. The minor nature of the works ensure no unreasonable amenity impacts to adjoining properties or the public domain.
  - ix. Due to the location of the proposed works generally above existing ground level, there will be no changes to the existing topography or landscaped areas within the subject site. These elements ensure no impacts on existing trees or vegetation.



## Clause 4.6 Request – Height: 14 Federal Parade, Brookvale

### 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*

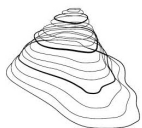
*(b) the public benefit of maintaining the development standard, and*

*(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.



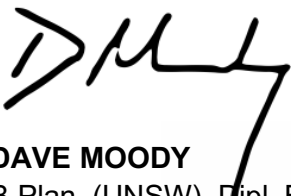
## Clause 4.6 Request – Height: 14 Federal Parade, Brookvale

### 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 2011. 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 R3 Medium Density Residential Zone.



**DAVE MOODY**

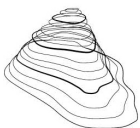
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