
Justification under Clause 4.6 of Warringah Local Environmental Plan 2011 – Exceptions to Development Standards.

70 South Creek Road, Collaroy

Clause 4.3 Height of Buildings

Control 8.5m

Existing Height 12.16m (3.66m)

Proposed Height 11.56m (3.06m)

1.0 Introduction

The proposed development comprises alterations and additions to the existing Pittwater House School at 70 South Creek Road, Collaroy (Lot 1 DP 1215531).

The subject site comprises an area of 3.38 hectares with a primary frontage to South Creek Road, a secondary frontage to Westmoreland Avenue and a limited frontage to Parkes Road. The site accommodates a range of buildings and structures predominantly located on the south-eastern portion of the site, with the northern portion of the site occupied by the main oval and sport and recreation areas. The site interfaces with residential neighbours on the western (and to a lesser extent) north-eastern and south-eastern boundaries.

The proposal primarily resolves the on-site student pickup and drop off and increased on-site staff and visitor parking all accessed from South Creek Road. New bus parking and service vehicles facilities are proposed on the north of the site with access from Westmoreland Avenue.

The second aspect of the proposed development resolves the existing overland flow and stormwater retention on the site.

The third aspect of the proposal involves the demolition of the small demountable services buildings and sheds on the southern frontage of

the site and the construction of a new library and student services building and alterations and additions to the M-block connection providing a new universal access core to manage accessibility to and between the existing buildings.

It is anticipated that these works will facilitate the increase of the student numbers over time, from 887 (currently) to 1091 by 2030.

The site is located approximately 20 kilometres north of the CBD on the fringe of the low density residential precinct and adjoining the 305 Squadron Australian Air Force cadet base and medium density residential development. The site is within 1.5km from Dee Why local centre and is served by bus routes on Campbell Avenue and Pittwater Road.

The site located on the northern side of South Creek Road and extends between the intersection with Parkes Road (west) to the adjoining 305 Squadron Australian Air Force cadet base (east). The site extends north and north-east to Westmoreland Avenue.

The school has occupied the site since 1961 and comprises an area of 3.38 hectares with a primary frontage to South Creek Road, a secondary frontage to Westmoreland Avenue and a limited frontage to Parkes Road. The site accommodates a range of buildings and structures predominantly located on the south-eastern portion of the site, with the northern portion of the site occupied by the main oval and sport and recreation areas. The site interfaces with residential neighbours on the western (and to a lesser extent) north-eastern and south-eastern boundaries.



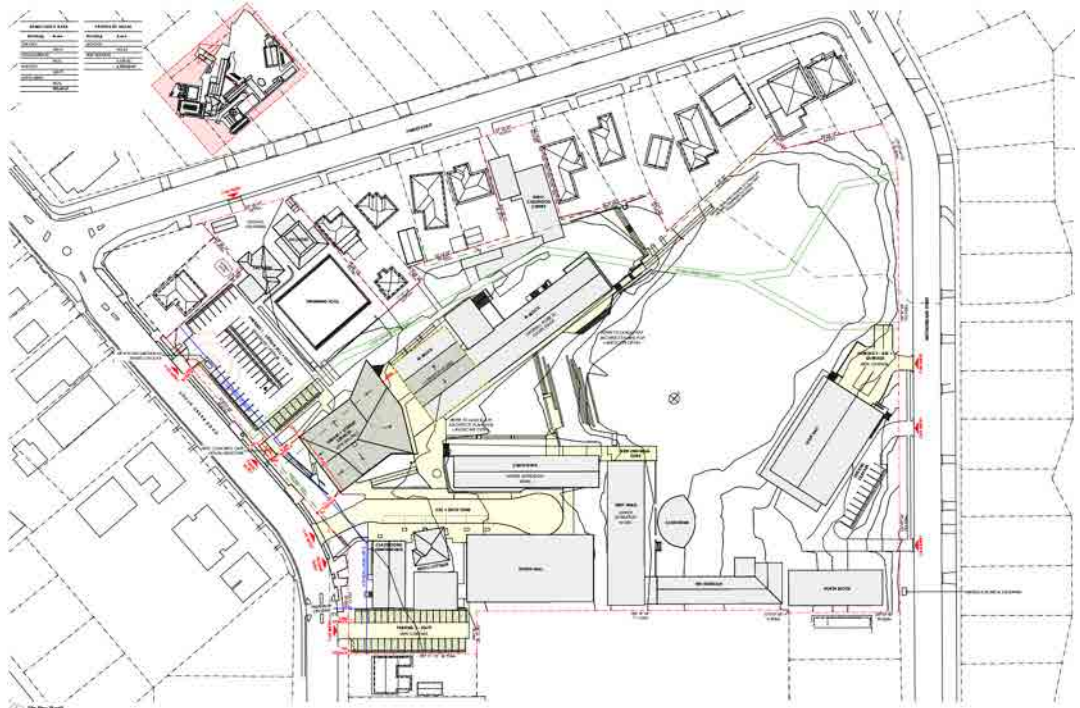
Source: RPData 2019

The development in the immediate vicinity generally comprises low scale single storey dwellings to the north and west, interspersed with medium density large scale residential developments to the south and south-west. The site adjoins the 305 Squadron Australian Air Force cadet base to the east. Large scale commercial and light industrial buildings occupy the land across Campbell Avenue to the north-west and west.

The subject site is legally described as Lot 1 DP 1215531 and is known as Pittwater House Schools, 70 South Creek Road, Collaroy. The site has an area of approximately 3.38 hectares and is irregular in shape.

The site has a northern boundary to the Westmoreland Avenue of approximately 175m. The southern boundary has a frontage to South Creek Road of approximately 137m. The common eastern boundary has a frontage of approximately 196m. and the common western boundary is stepped with two limited frontages to Parkes Road of approximately 33m and 20m and otherwise adjoins the rear of the single dwellings fronting Parkes Road.

The site has its predominant pedestrian and vehicular access from South Creek Road in the south.



Site dimensions

The land rises from south-west to north-east across the site approximately 15m. The gradient across the frontage of the site on South Creek Road rises from RL12.53 (west) to RL13.8 (east) a rise of approximately 1.3m. The land rises to the north with the existing building platforms formed through a series of retaining walls.

The northern boundary of the site is heavily treed along the Westmoreland Avenue frontage and fringing the southern portion of the oval.



Site with 5m contour overlay

Source: RPData 2019

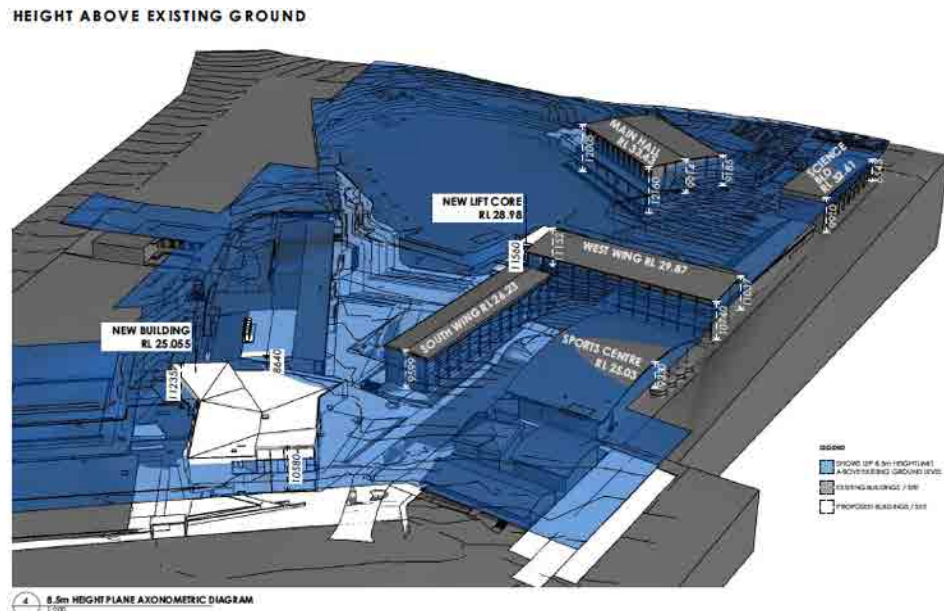


Site with 5m contour overlay

Source: RPData 2019

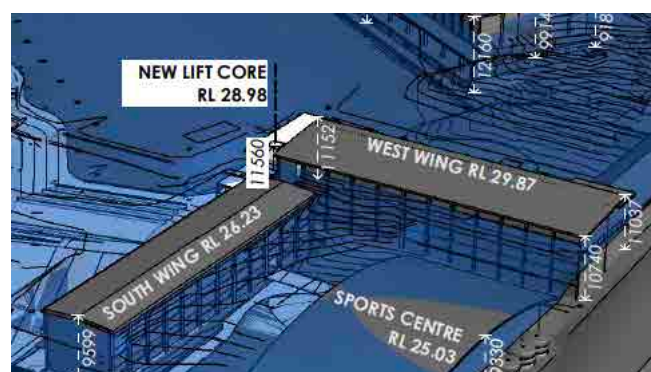
The height blanket demonstrates how the existing buildings on the site have been stepped down the site so that the proposal presents as three

storeys above existing natural ground level. The existing buildings almost all breach the height control of 8.5m being 9.5m to 12.16m in height.



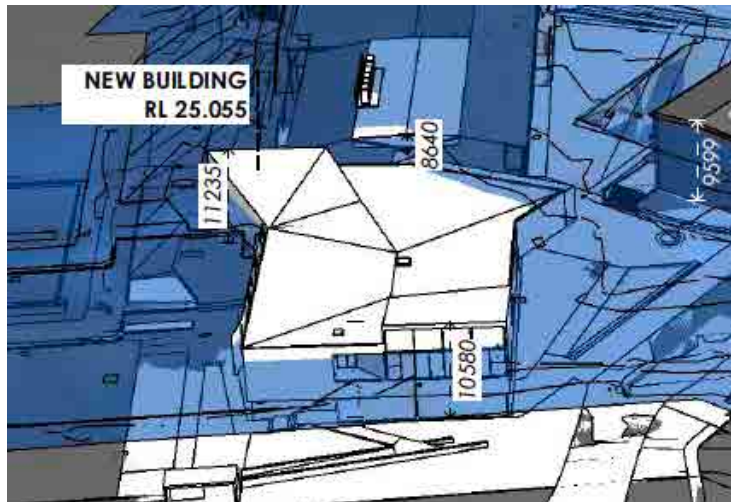
The proposal does not increase the existing height breach but works occur above the 8.5m height control resulting in the need for a Clause 4.6.

The proposed new lift core breaches the height control by 3.06m (RL28.98) providing an accessible linkage between the existing South Wing and West Wing each of which currently breach the control.



Accessible linkage between the existing South Wing and West Wing

The proposed new Library and Student Services building breaches the height control by 2.735m (RL25.055) providing an accessible linkage between the proposed new Library and Student Services building and M-Block.



New Library and Student Services building

The buildings are only linked through the centre to provide accessibility for all students across each level of the existing buildings. The building height is further complicated by the overland flow.

The property is not identified by Council as being a flood control lot but is affected by local runoff as a result of an existing overland flow path through the site, along the western boundary. The site is also burdened by an existing drainage easement in favour of Council as shown below. To support the development of the site, an assessment of the general flooding constraints and requirements was made.

The flood model predicts that during large rain events, the site will be subject to overland flow from Westmoreland Avenue. As a result of this the ground floor area of the development must be adequately protected against the inundation of floodwaters. Given the topography of the site and nature of overland flow, the flood planning level applicable to the development varies across the site.

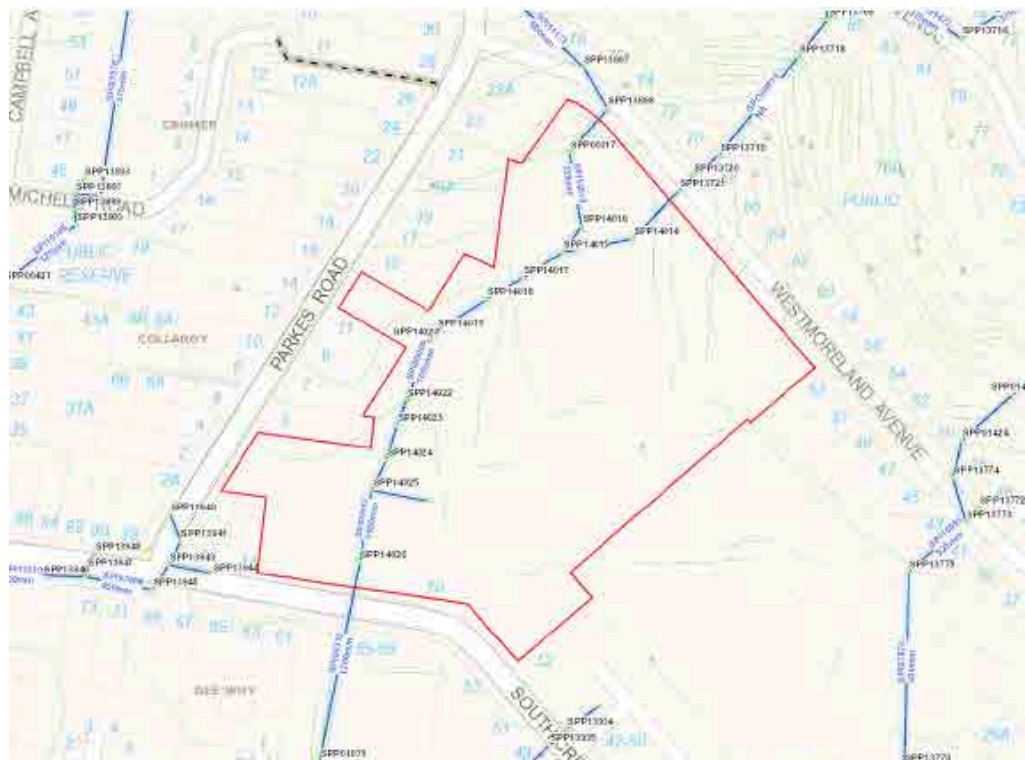
All aspects of the proposed development are categorized as vulnerable use and high-risk. In accordance with Warringah Council DCP sE.11, the development must be flood proofed to the PMF water level. The predicted PMF water surface levels are provided in the Stellen report.

Based on the predicted PMF water surface levels in the Stellen report the following FPLs shall be adopted for the site:

Existing M-Block: 14.92 – 16.55 mAHD (varies refer Figure 13)

Proposed M-Block Library Extension: 14.50 mAHD (NW corner)

Substation Kiosk: 13.50 mAHD





It is considered that it is a better planning outcome to provide access to all levels within the existing buildings in the development where it results in a breach to the height controls which is limited to the centre of the site and in a location which does not give rise to any significant adverse amenity impact.

Clause 4.6 of the Warringah Local Environmental Plan 2011 (WLEP) enables Council to grant consent for development even though the development varies a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clauses 4.6 (3) and (4)(a)(ii) require that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard, namely:

1. that the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
2. that the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
3. that 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.

The consent authority's satisfaction to those matters must be informed by the objective of providing flexibility in the application of the relevant control to achieve better outcomes for and from the development in question.

The Land and Environment Court has given consideration to the matters that must be addressed in relation to whether a variation to development standards should be approved. While these cases originally referred to the former SEPP 1, the principles still remain relevant, more recently, further guidance on the approach to apply to applications to vary development standards under clause 4.6 of the Standard Instrument was provided by the Land and Environment Court. This Clause 4.6 gives consideration to the matters raised in:

- Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118;
- Turland v Wingecarribee Shire Council [2018] NSWLEC 1511;
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;
- Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386; and
- Moskovich v Waverley Council [2016] NSWLEC 1015.
- Wehbe v Pittwater Council [2007] NSW LEC 827; and
- Winten Property Group Ltd v North Sydney Council [2001] 130 LGERA 79 at 89;

In accordance with the above requirements, this Clause 4.6 variation request:

2. identifies the development standard to be varied;
3. identifies the variation sought;
4. establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
5. demonstrates there are sufficient environmental planning grounds to justify the contravention;

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6. demonstrates that the proposed variation is in the public interest;
and
 7. provides an assessment of the matters the secretary is required
to consider before providing concurrence.

This Clause 4.6 variation request relates to the development standard for Height of Buildings under Clause 4.3 of the WLEP and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Mersonn dated November 2019 as well as the supplementary documentation submitted to Council. This Clause 4.6 variation request demonstrates that compliance with the Height of Buildings development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify variation to the standard.

2.0 Development Standard to be Varied

The development standard that is sought to be varied as part of this application is Clause 4.3 of the WLEP, relating to the Height of Buildings. Under the WLEP 2011, the site is afforded Height of Buildings of 8.5m.

3.0 Nature of the Variation Sought

The maximum Height of Buildings on the site under the WLEP 2014 for this application is 11.56m and requires a variation to the maximum Height of Buildings development standard through clause 4.6.

The proposed development does not seek consent to increase the Height of Buildings on the site other than the lift overrun and a localized portion of the leading edge of the roof with the majority of the proposed building well below the 8.5m height control. The proposed building exceeds the Height of Buildings development standard applicable under the WLEP 2011 by 3.06m being a 36% breach of the standard but setback 11m – 12m and limited to the centre of the site and the leading edge of the building, while the remainder of the roof

and parapets comply with the Height of Buildings control.

It is well established in case law that the extent of the numerical variation does not form part of the test required to be exercised under Clause 4.6. Decisions in respect of *Micaul Holdings P/L V Randwick City Council* (55% exceedance of height and 20% exceedance of FSR) and *Moskovich V Waverley Council* (65% exceedance of FSR) support this.

4.0 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

The five methods outlined in *Wehbe* include:

- 1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method).*
- 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Method).*
- 3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Method).*
- 4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Method).*
- 5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Method).*

In this instance, the First Method is of particular assistance in establishing that compliance with a development standard is unreasonable or unnecessary.

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action v Woollahra Municipal Council* [24] and *Turland v Wingecarribee Shire Council* [42]).

In this instance only a limited part of the proposed development is the aspect of the development that exceeds the development standard with the majority of the proposed building compliant with the maximum Height of Buildings development standard.

4.1 The objectives of the development standard are achieved notwithstanding the non-compliance (First Method)

The objectives of Clause 4.3 Height of Buildings in WLEP 2011 are;

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.*

The height of the proposal is considered to be compatible with and appropriate to the condition of the site and its context.

Pittwater House was founded by Mr Rex Morgan, who became the first principal of the school from 1961. Pittwater House began as a preparatory school for boys and has progressively expanded to include a Grammar School for Boys (1968), The Girls College (1975), Junior Girls College (1977) and an ECC. The school has existed on the site in this context for more than 50 years and the majority of the existing buildings breach the 8.5m height control because of the sloping topography and flood control levels.

The proposal is consistent and compatible with the height and scale of surrounding and nearby development.

The desired character of the locality and the surrounding buildings and public areas will continue to receive satisfactory exposure to sky and sunlight. The proposal provides an appropriate built form and land use intensity to minimise visual impact, disruption of views, loss of privacy and loss of solar access.

The proposal maintains the height transition between the buildings and new development stepping down the site and maintaining a consistent built form.

It is demonstrated in the plans that the proposal minimises any overshadowing, loss of privacy and visual impacts for the neighbouring properties consistent with the objectives of this clause. The proposed building breach is centrally located in the site and located to minimise any view, privacy, shadow or amenity impacts.

The proposal has been designed and sited so as to remain below the mature tree canopy as reflected in the proposed landscape plans.

This is intended to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments and to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

The SEE details that the proposal is largely consistent with the relevant environmental planning instruments and does not give rise to any adverse environmental impacts in respect to overshadowing, traffic, heritage, wind, reflectivity, stormwater, flooding, noise, waste, economic and social impacts.

It is considered that these objectives are met by the proposal.

5.0 There are sufficient environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the SLEP 2012 requires the departure from the development standard to be justified by demonstrating:

That there are sufficient environmental planning grounds to justify contravening the development standard.

There are sufficient environmental planning grounds to justify a flexible approach to the application of the Height of Buildings control as it applies to the site. In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site.

The applicable circumstances that relate to the site are discussed below.

The proposal makes efficient use of the existing buildings by inserting elements which provide accessibility for all students to all levels of the existing buildings. This is achieved by observing the flood planning levels and limiting the envelope and restricting the footprint of the proposed buildings to achieve accessibility. It is considered that this is a better planning outcome to utilise the existing buildings and limiting the envelope and restricting the footprint of the proposed buildings to achieve accessibility where it would compromise the accessible path of

travel provided to the entry of each level by complying with the height control.

The adopted approach meets the objective of full access, in the form proposed, which is considered sufficient environmental planning grounds to justify contravening the development standard.

A consideration of the application and the submitted shadow diagrams demonstrate that no significant overshadowing, privacy, view or bulk and scale amenity impacts arise from the proposal. It is considered that the proposal is the better planning outcome encouraged by the provisions of Clause 4.6.

While a Clause 4.6 exemption application is required for the works above the 8.5m height control all of these works are considered complimentary to the building and where external are benign and with no environmental or amenity impact where they occur above the compliant envelope.

The proposed works above the height have no view impact and cause no overshadowing, nor bulk or scale impacts. In the circumstances where there are sound environmental and site specific sufficient environmental planning grounds reasons for the breach to the height control it is considered to justify contravention of the control and consequently the exception to the height control standard under Clause 4.6 is considered acceptable.

By allowing a variation to the Height of Buildings development standard in this instance, an opportunity is presented for the proposed development to achieve the benefits of accessibility to all levels and improve the building's relationship with the surrounding development, and the relevant DCP controls. In this regard, there are sufficient environmental planning grounds to justify contravening the development standard. The proposed additional height sought in this Clause 4.6 better allows the built form on the site to achieve the desired future character of the locality, as compared to the do nothing scenario.

6.0 It is in the public interest because it is consistent with the objectives of the particular standard and the zone.

6.1 Consistency with the objectives of the development standard.

The proposed development is consistent with the objectives of the FSR development standard, for the reasons discussed in Section 4.1 of this report.

6.2 Consistency with the Zoned R2 – Low Density Residential Zone objectives.

The objectives for development in this zone are;

- *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.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

The proposed development improves the provision of *facilities or services to meet the day to day needs of residents* without compromising amenity of the surrounding area. The proposal is consistent with the desired pattern of land use and low density and achieves a development characterised by a landscaped setting that are in harmony with the natural environment of Warringah.

The proposal is considered to meet the objectives for development in the zone.

The proposal is considered consistent with the objectives of the standard and for development in this zone as required by this subclause.

7.0 Secretary's Concurrence.

Under Clause 4.6(5) of SLEP 2012, the Secretary's concurrence is required prior to any variation being granted. The following section provides a response to those matters set out in Clause 4.6(5) of the SLEP, which must be considered by the Secretary.

Whether contravention of the development standard raises any matter of significance for State or regional environmental planning
The variation to the Height of Buildings standard of WLEP 2011 will not raise any matter in which could be deemed to have State or Regional significance. The extent of variation sought is acceptable in the context of the existing building height and the works do not increase the existing height.

The public benefit of maintaining the development standard.

Maintaining the development standard would not result in any public benefit in this situation. As detailed within the SEE, the height and bulk of the existing building is predominantly unchanged and the proposal responds to the surrounding urban context and the requirements of the DCP and ADG.

The proposed built-form is consistent with the bulk and scale of the surrounding medium density apartment buildings, and requiring compliance with the Height of Buildings standard would result in an inconsistent building form with reduced levels of accessibility.

Therefore, to better meet the objectives of the DCP can be said to improve the development's presentation to the public domain and is in the public interest.

Any other matters to be taken into consideration by the Secretary
None.

In accordance with PS 18-003 (Variations to Development Standards), the Secretary's concurrence will not need to be sought.

8.0 Conclusion

The assessment above demonstrates that compliance with the maximum Height of Buildings development standard contained in Clause 4.3 of WLEP 2011 is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded on environmental planning grounds.

It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a superior outcome in planning and design terms. This Clause 4.6 variation demonstrates, notwithstanding the non-compliance with the maximum building height development standard, that:

- The development as proposed will deliver a superior built-form outcome in consideration of the site's topography and siting and its location amongst the surrounding low density buildings;
- The development as proposed will provide environmental benefits particular to the site through the provision of improved amenity and access for future occupants of the development and for the surrounding area generally; and
- Compliance with the development standard would be both unreasonable and unnecessary in the instance because the development is able to fully satisfy the objectives of the R2 – Low Density Residential Zone and the objectives of the Height of Buildings development standard.

This variation therefore seeks consent for the proposed works as consistent with the character and form of the desired future character and the surrounding medium density buildings and does not result in an over development of the site or any adverse impacts on the public domain. The proposed additional height is commensurate with surrounding developments and the built form that characterizes the locality. It is also consistent with the design approach applied to other

heritage buildings within the immediate vicinity.

Consistent with the aim of Clause 4.6 to provide an appropriate degree of flexibility to achieve better outcomes for and from development, a departure from the Height of Buildings development standard is considered appropriate in these circumstances.

Despite the numerical non-compliance with the Height of Buildings development standard, the proposed development is considered to satisfy the objectives of the development standard and the R2 – Medium Density Residential Zone.

The proposal will provide environmental benefits particular to the site through the provision of improved amenity for future occupants of the development and for the surrounding area generally. On this basis, the Clause 4.6 variation is considered well founded and should be supported.

In this instance it is considered appropriate to make an exception to the Height of Buildings development standard under the provisions of Clause 4.6 for the reasons outlined in the preceding discussion.

A handwritten signature in blue ink, appearing to read 'A. Darroch', is shown on a light yellow rectangular background.

Signature:

Name: Andrew Darroch

Date: November 2019