

Northern Development Assessment

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

**TO ACCOMPANY
DEVELOPMENT APPLICATION**

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

**AT
60 ALLEYNE AVENUE, NORTH NARRABEEN
LOT 1 DP 227483**

Prepared By

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Clause 4.6 Request – Height: 60 Alleyne Avenue, North Narrabeen

1.0 INTRODUCTION

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

This Clause 4.6 Request has been prepared in relation to the Height of Buildings Standard under Clause 4.3 of LEP 2014 in support of a Development Application (DA) seeking approval for “*alterations and additions to an existing residential dwelling*” on the property known as 60 Alleyne Avenue, North Narrabeen (subject site).

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

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

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

4.6 Exceptions to development standards

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

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

(b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

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

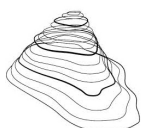
(a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

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

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

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

(i) *the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*



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

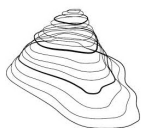
Note—

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

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

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

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



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

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

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

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

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

2.0 THE DEVELOPMENT STANDARD AND THE VARIATION SOUGHT

4.3 Height of buildings

4.3 Height of buildings

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

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

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

Comment:

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

The Height of Buildings Standard applicable to the subject site is 8.5m under LEP 2014, pursuant to Clause 4.3(2).

I note that a significant portion of the proposed roof form of the residential dwelling remains below or significantly below the 8.5m Maximum Height of Buildings Standard. The proposed alterations and additions will result in an increase in the existing maximum roof height at its highest point by 550mm resulting in a very minor breach of the 8.5m Height Standard by 46mm or 0.54%. I note that this breach occurs at the center of the proposed roof form which is centralized on the subject site. I note that in relation to the rear of the roof form, the northern edge of the roof form remains consistent with the existing height and the southern edge of the proposed roof form will actually be reduced in height.

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

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

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

The proposed development will be in the public interest because it is consistent with both the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out. The subject site is located within the 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.*
- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

Comment:

The proposed alterations and additions achieve the objectives of the C4 zone as follows;

- The proposed alterations and additions represent a low impact form of residential development, ensuring minimal impact on significant vegetation or trees, with only a single tree on the subject site and one adjoining the subject site within the road reserve, required to be removed. The proposed alterations and additions have ensured that the footprint of the existing approved development is generally maintained. I note that the proposed additions to the existing dwelling are either generally situated over existing hard surface area or located above existing ground level and therefore do not result in the reduction of any significant levels of Landscaped Area (27.8m²). The proposed garage is to be generally located over the existing driveway, however, has been widened to provide improved compliant vehicle access.
- The proposed alterations and additions will not result in any unreasonable impact on special ecological, scientific or aesthetic values.
- The proposed alterations and additions ensure that the proposed development remains low density residential and is of a scale which is integrated with the landform and landscape. This is reflected by the minor level of excavation required and the minimal impact on significant trees and vegetation on the subject site.
- As evidenced by the supporting documentation accompanying this DA, the proposed alterations and additions ensure no adverse impact on special ecological, scientific or aesthetic values.
- The proposed development will not result in any unreasonable amenity impact to riparian and foreshore vegetation and wildlife corridors.

The proposed alterations and additions ensure the residential dwelling remains sympathetic to the existing streetscape and the low-density residential environment. These design elements

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ensure that the proposed development, when viewed from the street, complements the identified streetscape.

Based on Clause 4.3 of LEP 2014, the relevant Objectives of the Height of Buildings Standard for buildings in Zone R2 – Low Density Residential are as follows:

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

Comment:

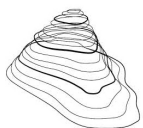
The Height of Buildings Standard applicable to the subject site is 8.5m pursuant to Clause 4.3 under LEP 2014.

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 existing residential dwelling and remains in keeping with the desired character of the locality. The proposed alterations and additions retain the existing use of the low density residential dwelling. Furthermore, the proposed development generally maintains the split level presentation to the street and adjoining properties, ensuring that the dwelling remains single storey in appearance when viewed from the north. I note that the increase in maximum building height (only 550m) and gross floor area is relatively minor with existing side and rear setbacks being generally maintained.
- The proposed alterations and additions, resulting in only a very minor increase in overall roof height, remains compatible with the height and scale of surrounding and nearby development. I note that the breach is also a result of the existing excavated Lower Level and the topography of the subject site.
- As evidenced by the Shadow Diagrams accompanying this DA, the proposed alterations and additions will not result in any unreasonable overshadowing to adjoining properties. Furthermore, I note specifically that the very minor breaches of the Height of Buildings Standard will not result in any unreasonable additional overshadowing.
- Due to the location of the subject site and the location of the proposed alterations and additions, the proposed development maintains the reasonable sharing of views. I note that the properties to the north and south of the subject site are orientated to the east towards the Narrabeen Lagoon and the coast and these views are not impacted.

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- I note that the side and rear setbacks and floor levels remain generally in keeping with the existing residential dwelling whilst excavation is primarily relating to the proposed garage, ensuring that the building design remains responsive to the natural topography.
- The subject site is not located within a Heritage Conservation Area and does not contain a Heritage Item. Furthermore, no Heritage Items are located in proximity to the subject site. In relation to the natural environment, the proposed alterations and additions will not result in any adverse visual impact and result in a Landscaped Area that achieves the Objectives of the DCP Control.



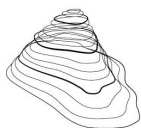
4.0 IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

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

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

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

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

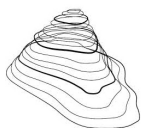


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achieved, notwithstanding non-compliance with the standard, consistent with the “first way” as set out in Step 3 above.

I wish to particularly note the following points: -

- The proposed alterations and additions are generally significantly below or below the Height of Buildings Standard.
- The breach of the Height of Buildings Standard is very minor.
- The proposed development is consistent with the relevant objectives of the Height of Buildings development standard expressed by clauses 4.3 LEP 2014.
- The proposed development achieves the relevant Objectives of the C4 Environmental Living Zone.
- The proposed development will not result in any unreasonable environmental impacts upon the amenity of neighbouring properties in terms of visual bulk, privacy, overshadowing and view sharing.
- The proposed development satisfies the relevant tests established in *Wehbe v Pittwater Council* (2007) 156 LGERA 446.
- The proposed development will be consistent with the surrounding residential character of the area and will contribute to the variety of housing and help meet demand for housing in the locality.
- The overall bulk, scale and streetscape elements of the proposed development are compatible with the existing and desired future character of the locality.
- The underlying objective would be thwarted if strict compliance with the Height of Buildings development standard was applied as the development satisfies the objectives or purpose of the standard, despite the non-compliance. The development allows a more efficient use of land and provides improved amenity within the existing dwelling, contributing to the variety and availability of housing types in the area.
- For the reasons outlined in the accompanying SEE and this Clause 4.6 Request, I consider that the proposed development results in a range of Positive Outcomes:
 - i. The proposed alterations and additions are generally below or significantly below the Height of Buildings Standard under LEP 2014. The breach of the Height of Buildings Standard is very minor.
 - ii. The breaching portion of the proposed development complies with Council’s Front, Side and rear Setback Controls.
 - iii. For the reasons referred to in this Clause 4.6 Request and the accompanying SEE, I consider that the proposed development, notwithstanding the breach of the Height of Buildings Standard, will preserve the environmental amenity of neighbouring properties and the locality.
 - iv. The proposed development, notwithstanding the breach of the Height of Buildings Standard, will result in a range of Positive Outcomes which are referred to in this Clause 4.6 Request and accompanying SEE.



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

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

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

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

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

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

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

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

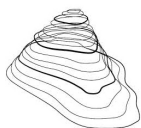
I note the following environmental grounds or, in other words, the Positive Outcomes arising from the proposed development and the breach of the Height of Buildings Standard:

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

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

- The building height of the proposed development is generally below or considerably below the height of buildings development standard under LEP 2014.
- 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.
- The proposed development maintains the existing views over the subject site.
- The proposed development results in an improvement in passive surveillance of Alleyne Avenue.
- There will be no increase in carparking demand as a result of the proposed development. The proposed development will ensure that 2 cars can safely access and park on the subject site and ensuring that the need for on-street parking is reduced and thereby improving pedestrian safety.
- The proposed development is of a high standard of architectural design, incorporating attractive colours and materials.
- The proposed alterations and additions do not result in any unreasonable amenity impacts to adjoining properties or the public domain.



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

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

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

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

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

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

Is there a public benefit of maintaining the development standard?

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

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

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

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

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

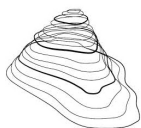
7.0 IS THE OBJECTION TO THE DEVELOPMENT STANDARD WELL FOUNDED?

This Clause 4.6 Request has demonstrated and justified that:

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

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

- The proposed development is permissible within the C4 Environmental Living Zone and is consistent with the relevant zone objectives. It retains the existing residential use of the site and provides an improved dwelling that is consistent with the density objective for the zone.
- The building height of the proposed development is generally below or considerably below the height of buildings development standard under LEP 2014.
- 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.
- The proposed development maintains the existing views over the subject site.
- The proposed development results in an improvement in passive surveillance of Alleyne Avenue.
- There will be no increase in carparking demand as a result of the proposed development. The proposed development will ensure that 2 cars can safely access and park on the subject site and ensuring that the need for on-street parking is reduced and thereby improving pedestrian safety.
- The proposed development is of a high standard of architectural design, incorporating attractive colours and materials.
- The proposed alterations and additions do not result in any unreasonable amenity impacts to adjoining properties or the public domain.



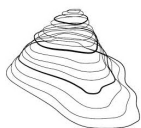
8.0 CONCURRENCE OF DIRECTOR GENERAL

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

Comment:

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

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



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9.0 CONCLUSION

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

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

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



DAVE MOODY

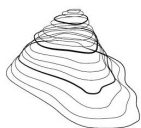
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