



planning consultants

13 February 2017  
Our Ref: 9271A.DK(Clause 4.6)

The General Manager  
Hornsby Shire Council  
PO Box 37,  
HORNSBY 1630

Dear Sir

**Clause 4.6 Exception Request Statement  
Hornsby Local Environmental Plan 2013 – Clause 4.3  
Anglican Community Services Castle Hill  
St James Chapel and Dover Hall**

**1.0 Introduction**

The development application the subject of this Clause 4.6 Exception Request Statement relates to the proposed redevelopment of the St James Chapel and Dover Hall building at Anglican Community Services (ACS) Castle Hill (formerly known as ARV).

Clause 4.3 of Hornsby Local Environmental Plan 2013 (HLEP 2013) is a development standard that provides that the height of a building on any land is not to exceed the height shown on the Height of Buildings Map of HLEP 2013. The Height of Buildings Map identifies the site as being subject to a 8.5m maximum building height.

The proposed building exceeds the 8.5m building height development standard reaching a maximum height of 12.105m above existing ground level at the north eastern corner. An architecturally designed spire reaching a height of approximately 32m above existing ground level is also proposed. The height of the spire matches the integrated spire of the existing St James Chapel and Dover Hall building. The SEE prepared by DFP concluded that the spire can be considered as an architectural roof feature and is therefore not subject to the maximum building height provisions (pursuant to Clause 5.6 (2) of HLEP 2013). However, Council has requested that the height of the spire be included in the Clause 4.6 statement.

We have therefore prepared this Clause 4.6 Exception Request Statement having regard to the following guideline and NSW Land and Environment Court judgements which are relevant to the assessment of the request to vary development standards under Clause 4.6:

- The former Department of Planning and Infrastructure (DoPI) guide entitled “*Varying Development Standards: A Guide, August 2011*” (in particular the ‘five part test’ contained within the Guide);
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009* and *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*; and
- *Wehbe v Pittwater Council [2007] NSWLEC 827*.

## **2.0 Hornsby Local Environmental Plan 2013**

### **2.1 Subclause 4.6(1) – Flexibility and Better Outcomes**

Clause 4.6 of HLEP 2013 provides that development consent may be granted for development even though the development would contravene a development standard, in this case Clause 4.3 Height of buildings of HLEP 2013.

Subclause 4.6(1) of HLEP 2013 states the objectives of the clause as follows:

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

Our response to these provisions is contained within this Clause 4.6 Statement.

### **2.2 Subclause 4.6(2) – Consent may be granted**

Subclause 4.6(2) provides that:

- (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.*

This subclause provides Clause 4.6 of HLEP 2013 with the power to be utilised for variation of the development standard imposed by HLEP 2013. As such, the Clause 4.3 development standard of HLEP 2013 is not expressly excluded from the operation of clause 4.6 and accordingly, consent may be granted.

### **2.3 Subclause 4.6(3) – Written Request**

Subclause 4.6(3) relates to the making of a written request to justify an exception to a development standard and states:

- “(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.”*

Strict compliance with the development standard under Clause 4.3 is considered to be unreasonable and unnecessary in the circumstances of this case and it is considered that there are sufficient environmental planning grounds to justify the variation as set out below.

### **2.4 Subclause 4.6(4) – Written Request**

Subclause 4.6(4) provides that consent must not be granted for development that contravenes a development standard unless:

- “(a) the consent authority is satisfied that:*
  - (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.”*

Furthermore, subclause 4.6(5) provides that in deciding whether to grant concurrence, the 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 Secretary before granting concurrence.”*

The remainder of this written request for exception to the Clause 4.3 development standard of HLEP 2013 addresses the matters required under subclauses 4.6(4) and 4.6(5) of HLEP 2013.

## 2.5 The Nature of the Variation

The site is located with the 8.5m maximum building height area of the Height of Buildings Map of HLEP 2013 as shown below at **Figure 1**.

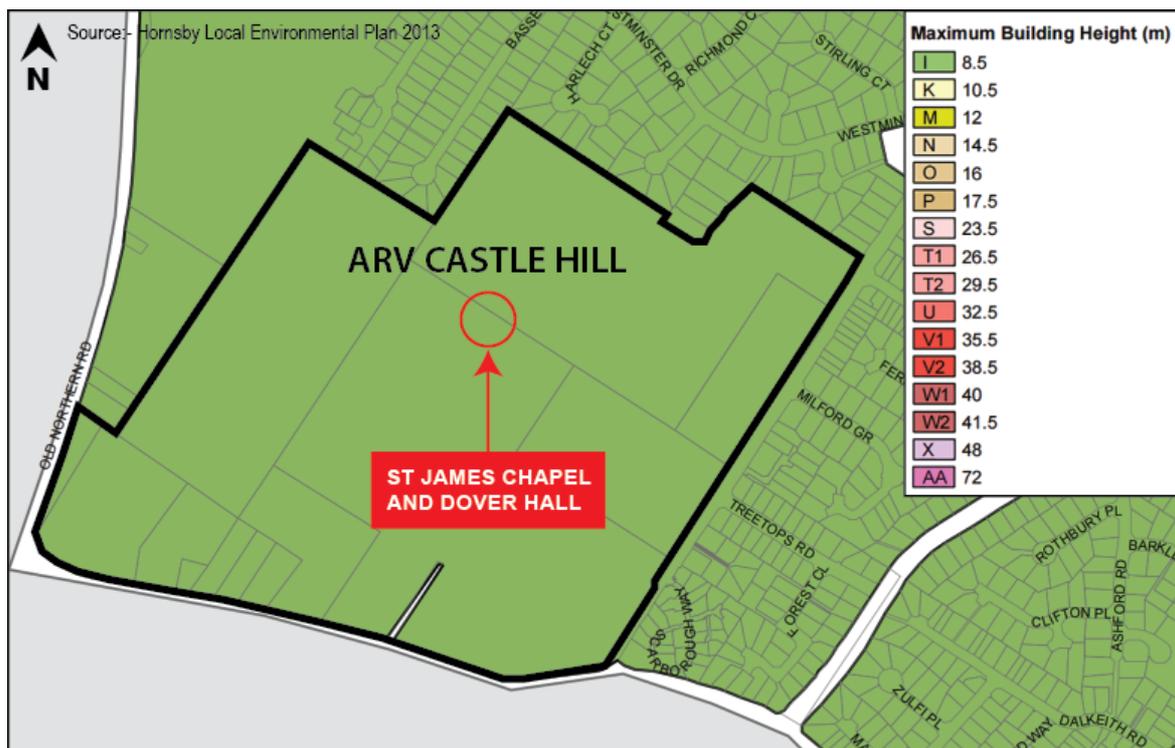


Figure 1 – HLEP 2013 Height of buildings Map (extract)

The subject site is located within the “I” 8.5m Maximum Building Height area under HLEP 2013. As can be seen in the extract of the Height of Buildings Map of HLEP 2013 above, all of the ACS Castle Hill site and the surrounding area is located within the “I” 8.5m Maximum Building Height area.

The proposed St James Chapel and Dover Hall varies in height from 7.75m at the building’s south west corner to 12.105m at the building’s north east corner. This variation in building height is attributable to the topography of the land falling towards the east and north east.

The spire has a height of 32m and is a deliberate design element that integrates with the buildings design and architecture and identifies the building as a church.

## 2.6 The Objectives of the Development Standard

The objective of the Clause 4.3 development standard is as follows:

- (a) *to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.*

## 2.7 The Objectives of the Zone

The Land Use Table of HLEP 2013 states the objectives of the R2 Low Density Residential Zone 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.*

## 2.8 The Grounds of the Objection

### Why the objective of the development standard is achieved:

The objective of the Clause 4.3 development standard is as follows:

- (a) *to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.*

The proposed St James Chapel and Dover Hall building is a replacement of the existing St James Chapel and Dover Hall building that is nearing the end of its economic life. The new building is in approximately the same position and is of similar size, height and capacity as the existing building. Furthermore, the proposed building will service the existing senior's community of ACS Castle Hill and provide similar services as the existing building.

The proposed St James Chapel and Dover Hall building varies in height from 7.75m at the building's south west corner to 12.105m at the building's north east corner. This variation in building height and also the non-compliance with the development standard is attributable to the topography of the land falling towards the east and north east. Given the inherent design of churches/chapels the main chamber must maintain its integrity by not stepping down the slope which has resulted in parts of the building breaching the 8.5m building height limit.

A spire is a common feature of a church and not uncommon in a residential context and often taller than surrounding houses. For the ACS village, it makes the religious hub of the village and retains a significant element of the villages' character that has become a familiar focal point of the village and as a much recognised icon.

The proposed (and existing) St James Chapel and Dover Hall building occupies a central position at the ACS Castle Hill site forming part of the central hub together with Wills Café, Lober House, bowling green, ACS Health Centre building and Community Centre building. As such, the proposed building does not immediately adjoin any ACS residential units and is also significantly removed from the boundaries of the ACS Castle Hill site, thereby ensuring that adverse amenity impacts upon surrounding residents and adjacent properties are negligible.

It is noted that the proposed building is in the vicinity of Lober House, an item of environmental heritage under Schedule 5 of HLEP 2013. A Heritage Impact Statement has been prepared by City Plan Heritage and concludes:

*“In conclusion, it is considered by City Plan Heritage that the proposed works, including the demolition of the existing St James Chapel and Dover Hall, and the construction of a new chapel and hall building, will result in no adverse impact to the heritage significance of the ARV Castle Hill Campus site or particular items of heritage significance located within the site. The proposed new building will improve upon the curtilage to Lober House and will enhance the setting of this historic building making it a more visible [sic] within the immediate complex opening up views to its primary façades. Furthermore, the replacement chapel design is of a high architectural and aesthetic quality and will positively contribute to the site. The new chapel and hall building will incorporate the existing church bell, stained glass windows and commemorative plaques hence maintaining connection with the existing building and its social values.*

*It is also noted that Council's heritage planner raised no concerns related to the proposed demolition and development as indicated in Section 1.1. The proposal demonstrates compliance with the existing controls regarding heritage conservation and is therefore recommended to Council for approval with the following recommendations:*

- *Should the existing St James Chapel hold any archives relating to the chapel building or its congregation, every effort should be made to retain and conserve these items;*
- *An archival recording should be conducted prior to demolition of the existing St James Chapel and Dover Hall building;*
- *An interpretation strategy should be prepared for the ARV Castle Hill Campus site and should include information about the new St James Chapel development and its predecessor.”*

Accordingly, the proposed building is considered appropriate within the context of ACS Castle Hill locality in terms of site constraints, development potential and infrastructure capacity. Therefore the objective of Clause 4.3 Height of buildings development standard is considered to be achieved.

### **Why the objectives of the R2 Low Density Residential zone are achieved**

The objectives of the R2 zone are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*

The first objective is not relevant to a place of public worship.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The existing and proposed St James Chapel and Dover Hall buildings represent the social and spiritual focal point of the ACS Castle Hill community. Accordingly, the proposed development meets the day to day social and spiritual needs of the residents of ACS Castle Hill.

Accordingly, it is considered that the proposed development satisfies the objectives of the R2 Low Density Residential zone under HLEP 2013.

### **Clause 4.6(3) considerations**

Clause 4.6(3) requires the consent authority to consider the written justification from the variation to 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.*

Compliance with Clause 4.3 development standard is considered to be unreasonable or unnecessary in the circumstances of this case. This is on account of the new St James Chapel and Dover Hall building being a replacement of existing buildings that are in approximately the same position and of similar size, height and capacity. Furthermore, the proposed building will service the existing senior's community of ACS Castle Hill and provide similar services as the existing building.

The proposed St James Chapel and Dover Hall building varies in height from 7.75m at the building's south west corner to 12.105m at the building's north east corner. This variation in building height and also the non-compliance with the development standard is attributable to the topography of the land falling towards the east and north east and the inherent design of churches/chapels requiring greater floor to ceiling heights, larger internal volume and a uniform floor plate. The spire at 32m matches the height of the current spire and therefore does not introduce a new element in the landscape of the village. It is simply a replacement of the current spire and its spiritual role to the village.

Views of the spire are predominantly from within the village. Distant glimpses of the spire will be possible from surrounding areas, but will be similar to the current situation and not result in any adverse visual impact.

Also, the proposed (and existing) St James Chapel and Dover Hall building occupies a central position at the ACS Castle Hill site forming part of the central hub together with Wills Café, Lober House, bowling green, ACS Health Centre building and Community Centre building. As such, the proposed building does not immediately adjoin any ACS residential units and is also significantly removed from the boundaries of the ACS Castle Hill site, thereby ensuring that adverse amenity impacts upon surrounding residents and adjacent properties are negligible.

In any event, many of the recently constructed residential and community buildings of ACS Castle Hill that were approved in DA/58/2012 as part of the Lober Square redevelopment, together with Lober House itself, are in excess of 8.5m in building height. In this respect, the ACS Health Centre building is 2-3 storeys in height, whilst the residential buildings on the north western side of Broughton Avenue are 3 and 4 storeys in height. As can be seen in **Figure 2**, Lober House achieves a roof building height of RL190.84, whilst the Lober 3 buildings that are currently under construction adjacent to St James Chapel and Dover Hall (to the south west) will achieve a roof building height of RL190.60. These buildings are significantly greater in height than the proposed St James Chapel and Dover Hall building that achieves a roof building height of RL184.140 (excluding the spire). Therefore, the main structure of the proposed building is in keeping with the scale of recently approved development and the emerging character of the locality.

Landscape Masterplan

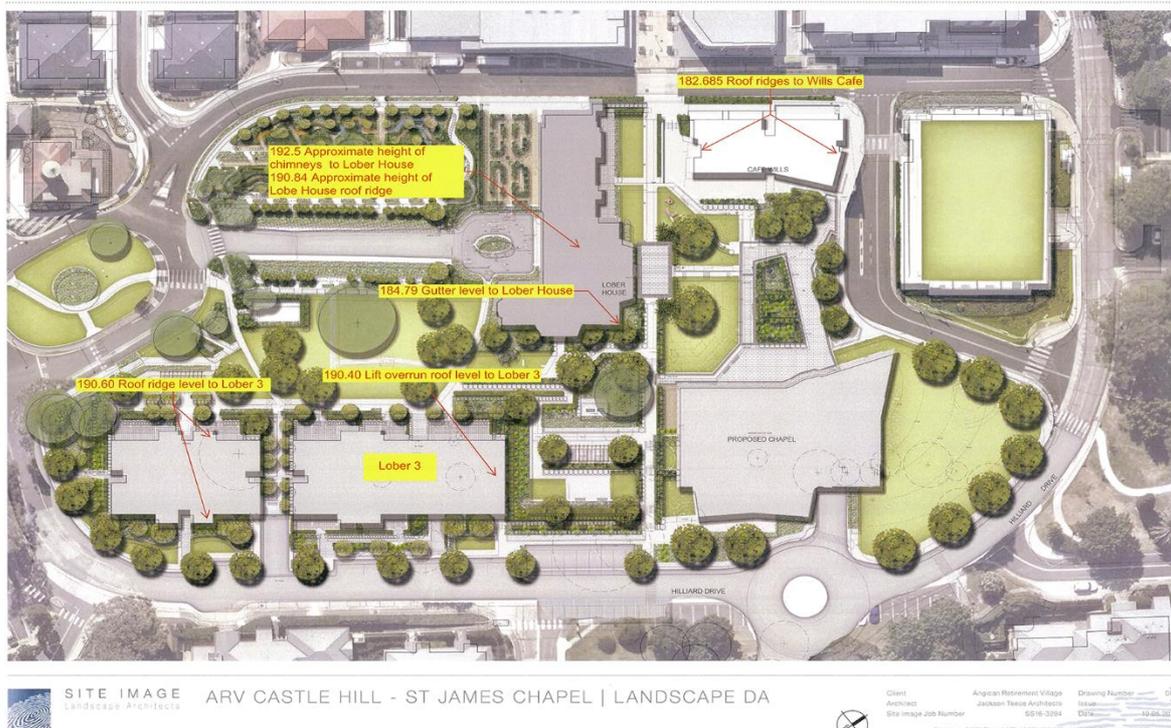


Figure 2

Strict compliance with this development standard is therefore both unreasonable and unnecessary in this instance and would result in a scale that is not in keeping with the emerging character and if the spire was reduced to a compliant height it would diminish the focal role of the chapel and result in an inferior design outcome for no discernible planning purpose.

**2.9 Secretary’s Considerations**

As indicated above, subclause 4.6(5) of the LEP also requires the Secretary of the NSW Department of Planning and Environment (DoPE), in deciding whether to grant concurrence, to consider the following:

“(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,”

The departure does not give rise to any matter of State or regional significance.

“(b) the public benefit of maintaining the development standard,”

The public benefit of strictly maintaining this development standard in the context of the ACS Castle Hill site is considered to be nil. Indeed, strictly maintaining the 8.5m maximum building height development standard is considered to be detrimental to the surrounding senior’s community that the proposed St James Chapel and Dover Hall building will service. An 8.5m building height compliant design in this location is likely to severely limit the capacity of the proposed building and result in an inferior and unsuitable design for certainly the most important building and focal point for the social and spiritual life of the residents of ACS Castle Hill.

Accordingly, the public benefit of maintaining the development standard in this instance has been demonstrated to not be present.

*“(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.”*

There are no other matters that are considered relevant in order for Council to exercise its concurrence from the Secretary to vary the development standard. It is noted that Council has delegated authority from the DoPE (Secretary) to vary the development standard under HLEP 2013.

### **3.0 DoPI Guideline**

The Guideline contains a ‘five part test’ established by the NSW Land and Environment Court. Having regard to the arguments presented above, we have also considered the five part test, as set out below.

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standards.*

As discussed above, the objectives of the development standard under Clause 4.3 of HLEP 2013 are capable of being achieved by the proposed development.

2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.*

Whilst the objectives of the development standard are stated in HLEP 2013, the specific purpose of the development standard as it relates to R2 zoned land is considered to be to control building height and scale within a typical low density residential locality so as to minimise adverse amenity and streetscape impacts.

In this instance, the proposed St James Chapel and Dover Hall building is located in a central position within the ACS Castle Hill site forming part of the central hub together with Wills Café, Lober House, bowling green, ACS Health Centre building and Community Centre building. As such, the proposed building is not located within a typical low density residential locality, does not immediately adjoin any ACS residential units and is also significantly removed from the boundaries of the ACS Castle Hill site, thereby ensuring that adverse visual and amenity impacts upon surrounding residents and adjacent properties are negligible or nil.

Indeed, the proposed St James Chapel and Dover Hall building represents the social and spiritual focal point of the ACS Castle Hill community. Therefore it is considered entirely appropriate to retain the spire’s height and to provide adequate scale to a building of such key importance to the surrounding community within the ACS Castle Hill site.

Therefore in the opinion of DFP, the purpose of the development standard within the R2 zone does not have particular relevance in this instance.

3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance unreasonable.*

The purpose of the development standard as it relates to the R2 zone is not considered to have particular relevance in this instance.

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.*

We are not aware of the development standard having been abandoned by Council due to development consents being granted that depart from the development standard in the R2 zone under HLEP 2013 in this locality.

However, on 26 July 2012 the JRPP approved DA 58/2012 relating to the Lober Square redevelopment for residential and community buildings within the vicinity of the proposed building. The approved buildings are up to 4 storeys in height, significantly in excess of 8.5m development standard of (what was then) draft HLEP 2013. As the draft LEP was on public exhibition at the time of the DA determination it was a relevant matter for consideration under s79C of the Environmental Planning and Assessment Act 1979.

As such, compliance with the development standard is considered unnecessary and unreasonable given the approval of DA 58/2012 that supported an emerging future character for buildings within the vicinity of the proposed building that achieve building heights of up to 4 storeys.

5. *The compliance with the development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

The R3 Medium Density Residential zone under HLEP 2013 is considered a more appropriate land use zoning for the ACS Castle Hill site given that recent seniors housing developments on the site have included 3 and 4 storey residential flat buildings and the current, and emerging, character of the village is a mix of medium density seniors housing. Likewise, the 8.5m maximum building height development standard (that applies to all R2 zoned land in Hornsby Shire) is not considered appropriate for the ACS Castle Hill site considering the scale of buildings (both existing and approved) for the reasons discussed in this statement.

#### **4.0 Conclusion**

Clause 4.3 Height of buildings of HLEP 2013 is a development standard that applies a maximum building height of 8.5m to the ACS Castle Hill site and surrounding residential area.

The proposed St James Chapel and Dover Hall building exceeds the 8.5m building height development standard across a majority of the proposed building. The proposed building varies in height from 7.75m at the building's south west corner to 12.105m at the building's north east corner. This variation in building height and also the non-compliance with the development standard is attributable to the topography of the land falling towards the east and north east and the inherent design of churches/chapels requiring greater floor to ceiling heights, larger internal volume and a uniform floor plate.

The spire matches the height of the existing spire and is a replacement of a built form element that is familiar to the villages residential community and makes the spiritual hub of the village.

The new St James Chapel and Dover Hall building is in approximately the same position and of similar size, height and capacity as the existing building. Furthermore, the proposed building will service the existing senior's community of ACS Castle Hill and provide similar services as the existing building.

The proposed (and existing) St James Chapel and Dover Hall building occupies a central position at the ACS Castle Hill site forming part of the central hub together with Wills Café, Lober House, bowling green, ACS Health Centre building and Community Centre building. As such, the proposed building does not immediately adjoin any ACS residential units and is also significantly removed from the boundaries of the ACS Castle Hill site, thereby ensuring that adverse amenity impacts upon surrounding residents and adjacent properties are negligible.



Indeed, the proposed St James Chapel and Dover Hall building represents the social and spiritual focal point of the ACS Castle Hill community. Therefore it is considered entirely appropriate to provide adequate scale to a building of such key importance to the surrounding community within the ACS Castle Hill site.

It is noted that on 26 July 2012 the JRPP approved DA 58/2012 relating to the Lober Square redevelopment for residential and community buildings within the vicinity of the proposed building. The approved buildings are up to 4 storeys in height, significantly in excess of 8.5m development standard of (what was then) draft HLEP 2013. As the draft LEP was on public exhibition at the time of the DA determination it was a relevant matter for consideration under s79C of the Environment Planning and Assessment Act 1979. As such, the emerging future character of buildings within the vicinity of the proposed building achieve building heights of up to 4 storeys consistent with the scale of the proposed development.

Therefore, strict compliance with this development standard is both unreasonable and unnecessary and there are sufficient environmental planning grounds to justify a variation to building height in this instance as compliance would result in an inferior design outcome for no discernible planning purpose. Accordingly, the justification within this written request is considered to be well founded.

Should you have any queries please do not hesitate to contact the undersigned.

Yours faithfully  
**DFP PLANNING PTY LTD**

A handwritten signature in black ink, appearing to read 'D. Kettle'.

**DAVID KETTLE**  
**DIRECTOR**

[dkettle@dfplanning.com.au](mailto:dkettle@dfplanning.com.au)

Reviewed:

A handwritten signature in black ink, appearing to read 'E. R. Hart'.