

Introduction

This Report contains a variation to the development standards in accordance with Clause 4.6 of the Botany Bay Local Environmental Plan 2013 (LEP), which provides the framework for consideration of proposed variations to development standards.

The variation sought under Clause 4.6 of the Botany Bay LEP 2013 has been prepared in accordance with the Land and Environment Court Ruling *Initial action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*. The case further clarified the correct approach of Clause 4.6 requests including that the Clause does not require a development with a variation to have a better or neutral outcome.

The proposal seeks to vary the building height development standard, which is set out in Clause 4.3 of the LEP. The proposed variation to the height standard has arose, due to the road level being elevated above the flood level and the requirement for the building to be constructed above the nominated freeboard level.

Definition of Development Standard

Section 1.4 of the Environmental Planning and Assessment Act 1979 (EPA Act) lists the items (not limited to) that are considered to be development standards, and are listed below.

- (a) *the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) *the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) *the cubic content or floor space of a building,*
- (e) *the intensity or density of the use of any land, building or work,*
- (f) *the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) *the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) *the volume, nature and type of traffic generated by the development,*
- (i) *road patterns,*
- (j) *drainage,*
- (k) *the carrying out of earthworks,*
- (l) *the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) *the provision of services, facilities and amenities demanded by development,*
- (n) *the emission of pollution and means for its prevention or control or mitigation, and*
- (o) *such other matters as may be prescribed."*

The proposed variation of the height of buildings under Clause 4.3 of the LEP is a development standard for the purposes of the EPA Act and Clause 4.6 of Botany Bay Local Environmental Plan 2013 (LEP).

Proposed Variation

The proposal seeks variation to Clause 4.3 of the LEP, which states:

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

The Height of Buildings Map nominates a maximum height of 42 metres for the site. Building Height is defined in the LEP as follows:

“building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.”

Extent of Variation

a) Existing approval

Development Application DA-14/96/02 and DA-14/96/07 for a Stage 1 concept proposal to allow for the comprehensive redevelopment of the site for mixed use was approved by the Land and Environment Court on 7 August 2015. Condition 15 of the consent states the following:

(15)(a) The maximum approved building heights as depicted on DWG NO.A005 Building heights Plan Prepared by PTW dated 22 February 2018, as shown in Table 5. (DA-14/96/02).

TABLE 1 : APPROVED BUILDING HEIGHTS

Block No.	Tower No.	Maximum Podium Height	Maximum Building Height	Maximum Plant Room Height
Urban Block 5C	B1, B2	15.3m (RL37.3)	40.5m (RL62.5)	43.1m (RL65.1)
	B4, B5	15.3m (RL37.3)	52.9m (RL74.9)	55.5m (RL77.5)
	B3, B6	15.3m (RL37.3)	65.3m (RL87.3)	67.9 (RL89.9)

b) Subject proposal

The proposed development involves the construction of a mixed use development comprising a 5 storey podium with towers above. The towers range in height from 16 to 21 storeys (maximum building height of 68.8m or RL90.5m). The residential towers sit above the maximum height limit specified by BBLEP and as such the proposal is inconsistent with Clause 4.3 of the LEP. The Development Application proposes the following heights:

TABLE 2 : PROPOSED PODIUM HEIGHTS

Block No.	Tower No.	Approved Podium Height	Proposed Podium Height	Variation	
Urban Block 5C	B1, B2b	15.3m (RL37.3)	15.9m (RL37.9)	+0.6m	2.5%
	B4, B5	15.3m (RL37.3)	15.9m (RL37.9)	+0.6m	2.5%
	B3, B6	15.3m (RL37.3)	15.9m (RL37.9)	+0.6m	2.5%

TABLE 3 : PROPOSED BUILDING HEIGHTS

Block No.	Tower No.	Approved Building Height	Proposed Building Height	Variation	
Urban Block 5C	B1, B2b	40.5m (RL62.5)	40.7m (RL62.7)	+0.2m	0.5%
	B4, B5	52.9m (RL74.9)	53.2m (RL75.2)	+0.3m	0.6%
	B3, B6	65.3m (RL87.3)	65.8m (RL87.8)	+0.5m	0.8%

TABLE 4 : PROPOSED PLANT ROOM HEIGHTS

Block No.	Tower No.	Approved Plant Room Height	Proposed Plant Room Height	Variation	
Urban Block 5C	B1, B2b	43.1m (RL65.1)	43.4m (RL65.4)	+0.3m	0.7%
	B4, B5	55.5m (RL77.5)	55.9m (RL77.9)	+0.4m	0.7%
	B3, B6	67.9 (RL89.9)	68.5m (RL90.5)	+0.6m	0.9%

The Approved Masterplan and Proposed building heights are shown on the elevations attached as part of this Clause 4.6 Variation (**Refer to Annexure 2**). The blue dotted line represents the Approved Masterplan building height and the green dotted line represents the proposed building height. As can be see, the proposed height variation is a slight increase in height when compared to the originally approved building height.

Condition 15 of DA-14/96/02 ad DA-14/96/07 identifies the the maximum approved building heights for the Stage 1 concept proposal to allow for the comprehensive redevelopment of the site for mixed use.

As shown in the Table 2-4 above, across all heights the variation sought is between 0.5% and 2.5% of the approved Building Height contained within DA-14/96/02 and DA-14/96/07. This is a slight increase in height when compared to the originally approved building heights in Table 1.

It should be noted, the approved Masterplan - Development Application DA-14/96/02 and DA-14/96/07 didn't take into consideration the topography of the site (particularly how different sections of the road slope) resulting in the flood level being higher than the road.

The proposal generally seeks to maintain the maximum height of the overall development with a minor increase proposed to respond to flood management on the site. As part of this proposal we have slightly increased the heights of the proposed buildings. The slight increase in height will ensure that buildings are being constructed above the flood level and still achieving the nominated freeboard level. This slight increase delivers a high level of safety and amenity for all residents and provides a margin of safety against unknown flood risk.

As identified within Condition 9 of DA-14/96/02 and DA-14/96/07, the Stage 1 concept proposal was approved with a restrictive covenant. The condition states:

“Condition 9 does not permit the variance of GFA, FSR from the maximum stated in Table 4; or variance from the maximum Building Height from the maximum stated in Table 5; or variance for Unit Mix as stated in Table 8. Any variation within the terms of the covenant must be justified via a clause 4.6 variation and agreed to by the consent authority. This condition only varies the wording of the covenant condition to allow for future variations due to construction requirements, within the terms of the covenant. All variations will still need to be assessed on merit. Council will not unreasonably withhold agreement to modify the covenant for more substantive changes following merit based assessment”.

The proposed variation to the height standard has arisen, due to the road level being elevated above the flood level and the requirement for the building to be constructed above the nominated freeboard level. In short, the proposed variation to the height standard is a construction requirement and will need to be assessed on merit.

Clause 4.6(3)(a) – Is the Development Standard Unreasonable or Unnecessary?

In Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC118, 5 matters were listed to demonstrate whether compliance of a development standard was unreasonable or unnecessary, as established in Wehbe v Pittwater Council (2007) NSWLEC 827. This case also stipulated that all 5 methods may not need demonstrate compliance is necessary where relevant. Each of the matters are addressed below.

1. 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 at [42] and [43].

The proposed heights were developed through an extensive master planning process and have been approved as part of a Stage 1 Development Consent. It would therefore be unnecessary and unreasonable to require strict compliance with the standard in this Stage 2 DA.

A response to each of the objectives of the height of building control has been provided on pgs 8-9.

2. Establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: *Wehbe v Pittwater Council* at [45].

The proposed development is able to demonstrate that strict compliance with the numerical height development standard is unnecessary in the particular circumstances of the proposal, as the development is able to:

- Meet the objectives of the development standard as outlined in Section 8 of this report;
- Meet other built form development standards;
- The approved Masterplan - Development Application DA-14/96/02 and DA-14/96/07 did not take into consideration the topography of the site (particularly how different sections of the road slope) resulting in the flood level being higher than the road. The height variation responds to the site's levels due to the site's topography.

3. Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: *Wehbe v Pittwater Council* at [46].

The justification for the breach in the height limit is based on the preferred urban design outcome for the Pagewood Green site as considered and approved under the Stage 1 Masterplan Consent. The proposed building heights were approved following consideration of a comprehensive site analysis and review of the site attributes and surrounding context.

4. 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 v Pittwater Council* at [47].

The proposed heights were developed through an extensive master planning process and have been approved as part of a Stage 1 Development Consent.

The potential to exceed the nominated LEP building heights for the Bunnerong Road site was thoroughly explored in the consideration of the Stage 1 masterplan proposal. As part of that assessment it was accepted that the UB5C site is suitable for building taller than the LEP controls permit.

5. 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 v Pittwater Council* at [48].

As stated earlier in the report, The justification for the breach in the height limit is based on the preferred urban design outcome for the Pagewood Green site as considered and approved under the Stage 1 Masterplan Consent.

Through the Stage 1 masterplan application the Pagewood Green site has been assessed as being suitable for more intensive development than would normally be achievable under the LEP, noting the building height limits that apply.

Clause 4.6(3)(b) – Is there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC118, the written request under Clause 4.6 must be “environmental planning grounds” by their nature established under 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.

a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources,

The proposed additional height is considered to be acceptable particularly when balanced against the benefits of the project which are:

- The proposal is entirely consistent with the maximum building height limits allowable by the approved Stage 1 masterplan for this part of the Pagewood Green site.
- Strict compliance with the height controls would result in a poorer design outcome for the site as it would prevent the delivery of the Pagewood Green site as envisaged by the Stage 1 masterplan consent.
- The bulk and scale of the proposed development is consistent with the adjoining large scale regional retail facility (Westfield Eastgardens) to the south and the other developments approved within the Pagewood Green site, being Urban Blocks 5W, 5E and 4.
- The proposed development is consistent with the intent of Clause 4.3 of the LEP which is to minimise adverse amenity impacts on neighbouring residential properties and to support the desired future character of the area.
- The proposal will not result in the loss of views, nor will it result in adverse amenity impacts and satisfies all relevant amenity criteria of the ADG, including access to sunlight, natural ventilation and privacy.

b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

The proposed variation to the height development standard does not conflict with any matters of State or regional environmental planning significance, nor does it conflict with any State Planning Policies or Ministerial directives. The significance of the non-

compliance is acceptable in the context of the Pagewood Green Development as it related to flooding.

c) to promote the orderly and economic use and development of land,

The proposed development and additional height has been designed to provide for the highest and best use of the land, which ensures the orderly and economic use and development of land.

The proposed height variation is consistent with the Desired Future Character, without adverse external impacts.

d) to promote the delivery and maintenance of affordable housing,

Not applicable. The proposed development has the opportunity to increase the supply and diversity of residential accommodation within the Pagewood Green Development.

e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,

The additional height will have no impacts in respect of threats to native animals and plants, ecological communities and their habitats.

f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

The subject site contains no Aboriginal cultural heritage. The additional floor space will have no impacts in this respect.

g) to promote good design and amenity of the built environment,

The additional height proposed will ensure that buildings are being constructed above the flood level and still achieving the nominated freeboard level. The increase in height will provide a high level of safety and amenity for all residents and provides a margin of safety against unknown flood risk.

h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

The proposed buildings and additional height will be constructed to the required standards, including the Building Code of Australia, to ensure the protection of the health and safety of their occupants.

i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

The additional height will have no impacts on the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State.

- j) to provide increased opportunity for community participation in environmental planning and assessment.

The Development Application was lodged to Council on the 11 January 2018 and was placed on public exhibition from the 24 January 2018 to 13 February 2018.

Clause 4.6(4)(a)(i) – the applicant’s written request has adequately addressed the matters required to be demonstrated by subClause (3)

This written justification has been carried out in accordance with the most recent court cast “*Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC11*” demonstrating the variation of the development standard is acceptable.

Clause 4.6(4)(a)(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

From the case *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC1*, the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. Further the case states that “*it is the It is the proposed development’s consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest*”.

A response to each of the objectives of the height of building control in Clause 4.3 follows:

Objectives	Proposed Development
(a) To ensure that the built form of Botany Bay develops in a coordinated and cohesive manner.	Height responds to surrounding development and land uses. The subject site is not located in the vicinity of residential areas.
(b) To ensure the taller buildings are appropriately located.	Consistent with the Stage 1 masterplan consent for the Pagewood Green site, the proposal will facilitate the development of the tallest buildings within the southern portion of the site adjacent to Westfield Eastgardens, allowing for the gradual transition in height down to the north where the Bunnerong Road site interfaces with residential uses.

Objectives	Proposed Development
(c) To ensure that building height is consistent with the desired future character of an area.	Consistent with the desired future character of the area as presented in Part 9D of the BBDCP 2013, the proposal provides new residential uses complemented by public open space and mixed use development across the wider Pagewood Green site.
(d) To minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.	The proposal allows for a high level of residential amenity and complies with the requirements of the Stage 1 masterplan consent and the ADG with respect to solar access and cross ventilation. Given the site's separation from existing residential uses, not adverse overshadowing will occur as a result of the proposal.
(e) To ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities.	The proposed development will make a positive contribution to the streetscape. Buildings have been designed to a high standard and comprise good quality materials and finishes.

Clause 4.6(4)(b) - the concurrence of the Secretary has been obtained.

Under Clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6 of the LEP, subject to the conditions in the table in the notice (**Annexure 1**)

The height variation sought is minor in nature between 0.5% and 2.5% of the approved Building Height contained within DA-14/96/02 ad DA-14/96/07. The maximum variation sought is 10% above the development standard, therefore this slight variation can be approved by Council.

Conclusion

In conclusion, the assessment above provides a sound basis that justifies the flexible application of the development standard for height in this instance. As a consequence it is our strong view that the proposed variation to the Height of Building development standard will result a better outcome as required by the objectives of Clause 4.6. These have been documented in detail but are summarised as follows:

- The variation sought is minor in nature between 0.5% and 2.5% of the approved Building Height contained within DA-14/96/02 ad DA-14/96/07;
- The slight increase in height will ensure that buildings are being constructed above the flood level and still achieving the nominated freeboard level;
- The increase in height delivers a high level of safety and amenity for all residents and provides a margin of safety against unknown flood risk;
- The slight height variation being sort provides a reasonable and sensitive transition with lower density residential areas to the east and north of the site;
- Additional height has been placed in an appropriate location on the building, without creating any greater adverse impacts upon surrounding properties, in terms of:
 - overshadowing,
 - view loss,
 - visual impact, or
 - privacy;
- The slight height variation is required to ensure that the sites levels are consistent with the sites topography;
- The proposed height variation is consistency with the Desired Future Character, The exceedance is extremely minor and does not add additional bulk to the building form. The additional height would be indiscernible when viewed at street level and in the context of the UB5C development as a whole.

ANNEXURE 1: CIRCULAR PS18-003 SECRETARY CONCURRENCE



Circular	PS 18-003
Issued	21 February 2018
Related	Revokes PS17-006 (December 2017)

Variations to development standards

This circular is to advise consent authorities of arrangements for when the Secretary's concurrence to vary development standards may be assumed (including when council or its Independent Hearing and Assessment Panel are to determine applications when development standards are varied), and clarify requirements around reporting and record keeping where that concurrence has been assumed.

Overview of assumed concurrence

This circular replaces Planning Circular PS 17-006 and issues revised assumed concurrence, governance and reporting requirements for consent authorities.

All consent authorities may assume the Secretary's concurrence under:

- clause 4.6 of a local environmental plan that adopts the *Standard Instrument (Local Environmental Plans) Order 2006* or any other provision of an environmental planning instrument to the same effect, or
- *State Environmental Planning Policy No 1 – Development Standards*.

However the assumed concurrence is subject to conditions (see below).

The assumed concurrence notice takes effect immediately and applies to pending development applications.

Any existing variation agreed to by the Secretary of Planning and Environment to a previous notice will continue to have effect under the attached notice.

Assumed concurrence conditions

Lot size standards for dwellings in rural areas

The Secretary's concurrence may not be assumed for a development standard relating to the minimum lot size required for erection of a dwelling on land in one of the following land use zones, if the lot is less than 90% of the required minimum lot size:

- Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition
- Zone R5 Large Lot Residential
- Zone E2 Environmental Conservation, Zone E3 Environmental Management, Zone E4 Environmental Living

- a land use zone that is equivalent to one of the above land use zones

This condition will only apply to local and regionally significant development.

Numerical and non-numerical development standards

The Secretary's concurrence may not be assumed by a delegate of council if:

- the development contravenes a numerical standard by greater than 10%; or
- the variation is to a non-numerical standard.

This restriction does not apply to decisions made by independent hearing and assessment panels, formally known as local planning panels, who exercise consent authority functions on behalf of councils, but are not legally delegates of the council (see section 231, to be renumbered 4.8 from 1 March 2018).

The purpose of the restriction on assumed concurrence for variations of numerical and non-numerical standards applying to delegates is to ensure that variations of this nature are considered by the council or its independent hearing and assessment panel and that they are subject to greater public scrutiny than decisions made by council staff under delegation.

In all other circumstances, delegates of a consent authority may assume the Secretary's concurrence in accordance with the attached written notice.

Independent hearing and assessment panels

From 1 March 2018, councils in Sydney and Wollongong will be required to have independent hearing and assessment panels that will determine development applications on behalf of councils (see section 231, to be renumbered section 4.8 from 1 March 2018).

The attached notice allows independent hearing and assessment panels to assume the Secretary's concurrence because they are exercising the council's functions as a consent authority.

Independent hearing and assessment panels established by councils before 1 March 2018 also make decisions on behalf of councils. The attached notice applies to existing panels in the same way as it will apply to panels established after 1 March 2018.

Regionally significant development

Sydney district and regional planning panels may also assume the Secretary's concurrence where development standards will be contravened.

The restriction on delegates determining applications involving numerical or non-numerical standards does not apply to all regionally significant development. This is because all regionally significant development is determined by a panel and is not delegated to council staff.

However, the restriction on assuming concurrence to vary lot size standards for dwellings in rural areas will continue to apply to regionally significant development. The Secretary's concurrence will need to be obtained for these proposals in the same way as it would for local development.

State significant development and development where a Minister is the consent authority

Consent authorities for State significant development (SSD) may also assume the Secretary's concurrence where development standards will be contravened. This arrangement also applies to other development for which a Minister is the consent authority for the same reasons.

Any matters arising from contravening development standards will be dealt with in Departmental assessment reports.

The restriction on assuming concurrence to vary lot size standards for dwellings in rural areas will not apply to SSD or where a Minister is the consent authority for the same reasons.

Notification of assumed concurrence

Under clause 64 of the *Environmental Planning and Assessment Regulation 2000*, consent authorities are notified that they may assume the Secretary's concurrence for exceptions to development standards for applications made under clause 4.6 of the SILEP (or any other provision of an environmental planning instrument to the same effect), or clause 6 of SEPP 1.

The notice takes effect on the day that it is published on the Department of Planning's website (i.e. the date of issue of this circular) and applies to pending development applications.

Procedural and reporting requirements

In order to ensure transparency and integrity in the planning framework the below Departmental monitoring and reporting measures must be followed when development standards are being varied:

- Proposed variations to development standards cannot be considered without a written application objecting to the development standard and dealing with the matters required to be addressed by the relevant instrument.
- A publicly available online register of all variations to development standards approved by the consent authority or its delegates is to be established and maintained. This register must include the development application number and description, the property address, the standard to be varied and the extent of the variation.
- A report of all variations approved (including under delegation) must be submitted to developmentstandards@planning.nsw.gov.au within 4 weeks of the end of each quarter (ie March, June, September and December) in the form provided by the Department.
- A report of all variations approved under delegation from a council must be provided to a meeting of the council meeting at least once each quarter.

Councils are to ensure these procedures and reporting requirements are carried out on behalf of Independent Hearing and Assessment Panels and Sydney district or regional planning panels.

Audit

The Department will continue to carry out random audits to ensure the monitoring and reporting measures are complied with. The Department and the NSW Independent Commission Against Corruption will continue to review and refine the audit strategy.

Should ongoing non-compliance be identified with one or more consent authorities, the Secretary will consider revoking the notice allowing concurrence to be assumed, either generally for a consent authority or for a specific type of development.

Further information

A Guide on Varying Development Standards 2011 is available to assist applicants and councils on the procedures for managing SEPP 1 and clause 4.6 applications to vary standards.

Links to SEPP 1 and the Standard Instrument can be found on the NSW Legislation website at: www.legislation.nsw.gov.au

For further information please contact the Department of Planning and Environment's information centre on 1300 305 695.

Department of Planning and Environment circulars are available at:

www.planning.nsw.gov.au/circulars

Authorised by:

**Carolyn McNally
Secretary**

Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000

Assumed concurrence notice

I, Carolyn McNally, Secretary of the Department of Planning and Environment, give the following notice to all consent authorities under clause 64 of the *Environmental Planning and Assessment Regulation 2000*.

Notice

All consent authorities may assume my concurrence, subject to the conditions set out in the table below, where it is required under:

- clause 4.6 of a local environmental plan that adopts the *Standard Instrument (Local Environmental Plans) Order 2006* or any other provision of an environmental planning instrument to the same effect, or
- *State Environmental Planning Policy No 1 – Development Standards*.

No.	Conditions
1	<p>Concurrence may not be assumed for a development that contravenes a development standard relating to the minimum lot size required for the erection of a dwelling on land in one of the following land use zones, if the variation is greater than 10% of the required minimum lot size:</p> <ul style="list-style-type: none">– Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition– Zone R5 Large Lot Residential– Zone E2 Environmental Conservation, Zone E3 Environmental Management, Zone E4 Environmental Living– a land use zone that is equivalent to one of the above land use zones <p>This condition does not apply to State significant development or development for which a Minister is the consent authority</p>
2	<p>Concurrence may not be assumed for the following development, if the function of determining the development application is exercised by a delegate of the consent authority:</p> <ul style="list-style-type: none">– development that contravenes a numerical development standard by more than 10%– development that contravenes a non-numerical development standard <p>Note. Local planning panels constituted under the <i>Environmental Planning and Assessment Act 1979</i> exercise consent authority functions on behalf a council and are not delegates of the council</p> <p>This condition does not apply to State significant development, regionally significant development or development for which a Minister is the consent authority</p>

This notice takes effect on the day that it is published on the Department of Planning's website and applies to development applications made (but not determined) before it takes effect.

The previous notice to assume my concurrence contained in planning system circular PS 17-006 *Variations to development standards*, issued 15 December 2017 is revoked by this notice. However, any variation to a previous notice continues to have effect as if it were a variation to this notice.

Dated: 21 February 2018



Carolyn McNally
Secretary, Department of Planning and Environment

**ANNEXURE 2: APPROVED MASTERPLAN AND PROPOSED BUILDING HEIGHTS
ELEVATIONS**