

Amended Statement of Environmental Effects

Section 4.55 (1A) Application

5 Oscar Place, Eastgardens (Urban Building 5C)

Modifications to the internal layout of the approved building and unit mix changes in Building D.

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1 Introduction

This application has been prepared by Karimbla Constructions Services (NSW) Pty Ltd to support a Section 4.55(1A) modification application to Bayside Council.

Throughout 2019 Karimbla Constructions Services (NSW) Pty Ltd spent time with the Bayside City Council staff, Bayside Local Planning Panel and Sydney Eastern City Planning Panel to convert Building D to Serviced Apartments, with final approval being received in December 2019 and February 2020.

Unbeknown since December 2019, the Coronavirus (CV-19) evolved, and as everyone knows has all but collapsed the entire tourist and business travel industry, with severe loss of employment and social upheaval with no sign of recovery anytime soon.

International borders are not opening anytime soon, with announcements that until there is a vaccine, arrivals into Australia will require quarantining, which effectively closes the border to international visitors that stay at out serviced apartments and hotels.

The pandemic has left everyone blind-sided and leaves us with no other option but to convert Building D back to a residential use, which was never our intention. In fact, there was national and international marketing of the Pagewood Serviced Apartment Site late last year.

Unfortunately, and with much regret, we have to change Building D back to residential from Serviced Apartments. This merely modifies the current the existing Residential Approval (DA2018/1003) unit layouts of some units and reinstates 3 units within the approved Port-Cochere area of the serviced apartment approval.

In a separate Application to the approved Masterplan (DA2014/96), all reference to serviced apartments will be removed.

The changes to the approvals are detailed in this report, and in summary the unit mix and unit numbers continue to comply with the approved masterplan.

2 Site Description

2.1 The Site

The subject site is located at 5 Oscar Place, Eastgardens (formerly 130-150 Bunnerong Road, Eastgardens) and is legally described as Lot 22 in DP 1242288. The location of the site is shown in **Figure 1** below.



Figure 1 Location Plan

The site is a rectangular shaped allotment with an area of approximately 13,090 sqm and is located within a broader site that comprises an L-shaped parcel of land with an area of 103,547 sqm.

The site has frontages to Oscar Place to the north, Westfield Drive to the south, Studio Drive to the east and Finch Drive to the west. Vehicle access to the site is gained from Westfield Drive, entry into the approved development will be through the car park entry from Finch Drive.

2.2 Surrounding Development

The surrounding land uses in the vicinity of the sites comprise:

- North: Low density residential uses. Pagewood shops are located to the north-east.
- East: Low density residential uses.
- South: Westfield Eastgardens shopping centre. The servicing area of the shopping centre borders the site's southern boundary. Commercial and industrial uses are located further to the south-west.
- West: Bonnie Doon Golf Course and associated club house.

An aerial of the subject site that shows the surrounding area is shown in **Figure 2** below.

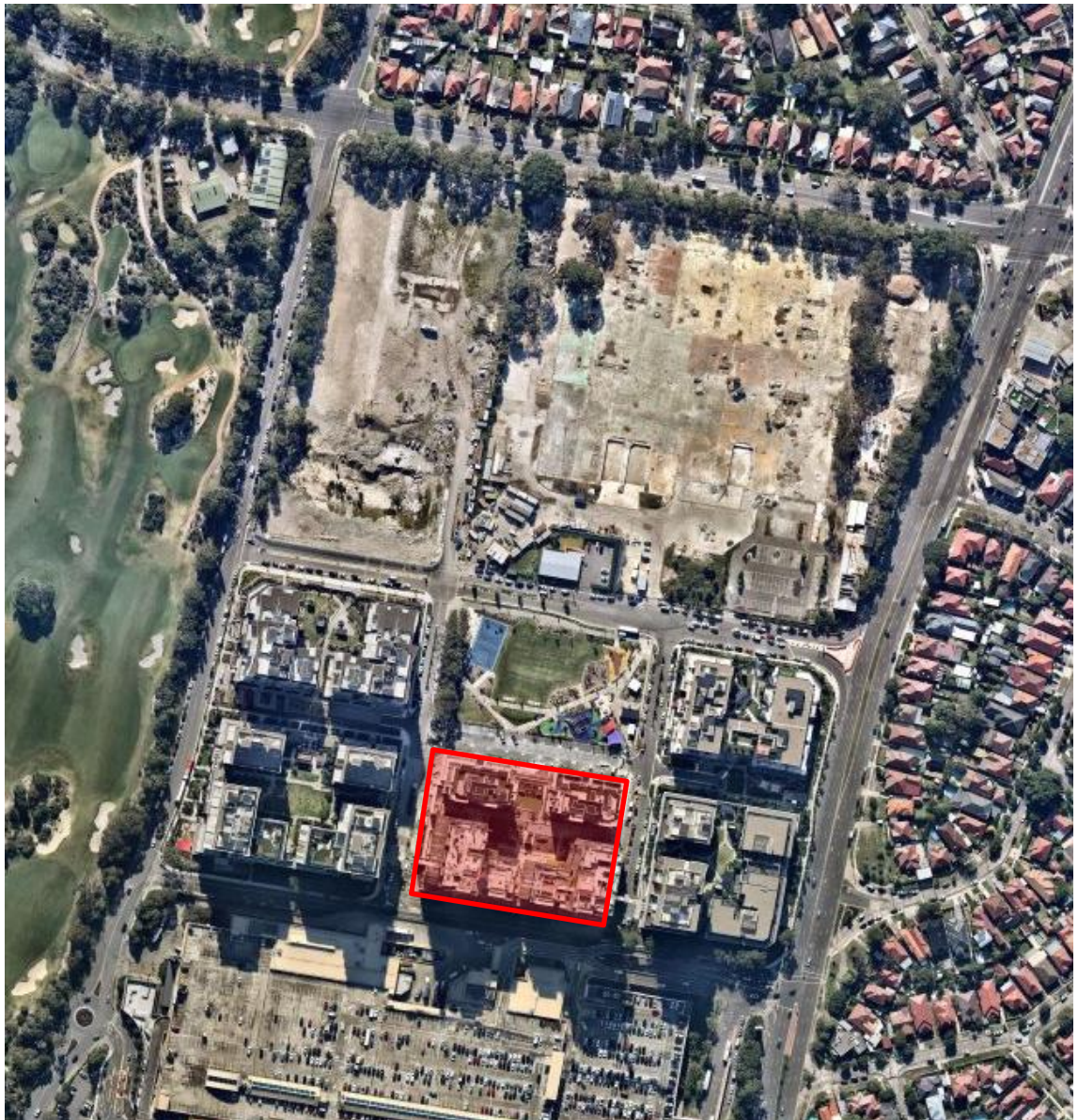


Figure 2 Aerial Site Plan

2.3 Existing Consents

On 29 November 2018, the Sydney Eastern City Planning Panel granted consent (DA2018/1003) for the construction of a mixed-use development. Specifically, development consent was granted for:

Construction of a mixed-use development comprising of four (4) residential towers ranging between 13 and 21 storeys, ground floor retail tenancies, associated landscaping and site works. The development proposes a total of 515 apartments

Modifications to date are listed below:

Development Application	Description	Date of Determination
DA-2018/1003/A	Modifications to the approved unit mix and internal layout of Building A, C and D. The changes proposed to Building D will result in the removal of all units on Level 01 and 02; which will be replaced with a porte cochere and double height hotel lobby	Withdrawn 3 July 2019
DA-2018/1003/B	An application to amend the approved unit mix in Buildings A, B, and C on Level 13 and 21 by including penthouse units and associated modifications to roof terraces on Level 14 and 22	Approved 23 April 2020

2.4 Associated Applications

Development Application	Description	Date of Determination
DA-2019/235	Changes to approved building design and change of use from residential apartments to hotel suites in Building D	Approved 11 February 2020

3 Detailed Description of the Proposed Modifications

The detail modification to each floor adopts the serviced apartment unit layout and removes or amends plan/car parking that was previously required for the serviced apartments.

Basement

- Serviced apartment amenities, storage and service rooms, clean linen rooms have been removed and replaced by car parking spaces; and
- Reconfiguration of car spaces and plant rooms.

Level 01

- Porte cochere and serviced apartment lobby has been removed and replaced with 1 x 2 bedroom and 2 x 3-bedroom maisonette units;
- Serviced apartment back of house areas including security room and managers office have been removed; and
- Serviced Apartment waste holding area has been converted into a residential waste holding areas.

Level 02

- Serviced apartment back of house areas including housekeeping managers office, lost property storerooms and continuation of the porte cochere lobby has been removed and replaced with 1 x 2 bedroom and 2 x 3-bedroom maisonette units in Level 01 and 1 x 3-bedroom unit; and
- Staff room and plant rooms removed and replaced with storage areas and car parking spaces.

Level 03

- Clean linen room removed and replaced with end of trip facilities; and
- Reconfiguration of car spaces

Level 04

- Plant Supply air room added; and
- Reconfiguration of car spaces

Level 05

- Serviced Apartment gym removed and replaced with car parking spaces;
- Services room reduced in size and hot water plant added; and
- 1 Reconfiguration of car spaces

Level 06 – 21

- Modifications to the residential unit layout. The approved serviced apartment layout of units in Building D under DA2019/235 will now become the residential unit layout for Levels 06-21 proposed under this application.

3.1 Reason for Modification

As mentioned in the Introduction of this report the Coronavirus outbreak the entire tourist industry has collapsed and the building cannot be left empty for an unforeseen timeframe as it has dire economic impacts on further employment and financial losses.

To keep people employed on the site and generate business for subcontractors, tradespeople, real estate agents and the like, it is imperative the serviced apartments be converted back to residential as was originally intended for the site.

The modification necessitates amendments to the consent conditions. Refer to **Annexure 4** for the proposed Condition amendments.

4 Substantially the Same

Section 4.55(1A) of the EP&A Act states that a consent authority may modify a development consent if:

“it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)”

The proposed modification remains substantially the same development as the approval with the exception of Building D which proposed modifications to the internal layout of the approved layout and unit mix changes in Building D.

Buildings A, B, C and the retail frontage in UB5C have not changed, only Building D which adopt the approved serviced apartments and show reinstate residential units back in the place of the serviced apartment porte cochere.

It should also be noted that the proposed unit mix and numbers remain compliant with the approved Masterplan as modified.

4.1 Consistency with the approved masterplan

Relevant to the modification is the GFA, unit mix and number of car parking spaces. This modification is entirely consistent with Conditions 12, 29 and 34 as detailed below:

4.1.1 Condition 12 – GFA and FSR

The Floor Space Ratio (FSR) applying to the land upon which UB5C is located is 3:1 under the BLEP 2013. The approved Masterplan under DA2014/96 permits an FSR of 3.86:1 and approved GFA of 50,556.

The proposed modifications to the internal layout and unit mix changes in Building D will result in an FSR of 3.86:1. This is based on the proposed total GFA of 50,556 sqm. Whilst the proposal does not comply with Clause 4.4 of the LEP, it is consistent with the recently approved masterplan which permits an FSR of 3.86:1 and GFA of 50,556.

4.1.2 Condition 29 - Car Parking

Table 2 below is a breakdown of the total number of parking spaces required for the proposed unit mix.

Table 2: Required Car Spaces Per Unit Mix

Use	Masterplan Rates	Yield	Required	Provided	Complies
Residential					
One Bedroom	1	210	210		Complies
Two Bedroom	1.5	238	357		Complies
Three Bedroom	2	74	148		Complies
Four Bedroom	2	8	16		Complies
Total number of parking spaces				731	Complies
Visitor	1 per 10 units	530	53		Complies
Bicycle	10% Residential Parking No.	734	73		Complies
	Retail	Wash Bay	Car Share	Loading Bay	
Rate	1/25 sqm	1 Bay	2 Spaces	2 Spaces	
Required	47	1	2	2	
Provided	47	1	2	2	

The proposed modification requires 731 residential car parking spaces to be provided for the development site. Therefore, the number of car parking spaces provided complies with the approved masterplan car parking rate.

4.1.3 Condition 34 - Unit Mix

The unit mix continues to comply with the Masterplan approval, as a tolerance up to 10% is permitted. See **Table 3** below.

Table 3: Amended Unit Mix

Type	Approved Stage 1 Masterplan % (a tolerance of 10%. Is permitted)	Proposed Unit Mix	% Provided	Tolerance	Complies
One Bedroom	30%	210	40%	10%	Complies
Two Bedroom	55%	238	45%	10%	Complies
Three Bedroom	15%	74	14%	1%	Complies
Four Bedroom	-	8	1%	1%	Complies
Total		530	100%	-	

The proposed mix of residential units provided within UB5C complies with the table above with a tolerance of 10%.

In accordance with the Stage 1 Masterplan consent, 17 residential units are required to be designed to satisfy adaptable housing requirements. It should be noted 20 residential units provided within the development have been designed to satisfy the requirements of adaptable housing. The proposed modification to the unit mix does not alter the amount of adaptable housing units required.

5 Environmental Planning Assessment

5.1 Section 4.15C(1)(a)(i): Environmental Planning Instruments

5.1.1 Botany Bay Local Environmental Plan 2013

Under the Botany Bay Local Environmental Plan 2013 (BBLEP), the subject site is zoned B4 Mixed Use. The reinstatement of residential units is permitted in the zone subject to consent. The relevant clauses of the BBLEP are considered below.

Height of Buildings

Clause 4.3 of the BBLEP contains the provisions relating to height of buildings. There are no modifications to the height of the building.

Floor Space Ratio

The Floor Space Ratio (FSR) applying to the land upon which UB5C is located is 3:1 under the BBLEP 2013. The approved Masterplan under DA2014/96 permits an FSR of 3.86:1 and GFA of 50,556 sqm.

The proposed modifications to the internal layout of the approved layout and unit mix changes in Building D will result in an FSR of 3.86:1, equivalent to a GFA of 50,556 sqm. Whilst the proposal does not comply with Clause 4.4 of the LEP, it is consistent with the recently approved masterplan which permits an FSR of 3.86:1 and GFA of 50,556.

Although a modification under Section 4.55 does not require a Clause 4.6 variation, one has been provided under Section 6.0 of this report to justify a variation to the BBLEP floor space ratio development standard.

Design Excellence

The main residential Development Application that is subject this modification was part of a design competition as required by the masterplan approval. Clause 6.16 outlines the design excellence provisions and are detailed below.

(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,

Response:

There is no change to the built form other than converting the approved porte-cochere back to residential units as originally envisaged for Building D.

The proposed modifications to the internal layout and reinstated 3 units maintain a high standard of architectural design and includes a variety of quality materials that are consistent to completed buildings in the locality.

(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,

The form and external appearance of the development will predominantly revert the porte-cochere back to residential units. This is the only external change and is consistent with the intent of the original masterplan.

The proposed modification will continue to maintain the approved form and appearance of Building D.

Response

(c) whether the development detrimentally impacts on view corridors,

The proposed modification improves the visual amenity by converting the porte-cochere back to residential units. There remains no disruption of views, loss of privacy or loss of solar access to existing development in the vicinity of the site.

Response

(d) the achievement of the principles of ecologically sustainable development.

Response

There is no dilution to the ecological sustainable development (ESD) principles from what was originally acceptable. Reinstatement of units in lieu of the porte-cochere continues to adopt the ESD principles established in the original masterplan.

5.1.2 State Environmental Planning Policy No 65 – Quality of Residential Flat Buildings

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) states that a consent authority is to give consideration to the design quality principles outlined in the SEPP and the Apartment Design Guide (ADG) in determining an application for residential development. The proposed modification is subject to SEPP 65, included at **Annexure 2** is a Design Verification Statement.

An assessment of the modification has been undertaken in accordance with the relevant Design Quality Principles as set out in Schedule 1 of SEPP 65 as follows:

Principle 1: Context and neighbourhood character	
<ul style="list-style-type: none"> • Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions. • Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. • Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change. 	<ul style="list-style-type: none"> • The proposal involves minor internal modifications and reinstates 3 units within the approved port-cochere area, consistent with the surrounding high-density context. • The reinstated 3 units will be consistent with the adjacent high-density residential buildings, streetscape and neighbourhood. • The reinstated 3 units are consistent with the new local context which has been undergoing change for the last 7 years. <p>Overall, the proposed modifications are consistent with the existing context and neighbourhood character.</p>

Principle 2: Built form and scale	
<ul style="list-style-type: none"> • Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings. • Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. • Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook. 	<ul style="list-style-type: none"> • The proposal to reinstate the 3 units within the approved port-cochere area achieves a good design that restores the desired future character of the street and surrounding buildings. • There is no change to the built form other than reinstating 3 residential units back within the approved port-cochere area as originally approved and intended. • The modification will reinstate residential units along the western façade where there currently exists an empty chasm of the Porte-cochere. The modification restores the original character of the streetscape and parks, maintains existing views and vistas and will continue to provide internal amenity and outlook as envisioned in the masterplan.
Principle 3: Density	
<ul style="list-style-type: none"> • Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context. • Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment. 	<ul style="list-style-type: none"> • The density is consistent with that encouraged by the Stage 1 Masterplan approval. The modification will significantly improve the amenity of the building for existing and future residents. • The proposed modifications are consistent with the projected population. The modifications will not result in changes to the approved site density. The approved density will not impact on existing infrastructure, public transport, access to jobs, community facilities and the environment.
Principle 4: Sustainability	
<ul style="list-style-type: none"> • Good design combines positive environmental, social and economic outcomes. • Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation. 	<ul style="list-style-type: none"> • The modifications to the internal layout and unit mix in Building D are consistent with the ESD principles applied under the masterplan and will continue to deliver the desired positive environmental, social and economic outcomes for the approved development. • The proposed modifications will improve the amenity and liveability of existing and future residents and will continue to comply with solar access and natural

	<p>ventilation requirements contained in the ADG.</p> <p>Overall, the proposed modifications will not impact on ESD principles and other sustainable design materials and elements implemented on the site during the masterplan process.</p>
Principle 5: Landscape	
<ul style="list-style-type: none"> • Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood. • Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, microclimate, tree canopy, habitat values and preserving green networks. Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long-term management. 	<ul style="list-style-type: none"> • The proposed modifications do not result significant changes to the approved landscape design. The only changes proposed are to the 3 maisonette units on the Level 1 which have been designed with larger courtyard area and will incorporate more densely landscape planter boxes which will act as a privacy screen and assist in separating the public footpath and the courtyard. • The proposed modifications will retain positive natural features, provide opportunities for social interaction and equitable access and will continue to retain the desired landscape character of the streetscape and neighbourhood.
Principle 6: Amenity	
<ul style="list-style-type: none"> • Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well-being. • Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility 	<ul style="list-style-type: none"> • Reinstating the 3 residential units along the western façade will fill an empty chasm where the Porte-cohere was located and will significantly improve the internal and external amenity of the building for existing and future residents. • The modifications to the internal layout and unit mix in Building D provide appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access in accordance with the design guidelines. <p>Overall, the proposed modifications will continue to provide a high level of amenity which contributes to positive living environments and resident wellbeing.</p>

Principle 7: Safety	
<ul style="list-style-type: none"> • Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety. • A positive relationship between public and private spaces is achieved through clearly defined secure access points and well-lit and visible areas that are easily maintained and appropriate to the location and purpose. 	<ul style="list-style-type: none"> • The development will continue to maintain a good level of surveillance to communal areas and the public domain to promote safety. Block D as residential will assist in preventing undesirable social problems and conflicts with adjoining residents of Building A, B and C. If the building were to remain a serviced apartment use. • The proposal will continue to maintain a positive relationship between public and private spaces through clearly defined secure access points and well-lit visible areas that are easily maintained and appropriate to the location and purpose.
Principle 8: Housing diversity and social interaction	
<ul style="list-style-type: none"> • Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets. • Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. • Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents. 	<ul style="list-style-type: none"> • The unit mix changes proposed in Building D continue to achieve a mix of unit types and sizes which provides greater housing choice and diversity for different demographics, living needs and household budgets. • The residential units in Building D have been designed to respond to the social context and provide housing and facilities to suit the existing and future social mix. • The proposed development includes facilities on site such as a communal lawn, outdoor dining space and covered BBQ area and two swimming pools, a spa and gymnasium that provide for a broad range of people and opportunities for social interaction amongst residents.
Principle 9: Aesthetics	
<ul style="list-style-type: none"> • Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures. • The visual appearance of a well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape. 	<ul style="list-style-type: none"> • The proposed modifications do not result in significant changes to the approved built form and will not impact on the mix of materials, colours and finishes already chosen for the development. • The development will continue to have a balanced composition of elements which reflects the modified internal layout and overall structure. <p>Overall, the development will continue to achieve a high standard of design and visual</p>

	appearance that is appropriate to the building type and responds to the existing or future local context.
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The proposed amendments generally meet the overall objectives and the nine design quality principles of SEPP 65.

An assessment of the modifications have been undertaken in accordance with the relevant applicable principles within Part 4 of the Apartment Design Guidelines.

Control	Provisions	Proposed	Complies												
Solar and Daylight Access	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area	376 out of 530 apartments in the overall development will receive a minimum of 2 hours sunlight. This is 71%.	Complies												
Natural Ventilation	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed	145 out of 233 apartments in Building D are natural cross ventilated. This is 62%.	Complies												
Ceiling Heights	<div>1. Measured from finished floor level to finished ceiling level, minimum ceiling heights are:<table><tr><th colspan="2">Minimum ceiling height for apartment and mixed use buildings</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table><p>These minimums do not preclude higher ceilings if desired</p></div>	Minimum ceiling height for apartment and mixed use buildings		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	The apartments in Building D will provide a minimum 2.7m ceiling height. This is compliance with the ADG requirements.	Complies
Minimum ceiling height for apartment and mixed use buildings															
Habitable rooms	2.7m														
Non-habitable	2.4m														
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area														
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope														
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use														
Apartment Size and Layout	<div>1. Apartments are required to have the following minimum internal areas:<table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table><p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each</p><p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each</p></div>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	The proposed unit mix in Building D meet the minimum internal areas.	Complies		
Apartment type	Minimum internal area														
Studio	35m ²														
1 bedroom	50m ²														
2 bedroom	70m ²														
3 bedroom	90m ²														

Private open space and balconies	<div>1. All apartments are required to have primary balconies as follows:</div> <table><thead><tr><th>Dwelling type</th><th>Minimum area</th><th>Minimum depth</th></tr></thead><tbody><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></tbody></table> <div>The minimum balcony depth to be counted as contributing to the balcony area is 1m</div>	Dwelling type	Minimum area	Minimum depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	The reinstated units on Level 1 and 2 in Building D have primary balconies that meet the minimum area and depth ADG requirements, which was originally approved under DA2018/1003.	Complies
Dwelling type	Minimum area	Minimum depth																
Studio apartments	4m ²	-																
1 bedroom apartments	8m ²	2m																
2 bedroom apartments	10m ²	2m																
3+ bedroom apartments	12m ²	2.4m																
Storage	<div>1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</div> <table><thead><tr><th>Dwelling type</th><th>Storage size volume</th></tr></thead><tbody><tr><td>Studio apartments</td><td>4m³</td></tr><tr><td>1 bedroom apartments</td><td>6m³</td></tr><tr><td>2 bedroom apartments</td><td>8m³</td></tr><tr><td>3+ bedroom apartments</td><td>10m³</td></tr></tbody></table> <div>At least 50% of the required storage is to be located within the apartment</div>	Dwelling type	Storage size volume	Studio apartments	4m ³	1 bedroom apartments	6m ³	2 bedroom apartments	8m ³	3+ bedroom apartments	10m ³	The apartments in Building D will provide the minimum storage as required by the ADG.	Complies					
Dwelling type	Storage size volume																	
Studio apartments	4m ³																	
1 bedroom apartments	6m ³																	
2 bedroom apartments	8m ³																	
3+ bedroom apartments	10m ³																	
Communal and Public Open Space	Communal open space has a minimum area equal to 25% of the site	A minimum communal open space area of 25% has been provided, which was originally approved under DA2018/1003.	Complies															
Deep Soil	<div>1. Deep soil zones are to meet the following minimum requirements:</div> <table><thead><tr><th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr></thead><tbody><tr><td>less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr><tr><td>650m² - 1,500m²</td><td>3m</td></tr><tr><td>greater than 1,500m²</td><td>6m</td></tr><tr><td>greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr></tbody></table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	less than 650m ²	-	7%	650m ² - 1,500m ²	3m	greater than 1,500m ²	6m	greater than 1,500m ² with significant existing tree cover	6m	A minimum of 7% has been provided as deep soil zone within the site. This was originally approved under DA2018/1003.	Complies			
Site area	Minimum dimensions	Deep soil zone (% of site area)																
less than 650m ²	-	7%																
650m ² - 1,500m ²	3m																	
greater than 1,500m ²	6m																	
greater than 1,500m ² with significant existing tree cover	6m																	

5.2 Section 4.15(1)(a)(ii): Draft Environmental Planning Instruments

Council has prepared a Draft Consolidating LEP, which combines Botany Bay and Rockdale LEPs. There are no changes to the planning controls of the site as a result of the proposed consolidating LEP.

5.3 Section 4.15(1)(a)(iii): Development Control Plans

5.3.1 Botany Development Control Plan 2013

Botany Development Control Plan 2013 applies to the subject site. Part 9D of the DCP includes site specific controls for the 130-150 Bunnerong Road site.

The provisions contained in Part 9D of the DCP primarily adopt the approved Masterplan. The proposed amendments do not alter the developments compliance with the provisions of the DCP.

The proposed modifications to the internal layout of the approved layout and unit mix changes in Building D better aligns with the objectives of the DCP and is consistent with the original masterplan approval.

5.4 Section 4.15(1)(a) (iiia): Planning Agreements

The site is subject to a Voluntary Planning Agreement (VPA) negotiated by the Applicant and the then Botany Bay Council during the assessment of the Stage 1 Masterplan application.

The VPA requirements have been delivered and the modification has no impact on this matter.

5.5 4.15(1)(a)(iv): Regulations

The Section 4.55 Application has been made in accordance with the requirements contained in Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000.

5.6 Section 4.15(1)(b): Likely Impacts

Surrounding Development

The proposed modification improves the visual impact by converting the porte-cochere back to residential units.

There remains no disruption of views, loss of privacy or loss of solar access to the existing development in the vicinity and ensures that the essential elements of the approved development remain unchanged including the approved use, scale, height, interface with the surrounding area, and the site function.

Built Environment

The proposal involves minor modifications to some of the approved residential unit layouts and reinstates 3 units within the approved port-cochere area, where previously 6 units existed.

The built form does not substantially change to what has been constructed. By reinstating the residential units in lieu of, the port-cochere, the built form goes back to what was predominantly approved in the masterplan and Stage 2 DA Approval.

Social and Economic

The proposed to reinstate residential units back into Building D has been unforeseen due the one in a 100-year viral pandemic not seen since the “Spanish Flu”. The entire tourist industry has collapsed both economically and socially for local jobs and businesses. All hotels and serviced apartments throughout Australia not just the subject site remain closed, which has resulted in monumental unemployment. The re-opening of any tourist accommodation to travellers remains unknown.

To keep people employed and improve the social environment, it is therefore imperative to convert the recently approved serviced apartments by the local and regional planning panels back to residential. Building D as residential will ensure the economic multipliers create a significant boost to the financial sector, property management, real estate offices, valuers, conveyancers, purchasers at furniture stores, increased demand to local shops and the like.

There are no negative impacts from reinstating residential units back into Building D. Keeping the building as an empty serviced apartment building will be more detrimental both socially and economically.

Natural Environment

The modification will not create or change adverse natural environmental impacts to the subject site and the vicinity.

5.7 Section 4.15(1)(c): Suitability of the Site

Amendments to Block D will continue to be suitable for the site as envisaged by the approved masterplan.

5.8 Section 4.15(1)(d): Submissions

The modification was lodged to Council on the 23 April 2020 and was placed on public exhibition from the 14 May 2020 to 28 May 2020.

As part of the assessment process, Council will take into consideration any matters raised in any submissions received in response to the public exhibition period.

5.9 Section 4.15(1)(e): The Public Interest

The minor amendments to the existing residential approval will have no discerning intent to the public.

6 Variation – Floor Space Ratio

Whilst Clause 4.6 is not used for modifications it remains a good guide for justifying variations where modifications apply and is deemed suitable on this occasion. In this regard, the principles set out in the standard format in accordance with the Land and Environment Court Ruling Initial action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 is provided below. 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.

6.1 Definition of Development Standard

Section 4.4 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 FSR under Clause 4.4 of the LEP is a development standard for the purposes of the Environmental Planning and Assessment Act (EP & A Act) Act and Clause 4.6 of Botany Bay Local Environmental Plan 2013 (BBLEP 2013) applies.

6.2 Proposed Variation

The recently approved masterplan under DA2014/96 permits an FSR of 3.86:1. This is based on a site area of 13,090sqm and proposed GFA of 50,556 sqm.

Although the variation required is to be assessed against the BBLEP, it is the recently approved masterplan that contains the permissible FSR and GFA for the site. In this respect, the FSR of 3.86:1 in this modification complies with the approved masterplan

6.3 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].

Compliance with the development standard is unreasonable and unnecessary as the objectives of the development standard are achieved. Clause 4.4 of the Botany Bay LEP 2013 outlines the objectives of the FSR standard to which the development continues to satisfy. A response to the objectives is outlined below.

a) to establish a maximum floor space ratio to enable appropriate development density to be achieved.

The additional FSR continues to enable an appropriate development density as the additional floor space has been created by reinstating floor space that was originally envisaged in the approved masterplan in lieu of the serviced apartment porte-cochere.

b) to ensure that development intensity reflects its locality.

Reinstatement of the 3 units is consistent with the development intensity of the locality that has transformed into a high density mixed use precinct.

c) To maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo a substantial transformation.

The proposed modification will continue to maintain an appropriate visual relationship between the existing character of areas and locations that are not undergoing a substantial transformation. The reinstatement of 3 units in the porte-cochere does not face any of the existing lower residential areas.

d) 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 reinstatement of the 3 units on the podium levels face an internal private driveway and neighbouring residential towers to the west. The reinstated units are consistent with the original design of the masterplan which will continue to improve the streetscape and is not visually seen from adjoining roads or parks.

e) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,

The proposed modification to reinstate the 3 units in the podium levels will improve the amenity of adjoining properties in Urban Block 5W, by not retaining a drop off zone for vehicles.

f) To provide an appropriate correlation between the size of a site and the extent of any development on that site,

The site has been assessed to be suitable for the proposed density and intensity through the consideration of the Stage 1 masterplan application and original DA consent. Reinstatement of the 3 units makes Block D more consistent with the size of the site compared to the porte cochere which has a two-storey element. The 3 units breaks up this scale in proportion to the size of the site and extent of existing development on the site.

g) to facilitate development that contributes to the economic growth of Botany Bay.

The modification adopts the serviced apartment unit layout and reinstates 3 of the 6 units at ground level and level 1 along the western façade.

The changes to the residential approval will continue the economic growth of Botany Bay.

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].

Clause 4.4 of the BBLEP contains objectives relating to the FSR. The objectives have been addressed above and satisfied. Justification for the breach in the FSR control against the BLEP2013 is based on the preferred urban design outcome for the Pagewood Green site as approved under DA 2018/1003 and by the Stage 1 Masterplan consent as modified by the Regional Planning Panel.

As the modification to this residential approval complies with the masterplan, the underlying objective or purpose to the FSR control contained in the BLEP2013 is unnecessary on this occasion.

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 recently amended masterplan approved an FSR of 3.86:1 and GFA of 50,556 sqm for the site. This is above the 3:1 FSR ratio identified in the Botany Bay LEP 2013. In this respect, the objective and purpose of the development standard has been “defeated or thwarted” because the modification to this application complies with the approved masterplan.

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 FSR for each Urban Block were developed through an extensive master planning process and approved as part of a Masterplan Development Consent.

The 3:1 FSR of the BLEP2013 has been abandoned by the approved masterplan and hence compliance with the standard is unnecessary and unreasonable.

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].

The zoning of the land as mixed use is not unreasonable as the development continues to provide for retail and residential uses. It is the FSR that has become inappropriate for the zoning as a consequence of the approved masterplan that allows 3.86:1 rather than 3:1 under the BLEP2013.

The modified FSR merely complies with the approved masterplan of 3.86:1 and for this reason the standard is unreasonable and unnecessary.

6.4 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 as found under the objectives of the EPA. This is demonstrated below.

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 modification to increase the FSR complies with the masterplan approval as amended, albeit not the numerical compliance with the BLEP 2013. Reinstating the 3 units along the western façade will fill a large chasm in the building that will improve the security of the locality by filling an empty high space that otherwise would provide a risk to safety for existing and future residents. Filling this empty space with units removes the safety/security risk and thereby satisfies the social aspect of this objective.

The three additional units and unit mix change adds more economic stimulus to the existing shops from future residents to satisfy the economic aspect of this objective.

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

The proposed 3 units continues to facilitate ecological sustainable development and relevant economic and social considerations that were a consideration under the original masterplan approval. The return of the 3 units will continue to satisfy the environmental sustainable development principles that were envisaged under the masterplan.

- c) To promote the orderly and economic use and development of land,**

The additional FSR when compared against the BLEP2013 continues to promote the orderly and economic use of the land. The residential use continues under this modification.

- d) To promote the delivery and maintenance of affordable housing,**

Not relevant to the application.

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

The proposed modification will have no impacts in respect of threats to native animals and plants, ecological communities and their habitat then previously considered in the original residential consent.

- f) To promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),**

Not relevant to the proposed modification as Urban Block 5C buildings have already been constructed.

- g) To promote good design and amenity of the built environment,**

The proposed modifications will continue to promote good design and amenity of the built environment. The changes proposed will facilitate a residential design along the western façade where there currently exists an empty chasm where the Porte-cohere was to go.

Without the variation to the FSR development standard, there can be no reinstatement of units into the porte-cohere area which will leave a vacuum of space, which will be detrimental in terms of community safety, and therefore to improve residential amenity, the space must be filled.

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

Proper construction, maintenance and protection of health and safety continue under the current conditions of consent with the 3 units along the western façade.

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

The proposal 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 modification was lodged to Council on the 23 April 2020 and was placed on public exhibition from the 14 May 2020 to 28 May 2020.

Council is responsible for assessing any submissions.

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

Although not necessary for a modification, 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.

6.6 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 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*”.

In this regard, the modification remains consistent with the BLEP2013 FSR objectives and the EPA objectives as outlined in this report.

6.7 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 Botany Bay LEP 2013, subject to the conditions in the table in the notice (**Annexure 3**).

6.8 Conclusion

Although the variation does not require a strict Clause 4.6 variation submission, one has been prepared to justify the departure of the FSR development standard against the BBLEP 2013. The variation to the development standard is warranted for the following reasons.

- Compliance with the standard is deemed unreasonable and unnecessary in the circumstances of the case as the modification complies with the masterplan.
- there are sufficient environmental planning grounds to justify contravening the development standard.
- the objectives of the FSR are not contravened and is therefore in the public interest. The public benefit of maintaining the development standard in this instance is not put at risk by allowing the departure from the LEP.
- Variation to the development standard is consistent with the relevant objects in clause 1.3 of the EPA.

- The variation to the development standard remains consistent with the objectives of the FSR under Clause 4.4 of the Botany Bay LEP 2013.

On this basis, the proposed variation to the development standard should be supported under the provisions of Clause 4.6(2) of BBLEP 2013.

7 Conclusion

The modification has been necessitated by the COVID19 eliminating serviced apartments in this location. As such the unit plans in the serviced apartment approval has been incorporated into this residential modification, with some minor addition to reinstate 3 of the 6 units along the western façade that otherwise was the porte-cochere for the serviced apartments.

This has created an unusual set of circumstances that creates additional floor space against the BLEP2013 yet is compliant with the approved masterplan.

The evidence in this report and plans demonstrated that the amendments to the residential approval continues to comply with the relevant planning controls and is worthy of approval.

Annexure 1: Amended Architectural Drawings

Annexure 2: Design Verification Statement

Annexure 3: 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:

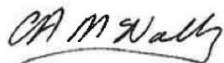
- clause 4.6 of a local environmental plan that adopts the *Standard Instrument (Local Environmental Plans) Order 2006* or any other provision of an environmental planning instrument to the same effect, or
- *State Environmental Planning Policy No 1 – Development Standards*.

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 4: Proposed Condition Amendments