

WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

40 SUNRISE ROAD, PALM BEACH

FOR A PROPOSED NEW DWELLING

For: For a proposed new dwelling
At: 40 Sunrise Road, Palm Beach
Owner: Susan Rothwell
Applicant: Susan Rothwell Architects

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Pittwater Local Environmental Plan 2014. In this regard, it is requested Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of the Pittwater Local Environmental Plan 2014 (PLEP 2014).

2.0 Background

Clause 4.3 restricts the height of a building in this locality to a maximum of 8.5m. This control is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposal provides for the construction of a new dwelling, which as a consequence of the steep fall in the site levels towards the north-west, will result in a portion of the upper floor roof, balustrades to the terraces and the north western planter box being up to 11.6m above ground, which exceeds Council's maximum building height by 3.1m or 36.4%.

The extent of the building elements which exceed the 8.5m height control is detailed in Figure 1 (over page).

Council's Height of Buildings control allows for consideration of building heights to 10m where a site exhibits a slope that is in excess of 16.7 degrees (that is 30%) and a representation of the building when compared to the 10 m height control is detailed in Figure 2.

The controls of Clause 4.3 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

Is clause 4.3 of PLEP 2014 a development standard?

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act mean standards fixed in respect of an aspect of a development includes:

“(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,”

- (b) Clause 4.3 relates to the maximum building height of a building. Accordingly, clause 4.3 is a development standard.

3.0 Purpose of Clause 4.6

The Pittwater Local Environmental Plan 2014 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 118* have been considered in this request for a variation to the development standard.

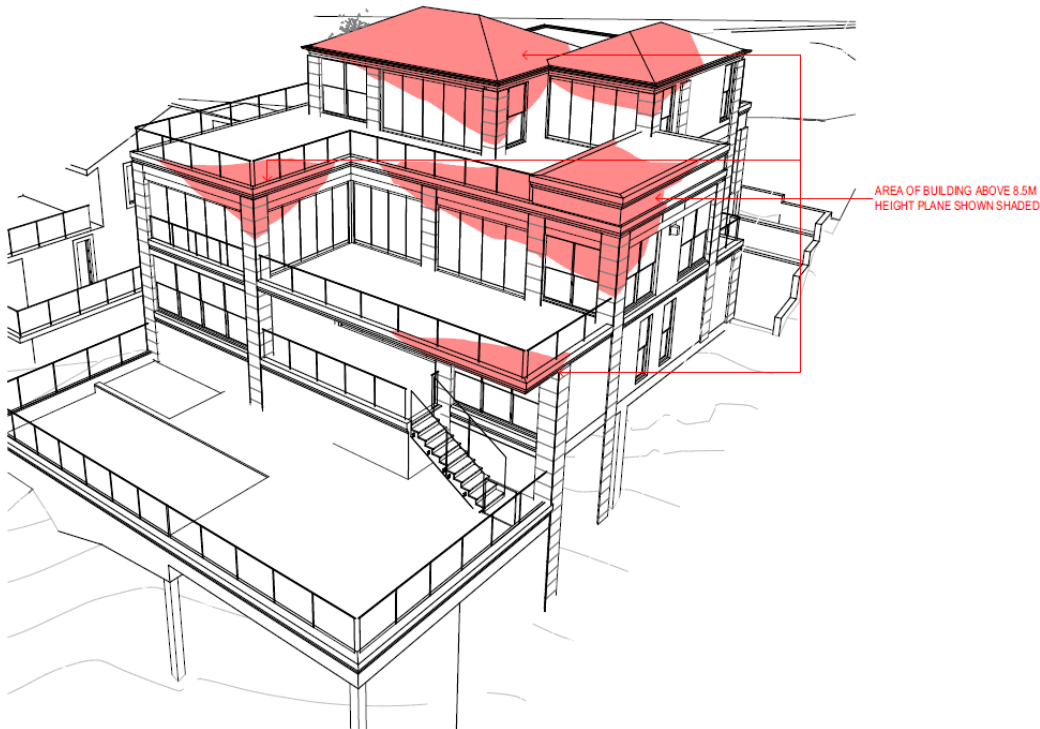


Fig 1: Plan extract to indicate area of dwelling exceeding the 8.5m height control

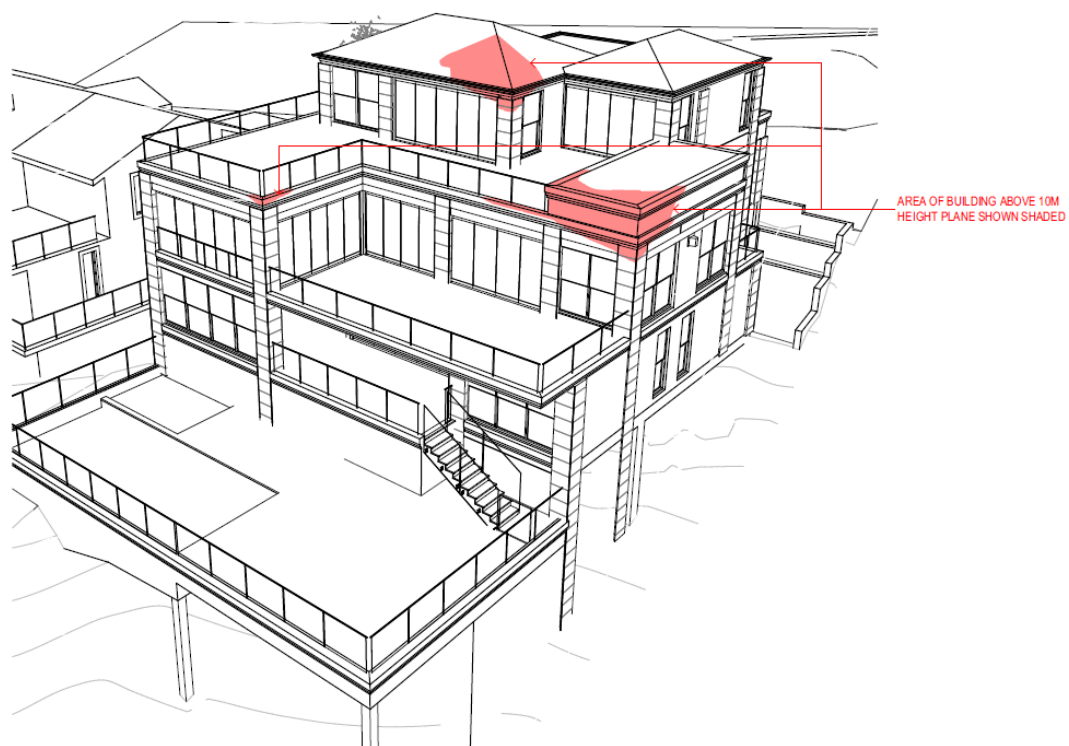


Fig 2: Plan extract to indicate area of dwelling exceeding the 10m height control as the site exhibits a slope that is in excess of 16.7 degrees or 30%

4.0 Objectives of Clause 4.6

Clause 4.6(1) of PLEP provides:

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

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in ***RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51]** where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of the LEP provides:

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

Clause 4.3 (the Maximum Height Control) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the PLEP.

Clause 4.6(3) of PLEP provides:

- (3) *Development consent must not be granted for development that contravenes a development*

standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

The proposed development does not comply with the maximum building height control development standard pursuant to clause 4.3 of PLEP which specifies a maximum building height of 8.5m in this area of Palm Beach. As a consequence of the substantial slope of the site towards north-west, the proposed new dwelling will result in a maximum building height for the new work of 11.6m, which exceeds the maximum height control by up to 3.1m or 36.4%.

Strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of PLEP provides:

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

(a) the consent authority is satisfied that:

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

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Planning Secretary has been obtained.

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Planning Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 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 cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of PLEP provides:

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

Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and should consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of PLEP from the operation of clause 4.6.

The specific objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for the construction of alterations and additions to an existing dwelling, which is consistent with the stated Objectives of the E4 Environmental Living Zone, which are noted as:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

The proposal will provide for the construction of a new dwelling, with open terrace areas and planters at the upper floor level which as a consequence of the substantial slope of the site from the roadway towards the north-west, will include elements which exceed Council's maximum height. The terraces provide for significant amenity in the form of level outdoor space on a challenging site.

The maximum non-compliance with the height control occurs to the north-western corner of the first floor planter and in other areas of the elevated terraces and the roof of the dwelling. These variations occur as a direct result of the site's sloping topography.

Notwithstanding elements of the dwelling which exceed the maximum height control, the proposal will maintain a general bulk and scale which is in keeping with the extent of surrounding development and with a consistent palette of materials and finishes which will provide for high quality development that will enhance and complement the locality.

The proposed new works will not see any unreasonable impacts on the views enjoyed by neighbouring properties.

Due to the northerly orientation of the site and as outlined in the shadow diagram information which supports the application, the works will not see any adverse impacts on the solar access enjoyed by adjoining dwellings.

The general bulk and scale of the dwelling as viewed from the public areas in Sunrise Road and the wider public view of the site and the Sunrise Hill precinct, together with from the surrounding private properties, will be largely maintained.

Figure 3 below indicates the relative height and scale of the adjoining development and the compatible height presented by the proposed development

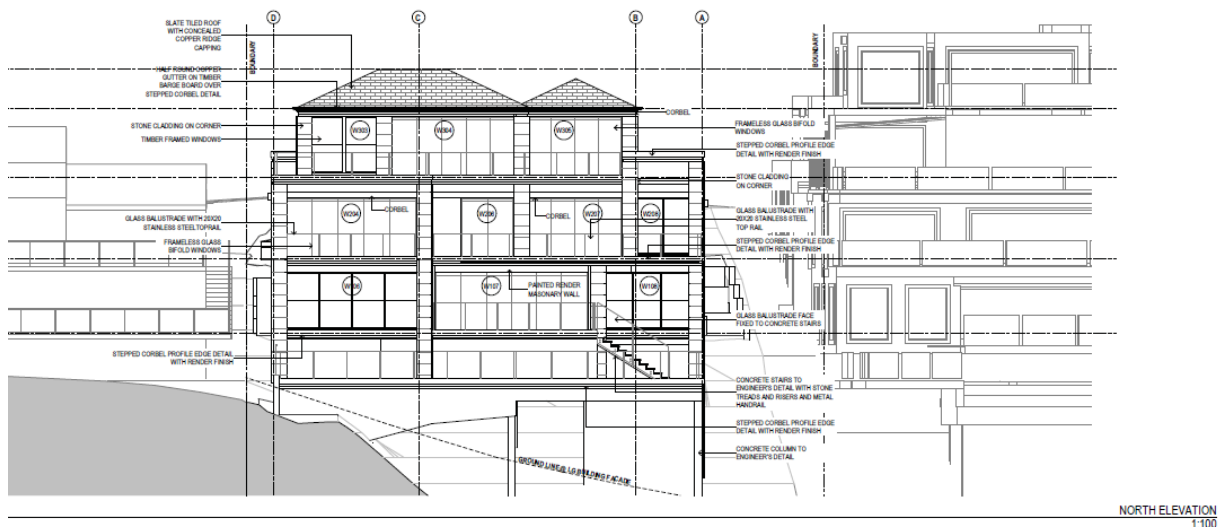


Fig 3: Plan extract to indicate relative height of the proposed development to the existing adjacent dwellings

5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the maximum building height standard contained in clause 4.3 of PLEP.
- 5.2 Clause 4.3 of PLEP specifies a maximum building height of 8.5m in this area of Palm Beach.
- 5.3 The proposed new dwelling will incorporate elements of the open terraces, first floor level planter and the roof of the dwelling which are up to 11.6m in height and exceed the height control by 3.1m or 36.4%.

6.0 Relevant Caselaw

- 6.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

- 17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
- 18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
- 19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
- 20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
- 21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is*

unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

6.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.3 of PLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the E4 Environmental Living zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of PLEP?

7.0. Request for Variation

7.1 Is compliance with clause 4.3 unreasonable or unnecessary?

- (a) This request relies upon the 1st way identified by Preston CJ in *Wehbe*.
- (b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved.
- (c) Each objective of the maximum building height standard and reasoning why compliance is unreasonable or unnecessary is set out below:

(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

The Objective of Clause 4.3 (1)(a) seeks to ensure buildings are compatible with the height and scale of surrounding and nearby development.

The surrounding area is predominantly characterised by two and three storey development.

The proposal seeks to provide for a new two and three story dwelling, which is consistent with the surrounding development pattern and which is stepped to follow the substantial slope of the site towards the north-west. As a result of the sloping topography, elements of the upper floor level terraces, roof and planter exceed the maximum height, with a height to 11.6m at the north-western corner of the first floor level planter box.

The predominant bulk of the dwelling has been massed towards the south-eastern corner of the site, in order to reduce the visual impact of the development viewed from the neighbouring properties and from further public views towards the site.

The external form of the development follows the sloping topography of the site, which assists with minimising the visual bulk of the development.

(b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

The proposed height of the new dwelling will maintain a compatible height and scale with that of the surrounding development along the Sunrise Road ridge.

The proposed new dwelling will not result in unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing, with the substantial views and solar access available to the sites, due to their northerly aspect, being largely maintained.

The proposal will not obscure any important landscape and townscape features beyond that which would be anticipated by the development of a residential dwelling, which is stepped to maintain a predominantly two and part three storey height on the site.

Consistent with the decision of Roseth SC in *Project Ventures Developments v Pittwater Council* [2005] NSWLEC 191, it is my opinion that “*most observers would not find the proposed building offensive, jarring or unsympathetic*”.

Further, the modulation of the northern façade and building elevations where visible from the public domain minimises the visual impact of the development.

(c) to minimise any overshadowing of neighbouring properties,

The proposed works to provide for a new dwelling have been stepped to respect the sloping terrain and massed towards the south-eastern corner of the site, in order to maintain suitable solar access for the adjacent properties.

The extent of the proposed overshadowing is reflected in the shadow diagrams prepared by Susan Rothwell Architects and which note that the primary living spaces and outdoor areas of the adjacent neighbours it is reasonably maintained.

(d) to allow for the reasonable sharing of views,

The subject and adjoining properties enjoy significant views towards the north over Palm Beach and towards Barrenjoey Headland, & Pittwater. Given the relative location of the adjoining dwellings, views and outlook towards Palm Beach and Pittwater will be retained for the neighbouring properties, with equitable access to views from the public and private spaces being maintained.

(e) encourage buildings that are designed to respond sensitively to the natural topography,

The proposal dwelling has been stepped to respect the challenging nature of the site, with the floor levels stepping down the site towards the north-west. By massing the new floor areas towards the south-eastern corner of the site, the views past the site for the neighbours to the east and west will be maintained and solar access in the morning hours for the western neighbour are well preserved. The northerly aspect of the site and its neighbours promotes good solar access opportunity for all properties throughout the day.

The proposed dwelling presents a compatible bulk and scale the surrounding element and the works are considered to respond sensitively to the natural topography.

(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

The proposed works will not see any further site disturbance, or loss of landscaped area. The site it is within the vicinity of the Sunrise Hill Heritage Conservation Area and will present a modest one and two storey elevation to the street, which will not adversely affect the heritage significance of the surrounding heritage conservation area.

7.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

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

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

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

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposed new dwelling will present a compatible bulk and scale to that of the existing surrounding dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).
- Similarly, the proposed development will provide for improved amenity within a built form which is compatible with the surrounding character of Sunrise Road and the wider area of Palm Beach, which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The design of the proposed new dwelling provides for level outdoor recreation space in the form of terraces, with privacy screening provided in the way of planters at the upper level which is considered to promote good design and enhance the residential

amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g).

- The proposed development improves the amenity of the occupants of the subject site and respects surrounding properties by locating the development where it will not unreasonably obstruct views across the site and will maintain the views from the site (1.3(g)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants and manages the bulk and scale and maintains views over and past the building from the public and private domain. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the maximum building height control.

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.3 Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the E4 Environmental Living Zone?

- (a) Section 4.2 of this written request suggests the 1st test in *Wehbe* is made good by the development.
- (b) Each of the objectives of the E4 Environmental Living Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council* [2017] NSWLEC 158 where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ found also that *“The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone”*.

In response to *Nessdee*, I have provided the following review of the zone objectives:

It is considered that notwithstanding the breach of the maximum building height by up to 2.8m to the north-western extremity of the first floor planter and elements of the balustrade to the terrace and portions of the main roof, the proposed new dwelling will be consistent with the individual Objectives of the E4 Environment or Living Zone for the following reasons:

- ***To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.***

As found in *Nessdee*, this objective is considered to establish the principal values to be considered in the zone.

Dwelling houses are a permissible form of development within the Land Use table and is considered to be specified development that is not inherently incompatible with the objectives of the zone.

The proposal provides for the construction of a new dwelling which manages the challenges of the substantial slope of the site towards north-west and will provide for new residential dwelling which is compatible with the character of the surrounding development.

The site and its location in Sunrise Road is considered to be an area of special visual and aesthetic value.

The external form of the development is stepped with the sloping topography of the form, which will reduce the visual bulk of the development.

Further, the modulation of the front façade and side elevations, together with the increased side setbacks to the upper level will ensure the development minimises the visual impact when viewed from the surrounding public and private areas.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and will not be a visually prominent element in the area.

- ***To ensure that residential development does not have an adverse effect on those values.***

The design prepared by Susan Rothwell Architects has been prepared to meet the

client brief, together with ensuring that the visual bulk and overall height of the dwelling is effectively managed.

The design is considered to be an improvement in terms of the building's appearance and visual impact and for these reasons, the development does not result in an adverse impact on the special aesthetic values of the site.

- ***To provide for residential development of a low density and scale integrated with the landform and landscape.***

The proposal provides for the construction of a new dwelling, which minimises disturbance to the site and is stepped to follow the falling terrain towards north-west.

As the design utilises increased setbacks for the upper floor relative to the lower levels and a recessive colour palette is provided, the building respects the predominant scale of development in the locality.

The setbacks are compatible with the existing surrounding development and the proposal does not have an adverse impact on long distance views.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum building height control, whilst maintaining consistency with the zone objectives.

7.4 Has council obtained the concurrence of the Director-General?

The Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.

7.5 Has the Council considered the matters in clause 4.6(5) of PLEP?

- (a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed additions to the dwelling house for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.
- (b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.
- (c) there are no other matters required to be taken into account by the secretary before granting concurrence.

8.0 Conclusion

This development proposes a departure from the maximum building height control, with the proposed new works to provide for a new dwelling with terrace areas and planter, together with the roof of the dwelling at the upper floor level presenting a height of up to 11.6m above existing ground level.

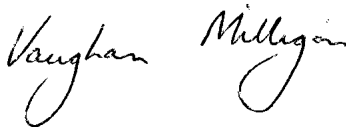
This variation occurs as a result of the sloping topography of the site and siting of existing development.

This written request to vary the maximum building height control specified in Clause 4.3 of the Pittwater LEP 2014 adequately demonstrates that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum building height would be unreasonable and unnecessary in the circumstances of this case.

In summary, the proposal satisfies all of the requirements of clause 4.6 of PLEP 2014 and the exception to the development standard is reasonable and appropriate in the circumstances of the case.

A handwritten signature in black ink, reading 'Vaughan Milligan'. The signature is written in a cursive, flowing style.

VAUGHAN MILLIGAN

Town Planner