

STATEMENT OF ENVIRONMENTAL EFFECTS

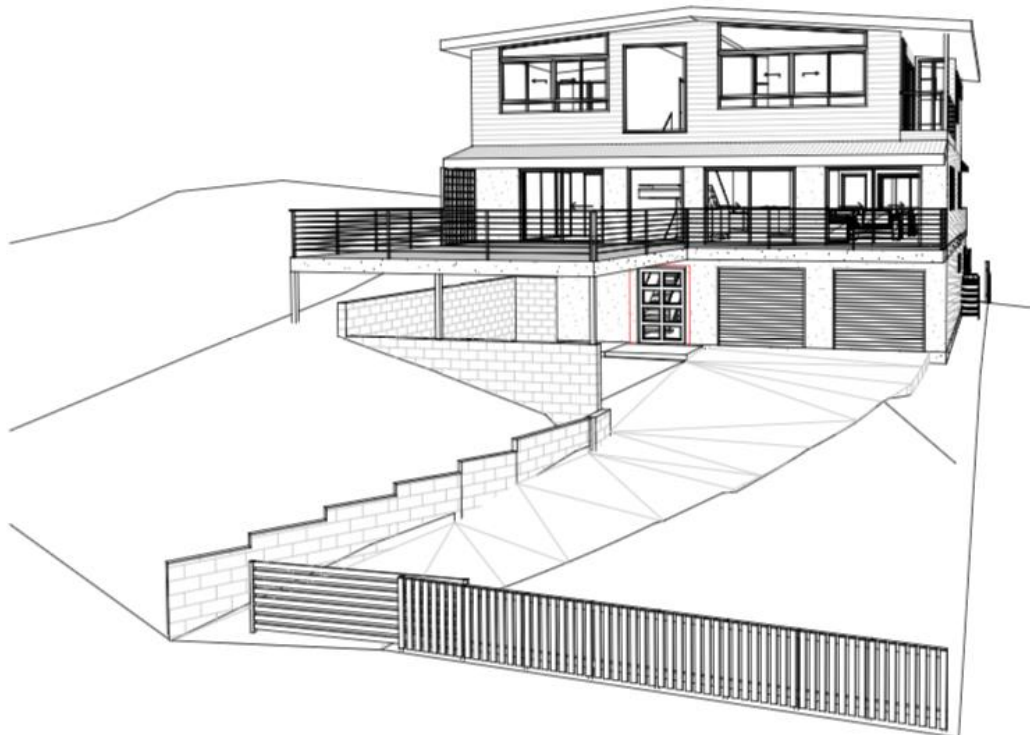
**FOR THE CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO AN
EXISTING DWELLING INCLUDING A NEW SWIMMING POOL
AND LANDSCAPING**

LOCATED AT

29 WANDEEN ROAD, CLAREVILLE

FOR

TRISH QUIRK



**Prepared
December 2020**

TABLE OF CONTENTS

1.0	Introduction.....	3
2.0	Property Description	3
3.0	Site Description	4
4.0	The Surrounding Environment	8
5.0	Proposed Development.....	9
6.0	Zoning and Development Controls.....	11
6.1	State Environmental Planning Policy No. 55 – Remediation of Land	11
6.2	State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	11
6.3	Pittwater Local Environmental Plan 2014	11
6.4	Pittwater 21 Development Control Plan 2014	14
6.4.1	Shaping Development – Desired Character.....	14
6.4.2	Section B General Controls.....	16
6.4.3	Section C Development Type Controls	20
6.4.4	Section D Design Criteria	25
7.0	Matters for Consideration under Section 4.15 of The Environmental Planning and Assessment Act, 1979	31
7.1	The provisions of any environmental planning instrument	31
7.2	Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and	31
7.3	Any development control plan.....	31
7.4	Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and	32
7.5	The regulations (to the extent that they prescribe matters for the purposes of this paragraph),	32
7.6	The likely impacts of that development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality.	32
7.7	The suitability of the site for the development.....	32
7.8	Any submissions made in accordance with this Act or the regulations	32
7.9	The public interest	32
8.0	Conclusion	33
Appendix: Clause 4.6 – Building Height		

1.0 Introduction

This Statement of Environmental Effects accompanies details prepared on behalf of Trish Quirk by Rapid Plans, Job No. 161118, Drawing No. DA1001 – DA1018, DA2001 – DA2005, DA3001 – DA3003, DA4001 – DA4005 & DA5001 – DA5005, dated 9 December 2020 to detail the construction of alterations and additions to an existing dwelling including new swimming pool and landscaping on land at **29 Wandeen Road, Clareville**.

This Statement describes the subject site and the surrounding area, together with the relevant planning controls and policies relating to the site and the type of development proposed. As a result of this assessment it is concluded that the development of the site in the manner proposed is considered to be acceptable and is worthy of the support of the Council.

In preparation of this document, consideration has been given to the following:

- *The Environmental Planning and Assessment Act, 1979 as amended*
- *The Environmental Planning and Assessment Regulation 2000*
- *State Environmental Planning Policy No. 55 – Remediation of Land*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *Pittwater Local Environmental Plan 2014*
- *Pittwater 21 Development Control Plan*

2.0 Property Description

The subject allotment is described as 29 Wandeen Road, Clareville, being Lot 89 within Deposited Plan 13760 and is zoned E4 Environmental Living under the Pittwater Local Environmental Plan 2014.

The site is noted as being within the W Hazard H1 area on Council's Geotechnical Hazard Map. A Geotechnical Investigation has been prepared by White Geotechnical Group, Reference No. J2597, dated 31 March 2020 as revised 17 December 2020 and will be discussed in further detail within this submission.

The site has been identified as being within a Terrestrial Biodiversity Zone, and this will be discussed in further detail within the report, with a Flora & Fauna Assessment being prepared for the development by Kingfisher Urban Ecology and Wetlands.

The site is also identified as being Class 5 Acid Sulfate Soils Area and this will be discussed in further detail within the report.

There are no other identified hazards affecting the land.

The site is not within the area affected by the State Environmental Planning Policy (Coastal Management) 2018.

3.0 Site Description

The property is located on the southern side of Wandeen Road.

The site has a width of 15.24m to Wandeen Road and a depth of 54.865m. The total existing site area is 836.1m².

The rear portion of the site has a gradual slope towards the rear, south-western corner, and the front portion of the site falls to the north-western corner. The site has a total fall of approximately 5.6m over its length. Stormwater from the site is directed to the street gutter in Wandeen Road.

The land is currently developed with an existing multi storey cement rendered dwelling. The site is accessed via an existing concrete driveway from Wandeen Road.

The details of the existing site levels are indicated within the Survey Plan prepared by C-Side Surveyors, Project No. 140802-DET, dated 17 October 2020.



Fig 1: Location of Subject Site
(Source: Google Maps)



Fig 2: View of subject dwelling, looking south from Wandeen Road



Fig 3: View of subject dwelling, looking south-east from Wandeen Road



Fig 4: View of the neighbouring dwelling to the east at No 31 Wandeen Road, looking south-east



Fig 5: View looking towards the subject site and the neighbouring dwelling at No 31 Wandeen Road, looking south-west from Wandeen Road



Fig 6: View of adjoining dwellings the west of the subject site, looking south

4.0 The Surrounding Environment

The general vicinity of the site is characterised by residential developments between one and three storeys in height within landscaped settings. The surrounding dwellings enjoy views towards Pittwater.

Surrounding the sites are single residences, with a variety of styles and scales of development. As indicated on the aerial photograph, a number of properties in the locality have similar footprints and recreational structures such as pools in their rear yards.

The development in the area is heavily influenced by the sloping topography, with dwelling stepped to follow falling site conditions.

The subject site faces Wandeen Road which provides traffic link between Bilgola Plateau and Clareville/Avalon and is therefore subject to heavy traffic flows. The proposal intends to provide for the turning area to allow vehicles to turn and exit the site in a forward direction, given the steep nature of the road and difficulty for vehicles to safely enter and exit site.

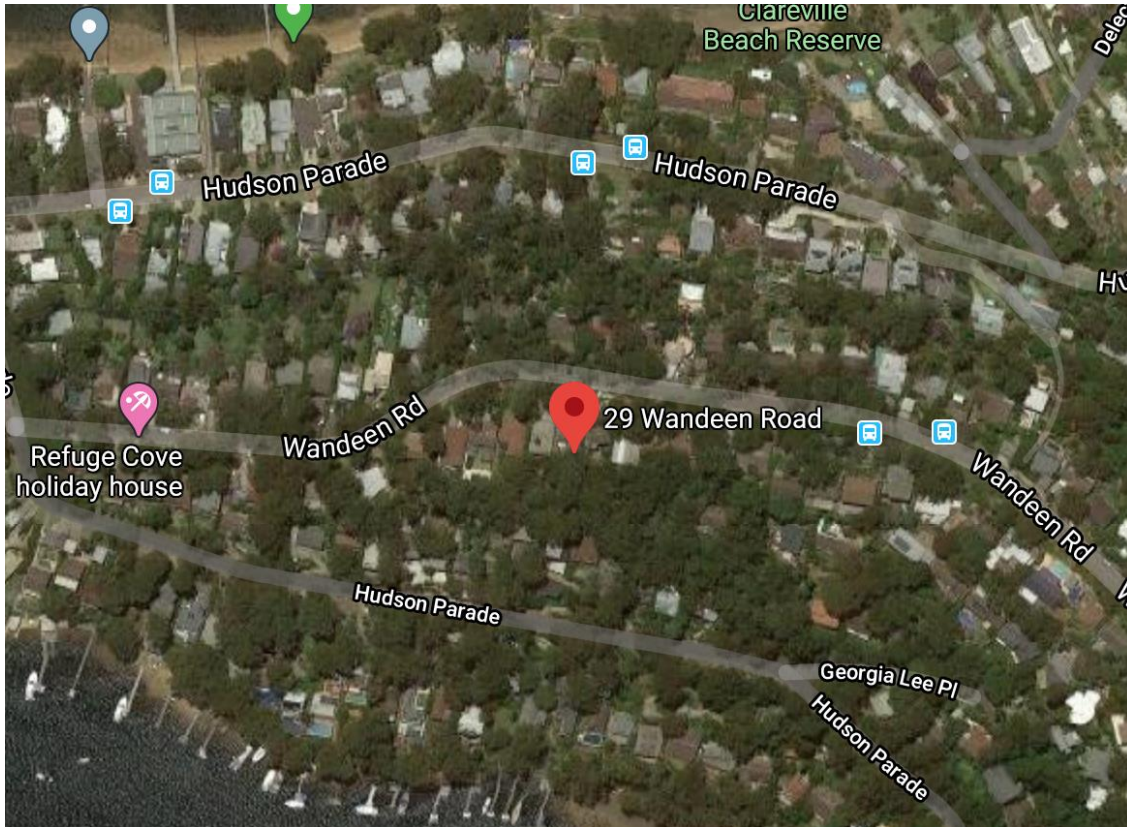


Fig 7: Aerial Photograph
(Source: Google Maps)

5.0 Proposed Development

As detailed within the accompanying plans, it is proposed to provide for the construction of alterations and additions to an existing dwelling.

The proposal will comprise the following:

Ground Floor Level

- Alterations and additions to existing ground floor level to provide for new laundry, store, bathroom, internal access stairs to first floor level and external stairs from deck to rear yard

First Floor Level

- Alterations and additions to existing first floor level to provide for new study, media room, kitchen bench, internal wall to dining room/kitchen, new pergola and external stairs to existing rear terrace, internal access stairs to ground floor level and extension of existing balcony

Second Floor Level

- Alterations and additions to existing second floor level to provide for four bedrooms including master bed with ensuite, walk-in robe and deck, bedroom 5 with ensuite, internal access stairs and bathroom

External Works

- Proposed landscaping
- New swimming pool and deck
- New turning circle

The proposed additions comprise of a low profile pitched roof form that complements the existing built form within the locality and limits any adverse impacts to the neighbouring properties.

It is notable that the proposed additions to the existing second floor level will remove the existing roof, with the new roof form over the existing and proposed new floor area (RL 70.957) to be up to 603mm below the existing ridge level of RL 71.56.

The external finishes of the new works comprise weatherboard cladding and metal roofing, with earthy tones which will effectively integrate into the bushland character of the locality.

The proposal seeks to remove a number of trees to accommodate the new works. Accordingly, an Arborist Construction Impact & Management Statement prepared by Growing My Way Tree Consultancy, dated June 2020.

The tree assessment confirms that five trees will be removed to facilitate the construction of the turning area and the swimming pool. The tree is identified as being mature Spotted Gum species, and in good health. The site and the immediate vicinity also supports a number of other trees of similar form and health which will not be affected by the work.

The Arborist's Statement includes recommendations for replacement planting of Spotted Gum species with area available for four extra trees within the rear yard and one extra tree within the front setback, in order to replace the trees that are to be removed.

A Landscape Plan has been prepared by Rapid Plans in Sheet DA1015 and provides for further landscape planting of screening plants to the perimeter of the site, particularly relation to the pool area in order to manage any issues in relation to overlooking and visual impact.

The proposed new plantings will add to the visual amenity of the site and reduce any adverse privacy impacts onto adjoining properties.

The development indices for the proposal are summarised over as:

Site Area:	836.1m²
Required soft landscaped area:	60% or 501.66m ²
Existing soft landscaped area:	60.4% or 505.1m ²
Proposed soft landscaped area:	59.8% or 499.73m ²

6.0 Zoning and Development Controls

6.1 State Environmental Planning Policy No. 55 – Remediation of Land

SEPP 55 – Remediation of Land and in particular Clause 7(1)(a) suggests that a consent authority must not grant consent to the carrying out of any development on land unless it has considered whether the land is contaminated.

Given the history of residential use of the land, the site is not considered to be subject to contamination and further investigation is not required at this stage.

6.2 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The proposal meets water, thermal and energy standards required by BASIX. A BASIX certificate has been submitted with the development application.

6.3 Pittwater Local Environmental Plan 2014

The site is zoned E4 Environmental Living under the provisions of the PLEP 2014.



Fig 8: Zoning extract – Pittwater LEP 2014

The development of and use of the land for residential purposes within the E4 Environmental Living Zone is consistent with the zone objectives, which are noted over as:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

It is considered that the proposed alterations and additions to the existing dwelling will be consistent with the desired future character of the surrounding locality for the following reasons:

- The proposal will be consistent with and complement the existing detached style housing within the locality.
- The proposed development respects the scale and form of other new development in the vicinity and therefore complements the locality.
- The proposal provides for the construction of alterations and additions to an existing dwelling, which will not have any substantial impact to the neighbouring properties.
- The setbacks are compatible with the existing surrounding development.
- The proposal does not have any impact on long distance views.

Clause 4.3 relates to building height.

The maximum building height in this portion of Avalon is 8.5m.

The architectural design prepared by Rapid Plans notes that the proposed additions to the existing second floor level will remove the existing roof, with the new roof form over the existing and proposed new floor area (RL 70.957) to be up to 603mm below the existing ridge level of RL 71.56.

The proposal provides for a maximum building height of 8.76m above the natural ground level and therefore presents a minor variation to this control.

Accordingly, a Clause 4.6 submission has been prepared and accompanies this statement.

Clause 7.1 relates to acid sulfate soils. The site has been identified as Class 5. The proposal will require some minor excavation of the site for the new swimming pool and the works will be supervised by the Consulting Structural and Geotechnical Engineers. Appropriate erosion and sediment control measures will be put in place for the construction of the swimming pool.

Clause 7.2 relates to earthworks. The proposal will require some minor excavation for the construction of the proposed swimming pool.

A Geotechnical Investigation has been prepared by White Geotechnical Group under Report No J2597, dated 31 March 2020, with a supplementary report dated 17 December 2020 which confirms that the Investigation has not noted any existing geotechnical hazards.

The Investigation notes that potential hazards are anticipated as a consequence of the construction works and recommendations have been provided to ensure that these hazards are effectively managed. All works will be carried out under the guidance of the consulting Structural and Geotechnical Engineers.

Clause 7.6 relate to biodiversity protection.

The land is noted within Council's Biodiversity mapped area.

- (1) *The objective of this clause is to maintain terrestrial, riparian and aquatic biodiversity by:*
- (a) *protecting native fauna and flora, and*
 - (b) *protecting the ecological processes necessary for their continued existence, and*
 - (c) *encouraging the conservation and recovery of native fauna and flora and their habitats.*

The proposal seeks to remove a number of trees to accommodate the new works. Accordingly, an Arborist Construction Impact & Management Statement prepared by Growing My Way Tree Consultancy, dated June 2020.

As discussed, the tree assessment confirms that five trees will be removed to facilitate the construction of the turning area and the swimming pool. The tree is identified as being mature Spotted Gum species, and in good health. The site and the immediate vicinity also supports a number of other trees of similar form and health which will not be affected by the work.

The Arborist's Statement includes recommendations for replacement planting of Spotted Gum species with area available for four extra trees within the rear yard and one extra tree within the front setback, in order to replace the trees that are to be removed.

The development will maintain a number of trees on the site, along with generous areas of soft landscaping.

It is considered that the development will achieve the Objectives of Clause 7.6.

Clause 7.7 relates to geotechnical hazards.

The site is noted as being within the W Hazard H1 area on Council's Geotechnical Hazard Map. A Geotechnical Investigation has been prepared by White Geotechnical Group, Reference No. J2597, dated 31 March 2020. A supplementary report dated 17 December 2020 has been prepared to address the DA plans accompanying this submission.

This report concludes the following:

The proposed development is suitable for the site. No geotechnical hazards will be created by the completion of the proposed development provided it is carried out in accordance with the requirements of this report and good engineering and building practice.

Subject to compliance with the recommendations contained within the report, the proposal will satisfy the provisions of this clause.

There are no other provisions of the Pittwater LEP 2014 that are relevant to the proposed works.

6.4 Pittwater 21 Development Control Plan 2014

Council's Pittwater 21 DCP Section B (General Controls), Section C (Development Type Controls) and Section D Avalon Beach Locality Statement provides a range of outcomes and controls which form the primary criteria for the control for development within the subject locality.

6.4.1 Shaping Development – Desired Character

The desired outcomes for the Avalon Beach Locality, in which this site falls, are as follows:

A4.1 Avalon Beach Locality

The most important desired future character is that Avalon Beach will continue to provide an informal relaxed casual seaside environment. The locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancies will be located on the valley floor and lower slopes that have less tree canopy coverage, species and habitat diversity, fewer hazards and other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, commercial, community and recreational facilities will serve the community.

Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport. Vehicular and pedestrian access into and through the locality is good. Pedestrian links, joining the major areas of open space (Angophora Reserve, Stapleton Park and Hitchcock Park) and along the foreshores, should be enhanced and upgraded. Similarly, cycle routes need to be provided through the locality. Carparking should be provided on site and where possible integrally designed into the building.

Future development will maintain a building height limit below the tree canopy, and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with development. The objective is that there will be houses amongst the trees and not trees amongst the houses.

Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.

Most houses are set back from the street with low or no fencing and vegetation is used extensively to delineate boundary lines. Special front building line setbacks have been implemented along Avalon Parade to maintain the unique character of this street. This, coupled with the extensive street planting of canopy trees, gives the locality a leafy character that should be maintained and enhanced.

The design, scale and treatment of future development within the Avalon Beach Village will reflect the 'seaside-village' character of older buildings within the centre, and reflect principles of good urban design. External materials and finishes shall be natural with smooth shiny surfaces avoided. Landscaping will be incorporated into building design. Outdoor cafe seating will be encouraged.

A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors. The natural landscape of Careel Bay, including seagrasses and mangroves, will be conserved. Heritage items and conservation areas indicative of early settlement in the locality will be conserved, including the early subdivision pattern of Ruskin Rowe.

Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities.

It is considered that the proposal is consistent with the desired character of the locality by providing for the construction of alterations and additions to an existing dwelling including a new swimming pool, which are consistent with the scale and style of the newer development in the vicinity.

The proposal will require the removal of a number of trees, with replacement plantings provided throughout the site. An appropriate level of soft landscaping will be provided throughout the site.

The proposal has been designed to reflect the existing setbacks provided to all boundaries existing in the immediate area.

The building materials and colours will harmonise with the natural environment and will not detract from the existing locality.

The proposal includes a new vehicle turning area within the front yard of the site, which will allow for vehicles to enter and exit the site in a forward direction which given the challenges presented by the busy nature of the road and limit available for drivers exiting the site, the works will see a positive improvement in terms of safety for both the subject site and the public.

6.4.2 Section B General Controls

The General Controls applicable to the proposed construction of additions and alterations to the existing dwelling are summarised as:

B3.1 Landslip Hazard

The controls seek to achieve the outcomes:

- Protection of people. (S)*
- Protection of the natural environment. (En)*
- Protection of private and public infrastructure and assets. (S)*

The site is noted as being within the W Hazard H1 area on Council's Geotechnical Hazard Map. A Geotechnical Investigation has been prepared by White Geotechnical Group, Reference No. J2597, dated 31 March 2020, as revised 17 December 2020.

Not This report concludes the following:

The proposed development is suitable for the site. No geotechnical hazards will be created by the completion of the proposed development provided it is carried out in accordance with the requirements of this report and good engineering and building practice.

Subject to compliance with the recommendations contained within the report, the proposal will satisfy the provisions of this clause.

B3.6 Contaminated Land and Potentially Contaminated Land

The controls seek to achieve the outcomes:

- Protection of public health. (S)*
- Protection of the natural environment. (En)*
- Successful remediation of contaminated land. (En, S)*

The proposal will see the site continue maintain its residential use, with previous contamination of the land considered unlikely.

B4.7 Pittwater Spotted Gum Forest – Endangered Ecological Community

The controls seek to achieve the outcomes:

- Conservation of intact Pittwater Spotted Gum Forest EEC. (En)*
- Regeneration and/or restoration of fragmented and / or degraded Pittwater Spotted Gum Forest EEC. (En)*
- Reinstatement of Pittwater Spotted Gum Forest to link remnants. (En)*
- Long-term viability of locally native flora and fauna and their habitats through conservation, enhancement and/or creation of habitats and wildlife corridors. (En)*

The proposal seeks to remove a number of trees to accommodate the new works. Accordingly, an Arborist Construction Impact & Management Statement prepared by Growing My Way Tree Consultancy, dated June 2020.

The tree Management statement confirmed that five trees will be removed to accommodate the turning area and swimming pool, with the opportunity for replacement planting available within both the front and rear yards of the site.

In addition, a Landscape Plan has been prepared which notes inclusion of additional perimeter screen planting. The proposed new plantings will add to the visual amenity of the site and reduce any adverse privacy impacts onto adjoining properties.

A Flora and Fauna Assessment has been prepared by Kingfisher Urban Ecology Wetlands, dated November 2020.

The Assessment has identified the following results:

- *No threatened flora or fauna species were recorded on-site during survey or previously recorded via Bionet.*
- *No significant habitat features, values or landscape corridors will be impacted by the proposed development.*
- *The proposal does not trigger entry into the BOS.*
- *Tree protection will be consistent with the Arborist report (Growing My Way, 2020). Main trees to be managed are trees within close proximity to building works. NB: see final arborist report for details of works and tree numbers.*
- *The site is within the PWSGF EEC however the community is not in benchmark condition, site is landscaped.*
- *The building area is small and the design has considered the trees and maximises their retention.*
- *It is preferred that five (5) trees be removed as the development encroaches on the SRZ. The trees are in marginal condition and native landscaping post development will offset their removal from the site.*
- *Test of significance has been conducted for PWSG Forest – while it resulted in a ‘not significant’ impact for this community recommendations have been made to assist the long-term sustainability of this community. Appendix V contains 5-part tests.*

The proposal is not considered to unreasonably impact on the Pittwater Spotted Gum Forest Ecological Community and meets the objectives of this clause.

B5.8 Stormwater Management – Water Quality – Low Density Residential

The controls seek to achieve the outcomes:

No increase in pollutants discharged with stormwater into the environment. (En)

Development is compatible with Water Sensitive Urban Design principles. (En)

Other than the proposed new vehicle turning area and the swimming pool and set of plans coping works, the majority of the proposed works are largely within the existing building footprint and will not see any significant change to the site conditions.

The proposed new roof areas will be connected to the existing stormwater system which directs water to the street gutter in Wandeen Road, and accordingly the proposal is considered to satisfy Council's stormwater requirements.

B5.10 Stormwater Discharge into Public Drainage System

The controls seek to achieve the outcomes:

All new development to have no adverse environmental impact at the discharge location (En, S)

The proposed new roof areas will be connected to the existing system which directs collected stormwater to the existing stormwater line to the street gutter.

B6.1 Access driveways and works on the Public Road Reserve – Low Density Residential

The controls seek to achieve the outcomes:

Safe and convenient access. (S)

Adverse visual impact of driveways is reduced. (En)

Pedestrian safety. (S)

An effective road drainage system. (En, S)

Maximise the retention of trees and native vegetation in the road reserve. (En, S)

The site will provide for the construction of alterations and additions to an existing dwelling. The current driveway crossing arrangements will be retained.

B6.2 Internal Driveways – Low Density Residential

The controls seek to achieve the outcomes:

Safe and convenient access. (S)

Reduce visual impact of driveways. (S)

Pedestrian safety. (S)

An effective road drainage system. (En, S)

Maximise the retention of trees and native vegetation.

Reduce contaminate run-off from driveways.

The existing driveway will remain unchanged, with a new turning circle provided for forward entry and exit.

Given the challenges of safely entering or leaving the site, with one being Road being a busy through link between Bilgola Plateau and Clareville/Avalon, inclusion of the vehicle turning area will provide for an important safety benefit for both the owners of the subject property and the public, in that safe egress and ingress to the site can be provided.

B6.3 Off-street Vehicle Parking Requirements

The controls seek to achieve the outcomes:

Safe and convenient parking (En,S)

The controls require a minimum of 2 parking spaces for a dwelling with 2 bedrooms or more. The proposal will maintain the existing double garage and will therefore comply with the parking requirement.

B8.1 Construction & Demolition – Excavation and Landfill

The controls seek to achieve the outcomes:

Site disturbance is minimised. (En)

Excavation and construction not to have an adverse impact. (En)

Excavation operations not to cause damage on the development or adjoining property. (S)

Minor excavation is required for the construction of the new swimming pool.

All new works will be carried out in accordance with the recommendations of qualified Structural and Geotechnical Engineers.

B8.2 Construction & Demolition – Erosion and Sediment Management

The controls seek to achieve the outcomes:

Waterways, coastal areas, watercourses, drainage systems and the public domain are protected from the transportation of sedimentation from development sites. (En)

Reduction of waste throughout all phases of development. (En)

Public safety is ensured. (S)

Protection of the public domain. (S, En)

As required, appropriate sedimentation controls will be implemented throughout construction to prevent transportation of sediment to adjoining properties.

B8.3 Construction & Demolition – Waste Minimisation

The controls seek to achieve the outcomes:

Reduction management of demolition, excavation and construction works is to be minimised by reuse on-site, recycling, or disposal at an appropriate waste facility. (En)

As required, appropriate waste management controls will be implemented throughout construction.

6.4.3 Section C Development Type Controls

The Development Controls applicable to the proposed development and are summarised as:

C1.1 Landscaping

The controls seek to achieve the outcome:

A built form softened and complemented by landscaping. (En)

Landscaping reflects the scale and form of development. (En)

Retention of canopy trees by encouraging the use of pier and beam footings. (En)

Development results in retention of existing native vegetation. (En)

Landscaping results in the long-term retention of Pittwater's locally native tree canopy. (En)

Landscaping retains and enhances Pittwater's biodiversity by using locally native plant species (En)

Landscaping enhances habitat and amenity value. (En, S)

Landscaping results in reduced risk of landslip. (End, Ec)

Landscaping results in low watering requirement. (En)

The proposal seeks to remove a number of trees to accommodate the new works. Accordingly, an Arborist Construction Impact & Management Statement prepared by Growing My Way Tree Consultancy, dated June 2020.

The Statement recommends inclusion of supplementary planting of Spotted Gums is within the front and rear yards of the site, with adequate area identified to sustain the new tree planting.

The proposed new plantings will add to the visual amenity of the site and reduce any adverse privacy impacts onto adjoining properties.

The development is supported by a Landscape Plan prepared by Rapid Plans (Sheet DA 1015) dated 9 December 2020 which will provide for additional plantings throughout the site.

The proposal will retain a suitable area of soft landscaping on site, and the site will maintain its contribution to the landscaped character of the locality and is considered to maintain consistency with the provisions of this clause.

C1.2 Safety and Security

The controls seek to achieve the outcomes:

On-going safety and security of the Pittwater community. (S)
Opportunities for vandalism are minimised. (S, Ec)
Inform applicants of Council's requirements for crime and safety management for new development. (S)
Improve community awareness in relation to Crime Prevention through Environmental Design (CPTED), its principle strategies and legislative requirements (S)
Identify crime and safety priority areas in Pittwater LGA (S, Ec)
Improve community safety and reduce the fear of crime in the Pittwater LGA (S)
Develop and sustain partnerships with key stakeholders in the local area who are involved in community safety. (S)

The site will retain the opportunity to view the driveway and street area with casual surveillance of the immediate area available.

C1.3 View Sharing

The controls seek to achieve the outcomes:

A reasonable sharing of views amongst dwellings. (S)
Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced. (S)
Canopy trees take priority over views. (En, S)

The proposal provides for the construction of alterations and additions to an existing dwelling.

The subject site and neighbouring properties on the high side of Wandeen Road enjoy views to the north and north-west towards Pittwater.

The proposed alterations and additions are largely contained within the building footprint, with the new works to the second floor level to be positioned to the western side of the current floor plate.

The new roof form over the upper floor additions will see a reduction in the overall ridge height of 603mm, which combined with the massing of the new floor areas towards the western side of the site, will ensure that properties above the property to the east should maintain their primary outlooks.

Additionally, the retention of the existing front setback ensures that the views currently enjoyed by neighbouring properties past the front elevation of the building will be maintained will be retained.

It is therefore considered that the proposal will therefore not adversely impact the view sharing of neighbouring properties.

C1.4 Solar Access

The controls seek to achieve the outcomes:

Residential development is sited and designed to maximise solar access during mid-winter. (En)

A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development. (En)

Reduce usage and/dependence for artificial lighting. (En)

The required controls to achieve the outcomes are to ensure that private open spaces of the subject and adjoining dwellings maintain a minimum of 3 hours of solar access in mid-winter.

Given the orientation of the subject and neighbouring properties, the proposed dwelling will not unreasonably further remove solar access to the primary living spaces or private open space areas of any neighbouring properties.

Shadow diagrams have been prepared which confirm that the adjoining neighbours will continue to receive access to at least three hours of solar access between 9.00am – 3.00pm. The majority of the additional shadows are noticeable at 12.00pm and 3.00pm, however the additional shadows fall mainly within the site.

C1.5 Visual Privacy

The controls seek to achieve the outcomes:

Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design. (S)

A sense of territory and safety is provided for residents. (S)

The required controls to achieve the outcomes are to ensure that the private open space, recreation areas and living rooms within 9m of a development are suitably protected to limit the effects of direct overlooking.

The proposal retains the existing window openings to the side elevations and is not considered to result in any additional overlooking to neighbouring properties.

The proposal provides for an extension to the front balcony, with the proposed privacy screening and landscape plantings along the eastern side boundary to assist with minimising opportunities to the eastern neighbour. The proposed balcony extension is well separated from the western side boundary.

Plantings are provided to the perimeter of the proposed swimming pool in order to maximise privacy for the adjoining neighbours. In addition, limited coping is provided to the northern, eastern and western boundaries, which minimises opportunities for overlooking.

The new works to the dwelling will not unreasonably overlook the neighbours, with the existing levels of amenity enjoyed by the neighbours to be largely maintained.

C1.6 Acoustic Privacy

The controls seek to achieve the outcomes:

Noise is substantially contained within each dwelling and noise from any communal or recreation areas are limited. (S)

Noise is not to be offensive as defined by the Protection of the Environment Operations Act 1997, including noise from plant, equipment and communal or recreation areas (S)

The required controls to achieve the outcomes are to ensure that noise sensitive living areas and bedrooms are located away from major noise sources.

Given the residential nature of the works, there will not be any significant Impact on the surrounding locality in terms of acoustic privacy. The works will maintain the current ample separation to living areas of adjoining properties, thereby maintaining existing levels of acoustic privacy. The proposed pool equipment will be contained in a sound attenuating enclosure.

C1.7 Private Open Space

The controls seek to achieve the outcomes:

Dwellings are provided with a private, usable and well-located area of private open space for the use and enjoyment of the occupants. (S)

Private open space is integrated with, and directly accessible from, the living areas of dwellings. (S)

Private open space receives sufficient solar access and privacy (En, S).

The required controls to achieve the outcomes are to ensure that dwellings are provided suitable private open space with an area and at a grade which will facilitates outdoor private recreation. The proposal retains the existing areas of private open space which enjoy good solar access.

C 1.12 Waste and Recycling Facilities

The controls seek to achieve the outcomes:

Waste facilities are accessible and convenient and integrate with the development. (En)

Waste facilities are located such that they do not adversely impact upon amenity of the land adjoining development or natural environment. (En, S)

The required controls to achieve the outcomes are to ensure that adequate area remains for the storage of waste and recyclable materials. There is sufficient area surrounding and inside the garage for on-site storage of waste and recyclables, with the waste removed by Council contractors via the household garbage service.

C 1.17 *Swimming Pool Safety*

The controls seek to achieve the outcomes:

The promotion of personal safety. (S)

Compliance with Swimming Pools Act 1992 and Regulations (En, S)

Swimming pool fencing and warning notices are to be provided in accordance with the *Swimming Pools Act 1992* and regulations. The proposed swimming pool fencing will comply with this control.

6.4.4 Section D Design Criteria

The **D1 Avalon Beach Locality Statement** contains a number of outcomes for development. The proposal has been assessed in regard to the Locality Statement and is summarised in the following table.

In support of the proposal, it is considered that this proposal is well designed, comprehensive and consistent with the community's vision for development in Pittwater in that it is:

- Proposing a form of development which is compatible with the existing residential character of the area by maintaining an appropriate development scale which is compatible with the vicinity.
- The proposal maintains existing views and amenity to adjoining properties.
- The proposal will not result in additional run-off to adjoining properties or public spaces.
- The development will not place additional demands on local infrastructure or on the sewage disposal system for the site.

A summary of the DCP controls for the **D1 Avalon Beach Locality** is provided below:

D1.1 Character as Viewed from A Public Place

The control seeks to achieve the outcomes:

To achieve the desired future character of the Locality.

To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment. (En, S, Ec)

To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.

The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation. (En, S, Ec)

High quality buildings designed and built for the natural context and any natural hazards. (En, S)

Buildings do not dominate the streetscape and are at 'human scale'.

To preserve and enhance district and local views which reinforce and protect the Pittwater's natural context.

The required controls to achieve the outcomes are to ensure that the building maintains a compatibility with the locality through appropriate design relief including roof forms textures, materials, the arrangement of windows, modulation of wall and roof planes, spatial separation, landscaping etc.

The proposal will provide for the construction of alterations and additions which will maintain a bulk and scale which is in keeping with existing surrounding development.

View sharing corridors forward of the dwelling will be retained for the neighbouring dwellings to the east and west of the subject site.

The setbacks provided reflect the setbacks of the adjoining properties.

The proposed additions to the dwelling are well articulated to provide visual interest and reduce bulk when viewed from Wandeen Road. In addition, the existing and proposed landscaping will ensure that the proposed works will be interspersed with the natural landscape setting.

D1.5 Building Colours, Materials and Construction

The controls seek to achieve the outcomes:

Achieve the desired future character of the Locality.

*The development enhances the visual quality and identity of the streetscape. (S)
To provide attractive building facades which establish identity and contribute to the streetscape.*

To ensure building colours and materials compliments and enhances the visual character and its location with the natural landscapes of Pittwater.

The colours and materials of the development harmonise with the natural environment. (En, S)

The visual prominence of the development is minimised. (S)

Damage to existing native vegetation and habitat is minimised. (En)

An informal beachside appearance of the Clareville Village. (S, Ec)

The required controls to achieve the outcomes are to ensure that the external colours and materials shall be dark and earthy tones as indicated within the DCP.

The materials and finishes include weatherboard cladding and colourbond roofing, which will complement the external finishes of the existing dwelling.

It is considered that the development is appropriate as the proposal will utilise finishes and colours which are compatible with the DCP, existing building finish and the surrounding properties.

D1.8 Front Building Line

The controls seek to achieve the outcomes:

Achieve the desired future character of the Locality. (S)

The amenity of residential development adjoining a main road is maintained. (S)

Vegetation is retained and enhanced to visually reduce the built form. (En)

Vehicle maneuvering in a forward direction is facilitated. (S)

To encourage attractive street frontages and improve pedestrian amenity.

To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment

The control to achieve this outcome is to provide a setback of 6.5m, or the established building line to the street frontage.

The site is subject to a minimum front setback of 6.5m, and the proposed works will maintain the existing minimum front setback of 14.6m. The proposal therefore readily complies with the front setback control.

D1.9 Side and rear building line

The controls seek to achieve the outcomes:

- To achieve the desired future character of the Locality. (S)*
- The bulk and scale of the built form is minimised. (En, S)*
- Equitable preservation of views and vistas to and/or from public/private places. (S)*
- To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*
- To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)*
- Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)*
- Flexibility in the siting of buildings and access. (En, S)*
- Vegetation is retained and enhanced to visually reduce the built form. (En)*
- To ensure a landscaped buffer between commercial and residential zones is established. (En, S)*

The relevant controls to achieve this outcome are to maintain a minimum side boundary setback of 2.5m for at least one side and a minimum of 1.0m setback for the other side.

The proposal is largely contained within the confines of the existing dwelling, and follows the siting of the existing side setbacks. The proposed works at the second floor level will stand 1m from the eastern side boundary and from 1.5m – 1.8m from the western side boundary.

The proposed balcony extension will stand 2.6m from the eastern side boundary and therefore complies with this control.

The proposed pool will stand 6.331m from the rear boundary, which is marginally within the required 6.5 m setback, however the swimming pool occupies less than 50% of the rear frontage and together with the additional privacy screen planting, is considered to achieve the objectives of Council's setback controls

The proposed pool will stand 1.158m from the western side boundary, and is well set back from the eastern side boundary.

The proposal therefore will continue to comply with the side and rear setback requirements.

D1.11 Building Envelope

The controls seek to achieve the outcomes:

- To achieve the desired future character of the Locality.*
- To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.*
- To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.*
- The bulk and scale of the built form is minimised. (En, S)*
- Equitable preservation of views and vistas to and/or from public/private places. (S)*

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)
Vegetation is retained and enhanced to visually reduce the built form. (En)

The required controls to achieve the outcomes are to maintain the development within a height envelope which provides for a height of 3.5m with an angle projected at 45°.

As noted on the submitted northern and southern Elevations, the proposal will present a variation to the building envelope control to the eastern and western side boundaries, as a result of the siting of existing development and sloping topography of the site.

The proposed breach of the building envelope to the eastern and western elevations is considered to be reasonable as it does not result in any unreasonable impacts for neighbouring properties in terms of solar access, privacy or general amenity.

Notwithstanding the variation to the building envelope control, the proposal is considered to be in keeping with the desired outcomes and is worthy of support on merit.

D1.14 Landscaped Area – Environmentally Sensitive Land

The controls seek to achieve the outcomes:

Achieve the desired future character of the Locality. (S)
The bulk and scale of the built form is minimised. (En, S)
A reasonable level of amenity and solar access is provided and maintained. (En, S)
Vegetation is retained and enhanced to visually reduce the built form. (En)
Conservation of natural vegetation and biodiversity. (En)
Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels. (En)
To preserve and enhance the rural and bushland character of the area. (En, S)
Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management. (En, S)

The required controls to achieve the outcomes are to limit residential development in order to maintain a minimum landscaped area of 60% of the site area.

The proposed new additions and alterations to the existing dwelling and associated works will provide for a soft landscaped area of 499.73m² or 59.8%. With the 6% impervious surface included the site sees an increase to 60%.

Compliance with this control is constrained by the existing structures and will see only a minor reduction in the landscaped area of 5.37m².

As the works achieve the objectives of this clause, the proposal is considered acceptable on merit.

D1.15 Fences – General

The controls seek to achieve the outcomes:

To achieve the desired future character of the Locality. (S)

To ensure fences compliment and conserve the visual character of the street and neighbourhood

To define the boundaries and edges between public and private land and between areas of different function.

To contribute positively to the public domain.

An open streetscape that allows casual surveillance of the street. (S)

Fences, where provided, are suitably screened from view from a public place. (S)

Safe sight distances and clear view of the street (including to and from driveways) for motorists and pedestrians. (S)

To ensure heritage significance is protected and enhanced. (S)

To ensure an open view to and from the waterway is maintained. (S)

No change to existing site fencing.

A new sliding front gate with a height of 1 m will be provided which will match the existing front fence. Given the open nature of the gate fence and its limited height, it is not considered to be presenting a prominent feature within the streetscape.

D1.20 Scenic Protection Category One Areas

The controls seek to achieve the outcomes:

To achieve the desired future character of the Locality.

Achieve the desired future character of the Locality. (En, S)

To preserve and enhance the visual significance of district and local views of Pittwater's natural topographical features such as, ridges, upper slopes and the waterfront. (En, S).

Maintenance and enhancement of the tree canopy. (En, S)

Colours and materials recede into a well vegetated natural environment. (En, S)

To maintain and enhance the natural environment of Pittwater as the predominant feature of the landscape with built form being a secondary component (En, S)

To preserve and enhance district and local views which reinforce and protect the Pittwater's bushland landscape and urban form to enhance legibility.

To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.

To ensure sites are designed in scale with Pittwater's bushland setting and encourages visual integration and connectivity to natural environment.

Development shall minimise visual impacts on the natural environment when viewed from any waterway, road or public reserve.

The site will maintain a suitable area of soft landscaping given the sites constraints.

The retention of earthy colours and finishes, together with the proposed new landscaping, will

ensure the development integrates with the existing building, thereby minimising the visual impact of the dwelling as viewed from the foreshore area.

The bulk and scale of the development is generally in keeping with the extent of development in the immediate locality.

The proposal will not see any unreasonable view loss for neighbouring properties, and will maintain suitable privacy, amenity and solar access for neighbouring dwelling. The proposal is therefore considered to be in keeping with the provisions of this clause.

7.0 Matters for Consideration under Section 4.15 of The Environmental Planning and Assessment Act, 1979

7.1 The provisions of any environmental planning instrument

The proposal is subject to the provisions of the Pittwater Local Environmental Plan 2014 and the relevant supporting Council policies. It is considered that the provisions of this environmental planning instrument have been satisfactorily addressed within this report and that the proposal achieves compliance with its provisions.

There are no other environmental planning instruments applying to the site.

7.2 Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

There are no draft instruments applying to the land.

7.3 Any development control plan

The development has been designed to comply with the requirements of Council's Pittwater 21 Development Control Plan 2014.

The application has been prepared having regard to the requirements of Section B, Section C and Section D of the Pittwater 21 DCP.

It is considered that the proposed design respects the aims and objectives of the DCP however we note that the Environmental Planning and Assessment Amendment Act 2012 No 93 (Amendment Act) which received assent on 21 November 2012 commenced on 1 March 2013.

Key amongst the amendments are requirements to interpret DCPs flexibly and to allow reasonable alternative solutions to achieve the objectives of DCP standards.

The new section 3.42 provides that the 'principal purpose' of DCPs is to 'provide guidance' on:-

- giving effect to the aims of any applicable environmental planning instrument
- facilitating permissible development
- achieving the objectives of the relevant land zones.

The key amendment is the insertion of section 4.15(3A) which:

- prevents the consent authority requiring more onerous standards than a DCP provides,
- requires the consent authority to be 'flexible' and allow 'reasonable alternative solutions' in applying DCP provisions with which a development application does not comply,
- limits the consent authority's consideration of the DCP to the development application (preventing consideration of previous or future applications of the DCP).

We request that Council applies considered flexibility where the application seeks variations to numerical development controls in the DCP as justified in this report. In particular we consider that

the variation to the rear setback and building envelope controls is a reasonable alternative solution to compliance where the site conditions results in a challenge to designing for new development which fully respects the setbacks.

It is considered that the proposed design respects the desired character objectives of the DCP in that it reinforces the existing residential character of the area and is compatible with the existing uses in the vicinity.

7.4 Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and

No matters of relevance are raised in regard to the proposed development.

7.5 The regulations (to the extent that they prescribe matters for the purposes of this paragraph),

No matters of relevance are raised in regard to the proposed development.

7.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality.

It is considered that the proposal, which seeks consent for proposed construction of alterations and additions to an existing dwelling, including a new swimming pool and associated landscaping, will not unreasonably impact upon the amenity of adjoining properties or upon the character of the surrounding area. It is considered that the resultant development is compatible with and will complement the residential character of the area.

The proposal is considered to be well designed having regard to the relevant provisions of the Council's PLEP 2014 and Council's Codes and Policies, in particular the Pittwater 21 DCP 2014 and the Avalon Beach Locality Statement.

7.7 The suitability of the site for the development

The subject land is currently zoned E4 Environmental Living under the Pittwater Local Environmental Plan 2014 and is considered suitable for the proposed development.

7.8 Any submissions made in accordance with this Act or the regulations

This is a matter for Council in the consideration of this proposal.

7.9 The public interest

The proposal will not impact upon the environment, the character of the locality or upon the amenity of adjoining properties and is therefore considered to be within the public interest.

8.0 Conclusion

The principal objective of this development is to provide for the construction of alterations and additions to existing dwelling, including a new swimming pool and associated landscaping, which respects and complements the site's location.

It is considered that the proposed works satisfy the stated objectives of Council's Development Controls. By maintaining our neighbours amenity and by complementing the existing style and character of the surrounding locality, the stated objectives have been satisfied.

As the proposed development will not have any significant impact on the environment, scenic quality of the area or the amenity of the adjoining allotments, the issue of Development Consent under the delegation of Council is requested.

VAUGHAN MILLIGAN

Town Planner

Grad. Dip. Urban and Regional Planning (UNE)

Appendix: Clause 4.6 – Maximum Building Height

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

29 WANDEEN ROAD, CLAREVILLE

VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM BUILDING HEIGHT CONTROL AS DETAILED IN CLAUSE 4.3 OF THE PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

FOR THE CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING INCLUDING NEW SWIMMING POOL AND LANDSCAPING

For: For proposed construction of alterations and additions to an existing dwelling including new swimming pool and landscaping
At: 29 Wandeen Road, Clareville
Owner: Peter and Trish Quirk
Applicant: Peter and Trish Quirk
C/- Vaughan Milligan Development Consulting

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

Pittwater LEP 2014 – Clause 4.3 prescribes a maximum building height for the subject site of 8.5m in this portion of Clareville. This control is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposed alterations and additions to the existing dwelling will provide a height of 8.76m above natural ground level which exceeds Council's maximum building height by 0.26m or 3% and therefore does not comply with this control.

It is relevant to note that the proposed additions to the existing second floor level will remove the existing roof, with the new roof form (RL 70.957) over the existing and proposed new floor area will be up to 603mm below the existing ridge level of RL 71.56.

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 means standards fixed in respect of an aspect of a development and 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.

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 LEP.

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 Clareville. The additions to the existing dwelling will result in a maximum building height of 8.76m or exceed the height control by 0.26m or 3%.

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 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 the housing needs of the community within a low density residential environment.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

The proposal will provide for the construction of alterations and additions to an existing dwelling to provide for increased amenity for the site's occupants.

The non-compliance with the height control arises as a result of the site's sloping topography and siting of existing development.

The new works maintain a bulk and scale which is in keeping with the extent of surrounding development, with a consistent palette of materials and finishes which will provide for high quality development that will enhance and complement the locality.

Notwithstanding the non-compliance with the maximum building height control, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood. It is noted that the proposal will maintain a consistent character with the built form of nearby properties.

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

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 Wandeen Road and the wider public view of the site, together with from the surrounding private properties, will be largely maintained.

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 Clareville.
- 5.3 The proposed additions and alterations to the existing dwelling will have a maximum height of 8.76m, which exceeds the height control by 0.26m or 3%.

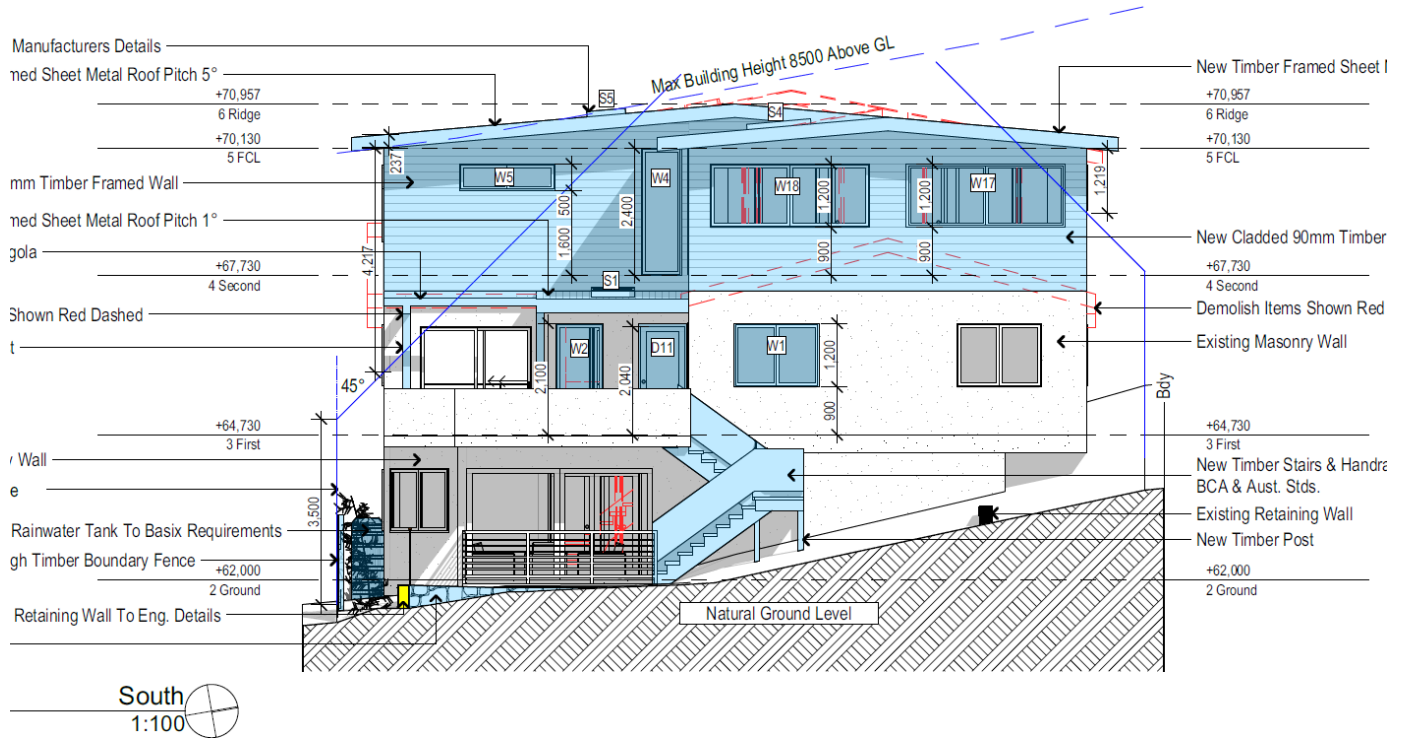


Fig 9: View of area breaching maximum building height control as noted in South Elevation prepared by Rapid Plans

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 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 clause 4.3 of PLEP a development standard?

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act 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.

7.2 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 accommodate the additions within a compatible building form, with the slope of the site and siting of existing development resulting in a portion of the roof being up to 8.76m in height.

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

The proposed height of the dwelling maintains consistency with the siting of surrounding development. The proposed ridge height of the dwelling is RL 70.957m, which is up to 603mm below the existing ridge height of RL 71.56m.

The proposed alterations and additions present a varied, modulated façade to Wandeen Road. The proposed development is considered to be compatible with the bulk and scale of surrounding development.

(c) to minimise any overshadowing of neighbouring properties,

The proposal is accompanied by Shadow Diagrams (Drawing No. DA5003 – DA5005)

which demonstrate that the proposal will see any unreasonable diminution of the existing solar access currently received by neighbouring properties.

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

Due the location of the site on the ridgeline, the proposal is not considered to result in any unreasonable view impacts on uphill properties. The existing front setback is maintained, which will ensure that the neighbouring properties to the east and west maintain their views.

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

The proposal will continue to present as a modest three storey development to Wandeen Road.

Whilst the footprint of the upper floor is to be increased, the proposal will see a minor reduction in the ridge height of the dwelling.

The proposal has been designed to follow the sloping topography of the site, and is considered to be effectively integrated into the landform.

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

The proposal provides for the construction of alterations and additions to an existing dwelling in a manner which will retain the single dwelling character of the site and the immediate area.

The proposal will present as a modest three storey development to Wandeen Road.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and the wider Warringah area.

This objective is achieved in that the proposal will not require any substantial site disturbance or excavation with the exception of the works to accommodate the swimming pool, with minimal alteration to the natural ground levels and through the retention of a suitable landscaped area, will maintain the balance between landscaping and built form.

Accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

7.3 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.*

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].*
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 additions will maintain the general bulk and scale of the existing surrounding newer 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 streetscape of Wandeen Road which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The proposed new development 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.

7.4 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 modest breach of the maximum building height by 0.46m at the northern extremity of the dwelling, the proposed alterations and additions to the existing dwelling will be consistent with the individual Objectives of the E4 Environmental Living Zone for the following reasons:

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

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 E4 Environmental Living contemplates low density residential uses on the land.

The housing needs of the community are appropriately provided for in this instance through the proposed alterations and additions to an existing dwelling which will provide for an appropriate level of amenity and in a form which will respect the predominant bulk and scale of the surrounding dwellings.

The proposal provides for the construction of alterations and additions to an existing dwelling in a manner which will retain the single dwelling character of the site and the immediate area.

The proposal will continue to present as a modest two and part three storey development to Wandeen Road, in keeping with the extent of existing development.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and the wider Pittwater area.

The compatible form and scale of the proposed development will meet the housing needs of the community within a single dwelling house which is a permissible use in this environmentally sensitive zone.

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

This control is not relevant to the subject residential development.

- **To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.**

This control is not relevant to the subject residential development.

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.

7.5 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.

7.6 Has the Council considered the matters in clause 4.6(5) of MLEP?

- (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.

7.0 Conclusion

This development proposes a departure from the maximum building height control, with the proposed new building to provide for a height of up to 8.76m.

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

This objection to 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, consisting of the first and last names 'Vaughan Milligan' written in a cursive, flowing style.

VAUGHAN MILLIGAN
Town Planner