

## **CLAUSE 4.6**

### **Height of Building**

**139 George Street,  
Avalon Beach**

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**RESPONSIBLE FOR THIS REPORT:**

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# 1 Clause 4.6 exception for Height of Building

## 1.1 Overview

Clause 4.6 of the Pittwater LEP 2014 (LEP) provides a mechanism for an exception to a development standard.

The proposal contravenes LEP Clause 4.3 'Height of Building' (height), which is a development standard, and an exception is sought.

The height applicable to the site is 8.5m under cl 4.3 and 10m pursuant to 4.3(2D).

The existing and proposed developments exceed the height standard. In summary:

- the existing height is 9.88m, with a Ridge RL 24.10 with an exceedance up to 1.38 metres
- the proposed ridge is RL 23.01 with a corresponding proposed height of 10.38m with an exceedance up to 1.88m metres.

Images 1 to 11 below show the nature and extent of the existing and proposed development's height exception.

## 1.2 Additional height provision for sloping land

Clause 4.3 2(D) applies to the proposal because the building footprint is situated on a slope that is in excess of 16.7 degrees. However, the provision is not relied upon because the proposal exceeds 10m and therefore does not satisfy the numerical limit (10m) within clause 4.3 2(D). Notwithstanding, the clause 4.6 exception provides the necessary mechanism to approve the proposed building height.

## 1.3 Site and location description

The site is located at 139 George Street, Avalon Beach and legally described as Lot 4 in Deposited Plan 204164. The site has an area of 1,170m<sup>2</sup>.

The site is located on the southern side of George Street and is accessed via a long 'battle-axe shaped' driveway from George Street.

The allotment is of irregular shape, with a narrow northern street frontage of 4.57m.

The allotment has a second egress from its western side via Careel Bay Crescent.

The property contains an existing large split-level dwelling house, carport, double garage, with various elevated decks above the ground level.

The site has a long, narrow driveway which provides access to the rear of the lot where the dwelling is situated. The existing dwelling house is positioned close to the rear boundary.

The topography slopes steeply from the rear of the dwelling to the front of the site. There is a level difference of approximately 9.46m between the rear of the dwelling house and the front boundary (RL 17.99 to RL 8.53).

The property is within a north facing hillside that enjoys views over Careel Bay and Pittwater. There is dense vegetation to the east and south of the site.

The undulating topography results in dwelling houses being sited at different levels and within an irregular pattern within the hillside.

Neighbouring properties to the east, south, south-east and south-west are significantly separated, elevated and screened by vegetation.

The figures on the following pages depict the character of the property and its existing development.



**Figure 1 – Alignment, orientation, and spatial layout of the subject site and adjoining dwellings (courtesy Northern Beaches Council)**



**Figure 2 – the configuration and orientation of the subject site (courtesy Northern Beaches Council Maps)**



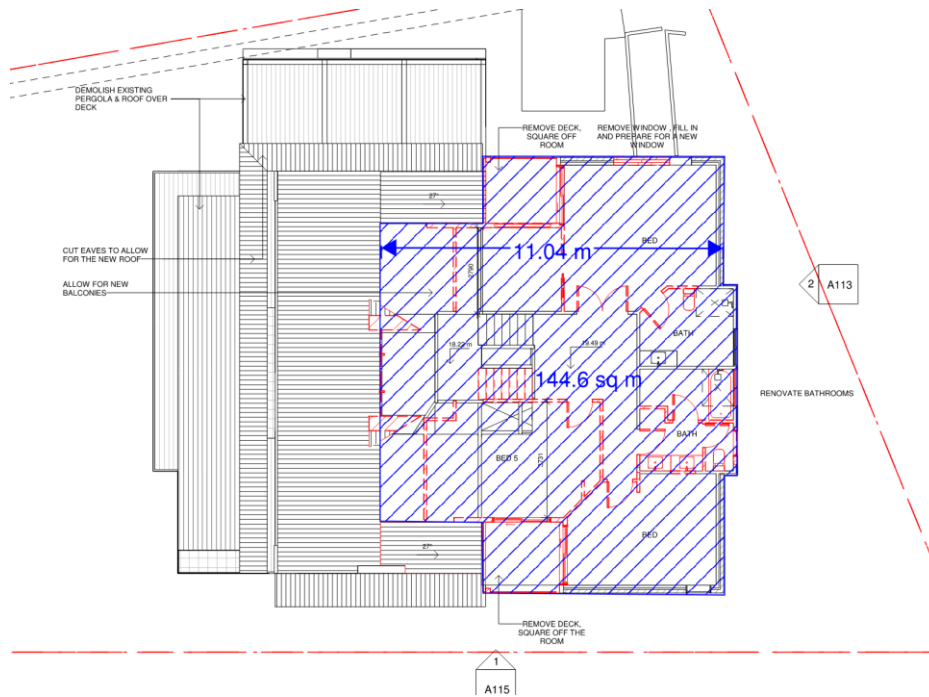


**Figure 3 – existing northern elevation**

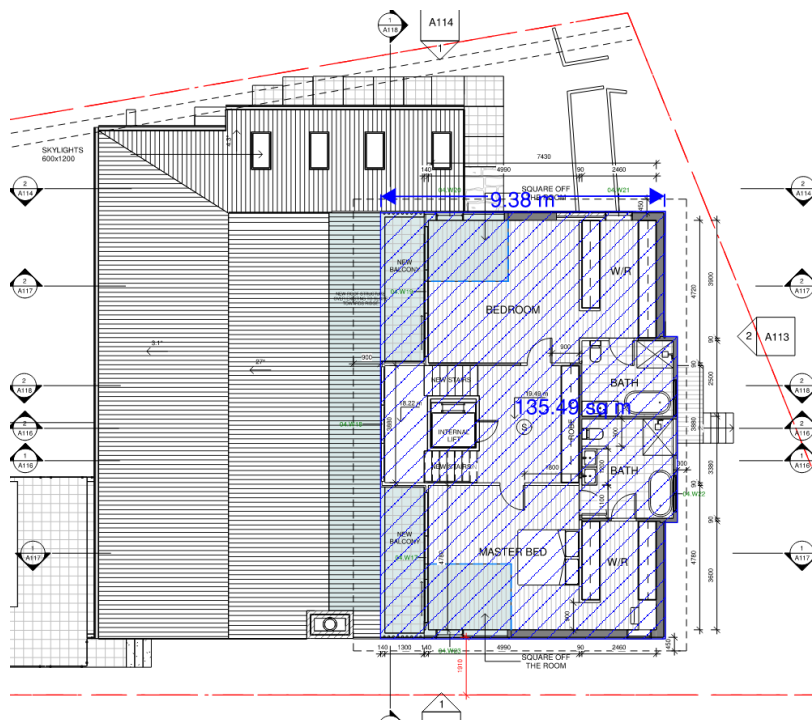


**Figure 4 – proposed northern elevation**





**Figure 5 – existing floorplate of the upper building level; the floor plate is 11m deep and approx. 144m<sup>2</sup> in area**



**Figure 6 – proposed floorplate of the upper building level; the floor plate is 9.4m deep and approx. 135.5m<sup>2</sup> in area**

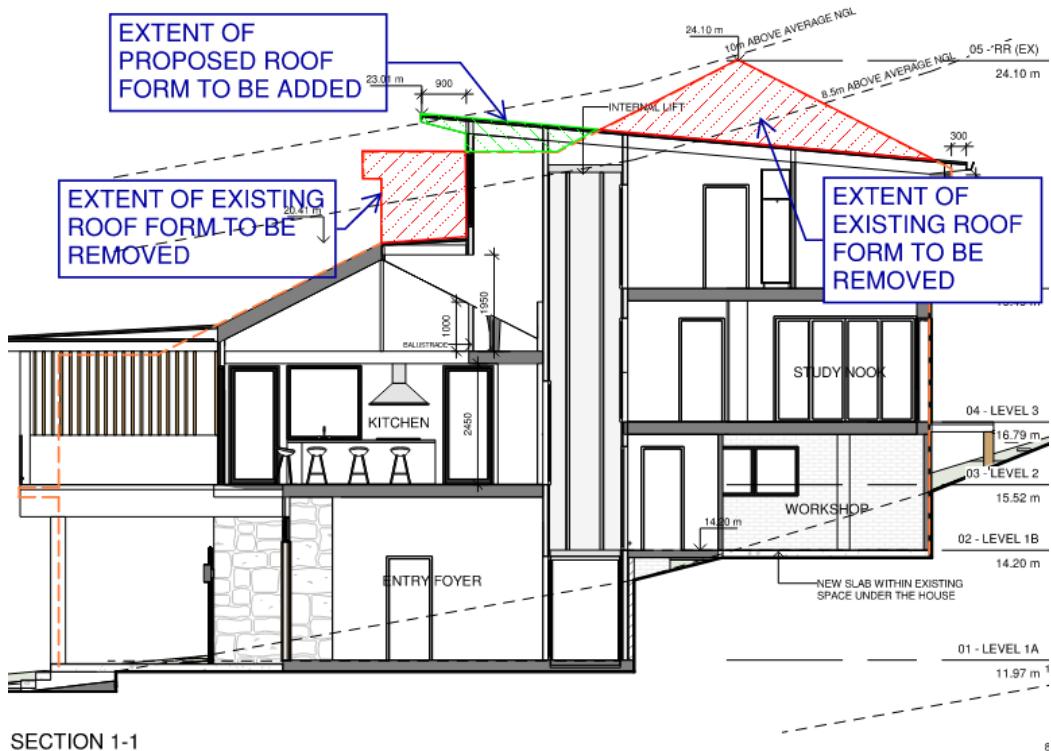


Figure 7 – extent of the proposed exception at the section 1-1

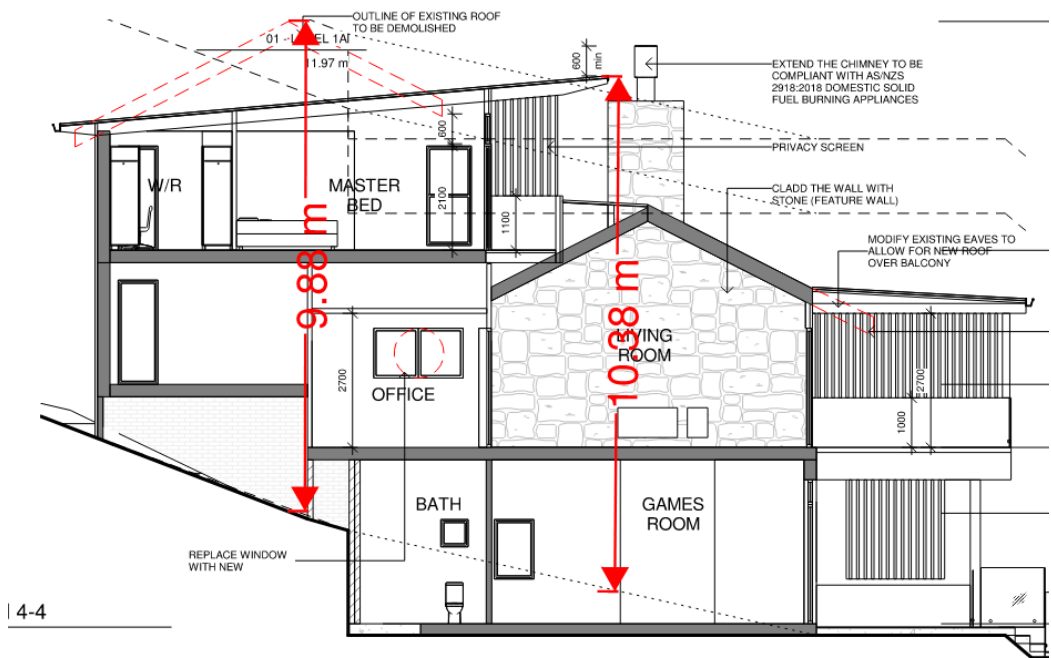
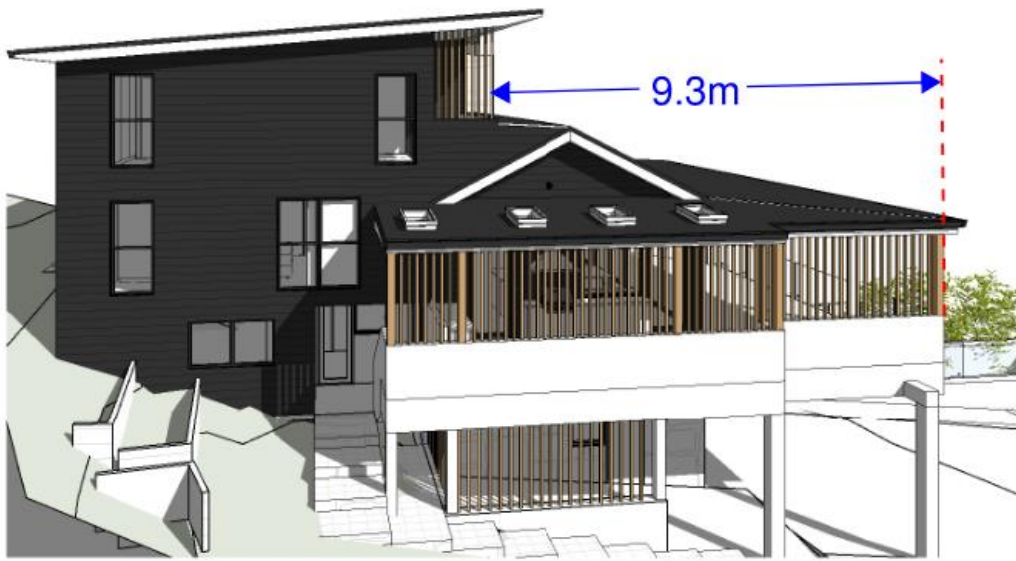


Figure 8 – extent of the existing and proposed exception at the section 4-4



**Figure 9 – the revised upper-level height exception is significantly set back from the front of the dwelling and will present as a recessive form**



**Figure 10 – extent of the proposed exception at the western elevation**





**Figure 11 – existing presentation of site to Careel Bay Crescent. The existing dwelling is obscured in this photograph**

## 2 Key statutory considerations

### 2.1.1 Objectives of clause 4.6

The objectives of clause 4.6 are as follows:

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

### 2.1.2 Objectives of Clause 4.3 Height of Building

The objectives of Clause 4.3 Height of Building are:

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) to minimise any overshadowing of neighbouring properties,*
- (d) to allow for the reasonable sharing of views,*
- (e) to encourage buildings that are designed 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.*

### 2.1.3 Ground level (existing)

**'ground level (existing)** means the existing level of a site at any point'.

### 2.1.4 Objectives of the C4 Environmental Living Zone

The objectives of the C4 Environmental Living zone are:

- 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.*

### 3 Assessment

Within the spirit of the objectives of clause 4.6, the matters in support of the proposed exception are demonstrated by the characteristics of the proposal and circumstances of the case as set out below.

As required by clause 4.6 (3) the following is a *written request* for the consent authority's consideration.

#### 3.1 4.6 (3)(a) - compliance with the development standard is unreasonable or unnecessary in the circumstances

Having regard for the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, and in accordance with 4.6 (3)(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case because the objectives of the height standard are satisfied.

In the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The first possible way is relevant to the subject matter and is repeated below:

1<sup>st</sup> *'The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.'*

*The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable'.*

. In summary, the proposed height exception does not threaten the proposal's ability:

- to achieve a development is consistent with the desired character of the locality;
- to achieve a development that is compatible with the height and scale of development within the property's visual catchment;
- to achieve an appropriate shading outcome to neighbouring properties;
- to achieve view sharing noting the proposal lowers the existing roof level;
- to achieve a building form and mass that is responsive to the site sloping topography and presents appropriately to adjoining land;
- to achieve a development on the property that results in an enhanced visual quality through improved materials and building design;
- due to the battle-axe location of the site, and the dwelling house's location at the rear of the site, has a small visual catchment. From where it can be seen, the design minimises its visual impact on surrounding land due to its recessive form.



Strict compliance with the development standard would therefore be unreasonable and unnecessary in these circumstances.

The objectives of the height of buildings standard are addressed in further detail within section 3.4.1 below

### **3.2 4.6 (3)(b) sufficient environmental planning grounds to justify contravening the development standard**

In accordance with 4.6 (3)(b) there are sufficient environmental planning grounds to justify the exception to the development standard. The environmental planning grounds in support of the exception are listed as follows and described below.

- Ground 1 – the existing development exceeds the height standard and the proposal involves a reduced upper-level and lower roof ridge
- Ground 2 – a compatible built form, bulk, and mass is proposed
- Ground 3 – the proposal is of good design and satisfies the objectives of the Environmental Planning and Assessment Act.
- Ground 4 – appropriate amenity outcomes are achieved.

#### **3.2.1 *Ground 1 – the existing development exceeds the height standard and the proposal involves a reduced upper-level and lower roof ridge***

The existing development has a height of approx. 9.88m. The proposed development results in a reduced maximum roof level.

The design, form, and location of the existing development limits the ability for the proposal to achieve strict compliance with the numerical standard.

The existing building already exceeds the building height standard. Modest additions and reconfiguration of the existing roof form is proposed that will provide a recessive upper-level, and a more contemporary design that is responsive to the site conditions.

The proposal involves reshaping and lowering the level of the existing roof form. The reshaping involves:

- a change from a pitched to a skillion roof.
- increased setbacks from the lower floor levels, including significant 9.3m setback from the front façade of the dwelling house.
- reduced depth and area of the upper-level floor plate. The depth (north to south) reduces from 11.4 to 9.38; the area of the floorplate reduces from 144m<sup>2</sup> to 135m<sup>2</sup>.
- lowering of the overall maximum roof ridge level from RL 24.10 to RL 23.01

Incorporating these features, the design of the upper-level augments the existing building envelope such that it forms a visually recessive building form..

#### **3.2.2 *Ground 2 – a compatible built form, bulk, and mass is proposed***

The proposed developments' height, mass, and form is compatible with other residential dwelling forms within the visual catchment. This is further addressed in response to objective (a) of the standard within section 3.3.1 of this report.

The proposal displays an appropriate bulk and scale within a vegetated landscaped setting noting:

- The proposal maintains the existing developments setback pattern.
- The property has a limited visual catchment due to its position within a battle-axe allotment and the vegetated character of the surrounding land.
- The proposal involves a modest GFA/FSR increase noting the existing GFA is 322m<sup>2</sup> (FSR of 0.28:1) and the proposed GFA is 347m<sup>2</sup> / 0.29:1, maintaining a suburban character below 0.5 to 1 as per the planning principle for 'Compatibility in a suburban context' established in *Salanitro-Chafei v Ashfield Council* [2005] NSWLEC 366 at 23-28.
- The proposal is located appropriately upon the site in terms of the topography and the landscaped hillside setting. The proposed recessed upper-level will contribute to achieving a development of reduced bulk and scale that is integrated with the sloping landform.

### **3.2.3 Ground 3 – the proposal is of good design and satisfies the relevant objectives of the Environmental Planning and Assessment Act**

Having regard to *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the proposal is consistent with the following objectives at under Section 1.3 of the Environmental Planning and Assessment Act 1979 (the Act):

*(c) to promote the orderly and economic use and development of land; and*

**In response to (c)**, the proposal results in a residential development that will promote orderly and economic use and development of land.

The proposed development responds appropriately to the height, bulk, scale, and alignment of the adjoining development.

The proposed design is successful in minimising its impacts. It incorporates an upper-level floor plate with setbacks that increase and that are articulated to create a recessive building mass.

The design incorporates a contemporary, low profile roof form that is appropriate in improving solar access and views to the dwelling house.

The design incorporates an appropriate mix of high-quality materials and finishes in a manner that will enhance the property's aesthetic character and form.

The proposed development will have an appropriate mass and form that is compatible with adjoining development, will not be visually intrusive, and will present appropriately to adjoining private and public land.

### **3.2.4 Ground 4 – no inappropriate amenity impacts**

The proposal will not result in any inappropriate environmental impacts on the adjoining land in relation to solar access, privacy, view sharing, or visual intrusion. These matters are addressed in more detail within section 3.3.1 below.

### 3.3 4.6 (4)(a)(ii) - the public interest

#### 3.3.1 Objectives of the Development Standard

In accordance with 4.6 (4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the LEP Clause 4.3 Height of Buildings (as such objectives relate to the C4 Environmental Living zone) which are repeated and responded to below

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

Response –

Despite a section of the proposed building displaying heights of upto 10.3m the proposed building height exceedance does not compromise the proposal's ability to be consistent with the desired character of the locality.

The property's visual catchment is very limited noting:

- The site has a long, narrow driveway which provides access to the rear of the lot where the dwelling is situated. The existing dwelling house is positioned close to the rear boundary.
- The property is within a north facing hillside that enjoys views over Careel Bay and Pittwater. There is dense vegetation to the east and south of the site.
- The undulating topography results in dwelling houses being sited at different levels and within an irregular pattern within the hillside.
- Neighbouring properties to the east, south, south-east and south-west are significantly separated, elevated, and screened by vegetation.

The proposed exception will:

- not be visible from George Street
- be significantly setback (by 35m) from Careel Bay Crescent
- be visible from limited locations. From where it can be seen, it will not be visually intrusive due to its significant 9.3 metre set back from the front facade of the levels below.

The proposal displays an appropriate height scale and bulk within a vegetated landscaped setting noting:

- The proposal maintains the existing developments setback pattern.
- The property has a limited visual catchment due to its position within a battle-axe allotment and the vegetated character of the surrounding land.
- The proposal involves a modest GFA/FSR increase noting the existing GFA is 322m<sup>2</sup> (FSR of 0.28:1) and the proposed GFA is 347m<sup>2</sup> / 0.29:1, maintaining a suburban character below 0.5 to 1 as per the planning principle for 'Compatibility in a suburban context' established in *Salanitro-Chafei v Ashfield Council*[2005] NSWLEC 366 at 23-28.

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

Response –

Despite a section of the proposed building displaying heights of upto 10.3m the proposed development will be compatible with the height and scale of the surrounding and nearby development. The following characteristics are noted:

- The proposed augmentation proposed to the upper-level will be characteristic of the established hillside development character in terms of form, scale, and siting facilitated by the design's recessive upper-level character.
- The proposed dwelling house changes and building height exception are compatible because:
  - is located appropriately upon the site in terms of the topography and the landscaped hillside setting. The recessed upper-level proposed will contribute to achieving a development of reduced bulk and scale that is integrated with the sloping landform and landscape.
  - will be positioned within a landscaped and heavily vegetated setting, compatible with the surrounding development
  - The existing building form will be enhanced by the proposed modifications the upper-level. It will result in a lower roof reduce level, a more contemporary building form, increased amenity via additional north facing openings, a recessive building form with appropriate visual presentation to neighbouring land.

***(c) to minimise any overshadowing of neighbouring properties,***

Response –

Despite a section of the proposed building displaying heights of upto 10.3m the proposed building will result in an acceptable level of overshadowing on adjoining land. In this regard the proposal is accompanied by shadow diagrams demonstrating the extent of proposed shading.

They show that shade will be cast over the rear of the adjacent property at 2 Careel Bay Crescent at 9am and over the rear of 138 and 140 Cabarita Road at 3pm. This represents a modest and even distribution of shade to the adjoining properties.

The shade will not be cast onto the principal private open space but onto landscaped areas at the rear of the properties and for a compliant period of time.

It is concluded that the proposal will not significantly or unreasonably reduce the available sunlight to the adjoining land and the provisions of the control are satisfied.

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

Response -

Despite a section of the proposed building displaying heights of upto 10.3m the proposed building will allow for the reasonable sharing of views. The following characteristics are noted:

- There are significant views of Pittwater and Careel Bay to the north of the location.

- As shown within the photographs on sheet A102 of the architectural plans, the three properties to the south of the site enjoy these views. It is observed from this photograph that the roofs of the dwellings in the foreground of the photos do not impede on these views. The proposed development involves a lowering of the existing roof level and there are unlikely to be adverse view sharing impacts.
- Given the sloping topography and the siting of the proposed structure, the proposal is not anticipated to adversely impact on the established views from surrounding residential properties or any public vantage points and achieves a reasonable sharing of views in accordance with the control.

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

Response -

Despite a section of the proposed building displaying heights of upto 10.3m the proposed height exception does not threaten the proposal's ability to achieve a building form and mass that is responsive to the site sloping topography and that presents appropriately to adjoining land.

The proposed upper level displays increased setbacks from the lower floor levels, including a significant 9.3m setback from the front façade of the dwelling house.

The proposed upper-level alterations to the upper level involve a reduced depth and area of the upper-level floor plate. The depth (north to south) reduces from 11.4 to 9.38; the area of the floorplate reduces from 144m<sup>2</sup> to 135m<sup>2</sup>.

From where it can be seen, it will be recessive when viewed from downslope areas to the north of the dwelling house.

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

Response -

Despite a section of the proposed building displaying heights of upto 10.3:

- The existing building form will be enhanced by the proposed modifications of the upper-level.
- It will result in a lower maximum roof level, a more contemporary building form, increased amenity to the occupants via additional north facing openings, a recessive building form with appropriate visual presentation to neighbouring land.
- As a result of the above, the proposal will not have an adverse visual impact on the natural environment.

The property is not within a heritage conservation area nor is the property a heritage item or near a heritage item

### **3.3.2 Objectives of the zone**

The proposed development will be in the public interest because it is consistent with the objectives for development within the C4 Environmental Living zone under the LEP in which the development is proposed to be carried out.

The objectives of the C4 Environmental Living zone are:

*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.*

It is assessed that the proposed development is consistent with, or not antipathetic to the zone objectives as it:

- will provide a low-impact augmentation of the existing dwelling house with a revised upper-level and roof form that is compatible with the other dwelling houses within the visual catchment.
- will provide an augmentation of the existing dwelling house that is not antipathetic to the ecological, scientific, or aesthetic values of the land.
- retains a low impact residential use on the site which, based on the information accompanying this DA, does not give rise to any unacceptable ecological, scientific or aesthetic impacts.

Accordingly, the proposal has had sufficient regard to the zone objectives and there is no statutory impediment to the granting of consent.

### **3.4 Secretary's considerations**

With regards to the Secretary's considerations the proposed variation of the development standard:

- Does not raise any matter of significance for State or regional environmental planning consistent With 4.6 (5)(a).
- The public benefit is not served by maintaining the development standard consistent with 4.6 (5)(b).



## 4 Conclusion

The variation proposed to the *Height of Building* development standard has been appropriately acknowledged and the circumstances assessed, having regard to the objectives of the control.

In conclusion, Council can be satisfied that:

- the proposed height exception will result in a contextually responsive development is consistent with the zone objectives;
- the proposal is consistent with the objectives of the height standard and will result in an appropriate amenity outcome to neighbouring land;
- there are sufficient site-specific circumstances and environmental planning grounds to justify the exception to the development standard;
- compliance with the height development standard is unreasonable or unnecessary in the circumstances of the case;
- given the proposal's ability to comply with the zone objectives that approval would not be antipathetic to the public interest; and
- contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

The proposal succeeds when assessed against the Heads of Consideration pursuant to clause 4.6 and should be granted development consent.