

**Four Towns  
Planning**

*Planning and property consultant*

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

**VARIATION OF A DEVELOPMENT  
STANDARD REGARDING HEIGHT OF  
BUILDINGS AS DETAILED IN CLAUSE  
4.3 OF THE PITTWATER  
ENVIRONMENTAL PLAN 2014**

**Alterations and additions to existing  
dwelling house, secondary dwelling  
and associated works**

**10 Kookaburra Close,  
Bayview NSW 2104**

✉ [mathew@fourtowns.com.au](mailto:mathew@fourtowns.com.au)

☎ 0425232018

[www.fourtowns.com.au](http://www.fourtowns.com.au)

PO Box 361, Balgowlah NSW 2093

**This report has been prepared to support a Development Application under the *Environmental Planning and Assessment Act 1979*.**

**Report prepared by:**

Mathew Quattroville

Director – Four Towns Pty Ltd

**Report prepared for:**

George and Kathy Casha

**10 December 2024**

***Disclaimer***

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## **Introduction**

This written request under Clause 4.3 of Pittwater Local Environmental Plan 2014 (**PLEP 2014**) accompanies a Development Application seeking consent for alterations and additions to an existing dwelling house, secondary dwelling and associated works at 10 Kookaburra Close, Bayview.

The written request is made pursuant to Clause 4.6 PLEP 2014 and requests a variation to height of buildings as detailed under Clause 4.3 of Pittwater Environmental Plan 2014.

Clause 4.3 of PLEP 2014 notes:

*(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

*(2D) Despite subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map may exceed a height of 8.5 metres, but not be more than 10.0 metres if—*

*(a) the consent authority is satisfied that the portion of the building above the*

*maximum height shown for that land on the Height of Buildings Map is minor, and*

*(b) the objectives of this clause are achieved, and*

*(c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and*

*(d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.*

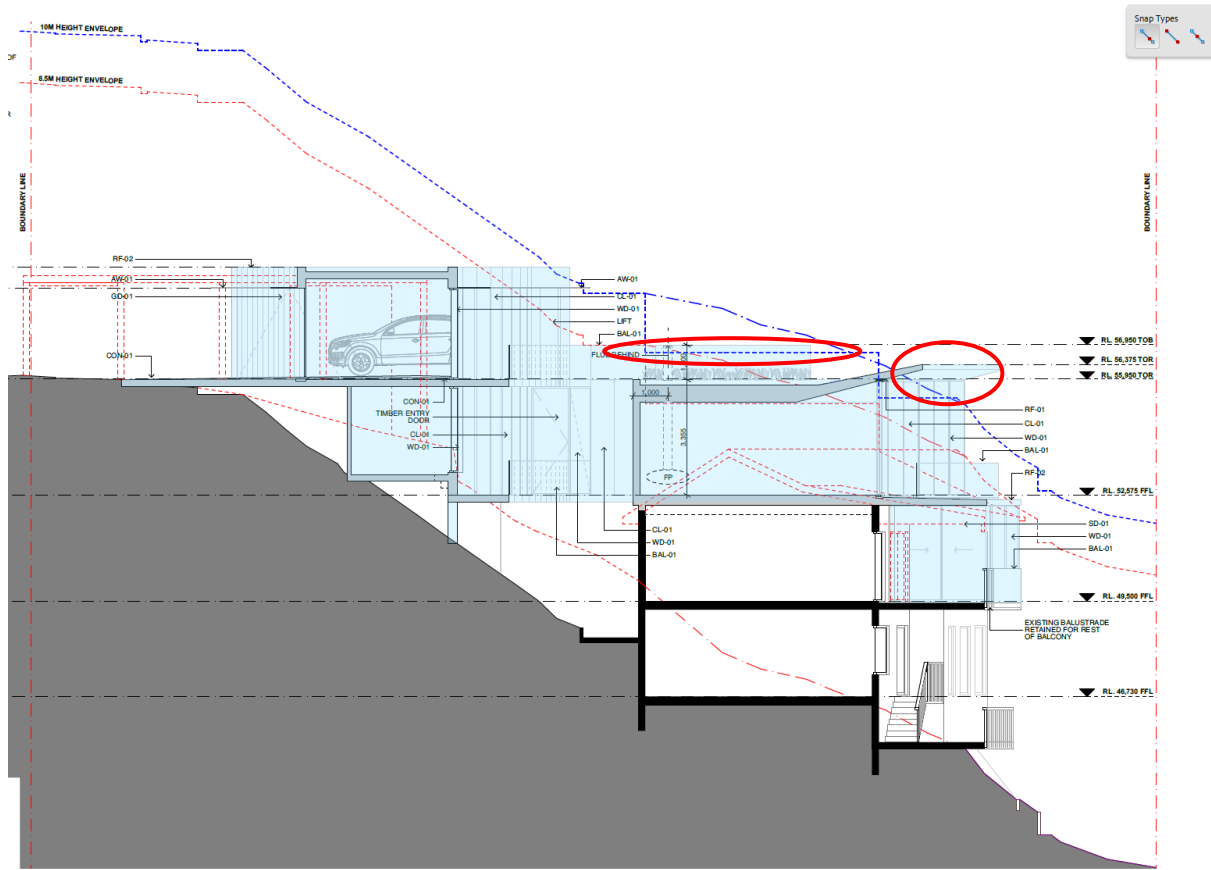
The site has a maximum building height provision of 8.5m (with allowances up to 10m as per Clause 4.3(2D)). The proposal will result in a maximum height of 10.97m. The proposed height breach is a result of the proposed architecturally designed roof on the first floor addition and other minor elements such as the balustrade for the roof top terrace.

The breach in the height of buildings standard is a result of the existing topography of the site and man-made changes which distort the height plane. The proposed building height is reasonable within the context of the site and will not result in excessive bulk and scale. It is submitted that there is more than enough justification and precedence within the area to support the breach.

In this regard, it is requested Council support a variation with respect to compliance with the maximum height of buildings as described in Clause 4.3 of the PLEP 2014.

The nature and extent of the contravention is as follows:

|   |           |
|---|-----------|
| <b>Requirement</b>  | 8.5m      |
| <b>Proposed</b>   | 10.97m    |
| <b>Is the planning control in question a development standard?</b>                                      | Yes       |
| <b>Is the non-compliance with to the clause requirement a numerical/or performance based variation?</b> | Numerical |
| <b>If numerical enter a % variation to requirement</b>  | 29.06%    |



|  |  |   |   |           |                   |               |  |                  |
|--|--|---|---|-----------|-------------------|---------------|--|------------------|
| K 31.03.24 W/P ISSUE<br>L 22.03.24 ISSUE   |  | EOIN ARCHITECTS PTY LTD<br>10/111 SYDNEY RD, BALCONIA NSW 2806 AUSTRALIA<br>P 081 55008 8075 M 0480 121 9461 E info@eoin-architects.com | FOR DESIGN DEVELOPMENT PURPOSES ONLY - NOT FOR PLANNING OR CONSTRUCTION PURPOSES<br>PROJECT: CONCEPT DESIGN - LOT 136 SP/300/19<br>10 KOOKABURRA CLOSE, BAYVIEW, NSW 2104<br>CLIENT: GEORGE AND KATHY CASHA |           |                   |               | NORTH SHEET TITLE<br>SITE CROSS SECTION - PROPOSED |                  |
| EOIN ARCHITECTS ABN 21 675 855 646<br>HOWARD STREET, SYDNEY NSW 1513 (CLASS 2 - REGISTERED PRACTITIONER - SEP 2008)<br>THIS DRAWING INCLUDES REVISIONS IN CONFORMANCE WITH ALL RELEVANT CONTRACTS, SPECIFICATION, REPORTS AND DRAWINGS. DO NOT ACT ON THIS DRAWING. DIMENSIONS GOVERN. VERIFY ALL DIMENSIONS ON SITE BEFORE CONSTRUCTION. COPYRIGHT OF THIS DRAWING IS VESTED IN EOIN. |  |   | PROJECT NUMBER<br>2401  | PLOT DATE | DRAWN<br>LOS / EH | CHECKED<br>EH | SHEET SCALE  | SHEET SIZE<br>A3 |

Figure 1: Extract from architectural plans shows the extent of the proposed variation.

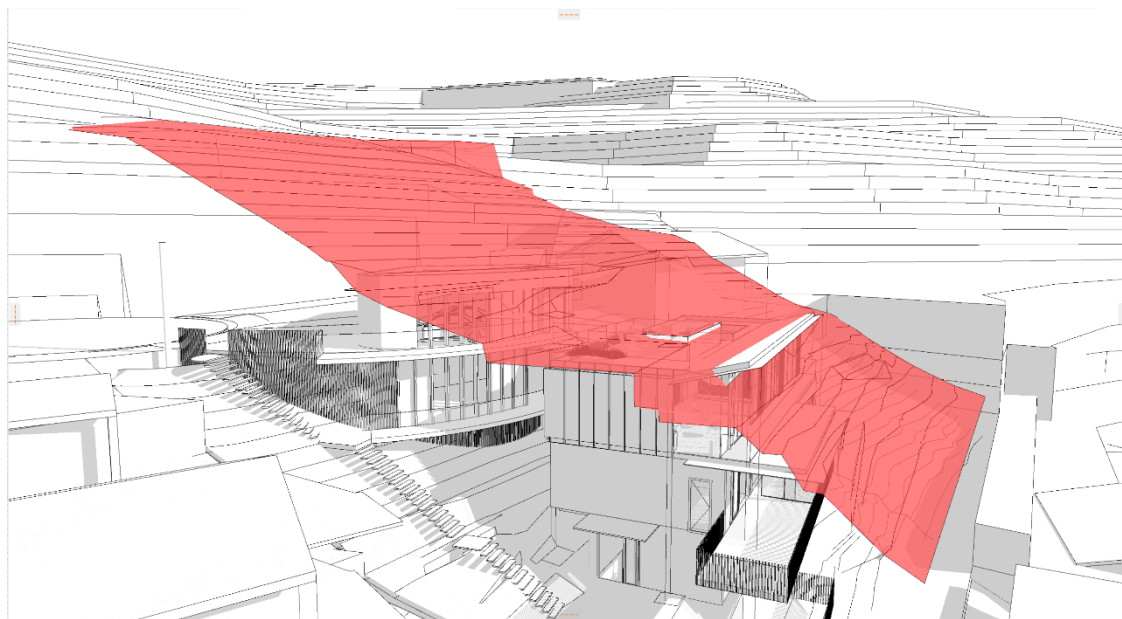


Figure 2: Extract showing 3D 10m height plane through the site

## **Pittwater Local Environmental Plan 2014 (“PWLEP”)**

### **2.1 Clause 2.2 and the Land Use Table**

Clause 2.2 and the Land Zoning Map provide that the subject site is zoned C4 – Environmental Living (the C4 zone) and the Land Use Table in Part 2 of PLEP 2014 specifies the following objectives for the C4 zone:

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

The proposed additions and alterations will likely result in low impact to the ecological value of the site. Whilst some trees are proposed for removal, they generally relate to low category value trees which will not impact the ecological values of the site.

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

The proposed works will not have an adverse impact on the ecological value of the area. As noted above, the proposal has been designed to avoid and minimise impacts to the site.

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

The proposed alterations and additions are appropriately integrated within the existing landform and topography of the site. The works are to improve and enhance the dwelling into a modern building with additional housing through a secondary dwelling. The proposed vehicular and pedestrian access throughout the site has been designed to minimise cut and fill, despite the steep topography of the site.

- ***To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.***

Not applicable – the proposal is not within a riparian or foreshore area.

### **2.3 Clause 4.6 – Exceptions to Development Standards**

Clause 4.6(1) PLEP 2014 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 latest authority in relation to the operation of clause 4.6 is the decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“*Initial Action*”). *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 PLEP 2014 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 is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the PLEP 2014.

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 prescribed height of buildings for residential accommodation in Zone C4, as prescribed under Clause 4.3 of the PLEP 2014, however strict compliance is unreasonable or unnecessary in the circumstances of this case and there sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

### **3. Relevant Caselaw**

The grounds of objection are based upon the various tests of the recent judgements in the *NSW Land and Environment Court Case Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827, Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61, and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.*

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 2014 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?

#### **4. Request for Variation**

##### **4.1 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 includes:

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

Clause 4.3 relates to the height of a building. Accordingly, Clause 4.3 is a development standard.

##### **4.2 Is compliance with Clause 4.3 unreasonable or unnecessary?**

This request relies upon the First method identified by Preston CJ in *Wehbe*. The first way in *Wehbe* is to establish that the objectives of the standard are achieved.

In determining a merit-based assessment of the landscaped area for the proposed development, due consideration has been given to the above objectives and the planning principles set by the Land and Environment Court of NSW, Planning Principle – floor space ratio (*Salanitro-Chafei V Ashfield Council* (2005) NSWLEC 366) and *Project Venture Developments v Pittwater Council* (2005) NSW LEC 91).

It is acknowledged that the purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards. In this regard, site topography should be considered when assessing the proposed height of buildings for the site. Given the proposed application is relatively minor and consistent with the built form character of the areas, Council’s assessment should be focused on this numerical allowance as opposed to the variation to the specific standard.

By providing flexibility the subject proposal is capable of achieving a better development and design outcome which adequately caters for enhanced housing options for the residential needs within the Northern Beaches LGA, in particular the Newport precinct.

#### **The First Method**

The proposal is consistent with the objectives of Clause 4.3, as outlined below:

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

- (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.*

It is acknowledged that the proposed development does not comply with clause 4.3 (2) and accordingly there is a requirement to submit a Clause 4.6 Variation. This Clause 4.6 seeks an exemption to the development standard as prescribed under the PLEP2014 and demonstrates that compliance with the provisions of clause 4.3 (2) is both unreasonable and unnecessary and the proposed development meets the required steps that are set out in the relevant NSW Land and Environment Court decisions to justify that the standard can be varied to achieve the subject proposal.

The development standard in Clause 4.3 (2) of the PLEP2014, is amendable to variation. The purpose of this Clause 4.6 is to vary the Height of Building as a building height referable to the building to give Council the power to grant development consent to the non-compliant purposes. This proposition is reinforced by the following:

Clause 4.3 (2) states:

*(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The Height of Building Map sets a maximum Height of Building control of 8.5m. For the purpose of calculating Height of Building, the PLEP2014 provides the following definition:

Building height is defined as follows:

***building height (or height of building) means—***

*(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*

*(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

*including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

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

Despite the variation to the Height of Building control which occurs as a result of the topography of the land and existing man made changes, the proposed development is considered to be in keeping with the desired future character of the locality. The proposal has been strategically designed to minimise the impact and bulk and scale of the project. The project designer has worked tirelessly to design through alterations and additions a modern high-end development that meet the sites constraints and the existing bulk and scale of the area; therefore, the proposal will not result in any unreasonable visual impact on the Kookaburra Close streetscape.

The proposed development will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing. Therefore, this written submission is considered to be compliant with the Statutory Provisions prescribed both under PLEP2014 and the provisions of Clause 4.6 which permit a variation to a development standard. It is noted it is consistent with the approval granted through the case *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 is that the distorted height plane creates reasonable environmental planning ground that justifies the contravention of the height standard.

In determining the building heights of the development, it is important to understand the definitions of building height and ground level (existing) and also relevant case law from the NSW Land and Environmental Court.



The court now considers the definition of “ground level (existing)” *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, which insists that the ground level (existing) is measured from the **excavated** ground level (within the footprint of the existing building) to the highest point of the proposal directly above. It is noted that the Court accepted (at [74]) that there is an ‘environmental planning ground’ that may justify the contravention of the height standard under ‘clause 4.6’ when the prior excavation of the site (within the footprint of the existing building) distorts the maximum building height plane. This falls hand in hand with the original leading cases *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 and *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189.

It is noted that common-sense should prevail from the new court case “Merman Investments Pty Ltd” with the fact that many height planes are now going to be distorted creating an argument which goes hand in hand with the original court cases relating to the extrapolated levels of a site through ‘Bettar’.

As a result of the above, it is determined that the maximum building above ground level (existing) is 10.97m for the proposed development. This results in a 2.47m variation or 29.06%. It is noted that the building height flows from 3.2m at the front of the site to the maximum 10.97m which is consistent with the topography of that side of Kookaburra Close. Clause 4.3 2(D) allows an increase to 10m if components 2(D)a-d can be achieved. It is our professional opinion these are achieved and can be applied to elements 10m and under. It is acknowledged that some architectural featured roof designs breach the 10m allowance. On this basis, it is our understanding that the height then gets measured from the 8.5m height allowance. It is noted that the breach is the result of the sloping nature of the site, several existing man-made level changes which distort the existing ground level and the existing man-made changes. If the natural ground level was applied, the proposed variation would be consistent with other approvals granted in the area. Regardless, the natural topography of the site and the existing building (which is already non-compliant) makes compliance with the building height impractical, and therefore unreasonable for Council to enforce. The bulk and scale and two to three storey appearance of Kookaburra Close is also retained. The proposal is supported and in our opinion is consistent with the objectives of Clause 4.3, as outlined below:

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

The site is located within an area identified within A4.4 Church Point and Bayview Locality which outlines the desired character of the area. The desired character statement of A4.4 Church Point and Bayview Locality is provided below:

#### *A4.4 Church Point and Bayview Locality*

##### *Desired Character*

*The Church Point and Bayview locality will remain a low-density residential area with dwelling houses a maximum of two storeys in any one place in a natural 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 occupancy dwellings will be located on lowlands in the locality on land that has less tree canopy coverage, species and habitat diversity and fewer other constraints to development. Retail, 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. The locality is characterised by steeply*

*sloping blocks so the provision of facilities such as inclinator, driveways and carparking need to be sensitively designed. The shared use of vehicular/pedestrian access, and the use of rooftops as parking areas can be solutions that minimise the physical and visual impact on the escarpment or foreshore.*

*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 the development. Views from the buildings shall be maintained below the tree canopy level capturing spectacular views up the Pittwater waterway. 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.*

*The locality is visually prominent particularly from Scotland Island, Bilgola Plateau, and the Pittwater waterway. Therefore, 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, and to enhance wildlife corridors.*

*Heritage items and conservation areas indicative of the Guringai Aboriginal people and of early settlement in the locality will be conserved.*

*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.*

*Pedestrian/cycle access around the foreshore and to areas of open space will be upgraded and maintained.*

*Church Point will remain an important link to the offshore communities.*

After reviewing the desired character statement, it is our professional opinion that the building by virtue of its height, bulk and scale, is consistent with the locality and desired character of the area. I have formed the considered opinion that the project is a sympathetic design and development with a bulk and scale consistent with the existing and future character of the area. It is also noted that most observers would not find the proposed development by virtue of its height and scale, in particular the building height breaching elements, offensive, or unsympathetic in a streetscape context. This objective is met.

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

The proposal has been strategically designed to minimise the bulk and scale impacts of the project. The project architect has worked tirelessly to design alterations and additions for a modern high-end dwelling that meet the sites constraints and the existing bulk and scale of the area. The proposal has been designed to be compatible with the functions of a dwelling while accommodating a bulk and scale that is complementary to the natural environment. This objective is met.

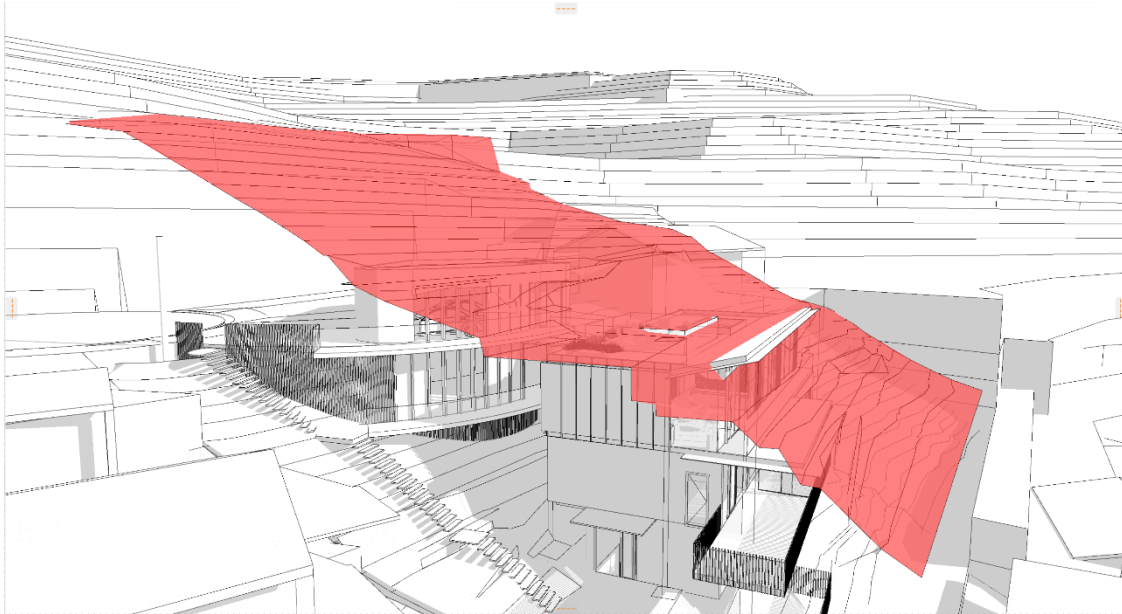


Figure 2: Extract showing 3D 10m height plane through the site



Photograph of adjoining site to the west – note bulk and scale

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

The proposed alterations and additions to the existing dwelling house will have minimal overshadowing impacts to neighbouring properties ensuring adequate levels of solar access are maintained to their private open space and primary living areas. Refer to shadow diagrams provided with the DA package. This objective is met.

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

The proposal for alterations and additions to the existing dwelling house will have no adverse impacts by way of view of sharing. Having inspected the site and identified available public and

private view lines over and across the site, I am satisfied that the building height variation will not give rise to any unacceptable view loss with a view sharing outcome maintained in accordance with the planning principle established in the matter of *Tenacity vs Warringah Council* (2004) NSWLEC 140. Notwithstanding the proposed minor building height variation, the proposal is consistent with this objective.

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

The proposed alterations and additions to the existing dwelling have been designed to respond to the existing natural topography of the land, noting the constraints associated with the steep sloping site, while still accommodating alterations and additions to the dwelling that is consistent with the bulk and scale of the area and linking the garage level with the main dwelling. The proposal is in our opinion is consistent with this objective.

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

The proposal will enhance the site through new alterations and additions which create a more sustainable dwelling which will improve the functionality of the site. The proposal has been designed to minimise any impacts on the natural environment, utilising pier and beam construction to mitigate any disruption to the site's natural landform. The site is not identified or located close to known heritage items. The proposal is consistent with this objective.

*(2D) Despite subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map may exceed a height of 8.5 metres, but not be more than 10.0 metres if—*

*(a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and*

*(b) the objectives of this clause are achieved, and*

*(c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and*

*(d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.*

It is our professional opinion that the proposed variation is minor as the subject site meets the objectives of Clause 4.3 (as outlined above) being situated on a slope greater than 16.7 degrees. The proposal has been designed with due regard to the existing building footprint and the need to minimise cut and fill. On this basis above, a variation to the building height is warranted in this instance.

It is acknowledged that Council has consistently held that there are adequate environmental planning grounds for alterations and additions to vary the development standard for the maximum building height, especially where existing man-made changes distort the height plane. There is also precedence of acceptable variations within the Bayview locality.

It is our professional opinion that the building by virtue of its height, bulk and scale, is consistent with the locality and desired character of the area. We have formed the considered opinion that the project is a sympathetic design and development with a bulk and scale consistent with the existing and future character of the area. The proposal is not offensive, or unsympathetic in a streetscape context nor the context from Kookaburra Close, and therefore the variation can be supported by Northern Beaches Council.

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

There are sufficient environmental planning grounds to justify contravening the development standard. Whilst there is no requirement that the development comply with the objectives set out in clause 4.6(1) it is relevant to note that objective (b) provides:

*“to achieve better outcomes **for and from** development by allowing flexibility in particular circumstances.”*

It should be noted at the outset that in *Initial Action* the Court held that it is incorrect to hold that the lack of adverse impact on adjoining properties is not a sufficient ground justifying the development contravening the development standard when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse impacts.

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. From a planning perspective, there is sufficient grounds to justify the variation to the height of buildings development standard for the following reasons:

1. Historical excavation and site disturbance
2. Topography of the site
3. Characterisation of the development
4. Streetscape Appearance
  - The sites topography and existing man-made excavation distorts the height plane for the site. If the natural ground level was taken, the proposal would substantially comply with the building height control and 10m allowance under Clause 4.3(2D).
  - The proposed development responds to the existing and desired future character of the locality. Furthermore, the subject proposed dwelling through alterations and additions retains the building footprint and in majority the height existing on the site. It's our opinion that the proposal will integrate into the existing streetscape and pattern of development within Kookaburra Close, noting the site is substantially lower than adjoining properties to the west.
  - The development does not result in any unnecessary or undue bulk or visual impacts on adjoining properties and is of a scale that is compatible with the existing and surrounding buildings. The streetscape analysis completed within the Statement of Environmental Effects notes numerous recent approvals with a variation to the building height and the immediate properties are all three storeys in height.
  - The amenity impacts to neighbouring residential properties, arising from the non-compliant building height, is negligible. Adjoining properties will continue to receive suitable solar access, privacy impacts are suitably minimised, and views are reasonably maintained.
  - The building height breach is minor (when assessed from the natural ground level) and would relate to only a small portion of the proposed development only, which will largely be indiscernible when viewed from Kookaburra Close.
  - The proposal is consistent with the stance Council has taken on developments within the Pittwater LGA noting numerous approvals granted for variations to the building height control.

Having regard to *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, and further to the proposal's consistency with the above strategic and statutory environmental planning provisions, the proposal is consistent with the following objectives 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*
- (g) to promote good design and amenity of the built environment,*

1. In response to (c), the proposal will facilitate the orderly and economic use and development of the land in a manner that is desired by the planning controls because it will facilitate the renovated dwelling consistent with approvals in the immediate area. In considering the contrary (refusal of the DA), retention of the building in its current form would not promote the orderly and economic use and development of land in the manner that council's strategic and statutory planning provisions seek. Retention of the building in its current form makes no advancement towards achieving the goal of creating functional development opportunities.

2. In response to (g) the proposal has been designed to promote good design and amenity of the built environment, with a consistent built form retained for Kookaburra Close.

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.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed height of buildings non-compliance in this instance.

## **5 Conclusion**

Pursuant to clause 4.6(3), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

- (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.*

As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.