



**Clause 4.6 Variation Request**

Clause 4.3 Height PLEP 2014

15 Ocean Road, Palm Beach



## 1. INTRODUCTION

This Clause 4.6 Exceptions to Development Standards request has been prepared BMA Urban on behalf of BJB Architects. It is submitted in support of a Development Application ('DA') for the demolition of the existing dwelling and subsequent construction of a new multi-level dwelling at No. 15 Ocean Road, Palm Beach.

This request seeks approval to vary the height of buildings development standard in clause 4.3 of the Pittwater Local Environmental Plan 2014. Clause 4.3 prescribes a numerical building height limit of 8.5m over the subject site. The proposed building height departs from this standard as demonstrated in **Part 2** of this variation request.

Clause 4.6 of the *Pittwater Local Environmental Plan 2014* ('Pittwater LEP') enables consent for development to be granted even though it contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards and to achieve better outcomes for and from development.

As the following request demonstrates, flexibility may be afforded by Clause 4.6 because compliance with the height of buildings development standard is unreasonable or unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to justify contravening the standard. This request also demonstrates that the proposal will be in the public interest, as the proposed development will be consistent with the objectives of the development standard and the zoning of the site.

The following sections of the report provide an assessment of the request to vary the development standard relating to "**height of buildings**" in accordance with Clause 4.6 of the Pittwater LEP.

Consideration has been given to the following matters within this assessment:

- *Varying development standards: A Guide*, prepared by the Department of Planning and Infrastructure dated August 2011.
- *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*
- Relevant planning principles and judgments issued by the Land and Environment Court. The *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* court judgment is the most relevant of recent case law.

Chief Justice Preston of the Land and Environment Court confirmed in the above judgment:

- The consent authority must, primarily, be satisfied the applicant's written request adequately addresses the 'unreasonable or unnecessary' and 'sufficient environmental planning grounds' tests:

*"that the applicant's written request ... has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ... and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard ..."* [15]

- On the 'Five Part Test' established under *Wehbe v Pittwater Council [2007] NSWLEC 827*:

*"The 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..."* [22]

- That in establishing 'sufficient environmental planning grounds' the focus must be on the contravention and not the development as a whole:

*"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" [26]*

- That clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development:

*"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 will have a better environmental planning outcome than a development that complies with the development standard." [88]*

This clause 4.6 variation has specifically responded to the matters outlined above and demonstrates that the request meets the relevant tests with regard to recent case law.

In accordance with the Pittwater LEP requirements, this Clause 4.6 variation request:

- identifies the development standard to be varied (**Part 2**);
- identifies the variation sought (**Part 2**);
- summarises relevant case law (**Part 3**);
- establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (**Part 4**);
- demonstrates there are sufficient environmental planning grounds to justify the contravention (**Part 4**);
- demonstrates that the proposed variation is 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 (**Part 4**);
- provides an assessment of the matters the secretary is required to consider before providing concurrence (**Part 4**); and
- provides a conclusion summarising the preceding parts (**Part 5**).

This Clause 4.6 Exceptions to Development Standards request should be read in conjunction with the revised plan detail prepared by BJB Architects accompanying this development application.

## 2. VARIATION OF HEIGHT OF BUILDINGS STANDARD

### 2.1 DEVELOPMENT STANDARD

Clause 4.3(2) of the Pittwater LEP sets out the maximum building height for development as shown on the Height of Buildings Map. The site is subject to a maximum building height of 8.5 metres, as illustrated in **Figure 1** below.



Figure 1: Height of Buildings Map  
 (Source: www.legislation.nsw.gov.au)



Clause 4.3(1) of the Pittwater LEP sets out the objectives for building height, 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.

The definition of “building height” for the purposes of clause 4.3 of the Pittwater LEP is 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.”

## 2.2 VARIATION TO HEIGHT OF BUILDINGS STANDARD

The extent of contravention with the prescribed height is best demonstrated across Figures 2 and 3 below being the building section and 3D height overlay. The building observes a maximum height of 13.6m and therefore, a 5.1m or 60% breach is observed.

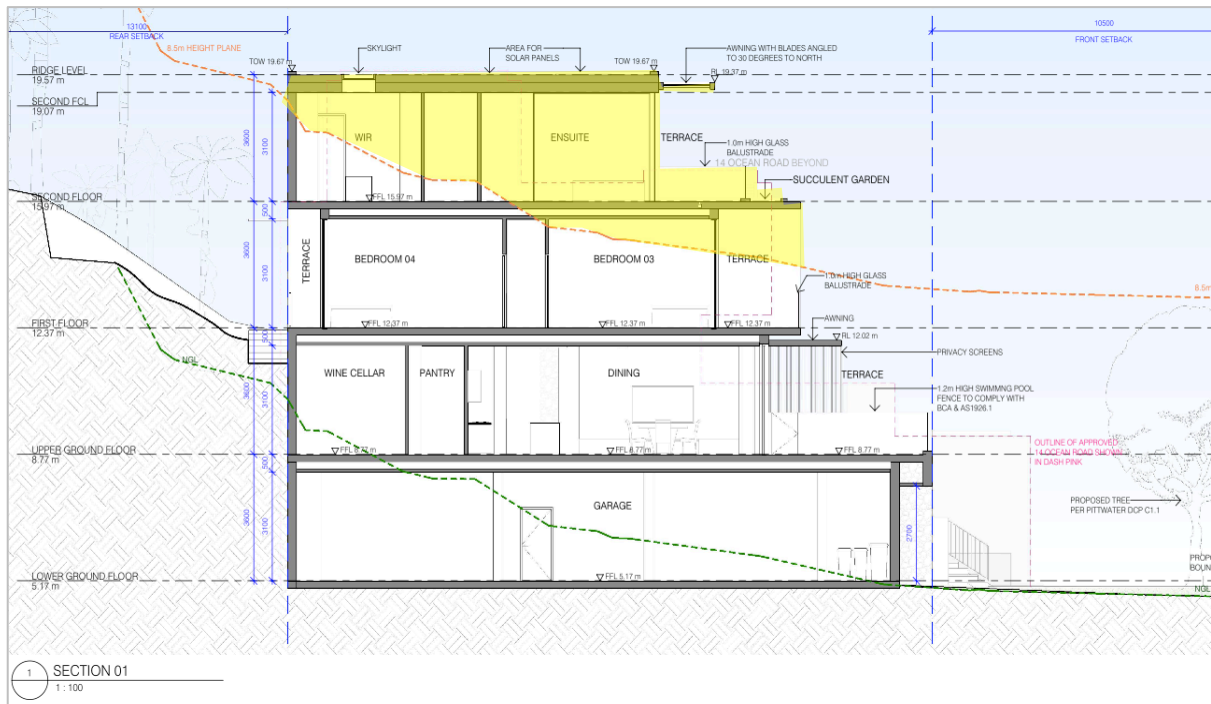


Figure 2: Height Breach Section (1) (Breaching component in yellow)

Source: BJB Architects

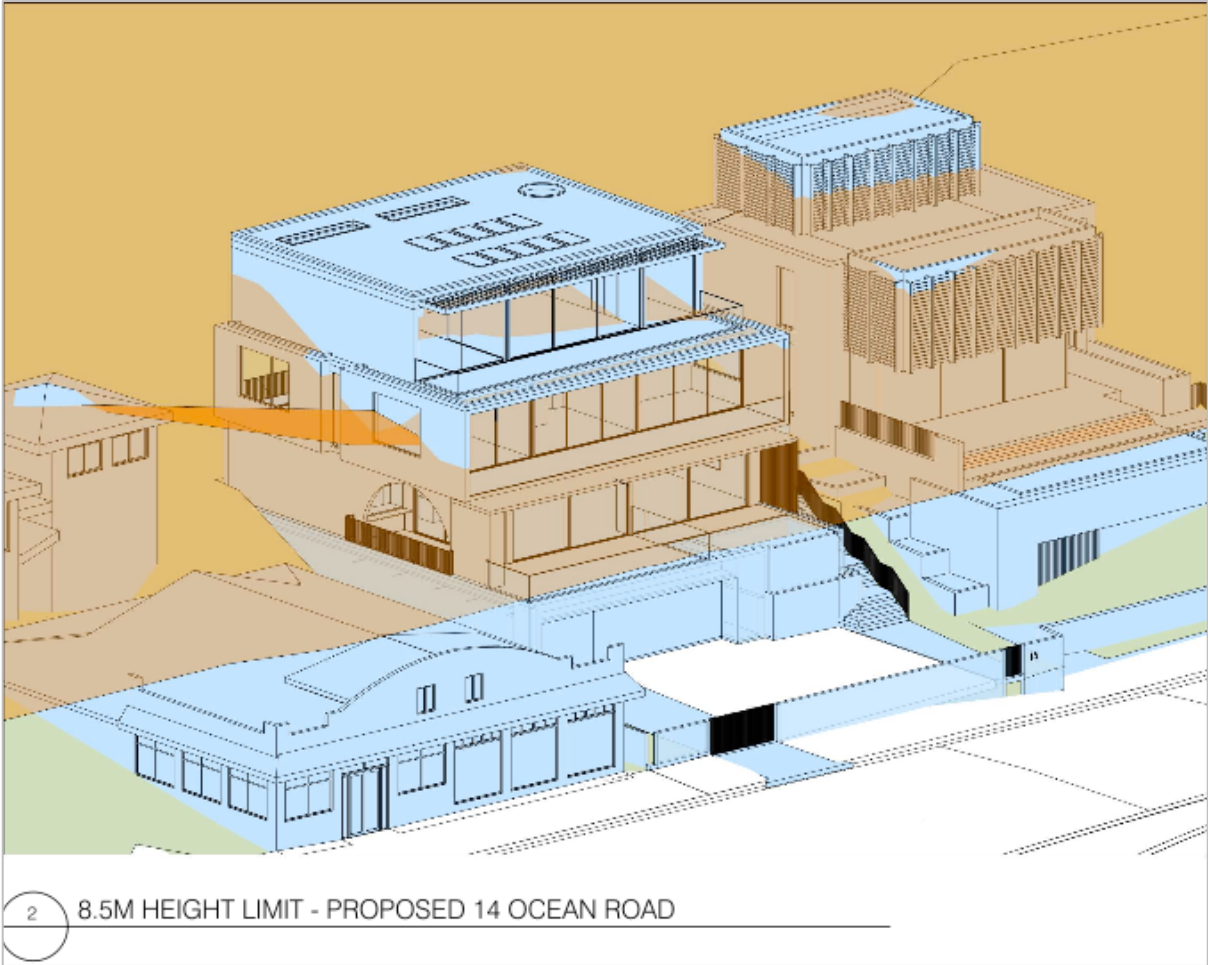


Figure 4: 3D - Height Overlay  
Source: BJB Architects

### 3. RELEVANT ASSESSMENT FRAMEWORK

Clause 4.6 of the Pittwater LEP includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of the Pittwater LEP are:

- (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.*

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a DA that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, clause 4.6(3) requires that the consent authority consider a written request from the applicant that seeks to justify the contravention of the development 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.*

Clause 4.6(4)(a) requires the consent authority to be satisfied that the applicant's written request adequately addresses each of the matters listed in clause 4.6(3). The consent authority should also be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which it is proposed to be carried out.

Clause 4.6(4)(b) requires the concurrence of the Planning Secretary to have been obtained. In deciding whether to grant concurrence, subclause (5) requires the Planning Secretary to 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 Planning Secretary before granting concurrence.*

The concurrence of the Planning Secretary may be assumed to have been granted, for the purpose of this variation request, in accordance with the NSW Department of Planning Circular PS 18–003 'Variations to development standards' dated 21 February 2018. This planning circular is a notice under section 64(1) of the Environmental Planning and Assessment Regulation 2021 and provides for assumed concurrence. A consent granted by a consent authority that has assumed concurrence is a valid and effective as if concurrence had been granted.

The Planning Secretary may also be assumed to have given concurrence if the matter is determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

This clause 4.6 variation request demonstrates that compliance with the building height prescribed for the subject site via clause 4.3 of the Pittwater LEP is unreasonable or unnecessary; there are sufficient environmental planning grounds to justify the requested variation; and approval of the variation is in the

public interest because it is consistent with the objectives relating to the relevant development standard and land use zone.

In accordance with clause 4.6(3), the applicant requests that the building height standard be varied.



## 4. ASSESSMENT OF THE CLAUSE 4.6 VARIATION

The following sections of this report provide a comprehensive assessment of the request to vary the development standard relating to height of buildings, in accordance with clause 4.3 of the Pittwater LEP. Detailed consideration has been given to the following matters within this assessment:

- ‘*Varying development standards: A Guide*’ as prepared by the Department of Planning & Infrastructure (dated August 2011).
- Relevant planning principles and judgements issued by the NSW Land and Environment Court.

The following sections of this report provide detailed responses to the key questions required to be addressed within the above documents and clause 4.6 of the Pittwater LEP.

### 4.1 ABILITY TO VARY THE STANDARD

The height of buildings standard as prescribed in Clause 4.3 of the Pittwater LEP is a development standard capable of being varied under clause 4.6(2) of that LEP. The proposed variation is not excluded from the operation of clause 4.6(2) of the Pittwater LEP, as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of that LEP.

### 4.2 CONSIDERATION

#### 4.2.1 Clause 4.6(3)(a) – Is Compliance with the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?

Historically, the most common way to establish a development standard was unreasonable or unnecessary was by satisfying the first method set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method requires that the objectives of the standard are achieved despite the non-compliance with the standard.

This was recently reaffirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16]-[17]. Similarly, in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [34] the Chief Judge held that “establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”.

This Request addresses the first method outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method alone is sufficient to satisfy the ‘unreasonable or unnecessary’ requirement.

▪ ***The objectives of the standard are achieved notwithstanding non-compliance with the standard*** (the first method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43]).

The specific objectives of the height of buildings development standard, as specified in clause 4.3(1) of the Pittwater LEP, are detailed **in the table** below. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Objectives	Assessment
<p>(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,</p>	<p>The desired future character of the Palm Beach Locality is identified in clause A4.12 of P21 DCP, which states the following with respect to height and scale:</p> <p><i>'Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form. Existing and new native vegetation, including canopy trees, will be integrated with the development. 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'</i></p> <p>Despite the height breach, the resulting form of the development maintains a strong connection with both existing and evolving forms with respect to its massing. The form of the development responds to the characteristics of the land which displays a notable fall from the rear towards the street and in response, a staggered building form is provided. This is consistent with the local character most relevantly, to the north of the site where adjacent lands present characteristics not dissimilar to that of the subject site.</p> <p>The established site conditions have as a consequence, created a visual disparity across the street setting made evident by the current relationship between the subject and neighbouring properties both current and evolving. The height variation to some degree, assist in the reestablishment of a more conducive and visually responsive built form outcome across the Ocean Road setting.</p> <p>Having regard to the foregoing commentary, the proposal, despite the height breach, is deemed to present as contextually suitable and consistent in scale along the Ocean Road frontage. More generally, the proposed design will visually integrate with that of neighbouring development both current and future, serving as an affirmation of the objective and not that of a building that abandons height controls.</p> <p>Accordingly, it is considered that the height, bulk and scale of the dwelling and in turn, its proportions, will present as compatible with adjoining development, the character of the locality and the natural setting. The resultant height breach does not offend this compatibility in any noticeable way.</p>

<p>(b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,</p>	<p>With respect to compatibility, we again rely on the foregoing commentary in address of the preceding objective.</p> <p>More generally, the proposal incorporates staggered facades, building recesses and the use of a variety of materials and detailing, to provide a highly articulated built form of contemporary external appearance. This design response ensures that the perceptible volume of the development, most notably the breaching components, will not be identified as an adverse contribution to bulk along the street edge but rather, will facilitate the provision of a more sympathetic streetscape outcome.</p>
<p>(c) to minimise any overshadowing of neighbouring properties,</p>	<p>In terms of overshadowing, a shadowing analysis prepared by BJB architects accompanies the DA. This analysis affirms that the extent of additional shadow cast over neighbouring properties, specifically No. 16 Ocean Road to the south as a result of the breach, will not be adversely influenced by the extent of height non-compliance observed.</p>
<p>(d) to allow for the reasonable sharing of views,</p>	<p>In terms of view impacts, the landform characteristics relevant to both the subject and neighbouring sites, and the relationship the proposed development will have with those dwellings, ensures that the breaching elements will not have a discernible impact on the extent of view enjoyed. The view loss impacts associated with the development, most notably the breaching elements, are not likely to be significant and have been mitigated through appropriate building design and siting.</p>
<p>(e) to encourage buildings that are designed to respond sensitively to the natural topography,</p>	<p>The built form has been designed in response to the natural landform characteristics which displays a notable slope from the rear towards the street. The staggering of the floor plates in response to the varying land levels is deemed the most appropriate outcome across this setting.</p> <p>It is also pertinent to note that the height breach in part, arises as a consequence of this landform typology.</p>
<p>(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.</p>	<p>The height breach in no way hinders the ongoing ability to retain contributory site vegetation ensuring that a fine balance between built and landscaped site attributes and elements is achieved. The scale of the development is consistent with the evolving character and will therefore, not present as a jarring contribution to the setting.</p> <p>In terms of impact to heritage items, the proposed development, more specifically the breaching aspects, are identifiably separated from two (2) items of significance identified as follows:</p> <ul style="list-style-type: none"> <li>· 'House' located at 2 Palm Beach Road</li> </ul>

	<p>Norfolk Island Pines (<i>Araucaria heterophylla</i>) located within the road reserve along Ocean Road</p> <p>Specifically, the primary view to the heritage listed dwelling at 2 Palm Beach Road is from along Palm Beach Road itself. Therefore, any future built form on the subject site, specifically the breaching elements, will in no way hinder views to, from and across this item of relevance from along this vantage point.</p> <p>With respect to the Norfolk Island Pines, these are well separated from the subject site and proposed dwelling and have no direct association with the proposal.</p>
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#### 4.2.2 Clause 4.6(3)(b) – Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?

Clause 4.6(3)(b) of the Pittwater LEP requires the consent authority to be satisfied that the applicant’s written request has adequately addressed that clause, by demonstrating:

*“that there are sufficient environmental planning grounds to justify contravening the development standard.”*

The environmental planning grounds relied upon in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development, as summarised in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] (NSWLEC 118).

There is an absence of environmental harm arising from the contravention of the development standard and positive planning benefits arising from the proposed development, as outlined in detail above. These include:

- The proposal is consistent with the objectives of the development standard and the objectives for development in the Environmental Living Zone.
- The proposed variation to the height is deemed a necessary outcome to allow for a well resolved and functional floor plate arrangement offering high levels of residential amenity. The height breach will result in no adverse impacts on adjoining properties in terms of visual bulk, views, privacy or overshadowing.
- The location and design of the height breaching elements have been organised to ensure that they do not present as visually jarring to the streetscape and in addition, do not result in any adverse level of amenity impact on neighbouring properties.
- The elements which breach the height do so largely as a result of the sites topography which as observed, displays a significant slope from the rear towards the street.
- Prior excavation of the site and the consequent distortion of the height of buildings plane over the site, when compared to the topography, is an environmental planning ground sufficient to justify contravening the development standard. The site's topography and unusual characteristics

distinguish this case from the more generic development for which a numeric standard of this kind inevitably must anticipate.

- The proposed development, notwithstanding non-compliance with the height development standard not only is an orderly and economic use and development of the land, but also promotes good design and amenity of the built environment.
- There is no planning purpose to be served by limiting the height strictly to the maximum height allowable given the site constraints and absence of unreasonable levels of amenity related impacts.

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

The Objects of the Environmental Planning & Assessment Act 1979 ('EP&A Act') under Section 1.3 of that Act are also relevant to whether grounds exist to warrant a variation. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, in **the table below** we consider whether the proposed development is consistent with each object.

The objects of the EP&A Act and how this proposal responds to each of the objects are detailed as follows:

Object	Comment
To promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources	This object is not relevant to this development.
To facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	The proposal will facilitate an ecologically sustainable development given that no negative impact on environmental and social considerations will arise. This in turn will serve to offer the ongoing sustainment of the economic health of the area.
To promote the orderly and economic use and development of land	The proposed development will promote the orderly and economic use of the land by way of providing a land use typology and intensity, consistent with that envisaged by Council.
To promote the delivery and maintenance of affordable housing	This object is not relevant to this development.
To protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats	Given the nature and character of the urban setting the proposed development is located within, no impact on threatened species or ecological communities is likely to result.
To promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)	This object is not relevant to this development
To promote good design and amenity of the built environment	The proposed development promotes good design in that it serves to provide a built form and massing arrangement that serves to positively influence the future amenity of the dwelling occupants while adopting an architectural form and language, with an overall silhouette, height and land use intensity

	compatible with both the established and emerging development and housing typology.
To promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants	The proposed development will comply with all relevant BCA codes and will promote the health and safety of occupants.
To promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State	This object is not relevant to this development
To provide increased opportunity for community participation in environmental planning and assessment	This proposed development will be publicly notified in accordance with Council’s Community Engagement Strategy/DCP.

Based on the above, the consent authority can be satisfied that the proposed development remains consistent with the Objects of the Act despite the height non-compliance.

**4.2.3 Clause 4.6(4)(a)(i) - Has the Written Request adequately Addressed the Matters in Sub-Clause (3)?**

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3).

Each of the subclause (3) matters are comprehensively addressed in this written request, including detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The written request also provides sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to the development standard.

**4.2.4. Clause 4.6(4)(a)(ii) - Will the Proposed Development be in the Public Interest because it is Consistent with the Objectives of the Particular Standard and Objectives for Development within the Zone in Which the Development is Proposed to be Carried Out?**

Clause 4.6(4)(a)(ii) provides that development consent must not be granted for development that contravenes a development standard, unless 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 land use zone in which the development is proposed to be carried out.

In Section 4.2.1 of this request, it was demonstrated that the proposal is consistent with the objectives of the development standard. The proposal (inclusive of the height non-compliance) is also consistent with the objectives of the C4 – Environmental Living Zone, as follows:

**Zone C4 – Environmental Living**

Objective	Comment
<ul style="list-style-type: none"> <li>To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.</li> </ul>	<p>The proposal is for a detached dwelling designed in response to the site constraints and natural landform characteristics. The proposed development will sit harmoniously on the site and will in no way preclude the ability to continually achieve these values.</p>
<ul style="list-style-type: none"> <li>To ensure that residential development does not have an adverse effect on those values.</li> </ul>	<p>The proposed development will not have any adverse impacts upon the special values of the site.</p>
<ul style="list-style-type: none"> <li>To provide for residential development of a low density and scale integrated with the landform and landscape.</li> </ul>	<p>The resultant development form is consistent with the low density character of the locality. The proposal is of an architectural style, siting and volume characteristic of that anticipated across a steeply sloping site and broader locality.</p>
<ul style="list-style-type: none"> <li>To provide for residential development of a low density and scale integrated with the landform and landscape.</li> </ul>	<p>The development has been designed in response to the natural landform characteristics. Significant trees are being retained and are further supplemented by way of additional site landscaping.</p>

The objectives of the land use zone as detailed above, as well as the objectives of the standard, have been adequately satisfied. Therefore, the proposal is considered to be in the public interest.

**4.2.5. Clause 4.6(5)(a) – Would the Non-Compliance raise any Matter of Significance for State or Regional Planning?**

The proposed minor non-compliance with the height of buildings development standard will not raise any matter of significance for state or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

**4.2.6. Clause 4.6(5)(b) – Is there a Public Benefit of Maintaining the Planning Control Standard?**

The proposed development achieves the objectives of the building height development standard and the land use zone objectives. As such, there is no public benefit in maintaining the development standard.

**4.2.7. Clause 4.6(5)(c) – Are there any other matters required to be taken into consideration by the Planning Secretary before granting concurrence?**

There are no known additional matters that need to be considered within the assessment of this clause 4.6 variation request and prior to granting concurrence, should it be required.

## 5. CONCLUSION

For the reasons set out in this written request, strict compliance with the height of buildings development standard contained within clause 4.3 of the Pittwater LEP 2013 is unreasonable and unnecessary in the circumstances of the case. Further, there are sufficient environmental planning grounds to justify the proposed variation and it is in the public interest to do so.

It is reasonable and appropriate to vary the height of buildings development standard to the extent proposed, for the reasons detailed within this submission and as summarised below:

- Compliance with the height of buildings development standard is unreasonable and unnecessary in the circumstances of the proposed development.
- The proposal, notwithstanding the non-compliance, is consistent with the objectives of the height of buildings standard and the C4- Environmental Living Zone.
- There are sufficient environmental planning grounds to justify the contravention, which results in a better planning outcome than a strictly compliant development in the circumstances of this particular case.
- There is an absence of any environmental impacts arising from the proposed variation.
- The proposed non-compliance with the height of buildings standard will not result in any matter of significance for State or regional environmental planning

For the reasons outlined above, the clause 4.6 request is well-founded. The development standard is unnecessary and unreasonable in the circumstances, and there are sufficient environmental planning grounds that warrant contravention of the standard. In the circumstances of this case, flexibility in the application of the height of buildings development standard should be applied.



## DISCLAIMER

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In preparing this report, BMA Urban was required to make judgements which may be affected by unforeseen future events, the likelihood and effects of which are not capable of precise assessment.

All surveys, forecasts, projections and recommendations contained in or associated with this report are made in good faith and on the basis of information supplied to BMA Urban at the date of this report, and upon which BMA Urban relied. Achievement of the projections and budgets set out in this report will depend, among other things, on the actions of others over which BMA Urban has no control.

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