

**Four Towns  
Planning**

*Planning and property consultant*

**WRITTEN REQUEST PURSUANT TO  
CLAUSE 4.6 OF WARRINGAH LOCAL  
ENVIRONMENTAL PLAN 2011**

**VARIATION OF A DEVELOPMENT  
STANDARD REGARDING THE HEIGHT  
OF BUILDING AS DETAILED IN  
CLAUSE 4.3 OF WARRINGAH LOCAL  
ENVIRONMENTAL PLAN 2011**

**Construction of a New Dwelling  
House**

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

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**Report prepared for:**

Azzwic Holdings Pty Ltd

**13 September 2023**

***Disclaimer***

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## 1. Introduction

This written request is made pursuant to the provisions of Clause 4.6 of the Warringah Local Environmental Plan 2011 (the LEP). A variation is sought to the 8.5m height of building standard of Clause 4.3, in relation to proposed plans for the construction of a new dwelling house, at 1130 Pittwater Road, Collaroy.

This exception statement relates to the drawings, prepared by MAP Architects, dated 22 May 2023.

This exception statement has also been prepared having regard to the Land and Environment Court judgments in the matters of *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*, *Bettar v Council of the City of Sydney [2014] NSWLEC 1070*, *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*, *Wehbe v Pittwater Council [2007] NSWLEC 827*, *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248*, *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*, *SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112*, *Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115* and *Tenacity Consulting v Warringah [2004] NSWLEC 140*.

The nature and extent of the contravention is as follows:

|   |           |
|---|-----------|
| <b>Requirement</b>  | 8.5m      |
| <b>Proposed</b>   | 8.95m     |
| <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>  | 5.3%      |

## 2. Warringah Local Environmental Plan 2011 (“WLEP”)

### 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 R2– Low Density Residential (the R2 zone) and the Land Use Table in Part 2 of WLEP 2011 specifies the following objectives for the R2 zone:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

The proposed development is for the purpose of a dwelling house. A dwelling house is a permissible land use under WLEP.

### 2.2 Clause 4.3 Height of Buildings

Clause 4.3 Height of Buildings is set out below:

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

- (a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

(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](#).*

(2A) *If the [Height of Buildings Map](#) specifies, in relation to any land shown on that map, a Reduced Level for any building on that land, any such building is not to exceed the specified Reduced Level.*

The height of building provisions for the site is 8.5m.

Development standards' is defined in section 1.4 of the EP&A Act 1979 as:

*development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which **requirements are specified or standards are fixed** in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:*

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

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

Clause 4.6(1) of WLEP 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 WLEP 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 WLEP.

Clause 4.6(3) of WLEP 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 height of building standard pursuant to clause 4.3 of the WLEP which specifies a building height of 8.5m, however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of WLEP provides:

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

- (a) the consent authority is satisfied that—*
  - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Planning Secretary has been obtained.*

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

Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of WLEP provides:

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

As these proceedings are the subject of an appeal to the Land & Environment Court, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

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

### **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 Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070, *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, *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130, *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112, *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115 and *Tenacity Consulting v Warringah* [2004] NSWLEC 140.

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 WLEP2011 a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
  - (a) compliance is unreasonable or unnecessary; and

- (b) there are sufficient environmental planning grounds to justify contravening the development standard?
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the R2 zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of WLEP2011?

#### 4. Request for Variation

##### 4.1 Is clause 4.3 of WLEP a development standard?

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

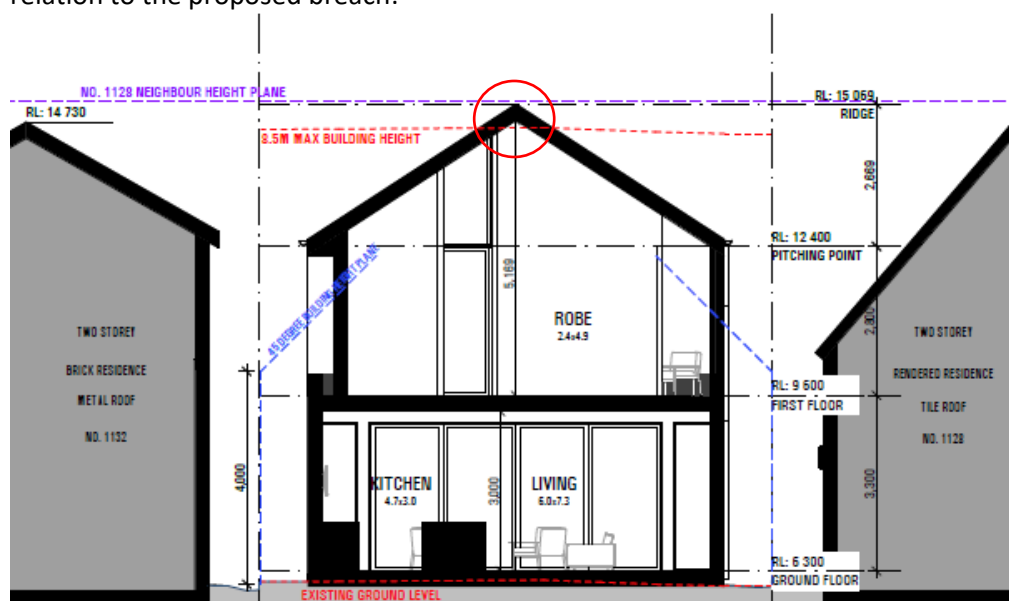
*(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*

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

##### Details of the non-compliance with the standard

The proposal has been designed as a new dwelling house to meet the needs of the owners from the existing run down dwelling. The proposed dwelling has been designed with regard to the bulk and scale of the area and the design intent of the high pitched roofs along Pittwater Road which is where the breach to the standard occurs.

The following extract from the architectural drawings shows the height of the building on the relation to the proposed breach:



#### 4.2 Is compliance with clause 4.3 unreasonable or unnecessary?

(a) This request relies upon the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> ways identified by Preston CJ in *Wehbe*.

(b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved. The second way in *Wehbe* is to establish that an objective is not relevant to the development. The fourth way in *Wehbe* is to establish that the development standard has been abandoned by Council's own actions in approving development that does not comply with the standard.

(c) Each objective of the standard and reasoning why compliance is unreasonable or unnecessary is set out below. Firstly, an analysis of the objectives is provided:

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 the building height of the site should be assessed on a greater numerical figure, noting the sites constraints, namely, the coastal hazard and minimum floor level requirements and noting the height of adjoining properties. Given the proposed application is minor and consistent with similar approvals granted in the area, Council's assessment should be focused on this numerical allowance as opposed to the variation to the specific standard. By providing flexibility in this regard, the subject proposal is capable of achieving a better development and design outcome which adequately caters for residential needs within the Northern Beaches LGA in particular the Narraweena precinct.

The objectives of the height of building standard are listed in clause 4.3 of the LEP.

This provides:

Clause 4.3(1) The objectives of this clause are as follows—

- (a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

#### **Objectives of the standard**

Compliance would also be unreasonable or unnecessary because it is consistent with the objectives of the building height standard for the following reasons:

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

The site existing is not compatible with the height and scale of surrounding and nearby development noting the adjoining developments. Refer to the streetscape and visual analysis which outlines the bulk and scale and varying nature of Pittwater Road with building heights in excess of 12m. The project architects have provided the building outlines of adjoining properties to show the compatibility of building height between the adjoining neighbours and the proposed dwelling on our site. It is noted that notwithstanding the proposed minor breach to the building height, our proposal is consistent with the adjoining properties to the north and south. It is important for Council to recognise and acknowledge the existing streetscape of Pittwater Road, which has a varied appearance with some three to eight storey buildings. It is noted that many dwellings are built



within the required front setback, and over the maximum 8.5m height limit. Strict adherence for our site would impact the existing streetscape and create a dwelling that is out of character and not compatible with the locality.

It is noted that the proposed variation relates to a small portion of the proposed new roof. It is important to acknowledge that the owners are creating an architecturally designed dwelling which will create visual interest and vitality to the Collaroy area, which is consistent with other roof forms within the immediate area.

As noted, the sites minor variation relates to the tip of the roof pitch, with the adjoining properties at 1128 and 1132 Pittwater Road having similar height variations. Further, Council recently approved DA2023/0173 at 1126 Pittwater Road, for alterations and additions with a variation to the building height at 9.27m (9%). The following is emphasised from the assessment officers report which supported the variation to the building height:

*Notwithstanding the non-compliance to this Clause, the resultant building mass will achieve compatibility and consistency with the building bulk of adjoining properties along the eastern side of Pittwater Road. In this instance, the overall building height will not adversely or unreasonably impact upon the existing character of the streetscape and beachscape.*

*In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.*

It is our professional opinion that the proposal is consistent and compatible with the height and scale of the surrounding and nearby development. The proposal is of a bulk and scale acceptable for the area, noting the increased and varied side setbacks to ensure modulation and articulation to the dwelling. On this basis, the proposal meets objective (a).

*(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*

The proposal has been strategically designed by the project architect to minimise any impacts relating to visual impact, views, privacy and loss of solar access. The proposal will not have a visual impact as the design is consistent with the bulk and scale of the immediate locality and any impacts to views would be minimal noting the main direction to the western side of Pittwater Road through a south-easterly direction to Ramsey Street. The proposal has been designed with minimal windows to the side boundaries, therefore no loss of privacy to neighbours at 1128 and 1132 Pittwater Road. On this basis, the proposal meets objective (b).

*(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*

The proposal has been designed as a quality, long term architectural solution which integrates the proposed dwelling with the landscaping on the site. The proposal will not dominate the scenic quality of Warringah's coastal and bush environments. The design is consistent with adjoining properties, therefore fitting in with the character and enhancing the scenic quality through new landscaping to the site. On this basis, it is our professional opinion that the proposal meets objective (c).

*(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

The site adjoins Collaroy Beach to the east. The proposal has been designed with due regard to the adjacent public place (Collaroy Beach) with the proposal designed to be recessive in nature through the careful articulation and elements of key facades. If the proposal were to comply with the building height it would create a disparity between the site and the adjoining properties. Due to the existing building heights, bulk and scale and the required RLs of sites, the visual impact of the proposal is consistent with the bulk and scale precinct. Further, the variation relates to roof which is consistent with adjoining sites and of architectural merit which provides visual interest, therefore not been of visual impact. On this basis, it is our professional opinion that the proposal meets objective (d).

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

The objectives of the R2 zone are addressed below:

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

The site provides a new enhanced dwelling on the site that will be utilised for decades to come. The proposal creates a low-density dwelling house (noting the variety of land uses in the immediate area) and creates a new landscape haven which integrates the dwelling with the existing natural environment.

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

Not applicable – the proposal retains the use of the site for residential purposes.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

The proposal includes a new enhanced landscape setting with a new designed landscape scheme for the site that integrates the proposed dwelling with the existing natural environment. The proposal will be in harmony with the natural environment of Warringah as supported by the Landscape Plan from Contour Landscape Architecture.

### **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 building development standard for the following reasons:

- The objectives of the development standard are achieved, notwithstanding the non-compliance with the standard in the circumstances described in this variation report and summarised as follows:
  - The proposal is consistent with the bulk and scale of the existing and desired streetscape character of the area.
  - The proposal provides articulation and modulation of the facades which assist in maintaining an appropriate visual relationship between the proposal and existing developments in the area.
  - The proposal enhances the landscaped area and provides vegetation within the front setback.
  - The proposal has been strategically designed by the project architect who has worked with relevant consultants and the clients to achieve a design which meets the needs of the project while maintaining the streetscape, the privacy and amenity of adjoining properties.
  - The variation has been reviewed against relevant LEC court principles, and the proposal is considered suitable in the context of the site and the merit analysis required given the existing scale, adjoining developments and the proposed development.
  - The desired future character of the locality is not jeopardised by the proposal and is consistent with Council's objectives for this precinct in regards to the R2 Low Density Residential zone.
  - The area of non-compliance does not give rise to any adverse environmental impacts to the amenity of the neighbouring properties. The area of non-compliance does not contribute to any adverse overshadowing impacts to adjoining developments.
  - The ground floor is dictated by the coastal hazards and the requirement to raise the ground level existing. Due to the small lot size and bulk and scale of adjoining properties, the variation is warranted.
  
- 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*
  - (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
  - (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 highly appropriate location, in a manner that is desired by the planning controls because it will facilitate low density residential development which is of good architectural design to accommodate for the current and future needs of residents. In considering the contrary (refusal of the DA), retention of the site in its current, constrained 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 site in its current form makes no advancement towards achieving the goal of creating functional residential space and accessible dwellings noting the current constraints on the dwelling with regard to space and accessibility.

2. In response to (e) the proposal has been designed to ensure the retention of the existing ecological values on site. The proposal does not remove any vegetation and has no impact on the environment.

3. In response to (g) the proposal has been designed to promote good design and amenity of the built environment while respecting the amenity of adjoining properties and the public foreshore to Collaroy Beach.

The proposal will be consistent with the aims and objectives of the Warringah LEP, the objectives of the height of building standard and the objectives of the R2 Low Density Residential.

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.

#### **4.4 Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the R2 Low Density Residential zone?**

Section 4.2 of this written request demonstrates that the proposed development achieves each of the underlying objectives of clause 4.3 and the R2 Low Density Residential Zone. As the proposed development achieves the objectives it follows that the proposed development is also consistent with those objectives.

As demonstrated in this request, the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. The proposal is in the public's interest as there is very little public benefit in maintaining the development standard of building height applicable to this site.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

#### **4.5 Has Council obtained the concurrence of the Director-General?**

The Secretary can be assumed to have concurred to the variation under Department of Planning Circular PS 18-003 'Variations to development standards', dated 21 February 2018. This circular is a notice under 64(1) of the *Environmental Planning and Assessment Regulation 2000*.

The Secretary can be assumed to have given concurrence as the matter will be determined by the by the Land & Environment Court of NSW on appeal.

The matters for consideration under clause 4.6(5) are considered below.

#### **4.6 Has the Court considered the matters in clause 4.6(5) of WLEP2011?**

(a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the particular site and this design and lot is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment. 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.

(b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.

(c) there are no other matters required to be taken into account by the secretary before granting concurrence.

## 5. Conclusion

This proposal is for demolition works and the construction of a new dwelling house. The building existing is well under the existing roof line of adjoining properties that do not comply with the building height. Further, 1126 Pittwater Road (two properties to the south) has just been approved with a further departure to the 8.5m building height requirements. It is noted the variation relates to the top of the roof pitch, otherwise the majority of the development complies. The high roof pitch allows a wider view corridor, then a flat roof design which would have further impacts.

The proposal has been designed to have minimal visual or amenity impacts including overshadowing arising from the parts of the building where the breach of the standard occurs.

This written request pursuant to Clause 4.6(3) of the Warringah LEP 2011 is acceptable for the following reasons:

- (a) The written request adequately addresses the matters required to be demonstrated by sub-clauses 4.6(3)(a) and
- (b) The proposal will be in the public interest because it is consistent with the objectives of the building height development standard and the objectives for development within the R2 Low Density Residential zone; and
- (c) The concurrence of the Director General is assumed.

In summary, the proposal satisfies all of the requirements of clause 4.6 of WLEP 2011 and exception to the development standard is reasonable and appropriate in the circumstances of the case.