

**STATEMENT OF ENVIRONMENTAL EFFECTS**

**FOR PROPOSED LIGHT INDUSTRIAL AND WAREHOUSE UNITS  
WITH ANCILLARY OFFICE SPACE**

**LOCATED AT**

**130 OLD PITTWATER ROAD, BROOKVALE**

**FOR**

**STEWART INVESTMENTS (NSW) PTY LTD**



**Prepared  
February 2019**

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## 1.0 Introduction

This Statement of Environmental Effects accompanies details prepared on behalf of Stewart Investments Pty Ltd by Leech Harmon Architects, Project No. 570, Sheets DA01 – DA20, and dated 18 December 2018 to detail the proposed construction of light industrial and warehouse units with ancillary office space at **130 Old Pittwater Road, Brookvale**.

The proposed development adjoins an existing approved light industrial and warehouse units with ancillary office space at 138-140 Old Pittwater Road, Brookvale, which is currently under construction (See Notice of Determination of DA 2012/1377 issued by the Land and Environment Court of New South Wales on 30 September 2013 and provided for “*Construction of a light industrial/warehouse and distribution centre*”) and which is currently subject to an Application to Modify Consent.

While the proposed development at No 130 Old Pittwater Road is an independent development, it will share a right of way access for vehicles over No138-140 Old Pittwater Road.

This statement reviews the proposed development by assessing the relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, (as amended) including:

- *The Environmental Planning and Assessment Act, 1979 as amended*
- *The Environmental Planning and Assessment Regulation 2000*
- *State Environmental Planning Policy No. 55 – Remediation of Land*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*
- *Warringah Local Environmental Plan 2011*
- *Warringah Development Control Plan*

## 2.0 Property Description

The subject site is located within the Brookvale Industrial Area and is currently occupied by industrial buildings which gain direct vehicular and pedestrian from Old Pittwater Road.

The site also has an upper, undeveloped level which is located above an existing escarpment line which traverses the site. The property is identified as **130 Old Pittwater Road, Brookvale**, being Lot A within DP 402556 and is zoned IN1 General Industrial within the provisions of Warringah Local Environmental Plan 2011.

The site has a primary frontage to Old Pittwater Road and is building on the site is not listed as an item of heritage significance, nor is it within a conservation area.

The site is identified as Bushfire Prone Land. Accordingly, a Bushfire Report has been prepared by Building Code & Bushfire Hazard Solutions Pty Limited, dated 11 September 2018, and accompanies this submission.

The site has been identified as Land Slip Area A, B and C and accordingly a Geotechnical Investigation has been prepared by White Geotechnical to support the development.

The site is subject to overland flows and flooding and accordingly, a Hydraulic Report & Stormwater Management Plan has been prepared by MGP Pty Ltd, dated 17 December 2018 and accompanies this

submission. This matter will be discussed in further detail within this report.

The details of the site are included in the survey plan prepared by Humel Architects, Drawing No 2016.10 dated July 2016.

### **3.0 Site Description**

The subject property is located within the Brookvale Industrial Area and is located on the south-western, higher side of Old Pittwater Road.

The subject site is currently utilised for light industrial purposes, with the primary pedestrian and vehicular access to the existing industrial units within the site from Old Pittwater Road.

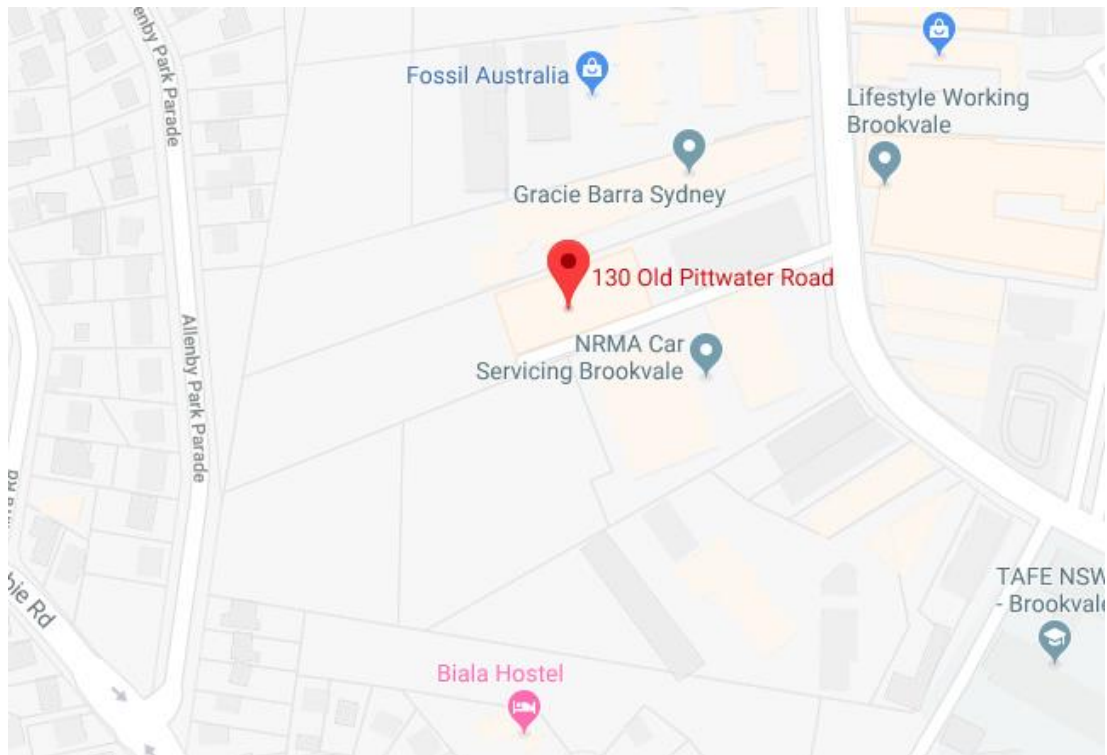
The subject site is located within the Brookvale Industrial Area and is currently occupied by industrial buildings which gain direct vehicular and pedestrian from Old Pittwater Road.

The site also has an upper, undeveloped level which is located above an existing escarpment line which traverses the site.

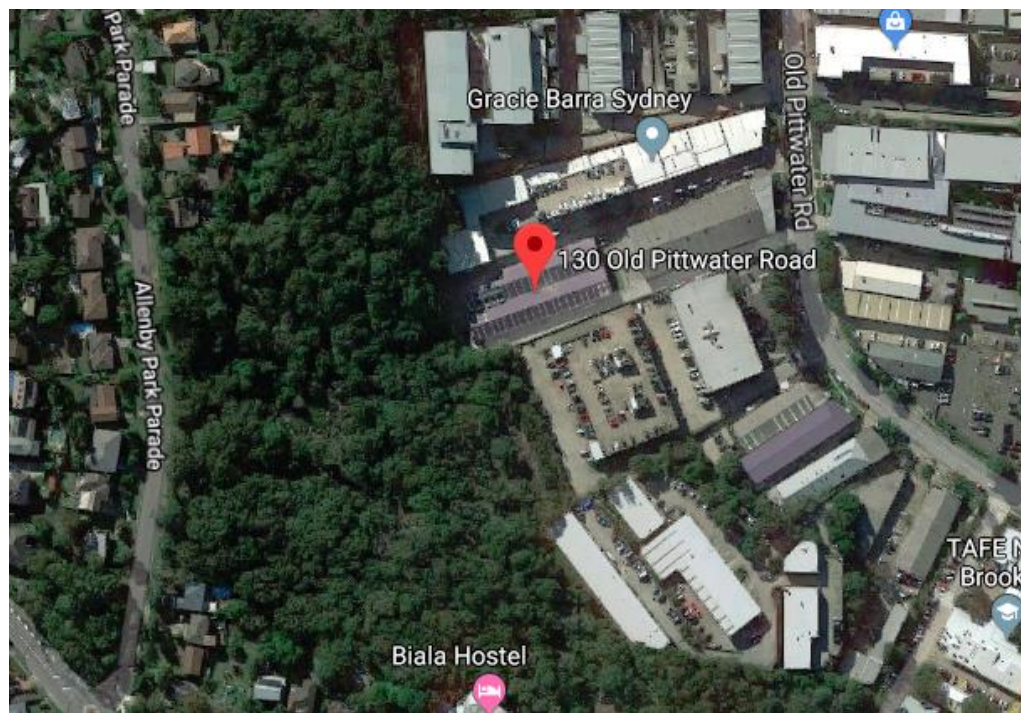
The proposed new industrial units are located at the rear of the site and will gain vehicular access via right of carriageway over the driveway access to the adjoining site at No 138-140 Old Pittwater Road, which in turns gains its vehicular access via a right of way over No's 134-136 Old Pittwater Road.

The adjoining property at No 138-140 Old Pittwater Road is currently being further developed in accordance with DA 2012/1377, with the bulk excavation works being carried out under Construction Certificate No CC2017/0662.

The surrounding units on the adjoining properties comprise a range of similar industrial uses.



**Fig 1: Location map**  
(Source: Google maps)



**Fig 2: Aerial view of subject locality**  
(Source: Google maps)





**Fig 3: View looking west from No 138-140 Old Pittwater Road towards the rear of the subject site and the location of the new industrial and warehouse unit development**



**Fig 4: View looking north-west from No 138-140 Old Pittwater Road towards the rear of the subject site and the location of the new industrial and warehouse unit development**





**Fig 5: View looking north over the subject site towards the surrounding development at the western, upper end of the allotments**



**Fig 6: View looking west from No 138-140 Old Pittwater Road towards the rear of the subject site and the interface (southern boundary) with the proposed development**

#### **4.0 Proposed Development**

The proposal seeks consent for the construction of a new industrial and warehouse complex at the upper, western end of the subject.

The existing single storey industrial units within the lower area of the site are to be retained, with the proposed industrial complex to be constructed at the upper level above the escarpment line and to be partly elevated over the existing buildings. The current vehicular and pedestrian access to the existing industrial units will remain from Old Pittwater Road.

The proposed new industrial units are located at the rear of the site and will gain vehicular access via right of carriageway over the driveway access to the adjoining site at No 138-140 Old Pittwater Road, which in turns gains its vehicular access via a right of way over No's 134-136 Old Pittwater Road.

The new works comprise:

##### **Level 1 (RL 31.50m)**

- Level 1 to provide for 1 x new industrial unit

##### **Level 1 – Mezzanine**

- Mezzanine and associated internal access stairs to proposed Level 1 industrial unit

##### **Level 2**

- Level 2 to provide for external access stairs to existing factory level below

##### **Level 2A (RL 41.60m)**

- Level 2A to provide for 8 x industrial units
- Driveway
- Car parking for 12 car spaces
- Garbage storage area

##### **Level 3 (RL 48.0m)**

- Level 3 to provide for 8 x industrial units
- Driveway
- Car parking
- Garbage storage area

##### **Level 3 – Mezzanines**

- Mezzanine and associated internal access stairs to proposed units C.01 – C.05



The external finishes of the new works to comprise lightweight weatherboard cladding with metal roof sheeting. The proposed mix of colours and finishes, in conjunction with the articulated wall lines and roof form, will be a positive element within the immediate area and provide visual interest.

No signage is proposed at this stage, and operating hours for the respective units will be determined in future Development Applications.

Toilet facilities for staff are provided within the units.

Forty-seven car parking spaces are provided on site. A ramp, one disabled car parking space and accessible WC have been provided within the site.

## **5.0 Relevant Statutory Controls**

### **5.1 State Environmental Planning Policy No. 55 – Remediation of Land**

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

Given that the area of the site has been undisturbed, the respective portion of the site is not considered to be subject to contamination and further investigation is not required at this stage.

### **5.2 State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017**

The SEPP commenced on 25 August 2017 and replaced Clause 5.9 of Warringah Local Environmental Plan 2011.

The aims of the SEPP are detailed in Clause 3 and note:

*The aims of this Policy are:*

- (a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and*
- (b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.*

In this instance, the proposal will not see any loss of any substantial vegetation and is therefore considered to be consistent with the aims of the SEPP.

A Flora & Fauna Assessment and Arboricultural Impact Appraisal and Method Statement have been prepared to address the site works and are discussed further within this statement.

### **5.3 Warringah Local Environmental Plan 2011**

The land is zoned IN1 General Industrial and RE1 Public Recreation under the provisions of the WLEP 2011.

The proposed works and the use of the land as “light industry” and a building for light industrial and warehouse purposes is permissible in the IN1 General Industrial zone with consent.

The new industrial complex will support the surrounding industrial uses and will assist in achieving the objectives of the zone, which are noted as:

- *To provide a wide range of industrial and warehouse land uses.*
- *To encourage employment opportunities.*
- *To minimise any adverse effect of industry on other land uses.*
- *To support and protect industrial land for industrial uses.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*
- *To enable a range of compatible community and leisure uses.*

- To maintain the industrial character of the land in landscaped settings.

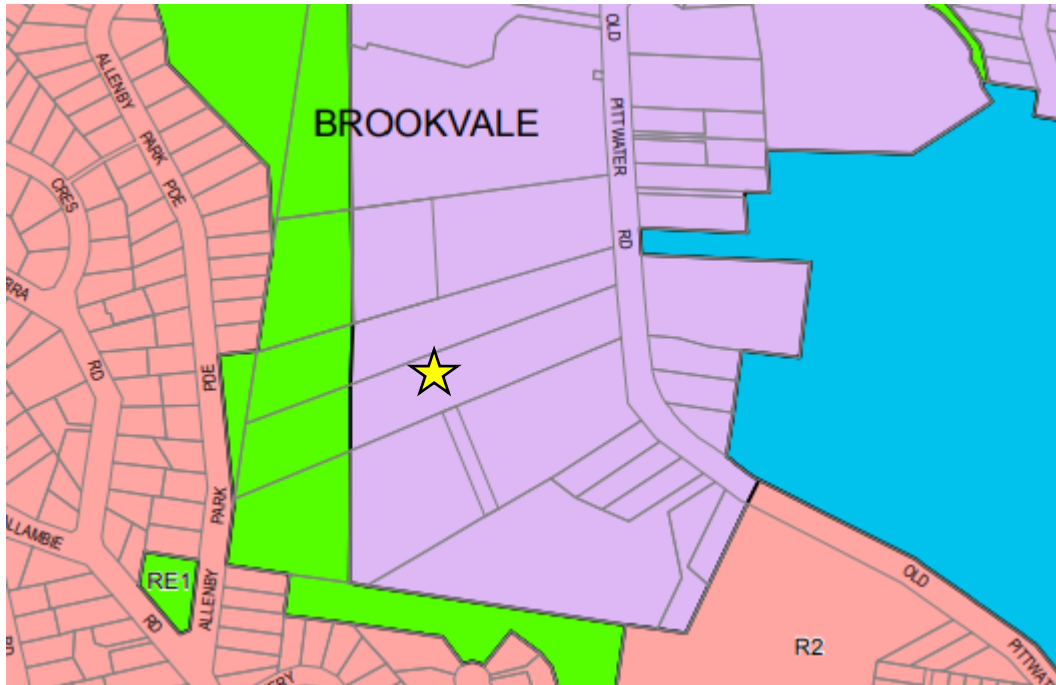


Fig 7: Extract of Warringah Local Environmental Plan 2011 Zoning Map

It is considered that the proposed industrial use will be consistent with the desired future character of the surrounding locality for the following reasons:

- The proposal will be consistent with and complement the existing range of industrial development in the area.
- The proposed use will enhance the employment opportunities and the range of services in the area.
- The proposal development will not unreasonably reduce the amenity of any nearby properties.

**Clause 4.3** provides controls relating to the height of buildings.

The dictionary supplement to the LEP notes building height to be:

***building height*** (or ***height of building***) means the vertical distance between ground level (existing) and 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.

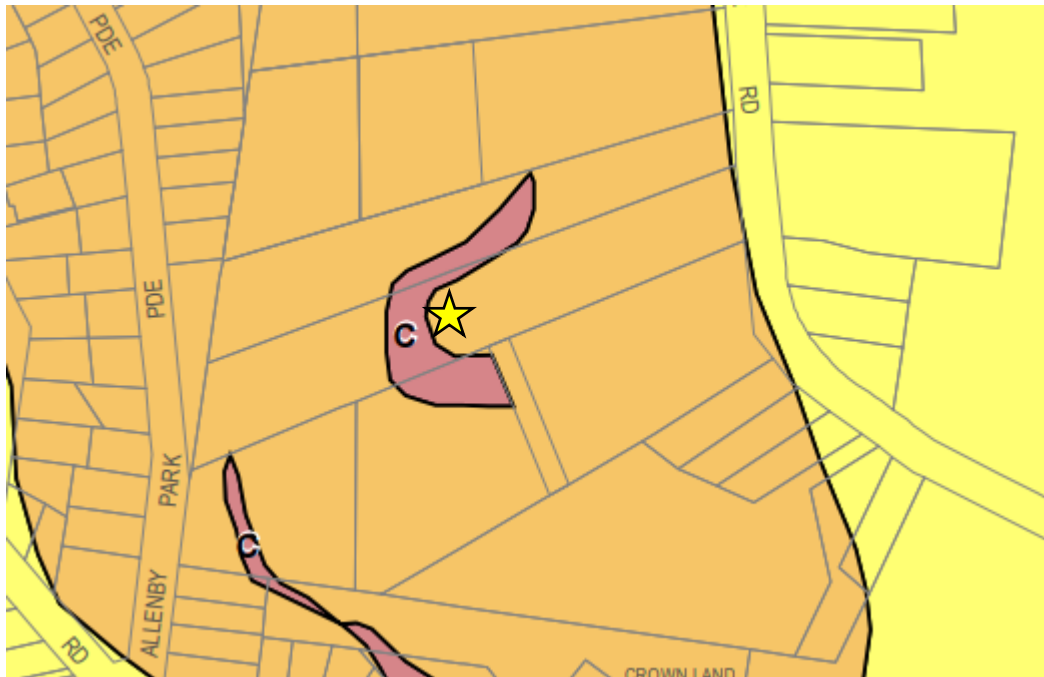
The building height limit for development in this portion of Brookvale is 11m. The maximum height of the proposed works is 32.115m which does not comply with this maximum height control. Accordingly, a submission has been prepared pursuant to Clause 4.6 and accompanies this statement.

**Clause 6.2** relates to earthworks. The proposal will require some excavation and site disturbance to accommodate the new development. The works will be carried out in accordance with the recommendations of the Geotechnical Investigation prepared by White Geotechnical Group Pty Ltd

under Report Reference J1911, dated 28 February 2019 and the Site Management and Construction Plan prepared by Leech Harmon Architects and will therefore satisfy the provisions of this clause.

**Clause 6.4** relates to development on sloping land. The site is identified as being within Area A, B and C on the Landslip Risk Map. Accordingly, a Geotechnical Investigation has been prepared by White Geotechnical Group Pty Ltd under Report Reference J1911, dated 28 February 2019 which concludes the following:

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



**Fig 8: Extract of Warringah Local Environmental Plan 2011**

There are no other clauses of the WLEP 2011 that are considered to be relevant to the proposed development. It is considered that the proposal achieves the requirements of the WLEP.



## 5.4 Warringah Development Control Plan

The relevant numerical and performance based controls under WDCP are discussed below:

Part B - Built Form Controls			
Standard	Required	Proposed	Compliance
B1 – Wall heights	Max 11m	Proposed building height/wall height up to 32.115m – See Clause 4.6 Submission	N/A
B2 – Number of storeys	The locality has a three storey height limit		N/A
B3 – Side Boundary Envelope and Side Setback	Building envelope 45 degrees from 5m. Setback 0.9m		N/A
B4 – Site Coverage	No requirement identified on map		N/A
B5 – Side Boundary setbacks	Merit assessment		N/A
B6 – Merit assessment of Side Boundary Setbacks	Merit assessment of side setbacks	<p>The proposal will stand a minimum of 1.834m from the northern boundary, and presents a nil setback to the southern boundary.</p> <p>The proposed development is sited to the rear of the lot and will not be prominently viewed from Old Pittwater Road.</p> <p>The site adjoins similar industrial developments to the north and south, with bushland to the rear. The proposed development is therefore not considered to result in any adverse impacts on</p>	Yes

Standard	Required	Proposed	Compliance
		the amenity of neighbouring properties.  The proposed siting of the new works is therefore considered worthy of support on merit.	
B7 – Front Boundary Setbacks	All land in IN1 4.5m	No change to existing setback.	Yes
B8 – Merit assessment of front boundary setbacks	No requirement identified on map		N/A
B9 – Rear Boundary Setbacks	Merit assessment noted on map		N/A
B10 – Merit Assessment of rear boundary setbacks	Merit assessment of rear setbacks	Minimum proposed rear setback is >100m. The development adjoins a reserve to the south-west and the proposed setback is therefore considered appropriate.	Yes
B11 – Foreshore Building Setback	No requirement identified on map		N/A
B12 – National Parks Setback	No requirement identified on map		N/A
B13 – Coastal Cliffs Setback	No requirement identified on map		N/A
B14 – Main Roads Setback	No requirement identified on map		N/A
B15 – Minimum Floor to Ceiling Height	No requirement identified on map		N/A
<b>Part C – Siting Factors</b>			
C2 – Traffic, Access and Safety	Vehicular crossing to be provided in accordance with Council's Vehicle Crossing Policy	The existing driveway access from Old Pittwater Road will continue to provide vehicular access to the current industrial uses within the site. The proposed access to the	Yes

Standard	Required	Proposed	Compliance
		<p>new industrial complex will be via a right of carriageway over the adjoining site at 138-140 Old Pittwater Road and in turn over no's 134-136 Old Pittwater Road (See Plan – Site Analysis Plan – Right of Carriageway details).</p> <p>The proposal includes a letter of authority from the owners of the adjoining sites (Stewart Investment (NSW) which confirms that the future right of carriageway rights will be granted in favour of No 130 Old Pittwater Road.</p> <p>The new driveway to be provided to proposed new carparking areas will be in accordance with Council's requirements. The proposal is accompanied by a Traffic and Parking Assessment prepared by TEF Consulting, Job No 18098 dated 11 December 2018.</p>	
C3 – Parking Facilities	Garages not to visually dominate façade Parking to be in accordance with AS/NZS 2890.1	Proposal seeks to provide carparking which is integrated into the design of the development and will not be visually dominant within the locality.	Yes

Standard	Required	Proposed	Compliance
	<u>Parking rates:</u> <i>Industry</i> 1.3 spaces per 100m <sup>2</sup> GFA (including up to 20% of floor area as office space component. Office space component above 20% determined at office rate).	<i>Industry</i> GFA of industrial component = 3894m <sup>2</sup>  39 spaces therefore required  47 spaces proposed, including 1 accessible space	Yes
C4 – Stormwater	Hydraulic Design to be provided in accordance with Council's Stormwater Drainage Design Guidelines for Minor Developments and Minor Works Specification	Proposal is accompanied by Hydraulic Details prepared by MGP Pty Ltd which addresses Council's requirements.	Yes
C5 – Erosion and Sedimentation	Soil and Water Management required	Erosion and sediment control measures will be employed.	Yes
C6 – Building over or adjacent to Constructed Council Drainage Easements	N/A		N/A
C7 – Excavation and Landfill	Site stability to be maintained	The proposal will require some excavation to accommodate the new development. The works will be carried out in accordance with the recommendations of the consulting Structural and Geotechnical Engineers, and will therefore satisfy the provisions of this clause.	Yes
C8 – Demolition and Construction	Waste management plan required	Proposal accompanied by a Waste Management Plan	Yes



Standard	Required	Proposed	Compliance
C9 – Waste Management	Waste storage area to be provided	Bins storage available within building	Yes
<b>Part D – Design</b>			
D1 – Landscaped Open Space and Bushland	No minimum landscaped open space requirement		N/A
D2 – Private Open Space			N/A
D3 – Noise	Mechanical noise is to be attenuated to maintain adjoining unit amenity. Compliance with NSW Industrial Noise Policy Requirements	No significant mechanical equipment required. Noise from the proposed future use will be reasonably contained within the units.	Yes
D4 – Electromagnetic Radiation	N/A to proposed development	N/A	N/A
D5 – Orientation and Energy Efficiency	N/A to proposed industrial component of development		N/A
D6 – Access to sunlight	Not applicable to proposed industrial use  This control requires that sunlight to at least 50% of private open space to adjoining properties is not to be reduced to less than 2 hours between 9am and 3pm on the winter solstice.	The subject site does not directly adjoin any residential development and will therefore not result in any solar access impacts to neighbouring properties.	Yes
D7 – Views	No applicable to proposed industrial use  View sharing to be maintained	The proposal is located in an industrial area and will not result in any impacts on any significant views.	Yes
D8 – Privacy	No applicable to proposed industrial use	The site does not adjoin any residential development.	N/A
D9 – Building Bulk	This clause requires buildings to have a visual bulk and	The external form of the development has been designed to	Yes

Standard	Required	Proposed	Compliance
	architectural scale that is consistent with structures on nearby and adjoining properties and not to visually dominate the street or surrounding spaces	follow the sloping topography of the building. The articulated roof and wall lines and the mix of colours and finishes serve to minimise the bulk of the building. The proposal is consistent with development in the locality and will not visually dominate the Old Pittwater Road streetscape.	
D10 – Building Colours and materials		The external finishes of the new works to comprise painted reinforced concrete walls with lightweight colorbond steel cladding and colorbond metal roof sheeting. The proposed colours and finishes will be non-reflective, and will enhance the streetscape appearance of the development. The external finishes have been detailed in the submission prepared by Leech Harmon Architects.	Yes
D11 – Roofs	The LEP requires that roofs should not dominate the local skyline.	The proposed low pitched roof form, comprised of individual elements which introduce articulation, is suitable for the contemporary nature of the new works and will not dominate the skyline.	Yes

Standard	Required	Proposed	Compliance
D12 – Glare and Reflection	Glare impacts from artificial illumination minimised. Reflective building materials to be minimised	The proposed colours and finishes are non-reflective and will not result in any glare.	Yes
D13 – Front Fences and Front Walls	Front fences to be generally to a maximum of 1200mm, of an open style to complement the streetscape and not to encroach onto street	No fencing proposed	N/A
D14 – Site Facilities	Garbage storage areas and mailboxes to have minimal visual impact to the street Landscaping to be provided to reduce the view of the site facilities	Suitable garbage storage areas throughout development	Yes
D15 – Side and Rear Fences	Side and rear fences to be maximum 1.8m and have regard for Dividing Fences Act 1991		N/A
D16 – Swimming Pools and Spa Pools	Pool not to be located in front yard or where site has two frontages, pool not to be located in primary frontage. Siting to have regard for neighbouring trees.	N/A	N/A
D17 – Tennis Courts	N/A		N/A
D18 – Accessibility	Safe and secure access for persons with a disability to be provided where required	Disabled access available as noted in Building Code of Australia 2016 Indicative Compliance Report prepared by Building Certificates Australia Pty Ltd,	Yes

Standard	Required	Proposed	Compliance
		Project No 18/0577 dated 8 February 2019.	
D19 – Site Consolidation in the R3 and IN1 Zone	Development shall not result in adjacent allotments that have areas or dimensions, or are constrained in other ways, that would render such allotment(s) incapable of being developed in accordance with Warringah Local Environmental Plan.	Adjoining properties are capable of being developed, and accordingly, site consolidation is not deemed necessary.	Yes
D20 – Safety and Security	Buildings to enhance the security of the community.  Buildings are to provide for casual surveillance of the street.	The proposed works will not reduce the security of the street area or the subject property. Casual surveillance of Old Pittwater Road is available from within the building.	Yes
D21 – Provision and Location of Utility Services	Utility services to be provided	Normal utility services are available to the site	Yes
D22 – Conservation of Energy and Water	Compliance with SEPP BASIX not required for industrial development		N/A
D23 – Signs	Building identification signage to be appropriate for proposed use and not to impact on amenity of surrounding locality. Signs not to obscure views vehicles, pedestrians or potentially hazardous road features or traffic control devices.	No signage proposed at this stage	N/A



Part E – The Natural Environment			
E1 – Private Property Tree Management	Arboricultural report to be provided to support development where impacts to trees are presented	<p>The proposal is accompanied by a Flora and Fauna Assessment prepared by ACS Environmental Pty Ltd, dated September 2018.</p> <p>In addition, an Arboricultural Impact Appraisal and Method Statement has been prepared by Naturally Trees, dated 14 September 2018.</p> <p>Subject to compliance with the recommendations contained within these reports, the proposal will satisfy the provisions of this clause.</p>	Yes
E2 – Prescribed Vegetation	Identified on map	<p>In addition, an Arboricultural Impact Appraisal and Method Statement has been prepared by Naturally Trees, dated 14 September 2018.</p> <p>Subject to compliance with the recommendations contained within this report, the proposal will satisfy the provisions of this clause.</p>	Yes
E3 – Threatened species, populations, ecological communities	Not identified on map		N/A
E4 – Wildlife Corridors	Identified on map	The proposal is accompanied by a	Yes

		<p>Flora and Fauna Assessment prepared by ACS Environmental Pty Ltd, dated September 2018.</p> <p>The rear portion of the site (0.39ha) will remain undisturbed and will continue to allow for wildlife to traverse the site.</p>	
E5 – Native Vegetation	Identified on map	<p>The proposal is accompanied by a Flora and Fauna Assessment prepared by ACS Environmental Pty Ltd, dated September 2018.</p> <p>Subject to compliance with the recommendations contained within this report, the proposal will satisfy the provisions of this clause.</p>	Yes
E6 – Retaining unique environmental features	Not identified on map	No significant features within site	Yes
E7 – Development on land adjoining public open space	Identified on map		
E8 – Waterways and Riparian Lands	Not identified on map		N/A
E9 – Coastline Hazard	Not identified on map		N/A
E10 – Landslip Risk	Identified on map as Area A, B and C.	A Geotechnical Investigation has been prepared by White Geotechnical Group Pty Ltd under Report Reference J1911, dated 28 February 2019 which concludes the following:	Yes

		<p><i>"The proposed development is suitable for the site. No geotechnical hazards will be created by the completion of the proposed development provided it is carried out in accordance with the requirements of this report and good engineering and building practice".</i></p> <p>Subject to compliance with the recommendations contained within the Geotechnical Investigation, the proposal is in keeping with the provisions of this clause.</p>	
E11 – Flood Prone Land	Identified on map	<p>The site is subject to overland flows and flooding and accordingly, a hydraulic report &amp; Stormwater Management Plan has been prepared by MGP Pty Ltd, dated 17 December 2018 and accompanies this submission.</p> <p>Subject to compliance with the recommendations contained within the Flood Investigation, the proposal is in keeping with the provisions of this clause.</p>	Yes

**6.0 Matters for Consideration Under Section 4.15 Of The Environmental Planning And Assessment Act, 1979**

**6.1 The provisions of any environmental planning instrument**

The proposal is subject to the provisions of the Warringah Local Environmental Plan 2011. It is considered that the provisions of this environmental planning instrument have been satisfactorily addressed within this report and that the proposal achieves compliance with its provisions.

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

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

There are no draft instruments applying to the land.

**6.3 Any development control plan**

The development has been designed to comply with the requirements of the WLEP 2011 & the controls of the Warringah Development Control Plan.

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

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

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

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

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

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

It is considered that the proposal, which seeks consent for the proposed construction of alterations and additions to an industrial building to provide for a new industrial complex which will not unreasonably impact upon the amenity of adjoining properties or upon the character of the surrounding area is compatible with and will complement the character of the area.

The proposal is considered to be well designed having regard to the relevant provisions of the Council's LEP and DCP.

## **6.7 The suitability of the site for the development**

The site is considered suitable for the proposed development.

The proposal will provide for proposed construction of alterations and additions to an industrial building to provide for a new industrial complex, which will not have a detrimental impact on the amenity of the adjoining properties or any detrimental impact on the streetscape.

## **6.8 Submissions made in accordance with this Act or the regulations**

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

## **6.9 The public interest**

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

## **7.0 Conclusion**

The proposal seeks consent for proposed construction of a new industrial and warehouse complex, to supplement the existing low scale light industrial buildings within the site.

The proposed development will not have a detrimental impact on the adjoining properties or the locality.

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

## **VAUGHAN MILLIGAN**

Town Planner

Grad. Dip. Urban & Regional Planning (UNE)

Appendix: Clause 4.6 Submission – Building Height

**OBJECTION PURSUANT TO CLAUSE 4.6 OF WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011**

**130 OLD PITTWATER ROAD, BROOKVALE**

**FOR PROPOSED LIGHT INDUSTRIAL AND WAREHOUSE UNITS  
WITH ANCILLARY OFFICE SPACE**

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

**For:** For the construction of proposed light industrial and warehouse units  
with ancillary office space  
**At:** 130 Old Pittwater Road, Brookvale  
**Owner:** Stewart Investments (NSW) Pty Ltd  
**Applicant:** Stewart Investments (NSW) Pty Ltd  
C/- Vaughan Milligan Development Consulting

**1.0 Introduction**

This objection is made pursuant to the provisions of Clause 4.6 of Warringah Local Environmental Plan 2011. In this regard it is requested Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of the Warringah Local Environmental Plan 2011 (WLEP 2011).

**2.0 Background**

Clause 4.3 restricts the height of a building within this area of the Brookvale locality and refers to the maximum height noted within the "*Height of Buildings Map*."

The relevant building height for this locality is 11m and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

Due to the existing topographical constraints within the upper portion of the land and the existing escarpment line traversing the site, a portion of the proposed new industrial building will be up to 32.115m in height where it extends over the line of the escarpment.

It is noted however that the development will be consistent with the maximum building height of the adjoining development under construction at 138-140 Old Pittwater Road, Brookvale.

The controls of Clause 4.3 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

### 3.0 Purpose of Clause 4.6

The Warringah Local Environmental Plan 2011 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 118* have been considered in this request for a variation to the development standard.

### 4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for construction of a new industrial and warehouse building with ancillary office space, which is consistent with the stated Objectives of the IN1 General Industrial Zone, which are noted as:

- *To provide a wide range of industrial and warehouse land uses.*
- *To encourage employment opportunities.*
- *To minimise any adverse effect of industry on other land uses.*
- *To support and protect industrial land for industrial uses.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*
- *To enable a range of compatible community and leisure uses.*
- *To maintain the industrial character of the land in landscaped settings.*

As sought by the zone objectives, the proposal will provide for the construction of a new industrial and warehouse building with ancillary office space, which is sensitive to the existing industrial setting with surrounding bushland and the topography of the locality.

The proposal introduces a new industrial development that will enhance the range of industrial and warehouse uses in the area and provide additional employment opportunity.

The proposal includes modulated wall lines and a consistent palette of materials and finishes in order to provide for high quality development that will enhance and complement the locality.

The variation to the height control is a direct consequence of the proposed building extending over



the escarpment line and given the scale and height of the surrounding buildings, the development will not be visually prominent.

The site will retain the bushland to the rear of the building, which adjoins the Council reserve, which also assists in minimising the visual impact of the development.

Notwithstanding the non-compliance with the maximum height control, the new works will provide a positive contribution to the industrial locality.

## **5.0 Onus on Applicant**

Clause 4.6(3) provides that:

*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.*

This submission has been prepared to support our contention that the development adequately responds to the provisions of 4.6(3)(a) & (b) above.

## **6.0 Justification of Proposed Variation**

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument should be assessed in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 11* & *Samadi v Council of the City of Sydney [2011] NSWLEC 1199*.

Paragraph 27 of the Samadi judgement states:

*Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).*

### **Precondition 1 - Consistency with zone objectives**

The proposed development of and use of the land within the IN1 General Industrial Zone is consistent with the zone objectives, which are noted as:

- *To provide a wide range of industrial and warehouse land uses.*
- *To encourage employment opportunities.*
- *To minimise any adverse effect of industry on other land uses.*
- *To support and protect industrial land for industrial uses.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*
- *To enable a range of compatible community and leisure uses.*
- *To maintain the industrial character of the land in landscaped settings.*

### **Comments**

It is considered that the proposed development will be consistent with the desired future character of the surrounding locality for the following reasons:

- As sought by the zone objectives, the proposal will provide for the construction of a new industrial and warehouse building with ancillary office space, which is sensitive to the existing industrial setting with surrounding bushland and the topography of the locality.
- The proposal introduces a new industrial development that will enhance the range of industrial and warehouse uses in the area and provide additional employment opportunity.
- The proposal includes modulated wall lines and a consistent palette of materials and finishes in order to provide for high quality development that will enhance and complement the locality.
- The variation to the height control is a direct consequence of the proposed building extending over the escarpment line and given the scale and height of the surrounding buildings, the development will not be visually prominent.
- The site will retain the bushland to the rear of the building which adjoins the Council reserve and which also assists in minimising the visual impact of the development.
- The proposed development respects the scale and form of the other new development in the vicinity and therefore complements the locality.
- The setbacks maintain compatibility with the existing surrounding development.

Accordingly, it is considered that the site may be developed with a variation to the prescribed maximum building height control, whilst maintaining consistency with the zone objectives.

## **Precondition 2 - Consistency with the objectives of the standard**

The objectives of Clause 4.3 are articulated at Clause 4.3(1):

*(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.*

### **Comments**

Despite the proposed variation to the statutory height control which occurs as a result of the sloping topography of the site and the design's intent to provide for an industrial development which will provide for commensurate services and facilities to complement the adjacent development at No 138-140 Old Pittwater Road, the proposed new development is considered to be in keeping with the desired future character of the locality.

The proposed development will not result in any unreasonable impacts on the surrounding industrial properties and land uses in terms of views, privacy or overshadowing.

The proposal is generally consistent with the height and scale of the surrounding industrial development in the locality, and the modulation of the façades minimises the visual impact of the development.

The site will retain the existing vegetated zone to the rear of the proposed building location which will enhance the view of the site from the surrounding public spaces.

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

## **Precondition 3 - To consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case**

It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides for an industrial development which is constrained by the sloping terrain of the subject and neighbouring sites.

Council's controls in Clause 4.3 provide a maximum overall height of 11m.

It is considered that the proposal achieves the Objectives of Clause 4.3 and that notwithstanding the non-compliance with the 11m height standard, the development is justified in this instance for the following reasons:

- The proposed works will maintain consistency with the general height and scale of the

surrounding industrial development in the area and the character of the locality.

- The proposed height is compatible with the height and form of the surrounding development and particularly the approved adjoining development under construction at No 138-140 Old Pittwater Road, Brookvale.
- The overall scale of the new works will maintain the amenity and appropriate solar access for the subject site and neighbouring properties.

For the above reasons it would therefore be unreasonable and unnecessary to cause strict compliance with the standard.

**Precondition 4 - To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed**

Council's controls in Clause 4.3 provide a maximum overall height of 11m for the subject development.

Due to the existing overall building height and sloping topography of the site, the proposed new works will be up to approximately 32.115m in height.

The development is justified in this instance for the following planning reasons:

- The proposal will provide for the construction of a new industrial and warehouse building with ancillary office space, which is sensitive to the existing industrial setting with surrounding bushland and the topography of the locality.
- The proposal introduces a new industrial development that will enhance the range of industrial and warehouse uses in the area and provide additional employment opportunity.
- The proposal includes modulated wall lines and a consistent palette of materials and finishes in order to provide for high quality development that will enhance and complement the locality.
- The variation to the height control is a direct consequence of the proposed building extending over the escarpment line and given the scale and height of the surrounding buildings, the development will not be visually prominent.
- The site will retain the bushland to the rear of the building which adjoins the Council reserve and which also assists in minimising the visual impact of the development.
- The proposed development respects the scale and form of the other new development in the vicinity and in particular, the adjacent development under construction at No 138-140 Old Pittwater Road and therefore complements the locality.
- The setbacks maintain compatibility with the existing surrounding development.

Having regard to the above, it is considered there are sufficient environmental planning grounds to

justify a variation of the development standard for maximum building height.

In the recent 'Four2Five' judgement (*Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does **not** mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard", it is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

The appeal of *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February of this year the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

While the judgment did not directly overturn the *Four2Five v Ashfield* decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligation is to be satisfied that "the applicant's written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ...and that there are sufficient environmental planning grounds to justify contravening the development standard." He held that this means:

*"the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary".*

Accordingly, in regard to the proposed development at 130 Old Pittwater Road, Brookvale, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

- The development is constrained by the siting of the proposed development and sloping topography of the site.
- The variation to the height control is inconsequential as it is of negligible impact to the streetscape and the amenity of neighbouring properties.
- The building, in seeking to provide for an appropriate level of industrial and warehouse floor area and supporting facilities which are compatible with the adjoining development under construction at No 138-140 Old Pittwater Road, Brookvale, will as a direct consequence of the

fall in levels resulting from the escarpment, present a portion of the roof area which will be up to 32.115m in height.

The above are the environmental planning grounds which are the circumstance which are particular to the development which merit a variation to the development standard.

In the *Wehbe* judgment (*Wehbe v Warringah Council* [2007] NSWLEC 827), Preston CJ expressed the view that there are 5 different ways in which a SEPP 1 Objection may be well founded and that approval of the Objection may be consistent with the aims of the policy. These 5 questions may be usefully applied to the consideration of Clause 4.6 variations: -

1. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*

**Comment:** Yes. Refer to comments under 'Justification of Proposed Variation' above which discusses the achievement of the objectives of the standard.

2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

**Comment:** It is considered that the purpose of the standard is relevant but the purpose is satisfied.

3. *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

**Comment:** Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development.

Furthermore, it is noted that development standards are not intended to be applied in an absolute manner; which is evidenced by clause 4.6 (1)(a) and (b).

4. *the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

**Comment:** The standard has not been abandoned, however there are a number of examples of similar buildings in the area which exceed the 11m height control.

Notably, the Notice of Determination of DA 2012/1377 was issued by the Land and Environment Court of New South Wales on 30 September 2013 and provided for "*Construction of a light industrial/warehouse and distribution centre*", with a height of up to 23.48m (noted in SEPP 1 submission prepared by Denis Fish Planning Services, which accompanied DA 2102/1377).

Additionally, as indicated in Figure 5, the existing development to the north at No 122-126 Old Pittwater is significantly in excess of 11m in height.

5. *the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

**Comment:** The development standard is applicable to and appropriate to the zone.

## **7.0 Conclusion**

This development proposed a departure from the maximum building height development standard, with the proposed new industrial building to provide a maximum overall height of 32.115m.

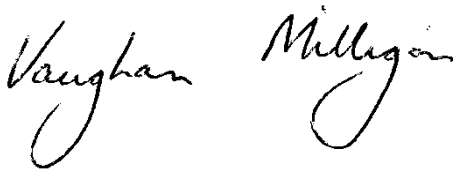
This variation occurs as a result of the sloping topography of the site.

The well-considered design seeks to provide for an appropriate level of industrial and warehouse floor area and supporting facilities, which are compatible with the adjoining development under construction at No 138-140 Old Pittwater Road, Brookvale and which will as a direct consequence of the fall in levels resulting from the escarpment line, present a portion of the roof area which will be up to 32.115m in height.

This objection to the maximum building height specified in Clause 4.3 of the Warringah LEP 2011 adequately demonstrates that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum building height control would be unreasonable and unnecessary in the circumstances of this case.

A handwritten signature in black ink, reading 'Vaughan Milligan'. The signature is written in a cursive, flowing style.

**VAUGHAN MILLIGAN**

*Town Planner*