APPENDIX 1
CLAUSE 4.6 – MAXIMUM BUILDING HEIGHT

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

5 SURFVIEW ROAD, MONA VALE

FOR ADDITIONS AND ALTERATIONS TO AN EXISTING DWELLING INCLUDING NEW DOUBLE CARPORT

VARIATION OF A DEVELOPMENT STANDARD REGARDING THE WORKS WITHIN COUNCIL'S MAXIMUM BUILDING HEIGHT AS DETAILED IN CLAUSE 4.3 OF THE PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

For: For proposed alterations and additions to an existing dwelling
At: 5 Surfview Road, Mona Vale
Owner: Lex & Belinda Pedersen
Applicant: Lex & Belinda Pedersen
C/- Vaughan Milligan Development Consulting

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Pittwater Local Environmental Plan 2014. 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 Pittwater Local Environmental Plan 2014 (PLEP 2014).

2.0 Background

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

The relevant building height for this locality is 8.5m and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The maximum building height in this portion of Mona Vale is 8.5m. The existing dwelling has a maximum height to the ridge of the pitched roof (@RL17.06m) of 10.33m above the existing garage floor level, which currently exceeds the maximum height control by 1.83m or 21.5%.

The proposed additions and alterations to the dwelling will see introduction of a parapet style roof with a central stair void, with the maximum height to RL 15.580, which exceeds the height control by 8.85m or 350mm or 4.1%.

The proposed new roof design will result in a substantial reduction in the overall height by up to 1.48m (See Figure 1 over).

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

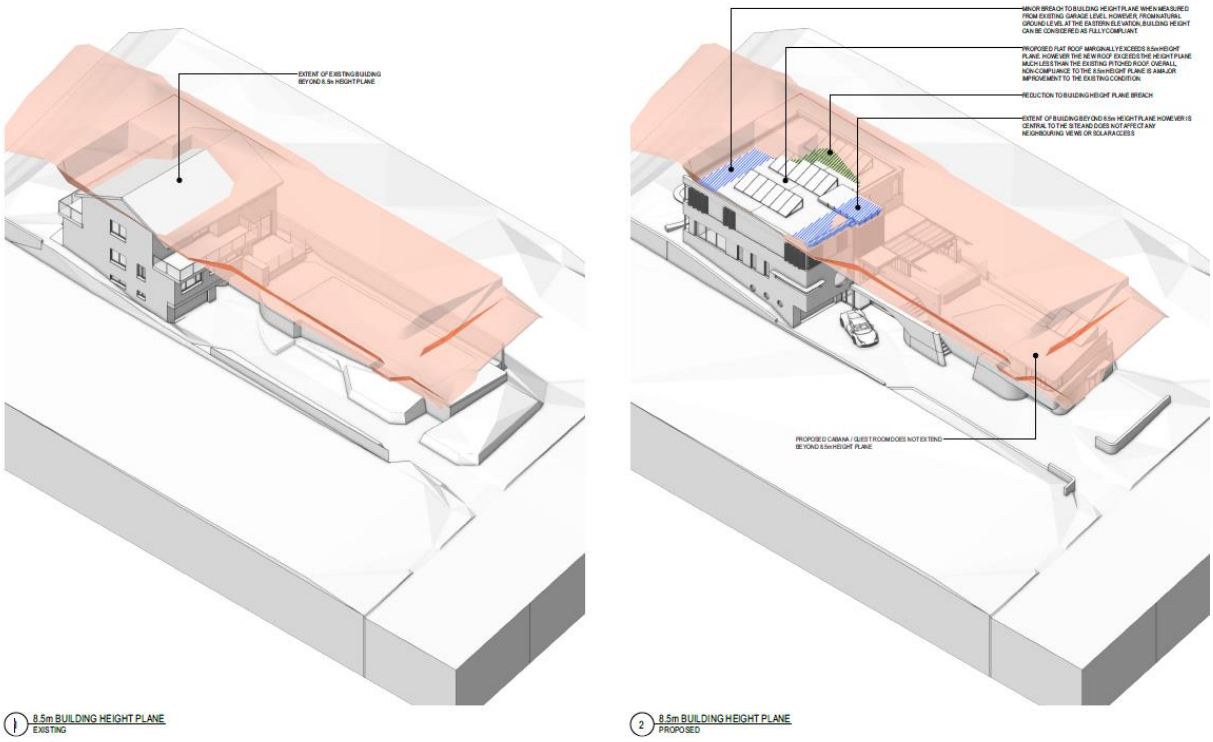

Fig 1: Extract of proposed architectural plans to indicate extent of reduction in the area of the roof which exceeds a maximum height control
(Source: MHDP Architects)

Is Clause 4.3 of PLEP a development standard?

(a) The definition of "development standard" in clause 1.4 of the EP&A Act means standard is fixed in respect of an aspect of a development and include:

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

(b) Clause 4.3 relates to floor space of a building. Accordingly, Clause 4.3 is a development standard.

The Dictionary to PLEP operates via clause 1.4 of PLEP. The Dictionary defines "building height" as:

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.*

For the purposes of calculating the maximum building height, the existing excavated level within the site and in particular the excavated lower floor level has been determined in accordance with the principles identified in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 [at 73].

For the purpose of determining the maximum height control applying to the land, the existing ground levels within the site and within the footprint of the existing dwelling were determined from the revised survey report prepared by Waterview Surveying Services, Project No 1649 dated 10 November 2022.

When the excavated garage floor level is used as the reference point for the 8.5m height control, the proposed additions and alterations to the existing dwelling will present a minor non-compliance with the maximum building height standard to the lift overrun and parapet roof, having a height of up to 8.85m.

As indicated in the Building Height Plane diagrams within the architectural plans prepared by MHDP Architects and in particular Figure 1 as noted previously, the significant majority of the new roof form will comfortably comply with Council's 8.5m maximum height control when measured above existing ground level is within the site. The building also presents as a stepped two storey form to follow the sloping topography of the site.

Figure 1 also notes that the overall height of the new roof form will be up to 1.48 it is below the existing pitched roof level.

As noted in *Merman* [at 74] the prior excavation of the site within the footprint of the existing building, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the land, is considered to be an environmental planning ground within the meaning of clause 4.6 (3)(b) of MLEP 2013.

The proposal is considered acceptable and as discussed further within this request, there are sufficient environmental planning grounds to justify contravening the development standard.

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 Pittwater Local Environmental Plan 2014 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 decision of Chief Justice Preston in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 ("Initial Action") provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in ***RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130 at [1], [4] & [51]*** where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of PLEP 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 (the building height development standard) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of PLEP.

Clause 4.6(3) of PLEP provides:

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development does not comply with the building height development standard pursuant to Clause 4.3 of PLEP which specifies a height of 8.5m however as compliance is constrained as a result of the form of the existing dwelling and the previous excavation of the site, 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 PLEP 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 requires the consent authority to be satisfied that that the concurrence of the Planning Secretary (of the Department of Planning and the Environment) has been obtained.

Under cl 55 of the *Environmental Planning and Assessment Regulation 2021,* the Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002 issued on 5 May 2020, 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 PLEP provides:

(5) In deciding whether to grant concurrence, the 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 Secretary before granting concurrence.

Council 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), and should 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 PLEP from the operation of clause 4.6.

The specific 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 the construction of alterations and additions to an existing dwelling, which is consistent with the stated Objectives of the C4 Environmental Living Zone, which are noted as:

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

- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

The proposal will provide for the construction of alterations and additions to an existing dwelling to provide for additional residential accommodation with a high level of amenity for the site's occupants.

The new works maintain a bulk and scale which is in keeping with the extent of surrounding development, with a consistent palette of materials and finishes, in order to provide for high quality development that will enhance and complement the locality.

Notwithstanding the non-compliance with the maximum building height control, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood. It is noted that the proposal will maintain a consistent character with the built form of nearby properties.

The proposed alterations and additions will not see any unreasonable adverse impacts on the views enjoyed by neighbouring properties.

The works will not see any adverse impacts on the solar access enjoyed by adjoining dwellings.

The general bulk and scale of the dwelling as viewed from the public areas in Prince Alfred Parade from the surrounding private properties will be largely maintained.

5.0 The Nature and Extent of the Variation

5.1 This request seeks a variation to the building height development standard contained in Clause 4.3 of PLEP.

5.2 Clause 4.3 of PLEP specifies an allowable height for a site in this part of Mona Vale of 8.5m.

5.3 The proposal has a maximum height of 8.85m above the existing excavated garage.

5.4 The total non-compliance with the building height control is 350mm or 4.11%.

6.0 Relevant Caselaw

6.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:

> *17. The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
>
> *18. A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
>
> *19. A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
>
> *20. A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
>
> *21. A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
>
> *22. These 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, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

6.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is Clause 4.3 of PLEP 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 C3 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 PLEP?

7.0. Request for Variation

7.1 Is clause 4.3 of PLEP 2014 a development standard?

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 maximum building height of a building. Accordingly, clause 4.3 is a development standard.

7.2 Is compliance with clause 4.3 unreasonable or unnecessary?

This request relies upon the 1st way identified by Preston CJ in Wehbe.

The first way in Wehbe is to establish that the objectives of the standard are achieved.

The objective of the maximum building height standard and reasoning why compliance is unreasonable or unnecessary is set out below:

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

Comment: The proposed non-compliance is limited to the stair void and parapet roof of the new roof form that is located above the existing excavated lower floor garage level of the existing dwelling. The resultant development presents as a two storey dwelling and is consistent with the form and scale of surrounding development.

The proposal is intended to reflect the predominant scale and form of the surrounding development in Surfview Road and will reflect the existing single dwelling uses in the vicinity.

The proposal will see the retention of the majority of the existing vegetation within the site, together with the Landscape Plan prepared by MHDP Architects providing for a significant improvement in the extent and quality of the landscape planting regime within the site to support the new dwelling.

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

Comment: The proposed development has a predominantly one and two storey appearance which sits comfortably in its surrounding context. The scale of the proposed development will not be jarring in the streetscape context or at odds with that of surrounding and nearby development.

(c) to minimise any overshadowing of neighbouring properties,

Comment: The non-compliance is limited to the stair void and parapet roof of the dwelling and these elements of the building breach the height control by up to approximately 350mm. The design of the building which steps down the site has been responsive to the site constraints and neighbouring development to minimise overshadowing.

A solar access assessment has been prepared by MHDP Architects which indicates that the proposed additions and alterations to the dwelling will not result in any unreasonable or adverse impacts to the existing solar access enjoyed by the primary private open spaces and primary living rooms of the adjacent southern neighbour.

The southern neighbouring dwelling locates the primary living areas and immediate open space towards the eastern end of the site and as a result, enjoys excellent solar access throughout the day till the early afternoon period.

The shadow analysis confirms that the southern neighbour will retain the opportunity for the from a living rooms and outdoor recreation space to maintain equitable and adequate solar access in accordance with Council's DCP control Clause C1.4.

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

Comment: The non-compliant portion of the dwelling does not result in any adverse impacts upon views. The property is located along the beachfront in with the overall reduction in the height of the building, reasonable access for views for surrounding properties will be maintained. Views from the public domain are largely unaltered and not adversely impacted by the proposed non-compliance.

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

Comment: The non-compliance is associated with the portion of a building that is located over existing excavated development. If not for the historical excavation which has resulted in the existing ground levels throughout the site and within the building footprint, the proposal would generally comply with the height limit prescribed.

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

Comment: The proposed non-compliant portions of the development do not result in any adverse impacts upon existing vegetation or contribute to adverse impacts upon the scenic qualities of the site. The proposed development is a high-quality architectural design that appropriately responds to the context and is compatible with the scale and form of surrounding dwellings.

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

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

In Initial Action the Court found at [23]-[24] that:

23. As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.

24. The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. 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: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

There are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposed development maintains the general bulk and scale of surrounding contemporary dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly and economic use of the land (cl 1.3(c)).

- Similarly, the proposed development will provide for a high level of amenity within a built form which is compatible with the character of the locality, which also promotes the orderly and economic use of the land (cl 1.3(c)).

- The proposed development is considered to promote good design and enhances the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g).

- The non-compliance primarily arises as a result of historical excavation undertaken to provide for the lower floor level of the existing dwelling. In accordance with the findings of the NSW LEC in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, the prior excavation of the site within the footprint of the existing building, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the hill, can properly be described as an environmental planning ground within the meaning of cl 4.6(3)(b) of LEP 2014.

- The proposed breach of the height control facilitates a superior design outcome for the site when compared to the compliant envelope that would distort the proposed built form to match the undulating topography of the site.

- The provision of rational and consolidated floor plate across the upper levels provides for improved planning outcome in terms of design and the building's relationship to the site overall.

- Consistent with the findings of Commissioner Walsh in *Eather v Randwick City Council* [2021] NSW LEC 1075 and Commissioner Grey in *Petrovic v Randwick City Council* [2021] NSW LEC 1242, the particularly small departure from the actual numerical standard and absence of impacts consequential of the departure constitute environmental planning grounds, as it promotes the good design and amenity of the development in accordance with the objects of the EP&A Act.

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of additions and alterations to the existing development that provides sufficient floor area for future occupants and manages the bulk and scale and maintains views over and past the building from the public and private domain. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the maximum building height control.

It is noted that in *Initial Action,* the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

> *87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site"*

> *relative to a development that complies with the height development standard (in [141] and [142] of the judgment). 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 have a better environmental planning outcome than a development that complies with the development standard.*

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.

7.4 Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the C4 Environmental Living Zone?

Section 7.2 of this written request suggests the first test in Wehbe is made good by the development.

Each of the objectives of the C4 Environmental Living Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council [2017] NSWLEC 158* where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ found also that "*The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone".*

In response to *Nessdee,* I have provided the following review of the zone objectives:

It is considered that notwithstanding the breach of the maximum building height, the proposed new dwelling will be consistent with the individual Objectives of the C4 Environmental Living Zone, as follows:

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

  Comment: The proposed development has been sensitively designed in response to the improved architectural style of the existing dwelling and with regard to the amenity of neighbouring properties. The proposed development will not be antipathetic to the visual significance of the area and is of a scale that is consistent and compatible with surrounding dwellings.

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

  Comment: The proposed development does not result in any adverse impacts upon the scenic quality of the locality and has been designed to be safe from the natural hazards that affect the site. The dwelling is highly articulated, and is to be finished in earthy tones, and natural materials to blend with the surrounding environment.

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

  Comment: The proposed development remains a single dwelling house, that is appropriately integrated into the slope of the land.

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

  Comment: The site is not identified as being located within a wildlife corridor and there are no substantial new works proposed within the area noted as being within the foreshore building line.

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

7.5 Has the Court obtained the concurrence of the Secretary?

The Court can assume the concurrence of the Director – General with regards to this clause 4.6 variation.

7.6 Has the Court considered the matters in clause 4.6(5) of PLEP 2014?

The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed additions and alterations to the existing dwelling for the particular site and this design 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.

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.

There are no other matters required to be taken into account by the Secretary before granting concurrence.

8.0 Conclusion

This development proposes a departure from the maximum building height control, with the proposed development reaching a maximum height of 8.85m above existing ground level, representative of a 0.35m or 4.11% variation to the maximum height prescribed.

This variation occurs as a result of historical excavation associated with the lower ground floor level, together with the sloping topography of the land as it falls towards the eastern boundary.

This request for variation of the maximum building height control specified in Clause 4.3 of the PLEP 2014 adequately demonstrates that 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 is unreasonable and unnecessary in the circumstances of this case.

In summary, the proposal satisfies all of the requirements of clause 4.6 of PLEP 2014 and the exception to the development standard is reasonable and appropriate in the circumstances of the case.

VAUGHAN MILLIGAN
Town Planner