

**STATEMENT OF ENVIRONMENTAL EFFECTS**

**CONSTRUCTION OF NEW DWELLING, GARAGE AND SWIMMING  
POOL**

**LOCATED AT**

**10 PAINTERS PARADE, DEE WHY**

**FOR**

**WALLHOUSE HOLDINGS PTY LTD**

**Prepared  
September 2019**

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## 1.0 Introduction

This Statement of Environmental Effects accompanies architectural plans prepared on behalf of Wallhouse Holdings Pty Ltd by Zanazan Architecture, Project No. 1815 – Painters Parade, dated 19 September 2019, detailing the construction of new dwelling, garage and swimming pool on vacant land at **10 Painters Parade, Dee Why**.

The architectural plans which for the Development Application submission comprise:

Drawing No	Drawing Title
1810-A001	Drawing List & Legend
1810-A101	Plan – Site & Roof
1810-A102	Plan – Level 3 (Street)
1810-A103	Plan – Level 2
1810-A104	Plan – Level 1
1810-A201	Elevation -West (Street)
1810-A201	Elevation – West/Pool Long
1810-A203	Elevation – North
1810-A204	Elevation – East
1810-A205	Elevation – South
1810-A301	Section – AA
1810-A302	Section - BB
1810-A303	Section – CC/Pool Short
1810-A900	Shadow Diagrams
1810-A901	Shadow Diagrams

This Statement describes the subject site and the surrounding area, together with the relevant planning controls and policies relating to the site and the type of development proposed. As a result of this assessment it is concluded that the development of the site in the manner proposed is considered to be acceptable and is worthy of the support of the Council.

In preparation of this document, consideration has been given to the following:

- *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 (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*
- *Warringah Local Environmental Plan 2011*
- *Warringah Development Control Plan*

Prelodgement Meeting No. PLM2019/0050 was undertaken on the 9 April 2019 in relation to the construction of the new dwelling, garage and swimming pool.

The issues identified by Council in the Pre-Lodgement Meeting have been considered in the preparation of the proposed design.

## **2.0 Property Description**

The subject allotment is described as 10 Painters Parade, Dee Why, being Lot 102 within Deposited Plan 16078 and is zoned R2 Low Density Residential within the provisions of the Warringah Local Environmental Plan 2011.

The site is not listed as a heritage item, nor is not located within a conservation area.

The land is noted as being Landslip Area B. A Geotechnical Site Investigation has been prepared by Crozier Geotechnical Consultants, Project No: 2019-094 dated June 2019 and is discussed further within this submission.

The site is identified as being located within a Low Risk Flood Planning Precinct. As such, no further flood assessment is considered to be necessary at this stage.

No other hazards have been identified.

## **3.0 Site Description**

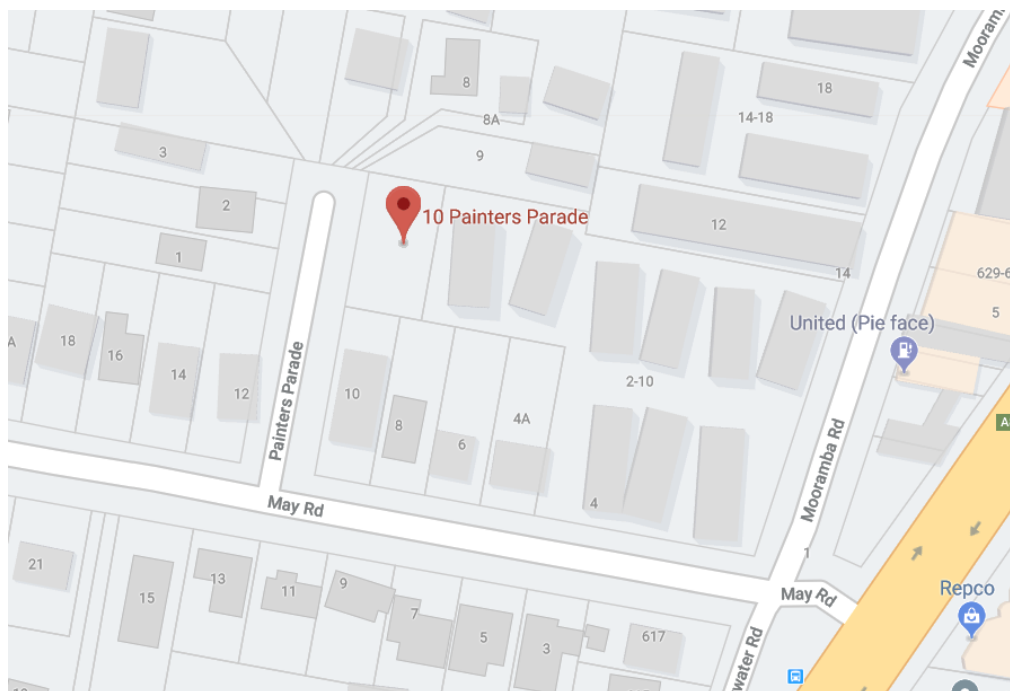
The property is located on the eastern side of the Painters Parade cul-de-sac. The site slopes steeply towards the north-eastern portion of the site, with steep rock faces throughout the site. The site is rectangular in shape, with a frontage of 36.595m to Painters Parade, northern and southern side boundaries measuring 20.76m, and a rear boundary of 36.59m.

The land has a total site area of 759.6m<sup>2</sup> and is currently vacant.

A Council controlled drainage easement which includes a 1200mm diameter stormwater pipe within the easement which is between 3.5m and 4.75m in width runs through the northern portion of the site.

Stormwater from the development is to be directed via gravity to the Council stormwater easement and connected to the pipeline.

The details of the site are as indicated on the survey plan prepared by John Lowe and Associates Pty Ltd Consulting Land and Engineering, Job No. 97318, dated 31 July 2018, which accompanies the DA submission.



**Fig 1: Location of Subject Site  
(Source: Google Maps)**



**Fig 2: View of subject site, with adjoining residential flat building to the rear at 2-10 Mooramba Road, looking east from Painters Parade**





**Fig 3: View of subject site and adjoining garage for the neighbouring site at No 10 May Road, looking east**



**Fig 4: View of subject site and location for new dwelling, looking north-east**

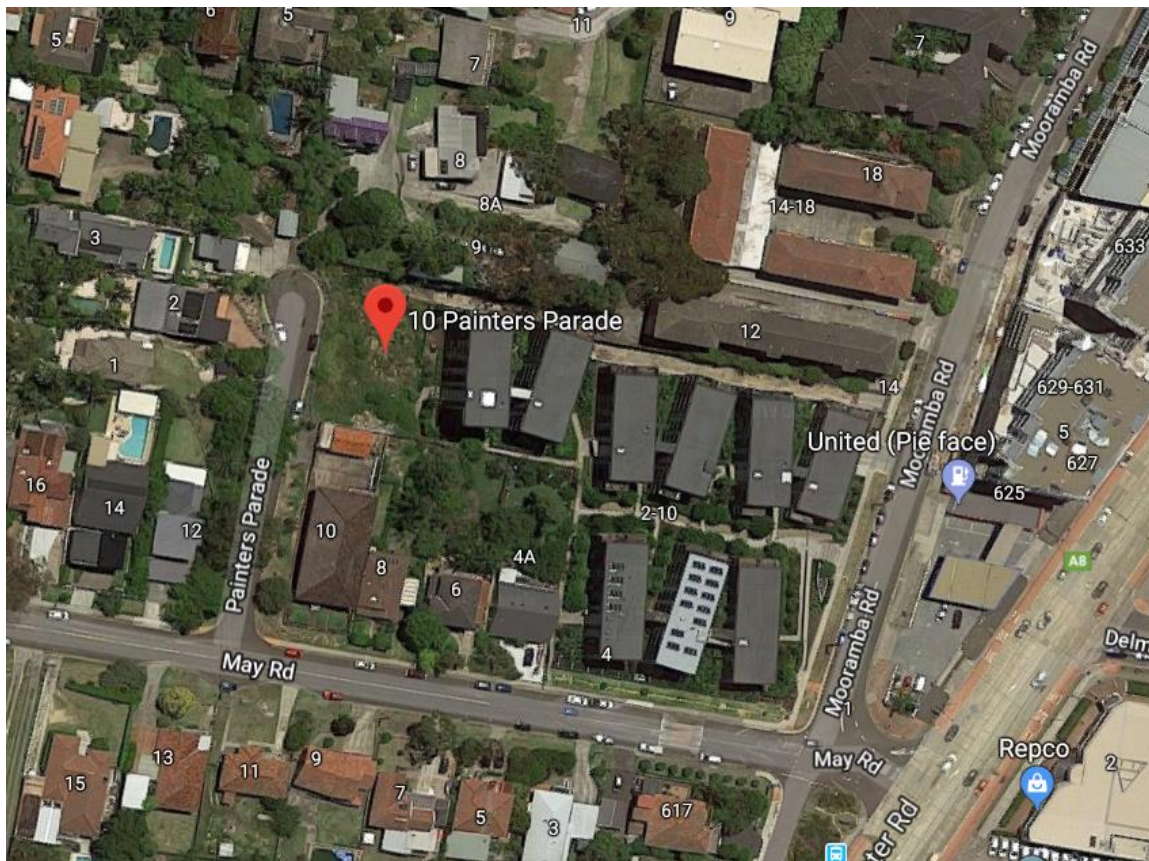


## 4.0 The Surrounding Environment

The general vicinity of the site is characterised by a mix of single detached dwellings and associated ancillary structures such as garages, storage sheds and swimming pools.

The sites immediately to the north, west and south comprise similar two storey dwellings. The sites to the east are zoned R3 Medium Density Residential and generally comprise residential flat development up to four storeys in height.

The site and its surrounds are depicted in the following aerial photograph:



**Fig 5: Aerial view of locality**  
(Source: Google Maps)

## **5.0 Proposed Development**

As detailed within the accompanying plans the proposal seeks consent for the construction of a new three storey dwelling, double garage and a swimming pool.

The proposed works comprise:

### **Level 1**

- Proposed new level 1 to provide for internal access stairs to upper level, family room with wet bar, WC, cabana, decking and outdoor terrace with BBQ

### **Level 2**

- Proposed new level 2 to provide for entry, open plan kitchen/living and dining, pantry, butler's pantry, guest bedroom with ensuite, internal access stairs to upper and lower levels, laundry, WC and media room

### **Level 3 (Street Level)**

- Proposed new level 3 to provide for internal access stairs to lower levels, two bedrooms, bathroom, master bedroom with study, robe, ensuite and balcony
- Attached double garage

### **Ancillary Works**

- New swimming pool
- External entrance stairs and elevated courtyard

The proposed new works to the dwelling will comprise reverse brick veneer, with external wall panel cladding and a mix of concrete and timber floor construction, with a colourbond sheet metal roof.

The dwelling is largely set at or below road level, with a single storey appearance when viewed from Painters Parade.

The dwelling is stepped to follow the falling site levels, with increasing rear setbacks to the eastern boundary which increase as the building height rises in height, to provide for suitable spatial separation for the adjoining residential flat building at 2-10 Mooramba Road.

The level 1 setback to the eastern boundary will be 4m, increasing to 4m -5.270m to Level 2 and 6m to Level 3.

The street setback varies from 1m to the double garage to 8.4m to the dwelling, with the articulated façade and flat roof form to reduce the visual impact of the development on the streetscape.

The collected roofwaters will be directed to the Council drainage easement and 1200mm diameter pipeline, in accordance with the hydraulic design & Stormwater Management Report prepared by Sparks + Partners Consulting Engineers, Job No 19152 dated 19 August 2019.



The proposal results in the following development indices:

Site Area:	759.6m <sup>2</sup>
Required Landscaped Area:	40% or 303.84m <sup>2</sup>
Proposed Landscaped Area:	47% or 360m <sup>2</sup>

## **6.0 Zoning and Development Controls**

### **6.1 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 the history of residential use of the land, the site is not considered to be subject to contamination and further investigation is not required at this stage.

### **6.2 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

The proposal meets water, thermal and energy standards required by BASIX. A BASIX certificate has been submitted with the development application.

### **6.2 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.

#### 6.4 Warringah Local Environmental Plan 2011

The land is zoned R2 Low Density Residential under the provisions of the WLEP 2011.

The proposed works to the dwelling are permissible in this zone under the WLEP 2011.

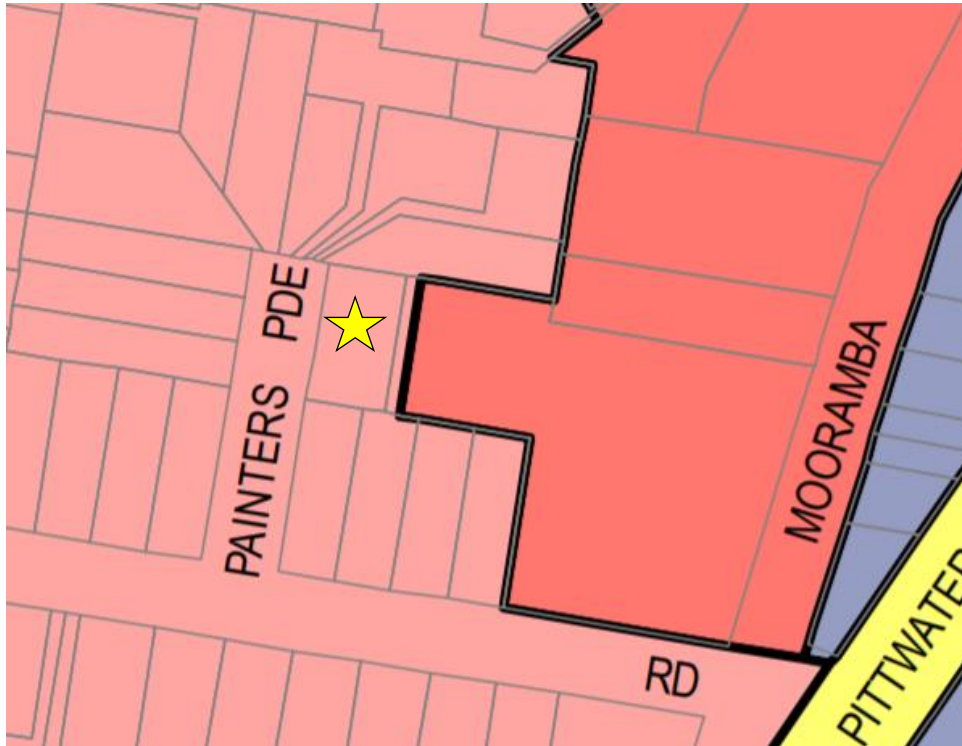


Fig 6: Extract of Warringah Local Environmental Plan 2011

The development of and use of the land for residential purposes is consistent with the zone objectives, which are noted as:

- *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.*

It is considered that the proposed construction of a new dwelling, garage and swimming pool 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 detached style housing within the locality.
- The proposed development respects the scale and form of other new development in the vicinity and therefore compliments the locality.
- The setbacks are compatible with the existing surrounding development.

- The proposal does not have any significant impact on the existing landscaped area or long distance views.

**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 Dee Why is 8.5m. The works to the dwelling will result in a maximum height of 12.36m which presents a variation of 3.86m or 45.4% to this control. A Clause 4.6 submission has been prepared and is attached as an appendix to this statement.

**Clause 6.2** relates to earthworks.

The proposal is accompanied by a Geotechnical Site Investigation has been prepared by Crozier Geotechnical Consultants, Project No: 2019-094 dated June 2019, which concludes that the proposal meets Council's requirements subject to compliance with the recommendations contained within the report.

Additionally, the works will be carried out in accordance with the recommendations of a qualified structural engineer.

**Clause 6.4** relates to development on sloping land. The site is noted on Council's Landslip Risk Map as being within Area B.

Accordingly, a Geotechnical Site Investigation has been prepared by Crozier Geotechnical Consultants, Project No: 2019-094 dated June 2019. Subject to the recommendations contained within this report, the proposal is considered to satisfy the provisions of this clause.

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.



## 6.5 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 7.2m	<p>Due to the steeply sloping topography of the site towards the north-east, a portion of the eastern elevation will be up to 12.36m above ground level.</p> <p>The objectives of this control read as follows:</p> <ul style="list-style-type: none"> <li>• <i>To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.</i></li> <li>• <i>To ensure development is generally beneath the existing <u>tree</u> canopy level.</i></li> <li>• <i>To provide a reasonable sharing of views to and from public and private properties.</i></li> <li>• <i>To minimise the impact of development on adjoining or nearby properties.</i></li> <li>• <i>To ensure that development responds to site topography and to discourage <u>excavation</u> of the natural landform.</i></li> </ul>	Yes – on merit

		<ul style="list-style-type: none"> <li>• <i>To provide sufficient scope for innovative roof pitch and variation in roof design.</i></li> </ul> <p>The proposed development has been designed to follow the steeply sloping topography of the site, which minimises the visual impact of the development.</p> <p>The proposal will not see any unreasonable loss of views for neighbouring properties.</p> <p>The proposed flat roof form will complement the surrounding development and maintain consistency with the character of residential development in the locality.</p> <p>The increasing rear setbacks of each level as the site rises in height reduce the bulk and scale impacts of the new dwelling.</p> <p>The proposed breach of the wall height is not considered to be unreasonable in this instance.</p>	
B2 – Number of storeys	No requirement identified on map		N/A

B3 – Side Boundary Envelope and Side Setback	Building envelope 45 degrees from 5m. Setback 0.9m	<p>The proposal generally complies with the side boundary envelope to the southern and eastern elevations, however as a result of the site's slope towards the north-east, the eastern elevation will exceed the building envelope control.</p> <p>The shadow diagram information provided with the application confirm that in excess of 50% of the private open space of the neighbouring dwelling at No 10 May Road will continue to receive at least three hours of solar access between 9am – 3pm.</p> <p>In this instance, the non-compliance with the building envelope control is reasonable as its results primarily from the topographical constraints of the site and does not adversely affect the amenity of the surrounding properties.</p>	Yes – on merit
B4 – Site Coverage	No requirement identified on map		N/A
B5 – Side Boundary setbacks	R2 zoned land 0.9m	Proposed new dwelling to stand 4.75m from northern side boundary and 1m from the southern side boundary and	Yes

		therefore complies with this control.	
B6 – Merit assessment of Side Boundary Setbacks	No requirement identified on map		N/A
B7 – Front Boundary Setbacks	Minimum 6.5m	<p>As a result of the irregular configuration of the lot, the proposed garage and dwelling have a minimum setback of 1m to the front boundary for a small portion of the development comprising the garage and media room below.</p> <p>The objectives of this control are as follows:</p> <ul style="list-style-type: none"> <li>• <i>To create a sense of openness.</i></li> <li>• <i>To maintain the visual continuity and pattern of buildings and landscape elements.</i></li> <li>• <i>To protect and enhance the visual quality of streetscapes and public spaces.</i></li> <li>• <i>To achieve reasonable view sharing.</i></li> </ul> <p>The proposed front boundary setback will be similar to that of the garage and dwelling within the neighbouring property to the south at 10 May Road.</p>	Yes – on merit



		<p>Due to slope of the site away from the street, the proposal will present a modest one-two storey scale to Painters Parade.</p> <p>As the remainder of the dwelling complies with the setback control, a sense of openness within the front of the property will be maintained.</p> <p>The encroachment into the front setback will not present any adverse impacts on the views currently enjoyed by neighbouring properties.</p> <p>The stepped design of the dwelling with the topography and further setbacks of the upper levels help to minimise bulk and scale impacts and will present a form that is complementary to the Painters Parade Streetscape.</p> <p>The steep sloping topography and the irregular configuration of the block present a challenge to designing a new dwelling that fully complies with this control. The proposal provides for a new attached garage within the front setback</p>	
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		which will see a modest form and will provide for increased residential amenity and on-site parking for the residents.	
B8 – Merit assessment of front boundary setbacks	No requirement identified on map		N/A
B9- Rear Boundary Setbacks	Min 6m rear setback	<p>Minimum proposed setback 4m for level 1, with increasing setback of 4m -5.27m for Level 2 and 6m to Level 3 and therefore presents a variation to this control.</p> <p>As a result of the steep sloping topography and the configuration of the site the chosen location of the new dwelling is acceptable on merit. The proposed new dwelling level 2 and level 3 will be further setback from the rear boundary In order to retain solar access and privacy for the neighbouring dwellings.</p>	Yes – on merit
	R2 Zoned land swimming pool not to exceed 50% of rear setback area.	As a result of the configuration of the site the new swimming pool is sited in western setback, however set well below the road level.	N/A
B10 – Merit Assessment of rear boundary setbacks	No requirement identified on map		N/A
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 proposal provides for a new vehicle crossing which will address Council's policies.	Yes
C3 – Parking Facilities	Garages not to visually dominate façade Parking to be in accordance with AS/NZS 2890.1	The proposal will see the construction of a new double garage. The proposed garage is modest in scale and will not visually dominate the dwelling's façade. The parking and access design will meet the relevant standards.	Yes
C4 – Stormwater	Hydraulic Design to be provided in accordance with Council's Stormwater Drainage Design Guidelines for Minor Developments and Minor Works Specification	<p>Stormwater to be directed to the stormwater easement running across the northern portion of the site.</p> <p>The proposal will see stormwater directed to the council drainage system which traverses the site in accordance with the hydraulic design prepared by Spark + Partners dated 19 August 2019.</p> <p>A report has been prepared by Sparks + partners Consulting</p>	Yes

		Engineers, dated 19 August 2019 which discusses the proposed stormwater disposal methodology.	
C5 – Erosion and Sedimentation	Soil and Water Management required	The proposal is accompanied by a sediment and erosion control plan prepared by Sparks + Partners, Consulting Engineers - Sheet DA2.01 dated July 2019.	Yes
C6 – Building over or adjacent to Constructed Council Drainage Easements	To ensure that council's drainage infrastructure is not damaged and that costs and liabilities are minimised when constructing, replacing, maintaining or obtaining emergency access to constructed public drainage systems located within private property	<p>There is a council drainage easement that runs through the northern portion of the site.</p> <p>The proposed new dwelling and swimming pool are well setback from the council easement and will see compliance with the councils water management policy and building over or adjacent to constructed council drainage systems and easements technical specifications.</p>	N/A
C7 – Excavation and Landfill	Site stability to be maintained	<p>Minimal excavation is required to accommodate the proposed new dwelling.</p> <p>Some excavation will be required for the new swimming pool, front courtyard and minor sections of the new dwelling.</p>	Yes



		All works will be carried out in accordance with the recommendations of the consulting Geotechnical and Structural engineers.	
C8 – Demolition and Construction	Waste management plan required	Waste management measures to be employed	Yes
C9 – Waste Management	Waste storage area to be provided	Bins storage available on site.	Yes
<b>Part D – Design</b>			
D1 – Landscaped Open Space and Bushland	Min 40% Landscaped Area to be maintained	<p>The proposal will maintain a landscaped area of 360m<sup>2</sup> or 47% and therefore complies with this control.</p> <p>A Landscape Plan has been prepared by Melissa Wilson Landscape Architects, Project No 1927, Drawing No LS01 dated 17 September 2019.</p> <p>The development within the site will continue to achieve the Objectives of the controls, which are noted as:</p> <p><b>Objectives</b></p> <ul style="list-style-type: none"> <li>• To enable planting to maintain and enhance the streetscape.</li> <li>• To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.</li> <li>• To provide for landscaped open space</li> </ul>	Yes

		<p><i>with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.</i></p> <ul style="list-style-type: none"> <li><i>• To enhance privacy between buildings.</i></li> <li><i>• To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.</i></li> <li><i>• To provide space for service functions, including clothes drying.</i></li> <li><i>• To facilitate water management, including on-site detention and infiltration of stormwater.</i></li> </ul> <p>The proposal will provide for sufficient area for the private open space and recreational requirements of the owners, whilst maintaining good areas of deep soil planting within the front and rear yard area.</p> <p>Given the significant slope of the site, the outdoor recreational space are provide primarily as elevated levels spaces to the terrace levels.</p>	
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D2 – Private Open Space	Dwelling houses with three or more bedrooms Min 60m <sup>2</sup> with min dimension 5m	The private open space is directly accessible from the dwelling. The majority of the private open space is within the western terraces provide at Levels 1 & 2, with good access to the northern sun.	Yes
D3 – Noise	Mechanical noise is to be attenuated to maintain adjoining unit amenity. Compliance with NSW Industrial Noise Policy Requirements	The swimming pool equipment is located below the pool coping, which is well removed from the surrounding properties and it is not anticipated that any acoustic issues will result from the mechanical equipment.	Yes
D4 – Electromagnetic Radiation	N/A to proposed development		N/A
D5 – Orientation and Energy Efficiency	Dwellings to be orientated to receive northern sun Appropriate construction to enhance thermal properties and ventilation/natural cooling Compliance with SEPP (BASIX) requirements	The site enjoys good access to northern sun to the side courtyards and the swimming pool area	Yes
D6 – Access to sunlight	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.	Whilst the proposal will see some additional overshadowing to the southern neighbour, the internal and external living areas will continue to receive suitable solar access.	Yes

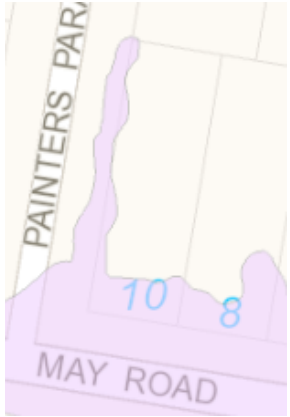
D7 – Views	View sharing to be maintained	<p>The controls require that development should enable the reasonable sharing of views.</p> <p>The subject site and neighbouring properties enjoy local views.</p> <p>The compatible roof height and flat roof form of the new works, along with the stepped levels of the new dwelling and sloping topography, will ensure that the primary outlook for the surrounding properties is not unreasonably diminished.</p>	Yes
D8 – Privacy	This clause specifies that development is not to cause unreasonable overlooking of habitable rooms and principle private open space of adjoining properties	<p>The side terraces and swimming pool area primarily overlook the yard areas of the subject site and will not unreasonably reduce the privacy enjoyed by the neighbours. The residents and neighbouring sites will see increased privacy through the inclusion of a privacy screen along the eastern side of the dwelling and entertaining area.</p> <p>Opportunities for screen plantings is retained within the northern side and eastern rear setback.</p>	Yes



D9 – Building Bulk	This clause requires buildings to have a visual bulk and architectural scale that is consistent with structures on nearby and adjoining properties and not to visually dominate the street or surrounding spaces	The existing surrounding development comprises a mix of one and two storey dwellings single residential dwellings and four storey apartments. The form of the proposed development is modest in height and scale, with an articulated façade, and will not visually dominate Painters Parade.	Yes
D10 – Building Colours and materials		The proposed new works will be finished in colours which complement the existing development within the locality.	Yes
D11 – Roofs	The LEP requires that roofs should not dominate the local skyline.	The proposed new dwelling provides for a flat roof form does not dominate the skyline. Further the roof minimises bulk and scale and maximises view retention to adjoining properties.	Yes
D12 – Glare and Reflection	Glare impacts from artificial illumination minimised. Reflective building materials to be minimised	The proposed new finishes will complement the character of the existing locality.  The proposed external finishes will provide for recessive colours and finishes.  No significant glare impacts will result from proposed new works.	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 fences 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	Bin storage area is available in the garage or surrounding the dwelling.	Yes
D15 – Side and Rear Fences	Side and rear fences to be maximum 1.8m and have regard for Dividing Fences Act 1991	No new front fences.	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.	Proposed swimming pool is to be located in the side yard.  The swimming pool is not proposed to sit near any neighbouring trees.	Yes
D17 – Tennis Courts	N/A		N/A
D18 – Accessibility	Safe and secure access for persons with a disability to be provided where required	Not applicable to residential development	N/A
D19 – Site Consolidation in the R3 and IN1 Zone	N/A		N/A
D20 – Safety and Security	Buildings to enhance the security of the community.  Buildings are to provide for casual	The proposed works will not reduce the security of the street area or the subject property. Casual surveillance of the street is available from	Yes

	surveillance of the street.	the dwelling to the street.	
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	A BASIX Certificate is provided to support the development	Yes
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	N/A
<b>Part E – The Natural Environment</b>			
E1 – Private Property Tree Management	Arboricultural report to be provided to support development where impacts to trees are presented	No significant protected trees are affected by the works.	Yes
E2 – Prescribed Vegetation	Not identified on map		N/A
E3 – Threatened species, populations, ecological communities	Not identified on map		N/A
E4 – Wildlife Corridors	Not identified on map		N/A
E5 – Native Vegetation	Not identified on map		N/A
E6 – Retaining unique environmental features	Not identified on map	No significant features within site	Yes
E7 – Development on land adjoining public open space	Not identified on map		N/A
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 B.	The proposal is accompanied by a Geotechnical Site Investigation has been prepared by Crozier Geotechnical Consultants, Project No: 2019-094 dated June 2019, which concludes that the proposal meets Council's requirements subject to compliance with the recommendations contained within the report.	Yes
E11 – Flood Prone Land	<p>Low Risk Flood Prone Land</p> 		N/A

## **7.0 Matters for Consideration under Section 4.15 of The Environmental Planning and Assessment Act, 1979**

### **7.1 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 these environmental planning instruments 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.

### **7.2 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 Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and**

It is not considered that there are any draft environmental planning instruments applying to the site.

### **7.3 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 design respects the aims and objectives of the DCP however we note that the Environmental Planning and Assessment Amendment Act 2012 No 93 (Amendment Act) which received assent on 21 November 2012 commenced on 1 March 2013.

Key amongst the amendments are requirements to interpret DCPs flexibly and to allow reasonable alternative solutions to achieve the objectives of DCP standards.

The new section 3.42 provides that the 'principal purpose' of DCPs is to 'provide guidance' on:-

- giving effect to the aims of any applicable environmental planning instrument
- facilitating permissible development
- achieving the objectives of the relevant land zones.

The key amendment is the insertion of section 4.15(3A) which:

- prevents the consent authority requiring more onerous standards than a DCP provides,
- requires the consent authority to be 'flexible' and allow 'reasonable alternative solutions' in applying DCP provisions with which a development application does not comply,
- limits the consent authority's consideration of the DCP to the development application (preventing consideration of previous or future applications of the DCP).

We request that Council applies considered flexibility where the application seeks variations to numerical development controls in the DCP as justified in this report. In particular we consider that the variation to rear setback, wall height and building envelope controls, are reasonable alternative solutions to compliance where the site's configuration, slope and the topographical constraints present a challenge to full compliance with the controls.

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

The development respects the streetscape character objectives of the DCP and will provide a cohesive and sympathetic addition to the site which will make a positive contribution to the area.

**7.4 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**

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

**7.5 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.

**7.6 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 construction of a new dwelling, garage and swimming pool, which have been located and designed to appropriately minimise impacts on the amenity of adjoining properties and are compatible with and will complement the character of the area.

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

**7.7 The suitability of the site for the development**

The site is considered suitable for the proposed development.

The proposal will provide for demolition of the existing dwelling and construction of a new dwelling and swimming pool.

It is suggested that the proposal will not have a detrimental impact on the amenity of the adjoining properties or any impact on the streetscape.

**7.8 Any submissions made in accordance with this Act or the regulations**

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

**7.9 The public interest**

The proposal will not impact upon the environment or the character of the locality and the considered location of habitable room windows and decks will mitigate any unreasonable visual impacts on the amenity of adjoining properties and is therefore considered to be within the public interest.

## **8.0 Conclusion**

The proposal provides for the construction of a new dwelling, garage and swimming pool which 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 and Regional Planning (UNE)

Appendix: Clause 4.6 Submission – Maximum Building Height

## **Clause 4.6 Submission – Maximum Building Height**



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

### 10 PAINTERS PARADE, DEE WHY

#### PROPOSED CONSTRUCTION OF A NEW DWELLING, GARAGE AND SWIMMING POOL

**For:** Proposed construction of a new dwelling, garage and swimming pool  
**At:** 10 Painters Parade, Dee Why  
**Owner:** Wallhouse Holdings Pty Ltd  
**Applicant:** Wallhouse Holdings Pty Ltd  
C/- Vaughan Milligan Development Consulting Pty Ltd

#### 1.0 Introduction

This written request 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 and refers to the maximum building height noted within the *"Height of Buildings Map."*

The maximum 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.

As a result of the steeply sloping site topography, the proposed new dwelling will provide a height of up to 12.36m which exceeds Council's maximum building height by 3.86m or 45.4% and therefore does not comply with this control.

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 the construction of a new dwelling, garage and swimming pool on vacant land, which is consistent with the stated Objectives of the R2 Low Density Residential Zone, which are noted as:

- *To provide for the housing needs of the community within a R2 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 proposal will provide for the construction of a new dwelling, garage and swimming pool on vacant land that will provide for residential use within the site.

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 overall height, the new works will provide an attractive residential development that will add positively to the character and future character of the local residential neighbourhood.

The proposed dwelling has been located to mitigate any adverse impacts of overshadowing and loss of view towards any neighbouring properties.

The dwelling has been designed to respect the sloping topography and the further setbacks of Level 2 and Level 3 will minimise any adverse impacts of overshadowing or privacy of neighbouring properties.

The floor to ceiling height has been reduced to minimise any further adverse height impacts.

The development will not see any unreasonable impacts on view sharing.

## 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 written request 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 [2014] 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 site is located in the R2 Low Density Residential Zone. The objectives of the R2 zone are noted as:

- *To provide for the housing needs of the community within a R2 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.*

It is considered that notwithstanding the noncompliance to the maximum building height, the new dwelling will be consistent with the individual Objectives of the R2 Low Density zone for the following reasons:

- ***To provide for the housing needs of the community within a R2 Low Density Residential environment.***

The R2 Low Density Residential Zone contemplates low density residential uses on the land. The housing needs of the community are appropriately provided for in this instance through the proposed construction residential dwelling which will provide for an appropriate level of family accommodation and in a form which respect the predominant height and scale of the surrounding dwellings.

As the site falls steeply towards the north-east, the development will see a noncompliance with the building height control, however the stepped rear setbacks and compatible building form with low pitch roof and the darker external finishes considered to suitably reduce the visual bulk of the dwelling.

The dwelling will present a single storey height and form when viewed from Painters Parade, with the new lower levels not prominently visible from any public place.

Further, the modulation of the front façade and building elevation, together with the increased side setbacks, stepped rear setback and recessive external finishes will ensure the development minimises the visual impact when viewed from the surrounding public and private areas.

The compatible form and scale of the new works to the dwelling will meet the housing needs of the community within a single dwelling house which is a permissible use in this low density residential zone.

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

The development does not suggest any alternate land uses and this Objective is not directly relevant to the subject single residential proposal.

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

The proposal provides for the construction of a new dwelling, garage and swimming pool and in a manner which will retain the single dwelling character of the site and the immediate area.

Further, the modulation of the front façade and side elevations where visible from the public domain minimises the visual impact of the development and respects the existing single dwelling form.

The surrounding dwellings are similar low density residential and medium density residential apartment blocks.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and the wider Warringah area.

This objective is achieved in that the proposal will not require any significant excavation, with minimal alteration to the natural ground levels, though stepping the dwelling with the topography of the land and through the retention of the existing landscaped area, will maintain the balance between landscaping and built form.

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.

## **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 variation to the maximum building height, the proposed construction of a new dwelling, garage and swimming pool are considered to be in keeping with the relevant Objectives of Clause 4.3 for the following reasons:

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

The Objective of Clause 4.3 (1)(a) seeks to ensure buildings are compatible with the height and scale of surrounding and nearby development.

The surrounding area is predominantly characterised by one and two storey development, and medium density apartment blocks.

The proposal seeks to accommodate for a new dwelling which will not present a dominate form to the Painters Parade streetscape and will appeal as a modest single storey dwelling from the streetscape as a result of the steep sloping topography.

The overall building height respects the surrounding character and the design seeks to minimise the visual height by providing for increasing setbacks to the upper floor levels towards the rear of the site to reduce the visual impact of the dwelling from neighbouring properties.

The proposed external colour and materials palette utilises receive finishes to the upper floor level towards the rear and is intended to ensure that the building's visual height and scale is further minimised.

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

Due to the general slope of the site towards the east, the properties to the west of the site enjoys view local views past the site are generally maintained over the dwelling and along the side setback areas.

The proposed new dwelling will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing.

The proposal will provide for varied setbacks to the upper floor levels which will allow for suitable views and access to sunlight to be maintained through and over the site.

Views from the surrounding public spaces are not adversely affected.

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

The proposal is located within an established residential zone and any longer distance view of the proposed additions will not read the works as out of scale or incompatible with its neighbours.

The proposal will not have any direct impact on the nearby coastal or bush environment.

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

The site is not within a recreation or environmental protection zone and is well removed from the foreshore area. The site is not within a conservation area or in the vicinity of any heritage items.

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

The proposal will see areas of suitable of soft landscaping which will maintain an appropriate balance between the landscaping and the built form.

Despite the variation to the building height control which occurs as a result of the sloping topography of the site, proposal is generally consistent with the height and scale of newer development in the locality.

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 the construction of a new dwelling, which is constrained by the nature of the existing development on site and the sloping topography of the site.

Council's controls in Clause 4.3 provide a maximum building height of 8.5m. As a result of the steep slope of the site towards the north-east, a portion of the roof will be up to 12.36m or 3.86m or 45.4% above ground level.

In the *Wehbe* judgment (*Wehbe v Pittwater 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:** It is not suggested that Council has abandoned its standard in granting consents in the immediate area, however as the dwelling adjoins a multi storey residential flat building, the dwelling will maintain a compatible scale and commensurate height to the surrounding development.

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.

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 building height of 8.5m for the subject development.

The proposed new additions to the dwelling will provide a height of 12.36m or 3.86m or 45.4% variation to the control.

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 recent 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 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, when assessed against the relevant Objects of the Environmental Planning & Assessment Act 1979, (NSW) outlined in s1.3, 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 external form of the proposed dwelling is stepped to follow the sloping topography of the site and results in a dwelling which is compatible in scale to its surrounding neighbours, which promotes the orderly & economic use of the land.
- Similarly, the proposed development will provide for an appropriate level of family accommodation and improved amenity within a built form which is compatible with the streetscape of Painters Parade, which also promotes the orderly and economic use of the land.
- The proposal is considered to promote good design and amenity to the local built environment as appropriate views, solar access and privacy will be maintained for the neighbouring properties.

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.

## **7.0 Conclusion**

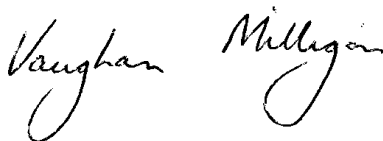
This development proposes a departure from the maximum building height control, with the proposed new dwelling to provide a maximum building height of 12.36m.

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

This written request to vary the maximum building height control 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 would be unreasonable and unnecessary in the circumstances of this case.



**VAUGHAN MILLIGAN**  
Town Planner