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# CLAUSE 4.6

# VARIATION REQUEST

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CLAUSE 4.6 REQUEST FOR VARIATION TO BUILDING HEIGHT DEVELOPMENT  
STANDARD

206 HUDSON PARADE, CLAREVILLE





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# 1 INTRODUCTION

This Clause 4.6 Variation Request has been prepared to accompany Development Application to Northern Beaches Council seeking consent for the demolition of an existing single storey dwelling house and construction of a split level 2 storey dwelling house at 206 Hudson Parade, Clareville.

The Clause 4.6 Variation Request relates to the height of buildings principal development standard prescribed under Clause 4.3(2) of the *Pittwater Local Environmental Plan 2014*, which states that:

“ The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map ”

The height of buildings map indicates a maximum building height of 8.5 metres prescribed for the subject site as illustrated in the reproduced height of buildings map below:



FIGURE 1: EXTRACT OF PITTWATER LOCAL ENVIRONMENTAL PLAN 2014 HEIGHT MAP

The development proposes a maximum building height of RL 21,910 metres to the top of the first floor and flat rooftop terrace. The proposal results in a maximum building height of 10.39 metres which is an exceedance by 1.89 metres or equivalent to 22.2% of the development standard.

An extract of the section and street elevation plans of the proposed development are provided below illustrating the extent of the proposed height exceedance shaded in red:

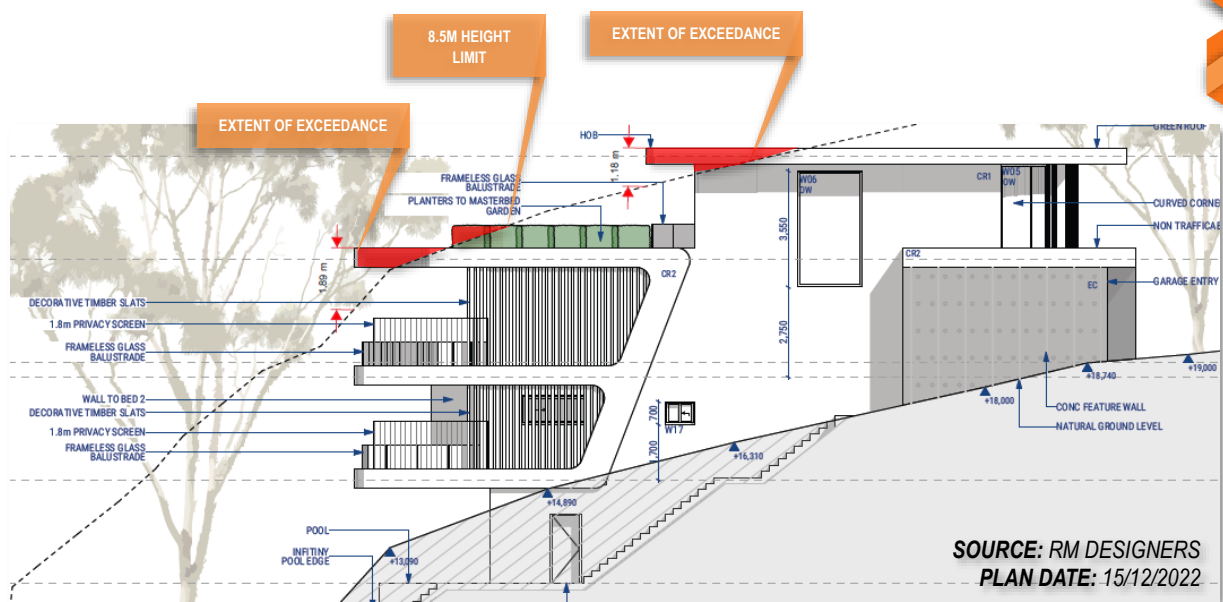


FIGURE 2: EXTRACT AND MARK-UP FROM SOUTH ELEVATION INDICATING HEIGHT LIMIT BREACH

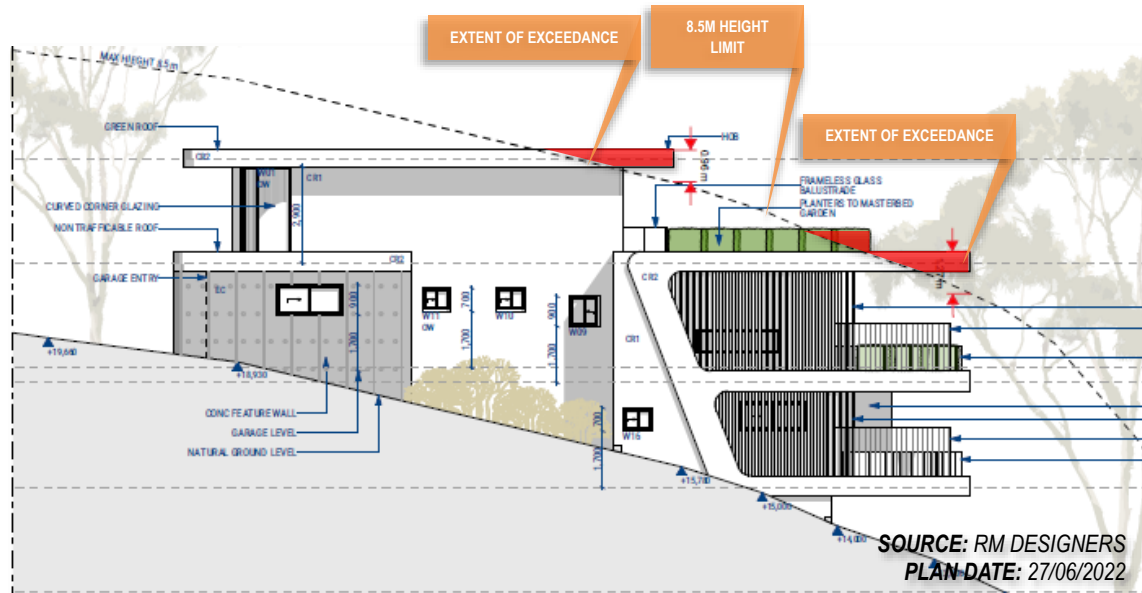


FIGURE 3: EXTRACT AND MARK-UP FROM NORTH ELEVATION INDICATING HEIGHT LIMIT BREACH

Pursuant to Clause 4.6 of the LEP, justification for the contravention of the height of buildings (HOB) development standard is provided within this Clause 4.6 Variation Request.

This request has been prepared having regard to the matters for consideration prescribed in Clause 4.6 of the LEP, noting that Clause 4.3 of the LEP is not excluded from consideration under Clause 4.6(8) of the LEP.

The variation request has also been prepared having regard to the findings and decisions in various case law including:

- *Wehbe v Pittwater Council* [2007] NSW LEC 827;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7;
- *Initial Action v Woollahra Municipal Council* [2018] NSWLEC 118;
- *Brigham v Canterbury-Bankstown Council* [2018] NSWLEC 1406;
- *Turland v Wingerarribee Shire Council* [2018] NSWLEC 1511;
- *Rebel MH Neutral Bay Pty Ltd v North Sydney Council* [2019] NSWCA 130



This Clause 4.6 Variation Request meets the objectives of Clause 4.6(1):

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

and demonstrates for the purpose of Clause 4.6(3):

- “ (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.* ”

## 2 REVIEW OF CASE LAW

The main principles adopted by the Land and Environment Court of NSW (L&EC) in considering Clause 4.6 variation requests to development standards, have been established in the proceedings of *Wehbe v Pittwater Council* [2007] NSW LEC 827 and *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7. The relevant principles of those proceedings are as follows:

### 2.1 WEHBE V PITTWATER COUNCIL [2007] NSW LEC 827

In these proceedings, Justice Preston set out the following five ways in which compliance with a development standard could be established as being unreasonable or unnecessary:

1. *Are the objectives of the development standard are achieved notwithstanding non-compliance with the standard;*
2. *Is the underlying objective or purpose not relevant to the development with the consequence that compliance is unnecessary;*
3. *Would the underlying objective or purpose be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;*
4. *Has the development standard been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard; or*
5. *Is “the zoning of particular land” “unreasonable or inappropriate” so that “a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land”.*

### 2.2 RANDWICK CITY COUNCIL V MICAUL HOLDINGS PTY LTD [2016] NSWLEC 7

In these proceedings, Preston CJ approved the following four stage test to ensure that the Court was satisfied that the variation request should be granted:

1. *That compliance with the development standard must be unreasonable or unnecessary in the circumstances of the case;*
2. *That there are sufficient environmental planning grounds to justify contravening the development standard;*
3. *That the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3); and*
4. *That 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.*





### 3 SITE & PLANNING CONTEXT

The subject site comprises one land parcel legally described as Lot 38 DP 13760 and is more commonly known as 206 Hudson Parade, Clareville.

The subject site comprises a regular allotment with the boundary dimensions as follows:

- An eastern frontage width measuring 15.24 metres;
- A northern side boundary depth measuring 42.975 metres;
- A southern side boundary depth measuring 40.235 metres; and
- A western rear boundary width measuring 15.44 metres.

The subject site has a site area of 632.3m<sup>2</sup> by Survey. accompanying the DA.

A 2 storey residential dwelling house and detached metal shed currently occupy the site. An aerial image and photographs illustrating the site and existing improvements are provided in Figures 4 to 8:



FIGURE 4: AERIAL MAP





FIGURE 5: VIEW OF THE SUBJECT SITE AT 206 HUDSON PARADE, CLAREVILLE



FIGURE 6: CLOSE-UP VIEW OF THE EXISTING DWELLING ON THE SUBJECT SITE





FIGURE 7: VIEW OF THE SUBJECT SITE FROM THE WEST (WATERWAY)

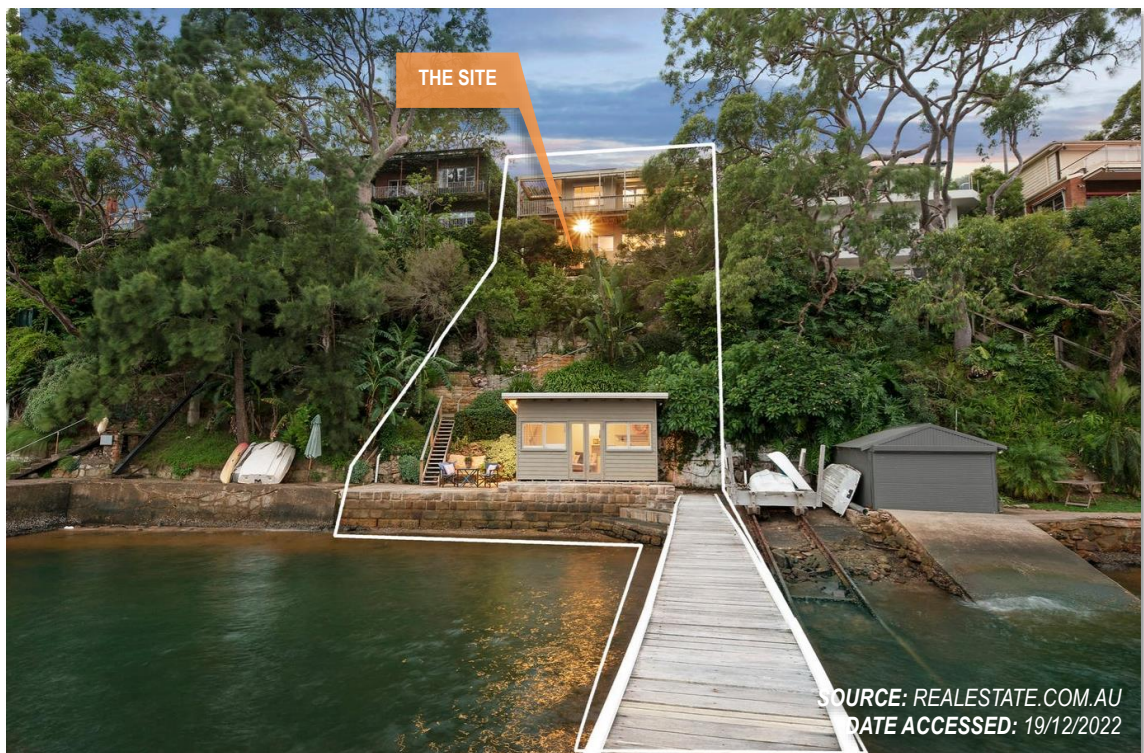


FIGURE 8: CLOSE-UP VIEW OF THE SUBJECT SITE FROM THE WEST (WATERWAY)

The DA seeks consent for demolition of an existing single storey dwelling house and construction of a split level 2 storey dwelling house at 206 Hudson Parade, Clareville. The development is defined as ‘dwelling house’ pursuant to the definitions contained in *Pittwater Local Environmental Plan 2014*. A detailed description of the proposed development has been provided within the Statement of Environmental Effects accompanying the DA and should be referred to in conjunction with this request.



## 4 CLAUSE 4.6 VARIATION REQUEST & ASSESSMENT

1. **What is the name of the environmental planning instrument that applies to the land?**  
Pittwater Local Environmental Plan 2014
2. **What is the zoning of the land?**  
C4 Environmental Living Zone.
3. **What are the objectives of the zone?**
  - 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.
4. **What is the development standard being varied?**  
Height of Building
5. **What clause is the development standard listed in the environmental planning instrument?**  
Clause 4.3
6. **What are the objectives of the development standard?**
  - (a) to ensure that building height is consistent with the desired future character of an area,
  - (b) to minimise visual impact of new development, disruption of views, loss of privacy and loss of solar access to existing development,
  - (c) to nominate heights that will provide an appropriate transition in built form and land use intensity.
7. **What is the numeric value of the development standard?**  
8.5 metres
8. **What is proposed numeric value of the development standard?**  
10.39 metres (maximum)
9. **What is the percentage variation proposed?**  
22.23%

### 4.1 CLAUSE 4.6(3)(A)

**DEMONSTRATE THAT COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE.**

The following assessment outlines that compliance with the development standard would be unreasonable and unnecessary in the circumstances of the case, particularly referencing the test established in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (the Initial Action case) which confirmed the approach as held in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC7 (the Micaul case) as follows:

In the Initial Action case, Preston CJ concluded:

- 13 *Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.*
- 14 *The first precondition, in cl 4.6(4)(a), is that the consent authority, or the Court on appeal*





- exercising the functions of the consent authority, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii). Each opinion of satisfaction of the consent authority, or the Court on appeal, as to the matters in cl 4.6(4)(a) is a jurisdictional fact of a special kind: see *Woolworths Ltd v Pallas Newco Pty Ltd* (2004) 61 NSWLR 707; [2004] NSWCA 442 at [25]. The formation of the opinions of satisfaction as to the matters in cl 4.6(4)(a) enlivens the power of the consent authority to grant development consent for development that contravenes the development standard: see *Corporation of the City of Enfield v Development Assessment Commission* (2000) 199 CLR 135; [2000] HCA 5 at [28]; *Winten Property Group Limited v North Sydney Council* (2001) 130 LGERA 79; [2001] NSWLEC 46 at [19], [29], [44]-[45]; and *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 at [36].
- 15 The first opinion of satisfaction, in cl 4.6(4)(a)(i), is that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters.
- 25 The consent authority, or the Court on appeal, must form the positive opinion of satisfaction that the applicant's written request has adequately addressed both of the matters required to be demonstrated by cl 4.6(3)(a) and (b). As I observed in *Randwick City Council v Micaul Holdings Pty Ltd* at [39], the consent authority, or the Court on appeal, does not have to directly form the opinion of satisfaction regarding the matters in cl 4.6(3)(a) and (b), but only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3)(a) and (b). The applicant bears the onus to demonstrate that the matters in cl 4.6(3)(a) and (b) have been adequately addressed in the applicant's written request in order to enable the consent authority, or the Court on appeal, to form the requisite opinion of satisfaction: see *Wehbe v Pittwater Council* at [38].
- 26 The second opinion of satisfaction, in 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 particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under cl 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in cl 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in cl 4.6(4)(a)(ii).
- 27 The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it 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. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).

This Clause 4.6 Variation Request and the assessment that follows establishes that the objectives of the development standard are achieved notwithstanding non-compliance with the numerical component of the development standard as set out in the 5-part test established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 (the *Wehbe* case).



The local surrounding area is characterised by residential developments of predominantly detached dwelling houses, some of which include multiple levels in split level design along the foreshore similar to that proposed in the subject DA and as can be seen in figures 7 and 8.

The LEP permits a maximum HOB of 8.5 metres for the subject site and the application proposes a maximum building height of 10.39 metres, equivalent to a maximum 22.23% variation to the permitted HOB for the proposed dwelling house. It is noted that a substantive majority of the actual built form is within the 8.5 metre limit and only roof overhangs contribute to the non-compliance, as can be drawn from the elevation plans partly reproduced as figures 2 and 3.

Strict compliance with the numerical development standard is unnecessary and unreasonable in this case given that the proposed development is compatible with the character of development within the locality and given that the objectives of the development standard are achieved, notwithstanding non-compliance with the numerical component of the development standard, in the following ways:

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

As described earlier, the local surrounding area is characterised by residential developments of predominantly detached dwelling houses, some of which include multiple levels in split level form along the foreshore similar to that proposed in the subject DA and as can be seen in figures 7 and 8. The subject site is located in the Avalon Beach locality, the desired future character of which is described in section A4.1 of the *Pittwater Development Control Plan 2014* as:

*“The most important desired future character is that Avalon Beach will continue to provide an informal relaxed casual seaside environment. The locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancies will be located on the valley floor and lower slopes that have less tree canopy coverage, species and habitat diversity, fewer hazards and other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, commercial, community and recreational facilities will serve the community.*

*Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport. Vehicular and pedestrian access into and through the locality is good. Pedestrian links, joining the major areas of open space (Angophora Reserve, Stapleton Park and Hitchcock Park) and along the foreshores, should be enhanced and upgraded. Similarly, cycle routes need to be provided through the locality. Carparking should be provided on site and where possible integrally designed into the building.*

*Future development will maintain a building height limit below the tree canopy, and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with development. The objective is that there will be houses amongst the trees and not trees amongst the houses.*

*Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the*





*slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.*

*Most houses are set back from the street with low or no fencing and vegetation is used extensively to delineate boundary lines. Special front building line setbacks have been implemented along Avalon Parade to maintain the unique character of this street. This, coupled with the extensive street planting of canopy trees, gives the locality a leafy character that should be maintained and enhanced.*

*The design, scale and treatment of future development within the Avalon Beach Village will reflect the 'seaside-village' character of older buildings within the centre, and reflect principles of good urban design. External materials and finishes shall be natural with smooth shiny surfaces avoided. Landscaping will be incorporated into building design. Outdoor cafe seating will be encouraged.*

*A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors. The natural landscape of Careel Bay, including seagrasses and mangroves, will be conserved. Heritage items and conservation areas indicative of early settlement in the locality will be conserved, including the early subdivision pattern of Ruskin Rowe.*

*Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities."*

The proposed dwelling house has been designed to integrate in the existing streetscape and achieve a form that is compatible with the desired future character in the following ways, having particular regard to the statements above:

- ▶ The development is a low-density residential development in the form of a dwelling house with a maximum height of 2 storeys above ground level. The building is integrated with the landform by adopting a split level terraced floor layout to respond to the topography of the land and is heavily landscaped within the front, rear and side setbacks in order to provide a landscaped setting.
- ▶ The existing site is supported by adequate infrastructure, including existing roads and public transport and existing water and sewerage facilities that will be augmented as part of the development to support the proposal.
- ▶ The development minimises bulk and scale by proposing a building height below the tree canopy of the notable trees on the subject and adjoining sites, which observe existing heights of between 10 metres to 25 metres as detailed on the accompanying Survey Plan.
- ▶ The existing and proposed landscaping has been designed to integrate with the development to achieve a building set amongst the trees and not trees amongst the houses, as evident by the accompanying Landscape Plan reproduced in part below:

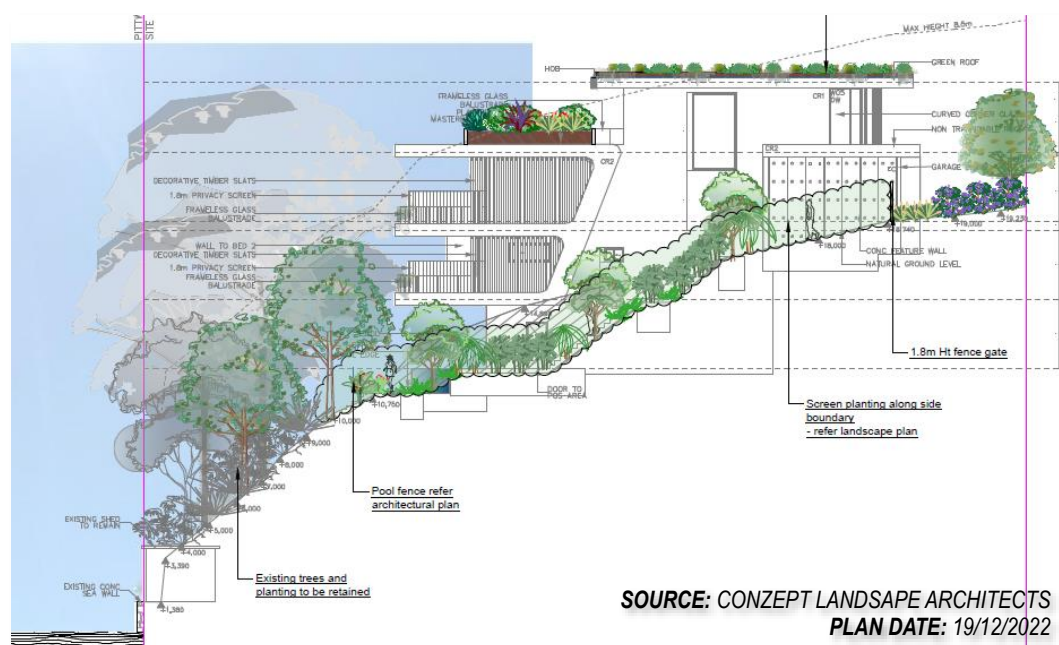


FIGURE 9: EXTRACT FROM LANDSCAPE PLANS

- The development is a contemporary building that includes heavy façade modulation and to the street and rear and incorporates shading through the balconies and overhangs that cause the breach, the subject of this Clause 4.6 Variation Request.
- External colours and materials have been selected to be dark and earthy tones including greys and natural timber that will harmonise with the natural environment.
- The subject site is a sloping site and the proposed development is stepped down along the slope so that the built form will integrate with the landform and landscape in order to minimise site disturbance. The levels of the dwelling house have been split and levels are also stepped as much as practicable whilst maintaining functional and practical floor layouts.
- The dwelling house is setback from the street in line with adjoining dwellings in order to maintain a consistent streetscape and building line to the street. The front setback area is enclosed low fencing and vegetation is proposed to assist in boundary delineation.

Typically, an 8.5 metre HOB development standard allows for 2 storey-built forms subject to floor to ceiling heights and roof designs. The development will establish and maintain the desirable attributes and character of the existing 2 storey dwelling houses within the locality, by presenting as a 2 storey façade that maintains overall streetscape value ensuring that the proposed building does not dominate the natural environment when viewed from Hudson Parade and surrounds.

The proposed overall built form will have minimal impact on the locality and context of surrounding land uses as a consequence of the additional building height, the subject of this variation request. The additional height causes minimal to no impacts on neighbouring properties as detailed below:

- It is noted that a substantive majority of the actual built form is within the 8.5 metre limit and only roof overhangs contribute to the non-compliance, as can be drawn from the elevation plans partly reproduced as figures 2 and 3; and
- Being located on the western end of the building, the overhangs will create no increased overshadowing from the main built form given that they will mainly self shadow the proposed development itself as illustrated on the shadow diagrams; and
- When viewed from the public domain and adjoining properties, the proposed additional building height will not be visible and the development will continue to appear as a 2 storey dwelling house to the street and split level terraced dwelling to the rear; and



- The overhangs provide no trafficable rooftop areas therefore providing no opportunity for overlooking or any potential visual or acoustic privacy impacts for neighbouring properties.

The extent of the variation is minor on a quantitative basis and when considered in the overall context of the building as illustrated in the elevation heat maps below:

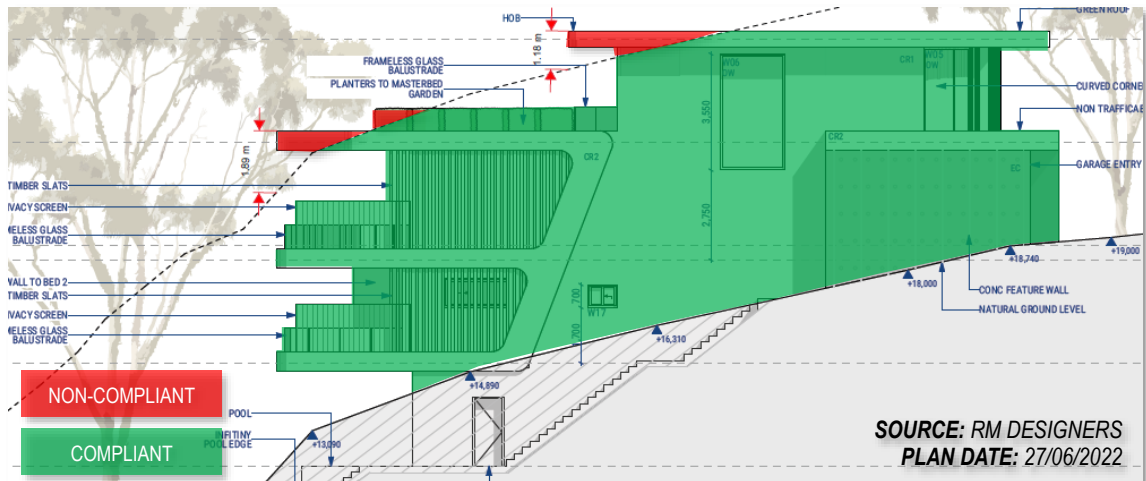


FIGURE 10: EXTRACT AND MARK-UP FROM SOUTH ELEVATION INDICATING HEIGHT LIMIT BREACH

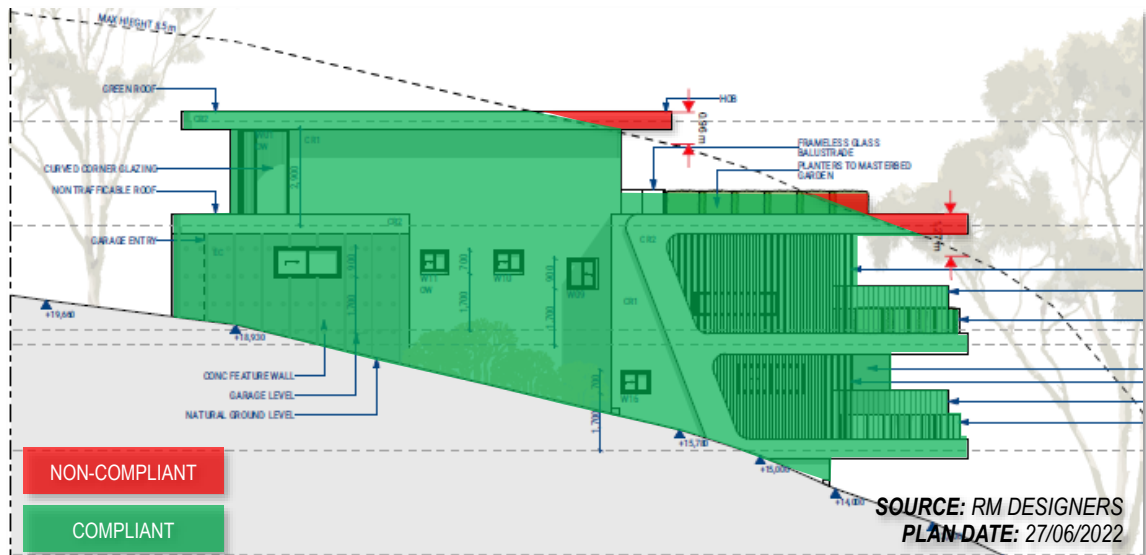


FIGURE 11: EXTRACT AND MARK-UP FROM NORTH ELEVATION INDICATING HEIGHT LIMIT BREACH

The proposed development ensures that the parts of the building that breach the maximum HOB development standard will not be visibly noticeable when observing the development from the street, public domain and from most adjoining properties. The results from these elements not being visible from nearby or adjoining properties and public areas, or visible at such distances, is that they would not be conspicuous to the observer, particularly given that they are extremely minor portions of the overall building.

Adjoining dwellings at 208 and 210 Hudson Parade and generally to the north and south of this site along the foreshore, have similar rear elevations comprising split level and terraced buildings in response to the topography of the land and excessive slopes as seen in figures 7 and 8 earlier and the figure below:





FIGURE 12: REAR VIEW OF DWELLINGS ON EASTERN SIDE OF HUDSON PARADE (NO. 208 MARKED)

The proposed development maintains a 2 storey façade integrated with Pittwater ecological and natural environments that ensures the subject site does not appear dominant to the street. The bulk and scale of the dwelling house is compatible with the development controls, density and building envelope controls in both the *Pittwater Local Environmental Plan 2014* and *Pittwater Development Control Plan 2014*. The proposed orientation, articulation, setbacks and building elements and layout are consistent with the controls in those planning policies and the development is therefore compatible with the desired future character of the local area and the wider Pittwater in general.

Figure 12 provided above indicates similar built forms along the same side of Hudson Parade indicating that the proposed development is compatible with the height and scale of surrounding and nearby development from both a streetscape and rear elevation.

The extent of the variation is minor on a quantitative basis and ensures that the parts of the building that breach the maximum HOB development standard will not be visibly noticeable when observing the development from the street, public domain and from most adjoining properties as can be seen in Figure 10 and Figure 11 above. The results from these elements not being visible from nearby or adjoining properties and public areas, or visible at such distances, is that they would not be conspicuous to the observer at the street and public domain, adjoining properties or from the waterway at the rear.

The development accordingly proposes a height and scale that is consistent with the desired character of the locality as required by objective (a).

**Objective (b): to minimise visual impact of new development, disruption of views, loss of privacy and loss of solar access to existing development,**

As detailed earlier, the development has been designed to maintain a 2 storey appearance from the street and public domain along Hudson Parade. To the rear, the development is compatible with the height, bulk and scale of neighbouring dwelling houses along this side of the street.





The proposed development is not excessive in height when compared with neighbouring buildings and so will not pose any visual impact concerns from the street and public domain, adjoining properties or from the waterway at the rear.

A View Analysis is contained within the accompanying Statement of Environmental Effects and demonstrates that the proposed additional building height will not be readily visible and the development will continue to appear as a 2 storey dwelling house when viewed from the public domain and adjoining properties. Importantly, the proposed additional height comprises overhangs which do not result in any view loss for adjoining properties or the only property opposite to the east at 211 Hudson Parade.

The subject application does not propose any windows, balconies or fencing that will impact on the privacy of residents on adjoining properties, particularly on parts of the building that breach the height. The assessment provided in Section 6 of the accompanying Statement of Environmental Effects outlines why the proposal is acceptable and would have an acceptable level of visual and acoustic impact on adjoining properties. In general, the siting of the proposed development provides ample separation from adjoining properties to ensure minimal acoustic and visual privacy impacts for adjoining properties, while also ensuring future residents of the proposed dwellings will be provided with suitable acoustic and visual privacy.

As mentioned previously and addressed within the Statement of Environmental Effects, the extended overhangs pose no increased overshadowing and will mainly self-shadow the proposed development itself. Being located on the western end of the building, the overhangs will create no increased overshadowing from the main built form given that they will mainly self shadow the proposed development itself as illustrated on the shadow diagrams.

Sufficient solar access reaches private open space and main private open space of the adjoining dwelling, particularly between 12:00pm and 3pm on June 21st. The building is orientated east to west in response to the orientation of the land and maximises solar access. The existing dwelling house at 208 Hudson Parade to the south of the subject site contains a large open plan living area on the ground floor level with a westerly aspect overlooking the water. Limited window openings are provided on the northern façade of the dwelling for the living room and significant vegetation within the northern boundary setback limits the amount of solar access achieved into the living space. The proposed development will maintain solar access for the principal living space of the adjoining dwelling at 208 Hudson Parade via its western façade which is where a majority of the solar access is currently obtained.

Due to natural topography, achieving full compliance with the development standard would require additional cutting of the land to accommodate lower building levels and avoid the overhangs. The proposed dwelling house is sited and designed to take into account the slope of the land to minimise the need for excessive cut beyond that proposed, allowing the building to step down with the slope. In addition, the proposed development observes 2.5 metre first floor setbacks to both side boundaries which exceeds the minimum requirement and further ensures minimal overshadowing impact.

The development will accordingly minimise visual impact of new development, disruption of views, loss of privacy and loss of solar access to existing development as required by objective (b).

***Objective (c): to nominate heights that will provide an appropriate transition in built form and land use intensity,***

The subject site is zoned C4 Environmental Living, along with land surrounding and adjoining the site.



There is a consistent 8.5 metre building height development standard that applies to the subject and adjoining sites. Therefore, a transition in built form and land use intensity is not required for this site.

## 4.2 CLAUSE 4.6(3)(B)

*DEMONSTRATE THAT THERE ARE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD.*

Considering that the development achieves the objectives of the development standard and the objectives of the land use zone, and furthermore achieves a satisfactory level of compliance with the other applicable State and Council Planning Policies, the proposal is meritorious, and the contravention of the development standard is justified.

Despite exceeding the statutory maximum building height development standard, the proposed dwelling house will facilitate the orderly and economic development of the land for the purposes of a dwelling house, that will positively contribute to the achievement of the vision and strategic objectives of *A Plan for Growing Sydney* and *Pittwater Local Environmental Plan 2014*.

## 4.3 CLAUSE 4.6(4)(A)(I)

*DEMONSTRATE THAT THE APPLICANT'S WRITTEN REQUEST HAS ADEQUATELY ADDRESSED THE MATTERS REQUIRED TO BE DEMONSTRATED BY SUBCLAUSE (3).*

This Clause 4.6 Variation Request has adequately addressed the matters required to be demonstrated by subclause (3), as detailed within.

## 4.4 CLAUSE 4.6(4)(A)(II)

*DEMONSTRATE THAT 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.*

The proposed development will be in the public interest because it is consistent with the objectives of the particular standard as demonstrated earlier, and is consistent with the objectives of the C4 Environmental Living zone in the following ways:

- ▶ The proposed development will provide for low-impact residential development in an area with special ecological, scientific or aesthetic values.
- ▶ The proposed development will ensure that the development does not have an adverse effect on those values.
- ▶ The proposed development will provides for residential development of a low density and scale integrated with the landform and landscape by stepping the building into split-levels that follow the landform.
- ▶ The proposed development will retains and enhances riparian and foreshore vegetation and wildlife corridors.

No substantive public benefit would be realised by maintaining and enforcing the development standard. A reduction in the building height to strictly comply with the 8.5 metre development standard would not alter the overall design approach or built form outcome for the site and would not realise any improvement to the relationship between the site, adjoining buildings and the surrounding area.



Conversely, strict compliance would result in a poorer planning outcome for the site with the removal of the overhangs and result in a flatter façade to the rear that will provide occupants with less amenity than what the development achieves as proposed.

The proposal, including the height exceedance achieves the objects of the *Environmental Planning and Assessment Act, 1979* (the Act) in the following ways:

- ▶ Section 1.3(c) as the entire built form of the development (apart from the roof overhangs) is below the maximum HOB development standard and promotes the orderly and economic use and development of the land by not posing any adverse amenity impacts on adjoining development and the public domain.
- ▶ Section 1.3(g) as the proposed development promotes good design and amenity of the built environment through the increased amenity that will be afforded to residents with the increased functional and shaded private open space on the upper levels.
- ▶ Section 1.3(h) as the proposed development promotes the proper construction and maintenance of a building with appropriate shading and amenity achieved through the overhangs.

For the reasons above and the assessment provided within this request, there are sufficient environmental planning grounds to justify the contravention of the height of buildings development standard.

#### 4.5 CLAUSE 4.6(4)(B)

*DEMONSTRATE THAT THE CONCURRENCE OF THE PLANNING SECRETARY HAS BEEN OBTAINED.*

Planning Circular PS 20-002, dated 5 May 2020, contains an assumed concurrence notice dated 18 February 2018 for all consent authorities for the purpose of determining a development application to which a Clause 4.6 Variation Request is made. The subject Clause 4.6 Variation Request does not exceed the limitations set by the assumed concurrence notice and therefore Council or the Local Planning Panel may assume the concurrence of the Planning Secretary.

#### 4.6 CLAUSE 4.6(5)

*PLANNING SECRETARY CONCURRENCE.*

As detailed above, assumed concurrence has been issued by the Planning Secretary.

#### 4.7 CLAUSE 4.6(6)

*EXCLUDED SUBDIVISION.*

The application of clause 4.6 to the height of buildings development standard is not precluded by the operation of Clause 4.6(6) of the LEP.

#### 4.8 CLAUSE 4.6(7)

*RECORD KEEPING.*

This is an administrative matter for the Council.

#### 4.9 CLAUSE 4.6(8)

*EXCLUDED DEVELOPMENT AND CLAUSES.*

The application of clause 4.6 to the height of buildings development standard is not precluded by the operation of Clause 4.6(8) of the LEP.



## 5 CONCLUSION

Having regard to the assessment of the proposal and Clause 4.6 Variation Request, the proposed development achieves the objectives of the development standard and the objectives of the land use zone, notwithstanding the contravention of the height control. Therefore, compliance with the development standard is unnecessary and unreasonable in these circumstances.

For the reasons provided within this request, there are sufficient environmental planning grounds to justify the contravention of the height of buildings development standard. This request has appropriately demonstrated that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out.

This Clause 4.6 Variation Request has been prepared in accordance with the requirements of Clause 4.6 of the *Pittwater Local Environmental Plan 2014* and has had regard to the findings of the various case law mentioned and discussed throughout. Accordingly, Council can exercise its power to grant development consent for the development that contravenes the development standard.

For the reasons outlined within this request, the subject variation is worthy of Council's support.