

Dear Chief Executive Officer

**PREMISES AT 73 REDNAL STREET, MONA VALE**  
**PROPOSED SECONDARY DWELLING AND LOWER GROUND STORE**

**CLAUSE 4.6 REQUEST -EXCEPTION TO THE DEVELOPMENT STANDARD**  
**(HEIGHT OF BUILDINGS) -PITTWATER LOCAL ENVIRONMENTAL PLAN**  
**2014**

This present document is a written variation request submitted under clause 4.6 of Pittwater Local Environmental Plan 2014 in connection with a development application seeking consent for the creation of a secondary dwelling on the site.

**1. INTRODUCTION**

Clause 4.3 of the PLEP controls the height of building. Relevantly, clause 4.3 (2) of PLEP provides 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.

Maximum building height shown is 8.5m, however clause 4.3 (2FA) of the PLEP provides as follows:

\* (2FA) Despite subclause (2), the maximum height for a secondary dwelling or a rural workers dwelling in zone E4 Environmental Living or Zone RU2 Rural Landscape is 5.5m if the secondary dwelling or rural workers dwelling is separate from the principal dwelling.

The proposed development is that the secondary dwelling is separate from the principal dwelling. The relevant applicable max. height of the proposed secondary dwelling is 5.5m.

Portion of the proposed secondary dwelling will contravene this at the south west corner having a height which varies between 7.1m and 5.5m.

A variation has been requested.

**2. REQUEST TO VARY A DEVELOPMENT STANDARD**

It is requested that a variations be sought for the max height of the secondary dwelling from 5.5m. in the height of buildings control contained in clause 4.3 of the PLEP (recently made).

The request is submitted to council in connection with and in support of the development application and is to be read in conjunction with the statement of environmental effects and submitted to council in support of and to inform the development application.

The SEE deals with the impacts of the development proposal in detail and provides details and compliance with the relevant planning controls and objectives.

Clause 4.6 of the PLEP allows Council to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clause 4.6 of the PLEP requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- \* that the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case
- \* that the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard and
- \* 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 the development within the zone in which the development is proposed to be carried out.

The consent authority's satisfaction as to those matters, must be informed by the objective of providing flexibility in the application of the relevant control to achieve better outcomes for and from the development in question.

The land and environment Court of NSW has provided judicial interpretation and clarification of the matters to be addressed in relation to variations to development standards lodged under the State Environmental Planning Policy 1 – Development Standards (SEPP 1) through the judgment of Justice Lloyd in “Winten Property Group Ltd v North Sydney Council (2001) 130 LGERA 79 at 89 (‘Winten’)

The ‘Winten test’ was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* (2007) NSW LEC 827 (‘Wehbe’). These tests and clause 4.6 of the LEP and other standard LEP instruments. Accordingly, this clause 4.6 variation request is set out using the relevant principles established by the court. Another recent one in the NSW Court of Appeal in *Four2Five Pty Ltd v Ashfield Council* (2015) NSWCA 248 has had some very important things to say about the use and construction of clause 4.6.

### 3. DEVELOPMENT STANDARD TO BE VARIED

Clause 4.3 of the PLEP states that, despite clause 4.3(2), the ordinarily applicable height of buildings standard, the maximum height for a secondary dwelling in zone E4 Environmental Living or Zone RU2 Rural Landscape is 5.5m if the secondary dwelling is separate from the principal dwelling.

The site is Zoned E4 Environmental Living under the PLEP. Secondary dwellings are permissible in the E4 zone with the consent authority.

This written request is to justify the contravention of the standard by demonstrating 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.

The proposed development will be in the public interest as it is consistent with the objectives of the standards and are of relevance to the subject matter of the development application and the objectives for the development within the E4 Environmental Living zone under PLEP in which the development is proposed to be carried out.

The proposed secondary dwelling has been designed to provide for natural solar access as possible. The proposed height which only has a portion of the roof and wall which exceeds this 5.5m height, allows for higher windows to be located so that solar access can pass through the existing natural vegetation.

Due to the topography of the land, and with the site falling towards the western corner of the rear boundary, it is difficult to adhere strictly to the required building height.

The proposed building will predominately comply with the required 5.5m building height, however only a small portion will contravene this and the building height for the secondary dwelling will be between 1.7m and 7.1m.

#### 4. THE OBJECTIVES OF THE STANDARDS

Clause 4.3 (1) of the PLEP and the objectives of this clause are as follows:

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

The proposal is for a secondary dwelling with a store below to the main residence which this development is consistent with the low density character of the precinct

Landscaping of the site has been minimally reduced due to the proposed addition. Majority of the existing vegetation will remain on the site with some exemptions.

The proposal will sit comfortably below the existing tree canopy and will result in only a small reduction in landscaping. Additional landscaping have been introduced to reduce any impacts it may pose and reduce any visual impact. In this regard the proposal is capable of meeting the objectives of the Pittwater DCP control.

The scale of the proposed development is consistent with the adjoining residential lots. Given the topography and the existing vegetation on the western side of the site the proposed development does not result in any privacy issues or impacts to nearby neighbours.

The floor level of the proposal is also much lower than its adjoining property to the east side boundary, which will also result in NO privacy impacts or view loss.

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

Development in the area is defined to a greater or lesser extent by residential lots constrained by steeper slopes and dense vegetation.

The proposal has been designed to sit within the landscaping setting, level of the secondary dwelling is similar to that of the main dwelling with some excavation necessary to reduce any height and to allow for a levelled area of private open space.

The scale of this proposal it consists of a lesser height in relation to other dwellings in the surround and neighbouring area.

Majority of the proposal complies with the building height contril where it is lower than 5.5m in height. The building heights will be between 1.7m to 7.1m. Only a small portion of the roof and wall – south western corner will contravene the 5.5m building height.

**c) to minimise any overshadowing of neighbouring properties**

Neighbours privacy will also **not** be affected.

The proposed secondary dwelling will not affect adjoining properties as the level of the proposal is lower than that of the adjoining property.

The natural gradient of the land and the combined design of the proposal will result in conservation of the existing amenity presently enjoyed be neighbouring residents.

The proposal satisfies this objective.

**d) to allow for the reasonable sharing of views.**

The proposal will not interrupt view corridors of its neighbours to any significant or material extent.

**e) to encourage buildings that are designed to respond sensitively to the natural topography.**

The site is within a biodiversity area. Clause 7.6 of PLEP applies to the development proposal. Some trees are proposed to be removed as part of the proposed developments they are located within the proposed buiilding footprint and or in close proximity. The

removal of those trees and vegetation will make way for an improved landscaped setting that will harmonise with the proposal and the surrounding streetscape.

Landscaping and associated biodiversity components are expected to be enhanced as a result of the development. An arboricultural impact assessment report has been included with this application. The proposal will not affect the fauna and other flora within the site.

The proposal satisfies this objective.

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

The development is not a heritage item nor is it located in a heritage conservation area.

The site contains natural vegetation with some introduced species. One major tree has to be removed however other new planting is to be introduced and integrated within the development. The proposed development will continue to sit and be integrated into a landscaping setting allowing the new dwelling to be second to the natural environment.

The objective satisfies this objective.

**Conclusion to this**

In respect of the height standard is of minimal significance with respect to the objectives of the relevant applicable height of building development standard. The gradient of the land, the size and shape of the lot and the natural bushland setting all assist in ensuring that a casual observer would have some difficulty in reading a small part of the additional height of the new dwelling.

It is concluded that the development will be consistent and will still satisfy relevant height objectives, notwithstanding the numerical departure from the standard contained in clause 4.3 (2FA) of PLEP.

The development is consistent with all of the abovementioned objectives of the standard.

The proposed development involves the creation of a secondary dwelling which is a form of development that **is encouraged** in the precinct. The secondary dwelling will be partially located on a sloping site, with the existing three storey principal dwelling being located to the front of the site. The proposed secondary dwelling will be located at the rear of the site and thus will not be visible from Rednal Street.

The building location encourages preservation of the natural environment and landscaping has been integrated into the building design allowing the dwelling to sit within a landscaping setting which will in turn reinforce Pittwater's natural environment

In saying this the proposed development is consistent with such of the aims of the PLEP as are relevance to the development.

## 5. ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT CLAUSES 4.6 (3)(b)

There are numerous environmental planning grounds for varying the development standard which is the preservation of appropriate residential density and the amenity, maintaining privacy for residents, preserving the natural topography and the biodiversity significance of the locality.

The proposal is consistent with the aims of the PLEP as it constitutes a good environmental planning ground justifying a contravention of the maximum height of buildings development standard contained in clause 4.3 of the PLEP.

Another good environmental planning ground justifying a contravention of the development standard in this instance is that there is no demonstrable public benefit in maintaining the development standard, clause 4.6 (5)(b) in this instance for to do would not result in any material public benefit in this situation.

The maximum height that is achieved in this case is 7.1m, the rest of the height is below 5.5m....ONLY A SMALL PORTION CONTRAVENES THIS HEIGHT. Due to the natural and slightly dense bushland setting, the proposal has been designed to capture solar access from all directions within the living areas and provide for cross ventilation at the same time. The height of these high windows is to provide more solar access within, due to the height of the existing vegetation that surround the property, however without affecting the natural ambiance of the landscape setting.

Due to the sloping topography of the land that this portion of the new build exceeds the max. building height of 5.5m

The proposed development will result in an improved outcome for the occupants and for the wider community in that there are likely to be no significant amenity impacts for residents and neighbours.

The proposed development is unlikely to increase the demand on local infrastructure and service and is entirely consistent with such of the zone objectives as are of relevance. The residential environment will remain characterised by a diverse range of low density dwelling styles, whilst not detracting from the consistent natural landscape setting.

This is a written request that the development will achieve the relevant zone objectives notwithstanding the numerical non-compliance with the height standard contained in clause 4.3 of the PLEP.

The above constitute good environmental planning grounds to justify contravening the development standard.

## 6. CONCLUSION

The proposed development will be low impact and designed to respond sensitively to the natural topography.

The proposal will provide improvement in the landscape quality and result in the construction of a high quality dwelling which will be intergrated into the locality. It will provide the occupants amenity without resulting in adverse environmental impacts to neighbours.

Amenity to adjoining properties is maintained and no view loss will be experienced by the proposal.

The proposal will not have an adverse effect on any special ecological, scientific or aesthetic values.

The secondary dwelling in its own right and when considered in conjunction with the principal dwelling, will not dominate the natural environment, maintaining a majority of the existing vegetation on the site.

It is requested that this non compliance be supported as there would be no practical utility in enforcing strict compliance with the relevantly applicable height of buildings development standard. All of the above constitutes good environmental planning grounds to justify contravening the development standard in this particular instance.

The variation from the development standard will not contravene any overarching State or regional objectives or standards, it will have no effect outside the site's immediate area and rises no issue of significance for State and or regional environmental planning.

Maintaining strict numerical with the 5.5m height of buildings development standard would not result in any public benefit in this instance. To maintain, to strictly enforce and apply the development standard in this instance would prevent the carrying out of an otherwise well designed residential development which is suited to the site.

#### IN SUMMARY

It is requested that this development justifies the contravention of the height of buildings development standard contained in clause 4.3 of the PLEP by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development shows it will be in the public interest as it is consistent with such of the objectives of the standard as are of relevance to the subject matter of the development application and the objectives for the development within the E4 Environmental Living zone.

It is sought that this development application may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the PLEP.

Yours Sincerely

