

STATEMENT OF ENVIRONMENTAL EFFECTS

**FOR THE PROPOSED CONSTRUCTION OF ALTERATIONS AND
ADDITIONS TO AN EXISTING DWELLING INCLUDING
A NEW GARAGE, LIFT AND ALTERATIONS TO EXISTING DRIVEWAY**

LOCATED AT

3 BEACONSFIELD STREET, NEWPORT

FOR

CRAIG AND THERESE RUSHBY



**Prepared
July 2019**

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1.0 Introduction

This Statement of Environmental Effects accompanies details prepared by THW Architects on behalf of Craig and Therese Rushby, Job No 144, Sheets A00-A – A04-A, A10-A – A13-A, A20-A-A21-A, A100-A, A103-A, A107-A, A-204 – A-206, dated 31 May 2019, to detail the proposed construction of alterations and additions to existing dwelling including a new garage, lift and alterations to existing driveway at **3 Beaconsfield Street, Newport**.

The inclusion of an internal passenger lift will allow for the property owners to enjoy safe and functional access to all levels of the dwelling as they age.

PLM2019/0002 was conducted on 24 January 2019. The issues raised in the meeting have been addressed as follows:

- **Building height**

The lounge room proposed at the upper floor level has been deleted. The introduction of the flat roof form over the existing stairwell and lift shaft assists with minimising the visual bulk of the dwelling. Whilst the proposal will not comply with the statutory height limit, the variation is existing and the overall height of the building is reduced (Existing Building Height – 12.380m, Proposed Building Height - 11.35m)
- **Front setback**

The proposed garage has been reduced in size and now provides parking for three cars. The stairs and associated retaining wall within the front setback have been removed, which reduces the visual impact of the proposed garage structure. It is considered reasonable to provide three parking spaces on the site due to the site's location at a busy intersection, with limited street parking available. The proposed garage will stand 6.5m from the front boundary and therefore complies with this control.
- **Building envelope**

The external form of the building remains largely unchanged, and the proposed new works will not alter the compliance of the dwelling with the building envelope control.
- **Landscaped area**

The proposal provides a landscaped 48%, which is a substantial improvement on the existing landscaped area of 33%. The garage roof is to be landscaped, as per the prelodgement advice.

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*
- *Pittwater Local Environmental Plan 2014*
- *Pittwater 21 Development Control Plan 2014*

2.0 Property Description

The subject allotment is described as 3 Beaconsfield Street, Newport, being Lot A within Deposited Plan 397484 and is zoned E4 Environmental Living under the Pittwater Local Environmental Plan 2014.

The site is identified within the Class 5 Acid Sulfate Soils Area. This will be discussed in further detail within this report.

The site is noted as 'W Hazard H1' on Council's Geotechnical Map. A Geotechnical Investigation has been prepared by Hodgson Consulting Engineers Pty Ltd, Job No. PX 00005, dated 1 July 2019, this will be discussed in further detail within this report.

The site is identified as being within a Terrestrial Biodiversity zone. This will be discussed in further detail within this report.

3.0 Site Description

The site is located on the corner of Beaconsfield Street and Barrenjoey Road. The site has a primary frontage to Beaconsfield Street to the north, and a secondary frontage to Barrenjoey Road to the east.

The site is currently developed with an existing three storey brick dwelling with a concrete and tile roof and an attached brick garage with a concrete landing over.

The land has a fall from the eastern secondary frontage to the western side boundary, with stormwater from the roof areas currently directed to street gutter along Beaconsfield Street.

The site is irregular in shape, with a primary northern front boundary of 12.27m, a north-eastern splay corner of 4.095m and a secondary eastern frontage of 31.34m. The western side boundary measures 49.47m and the rear boundary measures 22.635m. The site has a total area of 697m².

Vehicular access is available to the site via a gravel and concrete driveway to an attached brick garage at the rear.

The details of the land are contained within the survey report prepared by Daw & Walton Consulting Surveyors Pty Ltd, Job No. 4426-18 dated 30 October 2018 which accompanies the DA submission.

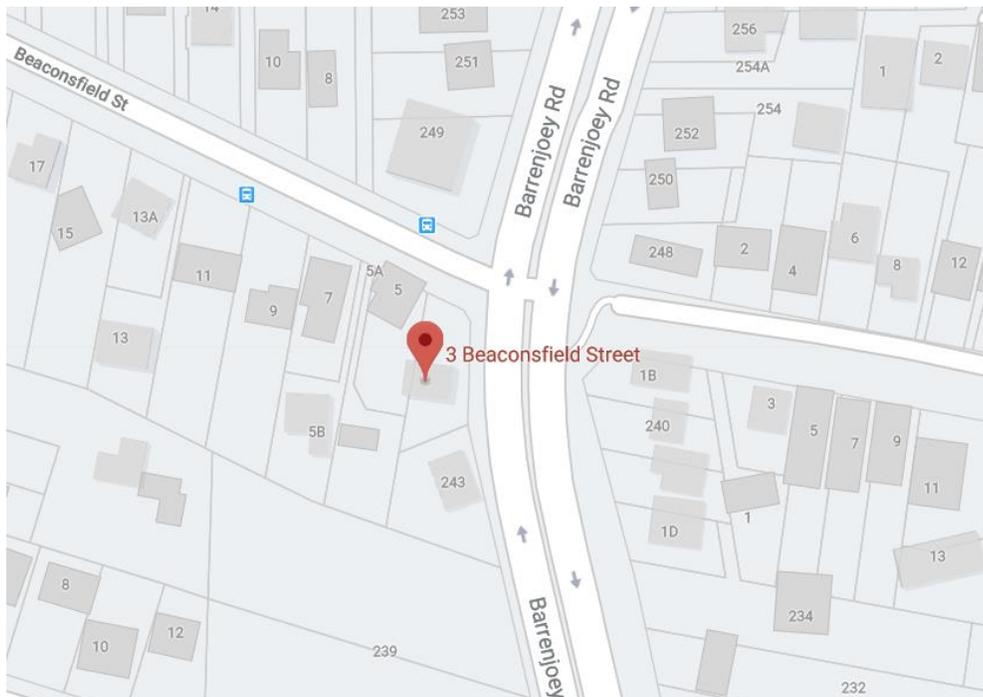


Fig 1: Location of Subject Site
(Source: Google Maps)



Fig 2: View of subject site, looking south from Beaconsfield Street (proposed new parking area location screened by the existing vegetation adjoining Barrenjoey Road/Beaconsfield Street boundary)



Fig 3: View looking south along eastern boundary, facing Barrenjoey Road



Fig 3: View looking south along western boundary

4.0 The Surrounding Environment

The general vicinity of the site is characterised by residential dwellings and a range of detached outbuildings, of a variety of architectural styles.

The varying age of development in the area has resulted in a mix of materials and finishes, with the development in the area generally presenting a consistent setback to the public domain.

The surrounding properties comprise a range of original style dwellings with an emergence of modern dwellings and additions. The surrounding dwellings comprise a mix of single and two storey dwellings.

The subject building is an anomaly in that it is single dwelling with a three storey height and a roof terrace. Other 3 storey buildings are in the immediate vicinity, either in the form of residential flat buildings or single dwellings which are generally influenced by the sloping topography.

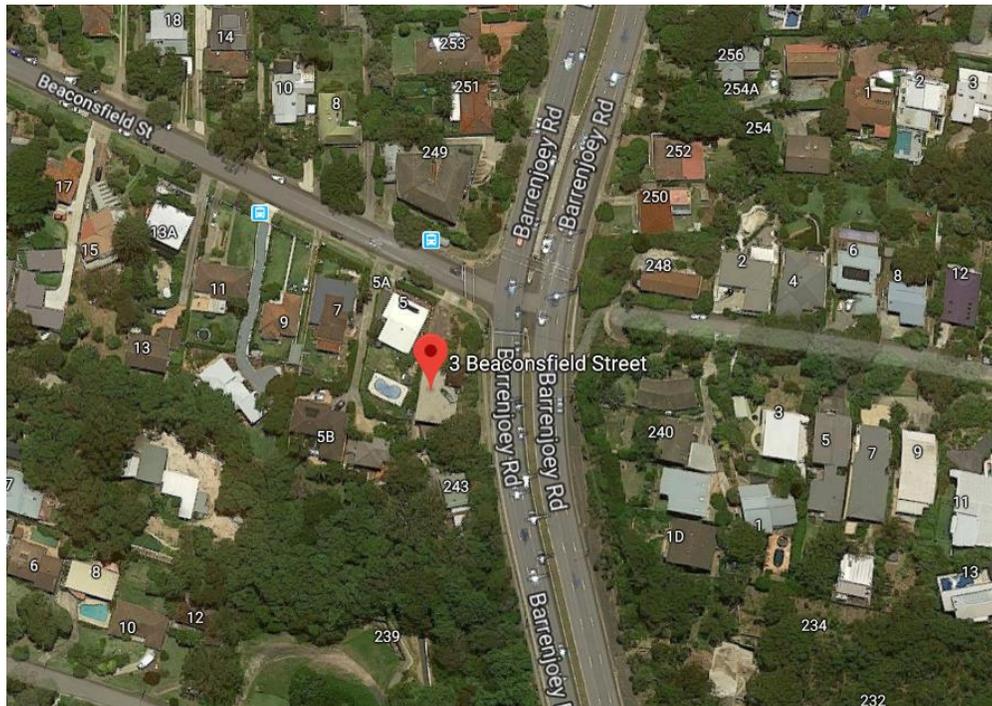


Fig 4: Aerial Photograph
(Source: Google maps)

5.0 Proposed Development

As detailed within the accompanying plans, the proposal seeks consent for the proposed construction of alterations and additions to the existing dwelling, including a new garage, lift and alterations to existing driveway.

The works will comprise the following:

- Lower Ground Floor Level**
 - Proposed alterations and additions to existing lower ground floor to provide for new entry, internal access stairs, lift, bathroom, gym, rumpus room and laundry
 - New attached triple garage and bin storage area
 - Existing workshop area unchanged

- Ground Floor Level**
 - Proposed alterations and additions to existing ground floor to provide for internal access stairs, lift, bedroom, bedroom and ensuite, bathroom, open plan kitchen/dining/living and balcony
 - External access stairs

- First Floor Level**
 - Proposed alterations and additions to existing first floor to provide for internal access stairs, lift, media room, bathroom, 3 bedrooms, master bedroom with ensuite and walk in robe and balcony
 - External access stairs

- Roof Level**
 - Proposed alterations and additions to existing roof level to provide for internal access stairs, bathroom and outdoor roof terrace

The general bulk and scale of the existing dwelling will remain largely unchanged, with the overall height of the dwelling to be reduced through the introduction of a new flat roof form over the existing lift shaft and stairwell. The existing balustrades to the rooftop terrace will be replaced with glass balustrades, which assists with minimising the visual bulk of the development and enhancing the visual appearance of the site.

The proposal will require the removal of a number of trees. Accordingly, a Tree Report has been prepared by SAS Landscape and Tree Solutions to detail the proposed tree removal and replacement plantings.

The available area of soft landscaping has been significantly increased through the removal of redundant paving and the introduction of landscaping over the proposed garage. New plantings are to be provided throughout the site as detailed in the submitted Landscape Plan prepared by SAS Landscapes.

The development indices for the site are:

Site Area	697m ²
Required Landscaped Area	60% or 418m ²
Existing Landscaped Area	33% or 233m ²
Proposed Landscaped Area	48% or 338m ²

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.

6.3 State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The SEPP commenced on 25 August 2017 and replaced Clause 5.9 of Pittwater Local Environmental Plan 2014.

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.*

The proposal will require the removal of a number of trees. Accordingly, a Tree Report has been prepared by SAS Landscape and Tree Solutions to detail the proposed tree removal and replacement plantings.

The available area of soft landscaping has been significantly increased through the removal of redundant paving and the introduction of landscaping over the proposed garage. New plantings are to be provided throughout the site as detailed in the submitted Landscape Plan prepared by SAS Landscapes.

In this instance, the proposal is therefore considered to be consistent with the aims of the SEPP.

6.4 Pittwater Local Environmental Plan 2014

Clause 2.2 Zone objectives and Land Use Table

The upper portion of the site which contains the dwelling is zoned E4 Environmental Living under the provisions of the PLEP 2014.

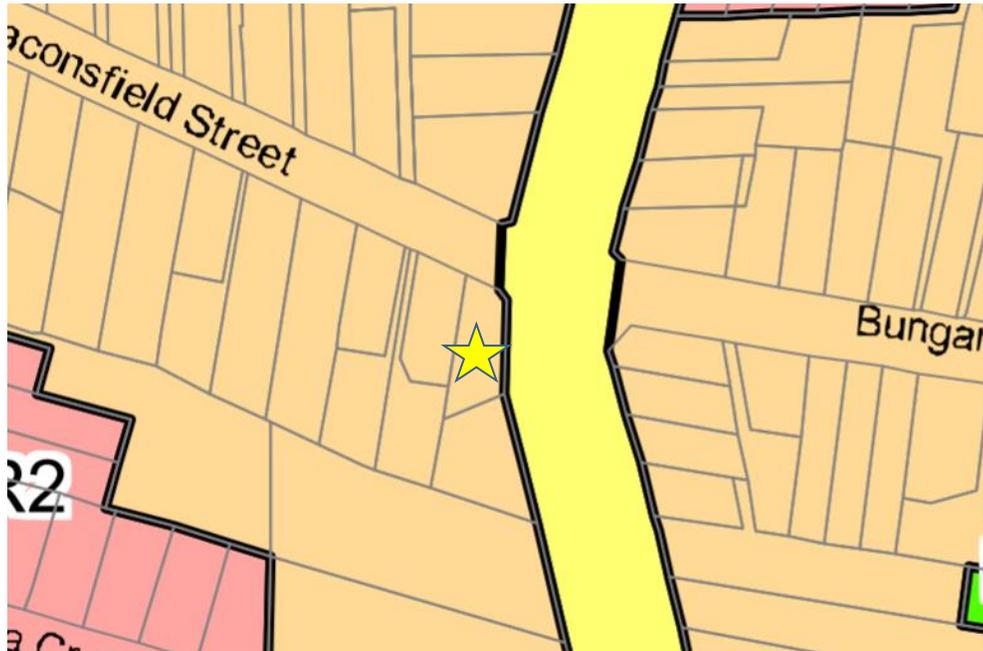


Fig 5: Extract of Pittwater Local Environmental Plan 2014

The proposed construction of alterations and additions to existing dwelling including a new garage, lift and alterations to existing driveway is considered to be permissible with the consent of Council in the E4 zone.

The development of and use of the land for residential purposes within the E4 Environmental Living Zone is consistent with the zone objectives, which are noted as:

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

It is considered that the proposed new works 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 complements the locality. The proposal provides for construction alterations and additions including a new garage, lift and alterations to existing driveway, which will not have any significant or adverse impact on the neighbouring properties.
- The setbacks are compatible with the existing surrounding development.
- The proposal does not have any adverse impact on long distance views.

Clause 4.3 – Height of Buildings

The maximum building height in this portion of Newport is 8.5m. The proposed works will provide for a height of up to 11.35m and therefore does not comply with this control.

The proposed works will see a reduction in the overall maximum height of the existing dwelling by 1.03m through the removal of the existing pitched roof form and construction of new flat roof.

A submission has been prepared pursuant to Clause 4.6 and accompanies this Statement.

Clause 7.1 – Acid Sulfate Soils

The upper portion of the site which contains the existing dwelling is identified as being within the Class 5 Acid Sulfate Soils Area. The proposal will see some excavation and groundwork for the construction of the new garage. Given the minor residential nature of the proposed works, it is not anticipated that any acid sulfate soils will be encountered and no further investigation deemed necessary.

Clause 7.2 – Earthworks

The proposal will not require any substantial excavation of the site to accommodate the proposed new works. A Geotechnical Investigation has been prepared by Hodgson Consulting Engineers Pty Limited, Job No. PX 00005, dated 1 July 2019, which addresses the provisions of this clause. The report concluded that:

No Geotechnical hazards are likely to adversely affect the subject property were observed on site

Clause 7.6 – Biodiversity protection

The land is noted within Council's Biodiversity mapped area.

- (1) *The objective of this clause is to maintain terrestrial, riparian and aquatic biodiversity by:*
- (a) *protecting native fauna and flora, and*
 - (b) *protecting the ecological processes necessary for their continued existence, and*
 - (c) *encouraging the conservation and recovery of native fauna and flora and their habitats.*

An arboricultural impact assessment has been prepared by SAS Landscape and Tree Solutions to address tree removal, protection and replacement measures. Six trees are recommended removal for the construction of the new works. Replacement plantings are to be provided as detailed in the submitted Landscape Plan.

The proposal will see an increase in the available area of soft landscaping. Accordingly, the proposal is therefore considered to be consistent with the provisions of this clause.

Clause 7.7 – Geotechnical Hazards

The site is identified as ‘W Hazard H1’ on Council’s Geotechnical Map. The proposal seeks the construction of alterations and additions to an existing dwelling, including a new garage, lift and alterations to existing driveway.

Accordingly, A Geotechnical Investigation has been prepared by Hodgson Consultants Pty Limited, Job No. PX 00005, dated 1 July 2019, which concludes the following:

The property appears stable by inspection and accordingly the proposed development will have an Acceptable Risk Level in accordance with the 2009 Geotechnical Risk Management Policy for Northern Beaches Council – Pittwater subject to good engineering practice for the structural design and construction methods.

The proposal is therefore considered to satisfy the provisions of this clause.

There are no other clauses of the PLEP 2014 that are considered to be relevant to the proposed development.

6.5 Pittwater 21 Development Control Plan

Council's Pittwater 21 DCP Section B (General Controls), Section C (Development Type Controls) and Section D10 Newport Locality Statement provides a range of outcomes and controls which form the primary criteria for the control for development within the subject locality.

6.5.1 Shaping Development – Desired Character

The desired outcomes for the Newport Locality, in which this site falls, are as follows:

D.10 Newport Locality

Desired Character

The Newport locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a natural 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 occupancy dwellings will be located on the valley floor and lower slopes that have less tree canopy coverage, species and habitat diversity and fewer other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, 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.

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 the development. 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.

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.

Heritage items and conservation areas indicative of the Guringai Aboriginal people and of early settlement in the locality will be conserved.

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.

Newport's coastal setting is what contributes most to the distinctive character of the commercial centre. Responsive, energy efficient buildings will support and enhance this relaxed, beachfront character and its outdoor lifestyle, contributing to a unique sense of place. Contemporary design solutions within the commercial centre will respond to Newport's climate and setting, including providing shade and shelter to streets and entries, generous private outdoor spaces, openings that capture ocean breezes, and shade elements.

It is considered that the proposal is consistent with the desired character of the locality by providing for alterations and additions including a new garage, lift and alterations to existing driveway, which is consistent with the scale and style of development within the vicinity.

The general bulk and scale of the existing dwelling will remain largely unchanged, with the overall height of the dwelling to be reduced through the introduction of a new flat roof form over the existing lift shaft and stairwell. The existing balustrades to the rooftop terrace will be replaced with glass balustrades, which assists with minimising the visual bulk of the development and enhancing the visual appearance of the site.

The proposal will require the removal of a number of trees. Accordingly, a Tree Report has been prepared by SAS Landscape and Tree Solutions to detail the proposed tree removal and replacement plantings.

The available area of soft landscaping has been significantly increased through the removal of redundant paving and the introduction of landscaping over the proposed garage. New plantings are to be provided throughout the site as detailed in the submitted Landscape Plan prepared by SAS Landscapes.

6.5.2 Section B General Controls

The General Controls applicable to the construction of additions and alterations to the existing dwelling and new passenger lift are summarised as:

B3.1 Landslip Hazard

The controls seek to achieve the outcomes:

Protection of people. (S)

Protection of the natural environment. (En)

Protection of private and public infrastructure and assets. (S)

The site is identified as 'W Hazard H1' on Council's Geotechnical Map. The proposal seeks the construction of alterations and additions to an existing dwelling, including a new garage, lift and alterations to existing driveway.

Accordingly, A Geotechnical Investigation has been prepared by Hodgson Consultants Pty Limited, Job No. PX 00005, dated 1 July 2019, which concludes the following:

The property appears stable by inspection and accordingly the proposed development will have an Acceptable Risk Level in accordance with the 2009 Geotechnical Risk Management Policy for Northern Beaches Council – Pittwater subject to good engineering practice for the structural design and construction methods.

The proposal is therefore considered to satisfy the provisions of this clause.

B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor

The controls seek to achieve the outcomes:

Conservation, enhancement and/or creation of habitats for locally native flora and fauna to ensure the long-term viability of locally native flora and fauna and their habitats. (En)

The proposal will require the removal of a number of trees. Accordingly, a Tree Report has been prepared by SAS Landscape and Tree Solutions to detail the proposed tree removal and replacement plantings. The available area of soft will be increased. The proposal will not result in any adverse impacts for nearby native flora and fauna and their habitats.

B5.8 Stormwater Management – Water Quality – Low Density Residential

The controls seek to achieve the outcomes:

No increase in pollutants discharged with stormwater into the environment. (En)

Development is compatible with Water Sensitive Urban Design principles. (En)

The proposal is accompanied by a Concept Stormwater Management Plan prepared by Barrenjoey Consulting Engineers Pty Ltd, Job No. 190509. Stormwater from the site will comprise clean roofwater only and no water quality issues are anticipated. The proposal will satisfy the provisions of this clause.

B5.10 Stormwater Discharge into Public Drainage System

The controls seek to achieve the outcomes:

All new development is to have no adverse environmental impact at the discharge location. (En, S)

The proposal is accompanied by a Concept Stormwater Management Plan prepared by Barrenjoey Consulting Engineers Pty Ltd, Job No. 190509. Stormwater from the site will be directed to the street gutter in Beaconsfield Street and therefore satisfy the provisions of this clause.

B5.12 Stormwater Drainage Systems and Natural Watercourses

This control seeks to achieve the outcomes:

The integrity of stormwater drainage systems, easements and natural watercourses are maintained. (En)

Stormwater flows including overland flow have continuity and are not impeded. (En)

As the stormwater comprises clean runoff from the roof, no water quality issues are anticipated.

The proposal is accompanied by a Concept Stormwater Management Plan prepared by Barrenjoey Consulting Engineers Pty Ltd, Job No. 190509. The impact of stormwater within the locality will be minimised.

B6.1 Access Driveways and Works on the Public Road Reserve – Low Density Residential

This control seeks to achieve the outcomes:

Safe and convenient access. (S)

Adverse visual impact of driveways is reduced. (En)

Pedestrian safety. (S)

An effective road drainage system. (En, S)

Maximise the retention of trees and native vegetation in the road reserve. (En, S)

The existing crossing will be retained and the driveway will be modified to provide access to the new triple garage.

B6.3 Off-Street Vehicle Parking Requirements – Low Density Residential

This control seeks to achieve the outcome:

An adequate number of parking and service spaces that meets the demands generated by the development.

Functional parking that minimises rainwater runoff and adverse visual or environmental impacts while maximising pedestrian and vehicle safety. Safe and convenient parking. (S)

The construction of the new garage will provide for 3 on site car parking spaces which readily meets this control.

B8.1 Construction & Demolition – Excavation and Landfill

The controls seek to achieve the outcomes:

Site disturbance is minimised. (En)

Excavation and construction not to have an adverse impact. (En)

Excavation operations not to cause damage on the development or adjoining property. (S)

The proposed works will require some excavation for the construction of the new garage. The proposed works will be carried out in accordance with the Geotechnical Investigation prepared by Hodgson Consultants Pty Limited, Job No. PX 00005, dated 1 July 2019, and will therefore satisfy the provisions of this clause.

B8.2 Construction & Demolition – Erosion and Sediment Management

The controls seek to achieve the outcomes:

Waterways, coastal areas, watercourses, drainage systems and the public domain are protected from the transportation of sedimentation from development sites.

(En)

Reduction of waste throughout all phases of development. (En)

Public safety is ensured. (S)

Protection of the public domain. (S, En)

The proposed works will require some excavation to accommodate the proposed garage. Erosion and sediment control measures will be carried out as necessary.

6.5.3 Section C Development Type Controls

The Development Controls applicable to the proposed development and are summarised as:

C1.1 Landscaping

The controls seek to achieve the outcome:

- A built form softened and complemented by landscaping. (En)*
- Landscaping reflects the scale and form of development. (En)*
- Retention of canopy trees by encouraging the use of pier and beam footings. (En)*
- Development results in retention of existing native vegetation. (En)*
- Landscaping results in the long-term retention of Pittwater's locally native tree canopy. (En)*
- Landscaping retains and enhances Pittwater's biodiversity by using locally native plant species (En)*
- Landscaping enhances habitat and amenity value. (En, S)*
- Landscaping results in reduced risk of landslip. (En, Ec)*
- Landscaping results in low watering requirement. (En)*

The required controls to achieve the outcomes are to ensure that the development will provide for the reasonable retention and protection of the existing significant trees and to provide for locally occurring species within any proposed replanting of the site.

The proposal will require the removal of a number of trees. Accordingly, a Tree Report has been prepared by SAS Landscape and Tree Solutions to detail the proposed tree removal and replacement plantings.

The available area of soft landscaping has been significantly increased through the removal of redundant paving and the introduction of landscaping over the proposed garage. New plantings are to be provided throughout the site as detailed in the submitted Landscape Plan prepared by SAS Landscapes.

C1.2 Safety and Security

The controls seek to achieve the outcomes:

- On-going safety and security of the Pittwater community. (S)*
- Opportunities for vandalism are minimised. (S, Ec)*
- Inform applicants of Council's requirements for crime and safety management for new development. (S)*
- Improve community awareness in relation to Crime Prevention through Environmental Design (CPTED), its principle strategies and legislative requirements (S)*
- Identify crime and safety priority areas in Pittwater LGA (S, Ec)*
- Improve community safety and reduce the fear of crime in the Pittwater LGA (S)*
- Develop and sustain partnerships with key stakeholders in the local area who are involved in community safety. (S)*

The proposed works will not impact on the existing safety or security of the site. Casual surveillance of the street area will be readily available from the existing dwelling and dwelling entrance.

C1.3 View Sharing

The controls seek to achieve the outcomes:

A reasonable sharing of views amongst dwellings. (S)

Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced. (S)

Canopy trees take priority over views. (En, S)

The subject and adjoining properties currently enjoy views to the west towards Pittwater. The proposed works will see a reduction in the overall RL of the dwelling by 1.03m through the removal of the existing pitched roof form and construction of a new flat roof.

The proposal maintains existing side and rear setbacks and will not see any increase in the height, bulk or scale of the dwelling. The majority of the works are contained within the footprint of the existing dwelling.

The proposal is therefore not considered to result in any unreasonable view loss for neighbouring properties.

C1.4 Solar Access

The controls seek to achieve the outcomes:

Residential development is sited and designed to maximise solar access during mid-winter. (En)

A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development. (En)

Reduce usage and/dependence for artificial lighting. (En)

The required controls to achieve the outcomes are to ensure that private open spaces of the subject and adjoining dwellings maintain a minimum of 3 hours of solar access in mid-winter.

The proposed works will see a reduction in the overall height of the dwelling of 1.03m through the removal of the existing pitched roof and construction of a new flat roof form. The existing solar access available to neighbouring properties will remain unchanged.

C1.5 Visual Privacy

The controls seek to achieve the outcomes:

Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design. (S)

A sense of territory and safety is provided for residents. (S)

The required controls to achieve the outcomes are to ensure that the private open space, recreation areas and living rooms within 9m of a development are suitably protected to limit the effects of direct overlooking.

The proposal seeks to provide for the construction of alterations and additions to existing dwelling including a new garage, lift and alterations to existing driveway, which will not have any significant implications for the privacy enjoyed by neighbouring properties. Majority of the proposed works to the dwelling are internal and will not see any impacts upon neighbouring dwellings.

C1.6 Acoustic Privacy

The controls seek to achieve the outcomes:

Noise is substantially contained within each dwelling and noise from any communal or recreation areas are limited. (S)

Noise is not to be offensive as defined by the Protection of the Environment Operations Act 1997, including noise from plant, equipment and communal or recreation areas (S)

The required controls to achieve the outcomes are to ensure that noise sensitive living areas and bedrooms are located away from major noise sources.

Given the residential nature of the works, there will not be any significant impact on the surrounding locality in terms of acoustic privacy.

The proposed lift is located on the eastern side of the dwelling and is well set back from neighbouring properties, which will suitably mitigate the effects of acoustic intrusion to the neighbours.

C1.7 Private Open Space

The controls seek to achieve the outcomes:

Dwellings are provided with a private, usable and well-located area of private open space for the use and enjoyment of the occupants. (S)

Private open space is integrated with, and directly accessible from, the living areas of dwellings. (S)

Private open space receives sufficient solar access and privacy (En, S).

The required controls to achieve the outcomes are to ensure that dwellings are provided suitable private open space with an area and at a grade which will facilitate outdoor private recreation.

The existing private open space area within the yard areas will be maintained and enhanced through the introduction of the additional screen planting.

C1.9 Adaptable Housing and Accessibility

The controls seek to achieve the outcomes:

The community's lifecycle housing needs are met within Pittwater through well designed adaptable housing. (S)

All members of the community enjoy equitable access to buildings to which the general public have access. (S)

Housing for older people and people with a disability are accessible, adaptable and safe. (S)

Equitable access in the public domain. (S)

The required controls to achieve the outcomes are to ensure that reasonable and convenient access is maintained to the site and the development for the occupants and visitors.

The works will retain appropriate pedestrian access to the site and the proposed lift will provide for convenient and safe access to all levels of the dwelling for the building's occupants.

C1.12 Waste and Recycling Facilities

The controls seek to achieve the outcomes:

Waste facilities are accessible and convenient, and integrate with the development. (En)
Waste facilities are located such that they do not adversely impact upon amenity of the land adjoining development or natural environment. (En, S)

The required controls to achieve the outcomes are to ensure that adequate area remains for the storage of waste and recyclable materials.

The proposed new garage will have adequate area for the on-site storage of waste and recyclables, with the waste removed by Council contractors via the household garbage service.

6.5.4 Section D Design Criteria

The **D10 Newport Locality Statement** contains a number of outcomes for development. The proposal has been assessed in regard to the Locality Statement and is summarised in the following table.

In support of the proposal, it is considered that this proposal is well designed, comprehensive and consistent with the community's vision for development in Pittwater in that it is:

- Proposing a form of development which is compatible with the existing character of the area by maintaining an appropriate development scale which is compatible with the vicinity.
- The proposal maintains existing views and amenity to adjoining properties.
- The development will not place any significant demands on local infrastructure or on the sewage disposal system for the site.

A summary of the DCP controls for the **D10 Newport Locality** is provided below:

D10.1 Character as Viewed from a Public Place

The control seeks to achieve the outcomes:

To achieve the desired future character of the Locality.

To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built form and natural environment. (En, S, Ec)

To enhance the existing streetscapes and promote a scale and density that is in scale with the height of the natural environment.

The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation. (En, S, Ec)

*High quality buildings designed and built for the natural context and any natural hazards. (En, S)
Buildings do not dominate the streetscape and are at 'human scale'. Within residential areas, buildings give the appearance of being two-storey maximum. (S)*

To preserve and enhance district and local views which reinforce and protect Pittwater's natural context.

To enhance the bushland vista of Pittwater as the predominant feature of the landscape with built form, including parking structures being a secondary component.

To ensure that development adjacent to public domain elements such as waterways, streets, parks, bushland reserves and other public open spaces, compliments the landscape character, public use and enjoyment of that land. (En, S)

The required controls to achieve the outcomes are to ensure that the building maintains a compatibility with the locality through appropriate design relief including roof forms textures, materials, the arrangement of windows, modulation of wall and roof planes, spatial separation, landscaping etc.

It is considered that the proposal is consistent with the desired character of the locality by providing for the construction of alterations and additions to existing dwelling which are largely contained within the footprint of the existing dwelling, and will complement the character of the surrounding locality.

The available area of soft landscaping is to be increased, with new plantings provided throughout the site to soften and screen the built form of the development.

D10.4 Building Colours, Materials and Construction

The controls seek to achieve the outcomes:

- Achieve the desired future character of the Locality.*
- The development enhances the visual quality and identity of the streetscape. (S)*
- To provide attractive building facades which establish identity and contribute to the streetscape.*
- To ensure building colours and materials compliments the visual character of its location with the natural landscapes of Pittwater.*
- The colours and materials of the development harmonise with the natural environment. (En, S)*
- The visual prominence of the development is minimised. (S)*
- Damage to existing native vegetation and habitat is minimised. (En)*
- The use of materials with low embodied energy is encouraged. (En)*
- New buildings are robust and durable with low maintenance requirements. (S)*
- In the Newport Commercial Centre, roofs of lighter colours are permitted to improve the thermal performance of the roof system. (En, Ec, S)*

The required controls to achieve the outcomes are to ensure that the external colours and materials shall be dark and earthy tones as indicated within the DCP.

It is considered that the development is appropriate as it is intended to utilise recessive tones and finishes to match the existing and surrounding dwellings as per Council's DCP control.

D10.7 Front Building Line

The controls seek to achieve the outcomes:

- Achieve the desired future character of the Locality. (S)*
- Equitable preservation of views and vistas to and/or from public/private places. (S)*
- The amenity of residential development adjoining a main road is maintained. (S)*
- Vegetation is retained and enhanced to visually reduce the built form. (En)*
- Vehicle manoeuvring in a forward direction is facilitated. (S)*
- To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*
- To encourage attractive street frontages and improve pedestrian amenity.*
- To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.*

The control to achieve this outcome is to provide a setback of 6.5m, or the established building line to the street frontage to Beaconsfield Street. A setback of 10m from Barrenjoey Road is required.

The proposed garage will provide a minimum front setback of 6.5m to Beaconsfield Street which meets this control.

The proposed garage will stand a minimum of 2.4m from Barrenjoey Road, and therefore presents a variation to this clause. The siting of the existing eastern elevation of the dwelling remains unchanged.

Compliance with this control is constrained by the narrow width of the lot and the siting of existing development. The proposed new garage will not be prominently viewed from Barrenjoey Road due to its modest scale and the proposed landscaping to its roof.

The proposed garage provides for safe off-street parking, in an area where limited street parking is available.

The proposed setbacks are considered to be adequate in this instance and will achieve the outcomes of Clause D10.7.

D10.8 Side and rear building line

The controls seek to achieve the outcomes:

- To achieve the desired future character of the Locality. (S)*
- The bulk and scale of the built form is minimised. (En, S)*
- Equitable preservation of views and vistas to and/or from public/private places. (S)*
- To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*
- To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)*
- Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)*
- Flexibility in the siting of buildings and access. (En, S)*
- Vegetation is retained and enhanced to visually reduce the built form. (En)*
- To ensure a landscaped buffer between commercial and residential zones is established. (En, S)*

The relevant controls to achieve this outcome are to maintain a minimum side boundary setback of 2.5m for at least one side and a minimum 1.0m setback for the other side. A setback of 6.0m to the rear boundary is also required by this clause.

The existing 1m setback from the western side boundary is maintained. The southern setback remains unchanged.

D10.11 Building Envelope

The controls seek to achieve the outcomes:

- To achieve the desired future character of the Locality. (S)*
- To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.*
- To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.*
- The bulk and scale of the built form is minimised. (En, S)*
- Equitable preservation of views and vistas to and/or from public/private places. (S)*

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)
Vegetation is retained and enhanced to visually reduce the built form. (En)

The required controls to achieve the outcomes are to maintain the development within a height envelope which provides for a height of 3.5m with an angle projected at 45°.

The proposal will not alter the compliance of the existing dwelling with the building envelope control.

D10.13 Landscaped Area – Environmentally Sensitive Land

The controls seek to achieve the outcomes:

Achieve the desired future character of the Locality. (S)
The bulk and scale of the built form is minimised. (En, S)
A reasonable level of amenity and solar access is provided and maintained. (En, S)
Vegetation is retained and enhanced to visually reduce the built form. (En)
Conservation of natural vegetation and biodiversity. (En)
Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels. (En)
To preserve and enhance the rural and bushland character of the area. (En, S)
Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management. (En, S)

The required controls require a minimum landscaped area of 60%. The proposal will see an increase in the overall soft landscaping area from 233m² or 33% of the site area to 338m² or 48% of the site area.

The available area of soft landscaping has been significantly increased through the removal of redundant paving and the introduction of landscaping over the proposed garage. New plantings are to be provided throughout the site as detailed in the submitted Landscape Plan prepared by SAS Landscapes.

Notwithstanding the variation to the landscaped area control, the proposal will result in an improvement in soft landscaping and is therefore considered worthy of support on merit.

The existing development and site pose a challenge to development that fully complies with this control.

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 Pittwater Local Environmental Plan 2014 and the relevant supporting Council policies. It is considered that the provisions of this environmental planning instrument have been satisfactorily addressed within this report and that the proposal achieves compliance with its provisions.

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

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

There are no draft instruments applying to the land.

7.3 Any development control plan

The development has been designed to comply with the requirements of Council's Pittwater 21 Development Control Plan 2014.

The application has been prepared having regard to the requirements of Section B, Section C and Section D of the Pittwater 21 DCP.

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 the front setback (Barrenjoey Road) and landscaped area control is a reasonable alternative solution to compliance where the existing development on site results in a challenge to designing for new development which fully respects the building envelope, rear setback and landscaped area criteria.

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.

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 proposed construction of alterations and additions to existing dwelling including a new garage, lift and alterations to existing driveway, which will not unreasonably impact upon the amenity of adjoining properties or upon the character of the surrounding area. It is considered that the resultant development is compatible with and will complement the character of the area.

The proposal is considered to be well designed having regard to the relevant provisions of the Council's PLEP 2014 and Council's Codes and Policies, in particular the Pittwater 21 DCP and the Newport Locality Statement.

7.7 The suitability of the site for the development

The subject land is currently zoned E4 Environmental Living under the Pittwater Local Environmental Plan 2014 and is considered suitable for the proposed development and is permissible under the provisions of the LEP.

7.8 Submissions made in accordance with this Act or the regulations

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

7.9 The public interest

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

8.0 Conclusion

The principal objective of this development is to provide for proposed construction of internal and external alterations and additions to the existing dwelling including a new garage, lift and alterations to existing driveway, to enhance the functionality and enjoyment of the property without unreasonably impacting on the adjoining properties.

It is considered that the proposed works satisfy the stated objectives of Council's Development Controls. By maintaining our neighbour's amenity and by complementing the existing style and character of the surrounding locality, the stated objectives have been satisfied.

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

APPENDIX
CLAUSE 4.6 – MAXIMUM BUILDING HEIGHT

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

3 BEACONSFIELD STREET, NEWPORT

PROPOSED CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO EXISTING DWELLING INCLUDING GARAGE, DRIVEWAY AND LIFT

For: For proposed construction of alterations and additions to existing dwelling including a new garage, lift and alterations to existing driveway
At: 3 Beaconsfield Street, Newport
Owner: Craig and Therese Rushby
Applicant: Craig and Therese Rushby
C/- Vaughan Milligan Development Consulting

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Pittwater Local Environmental Plan 2014. In this regard, it is requested Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of the Pittwater Local Environmental Plan 2014 (PLEP 2014).

2.0 Background

Clause 4.3 restricts the height of a building in this locality to a maximum of 8.5m and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposed alterations and additions to the dwelling will see a reduction in the overall building height from RL 56.580 (12.380m height) by 1.03m to a new maximum building height of RL 5.550 (11.35m height) which exceeds Council's maximum building height by 2.85m or 33.5% 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 Pittwater Local Environmental Plan 2014 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

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

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

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for alterations and additions to an existing approved dwelling, which is consistent with the stated Objectives of the E4 Environmental Living Zone, which are noted as:

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

As sought by the zone objectives, the proposal will provide for alterations and additions to an existing dwelling including a new garage, lift and alterations to existing driveway to provide for increased amenity for its residents.

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

The proposal will see a reduction in the overall maximum building height by 1.03m from RL 12.380 to RL 11.35, which does not comply with the statutory height limit.

Notwithstanding the reduction in the extent of the building's existing non-compliance with the maximum overall height, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood.

The demolition of existing pitched roof form and the construction of a new flat roof will see a reduction in the overall height of the existing dwelling by 1.03m.

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 E4 Environmental Living Zone. The objectives of the E4 zone are noted as:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

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

Comments

It is considered that notwithstanding the extent of the non-compliance with the maximum building height control (2.8m), the proposed alterations and additions to the existing dwelling will be consistent with the individual Objectives of the E4 Environmental Living zone for the following reasons:

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

The proposal will see a decrease in the overall building height by 1.03m. The works to the dwelling are modest and will not see any major external works changing the bulk and scale.

The contemporary building form with flat roof and recessive external finishes will reduce the visual bulk of the development.

As the form of the dwelling remains largely unchanged, the existing view corridors and solar access received by neighbouring properties will be maintained.

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

The design is considered to be an improvement in terms of the building's appearance and visual impact and for these reasons, the development does not result in an adverse impact on the special aesthetic values of the site.

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

The existing dwelling contains three levels, with a pitched roof over the existing stairwell. The proposal removes the pitched roof and provides for a new flat roof form.

The general bulk and scale of the dwelling remains unchanged.

The setbacks are compatible with the existing surrounding development and the proposal does not have an adverse impact on long distance views.

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 any building, by virtue of its height and scale, is consistent with the desired character of the locality,*

- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) to minimise any overshadowing of neighbouring properties,*
- (d) to allow for the reasonable sharing of views,*
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

Despite the minor to the maximum building height, the proposed alterations and additions are considered to be in keeping with the relevant Objectives of Clause 4.3 for the following reasons:

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

The Objective of Clause 4.3 (1)(a) seeks to ensure buildings, by virtue of their height and scale are consistent with the desired future character of the locality.

The surrounding area is predominantly characterised by one and two storey development, however the existing approved dwelling contains three levels and it also forms part of the local character and streetscape.

The proposal seeks to accommodate the existing upper level facilities within a more appropriate and visually sympathetic building form, with the contemporary flat roof reducing the overall building height by 1.03m.

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

The new works will see an improvement on the current situation.

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

The works will see a reduction in the overall height through the introduction of a flat roof form. The modifications to the existing building which will introduce increased modulation and a recessive materials treatment to the external finishes of the dwelling will ensure that the dwelling will be compatible with the form and nature of the surrounding development.

(c) to minimise any overshadowing of neighbouring properties,

As the proposal will see a reduction in overall ridge height and will not see any change to the general form of the existing building, the overall bulk and scale of the new works will appropriately maintain the neighbour's amenity and will not see any unreasonable loss of solar access for the subject site and neighbouring properties.

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

The surround properties will maintain their views to the west towards Pittwater as a result of the sloping land. Views past the site are generally along the side setback areas.

Given the proposal will reduce the overall height of the dwelling, some improved views may be available for more distant properties across Barrenjoey Road.

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

The site responds to the topographical constraints to development. The general form of the dwelling remains unchanged.

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

The development will not have any direct or adverse impacts on any heritage items of the conservation areas in the wider area.

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 alterations and additions to an existing building, which is constrained by the nature of the existing development on site.

Council's controls in Clause 4.3 provide a maximum building height of 8.5m above the natural ground level.

It is considered that the proposal achieves the Objectives of Clause 4.3 and that the development is justified in this instance for the following reasons:

- The proposed new works are modest in bulk and scale and will complement the character of the existing locality. The works will see a reduction in the existing overall height of the dwelling.
- As the proposal will not exceed the existing ridge height and presents only a minor change to the existing side setbacks which remain compliant, the overall bulk and scale of the new works will appropriately maintain the neighbour's amenity and will not see any unreasonable loss of solar access for the subject site and neighbouring properties.

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: Not applicable.

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

The proposed alterations and additions to the dwelling will provide a height of 11.35m or a 2.85m variation, reduced from an existing non-compliance of 3.88m above the 8.5m height control.

Having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for maximum building height.

In the recent 'Four2Five' judgement (*Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the

circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

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

The 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 proposed additions to the dwelling are compatible with the nature of the surround locality and, which promotes the orderly & economic use of the land.
- Similarly, the new works will provide for an appropriate level of family accommodation and improved amenity within a built form which is compatible with the streetscape of Beaconsfield Street, 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 alterations and additions to the existing building to include a reduction in the overall height of the building by 1.03m to a maximum building height of 11.35m.

This variation occurs as a result of the siting of the existing development on site and the design introducing a flat roof form which results in an overall reduction in the building height.

This written request to vary the maximum building height control specified in Clause 4.3 of the Pittwater LEP 2014 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.

A handwritten signature in black ink, consisting of the first name 'Vaughan' and the last name 'Milligan' written in a cursive style.

VAUGHAN MILLIGAN

Town Planner