

APPENDIX
CLAUSE 4.6 – HEIGHT OF BUILDINGS

Prepared April 2024

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

14 BASSETT STREET, MONA VALE

FOR PROPOSED ALTERATIONS & ADDITIONS TO AN EXISTING DWELLING

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM BUILDING HEIGHT
CONTROL AS DETAILED IN CLAUSE 4.3 OF THE PITTWATER LOCAL ENVIRONMENTAL PLAN 2014**

For: Proposed alterations and additions to an existing dwelling
At: 14 Bassett Street, Mona Vale
Owner: Jennifer Darin, Dennis Cooper, Alan Green & Laura Green
Applicant: Jennifer Darin, Dennis Cooper, Alan Green & Laura Green
c/- VMDC Planning

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

The maximum building height in this portion of Mona Vale is 8.5m. The existing dwelling (lift shaft) stands at a maximum height of 9.87m (RL 26.89).

The proposed additions and alterations to the first floor level will see a new skillion roof form which encompasses the existing lift to integrate it within the new first floor level. The height to the roof level over the lift will be up to 10.170m, which presents a 1.67m or 19.64% variation to the building height development standard, when measured to the existing ground level within the site which is an artificially lowered level through previous excavation for the lower ground floor level.

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

When the excavated lower level is used as the reference point for the 8.5m height control, the proposed additions and alterations present a non-compliance with the maximum building height standard, having a height of up to 10.17m.

When measured above the external ground levels and in particular the western elevation where the new skillion roof rises to its highest point, the visual height of the building does not exceed 8.5m when viewed from the west and north. From the east and south, the building presents as a stepped two storey height.

The extent of the breach of the building height control is directly related to the extent and form of the existing development and the slope of the land to the south-west towards the road verge along Bassett Street.

The figure below notes the variation to the maximum height control and demonstrates the height levels for the new roofline based on the existing ground levels as shown on the plans.

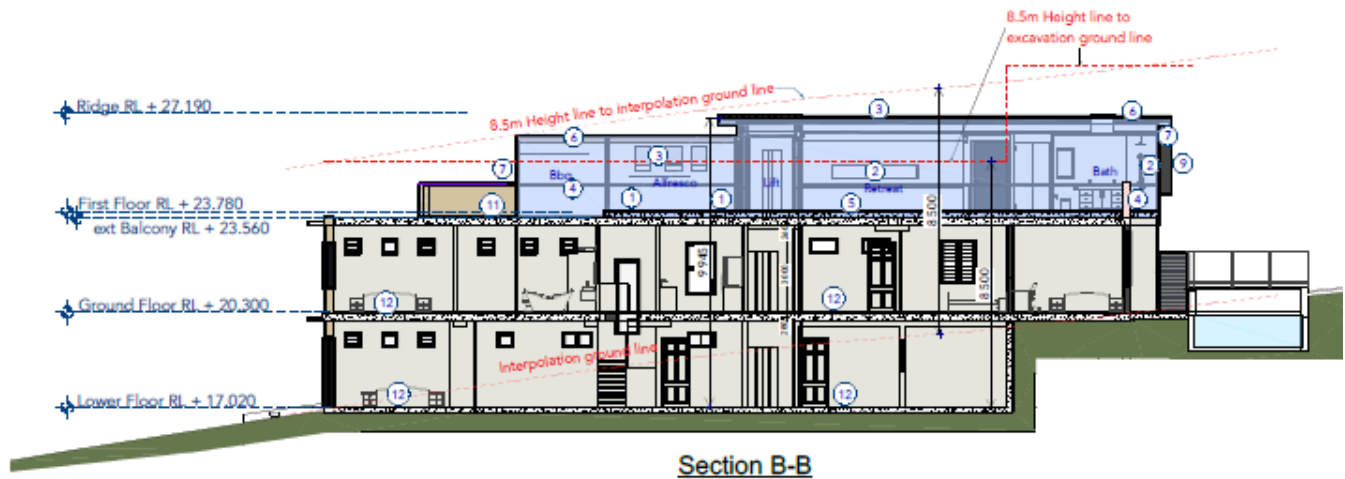


Fig 1: Building section indicating the height of the new works

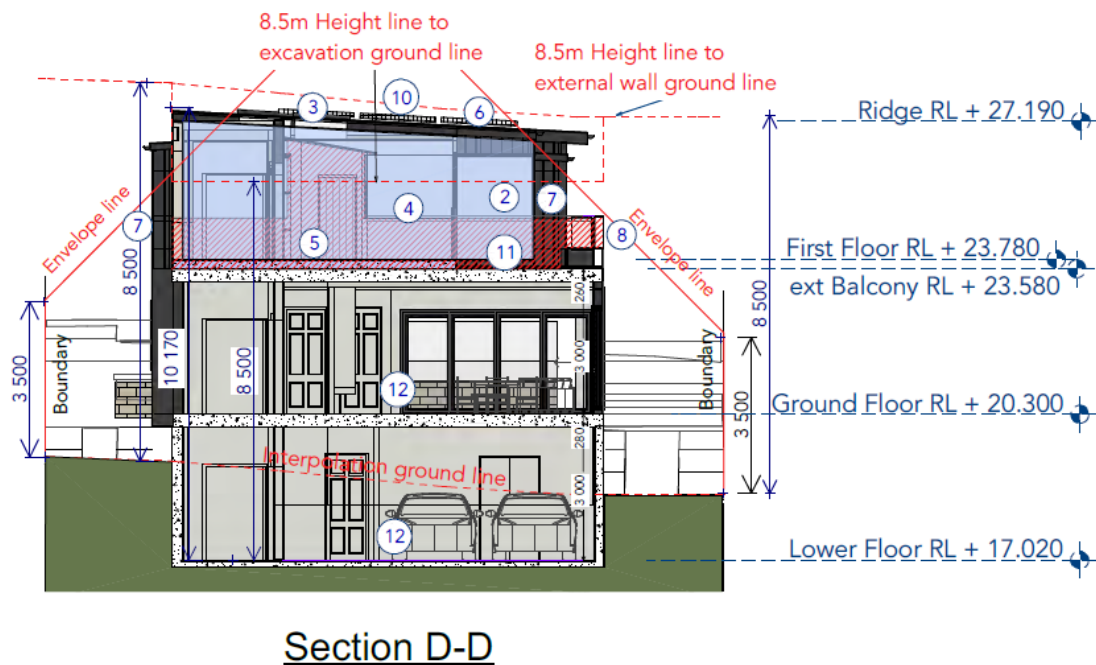


Fig 2: Building section indicating the height of the new works

The demonstrated building height variation is minor and restricted to only a small portion of the roof area of the new first floor plan of the dwelling house corresponding with the sloping topography.

As noted in *Merman* [at 74] the prior excavation of the site within the footprint of the existing building, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the land, is considered to be an environmental planning grounds within the meaning of clause 4.6 (3)(b) of PLEP 2014.

The proposal is considered acceptable and there are sufficient environmental planning grounds to justify contravening the development standard.

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

2.1 Authority to vary a Development Standard

In September 2023, the NSW Government published amendments to Clause 4.6 of the Standard Instrument which change the operation of the clause across all local environmental plans, including the Pittwater LEP. The changes came into force on 1 November 2023.

The principal change is the omission of subclauses 4.6(3)-(5) and (7) in the Standard Instrument Principal Local Environmental Plan.

The following changes have been made as a result of this:

- Clause 4.6(3) was amended such that the requirement to ‘consider’ a written request has been changed with an express requirement that the consent authority ‘be satisfied that the applicant has demonstrated’ that compliance with the development standard is unreasonable or unnecessary.
- Clause 4.6(4)(a)(ii) was amended such that the requirement that the consent authority must be satisfied that the proposed development in the public interest has been removed.
- Clause 4.6(4)(b) & 5 amended such that the requirement for concurrence from the Planning Secretary has been removed.

The objectives of clause 4.6 of the LEP, as amended, seek to recognise that in the particular circumstances of this case strict application of development standards may be unreasonable or unnecessary. The clause provides objectives and a means by which a variation to the development standard can be achieved as outlined below:

Clause 4.6 Exception to development standard

(1) The objectives of this clause are as follows—

- (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.*

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
- (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

Note—

The [Environmental Planning and Assessment Regulation 2021](#) requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

(5) (Repealed)

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note—

When this Plan was made it did not include all of these zones.

(7) (Repealed)

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

- (a) a development standard for complying development,
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,
- (c) clause 5.4,
- (caa) clause 5.5.

Is Clause 4.3 of the LEP a development standard?

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act means standards fixed in respect of an aspect of a development and includes:

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

- (b) Clause 4.3 relates to the maximum height of a building. Accordingly, Clause 4.3 is a development standard.

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 Standard Instrument 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 relied on in this request for a variation to the development standard.

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

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

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

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

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

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

Clause 4.6(2) of the LEP provides:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Clause 4.3 (the Height of Buildings control) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the LEP.

Clause 4.6(3) of the LEP provides:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

The proposed development does not comply with the maximum building height development standard pursuant to Clause 4.3 of PLEP which specifies a maximum building height of 8.5m in this area of Mona Vale. The proposed alterations and additions to the existing dwelling will accommodate a new first floor with a variation to the building height development standard of 1.67m to the portion of the new roof over the existing lift at the first floor level. The additional upper level will maximise the amenity and floor space for the occupants, while providing a more modern roof design consistent with more modern developments within the immediate area.

Strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation.

Clause 4.6(6) relates to subdivision and is not relevant to the development.

Clause 4.6(8) is only relevant so as to note that it does not exclude Clause 4.3 of the LEP from the operation of clause 4.6.

The specific objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide additions and alterations to the existing dwelling, which is consistent with the stated Objectives of the R2 Low Density Residential Zone, which are noted as:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage development that is sympathetic to the scenic, aesthetic and cultural heritage qualities of the built and natural environment.*

As sought by the zone objectives, the proposal will provide for an alterations and additions to an existing dwelling which is designed to accommodate the existing dwelling position, the sensitive coastal location and the sloping topography of the locality.

The non-compliance with the building height control arises as a direct result of the sloping topography of the site and position of the existing dwelling over the previously excavated portions of the site. The site levels fall towards the road verge at the south-western boundary, with the building height variation of the new upper floor occurring as a direct result of the existing dwelling location over the excavated area of the site combined with the sloping nature of the site.

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

The proposed additions to the dwelling will not introduce unreasonable impacts on the existing views enjoyed by neighbouring properties, nor create unreasonable or adverse impacts to the existing levels of solar access or privacy enjoyed by adjoining dwellings.

Notwithstanding the non-compliance with the maximum building height control, the new works will provide an attractive addition to the existing residential development that will continue to maintain

the building's contribution to the character and function of the local coastal residential neighbourhood.

5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the maximum building height standard contained in Clause 4.3 of PLEP.
- 5.2 Clause 4.3 of PLEP specifies a maximum building height of 8.5m in this area of Mona Vale.
- 5.3 The proposed additions and alterations to the existing building and in particular the new skillion roof form which incorporates the existing lift within the new roof to the first floor level will see a height of up to 10.17m, exceeding the height standard by 1.67m or 19.64%.

6.0 Relevant Caselaw

- 6.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular, the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:
 - 17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
 - 18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
 - 19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
 - 20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
 - 21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was*

also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

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

1. Is Clause 4.3 of PLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be consistent with the objectives of Clause 4.3 and the objectives for development for in the R2 zone?
4. Where the consent authority is the Court, has the Court considered the matters in clause 4.6 when exercising the power to grant development consent for the development that contravenes Clause 4.3 of PLEP?

7.0. Request for Variation

7.1 Is compliance with Clause 4.3 unreasonable or unnecessary?

- (a) This request relies upon the 1st way identified by Preston CJ in *Wehbe*.
- (b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved.
- (c) Each objective of the maximum building height standard, as outlined under Clause 4.3, and reasoning why compliance is unreasonable or unnecessary, is set out below:

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

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

The surrounding area is predominantly characterised by two and three storey development corresponding with the sloping topography.

The proposal seeks to accommodate the new works within a compatible building form, with the slope of the site towards the south-west results in the south-western area of the roof over the first floor displaying a building height of 10.17m, which is a marginal increase over the existing lift height of 9.87m and results from the new skillion roof over the existing lift element.

The uneven topography and excavated contours of the land influence the requirement to seek a variation under Clause 4.6.

The land has a sloping topography from the front to the rear of the site, which influences the building height and roof elements which exceed the corresponding height plane. The proposed variation to the building height is not readily distinguished when viewed from the Bassett Street frontage due to the location on the upward slope of the land.

In response to the site conditions, the generous setbacks, recessed design within the existing footprint, open balcony elements, differing materiality and a flat roof form are used to reduce building bulk. The styling of the building is consistent in terms of streetscape and general landscape elements. The built form is consistent with the existing pattern of newer development in the Bassett Street area.

The varied form of the first floor addition includes a minimal pitch skillion roof design to minimise impact while creating a more modern visual interest. Detailed solar access diagrams are provided to demonstrate that the proposed height variation does not create any unreasonable impact on solar access to adjacent land.

Detailed view considerations have been made with the assessment of the proposal, including considerations to accommodate view sharing across the site toward the coastal areas of Mona Vale Beach, and ocean views.

Accordingly, the building height is acceptable with regard to the streetscape when viewed in context with adjacent and nearby dwellings and when viewed from the public road level and nearby public.

By retaining the building's contribution to the local streetscape and its building heights and setbacks, the works will be consistent with the desired character of the Mona Vale locality.

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

The proposed development maintains consistency with the height and scale of the existing building and the surrounding dwellings in the immediate vicinity. The proposal is a site-specific design response which takes advantage of the properties superior coastal locational attributes whilst respecting the environmental characteristics of the site and the amenity of adjoining development.

The outcome is a modernised dwelling of exceptional design quality which displays a highly articulated building form which appropriately responds to the sites existing dwelling, geometry and the constraints imposed by the siting and design of adjoining development in relation to privacy, solar access and views.

The floor space appropriately distributed across the site. The building displays a complimentary and compatible building form when compared to other development located within the site's visual catchment generally.

The articulated side boundary setbacks maintain the rhythm of development and building setbacks within the street and provide appropriately for spatial separation, deep soil landscape opportunity, privacy, solar access and view sharing.

Whilst compliance with the height control is constrained by the sloping topography of the site in the form and heights of the existing building on the site, the development is considered appropriate and compatible within the locality and is therefore worthy of support.

(c) to minimise any overshadowing of neighbouring properties,

The extent of the proposed overshadowing is reflected in the shadow diagrams submitted with the architectural package and which note that the height of the new works will not unreasonably affect the primary living spaces and outdoor areas of the adjacent neighbour to the south, with the proposal consistent with Councils solar access requirements.

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

The dwelling house at No.14 Bassett is sited well forward of the proposed building line of the proposed first floor, meaning the proposed first floor does not intrude into the existing view lines across the southern portion of the site. Similarly, views across the rear of the site are generally maintained for properties to the north and north-

The development has no unreasonable impact upon the existing views from further up slope of the site due to the higher placement/vantage point of these properties.

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

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

The proposal includes a new first floor, with a minor area of roofline overall over the required 8.5m height requirement due to the existing excavated site and sloping topography. The new first floor will create an improved visual presentation of being stepped down the sloping site and as the primary outlook for the adjoining neighbours is retained, and the building will continue to present a compatible bulk and scale, the works are considered 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.

The proposed works will not see any further site disturbance, or loss of landscaped area. The site does not join any sites of heritage significance and the proposal is considered to be reasonable in this portion of Bassett Street and the Mona Vale locality.

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

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

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

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

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

- The height non-compliance can be attributed to the prior excavation of the site within the footprint of the existing building, which has distorted the height of buildings development standard plane overlaid above the site when compared to the topography of the existing land and this is considered to be an environmental planning grounds which supports the variation to the control.
- The proposed development will maintain the general bulk and scale of the existing surrounding development and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).
- Similarly, the proposed development will provide for improved amenity within a built form which is compatible with the streetscape of Bassett Street which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The topography has influenced the design response of the floor levels, side and front setbacks positions, built form, and amenity considerations for coastal views in context with surrounding houses, which is consistent with the Objective 1.3 (g).
- The proposed development improves the amenity of the occupants and respects the current levels of privacy, amenity and solar access enjoyed by the surrounding this replicating the existing built form (1.3(g)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly when considering the bulk, height, setbacks and selected elements of the proposal have been designed in consideration to minimise elements that contribute to the height and scale of the upper level to ensure non-complying elements do not contribute to unreasonable views and overshadowing.

These are not simply benefits of the development as a whole, but are benefits emanating from breach of the maximum building height control.

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

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental

planning grounds to justify contravening the development standard.

7.3 Is the proposed development consistent with the objectives of Clause 4.3 and the objectives of the R2 Low Density Zone?

- (a) Section 4.2 of this written request suggests the 1st test in Wehbe is made good by the development.
- (b) Each of the objectives of the Low Density Residential Zone and the reasons why the proposed development is consistent with each objective is set out below.

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

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

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

It is considered that notwithstanding the variation of to the building height control, the proposal which involves additions and alterations to the existing building will be consistent with the individual Objectives of the R2 Low Density Residential Zone following reasons:

- ***To provide for the housing needs of the community within a low density residential environment.***

The proposed height variation does not offend this objective of the zone in that the use of the dwelling remains for detached housing and is provided for within a landscape setting that is compatible with the scale, density and pattern of surrounding development. It is considered that the development satisfies this objective.

The height variation does not impact the scenic setting of the site and the surrounding steep topography. The surrounding dwellings form a backdrop to the dwelling that are consistent with the pattern of surrounding development within the Bassett Street locality.

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

This clause is not relevant to the proposal as no other (non-residential services or facilities) are proposed. It is considered that the development satisfies this objective.

7.4 Has the Council considered the matters in clause 4.6 of PLEP?

- (a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the new dwelling house within the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.
- (b) As the proposed development complies with the objectives of the development standard and the objectives of the zone, there is no significant public benefit in maintaining the development standard.

8.0 Conclusion

This development proposed a departure from the maximum building height development standard, with the proposed alterations and additions to the existing dwelling to provide a maximum building height of 10.17m which is a variation to the standard of 1.67 or 19.64%.

This variation occurs as a result of the existing excavation, sloping topography of the site, and the inclusion of the new roof form to the first floor level which includes the existing lift in order to integrate it within the design of the new work.

The proposed development does not adversely impact the Mona Vale coastal area or neighbouring properties and will substantially improve the amenity of the existing dwelling.

The unique site constraints provide sufficient environmental planning grounds to justify contravening the development standard.

This written request to vary to the maximum building height standard specified in Clause 4.3 of the Pittwater LEP 2014 adequately demonstrates that the objectives of the standard will be met.

Strict compliance with the maximum building height control would be unreasonable and unnecessary in the circumstances of this case.



VAUGHAN MILLIGAN

Town Planner