



PITTWATER LEP 2014

Clause 4.6 Exceptions to Development Standards – Height of Buildings

Proposed Demolition of Existing Building and Construction of a
New Dwelling House at

**No. 121 Pacific Road,
Palm Beach**

Prepared for:

Kede Carboni

c/o Daniel Boddam Architecture

PO Box 1946

Potts Point NSW 1335

Prepared by:

GSA PLANNING

Urban Design, Environmental & Traffic Planners

(A.B.N 89 643 660 628)

95 Paddington Street, Paddington NSW 2021

p: 02 9362 3364

e: info@gsaplanning.com.au

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PITTWATER LOCAL ENVIRONMENTAL PLAN (LEP) 2014
CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

APPLICANT'S NAME: Kede Carboni c/o Daniel Boddam Architecture

SITE ADDRESS: No. 121 Pacific Road, Palm Beach

PROPOSAL: Proposed Demolition of Existing Building and Construction of a New Dwelling House

1. (i) Name of the applicable planning instrument which specifies the development standard:

Pittwater Local Environmental Plan (LEP) 2014

(ii) The land is zoned:

E4 Environmental Living Zone

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

(iii) The number of the relevant clause therein:

Clause 4.3 – Height of Buildings

This Clause 4.6 Exception to Development Standards should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by GSA Planning.

2. Overview

This Clause 4.6 Exception to Development Standards has been prepared in accordance with the most recent case law. In our opinion, the variation is consistent with the objectives of the zone and development standard and has demonstrated there are sufficient environmental planning grounds to justify contravening the development standard.

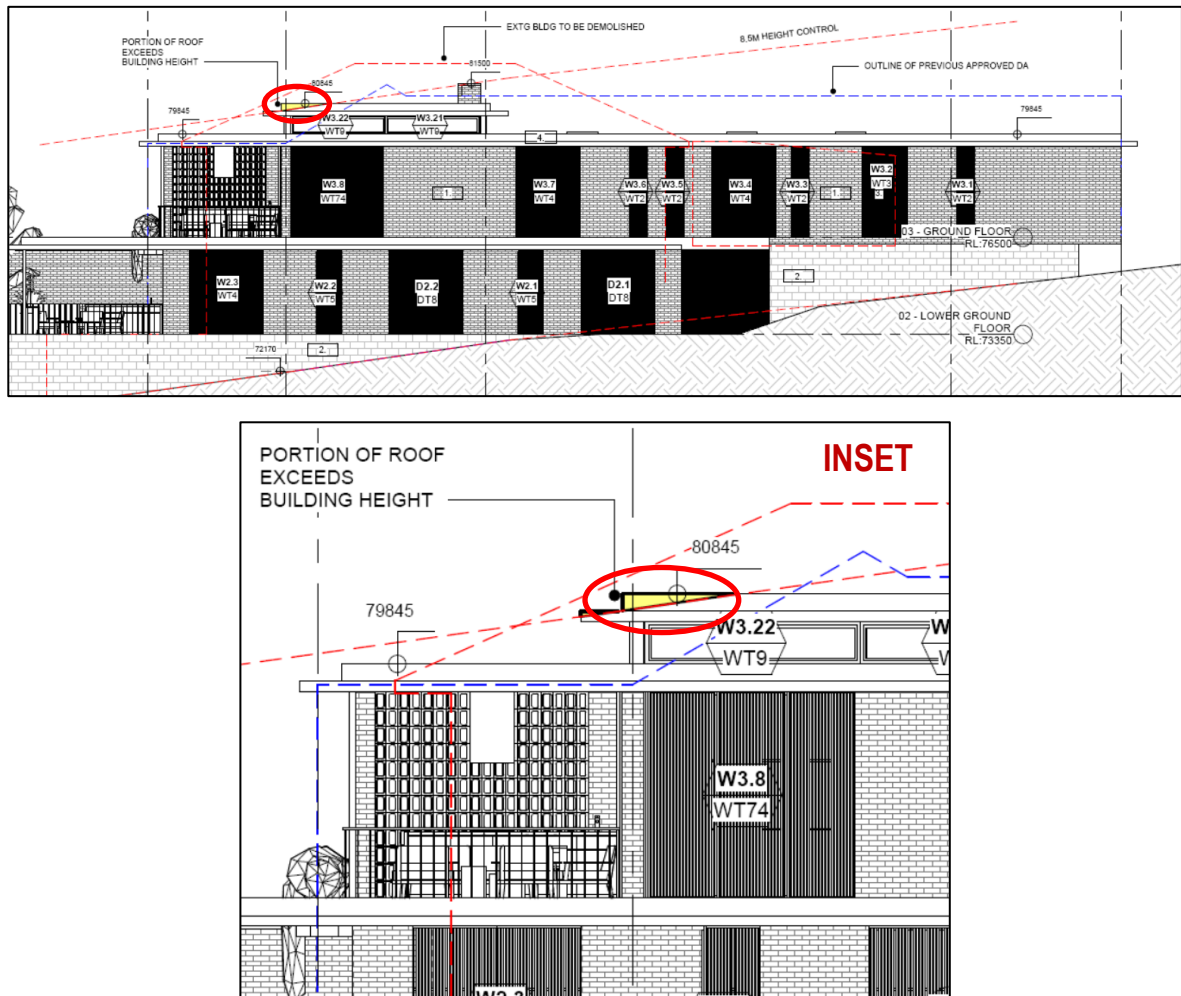
2. Background

In 2020, a Development Application (DA) was lodged with Northern Beaches Council for demolition of the existing structures on the site, and construction of a new dwelling, driveway, swimming pool and landscape works (DA2020/0133). The proposal had a single storey pitched roof appearance from the street, and two storeys from the rear. It had a maximum height of 9.042m, which was a variation of 6.35% over the maximum 8.5m development standard under the LEP. This was supported in a Clause 4.6 Exception to Development Standard. In its assessment report, Council deemed that the Clause 4.6 adequately demonstrated there are sufficient environmental grounds to justify contravening the development standard. On 28 July 2020, Council granted deferred development consent, subject to a number of conditions.

3. Specify the nature of Development Standard sought to be varied and details of variation:

The development standard to which this request for variation relates is Clause 4.3 of the LEP – Height of buildings. This Clause operates in conjunction with the Height Map which indicates a maximum 8.5m applies to the subject site. Clause 4.3 is consistent with the definition for a development standard under Section 1.4 of the Environmental Planning and Assessment Act 1979 (EPA Act).

The proposal largely complies with the height development standard, with the exception of a small portion of the flat roof structure over the ground floor living/dining area on the northern side of the dwelling, which reaches a maximum height of 8.675m, measured to the highest roof level at RL 80.845 AHD. The non-compliance is predominantly a result of the topography of the site, which has a steep west to east slope, in addition to a south to north slope. The extent of non-compliance is in the order of 2% and relates to a small part of the roof. By comparison, the existing dwelling has a maximum assumed height of approximately 8.9m, measured from the roof ridge at RL 82.14 AHD to the existing ground line immediately below (accounting for approximately 0.45m structure and clearance below the existing ground floor level), which is an existing non-compliance. However, it is also noted that the maximum roof level of the proposal will be approximately 1.29m lower than the existing maximum ridge (see Figure 1).



Source: Daniel Boddam Architecture and Interior Design

Figure 1: Elevation Demonstrating Maximum Height
(extent of non-compliance circled and coloured yellow)

4. Consistency with Objectives of Clause 4.6

The objectives of Clause 4.6 seek to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development. In the Court determination in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] 236 LGERA 256 (*Initial Action*), Preston CJ notes at [87] and [90]:

Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...In any event, Clause 4.6 does not give substantive effect to the objectives of the clause in Clause 4.6(a) or (b). There is no provision that requires compliance with the objectives of the clause.

However, it is still useful to provide a preliminary assessment against the objectives of the Clause. The objectives of Clause 4.6 and our planning response are as follows:

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

Flexibility is sought in the application of the height development standard to the proposed development in the circumstance of this particular case. In our opinion, the proposed maximum height of 8.675m is appropriate given the site constraints and surrounding context. The proposal complies minimum site area development standard under the LEP and the majority of DCP controls. In addition, flexibility is sought because the maximum roof ridge of the existing dwelling is greater than the proposed roof and the extent of the non-compliance will not result in unreasonable impacts to nearby dwellings.

Flexibility in this circumstance would result in a better outcome for the development. The majority of the proposed roof is located below the 8.5m height limit. The area of non-compliance only covers a portion of the roof structure at the northern end. The proposed flat roof form will maintain a low scale appearance from the street will provide a transition in scale between developments on the northern and southern site of the site, thus maintaining compatibility with the character of the locality. This will improve the streetscape appearance and the amenity for the residents.

5. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The Clause states, inter alia:

- (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.*

This written request justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in these circumstances; and there are sufficient environmental planning grounds to justify the non-compliance. These matters are discussed in the following sections.

5.1 Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 (*Wehbe*), Preston CJ established five potential tests for determining whether a development standard could be considered unreasonable or unnecessary. This is further detailed in *Initial Action* where Preston CJ states at [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 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.

It is our opinion that the proposal satisfies Test 1 established in *Wehbe* and for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant test will be considered below.

Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard;

Despite the proposed development's non-compliance with the applicable height development standard, the proposal is consistent with the desired low density and environmental character of the area. The proposal provides a height, bulk and scale that is generally consistent with that envisaged by Council's controls. Reasons why the proposed development is consistent with the objectives of the height standard are explained below.

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

'Desired future character' is not defined in the LEP. In *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115 [63] ('SJD'), Preston CJ states, inter alia:

...the desired future character of the neighbourhood or area can be shaped not only by the provisions of WLEP, including the development standards themselves, but also other factors, including approved development that contravenes the development standard.

Accordingly, the desired future character is shaped by the text and context of the LEP and recent approvals in the vicinity. The relevant clauses in the LEP which relate to urban character and built form are:

- a. The zoning of the land (Clause 2.2 and the Land Zoning Map);
- b. The zone objectives (Clause 2.3);
- c. The land use table (at the end of Part 2); and
- d. The development standards in Part 4:
 - i. Clause 4.3 Height of Buildings and Height of Buildings Map which prescribes a maximum height of 8.5m.

The E4 Environmental Living Zone permissible uses envisage dwelling house which is both existing and proposed on the site. Indeed, the most recent approval on the site had a maximum height of 9.042m, which is higher than the maximum height of the proposal.

The locality is characterised by two storey dwelling houses displaying a range of architectural styles. Older dwellings are being replaced with contemporary designed buildings that represent the future character of the area.

As indicated in the accompanying SEE, the desired future character of the Palm Beach locality includes a primarily low density residential area of two storeys in height, within a landscaped setting. Future development is to maintain a building height limit that is below the tree canopy and will minimise bulk and scale. Existing and new vegetation is to be integrated with the development. Contemporary buildings will utilise façade modulation and include shading elements. Building colours are to harmonise with the natural environment and developments on sloping site would minimise site disturbance. The future character of the locality will provide a balance between maintaining the landform and natural landscaping features of the site, with development of the land.

In our opinion, the proposal satisfies the desired future character of the Palm Beach locality. This is achieved by creating a low-density contemporary dwelling house that appears as single storey from the street (similar to the existing) and two storeys when viewed from the rear. The proposed flat roofed and stepped built form will maintain compatibility with existing and emerging development in the locality. The dwelling will be well modulated, with balconies/verandahs providing articulation at the rear. New landscaping will be well integrated into the design of the dwelling and throughout the site and will maintain the densely landscaped character of the area. As important, the area of non-compliance is limited to one portion of the flat roof on the northern side which will not be readily visible from the street and will not be discernible from nearby development.

Accordingly, although a small part of the proposal will exceed the height control, this is unlikely to have any significant adverse impacts as the design is generally contained within a compliant building envelope.

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

The area of non-compliance occurs at the roof of a proposed two storey dwelling house, which will remain compatible with other two storey dwelling houses that are commonly found in Pacific Road. This was supported in the Council officer's report for the previously approved DA which stated inter alia:

The proposal satisfies the desired future character of the Palm Beach locality by creating a low density dwelling house that appears as a single storey when viewed from the street and two storeys from the rear. The proposed dwelling will retain a residential scale...and will positively contribute to the desired character of the area.

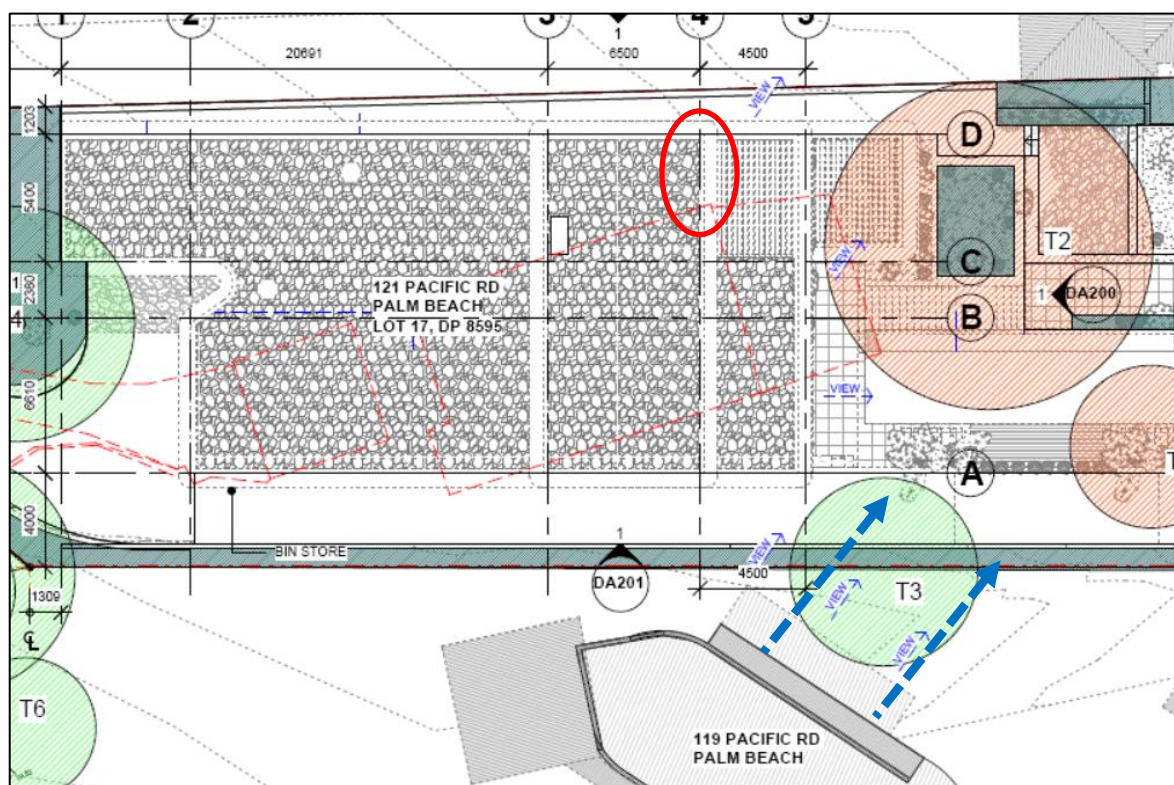
(c) to minimise any overshadowing of neighbouring properties

The shadow diagrams provided indicate the proposal will not create unreasonable shadow impacts on adjoining properties. As the area of non-compliance occurs on the northern side of the dwelling, it will not have an adverse impact on the extent of overshadowing to No. 119 Pacific Road to the south, when compared to a compliant height.

(d) to allow for the reasonable sharing of views

The accompanying SEE states that the proposal is not likely to create unreasonable view impacts on adjoining development. The area of height non-compliance will not interfere with the north-eastern

water views currently enjoyed by No. 119 Pacific Road. This is due to that property being located higher than the subject site as well as the proposed flat roof being substantially lower than the existing roof ridge (see Figure 2 on the following page).



Source: Daniel Boddam Architecture and Interior Design

— — — — — Existing View Lines from
No. 119 Pacific Road

Figure 2: Location of the Non-Compliant Roof Area (circled red),
Relative to No. 119 Pacific Road

In respect of views, the SEE states, inter alia:

The site and adjoining developments on the eastern side of Pacific Road enjoy views towards the Pacific Ocean and parts of Palm Beach towards the north east, from various locations and to varying degrees. Within the site, these views are available from the living areas and balconies/terraces located at the rear at the upper (ground) level of the dwelling. It is surmised that similar water views are obtained from the living rooms and/or balconies from adjoining development. Properties that are located on a higher level due to the sloping topography would enjoy more expansive views.

Views from the adjoining properties to the north at Nos. 123, 125 and 125A Pacific Road will not be affected by the proposed dwelling. Views from No. 119 Pacific Road will likely be maintained, given this property is higher than the subject site and is set back further from the eastern frontage than the proposal to maximise views

The proposal complies with Council's major building envelope controls in relation to building height (with minor exception) and setbacks, and complies with the majority of relevant controls under the DCP. The proposed flat roof is also lower than the maximum ridge of the existing dwelling house, and indeed the previously approved DA, and has a stepped built form at the rear. The main dwelling will have similar rear setbacks to the existing dwelling. The proposal will therefore not unreasonably obscure any view corridors or create adverse view impacts when compared to the existing situation. Accordingly, in our opinion, the proposal is appropriate in respect of views.

In respect of this objective, the Council officer's report for the previously approved DA (with a greater level of height variation stated the following:

The proposal allows for a reasonable sharing of views between adjoining and neighbouring dwellings. In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, were applied to the proposal as discussed elsewhere in this report. In summary, the proposal is considered appropriate for the subject site and acceptable with regards to view sharing principle.

As the current proposal has a similar built form, albeit with a flat roof and a smaller overall building height than the approval, it is our opinion, that the same comments would apply in this situation.

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

The proposal has been designed to respond sensitively to the natural topography. The proposal has a single storey appearance when viewed from the street, to maintain a low density residential appearance and the area of height non-compliance is not easily discernible from the public domain. Notwithstanding this, the proposal has two storey stepped built form at the rear which is desirable on sloping sites to minimise visible bulk. This was also supported in the Council officer's report for the previous DA.

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

The proposal presents a modest two storey dwelling house within a large allotment that will unlikely have adverse visual impacts on the natural environment or nearby heritage items. The proposal presents as a single storey dwelling when viewed from Pacific Road and a stepped two storey appearance from the rear. The extent of non-compliance occurs on the northern side of the dwelling which faces sites that contain heritage items. Notwithstanding this, the proposed built form complies with the side setback controls and as the topmost part of the roof is only 175mm over the height standard, it is lower than the existing roof ridge and will not be easily discernible from the adjoining properties.

5.2 There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

As discussed in the SEE, the proposal will maintain the residential use which is permissible within the E4 Environmental Living Zone and will be consistent with the zone objectives. The proposed height is a contextual fit with the density and scale of the area. In *Initial Action v Woollahra Municipal Council* [2019] NSWLEC 1097, Commissioner O'Neill states at [42] that:

I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by His Honour in Initial Action [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see s 1.3(g) of the EPA Act).

The proposal has a maximum ridge height of RL 80.845 AHD and this part of the roof is located substantially back from the portion of the roof fronting the street that complies with the standard. The subject site adjoins dwelling houses to the north that have ranging roof levels of RL 74.64 AHD to RL 81.13 AHD, and also adjoins a dwelling to the south that has a roof ridge of RL 83.33 AHD. The proposal will therefore provide an appropriate transition in height when viewed from Pacific Road. The dwelling will remain consistent with the two storey developments along Pacific Road. As indicated, there are several additional environmental planning grounds that justify the proposed height, including:

- The extent of non-compliance is minor (2% variation) and occurs at the rear of the uppermost roof form only;
- The location of the non-compliant area at the rear portion of the dwelling will not be readily noticeable from Pacific Road to the west or Florida Road to the east;
- Despite the non-compliance, the proposed height facilitates a low density residential development, consistent with the planning objectives of the area as well as other developments in the locality;
- The scale of the proposal is comparable to other dwellings within Pacific Road, and creates a more unified scale in the locality;
- The proposal represents a preferred design outcome with a flat roof design to minimise visual impact;
- Removal of the non-complying element to achieve strict compliance would not result in an improved planning outcome, given the minor exceedance of 175mm;
- The area of non-compliance would not create material impacts on the amenity of adjoining development in respect of privacy given it is located at the roof level only;
- The area of non-compliance will not create material impacts to the amenity of adjoining development in respect of solar access and views, compared to a fully height-compliant built form;
- The area of non-compliance would not create adverse impacts Maintaining environmental amenity for nearby dwellings and the public domain;
- The minor variation results in improved internal amenity for the occupants and visual amenity from the public domain.

Accordingly, in our opinion, the non-compliance will not be inconsistent with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the minor variation to the development standard, as required in Clause 4.6(3)(b).

6. Clause 4.6(4)(a) Requirements

Clause 4.6(4)(a) guides the consent authority's consideration of this Clause 4.6 variation request. It provides that:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

The applicant submits that the consent authority can be satisfied of each of the requirements of Clause 4.6(4)(a), for all the reasons set out in this written request, and having regard to the site and locality.

In our opinion, the proposal is consistent with the objectives of the height development standard, as already demonstrated; and the E4 Environmental Living Zone, as discussed below:

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

Response: The proposal will be for a low impact dwelling house.

Objective: *To ensure that residential development does not have an adverse effect on those values*

Response: The proposed single dwelling house has been carefully designed and sited to avoid adverse impacts on the ecological and aesthetic values of the site. The proposal will maintain, preserve and enhance the vegetation corridor at the rear of the property.

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

Response: The proposal will provide a two storey dwelling house that has a stepped built form as the land slopes down towards the rear. It will be contextually appropriate for the area in regard to the bulk and scale of development. The proposal has been carefully designed to integrate with the natural landform and landscape qualities of the site.

Objective: *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors*

Response: The proposal is not located in a riparian zone or within a known wildlife corridor. The proposal is also located within an elevated portion of Palm Beach. Notwithstanding this, the proposal will include planting that will retain the sites leafy character

From this, we consider the proposal is in the public interest and should be supported.

7. Clauses 4.6(4)(b) and 4.6(5) Requirements

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning, Industry and Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

Under Clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice. Since the conditions in the table do not apply in this case, the concurrence of the Secretary can be assumed.

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (*Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at [100] and *Wehbe* at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

The proposal is not considered to raise any matter of significance for State or regional environmental planning. The height non-compliance will enhance the amenity and functionality of the proposed dwelling without significantly, unreasonably or unacceptably impacting neighbouring properties. The variation to the development standard is limited to a small portion of the roof form only and will not result in any adverse privacy or unreasonable overshadowing impacts. The variation is mainly in response to the sloping topography and will not cause unreasonable view impacts to neighbouring dwellings.

The public benefit of maintaining the development standard is not considered significant given that, regardless of the non-compliance, the proposal will appear consistent in the streetscape. The proposal will provide a transition in height when viewed from Pacific Road and will present a contemporary flat roof form.

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted. The non-compliance contributes to a quality development which is consistent with the desired character of the precinct and is, in our opinion, in the public interest.

8. Conclusion

This written request has adequately demonstrated 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. This is summarised in the compliance matrix prepared in light of *Initial Action* (see **Table 1** on the following page).

We are of the opinion that the consent authority should be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives of the E4 Environmental Living Zone pursuant to the LEP. On that basis, the request to vary Clause 4.3 should be upheld.

Table 1: Compliance Matrix

Para (Initial Action)	Requirement	Section of this Report	Summary	Satisfied
10	Is it a development standard (s.1.4)	1	Yes	
11	What is the development standard	1	Clause 4.3: Height of Buildings	
12	What is the control	1 & 2	8.5m	
14	First Precondition to Enlivening the Power – Consent authority must form 2 positive opinions:		Both positive opinions can be formed as detailed below.	YES
15, 25	1st Positive Opinion – That the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3). There are two aspects of that requirement.	5	The Clause 4.6 variation has adequately addressed both matters in Clause 4.6(3) by providing a detailed justification in light of the relevant tests and planning considerations.	YES
16-22	First Aspect is Clause 4.6(3)(a) – That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Common ways are as set out in <i>Wehbe</i> .	5.1	The proposal satisfies Test of <i>Wehbe</i> : <ul style="list-style-type: none"> The objectives of the standard are achieved notwithstanding the non-compliance with the standard; 	YES
23-24	Second Aspect is Clause 4.6(3)(b) – 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 Clause 4.6(4)(a)(i) that the written request has adequately addressed this matter. The environmental planning grounds must be "sufficient" in two respects: <ol style="list-style-type: none"> The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus 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. 	5.2	Sufficient environmental planning grounds include, inter alia: <ul style="list-style-type: none"> The proposed height facilitates a low-density development consistent with the planning objectives of the area; The extent of the variation is minor (2% variation) and occurs at the rear of the uppermost roof form only; The location of the non-compliant area at the rear portion of the dwelling will not be readily noticeable from Pacific Road to the west or Florida Road to the east; Despite the variation, the proposed height facilitates a low-density residential development, consistent with the planning objectives of the area as well as other developments in the locality; The scale of the proposal is comparable to other dwellings within Pacific Road, and creates a more unified scale in the locality; The proposal represents a preferred design outcome with a flat roof design to minimise visual impact; Removal of the non-complying element to achieve strict compliance would not result in an improved planning outcome, given the minor exceedance of 175mm; 	YES

			<ul style="list-style-type: none"> • The area of non-compliance would not create material impacts on the amenity of adjoining development in respect of privacy given it is located at the roof level only; • The area of non-compliance will not create material impacts to the amenity of adjoining development in respect of solar access and views, compared to a fully height-compliant built form; • The variation would not create adverse impacts Maintaining environmental amenity for nearby dwellings and the public domain; • The minor variation results in improved internal amenity for the occupants and visual amenity from the public domain. 	
26-27	2nd Positive Opinion – That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out.	6	The proposed development is consistent with the objectives of the height standard as addressed under Test 1 of <i>Wehbe</i> . The proposal is also consistent with the objectives of the E4 Environmental Living Zone.	YES
28-29	Second Precondition to Enlivening the Power – That the concurrence of the Secretary has been obtained [Clause 4.6(4)(b)]. On appeal, the Court has the power to grant development consent, subject to being satisfied of the relevant matters under Clause 4.6.	7	As the relevant matters for consideration under Clause 4.6 have been satisfied as outlined above, the Council can grant development consent.	YES