

STATEMENT OF ENVIRONMENTAL EFFECTS

**FOR PROPOSED ADDITIONS & ALTERATIONS TO
THE EXISTING DWELLING**

LOCATED AT

287 HUDSON PARADE, CLAREVILLE

FOR

JILL MORRISON



**As Revised
April 2021**

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1.0 Introduction

This Statement of Environmental Effects accompanies architectural plans prepared on behalf of Ms Jill Morrison by H & C Design Pty Ltd, dated April 2021 to detail additions and alterations to the existing dwelling at **287 Hudson Parade, Clareville**.

The revised architectural plans and supporting consultant's information have been prepared in response to issues raised in Council's assessment of Development Application No DA2020/1761.

The revised architectural plans are supported by the following reports:

- Revised Stormwater Management Details prepared by NB Consulting Engineers, Job No 130101, Drawings No D101-D104 Issue C dated 1 April 2021
- Arboricultural Impact Assessment prepared by Bradshaw Consulting Arborists, dated 17 July 2020 and amended 7 April 2021
- Revised BASIX Certificate number A394351_02 dated 4 April 2021
- Landscape Plan prepared by Alex Woodside, Revision B dated 21 April 2021

The plans prepared by H & C Design Pty Ltd noted as Job No 20701 are variously dated and include the following sheets:

- Site Plan
- Lower Ground Floor Plan
- Ground Floor Plan
- Eastern Elevation
- Northern & Southern Elevations
- Western Elevation & Section
- Section
- Sediment Control & Fence Plan
- Shadow Diagrams 9am
- Shadow Diagrams 12pm
- Shadow Diagrams 3pm
- Site Analysis Plan
- Waste Management Plan
- Post Development Site Criteria Plan
- BASIX Details

The revised details address Council's issues through a reduction in the overall height of the building and additional Arboricultural and Civil Works plans.

The amended design as discussed in further detail within this submission.

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 (Coastal Management) 2018*
- *Pittwater Local Environmental Plan 2014*
- *Pittwater 21 Development Control Plan 2014*

2.0 Property Description

The subject allotment is described as 287 Hudson Parade, Clareville, being Lot 28 within Deposited Plan 228119. The property is zoned E4 Environmental Living under the Pittwater Local Environmental Plan 2014.

The site is not listed as a heritage item, nor is it within a conservation zone.

A small portion within the north-western extremity of the site is identified as being within the Coastal Environment Area and Coastal Use Area under the provisions of the SEPP (Coastal Management) 2018. This will be discussed further within this submission.

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

The site is noted as being within the Class 5 Acid Sulfate Soils areas. Together with the impacts on trees a result of the proposed works, which are discussed in the Arboricultural Impact Assessment prepared by Bradshaw Consulting Arborists, these issues will be discussed further within this submission.

The site is identified as being within Geotechnical Hazard H1 on Council's Geotechnical Hazard Map. Accordingly, a Geotechnical Investigation has been prepared by JK Geotechnics, Report Reference No 33306Zrpt dated 28 October 2020.

A small portion within the eastern extremity of the site is identified as being within a Low, Medium and High Risk Flood Prone Land. The works are separated from the Flood Prone Land and as will be discussed in this submission, no further investigation is deemed necessary in this instance.

There are no other known hazards.

3.0 Site Description

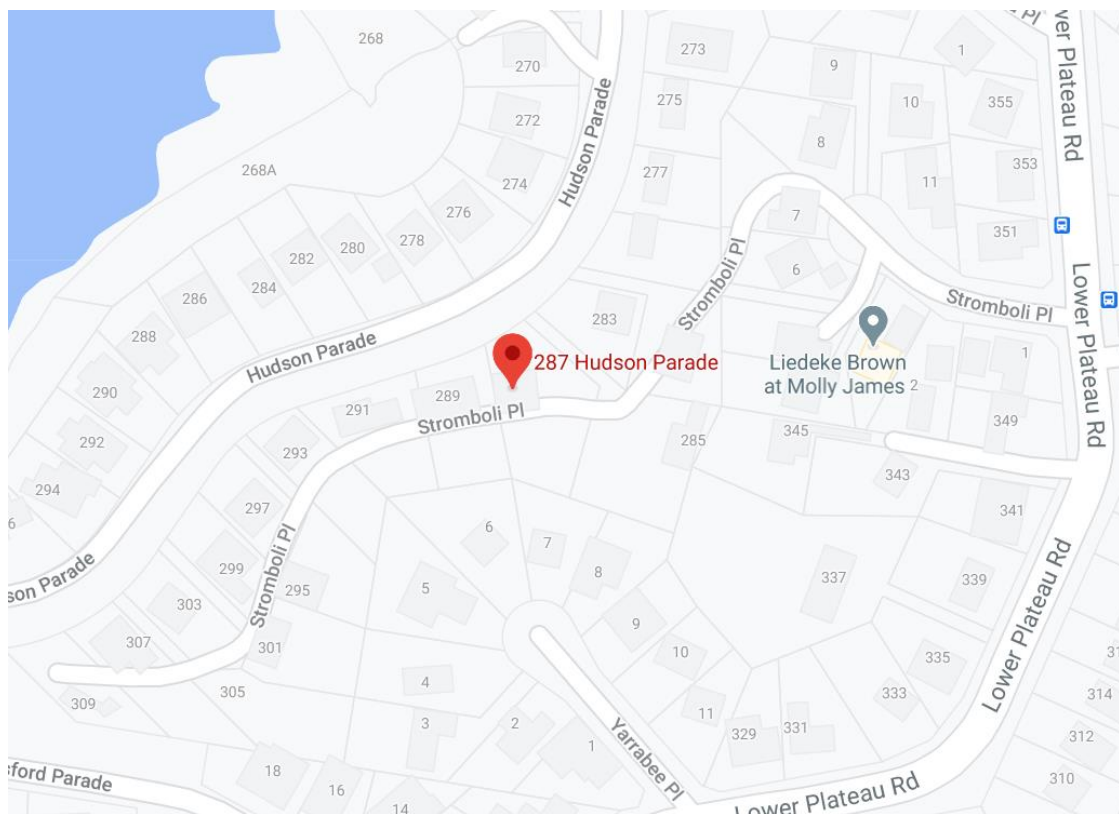
The property is irregular in shape and located on the south-western side of Hudson Parade, with an arc-shaped frontage of 15.235m to Hudson Parade, and a minimum depth of 45.17m (western side boundary). The site contains an existing bitumen driveway that provides a common right of way which traverses the site in an east-west direction. The rear boundary measures 20.21m and the total site area is 1415.4m².

The land falls to the north towards the Hudson Parade frontage. Collected stormwater from the site is to be directed to the watercourse which adjoins the north eastern boundary of the site, in accordance with the Stormwater Management Drainage Plan prepared by NB Consulting Engineers, Job No 130101 dated December 2020.

The site is currently developed with an existing two storey timber dwelling with a flat roof.

Driveway access to the existing open parking area forward of the dwelling is available from the common access driveway.

The details of the site are included on the survey plan prepared by SDG Land Development Solutions, Reference No. 5874, dated 21 December 2020, which accompanies the DA submission.



**Fig 1: Location of subject site
(Source: Google Maps)**



Fig 2: View of subject dwelling & open parking area, looking north-east from the common access drive

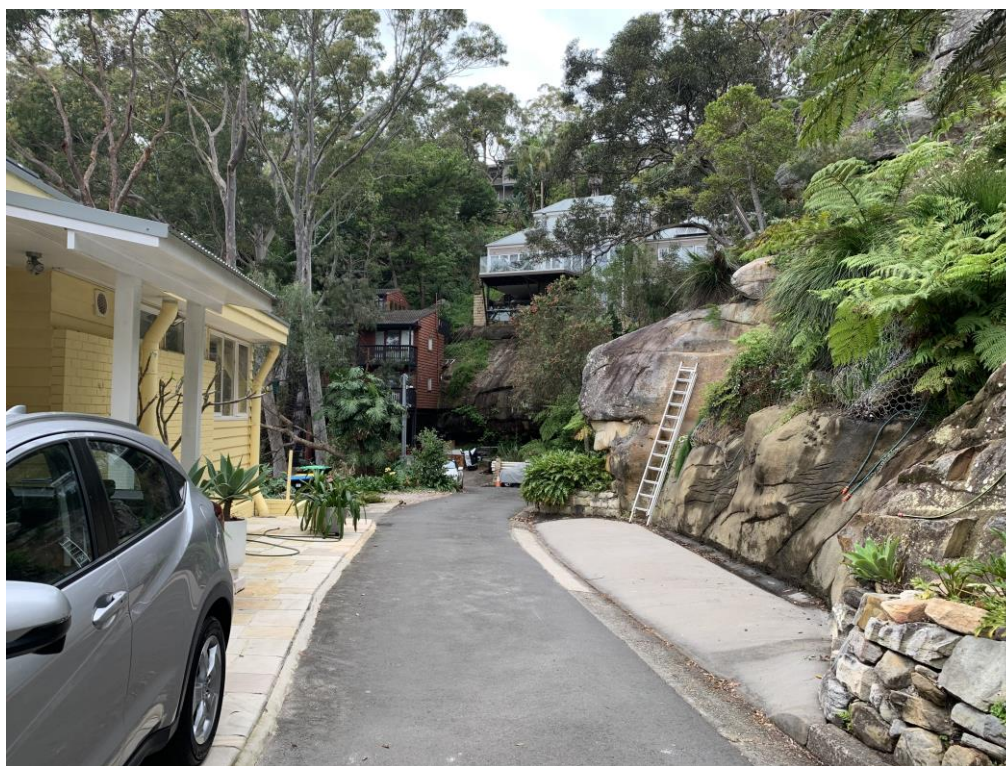


Fig 3: View looking east along the common driveway



Fig 4: View looking north along existing eastern wall and the location of the new additions and garage



Fig 5: View looking north east of the location of the new additions and towards the nearby neighbours to the east of the site



Fig 6: View looking north over the lower level of the dwelling and the location of the new additions

4.0 The Surrounding Environment

The general vicinity of the site is characterised by low density residential development generally between two and three storeys.

The site and surrounding properties have views towards Pittwater. The site and surrounding properties are characterised by a natural bushland setting.

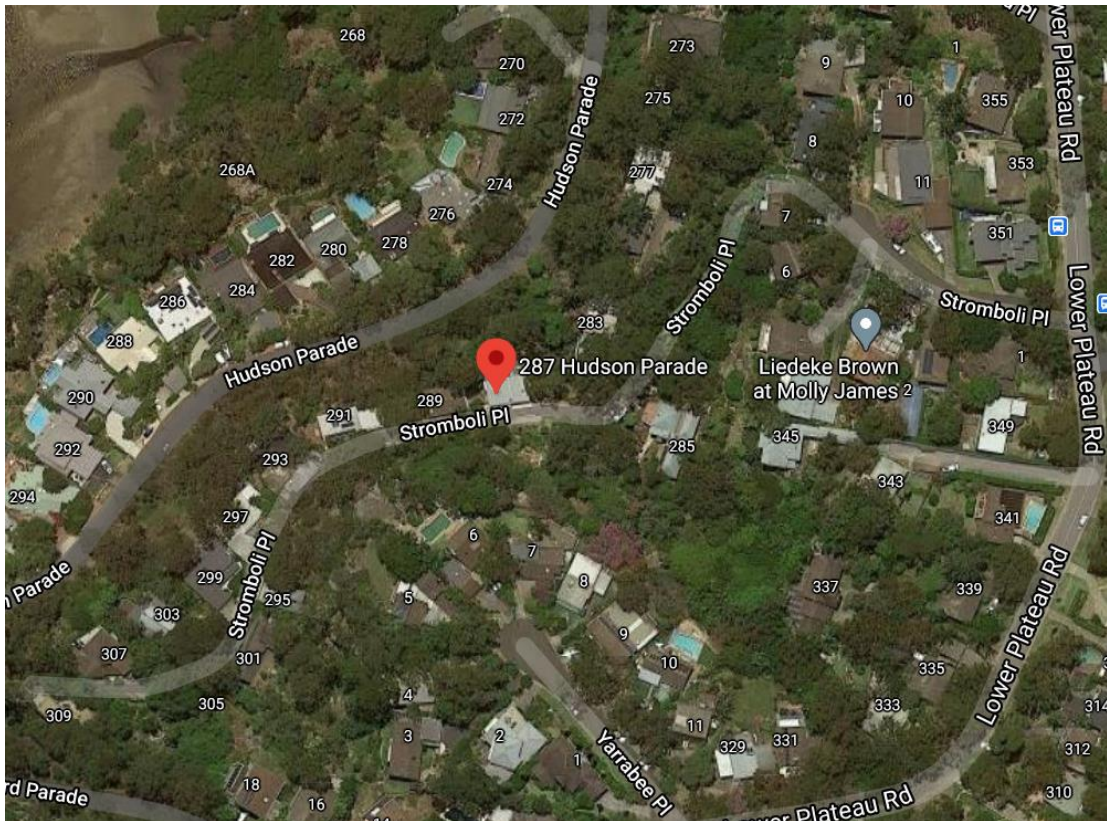


Fig 7: Aerial view of locality
(Source: Google Maps)

5.0 Proposed Development

The revised architectural design prepared by H & C Design Pty Ltd response to the issues facing Council's correspondence dated 15 March 2021, to identify concerns in relation to the overall height of the proposed additions and alterations to the dwelling, together with concerns raised by Council's Landscape officer and Development Engineer.

The revised design will continue to provide for alterations and additions to an existing dwelling.

To respond to the concern in relation to the overall height of the dwelling, the proposed first floor level over the proposed garage has been deleted, which results in a reduction in the overall height of the development by 2.49m.

The proposed garage addition will maintain the existing ridge height of the dwelling of RL 52.810, which will present a compatible single storey elevation to the southern boundary adjoining the common access driveway.

The revised design comprises the following additions and alterations to the dwelling:

Lower Ground Floor Plan

- Alterations and additions to existing lower ground floor level to provide for extension of existing deck and new external steps

Ground Floor Plan

- Alterations and additions to existing ground floor level to provide for new stairs and landings to a new double garage

External Works

- New double garage and driveway

The new works will provide for colours and finishes to match the existing development, with a matching colourbond roof sheet.

The new works will not be prominently visible from the Hudson Parade streetscape due to the substantial elevation of the site above street level.

To address the concerns raised by Council's Development Engineer, a revised Stormwater Management Drainage Plan and Details submission has been prepared by NB Consulting Engineers, Job No 130101 dated December 2020 on revised 5 April 2021. The collected roof waters from the dwelling will be directed to a level spreader along the northern side of the dwelling, to ensure that stormwater is dispersed wholly within the subject property.

A revised Arboricultural Impact Assessment dated 7 April 2021 as been prepared by Bradshaw Consulting Arborists and notes that the proposed works will require the removal of 5 trees within the

vicinity of the proposed garage.

As a response to the removal of the five trees, a revised Landscape Plan has been prepared by Alex Woodside, Revision B dated 21 April 2021 which provides for replacement planting of six native tree species to replace the trees being removed as a result of the proposed works.

The proposal results in the following indices:

Site Area:	1415m ²
Required soft landscaped area:	60% or 849m ²
Proposed soft landscaped area:	70.7% or 1000.5m 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

A revised BASIX certificate has been prepared to accompany the amended architectural details prepared by H & C Design and accompanies this submission.

6.3 State Environmental Planning Policy (Coastal Management) 2018

The subject site is identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is applicable to the proposed development.

The stated Aim of the Policy under Clause 3 is to:

The aim of this Policy is to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the Coastal Management Act 2016, including the management objectives for each coastal management area, by:

- (a) managing development in the coastal zone and protecting the environmental assets of the coast, and*
- (b) establishing a framework for land use planning to guide decision-making in the coastal zone, and*
- (c) mapping the 4 coastal management areas that comprise the NSW coastal zone for the purpose of the definitions in the Coastal Management Act 2016.*

The Coastal Management Act 2016 states within **Clause 3**:

The **objects** set out in **Clause 3** of the Coastal Management Act 2016 are:

- (a) to protect and enhance natural coastal processes and coastal environmental values including natural character, scenic value, biological diversity and ecosystem integrity and resilience, and*
- (b) to support the social and cultural values of the coastal zone and maintain public access, amenity, use and safety, and*
- (c) to acknowledge Aboriginal peoples' spiritual, social, customary and economic use of the coastal zone, and*
- (d) to recognise the coastal zone as a vital economic zone and to support sustainable coastal economies, and*
- (e) to facilitate ecologically sustainable development in the coastal zone and promote sustainable land use planning decision-making, and*

- (f) to mitigate current and future risks from coastal hazards, taking into account the effects of climate change, and*
- (g) to recognise that the local and regional scale effects of coastal processes, and the inherently ambulatory and dynamic nature of the shoreline, may result in the loss of coastal land to the sea (including estuaries and other arms of the sea), and to manage coastal use and development accordingly, and*
- (h) to promote integrated and co-ordinated coastal planning, management and reporting, and*
- (i) to encourage and promote plans and strategies to improve the resilience of coastal assets to the impacts of an uncertain climate future including impacts of extreme storm events, and*
- (j) to ensure co-ordination of the policies and activities of government and public authorities relating to the coastal zone and to facilitate the proper integration of their management activities, and*
- (k) to support public participation in coastal management and planning and greater public awareness, education and understanding of coastal processes and management actions, and*
- (l) to facilitate the identification of land in the coastal zone for acquisition by public or local authorities in order to promote the protection, enhancement, maintenance and restoration of the environment of the coastal zone, and*
- (m) to support the objects of the Marine Estate Management Act 2016.*

It is submitted that the assessment detailed under the Statement of Environmental Effects suggests that the proposed development is consistent with the objects of the SEPP (Coastal Management) 2018, as set out in Clause 3 of the Coastal Management Act 2016.

The matters for consideration under SEPP (Coastal Management) 2018 are addressed as follows:

Division 3 Coastal environment area

13 Development on land within the coastal environment area

- (1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) coastal environmental values and natural coastal processes,*
 - (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) Aboriginal cultural heritage, practices and places,*
 - (g) the use of the surf zone.*
- (2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
 - (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*

- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*
- (3) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

Comment:

The proposal provides for the construction of alterations and additions to an existing dwelling. The proposed works will be carried out in accordance with the recommendations of the Consulting Structural and Geotechnical Engineers, which will ensure that appropriate structural integrity for the site will be maintained.

Collected stormwater from the site is to be directed to the watercourse which adjoins the north eastern boundary of the site, in accordance with the Stormwater Management Drainage Plan prepared by NB Consulting Engineers, Job No 130101 dated December 2020. The stormwater management system will comply with Council's requirements. Sediment and erosion control measures will be carried out to minimise the impact of the works on the waterway.

Division 4 Coastal Use Area

Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—

- (a) has considered whether the proposed development is likely to cause an adverse impact on the following—*
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,*
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - (iv) Aboriginal cultural heritage, practices and places,*
 - (v) cultural and built environment heritage, and*
- (b) is satisfied that—*
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

Comment:

The proposal provides for alterations and additions. The modest extent of the new works ensures that the proposal will not result in any unreasonable adverse impacts within the foreshore area.

Division 5 General

15 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment

The proposal provides for the construction of alterations and additions to an existing dwelling. The proposed new works are not considered to increase the risk of coastal hazards for the subject property or adjoining land.

16 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment: No coastal management programs have been identified.

17 Other development controls not affected

Subject to clause 7, for the avoidance of doubt, nothing in this Part:

- (a) permits the carrying out of development that is prohibited development under another environmental planning instrument, or*
- (b) permits the carrying out of development without development consent where another environmental planning instrument provides that the development may be carried out only with development consent.*

Comment: Noted

18 Hierarchy of development controls if overlapping

If a single parcel of land is identified by this Policy as being within more than one coastal management area and the development controls of those coastal management areas are inconsistent, the development controls of the highest of the following coastal management areas (set out highest to lowest) prevail to the extent of the inconsistency:

- (a) the coastal wetlands and littoral rainforests area,*
- (b) the coastal vulnerability area,*
- (c) the coastal environment area,*
- (d) the coastal use area.*

Comment: Noted

6.4 Pittwater Local Environmental Plan 2014

The subject site is zoned E4 Environmental Living under the Pittwater LEP 2014.

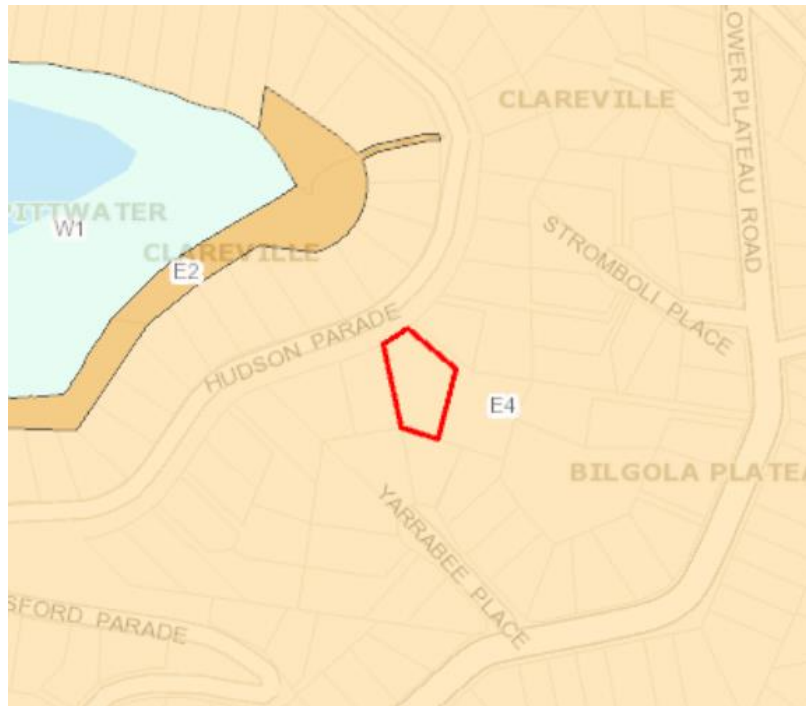


Fig 8: Extract of Pittwater Local Environmental Plan 2014 Zoning Map

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 alterations and additions to the existing dwelling 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 alterations and additions to the dwelling, which will not have any substantial impact to the neighbouring properties.
- The setbacks are compatible with the existing surrounding development.

- The proposal does not have any impact on long distance views.

Clause 4.3 – Height of Buildings

The maximum building height in this portion of Clareville is 8.5m.

The maximum height of the proposed new works to the dwelling is approximately 10.81m which will vary the height requirement stipulated by the LEP. Accordingly, a submission has been prepared pursuant to Clause 4.6 and accompanies this statement.

Clause 7.1 relates to acid sulfate soils. The site has been identified as Class 5. The proposal will not see any substantial excavation of the site with the exception of the works to accommodate the proposed new footings, and as such, it is not anticipated that any acid sulfate soils will be disturbed.

Clause 7.2 relates to earthworks. The proposal will be carried out in accordance with the recommendations of the Consulting Structural and Geotechnical Engineers, and will therefore satisfy the provisions of this clause.

Clause 7.3 relates to flood prone land.

A small portion within the eastern extremity of the site is identified as being within a Low, Medium and High Risk Flood Prone Land. The works are well separated from the Flood Prone Land and given that the significant four levels and the separation from any potential floodway ensures that there is no direct impact on the dwelling, no further investigation is deemed necessary in this instance.

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.*

The proposal requires the removal of a number of trees to accommodate the new works, and is therefore accompanied by a revised Arboricultural Impact Assessment prepared by Bradshaw Consulting Arborists, dated 17 July 2020 and amended 17 April 2021.

The Impact Assessment addresses five trees within the vicinity of the proposed works. The conclusion notes that five trees will be removed as a result of the proposed works. Es that Trees 4 & 5 can be retained.

As there is no other practical location for the provision of the proposed double garage, the removal of the trees and any replacement planting as required by Council is considered to be reasonable in this instance.

The Impact assessment also concludes that there is ample opportunity for replacement planting within the site and suggests that six endemic canopy trees of either *Corymbia maculata* or *Angophora Costata*

be considered as replacement species.

A Landscape Plan has been prepared by Alex Woodside, Revision B dated 21 April 2021 which provides for the planting of 6 native trees to replace the five trees been removed as a result of the proposed works.

A generous area of soft landscaping will be maintained within the site.

As the works will maintain a generous landscaped area, and will not have an adverse impact on the terrain of the site nor introduce any new works to the seabed of Pittwater, the objectives of Clause 7.6 will be achieved.

Clause 7.7 – Geotechnical Hazards

The site is identified as being within Geotechnical Hazard H1 on Council's Geotechnical Hazard Map. Accordingly, a Geotechnical Investigation has been prepared by JK Geotechnics, Report Reference No 33306Zrpt dated 28 October 2020.

The works will be carried out in accordance with the recommendations of the Consulting Geotechnical and Structural Engineers and will therefore satisfy the provisions of this clause.

There are no other clauses within the LEP that are relevant to the subject proposal.

6.5 Pittwater 21 Development Control Plan 2014

Council's Pittwater 21 DCP Section B (General Controls), Section C (Development Type Controls) and Section D Bilgola 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 Bilgola Locality, in which this site falls, are as follows:

A4.3 Bilgola Locality

The Bilgola locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary Dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.

The three distinct areas within the Bilgola locality (as identified in Bilgola Locality Map 2) will, by their unique differences, require differing and distinct degrees of control to ensure the individual characteristics and essence of each area are maintained and enhanced:

The Plateau Area: Will provide for some dual occupancies, on land that does not have tree canopy coverage, species and habitat diversity, or 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 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.

Natural scenic views from the Bicentennial Walkway will be preserved.

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.

It is considered that the proposal is consistent with the desired character of the locality by providing for alterations and additions to the dwelling, which are consistent with the scale and style of the newer development in the vicinity.

The proposal will maintain an appropriate area of soft landscaping.

The proposal has been designed to reflect the existing setbacks provided to all boundaries existing in the immediate area.

The building materials and colours will harmonise with the natural environment and will not detract from the existing locality.

Due to the elevated nature of the site, the proposed works will not be prominently visible from the Hudson Parade Streetscape.

6.4.2 Section B General Controls

The General Controls applicable to the proposed additions and alterations 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 being within Geotechnical Hazard H1 on Council's Geotechnical Hazard Map. Accordingly, a Geotechnical Investigation has been prepared by JK Geotechnics, Report Reference No 33306Zrpt dated 28 October 2020.

The works will be carried out in accordance with the recommendations of the Consulting Geotechnical and Structural Engineers and will therefore satisfy the provisions of this clause.

B3.11 Flood Prone Land

The controls seek to achieve the outcomes:

Protection of people.

Protection of the natural environment.

Protection of private and public infrastructure and assets.

A small portion within the eastern extremity of the site is identified as being within a Low, Medium and High Risk Flood Prone Land. The works are well separated from the Flood Prone Land and as the fallen site levels results in any potential floodway impact being restricted to the existing waterway alignment, with limited opportunity to impact on the dwelling, no further investigation is deemed necessary in this instance.

B4.7 Pittwater Spotted Gum Forest – Endangered Ecological Community

The controls seek to achieve the outcomes:

Conservation of intact Pittwater Spotted Gum Forest EEC. (En)

Regeneration and/or restoration of fragmented and / or degraded Pittwater Spotted Gum Forest EEC. (En)

Reinstatement of Pittwater Spotted Gum Forest to link remnants. (En)

Long-term viability of locally native flora and fauna and their habitats through conservation, enhancement and/or creation of habitats and wildlife corridors. (En)

The proposal requires the removal of a number of trees to accommodate the new works, and is therefore accompanied by an Arboricultural Impact Assessment prepared by Bradshaw Consulting Arborists, dated 17 July 2020 an amended 7 April 2021

As previously discussed, the Impact Assessment addresses five trees within the vicinity of the proposed works. The conclusion notes that five trees will be removed and recommends that further endemic replacement planting be provided.

As there is no other practical location for the provision of the proposed double garage, the removal of the trees and any replacement planting as required by Council is considered to be reasonable in this instance.

The Impact assessment also concludes that there is ample opportunity for replacement planting within the site and suggests that 6 endemic canopy trees of either *Corymbia maculata* or *Angophora Costata* be considered as replacement species.

A Landscape Plan has been prepared by Alex Woodside dated 21 April 2021.

The proposal is not considered to impact on the Pittwater Spotted Gum Forest Ecological Community and meets the objectives of this clause.

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)

Roofwater from the new roof areas will be connected to the existing system and as there is no substantial change to the runoff characteristics of the site, the retention of the existing arrangements is reasonable in this instance.

B5.10 Stormwater Discharge into Public Drainage System

The controls seek to achieve the outcomes:

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

Collected stormwater from the site is to be directed to a level spreader within the site, in accordance with the Stormwater Management Drainage Plan prepared by NB Consulting Engineers, Job No 130101 dated 1 April 2021.

As such, there will not be any substantial change to the existing stormwater discharge arrangements.

B6.1 Access driveways and works on the Public Road Reserve – Low Density Residential

The controls seek 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 site will provide a new double garage which is accessed via the existing common right-of-way driveway which traverses the site.

The current access arrangements will continue to provide suitable access to the property in accordance with these controls.

B6.2 Internal Driveways – Low Density Residential

The controls seek to achieve the outcomes:

- Safe and convenient access. (S)*
- Reduce visual impact of driveways. (S)*
- Pedestrian safety. (S)*
- An effective road drainage system. (En, S)*
- Maximise the retention of trees and native vegetation.*
- Reduce contaminate run-off from driveways.*

The proposal provides a new driveway which provides suitable access to the proposed garage.

B6.3 Off-street Vehicle Parking Requirements

The controls seek to achieve the outcomes:

- Safe and convenient parking (En, S)*

The controls require a minimum of 2 parking spaces for a dwelling with 2 bedrooms or more. The site will provide two off street parking spaces within the proposed garage, which will satisfy the 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)*

There will not be any significant excavation of the site or disturbance to the exterior ground levels and meets the objectives of this provision.

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)*

As required, appropriate sedimentation controls will be implemented throughout construction to prevent transportation of sediment to adjoining properties and Pittwater.

B8.3 Construction & Demolition – Waste Minimisation

The controls seek to achieve the outcomes:

Reduction management of demolition, excavation and construction works is to be minimised by reuse on-site, recycling, or disposal at an appropriate waste facility. (En)

As required, appropriate waste management controls will be implemented throughout construction.

6.5.3 Section C Development Type Controls

The Development Type 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 proposal retains the generous areas of soft landscaping on site, with all works well above the ground level. The site will maintain its contribution to the landscaped character of the locality.

A Landscape Plan has been prepared by Alex Woodside dated 21 April 2021 and provides for replacement tree planting of native tree species to compensate for the five trees been removed as a result of the proposed works.

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 site will retain the opportunity to view the driveway and street area with casual surveillance of the immediate area available.

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 a substantial outlook to Pittwater to the west.

The properties above the site are well elevated above the site, with views over the property to be maintained.

The proposal alterations and additions maintain the compatible scale of the dwelling and neighbouring properties will retain their primary views.

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.

Given the northern orientation of the subject and neighbouring properties, the new works will not unreasonably remove solar access to the primary living spaces or private open space areas of any neighbouring properties.

In accordance with Council's control, the adjoining properties will continue to receive in excess of three hours of direct solar access throughout the day.

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 proposed ground floor deck is well separated from the eastern side boundary and will not result in any problematic overlooking to the eastern neighbour.

The existing levels of amenity enjoyed by the neighbours will be largely maintained.

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 works will maintain the current ample separation to living areas of adjoining properties, thereby maintaining existing levels of acoustic privacy.

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 proposal retains suitable areas of private open space which enjoy good solar access, which are further supplemented by the proposed decking.

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.

There is sufficient area surrounding the garage for 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 **D3 Bilgola 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 residential 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 proposal will not result in additional run-off to adjoining properties or public spaces.
- The development will not place additional demands on local infrastructure or on the sewage disposal system for the site.

A summary of the DCP controls for the **D3 Bilgola Locality** is provided below:

D3.1 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 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 form maintains a compatibility with the locality through appropriate design relief and is secondary to the landscaping of the site.

The proposal provides for alterations and additions to an existing dwelling which will be consistent with the scale and form of other development within the locality.

The proposal will retain a generous area of soft landscaping.

A number of trees are to be removed to accommodate the proposed development, as detailed within the submitted Arboricultural Impact Assessment prepared by Bradshaw Consulting Arborists.

It is therefore considered that the proposal will achieve the desired future character of the locality.

D3.2 Scenic Protection – General

The controls seek to achieve the outcomes:

Achieve the desired future character of the Locality.

Scenic bushland and geographical landforms are the predominant features of Bilgola with the built form being the secondary component of the visual catchment. (En, S)

Preserve scenic quality as part of the recreational amenity. (S)

The proposal, which provides generous setbacks, presents an appropriate bulk and scale given the site constraints, which is consistent with the extent of surrounding development and will not be overbearing when viewed from the public domain or neighbouring properties.

The existing and proposed landscaping assists with softening and screening the built form of the development. The proposal is considered suitable in the scenic protection area, and will achieve the desired outcomes of this clause.

D3.3 Building colours and materials

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 and enhances the visual character 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 proposed new works will be finished in materials and tones to match the existing dwelling. Given the dwelling is located in a valley location and surrounded by medium and tall mature native species, the development is considered to harmonise with the surrounding natural environment.

D3.6 Front Building Line

The controls seek to achieve the outcomes:

Achieves the desired future character of the Locality.
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.

Development is subject to a minimum front setback of 6.5m.

The existing minimum front setback will remain unchanged.

D3.7 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.

The relevant controls to achieve this outcome are to maintain a minimum side boundary setback of 2.5m for at least one side and min 1.0m setback for the other side.

The existing western side setback remains unchanged. The new works will stand a minimum of 2.5m from the eastern side boundary and readily complies with the side setback control.

The development maintains a significant rear setback which exceeds Council's controls.

D3.9 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)*

As noted on the submitted Northern Elevation, the proposal will present a variation to the building envelope control to the northern extremity of the eastern elevation.

Compliance with the building envelope control is constrained by the steeply sloping topography of the site, together with the location of the existing dwelling.

Notwithstanding the variation to the building envelope control, the proposal will provide an appropriate bulk and scale. The proposal will not result in any adverse impacts on neighbouring properties in terms of solar access, privacy or views.

Due to the elevation of the subject site above street level, the new works will not be prominently viewed within the Hudson Parade streetscape.

The proposal is in keeping with the desired outcomes of this clause, and is worthy of support on merit.

D3.11 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 to achieve the outcomes are to limit residential development in order to maintain a minimum landscaped area of 60% of the site area.

The proposal will retain a soft landscaped area of 1000.5m² or 70.7% of the site area and therefore readily complies with this control.

D3.16 Construction, retaining walls, terracing and undercroft areas

The controls seek to achieve the outcomes:

To achieve the desired future character of the Locality.

To protect and minimise disturbance to natural landforms.

To encourage building design to respond sensitively to natural topography.

The proposal satisfactorily responds to the topography of the site. The works will not see any significant excavation or disturbance to the site to facilitate the new works.

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 as much as possible to meet the requirements of Council's Pittwater 21 Development Control Plan 2014.

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 side boundary envelope control is a reasonable alternative solution to compliance

where the site conditions results in a challenge to designing for new development which fully respects the 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, and

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 additions and alterations to the existing dwelling, 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 residential 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 2014 and the Avalon Beach 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.

7.8 Any 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 the construction of additions and alterations to the existing dwelling, which respects and complements the site's location.

It is considered that the proposed works satisfy the stated objectives of Council's Development Controls. By maintaining our neighbours 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)

Annexure: Clause 4.6 Submission

APPENDIX
CLAUSE 4.6 – MAXIMUM BUILDING HEIGHT

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

287 HUDSON PARADE, CLAREVILLE

FOR PROPOSED ADDITIONS & ALTERATIONS TO AN EXISTING DWELLING

For: Proposed additions and alterations to an existing dwelling
At: 287 Hudson Parade, Clareville
Owner: Jill Morrison
Applicant: Jill Morrison

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. This control is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposed additions and alterations to the existing dwelling, which as a result of the significant slope of the site will provide a height of up to 10.81m above natural ground level and which exceeds Council's maximum building height by 2.31m or 27%. The proposal therefore does not comply with Council's maximum height control. The extent of the building's roof which exceeds the 8.5 height control is detailed in Figure 1 (over page).

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

Is clause 4.3 of PLEP 2014 a development standard?

- (a) The definition of "development standard" in clause 1.4 of the EP&A Act mean standards fixed in respect of an aspect of the 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 building 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 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.

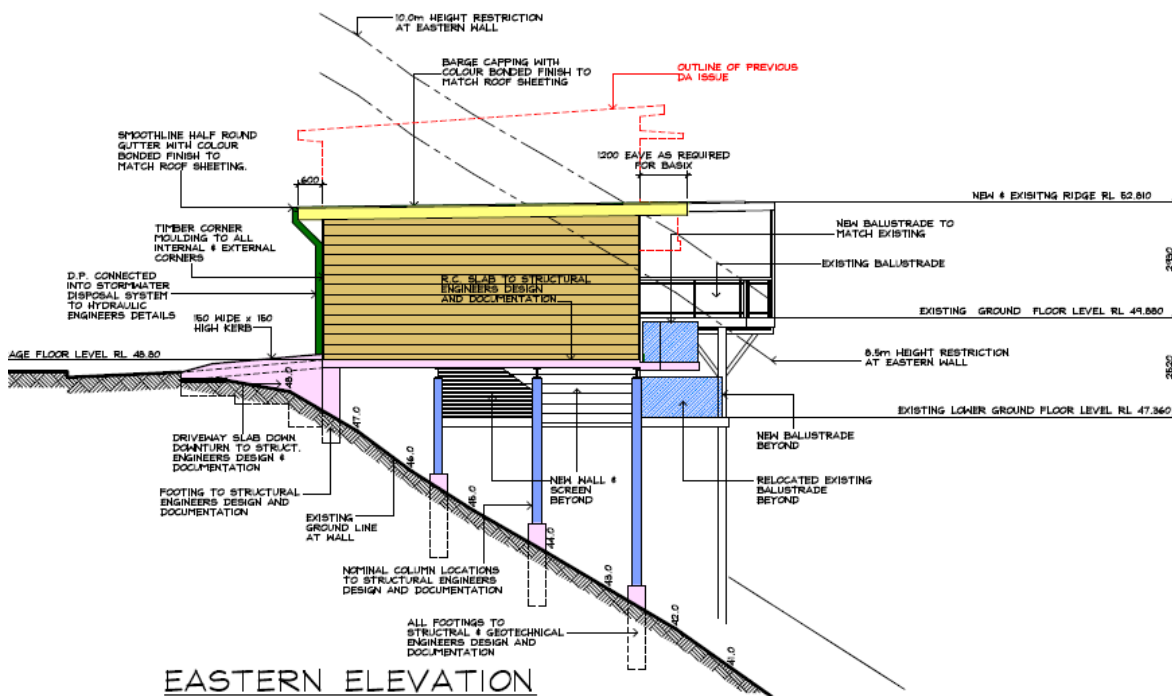


Fig 1: Section extract to indicate area of dwelling roof exceeding the 8.5m height control

4.0 Objectives of Clause 4.6

Clause 4.6(1) of PLEP provides:

- (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.*

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 Maximum Height Control) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the PLEP.

Clause 4.6(3) of PLEP 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 control development standard pursuant to clause 4.3 of PLEP which specifies a maximum building height of 8.5m in this area of Clareville. The additions to the existing dwelling will result in a maximum building height for the new work of 10.81m, which exceeds the maximum height control by 2.31m or 27.1%.

It is of note that the proposed addition to the dwelling will maintain the existing maximum ridge height of the current dwelling of RL52.810m.

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) of PLEP provides:

(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, and

(b) the concurrence of the Planning Secretary has been obtained.

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest **because** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Planning Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 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 cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of PLEP provides:

- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
- (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.*

Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and should consider the matters in cl 4.6(5) 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; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of PLEP 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 for the construction of alterations and additions to an existing 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.*

The proposal will provide for the construction of alterations and additions to an existing dwelling to provide for increased amenity for the site's occupants.

The non-compliance with the height control to the north-eastern extremity of the roof over the proposed garage addition to the existing ground floor level of the dwelling, which will maintain the same maximum ridge level for the dwelling of RL 52.810m arises as a direct result of the site's sloping topography.

The new works maintain 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.

Notwithstanding the non-compliance with the maximum building height control, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood. It is noted that the proposal will maintain a consistent character with the built form of nearby properties.

The proposed new works will not see any unreasonable impacts on the views enjoyed by neighbouring properties.

Due to the northerly orientation of the site and as outlined in the shadow diagram information which supports the application, the works will not see any adverse impacts on the solar access enjoyed by adjoining dwellings.

The general bulk and scale of the dwelling as viewed from the public areas in Hudson Parade and the wider public view of the site, together with from the surrounding private properties, will be largely maintained.

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 Clareville.
- 5.3 The proposed additions and alterations to the existing dwelling will have a maximum height of 13.3m, which exceeds the height control by 2.31m or 27.1%.

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 in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the E4 Environmental Living zone?
- 4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
- 5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) 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 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 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.

The surrounding area is predominantly characterised by two and three storey development, the form of which is heavily influenced by the sloping terrain of the land.

The proposal seeks to accommodate the new works within a compatible building form, with the slope of the site towards the north resulting in a portion of the new roof over the proposed garage at the existing ground floor level presenting a height of up to 10.81m above existing ground level.

It is notable that the proposed garage addition maintains the same maximum ridge level for the dwelling at RL 52.810 and presents a compatible single storey height to the elevation of the dwelling facing the common access driveway.

The external form of the development follows the sloping topography of the site, which assists with minimising the visual bulk of the development.

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

The proposed height of the new works to provide a ground floor level addition will maintain a compatible height and scale with that of the surrounding development.

The proposed additions to the dwelling will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing.

The proposal will not obscure any important landscape and townscape features beyond that which would be anticipated by the development of a residential dwelling, which will maintain a predominantly two storey height on the site.

Consistent with the decision of Roseth SC in *Project Ventures Developments v Pittwater Council* [2005] NSWLEC 191, it is my opinion that “most observers would not find the proposed building offensive, jarring or unsympathetic”.

Further, the modulation of the front façade and building elevations where visible from the public domain minimises the visual impact of the development.

(c) to minimise any overshadowing of neighbouring properties,

The extent of the proposed overshadowing is reflected in the shadow diagrams prepared by H&C Design Pty Ltd which note that the minor increase in overshadowing does not materially affect the primary living spaces and outdoor areas of neighbouring properties.

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

The primary views of the adjoining neighbours are directed towards the north, and will remain unaffected. Uphill properties are elevated above the subject site, and will maintain their primary views to the north. The opportunity for the surrounding properties to continue to retain suitable views across the site towards Pittwater will be maintained.

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

The proposal provides for alterations and additions to an existing dwelling, which follows the siting and design of the existing dwelling. 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, and maintain a generous soft landscaped area. The site does not join any sites of heritage significance and the proposal is considered to be reasonable in this portion of Clareville.

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.*

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].*
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 proposed additions will maintain the general bulk and scale of the existing surrounding dwellings 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 surrounding character of Hudson Parade which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The proposed minor additions to the dwelling are considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g).
- The proposed development improves the amenity of the occupants of the subject site and respects surrounding properties by locating the development where it will not unreasonably obstruct views across the site and will maintain the views from the site (1.3(g)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants and manages the bulk and scale and maintains views over and past the building from the public and private domain. These are not simply benefits of the development as a whole, but are benefits emanating from the 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 in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the E4 Environmental Living 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 E4 Environmental Living 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 found also 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 breach of the maximum building height which as a consequence of the substantial slope of the site towards the north and the location of the existing development, the proposed alterations and additions to the existing dwelling will be consistent with the individual Objectives of the E4 Environment or Living Zone for the following reasons:

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

As found in *Nessdee*, this objective is considered to establish the principal values to be considered in the zone.

Dwelling houses are a permissible form of development within the Land Use table and are considered to be specified development that is not inherently incompatible with the objectives of the zone.

The proposal provides for alterations and additions in a manner which will retain the single dwelling character of the site and the immediate area.

The site and its location in Hudson Parade is considered to be an area of special visual and aesthetic value.

The external form of the development is stepped with the sloping topography of the form, which will reduce the visual bulk of the development.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and will not be a visually prominent element in the area.

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

The design prepared by H & C Design Pty Ltd has been prepared to meet the client brief, together with ensuring that the visual bulk and overall height of the dwelling is effectively managed.

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 proposal provides for the construction of alterations and additions to an existing dwelling, including a new ground floor level addition to provide for a new double garage.

As the design utilises a compatible colour palette, the building respects the predominant visual appearance of development in the locality.

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.

7.4 Has Council obtained the concurrence of the Director-General?

The Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.

7.5 Has the Council considered the matters in clause 4.6(5) 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 proposed additions to the dwelling house for 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 is in the public interest because it 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.
- (c) there are no other matters required to be taken into account by the secretary before granting concurrence.

8.0 Conclusion

This development proposes a departure from the maximum building height control, with the proposed new works to provide for additions and alterations to the dwelling which will provide for a height of up to 10.81m.

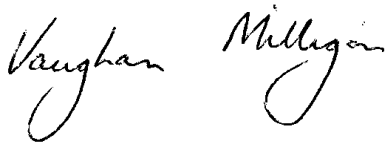
This variation occurs as a result of the sloping topography of the site and siting of existing development.

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.

In summary, the proposal satisfies all of the requirements of clause 4.6 of PLEP 2014 and the exception to the development standard is reasonable and appropriate in the circumstances of the case.

A handwritten signature in black ink, reading 'Vaughan Milligan'. The signature is written in a cursive, flowing style.

VAUGHAN MILLIGAN
Town Planner