APPENDIX 1
CLAUSE 4.6 – MAXIMUM BUILDING HEIGHT

(As revised February 2023)

WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011

38 THE DRIVE, FRESHWATER

FOR PARTIAL DEMOLITION OF THE EXISTING STRUCTURES AND CONSTRUCTION OF A NEW DWELLING WHICH INCLUDES THE RETENTION OF SUBSTANTIAL PORTIONS OF THE EXISTING DWELLING, TOGETHER WITH THE CONSTRUCTION OF A NEW GARAGE WITH SECONDARY DWELLING OVER, SWIMMING POOL AND ASSOCIATED LANDSCAPING

VARIATION OF A DEVELOPMENT STANDARD REGARDING COUNCIL'S MAXIMUM BUILDING HEIGHT CONTROL AS DETAILED IN CLAUSE 4.3 OF THE WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011

For:	Partial demolition of the existing dwelling and construction of new dwelling including the retention of substantial portions of the existing dwelling and the inclusion of a detached secondary dwelling over a garage, together with a swimming pool and landscaping
At:	38 The Drive, Freshwater
Owner:	Michael Addison
Applicant:	Michael Addison C/- Vaughan Milligan Development Consulting

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Warringah Local Environmental Plan 2011 (**WLEP 2011**). 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 WLEP 2011.

This submission considers the revised architectural plans prepared by Sketcharc and Northern Beaches Designs, dated 27 January 2023.

The relevant maximum building height on this site is 8.5m and is a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposed development presents a maximum height of 9.840m at the north-eastern extremity of the roof of the Ground Floor level, when measured above existing ground level at the Store Room floor level. The non-compliance represents a variation of 1.34m or 15.76%.

The portion and extent of the building which exceeds the 8.5m maximum height control is noted within Figure 1 (over).

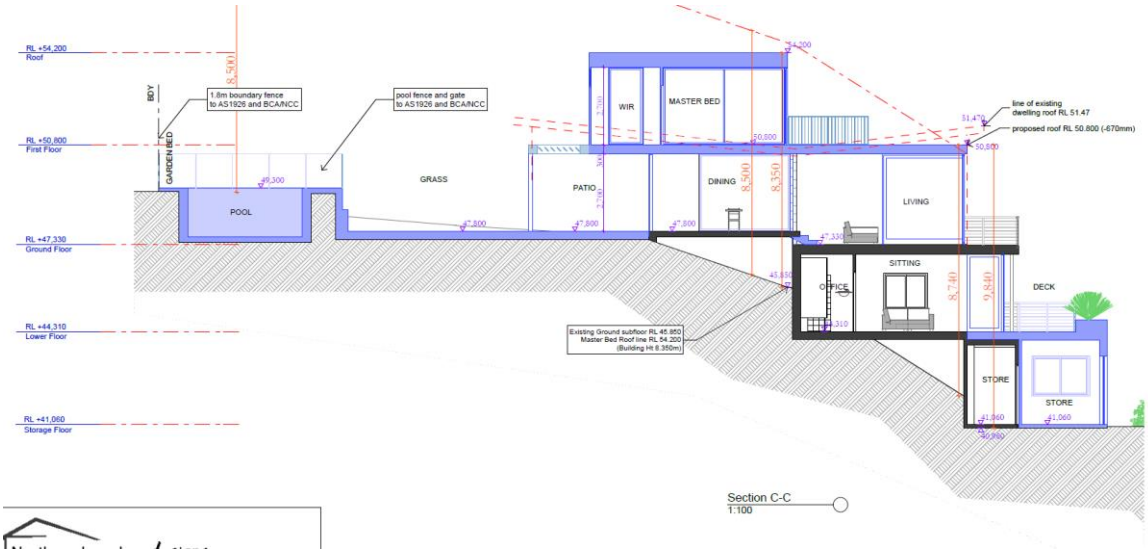

Figure 1: Extract of Section C-C indicating the height of the north-eastern extremity of the Ground Floor Level

1.1 Warringah Local Environmental Plan 2011

1.1.1 Clause 2.2 and the Land Use Table

Clause 2.2 and the Land Zoning Map provide that the subject site is zoned R2 – Low Density Residential (**the R2 zone**) and the Land Use Table in Part 2 of WLEP 2011 specifies the following objectives for the R2 zone:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterized by landscaped settings that are in harmony with the natural environment of Warringah.*

The proposed development is for the construction of a new dwelling house, secondary dwelling and ancillary development that is permissible within the R2 Zone.

1.1.2 Clause 4.3 – Height of buildings

Clause 4.3 of WLEP 2011 sets out the maximum height of a building as follows:

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

(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,
(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,
(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The Height of Buildings Map specifies a maximum building height of 8.5m in relation to the subject site. The Dictionary to WLEP 2011 operates via clause 1.4 of WLEP 2011. The Dictionary defines "building height" as:

***building height** (or **height of building**) means—*

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

> *(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*
>
> *including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

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

When the excavated lower level is used as the reference point for the 8.5m height control, the proposed new works present a non-compliance with the maximum building height standard, having a height of up to 9.840m.

When measured above the external ground levels and in particular the northern and southern elevations, the visual height of the building presents as a stepped two storey height.

As noted in *Merman* [at 74] the prior excavation of the site within the footprint of the existing building, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the land, is considered to be an environmental planning ground within the meaning of clause 4.6 (3)(b) of WLEP 2011.

The proposal is considered acceptable and as discussed further within this request, there are sufficient environmental planning grounds to justify contravening the development standard.

2.0 Is clause 4.3 of WLEP 2011 a development standard?

The definition of "development standard" in clause 1.4 of the EP&A Act means standards fixed in respect of an aspect of a development and includes:

> *"(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,"*

Clause 4.3 relates to the maximum building height of a building. Accordingly, clause 4.3 is a development standard as defined in the Environmental Planning and Assessment Act, 1979.

3.0 Purpose of Clause 4.6

WLEP 2011 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

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

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

4.0 Objectives of Clause 4.6

Clause 4.6(1) of WLEP 2011 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 Height of buildings control) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the LEP.

Clause 4.6(3) of WLEP 2011 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 WLEP 2011 which specifies a maximum building height of 8.5m at the site. The proposal presents a maximum variation of 1.34m or 15.76%.

As discussed in *Merman* [at 74] the prior excavation of the site within the footprint of the existing building, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the land, is considered to be an environmental planning ground within the meaning of clause 4.6 (3)(b) of WLEP 2011.

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 WLEP 2011 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 (clause 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 that the concurrence of the Planning Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

As confirmed in Planning Circular PS20-002 dated 5 May 2020, the Secretary has given written notice to each consent authority, confirming that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under clause 4.6.

Clause 4.6(5) of WLEP 2011 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 and the Court on appeal has the power under clause 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in clause 4.6(4)(a), and should consider the matters in clause 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 WLEP 2011 from the operation of clause 4.6.

5.0 The Nature and Extent of the Variation

This request seeks a variation to the maximum building height standard contained in clause 4.3 of WLEP 2011.

Clause 4.3 of WLEP 2011 specifies a maximum building height of 8.5m for this site.

The proposed development presents a maximum height of 9.84m at the north-eastern extremity of the roof of the Ground Floor level. The non-compliance represents a variation of 1.34m or 15.76%.

6.0 Relevant Caselaw

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:

> *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].*
>
> *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].*
>
> *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].*
> *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].*
>
> *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.*
>
> *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.*

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 WLEP 2011 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 R2 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 WLEP 2011?

7.0. Request for Variation

7.1 Is compliance with clause 4.3 unreasonable or unnecessary?

This request relies upon the first way identified by Preston CJ in Wehbe, which seeks to establish that the objectives of the standard are achieved, despite non-compliance with the standard prescribed.

Each objective of the maximum building height standard and reasoning why compliance is unreasonable or unnecessary is set out below:

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

The proposed dwelling house has been designed to follow the slope of the land. Whilst the proposed development is predominantly one and two storeys in height, a minor portion of the development reaches a maximum of three storeys in height. However, as the upper floor is setback from the level below, there are no three storey high walls presenting to the public domain or adjoining properties.

The proposed development is well articulated, and sits below the height of surrounding dwellings on the upper ridgeline. The height and scale of the proposed dwelling house is entirely commensurate with the height and scale of surrounding and nearby buildings, including the three storey dwellings at 36 and 40 The Drive (Figures 2, 3 and 4).

This objective is achieved.

Fig 2: View of the adjacent dwelling at No 36 The Drive, looking south from the existing garage roof terrace

Fig 3: View of the adjoining dwelling at No 40 The Drive, looking north-west

Fig 4: View of The Drive from Carrington Parade demonstrating multiple 3 storey dwelling houses.

(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access

Visual Impact

The bulk and scale of the resultant dwelling is commensurate with that of surrounding dwelling houses. The height non-compliances are limited to the north-eastern corners of the front upper-floor balconies, and do not attribute to excessive bulk and scale. The majority of the dwelling maintained well below the maximum height limit, with a single storey presentation to the rear.

Disruption of views

The proposed development extends across a portion of the site that is currently free of any development, to which neighbouring properties currently enjoy unobstructed views towards the ocean.

Furthermore, the application seeks to increase the height of the development compared to that which currently exists, which will also impact upon views currently obtained across the roof of the existing dwelling.

The impact to views currently enjoyed is reasonably minimised, as demonstrated in the Visual Impact Assessment prepared by Urbaine Design Group that accompanies this application.

The proposed development has been designed to minimise the impact upon available across the site. The height of the rear of the dwelling has been limited to single storey, well below the permissible 8.5m height limit, and generous side setbacks have been provided to allow view corridors to be retained around the proposed development.

Solar Access

Overshadowing associated with the non-compliant portions of the proposed

development tis contained within the subject site, with no unreasonable impacts to adjoining properties.

This objective is achieved.

c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

The proposed non-compliance is limited to the north-east corners of the light-weight front decks. The overall height of the development is maintained below that of surrounding dwellings along the ridgeline.

The proposal has a 2-3 storey appearance as seen from downslope, consistent with the size and scale of adjoining and nearby development.

This objective is achieved.

(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

The proposed development will be visible from the Carrington Parade pedestrian pathway, which is a highly utilised walkway along the coastline. Whilst visible, the resultant development will be commensurate with the bulk and scale of surrounding 3 storey dwelling houses, and will be maintained below the height of neighbouring dwellings on the ridgeline.

This objective is achieved.

Strict compliance with the 8.5m building height development standard of WLEP 2011 is considered to be unreasonable and unnecessary as the objectives of the standard are otherwise achieved.

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

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

> *23. As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
>
> *24. The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written*

> *request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

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

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

- The non-compliance arises as a consequence of the considerable slope of the land, which not only falls from the rear property boundary to the street, but also across the width of the building footprint.

- The extent of the non-compliance is limited to the north-eastern corner of the roofs over the Ground Floor level. The height non-compliance can be attributed to the prior excavation of the site within the footprint of the existing building, which has distorted the height of buildings development standard plane overlaid above the site when compared to the topography of the existing land and this is considered to be an environmental planning grounds which supports the variation to the control.

- The majority of the dwelling is maintained well below the maximum height limit.

- The form of the dwelling house is both consistent and compatible with the scale of surrounding and nearby two-three storey dwelling houses.

- The non-compliance does not detract from consistency with the objectives of the building height control.

- The proposed new works which exceed the maximum building height control are considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, by massing the new work towards the centre of the existing building footprint, minimising the visual impact of the bulk and scale when viewed from the rear yards of the northern and southern neighbours.

- The alterations demonstrate good design and improve the amenity of the built environment by creating improved and functional living area whilst retaining suitable amenity for the adjoining properties (cl 1.3(g)).

The previous excavation of the site and the consequent distortion of the height of buildings plane over the site when compared to the external levels and natural topography of the land is considered to be a constraint which impacts on the aspect of the development that contravenes a development standard, being the minor breach to the maximum building height control that is directly above the former excavation of the site.

Overall, the proposed design presents the orderly and economic development and use of the land, consistent with Object 1.3(c) of the EP&A Act.

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development and the elements which breach the maximum 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 4.3 and the objectives of the R2 Low Density Residential Zone?

(a) Section 7.2 of this written request suggests the 1st test in Wehbe is made good by the development.

(b) Each of the objectives of the R2 Low Density Residential Zone and the reasons why the proposed development is consistent with each objective is set out below.

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

Preston CJ 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, the proposed new dwelling will be consistent with the individual Objectives of the R2 Low Zone, as follows:

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

  The proposal provides a new, high quality family home at the subject site. The proposed dwelling house is of a scale that is anticipated within a low density environment.

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

  Not Applicable – the proposal relates to residential development.

- ***To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.***

  The application is supported by a Landscape Plan that demonstrates the enhancement of landscaping at the subject site. The minor breach associated with the Ground Floor roof does not detract from consistency with this objective.

The proposed development is in the public interest, as it is consistent with the objectives of both the building height development standard and the R2 Zone.

7.4 Has the Council obtained the concurrence of the Secretary?

The Council can assume the concurrence of the Secretary with regards to this clause 4.6 variation.

7.5 Has the Council considered the matters in clause 4.6(5) of WLEP 2011?

The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is specific to the design of the proposed development 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.

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 in this particular instance.
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 height of a building control, with the proposed new dwelling reaching a maximum height of 9.84m.

This written request to vary to the maximum building height specified in Clause 4.3 of the WLEP 2011 adequately demonstrates that the objectives of the standard will be met.

This variation occurs as a result of the sloping topography of the site and the prior excavation of the site within the building footprint, resulting in the distortion of how the building height plane relates to a site with excavated levels below the current building.

The bulk and scale of the proposed development is appropriate for the site and locality.

In summary, the proposal satisfies all of the requirements of clause 4.6 of WLEP 2011 and the exception to the development standard is reasonable and appropriate in the circumstances of the case.

VAUGHAN MILLIGAN
Town Planner