APPENDIX
CLAUSE 4.6 – HEIGHT OF BUILDINGS

Prepared June 2025

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

15 CHISHOLM AVENUE, AVALON

FOR THE CONSTRUCTION OF ADDITIONS AND ALTERATIONS TO AN EXISTING DWELLING

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

For:	Construction of additions and operations to an existing dwelling
At:	15 Chisholm Avenue, Avalon Beach
Owner:	Mr Michael Mangan
Applicant:	Mr Michael Mangan c/- Vaughan Milligan Development Consulting Pty Ltd

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).

This submission accompanies architectural plans prepared by AH Design, comprising Drawing No 1-4 dated 24 April 2025.

This submission has been prepared to address the provisions within Section 35B of the Environmental Planning and Assessment Regulation 2021, and as discussed within this Written Request, will demonstrate the grounds on which the proposal considers the matters set out in Clause 4.6(3)(a) and (b) of the PLEP 2014.

2.0 Background

Clause 4.3 restricts the building height of a building within this area of the Avalon Beach locality and refers to the maximum height noted within the "*Height of Buildings Map*."

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

The proposal provides for the construction additions and alterations to an existing dwelling, which as a consequence of the prior excavation of the site for the existing lower ground floor level and the slope of the land as it falls towards the east, a portion of the upper floor roof will be up to 9.54 m above ground to exceeds Council height control by 1.04m or 12.23%.

The extent of the building elements which exceed the 8.5m height control is detailed in Figure 1:

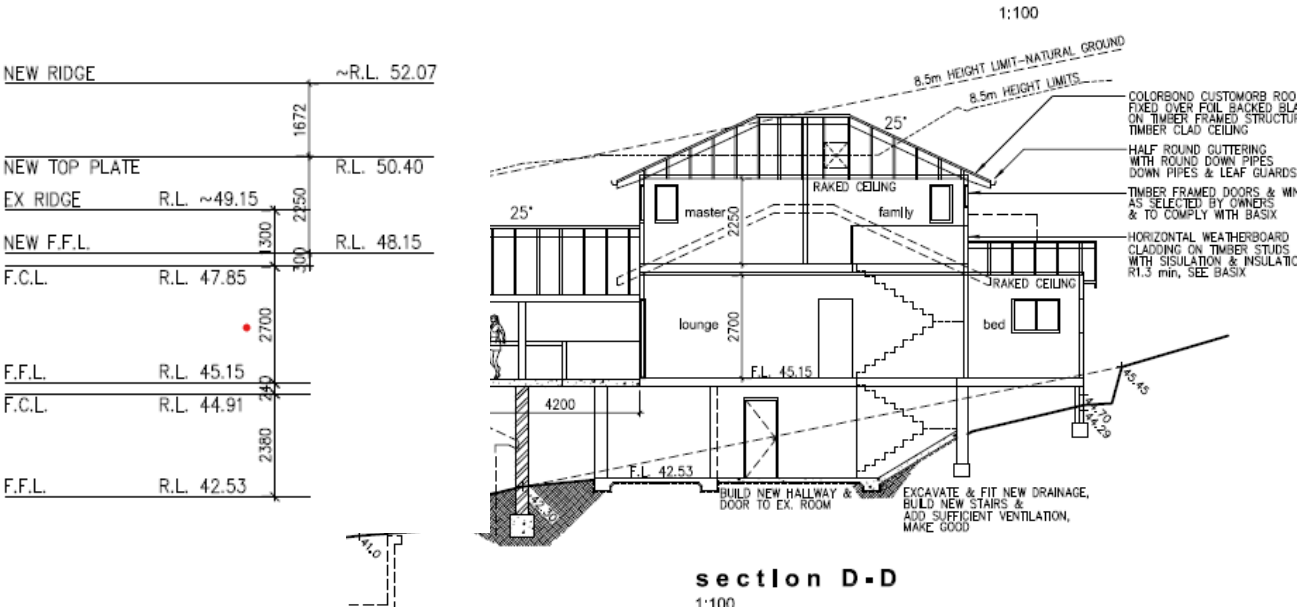


Fig 1: Section extract from plans prepared by AH Design dated April 2025

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

When the excavated lower level is used as the reference point for the 8.5m height control, the proposed additions and alterations present a non-compliance with the maximum building height standard, having a height of up to 9.54m.

When measured above the external ground levels and in particular the southern elevation, the visual height of the building does not exceed 8.5m when viewed from the south, east and north. From the west, 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 PLEP 2014.

The demonstrated building height variation when measured from the natural ground level is restricted to only a small portion of the roof area of the new dwelling and occurs over as a direct result of the falling site levels falling towards the east and the previous excavation works at the lower level.

The actual building height variation is also a direct response to the slope of the levels and Council's controls allow for consideration of height variations on sites with challenging slope.

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

2.1 Authority to vary a Development Standard

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

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

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

• Clause 4.6(3) was amended such that the requirement to 'consider' a written request has been changed with an express requirement that the consent authority 'be satisfied that the applicant has demonstrated' that compliance with the development standard is unreasonable or unnecessary.

• Clause 4.6(4)(a)(ii) was amended such that the requirement that the consent authority must be satisfied that the proposed development in the public interest has been removed.

• Clause 4.6(4)(b) & 5 amended such that the requirement for concurrence from the Planning Secretary has been removed.

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

Clause 4.6 Exception to development standard

> *(1) The objectives of this clause are as follows—*
>
> > *(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
> >
> > *(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
>
> *(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
>
> *(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*
>
> > *(a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and*

(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

Note—

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

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

(5) (Repealed)

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

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

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

Note—

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

(7) (Repealed)

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

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4,

(caa) clause 5.5.

Is Clause 4.3 of the LEP a development standard?

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

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

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

3.0 Purpose of Clause 4.6

The Pittwater Local Environmental Plan 2014 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

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

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

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

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

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

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

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

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

Clause 4.6(2) of the LEP provides:

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

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

Clause 4.6(3) of the LEP provides:

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

The proposed development does not comply with the maximum building height development standard pursuant to Clause 4.3 of PLEP which specifies a maximum building height of 8.5m in this area of Avalon Beach. As a consequence of the slope of the site towards the east and the previous historical excavation of the site to provide for the existing lower ground floor level, a portion of the new roof level for the dwelling will be up to 9.54m above ground, exceeding Council's height control by 1.04m or 12.23%.

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

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

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

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

The specific objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for modest additions and alterations to the existing dwelling, together with a swimming pool and cabana, which will be consistent with the stated Objectives of the C4 Environmental Living Zone, which are noted as:

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

As sought by the zone objectives, the proposal will provide for the modest additions & alterations to an existing dwelling, together with the swimming pool and cabana which accommodate the sloping topography of the site, to result in a dwelling which provides for appropriate amenity for its occupants, whilst respecting the amenity and outlook of the neighbouring properties. The dwelling has regard for the sensitive hillside location of the site and the general sloping topography of the locality.

The non-compliance with the building height control arises as a direct result of the slope of the land and the previous historical excavation of the site for the lower ground floor level .

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 PLEP 2014.

The proposal maintains a bulk and scale which is in keeping with the extent of surrounding development, with a consistent palette of materials and finishes which will provide for high quality development that will enhance and complement the locality. Accordingly, the proposal presents a building height that is well below the existing dwelling house that currently exists on the site.

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

Notwithstanding the non-compliance with the maximum building height control, the new works will provide an attractive addition to the existing residential development that will continue to maintain the building's contribution to the character and function of the local coastal residential neighbourhood.

5.0 The Nature and Extent of the Variation

5.1 This request seeks a variation to the maximum building height standard contained in Clause 4.3 of PLEP.

5.2 Clause 4.3 of PLEP specifies a maximum building height of 8.5m in this area of Avalon Beach.

5.3 The proposed additions and alterations to the dwelling will present of the new roof which will exceed the 8.5m height control, with the new works up to a height of 9.54m, exceeding the height standard by 1.04, or 12.23%.

6.0 Relevant Caselaw

6.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular, the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:

> *17. The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
>
> *18. A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
>
> *19. A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
>
> *20. A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
>
> *21. A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However,*

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

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

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

1. Is Clause 4.3 of PLEP a development standard?

2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:

   (a) compliance is unreasonable or unnecessary; and

   (b) there are sufficient environmental planning grounds to justify contravening the development standard

3. Is the consent authority satisfied that the proposed development will be consistent with the objectives of Clause 4.3 and the objectives for development for in the C4 zone?

7.0. Request for Variation

7.1 Is compliance with Clause 4.3 unreasonable or unnecessary?

(a) This request relies upon the 1st way identified by Preston CJ in Wehbe.

(b) The first way in Wehbe is to establish that the objectives of the standard are achieved.

(c) Each objective of the maximum building height standard, as outlined under Clause 4.3, and reasoning why compliance is unreasonable or unnecessary, is set out below:

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

The proposal reflects the established built form character of the immediate area where multi-level, variably stepped dwelling houses are prevalent, due to the steep topography of the land and the challenges providing pedestrian and vehicular access.

The proposed works have been designed to accommodate the steep slope of the site, whilst providing a stepped design that corresponds with the significant slope of the site. The proposal is for a three (3) level dwelling house with the existing excavated area to accommodate the levels of the dwelling contributing to the non-compliance. Accordingly, the area height above the natural ground level is considered to be a minor area of non-compliance that is comparable with surrounding development, and characteristic of the area.

- ***To ensure that buildings are compatible with the height and scale of surrounding and nearby development.***

The development is located on the downward slope of the Chisholm Avenue street reserve which is characterised by undulating topography. This results in variable built forms, such that there is an eclectic mix of height and scale in the area. Notwithstanding that the overall height of the development is marginally above the 8.5m requirement when measured from the existing external ground level, and more so when the excavated height is included. However, the additions and alterations to the dwelling are representative of a modest two storey dwelling when viewed from the west, north and south and the three storey appearance is generally only evident from the east, with the separation from surrounding properties to the east of the site having the result that the building is not visually prominent.

The non-compliance above existing ground level is considered to be relatively minor, with the excavated area of the dwelling not visually identifiable meaning the 9.54m building height does not unreasonably conflict with the height and scale of surrounding and nearby development. In this context, the proposed height non-compliance is considered to be compatible.

- ***To minimise any overshadowing of neighbouring properties.***

The modest two storey form of the building above ground ensures that solar access for the neighbours is not unreasonably compromised.

- ***To allow for the reasonable sharing of views.***

It is determined that the non-compliance does not impact the viewing angle from surrounding properties. The siting of the proposed first floor addition and new cabana and pool to the rear and accommodation with the sloping topography allows highly valued views from all neighbouring dwellings to be largely retained towards the east.. The building height non-compliance does not have an unreasonable impact upon the existing views from further to the west on the high side of Chisholm Avenue is views over the development will be maintained due to the elevation of these properties.

- ***To encourage buildings that are designed to respond sensitively to the natural topography.***

The proposal is reliant upon the existing topography of the site and sensitively steps down the sloping site. The proposal's design, with an integrated dwelling and landscape design, combined with open style terrace areas, and low profile rooflines provides sufficient breaks in the built form, such that there is no unreasonable building bulk when viewed from neighbouring properties.

- ***To minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.***

Despite the topographical constraints of the site, the development's design creates additional articulation, and visual interest with the new additions to the dwelling itself located over the existing lower floor levels to footprint located generally within the existing building footprint to minimise site disturbance and create sufficient setbacks from the boundaries, such that the visual impact of the building will be appropriately managed. Existing landscaping has been retained wherever possible and additional landscaping will soften and filter the built form. As a result, the proposal will be sufficiently integrated into the existing landscaped setting.

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 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 the development standard, being the minor breach to the maximum building height control that is directly above the former excavation of the site.

- 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 PLEP 2014.

- The proposed development is compatible with the height of the surrounding dwellings and will maintain the general bulk and scale of the existing surrounding development and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).

- Similarly, the proposed development will provide for improved amenity within a built form which is compatible with the streetscape of Chisholm Avenue which also promotes the orderly and economic use of the land (cl 1.3(c)).

- The proposed development improves the amenity of the occupants and respects the current levels of privacy, amenity and solar access enjoyed by the surrounding this replicating the existing built form (1.3(g)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly when considering the bulk, height, setbacks and selected elements of the proposal, notably the particular building form and varied side setbacks which have been designed in consideration of the surrounding properties, including view lines and the visual presentation of the building to the neighbouring dwellings.

In order to provide for the required floor area and at a level where there is no breach to the height control, the design would result in an increased built footprint and a loss of landscaped area in the site and therefore the minor variation to the height control is considered to be a preferable outcome in this instance.

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

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

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

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

7.3 Is the proposed development consistent with the objectives of Clause 4.3 and the objectives of the C4 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 C4 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 also found that "*The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone".*

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

It is considered that notwithstanding the variation of to the building height control, the proposal which involves additions and alterations to the existing dwelling and the construction

of a new swimming pool and cabana will be consistent with the individual Objectives of the C4 Environmental Living Zone for the following reasons:

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

  Comment: The proposed development has been sensitively designed in response to the values of the site. The development is supported by a Geotechnical Report & Arborist Report to ensure that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land. The proposed development will not be antipathetic to the visual significance of the area and is of a scale that is consistent and compatible with surrounding dwellings.

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

  Comment: The proposed development does not result in any adverse impacts upon the scenic quality of the locality and has been designed to be safe from the natural hazards that affect the site. The dwelling is highly articulated, and is to be finished in earthy tones, and natural materials to blend with the surrounding environment.

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

  Comment: The proposed development remains a single dwelling house, that appropriately responds to the challenges of the steeply sloping land.

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

  Comment: The development is supported by an Arborist's Report and will not involve the removal of disturbance of any significant vegetation to ensure that the development will not have any adverse impact on the condition, ecological value and significance of the existing planting within the site.

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

(a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the additions and alterations to the existing dwelling within the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.

(b) As the proposed development complies with the objectives of the development standard and the objectives of the zone, there is no significant public benefit in maintaining the development standard.

8.0 Conclusion

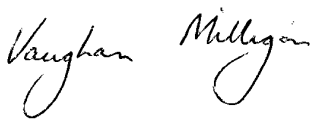
This development proposed a departure from the maximum building height development standard, with the additions and alterations to the existing dwelling to present a maximum height above the excavated existing ground level within the site of up to 9.54m, which breaches the 8.5m height control by 1.04m or 12.23%.

This variation occurs as a result of the steeply sloping topography and excavation of the site and the proposal will not adversely impact the Avalon Beach area or neighbouring properties and will substantially improve the amenity of owners when compared to the existing dwelling.

The unique nature of the site and is topographical and configuration constraints provide sufficient environmental planning grounds to justify contravening the development standard.

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

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



VAUGHAN MILLIGAN
Town Planner