

**CLAUSE 4.6 VARIATION
LIMITED DEVELOPMENT ON FORESHORE AREA****140A CRESCENT ROAD NEWPORT
ALTERATIONS AND ADDITIONS TO EXISTING TWO STOREY RESIDENCE****JUNE 2020 – REVISION A**

This statement constitutes a request for variation to a development standard, made under Clause 4.6 of Pittwater Local Environmental Plan 2014 for Northern Beaches Council.

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,*
- (b) *To achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

For this to occur, the Development Application is to be supported by a written application that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case. This application should be read in conjunction with the accompanying Development Application drawings prepared by Mark Hurcum Design Practice and Statement of Environmental Effects.

1.0 ZONING OF THE LAND

The subject site is zoned E4 Environmental Living

2.0 OBJECTIVES OF THE ZONE

The objectives of zone are as follows:

- *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.*

3.0 STANDARD TO BE VARIED

The standard to be varied is *Clause 7.8 Limited development on foreshore area* of Pittwater LEP 2014.

Specifically, Subclause (2):

Development consent must not be granted for development on land in the foreshore area except for the following purposes—

- (a) *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*
- (b) *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

For clarity, Subclause (5) states:

‘Foreshore Area’ means the land between the foreshore building line and the mean highwater mark of the nearest natural waterbody shown on the Foreshore Building Line Map.

4.0 OBJECTIVES OF THE DEVELOPMENT STANDARD TO BE VARIED

The objectives of this clause are as follows —

- (a) *to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,*
- (b) *to ensure continuous public access along the foreshore area and to the waterway.*

5.0 EXTENT OF VARIATION TO THE STANDARD

The extent of the variation to the development standard is the construction of an extension to an existing balcony which is already forward of the FSBL, described graphically in *Diagram 1* below. The foreshore building line (FSBL) runs through the middle of the existing dwelling. *Diagram 1* shows the non-conformity of both the existing dwelling and the proposed works. The existing balcony and proposed first-floor balcony extension are located in front of the FSBL within the foreshore area. The proposed first floor balcony extension has an area of 12.3m² and will result in an increase of the buildings footprint within the foreshore area.

Despite this increase it is important to note that the proposed first floor balcony extension is set back 0.6m from the front edge of the existing balcony and contained within the existing extremities of the building, defined by the existing balcony and north-eastern wall of the house.

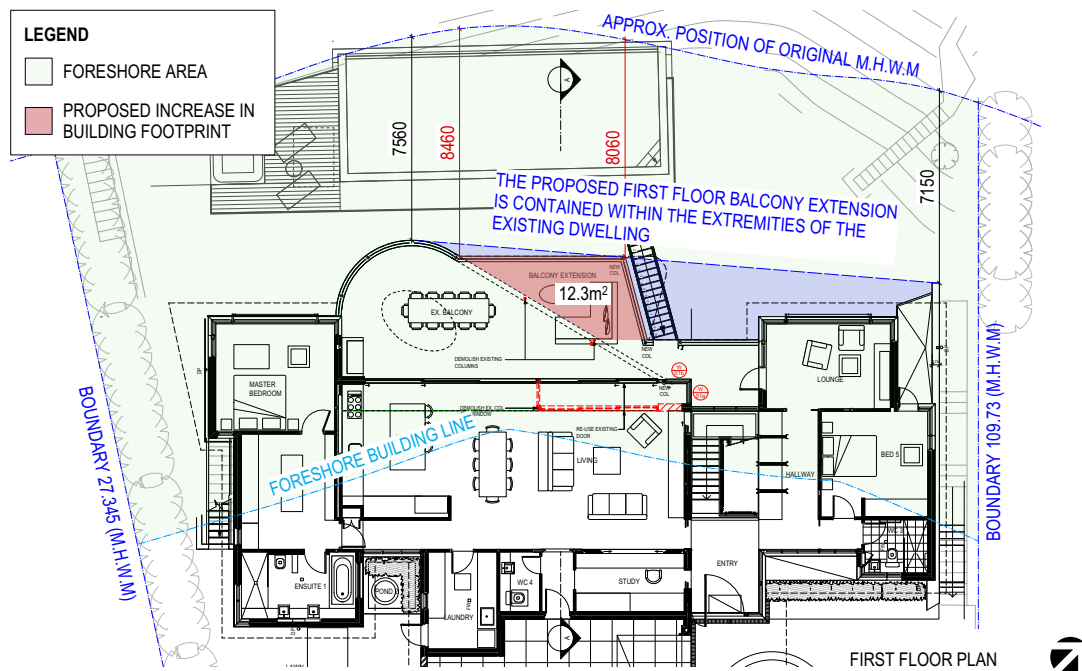


Diagram 1: The proposed first floor balcony extension will result in an increase to the buildings footprint of 12.3m² within the foreshore area but is contained within the extremities of the existing dwelling. Setbacks from the front of the existing balcony and to the rear boundary M.H.W.M are shown.

6.0 HOW IS STRICT COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THIS PARTICULAR CASE?

Strict compliance with this development standard is unreasonable given the existing building to be extended does not conform with the development standard, and due to the minor nature of the proposed development.

Strict compliance with the development standard is unnecessary as the objectives of this clause are achieved. Additionally, the proposed work satisfies the requirements of Clause 7.8.

Subclause (3) of *Clause 7.8 Limited development on foreshore area* of Pittwater LEP 2014 states:

Development consent must not be granted under this clause unless the consent authority is satisfied that—

- (a) the development will contribute to achieving the objectives for the zone in which the land is located, and*
- (b) the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*
- (c) the development will not cause environmental harm such as—*
 - (i) pollution or siltation of the waterway, or*
 - (ii) an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
 - (iii) an adverse effect on drainage patterns, or*
 - (iv) the removal or disturbance of remnant riparian vegetation, and*
- (d) the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*
- (e) opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
- (f) any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*
- (g) in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*
- (h) sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change, have been considered.*

The proposed first floor balcony extension satisfies all of the above requirements.

The proposed development is minor in nature and achieves the objectives of the E4 Environmental Living Zone. It is a low impact addition that is integrated within the existing building mass and is of an appropriate scale and compatible with both surround area and building. The existing building has a low profile, with substantial landscaping along the foreshore embankment that integrates the building within the surrounding landforms. The proposed works will not substantially alter this relationship. The proposed extension is located above an existing grass lawn and will not impact the existing foreshore vegetation and wildlife corridors.

The proposed balcony extension will not substantially change the appearance of the existing dwelling as viewed from the Pittwater waterway and adjacent foreshore areas. As shown on SK08 External Finishes Schedule all of the proposed finishes have been

selected to match the finishes of the existing dwelling and when finished it will be indistinguishable from the existing building form.

The proposed works will not cause environmental harm provided the appropriate measures are implemented during construction as shown on the previously submitted *SK09 Sediment and Erosion Control Plan*. No trees or native vegetation will be removed by the proposed works.

There is currently limited public access along the narrow strip of land between the existing sea wall and vegetated embankment. The proposed balcony extension is located above this embankment within the site's boundaries and will have no impact on the existing public access along the foreshore nor the amenity or aesthetic appearance of the foreshore.

The proposed location of the balcony ensures that it will not be impacted by sea level rise, coastal erosion and recession as a result of climate change.

Subclause (4) of *Clause 7.8 Limited development on foreshore area* of Pittwater LEP 2014 states:

In deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following—

- (a) continuous public access to and along the foreshore through or adjacent to the proposed development,*
- (b) public access to link with existing or proposed open space,*
- (c) public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,*
- (d) public access to be located above mean high water mark,*
- (e) the reinforcing of the foreshore character and respect for existing environmental conditions.*

The proposed development will have no impact on the existing limited public access along the foreshore and will not alter the existing character of the foreshore.

7.0 THERE ARE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

Clause 4.6 requires the departure from the development standard to be justified by demonstrating that there are sufficient environmental planning grounds to justify contravening the development standard. There are particular constraints that affect the site which inhibit the development's ability to achieve strict compliance with the development standard.

The site is constrained by its depth from Pittwater to the opposite boundary. The site is approximately 27-33m in depth (excluding access handle), with the foreshore building line approximately 15m from mean high-water mark. This effectively leaves only half the site depth behind the foreshore building line, which would severely limit available area for development.

This limitation has resulted in the existing building not conforming to the development standard, including the existing balcony to be extended. This means the extension will also not conform with the development standard. However the development will comply with the DCP rear setback control of 6.5m, which would apply where the foreshore building line does not apply.

The unique site constraints justify a departure from the development standard.

8.0 COMPLIANCE WITH THE OBJECTIVES PERTAINING TO STANDARD TO BE VARIED

As demonstrated below, all objectives of the Standard are met.

- (a) *to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,*

As the proposed development is situated well back from the foreshore and separated from it by the existing pool it will not impact the existing natural foreshore processes. The design of the first-floor balcony extension is consistent with the scale of surrounding buildings and will not adversely affect the significance of the area. As the proposed first floor extension is contained within the extremities of the existing building it will not adversely impact the views and amenity of the surrounding properties.

The objective is maintained.

- (b) *to ensure continuous public access along the foreshore area and to the waterway.*

There is currently no public access to the waterway within the subject site and limited access along the foreshore area between the existing retaining wall and embankment. As the proposed works are located within the bounds of the property between the existing pool and dwelling, they will not impact public access.

The objective is maintained.

9.0 CONCLUSION

It is submitted that a variation to Pittwater Council LEP 2014 is appropriate for this project, as it achieves all of the objectives of clause 7.8 and the proposed development satisfies all of the criteria listed in subclauses (3) and (4) which define the criteria on which council should determine consent. In addition, the proposed development does not adversely impact the neighbouring properties and will substantially improve the amenity of the existing dwelling. Finally, the unique site constraints provide sufficient environmental planning grounds to justify contravening the development standard.

The proposed development is in the public interest because it is consistent with the objectives of the development standard and the objectives of the zone. As demonstrated above, strict compliance with this standard is inappropriate for this Development Application. Consent should therefore not be withheld.