

Clause 4.6 Variation Request Clause 4.3 Height of Buildings

**5 RICHARD RD. SCOTLAND ISLAND, 2105
Lot 48 DP 12749**

Date: 27th May 2022

Prepared By: Stephen Crosby & Associates Pty. Ltd.
PO Box 204, Church Point, NSW 2105

For: J. & M. Marshall

Introduction

Concurrent with the above Development Application we submit this letter addressing the provisions of Pittwater Council **LEP 2014**, specifically **cl. 4.3– Height of buildings** regarding development that exceeds the maximum height on Council's Heights of Buildings Map under the provisions of **LEP 2014 cl.4.6 Exceptions to development standards**.

This document shall demonstrate compliance with the outcomes of **LEP control 4.3 Height of buildings** with regard to the proposed boat shed to supplement the existing water access only family dwelling.

Clause 4.6 of the Pittwater Local Environmental Plan 2014 enables Northern Beaches Council to grant consent to the development even though the boat shed contravenes a development standard. The clause aims to provide flexibility in applying certain development standards to achieve better outcomes for and from the development.

This clause 4.6 variation request demonstrates that compliance with the height standard is unreasonable and unnecessary in the circumstances of this case, and there are sufficient environmental planning grounds to justify contravention of the standard.

This clause 4.6 variation request demonstrates that the proposed development:

- Satisfies the objectives for development standard clause 4.3 PLEP 2014 Building Height,
- Satisfies the objectives of the W1 Waterways zone under PLEP 2014,
- Is consistent with applicable state and regional planning policies,
- Provides for a better planning outcome,
- Has sufficient environmental planning grounds to permit the variation, and
- Is in the public interest.

The DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.3 of the Pittwater LEP 2014.

VARIATION TO CLAUSE 4.3 HEIGHT OF BUILDINGS

The finished floor level of the proposed boat shed is nominated at 1.65m AHD and the ridge is 6.15m AHD. From the LEP Heights of buildings map the maximum height of the boat shed should be no more than 4.0m above astronomical height tide (1.17m AHD), giving a total of 5.17m AHD. The proposed boat shed ridge exceeds this height by 0.98m.

The location of the boat shed is in accordance with Pittwater Council's DCP P21 Section

D15.15 Waterfront Development, Clause c) Boat sheds part i. "Boat sheds shall be located above the MHWL on freehold land, **where practicable.**" The form of the land and the existing stone retaining wall make it practical to locate the entire boat shed behind the MHWL.

The height of the boat shed is entirely in accordance with Pittwater Council's DCP P21 Section D15.15 Waterfront Development, Clause c) Boat sheds part ii. "Boat sheds shall be no greater than 4.5m in building height above the platform on which it is built..." In regard to height limits the DCP makes no distinction as to the location of the boat shed.

The nominated Highest Astronomical Tide (HAT) of 1.17m AHD has been in the Council's LEP documents unchanged for over 30 years. As such it takes no account of sea level rise, or the Council's more recent (Cardno 2015) report into sea levels in Pittwater. The Cardno report puts a sea level rise of 0.42m at 2078 (relative to 2010), giving a tide level of 1.59m AHD, with the 1 in 100 year ARI still water level at 1.94m AHD.

JUSTIFICATION FOR CONTRAVENTION OF THE DEVELOPMENT STANDARD

Clause 4.6(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 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) there are sufficient environmental planning grounds to justify contravening the development standard.

Clause 4.6(4) Development consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:
 - (i) the applicants 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 Secretary has been obtained.

CLAUSE 4.6(3)(a) COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

The objectives of the standard are achieved notwithstanding non-compliance with the standard. The objectives of the standard are:

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
- (c) to minimise any overshadowing of neighbouring properties,
- (d) to allow for the reasonable sharing of views,
- (e) to encourage buildings that are designed 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.

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

The proposed boat shed floor level is entirely consistent in form and height with the guidelines for boat sheds as set down in PDCP21 D15.15, with the ridge level similar to many of these structures built over that last 20 years in Pittwater.

As, such, the proposal's height, whilst seeking a variation to the height control, still results in a development which is consistent with the expectations for boat sheds around Scotland Island and remains consistent with the desired character of the Pittwater waterway.

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

Many of the boat sheds in McCarrs Creek, Elvina and Lovett Bays, as well as on Scotland Island, are similar in height and scale.

Objective (c) to minimise any overshadowing of neighbouring properties.

The proposal will not result in any overshadowing of neighbouring properties due to the location of the boat shed over water, and the rising slope of the adjoining sites where dwellings are located.

Therefore, the variation to the height limit does not result in any overshadowing on neighbouring properties.

Objective (d) to allow for the reasonable sharing of views.

Due to the location of the boat shed being below the lowest floor levels of neighbouring dwellings, the proposed development, and the minor variation to the height limit, do not result in any view impacts, allowing for the reasonable sharing of views.

The proposal does not interrupt or obstruct any significant views to or from the site or Pittwater, making the proposed development consistent with this objective.

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

The proposed development has been designed to respond sensitively to the natural topography, which slopes steeply away from a level area straddling the Mean High Water Mark.

The building sits lightly on the existing terrain.

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

There are no heritage items affected by the proposal, and the building will have a similar visual impact on the existing environment being entirely consistent with waterfront boat sheds in this area of Pittwater.

Pittwater LEP 2014 cl. 4.6 Exceptions to development standards sets out the parameters for varying a development standard such as cl. 4.3 Height of buildings described above. Compliance with the relevant provisions of cl 4.6 is achieved as follows:

- (3) (a) as demonstrated above compliance with the development standard cl.4.3 is unreasonable or unnecessary in this case, and,
- (b) there are sufficient environmental planning grounds to justify contravening the development standard in this instance.
- (4) (a) (i) the proposed modification to the existing development is modest in scale and typical of boat sheds for water access only properties in Pittwater.

CLAUSE 4.6(4)(a)(ii) IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE ZONE AND DEVELOPMENT STANDARD.

Consistency with the objectives of the development standard.

The proposed development is consistent with the objectives of the height of buildings standard in clause 4.3, for the reasons discussed previously in **CLAUSE 4.6(3)(a) COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY.**

Consistency with the objectives of the zone.

The proposed development is consistent with the underlying objectives of the W1 Waterways zone. The primary driver of the variation is the result of designing a boat shed fit for purpose with minimal impact on the natural environment. The proposal will have minimal visual impact on the development on neighbouring sites or Pittwater.

The proposed siting and design of the boat shed will not affect public access along the waterfront. An access deck around the boat shed ensures public access along the waterfront is maintained.

The proposed development is of good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying the requirement that the proposal, and the height limit standard variation, are in the public interest.

Overall public interest.

The proposed development is considered to be in the public interest for the following reasons:

- Boat sheds are a specifically permissible use of the site and consistent with the character of the Scotland Island locality.
- Boat sheds of this traditional form add character to waterways foreshores when viewed by the public using the waterway for recreational purposes.

On the basis of the above, we believe that the consent authority can be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the development standard for building height contained in clause 4.3 of the PLEP 2014, and with the objectives of the W1 Waterways zone under the PLEP 2014.

CONCLUSION

The assessment above demonstrates that compliance with the maximum building height development standard in Clause 4.3 of the PLEP 2014 is unreasonable and unnecessary in the circumstances of this case and that the justification is well founded. It is considered that the variation allows an orderly and economic use and development of the land, and that the structure is of good design that will reasonably protect and improve the amenity of the surrounding built environment.

This clause 4.6 variation demonstrates that, notwithstanding the variation to the maximum building height development standard, the proposed development:

- Satisfies the objectives of the development standard for height of buildings in clause 4.3 of PLEP 2014,
- Satisfies the objectives of the W1 Waterways zone under PLEP 2014,
- Provides for a better outcome,

- Has sufficient environmental planning grounds to permit the variation, and
- Is in the public interest.

As such, the Development Application may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the PLEP 2014.

STEPHEN CROSBY