

CLAUSE 4.6 – VARIATION REQUEST
TO
MAXIMUM HEIGHT OF BUILDINGS
DEVELOPMENT STANDARD
UNDER CLAUSE 4.3 OF PITTWATER LOCAL
ENVIRONMENTAL PLAN 2014
FOR
DEMOLITION OF EXISTING STRUCTURES
AND
ERECTION OF NEW STRUCTURES
AT
**1191–1193 BARRENJOEY ROAD,
PALM BEACH**

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CLAUSE 4.6 – EXCEPTION TO A DEVELOPMENT STANDARD IN RELATION TO CLAUSE 4.3(2) MAXIMUM BUILDING HEIGHT OF THE PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

1.0 INTRODUCTION

This written request is made pursuant to the provisions of Clause 4.3(2) of the Pittwater Local Environmental Plan 2014 for the erection of a new building to accommodate Boathouse Café, boat hire and seaplane charter at 1191-1193 Barrenjoey Road, Palm Beach

Clause 4.6 – Exceptions to Development Standards

4.6 Exceptions to development standards

(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 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.

(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 Secretary has been obtained.*
- (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.*
- (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 E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 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) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (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.*

RESPONSE

Clause 4.3(2) Height of Buildings, of the Pittwater Local Environmental Plan 2014 is a development standard that is not subject to any of the specified exclusions from the operation of Clause 4.6.

This request is composed and informed by decisions of the Land and Environment Court and in particular the judgments in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Micaul Holdings Pty Ltd v Randwick City Council* [2015] NSWLEC 1386, *Moskovich v*

Waverley Council [2016] NSWLEC 1015 and *Wehbe v Pittwater Council [2007] NSWLEC 827*. The submission addresses the requirements of Clause 4.6.

This written application seeks an exception to a development standard as the proposal will breach the development standard as prescribed within the Maps component of the Pittwater Local Environmental Plan 2014 as illustrated in the following Section 2.0.

2.0 THE DEVELOPMENT STANDARD AND THE VARIATION SOUGHT



EXTRACT FROM PITTWATER LOCAL ENVIRONMENTAL PLAN 2014 –
HEIGHT OF BUILDINGS MAP PRESCRIBING A 4M MAXIMUM BUILDING HEIGHT

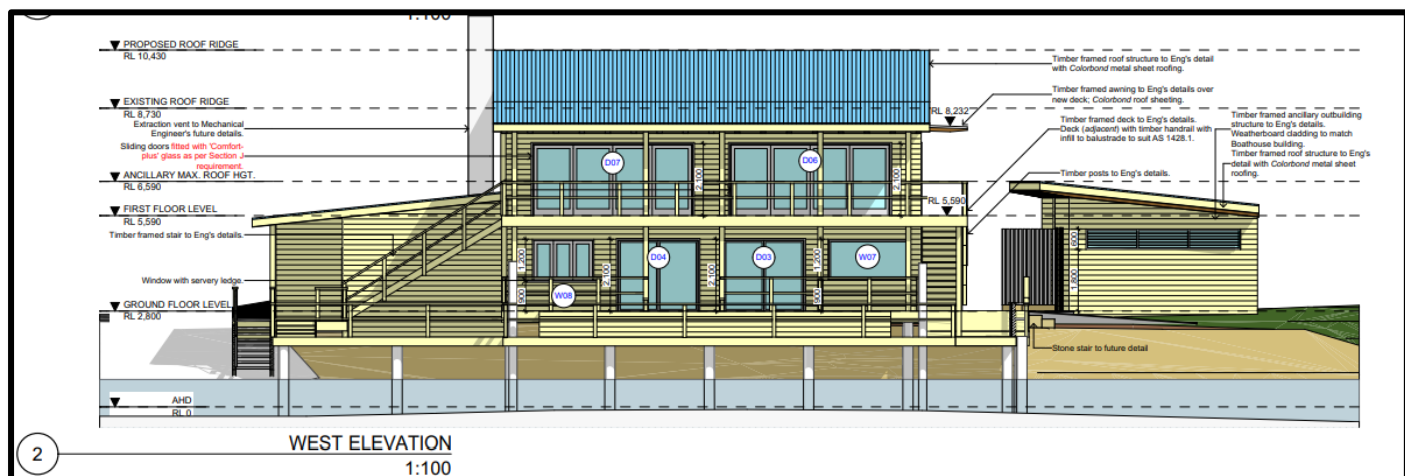
COMMENT

The subject site as identified within the Maps incorporated within the Pittwater Local Environmental Plan 2014 prescribe a development standard of a maximum building height of 4 metres.

The subject proposal with a proposed ridge height of RL10.43M AHD exceeds the maximum building height control of 4 m as the relevant standard is applicable to development below MHWL limited to 4m above Highest Astronomical Tide (HAT) (1.17mAHD), a resultant maximum building height of 5.17M.

The variation sought under this request is 5.26 metres (RL 10.43m minus RL 5.17m).

The following extract from the architectural details illustrate the proposed finished roof ridge height.



3.0 THE OBJECTIVES OF THE DEVELOPMENT STANDARD

4.3 Height of buildings

(1) *The objectives of this clause are as follows—*

- (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.*

RESPONSE

The proposal addresses the above Objectives as follows-

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

The desired character of the locality, being adjacent to the Governor Phillip Park Conservation Area endorses the Plan of Management in terms of the following objectives-

5.3.7 Additional building locations in the site

(a) Additional buildings

- *No additional buildings are to be constructed in locations outside of existing or former building footprints.*

The proposal is to be constructed on the existing building footprint.

5.5 View Sheds

(b) Views from Station Beach adjacent to Palm Beach Golf Club.

- *Open views of the headland are important from the beach, as this is generally the former approach/alignment to the headland. Any future built form or modifications associated with the Barrenjoey Boathouse to be designed with sympathetic architectural form and not present an obtrusive visual form or bulk in the site, be no higher than the existing structure and use colour sympathetic to the site character.*

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

The Boathouse Café is a singular structure along Station Beach and does not share the location with any structures in this location.

- (c) to minimise any overshadowing of neighbouring properties,*

The only neighbouring property in proximity to the subject site is the Governor Phillip Park located to the east of the Mean High Water Mark and, due to the fact that the proposed building is located to the west of the park, overshadowing is minimal.

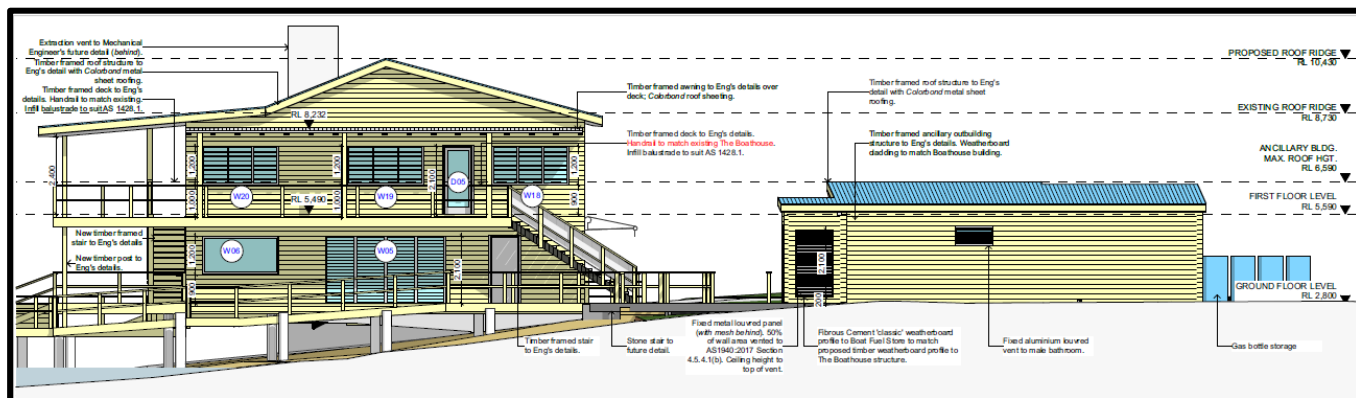
- (d) to allow for the reasonable sharing of views,*



**VIEW TOWARDS BARRENJOEY HEADLAND FROM STATION BEACH SOUTH
OF EXISTING BOATHOUSE**



EXISTING BUILDING VIEWED FROM THE SOUTH



SOUTH ELEVATION OF PROPOSED BUILDINGS

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

The overall height of the subject proposal is required to be raised from the existing height to allow for the subject building to withstand the impact of storms and to ensure that the building when completed at the required FFPL (Future Flood Planning Level) it is a minimum of 2.8 m AHD. This necessity to raise the floor is fully described in the attached extract from the author of the Cardno report which provides an explanation of the necessity to raise the building to the site.

In terms of the Cardno (2012) report, the site is on Station/Barrenjoey Beach. That report provides estuary planning levels (EPL) and the nominally appropriate case for this project is the 50-years

(from 2020) ARI storm and water level conditions for 2070. This level is 2.1 m AHD (2.07 m) at the Boat House – excluding freeboard and wave run-up and overtopping, which will be addressed separately. This is the closest example case included in Cardno (2012). This level includes 0.6m of projected sea level rise to 2070. The seaward deck, at 1.8 m AHD deck level, will be inundated in these design EPL conditions. The present rear deck is above the 2070 EPL, but is and will be affected by severe storms.

The back beach level shown on the site survey is about 2.5m AHD. Hence the car park, outdoor seating and outdoor kitchen facilities area would not be inundated by 'still water' at 2070 in the design storm event; but wave overtopping would cause inundation, which could flow back into the restaurant area.

The related design wave condition is $H_s=1.5\text{m}$ with a zero crossing period of 10.2 seconds. This is an ocean wave that may propagate from the Tasman Sea to the site in a rare storm, most likely with an offshore direction of east to east north-east. These waves would cause considerable uplift force on the floors and decks of the building, and wave overtopping north and south of the building would extend about 40m inland. The overtopping flow may be up to 0.3m deep at the shoreline with speeds in the order of 0.6 to 0.8m/s; and would be dangerous. However, ample warning of these storm conditions would be available, and in these circumstances the building and site would need to vacated.

The access road has levels of about 2.4 to 2.6m AHD.

Existing levels on the bitumen and packed sand vary from about 2.5m AHD at the landward side of the restaurant building and rise to 2.8m AHD towards the access road.

Hence, this area will not be inundated by the 2100 projected FFPL of 2.1m AHD, excluding 0.3m freeboard – Cardno (2012).

However, it will be affected by wave overtopping and additional inundation and run-up causing an overtopping depth of 0.4m (0.3m wave inundation + 0.1m (half breaking wave height = $0.2\text{m}/2$)) = 0.4m.

Hence the design FFPL is 2.8m AHD – 2.1m AHD + 0.3m FB + 0.4m inundation by wave overtopping). This is a site specific calculation, noting that the back-beach level is higher than the 2m AHD included in Cardno (2012). (Empahsis added)

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

The subject proposal and its surrounding context constraints and relevant plans of Management have been considered by CityPlan Heritage who have provided the following conclusion extracted from the accompanying Heritage Impact Statement by the same author.

In conclusion, it is considered by City Plan Heritage that the proposed works, including the demolition and reconstruction of the existing boathouse building with associated landscaping will result in little to no impact on the heritage significance of the Barrenjoey Heritage Conservation Area and the Governor Phillip Park. The proposed new building replacing the existing boathouse has been designed to interpret and reflect the weatherboard design of the existing Boathouse structure, while ensuring that through contemporary materials and detailing, the work is easily identifiable as new and not a copy of the original. The configuration and fabric of the

existing boathouse have been modified and replaced over time due to its beachside location and its operational requirements.

Therefore, its replacement with essentially a similar structure will not impact on its contributory values within the HCA. Additionally, the proposed landscape works to the site including change to the configuration of front of site landscaping, the addition of a seawall section, and proposed addition of new native vegetation will help to effectively integrate the site into the significant surrounding environment.

The proposed works provide a necessary upgrade to the Boathouse building which will assist in continuing the sustainable operation of the site in its current location for the future avoiding impact of raising sea and flood levels.

The proposal demonstrates compliance with the existing controls regarding heritage conservation and is therefore recommended to Council for approval.

4.0 IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

The subject proposal seeks to construct a replacement structure that allows for the building to have a serviceable life of at least 50 years and to be designed to safeguard against structural damage by storm events. The level is primarily dictated by the necessity to raise the lowest floor level to a level of RL2.8 m AHD with a subsequent overall building height of RL 10.43 m AHD. Ceiling heights are minimised however due to the commercial nature of the use of the building the ceiling heights are greater than ceiling heights likely to be found within residential buildings.

In order to achieve compliance with the development standard, a 4 m overall building height would result in a structure that is 1.2 m higher than the 2.8 m minimum Future Flood Planning Level and as such would not be satisfactory.

The proposal is a reproduction of the existing building on the site although taller and in conformity with the National Construction Code and is built to the minimum height able to be achieved under the site constraints.

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

The subject proposal does not offend any of the objectives under the E2 Environmental Conservation zone due to its sensitive location being on the existing footprint and the replication of the existing architectural form which is respected due to its history and value it offers to the community at large.

Given the fact that there is no building to benchmark the proposal against, the following extracts from the Governor Phillip Park Plan of Management are being adopted by this proposal as the parameters within the proposal is fashioned.

The extracts from the Plan of Management are as follows –

5.5 View sheds

5.5.1 Barrenjoey Headland

(a) Views from the north-west area of the park towards the headland.

- *Any future planting and built form is not to impede the open expansive views of the headland when viewed from Station Beach and the grassed area adjacent to the beach and the car park.*

(b) Views from Station Beach adjacent to Palm Beach Golf Club.

- *Open views of the headland are important from the beach, as this is generally the former approach/alignment to the headland. Any future built form or modifications associated with the Barrenjoey Boathouse to be designed with sympathetic architectural form and not present an obtrusive visual form or bulk in the site, be no higher than the existing structure and use colour sympathetic to the site character.*



**VIEW TO THE NORTH TOWARDS BARRENJOEY HEADLAND FROM THE SOUTHERN
END OF STATION BEACH ADJACENT TO PALM BEACH GOLF CLUB**

RESPONSE

The preceding photograph indicates the important view corridor sought to be preserved within the Plan of Management.

As can be seen from the above photograph and the fact that the existing Boathouse Café building, although currently breaching the height of buildings development standard is not materially impacting upon the expansive views and it is reasonable to deduce that the requisite increase in overall height in response to safeguarding against damage from future storm events will have no material, and little discernible, impact upon the above view. This lack of visual impact along with its lack of environmental impact and beneficial landscaping regime provides sufficient environmental planning grounds for this Clause 4.6 request to be supported.

6.0 WILL THE PROPOSAL BE IN THE PUBLIC INTEREST?

In accordance with Clause 4.6(4)(a), Development Consent must not be granted to a development that contravenes a Development Standard unless Council is satisfied in relation to certain matters as follows;

- (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 Director-General has been obtained.*

RESPONSE

The replacement of the existing building upon the existing footprint will serve the public interest as the following extract from the Plan of Management of Governor Phillip Park states the following and emphasises the importance of the facility within the periphery of the park –

Barrenjoey Boathouse and the jetty are well-used features within Governor Phillip Park. The Barrenjoey Boathouse building, constructed at the start of the jetty, includes a daytime cafe providing outdoor seating overlooking Pittwater.

In terms of the Objectives of the standard, these are addressed in Part 3 of this request.

In terms of the Objectives within the zone, the Objectives of the E2 Environmental Conservation zone are as follows;

Zone E2 Environmental Conservation

1 Objectives of zone

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*

- *To ensure the continued viability of ecological communities and threatened species.*
- *To protect, manage, restore and enhance the ecology, hydrology and scenic values of riparian corridors and waterways, groundwater resources, biodiversity corridors, areas of remnant native vegetation and dependent ecosystems.*

The subject proposal endorses the above objectives as it responds in a positive manner to the area below and around the subject structure as the proposal is designed to maintain a sensitive marine habitat below the structure whilst removing inappropriate landscape species around the subject locality and replacing the species with locally endemic species to integrate with the desired outcomes of the adjacent Governor Phillip Park.

The proposal will not destroy, damage or otherwise have an adverse impact on the values of these ecological communities and will maintain and in some instances enhance the continued viability of these communities and will not dominate the sensitive land and water interface of Station Beach.

7.0 IS THE OBJECTION TO THE DEVELOPMENT STANDARD WELL FOUNDED?

I believe that the proposal is well founded and makes it clear that the additional building height is necessary outcome due to the necessity for the proposal to satisfy the requirements of the future flood planning level in order to ensure the ongoing safety and structural stability of the subject building.

The application has been crafted to provide a replacement building that can be termed a “replica” of the existing building on the subject site which contributes to the landscape of this part of Palm Beach and is reflected in the relevant Plans of Management as making a valuable contribution to the locality. The proposal is endorsed within the accompanying Heritage Impact Statement prepared by City Plan, endorses the relevant objectives of the zone and development standard and respects the desired character expressed within the Plan of Management for the adjacent Governor Phillip Park.

Should the subject site not have been identified as prone to impacts from future storm events, the replacement building could be lower however this is not the case as the subject proposal must respond positively to these potential impacts.

A handwritten signature in dark ink, appearing to read 'Lance Doyle', is centered on the page. The signature is fluid and cursive, with a large initial 'L' and 'D'.

LANCE DOYLE
REGISTERED PLANNER
M. PLAN (UTS) B. APP SC. (UWS) RPIA

Dated: April 2021