

Northern Development Assessment

**CLAUSE 4.6 REQUEST FOR VARIATION OF THE LIMITED DEVELOPMENT ON
FORESHORE AREA STANDARD UNDER CLAUSE 7.8 OF PITTWATER LOCAL
ENVIRONMENTAL PLAN 2014**

**TO ACCOMPANY
DEVELOPMENT APPLICATION**

**FOR
PROPOSED DEMOLITION OF EXISTING DWELLING, CONSTRUCTION OF A NEW
DWELLING, SECONDARY DWELLING, SWIMMING POOL, CARPORT AND BOATSHED**

**AT
252 HUDSON PARADE, CLAREVILLE
LOT 59 DP 13760**

Prepared By

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1.0 INTRODUCTION

This request is made under the provisions of Clause 4.6 of Pittwater Local Environmental Plan 2014 (LEP 2014).

This Clause 4.6 Request has been prepared in relation to the Limited Development on Foreshore Area Standard under Clause 7.8 of LEP 2014 in support of a Development Application (DA) seeking approval for “*proposed demolition of an existing dwelling, construction of a new dwelling, secondary dwelling, swimming pool, carport and boatshed* on land described as Lot 59 DP 13760, 252 Hudson Parade, Clareville (subject site).

The Objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes arising from a proposed development.

For the reasons referred to in this Clause 4.6 Request, I consider that variation of the Limited Development on Foreshore Area Standard in the circumstances of this DA would achieve a better planning outcome, rather than requiring strict adherence to the Standard.

Clause 4.6 of LEP 2014 allows a Consent Authority to grant a variation to a Development Standard as prescribed below.

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.

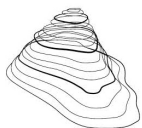
(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—

(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—



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- (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.*
- (5) In deciding whether to grant concurrence, the Planning 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 Planning 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 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.*

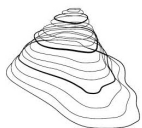
Note—

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

- (7) 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,*
 - (caa) clause 5.5.*

In the case of *Al Maha Pty Ltd v Strathfield Council* [2017] NSWLEC 1083, Presiding Commissioner C Dickson of the Land and Environment Court (Court) held that:

“[63] It is clear from a reading of cl 4.6 of LEP 2012 that the onus is on the applicant to meet the tests of cl 4.6 in seeking flexibility to the Height or FSR standards by demonstrating that the breaches of the two development standards are justified. Ms Ogg provided a written request under cl 4.6(3) which seeks to justify the contravention of the FSR Standard (FSR Request).



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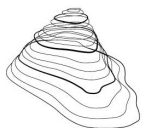
[64] In Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7, Preston CJ outlines that Commissioners on appeal exercising the functions of the consent authority have power to grant consent to developments that contravene the building height standard, or the FSR standard (cl 4.6(2)). However, they cannot grant such a development consent unless they:

- (1) are satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii))*
- (2) are satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii))*
- (3) have considered a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with they are satisfied that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6 (4)(a)(i)).*
- (4) have considered a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl. 4.6(3)(b) and cl 4.6(4)(a)(i)).”*

In addition to the abovementioned Court judgments, there are other relevant Court judgements relating to the application of a Clause 4.6 Request including, but not limited to, Winton Property Group v North Sydney Council [2001] NSW LEC 46, Wehbe v Pittwater Council [2007] NSW LEC 827, Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC 90, and Moskovich v Waverley Council [2016] NSW LEC 1015.

Given the above judgment of his Honour, Chief Judge Preston, which was followed by Presiding Commissioner C Dickson, this Clause 4.6 Request seeks to address the matters raised in (1) - (4) above and the provisions of Clause 4.6 of LEP 2014.

I note that the Limited Development On Foreshore Area Standard is not specifically excluded from the operation of Clause 4.6 of LEP 2014.



2.0 THE DEVELOPMENT STANDARD AND THE VARIATION SOUGHT

7.8 *Limited development on foreshore area*



(1) *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.*

(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).*

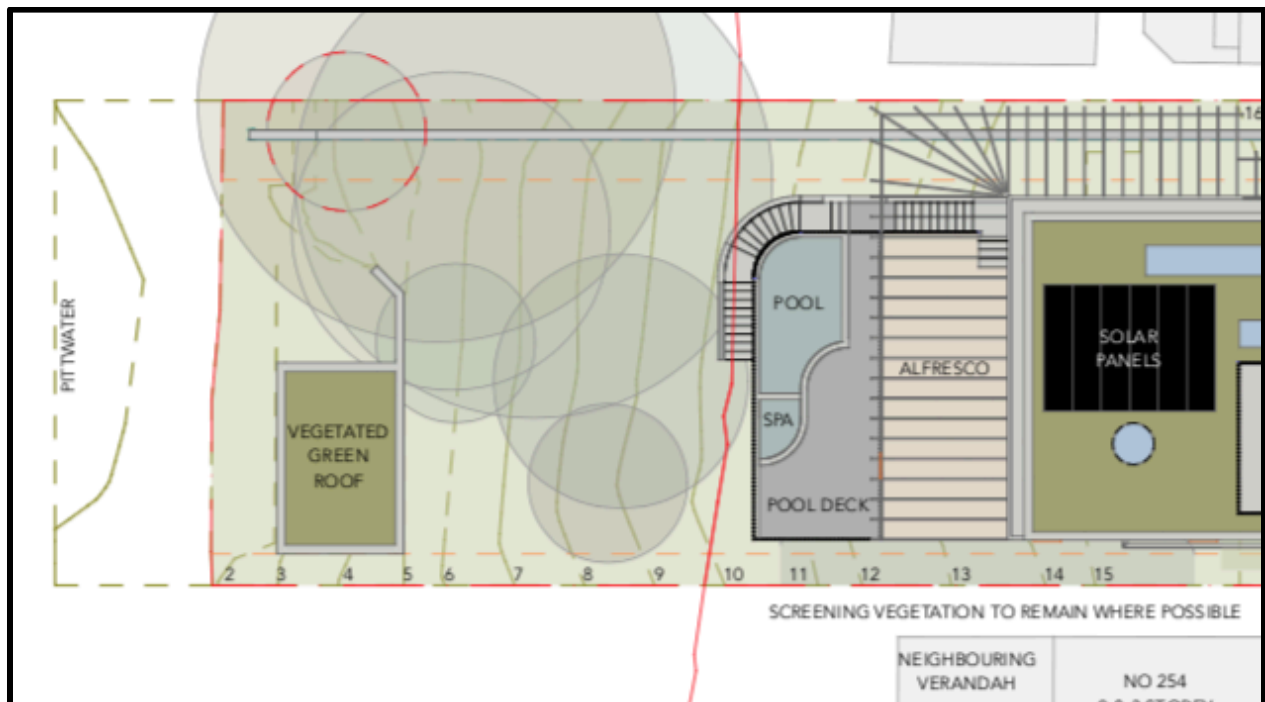
Comment:

Clause 7.8 entitled “*Limited development on foreshore area*” applies to the proposed development.

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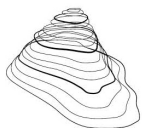
I note that under Clause 7.8(2) development is permitted within the foreshore area for the purpose of a boatshed, as proposed under the current DA. I note that the proposed boat shed is wholly contained within the subject site and set back from 2.064m to 1.936m from the mean high-water mark. Furthermore, the swimming pool/waterway access stairs result in a very minor encroachment within the foreshore area, noting that the proposed swimming pool is setback 17.024m to 16.765m from the mean high-water mark.

The proposed inclinator rail is a low-lying structure and provides access across the entirety of the subject site and is proposed to extend within the foreshore area. I note that inclinators are equivalent to waterway access stairs which are permitted within the foreshore area under Clause 7.8(2)(b).



The proposed boatshed, swimming pool/waterway access stairs and inclinator are considered to be consistent with the objectives of the C4 zone, ensuring that there is no unreasonable impact on the special ecological, scientific or aesthetic values, as confirmed within the report prepared by Kingfisher Urban Ecology and Wetlands. I note that the proposed boatshed nor the swimming pool/waterway access stairs necessitate the removal of any significant trees or vegetation from the foreshore area.

The proposed inclinator requires the removal of a single tree within the foreshore building area. I note that design options were investigated to attempt to locate the inclinator around the tree, allowing its retention, however, the owners were ultimately advised this was not possible. The proposed tree removal was required in order to provide access from the front boundary of the



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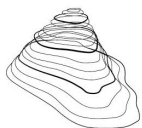
site down to Pittwater, with portions of the site sloping steeply, including within the foreshore area.

The proposed structures within the foreshore area are of a low density and scale and are integrated with the existing landform. The proposed development will not unreasonably impact riparian and foreshore vegetation and wildlife corridors and will not restrict public access of the foreshores.

The proposed boat shed is a relatively minor structure, having a floor area of only 18.8m² and a maximum height of less than 3.44m when taken from existing ground level, which is significantly reduced to the north due to the structure being partially excavated into the topography of the subject site. Furthermore, the boatshed incorporates a flat, green roof to further integrate the structure into the landscape.

These design elements ensure that the appearance of the proposed structures, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area.

This Clause 4.6 Request seeks to demonstrate that compliance with the Limited development on foreshore area Development Standard is unreasonable or unnecessary by reference to the first test in *Wehbe*, that is that the objectives of the standard are achieved notwithstanding the non-compliance with the Development Standard.



3.0 PROPOSAL WILL BE IN PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE DEVELOPMENT STANDARD

The proposed development will be in the public interest because it is consistent with both the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out. The subject site is located within the C4 Environmental Living Zone.

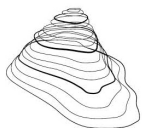
The objectives of the C4 Environmental Living Zone are as follows:

- *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.*

Comment:

The proposed development complies with the relevant Objectives of the C4 Zone as follows;

- The proposed development will result in a low impact residential development within an area of potential special ecological, scientific and aesthetic value. This is reflected in the supporting reports accompanying this DA and for the reasons outlined in the accompanying SEE. The proposed development will not result in an adverse impact on these values.
- The elements within the foreshore area which are considered to be 'breaching elements' are low- impact and will not adversely impact any ecological, scientific or aesthetic values of the site or its immediate surrounds.
- The proposed development retains the existing low density residential nature of the site, noting that the existing single storey cottage is to be replaced by a 2 storey residential dwelling, which itself complies with the Height of Buildings Standard, front, side and rear setback controls and Landscaped Area requirements. Furthermore, the proposed cut and fill for the development has been limited in order to ensure that the proposed design responds to the topography of the subject site, ensuring it is integrated with both the landform and the landscape.
- The proposed development will incorporate sediment and erosion control measures throughout construction in order to ensure no unreasonable impacts on the adjoining Pittwater.
- It is noted that the waterway immediately adjoining the foreshores of the subject site are free of seagrasses.
- The proposed inclinorail is a low-lying structure and provides access across the entirety of the subject site and is proposed to extend within the foreshore area. The



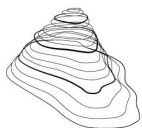
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proposed structures within the foreshore area are of a low density and scale and are integrated with the existing landform.

- The proposed boatshed, swimming pool/waterway access stairs and inclinator are considered to be consistent with the objectives of the C4 zone, ensuring that there is no unreasonable impact on the special ecological, scientific or aesthetic values, as confirmed within the report prepared by Kingfisher Urban Ecology and Wetlands. I note that the proposed boatshed nor the swimming pool/waterway access stairs necessitate the removal of any significant trees or vegetation from the foreshore area.
- The proposed development has been designed in such a way as to limit the impact on significant trees and vegetation on the subject site. I note that of the 19 trees evident on the subject site, 17 will be retained. The 2 trees to be removed are due to the proposed carport and driveway and the proposed inclinator. A number of design options were investigated in order to try and retain these trees, however, retention was ultimately not possible. I note that the removal of the tree at the front boundary is required in order to allow vehicle access to the subject site, whilst the removal of the tree at the southern end of the site is required in order that the proposed inclinator can provide access across the entirety of the property. I note that the portion of the site within the foreshore area that the proposed inclinator will provide access is steeply sloping.
- The proposed development provides a greater than required level of Landscaped Area and a significant volume of green roofed area. I note that the proposed green roofs incorporate a 400mm soil depth and seek to further offset the net loss of vegetation across the site, despite the compliant level of Landscaped Area proposed at ground level.
- Furthermore, a landscape plan was prepared by Kingfisher Urban Ecology in order to further improve the quality of landscaping on the subject site. Therefore, it is considered that the proposed development will enhance foreshore vegetation and wildlife corridors. I note that this landscape plan provides additional screening of the proposed swimming pool/waterway access stairs when viewed from the Pittwater.
- The proposed development will provide improved access across the subject site which is currently lacking. Furthermore, the provision of access has been designed to ensure minimal impact to the subject site.

The proposed development ensures the residential dwelling remains sympathetic to the existing streetscape, Pittwater and the Environmental Living Zone. These design elements ensure that the proposed development, when viewed from the street, complements the identified streetscape. Furthermore, the above design elements ensure that the proposed development, when viewed from both the Pittwater waterway and adjacent foreshore areas, will be compatible with the surrounding area.

Based on Clause 7.8 of LEP 2014, the relevant Objectives of the Limited development on foreshore area Standard for buildings in Zone C4 – Environmental Living Zone are as follows:



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- (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.*

Comment:

The proposed swimming pool/waterway access stairs result in a very minor encroachment into the foreshore area and are not considered to impact on natural foreshore processes or affect the significance and amenity of the area. Furthermore, as per Clause 7.8(2)(b) both swimming pools and waterways access stairs are permitted to be located within the foreshore area.

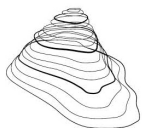
The proposed inclinor, which can be considered synonymous with waterway access, is a low lying structure of minor scale and is not considered to result in unreasonable impacts on natural foreshore processes or affect the significance and amenity of the area.

The proposed inclinor and swimming pool/waterway access stairs will not result in unreasonable amenity impacts to adjoining properties in terms of visual/acoustic privacy, overshadowing, view loss or visual impact.

The proposed boatshed, swimming pool/waterway access stairs and inclinor will not cause any environmental harm in relation to the following;

- pollution or siltation of the waterway, or
- an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or
- an adverse effect on drainage patterns, or
- the removal or disturbance of remnant riparian vegetation

The proposed development will not cause congestion or generate conflict between people using open space areas or the waterway, and will not inhibit the potential for continuous public access along the foreshore and to the waterway.



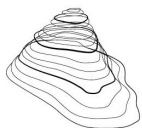
4.0 IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

For the reasons outlined in this Clause 4.6 Request and the accompanying SEE, I consider that the compliance with the Limited development on foreshore area Standard under LEP 2014 is unreasonable and unnecessary in the circumstances of the proposed development.

The steps to consider in assessing whether compliance with the Development Standard is unreasonable or unnecessary were confirmed in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (**Initial Action**) and are summarised below:

1. 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* [2007] NSWLEC 827 (**Wehbe**) at [42] and [43].
2. 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* at [45].
3. 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* at [46].
4. 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* at [47].
5. 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* at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in *Wehbe* 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.
6. 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.

For the purposes of this request, it is my opinion that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are

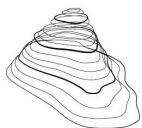


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achieved, notwithstanding non-compliance with the standard, consistent with the “first way” as set out in Step 1 above.

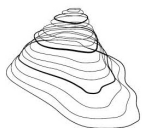
I wish to particularly note the following points: -

- The proposed development is consistent with the relevant objectives of the Limited development on foreshore area development standard expressed by clause 7.8 of LEP 2014.
- The proposed development achieves the relevant Objectives of the C4 Environmental Living Zone.
- The proposed development will not result in any unreasonable environmental impacts upon the amenity of neighbouring properties in terms of visual bulk, privacy, overshadowing and view sharing.
- The proposed development satisfies the relevant tests established in *Wehbe v Pittwater Council* (2007) 156 LGERA 446.
- The proposed development will be consistent with the surrounding residential character of the area and will contribute to the variety of housing and help meet demand for housing in the locality.
- The overall bulk, scale of the proposed elements is compatible with the existing and desired future character of the locality when viewed from Pittwater.
- The underlying objective would be thwarted if strict compliance with the Limited development on foreshore area development standard was applied as the development satisfies the objectives or purpose of the standard, despite the variation. The development allows a more efficient use of land and provides improved amenity across the site, contributing to the variety and availability of housing types in the area.
- For the reasons outlined in the accompanying SEE and this Clause 4.6 Request, I consider that the proposed development results in a range of Positive Outcomes relating to the breaching element:
 - i. The proposed inclinator will provide significantly improved access across the entirety of the site and in this instance, specifically to the foreshores of Pittwater. I note that the topography of the subject site is steep and justifies the provision of access in the foreshore area.
 - ii. The proposed swimming pool/waterways access stairs will provide significantly improved access to the foreshores of Pittwater. I note that the topography of the subject site remains steep within this foreshore area and justifies the provision of access to the foreshore.
 - iii. The extent of the breaching elements within this foreshore area are very minor, limited to a minor portion of the swimming pool/waterway access stairs and the proposed inclinator which is a narrow, low lying structure.
 - iv. The minor nature of the variation from the standard and the lack of unreasonable amenity impacts constitute environmental planning grounds, as it promotes the good design and amenity of the development in accordance with the objects of the EP&A Act.



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- v. The proposed development provides a compliant level of Landscaped Area, without including the additional Landscaped Area provided through the proposed green roofs above the carport, dwelling and boatshed. Furthermore, the proposed Landscape Plan provides for additional screen planting of the proposed swimming pool/water way access stairs when viewed from Pittwater.



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

For the reasons outlined in this Clause 4.6 Request and the SEE, I consider that there are strong environmental planning grounds to justify variation of the Development Standard.

The adjectival phrase “*environmental planning grounds*” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the Environmental Planning and Assessment Act (the Act), including the Objects in Section 1.3 of the Act.

Clause 4.6(3)(b) requires the Applicant to demonstrate that there are sufficient Environmental Planning Grounds to contravene the development standard.

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

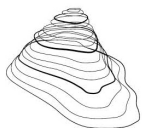
23. As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “*environmental planning grounds*” by their nature: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]. The adjectival phrase “*environmental planning*” 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].

For the reasons outlined in this Clause 4.6 Request, I consider that the compliance with the Limited development on foreshore area Standard under LEP 2014 is unreasonable and unnecessary in the circumstances of the proposed development.

I note the following environmental grounds or, in other words, the Positive Outcomes arising from the proposed development and the breach of the Standard:

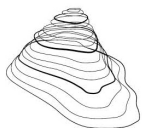
- i. The proposed inclinor will provide significantly improved access across the entirety of the site and in this instance, specifically to the foreshores of Pittwater. I note that



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the topography of the subject site is steep and justifies the provision of access in the foreshore area.

- ii. The proposed swimming pool/waterways access stairs will provide significantly improved access to the foreshores of Pittwater. I note that the topography of the subject site remains steep within this foreshore area and justifies the provision of access within this area.
- iii. The extent of the breaching elements within this foreshore area are very minor, limited to a minor portion of the swimming pool/waterway access stairs and the proposed inclinor which is a narrow, low lying structure.
- iv. The minor nature of the variation from the standard and the lack of unreasonable amenity impacts constitute environmental planning grounds, as it promotes the good design and amenity of the development in accordance with the objects of the EP&A Act.
- v. The proposed development provides a compliant level of Landscaped Area, without including the additional Landscaped Area provided through the proposed green roofs above the carport, dwelling and boatshed. Furthermore, the proposed Landscape Plan provides for additional screen planting of the proposed swimming pool/waterway access stairs when viewed from Pittwater.



6.0 STATE OR REGIONAL ENVIRONMENTAL PLANNING SIGNIFICANCE AND THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD

Clause 4.6 (5) relates to matters for consideration by the Secretary as to “*whether contravention of the Development Standard raises any matter of significance for State or regional environmental planning.*”

In deciding whether to grant concurrence, the Planning 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 Planning Secretary before granting concurrence.

Would non-compliance raise any matter of significance for State or regional planning?

The non-compliance does not raise any other matter of significance for State or regional planning.

Is there a public benefit of maintaining the development standard?

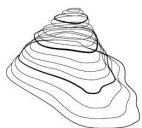
I consider that there is no public benefit associated with maintaining strict compliance with the development standard;

- The proposed development results in a range of positive outcomes as outlined in this Clause 4.6 Request and accompanying SEE.
- The breach of the Standard is very minor and the proposed development does not result in any unreasonable environmental impacts.
- The proposed development incorporates an attractive palette of colours and materials.
- I consider that, when viewed from Pittwater, the proposed development will result in an improvement in the visual aesthetics of the existing building.

Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?

There are no additional matters that need to be considered in exercising the assumed concurrence of the Secretary.

The contravention of the Standard in the circumstances of this application does not raise any matter of significance for State or regional environmental planning.



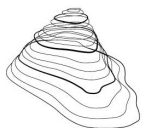
7.0 IS THE OBJECTION TO THE DEVELOPMENT STANDARD WELL FOUNDED?

This Clause 4.6 Request has demonstrated and justified that:

- The proposed development satisfies the relevant objectives of the Limited development on foreshore area development standard and Objectives of the C4 Environmental Living Zone; and
- Sufficient environmental planning grounds have been established to justify the non-compliance, given the range of positive outcomes and the absence of adverse environmental impacts upon neighbouring properties and the public domain, relative to the non-compliance.

I consider that this objection is well founded for the reasons outlined in this Clause 4.6 Request and the accompanying SEE. I again note the range of positive outcomes which are listed below:

- The proposed inclinator will provide significantly improved access across the entirety of the site and in this instance, specifically to the foreshores of Pittwater. I note that the topography of the subject site is steep and justifies the provision of access in the foreshore area.
- The proposed swimming pool/waterways access stairs will provide significantly improved access to the foreshores of Pittwater. I note that the topography of the subject site remains steep within this foreshore area and justifies the provision of access within this area.
- The extent of the breaching elements within this foreshore area are very minor, limited to a minor portion of the swimming pool/waterway access stairs and the proposed inclinator which is a narrow, low lying structure.
- The minor nature of the variation from the standard and the lack of unreasonable amenity impacts constitute environmental planning grounds, as it promotes the good design and amenity of the development in accordance with the objects of the EP&A Act.
- The proposed development provides a compliant level of Landscaped Area, without including the additional Landscaped Area provided through the proposed green roofs above the carport, dwelling and boatshed. Furthermore, the proposed Landscape Plan provides for additional screen planting of the proposed swimming pool/water way access stairs when viewed from Pittwater.



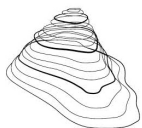
8.0 CONCURRENCE OF DIRECTOR GENERAL

- (4) Development consent must not be granted for development that contravenes a development standard unless—*
- (b) the concurrence of the Planning Secretary has been obtained.*
- (5) In deciding whether to grant concurrence, the Planning 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 Planning Secretary before granting concurrence.*

Comment:

The Department issued Planning Circular No. PS18-003 (dated 21st February 2018) which notified Council of arrangements “...where the Director General’s concurrence may be assumed for exceptions to development standards under environmental planning instruments which adopt clause 4.6...of the Standard Instrument...”

Clause 64 of the EPA Regulations provide that Council may assume the Director General’s [Secretary’s] concurrence for exceptions to Development Standards, thus satisfying the terms of this provision.

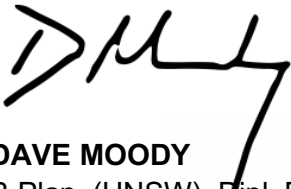


9.0 CONCLUSION

Notwithstanding the breach of the Limited development on foreshore area Standard, I consider that this request for variation of the Standard is well founded.

I consider that the proposed development, notwithstanding the variation of the Standard, will not have an unreasonable adverse impact on adjoining properties or the public domain and will result in a range of Positive Outcomes outlined in this Clause 4.6 Request and the accompanying SEE.

For the reasons provided within this Clause 4.6 request and accompanying SEE, variation of the Limited development on foreshore area Standard is supported. The Clause 4.6 request has adequately addressed the matters required under clause 4.6 of LEP 2014. Furthermore, it has been established that the proposed development would be in the public interest as it is consistent with the objectives of the Limited development on foreshore area Development Standard and the Objectives of the C4 Environmental Living Zone.



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