

Attachment A

Variation to Development Standard under Clause 4.6 Pittwater LEP 2014

The proposal has a variation in part to building height, and a variation is sought to the development standard as allowed under Clause 4.6 of Pittwater LEP 2014.

This written request should be read in conjunction with the Statement of Environmental Effects submitted with the application, and which addresses the impacts of the proposal and forms an annexure to this request.

The request for variation has been prepared with consideration of relevant principles set out in various judgements applying to variations to development standards, including *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 and *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Relevant Development Standard

Clause 4.3(2) of Pittwater LEP 2014 sets maximum building height through reference to the Height of Buildings Map, and the relevant Map identifies the site as having an allowed building height of 8.5m.

Extent of Variation to Development Standard

The proposal is partly below and partly above the 8.5m height standard. The proposed lift has a building height of 10.644m, based on existing ground level, which is a variation of 25.2% to the standard.

Reason for the Variation

The site is a steeply sloping property, with a fall of 14.4m or 25.9% from the front to rear boundaries and the current pedestrian access from Prince Alfred Pde to the dwelling is both steep and unsafe, with limited sight distances available, and with potential for conflict between pedestrians and vehicles entering and leaving the driveway to access 14A Prince Alfred Pde below.

The proposed lift is the only practical means to achieve more accessible, and safer pedestrian access to the dwelling house, and the height of the lift has been determined by the level of the approved car port, which will provide access to the lift. Additionally, the location of the lift needs to provide appropriate access at the ground level, and cannot be built closer to the street front (which would have a lower building height) due to the existing driveway, and the location of the lift is on an area that has been excavated approximately 2m below the *natural* ground level, and which results in a higher calculated building height based on *existing* ground level.

Why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?

Compliance with the 8.5m building height for the proposed lift and part of the walkway is unreasonable or unnecessary in the circumstances of the case, for the following reasons:

1. The variation arises as result of the steep slope of the land, the need to provide more accessible and safer pedestrian access, and due to practical limitations to the siting of the lift.
2. The site has a steep topography, which falls from the front to the rear by 14.4m or 25.9%, and which makes pedestrian access difficult with the steep slope of the driveway, including when carrying groceries and household items. Additionally, the existing pedestrian access also serves as a vehicle access driveway for the adjoining dwelling to the west, and where there are limited sight distances due to the winding nature of the driveway and in particular for pedestrians entering the driveway from the dwelling (as shown in Figures 11 and 12 of the SEE);
3. The siting of the lift and walkway is the only practical location to provide more accessible and safer pedestrian access, due to the slope of the land and the location of existing development on the site. Alternative locations, such as immediately adjoining the proposed car port to the west, which would comply with the required height limit, would not be practical due to the site levels and existing driveway location, and would not address the sight distance issues for pedestrians using the balance of the driveway or leaving the dwelling;
4. The area of variation will sit behind, and at a lower level than the car port under construction when viewed from the street and properties opposite. Viewed from the waterway to the west, the proposal will sit in front of, and below the level of the car port roof and otherwise will be largely screened from view by the existing dwelling house. These settings reduce the visual impact of the proposal and the variation, and the proposal will not adversely impact on the scenic qualities of the site or locality;
5. The variation is unlikely to result in adverse privacy, overshadowing or view impacts; and
6. The proposal is otherwise consistent with the objectives of the C4 Environmental Living zone and the objectives of the height standard.

In *Wehbe v Pittwater Council* [2007] NSWLEC 827 the Chief Justice of the Court outlined a number of ways an objection can demonstrate that compliance with a development standard is unreasonable or unnecessary, including by establishing 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, which is relevant in this case and is addressed below.

Objectives of the development standard (cl. 4.3 Pittwater LEP 2014)

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

Comment: The area of variation sits behind the approved car port when viewed from the street, and viewed from waterways to the west, the variation will sit in front of the carport and below the level of large trees on the site and surrounding properties. The proposal will be consistent with the character of the surrounding area and locality.

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

Comment: The area of variation will be compatible with, and capable of existing in harmony with the setting of the site, the levels and scale of nearby development, including the car port under construction and the adjoining dwelling to the south.

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

Comment: The proposal will result in some additional overshadowing, as shown on the submitted shadow diagrams and addressed in the SEE, which is not unreasonable given the nature of the proposal and existing and approved shadowing including from shadowing from large trees on the site.

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

Comment: View impacts have been considered and addressed in the SEE submitted with the application, and the proposal is not likely to result in adverse view impacts.

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

Comment: The proposal responds to the topography of the site, and provides safer and more accessible pedestrian access. Part of the variation arises as a result of previous excavation of the site for the swimming pool, and which increases the technical height of the lift compared to the natural ground level and the driveway to the east,

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

Comment: the proposal will have a reasonable visual impact, being largely screened from view by the car port and existing dwelling, and will not adversely impact on the natural environment, or on any heritage conservation areas or heritage items.

Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient environmental planning grounds to justify a variation to building height as proposed, as identified above, and also with particular reference to the objectives of the *Environmental Planning and Assessment Act 1979* detailed below.

The proposal will *promote the orderly and economic use and development of land* (Objective 1.3(c) of the Act) by applying appropriate flexibility to enable improved and safer pedestrian access to the site, and which will not adversely impact on the scenic qualities of the site, on the character of the surrounding area or on the amenity of surrounding properties.

Is the proposal in the public interest, being consistent with the objectives of the development standard and the objectives of the C4 Environmental Living Zone?

Consistency of the proposal with the objectives of the standard are addressed above, and the proposal is consistent with the objectives of the C4 Environmental Living Zone as follows:

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

Comment: The proposal is for ancillary development to a dwelling house, and the impacts of the proposal have been considered and addressed.

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

Comment: The proposal will not have an adverse effect on the values of the site and surrounding land, and the impacts of the proposal are reasonable. In particular, the location of the lift is in the centre of the site, to maximise separation and reduce impacts on the adjoining dwelling to the south.

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

Comment: The proposal does not increase the density of development on the site, and has been designed to provide improved pedestrian access and to reduce impacts on surrounding properties.

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

Comment: The proposal will not impact on riparian and foreshore vegetation or wildlife corridors.

Conclusion

In conclusion, this written request demonstrates that compliance with the standard is unreasonable and unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to justify the variation. Further, the variation is in the public interest as 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. On this basis the request satisfies the requirements of clause 4.6 of the LEP and the principles developed through caselaw.