

Clause 4.6 Variation Request Clause 4.3 Height of Buildings

**60 CABARITA RD. AVALON BEACH
Lot 14 DP 208499**

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

For: G. Smith

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 minor additions to the existing family dwelling.

Clause 4.6 of the Pittwater Local Environmental Plan 2018 enables Northern Beaches Council to grant consent to the development even though part of the top floor roof, and small master bedroom addition, 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 2018 Building Height,
- Satisfies the objectives of the E4 zone under PLEP 2018,
- 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 2018.

VARIATION TO CLAUSE 4.3 HEIGHT OF BUILDINGS

The finished floor level of the proposed top floor balcony addition is nominated at 16.28m AHD and the ridge is 20.43m AHD. Both these levels are within the 8.5m height limit, however the existing roof at its eastern edge exceeds the 8.5m height limit, and the proposed new roof extension to cover the whole of the top floor balcony extends this to a maximum height of 10.5m above ground level in the centre of the site.

At the northern end of the dwelling the internal spaces are within the 8.5m height limit, however the proposed top floor balcony roof exceeds the height limit by a maximum of 1.4m to a height of 9.9m above ground level.

At the southern end of the dwelling the existing roof exceeds the 8.5m height limit, and the proposed new roof to cover the small bedroom addition and small deck reaches a height of 10.2m above ground level. A height of 1.7m above the 8.5m height limit line. These dimensions are shown on DA drawing 2091-DA03 Elevations North and South.

The location of the top floor balcony roof is close to the property's southern boundary, however this is a boundary with an access handle down to Careel Bay benefitting No.62 Cabarita Road. The dwelling on No. 62 is sited close to Cabarita Road, and well above the ridge of the subject dwelling.

To the north of the proposed new balcony roof the lot boundary with adjoining property, No.58 Cabarita Road, is in excess of 6m, with the dwelling on No.58 a further 2m away.

The proposed new top floor balcony roof will dramatically reduce the sun heat load on the existing, and new windows, along the whole of this facade of the dwelling. Particularly in the summer months this has a positive effect on the BASIX impacts for the dwelling.

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 top floor master bedroom addition of 5.1m² is modest in the scale of dwellings in Careel Bay and along with the covered balcony is entirely consistent in form and height with neighbouring dwellings along the waterfront.

The proposed roof is low pitched, coming of a modest plate height of 2.42m, and 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 dwellings in the steeper parts of the Pittwater locality.

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

Many of the dwellings on steeper sites in the Norther Beaches area 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 balcony roof to the south of the dwelling on the adjoining site to the north, No.58, and the battle axe handle to the south .

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

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

Due to the location of the dwelling well below the neighbouring house on No.62 Cabarita Road in terms of the easterly water view, the proposed development, and the variation to the height limit, do not result in any material view impacts.

The proposal does not interrupt or obstruct any significant views from the neighbouring dwellings close to the Careel Bay waterfront, No's 58 and 66. The transparent balcony roof structure proposed is consistent with this view sharing objective.

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

The proposed minor development has been dictated by the existing dwelling that has been stepped down the site.

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 covered balcony structure will have a minimal visual impact on the existing environment being entirely consistent with dwellings in this area of the Northern Beaches.

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 development is modest in scale and typical of dwellings on steep sites in this area of the Northern Beaches.

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 E4 Environmental Living zone. The primary driver of the variation is the result of the

significant slope of the land and a desire to provide some sun protection from the east, particularly in summer, for the upper floor of the existing dwelling.

The proposal will have minimal visual impact on the development on neighbouring sites.

The proposed development will not affect public access along Cabarita Road, or the Careel Bay waterfront.

The proposed development is of good design that will reasonably protect the owners and improve the amenity of the existing dwelling, reducing heating and cooling loads and energy use, 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:

- Covered balconies improve the amenity within a dwellings and are consistent with the character of the Avalon Beach locality.

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 E4 Environmental Living zone under the PLEP 2018.

CONCLUSION

The assessment above demonstrates that compliance with the maximum building height development standard in Clause 4.3 of the PLEP 2018 as it would be applied to a covered balcony 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 2018,
- Satisfies the objectives of the E4 Environmental Living zone under PLEP 2018,
- 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 2018.

STEPHEN CROSBY