

Project Address: 214 Hudson Parade, Clareville, NSW, 2107
Owners: Patrick Heller, Nicole Heller, Peter Heller and Marianne Heller.
Proposal: Alterations and Additions to an existing boatshed.

CLAUSE 4.6 Exception

Justification under Clause 4.6 of Pittwater Local Environmental Plan 2014 – Exceptions to Development Standards.

Clause 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.*

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.



The Clause operates in conjunction with the Height of Buildings Map HOB_010, shown on the left.

The subject site straddles the Mean High Water Mark (MHWM).

Part of the building has an 8.5m height limit and the other has a 4m height limit.

Clause 4.6 states:

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 to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

(a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and

(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

(5) (Repealed)

(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.

(7) (Repealed)

(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,

Discussion

The subject property is described as 214 Hudson Parade, being Lot 41, DP. 13760 with a site area of 739.8m². The property is located at the southern side of Hudson Parade and fronts on to Pittwater.

The Application is for a proposed deck, boatshed refurbishment and ramp that straddles the Mean High Water Mark (MHW) that sits at about RL1.5m.

The existing boatshed is in disrepair and is built out of concrete block with metal roof construction and contains a slipway with two rails extending out into Pittwater.

The proposal includes the removal of the slip rails, re-construction of boatshed on existing footprint, new tidal landing into Pittwater and construction of level platform over the existing concrete deck.



Photo above showing the boatshed's existing East Elevation



Photo above showing the boatshed's existing South Elevation.

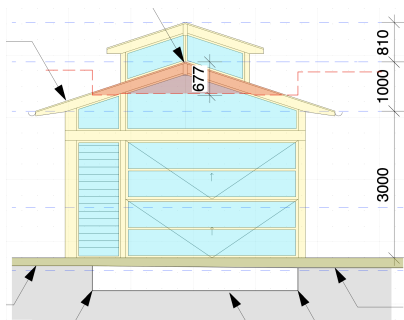
The proposed Application consists of:

Ground Floor

- Partial demolition of the existing boatshed, including the removal of concrete block walls and existing roof.
- The footings, concrete slipway and existing timber jetty are to remain.
- The sandstone walls are to be retained and new concrete block walls built to provide enclosed storage for a boat.
- Additional kayak storage is to be provided under the western eaves.
- New timber decking to be built over existing concrete slip.
- New "private landing steps" (stepped tidal landing) and "Skid" (ramp).

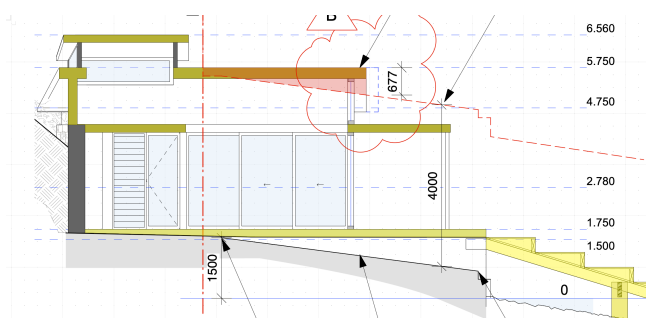
Storage Platform

- High level storage for equipment, materials or other products which must be stored above the Estuarine Planning Level.
- New pop-up roof provided above storage platform.



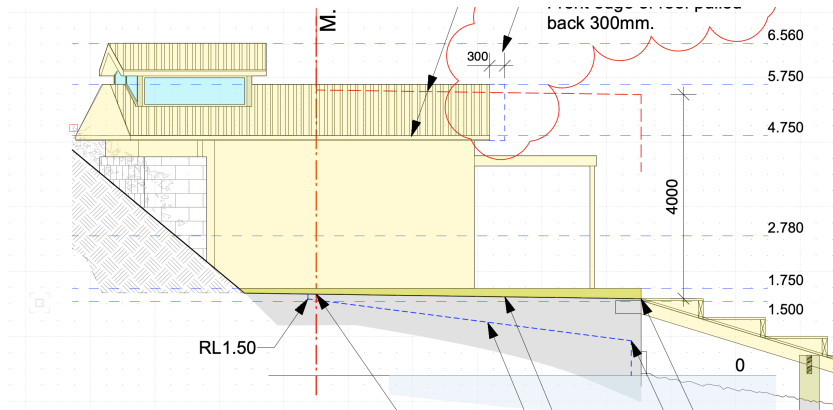
On the South Elevation (shown above) the 4 metre Maximum Building Height is indicated as the red dashed line with the area of non-compliance shaded red.

This elevation clearly shows that the non-compliance is due entirely, to the recess of the existing slipway below the proposed floor level of the boat shed.

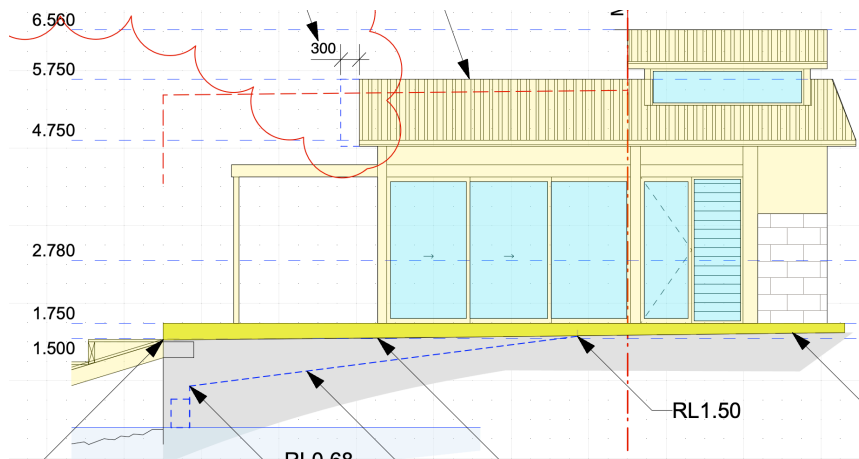


A small section of gabled roof highlighted in the section above is the non-compliance with Clause 4.3. It is a small triangular section of the roof, highlighted in red above.

At it's highest point the ridge is 677mm above the 4m Maximum Building Height Line due to the sloped profile of the existing slipway below.



The **West Elevation** shows the 4m Maximum Building height line as a red dashed line. The walls and gutters on both sides of the boatshed are within the envelope. The non-compliance is with the front edge of the pitched roof.



The **East Elevation** shows the 4 metre Height Line, which follows the natural ground level in the sub-floor void below. The non-compliance is a small triangular section of the existing gabled roof

To summarize, the non-compliances with Clause 4.3 Height of Buildings are of a minor nature and are due to the unique circumstances of the existing slipway ramp under the proposed boatshed.

We will now address each aspect of Clause 4.6 in turn for completeness:

(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.*

It is noted that the objectives of the Clause 4.6 is to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes, both **for** the development and **from** the development.

The proposal seeks flexibility in the application of the building height development standard to the proposed Application, to give the Applicant the flexibility to re-build their boatshed to be practical to use and fit in with the existing boatsheds along the Pittwater / Clareville foreshore.

It is noted that the existing boat shed is of inadequate construction and is detrimental to the area, specifically when viewed from the water and adjacent sites down at the water's edge. This Application seeks to re-build within the existing footprint to create a useable boat shed with acceptable facilities to current standards and to contribute to the aesthetics of waterfront development in this local area.

Strict compliance with the 4m height limit is considered unnecessary in this particular circumstance as the slipway that is causing the non-compliance, will not be visible once the development is carried out.

(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.

The development standard proposed to be contravened, Clause 4.3 Height of Buildings is not expressly excluded from the operation of this clause.

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
- (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.*

This submission is the written request for consideration by the consent authority. This written request justifies the contravention of the development standard by demonstrating that compliance is both unreasonable and unnecessary in these circumstances; and there are sufficient environmental planning grounds to justify the non-compliance.

To fulfill Clause 4.6, (3) (a) above, we will demonstrate that the Application fulfills the applicable objectives of Clause 4.3 Height of Buildings, and therefore actual compliance with the development standard is unnecessary in this circumstance.

The objectives of Clause 4.3, Height of Buildings are discussed below:

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

Northern Beaches Council's Pittwater 21 Development Control Plan D15.14 Waterfront Development C) Boatsheds, provides prescriptive Design Guidelines for Boatsheds. This is understood by the applicants to describe Northern Beaches Councils' desired character for the locality in terms of boat sheds viewed from Pittwater.

Point ii. notes:

"Boatsheds shall be one storey and no greater than 4.5 meters in building height above the platform on which it is built."

The platform from which it is built in this case is the proposed decking level.

It is considered that the proposal is consistent with the desired character of the locality, despite the level of the existing slipway underneath, which technically results in the front edge of the pitched roof being over the 4m height limit stipulated in the LEP.

Overall, the proposed boat shed is generally consistent with Diagram 4: Design Guidelines for Boatsheds as indicated in the diagrams below. Therefore we would argue that, by virtue of following the Diagram 4 in the DCP, the proposal will be consistent with the desired character of the locality.

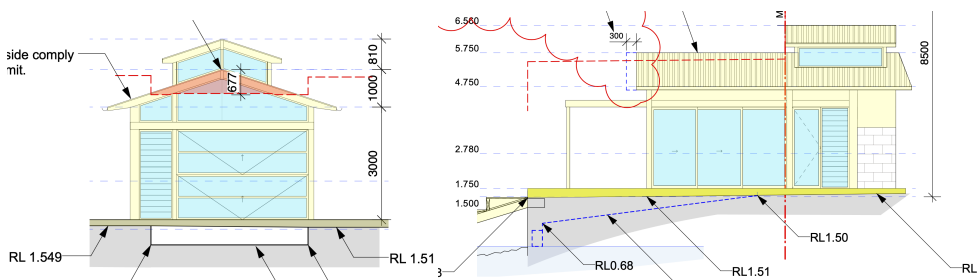
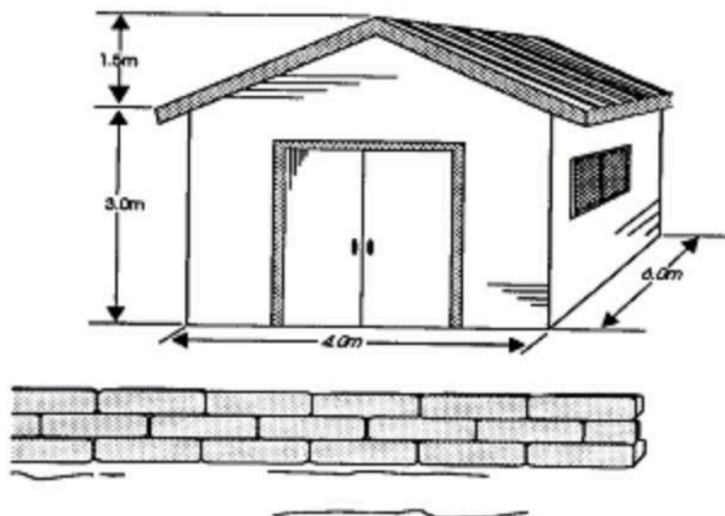


Diagram 4: Design Guidelines for Boatsheds



- See also B3 Estuarine Hazard Controls relating to boatsheds

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

Below are photos taken from Pittwater showing existing boat sheds on nearby properties to show examples of boat sheds that have been approved by Council over recent years.



244 Hudson Parade, Clareville



242 Hudson Parade, Clareville



Located in the Pittwater Area.



228 Hudson Parade, Clareville

These four photos show clearly that there is not a consistent 'theme' that runs through the recently approved boat sheds, rather the overall height and scale can vary substantially, some having two storeys.

We would argue that this Application is more in keeping with the Diagram 4 and associated guidelines from the DCP and there will contribute and indeed reinforce it's compatibility within surrounding development.

(c) to minimise any overshadowing of neighbouring properties,

The boat shed is located close to the water's edge – facing south and is a single storey structure. The adjacent boatshed on the neighbouring property to the West is located approximately 1 metre away from the boundary. Due to it's height, location and orientation, the proposed Boat shed will not overshadow any private open space or outdoor area.



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



The photo above shows the existing boat shed from the lower level of the house on the subject site. It is clear that the boat shed will not impact any views across Pittwater from the subject site or neighbouring properties due to the existing setbacks and topography.

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

As we have explained above, we have sought to follow the prescriptive requirements for boat sheds as set out in Council's DCP. We have worked to the 4.5 metre height requirement above the platform upon which it is built and propose a gabled roof facing Pittwater. As such, we would argue that we have by definition, responded sensitively to the natural topography and surround features.

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

It is noted that there are no heritage items within proximity of this Application and the Application is not within a designated Conservation Area so Clause (f) is not applicable in this instance.

We have explained previously that the design has followed the prescriptive requirements for Council's DCP and as such has minimized any adverse visual impacts that could occur with a development of this nature.

With respect to Clause 4.6 (3) (b):

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

In determining whether there are sufficient environmental planning grounds the L & E Court has previously considered the development standard and zone objectives. The proposal is consistent with the relevant zone objectives and we have demonstrated above, that the proposal fulfils all of the objectives of Clause 4.3 Height of Buildings.

In *Initial Action*, Preston CJ states [23] –[24] that the environmental planning grounds must be 'sufficient' in two respects;

- a) *The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus 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.*
- b) *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.*

Therefore, we shall consider only the elements that are contributing to the development's additional height above the Height of Buildings requirement of 4.0 metres:

- The proposed gable roof above the existing slipway that is above the 4.0 metre height requirement.

The non-compliances have been demonstrated to have no greater amenity effects on neighbouring development with regard to solar access and loss of views. The minor contravention of height regarding the proposed gabled roof can be considered in relation to the major amenity benefits it will bring to this particular development. To allow the Applicants to undertake the necessary re-building of the existing dilapidated and unsightly boat shed, are in themselves, justification on environmental planning grounds.

In considering the environmental planning grounds particular to the circumstances of the proposed development in relation to Section 1.3 of the EPA Act:

- The proposed design will promote good design and a high level of amenity for the owners without having any greater impact upon the amenity of the surrounding neighbours.
- The existing boat shed is dilapidated and unsightly. It detracts from the aesthetic qualities of the local area. By allowing the Applicants to re-build the boat shed on its existing footprint, this will greatly enhance aesthetic qualities of the water's edge and contribute to the locality.

We have demonstrated above that there are sufficient environmental planning grounds particular to this development that justifies a departure from the strict adherence to the development standard in this instance.

In relation to

(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.

We have demonstrated on the previous pages that the proposed development is consistent with the objectives of Clause 4.3 Height of Buildings and is similar in bulk and scale to other boat shed development within the area. We have also demonstrated above within Clause 4.6 (3) (a) that the proposal is consistent with objectives of the particular development standard and with the zone objectives.

Objectives of zone C4 Environmental Living:

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- To ensure that residential development does not have 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.*

The proposal is consistent with the zone objectives described above. The proposal maintains the current low-density pattern, allows local facilities, communal space and the foreshore are to be maintained across the water's edge.

The boat shed has been designed to adhere to the prescriptive design guidelines given with Council's DCP and will therefore enhance the desired future character of the area.

It should be noted that the breach of the 4m height limit will not have any impact on the ecological or scientific values of the site. The proposal's ecological impact is reviewed in depth in the DA's accompanying reports including a Coastal Area Environmental Impact Report, Aquatic Ecology Assessment and Estuarine Risk Management Report.

(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.

The contravention raises no matters of State or Regional significance. It is considered that where the proposal is consistent and compatible with the neighbouring sites in terms of its bulk, scale and character and there is no public benefit in maintaining the development standard. No other matters are required to be taken into consideration.

(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.

This is not applicable to the subject site and Application

(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).

The consent authority will keep a record of the determination.

(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,

(ba) clause 4.4, to the extent that it applies to land identified on the Key Sites Map as Site F, Site G, Site H or Site I,

(c) clause 5.4.

(d) clause 6.7, to the extent it applies to land identified on the Key Sites Map as Site F or Site G

(caa) clause 5.5.

The proposal is not complying development. The development standard does not arise from regulations in connection with BASIX. The standard does not arise from Clause 5.4, Clause 5.5 or Clause 6.7 or any of the other exclusions listed.

In this instance it is considered appropriate to make an exception to the Building Height Limit development standard under the provision of Clause 4.6 for the reasons outlined in the preceding discussion.



Signed
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