

Request for Variation of Development Standard under Clause 4.6 of Pittwater LEP 2014 - 8.5m Height Control

Introduction:

Clause 4.6 of *Pittwater Local Environmental Plan 2014* (PLEP 2014) allows for development consent to be granted for a development even though it contravenes a development standard where the consent authority has considered a written request justifying the contravention of the standard and it is satisfied that the proposed development will be in the public interest. Such written request is required to demonstrate that:

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

This clause 4.6 request seeks to vary the 8.5metre height control specified in clause 4.3 of PLEP 2014 to enable the construction of a roof over an upper level deck at 147 McCarrs Creek Road, Church Point. The proposed roof has a maximum height of 10.18metres above existing ground level and sits 0.95metres lower than the existing ridge height of the building. This variation request accompanies a development application for alterations to the dwelling house at 147 McCarrs Creek Road which includes the proposed roof.

Relevant Land and Environment Court cases have been considered in seeking a variation of the development standard and principles established by the Court applied in addressing the clause 4.6 legislative requirements.

Clause 4.6 Matters to be Addressed:

- 1. Cl.4.6(3)(a) Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?**

In determining whether compliance with the 8.5metre height control is unreasonable or unnecessary in the circumstances of this application it is appropriate to determine if the objectives of the zone and the objectives of the height standard are satisfied notwithstanding the non-compliance (*Whebe v Pittwater Council I (2007) 156 LGERA 446; [2007] NSWLEC 827*).

Objectives of the C4 Environmental Living Zone:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values and to ensure development does not have adverse effect on those values.*

The location of the existing dwelling and proposed roof is identified on the Biodiversity Values Map as being in proximity to littoral rainforest. The proposal will not result in the removal of any vegetation or alter the drainage regime for the area. Whilst the existing dwelling and proposed roof is not easily visible from a public place not having direct frontage to McCarrs Creek Road, the incorporation of the roof will assist in providing articulation and reduce the visual bulk of the existing front façade of the building.

The proposed roof will not result in any additional impact to the ecological or scientific values of the area and will improve the visual appearance of the building better integrating with the aesthetics of the area.

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

The proposed development does not incorporate additional floor space nor increase density, retaining the property as a four bedroom single dwelling house. The design of the roof falls to the front reflecting the fall of the land thereby integrating with its natural setting.

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

There is no loss of vegetation resulting from the development. The proposal will not have any detrimental impact on the riparian and foreshore vegetation and wildlife corridors within the area.

Objectives of the 8.5metre Height Control:

- *To ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality and compatible with that of surrounding and nearby development,*

The height and scale of the existing building is consistent with that of surrounding dwelling houses. The proposed roof over the upper level deck is 0.95metres lower than the ridge height of the building thereby maintaining the scale of development and sitting lower than the existing surrounding tree canopy. The inclusion of the roof over the deck also helps in reducing the perceived bulk of the building by providing depth to the façade and introducing shadow lines.

- *To minimise any overshadowing of neighbouring properties,*

The dwelling itself and proposed roof sits well below adjoining neighbouring buildings including sensitive areas of the neighbouring dwelling to the west (149A McCarrs Creek Road). No significant overshadowing impacts will occur as a result of the proposed roof.

- *To allow for the reasonable sharing of views,*

The proposed development including the roof over the upper level deck will not result in any view loss for neighbouring dwellings.

- *To encourage buildings that are designed to respond sensitively to the natural topography,*

The slope of the roof corresponds to the fall of the land thereby integrating well with the topography and natural setting.

- *To minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

The site is not within a Heritage Conservation Area or within proximity to a Heritage Item. The provision of the roof to the upper level deck reduces the perceived bulk of the building by introducing depth and shadow to what is currently a bland walled façade. This, together with the use of colours to blend with the bushland setting will improve the visual impact of the natural environment.

Is Compliance with the Standard Unreasonable and Unnecessary?

The proposed roof is located 0.95metres lower than the existing ridge height of the dwelling, is below the canopy height of surrounding trees and bushland and has been designed to follow the natural topography of the site. The roof does not result in any detrimental impact to neighbouring properties by way of overshadowing or view loss and improves the aesthetics of the building by reducing the visual impact of the currently blank upper level façade.

Having regard to the above, compliance with the standard is considered unreasonable and unnecessary in the circumstances of this case.

2. Cl.4.6(3)(b) Are there sufficient environmental planning grounds to justify contravening the development standard?

It is evident that the existing dwelling required excavation, altering the ground level from which height is now measured. Based on the assumed ground line (as shown in Figures 1 and 2 and evidenced from Photos 1 and 2 below) the roof of the deck remains below the maximum 8.5metre height limit. In accordance with the findings of Commissioner O'Neill in *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582* prior excavation within the building footprint constitutes an environmental planning ground within the meaning of cl.4.6(3)(b) of the LEP.

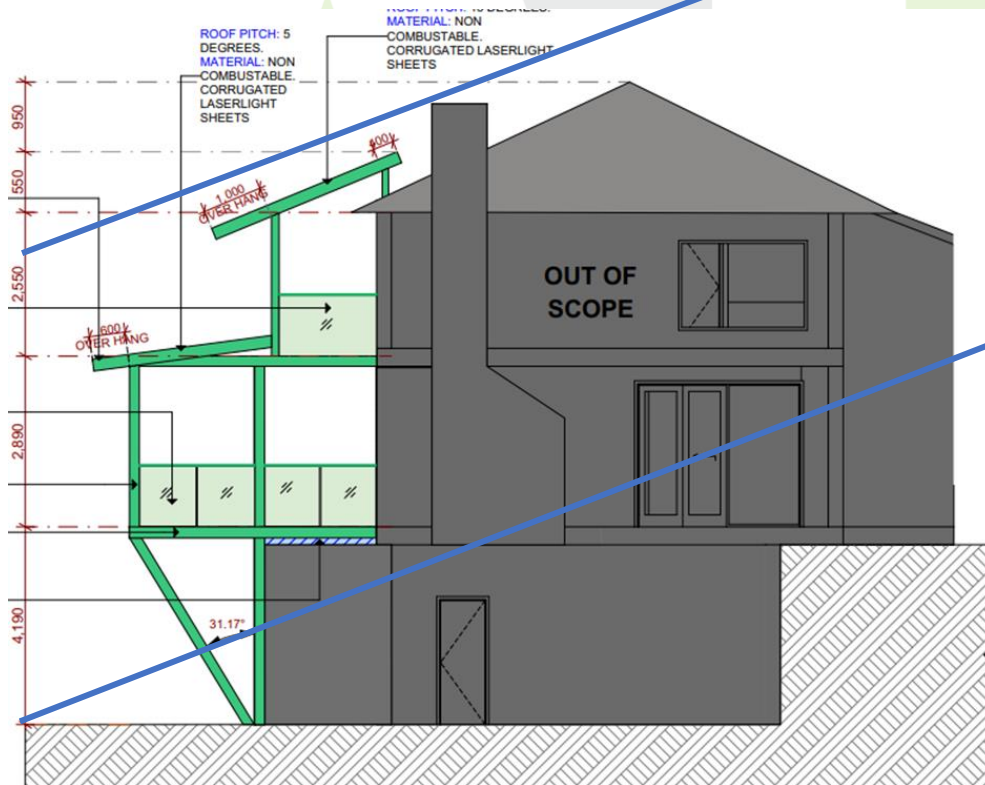


Figure 1: South-west elevation including assumed ground line with height plane

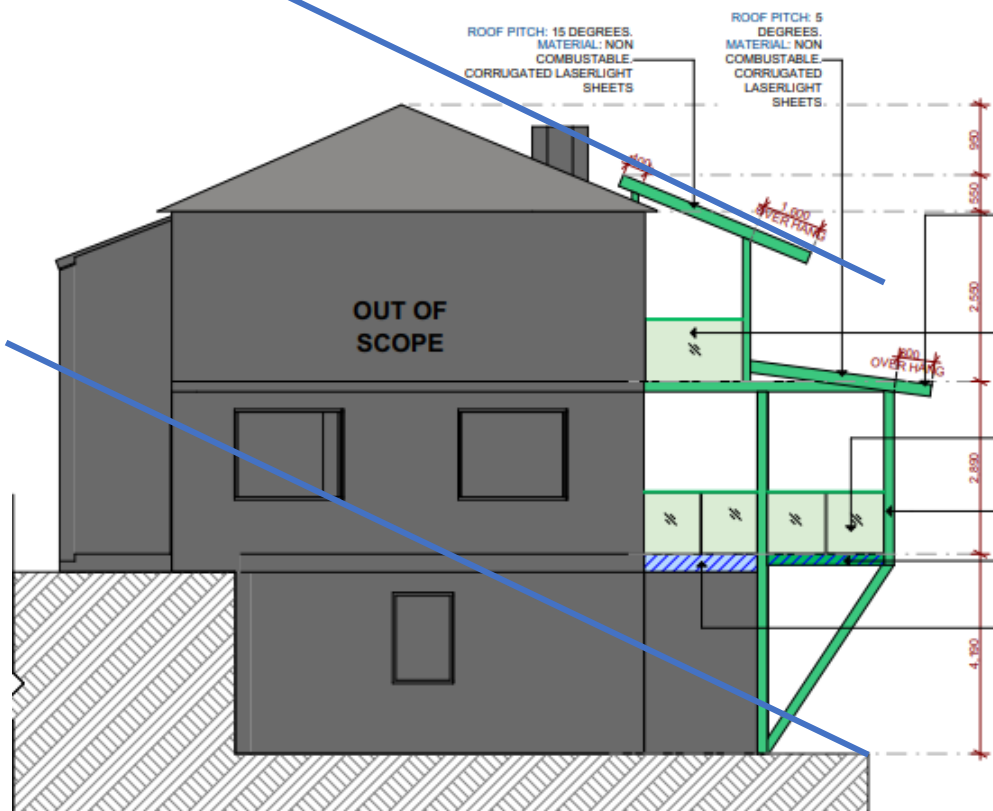


Figure 2: North-east elevation including assumed ground line with height plane



Photo 1: Photo showing natural ground at rear



Photo 2: Photo showing natural ground at side

The provision of the roof over the deck also provides positive planning outcomes including reducing the perceived bulk and improving the visual appearance of the front façade of the building, providing weather protection to the deck and shade for north-west facing windows enabling a more sustainable building and greater amenity for residents.

On this basis it is evident that there are sufficient environmental planning grounds to justify non-compliance with the 8.5metre height control.

3. Cl.4.6(4)(a)(ii) Will the proposed development 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?

As outlined in Point 1 above the development is consistent with both the objectives of the C4 Environmental Living zone and the objectives for the height of building standard. On this basis the consent authority can be satisfied that the proposed development will be in the public interest.

4. Cl.4.6(4)(b) Has the concurrence of the Planning Secretary been obtained?

In accordance with the Department of Planning and Environment Circular, PS 20-002 issued 5 May 2020 the consent authority can assume the concurrence of the Planning Secretary for the variation to the development standard proposed.

Conclusion

This clause 4.6 request for variation is submitted in conjunction with an application for alterations to a dwelling at 147 McCarrs Creek Road, Church Point. The variation sought is to allow a roof over an existing upper level deck extending to a height of 10.18metres above existing ground level, noting the maximum permissible height for a building on the site under clause 4.3 of PLEP 2014 is 8.5metres.

This written request has demonstrated that compliance with the 8.5metre height control is unreasonable and unnecessary in this case for the following reasons:

- The ridge of the new roof is 0.95metres below the existing ridge height of the dwelling;
- The variation is primarily a result of previous excavation of the site;
- The roof is consistent with scale of the existing building and surrounding development;
- The roof design responds sensitively to the surrounding natural environment following the natural contours of the land and ensuring no impact on vegetation or drainage patterns;
- The roof is consistent with the objectives of the C4 Environmental Living zone and the height control;
- The roof does not result in detrimental impact to neighbouring properties or the area generally in respect to overshadowing, loss of views or visual intrusion;

- The roofing of the deck results in a better environmental outcome reducing the perceived bulk of the building, providing weather protection for deck users and providing shade to internal areas from north-western sun.

On this basis the consent authority can be satisfied that, in accordance with clause 4.6(4)(a)(i) this written request has adequately addressed the matters required to be demonstrated under clause 4.6(3) of *Pittwater Local Environmental Plan 2014*.