

**Clause 4.6 Variation Request  
Clause 7.8 Limited development  
on the foreshore area**

**7 RICHARD RD. SCOTLAND ISLAND Lot 47 DP 12749**

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

**For:** C. Richter

## INTRODUCTION

This document shall demonstrate compliance with the outcomes of **LEP control 7.8 Limited development on foreshore area** with regard to the proposed small additional deck, on two levels, to supplement the existing family dwelling.

### **Pittwater Foreshore Setback Building Line;**

The proposed infilling of the existing basement area is above the Foreshore Setback Building Line (FSBL) refer Site Plan drawing no. 101/GA/1.1. The existing dwelling and its waterfront deck are above the FSBL, however a small section of the proposed smaller waterfront deck additions are in the foreshore area.

Both neighbouring dwellings, No.5 and No.9 have waterfront decks that are located within the foreshore area, forward of the FSBL. The proposed deck additions on both levels are behind the de-facto building line between both neighbouring decks.

The foreshore building line setback varies from 18.4m from MHW at the south-eastern property boundary to 15.7m at the north-western property boundary.

#### Setbacks from MHW:

Dwelling- existing	19.8m - 19.4m
Basement- addition	19.8m - 19.4m
Deck- existing	17.9m - 17.5m - Main Ground Floor deck
Deck- addition	15.0m - encroaching 0.65m in the S-E & N-W corners & 0.4m in the centre.

The additions to the dwelling consist of a basement bedroom and study area with entrance hall, and decking that partially crossed the FSBL, and a bedroom wing above the existing dwelling. There is also a separate workshop between the existing dwelling and the road frontage. The existing dwelling and decking are behind the FSBL, however the proposed small 14.3m<sup>2</sup> deck addition to the existing deck and proposed basement deck cross the FSBL by an average 0.5m, a total of 2.9m<sup>2</sup> decking on each level.

Pittwater LEP 2014 allows for consent to “the extension, alteration or rebuilding of an existing building partly in the foreshore area”, refer clause 7.8 (2) (a).

Clause 4.6 of the Pittwater Local Environmental Plan 2014 enables Northern Beaches Council to grant consent to the development even though the decking 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 relates to the development standard for development in the foreshore area under clause 7.8 of the Pittwater LEP 2014.

This clause 4.6 variation request demonstrates that compliance with the development in the foreshore area 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 2014 Limited development on the foreshore area,
- Satisfies the objectives of the E3 Environmental Management zone under PLEP 2014,
- 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 2014.

#### VARIATION TO CLAUSE 7.8 LIMITED DEVELOPMENT IN THE FORESHORE AREA

Pittwater Council LEP 2014 allows for consent to “the extension, alteration or rebuilding of an existing building partly in the foreshore area”, refer clause 7.8 (2) (a).

The proposal is for a small addition to the existing waterfront deck, and a new small basement deck, straddling the FSBL and into the foreshore area.

#### **LEP 2014 Section 7.8 Limited development on foreshore area – assessment:**

##### (1) Objectives:

- (a) The proposed addition to the existing deck, set down at a lower level in a similar to the decking at the neighbouring dwelling at No.5 Richard Rd, encroaches between 0.4m and 0.65m forward of the FSBL. The encroachment is 15m from the mean high water mark (MHW), further back than the decks on both neighbouring properties.
- (b) The proposed decks are a minimum of 15.0m from the MHW at an elevation of over 9m, well above the estuarine planning level (EPLA) of 2.69m, therefore having no impact on coastal processes.
- (c) Public access along the waterfront is not affected by the proposal, as all the works are over 15m from the public land below the MHW.

##### (2) Development consent:

- (a) can be granted for an extension to an existing dwelling where the site makes it appropriate to do so. In this case the proposed deck additions are behind the neighbouring dwellings' decks in terms of their waterfront views, and below the subject dwelling's existing waterfront deck, preserving the water views of the existing and neighbouring dwellings on either side. Outdoor recreation facilities such as the decks can be permitted in the foreshore area.

- (3)
  - (a) the site is zoned for individual dwellings and this addition shall provide a good family dwelling with usable outdoor areas overlooking Pittwater.
  - (b) the appearance of the dwelling from the waterway would be largely unchanged as the additional decking is in front of the current dwelling. There is no impact on indigenous vegetation with no trees required to be removed for the proposed works.
  - (c)(i) the works will not create pollution or siltation of the waterway when in use. Sediment fences shall be installed above the MHW during the course of the works to ensure excavated material doesn't wash from the site.
  - (ii) there will be no adverse impacts on the marine habitat, and minimal impact on the fauna and flora on the site as the works are in an area devoid of native vegetation. No wetlands exist in the immediate area.
  - (iii) There will be no adverse impact on drainage patterns, the works are largely in front of, and downhill of, the existing dwelling with little overground water present.
  - (iv) there is no remnant riparian vegetation in the area of the proposed works.
  - (d) public access along the waterfront would remain unaltered as a result of the proposed works.

- (e) there will be no change to the opportunities for continuous public access along the waterfront as the works are entirely on freehold land over 15m from the MHWL.
  - (f) the proposal will not compromise the natural or aesthetic significance of the land. The development is entirely in scale and character with other waterfront dwellings in the area.
  - (g) the proposed decking is consistent with neighbouring waterfront decks. The existing native screen trees will further minimise any visual impact from the waterway.
  - (h) sea level rise as a result of climate change is not considered to be an issue here as the floor level of the proposed lower floor and decking is a minimum of 9.9m AHD, well above Council's inundation level (EPLA) for the site.
- (4)
- (a) the proposal will have no effect on foreshore access as the works are set well back on freehold land.
  - (b) there is no open space in the immediate area apart from the waterway.
  - (c) there is no need to provide public access over this residential site.
  - (d) public access is generally not required by Council on freehold land on Scotland Island.
  - (e) the proposal is entirely similar to, and in character with, neighbouring cottages on the waterfront of Scotland Island.

**Pittwater LEP 2014 cl. 4.6 Exceptions to development standards** sets out the parameters for varying a development standard such as cl. 7.8 Limited development on foreshore area, described above. Compliance with the relevant provisions of cl 4.6 is achieved as follows:

#### 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:

(1)(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.

**Objective (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.**

The proposed small deck additions within the foreshore area are over 15m from the foreshore MHW and at an elevation of over 9m therefore well clear of the foreshore and any natural foreshore processes at work.

The bulk and scale of the proposed decking is consistent with the adjoining waterfront dwellings and waterfront dwellings in general on the Pittwater.

**Objective (b) to ensure continuous public access along the foreshore area and to the waterway.**

The proposed additions within the foreshore area are over 15m from the foreshore MHW and at an elevation of over 9m. Public access along the foreshore is unaffected by the proposed works.

**(2)(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.**

The proposed decking extends 0.4m to 0.65m into the foreshore area and 2.6m beyond the footprint of the existing dwelling's waterfront decking. No native vegetation is impacted by the proposal.

CLAUSE 4.6(4)(a) THE CONSENT AUTHORITY IS SATISFIED THAT

**(i) the applicant's written request has adequately addressed the matters required to be addressed by sub-clause (3).**

A written application to vary development standard LEP clause 7.8 limited development on the foreshore area has been provided.

**(ii) the proposal will be in the public interest because it is consistent with the objectives of the particular standard.**

The proposed development is of good design that will reasonably protect and improve the amenity of the subject site, and surrounding built environment, therefore satisfying the requirement that the proposal, protecting the views of both adjoining neighbours and improving the water view access for the occupants of the site meets the planning requirements. The minor development on the foreshore area is in the public interest.

## **CONCLUSION**

The assessment above demonstrates that compliance with the limited development on foreshore area development standard in Clause 7.8 of the PLEP 2014 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 limited development on foreshore area standard, the proposed development:

- Satisfies the objectives of the limited development on foreshore area in clause 7.8 of PLEP 2014,
- Satisfies the objectives of the E3 Environmental Management zone under PLEP 2014,
- 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 2014.

**STEPHEN CROSBY**