
CLAUSE 4.6

VARIATION REQUEST

VARIATION TO FORESHORE BUILDING LINE

206 HUDSON PARADE, CLAREVILLE





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1 INTRODUCTION

This Clause 4.6 Variation Request has been prepared to accompany DA-2022/2246 to Northern Beaches Council seeking consent for demolition works and construction of a dwelling house including swimming pool at 206 Hudson Parade, Clareville, seeking variation of the proposed overhang of upper-level balconies beyond the foreshore building line threshold.

The Clause 4.6 Variation Request relates to the Limited development on foreshore building line principal development standard prescribed under Clause 7.8 in Part 7 of the *Pittwater Local Environmental Plan 2014* (the LEP), which states that:

- “
- (1) *The objectives of this clause are as follows—*
 - (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.*
 - (2) *Development consent must not be granted for development on land in the foreshore area except for the following purposes—*
 - (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,*
 - (b) *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*
 - (3) *Development consent must not be granted under this clause unless the consent authority is satisfied that—*
 - (a) *the development will contribute to achieving the objectives for the zone in which the land is located, and*
 - (b) *the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*
 - (c) *the development will not cause environmental harm such as—*
 - (i) *pollution or siltation of the waterway, or*
 - (ii) *an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
 - (iii) *an adverse effect on drainage patterns, or*
 - (iv) *the removal or disturbance of remnant riparian vegetation, and*
 - (d) *the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*
 - (e) *opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
 - (f) *any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*
 - (g) *in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*
 - (h) *sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change, have been considered.*
 - (4) *In deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following—*
 - (a) *continuous public access to and along the foreshore through or adjacent to the*
- ”



- proposed development,*
 - (b) *public access to link with existing or proposed open space,*
 - (c) *public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,*
 - (d) *public access to be located above mean high water mark,*
 - (e) *the reinforcing of the foreshore character and respect for existing environmental conditions.*
- (5) *In this clause—*
- foreshore area** means the land between the foreshore building line and the mean high water mark of the nearest natural waterbody shown on the Foreshore Building Line Map.
- foreshore building line** means the line shown as the foreshore building line on the Foreshore Building Line Map.

The application proposes a demolition of existing structures on site, except the rear boat shed, and the construction of 2 storey dwelling house with an ancillary swimming pool. The site is subject to a foreshore building line pursuant to Clause 7.8 of the LEP as shown on the reproduced map below:

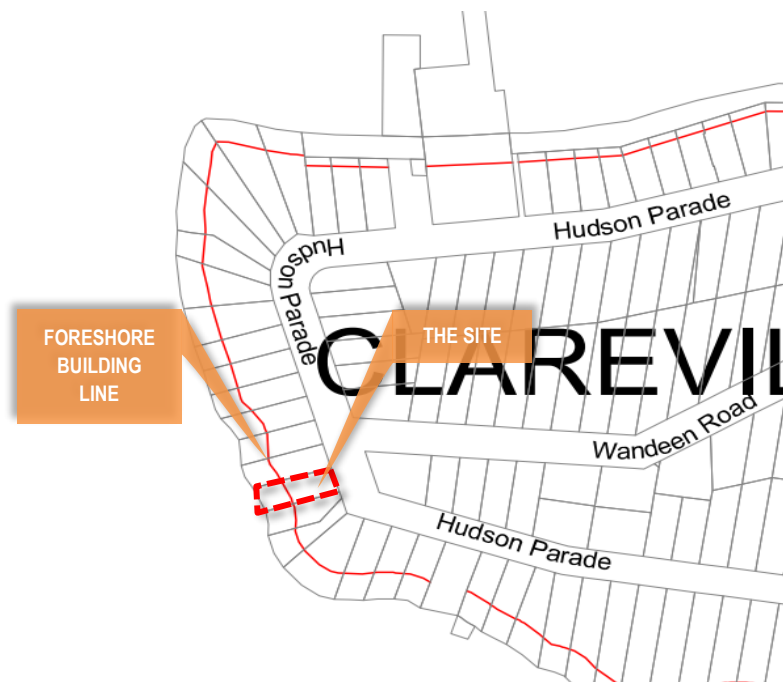


FIGURE 1: EXTRACT OF PITTWATER LOCAL ENVIRONMENTAL PLAN 2014 FORESHORE BUILDING LINE MAP

The development proposes balcony overhangs of approximately 2.32 metres on the bedrooms level and approximately 2.31 metres on the ground floor of construction beyond the foreshore area, resulting in the proposed development footprint extending beyond the prescribed foreshore building line.

An extract of the site plans of the proposed development are provided below illustrating the extent of the proposed foreshore building line exceedance shaded in red:

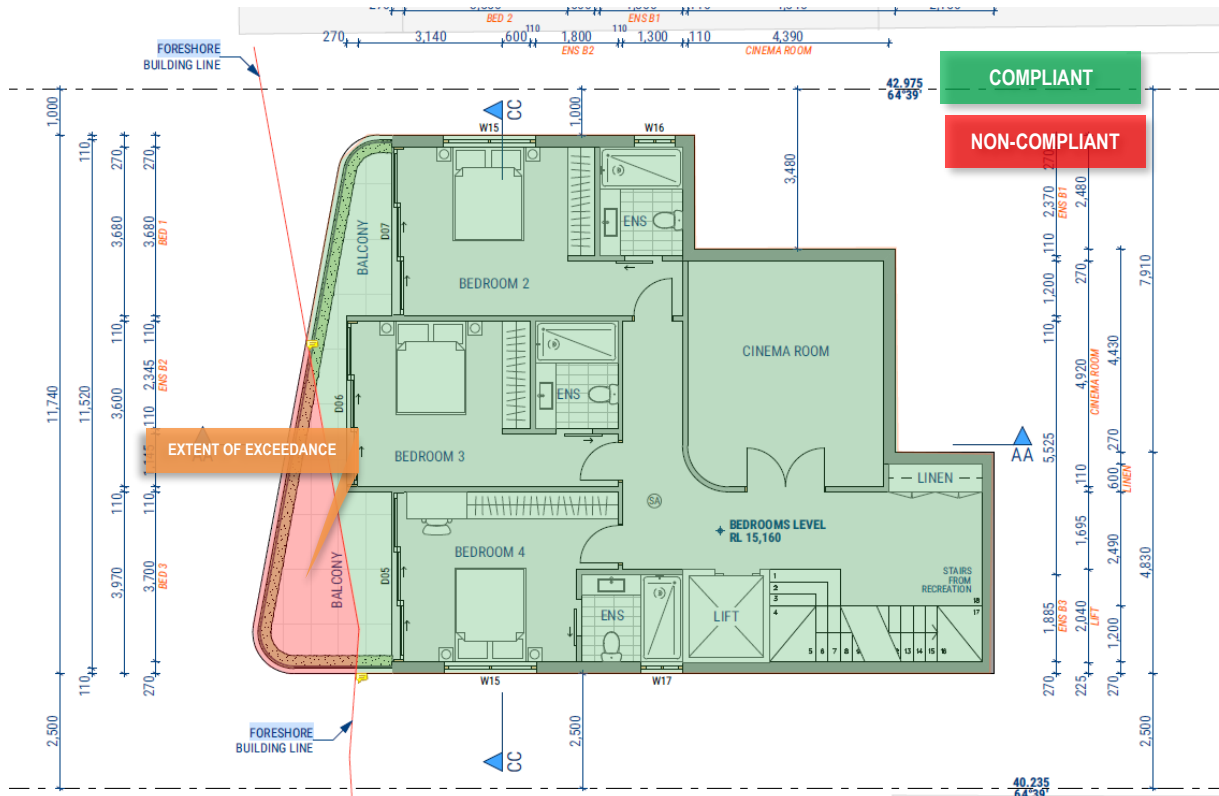


FIGURE 2: BALNCONY LEVEL EXCEEDENCE

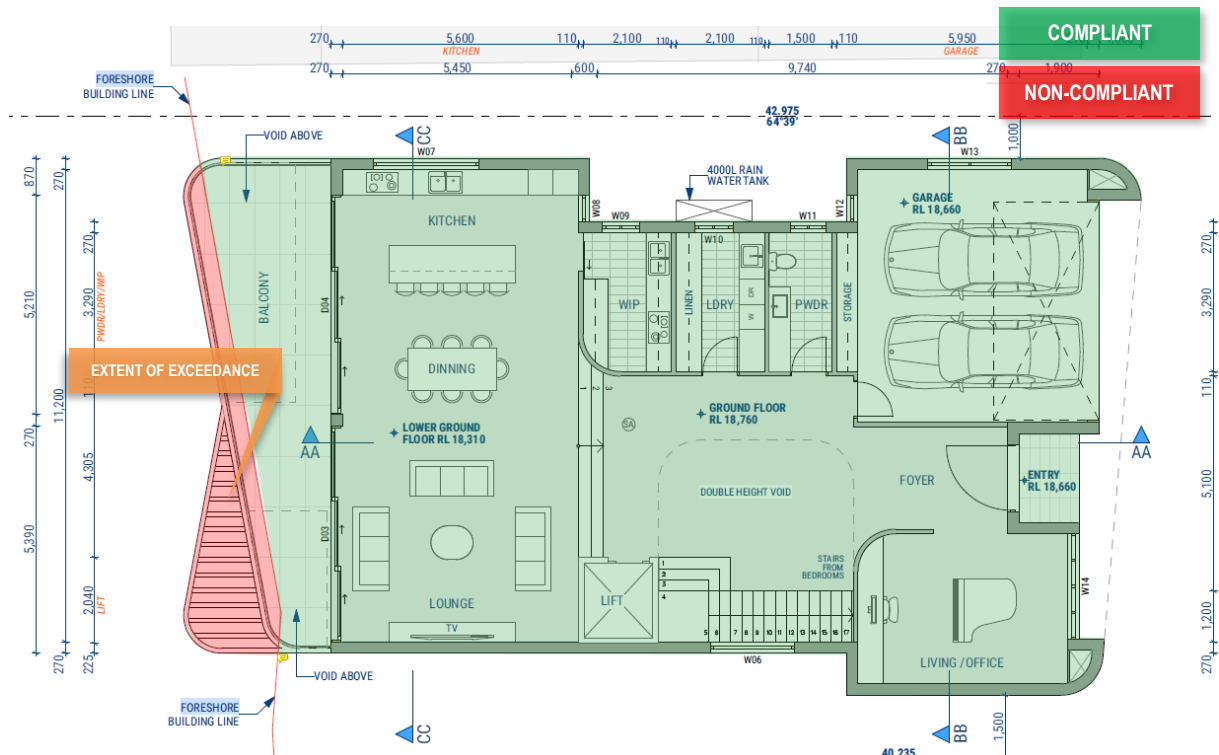


FIGURE 3: GROUND FLOOR LEVEL EXCEEDENCE

Pursuant to Clause 4.6 in the LEP, justification for the contravention of the "limited development on foreshore area" development standard is provided within this Clause 4.6 Variation Request.

This request has been prepared having regard to the matters for consideration prescribed in Clause 4.6



of in the LEP, noting that Clause 7.8 in the LEP is not excluded from consideration under Clause 4.6(8) in the LEP.

The variation request has also been prepared having regard to the findings and decisions in various case law including:

- 👉 *Wehbe v Pittwater Council [2007] NSW LEC 827;*
- 👉 *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;*
- 👉 *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7;*
- 👉 *Initial Action v Woollahra Municipal Council [2018] NSWLEC 118;*
- 👉 *Brigham v Canterbury-Bankstown Council [2018] NSWLEC 1406;*
- 👉 *Turland v Wingecarribee Shire Council [2018] NSWLEC 1511;* and
- 👉 *Rebel MH Neutral Bay Pty Ltd v North Sydney Council [2019] NSWCA 130.*

This Clause 4.6 Variation Request meets the objectives of Clause 4.6(1):

- “ (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. ”

and demonstrates for the purpose of Clause 4.6(3):

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

2 REVIEW OF CASE LAW

The main principles adopted by the Land and Environment Court of NSW (L&EC) in considering Clause 4.6 variation requests to development standards have been established in the proceedings of *Wehbe v Pittwater Council [2007] NSW LEC 827* and *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7*. The relevant principles of those proceedings are as follows:

2.1 WEHBE V PITTWATER COUNCIL [2007] NSW LEC 827

In these proceedings, Justice Preston set out the following five ways in which compliance with a development standard could be established as being unreasonable or unnecessary:

1. *Are the objectives of the development standard are achieved notwithstanding non-compliance with the standard;*
2. *Is the underlying objective or purpose not relevant to the development with the consequence that compliance is unnecessary;*
3. *Would the underlying objective or purpose be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;*
4. *Has the development standard been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard; or*
5. *Is “the zoning of particular land” “unreasonable or inappropriate” so that “a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land”.*



2.2 RANDWICK CITY COUNCIL V MICAUL HOLDINGS PTY LTD [2016] NSWLEC 7

In these proceedings, Preston CJ approved the following four stage test to ensure that the Court was satisfied that the variation request should be granted:

1. *That compliance with the development standard must be unreasonable or unnecessary in the circumstances of the case;*
2. *That there are sufficient environmental planning grounds to justify contravening the development standard;*
3. *That the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3); and*
4. *That 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.*

3 SITE & PLANNING CONTEXT

The subject site comprises 1 land parcel legally described as Lot 38 in DP 13760 and is more commonly known as 206 Hudson Parade, Clareville.

The subject site has an overall site area of 632.3 m² and comprises a fairly regular rectangular allotment with boundaries as follows:

- An eastern frontage width measuring 15.24 metres;
- A northern side boundary depth measuring 42.975 metres;
- A southern side boundary depth measuring 40.235 metres; and
- A western rear boundary width measuring 15.44 metres.

An aerial image and photographs illustrating the site and existing structures are provided below:



FIGURE 4: LOCATION MAP



FIGURE 5: LAND ZONING MAP



FIGURE 6: AERIAL MAP



FIGURE 7: VIEW OF THE SUBJECT SITE AT 206 HUDSON PARADE, CLAREVILLE



FIGURE 8: CLOSE-UP VIEW OF THE EXISTING DWELLING ON THE SUBJECT SITE



FIGURE 9: VIEW OF THE SUBJECT SITE FROM THE WEST (WATERWAY)

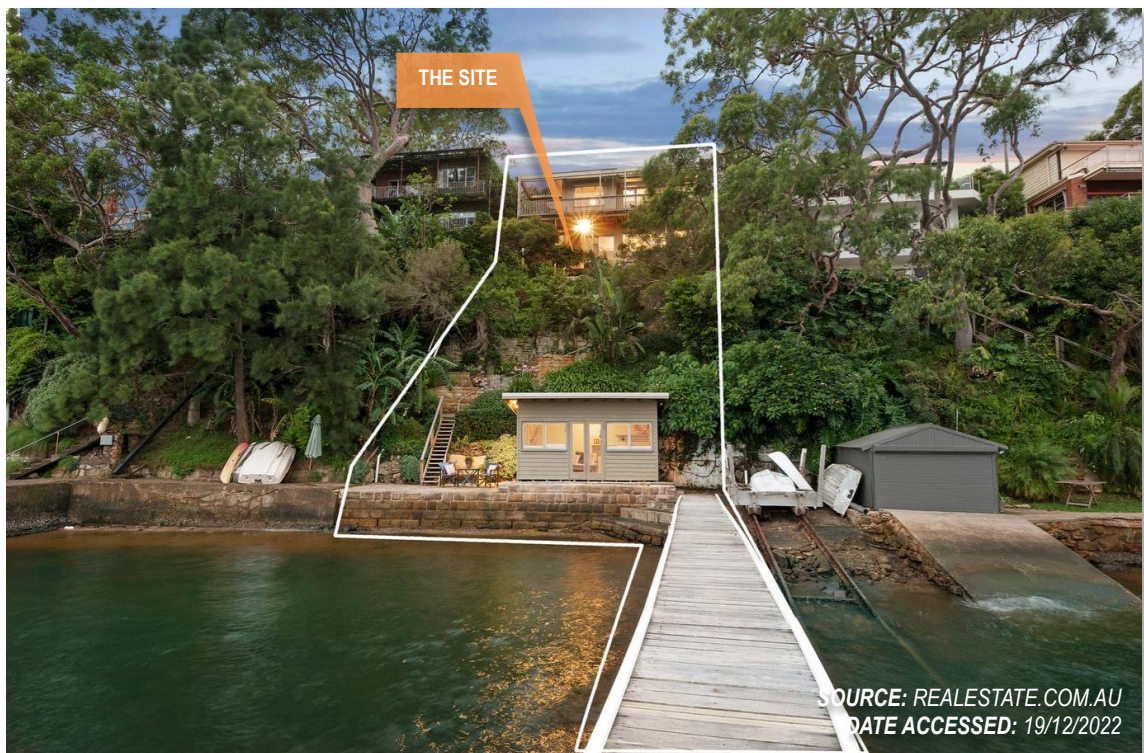


FIGURE 10: CLOSE-UP VIEW OF THE SUBJECT SITE FROM THE WEST (WATERWAY)

The DA seeks consent for demolition of an existing single storey dwelling house and construction of a split level 2 storey dwelling house. The development is defined as ‘*Dwelling house*’ pursuant to the definitions contained in *Pittwater Local Environmental Plan 2014*. A detailed description of the proposed development has been provided within the Statement of Environmental Effects accompanying the DA and should be referred to in conjunction with this request.



4 CLAUSE 4.6 VARIATION REQUEST & ASSESSMENT

1. **What is the name of the environmental planning instrument that applies to the land?**
Pittwater Local Environmental Plan 2014
2. **What is the zoning of the land?**
The site is zoned C4 Environmental Living Zone.
3. **What are the objectives of the zone?**
 - To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
 - To ensure that residential development does not have an 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.
4. **What is the development standard being varied?**
Limited development on foreshore area
5. **What clause is the development standard listed in the environmental planning instrument?**
Clause 7.8
6. **What are the objectives of the development standard?**
 - (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.

4.1 CLAUSE 4.6(3)(A)

DEMONSTRATE THAT COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE.

The following assessment outlines that compliance with the development standard would be unreasonable and unnecessary in the circumstances of the case, particularly referencing the test established in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (the Initial Action case) which confirmed the approach as held in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC7 (the Micaul case) as follows:

In the Initial Action case, Preston CJ concluded:

- 13 *Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.*
- 14 *The first precondition, in cl 4.6(4)(a), is that the consent authority, or the Court on appeal exercising the functions of the consent authority, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii). Each opinion of satisfaction of the consent authority, or the Court on appeal, as to the matters in cl 4.6(4)(a) is a jurisdictional fact of a special kind: see *Woolworths Ltd v Pallas Newco Pty Ltd* (2004) 61 NSWLR 707; [2004] NSWCA 442 at [25]. The formation of the opinions of satisfaction as to the matters in cl 4.6(4)(a) enlivens the power of the consent authority to grant development consent for*



- development that contravenes the development standard: see *Corporation of the City of Enfield v Development Assessment Commission* (2000) 199 CLR 135; [2000] HCA 5 at [28]; *Winten Property Group Limited v North Sydney Council* (2001) 130 LGERA 79; [2001] NSWLEC 46 at [19], [29], [44]-[45]; and *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 at [36].
- 15 The first opinion of satisfaction, in cl 4.6(4)(a)(i), is that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters.
- 25 The consent authority, or the Court on appeal, must form the positive opinion of satisfaction that the applicant's written request has adequately addressed both of the matters required to be demonstrated by cl 4.6(3)(a) and (b). As I observed in *Randwick City Council v Micaul Holdings Pty Ltd* at [39], the consent authority, or the Court on appeal, does not have to directly form the opinion of satisfaction regarding the matters in cl 4.6(3)(a) and (b), but only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3)(a) and (b). The applicant bears the onus to demonstrate that the matters in cl 4.6(3)(a) and (b) have been adequately addressed in the applicant's written request in order to enable the consent authority, or the Court on appeal, to form the requisite opinion of satisfaction: see *Wehbe v Pittwater Council* at [38].
- 26 The second opinion of satisfaction, in cl 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under cl 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in cl 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in cl 4.6(4)(a)(ii).
- 27 The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).

Furthermore, this Clause 4.6 Variation Request and the assessment that follows establishes that the objectives of the development standard are achieved notwithstanding non-compliance with the development standard as set out in the 5-part test established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 (the *Wehbe* case).

The local surrounding area is characterised by low density residential development on all sides. The dwellings within the locality typically present as a mixed single and 2 storey streetscape with landscaped surrounds. The subject proposal will maintain the character by allowing for a replacement residential low-density development that achieves a building typology that is compatible with existing single and 2 storey detached dwelling houses in the locality.



The land uses immediately adjoining or situated opposite the boundaries of the site are illustrated in the photographs contained in the Statement of Environmental Effects accompanying the DA.

Clause 7.8(2) of the LEP permits foreshore development for the purposes of extension, alternations or rebuilding of an existing building on land in the foreshore area and ancillary development including swimming pools. The development proposes balcony overhangs of approximately 2.32 metres on the bedrooms level and approximately 2.31 metres on the ground floor of construction beyond the foreshore area, resulting in the proposed development footprint extending beyond the prescribed foreshore building line. It is noted that a substantive majority of the actual built form is behind foreshore building line and primarily balcony overhangs contribute to the non-compliance, as can be drawn from the site plans partly reproduced as Figures 2 and 3 earlier.

Strict compliance with the numerical development standard is unnecessary and unreasonable in this case as the objectives of the development standard are achieved, notwithstanding non-compliance with the development standard, in the following ways:

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

As described earlier, the local surrounding area is characterised by residential developments of predominantly detached dwelling houses, some of which include multiple levels in split level form along the foreshore similar to that proposed in the subject DA and as can be seen in the figures provided earlier within this request. The subject site is located in the Avalon Beach locality, the desired future character of which is described in section A4.1 of the *Pittwater 21 Development Control Plan* (the DCP) as:

“The most important desired future character is that Avalon Beach will continue to provide an informal relaxed casual seaside environment. The locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancies will be located on the valley floor and lower slopes that have less tree canopy coverage, species and habitat diversity, fewer hazards and other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, commercial, community and recreational facilities will serve the community.

Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport. Vehicular and pedestrian access into and through the locality is good. Pedestrian links, joining the major areas of open space (Angophora Reserve, Stapleton Park and Hitchcock Park) and along the foreshores, should be enhanced and upgraded. Similarly, cycle routes need to be provided through the locality. Carparking should be provided on site and where possible integrally designed into the building.

Future development will maintain a building height limit below the tree canopy, and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with development. The objective is that there will be houses amongst the trees and not trees amongst the houses.



Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape and minimise site disturbance. Development will be designed to be safe from hazards.

Most houses are set back from the street with low or no fencing and vegetation is used extensively to delineate boundary lines. Special front building line setbacks have been implemented along Avalon Parade to maintain the unique character of this street. This, coupled with the extensive street planting of canopy trees, gives the locality a leafy character that should be maintained and enhanced.

The design, scale and treatment of future development within the Avalon Beach Village will reflect the 'seaside-village' character of older buildings within the centre, and reflect principles of good urban design. External materials and finishes shall be natural with smooth shiny surfaces avoided. Landscaping will be incorporated into building design. Outdoor cafe seating will be encouraged.

A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors. The natural landscape of Careel Bay, including seagrasses and mangroves, will be conserved. Heritage items and conservation areas indicative of early settlement in the locality will be conserved, including the early subdivision pattern of Ruskin Rowe.

Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities."

The proposed dwelling house has been designed to integrate in the existing streetscape and achieve a form that is compatible with the desired future character in the following ways, having particular regard to the statements above:

- ▶ The development is a low-density residential development in the form of a dwelling house with a maximum height of 2 storeys above ground level. The building is integrated with the landform by adopting a split level terraced floor layout to respond to the topography of the land and is heavily landscaped within the front, rear and side setbacks in order to provide a landscaped setting.
- ▶ The existing site is supported by adequate infrastructure, including existing roads and public transport and existing water and sewerage facilities that will be augmented as part of the development to support the proposal.
- ▶ The development minimises bulk and scale by proposing a building height below the tree canopy of the notable trees on the subject and adjoining sites, which observe existing heights of between 10 metres to 25 metres as detailed on the accompanying Survey Plan.
- ▶ The existing and proposed landscaping has been designed to integrate with the development to achieve a building set amongst the trees and not trees amongst the houses, as evident by the accompanying Landscape Plan reproduced in part below:

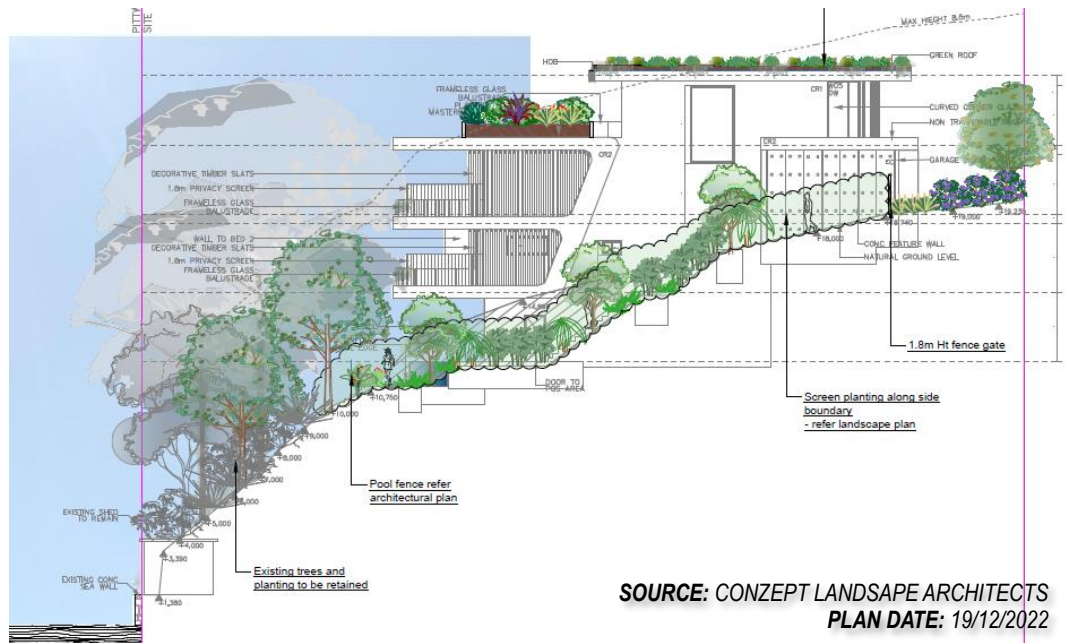


FIGURE 11: EXTRACT FROM LANDSCAPE PLANS

- The development is a contemporary building that includes heavy façade modulation and to the street and rear and incorporates shading through the balconies and overhangs that cause the breach, the subject of this Clause 4.6 Variation Request.
- The subject site is a sloping site and the proposed development is stepped along the slope so that the built form will integrate with the landform and landscape in order to minimise site disturbance. The levels of the dwelling house have been split and levels are also stepped as much as practicable whilst maintaining functional and practical floor layouts.
- The development locality is characterised by its on-foreshore area and estuarine fauna and flora. As determined in the Statement of Environmental Effects, the subject site is identified as estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. However, in accordance with Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuary planning level of 2.83 metres AHD is achieved, and the development is located above the derived EPL with no additional reporting needed. Hence, it is conclusive that the overall design is responsive to geotechnical hazard and natural foreshore processes. Refer to Appendix 1 within the Statement of Environmental Effects.

To ensure the overall built structure is responsive to the natural site constraints associated with the foreshore, the development maintains 2-storey built form subject to small portion of the balcony overhanging past the foreshore building line. The development will establish and maintain the desirable attributes and character of the existing 2 storey dwelling houses within the locality, by presenting as a 2-storey façade that maintains overall streetscape value ensuring that the proposed building does not dominate the natural foreshore processes or impact the significance and amenity of the area.

The development proposes an extended component of the proposed building structure attached to the principal living space with the extended overhang remaining within the confines of the built element and not extending into public accessways along foreshore area and Pittwater waterway. None of the building elements that exceed the foreshore building line are located on the ground level to ensure that the development poses no on-ground impacts to the foreshore area and to the waterway and therefore, the development will not impact on natural foreshore processes or affect the significance and amenity of the area and is consistent with Objective (a).



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

The development proposes a swimming pool on ground level which is permitted to extend beyond the foreshore building line pursuant to Clause 7.8(2)(b) of the LEP. The proposal also includes balcony overhangs of approximately 2.32 metres on the bedrooms level and approximately 2.31 metres on the ground floor beyond the foreshore area, resulting in the proposed development footprint extending beyond the prescribed foreshore building line. Accordingly, none of the building elements that exceed the foreshore building line are located on the ground level to ensure that the development poses no on-ground impacts to the foreshore area and to the waterway.

None of the areas that extend beyond the foreshore building line would have any direct impact on public access along the foreshore area and to the waterway. The development proposes an extended component of the proposed building structure attached to the principal living space. The extended overhang remains within the confines of the built element and does not extend into public accessways along foreshore area and Pittwater waterway.

The development is appropriately setback back from the rear waterbody and therefore, the proposal is consistent with Objective (b).

4.2 CLAUSE 4.6(3)(B)

DEMONSTRATE THAT THERE ARE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD.

Considering that the development achieves the objectives of the development standard and the objectives of the land use zone, and furthermore achieves a satisfactory level of compliance with the other applicable State and Council Planning Policies, the proposal is meritorious, and the contravention of the development standard is justified.

Despite exceeding the foreshore building line development standard, the proposed dwelling house will facilitate the orderly and economic development of the land for the purposes of a dwelling house, that will positively contribute to the achievement of the vision and strategic objectives of *A Plan for Growing Sydney* and *Pittwater Local Environmental Plan 2014*.

There are sufficient environmental planning grounds to justify contravening the development standard. They are:

- The development responds to low density residential characteristics that are compatible with the local character as detailed within this request; and
- The size, shape and orientation of the property will allow for the land to be developed with a dwelling house that will be of a bulk and scale that is compatible with the character, bulk and scale of buildings adjoining the land and within the foreshore area; and
- The proposed overhang elements will achieve an overall improved attractiveness of the land for the local and wider area by delivering a residential development whilst maintaining amenity; and
- The proposed development, even with its contravention of the development standard, poses no significant impacts on the surrounding locality.

The proposed development is consistent with the objectives of the zone as detailed in Section 4.4 below.

4.3 CLAUSE 4.6(4)(A)(I)



DEMONSTRATE THAT THE APPLICANT'S WRITTEN REQUEST HAS ADEQUATELY ADDRESSED THE MATTERS REQUIRED TO BE DEMONSTRATED BY SUBCLAUSE (3).

This Clause 4.6 Variation Request has adequately addressed the matters required to be demonstrated by subclause (3), as detailed throughout.

4.4 CLAUSE 4.6(4)(A)(II)

DEMONSTRATE THAT 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.

The proposed development will be in the public interest because it is consistent with the objectives of the particular standard as demonstrated earlier, and is consistent with the objectives of the C4 Environmental Living zone in the following ways:

- ▶ The proposed development will provide for low-impact residential development in an area with special ecological, scientific or aesthetic values.
- ▶ The proposed development will ensure that the development does not have an adverse effect on those values.
- ▶ The proposed development will provides for residential development of a low density and scale integrated with the landform and landscape by stepping the building into split-levels that follow the landform.
- ▶ The proposed development will retains and enhances riparian and foreshore vegetation and wildlife corridors.

No substantive public benefit would be realised by maintaining and enforcing the development standard. Strict compliance with the development standard would not alter the overall design approach or built form outcome for the site and would not realise any improvement to the relationship between the site, adjoining buildings and the surrounding area. Notably, none of the building elements that exceed the foreshore building line are located on the ground level itself and are elevated and overhang the foreshore area which in itself ensures that the development has a neutral impact. Conversely, strict compliance would result in a poorer planning outcome for the site with the removal of the overhangs and result in a flatter façade to the rear that will provide occupants with less amenity than what the development achieves as proposed. It is further noted that existing dwelling houses on neighbouring properties are also positioned beyond the foreshore building line and so the proposed development would not be out of character with the existing or desired future character of the area.

The proposal achieves the objects of the *Environmental Planning and Assessment Act, 1979* (the Act) in the following ways:

- ▶ Section 1.3(b) the overall design of the development responds to ecological values of the site, adopting planning measures to ensure that the overhang achieves overall positive planning outcome.
- ▶ Section 1.3(c) as the entire built form of the development (apart from the overhangs) is within the foreshore building line development standard and promotes the orderly and economic use and development of the land by not posing any adverse amenity impacts on adjoining development and the public domain.
- ▶ Section 1.3(g) as the proposed development promotes good design and amenity of the built environment through the increased amenity that will be afforded to residents with the increased



functional and shaded private open space on the upper levels.

- ▶ Section 1.3(h) as the proposed development promotes the proper construction and maintenance of a building with appropriate shading and amenity.

For the reasons above and the assessment provided within this request, there are sufficient environmental planning grounds to justify the contravention of the FSR development standard.

4.5 CLAUSE 4.6(4)(B)

DEMONSTRATE THAT THE CONCURRENCE OF THE PLANNING SECRETARY HAS BEEN OBTAINED.

Planning Circular PS 20-002, dated 5 May 2020, contains an assumed concurrence notice dated 18 February 2018 for all consent authorities for the purpose of determining a development application to which a Clause 4.6 Variation Request is made.

4.6 CLAUSE 4.6(5)

PLANNING SECRETARY CONCURRENCE.

As detailed above, assumed concurrence has been issued by the Planning Secretary.

4.7 CLAUSE 4.6(6)

EXCLUDED SUBDIVISION.

The application of Clause 4.6 to the development standard is not precluded by the operation of Clause 4.6(6) of the LEP.

4.8 CLAUSE 4.6(7)

RECORD KEEPING.

This is an administrative matter for the Council.

4.9 CLAUSE 4.6(8)

EXCLUDED DEVELOPMENT AND CLAUSES.

The application of Clause 4.6 to the development standard is not precluded by the operation of Clause 4.6(8) of the LEP.

5 CONCLUSION

Having regard to the assessment of the proposal and Clause 4.6 Variation Request, the proposed development achieves the objectives of the development standard and the objectives of the land use zone, notwithstanding the contravention of the development standard itself. Therefore, compliance with the development standard is unnecessary and unreasonable in these circumstances.

For the reasons provided within this request, there are sufficient environmental planning grounds to justify contravention of the development standard and this request has appropriately demonstrated that the proposed development will be in the public interest because it is consistent with the objectives of the development standard that is contravened and the objectives for development of the zone in which the development is proposed to be carried out.

This Clause 4.6 Variation Request has been prepared in accordance with the requirements of Clause 4.6 of the LEP and has had regard to the findings of the various case law mentioned and discussed



throughout. Accordingly, the subject variation is worthy of Council's support for the reasons discussed within this request and the Council can exercise its power to grant development consent for the development that contravenes the development standard.