

## Request for a variation of a Development Standard pursuant to Clause 4.6 of Pittwater Local Environmental Plan 2014

### 1. Request

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A request is made pursuant to the provisions of *Clause 4.6 Pittwater Local Environmental Plan 2014* to vary the development standard in relation to a development application for residential flat building and dwellings at 53C Warriewood Road, Warriewood.

This request is made having regard to:

1. The provisions of *Clause 4.6 Pittwater Local Environmental Plan 2014*; and
2. *Varying development standards: A Guide* (August 2011) prepared by the Department of Planning and Infrastructure. The Guide “contains details of the information applicants are required to submit to the council to assist council assess development applications and associated applications to vary a standard.”

### 2. Background

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The subject site is zoned is zoned R3 Medium Density Residential.

The objectives of the R3 zone are:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day-to-day needs of residents.
- To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.

The proposed development is contrary to Clause 4.3 of *Pittwater Local Environmental Plan 2014*, which, in conjunction with the Height of Buildings Map, requires that the maximum height of buildings for the site shall not exceed 10.5 metres. Amended architectural plans show the height of the proposed residential flat building only exceeds the maximum height limit from between 0.8 - 1.0 metre (or a maximum 9.5%) when measured from the existing ground level. The building height limit is exceeded by the lift over run only and not by the main body of the building. The applicant therefore relies upon Clause 4.6 for a variation to the building height standard.

The objectives of the building height development 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.

### 3. Justification for Clause 4.6 Request

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Clause 4.6 of *Pittwater Local Environmental Plan 2014* imposes four preconditions on Council in exercising the power to vary a development standard and grant consent to the proposed development:

The first precondition requires Council to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with Council finding that the matters required to be demonstrated have been adequately addressed.

The second requires Council to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with Council finding that the matters required to be demonstrated have been adequately addressed.

The third precondition requires Council to be satisfied that the proposed development will be consistent with the objectives of the zone.

The fourth requires Council to be satisfied that the proposed development will be consistent with the objectives of the standard in question.

These preconditions are addressed in detail in the following sections.

#### 3.1 Is the development standard unreasonable or unnecessary in the circumstances of the case?

Land and Environment Court cases dealing with applications to vary development standards resulted in the Court setting out a five part test for consent authorities to consider when assessing an application to vary a standard and to determine whether the objection to the development standards is well founded and compliance is unreasonable or unnecessary.

As part of the test, consent authorities are asked to consider if the objectives of the standard are achieved notwithstanding non-compliance with the standard.

The proposed development achieves the objectives of the standard notwithstanding non-compliance with the building height standard because:

- a) The residential flat building has a height and scale that exceeds the building height limit only because of the lift over run. The non-compliance is very minor (9.5%) and applies to only a very small proportion of the built form (the lift over run). The effective height of the significantly predominant built form does not exceed the building height limit so the residential flat building will be perceived to be consistent with the desired character of the locality in relation to building height.
- b) The residential flat building will be perceived from the public domain to be consistent with the desired future character of the locality when the site is filled as per the approved site levels in the subdivision approval. The residential flat building and lift over run will not exceed the maximum building height limit when measured from the finished ground level.
- c) The residential flat building will be compatible with the height and scale of the nearby three-storey dwellings that also form part of the development.
- d) There is no additional overshadowing of neighbouring properties from that part of the residential flat building that is in non-compliance with the building height standard.
- e) There is no additional impact on the reasonable sharing of views.
- f) The residential flat building continues to respond sensitively to the natural topography.
- g) There are no additional adverse visual impacts from the lift over run on the natural environment.

Strict adherence to the building height standard would not result in a development that is anymore consistent with the desired future character of the locality or have a more appropriate relationship to its surroundings or have a more suitable balance between landscaped area and built form.

The objectives of the standard are achieved notwithstanding non-compliance with the standard.

### 3.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

The proposed addition will result in a development that is consistent with all relevant environmental planning standards, notwithstanding non-compliance with the building height standard. Council has approved raising the land levels around the residential flat building as part of the subdivision approval. When measured from the finished ground levels the residential flat building will comply with the building height standard. While the building height has to be measured from the 'existing' ground level, the site has been approved to be filled and it is

this final ground level that will provide the context of the residential flat building.

The development has also been assessed to:

- have no detrimental impacts on both the natural and built environments;
- have no detrimental social or economic impacts;
- be suitable for the site; and
- be in the public interest.

### 3.3 Is the proposed development consistent with zone objectives?

In assessing a development's consistency with zone objectives, Commissioner Brown in *Antoniades Architects Pty Ltd v Canada Bay City Council* [2014] NSWLEC 1019, took the following approach:

*The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, nor even that it is compatible.*

With this in mind, the proposed development is considered to be consistent with the R3 zone objectives because:

- The development provides for the housing needs of the community within a medium density residential environment typified by 3-storey residential flat building and underground car parking.
- The development contributes to the variety of housing types and densities.
- The development is not antipathetic to enabling other land uses to meet the day-to-day needs of residents.
- The development provides housing that is compatible with the desired future character, style, orientation and pattern of buildings, streetscapes, works and landscaped areas. The proposed residential flat building will not be out of place or character.

### 3.4 Is the proposed development consistent with the objectives of the Building Height standard?

Section 3.1 of this request details how the proposed development achieves the objectives of the Building Height standard notwithstanding non-compliance with the standard.

#### 4. Conclusion

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Clause 4.6 of Pittwater LEP 2014 aims to provide an appropriate degree of flexibility in applying certain development standards to particular development and to achieve better outcomes by allowing flexibility in particular circumstances. The proposed development warrants favourable consideration under this clause because it has been demonstrated that:

- The development standard is unreasonable and unnecessary in the circumstances of the subject case;
- The objectives of the standard are achieved despite non-compliance with the standard; and
- The development is consistent with the objectives for development within the zone.

In conclusion, the request is well founded and granting consent is consistent with the requirements of Clause 4.6 of Pittwater LEP 2014.

Regards



Tony Polvere  
Director