
From: Micheal Fountain <micheal@mfa.com.au>

Sent: Tuesday, 1 March 2022 6:17 PM

To: Jordan Davies

Subject: DA2020/1762 —316 HUDSON PARADE, CLAREVILLE - Letter in Response to Wallrock and Proffitt

**The Planning Panel Members
Northern Beaches Council**

DA2020/1762 —316 HUDSON PARADE, CLAREVILLE

We represent the owner of 316 Hudson Parade Clareville, the owner of the subject property. We write in response to letter submitted to the panel by Sam Wallrock & Lucy Proffitt dated 27th February 2022.

We are somewhat surprised by this further submission by Mr Wallrock and Ms Proffitt. While we recognise and respect their right to do, they have been highly effective in delaying and changing the works as a result of their prior submissions.

We have identified quoted statements in the subject letter via **bold italics** and provided our response under each quote.

“We brought the illegal works to Council's attention”

The legality or otherwise of the works is a moot point that has been the subject of litigation in the NSW Land and Environment Court.

The matter was settled between our client and NBC as much as the CDC was relinquished, works stopped and the subject Development Application lodged.

It is a fact that this entire intervening process from 2018 to this point was instigated via the complaints from Mr Wallrock, our clients neighbour.

“The certifier was employed and paid by Mr Walls as were the construction workers. They were working under Mr. Walls instructions!”

The implication that Mr Walls instructed the Certifier is defamatory and untrue. We briefed and liaised with the Certifier. To this day, Mr Walls has had no contact with the Certifier.

Mr Wallrock may have misunderstood the reference to Owner's Consent.

“There was and there has never been any intention by Mr. Walls to simply restore the existing boatshed”

This statement is incorrect. It is our client's intention to restore the existing boatshed that has been there since at least 1947.

The concrete slab beneath the boatshed had degraded to the point of being unsound.

The boatshed had to be temporarily removed to facilitate the construction of a new slab, the dimensions only changed to accommodate contemporary structural requirements.

“The Council officers understandably have difficulty resisting”

While it is not Council Officers role to resist an application at the behest of a complainant, we refute any suggestion that the officers involved have been anything other than completely professional in this matter.

They have acted without fear nor favour and have achieved substantial concessions from our client, conceivably in response to Mr Wallrocks complaints.

“There are no independent verifiable records of the external dimensions of the original boat shed”

This statement is untrue. There have been a number of surveys carried out by independent registered surveyors over many years.

“Mr. Walls’ consultant surveyor instructed and paid by Mr. Walls “

The implication that Mr Walls instructed a licenced and registered Surveyor to fabricate the dimensions of the boatshed is defamatory and untrue.

The Surveyors were briefed by us not Mr Walls.

“This is now a new build”

This is not a new build. It is a replacement of a boatshed that has existed on the site since at least 1947 as per the advice from Ian Hemmings SC. The boatshed enjoys existing use rights and has not been abandoned.

It is not required to comply with a planning instrument that post-dated its original lawful construction.

This said, Council has required the dimensions of the boatshed to be reduced from that originally proposed, and now proposes to further reduce those dimensions further via consent condition. We note Mr Wallrock and Ms Proffitt make no merit arguments as to loss of view, loss of privacy or overshadowing. The changes they request have absolutely no effect on their property. It would be unreasonable and unnecessary to further reduce the dimensions of the boatshed below that which has existed on the site for over 70 years.

“We don't agree with the historic dimensions put forward by Mr. Walls consultants”

It is not required that Mr Wallrock agree with the dimensions. They are a fact recorded by right of a survey from a registered surveyor.

***“Further the proposed construction with glazed doors is not as indicated on Page 154
“...common for Pittwater area.....consistent with modern boat sheds” but more akin to a party house with opening sides”***

Any casual observance of the modern boatsheds of Pittwater will see that the proposed form and detail of the boatshed is completely consistent with those boatsheds.

The opening side doors permits smaller equipment like kayaks and paddle boards to be stored in the boatshed with ease.

This development has been an ongoing issue for both council and our client since 2016. The development application has now been on foot for over 12 months and all the matters of substance raised by Mr Wallrock and Ms Proffitt have been dealt with in the assessment of the application.

The proposal has received approvals and/or support from the following independent Government Departments and Consultants:

- DPI - Crown Lands
- DPI – Fisheries
- Transport for NSW - Maritime
- Royal Haskoning DHV – Coastal and Marine Damages Assessment
- Royal Haskoning DHV – Estuarine Risk Management Report
- Bio Analysis – Marine Habitat Survey.

We would respectfully ask that the Local Planning Panel Members recognise that we have done all we can to satisfy the concerns of the above mentioned entities, Council, Mr Wallrock and Ms Proffitt.

To this end we would ask that you accept Councils recommendation and grant conditional consent to the application.

Should the Local Planning Panel Members or Council require any further information or explanation please do not hesitate to call me on the numbers listed below.

Kind regards,
Micheal Fountain. B.Arch.
Director.



Micheal Fountain Architects Pty Ltd