



**WRITTEN APPLICATION PROVIDING GROUNDS FOR VARIATION TO DEVELOPMENT STANDARDS
PURSUANT TO CLAUSE 4.6 OF PITTWATER LOCAL ENVIRONMENTAL PLAN 2014**

REGARDING RE- BUILDING OF MARINE STRUCTURES ADJACENT TO

316 HUDSON PARADE, CLAREVILLE.

For Mr TONY WALLS, (APPLICANT)

1. OUTLINE – Building Height

It is requested Council support a variation with respect to compliance with the maximum building height in the W1 portion of the site as described in Clause 4.3 of the Pittwater Local Environmental Plan 2014 (PLEP 2014).

2. THE ZONING OF THE LAND

E2 Environmental Conservation – landward of the mean high-water mark.

W1 Natural Waterways – Seaward of the mean high-water mark

This application only relates to the W1 portion of the site as the proposed boatshed sits well below the building height control in the E2 zone.

3. OBJECTIVES OF THE ZONE

Zone W1 - Natural Waterways

1 Objectives of zone

- To protect the ecological and scenic values of natural waterways.
- To prevent development that would have an adverse effect on the natural values of waterways in this zone.
- To provide for sustainable fishing industries and recreational fishing.
- To ensure development does not adversely impact on the natural environment or obstruct the navigation of the waterway.
- To provide opportunities for private access to the waterway where these do not cause unnecessary impact on public access to the foreshore.

4. DEVELOPMENT STANDARD

Part 4, Clause 4.3 – Heights of Buildings, of the PLEP restricts the height of a building in the W1 zone to a maximum of 4m. This control is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

5. DEVELOPMENT STANDARD OBJECTIVES

4.3 Height of buildings

(1) The objectives of this clause are as follows—

- (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.

6. NUMERIC VALUE OF THE DEVELOPMENT STANDARD

4 Metres

7. PROPOSED NUMERIC VALUE

4.8 Metres

8. PERCENTAGE VARIATION

20%

9. HOW IS STRICT COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THIS PARTICULAR CASE.

The Land and Environment Court has provided guidance as to the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary:

The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary:

A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable:

A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary.

10. EXISTING USE – THE SECOND WAY

In his Memorandum of Advice Ian Hemmings SC found that lawful existing use has been established and that it has not been abandoned with respect to the proposed development.

Under part 5 Clause 41 of the EP&A Regulation

41 Certain development allowed (cf clause 39 of EP&A Regulation 1994)

(1) An existing use may, subject to this Division—

(a) be enlarged, expanded or intensified, or

(b) be altered or extended, or

(c) be rebuilt, or

Clause 41(1)(c) enables a development that has established existing use to be rebuilt

As the boatshed that is being used for the existing use was erected well before the relevant date on which the current planning instruments came into force it is not necessary or reasonable to strictly apply the consequent development standards to the proposal.

Compliance is unnecessary as per the second way mentioned above.

11. OBJECTIVES OF THE DEVELOPMENT STANDARD – THE FIRST WAY

Notwithstanding this fact the proposed rebuilding of the boatshed is not required to be compliant with the development standards that post-dated its erection, the proposed structure is consistent with the objectives of the height of building control in the PLEP.

The proposed boatshed is consistent with the desired character of the locality and that of nearby boatsheds.

It will not overshadow or block any views and the amendments to the original design will see it sit sensitively into the landscape thus improving its visual impact on the area.

As the proposed development achieves the objectives of the control it is not necessary or reasonable to require the rebuilt structure to be 800mm lower in building height than the structure it is replacing.

12. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS.

Sufficient environmental planning grounds as defined by the relevant clauses of Section 1.3 of the EP&A Act have been achieved to justify the contravention of the standard

The additional height of the boatshed above the standard will enable the storage of watercraft in the boatshed rather than in the open thus leading to a better environment via proper management and the orderly and economic use of the land.
C1.3(a)(c)

Further to this the additional height will create a better design outcome by right of the proportion and detail of the building and greater amenity for its occupants.
C1.3(g)

13. PUBLIC INTEREST

The additional height of the facility will enable the storage of watercraft which would have otherwise been stored in the open as is the case with many other craft being stored on the adjacent beach and reserve.

This as well as the improved aesthetic of the boatshed will improve the vista of the area when viewed from the surrounding public spaces.

14. STATE AND REGIONAL PLANNING

The additional building height of the boatshed will not raise any concerns in relation to state and regional planning as the primary reason why the noncompliance with the instrument is justified is that the proposal is for the reconstruction of a boatshed that lawfully existed well before the instrument came into force.

This situation is somewhat unique as is the site and as such the proposed additional building height will not be applicable to other sites in the area, region or state.

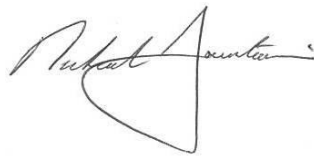
15. CONCLUSION

The development application which is the subject of this request is for the rebuilding of marine structures that have lawfully existed on the site since at least 1947.

These structures enjoy existing use rights which means that strict compliance with building height control as defined by section 4.3 of the PLEP 2014 is not necessary.

This said the building of the boatshed component to the height of the previous boatshed, which is 800mm higher than the control, will meet the objectives of the standard in any circumstance and therefore the application of the standard is not reasonable.

With this in mind the proposal clearly satisfies the requirements of clause 4.6 of the PLEP 2014 and the variance to instrument can be supported.

A handwritten signature in black ink, appearing to read 'Micheal Fountain', with a stylized flourish extending from the end.

Micheal Fountain Architects Pty Ltd

Micheal Fountain. B Arch.