



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

**Version 2.**

**REGARDING RE- BUILDING OF MARINE STRUCTURES ADJACENT TO**

**316 HUDSON PARADE, CLAREVILLE.**

**For Mr TONY WALLS, (APPLICANT)**

**1. OUTLINE – Development Application**

This application relates to a development application that seeks Northern Beaches Council (NBC), consent to reconstruct a boatshed and its associated structures under the existing use rights provisions of the EP&A Act and Regulation.

This document will address the provisions of Pittwater Local Environmental Plan, (PLEP ), cl4.3 that states that the height of buildings shall be in accordance with the height of buildings map.

The map indicates that the maximum height of a structure on the W1 section of the site shall be 4.0m.

Cl 4.6 of the PLEP allows NBC to grant consent to a development even though it contravenes the PLEP where it can be demonstrated that the standard is unreasonable, unnecessary and that there are reasonable environmental planning grounds to justify the variance.

This document will demonstrate that the height standard is unreasonable and unnecessary in this case and that there are adequate planning grounds to justify the controls variation.

The proposed development will satisfy the objectives of the PLEP, PDCP21 and the relevant state and regional planning policies.

This document will demonstrate that there are sufficient planning grounds to justify the variance , that it will provide a better planning outcome and as such it will be in the public interest.

**2. VARIATION**

**PLEP**

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.

NBC interprets the height of waterfront structures to be measured from the highest astronomic tide level which equates to RL 1.17 AHD.

Under this interpretation the highest permissible height of a waterfront structure shall be  $1.17 + 4.0 = 5.17$  AHD.

The height of the previous boatshed above its platform was 4.8m at a Relative Level of 6.05.

The height of the new structure above its platform is proposed to be 4.8m at RL 6.52

The level of the previous platform was RL 1.25

The level of the proposed platform is RL 1.72

The height of the original structure and that of the new structure is 4.8m

The platform has had to be raised to accommodate the NBC Estuarine Planning Level.

The proposal seeks a variance to the PLEP standard of 1.35m that being 5.35m above the highest astronomical tide level.

### **PITTWATER DCP 21, (PDCP)**

D15.15 Cl(c)(ii) states that:

*“Boatsheds shall be one storey and no greater than 4.5 metres in building height above the platform on which it is built”*

D15.15 Cl(c)(vi) states that,

*“The minimum floor level for proposed boatsheds shall be in accordance with the B3 Estuarine Hazard controls for foreshore development around the Pittwater Waterway”*

B3.9 Estuarine Hazard – states that:

Floor Levels - Boat shed Facilities

“New boat shed:

All floor levels shall be at or above the Estuarine Planning Level.

The proposal seeks a variance to:

PDCP D15.15 Cl(c)(ii) of 0.3m in height above the platform as per its original height.

PDCP D15.15 Cl(c)(vi) of – 0.91m in the height of the platform below the Estuarine planning level for the site.

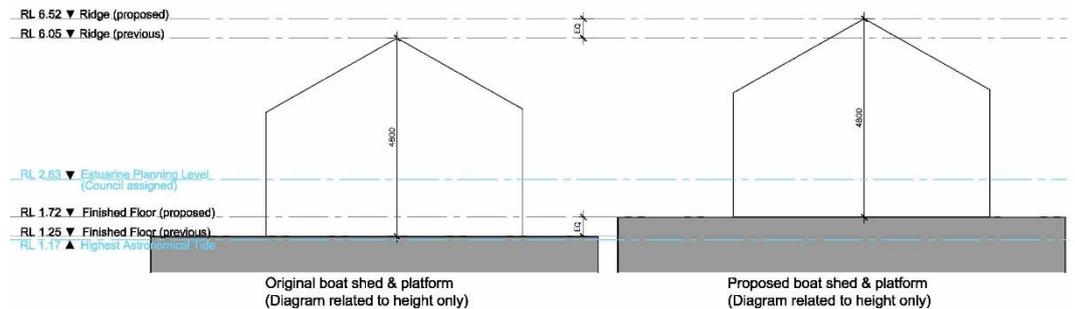
Variations to B3.9.

*“Consideration may be given on a merit basis to a floor level of a boat shed at a level lower than the Estuarine Planning Level where it can be demonstrated through an Estuarine Risk Management Report that the boat shed is structurally designed to withstand periodic wave action and tidal inundation up to the Estuarine Planning Level.”*

An Estuarine Risk Management Report has been prepared by Royal Haskoning DHV and is attached to the subject development application.

The report endorses NBCs estuarine planning level of RL 2.63 and conditionally supports the proposed variance in this circumstance to the level of RL 1.72.

By right of compliance with the requirements of B3.9 of the DCP the level of the proposed boatshed platform has been set at RL 1.72 which is 0.55m above the highest astronomical tide height of RL1.17.



### 3. JUSTIFICATION

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

#### a. OBJECTIVES OF THE ZONE

##### Zone W1 - Natural Waterways

##### 1 Objectives of zone

- To protect the ecological and scenic values of natural waterways.

The proposed increase in height of the boatshed and lowering of the platform floor level will have no effect on the ecological values and positive effect on scenic values of the water way.

- To prevent development that would have an adverse effect on the natural values of waterways in this zone.

The proposed increase in height of the boatshed and lowering of the platform floor level will have a positive effect on the natural values of the waterway.

- To provide for sustainable fishing industries and recreational fishing.

The proposed increase of the boatshed and the lowering of the platform floor level will have no effect on sustainable fishing industries or recreational fishing.

- To ensure development does not adversely impact on the natural environment or obstruct the navigation of the waterway.

The proposed increase in height of the boatshed and lowering of the platform floor level will not cause any impact on the natural environment nor will it cause any obstruction to navigation.

- To provide opportunities for private access to the waterway where these do not cause unnecessary impact on public access to the foreshore.

The proposed increase in boashed height and lowering of the platform level will not have an impact on the opportunity for private access to the waterway or public access to the foreshore.

## **b. DEVELOPMENT STANDARD OBJECTIVES**

### **PLEP 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,

The gabled boatshed has been integral to the character of Pittwater since settlement of the area. A boatshed of similar scale has existed on the site since at least 1947. The proposed boatshed is consistent with the form of many other boatsheds in the locality.

(b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

The proposed boatshed is consistent with the height of the previous boatshed and many other boatsheds in the locality.

(c) to minimise any overshadowing of neighbouring properties,

The proposed boatshed will not cause any overshadowing of neighbouring properties.

(d) to allow for the reasonable sharing of views,

The proposed boatshed will not cause any view loss to surrounding properties.

(e) to encourage buildings that are designed to respond sensitively to the natural topography,

The proposed boatshed has been designed to sit sensitively in its topographic setting. As opposed to the previous boatshed the proposed boatshed will have a lower roof angle and broader eaves that in combination will emphasise the horizontal rather than vertical form.

(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

The proposed boatshed will provide better fit with the natural environment than that of its predecessor and will have no impact on any heritage conservation area or heritage item.

**The proposed increase in height is consistent with the objectives of the zone and the development standard.**

**c. PDCP21 D15.15 - Waterways Locality - Outcomes**

*Waterfront development does not have an adverse impact on the water quality and estuarine habitat of Pittwater. (En)*

The proposed increase in boatshed height and the lowering of the platform level below the EPL will not have an adverse impact on the water quality and estuarine habitat of Pittwater.

*Public access along the foreshore is not restricted. (S)*

Public access through the proposed development will be maintained.

*Waterfront development does not encroach on navigation channels or adversely affect the use of ferries and service vessels or use of the waterway by adjoining landowners. (S, Ec)*

The proposed development will not encroach on navigation channels or adversely affect the use of ferries and service vessels.

*Structures blend with the natural environment. (S)*

The structures will blend with the natural environment

*Structures are not detrimental to the visual quality, water quality or estuarine habitat of the Pittwater Waterway. (En, S)*

The structures are not detrimental to the visual quality, water quality of estuarine habitat of Pittwater

*To promote a mix of commercial waterfront development for the accommodation of boats, their repair and maintenance, and for organised waterfront development. (Ec)*

The proposed structure will achieve this outcome.

*Waterfront development which does not comply with the outcomes of this clause are removed. (En, S, Ec)*

The proposed structures will comply with this clause.

The proposed development in general and specifically the requested variance in height of the boatshed and the lowering of the level of the platform will achieve the outcomes of the control.

**d. STATE AND REGIONAL PLANNING**

The additional building height of the boatshed and lowering of the platform below the EPL will not raise any concerns in relation to state and regional planning instruments.

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.

#### **4. NUMERIC VALUE OF THE DEVELOPMENT STANDARD**

4 Metres

#### **PROPOSED NUMERIC VALUE**

5.35 above the highest astronomical tide level.

4.80 metres from the boatshed platform.

#### **5. PERCENTAGE VARIATION**

34% above the highest astronomical tide level.

20% above the proposed boatshed platform

#### **6. 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.

##### **a. OBJECTIVES OF THE DEVELOPMENT STANDARD – THE FIRST WAY**

The proposed structure is consistent with the objectives of the height of building controls in the PLEP and the DCP21.

While there are tensions between these instruments in as much as the PLEP sets a height of 4 metres, measured by NBC above the highest astronomical tide level and the DCP21 that sets the height at 4.5m above the platform, which is to be set at the site-specific estuarine planning level, the objectives of each instrument are similar and are met by the proposal.

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 comply with the current standards.

#### **b. 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 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.

#### **7. 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 objectives of the standards are met despite the non-compliance patent in the design.

#### **8. PUBLIC INTEREST**

A boatshed and its associated structures:

- Have existed harmoniously on this site since at least 1947.
- Supported and helped form the beach and local estuarine systems in the decades since they were built.
- Have established the local boatshed aesthetic of the area and Pittwater in general.

The resetting of the platform level to meet Council requirements and the maintenance of the height of the prior structure will see the area returned to its former aesthetic.

The structures will help maintain the beach and its estuarine systems.

With the above in mind Council can be satisfied that the proposal is in the public interest as it restores the prior pattern of development, is beneficial to the maintenance of the beach and meets the objectives of the relevant instruments

## **9. 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.

This document has demonstrated that strict compliance with the height provisions of the PLEP is unreasonable and unnecessary in this case and that justification can be seen by right of the restoration of the prior form in accordance with the objectives and outcomes of the current instruments.

The improved design will see the structure achieve better fit with the local built and natural environment which will in turn lead to an orderly and economic use of the land.

With this in mind we request that the development application be approved with the variation in accordance with PLEP 4.6..

A handwritten signature in black ink, appearing to read 'Micheal Fountain', with a large, stylized flourish underneath.

Micheal Fountain Architects Pty Ltd

Micheal Fountain. B Arch.