

## APPENDIX 3 – APPLICATION TO VARY THE DEVELOPMENT STANDARDS

The NSW Planning system contains measures which facilitate a variation to the development standards under a Principal Local Environmental Plan (LEP), Clause 4.6. This clause provides flexibility on the application of development standards where environmental planning objectives can be satisfied despite not meeting the required development standard.

*Clause 4.6 allows a consent authority to grant consent to a development that contravenes a development standard if the consent authority is satisfied that the applicant has demonstrated that:*

- *compliance with the development standard is unreasonable or unnecessary in the circumstances*
- *there are sufficient environmental planning grounds to justify the contravention of the development standard.*

The Policy allows a grant of consent for development that cannot be carried out without contravening a development standard, but only if identified circumstances are found to exist. A development application must be supported by a written objection, which specifies the grounds for objection to the particular standard. The determining authority must be satisfied that:

- The objection is well founded (i.e. compliance is unreasonable or unnecessary),
- Granting of consent meets the objectives of the policy,
- Non-compliance does not raise matters of significance for State or regional environmental planning; and
- Strict compliance with the development standard would tend to hinder the attainment of objects 5(a) (ii) of the EP&A Act 1979.

The following request has been undertaken based on an adaptation of Appendix B of *Guide to Varying Development Standards*, November 2023, NSW Dept. of Planning and Environment.

### REQUEST TO VARY SECTION 7.6(4)(a) – Murray LEP 2011

#### Site and Proposed Development

Item	Response
1. Describe the site	Opposite NSW Title Lot 7 DP568414 (Murray River)
2. Describe the proposed development	Installation of new landing, walkway and pump pontoon for domestic water supply system within the Murray River attached to the bank on the Victorian side of the river on NSW crown land. Infrastructure replaces previously installed structure located at the site.

#### Planning instrument, development standard and proposed variation

Item	Response
3. What is the environmental planning instrument/s you are seeking to vary?	<i>Murray Local Environmental Plan 2011</i>
4. What is the site zoning?	W2 - Recreational Waterways
5. Identify the development standard to be varied	7(4)a Specific principles  <i>Development consent must not be granted for the erection of a structure on land to which this clause applies unless the consent authority is satisfied of the following—</i> <i>(a) that the proposed structure will not be located on an outside bend of the Murray or Wakool River,</i>
6. Identify the type of development standard	No numeric value applicable.
7. What is the numeric value of the development standard in the environmental planning instrument?	NA – no numeric value.
8. What is the difference between the existing and proposed numeric values? What is the percentage variation?	NA
9. Visual representation of the proposed variation (if relevant)	See section 4 of the Statement of Environmental Effect and Project plans provided

## Justification for the proposed variation

Test	Response
<b>10. How is compliance with the development standard unreasonable or unnecessary in the circumstances of this particular case?</b>	
a) Are the objectives of the development standard achieved notwithstanding the non-compliance? (Give details if applicable)	<p>The objectives of the Instrument are as follows:  <i>This Plan aims to make local environmental planning provisions for land in Murray in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.</i></p> <p>There are no objectives to the standard. It is understood that the intent of this clause is preserve navigational waters in the river channel. This structure is replacing existing structure at this location and remains within other structures and the existing snags within the River.</p>
b) Are the underlying objectives or purpose of the development standard not relevant to the development? (Give details if applicable)	NA
c) Would the underlying objective or purpose be defeated or thwarted if compliance was required? (Give details if applicable)	No.
d) Has the development standard been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard? (Give details if applicable)	There are several similar structures along the Murray River channel at this location although it is unknown if they have been lawfully installed. This structure replaces one which has been in place for a significant period (30+years) and has no history of navigational misdemeanour or interruption.
e) Is the zoning of the land unreasonable or inappropriate so that the development standard is also unreasonable or unnecessary? (Give details if applicable)	NA
<b>11. Are there sufficient environmental planning grounds to justify contravening the development standard?</b>	<p>Structures similar to the proposed are common along the river channel supporting water delivery to properties adjacent to the river. Murray River Council and adjoining local Councils have historically supported pump pontoon and access structures on either side of the Murray River.</p> <p>This proposal has considered the objectives to the LEP and submit that the installation and use of the site for the purpose of a stock &amp; domestic pump and River access will not adversely affect the riverine environment, that the project has been responsibly assessed and proposed and that there is not impact to the environment on the basis that the mitigation measures proposed are utilised.</p>
<b>12. Is there any other relevant information relating to justifying a variation of the development standard? (If required)</b>	This address is attached to a statement of environmental effects to accompany a development application. This report and related assessments identify that the project location and work are suitable for the utilisation of the site to improve domestic water supply with no impact to the site and surrounds. Plans and assessments have been provided to support this.

## CONCLUSION

As demonstrated above,

- this objection is well founded demonstrating that the compliance surrounding the installation of structures on an outside bend is unnecessary and unreasonable,
- Granting of consent meets the objectives of the policy,
- Non-compliance does not raise matters of significance from State or Regional environmental planning, and

- Strict compliance with the development standard would tend to hinder the attainment of objects 5(a) (ii) of the EP&A Act 1979.

The proposal relates to the replacement of aged infrastructure and increased reliability of supply of stock and domestic water supply to the Applicant's property adjacent to the river. The location of the structure on the outside bend is not considered to disrupt navigational waters.