

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1596
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Responsible Officer:	Phil Lane
Land to be developed (Address):	Lot 46 DP 13620, 967 Barrenjoey Road PALM BEACH NSW 2108 Lot LIC 402863, 967 Barrenjoey Road PALM BEACH NSW 2108
Proposed Development:	Construction of a jetty and associated ramp and pontoon
Zoning:	E4 Environmental Living
Development Permissible:	Yes - Zone E4 Environmental Living No - Zone W1 Natural Waterways
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	SMJ Investments Pty Ltd
Applicant:	SMJ Investments Pty Ltd

Application Lodged:	08/09/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Other
Notified:	17/09/2021 to 01/10/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 60,000.00
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PROPOSED DEVELOPMENT IN DETAIL

The works include the following:

- Extension to the existing jetty (8m additional length), new pontoon and replacement of the existing timber with mesh.

The majority of work is to be located below the mean high water mark. As a result, while the subject site is wholly located within the E4 Environmental Living Zone, the works proposed under this application will be undertaken within the Zone W1 Natural Waterways under the Land Use Table of the Pittwater

Local Environment Plan 2014 (PLEP 2014). See Figure 1 below.

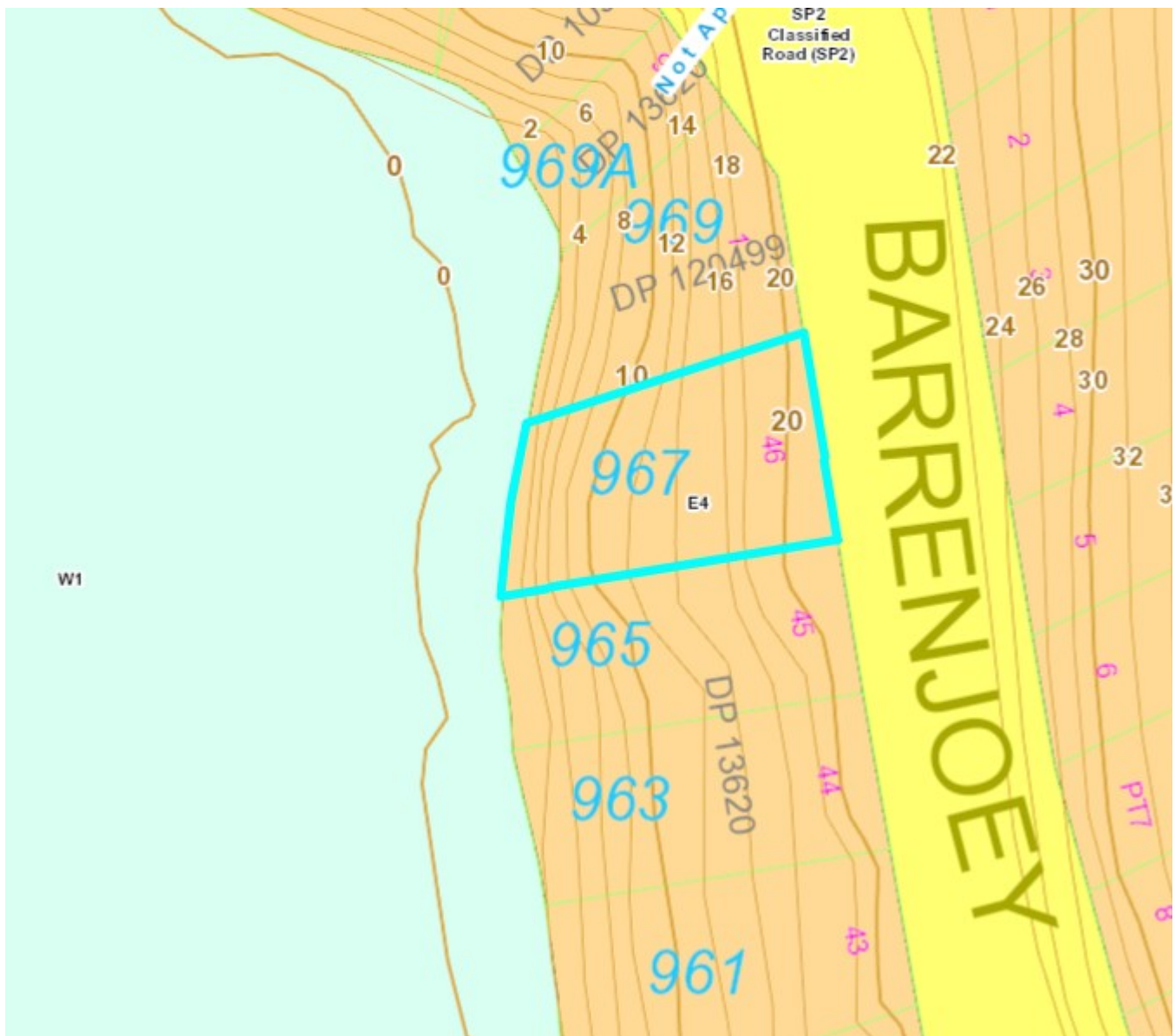


Figure 1: Subject site outlined in red within the E4 Environmental Living Zone, with the large majority of works being located in the adjoining W1 Natural Waterways Zone (light blue).

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest

- groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone W1 Natural Waterways

Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area

Pittwater 21 Development Control Plan - B3.7 Estuarine Hazard - Low density residential

Pittwater 21 Development Control Plan - D15.12 Development seaward of mean high water mark

Pittwater 21 Development Control Plan - D15.14 Minimum frontage for waterfront development

SITE DESCRIPTION

Property Description:	<p>Lot 46 DP 13620 , 967 Barrenjoey Road PALM BEACH NSW 2108</p> <p>Lot LIC 402863 , 967 Barrenjoey Road PALM BEACH NSW 2108</p>
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Barrenjoey Road.</p> <p>The site is irregular in shape with a frontage of 24.385m along Barrenjoey Road and a depth of m. The site has a surveyed area of 727m².</p> <p>The site is located within the E4 Environmental Living and W1 Natural Waterways zones and currently is a construction site with a the construction of a dwelling and swimming pool.</p> <p>The site is steep over 40% slope running from the road frontage down to the waterfront.</p> <p>The site has a number of native and exotic species of plants, trees and shrubs.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential development with similar ancillary structures such as jetties and pontoons.</p>

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- Development Application (N0597/07) was submitted to Council for the demolition of an existing garage structure. This application was approved, subject to conditions.
- Development Application (N0086/09) was submitted to Council for the demolition of existing dwelling and construction of a new dwelling. This application was approved, subject to conditions.
- Development Application (N0389/13) was submitted to Council for the construction of a new dwelling and waterfront facilities at 967 Barrenjoey Road, construction of new waterfront facilities at 969 Barrenjoey Road and a boundary adjustment between the two sites. This application was refused.
- Development Application (N0272/16) was submitted to Council for the demolition of existing dwelling and construction of a new dwelling, with a swimming pool and associated decking. This application was approved, subject to conditions.
- Modification Application (Mod2018/0387) was submitted to Council to modify consent N0272/16. This application was approved, subject to conditions.
- Modification Application (Mod2020/0412) was submitted to Council to modify consent N0272/16. This application was approved, subject to conditions.
- Modification Application (Mod2020/0563) was submitted to Council to modify consent N0272/16. This application was approved, subject to conditions.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development,	<p>(i) Environmental Impact</p> <p>The environmental impacts of the proposed development on the</p>

Section 4.15 Matters for Consideration'	Comments
including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Development for the purpose of the extension to an existing jetty, pontoon and replacement of timber and replacement with mesh on the existing jetty is prohibited within Zone W1 Natural Waterways pursuant to the Land Use Table of the Pittwater Local Environment Plan 2014 (PLEP 2014).

Notwithstanding such a prohibition, if "Existing Use Rights" (EUR) can be satisfactorily established for the land affected by the proposed development, then the consent authority may approve a development application.

However, the proposal must meet the relevant requirements applying to existing uses under the Environmental Planning and Assessment Act 1979, the Environmental Planning and Assessment Regulation 2000, and considering the impacts of the proposal through a merit assessment.

- **Does the existing use satisfy the definition of "existing use" under the *Environmental Planning and Assessment Act 1979* (the 'Act')?**

Section 4.65 of the Act defines an existing use as:

"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered:

1. Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?

Comment:

The aerial photo from Nearmap showed the jetty and pontoon in 2009 and a consent (N0086/09) was approved 30 November 2009 from the former Pittwater Council reveal that the use commenced as a lawful purpose, prior to the coming into force of Pittwater Local Environmental Plan in 2014.

The general architecture and arrangement of the jetty and pontoon is a typical of a standard surrounding jetties and pontoons.

2. Was the use of the jetty and pontoon granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

The aerial photo from Nearmap showed the jetty and pontoon in 2009 and a consent (N0086/09) was approved 30 November 2009 from the former Pittwater Council reveal that the use commenced as a lawful purpose, prior to the coming into force of Pittwater Local Environmental Plan in 2014.

The consent authority can therefore be suitably satisfied that whilst no form of consent from the inception of the boat shed and slip rail has been provided, it would precede requirements for consent.

3. Has the use of the jetty and pontoon been carried out within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment:

A search of Council's historical records indicates that the jetty and pontoon has occupied the site since at least 2009.

Based on the above history, Council can be satisfied that the site has continued to be used as an boat shed from at least 2009 to the present day without abandonment, which is within one year from the date on which the provision having the effect of prohibiting the use commenced. thereby satisfying Section 4.65 and 4.66 of the EP&A Act 1979.

- **What is “the land on which the existing use was carried out” for the purposes of cl 42(2) (b) of the Environmental Planning and Assessment Regulation 2000 (“the Regulation”)?**

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: “if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose”.

Comment:

Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the area in which the jetty and pontoon are to be proposed adjoining within the W1 Natural Waterways zone adjoining the subject site.

Status of Prescriptive Provisions under Section 79C

In accordance with the judgments and Planning Principles established by the Land and Environment Court, it is clear that prescriptive requirements of environmental planning instruments and development control plans cannot be applied to the assessment of the application as they would derogate from the existing use rights. In the absence of the usual considerations which apply by virtue of the application of a local environment plan or development control plan, the merit assessment of the development application which must be undertaken under s 4.15 of the EP&A Act must apply well recognised town planning principles.

Planning principles are designed to assist in reaching a decision in a particular case relating to issues which arise in merit cases. Planning principles are not legally binding, but provide an appropriate approach to a merits review of a development application for development relying on existing use rights.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council (2005) NSWLEC 71*, sets out the planning principles that should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights. Accordingly, the merits of the subject development application are assessed in accordance with the planning principles relating to existing use rights applications established in *Fodor Investments* and *Stomness Pty Ltd* below.

MERIT ASSESSMENT

The following four principles adopted by the NSW Land and Environment Court in this case will have general application in dealing with development applications that rely on existing use rights:

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Comment:

Planning Principle 1 makes it clear that, whilst an existing use rights development cannot be assessed against numerical controls governing bulk and scale, such controls still need to be taken into account in order to gain an informed understanding of the future context of the character of surrounding development. The judgement indicates that care must be taken in this assessment to avoid any de facto application of these standards and that failure to comply with these standards cannot be a consideration in the assessment. The focus of the assessment therefore, is to draw a comparison

between the bulk and scale of the development and the bulk and scale of development in the surrounding area and what is likely to occur in the vicinity in the future, based on the applicable planning controls.

Surrounding Development

The proposed works will not contribute to an adverse bulk and scale. Jetties and pontoons are common development within the Palm Beach foreshore locality and proposed height and scale is satisfies with the outcomes within clause D15.15 Water Front Development of P21DCP. In turn, the proposed development is considered to be consistent with the desired character of the locality.

Building Height

When viewed from the Pittwater waterway, the height difference and the disparity of height, bulk and scale between the existing building and the immediately adjoining boat shed is marked to the extent that there is no clear visual congruence between them. The proposal involves a jetty extension and new pontoon that has a similar footprint in comparison to the adjoining and surrounding structures, making it consistent and compatible when viewed from the street, water and distant areas.

The maximum height control for the W1 Natural Waterways zone is 4m, which is measured from 1.17m AHD. The maximum building height of the proposed development is 2.4m for the jetty.

It should be recognised that the proposed jetty extension has demonstrated compliance with the relevant height criteria under Clause D15.15 (Waterfront development) of the Pittwater 21 DCP at 2.4m where the requirement is 4.5m.

In summary, the building height is consistent with surrounding development, does not create any unreasonable overshadowing of surrounding properties and is consistent with the current and future characteristics of the Natural Waterways zone. As a result the building height is supported.

Side Setback

The north side boundary setback for the jetty is 8.5m and the pontoon is 7m and south side boundary setback for the jetty is 5.2m and the pontoon is 4.1m to the lateral limits.

The setbacks resulting from the proposed jetty and pontoon are considered to be adequate as it will result in reasonable and acceptable visual impact on the immediately adjoining properties and from the Pittwater waterway.

Building Envelope

The proposed extension to the jetty and pontoon are within the respective envelopes (north & south).

Relationship of Proposal to Existing and Likely Future Development

When viewed from Pittwater waterway or neighbouring sites of Barrenjoey Road, the height and the consistency of height, bulk and scale between the existing building and the immediately adjoining buildings displays clear visual congruence between them.

The proposal involves a new building areas that is consistent with the adjoining footprints/structures and side boundary setbacks.

2. What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

Comment:

The development application seeks to consent to extend the existing jetty and install a new pontoon.

Where a change of use is proposed within an existing building/structure, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists.

No change of use is proposed as the building/structure will remain a jetty and pontoon.

Therefore the established EUR benefit is being maintained and remains relevant.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment:

The planning concept of accepting EUR on this site does not in itself impact on adjoining land, as the intensity of the land for which the EUR seeks to demonstrate has been occurring for a prolonged period of time.

An analysis of the impacts of the extension to the jetty and pontoon is provided below:

Views

A site inspection has determined that there is no view loss on private properties as a result of the proposed works to the jetty and pontoon.

Overshadowing

In summary, the additional shadow created by the proposed development is found to be acceptable.

Privacy and Visual Impacts

The proposed works to the jetty and pontoon. The proposed works do not result in unreasonable overlooking opportunities to adjoining neighbours private open space.

As a result the privacy impacts of the proposal for the jetty and pontoon are reasonable.

In summary, the impacts to adjoining land is considered satisfactory with regard to view

loss, overshadowing, privacy and visual impacts.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Comment:

The numerical requirements for sunlight access and private open space under the PDCP do not apply, but these and other aspects must be assessed as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development where the controls do apply.

The development will provide an enhanced amenity for future occupiers by way of providing an extended jetty and new pontoon which is more compatible with contemporary needs and requirements. In summary, the amenity is considered satisfactory with regard to solar access, natural ventilation and acoustic quality.

The use has been existed prior to the coming into force of the Country of Cumberland Planning Scheme Ordinance and, therefore, is a lawful use.

Subsequently, the use can be retained under the current environmental planning instrument (Pittwater Local Environmental Plan 2014).

Conclusion

The use has been approved under a previous environmental planning instrument and, therefore, is a lawful use. Subsequently, the use can be retained under the current environmental planning instrument (Pittwater Local Environment Plan 2014).

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Building Code & Bushfire Hazard Solutions dated 27 July 2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 17/09/2021 to 01/10/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application seeks consent for extension of an existing jetty/ramp/pontoon facility.</p> <p>Landscape referral has assessed the application under PLEP and PDCP including the following clauses:</p> <ul style="list-style-type: none"> o C1.1 Landscaping o D12 Palm Beach Locality » D12.9 Landscaped Area – General o D12 Palm Beach Locality » D12.14 Scenic Protection Category One Areas <p>The plans indicate that no terrestrial landscape features are affected by the proposed works.</p> <p>I would defer to Council's Natural Environment Unit comments regarding potential environmental impacts.</p> <p>No objections are raised to approval with regard to landscape issues subject to conditions.</p>
NECC (Bushland and Biodiversity)	<p>The application seeks approval for the extension of an existing jetty/ramp/pontoon facility. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> <p>Biodiversity Conservation Act 2016 (BC Act) Biodiversity Conservation Regulation 2017 State Environmental Planning Policy (Coastal Management)</p> <ul style="list-style-type: none"> • Coastal Environment Area • Proximity to Coastal Wetlands <p>The east of the site is located within the Department of Planning, Industry and Environment's (DPIE) Biodiversity Values Mapping. Any removal of native vegetation from within mapped areas will trigger the Biodiversity Offset Scheme (BOS). As the proposed does not require establishment of an Asset Protection Zone (APZ) nor the removal of significant trees or vegetation from within this area, the BOS is not triggered.</p> <p>Assessment of impacts relating to aquatic and marine environments are deferred to Council's Coast's and Catchments Unit.</p> <p>Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.</p>
NECC (Coast and	The development proposal is for the extension of an existing jetty,

Internal Referral Body	Comments
Catchments)	<p>ramp and pontoon facility. The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against the coastal relevant requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>Assessment of the application has also considered:</p> <ul style="list-style-type: none"> • Consent of landowner to lodge a DA from the Department of Planning, Industries & Environment - Crown Lands, dated 21 May 2021. • No navigational concerns as a result of the proposed development from Transport for NSW Maritime Division dated 25 November 2020. • No objection to the proposed development (subject to conditions) from the Department of Primary Industries - Fisheries, dated 7 December 2020. <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore the Coastal Management Act 2016 is applicable to the proposed development. The proposed development is consistent with the objects, as set out under Clause 3 of the Coastal Management Act 2016.</p> <p>State Environmental Planning Policy (Coastal Management) 2018 The subject land has been included on the 'Proximity to Coastal Wetlands and Littoral Rainforest Area', 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 11, 13, 14 and 15 of the CM SEPP apply for this DA. On internal assessment, Council considers that the DA satisfies the relevant requirements under clauses 11, 13, 14 and 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP Development on Foreshore Area The subject property is affected by the foreshore building line and Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area. Proposed development works are located seaward of the foreshore building line and the proposed jetty is a permitted land use within the foreshore area. The proposed development is not contrary to the objectives of the zone, is unlikely to cause significant environmental harm or have an adverse impact on the amenity or appearance of the</p>

Internal Referral Body	Comments
	<p>foreshore. It is therefore considered that the development proposal satisfies the objectives and requirements of Clause 7.8 – Limited development on foreshore area of Pittwater LEP 2014 subject to conditions.</p> <p>Estuarine Hazard Management The subject property has been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As the Estuarine Planning Level (EPL) does not apply to jetties, bridging ramps or pontoons located on the seaward side of the foreshore edge the proposed development is considered to satisfy the relevant provisions of the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the B3.7 Estuarine Hazard Controls.</p> <p>Development Seaward of Mean High Water Mark Proposed development works are located on Crown land below the Mean High Water Mark. Hence, Section D15.12: Development seaward of mean high water mark in Pittwater 21 DCP applies to the proposed development. DPI Fisheries has raised no objections to the development proposal subject to application for a section 205 permit to harm marine vegetation and provided that the jetty and ramp are re-decked with mesh providing at least 60% light penetration. An aquatic ecology assessment lodged in support of the DA and prepared by Marine Pollution Research Pty Ltd (Aug. 2021) concludes that the proposed development would meet the aquatic ecological conservation requirements of the Fisheries Management Act (1994) provided mitigation and compensation measures are incorporated into the design and operation to the facility. On internal assessment and as assessed in the aquatic ecology report, the proposed development is unlikely to have significant adverse impacts on the visual amenity of the foreshore or water quality or estuarine habitat of the Pittwater waterway and the DA is considered to be able to satisfy the requirements of the Section D15.12 Controls subject to conditions.</p>
NECC (Development Engineering)	<p>The site is affected by the H1 Geotechnical Hazard and as such a Geotechnical report including Forms 1 and 1A in accordance with Council's Geotechnical Policy for the proposed works must be submitted with the application.</p> <p>Development Engineers cannot support the application due to insufficient information to address clause B3.1 of Pittwater DCP.</p> <p>Additional information submitted 24/09/2021</p> <p>The submitted Forms 1 and 1A meet the objectives of the DCP. The Geotechnical Engineer has deemed the works to be minor with no recommendations and as such forms 2 and 3 are not required.</p> <p>No objection to the proposal, subject to conditions as recommended.</p>
NECC (Riparian Lands and	This application has been assessed against relevant legislation and

Internal Referral Body	Comments
Creeks)	policy relating to waterways, riparian areas, and groundwater. This site is on Pittwater estuary and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of Pittwater. In addition, it must not significantly affect seagrass beds or other estuarine habitats. This application, subject to conditions, is recommended for approval as it is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of Pittwater, including seagrass beds, if conditions are adhered to.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPS), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPS), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 55 - Remediation of Land

Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.

SEPP (Infrastructure) 2007

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) *Aboriginal cultural heritage, practices and places,*
 - (g) *the use of the surf zone.*

Comment:

The assessment undertaken by Council's Coast and Catchments Officer has determine that subject to conditions, the proposed development is unlikely to cause an adverse impact on the characteristics of the coastal environment area as listed above and therefore satisfies this requirement. Council planning officers agree that the proposed works are not likely to cause an adverse impact upon the matters identified in this clause. The proposed alterations and additions do not discourage public access or amenity along the foreshore area nor impact on natural foreshore processes.

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
- (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
 - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

Council is satisfied the proposed works are designed, and can be managed, to avoid adverse impacts based upon the matters identified in this clause.

14 Development on land within the coastal use area

- (1)
- (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*

- (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
- (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The assessment, including an assessment undertaken by Council referral bodies has determined that subject to conditions, the development is unlikely to have an adverse impact on that listed under (a) and Council is therefore satisfied the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a).

The proposal does not impact upon the existing and safe access to and along the foreshore. The visual amenity from private and public space is not adversely effected and the surrounding area consists of examples of similar developments.

The assessment has also taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development. As discussed throughout this report, the development is considered to be considered with this and the desired future character of the locality.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

15 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

Council is satisfied that the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land.

Coastal Management Act 2016

The subject site has been identified as being within the coastal zone and therefore the Coastal Management Act 2016 is applicable to the proposed development.

The proposed development is consistent with the objects, as set out under Clause 3 of the Coastal Management Act 2016.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone E4 : Yes Zone W1 : No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone E4 : Yes Zone W1 : Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	E4 zone: 8.5m W1 zone: 4m	Nil 2.4m	- -	Yes Yes

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
1.9A Suspension of covenants, agreements and instruments	Yes
Part 4 Principal development standards	Yes
4.3 Height of buildings	Yes
Part 5 Miscellaneous provisions	Yes
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	Yes
Part 7 Additional local provisions	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone W1 Natural Waterways

The proposed water recreational structures (jetty and pontoon) forward of the MHWL are prohibited in the Zone W1 Natural Waterways under the Land Use Table of the Pittwater Local Environment Plan 2014 (PLEP 2014).

While Clause 2.5 of the PLEP 2014 allows for additional permitted uses on particular land, as outlined in Schedule 1 of the PLEP 2014, Schedule 1 Clause 23 (Uses of certain land in Zone W1 Natural Waterways) does not identify the subject land as "Area 23" on the Additional Permitted Uses Map.

However, the works proposed seaward of the MHWL are subject to existing use rights provisions.

Zone objectives

The underlying objectives of the W1 Natural Waterway zone are:

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

Comment: The development is appropriately sited and designed so as 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.*

Comment: The proposal has been reviewed by Council's Biodiversity, Riparian and Coastal Officers, having regard to the management of the natural environment and have raised no objection to the development subject to conditions. Further, the proposal has also been reviewed by DPI Fisheries who are also satisfied with the proposal. It is considered no unreasonable effects will be inflicted on the natural values of the waterway.

- *To provide for sustainable fishing industries and recreational fishing.*

Comment: The proposal will not impact on fish passages or recreational fishing areas.

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

Comment: The proposal has been reviewed by DPI Fisheries who have raised no objection to the proposal. Further, the Transport for NSW have confirmed via their letter of correspondence dated 25 November 2021, that there are no navigational concerns regarding the designed proposal.

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

Comment: The proposal demonstrates public access to and along the foreshore will be maintained.

Conclusion: For the reasons detailed above, the proposal is considered to be consistent with the objectives of the W1 Natural Waterways zone. The development is appropriately sited and designed so as to protect the ecological and scenic values of natural waterways.

7.8 Limited development on foreshore area

Based on the plans provided the proposed works are located entirely within the foreshore area.

Subclause 7.7(2) permits only the following types of development on land in the foreshore area:

- (2) *Development consent must not be granted for development on land in the foreshore area except (a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*
- (b) *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

The proposed works fall within the above categories, being limited to a jetty and a pontoon.

Based on the above, the development proposed as part of this application is considered permissible within the foreshore.

Pittwater 21 Development Control Plan

Built Form Controls

The Land and Environment Court Planning Principle established in the judgement by Senior Commissioner *Roseth in Fodor Investments v Hornsby Shore Council [2005] NSWLEC 71*, confirms that the provisions of environmental planning instruments (and DCPs) that derogate or detract from the benefit endowed on a site by existing use rights do not apply to the assessment of applications on sites where existing use rights apply.

As a result, zone objectives and planning controls that limit the size of a proposal (i.e. floor space ratio, height setbacks etc) have no effect on any site that enjoys the benefit of existing use rights. This includes qualitative provisions as well as quantitative provisions.

In view of the above, the built form controls contained within the P21DCP compliance table are not specifically relevant to the assessment of the application and are only included as a record to identify how the proposal measures up against the applicable controls that would apply to the site in the absence of existing use rights.

Accordingly, the merits of the subject development application are assessed in accordance with the planning principles relating to existing use rights applications established in *Fodor Investments and Stomness Pty Ltd*, and are detailed within the "Existing Use Rights" section of the assessment report.

Built Form Control	Requirement	Proposed	% Variation*	Complies
Side building line *D15.13 Lateral limits to development seaward of the mean high water mark applies	North Lateral Limit Line 2m	7m (Pontoon) 8.5m (Jetty)	- -	Yes Yes
	South Lateral Limit Line 2m	4.1m (Pontoon) 5.2m (Jetty)	- -	Yes Yes
Building envelope	North East 3.5m	No encroachment	-	Yes
	South 3.5m	No encroachment	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Section A Shaping Development in Pittwater	Yes	Yes
A1 Introduction	Yes	Yes
A1.7 Considerations before consent is granted	Yes	Yes
A4 Localities	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
Section B General Controls	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B1 Heritage Controls	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3 Hazard Controls	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4 Controls Relating to the Natural Environment	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5 Water Management	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6 Access and Parking	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8 Site Works Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
Section C Development Type Controls	Yes	Yes
C1 Design Criteria for Residential Development	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
Section D Locality Specific Development Controls	Yes	Yes
D1 Avalon Beach Locality	Yes	Yes
D1.21 Masterplan - Careel Bay	Yes	Yes
D12 Palm Beach Locality	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.13 Construction, Retaining walls, terracing and undercroft	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
areas		
D12.14 Scenic Protection Category One Areas	Yes	Yes
D15 Waterways Locality	Yes	Yes
D15.11 Waterfront lighting	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes
D15.13 Lateral limits to development seaward of mean high water mark	Yes	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.15 Waterfront development	Yes	Yes
D15.22 Masterplan - Careel Bay	Yes	Yes

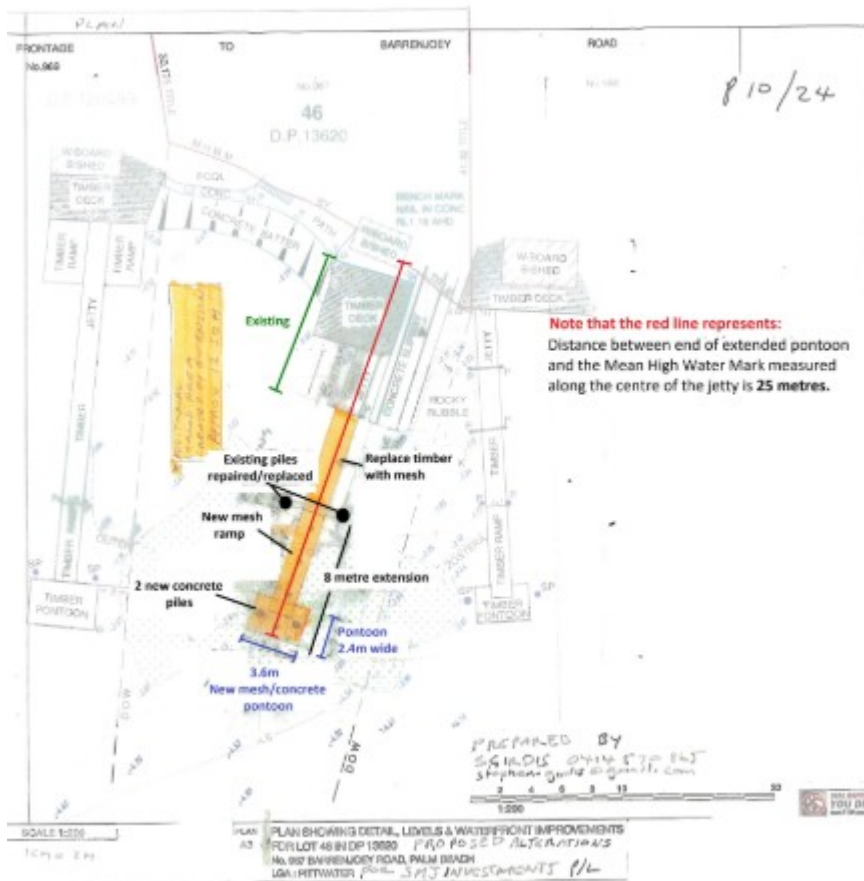
Detailed Assessment

B3.7 Estuarine Hazard - Low density residential

The subject property has been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As the Estuarine Planning Level (EPL) does not apply to jetties, bridging ramps or pontoons located on the seaward side of the foreshore edge the proposed development is considered to satisfy the relevant provisions of the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the B3.7 Estuarine Hazard Controls.

D15.12 Development seaward of mean high water mark

The proposal includes the construction of various waterway structures with a portion of the works located seaward of the mean high water mark which rely on EUR for permissibility within the W1 Natural Waterways Zone.



New works extension to the existing jetty on the site.

Where new structures are proposed including the jetty and pontoon, the encroachment of these structures into the waterway has been minimised through siting and design and remain consistent with the location of adjoining and surrounding development of this type. The proposed development has also been designed to facilitate satisfactory public access along the foreshore.

The application has been reviewed by Council's Natural Environment Team who subject conditions, are satisfied that the structures will not harm marine vegetation. A referral response by the Department of Primary Industries (Fisheries) has also been provided with the application, raising no objections subject to conditions.

It is therefore considered the outcomes and controls of this clause are achieved.

D15.14 Minimum frontage for waterfront development

Description of Non-compliance

The Control stipulates that allotments with a water frontage of less than 15.0m metres are generally only permitted to contain waterfront development such as a jetty, ramp and pontoon. Multiple facilities including boatsheds will not be permitted. The mean high water mark adjoining the Pittwater Waterway is 36.59m. As a result, multiple facilities below the mean high water mark can be considered.

However, the Control furthermore states that waterfront facilities should be shared with neighbouring waterfront properties to minimise the density and visual impact of foreshore development.

The proposal consists of a jetty extension, a pontoon and associated decking (mesh) for the individual use of the occupants of the subject site. It should be noted that the adjoining properties Nos. 965 and 969 Barrenjoey Road contains boat sheds, jetties and pontoons. Therefore, it is not considered necessary or practical to require such structures to be used communally between neighbouring properties.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying objectives of the Control as follows:

- *To minimise the individual and cumulative visual impact of waterfront development.*

Comment:

The adjoining properties to the north and south contains existing boat houses, jetties and pontoons thus the proposed works are not considered likely to inflict a negative visual impact upon the existing waterfront development. Boatsheds are common development within the Palm Beach foreshore locality and proposed height and scale is consistent with the design outcomes of clause D15.15 of P21DCP. In turn, the proposed development is considered to be generally consistent with the desired character of the locality.

As such, it is considered the control and outcomes of this clause are achieved.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;

- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2021/1596 for Construction of a jetty and associated ramp and pontoon on land at Lot 46 DP 13620, 967 Barrenjoey Road, PALM BEACH, Lot LIC 402863, 967 Barrenjoey Road, PALM BEACH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Submitted	Prepared By
Plan, Elevation (south)	3 September 2021	S. Girdis

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Comment	24 August 2021	Douglas Partners

Bushfire Assessment Statement	30 September 2021	Building Code & Bushfire Hazard Solutions
Aquatic Ecology Assessment	13 August 2021	MARINE POLLUTION RESEARCH PTY LTD

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the

development consent must, at the person's own expense:

- (i) protect and support the adjoining premises from possible damage from the excavation, and
- (ii) where necessary, underpin the adjoining premises to prevent any such damage.
- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

3. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
 - 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is

required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming

pools

- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

4. **Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

5. **Light penetration**

As per the NSW DPI Fisheries response dated 7 December 2020, the jetty and ramp must be re-decked with mesh that provided at least 60% light penetration.

Reason: Protection of seagrass.

6. **Lawful Authority to Use and Occupy Crown Land or Waterway**

An executed licence agreement from the relevant NSW government agency governing the use and occupation of Crown land is required to be obtained prior to the issue of a construction certificate.

Reason: To ensure that lawful authority under the Crown Land Management Act 2016 to use and occupy Crown land or waterway is obtained before construction commences.

7. **Compliance with Aquatic Ecology Assessment Report**

The development is to comply with all recommendations of the approved Aquatic Ecology Assessment Report prepared by Marine Pollution Research Pty Ltd, dated 13 August 2021, and these recommendations are to be incorporated into construction plans and specifications. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the release of the Construction Certificate.

Reason: To minimise potential harm and damage to estuarine habitat.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

9. **Estuarine Hazard Design Requirements**

All development or activities must be designed and constructed such that they will not increase the level of risk from estuarine processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect estuarine processes; they will not be adversely affected by estuarine processes.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

10. **Protection of Rock and Sites of Significance**

All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds.

Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

11. **Road Reserve**

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

12. **Management of *Caulerpa taxifolia***

The invasive marine alga *Caulerpa taxifolia* is present on this site. Site personnel must be able to identify *Caulerpa*.

All tools, machinery and environmental control devices must be inspected and cleaned thoroughly prior to leaving the site to prevent the spread of *Caulerpa* to other sites.

Any *Caulerpa* removed from the waterway should be tightly sealed in a plastic bag and lawfully disposed in general waste.

Reason: *Caulerpa taxifolia* is listed under the Biosecurity Act 2015 for all NSW waters.

13. **Aquatic sediment management**

Environmental safeguards (e.g. silt curtains) are to be used during construction to prevent the escape of turbid plumes into the aquatic environment. The silt curtains must be carefully placed and secured to ensure they do not drag over any nearby seagrass beds.

The safeguards must be regularly maintained and removed once the works are completed.

Reason: Protection of seagrass.

14. **Use of equipment and vessels in the vicinity of seagrass**

No equipment is to be placed on any seagrass beds.

Inshore infrastructure for mooring vessels and plant must be used where suitable. Where mooring lines or cables are required, they shall be suitably buoyed prior to laying and kept buoyed once laid to prevent cable drag or swing damage (scalping). Where this is impractical, contractors should use a floating rope.

Vessels must have adequate clearance over seagrass beds, including allowance for tidal movement, swell/wind wave heights and vessel propulsion.

Reason: Protection of seagrass.

15. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To demonstrate the proposal complies with the approved plans.

16. **Stockpiling**

No materials are to be stockpiled on the seabed.

Reason: protection of seagrasses

17. **Stockpiling materials**

During construction, all material associated with works is to be contained at source, covered and must be within the construction area. All surplus material and debris is to be removed off site and disposed of according to applicable regulations. The construction area is to be kept clean and any building debris removed as frequently as required to ensure no debris enters receiving waters.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within receiving waters throughout the construction period.

18. **Vessel Operation**

As recommended in the Aquatic Ecology Assessment prepared by Marine Pollution Research Pty Ltd dated 13 August 2021, the works must adopt measures to ensure no damage to seagrass and inshore rock rubble habitat identified in figure 4 of the report. These measures must include the following:

No vessel is to pass over the indicated marine vegetation unless there is sufficient depth to prevent vessel strike, propeller strike, or scouring damage from propeller wash.

No vessel is to be moored with anchor or other bottom tackle located in the indicated marine vegetation habitats.

Barge movement operations must be done during favourable tide and wind combinations, with the pushing vessel operated in such a manner as to minimise sediment disturbance and prevent strike or disturbance to seabed aquatic habitats. These manoeuvres should also be timed with the tides and low wave/wash periods to minimise seabed disturbance.

Barge mounted spuds cannot be used in seagrass or rock reef habitat areas as indicated in Figure 4 of the Aquatic Ecology Assessment.

If winches and anchor/mooring blocks are to be used, the anchor/mooring blocks and any associated chain are to be placed in such a manner that there is no direct damage to the identified habitats from the anchors/mooring blocks or chain, and anchors/blocks must be placed so that there is no risk under any tide or tide/wind combination of scalping the identified habitats from anchor chain or from cables sagging between the barge and anchor/mooring blocks or from the barge to other shore mooring points. If there is a sagging and scalping risk, the use of floating rope or suitable buoyancy for cables must be adopted.

All construction offcuts must be removed from the site and no construction materials are to be placed or stored on the seabed. Any dropped offcuts are to be retrieved from the seabed immediately for appropriate on-site disposal.

Any moorings or anchors that are used or piles/structures that are removed, should be inspected for the pest algae *Caulerpa taxifolia* once on the barge deck. If the alga is present, it should not be returned to the water and should be disposed of as normal construction waste into bins for appropriate shore disposal.

Reason: Protection of seagrass

19. **Construction works not to damage seagrass beds of inshore rock rubble habitat**
Construction shall be managed in accordance with all measures recommended in the Aquatic Ecology Assessment Report prepared by Marine Pollution Research Pty Ltd, dated 13 August 2021 and shall comply with all requirements, permits and control measures recommended by the Department of Primary Industries - Fisheries to minimise the impacts from construction and operation of the asset.

Reason: Protection of estuarine habitat

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

20. **Protection of Habitat Features**
All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Phil Lane, Principal Planner

The application is determined on 22/10/2021, under the delegated authority of:



Rodney Piggott, Manager Development Assessments