

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

|                            |             |
|----------------------------|-------------|
| <b>Application Number:</b> | DA2023/0700 |
|----------------------------|-------------|

|   |   |
|---|---|
| <b>Responsible Officer:</b>               | Stephanie Gelder  |
| <b>Land to be developed (Address):</b>    | Lot 102 DP 803977, 167 Riverview Road AVALON BEACH NSW 2107<br>Lot LIC 469130, 167 Riverview Road AVALON BEACH NSW 2107 |
| <b>Proposed Development:</b>              | Construction of a jetty, ramp, pontoon and fender pile  |
| <b>Zoning:</b>                            | W1 Natural Waterways  |
| <b>Development Permissible:</b>           | Yes   |
| <b>Existing Use Rights:</b>               | No  |
| <b>Consent Authority:</b>                 | Northern Beaches Council  |
| <b>Land and Environment Court Action:</b> | No  |
| <b>Owner:</b>                             | Simon David Ehrlich<br>Sara Ehrlich<br>Joel Tom Ehrlich<br>Shirley Rose Ehrlich   |
| <b>Applicant:</b>                         | Joshua Parsons  |

|                                  |   |
|----------------------------------|---|
| <b>Application Lodged:</b>       | 07/06/2023                              |
| <b>Integrated Development:</b>   | No                                      |
| <b>Designated Development:</b>   | No                                      |
| <b>State Reporting Category:</b> | Residential - Alterations and additions |
| <b>Notified:</b>                 | 15/06/2023 to 29/06/2023                |
| <b>Advertised:</b>               | Not Advertised                          |
| <b>Submissions Received:</b>     | 0                                       |
| <b>Clause 4.6 Variation:</b>     | Nil                                     |
| <b>Recommendation:</b>           | Approval                                |

|                                 |               |
|---------------------------------|---------------|
| <b>Estimated Cost of Works:</b> | \$ 150,000.00 |
|---------------------------------|---------------|

### PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the following works:

- Construction of a timber jetty including jetty piles;
- Construction of an access ramp;
- Construction of fender pile; and
- Construction of a floating pontoon.

The proposed works are located on Crown land below mean high water mark (MHWM) fronting Lot 102 DP 803977 known as 167 Riverview Road, Avalon Beach NSW 2107. The applicant has submitted Landowner's Consent from the Department of Planning and Environment – Crown Lands with the Development Application (LOC No.634187) dated 13 January 2023.

## 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 - 2.5 Additional permitted uses for particular land  
Pittwater Local Environmental Plan 2014 - Zone W1 Natural Waterways  
Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils  
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area  
Pittwater 21 Development Control Plan - D15.11 Waterfront lighting  
Pittwater 21 Development Control Plan - D15.12 Development seaward of mean high water mark  
Pittwater 21 Development Control Plan - D15.13 Lateral limits to development seaward of mean high water mark  
Pittwater 21 Development Control Plan - D15.14 Minimum frontage for waterfront development  
Pittwater 21 Development Control Plan - D15.15 Waterfront development  
Pittwater 21 Development Control Plan - D15.19 Dredging

## SITE DESCRIPTION

|                                   |   |
|-----------------------------------|---|
| <b>Property Description:</b>      | Lot 102 DP 803977 , 167 Riverview Road AVALON BEACH NSW 2107<br>Lot LIC 469130 , 167 Riverview Road AVALON BEACH NSW 2107 |
| <b>Detailed Site Description:</b> | The subject site consists of one (1) allotment located on the western side of Riverview Road.                             |

The proposed works are located outside the boundaries of the subject site below the Mean High Water Mark (MHWM).

The proposed works are located within the W1 Natural Waterways zone from PLEP 2014, and accommodates an existing boatshed, timber deck, retaining wall, and slip rails.

#### **Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by waterway structures adjoining the sites to the north and south. There are several boat sheds, jetties, and water recreation structures in the vicinity of the proposed works.

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:

##### **DA2022/0281**

Development Application for Alterations and additions to a dwelling house.  
Approved on 2 June 2022.

##### **DA2022/1155**

Development Application for Construction of a swimming pool.  
Approved on 16 January 2023.

#### **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  | There are no current draft environmental planning instruments.   |
| 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)(iiia) – Provisions of any planning agreement   | None applicable.   |
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)                     | <p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 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 69</u> of the EP&amp;A Regulation 2021 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, including environmental impacts on the natural and built environment and social | <p>(i) <b>Environmental Impact</b></p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p>   |

| Section 4.15 Matters for Consideration   | Comments  |
|--|---|
| and economic impacts in the locality   | <p>(ii) <b>Social Impact</b><br/>The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b><br/>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

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 15/06/2023 to 29/06/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

## REFERRALS

| Internal Referral Body                             | Comments  |
|--|---|
| Building Assessment - Fire and Disability upgrades | <p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p> |
| Environmental Health (Acid Sulfate)                | <p><b>General Comments</b></p> <p>Environmental Health have reviewed the Acid Sulfate Soil Report job number 23-072-02 dated 15 May 2023 which states</p>   |



| Internal Referral Body           | Comments  |
|----------------------------------|---|
|                                  | <p>Due to the absence of dredging works at the site and the nature of the proposed piling works for the development, I have assessed that no sediments will be exposed to atmospheric oxygen. This then leads on to the assessment that the development will not cause the production of acid sulfate soils at the site of 167 Riverview Road, Avalon Beach.</p> <p><b>Recommendation</b></p> <p>SUPPORTED - no conditions</p>  |
| Landscape Officer                | <p>The proposal is supported with regard to landscape issues.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause C4 zone Environmental Living, and the following Pittwater 21 DCP controls (but not limited to):</p> <ul style="list-style-type: none"> <li>• B4.22 Preservation of Trees and Bushland Vegetation</li> <li>• C1.1 Landscaping</li> <li>• D1 Avalon Beach Locality</li> </ul> <p>The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the C4 Environmental Living zone.</p> <p>The proposed works are mainly outside the property boundary and as such comments and assessment are deferred to the relevant referral teams. Any stockpiling within the property boundary or construction access through the property shall comply with the tree protection requirements outlined in the conditions of consent.</p> |
| NECC (Bushland and Biodiversity) | <p>The proposal seeks approval for the construction of a jetty, ramp, pontoon and fender pile.</p> <p>The comments in this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> <li>• NSW Biodiversity Conservation Act 2016</li> <li>• NSW Biodiversity Conservation Regulation 2017</li> <li>• SEPP (Resilience and Hazards) 2021 - Chapter 2 Development within the coastal environment</li> <li>• Pittwater LEP 2014 - Clause 7.6 Biodiversity Protection</li> <li>• Pittwater 21 DCP - Clause B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community</li> </ul> <p>Portions of the site are identified on the Department of Planning and Environment's Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offsets Scheme</p>   |

| Internal Referral Body      | Comments   |
|-----------------------------|--|
|                             | <p>(BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR). However, the submitted plans and documentation indicate that the proposed works are located outside of the BV Map area and therefore will not trigger entry into the BOS.</p> <p>Plans will have to be amended considering that stockpiling will have to take place outside of areas identified within the BV Map.</p> <p>Potential impacts to marine biodiversity will have to be assessed by the appropriate referral body.</p> <p>The development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p>   |
| NECC (Coast and Catchments) | <p><b>SUPPORTED WITH CONDITIONS</b></p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>• Plans, reports and documents lodged in support of this DA;</li> <li>• Coastal Management Act 2016;</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021;</li> <li>• State Environmental Planning Policy (Biodiversity &amp; Conservation) 2021; and</li> <li>• Pittwater LEP 2014 and P21 DCP.</li> </ul> <p>Assessment of the application has also considered:</p> <ul style="list-style-type: none"> <li>• Consent of landowner to lodge a DA from the Department of Planning &amp; Environment - Crown Lands, dated 13 January 2023.</li> <li>• No navigational concerns as a result of the proposed development from Transport for NSW Maritime Division dated 10 September 2021.</li> <li>• No objection to the proposed development (subject to conditions) from the Department of Primary Industries - Fisheries, dated 7 December 2020.</li> </ul> <p><b>Coastal Management Act 2016</b><br/>The subject site has been identified as being within the coastal zone and therefore the Coastal Management Act 2016 (CM Act) is applicable to the DA. The proposed development is generally consistent with the objects, as set out under Part 1 Section 3 of the CM Act.</p> <p><b>State Environmental Planning Policy (Resilience and Hazards) 2021</b><br/>As the subject site is within the coastal zone State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP R&amp;H) also</p> |

| Internal Referral Body           | Comments   |
|----------------------------------|--|
|                                  | <p>applies to the proposed development. The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the CM SEPP. Hence, Chapter 2 of SEPP R&amp;H applies for this DA. On internal assessment the DA generally satisfies the requirements under Divisions 3, 4 and 5 of SEPP R&amp;H. As such, it is considered that the application complies with the provisions of SEPP R&amp;H, subject to conditions.</p> <p><b>Pittwater LEP 2014 and Pittwater 21 DCP</b><br/>The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site.</p> <p>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>The development proposal is generally compliant with the relevant requirements of the D15 - Waterway Locality controls, subject to conditions.</p> <p><b>Development Seaward of Mean High Water Mark</b><br/>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 sought amendment of the development proposal and applied conditions to protect marine vegetation including a requirement that the jetty and ramp are decked with mesh providing at least 60% light penetration.</p> <p>An aquatic ecology assessment lodged in support of the DA and prepared by Waterfront Surveys Australia concludes that: 'In summary, the potential impacts on the aquatic ecology at The Property from the installation of a new jetty, ramp and pile stabilised pontoon are expected to be minimal, temporary and unlikely to cause any damage or harm to marine life.</p> <p>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)   | The development requires a geotechnical report which has been provided. On site detention is not required and vehicle crossing construction is not proposed. I have no objections to the proposal.   |
| NECC (Riparian Lands and Creeks) | <p>Supported</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>• Supplied plans and reports;</li> </ul>   |



| Internal Referral Body  | Comments  |
|-------------------------|---|
|                         | <ul style="list-style-type: none"> <li>• Coastal Management Act 2016;</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021;</li> <li>• Relevant LEP and DCP clauses; and</li> <li>• Northern Beaches Water Management for Development Policy.</li> </ul> <p>The site is in Pittwater estuary and the development must not significantly impact on the biophysical, hydrological or ecological integrity of the estuary.</p> <p>A referral letter from NSW DPI Fisheries has been provided and is supportive of the application. The referral requirements must be followed in full.</p> <p>A Marine Habitat Survey was provided by Waterfront Surveyors Australia. On review, no major issues were identified. All environmental protection measures stated in the survey, such as the installation of a silt curtain must be adhered to for the duration of works.</p> |
| NECC (Water Management) | <p>Supported</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>• Supplied plans and reports;</li> <li>• Northern Beaches Water Management for Development Policy (WM Policy); and</li> <li>• Relevant LEP and DCP clauses</li> </ul> <p>No water quality concerns provided environmental safeguards are in place. Please refer to Riparian Lands and Creeks referral for conditions.</p>   |

| External Referral Body                                    | Comments   |
|---|--|
| Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48 | <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>  |
| Aboriginal Heritage Office                                | <p>Development Application No. DA2023/0700</p> <p>Description: Construction of a jetty, ramp, pontoon and fender pile</p> <p>Address: 167 Riverview Road AVALON BEACH</p> <p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under</p> |

| External Referral Body | Comments  |
|------------------------|---|
|                        | Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted. |

## **ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\***

All, Environmental Planning Instruments (SEPPs 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 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 (Transport and Infrastructure) 2021**

#### Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

#### Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

### **SEPP (Resilience and Hazards) 2021**

#### **Chapter 2 – Coastal Management**

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

#### **Division 3 Coastal environment area**

#### **2.10 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 proposed works are located within land identified as "coastal environment area". The proposed works have been reviewed and it is considered that the proposed development will not result in an adverse impact to items listed under Clause 2.10(1)(a-g) inclusive. Furthermore, Council's Coastal Officer, and Riparian Land and Creeks Officer has reviewed the proposal, and are both supportable subject to recommended conditions.

- 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 subsection (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:

The proposed works have been designed, sited, and managed to avoid an adverse impacts as detailed under Clause 2.10(1)(a-g) inclusive.

## **Division 4 Coastal use area**

### **2.11 Development on land within the coastal use area**

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
  - 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
    - iii) foreshores,
    - iv) the visual amenity and scenic qualities of the coast, including coastal

headlands,  
Aboriginal cultural heritage, practices and places,  
cultural and built environment heritage, and

- b) is satisfied that:
  - i) the development is designed, sited and will be managed to avoid an
  - ii) adverse impact referred to in paragraph (a), or
  - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or 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 proposed works are located within land identified as "coastal use area". The proposed works are not likely to cause an adverse impact to items listed under Clause 2.11(1)(a)(i-v) inclusive. The proposed works have been designed, sited, and managed to avoid any unacceptable impacts. Furthermore, the proposal has taken into consideration the surrounding coastal and built environment, bulk, scale and size of the proposed development.

**Division 5 General**

**2.12 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:

The proposed development is not likely to cause an increased risk of coastal hazards on the land or other land.

**2.13 Development in coastal zone generally—coastal management programs to be considered**

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

There is no certified coastal management program applicable to the land.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

**Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

## Pittwater Local Environmental Plan 2014

|  |     |
|--|-----|
| Is the development permissible?  | Yes |
| After consideration of the merits of the proposal, is the development consistent with: |     |
| aims of the LEP?   | Yes |
| zone objectives of the LEP?  | Yes |

### Principal Development Standards

| Standard             | Requirement            | Proposed | % Variation | Complies |
|----------------------|------------------------|----------|-------------|----------|
| Height of Buildings: | 4.0m (above 1.17 AHD)* | 3.03m    | -           | Yes      |

\*Note: Height of buildings measured from 1.17 AHD which is the Highest Astronomical Tide where the structure is located behind the MHWM.

### Compliance Assessment

| Clause   | Compliance with Requirements |
|--|------------------------------|
| 1.9A Suspension of covenants, agreements and instruments | Yes                          |
| 2.5 Additional permitted uses for particular land        | Yes                          |
| 4.3 Height of buildings                                  | Yes                          |
| 5.7 Development below mean high water mark               | Yes                          |
| 7.1 Acid sulfate soils                                   | Yes                          |
| 7.2 Earthworks   | Yes                          |
| 7.6 Biodiversity protection                              | Yes                          |
| 7.7 Geotechnical hazards                                 | Yes                          |
| 7.8 Limited development on foreshore area                | N/A                          |

### Detailed Assessment

#### 2.5 Additional permitted uses for particular land

Under Schedule 1 Additional permitted uses of Pittwater Local Environmental Plan 2014 the following applies:

##### 23 Use of certain land in Zone W1 Natural Waterways

- (1) This clause applies to land identified as "Area 23" on the Additional Permitted Uses Map.
- (2) Development for the purposes of boat sheds, jetties or water recreation structures is permitted with development consent.

#### Comment:

In this instance the proposed development is located in Zone W1 and as such the development for jetties, and water recreation structures is permitted with development consent.

#### Zone W1 Natural Waterways

The proposed development is located in land zone W1 Natural Waterways of Pittwater Local



Environmental Plan 2014 (PLEP 2014).

The location of the proposed works is within "Area 23" of the Additional Permitted Uses Map, and is therefore permitted.

Clause 2.5 Additional permitted uses for particular land of PLEP 2014 contained within this report discusses this further.

### **7.1 Acid sulfate soils**

Clause 7.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 1, as indicated on Council's Acid Sulfate Soils Planning Map.

Any works within a Class 1 acid sulfate soil area are required to be assessed to determine if any impact will occur.

The development proposes to insert of five turpentine jetty piles, one turpentine mooring pile and two hollow steel pontoon stabilising piles into the seabed. As such, a Preliminary Acid Sulfate Soil Assessment has been undertaken by Waterfront Surveys Australia dated 15 May 2023. In the assessment, Rick Johnson found that, *"Due to the absence of dredging works at the site and the nature of the proposed piling works for the development, I have assessed that no sediments will be exposed to atmospheric oxygen. This then leads on to the assessment that the development will not cause the production of acid sulfate soils at the site of 167 Riverview Road, Avalon Beach"*.

In this regard, Rick Johnson advises that an Acid Sulfate Soil Management Plan (ASSMP) is not considered to be necessary for the development of the site. The Preliminary Assessment was referred to Council's Environmental Health Officer who concurred with the findings and, as such does not recommend any conditions in this instance.

This condition and the recommendations made in the Preliminary Assessment have been included in the recommendation of this report.

### **7.8 Limited development on foreshore area**

Under Clause 7.8(5), the definition of foreshore area is as follows:

*Foreshore area means the land between the foreshore building line and the mean high water mark of the nearest natural waterbody shown on the Foreshore Building Line Map.*

In this instance, the proposed works are not located in the foreshore area, and therefore this clause does not apply.

### **Pittwater 21 Development Control Plan**

#### Built Form Controls

There are no Built Form Controls relevant to this proposed development.

#### Compliance Assessment

| Clause   | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| A1.7 Considerations before consent is granted                        | Yes                          | Yes                         |
| A4.1 Avalon Beach Locality   | Yes                          | Yes                         |
| B1.3 Heritage Conservation - General                                 | Yes                          | Yes                         |
| B1.4 Aboriginal Heritage Significance                                | 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                         |
| B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community  | Yes                          | Yes                         |
| B4.16 Seagrass Conservation  | Yes                          | Yes                         |
| B4.19 Estuarine Habitat  | Yes                          | Yes                         |
| B5.13 Development on Waterfront Land                                 | 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                         |
| C1.2 Safety and Security   | Yes                          | Yes                         |
| D1.1 Character as viewed from a public place                         | Yes                          | Yes                         |
| D1.20 Scenic Protection Category One Areas                           | Yes                          | Yes                         |
| D15.1 Character as viewed from a public place                        | Yes                          | Yes                         |
| D15.2 Scenic protection - General                                    | Yes                          | Yes                         |
| D15.3 Building colours and materials                                 | 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  | No                           | Yes                         |
| D15.19 Dredging  | Yes                          | Yes                         |

#### Detailed Assessment

#### **D15.11 Waterfront lighting**

The proposal includes one new light that is a downlight located on the pontoon in a service bollard. The proposed light is of low profile and designed to reflect down onto the pontoon so as to lightly illuminate the pontoon for navigation safety and to lightly illuminate the facility for residential pedestrian traffic.

It is considered the proposed lighting is consistent with the control as detailed below:

*Adequate lighting is to be provided for safe access to waterfront development and safe navigation in and out of commercial and recreational waterfront development, and private facilities associated with a*

*dwelling, where appropriate.*

Therefore, it is considered that the proposal is consistent with Clause D15.11 Waterfront lighting of Pittwater 21 Development Control Plan.

#### **D15.12 Development seaward of mean high water mark**

Clause 15.12 Development seaward of mean high water mark of Pittwater 21 Development Control Plan stipulates the following:

*Only structures associated either with the accommodation, servicing or provision of access to boats shall be permitted seaward of mean high water mark.*

Comment:

The proposal includes a jetty, ramp, and pontoon that is seaward of the mean high water mark. Therefore, in this instance the proposal is compliant as the structures located seaward of the mean high water mark are for the provision of access to boats. The proposal includes a referral response from Department of Primary Industries Fisheries that is supportable of the proposal. This referral response has been included as a recommended condition of consent.

#### **D15.13 Lateral limits to development seaward of mean high water mark**

Clause D15.13 Lateral limits to development seaward of mean high water mark of Pittwater 21 Development Control Plan stipulates the following:

*Waterfront development shall be constructed perpendicular to the shoreline and within the defined lateral limit lines to development, regardless of the orientation of waterfront properties, where practicable. This is to maximise equitable access to the waterway.*

*Waterfront development shall be set back a minimum of 2.0 metres along the full length of the lateral limit lines to development to minimise conflict and the possibility of inaccurate location of structures during construction. This may be varied where shared facilities are proposed where the adjoining property will benefit from the shared facility.*

*This setback shall also apply to any vessel that is to be berthed at a wharf or boating facility, marina, water recreation structure or the like. Vessels which cannot meet this criterion are considered to be inappropriate for the site and should be accommodated elsewhere.*

Comment:

The proposal is located more than 2.0 metres from the lateral limit lines on both the northern and southern limits, and therefore will provide equitable access to the waterway.

#### **D15.14 Minimum frontage for waterfront development**

Clause D15.14 Minimum frontage for waterfront development of Pittwater 21 Development Control Plan details the following:

*Where an existing allotment has a water frontage of less than 15.0 metres, limited development such as a jetty, ramp and pontoon will generally only be permitted. Multiple facilities below mean high water mark (i.e. boatsheds, jetty and slipway etc.) will not be permitted. Facilities should be shared with neighbouring waterfront properties to minimise the density and visual impact of foreshore development. Where individual facilities are desired, the applicant must demonstrate, to the*

*satisfaction of Council, that shared facilities are not appropriate and that the objectives of this part would not be compromised.*

Comment:

The subject site obtains a water frontage of approximately 34.0m in a straight line. Therefore, as the existing allotment has a water frontage of more than 15.0 metres, it is considered that multiple facilities below the mean high water mark are acceptable. It is considered that there is substantial distance between allotments to allow for individual facilities, and the use of shared facilities would not be appropriate given the existing allotments to the north and south obtain existing individual facilities.

### **D15.15 Waterfront development**

Description of non-compliance

The proposal includes a construction of a jetty, access ramp, pontoon, and fender pile.

The proposal has been reviewed against the controls for a) jetties, ramps, and pontoons and it is considered that the proposal demonstrates compliance with the criteria of i-xii inclusive of Clause D15.15 Waterfront development of Pittwater 21 Development Control Plan.

However, under Diagram 2A and Diagram 2B the design guidelines for the pontoon is 2.4m x 6.0m, however the proposal is for a pontoon with dimensions of 3.0m x 4.0m.

Furthermore, the proposal includes a fender pile that is approximately 4.00 AHD that is numerically non-compliant with the pile control that details a maximum height of 2.67 AHD.

In this instance, the proposed variations have been assessed against the outcomes of the control, and it is considered that the variations are supportable as the outcomes have been satisfied.

Merit consideration

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

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

Comment:

The proposed waterfront development is accompanied by a Marine Report that has been reviewed by Council's Coast Officer, Riparian Land and Creek Officer, and Biodiversity Officer. It is considered that the proposal will not result in an adverse impact on the water quality, and estuarine habitat of Pittwater, subject to the recommended conditions provided by the relevant internal officers.

- ***Public access along the foreshore is not restricted.***

Comment:

The existing public access along the foreshore is not restricted as a result of the proposed development.

- ***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.***

Comment:

The proposal has been reviewed by Transport for New South Wales, who provided a referral response that stipulates there are no navigational concerns regarding the proposal.

- ***Structures blend with the natural environment.***

Comment:

The proposed structures will suitably blend in with the natural environment, and are consistent with existing waterfront structures.

- ***Structures are not detrimental to the visual quality, water quality or estuarine habitat of the Pittwater Waterway.***

Comment:

The proposed structures are compliant with the height of buildings control, and notably the proposed fender pile is of a similar height to the jetty piles. Therefore, it is considered that the structures will not result in any unacceptable impact to visual quality, water quality, or estuarine habitat of the Pittwater Waterway.

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

Comment:

The proposal is not a commercial waterfront development. This outcome is therefore not applicable.

- ***Waterfront development which does not comply with the outcomes of this clause are removed.***

Comment:

As detailed above, the proposed waterfront development complies with the outcomes of this clause and is therefore considered to be both appropriate and acceptable in this circumstance.

## **D15.19 Dredging**

There is no proposed dredging under this application, and as such the proposal is compliant with the control.

## **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 2022**



The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$ 750 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 150,000.

## **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 2021;
- 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 DA2023/0700 for Construction of a jetty, ramp, pontoon and fender pile on land at Lot 102 DP 803977, 167 Riverview Road, AVALON BEACH, Lot LIC 469130, 167 Riverview Road, AVALON BEACH, subject to the conditions printed below:

### **Terms and Reasons for Conditions**

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

## GENERAL CONDITIONS

### 1. **Approved Plans and Supporting Documentation**

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

| Approved Plans |                 |                                  |                              |                 |
|----------------|-----------------|----------------------------------|------------------------------|-----------------|
| Plan Number    | Revision Number | Plan Title                       | Drawn By                     | Date of Plan    |
| DA.2           | A               | Location Plan                    | Australian Ports and Marinas | 16 January 2023 |
| DA.3           | A               | General Arrangement Plan         | Australian Ports and Marinas | 16 January 2023 |
| DA.5           | A               | Plan On Proposed Structures      | Australian Ports and Marinas | 16 January 2023 |
| DA.6           | A               | Elevation On Proposed Structures | Australian Ports and Marinas | 16 January 2023 |

| Approved Reports and Documentation                |                |                                      |                  |
|---|----------------|--------------------------------------|------------------|
| Document Title                                    | Version Number | Prepared By                          | Date of Document |
| Acid Sulfate Soil Report                          | 23-072-02      | Waterfront Surveys Australia Pty Ltd | 15 May 2023      |
| Environmental Construction Management Plan - DA.7 | A              | Australian Ports and Marinas         | 16 January 2023  |
| Geotechnical Report                               | 0              | Crozier Geotechnical Consultants     | 25 May 2023      |
| Marine Report                                     | 21-072-02      | Waterfront Surveys Australia Pty Ltd | 21 July 2021     |

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

### 2. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

| Other Department, Authority or Service | EDMS Reference  | Dated        |
|--|---|--------------|
| Aboriginal Heritage Office             | Referral - Aboriginal Heritage Office - 167 Riverview Road Avalon Beach | 14 June 2023 |

|  |  |                   |
|--|--|-------------------|
| Ausgrid                                      | Ausgrid Referral Response - Letter of Consent OH and UG Cables | 26 June 2023      |
|  | Ausgrid Referral Response - Clearances Quick Reference Guide   | 26 June 2023      |
| Department of Primary Industries - Fisheries | Referral Response - DPI Fisheries                              | 26 August 2021    |
| Transport for New South Wales                | Referral Response - Transport for New South Wales              | 10 September 2021 |

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au))

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

### 3. 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 Certifier 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 Certifier 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 Certifier 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.

#### 4. **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 an 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 \$250,000. The Long Service Levy is calculated on 0.25% 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.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or 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 sewerred areas or managed on-site in unsewerred 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.

## FEES / CHARGES / CONTRIBUTIONS

### 5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$750.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$150,000.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

### 6. Security Bond

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any

damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)).

Reason: To ensure adequate protection of Council's infrastructure.

## **BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**

### **7. No Clearing of Vegetation**

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to issue of Construction Certificate.

Reason: To protect native vegetation.

### **8. Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Crozier Geotechnical Consultants dated 25.05.2023 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

### **9. 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. Evidence demonstrating compliance is to be submitted to the Certifier for approval.

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.

10. **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 risks associated with coastal hazards for development in an estuarine environment.

11. **Stockpiling and waste management**

Stockpiling of materials and waste will not take place in portions of the site are identified on the Department of Planning and Environment's Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offsets Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR).

Reason: To protect native flora and fauna.

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

The development is to comply with all recommendations of the approved Aquatic Ecology Assessment

Report prepared by Waterfront Surveys Australia, dated 21 July 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.

13. **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 Certifier prior to the issue of the Construction Certificate.

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

## **CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

14. **Installation and Maintenance of Aquatic Sediment and Erosion Control**

Sediment and erosion controls such as silt curtains and floating booms are to be used during construction, to ensure that there is no escape of turbid plumes into the aquatic environment and shall remain in proper operation until all development activities have been completed. Turbid plumes have the potential to smother aquatic vegetation and have a deleterious effect on benthic organisms.

Reason: To protect the surrounding aquatic habitats from the effects of sedimentation and erosion from the site.

## **DURING BUILDING WORK**

15. **Tree and Vegetation Protection**

- a) Existing trees and vegetation shall be retained and protected, including:
  - i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
  - ii) all trees and vegetation located on adjoining properties,
  - iii) all trees and vegetation within the road reserve.
  
- b) Tree protection shall be undertaken as follows:
  - i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
  - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
  - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
  - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
  - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
  - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
  - vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
  - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
  - ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
  - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
  - xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

- c) The arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as complaint to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

**16. Wildlife Protection**

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

**17. Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

**18. 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.

**19. Management of *Caulerpa taxifolia***

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

**20. Aquatic environment protection**

Environmental safeguards including silt curtains are to be used during construction to protect the aquatic environment. Appropriate methods must be installed and secured to ensure damage to the aquatic environment is minimised. Actions and recommendations of the aquatic ecology report must be followed.

Reason: To protect the aquatic environment.

**21. 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.

**22. Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifier.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

**23. Property Boundary Levels**

The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To maintain the existing profile of the nature strip/road reserve.

**24. Stockpiling materials**

During construction, all material associated with works is to be contained at source, covered and must be within the construction area. All material is to be removed off site and disposed of according to applicable regulations. The property 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.

**25. Construction works not to damage seagrass beds of inshore rock rubble habitat**

Construction 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.

**26. Department of Primary Industries - Fisheries**

In accordance with the referral from DPI Fisheries, the following is required:

1. The pontoon must not exceed 3m x 4m. DPI Policies and Guidelines state that pontoons must not exceed 2.4m x 3.6m. Some additional allowance has been made in this situation based on the size of neighbouring pontoons at Avalon and exposure of the site.
2. No permanent berthing is to occur at this facility.
3. There must be no harm to seagrass during construction. This means:
  - No anchors, chains, ropes or mooring blocks within seagrass; and
  - At least 900mm clearance must be maintained between the vessel/barge hulls and the seagrass. The same clearance must be maintained between the propeller and the seagrass. This must be achieved at all tidal conditions. If this clearance can not be achieved at low tide, the works must be restricted to high tide only; and

- Vessels must not moor over seagrass for longer than 48 hours (as this prevents light from reaching the seagrass and causes it to die).

Reason: Compliance with the recommendation from DPI Fisheries.

## BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

### 27. **No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) are to be imported on to the site prior to or during construction works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

### 28. **Waste Management Confirmation**

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

### 29. **Geotechnical Certification Prior to Occupation Certificate**

The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifier prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

### 30. **Public Access Below MHWL to be maintained**

Existing public access along the foreshore below the MHWL must be maintained at all times.

Reason: Compliance with the requirements of State Environmental Planning Policy (Resilience and Hazards)

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

**Signed**



**Stephanie Gelder, Planner**

The application is determined on 07/08/2023, under the delegated authority of:



**Adam Richardson, Manager Development Assessments**