

DEVELOPMENT APPLICATION ASSESSMENT REPORT

| | |
|----------------------------|-------------|
| Application Number: | DA2019/0359 |
|----------------------------|-------------|

| | |
|---|---|
| Responsible Officer: | Georgia Quinn |
| Land to be developed (Address): | Lot A DP 413022, 149 Riverview Road AVALON BEACH NSW 2107 |
| Proposed Development: | Alterations and additions to a jetty |
| Zoning: | E4 Environmental Living |
| Development Permissible: | Yes |
| Existing Use Rights: | No |
| Consent Authority: | Northern Beaches Council |
| Land and Environment Court Action: | No |
| Owner: | Mark Russell Bennett |
| Applicant: | Mark Russell Bennett |

| | |
|----------------------------------|---|
| Application Lodged: | 08/05/2019 |
| Integrated Development: | Yes |
| Designated Development: | No |
| State Reporting Category: | Residential - Alterations and additions |
| Notified: | 20/05/2019 to 03/06/2019 |
| Advertised: | Not Advertised |
| Submissions Received: | 1 |
| Clause 4.6 Variation: | Nil |
| Recommendation: | Approval |

| | |
|---------------------------------|--------------|
| Estimated Cost of Works: | \$ 50,000.00 |
|---------------------------------|--------------|

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for alterations and additions to an existing jetty.

In particular, the application includes:

- The extension of the existing jetty by eight (8) metres;
- A stepped ramp;
- A floating pontoon; and
- Six (6) new piles.

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 21 Development Control Plan - A1.7 Considerations before consent is granted

Pittwater 21 Development Control Plan - B8.3 Construction and Demolition - Waste Minimisation

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

SITE DESCRIPTION

| | |
|-----------------------------------|--|
| Property Description: | Lot A DP 413022 , 149 Riverview Road AVALON BEACH NSW 2107 |
| Detailed Site Description: | <p>The subject site consists of one (1) allotment located on the western side of Riverview Road. The site is associated with Crown licence LIC481625 for development seaward of the Mean High Water Mark.</p> <p>The site is irregular in shape with a frontage of 24.4m along Riverview Road and a depth of 57.7m. The site adjoins the Pittwater Waterway to the rear. The site has a surveyed area of 1007m².</p> <p>The site is located within the E4 Environmental Living zone and accommodates a two and three storey dwelling house. A detached timber boat shed, timber jetty and timber slipway are located adjacent to the site within the Pittwater Waterway.</p> <p>The site has a cross fall from east to west (ie. front to rear)</p> |

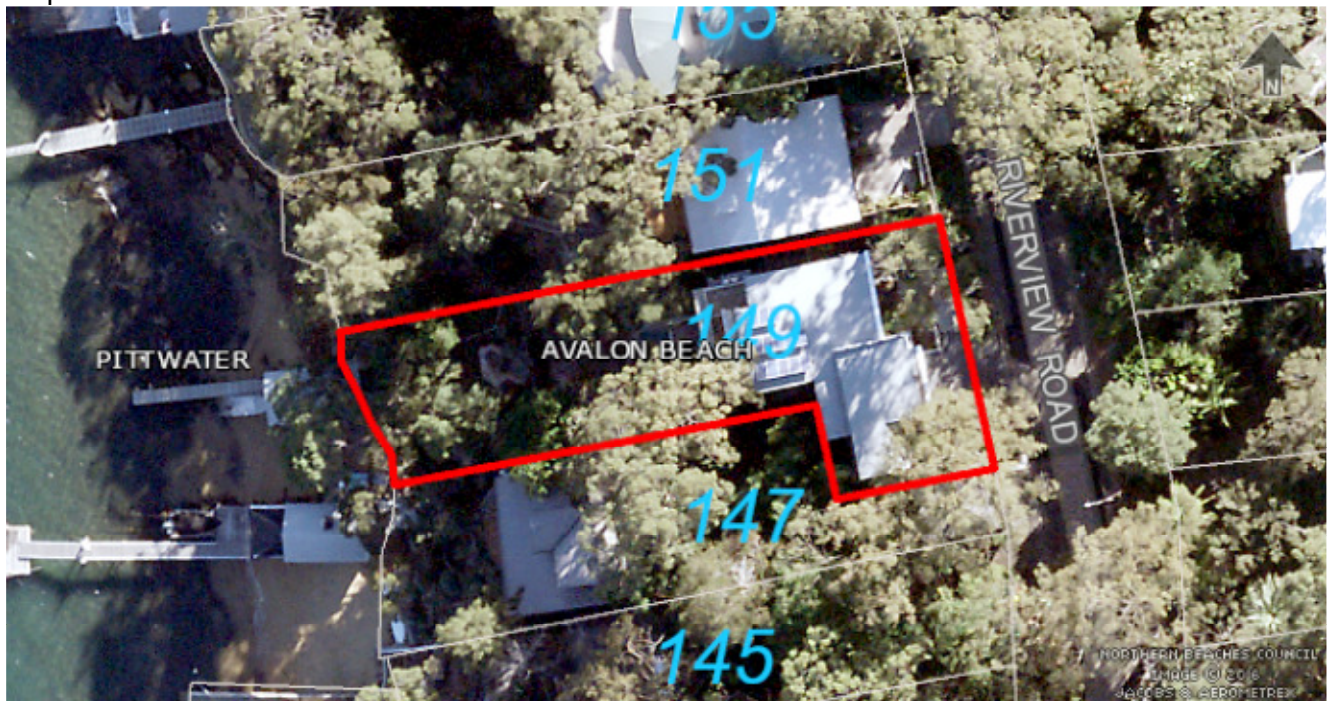
of approximately 32.4m.

The site is not known to contain any threatened species.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by similar low density residential development with ancillary waterfront facilities within landscaped settings.

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:

Review of Determination REV2019/0017

Development Application DA2019/0359 was rejected by Council on 16 April 2019 on the basis that the applicant failed to provide a cheque for \$320 payable to DPI Fisheries for an integrated referral. The applicant proceeded to request a review of the rejection and submitted the requested information to address the above concerns. The review was consistent with the provisions of S8.3 of the EPA Act, 1979 and therefore Council proceeded with the assessment and determination of Development Application DA2019/0359 for alterations and additions to an existing jetty.

Building Certificate BC0008/12

This BC for alterations and additions to an existing boatshed with a timber deck, jetty and slipway was issued 28 February 2012.

Building Certificate BC2018/0142

This BC was issued 01 April 2019 for alleged building works to the dwelling house without a Construction Certificate, associated with a s4.55 application (N0283/06/S96/1). Such works did not relate to the existing waterfront facilities.

Development Application N0283/06

This application for alterations and additions to an existing dwelling was granted consent on 08 December 2006. No works were proposed to the existing waterfront facilities.

Modification Application N0283/06/S96/1

This application to modify development consent N0283/06 for alterations and additions to the existing dwelling was granted consent on 19 December 2012. No works were proposed to the existing waterfront facilities.

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 | None applicable. |
| 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 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>Clause 50(1A)</u> of the EP&A Regulation 2000 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 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations.</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 clause is not relevant to this application.</p> |

| Section 4.15 Matters for Consideration' | Comments |
|--|--|
| | <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p>Clause 98 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> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p> |
| Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>(i) Environmental Impact 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> <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

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 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

| Name: | Address: |
|--|--|
| Apex Law Mr Clive Steirn Mrs Marilyn Anne Steirn | 147 Riverview Road AVALON BEACH NSW 2107 |

The following issues were raised in the submissions and each have been addressed below:

- **Support of Proposed Development**
- **Alleged Unauthorised Building Works**
- **Request for Information Regarding Said Navigational Issue**
- **Navigational Safety Hazard Identified by RMS Report**
- **Request for Council to Register Submitted Letters on Council's DA Tracking System**

The matters raised within the submissions are addressed as follows:

Support of Proposed Development

The first letter received from the adjoining property owner at No. 147 Riverview Road (dated 19 May 2019) notes no objection is raised to the proposed development, provided the plans and conditions imposed by Council are met by the applicant.

Alleged Unauthorised Building Works

The letter dated 19 May 2019 (referred above) alleges that the boatshed at No. 149 Riverview Road was constructed without consent from the relevant land owners, that being the NSW Crown Lands Division. As such, proper processes and necessary actions should be taken to rectify the situation.

Comment:

This matter does not form part nor relate to the proposed works the subject of this application. This matter has been referred to Council's Building Control team for investigation. A condition of consent has also been imposed stipulating that this consent relates only to the jetty extension and not any previously built structures.

This matter does not warrant the refusal of the application.

Request for Information Regarding Said Navigational Issue

Concern is raised in the second letter from the property owners of No. 147 Riverview Road of date 21 May 2019, in regard to the said navigational issue with the use of their jetty. This statement was noted in a letter from the RMS dated 18 April 2018, which was submitted in support of the subject application. The author of the letter, Mr Steirn, denotes he requires all copies of relevant documentation referring to

the above issue and as such he withdraws his consent to the subject application until further information is obtained.

Comment:

Attempts were made to obtain further information from the RMS regarding the identified navigational issue with the jetty of No. 147 Riverview Road however the RMS were not able to provide any such documentation to Council. It is noted that an inspection and assessment has been conducted by the Local Boating Safety Officer and it has been determined that there are no navigational concerns regarding the designated proposal.

This matter does not warrant the refusal of the application.

Navigational Safety Hazard Identified by RMS Report

Concern is raised in the latest letter from the property owners of No. 147 Riverview Road of date 26 September 2019, in regard to said navigational safety hazards which has been brought to such attention as a result of a GIPA application submitted to the RMS by Mr Steirn. This GIPA request disclosed email correspondence between RMS Officers and the applicant, Mr Bennett.

Comment:

The email letter from the RMS Officer, dated 25 July 2017, detailing the said navigational safety hazard was prepared and sent in relation to a Building Certificate relating to foreshore structures of No. 147 Riverview Road. This matter does not relate to the application on hand and furthermore, the statements made within the RMS email denote difficulty for the occupants of No. 149 Riverview Road to utilise their own waterfront facilities as a result of the obstructive facilities of No. 147 Riverview Road. No such statement is made from the RMS Officer that the proposed jetty extension of No. 149 is considered to impose navigational impacts but rather, the existing projections of No. 147 pose navigational impact and may restrict maneuverability and the safe operation of vessels for the neighbouring property at No. 149. The submission accuses the applicant of failing to omit such correspondence with the RMS as part of the subject application, and has also wrongly cited conclusions of the RMS supporting the proposed application.

The aforementioned email letter of the RMS denotes that a vessel trying to berth at the No. 149 facilities would have significant difficulty approaching the pontoon from the south or west, if a vessel was already secured at the pontoon of No. 147. The submission dated 26 September 2019 highlights the same difficulty would be encountered by a vessel approaching No. 147's pontoon, should a vessel be secured at the proposed pontoon at No. 149. It should be noted no permanent berthing of vessels has been proposed as part of the subject application. It is noted the submission acknowledges the navigational concern raised by Mr Robertson of RMS within his letter of support for the subject application, dated 18 April 2018. Mr Robertson stipulates *there are no navigational concerns regarding the designated proposal*, and that there is a navigational issue with the adjoining property No. 147 with the existing structure being over its division of water. Such navigational issue does not relate to the proposed works and therefore the RMS and subsequently the applicant, Mr Bennett, have satisfied the relevant requirements for the assessment of the development application on hand.

The submission goes on to state that the consent authority must have regard to the relevant zone objectives when determining a development application, and specifically one of the zone objectives of zone W1 Natural Waterways stipulates that development is not to obstruct the navigation of the waterway. The objector highlights that the occupants of No. 147 Riverview will be directly affected in terms of their safe and quiet enjoyment of their waterfront facilities which would be severely affected by the navigational safety hazards identified by RMS regarding projections of No. 147's facilities. The

submission highlights that Council would be acting contrary to the relevant statutory provisions should consent be granted without the applicant dealing with the safety hazard of the proposal. As above, the applicant has provided a letter of support for the jetty extension from the required bodies including the RMS of which states *there are no navigational concerns regarding the designated proposal*. Council has therefore been provided with the necessary and required documentation for the purposes of this development application.

These matters therefore do not warrant the refusal of the application.

Request for Council to Register Submitted Letters on Council's DA Tracking System

Letters of dates 03 June 2019; 04 June 2019; and 11 June 2019 from the property owners of No. 147 Riverview Road requested that each of their submissions are to be released online to Council's DA tracking system. This was said to be necessary so to ensure transparency and accountability by Council.

Comment:

Council wrote to the above objector on 05 June 2019 apologising for not releasing the submissions online as such letters were registered into Council's electronic system as a Request for Information rather than a Submission. This was rectified and all letters from the objecting property have been made publicly available on Council's DA Tracking System.

This matter does not warrant the refusal of the application.

REFERRALS

| Internal Referral Body | Comments |
|----------------------------------|---|
| NECC (Bushland and Biodiversity) | The site is mapped as 'Biodiversity' under the Pittwater LEP 2014, as it contains the endangered ecological community Pittwater Wagstaff Spotted Gum Forest and is also mapped as a wildlife corridor. The potential for any significant impacts to the terrestrial environment are limited as the jetty extension works will occur within the marine environment, and access to the work site will be via boat. The significance of impacts to the landward portion of the coastal environment area, mapped under the Coastal SEPP 2018, is minimal as the development is designed, sited and will be managed to avoid an adverse impact |
| NECC (Coast and Catchments) | <p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and also against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>12 Development on land within the coastal vulnerability area</p> <p>Development consent must not be granted to development on land that is within the area identified as "coastal vulnerability area" on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:</p> <p>(a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or</p> |

| Internal Referral Body | Comments |
|----------------------------------|--|
| | <p>works, and (b) the proposed development: (i) is not likely to alter coastal processes to the detriment of the natural environment or other land, and (ii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and (iii) incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and (c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.</p> <p>Comment: The subject property has been included under the 'Coastal Use Area' map and 'Coastal Environment Area' map but not included on the Coastal Vulnerability Area Map under State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP) and in regard to CM SEPP the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>However, the subject land is within the Estuarine Hazard Affected zone, wave action - tidal inundation and relevant conditions have been applied. An Estuarine Planning Level (EPL) has not been applied as the proposed development is only related to extension of Jetty.</p> |
| NECC (Riparian Lands and Creeks) | <p>No objection to the proposal. NSW DPI Fisheries and Roads and NSW Maritime Services have been consulted and no objections were raised. The Aquatic Ecology identifies mixed sea grass habitat present within and around the proposed development site. The report identifies risks to seagrass and other aquatic biota and recommends mitigation measures to minimize these risks (see Chapter 3.1). These issues are to be addressed, as recommending in the report, by the preparation of a Construction Environment Management Plan (CEMP). The CEMP must consider the Aquatic Ecology report, address the risks and define the appropriate mitigation measures. The CEMP must be submitted to Council for review and approval, prior to the issue of the Construction Certificate and commencement of works.</p> |

| External Referral Body | Comments |
|------------------------|---|
| Ausgrid: (SEPP Infra.) | <p>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.</p> |

| External Referral Body | Comments |
|--|--|
| Integrated Development – NSW Fisheries | <p>DPI Fisheries is responsible for ensuring that fish stocks are conserved and that there is no net loss of key fish habitats upon which they depend. To achieve this, DPI Fisheries ensures that developments comply with the requirements of the Fisheries Management Act 1994 (FM Act) (namely the aquatic habitat protection and threatened species conservation provisions in Parts 7 and 7A of the Act, respectively), and the associated Policy and Guidelines for Fish Habitat Conservation and Management (2013). In addition, DPI Fisheries is responsible for ensuring the sustainable management of commercial, recreational and Aboriginal cultural fishing, aquaculture, marine parks and aquatic reserves within NSW.</p> <p>DPI Fisheries has reviewed the proposal in light of those provisions and has no objections, subject to the proponent meeting the General Terms of Approval that follow. As per s.4.47(3) of the Environmental Planning and Assessment Act 1979, any consent issued by Council must be consistent with these GTAs.</p> <ol style="list-style-type: none"> 1. The proponent must apply for and obtain a Part 7 permit for dredging and reclamation and to harm marine vegetation under the FM Act from DPI Fisheries prior to any works on site. Permit application forms are available from the DPI Fisheries website at: http://www.dpi.nsw.gov.au/fisheries/habitat/help/permit; and 2. A minimum of 600 mm is to be maintained between the underside of the pontoon and the substrate at all times. <p>Planners Comment The General Terms of Approval as listed above have been enforced as conditions of consent.</p> |

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

Clause 7 (1) (a) of SEPP 55 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 Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP 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. 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 proposed development is minor in scale thus it is unlikely to cause an adverse impact to the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment; coastal environmental values and natural coastal processes; the water quality of the marine estate or to marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms. The proposed development will not hinder the safe access to and along the foreshore, beach, headlands or rock platforms. The subject site has not been identified to contain any Aboriginal cultural heritage, practices or places. The proposed development will not cause an adverse impact on the use of the surf zone.

- (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:

As detailed above, the proposed development has been designed, sited and will be managed to avoid any adverse impact on the cultural and environmental aspects referred to in subclause 1.

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 proposed development is not considered likely to cause an adverse impact on access along the foreshore, beach, headland or rock platforms for members of the public nor are any unreasonable

amenity impacts considered likely to arise. The development has been designed, sited and will be managed to avoid adverse impacts referred to above. The proposed development has taken into account the surrounding coastal and built environment which has influenced the design to ensure bulk, scale and size of the proposed development is appropriate.

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:

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

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 |

Compliance Assessment

| Clause | Compliance with Requirements |
|--|------------------------------|
| 1.9A Suspension of covenants, agreements and instruments | Yes |
| 5.7 Development below mean high water mark | Yes |
| 5.10 Heritage conservation | Yes |
| 7.1 Acid sulfate soils | Yes |
| 7.2 Earthworks | Yes |
| 7.6 Biodiversity protection | Yes |

Detailed Assessment

Zone W1 Natural Waterways

Development for the purposes of jetties are not identified within the W1 Natural Waterways zone as being permissible development. However, Clause 2.5 of PLEP 2014 allows for additional permitted uses on particular land, as prescribed within Schedule 1, Section 23 of PLEP 2014. This schedule stipulates jetties are permitted with development consent in zone W1 Natural Waterways for land identified as 'Area 23' on the Additional Permitted Uses Map. Given the subject land is sited within Area 23, the proposed development is therefore permitted with consent.

Pittwater 21 Development Control Plan

Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| A1.7 Considerations before consent is granted | Yes | Yes |
| A4.15 Waterways Locality | Yes | Yes |
| A5.1 Exhibition, Advertisement and Notification of Applications | Yes | Yes |
| B3.6 Contaminated Land and Potentially Contaminated Land | Yes | Yes |
| B4.16 Seagrass Conservation | Yes | Yes |
| B4.19 Estuarine Habitat | Yes | Yes |
| B4.20 Protection of Estuarine Water Quality | Yes | Yes |
| B5.13 Development on Waterfront Land | 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 |
| C1.3 View Sharing | Yes | Yes |
| C1.5 Visual Privacy | Yes | Yes |
| C1.6 Acoustic Privacy | 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 | No | Yes |
| D15.14 Minimum frontage for waterfront development | Yes | Yes |
| D15.15 Waterfront development | No | Yes |

Detailed Assessment

A1.7 Considerations before consent is granted

It should be noted the subject application is supported with the required correspondence from the NSW Roads and Maritime Services, in a letter of date 18 April 2018. This letter denotes support of the proposed development, and stipulates that there are no navigational concerns regarding the designated proposal. It is noted the subject application inclusive of the aforementioned letter was lodged with Council on 11 April 2019, being within 12 months of the date of the RMS letter of support. Furthermore, email correspondence was had between a RMS Officer and the assessing planning officer in relation to various matters, whereby the support for the proposed jetty extension was never disputed nor revoked. In this regard, the application is satisfactorily supported with the required documentation and correspondence required of the RMS.

B8.3 Construction and Demolition - Waste Minimisation

No Waste Management Plan has been provided as part of this application, therefore a condition of consent has been imposed requiring such be prepared in accordance with the DCP.

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

Description of non-compliance

The Control stipulates that waterfront development shall be setback a minimum of 2.0 metres along the full length of the lateral limit lines to minimise conflict and to maximise equitable access to the waterway.

Certain elements of the proposed development ie. one of the new piles and 0.07m² of the northern corner of the jetty extension encroaches the 2m setback requirement. The encroachment occurs as a need to support the extension.

The northernmost pile encroaches the prescribed 2m setback, measuring 1.5m from the lateral limit line. Further, the northern corner of the jetty extension measures 1.85m from the lateral limit line.

Merit consideration

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

- *To ensure that fair and equitable enjoyment of the waterway is achieved between neighbouring waterfront landowners through restricting unreasonable encroachment of waterfront development in front of adjoining properties.*

Comment:

Given that the slight encroachment relates to a singular pile and the northern corner of the jetty only, the development is not considered likely to hinder the equitable and fair enjoyment of the waterway. It is noted the new jetty extension, stepped ramp, pontoon and piles comfortably comply with the lateral limit lines and the prescribed 2m setback from such. The siting and design of the proposed development has resulted from several redesign attempts that have been made in consultation with DPI Fisheries. A letter of correspondence from DPI Fisheries denotes the adjoining waterfront facilities have restricted the options for placement of the subject works, given such structures were built across the lateral property line. Furthermore, the placement of the pile that encroaches the 2m setback requirement is not considered to impose any unreasonable amenity or aesthetic impacts to adjoining or surrounding properties given its minor scale and placement alongside the existing jetty structure.

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.

D15.14 Minimum frontage for waterfront development

The subject site has a water frontage of approximately 15.3m, therefore the stipulation limiting development to a jetty, ramp and pontoon only is not applicable. It should also be noted the site currently contains a boatshed, timber slipway and a jetty below mean high water mark. This application proposes a minor extension to the existing jetty only.

D15.15 Waterfront development

Description of non-compliance

The Control stipulates that the finished jetty deck shall have a maximum height of 1 metre above mean high water mark (MHWM) or 1.5 metres AHD.

The proposed jetty extension comprises a deck height of 1.1m above MHWM and 1.6m AHD.

Merit consideration

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

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

Comment:

The application is supported with an Aquatic Ecology Assessment, prepared by Marine Pollution Research Pty Ltd dated 17 November 2016, which denotes the proposed jetty extension would be of a low risk of impact on seagrass beds or plants. The report illustrates that the proposal will not have an adverse impact on the water quality or estuarine habitat of Pittwater. Council's Bushland and Biodiversity Officer, Riparian Lands and Creeks Officer and Coast and Catchments Officer have reviewed the proposal having regard to water quality and habitat and have raised no objections subject to conditions included in the recommendation of the report.

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

Comment:

The proposed development comprises a jetty extension seaward of the existing jetty only. Access along the foreshore will therefore not be hindered as a result of the 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:

Correspondence submitted with application from Roads and Maritime Services advises that an inspection/ assessment has been conducted by the local Boating Safety Officer and that there are no navigational concerns regarding the designated proposal. The proposed jetty extension (aside from one pile) has been sited such that it complies with the required two (2) metre setback from the lateral limit lines of the subject site so to ensure safe access is maintained for adjoining landowners and to maximise equitable access to and of the waterway.

- *Structures blend with the natural environment.*

Comment:

The proposed jetty extension will blend with the surrounding natural environment as a result of the site

specific design and revised siting (after discussions with DPI Fisheries) and the use of dark and earthy external finishes.

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

Comment:

The proposed development will appear consistent and comparable with existing adjoining and surrounding waterfront development. The height of the finished jetty deck will not cause a detrimental visual contrast, given the existing deck measures 1.6 AHD. It is noted the height of the jetty (agreed upon with DPI Fisheries) provides a significant clearance of 2.2m over the below seagrass and aquatic habitat. The proposal does not comprise a permanent berth thereby minimising development and associated impacts upon the estuarine environment. It is considered the proposed development is not detrimental to the visual quality, water quality or estuarine habitat of the Pittwater Waterway, subject to conditions included in the recommendation of this report.

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

Comment:

Not applicable, given the subject proposal is for residential waterfront development only.

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

Comment:

As detailed above, the proposed development achieves the underlying objectives of the Control and therefore the slight height breach of the jetty deck is supported in this particular circumstance.

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, subject to conditions, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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 2019

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 DA2019/0359 for Alterations and additions to a jetty on land at Lot A DP 413022, 149 Riverview Road, AVALON 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. | Dated | Prepared By |
| | | |

| | | |
|--|---------------|---|
| CC103 ^E , No. E- Site Plan/ South Elevation | 28 March 2019 | Bennett Architects & Associates Pty Ltd |
|--|---------------|---|

| Reports / Documentation – All recommendations and requirements contained within: | | |
|--|------------------|-----------------------------------|
| Report No. / Page No. / Section No. | Dated | Prepared By |
| Aquatic Ecology Assessment | 17 November 2016 | 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. 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 | Reference | Dated |
|---|--|---------------|
| Department of Primary Industry, Crown Lands & Water | Consent of Owner for lodgement of Development Application (Ref: MN79H223#01) | 05 April 2019 |
| Roads and Maritime Services | Development application for proposed jetty extension and assessment of amended drawing No. CC103D - redesign pontoon deleted at 149 Riverview Road, Avalon Beach | 18 April 2018 |
| Department of Primary Industries, Fisheries NSW | Referral - DPI Fisheries - DA2019/0359 - 149 Riverview Road Avalon Beach | 17 May 2019 |

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

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other Department, Authority or Body's.

3. Prescribed Conditions (Crown Land Only)

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

Reason: Legislative Requirement.

4. General Requirements (Crown Land Only)

(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) 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.

(c) 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.

(d) Where works are to be carried out to a Class 1a building, smoke alarms are to be installed throughout all new and existing portions of that Class 1a building in accordance with the Building Code of Australia prior to the occupation of the new works.

(e) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(f) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(g) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(h) All sound producing plant, equipment, machinery or fittings and the use will not exceed more than 5dB (A) above the background level when measured from any property boundary and/or habitable room(s) consistent with the Environment Protection Authority's NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997.

(i) 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.

(j) 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.

(k) Any Regulated System (e.g. air-handling system, hot water system, a humidifying system, warm-water system, water-cooling system, cooling towers) as defined under the provisions of the Public Health Act 2010 installed onsite is required to be registered with Council prior to operating.

Note: Systems can be registered at www.northernbeaches.nsw.gov.au

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

5. **Compliance with Standards (Crown Land Only)**

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

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

6. **Sewer / Water Quickcheck (Crown Land Only)**

The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre prior to works commencing to determine whether the development will affect any Sydney Water asset's sewer and water mains, stormwater drains and/or easement, and if further requirements need to be met. Plans will be appropriately stamped.

Please refer to the website www.sydneywater.com.au for:

- Quick Check agents details - see Building Developing and Plumbing then Quick Check; and
- Guidelines for Building Over/Adjacent to Sydney Water Assets - see Building Developing and Plumbing then Building and Renovating.
- Or telephone 13 20 92.

Reason: To ensure compliance with the statutory requirements of Sydney Water.

FEES / CHARGES / CONTRIBUTIONS

7. **Security Bond**

A bond (determined from cost of works) of \$1,000 and an inspection fee in accordance with Council's Fees and Charges paid as security 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, details demonstrating payment are to be submitted to the Certifying Authority 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).

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

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

8. Construction Environment Management Plan

A Construction Environmental Management Plan (CEMP) must be prepared in accordance to the environmental risks and mitigation methods identified in the Aquatic Ecology Report. The CEMP must be submitted for Council's approval prior to the issue of the Construction Certificate and commencement of works.

9. Estuarine Hazard Design Requirements

The following applies to all development:

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.

To ensure Council's recommended flood evacuation strategy of 'shelter-in-place', it will need to be demonstrated that there is safe pedestrian access to a 'safe haven' above the Estuarine Planning Level.

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

10. Handrail

Handrails are to be located on one side only of the jetty structure.

Reason: To minimise the visual impact of the development.

11. Waste Management Plan

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner. Blank condition for prior construction certificate (DACPLCPCC2)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

12. Survey

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- (b) At completion of the works to ensure the development is in accordance with the location and levels indicated on the approved plans.

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

Reason: To determine the height of buildings under construction comply with levels shown on approved plans. (DACPLE01)

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

13. Approved Structures

This consent grants approval to the jetty extension and associated piles only. The existing boatshed and other existing waterfront facilities do not form part of this consent.

Reason: To ensure this consent relates only to what has been proposed.

14. No Permanent Berthing of Vessels

No vessel is to be berthed permanently on the jetty structure.

Reason: To ensure consistency with the permissive occupancy

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

Signed



Georgia Quinn, Planner

The application is determined on 16/10/2019, under the delegated authority of:



Rodney Piggott, Manager Development Assessments