Sent: 19/05/2019 4:13:46 PM

Subject: DA 2019/0359, 149 Riverview Road, Avalon - Alterations and additions to jetty

- Submissions in Reply to NBC

Attachments: 19.5.19 CS RESPONSE TO NBC RE BENNETT JETTY OBJECTIONS.docx;

R - NSW Crown Lands Division - Unauthorised Works complaint - 149

Riverview Rd Avalon.PDF; R - Department of Primary Industries - Re Issue of

Building Certificate BC000812 - 149 Riverview Road Avalon.pdf; R -

Department of Primary Industries - Issue of Building Certificate - BC000812 - 149 Riverview Road, Avalon - MN79H223.pdf; R - Building Certificate Non Standard Letter for Application BC000812.pdf; R - BUILDING CERTIFICATE REPORT - BC000812- 149 RIVERVIEW RD AVALON.pdf; R - Bennett - Application for Building Certificate - BC000812 - 149 Riverview Road

Avalon.pdf;

Attention: Development Assessment Unit

Letter and documents attached.

Please confirm receipt of same?

Regards

Clive Steirn 147 Riverview Road, Clareville 2107 19 May 2019

The Chief Executive Officer Northern Beaches Council

Attention: Development Assessment Unit

Dear Sir or Madam

Application No. DA2019/0359

Address: Lot A DP 413022, 149 Riverview Road, Avalon Beach.

Description: Alterations and additions to a jetty

Provisional Consent to Subject DA.

I refer to Council's letter dated 14 May 2019 advising of our rights as adjoining property owners to identify issues of concern in relation the subject development application.

We reside at 147 Riverview Road, Avalon, which is next door to the subject property. We have inspected both the approved plans and conditions imposed by Council thus far and indicate we have no objections provided both the plans and conditions imposed by Council are met by the applicant in relation to the alterations and additions to the jetty.

However, Council should be aware that before final approval is given the following issue needs to addressed, and the proper processes followed in relation to the unlawful construction of Mr Benett's boatshed without approval of the owner (Department of Industry) for the reasons set out in previous submissions concerning the same issue:

New Boatshed Unlawfully Constructed and without Approval

Whilst we note on this occasion Mr Bennett has sought approval in relation to the proposed alterations and additions to his jetty, our concern is that he failed to so on a previous occasion when he demolished and constructed a new boatshed without the prior approval of the NSW Crown Lands Division (now Department of Industry), the owner of the site for the purposes of the relevant Act. This omission by Mr Bennett was noted the Crowns Land Division.

On 30 June 2011 the NSW Crown Lands Division wrote to Pittwater Council (as it then was) drawing Council's attention to the unauthorised waterfront works and requested that the matter be investigated by Council.

The full history surrounding Council's involvement in the matter has been the subject of complaints set out in previous correspondence with Northern Beaches Council. You will note that the new boatshed was constructed without the permission of the then owner,

Crown Lands Division, contrary to clause 280(1)(a) of the Environmental Planning and Assessment Regulation 2000. More to the point the new boatshed was unlawfully constructed in breach of the clause referred to and therefore the building certificate was invalidly issued. Accordingly, the building certificate has no legal effect given the relevant clause was not complied with as a condition precedent prior to the issue of the certificate. This remains the position and accordingly, the construction of the new boatshed *remains* unlawful.

Specifically, the matter has been fully set out in correspondence between my solicitor, Mr Grant Christmas and Northern Beaches Council in his letter attaching all relevant documents including photos of the new and old boatsheds, dated 7 February 2019. For your assistance we attach contemporary documents relevant to the issue at the time. There has been no response by Council to date.

We note from your letter that quite properly Council when considering an application has regard to:

- Statutory requirement under the Act.
- · Adopted policies of Council, and
- Issues raised in written submissions.

It is trite to say that when contrasting the two issues referred to above it will be seen that where there is a failure by a resident to comply with the proper processes the safeguards you refer to, fail at a fundamental level to the detriment of the ratepayers and other interested parties.

The failure by Mr Bennett is compounded when Council itself fails to investigate the matter when specifically requested to do so by the owner of the property, (the Crown Lands Division) which is acting in the public interest in seeking an investigation.

We are of the view that the proper processes should be followed, and Council should take the necessary action accordingly, in order to comply with the law.

We await your response.

Yours sincerely,

Clive Steirn

Copies: Councillor Rory Amon,

Mr Grant Christmas, Solicitor (Planning & Environmental Law)



www.dtiris.nsw.gov.au

Our Reference: MN79H223 Contact: Bethany Lomas Telephone: 8836-5331 Facsimile: 8836-5362

30 June 2011

Compliance Section
Pittwater Council
PO Box 882
MONA VALE NSW 1660



Dear Sir/Madam,

Re: Unauthorised Works fronting 149 Riverview Rd, Avalon:

Reference is made to telephone conversation with an Officer of Pittwater Council on 29 June 2011 regarding the above matter. The officer suggested this Division pass the enquiry onto you for investigation.

Current Permissive Occupancy agreement 1960/288 held for the purpose of reclamation, boatshed, jetty and slipway exists fronting the property.

Photographs submitted by the new owner were received in this Office as part of a transfer application. The photographs revealed re-development of the waterfront, in particular extensive works to the boatshed. The repairs/maintenance works completed on the jetty and slipway are not an issue as they appear to have been completed within the same framework as the approved structures. Please see photographs attached.

The matter of the boatshed was raised with the owner as unauthorised re-development works and a request was made to make application to this Division and Pittwater Council via a Building Certificate to legalise the re-development.

The owner is adamant that the works completed are extensive repair works only and not re-development as Crown lands suggests.

It would be appreciated if Council could investigate the matter further and advise Crown lands of their views and stance on the matter.

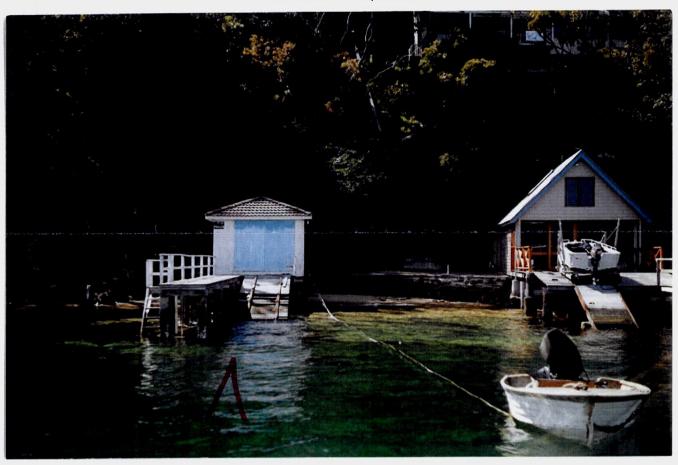
If you have any queries or require further information, please contact me on the number provided above.

Yours sincerely

Bethany Lomas
Property Management Officer
Sydney Area



Authorised Occupation:



Unauthorised Occupation:



From: Bethany Lomas <Bethany.Lomas@lands.nsw.gov.au>

Sent: 05/04/2012 03:42:08 PM

To: "pittwater_council@pittwater.nsw.gov.au" <pittwater_council@pittwater.nsw.gov.au>

Subject: Issue of Building Certificate BC0008/12 fronting 149 Riverview Rd, Avalon - MN79H223

Good Afternoon,

It has been brought to this Department's attention that the abovementioned Certificate has been issued by Council.

Records in this Office indicate that no Land Owners Consent for lodgement of this application was issued by this Department.

Can Council please advise this Office why Building Certificate was accepted and issued without the consideration and Consent of the Owner (Crown)?

Yours sincerely,

Bethany Lomas | Property Management Officer, Sydney Area, South Region (Crown Lands) | Catchments and Lands

Department of Primary Industries (DPI) | Level 12, 2-10 Valentine Avenue, Parramatta | PO Box 3935 Parramatta NSW 2124

T: 02 8836 5331 | F: 02 8836 5362 | E: bethany.lomas@lands.nsw.gov.au

W: www.crownland.nsw.gov.au | W: www.dpi.nsw.gov.au

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- CCF050312_0000.jpg

From: Bethany Lomas <Bethany.Lomas@lands.nsw.gov.au>

Sent: 14/08/2012 03:06:47 PM

To: "'pittwater_council@pittwater.nsw.gov.au'" <pittwater_council@pittwater.nsw.gov.au> Subject: FW: Issue of Building Certificate BC0008/12 fronting 149 Riverview Rd, Avalon -

MN79H223

Good Afternoon,

Reference is made to this Department's email to you of 5 April 2012, which can be found below.

Records in this Office indicate that no response has been received.

It would be most appreciated if you could please advise this Office, as a matter of urgency, of the current position of this enquiry.

Yours sincerely,

Bethany Lomas | Property Management Officer, Sydney Area, South Region (Crown Lands) | Catchments and Lands

Department of Primary Industries (DPI) | Level 12, 2-10 Valentine Avenue, Parramatta | PO Box 3935 Parramatta NSW 2124

T: 02 8836 5331 | F: 02 8836 5362 | E: bethany.lomas@lands.nsw.gov.au

W: www.crownland.nsw.gov.au | W: www.dpi.nsw.gov.au

From: Bethany Lomas

Sent: Thursday, 5 April 2012 3:42 PM

To: 'pittwater_council@pittwater.nsw.gov.au'

Subject: Issue of Building Certificate BC0008/12 fronting 149 Riverview Rd, Avalon -

MN79H223

Good Afternoon,
It has been brought to this Department's attention that the abovementioned Certificate has been issued by Council.
Records in this Office indicate that no Land Owners Consent for lodgement of this application was issued by this Department.
Can Council please advise this Office why Building Certificate was accepted and issued without the consideration and Consent of the Owner (Crown)?
Yours sincerely,
Bethany Lomas Property Management Officer, Sydney Area, South Region (Crown Lands) Catchments and Lands
Department of Primary Industries (DPI) Level 12, 2-10 Valentine Avenue, Parramatta PO Box

T: 02 8836 5331 | F: 02 8836 5362 | E: bethany.lomas@lands.nsw.gov.au

W: www.crownland.nsw.gov.au | W: www.dpi.nsw.gov.au

3935 Parramatta NSW 2124

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- CCF050312_0000.jpg

Business Hours: 8.00am to 5.30pm, Monday to Thursday 8.00am to 5.00pm, Friday

BC No: BC0008/12

31 August 2012

M/S BETHAMY LOMAS
PROPERTY MANAGEMENT OFFICER
SOUTH REGION CATCHMENT & LANDS
DEPARTMENT OF PRIMARY INDUSTRY
PO BOX 3935
PARRAMATTA NSW 2124

Dear Madam

Building Certificate BC0008/12

149 RIVERVIEW ROAD AVALON BEACH NSW 2107.

Reference is made to your e-mail dated 14/8/12 regarding the issue of Building Certificate BC0008/12 for the above premises.

The certificate was issued in respect of an existing boatshed and jetty to which alterations and additions had been carried out without Council consent.

These works were largely in the form of maintenance and repairs due to deterioration of the existing structures.

As all works involved are located below the High Water Mark and within Permissive Occupancy 1960/288 area, Council apologises for not having referred the application to your department for assessment prior to issue of the Building Certificate.

It appears this has occurred due to the circumstances of the application being repairs and alterations to existing structures and an administrative oversight.

Trusting this information is to your satisfaction.

Yours faithfully

Wal Dover SENIOR BUILDING SURVEYOR Business Hours: 8.00am to 5.30pm, Monday to Thursday 8.00am to 5.00pm, Friday Building Certificate No: BC0008/12

28 February 2012



Dear Sir/Madam

Application for a Building Certificate

Property: 149 RIVERVIEW ROAD AVALON NSW 2107

Please find the enclosed Building Certificate issued in response to your application.

Yours faithfully

Wal Dover SENIOR BUILDING SURVEYOR

BUILDING CERTIFICATE NO: BC0008/12

UNDER SECTION 149A OF THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979 (AS AMENDED)

THE PITTWATER COUNCIL

CERTIFIES THAT in relation to the building or part identified below, the Council –

- By virtue of anything existing or occurring before the date of inspection stated in this certificate; or
- Within 7 years after that date by virtue of the deterioration of the building or part solely by fair wear and tear, (b) WILL NOT -
- Make an order requiring the building to be repaired, demolished, altered or rebuilt by reason only of its design, (c) appearance, form of construction or state of repair; or
- Take proceedings for an order or injunction requiring the demolition, alteration, addition, or rebuilding of or to the (d)
- of

(e)	building or part, by reason only of its design, appearance, form of construction or state of repair; or Take proceedings in relation to any encroachment by the building or part onto land vested in or under the contro the Council.						
		IDENTI	FICATION	OF BUILDING	3		
Prop	erty Address:	149 RIVERVI	EW ROA	D AVALON NS	SW 2107		
Nea	rest Cross Street:	Trappers Wa	ıy	Side of Street:	Western		
Clas	sification of Building:	10a, 10b		Whole/Part:	Part of Building		
Desc	cription:	A timber boa jetty and slip		th a metal roof	together with a timber deck,		
Date	of Inspection:	23/02/2012	Owner:				
Lega	al Description of Land:	Lot A DP 413	3022				
			SCHE	DULE			
					ing to issue this certificate: ted 23/09/2011, Ref No 75013.		
Date	nd.	28/02/2012					

Dated	20/02/2012	
		Mark Ferguson <u>GENERAL MANAGER</u>
		per:

Applicant's Name:

NB:

- 1. An order made or proceedings taken in contravention of this certificate is of no effect.
- 2. The issue of a Building Certificate does not prevent
 - orders from being made against any person in relation to matters detailed in the table to Section 121B of (i) the Environmental Planning and Assessment Act, 1979 (as amended);
 - proceedings being taken against any person for failure to obtain development consent or to comply with any conditions of development consent, pursuant to Section 125 of the Environmental Planning and Assessment Act, 1979.



ABN6134083⁷871
Telephone 02 9970 1111
Facsimile 02 9970 1200
Postal Address
PO Box 882
Mona Vale NSW 1660
DX 9018 Mona Vale

Business Hours 8 00am to 5 30pm, Monday to Thursday 8 00am to 5 00pm, Friday

28 February 2012





Dear Sir/Madam

Application for a Building Certificate

Property

149 RIVERVIEW ROAD AVALON NSW 2107

Please find the enclosed Building Certificate issued in response to your application

Yours faithfully

elle

Wal Dover

SENIOR BUILDING SURVEYOR





ABN61340837871

Telephone 02 9970 1111 Facsimile 02 9970 1200

Postal Address PO Box 882

Mona Vale NSW 1660

BUILDING CERTIFICATE NO BC0008/12

DX 9018 Mona Vale

UNDER SECTION 149A OF THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979 (AS AMENDED)

THE PITTWATER COUNCIL

CERTIFIES THAT in relation to the building or part identified below the Council -

- (a) By virtue of anything existing or occurring before the date of inspection stated in this certificate or
- (b) Within 7 years after that date by virtue of the deterioration of the building or part solely by fair wear and tear WILL NOT --
- (c) Make an order requiring the building to be repaired demolished altered or rebuilt by reason only of its design appearance form of construction or state of repair or
- (d) Take proceedings for an order or injunction requiring the demolition alteration addition or rebuilding of or to the building or part by reason only of its design appearance form of construction or state of repair or
- (e) Take proceedings in relation to any encroachment by the building or part onto land vested in or under the control of the Council

IDENTIFICATION OF BUILDING

Property Address 149 RIVERVIEW ROAD AVALON NSW 2107

Nearest Cross Street Trappers Way Side of Street Western

Classification of Building 10a, 10b Whole/Part Part of Building

Description A timber boatshed with a metal roof together with a timber deck,

jetty and slipway

Date of Inspection 23/02/2012 Owner

Legal Description of Land Lot A DP 413022

SCHEDULE

The following written information was used by the Council in deciding to issue this certificate Survey report prepared by Rygate & Co Surveyors Pty Ltd, dated 23/09/2011, Ref No 75013

Dated 28/02/2012

Mark Ferguson
GENERAL MANAGER

per Altr

Applicant's Name

NB

An order made or proceedings taken in contravention of this certificate is of no effect

2 The issue of a Building Certificate does not prevent

- (i) orders from being made against any person in relation to matters detailed in the table to Section 121B of the Environmental Planning and Assessment Act 1979 (as amended)
- (II) proceedings being taken against any person for failure to obtain development consent or to comply with any conditions of development consent pursuant to Section 125 of the Environmental Planning and Assessment Act 1979

Email pittwater_council@pittwaternsw.gov.au Web pittwaternsw.gov.au

N 0301/0/

BUILDING CERTIFICATE REPORT

BUILDING CERTIFICATE NO 0008/12
Street Name Runerinew RN Walon
House No
Nearest Cross Street
Side of Street
Classification of Building (ie 1a, 10b) (O C 10 D) WHOLE OR PART (circle one)
WHOLE OR PART (circle one)
Description of Buildings a timber boatshed muit
a metal roof together with a
timber delk, jetty & slipway.
Description of Buildings a metal roof together with a dense dense fitty & slipway. Date of Inspection 33/3/12.
Owner's Name
Lot No A Section (if applicable) DP 4/3022
PO, 1960/ZBB
The following written information was used by the Council in deciding to issue this certificate
SURVEY REPORT/CERTIFICATE PREPARED BY
lygate & co Runeyous P/L
Ref No
Council File No
Building/Development Approval No
Occupation Certificate (No(s)
Sariisaroubeiraharraadaraadamannasasoraasiviininiinerkoolangasas
ASTER AND MARKATE PROPERTY OF THE PROPERTY OF
NSPECTOR DATE 27/2/12-

CHECK LIST FOR BUILDING CERTIFICATES	- DOMESTIC DWELLINGS
PROPERTY ADDRESS	
FEES	
Survey – This should be original if possible or copy of original certified be Are all the buildings existing on site shown on the survey Does survey indicate eaves and gutters position	y a surveyor
STRUCTURAL ENGINEERS CERTIFICATES – where applicable	le
Waterboard Certificate – certificate or telephone enquiry from B	
BUILDING APPROVALS Obtain the files for any building approvals or development consents applic	cable to the site
TERMITE PROTECTION BCA (PT 31 3(j) (ii))	
INSPECTION Date of inspection Where approved building plans are available check that conditions of approved building plans are available check that conditions of approved building plans are available check that conditions of approved building plans are available check that conditions of approved building plans are available check that conditions of approximately	roval have been complied with
External Roof Gutter External cladding Windows Lintels arch bars etc Settlement or cracks Outbuildings and the use of these Access driveways and gradients Stormwater drainage Connection to sewer if available Septic tank — check with tanker service removal type Installation of any problems relating to septic tank Onsite drainage Swimming pool – water quality/structure Swimming pool fencing Swimming pool – filter motors (noise) retaining walls INTERNAL Room sizes Floor to ceiling heights Light and ventilation Adaptation of building as flats eg direct internal access Access to all habitable areas — duplication of kitchens? Evidence of water entry Floor wastes	SITE INSPECTION REPORT Works as described - alk in Good condition. ok to usine B. C. Works as 27/2/12
Bathroom and laundry Adequate facilities for bathroom WC and laundry provisions Floor area – condition of floor timbers piers ant caps settlement or cracks COMMENTS FROM OTHER DEPARTMENTS/SECTION Town Planners D/A conditions Engineers Coastal Bluff area Flood Prone Land Wave Action Natural Resources Endangers spp Wildlife Corridor	
Signed by	
Date	



Application for Building Certificate
Environmental Planning & Assessment Act, 1979 (as amended) Section 149A, B, C, D

Effective from 1/7/11 till 30/6/12

Office Use - BC No: BC 0008/12

Property Des	scription			4. W 4. V	4.4			
Number:	149	Street:_	RIVER	evie W	ROAD,			
Suburb:	AVALON	ىم	SN.	2107	•			
Lot: Lot	· A.	DP: D	.P. 41	3022	<u>.</u>			
Applicant		and grade to a		A Maria	- 美沙中華	全然表现		***, * * ****
You can apply	, for a buildin	a Cortificat	s if you on					
(Please tick th			i you ai	€.				
I am the ov	wner of the b	uilding						
□ I have the		_	this appl	ication (see	e below)			
☐ I am the pu	urchaser und	er a contrac	t for the s	sale of the p	oroperty			
☐ I am the ov	vner's or pur	chasers soli	citor or a	gent				
□ We are a p	oublic authori	y which ha	s notified	the owner	of its intention	on to apply f	or the certifica	te
								

Owners Consent								
Certificate Type								
☐ Whole Property								
□ Whole Building i.e:								
Post Puilding : - ROATCHEN - DELAM - D. P.	nice in Decarpance							
Part Building i.e BOATSHED - RELATED TO: PERMISSIVE OCCUPANCY.								
□ Pool , Fencing & Access	1/							
Processing Fees								
Class 1 Building (together with any class 10 building on the site) (or a class 10 Building	\$250.00 each							
In the case of any other Class of Building – as follows								
Floor Area of building or part –								
(i) Not exceeding 200 square meters	\$210.00 each							
(ii) Exceeding 200 square metres but not exceeding 2000 square metres	\$210.00 plus \$0.42 cents for each sqm in excess of 200sqm							
(iii) Exceeding 2000 square metres	\$966.00 plus \$0.063 cents for each sqm in excess of 2000sqm							
(iv) Fee for additional inspection	\$75.00							
In the case of any unapproved structures or works	\$650.00							
(\$250.00 certificate fee plus \$400.00 inspection & assessment of								
unauthorised works)	<u> </u>							

BCOOR/12

Accompany	ing information to be submitted with Application	
Applicant Checklist	Documents Required	Office Use Received
/	A detailed survey prepared by a Registered Surveyor clearly showing the location of the structures and/or works on the site. The date of the survey is irrelevant in so far as the information contained therein is still current.	
	Where the property is identified on either	
	Pittwater Councils Geotechnical Risk Management Map 2003	
	and/or	
	Pittwater Councils Costal Hazard map 97-003 as being Bluff Management Areas	
	A geotechnical Engineers report prepared in accordance with Councils Interim Geotechnical Risk management policy is to be provided, together with completed form 4 & 4a pursuant to that policy	
	Certificate Application relates to unapproved structures or works the following is to be provided:	g additional
>	A detailed survey prepared by a Registered Surveyor clearly showing the site & location of the structures on the property and any nearby structures on adjacent properties together with floor levels, finish surface levels and the like. (A detail and contour survey as required to accompany Development Applications as outlined on Councils Development Application form will satisfy this requirement).	
7	Works as constructed plans. These plans should be prepared by a suitably qualified professional e.g. Architect/Draftsman and clearly annotate the unapproved structures and/or works as to their compliance with the relevant Council Development controls.	~
	Certification as to the structural and/or Geotechnical adequacy of the structures and/or works as built. All built structures will require certification as to their structural integrity by a qualified Structural Engineer, all earthworks and foundations will require certification by a qualified & experienced Geotechnical Engineer as to their adequacy.	
	Certificate by an appropriately qualified person that the structures and/or works comply with the Building Code of Australia and appropriate Australian Standards.	
	Council may require additional information to enable appropriate assessment and determination of the Building Certificate.	
Office Use		
Receipt No:_	$\frac{317281}{2012}$ Date: $\frac{9/2/2012}{2012}$ Cashier	Code (FHEA)

The Privacy and Personal Information Protection Act 1998 (PPIPA) was introduced by the NSW government to provide for the protection of personal information and the protection of privacy of individuals generally. The Act applies to information collected, used and stored by public sector agencies such as local councils. Under the Act, "personal information" is any information that identifies a person, such as their name, address and contact details. Pittwater Council requires this type of information to carry out even their most primary core services. Council is committed to handle this information in accordance with PPIPA and other State and Federal legislation. In the year 2000, Pittwater Council adopted a Privacy Management Plan based on the Act's 12 Information Protection Principles. Fundamental to Council's implementation of the Act is the premise that personal information is to be used only for the purpose for which it is collected.

