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**From:** Greg Boston  
**Sent:** 2/12/2024 5:25:30 PM  
**To:** Council Northernbeaches Mailbox  
**Cc:** Damian Huon  
**Subject:** TRIMMED: Objection - Development Application DA2024/1409 - 122A Crescent Road, Newport - Correction  
**Attachments:** Objection - DA2024 1409 - 122A Crescent Road, Newport 2.12.24.pdf;

Attn: Nick England – Planner

I refer to the objection already submitted by BBF planers in relation not this application.

Is has come to our attention that out clients address was incorrectly referred to as 50 Crescent Road, Newport whereas our clients correct address is 50 The Avenue, Newport.

The attached objection rectifies this error.

Please supersede the previous objection with the attached.

Cheers

Greg Boston  
B Urb & Reg Plan (UNE) MPIA  
B Env Hlth (UWS)  
Director

BOSTON BLYTH FLEMING PTY LIMITED  
Town Planners  
Telephone: 02 9986 2535  
[REDACTED]

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**From:** Greg Boston  
**Sent:** Thursday, 28 November 2024 10:57 AM  
**To:** Council Mailbox <council@northernbeaches.nsw.gov.au>  
**Cc:** [REDACTED]  
**Subject:** Objection - Development Application DA2024/1409 - 122A Crescent Road, Newport  
**Importance:** High

Attn: Nick England - Planner

Please find attached an objection in response to the notification of the above application on behalf of the owner of 50 Crescent Road, Newport.

For your consideration.

Regards

Greg Boston  
B Urb & Reg Plan (UNE) MPIA

B Env Hlth (UWS)  
Director

BOSTON BLYTH FLEMING PTY LIMITED  
Town Planners  
Telephone: 02 9986 2535  
Mobile: [REDACTED]

28<sup>th</sup> November 2024

The CEO  
Northern Beaches Council  
PO Box 82  
Manly NSW 1655

Attention Nick England – Planner

Dear Mr England,

**Notification Response**

**Development Application DA2024/1409**

**Reconfiguration of the existing marina to a nine (9) berth marina and subdivision into eight (8) lots including concept building envelopes for boat sheds on proposed Lots 5 and 6 associated landscaping and demolition and extension to an existing seawall and associated land reclamation  
122A Crescent Road, Newport**

We have been engaged by the owner of No. 50 The Avenue, Newport located on the northern side of The Avenue road reserve directly opposite the development site as depicted in Figure 1. Having reviewed the detail of the application, significant concern is raised in relation to the intensification of the proposed private marina facility, navigational impact on our client's berthing area, the visual and amenity impact on The Avenue road associated with the extension of the marina facilities beyond the northern lateral limit of the subject property and the inconsistency of the scale of the private residential boating facilities relative to other private residential boating facilities within the sites visual catchment.

We also find the description of the proposed development as submitted and notified to be incorrect and misleading on the basis that the existing commercial marina use has ceased with the existing infrastructure demolished and completely removed as a component of the proposed development. That is, the application proposes the demolition of the existing marina infrastructure and the construction and use of a new private marina. We request that the description of the proposal be amended and that the development application be renotified accordingly.

We have reviewed the objection prepared and previously submitted to Council by our client on dated 27 November 2024 and fully endorse its content. In our opinion the application is ill-conceived for the reasons outlined in this submission with its approval not in the public interest having regard to the following submissions.



**Figure 1** – Plan extract showing location of existing commercial marina and proposed private marina relative to our client's property shown by red star and existing jetty and boat shown by black arrow.

### **Reliance on 'existing use'**

In attempting to meet the requirements of environmental planning instruments and Council's development control plan, the applicant repeatedly relies on the positive impact the development will have when compared to the previous commercial marina use. For example, the applicant says the development is "consistent with the objectives and controls [of *State Environmental Planning Policy (Resilience and Hazards) 2021 (R&H SEPP)*] as there will be a reduction in intensity and scale of the existing marina" (*Statement of Environmental Effects*, page 26). This reliance is fundamentally misconceived.

As the consent authority would be aware, the development application is associated with DA2022/2152, which authorised the consolidation and subdivision of adjoining land above the mean high water mark. DA2022/2152 had the effect of terminating the commercial use of the existing waterfront structures and requiring further development consent to be obtained before they could be adaptively reused by the applicant in connection with the residential use.

Relevant conditions include:

**40. Commercial Use**

*Prior to the commencement of any works associated with this development consent, all operations associated with the commercial marina use shall cease.*

*Reason: To ensure the orderly development of land.*

**120. Marina Use and Works**

*Prior to the release of the Subdivision Certificate, development consent for the use of the existing marina structures located within the waterway for residential purposes shall be obtained and any associated physical works carried out.*

*Evidence confirming satisfaction of the above matters shall be provided to the Certifying Authority.*

*Reason: To ensure that the existing waterway structures are subject to a valid development consent and to facilitate the orderly development of land.*

Works in accordance with DA2022/2152 have been commenced, and we understand as required by Condition 40 the commercial marina use has ceased. As a result, there is no active lawful use of the existing structures below the water mark of which we are aware. Although there is no requirement in DA2022/2152 to remove the structures, there is no current "use" against which the use contemplated by the current development application should be compared.

As a consequence, the material provided to the consent authority about the impacts of the development has a critical deficiency. Any description of impacts which quantitatively or qualitatively relies upon a lessened impact by comparison with the now defunct marina use is misleading and does not allow jurisdictional matters to be addressed. The consent authority must be capable of being satisfied of jurisdictional matters where required by an environmental planning instrument. As it stands, where the information supplied provides an inaccurate or flawed basis to make that assessment of jurisdictional matters, the application must be refused: *Bruce Lyon Holdings Pty Ltd trading as Bruce Lyon Holdings Pty Ltd v City of Parramatta Council trading as City of Parramatta Council* [2022] NSWLEC 1705 (**Bruce Lyon**) at [94] onwards.

For example, the R&H SEPP prevents the consent authority from approving the development unless it satisfied of certain matters set out in 2.10(2) and 2.11(2). Specifically:

1. The consent authority **must** be satisfied under s2.10(2) that impacts of a kind identified in s2.10(1) have been avoided, and if not avoidable, have been minimised, and if not able to be minimised, have been mitigated. Of these impacts we are of the opinion that the proposal will have an adverse and avoidable impact on marine vegetation, native vegetation and fauna habitats due to its overall size (width and depth) (s2.10(1)(d)) and the use, enjoyment and amenity of the existing public open space (s210(1)(e)) being the western end of The Avenue due to the marinas extension beyond the lateral limit of The Avenue road reserve.
2. The consent authority **must** be satisfied under s2.11(2) that impacts of a kind identified in s2.11(1) have been avoided, and if not avoidable, have been minimised, and if not able to be minimised, have been mitigated. With regard to these impacts we identify s2.11(1)(a)(1) and s2.11(1)(a)(iii) of particular note given the physical size and land use intensity of the proposed marina having regard to the maintenance of existing and safe access to and along the foreshore and the adverse visual amenity impact on the scenic qualities of the foreshore area associated with the size and geometry of the marina proposed which extends beyond the lateral limits of the subject property and further into the waterway than any other private residential boating facilities along this section of the waterway.

Clearly, the development has not been designed and sited to avoid or even minimise associated impacts such impacts unable to be appropriately managed to the extent necessary to satisfy these provisions. Further, pursuant to s2.11(1)(c) the size, scale and intensity of the proposed marina is inconsistent with the surrounding coastal and built environment for the reasons previously identified.

As noted in Bruce Lyon at [89], the Applicant bears the onus of providing information capable of satisfying jurisdictional matters. It has not done so. If this submission is accepted, then based on the available information at present, the application must be refused.

For completeness, in my submission, even if proper information was provided, the consent authority ought to refuse the application on merit having to the above R&H SEPP considerations.

### **Evidence of legal right to use area**

In addition, for the development and use outside the boundaries of the existing lease, which we note is for a commercial marina, the development application does not contain information about the terms or permitted use of the Land under this lease. If our primary submission, that at minimum Lot 4 and Lot 8 should be deleted from any approval, is not accepted, the Council should require the applicant to provide a copy of the relevant lease over this area of the waterway.

The development application contains no information about the authorised use of the land, including the duration of any lease, the approved use, or any related terms. In those circumstances it is contrary to the efficient and economic use of land to provide planning authorisation where the constraints at property law are wholly unknown.

### **Non-compliance with Pittwater 21 DCP provisions**

significant concern is also raised in relation to the following matters:

- The berth geometry is above that required by technical standards, leading arguably to a greater impact (see p 4, Navigation Impact Assessment).
- The proposal for 8 waterfront berths represents an overdevelopment of the land. The provision of 4 berths for the 4 waterfront lots would represent the orderly development of the land.
- Approval of the application may set an undesirable precedent of large private marinas serving other waterfront land.
- The berths are tightly spaced providing an uncharacteristic pattern of waterfront development adjacent to low density residential zoned land. The spatial arrangement and distribution of waterfront structures is inconsistent with that established adjacent to the balance of residential zoned land within the sites visual catchment and will be perceived as inappropriate and jarring in such context.
- Vessels proposed are significantly larger and longer than the vessels which can be accommodated by the existing infrastructure. Clause D15.15 of Pittwater 21 DCP (P21DCP) indicates that the maximum dimension from berthing areas perpendicular to the shoreline shall be a maximum 5m x 9m. In this regard, the application fails to comply following Clause D15.15 outcomes and controls:
  1. The maximum dimension for berthing areas perpendicular to shore shall be 5 metres x 9 metres in accordance with Diagrams 3A and 3B.
  2. The size, scale and intensity of the proposed structures do not blend with the natural environment.
  3. The size, scale and intensity of the proposed structures are detrimental to the visual quality, water quality and estuarine habitat of the Pittwater Waterway.
  4. The proposed structures are greater in length than existing structures and will impede general navigation and equitable access and use of the waterway by adjoining landowners given its extension past the lateral limits of the development site and further into the waterway than any other private waterfront facilities within the site's visual catchment.
  5. The length of the proposed jetties is not minimised.

- Significant reduction in the spatial separation established between 50 The Avenue, Newport and the pe-existing Marina infrastructure.
- Loss of swing moorings in the bay, as recognised by p13, Navigational Impact Assessment).
- Completely new structure not adaptive reuse.

In this regard, the proposal fails to satisfy the **clause D15.1 P21DCP Character as viewed from a public place** provision namely:

#### Outcomes

*To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment.*

*To ensure that development adjacent to public domain elements such as waterways, streets, parks, bushland reserves and other public open spaces, compliments the landscape character, public use and enjoyment of that land.*

*Built structures are minimised below mean high water mark.*

*A balance between use of the waterway and conservation of the natural environment is achieved.*

#### Controls

*Buildings which front the street and/or the waterway must have a compatible presence when viewed from the waterway.....*

The proposal fails to satisfy the **clause D15.3 P21DCP Lateral limits to development seaward of mean high water mark** provision namely:

#### Outcomes

*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.*

#### Controls

*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. (Diagrams 1 and 2).*



*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 (Diagram 3).*

*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.*

### Variations

*Nil*

The proposal fails to satisfy the **clause D15.15 P21DCP Waterfront development** provision namely:

### Outcomes

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

*Public access along the foreshore is not restricted.*

*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.*

*Structures blend with the natural environment.*

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

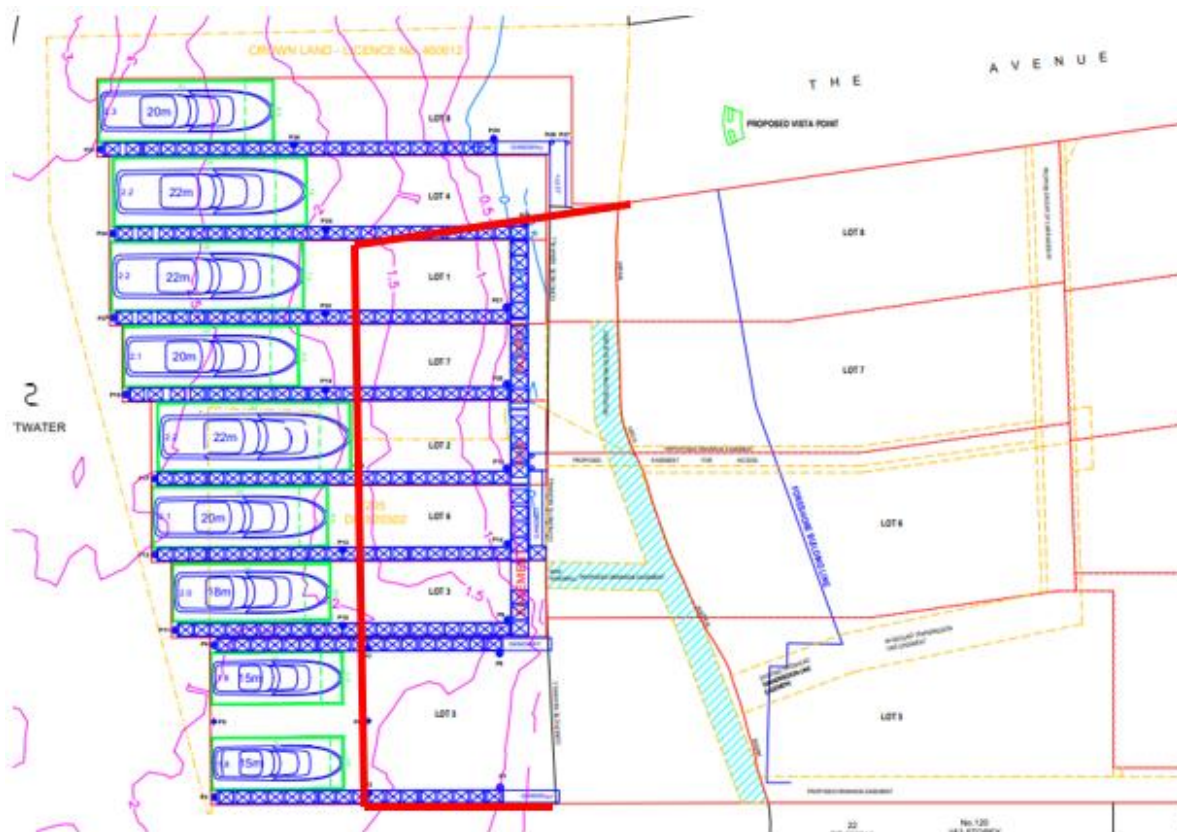
### Controls

*The maximum dimension for berthing areas perpendicular to shore shall be 5 metres x 9 metres in accordance with Diagrams 3A and 3B.*

The development application provides no visual impact assessment in relation to the development such as montage images or similar to demonstrate the acceptability of the proposal when viewed from the waterway and The Avenue. We are also of the opinion that amendments should be made to ensure that the application does not require the removal of any trees, that any site contamination is appropriately remediated as a component of the application and that the existing seawall is aesthetically upgraded by way of sandstone facing or similar.

For the reasons outlined in this submission, we have formed the opinion that the application is flawed in its reliance on an argument of betterment when compared to the now abandoned pre-existing commercial marina use and must fail having regard to the applicable statutory considerations unless there are significant amendments to the proposal as outlined including the deletion of proposed Lots 4 and 8 and a significant reduction in the depth of the berthing areas to a maximum of 9 metres in accordance with clause D15.15 of P21DCP.

In this regard, we are of opinion that all proposed works should be located within the area marked in red on the following diagram being compliant with the lateral limit and maximum berthing area (5 metre x 9 metre) provisions of P21 DCP.



Please do not hesitate to contact me to arrange site access or should you wish to discuss any aspect of this submission.

Yours sincerely  
Boston Blyth Fleming Pty Ltd

**Greg Boston**  
B Urb & Reg Plan (UNE) MPIA  
B Env Hlth (UWS)  
**Director**