



1st July 2021.

Department of Primary Industries – Fisheries

1243 Bruxner Highway,
Wollongbar, NSW 2477

Att Sarah Conacher

Your ref IDA 21/20

Dear Sarah,

**IDA referral for boatshed, ramp, slipway, jetty and steps.
316 Hudson Pde, Clareville (Lots 1 & 2, DP 827733) – Pittwater.**

We write to you on behalf of the applicant, Mr Tony Walls the owner of the land adjacent to the proposed works and the holder of Licence No 559856 over Crown Land below the mean high-water mark in Refuge Cove, Pittwater.

The purpose of this correspondence is to seek your support for an amended design that we suggest satisfies your concerns and provides a superior solution with respect to key fish habitat to the simple like for like replacement of the previous structures.

We understand from your first referral response that your key concerns that relate to fish and key fish habitat are that the prior proposal:

1. Was not a like for like replacement of the previous structures.
2. Saw the footprint being greater than the original.
3. Saw the replacement of the previous vertical walls.
4. Saw the replacement of the previous timber decking to the jetty with new timber decking.

Your concluding statement to the first referral response was:

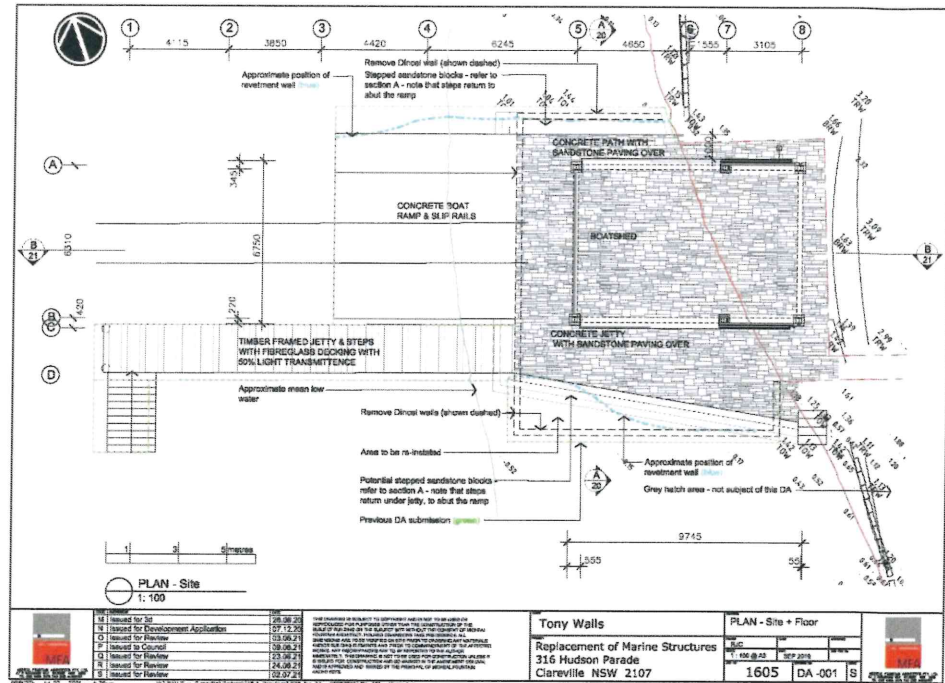
“The proponent claims to have existing use rights of the foreshore structures at 316 Hudson Parade, Clareville. If Council determines this to be correct, DPI Fisheries has no objections to the original structures being replaced like-for-like in the same location as the original structures with no additional reclamation. The proponent is welcome to submit a revised proposal, that takes into account the above recommendations, for consideration by DPI Fisheries”.

Based on the advice of Ian Hemmings SC we are confident that existing use rights have been established and that the use has not been abandoned.

To this end we have the right rebuild and conditionally expand the original use with the consent of the relevant Authorities

Please see following and find attached a revised proposal that takes into account your recommendations.

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This revision sees the:

1. Demolition of the of existing Dintel walls, other than for the portion that will be under the reinstated ramp.
2. A reduction of the overall footprint of the proposal.
3. The removal of all outer vertical walls other than those under the ramp.
4. Amendment of the jetty decking material from timber to fibreglass mesh that will provide 50% light transmission.

1. Footprint – Like for Like Replacement

Please note that the amended design sees the footprint of the proposed structures closely align with the prior structures when including the rip rap boulder beds that previous existed.

While there may be some increase in footprint to the south west corner there is commensurate reduction in footprint to the north, as such that there will be little net loss of fish habitat.

Reference to the images below illustrate the extent and detail of the footprint prior to the current works in the Image 1 and the status of the site in Image 2.

It is the white walls to the top and bottom of the structure illustrated in Image 2 that are proposed to be demolished as part of the amended design.

Please note that the proposed replacement of the boatshed and footpaths will be located between the highest and lowest astronomical tide, in degraded Type 3 minimally sensitive key fish habitat that is unvegetated sand with minimal or no in-fauna.

Image 1 – Below - Original Structures



Image 2 – Below -Current Works



DPI Policy States:

"5.1.4 Policy and guidelines for surrounding environmental considerations

3) NSW DPI will consider proposals within degraded habitat more favourably than proposals in areas of fish habitat that are relatively intact and in healthy condition or have a high potential for rehabilitation.

Guidelines for implementing the above policies include:

c) Proposals may be considered where the value of the habitat as a corridor is considered low (e.g. a single row of mangroves along a riverbank, small discontinuous patches of TYPE 2 seagrass) and the damage can be compensated (see section 3.3)."

Understanding the policy position above and the merits of the amended proposal we ask that you support the amended footprint.

2. Vertical Walls:

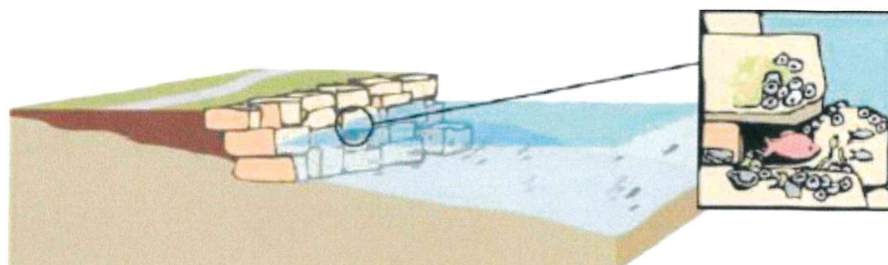
The walls that are proposed to be constructed will be replacing the walls that have existed on the site since at least 1947.

The coastal morphology and fish habitat has formed around these structures over the decades they have been in place and to remove them altogether has the potential to change the local morphology and thus threaten the existing habitat. (Ref Royal Haskoning and Bio Analysis reports)

Please note on the drawings that the all the outer vertical walls other than those under the ramp have been replaced with unbonded, stepped, sandstone blocks as per the, OEH Environmentally Friendly Seawalls Guide referenced in your referral responses.

3.2.3 Maximising habitat diversity and complexity

Creating seawalls out of mixed sized and shaped boulders that are placed and keyed together without cement. This creates more habitats than homogeneous structures owing to the spaces between the boulders (Figures 21 and 22). Utilising different rock sizes and shapes will provide greater habitat diversity and a variety of different sized and shaped spaces to accommodate various species and life-cycle stages (Lennon, 2003).



These blocks will protect the facility from wave action while providing habitat in the intertidal zone.

“5.2.4.1 Policies and guidelines for foreshore stabilisation works

1) NSW DPI will generally not approve the construction of new break walls, groynes, seawalls or retaining walls except where there are no feasible alternatives for erosion control and valuable assets are at risk. Modifications or repairs to existing walls or groynes should incorporate designs that reduce wave energy reflection and include restoration of the original shoreline.

Guidelines for implementing the above policies include:

c) Seawalls should be constructed in accordance with OEH’s “Environmentally Friendly Seawalls: A Guide to Improving the Environmental Value of Seawalls and Seawall-Lined Foreshores in Estuaries” (see

www.sydney.cma.nsw.gov.au/component/option,com_remository/Itemid,116/func,s_elect/id,51/

Understanding the policy position above and the merits of the amended proposal we ask that you support the amended seawall design.

3. Jetty Width and Decking Material.

The DPI Fisheries policy and guidelines do not appear to be proscriptive in relation to the width of jetties, they are however clear as to the requirement for the structures to provide light transmittance to the sea bed to encourage sea grass growth.

To this end the amended proposal sees the opaque timber boards of the prior and existing jetty and steps replaced with decking material specified to provide 50% light transmittance in accordance with your referral response.

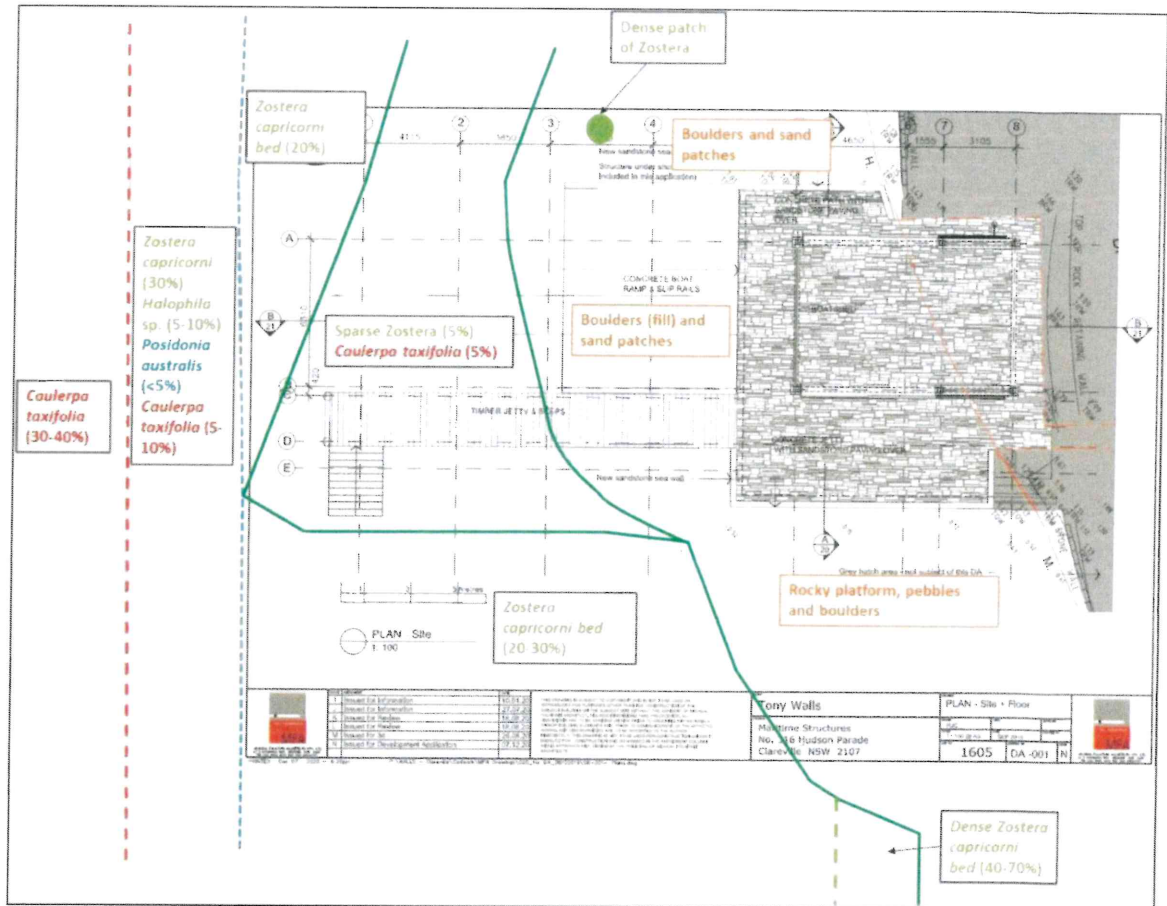
Reference to the sea grass map and images contained in the Bio- Analysis Report reveals that there is no sea grass under over one third of the proposed jetty and that the remaining section sees sparse *Zostera* seagrass of poor quality constitute less than 5% on the seabed. (Ref: Bio Analysis Report)

Image 3 – Sea Grass adjacent proposed reinstated jetty (Ref: Bio Analysis Report)



Ref Attachment 1 for larger copy of the drawing below

Figure 14. Distribution of the seagrasses and *Caulerpa taxifolia* present in the survey area.



DPI Fisheries Policy and Guidelines state:

c) *Proposals may be considered where the value of the habitat as a corridor is considered low (e.g. a single row of mangroves along a riverbank, small discontinuous patches of TYPE 2 seagrass) and the damage can be compensated (see section 3.3).*

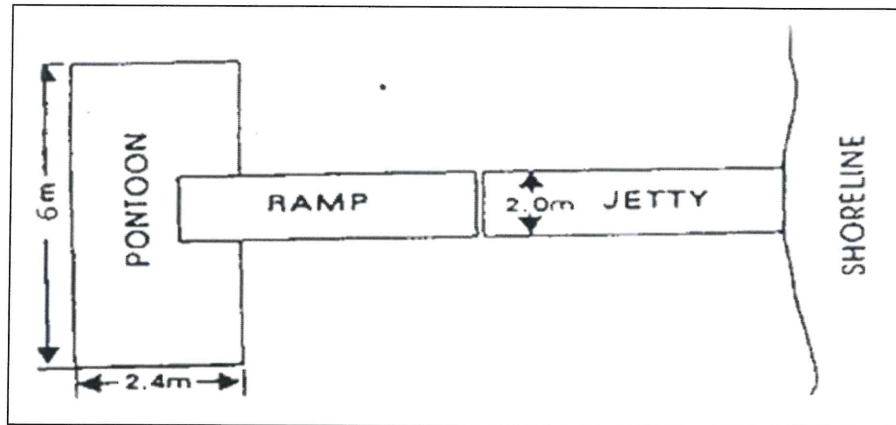
These amendments will see a net improvement of the light transmitted to sea bed that will hopefully encourage an increasing density of sea grass.

5.1.4 Policy and guidelines for surrounding environmental considerations

3) *NSW DPI will consider proposals within degraded habitat more favourably than proposals in areas of fish habitat that are relatively intact and in healthy condition or have a high potential for rehabilitation.*

With the above in mind, we would ask that you support the proposed 2 metre width of the jetty in accordance with the NBC DCP.

Diagram 2B: Design Guidelines for conventional Jetty, Ramp and Pontoon Structure



Conclusion:

Ian Hemmings SC has confirmed that existing use rights have been established and not abandoned.

He has also confirmed that the proposal may be expanded as originally proposed with consent.

This said we are willing to amend the proposal in response to your recommendations in in a design that sees the:

1. existing walls largely demolished,
2. development footprint reduced,
3. outer vertical walls deleted and replaced with stepped sandstone blocks,
4. and the jetty decking changed to provide 50% light transmittance.

These amendments will see a solution that is superior to that of the simple like for like replacement of the structures.

We trust that you will see that we have done all we reasonably can to modify the proposal while maintaining the functional requirements of the facility.

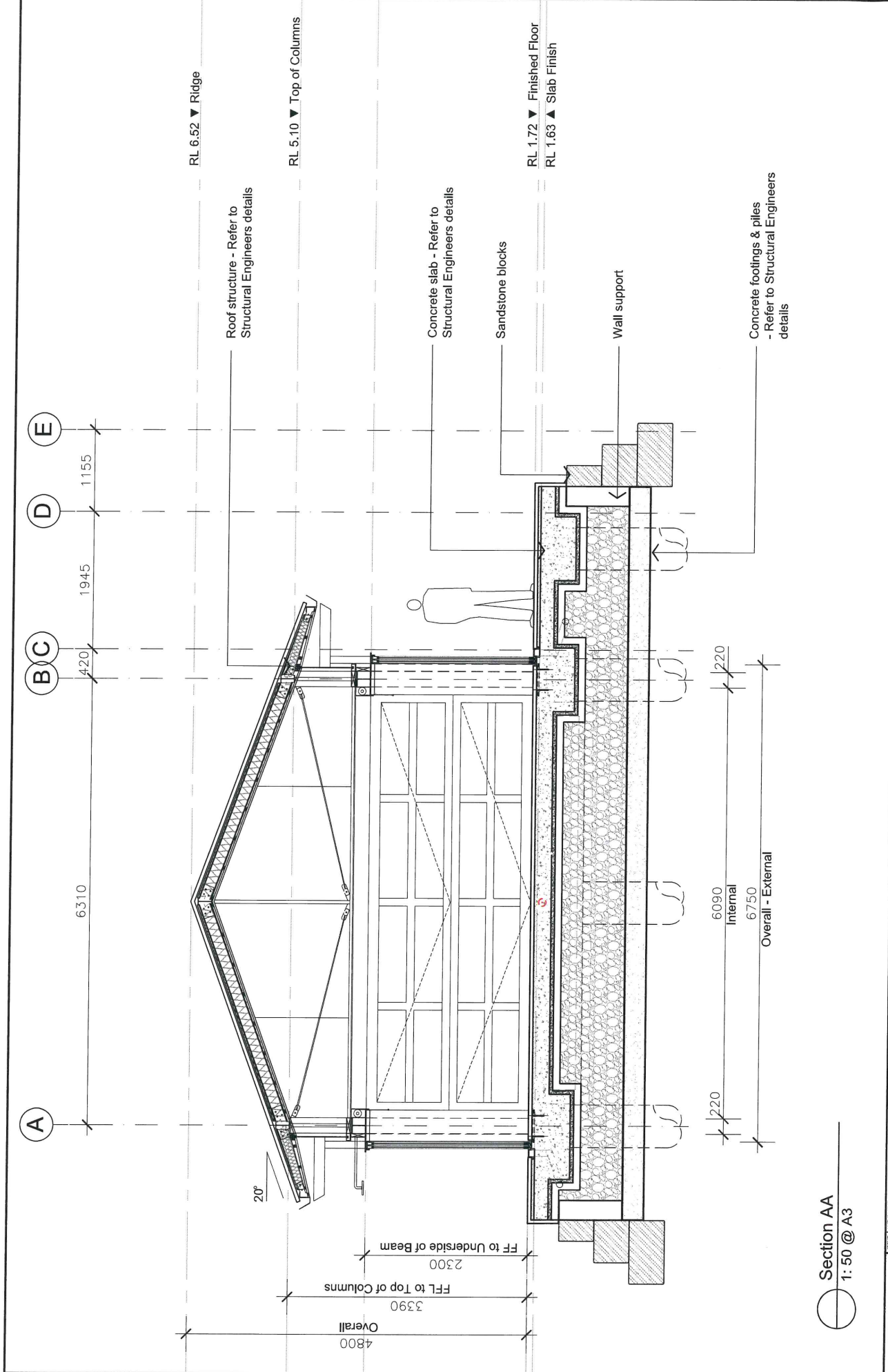
With this in mind we seek your support for the amended design.

Should you wish any further information or wish to discuss any of the above we would be more than happy to do so in an effort to settle the matter.



Micheal Fountain

Micheal Fountain Architects Pty Ltd.

Micheal Fountain. BArch.



Section AA
1: 50 @ A3

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DATE / COMMENT		SECTION AA	
D	Issued for Review	RJC & DMS	
E	Issued for 3d	1: 50 @ A3	
F	Issued for Development Application	DATE	
G	Estuarine Planning Levels added	1605	
H	Issued for Review	DA-020	
I	Issued to Council	J	
J	Issued for Review		
P:\WALLS - Clareville Codwork\MFA Drawings\023 for DA - 29062021\SK-010 - 020 - Sections & Elevations - 4.8 high.dwg		PRINTED: Jul 02, 2021 - 4:36pm	

