

SUBJECT: N0518/16 - 132 MCCARRS CREEK ROAD, CHURCH POINT NSW 2105 Extension of jetty, addition of berth piles and berth area, ramp and pontoon

Determination Level:

Manager

SUMMARY OF RECOMMENDATION:

CONSENT WITH CONDITIONS

REPORT PREPARED BY:

Heath Dennerley

APPLICATION SUBMITTED ON:

11 November 2016

APPLICATION SUBMITTED BY:

JOSKO SIMUNDZA
PO BOX 23
CHURCH POINT NSW 2105

OWNER(S):

MR JOSKO SIMUNDZA
MS ROSE REFALO

1.0 SITE DETAILS

The site is legally referred to as Lot A in Deposited Plan 347026 and is commonly known as 132 McCarrs Creek Road, Church Point. The site has a 15.09m wide frontage to McCarrs Creek Road to the east, a 81.07m long side boundary to the north, a 85.7m long side boundary to the south, an irregular boundary along the MHWL fronting Pittwater to the west, and a total site area of 1252m². The site currently contains a single storey dwelling that is located at the rear of the site fronting the waterway, with no means of vehicular access from McCarrs Creek Road. The site contains a detached boatshed that is located across the rear property boundary, primarily on Crown Land, and a concrete landing area, jetty and pontoon. The site is considerably steep with a fall of approximately 36m from the upper front boundary down towards the MHWL, with a slope of 44%

2.0 PROPOSAL IN DETAIL

The application seeks consent for the following works:

- Extension of existing jetty;
- Removal of existing ramp and pontoon;
- Installation of new ramp (4.2m x 1.5m)
- Installation of new pontoon (3.6m x 2.4m)
- New piles under existing jetty (x2)
- New berthing piles (x3)
- Berthing area (9m x 5m)

3.0 STATUTORY AND POLICY CONSIDERATIONS

The site is zoned E4 - Environmental Living under Pittwater Local Environmental Plan 2014. Pursuant to the land use table in Part 2 of this instrument, the proposed jetty, pontoon and berthing area is permissible with consent. The following relevant state, regional and local policies and instruments apply:

Environmental Planning and Assessment Act, 1979 (the Act)

- Environmental Planning and Assessment Regulation 2000 (the Regulation)
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX)
- State Environmental Planning Policy No 71 - Coastal Protection (SEPP 71)
- 10/50 Vegetation Clearing Code of Practice
- Pittwater Local Environmental Plan 2014 (PLEP 2014)
 - Acid Sulphate Soils Map - Class 5
 - Foreshore Building Line Map
 - Geotechnical Hazard Map
 - Height of Buildings Map - 8.5m
 - Lot Size Map - 700m²
- Pittwater 21 Development Control Plan (P21 DCP)
 - Church Point Locality
 - Geotechnical Risk Management Policy for Pittwater
 - Estuarine Risk Management Policy for Development in Pittwater.
 - Landscaped Area: Map 1

Pittwater 21 DCP identifies the land as being the following:

- Landslip Prone;
- Bush Fire Prone;
- Wave Action and Tidal Inundation;
- Containing areas of Saltmarsh Endangered Ecological Community
- Adjacent to Estuarine Wetlands
- Scenic Street Register.

Variation to development standards:

The application of Clause 4.6 is not required.

4.0 BACKGROUND

N0518/16 was lodged at Council at 11/11/16 and referred to Council's Natural Environment Officer, Development Engineer and Department of Planning and Environment. A search of Council's records revealed one (1) related document:

N0363/16

new single dwelling - Demolition of existing dwelling and construction of a new dwelling house, secondary dwelling and inclinor. Approved by delegated authority.

5.0 NOTIFICATION

N0581/16 was notified from 18/11/16 to 02/12/16 to adjoining property owners in accordance with Council's notification policy. The site inspection on the 03/01/2017 confirmed the placement of the notification sign. During the notification period, zero (0) submissions were received from adjoining neighbours.

6.0 ISSUES

- B4.15 Saltmarsh Endangered Ecological Community
- D15.15 Waterfront development
- SEPP No 71 - Coastal Protection

7.0 COMPLIANCE TABLE

- T - Can the proposal satisfy the technical requirements of the control?
- O - Can the proposal achieve the control outcomes?
- N - Is the control free from objection?

Control	Standard	Proposal	T	O	N
Pittwater Local Environmental Plan 2014					
1.9A Suspension of covenants, agreements and instruments			Y	Y	Y
Zone E4 Environmental Living			Y	Y	Y
4.3 Height of buildings			Y	Y	Y
5.5 Development within the coastal zone			Y	Y	Y
5.7 Development below mean high water mark			Y	Y	Y
5.10 Heritage conservation			Y	Y	Y
7.1 Acid sulfate soils		<i>Acid Sulfate Region 1 - all works are on water.</i>	Y	Y	Y
7.7 Geotechnical hazards			N	-	-
7.8 Limited development on foreshore area			Y	Y	Y
7.10 Essential services			Y	Y	Y
Pittwater 21 Development Control Plan 2014					
3.1 Submission of a Development Application and payment of appropriate fee			Y	Y	Y
3.2 Submission of a Statement of Environmental Effects			Y	Y	Y
3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings			Y	Y	Y
3.4 Notification			Y	Y	Y
3.5 Building Code of Australia			Y	Y	Y
3.6 State Environment Planning Policies (SEPPs) and Sydney Regional Environmental Policies (SREPs)			Y	Y	Y

Control	Standard	Proposal	T	O	N
4.3 Integrated Development: Fisheries Management		Application accompanied by a correspondence letter from Department of Primary Industries (Fisheries) dated 22/07/2016, advising that the Department has no objections in light of harm to aquatic habitat or threaten species. As such, Fisheries do not consider the proposal is a type of Integrated Development.	Y	Y	Y
A1.7 Considerations before consent is granted		Crown Lands consent received.	Y	Y	Y
A4.4 Church Point and Bayview Locality			Y	Y	Y
B1.3 Heritage Conservation - General			Y	Y	Y
B1.4 Aboriginal Heritage Significance		<i>No apparent issues.</i>	Y	Y	Y
B3.2 Bushfire Hazard		Proposed works forward of high water mark.	Y	Y	Y
B3.6 Contaminated Land and Potentially Contaminated Land			Y	Y	Y
B3.9 Estuarine Hazard - Business, Light Industrial and Other Development			Y	Y	Y
B4.15 Saltmarsh Endangered Ecological Community		See discussion.	Y	Y	Y
B4.16 Seagrass Conservation			Y	Y	Y
B4.19 Estuarine Habitat			Y	Y	Y
B4.20 Protection of Estuarine Water Quality			Y	Y	Y
B8.2 Construction and Demolition - Erosion and Sediment Management			Y	Y	Y
B8.5 Construction and Demolition - Works in the Public Domain			Y	Y	Y
C1.2 Safety and Security			Y	Y	Y
C1.13 Pollution Control			Y	Y	Y
D4.1 Character as viewed from a public place		The proposal will remain in character when viewed from the waterway with similar structures erected in the immediate vicinity.	Y	Y	Y
D4.3 Building colours and materials		Conditioned.	Y	Y	Y
D4.5 Front building line			-	-	-
D4.6 Side and rear building line			Y	Y	Y
D4.13 Construction, Retaining walls, terracing and undercroft areas			Y	Y	Y
D4.14 Scenic Protection Category One Areas			Y	Y	Y

Control	Standard	Proposal	T	O	N
D15.11 Waterfront lighting		No lighting proposed. A condition has been included in the recommendation stating <i>any proposed lighting is to be shielded or located to promote safe navigation and minimise any likely adverse visual impact when viewed from the Pittwater Waterway, any adjoining public land, and adjoining residences. Reflection off the water should be eliminated where possible. Flood lighting is not permitted.</i>	Y	Y	Y
D15.12 Development seaward of mean high water mark		The proposal seeks to provide for the servicing or provision of access to boats, yachts and the like. A letter from the Department of Primary Industries (Fisheries) accompanying this application advised that the Department has no objections in light of harm to aquatic habitat or threatened species.	Y	Y	Y
D15.13 Lateral limits to development seaward of mean high water mark			Y	Y	Y
D15.14 Minimum frontage for waterfront development		The proposal is for alterations and additions to the existing marine facility. It is not anticipated that the development will have an adverse visual impact further to the existing facility.	Y	Y	Y
D15.15 Waterfront development		See discussion.	N	Y	Y
D15.18 Seawalls			-	-	-
D15.19 Dredging			-	-	-
State Environmental Planning Policies and other					
SEPP No 71 - Coastal Protection		See discussion.	Y	Y	Y
EPA Act 1979 No 203 section 147 Disclosure of political donations and gifts			Y	Y	Y

8.0 DISCUSSION OF ISSUES

- **B4.15 Saltmarsh Endangered Ecological Community**

Natural environment provided the following comments:

The property contains a modified landscape with a current development application N0363/16 for demolition of the current dwelling and construction of a new dwelling, secondary dwelling and inclinor. The proposed works include removal of existing pontoon and piles and construction of a new ramp, pontoon, piles and berthing area. A Marine Habitat Survey has been submitted (H2O Ecology, 28/6/16) which assesses the impacts of the proposed works on the marine environment. The impacts were all assessed as being minimal and short term during and post construction with the proposed development unlikely to have a negative impact on any threatened or endangered species or communities in the area. Overall the works are unlikely to have any ecologically significant impacts on the marine environment or biodiversity at the subject site. Recommendations for construction practices have been provided and are to be adopted. A letter from the NSW Department of Primary Industries – Fisheries (C16/293, 22 July 2016) has been submitted which states NSW Fisheries has no objections to the proposed works.

- **D15.15 Waterfront development**

Non-compliance. The DCP states that:

- *the construction of "L" or "T" ends or other types of elongations or steps at right angles to jetties shall not be permitted.*
- *Vessels shall be berthed at right angles to the mean high water mark to minimise visual impact on the foreshore, where practicable.*

Although the application proposes a "T" end design and to berth the vessel parallel to the mean high water mark, a variation is considered to be acceptable in this instance for the following reasons:

- The application fully complies with DCP size requirements for berthing areas, pontoons and ramps. Therefore, the marine facility and proposed vessel is considered to have a minimal visual impact on the foreshore;
- The proposed vessel is no greater in length than the maximum length of the distance between the lateral limits of the property less 4 metres and will enable safe and efficient maneuvering without impinging on adjoining neighbours;
- The "T" shaped facility is consistent with similar "T" design facilities in the immediate vicinity of the site and the general locality and will therefore not be out of character;
- The existing structure to be replaced is of a "T" shaped design;
- The variation will cause no navigational issues as per RMS letter of 19/07/2016, and;
- The variation will not impact on any key fish habitat as per Fisheries letter of 22/07/2016.

Conditions applied requiring:

- The materials used for construction should not be deleterious to marine life, for example antifouling paints or treated woods must not be used, and
- Handrails are to be located only on one side of the structure.

- **SEPP No 71 - Coastal Protection**

As the proposed works are below MHW, a referral to the Department of Planning and Environment is required. A response was received from the Department on 15/02/2017 stating that they *do not need to be involved in the consideration of the matter. Council could now determine the proposal having regard to the matters listed in Clause 8 of the SEPP.*

Assessed against clause 8 of SEPP No. 71, the proposed development appears to be consistent with those matters for consideration set out in clause 8 for the following reasons:

- Existing public access along the coastal foreshore will not be impeded upon, allowing for continuing public access for pedestrians or persons with a disability;
- The development is suitable in its type, location and relationship with the surrounding area, as the proposed works are compatible with the adjacent existing jetties where bulk, scale and size is appropriate for the location;
- The natural scenic qualities will continue to be protected;
- The development has been assessed against scale, amenity, solar access and view sharing of and amongst surrounding properties. Due to the minor nature of the development and the minimal bulk and scale, the proposal will not result in additional impacts to amenity, solar access and view sharing for surrounding properties;
- No impacts on flora and fauna, particularly in the coastal area and the marine vegetation and their habitats. Furthermore, existing wildlife corridors and the development of these corridors will not be negatively impacted upon;
- Given the proposal is a typical development request for a waterfront property within Pittwater and the bulk and scale is relatively minor, there are unlikely to be impacts on the water quality of coastal waterbodies;
- There are no known impacts on cultural places, values, customs, beliefs and traditional knowledge of Aboriginal people;
- No known items of heritage, archaeological or historic significance are located nearby, therefore remaining consistent with clause 8.

Based on those matters for consideration raised above, the proposed jetty and pontoon should be considered acceptable and consent be granted.

9.0 CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, Pittwater Local Environmental Plan, Pittwater 21 Development Control Plan and other relevant policies as listed at item 3.0.

The proposal has been found to be consistent with the outcomes of the relevant controls of P21 DCP. The proposal is considered to be consistent with the existing character and desired future character of the Church Point Locality. As a result of these considerations the proposal is recommended for approval.

RECOMMENDATION OF DEVELOPMENT OFFICER/PLANNER

Report prepared by

Heath Dennerley

Date: 15 February 2017

