

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2023/0181
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<b>Responsible Officer:</b>	Olivia Ramage
<b>Land to be developed (Address):</b>	Lot 110 DP 12749, 7 Florence Terrace SCOTLAND ISLAND NSW 2105 Lot LIC 404399, 7 Florence Terrace SCOTLAND ISLAND NSW 2105
<b>Proposed Development:</b>	Construction of a mooring pen
<b>Zoning:</b>	C3 Environmental Management
<b>Development Permissible:</b>	Yes - Zone C3 Environmental Management Yes - Zone W1 Natural Waterways
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Yellow House Investments Pty Ltd
<b>Applicant:</b>	Harbour Planning Waterfront Consultancy

<b>Application Lodged:</b>	02/03/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Other
<b>Notified:</b>	08/03/2023 to 22/03/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 14,000.00
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### PROPOSED DEVELOPMENT IN DETAIL

The proposed development consists of the construction of a mooring pen including 4 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 - 7.1 Acid sulfate soils

Pittwater 21 Development Control Plan - D15.15 Waterfront development

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 110 DP 12749 , 7 Florence Terrace SCOTLAND ISLAND NSW 2105 Lot LIC 404399 , 7 Florence Terrace SCOTLAND ISLAND NSW 2105
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the northern side of Florence Terrace. The site is a waterfront allotment along the foreshore of Pitt Point and is bound by the Mean High Water Mark (MHWM) to the rear.</p> <p>The site slopes steeply down from from the south towards the northern waterfrontage.</p> <p>The site is currently occupied by a single storey dwelling house, boatshed and seawall. Below the MHWM is an existing jetty, ramp and pontoon.</p> <p>The surrounding development consists of dwellings with similar waterway structures including boatsheds, ramps, jetties, pontoons and moorings pens below the MHWM. To the west of the site is Tennis Court Wharf.</p>

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:

- N0479/15 - Development application for Alterations and additions to dwelling and new boatshed. Approved 2 March 2016.
- N0159/16 - Development application for Replace existing seawall with sandstone blocks. Approved 27 May 2016.
- BC2023/0045 - Building Information Certificate for unauthorised part seawall and concrete ramp currently under assessment.

## 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	There are no current draft environmental planning instruments.
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)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment	Part 4, <u>Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed

Section 4.15 Matters for Consideration	Comments
Regulation 2021 (EP&A Regulation 2021)	<p>conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to waterfront development.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 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>
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) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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 water surrounding Scotland Island is classified as vegetation buffer zone under the Northern

Beaches Council's Bushfire Prone Land Map. Consideration has been given that all works concerning this application are below Mean High Water Mark. Planning for Bushfire Protection 2019 indicates that there are no bush fire protection requirements for Class 10a buildings (non-habitable structures) that are located more than 6m from a dwelling on bush fire prone areas. In this instance, the proposal is for berthing area including 4 piles located more than 6m from a dwelling. As such, the consent authority can be satisfied that the development conforms to the requirements of Planning for Bushfire Protection 2019 and that bush fire risk assessment does not need to be submitted for this development application.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 08/03/2023 to 22/03/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

## REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p>The proposal seeks approval for the construction of a mooring pen. The comments on this referral relate to the following controls and provisions:</p> <ul style="list-style-type: none"> <li>• SEPP (Resilience and Hazards) 2021 - Chapter 2.10 Development within the coastal environment</li> <li>• Pittwater LEP 2014 - Clause 7.6 Biodiversity Protection</li> <li>• Pittwater 21 DCP - Clause B4.7 Pittwater Spotted Gum Forest</li> </ul> <p>Portions of the site are identified on the Department of Planning and Environment's Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offsets Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR). However, the submitted plans and documentation indicate that the proposed works are located outside of the BV Map area and therefore will not trigger entry into the BOS.</p> <p>It is noted that the potential impacts to seagrass have been assessed by the appropriate referral body.</p> <p>No native vegetation or fauna habitat would be impacted, the development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p>
NECC (Coast and Catchments)	<p><b>Supported with Conditions</b></p> <p>The application has been assessed in consideration of:</p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>• Plans and documents lodged in support of the DA;</li> <li>• the Coastal Management Act 2016;</li> <li>• State Environmental Planning Policy (Resilience &amp; Hazards) 2021; and</li> <li>• Pittwater LEP 2014 and Pittwater 21 DCP.</li> </ul> <p>Assessment of the application has also considered:</p> <ol style="list-style-type: none"> <li>1. Consent of landowner to lodge a DA from the Department of Planning, Industries &amp; Environment - Crown Lands, dated 1 December 2022.</li> <li>2. No navigational concerns as a result of the proposed development from Transport for NSW Maritime Division dated 12 October 2022.</li> <li>3. No objection to the proposed development (subject to conditions) from the Department of Primary Industries - Fisheries, dated 8 February 2022.</li> </ol> <p><b>Coastal Management Act 2016</b> The subject site has been identified as being within the coastal zone and therefore the Coastal Management Act 2016 is applicable to the DA. The proposed development is consistent with the objects, as set out under Part 1 Section 3 of the Coastal Management Act 2016.</p> <p><b>State Environmental Planning Policy (Coastal Management) 2018</b> The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience &amp; Hazards) 2021 (R &amp; H SEPP). Hence, Divisions 3, 4 and 5 of the R&amp;H SEPP apply for this DA. On internal assessment, Council considers that the DA generally satisfies the relevant requirements under Chapter 2 the R &amp; H SEPP. Subject to conditions, it is considered that the application can comply with the provisions of State Environmental Planning Policy (Resilience &amp; Hazards) 2021.</p> <p><b>Pittwater LEP 2014 and Pittwater 21 DCP</b> Development on Foreshore Area The subject property is affected by the foreshore building line and Part 7, Section 7.8 – Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area. The proposed development works are located seaward of the foreshore building line and planning officers will need to determine as to whether a mooring pen is a permitted use within the foreshore area.</p> <p><b>Estuarine Hazard Management</b> The subject property has been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As the Estuarine Planning Level (EPL) does not apply to jetties, bridging ramps or pontoons located on the seaward side of the</p>

Internal Referral Body	Comments
	<p>foreshore edge the proposed development is considered to satisfy the relevant provisions of the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the B3.7 Estuarine Hazard Controls.</p> <p><b>Development Seaward of Mean High Water Mark</b> Proposed development works are located on Crown land below the Mean High Water Mark. Hence, Section D15.12: Development seaward of mean high water mark in Pittwater 21 DCP applies to the proposed development. DPI Fisheries has raised no objections to the development proposal subject to conditions to protect seagrass. A Marine Habitat Survey lodged in support of the DA and prepared by H2O Consulting Group (Dec 2021) concludes that "In summary, the proposed development at 7 Florence Terrace, Scotland Island is not expected to result in any direct impacts on nearby seagrasses, which have been avoided. However, the adoption of the recommendations of this report will be essential to minimise potential for disturbances during construction works." On internal assessment and as assessed in the marine habitat survey, the proposed development is unlikely to have an adverse impact on water quality or estuarine habitat of the Pittwater waterway and the DA is considered to be able to satisfy the requirements of the Section D15.12 Controls subject to conditions.</p> <p><b>Waterfront Development</b> The DA seeks relief from the requirement to relinquish a licence for a private swing mooring by any person seeking approval for a berthing area. The D15.15 Waterfront Development Control at Section b) states that "where provided berthing areas shall meet the following criteria: a. the proponent must demonstrate that they do not already hold or cannot obtain a swing mooring, marina berth or boat shed where they could reasonably store their boat." In the case of the subject DA, the proponent already holds a swing mooring and a boat shed. The D15.17 Moorings Control applies to marina berths, swing moorings and mooring pens in Pittwater and requires that: "The maximum number of moorings in Pittwater shall not exceed the overall capped total of 3641." and further that: "In the event of a marine development being approved, the change of swing moorings to marina berths shall not alter the capped number of vessels in that area." As the proposal to hold a swing mooring, boatshed and mooring pen is non-compliant with the D15.15 development control, does not promote a more equitable use of the waterway's resources and is contrary to the requirements of the D15.17 development control, in that it has not demonstrated that the addition of a mooring pen will not exceed the mooring cap in Pittwater, the development proposal is not supported.</p> <p><b>Additional Comments in Regard to Swing Mooring Retention (29 May 2023)</b> The applicant has reiterated a request to retain the existing swing</p>

Internal Referral Body	Comments
	<p>mooring licence in addition to the proposed mooring pen, however, has once again provided no evidence that the addition of a mooring pen will not exceed the mooring cap in Pittwater or the Scotland Island Mooring Area total.</p> <p>Advice obtained independently by council staff from Transport for NSW indicates that there are just over 3500 moorings in Pittwater (mooring cap is 3641) and there is no waiting list for the Scotland Island Mooring Area. As such Council is able to support a resident only retention of the existing swing mooring licence in addition to the proposed mooring pen.</p>
NECC (Development Engineering)	<p><b>19/04/2023:</b> Proposed works are out of geotechnical hazard map, hence no Geotech assessment is required. No objections to approval and no development conditions required.</p> <p><b>21/03/2023:</b> The proposal seeks approval for the construction of a mooring pen. <b>Geotech</b> The proposed development is located within a Geotechnical Hazard H1 area. In accordance with Clause B3.1 Landslip Hazard of Pittwater 32 DCP, a risk assessment is to be undertaken (Geotechnical Risk Management Policy for Pittwater) for the site. Geotech Report with forms 1 and 1(a) is to be provided.</p>
NECC (Riparian Lands and Creeks)	<p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>- Supplied plans and reports;</li> <li>- Coastal Management Act 2016;</li> <li>- State Environmental Planning Policy (Resilience and Hazards) 2021;</li> <li>- Relevant LEP and DCP clauses; and</li> <li>- Northern Beaches Council Water management for development policy.</li> </ul> <p>Riparian</p> <p>The site is within the Pittwater Estuary and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of Pittwater, or the quantity and quality of surface and ground water flows that it receives.</p> <p>Sediment Management</p> <p>Silt curtains, as prescribed in the Aquatic Ecology Report and the CEMP , must be installed prior to any disturbance of estuarine sediments and must be maintained over the course of the works.</p> <p>CEMP and Caulerpa Management Plan</p> <p>The CEMP must include methods to minimise any disturbance of <i>Caulerpa taxifolia</i> and the spread of Caulerpa fragments out of the work area during the project.</p>

Internal Referral Body	Comments
	The proposal is therefore supported.
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	<p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>
Integrated Development - DPI Fisheries - Fisheries Management Act, s205 - Marine vegetation— regulation of harm	<p>The application is supported by a consent letter from the Department of Primary Industries (Fisheries) dated 8 February 2022 which advises the following.</p> <p>The proposal does not include any dredging, reclamation, harm to marine vegetation, or blockage of fish passage, and therefore DPI Fisheries does not consider the proposal to constitute Integrated Development under s.91 of the Environmental Planning and Assessment Act 1979. DPI Fisheries does not need to be consulted at the development application stage unless there are amendments to the proposal.</p> <p>The recommendations included within this letter are included in the recommended conditions of consent.</p>

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

All, Environmental Planning Instruments (SEPPs 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 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 (Transport and Infrastructure) 2021**

#### Ausgrid

Section 2.48 of Chapter 2 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 who raised no objections, subject to conditions which have been included in the recommendation of this report.

### **SEPP (Resilience and Hazards) 2021**

#### **Chapter 2 – Coastal Management**

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

#### **Division 3 Coastal environment area**

##### **2.10 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 unlikely to cause an adverse impact on the above matters. The proposal has been assessed by Council's Coast and Catchments Officer and Riparian Lands and Creek Officer deeming it acceptable subject to the recommended conditions.

- 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 subsection (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:

The proposed development has been designed and sited and will be managed to avoid adverse impacts on the coastal environment.

**Division 4 Coastal use area**

**2.11 Development on land within the coastal use area**

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
  - 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
    - ii) platform for members of the public, including persons with a disability,
    - iii) overshadowing, wind funnelling and the loss of views from public places to
    - iv) foreshores,
    - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
  - b) is satisfied that:
    - i) the development is designed, sited and will be managed to avoid an adverse
    - ii) impact referred to in paragraph (a), or
    - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or 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 likely to cause adverse impact on foreshore access, overshadowing, wind funnelling, views, amenity or heritage. The development has been designed and sited to avoid adverse impacts to the coastal use area.

**Division 5 General**

**2.12 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 increased risk of coastal hazards.

**2.13 Development in coastal zone generally—coastal management programs to be considered**

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

The proposal has been reviewed against all relevant legislation and policies.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

**Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

**Pittwater Local Environmental Plan 2014**

Is the development permissible?	Zone C3 : Yes Zone W1 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone C3 : Yes Zone W1 : Yes

**Principal Development Standards**

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Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	4m	3.1m (top of piles)	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.7 Development below mean high water mark	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes

#### Detailed Assessment

##### **7.1 Acid sulfate soils**

Clause 7.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 1 and 5, as indicated on Council's Acid Sulfate Soils Planning Map.

Any works within a Class 1 acid sulfate soil area are required to be assessed to determine if any impact will occur.

Clause 7.1 (6) stipulates:

(6) *Despite subclause (2), development consent is not required under this clause to carry out any works if—*

- (a) *the works involve the disturbance of less than 1 tonne of soil, and*
- (b) *the works are not likely to lower the watertable.*

#### Comment

The works involve disturbance of less than 1 tonne of soil, as the proposed piles will be driven into the seabed with no excavation required, As such, the works are not likely to lower the watertable.

#### **Pittwater 21 Development Control Plan**

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
A4.8 Lower Western Foreshores and Scotland Island Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.13 Pollution Control	Yes	Yes
D8.1 Character as viewed from a public place	Yes	Yes
D8.15 Site disturbance	Yes	Yes
D8.16 Scenic Protection Category One Areas	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	Yes	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.15 Waterfront development		
D15.17 Moorings	Yes	Yes

### Detailed Assessment

#### **D15.15 Waterfront development**

D15.15 b) Berthing areas stipulates the following requirements:

- The proponent must demonstrate that they do not already hold, or cannot obtain, a swing mooring, marina berth or boat shed where they could reasonably store their boat;
- That there is sufficient depth of water below the vessel being 600 mm depth at zero low tide ( - 1.53 AHD);
- That it does not extend beyond the seaward face of any related pontoon, piles or jetty steps;
- That there is sufficient clearance from prolongation of adjoining boundaries (i.e. a minimum of 2.5 metres)
- That it be designed and located to enable efficient and safe manoeuvring without impinging on adjoining neighbours; and
- The size of vessel must be accommodated wholly within the lease area.

#### Comment

The proposal seeks to retain the existing swing mooring in addition to the proposed mooring pen which is contrary to this control. Advice has been obtained by Council from Transport for NSW indicating there are just over 3500 moorings in Pittwater (cap is 3641) and there is no waiting list for the Scotland Island

Mooring Area. As such, a variation to this control is supported in this instance.

There is sufficient depth of water for the vessel as the shallowest point for the berthing area is -2.22 AHD. The berthing area extends approximately 4.3m from the existing pontoon and does not comply with the control. However, the berthing area aligns with the existing pontoon at No. 5 and is consistent with the existing waterfront development. The berthing area is setback 2.3m-2.7m from the prolongation of the western boundary and is partly non-compliant. This is due to the angled boundary and the position of the berthing area being parallel to the jetty resulting in a varied setback. The berthing area is sited with sufficient spatial separation from adjoining structures so as not to impinge upon manoeuvring of vessels. Lastly, the size of the vessel will be accommodated wholly within the 9m x 5m berthing area.

#### Merit consideration

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

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

#### Comment

The proposal has been reviewed by Council's Coast and Catchments Officer, Riparian Lands and Creeks Officer and Bushland and Biodiversity Officer. The proposal is deemed acceptable subject to the recommended conditions and is not considered to have an adverse impact on the water quality and estuarine habitat of Pittwater.

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

#### Comment

The proposed berthing area does not impact public access along the foreshore.

- *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

The proposed berthing area is appropriately sited so as not to impact on any navigational channels.

- *Structures blend with the natural environment.*

#### Comment

The proposed berthing area includes the installation of 4 piles that will appropriately blend with the natural environment and existing structures.

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

#### Comment

The proposed development will be consistent with the visual quality of surrounding waterfront development. It is considered the proposed development will not be 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

The proposal is not a commercial waterfront development. This outcome is therefore not applicable.

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

Comment

As demonstrated above, the proposed waterfront development complies with the outcomes of this clause and is considered to be both appropriate and acceptable.

Having regard to the above assessments, it is concluded that the proposed development is consistent with the relevant outcomes of the 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.

## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly affect 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 2022**

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 2021;
- 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 DA2023/0181 for Construction of a mooring pen on land at Lot 110 DP 12749, 7 Florence Terrace, SCOTLAND ISLAND, Lot LIC 404399, 7 Florence Terrace, SCOTLAND ISLAND, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

#### 1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

##### a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DWG 01 Rev 01 - Site Plan	February 2023	Harbour Planning
DWG 02 Rev 01 - Aerial Image View	February 2023	Harbour Planning
DWG 03 Rev 01 - Elevation Plan	February 2023	Harbour Planning

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Marine Habitat Survey 7 Florence Terrace, Scotland Island	3 December 2021	H2O Consulting Group

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

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:

<b>Other Department, Authority or Service</b>	<b>EDMS Reference</b>	<b>Dated</b>
Ausgrid	Ausgrid Referral Response	Undated
Aboriginal Heritage Office	AHO Referral Response	6 March 2023
Department of Primary Industries	DPI Fisheries Consent	8 February 2022

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

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

**3. Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifier for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in

progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

#### 4. **General Requirements**

- (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) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) 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.
- (e) 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.
  - (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
  - (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
  - (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
  - (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
  - (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
  - (k) 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.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
  - (ii) Swimming Pools Amendment Act 2009
  - (iii) Swimming Pools Regulation 2018
  - (iv) Australian Standard AS1926 Swimming Pool Safety
  - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
  - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

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

### 5. **Construction Environment Management Plan**

A Construction Environmental Management Plan (CEMP) must be prepared in accordance with the environmental risks and mitigation methods identified in the Aquatic Ecology Report prepared by H2O Consulting Group and must be kept in the site office.

An induction plan for site personnel must be prepared that addresses the CEMP.

The CEMP must also include a Caulerpa Management Plan, details can be found on NSW DPI Fisheries website.

The CEMP and site induction plan must be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

Reason: To protect native vegetation, wildlife, habitats and receiving waterways.

### 6. **Estuarine Hazard Design Requirements**

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.

Reason: To minimise risks associated with coastal hazards for development in an estuarine environment.

### 7. **Lawful Authority to Use and Occupy Crown Land or Waterway**

An executed licence agreement from the relevant NSW government agency governing the use

and occupation of Crown land is required to be obtained prior to the issue of a construction certificate.

Reason: To ensure that lawful authority under the Crown Land Management Act 2016 to use and occupy Crown land or waterway is obtained before construction commences.

8. **Compliance with Marine Habitat Survey Report**

The development is to comply with all recommendations of the approved Marine Habitat Survey Report prepared by H2O Consulting Group, dated 3 December 2021 and these recommendations are to be incorporated into construction plans and specifications for the proposed development. Evidence demonstrating compliance must be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure estuarine habitat and biodiversity is addressed appropriately.

9. **Compliance with Standards**

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

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifier prior to the issue of the Construction Certificate.

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

10. **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 Certifier 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.

## CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

11. **Sediment and erosion controls (in-stream works)**

For in-stream works a Silt Curtain is to be installed, as per recommendation in the Aquatic Ecology Report prepared by H2O Consulting around the proposed site prior to any disturbance of soil in or beside the waterway.

Controls can be removed once in-stream work has been completed and banks have been appropriately stabilised.

Reason: Protection of the receiving environment.

12. **Site inductions for Construction Environment Management Plan**

The site Environmental Officer (or appropriate equivalent) must induct all staff prior to starting work, with an induction record maintained and available onsite at all times.

Personnel conducting the site induction must:

- (a) Be familiar with any environmental protection conditions under the development approval and/or the Construction Environment Management Plan
- (b) Be familiar with the names and contact details of relevant people and authorities in the event of any environmental or site management emergency.
- (c) Be familiar with the presence of environmentally significant areas within and surrounding the site.
- (d) Be able to identify threatened species of fauna if they enter the site, especially Red-crowned Toadlet.
- (e) Be familiar with animal welfare issues and procedures should human-wildlife interactions take place during the construction phase.

Reason: To ensure all personnel understand what must be done to protect native vegetation, wildlife, habitats and receiving waterways on the site.

13. **Management of *Caulerpa taxifolia***

The invasive marine alga *Caulerpa taxifolia* is present on this site. Site personnel must be able identify *Caulerpa*. All tools, machinery and environmental control devices must be inspected and cleaned thoroughly prior to leaving the site to prevent the spread of *Caulerpa* to other sites.

Any *Caulerpa* removed from the waterway should be tightly sealed in a plastic bag and lawfully disposed in general waste.

Reason: *Caulerpa taxifolia* is listed under the Biosecurity Act 2015 for all NSW waters.

14. **Aquatic sediment management**

Environmental safeguards (e.g. silt curtains) are to be used during construction to prevent the escape of turbid plumes into the aquatic environment. The silt curtains must be carefully placed and secured to ensure they do not drag over any nearby seagrass beds.

The safeguards must be regularly maintained and removed once the works are completed.

Reason: Protection of seagrass.

15. **Use of equipment and vessels in the vicinity of seagrass**

No equipment is to be placed on any seagrass beds.

Inshore infrastructure for mooring vessels and plant must be used where suitable. Where mooring lines or cables are required, they shall be suitably buoyed prior to laying and kept buoyed once laid to prevent cable drag or swing damage (scalping). Where this is impractical, contractors should use a floating rope.

Vessels must have adequate clearance over seagrass beds, including allowance for tidal movement, swell/wind wave heights and vessel propulsion.

Reason: Protection of seagrass.

16. **Stockpiling materials**

During construction, all material associated with works is to be contained at source, covered and must be within the construction area. All waste material is to be removed off site and disposed of according to the Waste Management Plan and applicable regulations. The work area is to be kept clean and tidy and any building debris must be removed as frequently as required to ensure no debris or pollutants enter receiving waters.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within receiving waters throughout the construction period.

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

17. **Compliance with Marine Habitat Survey Report**

The development is to comply with all recommendations of the approved Marine Habitat Survey Report prepared by H2O Consulting Group, dated 3 December 2021 and these recommendations are to be maintained over the life of the development.

Reason: To ensure preservation of the development and the estuarine environment.

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

**Signed**



**Olivia Ramage, Planner**

The application is determined on 02/06/2023, under the delegated authority of:



**Adam Richardson, Manager Development Assessments**