

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1639
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Responsible Officer:	Kent Bull
Land to be developed (Address):	Lot A DP 27567, 158 Crescent Road NEWPORT NSW 2106 Lot LIC 316068, 158 Crescent Road NEWPORT NSW 2106
Proposed Development:	Construction of a seawall, including use of reclaimed land, a pontoon, a mooring pile and a berthing area
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Helen Elizabeth Anderson Timothy Andrew Anderson
Applicant:	Nicholas Cassidy

Application Lodged:	18/12/2020
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Other
Notified:	18/01/2021 to 01/02/2021
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 60,000.00
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PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for the construction of a seawall, including use of reclaimed land, a pontoon, a mooring pile and a berthing area (9m x 5m).

NB: As indicated under Section 1.5 of the *Environmental Planning and Assessment Act 1979*, a development application should only be for the proposed use and any future works. This development application seeks approval for some existing works which have already been constructed and these 'as built' works cannot be retrospectively approved by a development application.

A request (BLD2021/00793) has been made to Council's Environmental Compliance division to investigate these works.

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

Assessment - Integrated Development – DPI Fisheries - Fisheries Management Act (s201 Circumstances in which a person (other than a public or local government authority) may carry out dredging or reclamation)

Pittwater Local Environmental Plan 2014 - Zone W1 Natural Waterways

Pittwater 21 Development Control Plan - D15.15 Waterfront development

Pittwater 21 Development Control Plan - D15.18 Seawalls

SITE DESCRIPTION

Property Description:	<p>Lot A DP 27567 , 158 Crescent Road NEWPORT NSW 2106</p> <p>Lot LIC 316068 , 158 Crescent Road NEWPORT NSW 2106</p>
Detailed Site Description:	<p>The subject site relates to Crown land located below the Mean High Water Mark (MHWM) of 158 Crescent Road, Newport (legally referred to as Lot A DP 27567) and is subject to Crown License No. RI 572188.</p> <p>Land held under license below MHWM is zoned W1 Natural Waterways under the provisions of the Pittwater Local Environmental Plan 2014. This area falls within land identified as "Area 23" on the Additional Permitted Uses Map and therefore development for the purposes of jetties or water recreation structures are permitted with consent.</p> <p>No. 158 Crescent Road, Newport is an irregularly shaped battle-axe allotment with a MHWM frontage measured at 45.435m, a lot depth of up to 67.92m and an area of</p>

PITTPATER

NEWPORT

PANIMA PLACE

CRESCENT ROAD

164A
164B

158 160

162 164

153 154 155

1 2 3 4 5 6 7 8

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NORTHERN BEACHES COUNCIL
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dwelling house was granted consent.

APPLICATION HISTORY

22 January 2021

Letter sent to the applicant from Council identifying that insufficient information had been provided in relation the proposed seawall.

23 January 2021

Confirmation received of the notification sign erected on site.

8 February - 15 February 2021

Email correspondence between the applicant and assessing officer to resolve matters concerning a NSW DPI Fisheries referral and for plans to be amended demonstrating a compliant berthing area.

16 February 2021

The applicant submits amended plans attempting to address concerns in the letter. These amended plans were accepted by Council and form the basis of the following assessment.

24 February 2021

Applicant submits a Seawall Risk Management Report which is accepted by Council.

9 April 2021

Site inspection undertaken by the assessing officer.

14 April 2021

The applicant provide Council with a copy of the current Crown Licence applicable to the site.

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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions	Pittwater 21 Development Control Plan applies to this proposal.

Section 4.15 Matters for Consideration'	Comments
of any development control plan	
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was formally requested, however in response to a issues raised in a withdrawal letter, the applicant submitted amended plans and a coastal engineers report.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 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) Environmental Impact 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) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact 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 site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 18/01/2021 to 01/02/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Mr Martin Lloyd Payne	39 Beaconsfield Street NEWPORT NSW 2106
Mr Richard Henry Harper	37 Beaconsfield Street NEWPORT NSW 2106

A total of two (2) submissions were received in support of the development application. No objections or issues were raised in any of the submissions.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	<p>The applicant seeks consent to construct a seawall required for bank stabilisation, which includes reclamation, proposed berthing area and the authorisation of a pontoon and one mooring pile.</p> <p>Environmental Health has considered the Statement of Environmental Effects (SoEE) by SDG dated 13 May 2019 and the Marine Habitat Survey by H2O Consulting Group 27 January 2018.</p> <p>Pittwater is classified as class 1 for acid sulfate soils. Clause 7.1 of Pittwater LEP (taken from the standard instrument), provides exemptions to the requirement for an acid sulfate soil management plan (as stated in the SoEE), however, this clause was not formulated with significant consideration to aquatic developments. As such, if acid sulfate-related pollution issues are considered in the context of the LEP alone, the person/company in charge of an aquatic development may place themselves at risk of breaching the Protection of the Environment Operations Act 1997 and/or the Fisheries Management Act 1994 during construction.</p> <p>Pittwater is known to contain an accumulation of harmful and persistent contaminants within its sediment profile. Many of these contaminants, historically deposited as a result of marine-related industrial activities, became encapsulated by sediment deposited thereafter. ASS, known to be present in Pittwater, are also contained within waterlogged sediment layers.</p> <p>Dredging, driving and removal of jetty piles, barge movements etc., can cause re-suspension of previously encapsulated sediments and contaminants. ASS released into surface waters can react with</p>

Internal Referral Body	Comments
	<p>dissolved oxygen in a two-stop process to produce acid and facilitate the release of certain metals and metalloids (e.g. arsenic).</p> <p>It should be noted that monosulfides have been identified within Pittwater sediments and that certain areas of Pittwater are not well-flushed.</p> <p>Environmental Health are concerned that the cumulative effect of aquatic developments will significantly lower both the recreational value of Pittwater and cause ecological harm. As such, each development must be carefully considered and monitored.</p> <p>Environmental Health recommends approval subject to conditions.</p>
NECC (Bushland and Biodiversity)	<p>Council's biodiversity referrals team have assessed the development application for compliance against relevant biodiversity legislation, policies and controls including the following:</p> <ul style="list-style-type: none"> • Pittwater LEP cl. 7.6 Biodiversity Protection • Coastal Management SEPP <p>No terrestrial native vegetation is required for removal as a result of the proposed development, therefore the application is considered to satisfy relevant biodiversity policies and controls as listed above.</p>
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>The application has been assessed in consideration approval/support of:</p> <ul style="list-style-type: none"> • Consent to lodge DA from the Department of Crown Lands under the NSW Planning, Industries & Environment dated 15 July 2020 • No navigational Concerns from the Transport for NSW-Maritime Division dated 27 March 2018 enclosing dated and signed maps • Conditional No Objection from the DPI-Fisheries under the Department of Primary Industries dated 2 February 2021 <p>and Marine Habitat Survey prepared by H20 Consulting Group Pty. Ltd. dated 27 January 2018.</p>

Internal Referral Body	Comments
	<p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>Further, the applicant has proposed construction of a seawall. Hence the proposed development has been assessed also against the requirements of the Section 27 of the <i>Coastal Management Act 2016</i>. As required, the impact & risk associated with the construction/of the seawall has been assessed in an Seawall Risk Management Report prepared by Horton Coastal Engineering dated 23 February 2021.</p> <p>Based on the impact and risk identified in the provided report, Council applies maintenance condition as per Section 27(b)(ii) in approving this DA</p> <p>State Environmental Planning Policy (Coastal Management) 2018 The proposed development site has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by SDG Land Development Solutions dated 13 May 2019 and amended dated 7 December 2020 , the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p>Estuarine Hazard Management</p>

Internal Referral Body	Comments
	<p>The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7-B3.10 Estuarine Hazard Controls will apply to any proposed development of the site. The Estuarine Hazard Controls do not apply to Jetties, Bridging Ramps or Pontoons located on the seaward side of the foreshore edge.</p> <p>However, development works proposed are located on the seaward side of the foreshore edge on crown lands, below the Mean High Water Mark (MHWM).</p> <p>The proposed development is therefore not required to satisfy the relevant estuarine risk management requirements of P21 DCP.</p> <p>Development on Foreshore Area</p> <p>A large section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area.</p> <p>However, development works proposed are located on the seaward side of the foreshore edge on crown lands, below the Mean High Water Mark (MHWM).</p> <p>Therefore, the proposed development is not required to satisfy the relevant Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014.</p> <p>Development seaward of mean high water mark</p> <p>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 of the Pittwater 21 DCP applies to proposed development.</p> <p>Comment:</p> <p>On internal assessment and as assessed in the submitted Statement</p>

Internal Referral Body	Comments
	<p>of Environmental Effects (SEE) report prepared by SDG Land Development Solutions dated 13 May 2019 and amended dated 7 December 2020, the DA satisfies requirements under the Section D15.12: Development seaward of mean high water mark of the Pittwater 21 DCP. An analysis of the proposal demonstrated that the proposed development will not adversely impact on the visual amenity of the foreshore or water quality or estuarine habitat of the Pittwater waterway.</p> <p>This has been supported in the Marine Habitat Survey prepared by H2O Consulting Group Pty. Ltd. dated 27 January 2018 indicating that the proposed development is minimal and the disturbance that will occur will be minimal and potentially offset by the environmental improvements the works will provide.</p> <p>As such, it is considered that the application does comply with the requirements of the Section D15.12: Development seaward of mean high water mark of the Pittwater 21 DCP.</p>
NECC (Development Engineering)	<p>The submitted Geotechnical report certifies that an acceptable risk is achievable for the development.</p> <p>No objection to approval, subject to conditions and approval from Coast and Catchments.</p>
NECC (Riparian Lands and Creeks)	<p>This application has been assessed against relevant legislation for the protection of waterways.</p> <p>Given the ecological importance of estuarine plants, the seawall is to be constructed behind the <i>Juncus</i> spp. plants and construction techniques that minimize shoreline disturbance be implemented. If any <i>Juncus</i> spp. plants require removal they should be replanted in front of the seawall after construction. Silt curtains should be used to control any potential impacts on water quality from construction works below the HWM. They are to be installed prior to commencement of works to prevent the release of turbid plumes into the aquatic environment during construction.</p> <p>All contractors must be familiar with the invasive alga <i>Caulerpa taxifolia</i> and the measures to be taken if it is found onsite.</p> <p>With the application of these conditions it is considered unlikely that the proposal will have an adverse impact on the integrity and resilience of the biophysical, ecological and hydrological environment. It is therefore recommended for approval subject to conditions.</p>
External Referral Body	Comments

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs 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, REPs 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 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 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 Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

13 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 to the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment, coastal environmental

values and natural coastal processes, the water quality of the marine estate, or to marine vegetation native vegetation and fauna and their habitats, undeveloped headlands and rock platforms. The application is also supported by a response from the NSW Department of Primary Industries identifying no adverse impact upon the key fish habitats. The proposed sea wall, pontoon, piles and berthing area does not restrict on any existing public open space or safe access along the foreshore for members of the public, including persons with a disability. The proposed development is not likely to cause an adverse impact to the use of the surf zone.

- (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 subclause (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:

As detailed above, the proposed development has been designed, sited and will be managed to avoid an adverse impact on the cultural and environmental aspects referred to in Subclause 1.

14 Development on land within the coastal use area

- (1)
- (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 platform for members of the public, including persons with a disability,
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
 - (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) 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 an adverse impact on the existing access along the foreshore for members of the public, including persons with a disability and will not cause any overshadowing, wind funnelling or loss of views from public places to foreshores. The visual amenity and scenic qualities of the coast, including the coastal headlands will be preserved. The proposed development will also not have an adverse impact on the cultural and built environment heritage. As such, it is considered that the proposed development had been designed, sited and will be managed to

avoid an adverse impact on the above mentioned cultural and environmental aspects. Furthermore, the proposed development is consistent with the surrounding coastal and built environment, which consists of low-density residential dwellings services by jetties within the Pittwater waterways, and is of an appropriate bulk, scale and size.

15 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:

It has been considered that the proposed development will not likely cause increased risk of coastal hazards on the subject site or other land.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	4m (W1 Zone)	Top of pile: RL 2.9 AHD	-	Yes
		Top of seawall: RL 1.6 AHD	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone W1 Natural Waterways

Development for the purposes of a seawall including the use of reclaimed land is considered to be permissible with consent under the definition of 'environmental protection works'.

'Environmental protection works' is defined under the Pittwater Local Environment Plan 2014 (PLEP 2014).

"means works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes bush regeneration works, wetland protection works, erosion protection works, dune restoration works and the like, but does not include coastal protection works."

Development for the purposes of water recreational structures are not listed within the land use table as permissible development within the Zone W1 Natural Waterways Land Use Table of the PLEP 2014.

However, Clause 2.5 of the PLEP 2014 allows for additional permitted uses on particular land, as described or outlined in Schedule 1 of the PLEP 2014. Schedule 1 Clause 23 states the following:

23 Use of certain land in Zone W1 Natural Waterways

- (1) *This clause applies to land identified as "Area 23" on the Additional Permitted Uses Map.*
 (2) *development for the purposes of boat sheds, jetties or water recreation structures is permitted with development consent.*

As the subject application is for water recreation structures located within "Area 23" on the Additional Permitted Uses Map, the proposed development is permissible with consent.

Pittwater 21 Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport 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
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D9.17 Scenic Protection Category One Areas	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.16 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D10.18 Scenic Protection Category One Areas	Yes	Yes
D15.11 Waterfront lighting	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	No	Yes
D15.18 Seawalls	No	Yes

Detailed Assessment

D15.15 Waterfront development

Pontoon

The existing pontoon is of dimensions 2.7m x 4.2m is inconsistent with the diagrammatic requirement that pontoons be no more than 2.4m x 6m. Despite this non-compliance, the pontoon arrangement is not considered to have a detrimental impact environmentally, to the visual quality of the waterway and is seen to be generally consistent with other pontoons within the vicinity.

Berthing Area

The proposed berthing area configured parallel to the MHWL is non-compliant with the control requirement for vessels being berthed at right angles to the MHWL to minimise visual impact on the foreshore, where practicable. The control does however allow for the consideration of vessels berthed parallel to the MHWL provided that the parallel moored vessel does not restrict navigation.

Careful consideration was given to a berthing area at a right angle to the MHWL (to the east of the existing pontoon), however concerns were raised that there may not be a sufficient water depth for vessels.

The application is supported by a response from NSW Roads and Maritime Services that advised an inspection/assessment conducted by the local Boating Safety Officer indicated there were no navigational concerns regarding the proposal. Further, the location of the proposed berthing area is not considered to unreasonably impact upon the equitable use of the waterways for neighbouring waterfront landowners. This is particularly relevant given the significant width of the waterfrontage of the subject site.

The application has not provided details as to the vessel intended to be moored within the berthing area. Despite this, the proposed dimensions of the berthing area being 9m (L) x 5m (W) is compliant with the maximum dimensions as prescribed under this clause. Whilst there appears to be sufficient water depths in the proposed berthing area, conditions have been applied to ensure that any vessel

accommodated meets the relevant criteria on this clause.

Based on the above, the proposal is considered to satisfy the outcomes of this clause and is supported on merit.

D15.18 Seawalls

The proposed sea wall being RL 1.6AHD is technically non-compliant with the criteria that states a maximum recommended height of 1 metre above mean high water mark (1.5 metres AHD). In considering a variation to this criteria, it should be noted that the top of the sea wall of No. 7 Panima Place, Newport (adjoining the west of the subject site) is measured at 2m with the top of the sea wall at No. 158 Crescent Road, Newport (adjoining the east of the subject site) is measured at RL 1.55m. In this regard, the proposed stone sea wall achieves a level of height consistency with the adjoining seawalls of both adjoining properties (Figure 1).



Figure 1. Annotated image taken from Crescent Road Reserve indicating the location of the proposed sea wall in relation to the existing sea walls of adjoining properties.

Based on the above, the proposal is considered to satisfy the outcomes of this clause and is supported on merit.

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 2019

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 2000;
- 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 DA2020/1639 for Construction of a seawall, including use of reclaimed land, a pontoon, a mooring pile and a berthing area on land at Lot A DP 27567, 158 Crescent Road, NEWPORT, Lot LIC 316068, 158 Crescent Road, NEWPORT, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Sheet 1 of 2, Issue F	12/02/2021	SDG Land Development Solutions
Sheet 2 of 2, Issue F	12/02/2021	SDG Land Development Solutions

Reports / Documentation – All recommendations and requirements contained

within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Marine Habitat Survey: 158 Crescent Road, Newport	27 January 2018	H20 Consulting Group Pty Ltd
Geotechnical Letter, Ref. QY 00167A	8 December 2020	Hodgson Consulting Engineers Pty Ltd
Seawall Risk Management Report for 158 Crescent Road Newport	23 February 2021	Horton Coastal Engineering Pty Ltd

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

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:

Other Department, Authority or Service	EDMS Reference
NSW Road and Maritime Services	Re: development Application for proposed berthing area, seawall, reclamation & authorisation of one mooring pile & pontoon for 158 Crescent Road, Newport, Ref. 7188
Department of Planning, Industry & Environment - Crown Lands	Application for landowner's consent relating to -development comprising: Installation of a sea wall 45.4m and reclamation 142m ² Authorisation of a berthing area 11.25m x 4m, pontoon 2.7m x 4.2m and one mooring pile. on Crown land: Locational: Lot A DP 27567 Parish Narrabeen County Cumberland
Department of Primary Industries - Fisheries	IDA Referral, Ref. IDA21/4

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website 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 (Crown Land Only)**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

Reason: Legislative Requirement.

4. **General Requirements (Crown Land Only)**

(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) 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.

(c) 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.

(d) Where works are to be carried out to a Class 1a building, smoke alarms are to be installed throughout all new and existing portions of that Class 1a building in accordance with the Building Code of Australia prior to the occupation of the new works.

(e) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(f) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(g) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(h) All sound producing plant, equipment, machinery or fittings and the use will not exceed more than 5dB (A) above the background level when measured from any property boundary and/or habitable room(s) consistent with the Environment Protection Authority's NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997.

(i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(j) 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.

(k) Any Regulated System (e.g. air-handling system, hot water system, a humidifying system, warm-water system, water-cooling system, cooling towers) as defined under the provisions of the Public Health Act 2010 installed onsite is required to be registered with Council prior to operating.

Note: Systems can be registered at www.northernbeaches.nsw.gov.au

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

FEES / CHARGES / CONTRIBUTIONS

5. Security Bond

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

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

6. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Hodgson consulting engineers dated 8th December, 2020 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

7. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To provide public and private safety.

8. **Compliance with Seawall Risk Management Report**

The development is to comply with all recommendations (section 7) of the approved Seawall Risk Management Report prepared by Horton Coastal Engineering dated 23 February 2021 and these recommendations are to be incorporated into construction plans.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

9. **Structural Engineering for Estuarine Risk**

Structural engineering design for the seawall shall be prepared, with input as necessary from a chartered professional engineer with coastal engineering as a core competency, to ensure that for its design life (taken to be 60years and accepted by Council) the seawall is able to withstand the wave impact forces and loadings identified in the approved Seawall Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 23 February 2021.

Note: The potential for component fatigue (wear and tear) should be recognised for the less severe, but more frequent, wave impact loadings.

Reason: To ensure structural engineering is prepared by an appropriately qualified professional

10. **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 Certifying Authority prior to the issue of the Construction Certificate.

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

11. Sydney Water "Tap In"

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:

- "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

Reason: To ensure compliance with the statutory requirements of Sydney Water.

12. Details of sea wall construction

The following details must be incorporated as part of the sea wall construction:

- i) The sea wall is to be constructed of or faced in rectangular shaped sandstone, being either dressed or rough-cut in order to promote a uniform treatment along the foreshore.
- ii) Only clean fill is to be used behind the sea wall.
- iii) That there is no mortaring of the sea wall and a geotextile fabric is used behind the sea wall to prevent loss of sediment through the seawall.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of a Construction Certificate.

Reason: To minimise any adverse impacts associated with the construction of a sea wall.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

13. Environmental Health inspection before, during and after works

Notification must be given in writing to Council's Environmental Health team, no later than seven (7) business days prior to the date of commencement of works. No works relating to the removal or installation of piles, construction or removal of any other structure within the area classified as Class 1 for acid sulfate soils, are to commence until Council's Environmental Health Officer is on site to conduct an inspection and has taken water and soil samples. Council's Environmental Health Officer must be permitted entry to the site for the purposes of inspection and to collect before, during and after construction water and soil samples.

Reason: To facilitate environmental monitoring for the purposes of environmental protection.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

14. Road Reserve

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

15. **Management of *Caulerpa taxifolia***

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

If any *Caulerpa* is found on site it must be removed from the waterway, 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.

16. **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 damage the *Juncus spp* on site.

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

Reason: Protection of aquatic and intertidal environment.

17. **Barge Movements Not to Disturb Sediment or Seagrasses**

Barge movements to and from the approved construction footprint must be timed so as to not disturb sediment, or cause damage to any seagrasses.

Reason: To facilitate environmental monitoring for the purposes of environmental protection.

18. **Requirement to Notify About New Acid Sulfate Soils Evidence**

Any new information revealed during works that has the potential to alter previous conclusions about Acid Sulfate Soils, shall be immediately notified to the Council and the Principal Certifying Authority prior to further commencement.

Reason: Protection of the environment

19. **Protection of *Juncus spp* plants**

The seawall is to be constructed behind the *Juncus spp.* plants. Construction techniques that minimize shoreline disturbance are to be implemented. If any *Juncus spp.* plants require removal they should be replanted in front of the seawall after construction.

Reason: protection of estuarine vegetation

CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

20. **Geotechnical Certification Prior to Occupation Certificate**

The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**21. Compliance with Seawall Risk Management Report**

The development is to comply with all recommendations of the approved Seawall Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 23 February 2021 and these recommendations are to be maintained over the life of the seawall.

Reason: To ensure preservation of the development and the estuarine environment. To fulfil the maintenance condition as per Section 27(b)(ii) of the Coastal Management Act 2016.

22. Vessel dimensions

Any vessel berthed within the approved berthing area shall meet the following criteria:

- a) That there is sufficient depth of water below the vessel being 600mm depth at zero low tide; and
- b) The size of vessel must be accommodated wholly within the berthing area.

Reason: To ensure the vessel is of acceptable dimensions for the approved berthing area.

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

Signed



Kent Bull, Planner

The application is determined on 07/05/2021, under the delegated authority of:



Rodney Piggott, Manager Development Assessments