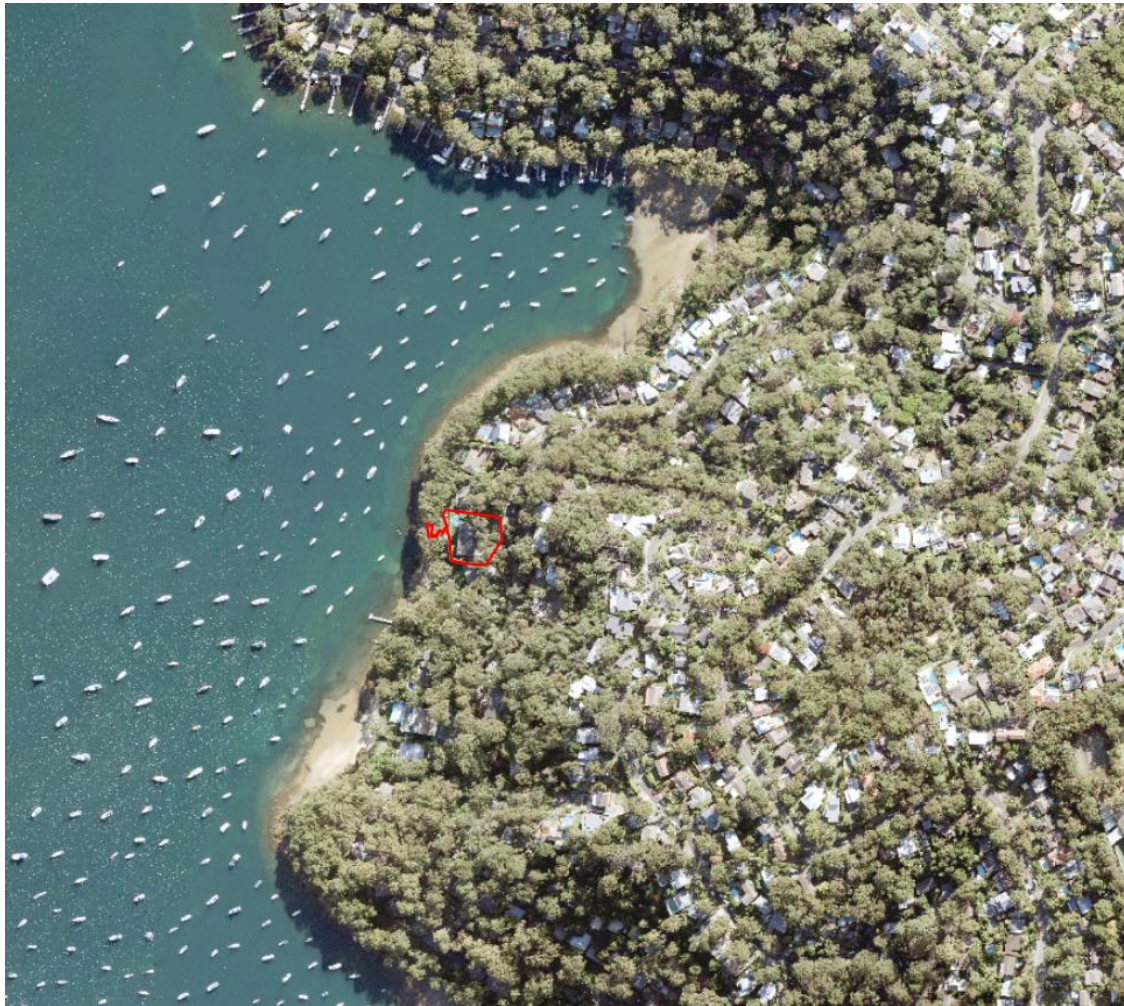


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# STATEMENT OF ENVIRONMENTAL EFFECTS DA\_V2

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Development Application – for Maritime Structures  
Adjacent 316 Hudson Parade  
Clareville NSW 2107



Prepared by:  
**Micheal Fountain Architects**  
2/5 Narabang Way  
Belrose NSW 2085



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## INTRODUCTION

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Use:	Residential – including a boatshed, ramp, slipway, concrete jetty, timber jetty and steps and berthing area.
Address:	Land adjoining 316 Hudson Parade, Clareville NSW 2107 (Lot 1 in DP 827733)
Lot No:	Lot 2 in DP 827733
	Crown land adjoining Lot 2 in DP 827733 and Lot 5 in DP 261693, known as “Pittwater”.
Zoning:	E2 - Environmental Conservation W1 - Natural Waterways
Prepared by:	<b>Micheal Fountain Architects Pty Ltd</b>
For:	Tony Walls (The Applicant)

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This Statement of Environmental Effects (SEE) has been prepared in support of a Development Application seeking approval to rebuild the marine structures that have existed lawfully on the site since at least 1947. (Ref Figure 1.)

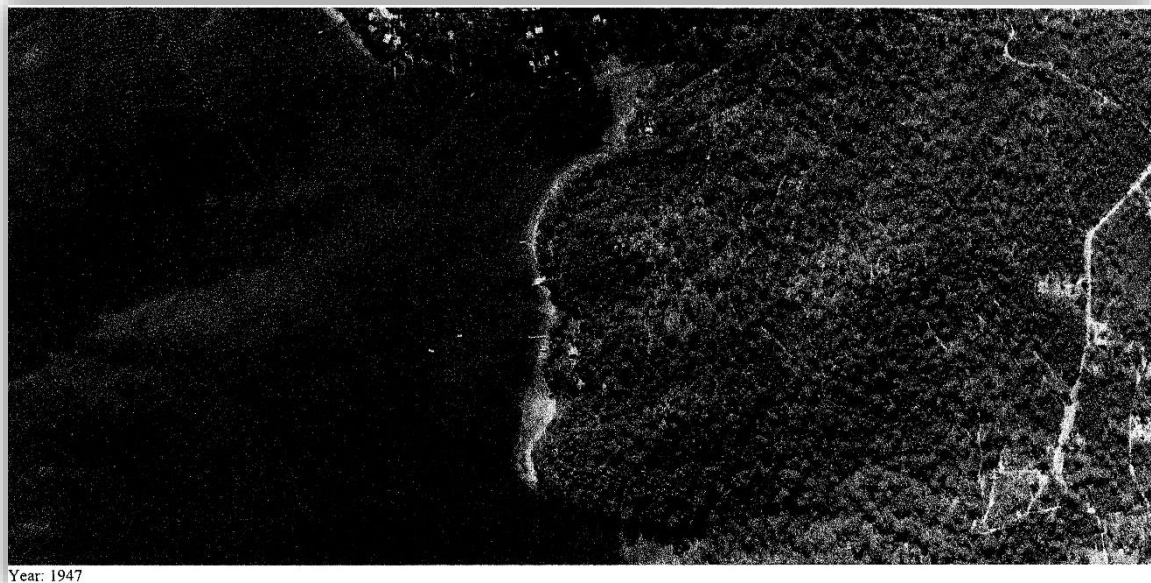


Figure 1.

The proposed uses enjoy existing use rights and have not been abandoned.

The prior structures were dilapidated and not in keeping with the desired character of the area. Whereas the new structures, while similar in scale, form and configuration, are proposed to be of higher quality natural materials that will blend with the landscape background at a distance while being of high aesthetic value at close range.

The reinstatement of the marine structures will have a positive effect on the local marine ecology and land form.





Montage - Prior Development



Montage - Proposed Development

In preparation of this SEE, consideration has been given to a range of documents and plans including, but not limited to the following:

**ARCHITECTURAL DRAWINGS:**

1605 DA - 00 – PLAN – Location  
1605 DA - 01 – PLAN – Site  
1605 DA - 10 – ELEVATION – North  
1605 DA - 11 – ELEVATION – South  
1605 DA - 12 – ELEVATION – East  
1605 DA - 13 – ELEVATION – West  
1605 DA - 20 – SECTION AA  
1605 DA - 21 – SECTION BB  
1605 DA - 30 – FINISHES/ MATERIALS

**SITE SURVEY:**

42235DT– LTS

**MONTAGE IMAGES – PRIOR AND PROPOSED**

**COASTAL and MARINE DAMAGES ASSESSMENT:**

Royal HaskoningDHV

**ESTUARINE RISK MANAGEMENT REPORT:**

Royal HaskoningDHV

**MARINE HABITAT SURVEY:**

BIO-ANALYSIS Pty Ltd (April 2021)

**PITTWATER LOCAL ENVIRONMENTAL PLAN 2014**

**PITTWATER 21 DEVELOPMENT CONTROL PLAN**

**COASTAL MANAGEMENT ACT 2016 (CM Act)**

## **PREFACE**

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This document references the relevant sections of the various planning instruments that control development on the sites.

Where the response is brief the planning instrument clause is provided as a heading alone.

Where the response is more complex the entire clause is quoted from the planning instrument and can be identified by indent and *italics*.

Our response to these clauses is provided in **blue** and *italics*.



## PROJECT BACKGROUND

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The structures at the address included a:

- Boatshed
- Timber Jetty and Steps
- Concrete Jetty
- Concrete Ramp
- Slipway Rails
- Berthing Area

The Applicant currently enjoys the benefit of a licence from Crown Lands over the land seaward of the Mean High-Water Mark which is valid until 2035 and is in negotiations with Council for a licence over Lot 2 (DP 827733), that joins his property at 316 Hudson Parade Clareville to the waterfront structures below the mean high-water mark.



Figure A.

In May 2016 an application was made to Crown Lands (DPI) to obtain Land Owners Consent to lodge an application to a Principal Certifying Authority (PCA) to provide a Complying Development Certificate (CDC) to repair and replace the structures listed in abovementioned licence.

Approval to lodge was granted by Crown Lands (DPI) on 15<sup>th</sup> July 2016.

CDC 4957/16 was approved and issued by PCA on the 24<sup>th</sup> November 2016.  
CDC 4957/16-1 modification to the first CDC was issued on the 24<sup>th</sup> May 2017.  
CDC 4957/16-2 modification to the second CDC was issued on the 11<sup>th</sup> May 2018.

The works were commenced by a contractor shortly after the issuance of the second CDC.

During the works, it was discovered that the concrete slab on which the boatshed had been built was poured over sand and rubble fill.

This fill was held in place by sandstone block sea walls.

Both the concrete slab and the seawalls were dilapidated and in danger of collapse.

It was decided that the safest solution was to:

- Remove the boatshed to gain access to the dilapidated slab.
- Pier through the slab to bedrock to support a new slab
- Use the old slab as formwork for the new concrete slab
- Build a new concrete wall, on sound footings, outside the seawall to protect the seawalls from water and wave action during construction.
- Place a new sandstone seawall against the new concrete wall to match the existing seawall.

These works were carried out, the result being that the concrete slab and seawalls remained mostly intact, containing the sand and rubble foundations.

If the outer wall was not built there was a high potential that the old walls and slab would collapse and risk the workers, machinery and fill entering Pittwater waterway.

Seeing the construction of the new concrete wall, a neighbour complained to Northern Beaches Council that unauthorised works were being undertaken on the site.

The result was that Council Officers attended the site and found that the removal of the boatshed and the construction of the concrete wall were not detailed in the CDC.

The Applicant contended that these were foundation works in progress and that they would not be in view when the works were completed. Furthermore, it was noted that most CDC applications do not go to a level of detailing to include footings and support structures.

The PCA agreed with the Applicant and following the presentation of more detailed documents and drawings, a modified CDC for the works was issued.

It was our clients, and the PCAs, view that this CDC remedied the situation.

Following a Council Officers site visit, a Stop Works Order was issued to the Applicant on 14th September 2018, stating that the works carried out were not in accordance with the CDC.

Construction works on the site were suspended in accordance with the Order.

An appeal against the Stop Works Order was lodged in The Land and Environment Court.

The outcomes of the Court proceedings were filed on 25th July 2019.

The proceedings were discontinued on the basis of undertakings made by the parties.

Those undertakings are:

1. Complying Development Certificate No. 4957/16 (and subsequent modifications) would be surrendered.
2. The Stop Work Order would be revoked.
3. No further work would be carried out by the Applicant on Lot 2 or Lot 5 unless a Lease and development consent had been obtained.
4. Council would act on any outstanding resolution made on 7 March 2016.
5. Council would not unreasonably withhold its consent to the making of a Development Application concerning its land at Lot 2.

Note in Figure A, that Lot 2, shown in red, is drawn around the pre-existing stair and boatshed. Lot 2 was created to facilitate access to the boatshed from the house at 316 Hudson Parade.

The Lease of Lot 2 to the owner of 316 Hudson Parade was a condition of the forced dedication of the private land to Council which is now known as Refuge Cove Reserve. Lot 2 is not part of the Reserve.

Upon the expiry of the original Lease, Pittwater Council resolved to licence the lot to the current owner of 316 Hudson Parade, Mr Walls and to delegate the negotiation of the licence to the General Manager.

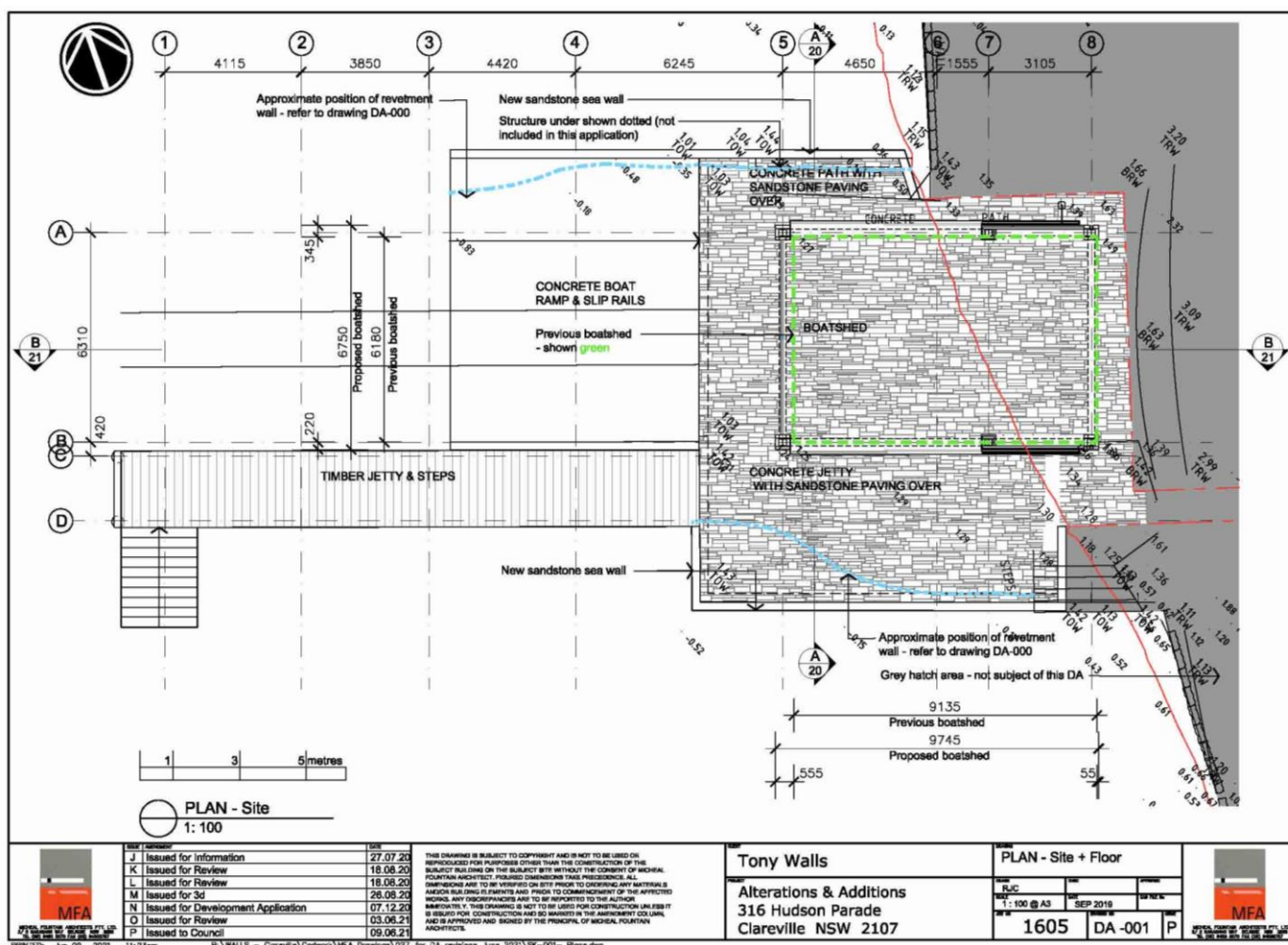
This is the subject of undertaking No.4 meaning that Council undertook to licence Lot 2 to Mr Walls and to grant land owners consent to the lodgement of the Development Application which is the subject of this SEE.



The Development Application seeks consent to rebuild the maritime structures that had previously existed on the site, for the same uses, including a boatshed, concrete jetty, concrete ramp, slip rails, timber jetty and steps and piles to a berthing pen, in similar locations (refer below plan).

The development configuration is slightly different to that which previously existed, the concrete jetty and ramp have been squared up and the boatshed is slightly larger than the original however all of the proposed structures are contained within the previous unit of land.

Public access will remain as it previously existed.



## EXISTING USE RIGHTS

Refer to Memorandum of Advice Ian Hemmings SC

For the purpose of this section, the maritime structures which are the subject of this Development Application, which include a boatshed, concrete jetty, ramp, timber jetty and stairs, slipway rails and mooring pen, will be collectively referred to as "the Structures".

The land upon which the Structures were erected is currently zoned E2 Environment Conservation (Crown Land) and W1 Natural Waterways. The use of the land for the purpose of the Structures is prohibited in each of the zones.

As a result, the consent to reconstruct the Structures will rely upon existing use rights.

Referencing a "Memorandum of Advice" from Ian Hemmings SC, (Attached)

In the conclusion of the "Memorandum of Advice", Hemmings writes:

*"67. The precise date of the erection of Structures upon the land is uncertain.*

*68. The Structures were erected after 1945 (and prior to 1951). Permission was required. That permission has not been located however; a presumption of regularity arises. That permission is deemed to be a development consent for the purposes of the Environmental Planning and Assessment Act.*

*69. The relevant use now being prohibited, there is an existing use founded upon the original permission (and now deemed development consent). The right to rely upon that (deemed) development consent cannot be abandoned.*

*70. In addition to that continuing consent the use also has the benefit of existing use rights. The existing use rights have not been abandoned. In those circumstances, a Development Application may be lodged to expand, alter, intensify and rebuild the structures. That Development Application must be limited to the relevant area (identified in the Regulations). That area is not limited to the surface area of the structures as they project above the water line. Nor is it limited to the area the subject of the permissive occupancy or now the licence.*

*71. Rather, the area extends beyond the surface area of the Structures as they project above the water line, to include support structures and also the area clearly and readily identifiable as being used for the purposes of the Structures.*

*72. A Development Application for the expansion, alteration, intensification and rebuilding of the Structures that confines itself to that area may both be lawfully made and determined, on the merits, by the Council."*

The development enjoys existing use rights, that use has not been abandoned and those rights can be expanded but only onto the relevant area as defined by the unit of land depicted below:



The relevant area is defined by the seaward piles of the existing structure, the eastern edge of the existing structure and a line to the north and south that links the two.

The changes to the original configuration outlined above are minor in nature, will have few environmental consequences and are necessary on the grounds of safety, improvement of the local visual environment and structural integrity respectively.



## MARINE ECOLOGY, NATURAL PROCESSES AND COASTAL LANDFORM

Refer To Marine Habitat Survey: Bio-Analysis Pty Ltd (April 2021)

Coastal and Marine Damages Assessment: Estuarine Risk Management Report: Royal HaskoningDHV

### COASTAL and MARINE DAMAGES ASSESSMENT:

*"Records show that the boatshed was in existence at the point of subdivision in 1981. It is our opinion that any early air photos of the site which may exist without any boatshed in place would most likely show a pocket beach in the same location as the existing pocket beach, but possibly with a reduced long-term average volume of beach fill. It is expected that similar behaviour would occur elsewhere in the Pittwater where boatshed foundations occupy the intertidal zone.*

*Importantly, the seawalls are effectively located inside the so-called Horizontal Shore Section of a notional groyne. While they may have a slightly higher elevation than the former boatshed floor level of 1.2-1.3m AHD, their influence as a groyne on longshore sediment transport would exhibit no material difference to that compared to the former boatshed and ramp structures. Accordingly, no impact or "damage" on longshore sediment transport would occur."*

The coastal and marina damages report concluded that should the walls that have been built be removed then there is the possibility that the average volume of beach fill will be reduced over time and that the proposed slightly higher boatshed floor level will cause no impact or damage on longshore sediment transfer.

### MARINE HABITAT SURVEY: BIO-ANALYSIS Pty Ltd (April 2021)

*"The proposed works should have an impact on the aquatic environment; however, this should be limited to the area where the works will occur if caution is taken to avoid further impacts to the seagrasses within close proximity of the proposal and to avoid dispersion of the noxious algae *Caulerpa taxifolia*."*

The marine habitat survey concluded that while the proposed works will have an impact on the aquatic environment that with care this impact will be limited to the actual area of work and not beyond it. Therefore, there will be no impact on the aquatic environment caused by the proposal.

### ASSESSMENT: ESTUARINE RISK MANAGEMENT REPORT: Royal HaskoningDHV

*"It is determined that the boat shed would be designed and constructed such that it would not increase the level of risk from estuarine processes for any people, assets or infrastructure on the site or in surrounding properties. All structural elements below the EPL would be constructed from assessed wave loading compatible materials as determined by the structural engineer and demonstrated by manufactured product directions as applicable. Suitable flood resistant building materials would be selected, and waterproofed services would be provided up to the EPL. Elements designed and installed to protect against wave action or tidal inundation would be maintained over the life of the structure. While an independent wave action and tidal assessment has been carried out, it is RHDHV's recommendation that Council's nominated EPL for the boatshed of 2.63m AHD be accepted."*

The assessment of estuarine risk carried out by Royal Haskoning concluded that the proposed boatshed would not increase the level of risk from marine processes and that Council's nominated EPL be accepted.

## PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

### PART 2 Permitted or prohibited development

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The land upon which the Structures were erected is currently zoned E2 Environment Conservation (Crown Land) and W1 Natural Waterways. The use of the land for the purpose of the Structures is prohibited in each of the zones Pittwater Land Zoning Map (Figure 2).

A request pursuant to Clause 4.6 of the LEP relating to permitted use is attached to this statement

The development will rely on existing use rights, as previously outlined, in order to seek a Development Consent from Northern Beaches Council.

The proposed works are consistent with the objectives of the zone, in that the significant landform is maintained and the structure does not dominate the landscape. The views to and from the water and cultural scenic quality will be preserved. Additionally, the scale and size of the development is appropriate to the locality and there is a demonstrated demand in the area.

## PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

### PART 4 4.3 Height

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The height of the proposed boatshed is controlled by Part 4 clause 4.3 of the LEP.

The maximum building height is defined by the height of buildings map.

The maximum building height in the W1 zone is 4m.

The maximum building height in the E2 zone is 8.5m.

The proposed height of the boatshed is 4.8m in line with the previous boatshed that enjoys existing use rights.

The objectives of Clause 4.3 are as follows—

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
- (c) to minimise any overshadowing of neighbouring properties,
- (d) to allow for the reasonable sharing of views,
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

The proposed additional height is consistent with these objectives in as much as the boatshed has been part of the character of the locality since at least 1947, is similar to the height of other boatsheds in the area, will not overshadow or block the views of neighbouring properties, will blend with the topography and will have little additional visual impact on the natural environment, heritage conservation areas and heritage items.

A request pursuant to Clause 4.6 of the LEP relating to building height is attached to this statement

# PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

## PART 7 Additional local provisions

### 7.1 Acid sulfate soils

With reference to the Pittwater Acid Sulfate Soils Map (Figure 9) the abutting site is zoned Class 5, which is the lowest possible rating. The proposed works do not involve excavation and as such it is not expected that acid sulphate soils will be influenced.

### 7.2 Earthworks

This control is not applicable to this development.

### 7.3 Flood planning

With reference to the NBC Flood Hazard Map (Figure 14) the sites are not on land with noted flood risk hazards.

### 7.4 Floodplain risk management

This control is not applicable to this development.

### 7.5 Coastal risk planning

With reference to the Pittwater Coastal Risk Planning Map (Figure 10) the sites are not subject to any known coastal risk.

### 7.6 Biodiversity

With reference to the Pittwater Biodiversity Map (Figure 12) the sites are identified as "Biodiversity". Since the works involve the rebuilding of structures, there will be minimal impact to local aquatic and land-based fauna and flora. Furthermore, the proposed development is supported by a report - Coastal and Marine Damages Assessment by Royal HaskoningDHV that indicates that the works have little effect on the local environment.

### 7.7 Geotechnical hazards

With reference to the Pittwater Geotechnical Hazard Map (Figure 11) the proposed works encroach a Geotechnical Hazard Zone H1. A Geotechnical Risk Management Form 1 accompanies the application.

### 7.8 Limited development on foreshore area

With reference to the Pittwater Foreshore Building Line Map (Figures 4 and 5) a small section of the proposed works is within illustrated foreshore area.

(1) The objectives of this clause are as follows—

- (a) to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,
- (b) to ensure continuous public access along the foreshore area and to the waterway.

*The proposed reinstatement of the boatshed and its surrounding structure within foreshore area will not impact on the natural foreshore processes or affect the amenity of the area.*

*Continuous access along the foreshore will be enhanced by the proposal.*

(2) Development consent must not be granted for development on land in the foreshore area except for the following purposes—

- (a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,

*It is not proposed to extend the footprint into the foreshore area.*

- (b) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).

*The proposal is consistent with these purposes*

(3) Development consent must not be granted under this clause unless the consent authority is satisfied that—

- (a) the development will contribute to achieving the objectives for the zone in which the land is located, and
- (b) the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and

*Council can be satisfied that the proposed reinstatement of part of the boatshed and its associated structures within the foreshore area are consistent with the objectives of the zone and will be compatible the surrounding area.*

- (c) the development will not cause environmental harm such as—

- (i) pollution or siltation of the waterway, or
- (ii) an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or
- (iii) an adverse effect on drainage patterns, or



- (iv) the removal or disturbance of remnant riparian vegetation, and
- (d) the development will not cause congestion or generate conflict between people using open space areas or the waterway, and

*Council can be satisfied that the proposed reinstatement of part of the boatshed and its associated structures within the foreshore area will not cause any environmental harm. (Ref reports from Royal Haskoning and Bio Analysis)*

- (e) opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and

- (f) any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained,

*Council can be satisfied that the proposed reinstatement of part of the boatshed and its associated structures within the foreshore area will facilitate continuous public access and not affect any of the factors mentioned in clause (f) and*

- (g) in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and

- (h) sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change, have been considered.

*Council can be satisfied that the continuous proposed reinstatement of part of the boatshed and its associated structures within the foreshore area will improve the aesthetic appearance of the foreshore and that sea level rise etc has been considered (Ref Royal Haskoning Report and the Photo Montage)*

- (4) In deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following—

- (a) continuous public access to and along the foreshore through or adjacent to the proposed development,
- (b) public access to link with existing or proposed open space,
- (c) public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,
- (d) public access to be located above mean high water mark,
- (e) the reinforcing of the foreshore character and respect for existing environmental conditions.

*Council can be satisfied that the proposed reinstatement of part of the boatshed and its associated structures within the foreshore area will facilitate public access, improve the foreshore character and respect the environmental conditions of the area.*

## 7.9 Residual lots

This control is not applicable to this development.

## 7.10 Essential services

This control is not applicable to this development.

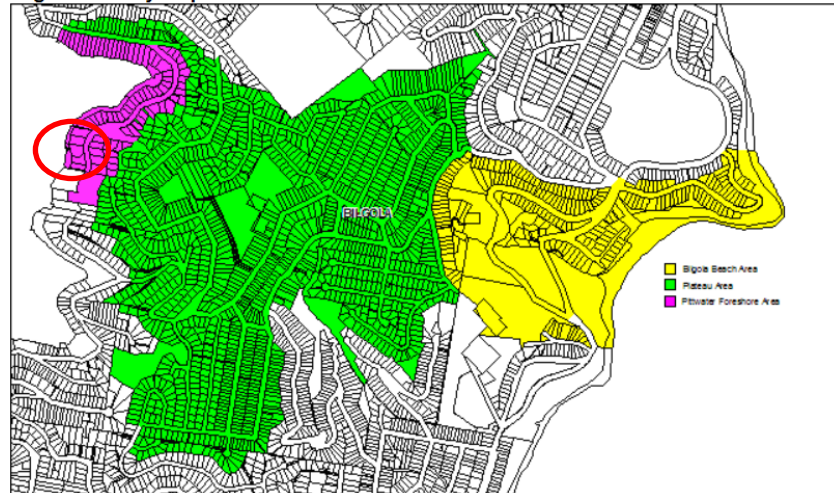
# PITTWATER 21 DEVELOPMENT CONTROL PLAN

## SECTION A – Shaping Development in Pittwater

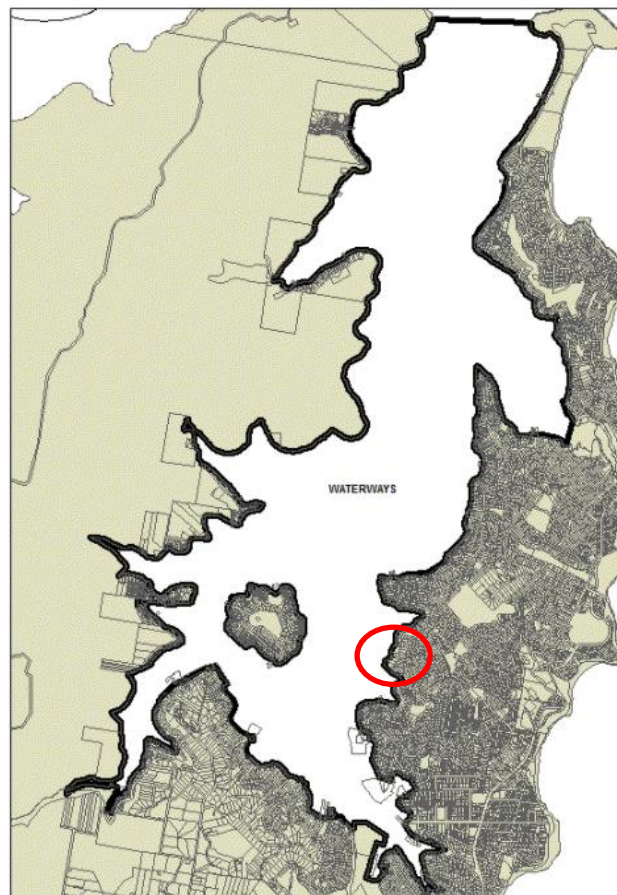
### A4 - Localities

With reference to the locality maps following, the site is in the locality of Bilgola and Waterways Localities – refer to SECTION D – Locality Specific Development Controls.

**Bilgola Locality Map 2**



**Waterways Locality Map**



### Future Character

*"The Bilgola locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary Dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.*

#### The Pittwater Foreshore Area:

*Contains areas of visual significance when viewed from the public open space of Pittwater. The visual amenity, natural flora and fauna, heritage and social values of the Pittwater Foreshore should be retained and protected.*

*Future development will maintain a building height limit below the tree canopy, and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandas and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.*

*A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.*

*Natural scenic views from the Bicentennial Walkway will be preserved.*

*Heritage items and conservation areas indicative of the Guringai Aboriginal people and of early settlement in the locality will be conserved.*

*Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities."*

*The proposed works are completely consistent with the Desired Future Character of the area. The proposal is low density and domestic in scale and is constructed from natural materials that harmonise with the surrounding environment. The Structures sit well below the tree canopy and dominant landform. As such they will maintain the visual significance of the landscape while maintaining the heritage and social values of the Pittwater Foreshore.*



## PITTWATER 21 DEVELOPMENT CONTROL PLAN

### SECTION B - General Controls

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#### B1 Heritage Controls

With reference to the Pittwater Heritage Map (Figure 8) the subject site does not have any heritage items, nor is it in a designated area with Aboriginal Heritage Significance.

#### B3.1 Landslip Hazard

With reference to the Pittwater Geotechnical Hazard Map (Figure 11), the site is an area that is zoned Geotechnical Hazard H1. As such, consultants will be engaged. Refer to Pittwater Local Environmental Plan 2014 – Part 7.7 Geotechnical hazards.

#### B3.2 Bushfire Hazard

With reference to the Pittwater Bush Fire Prone Land Map (Figure 13) the site is not located in an area that is associated with any bushfire hazards.

#### B3.3 Coastline (Beach) Hazard

This control is not applicable to this development (Figure 10)

#### B3.4 Coastline (Bluff) Hazard

This control is not applicable to this development (Figure 10)

#### B 3.7 Estuarine Hazard

This land is identified on the Estuarine Hazard Map (Figure 16)

##### Control:

Development is to be protected from the effects of wave action or tidal inundation either by mitigation works to protect the development or ensuring that the floor levels of the development are at or above the Estuarine Planning Level (EPL).

Boatshed shed facilities – All floor levels shall be at or above the EPL.

##### **Variations:**

“Consideration may be given on a merit basis to a floor level of a boat shed at a level lower than the EPL where it can be demonstrated through an Estuarine Risk Management Report that the boat shed is structurally designed to withstand periodic wave action and tidal inundation up to the EPL.”

*The floor level of the boatshed is below the EPL. It has been designed and will be constructed to address the Estuarine Hazard. An Estuarine Risk Management Report by Royal HaskoningDHV is provided to address this control.*

#### B3.11 Flood Prone Land

This control is not applicable to this development (Figure 14).

#### B4.1 – B4.22 Controls Relating to the Natural Environment

The proposed works do not involve any tree removal, there will be very little impact on the existing landscape, flora and fauna.

#### B5.1 Water Management

There will be no change to existing stormwater provisions on site as a result of this proposed development.

#### B6.1 – B6.11 Access and Parking

This control is not applicable to this development.

#### B8.1 – B8.6 Site Works Management - Construction and Demolition

The subject works sit within Pittwater Geotechnical Hazard Zone H1 (Figure 11) however, the works are within the relatively flat beach and reef area seaward of the land and engineer's drawings and documents have been referenced to construct a sound foundation wall and pile. Reference is made to this wall in the Coastal and Marine Damages Assessment by Royal HaskoningDHV and describe it as having a stabilising affect.

## PITTWATER 21 DEVELOPMENT CONTROL PLAN

### SECTION C - Development Type Controls

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#### **C1.1 Landscaping**

The subject sites are rich with existing landscaping, including trees, shrubs, bushes and other vegetation. The landscaping will remain as existing.

#### **C1.2 Safety and Security**

The safety and security of the sites will not be altered as a result of these works.

#### **C1.3 View Sharing**

The proposed works will not change the view lines of neighbouring properties.

#### **C1.4 Solar Access**

The proposed works will not change the solar access of the existing residence on the site, nor of neighbouring properties.

#### **C1.5 Visual Privacy**

The proposed works will not impact on the visual privacy currently enjoyed by the existing residence on the site and neighbours.

#### **C1.6 Acoustic Privacy**

The proposed works will not impact on the acoustic privacy currently enjoyed by the existing residence on the site and neighbours.

#### **C1.7 Private Open Space**

This control is not applicable to this development.

#### **C1.8 Dual Occupancy Specific Controls**

This control is not applicable to this development.

#### **C1.9 Adaptable Housing and Accessibility**

This control is not applicable to this development.

#### **C1.10 Building Facades**

No stormwater, sewer, gas, electrical or communication services are proposed for these facades.

#### **C1.11 Secondary Dwellings and Rural Worker's Dwellings**

This control is not applicable to this development.

#### **C1.12 Waste and Recycling Facilities**

Waste and recycling facilities are to remain as existing.

#### **C1.13 Pollution Control**

This project will be designed, constructed and maintained to prevent any threat to air, water, noise or land pollution.

#### **C1.14 Separately Accessible Structures**

This control is not applicable to this development

#### **C1.15 Storage Facilities**

This control is not applicable to this development, although the purpose of the boatshed is to store boats.

#### **C1.16 Development ancillary to residential accommodation – Tennis Courts**

This control is not applicable to this development

#### **C1.17 Swimming Pool Safety**

The proposal does not seek to alter any elements of the pool or pool fencing and remain existing.

#### **C1.18 Car / Vehicle / Boat Wash Bays**

This control is not applicable to this development

**C1.19 Incline Passenger Lifts and Stairways**

This control is not applicable to this development

**C1.20 Undergrounding of Utility Services**

This control is not applicable to this development

**C1.21 Seniors Housing**

This control is not applicable to this development

**C1.23 Eaves**

Eaves will be incorporated into the boatshed roof form to reflect the coastal heritage and character of Pittwater.

**C1.24 Public Road Reserve – Landscaping and Infrastructure**

This control is not applicable to this development

**C1.25 Plant, Equipment and Lift Over-Run**

This control is not applicable to this development

## PITTWATER 21 DEVELOPMENT CONTROL PLAN

### SECTION D Locality Specific Development Controls – Bilgola Locality

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#### **D3.1 Character as viewed from a public place**

The bank and the spotted gums dominate the elevations as viewed from Pittwater. The boatshed is relatively small in comparison. The view is dominated by natural features.

Furthermore, the proposed materials, textures and finishes are to match and complement the local material palette. The new built form is designed to complement the local natural environment and surrounding built forms. Building bulk and scale is kept to a minimum to maintain the dominance of the existing natural landscape.

#### **D3.2 Scenic protection - General**

The proposed works have been designed to integrate with the existing natural environment and to preserve the character of the locality.

#### **D3.3 Building colours and materials**

Colours will be natural and earthy. Natural textures and material selection will be used to harmonise with the existing environment. The Structures are not visible from the street.

#### **D3.6 Front building line**

This control is not applicable to this development.

#### **D3.7 Side and rear building line**

This control is not applicable to this development.

#### **D3.9 Building envelope**

The design of the boatshed form will reflect the character of the locality and bulk and scale will be minimised.

#### **D3.10 Landscaped Area – General**

This control is not applicable to this development – the site landscaped area will remain as existing.

#### **D3.11 Landscaped Area – Environmentally Sensitive Land**

This control is not applicable to this development – the site landscaped area will remain as existing.

#### **D3.12 Fences – General**

This control is not applicable to this development.

#### **D3.13 Fences – Flora and Fauna Conservation Areas**

This control is not applicable to this development

#### **D3.14 Construction, retaining walls, terracing and undercroft areas**

This control is not applicable to this development

#### **D3.15 Scenic Protection Category One Areas**

This control is not applicable to this development.



## PITTWATER 21 DEVELOPMENT CONTROL PLAN

### SECTION D Locality Specific Development Controls – D15 Waterways Locality

#### D15.1 Character as viewed from a public place

The adjoining sites are dominated by landscape, the maritime structures are designed to maintain and enhance the character of the area. The scale of the Structures are minimised, substantial eaves are provided to articulate the form and finishes are selected and proposed to address the natural context of the local environment.

Montage images have been provided with this submission, to illustrate the proposed Structures and the intent for them to enhance the waterway and the local natural environment.

#### D15.2 Scenic protection - General

The proposed Structures have been designed to maintain and complement the visual character of the area, to not distract from the local environment. Montage images are included with this application to demonstrate that the development is sensitive to the existing visual character of the area.

#### D15.3 Building colours and materials

Natural materials and colours have been selected to harmonise with the existing environment and minimise visual prominence. A montage image has been provided with the submission, along with a schedule of proposed materials and finishes.

#### D15.6 Front building line

This control is not applicable to this development.

#### D15.7 Side and rear building line

This control is not applicable to this development.

#### D15.10 Fences

This control is not applicable to this development.

#### D15.11 Waterfront lighting

Lighting will be selected to provide safe access to and around the Structures, without creating navigation hazards or substantial reflection off the water.

#### D15.12 Development seaward of mean high-water mark

The boatshed and concrete jetty that were originally on the site, were located partly above the mean high-water mark, it is intended that these locations will be re-instated with the proposed Structures. The other Structures, that are proposed seaward of the mean high-water mark, include timber jetty, steps, ramp and slipway rails that are in place to provide access to and from boats. (Ref Royal Haskoning and Bio Analysis reports)

#### D15.13 Lateral limits to development seaward of mean high-water mark

The new development will be located in similar positions to the previous Structures.

#### D15.14 Minimum frontage for waterfront development

The proposed development occupies the same unit of land as that which it replaces.

#### D15.15 Waterfront development

##### Outcomes

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

*Public access along the foreshore is not restricted. (S)*

*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. (S, Ec)*

*Structures blend with the natural environment. (S)*

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

*To promote a mix of commercial waterfront development for the accommodation of boats, their repair and maintenance, and for organised waterfront development. (Ec)*

*Waterfront development which does not comply with the outcomes of this clause are removed. (En, S, Ec)*

*The proposed reinstatement of the previous structures is consistent with the outcomes listed above.*

a) **Jetties, Ramps and Pontoons**

The new jetty, steps and associated piles will replace a previous jetty and steps, in a similar, but improved layout, size and construction which are consistent with the conventional jetty option illustrated in the controls clause a) diagram.

Sparse *Zostera* sea grass of less than 5% coverage is present adjacent the outer sections of the existing and proposed jetty and steps. The marine habitat survey from Bio-Analysis concludes that the proposed works will have an effect on the sea grass however this will be limited to the proposed area where the jetty and steps will be replaced. (Ref Bio Analysis Report)

c) **Boatsheds**

The boatshed, which enjoys existing use rights, will be rebuilt in a similar location and footprint to the original structure that was on site. Its dimensions are larger in length, width and height than outlined in the DCP, which were put in place after the previous boatshed was constructed. The proposed development will achieve the outcomes listed. The new boatshed will be built from new improved materials and finishes which are low maintenance and sympathetic to the natural surrounding setting. Montage images which illustrate the previous boatshed and the new proposed structure, demonstrates the visual improvements.

The floor level of the new boatshed will be RL 1.72, which is approximately 220mm higher than the original building floor level, to raise it above the Estuarine Planning Level.

d) **Slipways and Launching Ramps**

The ramp and slipway rails will be rebuilt in a similar location to the previous Structures in a similar layout. They do not detract from the visual character of the foreshore, nor effect marine vegetation.

e) **Piles**

Piles will be rebuilt in similar locations to the previous Structures, in compliance with the guidelines set out in the table which is included within this control and in consultation with a structural engineer.

## COASTAL MANAGEMENT ACT 2016 (CM ACT)

Objects of the Coastal Management Act

*The subject Structures have been in place since at least 1947.*

*The Coastal Management Act commenced on 07/06/2016.*

*According to the Memorandum of Advice from Ian Hemmings SC, the use enjoys existing use rights.*

*The existing use rights have not been abandoned and a Development Application may be lodged to expand, alter, intensify and rebuild the Structures.*

*Please reference reports from Royal HaskoningDHV x 2 and Bio-Analysis.*

The objects of this Act are to manage the coastal environment of New South Wales in a manner consistent with the principles of ecologically sustainable development for the social, cultural and economic well-being of the people of the State, and in particular—

- (a) to protect and enhance natural coastal processes and coastal environmental values including natural character, scenic value, biological diversity and ecosystem integrity and resilience, and  
*The proposal is consistent with the objects of the Act in as much as;  
 The natural coastal processes and coastal environmental values including natural character, scenic value, biological diversity and ecosystem has formed around the Structures that have been in place since at least 1947. Should the Structures not be permitted to be completed or be required to be removed it is a distinct possibility that the coastal systems, including the beach and surrounding sea grass beds will be damaged.*
- (b) to support the social and cultural values of the coastal zone and maintain public access, amenity, use and safety, and  
*The social and cultural values and public access, amenity, use and safety will be preserved should the Structures be permitted to be completed. Boatsheds, particularly those that have existed since at least 1947, are an essential part of the heritage of Pittwater as such they define the social and cultural fabric of the area. Should the Structures not be permitted to be completed the social and cultural value of the area will be diminished. Furthermore, the beach may disappear and the estuary bank may become further eroded which would similarly cause the loss of public access, amenity, use and safety of the area.*
- (e) to facilitate ecologically sustainable development in the coastal zone and promote sustainable land use planning decision-making, and  
*The proposed structures will be built from sustainable materials and the form will maintain the ecology of the area. The land use enjoys existing use rights and is typical in Pittwater.*
- (f) to mitigate current and future risks from coastal hazards, taking into account the effects of climate change, and  
*The existing structures protect the beach from erosion thus mitigate the current and future risks to the coastal environment caused by climate change.*
- (g) to recognise that the local and regional scale effects of coastal processes, and the inherently ambulatory and dynamic nature of the shoreline, may result in the loss of coastal land to the sea (including estuaries and other arms of the sea), and to manage coastal use and development accordingly, and  
*The existing structures protect the beach from erosion and thus mitigate the current and future risks to the coastal environment caused by the dynamic nature of the shoreline.*
- (m) to support the objects of the Marine Estate Management Act 2014.

The site is included in Part 2 - Coastal environmental area and Coastal use areas

**Coastal environment area**

- (1) The coastal environment area means the land identified by a State environmental planning policy to be the coastal environment area for the purposes of this Act, being land containing coastal features such as the coastal waters of the State, estuaries, coastal lakes, coastal lagoons and land adjoining those features, including headlands and rock platforms.
- (2) The management objectives for the coastal environment area are as follows-
  - (a) to protect and enhance the coastal environmental values and natural processes of coastal waters, estuaries, coastal lakes and coastal lagoons, and enhance natural character, scenic value, biological diversity and ecosystem integrity,  
*The coastal environment and natural process of the subject area have formed around the Structures that have been in place since before 1947. To prevent the completion of the works or to remove the Structures will, with a high degree of probability, negatively change the natural processes and damage the natural character, scenic value, biological diversity and ecosystem integrity.*
  - (b) to reduce threats to and improve the resilience of coastal waters, estuaries, coastal lakes and coastal lagoons, including in response to climate change,  
*The existing structures protect the beach from erosion thus mitigate the current and future risks to the coastal environment caused by climate change.*
  - (c) to maintain and improve water quality and estuary health,  
*The existing walls retain approximately 100 cubic metres of fill that has existed on the site since at least 1947. Should these walls not be permitted there is the potential for the fill to leach into the waterway due to tidal processes and result in diminished water quality and the subsequent negative impacts on the health of the estuary.*
  - (d) to support the social and cultural values of coastal waters, estuaries, coastal lakes and coastal lagoons,  
*The social and cultural values and public access, amenity, use and safety will be preserved should the Structures be permitted to be completed. Boatsheds, particularly those that have existed since at least 1947, are an essential part of the heritage of Pittwater and as such they define the social and cultural fabric of the area. Should the Structures not be permitted to be completed the social and cultural value of the area will be diminished.*
  - (e) to maintain the presence of beaches, dunes and the natural features of foreshores, taking into account the beach system operating at the relevant place,  
*Should the Structures not be permitted to be completed the beach operating system will be altered, the beach may disappear and the estuary bank may become further eroded.*
  - (f) to maintain and, where practicable, improve public access, amenity and use of beaches, foreshores, headlands and rock platforms.  
*Public access to the area will be improved via the proposed reconstruction of the pre-existing steps and pathway.*

**Coastal Use Area**

- (1) The coastal use area means the land identified by a State environmental planning policy to be the coastal use area for the purposes of this Act, being land adjacent to coastal waters, estuaries, coastal lakes and lagoons where development is or may be carried out (at present or in the future).
- (2) The management objectives for the coastal use area are as follows-
  - (a) to protect and enhance the scenic, social and cultural values of the coast by ensuring that-
    - (i) the type, bulk, scale and size of development is appropriate for the location and natural scenic quality of the coast, and  
*Boatsheds, particularly those that have existed since at least 1947, are an essential part of the scenic, social and cultural value of Pittwater. The proposed boatshed and associated structures are consistent with the scale and size of the prior structures however the bulk will be reduced by the use of more natural and sympathetic materials. As such the reconstructed structures will lead to a considerable improvement in the scenic quality of the area.*
    - (iv) adequate public open space is provided, including for recreational activities and associated infrastructure, and  
*Considerable public open space surrounds the proposed reconstruction. The beach which is the primary usable public open space is supported by the existing structure. This space will come under threat should the structure not be permitted to be completed or if it is removed.*



# STATE ENVIRONMENTAL PLANNING POLICY (COASTAL MANAGEMENT) 2018 (CM SEPP)

## Division 3 Coastal environment area

### 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,  
*The biophysical, hydrological and ecological environment has formed around the Structures that have been in place since at least 1947. Should the Structures not be permitted to be completed or be required to be removed it is a distinct possibility that the coastal systems, including the beach and surrounding sea grass beds will be damaged.*
  - (b) coastal environmental values and natural coastal processes,  
*The coastal environmental and natural coastal processes have formed around the Structures that have been in place since at least 1947. Should the Structures not be permitted to be completed or be required to be removed it is a distinct possibility that the coastal systems, including the beach and surrounding sea grass beds will be damaged.*
  - (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,  
*The existing walls retain approximately 100 cubic metres of fill that has existed on the site since at least 1947. Should these walls not be permitted there is the potential for the fill to leach into the waterway due to tidal processes and result in diminished water quality. There will be no cumulative impact on any coastal lake.*
  - (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,  
*Marine vegetation, native vegetation and fauna has formed around the Structures that have been in place since at least 1947. Should the Structures not be permitted to be completed or be required to be removed it is a distinct possibility that the vegetation, including the beach and surrounding sea grass beds will be damaged. There will be little damage caused to the surrounding rock platforms should the existing structures be permitted to remain. Alternately should they be required to be removed substantial damage will be caused which will have the likely consequence of negatively affecting the surrounding vegetation and fauna.*
  - (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,  
*Existing public open space will not be affected by the proposal. Public access to the area will be improved via the proposed reconstruction of the pre-existing steps and pathway. There is no access to the area for persons with a disability.*
  - (f) Aboriginal cultural heritage, practices and places,  
*Aboriginal cultural heritage, practices and places will not be affected by the proposal.*
  - (g) the use of the surf zone.  
*The proposal is not in a 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.

*The development has existed on the site since at least 1947, the only recent adverse impact to the site has been caused by the fact that the works have not been able to be completed. Should they be permitted to be completed the natural process will return the area to at least the quality that it once was.*

#### **Division 4 Coastal use area**

##### **14 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 platform for members of the public, including persons with a disability,  
*Existing access to the area will be improved via the proposed reconstruction of the pre-existing steps and pathway. There is no access to the area for persons with a disability.*
    - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,  
*There will be no additional overshadowing, wind funnelling or loss of views from public places to foreshores,*
    - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,  
*Boatsheds, particularly those that have existed since at least 1947, are an essential part of the visual amenity and scenic quality of Pittwater.*
    - (iv) Aboriginal cultural heritage, practices and places,  
*Aboriginal cultural heritage, practices and places will not be affected by the proposal.*
    - (v) cultural and built environment heritage, and  
*Boatsheds, particularly those that have existed since at least 1947, are an essential part of the scenic, social and cultural value of Pittwater.*
  - (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  
*The development has existed on the site since at least 1947, the only recent adverse impact to the site has been caused by the fact that the works have not been able to be completed. Should they be permitted to be completed the natural process will return the area to at least the quality that it once was.*
  - (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.  
*Boatsheds, particularly those that have existed since at least 1947, are an essential part of the scenic, social and cultural value of Pittwater. The proposed boatshed and associated structures are consistent with the scale and size of the prior structures however the bulk will be reduced by the use of more natural and sympathetic materials. As such the reconstructed structures will lead to a considerable improvement in the scenic quality of the area.*

## CONCLUSION

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This submission seeks consent for the reconstruction of the marine structures that have lawfully existed on the site since at least 1947.

The prior structures were dilapidated and not in keeping with the desired character of the area. Whereas the new structures, while similar in scale, form and configuration, are proposed to be of far higher quality natural materials that will blend with the landscape background at a distance while being of high aesthetic value at close range.

A part of the proposed boatshed and concrete jetty sits on Lot 2 of DP 827733 which is owned by Northern Beaches Council.

Northern Beaches Council has undertaken as a condition of the discontinuance of prior proceedings, to act on a prior resolution to licence Lot 2 to the owner of 316 Hudson Parade and to provide land owners consent to the lodgement of this application.

The proposed uses are not currently permitted in the zones; however, based on the advice of Ian Hemmings SC, the proposed structures benefit from existing use rights which have not been abandoned.

Under Part 5 of the Environmental Planning and Assessment Regulations 2000, development enjoying existing use rights, may be expanded, altered, intensified and rebuilt so long as the development does not expand beyond the unit of land that was available to it immediately prior to the use becoming prohibited.

The proposal does seek to straighten the former random outline of the development to the south and north and to otherwise make minor adjustments to the elements to meet contemporary standards and functions. None of these adjustments extend beyond the unit of land which was defined by the original development.

While the uses may be currently prohibited, the proposed development has been assessed with reference to the relevant objectives of the Pittwater 21 Development Control Plan, the Pittwater Local Environmental Plan 2014 and the Coastal Management Act 2016; the proposal was found to generally meet those objectives.

The proposal will not adversely affect the surrounding natural processes, vegetation or fauna that have formed around the Structures that have existed on the site for decades.

Conversely, should the development not be permitted to proceed or be removed, it is a strong possibility that the natural processes will be negatively changed with the consequence of causing harm to the local marine vegetation and fauna.

The rebuilding of the Structures will not negatively affect the amenity of any neighbouring dwellings, the general public or the natural environment.

Conversely, the failure to consent to the reconstruction of the prior structures will continue the current negative aesthetic and environmental outcomes that have ensued from the stoppage of the works.

We seek Councils support and request that this application be viewed favourably.

## APPENDICES

### MAPS

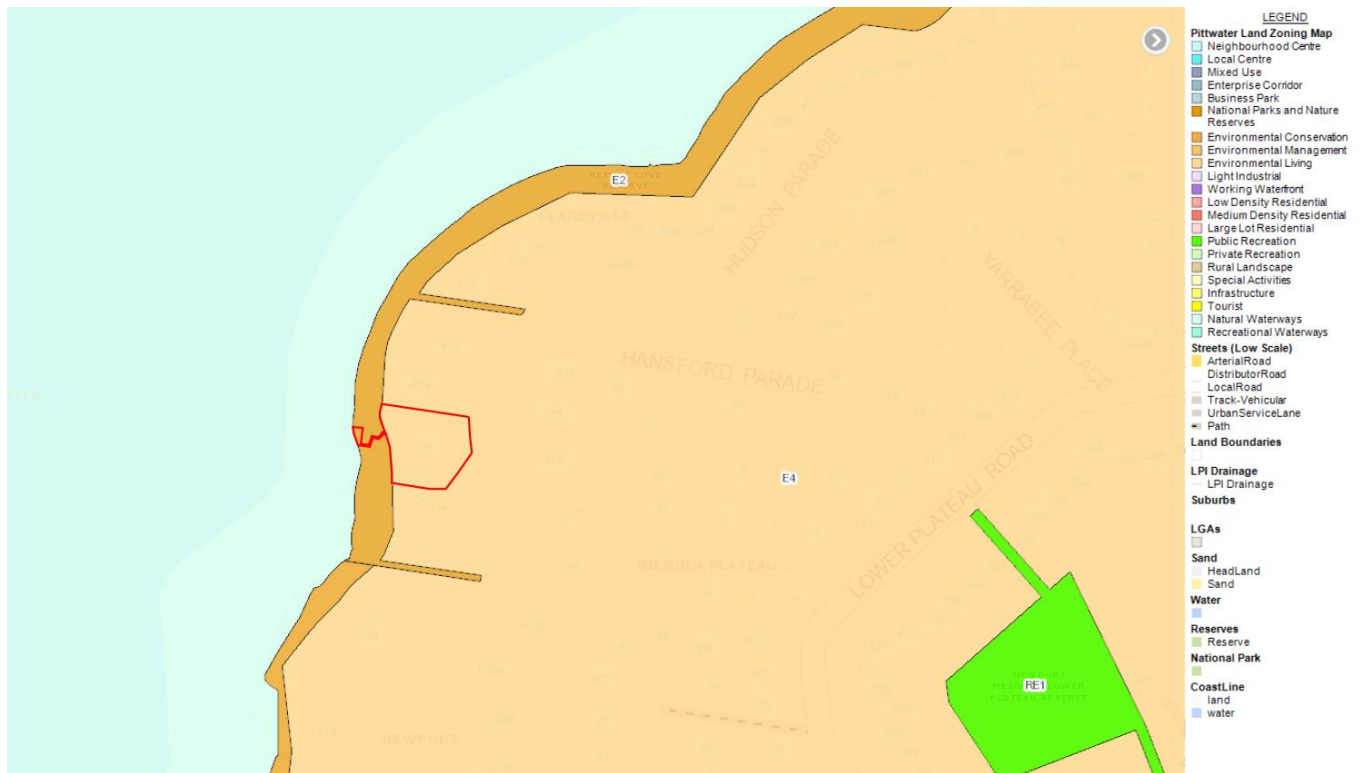


Figure 2. PITTWATER LAND ZONING MAP

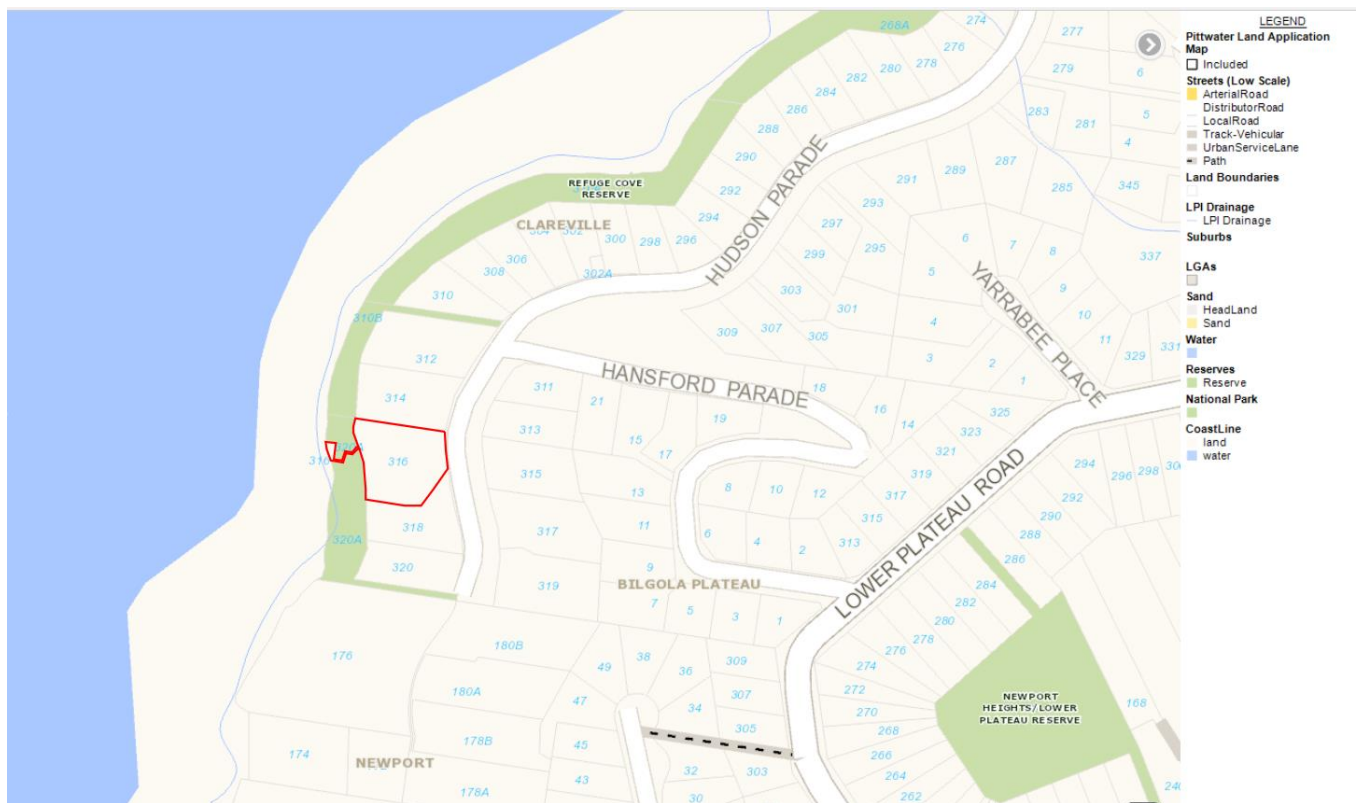


Figure 3. PITTWATER LAND APPLICATION MAP



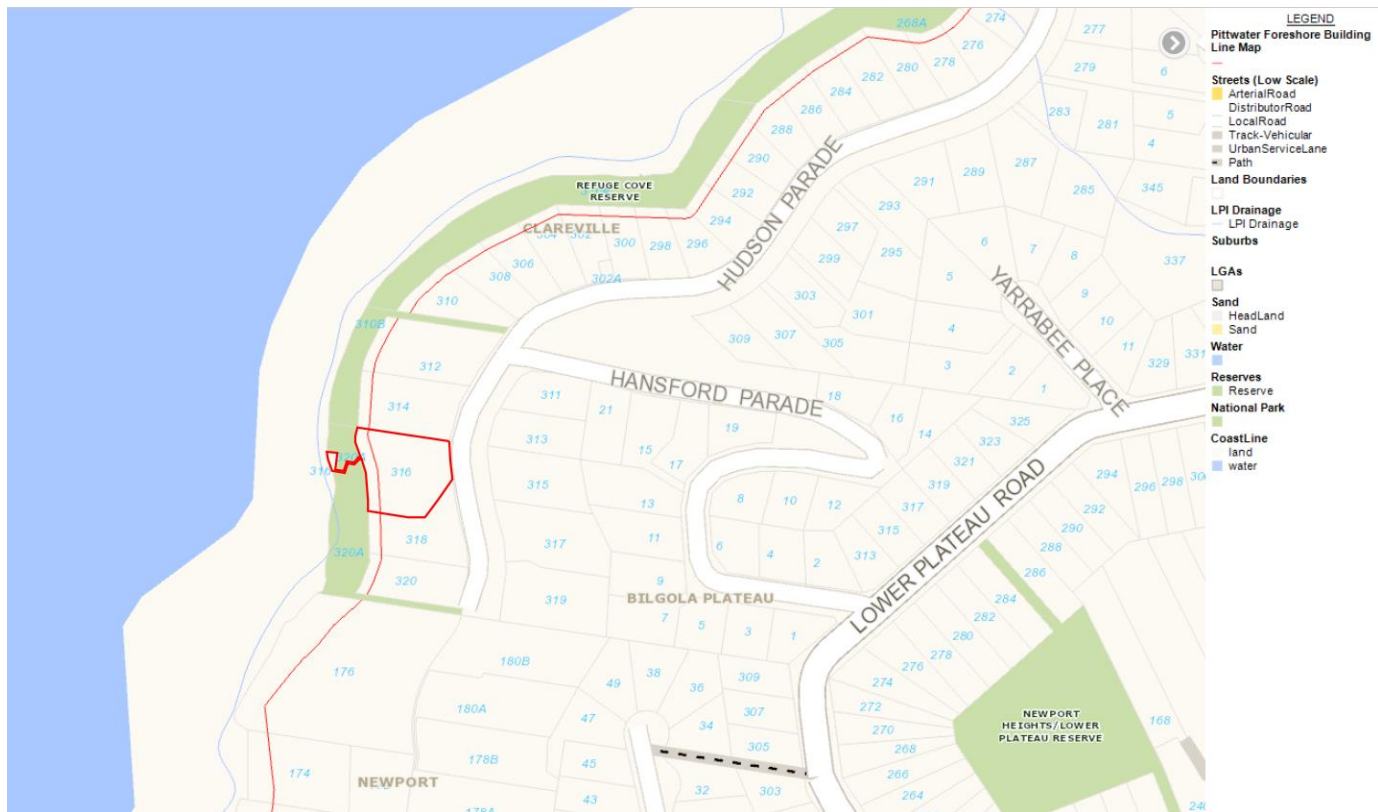


Figure 4. PITTWATER FORESHORE BUILDING LINE MAP

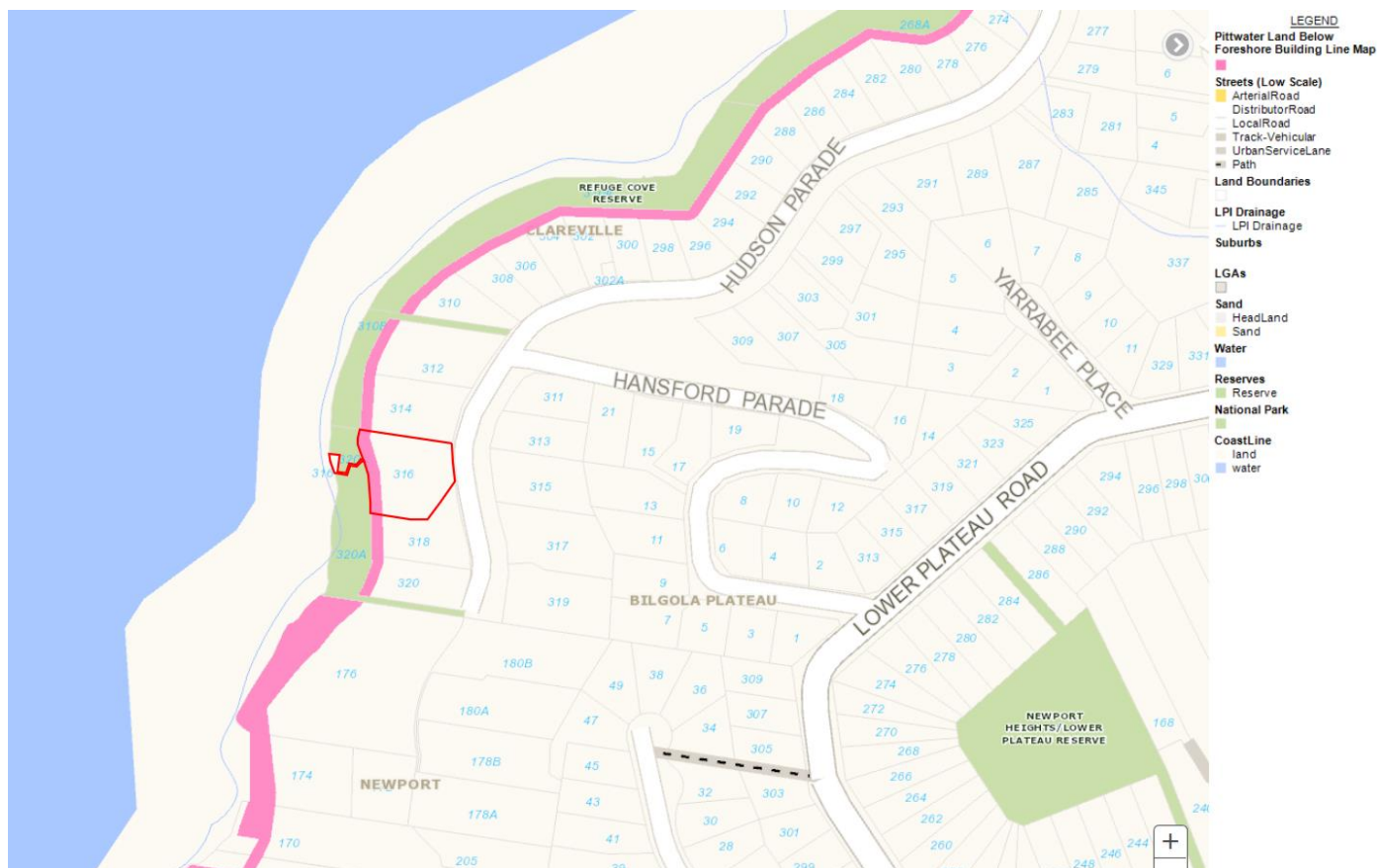


Figure 5. PITTWATER LAND BELOW FORESHORE BUILDING LINE MAP



Figure 6. PITTWATER HEIGHT OF BUILDINGS AREA MAP

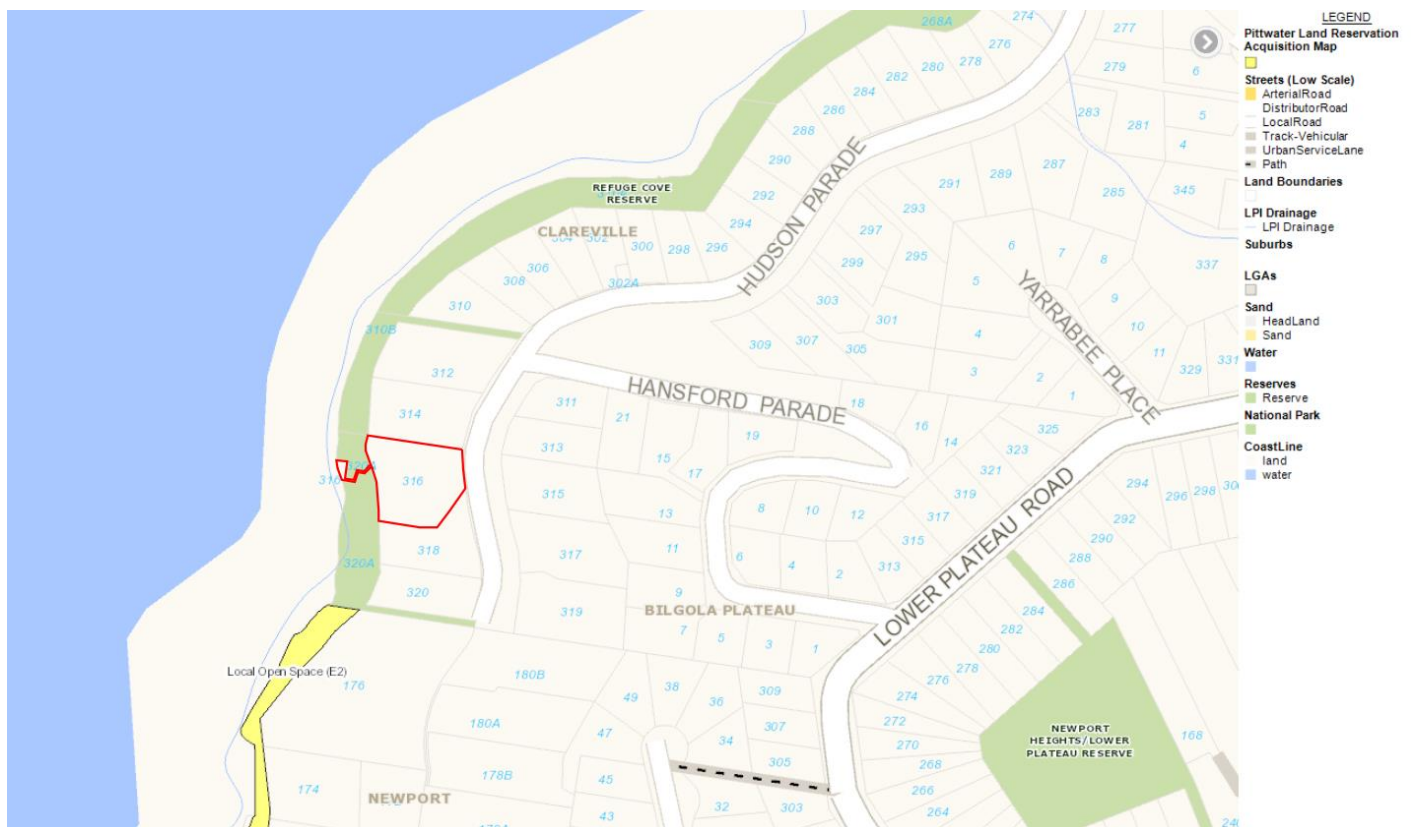


Figure 7. PITTWATER LAND RESERVATION ACQUISITION MAP

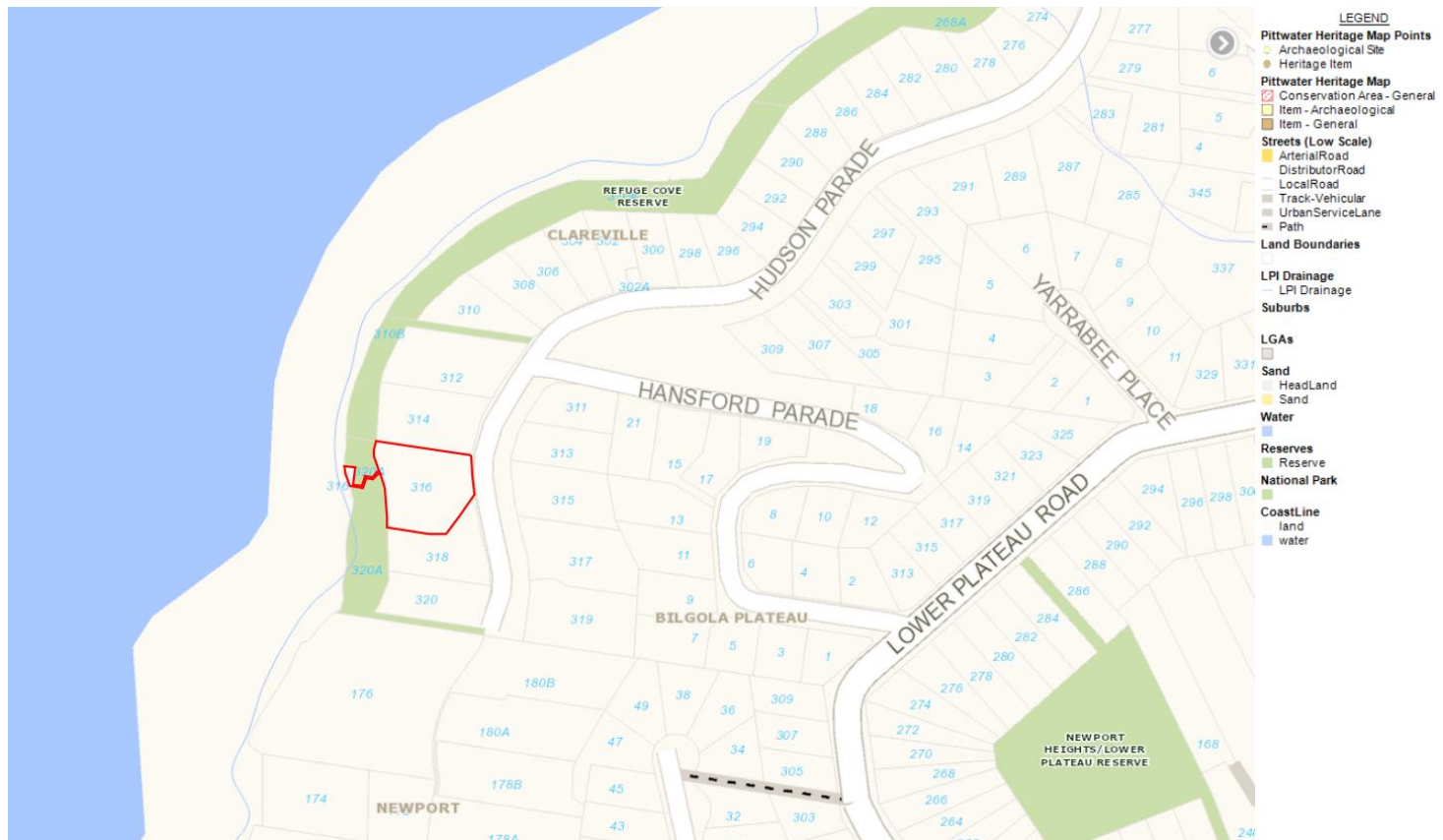


Figure 8. PITTWATER HERITAGE MAP



Figure 9. PITTWATER ACID SULFATE SOILS MAP



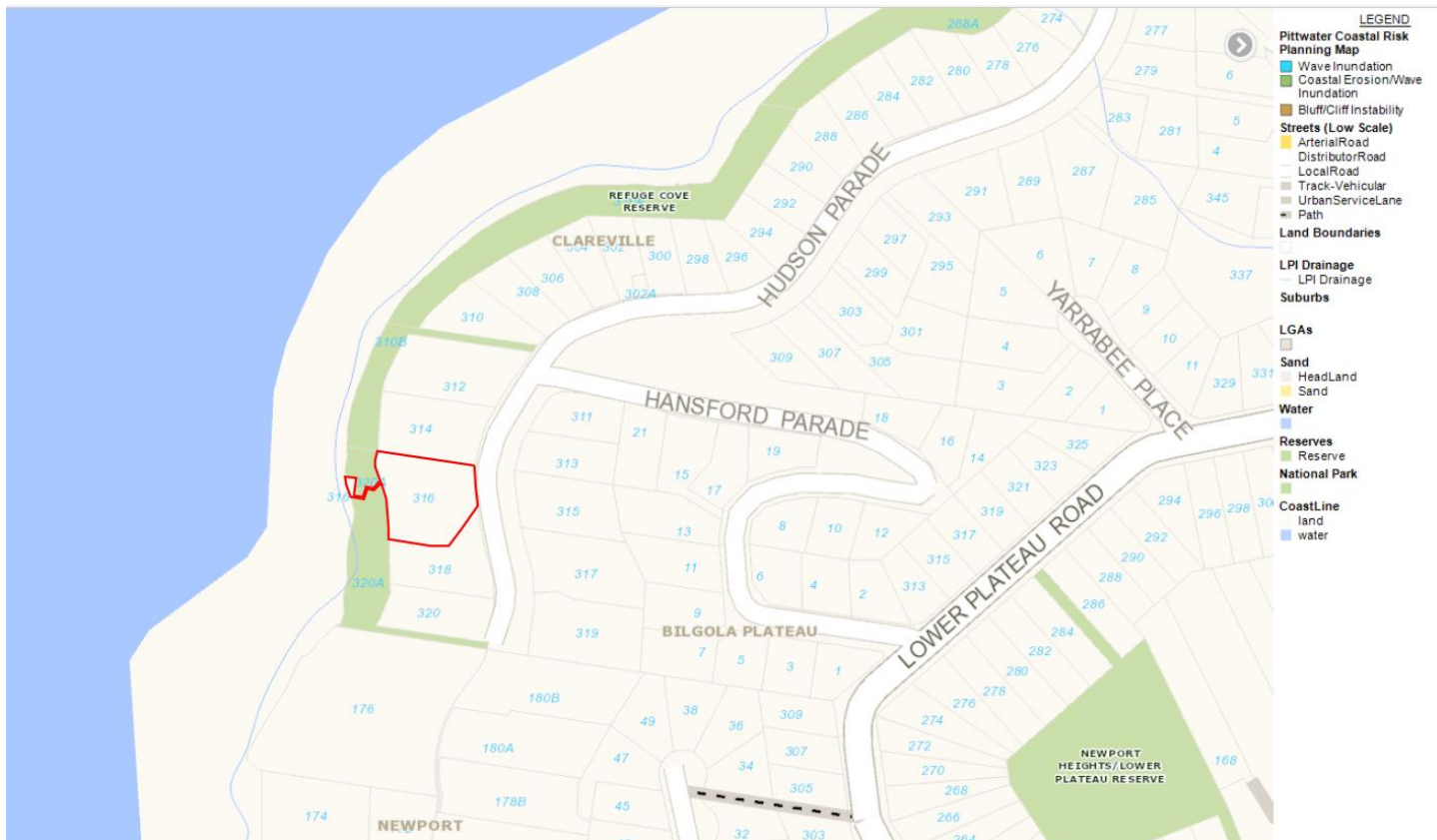


Figure 10. PITTWATER COASTAL RISK PLANNING MAP

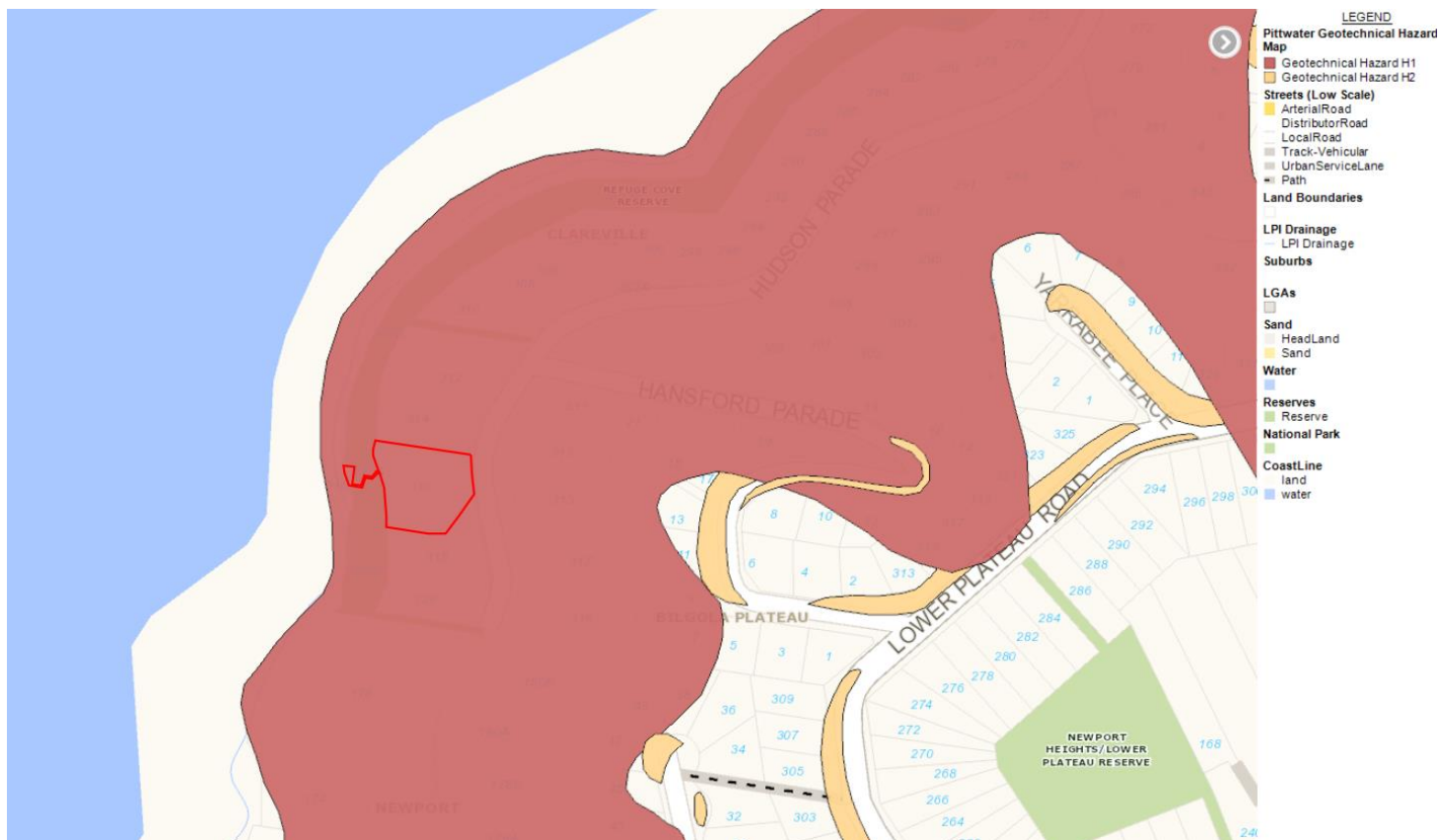


Figure 11. PITTWATER GEOTECHNICAL HAZARD MAP





Figure 12. PITTWATER BIODIVERSITY MAP

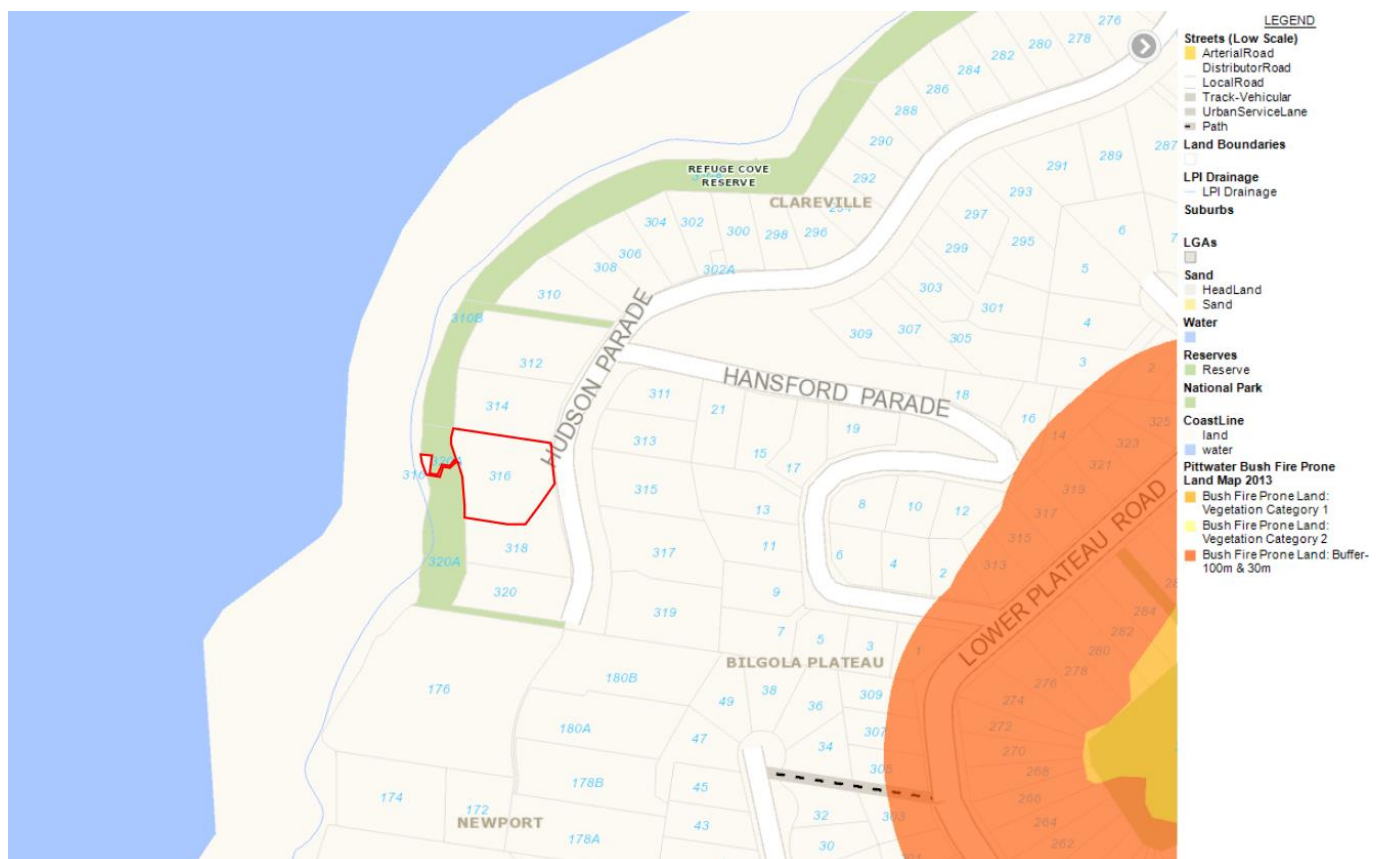


Figure 13. PITTWATER BUSH FIRE PRONE LAND MAP

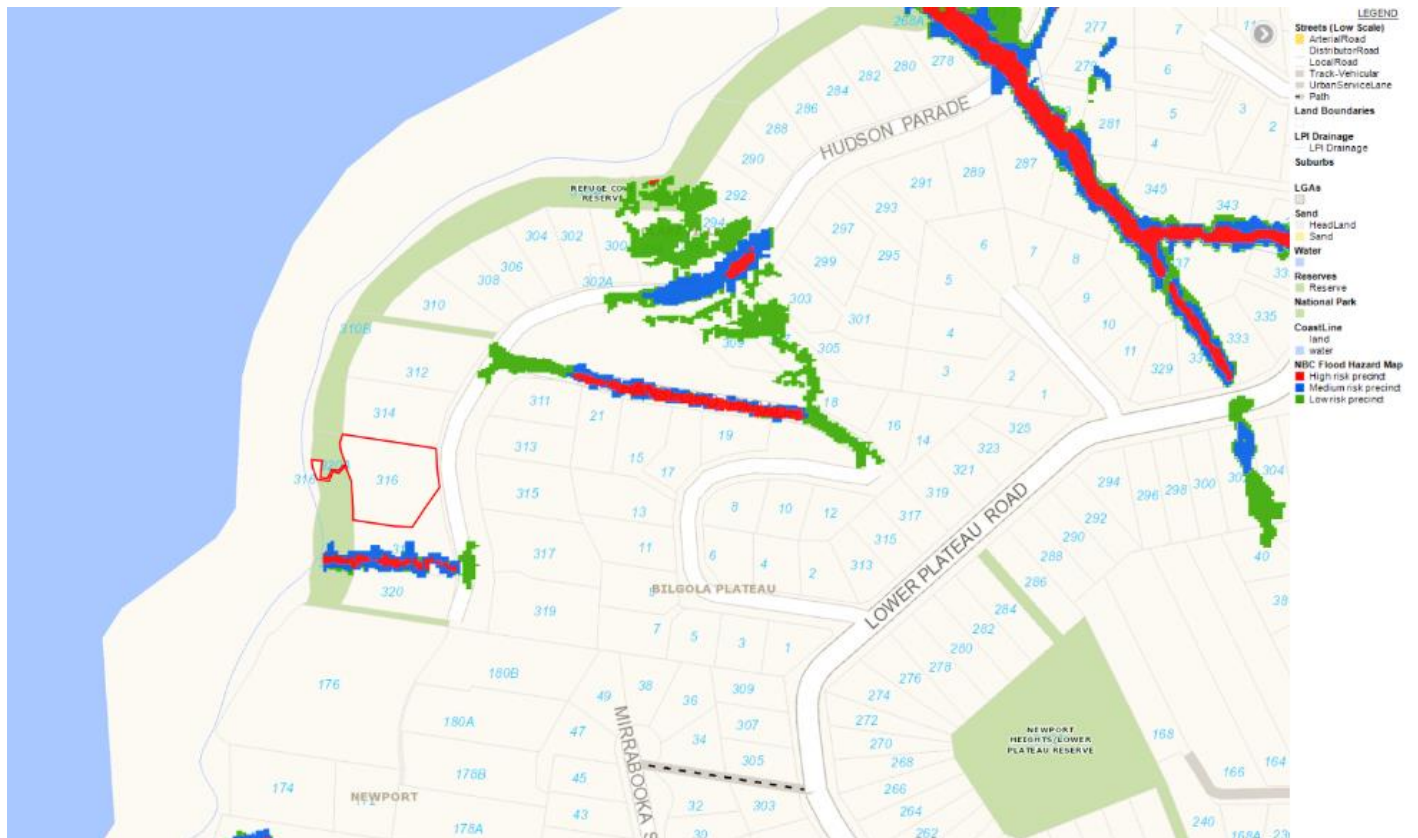


Figure 14. NBC FLOOD HAZARD MAP

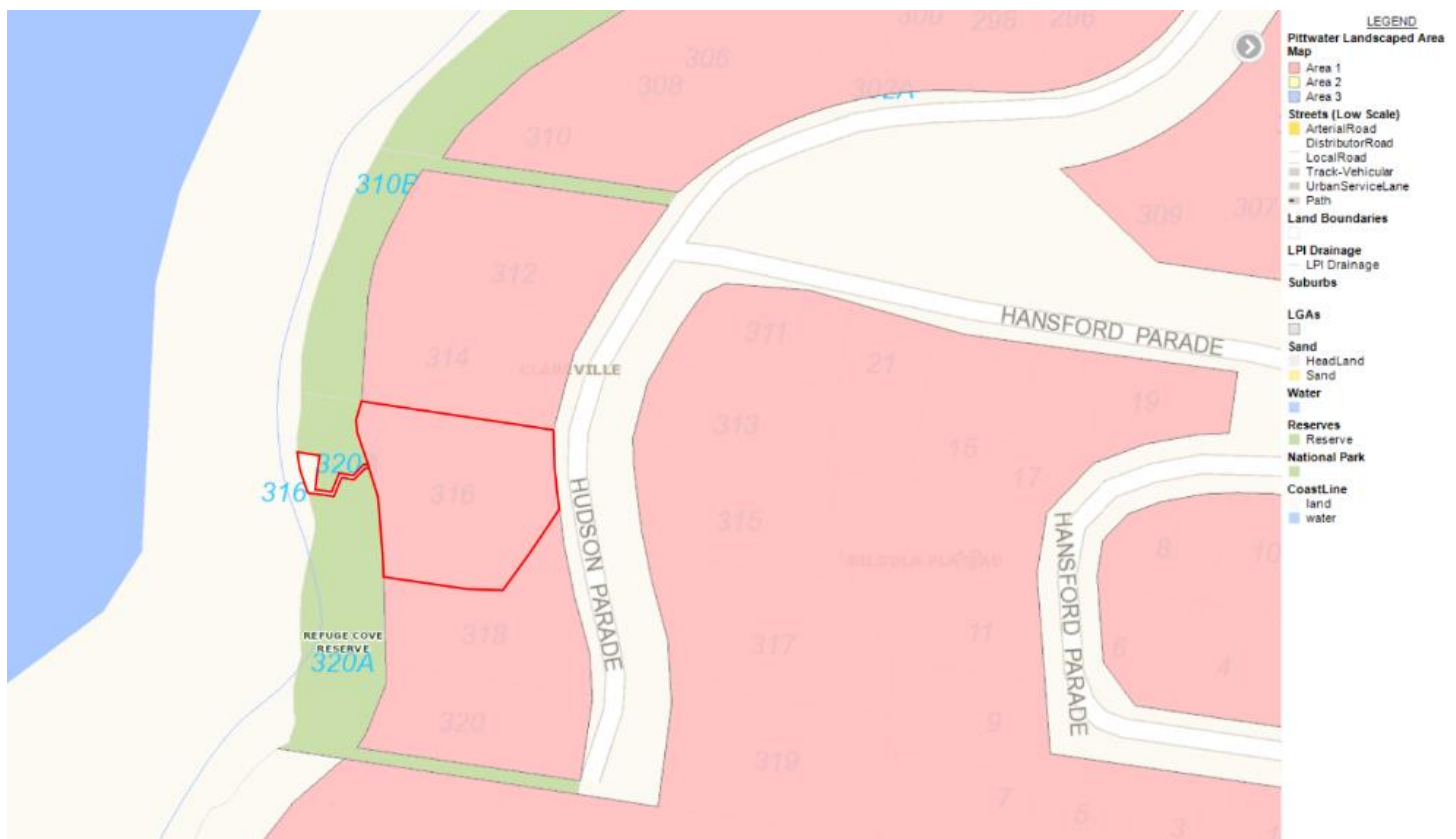


Figure 15. PITTWATER LANDSCAPED AREA MAP

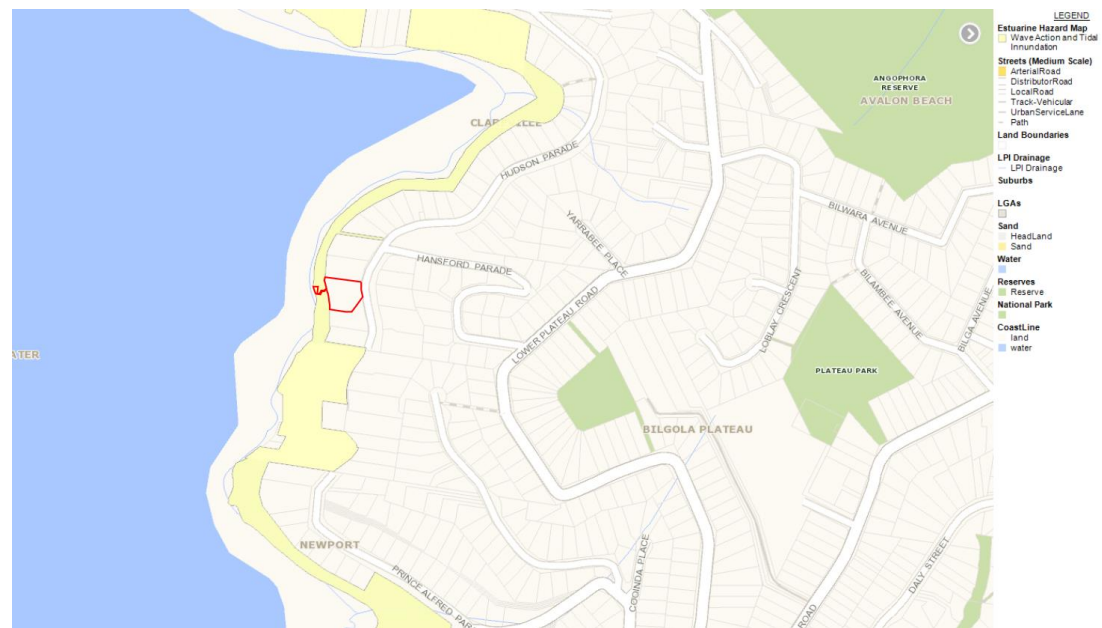


Figure 16. ESTUARINE HAZARD MAP