

Natural Environment Referral Response - Coastal

Application Number:	DA2023/0181
Proposed Development:	Construction of a mooring pen
Date:	29/05/2023
Responsible Officer	Olivia Ramage
Land to be developed (Address):	Lot 110 DP 12749 , 7 Florence Terrace SCOTLAND ISLAND NSW 2105 Lot LIC 404399 , 7 Florence Terrace SCOTLAND ISLAND NSW 2105

Reasons for referral

This application seeks consent for land located within the Coastal Zone.

And as such, Council's Natural Environment Unit officers are required to consider the likely impacts on drainage regimes.

Officer comments

Supported with Conditions

The application has been assessed in consideration of:

- Plans and documents lodged in support of the DA;
- the Coastal Management Act 2016;
- State Environmental Planning Policy (Resilience & Hazards) 2021; and
- Pittwater LEP 2014 and Pittwater 21 DCP.

Assessment of the application has also considered:

1. Consent of landowner to lodge a DA from the Department of Planning, Industries & Environment - Crown Lands, dated 1 December 2022.
2. No navigational concerns as a result of the proposed development from Transport for NSW Maritime Division dated 12 October 2022.
3. No objection to the proposed development (subject to conditions) from the Department of Primary Industries - Fisheries, dated 8 February 2022.

Coastal Management Act 2016

The subject site has been identified as being within the coastal zone and therefore the Coastal Management Act 2016 is applicable to the DA. The proposed development is consistent with the objects, as set out under Part 1 Section 3 of the Coastal Management Act 2016.

State Environmental Planning Policy (Coastal Management) 2018

The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (R & H SEPP). Hence, Divisions 3, 4 and 5 of the R&H SEPP apply for this DA.

On internal assessment, Council considers that the DA generally satisfies the relevant requirements under Chapter 2 the R & H SEPP.

Subject to conditions, it is considered that the application can comply with the provisions of State Environmental Planning Policy (Resilience & Hazards) 2021.

Pittwater LEP 2014 and Pittwater 21 DCP

Development on Foreshore Area

The subject property is affected by the foreshore building line and Part 7, Section 7.8 – Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area. The proposed development works are located seaward of the foreshore building line and planning officers will need to determine as to whether a mooring pen is a permitted use within the foreshore area.

Estuarine Hazard Management

The subject property has been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As the Estuarine Planning Level (EPL) does not apply to jetties, bridging ramps or pontoons located on the seaward side of the foreshore edge the proposed development is considered to satisfy the relevant provisions of the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the B3.7 Estuarine Hazard Controls.

Development Seaward of Mean High Water Mark

Proposed development works are located on Crown land below the Mean High Water Mark. Hence, Section D15.12: Development seaward of mean high water mark in Pittwater 21 DCP applies to the proposed development. DPI Fisheries has raised no objections to the development proposal subject to conditions to protect seagrass.

A Marine Habitat Survey lodged in support of the DA and prepared by H2O Consulting Group (Dec 2021) concludes that "In summary, the proposed development at 7 Florence Terrace, Scotland Island is not expected to result in any direct impacts on nearby seagrasses, which have been avoided. However, the adoption of the recommendations of this report will be essential to minimise potential for disturbances during construction works."

On internal assessment and as assessed in the marine habitat survey, the proposed development is unlikely to have an adverse impact on water quality or estuarine habitat of the Pittwater waterway and the DA is considered to be able to satisfy the requirements of the Section D15.12 Controls subject to conditions.

Waterfront Development

The DA seeks relief from the requirement to relinquish a licence for a private swing mooring by any person seeking approval for a berthing area.

The D15.15 Waterfront Development Control at Section b) states that "where provided berthing areas shall meet the following criteria:

a. the proponent must demonstrate that they do not already hold or cannot obtain a swing mooring, marina berth or boat shed where they could reasonably store their boat." In the case of the subject DA, the proponent already holds a swing mooring and a boat shed.

The D15.17 Moorings Control applies to marina berths, swing moorings and mooring pens in Pittwater and requires that: "The maximum number of moorings in Pittwater shall not exceed the overall capped total of 3641." and further that: "In the event of a marine development being approved, the change of swing moorings to marina berths shall not alter the capped number of vessels in that area."

As the proposal to hold a swing mooring, boatshed and mooring pen is non-compliant with the D15.15 development control, does not promote a more equitable use of the waterway's resources and is contrary to the requirements of the D15.17 development control, in that it has not demonstrated that the addition of a mooring pen will not exceed the mooring cap in Pittwater, the development proposal is not supported.

Additional Comments in Regard to Swing Mooring Retention (29 May 2023)

The applicant has reiterated a request to retain the existing swing mooring licence in addition to the

proposed mooring pen, however, has once again provided no evidence that the addition of a mooring pen will not exceed the mooring cap in Pittwater or the Scotland Island Mooring Area total. Advice obtained independently by council staff from Transport for NSW indicates that there are just over 3500 moorings in Pittwater (mooring cap is 3641) and there is no waiting list for the Scotland Island Mooring Area. As such Council is able to support a resident only retention of the existing swing mooring licence in addition to the proposed mooring pen.

The proposal is therefore supported.

Note: Should you have any concerns with the referral comments above, please discuss these with the Responsible Officer.

Recommended Natural Environment Conditions:

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

Estuarine Hazard Design Requirements

All development or activities must be designed and constructed such that they will not increase the level of risk from estuarine processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect estuarine processes; they will not be adversely affected by estuarine processes.

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

Lawful Authority to Use and Occupy Crown Land or Waterway

An executed licence agreement from the relevant NSW government agency governing the use and occupation of Crown land is required to be obtained prior to the issue of a construction certificate.

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

Compliance with Marine Habitat Survey Report

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

Stockpiling materials

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

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

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

Compliance with Marine Habitat Survey Report

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

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