
SUBJECT: N0113/14 - 55 ROBERTSON ROAD, SCOTLAND ISLAND NSW 2105 Proposed boat shed, deck, skid ramp, access stairs and retaining wall

Determination Level: Development Unit

SUMMARY OF RECOMMENDATION: CONSENT WITH CONDITIONS

REPORT PREPARED BY: Sylvania Mok
APPLICATION SUBMITTED ON: 24 April 2014
APPLICATION SUBMITTED BY: VAUGHAN MILLIGAN DEVELOPMENT CONSULTING PTY LTD, PO BOX 49~NEWPORT NSW 2106
OWNER(S): MRS JILL ANNE SCULLY

1.0 SITE DETAILS

The site is identified as 55 Robertson Rd, Scotland Island and is legally referred as Lot 122, DP 12749. The site is trapezium in shape with total site area of 720.8m². The site currently contains a split-level dwelling and experiences a fall of 18m at a slope of 30% from southern boundary down towards northern boundary at the foreshore (MHWMM).

The allotment has a frontage to Robertson Rd to the south and water frontage to the north that defines Pittwater Waterway. The site is accessed by an existing jetty at the foreshore area and an informal track between the dwelling and Robertson Road to the south.

2.0 PROPOSAL IN DETAIL

The application seeks consent for the following works:

- New single storey timber framed boatshed located partially below MHWMM
- New timber deck with an access ramp attached to boatshed
- New rock retaining wall to NE corner of site
- New timber access stairs adjacent to the new boatshed

3.0 STATUTORY AND POLICY CONSIDERATIONS

The site is zoned 2(a) Residential A under the provisions of Pittwater Local Environment Plan 1993, as shown on the Zoning Map. The site is zoned E3 Environmental Management under the Pittwater Local Environment Plan 2014 (commenced on 27/06/2014). Pursuant to both PLEP 1993 & PLEP 2014 (commenced on 27/06/2014), proposed development being construction of boat shed and its associated works is permissible on this land. The following relevant local and state policies apply to this site:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- State Environmental Planning Policy 71 – Coastal Protection;
- Pittwater Local Environmental Plan 1993;
- Pittwater Local Environmental Plan 2014 (commenced on 27/06/2014);
- Pittwater 21 Development Control Plan
 - Lower Western Foreshores And Scotland Island Locality
 - Geotechnical Risk Management Policy for Pittwater

The land is identified as the following:

- Slip affected
- Bushfire prone
- Unsewered land
- Area 1 – Dual Occupancy prohibited
- Foreshore Scenic Protection Area
- Subject to wave action and Tidal Inundation
- Land containing or adjoining Pittwater Spotted Gum Forest
- Land containing Saltmarsh endangered Ecological Community and other foreshore vegetation / habitat, estuarine wetlands, seagrass and Mangrove ECC's

State Environmental Planning Policy No. 1 - Development Standards (SEPP No. 1)

The applicant seeks to vary a development standard which requires the application of SEPP No. 1. Clause 6 of SEPP 1 states:

Where development could, but for any development standard, be carried out under the Act (either with or without the necessity for consent under the Act being obtained therefore) the person intending to carry out that development may make a development application in respect of that development, supported by a written objection that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case, and specifying the grounds of that objection.

The applicant has submitted a written objection (as part of the SEE, dated Dec 2013) outlining why compliance with the development standard is unreasonable and unnecessary. Clause 7 of SEPP 1 states:

Where the consent authority is satisfied that the objection is well founded and is also of the opinion that granting of consent to that development application is consistent with the aims of this Policy as set out in clause 3, it may, with the concurrence of the Director, grant consent to that development application notwithstanding the development standard the subject of the objection referred to in clause 6.

The following is Council's assessment of the SEPP 1 Objection:

1) Development Standard to be Varied

Environmental Planning and Assessment Model Provisions 1980 as adopted by Pittwater Local Environmental Plan (PLEP) 1993 – Part IV – General Amenity and Convenience – Clause 7(4) Foreshore Building Line states:

“A building shall not be erected between a foreshore building line and a bay, river, creek, lake or lagoon in respect of which the line is fixed.”

The applicant seeks consent for the construction of a new boat shed and its associated access stairs on the land between the foreshore building line and waterway.

The area between the foreshore building line and the waterway is approximately 209.64m². Quantitatively, the total area of the proposed works which encroaches over the FSBL is 24.4m² as such the applicant seeks to vary the development standard by approximately 11.64%.

NOTE:

Calculation of proposed area within foreshore area is as follows:

Portion of Boat shed - 7.078m²

Access Stairs - 15.369m²

Retaining Wall - 1.95m²

Total area - 24.4m²

The Standard Instrument and the EPA & Act 1979 define:

Building - includes part of a building, and also includes any structure or part of a structure (including any temporary structure or part of a temporary structure), but does not include a manufactured home, moveable dwelling or associated structure or part of a manufactured home, moveable dwelling or associated structure.

2) Underlying Object or Purpose of the Standard

There are no underlying objectives of the development standard specified in Clause 7 of the Model Provisions, however it is listed in a section of the PLEP titled General Amenity and Convenience. For the purpose of this assessment, this title along with the aims and objectives of D8.7 - Foreshore Building Line, within P21 DCP are used as a guide to determine the reasonableness of the works proposed within the foreshore building line:

- *To achieve the desired future character of the Locality;*
- *To preserve and enhance local views of the foreshore to reinforce and protect Pittwater's natural context and enhance legibility;*
- *To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping;*
- *To ensure the amenity of foreshore areas is enhanced and protected;*
- *To ensure that development adjacent to public domain elements such as rivers, foreshores, streets, parks, bushland reserves and other public open spaces compliments the landscape character, public use and enjoyment of that land;*
- *The visual impact of development when viewed from the waterway is reduced;*
- *To achieve an uncluttered setback which enhances the legibility of the foreshore character of Pittwater;*
- *To enhance the spaciousness and protect the vegetation, landforms and the natural landscape of the foreshore;*
- *To protect and improve pedestrian access along the foreshore, where applicable.*

3) Is compliance with the development standard unreasonable or unnecessary in the circumstances of case?

Wehbe v Pittwater Council [2007] NSWLEC 827, NSW Land and Environment Court case, Chief Justice Preston has adopted a rationale in the assessment of SEPP 1 objections to determine if strict compliance with the development standard is unreasonable or unnecessary. Paragraph 49, Chief Justice Preston states:

Development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).

The submitted SEPP 1 Objection seeks to establish that requiring compliance with the development standard in this instance is unreasonable or unnecessary because *“the proposed works are ancillary to the waterfront location and are commonly provided in this locality. The works are modest in their height and consistent with other similar structures in the immediate locality.”*

The proposed development has been assessed against the objectives of D8.7 - Foreshore Building Line, within P21DCP. Considerations have been made for each objective as follows:

The objectives outlined in Control D10.10 Foreshore Building Line in Pittwater 21 DCP are addressed as follows:

- ***To achieve the desired future character of the Locality; and***
- ***To preserve and enhance local views of the foreshore to reinforce and protect Pittwater's natural context and enhance legibility;***
- ***To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping; and***
- ***To enhance the spaciousness and protect the vegetation, landforms and the natural landscape of the foreshore;***

The proposed boat shed is single storey within the natural landscaped setting and is sympathetic to the landform it is located on as such it will be sufficiently integrated into the natural and existing built landscape. The boatshed and its associated works will minimise disturbance to the site and the potential impacts on the more significant trees within the site, located to the north of the dwelling. The proposed works will maintain a height limit below the tree canopy and the proposed development will remain of minimal bulk and scale and consistent with surrounding boat shed structures in the immediate locality.

The boatshed is single storey in height is located low within the foreshore area, as such view sharing is maintained to the subject site and adjoining properties. Furthermore, it is considered that the proposed works will allow for the preservation of local views of the foreshore. The applicant proposes natural materials of dark and earthy tones to further harmonise with the natural environment and surroundings.

- ***To ensure the amenity of foreshore areas is enhanced and protected; and***
- ***To protect and improve pedestrian access along the foreshore, where applicable.***

The proposed development will cause very minimal impact on the amenity of the foreshore area as the new deck and its associated stairway will not impede upon but rather improve pedestrian access along the foreshore that will complement with the character of the locality by being consistent with the established built form found along the foreshore area.

- ***To ensure that development adjacent to public domain elements such as rivers,***

foreshores, streets, parks, bushland reserves and other public open spaces compliments the landscape character, public use and enjoyment of that land; and

• *The visual impact of development when viewed from the waterway is reduced;*

The development as a whole responds to the waterway frontage, and will retain existing landscaping and character of the site. The proposal does not prevent or restrict public use of the waterway or the foreshore area as they are not extending beyond existing subject and surrounding jetties.

The proposal does not attribute to excessive bulk and scale when viewed from the waterway by keeping the size of the boatshed to a minimum in accordance with Council's policy. The development proposes natural and earthy tones and materials to blend the built form among the natural context and reduce the visual impact.

• *To achieve an uncluttered setback which enhances the legibility of the foreshore character of Pittwater;*

The proposed development observes a similar setback to the adjoining properties and nearby boat sheds. Whilst marine facilities are common within Scotland Island where boating facilities are the main transport for commuters travelling between the mainland and the island, the proposal is considered consistent with the character of the foreshore area and will not result in an uncluttered foreshore setback.

In accordance with Clause 8 of SEPP 1, it is considered that the non-compliance with the FSBL does not raise any matter of significance for State and Regional planning. Furthermore, it is considered that there would be little public benefit in maintaining strict compliance with the FSBL as prescribed in Pittwater LEP 1993 as the proposal is mindful of the surrounding natural elements including the foreshore of Pittwater, amenity to the public and private domain is considered to be reasonably maintained, the visual impact of the proposal is minimal when viewed from the waterway and foreshore access will remain available to the general public.

It has been demonstrated above that whilst the proposal does not comply with the development standard, it succeeds in achieving the relevant outcomes of the control. In this regard, strict compliance with the development standard is considered unnecessary and unreasonable.

4) Is compliance with the development standard consistent with the aims of SEPP 1?

5) Is the objection well founded?

Clause 3 outlines the aims of SEPP 1 as:

This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.

Section 5(a)(i) & (ii) of the EP&A Act are as follows:

(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,

(ii) the promotion and coordination of the orderly and economic use and development of land,

It is considered that strict compliance of the development standard in this instance would be inconsistent with the aims of SEPP 1 as it would not allow for the flexible application of planning controls where compliance with the control would be unreasonable or unnecessary and it would not encourage the attainment of orderly and economic development of the site.

In this regard, it is considered that the objection is well founded.

6) Conclusion

Council is satisfied that the objection is well founded and is of the opinion that granting of consent to the development application is consistent with the aims of the Policy as it allows for the flexible application of planning controls and the orderly and economic development of the site. The assessment has found that strict application of the development standard would be unreasonable and unnecessary given that the development will readily achieve the local planning objectives for the site.

4.0 BACKGROUND

The application has been referred internally to Council's Senior Engineer, Natural Resources Officer, Coast & Estuary Principal Officer and externally to NSW RFS, the Department of Planning and Infrastructure (SEPP 71) for comments and/or recommendations.

The development is Integrated, hence is also referred externally to Department of Primary Industries for comments and/or recommendations.

02 May 2014

Correspondence received from Department of Primary Industries with a number of conditions / recommendations.

13 May 2014

Site inspected on 13/05/2014 and has confirmed notification sign was displayed

21 May 2014

Correspondence received from NSW RFS which raised no concerns or issues on the proposal.

06 Aug 2014

An informal referral to Council's Coast & Estuary Principal Officer via email was undertaken on 05 Aug 2014. Comments were received via email correspondence.

06 Aug 2014

Due to a displacement of referral at the Department of Planning, a delayed correspondence from Department was received until this date. The Department has raised no concerns regarding the development besides stipulating considerations needs to be taken under the SEPP 71 - Coastal Protection.

5.0 NOTIFICATION

5 property owners notified
1 submission received

Submissions received from:

40 Robertson Rd raised concerns regarding:

- additions below MHWL may have implications on safe and uninterrupted public access;
- concerns on boat shed may be retrofitted to contain kitchen, bathrooms and bedroom in the future;
- necessity of having a boat-shed; and
- other concerns which are irrelevant to this proposal

6.0 ISSUES

- 3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings
- 4.2 Integrated Development: Fisheries Management
- B3.7 Estuarine Hazard - Residential Development: Dwelling House, Secondary Dwelling and Dual Occupancy
- B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community
- C1.2 Safety and Security
- D8.6 Side and rear building line
- D8.7 Foreshore building line
- D15.9 Public foreshore access
- D15.13 Lateral limits to development seaward of mean high water mark
- D15.14 Minimum frontage for marine facilities
- D15.15 Marine facilities
- Coastal Protection

7.0 COMPLIANCE TABLE

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

Control	Standard	Proposal	T	O	N
Pittwater Local Environmental Plan 1993					
9. ZONE No. 2(a) (RESIDENTIAL "A")			Y	Y	Y
33. Preservation of trees or vegetation			Y	Y	Y
39. Suspension of covenants, etc.			Y	Y	Y
46. Provision of adequate water and sewerage services			-	-	-
5 Consideration of certain applications		Subject development is within Foreshore Scenic Protection Area. However, proposed works appear modest and consistent with the surrounding existing boat- shed structures and associated works as such proposed works are not considered unreasonable.	Y	Y	Y

Control	Standard	Proposal	T	O	N
7 Foreshore building line	Proposed works are partially within the Foreshore Area. A SEPP 1 Objection statement has been submitted. Refer to Section 3.0 SEPP 1, for further discussions on variations to Development Standards on proposed development within the FSBL.		N	Y	Y
Pittwater 21 Development Control Plan					
3.1 Submission of a Development Application and payment of appropriate fee			Y	Y	Y
3.2 Submission of a Statement of Environmental Effects			Y	Y	Y
3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings		Submitted survey is a partial survey containing only survey information near the northern boundary and elements in the waterway. Given the proposed works are located near the waterway, this partial survey is considered acceptable. Site coverage will be calculated approximately based on additional information obtained from Council's mapping system and old survey records.	N	Y	Y
3.4 Notification		Development Application N0113/14 was notified to the adjoining property owners in accordance with council's notification policy. 5 adjoining property owners were notified for a period of 14 days from 30/04/2014 - 14/05/2014. During this time, 1 submission was received.	Y	Y	Y
3.5 Building Code of Australia		Condition(s) will be imposed that the development is to be in accordance with the BCA.	Y	Y	Y
3.6 State Environment Planning Policies (SEPPs) and Sydney Regional Environmental Policies (SREPs)		SEPP 71 - Coastal Protection has been considered towards the end of the Compliance Table.	Y	Y	Y
4.1 Integrated Development: Water Supply, Water Use and Water Activity			-	-	-

Control	Standard	Proposal	T	O	N
4.2 Integrated Development: Fisheries Management		<p>The proposal was referred to the Department of Primary Industries - Fisheries Division prior to the application being lodged with Council.</p> <p>And after application has been lodged to Council, the application was also referred to DPI- Fisheries Division.</p> <p>Refer to Discussions of Issues further within the report.</p>	Y	Y	Y
4.5 Integrated Development: Aboriginal Objects and Places			-	-	-
4.6 Integrated Development - Protection of the Environment			-	-	-
4.7 Integrated Development - Roads			-	-	-
4.8 Integrated Development - Rivers, Streams and Foreshores		<p>The proposed development includes works proposed within 40m of the waterbody. Section 39 of the Water Management (General) Regulation 2011 provides exemptions for residential and ancillary development within 40m of the waterbody. The proposed boatshed and associated works are considered to be an ancillary structure in association with the residential use of the property and as such the application is considered exempt from the provisions of the Water Management Act 2000.</p>	-	-	-
A1.7 Considerations before consent is granted			Y	Y	Y
B1.3 Heritage Conservation - General			-	-	-
B1.4 Aboriginal Heritage Significance		<p>Council's Natural Resources Officer provided the following comments:</p> <p><i>No apparent issues.</i></p>	Y	Y	Y
B3.1 Landslip Hazard			Y	Y	Y
B3.2 Bushfire Hazard		<p>Application has been referred to NSW RFS. Response received from RFS on 21 May 2014 has raised no concerns on the proposed development.</p>	Y	Y	Y
B3.5 Acid Sulphate Soils		<p>Council's Natural Resources Officer provided the following comments:</p> <p><i>No issues. Acid Sulphate Region 5 only.</i></p>	Y	Y	Y

Control	Standard	Proposal	T	O	N
B3.6 Contaminated Land and Potentially Contaminated Land			-	-	-
B3.7 Estuarine Hazard - Residential Development: Dwelling House, Secondary Dwelling and Dual Occupancy			Y	Y	Y
B3.9 Estuarine Hazard - Business, Light Industrial and Other Development			-	-	-
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community		Council's Natural Resources Officer has provided comments. For full assessment, refer to Discussions of Issues further in the report.	Y	Y	Y
B4.16 Seagrass Conservation		Council's Natural Resources Officer provided the following comments: <i>For comment see B4.7</i>	Y	Y	Y
B4.19 Estuarine Habitat		Council's Natural Resources Officer provided the following comments: <i>For comment see B4.7</i>	Y	Y	Y
B4.20 Protection of Estuarine Water Quality		Council's Natural Resources Officer provided the following comments: <i>For comment see B4.7</i>	Y	Y	Y
B8.1 Construction and Demolition - Excavation and Landfill			Y	Y	Y
B8.2 Construction and Demolition - Erosion and Sediment Management			Y	Y	Y
B8.3 Construction and Demolition - Waste Minimisation			Y	Y	Y
B8.5 Construction and Demolition - Works in the Public Domain					
C1.1 Landscaping		Council's Natural Resources Officer provided the following comments: <i>For comment see B4.7</i>	Y	Y	Y

Control	Standard	Proposal	T	O	N
C1.2 Safety and Security		A submission received from 40 Robertson Rd raised concerns regarding the additions below MHWL may have implications on safe and uninterrupted public access. These concerns have been addressed within the sections D15.9 - Public Foreshore Access, D15.15 - Marine Facilities, and the section relating to SEPP 71 - Coastal Protection further towards the end of report.	Y	Y	N
C1.3 View Sharing			Y	Y	Y
C1.4 Solar Access			Y	Y	Y
C1.5 Visual Privacy			Y	Y	Y
C1.6 Acoustic Privacy		Conditions relating to no cause of noise pollution from the operation of plant / equipment will be imposed.	Y	Y	Y
C1.7 Private Open Space			-	-	-
C1.13 Pollution Control		Conditions relating to no cause of air, odour, water, noise and other land pollution from the operation of plant / equipment will be imposed.	Y	Y	Y
C1.23 Eaves		Although non-compliant eaves are proposed for the boat-shed, the shed is not to be used for habitable space as such this control is not applicable.	-	-	-
D8.1 Character as viewed from a public place		Refer to section D15.15 - Marine Facilities and the section relating to SEPP 71 - Coastal Protection, towards the end of Compliance Table for further assessment on development as seen from the waterway.	Y	Y	Y
D8.3 Building colours and materials		SEE states all finishes will be of low reflectivity and in earthy tone complementing with the surrounding waterfront development. Condition(s) requiring all colours & finishes including roof colour are to be dark & earthy tone will be imposed.	Y	Y	Y
D8.4 Height	Max. Height - 8.5m	Proposed max. height - 6.04m Complies.	Y	Y	Y
D8.5 Front building line			-	-	-

Control	Standard	Proposal	T	O	N
D8.6 Side and rear building line	<p>Min. side setbacks - 2.5m to at least one side; 1m for other side</p> <p>Min. rear setback - 6.5m (other than where the foreshore building line applies)</p>	<p>Proposed Eastern side setback - 0.9m</p> <p>Proposed Western side setback - 5.3m (measured to stairs); 0m (measured to retaining walls)</p> <p>Proposed Rear setback - n/a (Foreshore Building Line applies)</p> <p>Because the development relies upon a greater setback on the western side, the proposed eastern side setback is technically non-compliant with regards to the 1m setback.</p> <p>Refer to Discussions of Issues further in the report.</p>	N	Y	Y
D8.7 Foreshore building line	<p>Development is prohibited between the foreshore building line and property boundary adjacent to the waterway, except development for the purpose of the following:</p> <ul style="list-style-type: none"> • Boating facilities; • An in-ground swimming pool at natural ground level; • Fencing; • Works to enable pedestrian access; and • Seawalls <p>Where a structure/s permitted within the foreshore building line obstruct or are likely to obstruct pedestrian access along the foreshore, alternative access must be provided around such structures.</p>	<p>The proposed boatshed and stairs structure are considered developments of boating facility and works to enable pedestrian access as such are permitted between the foreshore building line and the waterway.</p> <p>However, the PLEP prohibits development to be within the foreshore area. Refer to Section 3.0 - SEPP 1 for further discussions on variations to Development Standards on proposed development within the FSBL.</p>	Y	Y	Y
D8.8 Building envelope			Y	Y	Y

Control	Standard	Proposal	T	O	N
D8.9 Site coverage	Site Area - 720.8m ² For site areas between 700-749m ² , Max. Site Coverage - 29% (209.03m ²)	Existing site coverage - 24.92% (179.61m ²) [excluded <1m pathways, tanks & 6% recreation areas] Proposed site coverage - 28.31% (204.1m ²) [excluded <1m pathways, tanks & 6% recreation areas] Existing & proposed site coverage calculations comply.	Y	Y	Y
D8.11 Construction, Retaining walls, terracing and undercroft areas		Retaining wall is proposed to be constructed with rock. Condition requiring the materials are to be sandstone will be imposed. Council's Coast & Estuary Principal Officer also noted the following comments: <i>Proposed plan also makes reference to a proposed rock retaining wall at the foreshore. This structure should comply with the design principles and recommendations of the Environmentally Friendly Seawalls Guide (2009) prepared by the NSW Government.</i> This will be conditioned.	Y	Y	Y
D8.13 Stormwater overflow			-	-	-
D8.14 Parking management		Proposed development is to facilitate boat facilities, not motor.	Y	Y	Y
D8.15 Site disturbance			Y	Y	Y
D8.16 Scenic Protection Category One Areas		Refer to D8.3 - Building Colours and materials, for assessment on materials and finishes. Also refer to Section relating to SEPP 71 - Coastal Protection, towards the end of Compliance Table for further assessment on development as seen from the waterway.	Y	Y	Y

Control	Standard	Proposal	T	O	N
D15.9 Public foreshore access	<p>Development shall not be permitted within or adjoining the Pittwater Waterway which will:</p> <ul style="list-style-type: none"> • restrict or reduce opportunities for water-based recreation; • reduce or restrict access to public land or the waterway, including access from the waterway; • restrict or reduce boat access between existing or proposed public reserves or road reserves and the waterway; or • impede navigation in the waterway 	<p>A submission was received from 40 Robertson Rd which raised concerns in relation to the additions below MHWL may have implications on safe and uninterrupted public access.</p> <p>Proposed boat shed complements with a timber deck and stairs which are to facilitate safer and levelled access, therefore it does not prevent or hinder public foreshore access. As such the proposal is consistent with the outcomes of the control where it:</p> <ul style="list-style-type: none"> • enhances and improves public access between the waterway and the freehold land; • increases opportunity for public foreshore access in and immediately adjoining private foreshore development; and • compliments the landscape character, public use and enjoyment of that land because the proposal will be finished in dark and earthy tone 	Y	Y	N
D15.12 Development seaward of mean high water mark			Y	Y	Y

Control	Standard	Proposal	T	O	N
D15.13 Lateral limits to development seaward of mean high water mark	<p>Marine facilities shall be:</p> <ul style="list-style-type: none"> • constructed perpendicular to the shoreline and within the defined lateral limit lines to development, regardless of the orientation of waterfront properties, where practicable. This is to maximise equitable access to the waterway • set back a min. 2m along the full length of the lateral limit lines to development to minimise conflict and the possibility of inaccurate location of structures during construction. 	<p>Proposed boat shed and its associated deck are partially below MHWM, and are 0m from the western lateral limit line which is technically non-compliant.</p> <p>Refer to Discussions of Issues further in the report.</p>	N	Y	Y

Control	Standard	Proposal	T	O	N
D15.14 Minimum frontage for marine facilities	<p>Multiple marine facilities below mean high water mark (ie. boatsheds, jetty and slipway etc) will not be permitted.</p> <p>Where an existing allotment has a water frontage of less than 15.0 metres, limited development such as a jetty, ramp and pontoon will generally only be permitted. Multiple marine facilities below MHW (ie. boatsheds, jetty and slipway etc) will not be permitted.</p> <p>Facilities should be shared with neighbouring waterfront properties to minimise the density and visual impact of foreshore development. Where individual marine facilities are desired, the applicant must demonstrate, to the satisfaction of Council, that shared marine facilities are not appropriate and that the objectives of this part would not be compromised.</p>	Refer to Discussions of Issues further in the report.	N	Y	Y
D15.15 Marine facilities		<p>The proposal is consistent with the outcomes of the control subject to recommended conditions.</p> <p>For full assessment, refer to Discussions of Issues further in the report.</p>	N	Y	Y
Relevant State Controls					
Coastal Protection		<p>The proposal is consistent with the outcomes of the control subject to recommended conditions.</p> <p>For full assessment, refer to Discussions of Issues further in the report.</p>	Y	Y	N
(Building Sustainability Index: BASIX) 2004		Proposed works are below \$50,000 and are considered to be BASIX excluded development, hence BASIX Certificate is not required.	-	-	-

8.0 DISCUSSION OF ISSUES

- **3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings**

See Compliance Table.

- **4.2 Integrated Development: Fisheries Management**

The proposal was referred to the Department of Primary Industries - Fisheries Division prior to the application being lodged with Council. The plan stamped by DPI-Fisheries on 13 Feb 2014 is NOT FULLY consistent with those lodged with this development application (DPI-Fisheries stamped drawing is missing skid ramp in front of boatshed). However, Council has referred the application the DPI-Fisheries Division at the time of lodgement and the Department has provided the following comments dated 13 Feb 2014:

"Fisheries NSW has reviewed the proposal in light of those provisions and has no objections ; Fisheries NSW will consider final consent status for the proposal when Pittwater Council sends us the Integrated Development Application, noting that the works will require a Section 201 permit for dredging and reclamation associated with seawall construction, positioning the boatshed below mean high water, and to avoid any harm to the marine vegetation just offshore from the intertidal rock platform."

After application has been lodged to Council, the application was referred to DPI-Fisheries Division who had provided further comments as follow, dated 2 May 2014:

"Fisheries NSW has reviewed the proposal in light of those provisions and has no objections, subject to the proponent meeting the General Terms of Approval that follow. As per s.91A(3) of the Environmental Planning and Assessment Act 1979, any consent issued by Council must be consistent with these GTAs.."

- *The proponent must apply for and obtain a Part 7 permit for dredging and reclamation and harm marine vegetation under the FM Act from Fisheries NSW prior to any works on site. Permit application forms are available from the Fisheries NSW website at: <http://www.dpi.nsw.gov.au/fisheries/habitat/help/permit>;*
- *Environmental safeguards (silt curtains, booms etc.) are to be used during construction to ensure that there is no escape of turbid plumes into the aquatic environment. Turbid plumes have the potential to smother aquatic vegetation and have a deleterious effect on benthic organisms;*
- *In constructing the skid ramp decking, the gap installed between planks of the decking situated over Zostera seagrass is to be 30 mm; and*
- *All other relevant authorities have no objections to this proposal*

Given the updated drawings as lodged with Council on 24 April 2014 and that correspondence from DPI-Fisheries as per 2 May 2014 letter provides the latest comments received the Department, only Condition 1, 2 & 3 will be imposed in the consent if the development is to be approved.

- **B3.7 Estuarine Hazard - Residential Development: Dwelling House, Secondary Dwelling and Dual Occupancy**

Council's Engineer provided the following comments:

A Coastal/Estuarine Hazard Report prepared by Cardno, dated September 2013 identifies a range of issues affecting the proposed boat shed. The report makes a number of recommendations with respect to managing these issues to minimize the impact on the boat shed. The recommendations of the report are to be implemented as part of the proposal and maintained over the life of the development.

Council's Coast & Estuary Principal Officer provided the following comments:

From the photos and survey data attached to your email the foreshore type appears to be a natural rocky foreshore which would most closely equate to a type 2 foreshore edge treatment with a base EPL of RL 2.59 AHD at this location.

However as the majority of the proposed development is seaward of the foreshore edge, a merits assessment will need to be based on the estuarine risk management report submitted in support of the DA. If approved the consent should be conditioned in accordance with the risk management recommendations contained in the report and comments provided by the Development Engineer.

The attached plan also makes reference to a proposed rock retaining wall at the foreshore. This structure should comply with the design principles and recommendations of the Environmentally Friendly Seawalls Guide (2009) prepared by the NSW Government.

- **B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community**

Council's Natural Resources Officer provided the following comments:

The property contains a modified landscape typical of a suburban garden with an upper canopy with species which are commonly found in the Pittwater Spotted Gum Forest. The proposed works include construction of a boat shed, deck, access stairs and retaining wall. Trees exist within 5 metres of the proposed works (directly above the slump) however an arborist report has not been provided. The Risk Analysis and Management Report (Jack Hodgson Consultants Pty Ltd, 2 July 2013) recommends further investigation of the tree within the area of the proposed retaining wall works.

Therefore before the application can be further assessed, a detailed arborist report which assesses all trees within 5 metres of the proposed works is to be provided. The report is to determine the health, condition and Safe Useful Life Expectancy of the trees, and provide justified retention/removal recommendations as well as specify tree protection measures for each tree where applicable.

The works are proposed below the Mean High Water Mark and extend a distance into the estuary over a patch of vegetation indicated on the Site Analysis Plan (Jack Hodgson Consultants Pty Ltd, 24417-A01, 28 June 2013). Therefore a an Aquatic Ecology Report from a qualified consultant which assesses the potential impact to marine life including saltmarsh and/or seagrasses is required to be submitted as additional information.

A correspondence email dated 10 Jun 2014 from Natural Resources Officer indicated the application no longer requires an "Arborist Report" as additional information. And after consultation on 30 Jun 2014 with the DPI-Fisheries, requested additional information requiring an "Aquatic Ecology Report" is also no longer needed. Refer to ECM for records of email correspondences. Natural Resources Officer has provided the following further comments on 30 Jun 2014:

The tree located directly above the area of works as identified in the Risk Analysis and Management Report has been issued approval for removal in a separate application T0425/13 on 15/10/2013.

The works are proposed below the Mean High Water Mark and extend a distance into the estuary over a patch of vegetation indicated on the Site Analysis Plan (Jack Hodgson Consultants Pty Ltd, 24417-A01, 28 June 2013). Fisheries NSW has assessed the proposal and has no objections to the works. They have stated the works will require a Section 201 permit and will attach conditions for the protection of the existing seagrass to this permit. No further assessment of the site is therefore required. There are no further natural resource issues.

- **C1.2 Safety and Security**

See Compliance Table.

- **D8.6 Side and rear building line**

Proposed Eastern side setback - 0.9m

Proposed Western side setback - 5.3m (measured to stairs); 0m (measured to retaining walls)

Proposed Rear setback - n/a (Foreshore Building Line applies)

Because the development relies upon a greater setback on the western side, the proposed eastern side setback is technically non-compliant with regards to the 1m setback. Considering proposed development maintains a generous spatial separation (approx. 16.5m) with any structures at the neighbouring lot, the proposed boat-shed and its associated deck is not considered unreasonable and maintains consistency with the outcomes of this control because the proposal DOES NOT:

- alter the desired future character of the Locality because boat shed is a common marine development in this Locality;
- intensify the bulk & scale of the built form as the size has been kept to minimum and the finishes will be of dark and earthy tone;
- cause impacts upon views & vistas to and from public/private places because the shed is located low within the foreshore area and that it is single storey only;
- hinder the enjoyment of privacy, amenity and solar access at the adjoining property or takes away existing landscaping resulting an unattractive streetscape.
- take away existing vegetation as such to visually maintain the built form; and
- impede substantial landscaping or mature tree canopies that would result in an unattractive streetscape

- **D8.7 Foreshore building line**

See Compliance Table.

- **D15.9 Public foreshore access**

See Compliance Table.

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

Proposed boat shed and its associated deck are partially below MHW, and are 0m from the western lateral limit line which is technically non-compliant. Considering the existing adjoining jetty to west is 2.5m from the proposed deck and gradually allowing greater setback as it projects out towards the end of the proposed ramp, the proposal is considered to be meeting the outcome of ensuring fair and equitable enjoyment of the waterway between neighbouring waterfront landowners by not encroaching unreasonably in front of adjoining properties.

- **D15.14 Minimum frontage for marine facilities**

Although it is acknowledged that the subject site's water frontage width is less than 15m (being 13.3m) and a portion of the proposed boatshed, its associated works are located below MHW which will result in multiple facilities within the water frontage, the proposal is however considered acceptable because the spatial separation with existing neighbouring jetties to west ranges from 2.6 to 4.1m and to the east is 9m. This is considered a reasonable distance hence the proposal is considered to be consistent with the outcome by not causing excessive visual impact of marine facilities along the waterfront.

- **D15.15 Marine facilities**

- c) Boatsheds**

Boatsheds shall meet the following criteria:

i. Boatsheds shall be located above mean high water mark on freehold land, where practicable. Where this cannot realistically be achieved, as much of the proposed boatshed as is practical must be located above mean high water mark to minimise encroachment onto the littoral zone below mean high water mark. - Approximately 40% of the proposed boatshed is located above MHW on freehold land.

ii. Boatsheds shall be 1-storey and no > 4.5m in height above the platform on which it is built, 4m in width and 6m in length. The use of lofts or similar design concepts shall not be permitted. - Satisfactory - Proposed boat shed is 1-storey; it is 4m (W) X 4.5m (L) & has a max. height of 4.5m above the platform on which it is built.

iii. Boatsheds shall not prevent or hinder public foreshore access. Alternative access must be provided where a proposed boatshed is likely to make existing foreshore access below MHW difficult. - A submission was received from 40 Robertson Rd which raised concerns in relation to the additions below MHW may have implications on safe and uninterrupted public access.

Proposed boat shed complements with a timber deck and stairs which are to facilitate safe and levelled access, therefore does not prevent or hinder public foreshore access - Satisfactory

iv. Boatsheds cannot be used for any other purpose than the storage of small boats and/or boating equipment. The incorporation any internal kitchen facilities, habitable rooms, shower or toilet facilities shall not be permitted. Roof areas of boatsheds shall not be used for recreational or observational purposes. - A submission was received from 40 Robertson Rd which raised concerns in relation to the boat shed may be retrofitted to contain kitchen, bathrooms and bedroom.

Proposed boat shed will be used solely for the storage of boats and/or boating equipment to service the principle dwelling. The proposal does not incorporate any habitable rooms, internal kitchen or toilet facilities. This will be conditioned to ensure that these are not incorporated into the development at any time.

v. Boatsheds shall be constructed of low maintenance materials that are of a tone and colour which is sympathetic to the surrounding setting. Structures proposed along the western foreshores, McCarrs Creek, Horseshoe Cove, Salt Pan Cove, Refuge Cove, Clareville and Careel Bay are to have specific regard for the natural landscaped character of the area. Reflective materials and finishes for private boatsheds shall not be permitted. - **Satisfactory - SEE states all finishes will be of low reflectivity and in earthy tone complementing with the surrounding waterfront development. Therefore, the proposed boatshed will be constructed of low maintenance materials, and will be earthy tones and colours of the surrounding locality. This will be conditioned to ensure consistency with the control in this regard.**

vi. The minimum floor level for proposed boatsheds shall be in accordance with controls for foreshore development around the Pittwater Waterway. - **Proposed finished floor level of the boatshed is 1.7m AHD which is below the Estuarine Planning Level for the site of 2.59m AHD. Council's Development Engineer and Coast & Estuary Principal Officer have raised no objection in this regard apart from imposing the condition of that "the proposed boatshed is to be designed to withstand the forces of wave action estimated by the Cardno coastal report, dated 24 Sept 2013. In this regard, a civil/structural engineers certification is to be provided to the principal certifying authority prior to issue of a Construction Certificate."** This will be conditioned.

vii. Boatsheds shall be able to be entirely enclosed. Boatsheds which either partially or wholly do not incorporate appropriate wall cladding shall not be permitted, as such structures tend to become visually obtrusive when viewed from the waterway. - **Satisfactory - Proposed boatshed is solid on all four (4) elevations with double solid doors to the northern elevation as such will be fully enclosed when doors are shut.**

viii. All electrical equipment and wiring shall be water tight below the designed flood/tidal inundation level. - **Will be conditioned**

Boatsheds which cannot meet these criteria are considered out of scale and character with the type of residential foreshore development that exists around the Pittwater Waterway. Boats which cannot be accommodated in the recommended size boatshed are considered inappropriate and should be accommodated using alternative facilities - **With the exception of criterion i), the proposed boat shed meets all criteria within this control as such the proposed is considered largely consistent with the technical requirements and outcomes identified by this control.**

d) Slipways and Launching Ramps - Variation

Although slipways and launching ramps are generally not favoured, these structures can be considered on merit where they are unlikely to detract from the visual character of the foreshore, will not affect marine vegetation and restrict public foreshore access. Where the control is varied the following criteria shall apply:

- *Innovative design which incorporates slipping facilities with other existing or proposed structures is encouraged.* - **Satisfactory - the boat shed incorporates a skid ramp.**
- *Structures, the storage of lightweight boats, and any winch equipment shall be entirely on private freehold land and shall not obstruct public foreshore access.* - **This will be conditioned.**

- *Structures shall be at ground level, where possible. Slipways from boatsheds, or reclamation must be recessed into the subject structure or work to minimise the height of the sliprails or boat ramp above the bed of the Pittwater Waterway. - **Satisfactory - height of the skid ramp above the bed of the Pittwater waterway is considered minimised.***
- *Sliprails are to be in the form of two parallel rails, no more than 2m width apart, with either locking spreaders between the rails or bolted directly to the surface of the concrete without the use of spreaders or embedded in concrete to facilitate free access. **N/A***
- *Timber construction is preferred for proposed boat ramps. Concrete ramps may be considered at bed level in certain locations such as at Crystal Bay, Winji Jimi Bay, Palm Beach and Careel Bay or where it can be shown, to the satisfaction of Council, that the aims of this clause are not compromised. Other materials such as steel with bonded rust proof coating will also be considered. - **Satisfactory - Proposed finishes of ramp and piles will be timber. This will be conditioned.***

As discussed above, the proposed skid ramp is not located in the foreshore area or landward of the MHW, it is proposed to facilitate access from the waterway rather than impeding access. The application although is not supported by a Marine Habitat Survey, Council's Natural Resource officer has consulted NSW Department of Fisheries (DPI-Fisheries) Senior Environmental Assessment Officer, Marcel Green, in relation to matters on marine vegetation protection and no further comments have been provided by Natural Resources Officer in this regard. (Refer to B4.7 for details)

Correspondence letter has been received from the DPI-Fisheries on 2 May 2014. The proposed works would be acceptable upon satisfying the requirement for the applicant to gain a permit from Fisheries NSW which will include provisions to protect marine vegetation. A number of additional conditions imposed by the DPI-Fisheries will also be conditioned.

Given that the skid ramp is in a similar structure to the surrounding structures in the Locality, the proposal will not detract from the visual character of the foreshore area. And the over-all proposal:

- is not considered to be detrimental to the visual quality, water quality or estuarine habitat of the Pittwater Waterway;
- is not affecting marine vegetation; and
- is not restricting public foreshore access.

Therefore, a variation to allow the construction of the proposed skid ramp is deemed reasonable.

e) Piles

There are piles proposed as associated works to the proposed deck and skid ramp. Considerations have been taken against the controls under this section - **e) Piles**. However, given these proposed piles are only associated to the deck and ramp which are not located seaward beyond the existing adjacent jetties and are not within an area subject to heavy wave exposure as sensitive as jetties, pontoons and berthed vessels, the piles are unlikely to have a detrimental visual effect when viewed from the waterway. As such, the sub-controls of this section are not applicable in this instance.

- **Coastal Protection**

A submission was received from 40 Robertson Rd which raised concerns in relation to the additions below MHW may have implications on safe and uninterrupted public access.

Part of the the proposed works are below MHWL as such a referral to the Department of Planning & Environment is required. Response from Department of Planning & Environment advises that no additional matters, other than those specified in Cl. 8 of the SEPP 71 are needed to be taken into consideration. Therefore the proposed development has been considered with the matters set out under clause 8 of SEPP 71. And the proposal is considered to be consistent with Cl. 8 of SEPP 71 because:

- the development has been assessed against scale, amenity, solar access and view sharing of and amongst surrounding properties and coastal environs;
- the development although may not improve on disable access given the existing condition of foreshore area is non-accessible by persons with disability, it would not further impede upon existing access but rather improve on existing pedestrian access;
- the development is suitable in its type, location and relationship with the surrounding area as the proposed works are compatible with the adjacent existing jetties and boat sheds where bulk, scale and size is appropriate for the location. Therefore the natural scenic quality of the surrounding area are protected;
- the development provides new opportunities for public access to and along coastal foreshores that is compatible with the natural attributes of the coastal foreshore
- the development protects and preserves native coastal vegetation, existing wildlife corridor and marine environment as no trees have been affected due to the proposal and that the application has provided Marine Habitat assessments, where NSW Fisheries and Council have imposed conditions regarding protection of marine vegetation;
- rock platforms are protected and preserved; and
- no known Aboriginal heritage, archaeological or historic significance has been identified on site

9.0 CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, Pittwater Local Environmental Plan 1993, Pittwater 21 DCP and the draft Pittwater Local Environmental Plan and other relevant Council policies.

The impacts of the proposed development have been addressed and considered. The proposal is considered to be consistent with the relevant statutory and policy controls and is largely consistent with the technical requirements of P21 DCP as such is able to achieve the outcomes of the relevant controls. Subject to conditions of consent, the proposed development is not considered to result in any unreasonable impacts upon the adjoining properties.

Accordingly, the application is recommended for approval.

RECOMMENDATION OF DEVELOPMENT OFFICER/PLANNER

That Council as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 grant consent to development application N0113/14 for the boat shed and its associated works including the deck, access ramp, stairs and retaining wall at 55 Robertson Road, Scotland Island, subject to conditions of consent.

Report prepared by

Sylvania Mok

Date: 14 October 2014

