

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1862
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Responsible Officer:	Jordan Howard
Land to be developed (Address):	Lot 41 DP 13760, 214 Hudson Parade CLAREVILLE NSW 2107 Lot LIC 187249, 214 Hudson Parade CLAREVILLE NSW 2107
Proposed Development:	Alterations and additions to a boatshed, decking and skid ramp
Zoning:	C4 Environmental Living
Development Permissible:	Yes - Zone C4 Environmental Living Yes - Zone W1 Natural Waterways
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Peter Karl Heller Marianne Heller Patrick Alexander Heller Nicole Susanne Heller
Applicant:	Patrick Alexander Heller

Application Lodged:	22/01/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	30/01/2024 to 13/02/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 17%
Recommendation:	Approval

Estimated Cost of Works:	\$ 194,500.00
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a boatshed, decking and skid ramp.

The application is referred to the Development Determination Panel (DDP) due to a request to vary the height of buildings development standard, established by the Pittwater Local Environmental Plan 2014, by greater than 10%.

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

Critical assessment issues included assessment of the Clause 4.6 Request to vary the height of buildings development standard, as well as assessment of Pittwater 21 Development Control plan non-compliances, including:

- Clause D1.9 Side and rear building line.
- Clause D15.13 Lateral limits to development seaward of mean high water mark.
- Clause D15.15 Waterfront development

The 4.6 Request for the non-compliance with the height standard arises from the construction of a boatshed which straddles the the Mean High Water Mark (MHW). Above the MHW the building height development standard is 8.5m. Below the MHW the standard is 4m. The portion of the proposed boatshed above the MHW exhibits a building height of 5m, compliant with the 8.5m development standard. However, below the MHW the proposed boatshed exhibits a building height of 4.68m at the southernmost point of the boatshed, representing a 17% variation to the 4m development standard. Notably, the proposed boatshed is located over the footprint of an exiting boatshed, with the non-compliance arising due to the measuring of building height from an existing concrete boat ramp, which is to be built over. The design of the boatshed is generally in accordance with the prescriptive requirements for boatsheds outlined in the P21DCP, with only minor variations to theses prescriptions arising due to the use of the existing boatshed footprint.

The variation of the height of buildings development standard is assessed as acceptable within the section of this report on PLEP 2014 Clause 4.6 Exceptions to development standards.

This report concludes with a recommendation that the DDP grant approval to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

This Development Application seeks development consent for alterations and additions to a boatshed, decking and skid ramp. Specifically, the following is proposed:

Ground Floor (boatshed, internal and external):

- Partial demolition of the existing boatshed, including the removal of concrete block walls and existing roof.
- The footings, concrete slipway, rails and existing timber jetty are to remain.
- The sandstone walls are to be retained and new concrete block walls built to provide enclosed storage for a boat.
- Additional kayak storage is to be provided under the western eaves.
- New timber decking to be built over existing concrete slip.
- New “private landing steps” (stepped tidal landing) and “skid” (ramp).

Storage Platform (within boatshed):

- High level storage for equipment, materials or other products which must be stored above the Estuarine Planning Level.
- New pop-up roof provided above storage platform.

Additional information was requested in relation to Clause 4.3 Height of Buildings & Clause 4.6 Exceptions to Development Standard of Pittwater Local Environmental Plan 2014. Amended / additional information was provided, which did not require re-notification in accordance with the Northern Beaches Community Participation Plan.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living

Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards

Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area

Pittwater 21 Development Control Plan - D1.5 Building colours and materials

Pittwater 21 Development Control Plan - D1.9 Side and rear building line

Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land

Pittwater 21 Development Control Plan - D15.12 Development seaward of mean high water mark

Pittwater 21 Development Control Plan - D15.13 Lateral limits to development seaward of mean high water mark

Pittwater 21 Development Control Plan - D15.15 Waterfront development

SITE DESCRIPTION

Property Description:	Lot 41 DP 13760 , 214 Hudson Parade CLAREVILLE NSW 2107 Lot LIC 187249 , 214 Hudson Parade CLAREVILLE NSW 2107
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<p>Detailed Site Description:</p>	<p>The subject site consists of one (1) allotment located on the southern side of Hudson Parade, with a rear boundary abutting the Pittwater Waterway.</p> <p>The site is irregular in shape with a frontage of 15.24m along Hudson Parade and a maximum depth of 52.12m. The site has a surveyed area of 739.8sqm.</p> <p>The site is located within the C4 Environmental Living zone and accommodates a dwelling house. Below the Mean High Water Mark (MHWM), which forms the southern rear boundary, is the Pittwater Waterway, which is zoned W1 Natural Waterways.</p> <p>The site slopes steeply from the front (north) down towards the Pittwater Waterway at the rear (south), with a fall across the site of approximately 19m.</p> <p>The site contains trees, garden beds, lawn areas and vegetation.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by dwelling houses. Surrounding properties that also abut the Pittwater Waterway have associated boatsheds, jetties and boat ramps of various styles and ages.</p>
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Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

Development Application No. DA2021/1790

Alterations and additions to a dwelling house, including a swimming pool and garage.

Approved on 18 April 2022.

Modification Application No. Mod2022/0314

Modification of Development Consent DA2021/1790 granted for Alterations and additions to a dwelling house, including a swimming pool and garage.

This application was refused by Council on 13 September 2022. This decision was appealed in the NSW Land and Environment Court and the appeal was upheld, with DA2021/1790 modified in accordance with the determination of the Court on 13 December 2023.

Modification Application No. Mod2022/0625

Modification of Development Consent DA2021/1790 granted for Alterations and additions to a dwelling house, including a swimming pool and garage.

Approved on 15 March 2023.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Clause 4.3 Height of Buildings & Clause 4.6 Exceptions</p>

Section 4.15 Matters for Consideration	Comments
	<p>to Development Standard of Pittwater Local Environmental Plan 2014.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 30/01/2024 to 13/02/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p><i>Supported, subject to conditions.</i></p> <p>The proposal has been assessed against the following applicable controls and provisions:</p> <ul style="list-style-type: none">• SEPP (Resilience and Hazards) 2021 - Coastal Environment Area• Pittwater LEP - Clause 7.6 Biodiversity Protection• Pittwater DCP - Clause B4.7 Pittwater Spotted Gum Forest Endangered Ecological Community <p>The proposal is unlikely to impact upon native terrestrial fauna and flora. Portions of the land where works are proposed are noted to have been identified as containing seagrasses. Therefore, impacts to the marine environment will be assessed by the appropriate referral body.</p> <p>No native vegetation or fauna habitat would be impacted, the development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p>
NECC (Coast and Catchments)	<p><i>Supported, subject to conditions.</i></p> <p>The application proposes partial demolition and rebuild a boatshed, and construct a new ramp and tidal landing over an existing slipway. The existing boatshed was granted approval on the 5th of June, 1991 that allowed the boatshed to be constructed in its current location and to its current footprint of 5m wide by 7.3m in length.</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none">• Supplied plans and reports including;• Estuarine Risk Management Report by Horton Coastal Engineering Pty. Ltd. dated 13 January 2023• Coastal Area Environmental Assessment Report by Total Earth Care dated 17 January 2023• Aquatic Ecology Assessment by Marine Pollution Research Pty. Ltd. dated 15 November 2022 <ul style="list-style-type: none">• Coastal Management Act 2016;• State Environmental Planning Policy (Resilience and Hazards) 2021

Internal Referral Body	Comments
	<p>(section 2.10, 2.11 & 2.12);</p> <ul style="list-style-type: none"> • Relevant LEP and DCP clauses. <p>The application has been assessed in consideration approval/support of:</p> <ul style="list-style-type: none"> • Consent to lodge DA from the NSW Department of Planning and Environment – Crown Lands and Public Spaces dated 14 December 2023 enclosing dated and signed maps • No navigational concerns from the Transport for NSW-Maritime Division dated 16 January 2024 enclosing dated and signed maps • No Objection from the DPI-Fisheries, a division of the Department of Primary Industries dated 19 February 2024 enclosing dated and signed maps and also indicating If excavation for foundations is to occur, a permit to dredge will be required from the Department under s.201 of the Fisheries Management Act. <p>State Environmental Planning Policy (Resilience & Hazards) 2021</p> <p>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 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA.</p> <p>Comment:</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Utz-Sanby Architects dated August 2023 and also as assessed in the submitted Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated January 2023, the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&H.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p>Estuarine Risk Management</p> <p>The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site. The Estuarine Hazard Controls do not apply to Jetties, Bridging Ramps or Pontoons located on the seaward side of the foreshore edge.</p>

Internal Referral Body	Comments
	<p>As per submitted Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 13 January 2023, a base estuarine planning level (EPL) of RL 3.03m AHD would apply at the subject site.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Utz-Sanby Architects dated August 2023 and also as assessed in the submitted Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated January 2023, the ground floor level of the refurbished boatshed is still below the EPL for the site.</p> <p>The proposed development is therefore subject to conditions to satisfy the relevant estuarine risk management requirements of P21 DCP.</p> <p>Development on Foreshore Area</p> <p>A section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area.</p> <p>The DA proposes works outside the foreshore building line although are permissible due to the fact it is a boatshed and utilises the location and size of the existing boatshed. All these proposed works are consistent with Clause 7.8(2)(b).</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Utz-Sanby Architects dated August 2023, the DA satisfies the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.</p> <p>Development seaward of mean high water mark</p> <p>Proposed development works are located on crown land below the Mean High Water Mark. Hence, Section D15.12: Development seaward of mean high water mark of the Pittwater 21 DCP applies to proposed development.</p> <p>Comment:</p>

Internal Referral Body	Comments
	<p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Utz-Sanby Architects dated August 2023, the DA satisfies requirements under the Section D15.12: Development seaward of mean high water mark of the Pittwater 21 DCP. An analysis of the proposal demonstrated that the proposed development will not adversely impact on the visual amenity of the foreshore or water quality. The boatshed straddles the mean high water mark. The existing boatshed's footprint is retained. The boatshed contains no further encroachment onto the waterway. This allows for continued access to boats whilst minimising the impact on water quality hydrodynamics.</p> <p>The applicant has also submitted Aquatic Ecology Assessment prepared by Marine Pollution Research Pty. Ltd. dated 15 November 2022. The report concluded that the construction of a boat-shed and ramp facility can be undertaken with no significant impact on overall fish habitat values of the locality as intertidal to shallow sub-tidal native marine vegetation. Losses will be balanced against larger losses of pest algae habitat and an overall gain in shallow oyster reef fish habitat assemblages. Construction related risks can be mitigated and managed by the use of appropriate and specific aquatic habitat protection measures that can be incorporated into the project Construction Environment Management Plan (CEMP). The project may still require a Section 205 Permit under the FMA to ensure that the construction related risks are properly managed for the construction phase. or estuarine habitat of the Pittwater waterway</p> <p>As such, it is considered that the application does comply subject to approval conditions with the requirements of the Section D15.12: Development seaward of mean high water mark of the Pittwater 21 DCP.</p> <p>Lateral Limit to develop seaward of mean high water mark</p> <p>Proposed development works are located on crown land below the Mean High Water Mark. Hence, Section D15.13: Lateral limit to develop seaward of mean high water mark of the Pittwater 21 DCP applies to proposed development.</p> <p>Comment:</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Utz-Sanby Architects dated August 2023, the DA satisfies requirements under the Section D15.13: Lateral limit to develop seaward of mean high water mark of the Pittwater 21 DCP. The SEE report indicated that the proposed boatshed utilises the existing boatshed footprint to</p>

Internal Referral Body	Comments
	<p>minimise the impact on neighbours. In doing this the perpendicular nature of the boatshed to the shoreline is maintained. Since the waterfront development utilises the existing footprint it is not distanced 2m from the lateral limit lines originating at the boundary, instead sitting 1m from this line.</p> <p>As such, it is considered that the application does comply following existing footprint with the requirements of the Section D15.13: Lateral limit to develop seaward of mean high water mark of the Pittwater 21 DCP.</p> <p>Waterfront Development</p> <p>Proposed development of boatshed are located on crown land below the Mean High Water Mark. Hence, Section D15.15: Waterfront development, sub-section c) Boatshed of the Pittwater 21 DCP applies to proposed development. This sub-section specifies height, design and utilization of the boatshed. Boatsheds shall be one storey and no greater than 4.5m in building height above the platform on which it is built,, irrespective of its location</p> <p>Comment:</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Utz-Sanby Architects dated August 2023, the proposed boatshed utilises the locational footprint of the existing footprint of the existing boatshed.</p> <p>As such, it is considered that the application does comply, subject to conditions, with the requirements of the Section D15.15: Waterfront development, sub-section c) Boatshed of the Pittwater 21</p>
NECC (Riparian Lands and Creeks)	<p><i>Supported, subject to conditions.</i></p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021; - Relevant LEP and DCP clauses; and - Northern Beaches Council Water management for development policy. <p>This proposal is supported. Details below.</p> <p><i>Riparian</i></p>

Internal Referral Body	Comments
	<p>The site is located adjacent to Pittwater and as such proposed development must not significantly impact on the biophysical, hydrological or ecological integrity of Pittwater or the quantity and quality of surface and ground water flows that it receives.</p> <p><i>Sediment Management</i> Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established.</p> <p><i>Working in the marine environment</i> Recommendations from the Coastal Area Environmental Assessment Report and the Aquatic Ecology report apply.</p>
Parks, reserves, beaches, foreshore	<p><i>Supported, without conditions.</i></p> <p>The development site adjoins Pittwater waterway that is located downslope of the property.</p> <p>The development is not detrimental to the landscape/aquatic character of the adjoining waterway, and as such Parks, Reserves and Foreshores raise no concerns with the development proposal.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><i>Supported, subject to conditions.</i></p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>
Aboriginal Heritage Office	<p><i>Supported, subject to conditions.</i></p> <p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease</p>

External Referral Body	Comments
	in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, the Department of Planning, Industry and Environment (DPIE) and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 2 Coastal Vulnerability Area

2.9 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- b) the proposed development:
 - i) is not likely to alter coastal processes to the detriment of the natural environment or
 - ii) other land, and
 - iii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment:

There is currently no adopted Coastal Vulnerability Area Map, however, Council's Coasts and Catchments Officer has reviewed the proposed development and it is supported, subject to conditions.

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
 - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
 - b) coastal environmental values and natural coastal processes,
 - c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
 - d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
 - e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - f) Aboriginal cultural heritage, practices and places,
 - g) the use of the surf zone.

Comment:

Council's Coasts and Catchments Officer has reviewed the proposed development and it is supported, subject to conditions. The works are not considered to have adverse impacts on the above matters.

- 2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
- b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
- c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

Council's Coasts and Catchments Officer has reviewed the proposed development and it is supported, subject to conditions. The proposed development has been sited so as not to cause adverse impacts on the coastal environment.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - i) existing, safe access to and along the foreshore, beach, headland or rock
 - ii) platform for members of the public, including persons with a disability,
 - iii) overshadowing, wind funnelling and the loss of views from public places to
 - iv) foreshores,
 - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
 - b) is satisfied that:
 - i) the development is designed, sited and will be managed to avoid an
 - ii) adverse impact referred to in paragraph (a), or
 - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

Council's Coasts and Catchments Officer has reviewed the proposed development and it is supported subject to conditions. The works are not considered to have adverse impacts on the above matters.

Division 5 General

2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

Council's Coasts and Catchments Officer has reviewed the proposed development and it is supported, subject to conditions. The proposed development is not likely to cause increased risk of coastal hazards.

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

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

Comment:

Council's Coasts and Catchments Officer has reviewed the proposed development and it is supported, subject to conditions. The consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

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

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone C4 : Yes Zone W1 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone C4 : Yes Zone W1 : Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m in C4 zone (i.e. above MHWM)	5m	-	Yes
	4m in W1 zone (i.e. below MHWM)	4.68m	17%	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No

Clause	Compliance with Requirements
4.6 Exceptions to development standards	Yes
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The proposal is considered against the objectives of the C4 Environmental Living zone below:

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.

Comment:

The proposal provides for the development of a boatshed and related waterfront development, ancillary to a low-density residential development (a dwelling house). The proposal maintains the special ecological, scientific and aesthetic values of the site, considering that the site as existing has been disturbed for low density and scale residential use.

- To ensure that residential development does not have an adverse effect on those values.

Comment:

As above, the proposal maintains the special ecological, scientific and aesthetic values of the site, considering that the site as existing has been disturbed for low density and scale residential use.

- To provide for residential development of a low density and scale integrated with the landform and landscape.

Comment:

The proposal is ancillary to a low density residential development (a dwelling house). The proposed boatshed and related development is itself low in scale and density, and integrated with the landform and landscape, as much as possible whilst still maintaining usefulness for its intended purpose.

- To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.

Comment:

Council's Coasts and Catchments Officer has reviewed the proposed development and it is

supported, subject to conditions. Council's Bushland and Biodiversity Officer has also reviewed the proposed development and it is supported, subject to conditions. The proposal does not adversely impact on riparian and foreshore vegetation and wildlife corridors.

As demonstrated above, the proposal compiles with the objectives of the C4 Environmental Living zone.

It is also noted that the proposal includes works within the W1 Natural Waterways zone. The portion of the proposal within the W1 zone (including portions of the decking, boat ramp and boatshed) is also considered to be consistent with the objectives of that zone.

4.3 Height of buildings

The subject site straddles the Mean High Water Mark (MHWM). Above the MHWM the building height development standard is 8.5m. Below the MHWM the building height development standard is 4m.

The proposed development includes a boatshed partially proposed over the MHWM. The portion of the proposed boatshed above the MHWM exhibits a building height of 5m, compliant with the 8.5m development standard. However, below the MHWM the proposed boatshed exhibits a building height of 4.68m at the southernmost point of the boatshed, representing a 17% variation to the 4m development standard.

Refer to the section of this report on PLEP 2014 Clause 4.6 Exceptions to development standards for an assessment of the proposed variation.

4.6 Exceptions to development standards

The application seeks consent to vary a development standard as follows:

Development standard: Clause 4.3 Height of buildings

Requirement: 4m (below the MHWM)

Proposed: 4.68m

Percentage of variation: 17%

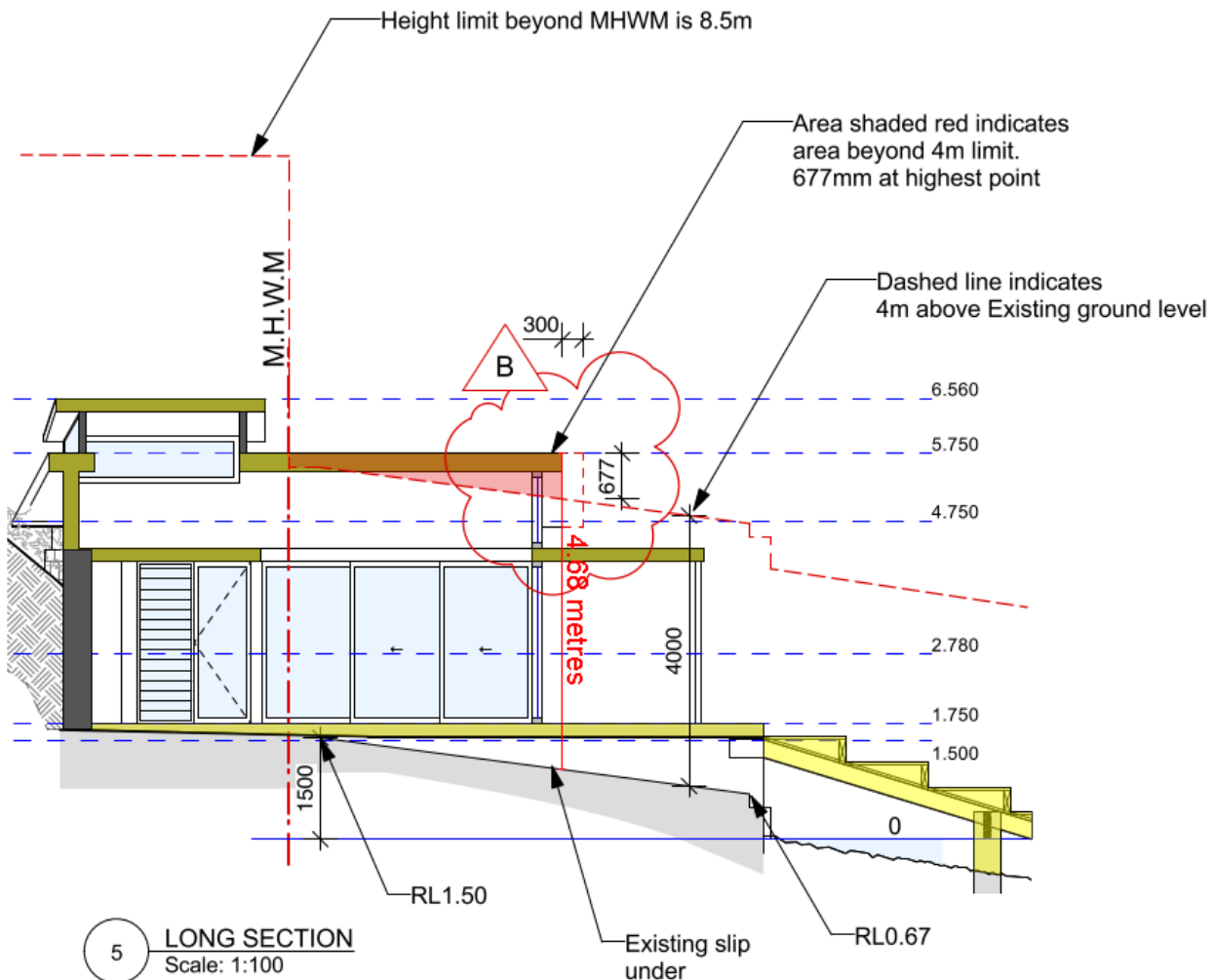


Figure 1 - Long Section of the proposed boatshed with the portion of the roof breaching the height of buildings development standard in red.

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the PLEP 2014 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

(1) *The objectives of this clause are as follows:*

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Comment:

The objectives of this clause have been considered pursuant to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979*.

Subclause (2) of this clause provides that:

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

Clause 4.3 Height of buildings is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment:

Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.3 Height of buildings is unreasonable or unnecessary in the circumstances of this application for the following reasons:

In accordance with *Wehbe v Pittwater Council [2007] NSWLEC 827*, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard. The applicant has demonstrated that the proposal meets the objectives of Clause 4.3 Height of buildings. As such, strict compliance with the building height development standard is unreasonable and unnecessary in the circumstances of this case.

(b) there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

The Clause 4.6 Request argues, in part:

"The non-compliances have been demonstrated to have no greater amenity effects on neighbouring development with regard to solar access and loss of views. The minor contravention of height regarding the proposed gabled roof can be considered in relation to the major amenity benefits it will bring to this particular development. To allow the Applicants to undertake the necessary re-building of the existing dilapidated and unsightly boat shed, are in themselves, justification on environmental planning grounds.

In considering the environmental planning grounds particular to the circumstances of the proposed development in relation to Section 1.3 of the EPA Act:

- The proposed design will promote good design and a high level of amenity for the owners without having any greater impact upon the amenity of the surrounding neighbours.*
- The existing boat shed is dilapidated and unsightly. It detracts from the aesthetic qualities of the local area. By allowing the Applicants to re-build the boat shed on it's existing footprint, this will greatly enhance aesthetic qualities of the water's edge and contribute to the locality."*

These arguments are generally concurred with. The design of the boatshed is generally in accordance with the prescriptive requirements for boatsheds outlined in the P21DCP, with only minor variations to these prescriptions arising due to the use of the existing boatshed footprint, and as such can be considered to be of good design. There are no anticipated visual or amenity impacts, considering the proposal is commensurate with surrounding waterfront development. Furthermore, it is noted that the variation results from the existing boat ramp level over which the boatshed is proposed, with the greatest extent of the variation above the southern end of this ramp.

Council is satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.3 Height of buildings for the following reasons:

- The design of the boatshed is generally in accordance with the prescriptive requirements for boatsheds outlined in the P21DCP, with only minor variations to these prescriptions arising due to the use of the existing boatshed footprint, and as such can be considered to be of good design.
- The proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.

Public Interest:

Matters relevant to public interest in respect of the development are considered in the relevant sections of this report as per Section 4.15(1)(e) of the EPA Act.

Conclusion:

Council is satisfied as to the matters set out in Clause 4.6 of the PLEP 2014.

It is considered on balance, that having regard to the particular circumstances, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

7.8 Limited development on foreshore area

Under Clause 7.8 Limited Development on Foreshore Area, development consent must not be granted for development on land in the foreshore area except for the following purposes:

- 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,*

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

Comment:

The proposed development is for the construction of a boatshed and slipway, as well as ancillary decking which acts as both a wharves and for waterway access purposes. These uses are for purposes listed above. Furthermore, the proposed boatshed and decking is to be located on the footprint of existing works, specifically with the boatshed constructed within the footprint of an existing boatshed and the decking on the the footprint of an existing concrete reclamation apron.

Development consent must not be granted under this clause unless the consent authority is satisfied that:

- *the development will contribute to achieving the objectives for the zone in which the land is located, and*
- *the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*
- *the development will not cause environmental harm such as:*
 - *pollution or siltation of the waterway, or*
 - *an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
 - *an adverse effect on drainage patterns, or*
 - *the removal or disturbance of remnant riparian vegetation, and*
- *the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*
- *opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
- *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, and*
- *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*
- *sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change have been considered.*

Comment:

The proposed development is consistent with the objectives of the C4 Environmental Living zone and W1 Natural Waterways zone. The appearance of the proposed development is compatible with the surrounding area. The proposed development will not cause environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats, drainage patterns or remnant riparian vegetation. The proposed development will not cause congestion or generate conflict between people using the adjacent open space or waterway. The proposed development allows access around the boatshed through the use of decking, which is beneficial to public foreshore access. Nonetheless, existing public foreshore access is limited by neighbouring development, but the proposal does not worsen this situation. The proposed development will not result in adverse impacts to any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land. The proposed development will not have an adverse impact on the amenity or aesthetic appearance of the foreshore. The proposed development will not impact upon sea level rise, coastal erosion or recession, or change flooding patterns.

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:

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

Comment:

The proposed development allows access around the boatshed through the use of decking, which is beneficial to public foreshore access. Nonetheless, existing public foreshore access is limited by neighbouring development, but the proposal does not worsen this situation. In this regard, the proposed development does not impact upon any public access. The proposed development is acceptable in relation to the foreshore character and the existing environmental conditions.

As such, the development complies with the requirements of this Clause.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation	Complies
Front building line	6.5m	>6.5m	-	Yes
Rear building line	FSBL applies*	Seward of FSBL	N/A	Yes**
Side building line	East: 2.5m	8.7m	-	Yes
	West: 1m	0.6m - 1.3m (to boatshed)	40%	No
Building envelope	East: 3.5m	Within envelope	-	Yes
	West: 3.5m	Within envelope	-	Yes
Landscaped area	60% (443.9sqm)	No change from existing***	N/A	N/A
Lateral Limits	East: 2m from lateral limit line	>2m	-	Yes
	West: 2m from lateral limit line	2.1m (to ramp) 0.5m (to boatshed) Nil (to decking)	- 75% 100%	Yes No No

* The 6.5m rear setback does not apply as the Foreshore Building Line applies. Refer to the section of this report on P21DCP Clause D1.9 Side and rear building line for details.

** Refer to the section of this report on PLEP 2014 Clause 7.8 Limited development on foreshore area for an assessment of the proposal against this Clause. In summary, the proposed structures are for purposes that are permitted within the foreshore area and comply with the requirements of the Clause.

*** The proposed structures are located over water or on an existing impervious area (comprising of an existing boatshed, decking and concreting), therefore the proposal does not decrease landscaped area from existing. Refer to the section of this report on P21DCP Clause D1.14 Landscaped Area - Environmentally Sensitive Land for further details.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B3.8 Estuarine Hazard - Medium Density Residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.23 Eaves	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	No	Yes
D1.11 Building envelope	Yes	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	N/A	N/A
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D1.20 Scenic Protection Category One Areas	Yes	Yes
D15.11 Waterfront lighting	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes
D15.13 Lateral limits to development seaward of mean high water mark	No	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.15 Waterfront development	No	Yes
D15.18 Seawalls	Yes	Yes
D15.19 Dredging	Yes	Yes

Detailed Assessment

D1.5 Building colours and materials

A schedule of colours and materials has not been provided with this application. However, the Statement of Environmental Effects, on page 28, states that *"the proposed boatshed consists of rendered concrete block construction. The external cladding of the building is a mid-grey colour, non-reflective and resistant to corrosion. The mid-grey of this cladding makes it unobtrusive from the waterfront and allows it to blend in with its natural surrounds."*

In this instance, a condition will be recommended to ensure compliance with the above statement, as mid-grey is an acceptable finish, in accordance with the colours permitted by the Clause. A condition will also be recommended to ensure the roof is not finished with a reflective finish. As conditioned, the proposed development can achieve the requirements and underlying outcomes of this control.

D1.9 Side and rear building line

Description of non-compliance

The proposed works are located at the rear of the property, which abuts the Pittwater Waterway.

The advisory notes of this control stipulate the following:

"The Foreshore Building Line is as per the Foreshore Building Line Map in the Pittwater Local Environmental Plan 2014. The Foreshore Building Line takes precedence over this control."

The Foreshore Building Line applies to the rear boundary and therefore takes precedent over the rear boundary line control. Refer to the section of this report on PLEP 2014 Clause 7.8 Limited development on foreshore area for an assessment of the proposal against this control. In summary, the proposed structures are for purposes that are permitted within the foreshore area.

As such, no merit assessment is required of the rear setback.

Regarding side setbacks, the control requires development to be setback 2.5m from one side boundary and 1m from the other side boundary. For the purpose of this assessment the 2.5m side building line is applied to the eastern boundary, whilst the 1m side building line is applied to the western boundary. The proposed boatshed exhibits a compliant 8.7m eastern side setback. However,

the proposed boatshed exhibits a non-compliant 0.6m - 1.3m western side setback, representing a maximum 40% variation to the control.

Merit consideration

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

- *To achieve the desired future character of the Locality. (S)*

Comment:

The proposal is consistent with the outcomes of the desired future character of the Avalon Beach Locality.

- *The bulk and scale of the built form is minimised.*

Comment:

The bulk and scale of the proposed boatshed, decking and ramp are commensurate to surrounding waterfront development.

- *Equitable preservation of views and vistas to and/or from public/private places.*

Comment:

The proposed development is not expected to obstruct any views or vistas to or from public or private places and is therefore consistent with Clause C1.3 View Sharing of the P21DCP.

- *To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*

Comment:

As above, the proposal is not expected to impact on any view corridors.

- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.*

Comment:

The proposal is not considered to have any unreasonable impacts on surrounding residential properties in terms of privacy, amenity or solar access.

- *Substantial landscaping, a mature tree canopy and an attractive streetscape.*

Comment:

No trees are proposed for removal, with works proposed on a portion of the site that has already been disturbed by built works, and Council's Bushland & Biodiversity team have supported the proposal, subject to conditions.

- *Flexibility in the siting of buildings and access.*

Comment:

The proposal, including the siting of buildings and access, is considered suitable.

Vegetation is retained and enhanced to visually reduce the built form.

-

Comment:

As above, no trees are proposed for removal, with works proposed on a portion of the site that has already been disturbed by built works. The landscape outcome is considered acceptable for the site and locality.

- *A landscaped buffer between commercial and residential zones is achieved.*

Comment:

Not applicable, as no commercial sites adjoin the subject site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1.14 Landscaped Area - Environmentally Sensitive Land

This Clause of the P21DCP applies to land in the locality within Areas 1 and 2 of the Landscaped Area Map. The subject site is within Area 1 of the Landscaped Area Map, and therefore requires a minimum of 60% (443.88sqm) of the site area to be landscaped area.

The exact landscaped area is unable to be determined, as the proposal only includes detailed plans of the southern portion of the subject site, focused on the foreshore and waterway area where the proposed works are located. These are acceptable for the purposes of assessing this development.

Nonetheless, the proposed structures are located over water and on a section of the site that as existing is impervious / built area. Therefore, the proposal does not decrease landscaped area. As such, no further merit assessment is required.

D15.12 Development seaward of mean high water mark

This control restricts all new buildings to be located landward of mean high water mark, with the exception of structures associated either with the accommodation, servicing or provision of access to boats

The proposed structures are therefore permitted by the control.

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

Description of non-compliance

Clause D15.13 Lateral limits to development seaward of mean high water mark stipulates that waterfront development shall be set back a minimum of 2.0 metres along the full length of the lateral limit line. Diagram 1 of this Clause outlines how lateral limit lines are to be plotted at curved waterfronts. The submitted plans do not denote lateral limit lines, but provide sufficient detail to plot these lines onto the plans.

The proposed development is setback further than 2m from the eastern lateral limit line, compliant with this control.

The proposed development exhibits the following setbacks to the western lateral limit line:

- 2.1m (to ramp) - compliant with the control.
- 0.5m (to boatshed) - representing a 75% non-compliance.
- Nil (to decking) - representing a 100% non-compliance.

Merit consideration

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

- *To ensure that fair and equitable enjoyment of the waterway is achieved between neighbouring waterfront landowners through restricting unreasonable encroachment of waterfront development in front of adjoining properties.*

Comment:

The proposed boatshed, decking and ramp will continue to allow for fair and equitable enjoyment of the waterway. The positioning of the waterfront development has been designed in consideration of neighbouring development, existing development at the subject site, the depth of the water and navigational concerns, and is considered to be placed in a suitable position in this regard. The proposed development is accompanied by a letter from Transport for NSW Maritime dated 3 February 2023 advising that "an inspection/assessment has been conducted by the local Boating Safety Officer and there are no navigational concerns regarding the designated proposal". Most significantly, the proposal is located within an area of the site already occupied by a boatshed and boating infrastructure, with the proposal to replace these. As such, the proposal causes no additional impact on any of the above matters. Considering the site context, constraints, surrounding waterfront development, and nature of the works as replacement of existing boating infrastructure, the positioning of the proposal is not considered to be unreasonable, or to unreasonably encroach the waterfront of adjoining properties.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

D15.15 Waterfront development

Description of non-compliance

The proposal includes the construction of a boatshed, skid ramp and associated decking.

P21DCP Clause D15.15 Waterfront development provides various controls on the design of waterfront development. Proposed variations to the listed requirements are discussed below:

Boatsheds:

- *"Boatsheds shall be one storey and no greater than 4.5 metres in building height above the platform on which it is built, 4.0 metres in width and 6.0 metres in length, as illustrated in Diagram 4. The use of lofts or similar design concepts shall not be permitted."*

The proposed boatshed is 4m in height from the platform on which it is built where below the MHWM. However, above the MHWM the proposal includes a storage platform within an elevated / pop-up section of roof, increasing the height above the platform to 4.8m. The boatshed also has a width of 4.9m and a length of 7.3m (noting that this is maintaining the footprint of the existing boatshed that is to be replaced). The pop-up roof and storage area do not form a loft or second-storey, rather it provides storage space above the Estuarine Planning Level.

Furthermore, the proposed development includes the construction of a skid ramp adjacent to an existing jetty. Ramps are generally not favored, however, the Clause allows for a variation to this requirement, stating that Council may consider such structures where they are unlikely to detract from the visual character of the foreshore, will not affect marine vegetation and will not restrict public foreshore access.

The proposal is not considered to detract from the visual character of the foreshore, considering surrounding properties contain existing boatsheds, jetties, and skid ramps. The applicant has submitted an Aquatic Ecology Assessment report which concludes that *"the project can be constructed and used with no measurable alteration of residual risk for the protection of marine fish habitats of Pittwater and can meet the aims of aquatic ecological conservation of the Fisheries Management Act (1994) and of the Northern Beaches Council DCP (Pittwater 21)"*. The proposed development allows access around the boatshed through the use of decking, which is beneficial to public foreshore access. Nonetheless, existing public foreshore access is limited by neighbouring development, but the proposal does not worsen this situation. The proposed skid ramp will not obstruct foreshore access.

The proposal has been reviewed by Council's Coastal Officer who has raised no objections to the works, subject to conditions.

Merit consideration

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

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

Comment:

The proposed development is accompanied by two letters from the Department of Primary Industries Fisheries (dated 3 April 2023 and 19 February 2024), raising no objection to the proposal. Additionally, the applicant has provided an Aquatic Ecology Assessment which supports the proposed works. Council's Bushland and Biodiversity Officer and Coast and Catchments Officer have also both reviewed the proposal having regard to water quality and habitat, and have raised no objections, subject to conditions. Overall, this demonstrates that the proposal, subject to conditions, will not have an adverse impact on the water quality and estuarine habitat of Pittwater.

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

Comment:

It is noted that access to the foreshore is limited by surrounding development on neighbouring allotments. However, access along the foreshore will not be further obstructed by the proposal and is maintained by decking around the boatshed for the portion of the waterfront at the

subject site.

- *Waterfront development does not encroach on navigation channels or adversely affect the use of ferries and service vessels or use of the waterway by adjoining landowners.*

Comment:

The proposed development is accompanied by a letter from Transport for NSW Maritime dated 3 February 2023 advising that "an inspection/assessment has been conducted by the local Boating Safety Officer and there are no navigational concerns regarding the designated proposal". As such, the proposal is considered sufficient in this regard.

- *Structures blend with the natural environment.*

Comment:

A schedule of colours and materials has not been provided with this application. However, the Statement of Environmental Effects, on page 28, states that "the proposed boatshed consists of rendered concrete block construction. The external cladding of the building is a mid-grey colour, non-reflective and resistant to corrosion. The mid-grey of this cladding makes it unobtrusive from the waterfront and allows it to blend in with its natural surrounds." In this instance, a condition will be recommended to ensure compliance with the above statement, as mid-grey is an acceptable finish. A condition will also be recommended to ensure the roof is not finished with a reflective finish. As conditioned, the proposal will appropriately blend with the surrounding natural environment.

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

Comment:

The proposal will be visually consistent and comparable with surrounding waterfront development. It is considered that the proposed development will not be detrimental to the visual quality, water quality or estuarine habitat of the Pittwater Waterway, subject to conditions included in the recommendations of this report.

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

Comment:

The proposal is not for a commercial waterfront development. Therefore, this outcome is not applicable.

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

Comment:

As demonstrated above, the proposed waterfront development complies with the outcomes of this Clause and is considered to be both appropriate and acceptable. As such, no element of the proposed or existing waterfront development requires removal.

Having regard to the above assessments, it is concluded that the proposed development is consistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$ 973 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 194,500.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

Council is satisfied that the Applicant's written request under Clause 4.6 of the Pittwater Local Environment Plan 2014 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- There are sufficient environmental planning grounds to justify the variation.

PLANNING CONCLUSION

This proposal, for alterations and additions to a boatshed, decking and skid ramp, has been referred to the Development Determination Panel (DDP) due to a request to vary the height of buildings development standard, established by the Pittwater Local Environmental Plan 2014, by greater than 10%.

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

Critical assessment issues included assessment of the Clause 4.6 Request to vary the height of buildings development standard, as well as assessment of Pittwater 21 Development Control plan non-compliances, including:

- Clause D1.9 Side and rear building line.
- Clause D15.13 Lateral limits to development seaward of mean high water mark.
- Clause D15.15 Waterfront development

The 4.6 Request for the non-compliance with the height standard arises from the construction of a boatshed which straddles the the Mean High Water Mark (MHW). Above the MHW the building height development standard is 8.5m. Below the MHW the standard is 4m. The portion of the proposed boatshed above the MHW exhibits a building height of 5m, compliant with the 8.5m development standard. However, below the MHW the proposed boatshed exhibits a building height of 4.68m at the southernmost point of the boatshed, representing a 17% variation to the 4m development standard. Notably, the proposed boatshed is located over the footprint of an exiting boatshed, with the non-compliance arising due to the need to measure the height from an existing concrete boat ramp, which is to be built over. The design of the boatshed is generally in accordance with the prescriptive requirements for boatsheds outlined in the P21DCP, with only minor variations to theses prescriptions arising due to the use of the existing boatshed footprint.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

REASON FOR DETERMINATION

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.3 Height of Buildings, pursuant to Clause 4.6 of the Pittwater Local Environmental Plan 2014 because the Applicant's written request has adequately addressed the merits required to be

demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2023/1862 for Alterations and additions to a boatshed, decking and skid ramp on land at Lot 41 DP 13760, 214 Hudson Parade, CLAREVILLE, Lot LIC 187249, 214 Hudson Parade, CLAREVILLE, subject to the conditions printed below:

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA-01	C	Boatshed	Utz-Sanby Architects	16 April 2024
DA-02	B	Site Plan	Utz-Sanby Architects	12 December 2023
DA-06	A	Height Limit Diagrams	Utz-Sanby Architects	16 April 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Aquatic Ecology Assessment	-	Marine Pollution Research	15 November 2022
Coastal Area Environmental Assessment Report	-	Total Earth Care	17 January 2023
Geotechnical Assessment	R.01.Rev2	Douglas Partners	2 February 2023
Estuarine Risk Management Report	-	Horton Coastal Engineering	13 January 2023
Waste Management Plan - 214 Hudson Parade, Clareville	-	-	-

In the event of any inconsistency between the approved plans, reports and documentation, the

approved plans prevail.

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	31/01/2024 (on EDMS)
NSW Department of Primary Industries - DPI Fisheries	DPI Fisheries - Referral Response	19 February 2024
NSW Department of Primary Industries - DPI Fisheries	DPI Fisheries Approval	3 April 2023

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

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

3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifier for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

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

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

Reason: Legislative requirement.

4. **General Requirements**

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
 - 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian

Standards.

- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
 - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

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

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

5. **No Approval for Secondary Dwelling**

No approval is granted or implied under this Development Consent for the use of any part of the boatshed for the purpose of a secondary dwelling or separate occupancy. At no time shall the boatshed be utilised or converted to provide for residential habitation.

Reason: To ensure compliance with the terms of this consent.

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$972.50 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$194,500.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

7. Security Bond

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. No Clearing of Vegetation

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

9. Stormwater Drainage Disposal

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifier prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifier prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

11. Boundary Identification Survey

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of any Construction Certificate.

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

12. Installation and Maintenance of Sediment Control

Prior to any works commencing on site, including demolition, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Principal Certifier:

1. Council's relevant development control plan,
2. The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time), and
3. The 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To ensure no substance other than rainwater enters the stormwater system and waterways.

13. Boatshed to be Properly Maintained: Development of a Maintenance Program

As the FFL of the boatshed is below the recommended Estuary Planning Level, a maintenance program shall be prepared by the structural engineer, with input as necessary from a chartered professional engineer with coastal engineering as a core competency, to ensure that for its design life the boatshed is maintained in a sound structural condition. The maintenance program shall be submitted to the Certifying Authority for approval prior to the release of the Construction Certificate. The boatshed shall be repaired and maintained in accordance with the program and as may be required from time to time to ensure its structural integrity for its design life.

Reason: To ensure appropriate maintenance of the boatshed located in the estuarine environment

14. 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 in accordance with Condition #5 of the Crown Land's letter of landowner's consent dated 14 December 2023, is required to be obtained prior to the issue of a construction certificate. Evidence demonstrating compliance is to be provided to the certifying authority for approval.

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.

15. 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.

To ensure Council's recommended flood evacuation strategy of 'shelter-in-place', it will need to be demonstrated that there is safe pedestrian access to a 'safe haven' above the Estuarine Planning Level.

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

16. Estuarine Planning Level Requirements

An Estuarine Planning Level (EPL) of 3.03m AHD has been adopted by Council for the subject site and shall be applied to all development proposed below this level as follows:

1. All structural elements below 3.03m AHD shall be of flood compatible materials;
2. All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 3.03 m AHD or waterproofed to this level; and
3. The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 3.03 m AHD.
4. All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 3.03 m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 3.03 m AHD to avoid the likelihood of contact with splashing waves and spray.

Reason: To ensure vulnerable components of the development are built at the appropriate level.

17. Compliance with Estuarine Risk Management Report

The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Horton Coastal Engineering, dated 13 January 2023 and these recommendations are to be incorporated into construction plans and specifications and maintained over the life of the development.

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

18. Structural Engineering for Estuarine Risk

Structural engineering design for the development shall be prepared, with input as necessary from a chartered professional engineer with coastal engineering as a core competency, to ensure that for its design life taken to be 60years as recommended and accepted by Council, the development is able to withstand the wave impact forces and loadings identified in the approved Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 13 January 2023.

The potential for component fatigue (wear and tear) should be recognised for the less severe,

but more frequent, wave impact loadings.

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

19. Preparation and adherence to Construction Environment Management Plan

A Construction Environmental Management Plan (CEMP) must be prepared in accordance with the environmental risks and mitigation methods identified in Coastal Area Environmental Assessment Report by Total Earth Care dated 17 January 2023 and the Aquatic Ecology Assessment prepared by Marine Pollution Research Pty. Ltd. dated 15 November 2022 and must be kept in the site office.

The CEMP must identify and appropriately manage invasive species (e.g. *Caulerpa taxifolia*).

An induction plan for site personnel must be prepared and implemented that addresses the CEMP. Induction records must be maintained and available onsite at all times.

Reason: To protect estuarine vegetation, wildlife, habitats.

20. Compliance with Standards

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

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

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

21. External Finishes to Roof

The external finish to the roof shall have a Solar Absorptance (SA) greater than 0.43 in accordance with the requirements of the BASIX Certificate to minimise solar reflections to neighbouring properties.

Any roof with a reflective finish is not permitted.

Green roofs and areas where solar panels (PV) are installed are excluded from conforming to the SA range.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the construction certificate.

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

22. External Finishes to Walls

The external finish to the walls shall have be a dark and earthy tone, consistent with the

permitted colours within Clause D1.5 Building Colours and Materials of the P21DCP, which includes: black, dark grey, dark green, dark brown, mid grey, green, brown and dark blue.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the construction certificate.

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

23. Sydney Water "Tap In"

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

24. Installation and Maintenance of Sediment and Erosion Control

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site

DURING BUILDING WORK

25. Wildlife Protection

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

26. Management of *Caulerpa taxifolia*

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

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

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

27. Aquatic environment protection

Environmental safeguards are to be used during construction to protect the aquatic environment. Appropriate methods must be installed and secured to ensure damage to the aquatic environment is minimised. Actions and recommendations of the aquatic ecology report must be followed.

Reason: To protect the aquatic environment.

28. Removing, Handling and Disposing of Asbestos

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

29. Geotechnical Requirements

All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

30. Survey Certificate

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

Reason: To demonstrate the proposal complies with the approved plans.

31. Waste Management During Development

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifier.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

32. Pollution Control

All stockpiles, materials, waste and slurry associated with works (including excavated material) is to be contained at source within the construction area and enclosed in waterproof covering and/or sediment and erosion control while not in use. All waste/debris is to be removed off site

and disposed of as frequently as required in accordance to local regulations.

Reason: To protect the surrounding environment, and ensure that pollutants and building associated waste do not leave the construction site.

33. Aboriginal Heritage

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Planning, Housing and Infrastructure.

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the Department of Planning, Housing and Infrastructure.

Reason: Aboriginal Heritage Protection.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

34. No Weeds Imported On To The Site

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) are to be imported on to the site prior to or during construction works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

35. Geotechnical Certification Prior to Occupation Certificate

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

Reason: To ensure geotechnical risk is mitigated appropriately.

36. Waste Management Confirmation

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

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

37. Geotechnical Recommendations

Any ongoing recommendations (if any) of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

38. Boatshed Not for Habitation

At no time shall the boatshed be utilised or converted to provide for residential habitation. The boatshed must not be used for any other purpose than the storage of small boats, light watercraft and boating and marine equipment. The incorporation of any internal kitchen facilities, habitable rooms, shower or toilet facilities is not permitted.

Reason: To ensure compliance with Pittwater Estuarine Risk Management Policy.