

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2022/0947
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<b>Responsible Officer:</b>	Gareth David
<b>Land to be developed (Address):</b>	Lot 47 DP 12749, 7 Richard Road SCOTLAND ISLAND NSW 2105 Lot LIC 496058, 7 Richard Road SCOTLAND ISLAND NSW 2105 Lot 48 DP 12749, 5 Richard Road SCOTLAND ISLAND NSW 2105 Lot LIC 496057, 5 Richard Road SCOTLAND ISLAND NSW 2105
<b>Proposed Development:</b>	Construction of a boat shed, jetty extension, skid ramp and access deck and stairs
<b>Zoning:</b>	C3 Environmental Management
<b>Development Permissible:</b>	Yes - Zone C3 Environmental Management Yes - Zone W1 Natural Waterways
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Melanie Jane Marshall John Andrew Marshall Christiaan Jacobus Richter
<b>Applicant:</b>	Stephen Crosby & Associates Pty Ltd

<b>Application Lodged:</b>	20/06/2022
<b>Integrated Development:</b>	Yes
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	22/09/2022 to 20/10/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	5
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 24.5%
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 140,000.00
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### EXECUTIVE SUMMARY

This development application seeks consent for the construction of a new boat shed and associated

access deck and skid ramp the extension of an existing shared jetty and new associated sea stairs.

The application is referred to the Northern Beaches Development Determination Panel (DDP) due to contravention of the Height of Buildings development standard exceeding 10% and the applications receiving five (5) submissions.

Concerns raised in the objections predominantly relate to view loss, scenic protection, character of foreshore development. and the design and use of the proposed boat shed and skid ramp.

The proposed variation to the Height of Buildings development standard of the Pittwater Local Environmental Plan 2014 (PLEP 2014) for the boat shed is 24.5% and a Clause 4.6 Variation statement was submitted with the application. Despite the building height numeric non-compliance, the proposal is not considered to result in unreasonable bulk, scale or amenity impacts as viewed from the adjoining Pittwater Waterway or adjoining properties. The height and scale of the proposed boat shed is consistent with similar recently approved structures on Scotland Island, McCarrs Creek, Elvina and Lovett Bay. The Clause 4.6 variation is considered to be well founded and is supported.

The proposed development is generally compliant with the numeric controls under the Pittwater 21 Development Control Plan (P21DCP) with minor variations to clause *D15.15 Waterfront development*. The proposal is considered to meet the objectives of this control.

The proposal has been reviewed by Council's Coastal Officer, Riparian Lands Officer, Development Engineer, Acid Sulphate and Bushland & Biodiversity Officer who have raised no objection to the works and associated impacts to the surrounding natural environment. The application is supported by a response from the DPI Fisheries identifying no adverse impact upon the key fish habitats (subject to conditions). Potential amenity issues to surrounding neighbours have been reviewed and have been determined to be reasonable having regard to the context and spatial relationships.

The proposed boat shed is proposed to be constructed partially upon an existing foreshore deck. A search of Council's records could not locate approval for this deck. As such, a Deferred Commencement condition is recommended to ensure a Building Information Certificate is issued by Council with respect to the existing foreshore deck which the boat shed is proposed to be constructed upon.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on balance the proposal is a suitable and appropriate development for the subject site, for the reasons outlined in this report.

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

## **PROPOSED DEVELOPMENT IN DETAIL**

The application consists of the construction of a new boat shed and associated access deck and skid ramp the extension of an existing jetty and new associated sea stairs.

## **ASSESSMENT INTRODUCTION**

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

- An assessment report and recommendation has been prepared (the subject of this report)

taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;

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

## SUMMARY OF ASSESSMENT ISSUES

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

Pittwater Local Environmental Plan 2014 - Zone W1 Natural Waterways

Pittwater 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 - 7.1 Acid sulfate soils

Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection

Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards

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

Pittwater Local Environmental Plan 2014 - 7.10 Essential services

Pittwater 21 Development Control Plan - B3.7 Estuarine Hazard - Low density residential

Pittwater 21 Development Control Plan - B4.16 Seagrass Conservation

Pittwater 21 Development Control Plan - B4.19 Estuarine Habitat

Pittwater 21 Development Control Plan - C1.3 View Sharing

Pittwater 21 Development Control Plan - C1.14 Separately Accessible Structures

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

<b>Property Description:</b>	<p>Lot 47 DP 12749 , 7 Richard Road SCOTLAND ISLAND NSW 2105</p> <p>Lot LIC 496058 , 7 Richard Road SCOTLAND ISLAND NSW 2105</p> <p>Lot 48 DP 12749 , 5 Richard Road SCOTLAND ISLAND NSW 2105</p> <p>Lot LIC 496057 , 5 Richard Road SCOTLAND ISLAND NSW 2105</p>
<b>Detailed Site Description:</b>	<p>The application is subject to both two (2) allotments and an adjoining Crown lands licence on the Pittwater foreshore.</p> <p>The private allotments are located on the south-west facing foreshore of Scotland Island, legally described as Lot 48 and</p>

Lot 47 in Deposited Plan 12749, and generally known as No.5 and 7 Richard Road, Scotland Island.

No.5 Richard Road, Scotland Island has an approximate area of 720m<sup>2</sup> and is currently occupied by a dwelling house and associated outbuildings. No.7 Richard Road, Scotland Island has an approximate area of 683m<sup>2</sup> and is occupied by a dwelling house. Both allotments are zoned C3 Environmental Management under Pittwater Local Environmental Plan 2014 (PLEP 2014).

On the south-western boundary of these allotments is the adjoining Crown Lands, occupied by an existing sea wall, deck, waterway access steps and shared jetty and pontoons. These structures are ancillary to the dwelling houses at No.5 and 7 Richard Road, Scotland Island. The licence area is zoned W1 Natural Waterways under PLEP 2014.

Adjoining and surrounding development is generally characterised by dwelling houses and associated waterway structures, including boat sheds, along the foreshore. Carols Wharf is located to the east.

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:

- **N0287/05** - Development Application for the construction of jetty and steps (to be shared by both properties) and removal of existing stone groyne - Approved August 2005
- **BC0072/08** - Building Certificate - Issued 2008

- **DA2021/0039** - Development Application for alterations and additions to a dwelling house at 7 Richard Road SCOTLAND ISLAND - Approved 16/03/2021

## APPLICATION HISTORY

19/09/2022

The application was re-notified as Nominated Integrated Development under the Water Management Act 2000.

## 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&amp;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&amp;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&amp;A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&amp;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&amp;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&amp;A Regulation 2021 requires the</p>

Section 4.15 Matters for Consideration	Comments
	<p>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&amp;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>
<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>	<p>(i) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification &amp; Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p>

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire Planning Services, dated 26/04/2022) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 22/09/2022 to 20/10/2022 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 process council is in receipt of 5 submission/s from:

Name:	Address:
Outlook Planning & Development	Po Box 8 BERESFIELD NSW 2322
Mrs Therese Bakker	PO Box 215 CHURCH POINT NSW 2105
Damian Sutton	Address Unknown
Ian Perkins	Address Unknown
Richard Bootle	Address Unknown

The following issues were raised in the submissions:

- View loss and request for height poles
- Scenic protection and visual impact
- Not in keeping with foreshore development and character of the area
- Boat shed size, design and use
- Use of slipway
- Foreshore access
- Excessive decking
- The application should be considered as nominated integrated development and be re-notified
- Inadequate Clause 4.6 and Statement of Environmental Effects

The above issues are addressed as follows:

- **View loss and request for height poles**

Comment:

The proposed development is acceptable in relation to view loss for the reasons detailed in the section of this report relating to Section C1.3 View Sharing of the P21 DCP. The requirements of this clause and the view sharing principles of *Tenacity Consulting vs Warringah Council [2004] NSWLEC 140* have been addressed and the issues raised within the residents submissions in relation to view loss do not warrant further amendment or refusal of the application.

Formal height poles were not considered necessary in this instance. On conducting a site visit and view loss inspections, Council's Planners used height poles to assist with the assessment of impacts.

- **Scenic protection and visual impact**

Comment:

The proposal is not considered to result in unreasonable visual impacts as view from the waterway or adjoining properties. The development has been sited to minimise the impact on existing significant vegetation and does not compromise the visual integrity of the site by removal of canopy trees along ridges and upper slopes as required by clause *D8.16 Scenic Protection Category One Areas*. The development also incorporate the use of unobtrusive and

non-reflective materials. Overall, the proposed development is visually consistent in terms of height, bulk and scale of surrounding waterfront development in the locality as detailed within this report.

- **Not in keeping with foreshore development and character of the area**

Comment:

The proposed works within the foreshore area have been assessed within Clause 7.8 of this report and the proposed works have been deemed acceptable in this instance. The proposed works within the foreshore area have been assessed against relevant planning controls and are supported on merit. The proposed development is acceptable in relation to the foreshore character and the existing environmental conditions.

- **Boat shed size, design and use**

Comment:

The proposed boat shed has been assessed within Clause 4.6 of PLEP 2014 and Clause D15.15 of P21DCP of this report and the proposed works have been deemed acceptable in this instance.

The proposed boat shed will generally comply with the design criteria of P21DCP with the exception of width. The minor breach in the width of the shed has been assessed on merit as acceptable as it is consistent with the scale of other boat sheds in the locality and will not result in unreasonable amenity or scenic impacts.

The height of the boat shed been assessed within Clause 4.6 of PLEP 2014 and it is considered that the development is visually consistent in terms of height, bulk, scale and design of surrounding waterfront development, and that the breach of the height limit will not result in any unreasonable impacts to neighbouring properties. The height of the proposal will be consistent with Pittwater 21 DCP requirements for boat sheds.

Concern was raised about the use of the boat shed as a habitable space and the inclusion of sliding doors. Front and side sliding doors are a consistent design feature of recently approved boat sheds in the locality. If approved, the following conditions is to be imposed to ensure the structure remains non-habitable:

*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*

- **Use of skid ramp**

Comment:

The submissions raised concerns that the proposed skid ramp is not practical due to the local water level.

The proposed skid ramp has been assessed within Clause D15.15 of P21DCP of this report and the proposed works have been deemed acceptable in this instance. A site visit revealed that the location of the skid ramp would reach mean high watermark.

- **Foreshore access**

Comment:



The proposed development will retain safe access to and along the foreshore to members of the public along the proposed new access deck.

- **Excessive decking**

Comment:

The proposed decking is considered acceptable to retain appropriate to retain safe access to and along the foreshore. If approved a Deferred Commencement condition is to be imposed to ensure a Building Information Certificate is issued by Council with respect to the existing foreshore deck which the boat shed is proposed to be constructed upon.

- **The application should be considered as Nominated Integrated Development and be re-notified**

Comment:

Following this submission, the application was referred to the Department of Planning and Environment – Water as Nominated Integrated Development under the *Water Management Act 2000*. The application was re-notified as such for 28 days.

Following this, The Department of Planning and Environment—Water reviewed documents and considers that, for the purposes of the Water Management Act 2000 (WM Act), the proposed works are exempt from the need to obtain a controlled activity approval and no further assessment by this agency is necessary.

- **Inadequate Clause 4.6 and Statement of Environmental Effects**

The submissions raised concerns regarding the validity of the the submitted Clause 4.6 Variation statement and Statement of Environmental Effects

Comment:

Council has reviewed the submitted documentation and considered acceptable for the purpose of assessment in this instance.

## REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	<p><b>General Comments</b></p> <p>Proposal for a jetty and pontoon will not result in the disturbance of 1000kg of disturbed potential (oxidisable) acid sulfate soils (PASS). This is the trigger value for an 'Acid Sulfate Soils Management Plan' under the <i>Acid Sulfate Soil Manual (1998)</i>. Given that pile removal and installation happens through the medium of water via barge-mounted equipment, the exposure of PASS to oxygen is expected to be minimal and of a reduced, if not, low risk of harm to environment. Please see the below condition that includes practical measures for managing acid sulfate soils for this circumstance.</p>
Environmental Health (unsewered lands)	<p><b>General Comments</b></p> <p>Proposed boat shed and jetty will have no impact on unsewered lands. The structure will be away from any land application areas, and there is no effluent-generating infrastructure, thus, no further consideration of on-site sewage management is required. No</p>

Internal Referral Body	Comments
	objections.
Landscape Officer	<p>The development application is for the construction of a new boat shed and skid ramp partially on Crown Land at No.5 Richard Road, Scotland Island, with a public access walkway deck and steps on Crown Land below the Mean High Water Mark, and extensions to the existing shared jetty with No.7 Richard Road, as described and illustrated in reports and plans. The proposal has gained approval following assessment from Department of Planning &amp; Environment - Crown Lands, DPI Fisheries and Transport for NSW - Maritime Division.</p> <p>Existing trees and vegetation are not impacted by the proposed works and shall be protected by standard conditions of consent as imposed. Landscape Referral raise no objections to the proposal.</p>
NECC (Bushland and Biodiversity)	<p>The proposal has been assessed against the following terrestrial biodiversity-related provisions:</p> <ul style="list-style-type: none"> <li>• NSW Biodiversity Conservation Act 2016</li> <li>• NSW Biodiversity Conservation Regulation 2017</li> <li>• SEPP (Resilience and Hazards) Coastal Environment Area</li> <li>• Pittwater LEP Clause 7.6 Biodiversity Protection</li> <li>• Pittwater DCP Cause B4.7 Pittwater Spotted Gum Forest Endangered Ecological Community</li> </ul> <p>The site contains Pittwater Spotted Gum Forest Endangered Ecological Community (EEC) and consequently, portions of the site are identified on the Department of Planning, Industry and Environment's Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act and Regulation, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offset Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR).</p> <p>The submitted plans and documentation indicate that the proposed works are located over the water and therefore will not require impact to native trees, including those identified on the BV Map. Conditions are recommended to avoid construction impacts to protected terrestrial vegetation.</p>
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Resilience &amp; Hazards) 2021 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>The application has been assessed in consideration approval/support of:</p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>• Consent to lodge DA from the Department of Crown Lands under the NSW Planning, Industries &amp; Environment dated 28 March 2022 with stamped map.</li> <li>• No navigational Concerns from the Transport for NSW-Maritime Division dated 8 October 2021 enclosing dated and signed maps</li> <li>• No Objection from the DPI-Fisheries under the Department of Primary Industries dated 3 November 2021</li> </ul> <p><b>Coastal Management Act 2016</b> The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p><b>State Environmental Planning Policy (Resilience &amp; Hazards) 2021</b> The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience &amp; Hazards) 2021 (SEPP R &amp; H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R &amp; 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 Stephen Crosby &amp; Associates Pty. Ltd. dated 1 June 2022, the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&amp;H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience &amp; Hazards) 2021.</p> <p><b>Pittwater LEP 2014 and Pittwater 21 DCP</b></p> <p><b>Estuarine Hazard Management</b> The subject property has not been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. However, as the proposed boatshed is partly located on waterway on crown land, Council recommended an EPL of 2.80m AHD, also supported by a specialist study prepared by Salients Pty.</p>

Internal Referral Body	Comments
	<p>Ltd. dated 24 May 2022. Hence, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7-B3.10 Estuarine Hazard Controls will apply to any proposed development of the site. The Estuarine Hazard Controls do not apply to Jetties, Bridging Ramps or Pontoons located on the seaward side of the foreshore edge.</p> <p>As the floor level of the proposed boatshed is below the recommended EPL, the applicant has submitted an Estuarine Risk Management Report prepared by Salients Pty. Ltd. dated 24 May 2022. The proposed development is therefore subjected to conditional approval to satisfy the relevant estuarine risk management requirements of P21 DCP.</p> <p><b>Development on Foreshore Area</b></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 a new boatshed partly located on foreshore area. Proposed works are consistent with Clause 7.8(2)(b). On internal assessment, the DA satisfies the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.</p> <p><b>Development seaward of mean high water mark</b></p> <p>Proposed development works are located on crown land below the Mean High Water Mark. Hence, Section D15.12: Development seaward of mean high water mark of the Pittwater 21 DCP applies to proposed development.</p> <p>Comment:</p> <p>On internal assessment, 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</p>

Internal Referral Body	Comments
	<p>amenity of the foreshore or water quality or estuarine habitat of the Pittwater waterway.</p> <p>The applicant has submitted an Aquatic Ecology Assessment prepared by Marine Pollution Research Pty. Ltd. dated 22 September 2021. The report concludes that the demolition and relocation of the existing jetty end plus sea-stairs for the shared jetty at Nos 3 and 5 Richard Road Scotland Island, and the construction of a boatshed, decking and ramp at No 3 can be undertaken with no direct impact on marine habitats that support marine vegetation and minimal risk of impact to other un-vegetated marine habitats.</p> <p>As such, it is considered that the application does comply with the requirements of the Section D15.12: Development seaward of mean high water mark of the Pittwater 21 DCP.</p> <p><b>Waterfront Development</b></p> <p>Proposed development of berthing areas are located on crown land below the Mean High Water Mark. Hence, Section D15.15: Waterfront development, sub-section c) Boat shed of the Pittwater 21 DCP applies to proposed development.</p> <p>Comment:</p> <p>On internal assessment, the DA satisfies requirements under the Section D15.15: Waterfront development, sub-section c) Boatshed of the Pittwater 21 DCP conditional to acceptance of the clause 4.6 variation request on height of the boatshed. Variation request has been prepared by Stephen Crosby &amp; Associates Pty. Ltd. dated 27 May 2022</p> <p>As such, it is considered that the application does comply with the requirements of the Section D15.15: Waterfront development, sub-section c) Boatshed of the Pittwater 21 DCP</p>
NECC (Development Engineering)	No objections to approval subject to conditions as recommended.
NECC (Riparian Lands and Creeks)	<p>Supported subject to conditions.</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>• Supplied plans and reports;</li> <li>• Coastal Management Act 2016;</li> </ul>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021; and</li> <li>• Relevant LEP and DCP clauses</li> </ul> <p>The recommendations of the DPI Fisheries referral and of the Aquatic Ecology Report (section 3.2 Minimising Potential impact from Construction Vessels) should be adopted in full. If any conflict is perceived between the DPI Fisheries referral and the Aquatic Ecology Report, the referral from DPI Fisheries should take precedence. Subject to conditions, the application meets the requirements of the relevant Environmental Planning Instruments and policies relating to waterways, riparian areas, and groundwater.</p>
NECC (Water Management)	<p>The proposal does not significantly increase impervious surfaces. Where there is risk of sediment mobilisation, both in and out of the water, appropriate controls must be installed prior to disturbing any sediment on site and maintained for the duration of works. On assessment the proposal meets the water management requirements.</p>
Parks, reserves, beaches, foreshore	<p>The development application is for the construction of a new boat shed and skid ramp partially on Crown Land at No.5 Richard Road, Scotland Island, with a public access walkway deck and steps on Crown Land below the Mean High Water Mark, and extensions to the existing shared jetty with No.7 Richard Road, as described and illustrated in reports and plans. The proposal has gained approval following assessment from Department of Planning &amp; Environment - Crown Lands, DPI Fisheries and Transport for NSW - Maritime Division.</p> <p>The proposed development is not detrimental to the existing waterway character of the adjoining Pittwater foreshore physically or visually, 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>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>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</p> <p>any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal</p>

External Referral Body	Comments
	Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.
Nominated Integrated Development - Department of Planning and Environment - Water - Water Management Act 2000, s91 - Controlled Activity Approval for works within 40m of watercourse	The proposal includes works located within 40m and located over the bed of a watercourse. As such, the application was referred to the Department of Planning and Environment - Water under s91 of the <i>Water Management Act 2000</i> . The Department of Planning and Environment—Water has reviewed documents for the application and considers that, for the purposes of the Water Management Act 2000 (WM Act), the proposed works are exempt from the need to obtain a controlled activity approval and raise no objection to the proposal.

## 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 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:**

The proposed works are not likely to cause an adverse impact upon the matters identified in this clause. The proposal does not seek excessive excavation or modification to the existing landform. The proposed works will not result in the removal of any significant or protected trees. The proposal has been reviewed by Council's Coastal Officer, Riparian Lands Officer, Development Engineer, Acid Sulphate and Bushland & Biodiversity Officer who have raised no objection to the works and associated impacts to the surrounding natural environment. The application is supported by a response from the DPI Fisheries identifying no adverse impact upon the key fish habitats (subject to conditions). The proposed development is also unlikely to cause an adverse impact to existing public open space and safe access to and along the foreshore members of the public.

- 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:**



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

#### **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 adverse
    - ii) 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:

The proposal does not impact upon the existing and safe access to and along the foreshore. The visual amenity from private and public space is not adversely effected, the surrounding area consists of examples of similar developments. The foreshore area is mapped as having a high likelihood of containing Aboriginal heritage sites. The foreshore area is heavily modified and no sites have been identified within the vicinity of the proposed development. The proposed works are not likely to cause an adverse impact upon the matters identified in this clause. A condition is to be imposed on any consent if in undertaking 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.

#### **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:

This application is accompanied by a geotechnical report and estuarine risk management report which states the risk associated with the development is acceptable subject to recommendations. The application has been reviewed by Council's Coastal Engineer, Development Engineer and Riparian Lands Officer and Coast & Catchments Officer who are satisfied that the development is not likely to

cause increased risk of coastal hazards on other land subject to conditions.

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 C3 : 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 C3 : Yes Zone W1 : Yes

#### **Principal Development Standards**

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	E3 Zone - 8.5m	Complies	N/A	Yes
	W1 Zone - 4m (above 1.17 AHD - Highest Astronomical Tide)	4.98m (above 1.17 AHD)	24.5%	No

\*Pittwater Local Environment Plan 2014, Clause 4.3 (2) Height Of Buildings states "The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map". The boatshed is to be constructed within the land area that dictates a maximum building height of 4.0m. As a result, the propose boatshed does not comply with the maximum building height requirements of the Pittwater Local Environment Plan 2014.

#### **Compliance Assessment**

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

Clause	Compliance with Requirements
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	

### Detailed Assessment

## **Zone W1 Natural Waterways**

Development for the purposes of jetties, skid ramps and boat sheds is not identified within the W1 Natural Waterways zone as being permissible development. However, Clause 2.5 of PLEP 2014 allows for additional permitted uses on particular land, as prescribed within Schedule 1, Section 23 of PLEP 2014.

This schedule stipulates boat sheds, jetties and water recreation structures are permitted with development consent in zone W1 Natural Waterways for land identified as 'Area 23' on the Additional Permitted Uses Map. Given the subject land is sited within Area 23, the proposed development is therefore permitted with consent.

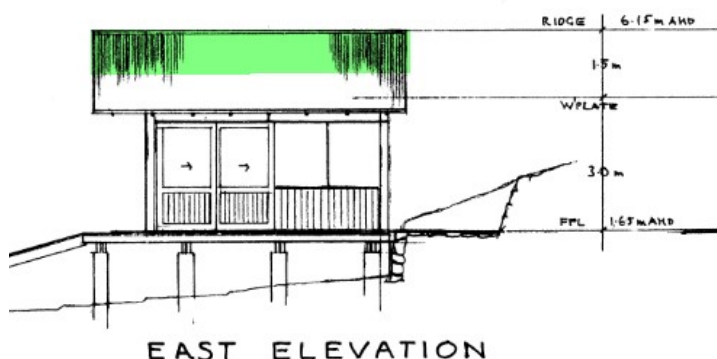
## **4.3 Height of buildings**

\*Pittwater Local Environment Plan 2014, Clause 4.3 (2) Height Of Buildings states "The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map". The boatshed is to be constructed within the land area that dictates a maximum building height of 4.0m. The proposed boat shed will have a maximum height of 4.98m which represents a 24.5% from the control. The non-compliance is demonstrated in figure 1 and 2 below.

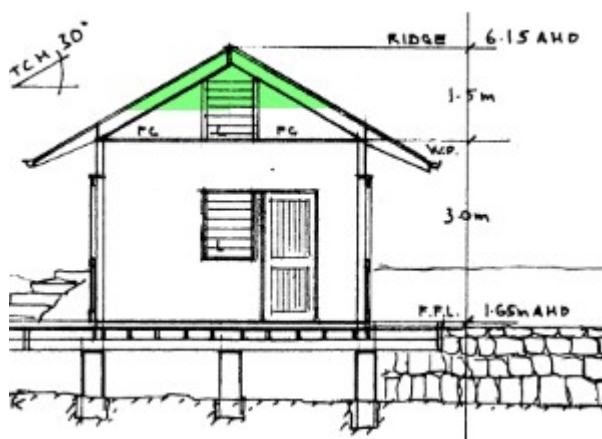
The proposed height of the boat shed has been measured using an estimate of the Highest Astronomical Tide (HAT) for Pittwater.

The HAT is the highest high tide, defined as the highest level which can be predicted to occur under average meteorological conditions and any combination of astronomical conditions. In Australia HAT is calculated as the highest level from tide predictions over the tidal datum epoch (TDE), this is currently set to 1992 to 2011.

Past applications for development forward of the mean high water mark in the Pittwater foreshores have used the 1.17 metres AHD estimate of the HAT, to estimate overall height.



**Figure 1: Building height variation shown in green**



**Figure 2: Building Height variation shown in green.**

## 4.6 Exceptions to development standards

### Description of non-compliance:

Development standard:	Height of buildings
Requirement:	4m (above 1.17 AHD - Highest Astronomical Tide)
Proposed:	4.98m (above 1.17 AHD - Highest Astronomical Tide)
Percentage variation to requirement:	24.5%

\*Note 1.17 refers to the Highest Astronomical Tide which is assessed as being the most relevant reference point for measuring the height of development within the waterway.

### Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 - Height of Buildings development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

### Clause 4.6 Exceptions to development standards:

(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.*

(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 development standard is not expressly excluded from the operation of this clause.

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

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

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

*(4) Development consent must not be granted for development that contravenes a development standard unless:*

*(a) the consent authority is satisfied that:*

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

*(b) the concurrence of the Secretary has been obtained.*

**Clause 4.6 (4)(a)(i) (Justification) assessment:**

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

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

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

*(b) that 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.'*

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

- *The proposed boat shed is consistent with the Pittwater 21 DCP requirements for boat sheds, specifically the height control of 4.5 metres measured from the slab or structure that the boatshed will be situated on;*
- *The nominated Highest Astronomical Tide (HAT) of 1.17m AHD has been in the Council's LEP documents unchanged for over 30 years. As such it takes no account of sea level rise, or the Council's more recent (Cardno 2015) report into sea levels in Pittwater. The Cardno report puts a sea level rise of 0.42m at 2078 (relative to 2010), giving a tide level of 1.59m AHD, with the 1 in 100 year ARI still water level at 1.94m AHD.*
- *The ridge level similar to many boat shed structures built over that last 20 years in Pittwater.*
- *The proposal will not result in any overshadowing of neighbouring properties due to the location of the boat shed over water, and the rising slope of the adjoining sites where dwellings are located.*
- *Due to the location of the boat shed being below the lowest floor levels of neighbouring dwellings, the proposed development, and the minor variation to the height limit, do not result in significant view impacts, allowing for the reasonable sharing of views.*
- *The building will have a similar visual impact on the existing environment being entirely consistent with waterfront boat sheds in this area of Pittwater.*

It is agreed that the development is visually consistent in terms of height, bulk and scale of surrounding waterfront development, and that the breach of the height limit will not result in any unreasonable impacts to neighbouring properties. The height of the proposal will be consistent with Pittwater 21 DCP

requirements for boat sheds.

In this regard, the applicant's written request has demonstrated that 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, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

**Clause 4.6 (4)(a)(ii) (Public Interest) assessment:**

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the W1 Natural Waterways zone. An assessment against these objectives is provided below.

**Objectives of development standard**

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the PLEP 2014 are:

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

*a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*

Comment:

The variation will not contribute to an adverse bulk and scale. Boat sheds are common development within the Lower Western Foreshores and Scotland Island locality and proposed height and scale satisfies with the outcomes within clause D15.15 of P21DCP. The boat shed will also be well below the height of surrounding trees. As such, the proposed development is considered to be consistent with the desired character of the locality.

*b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

Comment:

The height and scale of the proposed boat shed is consistent with similar recently approved structures on Scotland Island, McCarrs Creek, Elvina and Lovett Bay. The proposed development comprises a finished floor level of 1.65m AHD so to ensure the boat shed is not likely to be

subject to inundation. Additionally, the proposed height satisfies the requirements and outcomes within clause D15.15 of P21DCP.

*c) to minimise any overshadowing of neighbouring properties,*

Comment:

The proposal will not result in any overshadowing of neighbouring properties due to the location of the boat shed partly over water, and the rising slope of the adjoining sites where dwellings are located.

*d) to allow for the reasonable sharing of views,*

Comment:

The proposed development adequately preserves views and vistas to and from public and private places for the reasons detailed in the section of this report relating to Clause C1.3 View Sharing of the P21 DCP. Overall, the height variation is not considered to result in unreasonable view loss. Given associated level differences and positioning of the nearby built form, existing views and vistas are anticipated to be equitably retained.

*e) to encourage buildings that are designed to respond sensitively to the natural topography,*

Comment:

The proposed development requires minimal excavation works and does not require the removal of trees. The proposed boat shed is to be sited atop piles as to minimise the extent of site disturbance and thus responding sensitively to the natural topography of the site. The assessment has determined the development will not adversely impact coastal processes or natural topography of the land. The proposed colours and materials will ensure compatibility with the natural environment is achieved.

*f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items,*

Comment:

The proposal does not include the removal of any canopy trees, with the proposed colours and materials complimenting and enhancing the visual character and its location within the natural landscapes of Pittwater. There are no identified heritage items in the vicinity. To ensure the retention of any items that are found during construction a condition of consent will be imposed for potential items be referred to the Aboriginal Heritage Office.

## **Zone objectives**

The underlying objectives of the W1 Natural Waterways zone are:

- *To protect the ecological and scenic values of natural waterways.*

Comment:

The proposed boat shed is a form of development atypical to waterways. The extent of the variation to the development standard is in effect, an exceedance of the 4m height limit by 0.98m. The part of the structure that exceeds the standard is a pitched roof, very typical with other boatsheds in the vicinity. As a result the visual bulk and scale of the proposed works will not adversely effect the scenic values of the surrounding. The proposal does not seek excessive excavation or modification to the existing landform. The proposed works will not result in the



removal of any significant or protected trees. The proposal has been reviewed by Council's Coastal Officer, Riparian Lands Officer, Development Engineer, Acid Sulphate and Bushland & Biodiversity Officer who have raised no objection to the works and associated impacts to the surrounding natural environment. The application is supported by a response from the DPI Fisheries identifying no adverse impact upon the key fish habitats (subject to conditions).

- *To prevent development that would have an adverse effect on the natural values of waterways in this zone.*

Comment:

DPI (Fisheries) and relevant Council Referral Bodies including Council's Natural Environment Unit and Environmental Health have reviewed the application in relation to the natural values of the waterways zone. Their assessment has raised no concerns to the proposal, therefore recommending approval, subject to conditions.

- *To provide for sustainable fishing industries and recreational fishing.*

Comment:

The development facilitates recreational fishing and will have no adverse impact on this or on sustainable sustainable fishing industries.

- *To ensure development does not adversely impact on the natural environment or obstruct the navigation of the waterway.*

Comment

The proposal has been reviewed by DPI Fisheries and the RMS who have issued written support and raised no issues regarding navigational concerns. Furthermore, the application has been referred to the relevant Council Referral bodies who raise no concerns regarding impacts on the natural environment or obstruction of navigation within the waterway.

- *To provide opportunities for private access to the waterway where these do not cause unnecessary impact on public access to the foreshore.*

Comment

The proposed development will retain safe access to and along the foreshore members of the public.

Conclusion:

For the reasons detailed above, the proposal is considered to be inconsistent with the objectives of the W1 Natural Waterways zone.

**Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:**

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with

correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of building Development Standard associated with a single dwelling house (Class 1 building).

## **7.1 Acid sulfate soils**

The proposal has been reviewed by Council's Environmental Health (Acid Sulphate Soils) Officer who has raised no objection to the proposed works subject to recommended conditions.

## **7.6 Biodiversity protection**

Before determining a development application for development on land to which this clause applies, this clause requires the consent authority to consider:

*(a) whether the development is likely to have:*

*(i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*

*(ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*

*(iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*

*(iv) any adverse impact on the habitat elements providing connectivity on the land, and*

### Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land; the importance of the vegetation on the land to the habitat and survival of native fauna; or the habitat elements providing connectivity on the land. Council is also satisfied that the development will not unreasonably fragment, disturb, or diminish the biodiversity structure, function, or composition of the land.

*(b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

### Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development.

Before granting development consent, this clause also requires the consent authority to be satisfied that:

*(a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*

*(b) if that impact cannot be reasonably avoided by adopting feasible alternatives—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:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development is designed, sited and will be managed to any significant adverse environmental impact.

## 7.7 Geotechnical hazards

Under Clause 7.7 Geotechnical Hazards, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

- (a) site layout, including access,*
- (b) the development's design and construction methods,*
- (c) the amount of cut and fill that will be required for the development,*
- (d) waste water management, stormwater and drainage across the land,*
- (e) the geotechnical constraints of the site,*
- (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

### Comment:

The proposed development is supported by a geotechnical risk assessment, that demonstrate all geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

Development consent must not be granted to development on land to which this clause applies unless:

- (a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and*

### Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

- (b) the consent authority is satisfied that:*

- (i) the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or*
- (ii) if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or*
- (iii) if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or impact.*

### Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent. As such, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

## 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 in the foreshore area is for a boat shed which is permitted under Clause 7.8.

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 C3 Environmental Management 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 retains public access along the foreshore. 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 will retain continuous public access to and along the foreshore. 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.

## 7.10 Essential services

Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) *the supply of water,*
- (b) *the supply of electricity,*
- (c) *the disposal and management of sewage,*
- (d) *stormwater drainage or on-site conservation,*
- (e) *suitable vehicular access.*

Comment:

The site is adequately serviced by utilities infrastructure to satisfy 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	N/A	N/A	Yes
Rear building line	Foreshore Building Line applies	Below FBL	N/A	Yes
Side building line	2.5m (SE)	5.6m	N/A	Yes
	1.0m (NW)	4.7m	N/A	Yes
Building envelope	3.5m (SE)	Within envelope	N/A	Yes
	3.5m (NW)	Within envelope	N/A	Yes
Landscaped area	N/A - Below mean height water mark	N/A	N/A	N/A
Boat Shed	4.5 metres in building height above the platform	4.5m	N/A	Yes
	4.0 metres in width	4.4m	10%	No
	6.0 metres in length	5.4m	N/A	Yes

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.8 Lower Western Foreshores and Scotland Island Locality	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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	No	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6.11 Access Driveways, Internal Driveway and Off Street Parking Requirements - Dwelling House - Scotland Island	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
C1.7 Private Open Space	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
D8.1 Character as viewed from a public place	Yes	Yes
D8.3 Building colours and materials	Yes	Yes
D8.5 Front building line	Yes	Yes
D8.6 Side and rear building line	Yes	Yes
D8.13 Stormwater overflow	Yes	Yes
D8.14 Parking management	Yes	Yes
D8.15 Site disturbance	Yes	Yes
D8.16 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

Clause	Compliance with Requirements	Consistency Aims/Objectives
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.15 Waterfront development	No	Yes
D15.19 Dredging	Yes	Yes

#### Detailed Assessment

### **B3.7 Estuarine Hazard - Low density residential**

#### Description on Non-compliance

The proposed boat shed does not comply with the Estuarine Planning Level. The proposal is supported by an Estuarine Risk Management Report and qualifies for a variation of this control.

#### Merit Consideration

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

- *Protection of people. (S)*

#### Comment

The proposal is supported by a Estuarine Risk Management Report. Conditions have been included which require the recommendations of this report are complied with. The report concludes that residual risks arising from the development are minor. Coast and Catchments Officer who has raised no objections subject to recommended conditions. The proposal as conditioned will provide suitable protection for people.

- *Protection of the natural environment. (En)*

#### Comment

The proposed works will not unreasonably impact upon the natural environment. The application has been reviewed by Council's Coastal Engineer, Development Engineer, Biodiversity Officer, Riparian Lands Officer and Coast & Catchments Officer who are satisfied that the development will not result in unreasonable environmental impacts. The proposal is supported by a Estuarine Risk Management Report. Conditions have been included which require the recommendations of this report are complied with. The report concludes proposal can be constructed and used without undue impacts or negative consequences to public safety or the environment..

- *Protection of private and public infrastructure and assets. (S)*

#### Comment

The proposal is supported by a Estuarine Risk Management Report. Conditions have been included which require the recommendations of this report are complied with. The report concludes that residual risks arising from the development are minor. Coast and Catchments Officer who has raised no objections subject to recommended conditions. The proposal as conditioned will provide suitable protection of assets and infrastructure.

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.

#### **B4.16 Seagrass Conservation**

The applicant has submitted an Aquatic Ecology Assessment report. The report concludes that the proposal can be undertaken with no direct impact on marine habitats that support marine vegetation and minimal risk of impact to other un-vegetated marine habitats. The proposal has been reviewed by Council's Coastal Officer and Riparian Lands Officer who have raised no objection to the works and associated impacts to the surrounding natural environment. The application is supported by a response from the DPI Fisheries identifying no adverse impact upon the key fish habitats (subject to conditions).

#### **B4.19 Estuarine Habitat**

The applicant has submitted an Aquatic Ecology Assessment report. The report concludes that the proposal can be undertaken with no direct impact on marine habitats that support marine vegetation and minimal risk of impact to other un-vegetated marine habitats. The proposal has been reviewed by Council's Coastal Officer and Riparian Lands Officer who have raised no objection to the works and associated impacts to the surrounding natural environment. The application is supported by a response from the DPI Fisheries identifying no adverse impact upon the key fish habitats (subject to conditions).

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

##### Merit Consideration

Two (2) submissions were received from the following properties which included concerns regarding view loss from a private property:

- 1 Richard Road, Scotland Island
- 3 Richard Road, Scotland Island

The development is considered against the underlying Objectives of the Control as follows:

- *A reasonable sharing of views amongst dwellings*

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*, are applied to the proposal.

##### **1. Nature of the views affected**

*"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".*



Comment to Principle 1:

**No.1 Richard Road, Scotland Island**

The views from No.1 Richard Road, Scotland Island, Church Point that are the concern are to the south-west and include views of Pittwater Waterway and land and water interface. This is demonstrated in the photos below.



**Photo 1:** Existing views from No.1 Richard Road to the south-west (front garden).



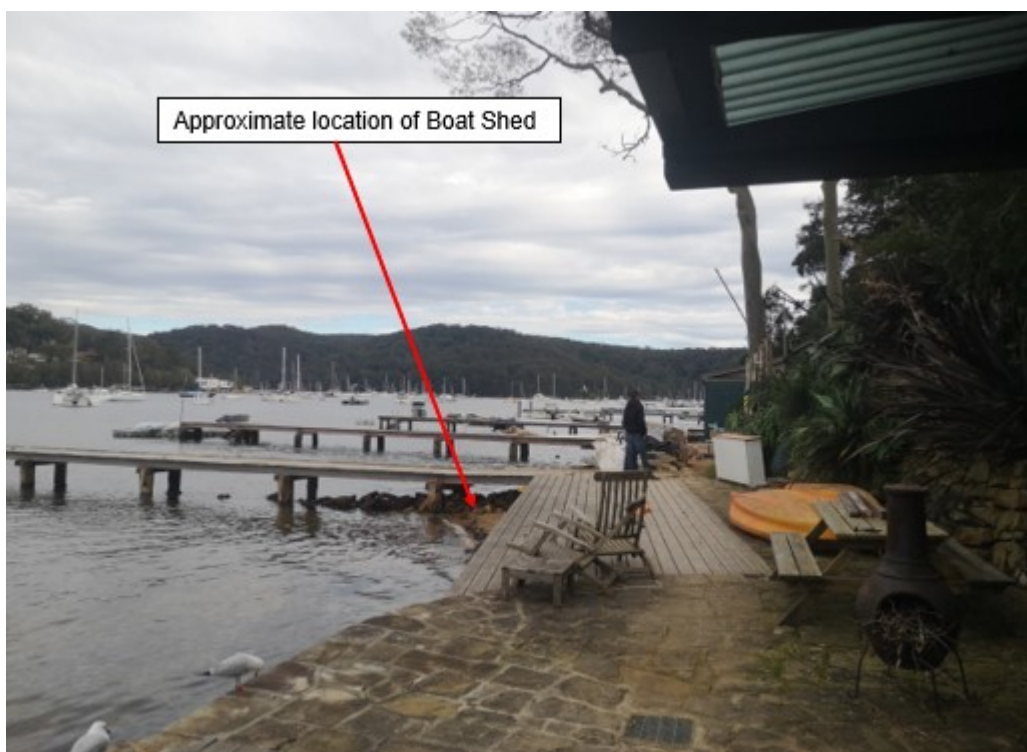
**Photo 2:** Existing views from No.1 Richard Road to the south (front garden). Views are unobstructed by the proposal.



**Photo 3:** Existing views from No.1 Richard Road to the south-west (ground level deck)

### **No.3 Richard Road, Scotland Island**

The views from No.3 Richard Road, Scotland Island, Church Point that are the concern are to the south-west and include views of Pittwater Waterway and land and water interface. This is demonstrated in the photos below.





**Photo 4:** Existing views from No.3 Richard Road to the south-west (lower foreshore deck area).



**Photo 5:** Existing views from No.3 Richard Road to the south (lower foreshore deck area). Views are unobstructed by the proposal.



**Photo 6:** Existing views from No.3 Richard Road to the south-west ("ground floor" elevated deck off living areas).

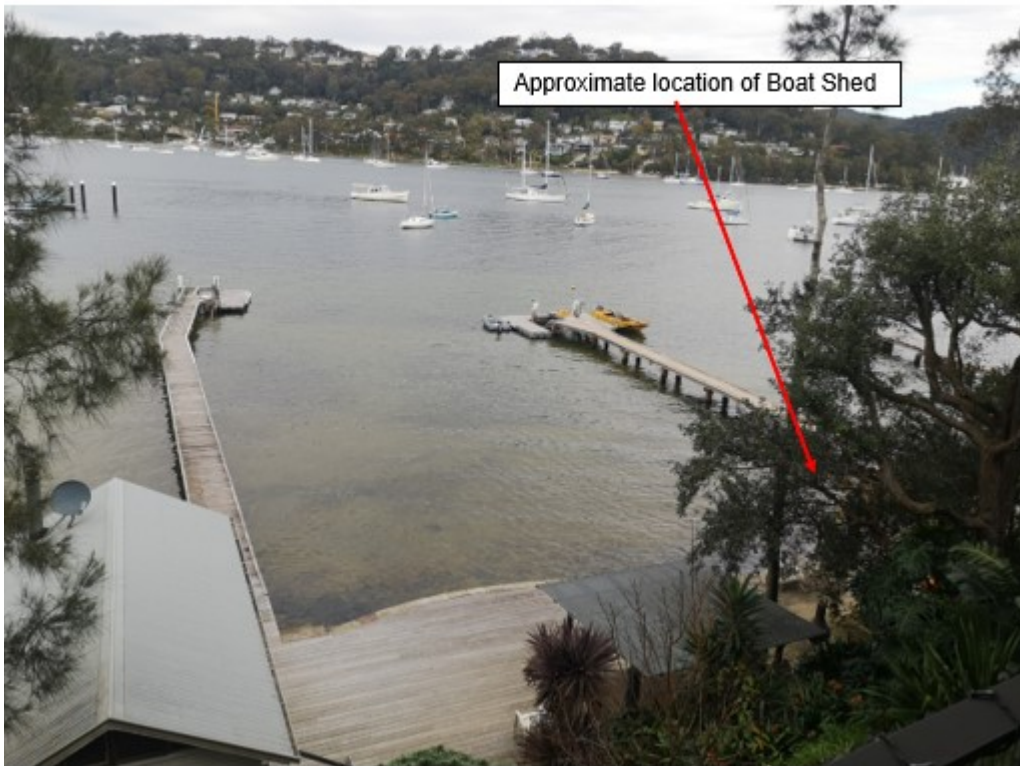


**Photo 7:** Existing views from No.3 Richard Road to the south ("ground floor" elevated deck off living areas). Views are unobstructed by the proposal.



**Photo 8:** Existing views from No.3 Richard Road to the south-east ("ground floor" elevated deck off living areas). Views are unobstructed by the proposal.





**Photo 9:** Existing views from No.3 Richard Road to the south-west ("first floor" elevated deck off bedroom).

## 2. What part of the affected property are the views obtained

*"The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".*

### Comment to Principle 2:

#### **No.1 Richard Road, Scotland Island**

Views are primarily obtained from the foreshore garden area, "ground level " deck, and ground and first floor living areas. The view which is of concern is obtained from both a sitting and standing position over the western side boundary. The expansive Pittwater views to the south and east remain unaffected by the proposal

#### **No.3 Richard Road, Scotland Island**

Views are primarily obtained from the lower foreshore deck area, "ground floor"elevated kitchen/dining and living room and the deck (and principle private open space) located off these rooms. Views are also obtained from the upper level bedrooms and balcony located off these rooms. The view which is of concern is obtained from both a sitting and standing position over the western side boundary. The expansive Pittwater views to the south and east remain unaffected by the proposal

## 3. Extent of impact

*"The third step is to assess the extent of the impact. This should be done for the whole of the property,*

*not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating".*

#### Comment to Principle 3:

##### **No.1 Richard Road, Scotland Island**

As viewed from No.1 Richard Road, the proposed boat shed would result in the partial loss of Pittwater Waterway views available from the front garden, ground level deck and ground floor living areas. These views are partially obstructed by existing buildings and vegetation. Expansive views of Pittwater Waterway are expected to be retained over and to the south and to the proposal

This can be seen within photos 1 to 3 above.

In consideration of the filtered nature of the view and the proportion of view lost in comparison to views retained, the extent of the impact is considered to be to be **negligible to minor**.

##### **No.3 Richard Road, Scotland Island**

As viewed from No.3 Richard Road, the proposed boat shed would result in the partial loss of Pittwater Waterway and land and waterway interface views available from the lower foreshore deck area, "ground floor" elevated deck located off living areas and "first floor" elevated deck located off the bedroom.

This can be seen within photos 4 to 9 above.

In consideration of the filtered nature of the view and the proportion of view lost in comparison to views retained, the extent of the impact is considered to be to be **minor**.

#### **4. Reasonableness of the proposal that is causing the impact**

*"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."*

#### Comment to Principle 4:

Overall, the view loss associated with the proposal is considered negligible to minor when put in context of the entirety of views obtained from adjoining properties and the location of existing vegetation. As such, the proposal is not considered to result in an unreasonable view loss. The built form non-compliance's associated with the proposal have been addressed within this report and are considered to meet the objectives of the control. The building height variation will not contribute to unreasonable view loss and a compliant building height will not result in a significant retention of views.

- *Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.*

Comment:

The proposed development will not impact upon views and vistas from roads and public places. The proposal will not unreasonably impact views from Carols Wharf or the foreshore

- *Canopy trees take priority over views.*

Comment:

The proposed development does not unreasonably impact upon trees.

Overall, Council is satisfied that the proposed development achieves consistency with the outcomes of Clause C1.3 View Sharing of P21DCP and the Land and Environment Court's planning principles.

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

If approved, a condition is to be imposed to ensure the proposed boat shed does not contain cooking facilities and is not used for the purposes of separate habitation.

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

Description of non-compliance

The Control stipulates that waterfront development shall be setback a minimum of 2.0 metres along the full length of the lateral limit lines to minimise conflict and to maximise equitable access to the waterway.

The proposal seeks to replace and extend an existing jetty which is located on the north-western lateral line limit. The remainder of the proposed development will be located 2m from the lateral line limits.

It should be noted that the proposed jetty is proposed to be shared between No.5 and No.7 Richard Road. The control states that the lateral line limit may be varied where shared facilities are proposed where the adjoining property will benefit from the shared facility.

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 jetty will continue to allow for the fair and equitable enjoyment of the waterway. The jetty extension, stairs and deck is a continuation of an existing arrangement. The development has also been designed to be shared between two neighbours, and therefore meets this objective. The proposal is suitably offset from adjoining jetties and waterway structures, being located approximately 20m from adjoining neighbouring jetties. The application is accompanied by a letter of correspondence from Transport for NSW, dated 08 October 2021, which states that the proposed development will not cause any navigational issues.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / 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 presents the following non-compliances with the design criteria outlined within this clause:

#### **a) Jetties, Ramps and Pontoons**

The proposed jetty extension is considered to generally meet the required design criteria specified by this control. The jetty extension is considered practical due to the tidal changes of high tide and low tide and the shallow nature of the land seaward of MHW. The proposed structure is similar in length to surrounding structures (notably No.3 Richard Road) and the application is supported with a response from the RMS raising no navigational concerns. The proposal is supported by an Aquatic Ecology Assessment report. The report concludes that the proposal can be undertaken with no direct impact on marine habitats. The proposal has been reviewed by Council's Coastal Officer and Riparian Lands Officer who have raised no objection to the works and associated impacts to the surrounding natural environment. No Berthing areas or Pontoons are proposed as part of this development.

#### **c) Boatsheds**

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

#### Comment:

The proposed boatshed and associated works are located partially above and partially seaward of the MHW. However, the development is permitted with consent below the mean high water mark as Area 23 of the Additional Permitted Uses Map under the PLEP 2014 applies. Full compliance is also considered unreasonable in this instance, due to the significant excavation that would be required due to the steep slope of the site immediately above the mean high water mark. It is considered the boat shed has been located in the most practical position.

***ii. 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***

#### Comment:

The proposed boat shed will generally comply with the design criteria with the exception of width. However, the boatshed will be 4.4m in width. The minor breach in the width of the shed has been assessed on merit as acceptable as it is consistent with the scale of other boat sheds in the locality and will not result in unreasonable amenity or scenic impacts.

#### **d) Slipways and launching ramps**

**Slipways and Launching Ramps are generally not favoured.**

#### Comment:

The application proposes the construction of a skid ramp adjoining the southern elevation of the proposed boat shed. While skid ramps are generally not favored, the clause allows for a variation to this requirement, stating that Council may consider skid ramps where structures are unlikely to detract from the visual character of the foreshore, will not affect marine vegetation and will not restrict public foreshore access. The proposed skid ramp will not obstruct public foreshore access and is



not considered to have an adverse or unreasonable visual impact when viewed from the Pittwater Waterway. The proposed ramp is minimal in height and will be constructed of timber. The applicant has submitted an Aquatic Ecology Assessment report. The report concludes that the proposal can be undertaken with no direct impact on marine habitats that support marine vegetation and minimal risk of impact to other un-vegetated marine habitats. The proposal has been reviewed by Council's Coastal Officer and Riparian Lands Officer who have raised no objection to the works and associated impacts to the surrounding natural environment. The application is supported by a response from the DPI Fisheries identifying no adverse impact upon the key fish habitats (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 development application was referred to Department of Primary Industries (Fisheries) with no objection raised subject to conditions. The application provided an Estuarine Risk Management Report, and a Geotechnical Assessment Report and which supported the proposed works. An Estuarine Risk Management Report prepared for the site was assessed against the Pittwater LEP 2014 and Pittwater 21 DCP and was supported by Council's Natural Environment - Coastal Section subject to conditions.

Council's Bushland and Biodiversity, and Coast and Catchments Officers have also reviewed the proposal having regard to water quality and habitat and have raised no objections subject to conditions included in the recommendation of the report. In turn, it is considered the proposal will not have an adverse impact on the water quality or estuarine habitat of Pittwater.

As a result, the proposal (subject to conditions) has been designed and sited to avoid an unreasonable or adverse impact on this and the development therefore achieves this outcome.

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

#### Comment:

Notwithstanding the location and dimensions of the boat shed, public access along the foreshore will not be restricted as the development incorporates a decking area around the structure, providing safe and level public access along the foreshore.

- ***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:

Correspondence submitted with application from Roads and Maritime Services, dated 08 October 2021, advises that an inspection/ assessment has been conducted by the local Boasting Safety Officer and that there are no navigational concerns regarding the designated proposal.

- ***Structures blend with the natural environment.***

Comment:

The proposed waterfront structures will blend with the surrounding natural environment as a result of the site specific design and the conditioned use of dark and earthy external finishes.

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

Comment:

The proposed development will be visually consistent and comparable with surrounding waterfront development. It is considered 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 recommendation 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 a commercial waterfront development. This outcome is therefore 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.

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 \$ 700 is required for the provision of new and augmented public

infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 140,000.

## **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:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

## **PLANNING CONCLUSION**

This proposal, for the construction of a new boat shed and associated access deck and skid ramp the extension of an existing shared jetty and new associated sea stairs has been referred to the Northern Beaches Development Determination Panel (DDP) due to contravention of the Height of Buildings development standard exceeding 10% and the applications receiving five (5) submissions.

The proposed height breach has been considered in relation to the provisions of Clause 4.6 of the Pittwater LEP 2014 and the context of the site and surrounding locale, which includes a number of

approvals inclusive of variations to the Height of Buildings development standard. While it is acknowledged that the proposed height contravention represents a moderate breach, the resulting impacts of the development on the amenity of the adjoining properties and the Pittwater Waterway has been assessed as reasonable. In this regard, the Clause 4.6 Variation is assessed as being well founded and is supported.

The proposal has been reviewed by Council's Coastal Officer, Riparian Lands Officer, Development Engineer, Acid Sulphate and Bushland & Biodiversity Officer who have raised no objection to the works and associated impacts to the surrounding natural environment. The application is supported by a response from the DPI Fisheries identifying no adverse impact upon the key fish habitats (subject to conditions). Potential amenity issues to surrounding neighbours have been reviewed and have been determined to be reasonable having regard to the context and spatial relationships.

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.

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 clause 4.3 Height of Building development standard pursuant to clause 4.6 of the PLEP 2014 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2022/0947 for Construction of a boat shed, jetty extension, skid ramp and access deck and stairs on land at Lot 47 DP 12749, 7 Richard Road, SCOTLAND ISLAND, Lot LIC 496058, 7 Richard Road, SCOTLAND ISLAND, Lot 48 DP 12749, 5 Richard Road, SCOTLAND ISLAND, Lot LIC 496057, 5 Richard Road, SCOTLAND ISLAND, subject to the conditions printed below:

## **DEFERRED COMMENCEMENT CONDITIONS**

### **1. Deferred Commencement**

A Building Information Certificate must be issued by Council with respect to the existing foreshore deck which the boat shed is proposed to be constructed upon. Alternatively, evidence of previous development approval of this deck is to be submitted to Council.

Evidence required to satisfy these conditions must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with the Environmental Planning and Assessment Regulation. Applicants must complete two essential steps to request their consent become operational:

1. Submit a completed 'Deferred Commencement Document Review Form' (available on Council's website), include the relevant evidence and the application fee as per Council's Fees and Charges.
2. Submit a request for operational consent to Council via the NSW Planning Portal. This can be completed through accessing the relevant portal application ID and navigating to 'Request for Operational Consent' in the Actions dropdown menu.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Clause 76 of the Environmental Planning and Assessment Regulation 2021. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 2. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

#### a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA01 Rev.A - Site Plan	20/10/2022	Stephen Crosby & Associates
DA02 - Floor Plan	July 2021	Stephen Crosby & Associates
DA03 - Section & Elevations	July 2021	Stephen Crosby & Associates
DA04 - Jetty Long Section	July 2022	Stephen Crosby & Associates
Schedule of Exterior Finishes	30/05/2022	Stephen Crosby & Associates

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Acid Sulfate Soil Assessment Report	01/06/2022	Marine Pollution Research Pty Ltd
Bushfire Risk Assessment Report	26/04/2022	Bushfire Planning Services Pty Limited
Estuarine Risk Management Report	24/05/2022	Salients Pty Limited
Preliminary Geotechnical Assessment Report (AG 22125)	27/04/2022	AscentGeo Consulting Geotechnical Engineers
Aquatic Ecology Assessment Report	22/09/2021	Marine Pollution Research Pty Ltd

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

d) The development is to be undertaken generally in accordance with the following:

<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
Waste Management Plan	27/05/2022	Stephen Crosby & Associates

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

3. **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:

<b>Other Department, Authority or Service</b>	<b>EDMS Reference</b>	<b>Dated</b>
Ausgrid	Ausgrid Referral Response	01/07/2022
NSW Department of Primary Industries - Fisheries	DPI Fisheries Referral Response (IDA22/68)	24/08/2022
Department of Planning and Environment – Crown Lands	Crown Lands Consent (MN79H980-002#01)	29/03/2022

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

4. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a *dwelling house* and *boat shed*, as defined by the Pittwater Local Environment Plan 2014 Dictionary.

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

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

5. **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.

## 6. 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 Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% 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.
- (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.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (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.

## 7. No consent for berthing area

No approval is granted under this consent for a berthing area. No vessels, including small watercraft, are to be berthed adjoining the approved jetty.

Reason: To ensure the proposal is carried out in accordance with the determination of Council and approved plans.

## FEES / CHARGES / CONTRIBUTIONS

### 8. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$700.00 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 \$140,000.00.

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.

### 9. **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](http://www.northernbeaches.nsw.gov.au)).

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

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

### 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 prepared by Ascentgeo dated 27/4/2022 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

### 11. **Construction Environment Management Plan**

A Construction Environmental Management Plan (CEMP) must be prepared in accordance with the environmental risks and mitigation methods identified in the DPI Fisheries Referral and the Aquatic Ecology Assessment and must be kept in the site office.

An induction plan for site personnel must be prepared that addresses the CEMP.

The CEMP and site induction plan must be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To protect native vegetation, wildlife, habitats and receiving waterways.

### 12. **Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: Protection of the receiving environment.

13. **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.

14. **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.

15. **Estuarine Hazard Design Requirements**

The following applies to all development:

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 potential hazards associated with development in an estuarine habitat.

16. **Compliance with Estuarine Risk Management Report**

The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Salients Pty. Ltd. dated 24 May 2022 and these recommendations are to be incorporated into construction plans.

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

17. **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 25 years as justified 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 Salients Pty. Ltd. dated 24 May 2022.

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

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

18. **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.

19. **External Finishes to Roof**

The external finish to the boatshed roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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.

20. **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](http://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.

21. **Lawful Authority to Use and Occupy Crown Land or Waterway**

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

Reason: To ensure that lawful authority under the Crown Land Management Act 2016

## **CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

22. **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

## CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

### 23. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees, and should additional pruning be required an application to Council's Tree Services shall be submitted for approval or otherwise.

The Certifying Authority must ensure that:

- c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Reason: Tree and vegetation protection.

24. **Wildlife Protection**

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

Reason: To protect native wildlife.

25. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

26. **Site inductions for Construction Environment Management Plan**

The site Environmental Officer (or appropriate equivalent) must induct all staff prior to starting work, with an induction record maintained and available onsite at all times.

Personnel conducting the site induction must:

- (a) Be familiar with any environmental protection conditions under the development approval and/or the Construction Environment Management Plan
- (b) Be familiar with the names and contact details of relevant people and authorities in the event of any environmental or site management emergency.
- (c) Be familiar with the presence of environmentally significant areas within and surrounding the site.
- (d) Be able to identify threatened species of fauna if they enter the site, especially Red-crowned Toadlet.
- (e) Be familiar with animal welfare issues and procedures should human-wildlife interactions take place during the construction phase.

Reason: To ensure all personnel understand what must be done to protect native vegetation, wildlife, habitats and receiving waterways on the site.

27. **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.

28. **Aquatic sediment management**

Environmental safeguards (e.g. silt curtains) are to be used during construction to prevent the escape of turbid plumes into the aquatic environment. The silt curtains must be carefully placed and secured to ensure they do not drag over any nearby seagrass beds. For reference on silt curtain placement, please see the referral from DPI Fisheries.

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

Reason: Protection of seagrass.

29. **Use of equipment and vessels in the vicinity of seagrass**

No equipment is to be placed on any seagrass beds.

Inshore infrastructure for mooring vessels and plant must be used where suitable. Where mooring lines or cables are required, they shall be suitably buoyed prior to laying and kept buoyed once laid to prevent cable drag or swing damage (scalping). Where this is impractical, contractors should use a floating rope.

Vessels must have adequate clearance over seagrass beds, including allowance for tidal movement, swell/wind wave heights and vessel propulsion.

Reason: Protection of seagrass.

30. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) prior to commencement of any other works on site.

Erosion and sediment controls 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 vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

31. **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.

32. **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.

33. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.



The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

34. **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.

35. **Installation and Maintenance of Sediment Control**

Prior to any works commencing on site, including demolition, 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.

36. **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.

37. **Acid Sulfate Soil Precautionary Measures**

1. Pile removal and placement works are to be enclosed using a floating silt curtain to facilitate rapid dispersal of disturbed sediments back to the seabed.

2. All seabed sedimental material on demolished piles is to be hosed off piles prior to piles leaving the silt curtain area, preferably as each pile is being pulled.
3. Piles or demolition material with adhered sub-surface seabed sediment that cannot be cleaned immediately but needs to be stored exposed to air prior to cleaning must be washed and hosed off into estuarine waters contained by the floating silt curtain as soon as practicable with a maximum exposure time of 18 hours.
4. For any pile or other demolition material with adhered sediment that cannot be cleaned immediately, the operator/contractor must keep a log book entry of the time of extraction out of the water, the manner and place of storage of the material and the time, manner and placement of hosed off material (in accordance with point 3 above).

Reason: Minimise the likelihood of environmental harm..

38. **Prevention of damage to aquatic ecology**

The development is to comply with all recommendations and mitigation measures of the approved Aquatic Ecology Assessment Report prepared by Marine Pollution Research Pty. Ltd. dated 22 September 2021 and these recommendations are to be incorporated into the CEMP.

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

39. **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 and Environment.

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 and Environment.

Reason: Aboriginal Heritage Protection.

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

40. **No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) are to be imported on to the site prior to or during construction works.

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

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

41. **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.

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

43. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

44. **Geotechnical Recommendations**

Any ongoing recommendations 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.

45. **General Foreshore Matters**

Unless in accordance with the approved works the Consent holder must ensure that:

- a) No materials or cleared vegetation that may obstruct flow or cause damage to the foreshore are left within the coastal foreshore area.
- b) All drainage works must not obstruct flow of water within the coastal waters. Drain discharge points are stabilised to prevent erosion. Any excavation must not result in diversion of any foreshore bank instability or damage to native vegetation.
- c) The foreshore is graded to enable the unimpeded flow of water and retaining structures result in a stable foreshore banks.
- d) Any vegetation or other material removed from the area of operations shall be disposed of lawfully. Burning of the material is not permitted.
- e) The foreshore is to function as an ecological system and as such, all works, access, roads, recreational areas, service easements and any other non-ecologically functioning work or activity are to be located beyond the foreshore other than provided by the consent.

Reason: Environmental protection, monitoring and enhancement of the foreshore.

46. **Compliance with Estuarine Risk Management Report**

The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Salients Pty. Ltd. dated 24 May 2022 and these recommendations are to be maintained over the life of the development.

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

47. **Boat shed to remain a non-habitable space**

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 to boat shed remains non-habitable