

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1275
Responsible Officer:	Georgia Quinn
Land to be developed (Address):	Lot 5 DP 816673, 67 Florence Terrace SCOTLAND ISLAND NSW 2105; LIC 558711
Proposed Development:	Construction of a boat shed and associated works
Zoning:	E3 Environmental Management; W1 Natural Waterways
Development Permissible:	Yes - Zone E3 Environmental Management Yes - Zone W1 Natural Waterways
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	David John Suttie Department of Planning, Industry Jennifer Joy Suttie & Environment - Crown Lands
Applicant:	Stephen Crosby & Associates
Application Lodged:	14/11/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	03/12/2019 to 17/12/2019
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 29.5%
Recommendation:	Approval
Estimated Cost of Works:	\$ 175,000.00

EXECUTIVE SUMMARY

The proposal is for the construction of a boat shed and associated works and involves a variation to the Height of Buildings development standard of the Pittwater Local Environmental Plan 2014 (PLEP 2014) of 29.5%. Despite the 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.

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

The proposed development is generally compliant with the numeric controls under the Pittwater 21 Development Control Plan (P21DCP).

The application is referred to the Northern Beaches Local Planning Panel for review and determination due to the contravention of the Height of Buildings development standard exceeding 10%.

The application has been assessed against the Environmental Planning and Assessment Act 1979 (EP&A Act 1979), Environmental Planning and Assessment Regulations 2000 (EP&A Regulations 2000), relevant Environmental Planning Instruments (EPIs) and Council policies. The outcome of this assessment is detailed within this report.

Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be approved subject to conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

This application seeks consent for the construction of a boat shed and associated works.

In particular, the application includes:

- The construction of a boat shed;
- A timber skid ramp; and
- Associated access decking.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone W1 Natural Waterways

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards

Pittwater 21 Development Control Plan - B4.19 Estuarine Habitat

Pittwater 21 Development Control Plan - B8.3 Construction and Demolition - Waste Minimisation

Pittwater 21 Development Control Plan - D8.9 Landscaped Area

Pittwater 21 Development Control Plan - D15.12 Development seaward of mean high water mark
Pittwater 21 Development Control Plan - D15.14 Minimum frontage for waterfront development
Pittwater 21 Development Control Plan - D15.15 Waterfront development

SITE DESCRIPTION

Property Description:	Lot 5 DP 816673 , 67 Florence Terrace SCOTLAND ISLAND NSW 2105
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Florence Terrace. The site is associated with Crown Licence LIC 558 711 for development seaward of the Mean High Water Mark, of which is owned by the Department of Planning, Industry and Environment - Crown Lands and is located within the W1 Natural Waterways zone. The site is regular in shape with a frontage of 10.1m along Florence Terrace and a depth of 58.9m to the mean high water mark. The site has a surveyed area of 589.4m². The site is located within the E3 Environmental Management zone and accommodates a one and two storey dwelling house. The site has a cross fall from west to east towards the Pittwater Waterway (ie. front to rear) of approximately 16m. The site is not known to contain any threatened species. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by similar scaled low density residential development within landscaped settings, most of which contain waterfront facilities including boat sheds and jetties.

Map:



SITE HISTORY

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

Development Application N0686/05

This application for the replacement of an existing jetty was granted consent under delegation on 6 December 2005.

Development Application DA2018/0518

This application for the construction of an inclined passenger lift was granted consent under delegation on 28 August 2018.

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	None applicable.
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)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been

Section 4.15 Matters for Consideration'	Comments
	addressed via a condition of consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 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. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 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. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 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. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
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	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is 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 Planning for Bushfire Protection, dated 22 August 2019) 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 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development. <u>Note:</u> The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.

Internal Referral Body	Comments
Environmental Health (unsewered lands)	As a boat shed, it will have no effect on the onsite waste water system. There are two conditions recommended to ensure the boat shed remains a boat shed, one to ensure no plumbing is added and a second to prevent it being converted to a habitable dwelling. <u>Planner Comment</u> The provided architectural plans denote the use of the structure as a boat shed only. In this regard it is not considered necessary to further impose a condition regarding the use.
Landscape Officer	The application is for a new Boat shed and skid ramp partially on Crown Land at 67 Florence Terrace Scotland Island, with a public access walkway deck and steps on Crown Land below the Mean High Water Mark. There is no existing trees within 5 metres of the development and thus no landscape issues are raised. The proposal is acceptable in terms of achieving the landscape outcomes of Pittwater 21 DCP, subject to conditions to protect existing trees and vegetation. Council's Landscape section has assessed the proposal against the following Pittwater 21 DCP Controls: B4.22 Preservation of Trees or Bushland Vegetation C1.1 Landscaping D8 Lower Western Foreshores and Scotland Island Locality
NECC (Bushland and Biodiversity)	The development has been assessed against Pittwater LEP - Clause 7.6 Biodiversity and Pittwater 21 DCP Clauses B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor and B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community (EEC). The boat shed and skid ramp has limited environmental impact on the terrestrial environment and no trees or significant native vegetation require removal. The development is designed, sited and will be managed to avoid any significant adverse impact to the EEC, wildlife corridor of threatened species and their habitats.
NECC (Coast and Catchments)	The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP. Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016.

Internal Referral Body	Comments
	State Environmental Planning Policy (Coastal Management) 2018 As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development. The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA. <i>Comment:</i> As assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Stephen Crosby & Associates Pty. Ltd. dated 4 November 2019 and Council accepts the assessment, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018. Pittwater LEP 2014 and Pittwater 21 DCP The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site. Estuarine Risk Management In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL 2.69m AHD would apply at the subject site. A reduction factor (RF) based upon the distance from the foreshore of proposed development may also apply at a rate of 0.07m reduction to the EPL for every 5.00m distance from the foreshore edge up to a maximum distance of 40.00m. As assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Stephen Crosby & Associates Pty. Ltd. dated 4 November 2019 and as assessed in the submitted Coastal Engineering Report prepared by Cardno (NSW/ACT) Pty. Ltd. dated 16 October 2019 and Council accepts the assessments, The floor level of the proposed boatshed is below the adopted EPL for the site. The proposed development is therefore subject to conditions to satisfy the relevant estuarine risk management requirements of P21 DCP.
NECC (Development)	

Internal Referral Body	Comments
Engineering)	The development/site is located in Geotechnical Hazard H1 Area, an "Acceptable Risk Management" level is achievable in accordance with the geotechnical report. Recommend approval subject to conditions.
NECC (Riparian Lands and Creeks)	This application has been assessed under SEPP Coastal Management 2018 - Coastal Environment Zone Pittwater DCP B4.16 Seagrass Conservation Pittwater DCP B4.19 Estuarine Habitat Pittwater DCP B4.20 Estuarine Water Quality Advice from DPI-Fisheries confirms that there is no risk to seagrass beds from the addition of a boathouse and ramp at the proposed location. It is not expected that any earth will be disturbed in the course of this work as the existing seawall is to remain, therefore sediment and erosion controls in the waterway will not be required.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

All, Environmental Planning Instruments (SEPPs, REPs 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, REPs 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 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 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 Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP 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. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (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 development is not considered likely to negatively impact upon the matters raised above in subclause (1).

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or
 - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The proposed development has been designed, sited and will be managed to avoid an adverse impact referred to in subclause (1).

14 Development on land within the coastal use area

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

Comment:

The proposed development is not likely to cause an adverse impact on the matters referred to above.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

15 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:

The proposed development is not likely to cause increased risk of coastal hazards on that land or other

land.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone E3 : 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 E3 : Yes Zone W1 : Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	4.0m W1 Zone 8.5m E3 Zone	5.18m	29.5% (1.18m)	No

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
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone W1 Natural Waterways

Development for the purposes of 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 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.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	4.0m
Proposed:	5.18m (above 1.17 AHD)*
Percentage variation to requirement:	29.5%

***Note** 1.17 AHD 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 (attached to this report as an Appendix) 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 development is justified in this instance for the following reasons:

- The height of the boat shed is entirely consistent in terms of form and height with the guidelines prescribed within 21DCP, Clause D15.15.
- The ridge height and scale of the proposed boat shed is not dissimilar to many previously approved structures built within the Scotland Island precinct and the wider Pittwater local.
- The proposed development will not result in any unreasonable overshadowing of neighbouring properties due to the location of the boat shed being largely beyond the MHW in conjunction with the rising slope of the adjoining sites.
- The boat shed will appear consistent with the desired character of the Pittwater Waterway. "

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 (located towards to northeast of the site) will not result in any unreasonable impacts to neighbouring properties.

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 E3 Environmental Management 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 proposal seeks a maximum building height of 5.18m (6.35 AHD), thereby contravening the numeric control by 29.5% (1.18m). The minor height departure will not contribute to an adverse building bulk and scale. The proposal is contemporary in design such the visual dominance of the built form is broken up as a result of the complementary external finishes in conjunction with the articulation of the structure. Further, modulation of the front facade will ensure the development minimises visual impact as viewed from the Pittwater Waterway and surrounding public and private spaces. Boat sheds are common development within the Lower Western Foreshores and Scotland Island precinct. The height and scale of the proposal is consistent with the design parameters prescribed within Clause D15.15 of P21DCP and is not dissimilar to that of surrounding development. In turn, 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 encroachment of the height of buildings development standard will not be discernible when viewed from the Pittwater Waterway. The height departure is substantially attributed to the existing ground levels within the rear portion of the site in conjunction with the matter of water inundation. The development comprises a finished floor level of 1.85 AHD as so to ensure the boat shed is not likely to be subject to inundation. Further, the development comprises a height and scale that is in keeping with that of surrounding development within the Scotland Island precinct and those within the wider Pittwater locale.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposal will not unreasonably impact neighbouring properties in terms of solar access, given the siting of the boat shed being largely beyond the MHWL in conjunction with the cross fall of the topography of the adjoining sites. It is also noted the boat shed will be offset from adjoining built structures, which furthermore assists in the maximisation of solar accessibility and amenity.

d) to allow for the reasonable sharing of views,

Comment:

The minor height variation will not be discernible to the casual observer from the waterway

perspective. Further, the articulated design and siting of the structure ensure minimal disruption of views between public and private spaces occur as a result of the development. The boat shed is offset from other structures within the adjoining properties, and at a significantly lower elevation than that of the adjoining dwellings. In turn the development is considered to allow for the reasonable sharing of views.

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

Comment:

Significant excavation is not required in order to facilitate the new works. The boat shed is to be sited atop of concrete piles, so as to reduce the extent of site disturbance and thus responding sensitively to the natural topography where possible. The development will sit comfortably within its context in terms of scale, massing and form and the variation will provide for a well composed, articulated structure that provides good amenity and function for the dwelling occupants whilst respecting the natural topography of the site and surrounds.

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

Comment:

The subject site is not located within proximity to a heritage conservation area or item. Further, the development as stated above, has been sited and designed appropriately within the context of the site to ensure the visual impact of the development is reasonable and minimised as viewed from the Pittwater Waterway and adjoining and surrounding properties.

Zone objectives

The underlying objectives of the W1 Natural Waterways zone

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

Comment:

The development is appropriately sited and designed so as to protect the ecological and scenic values of natural waterways.

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

Comment:

The proposal has been reviewed by Council's Biodiversity, Riparian and Coastal Officers, having regard to the management of the natural environment and have raised no objection to the development subject to conditions. Further, the proposal has also been reviewed by DPI Fisheries who are also satisfied with the proposal. It is considered no unreasonable effects will be inflicted on the natural values of the waterway.

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

Comment:

The proposal will not impact on fish passages or recreational fishing areas.

- *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 who have raised no objection to the proposal. Further, the RMS have confirmed via their letter of correspondence dated 1 March 2019, that there are no navigational concerns regarding the designed proposal.

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

Comment:

The proposal ensures public access to and along the foreshore will be maintained as a result of the application.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent 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 PS 18-003 dated 21 February 2018, 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, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	N/A	N/A	N/A
Rear building line	Foreshore Building Line applies	Wholly below FBL	N/A	N/A
Side building line	2.5m <i>Northwest</i>	4.5m <i>Deck</i>	N/A	Yes
		5.7m <i>Boat shed</i>	N/A	Yes
	1.0m <i>Southeast</i>	1.6m <i>Deck</i>	N/A	Yes
		2.6m <i>Boat shed</i>	N/A	Yes

Building envelope	3.5m <i>Northwest</i>	Within envelope	N/A	Yes
	3.5m <i>Southeast</i>	Within envelope	N/A	Yes
Landscaped area	68% (400.8m ²)	62.1% (366.3m ²)	8.7% (34.5m ²)	No

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
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	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
B4.20 Protection of Estuarine Water Quality	Yes	Yes
B5.11 Stormwater Discharge into Waterways and Coastal Areas	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	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
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
D8.8 Building envelope	Yes	Yes
D8.9 Landscaped Area	No	Yes

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

Detailed Assessment

B4.19 Estuarine Habitat

An Aquatic Ecology Report has not been provided as part of the application, as DPI Fisheries has stipulated the proposal is not considered to constitute Integrated Development under s.91 of the EPA Act 1979, as denoted within their letter of correspondence dated 7 March 2019. This was determined as the proposal does not include any dredging, reclamation, harm to marine environment or blockage of fish passage. Further, Council's Biodiversity Officer has reviewed the proposal and raised no objection.

B8.3 Construction and Demolition - Waste Minimisation

No Waste Management Plan was submitted as part of the application, therefore a condition of consent will be imposed requiring such be prepared in accordance with the DCP.

D8.9 Landscaped Area

Description of non-compliance

The control requires a minimum of 68% of the site area to be landscaped.

The proposal provides 62.1% (366.3m²) of the site as landscaped area, which represents a variation of 8.7% (34.5m²).

The variations provision prescribed within the Control, allows for up to 6% of the total site area to be impervious landscape treatment provided the objectives of the control are achieved in conjunction with such area being provided for outdoor recreational purposes only. As below, the objectives of the control are achieved, therefore the variation is permitted. In turn, the landscaped area of the site increases to 68.1%.

Merit consideration

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

- *To achieve the desired future character of the Locality.*

Comment:

The proposed development is appropriate in bulk and scale and is intended to provide storage functions for the dwelling occupants given the site is water access only. As the development is not considered unreasonable nor visually dominant, the desired future character of the locality is achieved.

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

Comment:

The boat shed, associated decking and skid ramp are articulated such that the dominance of the built form is broken down as a result. The boat shed achieves compliance with the relevant DCP built form controls for such development. Further, the development as viewed from the Pittwater Waterway will appear consistent with surrounding waterfront facilities, such that it will integrate appropriately within its context. In turn, the bulk and scale of the built form is considered to be reasonable and minimised.

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

Comment:

The boat shed has been designed and sited appropriately such that reasonable amenity including privacy and solar access is provided within the subject site and maintained to neighbouring properties. The boat shed has incorporated the majority of windows toward the rear boundary over the Pittwater Waterway. Further, the boat shed is offset from any built structures within the adjoining properties.

- *Vegetation is retained and enhanced within the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation including tree canopy.*

Comment:

No significant vegetation is required to be removed in order to facilitate the proposed development. The site is densely vegetated to the rear of the dwelling house, such that the existing built form is sufficiently screened. The boat shed development, being situated within a mature landscaped setting will visually appear as the secondary component of the site, consistent with this objective.

- *Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.*

Comment:

Council's development engineers have reviewed the proposal having regard to stormwater management and have raised no objection. It is therefore considered stormwater runoff will be appropriately managed to in turn prevent soil erosion and siltation of natural drainage channels.

- *To ensure the distribution of height and mass preserves, and enhances neighbourhood amenity and has regard to site characteristics and environmental constraints.*

Comment:

The boat shed has been appropriately designed so to evenly distribute the built form to in turn preserve and enhance neighbourhood amenity. The development is appropriately located within the context of the site, such that minimal excavation and site disturbance is required.

- *To conserve significant natural features of the site and contribute to effective management of biodiversity.*

Comment:

The development does not require the removal of significant vegetation or other natural features of the site. The proposal has furthermore been reviewed by Council's Biodiversity Officer who has concluded the development is not likely to impose environmental impact upon the terrestrial environment and that no removal of significant native vegetation is required.

- *The area of site disturbance is minimised.*

Comment:

The proposed development is sited atop of footings that include the existing sea wall and new concrete piers. In turn, minimal excavation is required. The degree of site disturbance is minimal and not dissimilar to that of previously developed sites within the vicinity.

- *Soft surface is maximised.*

Comment:

The landscaped area of the site is reduced slightly as a result of the boat shed development being sited across the MHW. This location was deemed the most practical and feasible position due to the existing sea wall and mature vegetation in conjunction with the recently approved inclinor (DA2018/0518). The boat shed is considered appropriate in terms of its bulk and scale, which in turn correlates to soft surface being maximised.

D15.12 Development seaward of mean high water mark

The control stipulates that all new buildings are to be located landward of the mean high water mark. The proposed boat shed is sited across the MHW, being located proportionately within both private land and the Pittwater Waterway. Given the site is water-access only this is considered acceptable. Further, the control allows for structures associated with the accommodation, servicing or provision of access to boats to be located seaward of the MHW. The proposal therefore satisfies this prescription. It is also noted that public access will be maintained along the foreshore.

D15.14 Minimum frontage for waterfront development

Description of non-compliance

The Control stipulates that allotments with a water frontage of less than 15.0m metres are generally only permitted to contain waterfront development such as a jetty, ramp and pontoon. Multiple facilities including boatsheds will not be permitted. The rear boundary of the site is 13.6m. However, the Control furthermore states that waterfront facilities should be shared with neighbouring waterfront properties to

minimise the density and visual impact of foreshore development. The existing jetty is a shared facility between the occupants of the subject site and those of the southern adjoining property, at No. 69 Florence Terrace.

Merit consideration

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

- *To minimise the individual and cumulative visual impact of waterfront development.*

Comment:

The site contains an existing timber jetty that is a shared facility between the subject site and the southern adjoining property. In turn, this minimises the visual impact of waterfront development as between two properties only one jetty structure exists. The spatial separation between the proposed boat shed and the northern adjoining property's waterfront facilities is at minimum 8.3m. This is considered a sufficient distance within this established waterfront residential area. Further, the proposed boat shed is considered appropriate in terms of bulk and scale, and readily complies the P21DCP built form controls for boat sheds. Given the site is water-access only, the intention of the boatshed is to facilitate storage similar to the function of a garage on the 'mainland'.

The proposal is considered to satisfy the above objective.

D15.15 Waterfront development

c) Boatsheds

The boat shed as proposed meets the prescribed requirements. It is however noted that the roof eave of the front elevation extends beyond the 6m length of the boat shed. Given the boat shed structure itself complies with the numeric parameters of this Control, no further assessment is considered necessary.

d) Slipways and Launching Ramps

As prescribed within this Control, ramps are not generally favoured however the timber skid ramp as proposed meets the requirements of the variations provision. The proposed ramp extends from the top of the existing sea wall and decking associated with the boat shed, so as to minimise the height of the ramp as viewed from the Pittwater Waterway. Further, the ramp is to be constructed out of timber and no slip rails are proposed. In this regard, the proposed ramp satisfies the prescribed criteria and is therefore supported.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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 2019

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$ 875 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 175,000.

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 2000;
- 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.

Accordingly

In summary, a detailed assessment has been required for the following specific issues:

The proposal includes a numeric non-compliance with the following PLEP 2014 Clause:

- 4.3 Height of Buildings.

The proposal includes non-compliances with the following P21DCP Clauses:

- D8.9 - Landscaped Area;
- D15.12 - Development seaward of mean high water mark;
- D15.14 - Minimum frontage for waterfront development; and
- D15.15 - Waterfront development.

The aforementioned non-compliances are considered to result in minimal material impact to adjoining properties and the surrounding Pittwater Waterway, and are considered reasonable when assessed against the relevant objectives of each control.

The proposal includes a more significant non-compliance in relation to Building Height. 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.

Based on the above discussion and the full assessment undertaken, the proposal is considered to be acceptable having regard to all relevant Pittwater LEP 2013 and P21DCP controls, and is therefore recommended for approval, subject to conditions.

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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2019/1275 for Construction of a boat shed and associated works on land at Lot 5 DP 816673, 67 Florence Terrace, SCOTLAND ISLAND, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
2069-DA01 - Site Plan/ Floor Plan	February 2019	Stephen Crosby & Assoc. Pty. Ltd.
2069-DA02 - Sections & Elevations	February 2019	Stephen Crosby & Assoc. Pty. Ltd.

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Bushfire Report (Ref: 1353)	22 August 2019	Planning for Bushfire Protection
Coastal Engineering Report (Ref: AWE200056/L001:PDT)	16 October 2019	Cardno Pty Ltd
Geotechnical Report (Ref: PX00007)	10 September 2019	Hodgson Consulting Engineers

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.

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.

2. 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 Certifying Authority 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 Certifying Authority 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 Certifying Authority 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.

3. 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 a final 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) 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 2008
 - (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.

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$875.00 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 2019. The monetary contribution is based on a development cost of \$175,000.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash

contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

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

5. Security Bond

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security 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, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

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

6. 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 Hodgson Consulting Engineers dated 10 September 2019 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.

7. **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 Certifying Authority 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.

8. **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.

9. **Estuarine Planning Level Requirements**

An Estuarine Planning Level (EPL) of 2.69m AHD has been adopted by Council for the subject site and shall be applied to all development proposed below this level as follows:

- All structural elements below 2.69m AHD shall be of flood compatible materials;
- All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 2.69m AHD or waterproofed to this level; and
- The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 2.69m AHD.
- All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 2.69m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 2.69m AHD to avoid the likelihood of contact with splashing waves and spray.

Reason: To ensure aspect of the development are built at the appropriate level

10. **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 100years unless otherwise justified and accepted by Council) the development is able to withstand the wave impact forces and loadings identified in the Coastal Engineering Report prepared by Cardno (NSW/ACT) Pty. Ltd. dated 16 October 2019

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

11. **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 Certifying Authority prior to the issue of the Construction Certificate.

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

12. **External Finishes to Roof**

The external finish to the 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 Certifying Authority 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. (DACPLC03)

13. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

14. **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.

15. **Tree and vegetation protection**

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

- i) all trees and vegetation within the site not approved for removal, excluding exempt vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties.

b) Tree protection shall be generally undertaken as follows:

- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites,
- ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,
- iii) existing ground levels shall remain under the tree protection zone of trees to be retained, unless authorised by AQF Level 5 Arborist,
- iv) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an AQF Level 5 Arborist. Details including photographic evidence of works undertaken shall be submitted to the Certifying Authority,
- v) to minimise the impact on trees and vegetation to be retained and protected, 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,
- vi) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a AQF Level 5 Project Arborist on site,
- vii) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,
- viii) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist, including advice on root protection measures,
- ix) should either or all of vi), vii) and viii) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- x) 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 AS 4970-2009,
- xi) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.

c) All protected trees are to be retained for the life of the development, or for their safe natural life. Trees that die or are removed by approval must be replaced with a locally native canopy tree.

Reason: to retain and protect significant planting on development and adjoining sites.

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

16. **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

17. **No Plumbing to be installed**

Plumbing must not be installed within the boat shed. No sinks, toilets or showers are to be added to the boat shed.

Reason: To avoid the boat shed affecting the load on the onsite waste water system.

18. **Control of Weeds**

Prior to the completion of works, all priority weeds (as listed under the Biosecurity Act 2015) are to be removed/controlled within the subject site using an appropriately registered control method. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>). All environmental weeds are to be removed and controlled. Refer to Council website http://www.pittwater.nsw.gov.au/environment/noxious_weeds

Reason: Weed management.

19. **No Planting Environmental Weeds**

No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>).

Reason: Weed management.

20. **Works to cease if item found**

If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.

Reason: To protect Aboriginal Heritage.