



ASSESSMENT REPORT

PROPOSED REFURBISHMENT OF THE MARINA AT THE ROYAL MOTOR YACHT CLUB BROKEN BAY, NEWPORT DEVELOPMENT APPLICATION (DA 133-3-2003-i)

1. Summary

The Royal Motor Yacht Club Broken Bay (the Applicant) lodged a development application with the Department on 28 March 2003 for the refurbishment of the Club's fixed marina berths with floating pontoons at 46A Prince Alfred Parade, Newport in the Pittwater local government area.

Under the *Environmental Planning and Assessment Act, 1979* (the Act) the proposal is classified as State significant development. The Minister is the consent authority for the proposal. The proposal is not designated development and a Statement of Environmental Effects was prepared. The proposal is integrated development, requiring an additional approval from the Environment Protection Authority.

The development application and supporting Statement of Environmental Effects was publicly exhibited between 8 May and 6 June 2003. Two submissions were received from the exhibition of the DA. The submissions raised traffic, noise, soil and water management, boat effluent pumpout, solid and liquid discharge to the waterway from the slipway, safety and environmental impacts of increasing the number of moorings.

The Waterways Authority and NSW Fisheries did not have any objection to the proposal. The former Department of Sustainable Natural Resources advised the proposal did not require an approval under the *Rivers and Foreshores Improvement Act, 1948* as the works to be carried out on the privately owned land are very minor.

Pittwater Council advised the development within the 6 (a1) Waterways zone was prohibited development and there was a contradiction as the proposal is being assessed as State significant development but deemed a development of minor environmental significance in terms of Clause 35 of Schedule 3 of the *Environmental Planning and Assessment Regulation 2000* (the Regulation). Council requested compliance with Development Control Plan No. 14 – Pittwater Waterways, conditions that are outcome based and all onsite parking to be made available to all users of the marina.

The Environment Protection Authority has granted its general terms of approval for the proposal. These cover water pollution and concentration limits for sediments near the piles, noise, soil and water management, and monitoring procedures.

The Department has assessed the proposal and submissions on the proposed development and considers there are no outstanding issues, and recommends that the Minister grants consent subject to conditions.

2. Site Context

The Royal Motor Yacht Club Broken Bay (RMYC) is located at Newport towards the southern end of Pittwater on its eastern shore between Salt Pan Point and Horseshoe Cove (see Figure 1). The property has vehicular access to Prince Alfred Parade and the site contains a substantial licensed club with 244 off-street parking spaces over several levels terraced down the site, and marina berths and associated marine related buildings.

The marina has a capacity of 204 berths with associated slipway and refuelling facilities. The marina structures comprise a northern section with 113 berths and a southern section with 91 berths. The marina arms in the northern section, except the perimeter attenuator arm, were upgraded some years ago with floating pontoon berths. The southern section and the attenuator arm are the old style fixed jetty marina berths and were constructed some 40 years ago.



Figure 1 – Subject Land



Figure 2 – Site Location

The surrounding development comprises substantial two and three storey houses set in landscaped gardens, many of which retain substantial native trees. The dwellings enjoy substantial water views across Pittwater to Church Point and Scotland Island to the north and Bayview and Mona Vale to the south. The foreshores in the vicinity of the site are developed with private boating facilities such as wharfs, jetties and pontoons. The Royal Prince Alfred Yacht Club is located to the south and other boating industry facilities are located on the foreshores of Church Point and Bayview to the east and south-east (see Figure 2). The Pittwater waterway also has extensive areas of swing moorings.

3. The Proposed Development

The proposal seeks approval for the refurbishment of the existing marina. The proposed works involve the removal of the existing fixed jetty berths and piles, construction of floating marina berths and floating perimeter wave attenuator within the exiting lease area. The reconfiguration of the marina layout will increase the number of berths from 204 to 218 (increase of 14 berths). An additional fuel outlet is to be located on the outer edge of the floating wave attenuator and the existing car park reconfigured to provide an additional eleven spaces.

4. Statutory Framework

4.1 Permissibility

The land below the mean high water mark is zoned part 10 W3 Waterways (Waterway Recreation Boating Facilities) and part 6 (a1) Waterways Recreation under the Pittwater Local Environmental Plan 1993 (LEP). The proposal is permitted in the W3 zone with consent. The proposal is prohibited development in the 6 (a1) zone. Section 76A (8)(c) of the Act applies to prohibited development, and makes such development permissible with consent, if the prohibited development is part of State significant development. In this case the part within the 6 (a1) zone is part of State significant development, therefore it is permissible with consent.

The land is zoned 2(a) Residential A under the Pittwater LEP. Clubs are permitted in the 2(a) zone with consent. Development listed in Schedule 7 of the LEP is designated development pursuant to clause 24 of the LEP. Schedule 7 states:

“Licensed clubs or hotels in Zone No 2 (a) or 2 (b), but excluding development involving alterations or additions to any existing development, which alterations or additions, in the opinion of the council, are of a minor nature and do not, to any significant extent, change the scale, size or degree of that existing development”

The proposal does not involve any alterations or additions to the licensed club other than the reconfiguration of the car parking associated with the club and the marina to create an additional 11 car spaces. The Department considers the car parking proposal is development of a minor nature that does not, in a significant way, change the scale, size or degree of the existing development. Therefore the proposal fits within the exclusions detailed in Schedule 7 and the proposal does not constitute designated development under clause 24 of the Pittwater LEP.

The proposal is therefore permissible with consent under the Pittwater Local Environmental Plan 1993.

4.2 State Significant Development

The Minister declared marina development in the Sydney Region (Sydney Harbour, Middle Harbour, North Harbour, Botany Bay, Port Hacking, Broken Bay) to be State Significant development under section 76A (7)(b)(iii) of the Act on 6 April 2001. The Marina Declaration applies to:

- the establishment of a new permanent boat storage facility on the waterway with support facilities on an adjoining area of land or waterway; and
- alterations or additions to an existing permanent boat storage facility on the waterway with support facilities on an adjoining area of land or waterway.

The term support services include:

- *Facilities for the construction, repair, maintenance, storage, sale, or hire of boats;*
- *Facilities for the provision of fuel or sewage pump out services to boats;*
- *Facilities for launching boats (such as slipways or hoists);*
- *Commercial, tourist, recreational, or car parking facilities that are ancillary to the marina development; and*
- *Any associated caretaker's residence.*

The proposal falls within the Marina Declaration as it involves an alteration to an existing permanent boat storage facility on a tidal waterway in Broken Bay, with support facilities on the adjoining land and waterway.

The proposal is classified as State significant development under the Marina Declaration. The Minister is the consent authority for State significant development. Therefore the Minister is the consent authority for the proposal.

4.3 Integrated Development

Under the Act Integrated development is development that requires development consent and an additional approval under another statutory instrument in order for the development to be carried out. Section 91 of the Act lists the types of additional approvals that are required. A proposal requiring a licence from the Environment Protection Authority under the *Protection of the Environment Operations Act 1997* (POEO Act) is integrated development.

Schedule 1 of the POEO Act lists the types of activities which require a licence. The Schedule includes:

“Marinas and boat repair facilities comprising: pontoons, jetties, piers or other structures (whether water-based or land-based) designed or utilised to provide moorings or dry storage (other than swing moorings) for 80 or more vessels (excluding rowing boats, dinghies or other small craft.”

Under the POEO Act the proposal requires a licence as the marina has a capacity of more than 80 moored vessels. The proposal will increase the number of berthed vessels from 204 to 218.

Therefore the proposal is integrated development as a licence is required from the Environment Protection Authority under the POEO Act.

4.4 Designated Development

Under Schedule 3 of the *Environmental Planning and Assessment Regulation 2000*, “**marinas or other related land or water shoreline facilities**” are classified as designated development if they:

- (1) Moor, park or store vessels (excluding rowing boats, dinghies or small craft) at fixed or floating berths, at freestanding moorings, alongside jetties or pontoons, within dry storage stacks or on cradles on hardstand areas:*
 - (a) that have an intended capacity of 15 or more vessels of any length of 20 metres or more, or*
 - (b) that have an intended capacity of 30 or more vessels of any length and:*
 - (i) are located in non-tidal waters, or within 100 metres of a wetland or aquatic reserve, or*
 - (ii) require the construction of a groyne or annual maintenance dredging, or*
 - (iii) the ratio of car park spaces to vessels is less than 0.5:1 or,*
 - (c) that have an intended capacity of 80 or more vessels of any size.*
- (2) Repair or maintain vessels out of the water (including slipways, hoists or other facilities) with an intended capacity of*
 - (a) one or more vessels having a length of 25 metres or more, or*
 - (b) 5 or more vessels of any length at any one time.*

The existing marina satisfies the criteria for designated development as it is a marina that could accommodate up to 254 vessels (204 berths and 50 moored at swing moorings).

However, this does not mean the proposal would automatically be classified as designated development, as it is an alteration and addition to an existing marina.

Under clause 35 of Part 2 of Schedule 3 of the Regulation, development involving alterations or additions to development (whether existing or approved) is not designated development if:

In the opinion of the consent authority, the alterations or additions do not significantly increase the environmental impacts of the

total development (that is the development together with the additions or alterations) compared with the existing or approved development.

Clause 36 of Part 2 of Schedule 3 of the Regulation sets out the factors which the consent authority must take into consideration when determining whether a development involving alterations or additions to development is designated or not. These factors are:

- (a) The impact of the existing development having regard to factors including:*
 - (i) previous environmental management performance, including compliance with the conditions of any consents, licences, leases or authorisations by a public authority and compliance with any relevant codes of practice, and*
 - (ii) rehabilitation or restoration of any disturbed land, and*
 - (iii) the number and nature of all past changes and their cumulative effects, and*
- (b) the likely impact of the proposed alterations or additions having regard to factors including:*
 - (i) the scale, character or nature of the proposal in relation to the development, and*
 - (ii) the existing vegetation, air, noise and water quality, scenic character and special features of the land on which the development is or is to be carried out and the surrounding locality, and*
 - (iii) the degree to which the potential environmental impacts can be predicted with adequate certainty, and*
 - (iv) the capacity of the receiving environment to accommodate changes in environmental impacts, and*
- (c) any proposals:*
 - (i) to mitigate the environmental impacts and manage any residual risk, and*
 - (ii) to facilitate compliance with relevant standards, codes of practice or guidelines published by the Department or other public authorities.*

The Department has assessed the proposed development against each of these factors (see Appendix A) and is satisfied that the proposed refurbishment of the marina would not significantly increase the environmental impacts of the total development, for the following reasons:

- The proposal is accommodated within the existing lease area;
- There is no evidence of previous unsatisfactory environmental performance or compliance issue;
- The impacts of the proposal on the waterways and surrounding locality are considered to be minor;
- The receiving environment is capable of accommodating the potential impacts of the proposal; and

- The implementation of environmental management plans will mitigate and manage potential short-term environmental impacts.

Consequently, the Department is satisfied that the proposed refurbishment of the RMYC marina would not significantly increase the environmental impacts of the total development compared with the existing or approved development, and therefore recommends that the Minister determine that the proposal is not designated development.

4.5 Relevant Environmental Planning Instruments

The proposal has been assessed against the relevant provisions in the Pittwater Local Environmental Plan 1993. This assessment concludes that the proposal is consistent with the relevant aims and objectives of the LEP and satisfies the relevant assessment criteria (see Appendix B).

4.6 Relevant Planning Policies

The proposal has been assessed against the relevant provisions in the Pittwater Waterways Development Control Plan No. 14. This assessment concludes that the proposal is consistent with the relevant aims and objectives of the DCP (see Appendix B).

5. Consultation

The Applicant lodged the development application with the Department on 28 March 2003.

5.1 Notification Procedure

The Department, in accordance with the Regulation:

- Notified the surrounding property owners and/or occupiers in writing;
- Advertised the DA in a newspaper circulating in the area, the Manly Daily;
- Notified the relevant public authorities; and
- Exhibited the DA between 16 April and 6 June 2003 at the Department and Pittwater Council's main office and the Mona Vale Library.

This satisfies the requirements for public participation of State significant advertised development in the Regulation.

Two submissions were received from the exhibition of the DA. The submissions raised traffic, noise, soil and water management, boat effluent pumpout, solid and liquid discharge to the waterway from the slipway, safety and environmental impacts of increasing the number of moorings.

5.2 Submissions from Public Authorities

5.2.1 Waterways Authority

The Waterways Authority considers the proposal will have no navigational impact on the area, however the new configuration will affect some private mooring licence holders. The Applicant must liaise with the mooring holders and bear the costs involved in the relocation of the moorings. The increase in the number of berths will require the relinquishment of an appropriate number of swing moorings. The Authority recommends that a sewerage treatment/pumpout facility be included with the development.

5.2.2 NSW Fisheries

NSW Fisheries have no objection to the proposed development, subject to the inclusion of conditions covering environmental safeguards, minimum clearance between the underside of the pontoons and the substrate, combination of screw and driven piles, and all relevant authorities have no objections to the proposal.

5.2.3 Department of Sustainable Natural Resources

The former Department of Sustainable Natural Resources (now part of the Department) has advised there appears to be very minor to no works occurring on the privately owned land. Consequently a Part 3A Permit under the *Rivers and Foreshores Improvement Act, 1948* was not required. The Department also advised that any part of the proposal wholly within Crown Land is not integrated development.

5.2.4 Environment Protection Authority

The Environment Protection Authority has granted its general terms of approval for the proposal. These cover:

- Water pollution and concentration limits for suspended solids near piling work.
- Noise limits and construction hours of operation.
- Notification of construction works and vibration management protocol.
- Soil and water management, including measures to control construction impacts.
- Monitoring procedures.

5.2.5 Pittwater Council

The proposal was considered by Council at its meeting on 19 May 2003. The Council resolved to advise the Department that:

1. The development is prohibited in the 6 (a1) Waterways Recreation zone.

2. The development being deemed “major” and of State significance, is in contradiction to it being deemed a development of minor environmental significance in terms of clause 36 of the Regulation and hence is either a matter that should be assessed and determined by Council or should be assessed and determined by the Minister as designated development.
3. That the development, should 1 and 2 be addressed, must comply with the community based standards for marina development contained within Development Control Plan No. 14 Pittwater Waterways.
4. Should consent be granted, conditions be applied that are clear, concise and outcome based to allow clear post approval management.
5. That the Minister be requested to place a condition on the consent to require all onsite parking to be made available to all users of the expanded marina at times of its operation.

6. Consideration

6.1 Water Quality Impacts

Construction

The construction of the proposal is likely to result in minor disturbances to the sediments in the seabed in the vicinity of the piles that need to be removed and/or new piles that are installed. The Applicant’s marine ecological study stated the removal of piles is likely to result in localised turbidity in the immediate area around the pile. The study considered this was not a significant problem and the turbidity would be confined to bottom waters and settle rapidly. The impacts would be minor and short-term. The placement of a silt curtain around the whole site is impractical as the marina will continue to operate, and is unnecessary. The Applicant has agreed to place localised silt curtains around piling activities to limit the disturbance caused by suspended solids.

One public submission stated the Executive Summary was deficient as to the need for a comprehensive soil and water management plan for construction, including both the protection of terrestrial and aquatic environments, and is required if any soil or sediment (in the case of subtidal works) are to be disturbed to any extent. The Statement of Environmental Effects (SEE) has identified potential impacts from the removal and installation of piles. The SEE considers the impacts are not significant, are localised and of short duration and measures can be employed to reduce the impacts.

The EPA’s general terms of approval require the preparation and implementation of a Soil and Water Management Plan and sets a concentration limit on the level of suspended solids within 1 m of the outside of the silt curtain.

Operational

The Applicant states the proposal does not involve dredging or reclamation and only results in a minor increase in the number of boats. The SEE considers there would be no significant increase in background levels of pollutants from the expanded marina. The existing fuel facilities and storage tanks are not affected by the proposal. The new diesel fuel outlet on the wave attenuator would be installed and designed in a similar way to the recently upgraded fuelling facilities on the hardstand area. The fuel line to the pumps on the wave attenuator will be a single piece of double contained flexible pipe with no joints along its length. The reconfiguration of the car park to provide an additional 11 car parking spaces has minimal environmental impacts as no major work or disturbance of soil is involved.

One public submission suggested the slipway should be upgraded to eliminate any liquid or solid discharge to the aquatic environment in accordance with the *Protection of the Environment Operations Act, 1997*. The proposal does not include works to or upgrading of the existing slipway. The marina operates under an environment protection licence granted by the EPA. The operation of the slipway is covered by the licence. The EPA has advised there are no outstanding issues with compliance with the licence conditions.

The Waterways Authority and one public submission requested a sewage pumpout facility to be included as part of the development. The proposal does not include a sewage pumpout facility. The nearest pumpout facility is located at Church Point, some 700 m to the east. The Applicant has advised there are no plans to install a sewage pumpout facility and that presently a maximum of 15% of the vessels berthed at the marina have holding tanks. A pumpout facility is located at Church Point and the Club would provide a pumpout if it is required to install one in the future. The Department considers a sewage pumpout facility is not necessary as the increase in the number of berths is considered to be minor, a pumpout is not a statutory requirement and the Club has indicated a facility would be provided in the future if required. The provision of holding tanks for effluent in vessels is not a mandatory requirement and the disposal of effluent from boats is restricted to certain waterways.

The Department considers the Applicant has adequately addressed the construction and operational water quality impacts of the proposal. The construction impacts are considered to be minor and short term and can be addressed by appropriate measures. The operational impacts of the refurbished marina are not considered to be significant and would be similar to that of the existing facility. The proposed conditions of consent, should the Minister approve the proposal, require the preparation and implementation of Construction and Operational Environmental Management Plans, including a Construction Soil and Water Management Plan which addresses sediment control measures.

6.2 Noise Impacts

Construction

The Applicant considers the greatest noise impacts from the proposal would be from construction activities. The noisiest activity would be from the installation of replacement or new piles. However, the pile driving is a relatively short duration activity, often lasting one hour per pile, and occurring intermittently rather than continuous. The Applicant has advised many of the piles will be screw piles, screwed into the rock seabed rather than being driven into rock. The piles that are to be driven will be into the softer seabed material and due to its softer nature the driving of these piles will not involve the same noise levels as occur when driving into rock. The piles into rock tend to be closer to the shore and therefore closer to residential properties. The noise generated by pre-drilling is much less than that generated by driving, which will be located further away from residences. The Applicant has agreed to prepare an acoustical report prior to work commencing and the placement of restrictions on the days and hours of pile driving operations. Regular liaison would be undertaken with local residents during the construction process. NSW Fisheries has recommended that the screw piles be limited to areas of rock seabed and driven piles be used where areas have softer substrates.

The EPA's recommended general terms of approval require the preparation of an acoustical report and noise mitigation program, and construction hours. Written notification of the commencement of piling activities must be made to residents that would be adversely affected.

Operational

The Applicant states that it is not aware of any significant or on-going complaints from nearby residents about noise problems. The refurbishment of the marina will not result in any adverse noise impacts on the locality on completion as there will only be a minor increase in the number of berths, which is off-set by increased car parking provision and no changes to the hours of operation or nature of operation of the marina.

One public submission raised concern at the proposal stating there is extra noise and evening functions with bands, etc. The proposal does not involve the licensed club or the entertainment and other functions at the premises.

The Department is satisfied that the construction and operational noise impacts have been adequately considered. The noise impacts of the proposal are unlikely to have any significant adverse impact on the surrounding locality. The proposed conditions of consent, should the Minister approve the proposal, include the EPA's general terms of approval related to noise impacts, and require the preparation and implementation of construction and operational noise management plans.

6.3 Flora and Fauna

The Applicant has undertaken an ecological study of the proposal. The Study indicated there are no seagrass beds in the lease area and in the vicinity of the marina. There are no mangroves or saltmarsh along the foreshore of the site or the immediate foreshore to the north or along Horseshoe Cove to the south. The existing marina structures support a variety of benthic species. The removal of piles and timber jetties would result in the loss of benthic communities, however, marine fauna would quickly re-establish on the new piles and pontoons.

The proposal does not involve any dredging or reclamation of land. The new wave attenuator is unlikely to affect the tidal flushing around the marina or affect the water quality.

There are no threatened species and the existing facilities do not provide a habitat for threatened species. The proposal is unlikely to have any significant impact on the existing aquatic ecology of the area. The proposed conditions, should the Minister approve the proposal, would ensure that the water quality is not adversely affected by construction activities and that appropriate measures are employed to minimise sediment movement.

6.4 Traffic and Parking

The Club presently provides a total of 244 car parking spaces. The increase in the number of berths requires the provision of additional car parking. The parking requirement for the proposal under the Pittwater Waterways Development Control Plan is the provision of 0.8 car spaces per marina berth for vessels between 10-15 metres in length. The proposal provides 11 additional parking spaces to comply with the DCP. The existing upper and lower level parking areas would be reconfigured to provide the additional spaces.

The traffic study prepared by the Applicant states that the additional berths and parking spaces would generate 3-4 vehicle trips per hour in a peak period. The study concludes the proposal is a low traffic generator and the additional traffic would not significantly affect the operation of the local road network.

Council's submission requested the imposition of a condition to require all onsite parking to be made available to all users of the expanded marina at times of its operations. This condition is requested because of the management practice of the Club to cordon off parking for specific users, leaving deficient parking for visitors to the Club, resulting in parking in Prince Alfred Parade.

One public submission raised objection to the proposal because of obstruction of driveways in the vicinity of the Club by cars drawn to the Club for regular day/evening and special events and functions. The submission raises safety concerns with the additional traffic.

The traffic study concludes the additional traffic generated by the proposal is minor and unlikely to have a significant impact on the road network. The Club advises the car park provides adequate capacity 95% of the time. The Club currently holds some 3-6 regattas/special events per year and all parking spaces are fully utilised on these days. The Club manages the parking demand by the provision of a minibus service for members within a 5 km radius and on special events days, employees are directed to park at Porter Reserve and a shuttle bus service operates. The Club estimates this provides an additional 30 spaces during the peak periods.

The Department considers the additional berths and parking spaces will not have a significant adverse impact on the road network. The recommended conditions, should the Minister approve the proposal, requires all parking spaces on the site to be made available to all users of the Club during its normal operating hours.

6.5 Visual Impacts

The proposed works involve the replacement of existing marina piles and elevated jetties with new floating pontoons or floating wave attenuator. There will be some new piles and the piles may vary in location. The orientation of the floating pontoons in the southern section will be oriented east-west rather than north-south as present. The wave attenuator will be extended to provide a more favourable wave climate for boats moored in the southern section of the marina. These boats currently do not have wave attenuation from the existing wave attenuator.

There would be minor changes in the view of the marina from residential properties overlooking the site. The view from the water and from Church Point/Bayview is likely to be similar to the existing view. The difference in the appearance of the marina will be minor and any difference would be regarded as an improvement. The floating pontoons and wave attenuator would present as lower profile structures, which rise and lower with the tide. The jetties at present provide substantial structures when viewed from the water at low tides.

No changes are proposed to the buildings on the site and there is no significant increase in the visual density of boats or in the extent of open water that is visible as a result.

The refurbishment of the marina is considered to have little to no effect on the view composition and overall the changes would appear to be minor and would be beneficial to the visual character of the locality.

6.6 Statutory Position

The Council has raised two concerns about the proposal. These are the zoning of part of the site which makes the proposal prohibited development in the 6 (a1) Waterways Recreation zone, and there is a contradiction between the proposal being State significant development and being deemed a

development of minor environmental significance in terms of clause 36 of the Regulation and not designated development.

6.6.1 Prohibited Development

The proposed development within the 6 (a1) zone may be dealt with as prohibited development under section 76A (8)(c) of the Act. This section of the Act states that if:

- (a) *a project comprises development part of which is State significant development, all other development comprised in the project is taken to be State significant development, and*
- (b) *but for this provision, part of State significant development would be subject to Part 5, this Part applies to the exclusion of Part 5 and the development may be carried out with development consent, and*
- (c) *but for this provision, part of State significant development would be prohibited, the development may be carried out with development consent.*

That is, as the portion of the proposed development that is within the 6 (a1) zone is part of State significant development (the proposal within the W3 Recreational Boating Facilities zone) then that part of the proposal that is prohibited, is permissible with consent. Therefore the proposal within the 6(a1) zone would be permissible with consent under section 76A (8)(c) of the Act. The Minister is able to consider that part of the development that is prohibited to be a part of the State significant development.

There is an anomaly in the zoning of the site as the zone boundary does not correspond with the lease boundary. Two small areas of the site are affected by the 6 (a1) zoning. These are an area near the existing slipways and an area in the south western corner. The new floating wave attenuator extends into the south western corner of the site. The area at present provides access to the berths in the southern section of the marina. No development is proposed in the area in front of the slipways. An application has been made to Council to adjust the zone boundary to correct the anomaly.

The Department considers it is appropriate for the development within the 6 (a1) zone on the south-western corner of the lease area to be considered under section 76A (8)(c) of the Act.

6.6.2 Additions and Alterations to Designated Development

Council has raised concern that because the proposal is deemed “major” and of State significance, this is in contradiction to it being deemed a development of minor environmental significance in terms of clause 36 of the Regulation and hence is either a matter that should be assessed and determined by Council or should be assessed and determined by the Minister as designated development.

The Minister made a Declaration on 6 April 2001 under section 76A (7) of the Act that a proposal for marina development was State significant development. The Declaration applies to all marina development that involves the establishment of a new, or additions or alterations to an existing, permanent boat storage facility on the waterway with support facilities on an adjoining area of land or waterway in Sydney Harbour, Middle Harbour, North Harbour, Botany Bay, Port Hacking, Broken Bay, or any associated tidal waters. This means the Declaration may apply to a marina development that is designated or non-designated development. The proposal is therefore State significant development under the Marina Declaration as it involves alterations or additions to an existing permanent boat storage facility in Broken Bay.

The proposal is potentially designated development under Schedule 3 of the Environmental Planning and Assessment Regulation 2000 as the marina has a capacity of 80 or more vessels of any size. Part 2 of Schedule 3 applies to development that involves alterations or additions to designated development. Clause 35 of Part 2 states that development involving alterations or additions to development (existing or approved) is not designated development if in the opinion of the consent authority, the alterations or additions do not significantly increase the environmental impacts of the total development compared with the existing or approved development. Clause 36 of Part 2 sets out the factors which must be considered when determining if the development is designated or not. The Regulation therefore provides for additions or alterations to designated development to be considered as non-designated development. The Minister in determining the development application would have regard to clauses 35 and 36 of Part 2 of Schedule 3 of the Regulation.

The fact that development is made State significant under section 76A (7) of the Act does not by that process alone make it designated development. Likewise the Marina Declaration refers to a class of development that may or may not be designated development, depending on whether it meets the criteria for designated marina development under clause 23 of Schedule 3 of the Regulation.

The purpose of clauses 35 and 36 of the Regulation is to exempt proposed development which is potentially designated development, but does not significantly increase the environmental impacts of the total development. It is in effect acknowledging that the development, taken as a whole, is in fact designated development, but the proposed additions and alterations are such that they do not require the making of another environmental impact statement. Therefore it is appropriate that the proposal is considered in terms of clause 35 and 36 of the Regulation.

6.7 Other Issues

One submission raised concern at an increase in the number of moored vessels as the number of moorings is excessive from a safety and environmental perspective in the Pittwater estuary. The SEE states the

increase in the number of vessels is minor. The increase does not significantly increase the visual density of boats at the marina.

The Pittwater Waterways DCP states the waterways adjacent to the site (mooring area 8) has a high concentration of existing moorings and marina berths. The area is not considered suitable for any additional private moorings. Commercial moorings will only be considered where adequate shore-based infrastructure can be provided. The proposal is considered to be consistent with the DCP as the increased berths are located wholly within the lease area and the Waterways Authority requires the relinquishment of an appropriate number of swing moorings licensed to the Club. This will result in an overall reduction in the number of swing moorings in this area.

The Waterways Authority has advised the proposal has no navigational impact on the area but a number of privately held swing moorings will need to be relocated.

7. Section 79C Consideration

Section 79C of the Act sets out the matters that a consent authority must take into consideration when it determines a development application. The Department has assessed the DA against these heads of consideration (see Attachment 1). Based on this evaluation and the assessment of key issues in section 6 above, it is considered that the proposal warrants approval.

8. Recommended Conditions of Consent

The Department has prepared a set of recommended conditions of consent should the Minister decide to approve the proposal. The Applicant has been consulted in the preparation of the conditions and has agreed to the proposed conditions of consent. The proposed conditions include the EPA's general terms of approval and NSW Fisheries suggested conditions. Pittwater Council requested conditions that are clear, concise and outcome based to allow clear post approval management. The Department's proposed conditions of consent would ensure that the environmental impacts of the proposal are managed and/or mitigated.

8. Conclusion

The Department has assessed the proposal and considered submissions from the public and public authorities. The proposal complies with the provisions of the Pittwater Local Environmental Plan 1993 and Pittwater Waterways Development Control Plan. The impacts on the visual and built environment are considered to be minor and beneficial. The environmental impacts of the proposal are minor and can be managed or mitigated through conditions of consent.

9. Recommendation

It is recommended that the Minister:

- (a) Consider the findings and recommendations of this report in his consideration of the development application; and
- (b) Approve the DA subject to conditions.

Michael Young
Major Development Assessment

Endorsed,

Sam Haddad
Executive Director
Sustainable Development