

**DETERMINATION OF A DEVELOPMENT APPLICATION
UNDER SECTION 80
OF THE
ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

Under Section 80 of the *Environmental Planning and Assessment Act 1979*, I, the Minister for Planning approve the development application referred to in Schedule 1, subject to the conditions in Schedule 2.

These conditions are necessary to:

- (i) Minimise any adverse environmental impacts associated with the development;
- (ii) Ensure consistency with the *Berowra Waters Plan of Management*;
- (iii) Provide for the on-going environmental management of the development; and
- (iv) Provide for regular monitoring and reporting on the development.

Andrew Refshauge MP
Minister for Planning

Sydney,

20 December, 2001

File No: S00/01498

Schedule 1

Development Application: DA No. 149-06-01.

Applicant: Cameron Brae Pty. Ltd.

Consent Authority: Minister for Planning.

Land: Lot 258 DP 721561 (No. 131 Bay Road) and Crown Lease No. 1968/18.

Proposed Development: The proposed development involves:

- Extending the two marina pontoons running in a east-west direction from the main access pontoon at the marina;
- Using the two marina pontoons to berth up to 78 vessels;
- Using the "charter ferry berth" (in plan CB100/1) to berth a charter ferry, and conduct charter ferry operations;
- Using the "fuel wharf" (in plan CB 100/1) to provide "short stay" berths at the marina;
- Using the existing car park to park up to 48 vehicles by using stacked parking; and
- Using the ground floor of the marina building for a chandlery shop, two offices, and a café with outdoor seating.

State Significant Development: The Minister's declaration on marina development in Sydney region, which was gazetted on 6 April 2001, applies to the proposed development. Consequently, it

is classified as State Significant Development under Section 76A(7)(b)(iii) of the *Environmental Planning and Assessment Act 1979*.

BCA Classification:	Level 1 & 2 Marina Building:	Class 6
	Level 3 Marina Building:	Class 4
	Marina Pontoons:	Class 10b

SCHEDULE 2 CONDITIONS OF CONSENT

DEFINITIONS

The Act	<i>Environmental Planning and Assessment Act 1979</i>
The Applicant	Cameron Brae Pty. Ltd.
BCA	Building Code of Australia
Council	Hornsby Shire Council
DA	Development Application
The Department	planning NSW
The Director-General	Director-General of planningNSW, or her delegate

GENERAL

Obligation to Minimise Harm to the Environment

1. The Applicant shall implement all practicable measures to prevent or minimise harm to the environment during the construction and operation of the development.

Terms of Approval

2. The Applicant shall carry out the development generally in accordance with the:
 - (a) DA submitted to Council by the Applicant, dated 16 March 2000, and modified by the fax sent to the Department by Peter Lean on 16 May 2001;
 - (b) Plans accompanying the DA marked CB100/1, CB100/2A, and CB100/3A prepared by David Sheiles, dated 30 September 1999; and
 - (c) Conditions of this consent.
3. If there is any inconsistency between the above, the conditions of this consent shall prevail to the extent of the inconsistency.

4. The Applicant shall comply with any reasonable requirement/s of the Director-General arising from the Department's assessment of:
 - (a) Any report, plan, or correspondence submitted in accordance with the conditions of this consent; or
 - (b) The implementation of any actions or proposals contained in these reports, plans, or correspondence.

Structural Adequacy

5. Before using any of the unlawful structures at the marina, the Applicant shall submit a structural engineer's certificate to the Department certifying that these structures comply with the relevant requirements of the BCA and *AS3962-1991 Guidelines for Design of Marinas*.
6. Before changing the use on the ground floor of the existing marina building, the Applicant shall obtain an Occupation Certificate for the proposed change of use from the Principal Certifying Authority.
7. Before any construction work starts, the Applicant shall obtain a Construction Certificate for the proposed development from the Principal Certifying Authority.

Compliance

8. Throughout the life of the development, the Applicant shall secure, renew, maintain, and comply with all the relevant statutory approvals for the development.
9. The Applicant shall ensure that its employees, contractors, sub-contractors, and lessees are aware of, and comply with, the conditions of this consent.
10. Before construction starts, the Applicant shall certify in writing to the Director-General that it has obtained all the necessary statutory approvals for the construction works, and complied with all the relevant conditions of this consent and/or any other statutory requirements for this development.
11. Before commissioning the new berths, the Applicant shall certify in writing to the Director-General that it has obtained all the necessary statutory approvals for the marina's operations, and complied with all the relevant conditions of this consent and/or any other statutory requirements for the development.

SPECIFIC ENVIRONMENTAL CONDITIONS

Limits on Operations

12. The Applicant shall comply with the following limits on the marina's operations:
 - (a) The two marina pontoons (in plan CB1 00/1) shall only be used to berth a maximum of 78 vessels;
 - (b) The "hire boat area" (in plan CB100/1) shall only be used to berth a maximum of 15 small hire boats (that are less than 4.5 metres in length);
 - (c) The "fuel pontoon" (in plan CB 100/1) shall only be used by "short stay" vessels¹;
 - (d) The "charter ferry berth" (in plan CB 100/1) shall only be used to berth a maximum of 1 charter ferry with a maximum carrying capacity of 100 passengers;
 - (e) All charter ferry operations at the marina shall be conducted from the "charter ferry berth" (in plan CB 100/1);
 - (f) The charter ferry shall not conduct any charter ferry operations on the waterway between 11am and 3pm on Saturdays, Sundays, or public holidays;

¹ "Short stay" vessels are vessels that are going to use the facilities at the marina (particularly the chandlery and shop) for short periods of time (up to 2 hours), and should not be used to berth boats for longer periods of time or overnight unless there is an emergency.

- (g) The marina car park (in plans CB 100/2A and CB 100/3A) shall only be used to park a maximum of 44 vehicles, and the Applicant shall ensure that no cars are parked on the entry and exit ramps of the car park at any time; and
- (h) The café on the ground floor of the marina building shall have a maximum of 70 seats (including indoor and outdoor seating).

Parking

13. Within 2 years of the granting of this consent, the Applicant shall provide at least 28 additional car parking spaces for the marina. These additional car parking spaces shall be provided in the area adjacent to the existing Dusthole car park in general accordance with the parking strategy in the *Berowra Waters Plan of Management*. This car parking would require further environmental assessment, and an additional development consent. If, however, after 18 months from the granting of this consent, the Applicant has been unable to provide this additional car parking, and the Applicant can demonstrate that it has taken all the reasonable measures available to provide this car parking, then the Applicant may, with the written approval of the Minister, provide the additional car parking on the land at 69-73 Bay Road, Berrilee in general accordance with the proposal in DA 152-06-01.

Note: This condition seeks to ensure that the parking required by the original consent for the marina (DA 112/80) is provided close to the marina in accordance with the parking strategy in the Berowra Waters Plan of Management rather than at a remote location in Berrilee.

Design of the Marina Berths

14. The new marina berths shall comply with the relevant requirements of AS 3962-1999 *Guidelines for Design of Marinas*.

Relinquish Swing Moorings

15. Before commissioning the new berths, the Applicant shall relinquish 19 swing moorings to the Waterways Authority, and provide the Director-General with written evidence confirming that these moorings have been relinquished.

Sewage Pump-Out System

16. Before commissioning the new berths, the Applicant shall install and commission a sewage pump-out system at the marina with sufficient capacity to accommodate the sewage generated by the boats berthed at the Berowra Waters Marina and the Cruisecraft Marina.

Note: The Applicant will require a separate approval from Council and the Department of Health for the sewage pump-out system.

17. The Applicant shall ensure that all the boats at the marina with holding tanks, including the charter ferry, are required to use the sewage pump-out system at the marina.
18. The Applicant shall encourage all the boats using the marina berths that do not have holding tanks to install holding tanks.

Charter Ferry Waste

19. The charter ferry using the "charter ferry berth" (in plan CB 100/1) at the marina shall have sufficient capacity to store all the wastewater and waste generated during charter ferry operations on board.
20. The charter ferry shall not discharge any wastewater or waste to the waterway.

Café Fitout

21. The construction and fitout of the café (or any part thereof) shall be in accordance with the *National Code for the Construction and Fitout of Food Premises* (1993), and the requirements of the *Food Act 1989*, the *Food (General) Regulation 1997*, and Council's *Food Premises Code*.

Marina Vegetation and Fish Habitat

22. The Applicant shall ensure that no marine vegetation is shaded or damaged by structures or works without a permit from NSW Fisheries.

Note: Under the Fisheries Management Act 1994, it is an offence to remove, cut, damage, harm, or destroy any marine vegetation without a permit. These offences carry penalties of up to \$55,000 for an individual, and \$ 110,000 for a company or corporation plus the full cost of site restoration.

23. The Applicant shall ensure that the distance between the underside of all the new waterside structures and the substrate at Low Water (0.0 metres ZFDTG) shall be at least 600mm.

Lighting

24. The Applicant shall ensure that any external lighting associated with the development:
- (a) Uses the minimum level of illumination necessary; and
 - (b) Is mounted, screened, and directed in such a manner so that it does not create a nuisance to surrounding land uses.
25. The Applicant shall submit detailed plans for any external lighting to the Director-General for approval with the Construction Management Plan.

Construction Hours

26. All construction work associated with the development shall be carried out between 7am and 6pm Monday to Friday, or between 8am and 1pm on Saturdays.
27. No construction work shall be carried out on Sundays or public holidays.
28. No plant, goods, or materials shall be delivered to or from the site outside the specified construction hours.

Noise

29. The Applicant shall ensure that the development does not generate any offensive noise.

ENVIRONMENTAL MANAGEMENT PLANS

Construction Management Plan

30. The Applicant shall prepare and implement a Construction Management Plan for the proposed development. This plan must:
- (a) Describe the proposed construction works;
 - (b) Outline the proposed construction program;
 - (c) Set standards and/or performance measures for the relevant environmental issues associated with the construction work;
 - (d) Describe what actions and measures will be implemented to mitigate the potential impacts of these construction works, and to ensure that these works will comply with the relevant standards and/or performance measures;
 - (e) Describe what procedures will be implemented to register, report, and respond to any complaints during the construction works;
 - (f) Identify the key personnel who will be involved in the construction, and provide contact numbers for this personnel;

- (g) Explain how the environmental performance of the construction works will be monitored, and what actions will be taken if any non-compliance is detected;
 - (h) Include a detailed Sediment Control Plan for the proposed construction works; and
 - (i) Include the detailed plans for any additional external lighting at the marina.
31. The Applicant shall not carry out any construction work before the Director-General has approved the Construction Management Plan for the proposed development.

Environmental Management Plan

32. The Applicant shall prepare and implement an Environmental Management Plan for the proposed operations of the marina. This plan must:
- (a) Describe the proposed operations;
 - (b) Identify all the relevant statutory requirements that apply to these operations;
 - (c) Set standards and/or performance measures for each of the relevant environmental issues;
 - (d) Describe what actions and measures will be implemented to mitigate the potential impacts of the marina's operations, and to ensure that these operations meet the relevant standards and/or performance measures.
 - (e) Describe what measures and procedures will be implemented
 - Register, report, and respond to complaints during operations; and
 - Ensure the operational health and safety of workers;
 - (f) Describe the role, responsibility, authority, and accountability of all key personnel involved in the proposed marina's operations; and
 - (g) Include a detailed:
 - Berthing Management Plan (for the marina berths, hire boat area, charter ferry berth, and fuel pontoon);
 - Charter Ferry Management Plan;
 - Parking Management Plan;
 - Wastewater Management Plan;
 - Solid Waste Management Plan;
 - Fuel Management Plan;
 - Noise Management Plan; and
 - Emergency Management Plan.
33. The Applicant shall not commission the new marina berths before the Director-General has approved the Environmental Management Plan for the proposed operations.
34. The Applicant shall make a copy of this Environmental Management Plan available to the public on request.
35. The Applicant shall review and update this Environmental Management Plan regularly, or as directed by the Director-General.

ANNUAL ENVIRONMENTAL AUDIT

36. Within 12 months of commissioning the new marina berths, and annually thereafter, unless the Director-General directs otherwise, the Applicant shall commission, and pay the full cost of, an independent environmental audit of the marina. This audit must:
- (a) Be conducted by a suitably qualified, experienced, and independent person whose appointment has been endorsed by the Director-General before the audit starts;
 - (b) Assess the environmental performance of the marina's operations, and its impacts on the surrounding environment;
 - (c) Assess whether the marina is complying with the relevant standards, performance measures, and statutory requirements;
 - (d) Review the adequacy of the marina's Environmental Management Plan; and, if necessary,
 - (e) Recommend measures or actions to improve the environmental performance of the marina, and/or the marina's Environmental Management Plan.

37. Within 1 month of commissioning the audit, the Applicant shall submit a copy of the Independent Environmental Audit report to the Director-General.

DISPUTE RESOLUTION

38. If the Applicant, Council, and/or any NSW Government agency (other than the Department), cannot agree on any aspect of these conditions, then the dispute shall be referred to the Director-General (or, if necessary, the Minister), whose determination on the matter shall be binding on all parties.