

**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) Provide for the on-going environmental management of the development; and
- (iii) Provide for regular monitoring and reporting on the development.

Andrew Refshauge MP
Minister for Planning

Sydney,

20 December, 2001

File No: S00/01499

Schedule 1

Development Application: DA No. 150-06-01.

Applicant: Cameron Brae Pty. Ltd.

Consent Authority: Minister for Planning.

Land: Lot 468 DP 729619 and
Special Lease No. 1989/3.

Proposed Development: The proposed development involves:

- Installing a new dry dock (19 metres x 8 metres);
- Using the new dry dock and the unlawful dry dock (13 metres x 8 metres) for boat maintenance and repair work;
- Replacing and using the two marina pontoons, which run east-west from the marina building (37.8 metres x 3 metres) with small pontoons at the western end of each pontoon (8 metres x 3 metres), to berth up to 29 vessels;

- Using the unlawful dinghy storage pontoon (10 metres x 4 metres) to store dinghies that are used in association with the vessels on swing moorings in the adjoining waterway; and
- Using the unlawful pontoon (20 metres x 3 metres) adjacent to the dinghy storage pontoon, which runs north-south from the marina building, to provide "short stay" berths at the marina.

State Significant Development: The Minister's declaration on marina development in the 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: Dry Dock: Class 10b
Marina pontoons: Class 10b

SCHEDULE 2 CONDITIONS OF CONSENT

DEFINITIONS

The Act	Environmental Planning and Assessment Act 1979
The Applicant	Cameron Brae Pty. Ltd.
BCA	Building Code of Australia
Council	Hornsby Shire Council
DA	Development Application
The Department	planningNSW
The Director-General	Director-General of planningNSW, or her delegate
SEE	Statement of Environmental Effects

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, dated 1 March 2000, submitted to Council by the Applicant, and modified by the:
 - Letter sent to Tony Moody by Peter Lean, dated 3 August 2000, outlining the changes to the location of the proposed dry dock; and
 - Fax sent to the Department by Peter Lean on 16 May 2001;
 - (b) SEE, titled "Berowra Waters Marina Pty. Ltd. Floating Pontoon Dry Dock Statement of Environmental Factors", prepared by CW Henstock & Associates Pty. Ltd.;
 - (c) Plans accompanying the DA and SEE marked CB200/1-A, CB200/2, and CB200/3 (dated 30 September 1999) prepared by David Sheiles, and the drawings 99/016-1,2,3,4, and 5 prepared by C.W. Henstock & Associates; and
 - (d) 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 the two unlawful pontoons 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 *AS 3962-1991 Guidelines for Design of Marinas*.
6. Before any construction work starts, the Applicant shall obtain a Construction Certificate for the proposed development from the Principal Certifying Authority.

Compliance

7. Throughout the life of the development, the Applicant shall secure, renew, maintain, and comply with all the relevant statutory approvals for the development.
8. The Applicant shall ensure that its employees, contractors, sub-contractors, and lessees are aware of, and comply with, the conditions of this consent.
9. 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.
10. Before commissioning the new works, 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

11. The Applicant shall comply with the following limits on the marina's operations:
- (a) The marina pontoons (37.8 metres x 3 metres), which run east-west from the marina building with small pontoons (8 metres x 3 metres) at the western end of each pontoon), shall only be used to berth a maximum of 29 vessels;
 - (b) The unlawful dinghy storage pontoon (10 metres x 4 metres) shall only be used to store dinghies that are used in association with vessels on swing moorings in the adjoining waterway;
 - (c) The unlawful pontoon (20 metres x 3 metres) adjacent to the dinghy storage pontoon shall only be used to provide "short stay" berths¹ at the marina;
 - (d) The two dry docks shall not be used in tandem to repair or maintain vessels that are longer than 19 metres;
 - (e) No vessel of 25 metres or longer shall be maintained or repaired at the marina;
 - (f) No more than 4 vessels shall be maintained or repaired out of the water at the marina (this includes the two dry docks) at any one time, but this excludes boats that are being stored (but not maintained or repaired) on trailers at the marina;
 - (g) The dry docks shall only be used between 7am and 6pm Monday to Friday, and between 8am and 4pm on Saturdays, Sundays, or public holidays;
 - (h) No boat maintenance or repair work that could generate air emissions (Mainly dust and spray) shall be carried out on the dry docks unless this work is fully enclosed, and the potential pollutants generated by this work are wholly contained within the enclosure; and
 - (i) No vessels shall be berthed adjacent to the dry docks at any time.

Location of the Dry Docks

12. The Applicant shall locate both dry docks wholly inside the existing lease area (Special Lease 1989/3), in general accordance with the proposal in the letter from Peter Lean to Tony Moody, dated 3 August 2000.
13. The Applicant shall submit a surveyor's certificate to the Director-General with the Construction Management Plan, certifying that both dry docks would be located wholly within the existing lease area, and in general accordance with the proposal in the letter from Peter Lean to Tony Moody, dated 3 August 2000.

Design of the New Dry Dock

14. The new dry dock shall comply with the relevant requirements of *AS 3962-1991 Guidelines for Design of Marinas*.

¹ "Short stay" berths are for vessels that are going to use the marina's facilities (particularly the chandlery, grocery, and liquor store) 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. These berths are different to "commuter" berths, which are used by residents in the surrounding area, who live on the waterway and rely on the public parking at Berowra Waters to park their cars. The "short stay" berths must not be used as "commuter" berths.

Upgrade Existing Dry Dock

15. The Applicant may use the existing dry dock for a maximum of three months from the date of this consent, or until the new dry dock is installed, whichever occurs first. After this, the Applicant shall stop using the dry dock until it is upgraded to a similar standard as the new dry dock, in accordance with the relevant requirements of the BCA and *AS 3962-1991 Guidelines for Design of Marinas*.
16. The Applicant shall notify the Director-General in writing as soon as the existing dry dock has been upgraded.
17. Before carrying out the proposed upgrade, the Applicant shall submit the detailed plans for this upgrade to the Director-General for approval.

Replacement of Existing Marina Pontoons

18. The Applicant shall submit detailed plans for the replacement of the existing marina pontoons to the Director-General for approval with the Construction Management Plan.

Demolition

19. All demolition work shall be carried out in accordance with *AS 2601-1991 The Demolition of Structures*.

Disposal of Hull Scrapings

20. The Applicant shall ensure that all hull scrapings are disposed of in accordance with the Environment Protection Authority's *Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes*.

Upgrade Sewerage System

21. Before commissioning any of the new works, the Applicant shall upgrade the existing sewerage system at the marina to ensure that it is capable of storing at least a full week's supply of wastewater.

Note: The Applicant will require a separate approval from Council and the NSW Department of Health for this upgrade.

Sewage Pump-Out

22. The Applicant shall ensure that all the boats at the marina with holding tanks are required to use the sewage pump-out system at the Berowra Waters Marina.
23. The Applicant shall encourage all vessels berthed at the marina that do not have holding tanks to install holding tanks;

Marine Vegetation and Fish Habitat

24. 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.

25. The Applicant shall ensure that the distance between the underside of the pontoons and the substrate at Low Water (0.0 metres ZFDTG) shall be at least 600mm.

Lighting

26. 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
27. The Applicant shall submit detailed plans for any external lighting to the Director-General for approval with the Construction Management Plan.

Construction Hours

28. 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.
29. No construction work shall be carried out on Sundays or public holidays.

Noise

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

ENVIRONMENTAL MANAGEMENT PLANS

Construction Management Plan

31. 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:
 - Erosion and Sediment Control Management Plan;
 - Construction Noise Management Plan,
 - Construction Traffic Management Plan; and
 - Construction Waste Management Plan for the proposed works;

- (i) Include the surveyor's certificate certifying that both dry docks would be located wholly within the existing lease area; and
 - (j) Include the detailed plans for:
 - The replacement of the existing marina pontoons;
 - Any external lighting; and
 - The upgrade of the existing dry dock.
32. 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

33. The Applicant shall prepare and implement an Environmental Management Plan for the marina's operations. 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, and to ensure that the marina's operations meet these standards and/or performance measures.
 - (e) Describe what measures and procedures will be implemented to:
 - 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 marina's operations; and
 - (g) Include a detailed:
 - Berthing Management Plan;
 - Dry Dock Management Plan;
 - Wastewater Management Plan;
 - Solid Waste Management Plan;
 - Noise Management Plan,
 - Fuel Management Plan; and
 - Emergency Management Plan.
34. The Applicant shall not commission any of the new construction works before the Director-General has approved the Environmental Management Plan for the proposed operations.
35. The Applicant shall make a copy of this Environmental Management Plan available to the public on request.
36. The Applicant shall review and update this Environmental Management Plan regularly, or as directed by the Director-General.

ANNUAL ENVIRONMENTAL AUDIT

37. Within 12 months of commissioning any of the new construction works, 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.

38. 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

39. 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.