

# ASSESSMENT REPORT

## DEVELOPMENT APPLICATION (DA 151-06-01): PROPOSED UPGRADE AND REDEVELOPMENT OF THE BOATSHED MARINA AT BEROWRA WATERS



File No: S00/01497

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*Please note that the figures referred to in the report do not appear in this electronic version. To view copies, please contact the Department of Urban Affairs and Planning Development and Infrastructure Assessment branch on 02 9762 8155.*

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### 1. SUMMARY

Cameron Brae (the Applicant) is proposing to upgrade and redevelop the Boatshed Marina on Berowra Waters Road, Berowra Waters in the Hornsby local government area.

The proposed development involves:

- Renovating the existing Kiosk and Boatshed buildings;
- Removing the slipway;
- Reconstructing and raising the existing deck (by 310mm);
- Extending the existing deck (by 32m<sup>2</sup>), eastwards over the cleared slipway to the new public access ramp;
- Erecting screens around the new deck area;
- Demolishing the roof extension from the Kiosk over the existing deck;
- Constructing a larger roof extension from the Kiosk over the new deck;
- Constructing a new ferry waiting area for pedestrians, and providing disabled access to the deck at the western end of the Kiosk;
- Constructing a pedestrian walkway along the southern boundary of the Kiosk and Boatshed;
- Repaving and marking the existing loading dock;
- Constructing a café entry feature on the new deck off Berowra Road;
- Constructing a new public access ramp off Berowra Waters Road;
- Constructing a new board walk to the north of the Boatshed;
- Constructing a new access pontoon to the north of the new deck, linking the public access ramp to the existing western marina pontoon;
- Replacing the existing western marina pontoon;
- Constructing a storeroom, and male, female and disabled toilets in the Boatshed;
- Establishing a new garbage storage area to the south of the Boatshed;
- Upgrading the existing wastewater treatment system;
- Using the Kiosk and new deck as a café between:
  - ) 7.30am and 9pm Monday to Friday;
  - ) 7.30am and 11am, and 3pm and 9pm on Saturdays; and
  - ) 7.30am and 10am, and 3pm and 9pm on Sundays and public holidays;
- Using the Kiosk to sell pre-packaged food between 7.30 am and 9pm daily; and
- Using the existing marina pontoons to provide berths for "short stay" vessels, up to 32 "commuter boats", and up to 20 small hire boats (less than 4.5 metres).

Under the *Environmental Planning and Assessment Act 1979* (the Act), the proposal is classified as State Significant and Integrated Development, and the Minister is the consent authority for the proposal.

On 16 March 2000, the Applicant lodged a development application (DA) for the proposal with Hornsby Council.

Hornsby Council subsequently exhibited the DA in accordance with the requirements in Division 6 & 7 of Part 6 of the *Environmental Planning and Assessment Regulation 2000* (the Regulation).

During the exhibition period, Council received 55 submissions on the DA, 4 from public authorities, and 51 from the general public.

The Department of Land and Water Conservation (DLWC), NSW Fisheries, Waterways Authority, and the Hawkesbury Nepean Catchment Management Trust do not object to the proposal.

With regards to the general public, however, 45 out of the 51 submissions objected to the proposal. These objections included submissions from several community groups, including the Association for Berowra Creek Inc, the Berrilee Progress Association, and the Hornsby Shire Residents and Ratepayers Association Inc.

The common theme in most of these objections is that there should be no more commercial development at Berowra Waters; and that the proposal would spoil the natural beauty of Berowra Waters, and intensify existing problems.

In summary, these submissions raised concerns about:

- Parking impacts;
- Heritage, urban design, and visual impacts;
- Wastewater management;
- Waste management;
- Noise impacts;
- Pedestrian safety; and
- Environmental management.

Hornsby Council has provided its General Terms of Approval for the proposed roadworks, and recommends that the Minister approve the DA subject to conditions, even though its officers recommended refusal.

The Department has assessed the DA, the submissions, and Council's proposed conditions, and recommends that the Minister approve the DA subject to conditions.

## **2. THE EXISTING SITUATION**

The Boatshed Marina is located off Berowra Waters Road on the eastern side of Berowra Waters (see Figures 1 & 2), partly on land (Lot 466 DP 727082), and partly on water (Crown Lease No. 1985/6).

**Figure 1: Photo of the Boatshed Marina (which is to the left of the picture, just south of the Cruisecraft Marina)**

The marina is surrounded mostly by water and bushland. However, to the north-east of the marina, there are several buildings, mainly along Kirkpatrick Way, including the post office, the Rural Bush Fire Service headquarters, the Cruisecraft Marina, and the Ferry Master's residence; to the south of the marina, there is the Berowra Waters Teahouse; and to the west of the marina, there is the vehicle ferry ramp.

The site includes (see Figures 2 & 3):

- The original boatshed (25m<sup>2</sup>), which has existed on the site in one form or another since the 1890s, and is commonly referred to as the Kiosk;
- The newer boatshed (149m<sup>2</sup>), which was built in the 1950s, and is commonly referred to as the Boatshed;
- A slipway, which is located between the two buildings;
- Associated deck areas, mainly around the Kiosk;
- Two sets of L-shaped marina pontoons on the water in front of the Kiosk and Boatshed;
- A concrete septic tank (3,500 litres), concrete holding tank (3,500 litres), and stainless steel grease trap (1,800 litres), which are located to the south of the Kiosk; and
- Garbage storage area, which is located south of the Kiosk, adjacent to Berowra Waters Road.

This development has occurred incrementally over many years.

Since 1985, however, the site has been the subject of 5 development consents (see document tagged "A" for a detailed description of these consents).

**Figure 2: The General Layout of Berowra Waters**

These consents provide for:

- DA 252/85     )  
                     )  
                     )  
                     )     Extension of the marina pontoons;  
                            30 hire boats (15 row boats and 15 power boats);  
                            46 moorings (either swing or pontoons);  
                            Use of the Boatshed to sell goods ( but these goods were restricted  
                                to "ships chandlery, fishing tackle and bait and the like"); and  
                                Install garbage storage area.
- DA 79/86     )  
                     )     Use the attic of the Boatshed for storage (in association
- DA 169/89   )  
                     )     with the Boatshed and marina facility and for no other purpose).
- DA 60/91     )  
                     )     Use of the Kiosk to sell "pre-packaged food/refreshments",  
                            with the service area to be at the western end of the building to  
                            improve pedestrian safety.
- DA 110/95   )  
                     )     Alteration, refurbishment and addition to the Boatshed to  
                            provide a restaurant and first floor residence; and the construction  
                            of a new wharf to accommodate a marina workshop, fuel storage  
                            and outdoor café. (This consent was a "deferred commencement".  
                            It required the Applicant to provide 5 car parking spaces to the  
                            north of the residential compound, and contribute \$51,000 for an  
                            additional 7 car parking spaces. It was not implemented, and has  
                            now lapsed.)
- DA 110/95   )  
                     )     Expand Kiosk into a restaurant with general  
                            waterfront and marina facilities. (This consent was also a deferred  
                            commencement. It required the rezoning and provision of remote  
                            parking at 69-73 Bay Road, Berrilee. The site was rezoned, but the  
                            DA for parking refused. It was not implemented, and has now  
                            lapsed.)

**Figure 3: Photo Showing the Kiosk and Boatshed From the Water**

In 1999, Council conducted an audit of the marina's works and operations (see attached document, tagged "A").

This audit confirmed that the Applicant was:

- (a) Operating an unlawful restaurant on the site with seating for 40 patrons on the deck of the Kiosk, and 60 patrons in the Boatshed; and
- (b) Using the marina pontoons to berth up to 20 commuter boats, and could therefore be in breach of the consent (DA 252/85), which only allows a maximum of 30 hire boats and 46 moorings (either swing or pontoon, because of the total lack of on-site car parking).

The audit report recommended that Council direct the Applicant to:

- (a) Stop using the Boatshed as a restaurant until the use is approved;
- (b) Ask the Applicant to confirm how many berths and moorings are associated with the marina.

The Applicant has subsequently:

- Stopped using the Boatshed as a restaurant, and the Kiosk to sell pre-packaged food;
- Closed off the deck area in front of the Kiosk, which is in disrepair, and needs upgrading; and
- Demolished the marina pontoons on the western arm of the marina, which were unusable.

In addition, the Applicant has confirmed that there are currently 35 swing moorings associated with the marina, although in practice the use of these swing moorings is managed by the Cruisecraft Marina. At present, the Applicant is using the remaining marina pontoon to berth up to 20 "commuter boats".

Strictly speaking, this is a breach of its consent (DA 252/85), which only allows a maximum of 46 moorings (either swing or pontoon) at the marina.

On 15 October 1999, the Applicant lodged a DA with Council to operate a 100 seat restaurant on the site, but subsequently withdrew this application following a public meeting on a number of proposals at Berowra Waters on 26 November 1999.

It then lodged the DA for this proposal on 16 March 2000.

### **3. THE PROPOSED DEVELOPMENT**

The Applicant is proposing to upgrade and redevelop the Boatshed Marina.

The proposed development involves:

- Renovating the existing Kiosk and Boatshed buildings;
- Removing the slipway;
- Reconstructing and raising the existing deck (by 310mm);
- Extending the existing deck (by 32m<sup>2</sup>), eastwards over the cleared slipway to the new public access ramp;
- Erecting screens around the new deck area;
- Demolishing the roof extension from the Kiosk over the existing deck;
- Constructing a larger roof extension from the Kiosk over the new deck;
- Constructing a new ferry waiting area for pedestrians, and providing disabled access to the deck at the western end of the Kiosk;
- Constructing a pedestrian walkway along the southern boundary of the Kiosk and Boatshed;
- Repaving and marking the existing loading dock;
- Constructing a café entry feature on the new deck off Berowra Road;
- Constructing a new public access ramp off Berowra Waters Road;
- Constructing a new board walk to the north of the Boatshed;
- Constructing a new access pontoon to the north of the new deck, linking the public access ramp to the existing western marina pontoon;

- Replacing the existing western marina pontoon;
- Constructing a storeroom, and male, female and disabled toilets in the Boatshed;
- Establishing a new garbage storage area to the south of the Boatshed;
- Upgrading the existing wastewater treatment system;
- Using the Kiosk and new deck as a café between:
  - ) 7.30am and 9pm Monday to Friday;
  - ) 7.30am and 11am, and 3pm and 9pm on Saturdays; and
  - ) 7.30am and 10am, and 3pm and 9pm on Sundays and public holidays;
- Using the Kiosk to sell pre-packaged food between 7.30 am and 9pm daily; and
- Using the existing marina pontoons to provide berths for “short stay” vessels<sup>1</sup>, up to 32 “commuter boats”<sup>2</sup>, and up to 20 small hire boats (less than 4.5 metres).

This proposal is slightly different to the proposal that was exhibited by Council , as the Applicant has subsequently modified the DA to:

- Include the replacement of the western marina pontoons, which were approved in 1985, but which have subsequently been demolished;
- Change the use of the existing marina pontoons to berth up to 32 “commuter boats” and 20 small hire boats (less than 4.5 metres);
- Delete the proposal to construct a boatshed pavilion on the northern end of the new public access ramp, with a 2m high chain fence running along the western end of the new access ramp from the new deck to the end of the access ramp; and
- Include the proposed pedestrian walkway to the south of the site, along Berowra Waters Road.

The Department considers these modifications to be minor, and believes that they would improve the proposal by upgrading the existing facilities, reducing its environmental impacts, and improving the amenity of the area. Given the nature of these modifications, the Department does not believe that the DA should be (or is required to be) re-exhibited.

In addition, the Applicant is proposing to relinquish 19 of the 35 commercial swing moorings that are currently associated with the Boatshed Marina, and to transfer the remaining 16 moorings to the Cruisecraft Marina, which is better equipped to provide the necessary support facilities for these vessels (see separate assessment reports).

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<sup>1</sup> Short stay” vessels are vessels that are going to use the marina’s facilities (particularly the café and shop) for short periods of time (less than 2 hours).

<sup>2</sup> “Commuter boats” are boats that are used by residents of the surrounding area, who live on the waterway, and rely on the public parking facilities at Berowra Waters to park their cars.

**Figure 4: The Proposed Layout of the Boatshed Marina**

**Figure 5: The Proposed Renovations to the Boatshed Marina**

In summary, if the proposal is approved:

- The marina pontoons would be used to berth up to 32 “commuter boats” and 20 small hire boats (less than 4.5 metres);
- The Kiosk would be used to sell pre-packaged foods between 7.30am and 9pm, and as a café with 60 seats during off-peak hours; and
- The Boatshed would be used to sell goods (restricted to ship chandlery, fishing tackle, and general provisions for boat users), and to provide general storage and amenities for the activities on site.

According to the Applicant, the proposal would:

- Retain, upgrade, and protect the heritage buildings on the site;
- Provide an attractive facility for residents and visitors, which would improve the general amenity of the area;
- Provide a safe, well-lit pedestrian walkway to the south of the site, along Berowra Waters Road;
- Provide a safe and convenient pedestrian waiting area for ferry passengers;
- Provide public access through the site to the proposed board walk across Franks Bight; and
- Upgrade the marina pontoons to provide berthing for the “commuter boats” associated with the growing local community, and hire boats.

#### **4. STATUTORY FRAMEWORK**

##### **Permissibility**

The Boatshed Marina is located partly on land, and partly on water.

Under the *Hornsby Shire Local Environmental Plan 1994*, the land is zoned Business D (Aquatic Service Centre), while the water is unzoned.

The proposal would be generally be classified as “restaurant” and “marina” development, which are permissible with consent in the Business D (Aquatic Service Centre) zone. In addition, under Clause 20(1) of the plan, all development below the mean high water mark requires consent.

Consequently, the proposed development is permissible with consent.

## Minister's Role

The proposal is classified as State Significant Development (see below), and the Minister is consequently the consent authority for the DA.

## State Significant Development

On 18 August 2000, and then again on 10 April 2001, the Minister declared marina development in the Sydney region to be State Significant Development under Section 76A(7)(b)(iii) of the Act.

The declaration applies to:

***Marina development*** located in Sydney Harbour, Middle Harbour, North Harbour, Botany Bay, Port Hacking, Broken Bay, or any associated tidal waters that involves:

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

*but excludes any development that, in the opinion of the Minister, is of local environmental planning significance.*

*The term support facilities on an adjoining area of land or waterway includes:*

- *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 satisfies the definition for "marina development" in the Minister's marina declaration, as it is an alteration and addition to an existing permanent boat storage facility on a tidal waterway of Broken Bay with support facilities on the adjoining area of land and the waterway.

Consequently, the proposal is classified as State Significant Development under Section 76A(7)(b)(iii) of the Act, and the Minister is the consent authority for the DA.

## Integrated Development

The DA was submitted and exhibited as Integrated Development, as the Applicant thought the proposal would require an additional approval under Part 3A of the *Rivers and Foreshores Improvement Act 1948*.

However, the Department of Land and Water Conservation has subsequently advised that this approval is not required.

Nevertheless, now that the Minister is the consent authority, the proposal requires an additional approval from Council under the Section 138 of the *Roads Act 1993* for the proposed pedestrian walkway.

It is therefore classified as Integrated Development under section 91 of the Act.



## Designated Development

Several submissions argued that the proposal should be classified as Designated Development.

Under Schedule 3 of the Regulation, “**marinas or other related land or water shoreline facilities**” are classified as Designated Development if they:

*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.*

The existing marina satisfies the criteria for Designated Development, as it is a marina that could accommodate up to 46 vessels with no car parking.

However, this does not mean the proposal would automatically be classified as designated development. The proposal would be classified as an alteration 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 include:

*(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.*

At present, the impact of the existing development is relatively minor, as the Kiosk is boarded up, the deck is in a state of disrepair, and the western arm of the marina has been removed.

Nevertheless, there is some concern about the previous environmental performance of the marina, as the Applicant operated an unlawful restaurant from the site for some time, in breach of the development consent, and these operations increased the impact of the approved development, particularly the parking impacts during peak periods.

Despite this, the Department has assessed the merits of the proposal (see Section 6), and is satisfied that the proposed alterations are likely to **reduce** the impact of the development that has been approved on the site, mainly by reducing the parking demand of the development during peak periods. In addition, these impacts could be further reduced by imposing a number of restrictions on the marina's operations.

In summary, the proposed alterations would upgrade the existing facilities on the site, retain and reuse the existing heritage buildings, and provide an attractive facility for residents and visitors without increasing the adverse impacts of the development.

Consequently, the Department is satisfied that the proposed alteration would not increase the environmental impacts of the total development compared with the existing or approved development, and therefore recommends that the Minister determine that the proposed alterations are not designated development.

### **Relevant Planning Instruments**

The following planning instruments are relevant to the proposal:

- *Sydney Regional Environmental Plan No. 20 Hawkesbury-Nepean River (No. 2- 1997);*  
and
- *Hornsby Shire Local Environmental Plan 1994.*

The proposal has been assessed against the relevant provisions in these planning instruments in Section 6 and Appendix A.

This assessment concludes that the proposal is consistent with the relevant aims and objectives of these instruments, and satisfies the relevant assessment criteria.

### **Relevant Policy Documents**

- *Berowra Waters Plan of Management;*
- *NSW Fisheries Habitat Protection Plan No. 3 - Hawkesbury Nepean River;*
- *Hornsby River Settlements DCP;*
- *Hornsby Heritage DCP;* and
- *Hornsby Car Parking DCP.*

The proposal has been assessed against the relevant provisions in these plans in Section 6 and Appendix A.

## 5. CONSULTATION

The Applicant lodged the DA for the proposal with Hornsby Council on 16 March 2000.

Council subsequently:

- Notified the surrounding land owners and relevant State Government agencies;
- Advertised the exhibition of the DA in the local newspaper;
- Put up public notices about the DA on the site; and
- Exhibited the DA between 30 March 2000 and 27 April 2000.

This satisfies the requirements for public participation in Division 7, Part 6 of the Regulation.

During the exhibition period, Council received 55 submissions on the DA, 4 from public authorities, and 51 from the general public.

The Department of Land and Water Conservation (DLWC), NSW Fisheries, Waterways Authority, and the Hawkesbury Nepean Catchment Management Trust do not object to the proposal.

With regards to the general public, however, 45 out of the 51 submissions objected to the proposal. These objections included submissions from several community groups, including the Association for Berowra Creek Inc, the Berrilee Progress Association, and the Hornsby Shire Residents and Ratepayers Association Inc.

The common theme in most of these objections is that there should be no more commercial development at Berowra Waters; and that the proposal would spoil the natural beauty of Berowra Waters, and intensify existing problems.

In summary, these submissions raised concerns about:

- Parking impacts;
- Traffic impacts;
- Wastewater management;
- Waste management;
- Noise impacts;
- Pedestrian safety; and
- Environmental management.

These issues have been assessed in more detail in Section 6 and Appendix A of this report.

On 18 August 2000, the Minister declared marina development in the Sydney region to be State Significant Development. The declaration applies to this proposal, and consequently makes the Minister the consent authority for this DA.

On 6 September 2000, Council resolved to recommend that the Minister approve the DA subject to conditions, even though its officers recommended refusal. On 12 October 2000, Council forwarded this recommendation to the Department with copies of the DA, plans, submissions, and proposed conditions.

Since then, the Department has held several discussions about the proposal with Council, the Applicant, and the relevant government agencies to resolve a number of issues.

## 6. CONSIDERATION OF ISSUES

The Department has assessed the DA, the submissions, and Council's recommendations, and believes that the following issues require further consideration.

### **Parking Impacts**

The marina has no parking on-site, and relies on the public parking in the surrounding area, mainly on Berowra Waters Road and Kirkpatrick Way, which has anywhere between 155 and 180 parking spaces, depending on how efficiently the cars are parked.

Parking - or the limited supply of parking - is a major constraint to future development at Berowra Waters, and a major source of conflict between residents, business owners, and visitors (tourists, anglers, boaties and bushwalkers).

These conflicts are particularly acute on the eastern foreshore, where the majority of the residents<sup>3</sup> park, mainly because it is closer to the main roads to Sydney and Newcastle.

Most submissions objected to the potential parking impacts of the proposal. This is because, during peak periods (mainly on Saturdays, Sundays, and public holidays in the warmer months), parking demand exceeds supply.

Over time, this demand is expected to increase for the following reasons: up to 30% of the existing residential lots in the surrounding area are vacant and are expected to be developed over the next few years; more permanent residents are moving to the area (replacing weekenders); the ratio of cars to each residence is increasing, and the reputation of Berowra Waters as a popular recreation area is growing.

Because a large proportion of this increase is expected to be generated by residents, it is expected to intensify the demands on the eastern foreshore in particular.

The Berowra Waters Plan of Management grapples with this issue, and tries to strike a balance between the residential, commercial, and recreational demands (see Figure 6).

On the eastern foreshore, the parking strategy in the Plan of Management proposes to:

- (a) Introduce fees to modify behaviour;
- (b) Establish a secure parking compound for the exclusive use of residents at the northern end of Kirkpatrick Way (for about 90 vehicles); and
- (c) Provide a few additional spaces along Kirkpatrick Way by relocating the chairs and tables near the public toilets.

This strategy is mostly directed at providing residents with secure parking.

For commercial development, the Plan of Management uses current demand to establish a "nominal limit" for each commercial facility, including the Boatshed Marina, and says that future uses at the marina should not exceed these limits.

To assist the assessment of the potential parking impacts, it is worth comparing the parking demand of the approved marina against the demand of the proposal, and the marina's "nominal limit" in the Berowra Waters Plan of Management.

Approved		Proposed		"Nominal Limit" <sup>4</sup>	
Use	PS	Use	PS	Use	PS
Chandlery (149m <sup>2</sup> )	3	Chandlery (149m <sup>2</sup> )	3	Workshop (30m <sup>2</sup> )	1
Kiosk (25m <sup>2</sup> )	3	Café (60 seats)	15	Kiosk (100m <sup>2</sup> )	7
30 Hire Boats	18	20 Hire Boats	12	10 Hire Boats	6
11 Fixed Berths	7	37 "Commuters"	0	10 "Commuters"	12
35 Swing Moorings	7			35 Swing Moorings	7
<b>Total</b>	<b>38</b>	<b>Total</b>	<b>30</b>	<b>Total</b>	<b>32</b>

<sup>3</sup> These residents live on the waterway, and do not have road access to their houses. Consequently, they rely on the public parking at Berowra Waters for their parking needs.

<sup>4</sup> The car spaces for the shop and workshop were reduced to ensure a consistent comparison between the other two calculations.

According to this analysis, the proposal would reduce the parking demand of the marina compared to what is already approved, and it would be marginally under the marina's "nominal limit" in the Berowra Waters Plan of Management.

However, there are a two discrepancies between the approved and proposed figures and the "nominal limit", that make this comparison problematic.

The first is that the "nominal limit" bears little resemblance to what is approved at the marina, and appears to be based on the actual use of the marina when the Berowra Waters Plan of Management was prepared.

**Figure 6: The Strategy in the Berowra Waters Plan of Management for the Eastern Foreshore**

The second is that the “nominal limit” attributes parking demand to “commuter boats”. This is double counting, as the parking demand is generated by the residents, **not** the commuter boats; and should be attributed to the residential development at Berowra Waters, **not** the commercial development.

The proposal to use the marina pontoons to provide berthing for “short stay” vessels and up to 32 “commuter boats” would not increase the parking demand at the marina; it would actually reduce it; and at the same time, it would provide some of the infrastructure that is (and will continue to be) necessary to support the expected growth in residential development.

Consequently, the Department is satisfied that the proposal would not intensify existing parking problems at Berowra Waters. If anything, it would improve the situation.

Despite this improvement, the Applicant is proposing to further reduce peak demand, by closing the café during peak periods, which are generally agreed to be between 11am and 3pm on Saturdays, Sundays, and public holidays<sup>5</sup>.

The Department supports this proposal, and believes it would help to further reduce the demand of the proposal. Nevertheless, the Department believes that strict limits should be placed on the marina’s operations, as these limits would help to limit the parking demand of the marina, and consequently help to reduce the parking conflicts on the eastern foreshore.

Consequently, the Applicant should be required to ensure that:

- The café shall have a maximum of 60 seats at all times;
- The café shall only operate between:
  - ) 7.30am and 9pm, Monday to Friday; and
  - ) 7.30am and 10.30am, and 3pm and 9pm on Saturdays, Sundays and public holidays;
- The Kiosk may be used to sell pre-packaged food between 7.30am and 9pm daily;
- The deck area in front of the Kiosk shall be closed to the public between 10.30am and 3pm on Saturdays, Sundays, and public holidays;
- The Boatshed shall only be used to sell certain goods (restricted to ship chandlery, fishing tackle, and general provisions for boat users), and provide general storage and amenities for the activities that are directly associated with the development’s operations;
- The existing marina pontoons shall only be used to provide berths for “short stay” vessels, up to 32 “commuter boats”, and up to 20 small hire boats (less than 4.5 metres in length);
- All vessels using the existing marina pontoons shall be berthed in an orderly manner, and the Applicant shall ensure that no overcrowding occurs;
- No vessels or dinghies shall be stored on, or berthed at any other pontoons, decks, ramps, walkways, or structures of the development;
- No swing moorings shall be operated or managed from the development; and
- All deliveries to and from the development shall be carried out between 9am and 4pm Monday to Friday.

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<sup>5</sup> This is supported by the traffic survey, conducted for the Applicant by Closton Budd Hunt & Kafes on the 25, 26, and 27 February 2000; and the traffic survey included in the Appendices of the Berowra Waters Plan of Management, which was conducted on 10 and 11 January 1997.

## Heritage, Urban Design and Visual Impacts

Berowra Waters is identified as an area of Regional Scenic Significance in *Sydney Regional Environmental Plan No. 20 Hawkesbury Nepean River (No. 2 - 1997)*; and the Kiosk and Boatshed are identified as local heritage items in *the Hornsby Local Environmental Plan 1994*.

The proposal involves changes to the Kiosk, Boatshed, and its surrounds, which could generate heritage and visual impacts.

Under Clause 18 of Council's LEP, the Minister is required to consider a heritage assessment of the proposed development. The Applicant submitted a independent heritage assessment of the proposal with the DA that was prepared by Donal Carr of Designs Concordant (dated 20 December 1999).

The Department has assessed this report and the potential heritage and visual impacts of the proposal in more detail in the following sub-sections.

### (a) Kiosk

The Applicant is proposing to:

- Renovate the exterior of the building;
- Reline the interior of the building, and upgrade the kitchen to comply with current standards;
- Replace the existing north roof extension with a larger extension over the extended deck;
- Remove the existing garbage storage area from the southern side of the building; and
- Remove the flagpole.

The independent heritage assessment does not believe that the proposed renovations would affect the heritage significance of the Kiosk, but says that the Applicant should be required to:

- Retain the original doors and linings of the Kiosk externally;
- Retain the rustic appearance of the exterior with minimum renovation;
- Carry out the proposed roof extension over the deck in a way that matches the original roof in terms of material, roof sheet lengths, ridge capping, and timber barge capping;
- Retain the west end gable infill; and
- Retain the flagpole.

The Department agrees with these recommendations, and believes that the Applicant should be required to ensure that the final plans for the proposed development are generally in accordance with these recommendations.

### (b) Kiosk Decks

The Applicant is proposing to:

- Take up the existing deck, which is poor condition and below the flood level, and relay it above the flood level (about 310mm higher);
- Remove the slipway;
- Extend the deck over the cleared slipway (32m<sup>2</sup>) to the new access ramp (see below);
- Provide a new café entry and paved entry court;
- Screen the deck from the ferry waiting shelter and access ramp;
- Install a new glass screen wind protector around the perimeter of the deck area; and
- Provide adjustable sail shade structures on the deck.

The independent heritage assessment argues that:

- The proposed reconstruction of the existing deck (at a higher level) would not affect the significance of the Kiosk;

- The proposed removal of the slipway and extension of the deck over the cleared slipway would adversely affect the significance of both the Kiosk and the Boatshed, in that the slipway would be lost to view, and the Kiosk would be visibly connected to the Boatshed;
- The proposed café entry would block off the significant view from the road to the slipway, shoreline, and deeper water; and
- There is not enough information in the DA to assess the possible heritage impacts of the proposed sail shade structure.

To reduce these adverse impacts, it says the Applicant should be required to:

- Retain the slipway;
- Restrict the deck extension to a 2.5 metre long bridge opposite the new west door to the Boatshed;
- Place the café entry gates at deck level, and
- Relocate the necessary steps between the gates and the roadway.

The Department disagrees with part of this assessment, and does not believe that the proposal to remove the slipway and extend the deck over the cleared slipway would have an adverse effect on the heritage significance of the Kiosk and Boatshed. The slipway is old and in a state of disrepair (see Figure 7), and not a heritage item; if retained it would require regular maintenance, and the costs associated with this maintenance would provide little in the way of heritage benefits. The Department does not believe that the proposal would visibly connect the Kiosk to the Boatshed, as these buildings would still be divided by the public access ramp, which would run between the two buildings.

**Figure 7: Photo of the Existing Slipway Between the Kiosk and Boatshed**



Consequently, the Department believes the Applicant should be allowed to remove the slipway and extend the deck.

However, it agrees with the other recommendations in the assessment report, and believes that the Applicant should be required to:

- Modify the design of the café entry to minimise the visual impact of this feature on the existing views from Berowra Waters Road to the waterway; and
- Provide additional details on the proposed sail shade structures on the deck, and the proposed screens around the deck.

#### (c) Boatshed

The Applicant is proposing to:

- Change the position of windows and doors on the west elevation, raise door openings on the east elevation, and add new window and door openings on the south elevation;
- Replace the aluminium doors to the north deck with multi-paned timber doors;
- Provide a new timber floor, 380 mm above the existing level;
- Provide male, female, disabled access toilets, and additional storage space in the south-western corner of the Boatshed building;
- Provide an additional septic tank next to the existing tanks at the eastern end of the building; and
- Provide a new garbage storage area behind the south-eastern corner of the building.

In general, the independent heritage assessment does not believe that these changes would affect the significance of the building, but says that the Applicant should be required to:

- Retain the existing door and window openings on the west elevation rather than create new ones;
- Replace the proposed toilet windows with 4 smaller vertical rectangular openings that are more appropriate to the architectural era;
- Use the existing door on the southern elevation for the store, rather than create a new door;
- Ensure that the fit-out of the new toilets and wall and floor finishes are sympathetic to the period, and are not too grand.

The Department generally supports these recommendations, and believes that the Applicant should be required to ensure that the final plans for the proposed development are generally in accordance with these recommendations.

In addition, the proposed location of the new garbage storage area is different on plans 506-A02 and 506-A03. The Department believes the location in plan 506-A03 would be preferable, because it would blend in better with the Boatshed building, and reduce the visual impact of the structure on the views from Berowra Waters Road to the waterway and eastern shoreline.

The Applicant should therefore be required to locate the new garbage storage area in accordance with the plan 506-A03 (and not plan 506-A02).

(d) Public Access Ramps, Pedestrian Walkway, and Loading Area

The Applicant is proposing to:

- Provide a new public access ramp and board walk through the site, between the Kiosk and Boatshed buildings, linking the public entry on Berowra Waters Road to the marina pontoons, that could be extended in the future to link up to the proposed board walk across Franks Bight;
- Install a new access pontoon to the north of the new deck, linking the new public access ramp to the western marina pontoons;
- Provide a 1.5 metre wide pedestrian walkway along the southern side of the Kiosk and Boatshed, along Berowra Waters Road, linking the ferry ramp to the post office; and
- Construct a paved loading dock across the pedestrian walkway between the Kiosk and the Boatshed.

The independent heritage assessment believes the new public access ramp and board walk, and new access pontoon would not adversely affect the significance of the Kiosk or Boatshed; and that the new pedestrian walkway would be sensible from a public safety viewpoint. However, it says concrete kerb and gutter would be out of keeping with the area, and suggests that either timber bollards or (second hand) stone would be a better alternative. It also says a fence or rail should be installed on the boatshed-side of the walkway to protect pedestrians from falling over the embankment.

The Department agrees with these recommendations. The Applicant is proposing to develop detailed plans for the proposed walkway and loading dock in consultation with Council, and should be required to incorporate these recommendations into the final plans.

Because the proposed walkway and loading dock require works to be carried out on Berowra Waters Road, the Applicant requires an additional approval from Council, under Section 138 of the *Roads Act 1993*, for these works.

Some submissions raised concerns about the potential conflict between pedestrians using the walkway, and the vehicles using the loading dock or the traffic on Berowra Waters Road. In addition, Council raised concerns about the fact that the new loading dock could not comply with the *AS 2890.2 - 1993 Parking Facilities Commercial Vehicles*.

However, after further discussions with the Applicant both Council and the Department are satisfied that the loading dock could be operated safely provided:

- All deliveries to and from the development are carried out by small rigid vehicles, and restricted to between 9am and 4pm Monday to Friday;
- The entry to and exit from the loading dock are co-ordinated with the operations of the vehicle ferry service; and
- The Applicant is required to prepare and implement a detailed Loading Dock Management Plan for the development.

Consequently, Council has provided its General Terms of Approval for the proposed road works.

Under these General Terms of Approval, the Applicant is required to:

- Pay the full cost associated with implementing these works;
- Prepare detailed plans for the proposed pedestrian walkway and loading dock along Berowra Waters Road in consultation with Council, and submit these plans to the Director-General for approval with the Construction Management Plan, and to Council for approval under Section 138 of the Roads Act 1993; and
- Repair, or pay the full cost of repairing, any damage to public assets in the vicinity of the site that may occur as a result of the proposed construction works.

(e) Boat Hire Pavilion

Although the Applicant has decided to delete the proposed boat hire pavilion on the northern end of the public access ramp from the proposal, and also the 2 metre high chain fence running along the western end of the new access ramp from the new deck area to the end of the access ramp, these features are still included in the plans accompanying the DA.

The Applicant should be required to modify these plans to reflect the new proposal, and to submit these plans to the Director-General for final approval with the Construction Management Plan.

(f) External Lighting

The Applicant is proposing to install additional external lighting, but has not submitted any details on this proposed lighting with the DA.

According to the Applicant, this lighting would improve pedestrian safety in the area, but it could also have adverse visual impacts on the surrounding residents.

Consequently, the Applicant should be required to:

- Ensure that any external lighting associated with the development:
  - Uses the minimum level of illumination necessary; and
  - Is mounted, screened, and directed in such a manner so that it does not create a nuisance to surrounding land uses; and
- Submit detailed plans for the external lighting to the Director-General for approval with the Construction Management Plan.

(g) General

The independent heritage assessment report says the Applicant should be required to:

- Ensure that all new materials shall match the existing materials on the Kiosk and Boatshed; and
- Research the colours of the buildings, and prepare a detailed colour scheme for the proposal, which confirms the colours and their placement.

The Department agrees, and therefore believes that the Applicant should be required to:

- Prepare a detailed Colour Scheme Plan for the proposed development;
- Prepare a detailed Materials Plan for the proposed development; and
- Submit revised plans for the proposed development, incorporating all the modifications and additional information required by the proposed conditions of consent, to the Director-General for approval with the Construction Management Plan.

**Wastewater Management**

The wastewater treatment system at the marina currently has a:

- Stainless steel grease trap (1,800 litres);
- Concrete septic tank (3,500 litres);
- Concrete holding tanks (3,500 litres);
- Pump-out facility alongside Berowra Waters Road; and

- Safety system which switches the mains water off if the wastewater in the holding tank rises above a certain level.

The proposal would increase the wastewater generated by the marina.

To meet this increased demand, the Applicant is proposing to increase the holding capacity of the system to 14,000 litres.

In general, the wastewater from the kitchen would be passed through a grease trap, before it is treated with the other wastewater from the Kiosk and Boatshed in the septic tank. The treated water would then be stored in the holding tank until it is removed by tanker, while the grease and fat in the grease trap would be removed and disposed of separately.

According to Council officers, the capacity of the proposed wastewater system would comply with the standards for a maximum of 60 people for a 7 day period in the NSW Department of Health's *Septic Tank and Collection Well Accreditation Guideline*.

The Applicant has not provided the detailed layout of the proposed system, which would require separate approval from Council and the Department of Health.

Before commissioning the proposed works, the Applicant should be required to:

- Upgrade the existing wastewater system so that it can accommodate all the wastewater generated on the site for a 7 day retention period; and
- Prepare and implement a Wastewater Management Plan for the marina.

## **Waste Management**

### **(a) Operational Waste**

There is currently a garbage storage area to the south of the Kiosk, which has a number of Otto bins. These bins are clearly visible from Berowra Waters Road, and detract from the heritage value of the building.

The Applicant is proposing to:

- Provide a new garbage storage area to the south of the boatshed building in accordance with Council's *Garbage Code*;
- Store all the waste generated by the proposal in this storage area until it is removed by Council.

This is a vast improvement over the current situation. However, the Applicant should be required to:

- Design and construct the new garbage storage area in accordance with Council's "Garbage Code";
- Locate the new garbage area in accordance with plan 506-A03; and
- Prepare and implement a detailed Waste Management Plan for the development.

#### (b) Construction Waste

During construction, the proposal is expected to generate a fair amount of construction waste, mainly the decking.

The DA does not describe how this waste would be managed and disposed of.

The Applicant should be required to:

- Store all construction waste on the site until it is removed by licensed contractors;
- Store it in a way that does not pollute the environment; and
- Prepare and implement a detailed Construction Waste Management Plan for the proposed works.

### Noise Impacts

#### (a) Operational Noise

Several submissions claim the proposal would disturb the "quietness and tranquility" of the village atmosphere.

The Applicant submitted an acoustic report on the noise impact of the proposal that was prepared by PHA Acoustic Consulting.

This report concluded that for normal usage, the café would not cause disturbance to the nearest residential properties during the day or night time, if patrons speak to one another in "casual", "normal", or "raised" voices; however, it may cause some disturbance if patrons talk to each other in loud voices, or shout at each other.

The Department is satisfied that these potential impacts could be avoided with good management.

The Applicant should be required to:

- Ensure that the development does not generate any offensive noise; and
- Prepare and implement a Noise Management Plan for the development.

#### (b) Construction Noise

The proposal will generate some construction noise.

To mitigate the potential impacts associated with this noise, the Applicant should be required to:

- Carry out all construction work during standard construction hours;
- prepare a Construction Noise Management Plan.

### Marine Vegetation and Fish Habitat Impacts

The *NSW Fisheries Habitat Protection Plan No. 3 - Hawkesbury Nepean River* covers the waterway.

This plan requires the potential fish habitat impacts of any proposal to be assessed.

According to the Applicant, the proposal would not disturb the seabed (which is comprised mainly of silt over sand), interfere with the tidal circulation, or affect any seagrass. Based on an assessment of the site and the available plans containing information on seagrasses in the area, the Department is satisfied that the proposal is unlikely to have any adverse impacts on marine vegetation or fish habitat in the area.

NSW Fisheries has raised no objections to the proposal, but says the Applicant should be required to:

- Ensure that no marine vegetation is shaded or damaged by structures or works without a permit; and
- Ensure that the distance between the waterside of the pontoons and the substrate at Low Water (0.0m ZFDTG) is at least 600mm.

The Department has included these recommendations in the proposed conditions of consent. In addition, the Department believes the Applicant should be required to prepare a detailed Erosion and Sediment Control Plan for the proposed works.

One of the submissions raised concerns about the potential impact of the proposal on the mangrove at Franks Bight. In the Department's view, the proposal would not have any adverse impact on the existing mangrove.

### **Trees**

There are currently 5 trees on site, 2 of which are significant.

The proposal would not remove any of these trees. Nevertheless, the Applicant should be required to:

- Prepare and implement a Tree Protection Plan for the construction works;
- Landscape the embankment between the Boatshed and Berowra Waters Road; and
- Prepare and implement a detailed Landscaping Plan for the development in accordance with *Council's Landscape Code for Development and Building Approval*.

### **Foreshore Impacts**

The DLWC believes the proposed works would not have an effect on the foreshore.

However, the Applicant should be required to prepare and implement a detailed Erosion and Sediment Control Plan for the proposed works, in accordance with the Department of Housing's publication *Managing Urban Stormwater: Soils and Construction*.

## **Construction Management**

The proposal could generate a number of construction impacts. However, the Department is satisfied that these potential impacts can be mitigated or managed.

Nevertheless, the Applicant should be required to prepare and implement a detailed Construction Management Plan for the proposed works.

## **Environmental Management**

The marina does not currently have an Environmental Management Plan.

To ensure that the development's operations are carried out efficiently and effectively, the Applicant should be required to:

- Prepare and implement a detailed Environmental Management Plan for the development's operations;
- Commission and pay the full cost of an annual independent environmental audit of the development; and
- Submit a copy of the audit report to the Director-General for review within one month of commissioning this audit.

## **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 DA.

The Department has assessed the DA against these heads of consideration (see Section 6 and Appendix A), and is satisfied that proposal is generally consistent with the provisions of the relevant planning instruments; that the potential impacts of the proposal could either be mitigated or managed; and that the proposal is generally in the public interest.

## **8. RECOMMENDED CONDITIONS OF CONSENT**

The Department has prepared a set of proposed conditions for the proposal.

These conditions include Council's proposed conditions, Council's General Terms of Approval for the proposed works on Berowra Waters Road, and the suggested conditions of certain State government agencies.

These conditions are required to:

- Modify details of the proposal;
- Minimise any adverse environmental impacts associated with the proposal;
- Provide for the on-going environmental management of the proposal; and
- Provide for regular auditing and reporting on the proposal's operations.

The Applicant has reviewed and accepted these proposed conditions.

## **9. CONCLUSION**

The Department has assessed the DA, the submissions on the proposal, and Council's proposed conditions.

The proposal would:

- Upgrade and reuse the heritage buildings on the site;
- Introduce a new café to the marina, which should attract more people to the marina to enjoy the heritage buildings;
- Provide "commuter" berths for the growing residential population at Berowra waters;
- Re-establish the boat hire business at the marina;

- Provide a safe pedestrian walkway adjacent to the marina, along Berowra Waters Road, between the vehicle ferry stop and the post office; and
- Upgrade the sewage treatment facilities at the marina.

The Department is satisfied that potential impacts associated with these benefits can either be mitigated or kept to a minimum through good management.

Consequently, the Department believes the Minister should approve the DA subject to conditions.

## 10. RECOMMENDATION

It is recommended that the Minister:

- Consider the findings and recommendations of this report;
- Approve the DA subject to conditions under Section 80 of the Act; and
- Sign the attached Instrument of Consent.

Endorsed:

David Kitto  
A/Senior Environmental Planning Officer

Sam Haddad  
Executive Director

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