

ASSESSMENT REPORT



Department of
Urban Affairs and Planning

DEVELOPMENT APPLICATION (DA 150-06-01): PROPOSED EXPANSION AND CONTINUED USE OF THE CRUISECRAFT MARINA AT BEROWRA WATERS

File No: S00/01499

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1. SUMMARY

Cameron Brae (the Applicant) is proposing to expand, regularise, and upgrade its operations at the Cruisecraft Marina on Kirkpatrick Way, Berowra Waters in the Hornsby local government area.

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.

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

On 1 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 54 submissions on the DA, 5 from public authorities, and 49 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; however, the Hornsby/Ku-ring-gai District of the NSW Rural Fire Service raised

concerns about the potential navigational impacts of the proposal on its adjoining operations.

With regards to the general public, however, 44 out of the 49 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;
- Navigational impacts;
- Boat maintenance and repair impacts;
- Hull scraping disposal;
- Wastewater management;
- Marine vegetation and fish habitat impacts;
- Visual impacts;
- Foreshore impacts; and
- Environmental management.

Hornsby Council recommends that the Minister approve the DA subject to conditions.

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 Cruisecraft Marina is located off Kirkpatrick Way on the eastern side of Berowra Waters (see Figures 1 & 2), partly on land (Lot 468 DP 729619), and partly on water (Special Lease No. 1989/3).

The marina is surrounded mostly by water and bushland. However, there are several buildings to the south of the marina, along Kirkpatrick Way, including the headquarters of the Rural Bush Fire Service, the Boatshed Marina, the post office, and the Berowra Waters Teahouse; the Ferry Master's residence and "Resident" Parking Compound are located to the north of the marina along Kirkpatrick Way.

Before the marina was built, there was a boatshed on the site, which had been operating since the 1950s.

The marina was approved in 1975 (DA 102/75), and has subsequently been modified by two additional consents (DA 301/84 and DA 429/87). In addition, Council approved a proposal to install fuel tanks in the adjacent reserve and sell fuel from the marina in 1981.

Figure 1: Photo of Cruisecraft Marina (which is to the left of the picture)

These approvals provide for:

- (a) A two-storey marina building with:
 - Level 1: Office (28m²)
Ship chandlery, grocery & liquor store (59m²)
 - Level 2: 2 Bedroom residence;
- (b) Workshop with an open work area to the south of the building (262m²);
- (c) Two 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 of each pontoon; and
- (d) Two fuel bowsers on the end of the northern arm of the marina.

The development consents do not specify the number of marina berths at the marina, but it is generally accepted that the marina could accommodate up to 40 vessels, depending on the size of the vessels.

In 1999, Council conducted an audit of the marina's works and operations (see attached document, tagged "A"). This audit identified several unlawful structures and uses at the marina.

Figure 2: The General Layout of Berowra Waters

The unlawful structures include the:

- (a) Workshop extensions over the approved work area to the south of the marina building¹;
- (b) Floating dry dock (13 metres x 8 metres) to the south of the southern marina arm;
- (c) Dinghy storage pontoon (10 metres x 4 metres) to the north of the marina building; and
- (d) North-south pontoon (20 metres x 3 metres) next to the dinghy storage pontoon.

There is some doubt about whether the current layout of the ground floor of the marina building is lawful or not, but Council has decided that whatever variations may have occurred are minor, and do not warrant any further action.

The unlawful uses include the:

- (a) Use of the floating dry dock for boat maintenance and repair work;
- (b) Use of the dinghy storage pontoon to store dinghies; and
- (c) Use of the north-south pontoon to store hire boats.

The audit report recommended that Council direct the Applicant to:

- (a) Stop using the dry dock until the use is approved;
- (b) Remove the dinghy storage pontoon; and
- (c) Remove the north-south pontoon.

These recommendations have not been implemented. Council seems to have decided not to take any action against these unlawful structures and uses so long as the Applicant is actively trying to legitimise or regularise them.

On 15 October 1999, the Applicant lodged a DA for a similar proposal at the marina, but subsequently withdrew this application following a public meeting on 26 November 1999. It then lodged the DA for this proposal on 1 March 2000.

Figure 3: Photo of Cruisecraft Marina

¹ This structure appears to have been approved by Council at the BA stage (BA 474/76), but the records of this approval are missing. Nevertheless, it is clear that the original development consent was never modified, and so, in strictly legal terms, these extensions, which effectively double the size of the workshop, are unlawful.

3. THE PROPOSED DEVELOPMENT

The Applicant is proposing to expand, regularise, and upgrade its operations at the Cruisecraft Marina (see Figure 3).

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 unauthorised dinghy storage pontoon, which runs north-south from the marina building, to provide "short stay" berths at the marina.

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

- Reduce the size of the proposed new dry dock;
- Use the unlawful north-south pontoon to provide "short stay" berths² for vessels that are going to use the marina's facilities for short periods of time (up to 2 hours), rather than hire boat berths; and
- Include the replacement of the two existing marina pontoons.

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

The Applicant has 35 swing moorings at Berowra Waters, which are currently linked to the Boatshed Marina. However, the Applicant is proposing to:

- Relinquish 19 of the 35 commercial swing moorings to enable the extension of the marina pontoons at the Berowra Waters Marina (DA 149-06-01); and
- Transfer the remaining 19 moorings to the Cruisecraft Marina.

The Department supports this proposal, as the Cruisecraft Marina is better equipped to support these vessels than the Boatshed Marina.

According to the Applicant, the proposal would:

- Upgrade the existing facilities at the marina;
- Provide better boat maintenance and repair facilities and services for the Berowra Waters area;
- Regularise the marina's operations; and
- Improve the marina's environmental performance.

² Short stay" berths are for vessels that are going to use the marina 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.

Figure 4: The Proposed Layout of the Cruisecraft Marina

STATUTORY FRAMEWORK

Permissibility

The Cruisecraft 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 classified as “marina” development, which is 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 of "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 additional approvals under Section 144 of the *Fisheries Management Act 1994* and Part 3A of the *Rivers and Foreshores Improvement Act 1948*.

After subsequent investigations, however, the Department has established that neither of these approvals is required, and that the proposal is consequently not 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:

- (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 40 vessels with no car parking, although in practice, there are currently only about 28 boats at the marina.

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 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.*

There is some concern about the previous environmental performance of the marina, as the Applicant has installed three unlawful structures at the marina, and used these structures to carry out a number of unlawful uses, such as dinghy storage and boat maintenance and repair work.

The Applicant argues the unlawful dry dock simply replaced the previous slipway at the marina, and that boat repair and maintenance work has always been carried out on the site, ever since it was a boatshed. Nevertheless, this argument does not make the unlawful structure lawful.

Despite this the Department believes that the likely impact of the proposed alterations and additions is likely to be minor, and should help to improve the environmental performance of the marina (see Section 6). Essentially, the proposal would reduce the number of marina berths, from 40 to 29, and thereby reduce the potential parking impacts of the marina; but it would increase the scale of boat repair and maintenance work at the marina.

While the two dry docks could, in theory, be used together to maintain or repair a vessel of 25 metres or more, which is one of the criteria that would make the proposal designated, this

would not occur in practice, as the two dry docks are not designed to work in tandem, and they could not be used together safely. Consequently, the proposed conditions of consent prohibit the use of the two dry docks in tandem.

In addition, the existing workshop and two dry docks could also be used to maintain or repair 5 or more vessels of any length at any one time, which would make the proposal designated development, but in practice this is not really feasible, and is unlikely to occur. Consequently, the proposed conditions of consent prohibit the repair or maintenance of more than 4 vessels out of the water at the marina at any one time.

While the Department accepts that the proposal would increase the scale of boat repair and maintenance work at the marina, it is satisfied that the potential impacts of this work would be reduced, as the two dry docks will have a fibreglass deck with no gaps for pollutants to fall through into the water, and a 150mm high steel bund around the outside to prevent pollutants falling off the edge into the water. With good management, these dry docks could be used without polluting the surrounding environment.

Consequently, the Department is satisfied that the proposed alterations and additions to the Cruisecraft 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.

Unlawful Uses

Section 76A of the Act makes it clear that development consent cannot be granted retrospectively.

However, there is a distinction between situations concerning **the unlawful erection of a structure** and the **unlawful use of land or a structure**. Section 109A of the Act provides that:

“the use of a building, work or land which was unlawfully commenced is not rendered lawful by the occurrence of any subsequent event except...the granting of development consent.”

In these situations, applications for consent must be assessed on their merits, and the prior unlawful use should not be taken into consideration in this assessment.

There is also some legal advice suggesting that the unlawful use should cease before consent for the continued use could be granted, but this advice does not specify precisely when (or for how long) the unlawful use should cease.

The Applicant has agreed to cease the unlawful operations before the Minister determines the DA.

Unlawful Structures

The Act does not provide for the retrospective approval of unlawful structures. Nevertheless, a person may regularise an unlawful structure/work by obtaining a Section 149 Building Certificate from Council.

This certificate differs from a development consent or building approval for a structure, in that it confers certain forms of legal immunity on the structure (see Section 149E of the Act), rather than granting consent for the structure. In other words it does not make an unlawful structure lawful; it simply makes it immune from certain types of legal action for, in some cases, a period of 7 years.

The Department has advised the Applicant to obtain a Section 149 Building Certificate from Council, and Council has advised the Applicant that it will only issue this certificate if the Minister approves the DA.

Consequently, the Applicant should be required to submit a structural engineer's certificate to the Department before using any of the unlawful structures, certifying that these works are in accordance with the relevant requirements of the BCA, and *AS 3962-1991 Guidelines for the Design of Marinas*.

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;* and
- *Hornsby Car Parking DCP.*

The proposal has been assessed against the relevant provisions in these plans in Section 6 and Appendix A, and is generally consistent with the provisions in these plans.

4. CONSULTATION

The Applicant lodged the DA for the proposal with Hornsby Council on 1 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 16 March 2000 and 26 April 2000.

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

During the exhibition period, Council received 54 submissions on the DA, 5 from public authorities, and 49 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; however, the Hornsby/Ku-ring-gai District of the NSW Rural Fire Service raised concerns about the potential navigational impacts of the proposal on the Brigade's ability to get into and out of the adjoining fire station.

With regards to the general public, however, 44 out of the 49 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:

- Car parking impacts;
- Navigational impacts;
- Boat maintenance and repair impacts;
- Solid waste and hull scrapings disposal;
- Sewage management; and
- Visual impacts.

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. 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.

5. 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

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 residents 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, this growth 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 5).

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.

Figure 5: The Strategy in the Berowra Waters Plan of Management for the Eastern Foreshore.

For commercial development in the area, it uses current demand to establish a “nominal limit” for each commercial facility, including the Cruisecraft 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 both the demand of the proposed marina and the “nominal limit” set for the marina in the Berowra Waters Plan of Management.

Approved		Proposed		“Nominal Limit” ³	
Use	PS	Use	PS	Use	PS
Retail (59m2)	4	Retail (59m2)	4	Shop (60m2)	4
Office (28m2)	1	Office (28m2)	1		
Workshop (262m2)	3	Workshop (262m2)	3	Workshop (212m2)	3
40 Marina Berths	24	29 Marina Berths	18	20 Marina Berths	12
		16 Swing Moorings	4	5 Houseboats	3
		Short Stay Berths	0	14 Hire Boats	9
		2 Dry Docks	2	15 “Commuters”	9
Total	32	Total	30	Total	40

According to this analysis, the parking demand of the proposal would be significantly under the “nominal limit” set for the marina in the Berowra Waters Plan of Management, and slightly under the demand of the “approved” marina, despite the fact that it would “inherit” 16 swing moorings from the Boatshed Marina.

In other words, concerns about proposal’s parking impacts are unjustified, and should be interpreted as a general concern about the lack of parking on the eastern foreshore during peak periods.

That said, 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:

- Marina pontoons shall only be used to berth a maximum of 29 vessels;
- Unlawful dinghy storage pontoon shall only be used to store dinghies that are used in association with the vessels on swing moorings in the adjoining waterway;
- Unlawful pontoon adjacent the dinghy storage pontoon shall only be used to provide “short stay” berths.

Navigational Impacts

The Hornsby/Ku-ring-gai District of the NSW Rural Fire Service is concerned that the new dry dock would make it more difficult for the Service to get its two boats into and out of the fire station, particularly in windy conditions, or if there are vessels attached to the outside of the dry dock.

The Fire Service provides the only waterborne emergency service in this part of the Hawkesbury-Nepean river system.

³ The car spaces for the shop and workshop were reduced to ensure a consistent comparison between the other two calculations.

In response to these concerns, the Applicant is proposing to move the new dry dock further north by reducing the width of the existing marina pontoon from 2.9 metres wide to 2 metres wide. This will ensure that the dry dock is 1.45 metres clear of the marina's lease boundary.

Despite this proposal, the Fire Service is still concerned about the possible navigational impacts of the new dry dock.

The Waterways Authority, which is responsible for regulating navigational matters, is aware of the Fire Service's concerns, but has raised no objections to the proposal.

The Department has visited the site, and does not believe that the new dry dock would unduly obstruct the Fire Service's activities.

However, the Applicant should be required to:

- Ensure that both dry docks are located wholly within the existing lease area (Special Lease 1989/3);
- Submit a surveyor's certificate to the Director-General (with the Construction Management Plan), certifying that both dry docks will be located wholly within the existing lease area; and
- Ensure that no vessels are berthed adjacent to dry docks at any time.

Boat Maintenance and Repair Impacts

Repairing and maintaining boats involves several activities that could pollute the river.

The Applicant has submitted a Statement of Environmental Effects (SEE) for the proposed dry dock, which was prepared by C W Henstock & Associates Pty. Ltd., consulting engineers.

According to the SEE, the new dry dock (19 metres x 8 metres) would have:

- A flat steel and fibreglass deck with no gaps for pollutants to fall through into the water;
- A 150mm high steel bund around the perimeter to prevent pollutants falling off the edge of the dock into the water; and
- Spaces on the perimeter where temporary posts could be installed, and sheeting attached to cover any vessel on the dock while work (that could generate spray or dust emissions) is being carried out.

In addition, the deck would be swept and cleaned before the dock is submerged.

The Department is satisfied that the potential boat repair and maintenance impacts associated with the proposed dry dock could be mitigated or managed, but recognises that the effectiveness of these measures will depend, to a large extent, on whether or not the Applicant manages the operations in accordance with best practice, and ensures that the surface of the dry dock is clean before the dry dock is submerged.

The existing dry dock has a steel frame with a timber deck, and no sides to prevent pollutants falling off the edge of the deck. It "requires major refurbishment", and should be upgraded to a similar standard as the proposed new dry dock.

To prevent the disruption of boat repair and maintenance work at the marina, the Applicant has asked the Department if it could use the existing dry dock while the new dry dock is being installed, and then upgrade it once the new dry dock is operational. The Department thinks this request is reasonable, but believes there should be a three month time limit imposed on the use of the existing dry dock.

Finally, some submissions were concerned that the two dry docks could be used in tandem to maintain or repair large boats (> 19 metres).

In a letter, dated 6 December 1999, CW Henstock indicates that the two dry docks should not be used in tandem to treat large boats for engineering and occupational health and safety reasons.

To limit the potential impacts of the proposed boat repair and maintenance operations, the Applicant should be required to:

- Upgrade the existing dry dock to a similar standard as the new dry dock;
- Ensure that the two dry docks are not used in tandem to repair or maintain vessels that are longer than 19 metres;
- Ensure that no vessels of 25 metres or longer are maintained or repaired at the marina;
- Ensure that no more than 4 vessels are maintained or repaired out of the water at the marina at any time;
- Ensure that no work that could generate spray or dust emissions is carried out at the marina unless the vessel is fully enclosed, and the potential pollutants are wholly contained within the enclosure; and
- Ensure that the dry docks are only used for boat maintenance or repair work between 7am and 6pm Monday to Friday, and between 8am and 4pm on Saturdays, Sundays, or public holidays; and
- Prepare and implement a Dry Dock Management Plan for the marina.

Hull Scrapings Disposal

At present, the marina generates between 15 to 20 litres of hull scrapings a week.

In the past, the Applicant has dealt with these scrapings as if they were “non-hazardous” waste, and put them in the garbage bins with the rest of the solid waste generated by the marina.

However, there is some doubt about whether the scrapings should be treated as “non-hazardous” waste, as they have never been assessed or classified in accordance with the EPA’s *Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes*.

After Council raised concerns about this, the Applicant has agreed to assess and classify the hull scrapings. In the interim, however, the scrapings are being collected and stored in plastic bags in covered containers, before they are removed by a licensed contractor (AAI Sydney Wastewater Management - EPA License No. 006829).

If these wastes are classified as “non-hazardous”, they would be disposed of with the rest of the marina’s garbage. However, if they are classified as “hazardous”, the interim arrangements would be made permanent.

The Department is satisfied with these measures.

However, the Applicant should be required to:

- Dispose of the hull scrapings in accordance with the EPA’s *Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes*; and
- Prepare and implement a detailed Solid Waste Management Plan for the marina.

Wastewater Management

(a) General Wastewater

The marina currently generates about 220,000 litres of wastewater a year, or an average of 4,230 litres a week. This wastewater is stored in septic tanks, and removed by licensed contractors.

The proposal is not expected to increase the wastewater generated by the marina; however, if it does increase the wastewater, these increases are expected to be minor.

Nevertheless, the existing sullage collection well (3,500 litres) is too small for the marina's existing operations, and needs to be serviced on Mondays and Saturdays because it is too small to hold a full weekend's wastewater; and even then, the system is sometimes "filled into air" or overflows.

Before commissioning the new dry dock, the Applicant should be required to upgrade the sewage system at the marina so that it is capable of storing at least 4,230 litres of wastewater. The upgrade will require a separate approval from Council under Section 68 of the *Local Government Act 1995*.

(b) Wastewater from the Vessels

The marina does not currently have sewage pump-out facilities. However, the Applicant has agreed to install a sewage pump out facility at the Berowra Waters Marina.

The Applicant should be required to:

- 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;
- Encourage all the vessels at the marina to install holding tanks; and
- Prepare and implement a Wastewater Management Plan for the marina.

Fuel Management

Unless properly managed, the fuel operations at the marina could pollute the river.

The Applicant should therefore be required to prepare and implement a Fuel Management Plan for the marina.

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 these proposals 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 dry docks 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, and believes the Applicant should also 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.

Visual Impacts

The proposal would "add" 4 structures to the marina: the two dry docks, the dinghy storage pontoon, and the north-south "short stay" pontoon.

A few submissions said these structures would "clutter up" the eastern foreshore.

The Department does not agree with these submissions, and believes that the structures would blend in well with the existing marina environment, and would not have any adverse visual impacts on the foreshore.

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

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 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.

Foreshore Impacts

Some submissions suggested that the proposal could attract larger boats to the marina, and the wake from these boats could damage the foreshore at Berowra Waters.

The Department does not agree. The impact of the proposal on the foreshore is expected to be at worst neutral, as it is likely to reduce the number of boats that could be berthed at the marina.

The DLWC, who is responsible for protecting the foreshore, does not believe that the proposal would affect the foreshore, and has decided that the proposed works do not require a permit under the *Rivers and Foreshores Improvement Act 1948*.

Noise Impacts

Several submissions suggest the proposal would disturb the peace and quiet of Berowra Waters.

The proposal would increase the scale of boat repair and maintenance work at the marina, however, the Department does not believe that this increase would substantially change the existing noise generated by the marina. Nevertheless, the Applicant should be required to:

- Ensure that the dry docks shall only operate between 7am and 6pm Monday to Friday, and between 8am and 4pm on Saturday, Sunday, and public holidays;
- Ensure that the development does not generate any offensive noise; and
- Prepare and implement a Noise Management Plan for the marina.

Construction Management

The proposal involves limited construction work to install the new dry dock, upgrade the existing dry dock, and replace the existing marina pontoons.

This work is unlikely to generate any significant impacts on the surrounding area.

Nevertheless, the Applicant should be required to:

- Submit detailed plans for the new marina pontoons to the Director-General for approval with the Construction Management Plan;
- Carry out all construction work during regular construction hours; and
- Prepare and implement a detailed Construction Management Plan for the proposed works.

Environmental Management

The marina does not currently have an Environmental Management Plan.

The Berowra Waters Plan of Management recommends that all commercial development at Berowra Waters should have an Environmental Management Plan, which is audited regularly.

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

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

6. 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.

7. 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.

8. CONCLUSION

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

The proposal would:

- Upgrade the existing marina pontoons;
- Improve the boat repair and maintenance facilities at the marina, and consequently reduce the environmental impacts commonly associated with these facilities;
- Provide "short stay" berths at the marina for residents and boat users to park at for short periods of time (less than 2 hours) while they use the marina's facilities; and
- Provide storage for the dinghies that are used in association with the vessels on swing moorings in the adjacent waterway.

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

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

9. RECOMMENDATION

It is recommended that the Minister:

- (a) Consider the findings and recommendations of this report;
- (b) Determine that the proposed development is not Designated Development;
- (c) Approve the DA subject to conditions under Section 80 of the Act; and
- (d) Sign the attached Instrument of Consent.

Endorsed:

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