

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

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

These conditions are necessary to:

- (i) Minimise any adverse environmental impacts associated with the development;
- (ii) Provide for the on-going environmental management of the development; and
- (iii) Provide for regular monitoring and reporting on the development.

Andrew Refshauge MP
Minister for Planning

Sydney,

20 December, 2001

File No: S00/01497

Schedule 1

Development Application: DA No. 151-06-01.

Applicant: Cameron Brae Pty. Ltd.

Consent Authority: Minister for Planning.

Land: Lot 466 DP 727082 and
Crown Lease No. 1985/6

Proposed Development: 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 32m²), 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 public 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 existing 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).

State Significant Development:

The Minister’s declaration on marina development in the Sydney region, which was gazetted on 6 April 2001, applies to the proposed development. Consequently, it is classified as State Significant Development under Section 76A(7)(b)(iii) of the *Environmental Planning and Assessment Act 1979*.

BCA Classification:

Kiosk	Class 6
Boatshed	Class 6
Decks, ramps, walkways and pontoons.	Class 10b

SCHEDULE 2 CONDITIONS OF CONSENT

DEFINITIONS

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

GENERAL

Obligation to Minimise Harm to the Environment

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

Terms of Approval

2. The Applicant shall carry out the development generally in accordance with the:
 - (a) DA, dated 20 March 2000, submitted to Council by the Applicant, as modified by the fax sent to the Department by Peter Lean on 16 May 2001;
 - (b) Plans accompanying the development application marked 506-A02 and 506-A03 prepared by John Sparkes & Associates Pty. Ltd.; and
 - (c) The conditions of this consent.
3. If there is any inconsistency between the above, or between these conditions and any previous conditions of consent for the land, the conditions of this consent shall prevail to the extent of the inconsistency.
4. The Applicant shall comply with any reasonable requirement/s of the Director-General arising from the Department's assessment of:
 - (a) Any report, plan, or correspondence submitted in accordance with the conditions of this consent; or
 - (b) The implementation of any actions or proposals contained in these reports, plans, or correspondence.

Structural Adequacy

5. All building work shall be carried out in accordance with the relevant requirements of the BCA.
6. The new pontoons shall comply with the relevant requirements of *AS 3962-1991 Guidelines for Design of Marinas*.
7. Before any construction work starts, the Applicant shall obtain a Construction Certificate for the proposed development from the Principal Certifying Authority.
8. Before commissioning the new works, the Applicant shall obtain an Occupation Certificate for the proposed development from the Principal Certifying Authority.

Compliance

9. Throughout the life of the development, the Applicant shall secure, renew, maintain, and comply with all the relevant statutory approvals for the development.

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

SPECIFIC ENVIRONMENTAL CONDITIONS

Limits on Operations

13. The Applicant shall comply with the following limits on the proposed development's operations:
 - (a) The café shall have a maximum of 60 seats;
 - (b) 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;
 - (c) The Kiosk may be used to sell pre-packaged food between 7.30 and 9pm daily;
 - (d) The seating on 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;
 - (e) The Boatshed shall only be used to sell certain goods (restricted to ship chandlery, fishing tackle, and general provisions for boat users), and provide storage and amenities for the activities that are directly associated with the development's operations;
 - (f) The existing marina pontoons shall only be used to provide berths for "short stay" vessels¹, up to 32 "commuter boats"², and up to 20 small hire boats (less than 4.5 metres in length);
 - (g) All vessels using the existing marina pontoons shall be berthed in an orderly manner, and the Applicant shall ensure that no overcrowding occurs;
 - (h) No vessels or dinghies shall be stored on, or moored or berthed at any of the other pontoons, decks, ramps, walkways, or structures of the development;
 - (i) No swing moorings shall be operated or managed from the development;
 - (j) All deliveries to and from the development shall be carried out between 9am and 4pm Monday to Friday; and
 - (k) All deliveries to and from the development shall be carried out by small rigid vehicles;

Heritage and Urban Design

14. The Applicant shall:
 - (a) Delete the boat hire pavilion, and the 2 metre high chain fence, running along the western end of the proposed public access ramp from the edge of the proposed deck area to the end of the access ramp, from the plans (see markings on the attached plans);
 - (b) Modify the design of the café entry feature (see the cross-hatched area on the attached plans) to minimise the visual impact of this feature on the existing views from Berowra Waters Road to the waterway;
 - (c) Ensure that the final plans for the proposed development are generally in accordance with the recommendations in the Heritage Report for the proposal, dated 20 December 1999, and prepared by Donal Carr of Designs Concordant, apart from the recommendations regarding the slipway and the extension of the deck area;

¹ "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).

² "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.

- (d) Locate the new garbage storage area in accordance with plan 506-A03 (and not plan 506-A02);
 - (e) Prepare a detailed Colour Scheme Plan for the proposed development, which identifies the colours that will be used, describes the placement of these colours, and justifies the choice of these colours;
 - (f) Prepare a detailed Materials Plan for the proposed development, which identifies the materials that will be used, describes the placement of these materials, and demonstrates that these materials will be sympathetic to the heritage significance of the buildings, and the existing materials on the Kiosk and Boatshed;
 - (g) Provide additional details on the proposed sail shade structures on the deck, and the proposed screens around the deck.
15. The Applicant shall submit revised plans for the proposed development, incorporating the modifications and additional information required by this consent, to the Director-General for approval with the Construction Management Plan.

Pedestrian Walkway and Loading Area

16. The Applicant shall:
- (a) Construct a 1.5 metre wide pedestrian walkway along Berowra Waters Road from the ferry ramp to the Post Office³;
 - (b) Construct a loading area and access crossing adjacent to the development in Berowra Waters Road⁴; and
 - (c) Install an appropriate barrier across the front of the site on Berowra Waters Road, and carry out any additional work that is required to tie these works to the existing infrastructure⁵;

Note: The Applicant will require a separate approval from Council under Section 138 of the Roads Act 1993 for any works in Berowra Waters Road.

17. The Applicant shall pay the full cost associated with implementing these works⁶.
18. These works shall be designed and constructed generally in accordance with Council's *Civil Works - Design and Construction Specification*⁷.
19. The Applicant shall prepare:
- (a) 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*;
 - (b) Prepare a Traffic Management Plan in accordance with *AS 1742.3 Traffic Control Devices for Works on Roads* for the proposed works on Berowra Waters Road, and submit this plan to Council for approval with the detailed plans for the proposed pedestrian walkway and loading dock⁸.
20. Before commissioning the proposed development, the Applicant shall 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 works⁹.
21. For all the works undertaken within the public road, the Applicant shall:
- (a) Submit a Compliance Certificate to Council for each nominated stage of the proposed development, certifying that the engineering works comply with the development

³ Council GTA 1a.

⁴ Council GTA 1b.

⁵ Council GTA 1c.

⁶ Council GTA 2.

⁷ Council GTA 3.

⁸ Council GTA 4.

⁹ Council GTA 5.

- consent, construction certificate, and Council's *Civil Works - Design and Construction Specification*; and
- (b) Submit a Work-As-Executed Plan, that has been prepared by a registered surveyor, to Council before the new works are commissioned¹⁰.

Marina Pontoons

22. The Applicant shall submit detailed plans for the proposed marina pontoons that would replace the western arm of the marina to the Director-General for approval with the Construction Management Plan.

Lighting

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

Disabled Access

25. The disabled access entrances, exits, and routes shall be clearly marked and well-lit.

Café Fitout

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

Wastewater Management

27. Before commissioning the proposed works, the Applicant shall upgrade the existing wastewater treatment system so that it can accommodate all the wastewater generated on the site for a 7 day retention period.

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

Garbage Storage

28. The new garbage storage area shall be designed and constructed in accordance with Council's *Garbage Code*.

Construction Hours

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

Noise

¹⁰ Council GTA 6.

32. The Applicant shall ensure that development does not generate any offensive noise during operations.

Marine Vegetation and Fish Habitat

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

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

34. The Applicant shall ensure that the distance between the underside of the pontoons and the substrate at Low Water (0.0metres ZFDTG) shall not be less than 600mm.

Demolition

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

ENVIRONMENTAL MANAGEMENT PLANS

(a) Construction Management Plan

36. The Applicant shall prepare and implement a Construction Management Plan for the proposed development. This plan must:
- (a) Describe the proposed construction works;
 - (b) Outline the proposed construction program;
 - (c) Set standards and/or performance measures for the relevant environmental issues associated with the construction work;
 - (d) Describe what actions and measures will be implemented to mitigate the potential impacts of these construction works, and to ensure that these works will comply with the relevant standards and/or performance measures;
 - (e) Describe what procedures will be implemented to:
 - Register, report, and respond to any complaints during the construction works; and
 - Ensure the operational health and safety of construction workers;
 - (f) Identify the key personnel who will be involved in the construction works, and provide contact numbers for this personnel;
 - (g) Explain how the environmental performance of the construction works will be monitored, and what actions will be taken if any non-compliance is detected;
 - (h) Include a detailed:
 - Erosion and Sediment Control Plan that has been prepared in accordance with the Department of Housing's publication *Managing Urban Stormwater: Soils and Construction*;
 - Dust Control Plan;
 - Tree Protection Plan;
 - Construction Wastewater Management Plan;
 - Construction Waste Management Plan;
 - Construction Noise Management Plan;
 - Construction Traffic Management Plan; and
 - Landscaping Plan that has been prepared in accordance with Council's *Landscape Code for Development and Building Approval*; and
 - (i) Include the:
 - Revised plans for the proposed development (see Condition 15);
 - Detailed plans for the proposed pedestrian walkway and loading area (see Condition 19);
 - Detailed plans for the proposed marina pontoons (see Condition 22); and
 - Detailed plans for the proposed external lighting (see Condition 24).
37. The Applicant shall not carry out any site works, demolition works, or construction works on the site before the Director-General has approved the Construction Management Plan for the proposed development.

Environmental Management Plan

38. The Applicant shall prepare and implement an Environmental Management Plan for the proposed operations of the development. This plan must:
- (a) Describe the proposed operations;
 - (b) Identify all the relevant statutory requirements that apply to these operations;
 - (c) Set standards and/or performance measures for each of the relevant environmental issues;
 - (d) Describe what actions and measures will be implemented to mitigate the potential impacts of the development, and to ensure that the development meets these standards and/or performance measures.
 - (e) Describe what measures and procedures will be implemented to:
 - Register, report, and respond to complaints during operations; and
 - Ensure the operational health and safety of workers;
 - (f) Describe the role, responsibility, authority, and accountability of all key personnel involved in the development's operations; and
 - (g) Include a detailed:
 - Berthing Management Plan;
 - Café Management Plan;
 - Wastewater Management Plan;
 - Waste Management Plan;
 - Loading Dock Management Plan; and
 - Noise Management Plan.
39. The Applicant shall not commission the proposed development before the Director-General has approved the Environmental Management Plan for the proposed operations.
40. The Applicant shall make a copy of this Environmental Management Plan available to the public on request.
41. The Applicant shall review and update this Environmental Management Plan regularly, or as directed by the Director-General.

ANNUAL ENVIRONMENTAL AUDIT

42. Within 12 months of commissioning the proposed development, and annually thereafter, unless the Director-General directs otherwise, the Applicant shall commission, and pay the full cost of, an independent environmental audit of the marina. This audit must:
- (a) Be conducted by a suitably qualified, experienced, and independent person whose appointment has been endorsed by the Director-General before the audit starts;
 - (b) Assess the environmental performance of the development's operations, and its impacts on the surrounding environment;
 - (c) Assess whether the development is complying with the relevant standards, performance measures, and statutory requirements;
 - (d) Review the adequacy of the development's Environmental Management Plan; and, if necessary,
 - (e) Recommend measures or actions to improve the environmental performance of the development, and/or the development's Environmental Management Plan.
43. Within 1 month of commissioning the audit, the Applicant shall submit a copy of the Independent Environmental Audit report to the Director-General.

DISPUTE RESOLUTION

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