

ASSESSMENT REPORT

DEVELOPMENT APPLICATION (DA 149-06-01): PROPOSED EXPANSION AND CONTINUED USE OF THE BEROWRA WATERS MARINA AT BEROWRA WATERS



Department of
Urban Affairs and Planning

File No: S00/01498

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1. SUMMARY

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

The proposed development involves:

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

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

On 20 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 61 submissions on the DA: 6 from public authorities, and 55 from the general public.

The Environment Protection Authority, Department of Land and Water Conservation, NSW Fisheries, Waterways Authority, and the Hawkesbury Nepean Catchment Management Trust do not object to the proposal; however, the Roads and Traffic Authority raised some concerns about the proposal to use stacked parking in the marina car park.

With regards to the general public, however, 50 out of the 55 submissions objected to the proposal. These objections included submissions from several community groups, including the Association for Berowra Creek Inc, the Berrilee Progress Association, the Hornsby Shire Residents and Ratepayers Association Inc, the Galston Area Residents' Association, the Anglers Action Group, and the Sea Bees Boating Club.

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, however, these submissions raised concerns about the following issues: parking impacts, wastewater management, visual impacts, loss of public space, conversion of swing moorings to fixed berths, marine vegetation and fish habitat 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 Berowra Waters Marina is located off Bay Road on the western side of Berowra Waters (see Figures 1, 2 and 3), partly on land (Lot 258 DP721561), and partly on water (Crown Lease No. 1968/18).

Figure 1: Photo of Berowra Waters Marina (to the right of the picture)

The marina is surrounded mostly by water and bushland. However, there are a number of houses to the east of the marina, along Bay Road, and to the south-east of the marina, along the waterway. In addition, there is a public car park with recreational facilities and a boat ramp to the west of the marina.

Before the marina was built, there was a boatshed on the site, which had been operating since the 1960s, with fuel tanks and bowsers.

The marina was approved in 1980 (DA 112/80), and subsequently expanded in 1981 (DA 391/81).

These various approvals provide for:

- (a) A three-storey marina building with:
 - Level 1: Supermarket (165m²);
Fast food outlet (24m²);

- Offices (16m²);
 - Laundry (9m²);
 - Hire Boat Shop (31m²);
 - Workshop (48m²);
 - Restaurant (190m²);
 - Office;
 - Staff Room;
- Level 2:
- Level 3:3 Bedroom residence;
- (b) A two-storey car park adjacent to the marina building with 32 car spaces;
- (c) A shed and slipway;
- (d) The two marina pontoons (which currently run in an east-west direction from the marina building along the southern shoreline of Dusthole Bay); and
- (e) 3 Underground fuel tanks and a fuel wharf.

The development consents do not set a specific limit on the number of berths at the marina. They allow up to 100 berths, provided a swing mooring is relinquished and a car parking space provided for each berth.

Figure 2: Photo of the Berowra waters Marina Building (taken from the fuel pontoon)

Figure 3: The General Layout of Berowra Waters

In 1999, Council conducted an audit of the marina's works and operations. This audit identified several unlawful structures and uses at the marina.

The unlawful structures include the:

- (a) Marina and fuel pontoons, which were all built in a different configuration to the approved configuration without modifying the original development consent¹;
- (b) Works associated with converting the supermarket/fast food outlet into a café with outdoor seating;
- (c) Internal modifications to level 1 of the marina building (to integrate the office space and the boat sales, hire, and supply facilities); and
- (d) Internal modifications to level 2 of the marina building.

The unlawful uses include the:

- (a) Use of the supermarket/fast food outlet as a café with outdoor seating;
- (b) Use of the existing car park to park up to 44 vehicles using stacked parking;
- (c) Use of the marina pontoons to provide berthing for a charter ferry and to conduct charter ferry operations (the Macquarie Princess); and
- (d) Use of the marina pontoons to berth up to 67 boats (when, strictly speaking, the marina only has consent to berth 32 boats, based on the available parking).

There is some doubt about whether these approvals provide for the use of the marina pontoons to berth up to 15 hire boats. The Applicant argues that the hire boat operations have been on the site since the 1960s. The Department accepts this argument, particularly since DA 391/81 approved a "hire boat shop" in the marina building.

The audit report recommended that Council:

- (a) Direct the Applicant to reduce the number of boats at the marina to comply with the consent;
- (b) Seek legal advice on its ability to enforce the parking requirements in DA 391/81;
- (c) Take no action concerning the fuel wharf;
- (d) Direct the Applicant to close the café until the use is approved;
- (e) Take no action concerning the minor internal modifications on Level 1 and 2 of the marina building; and
- (f) Direct the Applicant to stop the charter ferry operations until the use is approved.

These recommendations have not been implemented. Council seems to have decided not to take any action against the 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 20 March 2000.

¹ Both Council and the Department of Land and Water Conservation approved the different alignment at the Building Application stage; but the original consent was never modified. In strictly legal terms, therefore, these pontoons are classified as unauthorised works, even though two public authorities approved the change.

3. THE PROPOSED DEVELOPMENT

The Applicant is proposing to expand and regularise its operations at the Berowra Waters Marina (see Figures 4 and 5).

The proposed development involves:

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

In order to increase the number of berths at the marina from 60 to 79, the Applicant is proposing to relinquish 19 swing moorings. The Waterways Authority has indicated that these moorings would not be reallocated.

This proposal is slightly different to the proposal that was exhibited by Council, as the Applicant has subsequently modified the original DA to include the use of the marina pontoons (for hire boats), and the "fuel wharf" (for "short stay" berths).

The Department considers these modifications to be minor, and believes that they simply formalise existing approvals, would not expand the marina's operations, and therefore would not generate any additional environmental impacts. Consequently, the Department does not believe that the DA should be (or is required to be) re-exhibited.

According to the Applicant, the proposal would:

- Provide better boating facilities at Berowra Waters (by substituting berths for swing moorings);
- Provide a charter ferry service at Berowra Waters, which would be a popular tourist attraction, and improve the public's access to the surrounding waterway;
- Provide a new café on the western foreshore of Berowra Waters, which would provide reasonably priced food to residents, visitors, and boat users in an attractive setting;
- Provide the first sewage pump-out facility for boat users at Berowra Waters;
- Provide additional parking at the marina to accommodate some of the additional parking demand generated by the proposal;
- Shift the current parking demand for the 19 swing moorings from the eastern to the western foreshore of Berowra Waters, which is better equipped to accommodate this demand; and
- Improve the environmental performance of the marina.

It is important to note that this proposal is linked to a separate proposal to construct and operate a new car park with 34 car spaces and 2 bus spaces at 69-73 Bay Road, Berrilee (see separate assessment report DA 152-06-01).

Figure 4: The General Layout of the Berowra Waters Marina Showing the New Berths (in Shading)

Figure 5: The Ground Floor Plans of the Berowra Waters Marina Showing the Stacked Car Parking and the Proposed Use of the Existing Floor Space

4. STATUTORY FRAMEWORK

Permissibility

The Berowra Waters Marina is located partly on land, and partly on water.

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

The various elements of the proposal can be classified as “car park”, “marina”, “restaurant”, and “tourist facility” development. These types of development are permissible with consent in the Business D (Aquatic Service Centre) zone; and, under Clause 20(1) of the LEP, all development below the mean high water mark requires consent.

Consequently, the proposed development is permissible with consent.

One of the public submissions argued that “café” development is not defined in the LEP, and implied that the proposal would therefore be prohibited. This is incorrect: the proposed café is incorporated in the definition of “restaurant” development in the LEP, and is therefore permissible with consent in the Business D zone.

Minister's Role

The proposal is classified as State Significant Development (see below), and the Minister is 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 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. 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) that have 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 does not satisfy the criteria for Designated Development in Schedule 3 of the Regulation, as it:

- Does not have the capacity to moor, park or store 15 or more vessels of any length of more than 20 metres or more;
- Has greater than 30 vessels but
 -) is not located in non-tidal waters, or within 100 metres of a wetland or aquatic reserve;
 -) it does not require annual maintenance dredging; and
 -) the ratio of car park spaces to vessels is greater than 0.5:1;
- Does not have an intended capacity of 80 or more vessels of any size;
- Has a slipway for repairing and maintaining vessels out of the water, but this slipway cannot accommodate a vessel of 25 metres or more, nor 5 or more vessels at any one time.

The proposal would increase the number of vessels moored at the marina to 79, and the number of car spaces to 48. Consequently, the ratio of car spaces to vessels would be greater than 0.5:1, and the proposal would not satisfy the criteria for Designated Development.

Nevertheless, there is some debate about the number of vessels that would be moored at the marina. In addition to the 79 vessels, there would also be 15 hire boats that are associated with the marina's hire boat operations. So strictly speaking, there would be 94 vessels berthed at the marina.

Nevertheless, the hire boats are less than 4.5 metres long, and should be classified as "small craft", which are specifically excluded from Designated Development criteria.

Consequently, the proposal would be not be 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 given any 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) this 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 would 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:

- *State Environmental Planning Policy No. 11 - Traffic Generating Development;*
- *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, and satisfies the relevant assessment criteria, of these instruments.

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 of these plans. While the proposal is inconsistent with some of the provisions in these plans, the Department believes these variations are justified on merit grounds.

5. CONSULTATION

The Applicant lodged the DA for the proposal with Hornsby Council on 20 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 29 April 2000.

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

During the exhibition period, Council received 61 submissions on the DA, 6 from public authorities, and 55 from the general public.

The Environment Protection Authority, Department of Land and water Conservation, NSW Fisheries, Waterways Authority, and the Hawkesbury Nepean Catchment Management Trust did not object to the proposal; however, the Roads and Traffic Authority raised some concerns about the proposal to use stacked parking at the marina car park.

With regards to the general public, however, 50 out of the 55 submissions objected to the proposal. These objections included submissions from several community groups, including the Association for Berowra Creek Inc, the Berrilee Progress Association, the Hornsby Shire Residents and Ratepayers Association Inc, the Galston Area Residents' Association, the Anglers Action Group, and the Sea Bees Boating Club.

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;
- Wastewater management;
- Visual impacts;
- Loss of public space;
- Conversion of swing moorings to fixed berths;
- Marine vegetation and fish habitat impacts;
- Foreshore impacts; and
- Environmental management.

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 recommended 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 recommended 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

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).

This is clearly reflected in all the submissions, and is obviously the most contentious issue associated with the proposal.

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; more permanent residents are moving to the area (replacing weekenders); the ratio of cars to each residence is increasing, and reputation of Berowra Waters as a popular recreation area is growing.

The *Berowra Waters Plan of Management* grapples with this issue, and tries to strike a balance between the residential, commercial, and recreational parking demands. The general thrust of the plan is summarised in Figure 5.

Conceptually, the plan proposes to:

- (a) Introduce parking fees to modify behaviour; and
- (b) Increase parking supply within environmental limits.

For commercial development at Berowra Waters, the plan uses current demand to establish a “nominal limit” for each commercial facility, including the Berowra Waters Marina, and says that future uses should not exceed these limits.

This proposal, however, is based on what the plan considers to be an acceptable demand on the **public parking** at Berowra Waters. In other words, it accepts that the commercial uses at Berowra Waters would rely, to a significant extent, on the public parking in the area.

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

On the western foreshore, the parking strategy is to:

- (a) Introduce fees to modify behaviour;
- (b) Convert 20 car/trailer spaces to car spaces to reflect current demand (to create up to 48 car spaces at a cost of about \$50K);
- (c) Reconfigure the public car park and provide decked parking at the rear (to create up to 115 spaces at a cost of about \$ 2 million; and
- (d) Improve/maximise road side parking on Bay Road.

The plan states clearly that remote parking is **not** the preferred solution, and should only be pursued if the other options do not proceed within a reasonable period. In addition, it indicates that if remote parking is to be pursued, it should be located close to (or in association with) other community or commercial uses.

In principle, the Department agrees with this strategy.

There is no doubt that the Berowra Waters Marina proposal would increase parking demand on the western foreshore, and could intensify existing conflicts.

However, it is important to note that the proposal would only intensify these conflicts during peak periods. During off-peak periods, the increased demand could easily be accommodated in the adjoining public car park, and the Department believes that this would be an efficient use of the car park. The critical issue is then to assess the potential parking impacts during peak periods.

In order to understand the issue better, it is worth comparing the peak parking demand of the approved marina against the demand of the proposed marina, using the standards in Council’s DCP, and then comparing this demand with the “nominal limit” for the marina in the *Berowra Waters Plan of Management*.

Approved		Proposed		"Nominal Limit"	
Use	PS	Use	PS	Use	PS
Hire Boat (31m ²)	1	Chandlery etc.	2		
Workshop (48m ²)	1			Workshop (74m ²)	2
Laundry (9m ²)					
Offices (16m ²)	1	Offices	1	Offices (60m ²)	2
Fast Food (24m ²)	3	Café (190m ²)	24		
Supermarket (165m ²)	10			Shops (164m ²)	11
Level 1 Total	16	Level 1 Total	27	Level 1 Total	15
Restaurant (190m ²)	27	Restaurant	27	Restaurant	32
Residence (3 bd)	2	Residence	2	Residence	2
Level 2/3 Total	29	Level 2/3 Total	29	Level 2/3 Total	34
60 Marina Berths	36	78 Marina Berths	47	60 Marina Berths	36
15 Hire Boats	9	15 Hire Boats	9	15 Hire Boats	9
		Charter/Ferry	50 ²	Charter/Ferry	50
Total	90	Total	162	Total	144

According to this analysis, the proposal would increase the marina's parking demand by up to 72 spaces, which would exceed the "nominal limit" set for the marina in the *Berowra Waters Plan of Management* by 18 spaces³. This increase in demand can be attributed to the:

- Change of use on Level 1: 11 spaces
- New marina berths: 11 spaces
- Charter ferry: 50 spaces.

To accommodate or reduce this demand, the Applicant is proposing to:

- (a) Increase the capacity of the existing car park at the marina from 32 to 48 by using stacked parking; and
- (b) Prohibit the charter ferry from picking up or setting down passengers during peak periods.

Increasing the Capacity of the Marina Car Park

To increase the capacity of the marina's car park from 32 to 48, the Applicant is proposing to park vehicles in the aisles, and on the access ramps, of the car park during peak periods; and to employ a full-time parking attendant to co-ordinate these activities.

Several submissions were sceptical about this proposal, declaring it "unworkable", "impractical", and "dangerous".

The RTA and Council's traffic engineer have raised concerns about the proposal, arguing that it would cause on-street queuing in Bay Road (while cars are being dropped off or picked up), and suggested that this queuing could exacerbate congestion and pedestrian conflicts on Bay Road.

In addition, Council's traffic engineer argues that the access ramps are too steep for parking, and do not comply with *AS 2890.1 - 1993 Off Street Car Parking*.

² This is based on the parking rates in the Berowra waters Plan of Management (Draft). These rates assume the charter ferry would attract 200 passengers/day, and the parking demand would be 1 car space/4 passengers.

³ This analysis includes the 50 spaces which were attributed to the ferry in the Berowra Waters Plan of Management in the marina's nominal limit, because the plan acknowledges that the existing ferry is an asset to the area, and provides for its retention (even though the operation of the ferry has never been approved).

In response to these criticisms, the Applicant claims that there is sufficient space on both levels of the car park to allow vehicles to be moved around to access individual spaces without it being necessary to take any vehicle onto the street whilst the other vehicle is exiting its space.

This may be the case on some occasions, however, the Department agrees with the concerns raised by Council and the RTA, and believes that the proposal would cause on-street queuing on Bay Road, particularly if the access ramps are used for parking.

To prevent this, the Department believes that parking should be prohibited on the access ramps of the car park. This would reduce the capacity of the car park from 48 to 44. However, it would still increase the capacity of the car park from 32 to 44, and provide an extra 12 spaces at the marina during peak periods.

To ensure that the scheme operates efficiently and effectively, the Applicant should be required to prepare and implement a Parking Management Plan for the marina.

Restricting Charter Ferry Operations During Peak Periods

To reduce the parking demand of the marina during peak periods, the Applicant is proposing to prohibit the picking up or setting down of charter ferry passengers during peak periods (11 am to 3pm on weekends and holidays).

This proposal is problematic.

Under this arrangement, for instance, the ferry could pick passengers up at 10.50 am, and set them down again at 3.10pm. This means that while the passengers are out on the ferry trip, their vehicles would be sitting in the car park at Berowra Waters. In other words, the proposal would do nothing to reduce the demand of the marina during peak periods.

There appear to be two options for reducing the parking demand of the ferry during peak periods:

- (a) Prohibit ferry operations; or
- (b) Restrict ferry operations by, for instance, limiting the number of passengers that are allowed to use the ferry.

The second option is more attractive than the first, as there are regional benefits associated with the use of the ferry (mainly because it would improve the general public's access to the Hawkesbury River by boat), and these benefits would be reduced if the ferry's operations are prohibited at precisely the time when its services are likely to be most popular.

Nevertheless, the benefits associated with the proposed ferry need to be weighed against the potential impacts associated with its operations, and there is no doubt that it would increase the parking demand of the marina, and exacerbate the existing parking problems at Berowra Waters.

While the Department doubts that the ferry would generate parking demand for up to 50 vehicles during peak periods, as predicted in *the Berowra Waters Plan of Management*, the Applicant has not provided any additional information on the potential parking demand of the ferry during peak periods.

In the absence of this information, the Department believes that it would be difficult to set credible restrictions on the ferry's operations. Consequently, the Applicant should be required to ensure that the charter ferry does not conduct any charter ferry operations on the waterway between 11am and 3pm during peak periods.

This, in conjunction with the provision of extra car parking at the marina car park during peak periods, would reduce the peak parking demand of the marina from 72 to 10 spaces, which is roughly the demand generated by the change of use on the ground floor of the

marina building, which is primarily due to the introduction of the café on the ground floor of the marina building.

Reducing the Parking Demand of the Café

The Department is satisfied that the proposed café would contribute positively to the future development of the western foreshore of Berowra Waters, by providing a wide array of people (including residents, visitors, and the marina's customers) with reasonably priced food in an attractive setting.

However, the Department is concerned about the potential parking impacts associated with the café (190m²), which requires 24 spaces under the parking controls in Council's *Car Parking DCP* (1 space/8m²), and believes that these impacts should be reduced before the café could be approved.

In its proposed conditions, Council suggested that the café's parking demand could be reduced by prohibiting the outdoor seating. While this would undoubtedly reduce the café's parking demand, the Department believes it would be counter-productive to ban outdoor seating at the marina, as this would stop people from sitting outside in the warmer months and enjoying the views across the water.

Consequently, the Department believes that it would be better to reduce the café's parking demand by restricting the number of seats allowed at the café.

At present, the Applicant has not indicated how many seats the café is likely to have. Nevertheless, it is possible to use the parking controls in the Council's *Car Parking DCP*⁴ to translate the café's floor space into an equivalent number of seats:

192m ²	=	24 spaces	=	120 seats
160m ²	=	20 spaces	=	100 seats
128m ²	=	16 spaces	=	80 seats
112m ²	=	14 spaces	=	70 seats

These calculations suggest that the parking demand of the proposal could be reduced by up to 10 spaces during peak periods by limiting the number of seats at the café to 70.

In other words, it would reduce the potential parking impacts of the café enough to ensure that the proposal as a whole would not increase the peak parking demand of the marina over and above the parking demand of the existing marina; but it would also give the Applicant enough flexibility to put the café's seats indoors or outdoors depending on the weather conditions.

Consequently, the Department is satisfied that the potential parking impacts of the proposal can be kept to a minimum, particularly during peak periods.

Nevertheless, the Applicant should be required to ensure that:

- The two marina pontoons shall only be used to berth a maximum of 78 vessels;
- The "hire boat area" shall only be used to berth a maximum of 15 small hire boats (less than 4.5 metres);
- The "charter ferry berth" shall only be used to berth a maximum of 1 charter ferry with a maximum capacity of 100 passengers;
- The charter ferry shall not conduct any charter ferry operations on the waterway between 11am and 3pm on Saturdays, Sundays, or public holidays;
- The marina car park shall only be used to park a maximum of 44 vehicles, and the Applicant shall ensure that no cars are parked on the entry or exit ramps of the car park at any time; and

⁴ The DCP requires 1 space for every 5 seats for fast food outlets with internal and external seating.

- The café on the ground floor of the marina building shall have a maximum of 70 seats (including indoor and outdoor seating).

Non-Compliance With Existing Conditions of Consent

Under the original development consent for the marina (DA 112/80), the Applicant is required to provide at least one car parking space for each berth at the marina. Nevertheless, these conditions make it clear that some of these spaces could be provided off-site in a remote location:

...any space which cannot be provided in immediate proximity to the marina in accordance with the plans submitted, being provided to Council's satisfaction with arrangements for a shuttle service between the marina and car parking area...These arrangements are required to relieve the acute parking shortage in busy periods in the vicinity of the marina.

After Council approved the marina car park with 32 spaces in 1981 (DA39/1981), the Applicant initially provided the remaining parking spaces at Neale's Boat Storage, a commercial boat storage business located about 2 kilometres away at Berrilee. This commercial agreement subsequently lapsed and was not renewed, and the Applicant bought a site, in consultation with Council, at 69-73 Bay Road, Berrilee which it intended to use for car parking.

Soon after buying the site, the Applicant asked Council to rezone the site to allow car parking.

In 1995, following the rezoning of the site, the Applicant lodged a DA with Hornsby Council for a car park and shed, but Council refused this DA in November 1996. Following this refusal, the Applicant lodged an amended DA with Council for a car park, shed and water tank, which Council subsequently refused in April 1997. The Applicant then lodged an appeal against Council's decision in the Land and Environment Court, but the Court refused this appeal on traffic safety grounds.

On 15 October 1999, after revising the proposal to accommodate the traffic safety concerns raised by the Court's assessor, the Applicant lodged a DA with Council for a car park with 34 car spaces and 2 bus spaces on the land at 69-73 Bay Road, Berrilee.

Because this DA is associated with the Berowra Waters Marina DA, Council subsequently forwarded the Car Park DA to the Minister so that it could be assessed and determined at the same time as the Berowra Waters Marina DA.

If the Car Park DA is approved, and the Applicant is allowed to build and use the remote car park, then the Applicant would be able to comply with the conditions of its original consent for the Berowra Waters Marina (DA 112/80), and consequently put an end to several years of non-compliance.

Nevertheless, this approval would be inconsistent with the *Berowra Waters Plan of Management*, which was recently adopted by the Minister for Land and Water Conservation and Hornsby Council.

The *Berowra Waters Plan of Management*, which was prepared following extensive consultation with the local community, clearly states that remote parking is **not** the preferred solution for resolving parking problems at Berowra Waters, and should only be pursued if **other options do not proceed within a reasonable period**. Instead, the parking strategy in the *Plan of Management* advocates increasing the supply of parking on the western foreshore within "environmental limits".

The Department supports this parking strategy, and would prefer to see it implemented instead of the remote car park.

Consequently, the Department believes the Applicant should be encouraged to implement, or at least contribute towards the implementation of, the parking strategy in the *Berowra Waters Plan of Management* instead of being allowed to build and operate the remote car park. However, the Department also believes that these parking spaces should be available to the general public, and should not be for the exclusive use of the marina.

The Department has held discussions with representatives from Council and the Department of Land and Water Conservation about the possibility of requiring the Applicant to provide the parking adjacent to the marina in accordance with parking strategy in the *Berowra Waters Plan of Management*.

While both agencies accept that this proposal has merits, and that it would enable the proposed parking strategy to be implemented sooner rather than later, they indicated that there are currently several obstacles to implementing this proposal, as neither DLWC nor Council has carried out any detailed investigations to see if the proposed parking is feasible; there are no detailed plans for the parking; and no funding has been allocated for doing the necessary investigations, preparing detailed plans, and carrying out the proposed works.

Despite these obstacles, the Department believes this proposal presents an excellent opportunity to implement the parking strategy in the *Berowra Waters Plan of Management*, and provide additional parking for the marina within walking distance of the marina.

Certainly, this proposal would produce a much better outcome than the proposal to provide a new remote car park in Berrilee.

The Applicant also believes that this would be the best outcome, and is prepared to provide the parking adjacent to the marina in accordance with the *Berowra Waters Plan of Management*. However, the Applicant is also concerned by the fact that it has no direct control over the implementation of this strategy, and would need to rely, to a significant extent, on the cooperation of Council and DLWC. Consequently, it is concerned that the implementation of the strategy could be delayed for an unreasonable period.

Based on an assessment of what needs to be done to implement the strategy, the Department accepts that the implementation of the strategy could be delayed for an unreasonable period.

Consequently, it believes the Applicant should be required to provide at least 28 parking spaces for the marina within 2 years of this consent, and that these additional car parking spaces should be provided adjacent to the marina in general accordance with the parking strategy in the *Berowra Waters Plan of Management*. However, if after 18 months from the granting of this consent, the Applicant is unable to provide this parking, but can demonstrate that it has taken all reasonable measures available to provide this car parking, then with the written approval of the Minister, it should be allowed to provide the additional parking on the land at 69-73 Bay Road, Berrilee in general accordance with the proposal in DA 152-06-01.

Under this arrangement, the Applicant would have at least 18 months to carry out the necessary investigations for the car park, to prepare and lodge a DA for the proposal, and if it is approved, to implement (or start implementing) the proposal. However, this arrangement also acknowledges that under certain conditions, the Applicant should be allowed to construct the remote car park.

This arrangement is generally consistent with the parking strategy in the *Berowra Waters Plan of Management*, which indicates that remote parking should only be provided **in the event that other options do not proceed within a reasonable period**.

The main drawback with this arrangement, however, is that the Applicant would have to be allowed to continue operating the Berowra Waters Marina in non-compliance with its original consent for around 18 months, and possibly for up to 2 years.

While this is obviously regrettable, the Department believes that the potential costs of this approach would be outweighed by its potential benefits, as it would allow the parking strategy in the Berowra Waters Plan of Management to be implemented sooner rather than later, and it would give the Applicant a chance to satisfy the original conditions of consent for the marina without building the remote car park at Berrilee.

Wastewater Management

The proposed expansion is expected to increase the amount of wastewater generated by the marina, including the general wastewater associated with the toilets, café, and restaurant in the marina building, and the wastewater generated by the vessels at the marina. If this wastewater is not managed properly, it could pollute the waterway.

(a) General Wastewater

The marina currently has a package Sewage Treatment Plant (STP) that treats the wastewater generated by the toilets and restaurant, and discharges the treated wastewater into Berowra Creek, under an EPA license.

The Applicant is proposing to use this STP to treat the additional wastewater generated by the proposal.

Several submissions argued that the STP is inadequate for the marina's existing operations, and would not be able to cope with the proposed increase in wastewater.

Nevertheless, the Applicant's wastewater consultant argues that the existing plant has worked well over the years, and that its performance has improved significantly since new aeration diffusers were installed in June 2000⁵.

Consequently, he argues that the existing STP would have sufficient capacity to accommodate the additional wastewater generated by the proposal.

The EPA has reviewed the DA, and advises that "no changes are required to the existing licence to cover the proposed extension as set out in the DA".

The Department is therefore satisfied with the Applicant's proposal.

(b) Wastewater from the Marina's Vessels

There are currently no sewage pump-out facilities in the Berowra Waters area. Consequently, boating activities in the area are among the biggest contributors to water pollution of the estuary.

After discussions with Council and the Department, the Applicant has agreed to provide a sewage pump-out facility at the marina, which would be available to all the boats at Berowra Waters.

This is a significant benefit associated with the proposal, which should help to reduce water pollution both at the marina and in the surrounding waterway⁶.

Nevertheless, the Applicant should be required to:

- Install and commission a sewage pump-out facility at the marina before it commissions the new marina berths;
- Ensure that all the boats with holding tanks at the marina are required to use the new sewage pump-out system; and
- Encourage all the vessels at the marina to install holding tanks.

⁵ This upgrade occurred after the exhibition of the DA.

⁶ This facility will require a separate approval from Council under Section 68 of the *Local Government Act 1995*.

(c) Charter Ferry

The current charter ferry - the Macquarie Princess - does not have a holding tank on board. Consequently, the Applicant should be required to ensure that the charter ferry installs a holding tank before it commences operations at the marina.

Visual Impact

The proposal would extend the existing marina pontoons eastwards along the southern shoreline of Dusthole Bay towards the ferry ramp, and use the existing piles that were installed when the marina was originally built in the early 1980s.

Several submissions argued that this extension would have an adverse impact on Berowra Waters, claiming that it would “fill up” Dusthole Bay, create a “wall of boats” along the southern shoreline, and block views from Bay Road to the waterway.

While the Department accepts that the proposal would increase the bulk and scale of the existing marina, it does not believe that these increases would have an adverse impact on the foreshore or the dramatic bushland setting; instead, it is satisfied that the new structures would blend in well with the existing marina environment.

It should also be noted that, by removing 19 swing moorings from the water, the proposal would remove some of the “clutter” from the existing riverscape. The Applicant is proposing to install some additional external lighting with the new marina berths, but has not provided any details on this lighting in 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 proposed lighting to the Director-General for approval with the Construction Management Plan.

Loss of Public Space

Several submissions claim the proposed charter ferry berth and outdoor seating would be located on “public space”, and would therefore reduce public access to the area.

These claims are only partly true. Both the outdoor area at the marina building (where the café’s outdoor seating would be located) and the marina pontoons (where the charter ferry would be berthed) are really classified as **private space** where **public access** is allowed during normal business hours (see Figure 7 below).

While it is true to say that the proposal would use these facilities more intensively, it would not deny the public access to these facilities during normal business hours.

In addition, it is important to note that the current lease clearly restricts public access to the marina pontoon (where the charter ferry would be berthed): it allows public access to the pontoon itself, but clearly excludes public access from the water next to the pontoon, thereby making it clear that these berths are not “public berths,” as implied in several of the submissions.

Consequently, the Department does not believe that the proposal would result in the loss of public space or reduce public access to the marina.

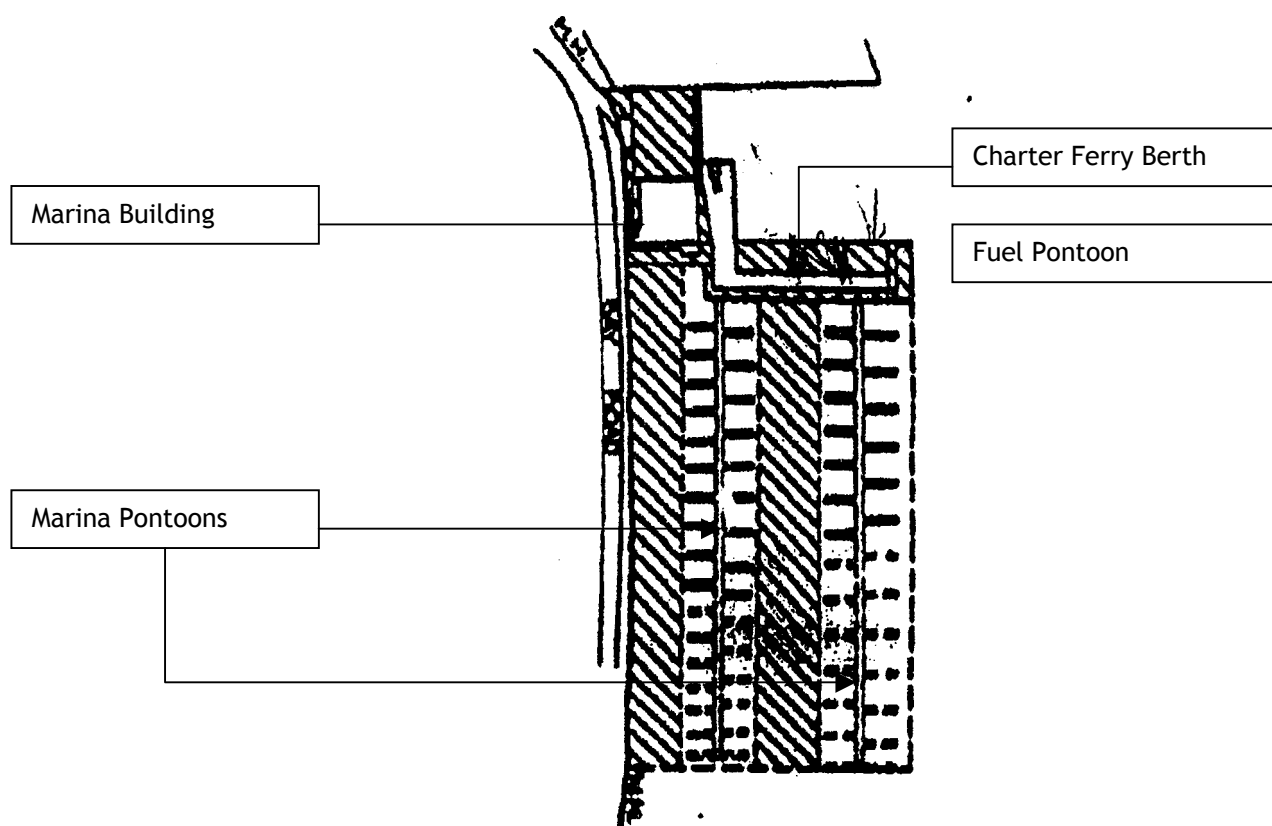


Figure 7: An Extract From the Existing Lease (with the cross-hatched areas denoting those areas where public access is allowed during business hours)

Conversion of Swing Moorings to Marina Berths

The proposal would convert 19 swing moorings into 19 marina berths, which is consistent with the recommendations in the *Berowra Waters Plan of Management*, which says that new berths may only be established at Berowra Waters if existing swing moorings are relinquished.

The Plan of Management also says there should be no increase in the existing number of moorings/berths at Berowra Waters. Consequently, the Waterways Authority has advised that it would not reallocate any swing moorings that are relinquished by the Applicant.

Some submissions argued that the proposed conversion would have adverse social impacts, making it more difficult for "battlers" to obtain berthing facilities at Berowra Waters, although they did not provide any evidence to support these claims.

According to the Plan of Management, however, there are currently 188 commercial swing moorings at the Berowra Waters. Consequently, the Department is satisfied that the potential equity impacts associated with the loss of 19 of these moorings would be negligible.

Navigational Impacts

The proposal would not have any significant navigational impacts on the waterway, and the Waterway Authority has no objections to the proposal.

Marine Vegetation and Fish

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 any 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.

Foreshore Impacts

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

The Department does not agree. The impact on the foreshore is expected to be negligible, particularly since the proposal would not increase the number of boats at Berowra Marina.

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

Noise Impacts

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

The Department doubts this would be the case, but accepts that some disturbance may occur if patrons of the café or the marina talk to each other in loud voices or shout at each other. However these potential impacts could be avoided with good management.

The Applicant should be required to:

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

Construction Management

The proposal involves very little construction work, apart from the extension of the two marina pontoons, which would use the existing piles.

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

Nevertheless, the Applicant should be required to:

- Carry out all construction work during regular construction hours; and

- Prepare and implement a 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 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, and is satisfied that the merits of the proposal outweigh its costs.

On the positive side, it would:

- Upgrade the boating facilities at the marina, by increasing the number of fixed berths which are popular with boat owners;
- Attract some of the parking that is currently associated with the swing moorings from the eastern to the western foreshore, which is better equipped to deal with this parking during peak periods;
- Introduce a new charter ferry service to the area, which is likely to be a popular tourist attraction, and would increase the general public's access to the waterway;
- Introduce a new café to the marina with outdoor seating, which would generally enhance the facilities on the western foreshore, and enable a wide array of people (residents, visitors, and boat users) to enjoy a meal in an attractive setting; and
- Provide a new sewage pump out facility for all the boats at Berowra Waters, which should help to significantly improve the water quality of the area.

These changes could increase the parking impacts of the marina during peak periods, however, the Department is confident that these impacts would be kept to a minimum by increasing the capacity of the existing car park, prohibiting charter ferry operations in peak periods, and restricting the maximum number of seats at the new café to 70.

In addition, the Department believes the proposal presents an excellent opportunity to implement, or start implementing, the parking strategy in the *Berowra Waters Plan of Management* sooner rather than later, and give the Applicant a chance to satisfy the conditions of its original consent without having to build the remote car park at Berrilee.

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

10. 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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Executive Director

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