

**SUBJECT: N0240/15 - 2A McCarrs Creek Road, Church Point NSW 2105 - Extension of existing marina facility from 59 to 73 berths, additional 3 dinghy moorings and removal of 7 swing moorings**

**Meeting:** Joint Regional Planning Panel Review Unit **Date:** 30 June 2016

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**SUMMARY OF RECOMMENDATION**

**Consent with Conditions**

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|----------------------------------|--------------------------------|
| <b>REPORT PREPARED BY:</b>       | Cheryl Williamson              |
| <b>APPLICATION SUBMITTED ON:</b> | 30/06/2015                     |
| <b>APPLICATION SUBMITTED BY:</b> | HAMPTONS PROPERTY SERVICES P/L |
| <b>OWNER(S):</b>                 | NSW GOVERNMENT - DEPT OF LANDS |

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**RECOMMENDATION OF DEVELOPMENT OFFICER / PLANNER**

That Council as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 grant consent to Development Application N0240/15 for Extension of existing marina facility from 59 to 73 berths, additional 3 dinghy moorings and removal of 7 swing moorings. Pittwater Council is the consent authority, and the Sydney East Joint Regional Planning Panel has the function of determining the application at 2A McCarrs Creek Road, Church Point NSW 2105 subject to the draft conditions of consent attached.

Report prepared by  
Cheryl Williamson, A/Executive Planner

Andrew Pigott  
**MANAGER, PLANNING & ASSESSMENT**

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**SUBJECT:** N0240/15 – 2A MCCARRS CREEK ROAD, CHURCH POINT NSW 2105 (Lot 308 DP 729621, Lot 273 DP 752046 and Lot 331 DP 1020134)

Extension of the existing Holmeport Marina facility from 59 to 73 *fixed* berths, installation of 3 additional dinghy moorings and removal of ~~7~~ 30 existing swing moorings.

*(23 further swing moorings proposed to be removed since Internal Review Meeting dated 5 November 2015)*

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**SUMMARY OF RECOMMENDATION:**

**DEFERRED COMMENCEMENT  
CONSENT WITH CONDITIONS**

**REPORT PREPARED BY:**  
**APPLICATION SUBMITTED ON:**  
**APPLICATION SUBMITTED BY:**

Cheryl Williamson  
30 June 2015  
Patrina Pty Ltd  
C/- Hamptons Property Services P/L  
PO Box 954  
Edgecliff NSW 2027

**OWNER(S):**  
**ESTIMATED COST OF WORKS:**  
**DETERMINATION LEVEL:**

NSW Government – Department of Lands  
\$784,685  
Joint Regional Planning Panel

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**1.0 SITE DETAILS**

2A McCarrs Creek Road is informally known as Holmeport Marina and is located on the northern side of McCarrs Creek Road in Church Point. The site comprises three irregularly shaped parcels; Lot 273 of DP 752046 is a land-based parcel of approximately 1,344m<sup>2</sup> in area, accommodating the existing two storey marina building, a number of single storey sheds and a boat maintenance facility. Lot 308 of DP 729621 is approximately 9,364m<sup>2</sup> in area and spans land and water. The southern part accommodates the site's car park and the northern part comprises the marina's existing walkways and berths. Lot 331 of DP 1020134 is wholly water-based, is approximately 2,495m<sup>2</sup> in area, and is the area now proposed to accommodate the extended marina. Figure 1 below demonstrates the different portions of the subject site:



Figure 1: Aerial photograph showing the different elements of 2A McCarrs Creek Road, Church Point

Vehicular and pedestrian access is afforded via the site's car park in the south eastern corner of the site. The land-based portions of the site are generally level and finished in concrete with ancillary landscaping. The site is separated from the public domain by a low, open, wooden fence and a boom gate at the car park entry.

Surrounding sites are generally residential in nature; dwelling houses of one, two and four storeys can be seen on the southern side of the road adjacent to the site. To the east and south west are Council reserves comprising trees and grassed open space and to the north is the wider Pittwater waterway.

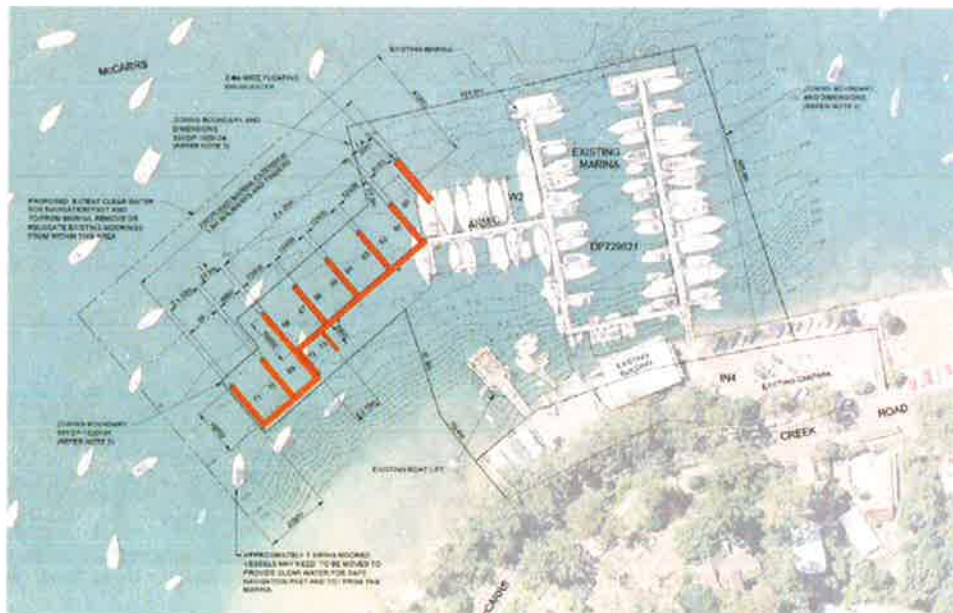
## 2.0 PROPOSAL IN DETAIL

The application proposes the following development:

- Extension of the existing marina facility from 59 berths to 73 berths, which would provide 14 additional berths and 3 dinghy moorings. This would be achieved through the installation of new piling equipment to secure the new marina structure and positioning of new floating pontoons attached to this piling equipment. This would create a new 'arm' located to the south west of the existing marina walkways comprising two sections of walkway running parallel to the shore line, and eight walkways running perpendicular to it.
- Relinquishment of 7 existing marina-operated swing moorings from the area proposed to accommodate the extended marina.

***Subsequent to the Internal Review Panel meeting dated 5 November 2015, the applicant has confirmed that a further 23 swing moorings can be removed, as a way to alleviate parking concerns. This means that 30 swing moorings in total will be removed, and that a net decrease of 13 berths/moorings would occur within the marina as a whole.***

Figure 2 below demonstrates the development proposed:



**Figure 2:** Site plan showing proposed development (provided as part of development application)

### 3.0 STATUTORY AND POLICY CONSIDERATIONS

#### Landowner's consent

Council records indicate that the site is owned by NSW Government Department of Lands; a letter confirming owners consent from the Department of Lands was submitted. However, the description of development on this letter was not consistent with that shown on the remainder of the documentation; a revised letter dated 11 August 2015 was subsequently received which resolved this issue.

#### Zoning and permissibility

##### History of the waterway zoning

Historically, under Pittwater LEP 1993, the area accommodating the existing marina was zoned W4: Business Boating Facilities, with adjacent areas of water (including the area now proposed to accommodate the extended marina) being zoned 6(a1): Waterways Recreation.

During the development of the Draft Pittwater LEP 2013, the W2: Recreational Waterways zoning was applied to the crown land lease boundary of the site (the boundary now proposed to be developed) and not to the boundary of the existing marina, in place of the prior W4 zoning. It is understood that this was applied in error by Council, and was identified during the second round of public exhibition of the new LEP to be rectified.

In reporting the LEP to the Council meeting, this error was identified to Councillors, and a recommendation was made to amend the Land Zoning Map to ensure consistency with the prior zoning. This recommendation was endorsed by Council as it adopted the draft LEP.

However, following the submission of the LEP to the Minister to be made, the LEP was made with the W2 zoning applied to the whole of the crown land lease area, and was not restricted in line with the previous zoning on the site. Despite correspondence to seek the amendment of, and explanation of, this zoning change, none has been forthcoming to date.

#### Current zoning and permissibility

The southernmost (land-based) portion of the site is zoned IN4: Working Waterfront. No works are proposed to these portions of the site and no changes of use, or intensification of existing uses are proposed to these parts of the site. The subject lot, Lot 331 of DP 1020134, is zoned W2: Recreational Waterways. Within this zone *marinas, jetties and mooring pens* are all listed as permissible with consent.

Submissions have been received raising concern that the proposed development is not consistent with the objectives of the zone. These objectives seek to protect the ecology and scenic quality of the waterway, to allow for water-based recreation and the enjoyment of the waterway and to ensure that public access to the waterway is not unduly restricted. As the following assessment report will demonstrate, these objectives are considered to have been met.

The proposed physical structures have been verified to be wholly contained within the boundaries of the W2 zone, and the stated sizes of the additional vessels have also been verified to be able to fit within the proposed berths without protruding into the W1: Natural Waterways zone (within which such development is prohibited).

*In rezoning the subject section of the lease area in this way, the proposed development can be said to have been foreseen. The rezoning is understood to have been carried out in consultation with the applicant, and it is apparent from the documentation accompanying development application N0136/03 that the 13 berths lost were always intended to be reinstated.*

#### **Relevant state, regional and local policies and instruments:**

- Environmental Planning and Assessment Act, 1979 (the Act)
- Environmental Planning and Assessment Regulation 2000 (the Regulation)
- State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55)
- State Environmental Planning Policy No 71 - Coastal Protection (SEPP 71)
- Located within NSW Rural Fire Service 10/50 Vegetation Clearing Area
- Pittwater Local Environmental Plan 2014 (PLEP 2014)
  - Acid Sulphate Soils Map – Class 1 and Class 2
  - Foreshore Building Line Map
  - Geotechnical Hazard Map – H1
  - Height of Buildings Map – 4 metres
- Pittwater 21 Development Control Plan (P21 DCP)
  - Waterways Locality
  - Geotechnical Risk Management Policy for Pittwater
  - Estuarine Risk Management Policy for Development in Pittwater
- Pittwater's Most Scenic Streets Register April 2012

#### **Adoption of amendments to Pittwater 21 Development Control Plan**

*A series of amendments to Pittwater 21 Development Control Plan came into force on 14 November 2014 (subsequent to the initial assessment and 5 November 2015 Internal Review Panel meeting). Given that the application was lodged prior to the implementation of this change, it is necessary to consider the prior version and the new version of the DCP. In this regard, clauses which have been repealed are marked as 'repealed 14/11/2015' within the new compliance table and new controls are marked 'in force 14/11/2015'.*

## **4.0 BACKGROUND**

### **History of the site**

Council's records for the site date back to the 1950s at which time the site was known as Mitchell's Marina. Approvals A1151/71 and SF2984/P273,281 both reference the marina accommodating 73 berths, and as having the same car parking area as is now present on the site. Approval A221/74 approved the construction of 240 berths on the site and included a proposal to expand the car parking area into Rostrevor Reserve to the east for use as public and private car parking. This consent was not implemented.

Development consent N0136/03 approved a reduction in berths from 72 to 59, which was sought due to the dimensions of existing structures not being of sufficient width to accommodate the more modern boats entering the market. The consent included the demolition of existing pontoons and supporting piles and construction of the configuration now seen on site. In the documentation of this prior development application it is clear that the reduction of berths was always intended to be redressed in the area of the site now proposed and an indicative layout plan of a similar nature to that now proposed accompanied this prior application.

Development consent N0154/04 granted approval for the addition of a deck and staircase to the marina building.

The gazettal of Pittwater LEP 2014, and the associated rezoning of the subject part of the site, took place on 27 June 2014. Further information regarding the prior and current land use zones of the site can be found in Section 3.0.

A pre-lodgement meeting was carried out with the applicant and representatives from the Holmeport Marina on 8 October 2014 relating to the development now proposed.

### **Church Point parking proposal**

In 2009 Pittwater Council adopted a Plan of Management and Masterplan for Church Point. This process revealed concerns regarding a lack of car parking at Church Point and a number of options were formulated for the provision of additional car parking within the locality. Following the establishment of a working group and a series of consultations with the public, Council resolved, on 16 December 2013, to support the carrying out of improvements to existing areas of car parking as well as the provision of a new single deck car park providing 120 new car parking spaces. Figure 3 below demonstrates the Masterplan for these works:



Figure 3: Concept Masterplan for Church Point parking improvements

***Subsequent to the Internal Review Panel meeting dated 5 November 2015, the Church Point Precinct project has progressed. After undergoing further notification and consultation processes, construction works on the Church Point upgrade commenced on 27 May 2016, with a temporary wharf to be constructed at Rostrevor Reserve to maintain access during the construction period.***

#### **Subject application**

The current development application was lodged with Council on 30 June 2015. The application was internally referred to the following Council units:

- Development Engineer
- Natural Resources Officer
- Health Unit
- Heritage Officer
- Strategic Planning
- Reserves and Recreation
- Catchment Management and Climate Change

and was externally referred to the following state government bodies:

- NSW Department of Primary Industries (Fisheries)
- NSW Department of Primary Industries (Water)
- NSW Rural Fire Service
- NSW Department of Planning and Environment
- Roads and Maritime Services

Informal discussions with the NSW Environment Protection Agency were also undertaken in the course of the application.

The application was publicly notified in accordance with Council's Notification Policy and a site inspection from the public domain, the existing land-based building and from the existing jetties was carried out on 13 July 2015 and a further inspection from McCarrs Creek Road was carried out on 17 August 2015.

Additional information was submitted during the course of the application, requested by Council. This information related to details of the construction of the walkways and piers, car parking and the management of sewage from vessels using the site.

***The matter was considered at Council's Internal Review Panel meeting on 5 November 2015. At this meeting, the Panel determined to defer a decision to allow for a peer review of the applicant's Traffic Impact Report to take place.***

***On 6 November 2015 and 18 November 2015 additional submissions were received regarding the application.***

***On 1 December 2015 an external Traffic Consultant was engaged to undertake a peer review of the submitted Traffic Impact Statement.***

***On 2 December 2015 an email was received from the applicant confirming that a further 23 swing moorings would be relinquished, equating to 30 swing moorings in total to be relinquished.***

***On 21 December 2015 Council received a report from the engaged Traffic Consultant presenting the findings of the requested peer review.***

***On 28 January 2016 Advice was received from Council's Urban Infrastructure team raising concerns with the sufficiency of the applicant's original Traffic Impact Statement and the parking rate to be applied.***

***On 23 February 2016 a letter was provided to the applicant requesting the submission of additional information relating to traffic and parking impacts.***

***On 4 April 2016 the applicant submitted additional information, authored by InRoads Group relating to traffic and parking impacts.***

***On 24 May 2016 further advice from Council's Urban Infrastructure Unit was received.***

## **5.0 NOTIFICATION**

The application was notified to 35 adjoining property owners for a period of 31 days between 9 July 2015 and 9 August 2015 in accordance with Council's Notification Policy. A site notice was displayed at the McCarrs Creek Road entry into the site and an advertisement was placed in the local press.

A submission has been received suggesting that the notification carried out was insufficient given that the Manly Daily (within which the application was advertised) is not delivered to residents of offshore communities. The notification was carried out in accordance with Council's Notification Policy as well as the statutory requirements regarding Integrated Development. However, in order to ensure that offshore residents were made aware of the proposal, off-shore based community groups were notified, and have subsequently made submissions.

Twelve (12) submissions have been received in response to the notification and advertisement of the application which raise the following concerns:

- No need for any additional moorings/saturation point reached
- Harm to the visual character of the waterway
- Additional noise to nearby residents
- Additional air pollution and odours affecting nearby residents
- Additional waves causing damage to the foreshore

- Insufficient car parking on the site and within the surrounding area, and adverse parking and traffic impacts arising from this
- Additional fire hazard to neighbouring residential properties
- Loss of public land for private commercial advantage
- Requirement for vessels to be berthed stern first to improve visual safety.
- Possibility of 'doubling up'; using one large mooring for two small boats
- Obstruction of normal water activities
- Breach of W2 zone objectives
- Reduced access and amenity to Botham's beach
- Insufficient notification of the application as the Manly Daily is not delivered to offshore residents
- Objection to Church Point multi storey car park

In terms of positive feedback, a submission notes that the use of marina berths is preferable to swing moorings given that there would be less damage to the seabed.

The suggestion that the proposal represents the loss of private land for commercial advantage is not strictly true given that the lease area for the marina (and the area into which the marina is proposed to extend) have already been granted by Crown lands and is already used for swing moorings operated by the marina. The application seeks to formalise and increase the moorings in this area rather than expand into an area which has not previously been authorised for use by the marina.

The possibility of the berths being used for more than one boat has been considered, and a condition has been included within the consent to limit the number of vessels using the moorings and to limit their length.

The objections received relating to the Church Point parking proposal are not directly linked to the subject development application and this proposal is undergoing its own separate consultation process. While the existing parking arrangements of the locality have been considered as part of this application, specific concerns relating to this separate project are not for consideration as part of this application.

The remainder of the above listed matters are discussed within the below report.

***Subsequent to the Internal Review Panel meeting on 5 November 2015, two (2) additional submissions have been received which raise the following matters:***

- ***Fire risk***
- ***Navigational risk***
- ***Parking***
- ***Transference of perceived public sector amenity for private sector gain***
- ***Request for a reduction in the amount of vessels proposed.***
- ***Use of existing car spaces by offshore commuters and emergency services***
- ***Inaccuracies in the applicant's Traffic Impact Report***
- ***Inaccuracies of applicant's photomontages***
- ***Request for a parking rate for marinas to be included within Pittwater 21 DCP.***

***The majority of these issues were raised and addressed within the original assessment report; discussion on these can still be found below.***

***Regarding the request for a lesser amount of vessels to be accommodated within the marina, the applicant has confirmed that a further 23 marina-operated swing moorings would be relinquished. This results in 30 swing moorings in total being relinquished, and represents a net reduction of 13 vessels across the marina as a whole. A condition to stipulate the removal of these swing moorings prior to the construction of the fixed berths is recommended.***

*Regarding the request for a parking rate for marinas to be included within the Pittwater 21 DCP, this forms a separate process within Council's functions and is not able to be enacted through the determination of the current development application. Council is currently undertaking a strategic review of the waterways, and this may result in further clarification being provided within Council's controls.*

## **6.0 ISSUES**

- 5.5 Development within the coastal zone
- 5.10 Heritage conservation
- 7.1 Acid sulfate soils
- 7.10 Essential Services; and
- 3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings
- 3.6 State Environment Planning Policies (SEPPs) and Sydney Regional Environmental Policies (SREPs)
- 3.7 Designated Development
- 4.1 Integrated Development: Water Supply, Water Use and Water Activity; and
- 4.2 Integrated Development: Rivers, Streams and Foreshores
- 4.3 Integrated Development: Fisheries Management
- 4.5 Integrated Development: Bushfire
- 4.7 Integrated Development - Protection of the Environment
- 5.1 Referral to the Roads and Maritime Services under SEPP (Infrastructure) 2007
- B1.2 Heritage Conservation - Development in the vicinity of a heritage item, heritage conservation areas, archaeological sites or potential archaeological sites;
- B1.3 Heritage Conservation – General; and
- B1.4 Aboriginal Heritage Significance
- B4.16 Seagrass conservation
- B5.1 Water Management Plan
- B5.2 Wastewater Disposal
- B6.6 Off-Street Vehicle Parking Requirements – All Development other than Low Density Residential; and
- B6.9 On Street Parking Facilities – All Development other than Low Density Residential; and
- B6.10 Transport and Traffic Management – All Development other than Low Density Residential
- C2.2 Safety and Security
- C2.5 View sharing
- C2.10 Pollution Control
- C2.12 Protection of Residential Amenity
- C2.15 Car/Vehicle/Boat Wash Bays
- C2.16 Undergrounding of Utility Services
- D15.2 Scenic protection - General
- D15.13 Lateral limits to development seaward of mean high water mark
- D15.15 Waterfront development

## **7.0 PITTWATER LEP 2014 AND PITTWATER 21 DCP COMPLIANCE TABLE**

- T - Can the proposal satisfy the technical requirements of the control?
- O - Can the proposal achieve the control outcomes?
- N - Is the control free from objection?

| Clause                                                                                             | Numerical Standard | Numerical Proposal                          | T | O | N |
|----------------------------------------------------------------------------------------------------|--------------------|---------------------------------------------|---|---|---|
| <b>Pittwater Local Environmental Plan 2014</b>                                                     |                    |                                             |   |   |   |
| 1.9A Suspension of covenants, agreements and instruments                                           |                    |                                             | Y | Y | Y |
| Zone IN4 Working Waterfront                                                                        |                    | Refer to 3.0 above.                         | Y | Y | Y |
| Zone W2 Recreational Waterways                                                                     |                    | Refer to 3.0 above.                         | Y | Y | N |
| 3.1 Exempt development                                                                             |                    |                                             | - | - | - |
| 3.3 Environmentally sensitive areas excluded                                                       |                    |                                             | - | - | - |
| 4.3 Height of buildings                                                                            | 4 metres           | 4 metres above the bed of the waterway.     | Y | Y | Y |
| 4.6 Exceptions to development standards                                                            |                    |                                             | - | - | - |
| 5.5 Development within the coastal zone                                                            |                    | See discussion                              | Y | Y | N |
| 5.7 Development below mean high water mark                                                         |                    |                                             | Y | Y | Y |
| 5.10 Heritage conservation                                                                         |                    | See discussion                              | Y | Y | Y |
| 7.1 Acid sulfate soils                                                                             |                    | See discussion                              | Y | Y | Y |
| 7.2 Earthworks                                                                                     |                    |                                             | Y | Y | Y |
| 7.7 Geotechnical hazards                                                                           |                    |                                             | Y | Y | Y |
| 7.8 Limited development on foreshore area                                                          |                    | New development located wholly beyond MHWM. | - | - | - |
| 7.10 Essential services                                                                            |                    | See discussion                              | Y | Y | Y |
| <b>Pittwater 21 Development Control Plan</b>                                                       |                    |                                             |   |   |   |
| 3.1 Submission of a Development Application and payment of appropriate fee                         |                    |                                             | Y | Y | Y |
| 3.2 Submission of a Statement of Environmental Effects                                             |                    |                                             | Y | Y | Y |
| 3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings        |                    | See discussion                              | N | Y | Y |
| 3.4 Notification                                                                                   |                    | Refer to Section 5.0                        | Y | Y | N |
| 3.5 Building Code of Australia                                                                     |                    |                                             | Y | Y | Y |
| 3.6 State Environment Planning Policies (SEPPs) and Sydney Regional Environmental Policies (SREPs) |                    | See discussion                              | Y | Y | N |
| 3.7 Designated Development                                                                         |                    | See discussion                              | Y | Y | Y |
| 4.1 Integrated Development: Water Supply, Water Use and Water Activity; and                        |                    | See discussion                              | Y | Y | Y |
| 4.2 Integrated Development: Rivers, Streams and Foreshores                                         |                    |                                             |   |   |   |
| 4.3 Integrated Development: Fisheries Management                                                   |                    | See discussion                              | Y | Y | Y |
| 4.5 Integrated Development: Bushfire                                                               |                    | See discussion                              | Y | Y | N |
| 4.6 Integrated Development: Aboriginal Places of Heritage Significance and Aboriginal Objects      |                    |                                             | - | - | - |
| 4.7 Integrated Development - Protection of the Environment                                         |                    | See discussion                              | - | - | - |
| 4.8 Integrated Development – Roads                                                                 |                    |                                             | - | - | - |
| 5.1 Referral to the Roads and Maritime Services under SEPP (Infrastructure) 2007                   |                    | See discussion                              | Y | Y | Y |
| 5.2 Referral to the NSW Police Service                                                             |                    |                                             | - | - | - |
| 5.3 Referral to NSW Office of Environment and Heritage                                             |                    |                                             | - | - | - |

|                                                                                                                                                                                                 |  |                                                             |           |           |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|-------------------------------------------------------------|-----------|-----------|
| Section A Shaping Development in Pittwater                                                                                                                                                      |  |                                                             |           |           |
| A1.7 Considerations before consent is granted                                                                                                                                                   |  |                                                             | Y         | Y         |
| A4.15 Waterways Locality                                                                                                                                                                        |  |                                                             | Y         | Y         |
| Section B General Controls                                                                                                                                                                      |  |                                                             |           |           |
| B1.2 Heritage Conservation - Development in the vicinity of a heritage item, heritage conservation areas, archaeological sites or potential archaeological sites ( <i>repealed 14/11/2015</i> ) |  | See discussion                                              | Y         | Y         |
| <b>B1.2 Heritage Conservation - Development in the vicinity of a heritage item, heritage conservation areas, archaeological sites or potential archaeological sites (in force 14/11/2015)</b>   |  | <b>See discussion</b>                                       | <b>Y</b>  | <b>Y</b>  |
| B1.3 Heritage Conservation – General ( <i>repealed 14/11/2015</i> )                                                                                                                             |  | See discussion                                              | Y         | Y         |
| <b>B1.3 Heritage Conservation – General (in force 14/11/2015)</b>                                                                                                                               |  | <b>See discussion</b>                                       | <b>Y</b>  | <b>Y</b>  |
| B1.4 Aboriginal Heritage Significance ( <i>repealed 14/11/2015</i> )                                                                                                                            |  | See discussion                                              | Y         | Y         |
| <b>B1.4 Aboriginal Heritage Significance (in force 14/11/2015)</b>                                                                                                                              |  | <b>See discussion</b>                                       | <b>Y</b>  | <b>Y</b>  |
| B3.1 Landslip Hazard                                                                                                                                                                            |  |                                                             | Y         | Y         |
| B3.2 Bushfire Hazard                                                                                                                                                                            |  | See discussion of 4.5                                       | Y         | Y         |
| B3.6 Contaminated Land and Potentially Contaminated Land                                                                                                                                        |  | See discussion of 3.6                                       | Y         | Y         |
| B3.9 Estuarine Hazard - Business, Light Industrial and Other Development                                                                                                                        |  |                                                             | Y         | Y         |
| B3.23 Climate Change (Sea Level Rise and Increased Rainfall Volume)                                                                                                                             |  |                                                             | -         | -         |
| B4.15 Saltmarsh Endangered Ecological Community                                                                                                                                                 |  |                                                             | Y         | Y         |
| B4.16 Seagrass Conservation                                                                                                                                                                     |  | See discussion                                              | Y         | Y         |
| B4.19 Estuarine Habitat                                                                                                                                                                         |  | See discussion of B4.16                                     | Y         | Y         |
| B4.20 Protection of Estuarine Water Quality                                                                                                                                                     |  | See discussion of B4.16                                     | Y         | Y         |
| B5.1 Water Management Plan                                                                                                                                                                      |  | See discussion                                              | N         | Y         |
| B5.2 Wastewater Disposal ( <i>repealed 14/11/2015</i> )                                                                                                                                         |  | See discussion                                              | Y         | Y         |
| B5.3 Greywater Reuse                                                                                                                                                                            |  |                                                             | -         | -         |
| B5.4 Stormwater Harvesting                                                                                                                                                                      |  |                                                             | -         | -         |
| B5.11 Stormwater Discharge into Waterways and Coastal Areas                                                                                                                                     |  |                                                             | Y         | Y         |
| B6.6 Off Street Vehicle Parking Requirements - All Development other than Low Density Residential ( <i>repealed 14/11/2015</i> )                                                                |  | See discussion<br><b>Further discussion included below.</b> | N         | Y         |
| <b>B6.3 Off-Street Vehicle Parking Requirements (in force 14/11/2015)</b>                                                                                                                       |  | <b>See discussion</b>                                       | <b>??</b> | <b>??</b> |
| B6.9 On Street Parking Facilities - All Development other than Low Density Residential ( <i>repealed 14/11/2015</i> )                                                                           |  | See discussion                                              | -         | -         |
| <b>B6.6 On-Street Parking Facilities (in force 14/11/2015)</b>                                                                                                                                  |  | <b>See discussion</b>                                       | <b>??</b> | <b>??</b> |

|                                                                                                                            |                  |                                         |           |           |           |
|----------------------------------------------------------------------------------------------------------------------------|------------------|-----------------------------------------|-----------|-----------|-----------|
| B6.10 Transport and Traffic Management - All Development other than Low Density Residential ( <i>repealed 14/11/2015</i> ) |                  | See discussion                          | Y         | Y         | Y         |
| <b>B6.7 Transport and Traffic Management (in force 14/11/2015)</b>                                                         |                  | <b>See discussion</b>                   | <b>??</b> | <b>??</b> | <b>??</b> |
| B8.1 Construction and Demolition - Excavation and Landfill ( <i>repealed 14/11/2015</i> )                                  |                  |                                         | -         | -         | -         |
| <b>B8.1 Construction and Demolition - Excavation and Landfill (in force 14/11/2015)</b>                                    |                  |                                         | -         | -         | -         |
| B8.2 Construction and Demolition - Erosion and Sediment Management                                                         |                  |                                         | Y         | Y         | Y         |
| B8.3 Construction and Demolition - Waste Minimisation                                                                      |                  |                                         | -         | -         | -         |
| B8.4 Construction and Demolition - Site Fencing and Security                                                               |                  |                                         | -         | -         | -         |
| B8.5 Construction and Demolition - Works in the Public Domain                                                              |                  |                                         | Y         | Y         | Y         |
| B8.6 Construction and Demolition - Traffic Management Plan                                                                 |                  |                                         | Y         | Y         | Y         |
| Section C Development Type Controls                                                                                        |                  |                                         |           |           |           |
| C2.2 Safety and Security                                                                                                   |                  | See discussion                          | Y         | Y         | N         |
| C2.5 View Sharing                                                                                                          |                  | See discussion                          | N         | Y         | N         |
| C2.6 Adaptable Housing and Accessibility                                                                                   |                  | No changes to buildings                 | -         | -         | -         |
| C2.7 Building Facades                                                                                                      |                  |                                         | Y         | Y         | Y         |
| C2.8 Energy and Water Conservation                                                                                         |                  | No new buildings proposed               | -         | -         | -         |
| C2.9 Waste and Recycling Facilities ( <i>repealed 14/11/2015</i> )                                                         |                  | Condition applied.                      | Y         | Y         | Y         |
| <b>C2.9 Waste and Recycling Facilities (in force 14/11/2015)</b>                                                           |                  | <b>Condition applied.</b>               | <b>Y</b>  | <b>Y</b>  | <b>Y</b>  |
| C2.10 Pollution Control                                                                                                    |                  | See discussion                          | Y         | Y         | N         |
| C2.12 Protection of Residential Amenity                                                                                    |                  | See discussion                          | Y         | Y         | N         |
| C2.14 Commercial Swimming Pools                                                                                            |                  |                                         | -         | -         | -         |
| C2.15 Car/Vehicle/Boat Wash Bays                                                                                           |                  |                                         | Y         | Y         | Y         |
| C2.16 Undergrounding of Utility Services                                                                                   |                  | See discussion                          | N         | Y         | Y         |
| C2.20 Public Road Reserve - Landscaping and Infrastructure                                                                 |                  |                                         | -         | -         | -         |
| C2.21 Food Premises Design Standards                                                                                       |                  |                                         | -         | -         | -         |
| C2.22 Plant, Equipment Boxes and Lift Over-Run                                                                             |                  |                                         | Y         | Y         | Y         |
| C5.11 Third Party Signage                                                                                                  |                  |                                         | -         | -         | -         |
| C5.20 Liquor Licensing Applications                                                                                        |                  |                                         | -         | -         | -         |
| Section D Locality Specific Development                                                                                    |                  |                                         |           |           |           |
| D15.1 Character as viewed from a public place                                                                              |                  | See discussion of D15.2                 | Y         | Y         | N         |
| D15.2 Scenic protection - General                                                                                          |                  | See discussion                          | Y         | Y         | N         |
| D15.3 Building colours and materials                                                                                       |                  | Condition applied                       | Y         | Y         | Y         |
| D15.6 Front building line                                                                                                  | Merit assessment | 68 metres from the shoreline; supported | Y         | Y         | Y         |
| D15.7 Side and rear building line                                                                                          | Not specified    |                                         | Y         | Y         | Y         |
| D15.10 Fences                                                                                                              |                  |                                         | -         | -         | -         |
| D15.11 Waterfront lighting                                                                                                 |                  | Conditions applied.                     | Y         | Y         | Y         |

|                                                                      |  |                    |   |   |   |
|----------------------------------------------------------------------|--|--------------------|---|---|---|
| D15.12 Development seaward of mean high water mark                   |  |                    | Y | Y | Y |
| D15.13 Lateral limits to development seaward of mean high water mark |  | See discussion     | N | Y | Y |
| D15.14 Minimum frontage for waterfront development                   |  |                    | Y | Y | Y |
| D15.15 Waterfront development                                        |  | See discussion     | N | Y | Y |
| D15.17 Moorings                                                      |  | See discussion     | N | Y | N |
| D15.18 Seawalls                                                      |  |                    | - | - | - |
| D15.19 Dredging                                                      |  |                    | - | - | - |
| D15.20 Commercial waterfront development - pollution prevention      |  | Conditions applied | Y | Y | Y |
| D15.21 Charter boat facilities                                       |  |                    | - | - | - |

- Issues with an N are discussed in further detail in the discussion section below.
- Issues marked with a - are not applicable to this Application.

## 9.0 DISCUSSION

### • 5.5 Development within the coastal zone

The clause echoes the provisions of SEPP 71 – Coastal Protection and seeks to protect, maintain, enhance and restore the coastal environment. This includes identifying opportunities for pedestrian public access, protecting amenity, scenic quality, coastal vegetation and the marine environment. The clause seeks to ensure that new development is of a type, bulk, scale and size which is appropriate to its surroundings and does not interfere with any items of Aboriginal or European heritage.

A submission has been received which states that the development will impede public access to Bothams Beach, which is understood to be the beach located either side of the existing Holmeport facility. However, no works are proposed to the land-based parts of the facility including the maintenance area to the south west, meaning that no reduction in access to this beach would occur. A distance of 68 metres will remain between the shoreline and the new structure allowing adequate access to the waterway.

The development is considered to present an appropriate appearance as viewed from the public domain; the pontoon structures will sit at water level and are horizontal in nature. A condition is included to ensure that the walkways are finished in dark, earthy and non-reflective tones to ensure that they visually recede and are not overly prominent. In terms of the boats which would use the walkways, the impact on the visual character of the waterway is considered to be acceptable; this character currently comprises water, headland and vegetation interspersed with boats and this would remain. A series of photomontages have been produced (and form Appendix 4 to the submitted documentation) which demonstrate that the vegetation in the foreground, waterway and bushland in the background would continue to be visible through the masts of the vessels.

The proposed water-based use is compatible with the adjacent land-based uses, which are also part of the Holmeport Marina. The development will not unduly prejudice residential properties further to the south in terms of their amenity. The structures will not result in the significant overshadowing of a coastal foreshore and will not result in an unreasonable loss of views from public places to the water, or from the water back toward land (view sharing is discussed under section C2.5).

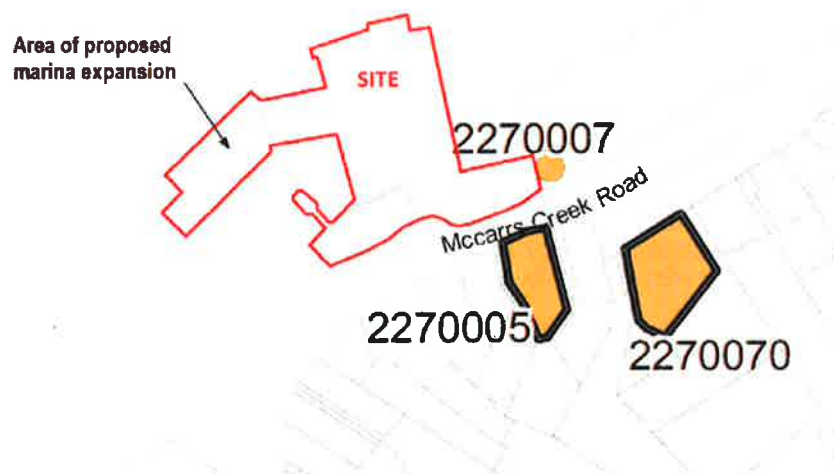
In terms of the natural environment, the development is considered to have acceptable impacts; the walkways are proposed to be supported on eleven piles (one at the end of each walkway) and are the same as the piles which support the existing marina structures. This results in minimal contact with, and disturbance of, the bed of the waterway. Council's Natural Resources Officer and NSW Department of Primary Industries (Fisheries) are in support of the proposal from an environmental viewpoint, subject to conditions and General Terms of Approval. The disposal of effluent resulting from the development is acceptable subject to the recommended deferred commencement conditions.

A submission has been received stating that the proposed activity would result in additional large waves which would erode the foreshore. This matter has not been raised as a concern by any of the internal or external referrals which have been carried out during the course of the application, and vessels would be bound to adhere to the same waterway rules as existing users of the waterway in terms of speed.

- **5.10 Heritage conservation; and**  
**B1.2 Heritage Conservation - Development in the vicinity of a heritage item, heritage conservation areas, archaeological sites or potential archaeological sites;**  
**B1.3 Heritage Conservation – General; and**  
**B1.4 Aboriginal Heritage Significance**

#### European heritage

None of the three affected lots are heritage listed, nor are they located within a heritage conservation area. None of the structures currently on the site are deemed to be of particular historical, cultural or social value. The site is located in the vicinity of a number of heritage items however, which are identified in figure 4 below:



**Figure 4:** Relationship of site to nearby heritage items

Item 2270007 is a concrete obelisk commemorating the exploration of McCarr's Creek, Item 2270005 is "Rostrevor", a residential dwelling built in 1886 and Item 2270070 is "Homesdale", a residential dwelling considered locally significant for its period and style of construction. The application was referred to Council's Strategic Planning team for advice as to whether the proposal was likely to result in any adverse impacts to nearby heritage items. The advice provided states:

*"The development proposal will have minimal impact on both items due to the location of the proposal being distant (a western extension to the marina) from both heritage items. Further to this, the topography of the land adjacent to the proposal offers shielding from Rostrevor House and the Memorial Obelisk, minimising impact further with regard to views and amenity that any new boats may impede. There is also a natural vegetation buffer between the proposal and the heritage items. The marina building itself that gives a further buffer between the development proposal and the heritage items."*

Given the nature of the development proposed, and its separation from these heritage items by at least 150 metres, the development is considered to have acceptable impacts from a heritage viewpoint.

#### Aboriginal heritage

In terms of items of aboriginal heritage significance, Council's Natural Resources Officer has advised that there are 'no apparent issues'.

The site is located within an area which forms part of a Native Title Claim connected with the Awabakal and Guringai People. In accordance with Section 24HA of the *Native Titles Act 1993*, Council referred the matter to NTSCORP Ltd who are identified as representing the interests of these parties. The matter was referred on 4 September 2015 and a period of 30 days provided within which to make representations.

On 10 September 2015 a response was received which did not discuss the merits of the proposal but the manner in which the matter had been referred. Following advice from Council's legal team a further letter was provided which confirmed that the matter had been referred in the correct manner and again seeking comments on the merits of the application. No further response was received.

- **7.1 Acid sulfate soils**

The affected portion of the site (water) is identified as having Class 1 Acid Sulfate Soils. The land-based areas of the marina are classed as having Class 2 soils. The clause requires that development consent is only be granted if an Acid Sulfate Soils Management Plan accompanies the application. However, two variations to this are provided within the clause; firstly, that the requirement may be waived if a preliminary assessment has been carried out which concludes that a Management Plan would not be required, and secondly if the development would involve the removal of less than 1 tonne of soil and would not lower the water table.

The application is supported by a Sediment and Water Quality Assessment which includes discussion on Acid Sulfate Soils. The analysis contained therein suggests that Acid Sulfate Soils are not present in the area of the proposed marina extension. The discussion also highlights the fact that Acid Sulfate Soils only become acidic when the soil is exposed to oxygen. Being located wholly underwater, this would not take place as a result of the proposed development. The application is considered to adequately address this clause, and an Acid Sulfate Soils Management Plan is not deemed to be necessary in this instance.

- **7.10 Essential Services; and  
B5.2 Wastewater Disposal**

The existing marina affords a suitable supply of water, electricity and vehicular access. Existing arrangements regarding stormwater drainage will remain unchanged.

Regarding the disposal and management of sewage, the applicant proposes to employ a portable sewage pump out system. Discussions with the Environmental Protection Agency and Council's Health Unit reveal that this is a common method for dealing with sewage and is acceptable in principle. However, given that only limited detail of this method of disposal have been provided as part of the application it is not considered appropriate to recommend the approval of the application without knowing the full details and process involved. This is considered to be of such importance as to warrant the issuing of a deferred commencement approval to allow for full details to be provided and for Council to ensure that appropriate procedures and practices are put in place to ensure that no adverse environmental, amenity or safety impacts would result. A deferred commencement condition is therefore recommended which seeks the submission of a Marine Sanitation and Pollution Prevention Management Plan.

- **3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings**

Due to the nature of the proposed development and the cost of the works, the submission of a schedule of finishes and scale model are not required in this instance. The documentation submitted is sufficient in identifying the development proposed and discussing its likely impacts.

- **3.6 State Environment Planning Policies (SEPPs) and Sydney Regional Environmental Policies (SREPs)**

State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55)

The SEPP seeks to ensure that development does not pose an unreasonable risk to human health or to the environment. The application is accompanied by a Sediment and Water Quality Assessment which found concentrated levels of mercury within the sediment samples taken, which 'exceeded the ISQG trigger level guidelines'. The report recommends further investigation prior to the carrying out of construction works.

This matter has been reviewed by Council's Health Unit who has advised that a number of conditions should be applied which mirror the recommendations within the Sediment and Water Quality Report. Subject to the application of these measures Council can be satisfied that the development will not result in undue risk to human health or the environment, in line with the provisions of the SEPP.

State Environmental Planning Policy No 71 - Coastal Protection (SEPP 71)

The SEPP aims to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast. The instrument encompasses beaches, estuaries, coastal lakes, headlands, cliffs or rock platforms, meaning that its provisions are applicable regarding the subject development. Part 8 of the SEPP contains matters for consideration in the assessment of applications within the coastal zone; these are discussed below. The Department of Planning and Infrastructure has indicated no concerns with the project provided that these matters of consideration are taken into account in the assessment of the application.

The proposed development does not reduce or remove public access along the foreshore. The proposed new structures are located wholly in the waterway and do not connect to the land-based portion of the marina. Being a private marina, it is not feasible to increase public access to the waterway in this instance. The type of development is suitable. This is an existing marina and the proposed works would operate in conjunction with this existing, established use. The area is zoned as a recreational waterway, and will increase the opportunity for the recreational use of this part of Pittwater.

The structures, which are horizontal and at water level, will not result in any undue shadowing of the foreshore. Similarly, the development is not considered likely to result in an undue loss of view or a harm to the scenic quality of the waterway. A number of submissions have been received in this regard, and these are further discussed within C2.5 and D15.2 below.

The works, through their installation and ongoing use, will not result in undue harm to animals, fish, marine vegetation or wildlife corridors, and general terms of approval from NSW Department of Primary Industries (Fisheries) have been received.

Submissions have been received stating that the development will restrict the use of the waterways by smaller craft, resulting in a conflict of users. However, the proposal includes the relinquishment of seven existing swing moorings, three of which are closer to the shoreline than the proposed structures. The consolidation of moorings into a smaller area which is closer to the existing marina facilities could be considered as a 'freeing up' of space for smaller craft to circulate. A distance of approximately 68 metres would remain between the new structures and the land, and a navigational channel of approximately 239 metres would remain between the marina and Scotland Island, ensuring the safe and convenient passage of vessels.

In terms of heritage impact, the proposal is found to be acceptable. Discussion on European and Aboriginal heritage can be found elsewhere within this report.

- **3.7 Designated Development**

The application form identifies the proposed development as designated development under Section 23 (Marinas or other related land and water shoreline facilities) of Schedule 3 Part 1 of the *Environmental Planning and Assessment Regulation 2000*. This Section identifies designated development as being:

- (1) *Marinas or other related land or water shoreline facilities that moor, park or store vessels (excluding rowing boats, dinghies or other 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 having a 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) *Facilities that 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 subject development will exceed the above stated numerical limits, the marina as a whole includes facilities which repair and maintain vessels out of the water, and the site is identified as being in the vicinity of a wetland area; it is agreed that the development forms designated development.

For designated development, applicants are required to submit an Environmental Impact Statement (EIS) with the development application which provides a comprehensive assessment of the impacts of the proposal. A comprehensive EIS accompanies this development application which outlines the various potential impacts of the proposal as well as providing documentation of the applicant's prior consultation process with the Department of Planning & Environment and the Environmental Assessment Requirements (EARs) which resulted from this. Section 6 of Schedule 2 of the application prescribes the form which an EIS must take; the submitted documentation is consistent with these requirements.

- **4.1 Integrated Development: Water Supply, Water Use and Water Activity; and 4.2 Integrated Development: Rivers, Streams and Foreshores**

The application form identified the proposed development as Integrated Development with the *Water Management Act 2000* and the application was accordingly referred to NSW Office of Water. NSW Office of Water has replied however stating that the proposed activity is exempt from requiring a Controlled Activity Approval and that no further NSW Office of Water assessment is necessary. Details of the relevant exemptions have been provided.

- **4.3 Integrated Development: Fisheries Management**

The development forms Integrated Development with the *Fisheries Management Act 1994* and the application was accordingly referred to NSW Department of Primary Industries (Fisheries). The Department has responded with no objections to the proposed development and has provided General Terms of Approval. These terms are incorporated into the attached conditions of consent.

- **4.5 Integrated Development: Bushfire**

The development forms Integrated Development with the *Rural Fires Act 1997*. The application was accordingly referred to NSW Rural Fire Service who has responded by issuing a bush fire safety authority for the works, subject to a number of conditions. These are reproduced within the attached conditions of consent.

A submission has been received relating to an additional fire hazard caused by the new development, posing a risk to neighbouring residential properties. Based on the advice of NSW Rural Fire Service it is considered that the development will have acceptable impacts in terms of bush fire protection, subject to the attached conditions of consent.

- **4.7 Integrated Development - Protection of the Environment**

The development does not constitute a scheduled activity as defined within the *Protection of the Environment Operations Act 1997*. This is due to the fact that the marina would accommodate less than 80 vessels (swing moorings are expressly excluded from the definition of boat mooring) and that the on-site maintenance facilities would accommodate less than 5 vessels at a length of less than 25 metres (4 existing cradles are accommodated within this part of the facility).

The NSW Environmental Protection Agency has provided confirmation that a license is not required in this regard, but has requested that a condition be applied to ensure that these thresholds are not exceeded; this condition is recommended within the attached conditions.

- **5.1 Referral to the Roads and Maritime Services under SEPP (Infrastructure) 2007**

A submission has been received stating that all new vessels should be berthed stern first in order to improve visibility and safety of vessels using the new facility.

The application was referred to Roads and Maritime Services who has responded with no objections to the proposed development. The imposition of seven standard conditions and one non-standard condition was recommended; these conditions have been incorporated into the attached conditions of consent. The non-standard condition specifies that vessels on the channel side of the extension are berthed stern side only; this addresses the concern raised within the abovementioned submission.

- **B4.16 Seagrass conservation**

Council's Natural Resources Officer provides the following advice:

*"The property contains a marina facility with berths for 59 boats and swing moorings. The proposed works include addition of 14 berths and removal of the 7 swing moorings. An Ecological Issues and Assessment Report has been submitted (Gunninah, April 2015) which found that no threatened flora or fauna are present in the works area. The report concludes that the project will not adversely affect the natural environment to any noticeable or relevant extent, and will not adversely affect any relevant habitat or resources for any threatened biota. Protection measures for the works period have been listed and are to be adopted.*

*The report references an Aquatic Ecological Assessment (Marine Pollution Research, February 2015) which assesses the marine ecological implications of the proposed extension. A survey was undertaken to accurately identify what is present in the area of the proposed works. Construction and operational impacts on the environment including seagrass beds and fish were considered and it was concluded that the works can be undertaken with no significant impact on the aquatic ecology of the locality. Potential construction-related impact, particularly on adjacent seagrass beds, can be mitigated to insignificance following the provided recommendations. The works can be undertaken without significant impact on seagrass beds. No dredging or reclamation is required for the project. Both reports are supported.*

*An Environmental Impact Statement has been submitted (Hamptons Property Services, 1/7/15) which collates information and recommendations from submitted consultant reports and provides a complete list of mitigation measures to be adopted before and throughout the works period. These are acceptable. There are no further natural environment issues."*

Conditions are included to ensure that the recommendations of each of the abovementioned reports are implemented during construction and on an ongoing basis.

The control requires that jetties, ramps, wharves, pontoons and other instream structures must be designed and constructed in accordance with NSW Department of Primary Industries specifications to maximise light filtration to the seafloor. The application has been endorsed by this Department subject to conditions. The structures will not result in a significant loss of light to the bed of the waterway.

- **B5.1 Water Management Plan**

The documentation advises that the site will not result in the need for additional stormwater management measures over and above the existing situation. Council's Development Engineer and Health Unit raise no concerns in this regard.

- **B6.6 Off-Street Vehicle Parking Requirements – All Development other than Low Density Residential; and**  
**B6.9 On Street Parking Facilities – All Development other than Low Density Residential; and**  
**B6.10 Transport and Traffic Management – All Development other than Low Density Residential**

Given that the development is proposed in conjunction with the adjacent land-based areas of the existing marina, the provisions of these controls are relevant in the assessment of the application, even though they technically do not apply to the waterways.

The outcomes of control B6.6 require an adequate number of parking spaces to meet the needs of the development, and that car parking areas minimise rainwater run-off, adverse visual or environmental impacts and maximise safety. The marina currently includes an at-grade concrete car park comprising 67 car spaces and the concrete slab which forms this car park is proposed to remain unchanged. In this regard the matters of stormwater, environmental impacts and visual impact will remain unchanged.

In order to establish what an adequate number of parking spaces is for the proposed development, a number of different documents are relevant:

#### Prior development approvals

A review of the development history of the site reveals that the marina operated with 73 berths, and a commensurate amount of swing moorings, between at least 1971 and 2003. These moorings operated using the same car parking area which is currently in place, which was not line-marked at the time meaning that car parking was of a more informal nature and that there were likely to be less car parking spaces. Development consent N0136/03 sought a reduction in berths from 72 to 59 due to the dimensions of the existing bays being too small to accommodate vessels of increasing sizes. The documentation from this approval clearly states that the shortfall in berths created by this reduction was always sought to be replaced once the subject lot was rezoned.

The current proposal seeks an increase of berths from 59 to 73, however in light of the history of the site this can also be seen as restoring the original number of berths which were previously in existence on the site.

#### Pittwater 21 DCP control B6.6: Off-Street Vehicle Parking Requirements

The control refers to a table which contains specific parking rates for different forms of development. This table does not provide a suggested amount for marina developments. The closest use would be the business premises use, however it is not considered appropriate to apply this rate given that it relates to the amount of gross floor area on a site; the areas of gross floor space are a small component of the overall operations of the facility and are not subject to change as part of this application.

For development which does not have its own specified rate, the control defers to the Roads and Maritime Services (RMS) document entitled '*Guide to Traffic Generating Development*' or seeks analysis drawn from surveyed data for similar development uses.

#### RMS Guide to Traffic Generating Development

Section 5.9.3 of the RMS Guideline document relates to tourist facilities, and specific guidance is provided as to parking rates for marinas. The commentary notes that parking demand for marinas varies substantially depending on the season, the type of berth and the type of boat. The guide calls for surveys to be undertaken of similar developments to inform of an appropriate rate. As a general rule, the Guide recommends the following generic parking rates:

- 0.6 spaces per wet berth
- 0.2 spaces per dry storage berth
- 0.2 spaces per swing mooring
- 0.5 spaces per marina employee

In applying these figures, the existing arrangement would require 88 parking spaces and the proposed development would require 94 spaces (a difference of 6 spaces).

It must be stressed however, that these are figures specified by the RMS which are intended to be general enough to be applied to new marina developments in all areas. The rates do not differentiate between different types of marinas, for example including marinas with a club or school element, or holding functions, none of which are the case with this facility. The subject development is a long-standing facility which has evolved over several decades, and has previously operated with the number of berths now proposed for at least 32 years. The suggestion that the current facility is deficient by 21 spaces is not borne out by the actual data provided within the traffic report (refer below). Further, the applicant has noted that while a total of 41 staff members are employed by the marina, these staff members do not all work at the same time. For example, the maintenance facility of the site (which employs 14 staff) is noted not to operate at the weekends, which are likely to be the busiest times for patrons.

***Since the initial assessment, the applicant has proposed to further reduce the amount of swing moorings by 23 (30 in total) and has clarified the staffing arrangements at the site noting that up to 15 staff are on site at any one time on weekdays, and up to 8 staff are on site at any one time at weekends. Using the RMS figures above, this would equate to a need for 76 spaces for the site as it currently exists and 79 spaces being required for the proposed development.***

Both Council's control B6.6 and the RMS Guideline itself both extol the virtues of seeking data of the actual site and area, and seeking comparisons with similar developments.

#### Submitted Traffic Report

The submitted Traffic Report includes a review of the history of the site, in which it is noted that the marina previously included 72 berths serviced by the same car park as now existing. The report notes that historic approvals of the site did not include a requirement for a particular number of car spaces, only that there be an area for car parking associated with the use (this is corroborated through a view of the historic files for the site).

The Traffic Report includes data from a traffic survey carried out at the site on a Sunday afternoon (when the marina is noted to be at its busiest). The survey identified that at the peak time, 55 vehicles were using the car park and that the car park did not exceed 82% capacity at any time during the monitoring period. From the data collected an average rate of 0.93 vehicles per berth has been extrapolated, which when applied to the proposed increase in berths results in a projected need of 68 car parking spaces (one space more than is currently provided on site). The Report notes that this peak demand is likely to last for short periods of time only (suggesting 15 minutes), and not resulting in a harmful impact to the surrounding road network. The Report suggests that at non-peak times the existing car parking amount is able to accommodate the increased amount of vessels.

#### Australian Standard AS3962-2001: Guidelines for design of marinas

The Traffic Report refers to Australian Standard AS3962-2001: *Guidelines for design of marinas*. This document includes a range of different parking rates to be applied, as follows:

- 0.3 - 0.6 spaces per wet berth
- 0.2 - 0.4 spaces per dry berth
- 0.3 - 0.6 spaces per swing mooring
- 0.5 spaces per employee

In terms of the range, the Standard specifies that the lower rate be used for commercial facilities and the higher rate for racing clubs. Accordingly, the existing facility would require 88 car spaces and the proposed facility would require 90 car spaces (a difference of 2 spaces). Again, as an existing long standing facility, the suggestion that an additional 21 spaces should be provided for the situation as it exists is not considered accurate.

***Based on the 30 swing moorings now proposed to be relinquished, and the clarification of staffing rates, the rates specified in the Australian Standard equate to 75 spaces being required for the existing development and 70 spaces being required for the proposed development.***

#### Pittwater 21 DCP control B6.7: On-street Parking Facilities

The proposed development does not result in the addition of, or loss of, any on-street car parking. Objections have been received which raise concern that the expansion of the marina will put undue pressure onto on-street parking areas, including the Church Point Planning Proposal parking areas proposed by Council.

The submitted Traffic Report concludes that there are sufficient spaces to accommodate the net increase of 7 vessels, save for 1 space which is anticipated to be accommodated on-street during limited peak times. This is a reasonable proposition. There is no reason therefore to conclude that the proposal would cause adverse impacts of this nature, nor that it would derail Council's own project to increase parking within the locality. It should be noted however that the additional car parking planned within the wider locality will be for the use of everyone, and so visitors to the marina would be able to access this parking in the same way as any other visitor to the area.

#### Summary

There are a number of different documents which suggest different parking rates for marina developments. The RMS Guideline and the Australian Standard offer generic rates which do not differentiate between the wide range of marina types which exist. The fact that actual parking counts have been carried out at the subject marina which show the acceptability of the current number of spaces is relevant, as is the fact that the marina has previously operated with 72 berths with the same or less car parking. The minor reduction in swing moorings is also relevant; while the number of fixed berths is increasing by 14, the net increase in vessels is just 7. In light of the above, it is concluded that the existing 67 car parking spaces are sufficient to provide an adequate amount of car parking which meets the needs of the development, in line with the outcomes of the control. A condition to require the provision of 67 unencumbered parking spaces in perpetuity is included within the recommended conditions of consent, along with a condition to require that at least one space is converted to become a disabled access space.

#### Repealed controls

***DCP controls B6.6, B6.9 and B6.10 have been repealed since the initial assessment was carried out, and replaced with new DCP controls B6.3, B6.6 and B6.7. While the numbering of these conditions has changed, and while previous controls have been consolidated, the provisions of the controls remain the same. The new versions of the controls do not stipulate a parking rate for marina developments, and the controls seek the same outcomes as their superseded versions.***

### Peer review

*The Panel determined to defer consideration of the application, to allow for the carrying out of a peer review of the submitted Traffic Impact Statement.*

*Such a review was carried out by GTK Consulting in December 2015 and was provided to Council in early January. It considers the original Traffic Report plus the additional 23 swing moorings to be relinquished. It raises the following issues:*

- *The fact that the car park is currently permitted for 'sticker holders' only, meaning that members without a sticker must park on-street;*
- *The time of year that the survey was conducted (Spring) potentially revealing a lower demand than at other times of year;*
- *A lack of consideration of the existing and proposed reduced swing moorings in the Traffic Report;*
- *The Marina's requirement that only one car per boat may park on site (noting that the car park could be half full, but that patrons would still need to park on-street);*
- *Non-compliance of the layout of the existing car park with the Australian Standard;*
- *Lack of existing disabled access parking;*
- *Request for existing boom gate to be relocated further into site.*

*The report does not state either that the site does or does not have enough off-street parking.*

*The applicant's Traffic Impact Statement and the peer review document were forwarded to Council's Urban Infrastructure team who agreed with the comments of the peer review and raised the following concerns:*

- *That the Traffic Impact Statement did not take into account the local conditions around the site;*
- *That the maximum size of vessels to be moored had not been adequately considered;*
- *That a lack of distinction had been provided between patron/visitor parking and the spaces designated for emergency services vehicles.*

### Submission of supplementary parking information

*The applicant submitted additional information in response to these concerns, at the request of Council. This took the form of a supplementary assessment which includes the data from three additional traffic count surveys, undertaken in March 2016 and provides responses to each of the matters raised.*

*The additional traffic surveys, which were conducted on a consecutive Friday, Saturday and Sunday at the beginning of March, found that the maximum occupancies were 66% (44 vehicles), 79% (53 vehicles) and 79% (53 vehicles) respectively, providing a similar result to the October survey carried out within the original Traffic Impact Assessment. There have now been four traffic counts carried out, one in the Spring and two in the early autumn, (which included high temperatures and sunny weather) which demonstrate the existing car park is not currently operating at maximum capacity.*

*The report takes into account the original 7 swing moorings to be relinquished, plus an additional 7 swing moorings and concluded that the net impact upon parking requirements would be zero. The applicant has offered however, to relinquish 30 swing moorings in total, which can only have a lesser effect on the amount of parking required.*

*The parking figures stated have expressly excluded the three police vehicle parking spaces, noting that three associated police berths are in existence on the existing arms of the marina. These three spaces are noted to be retained as part of the expanded marina.*

*The report restates the parking guideline amounts quoted in Australian Standard AS3962-2001 Guidelines for design of marinas and also seeks to rely on the rates quoted within a traffic study undertaken by Christopher Hallam and Associates entitled "Traffic and Parking Assessment of Proposed Modifications to Double Bay Marina" July 2009. Using the rates contained within this study, the existing development would require 47 spaces and proposed development would require 43 spaces. However, advice from Council's Urban Infrastructure team raises doubts in the applicability of the Double Bay Marina study, stating that the two locations are dissimilar in a number of ways and cannot readily be compared. It must also be acknowledged that this study represents one set of circumstances and does not have significant weight as a document to be applied to other marinas in other locations.*

#### Existing restrictions to car park access

*It has been noted in the peer review document and in advice from Council's Urban Infrastructure team that the boom gate system, restriction of one car per boat and 'sticker holders only' scheme means that it is possible for the car park to have multiple empty spaces, but that visitors would still need to park outside of the site. In the supplementary information provided the applicant states that these measures were intended as a way to prevent parking by those not associated with the site. It is considered appropriate to recommend conditions for the removal of the boomgate and the current restrictions. This would enable staff, patrons and their visitors to park until all spaces are filled, which is likely to alleviate parking pressure in the locality.*

#### Non-compliance of car park layout with Australian Standard AS2890.1-2004

*Both the peer review document and advice from Council's Urban Infrastructure team note that the existing layout of the car park, in terms of the dimensions of spaces and aisle widths, does not comply with the relevant Australian Standard, and that the boom gate should be relocated further into the site. This was raised with the applicant prior to the discussion of this matter at the 5 November 2015 meeting. The applicant is willing to undertake works to the car park layout to effect compliance in this regard, and an alternate layout plan was submitted. However, this would result in a decrease of parking spaces to 57 spaces. The proposed development represents alterations and additions to an existing marina, rather than a wholly new marina where none currently exists, and in fact results in a net reduction in the amount of vessels contained therein. While ordinarily compliance in this regard would be stipulated, the retention of the existing number of car spaces is considered to be of greater importance in this instance. The prior consents for the marina did not stipulate a certain number of car parking spaces nor a particular car park layout, and the car park was of an informal nature until the applicant recently linemarked the existing spaces.*

### Summary

*The following table summarises each of the above discussed parking rates:*

|                                                      | Existing – required spaces          | Proposed – required spaces          |
|------------------------------------------------------|-------------------------------------|-------------------------------------|
| <i>Pittwater 21 DCP</i>                              | <i>(no rate specified)</i>          | <i>(no rate specified)</i>          |
| <i>RMS Guide to Traffic Generating Development</i>   | 76                                  | 79                                  |
| <i>AS 3962-2001 Guidelines for Design of Marinas</i> | 75                                  | 70                                  |
| <i>Hallam &amp; Associates Study</i>                 | 47                                  | 43                                  |
| <i>Applicant's original traffic report</i>           | 59<br><i>(excl. swing moorings)</i> | 68<br><i>(excl. swing moorings)</i> |

*The fact that there is currently a shortage of public car parking in the Church Point locality is not in dispute. Council has undertaken the Church Point Parking Demand Management Review, and as a result is now undertaking the construction of an upgrade project to the Church Point Precinct, which includes 120 additional car parking spaces. This proposal is envisaged to satisfactorily alleviate the parking pressure in Church Point as it currently stands, not taking into account any changes made to Holmeport Marina. It can be reasonably be concluded therefore, that at the end of these construction works, and with no changes to the marina, the parking situation in Church Point would be acceptable. As now modified, the proposal seeks 14 new fixed berths and 3 new dinghy moorings, but relinquishes 30 marina-operated swing moorings, equating to a net decrease of 13 vessels within the marina's remit. The original recommendation on the application concluded that the proposal was acceptable in terms of the amount of parking proposed, and the amendments to the application with decreased vessel numbers, are also recommended as being acceptable.*

- **C2.2 Safety and Security**

A submission has been received which raises concern regarding the safety of swimmers at Botham's beach, suggesting that a risk to safety or life will result from the new vessels accessing the extended marina structure. The structure has been designed to ensure that the majority of vessels would enter and leave the structure from the north west (away from the beach) with only two smaller vessels and 3 dinghies accessing the structure from the south. This is similar to the existing swing arrangement, where three swing moorings are located to the south of the proposed structure. Bothams beach extends around the western curve of Church Point and only the northernmost part of this beach would be adjacent to the proposed development. The new arrangement is not considered to result in any additional safety concerns.

- **C2.5 View sharing**

The control requires that a reasonable sharing of views is afforded from both public and private areas. In establishing what is reasonable, the control refers to the Land and Environment Court Planning Principles. Two such principles are of note; *Tenacity Consulting v Warringah Council* deals with views from private properties while *Rose Bay Marina Pty Ltd v Woollahra Council* deals with views from public places.

In terms of private views, no objections have been received from nearby neighbouring properties, nor are adverse impacts anticipated in this regard. In terms of public views, submissions have been received raising concerns regarding a resulting change in view and change in the overall character of the waterway. An assessment against the provisions of the *Rose Bay Marina v Woollahra Council* planning principle is provided below:

#### Part 1: Identification stage

The view from McCarrs Creek Road is of trees and vegetation in the foreground with several glimpse views through to the waterway including views of boats and the dense vegetation of the headland beyond. In the section of roadway adjacent to the site's car park it is possible to view the car park and cars, the two storey marina building and glimpse views of the waterway. The glimpse views are obtained at a number of points along McCarrs Creek Road. This part of the road has a narrow, informal footpath to one side of the road only with no benches or lookout points identified. Views of the waterway are also possible from Botham's beach, the northernmost part of which is adjacent to the subject site.

The extent of the obstruction relates to a series of horizontal walkways located at or close to water level, which in themselves will not obstruct views. Boats moored in between the walkways will obscure a portion of the view although it will be possible to see through the masts and between/around the base of the boats. The boats are likely to come and go making the arrangement dynamic.

In terms of the intensity of public use, it is considered to be of a low intensity. This section of McCarrs Creek Road is not one where people would travel to see the view given the dense natural screening. Those walking up and down the informal footpath and motorists passing the site would benefit from glimpse views only rather than wide, expansive views. In terms of Botham's beach, it is anticipated that the areas further to the south would be likely to be more popular than those immediately adjacent to the maintenance area of the site, making the northernmost part of the sand of a low intensity use.

The principle seeks recognition of any document which identifies the importance of the view. DCP control C2.5 identifies the importance of views in the locality generally, and the whole of McCarrs Creek Road is included within the Scenic Streets Register, however neither document references this particular site or stretch of road.

#### Part 2: Analysis of impacts

It is difficult to make a quantitative assessment of existing view or loss of view for two reasons; firstly the view is comprised of a lot of separate glimpse views (each comprising different elements) and secondly because boats using the structures will vary in terms of how many boats are moored at any one time and the size of the boats. The following photomontages, taken from the applicants submission, show an existing and proposed arrangement from one of these views:



Figure 5: Photograph of existing

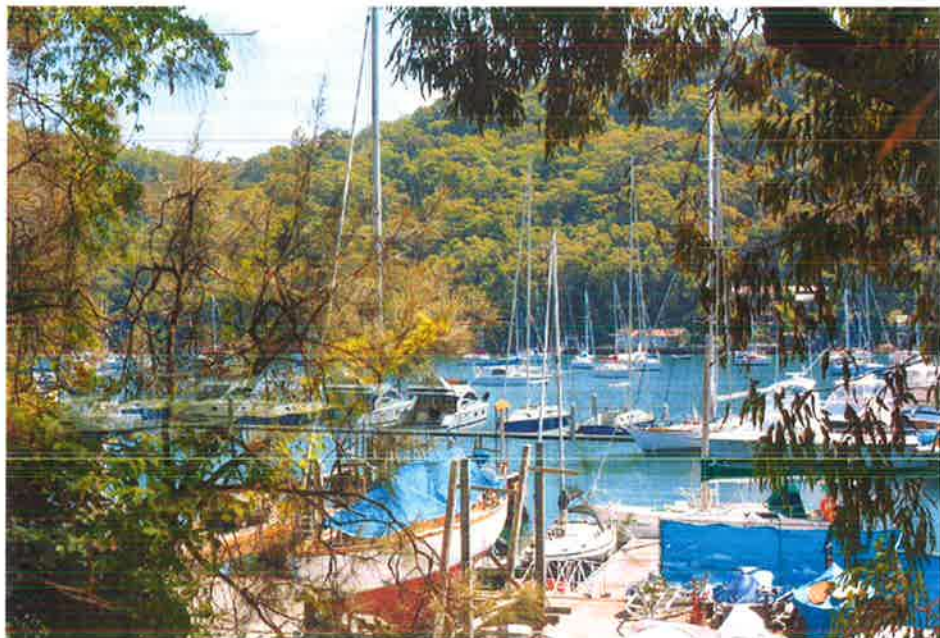


Figure 6: Photomontage of proposed development

In terms of a qualitative impact, the view does not include major landmarks and is not considered to be iconic. It is common to see an interface of land and water, however this would not necessarily be lost as a result of the development. While the mooring of boats in a closer, more consolidated area could result in a slight reduction in view, the reduction in swing moorings could also have the effect of gaining back sections of view.

### Summary

The outcomes of the C2.5 control seek a reasonable sharing of views and seek to protect, maintain and where possible enhance existing views from public places. The proposed structures themselves will not have the effect of reducing or removing a view. The amount of, and dynamic nature of, the boats which would use the structures is considered such that views through and around the boats will be possible. The nature of the existing view and its limited perceptibility from McCarrs Creek Road are such that the proposed development will not appear as obtrusive or harmful to character. It is concluded that the proposal is generally consistent with the requirements of this control.

- **C2.10 Pollution Control**

Submissions have been received which raised concerns that the increase in vessels at the marina will result in increased levels of noise, odours and fumes which will harm the amenity of nearby residential properties.

Council's Health Unit has reviewed the application documentation and visited the site and has advised that noise impacts from the additional berths are likely to be negligible in the context of the existing use of the site, but recommends the application of standard noise conditions to any consent. These conditions are included in the attached recommended conditions.

Regarding the concerns relating to diesel fumes and air pollution from boats, Council's Health Unit advises that this is not likely to be an issue, and that there are powers under the *Protection of the Environment Operations Act 1997* to deal with such pollution in the event that it arose. Standard conditions relating to air pollution are recommended.

- **C2.12 Protection of residential amenity**

The development will not result in the loss of solar access or visual privacy to surrounding residential development. Objections have been received which relate to noise and air pollution; these are discussed under control C2.10 above.

- **C2.16 Undergrounding of Utility Services**

Power lines adjacent to the site are located on the western side of McCarrs Creek Road and not adjacent to the marina site. It is considered unreasonable to require the relocation of these power lines underground (including digging underneath McCarrs Creek Road) given the scale and nature of the development proposed. A condition to require the underground provision of any new services to the site is recommended.

- **D15.2 Scenic protection - General**

Submissions have been received which raise concern regarding the character of the area as a result of a concentration of boats being located in the proposed area. The concern relates to a replacement of water and headland views with a view of boats.

However, the desired character of this locality (as expressed within control A4.15 of Pittwater 21 DCP), is that the locality should remain primarily as a recreational boating area. The subject development represents the type of development which can reasonably be expected for this site. The existing view from the public domain of McCarrs Creek Road and from the waterway is of water, trees and headland seen through the masts of boats. The proposed net increase of seven vessels will not materially intensify or alter this. The proposal is considered consistent with the existing and desired future character of this locality.

- **D15.13 Lateral limits to development seaward of mean high water mark**

While the control technically applies, there are no adjacent waterfront properties to measure this control against; to the south west of the marina site is a public reserve, then the roadway and then neighbouring properties which are not waterfront properties. The new structure will be separated from the reserve by approximately 68 metres leaving an adequate channel for equitable navigation, recreation and access.

- **D15.15 Waterfront development**

The development is consistent with the outcomes of this control. The technical requirements of the control relate more closely to smaller-scale forms of waterfront development. Notwithstanding this, the development is generally consistent with its provisions other than in two areas; the control states that no 'L' or 'T' ends to walkways should be proposed; the subject development is reliant on this design to enable access, and this is similar to the existing marina structures. Also, the control suggests maximum dimensions of 5m x 9m per berth; the subject berths exceed this, but as a marina this is supported.

- **D15.17 Moorings**

The control suggests a maximum of 433 moorings in the McCarrs Creek area and the control discourages additional moorings unless, in consultation with NSW Maritime, this is considered appropriate. The existing number of moorings in McCarrs Creek is not known, however the application has been reviewed by NSW Maritime who raise no objections to the proposal.

A submission has been received stating that no additional moorings are required and that saturation point has been reached. It is understood however that there is significant demand and waiting lists both at this marina and others within the Pittwater area for moorings due to an increasing population in the area generally, and as a result of the land release areas within the local government area. The net addition of 7 additional moorings will go some way to alleviating this demand without causing harm to the surrounding area.

The control specifies that where additional moorings are considered appropriate, moorings must be sited such that navigable water space is optimised, adverse visual impact is minimised and adequate shore-based infrastructure is available. The removal of seven swing moorings from the south western area of the site and replacement with closer, more consolidated moorings assists in optimising navigation space. The visual impact of the development is considered to be acceptable and the existing marina is considered to include sufficient shore-based facilities to support the development, subject to the recommended conditions of consent.

## **10.0 CONCLUSION**

The Development Application has been assessed in accordance with the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, Pittwater Local Environmental Plan 2014, Pittwater 21 DCP and other relevant policies as listed as item 3.0.

The proposal, **as it has been modified**, represents a ~~relatively minor net increase~~ **net decrease** in berths when considered in the context of the site as a whole, or in the context of other marinas in the Pittwater area. The development has been found to have appropriate environmental and amenity impacts and will not impact upon any items of European or Aboriginal heritage. The marina, as extended, has been found to have acceptable parking arrangements and the visual impact of the development is also held to be acceptable.

***The supplementary documentation relating to traffic and parking impacts, both from the external Traffic Consultant engaged by Council and from the applicant has been taken into account. The application continues to be recommended for approval.***

The proposed development is consistent with the relevant statutory and policy controls and outcomes. The impacts of the proposed development are considered acceptable subject to the recommended conditions. The application is recommended for approval, subject to the attached conditions of consent.

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#### **RECOMMENDATION OF PLANNER**

That Council as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 grant consent to Development Application N0240/15 for the extension of the existing Holmeport Marina facility from 59 to 73 berths, installation of 3 additional dinghy moorings and removal of ~~7~~ **30** existing swing moorings at 2A McCarrs Creek Road, Church Point, subject to the attached conditions of consent.

#### **Report prepared by**

Cheryl Williamson  
**SENIOR PLANNER**

# DRAFT

**CONSENT NO: N0240/15  
ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979 (AS AMENDED)  
NOTICE TO APPLICANT OF DETERMINATION  
OF A DEVELOPMENT APPLICATION**

Applicant's Name and Address:

PATRINA PTY LTD  
C/O - HAMPTONS PROPERTY SERVICES P/L  
PO BOX 954  
EDGECLIFF NSW 2027

Being the applicant in respect of Development Application No. N0240/15

Pursuant to section 80(1) of the Act, notice is hereby given of the determination by Pittwater Council, as the consent authority, of Development Application No. **N0240/15** for:

**Extension of existing marina facility from 59 to 73 berths, additional 3 dinghy moorings and removal of 7 30 swing moorings. Northern Beaches Council is the consent authority, and the Sydney East Joint Regional Planning Panel has the function of determining the application.**

**At: 2A MCCARRS CREEK ROAD, CHURCH POINT NSW 2105**

**Decision:**

The Development Application has been determined by the granting of a **deferred commencement consent** based on information provided by the applicant in support of the application and in accordance with:

- Drawing 8A0468/MA/CP1 revision B: Holmeport Marina Concept Plan Proposed Marina Extension prepared by Royal Haskoning DHV and dated 6 February 2015;
- Drawing DWG04 revision A: Existing car park layout plan prepared by Inroads Group and dated 26 October 2015
- Environmental Impact Statement prepared by Hamptons Property Services and dated June 2015
- Holmeport Marina Reconfiguration and Extension EIS: Coastal Processes and Navigation Assessment ref. 8A0468 prepared by Royal Haskoning DHV and dated 9 February 2015
- Ecological Issues and Assessment Report prepared by Gunninah and dated April 2015
- Holmeport Marina - Sediment and Water Quality Assessment ref. 113475 prepared by Meinhardt Infrastructure & Environment Pty Ltd and dated 20 February 2015
- Traffic Impact Assessment ref 14.413r01v3 prepared by Traffix and dated 30 April 2015
- Statement of Heritage Impact issue C prepared by Graham Brooks & Associates Pty Ltd and dated 23 April 2015
- Geotechnical Assessment ref. 2/856SPrpt prepared by JK Geotechnics and dated 22 December 2014
- Bushfire Protection Assessment ref. A14155 prepared by Travers Bushfire & Ecology and dated April 2015

as amended in red (shown clouded) or as modified by any conditions of this consent.

The reason for the imposition of the attached conditions is to ensure that the development consented to is carried out in such a manner as to achieve the objectives of the Environmental Planning and Assessment Act 1979 (as amended), pursuant to section 5(a) of the Act, having regard to the relevant matters for consideration contained in section 79C of the Act and the Environmental Planning Instruments applying to the land, as well as section 80A of the Act which authorises the imposing of the consent conditions.

# DRAFT

Endorsement of date of consent (TBC)

Mark Ferguson  
INTERIM GENERAL MANAGER  
Per:

# DRAFT

## CONDITIONS OF APPROVAL

### PART A - DEFERRED COMMENCEMENT CONDITIONS

This consent does not operate until the following deferred commencement conditions are satisfied and the Applicant has received written confirmation of the satisfactory completion of the requirements within this condition and the activation of the consent from Council. The information required by the deferred commencement conditions below are to be provided to the Council within six (6) months from the date of this consent. If this information is not provided within this time frame, the consent will lapse.

1. A Marine Sanitation and Pollution Prevention Management Plan is to be prepared by a suitably qualified and appropriately experienced consultant and must be submitted to and approved in writing by Pittwater Council prior to the development consent becoming operational. The Marine Sanitation and Pollution Prevention Management Plan shall include details of:
  - The type/model and manufacture's specification of the portable Marine Sanitation Device and Pumping system to be used.
  - Details of the type and integrity of the piping system, connection points and inclusion of non-return valves.
  - Details of tank overflow protectors that automatically shut the pump off when the tank is full, leak detection shutdowns, manufacture of materials specifically for use in the marine environment including stainless steel hardware and heavy duty marine grade non-corrosive materials.
  - Details of tank/s capacity level markings.
  - The volume/capacity of the system - which is to be able to completely empty the tank of the largest marine vessel accommodated on site.
  - The contents, location(s) and appearance of spill kit(s) to be used in the event of spills while operating the portable Marine Sanitation Device and Pumping system. The spill kit/device is to be able to accommodate/contain 110% of the volume/capacity of the portable system.
  - Written procedures for training staff regarding the use and maintenance of the portable Marine Sanitation Device and Pumping system and spill kit devices. The procedure is to include health and safety provisions including the process and frequency that the system will be cleaned.
  - The disposal of the sewage:
    - If disposal into the site's existing tank is required, details confirming that the capacity is sufficient to handle the existing and proposed loading.
    - If a new tank is required, details of the location, dimensions and appearance of the tank.
  - A copy of the Sydney Water trade waste agreement and any conditions relating to the management of both the existing and proposed wastewaters generated on the site. The wastewaters include wastes from the slipway, chemicals, materials, solids plus grey waters and black waters from the site and from marine vessels.
  - Environmental risk management planning which addresses, as a minimum:
    - the monitoring and maintenance of system devices, pumps, tanks and lines.
    - notification processes and contingency plans for leaks and spills.
    - compliance audits and record keeping.

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The Marine Sanitation and Pollution Prevention Plan must be designed in accordance with the following:

- Protection of the Environment Operations Act 1997
- NSW EPA Environmental Action for Marinas, Boatsheds and Slipways. The self-assessment checklist is to be completed and documentation detailing compliance with the checklist is to be submitted to Council in order to evaluate environmental performance and identify areas for improvement.

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## PART B – OTHER CONDITIONS

This consent is not an approval to commence building work. The works associated with this consent can only commence following the issue of the Construction Certificate.

Note: Persons having the benefit of development consent may appoint either a council or an accredited certifier as the principal certifying authority for the development or for the purpose of issuing certificates under Part 4A of the Environmental Planning and Assessment Act. When considering engaging an accredited certifier a person should contact the relevant accreditation body to ensure that the person is appropriately certified and authorised to act in respect of the development.

### A. Prescribed Conditions:

1. All works are to be carried out in accordance with the requirements of the Building Code of Australia.
2. A sign must be erected in a prominent position on-site only showing:
  - (a) the name, address and telephone number of the Principal Certifying Authority for the work, and
  - (b) the name of the principal contractor or the person responsible for the works and a telephone number on which that person may be contacted outside working hours, and
  - (c) that unauthorised entry to the work site is prohibited.

The sign must to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

3. This approval/consent relates only to the new work nominated on the approved consent plans and does not approve or regularise any existing buildings or structures within the property boundaries or within Council's road reserve.
4. Any building work in relation to the development consent is to be carried out in accordance with the requirements of the Building Code of Australia.

### B. Matters to be incorporated into the development and maintained over the life of the development:

1. A maximum of 73 vessels may be moored at the site at any one time (excluding swing moorings and dinghies). The existing maintenance area on the site may be used by up to, and including, four (4) vessels at any one time.

Note: the exceedance of the above requirements would necessitate a separate development approval and a license from NSW Environment Protection Agency.

2. All vessels must be berthed in accordance with the approved layout plan. The use of the outer edges of the approved structures is not approved as part of this consent.
3. The approved lengths of vessels utilising the approved new structures are limited as follows:
  - 2 x 10 metres
  - 2 x 18 metres
  - 9 x 20 metres
  - 1 x 27.5 metres

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4. Any lighting to be installed on the walkways for safety purposes must not be of such a level as to result in excessive light spill or harm to the amenity of the surrounding area. At no time is the intensity of the lighting to cause objectionable glare and must be designed, installed and used in accordance with *AS4282-1997 control of obtrusive effects of outdoor lighting*.
5. The following requirements, specified by NSW Rural Fire Service, apply to the development:
  - (a) At the commencement of building works and in perpetuity subject Lot 331 DP 1020134 and Lot 273 DP 752046 shall be managed as asset protection zones (APZs) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
  - (b) The existing buildings which store hazardous materials, including the repairs and service garage, are required to be upgraded to improve ember protection. This is to be achieved by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen mesh with a maximum aperture of 2mm. Where applicable, this includes any sub floor areas, openable windows, vents, weepholes and eaves. External doors are to be fitted with draft excluders.
6. The following requirements, specified by NSW Maritime, apply to the development:
  - (a) Vessels on the channel side of the extension must be berthed stern side only. This is to ensure that when leaving the marina, a berthed vessel would have its helm facing the channel, thus facilitating improved vision of the channel movements for the operator of the berthed vessel.
  - (b) The tenant shall not be exempted from the provisions of the Management of Waters and Waterside Lands Regulations - NSW, and shall at all times comply with the requirements of all Acts and Regulations administered by Roads and Maritime Services.
  - (c) Tenant shall at all times comply with any directions given by Roads and Maritime Services or an officer of the Authority in regard to painting, lighting or use or alteration of any structure as may, from time to time, be required in the interests of safe navigation, equitable use of and conservation of waterways and the prevention of pollution.
  - (d) Area of tenure shall include only that area below high water mark covered by the actual structures plus the berthing area.
  - (e) The sites of any freestanding piles installed for the purpose of mooring a vessel at a jetty/pontoon shall be included in the area of the tenure.
  - (f) Any existing moorings affected by the proposal will be relocated at the developers expense.
  - (g) Jetties shall be of substantial construction, have a minimum deck height of 0.75m above local mean high water level, with end piles and piles not more than 15m apart to have a minimum height of 1.0m above local mean high water level. Piles shall be finished at even height, stripped of bark above deck level and painted white. No outlying wires or obstructions shall project outside the extremities of the jetty.

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- (h) Freestanding piles for the mooring of a vessel at a jetty/pontoon shall be erected to a height of at least 1 m above the level of local mean high water and have the bark stripped off 0.6m down from the top and be painted white and the permissive occupancy number displayed thereon.
- 7. The following requirements, specified by NSW Department of Primary Industries, apply to the development:
  - (a) Environmental safeguards (silt curtains, booms etc) are to be used during construction to ensure that there is no escape of turbid plumes into the aquatic environment. Turbid plumes have the potential to smother aquatic vegetation and have a deleterious effect on benthic organisms.
  - (b) Construction workers are to be made aware of the location of nearby seagrasses. Impacts to this seagrass are to be avoided by:
    - (i) Not operating barges over this seagrass at lower tide levels and
    - (ii) Not anchoring within seagrass beds during construction
- 8. The use of the premises must be carried out in accordance with the approved Marine Sanitation and Pollution Prevention Plan at all times during the life of the development
- 9. The approved Marine Sanitation device and pumping system must be made available to patrons of the marina at all times during business hours that the marina is operating
- 10. Signage must be erected at the marina which advises patrons that sewage pump-out facilities are available on-site at all times during business hours that the marina is operating. This signage must be maintained for the life of the development.
- 11. If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.
- 12. There shall be no damage to intertidal habitats including rocky shores, seagrass beds, salt marshes or mangroves.
- 13. The landowner must comply with all aspects of the approved Ecological Assessment Report (Gunninah, April 2015), Aquatic Ecological Assessment (Marine Pollution Research, February 2015) and Environmental Impact Statement (Hamptons Property Services, 1/7/15) over the life of the development.
- 14. No building materials or other materials are to be placed on foreshore / Seagrass or other native vegetation. Sediment is not to leave the site or enter areas of Seagrass or its habitat.
- 15. Over the life of the development all declared noxious weeds are to be managed / removed in accordance with the Noxious Weeds Act 1993. Environmental weeds are to be removed and/or controlled.
- 16. No environmental weeds are to be planted on the site.
- 17. No building materials or other materials are to be placed on foreshore / seagrass or other native vegetation. Sediment is not leave the site or enter areas of seagrass or its habitat.
- 18. There is to be no net loss of sea grass.

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19. A minimum of 67 car parking spaces are to be retained on the site for the life of the development. The car parking area must be amended to include at least one disabled access car parking space which complies with Australian Standard AS2890. The storage of boats, equipment or garbage within the designated parking spaces is not permitted and these must remain available for the parking of vehicles at all times.
20. No water pollution shall result from the operation of any plant or equipment or activity carried out.
21. Noise from the operation of any plant or equipment at the premises shall comply with the noise provisions of the Protection of the Environment Operations Act, 1997.
22. No odour nuisance to the public or any adjoining premises, shall be created by the operation of any plant or equipment or any procedure carried out at the premises.
23. No emissions causing air pollution shall be created by the operation of any plant equipment or any procedure carried out at the premise.
24. The operation of any plant or equipment or any procedure carried out at the premises shall not cause land pollution.
25. All garbage enclosures/stores shall be constructed and fitted out and maintained over the life of the development in accordance with the following:
  - (a) A separate room or an appropriately constructed area is to be provided for the storage of garbage and recyclables.
  - (b) The area used for the storage and washing down of garbage and recycling receptacles shall be constructed of solid material (brick, concrete, concrete blocks, structural fibrous cement or other similar homogeneous material) so as to prevent the formation of cavities which become possible harbourages for insects and vermin. Framing in timber is not permitted.
  - (c) The walls of the enclosure shall be cement rendered and steel trowelled to a smooth, even surface.
  - (d) The floor shall be of impervious material coved at the intersection with the walls, graded and drained to an approved floor waste within the room/enclosure.
  - (e) Stormwaters shall not enter the floor of the garbage enclosure such that the sewer system may be contaminated by rainwaters.
  - (f) The garbage and recycling enclosure shall be made vermin proof.
  - (g) Garbage and recycling rooms shall be vented to the external air by natural or artificial means. The installation and operation of the mechanical ventilation system shall comply with AS 1668, Parts 1 & 2.
  - (h) Hot and cold water hose cocks shall be located within a garbage enclosure or in close proximity to Councils satisfaction.
26. The operation of the business and activities must comply with the Protection of the Environment Operations Act, 1997.
27. No water pollution shall result from the operation of any plant or equipment or activity carried out.
28. Noise from the operation of any plant or equipment at the premises shall not exceed criteria listed in the NSW Industrial Noise Policy January 2000.
29. No odour nuisance to the public or any adjoining premises shall be created by the operation of any plant or equipment or any procedure carried out at the premises.

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30. No emissions causing air pollution shall be created by the operation of any plant or equipment or any procedure carried out at the premises.
31. The operation of any plant or equipment or any procedure carried out at the premises shall not cause land pollution.
32. In the event that new utility services including overhead power supply and communication cables are required to service the development, these are to be placed underground for the total frontage of the development site to any public road at the full cost to the developer.
33. All plumbing, electrical wiring and drainage fixtures are to be concealed and not exposed to public view.
34. New electrical connections are to be carried out using underground cabling.
35. The finished surface materials of the walkways shall be of a dark and earthy colour and non-reflective finish.

## **C. Matters to be satisfied prior to the issue of the Construction Certificate:**

Note: All outstanding matters referred to in this section are to be submitted to the accredited certifier together. Incomplete Construction Certificate applications / details cannot be accepted.

1. Prior to the issue of a construction certificate, or the commencement of works whichever is the sooner, additional sediment sampling is to be undertaken to understand the ambient background concentrations within the sediment to identify potential sources of contamination in proximity to the slipway and boat works area. This is to ensure that these levels are not exacerbated by the new marina structure and the base position is set as to contamination levels.
2. Submission of construction plans and specifications and documentation which are consistent with the approved Development Consent plans, the requirements of Building Code of Australia and satisfy all conditions shown in Part B above are to be submitted to the Principal Certifying Authority.
3. In accordance with section 34 of the Building and Construction Industry Long Service Payments Act 1986, the applicant must pay a long service levy at the prescribed rate of 0.0035 of the total cost of the work to either the Long Service Payment Corporation or Council for any work costing \$25,000 or more.
4. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.
5. The development is to be carried out in accordance with the recommendations/requirements of the Bushfire Protection Assessment prepared by Travers Bushfire and Ecology and dated April 2015.

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## **D. Matters to be satisfied prior to the commencement of works and maintained during the works:**

Note: It is an offence to commence works prior to issue of a Construction Certificate.

1. The hours of construction are restricted to between the hours of 7.00am and 5.00pm Monday - Friday and 7.00am to 1.00pm on Saturdays. No works are to be carried out on Sundays or Public Holidays. Internal building work may be carried out at any time outside these hours, subject to noise emissions from the building or works not being audible at any adjoining boundary.

Note: This condition does not apply in relation to Crown building work that is certified, in accordance with Section 116G of the Act, to comply with the technical provisions of the States building laws.

2. Appropriate silt fences or other measures to contain sediment during pile driving are to be installed during construction to reduce potential impacts in terms of soil erosion and sediment control.
3. Any proposed demolition works shall be carried out in accordance with the requirements of AS2601-2001 The Demolition of Structures.

Amongst others, precautions to be taken shall include compliance with the requirements of the WorkCover Authority of New South Wales, including but not limited to:

1. Protection of site workers and the general public.
2. Erection of hoardings where appropriate.
3. Asbestos handling and disposal where applicable.
4. Any disused service connections shall be capped off.

Council is to be given 48 hours written notice of the destination/s of any excavation or demolition material. The disposal of refuse is to be to an approved waste disposal depot.

4. A stamped copy of the approved plans is to be kept on the site at all times, during construction.
5. The following facilities must be provided on the site:
  1. toilet facilities in accordance with WorkCover NSW requirements, at a ratio of one toilet per every 20 employees, and
  2. a garbage receptacle for food scrapes and papers, with a tight fitting lid.

Toilet facilities are to be provided in a location which will not detrimentally affect the amenity of any adjoining residents at or in the vicinity of the work site during the duration of the development.

6. Sampling, testing and remediation (if required) is to be carried out in accordance with the submitted Sediment and Water Quality Assessment prepared by Meinhardt and dated 20 February 2015.
7. Environmental safeguards (silt curtains, booms etc.) are to be used during construction to ensure that there is no escape of turbid plumes into the aquatic environment. Turbid plumes have the potential to smother aquatic vegetation and have a deleterious effect on benthic organisms.

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8. Temporary sedimentation and erosion controls are to be constructed prior to commencement of any work to eliminate the discharge of sediment from the site.
9. Sedimentation and erosion controls are to be effectively maintained at all times during the course of construction and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction.
10. Adequate measures shall be undertaken to remove clay from vehicles leaving the site so as to maintain public roads in a clean condition.
11. Personnel with appropriate training, or demonstrated knowledge and experience in erosion and sediment control shall be responsible for supervising the installation and maintenance of approved erosion and sediment control measures – during and after construction and until the site has been restored to the satisfaction of council.
12. No works are to be carried out in Council's Road Reserve without the written approval of the Council.  
Note: Separate approval is required for access driveways, paths, connections to underground services (stormwater, gas, sewer, electricity, etc.), and landscaping works within Council's Road Reserve.
13. No skip bins or materials are to be stored on Council's Road Reserve.
14. A clearly legible *Site Management Sign* is to be erected and maintained throughout the course of the works. The sign is to be centrally located on the main street frontage of the site and is to clearly state in legible lettering the following:
  1. The builder's name, builder's telephone contact number both during work hours and after hours.
  2. That no works are to be carried out in Council's Road Reserve without prior application and approval of a Road Opening Permit from Council.
  3. That a Road Opening Permit issued by Council must be obtained for any road openings or excavation within Council's Road Reserve associated with development of the site, including stormwater drainage, water, sewer, electricity, gas and communication connections. During the course of the road opening works the Road Opening Permit must be visibly displayed at the site.
  4. That no skip bins or materials are to be stored on Council's Road Reserve.
  5. That the contact number for Pittwater Council for permits is 9970 1111.
15. A satisfactory construction traffic management plan (CTMP) prepared by a suitably qualified traffic consultant is required to be submitted to the Private Certifying Authority prior to the commencement of any site works. The plan is to detail:
  1. Quantity of material to be transported
  2. Proposed truck movements per day
  3. Proposed hours of operation
  4. Proposed traffic routes, noting that 3 tonne load limits apply to some roads within Pittwater
  5. Location of on/off site parking for construction workers during the construction period.
16. Demolition works must be carried out in compliance with *WorkCovers Short Guide to Working with Asbestos Cement* and Australian Standard AS 2601 2001 *The Demolition of Structures*.
17. The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400mm x 300mm and be erected in a

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prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility. All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days notice in writing of the intention to disturb and remove asbestos from the development site.

**18. A minimum of 30 marina-operated swing moorings shall be removed from the lease area of the marina prior to the commencement of construction works in relation to the 14 additional fixed berths. These swing moorings are to be removed from the site in their entirety and not reinstated for the life of the development.**

**19. The existing boom gate must be removed from the entry to the car park prior to the commencement of works relating to the additional fixed berths.**

**20. All signage located within the car park of the site related to the restriction of one vehicle per boat is to be removed prior to the commencement of works relating to the additional fixed berths.**

## **E. Matters to be satisfied prior to the issue of Occupation Certificate:**

Note: Prior to the issue of an Occupation Certificate the principal certifying authority is to ensure that Council's assets, including road, kerb and gutter and drainage facilities adjacent or near to the site have not been damaged as a result of the works. Where such damage has occurred, it is to be repaired to Council's written satisfaction prior to the issue of an Occupation Certificate or suitable arrangements put in place to effect those repairs at a future date to Council's written satisfaction. Should this process not be followed, Council will pursue action against the principal accredited certifier in relation to the recovery of costs to effect such works.

Note: It is an offence to occupy the building or part thereof to which this consent relates prior to the issue of an Occupation Certificate.

1. Prior to the issue of an Occupation Certificate, or the commencement of the use of the new structures, whichever is the sooner, certification from a suitably qualified and appropriately experienced engineer must be submitted to the Private Certifying Authority which confirms that all of the requirements of the Marine Sanitation and Pollution Prevention Plan have been fully complied with.
2. Prior to the issue of an Occupation Certificate, or the commencement of the use of the new structures, whichever is the sooner, the applicant is to submit written confirmation from Sydney Water advising that the amended trade waste agreement and all conditions relating to the management of both the existing and new wastewaters generated on the site have been satisfactorily complied with. The wastewaters include wastes from the slipway, chemicals, materials, solids plus grey waters and black waters from the site and from marine vessels.
3. An Occupation Certificate application stating that the development complies with the Development Consent, the requirements of the Building Code of Australia and that a Construction Certificate has been issued must be obtained before the building is occupied or on completion of the construction work approved by this Development Consent.

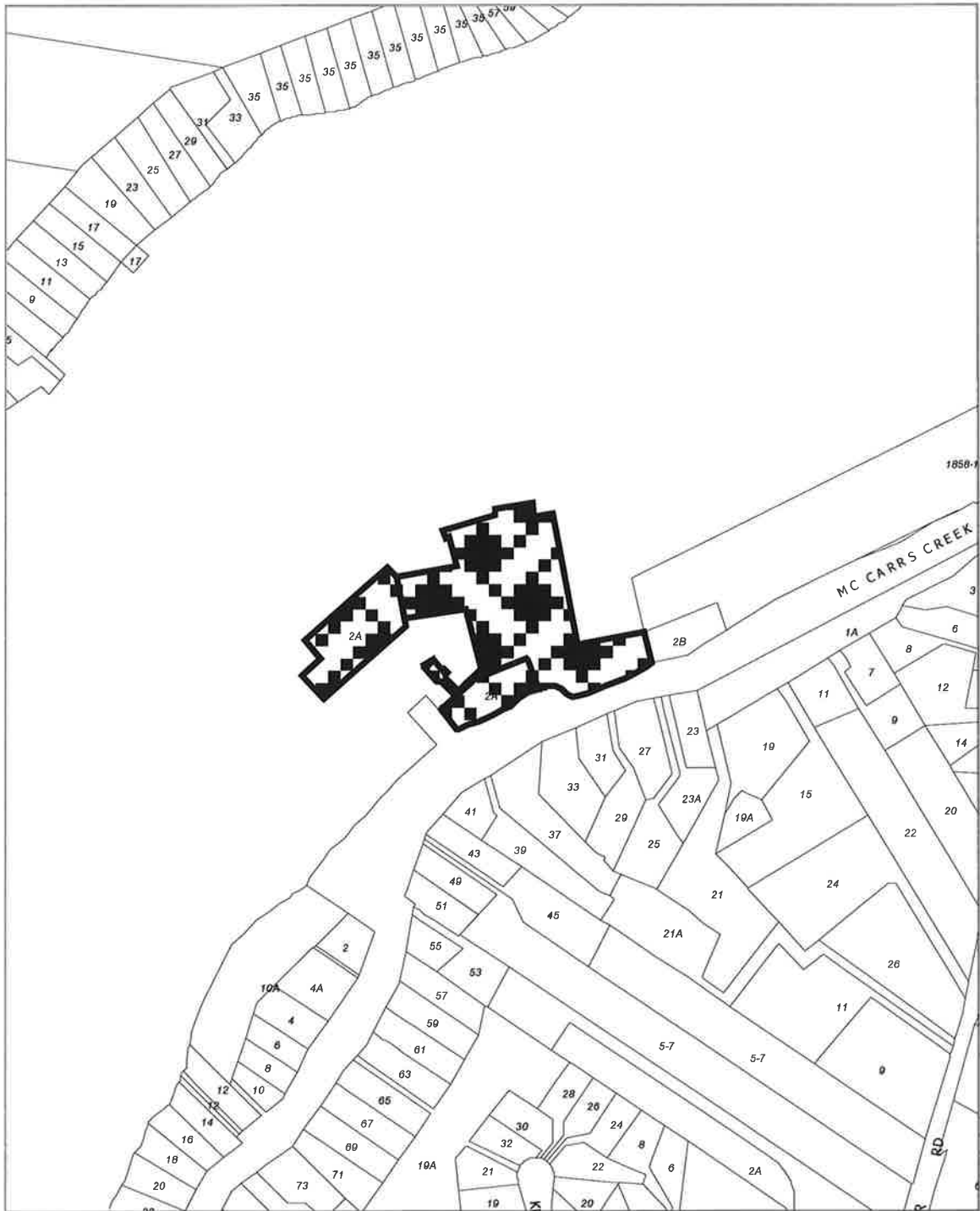
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4. Prior to issue of the Occupation Certificate, Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.
5. Restoration of all damaged public infrastructure caused as a result of the development to Council's satisfaction. Council's written approval that all restorations have been completed satisfactorily must be obtained and provided to the Private Certifying Authority with the Occupation Certificate application.

## G. Advice:

1. Failure to comply with the relevant provisions of the *Environmental Planning and Assessment Act, 1979* (as amended) and/or the conditions of this Development Consent may result in the serving of penalty notices (on-the-spot fines) under the summary offences provisions of the above legislation or legal action through the Land and Environment Court, again pursuant to the above legislation.
2. Dial before you dig: Prior to excavation the applicant is advised to contact Australia's National Referral Service for Information on Underground Pipes and Cables telephone 1100 or [www.1100.com.au](http://www.1100.com.au)
3. It is the Project Managers responsibility to ensure that all of the Component Certificates/certification issued during the course of the project are lodged with the Principal Certifying Authority. Failure to comply with the conditions of approval or lodge the Component Certificates/certification will prevent the Principal Certifying Authority issuing an Occupation Certificate.
4. In accordance with Section 95(1) of the EPA Act 1979, this development consent lapses 5 years after the date from which this consent operates if the development is not commenced.
5. To ascertain the date upon which a consent operates, refer to Section 83 of the *Environmental Planning and Assessment Act, 1979* (as amended).
6. Should any of the determination not be acceptable, you are entitled to request reconsideration under Section 82A of the *Environmental Planning and Assessment Act, 1979*. Such request to Council must be made in writing, together with appropriate fees as advised at the time of lodgement of such request, within 6 months of the determination.
7. If you are dissatisfied with this decision, Section 97 of the *Environmental Planning and Assessment Act, 1979*, gives you a right of appeal to the Land and Environment Court within 6 months of the date of endorsement of this Consent.
8. The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre to determine whether the development will affect Sydney Waters sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately stamped. For Quick Check agent details please refer to the web site at [www.sydneywater.com.au](http://www.sydneywater.com.au) then see Building Developing and Plumbing then Quick Check, or telephone 13 20 92.

## LOCALITY MAP



## NOTIFICATION PLAN

