

CONSULTANT ASSESSMENT REPORT

DA No:	DA/585/2022 (Lodged on 8 June 2022)
Description:	Construction of a public boardwalk and shared pathway between Kangaroo Point and Brooklyn Road
Property:	Lot 100 DP 865249 & Lot 7 DP 740853, Pacific Highway, Brooklyn and Kangaroo Point Wharf Reserve (R1038969) Lot 101 DP 1223533, No. 1422 Pacific Highway, Brooklyn
Applicant:	Hornsby Shire Council
Owner:	Hornsby Shire Council and State of NSW (Crown Lands)
Estimated Value:	\$4,257,000
Ward:	A Ward

- The application involves the construction of a public boardwalk and shared pathway between Kangaroo Point and Brooklyn Road, Brooklyn.
 - The application is categorised as “Designated Development” due to works within mapped wetlands and includes an Environmental Impact Statement (EIS) prepared in accordance with the Secretary’s Environmental Assessment Requirements (SEARS) dated 14 September 2020.
 - The application is also categorised as “Integrated Development” to NSW Department of Primary Industries (Fisheries) and NSW Rural Fire Service.
 - Additional information was submitted to support the proposed development on 21 September 2022 to address concerns raised within the notification period and an updated Biodiversity Assessment Report (BDAR) was submitted on 19 January 2023.
 - The proposal complies with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2013.
 - A total of five (5) submissions have been received in respect of the original application and one (1) submission (comprising two letters) following discussions with the writer of the submission from Dolphin Boatshed Marina in response to issues raised.
 - As the proposal involves the Council owned land, an independent assessment of the application has been undertaken.
 - The application is required to be determined by the Hornsby Council Local Planning Panel as it is classified as “Designated Development” and the applicant is Council.
 - It is recommended that the application be approved.
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BACKGROUND

Over the past two years, Council's Design Team have been preparing and consulting with the community regarding the proposed construction of a public boardwalk and shared pathway at Brooklyn, between Kangaroo Point (near Hawkesbury River road bridge) and Seymours Creek. Consultation occurred between 31 March 2022 and 2 May 2022, prior to lodgement of the development application.

The project is being funded by the NSW State Government under its Active Transport Program and Metropolitan Greenspace Program and will involve construction of an elevated boardwalk and a concrete pathway extending approximately one kilometre.

On 8 June 2022 the subject application was lodged.

On 28 July 2022, Council Officers met with the writer of the submission from Dolphin Boatshed Marina to discuss the issues raised its submission and additional time was granted for the writer to provide an additional submission if desired.

On 31 July 2022, NSW Rural Fire Service advised of no concerns with the proposal and issued General Terms of Approval.

On 21 September 2022, information was submitted in response to the discussions with Dolphin Boatshed Marina which addressed consideration of alternate alignments and included a plan which indicates five parallel car parking spaces along the frontage of the Dolphin Boatshed Marina in response to community concerns raised during the notification period. Specifically, investigations were undertaken into relocating the segment of the pathway, which is proposed within the road reserve of Brooklyn Road, for which the area is currently used by the Dolphin Boatshed Marina as an informal car parking area. No changes were made to the plans.

On 9 November 2022, a request for information was sent by Council with respect to finalising of the Biodiversity Assessment Report (BDAR) and calculations.

On 19 January 2023, an updated BDAR and Marine Ecological Assessment was submitted in response to comments from NSW Department of Primary Industries (Fisheries).

On 30 March 2023, NSW Department of Primary Industries (Fisheries) advised of no concerns with the proposal and issued General Terms of Approval.

SITE

The site comprises three lots, being Lot 100 DP 865249 & Lot 7 DP 740853, Pacific Highway, Brooklyn and Kangaroo Point Wharf Reserve (R1038969) Lot 101 DP 1223533, No. 1422 Pacific Highway, Brooklyn. The site runs in a north-south direction between Kangaroo Point (near Hawkesbury River road bridge) and Seymours Creek at Brooklyn.

The site is undulating and generally runs parallel to the Pacific Highway to the west and the Hawkesbury River Sandbrook Inlet to the east.

The site is located within Brooklyn, which comprises a strip of waterfront land along the southern bank of the Hawkesbury River and includes dwellings, marina, a small cluster of shops, pub, cafes and a local primary school and extends up to Kangaroo Point to the north.

The subject land is located approximately 4 km west of the Brooklyn township and traverses the coastal foreshore of the Hawkesbury River between Seymours Creek and Kangaroo Point. The accompanying BDAR identifies that it is dominated by remnant mangrove vegetation and saltmarsh located near roads, Dolphin Boatshed Marina and Kangaroo Point and that the subject land has also been historically disturbed from past activities including Oyster Farming as well as uses such as telecommunications

easement access and management, boat hire and dry-dock storage, boat mooring, car parking and recreational fishing. The BDAR also identifies that much of the vegetation has been historically cleared and regrown, and weed infestation is dense and prolific.

The subject land is part Crown land owned by the NSW Land and Property Management Authority. Council is the landowner of Lot 101 DP 1223533, with the remaining areas falling within the footprint of the waterway and Lot 100 DP 865249, which are managed by the Minister.

The site is identified as bushfire prone land and flood prone. The site is not burdened by any easements or restrictions.

The site contains one heritage item and is within the vicinity of several heritage items and is not located within a heritage conservation area. Two mapped watercourses are shown traversing the site adjacent to Old Pacific Highway and Brooklyn Road. These have been highly modified by the construction of the M1 Motorway and Pacific Highway and do not traverse the site as shown on the mapping. The southern section of the site crosses Seymours Creek.

PROPOSAL

The application is categorised as “*Designated Development*” and includes an Environmental Impact Statement (EIS) prepared in accordance with the Secretary’s Environmental Assessment Requirements (SEARS) dated 14 September 2020.

The application is also categorised as “*Integrated Development*” to NSW Department of Primary Industries (Fisheries) and NSW Rural Fire Service.

The application proposes:

- Construction of shared pathway and boardwalk that connects Brooklyn Road at the south eastern point of Seymours Creek with Kangaroo Point. The boardwalk will not pass over private owned land at the Dolphin Boatshed Marina and consequently there is a gap in the pathway. The pathway / boardwalk is located on the eastern side of Seymours Creek until the proposed bridge crossing over Seymours Creek is constructed to the south of the Dolphin Boatshed Marina.
- Construction of an at-grade concrete pathway of 3m in width within the road reserve and at the base of the embankment which supports Brooklyn Road. The pathway will be located on land located outside the lease area that is currently being used by the Dolphin Boatshed Marina as informal car parking.
- Removal of 65 trees.

It is proposed to construct the shared pathway and boardwalk in 3 specific stages these being:

- **Stage 1:** Kangaroo Point to the bushland track. Approximately 195m long, 3m wide boardwalk with mesh decking and railings both sides, heading south from Kangaroo Point. It will meander through the mangroves and intertidal zone towards the existing track formation further inland and includes a platform providing views to Sandbrook Inlet close to the commencement point. The section will be raised to be above the highest tide levels.
- **Stage 2:** Bushland track to Dolphin Boatshed Marina - Approximately 450m, 3m wide on grade pathway commencing from the start of the existing access track formation. It is proposed to clear and grade the existing track with construction materials to comprise of concrete and hence this section is referred to as a ‘shared pathway’. This section proceeds south towards the Dolphin Boatshed Marina and will include two platforms for viewing and seating opportunities. An area for additional recreational facilities has been surveyed and is identified on the plans.

- **Stage 3:** Dolphin Boatshed Marina to Old Dairy Site on Brooklyn Road - Approximately 360m, 3m wide boardwalk with mesh decking and railings which will commence from the south of the marina and proceed through mangrove areas and wetlands in the intertidal zone to connect Kangaroo Point and Brooklyn Road. An 18m span bridge will cross Seymours Creek before connecting to the Brooklyn Road footpath and viewing platform.

Vegetation clearing and machinery operation will be limited to the three metre wide corridor proposed for the boardwalk and designated locations for stockpiling and storage of materials and equipment have been identified on the plans.

The application indicates that the boardwalk has been sensitively designed to minimise the impact to the intertidal zone, saltmarsh and mangrove areas while providing an opportunity to walk along the foreshore, to sit and enjoy the views and to engage with this unique natural setting.

A footpath line marked for shared use between pedestrians and cyclists is proposed along Brooklyn Road. Stage 3 of the proposal connects with the existing footpath along Brooklyn Road, providing a continuous footpath from Brooklyn town and further extends it to Kangaroo Point.

Alternate designs

During the preparation of the application, and again during the assessment of the application, in response to concerns raised in one of the submissions, the Applicant considered alternative designs with respect to the location of the pathway. Specifically, investigations were undertaken into relocating the segment of the pathway proposed within the road reserve of Brooklyn Road, for which the area is currently used by the Dolphin Boatshed Marina as an informal car parking area. The alternatives were outlined in the Applicant's response as follows:

- Alternative 1: Cantilevered / piered boardwalk. This alternative would involve relocation of the pathway to the top of the embankment adjoining Brooklyn Road and construction of a cantilevered / piered boardwalk approximately 90m in length.
- Alternative 2: Use of Ausgrid maintenance access track. This alternative would involve relocation to an existing Ausgrid maintenance track located approximately 100m north of the Marina and provision of a crossing point at the top of the Marina vehicle access road.
- Alternative 3: Relocation adjacent to Marina driveway. This alternative would involve re-routing the alignment adjacent to the Marina driveway.

The letter dated 21 September 2022 from the Applicant provides an assessment of the alternate alignments and the reasons for the proposed alignment being most appropriate. Further, the applicant has indicated that the proposal would still allow for future provision of parallel car parking for five (5) vehicles with blister islands at either end within the current informal parking within the road reserve, along the frontage of the Dolphin Boatshed Marina.

ASSESSMENT

The development application has been assessed having regard to the Greater Sydney Region Plan - A Metropolis of Three Cities, the North District Plan and the matters for consideration prescribed under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (the Act). The following issues have been identified for further consideration.

1. STRATEGIC CONTEXT

1.1 Greater Sydney Region Plan - A Metropolis of Three Cities and North District Plan

The Greater Sydney Region Plan - A Metropolis of Three Cities has been prepared by the NSW State Government to guide land use planning decisions for the next 40 years (to 2056). The Plan sets a strategy and actions for accommodating Sydney's future population growth and identifies dwelling targets to ensure supply meets demand. The Plan also identifies that the most suitable areas for new housing are in locations close to jobs, public transport, community facilities and services.

The NSW Government will use the subregional planning process to define objectives and set goals for job creation, housing supply and choice in each subregion. Hornsby Shire has been grouped with Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Ryde, Northern Beaches and Willoughby to form the North District. The Greater Sydney Commission has released the North District Plan which includes priorities and actions for Northern District for the next 20 years. The identified challenge for Hornsby Shire will be to provide an additional 4,350 dwellings by 2021 with further strategic supply targets to be identified to deliver 97,000 additional dwellings in the North District by 2036.

The proposed development would be consistent with the Greater Sydney Region Plan - A Metropolis of Three Cities and the North District Plan, by contributing to improved liveability and prioritising opportunities for people to walk and cycle, whilst protecting environmentally sensitive areas of waterways, cultural and scenic landscapes and the coastal environment area.

2. STATUTORY CONTROLS

Section 4.15(1)(a) requires Council to consider *"any relevant environmental planning instruments, draft environmental planning instruments, development control plans, planning agreements and regulations"*.

2.1 Hornsby Local Environmental Plan 2013

The Hornsby Local Environmental Plan 2013 (HLEP) applies to all land within Hornsby Shire. An assessment of the development against the relevant sections of the HLEP is provided below.

2.1.1 Zoning of Land and Permissibility

The subject land is zoned:

- RE1 Public Recreation;
- W2 Recreational Waterways;
- C2 Environmental Conservation;
- C3 Environmental Management;
- IN4 Working Waterfront; and
- SP2 Infrastructure.

The proposal is an *'environmental facility'* which is defined under HLEP as:

"environmental facility means a building or place that provides for the recreational use or scientific study of natural systems, and includes walking tracks, seating, shelters, board walks, observation decks, bird hides or the like, and associated display structures."

An *'environmental facility'* is permissible within all of the above zones, with the exception of SP2 Infrastructure. Notwithstanding this, the SP2 zone allows for uses ancillary to development for the

purposes of a 'road' which is permissible within the zone. The applicant has also identified that other segments of the proposal in SP2 zoned land are for the purposes of a 'pedestrian and cyclist facility' which are able to be undertaken as exempt development pursuant to s 2.113 of State Environmental Planning Policy (Transport and Infrastructure) 2021.

The objectives of the RE1 Public Recreation zone are:

- *"To enable land to be used for public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*
- *To protect and maintain areas of bushland that have ecological value."*

The proposal would connect Kangaroo Point to Brooklyn Road for pedestrians and cyclists, providing opportunities for public recreation and physical activity. The proposal has been designed to be sensitive to the natural environment and has avoided bushland areas of ecological value, as well as providing viewing platforms and seating.

The objectives of the W2 Recreational Waterways zone are:

- *"To protect the ecological, scenic and recreation values of recreational waterways.*
- *To allow for water-based recreation and related uses.*
- *To provide for sustainable fishing industries and recreational fishing.*
- *To provide for a range of development that facilitates access to the waterways."*

The proposal would facilitate safe access for pedestrians and cyclists along the edge of the waterway, seating, viewing platform and a larger viewing platform at Kangaroo Point. The design of the boardwalk is sensitive to the ecological, scenic and recreation values of waterway.

The objectives of the C2 Environmental Conservation zone are:

- *"To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*
- *To maintain and improve water quality in the Hawkesbury River."*

The proposal would protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values. The proposed various technical reports and recommendations and the Vegetation Management Plan will also assist with ongoing improvements to the water quality in the river.

The objectives of the C3 Environmental Management zone are:

- *"To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To protect the natural environment of steep lands and floodplains within the catchment of the Hawkesbury River."*

The proposal would provide a sensitive form of development which does not adversely impact upon areas with special ecological, scientific, cultural or aesthetic values.

The objectives of the IN4 Working Waterfront zone are:

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- *“To retain and encourage waterfront industrial and maritime activities.*
 - *To identify sites for maritime purposes and for activities that require direct waterfront access.*
 - *To ensure that development does not have an adverse impact on the environmental and visual qualities of the foreshore.*
 - *To encourage employment opportunities.*
 - *To minimise any adverse effect of development on land uses in other zones.*
 - *To accommodate the retail, commercial, service and social needs of the community that uses the Hawkesbury River and its tributaries.”*

The proposal would not affect existing waterfront industrial and maritime activities. The needs of the community have been considered in the proposal, which provides for greater access for the community to the waterfront via a safe public boardwalk and shared pathway between Kangaroo Point and Brooklyn Road. The proposal would contribute to the health and wellbeing of the community, addressing their social needs.

The objectives of the SP2 Infrastructure zone are:

- *“To provide for infrastructure and related uses.*
- *To prevent development that is not compatible with or that may detract from the provision of infrastructure.”*

The proposal would not impact upon the existing roads and will provide a safe off-road route for pedestrians and cyclists.

It is considered that the proposal satisfies the zone objectives.

2.1.2 Development below mean high water mark

The Proposal includes works below the mean high-water mark of Hawkesbury River.

Clause 5.7 of the HLEP states:

“5.7 Development below mean high water mark

- (1) The objective of this clause is to ensure appropriate environmental assessment for development carried out on land covered by tidal waters.*
- (2) Development consent is required to carry out development on any land below the mean high water mark of any body of water subject to tidal influence (including the bed of any such water).”*

The proposal included appropriate environmental assessment, which has been reviewed and considered to be satisfactory by Department of Primary Industries - Fisheries (Fisheries) and Council's Natural Resource Team. Refer to discussion under Sections 2.6 and 2.7 of this report. Appropriate conditions of consent have been recommended regarding environmental matters, including compliance with the General Terms of Approval issued by Fisheries.

Accordingly, Clause 5.7 of the HLEP has been satisfied.

2.1.3 Heritage

Clause 5.10 of the HLEP requires the consent authority to have regard to the heritage significance of a heritage item or conservation area and aims to:

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- “(a) to conserve the environmental heritage of Hornsby,*
 - (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
 - (c) to conserve archaeological sites,*
 - (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.”*

The site is located in proximity to a number of local heritage items listed under HLEP. There are no listed Aboriginal heritage sites within or in vicinity of the site.

The desired outcome of Part 9.4.1 Development in the Vicinity of Heritage Items and Heritage Conservation Areas is to encourage *“new work that is sympathetic to the heritage significance of nearby heritage items, or adjoining heritage conservation areas, and their settings.”*

The application was accompanied by a Statement of Heritage Impact (SOHI) and Aboriginal Cultural Heritage Assessment (ACHAR).

The proposal was reviewed by Council's Heritage Team who indicated that no concerns are raised to the proposal on heritage grounds and recommended conditions of consent to ensure implementation of the recommendations detailed within the supporting SOHI and ACHAR. Refer to detailed discussion under Section 2.10.9 of this report.

Accordingly, Clause 5.10 of the HLEP has been satisfied.

2.1.4 Flood Planning

Clause 5.21 of the HLEP states, in part:

- “(2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—*
 - (a) is compatible with the flood function and behaviour on the land, and*
 - (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
 - (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
 - (d) incorporates appropriate measures to manage risk to life in the event of a flood, and*
 - (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*
- (3) In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—*
 - (a) the impact of the development on projected changes to flood behaviour as a result of climate change,*
 - (b) the intended design and scale of buildings resulting from the development,*

- (c) *whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
- (d) *the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.”*

The application was accompanied by a Flooding and Coastal Processes Assessment Report and Preliminary Geotechnical Investigation Report, prepared by Martens & Associates, which was reviewed by Council's Engineers and no objections were raised.

The reports include a number of recommendations to ensure that the pathway and boardwalk can operate safely in terms of flooding and groundwater and appropriate conditions recommended for implementation of the recommendations.

Accordingly, Clause 5.21 of HLEP has been satisfied.

2.1.5 Acid Sulfate Soils

Clause 6.1 of the HLEP requires consideration of acid sulphate soils “*to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage*”, including the preparation of an acid sulfate soils management plan.

The application was accompanied by a Soil and Water Quality Assessment (SWQA), which includes an Acid Sulfate Soils Management Plan (ASSMP), that can be implemented during development works.

Preliminary Geotechnical Investigation and Acid Sulfate Soils Assessment did not identify actual acid sulfate soils; however Potential Acid Sulfate Soil risks were identified for Stages 1 and 3. No Acid Sulfate Soil risk was identified for project area within Stage 2. Consequently, the Acid Sulfate Soil Management Plan recommends treatment strategies should acid sulfate soils be encountered during works.

Council's Engineers and Environmental Protection Team reviewed the submitted SWQA and ASSMP and raise no objection, subject to recommended conditions of consent.

Accordingly, Clause 6.1 of HLEP has been satisfied.

2.1.6 Earthworks

Clause 6.2 of the HLEP states that consent is required for proposed earthworks on site. Before granting consent for earthworks, Council is required to assess the impacts of the works on adjoining properties, drainage patterns and soil stability of the locality. The Preliminary Geotechnical Investigation considered earthworks and includes a recommendation for footings and installation of screw piles to be inspected by a geotechnical engineer.

The objectives of this clause are to ensure that required earthworks will not have a detrimental impact on environmental functions and processes. The plans detail minor earthworks only, with Stage 2 of the proposed development containing fill, and it is considered that the proposed excavation would not adversely impact on environmental functions and processes, subject to standard conditions of consent being applied in regard to sediment control.

Council's assessment of the proposed works and excavation concludes that minor cut and fill works will not impact upon surrounding properties, including drainage.

Accordingly, Clause 6.2 of HLEP has been satisfied.

2.1.7 Terrestrial Biodiversity

Clause 6.4 of the HLEP states, in part:

- “(3) Before determining a development application for development on land to which this clause applies, the consent authority must consider—*
- (a) whether the development is likely to have—*
 - (i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
 - (ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
 - (iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
 - (iv) any adverse impact on the habitat elements providing connectivity on the land, and*
 - (b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*
- (4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—*
- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
 - (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.”*

The site is partially mapped as Terrestrial Biodiversity under the HLEP, being the southern portion.

Refer to a detailed discussion regarding biodiversity under Section 2.7 of this report. Based on the information provided and assessment undertaken, the proposal complies with Clause 6.4 of the HLEP.

2.2 State Environmental Planning Policy (Resilience and Hazards) 2021

The application has been assessed against the requirements of Chapter 2 and 4 of State Environmental Planning Policy (Resilience and Hazards) 2021.

2.2.1 Chapter 2 Coastal Management

Development within mapped coastal wetlands. The proposal is classified as ‘*Designated Development*’ pursuant to of State Environmental Planning Policy (Resilience and Hazards) 2021 as it includes development within mapped coastal wetlands.

The Development Site is located within ‘coastal wetlands and proximity area’, ‘coastal environment’ and part ‘coastal use’ mapped under Resilience and Hazards SEPP.

The environmental assessments undertaken were comprehensive and demonstrate that the proposal has been designed to protect the environmental assets of the coast and the works can be appropriately managed during construction. It is concluded from the review of the technical reports and plans that

measures have been taken to protect and enhance the biophysical, hydrological and ecological integrity of the coastal wetland during and after construction.

2.2.2 Chapter 4 Remediation of Land

Chapter 4 of SEPP (Resilience and Hazards) requires that consent must not be granted to the carrying out of any development on land unless Council has considered whether the land is contaminated or requires remediation for the proposed use.

Should the land be contaminated, Council must be satisfied that the land is suitable in a contaminated state for the proposed use. If the land requires remediation to be undertaken to make the land suitable for the proposed use, Council must be satisfied that the land will be remediated before the land is used for that purpose.

The application as accompanied by a Preliminary Site Investigation (PSI), Detailed Site Investigation (DSI) and Human Health Risk Assessment (HHRA).

The DSI surmised that potential risk to receptors from soil contamination is considered to be low and no further soil contamination investigations or remediation is considered necessary. Council's Environmental Protection assessment concurs with this recommendation as it is acknowledged that the area where minor exceedances were detected are located within Stage 1, an intertidal zone where remediation would be challenging and where no access to the soil from the public is possible.

The DSI confirmed the presence of asbestos containing material (ACM) within Stage 1 investigation area and Stage 2 investigation area. Fibre reinforced cement pipes and ACM fragments located in the Stage 2 investigation area are described as being in good condition and to be bonded asbestos. This ACM will be required to be removed by way of offsite disposal to a licenced facility.

Stage 1A is impacted by ACM as a former oyster farm area. Given the extent and proximity of the material to the proposed development, a Human Health Risk Assessment report was developed. The HHRA concluded that the potential for workers and the public to be exposed to asbestos fibres in air derived from ACM in the area of concern, is negligible.

Exceedances soil samples in Stage 2 were below the health investigation level. Given this stage of the development will include an on grade concrete pathway, there will be negligible opportunity for complete ecological receptor pathways and the findings are satisfactory.

Further, Preliminary Geotechnical Investigation and Acid Sulfate Soils Assessment did not identify actual acid sulfate soils; however Potential Acid Sulfate Soil risks were identified for Stages 1 and 3. No Acid Sulfate Soil risk was identified for project area within Stage 2. Consequently, the Acid Sulfate Soil Management Plan recommends treatment strategies should acid sulfate soils be encountered during works.

Council's Environmental Protection assessment raises no objection to the proposal in terms of contamination, subject to recommended conditions of consent.

It is therefore unlikely that the site has experienced any significant contamination and further assessment under SEPP (Resilience and Hazards) is not necessary.

2.3 State Environmental Planning Policy (Biodiversity and Conservation) 2021

The application has been assessed against the requirements of Chapters 2, 4 and 6 of State Environmental Planning Policy (Biodiversity and Conservation) 2021.

2.3.1 Chapter 2 - Vegetation in non-rural areas

Chapter 2 of this Policy seeks to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

Part 2.3 of the Policy states that a development control plan may make a declaration in any manner relating to species, size, location and presence of vegetation. Accordingly, Part 1B.6.1 of the Hornsby Development Control Plan 2013 (HDCP) prescribes works that can be undertaken with or without consent to trees.

Section 2.10.8 of this report provides an assessment in accordance with Part 1B.6.1 of the HDCP.

2.3.2 Chapter 4 - Koala habitat protection 2021

Chapter 4 Koala habitat protection 2021, as the Hornsby LGA is a local government area listed in Schedule 2. The BDAR includes an assessment against Chapter 4 and concludes that the subject land is not core koala habitat.

2.3.3 Chapter 6 - Water Catchments

The aim of this chapter is to ensure that the catchment, foreshores and waterways are recognised, protected, enhanced and maintained.

The policy addresses matters related to biodiversity, ecology and environment protection; public access to, and use of, foreshores and waterways; maintenance of a working harbour; interrelationship of waterway and foreshore uses; foreshore and waterways scenic quality; maintenance, protection and enhancement of views and boat storage facilities.

Clause 6.9 of the Policy requires consideration of the impact of the proposal on recreational land uses in the catchment. The proposal improves public access along the foreshore without impacting upon natural watercourses, wetlands or riparian vegetation. Further, there is no conflict between land uses identified and the existing recreational land uses in the area can continue.

The view of the waterfront will not be adversely altered, with the natural timber materials and the extent of the works being sympathetic to the location and the environment and no buildings are proposed.

Subject to the implementation of sediment and erosion control measures and implementation of the recommendations of the technical reports to protect water quality, the proposal would have minimal potential to impact on the water catchments.

2.4 State Environmental Planning Policy (Transport and Infrastructure) 2021

The applicant has identified that other segments of the proposal in SP2 zoned land are for the purposes of a '*pedestrian and cyclist facility*' which are able to be undertaken as exempt development pursuant to Section 2.113 of State Environmental Planning Policy (Transport and Infrastructure) 2021.

2.5 Section 4.46 Environmental Planning and Assessment Act 1979 - Designated Development

The application is categorised as "*Designated Development*" and includes an Environmental Impact Statement (EIS) prepared in accordance with the Secretary's Environmental Assessment Requirements (SEARS) dated 14 September 2020.

Section 4.10 of the EP&A Act states that development may be 'designated development' if declared so by an environmental planning instrument or the regulations.

The Proposal is declared as 'designated development' by *State Environmental Planning Policy (Resilience and Hazards) 2021*, Chapter 2, as it involves development within the identified 'coastal wetland'.

2.6 Section 4.46 Environmental Planning and Assessment Act 1979 - Integrated Development

The application is also categorised as "*Integrated Development*" to NSW Department of Primary Industries (Fisheries) and NSW Rural Fire Service.

2.6.1 NSW Department of Primary Industries (Fisheries)

The Proposal involves minor excavations on 'water land' to facilitate the boardwalk foundations and will therefore require a permit under section 201 of the *Fisheries Management Act 1994* from Department of Primary Industries - Fisheries (Fisheries).

The Proposal involves removal of marine vegetation on public water land and will therefore require a permit under section 205 of the *Fisheries Management Act 1994* from Fisheries.

The application was referred to Fisheries and on 29 March 2023, Fisheries advised of no objections to the proposal, subject to General Terms of Approval, and stated:

"DPI Fisheries is responsible for ensuring that fish stocks are conserved and that there is no net loss of key fish habitats upon which they depend. To achieve this, DPI Fisheries ensures that developments comply with the requirements of the Fisheries Management Act 1994 (FM Act) (namely the aquatic habitat protection and threatened species conservation provisions in Parts 7 and 7A of the Act, respectively), and the associated Policy and Guidelines for Fish Habitat Conservation and Management (2013). In addition, DPI Fisheries is responsible for ensuring the sustainable management of commercial, recreational and Aboriginal cultural fishing, aquaculture, marine parks and aquatic reserves within NSW.

DPI Fisheries has reviewed the proposal in light of these provisions and has no objections, subject to the proponent meeting the General Terms of Approval that follow. As per s.4.47(3) of the Environmental Planning and Assessment Act 1979, any consent issued by Council must be consistent with these GTAs."

Appropriate conditions of consent have been recommended regarding compliance with the General Terms of Approval.

2.6.2 NSW Rural Fire Service

The subject site is mapped as bushfire prone land - vegetation buffer.

The application was referred to NSW Rural Fire Service (RFS) and on 31 July 2022, RFS advised of no concerns with the proposal. No conditions were recommended.

2.6.3 Water Management Act 2000

The Proposal involves works within 'waterfront land' and would be categorised as "*Integrated Development*". However, integrated approval is not required under s 91 of the *Water Management Act 2000* as pursuant to section 41 of the *Water Management (General) Regulation 2018*, a Controlled

Activity Approval (CAA) is not required as the works are to be carried out on waterfront land by a public authority.

2.7 Biodiversity Conservation Act 2016

The site is partially mapped as having 'biodiversity values' under *Biodiversity Conservation Act 2016*.

A Biodiversity Assessment Report (BDAR) and Marine Ecological Assessment has been prepared, and updated, during the assessment. The assessment has been completed in accordance with the Biodiversity Assessment Method 2020 and includes the following summary:

"The Subject Land has been historically managed for various reasons, including powerline easement, boatshed/marina, carpark, oyster farm and other uses, therefore all native vegetation in situ has been altered through years of historical usage.

The proposed development has been designed to minimise impacts on biodiversity values by retaining the most important biodiversity values on the Subject Property intact.

The development will involve the clearing of a maximum area of approximately 0.23 hectares of native vegetation. However only 0.13 ha is assessable under the BAM, the other 0.1 hectares is not assessable because it consists of marine vegetation that is assessed and offset under the Fisheries Management Act 1995. Impacts marine vegetation and marine fauna have been assessed in a separate report submitted for the project (Land Eco 2023b).

The proposed clearing of 0.008 hectares of Swamp Oak Floodplain Forest of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions Endangered Ecological Community (as listed under Schedule 2 of the Biodiversity Conservation Act 2016) in the Subject Land requires offset through retiring of Ecosystem Credit biodiversity offset credits. Under the BAM the total area cleared rounds up to 0.01 hectares. The proposed clearing of approximately 0.12 hectares of non-threatened 'Central Coast Escarpment dry forest' also requires offset through retiring of Ecosystem Credit biodiversity offset credits.

The following Ecosystem Credits are required to be retired to offset the residual biodiversity impacts of the proposal:

- *1 credits of PCT 1234 - Estuarine Swamp Oak forest (Swamp Oak Floodplain Forest of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions EEC).*
- *4 credits of PCT 1557- Central Coast Escarpment dry forest (This is not a TEC).*

The following Species Credit Species were confirmed present on the Subject Land:

- *6 Species Credits of Southern Myotis (Myotis macropus)*

The proponent is required to retire biodiversity offset credits to meet their obligations to offset the residual impacts of the proposed DA. The proponent may purchase and retire the appropriate offset credits (generated on Biodiversity Stewardship Sites) that comply with the trading rules of the Biodiversity Assessment Method 2020 in accordance with the 'like for like' report generated by the Biodiversity Assessment Method Calculator (Section 9 - Biodiversity Credit Report). Alternatively, the proponent can meet their offset obligations by making a payment directly into the NSW Biodiversity Offsets Payment Fund.

In addition to offsetting, the Biodiversity Conservation Act 2016 requires that an applicant takes all reasonable effort to avoid and minimise potential impacts of the proposal on local biodiversity values. A series of mitigation and management measures have been identified, which are to be

implemented as part of any construction environmental management plan produced for the site. These include measures to:

- *Implement a Vegetation Management Plan (Land Eco 2022a) for the construction and usage of the boardwalk and immediate surrounding vegetation;*
- *Implement ongoing management of priority weeds according to statutory requirements; and*
- *Ensure all contractors employed to work within the Subject Land are suitably qualified, experienced and informed of the sensitive ecological features and potentially occurring threatened species;*
- *Assign a Project Ecologist to conduct and oversee all ecological compliance requirements associated with conducting a proposed development in line with all relevant state and commonwealth legislation and guidelines;*
- *Ensure an Ecologist is present during the dewatering of dams and clearing of all vegetation to be cleared for the proposed activity;*
- *Incorporate locally indigenous flora species representative of Coastal Saltmarsh in any revegetation or soft landscaping associated with the boardwalk (Land Eco 2022a)*
- *Implement all relevant biological hygiene protocols and requirements as per NSW Government guidelines;*
- *Implement appropriate visual and sound barriers, vegetation protection fencing, stockpiling placement, erosion and sediment control during construction.”*

The proposal involves the construction of a boardwalk amongst mangrove and saltmarsh vegetation between Kangaroo Point and Seymours Creek, Brooklyn. The proposal includes vegetation removal for both raised and on-grade sections of boardwalk and is separated into three sections.

The NSW Biodiversity Conservation Regulation 2017 sets out thresholds for when the Biodiversity Offsets Scheme (BOS) would be triggered. The application triggers entry into the scheme.

Measures to ‘avoid and minimise’ impacts to biodiversity are detailed in the BDAR, as required by the *Biodiversity Conservation Act 2016*.

The proposal was reviewed by Council’s Natural Resources Officer who indicated that no concerns are raised to the proposal on biodiversity grounds and provided the following comments below.

The impacts of the proposal have been considered in indirect (section 5.3.1) and prescribed (section 5.3.2) impacts.

The principle of avoid, minimise and mitigate has been considered in section 6. The boardwalk has been placed to avoid as many trees as possible, prioritising trees in poor condition for removal above those in good condition. Section 2 of the track passes through a weedy portion of the site, therefore prioritising weed removal above loss of native species. Where possible, cleared areas of mangroves have been selected to minimise mangrove removal and artificial lighting has not been proposed to reduce disturbance to wildlife. Construction materials have been selected to reduce chemical leaching into the estuarine environment. Some hollow bearing trees may be removed to be replaced with nest boxes.

Management measures to mitigate impacts include a Vegetation Management Plan (VMP), and nomination of a Project Ecologist throughout the construction period to monitor the construction process. Construction methods have been listed in section 1.3.1 and 1.3.2 to protect the Mangrove and

Saltmarsh vegetation communities. Section 3.8.1 notes the intended replacement planting ratio of 2:1 in alignment with the *Fisheries Management Act 2014*.

A Marine Ecological Assessment (MEA) has also been provided. Three marine communities were identified within or adjoining the development, those being Estuarine Mangrove Forest, Coastal Saltmarsh and Seagrass. All three communities are found to be key fish habitat as described by the Fisheries Management Act 1994. Central Coast Escarpment Moist Forest was the only terrestrial community identified. No threatened species habitat is present within the proposed development footprint, though threatened species may occur in the Hawkesbury River.

The primary concern raised in the report is the potential for fish movement to be impeded by the boardwalk. By ensuring the boardwalk does not contain long sections of structural supports, the risk of habitat isolation will be minimised. Table 1 of the document notes that the development will not result in significant changes to hydrology that would impact wetland drainage.

The Bushfire Risk Assessment provided identifies the proposal as compliant with AS3959 and Planning for Bushfire Protection requirements and the RFS has not raised any bushfire concerns.

A Vegetation Management Plan (VMP) has been provided which is divided into three management zones which align with the vegetation classification. Zone 1, terrestrial forest vegetation identified as Central Coast Escarpment dry forest contains a variety of woody and secondary weeds and will benefit from the proposed management works. Zone 2, estuarine vegetation community identified as Estuarine Mangrove Forest is in good condition with moderate weed infestation. This zone is to be offset under the Fisheries Management Act. Zone 3, estuarine vegetation communities identified as Saltmarsh & Swamp Oak Forest contains some weed species. These communities will be offset under the *Fisheries Management Act 2014*.

The management actions involve transplanting, replacement of habitat with nesting boxes and weed management. The methods are best practice and will be effective in making habitat available following the removal of any hollow bearing trees. All works should be carried out in accordance with the CEMP and Section 4 of the VMP to ensure there is no net loss of biodiversity.

An Arborist Report has not been provided however comments have been made in support of the proposal by Councils Tree Management Team.

Discussion of impacts

As the *Fisheries Management Act 2014* and the Biodiversity Offset Scheme both require offsetting, the marine communities will be offset through the *Fisheries Management Act 2014* and the terrestrial communities and species credits will be offset through the Biodiversity Offset Scheme.

The Hornsby Development Control Plan 2013 identifies the principles of avoid, minimise and mitigate to ensure development does not result in a net loss of biodiversity. While the proposal is placed amongst significant estuarine vegetation, the pathway has been placed to minimise impact and reduce tree loss. The pathway will contribute to fragmentation of vegetation however the path will not result in a vehicle strike hazard for fauna passage. Once construction has ended and the surrounding vegetation restored, the final pathway is anticipated to have minimal impact on the surrounding flora and fauna communities.

The *Fisheries Management Act 2014* requires that vegetation is offset at a ratio of 2:1 in accordance with 'Policies and Guidelines for Fish Habitat Conservation and Management' (DPI 2013). The marine offset proposed within the VMP (section 3, zone 3) has identified a 765m² area available for weed management and replacement planting to satisfy the 2:1 ratio requirement to offset the 305m² area to be cleared for the development. In the event that the offset area is unable to be replanted, an offset calculation has been provided.

The proposal does not require the removal or modification of a significant area of vegetation or habitat, is generally consistent with the Biodiversity element of HDCP 2013 and will not have a significant impact on matters listed under the NSW BC Act 2016.

Amended

The amended BDAR, VMP and amended MEA have been reviewed to confirm the appropriate offset requirements for the impacted terrestrial and marine ecological communities. The two terrestrial communities will be offset under the Biodiversity Offset Scheme, with 0.008ha of Estuarine Swamp Oak Forest to be offset with 1 ecosystem credit, and 0.12ha of Central Coast Escarpment Dry Forest to be offset with 4 ecosystem credits as identified by the BAM-Calculator (BAM-C).

The two marine communities are not included in the BOS credit market; therefore, they will not be offset under the BOS as ecosystem credits. They do however need to be offset under the *Fisheries Management Act 1994*. As saltmarsh cannot be offset on this site due to site constraints, a monetary offset must be made instead. In conversations with DPI Fisheries, offsets are outlined in a document titled Policy and Guidelines for fish habitat, conservation and management (2013). This policy identifies an offset ratio of 2:1 for removed or damaged marine habitat. Section 3.3.3.2, part 2 identifies the monetary offset amount to be \$51/m². At a ratio of 2:1 this comes to \$102/m². An area of 740m² (0.07ha) of Estuarine Mangrove Forest and 300m² (0.03ha) of Saltmarsh Estuarine Complex is to be impacted, estimating a total offset area of 1,040m² and an offset payment of \$106,080. In addition to this offset, these two communities will be managed by the approved VMP.

One threatened species was identified in the BDAR as requiring offset credits. The Southern Myotis polygon contains all 4 identified vegetation communities as suitable habitat for this species, as such species credits must consider the full extent of the polygon including marine vegetation. The amended BDAR has removed the marine communities from the BAM-C calculation for ecosystem credits as this offsetting will be provided under the FM Act. In the first version of the BDAR, marine vegetation was included in the calculation for species credit species, influencing the offset requirements for Southern Myotis, creating a requirement for 10 species credits. As the 2nd version of the BDAR does not include marine vegetation in the calculations, the species credit calculation was reduced to 6. In communications with BOS support, the marine communities which are habitat for the species credit species must be included in the calculation. As a result, the original calculation is seen to be correct, and 10 species credits are to be retired for the Southern Myotis.

Council's Natural Resources assessment concluded that no biodiversity concerns are raised with respect to the proposed development, subject to recommended conditions of consent to ensure implementation of the amended BDAR, VMP and amended Marine Ecological Assessment.

Accordingly, the requirements of the *Biodiversity Conservation Act 2016* have been satisfied.

2.8 Crown Land Management Act 2016

The subject land is Crown land owned by the NSW Land and Property Management Authority and therefore will require a licence issued from NSW Crown Lands for occupation and use of Crown Land pursuant to Section 5.21 of *Crown Land Management Act 2016*.

On 20 September 2022, an email was received from Department of Planning and Environment - Crown Lands which confirms Lot 101 DP 1223533 is the subject of their letter to the landowner advising of the proposal and is the only section that requires concurrence as the remainder of the licence area falls within the footprint of the waterway and Lot 100 DP 865249 which is managed by the Minister. As part of those discussions, Council advised as the landowner of Lot 101 DP 1223533 that they have no objection to the application for a licence.

Whilst the application for a licence has been made, it has not yet been issued. An appropriate condition of consent has been recommended in this regard.

2.9 Section 3.42 Environmental Planning and Assessment Act 1979 - Purpose and Status of Development Control Plans

Section 3.42 of the *Environmental Planning and Assessment Act 1979* states that a DCP provision will have no effect if it prevents or unreasonably restricts development that is otherwise permitted and complies with the development standards in relevant Local Environmental Plans and State Environmental Planning Policies.

The principal purpose of a development control plan is to provide guidance on the aims of any environmental planning instrument that applies to the development; facilitate development that is permissible under any such instrument; and achieve the objectives of land zones. The provisions contained in a DCP are not statutory requirements and are for guidance purposes only. Consent authorities have flexibility to consider innovative solutions when assessing development proposals, to assist achieve good planning outcomes.

2.10 Hornsby Development Control Plan 2013

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within the Hornsby Development Control Plan 2013 (HDCP). The proposed development complies with the prescriptive measures within the HDCP. A brief discussion on compliance with relevant performance requirements is provided below.

2.10.1 Desired Future Character

Part 8.1.1 Desired Future Character of the HDCP contains the following summary for Brooklyn:

“Brooklyn continues to play a vital role in the maritime operations of the river, providing a transport interchange, maritime services facilities, commercial fishing, and a gateway for tourists, visitors and residents of the Hawkesbury River. Redevelopment of the foreshore area prioritises the retention of vegetation such as mangroves.

Dwellings are a mix of 1 and 2 storey dwellings, with pole design homes stepping up the hillside on the southern side of Brooklyn Road.”

The proposed boardwalk is an important feature for tourists, visitors and residents of the Hawkesbury River and provides a connection for users to walk or cycle which is not currently available along the waterfront. The proposal does not impact adversely upon the maritime or commercial finishing activities, nor any dwellings in the area and ensures minimal impact upon vegetation.

No desired future character summary is provided for Kangaroo Point.

The proposed development is in keeping with the desired future character of Brooklyn.

2.10.2 Scale

Part 8.1.2 Scale of the HDCP has the following relevant desired outcome:

“a. Development with a height, bulk and scale that protects and maintains the environmental and scenic qualities of the area.”

The height, floor area and site coverage controls are not applicable to the proposal due to the nature of the proposal. The proposed boardwalk is low scale and has been designed to be sensitive to the waterfront location and marine environment.

2.10.3 Setbacks

Part 8.1.3 Setbacks of the HDCP contains controls for setbacks, which are not applicable for this proposed development. However, the boardwalk is compatible with adjacent development and complement the riverine scenic quality and allows for canopy trees to be retained, consistent with the desired outcomes of the part.

Development is permitted by the HDCP between the Foreshore Building Line and the Mean High Water Mark (MHWM), where it complies with Clause 6.1 of the HLEP 2013 relating to Acid Sulfate Soils and the HLEP Foreshore Building Line Map. The subject area of the proposed works does not have a Foreshore Building Line and Acid Sulfate Soils has been appropriately addressed by way of a Soil and Water Quality Assessment (SWQA), which includes an Acid Sulfate Soils Management Plan (ASSMP), that can be implemented during development works. Therefore, the proposed development is appropriately located along the waterfront.

2.10.4 Landscaping

Part 8.1.4 Landscaping of the HDCP requires landscaping that retains the natural landscape features of the riverine scenic areas. The boardwalk has been placed to avoid as many trees as possible and prioritises removal of trees in poor health and weeds. The proposal includes details of landscaping either side of the pathway/boardwalk where possible and a Vegetation Management Plan has been prepared and reviewed by Council's Natural Resources Team who raised no objections. Refer to discussion under Section 2.7 above.

2.10.5 Privacy & Views

The proposal satisfies Part 8.1.7 Privacy and Views of the HDCP in that it is designed to ensure that views of the waterways are shared. The works are not envisaged to reduce views or impact upon privacy for any nearby properties.

2.10.6 Design

Part 8.1.8 Design Details has the desired outcome for development to incorporate environmentally sustainable design and construction and includes prescriptive measures to achieve this outcome.

The proposed boardwalk is consistent with the desired character of the area, addresses the river and road where applicable, minimises cut and fill and retains public access to the foreshore, with minimum impact on the waterways water quality and downstream users.

Lightweight timber construction is appropriate with regard to the scenic qualities of the waterfront.

Parts 8.2.2 Water Recreation Structures and 8.2.3 Seawalls of PDCP do not strictly apply to the proposal, however the desired outcomes and principles have been considered to ensure the proposal boardwalk complements the landscape features of the natural riverine scenic area and is located to provide safe, convenient, and equitable access to the waterway.

2.10.7 Kangaroo Point Masterplan

Part 8.3.1 River Settlement Masterplans contains a masterplan for Kangaroo Point, which includes details of a proposed heritage walk pathway linking to the existing southern portion of Kangaroo Point and car park. It is considered that the viewing platform could be used also as the beginning of a heritage walk in the future which is depicted as a circuit.

It is considered that the proposal does not prevent any works at Kangaroo Point as envisaged under the Masterplan.

Further, a condition is recommended regarding cultural heritage signage along the boardwalk, which is also identified within the Masterplan and would complement that provided at Kangaroo Point once the Masterplan is fully realised.

2.10.8 Tree Preservation

Council's Tree Management Team reviewed the proposal and identified that the proposal includes the removal of 65 trees and that none of the trees are identified as being significant. Further, the boardwalk has been placed to avoid as many trees as possible and prioritises removal of trees in poor health and weeds.

Subject to conditions, the proposal meets the requirements of Part 1B.6.1 Tree Preservation under the HDCP and is considered acceptable. Additional conditions have been recommended regarding replacement planting.

2.10.9 Heritage

The proposal was reviewed by Council's Heritage Team who indicated that no concerns are raised to the proposal on heritage grounds and provided the following comments below.

Heritage Listings

The proposed development is located within the site area of one heritage item and the vicinity of several heritage items listed under the Schedule 5 of the *Hornsby Local Environmental Plan 2013* (HLEP) as follows:

<i>Heritage Item</i>	<i>Item name</i>	<i>Property Address</i>	<i>Location of Proposed Works</i>
205	Seymours Creek - Mangrove Wetland	Brooklyn Road, Brooklyn	Within site area
99 & A21	Kangaroo Point	Pacific Highway, Brooklyn	Within the vicinity
204 & A13	Brooklyn Cemetery	Brooklyn Road, Brooklyn	Within the vicinity
245	Nature Reserve - bushland	Long Island, Brooklyn	Within the vicinity
248	Rest Park	Pacific Highway, Brooklyn	Within the vicinity
A22	Peats Ferry Road bridge	Pacific Highway, Brooklyn	Within the vicinity

There are no previously recorded Aboriginal archaeological sites located within the site area.

Context

The development site is located on the southern bank of the Hawkesbury River, between Kangaroo Point and Brooklyn Road. The site area covers:

- intertidal zones characterised by mangroves, oyster covered rocks and mud flats;
- an existing unmaintained access track between Old Pacific Highway and Brooklyn Road;

- an intersection with the Dolphin Boatshed Marina;
- a mangrove covered wetland characterised by mudflats, mangroves, saltmarsh areas;
- and a crossing over Seymours Creek.

The following general context notes have been extracted from the SOHI:

“The [study] area runs alongside three parcels of land which were occupied from an early period in the non-Indigenous history of the locality, initially in association with the construction of Peats Ferry Road and the establishment of a river crossing. The immediate area became a centre of settlement in the district, focussed on road and river transport, and the natural resources of the river and the bush. Following the opening of the railway, the focus of settlement shifted east to Brooklyn, and the nature of occupation and development in the Kangaroo Point and Peats Ferry locality has since been closely tied to the changing use of Peats Ferry Road (and its subsequent incarnations). The proposed boardwalk will be located on riverbank land that was originally entirely within the intertidal zone. The historical development of this specific area has been limited. Between Kangaroo Point and the Dolphin Boatshed Marina, the proposed boardwalk runs along land that was reclaimed in c.1970, when the Pacific Highway and Brooklyn Road were realigned. These substantial earthworks are likely to have involved significant impact, if not complete removal, of any former features. To the south of the Marina, the proposed boardwalk follows Seymours Creek. This area, at the mouth of the creek, was originally swampy, and no former structures are known, with the exception of the Brooklyn Road crossing of Seymours Creek. Fill appears to have been deposited in this area, possibly in the 1980s. This section of the proposed boardwalk, to the south of the Marina, is within a listed heritage item: the Seymours Creek Mangrove Wetland.”

The following general context notes have been extracted from the ACHAR:

“There are no previously recorded Aboriginal archaeological sites within the study area. No Aboriginal objects were found during the survey. The potential for the presence of Aboriginal archaeological sites is low. The study area extends across locations that were (or still are) swamp and tidal flat, and would have been submerged at high tide; these landforms would not have been suited to long-term or repeated occupation. In addition, much of the study area has been affected by large-scale earthworks that were undertaken in about 1970 to reclaim land along this section of the Hawkesbury River shore.”

Assessment

The proposal has been assessed with regards to the material submitted with the application including the SOHI and ACHAR and the relevant heritage provisions of Hornsby Development Control Plan 2013 (HDCP).

Heritage Impact Assessment

The SOHI provides an accurate heritage assessment of the heritage values of the development area, the locality and nearby heritage items. It also provides an accurate heritage assessment of the historical heritage impacts of the proposed development, identifying that:

1. It is unlikely to result in cultural heritage impact to the heritage values of the study area or nearby places; and
2. The following considerations should be given in undertaking the detailed design to ensure that the development is consistent in scale with the landscape setting and does not obscure views through the Seymours Creek Mangrove Wetland or the existing views to and from Kangaroo Point and Long Island:

- The colour palette and boardwalk fabric should be chosen to ensure that the new structure blends into the surrounding landscape and is not visually intrusive.
- The design of additional elements, including the viewing platforms, shelters, seating and barbecues should ensure that the bulk and scale of each element is compatible with the item 53 Statement of Heritage Impact Brooklyn Boardwalk, Brooklyn NSW setting, and does not obscure views: either within the Seymours Creek Mangrove Wetland, or to and from Kangaroo Point or Long Island Nature Reserve.

The conclusion of the SOHI is agreed with, and the recommendations of the report supported.

The proposed development is considered to satisfy Clause 5.10 of the HLEP and be consistent with the heritage controls under Part 9 of the HDCP.

Aboriginal Heritage

The ACHAR provides an accurate heritage assessment of the Aboriginal heritage values within the development area and the locality. It also provides an accurate heritage assessment of the potential Aboriginal heritage impacts of the proposed development, identifying that it is unlikely to result in harm to tangible Aboriginal heritage sites.

The conclusion of the ACHAR is agreed with, and the following recommendations of the report are supported.

The proposed development is considered to satisfy Clause 5.10 of the HLEP and be consistent with the heritage controls under Part 9.5.1 of the HDCP.

Recommendation

Council's Heritage assessment concluded that there are no heritage concerns raised with respect to the proposed development, subject to recommended conditions of consent to ensure implementation of the recommendations detailed within the supporting SOHI and ACHAR.

2.10.10 Traffic, Vehicle Access & Parking

Council's Traffic Engineering Team has reviewed the proposal, including the Construction Traffic Impact Assessment and Management Plan (CTIAM), and indicated that no concerns are raised to the proposal on traffic grounds and provided the following comments below.

Operational parking

Operational parking for boardwalks shared paths and footway connections is not required. These facilities are intended to encourage active transport and recreation, in general reducing the car demand on the road network.

Construction activity parking

During construction, parking for construction related vehicles will need to be accommodated at a safe location. The EIS states:

"The traffic assessment recommends an area within the Development Site or site office compound area be allocated to provide a minimum of 6 - 8 car parking for light vehicles and 1 heavy vehicle to accommodate construction traffic. If this cannot be accommodated within the Development Site, an off-site parking area is to be nominated."

Parking provision for construction vehicles is to be included in the recommended conditions of consent.

Operational traffic generation

Operational traffic generation for boardwalks shared paths and footway connections is not covered by Traffic Generating guidelines. These facilities are intended to encourage active transport and recreation, in general reducing the car demand on the road network.

Construction activity traffic generation

The proposal results in up to a maximum of 34 total daily vehicle movements (weekday) and 24 total daily vehicle movements (Saturday) during construction. Based on the estimated traffic generation during construction, the proposal will result in negligible impacts on the safety and function of the road network.

Access

Three likely construction compound areas have been identified. Two areas at the Kangaroo Point and one area off Brooklyn Road. Details of the compound areas are to be provided to Council prior to construction activity commencing. All vehicles shall enter and exit the sites in a forward direction.

Other matters

Provision of bicycle racks at key locations is to be considered and an appropriate condition of consent is recommended.

Recommendation

Council's Traffic Engineer has assessed the CTIAM and raises no objection to the proposal in terms of traffic and parking management, subject to recommended conditions of consent.

Further, in regard to road safety and the future potential expansion of the Dolphin Boatshed Marina, it be appropriate to provide signage as a condition of consent indicating it is a high pedestrian area and speed limited signage for the road approaches to the site. Additionally, to deter vehicles parking on the shared path, delineation such as bollards or kerbing is desirable to address potential safety concerns for vehicular and pedestrian conflict.

The letter dated 21 September 2022 from the Applicant ~~is~~ indicates that the proposal could be amended to provide parallel car parking for five (5) vehicles with blister islands at either end, along the frontage of the Dolphin Boatshed Marina. This formal parking is not considered to be necessary as a result of the assessment and the future redevelopment plans for the Dolphin Boatshed Marina could consider formalising of the informal spaces in this area.

The proposal meets the provisions of the HDCP with respect to transport and parking.

Further, the proposal connects with the existing footpath along Brooklyn Road, providing a continuous footpath from Brooklyn town and further extends it to Kangaroo Point. This will link two currently disconnected areas of Brooklyn and increase walking and cycling opportunities. Accordingly, the proposal will integrate into the existing pedestrian and cycling network.

2.11 Section 7.12 Contributions Plan

Hornsby Shire Council Section 7.11 Contributions Plan 2020-2030 does not apply in accordance with Section 2.7(2) of the plan, which states:

- “2. *In respect of development applications (or modifications thereto) made by or on behalf of the Council for community infrastructure including, but not limited to, libraries, community facilities, child care facilities, recreational areas, recreation facilities, car parks and the like.*”

3. ENVIRONMENTAL IMPACTS

Section 4.15(1)(b) of the Act requires Council to consider “*the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality*”.

3.1 Natural Environment

3.1.1 Tree and Vegetation Preservation

Council’s assessment regarding the impacts to trees arising from the proposal is provided in Section 2.10.8 of this report.

3.1.2 Waste Management

The Construction Traffic Management Plan (CTMP) provides potential areas for site office, storage of materials and waste. It was recommended that an alternative site office location should be considered at Brooklyn Road Reserve Rest at Lot 7025 DP 93862, Lot 238 DP 752026, Lot 250 DP 752026, subject to obtaining appropriate consents. The CTMP does not indicate the exact site location(s) for the proposed works, however, this can be provided as part of the Detailed Construction Management Plan prior to commencement of works. There are specific elements not included as part of the CTMP required to be addressed and these are included-within the recommended conditions of consent prior to the commencement of works.

With respect to on-going operational waste and facilities for the users of the pathways, Council’s Waste Management Team has reviewed the application and provided the following comments:

- *Litter bins need to be positioned at serviceable locations, which is only possible at each end of the boardwalk (Kangaroo Point (already has litter bins) and opposite Tom Richmond Oval, and at the Dolphin Boatshed Marina (already have 6 litter bins at the Marina). It is noted that these areas are flood prone. Bins could be moved to higher ground when the boardwalk is closed due to imminent flooding. Bin stands set in concrete are more readily restored after flooding.*
- *The Architectural Plans shows an “opportunity for shelters, BBQ, seating”. Such facilities require litter bins; however, the location is too far from any point at which the bins could be serviced. From a servicing perspective, the location of the BBQ/picnic shelters is not supported.*
- *Viewing areas/seating are not likely to need litter bins.*
- *Signage encouraging people to take their rubbish with them is recommended.*
- *The boardwalk planks and the park furniture (seating etc) should be made from recycled plastic (RePlas or similar) in demonstration of Council’s commitment to the use of recycled materials.*
- *The standard metal bin shrouds or bin stands in use across existing public areas in the LGA should be used.*

Council’s Waste Management assessment raises no objection to the proposal in terms of waste management, subject to recommended conditions of consent, including details of the location of bins to reflect the above comments.

3.1.3 Stormwater Management

The submitted Soil and Water Quality Assessment considers and recommends erosion, sediment and stormwater controls during the construction phase to mitigate negative impacts on riparian areas.

The plans propose satisfactory stormwater arrangements for the proposed boardwalk and have been reviewed by Council's Engineer and deemed satisfactory.

3.2 Built Environment

3.2.1 Built Form

The proposed boardwalk is low scale and has been designed to be sensitive to the waterfront location and marine environment. Lightweight timber construction is appropriate with regard to the scenic qualities of the waterfront and no buildings are proposed.

3.2.2 Traffic

Council's assessment regarding the impacts to traffic arising from the proposal is provided in Section 2.10.10 of this report.

3.3 Social Impacts

The proposal is expected to have a positive social impact due to the increased availability of an off-road pathway along the waterfront with seating and viewing platforms, which encourages less car usage, exercise, social interaction and access to a part of the nature in the area which is not currently accessible. The wellbeing and community benefits will be far reaching, for both locals and the wider community. The ability to walk or cycle safely from Brooklyn to Kangaroo Point is a significant improvement and encourages connectivity between the areas.

3.4 Economic Impacts

The proposal would have a positive impact on the local economy by providing a link between Brooklyn and Kangaroo Point for pedestrians and cyclists, bringing more recreational users to the locality and an increase in demand for local services. Local businesses will likely experience an increase in customers.

4. SITE SUITABILITY

Section 4.15(1)(c) of the Act requires Council to consider "*the suitability of the site for the development*".

The site is considered to be capable of accommodating the proposed development. The scale of the proposed development is consistent with the capability of the site and the environmental impacts minimised and is considered acceptable.

5. PUBLIC PARTICIPATION

Section 4.15(1)(d) of the Act requires Council to consider "*any submissions made in accordance with this Act or the regulations*".

5.1 Community Consultation

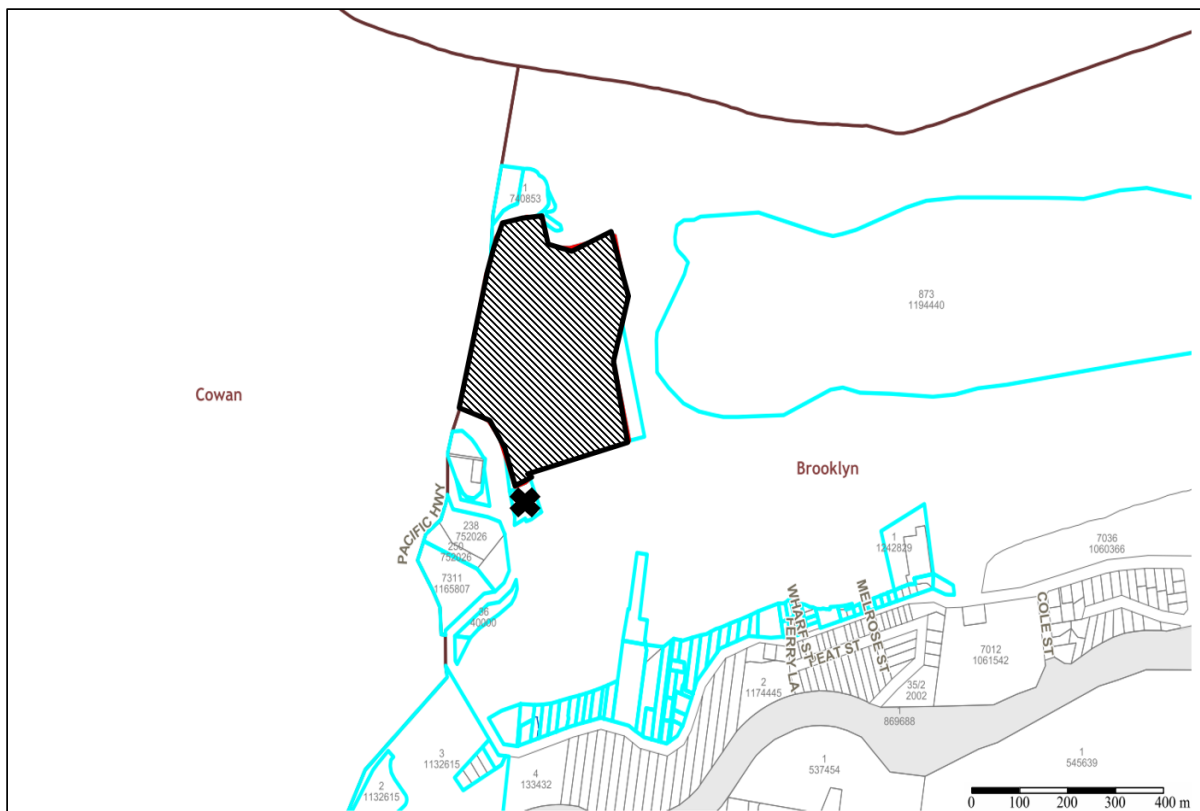
The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 17 June 2022 to 15 July 2022 in accordance with Community Engagement Plan. During this period, Council received a total of five (5) submissions (including one (1) from the Dolphin Boatshed Marina) in respect of the original application.

On 28 July 2022, Council Officers met with the applicant and the writer of the submission from Dolphin Boatshed Marina to discuss the issues raised in the submission including potential rerouting of the pathway along the road outside Dolphin Boatshed Marina and down the service trail and parallel parking arrangement next to the proposed path in its preferred location outside Dolphin Boatshed Marina.



Additional time was granted for the writer of the submission to provide an additional submission if desired.

Following this meeting, the applicant provided additional information which provided three different scenarios and why the subject route was chosen instead of the others. The additional information was not re-notified as the plans did not change and the additional information was in direct response to a concern raised by the Dolphin Boatshed Marina. However, the Marina was notified between 30 September 2022 to 21 October 2022 as the information was in direct response to their concerns. During this period, Council received an additional submission comprising two (2) letters from the Dolphin Boatshed Marina.

The map below illustrates the location of the nearby landowner who made a submission that are in close proximity to the development site.



NOTIFICATION PLAN

<p>PROPERTIES NOTIFIED HIGHLIGHTED BLUE</p>	<p>X SUBMISSIONS RECEIVED AGAINST</p>		<p>PROPERTY SUBJECT OF DEVELOPMENT</p>	
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Four (4) submissions were in support of the development, generally on the grounds that:

- Strongly supported, want it provided as soon as possible.
- Provides exercise option not currently available due to terrain.

- Provides public access to everyone (not just residents) to a beautiful and significantly historic area of NSW.
- Will bring people to the small businesses in Brooklyn.
- Fishermen would no longer be reduced to fishing from the break wall, or off the small bit of sand the boat ramp offers.
- The proposed development will be sympathetic to the environment and will be well built.

The submissions of support also included the following suggestions or comments:

5.1.1 Cultural History

The submission indicated that the proposal should incorporate education on the cultural history of the Deerubbin, in consultation with traditional custodians, and education on the bidirectional relationship we have with it and how it supports us today as well as accessible and pragmatic messaging/promotion regarding caring for the site today.

The Aboriginal Cultural Heritage Assessment Report which accompanied this application included the following comment:

“Hornsby Shire Council should consult with the Hornsby Aboriginal and Torres Strait Islander Consultative Committee regarding the possibility of incorporating Aboriginal heritage interpretation into the proposed works”.

A condition of consent has been recommended which requires consultation with the Local Aboriginal groups and Hornsby Aboriginal and Torres Strait Islander Consultative Committee and incorporation of information signage along the boardwalk.

5.1.2 Accessibility

The submission indicated that the proposal should not include steps to access the boardwalk or at either end and large gaps make it impossible for wheelchair and pram and mobility scooter users to access and egress the boardwalk. A shallow ramp would allow access. The route should be checked for these unnoticed difficulties which can make these beautiful sites impenetrable for large numbers of our community.

The application indicates that the proposal will provide compliant grades with the accessibility requirements of the BCA and AS 1428, with demonstration of compliance with accessibility related requirements and standards will be provided at Construction Certificate stage.

A review of the plans does not indicate steps and to ensure accessibility for all and that there are no large gaps, a condition of consent is recommended.

5.1.3 Kangaroo Point

The submission indicated that for the proposal to be successful, that Kangaroo Point would need major work done and provided the following comments:

- The boat ramp that currently exists there is small and ill equipped for launching anything more than a small tinny.
- There is no room for somebody with a trailer to turn around, the small amount of room that does exist often has pedestrians walking, and sometimes cars in no parking areas. Pedestrians are liable to be struck by a vehicle reversing or turning in this area.

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- The boat ramp needs to be lengthened, at low tide, non 4x4 vehicles will often get bogged in the sand at the bottom of the ramp.
 - The pontoon that is currently closed on the northern side of Kangaroo Point desperately needs to be fixed and reopened, boat owners with larger vessels will often use it to pick people up, NSW water police use it often, as does NSW Maritime and Marine Rescue NSW.
 - The last remaining pontoon that is open is excellent, however could do with some lighting at night.
 - The middle wharf is dangerous and is falling apart and needs to be repaired. Not removed, repaired. It is still a vital asset there.
 - If the boardwalk was to go ahead some considerations need to be made for parking, both for cars, and boat trailers. The boat ramp across the river while excellent, often has issues with people without trailers parking in trailer spots, and issues with caravans setting up for the day or night using two parking spots. If the boardwalk was to go ahead, this cannot be allowed to happen at Kangaroo Point being parking is already lacking. Many home owners of Bar Point and Dangar Island use Kangaroo Point ramp to leave their cars for sometimes days at a time. Parking needs to be organized so they have somewhere safe to leave their vehicles for an extended period, an area to tie up dinghies and tenders would also be appreciated for those who use Kangaroo Point to get to their moored vessels.
 - Careful planning and a wise use of public funds would ensure this asset is brought back to life and begins a safe, enjoyable, functional area for all.

This application will provide a connection for pedestrians and cyclists between Kangaroo Point (near Hawkesbury River road bridge) and Seymours Creek and is funded by the NSW State Government under its Active Transport Program and Metropolitan Greenspace Program. Council may in the future consider the above comments undertake further major works at Kangaroo Point. The primary purpose of the boardwalk is to encourage walking and cycling, reducing car usage, therefore additional parking or upgrade of Kangaroo Point is not warranted as part of this application.

One (1) submission was received from the Dolphin Boatshed Marina as part of the original notification, objected to the development, generally on the grounds that:

- No consultation with Dolphin Boatshed Marina during preparation of EIS despite indicating it occurred.
- Dolphin Marina Boatshed is the only business and concern affected by the proposed route of the boardwalk and pathway.
- The area proposed to be subject to the pathway has been used as a carpark for approximately 50 years. The carpark is a necessary part of the marina for staff, customers and visitors, and is integral to the operation of the marina operated by Dolphin Boatshed Marina. No regard for this in EIS or consultation.
- Dolphin Boatshed Marina is about to submit a Development Application for the development of the marina, which is a condition of Dolphin Boatshed's Crown leasehold.
- A pathway, as part of the proposal which would traverse the land used by Dolphin Boatshed Marina and its customers, presents an obvious danger to the safety of persons using the pathway. The carpark area and the driveways in and out of the area is used regularly by cars, boat trailers and trucks, large and small.

On 28 July 2022, Council Officers met with the applicant and the author of the submission from Dolphin Boatshed Marina to discuss the issues raised in the submission and potential re-routing of the pathway along the road outside Dolphin Boatshed Marina and down the service trail and parallel parking arrangement next to the proposed path in its preferred location outside Dolphin Boatshed Marina. Below is a summary of the key points discussed at the meeting:

- Car parking spaces currently outside of the Dolphin Boatshed Marina allotment would be impacted by the proposed shared pathway. These carparking spaces were discussed to have been in use since at least 1951 when a lease was acquired from the then equivalent of the Department of Crown Lands. This lease was identified to have lapsed or revoked in 1971. Since 1971 vehicles have been parking in the road reserve under an informal arrangement.
- The Dolphin Boatshed Marina is currently finalising expansion plans that would increase the number of berths to 89. This would require approximately 53 car parking spaces as per the parking rate required by the Hornsby Development Control Plan 2013.
- The route of the shared pathway was discussed, with the preference from Dolphin Boatshed Marina being that the pathway be routed along Brooklyn Road so that car parking is not impacted. Alternatives were discussed including co-locating the shared pathway and vehicle access road for the Marina, and the potential use of an existing service track that is located adjacent to the northern entry to the Marina.
- Safety requirements were discussed, including pedestrian safety and potential conflict between vehicles and pedestrians. A number of proposed safety measures were discussed, including signage for both pedestrians and vehicles.
- Whether the EIS adequately discussed the impacts of the proposal on the Dolphin Boatshed Marina.
- The Marina currently requires access for passenger vehicles and delivery vehicles, with the largest vehicle utilising the site being a semi-trailer that would access the site on an occasional basis for deliveries and / or to drop off boats to the dry dock.
- Notification of the development was discussed including notification during preparation of the EIS as well as notification during the development application.

Outcomes arising from the meeting included:

- Council would review the options proposed for re-routing the pathway if insufficient detail regarding this point had not been previously provided in the EIS.
- Council would review the submitted documentation to expand on the proposals impact on the Brooklyn Marina if insufficient detail regarding this point had not been previously provided in the EIS.
- Council would review road safety aspects of the design, to ensure that road safety requirements are sufficient for any proposed design.
- Dolphin Boatshed Marina would retrieve plans regarding the proposed marina extension and provide these documents for review as part of any future further submission on the project.
- Dolphin Boatshed Marina may lodge a pre-lodgement application for the future marina expansion (this would be a process separate to the assessment of this DA).

A further two (2) submissions were received from the Dolphin Boatshed Marina after the meeting with Council Officers on 28 July 2022, generally on the grounds that:

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- The proposed pathway should be constructed well clear of the area used by Dolphin Boatshed Marina, with the route of the pathway following the gravel track which is adjacent to the existing Telstra pillars to the commencement of the driveway to the marina and then to continue parallel with Brooklyn Rd.
 - Width of pathway along Brooklyn Rd could be 2m (not 3m), consistent with other parts of the pathway.
 - Reconfirmed Dolphin Boatshed Marina is about to submit a Development Application for the development of the marina, with 15 spaces at the foot of the embankment below Brooklyn Rd.
 - Indicates that the land used for informal parking was part of a special lease granted to the marina in 1951 until 1972 when terminated and reallocated for road construction purposes under the control of Council. The letter also indicates that the former Chief Executive of the Land and Property Management Authority informed Council some years ago that the land should continue to be used for this purpose and the Dolphin Boatshed Marina intends to rely upon this part of the road reserve for car parking.

The merits of the matters raised in community submissions have been addressed in the body of the report and below.

5.1.4 Parking & Pedestrians

The Dolphin Boatshed Marina is concerned the loss of available informal car parking spaces within the road reserve and that it will impact their plans for future expansion.

The issues were discussed on site with the Dolphin Boatshed Marina as outlined above and a further letter dated 21 September 2022 from the Applicant indicates the alternate routes considered during the initial design and also that the proposal could be amended to provide parallel car parking for five (5) vehicles with blister islands at either end, along the frontage of the Dolphin Boatshed Marina. This is not considered to be necessary as a result of the assessment of the current proposal. Given the future redevelopment plans for the Marina, the formalisation of parking should occur as part of that separate application.

The further submission also requests that the pathway be relocated and reduced in width. Consideration has been given to the various alternative routes and it is considered that the pathway as proposed, in the location shown and with a width of 3m is more desirable for users of the pathway, and there is still ample room for the formalisation of five (5) car parking spaces adjacent to the pathway by Dolphin Boatshed Marina in the future as part of their redevelopment. It is important to acknowledge that this road is currently under the care and control of Hornsby Shire Council and there is no active lease for this informal parking area currently in place. As such, these spaces are not allocated to the Dolphin Boatshed Marina and would not be considered as existing formal parking in the assessment of a redevelopment of the Marina. Further, the wider public benefit is required to be considered and the consideration of alternate routes identified various issues with the other options and identifies the safety for the users of the pathway to be superior with the current proposal.

5.2 Public Agencies

The development application triggered referral to the following external agencies:

5.2.1 RFS

On 31 July 2022, Rural Fire Service advised of no concerns with the proposal. No conditions were recommended.

5.2.2 Fisheries

On 29 March 2023, Department of Primary Industries - Fisheries advised of no objections to the proposal, subject to General Terms of Approval. Appropriate conditions of consent have been recommended regarding compliance with the General Terms of Approval.

6. THE PUBLIC INTEREST

Section 4.15(1)(e) of the Act requires Council to consider "*the public interest*".

The public interest is an overarching requirement, which includes the consideration of the matters discussed in this report. Implicit to the public interest is the achievement of future built outcomes adequately responding to and respecting the future desired outcomes expressed in environmental planning instruments and development control plans.

The application is considered to have satisfactorily addressed Council's and relevant agencies' criteria and would provide a development outcome that, on balance, would result in a positive impact for the community. Accordingly, it is considered that the approval of the proposed development would be in the public interest.

CONCLUSION

The application proposes construction of a public boardwalk and shared pathway between Kangaroo Point and Brooklyn Road.

The development generally meets the desired outcomes of Council's planning controls and is satisfactory having regard to the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

Council received a total of five (5) submissions has been received in respect of the original application and one (1) submission (comprising two letters) following discussions with the writer of a submission from Dolphin Boatshed Marina in response issues raised. The matters raised have been addressed in the body of the report and the issues do not warrant amendments to the proposal.

Having regard to the circumstances of the case, approval of the application is recommended.

The reasons for this decision are:

- The proposed development generally complies with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2013.
- The proposed development does not create unreasonable environmental impacts to adjoining development nor significant environmental impacts.

Note: At the time of the completion of this planning report, no persons have made a Political Donations Disclosure Statement pursuant to Section 10.4 of the Environmental Planning and Assessment Act 1979 in respect of the subject planning application.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this report is Donna Clarke from Landmark Planning Pty Ltd.

RECOMMENDATION

THAT the Hornsby Shire Local Planning Panel approve Development Application No. DA/585/2022 for construction of a public boardwalk and shared pathway between Kangaroo Point and Brooklyn Road at Lot 100 DP 865249 & Lot 7 DP 740853, Pacific Highway, Brooklyn and Kangaroo Point Wharf Reserve (R1038969) Lot 101 DP 1223533, No. 1422 Pacific Highway, Brooklyn be approved subject to the conditions of consent detailed in Schedule 1 of this report.

The reasons for this decision are:

- The proposed development complies with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2013.
- The proposed development does not create unreasonable environmental impacts to adjoining development with regard to visual bulk, solar access, amenity or privacy.
- The proposed development would contribute to improved liveability and prioritise opportunities for people to walk and cycle, whilst protecting environmentally sensitive areas of waterways, cultural and scenic landscapes and the coastal environment area.

Schedule 1

CONDITIONS APPLICABLE TO ALL STAGES

GENERAL CONDITIONS

The conditions of consent within this notice of determination have been applied to ensure that the use of the land and/or building is carried out in such a manner that is consistent with the aims and objectives of the relevant legislation, planning instruments and Council policies affecting the land and does not disrupt the amenity of the neighbourhood or impact upon the environment.

Note: For the purpose of this consent, the term 'applicant' means any person who has the authority to act on or the benefit of the development consent.

Note: For the purpose of this consent, any reference to an Act, Regulation, Australian Standard or publication by a public authority shall be taken to mean the gazetted Act or Regulation or adopted Australian Standard or publication as in force on the date that the application for a construction certificate is made.

1. Approved Plans and Supporting Documentation

The development must be carried out in accordance with the plans and documentation listed below and endorsed with Council's stamp, except where amended by Council and/or other conditions of this consent:

Approved Plans

Plan No.	Plan Title	Drawn by	Dated	Council Reference
1 of 30 Issue 2	Drawing Schedule, Locality Plan & Legend	Hornsby Shire Council Design & Construction Branch	undated	
2 of 30 Issue 2	Project Notes	Hornsby Shire Council Design & Construction Branch	undated	
3 of 30 Issue 2	Boardwalk & Shared Pathway Typical Sections	Hornsby Shire Council Design & Construction Branch	undated	
4 of 30 Issue 2	Concrete Path Joint Details	Hornsby Shire Council Design & Construction Branch	undated	
5 of 30 Issue 2	Overall Layout Plan	Hornsby Shire Council Design & Construction Branch	undated	
6 of 30 Issue 2	Control Line 1 Setout Details Sheet 1 of 2	Hornsby Shire Council Design & Construction Branch	undated	
7 of 30 Issue 2	Control Line 1 Setout Details Sheet 2 of 2	Hornsby Shire Council Design & Construction Branch	undated	

Plan No.	Plan Title	Drawn by	Dated	Council Reference
8 of 30 Issue 2	General Works & Services Plan - Plan 1 of 8	Hornsby Shire Council Design & Construction Branch	undated	
9 of 30 Issue 2	General Works & Services Plan - Plan 2 of 8	Hornsby Shire Council Design & Construction Branch	undated	
10 of 30 Issue 2	General Works & Services Plan - Plan 3 of 8	Hornsby Shire Council Design & Construction Branch	undated	
11 of 30 Issue 2	General Works & Services Plan - Plan 4 of 8	Hornsby Shire Council Design & Construction Branch	undated	
12 of 30 Issue 2	General Works & Services Plan - Plan 5 of 8	Hornsby Shire Council Design & Construction Branch	undated	
13 of 30 Issue 2	General Works & Services Plan - Plan 6 of 8	Hornsby Shire Council Design & Construction Branch	undated	
14 of 30 Issue 2	General Works & Services Plan - Plan 7 of 8	Hornsby Shire Council Design & Construction Branch	undated	
15 of 30 Issue 2	General Works & Services Plan - Plan 8 of 8	Hornsby Shire Council Design & Construction Branch	undated	
16 of 30 Issue 2	CL1 Cross Sections - CH5.000 TO CH110.000	Hornsby Shire Council Design & Construction Branch	undated	
17 of 30 Issue 2	CL1 Cross Sections - CH120.000 TO CH230.000	Hornsby Shire Council Design & Construction Branch	undated	
18 of 30 Issue 2	CL1 Cross Sections - CH240.000 TO CH350.000	Hornsby Shire Council Design & Construction Branch	undated	
19 of 30 Issue 2	CL1 Cross Sections - CH360.000 TO CH423.484	Hornsby Shire Council Design & Construction Branch	undated	
20 of 30 Issue 2	CL1 Cross Sections - CH430.000 TO CH500.000	Hornsby Shire Council Design & Construction Branch	undated	
21 of 30 Issue 2	CL1 Cross Sections - CH508.356 TO CH575.976	Hornsby Shire Council Design & Construction Branch	undated	
22 of 30 Issue 2	CL1 Cross Sections - CH580.000 TO CH643.024	Hornsby Shire Council Design & Construction Branch	undated	

Plan No.	Plan Title	Drawn by	Dated	Council Reference
23 of 30 Issue 2	CL1 Cross Sections - CH650.000 TO CH740.000	Hornsby Shire Council Design & Construction Branch	undated	
24 of 30 Issue 2	CL1 Cross Sections - CH750.000 TO CH807.179	Hornsby Shire Council Design & Construction Branch	undated	
25 of 30 Issue 2	CL1 Cross Sections - CH810.000 TO CH900.000	Hornsby Shire Council Design & Construction Branch	undated	
26 of 30 Issue 2	CL1 Cross Sections - CH910.000 TO CH1000.000	Hornsby Shire Council Design & Construction Branch	undated	
27 of 30 Issue 2	Tree Schedule - Sheet 1 Of 4	Hornsby Shire Council Design & Construction Branch	undated	
28 of 30 Issue 2	Tree Schedule - Sheet 2 Of 4	Hornsby Shire Council Design & Construction Branch	undated	
29 of 30 Issue 2	Tree Schedule - Sheet 3 Of 4	Hornsby Shire Council Design & Construction Branch	undated	
30 of 30 Issue 2	Tree Schedule - Sheet 4 Of 4	Hornsby Shire Council Design & Construction Branch	undated	

Supporting Documentation

Document Title	Prepared by	Dated	Council Reference
Environmental Impact Statement Issue 2	Martens & Assoc Pty Ltd	11/05/2022	D08426235
Preliminary Site Investigation Issue 2	Martens & Assoc Pty Ltd	8/04/2022	D08426241
Construction Traffic Impact Assessment and Management Plan	Martens & Assoc Pty Ltd	26/05/2022	D08426217
Flooding and Coastal Processes Assessment	Martens & Assoc Pty Ltd	27/05/2022	D08426234
Preliminary Geotechnical Investigation and Acid Sulfate Soils Assessment Issue 1	Martens & Assoc Pty Ltd	6/04/2022	D08426226
Soil and Water Quality Assessment Report (including Acid Sulfate Soil Management Plan)	Martens & Assoc Pty Ltd	1/05/2022	D08426248
Detailed Site Investigation Issue 4	Martens & Assoc Pty Ltd	8/04/2022	D08426242
Waste Management Plan Issue 1	Martens & Assoc Pty Ltd	3/05/2022	D08426216

Document Title	Prepared by	Dated	Council Reference
Aboriginal Cultural Heritage Assessment Report	Coast History & Heritage	May 2022	D08426250
Statement of Heritage Impact	Coast History & Heritage	May 2022	D08426224
Construction Noise & Vibration Management Plan	Acoustic Dynamics	20/05/2022	D08426249
Bushfire Risk Assessment Issue 1.2	BlackAsh Bushfire Consulting	3/05/2022	D08426244
Human Health Risk Assessment	Environmental Risk Sciences	27/04/2022	D08426240
Watercourse and Riparian Lands Assessment Issue 1	Martens & Assoc Pty Ltd	9/05/2022	D08426223
Amended Biodiversity Development Assessment Report Issue 1.1	Eco Consulting	18/01/2023	D08573667
Amended Marine Ecological Impact Assessment Issue 1.1	Eco Consulting	18/12/2022	D08573665
Vegetation Management Plan Issue 1.0	Land Eco Consulting	10/05/2022	D08426246
Pre-development tree survey and assessment (TA-01) Issue B	Arterra Consulting Arboriculture	18/02/2022	D08624653
General Terms of Approval - Fisheries	Department of Primary Industries	29/03/2023	D08619926
General Terms of Approval - NSW RFS	NSW Rural Fire Service	31/07/2022	D08461096

Reason: To ensure all parties are aware of the approved plans and supporting documentation that apply to the development.

2. Construction Certificate

- a) A Construction Certificate is required to be approved by Council or a Private Certifying Authority prior to the commencement of any construction works under this consent.
- b) A separate approval under s138 of the *Roads Act*, must be obtained from Council for all works within the public road reserve.
- c) The Construction Certificate/ Section 138 Roads Act application plans must be consistent with the Development Consent plans.

Reason: To ensure that detailed construction certificate plans are consistent with the approved plans and supporting documentation.

3. Staging

This consent allows for the construction of the shared pathway and boardwalk in three stages being:

- a) **Stage 1:** Kangaroo Point to the bushland track. Approximately 195m long, 3 m wide boardwalk with mesh decking and railings both sides, heading south from Kangaroo Point. It will meander through the mangroves and intertidal zone towards the existing

track formation further inland and includes a platform providing views to Sandbrook Inlet close to the commencement point. This section will be raised to be above high highest tide levels.

- b) **Stage 2:** Bushland track to Dolphin Boatshed Marina - Approximately 450m, 3m wide on grade pathway commencing from the start of the existing access track formation. It is proposed to clear and grade the existing track and is to be constructed of concrete and hence this section is referred to as a 'shared pathway'. This section proceeds south towards the Dolphin Boatshed Marina and will include two platforms for viewing and seating opportunities. An area for additional recreational facilities has been surveyed and is identified on the plans.
- c) **Stage 3:** Dolphin Boatshed Marina to Old Dairy Site on Brooklyn Road - Approximately 360m, 3 m wide boardwalk with mesh decking and railings which will commence from the south of the marina and proceed through mangrove areas and wetlands in the intertidal zone to connect Kangaroo Point and Brooklyn Road. An 18m span bridge will cross Seymours Creek before connecting to the Brooklyn Road footpath and viewing platform.

All conditions of this consent must be satisfied at each stage, as relevant to that stage. Upon completion of the final stage, all conditions of this consent must be fully satisfied.

Reason: To ensure the staging of the consent.

4. Removal of Trees

- a) This development consent permits the removal of trees numbered T1, T6, T7, T8, T9, T10, T11, T12, T13, T28, T36, T57, T63, T69, T72, T73, T88, T89, T103, T110, T126, T127, T128, T129, T132, T133, T135, T141, T142, T146, T147, T148, T149, T185, T186, T190, T195, T196, T197, T198, T199, T202, T203, T206, T209, T210, T211, T213, T215, T233, T236, T237, T238, T239, T246, T284, T308, T310, T500, T501, T502, T503, T504 and T505 as identified in the approved plans Sheets 1-30 prepared by Hornsby Shire Council Design & Construction Branch.
- b) No consent is granted for the removal of any other trees as these trees contribute to the established landscape amenity of the area/streetscape.

Note: The removal of any other trees from the site requires separate approval by Council in accordance with Part 1B.6 Tree and Vegetation Preservation of the Hornsby Development Control Plan, 2013 (HDCCP).

Reason: To identify only those trees permitted to be removed.

5. Tree Pruning

The pruning of any other trees from the site requires separate approval by Council in accordance with Part 1B.6 Tree and Vegetation Preservation of the Hornsby Development Control Plan 2013 (HDCCP).

Reason: To minimise the impact on trees to be retained.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**6. Building Code of Australia**

Detailed plans, specifications and supporting information is required to be submitted to the certifying authority detailing how the proposed building work achieves compliance with the *National Construction Code - Building Code of Australia*. All building work must be carried out in accordance with the requirements of the *National Construction Code - Building Code of Australia*.

Reason: Prescribed condition - EP&A Regulation section 69(1).

7. Flood Report

The development shall be designed in accordance with the recommendations outlined in the approved Flooding and Coastal Processes Assessment prepared by Martens & Assoc Pty Ltd, dated 27/05/2022, including the finalising and implementation of:

- a) Preliminary flood emergency response plan (FERP); and
- b) Flood risk action plan (FRAP)

Reason: To manage stormwater flows to minimise potential flooding.

8. Geotechnical

The development shall be designed in accordance with the recommendations outlined in the approved Preliminary Geotechnical Investigation and Acid Sulfate Soils Assessment Issue 1 prepared by Martens & Assoc Pty Ltd, dated 6/04/2022, including:

- a) Additional geotechnical testing prior to commencement of works (Section 5.1);
- b) Geotechnical recommendations (Section 4.3); and
- c) General Geotechnical Recommendations (Appendix F).

Reason: To ensure the stability of the site.

9. Public Road Works

A separate application under Section 138 of the *Roads Act, 1993* must be submitted to Council for approval to carry out works within the public road reserve. All road works approved under this consent must be constructed in accordance with Council's AUS-SPEC Specifications and the following requirements:

- a) The shared footpath pathway and boardwalk structure shall be designed generally in accordance with the approved plans identified as Project No.100227 Drawing No.29.31 Issue 2 by Hornsby Shire Council Design and Construction Branch.

Reason: To ensure infrastructure works are designed and constructed to appropriate standards and requirements of the Roads Act 1993.

10. Construction Environmental Management Plan (CEMP)

To assist in the protection of the public, the environment and Council's assets, a separate Construction Environmental Management Plan must be prepared by a suitably qualified environmental consultant in consultation with a qualified traffic engineer and AQF 5 arborist

and submitted to Council's Compliance Team via Council's Online Services Portal for review and written approval. The Plan must detail the actions that will be taken to protect the environment for the duration of works, and all responsible parties ensuring compliance with the document. The Plan is to be in accordance with the publication 'Managing Urban Stormwater - Landcom (March 2004)', the *Protection of the Environment Operations Act 1997* and relevant Council guidelines, and should include but not be limited to:

- a) Water quality and soil management, including but not limited to sediment and erosion control measures and stormwater management;
- b) Air quality management;
- c) Management strategies for the potential risks to on-site workers and visitors, off-site receptors, and the environment from the contamination identified;
- d) Measures implemented to address the conclusions and recommendations of the:
 - i) Detailed Site Investigation report,
 - ii) Acid Sulfate Soil Management Plan,
 - iii) Asbestos Management Plan,
 - iv) Flooding and Coastal Processes Assessment Report,
 - v) Soil and Water Quality Assessment,
 - vi) Construction Noise & Vibration Management Plan,
 - vii) Preliminary Geotechnical Investigation Report,
 - viii) Human Health Risk Assessment,
 - ix) Biodiversity Development Assessment Report,
 - x) Watercourse and Riparian Lands Assessment.
- e) A Construction Traffic Management Plan (CTMP) including the following:
 - i) The order of construction works and arrangement of all construction machines and vehicles being used during all stages.
 - ii) The CTMP plans shall be in accordance with all other plans submitted to Council as part of this development proposal.
 - iii) A statement confirming that no building materials, work sheds, vehicles, machines or the like shall be allowed to remain in the road reserve area without the written consent of Hornsby Shire Council.
 - iv) The Plan shall be in compliance with the requirements of the Roads and Maritime Services *Traffic control at work sites Manual 2018* and detail:
 - a. Public notification of proposed works;
 - b. Long term signage requirements;
 - c. Short term (during actual works) signage;
 - d. Vehicle Movement Plans, where applicable;
 - e. Traffic Management Plans;
 - f. Pedestrian and Cyclist access and safety.

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- v) Traffic controls including those used during non-working hours. Pedestrian access and two-way traffic in the public road must be able to be facilitated at all times.
 - vi) Details of parking arrangements for all employees and contractors, including layover areas for large trucks during all stages of works. The parking or stopping of truck and dog vehicles associated with the development will not be permitted other than on the site and the plan must demonstrate this will be achieved. The Construction Traffic Impact Assessment and Management Plan should be updated to indicate the location of a minimum of 6 - 8 car parking for light vehicles and 1 heavy vehicle to accommodate construction traffic. An off-site parking area is to be nominated if this cannot be accommodated.
 - vii) Confirmation that a street 'scrub and dry' service will be in operation during all stages of works.
 - viii) Proposed truck routes to and from the site including details of the frequency of truck movements for all stages of the development.
 - ix) Swept path analysis for ingress and egress of the site for all stages of works.
 - x) Site plans for all stages of works including the location of site sheds, concrete pump and crane locations, unloading and loading areas, waste and storage areas, existing survey marks, vehicle entry, surrounding pedestrian footpaths and hoarding (fencing) locations.
 - xi) Site plans showing the exact location(s) of the site offices for the duration of works.
 - xii) The total quantity and size of trucks for all importation and exportation of fill on site throughout all stages of works, and a breakdown of total quantities of trucks for each stage of works.
 - xiii) The number of weeks trucks will be accessing and leaving the site with excavated or imported fill material.
 - xiv) The maximum number of trucks travelling to and from the site on any given day for each stage of works.
 - xv) The maximum number of truck movements on any given day during peak commuting periods for all stages of works.
 - xvi) The source site location of any proposed fill to be imported to the site, for all stages of works.
 - xvii) The Plan must state that the applicant and all employees of contractors on the site must obey any direction or notice from the Prescribed Certifying Authority or Hornsby Shire Council in order to ensure the above.
 - xviii) If there is a requirement to obtain a Work Zone, Out of Hours permit, partial Road Closure or Crane Permit, the Plan must detail these requirements and include a statement that an application to Hornsby Shire Council will be made to obtain such a permit.
- f) A Construction Waste Management Plan detailing the following:

- i) Details of the importation or excavation of soil and fill, the classification of the fill, disposal methods and authorised disposal depots that will be used for the fill, in accordance with Preliminary Geotechnical Investigation Report.
 - ii) Asbestos management requirement and procedures for removal and disposal from the site in accordance with *AS 2601-2001 - 'The Demolition of Structures'*, and the *Protection of the Environment Operations (Waste) Regulation 2005*.
 - iii) General construction waste details including construction waste skip bin locations and litter management for workers.
- g) A Tree Protection Plan (TPP) prepared by an AQF 5 Arborist in accordance with any approved Arboricultural Impact Assessment and tree location plans, detailing the following:
- i) A site plan showing tree protection zones (TPZ) and structural root zones (SRZ) of trees to be retained and specific details of tree protection measures inclusive of distances (in metres) measured from tree trunks.
 - ii) Construction methodology to avoid damage to trees proposed to be retained during construction works.
 - iii) Specifications on tree protection materials used and methods within the TPZ or SRZ.
 - iii) Location of dedicated material storage space on site outside of TPZ's and SRZ's for retained trees.
- h) Detail the sediment and erosion control measures on a site plan in accordance with the recommendations of the Soil and Water Quality Assessment Report (TRIM: D08426248).
- i) The CEMP must detail the contact information for developers, builder, private certifier and any emergency details during and outside work hours.
- j) The CEMP is to include the construction specifications from section 1.3.1 and 1.3.2 of the Biodiversity Development Assessment Report to ensure there is minimal impact on the marine and terrestrial environment. Machinery is not to be used for any vegetation clearing due to the sensitive nature of the marine environment. If machinery is to be used for earthworks, rubber tracks and rumble boards are to be utilised to minimise disturbance.

Note: The CEMP must be lodged via Council's Online Services Portal at: <https://hornsbyprd-pwy-epw.cloud.infor.com/ePathway/Production/Web/Default.aspx> and by selecting the following menu options: Applications > New Applications > Under 'Application Types': Management Plans.

Reason: To document construction measures to protect the public and the surrounding environment.

11. Waste Management Details

The plans are to indicate the proposed location of any additional public place litter bins and details the proposed servicing arrangements of all bins for approval by Council's waste management branch prior to issue of the Construction Certificate. Bins located along the proposed boardwalk which are not accessible by the contractor will need to be brought to a suitable servicing location by Council staff and returned following service.

Reason: To ensure domestic waste bins are not used for demolition and construction waste.

12. Asbestos Management Plan

- a) An Asbestos Management Plan must be prepared by an appropriately qualified consultant in accordance with Safe Work (2020) How to Manage and Control Asbestos in the Workplace Code of Practice and Safe Work (2019) Code of Practice How to Safely Remove Asbestos and other relevant guidelines and be submitted to Council for approval.
- b) The Asbestos Management Plan must include a methodology for an asbestos survey (AS) post vegetation removal, prior to earthworks commencing) for the asbestos removal works identified within Stage 2 1 investigation area and to provide appropriate construction practices for works in Stage 1.
- c) The Asbestos Management Plan must include an unexpected finds protocol to manage unexpected finds risk (such as other areas of PACM, odours or soil staining).

Reason: To ensure the appropriate removal and disposal of contaminated materials.

13. Sydney Water – s73 Certificate

A s73 Certificate must be obtained from Sydney Water and submitted to the PCA..

Note: Sydney Water requires that s73 applications are to be made through an authorised Sydney Water Servicing Coordinator. Refer to www.sydneywater.com.au or telephone 13 20 92 for assistance.

Reason: To ensure compliance with the requirements of Sydney Water.

14. Licence Agreement

An executed licence agreement from the relevant NSW government agency governing the use and occupation of Crown land is required to be obtained prior to the issue of a construction certificate. This is to ensure that lawful authority under the *Crown Land Management Act 2016* to use and occupy Crown land or waterway is obtained before construction commences.

Reason: To ensure the appropriate licenses have been obtained.

15. Accessibility

To ensure accessibility to the proposal, no steps or large gaps preventing disabled access are to be included within the proposed works and a shallow ramp should be provided at either end of the boardwalk, if required.

Reason: To ensure the appropriate accessibility to the proposal.

16. Bicycle Racks

Bicycle racks are to be provided at the entrances/exits along the boardwalk. Details of the locations are to be shown on the Construction Certificate plans.

Reason: To ensure rest areas for cyclists.

17. High Pedestrian Area

- a) Signage is to be provided on the boardwalk and pathways at the approach to, and alongside of, the Dolphin Boatshed Marina indicating it is a high pedestrian area and speed limited signage for the road approaches to the site.
- b) To deter vehicles parking on the shared path, delineation such as bollards or kerbing is desirable to address potential safety concerns for vehicular and pedestrian conflict.
- c) Details of the above requirements must to be shown on the plans submitted with the Construction Certificate.

Reason: To ensure appropriate safety signage.

18. Appointment of a Project Arborist

- a) A project arborist with AQF Level 5 qualifications must be appointed.
- b) Details of the appointed project arborist must be submitted to Council and the PCA for registration with the application for the construction certificate.

Reason: To ensure appropriate monitoring of tree(s) to be retained.

19. Appointment of Project Bush Regenerator/Ecologist

- a) To ensure the implementation and monitoring of environmental protection measures during the construction of the approved development, a suitably qualified and experienced project bush regenerator/ ecologist must be appointed to assist in ensuring compliance with the conditions of consent and provide monitoring reports to Council at various stages of the Project as identified in the approved Vegetation Management Plan provided by Land Eco (D08426246) and as specified by the conditions of consent.
- b) An inspection schedule to assess tree and vegetation health and provide certification for the various stages of development such as site establishment (includes demolition and installation of tree protection measures), construction work, hard and soft landscaping practical completion and occupancy certification is to be included with the application for the construction certificate and approved by Natural Resources at naturalresourcesplanning@hornsby.nsw.gov.au.
- c) Details of the appointed project ecologist must be submitted to Council and the PCA with the application for the subdivision works certificate.

Reason: To ensure appropriate monitoring of environmental protection measures.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS
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20. Erection of Construction Sign

- a) A sign must be erected in a prominent position on any site on which any approved work is being carried out:
 - i) Showing the name, address and telephone number of the principal certifying authority for the work;

- ii) Showing the name of the principal contractor (if any) for any demolition or building work and a telephone number on which that person may be contacted outside working hours; and
 - iii) Stating that unauthorised entry to the work site is prohibited.
- b) The sign is to be maintained while the approved work is being carried out and must be removed when the work has been completed.

Reason: Prescribed condition EP&A Regulation, section 70(2) and (3).

21. Protection of Adjoining Areas

A temporary hoarding, fence or awning must be erected between the work site and adjoining lands before the works begin and must be kept in place until after the completion of the works if the works:

- a) Could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic;
- b) Could cause damage to adjoining lands by falling objects; and/or
- c) Involve the enclosure of a public place or part of a public place; and/or
- d) Have been identified as requiring a temporary hoarding, fence or awning within the Council approved Construction Management Plan (CMP).

Note: Notwithstanding the above, Council's separate written approval is required prior to the erection of any structure or other obstruction on public land.

Reason: To ensure public safety and protection of adjoining land.

22. Erosion and Sediment Control

To protect the water quality of the downstream environment, erosion and sediment control measures must be provided and maintained throughout the construction period in accordance with the manual 'Urban Stormwater: Soils and Construction "The Blue Book" 2004 (4th edition), the approved plans, Council specifications and to the satisfaction of the principal certifying authority. The erosion and sediment control devices must remain in place until the site has been stabilised and revegetated.

Note: On the spot penalties may be issued for any non-compliance with this requirement without any further notification or warning.

Reason: To minimise impacts on the water quality of the downstream environment.

23. Road Opening Permit

A road opening permit shall be obtained from the Council to permit a person to dig into Council assets, such as roads, footpaths and nature strips. The applicable fees for the restoration of any public asset by Council shall be at the applicant's full expense.

Reason: To ensure appropriate permits are applied for.

24. Protection of vegetation, habitat and environmental features during construction

Fencing must be placed in accordance with the specifications below to the satisfaction of the Council or the principal certifier:

- a) Prior to the clearing of vegetation, the project ecologist and construction contractor are to identify the maximum extent of clearing using flagging tape, fencing or similar.
- b) Install 1.2-metre-high exclusion fencing along the immediate work area to prevent accidental trampling of retained vegetation. Fencing must be of mesh or bar construction to protect wildlife and allow light and air to adjoining vegetation. The base of the fence must be raised to allow fauna movement.
- c) A sign must be erected along the fence to identify areas of protected vegetation.
- d) Any anthropomorphic waste or weed dispersal throughout the development footprint and adjoining vegetation is to be collected and disposed of offsite.
- e) Clean machinery of soil and debris before entering the site to prevent the spread of weeds and fungal pathogens.

Note: The Act prohibits the disturbance to threatened species, endangered populations and threatened ecological communities, or their habitat, without appropriate consent or license.

Reason: To ensure that adjoining land which contains vegetation of local and state significance is duly protected from impacts during works.

25. Vegetation removal and fauna management

Prior to the clearing of any vegetation or the demolition of any structures associated with the proposed subdivision, the following must be carried out as required by the Vegetation Management Plan Issue 1.0 prepared by Land Eco Consulting, dated 10/05/2022:

- a) A pre-clearing survey is to be completed by the project ecologist, including inspection of hollows and culverts.
- b) The engaged bush regeneration company must complete soil and saltmarsh species translocation to a licenced nursery to be replanted following construction. The company must have proven experience working in translocation.
- c) Suitably qualified and experienced fauna management personnel must be nominated to be present during vegetation clearing in the event fauna is observed.
- d) Prepare protocols for the capture and release of resident fauna, including the staging of any capture and release of resident or injured fauna throughout all stages of the project and notification protocols for unexpected finds.
- e) Any hollows or logs with habitat value must be relocated within the site as habitat.

Reason: To minimise damage to any vegetation or habitat to be retained during construction

26. Implementation of Vegetation Management Plan

- a) The approved Vegetation Management Plan Issue 1.0 prepared by Land Eco Consulting, dated 10/05/2022 must be commenced prior to any clearing or demolition works and is to be in place for a minimum period of 5 years, to be overseen by the project ecologist.
- b) Monitoring reports are to be provided annually to Council's Natural Resources Team (naturalresourcesplanning@hornsby.nsw.gov.au) for the duration of the Vegetation Management Plan.

Reason: To ensure pre-clearance works identified in the approved VMP are carried out to minimise disturbance to protected habitat and vegetation.

27. Biodiversity Offset Scheme

- a) Ecosystem credit retirement conditions:
- i) Prior to commencement of works, the class and number of ecosystem credits in Table 1 must be retired to offset the residual biodiversity impacts of the development.
 - ii) The requirement to retire credits in the above condition may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the Biodiversity Offsets Payment Calculator.
 - iii) Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of Table 1 must be provided to the consent authority.

Impacted PCT	No. of ecosystem credits	IBRA sub-region	PCTs that can be used for offsetting
1234-Estuarine Swamp Oak forest	1	Pittwater, Cumberland, Sydney Cataract, Wyong and Yengo or Any IBRA subregion that is within 100 kilometres of the outer edge of the impacted site	915, 916, 917, 918, 919, 1125, 1230, 1232, 1234, 1235, 1236, 1726, 1727, 1728, 1729, 1731, 1800, 1808
1557-Central Coast Escarpment dry forest	4	Pittwater, Cumberland, Sydney Cataract, Wyong and Yengo or Any IBRA subregion that is within 100 kilometres of the outer edge of the impacted site	690, 697, 698, 755, 1092, 1262, 1267, 1268, 1281, 1385, 1548, 1549, 1550, 1556, 1557, 1558, 1564, 1565, 1580, 1582, 1584, 1585, 1845, 1846, 1847, 1914

Table 1: Ecosystem credits - like for like

- b) Species credit retirement conditions
- i) Prior to commencement of works, the class and number of species credits in Table 2 must be retired to offset the residual biodiversity impacts of the development.
 - ii) The requirement to retire credits in the above condition may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of species credits, as calculated by the Biodiversity Offsets Payment Calculator.
 - iii) Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of Table 2 must be provided to the consent authority.

Impacted species credit species	No. of species credits	IBRA sub-region
Myotis macropus / Southern Myotis	10	Anywhere in NSW

Table 2: Species credits - like for like

- c) Variation: Ecosystem credit retirement conditions
- i) Prior to commencement of works, the class and number of species credits in Table 4 must be retired to offset the residual ecosystem impacts of development.
 - ii) Evidence of the retirement of credits in satisfaction of Table 4 is to be provided to the consent authority.

Impacted PCT	No. of ecosystem credits	IBRA sub-region	Approved variation PCT(s) that can be used for offsetting
1234 - Estuarine Swamp Oak Forest	1	Pittwater, Cumberland, Sydney Cataract, Wyong and Yengo or Any IBRA subregion that is within 100 kilometres of the outer edge of the impacted site	

Table 4: Ecosystem credits - variation rules

- d) Variation: Species credit retirement conditions
- i) Prior to commencement of works, the class and number of species credits in Table 5 must be retired to offset the impacts of development.
 - ii) Evidence of the retirement of credits in satisfaction of Table 5 is to be provided to the consent authority.

Impacted species credit species	No. of species credits	IBRA sub-region	Approved variation species credit species that can be used for offsetting
Myotis Macropus - Southern Myotis	10	Pittwater, Cumberland, Sydney Cataract, Wyong and Yengo. or Any IBRA subregion that is within 100 kilometers of the outer edge of the impacted site.	Any species listed as Vulnerable or a higher category of listing under Part 4 of the BC Act

Table 5: Species credits - variation rules

Reason: To meet offset obligations as identified by the Biodiversity Conservation Act 2016.

28. Fisheries Offsets

In accordance with the *Fisheries Management Act 1994* and the Policy and Guidelines for Fish Habitat Conservation and Management (2013), when on-going restoration is not possible, a monetary offset may be accepted. As the site is constrained and an offset of Saltmarsh Estuarine Complex and Estuarine Mangrove Forest is not possible, 1,040m² of impacted

marine vegetation is to be offset at a ratio of 2:1, at the rate of \$51/m². A total of \$106,080 is required to be offset as compensation for harm to marine habitat.

Reason: to meet offset obligations as identified by the Fisheries Management Act 1994.

REQUIREMENTS DURING DEMOLITION AND CONSTRUCTION

29. Construction Work Hours

- a) All works on site, including demolition and earth works, must only occur between 7am and 5pm Monday to Saturday.
- b) No work is to be undertaken on Sundays or public holidays.

Reason: To protect the amenity of neighbouring properties.

30. Environmental Management

To prevent sediment run-off, excessive dust, noise or odour emanating from the site during the construction, the site must be managed in accordance with the publication 'Managing Urban Stormwater - Landcom (March 2004) and the Protection of the Environment Operations Act 1997.

Reason: To minimise impacts to the natural environment and public health.

31. Street Sweeping

During works and until exposed ground surfaces across the site have been stabilised, street sweeping must be undertaken following sediment tracking from the site.

The street cleaning service must utilise a 'scrub and dry' method and be undertaken for the full extent of any sediment tracking.

Reason: To minimise impacts to the natural environment.

32. Compliance with Environmental Management Plan (EMP)

The Council approved Environmental Management Plan must be complied with for the duration of works, unless otherwise approved by Council.

Reason: To ensure the required site management measures are implemented during construction.

33. Compliance with Asbestos Management Plan

The Council approved Asbestos Management Plan must be complied with for the duration of works, unless otherwise approved by Council.

Reason: To ensure the required asbestos management measures are implemented during construction.

34. Compliance with Construction Noise and Vibration Management Plan

The Council approved Construction Noise and Vibration Management Plan must be complied with for the duration of works, unless otherwise approved by Council.

Reason: To ensure the required noise and vibration measures are implemented during construction.

35. Compliance with Preliminary Geotechnical Investigation

The recommendations of the Preliminary Geotechnical Investigation and Acid Sulfate Soils Assessment Issue 1 prepared by Martens & Assoc Pty Ltd, dated 6/04/2022 must be complied with for the duration of works, unless otherwise approved by Council.

Reason: To ensure the required geotechnical measures are implemented during construction.

36. Council Property

To ensure that the public reserve is kept in a clean, tidy and safe condition during construction works, no building materials, waste, machinery or related matter is to be stored on the road or footpath.

Note: This consent does not give right of access to the site via Council's park or reserve. Should such access be required, separate written approval is to be obtained from Council.

Reason: To protect public land.

37. Disturbance of Existing Site

During construction works, the existing ground levels of open space areas and natural landscape features, including natural rock-outcrops, vegetation, soil and watercourses must not be altered unless otherwise nominated on the approved plans.

Reason: To protect the natural features of the site.

38. Landfill

- a) Prior to fill material being imported to the site, a Waste Classification Certificate shall be obtained from a suitably qualified environmental consultant confirming the fill wholly consists of Virgin Excavated Natural Material (VENM) as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997* or a material approved under the NSW Environment Protection Authority's Resource Recovery Orders and Exemptions.
- b) The required Waste Classification Certificate must be obtained by the Principal Contractor prior to fill being imported to the site and made available to Council at its request.

Reason: To ensure soil imported to the site is not contaminated.

39. Excavated Material

All excavated material removed from the site must be classified by a suitably qualified environmental consultant in accordance with the NSW Environment Protection Authority's *Waste Classification Guidelines* and *Protection of the Environment Operations (Waste) Regulation 2014* prior to disposal to a licensed waste management facility. Tipping dockets for the total volume of excavated material that are received from the licensed waste management facility must be provided to the principal certifying authority prior to the issue of an Occupation Certificate.

Reason: To ensure the appropriate disposal of excavated material.

40. Acid Sulfate Soils

- a) The Council approved Acid Sulfate Soil Management Plan Soil and Water Quality Assessment Report (including Acid Sulfate Soil Management Plan), prepared by Martens & Assoc Pty Ltd, 1/5/22 must be complied with for the duration of works, unless otherwise approved by Council.
- b) Should acid sulfate soils be encountered during construction works, cessation of works on site and notification to Council is to be undertaken immediately.
- c) Prior to any works recommencing on the site, written advice is to be provided to Council outlining the remediation strategies to manage identified acid sulfate soils for review and approval.

Reason: To protect the environment from the effects of acid sulfate soils.

41. Unexpected Finds

Should the presence of asbestos or soil contamination, not recognised during the application process be identified during any stage of works, the applicant must immediately notify the PCA and Council.

Reason: To ensure the appropriate removal and disposal of contaminated materials.

42. Waste Management Details

Requirements of the approved Waste Management Plan shall be complied with during all site preparation works, demolition and throughout all construction works. When implementing the Waste Management Plan, the developer is to ensure:

- a) The disposal of any demolition and construction waste must be undertaken in accordance with the requirements of the Protection of Environment Operations Act 1997
- b) All waste on site is to be stored, handled and disposed of in such a manner as to not create air pollution, offensive noise or pollution of land and water as defined by the *Protection of Environment Operations Act 1997*
- c) Generation, storage, treatment and disposal of hazardous waste is conducted in accordance with the relevant waste legislation administered by the EPA and relevant Occupational Health and Safety legislation administered by WorkCover NSW
- d) All waste generated (including excavated materials) which cannot be reused or recycled must be transported to a facility which can lawfully accept it
- e) All materials and resources that are to be stored on site during construction works are contained on the site. The provisions of the *Protection of Environment Operations Act 1997* must be complied with when placing/stock piling loose material, disposal of concrete waste or activities which have potential to pollute drains and water courses
- f) The storage of waste and recycling containers must be within the boundaries of the development site at all times. Public footways and roads must not be used for the storage of any waste and must be kept clear of obstructions during all construction works

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- g) From the commencement of works on site, until such time as the final occupation certificate is issued, the applicant is required to monitor the construction area and the immediate vicinity regularly for litter and illegal dumping. The applicant is to arrange removal of said material where required to avoid contamination of waterways and bushland as well as mitigating any further instances or compounding of illegal dumping.
- h) Additionally, written records of the following items must be maintained during the removal of any waste from the site and such information submitted to the Principal Certifying Authority within fourteen days of the date of completion of the works:
- i) The identity of the person removing the waste.
 - ii) The waste carrier vehicle registration.
 - iii) Date and time of waste collection.
 - iv) A description of the waste (type of waste and estimated quantity).
 - v) Details of the site to which the waste is to be taken.
 - vi) The corresponding weighbridge tip docket/receipt from the site to which the waste is transferred (noting date and time of delivery, description (type and quantity) of waste).
 - vii) Whether the waste is expected to be reused, recycled or go to landfill.

Note: In accordance with the Protection of the Environment Operations Act 1997, the definition of waste includes any unwanted substance, regardless of whether it is reused, recycled or disposed to landfill.

Reason: To ensure the management of waste to protect the environment and local amenity during construction.

43. Garbage receptacle

A garbage receptacle must be provided at the work site before works begin and must be maintained until all works are completed.

- a) The garbage receptacle must have a tight fitting lid and be suitable for the reception of food scraps and papers.
- b) The receptacle lid must be kept closed at all times, other than when garbage is being deposited.
- c) Food scraps must be placed in the garbage receptacle and not in demolition and construction waste bins.

Reason: To maintain the site in a clean condition and protect local amenity.

44. Prohibited actions within the tree protection zones

The following activities are prohibited within the approved tree protection zones unless otherwise approved by Council:

- a) Soil cutting or filling, including excavation and trenching
- b) Soil cultivation, disturbance or compaction
- c) Stockpiling storage or mixing of materials

- d) The parking, storing, washing and repairing of tools, equipment and machinery
- e) The disposal of liquids and refuelling
- f) The disposal of building materials
- g) The siting of offices or sheds
- h) Any action leading to the impact on tree health or structure

Reason: To protect trees during construction.

45. Approved Works within Tree Protection Zone incursions

- a) Where tree root pruning is required for the installation of piers, driveway or underground services, the pruning must be overseen by the AQF 5 project arborist and must be undertaken as follows:
 - i) Using sharp secateurs, pruners, handsaws or chainsaws with the final cut being clean.
 - ii) The maximum diameter of roots permitted to be cut is 40mm
- b) Approved excavations within the Tree Protection Zone of trees to be retained not associated with installation of services must be undertaken as follows:
 - i) Excavations for the construction and/or installation of the piers in the Tree Protection Zone of trees to be retained on the approved plans must be supervised by the project arborist for the first 1.000 meter undertaken manually to locate roots and allow for pruning in accordance with Condition No. 44 a).
- c) To minimise impacts within the Tree Protection Zone (TPZ) of trees retained on the approved plans, the installation of services must be undertaken as follows:
 - i) The AQF 5 project arborist must be present to oversee the installation of any underground services which enter or transect the tree protection.
 - ii) The installation of any underground services which either enter or transect the designated TPZ must be undertaken manually.
 - iii) For manually excavated trenches the AQF 5 project arborist must designate roots to be retained. Manual excavation may include the use of pneumatic and hydraulic tools.

Reason: To protect trees during construction.

46. Building Materials and Site Waste

The stockpiling of building materials, the parking of vehicles or plant, the disposal of cement slurry, waste water or other contaminants must be located outside the tree protection zones as prescribed in the conditions of this consent of any tree to be retained.

Reason: To protect trees during construction.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE**47. Construction of engineering works**

All footpath and boardwalk construction identified in this consent are to be completed and a Compliance Certificate issued prior to the release of the Occupation Certificate.

Reason: To ensure engineering works are completed.

48. Damage to Council Assets

To protect public property and infrastructure, any damage caused to Council's assets as a result of the construction or demolition of the development must be rectified by the applicant in accordance with AUS-SPEC Specifications (www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions). Rectification works must be undertaken prior to the issue of an Occupation Certificate, or sooner, as directed by Council.

Reason: To ensure public infrastructure and property is maintained.

49. Preservation of Survey Marks

A certificate by a Registered Surveyor must be submitted to the Principal Certifying Authority, certifying that there has been no removal, damage, destruction, displacement or defacing of the existing survey marks in the vicinity of the proposed development or otherwise the re-establishment of damaged, removed or displaced survey marks has been undertaken in accordance with the Surveyor General's Direction No.11 "Preservation of Survey Infrastructure".

Reason: To protect the State's survey infrastructure.

50. Works as Executed Plan

A works-as-executed plan(s) must be prepared by a registered surveyor and submitted to Council for completed footpath pathways and boardwalk structure.

Reason: To ensure infrastructure is constructed and positioned in the approved location.

51. Flood Emergency Response Plan

A flood emergency response plan must be prepared which is generally in accordance with the approved Flooding and Coastal Processes Assessment Report and must be implemented prior to the operation of the footpath pathway and boardwalk.

Reason: To ensure users of the walkway are aware of flood emergency procedures in the event of a flood.

52. Compliance with Acid Sulfate Soil Management Plan

A report is to be submitted to the PCA by a suitably qualified Environmental Consultant in consultation with a chartered Structural Engineer prior to the issue of an Occupation Certificate, confirming compliance with all recommendations as outlined in the Acid Sulfate Soil Management Plan contained in the Soil and Water Quality Assessment Report prepared by Martens & Assoc Pty Ltd, dated 1/05/2022.

Reason: To ensure the environment has been protected from the effects of acid sulfate soils.

53. Asbestos Clearance Certificate

Should any asbestos be encountered during demolition or construction works, a licenced asbestos assessor is required to provide a Clearance Certificate to the Certifier prior to the issue of an Occupation Certificate, certifying that the asbestos has been removed and appropriately disposed of, and the site is now suitable for its approved use.

Reason: To ensure the appropriate removal and disposal of contaminated materials and the site is suitable for its approved use.

54. Environmental Educational Signage

Signage informing boardwalk users of the following should be designed and erected at multiple points along the boardwalk including:

- a) Consequences of littering (legal and compassionate responsibility)
- b) Enforce the rules that pedestrians must stay on boardwalk and not leave the boardwalk to avoid trampling native vegetation and wildlife habitat.
- c) Informing the public of the presence of the Coastal Saltmarsh and Swamp Oak Floodplain Forest Endangered Ecological Communities.
- d) Detailing the negative impacts of pet defecation and urination on the saltmarsh, encouraging owners to keep pets on leash and clean up after them.
- e) Enforce no smoking rules on the boardwalk.
- f) Fishing information including fish bag limits, protected marine species to avoid, pest species to report, equipment cleaning protocols and NSW DPI Fisheries contact information and encouraging the use of environmentally friendly fishing equipment.

Reason: To ensure protection of the environment.

55. Nest Box Installation

In accordance with the approved Vegetation Management Plan, prepared by Land Eco Consulting, 10/5/22, nest boxes are to be installed throughout the development area to offset the loss of habitat. The next boxes to be installed must include:

- a) 5 microbat boxes
- b) 5 small parrot boxes
- c) 5 large parrot boxes

Reason: To offset loss of habitat.

56. Offset planting

In accordance with the approved Vegetation Management Plan, offset planting must be undertaken using the plant species list in section 7 of the approved VMP, provided by Land Eco Consulting. Initial planting must be undertaken prior to the issue of an occupation certificate, to be followed to supplementary planting as required.

Reason: To maintain biodiversity values on the site.

57. Final Certification - Ecology

The project Ecologist must provide to the Council certification of the implementation of the of the Vegetation Management Plan Issue 1.0 prepared by Land Eco Consulting, dated 10/05/2022. The certification must note:

- a) Certification that tasks within the VMP have commenced.
- b) Time and date of any site inspections.
- c) Key observations made during each site inspection.
- d) Compliance with key hold points in the approved plans.
- e) Variations from the approved plan and alternative solution or remedial works, including correspondence with Council or the certifier regarding variations.
- f) Compliance or non-compliance with the approved plan.
- g) Recommendations for future works.

Reason: To ensure that ecological works have been undertaken in accordance with the approved plan(s).

58. Litter and Illegal Dumping Management

A Litter and Illegal Dumping Management Plan must be submitted to the principal certifying authority and Council prior to the issue of the Occupation Certificate or the use commencing, whichever is earlier. The Litter and Illegal Dumping Management Plan must include mitigation (including but not limited to litter picking patrols and removal of illegally dumped material) and prevention strategies (for example signage, strategically located litter bins, security cameras) and must cover both the subject site and adjacent land.

Reason: To ensure appropriate mitigation and prevention strategies are implemented.

59. Cultural Information Signage

Consultation is to be undertaken with the Local Aboriginal groups and Hornsby Aboriginal and Torres Strait Islander Consultative Committee to inform cultural signage at locations spaced along the boardwalk. The signage is to be in place prior to the issue of an Occupation Certificate.

Reason: To ensure cultural information signage is installed.

60. Certification of Fisheries Requirements

Evidence is to be provided to the Principal Certifying Authority (PCA) of the satisfactory completion of all works required by the NSW Department of Primary Industries - Fisheries conditions of concurrence contained within their letter dated 29 March 2023 (replicated below), prior to the issue of the Occupation Certificate.

Reason: To ensure Certification of Fisheries Requirements.

GENERAL TERMS OF APPROVAL - NEW SOUTH WALES DEPARTMENT OF PRIMARY INDUSTRIES - FISHERIES

The following conditions of consent are General Terms of Approval from the nominated State Agency pursuant to Section 4.47 of the *Environmental Planning and Assessment Act 1979* and must be complied with to the satisfaction of that Agency.

61. Part 7 Permits

The proponent must apply for and obtain a Part 7 permit to for dredging, reclamation, and to harm marine vegetation under the FM Act from DPI Fisheries prior to any works on site. Permit application forms are available from the DPI Fisheries website at: <http://www.dpi.nsw.gov.au/fisheries/habitat/help/permit>.

62. Harm Offsets

Offsets for harm to marine vegetation will be negotiated between DPI Fisheries and Hornsby Shire Council as part of the Fisheries Permit process. Council must undertake a feasibility assessment for on-ground rehabilitation works within the Hawkesbury Estuary. The offset works do not need to occur within the project site or immediately adjacent, so long as they are within the same estuary as where the harm will occur. Monetary compensation will only be accepted if the feasibility assessment demonstrates that there is no potential for onground rehabilitation works.

63. Environmental safeguards

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.

- END OF CONDITIONS -

ADVISORY NOTES

The following information is provided for your assistance to ensure compliance with the *Environmental Planning and Assessment Act 1979*, *Environmental Planning and Assessment Regulation 2000*, other relevant legislation and Council's policies and specifications. This information does not form part of the conditions of development consent pursuant to Section 4.17 of the Act.

Environmental Planning and Assessment Act 1979 Requirements

The *Environmental Planning and Assessment Act 1979* requires:

- The issue of a construction certificate prior to the commencement of any works. Enquiries can be made to Council's Customer Services Branch on 9847 6760.
- A principal certifying authority to be nominated and Council notified of that appointment prior to the commencement of any works.
- Council to be given at least two days written notice prior to the commencement of any works.
- Mandatory inspections of nominated stages of the construction inspected.

- An occupation certificate to be issued before occupying any building or commencing the use of the land.

Tree and Vegetation Preservation

Hornsby Development Control Plan 2013 Tree and Vegetation Preservation provisions have been developed under Council's authorities contained in *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* and the *Environmental Planning and Assessment Act 1979*.

In accordance with these provisions a person must not cut down, fell, uproot, kill, poison, ringbark, burn or otherwise destroy the vegetation, lop or otherwise remove a substantial part of the trees or vegetation to which any such development control plan applies without the authority conferred by a development consent or a permit granted by Council.

Fines may be imposed for non-compliance with the *Hornsby Development Control Plan 2013*.

Note: A tree is defined as a long lived, woody perennial plant with one or relatively few main stems with the potential to grow to a height greater than three metres (3m). (HDCCP 1B.6.1.c).

Disability Discrimination Act

The applicant's attention is drawn to the existence of the *Disability Discrimination Act 1992*. A construction certificate is required to be obtained for the proposed building/s, which will provide consideration under the *Building Code of Australia*, however, the development may not comply with the requirements of the *Disability Discrimination Act 1992*. This is the sole responsibility of the applicant.

Covenants

The land upon which the subject building is to be constructed may be affected by restrictive covenants. Council issues this approval without enquiry as to whether any restrictive covenant affecting the land would be breached by the construction of the building, the subject of this consent. Applicants must rely on their own enquiries as to whether or not the building breaches any such covenant.

Dial Before You Dig

Prior to commencing any works, the applicant is encouraged to contact Before You Dig Australia (BYDA) at www.byda.com.au for free information on potential underground pipes and cables within the vicinity of the development site.

Telecommunications Act 1997 (Commonwealth)

If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on Phone Number 1800810443.

Asbestos Warning

Should asbestos or asbestos products be encountered during demolition or construction works, you are advised to seek advice and information prior to disturbing this material. It is recommended that a contractor holding an asbestos-handling permit (issued by *SafeWork NSW*) be engaged to manage the proper handling of this material. Further information regarding the safe handling and removal of asbestos can be found at:

www.environment.nsw.gov.au

www.adfa.org.au

www.safework.nsw.gov.au

Alternatively, telephone the *SafeWork NSW* on 13 10 50.