

JRPP No.	2009SYE017
FILE No	DA 602/2009/1
PROPERTY DETAILS	8 Castra Place Double Bay
Lot & DP No.:	Lot: 1 DP: 120293 ¹ Lot 13 RP 5113 DP 711414
Side of Street:	North
Site Area (m²):	543.5m ² (lot 13 DP 711414) 3,176 m ² (lot 1 DP 120298) ²
Zoning:	Residential 2(a) (WLEP 95) W1 Maritime waters (SHREP) W5 Water recreation (SHREP)
PROPOSAL:	Replacement of existing fixed wharf structure with berthing for 40 vessels & moorings for 25 vessels with a new floating structure with berths for 45 vessels and moorings for 20 vessels.
TYPE OF DEVELOPMENT	Designated and integrated
APPLICANT:	Double Bay Marina
OWNER:	Double Bay Marina Pty Ltd NSW Maritime
DATE LODGED:	20/11/2009
AUTHOR:	Mr P Kauter
CONSENT AUTHORITY	Joint Regional Planning Panel (Regional Panel)

DOES THE APPLICATION INVOLVE A SEPP 1 OBJECTION? YES ☐ NO ☒

1. RECOMMENDATION PRECIS

The development application is recommended for approval. This is because the proposed scale of the development is appropriate for the location. This is notwithstanding that the residential nature of the location is sensitive in terms of the marina's externalities. The terms of the recommended consent are aimed at controlling the proposed marina's externalities. The recommended conditions of consent include reducing the maximum boat length to 15.5m and maximum boat height to 4.8m.

¹ Existing lease from NSW Maritime

² Existing area of waterway leased from NSW Maritime

2. PROPOSAL PRECIS

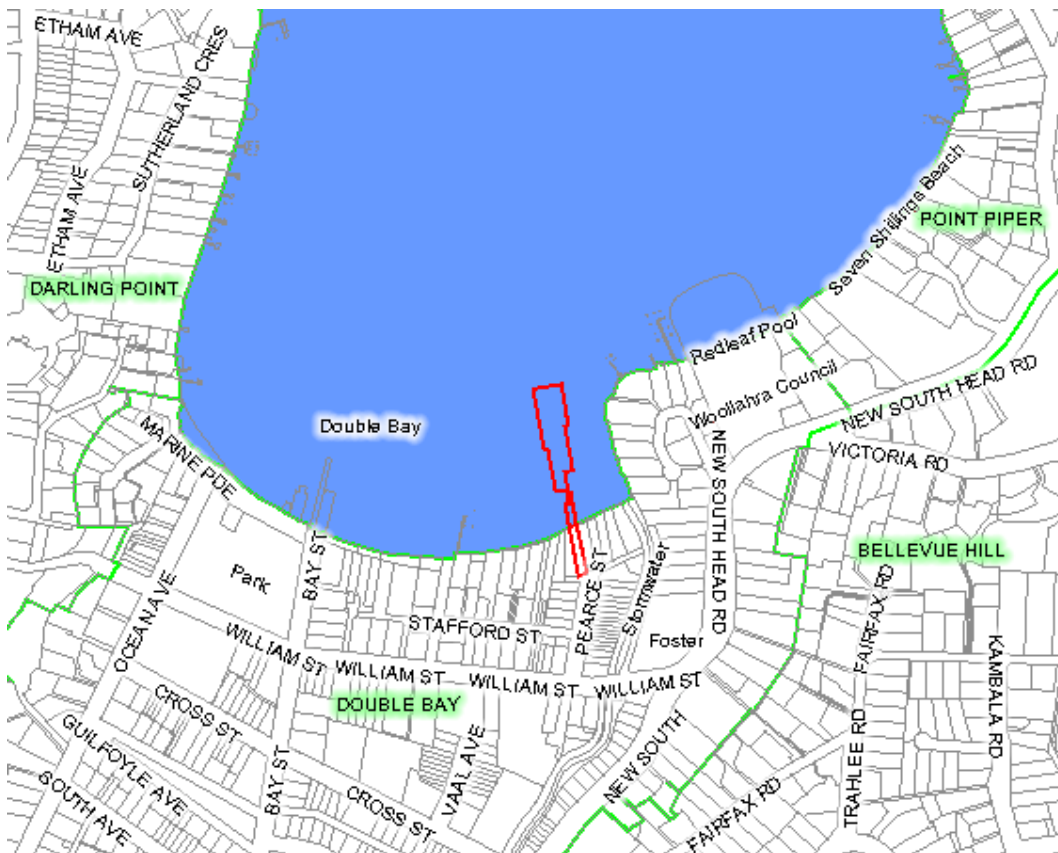
Double Bay Marina Pty Ltd, as owner of the Double Bay Marina, proposes to redevelop the existing marina facilities by removing the existing fixed marina berths and constructing floating pontoon marina berths.

The proposed development constitutes designated development and integrated development under the *Environmental Planning & Assessment Act 1979* (the Act).

There was a previous application for the redevelopment of this marina, DA844/2007. It was refused by council and an appeal against the refusal was dismissed by the Land & Environment Court.

The Regional Panel is the consent authority for this development application as the application is for designated development.

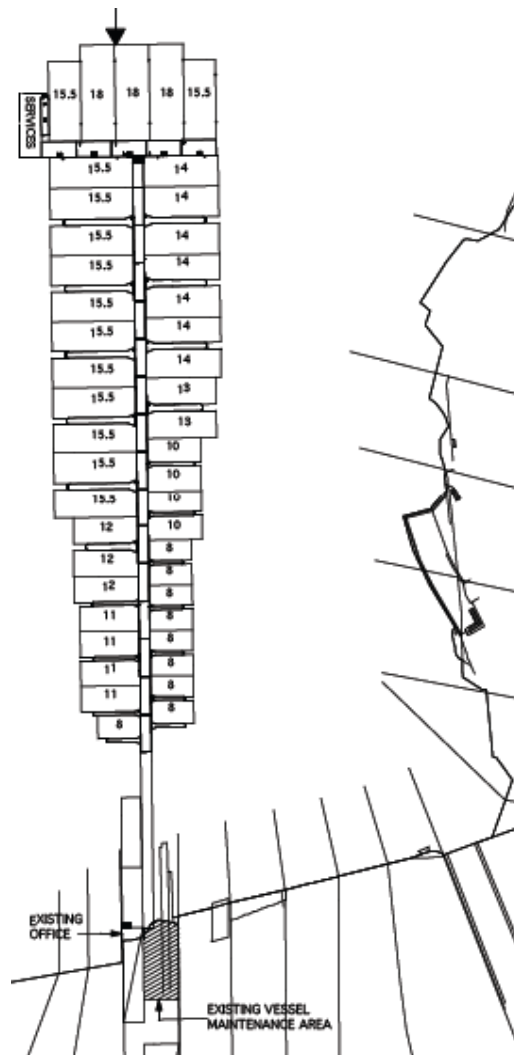
3. LOCALITY MAP



4. DESCRIPTION OF PROPOSAL

The proposal is to redevelop the Double Bay Marina. The redevelopment involves removing the existing fixed, timber walkway and berthing structures and the installation of new marina facilities comprising floating pontoons. The floating pontoons will be held in position with telescopic piles which will not protrude above the pontoon surface.

The new marina will be designed with a main north south walkway with berthing on both sides. A 'T' head is to be located at the northern end of the walkway which will accommodate additional, perpendicular berths. The following plan shows the proposed marina layout.



The redeveloped marina will accommodate 45 marina berths (5 more than what currently exists) and 20 swing moorings (5 less than what currently exists). The area of waterway leased from NSW Maritime for the marina berths will be 3,620m² which is 440m² more than the existing leased area. The area of waterway occupied by the swing moorings will be 26,455m² which is 6,178m²³ less than the existing occupied area.

³ The area occupied by swing moorings includes the space required for the boats to swing. This is consistent with a ruling of the Land & Environment Court in *Rose Bay Marina Pty Ltd v Minister for Urban Affairs and Planning* [2002] NSWLEC 123.

The following tables show the location/number of boats, maximum boat lengths and maximum boat heights.

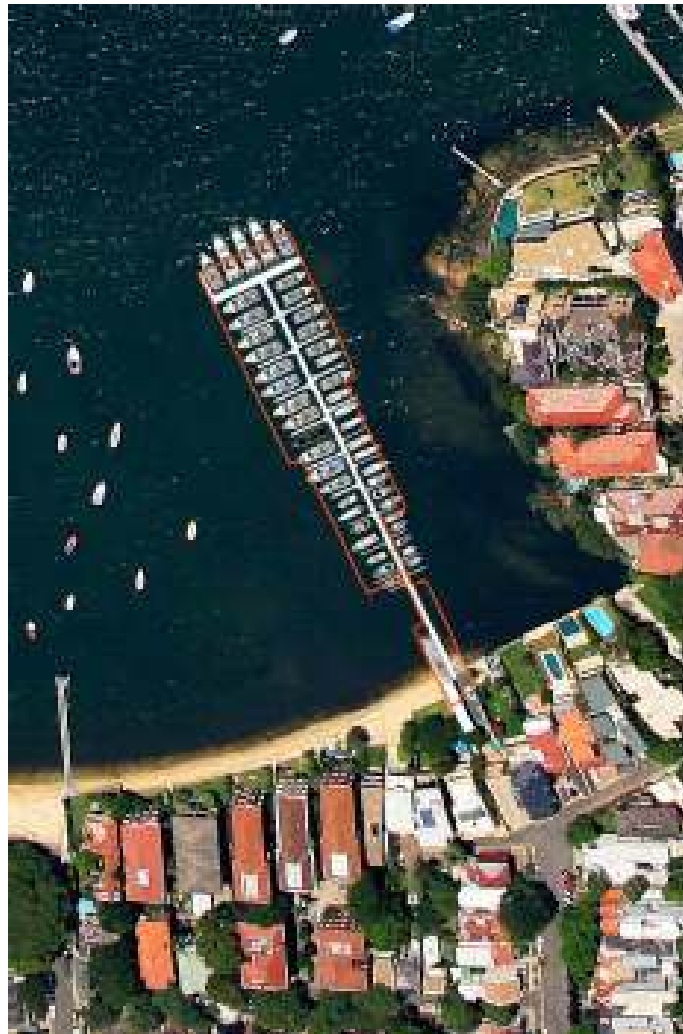
Location/Number of boats	Maximum boat length
Western side - 21	8x8m, 4x10m, 2x13m, 7x14m
Eastern side - 19	1x8m, 4x11m, 3x12m, 11x15.5m
End (Northern side) - 5	2x15.5m, 3x18m
Total - 45	

The height of boats will be limited as follows:

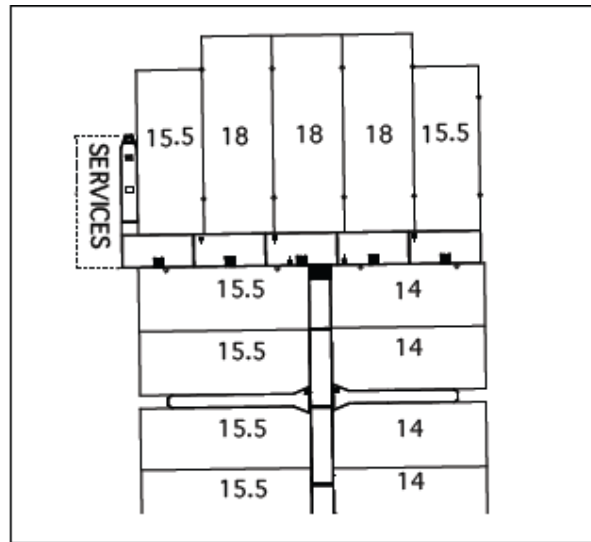
Maximum boat length	Maximum boat height*
8-12m	3m
15.5m	4.8m
18	5m

*does not include masts or communication towers

The following is an aerial photo montage of the proposal.



A public services berth is proposed on the western side of the 'T' head and will include fuelling and sewage pump out services, as shown on the following plan. This will be available for use by the general boating public in addition to the owners of boats berthed on the marina.



An aluminium ramp will provide access from the remaining part of the existing timber jetty, which is to be redecked, to the proposed floating pontoons. Service pedestals for lighting, water and fire hose reels are to be provided as is a wheel chair lifting arm/ramp and security gates.

Minor alterations are proposed to the existing marina building to upgrade the existing toilet facilities to include a facility for use by people with a disability.

A Plan of Management for controlling the use of the new facilities and the existing workshop forms part of the EIS. Office operating hours are:

9.00am to 6.00pm, 7 days per week (summer)
9.00am to 5pm, 7 days per week (winter)

The slipway and boat maintenance operating hours are:

9.00am to 6.00pm Monday to Friday
9.00am to 12.30pm Saturday

Public access to the marina will be available during office hours.

The previous proposal

An understanding of the differences between the current proposal and the previous proposal, DA844/2007, is necessary. The previous proposal was, in effect, refused by council and an appeal to the Land & Environment Court was dismissed. In discussing the impacts of the current proposal, in part 17 of this report, references are made to the detailed judgement of former Senior Commissioner Roseth in those appeal proceedings.

In the previous proposal the configuration of the marina involved a main north-south walkway (125m long) with 3 berthing arms on the western side (varying in length from 50m to 61.2m). Boat

storage capacity was 54 marina berths and 14 swing moorings. Boat length varied from 8m to 15.5m. The area of waterway which the marina berths would have occupied was 7,665m². Dredging 4,800m³ of the sea bed was proposed. The following table makes a summary comparison between the current and previous proposals and the existing marina.

SUMMARY COMPARISON OF CURRENT AND PREVIOUS PROPOSALS AND EXISTING MARINA			
	Current proposal	Previous proposal	Existing
Leased area of waterway	3,620m ² (-4,045)	7,665m ²	3,180m ²
Dredging	Nil* (-4,800)	4,800m ³	Nil*
Boat length (marina berths)	8 to 18m (0 to + 2.5m)	8 to 15.5m	8 to 15.5m
Marina berths	45 (-9)	54 (includes 3 casual)	40
Swing moorings	20 (+6)	14	25
Total boat storage capacity	65 (-3)	68	65

() show difference between current & previous proposals

* maintenance dredging has been approved but is not part of this DA

5. SUMMARY

Reasons for report	Issues	Submissions
<ol style="list-style-type: none"> To assist the Regional Panel in determining the development application, and To permit the DCC to decide if the council will make a submission to the Regional Panel. This is because under our current delegations the development application would have otherwise been referred to the DCC for determination as: <ul style="list-style-type: none"> It does not satisfy the criteria for determination under staff delegation It is for designated development It involves land with a water frontage A Councillor has declared an interest* 	<ul style="list-style-type: none"> previous L&E Court judgement visual impacts traffic & parking public interest pollution waterways management & navigation environmental impacts privacy other 	259 submissions were received.

*Councillor Malcolm Young as an objector to the previous DA

6. ESTIMATED COST OF WORKS

Council adopted (DCC 6 June 2005) administrative changes for determining DA fees based on the estimated cost of work. Where the estimated cost of work is greater than \$750,000 or where the applicant's estimate is considered to be neither genuine or accurate, the applicant has to provide a Quantity Surveyor's report.

The capital investment value of the development (as provided by the applicant) is \$1,612,306.

7. DESCRIPTION OF SITE OF LOCALITY

THE SITE AND LOCALITY		
Physical features	<p>Double Bay Marina is located in the western part of Double Bay.</p> <p>Double Bay is within the headlands of Point Piper to the east and Darling Point to the west. A major feature is the natural way the sweep of the bay changes. This change occurs at the vicinity of Gladswood Gardens where there is a secondary headland which divides the bay into 2 distinct parts. The foreshore is characterised by sandy beaches and the retained edges of private residential properties. The bay is orientated to the north/north west.</p> <p>Styne Park is located at the western end of Double Bay and is the main area of public open space in the vicinity.</p>	
Topography	<p>The Double Bay basin adjoins the foreshore between Wiston Gardens to the west and the major stormwater drains in the vicinity of Sherbrooke Avenue to the east. The land form in this area is generally low lying. By contrast, the peninsulas of Darling Point to the west and Point Piper to the east rise steeply. The secondary headland around Gladswood Gardens is also steep by comparison with the basin although it is less prominent than the main peninsulas.</p> <p>The area of the development site above the MHWL has level access from Castra Place with a slight fall from the street alignment toward the foreshore.</p>	
Existing buildings and structures	<p>The existing land based buildings consist of a 2 storey dwelling and a single storey marina building. The dwelling is located close to the alignment of Castra Place and the eastern side boundary. It is occupied separately to the marina. Castra Place is a small, narrow, dead-end street which provides access to a number of private dwellings in addition to the marina.</p> <p>The marina building and other marina facilities are accessed by land from Castra Place by a pedestrian passageway on the western side of the dwelling. The marina building is on the western side of the property to the north west of the dwelling. Accommodation includes an office, toilets, workroom and storage. A small section at the northern end of the building is below the MHWL.</p> <p>The land above the MHWL has an angled frontage to Castra Place of 10.39m (including the width of the pedestrian passage). The side boundaries are parallel and measure 54.985m (eastern side) and 52.965m (western side). The area of this section of land is 543.5m².</p> <p>A slipway is located to the east of the marina building and extends further to the north into the waters of Double Bay. Immediately to the north of the marina building is a timber deck with skid and a jetty which leads to the marina berths.</p> <p>The existing marina berths are located on both sides of a single fixed timber walkway that extends 143m (scaled) in a northerly direction into Double Bay, as measured from the MHWL. The level of the walkway is approx. RL 1.52 AHD. Boats on the existing marina berths are berthed at right angles to the walkway and parallel to the shoreline. There is a ‘T-head’ at the end of the walkway which accommodates 2 berths.</p> <p>There are 25 swing moorings associated with the marina. These are generally located to the west and north of the marina berths.</p> <p>The following table shows the boat storage capacity of the existing marina.</p> <table><tr><td>Boat Storage Capacity – Existing Double Bay Marina</td></tr></table>	Boat Storage Capacity – Existing Double Bay Marina
Boat Storage Capacity – Existing Double Bay Marina		

	Maximum boat length	Number of boats
	Up to 8m	14
	10m	2
	12m	10
	13m	3
	15.5m	11
	Various lengths on swing moorings	25
	TOTAL	65
	<p>The existing marina does not contain any on site car parking or loading area.</p> <p>DP 120293 indicates that the existing area leased by NSW Maritime to the marina is 4,075m². The EIS is accompanied by a survey by a registered surveyor which refers to the surveyed leased area as approximately 3,180m². Plans submitted with the DA refer to the area of waterway currently occupied by swing moorings leased to Double Bay Marina as 33,073m².</p>	
Environment	<p>The foreshore in the immediate vicinity of the Double Bay marina consists of a sandy beach and sea walls of private residences. The beach is narrow and the width varies with the tide. Private dwellings and low rise apartment buildings, which mainly have a street frontage to Stafford Street or Castra Place, abut the beach. There is a private jetty at the front of 2 Beach Street, about 125m to the west of the marina. This jetty is suspended on piers over the beach.</p> <p>Further to the west, between Beach Street and the Double Bay ferry wharf (a distance of approx. 140m), the sandy beach is more accessible. Behind the beach is a pedestrian promenade with landscaping and seating and which is well utilised by the public. Behind the promenade/landscaping are high walls which provide privacy to the yards of adjoining dwellings and low rise apartment buildings which have their street frontage to William Street.</p> <p>The ferry wharf extends about 180m into Double Bay. Sydney Ferries operate regular services between Circular Quay and Watsons Bay which stop at the wharf. The NSW 18 Footers Sailing Club is located immediately to the east of the wharf. It is a single storey building supported on piers over the water and is a licensed, registered club. The club supports competitive racing events involving 18 foot sailing skiffs.</p> <p>To the west of the wharf are boat sheds associated with the 18 foot sailing skiff racing. The sheds adjoin the north eastern corner of Styne Park. Styne Park is the largest public park in the vicinity. It is characterised by a level grassed area which is used occasionally as playing fields and substantial perimeter fig trees. It also contains a pedestrian pathway parallel to the sandstone sea wall and children's play equipment. The park is bounded by the Harbour to the north, Bay Street to the east, William Street to the south and Ocean Avenue to the west.</p> <p>The Darling Point peninsular is located to the north/west of Styne Park. It is a hillside characterised by residential Harbour side properties comprising dwellings and low/moderate rise residential apartments in a treed setting.</p> <p>On the immediate eastern side of the Double Bay marina are private residences which have a street frontage to Castra Place. Further to the east is where 2 major stormwater channels discharge into the Harbour. Beyond the stormwater channels to the north/east is the secondary headland which is characterised by a hillside occupied by medium rise residential apartment buildings and single dwellings having their street frontage to Gladswood Gardens. The foreshore of this secondary headland is roughly parallel to the walkway of the existing marina.</p> <p>Further to the east is Redleaf Pool which comprises a public swimming enclosure on the Harbour and in front of Woollahra Municipal Council's chambers and administrative offices. To the east of Redleaf Pool is Seven Shillings Beach. Seven Shillings Beach is a sandy beach owned by the various adjoining properties down to the MHWL. The adjoining properties are occupied by substantial Harbour front residences, dwellings and apartment buildings which have their street frontages to New South Head Road, St Mervyns Avenue and Buckhurst Avenue.</p> <p>To the east of Seven Shillings Beach is the Point Piper peninsular. It is a hillside characterised by Harbour front residences and residential apartments in a treed setting. The foreshore consists of</p>	

	<p>retained edges and natural rock outcrops. There are numerous private boat sheds.</p> <p>Double Bay Marina is the only marina in the Bay. There are numerous boats moored on swing moorings, some of which are operated by the marina but most of which are operated by NSW Maritime. Clarke Island, a small, uninhabited, tree covered island, is located about 450m to the north of Darling Point. It is visually highly prominent from most parts of the Double Bay foreshore.</p> <p>The Double Bay commercial/shopping centre starts at Cross Street which is 2 blocks to the south of the foreshore. It includes a diversity of commercial offices and retail outlets mixed with residential. The Cross Street car park, a multi-level public car park, is located at the north eastern end of the centre, approx. 350m (direct pedestrian route) from the Double Bay Marina.</p> <p>Under the Woollahra Residential Development Control Plan 2003 (WRDCP) the Double Bay precinct, which includes the foreshore from Gladswood Gardens in the east to Ocean Avenue in the west is described as follows:</p> <p><i>Double Bay precinct sits within a low lying basin, framing the Double Bay foreshore. The precinct is notable for both the density of its built form and its green landscape character. The precinct's tree canopy, formed by both street (public) and private yard planting, is a prominent element in the Municipality's presentation from Sydney Harbour. Maintaining a consistent tree canopy and achieving sensitive building interventions are key elements in this setting.</i></p> <p><i>The street pattern allows for long views to the harbour, and distant views to surrounding hillsides. Three major streets dominate the precinct: the curvilinear New South Head Road which forms an edge to the precinct at the south; Ocean Avenue, the north-south oriented boulevard that divides Double Bay from the hillside of Darling Point; and the east-west oriented William Street. Due to their topography and location each of these major streets presents unique settings within the broader common elements of the precinct.</i></p> <p><i>The quality of buildings within the precinct represents an evolution and mix of building styles and very often maintains a consistent scale across both sides of the street. There are a number of inter-war flat buildings within the precinct that contribute to its character.</i></p> <p>The Darling Point precinct, which includes the western foreshore of Double Bay, is described in the WRDCP as follows:</p> <p><i>The Darling Point precinct is a highly prominent peninsula on Sydney Harbour sited between Rushcutters Bay and Double Bay. Darling Point's natural setting facilitates spectacular views to the harbour from both private houses and public spaces. The street trees and trees in private yards provide the peninsula with a soft landscape quality.</i></p> <p><i>The built environment is notable for the wide variety of architectural styles and housing types. The precinct contains heritage conservation areas at Etham Avenue, Darling Point Road and Mona Road, and a significant number of heritage items (refer to Woollahra LEP 1995 as amended). A significant element of the heritage items and heritage conservation areas is the location of buildings within a landscaped setting.</i></p> <p><i>The ridgeline of Darling Point saw the development of post war high rise and higher density development. Significantly, many of the towers contain extensive landscaped grounds and gardens which provide an openness and allow for distant views. Streets surrounding the ridgeline are typified by two, three and four storey development and include walk up flats, semi detached and detached houses. The Rushcutters Bay foreshore area comprises a mix of buildings, including Victorian terraces and heritage listed residential Arts and Crafts buildings.</i></p> <p>The Point Piper precinct, which includes Seven Shillings Beach and the eastern foreshore of Double Bay, is described in the WRDCP as follows:</p> <p><i>Point Piper is a peninsula favoured by its prominent location on Sydney Harbour. The peninsula's natural setting facilitates extensive views across the harbour and surrounding harbourside suburbs.</i></p> <p><i>Where available, the views and glimpses of the harbour between buildings and trees allow for a stimulating pedestrian environment. The streetscape qualities of the precinct, however,</i></p>
--	---

	<p>vary in their landscape quality, and often front fences and walls and car parks on the street edge block views from the footpath.</p> <p>The built environment of the precinct comprises a range of housing types and styles, including an excellent group of inter war flat buildings at Longworth Avenue (substantially retained in their garden settings); large post World War II apartment buildings at Wolseley Road and substantial harbourside houses. Significant elements of most periods of development has been the retention of large areas of soft landscaping around all built form types.</p>
--	--

The following is an aerial photograph of Double Bay showing the existing marina. To the right (east) of the marina is the secondary headland, Redleaf swimming enclosure and Seven Shillings Beach. To the left (west) of the marina is Double Bay Beach, Double Bay ferry wharf/18 Footers Sailing Club, Styne Park and the Darling Point peninsular.



Source: *Visual Impact Assessment* November, 2007 by rla (p.65)

8. PROPERTY HISTORY

PROPERTY HISTORY	
Current use	The main use of the marina is boat storage in the form of marina berths and

	<p>swing moorings. A slipway and workshop facilitate boat repair and maintenance activities. The marina building accommodates an office connected with the administration and management of the marina. There are services and facilities, including fuel storage and fire fighting devices, associated with the marina use.</p> <p>There is a dwelling located on the land which is used exclusively for residential purposes.</p>
Previous relevant applications	<p>DA844/2007 proposed a major redevelopment of the marina facilities. The redevelopment included removal of the existing fixed mooring structures and construction of floating pontoons. The floating pontoons were to have been arranged with 3 east-west berthing arms off a main north-south walkway. Boat storage was to be 54 berths and 14 swing moorings.</p> <p>Prior to the application being determined by Council the applicant lodged an appeal with the Land & Environment Court on the ground that the application was deemed to have been refused. The application was considered by the Council's Strategic & Corporate Committee and by Full Council on 2/9/08. The Council resolved to resist the Land & Environment Court appeal, citing 39 reasons. The appeal was heard by Senior Commissioner J Roseth who dismissed it primarily as the east-west berthing arms would block private views from residential properties to the west of the marina and as such the public good did not outweigh the private loss, see <i>Double Bay Marina v Woollahra Council</i> [2009] NSWLEC 1001 (<i>Double Bay Marina</i>).</p> <p>There have been numerous other earlier applications relating to the use and erection of buildings and structures on the development site. Many of these applications and their terms and conditions have been the subject of appeals and proceedings in the Land & Environment Court (and its predecessor Courts & Tribunals).</p> <p>The current proposal does not affect the structure or use of the existing dwelling on the subject land. Alterations are proposed to the marina building although its existing use, ancillary to the marina operations, is not proposed to change.</p> <p>DA39/60 and 40/60 were for alterations and additions to the existing marina building and other land based marina related facilities and for alterations and additions to a cottage which also existed on the land. Conditional consent was granted by the Land and Valuation Court on 13/2/1970.</p> <p>In his judgement relating to these decisions Justice Else-Mitchell was satisfied that prior to 1936 the property at 8 Castra Place consisted exclusively of a dwelling house without any structures or facilities for the conduct of a marine or boating business. At a later date a pier or jetty was built and a slip and boatshed were erected upon the land. These decisions are relevant to the matter of existing use rights which is of some relevance to the current DA and which is discussed later in this report.</p> <p>The main, relevant consents/approvals for the existing dwelling are DA84/209 (granted by the Land & Environment Court on 28/6/85), DA85/098 and BA 844/85.</p> <p>The main, relevant consents/approval for the marina building are DA81/257, DA85/266 and BA678/84.</p> <p>Other applications include:</p> <p>DA85/099 and BA906/85 for a 20,000 litre diesel fuel storage tank BA85/896 for a screen wall BA932/85 for a swimming pool BA1018/85 for sailboard storage DA97/50 for floating pontoons to store jet skis (refused as it related to illegal works which were subsequently removed) IDA99/607 for floating pontoons to store personal water craft – granted deferred commencement consent</p>

	<p>Information has been obtained from NSW Maritime in relation to approval on 2/4/85 for a new marina. The marina provided accommodation for 40 berths consistent with the layout as presently exists. The approval was subject to a number of conditions, including:</p> <p>(i) <i>as they could interfere with and restrict any future stormwater outlet maintenance dredging the Board may carry out in the future, the lessee shall remove those piles, portion of the jetty and vessels lying east of the current lease boundaries if and when required by the Board and at no expense to the Board. It should be clearly understood that the dredging by the Board in this area is only carried out when considered necessary for efficient operation of the stormwater outlets, or for the removal of odiferous mudflats. Dredging will not be undertaken in order to maintain depths for boating using the area or to maintain berth depths adjacent to the marina;</i></p> <p>(m) <i>steps to be provided at the western side of the structure to improve the access along the foreshore consistent with the existing requirement under the lease. Detailed drawings of the steps are to be submitted for the Board's approval;</i></p> <p>(xviii) <i>a suitable clause to permit free and uninterrupted passage over the strip of land 3.6 metres wide immediately below high water mark, shown by green hatching on enclosed plan, together with any structures erected thereon;</i></p> <p>The land title includes an instrument for access which appears to comply with (xviii) although there is a gate on the access stairs which is lockable and access is not always available.</p> <p>Contentious, recurring issues relating to previous applications have pertained to the use of the dwelling in conjunction with the marina and use rights for the marina building. These issues have been contentious due to the impacts on the amenity of the predominantly residential nature of the surrounding land uses.</p>
Pre-DA	nil
Requests for additional information	<p>On 8/12/09 we requested the payment of additional fees payable for designated development. Payment was received on 18/12/09.</p> <p>On 26/2/10 we requested additional information related to the comments in the health referral response. Additional information was received 12/3/10 including an <i>operational and construction noise assessment</i>.</p>
Land and Environment Court Appeal	nil

9. REFERRALS

9.1 The following table contains particulars of internal referrals.

INTERNAL REFERRALS

Referral Officer	Comment	Annexure
Development Engineer	<p>Site Drainage comments</p> <p><i>Any discharge of drainage to Sydney harbour will require approval and conditions from the Waterways Authority – conditions applied</i></p> <p>Construction Management comments</p> <p><i>As a result of the site constraints, limited space and access a Construction Management Plan is to be submitted to Council and is conditioned accordingly.</i></p> <p>Impacts on Council Infrastructure comments</p> <p><i>There are no proposed or approved works on Council's assets which are in satisfactory condition – no specific conditions applied.</i></p> <p>Traffic comments</p> <p><i>Council's Traffic Engineer dated 11 December 2009 has concluded that the development is unlikely to exacerbate the traffic issues surrounding the site and on this basis there are no objections to the development on traffic grounds</i></p> <p>Other comments</p> <p><i>Due to the likelihood of additional power usage as a result of the new development, Energy Australia has requested that the applicant contact them with regards to the possible provision of a new Electricity Substation on site.</i></p> <p>Recommendation</p> <p><i>Council's Development Engineer has determined that the proposal satisfies Technical Services concerns, subject to the following conditions. Accordingly, the following conditions are recommended.</i></p> <p>(Refer to conditions A3, A5, C2, C10, D2, D5, E3, E7, E8, E10, F5 & G1)</p>	2
Landscaping Officer	<p><i>Council's Tree and Landscape Officer has determined that the development proposal is satisfactory in terms of tree preservation and landscaping, subject to compliance</i></p>	3

	<p><i>with the following Conditions of Consent.</i></p> <p>(Refer to conditions E19 & E20)</p>	
Environmental Health Officer	<p>Our Environmental Health Officer's referral response of 11/12/09 (annexure 4) raised concerns with the acoustic report submitted with the EIS. We wrote to the applicant about these concerns on 26/2/10. In response the applicant submitted a revised Operational and Construction Noise Management Report on 12/3/10.</p> <p>Our Environmental Health Officer's referral response of 30/3/10 (annexure 5) was based on the revised report. The response is that the revised report addresses concerns about operational and construction noise. In relation to maintenance noise it recommends that the report be reviewed to provide definitive noise mitigation strategies. We emailed the applicant on 8/4/10 requesting a response.</p> <p>The applicant responded by agreeing to limit water jetting to 1 hour a day Monday to Friday on a trial basis. Our Environmental Health Officer advised that this is satisfactory.</p> <p>(Refer to conditions E17, F7, I7, I8, I9, I10 & I11)</p>	4 & 5
Heritage Officer	<p><i>Consent, subject to the following special advising:</i></p> <p><i>1. Archaeological potential Ellen A Reid</i></p> <p><i>The NSW Heritage Office has advised that a search of the NSW Shipwrecks Database identified that, located in and around the area of the Double Bay Marina in 1896 the ship Ellen A Reid , a 70.25m, 1790 tonne cargo ship caught fire and was beached.</i></p> <p><i>The possibility that any ship relics could be impacted should be considered and an appropriate mitigation strategy put in place should this occur including necessary permits under the NSW Heritage Act.</i></p> <p><i>The applicant is to engage an archaeologist to be present on-site should any archaeological object be found. Work shall cease until the significance of the evidence has been assessed by the archaeologist and</i></p>	6

	<p><i>presented to Council and the NSW Heritage Office. Work must not recommence until the archaeologist is satisfied that all obligations under the NSW Heritage Act have been met.</i></p> <p><i>This advising is attached in order to comply with the planning principles for heritage conservation relating to potential archaeological sites contained in the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.</i></p> <p>(Refer to advising K15)</p>	
Urban Design Planner	<p><i>That the urban design impacts of the proposal are acceptable for the following reasons:</i></p> <ol style="list-style-type: none"> <i>1. The incremental increase in the visual impact of the proposed marina extension is minor.</i> <i>2. There are minor potential visual benefits to the proposal.</i> <i>3. No properties are significantly affected by the proposal.</i> <i>4. The public domain is not impacted on.</i> <i>5. The location is relatively secluded and the proposal does not affect the character of the location.</i> <p><i>The proposal in its revised form is acceptable.</i></p>	7
Fire Safety Officer	<p><i>The proposal shall contain the following conditions if approved:</i></p> <ol style="list-style-type: none"> <i>1.1 Building upgrade (Clause 94 of the Regulation)</i> <i>.....</i> <i>1.2 Annual Fire Safety Statements (Class 1b to 9c buildings inclusive)</i> <i>.....</i> <p>(Refer to conditions C3 & I3)</p>	8

9.2 The following table contains particulars of external referrals.

EXTERNAL REFERRALS		
External Referral Body	Reason for referral	Comment
NSW Industry & Investment	s.205 of the Fisheries Management Act 1994 no objections providing the following general terms of approval are included in any

EXTERNAL REFERRALS		
External Referral Body	Reason for referral	Comment
		<p><i>development consent issued for this proposal:</i></p> <p>.....</p> <p><i>(see annexure 9 for detailed comments and condition A4)</i></p>
NSW Office of Water	Water Management Act, 2000	<p><i>The NSW Office of Water has reviewed documents for the above development application and considers that, for the purposes of the Water Management Act (2000) a Controlled Activity Approval is not required and no further assessment by the <u>NSW Office of Water</u> is necessary</i></p> <ul style="list-style-type: none"> <i>• It should be noted that sections of the benthos where the proposal is planned to be carried out contains of Caulerpa filiformis. This species is described as a rapidly dominating algal assemblage. Care should be taken to eradicate or minimise the spread of this species where the proposal is being carried out.</i> <p><i>(see annexure 10 for detailed comments)</i></p>
<i>Foreshores and Waterways Planning and Development Advisory Committee</i>	<i>Clause 29 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</i>	<p><i>The Committee recommends that the consent authority:</i></p> <ol style="list-style-type: none"> <i>a) Clarifies the applicant's intention in relation to the use of the service area by the general boating public;</i> <i>b) Requires that the maximum height of piles be 3.5m above MHW;</i> <i>c) Satisfies itself that the visible section of all piles is of a material which will be sympathetic with the surrounds;</i> <i>d) Requires the applicant to completely remove all existing piles from the seabed in accordance with NSW Maritime's standard requirements;</i> <i>e) Requires the applicant to remove the existing piles from the seabed in a manner which minimises both disturbance of the seabed and impacts on the aquatic environment; and</i> <i>f) Considers the visual impact of the proposal.</i>

EXTERNAL REFERRALS		
External Referral Body	Reason for referral	Comment
		<i>(see annexure 11 for detailed comments and conditions C1(a), (b), (c) & (e) & I15)</i>
New South Wales Police	For comment under the Memorandum of Understanding – Crime Prevention Through Environmental Design (CPTED)	Letter dated 15/12/09 from the Commander of the Rose Bay Local Area Command makes a number of suggestions to address the perception of safety and security and actual reduction in opportunities for crime. <i>(see annexure 12 for detailed comments and condition A7)</i>
NSW Maritime	EPA Regs cl.77	Letter dated 19/4/10 <i>NSW Maritime recommends the following that public access is to be maintained through the marina during business hours.</i>
Sydney Ferries	EPA Regs cl.77	No comment received
Energy Australia	EPA Regs cl.77	No comment received
NSW Fire Brigades	EPA Regs cl.77	No comment received
Heritage Branch (Department of Planning)	EPA Regs cl.77	<p><i>As the subject property is not currently on the State Heritage Register, it is noted that the Heritage Council is not the consent authority for this development application.</i></p> <p><i>Nonetheless, the Heritage Branch has considered this application and has the following comment:</i></p> <ul style="list-style-type: none"> <i>Whilst the current DA for the re-development of Double Bay Marina is considerably more sympathetic to the landscape than its previous incarnations, the additional visual impacts that the new Marina would have on the view lines and historic setting from the State Heritage Listed Gladswood property should be taken in to account when deciding upon its viability.</i> <i>A search of the NSW Shipwrecks Database shows that the 'Ellen A Reid', a 70.25m, 1790 tonne cargo ship caught fire and was beached in Double Bay in 1896. Whilst the wreck was refloated, there could be relics associated with that</i>

EXTERNAL REFERRALS		
External Referral Body	Reason for referral	Comment
		<i>incident still located in and around the area of the Marina. The possibility that any such relics could be impacted by these works will need to be considered and an appropriate mitigation strategy put in place should this occur including all necessary permits under the NSW Heritage Act. (see advising K15)</i>
RTA	EPA Regs cl.77	Letter dated 4/5/10 <i>Following a review of the traffic report and information submitted, the RTA will not object to the subject development application as it is considered that there will not be a significant traffic impact on the state road network.</i>
Royal Australian Navy	EPA Regs cl.77	Letter dated 20/4/10 <i>The nearest Defence site is Garden Island which is the principal naval establishment on the east coast of Australia. Garden Island is a key site for Defence through the provision of wharfage and alongside support facilities to Sydney home-ported and visiting Royal Australian Navy and foreign fleet units.</i> <i>Defence has assessed the proposed redevelopment of the Double Bay marina. As an existing facility, Defence does not consider the proposal will have an impact on our activities at Garden Island.</i>

ENVIRONMENTAL ASSESSMENT UNDER S.79C

The relevant matters for consideration under section 79C of the *Environmental Planning and Assessment Act 1979* are assessed under the following headings.

10. RELEVANT STATE/REGIONAL INSTRUMENTS AND LEGISLATION

10.1 Part 3A

Part 3A of the Act relates to major infrastructure or development that is, in the opinion of the Minister, of state or regional environmental planning significance. Development to which part 3A of the EPA Act applies requires the approval of the Minister.

Under *State Environmental Planning Policy (Major Development) 2005* (Major Development SEPP) certain development included in the schedules is declared to be a project to which part 3A of the Act applies. Schedule 1 includes marinas in Sydney Harbour which can moor more than 30 vessels, or in the case of an existing facility will moor more than an *additional* 30 vessels.

This proposal would increase the number of vessels which can be moored by 5. Therefore the development would not be a project to which part 3A of the EPA Act applies.

10.2 Designated development

Section 77A of the Act provides that development is designated development if it is declared to be designated development under an environmental planning instrument or the *Environmental Planning and Assessment Regulation 2000* (EPA Reg). Schedule 3 of the EPA Reg provides that certain categories of marinas are designated development, including:

23 Marinas or other related land and water shoreline facilities

(1) *Marinas or other related land or water shoreline facilities that moor, park or store vessels (excluding rowing boats, dinghies or other small craft) at fixed or floating berths, at freestanding moorings, alongside jetties or pontoons, within dry storage stacks or on cradles on hardstand areas:*

.....

(b) *that have an intended capacity of 30 or more vessels of any length and:*

(i) *are located in non-tidal waters, or within 100 metres of a wetland or aquatic reserve, or*

(ii) *require the construction of a groyne or annual maintenance dredging, or*

(iii) *the ratio of car park spaces to vessels is less than 0.5:1, or*

(c) *that have an intended capacity of 80 or more vessels of any size.*

The proposed redeveloped marina has an intended capacity of 45 vessels. As there is no car parking the ratio of car parking spaces to vessels is less than 0.5:1. Alterations and additions are not designated development if, in the opinion of the consent authority, they do not significantly increase the environmental impacts of the total development. In the case of this proposal, irrespective of the environmental impacts, it is considered that the development is for a new facility rather than alterations and additions. The proposal is therefore considered to be designated development.

An application for designated development is required to be:

- Publicly exhibited in accordance with s.79 of the Act which provides for a notice to be placed on the land in addition to notification of adjoining land owners and advertising in the local newspaper

- Exhibited for 30 days (cl.78(2) of the Regs)
- Notified to public authorities, other than approval and concurrence authorities who, in the opinion of the consent authority, may have an interest in the determination of the DA (cl.77 of the Regs)
- Accompanied by an environmental impact statement (EIS) (schedule 1, part 1, 2(1)(e) of the Regs)

The Regs contains provisions for the form and content of an EIS (cl.71 & 72) and for the applicant to consult with the Director General and have regard to the Director General's requirements (cl.73).

A copy of submissions received during the public exhibition must be forwarded to the Director General (cl.81 of the Regs).

The DA has been publicly exhibited as required. The form and contents of the EIS are considered to be satisfactory with regard to the Regs. A letter dated 22/9/09 was received from a delegate for the Director-General with a copy of his requirements for the preparation of the EIS. The letter also advised that the Council should forward 3 copies of the DA & EIS to the Department for concurrent exhibition. Also, at the end of the exhibition we should send a copy of all submissions received to the Department (as required by cl.81 of the Regs) and noted that *...the Department will only respond during the 21 day statutory period if there is an issue of major significance involved.*

The EIS has regard to the Director General's requirements. Copies of submissions were sent to the Department on 18/2/10. No response was received.

In addition to the approval and concurrence authorities, notification of the DA was given to the following public authorities under cl.77 of the Regs:

- NSW Maritime
- NSW Fire Brigades
- NSW Police (memorandum of understanding)
- Sydney Water
- Sydney Ferries Corporation
- Energy Australia
- RTA
- Royal Australian Navy

10.3 Integrated development

Section 91 of the EPA Act provides that development is integrated development if it requires consent and it requires approval under certain other Acts. The proposed development is integrated as it requires approval under the following Acts which are listed in s.91:

- *Water Management Act 2000* (WMA) as a controlled activity. The NSW Office of Water is the approval body under the WMA.
- *Fisheries Management Act 1974* (FMA) as a permit is required to harm marine vegetation in a protected area. The NSW Industry & Investment is the approval body under the FMA.

Section 91A(3) provides that a consent must be consistent with the general terms of approval of an approval body. S.91A(4) provides that if an approval body informs a consent authority that it will not grant a required approval the consent authority must refuse consent to the application. Section 91A(5) provides that if an approval body fails to inform a consent authority the consent authority

may determine the DA. Under cl.70 of the Regs an approval body is required to advise its decision in relation to its general terms of approval within 21 days after receiving the last of the submissions received during the submission period.

Submissions were forwarded to the approval bodies on 18/2/10. NSW Industry & Investment has furnished its general terms of approval. The Office of Water has advised that a controlled activity approval is not required. If consent is to be granted it will need to incorporate NSW Industry & Investment general terms of approval, refer annexure14.

10.4 Existing use rights

The land use zoning of the area on which the development is proposed to take place is discussed in detail in relation to the assessment of the proposal under the relevant environmental planning instruments, i.e. *Sydney Regional Environmental Plan (Sydney Harbour Catchment)2005* (SHREP) and *Woollahra Local Environmental Plan 1995* (WLEP).

Existing use rights is an issue because part of the development site includes land above the MHWM which is zoned Residential 2(a) under WLEP but which is, in part, used for marina purposes. Under WLEP marinas are most appropriately classified as a *tourist facility*. *Tourist facility* is defined as:

*Means an establishment providing for holiday accommodation or recreation and may include a boat shed, boat landing facilities, camping ground, caravan park, holiday cabins, hotel, house boat, **marina**, motels, playground, refreshment room, water sport facilities or a club used in conjunction with any such activities. (emphasis added)*

WLEP cl. 8 includes development control tables. For the 2(a) zone *tourist facility* is not included as development which may be carried out either with or without development consent. Therefore it is development which is prohibited.

The works proposed by this DA on the 2(a) zoned land are relatively minor, comprising of alterations to the existing marina building. Also, land access to the proposed water based component is reliant on access over land zoned 2(a). Support facilities for the marina are also partly located on the land zoned 2(a). No works are proposed to the dwelling and no change in use of the dwelling is proposed.

There is a line of Court decisions relating to the use of different parts of the development site. The pivotal decision was *Double Bay Marina Pty Limited v Woollahra Municipal Council* (1969) 19 L.G.R.A. 147 the Short Minutes of Order of which was handed down by Justice Else-Mitchell on 13/2/1970. In summary this decision differentiated the land occupied by the then cottage and its curtilage from the waterfront land. The land occupied by the cottage generally comprised that part of the site from the alignment of Castra Place to a line 20 feet (approx. 6m) to the north of the cottage that existed at the time. The waterfront land comprised the balance of the allotment including land occupied by the marina building and slipway. Although the decision declared that the existing use of the cottage and its curtilage did not include marine activities of any kind the Court did grant consent to the demolition of part of the cottage and for the cottage to be used for certain marine purposes. Consequently the terms of this decision, which included the consent relating to the use of the cottage for certain marine purposes expiring in 1972, ultimately resulted in the cottage land being developed and used exclusively as a cottage only.

This is not an exhaustive account of the history of uses of this property. The various Court decisions handed down over the years detail more fully how the uses have related to the planning controls and planning schemes that have applied from time to time. In the circumstances a more detailed account is not considered to be necessary as part of this report.

A dwelling now exists on part of the land following the grant of consent to DA84/209 (by the Land & Environment Court) and building approval to BA844/85. No use rights, for marina purposes or otherwise, now exist for the land occupied by the existing dwelling as no lawful marina use has occurred on it for over 12 months and any use rights have therefore been abandoned, refer to s.109(3) of the Act.

The marina building on the waterfront land was rebuilt under consent granted to DA81/257 and approval to BA678/84. The use for marina purposes of the waterfront land was lawfully commenced and has been continuous. Therefore the waterfront land has existing use rights notwithstanding that marinas are prohibited in the 2(a) zone.

The alterations proposed to the marina building include the realigning of the external walls in the south west corner and the construction of a new internal wall between the existing workshop and toilets. The alterations will enlarge an existing toilet to permit use by persons with a disability. The realignment of external walls will not increase the floor area of the building. The building abuts the western boundary apart from the southern end which is setback approx. 1.8m. The setback area forms a garbage store recess. The proposed realigned western wall will be setback 1.5m (i.e. 0.3m closer than the existing section of wall) from the side boundary for a length of approx. 2m.

The EPA s.108 relates to regulations for existing uses. Subclause (1)(a) provides as follows:

108 Regulations respecting existing use

(1) The regulations may make provision for or with respect to existing use and, in particular, for or with respect to:

(a) the carrying out of alterations or extensions to or the rebuilding of a building or work being used for an existing use, and

The Regs cl.41 allows certain development associated with existing uses. Subclause (1)(b) provides as follows:

41 Certain development allowed

(1) An existing use may, subject to this Division:

(b) be altered or extended, or

The Regs cl.43 provides that development consent is required for alterations and additions. It provides as follows:

43 Development consent required for alteration or extension of buildings and works

(1) Development consent is required for any alteration or extension of a building or work used for an existing use.

(2) The alteration or extension:

(a) must be for the existing use of the building or work and for no other use, and

(b) must be erected or carried out only on the land on which the building or work was erected or carried out immediately before the relevant date.

The proposed alterations and additions to the marina building are for the existing use, i.e. a marina and will be on the land on which the building was erected before the relevant date, being the date when a planning instrument came into force which would have had the effect of prohibiting the use.

Accordingly, the alterations proposed to the marina building may be carried out with development consent.

The alterations proposed to the marina building are minor and will not result in the amenity of any adjoining properties being adversely affected. The alterations include providing toilet facilities for people with disabilities which is considered to be a public benefit. In general, there is no objection to that part of the proposal that relates to altering the existing marina building.

The floating pontoons and marina berths now proposed will be in areas zoned under the SHREP within which commercial marinas are a permissible use, with development consent. Accordingly the establishment of use rights for this area of the development site is not necessary.

11 RELEVANT STATE/REGIONAL INSTRUMENTS

11.1 State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP)

The Infrastructure SEPP replaced a number of SEPPs including *State Environmental Planning Policy No. 11 – traffic generating development*. Clause 104 of the Infrastructure SEPP refers to traffic generating development. It provides that certain types of development must be referred to the RTA for comment prior to the granting of consent. The criteria for referral are based on the size or capacity of the development and the nature of the road to which the development has vehicular or pedestrian access.

The proposal is not considered to meet the criteria which would require referral to the RTA under the Infrastructure SEPP. The proposal was referred to the RTA under cl.77 of the Regs. No response was received. Comment was provided by our Development/Traffic Engineer, (see annexure 2) who raised no objection. Traffic and parking is discussed in more detail later in this report, refer 17.2.

11.2 Major Development SEPP

The aims of the Major Development SEPP include identifying development to which the assessment and approval process under part 3A of the Act apply and identifying development for which regional panels are to exercise specified consent authority functions. The provisions relating to part 3A development have been discussed earlier.

Part 3 of the Major Development SEPP identifies the types/categories of development which is regional development and what consent authority functions a Joint Regional Planning Panel (Regional Panel) may exercise in relation to such regional development.

Development which is Regional Development includes designated development. As this proposal is designated development it is development to which part 3 of the Major Development SEPP applies.

Cl.13F of the Major Development SEPP provides that a regional panel may exercise the determination of development application functions of a council under part 4 of the Act. Therefore, the regional panel is the consent authority for this development application.

Parts 4.6 and 4.7 of *Procedures for the operation of joint regional planning panels*, prepared by the Department of Planning provide:

4.6 Council representation to the Regional Panel

A council may make a submission on a development application that is to be determined by a Regional Panel during and up to seven (7) days before the Panel Meeting. The applicant may consider it appropriate to provide a briefing to council prior to the council framing its submission to the Panel.

The council submission should be forwarded to the Panel Secretariat. A Regional Panel will give consideration to a council submission in its determination of the application. A council submission, however, is not a matter that must be specifically addressed in the assessment report or recommendations prepared by the council staff.

4.7 Submission of Assessment Report to Panel Secretariat

The completed assessment report and recommendation, signed by the officer responsible for the report, is to be forwarded electronically to the Panel Secretariat immediately upon completion.

The assessment report is not required to be endorsed or presented to the Council before being forwarded to the Panel Secretariat.

11.3 State Environmental Planning Policy No.33 – Hazardous and Offensive Development (SEPP 33)

The objectives of SEPP 33 relate to:

- the definitions of hazardous and offensive industries
- preventing the prohibition of storage facilities if they are not hazardous and offensive as defined in the policy
- ensuring that any proposed mitigation measures are taken into consideration in determining whether a development is a hazardous or offensive industry
- to ensure that a consent authority has sufficient information to determine if a development is a hazardous or offensive industry.

If a development is considered to be a potentially hazardous or potentially offensive industry certain criteria under cl.13 of the policy need to be considered:

The existing facilities include a 20,000 litre diesel fuel storage tank. The tank is underground and located at the southern end of the slipway on an area of the site that is above the MHWL. Advice has previously been received from the Department of Planning's Major Hazards Unit that diesel is a combustible and not a class 3 flammable dangerous good and therefore the provisions of SEPP 33 do not apply. The existing fuel storage tank is to remain and an upgraded bowser facility will be provided.

The proposal is considered to be satisfactory with regard to the provisions of SEPP 33.

11.4 State Environmental Planning Policy No.55 – Remediation of Land (SEPP 55)

Clause 7(1)(b) and (c) of SEPP 55 require that where land is contaminated a consent authority must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed. If the land requires remediation the consent authority must be satisfied that the land will be remediated before the land is used for that purpose. The *Managing Land Contamination planning guidelines SEPP55-remediation of land* 1998 (the

Guidelines), published by the Department of Urban Affairs and Planning and the Environment Protection Authority assist in applying SEPP 55.

The proposal does not intend to change the existing use of the development site. The area of submerged land leased to Double Bay Marina Pty Ltd for use for the purposes of a marina will increase (by 440m²) as a consequence of the proposal.

In relation to the Guidelines, the existing marina use is considered to be development referred to in table 1, *Some activities that may cause contamination*. The proposal will not involve a change of use in relation to that part of the proposed development site that is currently used for marina purposes. The area of the development site that is not currently used for marina purposes is not known to have been used for purposes involving activities referred to in table 1. A preliminary investigation would therefore not be required under cl.7(2).

The EIS includes the following comments regarding SEPP 55:

SEPP 55 is relevant as the proposal may result in the disturbance of contaminated sediments. This issue was considered in detail in relation to the previous scheme which proposed significant dredging of contaminated sediments. Dredging is not proposed in the current proposal as approval has already been granted for maintenance dredging (see Appendix F). The impacts of the proposal on the existing sediment will be limited as no removal of sediment is required. As noted above the existing piles are to be cut off at the base and new piles provided without significant disturbance to sediments. (p.32)

Having specific regard to the Guidelines and as the proposal does not involve dredging and construction methods consider minimising sediment disturbance, the proposal is considered to be satisfactory in terms of SEPP 55.

[NOTE: There is an issue regarding the cutting off of the piles. The Waterways Advisory Committee recommends that the piles be extracted, in accordance with NSW Maritime's standard requirements. Measures to prevent the migration of contaminated sediments which may become suspended during this process can be imposed as a condition should consent be granted.]

11.5 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (SHREP) (deemed State Environmental Planning Policy)

The SHREP was gazetted on 28/9/05. It consolidated and replaced *Sydney Regional Environmental Plan No.22 – Parramatta River* and *Sydney Regional Environmental Plan No.23 – Sydney and Middle Harbours*. It aims to establish a balance between promoting a prosperous working harbour, maintaining a healthy and sustainable waterway environment and promoting recreational access to the foreshore and waterways.

The SHREP contains 6 parts as follows:

1. Part 1 – Preliminary, which contains the aims and the principles which enable those aims to be achieved in relation to the foreshore and waterway area.
2. Part 2 – Planning principles, which relate to the plan making process
3. Part 3 – Foreshores and waterways area, which includes zonings and their objectives, matters for consideration in relation to DAs, the Advisory Committee's constitution and role and special provisions
4. Part 4 – Strategic sites, which contains matters for consideration in relation to sites identified as strategic foreshore sites in the SHREP

5. Part 5 – Heritage provisions, which contains provisions for the assessment of DAs relating to heritage items and places of potential heritage significance as identified in the SHREP
6. Part 6 – Wetlands protection, which contains provisions for the assessment of DAs relating to wetlands protection areas as identified in the SHREP.

The provisions relevant to the assessment of this DA are in Parts 1, 3, 5 & 6 and are discussed below.

Clause 2 sets out the aims of the plan as follows:

2 Aims of plan

- (1) This plan has the following aims with respect to the Sydney Harbour Catchment:*
 - (a) to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained:*
 - (i) as an outstanding natural asset, and*
 - (ii) as a public asset of national and heritage significance, for existing and future generations,*
 - (b) to ensure a healthy, sustainable environment on land and water,*
 - (c) to achieve a high quality and ecologically sustainable urban environment,*
 - (d) to ensure a prosperous working harbour and an effective transport corridor,*
 - (e) to encourage a culturally rich and vibrant place for people,*
 - (f) to ensure accessibility to and along Sydney Harbour and its foreshores,*
 - (g) to ensure the protection, maintenance and rehabilitation of watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity,*
 - (h) to provide a consolidated, simplified and updated legislative framework for future planning.*
- (2) For the purpose of enabling these aims to be achieved in relation to the Foreshores and Waterways Area, this plan adopts the following principles:*
 - (a) Sydney Harbour is to be recognised as a public resource, owned by the public, to be protected for the public good,*
 - (b) the public good has precedence over the private good whenever and whatever change is proposed for Sydney Harbour or its foreshores,*
 - (c) protection of the natural assets of Sydney Harbour has precedence over all other interests.*

These aims are required to be considered in the assessment of DAs under cl.17(2). The principles which enable the aims to be achieved are relevant to the assessment of this DA as the development is proposed to be carried out in the foreshores and waterways area. They are fundamental to properly understanding the weight which needs to be given to competing interests in respect to development and use of the waterway and foreshore area.

The principles clearly state that protection of the Harbour's natural assets is paramount. Therefore, to properly assess a DA under the SHREP a proper understanding of the impacts of the proposed development on the natural assets is fundamental. The principles also stress the strong public affinity with the Harbour expressed in terms of its public ownership. There is an obligation for a consent authority to uphold the public good over private interests if and whatever changes to the Harbour may be proposed. Consequently the public is entitled to have high expectations that its rights as owner of the Harbour will not be compromised by inappropriate developments.

The proposed development, being for a commercial marina, is defined as *land/water interface development*. Clause 5 provides that the local council is the consent authority for land/water

interface development. As discussed earlier, the regional panel may exercise the determination of development application functions of the council.

Clause 7 provides that the SHREP supplements and does not derogate from any other environmental planning instrument. Also, in the event of any inconsistency it applies to the extent of the inconsistency. It is considered that the SHREP zonings apply to all land below the mean high water mark.

11.5.1 Matters requiring consideration

Under cl.16 the area of waterway that the proposed marina would occupy is zoned partly W1-Maritime Waters and partly W5-Water Recreation. Clause 17 includes objectives for the W1 and W5 zones and provides that development consent must not be granted unless the consent authority is satisfied that development is consistent with the aims of the plan (as contained in cl.2(1) & (2) referred to earlier) and the objectives of the zone. Clause 18 provides that certain developments are either permissible without consent, are permissible only with consent or are prohibited, depending on the zoning. Commercial marinas are development permissible only with development consent in the W1 and W5 zones.

Although commercial marinas are permissible with consent in both the W1 and W5 zones the objectives of the zones are quite different. As mentioned earlier cl.17(2) prevents a consent authority from granting consent to any development unless it is satisfied that it is consistent with the aims of the plan and the objectives of the zone. The following table shows the objectives applying to each of the zones.

Zone Objectives	
W1 – Maritime Waters	W5 – Water Recreation
<ul style="list-style-type: none"> a) to give preference to and protect waters required for the effective and efficient movement of commercial shipping, public water transport and maritime industrial operations generally, (b) to allow development only where it is demonstrated that it is compatible with, and will not adversely affect the effective and efficient movement of, commercial shipping, public water transport and maritime industry operations, (c) to promote equitable use of the waterway, including use by passive recreation craft. 	<ul style="list-style-type: none"> (a) to give preference to and increase public water-dependent development so that people can enjoy and freely access the waters of Sydney Harbour and its tributaries, (b) to allow development only where it is demonstrated that the public use of waters in this zone is enhanced and will not be compromised now or in the future, (c) to minimise the number, scale and extent of artificial structures consistent with their function, (d) to allow commercial water-dependent development, but only where it is demonstrated that it meets a justified demand, provides benefits to the general and boating public and results in a visual outcome that harmonises with the planned character of the locality, (e) to minimise congestion of and conflict between people using waters in this zone and the foreshore, (f) to protect and preserve beach environments and ensure they are free from artificial structures, (g) to ensure that the scale and size of development are appropriate to the locality, and protect and improve the natural assets and natural and cultural scenic quality of the surrounding area, particularly when viewed from waters in this zone or from areas of

Matters to be considered in the assessment of a DA are in Part3, Division 2 under the following headings:

- cl.21 – biodiversity, ecology and environment protection
- cl.22 – public access to and use of, foreshores and waterways
- cl.23 – maintenance of a working harbour
- cl.24 – interrelationship of waterway and foreshore uses
- cl.25 – foreshore and waterways scenic quality
- cl.26 – maintenance, protection and enhancement of views
- cl.27 – boat storage facilities

11.5.2 Foreshores and waterways planning and development advisory committee (Advisory Committee)

Clause 29 provides that consent can not be granted to development referred to in schedule 2 on land that is within the foreshore and waterway area unless the DA has been referred to the Advisory Committee. Commercial marinas are referred to in schedule 2 and the land is within the foreshores and waterways area. The DA was considered by the Advisory Committee on 9/4/10. The Committee recommends that the consent authority:

- a) Clarifies the applicant's intention in relation to the use of the service area by the general boating public;*
- b) Requires that the maximum height of piles be 3.5m above MHW;*
- c) Satisfies itself that the visible section of all piles is of a material which will be sympathetic with the surrounds;*
- d) Requires the applicant to completely remove all existing piles from the seabed in accordance with NSW Maritime's standard requirements;*
- e) Requires the applicant to remove the existing piles from the seabed in a manner which minimises both disturbance of the seabed and impacts on the aquatic environment; and*
- f) Considers the visual impact of the proposal.*

Conditions can be imposed in relation to items a) – e). Item f) is considered in part 17.1 of this report.

11.4.3 Other relevant SHREP provisions

Other provisions of the SHREP relevant to this proposal are:

- part 5 – Heritage provisions
- part 6 – Wetlands protection

Annexure 13 is a table which summarises the proposal in relation to each of the relevant matters for consideration under the SHREP. Issues arising are further discussed under **part 17**.

12. SECTION 94A LEVY

The levy payable under our s.94A Development Contributions Plan 2005 is:

\$1,612,306 (estimated cost) x 1% (levy rate) = \$16,123.00.

(Note: The provisions of Council's s.94 Contributions Plan 2002 apply to development on land within the defined catchment of the Double Bay commercial centre. However, as the marina is on land outside of the Double Bay commercial centre, consideration of that Plan is not relevant for this proposal.)

13. ENVIRONMENTAL PROTECTION & BIODIVERSITY PROTECTION ACT 1999 (EPBC ACT)

The EPBC Act is Commonwealth legislation. It requires the Federal Minister to approve of certain activities. Approval is required for actions that are likely to have a significant impact on:

- a matter of national environmental significance;
- the environment of Commonwealth land (even if taken outside Commonwealth land); and
- the environment anywhere in the world (if the action is undertaken by the Commonwealth).

An action includes a project, development, undertaking, activity, or series of activities.

The EIS refers to the provisions of the EPBC Act in section F1 as follows:

F.1 Commonwealth Environment Protection and Biodiversity Conservation Act

The impacts on flora and fauna have been addressed in the report at Appendix B. As this assessment concludes that there is no significant impact by the proposal on any identified species, no permit will be required under the above Act.

Appendix B of the is an *Aquatic ecological assessment of proposed redevelopment of Double Bay Marina*, by W.S. Rooney & Associates Pty Ltd, November 2009. It discusses the EPBC Act in part 5.4 *Matters of national environmental significance*. It states:

If the proposal were deemed to have a significant impact upon matters of national environmental significance, it would require approval under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), in addition to any approvals required under NSW legislation.

..... the EPBC Act lists a number of threatened and /or migratory marine species that occur in NSW, and , where relevant, must be acknowledged in any impact assessment involving the marine environment. the gazetted threatened marine and/or migratory species lists includes..... Syngnathiformes

Syngnathiformes are known to occur in shallow seagrass beds of Sydney Harbour, and often associated with piles, nets and other hard surfaces with abundant epiphytes attached. Because shallow seagrasses occur nearby, and because there are numerous piles (with associated attached flora and fauna) within the existing marina complex, it is considered very possible that one or more members of the Syngnathiforme group would occur within or very near to the proposed development. The proposed replacement of the entire existing fixed jetty and arms will cause the temporary displacement of any pipefish or seahorses that presently occur around the piles of the existing marina. These small fish species will be forced to move elsewhere, either to adjacent seagrass beds or nearby piles or other hard structures covered with epiphytes until the new piles are in place and a suitable density of epifauna has developed on these new piles and floating pontoons.

We assume that the mitigation measures in place during construction will ensure that no Syngnathiformes are removed from the water during pile removal and that adequate water quality will prevail, specifically over the nearby important seagrass bed to the east, so that any Syngnathiformes utilizing that bed are not adversely affected. If adequate water quality is

not maintained over the seagrass beds, then, depending on the duration of adverse exposure, these protected fish species may be forced to move to suitable habitat elsewhere; but because these species are mobile and can move away from localised adverse conditions, we do not expect any mortality to these, or any other fish species as a result of habitat disruption or accidental short-term exposure to a chemical insult. (pp.19&20)

..... in addition to the Syngnathiformes discussed above, there are possibly three other fish species on that modified Commonwealth list that could utilise some of the habitats found at and near this development proposal at one or more stages of their life cycle (usually the juvenile stages):

.....

None of these three species are deemed Endangered or Vulnerable, based on IUCN criteria, and so are not listed as such by the EPBC Act. There, a permit is not required by the Commonwealth EPBC Act. (p.24)

Syngnathiformes are listed under the EPBC Act and they are known to reside in seagrass beds in Sydney. Having regard to the above comments in the Rooney report it is considered that referral for approval of the Federal Minister under the EPBC Act is unnecessary. (Note: the Council has no obligation to refer the DA to the Federal Minister under the EPBC Act - the obligation for referral rests with the proponent).

14. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995 (WLEP)

WLEP applies to all land within the area of Woollahra and under cl.3(1) includes land taken to be within the area by virtue of s.205 of the *Local Government Act 1993*. Section 205(1) includes land and water between the high-water mark and the low-water mark (commonly referred to as the inter-tidal zone).

Accordingly, in terms of the assessment of this DA, WLEP also applies to land and water within the inter-tidal zone. However, the main components of the proposal, including the floating pontoons and berthing pens are to be located on areas where WLEP does not apply.

The land use zoning under WLEP for that part of the development site above the MHWL is Residential 2(a). Located on this part of the land is a 2 storey dwelling house and swimming pool occupied separately to the marina. To the north of the dwelling is a single storey marina building which abuts the western side boundary. To the east of the marina building are facilities associated with the operations of the marina which include a slipway, underground diesel fuel tank and storage.

As discussed under part 10.4, existing use rights apply to that part of the development site located between the land occupied by the dwelling house and the MHWL. Under s.108(3) of the EPA the provisions of WLEP which derogate from the relevant provisions of the Regs relating to existing use rights have no force or effect. As discussed under part 10.4 the only works on the land zoned under WLEP are minor alterations to the marina building. Those works are considered to be satisfactory with regard to the relevant provisions of the Regs relating to existing use rights. Further assessment of those works against the provisions of WLEP is considered to be unnecessary.

15. DEVELOPMENT CONTROL PLANS

15.1 Sydney Harbour Foreshores & Waterways Area Development Control Plan (SHDCP)

The SHDCP applies to the proposed development as it applies to all development within the foreshores and waterways area as identified in the SHREP. All of the proposed development is within such area.

The SHDCP contains provisions for assessing the impact of developments on the ecology (part 2) and landscape (part 3). It also contains general design guidelines for various types of development (part 4) and guidelines for specific developments including marinas (both commercial and private) (part 4.7). Appendix D of the SHDCP contains specific guidelines for assessing the visual impact of marinas.

Annexure 14 is a table which summarises how the proposal relates to the various provisions of the SHDCP.

15.2 DCP for off-street car parking provision and servicing facilities (Carparking DCP)

The DCP was adopted by Council in 1995. Under table 2.3 – *Transport and communication* the following note is included in relation to marinas:

0.6 car parking spaces per wet berth, 0.2 parking spaces per dry storage berth and swing mooring and 0.5 parking spaces per marina employee.

Based on the DCP's rates for parking the generation rates for the existing and proposed marinas are as follows:

Existing

40 wet berths x 0.6	= 24
25 swing moorings x 0.2	= <u>5</u>
Total	= <u>29</u>

Proposed

45 wet berths x 0.6	= 27
20 swing moorings x 0.2	= <u>4</u>
Total	= <u>31</u>

Based on parking generation rates in the DCP the proposed marina will generate an additional parking demand of 2 spaces.

There are no off-street parking spaces associated with the existing marina. There are no off-street parking spaces proposed as part of the redevelopment. Physical constraints, being the width of the land to Castra Place and the siting of existing buildings, makes on-site parking impracticable. Parking and traffic impacts are discussed in detail under **part 17.2 Traffic and parking impacts**.

(Note: The provisions of our s.94 Contributions Plan 2002 apply to development on land within the defined catchment of the Double Bay commercial centre. However, as the marina is on land outside of the Double Bay commercial centre, consideration of that Plan is not relevant for this proposal.)

15.3 Access for people with a disability

The marina is accessible via level access pathways from Castra Place. With regard to facilities for use by people with disabilities the following are proposed:

- a disabled toilet
- a ramp to provide access to vessel berths
- a specific facility at the service berth to lift wheelchair users on and off boats

Access from the existing section of jetty to be retained and the proposed floating pontoons will be via a gangway. The grade of the gangway will change with tide fluctuations. The gangway needs to be designed so that a gradient of 1:14 is maintained for 80% of the time. Should development consent be granted a condition to this effect should be imposed, see condition C.1.

Otherwise the proposal is considered to be satisfactory regarding the provisions of the Access DCP.

15.4 Other DCPs, codes and policies

15.4.1 Development Control Guidelines for the Provision of Foreshore Open Space and Access

The Guidelines were adopted by Council on 26/8/91 under SREP 23 (now replaced by SHREP) and as a policy in relation to the Council's own determinations.

The purpose of the Guidelines, as contained in part 2, is to state the means by which the Council intends to implement its foreshore objectives.

The foreshore objectives, as stated in part 3, relate to:

- preserving existing public open space along the foreshore and to provide further public pedestrian access to the foreshore in appropriate locations
- discourage alienation of the foreshore by buildings and encourage greater public access
- foster an environment which satisfies community needs and expectations while protecting the natural environment
- foster opportunities for the study and appreciation of the intertidal zone
- provide stopping points for people exploring the foreshore by small boats.

Part 5 contains 25 means by which the Council will implement its objectives. These mostly relate to initiatives for Council to undertake. Item 6 relates to providing facilities for access to foreshore parks and from these to the water for people with ambulatory problems. The proposed upgrading of facilities for use by people with disabilities as discussed in part 15.3 would be consistent with this item.

Item 24 states:

24. Promote the protection of existing views and the creation of new ones, from public spaces such as parks and roads, to the foreshore and the water, so as to complement physical access with visual access.

The proposal will have some impacts on views however these impacts will not detract from the physical access.

15.4.2 Boat Storage Policy for Sydney Harbour

The policy was prepared by the former Department of Infrastructure, Planning and Natural Resources and the Waterways Authority in June 2004. It aims to provide a more strategic and certain approach to regulating boat storage facilities and to provide a balance between promoting a prosperous working harbour, maintaining a healthy and sustainable waterway environment and promoting recreational access to the foreshores and waterways.

Critical issues are contained in Part 4 of the Policy. Part 4.1 relates to a 'moratorium' on marina development which resulted from concerns about visual impacts of boat storage facilities, environmental impacts and public access to the foreshore and waterway.

Part 4.2 discusses changing demands. It relevantly states that there is a clear trend towards larger motorised boats which are more likely to be stored on marina berths. Consequently, marina operators are looking to convert swing moorings to marina berths.

Part 5, Boat storage policy statement, outlines the State Government's policy for effective boat storage. Part 5.1 relates to commercial marinas. It states that commercial marinas will generally be allowable in certain locations where:

- *Foreshores are already modified through development , including existing maritime commercial and recreational activities*
- *Conflicts with other land and water uses are minimised*
- *Public access to and use of the foreshores and waterways is not reduced*
- *The visual impacts of the development are acceptable, and*
- *There are no adverse impacts on wetland or flora and fauna habitats*

These matters are discussed in **part 17, Impacts**, of this report.

Part 5.3, Single moorings, states *'Single moorings generally have a lower visual impact than fixed berth storage ... However, as boats are able to move more freely on single moorings, they can also impede navigation by other vessels. ... The Government therefore supports the retention of private single mooring areas at their current levels. ... As a means of freeing up water space for navigation, the Government also considers the conversion of commercial single moorings (associated with commercial marinas) to marina berths to be appropriate in suitable locations. This will also potentially facilitate greater public access to the waterway for recreational boating.'*

The visual impact of the proposal is discussed under **part 17.1, Visual impacts**, of this report.

Part 6, Implementing the policy, states the moratorium will be lifted by gazettal of SHREP and the release of the new Waterways Authority land owner's consent manual. The REP and manual are both now effective.

In Part 6.2, Simplifying the planning framework, the following comments are included regarding the SHREP ... *The development of new commercial marinas and the conversion of single moorings to fixed marina berths will be permissible in four separate zones ... These zones reflect the primary areas of the harbour used for ... public recreation (such as The Spit, Rose Bay and Rushcutters Bay)...* . Also, *Private single moorings are permissible without the requirement for development consent in all waterway zones. Such facilities are licensed by the Waterways Authority and numbers will remain at about current levels.*

The proposal involves the conversion of single moorings to fixed marina berths and there is to be no reduction in private single moorings. As such the proposal is considered satisfactory with regard to part 6.2 of the Policy.

Part 6.3, Improving development controls for marinas, states ... *The draft (now adopted) Harbour DCP therefore provides a stronger and comprehensive assessment tool for marinas, which will contribute to improved scenic quality and other environmental outcomes for the harbour.*

The impact of the proposed marina on the scenic quality of the Harbour and other environmental outcomes are considered under **part 17** of this report.

Part 6.5, Planning for high usage precincts, provides:

The Waterways Authority will prepare 'Framework Plans' for some high usage boating precincts of the harbour. Such a plan is currently being prepared for the Rose Bay West boating precinct.

These plans are not statutory documents, however they are used by the Authority to help guide its decisions as land owner in areas of the harbour where there are competing demands for water-based development and particular environmental issues are to be addressed. The plans are prepared in consultation with local councils, relevant state agencies, boating groups and the local community.

No framework plan has been prepared for Double Bay.

The former land owner's consent manual required NSW Maritime to consider a wide range of environmental matters in deciding whether or not it would grant land owner's consent. The new policy does not contain environmental considerations. Environmental impacts are now only part of the development consent assessment.

15.4.3 AS 3962-2001 Guidelines for design of marinas

AS 3962 contains guidelines for marina designers, manufacturers and operators in relation to recreational marinas and small commercial vessels up to 50m in length. The standard covers investigations, dimensional criteria, loading & stability, design considerations, services, onshore boat facilities and traffic & parking.

NSW Maritime advised Dredging Systems Pty Ltd by letter dated 17/7/09 that *NSW Maritime has undertaken a Part V (of the EPA Act) Assessment of your proposal and has no objection to the proposed works subject to your Company adhering to your report of 18 June 2009.* This is provide safe boating passage and to fully operate the (existing) marina. Presently berths on the eastern side of the marina closest to the shore are inaccessible at low tide due to insufficient water depth. Silting of this area occurs over time associated mainly with the adjacent discharge of stormwater channels into the Harbour.

Maintenance dredging is development permissible without development consent under SHREP.

Due to the similarity in the location and footprint of the existing and proposed marinas the approved maintenance dredging should achieve satisfactory draughts for vessels using the proposed marina. Berth sizes are consistent with the *guidelines for minimum design criteria* in cl.3.3. The dimensions of the walkway and fingers are considered to be satisfactory in terms of cl.3.5.

Section 8 deals with traffic and parking. It states at cl.8.2.1:

*The number of car parking spaces to be provided for development of **new** facilities is based on the particular activities and uses at each site.*

In the absence of traffic and parking studies, the following car parking requirements have been found to be acceptable:

It then stipulates 0.3 spaces (for commercial facilities) for both wet berths and swing moorings. As the existing and proposed aggregate number of wet berths and swing moorings will be the same, i.e. 65, the demand for parking spaces will also remain the same, i.e. 19.5 spaces.

The proposal is considered to be satisfactory in terms of AS 3962.

Land owner's consent

The Regs, cl.49, provides that a DA may be made by the owner of the land or a person with the written consent of the owner. In the case of Sydney Harbour, NSW Maritime is the authority which owns the Harbour bed. Therefore the applicant, Double Bay Marina Pty Ltd, was required to obtain the consent of NSW Maritime before submitting the DA.

NSW Maritime granted land owner's consent on 3/11/09, refer annexure 15. In considering to grant consent NSW Maritime had regard to its *Obtaining permission to lodge a development/project application* Policy.

The plans accompanying the DA indicate the nature, extent and specific location of the marina to be the same as the basis upon which NSW Maritime granted its land owner's consent.

16. APPLICABLE REGULATIONS

Under the Regs the following are matters required to be considered:

- the *Government Coastal Policy*, under clause 92(1) – the Policy's boundaries were extended in November 2005 to include parts of the Woollahra Municipality. However, under the regulation only the seaward provisions of the Policy apply to Woollahra. Therefore the Policy is not relevant to the consideration of this development proposal.
- *Australian Standard AS 2601-1991: The demolition of structures as in force 1 July 1993*, under clause 92(2). The proposal includes demolition of existing fixed walkways. Conditions can be imposed to require compliance with the Standard should consent be granted.
- Clause 93 requires that the consent authority consider the fire protection and structural adequacy of a building if the development proposes a change of use and no building work is involved. The development does not propose a change of building use.
- Clause 94 Regs requires that the consent authority consider whether a building should be brought into total or partial conformity with the *Building Code of Australia*. Council's Fire Officer has considered this issue and is of the opinion that a condition of consent should be imposed requiring the existing buildings to be brought into partial conformity with the Building Code of Australia.

17. IMPACTS

The judgement handed down in the *Double Bay Marina* proceedings has an obvious, direct relevance to the assessment of the impacts of the current proposal. That judgement included a 'planning principle' for discerning the public interest. The Court did not formally adopt it as a planning principle. However, it is considered relevant in the assessment of this DA because it

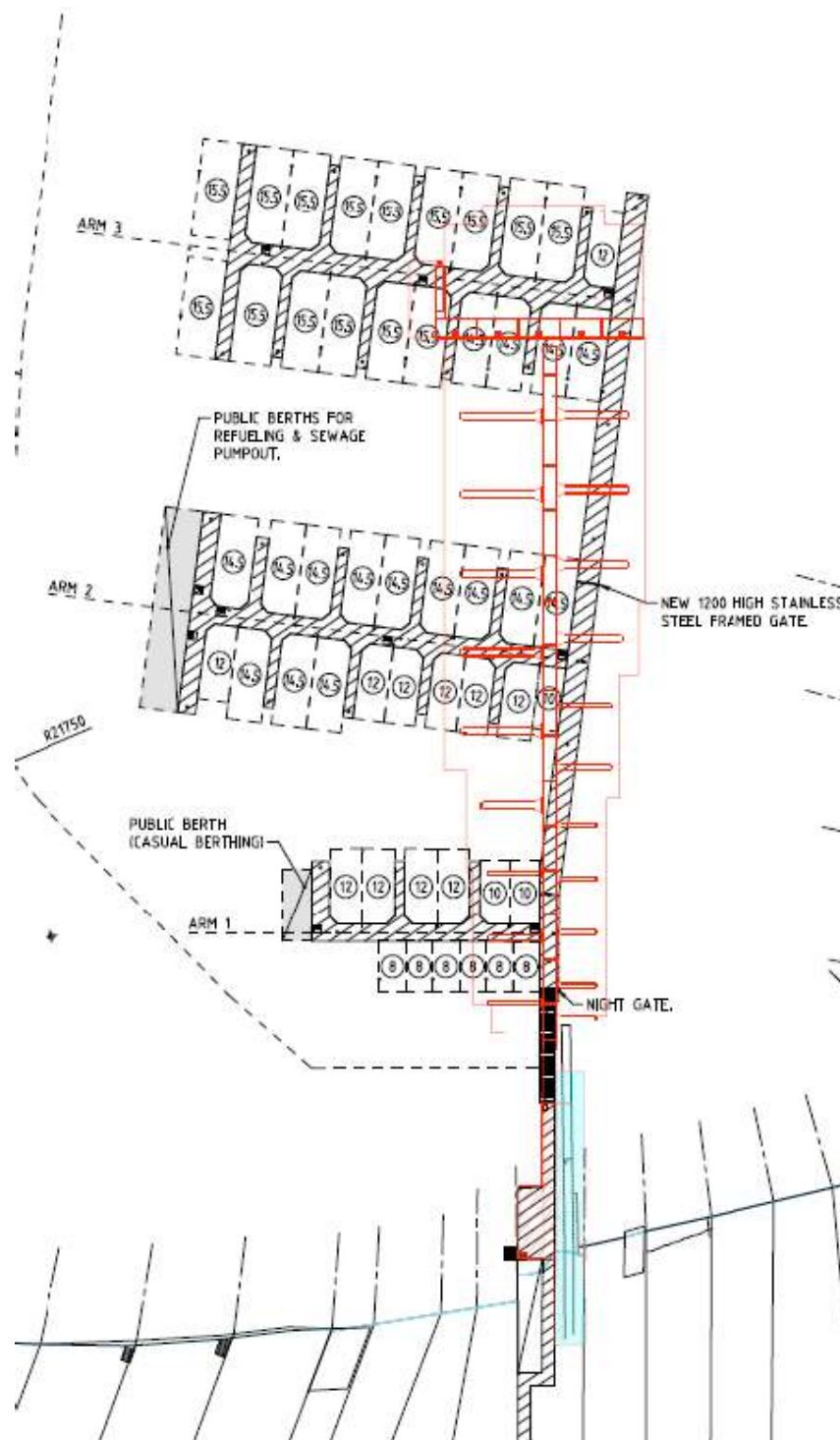
related to the same category of development, i.e. a marina, occupying a similar area of the waterway.

The judgement in the *Double Bay Marina* proceedings discusses the Council's contentions under the following headings:

- Ecological impacts including wave action
- Traffic and parking impacts
- Navigational impacts
- Visual and heritage impacts
- The public interest

Of these contentions visual impacts and the public interest influenced the decision to dismiss the appeal.

The following plan provides an overlay comparison of the current proposal with the proposal considered in the *Double Bay Marina* appeal.

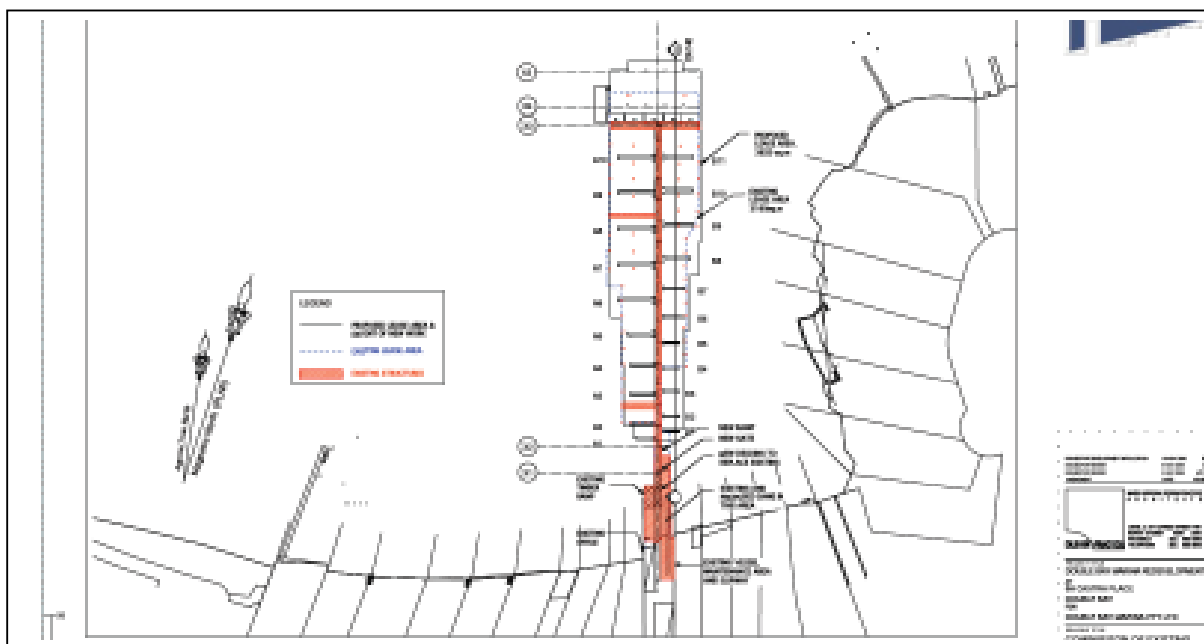


A summary comparison of the proposal considered in the *Double Bay Marina* proceedings with the current proposal and with the existing marina is included at the end of part 4 of this report. Comparisons are made in the following assessment of the impacts of the current proposal.

17.1 Visual impacts

- proposed increases in the size of the marina berths
- proposed increases in the number of marina berths
- changes to the footprint of the marina berths

The change to the footprint of the marina berths is illustrated in the following plan.



The other significant area of increase is at the south east corner. This represents an area occupied by 5x8m berths. There will also be some relatively minor changes to the eastern and western alignments of the leased area. Relevantly the proposed eastern and western alignments will be the same as the north east and north west corners of the existing leased area. The north east and north west corners will project 7.5m further to the north. These are the points most critical to visual impacts.

The application restricts the height of boats on 15.5m berths to 4.8m and 18m berths to 5m. Presently there is no restriction on the height of boats in any of the berths. The maximum berth length is currently 15.5m and vessels which use these berths generally do not exceed 15.5m.

[In *Addenbrooke Pty Ltd v Woollahra Municipal Council* [NSWLEC 10004 of 2009] and *Addenbrooke Pty Ltd v Woollahra Municipal Council* [NSWLEC 10005 of 2009]⁴ the Court imposed a 7m height restriction on 30m berths and a 6m height restriction on all other berths. The purpose of those restrictions was to minimise the visual impact of the proposed marina. The berth sizes in those cases varied from 15 to 30m and included 20m and 25m vessels.

In those cases the Court regarded a 6m height limit appropriate for berths in the range of 15.5m to 18m. This is 1m and 1.2m higher, respectively, than what the applicant is seeking approval for in the current application. Other factors need to be considered in applying restrictions to boat storage in Double Bay, such as the character of the bay and the nature of the areas from which visual impacts occur. However, that case demonstrates that, in principle, limiting the height of boats on berths is an appropriate means of mitigating the visual impacts of marinas.]

The proposal the subject of the *Double Bay Marina* proceedings would have extended the western alignment of the leased area by 42.5m (approx.) further to the west. The eastern alignment would have been 7.5m further to the west. This means that the westerly extension of the current proposal is 42.5m less than the previous proposal but the easterly extension is 7.5m more. This suggests that the current proposal would have significantly less impact on viewing locations to the south west but greater impact on viewing locations to the south east of the marina.

The *Double Bay Marina* proposal provided for a maximum berth length of 15.5m compared with the current proposal's maximum of 18m. This increase in the vessel size suggests possible increased visual impacts.

Impacts on the visual catchment

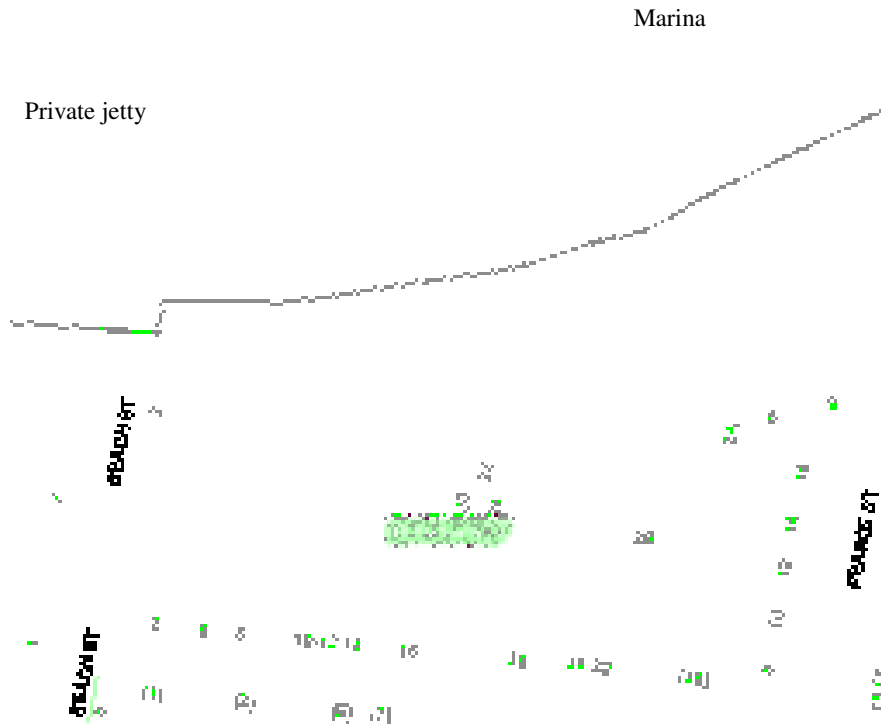
Viewing locations to the south west include the beach between the marina and the 18 Footers Sailing Club, and residential properties adjoining the beach. The beach is divided by a private jetty at Beach Street, about 125m from the marina. Along this section of the beach the intertidal zone is accessible to the general public from the west. Public access is subject to tide fluctuations and the restricted clearance under the suspended walkway of the jetty. Because of access constraints this section of beach is more conveniently used by the residents of the adjoining residential properties than by the general public.

Private residential properties, comprising 2 storey free standing dwelling and 3 storey inter-war residential flat buildings, have a direct frontage to this section of the beach. These properties have street access from either Castra Place, Stafford Street or Beach Street. The properties immediately to the west of the marina are occupied by detached, 2 storey dwellings. The lower floor levels and yards of these properties are level with the beach.

The properties further to the west are occupied by inter-war residential flat buildings, apart from the property on the corner of Beach Street which is a 2 storey semi detached style dwelling. These properties have low retaining walls abutting the beach which support elevated yards. Consequently, the ground floors of these buildings are also elevated in relation to the beach.

⁴ These proceedings related to the Council's refusal of development applications to redevelop the Rose Bay and Point Piper marinas

The relationship of these properties is demonstrated in the following plan.



Views from this section of beach and from the adjoining properties include the Darling Point and Point Piper headlands, to the west and east respectively, and the closer Gladswood Gardens headland. To the north the views include the northern foreshore from Cremorne Point in the west to Middle Head in the east. This encompasses views to Bradleys Head and Clark Island. Views of all of these features are not available from all parts of the beach or from all of the adjoining properties, e.g. views to Middle Head from the western end of this section of the beach are not available from the eastern end.

The visual impacts from these locations arise from the northerly extension of the marina and the increased size of the boats. The proposed north east corner of the leased area is 7.5m further to the north than the existing leased area. The largest marina berths at the northern end of the marina will be 18m compared with the existing 15.5m.. The maximum boat height proposed by the DA is 6m which applies to the 3 x 18m berths in the middle of the 'T' head. Presently there is no restriction on boat heights but generally the height of the biggest boats berthed at the marina does not exceed the 4.8m restriction intended by the DA for boats on the 15.5m berths. The proposed north western most berth is a 15.5m berth with a 4.8m height restriction.

The *Double Bay Marina* judgement includes the following comment under the heading *Visual and heritage impacts* regarding evidence given by the visual experts (Dr Lamb gave evidence on behalf of the applicant):

..... They (the visual experts) agree that the impact on the views from the ground floor of the single houses between the marina and the private jetty at the end of Beach Street is high, as the proposed marina would eliminate the views of Clark Island, and in some cases of Darling Point and Manly as well. They also agree that the view impact on the intertidal beach in front these houses is high. As for the apartment buildings between the marina and the private jetty, Dr Lamb assessed the impact as moderate, while the other two assessed it as high. Having visited the houses and apartments, I do not understand why Dr Lamb differentiates between

them: I found the impact very similar. I note that some of the houses have upper floors (albeit not used as living areas) from which the views would be less affected, while apartments do not have upper floors. This suggests that the impact on the apartments would be worse. (para. 39)

Under the heading *The public interest* the judgement includes the following:

It is common ground between the parties that the loss of views from the intertidal beach between the marina and the private jetty at the end of Beach Street constitutes a diminution of the public interest, in other words it is a public detriment. (para. 53)

The parties disagree, however, whether the loss of views from the ground floor of dwellings between the marina and the private jetty is a public or private detriment. In my opinion, the loss of these views is a private detriment. The owners or occupants of those dwellings do not constitute the “public” or even a “section of the public”. They are a collection of private interests. (para. 54)

It seems to me that the two matters that determine the fate of this application are the weight one gives to the loss of views from the intertidal beach and the balancing of the private benefit of better boat accommodation against the private detriment of view loss from the dwellings behind the intertidal beach. (para. 59)

In my opinion, the public interest of preserving the views from the intertidal beach, because of its low accessibility, should be given moderate weight. (para 60)

..... The detriment to the occupants of the dwellings is to deprive them of their water view, which is probably the amenity they value highest in their dwelling. It seems to me that better accommodation for one’s boat is a convenience, whereas the loss of water views is a devastating (and, in a waterfront dwelling, unexpected) experience. (para 62)

There are 10 private properties within this section of the visual catchment. At the eastern end is 6 Castra Place and at the western end is 1/2 Beach Street.

6 Castra Place is the property immediately to the west of the marina. There is a 2 storey dwelling on this property. The area from which the proposal will have greatest visual impact is the garden in the vicinity of the northern wall of the dwelling at ground floor. The existing view from this location to the north is constrained by the wall of the marina building to the east which obstructs the Gladswood Gardens and Point Piper headlands. Views are available of the waterway, including the marina and moored boats, Clark Island, the northern foreshore from Cremorne Point in the west to Taronga Park in the east, and the Darling Point headland. A hedge encloses the yard which limits some of the outlook.

The owner of this property did not lodge an objection to the DA.

The EIS includes a *Visual Impact Assessment*, by Dr. Richard Lamb, November 2009 (*the Lamb report*). It describes the visual impact of the proposal on this viewing location as follows:

This is a high viewer sensitivity close range view. The western wall of the adjacent property restricts views in the east direction and the existing marina blocks some views in the north direction. The vessels on the T-Head including the 18m vessels would be mostly screened in this view by vessels off the main spine of the proposed marina and would not cause any significantly increased view loss effects. Views of Clark Island would be retained to the extent possible in the present situation. There would be less visibility of marina structure due to the

floating pontoon style marina as opposed to the existing fixed timber jetty. The potential increase in the visual effects and impacts due to the proposed marina compared to the existing marina is assessed to be negligible (p.42)

From this location boats berthed on the proposed marina will closely align with the eastern side of Clark Island. However, they will not obstruct views of the Island itself. Views of the Island would also not be affected by boats occupying the services berth. Views of a section of the northern foreshore hillside, to the east of Clark Island, will be partly obstructed but the ridgeline will still be visible over the boats. Being the closest property to the west of the marina this location is potentially the worst affected from this section of the visual catchment (i.e. the area between the marina and the private jetty/Beach Street). However, the visual impacts are considered to be 'moderate' in the context of the range of impacts under the *Tenacity*⁵ planning principle.

From locations further to the west within this section of the visual catchment the relationship of the marina to Clark Island becomes more distant. From higher locations, i.e. the upper levels of the dwellings and flats/home units above the ground floor, existing views over the marina will be unaffected.

1/2 Beach Street is at the western end of this part of the visual catchment. This property is occupied by one of a pair of 2 storey semi detached style buildings (the adjoining property has its frontage to Beach Street and not to the beach itself). The ground floor is elevated in relation to the beach as is the yard area. There is a private jetty off the north western corner of the property which extends over the beach and projects into the waters of Double Bay.

The main location from which views from this property would be affected by the proposal is the patio on the northern side of the ground floor. Views from this location extend from the Darling Point headland in the west to parts of the Gladswood Gardens and Point Piper headlands, visible over the marina, in the east. The northern shoreline from almost Cremorne Point in the west to Middle Head in the east is visible. This includes the waterway, Taronga Park, Clark Island and Bradleys Head.

An objection was received on behalf of the owner of this property from ARPL. The objection summarises the impacts as follows:

In summary, the development will result in the loss of long-distance cross harbour views to Manly from your rear garden sitting area. We consider this impact to be significant. This view to Manly is iconic and is worthy of protection (as was similarly required by the Court in the appeal regarding Rose Bay Marina where a similar view to Manly was at risk).

The impact upon this view is attributable to the proposed re-orientation of berths at the northern end of the proposed marina. The north-western-most vessels would screen this view.

Modification to either the size of vessels to a length of 8.5m, or deletion of the western berths provided in that area of the marina, through condition of consent, would be sufficient to address this concern. This would require greater analysis to ensure that all impact would be addressed.

In all other respects, the scope of the proposed marina development appears acceptable.
The *Lamb* report describes the visual impact of the proposal from near this viewing location as follows:

⁵ The Land & Environment Court has adopted a Planning Principle for views based on the judgement handed down in *Tenacity Consulting v Warringah* (2004) NSWLEC 104. 'Moderate' is used to describe visual impacts which are medium, not extreme or excessive.

This is a high viewer sensitivity close range view. There are expansive highly scenic views from here spanning from west to east. The proposed marina would not cause a significant increase in the existing effects on the visual character and composition of the view and no unreasonable view blocking effect. The proposed increase in the northern extent by the vessels on the T-Head would not extend beyond the swing moorings that are visible in the view line towards Georges Heights / Manly. The potential increase in the visual effects and impacts due to the proposed marina compared to the existing marina is assessed to be negligible. (p.42)

From this viewing location the proposed marina will result in some of the outer part of the Point Piper being obstructed. However, the vast majority of the headland will be unaffected and it will remain clearly recognisable. There is also a narrow corridor between Point Piper and Middle Head headlands which allows restricted views towards Manly. This represents a very small percentage of views available from this property. Boats on the 'T' head will impede on this narrow corridor. The existing view is not uninterrupted due to the location of swing moored vessels. Also, the distance to Manly is about 9km. With boats on the 'T' head being berthed stern-in, from this viewing location, the boat on the western end will be viewed at an angle rather than directly from the rear. In the event that this berth is occupied by a motor boat of the maximum length and height (15.5m long and 4.8m high) distant high rise buildings in the proximity of Manly will still be visible. Using *Tenacity* terminology the degree of affectation would be 'minor', i.e. comparatively small in importance.

The view impact of the current proposal on this part of the visual catchment is substantially different to the proposal considered in the *Double Bay Marina* proceedings. Maintaining the existing western alignment of the marina means that the current proposal will have substantially less visual impact.

Further to the west of the private jetty/Beach Street the beach continues and there is a promenade that extends to the 18 Footers Sailing Club. It is an area readily accessible to, and frequently used by, the public. The promenade leads to the Double Bay public ferry wharf and Styne Park. The ferry wharf is located on the route operated by Sydney Ferries between Circular Quay and Watsons Bay. Adjoining the promenade are high walls which separate it from the yards of private residential properties beyond.

The *Lamb report* describes the increased visual impacts from a viewing point mid way along the promenade as follows:

An example of the view experience available from the beach in the vicinity of the existing marina. The views are panoramic and the scenic views span from southwest to east. The existing marina causes blocking effect of the views of the eastern shoreline of the Bay and of the Redleaf Pool. The small increase in the northern extent due to the vessels on the T-Head of the proposed marina, including the 18m vessels would not cause any significant increase in view blocking effect. Views further in the northeast direction towards Manly would still be retained. The removal of the fixed structure, piles and jetties of the existing marina would improve the quality of the view. The potential increase in the visual effects and impacts due to the proposed marina compared to the existing marina are assessed to be negligible. (p.41)

North easterly views of the northern foreshore from the promenade extend as far as parts of North Head. None of these views will be affected by the proposal. Neither will views from the private residential properties behind the promenade. As these properties have high walls separating their yards from the promenade/beach and because the dwellings are well setback from the promenade the visual impacts would be less than from the promenade.

Styne Park is the major open space area of Double Bay. It is bounded by Bay Street to the east, William Street to the south, Ocean Avenue to the west and the Harbour to the north. It contains playing fields, pathways and playground equipment. It has a direct frontage to the waters of Double Bay where there is a sandstone sea wall. The Harbour views from the park are contained by the headlands of Darling Point and Point Piper but they are still extensive. They include the northern foreshore from Taronga Park to Manly and part of South Head, encompassing Bradleys Head and Clark Island. These views will not be affected by the proposed marina extension.

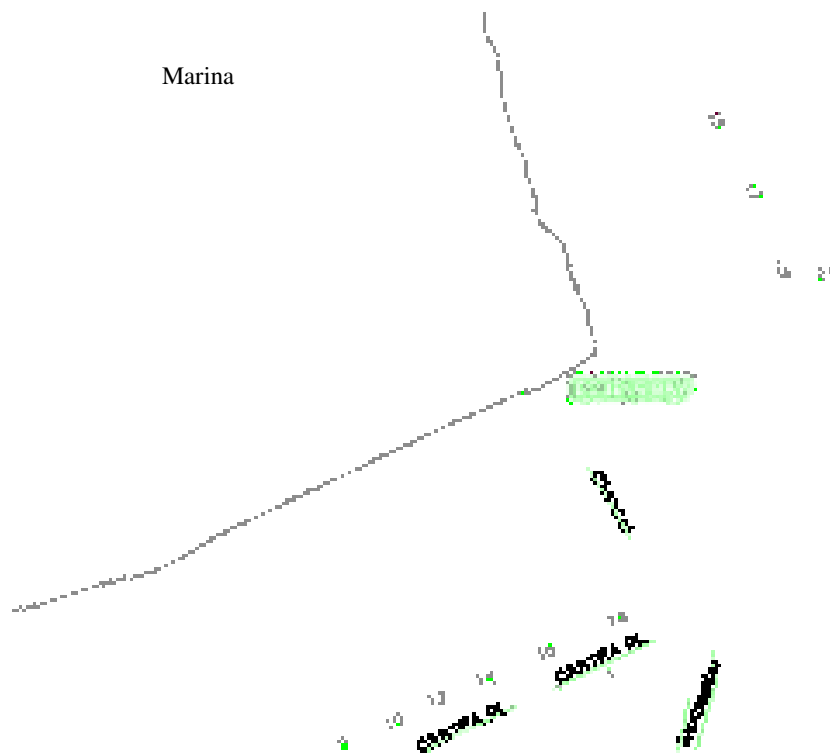
In terms of views to the east/north east, towards the marina, the public ferry wharf and the adjacent 18 Footers Sailing Club building form a visual barrier from most vantage points in the park. Views of the marina beyond the line of the wharf/club building are available from the north west corner of the park. Also, at the north east corner of the park views toward the marina are possible between the 18 Footers Sailing Club building and the boundary fence to the private residential property at the northern end of Bay Street. However, from these locations the proposal will not affect views of any significant features (i.e. Gladswood Gardens headland, Redleaf Pool, Seven Shillings Beach and Point Piper) and will cause no loss of visual amenity. This is due to the proposed extent of the northerly extension of the marina.

Similarly, views from the public ferry wharf to the east will not be affected and neither will visual amenity.

The Darling Point headland is to the west of Styne Park. The hillside is characterised by private residential properties extending to the Harbour shore line. The buildings are elevated in relation to the waterway and have Harbour views, including views in an easterly direction towards the marina. Whilst the marina will be visible from some of these properties its increase in size will be barely perceptible. This is due to the extent of the increase in size of the marina and the distance to the nearest properties, i.e. 400m (approx.). View loss and visual amenity from these properties is not considered to be an issue.

The properties to the east of the marina, i.e. between the marina and the stormwater canal/Sherbrooke Avenue, will be the most visually impacted properties. There are 5 properties in this area, 10, 12, 14, 16 and 18 Castra Place. The properties are occupied by 2 storey dwellings with sea walls at their harbour frontages. There is no practical public access to the area beyond the sea walls although the existing marina lease provides legal rights for public to access that area.

The relationship of those properties is shown on the following plan.



The existing views from these properties is contained by the Gladswood Gardens headland, the existing marina, vegetation and buildings on neighbouring properties.

16 Castra Place is 1 property to the west of the stormwater channel. From the main living area at the northern end of the ground floor the existing view includes the section of waterway to the east of the marina, the marina, Clark Island and high rise apartment buildings on Darling Point. The northshore ridgeline is visible from Cremorne Point in the west to Bradleys Head in the east. The northern shoreline is visible from Clark Island to Bradleys Head. Clark Island is in about the centre of the view and is visible from the shoreline to the ridgeline. If the existing outer berths of the marina were to be occupied the ridgeline would still be visible but the western part of the shoreline would be blocked.

The owner's of 16 Castra Place lodged an objection. The objection in relation to the size of boats proposes a compromise as follows:

1. *the length of boats at the end of the marina is restricted to 15.5m*
2. *no increase in the length of boats on the eastern side of the marina*
3. *the height of boats on the marina is restricted to 4.25m on the western side and 2.75m on the eastern side of the marina*
4. *the height of boats at the end of the marina matches the height restriction on either side of the marina. Accordingly, the boats in the centre and on the western side of the marina are restricted to 4.25m and the boat on the eastern side of the marina is restricted to 2.75m*

This compromise would mean the 3 x 18m berths in the centre of the 'T' head being reduced to 15.5m berths. Also, there are 11 x 15.5m berths on the western side of the marina where a height restriction of 4.25m would apply rather than the 4.8m sought by the DA. There are another 8 berths on the western side of the marina which would have a height restriction of 4.25m rather than the 3m proposed by the DA (this actually represents a height increase of 1.25m per berth). On the eastern

side of the marina 21 berths would be restricted to a height of 2.7m where as the DA proposes restrictions varying from 3m to 3.5m.

The *Lamb report* comments as follows on the potential increased visual impacts caused by the proposal on this viewing location:

An example of the small number of high sensitivity private domain viewing locations east of the marina in Castra Place. The western wall of the property blocks the view to the west and the existing marina blocks views of a very small part of Clark Island, a small section of the far shoreline and parts of the water of Sydney Harbour. The 18m vessels on the T-Head of the proposed marina would not cause a significantly greater effect than approved 15m vessels in the same location that are not subject to any height controls. The removal of the fixed structure, piles and jetties of the existing marina would improve the quality of the view. It is assessed that the potential increase in visual effects and impacts due to the proposed marina compared to the existing marina would be negligible to low.

Under the proposal the subject of the *Double Bay Marina* proceedings, although the main walkway was orientated more easterly than now proposed, no berths were to be located on its eastern side. Therefore, this proposal will have increased impacts, including visual impacts, on those properties located to the east of the marina.

The proposed northerly extension of the leased area and the reorientation of berths from parallel to perpendicular to the 'T' head would obstruct views of the shoreline of Clark Island to all but its eastern end. The ridgeline of the Island would remain visible over the boats. The proposed increased height of vessels which can be accommodated on the 'T' head berths would add to the extent of the Island's ridgeline which would be lost from view. Based on *Tenacity* ratings the impact from this viewing location is considered to be moderate.

It is considered that the 18m berths on the 'T' head are excessive. They exceed the existing maximum berth length and are also longer than the 15.5m proposed by the previous DA, the subject of the *Double Bay Marina* proceedings. The height of these berths should be restricted to the 4.8m which is proposed by the DA to apply to the other 15.5m berths. This would keep the size of boats commensurate to what was referred to in the *Double Bay Marina* judgement as *small scale and permeable visual character of the Bay*. (para. 62). It would also reduce visual impacts on properties in the vicinity to an acceptable level.

10 Castra Place adjoins the eastern side of the marina. The existing view from the northern yard is similar to that previously described for 16 Castra Place. The Gladswood Gardens headland is more visible but Clark Island is only partially visible above the existing boats berthed on the marina.

Objections were received from 14 and 18 Castra Place. These objections included similar concerns regarding loss of views, i.e. boats on the 'T' head will create a "wall of boats" affecting views to Clark Island and to the west and north. From 14 Castra Place the ridge of Clark Island is presently, partially visible over boats on the marina berths. Provided the berths on the 'T' head are limited to 15.5m with a 4.8m height restriction the impact on the views of Clark Island will not be unreasonable. From 18 Castra Place the view of Clark Island will not be affected. Views from these properties to the west and north will only be marginally affected involving small areas of Darling Point and the northern foreshore. By *Tenacity* standards the view affectation is considered to be 'minor'.

No objection was received from 10 Castra Place. An objection was received from 12 Castra Place but it did not raise view loss as an issue.

Properties on the Gladswood Gardens headland will be largely unaffected in terms of visual impact. This is primarily because they are elevated sufficiently to maintain views over the proposed marina and because of the similarities between the existing and proposed marina footprints.

Views from points further to the east, i.e. Redleaf Pool, Seven Shillings Beach and Point Piper will be largely unaffected. The overall extension of the proposed marina 9m to the north is relatively minor. Notwithstanding the proximity to the Gladswood Gardens headland the extension will not confuse the interpretation of the secondary headland or interfere with the sweep of the Bay.

Other factors relating to visual impact

Other matters to consider in relation to visual impact are the comments made by Council's Urban Design Planner, refer annexure 7. He carried out an assessment as required by the SHDCP, appendix D, including a visual impact assessment matrix. His *Summary of Visual Assessment and Recommendation* are as follows:

5.6 Summary of Visual Assessment

The principle impact of the proposal is on the beach and the properties directly adjacent to the beach, between the marina and the private wharf at the end of Beach Street.

The impact to these properties is slight and incremental. These properties are well endowed with environmental amenity, including direct access to the beach and to open water.

The slight impact on the view from the eastern section of the beach is not (sic) considered to have no impact on the quality of the public domain. When considering the impact of the proposal on the public domain as a whole the change is considered very minor.

6. RECOMMENDATION

That the urban design impacts of the proposal are acceptable for the following reasons:

- 1. The incremental increase in the visual impact of the proposed marina extension is minor.*
- 2. There are minor potential visual benefits to the proposal.*
- 3. The (sic) no properties are significantly affected by the proposal.*
- 4. The public domain is not impacted on.*
- 5. The location is relatively secluded and the proposal does not affect the character of the location.*

The proposal in its revised form is acceptable.

The SHREP Advisory Committee also made comments relating to visual impact related matters, see annexure 11. The comments specifically concern the height and material of piles. These matters can be dealt with as conditions of consent.

The visual impacts of the proposal are considered to be acceptable subject to the 3x18m berths being changed to 3x15.5m berths with a height restriction of 4.8m. The 18m berths are considered to be excessive in terms of the matters under the SHREP and SHDCP that are required to be taken into consideration in assessing the visual impact of marinas. Comments in relation to these matters are included in the SHREP and SHDCP compliance tables, see annexures 13 and 14. Also, 15.5m berths is the maximum presently permitted on the marina and was also the maximum proposed in the *Double Bay Marina* proceedings. The judgement in those proceedings comments on the character of the Bay as being *small scale and permeable* (p.62). Maintaining the existing maximum berth length of 15.5m and keeping a similar footprint to the existing marina will ensure that the

character of the Bay is not compromised notwithstanding that there will be an increase in the number and the maximum length of berths.

The reduction in size of the 3x18m berths will also reduce the visual impacts of the proposal in terms of the surrounding residential properties. It is acknowledged this will not address all of the specific concerns regarding visual impacts raised by some nearby property owners. However, the proposal is considered to be of an appropriate scale in the context of Double Bay and in terms of the reasonable expectations of surrounding property owners and the provisions of the SHREP and SHDCP.

There are also benefits in terms of visual impacts related to the design concept of the proposed marina:

- the substitution of floating pontoons for fixed timber jetties will reduce the visibility of the fixed components of the marina berths
- the floating pontoons are designed to have a freeboard of 400mm whereas, when the tide is zero FDTG, the existing jetty is approximately 2.4m higher than the water level
- the proposed design incorporates telescopic piles to hold the floating pontoons in place - these will replace 138 existing piles which are presently visible above the water level

Also, there will be a corresponding reduction in the number of commercial swing moorings in relation to the increase in the number of marina berths. It is generally accepted that marina berths are visually less acceptable than swing moorings. Nevertheless, the area of waterway in the vicinity of the marina which is currently occupied by swing moorings will be reduced by 6,618m².

17.2 Traffic and parking

The EIS includes a report, *Traffic and parking assessment of proposed modifications to Double Bay Marina*, July 2009, prepared by Christopher Hallam and Associates Pty Ltd (*Hallam report*).

The proposal was also referred to the Council's Traffic Engineer who provided a response dated 11/12/09, see annexure 2.

The *Hallam report* refers to a number of surveys carried out at the Double Bay Marina and also at the Rose Bay, Point Piper and Cruising Yacht Club of Australia marinas. The surveys relate to establishing car parking rates generated by marinas. The surveys looked at car parking rates generated by marina berths and swing moorings, usage rates of boats on marina berths and swing moorings, the number of people who use boats on marina berths and swing moorings (group sizes) and the impact of boat length on car parking demand.

Using the findings of the surveys, the report provides the following average parking demand:

- | | |
|-----------------------------------|--------------------------------|
| • Mean parking demand per berth | 0.161 cars/berth/weekend day |
| • Mean parking demand per mooring | 0.244 cars/mooring/weekend day |

The report also includes mean parking demands based on Summer surveys of the Rose Bay Marina:

- | | |
|-----------------------------------|--------------------------------|
| • Mean parking demand per berth | 0.238 cars/berth/weekend day |
| • Mean parking demand per mooring | 0.362 cars/mooring/weekend day |

The difference between the mean parking demands for berths and moorings remains constant, i.e. moorings generate 51% greater demand than berths.

The report then makes a comparison between the mean parking demand based on surveys undertaken at the Double Bay Marina for Easter and December as follows:

Summer and Easter mean parking demand		
	Easter	Summer
Demand per berth	0.212	0.144
Demand per mooring	0.370	0.240
% difference	+75%	+67%

The report establishes that, based on the surveys, there is a consistent pattern of higher parking demand for moorings than for berths. Hence, as this proposal maintains the same number of boats (65) but reduces the number of moorings (25 to 20) and increases the number of berths (40 to 45), the car parking demand of the proposed marina will be less than for the existing marina.

Regarding the influence of boat length on car parking generation the report concludes that, based on the increased average length of boats on the existing marina as compared to the proposed marina (i.e. the proposal would increase the average length of boats by 3%), increased boat length will not impact on parking rates.

The *Hallam report*, in discussing the car parking generation rates for marinas in Council's Car Parking DCP, considers the car parking generation rates (i.e. 0.6 spaces/berth and 0.2 spaces/swing mooring) to be out of date. This is because they appear to have been based on the earlier version of AS 3962-1991 *Guidelines for design of marinas* whereas the current 2001 version has the same rate for berths and moorings, i.e. 0.3-0.6. The car parking generation rates under the DCP and AS were discussed earlier, see parts 15.2 & 15.3.4 of this report.

Other matters covered by the *Hallam report* are:

- The services berth is not a casual berth and its use will therefore not give rise to any additional parking demands
- The Marina's Transport Management Plan will encourage marina users to use the nearby Cross Street car park – surveys of vacancy rates within the car park indicate that it has ample spare capacity
- Construction materials and equipment will be delivered by water, therefore, there will be no truck movements to or from the site; demolition material will be removed by barge; recommends a construction zone be provided at the north-western corner of Pearce Street (note: the location and nature of any work zone would be subject to Council approval) ; workers arriving by road will be instructed to park in the Cross Street car park

Council's Traffic Engineer referral response looks at car parking generation based on AS 3962-2001 (discussed earlier), the RTA Guidelines for Traffic Generating Developments and the information contained in the *Hallam report*.

The RTA Guidelines use the same car parking generation rates for berths and moorings as Council's Car Parking DCP, i.e. 0.6 spaces per berth and 0.2 spaces per mooring. However, the Guidelines preface the use of these car parking generation rates with:

If a survey is not conducted of similar developments, the following levels of parking are recommended

In this case surveys have been conducted.

The Traffic Engineer's referral response in relation to parking concludes with:

Based on the above figures and the methodology used by AS 3962-2001 and the survey suggested by the RTA document, it appears that it would be impossible to establish that this development would have an adverse effect on available parking in the vicinity of the development site.

The response in relation to traffic circulation in Castra Place and traffic generation in surrounding streets is as follows:

Traffic Circulation in Castra Place:

*Based on the number of vehicles requiring parking and the fact that **no** parking is currently provided on-site, it is considered that there would be a considerable level of disruption for residents of Castra Place in the pick-up and drop-off of passengers to the boats moored in Double Bay. However, as the development can only deal with the increase in vehicles generated by the development and the 2 of the 3 methods used to establish this demand fail to indicate that the development will increase parking demand in the area, it would be difficult to suggest that this development is exacerbating the pick-up and drop-off of boat passengers over what currently occurs.*

Traffic Generation in Surrounding Streets:

For the same reasons as espoused in the first 2 sections of this report for the parking and traffic circulation in Castra Place, the effect of traffic generation by the development on the streets surrounding 8 Castra Place is considered insignificant.

The *Double Bay Marina* judgement discusses traffic and parking impacts at paragraphs 27-32. The proposal in those proceedings was for 51 berths and 14 moorings. By comparison, using the Easter car parking generation rates from the *Hallam report*, the proposal in the *Double Bay Marina* proceedings would have generated a parking demand of 16 spaces ($51 \times 0.212 + 14 \times 0.370$) as compared to the current proposal's 17 spaces (the existing marina generates 18 spaces using these generation rates).

In those proceedings the Council argued that the proposal was for a new marina and therefore it should comply with the Parking DCP. The Senior Commissioner dismissed this argument as follows:

..... Ms Levy's (Council's expert witness on traffic and parking) main point is that the application is for a new marina and should therefore comply with the Parking DCP. In support of her argument she cited the example of a new apartment building. If a new apartment building is built on the site of an existing one that provides no parking; the council would require it to comply with the current parking code.

There is a flaw in Ms Levy's argument. A new apartment building can provide on-site parking by digging underground. The renewed marina cannot do so. (pp.29&30)

The judgement then goes on to say:

..... While the applicant has offered to acquire parking spaces in the parking station at the corner of Cross Street and New South Head Road, in my opinion, this is not a good solution, since it permanently removes spaces from a public parking station for the use of boat owners who might use them only rarely. If, however, the boat owners use the parking on a casual basis, those spaces are available to the public at other times.

It is clear that the existing users of the marina now make their arrangements for parking for better or for worse. These arrangements may be inconvenient to them and also inconvenient to nearby residents. The approval of the application would not increase the inconvenience. Its refusal would not reduce it. Planners and traffic engineers should accept that some situations just do not lend themselves to a neat and tidy solution.

In my opinion, the lack of parking and loading is not a reason for refusing the application.
(pp.30-32)

No marina parking or loading facilities are currently provided on site. Existing buildings/structures on the land based component of the site make it physically impractical to provide such facilities on site. The surrounding streets are predominantly residential within which resident parking schemes operate. Although no information regarding on street parking availability has been provided with the DA, parking spaces in the vicinity of the marina are in high demand. This is mainly due to the lack of on site parking on the residential properties as a consequence of changing vehicle use since the area was originally developed. This is evidenced by the need to establish resident parking schemes.

The proposal does not provide for any on site parking or loading facilities. The *Hallam report* maintains that the proposal will not increase the demand for parking and may actually reduce demand as compared to the existing marina operations on account of the change in the mix of berths and moorings. This view is not challenged by the Council's Traffic Engineer. The *Double Bay Marina* judgement makes it clear that the impracticability of providing on site parking should not be used as some kind of veto on the marina being redeveloped.

Parking and traffic issues have been raised in numerous submissions received from surrounding residents as a result of the DA being publicly exhibited. This is mainly based on anecdotal observations of existing problems experienced in the surrounding streets. These observations are not disputed. However, on planning grounds, it is considered that the absence of on site parking and loading facilities is not reason enough to refuse this proposal. This is because, based on the available information, it is not possible to conclude that the proposal will result in a substantial, or any, increase in demand for parking or loading facilities. The traffic and parking problems currently being experienced will not be worsened and may, in fact, be marginally improved.

Under *State Environmental Planning Policy (Infrastructure) 2007* (Infrastructure SEPP) certain traffic generating developments are required to be referred to the RTA for comment. The size/capacity of this proposal is not considered to trigger the need for referral under the Infrastructure SEPP. The proposal was referred to the RTA under cl.77 of the Regs (as an authority who may have an interest in the determination of the application). The RTA advised that it will not object to the proposal as it considers that there will be no significant traffic impact on the state road network.

In the circumstances the proposal is considered to be acceptable in terms of traffic and parking considerations.

17.3 Marine ecology impacts

The EIS includes a report on marine ecology, *Aquatic ecological assessment of proposed redevelopment of Double Bay Marina*, dated November 2009 (version 3) by W.S. Rooney & Associates Pty Ltd (*Rooney report*).

The *Rooney report* includes the following:

- Description of aquatic habitats, i.e. unvegetated or sparse algal-colonised sediment; seagrass beds; rocky shore; timber piles; and sandy beach
- Discussion of:
 - Biological assessment in a highly disturbed ecosystem
 - Risk to aquatic flora and fauna from the proposal
 - Aquatic threatened species and protected species in NSW, including:
 - Fisheries Management Act, 1994
 - NSW Threatened Species Act, 1995
 - Matters of national environmental significance (EPBC Act)
- Mitigation measures:
 - Minimise risk to protected species
 - Minimise dispersal of *Caulerpa taxifolia*
- Summary and conclusions

The summary and conclusion includes:

Therefore, if the mitigation measures recommended in this report are implemented, we consider that the proposed redevelopment of the Double Bay Marina will have the following aquatic ecological impacts:

- *A temporary loss of epibiota removed during pile removal: this will also result in a temporary loss of habitat for fish and other mobile species that would utilise the piles and associated epibiota for foraging and protection; this community is expected to recover within 12-18 months. The new epibiotic assemblage is likely to be slightly different from the existing assemblage due to different shading characteristics.*
- *No increased contribution to dissolved metals in Double Bay from antifoulant paints*
- *The likely loss of one small patch of *Halophia ovalis*; otherwise, no significant impact on seagrasses from shading or turbidity resulting from construction or commissioning of the new marina.*

*This project is considered to have a short-term impact on benthic epifauna on piles within the area affected by reconstruction, but in the longer term there could be a net benefit to the unvegetated soft-bottom habitat at the marina, particularly where large mats of suspended *Gracilaria wrack* are removed. With adequate mitigation measures to prevent suspended solids that are disturbed during construction from dispersing and smothering adjacent areas, we consider the proposal to be environmentally sustainable.*

The recommended mitigation measures contained in the *Rooney report* relate to protecting any Syngnathiformes (seahorse, pipefishes and similar related species) during the process of removing the existing piles. It is also recommended that the declared noxious pest algae *Caulerpa taxifolia*, which has been found near some of the outer piles, be removed. As it is not present in high densities its removal is considered to be achievable. After the reconstruction is complete, it is recommended that an aquatic ecologist reinspect the site for any remnant specimens of *Caulerpa taxifolia*, and remove any that may have re-established. The condition and extent of any *Gracilaria wrack* on nearby seagrasses could also be confirmed at the same time.

The proposal was referred to NSW Industry & Investment under the integrated development provisions of the Act as, in addition to development consent, approval is also required under the

Fisheries Management Act 1994 (FMA). By letter dated 17/12/09 NSW Industry & Investment provided its general terms of approval. These include a requirement to obtain a permit to harm marine vegetation under the FMA, s.205; environmental safeguards (silt curtains, booms, etc); appropriate deposition of demolition waste; construction materials should not be deleterious to marine life; and, all other relevant authorities having no objections. These general terms of approval are required to be included as conditions should consent be granted to the DA.

In the *Double Bay Marina* judgement, ecological impacts including wave action, is discussed at paragraphs 22-26. The issue which the Court was left to decide was the paucity of sampling to indicate the concentration of copper in the area to be dredged. The Senior Commissioner considered further sampling unnecessary and commented as follows:

It seems to me that further samplings are likely to confirm that the copper concentration to the east of the existing marina is high. I think this fact was indeed the result of untreated drainage coming from council's drainage outlet (which is likely though not proven), it would not justify the refusal of the application. There is therefore no point in requiring further samplings. As a general principle, one should not require more information unless that information is crucial to a decision. (p.25)

A major difference between the current proposal and the proposal the subject of the *Double Bay Marina* proceedings is that no dredging is proposed as part of the current proposal. The previous proposal sought approval for dredging 4,800m³ of the sea bed as part of that redevelopment. It has been noted that NSW Maritime has granted approval for maintenance dredging. Maintenance dredging is development permissible without development in the W1 and W5 zones under the SHREP. This dredging is required for the continued operation of the current marina and will be necessary regardless of whether the current proposal proceeds.

In relation to contamination the EIS states:

..... it is proposed to cut the existing piles off at the base so as not to disturb the sediment and to use a vibration system for the provision of the new piles that will allow their placement without significant disturbance to the sediment. (p.24)

The Waterways Advisory Committee recommendations include that the consent authority:

- d) Requires the applicant to completely remove all existing piles from the seabed in accordance with NSW Maritime's standard requirements.*
- e) Requires the applicant to remove the existing piles from the seabed in a manner which minimises both disturbance of the seabed and impacts on the aquatic environment.*

It is considered that these recommendations should form part of any consent. As removal of the piles may disturb contaminated sediment precautions to prevent sediment migration to other areas will need to be implemented.

Having regard to the *Rooney report*, the response from NSW Industry & Investment and having regard to comments contained in the *Double Bay Marina* judgement, the proposal is considered to be satisfactory with regard to marine ecology impacts. Should consent be granted conditions should be imposed regarding mitigation measures contained in the *Rooney report* and to prevent the migration of contaminated sediments, particularly during the process of extracting existing piles. The relatively minor change between the existing and proposed marina footprints is not considered to give rise to any unacceptable impacts on the beach environment. In this regard the *Double Bay Marina* judgement included the following comments:

I turn to the impact of increased wave action. The net effect, however, is a reduction in width (of the beach). This is undoubtedly a negative effect of the proposal. In view of the fact that the Mean High Water Mark changes over time as a result of natural forces, I do not consider it a major negative. If it were the only negative outcome of the proposal, it would not be sufficient to justify its refusal. (p.26)

The effect on the beach considered in relation to the *Double Bay Marina* proposal was considerably different to the current proposal. It extended the marina berths significantly further to the west, across the beach. The marina redevelopment as now proposed is considered to have less impact on wave action and therefore the less impact on the beach environment.

17.4 Acoustic impacts

An acoustic report was submitted as part of the EIS, *Proposed upgrade of Double Bay Marina operational and construction noise assessment*, prepared by Heggies, dated 17 September 2009. A revised acoustic report was prepared by Heggies, revision 1, dated 11 March 2010 (*Heggies report*). The revised report was submitted following comments in the referral response from Council's Environmental Health Officer, see annexure 4. It contains:

- Additional information regarding the impacts of engine noise on sleep disturbance
- Additional recommendations regarding operational noise relating to:
 - Cleaning of boat hulls
 - The air compressor
 - Work practices to reduce the simultaneous operation of noisier equipment
 - Potential future construction of an acoustic enclosure for the maintenance area

Council's Environmental Health Officer also commented on the revised report, see annexure 5.

The *Heggies report* identifies 3 potential noise sources likely to impact on nearby residences, operational noise, maintenance noise and construction noise. It establishes project specific operational and construction noise goals. Operational noise goals have been established by applying noise criteria based on the NSW Government's *Industrial Noise Policy*, 2000 (INP), and applicable notes, to measured background noise levels. Construction noise goals have been established by reference to DECCW's *Interim Construction Noise Guideline*, July 2009.

Operational activities relate to boats arriving at and leaving the marina. Although the marina office will be open from 9am to 6pm, 7 days during summer and 9am to 5pm 7 days during winter marina users will have 24 hour access. Using computer modelling the *Heggies report* predicts that noise levels comply with the project specific noise criteria except for the closest eastern residence where a minor exceedance of 1dBA is predicted. In relation to sleep disturbance criteria, operational activities associated with people talking outside the marina office and in the pedestrian laneway and the disposal of bottles has the potential to exceed the sleep disturbance screening level.

In relation to engine noise, vessels arriving/leaving on the eastern side of the marina would exceed the pre and post midnight screening levels by 4 & 6 dBA respectively. Vessels arriving/leaving on the western side of the marina would exceed the post midnight screening level by 1 dBA. The *Heggies report* maintains that the operational noise is unlikely to result in awakening reactions due to:

- the low number of boat movements between 10pm and 7am
- the small number of existing boats with bow thrusters is not anticipated to increase; the bow thrusters are used only to avoid collisions
- noise levels are below 60dBA
- talking and bottle disposal activities can be adequately addressed in the Marina Management Plan

Council's Environmental Health Officer agrees with these assertions. Also, these operational activities currently occur and are unlikely to significantly increase as a consequence of the proposed marina redevelopment.

Regarding mechanical plant, such as air conditioners, sewerage pumps, fixed maintenance plant and water and air compressors, the Environmental Health Officer comments that, in order to maintain consistency, that noise emission from these sources should satisfy Council's Noise Criterion for Mechanical Plant and Equipment, i.e. noise measured at any boundary of the site at any time must not exceed the background noise level. This can be achieved by a condition on a consent.

Maintenance activities, associated with the workshop area would be conducted only during the marina's office hours. Council's Environmental Health Officer has maintained that noise levels which exceed the project specific daytime noise goal by 28 dBA are unacceptable (the *Heggies report* states that noise associated with the use of the pressure cleaner will exceed the noise goal by 28 dBA). Apart from the pressure cleaner, mitigation measures contained in the *Heggies report* for maintenance activities include:

- air compressor – acoustic enclosure/workshop location or replacement with a quieter unit
- the introduction of work practices to reduce the simultaneous operation of noisier equipment, e.g. the use of the pressure cleaner and angle grinder
- potential construction of an acoustic enclosure for the maintenance area

In response to concerns mainly relating to the pressure cleaner the applicant agreed to limit the use of water jetting to 1 hour a day Monday to Friday and that this occur initially on a trial basis. The Environmental Health Officer advised that this satisfied his concerns regarding noise generated by maintenance activities.

Also, the maintenance activities are currently being conducted. It is unlikely that the activities would increase in any appreciable way as a consequence of the proposed redevelopment. The mitigation measures now being proposed will create more stringent conditions applying to maintenance activities than what presently exist.

In the circumstances noise associated with maintenance activities is considered to be satisfactory in terms of the amenity of the surrounding residences provided the mitigation measures are incorporated into the terms of any approval.

Construction activities are estimated to take 13 weeks in total including 4 weeks to install the new piles, the noisiest of the activities. Using a number of different piling options the maximum construction noise levels would exceed the Noise Management Level (NML) by 38 dBA.

The *Heggies report* includes a range of measures to mitigate against noise associated with construction activities. These are based on DECCW's *Interim Construction Noise Guideline* and AS 2436-1981 *Guide to Noise Control on Construction, Maintenance and Demolition Sites*. They include operational strategies, source noise control strategies and community consultation. Reference is also made to mitigation measures relating to the impact piling rig operations such as the use of shrouds.

Council's Environmental Health Officer is in agreement with the noise mitigation measures for construction activities contained in the *Heggies report*. He also makes specific recommendations for the monitoring program during the construction phase.

With construction noise the reality is that NMLs will be exceeded. It is a matter of managing the activities so that the noise generated does not unreasonably impact on the amenity of surrounding properties. Subject to the mitigation measures discussed above noise associated with construction activities is considered to be acceptable.

17.5 Heritage

Sydney Harbour is an item of environmental heritage item under the *Heritage Act 1977*, s.170. The definition of Sydney Harbour includes all tidal bays connected with the Harbour and all waters bounded by the mean high water mark. That part of the site of the Double Bay Marina below the mean high water mark is therefore part of an item of environmental heritage.

The following heritage items, as identified by the *State Heritage Register*, the SHREP and/or the WLEP, are located in the vicinity of the development site:

- Double Bay Compressed Air Ejector Station (*State Heritage Register*)
- 11 Gladswood Gardens, Double Bay, *Gladswood House* – building (*State Heritage Register*/WLEP)
- *Gladswood House - private jetty*, 11 Gladswood Gardens, Double Bay (SHREP, item no. 52)
- *Site of public wharf (now occupied by new wharf)* Bay Street, Double Bay (SHREP, item no. 66)

- 21 Gladswood Gardens, Double Bay – *house, stone works* (WLEP)

Council's Heritage Officer provided a referral response (see annexure 6) which makes an assessment of heritage impacts on these items. The response concludes:

The application is acceptable as it complies with the relevant heritage conservation provisions of these statutory and policy documents associated with the site and would have a satisfactory heritage impact.

The Heritage Officer recommends an advising be included related to archaeological potential related to the *Ellen A Reid*, a 1,790 tonne cargo ship which caught fire and was beached in Double Bay in 1896.

The Department of Planning's Heritage Branch were notified of the DA under the Regs, cl.77, i.e. as a public authority which may have an interest in the determination of the DA. The following comments were provided:

- *Whilst the current DA for the re-development of Double Bay Marina is considerably more sympathetic to the landscape than its previous incarnations, the additional visual impacts that the new Marina would have on the view lines and historic setting from the State Heritage Listed Gladswood property should be taken in to account when deciding upon its viability.*
- *A search of the NSW Shipwrecks Database shows that the 'Ellen A Reid', a 70.25m, 1790 tonne cargo ship caught fire and was beached in Double Bay in 1896. Whilst the wreck was refloated, there could be relics associated with that incident still located in and around the area of the Marina. The possibility that any such relics could be impacted by these works will need to be considered and an appropriate mitigation strategy put in place should this occur including all necessary permits under the NSW Heritage Act.*

The response from Council's Heritage Officer responds to the specific matters raised in the Heritage Branch's comments.

The *Double Bay Marina* judgement included comments on heritage impacts at p.37:

..... The main heritage issue appears to be the impact on Clark Island, which is a heritage item on the Sydney Harbour REP. Clark Island is more than 1km away from the marina and it seems to me absurd for the council to pretend, in its eagerness to add another matter to an already long list of contentions, that the proposal would have any impact on it. The heritage experts were not required for cross-examination (even though they disagreed on every important contention), which seems to me a confirmation of the fact that there is no genuine heritage issue in this case.

The 'impact' on Clark Island was visual rather than physical. The current proposal has significantly less visual impact on Clark Island than that which was the subject of the *Double Bay Marina* proceedings.

Subject to the advising recommended by the Council's Heritage Officer, the proposal is considered to be satisfactory in term of heritage considerations.

17.6 Other issues

17.6.1 Navigation

The EIS includes the following statement in relation to waterway navigation:

The proposal only slightly increases the area of the waterway occupied by fixed berths. This increase will not hamper navigation of the waterway. Further, the proposed removal of 5 swing moorings will significantly decrease the total area of the waterway affected by boats associated with the development.

This statement is considered to be a reasonable summation of the situation regarding navigation.

In relation to matters raised in submissions about the relinquishment of swing moorings, possible impact on nearby private swing moorings (those operated by NSW Maritime) and the future use of the water space, an email in the following terms was sent to the marina manager from NSW Maritime's Operations Supervisor Sydney Harbour:

In regards to your relinquishment of 5 commercial mooring sites for 5 marina berths I quote as per the letter sent to your Engineer, Mr Howard Bersten 11 June 2008 from the General Manager.

"NSW Maritime's intention is that the water space created by surrendering of moorings be reserved for unobstructed navigation, that is, it will be free of swing moorings or other built structures.

The water space will remain under NSW Maritime's management as a public resource for shared use by all water users. There are no plans to establish private moorings, in essence the area would be regarded as a fairway."

This has not changed in regards to your current proposal.

NSW Maritime was also notified of the proposal under cl.77 of the Regs as an authority which may have an interest in the determination of the DA. Their response did not raise any navigational matters.

In *Double Bay Marina* judgement the issue of navigational safety was discussed (pp.33-36). Relevantly, it says:

The Court heard the evidence of Mr P Burge, a marine engineer retained by the council and Mr H Bersten, a consultant retained by the applicant. The experts agreed that there were no issues of safety that justified refusal of the application. (p.33)

It is considered that the proposal is satisfactory with regard to navigational matters.

17.6.2 Climate change

"Global warming" refers to a rise in global temperatures that has coincided with human induced (anthropogenic) increases in concentrations of greenhouse gases in the atmosphere. The "greenhouse effect" is the name given to the natural build up of greenhouse gases in the lower atmosphere that prevent heat from the sun's rays from escaping back into space. When the balance of greenhouse gases is disrupted, more heat is trapped and the earth gradually heats up. Carbon dioxide (CO₂) through the burning of fossil fuels and land clearing is the most important anthropogenic greenhouse gas. Other important anthropogenic greenhouse gases include methane (CH₄), nitrous oxide (N₂O) and various forms of fluorocarbons.

An objective of *Woollahra Local Environmental Plan 1995*, cl.2(2)(j) is:

(j) in relation to global warming –

- (i) to promote energy conservation measures,*
- (ii) to promote energy-efficient building development and mass transport systems, and*
- (iii) to ensure that new development takes account of global warming effects,*

The proposal will not contribute unacceptably to global warming as its purpose is effectively to store boats. The proposal is in response to an existing and/or future demand for big power boats, as identified in the then Department of Infrastructure, Planning and Natural Resources' *Boat Storage Policy for Sydney Harbour*, June 2004. Whether these boats are stored at Double Bay or at some other location will not alter the volume of greenhouse gas emissions. There is no evidence to suggest that the proposal itself will result in an overall increase in the number of large power boats.

Any impact on air quality in the vicinity of the proposed marinas, which is different to global warming, is likely to be imperceptible given:

- the number of boats will remain the same – although it is acknowledged that bigger power boats use more fuel than smaller power boats and sailing boats (which still have motors which are used particularly for manoeuvring, e.g. berthing)
- different patterns of boat use - information collected during traffic surveys indicates that boats on marina berths are used less frequently than boats on swing moorings. The proposal will reduce the number of boats on swing moorings and increase the number of boats on marina berths
- dispersion of air pollutants by prevailing winds.

Changes to water levels associated with global warming may have an impact on marina design. The proposal has been designed to levels recommended by NSW Maritime. The inherent design of the proposed floating pontoon marina, as opposed to fixed structures, is better suited to sea level changes.

For planning purposes the NSW Government has adopted sea level rise benchmarks of 0.4m by 2050 and 0.9m by 2100. According to the SHDCP the highest astronomical tide is 1.175 AHD (2.1 ZFDTG). The existing deck/jetty section which is to remain is RL 1.5 AHD and the floor level of the marina building is about RL 1.9 AHD.

By mathematical (rather than scientific) interpolation, applying the NSW Government's sea level rise planning benchmark for 2050 the existing deck/jetty would be 0.075m below the water level at high tide. Using the 2100 benchmark it would be 0.575m below the water level. In relation to the floor level of the marina building using the 2050 benchmark the water level would be - 0.325m whereas using the 2100 benchmark the water level would be +0.165m. These figures do not take into account wave action and vessel wash which are likely to be minimal due to the wave attenuation action of the floating pontoons and limited vessel access on the adjacent water area.

The design of the proposed marina, comprising floating pontoons, will be more responsive to sea level rise than the existing fixed jetties. The impacts on the existing section of jetty to be retained and the marina office will have to be eventually dealt with as will the impacts on other low lying properties that are in close proximity to the ocean. It would be appropriate to bring this issue to the applicant's attention through an advising on any consent.

Other consequences of sea level rise include increased water depth which should lead to a reduced need for maintenance dredging and less likelihood of contaminated sediments being disturbed. The perceived height of boats as seen from the land may also be accentuated.

The proposal is considered to be acceptable in terms of global warming.

17.6.3 Ecologically Sustainable Development (ESD)

Section 5(a)(vii) of the EPA Act provides that an objective of the Act is to encourage ESD. Under s.79C(1)(e) of the EPA Act consideration of the public interest is required if it is relevant to the development. Whether this development is ESD is a matter for consideration.

Section 8 of the *Local Government Act 1993* contains a charter for Councils, i.e. *a set of principles that are to guide a council in the carrying out of its functions*. S.8(1) includes:

8 The council's charter

(1) A council has the following charter:

.....

- *to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development* (emphasis added)

.....

There are a number of Land & Environment Court cases involving ESD principles. *BGP Properties Pty Limited v Lake Macquarie City Council* [2004] NSWLEC399 (12 August 2004) and *Telstra Corporation v Hornsby Shire Council* [2006] NSWLEC 133 are among those more frequently referenced. These judgements explain the concept of the precautionary principle, its constituent elements and an analytical framework for its application, including in NSW environmental and planning laws.

ESD in its most basic formulation is “development that meets the needs of the present without compromising the ability of future generations to meet their own needs” (World Commission on Environment and Development, *Our Common Future*, 1987 p.44, also known as the Brundtland Report).

Mandatory issues for an EIS are included in schedule 2 of the Regs. They include reasons justifying the development including the following principles of ESD:

- a. precautionary principal
- b. inter-generational equity
- c. conservation of biological diversity and ecological integrity
- d. improved valuation, pricing and incentive mechanisms

Part H of the EIS comments on these ESD principles. Each of the ESD principles is discussed below. The comments rely on assessments and conclusions reached earlier in the report.

Precautionary principle

Meaning

This means if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

EIS

there are no significant risks associated with the proposal which are unknown. A full assessment of all the potential impacts has been undertaken. This assessment concludes that there are no significant impacts

Comment

Various scientifically based documents have been used to assess the environmental impacts of the proposal, e.g. aquatic ecology and noise. These have established the likely environmental impacts of the development. Responses from integrated approval bodies indicate that potential environmental impacts are reasonably manageable. It is concluded that the proposal does not pose a threat of serious or irreversible environmental damage. Precautions to avoid environmental damage can effectively be implemented through the imposition of consent conditions.

Inter-generational equity

Meaning

This means that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations.

EIS

the proposal achieves this by minimising impacts and improving the quality of the environment in relation to some issues. In this regard removal of toxic algae from the site and improved management systems will ensure that the environment is protected in the long term

Comment

The proposal will continue historical use of this section of Double Bay for marina purposes. It has been concluded that environmental impacts are either satisfactory or manageable.

The change in the visual appearance of Double Bay may raise be an inter-generational issue, notwithstanding that this report finds the visual impacts acceptable. Although this raises inter - generational equity issues it does not go to the health, diversity and productivity of the environment.

Inter-generational principles are considered to be satisfactory.

Conservation of biological diversity and ecological integrity

Meaning

Conservation of biological diversity and ecological integrity should be a fundamental consideration.

EIS

as noted in the detailed assessment of the ecology of the area, the proposal will not have any adverse impacts on any threatened or endangered species. Whilst there may be some short term impacts in terms of loss of habitat, this will be replaced in the longer term and there will be improvements through removal of toxic algae from the site and improved management systems

Comment

It is agreed that the proposal will conserve biological diversity and ecological integrity.

Improved valuation, pricing and incentive mechanisms

Meaning

Environmental factors should be included in the valuation of assets and services, e.g. polluter pays. Environmental goals should be pursued in the most cost effective way.

EIS

the government control of boat registration and licenses provides the mechanism for ensuring that 'polluter pays'. In this regard the pollution caused by use of boats can be minimised or offset by using these revenue streams. Importantly the proposal does not propose any increase in the number of boats

Comment

Pricing mechanisms in relation to matters such as waste disposal, electrical power and fuel consumption factor environmental levies. The cost of managing environmental protection can be transferred to the applicant through consent conditions.

Conclusion

The proposal is considered to be satisfactory when assessed against the principles of ESD.

18. Suitability of the site

The suitability of the site has been assessed in part 11.4 of this report in terms of SEPP 55. That assessment concludes that the site is suitable for use for marina purposes.

This application does not include dredging. NSW Maritime undertook an assessment under Part V of the Act following a request on behalf of the marina to carry out maintenance dredging. They raised no objection. Issues associated with the maintenance dredging would have been considered as part of the Part V assessment. The dredging, which will be necessary regardless of whether this redevelopment proposal proceeds, has the potential to remove existing contaminated sediments from the sea bed. This is seen as a positive in terms of the site's suitability for use for marina purposes.

19. SUBMISSIONS

19. SUBMISSIONS

In accordance with the provisions of the Act and the Regs the DA was publicly exhibited as required for designated development.

Section 79 of the Act sets out public participation requirements for designated development. It requires that the DA must be placed on public exhibition for a period of not less than 30 days and consist of written notice to adjoining land owners, a notice being exhibited on the land and advertisements being placed in a local newspaper.

Written notices, site notices and newspaper advertisements required by cls.78, 79 & 80 of the Regs were arranged and the submission period commenced on 10/12/09 and ended on 12/2/10. Written notices were sent to the individual occupiers of all private swing moorings in Double Bay. This was organised through NSW Maritime. Written notices were also sent to owners of individual berths at the Double Bay Marina. In total 1,001 written notification letters were sent.

The following public authorities were notified as required by cl.77 of the Regs, being authorities who may have an interest in the determination of the DA:

- Roads and Traffic Authority
- NSW Maritime
- Energy Australia
- Sydney Ferries Corporation
- NSW Fire Brigades
- NSW Heritage Office
- Royal Australian Navy

Since the commencement of the submission period 259 written submissions have been received. As required by cl.81 of the Regs submissions received during the submission period were forwarded to the Department of Planning on 18/2/10 (note: in relation to s.80(9)(b) of the Act no response was received from the Department within 21 days of the submissions being forwarded).

Written submissions were in the form of objections to, or support for, the proposal as follows:

- objections 33
- in support 226

19.1 **Objections**

Annexure 16 is a matrix which shows each objector and the grounds for their objection, which have been grouped into 10 categories.

The following table shows the objection categories and a reference to the relevant part of the report where the issues raised in objections are considered.

OBJECTIONS TABLE	
Grounds for objection	Report reference
visual impacts	17.1
traffic & parking	17.2
public interest	20
noise	17.4
waterways management & navigation	17.6.1
environmental	17.6.2 & 17.6.3
residential amenity	17.1, 17.2, 17.4 & 19.1
ecology	17.3
overdevelopment	17.1 & 20
other	19.1

The following matters have been raised in objections but have not been discussed earlier in this report:

- **Sustainability** – this relates to the location of the marina adjacent to the stormwater outfalls and the need therefore for regular dredging.

Comment

The need for maintenance dredging due to the proximity of the marina to the stormwater outfalls will not alter as a consequence of this DA being approved. The maintenance dredging is required for the operation of the marina in its current configuration. There is nothing to suggest that the existing marina contributes to siltation in this location or that the proposed marina will exacerbate the current position. The maintenance dredging, if anything, is beneficial in removing contaminated sediments within the seabed material.

- **Security** – this relates to measures taken by marina management to counter theft from boats. Presently, it is claimed, that public access to all parts of the wharf is being denied and that lighting has been added. The concern is how will the marina now manage security and will public access be denied.

Comment

Proposed security measures are contained in the Marina Management Plan. These measures include around the clock CCTV surveillance, marina staff being on site during normal business hours and a night watchman being on site from 10pm – 6am who will make patrols and keep a log.

Proposed lighting is also described in the Marina Management Plan. Public access, which as proposed will be more extensive than what the marina is currently required to provide, would be a term of any consent and accordingly would be enforceable.

- **Reasons for the development** – this relates to claims that the additional berths are required to the fund proposed redevelopment.

Comment

Funding of the redevelopment is not a relevant matter for consideration in assessing the DA. The proposal is either acceptable or unacceptable based on a proper assessment of its environmental impacts.

- **Safety** – associated with the storage and availability of fuel.

Comment

Fuel is currently stored in a tank (20,000 litre diesel fuel) under the slipway and is available from the marina. The proposal will not change the current fuel storage arrangements. Diesel is not a hazardous liquid. The Marina Management Plan includes precautions relating to emergencies including fire and spillages. The concerns are not considered to be well founded.

- **Property values** – this relates to the combined impact of noise, visual pollution and exhaust pollution from the engines of boats.

Comment

The impact of the proposal on property values is not a matter for consideration in the assessment of the DA. Noise and visual impacts have been assessed earlier in this report and, subject to conditions, are considered to be acceptable.

- **Management plan** – this relates to there being no contact details in the event of a nuisance and the dispute resolution provisions

Comment

Firstly it should be acknowledged that there is currently no management plan for the marina. The proposed introduction of a management plan is consistent with current community expectations and will provide a level of control over ongoing operations that is enforceable. However, the specific concerns with the proposed plan are considered to have merit. Conditions should be imposed requiring the prominent display of contact details of a person who can take positive action in the event of nuisances arising.

Also, the dispute resolution provisions in part 11.2, which purport to prevent a member of the public from approaching the Council, starting arbitration or court proceeding regarding a complaint in the first instance, need to be removed.

- **Visual privacy** – this relates to people on the marina being able to look into nearby private residences

Comment

The nature of the proposal is unlikely to result in a change to the level of privacy currently afforded to nearby residences. This is because:

- the number of boats that the marina can accommodate will not change
- the different mix of marina berths to swing moorings has the potential to reduce the number of people using the facility (refer to the discussion on traffic and parking impacts)
- the configuration of the marina will be virtually unchanged in terms of the orientation of the main walkway to nearby residences and location of vessels

19.2 Submissions in support

The reasons raised in those submissions supporting the proposal generally fall within the following categories:

- the existing marina is outdated
- the proposal will benefit the area, the views and the users
- the proposal will allow aged and disabled access and will be much safer for all users and the general boating public

Annexure 17 is a list of people who put in written submissions in support of the proposal. The list groups the people in order of suburb following comments made during a briefing with the members of the Regional Panel.

The applicant's planning consultant, Ingham Planning, submitted a letter dated 13/4/10 responding to the matters raised in the objections, see annexure 18.

20. THE PUBLIC INTEREST

In the Land & Environment Court judgement, *Double Bay Marina v Woollahra Council [2009] NSWLEC 1001*, (Double Bay Marina) Roseth SC set out a planning principle for discerning the

public interest. Although the planning principle was intended to apply to the assessment of all DAs, it is particularly relevant to this proposal as it related to a previous proposal to redevelop this marina. Also, discerning the public interest was crucial to the Court's determination of that appeal.

It is noted that the planning principle set out in the *Double Bay Marina* judgement has not been adopted by the Land & Environment Court as a planning principle. Nevertheless, the judgement does set out a methodology for assessing public interest that is considered to be of particular relevance and is therefore discussed below. However, caution needs to be exercised in drawing conclusions from applying the methodology considering it has no formal status as an adopted Land and Environment Court planning principle.

The *Double Bay Marina* judgement sets out 3 steps for discerning the public interest in the assessment of a development proposal:

1. define the public whose interest is being invoked
2. define the benefit towards which a proposal claims to make a contribution (or from which it is claimed to detract)
3. make explicit the weight given to the public interest relative to other considerations

Who is the public?

In *Double Bay Marina* the Senior Commissioner stated that '*the public*' requires redefinition in every case.

.....the public may be all people in the world. At its narrowest, the public may be the people who live or work in a locality or a business centre or use a public facility, such as a park or a beach. (p.48)

Councils often confuse the public interest with the complaints of individual objectors. In most cases the interest of objectors is a private interest. The fact that the number of objectors is large does not, by itself, render their interest public. For the interest of objectors to be equated with the public interest, the objectors must be identifiable as a section of the public as described above. The fact that their number may be small (for example the users of a park), does not deny the public nature of their interest. (p.49)

In applying this step in *Double Bay Marina* the Senior Commissioner states:

In my opinion, the loss of these views (from the ground floor of some 10-20 dwellings) is a private detriment. The owners or occupants of those dwellings do not constitute the "public" or even a "section of the public". They are a collection of private interests. (p.54)

In support of its contention that the renewal of the marina represents a private interest, the council tendered the Articles of Association of the applicant company. Even without the Articles of Association (which seem little different from those of other private business organisation) it seems clear that the application serves a private rather than the public interest. The berths will be available for purchase under Strata title. This is no different from an apartment building. (p.56)

Applying the Senior Commissioner's approach to the current proposal, the public is considered to be the users of the nearby public domain areas. These areas are specifically considered to be the intertidal beach between the marina and Beach Street, the beach and promenade between Beach

Street and the 18 Footer's Sailing Club, the public ferry wharf, Styne Park and the waters of Double Bay.

The people who made submissions in support or opposing the DA are considered to be the public only if they are also users of the public domain areas referred to above. However, some of the issues raised in some of the submissions relate to matters of public interest, e.g. the loss of Harbour views from areas of the beach. Similarly the holders of marina berths and moorings are considered to be the public only if they are also users of the public domain areas. Otherwise those people who made submissions or are holders of marina berths or moorings are considered to represent private interests.

What is the benefit/detriment?

The *Double Bay Marina* judgement states:

The next step is to make explicit the benefit to which a proposal contributes or from which it detracts. Where the detriment or benefit can be quantified, this should be done; however, not all benefits lend themselves to accurate measurement. Moreover, not all benefits are universally recognised as benefits. In the case of some benefits there is likely to be general agreement that they are benefits. When it comes to changing a view composed of natural elements of the landscape into one dominated by man-made elements, the benefit-detriment debate becomes less clear-cut, though most people would prefer natural landscapes. Where there are competing and feasible claims whether a proposal contributes to or detracts from the public interest, there is no option for the decision-maker but to make a subjective choice between them. (p. 50)

In applying this step in *Double Bay Marina* the Senior Commissioner referred to the loss of view from the beach as follows:

..... the loss of views from the intertidal beach between the marina and the private jetty at the end of Beach Street constitutes a diminution of the public interest, in other words it is a public detriment. (p.53)

He considered that provision of the proposed marina facilities *serves a private rather than the public interest.* This followed an acknowledgement of the Double Bay Marina's Articles of Association although they did not seem to significantly influence the Senior Commissioner's opinion, refer to the earlier quote from p. 56.

At the conclusion of p.56 the Senior Commissioner goes on to say:

..... I accept, however, that a minor part of the application, the provision of disabled facilities (that proposal included alterations to create a disabled toilet, installation of approved lifting devices for transferring disabled people to and from vessels and access for Sailability Australia activities), is in the public interest.

It should be noted that the Double Bay marina proposal also included sewage pump out and fuel and water available to the public, tender service available for public use and public access onto the marina. These proposed features are not specifically referred to in the judgement. It is presumed that they were considered to be benefits for the marina users rather than for the general public. This presumption is considered to be supported by the following comment:

- *the provision of improved mooring facilities for the future users of the existing marina, which is a private benefit. (p. 58)*

In relation to the inclusion of swing moorings into marina berths the Senior Commissioner commented as follows:

The conversion of swing moorings into marina berths therefore increases the area of water available for navigation. Against this is the consideration that the visual impact of a swing-moored boat is much less than that of a boat berthed in a marina Therefore if one considers ease of navigation more important than visual impact, the conversion of swing moorings to marina berths is a public benefit; while, if one adopts the opposite position, it becomes a public detriment. (p.57)

The competing public and private interests were summarised as:

- *view loss from the intertidal beach, which is a public detriment;*
- *the provision of disabled facilities in the renewed marina, which is a public benefit;*
- *the significant loss of views of ten to twenty dwellings behind the intertidal beach, which is a private detriment;*
- *the provision of improved mooring facilities for the future users of the existing marina, which is a private benefit. (p. 58)*

Applying the Senior Commissioner's approach to the current proposal, the impact on the outlook of people using the intertidal beach, the beach and promenade, the ferry wharf, Styne Park and the waters of Double Bay is a public detriment. Provision of disabled facilities would be a public benefit. The loss of amenity, including views, from private properties would represent a private detriment. The improved mooring facilities would be a private benefit.

Weighing up the public interest

In *Double Bay Marina* the Senior Commissioner discussed this step as follows:

The final and most difficult step is the ranking of the various interests. This may require weighting one public interest against another or balancing the public interest against private interests. Although only few planning instruments contain a statement that the public interest is paramount, in planning decisions, other things being equal, the public interest overrides the private interest. However, other things are rarely equal, and where a public detriment is minor, a major private benefit may take precedence over it. (p. 51)

The hardest conundrum occurs when the decision-maker must choose between competing public interests. In these cases the decision makers cannot avoid making value judgements but they owe it to the readers of their judgement to make the value judgements explicit. (p. 52)

In applying this step the Senior Commissioner said:

It seems to me that the two matters that determine the fate of this application are the weight one gives to the loss of views from the intertidal beach and the balancing of the private benefit of better boat accommodation against the private detriment of view loss from the dwellings behind the intertidal beach. (p. 59)

In my opinion, the public interest of preserving the views from the intertidal beach, because of its low accessibility, should be given moderate weight. Even so, it outweighs the public benefit of providing disabled facilities in the new marina, which is likely to be used by a very small number of people. (p. 60)

The nature of the benefit and detriment greatly influences the balancing of the private interest of boat owners against the private detriment of the occupants of the affected dwellings. The interest of boat owners is to have more up-to-date accommodation for their boats. The detriment to the occupants of the dwellings is to deprive them of their water view, which is probably the amenity they value the highest in their dwelling. It seems to me the loss of water views is a devastating (and, in a waterfront dwelling, unexpected) experience. (p.61)

In weighting the public interest in the current application, the SHREP, cl.2(2) under *Aims of the plan*, relevantly provides:

- (2) *For the purpose of enabling these aims to be achieved in relation to the Foreshores and Waterways Area, this plan adopts the following principles:*
- (a) *Sydney Harbour is to be recognised as a public resource, owned by the public, to be protected for the public good,*
 - (b) *the public good has precedence over the private good whenever and whatever change is proposed for Sydney Harbour or its foreshores,*
 - (c) *protection of the natural assets of Sydney Harbour has precedence over all other interests.*

It is clear that this provision strongly underpins the Senior Commissioner's view that *the public interest overrides the private interest.*

In relation to the visual impact on the public domain the differences between the development considered in the *Double Bay Marina* proceedings and the current proposal need to be taken into account. The *Double Bay Marina* proposal would have extended the marina berths a significant distance to the west, across the intertidal beach. The current proposal maintains the western alignment of the existing marina berths with a slight northerly extension. However, the current proposal increases the maximum berth length from 15.5m to 18m. The visual impacts of these changes on the public domain areas are discussed in part 17.1 and are considered to be either negligible or minor, subject to the maximum berth length being 15.5m.

This final step for discerning public interest as set out in the *Double Bay marina* judgement is to weigh the public disbenefits, as described above, against the public benefits. The public benefit in the case of *Double Bay Marina* was considered by the Senior Commissioner to relate to the provision of facilities for use by people with a disability. The current proposal includes a toilet facility for use by people with a disability and a device for transferring people with a disability onto vessels.

The Marina Management Plan which forms part of the EIS also refers to the proposed tender service for both marina moorings and non marina moorings as a public benefit. Public access to the marina facilities will also be available during business hours.

Out of the features referred to above it is considered that public access to the marina arms could be considered to be a public benefit, notwithstanding that it was not acknowledged as such in *Double Bay Marina*.

The private disbenefit relates primarily to the visual impact on properties to the south and east of the marina. These impacts are discussed in part 17.1 of this report. The most affected private properties are the 5 dwellings to the south east of the marina, i.e. 10-18 Castra Place. Of these the worst affected is 16 Castra Place where part of Clark Island will be blocked. However, this impact is considered to be moderate. It is not considered that view impacts on private properties would be unacceptable.

Conclusion

This assessment has endeavoured to quantify the benefits and disbenefits of this proposal. The foregoing discussion is considered to make the benefits and disbenefits *explicit*.

The public disbenefit associated with loss of visual amenity from the public domain areas is not considered to outweigh the public benefit of providing access specifically for people with a disability and to the general public.

The private disbenefits to the owners of individual properties in terms of loss of amenity is not considered to be of sufficient weight to justify rejection of the DA.

In terms of maintaining the small scale and permeable visual character of Double Bay it is considered that the maximum size marina berths should not be increased from the current 15.5m. For this purpose the proposed 3x18m berths on the central part of the 'T' head should be reduced to 15.5m berths with a maximum height of limit of 4.8m.

21. DISCLOSURE STATEMENTS

Under S.147 of the Environmental Planning and Assessment Act, 1979 there have been no disclosure statements regarding political donations or gifts made to any councillor or gifts made to any council employee submitted with this development application by either the applicant or any person who made a submission.

22. CONCLUSION

The proposal is considered to satisfy the relevant planning controls and in particular the provisions of SHREP and SHDCP. The marina is considered to be in a sensitive location due to the nature of the surrounding area's residential character. The proposed increase in the footprint of the marina is slight. However, 5 additional marina berths are proposed and the number of bigger boats will increase. In order to maintain the character of Double Bay it is considered that the maximum length of marina berths should be maintained, i.e. 15.5m.

There will be some impacts on views from a limited number of private properties in the vicinity. However, on balance these impacts are not considered to be undue or unreasonable in the context of the planning controls which apply to development in and around Sydney Harbour. This development application also presents the opportunity to introduce controls to manage the marina's externalities through conditions of consent. In terms of the amenity of surrounding properties the recommendation is considered to represent a positive outcome.

23. RECOMMENDATION: Pursuant to Section 80(1) of the Environmental Planning and Assessment Act, 1979

THAT the Joint Regional Planning Panel, as the consent authority, grant development consent to DA 602/2009/1 for replacement of existing fixed wharf structure with berthing for 40 vessels & moorings for 25 vessels with a new floating structure with berths for 45 vessels and moorings for 20 vessels on land at 8 Castra Place, Double Bay subject to the following conditions:

A. General Conditions

A.1 Conditions

Consent is granted subject to the following conditions imposed pursuant to section 80 of the Environmental Planning & Assessment Act 1979 (“the *Act*”) and the provisions of the Environmental Planning and Assessment Regulation 2000 (“the *Regulation*”) such conditions being reasonable and relevant to the development as assessed pursuant to section 79C of the Act.

Standard Condition: A1 (Autotext AA1)

A.2 Definitions

Unless specified otherwise words have the same meaning as defined by the *Act*, the *Regulation* and the *Interpretation Act* 1987 as in force at the date of consent.

Applicant means the applicant for this Consent.

Approved Plans mean the plans endorsed by Council referenced by this consent as amended by conditions of this consent.

AS or *AS/NZS* means Australian Standard® or Australian/New Zealand Standard®, respectively, published by Standards Australia International Limited.

BCA means the Building Code of Australia as published by the Australian Building Codes Board as in force at the date of issue of any *Construction Certificate*.

Council means Woollahra Municipal Council

Court means the Land and Environment Court

Local native plants means species of native plant endemic to Sydney's eastern suburbs (see the brochure titled "Local Native Plants for Sydney's Eastern Suburbs published by the Southern Sydney Regional Organisation of Councils).

Stormwater Drainage System means all works, facilities and documentation relating to:

- a. The collection of stormwater,
- b. The retention of stormwater,
- c. The reuse of stormwater,
- d. The detention of stormwater,
- e. The controlled release of stormwater; and
- f. Connections to easements and public stormwater systems.

Owner means the owner of the *site* and successors in title to the *site*.

Owner Builder has the same meaning as in the *Home Building Act* 1989.

PCA means the *Principal Certifying Authority* under the *Act*.

Principal Contractor has the same meaning as in the *Act* or where a *principal contractor* has not been appointed by the *owner* of the land being developed *Principal Contractor* means the *owner* of the land being developed.

Professional Engineer has the same meaning as in the *BCA*.

Public Place has the same meaning as in the *Local Government Act* 1993.

Road has the same mean as in the *Roads Act* 1993.

SEE means the final version of the Statement of Environmental Effects lodged by the *Applicant*.

Site means the land being developed subject to this consent.

WLEP 1995 means *Woollahra Local Environmental Plan* 1995

Work for the purposes of this consent means:

- a. the use of land in connection with development,
- b. the subdivision of land,
- c. the erection of a building,
- d. the carrying out of any work,
- e. the use of any site crane, machine, article, material, or thing,
- f. the storage of waste, materials, site crane, machine, article, material, or thing,
- g. the demolition of a building,
- h. the piling, piercing, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,

- i. the delivery to or removal from the *site* of any machine, article, material, or thing, or
- j. the occupation of the *site* by any person unless authorised by an *occupation certificate*.

Note: Interpretation of Conditions - Where there is any need to obtain an interpretation of the intent of any condition this must be done in writing to Council and confirmed in writing by Council.

Standard Condition: A2 (Autotext AA2)

A.3 Approved Plans and supporting documents

Those with the benefit of this consent must carry out all work and maintain the use and works in accordance with the plans and supporting documents listed below as submitted by the Applicant and to which is affixed a Council stamp “Approved DA Plans” **unless modified by any following condition**. Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author/Drawn	Date(s)
DA100 issue B	Site plan of existing marina	Mark Hurcum Design Practice	10/11/09
DA 110 issue B	Site plan of proposed marina	Mark Hurcum Design Practice	10/11/09
DA 120 issue B	Proposed development plan	Mark Hurcum Design Practice	10/11/09
DA 130 issue B	Comparison of existing and proposed marina	Mark Hurcum Design Practice	10/11/09
DA 140 issue A	Proposed berthing plan	Mark Hurcum Design Practice	5/11/09
DA 150 issue B	Marina elevation	Mark Hurcum Design Practice	10/11/09
DA 160 issue C	Seagrass beds at December 2008	Mark Hurcum Design Practice	12/11/09
DA 110 issue B	Landside plan	Mark Hurcum Design Practice	10/11/09
Job No. 09048	Environmental impact statement	Ingham Planning Pty Ltd	November 2009
Report 10-5093R2, revision 1	Proposed upgrade of Double Bay Marina operational and construction noise assessment	Heggies Pty Ltd	11/3/2010
Job No 2617	Traffic & Parking Report	Christopher Hallam & Assoc	July 2009
Job No 0903-079 version 3	Aquatic Ecological Assessment	W.S. Rooney & Assoc P/L	November 2009
	Marina Management Plan	Double Bay Marina	November 2009

Note: Warning to Accredited Certifiers – You should always insist on sighting the original Council stamped approved plans. You should not rely solely upon the plan reference numbers in this condition. Should the applicant not be able to provide you with the original copy Council will provide you with access to its files so you may review our original copy of the approved plan.

Note: These plans and supporting documentation may be subject to conditions imposed under section 80A(1)(g) of the *Act* modifying or amending the development (refer to conditions which must be satisfied prior to the issue of any *Construction Certificate*.)

Standard Condition: A5 (Autotext AA5)

A.4 General Terms of Approval – [Fisheries Management Act 1994](#) (DPI)

The following general terms of approval have been imposed by the NSW Department of Industry & Investment:

1. ***A permit to harm marine vegetation under s.205 of the Fisheries Management Act 1994 is obtained from this Department prior to construction. I & I NSW cannot issue a permit until development consent has been granted and the Department has received a copy of the determination.***
2. ***Environmental safeguards (silt curtains, booms etc.) are to be used during the proposed dredging works to ensure there is no escape of turbid plumes into the aquatic environment. Turbid plumes caused by run off, pile driving etc, have the potential to smother aquatic vegetation and have a deleterious effect on benthic organisms. Silt curtains are to be positioned so that they exclude adjacent seagrass from harm.***
3. ***No harm to any marine vegetation, including via shading, occurs without a permit from this Department.***
4. ***Demolition waste is to be deposited appropriately on land.***
5. ***The materials used for construction should not be deleterious to marine life, for example antifouling paints or treated woods must not be used. These materials inhibit marine growth and reduce the habitat available to marine life.***
6. ***All other relevant authorities have no objections to this proposal.***

Note: These conditions have not been imposed by Council but are required to be incorporated as conditions of development consent. Where there is any inconsistency between these general terms of approval and other conditions of this consent the more onerous requirement prevails.

Note: Should you have any questions relating to this condition please contact Conservation Manager, Cronulla Fisheries Centre, PO Box 21, CRONULLA NSW 2230.

Standard Condition: A10 (Autotext AA10)

A.5 Ancillary Aspect of the Development (s80A(2) of the Act)

The owner must procure the repair, replacement or rebuilding of all road pavement, kerb, gutter, footway, footpaths adjoining the site or damaged as a result of work under this consent or as a consequence of work under this consent. Such work must be undertaken to Council's satisfaction in accordance with Council's "Specification for Roadworks, Drainage and Miscellaneous Works" dated January 2003 unless expressly provided otherwise by these conditions at the *owner's* expense.

Note: This condition does not affect the *principal contractor's* or any sub-contractors obligations to protect and preserve public infrastructure from damage or affect their liability for any damage that occurs.

Standard Condition: A8 (Autotext AA8)

A.6 Prescribed Conditions

Prescribed conditions in force under the *Act* and *Regulation* must be complied with.

Note: It is the responsibility of those acting with the benefit of this consent to comply with all prescribed conditions under the *Act* and the *Regulation*. Free access can be obtained to all NSW legislation at www.legislation.nsw.gov.au

Standard Condition: A30 (Autotext AA30)

A.7 CPTED – Safer by design

The following general conditions have been sought by the NSW Police Service and Council concurs with the imposition of these conditions:

Fencing – temporary fencing should be erected around the construction zone; vandal resistant materials should be used; fences and gates should be designed with grilles to allow vision through them.

Materials – all materials should be marked with the company name or building site lot number; consider placing an on-site storage container or compound for secure storage of tools and materials.

Signage – site maps, sign posting and numbering should be strategically located; signs should be well lit, large and legible with strong colours and incorporate standard symbols that are clear, legible and useful.

Surveillance – entry points should be designed so as to maximise surveillance opportunities to and from these areas from both inside as well as outside; the placement and orientation of common entry areas should optimise opportunities for natural supervision by staff and other guardians; cameras should be installed both within and around the area and placed at eye level so that faces are readily identifiable.

Lighting – a lighting design should be applied to all public areas of the development; the lighting design should achieve a wide and even spread of illumination at an appropriate lux level, which will provide good area illumination as well as visibility from distant vantage points; light fittings should be robust and vandal resistant and positioned to eliminate shadows cast by surrounding elements; lighting type should be either fluorescent or metal halide; lighting should be controlled by a time clock to ensure that appropriate lighting levels are in place at any time of the day.

Malicious damage – consideration must be given to the use of graffiti resisting materials; co-ordinated regular maintenance to keep the area clean and attractive by removing graffiti, renewing decayed items and replacing broken lighting.

B. Conditions which must be satisfied prior to the demolition of any building or construction

B.1 Construction Certificate required prior to any demolition

Where demolition is associated with an altered portion of, or an extension to an existing building the demolition of any part of a building is "commencement of erection of building" pursuant to section 81A(2) of the Act. In such circumstance all conditions in Part C and Part D of this consent must be satisfied prior to any demolition work. This includes, but is not limited to, the issue of a Construction Certificate, appointment of a PCA and Notice of Commencement under the Act.

Note: See *Over our Dead Body Society Inc v Byron Bay Community Association Inc* [2001] NSWLEC 125.
Standard Condition: B1 (Autotext BB1)

C. Conditions which must be satisfied prior to the issue of any construction certificate

C.1 Modification of details of the development (s80A(1)(g) of the Act)

The *approved plans* must be amended and the *Construction Certificate* plans and specification, required to be submitted to the *Certifying Authority* pursuant to clause 139 of the *Regulation*, must detail:

- (a) The 3 x 18m berths, located on the centre of the 'T' head, being reduced in size to 15.5m berths. Boats using those berths are not to exceed 4.8m in height. The mooring piles are to be relocated accordingly (also refer to condition I.13 of this consent)
- (b) Non telescopic piles are to be timber
- (c) Existing piles are to be completely removed from the Harbour in accordance with NSW Maritime's standard requirements. The piles are not to be cut off.
- (d) The gangway being designed so that the gradient does not exceed 1:14 for 80% of the time, having regard to access for people with disabilities.
- (e) Non-telescopic piles are to be a maximum height of 3.5m above the mean high water mark
- (f) The Marina Management Plan being amended by:
 - i. deleting the 1st paragraph under *11.2 Dispute Resolution*
 - ii. by inserting an additional part under *11 Complaints* requiring that signage be displayed in a prominent location containing the after hours contact details of a person who is in a position to immediately investigate and take action in respect of complaints

Note: The effect of this condition is that it requires design changes and/or further information to be provided with the *Construction Certificate* drawings and specifications to address specific issues identified during assessment under section 79C of the *Act*.

Note: Clause 146 of the *Regulation* prohibits the issue of any *Construction Certificate* subject to this condition unless the *Certifying Authority* is satisfied that the condition has been complied with.

Note: Clause 145 of the *Regulation* prohibits the issue of any *Construction Certificate* that is inconsistent with this consent.

Standard Condition: C4 (Autotext CC4)

C.2 Payment of Security, Levies and Fees (S80A(6) & S94 of the Act, Section 608 of the Local Government Act 1993)

The person(s) with the benefit of this consent must pay the following long service levy, security, development levy, and fees prior to the issue of any *construction certificate*, *subdivision certificate* or *occupation certificate*, as will apply.

The *certifying authority* must not issue any *Part 4A Certificate* until provided with the original receipt(s) for the payment of all of the following levy, security, contributions, and fees. Specifically

- a. prior to the issue of a *construction certificate*, where a construction certificate is required; or
- b. prior to the issue of a *subdivision certificate*, where only a subdivision certificate is required; or
- c. prior to the issue of an *occupation certificate* in any other instance.

Description	Amount	Indexed	Council Fee Code
-------------	--------	---------	------------------

LONG SERVICE LEVY under Building and Construction Industry Long Service Payments Act 1986			
Long Service Levy Use Calculator: http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm	Contact LSL Corporation or use their online calculator	No	
SECURITY under section 80A(6) of the Environmental Planning and Assessment Act 1979			
Property Damage Security Deposit - Making good any damage caused to any property of the <i>Council</i> as a consequence of the doing of anything to which the consent relates.	\$34,246	No	T115
DEVELOPMENT LEVY under Woollahra Section 94A Development Contributions Plan 2005 This plan may be inspected at Woollahra Council or downloaded from our website www.woollahra.nsw.gov.au .			
Development Levy (S94A)	\$16,123 + Index Amount	Yes, quarterly	T96
INSPECTION FEES under section 608 of the Local Government Act 1993			
Security Administration Fee	\$175	No	T16
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$50,544 Plus any relevant indexed amounts and long service levy		

Building & Construction Industry Long Service Payment

The Long Service Levy under Section 34 of the *Building & Construction Industry Long Service Payment Act*, 1986, must be paid and proof of payment provided to the *Certifying Authority* prior to the issue of any *Construction Certificate*.

Note: The Levy can be paid directly to the Long Services Payments Corporation or to Council. Further information can be obtained from the Long Service Payments Corporation's website <http://www.lspc.nsw.gov.au/> or by telephoning the Long Service Payments Corporation on 13 14 41.

How must the payments be made?

Payments must be made by:

- Cash deposit with Council,
- Credit card payment with Council, or
- Bank cheque made payable to Woollahra Municipal Council.

The payment of a security may be made by a bank guarantee where:

- the guarantee is by an Australian bank for the amount of the total outstanding contribution;
- the bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first;
- the bank agrees to pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent; and
- the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

How will the section 94A levy be indexed?

To ensure that the value the development levy is not eroded over time by increases in costs, the proposed cost of carrying out development (from which the development levy is calculated) will be indexed either annually or

quarterly (see table above). Clause 3.13 of the Woollahra Section 94A Development Contributions Plan 2005 sets out the formula and index to be used in adjusting the s.94A levy.

Do you need HELP indexing the levy?

Please contact our customer service officers. Failure to correctly calculate the adjusted the development levy will delay the issue of any Part 4A Certificate and could void any Part 4A Certificate (construction certificate, subdivision certificate, or occupation certificate).

Deferred periodic payment of section 94A levy under the Woollahra Section 94A Development Contributions Plan 2005

Where the applicant makes a written request supported by reasons for payment of the section 94A levy other than as required by clause 3.9, the Council may accept deferred or periodic payment. The decision to accept a deferred or periodic payment is at the sole discretion of the Council, which will consider:

- a. the reasons given;
- b. whether any prejudice will be caused to the community deriving benefit from the public facilities;
- c. whether any prejudice will be caused to the efficacy and operation of this plan; and
- d. whether the provision of public facilities in accordance with the adopted works schedule will be adversely affected.

Council may, as a condition of accepting deferred or periodic payment, require the provision of a bank guarantee where:

- a. the guarantee is by an Australian bank for the amount of the total outstanding contribution;
- b. the bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first;
- c. the bank agrees to pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent; and
- d. the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

Any deferred or outstanding component of the section 94A levy will be adjusted in accordance with clause 3.13 of the plan. The applicant will be required to pay any charges associated with establishing or operating the bank guarantee. Council will not cancel the bank guarantee until the outstanding contribution as indexed and any accrued charges are paid.

Standard Condition: C5 (Autotext CC5)

C.3 Building upgrade (cl. 94 of the Regulation)

Council considers that, pursuant to clause 94 of the *Regulation*, it is appropriate to require the existing building to be brought into total or partial conformity with the *BCA*.

The *Construction Certificate* plans and specification required to be submitted to the *Certifying Authority* pursuant to clause 139 of the *Regulation* must detail building upgrade works required by this condition.

The *Certifying Authority* must be satisfied that such work, to be implemented as part of the development, will upgrade the building to bring it into compliance with the following provisions of the *BCA* as in force at the date of the *Construction Certificate* application:

1. that fire hose reels shall be provided as follows;
 - (a) No part of a berth should be beyond the reach of the nozzle end of a fully extended reel. Hose reels should be suitable for operation by one person.

- (b) The length of hose on any reel should be 36 m.
- (c) At least one reel should be located on the shoreline side of the first berth, and also at the seaward end of each walkway.
- (d) The maximum distance between any two reels should be 30 m. Where more than two reels are required, they should be evenly spaced along walkways.
- (e) At least two reels should be accessible from each berth.

The two most hydraulically disadvantaged reels (operated simultaneously) should each provide a minimum water flow rate of 0.63 L/s at a running pressure of not less than 275 kPa.

Where the required flow rate and running pressure cannot be achieved at all times from the normal water supply, a booster pump should be provided which should-

- (i) be self priming;
- (ii) have the capacity to supply water at a minimum rate of 1.26 L/s at the required running pressure; and
- (iii) operate automatically upon the flow of water through any hose reel.

Stand-alone mobile fire pumps should be considered, to augment the hose reels and other fire prevention devices.

2. That a fire hydrant shall be provided adjacent to the head of each gangway.
3. Portable fire extinguishers for fire hazards that cannot be extinguished with water shall be provided at the appropriate locations.
4. An audible fire alarm system shall be provided to the marina.
5. That the selection and location of equipment, training of staff and marina users and the development of an emergency response plan (where relevant complying with AS 3745-2002) shall be jointly developed by the marina operators, NSW Fire Brigades (both the marine section and the local fire brigade), the Sydney Ports Corporation, the RAN and Maritime NSW.
6. Double containment fuel lines shall be used for fuel delivery over water.

Note: The *Certifying Authority* issuing the *Construction Certificate* has no power to remove the requirement to upgrade the existing building as required by this condition. Where this condition specifies compliance with performance requirements of the *BCA* the *Certifying Authority*, subject to their level of accreditation, may be satisfied as to such matters. Where this condition specifies compliance with prescriptive (deemed to satisfied) provisions of the *BCA* these prescriptive requirements must be satisfied and cannot be varied unless this condition is reviewed under section 82A or amended under section 96 of the *Act*.

Note: This condition does not set aside the *Certifying Authorities* responsibility to ensure compliance with clause 143 of the *Regulation* in relation to Fire Protection and Structural Adequacy.

Note: AS 4655 *Guidelines for fire safety audits for buildings* (or any succeeding AS) should form the basis of any fire upgrade report.

Standard Condition: C10 (Autotext CC10)

C.4 Waste Storage - Compliance with the Marina Management Plan

The Construction Certificate plans and specifications, required to be submitted to the Certifying Authority pursuant to clause 139 of the Regulation, must detail provisions for waste management in accordance with the EIS.

Waste Storage Areas must meet the following requirements:

- a. Bins must be stored with lids down to prevent vermin from entering the waste containers.
- b. The area must be constructed with a smooth impervious floor graded to a floor waste. A waste storage area that is located internal to the building must be fitted with both a hot and cold water supply and hose cocks. Wastewater must be discharged to the sewer in accordance with the requirements of Sydney Water.
- c. Walls and ceilings of the waste storage area must be constructed of an impervious material with a smooth finish. The junction between the walls and the floor must be covered with a minimum radius of 25mm to prevent the accumulation of waste matter.
- d. The garbage storage area must be well lit to enable use at night. A timer switch must be fitted to the light fitting to ensure the light is turned off after use.
- e. Odour problems must be minimised by good exhaust ventilation.
- f. Both putrescible and recycling bins/crates must be stored together. Recycling bins must never stand alone. They must always be located beside putrescible waste bins. Putrescible bins must be located closest to the entrance to the waste storage room.
- g. Signage on the correct use of the waste management system and what materials may be recycled must be posted in the communal waste storage cupboard/ room or bin bay.

Standard Condition: C19

C.5 Provision for Energy Supplies

The applicant must provide to the *Certifying Authority* a letter from Energy Australia setting out Energy Australia's requirements relative to the provision of electricity/gas supply to the development.

Any required substation must be located within the boundaries of the site.

Where an electricity substation is required within the site but no provision has been made to place it within the building and such substation has not been detailed upon the approved development consent plans a section 96 application is required to be submitted to Council. Council will assess the proposed location of the required substation.

The *Construction Certificate* plans and specifications, required to be submitted pursuant to clause 139 of the *Regulation*, must detail provisions to meet the requirements of Energy Australia.

Warning: If the substation is not located within the building its location, screening vegetation, all screen walls or fire separating walls must have been approved by the grant of development consent or amended development consent prior to the issue of any *Construction Certificate* for those works. Documentary evidence of compliance, including correspondence from the energy authority is to be provided to the *Certifying Authority* prior to issue of the *Construction Certificate*. The *Certifying Authority* must be satisfied that the requirements of energy authority have been met prior to issue of the *Construction Certificate*.

Note: This condition has been imposed because the application fails to provide sufficient detail (either by plans or by the Statement of Environmental Effects) demonstrating that provision has been made to EnergyAustralia's satisfaction for the provision of electricity supply to the building. Nevertheless,

Council has no reason to believe that provision cannot be reasonably made for electricity to service the development.

Note: Where it is proposed to shield any booster connection or any building from any substation pursuant to clause 5.6.3(c)(ii) of AS 2419.1-1994 or by fire resisting construction under the *BCA* respectively and this construction has not been detailed upon the approved development consent plans such works should be considered inconsistent with consent pursuant to clause 145 of the *Regulation*. The Applicant must lodge with Council details for any such construction pursuant to section 96 of the *Act* to allow assessment under section 79C of the *Act*.

Note: Substations must not be located within the minimum sight distance at driveway entrances under Australian Standard AS/NZS 2890 (Set)-2004 Parking Facilities Set whether such driveways service the site or any adjoining land.
Standard Condition: C21

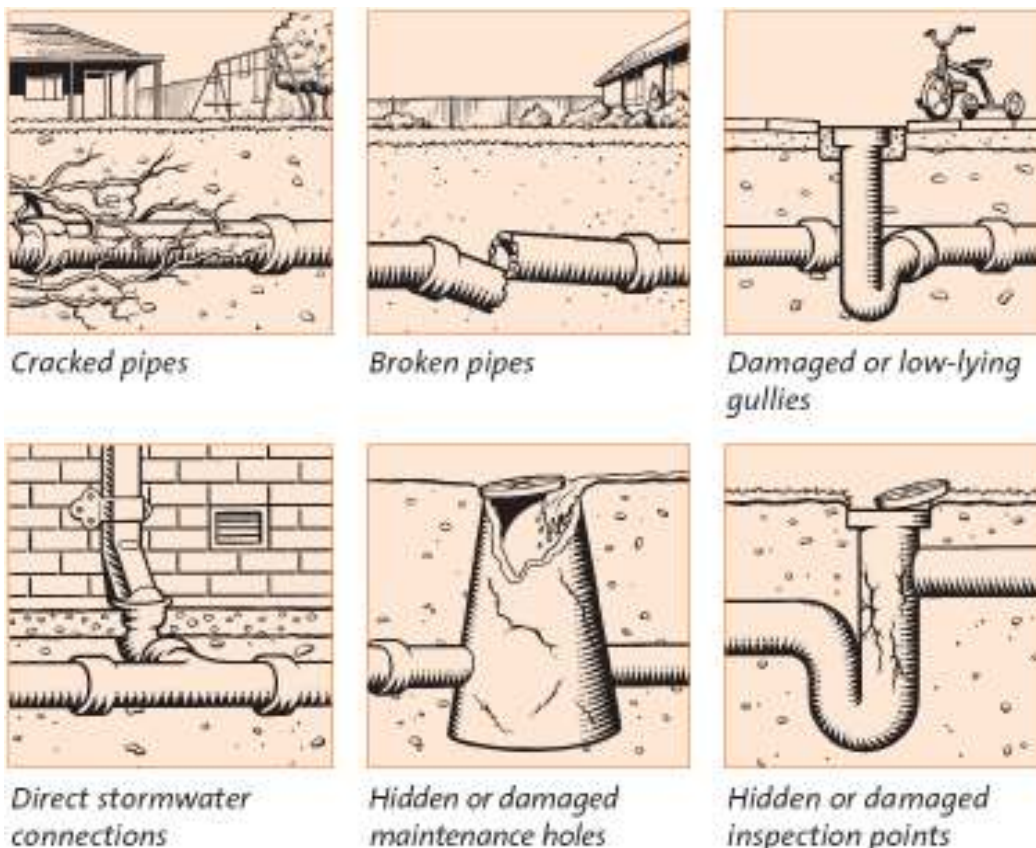
C.6 Water and waste water - Section 73 Developers Certificate & Upgrading of existing system (Clause 25(1) WLEP 1995)

A developer compliance certificate under Part 6, Division 9 of the *Sydney Water Act 1994* must have been issued by the Sydney Water Corporation prior to the issue of any *Construction Certificate*. The effect of this certificate is that adequate provision has been made or is available for the provision of potable water to and the removal of waste water from the development.

Note: Following application to Sydney Water, a 'Notice of Requirements' will detail water and sewer extensions to be built and charges to be paid. Please make early contact with Sydney Water's authorised Coordinator, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

Note: Further information can be obtained from the Sydney Water Corporation on or telephone 13 20 92 or by visiting their web site:
http://www.sydneywater.com.au/html/yourHome/edeveloper/urban_dev_qa.cfm.

The Construction Certificate plans and specifications, required to be submitted to the Certifying Authority pursuant to clause 139 of the Regulation, must detail the replacement of all private sewer pipes between all sanitary fixtures and Sydney Waters sewer main where they are not found by inspection to be Sewer grade UPVC or copper with continuously welded joints.



Note: This condition has been imposed to ensure that where private sewer pipes are old, may leak or may be subject to root invasion (whether from existing or proposed private or public landscaping) that existing cast iron, concrete, earthenware or terracotta systems are replaced with new UPVC or copper continuously welded pipes between all sanitary fixtures and Sydney Waters sewer main as part of the development, such that clause 25(1) of WLEP 1995 be satisfied. Further, leaking sewer pipes are a potential source of water pollution, unsafe and unhealthy conditions which must be remedied in the public interest. See:

<http://www.sydneywater.com.au/Publications/Factsheets/SewerfixLookingAfterYourSewerPipes.pdf>

Standard Condition: C22 (Autotext CC22)

C.7 Soil and Water Management Plan – Submission & Approval

The *principal contractor* or *owner builder* must submit to the *Certifying Authority* a soil and water management plan complying with:

- a. “*Do it Right On Site, Soil and Water Management for the Construction Industry*” published by the Southern Sydney Regional Organisation of Councils, 2001; and
- b. “*Managing Urban Stormwater - Soils and Construction*” published by the NSW Department of Housing 4th Edition” (*The Blue Book*).

Where there is any conflict *The Blue Book* takes precedence. The *Certifying Authority* must be satisfied that the soil and water management plan complies with the publications above prior to issuing any *Construction Certificate*.

Note: This condition has been imposed to eliminate potential water pollution and dust nuisance.

Note: The International Erosion Control Association – Australasia <http://www.austieca.com.au/> lists consultant experts who can assist in ensuring compliance with this condition. Where erosion and sedimentation plans are required for larger projects it is recommended that expert consultants produce these plans.

Note: The “*Do it Right On Site, Soil and Water Management for the Construction Industry*” publications can be down loaded free of charge from <http://www.woollahra.nsw.gov.au/>.

Note: Pursuant to clause 161(1)(a)(5) of the *Regulation* an *Accredited Certifier* may satisfied as to this matter.

Standard Condition: C25

C.8 Professional Engineering Details

The *Construction Certificate* plans and specifications, required by clause 139 of the *Regulation*, must include detailed *professional engineering* plans and/or specifications for all structural, electrical, hydraulic, hydro-geological, geotechnical, mechanical and civil work complying with this consent, approved plans, the statement of environmental effects and supporting documentation.

Detailed professional engineering plans and/or specifications must be submitted to the *Certifying Authority* with the application for any *Construction Certificate*.

Note: This does not affect the right of the developer to seek staged *Construction Certificates*

Standard Condition: C36

C.9 Geotechnical and Hydrogeological Design, Certification & Monitoring

The *Construction Certificate* plans and specification required to be submitted to the *Certifying Authority* pursuant to clause 139 of the *Regulation* must be accompanied by a *Geotechnical / Hydrogeological Monitoring Program* together with civil and structural engineering details for piling, prepared by a *professional engineer*, who is suitably qualified and experienced in geotechnical and hydrogeological engineering. These details must be certified by the *professional engineer* to:

- a. Provide appropriate support and retention to ensure there will be no ground settlement or movement, during piling or after construction, sufficient to cause an adverse impact on adjoining property or public infrastructure.
- b. Provide appropriate support and retention to ensure there will be no adverse impact on surrounding property or infrastructure as a result of changes in local hydrogeology.
- c. Provide a Geotechnical and Hydrogeological Monitoring Program that:
 - i. Will detect any settlement associated with temporary and permanent works and structures;
 - ii. Will detect deflection or movement of temporary and permanent retaining structures (foundation walls, shoring bracing or the like);
 - iii. Will detect vibration in accordance with AS 2187.2-1993 Appendix J including acceptable velocity of vibration (peak particle velocity);

Standard Condition: C40

C.10 Stormwater Discharge to Harbour (Clause 25(2) WLEP 1995)

The developer must obtain written approval from the NSW Maritime Authority to discharge stormwater from the subject property directly into Sydney Harbour

Standard Condition: C50 (Autotext CC50)

C.11 Traffic management plan

The provisions in part 4 of the Marina Management Plan being amended to also include that:

- All persons delivering and/or picking-up goods and/or people to/from the premises shall do so strictly in accordance with the Australian Road Rules (the rules). In particular attention is directed to rule 168 of the rules regarding No Parking Restrictions. If necessary persons utilising 'No Parking' zones are to make prior arrangements with management of the Double Bay Marina to ensure the rules are strictly adhered to.
- Management of the Double Bay Marina are to inform persons delivering and/or picking-up goods and/or people of the appropriate sections of the rules through a code of conduct for patrons and service providers and through other effective means as may be appropriate.

D. Conditions which must be satisfied prior to the commencement of any development work

D.1 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989

For the purposes of section 80A (11) of the Act, the following conditions are prescribed in relation to a development consent for development that involves any building work:

- a. that the work must be carried out in accordance with the requirements of the Building Code of Australia,
- b. in the case of residential building work for which *the Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

This condition does not apply:

- a. to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4),
- or
- b. to the erection of a temporary building.

In this condition, a reference to the *BCA* is a reference to that code as in force on the date the application for the relevant construction certificate is made.

Note: This condition must be satisfied prior to commencement of any work in relation to the contract of insurance under the Home Building Act 1989. This condition also has effect during the carrying out of all building work with respect to compliance with the Building Code of Australia.

Standard Condition: D1 (Autotext DD1)

D.2 Construction Management Plan

As a result of the site constraints, limited space and access an amended Construction Management Plan is to be submitted to Council. The Construction Management Plan must be complied with in every respect.

The amended construction management plan must be submitted and approved by Council's Development Engineer. The plan must:-

- a. describe the anticipated impact of the construction works on:**
 - local traffic routes
 - pedestrian circulation adjacent to the building site
 - and on-street parking in the local area, and;
- b. describe the means proposed to:**
 - manage construction works to minimise such impacts,
 - provide for the standing of vehicles during construction,
 - provide for the movement of trucks to and from the site, and deliveries to the site, and;
- c. show the location of:**
 - any site sheds and any anticipated use of cranes and concrete pumps,
 - any areas of Council property on which it is proposed to install a Works Zone (Construction Zone),
 - structures to be erected such as hoardings, scaffolding or shoring,
 - any excavation.
- d. describe the excavation impact on the area including**
 - Number and types of trucks to be used
 - Time frame
 - Streets to be used
 - Routes to be taken
 - Directions of travel
 - Truck storage areas
 - It is recommended that vehicle routes be shared
 - Excavation is to only be carried out outside peak and school hours between 9.30am to 2.30pm week days
 - The CMP is to include both demolition and excavation works.
- e. show the location** of all Tree Protection (Exclusion) Zones as required within the conditions of this development consent.
- f. include the following:**
 - the 3 car garage belonging to Number 8 Castra Place is to be used for parking of construction related vehicles and to receive deliveries from Castra Place
 - the construction works shall be fully contained within the development site
 - that any additional construction related vehicles that cannot be accommodated within the garage must park within the available parking spaces and fully obey the existing parking restrictions

The Plan must make provision for all materials, plant, etc. to be stored within the development site at all times during construction. Structures or works on Council property such as hoardings, scaffolding, shoring or excavation need separate approval from Council. Standing of cranes and concrete pumps on Council property will need approval on each occasion.

Note: A minimum of eight weeks will be required for assessment. Work must not commence until the Construction Management Plan is approved. Failure to comply with this condition may result in fines and proceedings to stop work.

Standard Condition: D9 (Autotext: DD9)

D.3 Site Signs

The *Principal Contractor* or *owner builder* must ensure that the sign required by clauses 98A and 227A of the *Regulation* is erected and maintained at all times.

“Erection of signs

1. For the purposes of section 80A (11) of the *Act*, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
2. A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - a. showing the name, address and telephone number of the principal certifying authority for the work, and
 - b. showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - c. stating that unauthorised entry to the work site is prohibited.
3. Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
4. This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
5. This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the *Act*, to comply with the technical provisions of the State’s building laws.”

Note: *PCA* and *principal contractors* must also ensure that signs required by this clause are erected and maintained (see clause 227A which imposes a penalty exceeding \$1,000).

Note: If *Council* is appointed as the *PCA* it will provide the sign to the *principal contractor* or *owner builder* who must ensure that the sign is erected and maintained as required by Clause 98A of the *Regulation*.
Standard Condition: D12

D.4 Toilet Facilities

Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.
Each toilet provided:

- a) must be a standard flushing toilet, and
- b) must be connected to a public sewer, or
- c) if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the council, or
- d) if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the council.

The provision of toilet facilities in accordance with this condition must be completed before any other work is commenced.
In this condition:

accredited sewage management facility means a sewage management facility to which Division 4A of Part 3 of the *Local Government (Approvals) Regulation* 1993 applies, being a sewage management facility that is installed or constructed to a design or plan the subject of a certificate of accreditation referred to in clause 95B of the *Local Government (Approvals) Regulation* 1993.

approved by the council means the subject of an approval in force under Division 1 of Part 3 of the *Local Government (Approvals) Regulation 1993*.

public sewer has the same meaning as it has in the *Local Government (Approvals) Regulation 1993*.

sewage management facility has the same meaning as it has in the *Local Government (Approvals) Regulation 1993*.

Note: This condition does not set aside the requirement to comply with Workcover NSW requirements.

Standard Condition: D13 (Autotext DD13)

D.5 Erosion and Sediment Controls – Installation

The *principal contractor* or *owner builder* must install and maintain water pollution, erosion and sedimentation controls in accordance with:

- a. The *Soil and Water Management Plan* if required under this consent;
- b. “*Do it Right On Site, Soil and Water Management for the Construction Industry*” published by the Southern Sydney Regional Organisation of Councils, 2001; and
- c. “*Managing Urban Stormwater - Soils and Construction*” published by the NSW Department of Housing 4th Edition” (‘The Blue Book’).

Where there is any conflict The Blue Book takes precedence.

Note: The International Erosion Control Association – Australasia (<http://www.austieca.com.au/>) lists consultant experts who can assist in ensuring compliance with this condition. Where Soil and Water Management Plan is required for larger projects it is recommended that this be produced by a member of the International Erosion Control Association – Australasia.

Note: The “Do it Right On Site, Soil and Water Management for the Construction Industry” publications can be downloaded free of charge from www.woollahra.nsw.gov.au.

Note: A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the Act and/or the *Protection of the Environment Operations Act 1997* **without any further warning**. It is a criminal offence to cause, permit or allow pollution.

Note: Section 257 of the *Protection of the Environment Operations Act 1997* provides inter alia that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution”

Warning, irrespective of this condition any person occupying the site may be subject to proceedings under the *Protection of the Environment Operations Act 1997* where pollution is caused, permitted or allowed as the result of their occupation of the land being developed.

Standard Condition: D14 (Autotext DD14)

D.6 Building - Construction Certificate, Appointment of Principal Certifying Authority, Appointment of Principal Contractor and Notice of Commencement (s81A(2) of the Act)

The erection of the building in accordance with this development consent must not be commenced until:

- a. a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited Certifier, and
- b. the person having the benefit of the development consent has:
 - i. appointed a principal certifying authority for the building work, and
 - ii. notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and

- b1. the principal certifying authority has, no later than 2 days before the building work commences:
 - i. notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - ii. notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- b2. the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - i. appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
 - ii. notified the principal certifying authority of any such appointment, and
 - iii. unless that person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - iv. given at least 2 days' notice to the council of the person's intention to commence the erection of the building.

Note: *building* has the same meaning as in section 4 of the *Act* and includes part of a building and any structure or part of a structure.

Note: *new building* has the same meaning as in section 109H of the *Act* and includes an altered portion of, or an extension to, an existing building.

Note: The commencement of demolition works associated with an altered portion of, or an extension to, an existing building is considered to be the commencement of building work requiring compliance with section 82A(2) of the *Act* (including the need for a *Construction Certificate*) prior to any demolition work. See: *Over our Dead Body Society Inc v Byron Bay Community Association Inc* [2001] NSWLEC 125.

Note: *Construction Certificate* Application, *PCA Service Agreement* and *Notice of Commencement* forms can be downloaded from Council's website www.woollahra.nsw.gov.au.

Note: It is an offence for any person to carry out the erection of a *building* in breach of this condition and in breach of section 81A(2) of the *Act*.
Standard Condition: D15

D.7 Establishment of boundary location, building location and datum

Prior to the commencement of any work the principal contractor or owner builder must ensure that a surveyor registered under the *Surveying Act 2002* sets out:

- a. the boundaries of the *site* by permanent marks (including permanent recovery points);
- b. the location and level of foundation excavations, footings, walls and slabs by permanent marks, pegs or profiles relative to the boundaries of the land and relative to Australian Height Datum ("AHD") in compliance with the approved plans;
- c. establishes a permanent datum point (bench mark) within the boundaries of the *site* relative to AHD; and
- d. provides a copy of a survey report by the registered surveyor detailing, the title boundaries, pegs/profiles, recovery points and bench mark locations as established pursuant to this condition to the PCA.

Note: Where the *principal contractor* or *owner builder* notes any discrepancy between the approved development consent and the *Construction Certificate*, especially in relation to the height, location or

external configuration of the building (but not limited to these issues) the *principal contractor* or *owner builder* should not proceed until satisfied that the variations as shown are consistent with the consent. Failure to do so may result in a breach of development consent.

Note: On larger developments, or where boundary redefinition is required, the placement of new State Survey Marks as permanent marks should be considered by the registered surveyor.

Standard Condition: D18 (Autotext DD18)

D.8 Aquatic ecology

A survey being undertaken to identify if there has been changes to the distribution of seagrasses since the February 2006/December 2008 surveys and *Caulerpa taxifolia* since the 20/10/09 inspection. This is to ensure that the installation of the silt curtains and other control measures are located appropriately. A construction management plan will need to be prepared in conjunction with Department of Primary Industries regarding the removal of *Caulerpa taxifolia*.

D.9 Checking Construction Certificate plans & protecting assets owned by the Sydney Water Corporation

Construction Certificate plans must be stamped by the Sydney Water Corporation prior to the commencement of any development work. This is required to ensure that buildings close to or over Sydney Water Corporation assets are identified and requirements for protecting them are implemented.

Note: Further information can be obtained from the Sydney Water Corporation on or telephone 13 20 92 or by visiting their web site: http://www.sydneywater.com.au/html/yourhome/quick_check/building_renovating.cfm

Standard Condition: D19 (Autotext DD19)

E. Conditions which must be satisfied during any development work

E.1 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989

For the purposes of section 80A (11) of the Act, the following condition is prescribed in relation to a development consent for development that involves any building work:

- a. that the work must be carried out in accordance with the requirements of the Building Code of Australia,
- b. in the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

This condition does not apply:

- a. to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4) of the Regulation, or
- b. to the erection of a temporary building.

In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant construction certificate is made.

Standard Condition: E1 (Autotext EE1)

E.2 Compliance with Australian Standard for Demolition

Demolition of buildings and structures must comply with Australian Standard AS 2601—1991: The Demolition of Structures, published by Standards Australia, and as in force at 1 July 1993.

Standard Condition: E2 (Autotext EE2)

E.3 Compliance with Construction Management Plan

All development activities and traffic movements must be carried out in accordance with the approved construction management plan.

All controls in the Plan must be maintained at all times. A copy of the Plan must be kept on-site at all times and made available to the *PCA* or *Council* on request.

Note: Irrespective of the provisions of the Construction Management Plan the provisions of traffic and parking legislation prevails.

Standard Condition: E3 (Autotext EE3)

E.4 Requirement to notify about new evidence

Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination, heritage significance, threatened species or other relevant matters must be immediately notified to Council and the Principal Certifying Authority.

Standard Condition: E4 (Autotext EE4)

E.5 Critical Stage Inspections

Critical stage inspections must be called for by the *principal contractor* or *owner builder* as required by the PCA, any PCA service agreement, the *Act* and the *Regulation*.

Work must not proceed beyond each critical stage until the PCA is satisfied that work is proceeding in accordance with this consent, the Construction Certificate(s) and the *Act*.

critical stage inspections means the inspections prescribed by the *Regulations* for the purposes of section 109E(3)(d) of the *Act* or as required by the PCA and any PCA Service Agreement.

Note: The PCA may require inspections beyond mandatory critical stage inspections in order that the PCA be satisfied that work is proceeding in accordance with this consent.

Note: The PCA may, in addition to inspections, require the submission of *Compliance Certificates*, survey reports or evidence of suitability in accordance with Part A2.2 of the BCA in relation to any matter relevant to the development.

Standard Condition: E5 (Autotext EE5)

E.6 Hours of Work –Amenity of the neighbourhood

- a. No *work* must take place on any Sunday or public holiday,
- b. No *work* must take place before 7.30am or after 5pm any weekday,
- c. No *work* must take place before 7.30am or after 1pm any Saturday, and
- d. No **piling**, piercing, cutting, boring, drilling, rock breaking, rock sawing, jack hammering or bulk excavation of land or loading of material to or from trucks must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday.
- e. No **piling**, rock excavation being cutting, boring, drilling, breaking, sawing, jack hammering or bulk excavation of rock, must occur without a 15 minute break every hour.

This condition has been imposed to mitigate the impact of work upon the amenity of the neighbourhood. Impact of work includes, but is not limited to, noise, vibration, dust, odour, traffic and parking impacts.

Note: The use of noise and vibration generating plant and equipment and vehicular traffic, including trucks in particular, significantly degrade the amenity of neighbourhoods and more onerous restrictions apply to these activities. This more invasive work generally occurs during the foundation and bulk excavation stages of development. If you are in doubt as to whether or not a particular activity is considered to be subject to the more onerous requirement (9am to 4pm weekdays and 9am to 1pm Saturdays) please consult with Council.

Note: Each and every breach of this condition by any person may be subject to separate penalty infringement notice or prosecution.

Note: The delivery and removal of plant, equipment and machinery associated with wide loads subject to RTA and Police restrictions on their movement out side the approved hours of work will be considered on a case by case basis.

Note: Compliance with these hours of work does not affect the rights of any person to seek a remedy to offensive noise as defined by the *Protection of the Environment Operations Act 1997*, the *Protection of the Environment Operations (Noise Control) Regulation 2000*.

Note: EPA Guidelines can be down loaded from <http://www.epa.nsw.gov.au/noise/nglg.htm> .

Note: see http://www.epa.nsw.gov.au/resources/ci_build_sheet7.pdf
Standard Condition: E6 (Autotext EE6)

E.7 Maintenance of Vehicular and Pedestrian Safety and Access

The *principal contractor* or *owner builder* and any other person acting with the benefit of this consent must:

- a. Not erect or maintain any gate or fence swing out or encroaching upon the road or the footway.
- b. Not use the road or footway for the storage of any article, material, matter, waste or thing.
- c. Not use the road or footway for any *work*.
- d. Keep the road and footway in good repair free of any trip hazard or obstruction.
- e. Not stand any plant and equipment upon the road or footway.

This condition does not apply to the extent that a permit or approval exists under the section 73 of the *Road Transport (Safety and Traffic Management) Act 1999*, section 138 of the *Roads Act 1993* or section 94 of the *Local Government Act 1993* except that at all time compliance is required with:

- a. Australian Standard AS 1742 (Set) Manual of uniform traffic control devices and all relevant parts of this set of standards.
- b. Australian Road Rules to the extent they are adopted under the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999*.

Note: Section 73 of the *Road Transport (Safety and Traffic Management) Act 1999* allows the Police to close any road or road related area to traffic during any temporary obstruction or danger to traffic or for any temporary purpose. Any road closure requires Police approval.

Note: Section 138 of the *Roads Act 1993* provides that a person must not:

- a. erect a structure or carry out a work in, on or over a public road, or
- b. dig up or disturb the surface of a public road, or
- c. remove or interfere with a structure, work or tree on a public road, or
- d. pump water into a public road from any land adjoining the road, or
- e. connect a road (whether public or private) to a classified road, otherwise than with the consent of the appropriate roads authority.

Note: Section 68 of the *Local Government Act 1993* provides that a person may carry out certain activities only with the prior approval of the council including:

Part C Management of Waste:

- “1 For fee or reward, transport waste over or under a public place
- 2 Place waste in a public place
- 3 Place a waste storage container in a public place.”

Part E Public roads:

- “1 Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway
 - 2 Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road.”
- Any work in, on or over the Road or Footway requires *Council* Approval and in the case of classified roads the NSW Roads and Traffic Authority. Road includes that portion of the road uses as a footway.

Standard Condition: E7 (Autotext EE7)

E.8 Maintenance of Environmental Controls

The *principal contractor* or *owner builder* must ensure that the following monitoring, measures and controls are maintained:

- a. Erosion and sediment controls,
- b. Dust controls,
- c. Dewatering discharges,
- d. Noise controls,
- e. Vibration monitoring and controls,
- f. Ablutions.

Note 1: See http://www.epa.nsw.gov.au/small_business/builders.htm for additional information.

Standard Condition: E11

E.9 Vibration Monitoring

Vibration monitoring equipment must be installed and maintained, under the supervision of a *professional engineer* with expertise and experience in geotechnical engineering, between any potential source of vibration and any *building* identified by the *professional engineer* as being potentially at risk of movement or damage from settlement and/or vibration during the excavation and during the removal of any excavated material from the land being developed. If vibration monitoring equipment detects any vibration at the level of the footings of any adjacent building exceeding the peak particle velocity adopted by the *professional engineer* as the maximum acceptable peak particle velocity an audible alarm must activate such that the *principal contractor* and any sub-contractor are easily alerted to the event.

Where any such alarm triggers all excavation works must cease immediately.

Prior to the vibration monitoring equipment being reset by the *professional engineer* and any further work recommencing the event must be recorded and the cause of the event identified and documented by the *professional engineer*.

Where the event requires, in the opinion of the *professional engineer*, any change in work practices to ensure that vibration at the level of the footings of any adjacent building does not exceed the peak particle velocity adopted by the *professional engineer* as the maximum acceptable peak particle velocity these changes in work practices must be documented and a written direction given by the *professional engineer* to the *principal contractor* and any sub-contractor clearly setting out required work practice.

The *principal contractor* and any sub-contractor must comply with all work directions, verbal or written, given by the *professional engineer*.

A copy of any written direction required by this condition must be provided to the *Principal Certifying Authority* within 24 hours of any event.

Where there is any movement in foundations such that damaged is occasioned to any adjoining *building* or such that there is any removal of support to *supported land* the *professional engineer*, *principal contractor* and any sub-contractor responsible for such work must immediately cease all work, inform the owner of that *supported land* and take immediate action under the direction of the *professional engineer* to prevent any further damage and restore support to the *supported land*.

Note: *Professional engineer* has the same mean as in Clause A1.1 of the BCA.

Note: *Building* has the same meaning as in section 4 of the Act i.e. “**building** includes part of a building and any structure or part of a structure”.

Note: *Supported land* has the same meaning as in section 88K of the Conveyancing Act 1919.

Standard Condition: E14 (Autotext EE14)

E.10 Erosion and Sediment Controls – Maintenance

The *principal contractor* or *owner builder* must maintain water pollution, erosion and sedimentation controls in accordance with:

- a. The Soil and Water Management Plan required under this consent;
- b. “*Do it Right On Site, Soil and Water Management for the Construction Industry*” published by the Southern Sydney Regional Organisation of Councils, 2001; and
- c. “*Managing Urban Stormwater - Soils and Construction*” published by the NSW Department of Housing 4th Edition (“*The Blue Book*”).

Where there is any conflict *The Blue Book* takes precedence.



Note 1: A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the Act and/or the Protection of the Environment Operations Act 1997 without any further warning. It is a criminal offence to cause, permit or allow pollution.

Note 2: Section 257 of the Protection of the Environment Operations Act 1997 provides that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution”. **Warning,** irrespective of this condition any person occupying the site may be subject to proceedings under the Protection of the Environment Operations Act 1997 where pollution is caused, permitted or allowed as the result of the occupation of the land being developed whether or not they actually cause the pollution.

Standard Condition: E15 (Autotext EE15)

E.11 Check Surveys - boundary location, building location, building height and stormwater drainage system relative to Australian Height Datum

The *Principal Contractor* or *Owner Builder* must ensure that a surveyor registered under the *Surveying Act 2002* carries out check surveys and provides survey certificates confirming the location of the building(s), ancillary works, flood protection works and the stormwater drainage system relative to the boundaries of the *site* and that the height of buildings, ancillary works, flood protection works and the stormwater drainage system relative to Australian Height Datum complies with this consent following the installation of piles.

Note: This condition has been imposed to ensure that development occurs in the location and at the height approved under this consent. This is critical to ensure that buildings are constructed to minimum heights for flood protection and maximum heights to protect views and the amenity of neighbours.

Standard Condition: E20 (Autotext EE20)

E.12 Placement and use of Skip Bins

The *principal contractor* or *owner builder* must ensure that all waste storage containers, including but not limited to skip bins, must be stored within the site unless:

- a. Activity Approval has been issued by Council under section 94 of the *Local Government Act 1993* to place the waste storage container in a public place, and
- b. Where located on the road it is located only in a position where a vehicle may lawfully park in accordance with the Australian Road Rules to the extent they are adopted under the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999*.

Note: Waste storage containers must not be located on the footpath without a site specific activity approval. Where such site specific activity approval is granted a 1.5m wide clear path of travel is maintained free of any trip hazards.

Standard Condition: E21 (Autotext EE21)

E.13 Prohibition of burning

There must be no burning of any waste or other materials. The burning of CCA (copper chrome arsenate) or PCP (pentachlorophenol) treated timber is prohibited in all parts of NSW. All burning is prohibited in the Woollahra local government area.

Note: Pursuant to the *Protection of the Environment Operations (Control of Burning) Regulation 2000* all burning (including burning of vegetation and domestic waste) is prohibited except with approval. No approval is granted under this consent for any burning.

Standard Condition: E22 (Autotext EE22)

E.14 Dust Mitigation

Dust mitigation must be implemented in accordance with “*Dust Control - Do it right on site*” published by the Southern Sydney Regional Organisation of Councils.

This generally requires:

- a. Dust screens to all hoardings and site fences.
- b. All stockpiles or loose materials to be covered when not being used.
- c. All equipment, where capable, being fitted with dust catchers.
- d. All loose materials being placed in bags before placing into waste or skip bins.
- e. All waste and skip bins being kept covered when not being filled or emptied.
- f. The surface of excavation work being kept wet to minimise dust.
- g. Landscaping incorporating trees, dense shrubs and grass being implemented as soon as practically possible to minimise dust.

Note 1: “*Dust Control - Do it right on site*” can be downloaded free of charge from Council’s web site www.woollahra.nsw.gov.au or obtained from Council’s office.

Note 2: Special precautions must be taken when removing asbestos or lead materials from development sites. Additional information can be obtained from www.workcover.nsw.gov.au and www.epa.nsw.gov.au. Other specific conditions and advice may apply.

Note 3: Demolition and construction activities may affect local air quality and contribute to urban air pollution. The causes are dust, smoke and fumes coming from equipment or activities, and airborne chemicals when spraying for pest management. Precautions must be taken to prevent air pollution.

Standard Condition: E23 (Autotext EE23)

E.15 Compliance with Acid Sulfate Soils Management Plan

The Principal Contract / Owner Builder and any subcontractor must comply with the Acid Sulfate Soil Management Plan and the NSW Government Acid Sulfate Soils Management Advisory Committee guidelines.

Note: The Acid Sulfate Soils Management plan submitted with the Development Application sets out all the above requirements in detail.

Note: A failure to implement and maintain the Acid Sulfate Soils Management plan can result in the following environmental harm:

- damage to the soil structure so plant roots and soil organisms can't easily move about
- plant roots being burnt by acid, reducing plant health and productivity
- acid intolerant soil fauna and flora are killed, so the soil biodiversity and health are reduced
- plants and soil life can be poisoned by the available toxic metals
- loss of aquatic plants that can not survive acidic conditions
- loss of fish, crustaceans, birds and other animals
- damage to metal and concrete structures (such as bridge pylons and pipes)

Standard Condition: E28 (Autotext EE28)

E.16 Fuel-filling area implementation

The fuel filling area must be constructed in accordance with:

- a. Code of Practice for the Design, Installation and Operation of Underground Petroleum Storage Systems by the Australian Institute of Petroleum (CP22-1994);
- b. Environment Protection Authority's Environmental Guideline: Surface Water Management on the Covered Forecourt Areas of Service Stations.

Standard Condition: E36 (Autotext EE36)

E.17 Reporting and monitoring program during the construction phase

Reporting of the monitoring program during the construction phase shall identify all exceedences of the Noise Management Level (NML) and be made available at all times to the appropriate certifying authority. The reporting shall describe the date, time and nature of exceedence/incident; identify the cause (or likely cause) of the exceedence/incident; describe what action has been taken and describe the proposed measures to address the exceedence/incident.

E.18 Removal of existing piles – containment of sediments

Measures (e.g. the use of silt curtains) are to be implemented to prevent the migration of sediments disturbed as a result of the removal of existing piles. This condition is imposed with regard to protection of the marine ecology.

E.19 Tree Preservation

All persons must comply with Council's *Tree Preservation Order* ("the TPO"), other than where varied by this consent. The order applies to any tree, with a height greater than 5 metres or a diameter spread of branches greater than 3 metres, is subject to Council's Tree Preservation Order unless, exempted by specific provisions. Works to be carried out within a 5 metre radius of any tree, subject to the Tree Preservation Order, require the prior written consent of Council.

General Protection Requirements

- a) There must be no excavation or *work* within the required Tree Protection Zone(s). The Tree Protection Zone(s) must be maintained during all *development work*.
- b) Where excavation encounters tree roots with a diameter exceeding 40mm excavation must cease. The *principal contractor* must procure an inspection of the tree roots exposed by a qualified arborist. Excavation must only recommence with the implementation of the recommendations of the qualified arborist or where specific instructions are given by Council's Tree Management Officer in strict accordance with such Council instructions.
- c) Where there is damage to any part of a tree the *principal contractor* must procure an inspection of the tree by a qualified arborist immediately. The *principal contractor* must immediately implement treatment as directed by the qualified arborist or where specific instructions are given by Council's Tree Management Officer in strict accordance with such Council instructions.

Note: Trees must be pruned in accordance with Australian Standard AS 4373 – 2007 “Pruning of Amenity Trees” and Workcover NSW Code of Practice Amenity Tree Industry 1998. Standard Condition: E8

E.20 Tree Preservation & Approved Landscaping Works

All landscape works must be undertaken in accordance with the approved landscape plan, arborist report, tree management plan and transplant method statement as applicable.

- a) The following trees must be retained

- Trees on private land

Council Ref No	Species	Location	Dimensions (metres)
1	<i>Glochidion ferdinandii</i> Cheese Tree	South end of office building	5 x3

F. Conditions which must be satisfied prior to any occupation or use of the building (Part 4A of the Act and Part 8 Division 3 of the Regulation)

F.1 Occupation Certificate (section 109M of the Act)

A person must not commence occupation or use of the whole or any part of a new building (within the meaning of section 109H (4) of the *Act*) unless an occupation certificate has been issued in relation to the building or part.

Note: new building includes an altered portion of, or an extension to, an existing building.

Standard Condition: F1 (Autotext FF1)

F.2 Provision of Category 1 Fire Safety Provisions (clause 93 of the Regulation)

A person must not commence occupation or use of the whole or any part of a the building unless such of the Category 1 fire safety provisions as are applicable to the building’s proposed new use are provided.

Note: Category 1 fire safety provision means the following provisions of the BCA, EP1.3, EP1.4, EP1.6, EP2.1, EP2.2 and EP3.2 in Volume One of that Code and P2.3.2 in Volume Two of that Code.

Standard Condition: F3 (Autotext FF3)

F.3 Fire Safety Certificates

In the case of a *final occupation certificate* to authorise a person:

- a. to commence occupation or use of a *new building*, or
- b. to commence a change of building use for an existing building,

a *certifying authority* must be satisfied that a final fire safety certificate has been issued for the building.

In the case of an *interim occupation certificate* to authorise a person:

- a. to commence occupation or use of a partially completed *new building*, or
- b. to commence a change of building use for part of an existing building,

a *certifying authority* must be satisfied that a final fire safety certificate or an interim fire safety certificate has been issued for the relevant part of the building.

Note: This condition does not apply to a class 1a or class 10 building within the meaning of clause 167 of the Regulation.

Note: In this condition:

interim fire safety certificate has the same meaning as it has in Part 9 of the Regulation.

final fire safety certificate has the same meaning as it has in Part 9 of the Regulation.

new building has the same meaning as it has in section 109H of the Act.

Standard Condition: F4 (FF4)

F.4 Compliance Certificate from Sydney Water

All work must be completed in accordance with the Compliance Certificate under the Sydney Water Act 1994 and the “Notice of Requirements”.

Note: Please refer to “Your Business” section of Sydney Water’s web site at www.sydneywater.com.au then the “e-developer” icon or telephone 13 20 92.

Standard Condition: F5 (Autotext FF5)

F.5 Commissioning and Certification of Systems and Works

The *principal contractor* or *owner builder* must submit to the satisfaction of the *PCA* works-as-executed (“WAE”) plans, *Compliance Certificates* and evidence of suitability in accordance with Part A2.2 of the BCA confirming that the *works*, as executed and as detailed, comply with the requirement of this consent, the *Act*, the *Regulations*, any relevant *construction certificate*, the *BCA* and relevant *Australian Standards*.

Works-as-executed (“WAE”) plans, *Compliance Certificates* and evidence of suitability in accordance with Part A2.2 of the BCA must including but may not be limited to:

- a. Certification from the supervising professional engineer that the requirement of the Geotechnical / Hydrogeological conditions and report recommendations were implemented and satisfied during development work.
- b. All flood protection measures.
- c. All stormwater drainage systems.
- e. All mechanical ventilation systems.
- f. All hydraulic systems.
- g. All structural work.
- h. All acoustic attenuation work.
- i. All waterproofing.
- j. Such further matters as the *Principal Certifying Authority* may require.

Note: This condition has been imposed to ensure that systems and works as completed meet *development standards* as defined by the *Act*, comply with the *BCA*, comply with this consent and so that a public record of works as executed is maintained.

Note: The *PCA* may require any number of WAE plans, certificates, or other evidence of suitability as necessary to confirm compliance with the *Act*, *Regulation*, Development Standards, *BCA*, and relevant *Australia Standards*. As a minimum WAE plans and certification is required for stormwater drainage and detention, mechanical ventilation work, hydraulic services (including but not limited to fire services).

Note: The *PCA* must submit to Council, with any *Occupation Certificate*, copies of works-as-executed (“WAE”) plans, *Compliance Certificates* and evidence of suitability in accordance with Part A2.2 of the *BCA* upon which the *PCA* has relied in issuing any *Occupation Certificate*.
Standard Condition: F7 (Autotext FF7)

F.6 New Waste Services

No occupation certificate must be issued until the owner/developer has procured the provision of required waste services including purchase of all waste and recycling storage containers (bins and crates) from Council.

Standard Condition: F19 (Autotext FF19)

F.7 Noise mitigation strategies

Prior to occupation of the marina the applicant shall confirm that all noise mitigation strategies for operational activities as contained in the report by Heggies Australia Pty Ltd dated 11/3/10 have been fully adopted. This condition has been imposed to protect the amenity of surrounding residents.

F.8 Evidence of right for public access to the marina

The applicant is to provide evidence to Council that the lease with NSW Maritime includes provision for unrestricted public access to all parts of the Marina during business hours. This condition is imposed with regard to public access to the waterway/foreshore.

G. Conditions which must be satisfied prior to the issue of any Subdivision Certificate

G.1 Electricity Substations – Dedication as road and/or easements for access

If an electricity substation, is required on the site the owner must dedicate to the appropriate energy authority (to its satisfaction), free of cost, an area of land adjoining the street alignment to enable an electricity substation to be established. The size and location of the electricity substation is to be in accordance with the requirements of the appropriate energy authority and Council. The opening of any access doors are not to intrude onto the public road (footway or road pavement).

Documentary evidence of compliance, including correspondence from the energy authority is to be provided to the *Principal Certifying Authority* prior to issue of the Construction Certificate detailing energy authority requirements.

The Accredited Certifier must be satisfied that the requirements of energy authority have been met prior to issue of the Construction Certificate.

Where an electricity substation is provided on the site adjoining the road boundary, the area within which the electricity substation is located must be dedicated as public road. Where access is required across the site to access an electricity substation an easement for access across the site from the public place must be created upon the linen plans burdening the subject site and benefiting the Crown in right of New South Wales and any Statutory Corporation requiring access to the electricity substation.

Standard Condition: G4 (Autotext GG4)

H. Conditions which must be satisfied prior to the issue of a Final Occupation Certificate (s109C(1)(c))

H.1 Removal of Ancillary Works and Structures

The *principal contractor* or *owner* must remove from the land and any adjoining public place:

- a. The site sign;
- b. Ablutions;
- c. Hoarding;
- d. Scaffolding; and
- e. Waste materials, matter, article or thing.

Note: This condition has been imposed to ensure that all ancillary matter is removed prior to the issue of the *Final Occupation Certificate*.

Standard Condition: H12 (Autotext HH12)

I. Conditions which must be satisfied during the ongoing use of the development

I.1 Hours of use

The hours of operation are limited to the following:

- | | | | | |
|----|------------------------------|---------------------|------------------|-----------------|
| a. | Office | Daylight saving | 9.00am to 6pm | 7 days per week |
| | | Non daylight saving | 9.00am to 5pm | 7 days per week |
| b. | Slipway and boat maintenance | 9.000am to 6pm | Monday to Friday | |
| | | 9.000am to 12.30pm | Saturday | |

The owners of boats on the marina may have 24 hour access to the marina 7 days a week.

Reason: This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

Note: Deliveries to or dispatches from the site must not be made outside these hours. Trading Hours may be more onerous than these general hours of use. This condition does not apply to activities such as cleaning which takes place wholly within the building and which are not audible within any adjoining residential dwelling. If internal activities are audible within any adjoining residential dwelling such that they cause a nuisance to the occupiers of such dwelling than such internal activities must not occur outside these hours of use. This condition does not restrict the operation of noise pollution laws.

Standard Condition: I1 (Autotext II1)

I.2 Waste Management – Commercial

Waste Management must comply with the Marina Management Plan.

Waste and recycling bins/crates must be removed from the road or footpath within 1 hour of collection or otherwise is accordance with the approved *Waste Management Plan*.

This condition does not apply to the extent that Activity Approval exists under the Local Government Act 1993 or the Roads Act 1993 and subject that all conditions of such approval(s) are complied with.

Reason: This condition has been imposed to ensure that all waste and recycling receptacles are removed from public places following collection to ensure there is no unnecessary obstruction of footpaths or roads and no unnecessary visual amenity impacts.
Standard Condition: I15 (Autotext II15)

I.3 Annual Fire Safety Statements (Class 1b to 9c buildings inclusive)

Each year, the owner of a building to which an *essential fire safety measure* is applicable must provide an *annual fire safety statement* to Council and the Commissioner of the NSW Fire Brigades. The *annual fire safety statement* must be prominently displayed in the building.

Note: *Essential fire safety measure* has the same meaning as in clause 165 of the *Regulation*. *Annual fire safety statement* has the same meaning as in clause 175 of the *Regulation*. Part 9 Division 5 of the *Regulation* applies in addition to this condition at the date of this consent. Visit Council's web site for additional information in relation to fire safety www.woollahra.nsw.gov.au.
Standard Condition: I22

I.4 Storage and handling of flammable and combustible liquids

The storage and handling of flammable and combustible liquids must be in accordance with AS1940-2004 - *The storage and handling of flammable and combustible liquids*.

Reason: This condition has been imposed to protect public safety.
Standard Condition: I27 (Autotext II27)

I.5 Outdoor lighting – Commercial

Outdoor lighting must comply with AS 4282-1997: *Control of the obtrusive effects of outdoor lighting*. The maximum luminous intensity from each luminaire must not exceed the level 1 control relevant under table 2.2 of AS 4282. The maximum illuminance and the threshold limits must be in accordance with table 2.1 of AS 4282.

Reason: This condition has been imposed to protect the amenity of neighbours and limit the obtrusive effects of outdoor lighting in public places.

Note: Council may consider, subject to an appropriate section 96 application relaxation of this condition where it can be demonstrated, by expert report, that the level of lighting in the existing area already exceeds the above criteria, where physical shielding is present or physical shielding is reasonably possible.
Standard Condition: I43 (Autotext II43)

I.6 Commercial Waste Management

All waste must be presented for collection in a receptacle. Waste receptacles must be presented no earlier than close of business on day before collection and removed from collection point an hour after open of business on day of collection. Receptacles are not to be stored in any public place at anytime. Waste and recycling receptacles must be stored at all times within the boundaries of the site.

Note: No waste will be collected by Council that isn't presented properly. The waste must be presented with lid closed to reduce littering. Standard Condition: I46 (Autotext II46)

I.7 Noise Control

The use of the premises must not give rise to the transmission of *offensive noise* to any place of different occupancy. *Offensive noise* is defined in the *Protection of the Environment Operations Act 1997*.

Reason: This condition has been imposed to protect the amenity of the neighbourhood.

Note: Council will generally enforce this condition in accordance with the *Noise Guide for Local Government* (<http://www.environment.nsw.gov.au/noise/nglg.htm>) and the *Industrial Noise Guidelines* (<http://www.environment.nsw.gov.au/noise/industrial.htm>) publish by the Department of Environment and Conservation. Other state government authorities also regulate the *Protection of the Environment Operations Act 1997*.

Useful links:

Community Justice Centres—free mediation service provided by the NSW Government (www.cjc.nsw.gov.au).

Department of Environment and Conservation NSW, Noise Policy Section web page (www.environment.nsw.gov.au/noise).

New South Wales Government Legislation home page for access to all NSW legislation, including the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Noise Control Regulation 2000* (www.legislation.nsw.gov.au).

Australian Acoustical Society—professional society of noise-related professionals (www.acoustics.asn.au/index.php).

Association of Australian Acoustical Consultants—professional society of noise related professionals (www.aaac.org.au).

Department of Gaming and Racing - (www.dgr.nsw.gov.au).

Standard Condition: I50 (Autotext II50)

I.8 Maintenance of Sound Attenuation

Sound attenuation must be maintained in accordance with the *Acoustic Report*. This condition is imposed to protect the residential amenity of the surrounding area.

Standard Condition: I51 (Autotext II51)

I.9 Noise from mechanical plant

Noise from all mechanical plant shall comply with Council's Noise Criterion of Mechanical Plant and Equipment, i.e. the noise level measured at any boundary of the site at any time while the mechanical plant and equipment is operating must not exceed the background noise level.

The noise mitigation strategies recommended for the operational activities of the marina as detailed in the report by Heggies Australia Pty Ltd dated 11/3/10 being fully adopted, except as required by condition I.10 of this consent.

Reason: This condition has been imposed to protect the amenity of the neighbourhood.

Note: Words in this condition have the same meaning as in the:

NSW Industrial Noise Policy (http://www.environment.nsw.gov.au/resources/ind_noise.pdf)

ISBN 0 7313 2715 2, dated January 2000, and

Noise Guide for Local Government (<http://www.environment.nsw.gov.au/noise/nglg.htm>)

ISBN 1741370671 , dated December 2004.

Standard Condition: I53 (Autotext II53)

I.10 Water jetting/pressure cleaning

Water jetting/pressure cleaning operations being limited to 1 hour per day Monday to Fridays during the Marina's operating hours. This condition is imposed with regard to the amenity of the surrounding residential area.

I.11 Compliance with the Marina Management Plan

The applicant is to ensure that the provisions of the Marina Management Plan are strictly adhered to. This condition is imposed to protect the surrounding environment.

I.12 Occupation of marina berths – vessel length

The maximum length of vessels occupying marina berths is not to exceed the overall vessel length as shown on drawing no. DA 140, issue B, dated 5/11/09 drawn by Mark Hurcum Design Practice, Architects, except as varied by condition C.1(a) of this consent. This condition is imposed with regard to the visual amenity of surrounding properties and with regard to boating safety. (Also refer to Advising K14 regarding occupation of marina berths)

I.13 Occupation of marina berths – vessel height

The height of vessels occupying marina berths is not to exceed the height shown in the *Environmental Impact Statement*, part B.4, except as varied by condition C.1(a) of this consent. The measurement of vessel height is to be from the waterline to the top of the superstructure of the vessel, including any fly bridges, but excluding any antennas, to motor boats or masts to yachts or the like. This condition is imposed with regard to the visual amenity of surrounding properties. (Also refer to Advising K14 regarding occupation of marina berths)

I.14 Access to marina

The gate to the steps which allow access from the intertidal beach on the western side of the marina is not to be locked during normal business hours. This condition is imposed to permit public access to the marina.

I.15 Use of the services berth/water, sewage pump out, water and fuelling facilities

The general boating public, in addition to owners of boats on the marina, is to have access to the services berth and the water, sewage pump out, water and fuelling facilities. The services berth shall not be used for berthing of vessels on a permanent basis or overnight.

This condition is imposed with regard to the needs of the boating public, parking, and visual impact.

I.16 Use of the marina

To protect the amenity of surrounding residential properties the marina shall not be used for the pick up or drop off of passengers as part of charter or commercial boating businesses.

J. Miscellaneous Conditions

J.1 Global warming

The design of the marina is to take into account the impacts of the effects of global warming and in particular sea level rise. This condition is imposed having regard to sea level rise benchmarks adopted by the NSW Government, i.e. 0.4m by 2050 and 0.9m by 2100.

K. Advisings

K.1 Criminal Offences – Breach of Development Consent & Environmental laws

Failure to comply with this development consent and any condition of this consent is a **criminal offence**. Failure to comply with other environmental laws are also a criminal offence.

Where there is any breach Council may without any further warning:

- Issue Penalty Infringement Notices (On-the-spot fines);
- Issue notices and orders;
- Prosecute any person breaching this consent; and/or
- Seek injunctions/orders before the courts to restrain and remedy any breach.

Warnings as to potential maximum penalties

Maximum Penalties under NSW Environmental Laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

Warning as to enforcement and legal costs

Should Council have to take any action to enforced compliance with this consent or other environmental laws Council's policy is to seek from the Court appropriate orders requiring the payments of its costs beyond any penalty or remedy the Court may order.

This consent and this specific advice will be tendered to the Court when seeking costs orders from the Court where Council is successful in any necessary enforcement action.

Note: The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of the *Crimes (Sentencing Procedure) Act 1999*, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious. You can obtain further information from the following web sites:

<http://www.theshopfront.org/documents/ConvictionsCriminalRecords.pdf> and the Attorney General's www.agd.nsw.gov.au.

Standard Advising: K1 (Autotext KK1)

K.2 Dial before you dig



The *principal contractor, owner builder* or any person digging may be held financially responsible by the asset owner should they damage underground pipe or cable networks. Minimise your risk and Dial 1100 Before You Dig or visit www.dialbeforeyoudig.com.au.

When you contact Dial Before You Dig, you will be sent details of all Dial Before You Dig members who have underground assets in the vicinity of your proposed excavation.

Standard Advising: K2 (Autotext KK2)

K.3 Commonwealth Disability Discrimination Act 1992 (“DDA”)

The Disability Discrimination Act 1992 (DDA) makes it against the law for public places to be inaccessible to people with a disability. Compliance with this development consent, Council’s Access DCP and the BCA does not necessarily satisfy compliance with the DDA.

The DDA applies to existing places as well as places under construction. Existing places must be modified and be accessible (except where this would involve “unjustifiable hardship”).

Further detailed advice can be obtained from the Human Rights and Equal Opportunity Commission (“HEROC”):

- <http://www.hreoc.gov.au/index.html>
- http://www.hreoc.gov.au/disability_rights/dda_guide/ins/ins.html

If you have any further questions relating to the application of the DDA you can send an email to HEROC at disabdis@humanrights.gov.au.

Standard Advising: K3 (Autotext KK3)

K.4 NSW Police Service and Road Closures

The Rose Bay Local Area Command closely aligns with the boundaries of the Woollahra local government area.

Council and Police approval is required prior to a partial or full temporary road closure. If you are seeking a partial or full temporary road closure you must comply with the relevant conditions of this consent and you must also gain the approval of the Traffic Sergeant, Paddington Police Station, 16 Jersey Road, Paddington. Phone No.: 0283568299 or Fax No.: 0283568211.

Warning: If you partial or full close a road without compliance with Council and Police requirements Council Rangers or the Police can issue Penalty Infringement Notices or Court Attendance Notices leading to prosecution.

Standard Advising: K4 (Autotext KK4)

K.5 Builders Licences and Owner Builders Permits

Section 81A of the *Act* requires among other matters that the person having the benefit of the development consent, if not carrying out the work as an **owner-builder**, must appoint a *principal contractor* for residential building work who must be the holder of a contractor licence.

Further information can be obtained from the NSW Office of Fair Trading website about how you obtain an owner builders permit or find a principal contractor (builder):

<http://www.dft.nsw.gov.au/building.html> .

The Owner(s) must appoint the PCA. The PCA must check that Home Building Act insurance is in place before the commencement of building work. The Principal Contractor (Builder) must provide the Owners with a certificate of insurance evidencing the contract of insurance under the Home Building Act 1989 for the residential building work.

Standard Condition: K5 (Autotext KK5)

K.6 Building Standards - Guide to Standards and Tolerances

The PCA does not undertake detailed quality control inspections and the role of the PCA is primarily to ensure that the development proceeds in accordance with this consent, Construction Certificates and that the development is fit for occupation in accordance with its classification under the Building Code of Australia. Critical Stage Inspections do not provide the level of supervision required to ensure that the minimum standards and tolerances specified by the “Guide to Standards and Tolerances©” ISBN 0 7347 6010 8 are achieved.

The quality of any development is a function of the quality of the *principal contractor’s* or *owner builder’s* supervision of individual contractors and trades on a daily basis during the development. The PCA does not undertake this role.

The NSW Office of Fair Trading have published a “Guide to Standards and Tolerances©” ISBN 0 7347 6010 8. The guide can be obtained from the Office of Fair Trading by calling 13 32 20 or by Fax: 9619 8618 or by post to: Marketing Branch, PO Box 972, Parramatta NSW 2124.

The Guide can be down loaded from:

<http://www.fairtrading.nsw.gov.au/pdfs/corporate/publications/dft242.pdf>

Council, as the PCA or otherwise, does not adjudicate building contract disputes between the *principal contractor*, contractors and the owner.

Standard Condition: K6 (Autotext KK6)

K.7 Workcover requirements

The Occupational Health and Safety Act 2000 No 40 and subordinate regulations, codes of practice and guidelines control and regulate the development industry.

Note: Further information can be obtained from Workcover NSW’s website: <http://www.workcover.nsw.gov.au/Industry/Construction/default.htm> or through their head office: Location: Workcover NSW, 92-100 Donnison Street, GOSFORD 2250 Postal address: WorkCover NSW, Locked Bag 2906, LISAROW 2252, Phone (02) 4321 5000, Fax (02) 4325 4145.

Standard Condition: K7 (Autotext KK7)

K.8 Asbestos Removal, Repair or Disturbance

Anyone who removes, repairs or disturbs bonded or a friable asbestos material must hold a current removal licence from Workcover NSW.

Before starting work, a work site-specific permit approving each asbestos project must be obtained from Workcover NSW. A permit will not be granted without a current Workcover licence.

All removal, repair or disturbance of or to asbestos material must comply with:

- The Occupational Health and Safety Act 2000;
- The Occupational Health and Safety Regulation 2001;
- The Code of Practice for the Safe Removal of Asbestos [NOHSC: 2002 (1998)];
- The Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)] <http://www.nohsc.gov.au/>]; and
- The Workcover NSW Guidelines for Licensed Asbestos Removal Contractors.

Note: The Code of Practice and Guide referred to above are known collectively as the Worksafe Code of Practice and Guidance Notes on Asbestos. They are specifically referenced in the Occupational Health and Safety Regulation 2001 under Clause 259. Under the Occupational Health and Safety Regulation 2001, the Worksafe Code of Practice and Guidance Notes on Asbestos are the minimum standards for asbestos removal work. Council does not control or regulate the Worksafe Code of Practice and Guidance Notes on Asbestos. You should make yourself aware of the requirements by visiting www.workcover.nsw.gov.au or one of Workcover NSW's offices for further advice.
Standard Advising: K8 (Autotext KK8)

K.9 Lead Paint

It is beyond the scope of this consent to provide detailed information about dealing with lead paint. Painters working in an area containing lead-based paint should refer to Australian Standard AS 4361.1–1995, Guide to Lead Paint Management—Industrial Applications, or AS 4361.2–1998, Guide to Lead Paint Management—Residential and Commercial Buildings.

Industrial paints, may contain lead. Lead is used in some specialised sign-writing and artist paints, and road marking paints, and anti-corrosive paints. Lead was a major ingredient in commercial and residential paints from the late 1800s to 1970. Most Australian commercial buildings and residential homes built before 1970 contain lead paint. These paints were used both inside and outside buildings.

Lead hazards - Lead particles are released when old lead paint flakes and peels and collects as dust in ceiling, wall and floor voids. If dust is generated it must be contained. If runoff contains lead particles it must be contained. Lead is extremely hazardous, and stripping of lead-based paint and the disposal of contaminated waste must be carried out with all care. Lead is a cumulative poison and even small levels in the body can have severe effects.

Standard Advising: K9 (Autotext KK9)

K.10 Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact:

Peter Kauter, Executive Planner on (02) 9391 7156

However, if you wish to pursue your rights of appeal in the Land & Environment Court you are advised that Council generally seeks resolution of such appeals through a Section 34 Conference, site hearings and the use of Court Appointed Experts, instead of a full Court hearing.

This approach is less adversarial, it achieves a quicker decision than would be the case through a full Court hearing and it can give rise to considerable cost and time savings for all parties involved. The use of the Section 34 Conference approach requires the appellant to agree, in writing, to the Court appointed commissioner having the full authority to completely determine the matter at the conference.

Standard Condition: K14 (Autotext KK14)

K.11 Release of Security

An application must be made to Council by the person who paid the security for release of the securities held under section 80A of the *Act*.

The securities will not be released until a *Final Occupation Certificate* has lodged with Council, Council has inspected the site and Council is satisfied that the public works have

been carried out to Council's requirements. Council may use part or all of the security to complete the works to its satisfaction if the works do not meet Council's requirements.

Council will only release the security upon being satisfied that all damage or all works, the purpose for which the security has been held have been remedied or completed to Council's satisfaction as the case may be.

Council may retain a portion of the security to remedy any defects in any such public work that arise within 6 months after the work is completed.

Upon completion of each section of road, drainage and landscape work to Council's satisfaction, 90% of the Bond monies held by Council for these works will be released upon application. 10% may be retained by Council for a further 6 month period and may be used by Council to repair or rectify any defects or temporary works during the 6 month period.

Note: The Application for Refund of Security form can be downloaded from <http://www.woollahra.nsw.gov.au/pdf/Forms/Planning/RefundofSecurity.pdf>

Standard Condition: K15 (Autotext KK15)

K.12 Owner Builders

Under the *Home Building Act 1989* any property owner who intends undertaking construction work to a dwelling house or dual occupancy to the value of \$12,000 or over must complete an approved education course and obtain an owner-builder permit from the Office of Fair Trading. See www.fairtrading.nsw.gov.au.

Standard Condition: K18 (Autotext KK18)

K.13 Model

If you submitted a model with the application it must be collected from the Council offices within fourteen (14) days of the date of this determination. Models not collected will be disposed of by Council.

Standard Condition: K21 (Autotext KK21)

K.14 Occupation of marina berths

The applicant is advised that the Council has no general objection to any of the marina berths being occupied by either a power boat or a yacht. However, yachts may only use marina berths if the design of the individual berthing pen satisfies relevant criteria, including under keel clearances.

K.15 Archaeological potential *Ellen A Reid*

The NSW Heritage Office has advised that a search of the NSW Shipwrecks Database identified that, located in and around the area of the Double Bay Marina in 1896 the ship *Ellen A Reid*, a 70.25m, 1790 tonne cargo ship caught fire and was beached.

The possibility that any ship relics could be impacted should be considered and an appropriate mitigation strategy put in place should this occur including necessary permits under the NSW Heritage Act.

The applicant is to engage an archaeologist to be present on-site should any archaeological object be found. Work shall cease until the significance of the evidence has been assessed by the archaeologist and presented to Council and the NSW Heritage Office. Work must not

recommence until the archaeologist is satisfied that all obligations under the NSW Heritage Act have been met.

This advising is attached in order to comply with the planning principles for heritage conservation relating to potential archaeological sites contained in the [Sydney Regional Environmental Plan \(Sydney Harbour Catchment\) 2005](#).



Mr P Kauter
EXECUTIVE PLANNER

ANNEXURES

1. Plans
2. Referral response – Development Engineer
3. Referral response – Landscaping Officer
4. Referral response – Environmental Health Officer (dated 11/12/09)
5. Referral response – Environmental Health Officer (dated 30/3/10)
6. Referral response – Heritage Officer
7. Referral response – Urban Design Planner
8. Referral response – Fire Safety Officer
9. NSW Industry & Investment general terms of approval
10. Referral response – NSW Office of Water
11. Foreshores & Waterways Planning and Development Advisory Committee's meeting minutes
12. NSW Police letter 15/12/09 (CEPTED)
13. SHREP compliance table
14. SHDCP compliance table
15. NSW Maritimes land owner's consent
16. Objection's matrix
17. Supporter's list
18. Ingham Planning letter 13/4/10 (response to matters raised in objections)