



WOOLWICH MARINA

S96 MODIFICATION APPLICATION

EXECUTIVE SUMMARY

This report has been prepared by WorleyParsons on behalf of Lesley Anne Newton to accompany an application pursuant to **Section 96(2)** of the *Environmental Planning and Assessment Act, 1979 (the EP&A Act)* for the modification of Development Consent 2009/1128 issued by Hunters Hill Council on 27 May 2010.

Development Consent 2009/1128 granted approval for the:-

- demolition of part of the existing fixed timber berthing structure and mooring piles;
- relinquishment of 10 commercial swing moorings held under CL6104; and
- construction of a new 30 berth floating marina structure, including breakwater pontoons, holding spaces for rigging and slipping and a public sewage pumpout facility.

Condition No. 2 of Development Consent 2009/1128 states:-

"This application permits the construction of a floating marina for the provision of only 30 Berths. Berth No.7 and 8 shall be deleted from the development in order to provide for a safer navigation of waters for users of the Margaret Street public ramp. The walkway section between the northern arm and the southern end of the existing floating structure to be retained in the proposed development is to be relocated west. The plans are to be amended to reflect this change and to include a site plan to be fully dimensioned sections and elevational details of the Marina and pontoon structure and to be submitted to Council."

This modification application seeks to modify Development Consent 2009/1128 by reinstating the two berths (Berths No. 7 and 8 not approved under DA 2009/1128 as a result of Condition No. 2) in a relocated position, as indicated on **Drawing 6557-01-002 Issue F dated 24 May 2010** included at **Appendix A**. The application relates to the area of water, being the land below the mean high water mark (MHW) subject to NSW Maritime Lease No RP5298 and the commercial swing moorings held under NSW Maritime Lease No. CL6104.

The following Conditions would require modification:-

- Condition No 1. (reference to plans); and
- Condition No. 2 (reference to 30 berths).

The Sydney East JRPP is the consent authority under the provisions of **Clause 13F(1)(b)**.

This application describes the proposed modifications, includes the modified plans at **Appendix A** and provides a planning assessment of the relevant matters for consideration contained in S96(2) and 79C(1) of the EP&A Act. The application is accompanied by a S96(2) application form and fee.

Permission to Lodge the s96(2) Modification DA has been obtained from NSW Maritime (refer to PTL Letter dated 28 September 2010 which is also included at **Appendix A**.)



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Having regard to the provisions of Section 96(2), it is our opinion that the proposed modification is *"substantially the same development as the development for which consent was originally granted."* Further, it is considered that the proposed modification would have minimal environmental impact.



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1. INTRODUCTION

This report has been prepared by WorleyParsons on behalf of Lesley Anne Newton to accompany an application pursuant to **Section 96(2)** of the *Environmental Planning and Assessment Act, 1979 (the EP&A Act)* for the modification of Development Consent 2009/1128, issued by Hunters Hill Council on 27 May 2010.

1.1 Structure of Report

The structure of this report is as follows:

- **Section 2** – Background (a description of Development Application 2009/1128);
- **Section 3** - a detailed description of the proposed modification to DA 2009/1128;
- **Section 4** – Section 79C considerations; and
- **Section 5** – Conclusion.

The following Appendices accompany the s96 Modification Application

APPENDIX	PLANS
Appendix A	<ul style="list-style-type: none">• Proposed S96(2) Modification DA marina layout; and• Land owner's consent to submit a s96(2) Modification Application (PTL Letter and plan stamped by NSW Maritime dated 28 September 2010).
Appendix B	<ul style="list-style-type: none">• Original marina layout (DA2009/1128); and• Land owner's consent to submit a Development Application (PTL Letter and plan stamped by NSW Maritime dated 1 December 2009)
Appendix C	<ul style="list-style-type: none">• Sketch for Information Only – (DA2009/1128 original marina showing navigation distance to the existing seawall.
Appendix D	<ul style="list-style-type: none">• Sketch for Information Only – (DA2009/1128 original marina layout December 2009 with s96(2) marina layout overlaid).
Appendix E	<ul style="list-style-type: none">• A collection of photographs of the site.
Appendix F	<ul style="list-style-type: none">• Traffic and Parking Letter dated 24 September 2010



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2. BACKGROUND

On 11 December 2009, a Development Application (DA) and Environmental Impact Statement (EIS) were submitted to Hunters Hill Council (the Council) seeking development consent for the proposed redevelopment of Woolwich Marina, located in the area of water adjoining 2C Margaret Street, Woolwich. The DA proposed the relinquishment of 10 existing swing moorings, redevelopment of the existing fixed timber marina structure which accommodated 20 berths and demolition and replacement with a new floating marina able to accommodate 32 berths (refer original marina layout as shown on Drawing No. 6557-01-002 Issue E dated 07.12.09 at **Appendix B**). The DA was registered as DA 2009/1128.

On 21 April 2010, DA 2009/1128 was referred to the Sydney East Joint Regional Planning Panel (JRPP) for determination. The Council's planning report recommended approval of the DA subject to a number of conditions.

Proposed Condition No. 3 recommended:-

"This application permits the construction of a floating marina for the provisions of only 30 berths. The plans are to be amended to reflect this change..."

Proposed Condition No. 4 recommended:-

"Berths No.s 7 and 8 being deleted from the development in order to provide for a safer navigation of waters for users of the Margaret Street public ramp. The walkway section between the northern arm and the southern end of the existing floating structure to be retained in the proposed development is to be relocated west. The plans are to be amended to reflect this change."

The recommendation to reduce berth numbers from 32 to 30 appeared to be based on the strength of the comments provided by Council's Maritime Environmental Engineer and included in the Council's planning report. These included:-

- 1) *"The eastern side of the new floating marina structure encroaches on the safe navigation waters for users of the Margaret Street Boat Ramp. We recommend that the layout is modified such that berths 7 and 8 are deleted, and the walkway section between the northern arm and southern end of the existing floating structure (retained in the proposed Development), is moved west."*

On behalf of the applicant and prior to the 21 April 2010 JRPP meeting, we submitted to the Council that the comments of Council's Maritime Environmental Engineer appeared to be at odds with the consent to the making of the development application (Permission To Lodge), provided by NSW Maritime (dated 1 December 2009). Further, the Council officer's planning report did not contain information to support the statement at item 1) *"...encroaches on the safe navigation waters for users of the Margaret Street Boat ramp."*



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In our view, a key element of the original PTL process, required NSW Maritime to consider any impacts of the proposed development on "navigation and safety, relationship to adjoining land and adjoining public land." These aspects were signed off by NSW Maritime in its PTL letter of 1 December 2009, which stated NSW Maritime "consents to the making of your development application..." (refer to original NSW Maritime PTL Letter dated 1 December 2009 at Appendix B)

The distance between the eastern edge of the existing "floating structure" and the boat ramp sea wall is 17.3m. The navigation distance is 14.7m. DA 2009/1128 did not propose a reduction of this distance -in fact, the new additional walkways for the marina were a distance of 18.3m from the seawall at the closest point (refer attached "Sketch for Information Only" at Appendix C). In our opinion, the proposed development did not encroach on the safe navigation waters.

On behalf of the applicant it was also submitted to the JRPP, that the JRPP could grant consent to the application for 32 berths having regard to the Council's concern regarding "navigation and safety" by the relocation of Berths No. 7 and 8 (in the same manner that the sewage pumpout was recommended by the Council to be relocated) from the eastern side of the marina to the western side.

Notwithstanding the above submissions, on 21 April 2010, the JRPP granted consent to DA 2009/1128 for:-

- demolition of part of the existing fixed timber berthing structure and mooring piles;
- relinquishment of 10 commercial swing moorings held under CL6104; and
- construction of a new 30 berth floating marina structure, including breakwater pontoons, holding spaces for rigging and slipping and a public sewage pumpout facility.

Condition No. 2 of the Development Consent states:-

"This application permits the construction of a floating marina for the provision of only 30 Berths. Berth No.7 and 8 shall be deleted from the development in order to provide for a safer navigation of waters for users of the Margaret Street public ramp. The walkway section between the northern arm and the southern end of the existing floating structure to be retained in the proposed development is to be relocated west. The plans are to be amended to reflect this change and to include a site plan to be fully dimensioned sections and elevational details of the Marina and pontoon structure and to be submitted to Council."

This modification application seeks to modify Development Consent 2009/1128 by reinstating the two berths (Berths No. 7 and 8 not approved under DA2009/1128) in a relocated position, as indicated on Drawing 6557-01-002 Issue F dated 24 May 2010 included at Appendix A.



3. MODIFICATION OF DEVELOPMENT CONSENT 2009/1128

In accordance with the provisions of S96(2):

"A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- c) it has notified the application in accordance with:*
 - I. the regulations, if the regulations so require, or*
 - II. a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan as the case may be.*

Subsections (1) and (1A) do not apply to such a modification."

In determining such an application, Council must also consider the matters referred to in Section 79 C (1) of the EP&A Act.

Clause 115(1) of the Environmental Planning and Assessment Regulations 2000 (the Regulations) provides:

An application for modification of a development consent under section 96 (1), (1A) or (2) or 96AA (1) of the Act must contain the following information:

- a) the name and address of the applicant,*
- b) a description of the development to be carried out under the consent (as previously modified),*



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- c) *the address, and formal particulars of title, of the land on which the development is to be carried out,*
- d) *a description of the proposed modification to the development consent,*
- e) *a statement that indicates either:*
 - I. that the modification is merely intended to correct a minor error, misdescription or miscalculation, or*
 - II. that the modification is intended to have some other effect, as specified in the statement,*
- f) *a description of the expected impacts of the modification,*
- g) *an undertaking to the effect that the development (as to be modified) will remain substantially the same as the development that was originally approved,*
- h) *if the applicant is not the owner of the land, a statement signed by the owner of the land to the effect that the owner consents to the making of the application (except where the application for the consent the subject of the modification was made, or could have been made, without the consent of the owner),*
- i) *a statement as to whether the application is being made to the Court (under section 96) or to the consent authority (under section 96AA),*

and, if the consent authority so requires, must be in the form approved by that authority.

The information required under Clause 115 (1) of the Regulations is provided in Sections A- I below.

A. NAME AND ADDRESS OF THE APPLICANT

The applicant is Lesley Anne Newton.

The address of the applicant is 2C Margaret Street, Woolwich.

B. DESCRIPTION OF THE DEVELOPMENT TO BE CARRIED OUT

Development Consent 2009/1128 granted consent for:-

- demolition of part of the existing fixed timber berthing structure and mooring piles;
- relinquishment of 10 commercial swing moorings held under CL6104; and
- construction of a new 30 berth floating marina structure, including breakwater pontoons, holding spaces for rigging and slipping and a public sewage pumpout facility.



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C. ADDRESS AND FORMAL PARTICULARS OF TITLE

The application relates to the area of water adjoining 2C Margaret Street, Woolwich, being the land below the mean high water mark (MHWM) subject to NSW Maritime Lease No RP5298 and the commercial swing moorings held under NSW Maritime Lease No. CL6104 (refer Figures 1, 2 and 3).

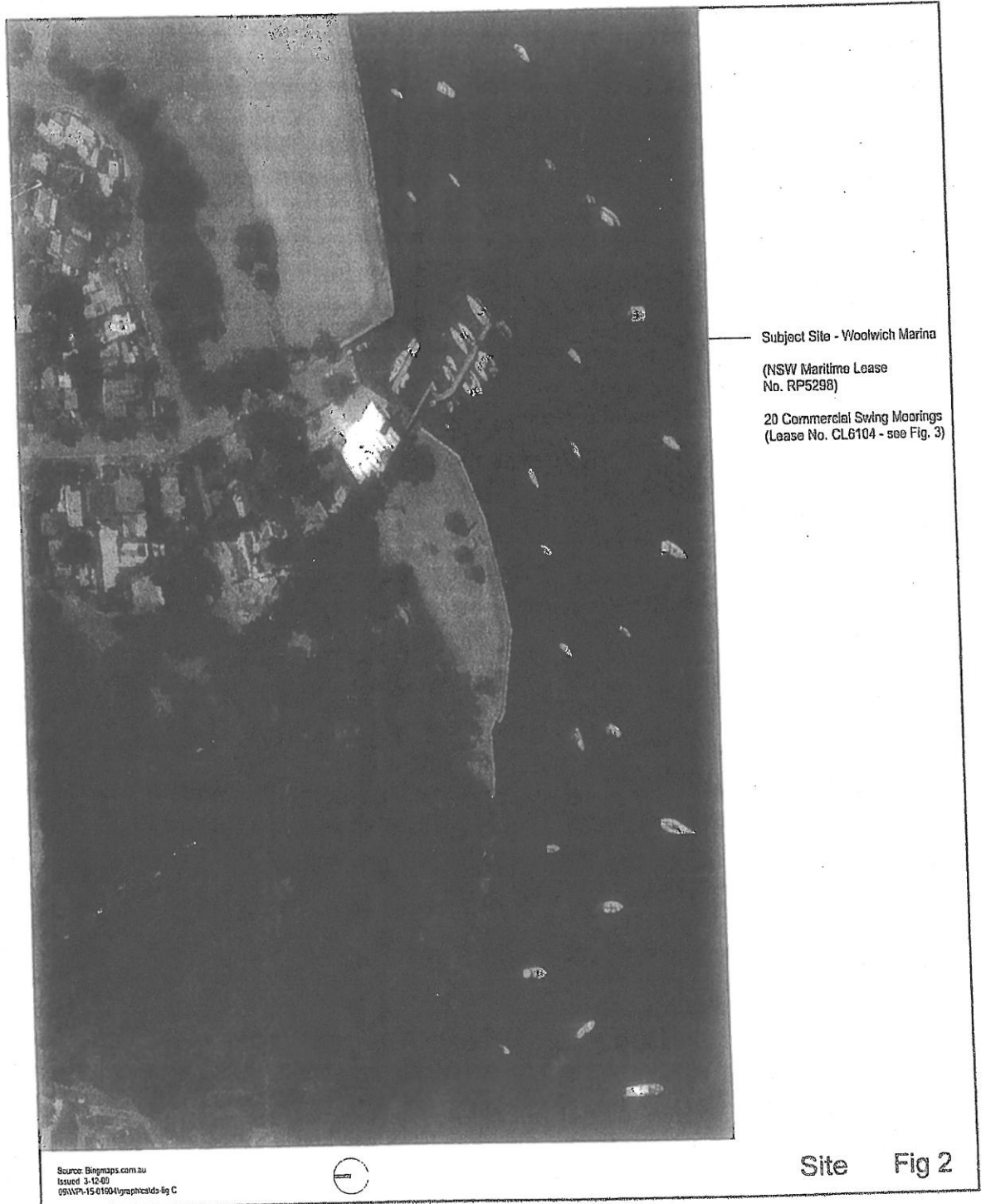


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