



## WOOLWICH MARINA

### S96 MODIFICATION APPLICATION

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#### D. DESCRIPTION OF PROPOSED MODIFICATION TO THE DEVELOPMENT CONSENT

The proposed **S96(2) Modification Application** to DA 2009/1128 seeks to re-instate Berths No. 7 and 8 in a relocated position, as indicated on Drawing 6557-01-002 Issue F dated 24 May 2010 included at **Appendix A**.

The walkway section between the southern end of the "holding spaces" and "rigging spaces" floating pontoon structure and the northern arm of the marina, is shown modified on the plan as it is necessary to satisfy Condition No. 2 of Development Consent 2009/1128.

No other changes to the development approved under DA 2009/1128 are proposed.

The proposed S96(2) modification is shown overlayed (in "black") on the original DA2009/1128 proposal (in "pink") for information purposes (refer **Appendix D**).

The proposed modified marina layout satisfies the relevant planning instruments and policies including:-

- Australian Standard AS 3962- Guidelines for design of marinas;
- Guidance Notes produced by NSW Maritime;
- Deemed SEPP Sydney Regional Environment Plan (Sydney Harbour Catchment) 2005; and
- Sydney Harbour Foreshores and Waterways Area Development Control Plan.

As a result of the changes to the proposed development, the following Conditions of Consent require modification:

- Condition No. 1
- Condition No. 2

This S96(2) application seeks an amendment to Condition No.1 as follows:

*The development consent No 2009-1128 relates to the plans prepared by Worley Parsons drawing Nos 6557-01-001 Issue B dated 9 Dec 2009 and 6557-01-002 Issue E dated 7 Dec 2009, 6557-01-002 Issue F dated 24 May 2010 as received by Council on 11 December 2009, except where amended by conditions of this consent.*

This S96(2) application seeks an amendment to Condition No.2 as follows:

*~~"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."~~*



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### E. STATEMENT OF EFFECT

The proposed modification seeks to re-instate Berths No. 7 and 8, in a relocated position. The two proposed berths would be located within the general footprint and sight lines of the approved marina and would not result in any additional view loss.

### F. EXPECTED IMPACTS OF THE MODIFICATION

To establish the impacts associated with the proposed modification (as per the requirements of Clause 115(1) of the EP&A Regulation), an assessment against the matters referred to in Section 79C of the EP&A Act has been undertaken.

Section 96(3) of the EP&A Act provides:

*"In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application."*

An assessment against the matters referred to in Section 79C is provided in Table 1.

Table 1 Matters referred to in Section 79C

MATTER	COMMENT
79C(1)(a)(i) the provisions of any environmental planning instrument	<p>Deemed SEPP Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</p> <p>The modified development (for the purpose of two additional berths) remains defined as a commercial marina and is consistent with the objectives of the W1- Maritime Waters and W5- Recreational Waters zones. The two berths, to be located on the inner arm, can be accommodated within the sight lines of the approved marina footprint with no additional visual impact.</p> <p>The modified development remains permissible in the W1- Maritime Waters and W5- Recreational Waters zones, under the provisions of Clause 18 of the Deemed SEPP Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.</p> <p>Environmental Planning and Assessment Regulation 2000</p> <p>Part 2 of the Regulation addresses Are Alterations and Additions Designated Development? It is considered that the proposed modifications do not constitute designated development, under the provisions of Clause 35 Schedule 3 of the Regulation, as the "proposed alterations and additions do not significantly increase the environmental impacts of the total development (that is development together with the alterations and additions) compared with the ...approved development."</p>



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	<p><b>Environmental Planning and Assessment Act, 1979</b></p> <p>DA2009/1128 was classified as Integrated Development and was referred to the NSW Department of Industry and Investment (Fisheries) and the NSW Office of Water. Referral of the s96 Modification Application to NSW Department of Industry and Investment (Fisheries) and NSW Office of Water is required.</p>
<p><b>79C(1)(a)(ii)</b> the provisions of any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority</p>	<p>Not Applicable</p>
<p><b>79C(1)(a)(iii)</b> the provisions of any development control plan</p>	<p>The modified development remains consistent with the design guidelines and development controls contained in the <i>Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005</i>.</p>
<p><b>79C(1)(a)(iv)</b> the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates</p>	<p>The Regulations do not prescribe any matters for consideration relevant to the proposed development.</p>
<p><b>79C(1)(b)</b> the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic</p>	<p>For the purposes of this assessment, it is considered that the issues addressed in the Environmental Impact Statement are readdressed in this table with regards to the likely impacts of the proposed modifications.</p> <p><b>Construction Impact</b></p> <p>Construction works remain as identified in <b>Section 3.6</b> of the EIS dated December 2010 and reproduced below:-</p> <p><i>"The construction works include the following:</i></p>



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<b>impacts in the locality</b>	<ul style="list-style-type: none"><li>• demolition and removal of old timber structures and existing pontoon;</li><li>• installation of piles (prefabricated off-site);</li><li>• installation of pontoons (prefabricated off-site, transported by truck and floated to site); and</li><li>• other minor miscellaneous work on site including services installation."</li></ul> <p><i>During construction, there is the potential for some disturbance to the seabed to be created by the installation of the piles. Sediment containment devices (i.e. turbidity curtains) would be used where necessary to contain any re-suspended particles caused by this activity. The specification for the works would require the contractor to take measures to minimise or prevent spillage of debris or material and to ensure any falling into the harbour is recovered and removed. It is considered that no significant impact to water quality in the harbour would result from the proposed works.</i></p> <p><i>The majority of the construction works can be undertaken off-site, thus minimising construction activities at the site."</i></p> <p><b>Visual Impact</b></p> <p>A Visual Impact Assessment was prepared by Clouston and Associates as part of the EIS submitted to Council in December 2009. The report provided an objective assessment of the proposed development and included:</p> <ul style="list-style-type: none"><li>• A description of the development site in its local context.</li><li>• Analysis of the visual harmony between the proposed development and the surrounding Landscape Character Types.</li><li>• A view analysis matrix of table highlighting which viewers or visual receptors have been identified.</li><li>• Analysis of the magnitude of the proposed change to the existing visual character.</li><li>• Visual simulation from key receptor locations.</li><li>• The means by which significant visual impacts might be considered through avoidance, minimise, mitigate, offset, manage.</li></ul> <p>The Assessment concluded:-</p> <p><i>"...that the visual impacts of the proposed marina extension are not significant overall given that:</i></p>
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- *The most significant impacts of the marina will be on the existing marina premises itself. As explained previously views over the marina are to be expected and are deemed acceptable for businesses of this nature.*
- *The majority of the new marina footprint is contained in front of the associated commercial properties (C1 and C2).*
- *The extension replaces an existing marina of a similar footprint.*
- *Craft will be moored further from the shore than presently exists.*
- *No significant mid or long distant views are obscured by the proposal.*
- *The new pontoons are of a floating variety therefore reducing the visual profile of the structure in lower tides.*
- *The numbers of close permanent visual receptors (e.g. residences) are minimal.*
- *The most significant visual changes are from the parks with moderate to low visitation and mostly only at close range to the proposal.*
- *The new layout of the marina consolidates boats in berths on an approximate north south orientation along two jetties. This has the potential to reduce the overall visual mass when viewed along the foreshore such as in Horse Paddock where views to Pulpit Point are less obscured."*

The proposed two berths will be located within the general "envelope" of the approved marina and are considered to be of no greater impact than that assessed under DA2009/1128.

#### Noise Impact

The construction hours will remain unchanged and would be consistent with normal construction hours which are as follows:

- Monday to Friday 7:00am to 5:00pm
- Saturday 8:00am to 1:00pm
- No work on Sundays or public holidays.

#### Scale of development

The scale of the proposed modifications is still in keeping with the original development application and is appropriate for the site.

#### Impact on public access

The impact to public access would not be affected during construction or operation of the modified proposal.



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### Heritage Impact

The assessment and conclusions made in the Heritage Impact Assessment submitted with the original DA are still valid. They are reproduced below:-

*"Following a thorough assessment of the proposed development and its relationship to the above heritage items, it is concluded that the proposed development would not be detrimental to the heritage significance of any of the above items. Rather, overall, it is considered that the proposed development would actually enhance their conservation values and create the opportunity to increase the public's awareness and appreciation of their history and heritage significance and the heritage significance of this section of the Parramatta River and its interface/contribution to Sydney Harbour as both an active and recreational space of local, state and national heritage significance.*

*The proposed development is considered to satisfy the heritage provisions of the Commonwealth Environment Protection and Biodiversity Conservation Act 1999, the NSW Heritage Act 1977, the Deemed State Environmental Planning Policy (Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005), and the Hunter's Hill Local Environmental Plan No 1 and no referral under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 is required. It is therefore recommended that on heritage grounds, the proposed development be granted development consent."*

### Climate Change

The design of the two berths has the same design specifications as the approved marina, which has been designed for a life span of approximately 50 years. Therefore a sea level rise of 0.4m relative to 1990 mean sea level has been adopted in 1 instance. Since the proposal is to incorporate a fully floating marina, water changes would have minimal impact on the proposed development.

### Traffic Impact

The Traffic and Parking Report prepared by McLaren Traffic Engineering submitted with DA2009/1128 (dated November 2009) concluded that the proposed 32 berth marina "is supportable on traffic and parking grounds."

McLaren Traffic Engineering have reviewed the proposed s96 modification and conclude in Letter dated 24 September 2010 (Refer Appendix E):-

- "The re-instatement of two berths will result in the same conclusions stated in the original November 2009 traffic report. The conclusions of that report, as follows:
  - The proposed development is supportable on traffic and parking grounds. The summary of the proposed development impact is as





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follows:

- The subject proposal requires one (1) additional car parking space for visitors to the marina. However the additional 1 space required by the proposed changes to the marina can be readily absorbed by the abundance of existing on-street parking within close proximity to the site that is currently under utilised.
- In essence the additional traffic generation effects will be very low and will not create any adverse effects in terms of traffic flow efficiency considerations at the driveways serving the site and within the local road system surrounding the site.
- Current levels of service at nearby intersections will not change as a consequence of the proposed development."

#### Impact on existing waterway uses

Due to the location of the two proposed berths, it is submitted that they would not increase the risk to other waterway users. The relocation of the two berths also addresses any concern the Council had and may still have in relation to potential impacts on the navigation and safety associated with the use of the public boat ramp. This conclusion is considered to be supported by NSW Maritime's addressing of the issue at the time of issuing its PTLs.

#### Aquatic Ecology

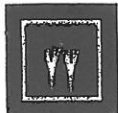
The assessment and conclusions made in the Aquatic Ecology Assessment submitted with the original DA are still valid. They are reproduced below:-

*"To minimise against water quality impacts, the applicant should be required to:*

- *Carry out the proposed demolition and construction works in a manner that reduces the potential for materials to enter Parramatta River.*
- *Prepare and implement a Construction Management Plan in which erosion and sediment management are addressed.*
- *Deploy a floating boom and silt curtain around the construction area to ensure that resuspended sediments and associated contaminants are contained.*
- *Make available at the construction site, spillage equipment to absorb any material that may enter the water.*

*Noise should be managed by council in accordance with the NSW Department of Environment and Climate Change (DECC) Noise Control Guidelines – Construction Site Noise (DECC 2008).*

*Use silencers on engines and machinery where possible to minimise noise impacts on marine and terrestrial biota.*



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	<i>Monitor water quality while works are being undertaken."</i>  <b>Waste</b>  Waste associated with the two proposed berths would be minimal and would be managed as outlined in the <b>Construction Environmental Management Plan</b>
<b>79C(1)(c) the suitability of the site</b>	The site currently operates as a marina. The proposed two additional berths are considered a suitable use of the site.
<b>79C(1)(e) the public interest.</b>	The proposed two additional berths were part of the overall redevelopment of Woolwich Marina and upgrade of the existing facility to provide a modern day marina facility, enhancing the opportunities for recreational boating. The replacement of the existing dilapidated timber structure with a modern, low profile floating pontoon system will provide safer and more convenient access to and from craft

## SUMMARY

The proposed development footprint is substantially the same as that for which development consent was granted on 27 May 2010. Whilst the proposal increases the number of berths by 2, this is not an increase over the total number of berths for which development consent was sought and the impacts of which were addressed in DA2009/1128. The location of those berths is within the sightlines of the approved marina and will not result in additional loss of views.

The modifications do not seek to change the use or function of the site.

In summary, the proposed modified development will not create impacts different from those identified and assessed in DA2009/1128. It is considered that this conclusion supports the view that the modified proposal is not materially different from that which was originally approved.

## G. UNDERTAKING

The development (as proposed to be modified) will remain substantially the same as the development which was originally approved, in that the consent still pertains to *"Demolish part of the existing marina, relinquish 10 commercial moorings held under CL6104. Construct 32 berth floating marina...Consent granted subject to conditions described on Pages 2 and 3."*

The proposed modifications will not change the use of the site or the essence of the development as approved. The modifications relate to two additional berths, which are still consistent with that application, to redevelop the existing marina and provide boating accommodation for up to 32 berths.

The test for considering this issue is taken from *Vacik P/L v Penrith City Council* [1992] NSWLEC 8 in which it was determined that *"substantially"* was taken to mean essentially or materially or having the same essence. It is our opinion that the proposed modifications satisfy this test.





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## **H. LAND OWNERS CONSENT**

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

## **I. STATEMENT AS TO CONSENT AUTHORITY**

The Sydney East Joint Regional Planning Panel (JRPP) is the consent authority under the provisions of Clause 13F(1)(b).



## 4. CONCLUSION

The proposed S96(2) Modification DA to DA 2009/1128 has addressed NSW Maritime's policies for waterside development in relation to:-

- Navigation Safety;
- Relationship to Adjoining Land; and
- Adjoining Public Land.

The relocation of Berths No. 7 and 8 (not approved under DA 2009/1128) to the proposed location addresses Council's perceived concern in relation to the provision "*safer navigation of waters for users of the Margaret Street public ramp.*"

It is considered that the proposed modification will have minimal environmental impact. Further, that the development will remain "substantially the same development" as that which was originally approved.