

Memorandum

Date 30 August, 2012

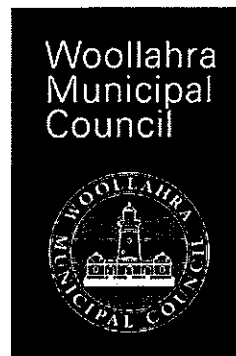
File Nos. DA2012/136/1
2012SYE036

To Sydney East Joint Regional Planning Panel (Regional Panel)

CC

From P Kauter

Subject ROSE BAY MARINA - AMENDED PLANS



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The purpose of this memorandum is to provide comments on the amended plans for the information of the Regional Panel in its consideration of the development application (DA) to extend the marina. These comments are supplementary to the staff assessment report to the Regional Panel (the assessment report) on the DA which has already been submitted to the Panel for its consideration.

The Regional Panel is scheduled to consider the DA on 13/9/12

The amended plans

The amended plans accompanied a Notice of Motion by the applicant to the Land & Environment Court (LEC), see **annexure**. The Notice of Motion sought leave to rely on the amended plans in appeal proceedings which have also been brought by the applicant on the grounds that the DA has been deemed to have been refused. The LEC granted leave to rely on the amended plans on 24/8/12.

An affidavit in support of the Notice of Motion relevantly affirmed:

4. *I am instructed by the applicant and verily believe that the applicant seeks to amend its plans in order to reduce the visual impact of the Application by seeking consent to alter the position of the proposed new arm (Arm C) described in paragraph 2(a) above, in accordance with the plans annexed to this affidavit and marked "B".*
6. *Further, I am instructed by the applicant and verily believe that the amended plans comprising annexure "B" to this affidavit are responsive to a submission lodged in objection to the Application by Mr Rolfe on behalf of the Sydney Harbour Association. A copy of Mr Rolfe's submission is annexed to this affidavit and marked "C".*

7. *In addition, the assessment report prepared by an officer of the respondent for the meeting of the Sydney East Joint Regional Planning Panel of 13 September 2012 acknowledges on page 39 that such an amendment would further reduce the visual impacts of the Application.*

The following table summarises differences between the original plans and the amended plans.

	Original plans	Amended plans
Minimum distance from promenade	51m	54m (+3m)
Maximum distance from promenade *	167m*	172m* (+5m)
Easterly extension**	52m**	64m** (max) (+12m)
No. of boats	37	37 (no change)
Length of boats	37 x 15m	16 x 15m (-21) 21 x 10m (+21)
Length of Arm C***	107.68m***	106.21m*** (-1.47m)
Width of fairway	35m	32.49m**** (min.) (-2.51m)
Height restriction on boats	3.5m	3.5m (no change)

* measured to the northern most point of the 'T' head finger

**measured from east side of 'CRANBROOK ROAD VIEW LINE'

***including the walkway

NOTE: all measurements scaled apart from *** and **** which are taken from the amended plans

The amended plans also provide for two viewing platforms, one near the junction of the new walkway extension and existing Arm B (in the location of the larger viewing platform proposed by the original plans) and the other at the north eastern corner of proposed new Arm C.

Comments

The assessment report makes the following reference to changes suggested by the Sydney Harbour Association (SHA) in its objection to the DA (p.39):

The Sydney Harbour Foreshore Committee (sic), the second respondent in both the LEC proceedings, have made a number of suggested changes to the proposed development including:

- *The rotation of Arm C*
- *Reduction to the height (sic) of the boats on the eastern side of Arm C*
- *The relocation of the viewing platform to the end of this arm*

Whilst, these changes would further reduce the visual impacts of the proposal they would not overcome the visual impacts referred to above.

The SHA objection is in the form of a letter and three attachments, attachments A, B & C. The attachments comprise diagrammatic sketch plans. Attachment A is in the form of a section diagram showing the relationship of vessels to the viewing line of a person standing on the promenade at varying tides. The SHA objection states:

Attachment B shows our proposals of the layout or 10- and 15- metre vessels.

Attachment C shows the extent of clearwater views from the Rose Bay Promenade that could be available to the public if our modifications were adopted.

Attachment C is the plan which resembles the amended plans submitted with the applicant's Notice of Motion to the LEC. Whilst it may be drawn to some proportion it is not what could be termed as a scaled drawing. It is apparent that Arm C has been angled toward existing Arm B, that there is a notation *width of Arm C reduced by 5m* and that there is a dimension of 30m shown between the closest point of proposed Arm C and existing Arm B.

It is apparent from the amended plans that the now proposed Arm C extends a further 12m (approximately) to the east, i.e. further across the promenade, when compared with the original plans. Therefore the amended proposal would have a greater impact on views up to Manly from the promenade than the original proposal. This further extension across the promenade was not apparent from the SHA objection. It is also likely that the increased visual impact caused by the easterly extension of the marina would more than offset any benefits that may be gained by the angling of Arm C. The amended plans were not accompanied by photomontages which would have enabled a comparison between the visual impacts of the original proposal and the amended plans.

The SHA objection also states:

We have proposed to change the vessel lengths on Arm C from the proposed 37x15 metre berths to 42x10 metre berths. The five extra berths that we show are commercial berths intended to replace five existing commercial swing moorings, in order to widen the clearwater corridor.'

The SHA submission seems to be somewhat contradictory regarding its suggestions on boat length. However, it does envisage five more berths on proposed Arm C than the amended plans and five fewer swing moorings *in order to widen the clearwater corridor*. The amended plans do not provide for any further reduction in the number of swing moorings or, consequently, the wider clearwater corridor referred to in the SHA objection.

Conclusion

The applicant submitted the amended plans to the LEC in response to the SHA objection. However, it appears that the amended plans do not incorporate all of the suggestions made in the SHA objection. The amended plans also clearly show that the proposed marina will now extend further across the promenade than the original proposal by a significant distance. This was not apparent from the SHA objection or when the assessment report was prepared.

Item 7 of the Affidavit implies that the assessment report acknowledges that the amended plans reduce the visual impacts of the proposal. It needs to be noted that when the assessment report was prepared the author did not have the amended plans. Further, in the absence of accurate photomontages it would seem that the visual impact of the amended proposal on persons using the promenade would not be reduced. Rather, it is likely that the visual impacts will be increased.

For the reasons contained in these comments **the amended plans do not warrant any change to the recommendation of the assessment report.**

The Regional Panel should also note:

1. The amended plans form part of the LEC appeal
2. The applicant has not formally amended the DA in relation to the amended plans
3. We gave notice to the people who objected to the DA of the appeal as required by s.97A(1)(a) of the *Environmental Planning and Assessment Act 1979* by letter dated 30/8/12 and enclosed a copy of the amended plans with the notice

4. We have **not** re-exhibited the DA
5. The land owner's consent for the DA from Roads and Maritime Services was a qualified consent

Annexure – the applicant's Notice of Motion to the LEC seeking leave to rely on the amended plans in the appeal proceedings.



Peter Kauter
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