



Joint Regional Planning Panel Report

DA #	183/2012
Site Address	Clontarf Marina, Sandy Bay Road, Clontarf.
Proposal	Removal of forty-one (41) swing moorings [eighteen {18} swing moorings retained], demolition of existing twenty-five (25) vessel berth marina including (4) fuel berths, construction of a new marina containing sixty-four (64) vessel berths, entry way, platform, above ground fuel tanks, relocation of existing public swing moorings and alterations and additions to the existing boatshed – Clontarf Marina
Officer	Nayeem Islam

Application Lodged:

21 August 2012 (Further information received on 28 March 2013, and amended plans submitted 4 February 2014 and further information submitted 21 May 2014, 23 May 2014 and 26 May 2014.

Applicant:

Clontarf Marina

Owner:

Part NSW Roads and Maritime Service, Part Crown land.

Estimated Cost:

\$4,650,000

Zoning:

Below MHWL *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*: W5 Water Recreation. Above MHWL *Manly Local Environmental Plan, 1988*: Zone 6 Open Space.

Surrounding Development:

The surrounding development consists of recreational open space, car parking, dwelling houses and commercial marinas (across the harbour).

Heritage:

The harbour foreshores are listed as a landscape item of environmental heritage under the *Manly LEP 1988*. The site is in the vicinity of Middle Harbour Submarine Syphon which is listed as an item of environmental heritage under the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*. The site is in the vicinity of Clontarf Park, Fisher Bay Reserve and Norfolk Island Pine Commemorative Tree (*Araucaria heterophylla*) which are listed as a landscape item of environmental heritage under the *Manly LEP 1988*.

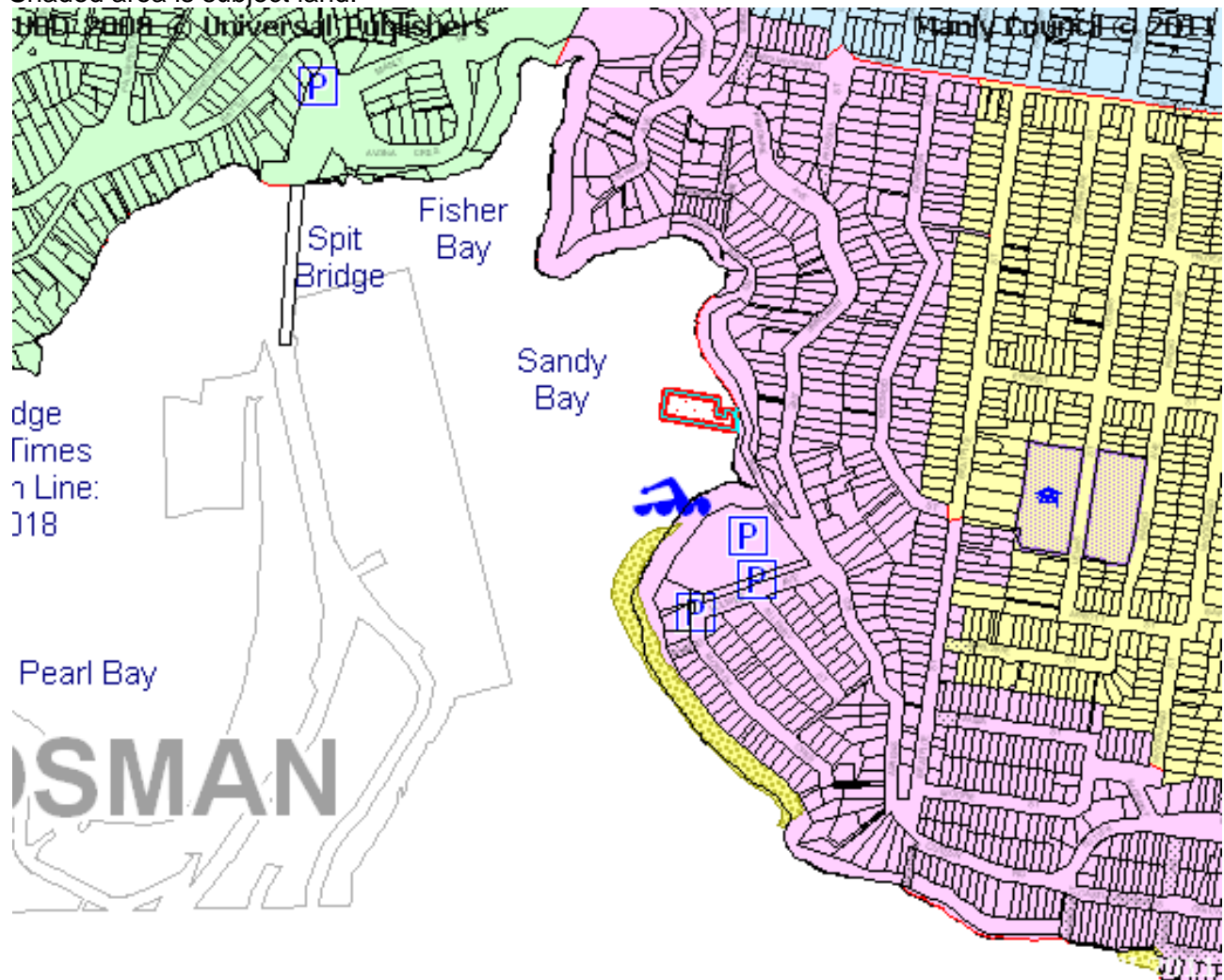
SUMMARY:

1. THE PROPOSAL IS A DESIGNATED DEVELOPMENT PURSUANT TO SECTION 77A OF THE *ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979*.
2. THIS APPLICATION WAS LODGED AS AN INTEGRATED DEVELOPMENT REQUIRING GENERAL TERMS OF APPROVALS UNDER SECTION 205 OF THE *FISHERIES MANAGEMENT ACT 1994*, SECTION 91A(2) OF THE *PROTECTION OF THE ENVIRONMENT OPERATIONS ACT 1997* AND SECTION 91 OF THE *WATER MANAGEMENT ACT 2000*. HOWEVER, SUBSEQUENT TO THE LODGING OF AMENDED PLANS, IT IS CONSIDERED THAT THE APPLICATION DOES NOT REQUIRE GENERAL TERMS OF APPROVAL UNDER SECTION 91A(2) OF THE *PROTECTION OF THE ENVIRONMENT OPERATIONS ACT 1997*.
3. THE ORIGINAL APPLICATION WAS FOR REMOVAL OF SWING MOORINGS DEMOLITION OF EXISTING TWENTY-ONE (21) VESSEL BERTH MARINA, CONSTRUCTION OF A NEW MARINA CONTAINING EIGHTY-SEVEN (87) BERTHS, ENTRY WAY, PLATFORM, ABOVE GROUND FUEL TANKS, RELOCATION OF EXISTING PUBLIC SWING MOORINGS AND ALTERATIONS AND ADDITIONS TO THE EXISTING BOATSHED.

4. THE ORIGINAL APPLICATION WAS ASSESSED BY COUNCIL'S INDEPENDENT PLANNING CONSULTANT AND WAS RECOMMENDED FOR REFUSAL.
5. THE APPLICANT REQUESTED THAT THE APPLICATION BE DEFERRED FOR THE SUBMISSION OF AMENDED PLANS.
6. THE AMENDED PROPOSAL SEEKS DEVELOPMENT CONSENT FOR REMOVAL OF FORTY-ONE (41) SWING MOORINGS [EIGHTEEN {18} SWING MOORINGS RETAINED], DEMOLITION OF EXISTING TWENTY-FIVE (25) VESSEL BERTH MARINA INCLUDING FOUR (4) FUEL BERTHS, CONSTRUCTION OF A NEW MARINA CONTAINING SIXTY-FOUR (64) VESSEL BERTHS, ENTRY WAY, PLATFORM, ABOVE GROUND FUEL TANKS, RELOCATION OF EXISTING PUBLIC SWING MOORINGS AND ALTERATIONS AND ADDITIONS TO THE EXISTING BOATSHED – CLONTARF MARINA. TOTAL 82 BERTHS.
7. THE AMENDED APPLICATION WAS NOTIFIED TO ALL ADJOINING AND NEARBY PROPERTY OWNERS AND EIGHTY ONE (81) OBJECTIONS, ONE (1) PETITION AGAINST THE PROPOSAL, SIGNED BY TWO HUNDRED AND SIXTY FOUR (264) PEOPLE, AND SEVENTEEN (17) SUPPORTING SUBMISSIONS WERE RECEIVED.
8. THE APPLICATION WAS REFERRED TO ALL PRECINCT COMMUNITY FORUMS FOR COMMENTS. COMMENTS WERE RECEIVED FROM SEVEN (7) PRECINCT FORUMS OBJECTING TO THE PROPOSAL.
9. SITE INSPECTION IS RECOMMENDED.
10. THE APPLICATION IS RECOMMENDED FOR **REFUSAL**.

LOCALITY PLAN

Shaded area is subject land.



Introduction

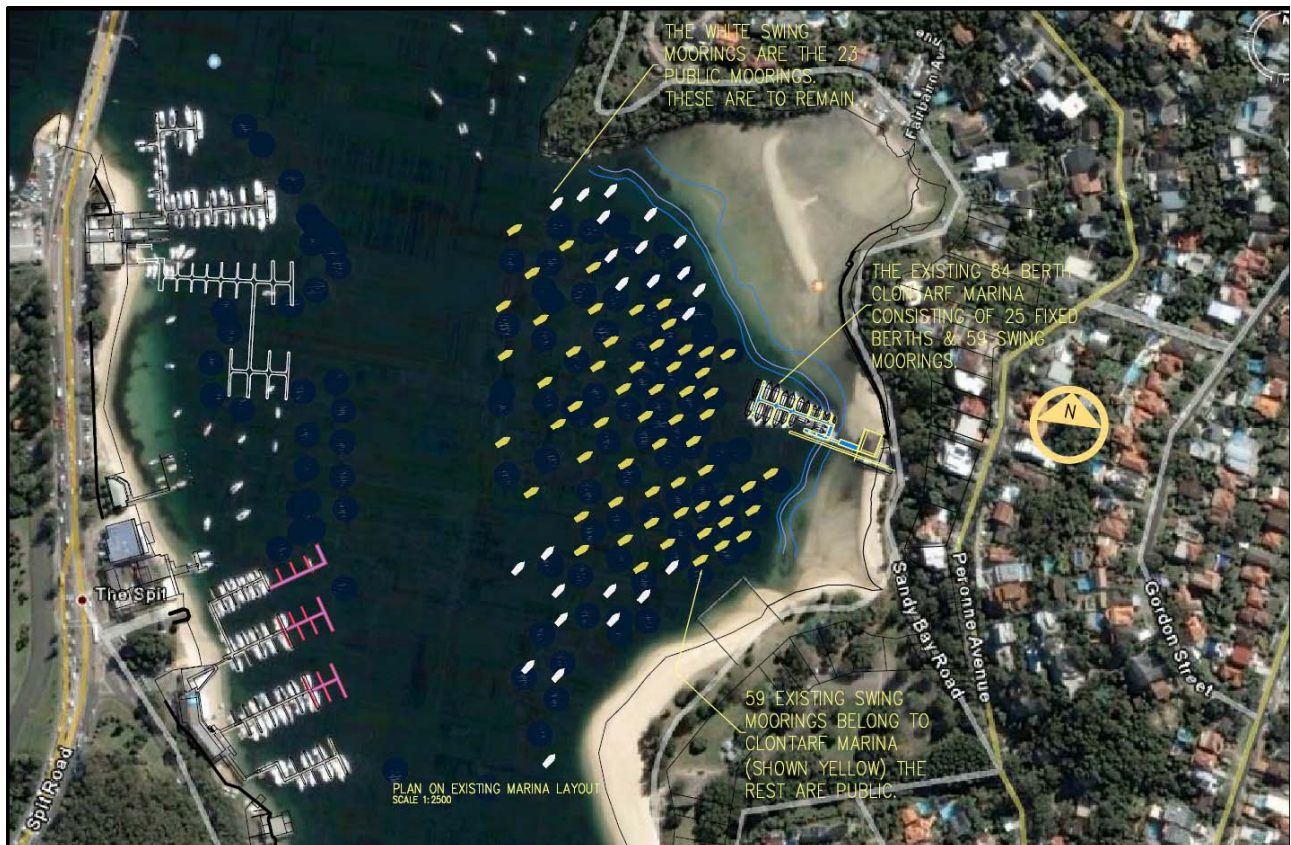
Locality analysis

The site is located within Sandy Bay area which currently contains an existing marina with a total of 84 berths including eighteen (18) fixed commercial vessel berths, seven (7) casual, work and fuel berths and fifty nine (59) swing moorings. (Note: the original application indicated twenty one (21) total berths but under the *Environmental Planning and Assessment Regulations 2000* the existing number of fixed berths is Twenty Five (25) as indicated below.)



Existing Fixed berths.

The locality also contains an additional twenty three (23) public swing moorings that are administered by the RMS. To the south of the development is a public harbour swimming enclosure and Clontarf Beach and Clontarf reserve. To the west is Middle Harbour, The Spit and several other marinas largely consisting of fixed berths with some swing moorings. Between Sandy Bay and The Spit is a navigation channel. To the north of the proposed development are the shallow waters of Sandy Bay with Fisher Bay Reserve and dwelling houses beyond. Sandy Bay Road is located to the east of the site with an adjacent park and dwelling houses beyond. Clontarf Beach and Sandy Bay are popular areas for public recreation and are located along the Manly Scenic Walkway. The locality largely consists of dwelling houses and public reserves to the land based side, with Marinas and navigational channels recreational waters over the harbour.



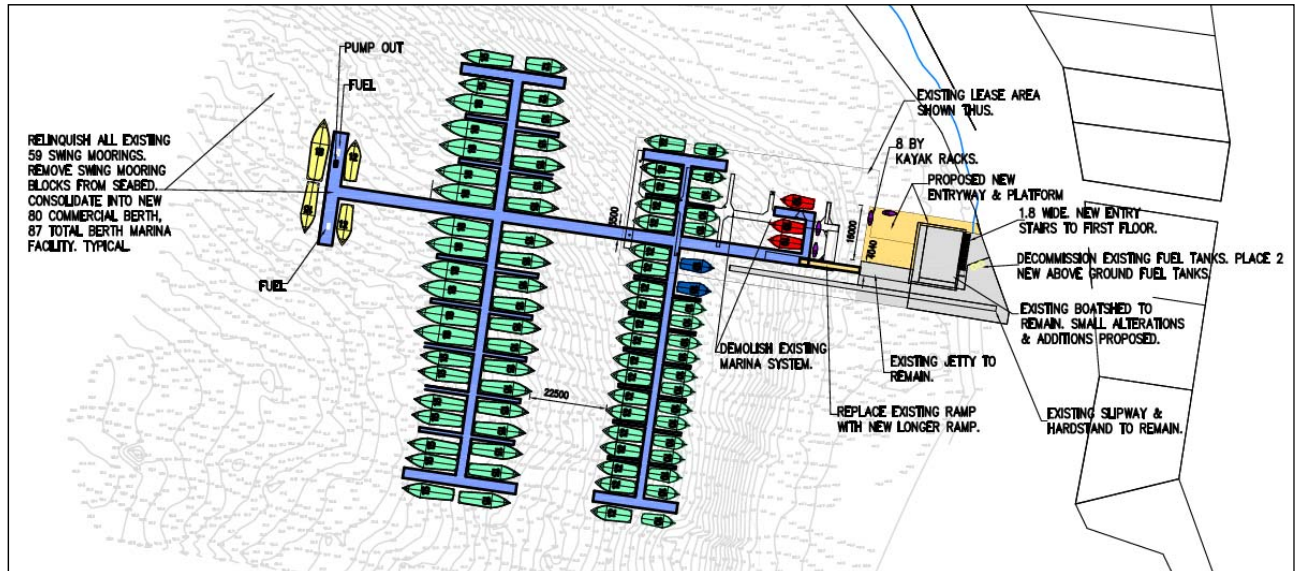
Existing development and swing moorings

Background

The original development that was proposed included the installation of eighty seven (87) new berths in a new floating concrete marina system as a consolidation of the existing 59 swing moorings, 18 commercial marina berths, 4 fuel berths and 3 work berths, together with alterations and additions to the marina boatshed. The proposed development generally consists of the following:

- Relinquishing all existing 59 swing moorings and consolidate these 59 swing mooring berths with the existing 18 marina berths into a new 87 berth concrete floating marina system with steel restraining piles;
- Repositioning the current 23 public swing moorings;
- The removal of the existing 2 fuel pumps from the existing refuelling pontoon;
- Removal of all services, lighting and water from the existing 18 berth concrete marina system;
- Removal of the existing access ramp to the existing concrete marina system;
- Demolition of the existing concrete marina system and removal of all debris, structure and materials from site;
- Lifting the existing timber jetty 100mm (to match the existing boatshed floor level);
- Constructing a new timber platform adjacent to the north of the existing timber jetty. This platform will include a handrail along its western and northern edges and run to Sandy Bay Road, along the northern edge of the marina boatshed;
- Installation of a new access ramp from the existing jetty (lifted 100mm) to the landward face of the new marina system;
- Installation of fuel services and pump-out to the outermost new marina arm;
- Decommissioning of the existing four below ground fuel tanks;
- Installation of two new above ground fuel tanks;
- Modifications to the boatshed to be more sympathetic with surrounding residential development;
- A new disabled toilet to the existing boatshed;
- Convert walkway on southern side of boatshed into a kayak store;

- New stairs to first floor along the eastern (street) side to the first floor of the existing boatshed removing the need for the public to walk through the existing slipway;
- Modifications to the lower front of the boatshed to better utilise these rooms and toilet amenity, including use of part of ground floor of boatshed into a kiosk;
- Relocation of the existing pedestrian crossing further north along Sandy Bay Road to line up with the new access way proposed for the northern edge of the existing boatshed; and
- Creation of additional parking spaces due to the relocation of the pedestrian crossing.



Original Proposal (excluding relocation of swing moorings)

The application was assessed by Council's Planning Consultant and considered by the DAU with a recommendation for refusal and referral to the Manly Independent Assessment Panel (MIAP).

The applicant requested that determination of the application be deferred to allow the provision of an amended proposal. The MIAP resolved to defer the application until amended plans were received.

Description of proposed development (as amended)

The proposal as amended generally consists of a total of 82 berths and other works as follows:

- Removal of 41 of the existing 59 Swing moorings (retaining 18 swing moorings);
- Demolition of the existing fixed berth marina;
- Construction of a new marina containing 64 vessel berths (consisting of 58 rentable berths 2 casual / fuel berths, 3 work berths and 1 destination Sydney Harbour berth);
- Alterations and additions to the existing boatshed;
- Relocation of existing public swing moorings;
- Decommissioning of the existing 4 fuel tanks;
- Construction of 2 above ground fuel tanks;
- Construction of a new entry way platform;
- Kiosk within existing boatshed.

Council Resolution

At the Ordinary Meeting of the Council on the 12 May 2014 the following motion was resolved:

"That Council notes and supports the objections of all Precincts in opposing the amended Clontarf Marina DA 183/2012 on the following grounds put forward by the Precincts:

Part A

The marina continues to be a very large and expansive development which will intrude upon and spoil a tranquil, pristine public space enjoyed by the local community and visitors alike

- *There is considerable alienation of public space for private commercial purposes*
- *The expansion of the marina will accommodate large, bulky motorised vessels, rather than smaller boats, which will alter the character of the quiet bay*
- *The marina will still adversely impact upon the Manly Scenic Walkway, the Recreation Reserve, the beach and the swimming pool*
- *Sound, light, rubbish and fuel pollution will be increased*
- *The marina development will adversely affect traffic congestion, parking and noise in an already crowded, narrow cul-de-sac.*
- *It is an inappropriate development in this long- established quiet residential area and will obscure views across the harbour from the scenic walkway, surrounding hills and from the Reserve.*
- *It is a proposal which is not in the public interest.*

Part B

That Council writes to the RMS the Division of Planning and the Crown Lands to express its concerns regarding the scale of the proposed development.

For the Resolution: Councillors Aird, Burns, Heasman, Bingham, Pickering, Le Surf, J Griffin, C Griffin and Hay AM

Against the Resolution: Nil."

Internal Referrals

Engineers Comments

The Council's Engineers offered no objections to the proposal subject to inclusion of recommended conditions of consent.

Building Comments

The Council's Building Surveyor offered no objections to the proposal subject to inclusion of recommended conditions of consent.

Natural Recourses Officers Comments

Council's Natural Recourses Officer has commented on the proposal as follows:

1. "Threatened Species Assessment for DA0183/2012

This memo constitutes the Natural Resources Branch assessment for the Proposed Consolidation of Clontarf Marina, with respect to threatened species and terrestrial biodiversity.

1.1 Submitted documentation

Comments are based on a review of submitted documentation including:

- **Part A.** Addendum Document Environmental Impact Statement, prepared by J.S Parson Structural Consultants Pty Ltd, on behalf of Clontarf Marina Pty Ltd.

- **Part B.** Environmental Impact Statement for The Proposed Consolidation of Clontarf Marina's 59 Existing Swing Moorings into a Fixed Floating Marina System On Behalf of Clontarf Marina Pty Ltd Sited at Sandy Bay, Sandy Bay Road, Clontarf. Environmental Impact Statement and Appendices A-E
- **Part C.** Environmental Impact Statement for The Proposed Consolidation of Clontarf Marina's 59 Existing Swing Moorings into a Fixed Floating Marina System On Behalf of Clontarf Marina Pty Ltd Sited at Sandy Bay, Sandy Bay Road, Clontarf. Appendices F-X
- Australian Museum Consulting 2014, Terrestrial Biodiversity Assessment for Clontarf Marina. Consultancy report to Australian Ports and Marinas Pty Ltd
- Cardno 2013. Clontarf Marina Redevelopment, Aquatic Habitats-Addendum. Report prepared for Clontarf Marina Pty Ltd.
- Clontarf Marina Redevelopment – Threatened Species Assessment Prepared for Clontarf Marina Pty Ltd, Job Number: 59914139. May 2014

1.2 Current Site

The site sits generally over the waters of Middle Harbour on the eastern shore of Sandy Bay and adjacent Sandy Bay Road on the landward side. The site is bounded by sandy beaches fronting Clontarf Reserve and Monash Crescent and Clontarf swimming baths.

The existing Clontarf Marina is located on the site. It is located almost entirely below mean high water mark on Maritime Waters controlled by NSW Maritime Authority and a small section of land leased from Manly Council.

The terrestrial area having the potential to be impacted by the proposed development includes an area of remnant vegetation adjacent to the marina across Sandy Bay Road, a landscaped strip to the south of the marina along the foreshore side of Sandy Bay Road and tidal sand flats on either side of the marina

The current jetty built in 2000 is 15m long and sits on four timber piles. It is believed to be in the same location as the original jetty. There is a 9.1m aluminium access ramp leading from the timber jetty to the marina deck. There is a floating fuel berth on the landward end of the marina.

1.3 Previously Proposed Works

A Designated Development application was submitted on 21 August 2012, seeking approval for consolidation of Clontarf Marina's existing 59 swing moorings and 18 fixed floating commercial marina berths into a new consolidated 78 fixed floating commercial berth marina system. The Council's External Planning Consultant's review considered that the extension was too bulky (meaning that its extension north and south along the foreshore as well as west out into Middle Harbour was too large) and was inconsistent with a number of planning objectives. The Clontarf Precinct Committee and a number of residents raised concerns that the proposed orientation of the new marina system and the total number of vessels proposed as commercial berths would block views from Clontarf foreshore (Part A Addendum Document EIS Executive Summary).

Determination of the proposal was deferred, pending submission of a modified proposal.

1.4 Proposed Works

The modified proposed works will involve:

- Removal of 41 swing moorings (18 swing moorings retained);
- Demolition of existing 21 vessel berth marina;
- Construction of a new marina containing 64 vessel births, with a footprint of 7,970 m³; (Fixed and swing mooring total 82 vessels)

- Installation of 14 steel piles for Northern marina arm; and 17 steel piles for Southern marina arm;
- Construction of entry way and platform;
- Installation of new above ground fuel tanks and removal of 50 year old underground single walled steel fuel tanks; and
- Relocation of existing public swing moorings and alterations and additions to the existing boat shed.

In responding to the concerns raised over the previously proposed works, the current works seek to achieve significant improvements in visual quality and bulk reduction by re-orienting the marina, rotating the structure by 90 degrees and creating a viewing corridor through the centre of the marina; reducing the length of the long line of vessels fronting the Clontarf foreshore; and reducing the proposed marina development by 23 berths from 87 to 64 total proposed berths which also reduces the water footprint of the marina structure from 12,639 m3 to 7,970 m3 (Part A Addendum Document EIS Executive Summary).

There has been no modification of the type of materials to be used in construction or of the construction methods to be used. Also, the number of existing structures to be removed and the removal methodology remains unchanged from the original proposal.

2. Requirements under Manly LEP2013 and Manly DCP2013

2.1 Manly LEP 2013

The site is located on or adjacent to the Manly Local Environment Plan 2013 (MLEP 2013) Terrestrial Biodiversity Map and thus requires consideration of Clause 6.5(3) and (4) of the MLEP 2013

2.2 Requirements under the Manly DCP 2013

The subject site is outside the area indicated in Schedule 1 - Map D of the Manly Council DCP 2013, which indicates areas requiring an Assessment of Significance for the endangered populations of Little penguins or Long-nosed bandicoots.

3. Referral to the Department of Primary Industries

The application is considered to be an integrated development and approval is required under Section 205 of the Fisheries Management Act 1994.

4. Submitted Environmental Impact Statement

The Natural Resources Branch assessed the submitted documentation in regards to impacts to biodiversity and threatened species. The submitted EIS states that in relation to environmental protection and biodiversity that the proposed marina consolidation will;

- Have a net positive environmental impact.
- Create new floating reef style habitat supporting biodiversity.
- Mitigate any risk of fuel spills ensuring the protection of Manly's waterways.
- Generally meet with the underlying rationale of this Strategy.

Part A of the EIS in section 6.10 (Threatened Species Considerations), states that two threatened species exist within the LGA, listing Little Penguins and the Long-nosed Bandicoot. The EIS continues by stating that in regards to Long-nosed Bandicoots there will be no impacts due to proximity.

5. Additional Information requested

The Natural Resources Branch, in reference to the relevant Director General Requirements for the proposal, and in respect to the Natural Resources Branch's ability to assess the impacts on biodiversity and threatened species, considered it necessary for the applicant to submit additional assessment in terms of terrestrial biodiversity. The Natural Resources Branch

requested additional information on species, populations and ecological communities listed under the TSC act and/or EPBC Act.

A request was sent to the planning officer on the 9th May for this additional information, and clause 6.5 (3) and (4) of the Manly LEP 2013, was recommended to be considered in the assessment process.

As a result of the request for additional information, the Natural Resources Branch received 2 additional reports;

1. Australian Museum Consulting 2014, Terrestrial Biodiversity Assessment for Clontarf Marina. Consultancy report to Australian Ports and Marinas Pty Ltd
2. Clontarf Marina Redevelopment – Threatened Species Assessment
Prepared for Clontarf Marina Pty Ltd, Job Number: 59914139. May 2014

The Natural Resources Branch assessment of the 2 reports is provided in section 6 and 7 of this memo.

6. Submitted Terrestrial Biodiversity Assessment for Clontarf Marina

As a result of the request for additional information, Council received the Australian Museum Consulting, Terrestrial Biodiversity Assessment for Clontarf Marina. Consultancy report to Australian Ports and Marinas Pty Ltd (TBA) 2014.

The TBA was informed by a site visit conducted on the 19th of May 2014. The TBA was completed by a qualified ecological consultant. During the site visit remnant vegetation and landscaping near the marina were investigated. The area was searched for threatened plants and the vegetation community was confirmed. Potential breeding and foraging resources for fauna and in particular for threatened species were identified and any fauna observed during the site visit were recorded. The TBA identifies the remnant vegetation on the high side of Sandy Bay Road as Coastal Sandstone Foreshores Forest and notes this vegetation community is not threat-listed under either the TSC or EPBC Acts.

The TBA states that no species listed by the TSC Act or the EPBC Act were recorded within the Study Area.

The TBA notes that the majority of works associated with the proposed marina consolidation will occur in the aquatic environment and are unlikely to impact terrestrial species. The TBA states the vegetation within the remnant community is unlikely to be impacted, but that fauna may be impacted. The TBA states that while impacts on potential fauna habitat in the Study Area is expected to be minimal, two threatened species (Grey-headed Flying-fox and the Eastern Bentwing-bat), and individuals of the endangered Little Penguin population of the Manly Point Area are likely to occur in the Study Area on occasion and may be affected to some extent by the development.

The impacts on these species and the endangered population were assessed using 7-part tests and, for the Grey-headed Flying-fox, the EPBC Assessment of Significance. The TBA reports the results of these assessments as no 'significant impact' being likely to occur as a result of the proposed marina consolidation.

The TBA acknowledges that there is potential habitat for waders on the tidal sand flats on either side of Clontarf Marina. However notes that the proposed development is not expected to add significantly to the level of disturbance that already occurs on these sand flats and thus impacts on threatened shorebirds are expected to be minimal. No further assessment of the potential impacts on shorebirds has been conducted.

The TBA states that there is potential habitat for Long-nosed Bandicoots in the Study Area but that the individuals are unlikely to belong to the listed North Head Population of Long-nosed Bandicoots due to a lack of habitat connectivity between the endangered population and the Study Area.

In regards to listed migratory species, the TBA states that many of the migratory species that have been recorded or are predicted to occur in the region, locality or study area are marine or aerial and are unlikely to be impacted by the proposed marina consolidation.

The TBA concludes that no potential habitat will be lost as a result of the proposed development and potential indirect impacts associated with increased noise during construction and additional lighting once the proposed marina is operational are expected to be minor considering the level of disturbance that already occurs in the area.

7. Submitted Threatened Species assessment Clontarf Marina

As a result of the request for additional information, Council received the Clontarf Marina Redevelopment – Threatened Species Assessment Prepared for Clontarf Marina Pty Ltd, Job Number: 59914139. May 2014.

The report focused generally on the species listed through the FM act, and 3 separate Assessments of Significance (AoS) are provided as appendices to the report. The submitted AoS are for grey nurse sharks, great white sharks and black cod. The AoS's conclude that whilst these 3 species may occur in and around Sydney Harbour, the scale of the development is small and these species are most unlikely to be affected by it.

In relation to species protected under the FM Act, the report notes that there is no requirement to perform an AoS, and as such, none have been provided. The report notes that while some protected species may be found within the study area, none were observed during the survey. Further, the report notes that impacted habitat is only a small portion of the existing potential habitat in the region, stating that potential habitat is abundant elsewhere. The report concludes that it is considered unlikely the Proposal will have any impact on these species.

The assessment reports that no syngnathids were observed in the underwater survey in May 2011 despite an extensive targeted search. And while noting that the seagrass present in the survey area may provide potential habitat for syngnathids, the seagrass was assessed as not being potentially impacted by the proposal.

8. Natural Resources Branch Assessment

The Natural Resources Branch have reviewed the submitted documentation and are satisfied that the potential impacts to biodiversity and threatened species have been adequately assessed.

The Natural Resources Branch is satisfied that all species listed under the EPBC Act, TSC Act or FM Act with a likelihood of moderate or greater of utilising the Study Area have been assessed. The submitted AoS's appear to have been completed by appropriately qualified consultants and the Natural Resources Branch accept the conclusions.

In regards to the Long-nosed Bandicoot, the Natural Resources Branch agree that any individuals within the study area are very unlikely to be part of the endangered population.

Natural Resources Branch accept that the vegetation community identified within the Study Area is commensurate with Coastal Sandstone Foreshores Forest and notes this vegetation community is not threat-listed under either the TSC Act or EPBC Act.

The Natural Resources Branch accept that no further assessment of species protected under the FM Act is required. And that the assessment in regards to waders and migratory species is appropriate.

The Natural Resources Branch accept the findings of the submitted reports, including the relevant AoS reports, and consider that with mitigation measures and the conditions of consent below, the project can be completed without significant impact to biodiversity or threatened species, population or ecological community under the TSC Act, EPBC Act or FM Act, including; grey nurse sharks, great white sharks, black cod, Grey-headed Flying-fox, Eastern Bentwing-bat or Little Penguins in the Manly area.

The Natural Resources Branch recognise the proposed redevelopment of Clontarf Marina has the potential to affect the local and surrounding aquatic environment through various processes during the construction phase and due to its ongoing presence and operation. However, with the mitigation measures these impacts can be mitigated.

9. Natural Resources Branch Determination

In order to make their determination, the Natural Resources Branch has accepted the documentation submitted as true and correct. Based on an assessment of the documents provided (refer section 1.1), the Natural Resources Branch conclude that subject to the recommended conditions of consent below, the proposal can be completed without a significant adverse impact on any threat listed species (EPBC Act, TSC Act or FM Act) or other biodiversity.

10. Recommended Conditions of Consent

10.1 Non-Standard Conditions of Consent

- **ANS01**

All workers on the work site are to be made aware of the potential presence of Little Penguins through the site induction. All workers are to be inducted prior to commencement of works. The site induction is to include information about the conservation significance of the endangered population, potential Little Penguins activities on-site, identification of Little Penguins and the measures in place on-site to protect Little Penguins. Evidence of the site induction is to be documented and provided to the Principle Certifying Authority. Visitors to the works site (e.g. site inspectors, sub-contractors and the like) are to be similarly inducted upon arrival at the site.

Reason: To avoid accidental harm to Little Penguins, it is important that workers on the site are aware of their presence, their conservation significance and the measures in place to protect them.

- **ANS02**

Any injured or dead Little Penguins and/or other animal is to be reported to the Office of Environment and Heritage (OEH) Park and Wildlife Sydney Harbour North Area (tel. 9960 6266), or Manly Council (tel. 9976 1500). Following advice from those contacts, any injured Little Penguins should be taken to Taronga Zoo Wildlife Hospital for rehabilitation (tel. 9978 4751 or 9978 4785).

Reason: It is essential injured Little Penguins other species are given expert care so they can be rehabilitated and returned to the population where possible. It is also important that any deceased individuals are reported so appropriate investigations can be undertaken to understand the cause of death to inform the future management and recovery of the endangered populations.

- **ANS03**

A site Construction Management Plan (CMP) is to be prepared and is to include a section for Environmental Management. This section, as a minimum, is to outline all measures for the protection of biodiversity. The CMP is to be approved by Council/Accredited Certifier prior to issue of Construction Certificate.

Reason: To ensure that all measures for the protection of biodiversity at the development site are incorporated into one document that is for the overall management of the construction to ensure"

Heritage Officers Comments

Council's Heritage Officer has commented on the proposal as follows:

"I have reviewed DA0183/2012 regarding the changes to the Sandy Bay Marina and have determined that there will be no significant heritage impacts to the heritage items in the vicinity."

Waste Officers Comments

Council's Waste Officer has commented on the proposal as follows:

"Waste and recycling bins are to be stored within the designated bin storage areas, and screened from the street."

Assessing officer's note: the plans indicate a waste storage area that is screened from the street.

Environmental Health Officers Comments

Council's Environmental Health Officer has commented on the proposal as follows:

- *" Part A Addendum Document – Environmental Impact Statement*
 - *Four tanks below ground. Two tanks to be installed above*
- *Part B – Environmental Impact Statement*
 - *Single walled fuel tanks buried below foreshore to be replaced with aboveground double walled fuel tanks. Tanks to be bunded*
 - *Decommissioning of four underground tanks (in-situ) and removal of bowisers, pipeworks and valves. Placement of concrete slab over and placement of two above ground tanks and bowisers*
 - *Compliance with Australian Dangerous Goods Code, AS1692-2006, AS1940 for storage of fuel tanks. AS4452-1997 & AS3780-1994 in relation to storage of toxic substances – Acetone, Kerosene, Paint and Resin Solution. All dangerous goods registered with WorkCover NSW*
 - *AS4976-2008 for the decommissioning of the existing tanks*
 - *NSW EPA licensing as Commercial Marina. EPA Bunding and Spillage Management requirements*
 - *Wash-down waste water treatment system in which bunded area drains into*
 - *Water testing every two months*
 - *Small kiosk proposed*
 - *Pump-out facility to be provided for vessels to pump out grey water*
 - *Construction of pillions – potential for sediment to enter harbour*
 - *Significant environmental impacts limited to fuel or oil spills during construction, floating debris – spill equipment and floating silt curtain to be onsite during construction*
 - *Environmental audits conducted weekly during construction*
 - *No driving proposed. Piles to be drilled into seabed*
 - *No acid sulphate soils are present at the site of the proposed marina consolidation – confirmed by report in Appendices*
 - *Drawing DA.01a indicates relocation of compressor and installation of enclosure for sewer pump underneath new stairs. Plans also indicate fans and vents on roof to be relocated – detail isn't supplied*
 - *Drawing DA.02a indicates floor plan for new food shop. Detail of fit-out not provided*
 - *Drawing 10394 indicates existing below ground fuel tanks to be removed*
- *Part C – Environmental Impact Statement*
 - *Dangerous Goods Notification Expired (22/04/12)*
 - *Compliance with AS1692-2006 for Design of Steel tanks for flammable and combustible liquids*

- Compliance with AS1940 for The storage and handling of flammable and combustible liquids
- Appendix M – Soil Testing Report indicates that the tanks are suitable to be abandoned in-situ
- Consent to Discharge Industrial Trade Wastewater by Sydney Water Corporation
- The Washdown Wastewater Treatment System must comply with the Operation and Maintenance Manual
- Acid Sulphate Soil study determined that demolition and construction works can proceed without concern that acid sulphate soils may be encountered.
- Construction Environmental Management Plan

Recommendation

Following conditions to be added to development consent

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

2BS01

The fit-out of the food premises must comply with the following:

- Food Act 2003,
- Food Regulation 2004,
- Australian Standard AS6474-2004: Design, construction and fit-out of food premises, and
- Australia and New Zealand Food Safety Standards Code 3.2.3: Food premises and equipment

Reason: To ensure compliance with legislation and to protect public health and safety.

2WM03

Garbage rooms or grease arrester rooms must be constructed of solid material: cement rendered and steel trowelled to a smooth even surface. The door to the garbage room is to be designed and constructed to ensure the room is vermin proof and can be opened from the inside at all times. The garbage room is to be ventilated to the external air by natural ventilation or an approved air handling exhaust system.

Reason: To keep garbage rooms in a clean and sanitary condition to protect public health.

2DS08

The waste water treatment system must be approved under Section 68 of the Local Government Act 1993 prior to the issue of Construction Certificate.

Reason: To ensure compliance with legislation and to protect public health and amenity.

CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT

4BS01

The construction of the food premises must comply with the following:

- Food Act 2003,
- Food Regulation 2004,
- Australian Standard AS6474-2004: Design, construction and fit-out of food premises, and
- Australia and New Zealand Food Safety Standards Code 3.2.3: Food premises and equipment

Reason: To ensure compliance with legislation and to protect public health and safety.

4CD01

All of the following are to be satisfied/complied with during demolition, construction and any other site works:

- 1. All demolition is to be carried out in accordance with Australian Standard AS 2601-2001*
- 2. Demolition must be carried out by a registered demolition contractor.*
- 3. A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance must be planked out.*
- 4. No blasting is to be carried out at any time during construction of the building.*
- 5. Care must be taken during demolition/ excavation/ building/ construction to prevent any damage to adjoining buildings.*
- 6. Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.*
- 7. Any demolition and excess construction materials are to be recycled wherever practicable.*
- 8. The disposal of construction and demolition waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.*
- 9. All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997. All excavated material should be removed from the site in an approved manner and be disposed of lawfully to a tip or other authorised disposal area.*
- 10. Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation.*
- 11. All materials on site or being delivered to the site are to generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 must be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.*
- 12. Details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) should be kept on site as evidence of approved methods of disposal or recycling.*
- 13. Any materials stored on site must be stored out of view or in such a manner so as not to cause unsightliness when viewed from nearby lands or roadways.*
- 14. Public footways and roadways adjacent to the site must be maintained and cleared of obstructions during construction. No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.*
- 15. Building operations such as brick-cutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.*
- 16. All site waters during excavation and construction must be contained on site in an approved manner to avoid pollutants entering into waterways or Council's stormwater drainage system.*
- 17. Any work must not prohibit or divert any natural overland flow of water.*

Reason: To ensure that demolition, building and any other site works are undertaken in accordance with relevant legislation and policy and in a manner which will be non-disruptive to the local area.

4CD02

In order to maintain the amenity of adjoining properties, audible site works must be restricted to between 7.00am and 6.00pm, Monday to Friday and 7.00am to 1.00pm Saturday (including works undertaken by external contractors). No site works can be undertaken on Sundays or public holidays. Unless otherwise approved within a Construction Traffic Management Plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Reason: To prevent disturbance to the surrounding community.

4WM02

Removal of trackable wastes from the site must comply with the Protection of the Environment Operations (Waste) Regulation 2005 for the transportation, treatment and disposal of waste materials. Waste materials must not be disposed on land without permission of the land owner and compliance with the provisions of the Protection of the Environment and Operations Act 1997.

Reason: To ensure compliance with legislation.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

5BS01

The premises requires an Environmental Health Inspection upon completion of works by Council prior to the issue of an Occupation Certificate.

Reason: To comply with legislation.

5BS02

Trading must not commence until the proprietor of the food business formally registers their business details with The NSW Food Authority Notification and Food Safety Information System (NAFSIS).

Reason: To ensure compliance with legislation and the Australia and New Zealand Food Standards Code.

5MS01

Documentation is to be supplied by a practising mechanical engineer certifying the mechanical exhaust ventilation system, as installed, complies with Australian Standard AS 1668, and must be provided to Council Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: To ensure the mechanical exhaust ventilation system complies with Australian Standard AS1668.

5WM01

The applicant must contact Sydney Water (Tel. - 131110) to determine whether a Trade Waste Permit is required before discharging any trade waste to the sewerage system.

Reason: To comply with legislation.

ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR DEVELOPMENT

6AP04

All towers, ventilation/ducting, exhaust fan structures, chillers and condensers for air-conditioning and any other structures on the roof are to be the subject of a separate Development Application.

Reason: To maintain the amenity of the surrounds.

6AQ01

The use of the premises must not give rise to air impurities in contravention of the Protection of the Environment Operations Act 1997 and must be controlled in accordance with the requirements of this Act.

Reason: To ensure compliance with legislation and to protect public health and amenity.

6BS02

The ongoing operation and fit out of the premises must be maintained in accordance with the following requirements:

- *Food Act 2003*
- *Food Regulations 2004*
- *Australian Standard AS4674-2004: Construction and fit out of food premises*
- *Australia and New Zealand Food Standards Code 3.2.3: Food Premises and Equipment*
- *Australia and New Zealand Food Standards Code 3.2.2: Food Safety Practices and General Requirements*

Reason: To ensure compliance with legislation and to protect public health and safety.

6NL03

The ongoing use of the premises/property must not give rise to 'offensive noise' as defined under the provisions of the Protection of the Environment Operations Act 1997.

Reason: To ensure compliance with legislation and to protect public health and amenity.

6NL04

External sound amplification equipment or loud speakers must not be used for the announcement, broadcast, playing of music (including live music) or similar purposes.

Reason: To protect the acoustic amenity of neighbouring properties and the public.

6WM01

Activities must not detrimentally affect impact on the amenity of the adjoining occupations and the neighbourhood in general by the emission of noise, smoke, dust, fumes, grit, vibration, smell, vapour, steam, soot, ash, waste water, waste products, oil, electrical interference or otherwise.

Reason: To protect existing and future amenity of the adjoining occupations from excessive waste emissions.

6WM02

Deliveries and waste collection must only occur during the following hours:

- *Weekdays – 7:00AM – 8:00PM*
- *Weekends and Public Holidays – 8:00AM – 8:00PM*

Reason: To minimise disruption to neighbouring properties.

6WM10

The operation of the premises must be conducted in a manner that does not pollute waters as defined by the Protection of the Environment Operations Act, 1997.

Reason: To ensure compliance with legislation and to protect public health and amenity.

ADDITIONAL NON-STANDARD CONDITIONS

Mechanical Ventilation

Details of the proposed mechanical exhaust systems, detailing compliance with the relevant requirements of Clause F4.12 of the Building Code of Australia and Australian Standard 1668 Parts 1 and 2 are to be submitted to Council or the Principal Certifying Authority for approval prior to the issue of a Construction Certificate.

Reason: To ensure compliance with legislation and to protect public health and safety.

Construction Noise

Noise arising from the works must be controlled in accordance with the requirements of the Protection of the Environment Operations Act 1997 and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual.

Reason: To ensure compliance with legislation and to prevent disturbance to the surrounding community.

Outdoor Lighting

Prior to the issue of a Construction Certificate, the Certifying Authority must be satisfied that all outdoor lighting is designed and positioned to minimise any detrimental impact upon the amenity of other premises and adjacent dwellings and that the outdoor lighting complies with the relevant provisions of Australian Standard 1558.3:2005 Pedestrian area (Category P) lighting – Performance and design requirements and Australian Standard 4282:1997 Control of the obtrusive effects of outdoor lighting.

Reason: To protect public health and amenity.

Air Quality

The construction and ongoing use of the premises, building services, equipment, machinery and ancillary fittings shall not give rise to air pollution. All works shall ensure air quality controls are in place and all activity is in accordance with the Protection of the Environment Operations Act 1997 and Protection of the Environment Operations (Clean Air) Regulation 2002.

Reason: To ensure compliance with legislation and to protect public health and amenity.

Asbestos Removal

Anyone who removes, repairs, or disturbs bonded or 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. All removal, repair or disturbance of or to asbestos material must comply with the requirements of WorkCover NSW and with the following:

- Work Health and Safety Act 2011;*
- Work Health and Safety Regulation 2011; and*
- How to Safely Remove Asbestos Code of Practice [WorkCover NSW (2011)].*

Reason: To ensure compliance with legislation and protect the health and safety of site workers and of the public.

Decommissioning of fuel tanks

Existing underground tanks which are no longer intended to store dangerous goods must be cleaned free of dangerous goods and made safe. The decommissioning of underground tanks and associated pipework, must be carried out by a competent person and certification provided in compliance with the following:

- Australian Standard AS1940: The storage and handling of flammable and combustible liquids,*
- Australian Institute for Petroleum (AIP) Code of practice CP22: The removal and disposal of underground petroleum storage tanks,*
- Work Health and Safety Act & Regulation 2011,*
- WorkCover NSW Storage and handling of dangerous goods code of practice 2005,*
and
- any other requirements imposed by WorkCover NSW.*

Reason: To ensure compliance with legislation and to protect public health and safety.

Dangerous Goods Storage

Prior to dangerous goods being stored onsite, the occupier of the premises must notify with WorkCover NSW. The storage of dangerous goods onsite must comply at all times with the following:

- Australian Standard AS1940: The storage and handling of flammable and combustible liquids,*
- Work Health and Safety Act & Regulation 2011,*
- WorkCover NSW Storage and handling of dangerous goods code of practice 2005, and*
- any other requirements imposed by WorkCover NSW.*

Reason: To ensure compliance with legislation and to protect public health and safety.

Pollution Incident

In the event of a pollution incident, the details of the incident must be recorded in a register including the remedial action taken. The appropriate authority must be notified of a pollution incident as soon as reasonably practicable after the incident has occurred.

Reason: To ensure compliance with legislation and to protect public health and amenity.

Construction Environmental Management Plan

Compliance with the Construction Environmental Management Plan developed by J.S.Parsons Structural Consultants and as found in Part 'C' Environmental Impact Statement, Appendix W.

Reason: To ensure that the environment and amenity of the public is protected."

Access Committee Comments

Council's Access Committee has commented on the proposal as follows:

- *"Noting that there is an accessible bathroom provided, we believe that the accessible facilities could be improved with the installation of hoist sockets on both arm A and D to lift disable sailors/passengers into the boat.*
- *The hoist sockets provide flexibility for future use and at minimal disruption in this design/construction stage*
- *Storage for the hoist could be provided in a storage area indoors – minimal space is required.*

Recommended Approval condition:

That hoist sockets be installed on both Arms A and D of the proposed marina, with a secure storage area for lightweight portable hoist in the main building.

Reason: *To provide facilities for mobility impaired sailors/passengers.*

Details could be obtained from Sailability NSW."

Traffic Engineer Officers Comments

Council's Traffic Engineer has commented on the proposal as follows:

"It is understood that Sandy Bay Road will remain unaffected by the Marina development works and that no land based equipment or vehicles are required. Should construction works impact on vehicular or pedestrian traffic, a Traffic Management plan is to be prepared.

Note: previously proposed crossing deleted, so previously requested information regarding this no longer required."

Coastline Management Officers Comments

Council's Coastline Management Officer has commented on the proposal as follows:

"Context

This memo constitutes the coastal management assessment relating to proposed works for the Proposed Consolidation of Clontarf Marina, with respect to coastline management issues, as well as interactions with Manly Council's Clontarf/Bantry Bay Estuary Management Plan 2008.

1. 1.1 Submitted documentation

Comments are based on a review of submitted documentation, being:

- Part A. Addendum Document Environmental Impact Statement, prepared by J.S Parson Structural Consultants Pty Ltd, on behalf of Clontarf Marina Pty Ltd.*
- Part B. Environmental Impact Statement for The Proposed Consolidation of Clontarf Marina's 59 Existing Swing Moorings into a Fixed Floating Marina System On Behalf of Clontarf Marina Pty Ltd Sited at Sandy Bay, Sandy Bay Road, Clontarf. Environmental Impact Statement and Appendices A-E.*
- Part C. Environmental Impact Statement for The Proposed Consolidation of Clontarf Marina's 59 Existing Swing Moorings into a Fixed Floating Marina System On Behalf of Clontarf Marina Pty Ltd Sited at Sandy Bay, Sandy Bay Road, Clontarf. Appendices F-X.*
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2. 1.2 Current Site

The site sits generally over the waters of Middle Harbour on the eastern shore of Sandy Bay and adjacent Sandy Bay Road on the landward side. The site is bounded by sandy beaches fronting Clontarf Reserve and Monash Crescent and Clontarf swimming baths.

The existing Clontarf Marina is located on the site. It is located almost entirely below mean high water mark on Maritime Waters controlled by NSW Maritime Authority and a small section of land leased from Manly Council.

Clontarf Marina began as a small boatshed with a number of adjacent swing moorings. By the 1920's, a timber jetty had been added and later a ramp and timber pontoon. Redevelopment of the site occurred in 1960, involving construction of a larger two storey boatshed and relocation of the ramp and slipway seaward. Various upgrades involved additions of moorings and fuel storage and filling. The current jetty built in 2000 is 15m long and sits on four timber piles. It is believed to be in the same location as the original jetty. There is a 9.1m aluminium access ramp leading from the timber jetty to the marina deck. There is a floating fuel berth on the landward end of the marina.

3. 1.3 Previously proposed works

A Designated Development application was submitted on 21 August 2012, seeking approval for consolidation of Clontarf Marina's existing 59 swing moorings and 18 fixed floating commercial marina berths into a new consolidated 78 fixed floating commercial berth marina system. The External Planning Consultant, Sony Ooi's review considered that the extension was too bulky (meaning that its extension north and south along the foreshore as well as west out into Middle Harbour was too large) and was inconsistent with a number of planning objectives. The Clontarf Precinct Committee and a number of residents raised concerns that the proposed orientation of the new marina system and the total number of vessels proposed as commercial berths would block views from Clontarf foreshore (Part A Addendum Document EIS Executive Summary).

Determination of the proposal was deferred, pending submission of a modified proposal.

4. 1.4 Modified proposed works

The modified proposed works will involve:

- Removal of 41 swing moorings (18 swing moorings retained);*
- Demolition of existing 21 vessel berth marina;*

- Construction of a new marina containing 64 vessel births, with a footprint of 7,970 m³;
- Installation of 14 steel piles for Northern marina arm; and 17 steel piles for Southern marina arm;
- Construction of entry way and platform;
- Installation of new above ground fuel tanks and removal of 50 year old underground single walled steel fuel tanks; and
- Relocation of existing public swing moorings and alterations and additions to the existing boat shed.

In responding to the concerns raised over the previously proposed works, the current works seek to achieve significant improvements in visual quality and bulk reduction by re-orienting the marina, rotating the structure by 90 degrees and creating a viewing corridor through the centre of the marina; reducing the length of the long line of vessels fronting the Clontarf foreshore; and reducing the proposed marina development by 23 berths from 87 to 64 total proposed berths which also reduces the water footprint of the marina structure from 12,639 m³ to 7,970 m³ (Part A Addendum Document EIS Executive Summary).

There has been no modification of the type of materials to be used in construction or of the construction methods to be used. Also, the number of existing structures to be removed and the removal methodology remains unchanged from the original proposal.

2 SUMMARY OF KEY COASTAL MANAGEMENT ISSUES

5. 2.1 Pollution issues

Clontarf Marina currently provides a fuelling facility for boats, consisting of four underground tanks for petrol and diesel, booster pumps, pipelines from the tanks to a refuelling jetty and two dispensers on the jetty.

Key issues for pollution potentially arise from the storage and handling of fuels and chemicals and run-off from the marina and work areas. There is potential for leakage of fuel from the existing single walled steel tanks, due to corrosion and potential for contamination of soil and/or groundwater. There is potential for spills from fuel services. During the construction phase, there is potential for pollution from construction activities.

The Proposed Consolidation of Clontarf Marina includes a proposal to decommission the existing four underground fuel tanks. The Fuel Decommissioning Report (Part C, Appendix L) noted that the existing tanks are approaching the end of their service life. Other parts of the fuelling facility have recently been refurbished. The existing underground fuel tanks will be decommissioned by the preferred method under the relevant Australian Standard AS4976-2008 'The removal and disposal of underground petroleum storage tanks' which is abandonment by filling with concrete slurry. This method is regarded as the least disruptive requiring no excavation or other demolition and the abandoned tanks are stabilised in position by the stable fill.

The Phase 2 Environmental Site Assessment (Part C, Appendix M) investigated the potential for contamination of sediments from the existing underground fuel tanks, principally hydrocarbons from potential fuel leakage and lead contamination from potentially corroded tank walls. The Assessment concluded that all contaminants of concern were reported to be either below the laboratory detection limits or present in concentrations below the site soil criteria. The Assessment did not measure impacts on groundwater and recommended that groundwater monitoring be installed and groundwater sampling of the site be undertaken. However, the assessment concluded that due to the very low level of contaminants in soil, there was minimal risk of groundwater impact.

The existing underground tanks are proposed to be replaced with two concrete encased, double-walled above ground tanks, each with capacity of 1200 litres for petrol and diesel, respectively. The new tanks would be designed and installed in accordance with the relevant industry Australian Standard AS1940 'The storage and handling of flammable and combustible liquids'. The proposed new fuel tanks contain integral secondary containment, within the two walls and have an external fire rated covering. The location meets the siting requirements of AS1940 'The storage and Handling of Flammable and Combustible Liquids'.

The hardstand work area on the slipway would ensure no contaminants enter the environment from slipway work processes and all pollutants could be captured, recycled or disposed of in accordance with relevant Australian Codes and Standards and design requirements set by the Environment Protection Authority. The hardstand would provide a completely bunded area for working on all vessels 2.5m above low tide and would contain all stored fuel.

A grated drain conveys all collected pollutants such as anti-foul paints and oil/fuel to a collection pit that runs into a wash-down waste water treatment system with treated waste being suitable for discharge to sewer; compliance testing would be undertaken every two months with results sent to Sydney Water; and there would no noise from new above ground tanks.

The EIS and supporting reports did not provide any information on the installation and operation of the new fuel services facility at the end of the marina although this is referenced under Section 5.2.4 (Part B, EIS) and described as 'state of the art and environmentally friendly fuel services'. The provision of fuel services and pump out has the potential to impact on the environment.

There is some potential for pollution from the demolition and construction works, particularly from air borne waste generated eg. from crushing material for recycling, such as bricks and the steel pile cutting activity. There is no reference to measures to contain air borne waste in the Waste Management Plan.

There is potential for acid sulphate soils to be present in the vicinity of the marina development. The site is located on land in Manly LEP's Foreshores and Waterways Area where an assessment of the proposed works is required in accordance with the State Government's Acid Sulphate Soils Assessment Guidelines. An Acid Sulphate Soil Study was undertaken (Part B, Appendix T). The assessment reviewed records of material from the dredging of Clontarf Baths which is in close proximity to the marina and found that all material removed to date had been clean sand, free of acid sulphate.

6. 2.2 Ecological issues

The Aquatic Ecology survey (Part C, Appendix F) identified Zostera sp. seagrass in shallow areas on either side of the existing marina structure. Vessels berthed on the north eastern extent of the proposed marina will be further away from the nearest seagrass bed than for the original proposal, ie. at a distance of greater than 3 metres. The addition of the timber platform alongside the existing jetty would traverse primarily bare sand and would be more than 10m away from the nearest seagrass. No seagrass was identified in the planned footprint for the new marina.

Both the existing and proposed marina structures and swing mooring configurations shade the underlying water column and surface of the seabed, reducing the amount of available light in that vicinity. The extent of the areas impacted by shading is relatively minimal, compared to the larger areas of similar, soft sediment habitat occurring at Clontarf that would support microscopic floating algae and diatoms in the water column and on the surface of the seabed.

The existing marina structures and swing moorings provide artificial habitat for a variety of organisms, including macroalgae, invertebrates and fish. There would be an overall reduction in the amount of artificial habitat created and a reduced benefit from removal of swing moorings, due to the retention of a higher number of swing moorings and smaller marina structure under the revised proposal, compared to the original proposal. However, the provision of artificial habitat from the marina structure under the revised proposal will be greater than that provided by the existing marina structure. The modified proposal will also create a benefit from the reduced number of moorings compared to the existing marina structure.

*There is a patch of *Posidonia australis* in the North-western corner of Sandy Bay, approximately 220m from the existing marina and 100m from the nearest swing mooring, proposed for removal. *Posidonia australis* is currently being assessed as a potentially threatened ecological community under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act).*

The Aquatic Ecology survey notes the following potential impacts from construction:

- Mobilised sediment and associated turbidity has the potential to impact on seagrass habitats due to reduced light availability and/or smothering. Removal of existing piles, installation of new piles and removal of swing moorings may cause disturbance to seabed and mobilise sediments into the water column. In particular, the sediment in deeper areas of Sandy Bay where the swing moorings are to be removed and piles to be installed is generally composed of fine grained silt which has the potential for mobilisation when disturbed.*
- Re-suspension of sediments resulting from the removal of steel piles and swing moorings has the potential to release organic matter, nutrients and contaminants which may impact on water quality.*
- There is potential for impacts on seagrass in proximity to Clontarf Marina from construction boat anchoring or propeller action.*
- There is potential for spread of the exotic aquatic weed, *Caulerpa* sp. due to disturbance from construction activities.*

7. 2.3 Heritage issues

The review of potential heritage issues undertaken for the original proposal (Part B, EIS, Section 15. Statement of Heritage Impact) found that there were no heritage items on the site. The review identified four items of heritage significance surrounding the site, with none being within 75m of the site:

Heritage items identified in proximity to the Proposed Consolidation of Clontarf Marina development included:

- Middle Harbour Submarine Syphon – 225m from proposed development site*
- The Spit Bridge – 635m from proposed development site*
- Clontarf Reserve – 75m from proposed development site*
- A Norfolk Island Pine – 230m from proposed development site*

The review concluded that there was significant spatial separation between the heritage items in proximity to the proposed marina development site.

A further review of heritage issues undertaken for the revised proposal (Part A, Appendix E1 Modified Statement of Heritage Impact) identified the heritage values of the Clontarf Harbour Foreshore, being expansive views, water recreation, attending foreshores by vessel and the relationship with Middle Harbour and the eastern foreshore of The Spit. The review concluded that the proposed consolidation enhanced the heritage values of the harbour foreshore.

8. 2.4 Issues for coastal processes

Issues for coastal processes that could arise from the Proposed Consolidation of Clontarf Marina include changes to the seabed, new levels of erosion along the foreshores of Sandy Bay, or new levels of sedimentation in the waters of Sandy Bay, all of which could occur either locally or more widely throughout the Bay and Middle Harbour. There could also be damage to infrastructure or aquatic habitat.

The Coastal Processes Study (Part C, Appendix S) described the key coastal sedimentation processes that currently occur in Middle Harbour. Two distinct and mobile sand bodies are identified. A small narrow riverine delta extends from Sandy Bay along the western foreshore of Clontarf. There is a large marine delta that extends across the Harbour between Balmoral and Roseville Reserve, to Clontarf. There is no sand exchange between the two deltas which are relatively static. The narrow riverine delta is seeing a level of sedimentation within the vicinity of Clontarf Baths, due to slowing of current flow, wind developed waves and vessel wash. Four stormwater drains within the Sandy Bay area add to the potential for an increase in sedimentation along Clontarf Reserve. Siltation from stormwater drains and mobilisation of sediments in Sandy Bay by tidal currents moves sediment towards Clontarf Reserve.

The Coastal Processes Study found that the Proposed Consolidation of Clontarf Marina would not have any physical impact on the sediments, rate of sediment movement, water depth, nor movement of water in Sandy Bay, Clontarf Reserve or the wider area of Middle Harbour. The levels of erosion and sedimentation in the locality are due to natural processes and the transportation of man-made sediments delivered to the coastal area by storm water channel. There is sufficient flushing of Sandy Bay. The proposed marina system does not produce an impediment to the flushing of Sandy Bay due to there being sufficient gaps between floatation modules and shallow draw of 0.3-0.5m. Water depths in the vicinity of the marina range from 3-19.5m.

The EIS notes that the marina upgrade can cope with a sea level rise of up to 1m before ameliorative action is required.

9. 2.5 Issues for visual impact

The EIS provided a description of the current views of the site (Part A, Section 9 Visual Impact). The existing marina and mooring field is visible from the Clontarf foreshore. Three separate views are identified, being the nearby view, intermediate view and panoramic view. The nearby view is that taken from a position adjacent to the existing marina which constitutes the marina and associated infrastructure. The intermediate view from the Clontarf Marina takes in the sandy beach to the north of the marina, Middle Harbour navigation channel and swing moorings. The panoramic view extends to the foreshore of The Spit and all else that can be taken in from an all round view, including the existing swing mooring field which runs from north of Sandy Bay to south of Clontarf Park.

There will be some loss of views from private property and publically accessed viewing points, due to the proposed increase in the footprint of the marina, over the current marina. The revised marina configuration has aimed to reduce the appearance of bulk over the original proposal. The re-orientation of marina arms perpendicular to the shore rather than parallel has aimed to create a viewing corridor across to the eastern foreshore of The Spit which protects the views from the Manly to Spit Bridge Scenic Walk.

The reduced number of swing moorings and consolidation into two discreet groupings, being public moorings and commercial moorings also reduces the appearance of bulk and creates open water with associated views. The overall number of boats proposed in the revised proposal is reduced by two from the original proposal.

There is potential for visual impact from the addition of two above ground fuel tanks to the marina site. The tanks are each 1200 litre capacity. The tanks will be slightly higher than the existing sandstone fence. The Proposed Consolidation of Clontarf Marina includes an additional course of sandstone blocks which will maintain the appearance of the premises from the surrounding public areas and roadway.

10. 2.6 Issues for public access and use of the foreshore

The areas surrounding Clontarf Marina comprise Clontarf Reserve and sandy beaches fronting the reserve, Clontarf swimming baths and the sandy beach fronting Monash Crescent. These areas are used for recreation. The Manly to Spit Bridge scenic walk passes along the foreshore. The southernmost proposed berth is sited 65 m north of the swimming baths. Modifications have been made to the entrance amenity so that the public are not required to walk through the slipway.

No additional parking or change to pedestrian access is proposed. The parking and traffic assessment (Part A, Appendix D1) included an independent parking count which found that there is currently available on-street parking at all surveyed times within a close proximity of the site. The proposal is not expected to result in a significant increase in parking demand. There will be a dedicated tanker parking area for fuel deliveries.

Provision is being made for kayak storage, including 8 public kayaks/canoe storage racks for public use.

The relocation of fuel services further out along the marina under the Proposed Consolidation of Clontarf Marina will reduce the impact of vessel movements on public recreation and amenity inshore.

A dedicated berth is to be created in order to meet the requirements of the 'Destination Sydney Harbour' program.

3 COASTAL MANAGEMENT ASSESSMENT

11. 3.1 Pollution impacts

The potential impacts from the existing four single-walled underground fuel tanks were investigated in the Phase 2 Environmental Site Assessment, particularly with respect to contamination from hydrocarbons and lead. The Assessment concluded there were no contaminants present in the surrounding sediments. A groundwater assessment was not undertaken but due to the very low level of contaminants in soil, the Assessment concluded there was minimal risk of groundwater impact.

The preferred method for decommissioning the existing underground fuel tanks is to clean the tanks, fill them with a concrete slurry and leave them in situ. This is in accordance with the relevant Australian Standard AS4976-2008 'The removal and disposal of underground petroleum storage tanks'. The design and location of the new above ground tanks would be in accordance with the relevant industry Australian Standard AS1940 'The storage and handling of flammable and combustible liquids'.

The bunded area around the hardstand work area on the slipway would ensure that spills are contained and contaminants prevented from entering the environment. All pollutants would be recycled or disposed of in accordance with the relevant Australian Codes and Standards and design requirements set by the Environment Protection Authority.

The provision of fuel services and pump out has the potential to impact on the environment. The potential for pollution from demolition and construction works, particularly with respect to containing air borne waste could be more specifically addressed in the Waste Management Plan.

Records show that sandy material dredged from the vicinity of the marina is free of acid sulphate. Therefore, there are no concerns relating to the potential for acid sulphate soils and there would be no impacts nor management measures required.

Assessment:

There are no potential impacts from acid sulphate soils. There are no contaminants present in the sediments in the vicinity of the existing underground fuel tanks and the decommissioning of the tanks in situ is the preferred method. The potential for pollutants entering the environment could be adequately managed through the proposed spill containment and disposal measures for both the new above ground fuel tanks and the marina hardstand workshop area.

There should be a spill management program for both fuel services and pump out on the outer end of marina. There should be measures in the Waste Management Plan for the containment of airborne waste generated during construction.

12. 3.2 Ecological impacts

The siting of the new marina would move commercial vessel berths further away from existing seagrass beds when compared to the existing marina system which provides additional protection from vessel movements.

As noted in the Aquatic Ecology Survey (Part C, Appendix F), the proposed use of hollow steel piles is likely to minimise the amount of sediment mobilised during pile installation. Any increases in suspended sediments and turbidity are likely to be temporary and localised during the construction phase and are not expected to have a detrimental effect on seagrasses. In addition, there are not expected to be any impacts on the potentially threatened *Posidonia australis* seagrass, given the patch of seagrass is sufficiently distant from the marina development area. No increased shading is expected from the marina structures which are sufficiently distanced away from existing seagrass beds.

The removal of the existing structures of Clontarf Marina, including floating pontoons, piles and swing moorings will result in the loss of macroalgae and invertebrates, adhered to the structures and will temporarily disperse mobile fish which are attracted to the structures. However, these impacts are expected to be temporary, given their replacement as part of the Proposed Consolidation of Clontarf Marina development and the likely recolonisation of the structures with macroalgae and invertebrates. There is likely to be a net increase in this type of artificial habitat due to the expanded size of the marina.

The proposed floating silt curtain to be installed around the site prior to the commencement of construction works will prevent any movement of sediment into adjacent areas, including sensitive seagrass areas.

Assessment:

No detrimental impact to the ecology is expected due to the proximity of seagrass areas at sufficient distance away from the marina footprint and construction areas. Any potential impacts from the construction activity can be avoided by the creation of 'no go' zones around the seagrass beds. The impact of mobilised sediments would be minimised by use of the floating silt curtain in the vicinity of works.

13. 3.3 Heritage impacts

The Modified Statement of Heritage Impact concluded that with the removal and consolidation of swing moorings, Sandy Bay and the Clontarf foreshore would be returned to the more open water layout associated with the 1800's to the mid 1900's and would aid in turning the foreshore back into a destination.

Assessment:

No potential detrimental impacts on heritage are associated with the Proposed Consolidation of Clontarf Marina development. There are no heritage sites in the vicinity of the marina.

14. 3.4 Impacts on coastal processes

The Coastal Processes Study found that the Proposed Consolidation of Clontarf Marina would not have any physical impact on the sediments, rate of sediment movement, water depth, nor movement of water in Sandy Bay, Clontarf Reserve or the wider area of Middle Harbour. The levels of erosion and sedimentation in the locality are due to natural processes and stormwater movements. Natural flushing of Sandy Bay is considered sufficient and marina design ensures there would be no impediment to flushing.

Due to there being no potential impacts on seabed levels or any new triggers that may change the current sedimentation or coastal erosion patterns in Sandy Bay and Middle Harbour, there are no private, commercial or public structures within Middle Harbour that could be affected by the proposed development.

It was not possible to determine whether there would be any additional impacts on coastal processes due to the revised proposal because an updated assessment was not provided. However, because the original assessment concluded that there were no changes to coastal processes as a result of the existing marina nor the original proposal, it is unlikely there would be any changes attributable to the modified proposal.

Assessment:

There will be no detrimental impact to coastal processes as a result of the Proposed Consolidation of Clontarf Marina. Coastal processes are due to natural processes and there are currently no impacts on coastal processes from the current marina.

15. 3.5 Visual impact

The Modified Visual Impact Assessment (Part A, Appendix C1) noted that the loss of views of the waterway, arising from the increase in the footprint of the marina will be more than offset by a significant increase in the views of open water. This will be achieved by removing some of the swing moorings and consolidating the remaining moorings into two smaller, separated fields which creates a viewing corridor and introduces a new panoramic view separated by open water. Views into Middle Harbour's navigation channel will also be improved. The creation of a viewing corridor across to the eastern foreshore of The Spit is expected to enhance the views from the Manly to Spit Bridge Scenic Walk.

The potential visual impact from the two new above ground fuel tanks to the marina site is being addressed. The existing sandstone fence would be increased in height, under the Proposed Consolidation of Clontarf Marina which would maintain the appearance of the premises from the surrounding public areas and roadway.

Assessment:

The bulk and orientation of the elements of the Proposed Consolidation of Clontarf Marina would not have an unacceptable impact on views from private property, and public access areas across the waterway nor from the waterway to the shores of Clontarf.

16. 3.6 Impact on public access and use of the foreshore

The EIS (Part A, Section 11. Public Access) notes that public access along the foreshore will remain unchanged and unaffected. Public access to the marina will be enhanced by the provision of casual berthing closer to the navigation channel.

The Proposed Consolidation of Clontarf Marina seeks to improve public access. It is noted that casual berthing would be retained. However, there is no mention of any provision for pick-up and drop-off which could be associated with refueling or the use of pump out facilities. This would further improve public access.

The creation of open blue water by removing the swing moorings would be expected to enhance public recreation and amenity.

There would be a reduced requirement for dinghy storage due to conversion of swing moorings to marina berths which would potentially reduce the detrimental impacts of dinghy storage on the foreshore and improve public access.

Assessment:

There are not expected to be any detrimental impacts on public access and use of the foreshore from the Proposed Consolidation of Clontarf Marina. In particular, the overall reduction in the total number of berths by two berths is likely to result in there being no net increase in parking demand on the foreshore.

4 ASSESSMENT AGAINST CLONTARF/BANTRY BAY ESTUARY MANAGEMENT PLAN 2008

17. 4.1 Plan context

Clontarf/Bantry Bay Estuary Management Plan was adopted by Manly Council in 2008. It covers the portion of the Middle Harbour Estuary and foreshore that aligns with the Manly Local Government Area border. The Plan has been developed in response to legislative requirements and community issues in accordance with current best practices for the management of estuaries and the catchments.

In the Plan, Section 2.4 Current Condition noted that human activities have altered and modified the natural system of the study area. It noted the first punt operation in 1849, ferry operation and tram services through to the construction of the present Spit Bridge in 1958. The 2.4m length of seawall occupies 46% of the length of the foreshore. Other human interventions that were identified include the swimming baths, sailing and yacht clubs, Clontarf Marina and walkways, including Manly Scenic Walkway.

The scope of the Plan is addressed through Strategic Management Options which cover a wide range of structural and non-structural solutions. The Strategic Management Options address 10 key management issues:

- Water quality and pollution*
- Aquatic/intertidal habitat conservation and management*
- Bushland/terrestrial habitat conservation and management*
- Sedimentation and beach erosion*
- Hazards and risks including climate change*
- Estuary use*
- Access*
- Foreshore infrastructure and facilities*
- Heritage conservation*
- Monitoring*

Actions were developed in the Plan which address implementation of the Strategic Management Options.

18. 4.2 Assessment

Actions in the Clontarf/Bantry Bay Estuary Management Plan that specifically relate to the Proposed Consolidation of Clontarf Marina include:

FI.1 Rationalise mooring places to minimise the impact on ecologically important seagrass beds.

The Coastal Management Assessment concluded that seagrass beds would be sufficiently distant from the proposed marina site. In addition, the proposal would result in a consolidation of moorings with the potential to reduce impacts on the seabed which is consistent with Action FI 1, above.

FI.3 Establish dinghy and kayak storage facilities at suitable locations within the study area.

The Proposed Consolidation of Clontarf Marina would make provision for 8 kayak storage places for use by the public.

With regard to the other actions for implementing the Strategic Management Options, the EIS and supporting studies have generally addressed the issues pertaining to the Proposed Consolidation of Clontarf Marina, including water quality and pollution, aquatic/intertidal habitat conservation and management, sedimentation and beach erosion, hazards and risks, climate change, estuary use, access, foreshore infrastructure and facilities and heritage conservation. More specific details of these issues and the assessment of impacts are covered under the Coastal Management Assessment, above.

5 RECOMMENDATIONS FOR CONDITIONS OF CONSENT

5.1 Construction phase

- 1. Impose a 'no wash' speed limit on vessels approaching and working in the site, in order to minimise sediment disturbance.*
- 2. Designate 'no go' zones for construction in areas containing seagrasses, in order to avoid damage to seagrasses.*
- 3. Designate 'no go' zones in areas containing the exotic aquatic weed *Caulerpa* sp., in order to prevent spread of the weed.*
- 4. Include measures for the containment of airborne waste in the Waste Management Plan.*

5.2 Operations phase

- 1. Incorporate operational measures to minimise the risk of spills from fuel services and pump out facilities on the end of the marina, as well as spill management measures."*

External Referrals

Precinct Community Forum Comments

The proposal was referred to all Precinct Community Forums for comment. The following comments were received:

Balgowlah Heights Precinct Community Forum

"While there is an increase of berths from 84 to 87 including utility and working berths, the application proposed to remove many of the swing moorings and open up the navigation channel and improves the horizontal view lines. The impact on vertical view lines has not been considered for this report. The deck is increased on the seaward side of the building. Public parking is increased by 2 because of the redesign to the front of the building and its approaches.

Application presents many positives for the waterway.

AMENDED DA - Clontarf Marina

The DA Coordinator discussed this amended DA with the applicant.

The proposal seeks to convert the existing 25 fixed berths and 59 swing moorings, a total of 84 boats, to 64 berths and 18 swing moorings, a total of 82 boats.

The DA documents were only collected from Council yesterday, Monday 10 March 2014.
Comments:

In the new proposal which is a revision of a submission made in 2012;

- 1. the combination of berths and swing mooring will take up less public space than the present layout of berths and swing moorings. Swing moorings take up more public water space than berths.*
- 2. the berths will cater for a range of boat lengths from 10 metres to 18 metres.*
- 3. the new marina will be in deeper water than the existing marina and does not impact on sea grasses – no dredging is required. The submission has approval from Fisheries.*

4. The view from various points in the surrounding landscape will change. While there is a bulk associated with the berthing area, other areas will be opened up.
5. Boats on swing moorings are often vandalised. Those owners that choose to go into the berths will enjoy added security.
6. The building will not change significantly but there will be a small cafe. The cafe will not require a grease trap so there will be only limited cooking facilities available to the proprietor. The cafe and associated seating area will be open to the public.
7. There will be better control on the accidental dropping of rubbish as those using the berths will have an easier access to bins etc and will not have to carry it from their swing mooring to land.
8. As the number of boats at the site is much the same as it is now, there should be no increase in traffic or parking requirements. No additional parking is provided in this amended DA.
9. It is understood that most of the boat owners are residents of the area
10. The main navigation channel leading to and from the Spit Bridge will be widened from about 10 metres to about 40 metres by the amended design.
11. The refuelling area is moved from existing area near the shore to the end of the berths. Any spill will be controlled as it is now with a boom but there is less chance of a spill affected the nearby beach areas.

Mrs Patterson, representing Clontarf Precinct made following comments:

1. larger boats to be allowed – bulkier
2. RMS may backfill with more swing moorings or replace some of the 41 swing moorings to be absorbed into the fixed berths
3. pictures of west side of Middle Harbour were shown – 3 of which have been extended – it was noted that all are adjacent to a major road (services access, noise, etc) and not near residential homes
4. fuel tanks to be serviced by tankers using Sandy Bay, Amiens and Peronne Roads
5. balloons were put up initial and second DA, no balloons this DA

Other concerns raised were:

1. that the bulk would be similar to those on the western side and
2. traffic – it was stated that according to RMS there is a 30% increase for fixed berth marinas – service vehicles as well as patronage traffic
3. it became obvious that lodgement of objections by 21 March for a proposal this size was inadequate and that an extension be sought, a public forum meeting be considered to which applicant be invited.

MOTION:

That the residents of Balgowlah Heights Precinct express concern and supports Clontarf Precinct's concerns and asks that Council extends the time for submission by 2 months and that the applicant and objectors attend a meeting to discuss the proposal.

Prior to the meeting the applicant should prepare a photomontage of the development and place balloons to demonstrate the bulk of the proposal."

Clontarf Precinct Community Form

"Proposed removal of forty one (41) swing moorings, (eighteen (18) swing moorings retained), demolition of existing twenty one (21) vessel berth marina, construction of a new marina containing sixty four (64) vessel berths, entry way, platform, above ground fuel tanks, relocation of existing public swing moorings and alterations and additions to the existing boat shed."

There was a presentation to the meeting from the conveyor of the precinct Sub Committee regarding the history of the marina DA and submissions and it was seen that this was essentially the same DA that had been presented in 2012 with amendments.

In 2012, the DA was rejected by Council as it was found not to comply with 12 conditions and was then sent to the Manly Independent Approval Panel (MIAP) for consideration. At this time, the Marina withdrew its application before a determination could be made. MIAP asked the applicant to consult further with the Precinct before re-submitting the application. There had been a meeting on 13th May 2013, 1 month after the MIAP hearing with 4-5 Precinct representatives, the owner of the marina and a consultant hired by the marina to work on the DA. There has been little consultation since then.

The DA that is currently presented to Council is 3 very large volumes of dense professional consultants reports which will take a lot of time for the Precinct to work through. It is unreasonable that the Precinct should be expected to wade through this massive voluminous material within the 21 days before submissions are closed. Even so, it was noted that the questions put forward of the major concerns of the Precinct, were not answered.

It was also noted that the new DA will have 12 berths for 18 metre boats and 27 berths for 15 metre boats. These are very large boats and it was noted that the draught of yachts of this size may be too deep for Middle Harbour and this means that such large boats would more than likely be motor cruisers with attendant fuel pollution and potential larger numbers of people being entertained on board. The parking pressure on the very narrow and small Sandy Bay Road would be greatly increased. Council has a responsibility and a duty to the parking problems that are already evident in the whole of the Sandy Bay, Clontarf Reserve and even Peronne Ave areas and the potential for greatly increased pressure is a very high concern.

The modification of the size of the marina is 25% reducing the number of fixed moorings from 82 to 64. However, the marina will still be three times the size of the present one and will still have the 39 berths for very large vessels of 18 and 15 metres in length in a small bay in a residential, not commercial area.

The DA lodged in April 2013 was rejected on 10 grounds, 2 being crucial in that the marina was not considered to be suitable for the site and would result in a negative outcome for the community surrounding it.

Swing moorings are seen as integral to the character of the area and a large and bulky marina are inappropriate for the site and would be contrary to the public interest.

The sub committee continues to meet and other Precincts feel similarly about the proposal.

Earlier submissions to Council by residents who oppose the marina development will not be taken into account and so residents are strongly urged to make new submissions to Council for this current DA

Motion 1:

"That Clontarf Precinct reaffirms its strong opposition to the proposed Clontarf Marina development on the grounds that:

- It is a very large and expansive development which will intrude upon and spoil a tranquil, pristine public space enjoyed by the local community and visitors alike.*
- It is an alienation of public space for private commercial purposes.*
- The expansion of the marina will accommodate large, bulky motorised vessels, rather than smaller boats, which will alter the character of the quiet bay.*
- It will adversely impact upon the Manly Scenic Walkway, the Recreation Reserve, the beach and the swimming pool.*
- Sound, light, rubbish and fuel pollution will be increased.*
- It will adversely affect traffic congestion, parking and noise in an already crowded, narrow cul-de-sac.*
- It is an inappropriate development in this long- established quiet residential area and will obscure views across the harbour from the scenic walkway, surrounding hills and from the Reserve.*
- It is a proposal which is not in the public interest."*

The Corso Precinct Community Form

“Proposed Removal of forty-one (41) swing moorings (eighteen {18} swing moorings retained), demolition of existing twenty-one (21) vessel birth marina, construction of a new marina containing sixty-four (64) vessel births, entry way, platform, above ground fuel tanks, relocation of existing public swing moorings and alterations and additions to the existing boatshed

Motion: *That Manly Corso Precinct has discussed this application and advises Council of community comments as follows:*

That CP did not have enough time to research all info presented, and had not sufficient time to discuss what are the benefits for the area, or the relevance and possible disadvantages for the area. Development occurring at Clontarf in close proximity to the reserve and pool affects everyone in the Manly area. It is especially important for all residents to be aware of what is being planned. A question was raised: What sort of the assessment has been done for the other locations for marina. More time is required.”

Fairy Bower Precinct Community Forum

“Following a presentation from Sue Cheney of Clontarf Precinct, Fairy Bower Precinct voted to support Clontarf Precinct’s opposition to the proposed Clontarf Marina development on the grounds that:

It is a very large and expansive development which will intrude upon and spoil a tranquil, pristine public space enjoyed by the local community and visitors alike.

It is an alienation of public space for private commercial purposes.

The expansion of the marina will accommodate, large, bulky, motorised vessels, rather than smaller boats, which will alter the character of the quiet bay.

Sound, light, rubbish and fuel pollution will be increased.

It will adversely affect traffic congestion, parking and noise in an already crowded, narrow cul-de-sac.

It is an inappropriate development in this long-established quiet residential area and will obscure views across the harbour from the scenic walkway, surrounding hills and from the reserve.

It is a proposal which is not in the public interest”

North Harbour Precinct Community Forum

“Our precinct and residents objected to the previous Clontarf marina expansion proposal. We supported Clontarf Precinct’s objection, which you also kindly supported. The amended proposal is also against the public and environmental interests. There has been no meaningful community consultation.

David Patterson from the Clontarf Precinct updated the residents and Mike on additional information that has come to light recently on the proposed changes to the Clontarf Marina that have been proposed. The marina proposes to increase the number of fixed berths from 21 to 64 making it three times the capacity of the present structure. This includes provision for fixed berth mooring for 12 vessels of 18 metres in length and 26 vessels of 15 metres in length. The visual impact of these huge boats will be massive. Terry confirmed that the precinct had already lodged its objections to the proposed expansion of the marina with the council. Residents were invited to continue to express their objections.”

Ivanhoe Park Precinct Community Forum

"This area of Clontarf is a key family and community asset within the Manly area. The Precinct Objects to this DA for the following reasons:

- * The size of many of the fixed floating moorings suggests use by large motorboats not currently seen in this marina and not conducive to current community use. The addition of large motorboats will change the nature and amenity of what is currently a low-key family and community area*
- * Addition of large motorboats, obviously designed to have a large number of people on board, will add to the parking pressures in this area, particularly during weekends*
- * The servicing and maintenance of these additional craft will increase noise and pollution in this area. Again adversely affecting what is an area popular with families*
- * There is no guarantee in this DA that the swing moorings will be re-arranged and removed according to diagrams in the DA. If these swing moorings remain, and it seems a possible outcome, there will be added pressure on the natural environment and again, adversely affect community use of the area."*

Ocean Beach Precinct Community Forum

"OBP continues to support the position of Clontarf Precinct against the proposed development. We feel the marina proposed is against the public interest, and opposes the residential character of the Clontarf bay which is enjoyed by residents and family visitors in high numbers. We oppose the development on the basis of negative impact on the following aspects:

- Environmental - increased pollution*
- Social impact - privatization of a public area, enjoyed by all residents and many visitors*
- Traffic Impact - the impact of service trucks (including petrol tanks) and visiting boat users on a residential area which suffers from limited access.*
- The assumption of public space for a limited group of the public which is already serviced by marinas at the Spit, a location that is better serviced by main roads and has limited impact on the public as it is not adjacent to residents.*
- Impact of the community*

Foreshores and Waterways Planning and Development Advisory Committee (FWPDAC)

The proposal was referred to the FWPDAC. The following comments have been received:

"The Sydney Harbour Foreshores & Waterways Area DCP for the SREP (Sydney Harbour Catchment) 2005 identifies the site within Landscape Character type 6 which is characterized by sandy beaches and headlands where the backdrop of development is interspersed with vegetation.

The proposal is not considered a category 1 referral as there are no elements that are of state or regional planning significance, are of significant public interest or require technical advice with which the committee can assist the consent authority.

The Committee raises no particular concerns with the proposal. However, the Committee recommends that the Consent Authority satisfy itself that the proposal is consistent with Clause 4.7 Marinas (Commercial and Private) of the Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005"

Roads & Maritime Service Comments

The application has been referred to the Roads & Maritime Service for comments with regard to navigation. At the writing of this report no response has been received.

Integrated Development Referrals

Department of Primary Industries (Office of Water)

The proposal was referred to the Department of Primary Industries (Office of Water) for general terms of approval under section 91 of the *Water Management Act 2000*. The following comments have been received:

"If the proposed development is approved by Council, The Office of Water requests that these GTA be included (in their entirety) in Councils development consent...."

These General Terms of Approval (GTA) only apply to the controlled activities described in the plans and associated documentation relating to DA2012/183 and provided by Council :

(i) Site Plan , Map and/or survey

Any amendments or modifications to the proposed controlled activities may render these GTA invalid. If the proposed controlled activities are amended or modified the NSW Office of Water must be notified to determine if any variations to these GTA will be required.

Prior to the commencement of any controlled activity (works) on waterfront land, the consent holder must obtain a Controlled Activity Approval (CAA) under the Water Management Act from the NSW Office of Water. Waterfront land for the purposes of this DA is land and materials in or within 40metres of the top of the bank or shore of the foreshore identified.

The consent holder must prepare or commission the preparation of:

(i) Erosion and Sediment Control Plan.

The Consent holder must reinstate waterfront land affected by the carrying out of any controlled activity in accordance with a plan or design approved by the NSW Office of Water.

The consent holder must use a suitable qualified person to monitor progress, completion performance works, rehabilitation and maintenance and report to the NSW Office of Water as required.

The Consent Holder must ensure that no materials or cleared vegetation that may (i) obstruct flow, (ii) wash into the water body, or (iii) cause damage to river banks, are left on waterfront land other than in accordance with a plan approved by the NSW Office of Water.

The Consent holders must establish all erosion and sediment control works and water division structures in accordance with a plan approved by the NSW Office of Water. These works and structures must be inspected and maintained through the working period and must not be removed until the site has been fully stabilized.

The consent holder must ensure that no excavation is undertaken on waterfront land other than in accordance with a plan approved by the NSW Office of Water."

Department of Primary Industries (Fisheries)

The proposal was referred to the Department of Primary Industries (Fisheries) for general terms of approval pursuant to section 205 of the *Fisheries Management Act 1994*. DPI (Fisheries) responded with several conditions of consent. Subsequent to the submission of amended plans the application was again referred to the DPI (Fisheries) for comment. The following comments have been received:

"Consistent with previous advice on the original proposal (OUT12/30767), Fisheries NSW has reviewed the amended proposal and has no objections, subject to the proponent meeting the General Terms of Approval that follow.

*Fisheries NSW notes that despite an amended aquatic ecology report, General Term of Approval #2 (re aquatic habitats and bathymetry) from that previous advice has not been met. The bed of *Posidonia australis* seagrass referred to in the original and amended report was last mapped by DPI in 2003, and our Director-General Requirements for the EIS (OUT12/2218) and GTA 2 sought an updated synopsis of its extent and nature, and an assessment of potential impacts on that bed from the proposal. It is acknowledged that the proposal (and amended proposal) will not have a direct impact on the bed, however reconfiguring the 23 public swing moorings as a result of the proposal could have an indirect impact, and yet it also provides an opportunity to reduce any existing impacts of swing moorings on that bed. The following GTAs take those matters into account.*

General Terms of Approval

- 1. Swing moorings are not to be placed in any seagrass beds, and any existing swing moorings within *Posidonia australis* seagrass are to be relocated out of seagrass and onto unvegetated substratum;*
- 2. **Prior to any in-water works on the site**, the proponent must apply for and obtain a Part 7 permit to harm marine vegetation from Fisheries NSW. Permit application forms and associated lodgement information can be found at: <http://www.dpi.nsw.gov.au/fisheries/habitat/help/permit>; and*
- 3. **Prior to any in-water works on the site**, the proponent must ensure the removal and appropriate disposal of all *Caulerpa taxifolia* from within the seagrass and algae beds identified in the aquatic ecology reports, in consultation with FisheriesNSW; and*
- 4. Upon complete removal of the *Caulerpa taxifolia*, submit a report to the satisfaction of Fisheries NSW that includes the methods and before and after photos illustrating the result.*

*For the information of the proponent with respect to GTA3, the "NSW Control Plan for the Noxious Marine Alga *Caulerpa taxifolia*" (I&I 2009) outlines various methods for the removal of *Caulerpa taxifolia* and is available from the Fisheries NSW website at: http://www.dpi.nsw.gov.au/__data/assets/pdf_file/0013/210712/NSW-control-plancaulerpa-taxifolia.pdf."*

Environmental Protection Authority

The original proposal was referred to Environmental Protection Authority for general terms of approval pursuant to ss 43 (a), 47 and 55 of the *Protection of the Environment Operations Act 1997*. The EPA recommended a number of conditions of consent. Subsequent to the submission of amended plans the application was again referred to the EPA for comment. The following comments have been received:

"On the basis of the information provided it appears that the proposed activity does not constitute a Scheduled Activity under schedule 1 of the Protection of the environment Operations Act 1997 (POEO ACT) Hence the EPA does not consider that the proposal will require an Environmental Protection License (EPL) under the POEO Act."

Planning Comments

Environmental Planning & Assessment Act 1979 – Section 79(C)(1)

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:

(i) any environmental planning instrument, and

The applicant is seeking approval to undertake works both above and below the Mean High Water Mark. Accordingly, the report provides for an assessment of the development against the provisions contained within the following environmental planning instruments:

- *The Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*
- *The Manly Local Environmental Plan 1988*
(in relation to works above the Mean High Water Mark)

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (deemed SEPP):

Under SREP (Sydney Harbour Catchment) 2005 the majority of the proposed development is located below the Mean High Water Mark and this area is Zoned W5 – Water Recreation.

Part 1 Preliminary

Clause 2 Aims

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 has the following aims:

“(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.”*

With regard to the above, the proposed development is not considered to be consistent with the above aims (a)(i) and (ii), (e) and (f). Whilst the proposed development consolidates the existing development and reduces the impacts of the development in terms of its impact on aquatic vegetation, the proposed development is considered to adversely impact on the Sydney Harbour and its foreshores by reducing access along the foreshores and reducing the quality of the natural environment. The proposed development also will have a negative impact on the adjoining public recreation area by favouring exclusive use of the area. The proposal is considered not to strike an appropriate balance between the needs of recreational boat users and other recreational users in the locality.

The proposal is not considered to be consistent with the clause 2(1) objectives.

“(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.”*

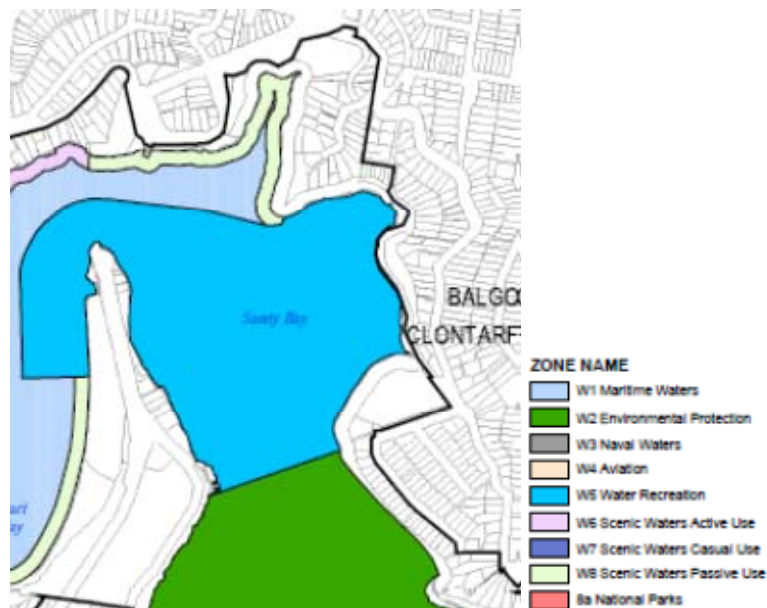
With regard to the above, in this instance the proposed development is not consistent with the above principles. The proposal would result in reducing an area which is highly used by the general public for the benefit of a particular group of recreational users. This will set an undesirable precedent of public area being used for private good. The proposed development will have an adverse impact on the natural asset of Sydney Harbour.

Clause 5 Consent Authority

The proposed redevelopment is for a Commercial Marina and is considered to be a land/water interface development and as such Council is the Consent Authority. (Note: pursuant to Schedule 4A of the *Environmental Planning and Assessment Act 1979* the JRPP is authorised to exercise the consent authority powers of Council for this application).

Clause 16 Zones indicated on the Zoning Map

The part of the development located below the MHWL is zoned W5 Water Recreation.



Clause 17 Zoning Objectives

The objectives of W5 water recreation zone are as follows:

- “(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 public access.”*

The proposal fails to meet all of the objectives. The proposed development does not improve freely available general access to the waters of Sydney Harbour. The proposal hinders the public use of waters and the potential for further public recreation would be compromised.

The proposed design and extent of the facility would be in conflict with the existing and planned character of the locality. The proposal will lead to conflict between people using this Zone and the foreshore. It would have an adverse impact on the beach environment by introducing additional artificial structures to the locality. The proposed scale and size of the development is not considered to be appropriate to the locality and not improve the natural assets and the natural and cultural scenic quality of the surrounding area. The view available from the adjoining recreational reserve and Sandy Bay beach would be compromised.

Clause 18 development control in the waterways

The proposal is a Commercial Marina which is defined as:

“commercial marina means a permanent boat storage facility (whether located wholly on land, wholly on the waterway or partly on land and partly on the waterway) together with any associated facilities, including:

- (a) any facility for the construction, repair, maintenance, storage, sale or hire of boats, and*
 - (b) any facility for providing fuelling, sewage pump-out or other services for boats, and*
 - (c) any facility for launching or landing boats, such as slipways or hoists, and*
 - (d) any associated car parking, commercial, tourist or recreational or club facility that is ancillary to a boat storage facility, and*
 - (e) any associated single mooring,*
- but does not include a boat repair facility or a private marina.”*

Commercial Marinas are a type of development that may be carried out within the W5 Zone with development consent.

Division 2 Matters for consideration

Clause 21 Biodiversity, ecology and environmental protection

The application has been referred to Council's Environmental Health Officer, Coastline Management Officer and Natural Resource Officer who have provided suitable conditions of consent should the application be worthy of approval.

Clause 22 Public Access to, and use of, foreshores and waterways

The proposed development would not enhance and maintain public access along the foreshore, as discussed above.

Clause 23 Maintenance of a working harbour

The proposed development would maintain the use of the facility for working harbour purposes.

Clause 24 Interrelationship of waterway and foreshore uses

The proposal is not considered promote equitable use of the waterway by passive recreational craft.

The proposed development is not considered to minimise impacts on the waterway. The proposed development introduces a further artificial man made structure to the detriment of the Harbour.

Clause 25 Foreshore and waterways scenic quality

The proposed increase in size of the development is not of a scale, form, design and siting that would maintain the scenic quality of the foreshore and waterways, noting the existing and likely future character of the locality. The development is not considered to maintain, protect and enhance the visual qualities of this part of Sydney Harbour. The proposed development would have cumulative negative impacts on the character of the waterway and foreshore, noting the surrounding waterways containing commercial marina's with largely fixed berths, the recreational character of the surrounding land with residential development beyond.

Clause 26 Maintenance, protection and enhancement of views

It is noted that the applicant's submission includes an EIS which contains a detailed visual impact assessment prepared by consultant Tony Moody. However, the visual impacts of the proposed development are not considered to maintain, protect and enhance the views to and from Sydney Harbour. In this instance it is considered that the benefits of the reduction in the visual impact of the swing moorings do not outweigh the negative impacts of the clustering of the boats and a fixed marina structure. It is considered that the development will impede the public views to the Spit Bridge (heritage item). The removing of the swing moorings will partly improve the views to the Harbour in some locations however the proposed marina structure would impede and dominate views from many other locations. It is considered that the cumulative impacts of this development in conjunction with developments across The Spit would negatively impact the scenic quality of the locality.

Clause 27 Boat storage facilities

The proposed development is consistent with clause 27 matters for consideration for boat storage, noting that the development has a positive impact on boat storage.

Clause 29 Consultation required for certain development applications

The original and amended proposal has been referred to the Foreshores and Waterways Planning and Development Advisory Committee whose comments are provided above.

Clause 59 development in vicinity of heritage items

Council's heritage officer has considered the proposal and advises that the proposal does not have a significant impact on the heritage items in the locality. However, it is noted that the proposed development will have impacts views from public land to the Spit Bridge which is listed as an item of environmental heritage under the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*.

(Part 6) Clauses 61, 62 and 63 Wetlands protection

The development is located within the wetlands protection area. The proposed development is considered to be consistent with the objectives for wetland protection contained within Clause 61. The proposed development requires development consent as per Clause 62. The proposal has been considered against the matters for consideration within Clause 63. The proposal would have a neutral effect on the quality of water entering the waterway. The environmental effects of the proposal in terms of native plant communities, native wildlife populations, habitat and water quality are considered to be acceptable.

Manly Local Environmental Plan 1988:

The subject site is located in Zone No. 6 – Open Space Zone under Manly LEP, 1988.



Extract of the Manly LEP 1988 zoning map

The proposed land based development is alterations and additions to the existing marina and as such is permissible with development consent.

Manly Local Environmental Plan 1988 Clause 10 Objectives

The following comments are made in regard to the objectives for the Open Space Zone as stated in Clause 10 of the Manly Local Environmental Plan 1988;

“(a) to ensure there is provision of adequate open space areas to meet the needs of all residents and provide opportunities to enhance the total environmental quality of the Municipality,”

The proposed development does not expand the scale of the works within the open space zone.

“(b) to encourage a diversity of recreation activities suitable for youths and adults,”

The proposed development would concentrate benefits to a limited sector of recreational users.

“(c) to identify, protect and conserve land which is environmentally sensitive, visually exposed to the waters of Middle Harbour, North Harbour and the Pacific Ocean and of natural or aesthetic significance at the water’s edge,”

The proposal does not conserve land visually exposed to the waters of Middle Harbour and is not consistent with this objective.

“(d) to facilitate access to open areas, particularly along the foreshore, to achieve desired environmental, social and recreational benefits,”

The proposal would limit the existing access to the Harbour foreshore.

“(e) to conserve the landscape, particularly at the foreshore and visually exposed locations, while allowing recreational use of those areas, and”

The proposed development has unacceptable visual impacts on the landscape at the foreshore and would impede general access for the public.

“(f) to identify areas which:

- (i) in the case of areas shown unhatched on the map are now used for open space purposes, and*
- (ii) in the case of land shown hatched on the map are proposed for open space purposes.”*

The land is identified for open space purposes.

Clause 16 - Development within Zone No 6

“Where the council or a public authority owns land which is within Zone No 6, the council shall not consent to an application to carry out development on that land unless it has made an assessment of:

- (a) the need for the proposed development on that land,*
- (b) the impact of the proposed development on the existing or likely future use of the land,*
- and*
- (c) the need to retain the land for its existing or likely future use.”*

The existing Open Space zoned land currently accommodates in ground fuel tanks, fencing and a slipway for the use of the marina and is subject to a lease. The amended proposal largely maintains the existing use of these structures except with above ground tanks replacing the underground tanks.

Clause 17 – Visual and aesthetic protection of certain land

“The council shall not grant consent to the carrying out of development unless it is satisfied that the development will not have a detrimental effect on the amenity of the Foreshore Scenic Protection Area.”

Clause 17 of the MLEP requires the consent authority to be satisfied that a development will not have a ‘detrimental effect on the amenity of the Foreshore Scenic Protection Area’. The proposal would increase the extent of the built form and have cumulative impacts on the amenity of the Foreshore Scenic Protection Area.

Clause 19 – Items of environmental heritage

“The council shall not grant consent to a development application to carry out development in the vicinity of an item of environmental heritage unless it has made an assessment of the effect which the carrying out of that development will have on the historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the item of the environmental heritage and its setting”.

Clause 19 of the MLEP requires the consent authority to have regard to whether the development would have an adverse impact on the significance of items of environmental heritage that are located in the immediate vicinity of the development site. Council’s heritage officer has considered the application and is of the view that the proposal would not have a significant impact on nearby items.

State Environmental Planning Policy 55 - Remediation of Land

The applicant has provided testing (within part C, Appendix M of the EIS) that indicated that the site is not contaminated.

State Environmental Planning Policy 64 -Advertising and Signage

The proposed signage is consistent with the business identification sign requirements contained within the *SEPP 64*. The proposed signage has been assessed against Schedule 1 Assessment criteria with no concerns identified in this regard.

79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and

Draft Manly Local Environmental Plan 2011

The draft Manly LEP 2011 was published on the NSW Legislation website as “Manly LEP 2013” on 5 April 2013 and became operational from the 19th April 2013. Clause 1.8A – Savings provision relating to development applications of the Manly LEP 2013 states as follows: “If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.”

Notwithstanding the above, an assessment of the subject application has been carried out as per the provisions of the Manly Local Environmental Plan 2013 as follows:

Under the draft Manly LEP 2011, the site is:
Zone RE1 Public recreation

The proposal, being a Marina, is permitted with the consent of Council.

Part 4 Principal development standards

The provisions of the draft Manly LEP 2011 have been referred to as part of the assessment. The site is not affected by the principal development standards.

Part 5 Miscellaneous Provisions

The provisions of the draft Manly LEP 2011 have been referred to as part of the assessment and the following comments are made in relation to particular miscellaneous provisions:

5.	Miscellaneous Provisions	Applies	Complies	Comments
5.10	Heritage Conservation	Yes	Yes	<i>The proposal considers heritage impacts on heritage items within the vicinity of the development within part B of the EIS.</i>

Part 6 Local Provisions

The provisions of the draft Manly LEP 2011 have been referred to as part of the assessment and the following comments are made in relation to particular local provisions:

6.	Local Provisions	Applies	Complies	Comments
6.5	Stormwater Management	Yes	Yes	<i>Stormwater management has been addressed.</i>
6.6	Terrestrial Biodiversity	Yes	Yes	<i>The impacts on terrestrial biodiversity have been considered</i>
6.9	Earthworks	Yes	Yes	<i>The proposal adequately addresses the earthworks</i>
6.10	Foreshore Scenic Protection Area	Yes	No	<i>The proposal is not consistent with this clause.</i>
6.11	Foreshore building line	Yes	No	<i>The proposal is not consistent with this clause.</i>
6.12	Development on the Foreshore must ensure access	Yes	No	<i>Foreshore access is reduced by the proposed development</i>

79C(1)(a)(iii) - any development control plan, and

Sydney Harbour Foreshores & Waterways Area Development Control Plan 2005

1. Introduction

The proposed development is not considered to be consistent with all the aims of the DCP or the planning principals for the Foreshores and Waterways area in that it fails to minimize impacts on views and vistas to and from public places and would not compliment the scenic character of the area.

2. Ecological Assessment

The impacts of the proposed development on local ecology has been assessed and found to be consistent with the general aims contained within 2.2 of the SHF&WA DCP 2005. The proposed development is located within the sandy beaches ecological communities which is an aquatic type of medium conservation value according to the table 1. The proposed development is consistent with the performance criteria contained within table 6 for aquatic ecological communities of medium conservation value.

3. Landscape Assessment

The proposal is not considered to be consistent with the 3.2 general aims. The proposed development has not been designed to minimise the impacts on views and vistas to and from public spaces. The development would decrease views to and from the Marina structures on the spit which are listed as a landmark item on Map 15. The proposal has an impact on public views to the Spit Bridge which is listed as an Item of environmental heritage within the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*. The proposal is not considered to complement the scenic character of the area nor protect the integrity of the foreshore. The proposal would be in conflict with the existing and planned landscape character of the area.

The proposal is located within landscape character type 6. The proposed development is not consistent with the performance criteria. The proposal seeks to extend and expand a break in the visual continuity of the beach at low tide.

4. Design Guidelines for Water-Based and Land / Water Interface Developments

The proposed development is not considered to be consistent with general requirements of land/water interface developments. The proposed development is not considered to improve access to the foreshore including the inter-tidal zone. The siting of the structures is not considered to be consistent with the additional criteria. The built form of the development is not considered to be consistent built form guidelines.

The design and layout of the proposed development is not considered to be consistent with the design and layout objectives and guiding principles for marinas. The proposal provides facilities and services that are inconsistent with the facilities and services objectives and guiding principles for marinas. The visual impact of the proposal (addressed elsewhere in this report) is also not consistent with the visual impact objectives and guiding principles for marinas. The proposed development is inconsistent with all the environmental management objectives and guiding principles for marinas. The traffic and parking impacts of the development remain a concern for nearby residents as evidenced in the submissions received.

Appendix D How to undertake a Visual Impact Assessment for Marina's

The applicant has submitted a view analysis matrix as per Appendix D of the Sydney Harbour Foreshores & Waterways Area Development Control Plan 2005 prepared by consultant Tony Moody.

79C(1)(a)(iia) - any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and

No planning agreement or draft planning agreement pursuant to section 97F has been offered or required.

79C(1)(a) (iv) - the regulations

Environmental Planning and Assessment Regulation 2000

The regulations have been considered. In accordance with Schedule 3 the proposed development is a Designated Development. The proposal includes an Environmental Impact Statement consistent with Schedule 2 of the *Environmental Planning and Assessment Regulation 2000*.

79C(1)(a)(v) - any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)

There is no Coastal Zone Management Plan within the meaning of the *Coastal Protection Act 1979* applicable for the Manly area.

79C(1) (b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The submitted documents within the EIS provide for consideration of the environmental impacts of the development. The proposal would result in adverse impact on both the natural and built environments.

Parking and Traffic Impacts

The amended proposal includes an addendum traffic report that has been considered by Councils Transport Officer. The study concludes that the proposal will have satisfactory traffic and parking impacts. It is noted that the study relies on the document 'Car Parking Implications of Marina Development' (2001) which was prepared by Christopher Hallam and Associates Pty Ltd on behalf of the Boating Association. According to the report the study suggests that the car parking demand per fixed berth is less than car parking demand per swing mooring. This methodology has been criticized within the submissions.

Navigation Impacts

The proposed development involves an increase in the main navigation channel. However the extension of the fixed jetty would present some obstruction in shallower waters of Sandy Bay.

Visual impact assessment

Impact on private views (*Tenacity Consulting v Warringah Council*)

In considering the impacts on the existing views of the surrounding residential properties the planning principle established under *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 [25-29] is relevant.

“The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.”

The surrounding residential development with affected views sits higher than the proposed marina structure and as such the affected views are that of water views with some land water interface views affected for properties that front Sandy Bay Road. Private views to The Spit Bridge and marinas on The Spit are maintained which are the landmarks in the locality.

“The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.”

The affected residential views are located in a variety of locations including from the front of the site and from the rear of the site. The views are available from a variety of positions. The views are largely across front and rear boundaries.

“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.”

The nature of the locality is such that the affected properties have other unaffected views. The loss of water views from private property is offset by the consolidation of the swing moorings. The separation distance between the residential properties and the proposed marina structure reduces the impacts on the view. It is noted that the marina structures on the far side of Middle Harbour are noted as a landmark under the Sydney Harbour Foreshores & Waterways Area Development Control Plan 2005. The proposal is considered to have a negligible to minor impact on private views.

“The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”

The proposal is considered to be consistent with *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* and *Sydney Harbour Foreshores & Waterways Area Development Control Plan 2005* noting that they do not contain numeric development standards as is envisaged

within the *Tenacity* planning principal. The proposal is located within one of only a few sites in the Manly LGA where marinas are permissible. The proposal has been modified in an attempt to reduce the view impacts. The proposal is considered to be a reasonable proposal and consistent in terms of assessment under the *Tenacity* planning principal.

Impact on public views (*Rose Bay Marina Pty Limited v Woollahra Municipal Council and an or*)

Identification stage

The *Manly Development Control Plan 1988* and the Development Control Plan for Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 Sydney Harbour Foreshores & Waterways Areas both provide a framework for the consideration of impacts on public views. However, it is appropriate to consider the planning principle established under *Rose Bay Marina Pty Limited v Woollahra Municipal Council and an or* [2013] NSWLEC 1046.

“The first step of this stage is to identify the nature and scope of the existing views from the public domain. This identification should encompass (but is not limited to):

- the nature and extent of any existing obstruction of the view;*
- relevant compositional elements of the view (such as is it static or dynamic and, if dynamic, the nature and frequency of changes to the view);*
- what might not be in the view - such as the absence of human structures in the outlook across a natural area (such as the view from Kanangra Walls);*
- is the change permanent or temporary; or*
- what might be the curtilages of important elements within the view.”*

Existing views from the public domain are available from the surrounding parks, Clontarf Beach and swimming enclosure, Sandy Bay Road, tidal flats, surrounding roads and the Manly Scenic Walkway. The existing views provide for the expanse of Middle Harbour and include views to The Spit Bridge, Spit Marina on the far side of Middle Harbour, land water interface views, water views and views to remnant vegetation around the harbour. Although some of these views are filtered by vessels moored within the harbour, the proposed structure and associated large sized vessels will obstruct these views further.



Existing view from Manly Scenic Walkway (bench Seat)



Existing view from Clontarf Park (just off the Manly Scenic walkway)



Existing view from swimming enclosure



Existing view adjacent to the Marina boathouse



Existing view Manly Scenic Walkway (from bench at Sandy Bay)



Existing view Sandy Bay

The existing public domain views include the existing marina and surrounding swing moorings, the proposed development would extend the built form further into the waterway and the consolidation of vessels within the fixed berths would create an obstruction to the public view. The existing views are largely static but are affected by the operation of the swing moorings with the moored vessels changing location with the wind and a reduced impact when vessels are in use. During weekends and public holidays a higher percentage of vessels would normally be in use, reducing the number of obstructions to the public views.

“The second step is to identify the locations in the public domain from which the potentially interrupted view is enjoyed.”

The potentially interrupted views are enjoyed from the surrounding parks, Clontarf Beach and swimming enclosure, Sandy Bay Road, tidal flats, surrounding roads and the Manly Scenic Walkway. There are a significant number of views that could be considered to be potentially interrupted by the development.

“The third step is to identify the extent of the obstruction at each relevant location.”

The applicant’s planning consultant argues that many of the affected public views are elevated above the marina and as a result still enjoy panoramic public views. This is not agreed as a majority of the public land in the immediate area comprises land/water interface with viewing available from low lying area.

“The fourth step is to identify the intensity of public use of those locations where that enjoyment will be obscured, in whole or in part, by the proposed private development.”

The locality has significant use as a public recreational area and is in high demand during the peak periods of weekends and public holidays. The Manly Scenic Walkway is of significant recreational and tourist importance.

“The final step to be identified is whether or not there is any document that identifies the importance of the view to be assessed.”

- *This will encompass specific acknowledgment of the importance of a view (for example, by international, national, state or local heritage recognition) or where the relevant planning regime promotes or specifically requires the retention or protection of public domain views.*

However, the absence of such provisions does not exclude a broad public interest consideration of impacts on public domain views.'

The affected view includes views to The Spit Bridge which is a heritage item of state significance under the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*. The marina structures on the far side of Middle Harbour are noted as a landmark under the Sydney Harbour Foreshores & Waterways Area Development Control Plan 2005

Analysis of visual impacts

In terms of the qualitative assessment, the impacts of the proposed consolidation of the vessels will result in a massing that extends well into the bay and will have the effect of placing a "boundary" on the current open vista available from Clontarf Reserve and swimming enclosure as well as views available from Sandy Bay north of the marina.

The impacts on the public views are considered to be significant and will result in a reduction of the overall amenity of the Clontarf Reserve and Sandy Bay areas. As such, considering the planning principle within *Rose Bay Marina Pty Limited v Woollahra Municipal Council* the proposed development is considered to have unacceptable impacts on public views.

Social and economic impacts

The proposed development would not have any significant negative impacts on the social or economic conditions of the locality.

79C(1) (c) - the suitability of the site for the development,

The site contains an existing commercial marina and has done so for some time. The development is permissible within its zone. However, the extent and scale of the proposal is considered excessive in this location with resultant negative impacts on the character of the locality and as such the proposal is not considered to be suitable for this development

79C(1) (d) - any submissions made in accordance with this Act or the regulations

The original application was advertised in the Manly Daily, put on public exhibition, and adjoining owners were notified in accordance with Clause 79 (1) (Public exhibition and notification of a designated development) of the *Environmental Planning and Assessment Act 1979*. Twenty nine (29) objections, one (1) petition against the proposal signed by eighty four (84) people and thirty one (31) letters of support were received in relation to the original proposal.

The amended application was advertised in the Manly Daily, put on public exhibition and adjoining owners were renotified. eighty one (81) objections, one (1) petition against the proposal signed by two hundred and sixty four (264) people and seventeen (17) submissions in support were received from the following raising the following issues (in summary):

Objector	Issues raised
Peter Wade, 17 Sandy Bay Road, Clontarf	<ul style="list-style-type: none">• Opposes the development.• Out of scale with current development and static not a live environment.• Increase in the space privately occupied by the marina• Will not prevent future swing moorings being subsequently re-allocated to other boat owners.• Traffic and parking impacts.• Visual impact of the proposal.
T John Baker, 2/73 Lauderdale Avenue, Fairlight	<ul style="list-style-type: none">• Supports the development.• Environmental benefits.• Improved safety of navigation.• Facilities for sailing for the disabled (sailability).• Improved visual amenity.

Sybille Lechner, 11A / 10 Hilltop Crescent Fairlight	<ul style="list-style-type: none"> • Opposes the development. • Massive expansion of the capacity of the marina. • Curtails recreational users. • Negative impact on the environment. • Will adversely affect the safe use and enjoyment of Clontarf beach and swimming pool. • Manly Scenic Walkway will be affected by the proposal. • Public space on the beach and water will be given over for private profit.
Harriett Brown, 1 Allenby Street Clontarf.	<ul style="list-style-type: none"> • Opposes the development. • Visual impact on the walkway.
Serge Dansereau, 3 Holmes Avenue Clontarf	<ul style="list-style-type: none"> • Supports the development. • Reduces the footprint of the marina.
Michael Mc Ginley, 23 Gordon Street Clontarf	<ul style="list-style-type: none"> • Opposes the development. • Favours swing moorings. • Potential danger to recreational users. • There are sufficient fixed moorings on the other side of the harbour. • More noise and disruption for residents. • Swing moorings allow for kayakers and paddlers to manoeuvre easily.
Paul Billingham, 20 Allenby Street Clontarf	<ul style="list-style-type: none"> • Supports the development. • Clears up crowded waterway. • Many uses of the facility live locally. • Many vessels are constantly parked in Holmes Avenue.
B B Bignold	<ul style="list-style-type: none"> • Visual pollution. • Over development. • View impacts.
Leigh Power, 31 Peronne Avenue Clontarf	<ul style="list-style-type: none"> • Supports the development. • Would like to see a cafe or kiosk included.
Ian Smith, 21 Peronne Avenue Clontarf	<ul style="list-style-type: none"> • Opposes the development. • Impacts on the ecosystem • Impacts on water views. • Impacts on parking. • Acoustic impacts from boat parties on the harbour.
Rodger Freney,	<ul style="list-style-type: none"> • Opposes the development. • Scale, dimension and bulk of the marina excessive to Clontarf Bay. • Visual impact of larger boats. • Visual impact of structure on walkway. • Exclusive use of Middle Harbour waterways for the proposal. • Unacceptable environmental impacts from exhaust on swimming area. • Impacts on currents and water flows. • Traffic impacts. • Noise pollution. • Visual unattractiveness of berthed vessels.

Julie Lennon, 12/6 Freeman Place Carlingford	<ul style="list-style-type: none"> • Opposes the development. • Impact on the visual beauty of Clontarf Bay. • Adverse affect on the safety of Clontarf Beach and pool. • Impact on the Manly Scenic Walkway. • Public space on the beach and water will be given to private commercial interest. • The proposal is a massive overdevelopment of a residential area and harbour side park.
William (Bill) C. Wardrop, 40 Peronne Avenue Clontarf	<ul style="list-style-type: none"> • Opposes the development. • No public / ratepayer benefit from the proposal. • The expansion of marinas, jetties and wharves is progressively shrinking the harbour. • Boats on swing moorings are picturesque. • The deliveries of fuel to the marina are by large trucks that are a major safety issue for residents. The marina should source its fuel by barge. • If the current operator can't make a go of the business then he should sell it to someone who can. • Impacts on parking.
Prue Britt, 16 Mengarvie Road Parkes	<ul style="list-style-type: none"> • Opposes the development. • Congestion on Middle Harbour. • Impact from service vehicles • Risk of pollution. • Insufficient car parking.
Margrot and Richard Alaba, 101 Beatrice Street Balgowlah Heights	<ul style="list-style-type: none"> • Opposes the development. • The expansion would be an alienation of public space for commercial use. • It will adversely affect the amenity of the area with increased traffic and parking congestion for both residents and visitors.
MA Allsop, 29 Monash Crescent Clontarf	<ul style="list-style-type: none"> • Opposes the development. • The area is popular for recreation. • The development will introduce many more large motor vessels with associated impacts. • It will bring cars and traffic into an already gridlocked area on weekends and public holidays. • There has been considerable development on the other side of the harbour which has blocked off views across the harbour with large motor vessels and tall masted yachts.
G Andrews, 26 Peronne Ave Clontarf	<ul style="list-style-type: none"> • Opposes the development. • Loss of water space. • Parking impacts. • Impact on ambiance. • The footprint has not been reduced enough. • Lack of access to catch water taxis and disabled access.
The Honorable Mike Baird MP	<ul style="list-style-type: none"> • I would like to make a representation on behalf of the Clontarf Precinct. • Your consideration of the precinct's concerns and associated resolutions would be appreciated.
Les Baker	<ul style="list-style-type: none"> • Supports the development. • Open up the waterways and make it safer for all users. • It will be safer for kayakers.

Annie & Martin Bennett, 29 Beatrice Street, Clontarf	<ul style="list-style-type: none"> • Supports the development in its revised format. • The proposal will not adversely affect views from the surrounding houses. • The marina operation is environmental contentious.
John Burgman, 25 Monash Crescent, Clontarf	<ul style="list-style-type: none"> • Opposes the development. • The size and scale is inappropriate for the small and tranquil bay. • The proposal will dominate the surrounding land uses and have a significant visual impact on the bay. • The proposal results in a substantial character change. • Impact on recreational amenity. • Traffic impacts. • Parking impacts and acoustic impacts on surrounding residents.
Carlo & Rita Pamela Bongarzone, 9 Russell Street Clontarf	<ul style="list-style-type: none"> • Opposes the development. • Lack of space for expanded facilities. • The enlargement is for commercial reasons and adds no aesthetic, useful or environmental purpose. • The enlarged marina would extend closer to the swimming area. • Impacts on the flow of water, sand and sea grass. • Fuel tanks are a hazard. • Noise impacts as the marina is an industrial facility. • Impact of the built environment in the natural environment. • The reduction in swing moorings does not enhance the legitimacy of the application. • An enlarged marina has no place in a public reserve. • Impact of public views • Increased silting up of the swimming enclosure. • Impact on public space
Douglas Browne, 74a Seaview Street Balgowlah	<ul style="list-style-type: none"> • Opposes the development. • The size of the development is inappropriate for the area. • Visual dominance of Sandy Bay. • Impact on social and recreational amenity. • Traffic impacts of the development.
Helen & Giorgio Brussolo, 49 Beatrice Street Balgowlah Heights	<ul style="list-style-type: none"> • Opposes the development. • Suitability of the development and impact on the shoreline, harbour vistas and public area. • Traffic generation and car parking impacts on a popular area. • Loss of amenity and beauty of the area. • No environmental assessment has been conducted into the impact of the development on the environment.
Dave Bull, Peronne Avenue, Clontarf	<ul style="list-style-type: none"> • Supports the development. • The operator is environmentally conscious. • The proposal reduces the number of boats and blocks less views. • Improves access for other marine recreational users.

PA & LM Carter, PO Box 88 Seaforth	<ul style="list-style-type: none"> • Opposes the development. • The applicant gave a commitment to the precinct in October 1997 that the development from 6 to 26 pontoon moorings would be the final enlargement. • Traffic impacts as a result of increased size of vessels. • Impacts of fuel delivery trucks. • A recent observation of traces of fuel floating on the surface to the south of the pool. • Static pontoon will inhibit natural cleaning by the outgoing tide.
Confidential submission	<ul style="list-style-type: none"> • Opposes the development. • Unsuitable for such a small bay. • The proposal offers little to the public. • Takes over public space and not in the public interest. • RMS swing moorings may fill in the clear water space. • The proposal increases the number of larger motor boats that have significantly more visual bulk and increased impacts on views. • Increase in fuel usage and impacts of deliveries. • Consolidation of the swing moorings could be dangerous. • The proposal will dominate the bay. • Different character on the other side of the harbour. • Impact on recreational users. • Proximity of the development to the swimming enclosure. • Impact of views to the Spit Bridge. • Impact on navigation in the channel. • Industrial use of the marina. • Small road access and issues with fuel deliveries. • Detracts from the natural beauty of the bay. • Takes over more public space. • Swing moorings are more preferable.
R Crowley, 91 Lady Davidson Cct, Forestville	<ul style="list-style-type: none"> • Opposes the development. • Impact on Clontarf Beach and pool. • Impact on the Manly Scenic Walkway blocking views to the harbour. • Public space being privatised. • Overdevelopment of the residential and harbour side park.
WM & HA Cowper 56a Edgeclife Esplanade Seaforth	<ul style="list-style-type: none"> • Opposes the development. • Not in the public interest.
Mike & Diane Devlin, 11 Peronne Avenue Clontarf	<ul style="list-style-type: none"> • Opposes the development. • Impact on ambiance of Clontarf Reserve and Sandy Bay. • Larger boats and other impacts.
M Docherty, Balgowlah	<ul style="list-style-type: none"> • Opposes the development. • Increase in traffic and need for parking. • Increase in chemicals for cleaning, sanding and painting will be increased. • Impacts on the amenity of the foreshore area.
Allision Doorbar, Clontarf resident	<ul style="list-style-type: none"> • Supports the development. • Decreases the number of swing moorings which will make it safer for kayaking, paddle boarding and swimming. • Environmental benefits of the proposed development. • Increased disabled access.
Mark Fenna-Roberts, 7a Linkmead Avenue Clontarf	<ul style="list-style-type: none"> • Opposes the development. • Visual impact. • No community or local resident benefit.

L & B Fienberg, 23 Peronne Avenue, Clontarf	<ul style="list-style-type: none"> • Opposes the development. • Overdevelopment of a small bay. • The development will introduce large motor boats and vessels to the area. • More fuel tankers. • Traffic and parking impacts. • Visual impact.
Lyn and Bob Fisher, 39 Radio Avenue, Balgowlah Heights	<ul style="list-style-type: none"> • Opposes the development. • The huge construction is an anathema to the area. • The outlook of the area will be jeopardised. • On public holidays the area is already gridlocked. • Not in the public interest.
David Fleming, 7 Peronne Avenue Clontarf	<ul style="list-style-type: none"> • Opposes the development. • Significant commercial expansion. • Impacts on the community through noise, light and visual pollution. • Insufficient car parking. • Substantial works have occurred on the other side of the harbour. • Significant increase in vessel length. • Increase in berthing density. • Traffic report is based on flawed assumptions. • No community support for the development. • Increase in turbidity in the vicinity of the marina encouraging Caleurpa Taxifolia. • Deposit of seabed material in the swimming enclosure. • The deck will overshadow seagrasses. • Location of the fuel berth is a hazard should a vessel go off course. • The development does not address the impacts of sea level rise. • Above ground fuel tanks are a risk • Impacts on views and light pollution. • Noise impacts from the deck.
Tracy Fleming, 7 Peronne Avenue Clontarf	<ul style="list-style-type: none"> • Opposes the development. • Marina berths grow by 300%. • The application provides no additional car parking. • RMS owner's consent has lapsed. • Drawings included in the proposal are out of date. • The developments of the marina across the harbour have impacted navigation. • No mention that this development will require a wider navigation channel. • Impact of spit bridge opening time changes. • Increase in vessel length. • Increase in turbidity in the vicinity of the marina encouraging Caleurpa Taxifolia. • Location of the fuel berth is a hazard should a vessel go off course. • Impact of kiosk area. • Visual impact of the proposal. • Increase noise on residents.

Margot Freeman, 64 Peronne Avenue Clontarf.	<ul style="list-style-type: none"> • Opposes the development. • Impact on the attractiveness of Clontarf Beach. • Existing heavy traffic and parking shortage. • Increase in boats in the area.
Philippa Giles, 41 Gordon Street Clontarf	<ul style="list-style-type: none"> • Opposes the development. • The size and bulk of the proposed marina is out of scale with its location with a swimming pool located close by. • The development reduces the area to the public. • Increase in cars and shortage of parking.
Robin Gillis, 8 Palmerton Place Seaforth	<ul style="list-style-type: none"> • Opposes the development. • Not in the public interest.
Grahame	<ul style="list-style-type: none"> • Supports the development.
Marc & Lorraine Gilbert, 6 Battle Bulverde Seaforth	<ul style="list-style-type: none"> • Opposes the development. • Not in the public interest.
Ms Fusil	<ul style="list-style-type: none"> • Opposes the development. • Impact on Clontarf Beach and swimming pool. • Impact on the Manly Scenic Walkway • Reduction in public space. • Overdevelopment of a residential area and harbour park.
N Harris, 26 Megara Place Seaforth	<ul style="list-style-type: none"> • Opposes the development. • Not in the public interest.
Gregory Harrison, 26 Edgecliffe Esplanade Seaforth	<ul style="list-style-type: none"> • Opposes the development. • The development on the Mosman side of the harbour has impacted the view. • Impact on the beach.
PJ Hodges, 11 Old Sydney Road Seaforth.	<ul style="list-style-type: none"> • Opposes the development. • Not in the public interest.
Ian Hoefnagels	<ul style="list-style-type: none"> • Supports the development. • Provides employment opportunities. • Provides a great facility for local residents.
Dr Marus Jackson & Dr Jacqueline Zhang, 1/28 Battle Boulevard Seaforth.	<ul style="list-style-type: none"> • Opposes the development. • Not in the public interest.
Confidential	<ul style="list-style-type: none"> • Opposes the development. • The proposal is inconsistent with the Clause 2(1) aims of SREP (Sydney Harbour Catchment) 2005 due to impacts on aesthetic appeal, view corridors and visual impact. • The proposal is inconsistent with the objectives (d), (e) and (g) for the W5 Zone. • Adverse impacts on the Clontarf Reserve and The Manly Spit walk. • Adverse view impacts. • The height of 18m boats can interrupt view corridors. • The existing jetty allows for views beyond. • Loss of public views to the iconic Spit Bridge. • Scale of the development. • Conflicts with other recreational users. • No guarantee that the swing mooring will not be placed in the open area by RMS. • Marinas increase the number of visiting boats to the area, creating a safety hazard. • Impacts of the development on water quality and wash in the swimming area. • The proposal is inconsistent with clause 25(b) of the SREP (Sydney Harbour Catchment) 2005.

	<ul style="list-style-type: none"> • The proposal is inconsistent with the Clause 10 objectives (c) and (e) for Zone 6 within the Manly Local Environmental Plan 1988. • The proposed development is inconsistent with Clause 4(d)(i) of the Manly Local Environmental Plan 1988. • The proposal impacts on Kayakers, swimmers and small sailing craft. • The proposal is inconsistent with Clause 17 of the Manly Local Environmental Plan 1988. • The proposal is inconsistent with the performance criteria for landscape character type 6 within the Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 as the proposal breaks the continuity of the sandy foreshore and is visually dominant. • The proposal is inconsistent with the Design guidelines for water based and land / water interface development within Clause 4.2 of the General Requirements of the Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 as the proposal cuts foreshore access at low tide on the Sandy Bay. The proposed deck will present a physical barrier to walkers. The proposal also creates conflicts with other recreational users. • The proposal is inconsistent with Clause 4.7 Marinas (Commercial and Private) within Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 as the proposal does not provide for car parking. • Impacts on community amenity through noise and traffic impacts. • Increased fuel use leading to more fuel deliveries. • Challenges the validity of the traffic report. • The site is not suitable for the proposed development due to access only through residential areas. • The proposal is not in the public interest.
Dan Jones	<ul style="list-style-type: none"> • Supports the development. • Environmental benefits of fixed berths. • Boats can break loose of swing moorings causing environmental spills. • Removing swing moorings increases safety for other users such as paddle craft.
Tim Kaill	<ul style="list-style-type: none"> • Supports the development. • Improves navigation in the channel. • Provides a pump out facility and a berth giving greater access to the boating public. • Moves the fuel facility away from the beach. • There is a shortage of pump out facilities in Middle Harbour.
J P Kemp, 4 Ponsonby Parade Seaforth	<ul style="list-style-type: none"> • Opposes the development. • Not in the public interest.

Perter and Helen Kendall, 59 Peronne avenue Clontarf	<ul style="list-style-type: none"> • Opposes the development. • Threefold increase in fixed moorings. • Visual bulk from power boats and increased fuel use. • Total number of patrons increased resulting in increased demand for parking. • Existing parking on weekends and public holidays is always parked out. • Fire hazard on the roadway. • Nothing to prevent RMS from issuing further moorings over time. • Visual impact on the bay.
W Kramer, 35 Seaforth Crescent Seaforth	<ul style="list-style-type: none"> • Opposes the development. • Not in the public interest.
Tony Kuta, 35 Edgecliffe Esplanade, Seaforth	<ul style="list-style-type: none"> • Opposes the development. • Not in the public interest.
Mrs R Lambert, 44 Edgecliffe Esplanade Seaforth	<ul style="list-style-type: none"> • Opposes the development. • Not in the public interest.
Terry le Roux	<ul style="list-style-type: none"> • Opposes the development. • Clontarf Reserve is a special place. • Sydney Harbour Foreshore has few iconic harbour reserves. • The waters of Clontarf Reserve are different to others with large marinas. • Provisions of SREP (Sydney Harbour Catchment) 2005 protect the Manly Scenic Walkway. • The development will have a negative impact on children enjoying Clontarf Reserve. • Visual impact of large motor boats. • Suitability of the site.
Marianne Levin, 2 Beatrice Street Clontarf	<ul style="list-style-type: none"> • Opposes the development. • Impacts on the serenity of Manly Walk and Clontarf Park. • Widespread size of the marina creating more noise and visual pollutions.
Geoffrey Lim, 22 Peronne Avenue Clontarf	<ul style="list-style-type: none"> • Opposes the development. • Impact on visual amenity. • Adverse traffic impacts.
Palama Liamazares & Paul Jennings, 18 Sandy Bay Road Clontarf	<ul style="list-style-type: none"> • Opposes the development. • Parking impacts. • Environmental impacts from the clustering of the remaining 18 swing moorings. • Impacts on residents from large party boats.
Peter McAskill, 109 Cook Street Forestville	<ul style="list-style-type: none"> • Opposes the development. • Size and scale of the project is inappropriate. • Visually dominant in the natural setting of Clontarf Bay. • Social and recreational amenity of the area. • Wall of boats impacting views and the Manly Foreshore Walk. • Traffic impacts. • Parking impacts. • Noise impacts.
Caroline McGinley, 23 Gordon Street Clontarf.	<ul style="list-style-type: none"> • Opposes the development. • Children use the beach and don't want extra traffic boats and pollution. • Concerned about petrol storage.

Alen McMullen	<ul style="list-style-type: none"> • Supports the development. • The development has no impact on the Manly Scenic Walkway. • Community benefits of the proposal. • Logical restructure of the marina with little effect on Manly Pool or pool enclosure. • The proposal is in the public interest.
Heather Mead, 2 Peronne Avenue Clontarf.	<ul style="list-style-type: none"> • Opposes the development. • SOEE is flawed. • Benefits of blue water oversold by the applicant. • Proximity to residential properties. • Existing development provides buffer zone around the spit marinas. • Impact on residents from noise. • Impact on water quality for swimmers. • Not in the public interest.
Janette Moore-Wilton	<ul style="list-style-type: none"> • Opposes the development. • Proposal is too large. • Parking is limited
Ron Nathans, 36 Monash Crescent Clontarf	<ul style="list-style-type: none"> • Opposes the development. • Public waterway for private gain. • Acquisition not done on just terms. • Larger boats create flow on effects. • Increase in number of visitors. • Increase in noise impacts. • Adversely impacts, traffic congestion and parking.
Kerry Newman, 3/48 Gordon Street Manly Vale	<ul style="list-style-type: none"> • Opposes the development. • Impact on Clontarf Beach and swimming pool. • Impact on the Manly Scenic Walkway. • Reduction in public space. • Overdevelopment of a residential area and harbour park. • Privatisation of public space.
Louise A Nicolle, 33 Bimbal Ave Mt Colah	<ul style="list-style-type: none"> • Opposes the development. • Impact on Clontarf Beach and swimming pool. • Impact on the Manly Scenic Walkway. • Reduction in public space. • Overdevelopment of a residential area and harbour park.
Suzanne O'Brian	<ul style="list-style-type: none"> • Opposes the development. • Area is used by families with small children. • Parking is limited. • Traffic and parking generation. • Extra fuel tanker deliveries. • Impact other recreational users.
Jan-Erik & Barbra Oppl, 3 Peronne Avenue Clontarf.	<ul style="list-style-type: none"> • Opposes the development. • Noise impacts on residents. • Parking impacts. • Impacts of fuel tanks. • Traffic impacts. • Congestion in the swimming area, safety issue to children swimming. • Pollution impacts.

Antoine de Paauw, 51 Perrone Avenue Clontarf.	<ul style="list-style-type: none"> • Opposes the development. • Swing moorings being replaced in the future. • Wall of boats blocking views. • Impact on parking. • Fuel pollution from larger craft.
David Park, Abbot Street, Balgowlah Heights	<ul style="list-style-type: none"> • Opposes the development. • Traffic impacts, fuel deliveries and chemicals in the harbour.
David Patterson, 13 Peronne Ave Clontarf	<ul style="list-style-type: none"> • Opposes the development. • Size and scale of the project inappropriate for the site. • Visual impact. • Impact on recreational amenity. • Proposal creates a wall of boats. • Traffic impacts. • Impacts of fuel tankers. • Safety impacts. • Impacts on foreshore access as a result of the proposed deck. • Impact on seagrasses.
Confidential	<ul style="list-style-type: none"> • Opposes the development. • Increase in size of the marina. • Impact on the Manly Walk and reserve. • Fails to acknowledge the impacts of bigger boats. • RMS may replace swing moorings. • Alienation of public space. • Detrimental to the character of the Clontarf and Sandy Bay area. • Amenity impacts from light, sound, rubbish and fuel. • Traffic and parking impacts. • Larger motor boats will increase car parking demand. • Inappropriate development that is not in the public interest. • Lack of meaningful consultation. • Inaccurate claims within the EIS. • Visual impact of the development.
John Pens, 51A Peronne Avenue Clontarf	<ul style="list-style-type: none"> • Opposes the development. • Impact on the residential character of Clontarf. • Increased bulk. • Parking impacts. • RMS may replace swing moorings. • Visual impact of the development. • Overstated benefits of blue water area. • It is a myth that the public can't use the area between swing moorings. • Disputes the benefits of the proposed development.
T D Reeve, 52 Bungalow Avenue	<ul style="list-style-type: none"> • Opposes the development. • Visual impact of parked boats. • Commercial enterprise taking over public space. • Traffic, parking and noise impacts.
Bruce & Dr Jan Ritchie	<ul style="list-style-type: none"> • Supports the development. • Improves the visual appearance of the Clontarf Bay. • Improved safety on the harbour. • Improved aesthetics of The Spit.

Hylda Rolf , Secretary Sydney Harbour Association.	<ul style="list-style-type: none"> • Opposes the development. • Improved proposal from the original. • Visual impact of several minor impacts resulting in a major impact over time. • Impacts will be measured by the height of the vessels, such controls are necessary. • Impact on intertidal pedestrian movements.
Associate Professor Tracy Rushmer	<ul style="list-style-type: none"> • Opposes the development. • Well used public area. • Development not appropriate for the site. • Not in the public interest.
Carole St John, 1/2d Battle Boulevard Seaforth	<ul style="list-style-type: none"> • Opposes the development. • Traffic impacts, fuel deliveries and chemicals in the harbour.
Sheila E Scott, 2/73 Lauderdale Avenue Fairlight.	<ul style="list-style-type: none"> • Supports the development. • Employment opportunities for young people. • Improved safety on the harbour. • Improved access for person with a disability. • No negative impacts from Davis Marina development.
Confidential	<ul style="list-style-type: none"> • Opposes the development. • Conflicts with legislative and regulatory provisions. • Environmental impact would be catastrophic and irreversible. • Permanent wall of boats • Car parking and traffic issues. • Public interest not taken into account. • Modified proposal does not address the issue of 18 metre boats. • Visual impacts. • Pollution impacts. • Wash impacts.
Berris Smith, 11 Old Sydney Road Seaforth.	<ul style="list-style-type: none"> • Opposes the development. • Unsuitable for its size and not in the public interest. • Will cause greater traffic congestion and pollution on the waterways.
Christian Soberg, 105 Beatrice Street Balgowlah Heights.	<ul style="list-style-type: none"> • Opposes the development. • The proposal will lead to a wall of boats blocking iconic views. • The development will spoil the amenity to the swimming area and beach. • Benefits a small minority of boat owners and negatively impacts residents and visitors of the use of the harbour side pool. • Increase in sound and noise impacts. • Increase in traffic impacts.
David Torrance	<ul style="list-style-type: none"> • Opposes the development. • Impact on public space. • Impacts on the amenity of the area. • Domination of the landscape. • Impact on other recreational users. • Impact on boat traffic. • Impacts on traffic, noise and light .
Edward Tracogna, 1 Ponsinby Parade Seaforth	<ul style="list-style-type: none"> • Opposes the development. • Not in the public interest.

Peter Trout, 15 Beatrice Street Clontarf	<ul style="list-style-type: none"> • Supports the development. • More noise from the Spit Bridge and MHYC will emanate than from this development. • Unlikely to be an increase in cars than the existing. • Larger vessels will not block views. • The development increases open water. • Service vehicles already service the area.
Peter Van de Valde, 1 Edgecliffe Esplanade Seaforth	<ul style="list-style-type: none"> • Opposes the development. • Impact on Clontarf Beach and Bay. • Overcrowding of this part of middle harbour.
Sanja Vidaic	<ul style="list-style-type: none"> • Opposes the development. • Impact on the park and scenic walkway. • Visual pollution. • Impact on paddle boarders.
Confidential	<ul style="list-style-type: none"> • Opposes the development. • Visual impact of the proposal • Environmental impacts. • Conflicts with legislative and regulatory provisions. • Fails the public interest test. • Traffic congestion from the development. • RMS may replace swing moorings. • Impacts on light, sound, rubbish and pollution.
Brian Woolmer, 45 Ponsonby	<ul style="list-style-type: none"> • Opposes the development. • Impact on other recreational users. • No justification for increased scale.
Carolyn Wyatt, 2/5C Brady Street Mosman	<ul style="list-style-type: none"> • Opposes the development. • Impact on other recreational users. • Impacts from large motor boats. • Impact of fuelling boats and fuel tankers. • Parking and traffic impacts.
Steve Wyatt, 2/5C Brady Street Mosman	<ul style="list-style-type: none"> • Opposes the development. • Impact on other recreational users. • Impacts from large motor boats. • Impact of fuelling boats and fuel tankers. • Parking and traffic impacts.
Peter Youll, 4/269 Malton Road North Epping.	<ul style="list-style-type: none"> • Opposes the development. • Impact on Clontarf Beach and swimming pool. • Impact on the Manly Scenic Walkway. • Reduction in public space. • Overdevelopment of a residential area and harbour park.
David Young	<ul style="list-style-type: none"> • Opposes the development. • Commercialisation of public space. • Visual pollution from the boats being close together. • Impact from power boats. • Impact on the beauty of the area.
Lynne Young	<ul style="list-style-type: none"> • Opposes the development. • Substantial expansion of the marina. • Out of character with the area. • Impact of larger boats. • Impacts on light, sound, rubbish and pollution. • Impact of fuelling boats and fuel tankers. • Parking and traffic impacts. • RMS may replace swing moorings. • Not in the public interest.

Phil Young, 8 Linkmead Avenue Clontarf.	<ul style="list-style-type: none"> • Opposes the development. • Impacts on character of the locality. • Impact on visual amenity. • Visual bulk of the proposal. • Impact on other recreational users. • Parking and traffic impacts.
Dr KH Shelley Jones, 43 Ponsonby Parade Seaforth	<ul style="list-style-type: none"> • Opposes the development. • Not in the public interest.
Petition containing 265 Signatures	<ul style="list-style-type: none"> • Opposes the development. • Adverse impacts on the Manly Scenic Walkway, Clontarf reserve, Clontarf Beach and swimming pool. • Takes away public space for community recreation to give it to private commercial purposes. • Is an overdevelopment that is inappropriate next to a harbour side park and residential area. • Is not in the public interest.

Comment on submissions:

The submissions include a number of common concerns as follows;

- Excessive scale and visual impact. Overdevelopment. Proposal will dominate surrounding land uses. Size inappropriate for the area.
- Public space will be given up to private commercial interest. Exclusive use. No public or ratepayer benefit. Not in the public interest. Fails the public interest test.
- Impact on safe use and enjoyment of Clontarf Beach and swimming enclosure.
- Impact on views.
- Traffic and parking. Fuel delivery trucks safety issue. Fuel should be delivered by water Impact on navigation.
- Impacts on Manly Scenic walkway and Clontarf Reserve.
- Inconsistency with landscape character.
- Wall of boats blocking view.
- Shrinking of the harbour.
- Noise.
- RMS may replace swing moorings.

The majority of the concerns raised in the submissions have been discussed previously in this report. Concerns regarding the bulk and scale of the proposal, public interest, impacts on Clontarf Reserve and Sandy Bay area, view impacts, impacts on the character of locality, traffic safety are considered valid and remain unresolved.

The visual impact of the proposal has been considered within this report and is not considered to be acceptable. The proposed development is not considered to strike an appropriate balance between boat users and other recreational users including swimmers. The development is considered to have a significant detrimental impact on the Manly Scenic Walkway.

The general impact of the development on surrounding residents and members of the public is not considered to be acceptable.

79C(1) (e) - the public interest.

The proposal is considered to be inconsistent with the Section 5 objects of the *Environmental Planning and Assessment Act 1979*. The proposal is considered to be inconsistent with ESD principles as described by Preston CJ in *Telstra v Hornsby Shire Council* [2006] NSWLEC 133 (24 March 2006) including the Precautionary Principle and Intergenerational Equity.

The public interest is best served by the consistent application of the relevant Environmental Planning Instruments, and by the consent authority ensuring that any adverse impacts on the surrounding area are avoided. The proposal would result in a number of negative impacts on the locality and on the existing quality of the environment and as such the proposal is not considered to be in the public interest.

CONCLUSION:

The application has been assessed having regard to Section 79C of the *Environmental Planning and Assessment Act 1979*, *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* the *Manly Local Environmental Plan 1988* and Sydney Harbour Foreshores & Waterways Area Development Control Plan 2005 and is not considered to be acceptable on merit.

RECOMMENDATION

That Development Application No. 183/2012 for Removal of forty-one (41) swing moorings [eighteen {18} swing moorings retained], demolition of existing twenty-five (25) vessel berth marina including four (4) fuel berths, construction of a new marina containing sixty-four (64) vessel berths, entry way, platform, above ground fuel tanks, relocation of existing public swing moorings and alterations and additions to the existing boatshed at Clontarf Marina, Sandy Bay Road, Clontarf be **Refused** subject to the following conditions:-

1. Pursuant to Section 79 C(1)(a)(i) and (b) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with Part 1 Clause 2 (1) Aims (a)(i) and (ii), (e) and (f) of the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*.
2. Pursuant to Section 79 C(1)(a)(i) and (b) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with Clause 17 Zoning (W5 Water Recreation) objectives (a) to (g) of the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*.
3. Pursuant to Section 79 C(1)(a)(i) and (b) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with Clause 22 *Public Access to, and use of, foreshores and waterways* of the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* in that it would not enhance and maintain public access along the foreshore.
4. Pursuant to Section 79C(1)(a)(i) and (b) of the Environmental Planning and Assessment Act 1979, the proposal development is inconsistent with Clause 24 *Interrelationship of waterway and foreshore uses* of the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* as the proposal is not considered to promote equitable use of the waterway by passive recreational craft and is not considered to minimise impacts on the waterway.
5. Pursuant to Section 79C(1)(a)(i) and (b) of the Environmental Planning and Assessment Act 1979, the proposal development is inconsistent with Clause 25 *Foreshore and waterways scenic quality* of the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* as the proposed development is not of a scale, form, design and siting that would maintain the scenic quality of the foreshore and waterways.
6. Pursuant to Section 79C(1)(a)(i) and (b) of the Environmental Planning and Assessment Act 1979, the proposal development is inconsistent with Clause 26 *Maintenance, protection and enhancement of views* of the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* as the visual impacts of the proposed development are not considered to maintain, protect and enhance the views to and from Sydney Harbour.

7. Pursuant to Section 79C(1)(a)(i) and (b) of the Environmental Planning and Assessment Act 1979, the proposal development is inconsistent with Clause 59 *Development in vicinity of heritage items* of the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* as the proposal will impact views from public land to the Spit Bridge which is listed as an item of environmental heritage under the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*.
8. Pursuant to Section 79C(1)(a)(i) and (b) of the Environmental Planning and Assessment Act 1979, the proposal is not considered to be consistent with Clause 3.2 *General Aims* of the *Sydney Harbour Foreshores & Waterways Area Development Control Plan 2005* as the proposal has not been designed to minimise the impacts on views and vistas to and from public spaces. The proposal is not considered to complement the scenic character of the area nor protect the integrity of the foreshore.
9. Pursuant to Section 79C(1)(a)(i) and (b) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the performance criteria for *Landscape Character Type 6* as detailed in Clause 3.3 of the *Sydney Harbour Foreshores & Waterways Area Development Control Plan 2005* in that the proposal seeks to extend and expand a break in the visual continuity of the beach at low tide.
10. Pursuant to Section 79C(1)(a)(i) and (b) of the Environmental Planning and Assessment Act 1979, the proposed development is not considered to be consistent with Clause 4.2 *General requirements of land/water interface developments* of the *Sydney Harbour Foreshores & Waterways Area Development Control Plan 2005* in that the proposed development is not considered to improve access to the foreshore including the inter-tidal zone.
11. Pursuant to Section 79C(1)(a)(i) and (b) of the Environmental Planning and Assessment Act 1979, the proposed development is not considered to be consistent with Clause 4.5 *Built form* guidelines of the *Sydney Harbour Foreshores & Waterways Area Development Control Plan 2005*.
12. Pursuant to Section 79C(1)(a)(i) and (b) of the Environmental Planning and Assessment Act 1979, the proposed development is not considered to be consistent with the location objectives and guiding principles for marina development as detailed in Clause 4.7 of the *Sydney Harbour Foreshores & Waterways Area Development Control Plan 2005*.
13. Pursuant to Section 79C(1)(a)(i) and (b) of the Environmental Planning and Assessment Act 1979, the proposed development is not considered to be consistent with the visual impact and guiding principles for marina development as detailed in Clause 4.7 of the *Sydney Harbour Foreshores & Waterways Area Development Control Plan 2005*.
14. Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, the proposal is not considered to be in the public interest.
15. Pursuant to Section 79C(1)(d) of the Environmental Planning and Assessment Act 1979, the proposal is not considered to be satisfactory having regard to the issues raised in the submissions received.