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4 April 2016

Warwick Winn  
General Manager  
North Sydney Council  
200 Miller Street

NORTH SYDNEY, NSW 2060

Attention: Mr George Youhanna

**DEVELOPMENT APPLICATION - BERRYS BAY MARINA  
RESPONSE TO COUNCIL ASSESSMENT REPORT**

Further to the recent publication of the Council's Assessment Report to the Joint Regional Planning Panel, we are pleased to submit the following supplementary material as a means of providing further clarification with regards to some of the matters raised in the Assessment Report. This letter has been drafted to assist the Joint Regional Planning Panel with their consideration of the application and we formally request that this material be forward by the North Sydney Council to the Joint Regional Planning Panel.

The following provide an overview of the key matters raised in the assessment report and seeks to provide some clarity with

**1. MATTERS RESOLVED / ACCEPTED BY COUNCIL**

The following are matters that are considered to be resolved or accepted by Council.

- a) **Acoustics** – Assessment Report notes that all acoustic matters can be dealt with by way of condition and do not warrant refusal.
- b) **Microbats** – Assessment Report notes that the material provided with the application is acceptable and recommends conditions.
- c) **Pedestrian Circulation / Access Paths** – Assessment Report notes that the matter associated with pedestrian access and emergency vehicle access can be dealt with by way of condition and do not warrant refusal.
- d) **Aboriginal Heritage** – Aboriginal Heritage Office has written to North Sydney Council advising that they consider the application to be acceptable.
- e) **Contamination** – Assessment Report notes that the information submitted with the application suitably addresses the requirements of SEPP 55.

## 2. MATTERS THAT CAN BE CONDITIONED

The following is a list of matters identified within the Council's assessment report as being unresolved or unacceptable, but which in our opinion can be made acceptable by way of condition.

- a) **Conservation Scope of Works and Maintenance Plan** – An Outline Plan for Conservation Works Schedule together with detailed 1:100 architectural plans was provided to Council's heritage officer. Together these documents clearly depict the extent of works proposed and location of built form to be retained or replaced. The submission and approval of a Detailed Scope of Works and Maintenance Plan can be conditioned as being required for prior to issue of the relevant construction certificate.
- b) **Heritage Architectural Plans** – Detailed 1:100 scale plans were provided that clearly depict the extent of works within both Woodleys Shed and the bund wall. The level of detail provided within these plans is consistent with many other development applications for heritage buildings and is considered sufficient for DA purposes. If necessary a condition can be imposed on the consent requiring referral and sign-off of construction drawings by Council's heritage officer prior to the issue of the relevant construction certificate.
- c) **Car parking numbers** – Parking numbers proposed were in response to the CRG process which highlighted community concern about parking impacts on local streets. Council's Manager of Traffic and Transport Manager notes on page 25 of the report that 75 spaces would be a more appropriate number as this sits in between RMS and Council rates. A condition imposing a maximum number of spaces (e.g. 75) could be included within the consent.
- d) **Roadworks upgrade to Balls Head Road** – Based on our review the proposed upgrades to Balls Head Road don't appear to be within the Council's Section 94 Program. The proposed development does not necessitate any intersection capacity improvements and the carriageway widths are adequate so no need for widening. Whilst this is the case the proposed development will be making upgrades to the road and kerb along the front of the site and the applicant is willing to carry out works where this is necessitated by the proposal.
- e) **Bicycle parking** – Bicycle parking can be easily accommodated within the site and a minimum number of bicycle parks can be conditioned as part of the consent.
- f) **Emergency Vehicle Access** – If consultation with Sydney Water and NSW Ambulance Service is necessary this can be conditioned as being required prior to the issue of the relevant Construction Certificate.
- g) **Detailed Landscape Plans** – Landscape Plans have been submitted for the application. Council's Landscape Architect has noted that some proposed plant species are not considered appropriate as they are not '100% local native species.' Refinement of the species selection can be conditioned as part of the further detailed Landscape Plan that will need to be prepared to obtain the relevant Construction Certificate.
- h) **Size of boats** – Concerns have been raised about the scale of boats proposed to be moored at the marina. If necessary conditions can be imposed to restrict the length and height of boats (e.g. max 30m length with max height above water level of 7m). It is noted that this approach was used by the Land and Environment Court when approving the extension to the Rose Bay Marina.

### 3. MATTERS CONTENTED

- a) **View Impacts** – Council’s Heritage Officer states that the proposal will have a significant impact on the ‘established and significant working waterfront character which is essential to the heritage significance.’ Whilst this is the case the Design Excellence Panel (DEP) and the Council’s Landscape Officer assert that the proposal will have a significant impact on *‘the bays natural beauty.’* Which according to the DEP *‘is extraordinarily and almost uniquely juxtaposed with its proximity to the City and its relationship to the attractive and superbly conserved adjoining natural reserve.’*

Key to determining the extent of visual impact is establishing the baseline from which the visual assessment should be carried out. The Assessment Report provides mixed messages in this regard, however the suggestion that the baseline position is one of Berrys Bay being a natural untouched environment is incorrect. Berrys Bay has historically been a working bay characterised by boats, ships and marine activities. For this reason the year 1999 was chosen as the baseline position from which to carry out the assessment. The year was identified as the preferred baseline for two reasons, the first being that the bay was still very much operational at this time in the modern day environment. The second reason is because it was this year that the Waverton Peninsula Master Plan was prepared.

A detailed assessment has been carried out by Clouston Associates, however to further assist with the Council’s and JRPPs understanding of the proposal, a comparison between the extents of water coverage in 1999 compared to the proposed development has been carried out and is attached for the JRPP’s information (**Attachment A**).

- b) **Public Access to Dolphin Wharf** – Dolphin Wharf has historically never been publicly accessible and it is proposed to maintain this existing arrangement. There is no clear need or purpose for public to access the wharf, and we note that if it were to be provided then this would bring with it a range of safety and security issues.

c) **Compliance with Planning Framework**

- Sydney Harbour REP 2005 – Council’s Assessment Report states that the proposal does not comply with the SHREP. A detailed assessment of the proposal against the provisions of the SHREP was provided as part of the application (refer Information Response dated 2<sup>nd</sup> November 2015). This analysis clearly illustrates that the proposal is permissible within the Maritime Water zone and complies with the key relevant objectives, principles and standards.
- North Sydney LEP 2012 – Proposal is permissible within the W4 Working Waterfront Zone. A detailed assessment of the individual land uses was provided in the Environmental Impact Statement that clearly confirmed how each use was permissible in the zone.

Land within the E4 Environmental Conservation Zone is limited to a small part of the site’s south-west corner. Documentary evidence (**Attachment B**) provided by Roads and Maritime Services (RMS) confirms that the Woodleys site was operational until early 2011, when the lease was terminated. Prior to this RMS called for registrations of interest in December 2007 for the redevelopment of the site and has been pursuing this ever since. Accordingly, the site has always either been in use as a working waterfront or has been intended to be redeveloped for boat related activities. In light of this it is apparent that the site has either been operational or there has been a process in place to maintain the future and ongoing operation of the site for working waterfront purposes, that small part of the Woodleys site zoned E2 Environmental Conservation is therefore considered to benefit from existing use rights.

- Sydney Harbour Foreshores and Waterways Area DCP 2005 – An assessment of the proposal was carried out within the Environmental Impact Statement. A further detailed assessment of the proposal against the specific provisions of the SHDCP was provided to Council in the letter dated on 14<sup>th</sup> March 2016.
- Waverton Peninsula Master Plan – A detailed analysis of the proposal against the Waverton Peninsula Master Plan was provided as part of the Response to Information Request dated 2<sup>nd</sup> November 2015. This analysis clearly demonstrated how the proposal provided for an outcome that is consistent with the Master Plan.

- d) **Public Good vs Private Good** – the Assessment Report asserts that the proposal results in a precedence of private good over public good. The Assessment Report however downplays the fact that a commercial marina is intended to meet the public demand for modern boating facilities on Sydney Harbour. In addition it fails to consider or even acknowledge all of the extensive public benefits that will be realised as a result of the proposal. These are outlined in detail on page 21 of the Response to Information Request dated 2<sup>nd</sup> November 2015, key benefits include:
- Reuse and regeneration of a presently derelict and unusable waterfront site.
  - Creation of a new high quality publicly accessible Marina Gardens that will include at a minimum grassed open space, landscaped features, a children's playground and picnic facilities. Approximately 5,053m<sup>2</sup> of the site (i.e. 30.3%) will be landscaped publicly accessible and useable space.
  - A new high quality foreshore walkway connecting Carradah Park through the site to the Quarantine Station, where access can then ultimately be extended Balls Head.
  - Provision to allow improved access down to the local beach in Berrys Bay to make it safer and more accessible to the community.
  - Provision of new sea wall steps and platform along the foreshore allowing direct access into and out of the water in Berrys Bay. These steps will be able to be used for people wishing to sit down and put their feet in the water, swimming etc.
  - Provision of a marina pontoon that will be publicly accessible to allow members of the public to launch their kayak and/or small non-motorised leisure craft.
  - Public toilets, water bubblers and amenities on site for use by the public.
  - Creation of up to 50 new full time equivalent jobs for the local community.
  - Adaptive reuse of the Woodleys Boatshed and the existing bund wall, there-by guaranteeing their long term survival.
  - Implementation of an Archaeology and Heritage Implementation Strategy within the site that will guide and educate the public about the site's cultural and historical background.
  - Provision of a kiosk within the development to enable visitors and members of the community to buy coffee, small snacks, fish and chips etc.
  - The provision of fixed marina berths and dry dock storage that will address a publicly identified need for more boat storage in Sydney Harbour.
  - Provision of dinghy racks within the site will provide a service to existing boat owners who have their vessels on private swing moorings within Berrys Bay.

I trust this information will assist the JRPP with their understanding of the proposal and we therefore would like to formally request that the Council forward this material to the JRPP at the earliest possible convenience. In the meantime if there is anything that you would like to discuss please do not hesitate to contact me on (02) 9956 6962 or [bcraig@jbaplanning.com.au](mailto:bcraig@jbaplanning.com.au).

Yours faithfully



Benjamin Craig  
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