

### AtCOUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	2019SNH021
<b>DA Number</b>	DA 57/19
<b>LGA</b>	North Sydney
<b>Proposed Development</b>	Demolition of existing water-based structures and installation and use of a new floating dry dock (FDD) for maintenance and repair of maritime vessels up to 750T in association with the existing boat building and repair facility
<b>Street Address</b>	6 John Street McMahons Point
<b>Applicant/Owner</b>	Stannard Marine Pty Ltd / Road and Maritime Services
<b>Date of DA lodgement</b>	5 March 2019
<b>Number of Submissions</b>	Original Notification – 44 for, 288 against (332 in total) Re-notification – 14 for, 171 against (185 in total)
<b>Recommendation</b>	Refusal
<b>Regional Development Criteria</b>	Regionally significant development under Clause 7(b) of Schedule 7 of State Environmental Planning Policy (State and Regional Development)
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• North Sydney LEP 2013</li> <li>• North Sydney DCP 2013</li> <li>• SEPP 33 – Hazardous &amp; Offensive Development</li> <li>• SEPP 55 – Remediation of Land</li> <li>• SEPP (Coastal Management) 2018</li> <li>• SEPP (Infrastructure) 2007</li> <li>• Draft Environment SEPP</li> <li>• Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</li> <li>• Sydney Harbour Foreshore and Waterways Area Development Control Plan 2005</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>• Attachment 1 Architectural Plans</li> <li>• Attachment 2 Visual Impact Assessment prepared for the applicant by RLA</li> <li>• Attachment 3 Visual Impact Assessment prepared for Council by Architectus</li> <li>• Attachment 4 EPA request for additional information dated 5 June 2020</li> </ul>
<b>Report prepared by</b>	Brett Brown, Consultant Planner
<b>Report date</b>	7/8/20

#### Summary of s4.15(1) matters

Have all recommendations in relation to relevant s4.15(1) matters been summarised in the Executive Summary of the assessment report?

**Yes**

#### Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report?

**Yes**

*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

#### Clause 4.6 Exceptions to development standards

**NA**

If a written request for a contravention to a development standard has been received

, has it been attached to the assessment report?

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**Special Infrastructure Contributions**

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

**No**

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**Conditions**

Have draft conditions been provided to the Panel for consideration?

**No**

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**EXECUTIVE SUMMARY**

The original DA for the FDD was withdrawn by the applicant in December 2018 as Council was of the view that the submitted information was inadequate to allow determination. The applicant continued to liaise with Council and the current DA for the FDD was lodged in March 2019. The DA does not propose any specific changes to the existing operations of the facility which are controlled by the 1990 development consent (and an EPA license) and so the impacts are limited to those specifically related to the FDD and associated infrastructure.

There have been numerous requests to the applicant for additional information regarding the potential impacts of the proposal including documentation to satisfy the requirements of the Environment Protection Authority (EPA). The EPA remain unsatisfied with the information provided in relation to air quality and noise impacts. As the DA is integrated development (ie will require an EPA license), without the EPA's General Terms of Approval (GTA's), development consent cannot be granted.

The assessment of other impacts of the proposal concludes that it will not be unreasonable having regard to the circumstances outlined in this report. In particular, the visual impact assessment, undertaken by an independent consultant, has found the visual impacts of the proposal to be acceptable. Whilst there are some other issues that require further attention in addition to the EPA requirements, apart from these, the proposal is considered to be satisfactory.

The proposal has the potential for significant impacts and accordingly there has been many public submissions made raising concerns. However, there has also been support for the proposal by those who support the continuation of a 'working harbour'.

The site has a long history of use for boat repair and the current zoning of the land and waterway permit this use. There is no limit on the size of waterway structures however the bulk of the height of the FDD is commensurate with the height of buildings permitted on the land component of the site (ie 10m). The nature of the structure is consistent with the historical use of the site and of Berry Bay generally and what is envisaged on the land component under Council's LEP and DCP.

Notwithstanding that the proposal is considered to be reasonable 'in principle', this is subject to ensuring that the impacts on surrounding residents is acceptable and meets the relevant environmental guidelines. As noted above, this has not been adequately demonstrated.

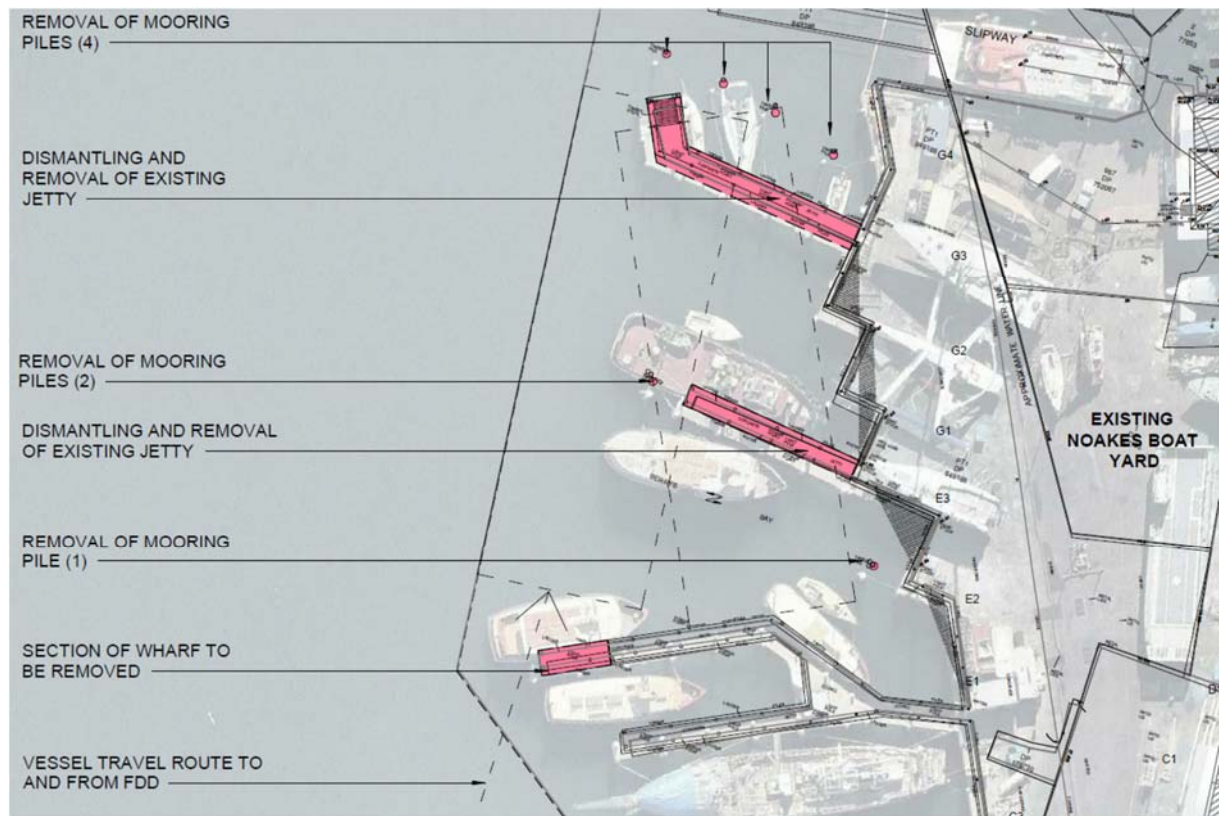
**DESCRIPTION OF PROPOSAL**

The amended application is seeking consent for demolition of existing water-based structures and installation and use of a new floating dry dock (FDD) for maintenance and repair of maritime vessels up to 750T. It should be noted that the applicant has advised that the FDD is technically capable of accommodating a vessel up to 1000T and so this has been used in their impact assessment, however due to the need to work within the dimensions of the FDD, the practical limit is 750T.

Details of the proposal are as follows:

### Demolition (see Figure 1 )

- Removal of 4 mooring poles to the south of the existing slipway
- Removal of two jetties to the south of the 4 mooring poles to be removed
- Removal of around 8m of the end of the jetty adjoining the two jetties to be removed.



Source - Altis Demolition Plan SK4002

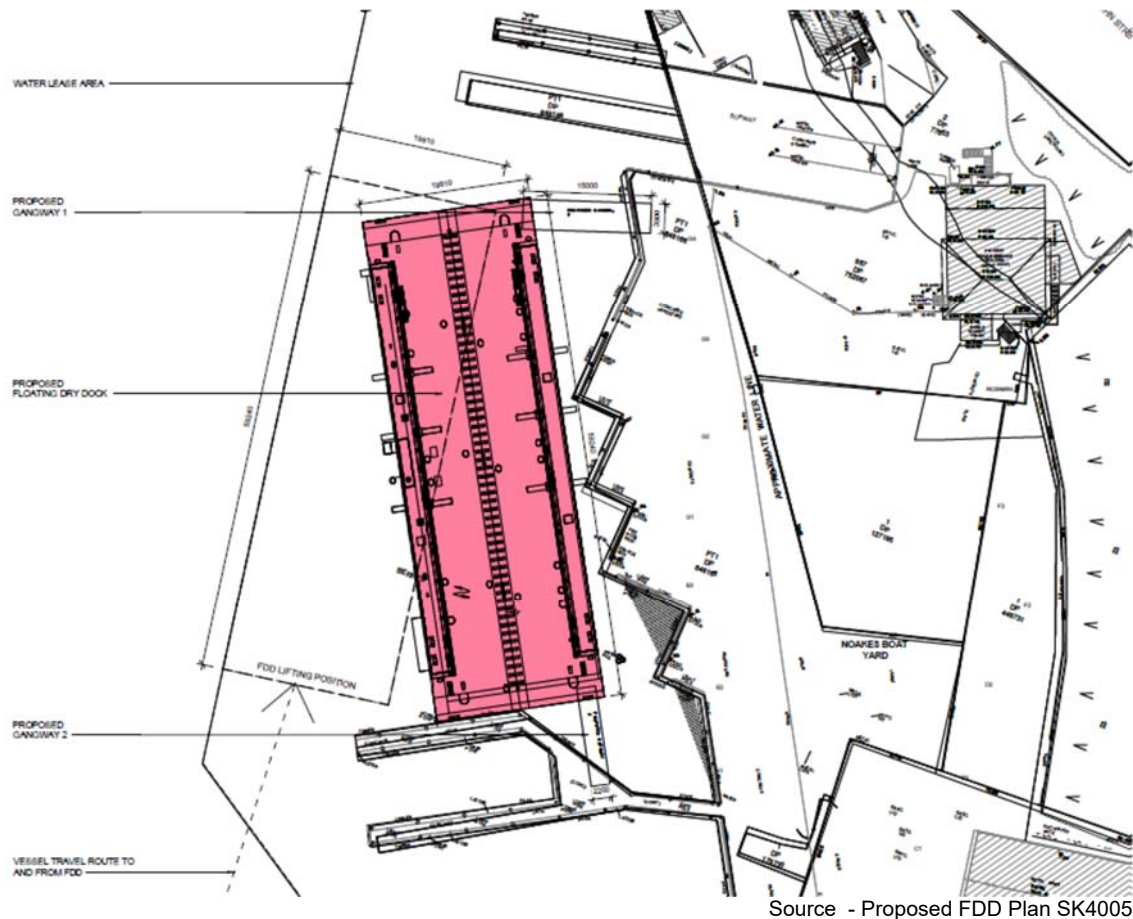
**Figure 1 – proposed demolition works**

### Floating Dry Dock (see Figures 2 – 5)

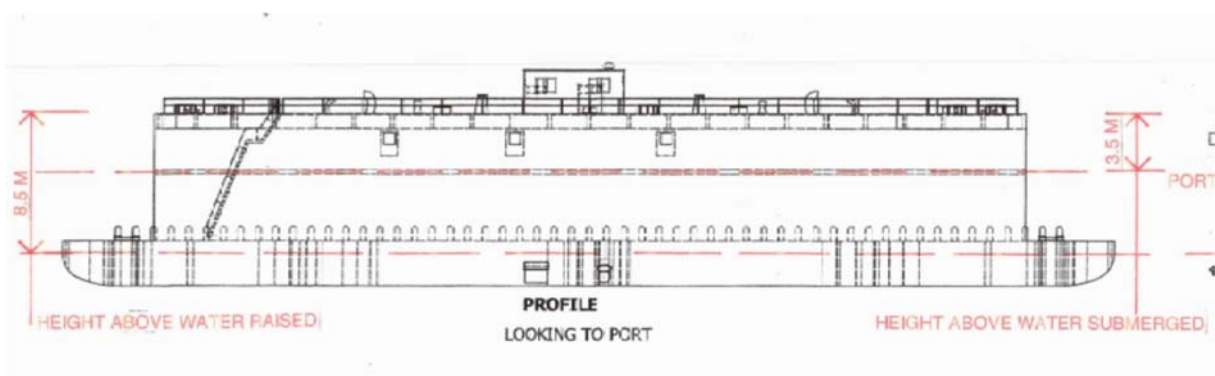
- Steel structure 19.81m wide by 59.24m long. In the raised position, the maximum height of the structure is around 11.5m (to the top of the small operating bridge) above water level. However, the main elements of the structure (ie the 'walls') have a height of 8.5m (see **Figure 3**). In the lowered position, the height is 3.5m;
- The structure is movable and is able to be raised and lowered in order to allow vessels to move directly into the structure and then lifted above the waterline to allow work to occur. The lowered and raised position of the structure are shown on **Figure 3**. The lowered position is at the edge of the maritime lease area and the raised position is next to the land based facilities and modified wharf. The process for getting a boat on the FDD and raised is described by the applicant as being in 5 stages that will take approximately 5-6 hours;
- The structure will have fixed acoustic lining to the inside of the external side walls and heavy duty 'curtains' with a density of 6kgs/sqm at the ends of the structure and also at the top of the structure so that the work area can be fully enclosed. These curtains will assist in minimising noise and air emissions from the work area and form the main component of the amendments to the originally submitted DA. The curtains are operable and only need to be in place when certain works are being undertaken including spray painting, welding and surface preparation. The curtains would be unnecessary when the dock is being flooded and swung out to receive or release a vessel, during inspections, undertaking propeller maintenance and other light works such as hand painting and other lesser maintenance activities (unless noise limits or other EPA criteria could potentially be exceeded). The end curtains can be used separately however the top curtain would only be used when the end curtains are in use. The max height of the curtains will be around 7.78m. It is estimated by the

applicant that the curtains will be used for 70% of the time a vessel is on the FDD and around of 55% of an entire year period;

- The structure is able to accommodate vessels up to 60m long and up to 1000T. The assessment undertaken by the applicant has been made on this basis. However, the applicant notes that in practice vessels of this length would not exceed 750T and rarely exceed 650T. The applicant indicates that a Royal Australian Navy (RAN) Minehunter is an example of the largest type of vessel that will be accommodated. The latest Minehunter to be commissioned, HMAS Yarra (IV), is 52.5m long and 732T. However, regardless of size, no work is permitted to occur outside the extent of the FDD including a max height of 8.5m.

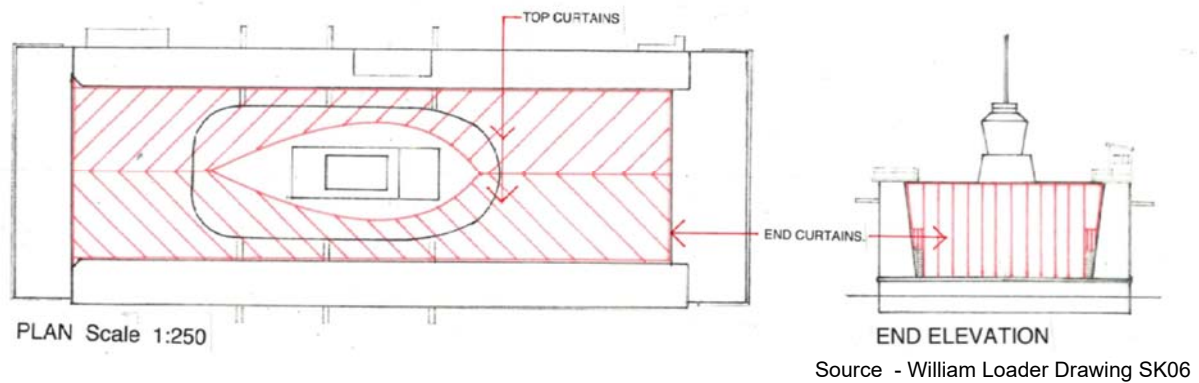


**Figure 2 – proposed location of FDD showing lowered and lifted positions**



**Figure 3 – long elevation indicating height of walls above water level in lowered and lifted positions**





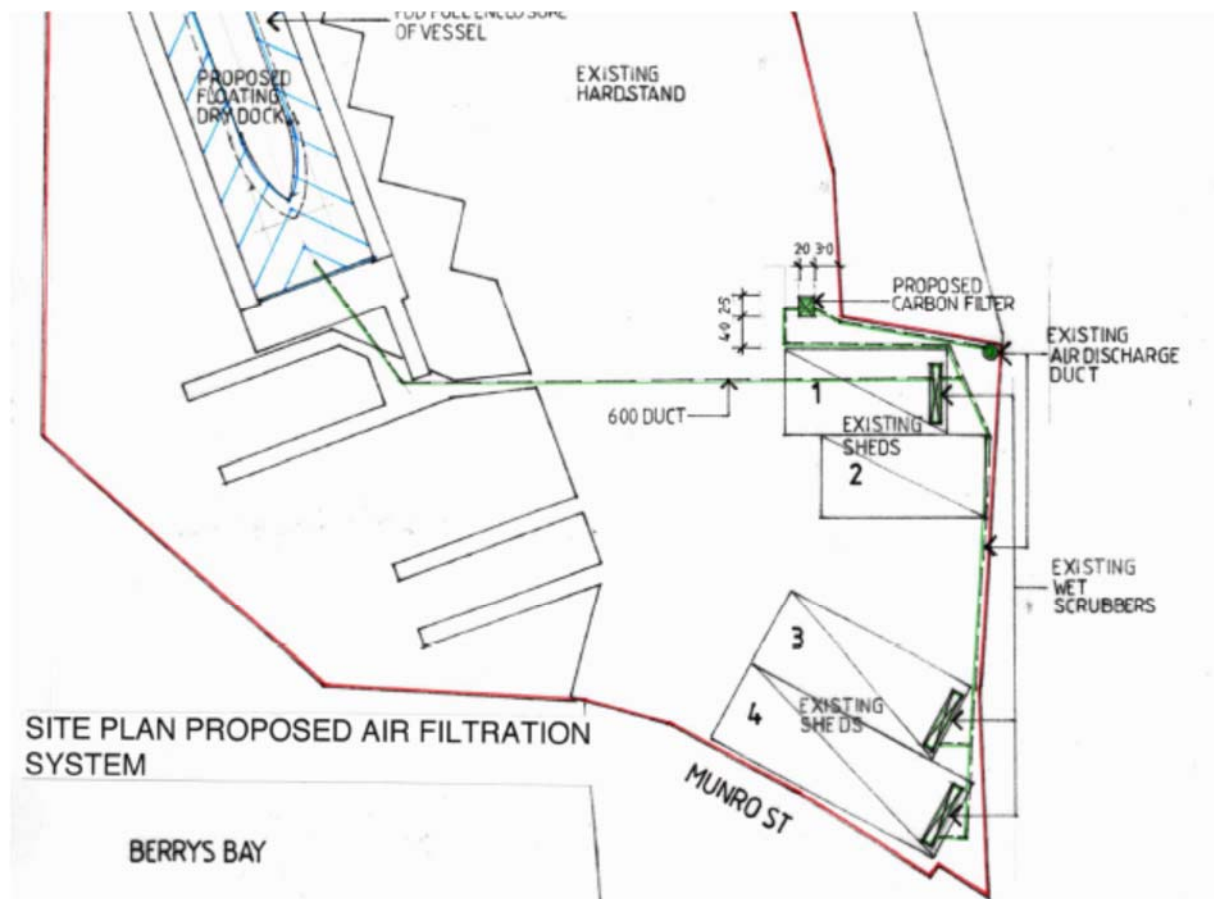
**Figure 4 – plan view showing top curtains and end elevation with curtain**



**Figure 5 – photomontage of FDD in raised position viewed from the Dolphin Wharf**

**Related infrastructure (see Figure 6)**

- Provision of new on-shore infrastructure in the form of ducting and plant relating to air quality mitigation. The new elements will also rely on existing infrastructure including existing wet scrubbers and discharge ducts.



Source - William Loader Drawing SK09

**Figure 6 – plan showing existing and proposed air quality control infrastructure**

There is no proposal to alter the application of any of the conditions of the existing development consent that applies to the site including the approved staffing numbers (up to 120), hours of operation (including specific limits on certain activities) and noise limits. There are also requirements under the current EPA license that are required to be complied with.

## **STATUTORY CONTROLS**

- Environmental Planning and Assessment Regulations 2000
- SEPP 33 – Hazardous & Offensive Development
- SEPP 55 – Remediation of Land
- SEPP (Coastal Management) 2018
- SEPP (Infrastructure) 2007
- Draft Environment SEPP
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- Sydney Harbour Foreshore and Waterways Area Development Control Plan 2005
- North Sydney LEP 2013

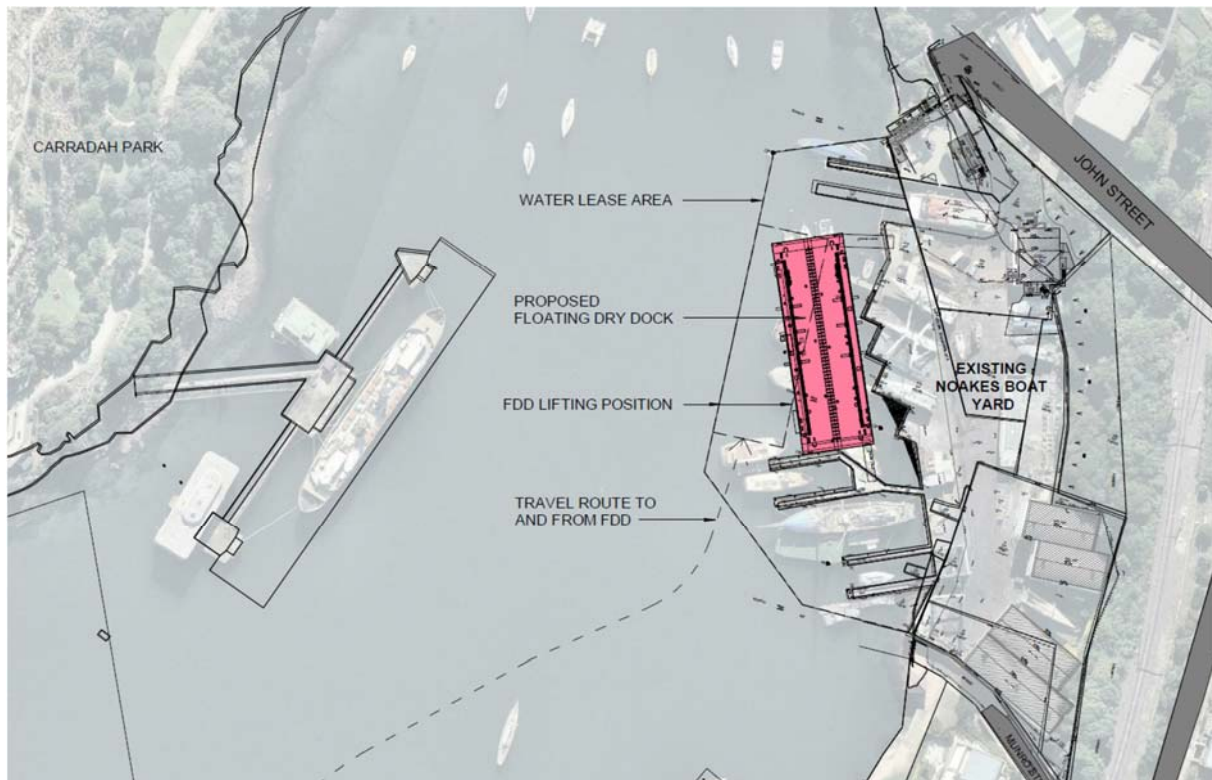
## **POLICY CONTROLS**

DCP 2013

## **DESCRIPTION OF LOCALITY**

The land component of the site is located on the eastern shore of Berrys Bay, on Sydney Harbour (see **Figure 7**). The site address is 6 John Street, McMahons Point. The site is currently occupied by a boat repair and maintenance facility that comprises land infrastructure as well as various wharfs that project into Berrys Bay for mooring of boats. These wharfs and

adjacent waterway form part of the lease of the waterway by the applicant. This is the part of the site that will accommodate the FDD.



**Figure 7 – subject site**

The landward side of the site is occupied by car parking areas, hardstand areas, four enclosed buildings for boat repairs and maintenance, a two storey office building, and other marine infrastructure. The site and jetty structures are heritage items under North Sydney LEP. The land component of the site is also zoned under the LEP and is part zoned IN4 Working Waterfront and is partly unzoned land. The waterway component is zoned W1 Maritime Waters under Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

The site is surrounded by a mixture of land uses, including low, medium and high density residential development, transport infrastructure, public recreation areas and environmental conservation areas.

## RELEVANT HISTORY

The current operations of the existing boat repair and maintenance facility on site are subject to Development Consent 1164/90 which sets parameters for hours of operation, vessel accommodation and the nature of works permitted on site. The development consent enables:

- Employment of up to 120 people; and
- Hours of operation between 7am to 6pm for six days a week (however some activities have more restricted hours).

The applicant advises that the current facility provides boat repair and maintenance services in the following proportions: 60% public agencies and 40% private businesses/individuals.

The author understand that Council has commenced legal proceedings against the owner for failure to provide a public jetty which it alleges is required as a condition of the 1990 development consent.

A DA for the subject FDD was lodged with Council in January 2018 and various requests for further information were made by Council and responded to by the applicant however, as there were still issues outstanding, the DA was withdrawn on 4 December 2018.

The subject DA was lodged on 5 March 2019. Council requested the applicant to provide further information by way of letters on 15/3/19, 12/6/20 and via numerous email exchanges. The information provided, and in particular information required by the NSW Environment Protection Authority (EPA), has been deemed inadequate to allow proper assessment.

## **REFERRALS - Internal**

### **Development Engineer**

The application was referred to Council's Development Engineer who has made an assessment in relation to:

- Traffic Management
- Stormwater
- Parking and Access
- Sediment and Erosion Control

No objection has been raised subject to the recommended conditions.

### **Traffic Engineer**

Council's Traffic Engineer has raised no objection to the proposal subject to the preparation of a Construction Management Plan and approval by the North Sydney Traffic Committee prior to the issue of a construction certificate.

## **REFERRALS - External**

### **Office of Environment & Heritage (OEH)**

The correspondence from OEH indicates that their concurrence is not required for the development unless it involves Biodiversity Offsets. This is not the case as a Biodiversity Development Assessment Report (BDAR) is not (based on the applicant's assessment), required for the proposal and therefore no offsets are required.

### **Department of Primary Industries (Fisheries)**

Fisheries have raised no objection to the proposal subject to the provided General Terms of Approval (GTA's).

### **NSW Environment Protection Authority (EPA)**

EPA has raised concerns regarding the following reports prepared by the applicant: Jacobs Air Quality Assessment (AQA) and Jacobs Noise and Vibration Assessment (NVA). Whilst a number of requests to the applicant for further information and have been responded to, the latest correspondence from EPA dated 5 June 2020, still has outstanding issues. As the EPA's GTA's have not been provided, consent cannot be granted as the proposal is integrated development.

### **Natural Resources Access Regulator (NRAR)**

The DA was referred to NRAR however they have indicated that approval under the Water Management Act 2000 is not required.

### **Heritage Council of NSW**



The Heritage Council has indicated that their original request for additional information was not provided with the amended plans and documentation and as such their concerns remain. However, they have also noted that the matters raised can be dealt with by conditions of consent.

**Department of Planning, Industry & Environment (DPIE) and Roads and Maritime Services (RMS) Foreshores and Waterways Planning and Development Advisory Committee**

The Committee raised no specific issues in relation to the development and confirmed that the statutory referral obligations under Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 have been met.

**AUSGRID**

AUSGRID raised no objections subject to conditions.

**SUBMISSIONS**

The owners of surrounding properties were originally notified of the proposed development between 22 March 2019 and 23 April 2019 when 332 submissions were received, 44 in support and 288 opposing the proposal. The letters of support generally relate to the need to retain and support boating infrastructure on the Harbour and include a submission from the NSW Maritime Museum. The issues raised against the proposal can be summarised as follows:

- Visual impacts
- Impacts on property prices
- Excessive noise/acoustic issues
- Excessive pollution
- Construction impacts
- Air quality impacts
- Private benefit, public loss of access and amenity
- History of EPA infringements by owner
- Impacts on biodiversity
- Cultural, character and heritage impacts
- Greater waste generation
- Environmental harm
- Inappropriate zoning according to REP
- Inconsistencies, distortions, errors and lack of detail in DA, EIS and supporting documentation
- Danger of accidents and risk to residents and users of small craft such as kayaks
- Not consistent with Greater Sydney Commissions proposal of Green Grid
- Parking problems and traffic issues
- Economic justification is flawed
- Applicants have no record of operating an FDD
- Lack of evidence about safety, licensing etc of FDD
- Over industrialisation
- Precedent
- Impact of wash
- Legal identity of applicants and lease holders
- Poor/lack of consultation with community

It is noted that the objectors include the Lavender Bay, Union and Waverton Precincts.

The DA was notified again when the amended plans and documents were submitted between 13 March and 13 April 2020. This further notification resulted in 185 submissions, 171 against the proposal and 14 in support. The issues raised were generally the same as with the original notification.

## CONSIDERATION

The relevant matters for consideration under Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*, are assessed under the following headings:

### **Environmental Planning and Assessment Regulation 2000**

There are various provisions of the Regulations that are of relevance to the application including those relating to 'designated development'. In particular designated development is required to have a greater degree of public consultation than most development (as detailed above). Council has undertaken the necessary consultations and referral of submissions in accordance with the requirements of the Regulations.

Also, the type of development proposed is one that requires Environmental Assessment Requirements to be issued by the Secretary of the Department of Planning, Industry and the Environment (known as 'SEAR's'). These were issued to the applicant on 31 August 2017. In accordance with the SEAR's the DA was lodged within 2 years of this date. The SEAR's include the requirements of NSW EPA, NSW Fisheries and the NSW Heritage Council. The applicant has failed to demonstrate that all the required consultations with authorities were undertaken. Further, as noted above the EPA still have concerns about the documentation provided and as such it is considered that the SEAR's have not been satisfied.

### **State Environmental Planning Policy No 33—Hazardous and Offensive Development**

The applicant's documentation concludes that the proposal has the potential to be both a 'potentially hazardous industry' and a 'potentially offensive industry', however, that in light of the conclusions of the technical reports prepared, that SEPP 33 does not apply. In the author's view this SEPP does apply as without the proposed mitigation measures the development would be potentially hazardous (ie a significant risk to human health and the environment) and potentially offensive (ie would have a significant adverse impact from pollution, including noise, on the locality).

As the proposal is considered to be a potentially hazardous industry, the DA does not satisfy the requirements of Clause 12, as it is not accompanied by a 'preliminary hazard analysis', prepared in accordance with the relevant DPIE guidelines. Pursuant to Clause 13 of the SEPP the consent authority must consider the following matters:

- (a) current circulars or guidelines published by the Department of Planning relating to hazardous or offensive development, and*
- (b) whether any public authority should be consulted concerning any environmental and land use safety requirements with which the development should comply, and*
- (c) in the case of development for the purpose of a potentially hazardous industry—a preliminary hazard analysis prepared by or on behalf of the applicant, and*
- (d) any feasible alternatives to the carrying out of the development and the reasons for choosing the development the subject of the application (including any feasible alternatives for the location of the development and the reasons for choosing the location the subject of the application), and*
- (e) any likely future use of the land surrounding the development.*

In relation to (a) the current guidelines are dated January 2011. These guidelines must also be considered as part of a preliminary hazard analysis and as the applicant has not prepared this, an assessment of consistency with the guidelines cannot be made.

In relation to (b), various public authorities have been consulted including the EPA, who are not satisfied that the applicant has addressed the environmental impact concerns that they have raised.

In relation to (c), as noted, a preliminary hazard analysis has not been submitted with the DA.

In relation to (d), the submitted EIS includes a consideration of alternatives to the proposal.

In relation to (e), there is no significant change proposed to surrounding land uses.

In light of the above, the failure to prepare a preliminary hazard analysis has been included as a reason for refusal of the application.

### **SEPP 55 – Remediation of Land**

The submitted Preliminary Contamination Assessment identifies the likelihood of contamination of the marine sediment within Berrys Bay and the potential for the removal of the existing jetties and use of the FDD to disturb these sediments. Accordingly, mitigation measures have been recommended to minimise such impacts.

### **SEPP (Coastal Management) 2018**

This SEPP applies as the site is within the coastal zone and is within the Coastal Environment Area (see **Figure 8**).



**Figure 8 – SEPP (Coastal Management) 2018 Map**

Clause 13(1) of the SEPP states:

- (1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—*
- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
  - (b) coastal environmental values and natural coastal processes,*

- (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
- (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- (f) Aboriginal cultural heritage, practices and places,
- (g) the use of the surf zone.

The submitted documentation addresses the above matters and it is considered that the proposal, subject to appropriate conditions, would not have any adverse impacts in relation to these matters. Public access is discussed in more detail below in relation to SREP Sydney Harbour.

In relation to Clause 15 of the SEPP regarding coastal processes, there is no evidence to suggest that the proposal will have an adverse impact in this regard.

### **SEPP (Infrastructure) 2007**

The provisions of this SEPP are not directly relevant as the proposal is not being undertaken by a public authority.

### **Draft Environment SEPP**

This draft has been exhibited and is intended to supersede various existing SEPP's including the deemed SEPP, Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. However, the proposed changes have no significant consequences for the consideration of the subject application.

### **Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

The relevant provisions of the SREP are considered in the following table.

<b>Provisions</b>	<b>Comment</b>	<b>Complies?</b>
<i>2 Aims of Plan</i>		
(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,	The proposal does not increase the existing lease area that can be used in association with current use. It will have a visual impact however this has been assessed as being satisfactory in the context of the existing environment (see detailed discussion below).	Yes
(b) to ensure a healthy, sustainable environment on land and water,	The proposal has addressed many of the potential impacts on the environment, however NSW EPA remain unsatisfied in relation to a number of matters.	No
(c) to achieve a high quality and ecologically sustainable urban environment,	The proposal has addressed many of the potential impacts on the environment, however NSW EPA remain unsatisfied in relation to a number of matters.	No
(d) to ensure a prosperous working harbour and an effective transport corridor,	The proposal builds upon the existing boatyard uses and contributes to the continuation of a prosperous working harbour.	Yes
(e) to encourage a culturally rich and vibrant place for people,	The proposal provides for a unique land use on the harbour adding to its cultural richness and vibrancy.	Yes
(f) to ensure accessibility to and along Sydney Harbour and its foreshores,	The proposal does not affect existing public access along the foreshore. Access to the water is maintained as the new facilities are within the existing lease area.	Yes



Provisions	Comment	Complies?
(g) to ensure the protection, maintenance and rehabilitation of watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity,	The proposal is generally consistent with this objective.	Yes
(h) to provide a consolidated, simplified and updated legislative framework for future planning.	NA	NA
<p>(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:</p> <p>(a) Sydney Harbour is to be recognised as a public resource, owned by the public, to be protected for the public good,</p> <p>(b) the public good has precedence over the private good whenever and whatever change is proposed for Sydney Harbour or its foreshores,</p> <p>(c) protection of the natural assets of Sydney Harbour has precedence over all other interests.</p>	<p>As discussed in detail below, the proposal provides a public good by providing a service to the 'public,' including public authorities, that is not widely available.</p> <p>Many of the objections to the proposal relate to the impacts on the enjoyment of private properties. However, these impacts have occurred for many years from the existing use and whilst the proposal has the potential to exacerbate such impacts, this needs to be measured against the broader public benefit of providing a needed piece of infrastructure in an appropriate location.</p> <p>Notwithstanding this, the applicant has not adequately demonstrated that the additional impacts can be suitably mitigated.</p> <p>Whilst the proposal will have some visual impact on the harbour, it does not affect the overall ability for the harbour to remain a natural asset.</p>	Yes
<p><i>14 Foreshores and Waterways Area</i></p> <p>The planning principles for land within the Foreshores and Waterways Area are as follows—</p> <p>(a) development should protect, maintain and enhance the natural assets and unique environmental qualities of Sydney Harbour and its islands and foreshores,</p> <p>(b) public access to and along the foreshore should be increased, maintained and improved, while minimising its impact on watercourses, wetlands, riparian lands and remnant vegetation,</p> <p>(c) access to and from the waterways should be increased, maintained and improved for public recreational purposes (such as swimming, fishing and boating), while minimising its impact on watercourses, wetlands, riparian lands and remnant vegetation,</p> <p>(d) development along the foreshore and waterways should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands and foreshores,</p> <p>(e) adequate provision should be made for the retention of foreshore land to meet existing and future demand for working harbour uses,</p> <p>(f) public access along foreshore land should be provided on land used for industrial or commercial maritime purposes where such access does not interfere with the use of the land for those purposes,</p> <p>(g) the use of foreshore land adjacent to land used for industrial or commercial maritime purposes should be compatible with those purposes,</p> <p>(h) water-based public transport (such as ferries) should be encouraged to link with land-based public transport (such as buses</p>	<p>The bulk of the proposal will not occur within the foreshores and waterways area and as such these principles are of limited relevance. The private and industrial nature of the existing use precludes public access and the proposal will not alter the existing situation.</p>	NA

Provisions	Comment	Complies?
and trains) at appropriate public spaces along the waterfront, (i) the provision and use of public boating facilities along the waterfront should be encouraged.		
<i>18 Development control in the waterways</i>		
<p>This clause includes a zoning matrix. Under this matrix, 'boat repair facilities' are permitted with consent in the W1 zone. It is noted that consent can only be granted if the development:</p> <p><i>(a) is not inconsistent with the aims of this plan or the objectives of the zone in which it is proposed to be carried out, and</i></p> <p><i>(b) is not inconsistent with any other environmental planning instrument that applies to the land, and</i></p> <p><i>(c) will not otherwise have any adverse impacts.</i></p> <p>The objectives of the W1 zone are:</p> <p><i>(a) to give preference to and protect waters required for the effective and efficient movement of commercial shipping, public water transport and maritime industrial operations generally,</i></p> <p><i>(b) to allow development only where it is demonstrated that it is compatible with, and will not adversely affect the effective and efficient movement of, commercial shipping, public water transport and maritime industry operations,</i></p> <p><i>(c) to promote equitable use of the waterway, including use by passive recreation craft.</i></p>	<p>As discussed above, the proposal is considered to be only partly consistent with the aims of the plan.</p> <p>The proposal is considered to be consistent with the objectives of the W1 zone.</p>	No
Division 2 Matters for consideration		
21 Biodiversity, ecology and environment protection	The submitted documentation appears to adequately address the potential environmental impacts of the disturbance of contaminated sediments. However, the EPA still has concerns regarding the protection of the environment in relation to noise and air quality.	No
22 Public access to, and use of, foreshores and waterways	As noted above the subject site presently does not have public access and the proposal does not alter this and does not reduce the potential for this to occur in the future. The FDD is within the existing lease area and therefore does not reduce the public enjoyment of the waterway.	Yes
23 Maintenance of a working harbour	The proposal is consistent with the matters raised in this section. The site contributes to the maintenance of a working harbour and the proposal will enhance its contribution.	Yes
24 Interrelationship of waterway and foreshore uses	The proposal will maintain an equitable use of the waterway and foreshore land as the works are contained within the existing site and lease area.	Yes
25 Foreshore and waterways scenic quality	The FDD has the potential for adverse visual impacts. These have been assessed in detail by the applicant and this has been peer reviewed for Council by Architectus. This review concludes that the impacts of the FDD on the scenic qualities of the area will not be unreasonable. This is discussed further below.	Yes
26 Maintenance, protection and enhancement of views	The impact on views forms part of the visual impact assessment which as noted above,	Yes

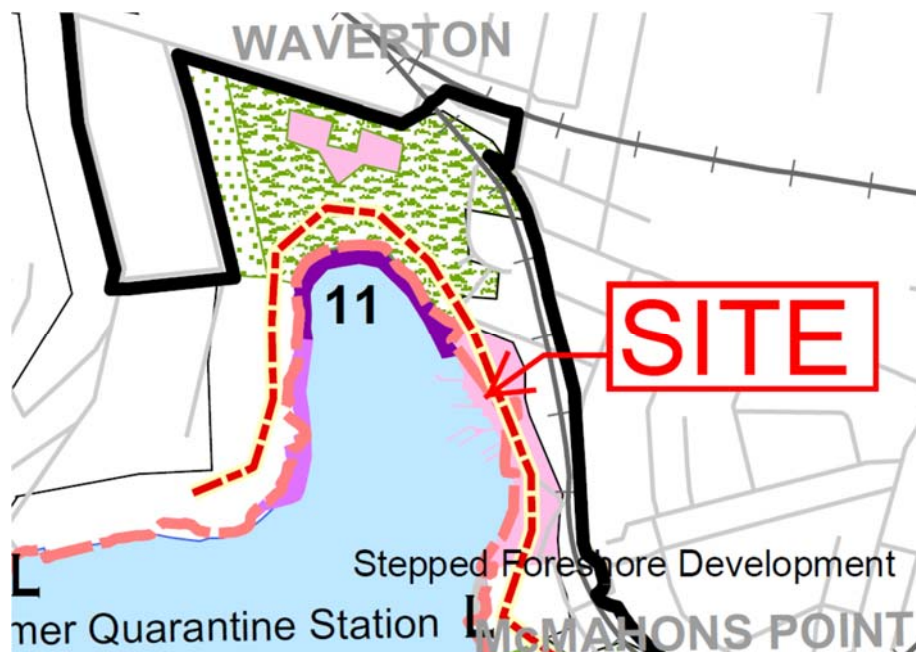
Provisions	Comment	Complies?
	has been found to be satisfactory. This is discussed further in the Issues section below.	
27 Boat storage facilities	The proposal is for boat maintenance and repair, not storage.	Yes
27A Floating boat platforms	The proposed FDD is not of lightweight materials and does not constitute a floating boat platform.	NA
27B Mooring pens	NA	NA
Division 3 Foreshores and Waterways Planning and Development Advisory Committee		
Under this division the DA requires referral to the Advisory Committee.	As noted above, the Committee has advised that they have no objections to the proposal.	Yes
36 Development on land comprising acid sulfate soils	The proposed works will not disturb acid sulfates soils within the foreshore area zoned W1.	Yes
57 Development affecting matters of Aboriginal heritage significance	The proposal has been reviewed by the Heritage Council of NSW who have not raised any concerns regarding aboriginal heritage.	Yes
58 Development affecting matters of non-Aboriginal heritage significance	The proposal has been reviewed by the Heritage Council of NSW who have raised some concerns but suggest these can be dealt with by conditions of consent.	Yes

## Sydney Harbour Foreshore and Waterways Area Development Control Plan 2005

The relevant provisions of the Sydney Harbour DCP are considered in the following table.

Provisions	Comment	Complies?
<b>2. Ecological Assessment</b>	It is considered that the applicant's assessment of impacts on the ecology of the area is satisfactory.	Yes
<b>3. Landscape Assessment</b>		
The area around the site is noted as being within Landscape Character Type 11 (see <b>Figure 9</b> ). This Character Type relates to areas having a high level of development largely comprising waterside industrial uses and having a strong visual presence within the Harbour. It noted that: the important contribution made to the vitality and diverse activity on the Harbour by these elements needs to be recognised. Development has been designed and sited with regard to the natural features of the area; their importance within the landscape character needs to be maintained.	The proposal will meet the performance criteria for this Landscape Character Type by: <ul style="list-style-type: none"> <li>Using some design and mitigation measures to minimise noise and amenity impacts between incompatible land uses. However, the details of this mitigation in relation to noise and air quality remain unsatisfactory to EPA;</li> <li>The views of the remaining natural elements along the foreshore and behind existing development will be preserved;</li> <li>The maritime nature of industrial uses on the harbour is preserved and the pressure for these uses to relocate will be minimised;</li> <li>The FDD has a height and scale compatible with existing development and maintains the the visual dominance of the industrial elements within the harbour.</li> </ul>	Yes/No
<b>4. Design Guidelines for Water Based and Land/Water Interface Developments</b>		
4.2 General requirements The following objectives and requirements must be considered: <ul style="list-style-type: none"> <li>public access to waterways and public land is maintained and enhanced;</li> <li>congestion of the waterway and foreshore is minimised;</li> <li>conflicts on the waterway and foreshore are avoided;</li> <li>the development warrants a foreshore location;</li> <li>the development does not interfere with navigation, swimming or other recreational activities;</li> </ul>	The proposal meets these requirements as it: <ul style="list-style-type: none"> <li>Does not alter public access;</li> <li>Does not result in congestion of the waterway;</li> <li>Does increase potential for waterway conflict but not to an unreasonable degree;</li> <li>Does interfere with navigation and recreational use of the bay but not to an unreasonable degree;</li> <li>Warrants a foreshore location;</li> <li>Has adequately demonstrated the demand for such a facility;</li> <li>Does not unreasonably affect the natural</li> </ul>	Yes

Provisions	Comment	Complies?
<ul style="list-style-type: none"> <li>the demand for the development has been established;</li> <li>the structure does not obstruct or affect the natural flow of tides and currents;</li> <li>development does not dominate its landscape setting;</li> <li>the extent of development is kept to the absolute minimum necessary to provide access to the waterway;</li> <li>shared usage of facilities is encouraged to minimise the number of structures and their cumulative impact on the environment of the Harbour and its tributaries; and</li> <li>development is setback at least 2.5 metres from the division of the waterway as established by the NSW Maritime Authority and illustrated in Figure 4.</li> </ul>	<p>flow of tides and currents;</p> <ul style="list-style-type: none"> <li>Does not dominate its landscape setting which is chiefly characterised by the existing boat repair facilities and other infrastructure;</li> <li>Keeps the extent of development to the minimum possible</li> <li>Is setback as per requirements.</li> </ul>	
4.3 Foreshore access	As noted above the existing access is not affected.	Yes
4.4 Siting of buildings and structures	The proposal is considered appropriate in this regard.	Yes
4.5 Built form	The proposal is considered appropriate in this regard given the nature of the use and the context to the existing boat repair facility.	Yes
<b>5. Design Guidelines for Land Based Developments</b>	These provisions have minimal relevance as only very minor work is intended on the land component of the subject site.	
5.8 Waterfront Industry	Whilst not strictly applicable to the proposed FDD, the bulk of the proposed structure is less than the max 10m building height referred to in this section. In relation to colours, the land based infrastructure would be required to be painted in accordance with this section. For the FDD itself the independent visual assessment recommended a number of colour changes to make the FDD more recessive within the view (see further discussion below).	Yes



**Figure 8 – Sydney Harbour DCP  
Ecological Communities and Landscape Character Map**



Given the nature of the proposal, the numeric controls of NSLEP 2013 and DCP 2013 are of minimal relevance and as such a compliance table is not appropriate. The relevant provisions of these documents are considered below.

### **Permissibility within the zone**

The land component of the site is part zoned IN4 Working Waterfront and is partly unzoned land. The proposed air quality infrastructure within the land component of the site is part of the 'boat repair facility' use, which is permitted in the IN4 and the unzoned part of the site. As required by Clause 2.4 of the LEP relation to unzoned land, the proposal:

- will not adversely impact on adjoining zoned land (ie the IN4 land) and is compatible with the objectives of that zone, and
- is appropriate and is compatible with permissible land uses in the adjoining IN4 land.

That part of the proposal within the IN4 zone is considered to be generally consistent with the objectives for this zone as:

- it provides an appropriate type of light industrial use;
- it encourages employment opportunities;
- it supports and protects industrial land for industrial uses;
- it is compatible with the scale and character of the surrounding residential area.

However the proposal does not adequately demonstrate that it minimizes *“any adverse effect of industry on other land uses.”*

### **Building height**

That part of the site zoned IN4 is subject to a 10m height limit. The proposed works within this area (which do not include the FDD) do not exceed 10m. It is also noted that the bulk of the height of the FDD is less than 10m and so is commensurate with the height of a structure that is permitted within the IN4 zone.

### **Development below mean high water mark**

Clause 5.7 of the LEP requires consent to carry out development on any land below the mean high water mark of any body of water subject to tidal influence (including the bed of any such water). Further the objective of the clause is noted to be *“to ensure appropriate environmental assessment for development carried out on land covered by tidal waters.”* As noted above, EPA is of the view that the environmental assessment undertaken by the applicant is inadequate.

### **Heritage conservation**

The heritage impacts of the proposal on the site (a local heritage item under the LEP) and surrounding heritage items have been assessed by the applicant and reviewed by the NSW Heritage Council who have raised no objection subject to conditions.

### **Development on land in Zone IN4**

Clause 6.8 of the LEP notes that consent cannot be granted:

- if the proposed development is inconsistent with:
  - (i) *the size of the site and the part of the waterway where the development is to be situated, particularly in relation to the number, size and draft of any boats to be moored, or*
  - (ii) *the proximity, scale and height of surrounding development, or*
  - (iii) *the scenic, environmental and cultural qualities of the site and its surrounding area, or*
- if the proposed development is likely to have a significantly adverse effect on:
  - (i) *public views and views from surrounding properties, or*
  - (ii) *natural features on or adjoining the site, such as cliff lines, bushland and significant trees.*

It being noted that the area containing the FDD is not subject to the LEP provisions, the ancillary air quality works are considered to meet the above requirements.

### DEVELOPMENT CONTROL PLAN 2013

The DCP is of limited relevance as it only applies to the land based work and contains few provisions that relate to the type of development proposed. No increase in staff or deliveries are proposed and existing parking provided on site is consistent with previous approvals and DCP requirements.

In regard to waste management, the DA is accompanied by a Waste Management Report that indicates that an increase in operational waste can be expected and accordingly extra facilities will be required. This can be dealt with by appropriate conditions of consent.

In relation to heritage, the relevant matters have been previously addressed.

The DCP provisions of greatest relevance are in the Character Statement for the 'John Street Waterfront Neighbourhood' which comprises the site and the adjoining railway land. The provisions of this part of the DCP are addressed in the following table.

Provision	Comment
<b>10.8.1 Significant Elements</b>	
<b>Land Use</b>	
P1 Maritime industrial and commercial activities.	The proposal is consistent with this land use.
<b>Topography</b>	
P2 Generally flat below a large man-made sandstone cliff.	Noted.
<b>Natural Features</b>	
<b>P3 Berrys Bay.</b>	
<b>Views</b>	
P4 The following views and vistas are to be preserved and where possible enhanced: (a) views to Sydney Harbour and beyond.	Whilst not strictly relevant to the FDD, it is considered that even considering the FDD, the views to the Harbour are reasonably maintained.
<b>Identity / Icons</b>	
P5 Berrys Bay.	Noted.
P6 Sandstone cliff.	Noted.
P7 North Shore railway line.	Noted.
<b>Subdivision</b>	
P8 Large consolidated parcels.	Noted.
<b>Streetscape</b>	
P9 Munro street is narrow with no on-street parking and fully paved verges.	The proposal has no impacts on streetscapes.

Provision	Comment
P10 John Street is narrow with fully vegetated verges and double rail timber fences.	The proposal has no impacts on streetscapes.
P11 Buildings built close to the boundary with a low masonry wall and cycle fencing above.	The proposal has no impacts on streetscapes.
<b>10.8.2 Desired Future Character</b>	
<b>Diversity</b>	
P1 Waterfront industrial buildings and structures, hard stand, wharves and jetties, administrative buildings, car parking.	The proposal is consistent with this use.
<b>Access</b>	
P2 Providing continuous public access along the foreshores of Berrys Bay via railway land.	The proposal does not limit achievement of this outcome.
<b>10.8.3 Desired Built Form</b>	
<b>Form, massing and scale</b>	
P1 Large scale industrial buildings reflective of their foreshore location.	Whilst the FDD is not subject to these provisions, if it were, it would be consistent as it has the appearance of a large scale industrial structure.
P2 Building height is minimised to preserve public and private views.	Whilst the FDD is not subject to these provisions, if it were, it would be consistent as it has the appearance of a large scale industrial structure and is generally lower than the 10m height permitted.
P3 The height of buildings generally kept below cliff lines where possible on low terraces adjoining the foreshore.	Whilst the FDD is not subject to these provisions, it is lower than the cliff line.
P4 Large open areas including landscaping and hard stand areas.	The proposal does not affect open space.
<b>Siting</b>	
P5 Buildings are generally located against the cliff with a setback from the cliff for access and maintenance.	Noted.
P6 Areas adjacent to the foreshore are generally free of buildings.	No buildings are proposed near the foreshore.
<b>Fences</b>	
P7 Open fencing screened with landscaping.	Noted.
<b>Colours and materials</b>	
P8 Modern, lightweight materials.	Noted.
<b>Roof</b>	
P9 Flat or curved.	Whilst the FDD is not subject to these provisions, if it were, it would be consistent as it has a flat profile.
P10 Flat roofs to preserve views where appropriate.	Whilst the FDD is not subject to these provisions, its flat profile minimises view impacts.
<b>Car accommodation</b>	
P11 To be screened from public view with landscaping.	No new parking is proposed.

## ALL LIKELY IMPACTS OF THE DEVELOPMENT

In addition to the above the following issues require further discussion.

### Visual impact

An independent assessment of visual impact has been undertaken on behalf of Council by Architectus. Their report on the original DA concluded that the visual impacts of the proposal were acceptable and their revised assessment for the amended plans (including acoustic curtains), maintains this conclusion. A summary of the findings is provided below.

*Based on the review undertaken, the most significant impacts are as follows:*

*Public domain views within the vicinity of the site include most significantly impacts to the north and west of Berrys Bay. Moderate impacts to views of moderate or moderate-high importance assessed include:*

*P6 from Waverton Park (soccer field); and  
P7 from Larkin Street (centre).*

*Although the proposal is visible and has a level of prominence in these public domain views, the key elements of importance within the existing views are retained, including views to the water, the Sydney CBD skyline and landforms. One further view (P5) from John Street has low-moderate importance but a high view change as it is directly in front of the site.*

*Private views of high importance that are anticipated to be most impacted by the proposed development (moderate-high impact) are views from the north of the site along John Street, including:*

*View P10 from 1/11 John Street;  
P11 from 11/9 Commodore Crescent;  
P12 from 5 Commodore Crescent.*

*There is one further view assessed as a moderate-high impact (P14) however this is of moderate importance as it is from a bedroom which is not considered as important as a primary living space under the 'Tenacity' principles. There are a range of other locations that have been assessed as moderate impact on a high importance view, both from the north around John Street / Commodore Crescent (P8, P13, P15) and from the south along Munro Street (P3, P16, P17).*

The suggested mitigation measures to ensure an acceptable impact are as follows. The report concludes that subject to these measures, *"the development is appropriate and acceptable with regard to its impact on both public domain and private views."*

- Painting the FDD and ensuring that the acoustic curtains are a dark blue or green colour, rather than pale grey;
- Painting the hand rails of the FDD a colour that blends with the marine environment, rather than yellow;
- No flood lighting or security lighting permitted.

## **ENVIRONMENTAL APPRAISAL**

## **CONSIDERED**

1.	Statutory Controls	Yes
2.	Policy Controls	Yes
3.	Design in relation to existing building and natural environment	Yes
4.	Landscaping/Open Space Provision	Yes
5.	Traffic generation and Carparking provision	Yes
6.	Loading and Servicing facilities	Yes
7.	Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8.	Site Management Issues	Yes
9.	All relevant S4.15(1) considerations of Environmental Planning and Assessment Act 1979	Yes

## **SUBMITTERS CONCERNS**

The relevant concerns of submitters have largely been addressed in this report. Additional comments are provided below:



Excessive pollution – the EPA have considered this issue generally and only have concerns regarding air quality and noise impacts.

Construction impacts – Construction impacts would be minimal as the FDD will be brought to the site by water. Impacts can be appropriately managed by way of conditions of consent.

Inconsistencies, distortions, errors and lack of detail in DA, EIS and supporting documentation – the information provided is generally satisfactory however there are some elements which are not satisfactory as noted in the reasons for refusal.

Danger of accidents and risk to residents and users of small craft such as kayaks – the proposal has the potential to increase boat movements in Berrys Bay but the increase would not be significant given the average time a vessel will spend on the FDD.

Not consistent with Greater Sydney Commissions proposal of Green Grid – there is no opportunity for open space or public access within the developed part of the site if the current use is to continue. However, the land is owned by the State Government and although public access through the undeveloped part of the site has previously been assessed and found to be unachievable, this could be further investigated.

Parking problems and traffic issues – the proposal will not increase parking demand.

Economic justification is flawed – no formal economic report has been submitted and the SEAR's for the project did not include any requirement for an economic assessment. The applicant has adequately demonstrated the need for such a facility in Sydney Harbour.

Lack of evidence about safety, licensing etc of FDD – the operation of the FDD will need to be in accordance with the relevant maritime safety standards and licenses.

Over industrialisation – the proposed development including the FDD occur within the current lease area and the scale of the development is in keeping with what can be expected given the W1/IN4 zoning.

Precedent – the proposal is very unique and does not set a precedent.

Impact of wash – this has been assessed by the applicant and concluded to be acceptable.

Poor/lack of consultation with community – the applicant consulted with two precinct groups prior to submitting the DA and the DA was notified on two occasions.

## **CONCLUSION**

The proposal is considered to be acceptable in principle but has failed to adequately demonstrate that it can be undertaken without an adverse impact on the surrounding environment as detailed in the reason for refusal.

## **RECOMMENDATION**

**THAT** the Sydney North Planning Panel, as the consent authority, refuse Development Application No.57/19 for the provision of a Floating Dry Dock and ancillary works including demolition of existing structures at No. 6 John Street McMahons Point, for the following reasons:

1. The application has failed to adequately address the potential air quality and noise impacts of the proposal as detailed in the letter from the Environment Protection Authority (EPA) dated 5 June 2020. In the absence of EPA's General Terms of Approval for the application, pursuant to Section 4.47 of the Environmental Planning and Assessment Act, development consent cannot be granted.

2. The application does not satisfy the requirements of Schedule 2 of the Environmental Planning and Assessment Regulation 2000 in that the submitted Environmental Impact Statement (EIS) does not adequately address the Planning Secretary's Environmental Assessment Requirement's (SEAR's). In this regard, the requirements of the EPA have not been satisfied and the required consultation with all the relevant authorities referred to in the SEAR's has not been undertaken.
3. In the absence of adequately demonstrating adverse air quality and acoustic impacts, the proposal is contrary to the provisions of Sydney Regional Environmental Plan (Sydney Harbour Catchment), 2005 Sydney Harbour Foreshore and Waterways Area Development Control Plan 2005 and North Sydney Local Environmental Plan 2013.
4. The application fails to adequately address the requirements of State Environmental Planning Policy No 33—Hazardous and Offensive Development in that a Preliminary Hazard Analysis has not been undertaken
5. The proposal is not in the public interest as it has not adequately demonstrated that the potential air quality impacts, acoustic impacts and impacts from hazardous materials, can be suitably mitigated .

**Brett Brown**  
**CONSULTANT PLANNER**

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**Note by Manager Development Services.**

This report has been reviewed for content, quality and completeness and is considered to be of appropriate standard for the consideration of the Sydney North Planning Panel. No material alteration has been made to the original drafting of the report and it may be considered an independent assessment of this Development Application.

**Stephen J Beattie**  
**Manager Development Services**

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