

COUNCIL ASSESSMENT REPORT
SYDNEY EASTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSEC-304 – DA/2023/1125
PROPOSAL	Integrated development for construction of a two-storey community facility including rowing boatshed, public boat launching pontoon, kiosk and ancillary spaces.
ADDRESS	Part Lot 120 DP 1279860 – 66-68 Mary Street LILYFIELD
APPLICANT	Barbara Ramjan
OWNER	Crown Lands
DA LODGEMENT DATE	27 December 2023
APPLICATION TYPE	Development Application (Integrated)
REGIONALLY SIGNIFICANT CRITERIA	Section 2.19(1) and Clause 5 of Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> declares the proposal regionally significant development as: Private infrastructure and community facilities over \$5 million
CIV	\$9,350,821 (excluding GST)
CLAUSE 4.6 REQUESTS	N/A
KEY SEPP/LEP	<ul style="list-style-type: none"> • <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> • <i>State Environmental Planning Policy (Sustainable Buildings) 2022</i> • <i>State Environmental Planning Policy (Planning Systems) 2021</i> • <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> • <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> • <i>Crown Land Management Act 2016</i> • <i>Inner West Local Environmental Plan 2022</i> • Leichhardt Development Control Plan 2013 • Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005

TOTAL & UNIQUE SUBMISSIONS ISSUES SUBMISSIONS	135 submissions (119 in support 16 in opposition)
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> • Attachment A: Reasons for refusal • Attachment B: Draft Conditions of consent • Attachment C: Architectural Excellence Design and Review Panel minutes • Attachment D: Architectural Plans • Attachment E: Public domain plan • Attachment F: Access Report • Attachment G: Plan of Management (revised) • Attachment H: Traffic Report • Attachment I: Foreshore Risk Management Report • Attachment J: Heritage Interpretation Plan - signage
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	N/A
RECOMMENDATION	Refusal
DRAFT CONDITIONS TO APPLICANT	N/A
SCHEDULED MEETING DATE	7 November 2024
PLAN VERSION	29 September 2024 Rev A and 26 July 2024 Rev C
PREPARED BY	Annalise Ifield
DATE OF REPORT	24 October 2024

EXECUTIVE SUMMARY

This report is an assessment of the application for an integrated development for construction of a two-storey community facility including rowing boatshed, public boat launching pontoon, kiosk and ancillary spaces primarily on water within Iron Cove with a land/water interface to Leichhardt Park, Lilyfield.

Leichhardt Park is known for recreational spaces such as the Bay Run path and its water views and scenic qualities. The park and sea wall are listed as separate heritage items. The site experiences tidal flooding and contamination risks associated with past land uses/ and reclamation. Leichhardt Park Plan of Management and Master Plan is the key document which directs the future vision, planning, management and use of the park and includes the provision for a potential community rowing club.

During the assessment process, Council made a request for further information and design amendments. Additional information was submitted which has not adequately addressed the main issues and no amendments have been made to the design.

The main issues that have arisen during the assessment of the application include:

- The visual impact on Leichhardt Park foreshore as a result of the location, size and scale of the structure
- Conflict with the foreshore uses and interference with other recreational activities within Leichhardt Park in particular from the transportation of boats
- Access arrangements given the emphasis on accessibility
- Permissibility of the kiosk component associated with a community facility
- Impacts on trees and vegetation
- Operational impacts from the first floor multipurpose space

The proposal does not comply with the aims, objectives and design parameters contained in *State Environmental Planning Policy (Biodiversity and Conservation) 2021*, *Inner West Local Environmental Plan 2022*, Leichhardt Development Control Plan 2013, and Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005.

It is considered that the development in its current form would result in adverse impacts on Iron Cove, Leichhardt Park and surrounds and therefore, is not considered to be in the public interest.

A proposal of a reduced scale and intensity, for example single storey form, would reduce potential conflict and lessen the visual impact on Leichhardt Park which would likely satisfy the relevant provisions.

1. THE SITE AND LOCALITY

1.1 The Site

The proposed development is located on the western foreshore of Leichhardt Park, Lilyfield. The site is partly on land and partly over the waters of Port Jackson's, Iron Cove. The proposed two storey building will sit on piles over the water in Iron Cove with a land interface and access via Leichhardt Park. The land portion of the site is legally described as Lot 120, DP1279860. The development footprint is irregular in shape and has an area of approximately 1,765 square metres (sqm).

The proposed development is located approximately 80m to the north of the Maliyawul Street public carpark and approximately 15m to the west of The Bay Run path which continues in a north easterly direction through the park. Leichhardt North light rail stop is approximately 1km to the south.

The land adjacent to the proposed development is currently an open grassed area. There is a playground, an outdoor fitness station, amenity block and sports field in proximity to the proposed development. Existing major facilities within Leichhardt Park include Leichhardt Park Aquatic Centre and Leichhardt Oval are located to the east.

The land-based portion of the site is subject to flooding due to tidal inundation from Iron Cove. The site and seabed are identified as acid sulfate soils and are likely contaminated due to past industrial use and reclaimed foreshore land. The land-based portion of the site is identified as a heritage item being Leichhardt Park, including Leichhardt Ovals and Aquatic Centre, including interiors, (I1197 in Schedule 5 of the *IWLEP 2022*). The seawall is also listed as a heritage item (31 within Schedule 5, Sydney Harbour Heritage Items in the *Biodiversity and Conservation SEPP 2021*).

Both the land and water components are Crown Lands, with the Crown Land Manager (CLM) for the water being Transport for NSW, and the CLM for Leichhardt Park being Inner West Council, Crown Land Reserves are owned by the State of New South Wales (NSW).



Figure 1: Context Plan of Iron Cove (Source: Hill Thalys)

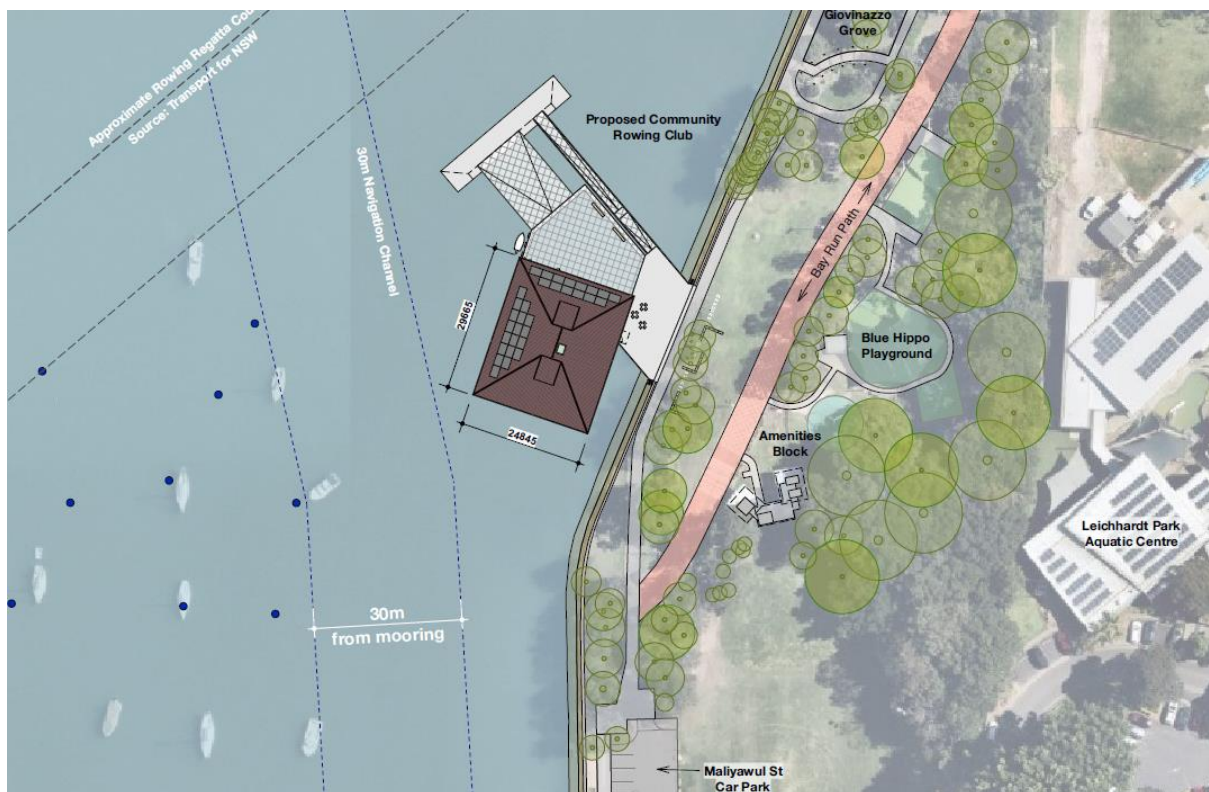


Figure 2: Site Plan showing proposed development location (Source: Hill Thalys)



Figure 3: Context Perspective (Source: Hill Thalís)



Figure 4: View from Haberfield Rowers Club carpark towards Leichhardt Park (Source: Hill Thalís)



Figure 5: View from Rodd Point towards Leichhardt Park (Source: Hill Thalís)



Figure 6: View of Leichhardt Park Foreshore at sunset (dated 12 March 2024)



Figure 7: View of Leichhardt Park Foreshore in use (dated 25 April 2024)

1.2 The Locality

Iron Cove is surrounded by the suburbs of Birchgrove, Balmain, Rozelle, Lilyfield, Haberfield, Five Dock, Rodd Point, Russell Lea and Drummoyne. Parklands predominantly line the eastern foreshore including Leichhardt Park, Callan Park and King George Park.

Leichhardt Park is a large public park within the Inner West Council area, and provides users access to open space with water views within a landscape setting. The shoreline defined by a heritage listed seawall, with a heavily vegetated backdrop. Leichhardt Park includes

approximately 2km of foreshore and is a significant recreational precinct catering for both active and passive recreational uses, and includes a range of facilities, including skate park, aquatic centre, three ovals including Leichhardt Oval.

Following the Iron Cove shoreline is a 7km continuous path which is crossed at the Iron Cove Bridge, known as The Bay Run. This path is considered regionally significant and popular with walkers, runners and cyclists, attracting up to 5,000 people per day.

Within Iron Cove, there are limited structures within or beyond the foreshore, but does include, the two storey UTS Haberfield Rowing Club formed in 1925, and the two storey Leichhardt Rowing Club located at the end of Glover Street (approximately 500 metres (m) northeast of the proposed development), established in 1886.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposal seeks consent for the construction of a two-storey 'community facility' including rowing boatshed, publicly accessible boat launching pontoon, kiosk and ancillary spaces.

Specifically, the proposal involves:

- Partial demolition of the sea wall and park footpaths
- Construction of a two-storey community facility on piers used for the purposes of a rowing club. Including:
 - Ground floor containing boat storage, WC, kiosk, stairs, ramp to first floor
 - First floor containing multipurpose community room, indoor rowing room/training area, main WC and change rooms, office area, kitchen facilities, and deck area
 - The proposal also includes a publicly accessible floating launching pontoon, two gangways, and a forecourt area/bridge connecting the development to Leichhardt Park
- Public domain works to Leichhardt Park including:
 - Rerouting the Bay Run path and path widening
 - Removal of approximately 12 trees
 - Removal of a portion of handrail along foreshore
 - Reinforcement to grassed area used as a temporary trailer rest area
 - Path resurfacing and relocation of sea wall sandstone blocks to the park
 - New community notice board
 - Associated landscaping.
- Operational details including:

- The club has an estimated maximum capacity of 200 active (rowing) members
- Rowing activities (and the opening of the boat shed) are anticipated primarily between 5.00am and 9.00am on weekdays and between 6.00am and 11.00am on weekends however the facility is available for use by members “during most daylight hours and in the early mornings”. Opening and closing of the boat shed and other facilities will be managed by club members.
- Seasonal off-water training sessions are anticipated between 3.00pm and 7.00pm daily for up to 30 members.
- The first floor multipurpose space will include events such as ‘club meetings’ and for ‘community organisations’ and for community uses such as yoga or Scouts. It is anticipated that the multipurpose space will be used 2-3 times a week, for up to 100 persons, specific times of use have not been nominated.
- Kiosk trading hours are between 6:00am and 3:00pm
- It is anticipated that not more than one annual regatta will be held. The regatta will involve multiple rowing clubs and spectators. The number of attendees unspecified.
- Loading and unloading of boats will require a car towing a boat trailer to the end of Maliyawul Street, then tethering/untethering their boat trailer, and walking the trailer across the Bay Run to/from a temporary ‘trailer rest area’ in the park. The boats are then hand carried to the facility. It is anticipated that loading and unloading would occur up to once per fortnight and on a “‘as-needs’ basis....for repair”.

Note: No approval is being sought for the tables, chairs and umbrellas on the forecourt/Leichhardt Park, and no boat mooring within the water.

Table 1: Development Data

Control	Proposal
Site area	Approximate area occupied below MHW: 1,763sqm
GFA	897sqm
FSR	N/A
Clause 4.6 Requests	N/A
No of apartments	N/A
Max Height	13m (Max RL 12.77 AHD)
Landscaped area	N/A
Car Parking spaces	Nil
Setbacks	N/A

2.2 Background

2.2.2 Leichhardt Park Plan of Management and Master Plan timeline

- On 31 July 2019, at the request of the Balmain Para rowing, Council staff nominated a location for a community rowing club in the Leichhardt Park Plan of Management and Master Plan. The facility and location were to be subject to approval and further investigations.
- 28 April 2020, the Council endorsed the draft Leichhardt Park Plan of Management and Master Plan.
- 27 September 2020, the Crown reviewed the draft Leichhardt Park Plan of Management and Master Plan and confirmed it satisfied the requirements under section 3.23 of the *Crown Land Management Act 2016*.
- 12 September 2020, the draft Leichhardt Park Plan of Management and Master Plan was publicly exhibited to the community. Key community issues contained in the Engagement Report relevant to the subject application include:
 - *There were competing views on the Para rowing facility, from strong support to strong opposition. Responders commented that the rowing facility was supported by Leichhardt Rowing Club, however there was also strong opposition from some local residents about disrupting views from the park and closing in and the loss of open space.*
 - *Some responses questioned the need for a separate rowing facility when Leichhardt Rowing Club is already located in the park. The responses requested that the Para Rowing facility be included in an expanded version of the existing rowing club.*
 - *Council officers have also previously highlighted concerns in relation to the impact that this facility will have on the Iron Cove Bay Run in this location. This will need to be carefully assessed in any future Development Application submitted by NSW Para-Rowing.*
- 10 November 2020, the Council adopted the final Leichhardt Park Plan of Management and Master Plan.

2.2.2 Final Plan of Management and Master Plan details

The below figure indicates the potential location for a new rowing club, numbered 16 and described as follows:

16. Location for potential community rowing club as proposed by Balmain Para Rowing, subject to approval. Impact of rowing facility at this location to be further investigated by Council. Community rowing club to be delivered by others (not by council.)



Figure 8: Excerpt from Leichhardt Park Plan of Management and Master Plan (page 54)

Additional relevant comments in relation to a proposed rowing club were included in the Leichhardt Park Plan of Management and Master Plan_numbered 17 and 18 described as follows:

17. Option to relocate a segment of the Maliyawul Street Car Park to Peace Park to consolidate and increase public open green space within Leichhardt Park. Ensure that there is no loss of the existing car parking capacity (refer to Zone 4 for relocated parking location). Establish an area of new public open green space adjacent Leichhardt #3 that can be used for sports warm-up, spectating, dog walking and general passive recreation. Service vehicle access can be permitted from northern end of Maliyawul Street for maintenance or emergency purposes. Note: this proposal will not occur should the community rowing club proposal proceed at the location indicated (Zone 1, 16).

18. Rectification of the existing Bay Run pinch point afforded by the relocation of a segment of Maliyawul Street Car Park (17). If relocating segment of the car park is not undertaken, the pinch point should be addressed through the remove the dog-leg of the existing shared path at the northern end of Maliyawul Street and creation of a smooth transition by altering the northernmost end of the existing car park as required.

The following note is included on page 44 of the Leichhardt Park Plan of Management and Master Plan:

While the provision of an accessible point for the community ingress to Iron Cove is recommended, the location suggested is not considered to be ideal due to the impact on the surrounding areas of parkland which are already heavily utilised and fairly congested.

2.2.3 Consistency with the Leichhardt Park Plan of Management and Masterplan

It noted that the current proposal's location varies from the original site proposed by the applicant and adopted in the masterplan. In this regard, the proposal has shifted approximately 45m north, further away from the Maliyawul Street carpark. It is understood this variation is in response to the navigational channel within the waterways.



Figure 9: Applicants original submission for the Masterplan (source: Community Rowing Club)



Figure 10: Except of Site Plan showing proposed development location (Source: Hill Thalys)

2.2.4 Pre-development Application (PDA/2022/0330)

On 21 November 2022 a pre-development (PDA) meeting was held. On 6 February 2023, written formal advice issued. The main issues raised included:

- Permissibility across two zones
- Contamination
- Integrated development
- Siting and location of the development
- Consistency with the Plan of Management and Masterplan

In summary the advice concluded:

Council has undertaken an assessment of your concept proposal and it is considered that in principle, a rowing facility that incorporates inclusion and accessibility standards will be of benefit to the community. However, the siting and location of the of the facility needs to be reviewed and further analysis undertaken to address the proposed impacts in terms of alienation of public use of that elongation of the waterfront, interference with public access to The Bay Run, pedestrian safety and conflict and traffic and parking impacts. Given the lack of direct and discrete vehicle access to the site Council holds considerable concern that the intended use would result in conflicts with other users of the parkland.

It is recommended that the development concept be incorporated as a partnership with one of the nearby rowing clubs, i.e., Leichhardt Rowing Club or the UTS Rowing Club ameliorate the above impacts and promote inclusion and economies of scale.

Also, it is considered that a single storey form with reduced ceiling heights and low-pitched roof would minimise the overall bulk and height of the building and minimise the overall visual impacts from the waterway and the foreshores.

In this regard, it is unlikely that the current form of the would be supported.

2.2.5 Application History

The development application was lodged on **27 December 2023**. A chronology of the development application since lodgement is outlined below including the Panel's involvement with the application:

Table 2: Chronology of the DA

Date	Event
9 January 2024	DA referred to external agencies
17 January 2024	Exhibition of the application

6 February 2024	Community information session held for the public
6 February 2024	Preliminary Planning Panel briefing by applicant
21 February 2024	End of public exhibition period
22 March 2024	Internal referrals completed
18 April 2024	<p>In person meeting with Applicant and team to discuss issues around public domain impacts.</p> <p>It is noted Council was open to exploring a number of solutions that the applicant may have had and requested to reconvene once options prepared.</p>
23 April 2024	Planning Panel briefing by Council
22 May 2024	Architectural Excellence Design and Review Panel (AEDRP) held, where with Applicant and team presented
29 May 2024	<p>Request for further information issued from Council to applicant to address the following matters:</p> <ol style="list-style-type: none"> 1) Siting and Location of the Development 2) Traffic and Parking 3) Fisheries Management 4) Contamination 5) Acid Sulfate Soils 6) Kiosk permissibility 7) Visual Impact 8) Foreshore Risk Management 9) Heritage Interpretation 10) Urban Ecology 11) Essential services 12) Plan of Management 13) Sustainable Buildings SEPP 14) General documentation matters
2 July 2024	The applicant was disinclined to meet with Council prior to submission of additional information despite requests by Council.
8 August 2024	Amended plans and additional information lodged. The design and built form remained unchanged. The following new or revised information was submitted:

	<ul style="list-style-type: none"> • Preliminary site investigation • Acid sulfate report • Marine pollution report • Public domain works plans • Heritage interpretation plan • Water and waste water report • Supply of electricity letter • Revised plan of management
6 September 2024	Traffic Impact Assessment submitted.
17 September 2024	Re-notification of the application.
17 September 2024	<p>Online meeting with Applicant and team to discuss response to request for additional information.</p> <p>A number of outstanding issues were raised with the applicant including (but not limited to):</p> <ul style="list-style-type: none"> • Visual impact and scale • Response to AEDRP • Kiosk permissibility • Sustainable Buildings SEPP • Loading zone within the park • Public domain and operational matters
18 September 2024	<p>A second Request for further information issued from Council to applicant to address the following resolvable matters:</p> <ol style="list-style-type: none"> 1) Kiosk permissibility 2) Sustainable Buildings SEPP 3) Mean High Water Mark
8 October 2024	<p>Additional information was lodged. The following new or revised information was submitted:</p> <ul style="list-style-type: none"> • Response to AEDRP comments including single storey footprint view loss plan • Embodied Emissions Material Form • Amended floor plan calculating sqm for each room

17 October 2024	End of re-notification of the application
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3. STATUTORY CONSIDERATIONS

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
 - (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,*
- (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,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below. It is noted that the proposal is considered to be Integrated Development (s4.46) under the *Fisheries Management Act 1994*; as the construction of building may involve removal, damage and destruction of marine vegetation on public water, land or on the foreshore of any such land or lease. General Terms of Approval have been issued by the Department of Primary Industries – Fisheries and in the event of approval, form part of the recommended conditions of consent.

3.1 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulation are considered below.

(a) Section 4.15(1)(a)(i) – Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Sustainable Buildings) 2022*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Inner West Local Environmental Plan 2022*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 3** and considered in more detail below.

Table 3: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Complies
<i>SEPP (Biodiversity & Conservation) 2021</i>	• Chapter 2: Vegetation in non-rural areas	No
	• Chapter 6: Sydney Harbour Catchment	No
<i>SEPP (Sustainable Buildings) 2022</i>	• Chapter 3 Standards for non-residential development	Yes
<i>State Environmental Planning Policy (Planning Systems) 2021</i>	• Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 5 of Schedule 6.	Yes
<i>SEPP (Resilience & Hazards)</i>	• Chapter 2: Coastal Management	Yes
	• Chapter 4: Remediation of Land	Yes
<i>Inner West Local Environmental Plan 2022</i>	• Refer to separate table below.	No
Leichhardt Development Control Plan 2013	• Refer to summary table in attachment C	No

Consideration of the relevant SEPPs is outlined below:

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*

Chapter 2 Vegetation in non-rural areas

Chapter 2 of the *State Environmental Planning Policy (Biodiversity and Conservation) 2021* (SEPP (Biodiversity & Conservation) 2021) relates to the protection/removal of vegetation and gives effect to the local tree preservation provisions of C1.14 *Tree Management* of the *Leichhardt Development Control Plan 2013* (LDCP 2013). The following relevant aims, objectives and controls are provided below:

2.1 Aims of Chapter

- *The aims of this Chapter are—*
 - (a) *to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and*
 - (b) *to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.*

C1.14, LDCP 2013

- *O3 To protect trees within and adjacent to development sites and to ensure that all new development provides an opportunity for existing and new trees to grow.*
- *O4 To manage the urban landscape so trees continue to make a significant contribution to its quality, character, and amenity.*
- *O5 To maintain and enhance the amenity of the Inner West Local Government Area through the preservation of appropriate trees and vegetation.*
- *C8 The following matters will be considered when determining an application to remove or prune a prescribed tree:*
 - i. *Danger/Safety Risk Assessment*
 - ii. *Property Damage*
 - iii. *Condition / health of the tree*
 - iv. *Tree species,*
 - v. *Significance within the Landscape and/or Streetscape*
 - vi. *Termites*
 - vii. *Other criteria*
- *C10 A replacement tree/s must be planted to replace any prescribed tree approved for removal. This will enable Council to effectively retain and maintain the urban forest canopy across the Inner West. Replacement trees are to be located on the same site as the tree removal, as determined by Council.*
- *C13 All development proposals must be designed to maintain or improve the urban forest values of the site by minimising the impact on tree/s and planting replacement tree/s for tree/s that are proposed for removal. This requirement applies to Council owned trees as well as trees on private or other property and adjoining land.*

An assessment of the proposed development has identified the following impacts to trees:

- The public domain improvement plan prepared by Hill Thalys Architecture + Urban Projects Pty Ltd, dated 31 July 2024 has identified 12 trees for removal, and will encroach into the Tree Protection Zones of a number of adjacent trees.
- The Water & Wastewater Report, prepared by Acor, dated 17 July 2024 has identified the water supply connection location in close proximity to a heritage listed Fig Tree (I1201 under *IWLEP 2022*) located towards Mary Street.

- Vehicle access, and boat trailer movements within the park including swept paths have not been submitted which may result in further tree impacts/removal within the foreshore of Leichhardt Park.

An Arboricultural Impact Assessment and/or site-specific Tree Protection Plan has not been submitted for the proposal. As such, insufficient information is available to demonstrate the development protects the biodiversity values of trees and preserves the amenity of the area.

There are approximately 49 *Casuarina sp.* Trees in the vicinity of the Bay Run path at the end of the Maliyawul Street carpark. These trees are generally in good health and fair condition, providing over 900sqm of canopy cover. While individually they are not particularly noteworthy, the cluster of trees in this location is significant to this portion of the park. They provide a screen to the end of the carpark from within the parklands, providing a visual barrier and creating a visual 'gateway' to the park. Furthermore, they provide shade, cooling and wind protection for this portion of the Bay Run, and enhance the aesthetic appeal and tranquillity of the area.

Council acknowledges the shared desire to widen the adjacent portion of the Bay Run path, and that any such works would result in tree impacts (including tree removal) at the end of the Maliyawul Street carpark. This work would be developed in consultation with a suitably qualified arborist to minimise the number of trees to be removed and demonstrate the viable retention of the remaining trees. In this regard, it is noted that Leichhardt Park has limited capacity for replacement plantings, due the need to balance open spaces, sporting fields, and future tree growth of recent plantings. Therefore, minimising tree loss is an important objective for any future proposal to ensure the park remains vibrant and functional for the community.

In addition to the above, a site-specific Tree Protection Plan will need to address construction vehicle access including proposed routes to be taken to facilitate construction within the park space. Any plan should outline the proposed routes for vehicles and also include comment on any proposed under pruning (in compliance with AS4373 – *Pruning of amenity trees*) required to allow for vehicular access and shall allow for raising of a truck tipper body (if necessary). The plan must also include a designated materials drop off/storage point located clear of any tree protection zone.

Regarding the Fig Tree located towards Mary Street, concern is raised that the connection of associated utilities will have a detrimental impact on this tree. It is noted that this tree is an individually listed heritage item (I201). An arborist would be required to investigate and review the proposed utility installation plans to confirm a workable solution that would not be detrimental to the tree.

At this stage, sufficient information has not been submitted to enable an assessment to the trees within the park setting, and as a result the proposal has not demonstrated that it will satisfy the relevant provisions contained in *SEPP (Biodiversity & Conservation) 2021* and C1.14 *Tree Management* of the LDCP 2013.

Chapter 6 Water Catchment

The subject site is located within the designated water catchment of the Sydney Harbour and is subject to the provisions contained within Chapter 6 of the above *SEPP (Biodiversity & Conservation) 2021*. The application has been assessed and the following table provides a summary of the relevant provisions:

Table 4: Assessment against Chapter 6 Water Catchment

Section	Assessment	Compliance
6.6 Water quality and quantity	<ul style="list-style-type: none"> The proposal is considered to have a neutral effect on the quality of the water entering the waterway. As the building is constructed on piles; the proposal will minimise the impact on the natural flow of water. The proposal will have a negligible impact on the amount of stormwater run-off and the proposal will incorporate on-site stormwater retention The proposal is considered to have a negligible impact on the level and quality of the water table In the event of approval, water quality impacts during construction can be reasonably managed. 	Yes
6.7 Aquatic ecology	<ul style="list-style-type: none"> The development involves the clearing of riparian vegetation. The proposal was referred to the Department of Planning and Environment-Water under the Water Management Act 2000. The agency has advised the proposed works are exempt from the need to obtain a controlled activity approval. The proposal was referred to the Department of Primary Industries and Regional Development under the Fisheries Management Act 1994. The agency has provided General Terms of Approval (GTAs). The impacts upon biodiversity, ecology and environment protection have been taken into consideration in the assessment and found to be acceptable. 	Yes
6.9 Recreation and public access	<p>The proposal is contrary to 6.9(1)(a) in that the development is considered to result in adverse impacts to the recreational uses within the Leichhardt Park foreshore.</p> <p>See discussion below relating to public domain.</p>	No
6.10 Total catchment management	As the proposal is considered unlikely to have an adverse environmental impact, no consultation with the adjacent or downstream local government area was required.	Yes
6.11 Land within 100m of natural waterbody	The proposal is contrary to 6.11(b) in that the development is not considered to minimise the conflict	No

	<p>between land uses within the Leichhardt Park foreshore.</p> <p>See discussion below relating to public domain.</p>	
6.12 Riverine Scenic Areas	The site is not within the Hawkesbury-Nepean Catchment.	N/A
6.25 Consent authority	In accordance with subsection (3), the State Environmental Planning Policy (Planning Systems) 2021, being another environmental planning instrument, specifies a different public authority, other than the council, as the consent authority for the development.	Yes
6.26 Zoning of Foreshores and Waterways Area	The site is identified within the foreshore and waterway area. The site is zoned Zone 5—Water Recreation on the Foreshores and Waterways Area Map.	Yes
6.27 Zone objectives and Land Use Table	<p>The development is considered inconsistent with the following:</p> <ul style="list-style-type: none"> <i>To minimise the number, scale and extent of artificial structures, considering the function of the structures.</i> <i>To allow commercial water-dependent development that—</i> <ul style="list-style-type: none"> <i>results in a visual outcome that is compatible with the planned character of the locality.</i> <i>To minimise congestion and conflict arising from the use of waters in the zone and the adjoining foreshores.</i> <i>To ensure the scale and size of development are appropriate to the locality.</i> <i>To ensure the scale and size of development protect and improve the natural assets and the natural and cultural scenic quality of the surrounding area, particularly when viewed from waters in the zone or from areas of public access.</i> <p>See discussion below relating to visual impact and public domain.</p>	No
6.28 General	The proposal is contrary to the principles of Sydney Harbour (1((a)(ii) & (iii)) in that the public good has precedence over the private good, and the protection of the natural assets take precedence over all other interests.	No

	<p>The proposal is contrary to (1)(c) as the development will have an adverse impact of the foreshores and waterway area including recreational uses.</p> <p>The proposal is contrary to (2)(e) the proposal has not demonstrated that the unique visual qualities are enhanced, protected or maintained, including views and vistas to and from the foreshore and waterways area, and public places.</p> <p>See discussion below relating to visual impact and public domain.</p>	
6.32 Rocky foreshores and significant seagrasses	The site is not identified as containing rocky foreshores and significant seagrasses.	N/A
6.33 Boat storage facilities	<p>The proposal is contrary to 6.33(a), and (c), in that the boat storage component is privately operated and not available for general public use.</p> <p>The proposal is contrary to 6.33(b), as there is insufficient information to adequately demonstrate the location of the boat storage component in relation to the Mean High Water Mark (MHW), in which development below the MHW should avoid the proliferation of boat related structures. It is noted MHW has not been shown on the plans.</p> <p>The proposal is contrary to 6.33(e), as it does not minimise the visual intrusion.</p> <p>See discussion below relating to visual impact.</p>	No
6.34 Floating boat platforms	<p>The floating boat platform component is considered to satisfy this section as follows:</p> <ul style="list-style-type: none"> • The platform provides for public access to and along the foreshore and to and from the waterway • The platform is compatible with the locality • The proposal was referred to the Department of Primary Industries and Regional Development under the <i>Fisheries Management Act 1994</i>. The agency has provided General Terms of Approval (GTAs) confirming the location of the platform is suitable water depth, without the need for dredging and will result in acceptable wash and overshadowing impacts on the seagrass. 	Yes
Division 5 Strategic foreshore sites	The site is not identified as a Strategic Foreshore Site.	N/A

Part 6.4 Heritage conservation in Sydney Harbour	The proposal is identified as 'heritage development' given the erection of a building near or within a place that is a heritage item being 31 Inner west stone retaining wall under the <i>SEPP (Biodiversity & Conservation) 2021</i> and I1197 Leichhardt Park which includes Leichhardt Ovals and Aquatic Centre, including interiors under <i>IWLEP 2022</i> .	Yes
6.53 Requirement for development consent	<p>A Heritage Impact Statement (HIS) has been provided and includes the historical development of the site, demonstrating a jetty is visible within the approximate location of the proposed building in the 1930 aerial. This jetty is also visible in the 1891 Surveyor General's Map of the area. If consent is granted, it is recommended that a condition be included in the consent requiring that if unexpected archaeological deposits or Aboriginal objects are found, work is to cease in the affected area(s) and the Office of Environment & Heritage be notified.</p> <p>The Heritage Interpretation Plan - Revision A, July 2024, does not provide examples of an appropriate interpretive signage strategy. Section 7.1: Implementation of the Plan states that detailed design and development of material for physical forms of interpretation such as signage, will require further input and consultation with key stakeholders including Traditional Owners, Council, community groups and others. However, this is to form part of the preparation of the Interpretive Plan and its recommendations, including specific recommendations for appropriate signage.</p> <p>The proposed Heritage Interpretation Plan-signage plan (dwg ASK2.00 rev A, prepared by Hill Thalys, dated 31 July 2024) shows the photos which depict the Drummoyne Municipal Baths. Though relevant to the wider Iron Cove, this is not considered suitable to be included in the content of the interpretive signage for the site. It is considered more appropriate to include the history and documentation relevant to the Leichhardt Municipal Baths given the proximity to the site. As such, detail for the proposed signs should be further investigated, including appropriate subjects for the signage, including Aboriginal Cultural Heritage relevant to the site, proposed text and historical photos and maps.</p> <p>This matter could be readily addressed by conditions of consent, and if consent is granted, it is recommended that conditions are included for a revised heritage</p>	No

	interpretation plan and that the applicant be guided by the additional detailed advice above. As the application is recommended for refusal this matter remains unresolved and should form part of the reasons for refusal.	
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Zoning

The site is subject to the permissibility provisions of two separate environmental planning instruments as the works are partially land based and partially water based. The land-based component is within the RE1 Public Recreation Zone pursuant to Section 2.3 of the *IWLEP 2022*, and the water-based component is within the W5 Water Recreation Zone pursuant to Section 2.26 of the *SEPP (Biodiversity & Conservation) 2021* (Figure 11). The zone boundary between the RE1 Public Recreation Zone and the W5 Water Recreation Zone is at the mean high-water mark (MHWM) (by title).

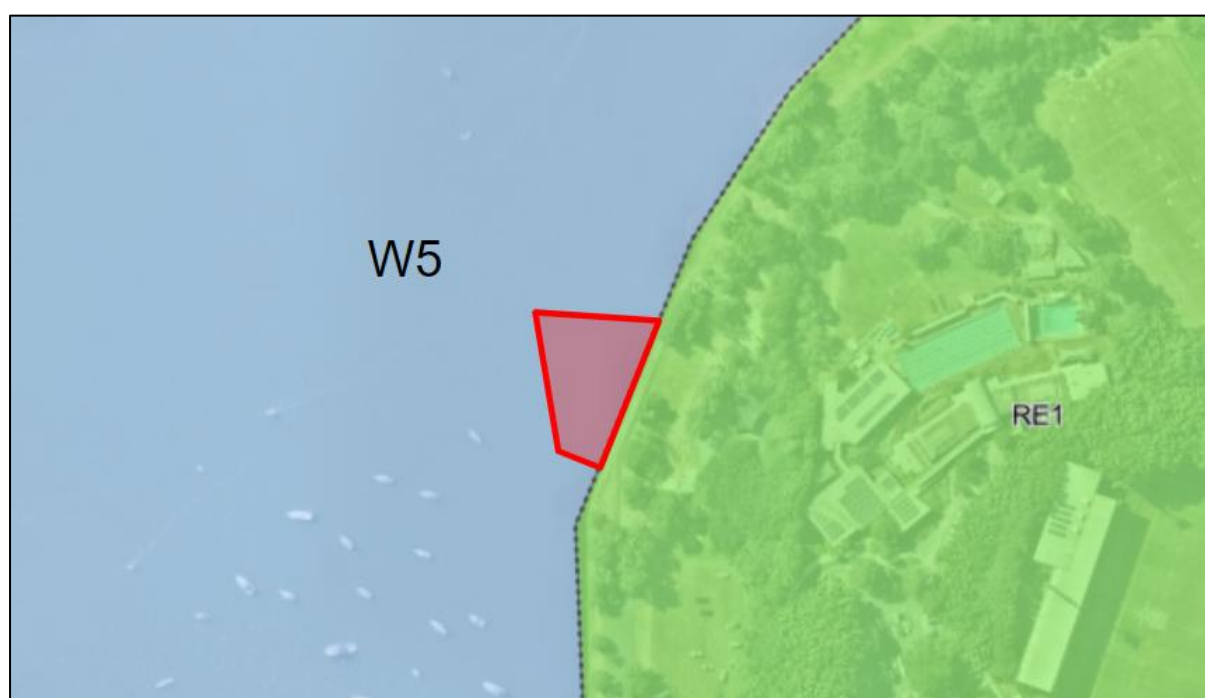


Figure 11: Zoning Map (subject site approximately identified by the red shape)

The proposed development is for a **community facility**. The proposed use for a **community facility** is permissible with consent in both zones with consent.

According to the definitions (contained in the relevant land zoning dictionaries), **community facility** is defined as:

community facility means a building or place—

- (a) owned or controlled by a public authority or non-profit community organisation, and
- (b) used for the physical, social, cultural or intellectual development or welfare of the community,

but does not include an educational establishment, hospital, retail premises, place of public worship or residential accommodation.

The proposed development does not satisfy this definition as the **kiosk** component can not be characterised as being ancillary to the dominant purpose of the development, as the definition of **community facility** explicitly excludes any **retail premises**.

The applicant's response on 8 October 2024 to permissibility is as follows:

A 'community facility' is a generic use, therefore within this community facility is a 'recreational or club facilities' (the rowing club) and public wharf areas.

All the above land uses are permissible in both the site's harbour based W5 Water Recreation under State Environmental Planning Policy (Biodiversity and Conservation) 2021 and land based RE1 Public Recreation zone under Inner West Local Environmental Plan 2022.

The kiosk is an ancillary use within the rowing club.

However, to the extent that the kiosk was assessed as a separate use, kiosks are not directly addressed within the W5 Water Recreation under State Environmental Planning Policy (Biodiversity and Conservation) 2021 but are expressly permitted with consent in the equivalent zone W2 of the Standard Instrument—Principal Local Environmental Plan.

It is noted that the inclusion of a café in a similar proposal, in respect of the development of the UTS Haberfield Rowing Club (DA 2011.255.1 in the former Ashfield Council LGA) was permissible within the same Zone W5.

Council is of the opinion that **community facility** is not a generic use i.e. not a 'group term' such as 'commercial premises'. Rather it is its own distinct use as defined above.

Council would accept the proposal as a mixed-use development comprising of **community facility** and **recreational or club facilities**, with the kiosk being ancillary to the **recreational or club facilities**.

However insufficient information has been submitted to specify the areas associated with each use to confirm permissibility given the site straddles two different zones and cost of works for each component given the delegation triggers. As such, the permissibility of the kiosk component has not been adequately demonstrated.

It is noted that UTS/ Haberfield Rowing Club was not approved as a **community facility** rather it was approved as a **recreational or club facility** which permits ancillary retail premises.

Landscape and Visual Impact

Chapter 6 of the *SEPP (Biodiversity and Conservation) 2021*, makes provisions for zoning of Foreshores and Waterways Area. The proposal for a community facility is permissible within

Zone 5 Water Recreation. Although a community facility is permissible in zone W5 it must also be consistent with the zone objectives. Four of the eight objectives are considered relevant to the assessment on visual impact:

- *To minimise the number, scale and extent of artificial structures, considering the function of the structures.*
- *To allow commercial water-dependent development that—
(c) results in a visual outcome that is compatible with the planned character of the locality.*
- *To ensure the scale and size of development are appropriate to the locality.*
- *To ensure the scale and size of development protect and improve the natural assets and the natural and cultural scenic quality of the surrounding area, particularly when viewed from waters in the zone or from areas of public access.*

Part 6.2 Development in regulated catchments of the *SEPP (Biodiversity and Conservation) 2021*, contains the following provisions:

6.28 General

- *(1) In deciding whether to grant development consent to development in the Foreshores and Waterways Area, the consent authority must consider the following—
(a) whether the development is consistent with the following principles—
(i) Sydney Harbour is a public resource, owned by the public, to be protected for the public good,
(ii) the public good has precedence over the private good,
(iii) the protection of the natural assets of Sydney Harbour has precedence over all other interests,*
- *(2) Development consent must not be granted to development in the Foreshores and Waterways Area unless the consent authority is satisfied of the following—
(e) the unique visual qualities of the Foreshores and Waterways Area and its islands, foreshores and tributaries will be enhanced, protected or maintained, including views and vistas to and from—
(i) the Foreshores and Waterways Area, and
(ii) public places, landmarks and heritage items.*

The Sydney Harbour Foreshore and Waterways Area Development Control Plan 2005 (SHDCP 2005) which accompanies the *SEPP (Biodiversity and Conservation) 2021* also includes provisions relating to visual impact of development from the waterways and foreshore. The following sections of the SHDCP 2005 are relevant to the proposed development:

3.2 General Aims

All development should aim to:

- *minimise any significant impact on views and vistas from and to:*
 - *public places,*
 - *landmarks identified on the maps accompanying the DCP, and*

- *heritage items;*
- *ensure it complements the scenic character of the area;*

4.2 General Requirements

The following objectives and requirements must be considered for all water-based and land/water interface developments:

- *the development warrants a foreshore location;*
- *the development does not interfere with navigation, swimming or other recreational activities;*
- *the demand for the development has been established;*
- *development does not dominate its landscape setting;*
- *the extent of development is kept to the absolute minimum necessary to provide access to the waterway;*
- *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*

4.4 Siting of Buildings and Structures

The following criteria should be observed when siting buildings and structures:

- *buildings should not obstruct views and vistas from public places to the waterway; and*

4.5 Built Form

The following guidelines are designed to reinforce the local requirements:

- *where buildings would be of a contrasting scale or design to existing buildings, care will be needed to ensure that this contrast would enhance the setting;*
- *while no shapes are intrinsically unacceptable, rectangular boxy shapes with flat or skillion roofs usually do not harmonise with their surroundings. It is preferable to break up facades and roof lines into smaller elements and to use pitched roofs;*
- *colours should be sympathetic with their surrounds and consistent with the colour criteria, where specified, for particular landscape character types in Part 3;*

Discussion

The provisions contained in the *SEPP (Biodiversity & Conservation) 2021*, and *SHDCP 2005* provide the basis in understanding the weight which needs to be given to competing interests in respect to development and use of the waterway and foreshore area. The above provisions outline the strong focus on protecting views from the public domain, and the importance of the Harbour's natural assets. Given the above, there is an obligation for a consent authority to uphold a high standard for development to ensure that the Harbour will not be compromised.

The proposal seeks approval for a building footprint of 1,700sqm, with the two-storey building envelope measuring 29.6m wide by 24.8m deep with a maximum height of approximately 13 m (RL 12.77 AHD). The development is located within Iron Cove with a land interface shared

with Leichhardt Park. The building will be a largely metal-clad structure painted in 'heritage red' screening a grey 'metal or fibre cement' base.

The applicant submitted a landscape assessment report (Revision A, prepared by Hill Thalys Architecture + Urban Projects Pty Ltd, dated September 2023) and view analysis plans (Revision A, prepared by Hill Thalys Architecture + Urban Projects Pty Ltd, dated September 2023) which provides a view analysis from 12 locations and photomontages of four locations, two within Leichhardt Park, and two from across the Iron Cove.



Figure 12: Except from View Analysis - Public views from Iron Cove (DA5.00 rev A, Source: Hill Thalys)

Council accepts the above view analysis submitted by the applicant, in that the visual impact on locations from across Iron Cove are generally considered reasonable due to distance attenuation. It is noted no view analysis has been undertaken from the waterways.



**Figure 13: Except from View Analysis - Public views from Leichhardt Park Cove
(DA5.03 rev A, Source: Hill Thalix)**

The view analysis from three locations within Leichhardt Park emphasises the impact that existing trees will have on obscuring the visual impact, however as noted elsewhere in this report, the associated required public domain works will likely result in the loss or pruning of many of these trees. Two photomontages have been submitted from within Leichhardt Park, which is where the development is considered to have the greatest visual impact.

Council has undertaken its own assessment utilising the guidelines contained in Appendix D of the SHDCP 2005. It is noted appendix D is a mandatory requirement for marinas, however states that it can be used as tool to evaluate the visual impact for any boat storage facilities. Appendix D identifies factors which potentially contribute to visual impact such as the location of the viewer, distance of view, approximate period of view, scale or relative size and boat storage type/spatial relationship. Then in a matrix format, the degree of impact of each factor is measured as high = 3, medium = 2 and low = 1.

In addition, The NSW Land & Environment Court (NSW LEC) provides a Planning Principle to assist with determining the impact on views from the public domain, outlined in *Rose Bay Marina Pty Limited v Woollahra Municipal Council & Anr* [2013] NSWLEC 1046. The Planning Principle establishes steps for determining the acceptability of the impact on views from the public domain, as follows;

1 – Identification stage

The first step of this stage is to identify the nature and scope of the existing views from the public domain.

Leichhardt Park provides a diverse range of views, including;





- **Water:** The park includes approximately 2km of foreshore land, providing scenic views of the water, small boats on swing moorings, and other water activities.

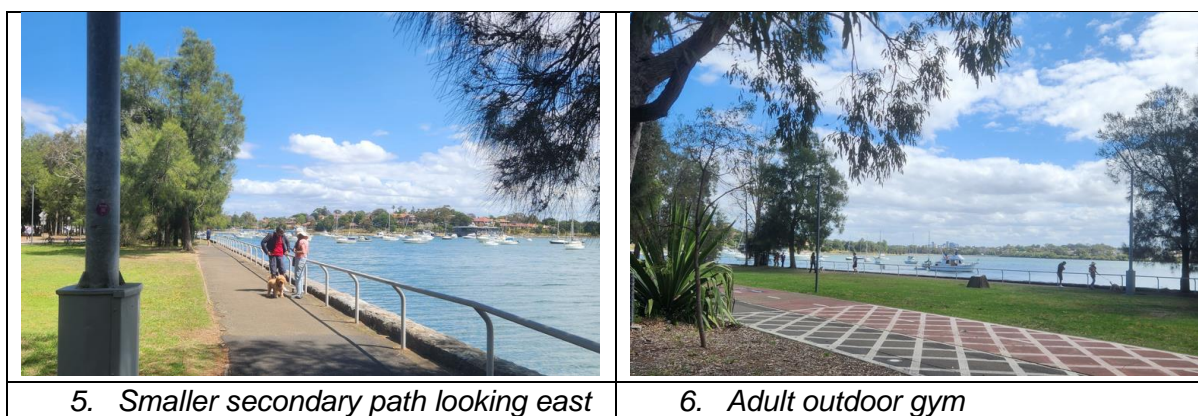
- **Nature:** The park features extensive areas of successful bush regeneration, mature trees, and sensory gardens, creating a calm setting that contrasts with the urban environment. The natural vistas contribute to the overall aesthetic of the space.
- **Recreational:** The park includes a range of recreational activities and facilities such as sports fields, playgrounds, and walking paths including the popular 'Bay Run'. Recreational activities that combine scenic views are sought out by the community.
- **Wildlife:** The area is home to various bird species and other wildlife, which can be observed throughout the park, adding to the natural asset of the views.

The second step is to identify the location in the public domain from which the potentially interrupted views is enjoyed.

Council has selected a range of views available from the immediate foreshore Leichhardt Park which will be impacted by the proposal. The views include:

Table 5: Photos of views from various locations adjacent to the development

	
<p>1. Entrance to Leichhardt Park from Maliyawul Street</p>	<p>2. Smaller secondary path looking east</p>
	
<p>3. Blue Hippo Playground</p>	<p>4. Bay Run</p>



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

Using the criteria set out in appendix D, it is observed that the location of views impacted will be from a flat foreshore, and therefore viewers will have no view over the structure. All viewpoints are within 100m of the adjoining shoreline, and the period of people engaging with the view will range between a few minutes to half a day from all locations. The scale of the development is best categorised as being 10-30m. Iron Cove is considered a narrow and enclosed bay as the mouth is narrower than its widest part. As such, considering the 6 viewpoints identified within the foreshore, the development can be considered high impact.

Table 6: View analysis matrix

	1	2	3	4	5	6
	Entrance to Leichhardt Park from Maliyawul Street	Secondary path looking east	Blue Hippo Playground	Bay run	Secondary path looking west	Adult outdoor gym
Location of viewer	3	3	3	3	3	3
Distance of view	3	3	3	3	3	3
Period of view	2	2	2	2	2	2
Size or relative scale	2	2	2	2	2	2
Spatial relationships	3	3	3	3	3	3
Overall potential visual impact (average score, out of 3)	2.6	2.6	2.6	2.6	2.6	2.6

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

Within Leichhardt Park, different locations attract varying intensities of use, such as;

- **'Fr A Gonelli Garden'** (the area immediately adjacent to the foreshore) is one of three bookable areas of the park. This area is regularly booked for children parties, charity events, and weddings etc. This area benefits from water views and views of the sun setting over the bay.
- **Blue Hippo Playground** is a frequently busy children's playground due to proximity of parking, toilet facilities, water views and scenic qualities.
- **The Bay Run** is used by an estimated 5,000 people per day (source: Lights up for new and improved Bay Run, media release by the Minister for Transport, Published 9 September 2023).
- The **secondary path adjacent to the Bay Run** which follows the foreshore and loops around Giovinazzo Grove. It is regularly used as an alternative to the Bay Run path as shorter more scenic route.
- The **adult outdoor gym** is regularly used by the general public, particularly seniors who enjoy the views while engaging in strength exercises and recreational activities.

As demonstrated above, Leichhardt Park is well used and highly frequented by the community. The Inner West LGA is a densely populated area with limited public open space. A *Recreation Needs Study - A healthier Inner West* (dated October 2018, prepared by Cred Consulting on behalf of Inner West Council), identified the Inner West had a population of 51 persons per hectare of open space, which is higher than Greater Sydney at 5 persons per hectare. Further, the LGA area lacked sufficient public open space for future populations (65-68 people / ha by 2036), and there is very limited land available for the creation of any new public space.

The final step to be identified is whether or not there is any document that identifies the importance of the view to be assessed. However, the absence of such provisions does not exclude a broad public interest consideration of impacts on public domain views.

The provisions in the *SEPP (Biodiversity and Conservation) 2021* and *SHDCP 2005* outline the importance of the views to be assessed. Further the Leichhardt Park Plan of Management and Master Plan outlines core values of the parklands including:

- Establish the park as a place for people.
- Highlight the unique aspects of the park and build upon them to establish a clear identity for the park and its assets.
- Preserve and protect successful spaces, and create new fine-grain spaces.
- Protect areas that are highly valued by the community.

2 – Analysis stage

Council has assessed the visual impacts associated with the proposal on Leichhardt Park and considers the impacts to be high as the proposed community facility would dominate its setting within a public park foreshore known for its scenic qualities.

The park is a much-used public asset of considerable aesthetic and social importance and the impact on these views is considered a public detriment. The potential visual impact on adjoining public open spaces is strongly influenced by the location, size and scale of the structure, and the distance from the viewer. As shown in Table 6, the proposal would

significantly interrupt expansive views of Iron Cove from several highly used, and valued areas within the public domain.

Generally, there are very few new structures within or beyond the foreshore, which is consistent with the relevant provisions and zone objectives. Along the 7 km length of the Bay Run there are five structures between the path and the water, which are typically long-standing rowing or sailing clubs. This portion of the Bay Run path is particularly sensitive to change, being set within parklands with high visitation.

The application was referred to the Architectural Excellence Design and Review Panel (AEDRP) who did not support the current proposal and questioned its two-storey design given the focus on accessibility. In particular, the proposed 2.15m wide cantilevered ramp, which accounts for approximately 20% of the building footprint. The AEDRP also raised the choice of materials and finishes, particularly the proposed use of a steel structure painted in 'heritage red.' They recommended a simpler structure potentially using timber to align with the boatshed typology, and suggested alternative natural materials and colours for external wall cladding. The AEDRP comments were provided to the Applicant, however no design amendments have been made.

Whilst it is acknowledged that the proposed built form may not be dissimilar to a number of rowing clubs in the area, the context of the Leichhardt Park location is highly sensitive to change given its value as a community asset. An overview of other two storey rowing clubs and their context is as follows:

- **Leichhardt Rowing Club** (established in 1886): The existing building is land based and located outside the boundary of Leichhardt Park, however adjacent to the Bay Run. In comparison to the current proposal, Leichhardt Rowing Club is partially screened by trees, is located in a somewhat recessed portion of the bay, and located near Glover Street Car Park and aircraft transponder site, an area with lower amenity and scenic qualities.
- **UTS/Haberfield Rowing Club** (established in 1925): The existing building is partially water-based and adjacent to the Bay Run. In contrast to the current proposal, it is within an urbanised context, being directly adjacent to the 5-lane City West Link highway and residences of Haberfield elevated beyond.
- **Balmain Rowing Club** (established in 1882): The existing building is land based and located on steep topography, making it appear as a single-storey structure from the public domain.

UTS/Haberfield Rowing Club is most comparable in size and scale to the current proposal, however the UTS/ Haberfield Rowing Club operates a rowing club on only one level, with the entire first floor being used as a restaurant. Whilst it is acknowledged that accessible requirements may necessitate additional clearances, the size and scale of the current proposal is considerably larger compared to other comparable rowing clubs on Iron Cove. There is considered scope to consolidate elements of the proposal on the first floor. Further, the floor to ceiling heights being 3m on the ground floor and a ranked ceilings of 4.5m could be reduced given the sensitivities of the location and the amenity requirements of non-residential building. As mentioned previously, the first floor access, if required at all, could be rationalised.

Considering the use of the structure, it has not been demonstrated that the scale of the development has been minimised to lessen its visual impact.

It is important to note that the current proposal's location being approximately 45m north of the potential site adopted in the masterplan, has contributed to the visual impact on Leichhardt Park. Furthermore, the shift in location, introduces a private use with a public component (being the pontoon) within the public parklands rather than at the end of the Maliyawul Street. This could impact the character and nature of the spaces and undermine the fundamental purpose of public parklands as spaces for community engagement, recreation, and connection to nature.

Considering the above, the proposed size and scale of the structure and loss of water views in this location represents a significant change to this portion of Leichhardt Park. Such views represent a key element of the public domain, for the enjoyment of the wider community. As a result, in its current form, the proposal has not demonstrated that it will satisfy the relevant provisions contained in *SEPP (Biodiversity & Conservation) 2021* and Part 3 and 4 of the SHDCP 2005.

Impact on foreshore land

The site is located approximately 75m from the end of the public carpark in Maliyawul Street where the Bay Run path narrows and meets another narrow path leading to Giovinazzo Plaza. This area is of high pedestrian and cycle activity and the proposed use which includes transporting rowing boats will create additional conflicts and additional movements in a highly used area. The following outlines the statutory considerations relevant to the impact on foreshore land:

Chapter 6 of the *SEPP (Biodiversity and Conservation) 2021*, makes provisions for zoning of Foreshores and Waterways Area. The following key objective is raised by Council as relevant to the assessment on public domain impact:

- *To minimise congestion and conflict arising from the use of waters in the zone and the adjoining foreshores.*

Part 6.2 Development in regulated catchments of the *SEPP (Biodiversity and Conservation) 2021* also provides the following provisions:

6.9 Recreation and public access

- *(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider—
(a) the likely impact of the development on recreational land uses in the regulated catchment, and*

6.11 Land within 100m of natural waterbody

- *In deciding whether to grant development consent to development on land within 100m of a natural waterbody in a regulated catchment, the consent authority must consider whether—*
 - (a) *the land uses proposed for land abutting the natural waterbody are water-dependent uses, and*
 - (b) *conflicts between land uses are minimised.*

6.28 General

- (1) *In deciding whether to grant development consent to development in the Foreshores and Waterways Area, the consent authority must consider the following—*
 - (a) *whether the development is consistent with the following principles—*
 - (i) *Sydney Harbour is a public resource, owned by the public, to be protected for the public good,*
 - (ii) *the public good has precedence over the private good,*
 - (iii) *the protection of the natural assets of Sydney Harbour has precedence over all other interests,*
 - (c) *whether the development will have an adverse impact on the Foreshores and Waterways Area, including on commercial and recreational uses of the Foreshores and Waterways Area,*

The SHDCP 2005 also includes provisions relating to public domain impacts from the development on the foreshore. The following sections of the SHDCP 2005 set out guidelines relevant for the proposed development:

4.2 General Requirements

The following objectives and requirements must be considered for all water-based and land/water interface developments:

- *congestion of the waterway and foreshore is minimised;*
- *conflicts on the waterway and foreshore are avoided;*
- *the development does not interfere with navigation, swimming or other recreational activities;*

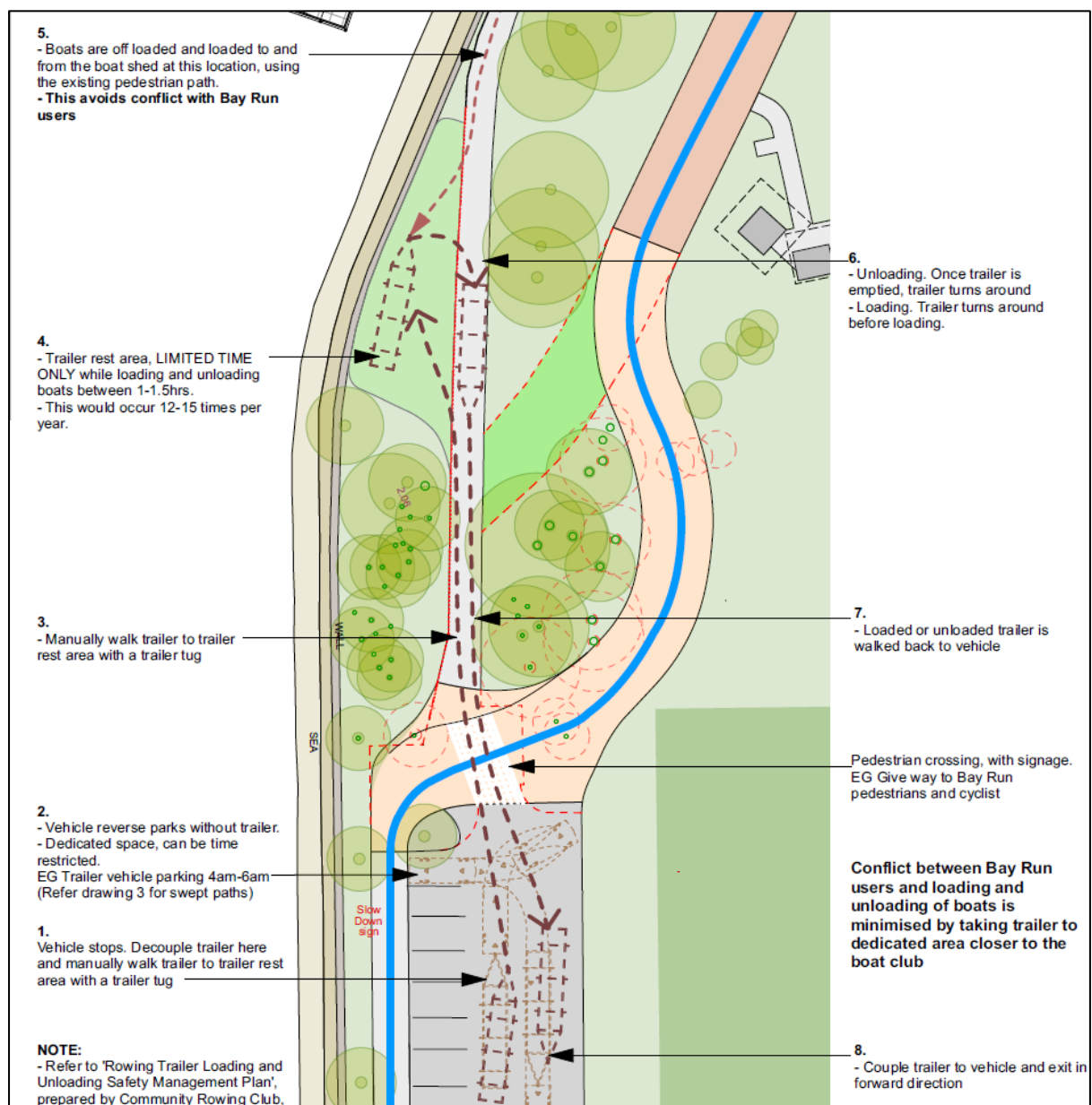
Discussion

Whilst the proposed development is largely located on the water, it has not been demonstrated that the land/water interface and access arrangements via Leichhardt Park will have acceptable impacts in relation to additional movements and conflict with the foreshore and other existing recreational activities.

The proposed location's main point of access is via a path approximately 80m from the end of Maliyawul Street car park through Leichhardt Park and across the Bay Run. This path of travel is anticipated to be used by club members, staff, boat transportation trailers, users of the first floor spaces, users of the public jetty, deliveries, servicing, loading/unloading etc. The proposed location for the rowing club shifting approximately 45m further (north) into the parklands to the Masterplan extends the distance to be travelled and the potential conflicts.

As identified in the Leichhardt Park Plan of Management and Master Plan there is an existing Bay Run 'pinch point' at the end of the Maliyawul Street Carpark where pedestrian and cyclist safety are compromised. The preferred solution to the pinch point in the Master Plan is to relocate a segment of the carpark. However, the Master Plan states that if a rowing club is to be established in the location identified, *the pinch point should be addressed through the removal the dog-leg of the existing shared path at the northern end of Maliyawul Street and creation of a smooth transition by altering the northernmost end of the existing car park as required.*

In response to initial concerns raised by Council, the applicant submitted a public domain improvement plan (prepared by Hill Thalys Architecture + Urban Projects Pty Ltd, dated 31 July 2024) as shown in figure 14 and considered in more detail below.



**Figure 14: Except from Proposed Public Domain Improvement Plan (ASK1.10 rev A,
Source: Hill Thalís)**

Whilst the public domain improvement plan positively provides separation of uses, the plan overall is not considered appropriate for the following reasons:

Path redirection

- The redirection of the Bay Run is to a less direct and more 'dog-legged' configuration, which reduces accessibility and visibility, and disrupts flow.
- The redirection of the Bay Run will increase the overall length of the route.
- The proximity of the redirected Bay Run to Leichhardt Oval no. 3 interferes with the use of this oval for sports such as football. In this regard, a clearance of approximately 5m is required.
- The path precludes anticipated future lighting improvements to Leichhardt Oval no. 3.
- The redirected Bay Run results in unknown arboricultural impacts given insufficient supporting documentation to support the tree removal or demonstrate the viability the retained trees.

Trailer decoupling zone

- The location of the decoupling trailer zone within the parking aisle would obstruct traffic and block access to car parks.
- The location of the decoupling trailer zone within the middle of carpark would create safety hazard for cyclists. In this regard, this end of the carpark should be treated as a shared zone.

Loading/unloading zone

- The loading/unloading of boat trailers within the parkland requires 'reinforcing' part of the public grassed area for a temporary storage area and/or would result in adverse environmental impacts including soil erosion, and damage to vegetation and trees.
- The loading/unloading of boat trailers within the parkland could result in public safety issues such as blocked access paths. This would require clearly dimensioned plans and swept paths.
- The path to the loading/unloading zone has not demonstrated sufficient width for a trailer. This would require clearly dimensioned plans and swept paths.
- The loading/unloading and temporary storage of boat trailers within this portion of the parkland will detract from the natural and scenic qualities which would affect the recreational enjoyment for others.

Notwithstanding, the public domain improvement plan or plan of management has not sufficiently addressed how the other associated uses on the site will operate to minimise conflict, including;

- How non-members of the club (the general public) utilising the public pontoon would commute their boats safely.
- How the kiosk will operate including deliveries, waste management, outdoor seating details, and maintenance of facilities.

- How the multipurpose space will operate given the intended use of 2-3 times per week with up to 100 people.

Considering the information available for assessment and the significance of the Leichhardt Park foreshore to the community, the proposal does not satisfy the relevant provisions contained in *SEPP (Biodiversity & Conservation) 2021* and SHDCP 2015.

It is considered that these matters can be resolved, however need to be resolved prior to determination given the uncertainties in relation to the possible impacts of the development on the public domain. In the event of approval, a deferred commencement condition could be imposed to ensure a revised public domain plan is developed to protect Leichhardt Park. Further, in the event of an approval, a deferred commencement condition would be sought for the plan of management to be amended to address the whole proposal.

- *State Environmental Planning Policy (Sustainable Buildings SEPP) 2022*

Chapter 3 Standards for non-residential development

Chapter 3 of the *State Environmental Planning Policy (Sustainable Buildings SEPP) 2022* applies to the proposal. The objectives of this chapter is to promote a more sustainable development.

The application is accompanied by NABERS Embodied Emissions Materials Form (prepared by Altus Group), which quantify the embodied emissions attributable to the development. The purpose of this form is to report on material quantities only, to support project team discussions about potential reduction in emissions from key materials.

- *State Environmental Planning Policy (Planning Systems) 2021*

Chapter 2: State and Regional Development

The proposal is *regionally significant development* pursuant to Section 2.19(1) as it satisfies the criteria in Clause 2 of Schedule 5 of the *State Environmental Planning Policy (Planning Systems) 2021 (Planning Systems SEPP)* as the proposal is for a community facility over \$5 million. Accordingly, the Sydney Eastern City Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.

- *State Environmental Planning Policy (Resilience and Hazards) 2021*

Chapter 2 - Coastal Management

Chapter 2 of the *State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP 2021)* relates to coastal management and aims to promote an integrated and coordinated approach to land use planning in the coastal zone in a manner consistent with the Coastal Management Act 2016. 31. The site falls within a Coastal Environment Area and a Coastal Use Area.

The provisions of this chapter have been considered and the proposal is generally consistent. It is noted that the development is located on land within the Foreshores and Waterways Area within the meaning of Chapter 6 of *SEPP (Biodiversity & Conservation) 2021*, as such a number of sections under this chapter do not apply.

Chapter 4: Remediation of Land

The provisions of Chapter 4 of *Resilience and Hazards SEPP 2021* have been considered in the assessment of the development application. Section 4.6 of *Resilience and Hazards SEPP 2021* requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

The Preliminary Site Investigation (PSI) has identified potential land-based sources of contamination including the likely presence of fill material and the possibility of contamination associated with the demolition of a former adjacent large warehouse building. The primary water-based sources of contamination are considered to be the sediment of Iron Cove which available information (including previous contamination studies) indicates is likely contaminated with a range of inorganic and organic contaminants.

The PSI recommends the following works to be completed so that contamination risk remain low and acceptable during, and post construction works:

- Preparation and implementation of a Construction Environmental Management Plan (CEMP) for the construction phase of the project. The CEMP is to include protocols to address any unexpected finds which may be encountered during the minor land-based excavation works, outline suitable water-based construction techniques to minimise sediment disturbance and outline all land and water based sediment and erosion control measure include the implementation of silt curtains to limit potential sediment migration.
- If any soil material is removed from the investigation area, a formal waste classification assessment shall be required in accordance with the NSW EPA Waste Classification Guidelines (2014). Any imported soil material such as service trench backfill material also requires classification in accordance with NSW EPA (2014) Guidelines.

On the basis of the above report, the consent authority can be satisfied that the land will be suitable for the proposed use and that the land can be remediated, subject to the implementation of the report recommendations which has been included as a condition of consent in the event of approval.

Inner West Local Environmental Plan 2022

The relevant local environmental plan applying to the land portion of this site is the *Inner West Local Environmental Plan 2022 (IWLEP 2022)*. The proposal is considered inconsistent with the following aims of plan:

- *(b) to conserve and maintain the natural, built and cultural heritage of Inner West,*

As discussed under Section 6.53 of the *SEPP (Biodiversity & Conservation) 2021* the heritage interpretation plan does not demonstrate an appropriate interpretive strategy.

- *(c) to reduce community risk from and improve resilience to urban and natural hazards,*

As discussed under Section 6.8 of the *SEPP (Biodiversity & Conservation) 2021* the lowering of the sea wall increases community risk from natural hazards.

- *(g) to create a high quality urban place through the application of design excellence in all elements of the built environment and public domain,*

The application was referred to the AEDRP who did not support the proposal for the following reasons as discussed previously in this report:

- Access to site and its connectivity with the nearest Maliyawul Street carpark; and
- The proposal of a two-storey boatshed building.

Further, the AEDRP raised concern with the access arrangements given the facilities emphasis on accessibility. It is noted an Access Report (prepared by Accessibility Solutions, dated August 2022) was submitted with the application concluding the proposal complies with the relevant accessibility requirements.

Whilst the report concludes that the ramp provides technical compliance with the accessibility requirements for the building, the AEDRP raised whether this is the most practical and equitable solution. The ramp is approximately 60m in length, at a maximum allowable 1:14 grade, and is exposed to the elements (wind, rain, and sun). Whereas able-bodied visitors will be able to use a wholly internal and more direct staircase to the first floor.

The multi-purpose space is also intended to be used by the general community and as such should provide more direct and equitable access to ensure inclusive participation by people of all abilities. The AEDRP also questioned the practicalities of the ramp for users such as older people with mobility difficulties, parents and/or carers with strollers and prams, and any persons with temporary or permanent mobility difficulties. In this regard, the AEDRP recommended a single storey floor plate to be incorporated and/or other accessibility options pursued such as a lift.

Access to the facility is further impacted by its location approximately 80m from the nearest car space and 170m from the nearest accessible car space.

- *(h) to prevent adverse social, economic and environmental impacts on the local character of Inner West,*

As discussed under the *SEPP (Biodiversity & Conservation) 2021*, the visual impact of the proposal adversely impacts the character of Leichhardt Park and consequently the local character of the Inner West.

- (i) to prevent adverse social, economic and environmental impacts, including cumulative impacts.

As discussed under the *Biodiversity Conservation SEPP*, Sydney Harbour and its foreshores need to be carefully safe guarded and protected as a natural asset. In this regard, new man-made structures of this size and scale within the foreshore area is considered to result in adverse cumulative impacts.

Zoning and Permissibility (Part 2)

The proposal is considered inconsistent with the following relevant objectives of the *RE1 Public Recreation Zone* under the *IWLEP 2022* as follows:

- To provide a range of recreational settings and activities and compatible land uses.

As discussed under the *SEPP (Biodiversity & Conservation) 2021*, the proposed use as a community facility for the purposes of a rowing club, has not demonstrated compatibility with the existing foreshore activities.

- To protect and enhance the natural environment for recreational purposes.

As discussed under the *SEPP (Biodiversity & Conservation) 2021*, the natural environment and setting of Leichhardt Park is not considered to be protected or enhanced by the proposed development as a result of a large urbanised structure being located within the park space.

- To conserve, maintain and enhance biodiversity and the natural environment, including terrestrial, aquatic and riparian habitats and natural land forms.

As discussed under the *SEPP (Biodiversity & Conservation) 2021*, the proposal in its current form, has not demonstrated that it will conserve, maintain or enhance biodiversity and the natural environment.

General Controls and Development Standards (Part 2, 4, 5 and 6)

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 7** below.

Table 7: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
2.7 Demolition	<p>The proposal satisfies the section as follows:</p> <ul style="list-style-type: none"> • Demolition works are proposed, which are permissible with consent; and • In the event of approval, standard conditions would be recommended to manage impacts which may arise during demolition. 		Yes

4.3 Height of buildings	NA	NA	NA
4.4 FSR	NA	NA	NA
5.7 Development below mean high water mark	Development consent is required to carry out development in the subject location which includes land below the Mean High Water Mark and a body of water subject to tidal influence.		Noted
5.10 Heritage	Refer to discussion under <i>SEPP (Biodiversity & Conservation) 2021</i> .		No
6.1 Acid sulphate soils	<p>The land-based component of the site is identified as containing Class 2 acid sulfate soils (ASS).</p> <p>An Acid Sulfate Assessment Report was prepared by Marine Pollution Research, dated July 2024 which concluded that the land excavation will occur into fill material, and the small amounts of offshore possible acid sulfate soil (PASS) that could be disturbed would for the most part be returned to the estuarine waters to be dispersed and re-incorporated into the seabed sediments with no exposure to air, and no opportunity to become ASS.</p> <p>Accordingly, there is no requirement for the preparation of an ASS Management Plan as per Section 6.1(3).</p>		Yes
5.21 Flood planning	See discussion below.		No
6.5 Limited development on foreshore area	See discussion below.		No
6.8 Development in areas subject to aircraft noise	The site is located within the ANEF 20-25 contour. The proposal is capable of satisfying this section as in the event of approval conditions are recommended to ensure that the proposal will meet the relevant requirements of Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021:2015, thereby ensuring the proposal's compliance with the relevant provisions of Section 6.8 of the <i>IWLEP 2022</i> .		Yes
6.6 Development on the foreshore	The development maintains public foreshore access and open space links adjacent to the proposed development.		Yes

must ensure access	Subject to condition in the event of approval, maintaining the sea wall height will protect the foreshore and open space from sea level rise or changes to flooding patterns as a result of climate change.	
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5.21 Flood Planning

The proposal includes development on flood liable land. The objective of the section is to minimise the flood risk during flood events and ensure the development is compatible with the future flood functions as a result of climate change.

- (2) *Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—*
 - (a) *is compatible with the flood function and behaviour on the land, and*
 - (b) *will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
 - (e) *will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*
- (3) *In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—*
 - (a) *the impact of the development on projected changes to flood behaviour as a result of climate change,*

The proposal includes removing the top course of sandstone from the seawall to provide access from the existing path in Leichhardt Park to the community facility. The current wall height is approximately 2.0m AHD which is slightly lower than the still water level at the site of 2.03m AHD allowing for a 5% exceedance sea level rise projection (Foreshore Risk Management Report dated 9 October 2023 prepared by Horton Coastal Engineering). Reducing the height of the wall will result in a lower level of protection to this area of Leichhardt Park during extreme foreshore flooding events.

Maintaining the wall height at 2.0m AHD better aligns with the proposed floor level of the boat shed proposed at 2.17m AHD. In addition, raising the proposed new footpath approximately 100mm in height to meet the height of the existing wall would enable access at a 1 in 14 grade to be achieved in a short distance either side of the proposed forecourt. This matter could be addressed by commencement condition of consent to maintain the height of the sea wall, if consent is granted. As the application is recommended for refusal, this matter remains unresolved and should form part of the reasons for refusal.

Section 6.5 - Limited development on foreshore area

The objective of the section is to ensure that development in the foreshore area will not adversely impact on natural foreshore processes or affect the significance and amenity of the area.

- (3) *Development consent must not be granted for development on land to which this clause applies except for the following purposes—*
- (a) *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area,*
 - (b) *boat sheds, cycleways, fences, jetties, retaining walls, slipways, swimming pools, walking trails, waterway access stairs, wharves, picnic facilities or other recreation facilities (outdoors).*

There is insufficient information to adequately demonstrate the location of the proposed development in relation to the MHWL, in which the erection of a new building within the 'Foreshore Area' (being the land between the foreshore building line and the MHWL of the nearest natural waterbody shown on the Foreshore Building Line Map), would be prohibited. It is noted MHWL has not been shown on the survey or architectural plans.

(b) Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

There are no draft instruments which have been the subject of public consultation under the EP&A Act, that are relevant to the proposal.

(c) Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

- Leichhardt Development Control Plan 2013 (LDCP 2013)

Table 8: Consideration of the LDCP 2013 Controls

LDCP 2013	Compliance
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part B: Connections	N/A
Part C	
C1.0 General Provisions	No – see discussion
For reasons already discussed in this report, the proposal is considered contrary to;	
<ul style="list-style-type: none"> • <i>O2: Accessible: places and spaces can be accessed by the community via safe, convenient and efficient movement systems.</i> • <i>O3: Adaptable: places and spaces support the intended use by being safe, comfortable, aesthetically appealing, economically viable and environmentally sustainable and have the capacity to accommodate altered needs over time.</i> 	

<ul style="list-style-type: none"> • <i>O5 Connected: places and spaces encourage people to interact with the physical environment and each other through a network of safe, convenient travel routes and alternatives which are accessible for all users. Places and spaces accommodate a variety of uses and activities which attract people and enhance social activity.</i> • <i>O6 Compatible: places and spaces contain or respond to the essential elements that make up the character of the surrounding area and the desired future character. Building heights, setbacks, landscaping and architectural style respond to the desired future character. Development within Heritage Conservation Areas or to Heritage Items must be responsive to the heritage significance of the item and locality.</i> 	
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes
C1.3 Alterations and additions	N/A
C1.4 Heritage Conservation Areas and Heritage Items	Yes
C1.5 Corner Sites	N/A
C1.6 Subdivision	N/A
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	Yes
C1.11 Parking	No
C1.12 Landscaping	N/A
C1.13 Open Space Design Within the Public Domain	No – refer to below
<p>For reasons already discussed in this report, the proposal is considered contrary to;</p> <ul style="list-style-type: none"> • <i>O1 To ensure that open space within the public domain:</i> <ul style="list-style-type: none"> <i>a. has a high standard of urban and landscape design;</i> <i>b. is visually attractive and enhances the character of the neighbourhood;</i> <i>c. integrates with other parts of the public domain and links pedestrian and cyclist networks;</i> <i>d. facilitates the comfortable gathering and movement of people;</i> 	
C1.14 Tree Management	No – see discussion under <i>Biodiversity and Conservation SEPP 2021</i>
C1.15 Signs and Outdoor Advertising	N/A
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	N/A
C1.17 Minor Architectural Details	N/A
C1.18 Laneways	N/A
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	N/A
C1.20 Foreshore Land	No – refer to below
<p>For reasons already discussed in this report, the proposal is considered contrary to;</p> <ul style="list-style-type: none"> • <i>O1 Development shall:</i> <ul style="list-style-type: none"> <i>b. Not lead to visual congestion of the foreshore;</i> 	

<p>c. be set within a landscape setting and be compatible with surrounding landscapes and streetscapes;</p> <p>e. be in the public interest for existing and future generations;</p> <ul style="list-style-type: none"> • C3 Development on land adjacent to the foreshore must be designed with regard to the provisions of SREP (Sydney Harbour Catchment) 2005 and Sydney Harbour Foreshores and Waterways Area DCP (2005). 	
C1.21 Green Roofs and Green Living Walls	N/A
Part C: Place – Section 2 Urban Character	
C2.2.4.4 Iron Cove Parklands Distinctive Neighbourhood	No – refer to below
<p>For reasons already discussed in this report, the proposal is considered contrary to;</p> <ul style="list-style-type: none"> • O1 To facilitate development that is consistent with the Desired Future Character and Controls for the Distinctive Neighbourhood • C1 - The desired future character of the Iron Cove Parklands Distinctive Neighbourhood is for the area to retain its current nature as a recreation precinct, both in terms of active and passive recreation. The area should remain a publicly accessible parkland reserve providing the community with a significant recreation resource of a type and scale not found elsewhere within the local area. • C2 - Importantly, any new development within this precinct should be restricted only to the improvement of existing facilities and no additional development should be considered. There is scope within the site for some degree of adaptive reuse of the existing buildings; however this should be within the context of a major recreation precinct and should respect the heritage values of those, and the surrounding buildings. 	
Part C: Place – Section 3 – Residential Provisions	
	Not applicable to community facilities
Part C: Place – Section 4 – Non-Residential Provisions	
	Not applicable to RE1 zone or unzoned land
Part D: Energy	N/A
Part E: Water	
E1.1 Approvals Process and Reports Required with Development Applications	N/A
E1.1.2 Integrated Water Cycle Plan	N/A
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	No – see discussion under <i>Biodiversity and Conservation SEPP 2021</i>
E1.1.5 Foreshore Risk Management Report	No – see discussion under <i>Biodiversity and Conservation SEPP 2021</i>
Part F: Food	
	N/A

Part G: Site Specific Controls	N/A

C1.11 Parking

The following relevant objectives and controls are provided below:

- *O7 To provide parking that can meet the needs of building or facility users for all modes of transport.*
- *C14 Developments and land uses, which are not specifically listed in Table C4: General Vehicle Parking Rates, will be assessed on their merit in accordance with the following criteria to determine the required parking provision:*
 - a. parking requirements established by survey of comparable establishments;*
 - b. the person capacity of the premises;*
 - c. the proportion of visitors, staff or patrons likely to arrive by car;*
 - d. the characteristics of the use and whether persons are likely to arrive in concentrated groups and the consistency of such arrivals/departures;*
 - e. the availability and level of service of public transport;*
 - f. details provided in a Site Specific "Travel Plan". Refer to 'Travel Plans' within Section C1.11 (refer to Control 26); and*
 - g. the proportion of trips induced by the development that could be taken by bicycle*
- *C18 Bicycle parking spaces are to be provided in accordance with Table C6: Bicycle parking provision rates.*
- *C23 Motor bike parking is to be provided at a rate of one (1) space for developments that require between 1 to 10 vehicle spaces and 5% of the required vehicle parking thereafter. The rate of total parking provision required is established by Table C4: (General Vehicle Parking Rates) for the land use*
- *C30 Service and delivery areas and loading facilities in new developments are to be designed in accordance with the following:*
 - a. be congruent to the location and layout of service and loading operations relevant to the development and not be used for any other purpose such as the storage of goods and equipment or as parking areas;*
 - b. be physically separate from areas used for car, pedestrian and bicycle movements;*
 - c. be located in a manner that will not visually impact on the development, streetscape or adjacent premises;*
 - d. all vehicles must enter and leave the property in a forward direction; and*
 - e. access driveways, internal circulation roadways and service areas are to be designed for the largest vehicle anticipated to use the site in accordance with Clause C29 above. Note: Retail uses are not permitted to receive deliveries from vehicles which cannot be accommodated at the on-site loading facility unless an existing 'Loading Zone/Truck Zone' is provided on-street outside the property. Such uses are to arrange deliveries to be made by appropriate size vehicles.*
- *C32 The potential impacts on the amenity, traffic management and vehicle parking provision in the vicinity of the bus/coach set down and parking areas will be a matter for consideration in assessing any application for bus/coach set down or parking areas*

As the LDCP 2013 does not provide car parking rates for boat sheds, parking demand for the development was assessed using travel mode surveys conducted at the nearby Haberfield Rowing Club and Leichhardt Rowing Club during a 6 day period. The Traffic Impact Assessment (prepared by Traffix, dated September 2024) found that the main travel mode of visitors was as a car driver at 71.9%, followed by pick-up / drop-off at 12.6%, car passenger at 9.2% and active travel (walking and bicycle) at 6.2%. Peak demand was found to be between the hours of 6:00am and 8:00am.

The car parking assessment was based on the critical weekend peak period anticipating a maximum total of 59 people, comprising nine (9) staff and 50 members on-site at any one time. Based on the mode distribution found above in the travel mode surveys this would result in a car parking demand for 41 spaces for members.

As there is no on site parking proposed, parking surveys of the nearby car parking spaces along Maliyawul Street, Mary Street, Frazer Street and the Leichhardt Park carpark, which provide a total of 422 car parking spaces were undertaken during the main operational hours of the development to determine the available car parking capacity.

The surveys found that the peak parking demand of the carpark and surveyed streets is between 8:00am-10:00am which is outside of the peak demand of the rowing club which was found to be between 6:00am and 8:00am. Generally, on all the surveys days, there were over 200 spaces available before 8:00am with the carpark and surveyed streets. Therefore in terms of parking for the rowing club component of the proposal is satisfactory.

However, insufficient information has been submitted to fully assess the parking needs of the development as a whole, including:

- Parking demand has not been determined for the multi purpose/community room. The POM states this room may be leased to community organisations for uses such as yoga, pilates, aerobics, circuit training or Scouts. The POM also states that uses of the community room could be in the order of 100 people. It is unclear at what days and times these uses will take place or if the community room will be used for events such as weddings, birthdays etc.
- The TIA would need to provide an estimated peak parking demand for the multi purpose/community room use and provide additional surveys during the peak times of the proposed use of the community room noting that on some evenings the nearby function centre La Montage or Leichhardt Oval is also in use and the adjacent carparks are all at capacity.
- Times have been provided for the unloading of the boats from the trailer i.e. before 8:00am however, clarity regarding the times when the trailer will be loaded following the day's rowing events has not been provided. The POM should also include strict times for unloading and loading the boat trailer.
- Swept paths detailing the manoeuvring of the trailer and tug to and from the boat shed along the path.
- Requirements for any bus/coach parking facilities.
- Provision of bicycle parking on site.

As insufficient information has been provided to allow for a full assessment of the boatshed/clubhouse, kiosk, function/community room and ancillary spaces, in Leichhardt Park, the proposal has not demonstrated acceptable traffic impacts.

- Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 (SHDCP 2005)

Table 9: Consideration of the SHDCP 2005 Controls

SHDCP 2005	Compliance
Part 2: Ecological Assessment	
General Aims	Noted
Part 3: Landscape Assessment	
General Aims	No – see discussion under <i>SEPP (Biodiversity and Conservation) 2021</i>
Landscape Character Type 12	Yes
Part 4: Design Guidelines for Water-Based and Land/Water Interface Developments	
General Requirements	No – see discussion under <i>SEPP (Biodiversity and Conservation) 2021</i>
Foreshore Access	Yes
Siting Of Buildings and Structures	No – see discussion under <i>SEPP (Biodiversity and Conservation) 2021</i>
Built Form	No – see discussion under <i>SEPP (Biodiversity and Conservation) 2021</i>
Signage	N/A
Marinas (Commercial and Private)	N/A
Private Landing Facilities (Including Jetties, Ramps and Pontoons)	N/A
Mooring Piles and Mooring Pens	N/A
Dredging	N/A
Slipways	N/A
Skids	N/A
Boat Lifts	N/A
Swimming Enclosures	N/A
Swimming Pools	N/A
Boat Sheds	N/A
Sea walls	N/A
Reclamation	N/A

3. Local Infrastructure Contributions Plan

The following contributions plans are relevant pursuant to Section 7.18 of the EP&A Act 1979 and in the event of approval have been considered in the recommended conditions (notwithstanding Contributions plans are not DCPs they are required to be considered):

- *Inner West Local Infrastructure Contributions Plan 2023*

Section 7.11 contributions are not payable for the proposal as the development is exempt as the development is primarily outside the LGA boundaries.

(d) Section 4.15(1)(a)(iia) – Planning agreements under Section 7.4 of the EP&A Act

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

(e) Section 4.15(1)(a)(iv) - Provisions of Regulations

The EP&A Regulation 2021 contains matters that must be taken into consideration by a consent authority in determining a development application, with the following matters being relevant to the proposal:

- The applicant has provided a report demonstrating the works can conform with the Building Code of Australia.

3.2 Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, it is considered that the proposed development has not demonstrated it will not have adverse environmental impacts upon the locality.

3.3 Section 4.15(1)(c) - Suitability of the site

The proposal has not demonstrated it is of a nature in keeping with the overall function of the site and as a result is contrary to the test of site suitability.

3.4 Section 4.15(1)(d) - Public Submissions

These submissions are considered in Section 5 of this report.

3.5 Section 4.15(1)(e) - Public interest

In consideration of the public interest, 6.28(1)(a)(ii) of the *SEPP (Biodiversity and Conservation) 2021*, relevantly provides:

the public good has precedence over the private good whenever and whatever change is proposed for Sydney Harbour or its foreshores,

The public interest is considered to be the benefit Leichhardt Park provides to users of the nearby public domain areas. These areas are specifically considered to be the foreshore of Leichhardt Park and the Bay Run which is used by a high number of people. As demonstrated earlier in this report, the loss of views and the conflict of land uses is not considered to be in the public interest.

Notwithstanding, the provision of an accessible pontoon and facilities for the para-rowing community, is considered to be in the public interest. However, the first floor of the community facility should provide direct and equitable access to ensure inclusive participation by people of all abilities.

Further, the provision of pontoon available for public use and public access is considered to be in the public interest. However, the location of the pontoon makes the ability for the general public difficult to use and access with their own boats (the need to transport boats from car spaces within the car park), or if highly desirable the frequent use by members of the public would result in additional points of conflict within the foreshore. Further, approximately 500m either side of the proposed facility are existing pontoons available for public use which have direct access from carparks. As a result, the pontoon's potential public interest may not be of high benefit.

In light of the above, the proposal is not considered to be satisfactory in terms of the public interest.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment and concurrence as required by the *EP&A Act 1979* and outlined below in Table 5.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of conditions of consent in the event of approval.

Table 10: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
			N/A
Referral/Consultation Agencies			
Water NSW	Section 91 of the Water Management Act 2000	The application was referred to the Department of Planning and Environment - Water for concurrence as the development involves controlled activities on waterfront land. The Department of Planning and Environment - Water responded to the request on 31 January 2024 and advised that the proposed works are exempt from the need to obtain a controlled activity approval, under Schedule 4, 36 of the Water Management Act (General) Regulation.	Yes

Integrated Development (S 4.46 of the EP&A Act)			
Department of Primary Industries - Fisheries	Part 7 and 7A of the <i>Fisheries management Act 1994</i>	The construction of building may involve removal, damage and destruction of marine vegetation on public water, land or on the foreshore of any such land or lease. General Terms of Approval have been issued by the Department of Primary Industries - Fisheries and in the event of approval, form part of the recommended conditions of consent.	Yes

4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 11**.

Table 11: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	Not supported	No, refer to key issues
Local Traffic Committee	Not referred as no detailed plans relating to proposed changes to the carpark.	N/A
Urban Forest	Not supported	No, refer to key issues
Parks Planning	Not supported	No, refer to key issues
Architect Excellence Design and Review Panel	Not supported	No, refer to key issues
Building	Support provided subject to conditions	Yes
Health	Support provided subject to conditions	Yes
Waste	Support provided subject to conditions	Yes
Urban Ecology	Support provided subject to conditions	Yes
Heritage	Support provided subject to conditions	Yes

The outstanding issues raised by Council officers are considered in the key issues section of this report.

4.3 Community Consultation

The proposal was notified in accordance with the Council's Community Engagement Framework. The notifications included the following:

- A sign placed on the site;
- Notification on a website;
- Notification letters sent to adjoining and adjacent properties (approximately 75m from the subject site);
- Notification on the Council's website.

The initial notification took place between 17 January 2025 and 21 February 2024. 82 submissions were received in total. 57 were in support of which 45 were received from persons outside of the Council area.

Renotification took place between 17 September 2024 and 17 October 2024. 83 submissions were received in total. 66 were in support of which 48 were from persons outside the Council area.

A total of 16 submissions were received in opposition to the proposal, raising the following issues:

Table 12: Community Submissions

Issue	No of submissions	Council Comments
Loss of views Submissions raised concern with the scale of the two-storey structure and its adverse effect on views and outlook from Leichhardt Park, particularly to the west for sunsets.	6	See discussion under Chapter 6 of the <i>SEPP (Biodiversity & Conservation) 2021</i> . Outcome: This issue has not been satisfactorily addressed.
Pedestrian/cyclists/boat trailer conflicts Submissions raised concern about the increase chance for conflicts on the Bay Run between pedestrians, cyclists and those accessing the facility.	5	See discussion under Chapter 6 Water Catchment of the <i>SEPP (Biodiversity & Conservation) 2021</i> . Outcome: This issue has not been satisfactorily addressed. Further development of a public domain upgrade plan is required.
Parking and traffic impacts Submissions raised concern with the increased competition for parking and congestion in the Maliyawul Street public carpark.	5	See discussion under Chapter 6 Water Catchment of the <i>SEPP (Biodiversity & Conservation) 2021</i> , and C1.11 Parking of the LDCP 2013. Outcome: This issue has not been satisfactorily addressed. Further

		development of a public domain upgrade plan is required.
Visual bulk/impacts Submissions raised concern with the visual impact of the two-storey built form when viewed from Leichhardt Park.	4	See discussion under Chapter 6 of the <i>SEPP (Biodiversity & Conservation) 2021</i> . Outcome: This issue has not been satisfactorily addressed.
Impacts of 'privatising' this portion of the park Submissions raised concern with the use of this portion of Leichhardt Park for a membership only rowing club and its impacts on alienating the adjacent portions of the park.	4	See discussion under Chapter 6 Water Catchment of the <i>SEPP (Biodiversity & Conservation) 2021</i> Outcome: This issue has not been satisfactorily addressed.
Overuse of Iron Cove Submissions raised concern with the number (4) of rowing club facilities already using Iron Cove and the overuse of the bay by boats.	4	This is a Transport for NSW maritime planning consideration. Outcome: Not applicable.
Location of facility Submissions raised concern with the facility being too close to the rowing course and navigation space resulting boats launching from the site will turning straight into the main lane of traffic – causing danger on the water.	4	Transport for NSW provided permission to lodge (PTL) which confirms land the proposal meets Navigation Safety. Outcome: Not applicable.
Justified need Submissions raised concern with the lack of evidence provided to justify the need or capacity for a fifth rowing club on Iron Cove.	2	The application received approximately 66 unique submissions of support. As such, it is reasonable to accept the need for a new club. Outcome: Acceptable
Community engagement Submissions raised concern about the lack of / insufficient community	2	The application was notified twice, between 17 January 2025 and 21 February 2024 and 17 September 2024 and 17 October 2024 in

engagement given the scale and location of the proposal.		<p>accordance with Council's Community Engagement Strategy 2022.</p> <p>It is also noted that community engagement for the Leichhardt Park Master Plan which included a rowing club was undertaken between 12 September 2020 to 19 October 2020.</p> <p>Outcome: Acceptable</p>
<p>Public access to facility</p> <p>A submission raised concern with how the general public are expected to access the facility or storage facilities given the conflicts with the Bay Run and constraints of the Maliyawul Street public carpark.</p>	1	<p>See discussion under Chapter 6 Water Catchment of the <i>SEPP (Biodiversity & Conservation) 2021</i>.</p> <p>Outcome: This issue has not been satisfactorily addressed. Further development of a public domain upgrade plan is required.</p>
<p>Consultation with Rowing NSW</p> <p>A submission raised concern about the lack of consultation with Rowing NSW in relation to the management of the rowing course in Iron Cove.</p>	1	<p>This is not a planning matter for consideration for the assessment of this application.</p> <p>Outcome: Not applicable.</p>
<p>Accessibility</p> <p>A submission raised concern that the building has not been designed to be accessible, most notably access to and facilities within the first floor such as the kitchen.</p>	1	<p>The application was supported by an Accessibility Report.</p> <p>See further discussion under Aims of plan under <i>IWLEP 2022</i>.</p> <p>Outcome: This issue has not been satisfactorily addressed.</p>
<p>Membership mix</p> <p>A submission has raised concern that insufficient information has been provided relating to the membership makeup, maximum capacity, and cost.</p>	1	<p>Outcome: If consent is granted, a condition of consent is recommended requiring further information relating to the membership profile to be provided in a revised Plan of Management.</p>

Funding A submission has raised concern with how proponent is securing funding.	1	This is not a planning matter for consideration for the assessment of this application. Outcome: Not applicable.
Environmental impacts A submission raised concern that the environmental impacts on the bay during construction have not been adequately considered.	1	The proposal was referred to the Department of Primary Industries and Regional Development under the <i>Fisheries Management Act 1994</i> . The agency has provided General Terms of Approval. Outcome: If consent is granted, the imposition of suitable conditions of consent would address these matters.
Water traffic A submission raised concern that the proposal will unreasonably add to water traffic.	1	This is a Transport for NSW maritime planning consideration. Outcome: Not applicable.

5. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues, it is considered that the proposal in its current form and as a result of insufficient information submitted has not demonstrated that it can be supported.

The key reasons that support should not be granted in its proposed location and in its current form are;

- By virtue of its size and scale, it would have an unacceptable visual impact on the Leichhardt Park foreshore and Sydney Harbour and;
- The proposed use/s will create conflicts with the existing foreshore activities.

The proposal has not demonstrated that it complies with the aims, objectives and design parameters contained in *State Environmental Planning Policy (Biodiversity and Conservation) 2021*, *Inner West Local Environmental Plan 2022*, *Leichhardt Development Control Plan 2013*, and *Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005*.

A proposal of a reduced scale and intensity, for example single storey form, would reduce potential conflict and lessen the visual impact on Leichhardt Park which would likely satisfy the relevant provisions.

It is considered that the development in its current form would result in adverse impacts on Iron Cove, Leichhardt Park and surrounds and therefore, is not considered to be in the public interest.

The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

6. RECOMMENDATION

That the Development Application DA/2023/1125 for Integrated development for construction of a two-storey community facility including rowing boatshed, public boat launching pontoon, kiosk and ancillary spaces at 66-68 Mary Street, Lilyfield be REFUSED pursuant to Section 4.16(1)(b) of the *Environmental Planning and Assessment Act 1979* subject to the reasons for refusal attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Reasons for refusal
- Attachment B: Draft Conditions of consent
- Attachment C: Architectural Excellence Design and Review Panel minutes
- Attachment D: Architectural Plans
- Attachment E: Public domain plan
- Attachment F: Access Report
- Attachment G: Plan of Management (revised)
- Attachment H: Traffic Report
- Attachment I: Foreshore Risk Management Report
- Attachment J: Heritage Interpretation Plan - signage