

DETERMINATION AND STATEMENT OF REASONS
SYDNEY EASTERN CITY PLANNING PANEL

DATE OF DETERMINATION	17 June 2021
PANEL MEMBERS	Carl Scully (Chair), Roberta Ryan, John Brockhoff, Michael Megna
APOLOGIES	Jan Murrell
DECLARATIONS OF INTEREST	<p>Mayor Angelo Tsirekas declared a conflict of interest as he has lodged a submission against the application. Accordingly, he did not participate in the Panel for this matter.</p> <p>Prior to the start of the public meeting Sue Francis declared to the Chair a conflict of interest as an employee of City Plan had made a submission on the matter. For this reason Ms. Francis did not participate any further in the proceedings.</p> <p>The Chair noted that one of the consultants of the applicant, Brett Moore worked for the Waterways Authority during his time as Minister for Ports but did not believe this presented any conflict of interest in participating in the deliberations on this DA.</p>

Public meeting held by videoconference on 17 June 2021, opened at 1pm and closed at 3.25pm.

MATTER DETERMINED

PPSSEC-31 – Canada Bay – DA2019/0380 – 380 Victoria Place, Drummoyne (as described in Schedule 1)

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

Development application

The Panel determined to refuse the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel was not satisfied sufficient balance was achieved between the needs of the public regarding the use and enjoyment of the harbour and foreshores and private usage for the marina proposal, and accordingly accepted the recommendation in the assessment report to refuse the development application. The detailed reasons for the Panel's decision are set out below.

1. The proposal is inconsistent with and unacceptable having regard to the aims of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005, contained in clause 2(1)(a), having particular regard to the principles set out in clause 2(2).
2. Unacceptable non-compliance with Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 – The proposed development is unsatisfactory, pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, as it does not comply

with the objectives and controls contained within Part 3, Division 2 of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005, including Clause 22 Public access to, and use of, foreshores and waterways, Clause 23 Maintenance of a working harbour, Clause 24 Interrelationship of Waterway and foreshore uses, Clause 25 Foreshore and waterways scenic quality and Clause 26 Maintenance, protection and enhancement of views.

3. Non-compliance with Sydney Harbour and Waterways Area Development Control Plan 2005 – The proposed development is unsatisfactory, pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as it does not comply with the objectives and controls contained within Part 3.2 General Aims (dot point 1 & 2) , Part 4.2 General Requirements (dot point 8), Part 4.7 Marinas (Commercial and Private) Visual Impact (dot points 2 & 5) of the Sydney Harbour and Waterways Area Development Control Plan 2005.
4. Unacceptable visual impact and view loss from the public domain – The proposed development is unsatisfactory, pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, as the bulk, scale, size and positioning of the vessels will block views to and from Sydney Harbour, the public domain and waterway.
5. Unacceptable Visual Impact and View Loss from private properties – The proposed development is unsatisfactory, pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, as the bulk, scale, size and positioning of the vessels will block views from the adjoining foreshore properties of Sydney Harbour and Huntelys Point foreshore.
6. Unacceptable traffic and parking Impacts – The proposed development is unsatisfactory, pursuant to the provisions of Section 4.55(1)(a)(iii) of the Environmental Planning and Assessment Act 1979. The proposal will result in unacceptable parking and local traffic impacts. It is noted that the applicant has failed to provide a survey of the parking demand for the existing marina, including:
 - Number of staffing
 - Number of customer accessing boats
 - Crew and wait staff
 - Contractors completing maintenance, repair and cleaning of vessels
 - Existing delivery, loading and service requirements
 - Existing first floor commercial use parking demands

The applicant has failed to demonstrate compliance with the objectives and controls contained within Part C of the City of Canada Bay Development Control Plan 2017 including C3.1 Vehicular Parking & Accessible Parking and C3.2 Bicycle Parking.

The stacked parking arrangement is not demonstrated to be a practical solution in the context of the proposal.

- 7.1. Unacceptable impact upon Heritage Conservation under the SHSREP and CBLEP – The proposed development is unsatisfactory, pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, as the development does not satisfactorily conserve the heritage significance of heritage items located within the vicinity of the site as required by Clause 55(4) Protection of Heritage Items of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 and Clause 5.10 Heritage Conservation of the Canada Bay Local Environmental Plan 2013.
- 7.2. Unacceptable impact upon Heritage Conservation under the CBDP – The proposed development is unsatisfactory, pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as it does not comply with the objectives and controls contained within Part D Heritage of the City of Canada Bay Development Control Plan 2017.
8. Unacceptable Contamination – The proposed development is unsatisfactory, pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, as

applicant has failed to demonstrate that the use of the public kayak pontoon would not result in contaminated sediments being disturbed that pose a risk to human health at and around the lowest astronomical tide. In accordance with Clause 7(b) of State Environmental Planning Policy No 55 - Remediation of Land, the public kayak pontoon is not suitable for its intended use in its contaminated state.

9. Unacceptable Equity of Access – The proposed development is unsatisfactory, pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, as equitable access from Victoria Place to the marina for people with a disability has not been demonstrated in accordance with the requirements of the Building Code of Australia, relevant Australian Standards and with regard to the Disability Discrimination Act 1992.
10. Insufficient provision for Waste Management – The proposed development is unsatisfactory, pursuant to the provisions of Section 4.55(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as it does not comply with the objectives and controls contained within Part C4 Waste management of the City of Canada Bay Development Control Plan 2017 as the applicant has failed to demonstrate compliance with the maximum SafeWork NSW gradients.
11. Unsuitability of the Site – Pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the site is not suitable having regard to the nature and extent of the development proposed.
12. Not in Public Interest – Pursuant to the provisions of Section 4.15(1)(e) & 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal does not satisfy the planning principles in Clause 2(2) of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 and as such the approval of the development application is not in the public interest for the reasons for refusal outlined above.

CONDITIONS



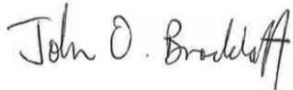

Not applicable

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition and heard from all those wishing to address the Panel. The Panel notes that issues of concern included:

- Visual impact and view loss
- Insufficient Parking
- Navigation & Safety
- Amenity
- Not in the public interest
- Environmental Impact
- Vehicular Traffic & Movement
- Site is not suitable
- Restriction of Public Recreation & Access
- Amended plans fail to address concerns
- Neighbourhood shop
- Use of Howley Park (East)
- Heritage Impacts
- Private facilities
- Loss of Working Harbour
- Fire Safety
- Property value

The Panel considers that concerns raised by the community have been adequately addressed in the assessment report and that no new issues requiring assessment were raised during the public meeting.

PANEL MEMBERS	
 Carl Scully (Chair)	 Roberta Ryan
 John Brockhoff	 Michael Megna

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSEC-31 – Canada Bay – DA2019/0380
2	PROPOSED DEVELOPMENT	Alterations and additions to the marina berth layout to provide overall storage of 130 vessels comprising 15 swing moorings and 115 floating berths. The works include; removal of 29 swing moorings, retaining 15 swing moorings, increasing the number of floating berth spaces from 50 to 115, cessation of slipway activities including the removal of slipway rails and the demolition of internal office mezzanine structure within the covered slipway area, and the provision of 8 valet car parking spaces within the existing slipway area.
3	STREET ADDRESS	380 Victoria Place Drummoyne
4	APPLICANT/OWNER	Enares Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Private infrastructure and community facilities over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy No. 33 – Hazardous and Offensive Development State Environmental Planning Policy No. 55 – Remediation of Land Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 Canada Bay Local Environmental Plan 2013 Draft environmental planning instruments: Nil NSW Sydney Harbour Boat Storage Strategy (TfNSW) 2013 Development control plans: <ul style="list-style-type: none"> Sydney Harbour Foreshore and Waterways Development Control Plan 2005 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council assessment report: 3 June 2021 Applicant submission received: 15 June 2021 Written submissions during public exhibition: <ul style="list-style-type: none"> Original notification: 227 Re-notification: 123 Verbal submissions at the public meeting: <ul style="list-style-type: none"> Angelo Tsirekas (Mayor – Canada Bay), Olivia Page, John Brady, Graeme Maclaren on behalf of Save the Gladesville Bridge Waterways Inc, Ruth Trethingham, Councillor Andrew Ferguson, Michelle Dudgeon on behalf of Parramatta River Sailing Club, Bob Griffiths, Ross Williams (Mayor – Hunters Hill), Stuart Forbes, Claire Ward, Dr Neil Griffith, Glen Norris Council assessment officer – Stuart Ardlie

		<ul style="list-style-type: none"> ○ On behalf of the applicant – Chris Forrester, Jim Thompson, Clare Swan, Anthony Rowan, Joshua Hollis, Stephen Davies, Brett Moore
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 15 October 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Carl Scully (Chair), Jan Murrell, Roberta Ryan, Michael Megna ○ <u>Council assessment staff</u>: Shannon Anderson, Stuart Ardlie • Site inspection: 8 April 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Carl Scully (Chair), Sue Francis, Michael Megna ○ <u>Council assessment staff</u>: Shannon Anderson, Stuart Ardlie • John Brockhoff and Roberta Ryan visited the site independently, prior to 17 June 2021 • Final briefing to discuss council's recommendation: 17 June 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Carl Scully (Chair), Roberta Ryan, Sue Francis, Michael Megna, John Brockhoff ○ <u>Council assessment staff</u>: Shannon Anderson, Stuart Ardlie
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Not supplied