

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSNH-30
DA Number	313/19
LGA	North Sydney
Proposed Development	To carry out alterations and additions to an existing boat repair facility and marina including the removal of slip rails, timber jetties and mooring piles and construction of a boatshed, installation of a boat crane with the capacity for 35T vessels, installation of a floating pontoon to accommodate five (5) vessels, concrete hardstand, vehicular crossing and ancillary works.
Street Address	62 Willoughby Street Kirribilli
Applicant/Owner	Pattons Slipway Pty Ltd
Date of DA lodgement	3 October 2019
Total number of Submissions Number of Unique Objections	<ul style="list-style-type: none"> 25 submissions including one from North Sydney Council and one in support to original proposal. 23 Unique Objections
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Regional development, as outlined in Schedule 7 of the <i>State Environmental Planning Policy (State and Regional Development) 2011</i> – marinas or other related land and water shoreline facilities, which meet the requirements for designated development under clause 23 of Schedule 3 to the <i>Environmental Planning and Assessment Regulation 2000</i>
List of all relevant s4.15(1)(a) matters	<p>North Sydney LEP 2013 Zoning – IN4 – Working Waterfront Item of Heritage – Yes Conservation Area – Yes – Careering Cove Conservation Area. Building Height – 10m SREP Sydney Harbour Catchment 2005 & Draft Environment SEPP Land Zone below MHWL - W1- Maritime Land SEPP 33 – Hazardous and offensive Development SEPP 55 – Remediation of Land & Draft Remediation of Land SEPP. Protection of Environmental Operations Act North Sydney DCP 2013 Foreshores and Waterways Development Control Plan 2005</p>
List all documents submitted with this report for the Panel's consideration	<p>Plans Draft Conditions</p>
Clause 4.6 requests	NA
Summary of key submissions	traffic; amenity impacts; parking; intensification of activities; loss of views; noise and air pollution.
Report prepared by	Geoff Mossemeneer, Executive Planner North Sydney Council
Report date	9 September 2020

Summary of s4.15 matters

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

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**
e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Not Applicable**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)? **Not Applicable**
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**
Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

EXECUTIVE SUMMARY

This application seeks approval to carry out alterations and additions to an existing boat repair facility and marina including the removal of slip rails, timber jetties and mooring piles and construction of a boatshed, installation of a boat crane with the capacity for 35T vessels, installation of a floating pontoon to accommodate five (5) vessels, new concrete hardstand, vehicular crossing and ancillary works.

The application was advertised as a designated and integrated development proposal from 25 October 2019 until 22 November 2019. Twenty-five (25) submissions were received raising concerns relating to traffic; amenity impacts; parking; intensification of activities; loss of views; noise and air pollution.

A review of the development application and consideration of the submissions received in response to notification; as well as the recommendations from internal specialist referral officers; and the comments of external referral agencies, identified a number of issues with the application.

Following an initial briefing with the Sydney North Planning Panel on 12 February 2020, the applicant was advised in letter dated 12 February 2020 of the issues and concerns and invited to withdraw the application or amend the application to resolve the concerns.

The applicant met with Council Officers on 17 March 2020 and agreed to consider all the issues and respond with amended plans / additional information. The response was received on 29 July 2020. Only minor amendments were made to the original plans and further notification was not required. The concerns relating to amenity impacts; parking; intensification of activities; loss of views; noise and air pollution have not been satisfactorily resolved.

The proposed development has been assessed with respect to the objectives and relevant Sections of the EP&A Act, as well as the objectives, merit based outcomes, development standards and prescriptive controls of various State Environmental Planning Policies, the North Sydney Local Environmental Plan 2013 and the North Sydney Development Control Plan 2013.

Following assessment of the proposal, the development application is recommended for **refusal**. The proposal is contrary to the aims of North Sydney Local Environmental Plan 2013; the zone objectives and Clause 6.8 of North Sydney Local Environmental Plan 2013.

The two-storey boatshed and storage of boats on the hardstand would have a significant adverse impact on public views and views from surrounding properties. The boatshed as proposed affects views from the Ensemble Theatre, the adjacent public viewing platform, the street and residences opposite the site. This is contrary to the provisions of the Sydney Regional Environmental Plan (Sydney Harbour Catchment); the Sydney Harbour Foreshore and Waterways Area Development Control Plan 2005 and North Sydney Local Environmental Plan 2013.

While in principle, water front industry is supported by Council, the marina and the scale of the proposed hardstand would be an intensification of the use with respect to boat repairs carried out in the open that would result in adverse amenity impacts on the surrounding area.

The intensification of the use and additional building area creates a demand for parking that has not been provided on site.

1. DESCRIPTION OF PROPOSAL

This application seeks approval to carry out alterations and additions to an existing boat repair facility and marina including the removal of slip rails, timber jetties and mooring piles and construction of a boatshed, installation of a boat crane with the capacity for 35T vessels, installation of a floating pontoon to accommodate five (5) vessels, new concrete hardstand, vehicular crossing and ancillary works.

Proposed hours of operation of the boat repair facility are Monday to Friday (7.30am - 5pm) and Saturday (8.00am - 3:00pm) and offices are Monday to Friday (8.30am – 5.30pm).

Proposed Works:

Demolition

The works will include removal of the existing sliprails. The existing jetties will also be removed as will the existing piles. The remains of the boatshed will also be removed.

Maintenance facilities

A new boat crane that would hoist vessels from the waterway and traverse these onto a new hardstand area is proposed to replace the existing sliprails. The boat crane requires a radius of 8.3 m from the edge of the hardstand area across the site, clear to enable vessel movement. The boat crane has the capacity to hold a vessel up to 35T in weight and 18m in length.

Hardstand

It is proposed to extend the hardstand area from the existing sandstone retaining wall on the southern side of the site, for a distance of 10m in a northerly direction with the express purpose of ensuring that there is sufficient water depth for vessels being lifted onto the boat crane.

To ensure that the new piles are not visually obtrusive, the piles will however be recessed into the hardstand area, and not external to the edge of the concrete slab. This will reduce the extent of visual prevalence of the structure.

Marina

It is proposed to demolish the five existing berths and replace these with a new floating marina system, comprising five berths. The marina system will be constructed of concrete and, similar to the hardstand, will be recessed into the pontoons to reduce the footprint of the overall structure on the waterway. The maximum vessel length within the berths will be 15m.

Piling

To accommodate the changes at the site it will be necessary to install nine (9) new piles, which will be made of steel. These are to be installed by utilising teeth which are welded to the pile with the pile being used as a 'hole saw' to drill the hole with the pile remaining in the hole.

Boatshed

The lower ground floor will comprise storage for boating and maintenance facilities, while the first floor will contain ancillary office space attached to the balance of the site and for marine related purposes.

Minor works to existing building

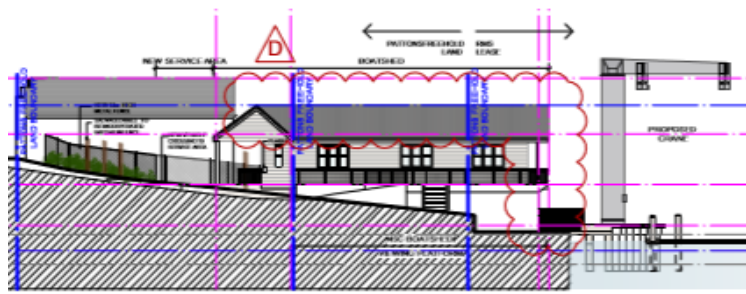
It is proposed to undertake minor works to the existing building. This includes replacing an existing gate and fence, with a new 1.8m high fence and gate; new doors to the existing

deck, located on the southern side of the building; provision of new walls, where doors are being demolished, within the internal entry to the building.

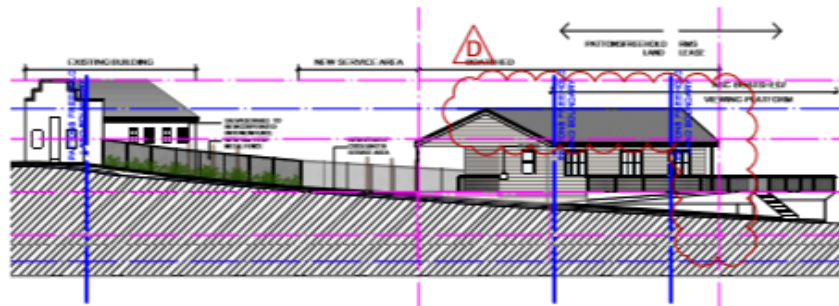
Service area

It is proposed to provide a new service area located on the southern side of the site, accessible from Willoughby Street.

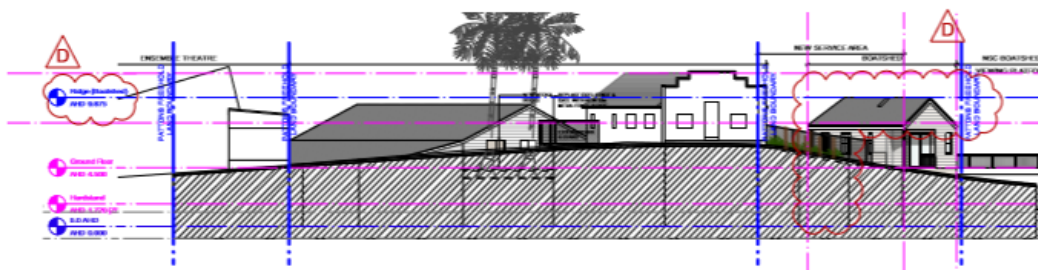




3 Proposed SouthEast Elevation
Scale 1:500



4 Proposed Willoughby Street (South) Elevation
Scale 1:500



5 Proposed McDougall Street (SouthWest) Elevation
Scale 1:500

2. STATUTORY CONTROLS

North Sydney LEP 2013

Zoning – IN4 – Working Waterfront

Item of Heritage – Yes

Conservation Area – Yes – Careering Cove Conservation Area.

Building Height – 10m

SREP Sydney Harbour Catchment 2005 & Draft Environment SEPP Land Zone below MHWL - W1- Maritime Land

SEPP 33 – Hazardous and offensive Development

SEPP 55 – Remediation of Land & Draft Remediation of Land SEPP.

Protection of Environmental Operations Act

2.1 POLICY CONTROLS

North Sydney DCP 2013
Foreshores and Waterways Development Control Plan 2005

3. CONSENT AUTHORITY

For marinas or other related land and water shoreline facilities, which meet the requirements for designated development under clause 23 of Schedule 3 to the *Environmental Planning and Assessment Regulation 2000*, the consent authority for the development application is the Sydney North Planning Panel.

The following Integrated approval bodies and approvals are required:

NSW Environment Protection Authority
Protection of the Environment Operations Act 1997 (Section 43 (b) and 48)

NSW Department of Primary Industries
Fisheries Management Act 1994 (Section 205) Water Management Act 200 (Section 90 and 91)

4. DESCRIPTION OF LOCALITY

4.1 THE SITE

The subject site is described as Lot 1, DP 326759, Lot 1 326760 and Lot 1, DP 1095443 and is known as 62 Willoughby Street, Kirribilli. The land has an area of approximately 1490m². The site has an approximate frontage to Willoughby Street of 30m and 36m to McDougall Street.

The site has an existing single and two-storey fibro building, with a smaller brick building fronting the street, as well as the remnants of a burnout boat shed, located at the eastern side of the site.

The site is occupied by four commercial tenancies, the largest of which is used as a slipway and boat maintenance facility. The building is also occupied by a sail making business, a marine electrician and plumber and the Ensemble Theatre who undertake the making of sets for theatrical purposes and stage contemporary plays. Administration offices associated with the primary use also occupy the building.

Existing sliprails occupy the hardstand area between the main buildings and the boatshed located at the eastern end of the site. The waterside area of the site occupies a lease area of 2,159m² and contains slips and piles, being used for the purpose of boat maintenance and repair, along with five existing berths.

A foreshore parkland area owned by North Sydney Council adjoins the east of the subject site and contains an existing small craft boatshed with a viewing platform above.








4.2 LOCALITY

The context surrounding the site forms a combination of various land uses, including residential uses and, closer to the waterway, those for recreational pursuits. For those uses immediate to the site, the landownership arrangements are provided below.



Table 7: Legal Description of adjoining allotments

Street Address	Landowner	Lot	Deposited Plan	Map Reference
62A Willoughby Street	North Sydney Council	1	572899	
78 McDougall Street	Ensemble Theatre	2	326759	
76 McDougall Street	Sydney Flying Squadron	2	1046761	
74 McDougall Street	MWS&B	1	773343	
1 Bradley Avenue	Kirribilli Marina	1	1091583	

Land-based facilities

Directly west is the Ensemble Theatre. Adjacent this is the clubhouse of the Sydney Flying Squadron and beyond this, an MSW&B building and public parkland.

Directly east of the site is parkland owned by North Sydney Council and containing an existing boat storage shed and viewing platform above.

To the south on the opposite side of the street, is residential development consisting mainly of single dwellings and residential flat buildings.

Water-based facilities

Careening Cove is primarily used for storage (moorings and berths) of recreational power boats (including yachts). A second boat repair facility is located at the Royal Sydney Yacht Squadron (RSYS).

Current storage and repair facilities include:

- RSYS accessible to members only including: Inner marina arm for permanent berthing of approximately 12 vessels including the Squadrons tenders, start boat, youth training yachts and other vessels associated with sailing activities; Hardstand for boat repair facility and permanent storage of up to approximately 60 sailing vessels. Two cranes are available to launch and retrieve boats for storage and/or repair.
- Private pontoons and mooring pens between 1 Elamang Avenue and 29 Elamang Avenue catering for permanent berthing for approximately 25 vessels
- Public pontoon at Wrixton Park providing temporary berthing for 1 vessel.
- Kirribilli Marina providing permanent berthing for approximately 12 vessels
- Private pontoon and mooring pen at 2 Stannards Place for permanent berthing of 1 vessel
- Private and/or public moorings for approximately 50 vessels throughout the bay.

The total number of permanent, on water moorings and berths in Careening Cove is approximately 105.

5. BACKGROUND

The site has been used for boat repairs for many years and by Pattons Slipways since 1948. The site was sold to the Sydney Flying Squadron in 1972.

Council records reveal a history of issues with the slipway concerning spills, noise, working after hours and boat trailers on the street. The site needs to be upgraded and controlled.

As Designated Development, the application requires the submission of an Environmental Impact Statement prepared in accordance with the SEAR's issued on 22 August 2017. The application is also integrated development pursuant to s4.46 of the Act. A pre-lodgement meeting with Council was held on 28 June 2019 just prior to lodgement.

DA.313/19 was lodged on 3 October 2019.

A review of the development application and consideration of the submissions received in response to notification; as well as the recommendations from internal specialist referral officers; and the comments of external referral agencies, identified a number of issues with the application.

Following an initial briefing with the Sydney North Planning Panel on 12 February 2020, the applicant was advised in letter dated 12 February 2020 of the issues and concerns and invited to withdraw the application or amend the application to resolve the concerns.

The applicant met with Council Officers on 17 March 2020 and agreed to consider all the issues and respond with amended plans /additional information. The response was received on 29 July 2020.

Amended plans accompanying the submission show the following amendments:

- reduction in the ground floor area of the boatshed from 106m² to 102m²
- reduction of the first-floor area of the boatshed from 100m² to 93.5m²
- reduction in the ridge height of the boatshed from RL 10.525 to RL 9.875 (-0.65 sqm)
- deletion of the balcony on the north-eastern face of the boatshed, forward of the building envelope and replacement with a Juliet balcony within the building envelope
- reduction in the width of the vehicular crossover on Willoughby Street from 9m to 7.2m to ensure sufficient service access is available to the proposed service area

In response to Council's query concerning intensification of the use the proponent commented:

The proposal does not increase the operational capacity of the site to service boats. Pattons currently holds licences for eight (8) swing moorings within the waterway adjacent the site and five (5) piled berth moorings. On these moorings are vessels that are having work undertaken on them at Pattons and are on short term use arrangements. These are regularly rotated from the swing mooring that they are attached to and slipped onto the hardstand area. The works are then scheduled over varying periods of time which commonly includes a piece of work being completed, the vessel being returned to the waterway for a period and then re-returned to the slip and, subsequently the hardstand, for further works to be completed. This may happen a number of times depending on the available of area on the hardstand as well as the nature of works that needs to be undertaken.

Therefore, the movement of vessels is generally high under the current circumstances. The application proposes a crane that will enable a vessel to be placed on the extended hardstand, worked on in a timely manner and returned to its owner. The number of vessels currently worked on, which is in the order of ten vessels, will remain the same. The only difference is the way in which vessels will be stored at the site; the number of vessels worked on at the site will not increase. However, the efficiency with which they are worked on will be improved due to the increased size. Therefore, the capacity of the Pattons operation as a whole, at any one time, will not be altered over the current situation.

No additional information was provided to outline current activities or the associated noise impacts.

The minor changes to the boatshed did not warrant further notification as the changes did not resolve any of the issues raised in the submissions.

The applicant was given ample opportunity to resolve concerns yet has failed to do so. The application as amended is the proposal considered in this assessment.

6. REFERRALS

6.1 Building

The application has not been assessed specifically in terms of compliance with the National Construction Code (NCC). It is intended that if approved, Council's standard condition relating to compliance with the NCC be imposed and should amendments be necessary to any approved plans to ensure compliance with the NCC, then a Section 4.55 application to modify the consent may be required.

6.2 Environmental Health

Council's Team Leader Environmental Health provided the following comments:

The predicted noise from operations at the slip way show exceedance of noise criteria at several residential receivers. The noise associated with these exceedances is from water blasting and other hard stand activities, deliveries and collections (skip bin) and general waste collection.

Of these noise sources, only the hard stand crane is new. The other activities are current at the slip way.

The acoustic report advises that the water blasting, which alone produces the highest noise level of the hard stand activities lasts for about 15 minutes at a time and will only occur 4 times per day. The new hard stand crane complies with the predicted noise level but has little to no safety margin.

The slip way has been in operation for some years with collections and deliveries, general waste collection, and slip way activities. The acoustic assessment is based on these activities in their current form – as in the current number of boats being maintained at the facility.

Given the development application is for a larger workspace, it would stand to reason that the intent is to maintain/service more boats than is currently accommodated.

This in turn would increase the number of hard stand crane movements per day, the amount of water blasting and other hard stand activities, increased deliveries and collections etc..

The EPA in their assessment recommend that the number of boats serviced at a time at the slip way does not increase with this application.

If the intent is to accommodate more boats, this should be reflected in the acoustic report.

Also as water blasting is the biggest noise contributor to the hard stand noise, an acoustic curtain can be used to reduce noise to surrounding receivers. The acoustic report would need to advise of the expected noise reduction from this.

With regard to consent conditions, the EPA has made a list of recommendations and conditions that would be required to be adopted. These are based on the facility not increasing in capacity. If the capacity is to increase, the acoustic report should be amended to include some noise mitigation measures where possible to be utilised.

6.3 Heritage

Council's Conservation Planner provided the following comments:

Heritage Status and Significance

62 Willoughby Street is identified as an item of environmental heritage in Part 1, Schedule 5 of North Sydney LEP 2013 (I 0299) and is situated within Careening Cove conservation area

(CA10) as identified in Part 2 of Schedule 5. Section 8.3.3 of Part C North Sydney DCP 2013 states that Careening Cove conservation area is significant:

- (a) as a largely consistent early 20th century residential area with an unusual and irregular pattern of street layout and irregular subdivision pattern that give the area a particular character.
- (b) as retaining much of the urban detail and fabric seen in gardens, fencing, street formations, use of sandstone for retaining and building bases, sandstone kerbing and natural rock faces.
- (c) for the amphitheatre like form around the reclaimed Milson Park and the head of the bay.
- (d) for the remaining waterfront industrial and recycled industrial development that gives the area much of its character.

The site comprises a group of heritage items that are waterfront buildings representing the last relics of the once extensive maritime industry on this waterfront.

SITE CONTEXT

The site context is that of a working waterfront that was once a part of an extensive maritime industry in Careening Cove during the late nineteenth and early twentieth centuries. The



Source: Six Maps NSW – 1943 aerial image



Source: Six Maps NSW – aerial image

FIGURE 1

increase of coastal land values and technological changes affecting the boatbuilding industry, contributed to the coastal shipping and wooden boat building trade to go into decline. From the 1960s and 1970s, the increase in residential development has taken hold and compatible uses such as the adaptive use of the Ensemble Theatre site and the nearby park are evident in improving residential amenity in the area. The remaining maritime activities are contained in a relatively low scale amphitheatre-like setting that are generally set below the street.

Comment

The HIS describes the remaining burnt out shell as 'an anomaly in the streetscape'. The heritage and design premise put forward for the current proposal is that the new structure will be constructed with similar dimensions to those of the previous boatshed that is, of one to two storey height and with a gabled roof so that it will reinstate the 'staggered roof profile that existed along this section of Careening Cove prior to the fire'. It is noted that the gap left from the loss of the earlier boatshed structure creates an infill opportunity where the proposed new boatshed will enable gap views either side of a gable roof form.

An analysis of the marina area comparing historical images (FIGURE 1), highlights changes that have modified the form of the existing marine structures over time within the marine area. The images indicate that the low scale character within the marina is retained. The historical images of the earlier boatshed relating to the subject proposal, shows a two storey form facing the harbour and the street facing scale to be single storey. At that time, the single storey Willoughby Street elevation appears to be set back and below the street and its scale to the street appears to be smaller than the street facing elevation of the 1980s which appears to be

built to the street alignment suggesting that the earlier building underwent some changes. The form of the adjacent building has also changed - the Council owned building has been rebuilt as a low scale concrete structure with a viewing platform above.

The principle of replacing the boatshed is supported on the basis that it is an infill development that will be built over the area that denotes the existence of a boatshed since the late 1870's and within the context of an area historically occupied and operational as a marine facility. The new boatshed will utilise a mix of traditional and modern materials with new elements such as a continuous Colorbond gable roof, concrete platform at street level for vehicular access, a concrete hardstand and new crane to cater for larger boats. However, the new structure, described as a [replica] of its 'early basic form', falls outside of the parameters of conservation works relating to preservation, restoration, reconstruction and adaptation as per the Burra Charter definitions.

The proposed height and scale of the new boatshed is comparatively too high and does not reflect a transitory height between the flat roofed building on the one side and the height of the existing marine buildings on the other. The proposal seeks to remove any remnant structures including associated elements such as the slipways. In the absence of any compelling argument submitted for consideration and any supporting documentation from RMS, removal of the existing slipways is not supported. The slipways form part of the historic fabric significant to the site context. Demolition of these elements, although proposed to be repurposed on the site, will affect the historic character of the marina and its interpretation within the Careening Cove conservation area and should remain in situ.

Conclusion and Recommendations

The proposed maritime building is not a 'replica' boatshed structure of the previous boatshed and sits outside the definition of the processes of heritage conservation as per the Burra Charter. The proposal is out of character for being too high and has a poor relationship with the adjacent low-scale Council building. Other new elements such as the concrete hardstand and the large crane to handle bigger boats than were previously catered for, will increase the built and operational scale of the boatshed in relation to its previous form as well as within its current setting and context. The proposal in its current form is NOT SUPPORTED. The proposal should either be withdrawn/ refused or revised to a scale that is compatible with its site context and setting.

There is no case per se to 'replicate' the former burnt-out historical structures on the site on heritage conservation grounds. Instead. The boatshed structure can be reinstated in its own right to continue a maritime use as part of the industrial maritime heritage of Careening Cove. Construction of an appropriate maritime structure (and associated crane structure) is acceptable and is a permissible use in the IN4 Working Waterfront zone.

The extensive concrete ribbon is an issue for the development. The extent of the proposed deck built 10m over the water is also a concern and needs to be cut back.

The heritage concerns relating to the removal of the slipways remain. However, it is recognised that the slipways may not be able to satisfy EPA requirements. The appropriateness of the use of the slips as part of a modified deck indicate their former location into/on the concrete should be investigated. Use of the slip rails into the front fence is not supported.

6.4 Engineering

Council's Development Engineer raised no objection with regard to road and engineering works, draft conditions were supplied.

6.5 Traffic

Council's Traffic Engineer provided the following comments:

I refer to your request for traffic comments in relation to Development Application 313/19 for development at 62 Willoughby St, Kirribilli. I have read the Traffic and Parking Assessment Report prepared by Varga Traffic Planning Pty Ltd dated 26 September 2019. Reference is also made to the architectural drawings by Weir Phillips Architects rev "B" dated 18th September 2019.

Existing Site

The subject site is located on the north-eastern corner of the Willoughby Street and McDougall Street intersection and lies within the Careening Cove Heritage Conservation Area. The site has street frontages of approximately 30m in length to Willoughby Street, approximately 36m in length to McDougall Street and occupies an area of approximately 1,490m². The subject site is currently occupied by a single and two-storey fibro building, with a smaller brick building fronting the street, as well as the remnants of a now largely demolished burnt out historical boat shed.

Proposed Development

The proposed development involves the alterations and additions to the existing facility including the removal of the existing metal rail slipways, piles, jetties and sloped hardstand slipway area, the restoration of the fire-damaged boatshed, and the construction of a new 5-berth pontoon and hardstand area with 35T crane. The proposed works also include the construction of a new service area which will adjoin the historic boatshed and front Willoughby Street, along with associated landscaping works. Vehicular access to the new service area is to be provided via a new driveway crossover located off Willoughby Street.

Parking Provision

Based on the Council's DCP 2013 (amended on 5 November 2015 Section 10) the following maximum parking provisions for this development are required:

Boat repair facility, (approx. 830m² Hardstand)

1 space / 200m² = 4

Total car parking provided = 0

Development proposes a new driveway access of approximately 9m wide at kerb in Willoughby Street which takes away 2 on-street parking spaces. The development is required to amend the driveway width to minimise the loss of on-street parking space.

However, if the proposed driveway width is necessary for the development, it is required that the development provide maximum of 4 onsite parking spaces to comply with Council's DCP's maximum parking requirements and to avoid reliance on the available on-street parking spaces.

Traffic Generation

The report suggests that there is no significant increase in traffic generation caused by the proposed development. Generally, the proposed development will not have unacceptable traffic implications in terms of road network capacity.

Conclusion

It is recommended that the proposed development be approved with the following conditions imposed:

1. That a Construction Management Plan be prepared and submitted to Council for approval by the North Sydney Traffic Committee prior to the issue of the Construction Certificate. Any use of Council property shall require appropriate separate permits/ approvals.

2. Development proposes a new driveway access of approximately 9m wide at kerb in Willoughby Street which takes away 2 on-street parking spaces. The development is required

to amend the driveway width to minimise the loss of on- street parking space. However, if the proposed driveway width is necessary for the development, it is required that the development provide maximum of 4 onsite parking spaces to comply with Council's DCP's maximum parking requirements and to avoid reliance on the available on-street parking spaces.

Comment: No parking is proposed on site or possible with regard the topography and proposed hardstand and boatshed. The upper level of the boatshed is intended as office space not directly related to the boat repair business. This will result in additional workers on site. If the proposal is to be accepted without parking, then the boatshed upper level needs to be reduced/deleted and conditioned to be used as part of the boat repair business and not as an ancillary use. Two parking spaces could be provided over the storage area with the upper level of the boatshed deleted or setback from the street. The car spaces could be accessed from the service area and the driveway crossing to the service area be reduced in width.

7 External Referrals

7.1 NSW Department of Primary Industries

DPI Fisheries is responsible for ensuring that fish stocks are conserved and that there is no net loss of key fish habitats upon which they depend. To achieve this, DPI Fisheries ensures that developments comply with the requirements of the Fisheries Management Act 1994 (FM Act) (namely the aquatic habitat protection and threatened species conservation provisions in Parts 7 and 7A of the Act, respectively), and the associated Policy and Guidelines for Fish Habitat Conservation and Management (2013).

In addition, DPI Fisheries is responsible for ensuring the sustainable management of commercial, recreational and Aboriginal cultural fishing, aquaculture, marine parks and aquatic reserves within NSW. DPI Fisheries has reviewed the proposal in light of these provisions and has no objections, subject to the proponent meeting the General Terms of Approval that follow.

As per s.4.47(3) of the Environmental Planning and Assessment Act 1979, any consent issued by Council must be consistent with these GTAs.

1. In this instance, the proponent does not require a Part 7 permit under the FM Act. If the scope of work changes, it must be referred to DPI Fisheries; and

2. Environmental safeguards (silt curtains, booms etc.) are to be used during construction to ensure that there is no escape of turbid plumes into the aquatic environment. Turbid plumes have the potential to smother aquatic vegetation and have a deleterious effect on benthic organisms; and

3. A minimum of 900 mm is to be maintained between the underside of the pontoon and the substrate at all times.

7.2 NSW Environmental Protection Authority

The proposal constitutes both Designated and Integrated Development and was referred to the Environment Protection Authority (EPA) under s43(b), 48 & 55 of the Protection of the Environment Operations Act 1997 (POEO Act). The EPA received a request for comments on the proposal on 21 October 2019, and was provided the public submissions on the proposal on 25 November 2019. The EPA understands that the Sydney North Planning Panel is the consent authority for the proposal. The EPA provided input to the Secretary's Environmental Assessment Requirements (SEARs) for the proposal on 11 August 2017 (DOC17/395190).

The EPA understands that the site is currently occupied by four commercial tenancies, the largest of which is used as a slipway and boat maintenance facility. This facility is not currently licensed by the EPA. The proposal seeks to upgrade the existing boat maintenance facility, and includes:

- Removal of existing slip rails, timber jetties and hardstand
- Installation of new hardstand, boat crane, and floating pontoon
- Restoration of existing boatshed for storage and office space.

The proposal will trigger the requirement for an environment protection licence under clause 25 of schedule 1 of the POEO Act, for 'Marinas and boat repairs'. The EPA has reviewed the information provided in relation to the proposal, including the public submissions, and has determined that it is able to issue a licence for the proposal, subject to a number of conditions. The applicant will need to make a separate application to EPA to obtain this licence.

The EPA has not assessed whether the land is suitable for the proposed development. Any assessment of the suitability of the site for the proposed land use will need to be undertaken by the Sydney North Planning Panel. These general terms relate to the development as proposed in the documents and information currently provided to EPA. In the event that the development is modified either by the applicant prior to the granting of consent or as a result of the conditions proposed to be attached to the consent, it will be necessary to consult with EPA about the changes before the consent is issued. This will enable EPA to determine whether its general terms need to be modified in light of the changes.

In assessing the proposal EPA has identified a number of environmental issues that the Sydney North Planning Panel may wish to consider in its overall assessment of the application. These issues are discussed later in the assessment including the applicant's response (Section 12).

7.3 Foreshores and Waterways Planning and Development Advisory Committee

The Foreshores and Waterways Planning and Development Advisory Committee (the Committee) has reviewed the referral in accordance with Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (the SREP), and considers the proposed development is to be a 'Category 2' matter. In referring the proposal to the Committee, North Sydney Council, as the consent authority, has satisfied its statutory obligation as required under the SREP. The Committee raises no specific issues in relation to the proposed development and as such does not wish to make any further comment concerning this matter.

7.4 Sydney Water

Sydney Water has a critical wastewater main located within the boundaries of the proposed development site. It appears that the proposed development will be built over the existing wastewater main. In addition, the proposed development has the potential to impact sewage pumping station SP 0033 which is directly adjacent to the subject area.

Sydney Water reviewed the application in December 2019 and based on the information supplied at the time, raised an objection to the development proposal. Sydney Water has since received updated plans and wished to formally withdraw the objection raised on 17 December 2019. Due to the proximity of the proposed development to Sydney Water assets, the proponent should continue to follow the standard Building Plan Approval process.

7.5 Natural Resources Access Regulator

The Natural Resources Access Regulator has reviewed documents for the above development application and considers that, for the purposes of the Water Management Act 2000 (WM Act), general terms of approval and / or a controlled activity approval is not required, and no further assessment by this agency is necessary.

7.6 Port Authority of New South Wales

Port Authority's interest in the proposal is limited to the Harbour Master's remit, such as issues regarding navigations impacts and marine traffic management.

Section 4.3 of the Navigation Impact Assessment, prepared by Haskoning Australia Pty Ltd, dated 04/10/2019 states: "However, the directions issued by the Harbour Master are primarily regarding vessels that require pilotage. Vessels under 30m LOA are exempt from pilotage. Due to the size of berths and the lift capacity of the proposed crane at Pattons Slipway, the Harbour Master's Directions (Port Authority of New South Wales 2016) are not applicable to proposed users of Pattons Slipway".

Although vessels under 30m LOA are indeed deemed as exempt from pilotage under the Harbour Master's Directions (Port Authority of NSW 2016), it is erroneous to simply state that the Harbour Master's Directions are entirely not applicable to the proposed users of Pattons Slipway. The Harbour Master has authority under the Marine Safety Act 1998 to direct and control the time and manner in which any vessel may leave or enter the port. The general powers of the Harbour Master are outlined under s88 of the Marine Safety Act 1998. The Harbour Master's Directions for Sydney Harbour, issued under s88 of the Marine Safety Act 1988, are documented in the Harbour Master's Directions (Port Authority of New South Wales 2016).

All vessel operators are required to comply with the Harbour Master's directions.

Please note that written approval of the Harbour Master is required for any proposed works (whether undertaken in relation to a Port Authority of New South Wales facility or not) that will disturb the bed of a port or are otherwise captured by clause 67ZN of the Ports and Maritime Administration Regulation 2012.

Clause 67ZN of the Ports and Maritime Administration Regulation 2012 states:

"A person must not use drags, grapplings, or other apparatus for lifting any object or material from the bed of a port described in Schedule 1, or otherwise disturb any such bed in any way, except with the written permission of the relevant harbour master and in accordance with the conditions attaching to such permission".

The Harbour Master approval process includes providing Port Authority with all final documentation (assessment reports and plans) for review together with a completed Harbour Master Approval Form. The Harbour Master may impose conditions on any approval to disturb the seabed.

8.0 SUBMISSIONS

The application was advertised as a designated and integrated development proposal from 25 October 2019 until 22 November 2019. 25 submissions were received and are summarised as follows:

- Size and scale, it is too expansive in terms of concrete hardstand covering 200m² of water
- bulk and size of the crane sitting beyond the current waters' edge
- boats and their masts will be sitting several metres higher on the hardstand, than they currently do on the slipway, which will be more imposing on the size and bulk of the craft to pedestrians / residents
- the hardstand is too intrusive on the public's current view of the Careening Cove water interface
- it is unacceptable to intensify the operation's facilities by more than two and a half times.
- supports a redevelopment of these sites, but not in this configuration. Renewed slipways would be far more acceptable, with timber decking, as traditionally used on waterfront areas versus expansive concrete areas.

- the 'renewed' boat shed exceeds the footprint and scale of the former boat shed. It burnt down nearly 30 years ago, so any existing use rights have long expired.
- object to the footprint of the hardstand and marina extending into Careening cove.
- buoys and height poles should be installed to show the extent of this proposal on the community and loss of amenity especially from Wrixton Park and the Council's viewing platform.
- health impacts of the open air 'anti fouling' and spraying of hulls of the vessels, especially as there is proposed a 250% increase in numbers of craft that can be serviced.
- should be photo montage illustrating the view-loss from the Willoughby / Elamang intersection.
- loss of views from Ensemble Theatre
- loss of views from Public Domain
- visual impact on Theatre foyer bar and restaurant, boats larger than current. Crane and boatshed will impact views.
- acoustic impact on daily activity of rehearsal and performances. Noise from construction phase and use of crane plus intensification of activity by increasing capacity of site. Further detailed assessment on impact on theatre required.
- the DA does not adequately address management of air quality that will arise from intensification of operations that would adversely affect restaurant, bar patrons and staff.
- air pollution during sand blasting and spray painting that is not fully contained.
- additional noise from hard stand area and related activities.
- support the existence of maritime businesses in Careening Cove as a traditional use of this precinct and contributing to the character of the precinct.
- estimate that the existing slipways could haul out vessels of up to 100 tonnes. The decision authority should be aware that replacing these existing slip ways with a 35 tonne crane reduces the market supply of slipways for larger commercial vessels.
- the proposed concrete hard stand over the harbour, beyond the high tide line, is a major extension of the existing ship repair yard. The proposal will have a significant impact on the aesthetic of Careening Cove. Additionally, it will encroach on the turning circle for Vessels mooring across the bay at the end of Bradly Avenue, and manoeuvring room for small craft using the recently renovated Council Launching Ramp.
- The new building on the South Eastern perimeter is replacing the burned shell of a former boat shed. The proposed design of this new building appears higher and larger than the former building that it is replacing. A compromise might be to include the existing burned out building in the area of Hard stand, and to reduce the Hard Stand by 5 m on its North East edge. Additional low-rise shedding could be provided along the Southern perimeter of the site. Any building on this Southern perimeter should not be so high as to encroach on the pleasant views that the public presently enjoy across Careening Cove.
- The site will have capacity to service increased number of vessels (up to 10). The gross floor area of buildings will increase by 206m². Increase in number of employees by 9. Increased activity will require suitable conditions to be imposed to control operations on site.
- Mitigation measures required to address air quality impacts from spray painting. There are no buildings or enclosures capable of accommodating the vessels.

- Crane would impact views.
- Vibration from construction and noise levels during construction and on-going.
- Clean up and modernisation of slipway is long overdue. Support working waterfront but not at the expense of the alienation of our waterways and the aesthetic amenity of water views for the locality.
- The monolithic concrete hardstand and attached marina will significantly degrade the public view of the Cove.
- Modernisation of run-down slipway by either replacement with a more efficient and environmentally friendly slipway system or a modestly sized hardstand behind the seawall is long overdue.
- The proposed development would obstruct the views from Willoughby Street, Elamang Avenue and the public grassed area atop the kayak storage building and the adjacent park.
- The obtrusive crane would be an eyesore.
- The proposed building would tower over the kayak storage building, thereby obstructing the afternoon sun and the view enjoyed by the public from the park and seating atop this structure.
- Increased operator activity means more staff, more traffic, more water pollution and more noise
- The local fish population under the Ensemble Theatre and The Flying Bear Café has grown over the past few years. Increased vessels will pollute the Cove for their inhabitation.
- Excessive vessel speed entering or exiting the Cove. Both the operators and other vessels don't have an etiquette for local boats or residents
- Overuse of the public jetty. Tying up their vessels for lengthy periods which reduces the use of other boaters, including kayaks etc
- Installing inappropriate mooring points near the public jetty. These actions virtually blocked access to the public and ensured they had solitary access. Suggestion: implement a 20m 'no mooring' arc surrounding the Jetty
- Unacceptable vehicular speed by their employees in surrounding streets.
- Operator employees parking in already over-crowded street.
- Unacceptable mechanical and other vessel repairs of trailered vessels in surrounding streets.
- Unacceptable trading hours. Regularly working on vessels after 6:00pm, Saturday afternoons and all-day Sunday.
- Careening Cove with its long marine history is one of the little gems of Sydney Harbour, and this will be spoilt if the application is given approval in its present form.
- The existing slipway nestles comfortably into the lower end of Careening Cove.
- The proposal to install a floating pontoon to accommodate up to 5 vessels is an encroachment into the public's water of the Cove.
- The boatshed which burnt down in 1992 resulted in views across the Cove. After 27 years it seems pointless to restore the high-pitched boatshed as there are no other historic buildings

on the site and will also cut out the westward views for the public, tourists, residents and from the public viewing platform. This would be a good opportunity for Council and Pattons to jointly come up with an innovative development to incorporate the burnt-out boat shed and the very popular grass viewing platform.

- Council is vigilant in retaining the look and feel of this area, and should continue to do so, especially when this is essentially a commercial development for commercial purposes and which will add nothing to the cultural and other heritage of the surrounding area. Council should reject this application and, if it is to proceed, it's height scale and impact should be reduced significantly.
- The existing slipway has minimal impact on the water and the foreshore, allowing the pretty views from Willoughby Street and Elamang Avenue to be enjoyed by the public and residents. This would be replaced by a heavy concrete hard-stand extending 10 metres into the Cove.
- The Department of Environment and Climate Change has no problems with slipways which adequately address pollution issues, so the rationale for a hardstand is not valid.
- A far better solution would be for Pattons and the Council to jointly redevelop the boatshed site, with a leasing arrangement giving Pattons use of the Council's kayak storage in exchange for creating a grassed area as the top level of the boatshed site, contiguous with the Council's existing grassed area. Joining the lower level of the boatshed site to the Council's kayak storage would increase the marine activity on site, with the upper level greatly enlarging the public's access to the delightful vistas from the expanded grassed area.
- Hardstand encroaches into Careening Cove by 10 metres, impacting on the view of the land water interface for the general public, with a further 15m marina berth for 5 boats protruding further into the cove. Their report advises that the navigable Chanel will be improved, the navigable Chanel is narrowed between Landseair Marina opposite and Pattons Slipway, which will impede the historic 18 footer skiffs to get out of the cove, especially in difficult wind conditions.
- Currently there are 4 rail slipways on the site, allowing 4 vessels to be serviced at one time. They say that the 10m hardstand will not intensify the operations. They then state that it will be able to service 10 boats at any one time, with another 5 on the marina berths. This is a 2.5 times intensification.
- Currently on the rail slipway, they are able to service larger vessels, (50T ferries etc.) being one of two sites on Sydney Harbour that can cater for these sized vessels. This proposal of a hardstand, with 2-3 storey crane lift for a maximum 35T vessels, is lessening their capacity to service craft in Sydney Harbour. But increasing the number to greater than 5 vessels to be serviced at any one time.
- Renewing the current Rail Slipways may be a better option for the larger vessels, but Pattons would need to employ more EP&A environmental protection practices to ensure the waste from grinding & scrubbing hulls, and re-painting same with anti-foul was not let loose into the waterways.
- Crane lift has a 10 m reach and is close to 3 storeys high – 10m. This will have a visual impact for the public to the water interface, especially from the Wrixton Park adjacent on Willoughby St. The craft shown in their application, are smaller motor boats with flybridges, and they did not show a yacht with mast, as are currently moored down there, and serviced. Any yacht lifted onto the hard stand, will have a much higher presence, than on the current rail slipways. Certainly more impact than the motor craft shown in their illustrations, of their 18m / 60ft boats. Yachts have the depth of the keel plus height of the mast. This is misleading in the application, by omission.
- DA04 shows that the Boat shed is only 6 m wide, with 20.5–25.5 m long, with two storeys; lower of storage space and toilet; upper of office, balcony, 'accessible' toilet and kitchenette. The roof pitch is then another 3 m higher, (equivalent to another floor height) which is

excessive pitch for a 6 m wide property. It does not read with any of the surrounding buildings and detracting from the heritage Wrixton House opposite. This roof should be flat, or no greater angle than the other metal roof over the sail maker at the other side of the site. This Boat shed should be pulled back, by nearly a third, so as to not protrude over the RMS leased water way section. This is effectively a three storey structure, with the high-pitched roof, over the water. In its current form it impacts the views from Wrixton Park to Milson Park to be able to watch the 18 ft skiffs launch and return.

- The current height and size of the boat shed impacts on the sun to Wrixton park with loss of public amenity by this overshadowing. If the roof was lowered to a skillian roof, sloping SE down to the park, and the shed did not protrude out over the High Water mark, then the Wrixton park would be less impacted, as would the other properties around and the general public on the street.
- Serious concerns regarding anti fouling. I see major issues with poisonous residue to humans, houses and cars let alone the environment in the local area. There are winds blowing from some direction at least 80% of the daytime. If there is approval it should be to worlds best practice which includes total enclosure as with commercial spray painting and compulsory use of spray booths.
- Parking in McDougall and Willoughby Streets are already an issue. Residents have issues, the Ensemble which has a large number of elderly patrons have an issue and this can only be exasperated by an increase of users of the boating facilities.
- Levels of noise when the facility is in use and movement of traffic to and from the facility in an already very congested area.
- The “Historic Boatshed” should not be approved: Its effect on public views from the viewing platform; Its effect on the only street view of the cove from its southern side; It’s not a boatshed. And what kind of “store” (upper level) needs a balcony? The past existence of a boatshed related to past use, not proposed use. There is no existing use right to erect a structure where the boatshed was. Its steep gable roof is not an industrial form, wantonly occludes views, and screams out for internal loft addition.
- On a site over-endowed with existing structures to support hardstand operations, it covers what should be hardstand operation space within the site so as to enlarge claims for hardstand encroachment into the harbour.
- We have thoroughly examined the proposed development application and wish to say that we have no objection to the development as presented. We feel it will enhance Careening Cove and add a new dimension of interest in that very special cove. They have our full support, and we wish the applicant, Pattons Slipways Pty. Ltd every success in their endeavours.

North Sydney Council

At its meeting of 24 February 2020, Council considered a briefing report relating to this application. The purpose of the report was to provide Councillors with information on the application thus far, with regard to submissions received and responses from referrals. No assessment of the application was provided and the intent of the report was for information purposes only.

Council resolved:

1. **THAT** Council resolve to prepare a strong submission to the Sydney North Planning Panel which reflects all issues raised in the report and by local residents.
2. **THAT** Council urge the Sydney North Planning Panel to reject the proposal in its current form.

The submissions are addressed later in this report (Section 13)

9.0 CONSIDERATION

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

9.1 Permissibility

The site currently operates as a boat repair facility in accordance with the definition contained in the Dictionary to the North Sydney Local Environmental Plan 2013 (the NLEP 2013):

any facility (including a building or other structure) used primarily for the construction, maintenance or repair of boats, whether or not including the storage, sale or hire of boats, but does not include a marina or boat shed.

The continuing use of the site, as proposed, is permissible on the land, in accordance with the IN4 Working Waterfront zone.

The waterway below mean high water mark is zoned W1 Maritime Waters subject to the Sydney Regional Environmental Plan (Sydney Harbour Catchment) (the SREP) and boat repair facilities are also permitted with development consent in that zone. Such facility is defined as:

... any building, structure or facility used primarily for the construction, maintenance, repair, sale or hire of boats, whether or not including the storage of boats or other vessels but does not include a commercial marina.

In addition, part of the site will be used as a marina. This is also permitted in the W1 Maritime Waters zone and is defined as:

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

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

As such, all existing and continued uses are permissible with development consent, both on land and in water, in accordance with the relevant environmental planning instruments (EPIs).

9.2 Strategic context

The EARs require adequate justification as to the need for the proposed alterations and additions to the site and why the use continues to remain suitable in this location, particularly in terms of environmental, social and economic impact.

The site is one of the few locations within Sydney Harbour which continues to undertake boat repair and maintenance facilities. The configuration of Careening Cove and the size of the

site mean that only smaller vessels can be maintained at this facility. This site provides for the smaller boat owner and has been a longstanding boat repair and maintenance facility. There are few if any opportunities to provide similar facilities around Sydney Harbour.

In terms of integration with the existing operation, it has been claimed that the same activities will be undertaken. The applicant also claims that efficiency would be improved, as the introduction of a crane will enable for a faster opportunity to bring vessels from the waterway onto the hardstand area for repair.

The application would improve the environmental compliance of the subject site, which currently operates without the benefit of an environmental protection licence. This level of control over the site could ensure that appropriate controls are achieved for marine-related purposes and vessel maintenance.

9.3 Visual assessment

The EARs require consideration of an impact assessment of buildings and berthed vessels, particularly when viewed from:

- properties along the foreshore areas
- waterway users
- public and other significant land-based vantage points.

The application was supported with a Visual Impact Assessment prepared by Richard Lamb & Associates. The following statement from the VIA (p.13) is accepted:

The greatest effect on view composition would largely be on views parallel to the existing facility from the west or east for example from parts of the Ensemble theatre, the closest parts of Milson Park and potentially from the east from a public viewing deck and small reserve at the terminus of Willoughby Street.

The following photos and photomontages are sourced from the Visual Impact Assessment prepared by Richard Lamb & Associates that may assist in the visual assessment.



Photo locations



View 02; View north from the elevated path at the north-west corner of Elamang Avenue



Photomontage location 2, from the elevated path at the north-west end fo Elamang Avenue



View 07; View south to the subject site from the main navigation channel in Careening Cove



Photomontage location 7, view south from Careening Cove to the subject site



View 09; View west towards the site from Careening Cove



Photomontage location 9, view west from the south side of Careening Cove



View 12; View east from the ground floor restaurant at the Ensemble Theatre



Photomontage location 12, view north-east from the ground floor restaurant at the Ensemble Theatre

The survey showing existing piles and the proposed hardstand plan are reproduced to assist the Panel:



The above photos clearly demonstrate that the boatshed and the storage of boats on the hardstand will block current views of the water from the street and residences opposite the site. To retain part of this view the upper level of the boatshed would need to be deleted and replaced with a flat roof over the lower storage level to a similar height to the adjacent public viewing platform. The water view would still be partially blocked by the boats stored at a higher level than the current slipway. The length of the boatshed will also impact on public views from the viewing platform and the Ensemble Theatre. Should the upper level of the boatshed not be deleted it should be setback to the land boundary line of the site to limit the impact on the views. The lower section could be setback in line with the adjacent boat storage below the viewing platform.

Storage of boats on the hardstand area on the 10m section over the water would also obstruct views. Use of this section for repairs of boats would also intensify the use and result in increase of noise impacts with more work in the open. The hardstand area must be reduced in scale over the water to restrict boat storage to no more than one large boat subject to no work being carried out on that boat, the remainder of the hardstand over the water would need to be clear for access and lifting of boats from the water. A reduction by at least 3m or the edge of the hardstand to be in line with the seawall in front of the viewing platform (the existing piles are approximately 3m in from the proposed hardstand edge) - other than a small section where the crane is mounted (3m x 3m). The reduced hardstand area would still allow more than adequate access to the existing boat repair building.

The montages also show a tidy marina, and decks more like a resort marina rather than a boat repair facility that is likely to have equipment and materials used to repair the boats. The area of the reduced hardstand over the water needs to be kept clear of equipment other than the one stored boat. Any open-air repair of boats should be limited on the land boundary side of the hardstand between the buildings in the area currently used with the slipways.

9.4 Contamination

The EARs require consideration of a detailed assessment of the extent and nature of any contamination of:

- the soil, groundwater and marine sediments
- an assessment of potential risks to human health and the environmental receptors in the vicinity of the site
- a description and appraisal of mitigation and monitoring measures

A Preliminary Site Investigation has been undertaken by Advisian Worley Group, which included a desktop review of the site, including historical information, a site visit to determine operational aspects and discuss with operators' current practices and providing an assessment and recommendations pertaining to the proposed development. The assessment, having regard to the uses at the site and nearby land uses, has identified the potential contamination risks as set out below.

Potential Off-Site Sources of Contamination

- Stormwater runoff from adjacent urban land uses
- Fill material that has been contaminated or imported for construction sites, hardstand areas or slipways
- Transportation and deposition of contaminated sediments from Neutral Bay which may have been transported by natural currents and turbulence by powered vessels.

Potential on-Site Sources of Contamination

- Vessel building and maintenance activities

- Inadequate waste collection and storage facilities
- Inadequate stormwater management due to the blockage identified of the tidal sump
- Spills

Based on the identified risks the following potential contaminants of concern (PCOCs) are as follows:

- Heavy metals and metalloids particularly Lead (Pb)
- PAHs
- Total recoverable hydrocarbons (TRHs)
- Organotins including Tributyltin (TBT) (controlled in NSW by means of a Chemical Control Order)
- Polychlorinated Biphenyls (PCBs)
- Organochlorine (OC),
- organophosphorus (OP) pesticides and Phenols

While no contaminant testing has been undertaken by Advisian, the Preliminary Site Investigation has identified potential sources of concern and associated control measures, which form part of the risk mitigation strategy during both the construction and operational phases of the development.

The Preliminary Site Investigation does recommend that testing be undertaken to confirm the containment status of the site and eliminate or confirm potential human health risks identified in the preliminary investigation. This can be conditioned.

Sampling was undertaken by Marine Pollution Research as part of the Aquatic Ecology Assessment. Of the samples tested, the contaminants found were consistent with an urbanised and industrialised estuarine locality, consistent with those found in Port Jackson.

9.5 Biodiversity

The EARs require consideration of the following matters, particularly as they relate to aquatic flora and fauna:

- accurate predictions of any vegetation clearing, including marine vegetation o a detailed assessment of the potential impacts on any critical habitats, protected species, threatened species, populations or endangered ecological communities or their habitats
- a Biodiversity Assessment in accordance with the Office of Environment and Heritage Guidelines
- an aquatic habitat assessment in accordance with the Department of Primary Industry guidelines
- a detailed description of the measures to avoid, minimise, mitigate and offset biodiversity impacts.

9.5.1 Vegetation Clearing

An assessment has been undertaken to determine the extent of vegetation removal that may occur as a result of the proposed development, which is an outcome of pile and slipway removal, which is to be offset against the introduction of new infrastructure. The Aquatic Ecology Impact Assessment has provided the following analysis in this regard:

There are 17 mooring and jetty piles to be removed with eight marina locator piles to be installed along with two stub jetty piles. Of the 41 hardstand piles in the intertidal area, 15 will be exposed to sunlight and the rest will be shaded. Whilst aquatic biota can be found on the wetted surfaces of structures in Sydney Harbour up to at least 2m above ISLW, the main zoning habitats - intertidal oysters and sub-tidal algae plus encrusting

fauna - are generally confined to a range below 1m above ISLW. This range has been adopted for calculating wetted surface losses and gains. In addition, calculations for surface areas of piles have assumed a single pile diameter of 0.3m.

The total loss of pile wetted surface area will be around 32m² and the proposed piles will create around 65m² wetted surface area in total with 42m² of this being piles available for sunlight. The net result of piles available for colonisation by algae-based habitats will be a 10m² gain. The slipway rails that are to be removed have wetted surface area available for colonisation of macro algae, however continual use of the rails has kept a lot of the rails clear from growth, with the majority of algal colonisation at the deeper sections of the slipway. The approximate wetted surface area for the slip rails has been calculated using the full length of the rails from the 0m ISLW mark and assuming a 0.2m width (based on the rails presenting three sides for colonisation). The net loss of wetted surface area from the removal of the slipway rails would be approximately 35m².

Placement of the pontoons will introduce additional shallow sub-tidal wetted surface area which provides good habitat for a diversity of mainly fringing zone biota (Connell 2000). Assuming a vertical wetted surface depth of 0.5m, the pontoons will provide an additional 74.3m² vertical shallow sub-surface habitat and the pontoon undersides will provide an additional 79.8m² shaded sub-surface habitat.

The above calculations indicate that the proposal will result in the temporary loss of around 32m² pile and 35m² slipway rail habitat, (67m² total) the creation of 42m² lighted pile, 23m² of shaded pile habitat and the creation of 154m² pontoon habitat. There is a net gain of around 152m² structural wetted surface habitat and this net increase in structural wetted surface area will be available for colonisation by similar marine biota to those lost to demolition. The gain of 116m² structural habitat exposed to sunlight should support an algae-based assemblage, which is considered a beneficial impact for an urbanised location in Sydney Harbour.

Therefore, while there will be a short-term temporary loss of habitat, the nett outcome will result in increased habitat areas over the current situation. There should be no long-term adverse impact as a result of this proposal.

9.5.2 Impacts on critical habitats and threatened species

A consideration is provided in the Aquatic Ecology Impact Assessment in terms of both Federal and State legislation, including the:

- Biodiversity Conservation Act 2016
- Fisheries Management Act 1994
- Environment Protection and Biodiversity Conservation Act 1999.

The following conclusions are made with respect to potential species on, within or in proximity to, the subject site:

Fisheries Management Act 1994

The FMA lists a number of marine and estuarine shark and teleost fish species as Vulnerable Species under Schedule 5 of the Act with several also listed as threatened under the EPBC Act. Syngnathiformes (seahorses, sea dragons, pipefish, pipe horses and seamoths) are protected, under both the EPBC Act and the FMA. Seagrasses are protected under the FMA, and Posidonia australis seagrass is listed under both the FMA and EPBC Act as an Endangered Ecological Community in Port Jackson:

- Given the distance upstream from the estuarine mouth and the confined built nature of the habitats in Careening Cove it is considered that listed Grey Nurse and Great White shark species would not be expected in Careening Cove.
- Of the remaining species known from Sydney Harbour, suitable habitat for Black Rock Cod *Epinephelus daemeli* is found in the lower and mid estuary but is unlikely to occur at this locality. Notwithstanding, a specific search was made for Black Rock Cod, particularly juveniles and subadults (which are more likely to occur in estuaries), with the main search concentrated within, and around, areas of sub-tidal inshore rock rubble, reef and seawalls at the locality. There was no suitable rock habitat, rock crevice, overhang or cave habitat for adult Black Cod in the locality, and no specimens of Black Cod were observed during the field work for this study. It is considered that rock rubble habitat in the locality is too sparse to provide habitat for Black Rock Cod. Whilst some of the slipway structures that support kelp-based assemblages could provide shelter and feeding habitat for juvenile Black Cod, the patchiness of the habitats would make transiting from patch to patch difficult and it is concluded that it is unlikely that juvenile Black Rock Cod would utilise the aquatic habitats of the project site.
- Of the 31 species Syngnathiformes known from East Coast Australian waters, three of these species, (White's seahorse *Hippocampus whitei*, Coleman's Seahorse *Hippocampus colemani* and the pygmy pipehorse *Idiotropiscis* sp.), are endemic to NSW. White's seahorse has been reported from deep seawalls and ferry piles in Neutral Bay.
- No syngnathids were found during specific searches of the rock reef, sliprail and pile habitat.

No pipefish were noted in the sparse *Halophila* seagrass patches and given the size, distribution and impermanence of the patches, none are expected.

o Specific searches were made of the rock reef, sliprail and pile habitat, with particular reference to White's seahorse, but none were found.

o Whilst the dense kelp growth along the deeper sections of the sliprails could provide suitable shelter and feeding habitat, the overall patchiness of the habitats probably inhibits colonisation by White's seahorse. Notwithstanding, the presence of Whites Seahorse cannot be entirely discounted.

o No pipefish were noted in any of the habitats, including the sparse *Halophila* seagrass clumps and given the size, distribution and impermanence of the clumps, none are expected.

• Of the three seagrass species known from Port Jackson estuary, *Zostera muelleri* subsp. *capricorni* and *Halophila ovalis* are both protected under the FMA and *Posidonia australis* seagrass is listed under both the FMA and the Commonwealth EPBC Act as an Endangered Ecological Community in Port Jackson:

o No *Posidonia* or *Zostera* seagrass was found at the site or in the immediate locality and *Halophila* occurred as rare clumps or sparse individuals.

o The *Halophila* distribution does not meet the Key Fish Habitat seagrass bed size definition of the DPI Fisheries' guidelines (DPI Fisheries 2013).

9.5.3 Biodiversity Conservation Act 2016 & Environment Protection and Biodiversity Conservation Act 1999

With regard to other aquatic species or ecological communities and migratory species listed under the Biodiversity Conservation Act 2016 (BCA) and under the EPBC Act, various listed cetaceans), marine mammals, reptiles and sea-birds are known from the outer Sydney Harbour and are known to penetrate the main harbour to and beyond the study area, albeit rarely:

- Little Penguins are observed fishing and feeding throughout the harbour and could be expected to visit the aquatic habitats of the site from time to time.
- Various listed cetaceans (whales and dolphins), marine mammals (seals and sea lions), marine reptiles (turtles and sea-snakes) and sea-birds (migratory ocean birds and waders) are known from Sydney Harbour and are known to penetrate the harbour to and beyond the study area. However, none are expected to penetrate the confines

of Careening Cove due to restricted ability to manoeuvre, unsuitable shoreline haul-out, roosting or feeding habitats, disturbance from vessels and shore traffic and inhibition of sight lines for seabirds due to the heights of buildings around the shore-line.

- Other species listed under the BCA such as raptors (e.g., sea eagles) are not expected to frequent the Careening Cove waters due to the long distances from suitable roosting and nesting habitats.

- Fishing bat (Southern Myotis) and some small bat species are known to feed over Harbour waters and roost in, or under, marine structures; however, none have been reported or sighted by staff at Pattons Slipway and inspections indicated no evidence of bat roosting (including bat droppings) in any of the facility buildings, including the burnt-out boatshed (which has no protective roof structure). There were also no suitable roosting areas noted under the existing buildings.

- Saltmarsh is listed under both the EPBC and BCA but there is no suitable habitat for saltmarsh in Careening Cove.

- The site is totally urbanised, there are no areas of native plants and only a few small beds of introduced specimen plants. As such, there is no suitable habitat for listed native terrestrial bird or bat species at the site.

Based on the aforementioned information, the following conclusions are drawn with respect to critical habitat and threatened species:

It is concluded that, of the threatened or listed species that may occur in the vicinity of the site, few would be utilising the resources of the site to any great extent and would generally be in the locality of the more open waters of the Cove and outer Neutral Bay as transients. The site does not provide any significant habitat features for any of these species. This conclusion is in line with the OEH response to the SEARS that states inter alia "OEH's Greater Sydney Planning Team has concluded that the matter does not contain biodiversity, and OEH has no further need to be involved in the assessment of this project".

It is concluded that there would not be any threatened species residing within the locality of the proposal and that the site and the locality do not constitute specific habitat for other threatened aquatic species as listed under the FMA, BCA and EPBC Act and accordingly there is no requirement for notification under the Commonwealth EPBC Act and no requirements for Tests of Significance under the FMA or BCA.

As such, no further consideration is required in relation to the legislative provisions above.

9.6 Soil and Surface Water

The EARs require consideration of the following:

- a description of local soils, topography, drainage and landscapes)
- an assessment of potential impacts on the quality and quantity of surface and groundwater resources
- details of sediment and erosion controls
- details of the proposed stormwater and wastewater management systems (including sewage), water monitoring program and other measures to mitigate surface and groundwater impacts
- benthic morphology, water flow in and around the development, flushing and wave bounce
- details of construction methodology and any proposed dredging, including measures to manage and minimise disturbance of the shoreline, substrate stability and potentially contaminated sediments o a description and appraisal of mitigation and monitoring measures.

No dredging is required to accommodate the proposed alterations and additions. All other matters are addressed below.

9.6.1 Erosion & sediment control

Erosion and sediment control during construction is fundamental to ensuring environmental quality at the site. As there is only a limited amount of land disturbance proposed, there is a low potential for erosion during construction, as excavation is limited to reset levels at the rear of the hardstand and granular fill will be used over the existing sliprails to facilitate the construction of the new hardstand. This can be conditioned.

9.6.2 Water quality

There are two key risks associated with water quality, being that from run-off/wash off and from fuels and chemical leaks.

In both cases, the assessment confirms that, with sound environmental controls and careful management, the quality of surrounding waters can be protected.

9.6.3 Stormwater management

The key features of the Stormwater Management System will be:

- grading of the hardstand will be undertaken to enable water to fall into two surface inlet pits, which will be fitted with screen baskets that will strain debris from antifouling activities. Such debris will be disposed of, off-site
- during dry weather, boat washing will be captured in the trade waste system and be treated through an oil-water separator, prior to being discharged into the Sydney Water system, which will be executed by a diversion valve at the base of the surface inlet pits. These waters will be diverted to a holding tank and treated by the separator prior to discharge
- during wet weather, discharge greater than the first flush flow is not permitted and will therefore be diverted to the holding tank, where the diversion valves are able to measure the quantum so that no further flows go into the trade waste system
- once the diversion valves are closed, then flows from the surface pits will overflow into the stormwater system and gross pollutant trap (GPT), which will treat the water before being discharged to Sydney Harbour. The GPT will have the capacity to reduce pollutant loads.

This can be conditioned.

9.6.4 Sewerage

The existing amenities are pumped to the Sydney Water gravity sewer in McDougall Street, which will be unchanged as part of this development. The proposal does not seek to involve any on-site sewage disposal provision.

9.6.5 Water quality monitoring

As required, water quality monitoring will need to be undertaken in accordance with requirements as stipulated in any future Environmental Protection Licence.

9.6.6 Groundwater

The Surface Water and Soil Assessment indicate that:

- the premises do not have a licence for taking groundwater and is not subject to a Water Sharing Plan, and
- there are no ecosystems dependent upon groundwater supply.

9.6.7 Benthic Morphology

The Navigation Impact Assessment provides an assessment in relation to water depth and Clearance:

....The water depth at Pattons Slipway is therefore considered suitable for the design vessel/s. The vessels could be accommodated within the proposed berths at all tides and would not encroach beyond the intended berth pocket.

The existing slipway rails and associated piles would be removed, which would provide an increase in water depth of up to say 1.5 m at the toe of the existing slipway. This would improve navigation to and from the public pontoon at Wrixton Park.

All existing slipway piles to be removed would be cut off to seabed level to ensure there is no reduction in waterway depths.

The water depths are acceptable to accommodate the design vessels and there would be no underwater obstructions or permanent occupation beyond the design marina and berth pocket. Removal of the slipway rails would improve navigable water depths.

The proposal is acceptable and could result in a nett improvement over the existing situation through the removal of the slip rails, as a result of the proposed alterations and additions.

9.6.8 Water Flow

In terms of water flow and currents within the vicinity of the site, the following is provided in the Navigation Impact Assessment:

Tidal currents within Careening Cove are expected to be negligible. Sydney Harbour experiences diurnal tides with a maximum range of 2.1 m. The surface area of Careening Cove is relatively small compared to the width and depth of the Cove, resulting in negligible tidal currents.

Freshwater flows within Careening Cove, resulting from rainfall runoff and stormwater outlets, are expected to be negligible. The catchment area, that discharges into Careening Cove, is relatively small compared to the width and depth of the Cove.

Localised propeller current may be caused in the vicinity of motorised vessels. Due to the low installed engine power on typical sailing yachts (up to say 40 hp), propeller currents would be negligible. Higher propeller currents would be produced by motor cruisers with velocity dependant on the size of the propeller and installed engine power. Propeller currents generated from vessels in Careening Cove would generally fully dissipate within say 10 to 15 m of the vessel.

Accordingly, the proposed development will not have any adverse effect in terms of water flow within Careening Cove.

9.6.9 Flushing

The risk assessment in relation to flushing from the Surface Water and Soil Assessment concludes that the proposed development does not present any significant risk or adverse impact in relation to flushing.

9.6.10 Wave Bounce

The risk assessment in relation to wave bounce is extracted from the Surface Water and Soil Assessment concludes that the proposed development does not present any significant risk or adverse impact in relation to wave bounce.

9.6.11 Construction Management

To ensure that the movement of soils associated with the proposed development does not result in any adverse conditions arising from the proposed works, the Surface Water and Soils Assessment provides the following risks which are to be carefully managed:

- transportation of erosion and sediment into Careening Cove
- risk of spill associated with hydrocarbons or hazardous materials
- removal of pylons and slipways from the waterway
- installation of new pylons for the proposed extensions.

The following are the suggested mitigation measures during construction:

- works should be staged to limit the amount of disturbed areas at any one time, which will reduce the potential for erosion
- installation of a sump as set out above
- sediment fencing and sandbags along the lower edge of the disturbed area should be provided to avoid concentrated flow
- a shaker pad is to be provided at the site exit to reduce debris attached to vehicle wheels
- site storage for hydrocarbons within bunded areas is to be provided with spill response procedures
- all measures are to be inspected post rainfall events
- appropriate level of resourcing for monitoring is to be provided and clear protocols for pollution incidents that align with ARA, EPA, local Council and Fire and Rescue NSW requirements
- procedures for emergency response in relation to pollution incidents
- adequate staff training to ensure that personnel are made aware of environmental procedures and requirements.

Similar requirements would be required for the operational phase of the development which would be incorporated into the Operational Environmental Management Plan (OEMP).

Based on the aforementioned measures during both construction and operation, suitable measures in terms of erosion and sediment control are achievable to ensure satisfactory operation of the site.

9.6.12 Water Resources

The Natural Resources Access Regulator has reviewed documents for the development application and considers that, for the purposes of the Water Management Act 2000 (WM Act), general terms of approval and / or a controlled activity approval is not required, and no further assessment by this agency is necessary.

9.7 Impacts

9.7.1 Noise & Vibration

The EARs require consideration of the following:

- a description of all potential noise and vibration sources during construction and operation, including road traffic noise
- a noise and vibration assessment in accordance with the relevant Environment Protection Authority guidelines
- a description and appraisal of mitigation and monitoring measures.

Construction impacts associated with the proposal

During the construction phase, the likely sources of noise and vibration attributable to this process will include:

- impact piling
- pile drilling
- circular saw
- petrol generator
- compressor
- crane located on a barge
- skip bin collection and delivery.

Having regard to the sources, a condition requiring a construction noise management plan is required should consent be granted.

9.7.2 Operational impacts of the proposal

The list below details the noise and vibration sources that are attributable to the current operation of the site, as identified in the Acoustic Report:

- high-pressure water cleaner: 24Mpa phase 3 electric power, for cleaning boats on slipway
- electric polishers for cleaning boats on slipway
- spray gun, which is only used occasionally to touch up boats on the slipway
- power tools
- mobile truck-mounted crane deliveries, which are mainly for lifting boat engines in and out of boats on the slipway and occur approximately six (6) times per year
- skip bin delivery and collection, of approximately ten deliveries per year with fourteen individual visits. This is undertaken with a truck crane (Hyab) with stabilisers, which is used to crane the bin over the fence from Willoughby Street onto the site
- general waste collection, which includes four wheelie bins of general waste, which are collected each week. Wastewater and sediment are collected every three months and waste oil is collected every six months.

The aforementioned noise and vibration sources will continue with the operation of the site. The only additional operational noise source is that attributable to noise generated by the new crane (electric motor).

Having regard to the noise generated, the following restrictions were suggested by the applicant for the operation of the premises:

- works are only to take place between 8:00am and 5:00pm, Monday to Friday
- grinding and polishing work is to take place inside the workshop with the door closed, or as proximate to the boat being cleaned as possible with an acoustic curtain, to reduce the level of noise reaching residents
- if water-blasting activities are at issue, a temporary curtain could be placed between the job and residents (e.g. flexishield curtain)
- workers on the site are to ensure that works are undertaken using the quietest reasonable process and method
- truck engines should not be left idling.

9.7.3 Traffic and Parking

No parking is proposed on site or possible with regard the topography and proposed hardstand and boatshed. The upper level of the boatshed is intended as office space not directly related to the boat repair business. This will result in additional workers on site. If the proposal is to be accepted without parking, then the boatshed upper level needs to be deleted or reduced in area and conditioned to be used as part of the boat repair business and not as an ancillary use. Should the upper level of the boatshed be deleted or significantly reduced in area, it would be possible to provide for 2 car spaces located above the storage building and accessed from the service area (with suitable fencing/screening from street).

9.7.4 Waste Management

A Waste Management Plan was submitted with the application addressing both the construction and operational phases of the development.

10.0 ENVIRONMENTAL PLANNING INSTRUMENTS

Relevant Environmental Planning Instruments

EPI	Abbreviation
State Environmental Planning Policy (Infrastructure) 2007	SEPP (Infrastructure)
State Environmental Planning Policy No. 33 – Hazardous & Offensive Development	SEPP 33
State Environmental Planning Policy No. 55 – Remediation of Land	SEPP 55
State Environmental Planning Policy (Coastal Management) 20181	SEPP (CM)
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	the SREP
North Sydney Local Environmental Plan 2013	NSLEP 2013
North Sydney Development Control Plan 2013	NSDCP 2013

10.1 State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure)

The provisions prescribed in Division 13 relating to Port, Wharf or Boating Facilities have been considered, given the proposed development addresses the Definition of facilities contained in Clause 67(d), being for the purposes of ...refuelling, launching, berthing, mooring, storage or maintenance facilities for any vessel.

As the proposed development is not a development being undertaken on behalf of a public authority, but for an entity leasing the land from a public authority, Clause 68 is not applicable.

Clause 69 relates to Development permitted with consent. The proposal is classified as being Development for the purpose of a facility for maintaining vessels may be carried out by any person with consent on land in a prescribed zone or on unzoned land. The site is classified as a wharf or boating facility, the definition of which is deferred to the Standard Instrument, as:

wharf or boating facilities means a wharf or any of the following facilities associated with a wharf or boating that are not port facilities:

- (a) facilities for the embarkation or disembarkation of passengers onto or from any vessels, including public ferry wharves,*
- (b) facilities for the loading or unloading of freight onto or from vessels and associated receival, land transport and storage facilities,*
- (c) wharves for commercial fishing operations,*
- (d) refuelling, launching, berthing, mooring, storage or maintenance facilities for any vessel,*
- (e) sea walls or training walls,*
- (f) administration buildings, communication, security and power supply facilities, roads, rail lines, pipelines, fencing, lighting or car parks.*

The site is also located in a prescribed zone. As such, the proposed development requires consent in accordance with this clause.

Clause 104 addresses Traffic Generating Development. The subject site and the proposed development do not meet the criteria as set out at Table 1 of Schedule 3.

10.2 State Environmental Planning Policy No. 33 – Hazardous & Offensive Development (SEPP 33)

The proposal has the potential to pose hazardous and offensive risks to the locality during the construction and operational phases of the development. These include potential odour related and air quality risks, potential impacts to aquatic and terrestrial biodiversity, potential disturbance and mobilisation of localised sediments within Careening Cove and potential impacts on soil, water quality and water resources of the local environment.

The relevant definitions (Clause 3) are as follows:

Potentially hazardous industry means a development for the purposes of any industry which, if the development were to operate without employing any measures (including, for example, isolation from existing or likely future development on other land) to reduce or minimise its impacts on the locality or on the existing or likely future development on other land, would pose a significant risk in relation to the locality:

(a) to human health, life or property, or

(b) to the biophysical environment,

and includes a hazardous industry and a hazardous storage establishment.

Potentially offensive industry means a development for the purposes of an industry which, if the development were to operate without employing any measures (including, for example, isolation from existing or likely future development on other land) to reduce or minimise its impact in the locality or on the existing or likely future development on other land, would emit a polluting discharge (including, for example, noise) in a manner which would have a significant adverse impact in the locality or on the existing or likely future development on other land, and includes an offensive industry and an offensive storage establishment.

Therefore, the provisions of SEPP 33 may apply.

Clause 12 relates to Preparation of preliminary hazard analysis, which mandates the requirement for an analysis to accompany any development application proposed to carry out a potentially hazardous industry.

This development application is accompanied by technical reports relating to the potential risks associated with the proposed development in relation to matters of:

- Air Quality
- Biodiversity
- Preliminary Contamination
- Water Resources,
- Soil and Water Quality
- Acoustic Impact.

These reports demonstrate that the potential hazards associated with the development and potential risks may be appropriately mitigated, and not representative of a potentially hazardous or offensive industry and therefore a preliminary hazard analysis is not required.

10.3 State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)

The provisions of SEPP 55 are applicable as the proposal involves works on land to which the Policy applies, which is to the whole of the State (Clause 5).

Clause 7 details the matters relating to Contamination and remediation to be considered in determining development application and the relevant provisions, as it relates to the proposed development, is outlined as follows:

(1) A consent authority must not consent to the carrying out of any development on land unless:

a) It has considered whether the land is contaminated, and

b) 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, and

c) If the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose

(3) The applicant for development consent must carry out the investigation required by Subclause (2) and must provide a report on it to the consent authority.

The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considered that the findings of the preliminary investigation warrant an investigation.

The site is located on land within Careening Cove, an area that has been historically used for maritime purposes and associated activities for many years.

In consideration of these historic land uses, the site demonstrates potential contamination of the land, which has been confirmed by in the Preliminary Contamination Assessment Report, accompanying this application. The causes, both as a result of the site and the activities within the broader Careening Cove area, are likely to be:

- Stormwater runoff from adjacent urban areas
- Use of contaminated, imported or fill material to construct the buildings, concrete hardstand and slipways
- Transportation and deposition of contaminated sediments from the adjacent Neutral Bay.
- Vessel building and maintenance activities on and adjacent to the Site (i.e. cleaning of vessel hulls and the removal of antifouling paint containing organotins and heavy metals, i.e. aerial release from over spraying or physical deposition of paint flecks on the ground surface.
- Inadequate waste collection and storage facilities and stormwater management allowing contaminants to reside onsite and pollute the marine waters and sediments.
- Spills may have also occurred directly to sediments or marine waters,

Having regard to the above, the following contaminants have been potentially identified:

- heavy metals and metalloids particularly lead (Pb)
- PAHs
- Total recoverable hydrocarbons (TRHs)
- Organotins including Tributyltin (TBT)
- Polychlorinated Biphenyls
- Organochlorine (OC), organophosphorus (OP) pesticides or Phenols.

Therefore, a Preliminary Contamination Assessment, has been provided for consideration by the consent authority.

Clause 9 relates to Category 1 remediation work: work needing consent. For the purposes of this Policy, the proposal would be classified as a Category 1 Remediation Work as the

development is classified as designated development. It is also proposed in a coastal protection zone and on land that contains a heritage item.

In accordance with the SREP, the proposed development is classified as land water interface development within the North Sydney local government area; as such, the Council has jurisdiction over the application.

In relation to advertising of the development application, as Category 1 Remediation work is required, the application is to be advertised for 30 days pursuant to this Clause and Section 29A of the Act.

Clause 15 relates to Remediation work that is ancillary to other development. The relevant provisions, as they relate to the proposed development, are outlined below:

- (2) A category 1 remediation work must be treated as such even if it is ancillary to development that may be carried out without consent.*
- (3) A remediation work that would of itself be a category 1 remediation work and constitute designated development does not, just because it is ancillary to other development:*
 - (a) render the latter development designated development, or*
 - (b) cause that development to become a development for which development consent is required.*

The Category 1 remediation work associated with the proposal would be ancillary to the primary purpose. The remediation works, in their own right, would not render the latter designated development nor cause the development to become a development subject to development consent independently.

Having regard to the impact assessment and mitigation measures, the proposal is adequate in terms of this SEPP.

10.4 State Environmental Planning Policy (Coastal Management) 2018 (SEPP CM)

The site is in the coastal zone (Clause 5) and therefore subject to the SEPP.

Clause 3 provides the Aim of the Policy. The proposal will be consistent with the relevant Aim, by extending an existing maritime use within the coastal zone, while ensuring that the environmental assets within the vicinity of the site are not adversely impacted. Appropriate mitigation measures are proposed to protect these assets.

The associated technical report demonstrate that the proposed development will have no adverse impact on the coastal environment.

10.5 Sydney Regional Environmental Plan (Sydney Harbour Catchment) (SREP)

The site is located within the W1 Maritime Waters zone and within the Foreshores and Waterways Area. The relevant matters are addressed below.

10.5.1 - Clause 2 provides the Aims and the proposed development is considered below having regard to those relevant to the application.

Assessment to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained: (i) as an outstanding natural asset, and (ii) as a public asset of national and heritage significance, for existing and future generations,

The potential impacts on the catchment and foreshore that may arise as a result of the proposed development have been recognised, the catchment and foreshore areas can continue to be protected, maintained and enhanced as a result of this proposal subject to further modifications, strict conditions and control.

... to ensure a healthy sustainable environment on land and water, to achieve a high quality and ecologically sustainable urban environment,

The proposal with respect to its design and potential impacts have been considered to ensure that a healthy sustainable environment on land and water, as well as the urban environment, is achieved. Modifications and strict conditions will be necessary.

...to ensure a prosperous working harbour and an effective transport corridor,

The proposal would allow for the continued use of the site for the purposes of a boat repair facility, which would continue the contribution that the site makes as a waterside industrial use along the foreshore.

(e) to encourage a culturally rich and vibrant place for people,

The proposal could fulfil these requirements as part of the industrial working waterfront. The proposal needs to minimise its impacts on public views and the adjacent public viewing platform. Modifications and strict operating conditions are essential.

(f) to ensure accessibility to and along Sydney Harbour and its foreshores,

As the site is occupied by occupational health and safety legislation, accessibility along the foreshore is limited. The public road is relatively close to the foreshore and the waterfront is visible from public spaces. The proposal needs to minimise its impacts on public views and the adjacent public viewing platform. Modifications to the proposal are required.

...to ensure the protection, maintenance and rehabilitation of water courses, wetlands, riparian lands, remnant vegetation and ecological connectivity

The necessary measures to ensure the protection, maintenance and rehabilitation of water courses, remnant vegetation and ecological connectivity have been addressed.

10.5.2 - Clause 13 relates to the planning principles for development on land within the Sydney Harbour Catchment.

(a) development is to protect and, where practicable, improve the hydrological, ecological and geomorphological processes on which the health of the catchment depends,

Given the nature of the works to a small portion of the harbour catchment, the proposal would not significantly impact on the hydrological, ecological and geomorphological processes of the greater Sydney catchment.

(b) the natural assets of the catchment are to be maintained and, where feasible, restored for their scenic and cultural values and their biodiversity and geodiversity,

The proposed development would detract from the scenic and cultural value of the catchment with the extensive concrete hardstand over the water. As such, the natural assets of the catchment will not be maintained and enhanced by the proposal.

- (c) decisions with respect to the development on land are to take account of the cumulative environmental impact of development within the catchment,*

The potential cumulative environmental impacts will impact the amenity of the area. These could be managed through appropriate mitigation measures during construction and operation.

- (d) action is to be taken to achieve the targets set out in Water Quality and River Flow Interim Environmental Objectives: Guidelines for Water Management: Sydney Harbour and Parramatta River Catchment (published in October 1999 by the Environment Protection Authority), such action to be consistent with the guidelines set out in Australian Water Quality Guidelines for Fresh and Marine Version: 1, Waters (published in November 2000 by the Australian and New Zealand Environment and Conservation Council),*

Surface Water and Soils Assessment has been provided.

- (e) development in the Sydney Harbour Catchment is to protect the functioning of natural drainage systems on floodplains and comply with the guidelines set out in the document titled Floodplain Development Manual 2005 (published in April 2005 by the Department),*

The proposal does not seek to alter the existing drainage systems.

- (f) development that is visible from the waterways or foreshores is to maintain, protect and enhance the unique visual qualities of Sydney Harbour,*

Although a Visual Impact Assessment was provided. The extent of the hardstand and two storey boatshed past the land boundary and over the water will not maintain, protect and enhance the visual qualities of Sydney Harbour. The hardstand needs to be reduced in size and the boatshed modified.

- (g) the number of publicly accessible vantage points for viewing Sydney Harbour should be increased,*

The publicly accessible vantage points are not increased. The adjoining vantage point will be severely impacted by the boatshed as will views across the site from the street.

- (h) development is to improve the water quality of urban run-off, reduce the quantity and frequency of urban run-off, prevent the risk of increased flooding and conserve water,*

Refer to: Surface Water and Soils Assessment

- (i) action is to be taken to achieve the objectives and targets set out in the Sydney Harbour Catchment Blueprint, as published in February 2003 by the then Department of Land and Water Conservation, The Sydney Harbour Catchment Blueprint sets direction for managing native vegetation, biodiversity, water sources and soils in the Sydney Harbour Catchment. It is considered the proposal adequately addresses these matters.*

Refer to: Surface Water and Soils Assessment Aquatic Ecology Report

- (j) development is to protect and, if practicable, rehabilitate watercourses, wetlands, riparian corridors, remnant native vegetation and ecological connectivity within the catchment,*

The proposed development would continue to protect the natural assets within the catchment. Refer to: Aquatic Ecology Report

- (k) development is to protect and, if practicable, rehabilitate land from current and future urban salinity processes, and prevent or restore land degradation and reduced water quality resulting from urban salinity,*

The proposed development is predominantly contained within the body of water and would not prompt urban salinity processes, land degradation or reduced water quality. Refer to: Surface Water and Soils Assessment

- (l) development is to avoid or minimise disturbance of acid sulfate soils in accordance with the Acid Sulfate Soil Manual, as published in 1988 by the Acid Sulfate Soils Management Advisory Committee.*

The proposed development is predominately contained within the body of water and would not unreasonably disturb acid sulphate soils.

10.5.3 - Clause 14 relates to the planning principles for sites within the Foreshores and Waterways Area.

- (a) development should protect, maintain and enhance the natural assets and unique environmental qualities of Sydney Harbour and its islands and foreshores,*

The proposed development would detract from the natural assets and unique environmental qualities of the foreshore

- (b) public access to and along the foreshore should be increased, maintained and improved, while minimising its impact on watercourses, wetlands, riparian lands and remnant vegetation,*

Addressed previously. Not practical for a boat repair business.

- (c) access to and from the waterways should be increased, maintained and improved for public recreational purposes (such as swimming, fishing and boating), while minimising its impact on watercourses, wetlands, riparian lands and remnant vegetation,*

Addressed previously. Not practical for a boat repair business.

- (d) development along the foreshore and waterways should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands and foreshores,*

Refer to previous comments on Visual Impact Assessment

- (e) adequate provision should be made for the retention of foreshore land to meet existing and future demand for working harbour uses,*

The site is recognised as a working harbour use. The development is in response to improving the operational management measures associated with the site to ensure the retention of this boat repair facility. Demand for the proposed facility is reflected by the making of this application and, as such, the need to maintain this site as part of the working harbour.

- (f) public access along foreshore land should be provided on land used for industrial or commercial maritime purposes where such access does not interfere with the use of the land for those purposes*

It is not in the public interest for foreshore access to be made available across the site due to occupational health and safety restrictions. The other buildings on site do not permit access along the foreshore.

- (g) the use of foreshore land adjacent to land used for industrial or commercial maritime purposes should be compatible with those purposes,*

The proposal reflects a use that has been operating for many years in different forms. The proposal remains consistent with the principal use of the site and is compatible with the location with proper environmental control.

- (h) water-based public transport (such as ferries) should be encouraged to link with land-based public transport (such as buses and trains) at appropriate public spaces along the waterfront*

The subject site is privately owned/leased and does not provide linked water-based and land-based public transport connections.

- (i) the provision and use of public boating facilities along the waterfront should be encouraged.*

The subject site is privately owned/leased and does not provide immediate use of public boating facilities. However, other areas within Careening Cove waterfront provide public facilities.

10.5.4 - Part 3 deals with the Foreshores and Waterways Area and the site is located in the W1 Maritime Waters zone.

Zone Objectives - W1 Maritime Waters Zone

- a) to give preference to and protect waters required for the effective and efficient movement of commercial shipping, public water transport and maritime industrial operations generally*

The alterations and additions will not adversely impact upon the effective and efficient use of the waterway. Refer to: Navigation Impact Assessment

- (b) to allow development only where it is demonstrated that it is compatible with, and will not adversely affect the effective and efficient movement of, commercial shipping, public water transport and maritime industry operations,*

The alterations and additions are compatible and will ensure that the subject site operates in a more efficient and effective manner, particularly with respect to environmental compliance.

- (c) to promote equitable use of the waterway, including use by passive recreation craft*

The alterations and additions will not alter the current situation with regard to the equitable use of the waterway.

10.5.5 - Division 2 relates to the Matters of Consideration to assist the consent authority in determining a development application (Part 4 of the EP & A Act) under this Policy.

Matters for Consideration –

21. Biodiversity, ecology and environment protection

- (a) development should have a neutral or beneficial effect on the quality of water entering the waterways,*

Details on the aquatic habitats have been addressed in the EIS.

- (b) development should protect and enhance terrestrial and aquatic species, populations and ecological communities and, in particular, should avoid physical damage and shading of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities),*
- (c) development should promote ecological connectivity between neighbouring areas of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities),*
- (d) development should avoid indirect impacts on aquatic vegetation (such as changes to flow, current and wave action and changes to water quality) as a result of increased access,*
- (e) development should protect and reinstate natural intertidal foreshore areas, natural landforms and native vegetation,*
- (f) development should retain, rehabilitate and restore riparian land,*
- (g) development on land adjoining wetlands should maintain and enhance the ecological integrity of the wetlands and, where possible, should provide a vegetative buffer to protect the wetlands,*
- (h) the cumulative environmental impact of development,*
- (i) whether sediments in the waterway adjacent to the development are contaminated, and what means will minimise their disturbance. located and habitats for oysters were identified.*

The site is not located in a wetland protection area. Matters of cumulative impact are addressed through existing operating procedure in conjunction with proposed Mitigation Measures. Refer to: Biodiversity Assessment Navigation Impact Assessment Water Resources, Soil and Water Quality Assessment Contamination Assessment Mitigation Measures

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

- (a) development should maintain and improve public access to and along the foreshore, without adversely impacting on watercourses, wetlands, riparian lands or remnant vegetation,*
- (b) development should maintain and improve public access to and from the waterways for recreational purposes (such as swimming, fishing and boating), without adversely impacting on watercourses, wetlands, riparian lands or remnant vegetation,*

- (c) if foreshore land made available for public access is not in public ownership, development should provide appropriate tenure and management mechanisms to safeguard public access to, and public use of, that land,*
- (d) the undesirability of boardwalks as a means of access across or along land below the mean high-water mark if adequate alternative public access can otherwise be provided,*
- (e) the need to minimise disturbance of contaminated sediments.*

Refer to previous comments. It is not practical to provide for public access across the site for safety reasons.

23. Maintenance of a working harbour

- (a) foreshore sites should be retained so as to preserve the character and functions of a working harbour, in relation to both current and future demand,*
- (b) consideration should be given to integrating facilities for maritime activities in any development,*
- (c) in the case of development on land that adjoins land used for industrial and commercial maritime purposes, development should be compatible with the use of the adjoining land for those purposes,*
- (d) in the case of development for industrial and commercial maritime purposes, development should provide and maintain public access to and along the foreshore where such access does not interfere with the use of the land for those purposes.*

The proposal would retain and the preserve the character and functions of a working harbour as a result of its continued use. The proposed structures could improve the environmental compliance of the site.

24. Interrelationship of a waterway and foreshore uses

- (a) development should promote equitable use of the waterway, including use by passive recreation craft,*
- (b) development on foreshore land should minimise any adverse impact on the use of the waterway, including the use of the waterway for commercial and recreational uses,*
- (c) development on foreshore land should minimise excessive congestion of traffic in the waterways or along the foreshore,*
- (d) water-dependent land uses should have priority over other uses,*
- (e) development should avoid conflict between the various uses in the waterways and along the foreshores.*

The proposed development would not unreasonably conflict with other waterway and foreshore uses. The proposed works are appropriately located in relation to the land-based affiliated activity and would not obstruct access to and from the foreshore or waterway. Refer to: Navigation Impact Assessment

25 *Foreshore and waterways scenic quality*

- (a) the scale, form, design and siting of any building should be based on an analysis of:
 - (i) the land on which it is to be erected, and*
 - (ii) the adjoining land, and*
 - (iii) the likely future character of the locality,**
- (b) development should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands, foreshores and tributaries,*
- (c) the cumulative impact of water-based development should not detract from the character of the waterways and adjoining foreshores.*

The size of the hardstand over the water, the crane structure and the location and scale of the boatshed does not have proper regard to the adjoining land and uses. The proposal does not maintain or enhance the visual qualities of the harbour.

26 *Maintenance, protection and enhancement of views*

- (a) development should maintain, protect and enhance views (including night views) to and from Sydney Harbour,*
- (c) development should minimise any adverse impacts on views and vistas to and from public places, landmarks and heritage items,*
- (c) the cumulative impact of development on views should be minimised.*

The proposed crane structure will have an impact on existing views but may be acceptable if it was the only element affecting the views. The boatshed needs to be significantly setback and reduced in scale to minimise the adverse impact on views from the adjacent public viewing platform and Willoughby Street as well as the semi-public areas within the Ensemble Theatre.

27 *Boat storage facilities*

- (a) development should increase the number of public boat storage facilities and encourage the use of such facilities,*
- (b) development should avoid the proliferation of boat sheds and other related buildings and structures below the mean high-water mark,*
- (c) development should provide for the shared use of private boat storage facilities,*
- (d) development should avoid the proliferation of private boat storage facilities in and over the waterways by ensuring that all such facilities satisfy a demonstrated demand,*
- (e) boat storage facilities should be as visually unobtrusive as possible,*
- (f) in the case of permanent boat storage, the safety and utility of the development should not be adversely affected by the wave environment, and the development should avoid adverse impacts on safe navigation and single moorings.*

The proposal seeks to provide boat storage facilities over the waterway on the hardstand and with a two-storey boat shed structure (not used to store boats) which would be visually obtrusive. The boatshed is proposed over the mean high-water mark. The boat shed needs to be setback behind the mean high-water mark and any use of the hardstand for boat storage over the mean high-water mark should be restricted and visually unobtrusive.

In accordance with **Division 3 and Schedule 2**, the application was considered by the Foreshores and Waterways Planning Development Advisory Committee to advise the consent authority on any concerns relating to the development application. No comments were made by the Committee.

10.6 Sydney Harbour Foreshore and Waterways Area Development Control Plan 2005 (SDCP)

The relevant matters relating to this are addressed below.

SECTION 2: ECOLOGICAL ASSESSMENT

2.2 General Aims

The overall purpose of the performance criteria is to conserve biological diversity within and around Sydney Harbour and its tributaries. Within this context, criteria have been devised to ensure that:

- *ecological communities, particularly those which form wildlife habitats, are protected and where feasible enhanced;*
- *development is sited to retain native vegetation, wetlands and natural foreshores;*
- *development is accompanied by revegetation and rehabilitation of degraded foreshores, where appropriate; and development does not impact adversely on water quality.*

Refer to Aquatic Ecology Assessment.

2.3 Identification of Ecological Communities Objectives:

To establish whether there are ecological communities that need to be considered when an application is being prepared, three steps must be followed.

Step 1: A series of maps accompany the DCP that show, in general terms, areas of ecological significance.

Step 2: Determine the Conservation Status of Identified Ecological Community

The Aquatic Ecology Report addresses these matters. A species impact statement is not required. Refer to: Aquatic Ecology Report Section 3 deals with landscape character and the site is located in Area 8. The relevant matters are addressed below.

Landscape Character - Assessment 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.*

The proposal seeks to provide boat storage facilities over the waterway on the hardstand and with a two-storey boat shed structure which would be visually obtrusive. The boat shed needs to be setback behind the mean high-water mark and any use of the hardstand for boat storage over the mean high-water mark should be restricted and visually unobtrusive. The upper level of the boatshed should ideally be deleted to minimise impact on views and to provide for some on-site parking.

3.4 Landscape Character Type

Character Type 8 applies to areas including North Sydney, Elizabeth Bay, Neutral Bay, Mosman Bay, Cremorne and Manly.

ii. Statement of Character and Intent

These areas have a high level of built form with waterside commercial, industrial and residential uses. The commercial and industrial uses play an important role in terms of tourism and maritime services which support water-based activities. There are special features in these areas that contribute to the visual character of the area that should be maintained.

iii. Performance Criteria

Any development within this landscape is to satisfy the following criteria:

- o vegetation is integrated with land-based development to minimise the contrast between natural and built elements;*
- o design and mitigation measures are provided to minimise noise and amenity impacts between incompatible land uses;*
- o the maritime uses on the Harbour are preserved. Pressure for these uses to relocate is minimised. New developments adjoining maritime uses are designed and sited to maintain compatibility with existing maritime uses; and*
- o remaining natural features that are significant along the foreshore are preserved and views of these features are maintained compatible with the land uses within the vicinity thereof.*

The maritime use of the site is preserved and could be achieved on a compatible basis with improved environmental performance subject to strict conditions. Natural features will be altered through the building of a hardstand 10m, a crane and a two-storey boatshed over the mean high-water mark. These elements cannot be supported. Repair of boats in the open needs to be restricted to behind the mean high-water mark between buildings to minimise noise and amenity impacts.

Section 4 relates to the Design Guidelines for Water-Based and Land/Water Interface Developments. The proposal is a land/water interface development and the relevant provisions are addressed below.

4.2 GENERAL REQUIREMENTS - Land/ water interface developments:

- public access to waterways and public land is maintained and enhanced;*
- congestion of the waterway and foreshore is minimised;*
- 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;*
- the structure does not obstruct or affect the natural flow of tides and currents;*
- development does not dominate its landscape setting;*
- 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*
- development is setback at least 2.5 metres from the division of the waterway as established by the NSW Maritime Authority*

These matters generally addressed previously. The proposal seeks to provide boat storage facilities over the waterway on the hardstand and with a two-storey boat shed structure which would be visually obtrusive. The boat shed needs to be setback behind the mean high-water mark and any use of the hardstand for boat storage over the mean high-water mark should be restricted and visually unobtrusive. There is no setback from the division of the waterway.

4.4 SITING OF BUILDINGS AND STRUCTURES

- where there is existing native vegetation, buildings should be set back from this vegetation to avoid disturbance to the vegetation;
- buildings should address the waterway;
- buildings should not obstruct views and vistas from public places to the waterway; and
- buildings should not obstruct views of landmarks and features identified on the maps accompanying this DCP.

The proposal seeks to provide boat storage facilities over the waterway on the hardstand and with a two-storey boat shed structure which would be visually obtrusive. The boat shed needs to be setback behind the mean high-water mark and any use of the hardstand for boat storage over the mean high-water mark should be restricted and visually unobtrusive.

4.5 BUILT FORM

- 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;
- bright lighting and especially floodlighting which reflects on the water, can cause problems with night navigation and should be avoided. External lights should be directed downward, away from the water. Australian Standards (AS4282–1997) Guidelines for Outdoor Lighting and Pedestrian Area (Category P) Lighting (AS/NZ 1158.3 – 1999) should be observed;
- where otherwise required for navigation purposes, all lights on structures shall be shielded seawards and positioned to avoid disturbance to neighbouring properties;
- colours should be sympathetic with their surrounds and consistent with the colour criteria, where specified, for particular landscape character types in Part 3;
- the cumulative visual impact of a number of built elements on a single lot should be mitigated through bands of vegetation and by articulating walls and using smaller elements; and
- the cumulative impact of development along the shoreline is considered having regard to preserving views of special natural features, landmarks or heritage items.



The boatshed should be setback to maintain views across the mean high water mark (although the crane will have an impact) The height of the boatshed could be reduced by deleting the upper level (preferred) or if some of the upper level is retained (after setback from mean high water and setback from street to allow for parking) by reducing the pitch of the roof to be similar to the existing building on the waterfront (building to the right on

elevation above). Conditions with regard to lighting would be required should approval be granted.

4.7 MARINAS

Location

- *Marinas (where permissible) are to be located where they can be used by as many people as possible and are easily accessed from land and water;*
- *marinas are to be located where there is adequate water depth or where minimal dredging of soft material will achieve an adequate water depth;*
- *marinas are to be located away from areas subjected to exposed wave environments;*
- *marinas are preferably to be located away from wetlands or the wetlands protection area (both as defined by the SREP) or where they or the vessels using them will physically damage or overshadow estuarine vegetation of high value.*
- *marinas are not to reduce the number of publicly available single (swing) moorings, jeopardise safe navigation or adversely impact other water users including small craft; and*
- *waterside structures are to minimise impacts on public water activities.*

The proposal satisfies the above requirements. The Marina would be only available for boats being repaired.

Design & Layout

- *Buildings and other facilities are to be designed and sited so that natural or other attractive features are not obscured;*
- *buildings are to be designed so that their dimensions are not excessive and can reasonably meet the functional requirements of the proposed uses;*
- *marinas are to enhance public access to and along the shore and, where relevant, the inter tidal zone;*
- *secure storage is to be provided in a controlled environment;*
- *marinas are to be in the form of a series of interlinked pontoons which shall be restrained and held in position by a minimum number of piles or mooring lines to anchor points in the seabed;*
- *shiny or reflective materials are not to be used*
- *the depth and width of berths and fairways of commercial marinas shall accommodate either a yacht or motor vessel. Restricted berths are to be nominated only where this will lead to an optimal environmental outcome;*
- *commercial marinas are to provide a point of access to boats for disabled people where possible;*
- *marinas are to be designed to minimise the impact of vessels when in use on the environment including on air and water quality, marine habitat and bank stability; and*
- *marina layouts are to be designed in accordance with the following publications:* • *Department of Environment and Conservation (NSW) "Environmental Information for Marinas, Boatsheds and Slipways" (November 1998).* • *NSW Maritime Authority "Engineering Standards and Guidelines for Maritime Structures"* • *NSW Fisheries Department's "Aquatic Habitat Management and Fish Conservation—Policy and Guidelines", 1998* • *NSW Department of Primary Industries – Fisheries "Policy and Guidelines – Aquatic Management and Fish Conservation (1999)".* • *NSW Department of Primary Industries – Fisheries "Habitat Protection Plan No. 2: Seagrasses"; and* • *NSW Department of Primary Industries – Fisheries "Habitat Protection Plan No. 1:*
- *commercial marinas are to provide boating service facilities such as fuel, water, toilet facilities or sewage pumpout where practicable and where such facilities are not yet locally available;*

- *commercial marinas are to provide a mix and choice of boat storage facilities based on established demand as well as a range of marine services to the boating public;*
- *commercial marinas are to provide benefits to both the general and boating public; and*
- *vessels at the marina are not to be used as a permanent residence. A covenant shall be included on the lease to enforce this requirement.*

Due to the size of the marina, facilities such as fuel, water, toilet facilities or sewage pumpout and a mix and choice of boat storage facilities based on established demand as well as a range of marine services to the boating public are not proposed. The upper level of the boatshed is not part of the boat repair facility or marina. It is not required to meet the functional requirements of the proposed use. Deletion of the upper level will not be a reduction to the boat repair facility.

Visual Impact

- *the visual contrast (derived from an analysis of form, line, colour and texture) between the marina and the existing or planned future character of its setting is to be minimised*
- *the visual impact of the marina on people in the visual catchment (derived from an analysis of the potential number of viewers, their location within the landscape, distance from the marina, and duration of view) is to be minimised;*
- *any visual analysis shall consider the impact of the largest motor vessel(s) capable of being berthed at the marina;*
- *the largest vessels (motorised or otherwise) to be berthed at the marina are to be located as far from shore as possible;*
- *waterside structures and berthed vessels associated with marinas are not to block views from foreshore public open space or views to foreshore public open space from the waterway*
- *the bulk and scale of buildings and other structures on land is to be minimised through appropriate mitigation measures including landscaping, articulated walls, detailing of surfaces and by using smaller elements;*
- *the visual impact of car parking from the waterway is to be minimised; and*
- *all signage is to be located on dry land below the roofline (or parapet) of buildings. Advertising signs are not to detract from the visual quality or amenity of the foreshores and waterways when viewed from the waterways*

Refer to previous comments concerning the boatshed and impact on views. Signage has not been proposed as part of this application. The bulk and scale of buildings and other structures have not been minimised by landscaping or articulated walls. Car parking is not provided but is possible with suitable fencing/screening to the street and waterway.

Environmental Management Pollution and waste:

- *potential pollutant sources from the site must be controlled and meet established performance standards;*
- *appropriate controls are to be in place and managed to prevent any pollutants entering the environment;*
- *marinas for nine or more vessels are to provide adequate and readily accessible facilities for the collection and disposal of wastes from vessels;*
- *facilities for pumping out sewage holding tanks are to be provided onshore; and*
- *any waste that cannot be recycled is to be disposed of at an appropriate facility.*

These can be conditioned.

Traffic and Parking:

- *land-based impacts including traffic volumes and parking demand meet established performance standards;*
- *adequate car and trailer parking (based on the number and type of berths, associated activities and number of employees) is to be available onsite. Off-site parking is acceptable only where it will not reduce community amenity or generate adverse traffic impacts; and*
- *the adverse impacts of traffic and parking generated by boat storage facilities in terms of congestion, safety, air quality and noise are to be minimised.*

No parking is proposed on site or possible with regard the topography and proposed hardstand and boatshed. The upper level of the boatshed is intended as office space not directly related to the boat repair business. This will result in additional workers on site. If the proposal is to be accepted without parking, then the boatshed upper level needs to be deleted or reduced in area and conditioned to be used as part of the boat repair business and not as an ancillary use. Should the upper level of the boatshed be deleted or significantly reduced in area, it would be possible to provide for 2 car spaces located above the storage building and accessed from the service area (with suitable fencing/screening from street and waterway).

Noise

- *the adverse impacts of noise (considering hours of operation, existing background noise, expected departure/arrival times for vessels, noise level of marina patrons, noise level from repair and testing of vessels and motors) are to be minimised through appropriate design and management measures; and*
- *land-based impacts including noise emissions meet established performance standards.*

Lighting

- *the adverse impacts of lighting on night navigation and neighbours are to be minimised through appropriate design and management measures.*

This could be managed by conditions and a suitable management plan. Repairs of boats on the hardstand and within the Marina would need to be strictly conditioned with regard to noise.

Health and safety

- *Marinas are to be a safe place to work and adequate environmental safety and emergency response plans are in place.*

This could be managed by conditions.

10.7 North Sydney Local Environmental Plan 2013 (NSLEP2013)

The site is subject to the provisions of NSLEP 2013.

Clause 2 provides the Aims. Those relevant to the proposed development are:

to promote development that is appropriate to its context and enhances the amenity of the North Sydney community and environment;

The proposed development relates to works for a use that is already existing on the site as a boat repair facility. Given the nature of the use, the location of the site is appropriate in its context, as part of a working harbour, having regard to the proximity to the foreshore. The proposal seeks to improve the operational and environmental importance of the existing

facility. The proposal in its current form represents an intensification of the use that would have an adverse impact on the amenity of the community due to its scale and visual impacts.

In relation to the character of North Sydney's neighbourhoods:

to ensure that new development is compatible with the desired future character of an area in terms of bulk, scale and appearance, and

to maintain a diversity of activities while protecting residential accommodation and local amenity, and

to ensure that new development on foreshore land does not adversely affect the visual qualities of that foreshore land when viewed from Sydney Harbour and its tributaries.

The proposal allows for the diversified activity on the site to continue. The proposal represents an intensification of the use that would have an adverse impact on the amenity of the community due to its scale and visual impacts.

In relation to non-residential development:

to maintain a diversity of employment, services, cultural and recreational activities, and

to ensure that non-residential development does not adversely affect the amenity of residential properties and public places, in terms of visual and acoustic privacy, solar access and view sharing, and

to maintain waterfront activities and ensure that those activities do not adversely affect local amenity and environmental quality,

The amenity of surrounding residential properties and public spaces would be impacted in terms of visual and acoustic impacts. If managed correctly the proposed development could continue existing waterfront activity, without adversely impacting environmental quality.

in relation to environmental quality:

to maintain and protect natural landscapes, topographic features and existing ground levels, and

to minimise stormwater run-off and its adverse effects and improve the quality of local waterways,

The proposal would not unreasonably impact on the environmental quality of the surrounding area and the waterway provided acceptable controls are in place. The proposal does not maintain existing ground levels.

to identify and protect the natural, archaeological and built heritage of North Sydney and ensure that development does not adversely affect its significance.

The application has not been supported with regard to heritage. The proposal removes the slipways and builds over the foreshore area. The proposed boatshed is not considered to be a rebuild of the boatshed that was destroyed by fire almost 30 years ago. The previous boatshed was not heritage listed nor is there any form of existing use rights applicable as the use is permissible.

The proposed uses are permissible with development consent in the IN4 Working Waterfront zoning applying to the land.

The zone objectives are:

- to retain and encourage waterfront industrial and maritime activities;
- to identify sites for maritime purposes and for activities that require direct waterfront access;
- to ensure that development does not have an adverse impact on the environmental and visual qualities of the foreshore;
- to encourage employment opportunities; and
- to minimise any adverse effect of development on land uses in other zones.

The maritime nature of the proposed development is suitably located along the foreshore, which relies upon direct waterfront access. The use will continue to provide employment. The proposal does impact on the visual qualities of the area and does not minimise the adverse effect on the surrounding area.

LEP Compliance

10.7.1 - Clause 2.7 Demolition

Demolition of existing buildings requires development consent. Development consent is sought for the demolition in accordance with the Architectural Plans.

10.7.2 - Clause 4.3 Height of Buildings - 10 metres

The height control is applicable only to the land base part of the site. The boatshed will not exceed 10 m in height. The crane would be higher than 10m above the mean high-water mark but is not subject to the height control.

10.7.3 - Clause 4.6 Exceptions to development standards

The proposal does not seek to vary a principal development standard.

10.7.4 - Clause 5.7 Development below mean high water mark

(1) The objective of this clause is to ensure appropriate environmental assessment of development carried out on land covered by tidal waters.

(2) Development consent is required to carry out development on any land below the mean high-water mark of any body of water subject to tidal influence (including the bed of any such water).

Development consent is sought as the proposed development involves works on a body of water.

10.7.5 - Clause 5.10 Heritage Conservation

Objectives:

(a) to conserve the environmental heritage of North Sydney,

(b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views.

Requirement for Consent

(a) Demolishing or moving any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance):

(i) A heritage item.

Effect on proposed development on heritage significance

The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.

The proposed building is not a 'replica' boatshed structure of the previous boatshed and sits outside the definition of the processes of heritage conservation as per the Burra Charter. The proposal is out of character for being too high and has a poor relationship with the adjacent low-scale Council building. Other new elements such as the concrete hardstand and the large crane will increase the built and operational scale of the boatshed in relation to its previous form as well as within its current setting and context. The proposal should be revised to a scale that is compatible with its site context and setting.

10.7.6 - Clause 6.8 Development on land in Zone IN4

The objectives of this clause are as follows:

- (a) to ensure development on land in Zone IN4 Working Waterfront is in proportion with the site and its surroundings,*
- (b) to acknowledge the unique environmental quality of the foreshores of the harbour.*

The proposed alterations and additions are not considered proportional to the site and its surrounds in terms of bulk and scale.

The proposal will improve its relationship from an environmental perspective and is consistent with the maritime industrial use of the site.

Development consent must not be granted for development on land in Zone IN4 Working Waterfront if the consent authority is satisfied that:

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

The proposal is considered to have a significant adverse impact on public views and views from surrounding properties. These impacts are determinative. The upper level of the boatshed needs to be deleted or significantly reduced to minimise view impacts (and possibly provide some on-site parking). The boatshed as proposed affects views from the Ensemble Theatre, the adjacent public viewing platform, the street and residences opposite the site.

10.7.7 - Clause 6.9 Limited Development on foreshore area

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

In this clause—

foreshore area means the land between the foreshore building line and the mean high water mark of the nearest natural waterbody shown on the Foreshore Building Line Map.

foreshore building line means—

- (a) the line that is landward of, and at the distance specified on the Foreshore Building Line Map from, the mean high water mark of the nearest natural waterbody shown on that map, or*

(b) if no distance is specified, the line shown as the foreshore building line on that map.

The site is not located within the foreshore area.

10.7.8 - Clause 6.10 Earthworks

The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

Preliminary Contamination Assessment; Acoustic Impact Assessment; Surface Water and Soils Assessment reports have been submitted.

10.8 North Sydney Development Control Plan 2013 (NSDCP 2013)

The proposed development, for alterations and additions to a boat repair facility and marina, presents a limited number of relevant provisions under the NSDCP 2013.

Those applicable to the proposal are summarised as follows:

Section 10 involves controls relating to Car Parking and Transport.

Part 10.2 deals with Parking Provisions and requires a boat repair facility to provide a maximum of 1 space per 200m² as well as appropriate loading facilities. Car parking for commercial office space is required at a rate of 1 space per 200m². Parking is discussed in referrals to Council's Traffic Engineer. No parking is proposed but could be provided with appropriate modifications to the boatshed as discussed previously.

Section 11 relates to Traffic Guidelines for Development and requires the provision of a traffic impact assessment.

A traffic impact statement accompanied the application and was addressed by Council's Traffic Engineer (referrals)

Section 13 involves controls relating to Heritage and Conservation. These matters have been addressed previously in detail.

Section 14 involves controls relating to Contamination and Hazardous Building Materials. Matters of contamination are addressed in the Preliminary Contamination Assessment. This can be conditioned.

Section 17 provides controls relating to Erosion and Sediment Controls. This is addressed in the Surface Water and Soils Assessment. This can be conditioned.

Section 18 provides controls relating to Stormwater Management. This is addressed in the Surface Water and Soils Assessment. This can be conditioned.

Section 19 provides controls relating to Waste Minimisation and Management. A Waste Management Report accompanied the development application, which outlined the methods of waste handling and disposal pertaining to the proposed development, during both construction and operation. This can be conditioned.

Part C of NSDCP 2013 provides Character Statements for certain areas within the local government area. The subject site is located within the Kirribilli Planning Area and the subset known as the Careening Cove Conservation Area.

Careening Cove conservation area is significant:

(a) as a largely consistent early 20th century residential area with an unusual and irregular pattern of street layout and irregular subdivision pattern that give the area a particular character.

(b) as retaining much of the urban detail and fabric seen in gardens, fencing, street formations, use of sandstone for retaining and building bases, sandstone kerbing and natural rock faces.

(c) for the amphitheatre like form around the reclaimed Milson Park and the head of the bay.

(d) for the remaining waterfront industrial and recycled industrial development that gives the area much of its character.

The site comprises a group of heritage items that are waterfront buildings representing the last relics of the once extensive maritime industry on this waterfront. The heritage assessment concluded that the proposal is out of character for being too high and has a poor relationship with the adjacent low-scale Council building and the other new elements such as the concrete hardstand and the large crane will increase the built and operational scale of the boatshed in relation to its previous form as well as within its current setting and context. The proposal should be revised to a scale that is compatible with its site context and setting.

11.0 ALL LIKELY IMPACTS OF THE DEVELOPMENT

All likely impacts of the proposed development have been considered within the context of this report.

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

12.0 Environmental Issues

In assessing the proposal, the EPA in its response to Council identified several environmental issues that the Sydney North Planning Panel may wish to consider in its overall assessment of the application.

The applicant was advised of these issues and provided a response. These issues include the following:

Note: The first part reproduces the issue raised by the EPA. The second part reproduces the applicant's response. The third part is the assessment comment.

12.1 Operational capacity

*The Environmental Impact Statement (EIS) does not provide adequate details of either the current or proposed activities undertaken on site, such as the frequency of spray painting and blasting, the type of repair work undertaken (e.g. minor/ spot repair works or full overhaul and respray) and the type of spray equipment and air emission controls used. Section 3 of the EIS for the proposal states "While the site will have the capacity to service an increased number of vessels (up to ten (10) at any one time, depending on size), the introduction of the extended hardstand area and crane will allow for a more efficient configuration of these than the current circumstances." and "By replacing the slipways with the boat crane and hardstand area will not result in an intensification of the use on the site; the purpose is simply to reduce the environmental risk associated with the use of slipways..." **The EPA recommends that the consent for the proposal limit the type and frequency of boat repair activities to those currently approved under the existing consent.***

Response

The proposal does not increase the operational capacity of the site to service boats. Pattons currently holds licences for eight (8) swing moorings within the waterway adjacent the site and five (5) piled berth moorings. On these moorings are vessels that are having work undertaken on them at Pattons and are on short term use arrangements. These are regularly rotated from the swing mooring that they are attached to and slipped onto the hardstand area. The works are then scheduled over varying periods of time which commonly includes a piece of work being completed, the vessel being returned to the waterway for a period and then re-returned to the slip and, subsequently the hardstand, for further works to be completed. This may happen a number of times depending on the available of area on the hardstand as well as the nature of works that needs to be undertaken.

Therefore, the movement of vessels is generally high under the current circumstances. The application proposes a crane that will enable a vessel to be placed on the extended hardstand, worked on in a timely manner and returned to its owner. The number of vessels currently worked on, which is in the order of ten vessels, will remain the same. The only difference is the way in which vessels will be stored at the site; the number of vessels worked on at the site will not increase. However, the efficiency with which they are worked on will be improved due to the increased size. Therefore, the capacity of the Pattons operation as a whole, at any one time, will not be altered over the current situation.

The Applicant is willing to accept a condition of consent that would limit the number of vessels being worked on the hardstand at anyone time to ten vessels, consistent with the current situation.

Comment:

From the response above, it would appear that the boats on the swing and berth moorings are not being repaired while in the water. They are transferred to the slip where the repairs are carried out. This would result in three boats being on the slip for repairs at any one time. The applicant has not provided details of any works that may be carried out on the boats that are moored. Limited tools and equipment would be used if staff accessed the moored boats by a tender to carry out repairs.

The proposal with the marina attached to the hardstand would allow staff easy access to repair boats berthed at the marina. This is in addition to the hardstand area. The area of the hardstand would allow significantly more than 3 boats to be repaired at any one time (the applicant stated 10). This represents a significant intensity in the use. The EPA recommends that the consent for the proposal limit the type and frequency of boat repair activities to those currently approved under the existing consent. There is no existing consent. To limit the type and frequency of repairs to the current activity would require conditions that would restrict repairs to the hardstand to behind mean high water mark with only boat storage allowed in front of the mean high water mark.

The extent of the hardstand is considered excessive and could be cut back by 3m (in line with adjacent seawall in front of public viewing platform). That would result in 7m wide hardstand in front of the land boundary to allow for manouvring and lifting of boats by the crane and the storage of one boat in between the marina and existing building. No repair work should be permitted on boats moored in the marina or stored in front of the land boundary of the site. Noise from repairs would be restricted to the current work area.

The proposal is not supported as submitted. Significant modifications to the proposal are necessary as indicated previously throughout the assessment.

12.2 Air Quality

*Section 1.2 of the Air Quality Impact Assessment (AQIA) notes that a quantitative air assessment for the proposal has not been undertaken, because "detailed information on the proposed operational activities within the Development Site (daily activity rates, ventilation rates, pollution control systems, potential emission rates, etc) is not yet available." The AQIA therefore includes a qualitative (risk-based) assessment of air impacts. Section 8.3 of the AQIA states "The potential risk of air quality impacts due to VOCs emissions from spray painting and associated activities would be reduced significantly, if all spraying and paint mixing operations are conducted in well-designed, ventilated and filtered booths and enclosures [and] surface preparation is carried out in enclosed, ventilated and filtered spaces." However, Section 8.3 of the AQIA states "Currently, spray painting and associated activities are understood to have been undertaken in the open and this will continue after the upgrade." **The EPA therefore recommends that the consent prohibit any significant spray painting and associated activities, including sand and soda blasting, paint mixing operations, and antifoul application, from being undertaken at the site, unless "well-designed, ventilated and filtered booths and enclosures" are installed for this purpose. Design and operation of any such enclosure should include appropriate air pollution mitigation equipment. For the purposes of this requirement, the EPA has taken 'significant spray painting' to mean spray painting in which the total area being painted on an individual vessel is greater than ten (10) square metres.** The EPA notes that minor spray painting works are currently undertaken at the site. Section 8.3 of the AQIA states "At the time of writing this report, hours per week that spray painting is performed at the Development Site is not available, however it is understood to be minimal... there has never been an odour complaint received from the residents in the vicinity of the Development Site, which indicates that the small amount of VOC emissions released from the spray*

painting operations are dispersed by the time they reach the residential receptors." **The EPA recommends that spray painting and associated activities undertaken at the site, in the open, are subject to conditions to help minimise any potential risks to human health or the environment. This is consistent with limits currently in place for other, similar EPA-licensed facilities.** The EPA has included these conditions in Attachment A.

Response:

The EPA has proposed the following General Terms of Approval in relation to maintenance activities:

O5.1 Spray painting of vessels at the premises may only be undertaken if the total area being painted on an individual vessel is less than ten (10) square metres.

O5.2 a) Any spray painting undertaken at the premises must be fully encapsulated prior to and during paint application.

b) For the purposes of this condition, 'encapsulated' means fully enclosed with a nonpermeable material, ensuring no air transfer between the inside and outside of the encapsulation. Note: Encapsulation should not prevent a person from easily escaping.

O5.3 Antifoulant paint may only be applied to vessels at the premises using a roller, brush or airless spray application.

O5.4 No spray painting, grinding or sanding activities may be undertaken over water, or on vessels berthed at the premises, at any time.

O5.5 Sand blasting and soda blasting activities are not permitted to be undertaken at the premises at any time. Note: Definitions of the above terms are provided in the special dictionary at condition E1 of this licence. Note: Guidance information relating to the Organotin Chemical Control order and application of other antifouling paints is provided in the Fact sheet - Applying Antifouling paints at marinas (NSW EPA, 2013)

The Applicant accepts these conditions. Should the Applicant seek to undertake sand blasting or soda blasting activities to vessels, the Applicant will need to modify any future consent to ensure that adequate encapsulation of such activities can be achieved to ensure that the amenity of surrounding receivers is not impacted.

Comment:

Should any consent be granted, the general terms of approval issued by the EPA would be imposed.

12.3 Noise emissions

*Table 15 of the Noise and Vibration Assessment (NVA) for the proposal states that noise from some operations on site will exceed recommended noise criteria for some sensitive receivers. Section 7 of the NVA lists a number of recommendations to ensure that potential noise impacts from the proposal are minimised. **The EPA recommends that the consent for the proposal require these recommendations to be implemented.***

Response

The Applicant has no objection to these recommendations being imposed as conditions of consent.

Comment:

The recommendations would form part of the draft conditions.

12.4 Site contamination

Section 4.5 of the Preliminary Site Assessment (PSA) for the proposal states that potential contaminants of concern (PCoC) at the site "include heavy metals and metalloids particularly lead, PAHs, TRHs, organotins including TBT, PCBs, OC and OP pesticides and phenols." Table 5.1 of the PSA identifies potential pathways for exposure to PCoCs, including:

- Dermal contact with contaminated sediments at the toe of the slipway (likely)
- Dermal contact with contaminated subsurface soils located beneath the slipway hardstand (likely)
- Inhalation of soil gas, or generation of offensive odours originating from exposing contaminated subsurface soils located beneath the slipway hardstand (likely)

Section 7 of the PSA lists a number of recommendations to ensure that potential risks to human health and the environment posed by the identified PCoC are minimised or eliminated. **The EPA recommends that the consent for the proposal require these recommendations to be implemented.**

Response

The Applicant has no objection to these recommendations being imposed as conditions of consent.

Comment:

The recommendations would form part of the draft conditions.

12.5 Sewerage pump out

Section 2.3.3 of the AQIA states that "fuel storage or sewerage pump out facilities are not proposed at the Development Site." Sewerage pump-out activities from vessels are known to pose a potential risk of odour emissions, and the **EPA therefore recommends that sewage-pump out activities are prohibited at the site.**

Response

The applicant does not propose sewage pump out activities at the site and is willing to accept a condition of consent to this effect.

Comment:

A condition could be included in the draft conditions.

12.6 Scheduled Development Work

Scheduled development work Under section 47 of the POEO Act 'Scheduled Development Work' is defined as work at any premises at which scheduled activities are not carried on that is designed to enable scheduled activities to be carried on at the premises. Under section 47 it is an offence to undertake scheduled development work without an environment protection licence. If the proposal is approved, the proponent must obtain an environment protection licence from the EPA before construction commences.

Response

The Application will obtain the relevant licence before construction commences.

Comment:

Noted.

13.0 Submitters

Twenty-five (25) submissions were received. The issues raised can be summarised under the following groupings:

Scale

Size and scale, it is too expansive in terms of concrete hardstand covering 200m² of water.

bulk and size of the crane sitting beyond the current waters' edge.

boats and their masts will be sitting several metres higher on the hardstand, than they currently do on the slipway, which will be more imposing on the size and bulk of the craft to pedestrians / residents

The site will have capacity to service increased number of vessels (up to 10). The gross floor area of buildings will increase by 206m². Increase in number of employees by 9. Increased activity will require suitable conditions to be imposed to control operations on site.

Currently there are 4 rail slipways on the site, allowing 4 vessels to be serviced at one time. They say that the 10m hardstand will not intensify the operations. They then state that it will be able to service 10 boats at any one time, with another 5 on the marina berths. This is a 2.5 times intensification.

Currently on the rail slipway, they are able to service larger vessels, (50T ferries etc.) being one of two sites on Sydney Harbour that can cater for these sized vessels. This proposal of a hardstand, with 2-3 storey crane lift for a maximum 35T vessels, is lessening their capacity to service craft in Sydney Harbour. But increasing the number to greater than 5 vessels to be serviced at any one time.

It is agreed that the scale of development is an intensification of the use and the size of the hardstand and building needs to be significantly reduced along with strict conditions limiting the area available on site for boat repair and for boat storage.

Views

loss of views from Ensemble Theatre

loss of views from Public Domain

Hardstand encroaches into Careening Cove by 10 metres, impacting on the view of the land water interface for the general public, with a further 15m marina berth for 5 boats protruding further into the cove.

visual impact on Theatre foyer bar and restaurant, boats larger than current. Crane and boatshed will impact views.

Crane would impact views.

The existing slipway has minimal impact on the water and the foreshore, allowing the pretty views from Willoughby Street and Elamang Avenue to be enjoyed by the public and residents. This would be replaced by a heavy concrete hard-stand extending 10 metres into the Cove.

The “Historic Boatshed” should not be approved: Its effect on public views from the viewing platform; Its effect on the only street view of the cove from its southern side; It’s not a boatshed. And what kind of “store” (upper level) needs a balcony? The past existence of a boatshed related to past use, not proposed use. There is no existing use right to erect a structure where the boatshed was. Its steep gable roof is not an industrial form, wantonly occludes views, and screams out for internal loft addition.

The obtrusive crane would be an eyesore.

The monolithic concrete hardstand and attached marina will significantly degrade the public view of the Cove.

Crane lift has a 10 m reach and is close to 3 storeys high – 10m. This will have a visual impact for the public to the water interface, especially from the Wrixton Park adjacent on Willoughby St. The craft shown in their application, are smaller motor boats with flybridges, and they did not show a yacht with mast, as are currently moored down there, and serviced. Any yacht lifted onto the hard stand, will have a much higher presence, than on the current rail slipways. Certainly more impact than the motor craft shown in their illustrations, of their 18m / 60ft boats. Yachts have the depth of the keel plus height of the mast. This is misleading in the application, by omission.

The proposed development would obstruct the views from Willoughby Street, Elamang Avenue and the public grassed area atop the kayak storage building and the adjacent park.

The proposed building would tower over the kayak storage building, thereby obstructing the afternoon sun and the view enjoyed by the public from the park and seating atop this structure

The proposal to install a floating pontoon to accommodate up to 5 vessels is an encroachment into the public’s water of the Cove.

The boatshed which burnt down in 1992 resulted in views across the Cove. After 27 years it seems pointless to restore the high-pitched boatshed as there are no other historic buildings on the site and will also cut out the westward views for the public, tourists, residents and from the public viewing platform.

As indicated throughout the assessment, the adverse impact on public and private views are unacceptable. The upper level of the boatshed could be deleted with the reduction in the size of the hardstand to limit the number of boats stored above the water level. The crane would be obtrusive but may be acceptable if all other modifications are made. Replacement of the slipway is a limited option due to the depth of the site and the grade required to ensure that full environmental protection is available under the boat on the slip.

Boatshed

the 'renewed' boat shed exceeds the footprint and scale of the former boat shed. It burnt down nearly 30 years ago, so any existing use rights have long expired.

The new building on the South Eastern perimeter is replacing the burned shell of a former boat shed. The proposed design of this new building appears higher and larger than the former building that it is replacing. A compromise might be to include the existing burned out building in the area of Hard stand, and to reduce the Hard Stand by 5 m on its North East edge. Additional low-rise shedding could be provided along the Southern perimeter of the site. Any building on this Southern perimeter should not be so high as to encroach on the pleasant views that the public presently enjoy across Careening Cove.

DA04 shows that the Boat shed is only 6 m wide, with 20.5–25.5 m long, with two storeys; lower of storage space and toilet; upper of office, balcony, 'accessible' toilet and kitchenette. The roof pitch is then another 3 m higher, (equivalent to another floor height) which is excessive pitch for a 6 m wide property. It does not read with any of the surrounding buildings and detracting from the heritage Wrixton House opposite. This roof should be flat, or no greater angle than the other metal roof over the sail maker at the other side of the site. This Boat shed should be pulled back, by nearly a third, so as to not protrude over the RMS leased water way section. This is effectively a three storey structure, with the high-pitched roof, over the water. In its current form it impacts the views from Wrixton Park to Milson Park to be able to watch the 18 ft skiffs launch and return.

The current height and size of the boat shed impacts on the sun to Wrixton park with loss of public amenity by this overshadowing. If the roof was lowered to a skillian roof, sloping SE down to the park, and the shed did not protrude out over the High Water mark, then the Wrixton park would be less impacted, as would the other properties around and the general public on the street.

The upper level of the boatshed is not supported due to its adverse impacts on views. A more appropriate building would be only the lower storage level in line with the adjacent public storage building with a flat roof. A green roof would be a public benefit.

Hardstand

the hardstand is too intrusive on the public's current view of the Careening Cove water interface

the proposed concrete hard stand over the harbour, beyond the high tide line, is a major extension of the existing ship repair yard. The proposal will have a significant impact on the aesthetic of Careening Cove. Additionally, it will encroach on the turning circle for Vessels mooring across the bay at the end of Bradly Avenue, and manoeuvring room for small craft using the recently renovated Council Launching Ramp.

The Department of Environment and Climate Change has no problems with slipways which adequately address pollution issues, so the rationale for a hardstand is not valid.

The hardstand needs to be reduced. Only one boat should be allowed to be stored on the hardstand in front of the property's land boundary (mean high water mark) Boat repairs in the open should be restricted to behind the property's land boundary.

Parking

Operator employees parking in already over-crowded street.

Unacceptable mechanical and other vessel repairs of trailered vessels in surrounding streets.

Parking in McDougall and Willoughby Streets are already an issue. Residents have issues, the Ensemble which has a large number of elderly patrons have an issue and this can only be exasperated by an increase of users of the boating facilities.

Levels of noise when the facility is in use and movement of traffic to and from the facility in an already very congested area.

No parking is proposed and the proposal intensifies the current use which is unacceptable. A significantly reduced proposal as outlined in the above assessment with the possible addition of 2 on site car spaces would be required before any redevelopment could be supported.

Pollution

health impacts of the open air 'anti fouling' and spraying of hulls of the vessels, especially as there is proposed a 250% increase in numbers of craft that can be serviced.

the DA does not adequately address management of air quality that will arise from intensification of operations that would adversely affect restaurant, bar patrons and staff.

air pollution during sand blasting and spray painting that is not fully contained. Mitigation measures required to address air quality impacts from spray painting. There are no buildings or enclosures capable of accommodating the vessels.

The local fish population under the Ensemble Theatre and The Flying Bear Café has grown over the past few years. Increased vessels will pollute the Cove for their inhabitation.

Serious concerns regarding anti fouling. I see major issues with poisonous residue to humans, houses and cars let alone the environment in the local area. There are winds blowing from some direction at least 80% of the daytime. If there is approval it should be to worlds best practice which includes total enclosure as with commercial spray painting and compulsory use of spray booths.

Pollution control is a major concern. The EPA has recommended a number of conditions and restrictions that the applicant has indicated they would accept. If the proposal is approved, the proponent must obtain an environment protection licence from the EPA before construction commences.

Noise

acoustic impact on daily activity of rehearsal and performances. Noise from construction phase and use of crane plus intensification of activity by increasing capacity of site. Further detailed assessment on impact on theatre required.

additional noise from hard stand area and related activities.

Vibration from construction and noise levels during construction and on-going.

Unacceptable trading hours. Regularly working on vessels after 6:00pm, Saturday afternoons and all-day Sunday.

The noise from the crane may not be an issue with an electric motor. The noise from repairs in the open is a concern and the boat repairs should be restricted to the current area on the land side of the hardstand with the hardstand in front of the land boundary and the marina being restricted to boat storage only with no repairs permitted in the open. No compressors or machinery should be used or stored in the area to the front of the land boundary

Alternatives

supports a redevelopment of these sites, but not in this configuration. Renewed slipways would be far more acceptable, with timber decking, as traditionally used on waterfront areas versus expansive concrete areas.

estimate that the existing slipways could haul out vessels of up to 100 tonnes. The decision authority should be aware that replacing these existing slip ways with a 35 tonne crane reduces the market supply of slipways for larger commercial vessels.

Careening Cove with its long marine history is one of the little gems of Sydney Harbour, and this will be spoilt if the application is given approval in its present form.

The existing slipway nestles comfortably into the lower end of Careening Cove.

This would be a good opportunity for Council and Pattons to jointly come up with an innovative development to incorporate the burnt-out boat shed and the very popular grass viewing platform.

Renewing the current Rail Slipways may be a better option for the larger vessels, but Pattons would need to employ more EP&A environmental protection practices to ensure the waste from grinding & scrubbing hulls, and re-painting same with anti-foul was not let loose into the waterways.

A far better solution would be for Pattons and the Council to jointly redevelop the boatshed site, with a leasing arrangement giving Pattons use of the Council's kayak storage in exchange for creating a grassed area as the top level of the boatshed site, contiguous with the Council's existing grassed area. Joining the lower level of the boatshed site to the Council's kayak storage would increase the marine activity on site, with the upper level greatly enlarging the public's access to the delightful vistas from the expanded grassed area.

In relation to the continued use of a slip on the site, the site has limited depth and the grade required to get the boat above high tide would result in limited space for repairs to be carried out. The proponent has indicated that if a slip arrangement were to continue, the amount of space that would be available for vessel maintenance and servicing, would allow 1 x 11m vessel able to be positioned on the hardstand area.

The suggestion of extending the public viewing platform over the lower storage area has merit but has not been proposed by the applicant. If the upper level of the proposed boatshed was removed and replaced with a green roof, that would represent a more acceptable outcome. The use of the roof for public use would have to be an offer from the proponent and might be considered in any resubmitted application.

Support

Modernisation of run-down slipway by either replacement with a more efficient and environmentally friendly slipway system or a modestly sized hardstand behind the seawall is long overdue.

We have thoroughly examined the proposed development application and wish to say that we have no objection to the development as presented. We feel it will enhance Careening Cove and add a new dimension of interest in that very special cove.

support the existence of maritime businesses in Careening Cove as a traditional use of this precinct and contributing to the character of the precinct.

Support is noted.

14.0 Conclusion

The proposed development has been assessed with respect to the objects and relevant Sections of the EP&A Act, as well as the objectives, merit based outcomes, development standards and prescriptive controls of various State Environmental Planning Policies, the North Sydney Local Environmental Plan 2013 and the North Sydney Development Control Plan 2013.

The application was advertised as a designated and integrated development proposal from 25 October 2019 until 22 November 2019. 25 submissions were received raising concerns relating to traffic; amenity impacts; parking; intensification of activities; loss of views; noise and air pollution.

A review of the development application and consideration of the submissions received in response to notification of the application; the recommendations from internal specialist referral officers; and the comments of external referral agencies, identified a number of issues with the application.

Following an initial briefing with the Sydney North Planning Panel on 12 February 2020, the applicant was advised in letter dated 12 February 2020 of the issues and concerns and invited to withdraw the application or amend the application to resolve the concerns.

The applicant met with Council Officers on 17 March 2020 and agreed to consider all the issues and respond with amended plans / additional information. The response was received on 29 July 2020.

The applicant was advised of the concerns and given an opportunity to amend the proposal to resolve the concerns.

No additional information was provided to outline current activities or the associated noise impacts.

The minor changes to the boatshed did not warrant further notification as the changes did not resolve any of the issues raised in the submissions.

The concerns relating to amenity impacts; parking; intensification of activities; loss of views; noise and air pollution have not been satisfactorily resolved.

The proposal is unacceptable with regard to the Sydney Regional Environmental Plan (Sydney Harbour Catchment) (SREP)

Clause 13 relates to the planning principles for development on land within the Sydney Harbour Catchment.

.....the natural assets of the catchment are to be maintained and, where feasible, restored for their scenic and cultural values and their biodiversity and geodiversity,

The proposed development would detract from the scenic and cultural value of the catchment with the extensive concrete hardstand over the water. As such, the natural assets of the catchment will not be maintained and enhanced by the proposal.

.....development that is visible from the waterways or foreshores is to maintain, protect and enhance the unique visual qualities of Sydney Harbour,

The extent of the hardstand and two storey boatshed past the land boundary and over the water will not maintain, protect and enhance the visual qualities of Sydney Harbour. The hardstand needs to be reduced in size and the boatshed modified.

Clause 14 relates to the planning principles for sites within the Foreshores and Waterways Area.

.....development should protect, maintain and enhance the natural assets and unique environmental qualities of Sydney Harbour and its islands and foreshores,

The proposed development would detract from the natural assets and unique environmental qualities of the foreshore.

.....development along the foreshore and waterways should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands and foreshores,

The extent of the hardstand and two storey boatshed past the land boundary and over the water will not maintain, protect and enhance the visual qualities of Sydney Harbour.

Division 2 relates to the Matters of Consideration to assist the consent authority in determining a development application (Part 4 of the EP & A Act) under this Policy.

Foreshore and waterways scenic quality

(a) the scale, form, design and siting of any building should be based on an analysis of:

- (i) the land on which it is to be erected, and*
- (ii) the adjoining land, and*
- (iii) the likely future character of the locality,*

(b) development should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands, foreshores and tributaries,

(d) the cumulative impact of water-based development should not detract from the character of the waterways and adjoining foreshores.

The size of the hardstand over the water, the crane structure and the location and scale of the boatshed does not have proper regard to the adjoining land and uses. The proposal does not maintain or enhance the visual qualities of the harbour.

Maintenance, protection and enhancement of views

- (a) development should maintain, protect and enhance views (including night views) to and from Sydney Harbour,*
- (d) development should minimise any adverse impacts on views and vistas to and from public places, landmarks and heritage items,*
- (c) the cumulative impact of development on views should be minimised.*

The proposed crane structure will have an impact on existing views but may be acceptable if it was the only element affecting the views. The boatshed needs to be significantly setback and reduced in scale to minimise the adverse impact on views from the adjacent public viewing platform and Willoughby Street as well as the semi-public areas within the Ensemble Theatre.

Boat storage facilities

- (f) boat storage facilities should be as visually unobtrusive as possible,*

The proposal seeks to provide boat storage facilities over the waterway on the hardstand and with a two-storey boat shed structure (not used to store boats) which would be visually obtrusive.

The proposal is unacceptable with regard to the Sydney Harbour Foreshore and Waterways Area Development Control Plan 2005 (SDCP).

Landscape Character - Assessment 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;*

The boat storage facilities over the waterway on the hardstand and with a two-storey boat shed structure would be visually obtrusive. The boat shed needs to be setback behind the mean high-water mark and any use of the hardstand for boat storage over the mean high water mark should be restricted and visually unobtrusive.

Section 4 relates to the Design Guidelines for Water-Based and Land/Water Interface Developments.

4.4 SITING OF BUILDINGS AND STRUCTURES

- where there is existing native vegetation, buildings should be set back from this vegetation to avoid disturbance to the vegetation;*
- buildings should address the waterway;*
- buildings should not obstruct views and vistas from public places to the waterway; and*
- buildings should not obstruct views of landmarks and features identified on the maps accompanying this DCP.*

The boat storage facilities over the waterway on the hardstand and with a two-storey boat shed structure would be visually obtrusive.

Visual Impact

- *any visual analysis shall consider the impact of the largest motor vessel(s) capable of being berthed at the marina;*
- *the largest vessels (motorised or otherwise) to be berthed at the marina are to be located as far from shore as possible;*
- *waterside structures and berthed vessels associated with marinas are not to block views from foreshore public open space or views to foreshore public open space from the waterway*
- *the bulk and scale of buildings and other structures on land is to be minimised through appropriate mitigation measures including landscaping, articulated walls, detailing of surfaces and by using smaller elements;*

The bulk and scale of buildings and other structures have not been minimised by landscaping or articulated walls. Berthed vessels and vessels stored on the hardstand would block views.

Traffic and Parking:

- *adequate car and trailer parking (based on the number and type of berths, associated activities and number of employees) is to be available onsite. Off-site parking is acceptable only where it will not reduce community amenity or generate adverse traffic impacts; and*
- *the adverse impacts of traffic and parking generated by boat storage facilities in terms of congestion, safety, air quality and noise are to be minimised.*

No parking is proposed on site or is possible with regard the topography and proposed hardstand and boatshed. Should the upper level of the boatshed be deleted or significantly reduced in area, it would be possible to provide for 2 car spaces located above the storage building and accessed from the service area (with suitable fencing/screening from street and waterway).

The proposal is contrary to the aims of North Sydney Local Environmental Plan 2013 (NSLEP2013) and the zone objectives.

Clause 2 provides the Aims. Those relevant to the proposed development are:

to promote development that is appropriate to its context and enhances the amenity of the North Sydney community and environment;

The proposal in its current form represents an intensification of the use that would have an adverse impact on the amenity of the community due to its scale and visual impacts.

In relation to the character of North Sydney's neighbourhoods:

to ensure that new development is compatible with the desired future desired character of an area in terms of bulk, scale and appearance, and

to maintain a diversity of activities while protecting residential accommodation and local amenity, and

to ensure that new development on foreshore land does not adversely affect the visual qualities of that foreshore land when viewed from Sydney Harbour and its tributaries.

The proposal represents an intensification of the use that would have an adverse impact on the amenity of the community due to its scale and visual impacts.

In relation to non-residential development:

to ensure that non-residential development does not adversely affect the amenity of residential properties and public places, in terms of visual and acoustic privacy, solar access and view sharing, and

to maintain waterfront activities and ensure that those activities do not adversely affect local amenity and environmental quality,

The amenity of surrounding residential properties and public spaces would be impacted in terms of visual and acoustic impacts.

to identify and protect the natural, archaeological and built heritage of North Sydney and ensure that development does not adversely affect its significance.

The proposal removes the slipways and builds over the foreshore area. The proposed boatshed is not considered to be a rebuild of the previous boatshed on site. The previous boatshed was not heritage listed nor is there any form of existing use rights applicable as the use is permissible.

The IN4 Working Waterfront zone objectives are:

- to retain and encourage waterfront industrial and maritime activities;
- to identify sites for maritime purposes and for activities that require direct waterfront access;
- to ensure that development does not have an adverse impact on the environmental and visual qualities of the foreshore;
- to encourage employment opportunities; and
- to minimise any adverse effect of development on land uses in other zones.

The proposal would impact on the visual qualities of the area and would not minimise the adverse effect on the surrounding area.

The objectives *Clause 6.8 Development on land in Zone IN4* are:

- (a) to ensure development on land in Zone IN4 Working Waterfront is in proportion with the site and its surroundings,*
- (b) to acknowledge the unique environmental quality of the foreshores of the harbour.*

The proposed alterations and additions are not considered proportional to the site and its surrounds in terms of bulk and scale.

Development consent must not be granted for development on land in Zone IN4 Working Waterfront if the consent authority is satisfied that:

(a) the proposed development is consistent with:

- (i) the size of the site and the part of the waterway where the development is to be situated, particularly in relation to the number, size and draft of any boats to be moored, or*
- (ii) the proximity, scale and height of surrounding development, or*

- (iii) the scenic, environmental and cultural qualities of the site and its surrounding area, or*
- (b) the proposed development is likely to have a significantly adverse effect on:*
- (i) public views and views from surrounding properties, or*
 - (ii) natural features on or adjoining the site, such as cliff lines, bushland and significant trees.*

The proposal is considered to have a significant adverse impact on public views and views from surrounding properties. The boatshed as proposed affects views from the Ensemble Theatre, the adjacent public viewing platform, the street and residences opposite the site.

Having regard to North Sydney Development Control Plan 2013 (NSDCP 2013). *Section 10* involves controls relating to Car Parking and Transport. No parking is proposed but could be provided with appropriate modifications to the boatshed as discussed previously.

Following assessment of the proposal, the development application is recommended for **refusal**. The changes necessary to address or resolve the concerns relating to amenity impacts; parking; intensification of activities and loss of views are significant and cannot be conditioned. A redesign of the proposal would be required as indicated throughout the report.

RECOMMENDATION

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

THAT the Sydney North Planning Panel, as the consent authority, refuse PPSSNH-30 – North Sydney - Development Application No.313/19 for the following reasons:

- 1) The proposal is contrary to the aims of North Sydney Local Environmental Plan 2013; the zone objectives and Clause 6.8 of North Sydney Local Environmental Plan 2013.
- 2) The two-storey boatshed and storage of boats on the hardstand would have a significant adverse impact on public views and views from surrounding properties. The boatshed as proposed affects views from the Ensemble Theatre, the adjacent public viewing platform, the street and residences opposite the site. This is contrary to the provisions of the Sydney Regional Environmental Plan (Sydney Harbour Catchment); the Sydney Harbour Foreshore and Waterways Area Development Control Plan 2005 and North Sydney Local Environmental Plan 2013.
- 3) The marina and the scale of the proposed hardstand would be an intensification of the use with respect to boat repairs carried out in the open that would result in adverse amenity impacts on the surrounding area.
- 4) The intensification of the use and additional building area creates a demand for parking that has not been provided on site.
- 5) The approval of the proposed development would be contrary to the public interest.

Geoff Mossemenear
EXECUTIVE PLANNER

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