


COUNCIL BRIEFING REPORT

Panel Reference	PPSSNH-541
DA Number	216/24
LGA	North Sydney
Proposed Development	Alterations and additions to an existing marina
Street Address	62 Willoughby Street Kirribilli
Applicant	Hamptons Property Services Pty Ltd
Owners	Patton's Slipway Pty Ltd & Transport for NSW
Date of DA lodgement	09 September 2024
Number of Submissions	16
Regional Development Criteria (CI, 2.19 & Schedule 6, SEPP Planning Systems 2021)	Particular Designated Development – marinas or related facilities that meet the requirements for designated development under the <i>Environmental Planning and Assessment Regulation 2021</i> , Schedule 3, section 32



Jim Davies
EXECUTIVE PLANNER
NORTH SYDNEY COUNCIL

07 February 2025

INTRODUCTION

The application was received on 09 September 2024.

Beforehand, the proposal was the subject of a pre-lodgement meeting held 17 September 2021.

Key matters for discussion and advice at the meeting were:

1. Scope of assessment for a new development application, including addressing the reasons the previous application was refused.
2. Intensity of use – the application should provide information to enable comparison of the existing, refused and proposed development by using colours to differentiate between them. Dimensions and areas should be included to allow a measured comparison.
3. The hardstand area has not changed significantly, it's size being required for operational reasons, (Council was advised) and that it will be partly screened by vessels being moored in front of it.
4. A revised visual impact assessment will be required, this being likely to remain a significant issue.
5. Details of traffic, parking and vehicle manoeuvring, in a revised traffic impact assessment.
6. Detailed reports addressing noise and vibration, air quality, light spillage.
7. The application should be accompanied by a detailed plan of management.
8. Details of fencing, including recycling of salvaged slip rails as fencing material, fire safety at boundaries.
9. Providing any details of community consultation before submitting a new application.
10. Heritage – revised assessment should consider:
 - a. Demolition,
 - b. Local character,
 - c. Scale and massing,
 - d. Materials,
 - e. Public domain views,
 - f. Streetscape, and
 - g. The Sydney Flying Squadron's 'Heritage Fleet's' ability to launch from and land at the Milson Park boat ramp.

BACKGROUND

The site was the subject of a previous development application, DA 313/19 (PPSSNH-30). It was determined by way of refusal by the Sydney North Planning Panel on 23 September 2020, 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 Environmental Impact Statement (EIS) inadequately describes the proposed development, in terms of the type, scale and frequency of works and activities during the operation of the proposed development and inadequately analyses feasible alternatives to carrying out the proposed development including design, location and technological alternatives and the consequences of not carrying out the proposed development. Therefore, the EIS has not satisfied the requirements of Schedule 2 of

the Environmental Planning and Assessment Regulation 2000.

3. 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.

4. 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.

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

6. The approval of the proposed development would be contrary to the public interest.

In summary, the current application is very similar to that refused by the Panel. To determine similarities and differences is difficult, as no comparative analysis or even a summary of differences has been provided.

However, the EIS indicates that the boatshed to replace that burnt down some time ago has been reduced to a single storey with a skillion roof. In the refused application, the boatshed was to be 2 storeys with a pitched roof.

Apparently, the proposed hardstand has been reduced and the hoist's capacity reduced from 40 tonnes to 15 tonnes. A comparison of plans indicates the hardstand, however, is about the same size. These details should be measured and accurate dimensions shown on plans.

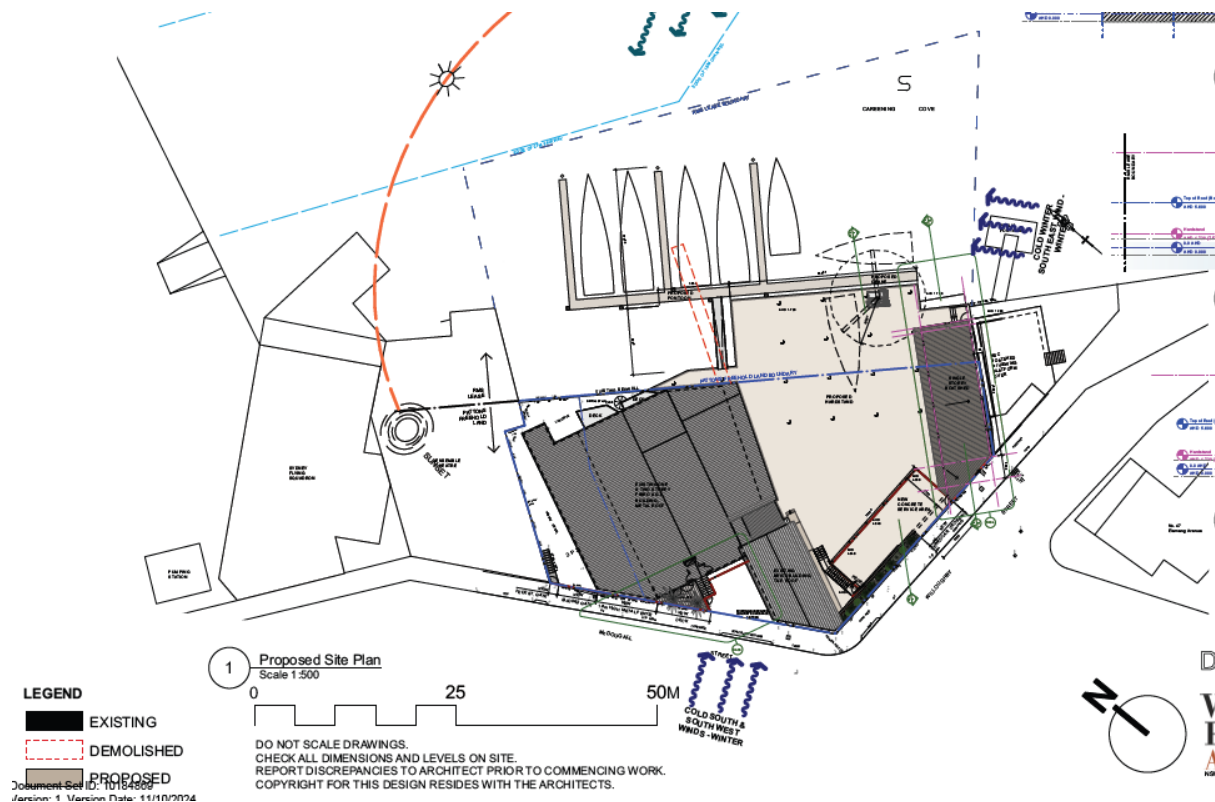
PROPOSAL

According to the submitted Environmental Impact Statement (Hamptons Property Services, 13 September 2024) the DA seeks approval for:

- Removal of the existing slip rails, two timber jetties and mooring piles,
- Removal of the existing hardstand area,
- Replacement (and enlargement) with a new concrete hardstand area,
- New servicing infrastructure, including a new vehicular crossover, service area (a raised platform) and access stairs,
- Installation of a crane to hoist vessels from the water to the hardstand, with the capacity for vessels up to 15 tonnes,
- Installation of a pontoon jetty to accommodate five (5) vessels (of up to 15m in length)
- Removal of the remnants of the original 2 storey boatshed, damaged by fire, and replacement with a single storey boatshed.
- New fencing to the street frontage, incorporating parts of the salvaged sliprails.

The existing boatshed (weatherboard and metal) and original brick and tile building at the street frontage will remain and are not greatly affected by the application, except for repainting the larger of the two buildings.

Below is a site plan from the architectural drawings and an aerial image showing zoning and land use in the locality.



Extract of site plan (Weir Phillips Architects)



Site (yellow edge) and local context. Immediately to the site's north is the Ensemble Theatre and the Sydney Flying Squadron. Both have well-patronised food and drink premises with harbour views over and past the site. Across Careening Cove is the Kirribilli Marina. Adjacent development west and south is mainly residential. The site is in the W4 Working Waterfront zone under the North Sydney LEP 2013 (eplanning spatial viewer).

STATUTORY CONTROLS

SEPP (Biodiversity & Conservation) 2021

The site is in the Foreshores and Waterways Area as defined by the SEPP's mapping. The marine part of the site is in the policy's Zone 1 – Maritime Waters. An extract of relevant mapping follows.



Zone 1 - Maritime Waters shown in blue. The mauve area is Zone 6 – Scenic Waters Active Use. The thin red line is the boundary of the Foreshores and Waterways Area (FAWA) – land on the waterside of this line and the water (below Mean High Water) are in the FAWA. Existing and proposed lease boundaries are not plotted on plans of the development. The proposed extension of the new hardstand platform and the proposed pontoon jetty into the bay will be in Zone 1 and subject to its requirements. Comparing the two zones there is a small overlapping area where the slips and remnants of the damaged boatshed are located (eplanning spatial viewer).

Proposed development, a “marina” as defined, is permitted with consent Zone 1 Maritime Waters and the W4 Working Waterfront zone.

Both zones have objectives which must be considered by the consent authority. Whether the proposed development is consistent with several of these objectives will be a key consideration in the application’s assessment.

Zone 1 Maritime Waters Objectives

- *To give preference to and protect waters required for the effective and efficient movement of commercial shipping, public water transport and maritime industry operations.*

- *To allow development that is compatible with and will not adversely affect the effective and efficient movement of, commercial shipping, public water transport and maritime industry operations.*
- *To promote the equitable use of the Foreshores and Waterways Area, including use by passive recreation craft.*

Preliminary assessment and consideration of submissions received to date suggests that the development is unlikely to be consistent with the third of these objectives. At this stage, apparent issues include potential view and visual impacts of the proposal, reduction of the amenity of Careening Cove and its foreshores and restriction of leisure and sporting crafts' access to its waters and those of the open harbour, via Careening Cove.

In addition to land (and water) use zones, the Sydney Harbour catchment and the FAWA are the subject of specific criteria that must be considered by the consent authority, which address the impact of development on Sydney Harbour, identified as:

- a significant public and environmental resource,
- a place important First Nations people
- being strongly associated with the origins of Sydney (and the nation),
- a place of economic activity that is vital to transport, and
- as a source of sport, recreation and leisure, both active and passive.

There are also matters prescribed for specific types of development, including marinas.

A thorough assessment of the proposal against these criteria will be presented in the determination report.

SEPP (Resilience & Hazards) 2021

The proposal is supported by a preliminary site study into contamination, the site having been used for maritime activities for well over a century.

Conditions have been recommended by Council's Environmental Team, to implement the conclusions of the submitted investigation.

The Environment Protection Authority have given notice that upon approval, the development will be the subject of an Environmental Protection Licence under the *Protection of the Environment Operations Act 1997*.

North Sydney LEP 2013

• Zoning – W4 Working Waterfront

As shown, the site is in the W4 zone, which has the following objectives. As mentioned, marinas are permissible with consent in this zone.

- *To retain and encourage industrial and maritime activities on foreshores.*
- *To identify sites for maritime purposes and for activities requiring direct foreshore access.*
- *To ensure that development does not have an adverse impact on the environment and visual qualities of the foreshore.*
- *To encourage employment opportunities.*
- *To minimise any adverse effect of development on land uses in other zones.*

Having regard to the third objective key issues that will require consideration include waste water management, noise and vibration and adverse impacts on air quality, in addition to potential visual impacts.

Regarding the fifth objective, members of the community have expressed concerns that potential environmental impacts would compromise compatibility with other nearby land uses, mainly residential zones.

Not only uses in other zones are potentially impacted. The Ensemble Theatre, which has objected to the proposal (and the Sydney Flying Squadron, which has not made a submission to date) are also in the W4 Working Waterfront zone.

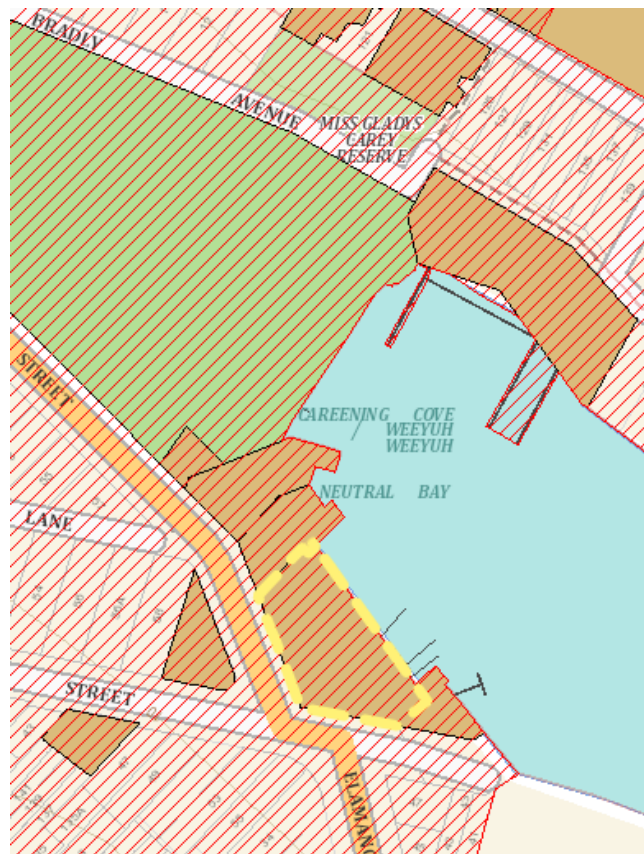
Despite being in the same zone, the theatre has submitted that the proposed works will be incompatible with some of its key attributes, which complement its main theatrical offerings, resulting from the potentially increased scale and intensity of activities and berthing of boats by the proposed development. These attributes, considered fundamental to the experience offered by the theatre, include the waterfront location, especially the harbour views their bar and restaurant offer patrons, both day and night, noting patronage exceeds 80,000 people per annum.

- **Building height – 10.0m (max)**

The proposal appears to comply with the height control. However existing ground level is not defined and land survey is necessary, principally to measure height of the crane and the new boatshed, in accordance with the definition of “building height of the LEP.

- **Heritage**

As shown below, the site, Wrixton Park, on the site’s south-eastern boundary, the Ensemble Theatre and the Sydney Flying Squadron’s premises are heritage items. These items and land either side of Careening Cove are in a conservation area that shares its name with this historic waterbody.



Heritage items shaded tan and the Careening Cove Heritage Conservation Area hatched red and the site bordered in yellow (eplanning spatial viewer).

Careening Cove is the smallest of the five inlets between the Sydney Harbour Bridge and Bradleys Head. It has retained its small-scale character and contains a group of waterfront buildings that are locally significant, which includes the subject site. They represent some of the last relics of the once extensive maritime industry on the North Sydney and Careening Cove's waterfront.



CURRENT VIEW



HISTORIC VIEW

Infill development to replace the previously burnt-out boatshed is supported in principle as part of an ongoing operational marine facility.

The following historical elements on the site remain significant to the historic character and understanding of the marine history of Careening Cove:

- The existing slipways and rails retain their original location on the site.
- The timber jetty represents a key period of the history of the site and Careening Cove and perhaps the only one now remaining in Careening Cove.

The marina at 1 Bradly Avenue opposite the subject site has had an increase in the number of berths, including larger vessels. The proposed increase to five berths for larger vessels extending the proposal's footprint into the harbour will create a compositional change within Careening Cove adversely impacting the setting and views of the Cove generally, and in terms of views to and from the heritage items that frame Careening Cove.

Given the small size of Careening Cove, the impact on views associated with the heritage items is highly localised and will create an adverse impact which is beyond just that limited to a 'small area of Willoughby Street' as indicated in the Visual Impact Assessment accompanying the DA.

The context of the site is such that there are several important activities that now co-exist and the impact of the proposal on Careening Cove and the amphitheatre setting of the bay should be more comprehensively considered.

- **Clause 6.8 Development on land in zone W4**

This clause includes matters for consideration for development in the W4 zone:

(1) The objectives of this clause are as follows—

(a) to ensure development on land in Zone W4 Working Waterfront is in proportion with the site and its surroundings,

(b) to acknowledge the unique environmental quality of the foreshores of the harbour.

(2) Development consent must not be granted for development on land in Zone W4 Working Waterfront if the consent authority is satisfied that—

(a) the proposed development is inconsistent with—

(i) the size of the site and the part of the waterway where the development is to be situated, particularly in relation to the number, size and draft of any boats to be moored, or

(ii) the proximity, scale and height of surrounding development, or

(iii) the scenic, environmental and cultural qualities of the site and its surrounding area, or

(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.

(3) Development consent may be granted for an outdoor seating area associated with a kiosk on land to which this clause applies if the area used for that purpose does not exceed 40 square metres.

To date, preliminary assessment suggests that the proposal could be deemed inconsistent with several of these provisions.

Whether the proposal is consistent with objective (a) is questionable, especially whether the enlarged footprint represented by the hardstand structure and the outward extension the new pontoon berths are in proportion with site and surroundings.

Consent must not be granted if an application is inconsistent with any provisions of subclause (2). At this stage of the assessment process, the proposal is arguably inconsistent with these requirements:

- As the proposal's scale is excessive, having regard to the size of the site and the part of the waterway where the development is proposed (para (a) (i)),
- With regard to the proximity, scale and height of surrounding development, the proposal is potentially out of scale (or proportion) with nearby development, a matter

not well-addressed in the EIS or the complementary visual impact assessment (para (a) (ii)),

- The scenic, environmental and cultural qualities of the site and its surrounding area have not been fully considered, particularly the cultural significance of the Ensemble Theatre and the historical significance of the Sydney Flying Squadron (para (a) (iii)), and
- Adverse impact on public views and views from surrounding properties. Views, both public and private, are significant and are of considerable concern to the community. Information submitted to date is of insufficient detail to allow a proper assessment of this issue (para (b) (i)). Several members of the community have suggested buoys be placed in Careening Cove, to indicate the location of the proposed hardstand and pontoon jetty. Accurately dimensioned outlines of same and other pertinent details on an aerial image of the cove, including its southern, western and northern shores, would be a good starting point in assisting public understanding of the proposed development.

NON-STATUTORY CONTROLS

North Sydney DCP 2013

Several sections of the DCP apply, prescribing guidelines for development-related matters, typically addressed in conditions of consent, including:

Part B

- Parking and transport,
- Construction management,
- Access,
- Contamination and hazardous materials,
- Erosion and sediment control,
- Stormwater, and
- Waste

Part C Character Statements

- Careening Cover Conservation Area

North Sydney Local Infrastructure Plan 2020

Upon approval, the application would be conditioned, requiring a contribution toward local infrastructure, in accordance with section 7.12 of the EP & A Act.

REFERRALS

Internal referrals

Conservation Planner

Addressed above.

Landscape Development Officer

Council's LDO has recommended a condition regarding landscaping be applied should consent be granted, noting there is no terrestrial vegetation of note on the site.

Waste Management

Being a commercial enterprise, waste management and disposal must be arranged by the operator(s).

Flooding and drainage

The Infrastructure Engineer raises no objections provided the waste water is discharged to the sewer. This method of disposal is proposed, including screening and recycling of waste water, before discharge to the sewer.

Building, transport and engineering assessments

Conditions are recommended, should the application be approved.

Parks and Recreation

The open space manager has raised no objection as the proposal does not impact operations or facilities at Wrixton Park, next to the site.

External referrals***Aboriginal Heritage Office***

No objections to the Proposal, there being a low likelihood of finding any items of Aboriginal cultural significance on the site.

Department of Planning Housing Industry and Environment (Water)

No referral was required, as waterfront and water-based activities on Sydney Harbour are exempt from the need for approval under the *Water Management Act 2000*.

Department of Primary Industries (Fisheries)

Fisheries has issued General Terms of Approval to be included in any consent granted, as required by the integrated development provisions of the *EP & A Act*.

Environment Protection Authority

As mentioned, the EPA intend issuing an Environmental Protection Licence for the development should the subject application be approved. However, before this can occur, this agency has requested the applicant to provide further information regarding potential noise and air quality impacts and their assessment. The applicant has advised this information is being prepared.

CONSENT AUTHORITY

As the proposal is designated development under the *EP & Act*, the *SEPP (Planning Systems) 2021* nominates the relevant Sydney District or Regional Planning Panel as the consent authority.

APPLICATION CHRONOLOGY

09 September 2024 – Application lodged.

04 October 2024 – 08 November 2024 – Notified for a minimum 30 day period due to the application being for designated and integrated development; 16 submissions have been received to date.

KEY ISSUES

At the time of writing, key issues for finalising the assessment and determination of the subject application are:

- View impacts, from surrounding development and the public domain, and scenic/visual impacts of the proposal when viewed from places such as foreshore reserves, nearby residences, streets and the harbour. Other viewpoints should be considered and further details provided, at a larger scale than submitted.

- Other impacts resulting from the footprint of the development increasing over the surface of Careening Cove, with considerable activity already occurring on its shores and on the water (swing moorings), competing for limited aquatic space, despite the application being supported by a specialist report stating the proposal will not impact navigation in the cove.
- A key issue which has hindered a proper consideration of both these key impacts has been the lack of consistent and accurate information submitted. For example:
 - Submitted plans do not allow a comparison of what is proposed, with what was refused in 2020 and the existing extent of development, this data being presented on different plans at different scales.
 - Complete dimensions of existing and proposed works, including the distances existing and proposed works extend into Careening Cove, and the outline or boundary of existing and proposed maritime leases.
 - Compilation of suitable data onto a simple base, such as an aerial image, would greatly assist public understanding. Having conducted a detailed review of submissions, it is apparent that many issues of concern have arisen due to incomplete or inaccurate information having been submitted.
 - The architectural plans at A3 are difficult to read and do not show adequate surroundings to gain a proper appreciation of the proposed development in context. This matter is critical, in such an environmentally sensitive location. A more detailed assessment of potential visual and land-use compatibility related impacts is required.
 - It appears that many of the images used in the visual impact assessment (addendum) were used in the assessment prepared for the previous development application.

CONCLUSION

As summarised, there are several issues (the above list is not exhaustive) that require the applicant's attention.

A site meeting has been scheduled for 18 February 2025. A request for amendments and/or further information is planned to be provided to the applicant before this meeting.

Depending on the applicant's response-time, and the need to readvertise determination could occur in either May or June 2025.

For the Panel's consideration.