

---

**From:** DYPXCPWEB@northernbeaches.nsw.gov.au  
**Sent:** 30/10/2024 8:29:53 PM  
**To:** DA Submission Mailbox  
**Subject:** Online Submission

30/10/2024

MRS Jeanette Webb  
4 Willyama AVE  
Fairlight NSW 2094

**RE: DA2024/1216 - Gourlay Avenue BALGOWLAH NSW 2093**

4 Willyama Avenue  
Fairlight NSW 2094  
6 August 2020

Maxwell Duncan  
Planner  
Northern Beaches Council  
1 Belgrave Street  
Manly NSW 2095

Dear Sir

SUBMISSION IN RELATION TO PROPOSED DEVELOPMENT

Application No: DA2024/1216

Address: North Harbour Marina : Gourlay Avenue Balgowlah "Marina"

Description: Alterations and additions to Marina

We are the owners of the property at 4 Willyama Avenue Fairlight and have not received Council notification in relation to the above proposed development however we have reviewed the application plans and responses on Council's website.

Our residence in Fairlight looks directly across North Harbour to the Marina. We strongly oppose the granting of consent to the proposal made for alterations and additions to the Marina.

Whilst we note that in letters which have been said to have been sent to other residents (we have not received such a letter) the applicants have apparently stated that they agree to limit the berth size to a 15m maximum berth and reduce kiosk operating hours between 7am and 4pm and not serve alcohol at the kiosk, unless the DA is amended to remove those matters and revise the application in line with the letter to residents it will be a matter for Council to impose such conditions.

In the event that other conditions were not palatable to the Applicant, or the Council refuses the proposal entirely, it would be open to the Applicant to appeal the refusal. In those circumstances a Court would be considering the originally worded proposal and may decide issues without being limited by these representations to residents (unless those residents

obtain a Double Bay Marina order for intervention in the proceedings). For that reason it must be assumed (in the absence of amendment of this DA) that all matters of concern (whether or not they will be pressed by the Applicant) should be addressed.

We would like to make the following submissions in relation to the proposed development.

## 1. Noise

### 1.1 Marina Building

For reasons that apparently relate to the refraction or bending of sound waves on the water surface (the details of which are unclear to us including that the angle of reflection of the sound apparently changes and sound travels further over water and more quickly than otherwise) less of the noise is lost into the air and more of it is heard by residents. We are well aware that loud noise already travels into our home from homes on the other side of North Harbour at Forty Baskets and Balgowlah Heights and from the Marina (including on the current deck and from the interior of the building on the Marina), whenever a function has been held either at these residences or at the Marina.

As these functions have been only occasional and short lived, we have never complained to Council about the transmission of loud noise across North Harbour and into our home, and its negative impact on our use and enjoyment of our home, as we have assessed that the noise is tolerable on a one-off basis and that it is reasonable for others to enjoy the functions being held.

The proposal to operate a café on the Marina with seating outside on the proposed enlarged deck on the days and hours proposed, is a very different situation.

The current use of the Marina Building to include a kitchen and office and workshop spaces is clearly ancillary to the Marina use. Despite the point made by gsa planning at p.14 of their Statement of Environmental Effects that "it should be noted that the proposed kiosk will be ancillary to the existing Marina use", Planning NSW and the law requires that to be considered an "ancillary use", the use must not be an independent use in its own right. The proposed café arguably is not ancillary to the Marina use, but rather is an independent use.

Large Marinas are recognised as high-impact development that can affect the environment especially if located near environmentally sensitive areas including wetlands. gsa at p.29 of their report acknowledge the Marina proximity to wetland in the statement that it "remains as existing". What will not remain as existing however, is the potential for increase in the use of the Marina by large Superyachts and power boats if the t-berth alterations proceed. The increased impact of larger vessels on nearby wetlands ought not to be simply summarised as "as existing" if other factors change.

If a development application is categorised as designated development, the application:

- must be accompanied by an environmental impact statement (EIS)
- requires public notification for at least 28 days
- can be the subject of a merits appeal to the Land and Environment Court by objectors.

An EIS for designated development must be prepared in accordance with the requirements of the Department of Planning Secretary's Environmental Assessment Requirements.

### 1.2 Liquor licence

We strongly oppose the granting of any consent that permits the licensing of the premises for the sale of liquor. If the café were permitted to be licensed, the noise effects are likely to increase as the sobriety of patrons decreases. The noise from those operations will be unavoidable by us and will negatively affect the use and quiet enjoyment of our home.

Council should include in any consent granted a prohibition on the sale of liquor on the Marina.

### 1.3 Trading hours

The proposed trading hours from 6am to 9 pm/sunset (if approved) will significantly increase the negative impact of the noise from the Marina, which will undoubtedly be heard inside our residence.

If approval is given despite our objection, Council should impose conditions on the trading hours of the Marina café to exclude trading on public holidays and to limit trading to the hours of 8:00 am to 4 pm.

Council should also include in any consent granted a prohibition on the use of amplified music on the Marina.

### 1.3 Fire and Bushfire Hazard

The BCA Capability Report notes that if the area is to be used as a café, it is assumed that it will include a kitchen including oils and fats and also acknowledges technical non-compliance and the need for a Performance Solution. Whilst a Performance Solution may address the non-compliance, the operation of a café must carry with it some risk of kitchen fire (hence the need for extinguishers and other equipment). Should such a fire escape the building, the Wellings Reserve and nearby residences are at risk of bushfire.

We have seen fires in the Wellings Reserve over the last decade that have required fire and aerial devices to control and extinguish. Whilst the current operation brings some risk in the use of the kitchen, a commercial café operating during the proposed hours and days, increases that risk, particularly where the Bushfire Asset Protection set back currently includes the Marina building.

### 1.4 Navigation Channel

It is clear from the Proposed Marina Channel and Swing Mooring Rearrangement plan attached to the report prepared by Marine Pollution Research Pty Ltd, that if approved the Navigation Channel will occupy an area that is currently occupied by swing moorings and is towards the northern shore of North Harbour.

If the proposal for a Navigation Channel in that position is approved, the noise impacts from the navigation of large vessels will be detrimental to the quiet use and enjoyment of our residence.

If the analysis of the impact of the creation of the channel is limited to the area shown in figure 2 (including the area occupied by the current swing moorings) and does not address the

impact of vessels using such a channel on the marine life and sea grasses off Fairlight beach and upon the clarity of the water for swimming diving and snorkelling in the area that will presumably be the location of the extension of the proposed Navigation channel. That impact is unknown and should be properly addressed before Council makes any decision on the application.

### 1.5 Alterations to the Pontoons

Although the report of gsa planning at page 24 asserts that the alteration and additions "will only minorly increase the intensity of the site as a new use", the effect of the provision of additional berths in lieu of the swing moorings that currently exist, is the potential for persons (including those stated to be on waiting lists) to take up the berths for the mooring of large power boats and larger Yachts (sometimes described as Superyachts) instead of the smaller yachts currently moored.

The noise emitted by larger boats (including motor boats and larger Yachts) that would be able to be accommodated by the increase of additional marina berths and expansion of the existing pontoons to include a floating 25m T head Berth on the Western arm and a floating 32m T head berth on the end of the Eastern arm, including from the loading and unloading and movements of these larger Yachts and other larger vessels, will be likely to result in a significantly increased noise arising from the use of the Marina and will be likely to negatively affect the use and enjoyment of our home.

Although the gsa responses at p32 deal with view loss and bulk and scale issues that are required to be addressed, the response that the alterations to the Marina Building do not create additional bulk and scale, does not address (and perhaps is not required to address) the fact that the mooring of large power boats at any new berths will undoubtedly obstruct to some degree the view of the shore from the waterway.

If despite our objection to the alterations to the Pontoons (and particularly to the addition of any T-head berths on the end of the arms) Council should impose conditions on any consent similar to these:

- a. any casual berthing areas shall only be used by non-commercial vessels and are not to be used by persons not using marina facilities. The casual berthing areas shall not be used for berthing of vessels on a permanent basis or overnight.
- b. no vessels exceeding 3m in height shall be permitted to occupy a berth
- c. no vessels exceeding 15m in length shall be permitted to occupy a berth or a swing mooring.
- d. The use of the premises must not give rise to the transmission of offensive noise to any place of different occupancy. Offensive noise is defined in the Protection of the Environment Operations Act 1997.

### 1.4 Construction Noise

If despite our objection the proposal in relation to the Pontoons and T head Berths is approved, it should be noted that noise during the construction phase will also have a significant impact on the use and enjoyment of our home.

To mitigate the impact on us and the neighbourhood, council should impose appropriate conditions on any consent including conditions similar to these:

Hours of work

1. a) No work must take place on any Sunday or public holiday,
  2. b) No work must take place before 7am or after 5pm any weekday,
  3. c) No work must take place before 7am or after 1pm any Saturday,
  4. d) The following work must not take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday;
    1. i) Piling;
    2. ii) Piering;
    3. iii) Rock or concrete cutting, boring or drilling;
    4. iv) Rockbreaking;
    5. v) Rock sawing;
    6. vi) Jack hammering; or
    7. vii) Machine excavation,
  5. No loading or unloading of material or equipment associated with the activities listed in 4 (d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.
  6. No rock excavation being cutting, boring, drilling, breaking, sawing, jack hammering or bulk excavation of rock, must occur without a 15 minute break every hour.
1. Light Spill

1.1 Wellings Reserve is home to nocturnal birds and animals that are likely to be negatively affected by light spill from what are acknowledged by gsa as "Bright lights and light pollution" p. 30. Although the response states that "Bright lights and light pollution will be directed downwards and will ensure no adverse impacts on night navigation or impacts on neighbourhood developments" arguably the adverse impact could be completely avoided if consent to the alterations to the deck and pontoons were refused or trading hours strictly limited.

1.2 The gsa report includes Table 4: Project Compliance -Sydney Foreshores and Waterways DCP 2005 responses from p25 of their report. The built form response to the requirement that "All lights on structures shall be shielded seawards and position to avoid disturbance to neighbouring properties" does not state that all lights on structures will be shielded seawards (merely positioned to avoid disturbance - which is an additional requirement).

Council should include a condition of any consent that complies fully with the Table 4 description i.e. as follows:

"All lights on structures shall be shielded seawards and positioned to avoid disturbance to neighbouring properties."

1.3 The lights of the Marina are currently modest and do not have a negative impact on our home, however if bright lights are installed the light spill is likely to intrude into our main bedroom (which faces the Marina).

1.4 The installation of bright lights is a source of light pollution and whilst common in urban areas this Marina uniquely adjoins the bush of Wellings Reserve. A lighting management plan to ensure responsible lighting practices in relation to all artificial outdoor lighting installation at the Marina (whilst ensuring public safety) should be required to preserve the integrity of the

night sky and to minimise the impact on the quality of night life, night sky visibility and the alteration of wildlife behaviour.

We request that Council consider our submissions when determining the application.

Yours Sincerely

Jeanette and Lewis Webb

