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**From:** [REDACTED]  
**Sent:** 21/11/2024 3:02:40 PM  
**To:** Council Northernbeaches Mailbox  
**Subject:** TRIMMED: Fw: DA2024/1216 North Harbour Marina  
**Attachments:** Objection to DA2024-1216 Marina North Harbour R Chick.pdf;

Dear Council (attn Maxwell Duncan),

Please see below and attached an objection to DA2024/1216 - Alterations and additions to commercial development - Alterations and additions to Marina facilities. I submitted it on the 19<sup>th</sup> (as below) but notice that it hasn't been uploaded so am not sure if it was received.

I would like my personal details withheld when this is uploaded please.

Kind regards,

[REDACTED]

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**From:** [REDACTED]  
**Sent:** Tuesday, 19 November 2024 4:26 PM  
**To:** maxwell.duncan@northernbeaches.nsw.gov.au <maxwell.duncan@northernbeaches.nsw.gov.au>  
**Subject:** Re: DA2024/1216 North Harbour Marina  
Dear Mr Duncan,

Please find attached a submission in relation to DA2024/1216 - Alterations and additions to commercial development - Alterations and additions to Marina facilities.

If possible, could my submission please be kept anonymous when uploaded?

I have not been able to provide as considered or detailed submission as I would have liked, but I would be pleased to provide further detail or any clarification on the matters discussed in my submission, or if there are additional opportunities for submissions.

Thank you very much for your consideration.

Kind regards,

[REDACTED]

[REDACTED]

[REDACTED]

Dear Mr Duncan,

**Objection to DA2024/1216 - Alterations and additions to commercial developmt -  
Alterations and additions to Marina facilities**

As a former long term resident of Lauderdale Ave Fairlight, current resident of Balgowlah and frequent user of North Harbour (on the foreshore and water as a swimmer and paddleboarder), I object to this application and request Council to refuse development consent.

In summary, this is because:

- The proposed development facilitates the use of the marina by vessels that are significantly larger, more polluting, with markedly different and more intensive use than the vessels currently provided for by the marina. The acknowledgment, assessment, and consideration of the impacts of this intensification is entirely absent from the application, cover letter, Statement of Environmental Effects, and associated documentation.
- The proposed development **substantially increases the scale of the current facilities and the intensity of their use**, which will have a much larger impact on North Harbour, which is primarily a public resource, owned by the public, to be protected for the public good;
- Significant detrimental impact on amenity of the bay and residences surrounding the bay, including acoustic impacts, pollution, safety to swimmers and users of small watercraft;
- Significant and unassessed impacts on endangered species and populations: little penguins, whites seahorse; and other threatened species that rely on North Harbour such as green turtles, cetaceans, sea lions, and seagrass.
- Impact on other users of the foreshore area, including through increased pressure on parking that is already oversubscribed;
- The development impermissibly elevates the private good over the protection of the natural assets of Sydney Harbour and the public good (contrary to s 6.28(1) of the *State Environmental Planning Policy (Biodiversity and Conservation) 2021*).

Further, I submit that Council is obliged to refuse the application because it does not provide sufficient information for Council to consider the likely impacts of the development as required under s 4.15 of the *Environmental Planning and Assessment Act 1979* (Cth).

**Application is incomplete- likely impacts of operation/use of proposed development are entirely absent**

The application is incomplete- the applicant has not provided council with sufficient information on the impacts of the development to approve it. The application and supporting documents relate only to the **construction** of the marina enlargement, and not the **use** of the expanded facility by boats exponentially larger with significantly greater impact than the marina currently supports. The use of the proposed development represents far greater impacts than

the construction, and the omission of these impacts from the application renders it incomplete and misleading.

This focus on construction means that the actual impacts of the development on the environment and the community cannot be considered by the council in making its decision under s 4.15 of the EP&A Act. Relevantly, Council is required to consider (at s 4.15(1)(b)) “the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality”.

It is settled law that “likely impacts” include direct and indirect impacts “flowing from the development the subject of the development application” (*Hoxton Park Residents Action Group Inc v Liverpool City Council* (2011) 81 NSWLR 638).

The recent Court of Appeal decision of *Bingman Catchment Landcare Group Incorporated v Bowdens Silver Pty Ltd* [2024] NSWCA 205 was a matter in which the Court overturned a development consent because the applicant failed to provide, and the decision maker therefore failed to consider, information about impacts of a power line needed for a mine. These impacts are much more remote than the impacts of use of the proposed development of the Davis Marina.

In relation to this proposed development (DA2024/1216), the environmental and social impacts of the use of North Harbour and the marina premises by significantly larger vessels with many more occupants and different and more intensive uses than the current vessels and usage is a direct impact flowing from the development the subject of the development application. These impacts are mandatory considerations for Council. In the absence of evidence by the applicant of those impacts and that those impacts can be appropriately managed, the application must be refused.

Necessary, but not sufficient, information about the likely impacts which are not even acknowledged in the present application include:

- an acoustic assessment of the use of the facility in the manner the operator is proposing to use the facility. Sound is amplified across water, and the proposed development involves accommodating luxury, high impact, vessels used for parties and overnight accommodation;
- an ecological assessment of the use of North Harbour (ie not only when moored at the proposed development, but also passage through the Harbour, which is zoned for environmental protection under the Biodiversity Conservation SEPP 2021 (see discussion below) by the significantly larger, louder, more polluting motor boats which are more akin to cruise ships or speed boats than to the vessels that currently use the bay which are medium sized yachts and small motor boats. Of particular concern are whites seahorses and little penguins, both endangered species which inhabit North Harbour and for which the use of the intensified marina and associated use of North Harbour may constitute a threatening process.
- a proposed plan that addresses the operation of the proposed development, including the large vessels proposed to be accommodated and controls out in place to minimise pollution and nuisance.

## Statement of environmental effects

The statement of environmental effects has a number of significant deficiencies, and should not be relied on.

Chief of these is its failure to address the likely impacts of the intended use of the marina that the development the subject of the application is designed to facilitate.

However, it also ignores highly relevant development controls applicable to the proposed development (see below), and makes a number of statements with no evidence, or which are disingenuous and misleading, such as:

- “the proposal in fact results in reduction to the parking demand” (p 16) there is no evidence provided for this and it defies credulity that the proposed development, which facilitates the use of the marina by many many more people through the increased size of vessels;
- “the proposed Marina will have a total capacity of 44 berthed vessels (and 41 swing moorings) of lengths varying from 8m to 15m” (p 18). This is **false**- in fact the proposed development facilitates use by vessels up to 32 metres.
- “overall, the proposal does not significantly alter the existing scale, character or nature of the site.” (p 19). This ignores the proposed significant intensification of use (and impact) by facilitating vessels up to 34m on one arm and 25m on the other, a significant increase in the scale, nature and character of the site than the current marina, which accommodates more modest (and less polluting) vessels of up to 15m.

The SEE ignores a number of highly relevant provisions of a relevant planning control, namely the *State Environmental Planning Policy (Biodiversity and Conservation) 2021*, extracts of which are set out below for convenience (but all of which must be considered):

### 6.28 General

(1) In deciding whether to grant development consent to development in the Foreshores and Waterways Area, the consent authority must consider the following—

(a) whether the development is consistent with the following principles—

- (i) Sydney Harbour is a public resource, owned by the public, to be protected for the public good,
- (ii) the public good has precedence over the private good,
- (iii) the protection of the natural assets of Sydney Harbour has precedence over all other interests,

(b) whether the development will promote the equitable use of the Foreshores and Waterways Area, including use by passive recreation craft,

...

The development, through seeking to facilitate the use of the harbour by luxury craft which represent an intensification of use and a change in nature of use, impermissibly elevates the private good (the recreational use of the Harbour on highly polluting and intrusive luxury craft)

over the protection of the natural assets of Sydney Harbour (such as little penguins, whites seahorse, and the many marine mammals and other species that call North Harbour home and rely on it as part of some of all of their lifecycles) and the public good (the low intensity recreational activities, and peaceful enjoyment of the natural environment by residents and bushwalkers which is currently the main use of North Harbour).

The development area is [zoned](#) rocky foreshore and abuts significant seagrass area.

### **6.32 Rocky foreshores and significant seagrasses**

- (1) This section applies to land identified as a rocky foreshore or significant seagrass area on the [Rocky Foreshores and Significant Seagrasses Map](#).
- (2) Development on land to which this section applies may be carried out only with development consent.
- (3) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied the development—
  - (a) will preserve and enhance the health and integrity of seagrasses, areas containing seagrasses and ecological communities in rocky foreshore areas, and
  - (b) will maintain or increase the connectivity of seagrass vegetation and natural landforms, and
  - (c) will prevent, or will not contribute to, the fragmentation of aquatic ecology, and
  - (d) will not cause physical damage to aquatic ecology.

The application does not provide evidence that the likely impacts of the development (which, as set out above, requires consideration of the use of the marina and the harbour that the development application facilitates) will preserve and enhance the health and integrity of seagrasses and ecological communities, maintain connection, will not fragment, and will not cause damage to aquatic ecology. As set out below, the aquatic ecosystem assessment is not fit for purpose due to its failure to consider the likely impacts posed by the use of the proposed development as intended and designed for.

The waterway itself is [zoned](#) as Zone 2- environmental protection. Of particular relevance is:

### **6.38 Marinas and boat building and repair facilities in Zone 2**

- (1) The objectives of this section are as follows—
  - (a) to maintain the working harbour character and functions of certain existing marinas and boat building and repair facilities by retaining their sites for maritime purposes,
  - (b) to ensure development carried out on the sites, including alterations of or extensions to the facilities, does not substantially increase the scale of the facilities or the intensity of their use.
- (2) Despite any other provision of this Part, development for the purposes of marinas or boat building and repair facilities may be carried out with development consent on land in Zone 2 if the land is identified as a special purposes area on the [Special Purposes \(Marinas and Boat Building and Repair Facilities\) Map](#).

(3) In this section, a reference to a marina does not include a reference to a private marina.

The proposed development is a site to which cl 6.38 applies: it is identified as a special purposes area for the purpose of cl 6.38(2).

However, contrary to the objective of the section, the proposed development **substantially increases the scale of the facilities and the intensity of their use** by facilitating the mooring of vessels up to 32 metres (which is such an intensification in scale that vessels of that length can be considered superyachts).

#### **Significant intensification of use**

Allowing berths accommodating one 32 metre vessel and one 25 metre vessel at the same time is a significant intensification use for a facility that currently only allows for 14m vessels. For example 32 metre vessels can be considered superyachts. These vessels are of an entirely different nature to the vessels currently accommodated by the marina- they are luxury craft, are used for large parties, can accommodate many more people, are likely to be used for overnight stays for many people, used as party boats (with attendant noise), are significantly more polluting, require waste disposal and infrastructure such as generators to support them. It is not only an increase in vessel length that is being contemplated, but a significant change to the nature of vessels and the nature of the use of vessels.

#### **Aquatic ecology assessment (AEA)**

The AEA does not provide an assessment of the likely impacts of the development on the aquatic ecosystem because it considers only the construction of the enlarged marina, not the intensification of use and the impacts of vessels significantly larger, more polluting (including acoustically), requiring significant additional infrastructure (such as generators), and accommodating orders of magnitude more people on board than the vessels that currently use the marina.

Of particular concern is the absence of assessment of the likely impacts of the proposed development on endangered and other threatened species that are known to rely on North Harbour.

This is a sensitive marine habitat. North harbour is used by a range of threatened and endangered species such as green turtles, cetaceans, sea lions, dolphins. It is known habitat for the critically endangered little penguin and the endangered white's seahorse.

The use of North Harbour by significantly larger and more impactful vessels as a direct impact of the proposed development represents a key threatening process for both species.

The likely impacts of the proposed development (that is, the impact of the intensified use of the marina and North Harbour by vessels the proposed development facilitates- ie up to 32 metres- and associated activities such as overnight accommodation, parties, use of generators, accommodation of crew, waste disposal etc) on these species is not acknowledged or assessed in the AEA, and the AEA is therefore not fit for purpose.

#### **Inadequate opportunity for affected persons to make submissions**

Finally, the community has not been provided with sufficient notification of the development. All residents with views of North Harbour will be impacted by the intensification of use of North Harbour (and are analogous to property owners and occupiers across the street from a proposed residential development) that is a likely impact of the proposed development, however only a small number of residents of the north side of north harbour were notified.

I walk the foreshore route past the marina several times a week, and no notice was provided at the main street frontage of the development (as required by Council's community participation plan at p 15), at Gourlay Ave, so that those walking past who are likely to be interested in the application would know about it. Only in the last few days has this been attempted to be rectified, by the placement of a yellow notification of application on a corner of the boatshed that is only accessed at high tide. In my view this does not meet the requirements of council's community participation plan for notice to be placed at the main public frontage.

An example of an appropriate upgrade to facilities is the Treharne marina across the bay, which has had additional decking and a small café kiosk, but has not changed the character of the harbour or had significant negative impacts on the amenity of residents as kiosk hours are limited and vessel numbers and size of vessels using the marina have not increased markedly.

Given the timeframes, I have not been able to provide a more detailed submission, but I would be pleased to provide further detail on the above, or on other aspects of the development. Please don't hesitate to contact me by return email if you would like clarification, further detail, or if there are additional opportunities for submissions.

Kind regards,



19 November 2024