

Reference: HPS 2014.039

5 February 2016

Ms. Rebecca Englund
Executive Planner
Pittwater Council
PO Box 882
MONA VALE NSW 1660

Dear Ms Englund,

Re: Development Application N0379/2015 for alterations and additions to the Royal Motor Yacht Club at 46 & 46A Prince Alfred Parade, Newport

RESPONSE TO COUNCIL'S REQUEST FOR ADDITIONAL INFORMATION

We refer to the above development application and the Council's letter dated 14 December 2015, requesting additional information to enable progress of this application's assessment. Please find hereunder our responses as requested.

1. Existing Use Rights

With respect to both the timeline and the submission by Mr. Patrick Larkin, SC, this is addressed in the joint opinion prepared by Mr. Peter Tomasetti SC and Mr Noel Hemmings QC. This is provided at Annexure 1 and establishes the position, with further information, regarding the ability to rely upon the existing use rights provisions pursuant to Section 106 of the Environmental Planning & Assessment Act 1979 (the Act).

2. Traffic and Parking

Clarification has been requested by Council in relation to:

- diagrams to demonstrate the gross floor area of the existing club; and
- clarification in relation to peak times for individual uses, maximum capacity and staffing numbers.

For clarity, the gross floor area plans are provided as Annexure 2.

In terms of staffing, there are 22 employees on site. Naturally these are not on site all at one time and reflected based on seasonal factors, events and general day-to-day activities.

In the event that there are functions on all levels at the same time, this would occur on a Friday evening and result in a maximum of 30 employees.

In terms of staffing, a large proportion of Marina Staff do not have a vehicle. 40-50% of internal or club staff are under 25 years old and car pool to and from their place of employment. There are normally 4-6 Marina attendants on over the weekend and a maximum of one car per day.

Large events (weddings, functions etc.) may occur up to approximately 10 times per year. Shows are also held at the facility, generally being of a Friday or Saturday once per month for ten months of the year.

However, it is relevant that the application relates only to the extension of the marina and that the proposal does not alter the floor space or use within the existing club house facility. In addition, the increased number of vessels will not give rise to additional events being held at the facility, nor will it result in increased staff numbers.

This being the case, and based on the demand assessment for the use of the car parking area, there is sufficient car parking to support the extension of the marina facility, which forms part of the application.

The updated Traffic Report, taking account of these issues is provided at Annexure 3.

3. Submissions Received

We acknowledge Council received 31 submissions, from 26 different sources, following the notification period between 4 October 2015 and 25 November 2015. We provide herewith our response to the issues raised in those submissions, beginning with the three matters specifically raised by Council.

A. Sedimentation and water flow in Horseshoe Cove

A detailed analysis of the benthic morphology of the bay was included with one submission and a further three submissions raised siltation of the bay as a concern.

The applicant was not required, under the Secretary's Environmental Assessment Requirements (SEARs), to specifically address this issue. However, following review of these submissions, further consultation was undertaken with International Marina Consultants Pty Ltd in relation to this issue. Their full advice is attached as annexure 4.

This matter has been addressed by International Marina Consultants and is included as Annexure 4.

In relation to the potential loss of Horseshoe Cove, the IMC advice states that:

- *this little embayment is comparatively sheltered, not subject to ocean wave energy and littoral processes are not seen to be dominating supply of siltation or its movement.*

The report goes on to state that:

The Ferguson report [which is the key report pertaining to the submissions on this issue] considers that the westward extension of the floating berths will effectively shift the 'hard point' of the coastline further exacerbating siltation outcomes. It should be noted, however, that littoral movement processes in what is a relatively inactive low wave energy headland will not be

significantly affected by the westward extension of floating structures. This westward extension is a floating structure with less than 1 meter draft n more than 12 meters water depth. It will deflect any wave energy from the north-west further west, but with the existing marina and headland here is effectively no wave energy from north-west waves reaching the inner shores of the Cove so its impact is insignificant.

It is more likely that the proliferation of shoreline connected berthing structures and vessels along Horseshoe Cove foreshore will have most effect on near shore siltation in this area as evidenced by some build-up of material between them.

It is also noted that the vertical wall constructed along this foreshore would locally reflect any wave energy which would tend to flatten the beach profile hence increasing the distance to deeper water for vessels berthed along the immediate shoreline.

It is therefore reasonable to conclude that the proposed expansion of the existing facility will not result in detrimental impact in this regard.

B. Existing Contaminates found in the water and substrate surrounding the facility

Concern was raised in relation to water quality, disturbance of sediment and aquatic ecology. As discussed in the EIS, water and soil quality and aquatic ecology were both thoroughly researched by the applicant's consultants. The findings established that the existing sediment and water within proximity of the marina showed elevated levels of some contaminants and that further testing should be undertaken. Specific measures are also to be adopted during pile-driving to ensure minimal disturbance to the sediment.

The EPA have reviewed the findings of this report, in light of their own data, and have provided specific conditions ("General terms of approval") to be attached to any approval to safeguard the environment, and ensure the development satisfies current standards. The required further testing has been conditioned as part of any approval, to be undertaken prior to the development works. Any breach of these conditions would be subject to enforcement from both the Council and the EPA.

Following review of the submissions, further consultation was sought with Meinhardts, who had undertaken the original testing. Their complete advice is attached as Annexure 5. In summary, they have undertaken wider research of baseline data *via* Council and the University of Sydney, and initial reviews indicate similar contaminants and concentrations in other areas of Pittwater, such that this is not a solitary case. Meinhardts re-iterate that their findings justify further testing, but that the marina is but one of many likely sources for contamination in the vicinity, such as stormwater runoff from residential, commercial, and industrial areas, sewage overflow, golf courses, and roads.

All required cleanliness and maintenance standards are anticipated to be included as conditions of consent. These, together with the on-going management practices of the marina, will ensure best practice guidelines are maintained.

With regard to the impacts of these contaminants and the extension upon aquatic ecology, the consultant's research (including several dives in the vicinity) conclude that there is no aquatic vegetation in the location of the extension as it is too deep to enable sufficient light penetration, and therefore growth. There are colonies on some of the piles which are proposed to be relocated;

however, the species present will re-colonise easily on the relocated and new piles soon after the development is complete. No concern was raised in this regard within the EIS.

Following review of the submissions, further consultation was undertaken with Marine Pollution Research Pty Ltd. Their complete advice is attached as Annexure 6, the consultant confirms Meinhardts findings as being *'what would be expected in an urban waterway that has both historic and recent pollution sources'*. It is also noted that the sources are varied.

The consultant also advises that, given the depth for the new outer marina arm (north to south) ranges from -10.5m to -12.5m chart datum (i.e. greater than the depths around the existing outer arm), the risk of seabed sediment contaminants being mobilised to the water column is therefore considered very low and there is, consequently a low risk of adverse impact on existing biota. Given the depth at the lowest tide is still 10.5m, there is also no risk of vessels bottoming-out or sediment disturbance by propeller thrust.

Regarding water quality and the risk to human health, Marine Pollution Research comment: *"It is concluded that the present water quality of the waters around the marina (as measured) do not pose a health risk for recreational users and the risk to recreational users of the waters around the marina are not likely to change from the present low risk as a result of the proposed marina expansion"*.

C. Legal advice prepared by Patrick Larkin SC

The matter of existing use rights is addressed at Annexure 1.

D. Concern for navigational safety, specifically for non-motorised craft and junior sailors

The proposed alterations at the RMYC facility involve extension of Arm B in a westerly direction, closer to the eastern boundary of the navigational channel. The proposal involves the installation of 65 new berths, but, with adjustments to the existing facility and removal of between 6 and 12 swing moorings, this will result in a net increase of only 39 berths. The new layout will allow for an increased number of larger vessels.

Concern has been raised that the proposed alterations and the intended increase in vessels, specifically larger vessels, will alter or reduce the current safe navigating environment of kayak users, junior sailors, and the like.

Both the applicant's consultant and the NSW Maritime's Boating Officer have reviewed the plan in terms of the existing navigation routes, and the likely impacts of the proposal, which has been determined as acceptable. Further to this, the expanse of waterway that swing moorings take up is in the order of ten times that of a floating berth, such that the replacement of the swing moorings, with fixed berths, will free up some of the waterway that is currently un-useable as a result of the location and swing of these moorings. Finally, the structured arrangement will provide greater consistency and certainty in vessel location, beneficial to successfully navigating the waterway in a more consistent manner.

Given that the works will not significantly alter the public navigational channel over the existing situation and there will be no change to the existing port markers, the intended and designated

navigational paths and all relevant speed limits will not be altered by the proposed extension. These paths, and the proposed increase in vessel numbers, as they relate to navigational safety, have been considered and found acceptable by the Roads and Maritime Services. All water users are subject to correct water safety rule adherence and appropriate conduct.

Regarding Junior sailors specifically, RMYC are very supportive of families and have their own boating division for children, called “Mini Mariners”. The Club is an open supporter of the Royal Prince Alfred Yacht Club Tackers Sailing Programs for children, referring members’ children to this program for those who want to learn, or advance, their skills in sailing. RMYC would not want to compromise the safety of this program, or see a reduction in the availability of this opportunity to learn to safely enjoy the waterway. Given the proposed extension will not impact navigational routes, and is wholly supported by the RMS on these grounds, the Club would be willing to consider any suggestions as to how sharing of this waterway, with junior sailors specifically, can continue in the safest possible way. It is acknowledged that the main areas for training or use of junior sailing by RPAYC is off the South Eastern Side of Scotland Island, not in the navigable waters off either the RMYC or RPAYC.

We do note, however, that RPAYC have not, themselves, raised this as an issue of concern.

E. Cumulative increase of vessel numbers and on-water boat storage in Pittwater

Concern has been raised regarding the increased proportion of accommodation for larger sized vessels within Pittwater as a whole. Residents report that larger boats are not appropriate for Pittwater, will be visually detrimental, and will further add to congestion of the waterway. Some also state there is no demand for these larger vessels.

It is anticipated that the Pittwater Waterways Review has been initiated to enable a clearer view on these issues, which is to be commended. Many submissions relate to delaying a decision on this proposal, or Council resolving a moratorium on all waterways proposals, until that review is completed and a clear view of the cumulative scenario for the Pittwater may be arrived at.

Despite these considerations being valid, the current situation is that the Review has only just begun and could take a significant amount of time to be completed. No such moratorium has been resolved at this time and so the applicant is only able to address the existing parameters for this application; being those stipulated under the current Council and State legislative requirements.

As provided in the EIS accompanying the application, a Navigational Assessment has been carried out by an appropriately qualified professional, to ensure there will be no detrimental impacts arising regarding impact to navigational routes, nor impacts caused by the increased number of vessels using the marina and waterway. The consultant report established the proposal as satisfactory on these grounds, and the NSW Roads and Maritime Services have also found the proposal acceptable with regard to navigation.

With regard to demand for larger boats, public documentation published by the NSW government on current and forecast boating trends, clearly establishes an increasing proportion of boats in the “non-trailerable” (longer length) category. These trends are occurring across the State’s waterways,

including in the Pittwater. This trend means an increasing amount of boat owners are choosing to own larger vessels and store them on-water, thus a demand is created for berths that can accommodate these longer-length vessels. Such boats do not generally leave the water, but are continuously stored on-water, with the owner simply coming and going to the marina to use them.

Several submissions raise concern that the boat owners may not be local to the Pittwater area. It is a valid point that the waterways are not a local asset for the benefit only of local land owners, but are a State asset, to be shared. The increase in demand for on-water storage for these larger vessels means that as Sydney Harbour foreshores near capacity, the next closest waterways become highly sought after for this purpose. There are a finite number of waterways suitable for these vessels within close proximity to the city; Pittwater is one such waterway.

Visually, the vessels are of course larger which will create a change in appearance compared to groupings of smaller vessels; however, the proposed total number of these larger vessels, currently 20 vessels that are 17m and longer, increasing to 39 vessels that are 17m and longer, is a small proportion of the overall 217 berths increasing to 256 berths at the marina. Visual impact of the marina extension as a whole will be discussed below.

F. Loss of public waterway for private use

The current use of the waterway in connection with the Marina is permitted under a Crown Land lease. The public waterway is governed by the State, and the marina has had a lease within this area for many years. The swing moorings beyond the marina, are operated under a commercial license, also granted by the State.

The proposed extension is outside the existing Crown lease boundary, and is within the part of the waterway zoned W1 Natural Waterway, where marinas are prohibited. However, it has been relied upon, that as this part of the waterway has operated consistently for the purpose of mooring vessels in connection with the marina, since prior to the zoning coming into force, and therefore this area of the waterway has 'existing use rights', as defined under Section 109 of the EP&A Act 1979. In this regard, it is proposed to expand the mooring facilities into this area in exchange for the swing moorings that operate in that area, expanding the existing use, as permitted by the Act.

A "Permission to Lodge" authority signed by the State accompanied the development application, acknowledging that they have been made aware of the intentions to expand the marina. Upon any approval of the DA, an extension to the Crown Lease boundary would be sought, to align the lease with the approved expanded part of the waterway. This is the usual procedure for a marina expansion.

G. Visual Impact

Photomontages have been prepared for the proposed extension to illustrate the likely appearance of the extended arm of the marina, and the corresponding vessels berthed there. The difference in appearance is generally minor, as the extended arm will be located in an area currently populated by swing moorings. The most noticeable change will be that there will be an increased number of larger vessels. A full visual impact analysis is included at Appendix 14 of the EIS.

With regard to the difference in appearance, the extended arm, being beyond the existing marina structure, will be less visible from the RMYC club site, than from some vantages either side. The change to wet berths will see a more regularised arrangement of vessels than currently exists in the form of swing moorings. Vessels will be clustered along the arm of the marina, in a more dense arrangement but will still remain wholly located within the portion of the waterway that currently accommodates vessels on swing moorings. No additional open waterway will be affected by the proposal.

The appearance of boats is considered to be iconic to Pittwater and is not considered detrimental to the character of the area. It is a key and apparent feature of this waterway. The portion of waterway that will be occupied by the proposed structure is small in comparison to the total size of the waterway. For these reasons the change in appearance is not considered detrimental, nor unacceptable, from public vantages.

Attempts have been made to assess the impact from additional private vantages however no response from those property owners was forth-coming.

H. Request for a moratorium on considerations for all relevant applications until the Pittwater Waterways Review is completed.

This issue was the sixth most prevalent raised within the submissions. Consideration for this issue is addressed above, together with issue No.2.

I. Insufficient on-site car parking

Six of the submissions received raised concern for a lack of car-parking on-site to meet the increase in demand that is likely from the extension. Included with the EIS at Appendix 11, the applicant has provided a complete traffic and car parking study. This study shows that the existing 282 car spaces on-site are sufficient to meet the demand of the extension, and are satisfactory when assessed against all relevant guidelines.

Further information has been provided above under Item 2. Traffic and Parking.

J. Fire Hazard

Five submissions raised concern for the potential for increased fire hazard in relation to on-site fuel storage, and road delivery of fuel to the site. The indicated fuel outlets are actually the existing approved fuel outlets at RMYC that are simply to be relocated to the outer arm under the extension. There is no proposed increase in the number of fuel outlets, nor any increase in fuel storage capacity, beyond that which already exists on-site. No material increase in the rate of fuel truck delivery is anticipated as a consequence of the development.

The site does not fall within a Bushfire Prone Area, and as such referral to the local Rural Fire Service for consideration is not required. The proposal is considered to be satisfactory in terms of Fire Safety.

K. Size of vessels is inappropriate for Horseshoe Cove

Five submissions implored that the proposed size of vessels as inappropriate for this part of the waterway. Consideration for this issue is addressed above, together with issue E.

L. Additional swing moorings should be relinquished to offset the additional vessel numbers

The number of swing moorings to be relinquished is at the discretion of RMS. The swing moorings intended to be relinquished are those in the direct location of, or near enough to, the extension; that will become unviable. Any additional relinquishment of swing moorings, to off-set the increase in vessels proposed under the extension, would have to be a substantiated requirement of the Council. The applicant would prefer to be consulted prior to determination, should the Council consider this to be a necessary requirement.

M. Increased road traffic along Prince Alfred Parade

Three submissions raised concern for increased road traffic along Prince Alfred Parade. Post construction, only trips taken by the owners of the nett increase of 39 vessels, will be different to the existing scenario. Given how small 39 berths are, in comparison to the existing 217 berths, the change in traffic is unlikely to be noticeable on most days. On peak days, however, when a high proportion of boat owners all want to take boats out on the same morning, some increase may be seen; however, it is on these days that the club offers additional patron services which should offset much of the peak demand. The Traffic Study undertaken for the EIS does not highlight a likely detrimental impact upon road traffic in the vicinity. See also Item **2. Traffic and Parking**, above.

N. Noise impacts

The EIS explains that construction noise will be limited to the driving of piles and the delivery of materials and equipment. Methodology and material type has been selected to minimise noise impacts upon surrounding properties during this time.

With regard to the ongoing operation of the expanded marina, any resulting noise will be that which results from the increase in vessels (39). These include: the sound of vessels entering, docking and exiting the marina; people and cars entering and exiting the carpark; as well as people aboard moored vessels. Any residential receptors are a reasonable distance from where the additional berths are located, and as such, generally the impact of the additional vessels is considered to be negligible. Any unacceptable noise impacts, in association with the operation of the Club or from the berths, will be managed via conditions of the consent. Complaints are to be managed appropriately in accordance with the Club's Complaints register and Plan of Management, and any breach could result in enforcement action from Council or the EPA.

We trust this summary addresses the concerns of the neighbours' submissions, and will assist you in your assessment of the subject proposal. Should you have any further queries, please do not hesitate to contact the undersigned.

Yours sincerely,



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(Work Days: Monday, Tuesday, Thursday)