

ASSESSMENT REPORT

DEVELOPMENT APPLICATION (DA 162-07-01): THE PROPOSED REPAIR AND REFURBISHMENT OF THE BIRKENHEAD POINT MARINA IN DRUMMOYNE



File No.: S01/00160

1. SUMMARY

Birkenhead Investments Pty. Ltd. (the Applicant) is proposing to repair and refurbish the Birkenhead Point Marina on Roseby Street, Drummoyne in the City of Canada Bay.

The proposed development involves the repair and renovation of the existing breakwaters, pontoons, access gangways, piles and marina services. Whilst the number of berths at the marina would be reduced from 220 to 187, the marina would remain virtually identical to the existing arrangement.

The repairs and refurbishment are required by the Applicant in order to renew its lease with the Waterways Authority.

Under the *Environmental Planning and Assessment Act 1979* (the Act), the proposal is classified as State Significant and Integrated Development, and the Minister is the consent authority for the development application (DA).

On 3 July 2001, the Applicant lodged a DA for the proposal with the Department. The Department subsequently exhibited the DA in accordance with the requirements for public participation in Division 6, Part 6 of the *Environmental Planning and Assessment Regulation 2000* (the Regulation).

During the exhibition, the Department received 3 submissions from public authorities - the EPA, Waterways Authority and the Foreshores and Waterways Planning and Development Advisory Committee. These submissions do not object to the proposal, but suggested conditions to minimise the potential construction impacts of the proposal.

The Department has assessed the DA and these submissions, and recommends that the Minister approve the DA subject to conditions.

2. SITE CONTEXT

The Birkenhead Point Marina is located on Roseby Street, Drummoyne and forms part of the Birkenhead Point Shopping and Marina complex (see Figure 1). The marina is owned and operated by Birkenhead Investments Pty Ltd, whose lease is due for renewal on 1 October 2001.



Figure 1: Birkenhead Point Marina and its Surrounds

The marina contains 220 berths, most of which are occupied by recreational and commercial clients. Vessels associated with marine brokers currently occupy approximately 45 berths and 6 berths are made available for casual users. Currently there are no restrictions on the maximum size of vessels allowed to moor at the marina. Each berth is serviced with power, water and lighting. The marina also provides a sewage pump-out service.

The marina used to have a refuelling facility, storage facility and travel lift, but they were removed in 1997. The travel lift support structure still remains within the marina.

Development surrounding the marina exhibits a range of uses and densities, with Birkenhead Point Shopping Centre and several new high-density housing developments dominating the area.

3. THE PROPOSED DEVELOPMENT

The proposed development involves the repair and renovation of the existing breakwaters, pontoons, access gangways, piles and marina services. Whilst the numbers of berths at the marina would be reduced from 220 and 187, the marina would remain virtually identical to the existing arrangement.

The repairs and refurbishment are required by the Applicant in order to renew its lease with the Waterways Authority. The Authority believes that the current dilapidated structures pose a significant risk to both vessels and users of the marina.

4. STATUTORY FRAMEWORK

Permissibility

The Birkenhead Point Marina is located partly on land, and partly on water.

Under the *Drummoyne Local Environmental Plan 1987*, the land is zoned 3(c1)(Business Special), while the water is unzoned. Under the zoning 3(c1)(Business Special), the marina and associated boating facilities are permissible with consent.

Under *Sydney Regional Environmental Plan No.22 - Parramatta River*, the proposal is defined as a "large marina", and is therefore classified as land/water interface development. Under Clause 17 of the plan, land/water interface development requires development consent.

Consequently, the proposal may only be carried out with development consent.

State Significant Development

On 18 August 2000, and then again on the 10 April 2001, the Minister declared marina development in the Sydney region to be State Significant Development under Section 76A(7)(b)(iii) of the Act

The declaration applies to:

Marina development located in Sydney Harbour, Middle Harbour, North Harbour, Botany Bay, Broken Bay, or any associated tidal waters that involves:

- (a) *The establishment of a new permanent boat storage facility on the waterway with support facilities on an adjoining area of land or waterway; or*
- (b) *Alterations or additions to an existing permanent boat storage facility on the waterway with support facilities on an adjoining area of land or waterway;*

But excludes any development that, in the opinion of the Minister, is of local environmental planning significance.

The term support facilities on an adjoining area of land or waterway includes:

- *Facilities for the construction, repair, maintenance; storage, sale, or hire of boats;*
- *Facilities of the provision of fuel or sewerage pump out services to boats;*
- *Facilities for launching boats (such as slipways or hoists);*
- *Commercial, tourist, recreational, or car parking facilities that are ancillary to the marina development; and*
- *Any associated caretaker's residence.*

The proposal satisfies the definition of "marina development" in the marina declaration, as it is an alteration to an existing permanent boat storage facility on a tidal waterway of Sydney Harbour, with support facilities on the adjoining land and waterway.

Consequently, the proposal is classified as State Significant Development under Section 76A(7)(b)(iii) of the Act, and the Minister is the consent authority for the DA.

Integrated Development

The DA was submitted and exhibited as Integrated Development, as the applicant thought the proposal would require additional approvals under Part 3A of the *Rivers and Foreshores Improvement Act 1948* and Section 48 of the *Protection of the Environmental Operations Act 1997*.

The Waterways Authority has decided that the proposal would not require a Part 3A permit provided the Applicant complies with its recommended conditions of consent.

However, the EPA has decided that the Applicant would need to amend its existing licence to cover the additional EPA conditions.

Consequently, the proposal is classified as Integrated Development under Section 91 of the Act.

Designated Development

The proposed repairs and refurbishment are classified as alterations to a designated development and are therefore potentially designated development.

However, under Clause 35 of Part 2 of Schedule 3 of the Regulation, development involving alterations or additions to development (whether existing or approved) is not designated development if:

In the opinion of the consent authority, the alterations or additions do not significantly increase the environmental impacts of the total development (that is the development together with the additions or alterations) compared with the existing or approved development.

Clause 36 of Part 2 of Schedule 3 of the Regulation sets out the factors which the consent authority must take into consideration when determining whether a development involving alterations and/or additions to development is designated or not. These factors include:

(a) The impact of the existing development having regard to factors including:

- (i) previous environmental management performance, including compliance with the conditions of any consents, licences, leases or authorisations by a public authority and compliance with any relevant codes of practice, and*
- (ii) rehabilitation or restoration of any disturbed land, and*
- (iii) the number and nature of all past changes and their cumulative effects, and*

(b) the likely impact of the proposed alterations or additions having regard to factors including:

- (i) the scale, character or nature of the proposal in relation to the development, and*
- (ii) the existing vegetation, air, noise and water quality, scenic character and special features of the land on which the development is or is to be carried out and the surrounding locality, and*
- (iii) the degree to which the potential environmental impacts can be predicted with adequate certainty, and*
- (iv) the capacity of the receiving environment to accommodate changes in environmental impacts, and*

(c) any proposals:

- (i) to mitigate the environmental impacts and manage any residual risk, and*
- (ii) to facilitate compliance with relevant standards, codes of practice or guidelines published by the Department or other public authorities.*

Having regard to these criteria, the Department is satisfied that the proposed repairs and refurbishment would not significantly increase the environmental impacts of the total development for the following reasons:

- There is no evidence of previous unsatisfactory environmental performance;
- The proposal involves the repair and refurbishment of existing structures, and would not significantly alter the scale, character and nature of the site;
- The impacts of the proposal on the marine ecology are considered to be minor with habitats likely to be rapidly re-established;
- The receiving environment is capable of accommodating the potential impacts of the proposal; and
- The implementation of environmental management plans will mitigate and manage potential short-term environmental impacts.

Relevant Planning Instruments/Policies

The proposal has been assessed against the relevant provisions in the following planning instruments/policies:

- *State Environmental Planning Policy No.56 - Sydney Harbour Foreshores & Tributaries;*
- *Sydney Regional Environmental Plan No.22 - Parramatta River;*
- *Drummoyne Local Environmental Plan 1986; and*
- *Sydney Harbour and Parramatta River Development Control Plan for SREP No.22 & 23.*

This assessment concludes that the proposal is consistent with the relevant aims and objectives of these instruments, and satisfies the relevant assessment criteria.

5. CONSULTATION

The applicant lodged a DA for the proposal with the Department on 3 July 2001.

The Department subsequently:

- Notified the surrounding property owners in writing;
- Advertised the DA in the local newspaper, *The Glebe*;
- Notified the relevant public authorities;
- Exhibited the DA between 11 July and 10 August 2001;
- Put up public notices about the DA on the site; and
- Referred the DA to the Foreshores and Waterways Planning and Development Advisory Committee as required by Clause 18 in *SREP No.22 - Parramatta River*.

This satisfies the requirements in Division 6, Part 6 of the *Environmental Planning and Assessment Regulation 2000* and Clause 18 of *SREP No.22 - Parramatta River*.

During the exhibition period, the Department received 3 submissions from public authorities. No submissions were received from the public.

The Foreshores and Waterways Planning and Development Advisory Committee does not object to the proposal, but sought an explanation for the loss of berthing capacity at the marina given that it will occupy the same amount of water space.

The Waterways Authority and EPA do not object to the proposal, but recommended several conditions of consent to minimise the potential construction impacts of the proposal.

6. CONSIDERATION OF ISSUES

Design Concerns

As a consequence of the proposed repairs and refurbishment, the berthing capacity at the marina will be reduced from 220 to 187. The Foreshores and Waterways Planning and Development Advisory Committee is concerned about this loss of berthing capacity given the fact that there is a limited range of berthing facilities to cater for large vessels in the Sydney region.

The explanation for the loss is that the Applicant is required to comply with the *Australian Standard AS 3962-1991 - Guidelines for Design of Marinas*. These compulsory standards, introduced after the original marina was constructed, require greater dimensional requirements for berths and manoeuvring than what currently exists, resulting in the unavoidable loss of berthing capacity.

The Department accepts that this loss in berthing capacity is necessary and reasonable due to the requirements of the *Australian Standard*.

Construction Issues

During construction, the proposal is expected to generate short-term impacts to the environment, with the majority of these impacts associated with piling activities. The main issues of concern are:

Noise

The piling activities are likely to generate significant noise levels, which could disturb the residents in the surrounding areas.

To minimise these impacts, the Applicant should be required to:

- (a) Conduct pile driving activities only between the hours of 7am and 6pm Monday to Friday or between 8am and 1pm on Saturdays;
- (b) Prepare and implement a detailed Construction Noise Management Plan; and
- (c) Advise residents prior to the commencement of piling activities and provide contact details to register complaints.

In addition, the applicant is not permitted to carry out impact piling unless agreed to in writing by the EPA.

Waste Management

The removal of the existing marina pontoons and other associated structures will generate waste that could pollute Parramatta River.

To minimise the impacts associated with construction waste, the Applicant should be required to:

- (a) Completely remove all piles from the bed of Parramatta River;
- (b) Completely remove all the travel lift structures, pontoons and gangways intended for demolition from the Waterways Authority's land;
- (c) Remove all construction waste from the site;
- (d) Manage demolition waste in accordance with the EPA's *Environmental Guidelines - Assessment, Classification and Management of Liquid and Non-Liquid Wastes*; and
- (e) Prepare and implement a detailed Construction Waste Management Plan for the proposed works.

Water Quality

The proposed construction works have the potential to impact on the water quality of Parramatta River. In particular, the removal and installation of piles has the capability to generate high levels of turbidity.

To minimise these impacts, the Applicant should be required to:

- (a) Carry out the proposed demolition and construction works in a manner that reduces the potential for materials to enter Parramatta River;
- (b) Prepare and implement a Construction Erosion and Sediment Management Plan;
- (c) Ensure that turbidity levels do not exceed the limits set by the EPA;
- (d) Make available at the construction site spillage equipment to absorb any material that may enter the water
- (e) Deploy a floating boom and silt curtain if a visible plume occurs during construction; and
- (f) Prepare and implement a Construction Spill Management Plan.

The Department is satisfied that through the implementation of these conditions and a Construction Management Plan, the potential construction impacts of the proposed development can be mitigated and managed effectively.

Environmental Management

The marina does not currently have an Environmental Management Plan.

To ensure that the marina's operations are carried out efficiently and effectively, the Applicant should be required to:

- (a) Prepare and implement an Environmental Management Plan for the marina's operations;
- (b) Commission and pay the full cost of an annual independent environmental audit of the marina; and
- (c) Submit a copy of the audit to the Director-General for review within one month of commissioning the audit.

7. SECTION 79C CONSIDERATION

Section 79C of the Act sets out the matters that a consent authority must take into consideration when it determines a development application.

The Department has assessed the DA against these heads of consideration (see Appendix A), and is satisfied that the:

- Proposal is consistent with the relevant provisions in the *Drummoyne LEP 1986*, *SREP No. 56 - Sydney Harbour Foreshores & Tributaries*, *SREP No. 22 - Parramatta River*, and *Sydney Harbour and Parramatta River DCP for SREP No. 22 & SREP No. 23*;
- Proposal would not result in any significant environmental or socio-economic impacts;
- Site is suitable for the proposed development; and
- Development is likely to be in the public interest.

8. RECOMMENDED CONDITIONS OF CONSENT

The Department has prepared a set of proposed conditions of consent for the proposal.

These are intended to modify details of the development application to:

- Minimise the environmental impacts associated with the construction activities;
- Reduce the impact on residential amenity during construction;
- Establish an environmental management plan for the marina; and
- Provide for regular auditing and appraisal of the proposal's environmental management.

The Applicant has reviewed, and does not object to, these conditions.

9. CONCLUSION

The Department has assessed the DA and submissions on the DA.

The proposal involves the repair and refurbishment of existing structures, and is not expected to significantly change the scale, character and nature of the site. The proposed marina will in fact remain virtually identical to the existing marina, with any minor changes imperceptible to the casual observer. However, these changes are necessary to maintain the safety of the boats and users of the marina.

As a consequence, it is understood that the proposal will only generate minor impacts during construction, with no change in impacts associated with the operational phase. The Department is satisfied that these impacts can be mitigated and managed through the implementation of a Construction Management Plan.

Consequently, the Department believes that the Minister should approve the DA subject to conditions.

RECOMMENDATION

It is recommended that the Minister:

- (a) Consider the findings and recommendations of this report;

- (b) Approve the DA subject to conditions, under Section 80 of the Act; and
- (c) Sign the attached Instrument of Consent.

Endorsed:

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