

19 July 2024

Anna Nowland
Principal Planning Officer
Department of Planning, Housing and Infrastructure
Locked Bay 5022
Parramatta NSW 2124

Re: Submissions Report for Blackwattle Bay Marina Modification, Mod 4 - Operation of the Marina

Dear Anna,

Please find attached All Occasion Cruises' response to submissions made to the Department of Planning, Housing and Infrastructure (the Department) for Modification Report: Blackwattle Bay Marina Modification, Mod 4 - Operation of the Marina (Application Number MP11_0001-Mod-4) (EMM, 2024).

This submissions report has been prepared in accordance with the Department's guidelines for submissions reports, under the NSW Environmental Planning & Assessment Regulation 2021: State significant development guidelines – preparing a submissions report (DPHI, 2024).

Yours sincerely



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1 Introduction

All Occasion Cruises (AOC) operates the Blackwattle Bay Marina located at 5-11 Bank Street, Pyrmont. The marina is a base for AOC's own vessels, and for other government and private sector vessels operating on Sydney Harbour to which they provide berths and back of house support.

AOC was relocated to its present location from the site of the new Sydney fish markets (currently under construction), despite around twenty years to run on its previous lease. A negotiated relocation to its current site, and significant investment by AOC on the water side marina construction costs, enabled the fish market redevelopment to go ahead.

As per the Modification Assessment Report for the relocation of AOC to its current site, this use was approved for a limited five-year period given potential incompatibility of the marina operations with the proposed renewal of the Blackwattle Bay waterfront, which was still in an early planning phase. The five-year approval was also to allow time for consideration of alternate permanent sites for the Blackwattle Bay Marina (DPE 2018, pg. 29).

AOC presently holds a long-term renewable lease over the water side operations, and a renewable licence over the land side operations, both from Transport for NSW as the landowner. Both lease and licence have options for the next 15 years provided a planning approval for the marina operations remains in place.

Operation of the site as a marina is allowed under Project Approval MP 11_001 (Mod 3) (the consent), granted by the former NSW Department of Planning, Industry and Environment (DPIE) on 12 December 2018. The current 5-year limitation on the operation under Condition A8 of the Project Approval would, if left unchanged, require the business to cease operations by 11 August 2025.

The Blackwattle Bay Marina Modification (Mod 4) (MP11_0001-Mod-4), currently under assessment with the Department, is seeking the following:

- a change to Condition A8 to remove the current 5-year restriction on operations as it relates to the water side component of the marina
- a change in Condition A8 to allow for ongoing operations of the land side component of the marina until such time as that land is required for the proposed Bank Street Park and the alternate office within 1-3 Bank Street is in place.

The purpose of the modification being sought is to align the duration of the planning approval with the needs of the current operations and provide operation certainty to the business, and to align with the redevelopment plans of INSW.

Submissions have been made to the Department (11 in total) in response to the Mod 4 modification application, and as per the assessment process, AOC has prepared this submission report to address the issues raised.

2 Analysis of submissions

Eleven (11) submissions have been made in total. AOC and EMM have reviewed the submissions and collated the substance of each submission, with responses, in Appendix A.

Of the eleven submissions:

- one was made by City of Sydney, one by Infrastructure NSW (INSW), one by a local community group (the Pyrmont Action Group), and the remainder by private individuals
- no form letters or petitions were used, though several of the individual submissions had shared content

- one submission was made in support of the modification; the remainder either objected to elements or the whole of the proposed modification, whilst others raised concerns with the existing operation
- of the un-redacted addresses of the private submitters, all apparently either worked or lived locally, within Pyrmont.

2.1 Issues raised by government agencies

Key excerpts from the submissions by City of Sydney and NSW are reproduced here. The issues raised in these submissions were substantially different to those raised in submissions from the community, and are summarised in more detail.

2.1.1 City of Sydney submission

Issues raised in the City of Sydney submission:

- A time-limited consent is still warranted whilst the Blackwattle Bay Precinct continues to evolve.
- City of Sydney supports a further 'year-year' period being granted.
- Understands that the future operation of the marina will be subject to the development of the Bank Street Reserve (SSD-53386706), which should occur within the suggested period.

2.1.2 NSW submission

Issues raised in the NSW submission:

- The modification would enable the dryland works to operate on the current site until such time as 1-3 Bank Street has been redeveloped. This will impact the ability to efficiently deliver the Bank Street Park, construction for which is proposed to commence as soon as possible. This is currently anticipated to be in Q1 2025. The reason Condition A8 was imposed in Mod 3 was to ensure the waterfront promenade and open space envisaged as part of the urban renewal objectives for the precinct could be realised. The proposed modification is inconsistent with this.
- The [Mod 4] application does not adequately demonstrate that the proposed development is substantially the same as the development authorised by the last consent (as last modified under section 75W)¹. Mod 3 was approved on a temporary basis, to enable the delivery of the urban renewal objectives for the precinct. The temporary nature of the development is fundamental to its definition and was a key consideration in the Department's assessment and approval of the Mod. It would not have been approved if proposed as a permanent facility. This is reflected in the description of Mod 3 as a "Temporary Charter Facility".
- Based on an assessment of the proposal against the matters for consideration outlined in section 4.15 of the Act, it is our view that:
 - The proposed modification could have adverse social and economic impacts, as it will impact the efficient and effective delivery of the park, which is a Government priority and has been promised to the community.

¹ Schedule 2, Section 3BA(6) of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017

- The site is not suitable for the proposed development. The land the subject of the application has been identified as the location for dragon boat storage and landscaping under the Design Guidelines, and this is reflected in the current DA for Bank Street Park.
- The proposed modification is not in the public interest, as it may impact the efficient and timely delivery of an important item of public infrastructure.
- Finally, we are unclear how the proposed amendment to Condition A8, if it was approved, would be enforced. Should DPHI decide to approve the application, the wording of the condition should be drafted such that it is tied to a defined and tangible milestone.

2.2 Issues raised in the opposing private and community submissions

The issues raised in the opposing private and community submissions (8 in total) can be categorised as follows:

- The open-ended nature of the proposed change to the condition (being generally unsuitable).
- Operational issues and complaints relating to AOC's activities under the existing approval:
 - predominantly alleging breaches of approval conditions and lease agreement by AOC, regarding the number of cars parked at the land side facility, number of vessels moored, vessel boarding, and refuelling
 - amenity issues at the temporary marina office, particularly sewage odour, but is also made of noise nuisance, a lack of garden maintenance by AOC, and unsightly rubbish and storage.
- Concerns regarding impacts to parking in the local area, both under the current arrangement and the future plan for the marina.
- Desire to see Bank Street Park delivered promptly/unhindered and prioritised over commercial/private operations at the marina, and prioritising of public access and use of the marina.
- Desire to see the marina put up for public tender.
- Opposition to elements of the Bank Street Park proposal (e.g. locating of AOC commercial office and storage within the proposed community building at 1 – 3 Bank Street).
- Character and safety history of the operator.

2.3 Issues raised in the supporting private submission

The single supporting submission made the following points, in favour of the proposed modification:

- The continued operation of the marina by AOC is essential to support the economy and community activities, supporting local businesses and tourism, and ensuring continuity of services and stability for the employees and clients who depend on AOC.
- The request to keep the current offices until alternatives are available is reasonable and pragmatic.

3 Actions taken since exhibition

Since the publication of the responses, AOC has discussed the INSW submission with its landlord Transport for NSW. AOC's understanding is that INSW and TfNSW meet regularly in a project control group for the development of the Bank Street Park.

TfNSW has undertaken to discuss INSW's comment at these meetings, as both TfNSW and AOC understand that INSW has no objection to the removal of the time restriction on the waterside element, which was not clear from its letter.

INSW has included a new land base for the marina operations at 1-3 Bank Street in its plans for the Bank Street park. The principal INSW objection to the second part of AOC's proposed modification is it may interrupt the timing of the Bank Street park.

AOC has proposed to TfNSW that all parties meet to come up with a schedule to allow timely work, temporary relocation and faster construction at proposed new premises.

4 Response to submissions

Detailed responses to submissions are provided in Appendix A.

5 Updated project justification

As noted in the Modification Application Report, the purpose of the modification being sought (MP11_0001-Mod-4) is to align the duration of the planning approval for the marina with the needs of AOC's operations as well as the redevelopment plans for Blackwattle Bay waterfront. The proposed modification would permit the water side to operate without the current timing restriction (currently the planning approval will cease on 11 August 2025), and the necessary supporting dry land facilities to operate until such time as an alternative location is made available at 1-3 Bank Street or an alternate interim site.

AOC reiterates that the temporary 5-year nature of the marina approval was an interim solution, meant to allow time for consideration of alternate permanent sites for a future Blackwattle Bay Marina and finalisation of plans for the proposed renewal of the Blackwattle Bay waterfront.

Redevelopment plans for Blackwattle Bay waterfront and Bank Street Park have since progressed significantly. The location of the Blackwattle Bay Marina water side operation has been confirmed in its current location as part of State Significant Precinct rezoning for Blackwattle Bay. The 5-year limit was never meant to be a hard time limit on AOC's operations, but only to avoid the prospect of incompatible uses being locked in ahead of the conclusion of the rezoning process for the renewal of the Blackwattle Bay Precinct. Given the outcome of this process has confirmed the suitability of this area for ongoing commercial day charter operations, it is appropriate to remove current restrictions and provide operational certainty to the business.

With respect to any timing conflict between the ongoing land side operations of the marina and the construction of the Bank Street Park, AOC are keen to collaborate closely and engage proactively with DPHI, INSW and Transport NSW to achieve a planning outcome that is optimal for all – one that allows for the successful execution of the new Blackwattle Bay waterfront plan, while permitting AOC to use the current landside facilities, as approved until 11 August 2025 or beyond should the delivery of the Bank Street Park be delayed, or even vacate it earlier should alternative landside facilities become available at 1-3 Bank Street, in accordance with the development plans agreed between Transport for NSW and INSW.

AOC is willing to help facilitate / work in with the staging of works related to Bank Street Park, should they need to commence prior to facilities at 1-3 Bank Street becoming available, and believes it should be feasible to

schedule construction so as to have 1-3 Bank St ready prior to the removal of the existing facility at 5-11 Bank Street. AOC is also happy to explore temporary locations and ways of helping in the build of the new facility should it be necessary but is seeking to minimise disruption to its continued operations.

Having regard for the above, AOC has amended the proposed modification to Condition A8 as set out in Table 5.1 below.

Table 5.1 | Proposed modification to Project Approval

Condition to be modified	Existing Condition	Proposed amended Condition (Modification 4 application)	Amended Proposed Condition
A8	<i>“The operation of this approval from the commencement of operation of this use is restricted to a maximum of 5 years”</i>	<i>“The operation of the land component on its current site (5-11 Bank Street) is restricted to such time as that land is required for the purposes of a public park and until such time that alternate land based facilities are available at 1-3 Bank Street thereafter”.</i>	<i>“The operation of the land component on its current site (5-11 Bank Street) may continue to operate until 11 August 2025 and thereafter until such time as that land is required for the purposes of a public park”.</i>

6 References

EMM 2024, Blackwattle Bay Marina Modification 4

DPHI 2024, State significant development guidelines – preparing a submissions report

DPE 2018, Maritime Facility (Former Sydney Heritage Fleet) Bank Street, Pyrmont, Modification Assessment Report (MP11_0001 MOD3), State of NSW through its Department of Planning and Environment

Appendix A

Submissions register and responses

A.1 Submissions register and responses

Stakeholder	Date	Submission and key points raised	Response
City of Sydney	18/06/2024	Not supportive. Key points: • A time-limited consent is still warranted whilst the Blackwattle Bay Precinct continues to evolve • Supports a further 'year-year' period being granted. • Understands that the future operation of the marina will be subject to the development of the Bank Street Reserve (SSD-53386706) which should occur within the suggested period.	Plans for the Blackwattle Bay precinct (Bay Street Park) have been significantly progressed since the original approval was granted to AOC in 2020. INSW has since completed further detailed planning for the precinct and lodged an application for development of the park in late 2023, which is currently being assessed by the Department; it is unlikely to evolve in any significant way from the current plan detailed in INSW's application. AOC notes that no objection to the water side operation is raised by City of Sydney in its submission, and points raised only concern the land side component at 5-11 Bank Street. Regardless of the possible further development or refinement of the plan, the water side component of the Blackwattle Bay Marina was built by Transport NSW as a long term / permanent facility, to be used in perpetuity following the completion of the Bank Street Park. AOC understands that City of Sydney is not objecting to the continuing operation of the water side component. However, the proposed year-year arrangement for the approval would not ensure continuous operation of the marina, nor would it give certainty to AOC's operation, which seeks to operate beyond 2025 on a permanent basis and following the completion of the Bank Street Park. AOC reiterates that the temporary nature of the approval was originally made at a time when the future use of Blackwattle Bay was uncertain. AOC consider that the proposed "year-year" extension is unwarranted, would require unnecessary applications to extend the consent each year and provides no operational certainty to the business.

Infrastructure NSW	21/06/2024	Not supportive. Key points: • INSW acknowledges the important contribution of working harbour uses within Blackwattle Bay, and the need to continue to provide adequate facilities for these uses. • The modification would enable the dryland works to operate on the current site until such time as 1-3 Bank Street has been redeveloped. This will impact the ability to efficiently deliver the Bank Street Park, construction for which is proposed to commence as soon as possible. This is currently anticipated to be in Q1 2025. The reason Condition A8 was imposed in Mod 3 was to ensure the waterfront promenade and open space envisaged as part of the urban renewal objectives for the precinct could be realised. The proposed modification is inconsistent with this. • The application does not adequately demonstrate that the proposed development is substantially the same as the development authorised by the last consent (as last modified under section 75W)². Mod 3 was approved on a temporary basis, to enable the delivery of the urban renewal objectives for the precinct. The temporary nature of the development is fundamental to its definition and was a key consideration in the Department's assessment and approval of the Mod. It would not have been approved if proposed as a permanent facility. This is reflected in the description of Mod 3 as a "Temporary Charter Facility". • Based on an assessment of the proposal against the matters for consideration outlined in section 4.15 of the Act, it is our view that: – The proposed modification could have adverse social and economic impacts, as it will impact the efficient and effective delivery of the park, which is a Government priority and has been promised to the community. – The site is not suitable for the proposed development. The land the subject of the application has been identified as the location for dragon boat storage and landscaping under the Design Guidelines, and this is reflected in the current DA for Bank Street Park. – The proposed modification is not in the public interest, as it may impact the efficient and timely delivery of an important item of public infrastructure. • Finally, we are unclear how the proposed amendment to Condition A8, if it was approved, would be enforced. Should DPHI decide to approve	As with the City of Sydney's submission, AOC notes that no objection to the water side operation is made by INSW, given the understanding that operation of the waterside component will continue under the Bank Street Park proposal. All issues raised in INSW's submission relate to the land side component, and incompatibility with staging of works related to Bank Street Park. AOC currently has approval to operate its land side operations on the site until 11 August 2025. INSW has indicated that it is currently anticipated to commence construction of the Bank Street Park in Q1 2025 which is incompatible with the consent and lease that AOC have over the site. AOC understands the concerns around the scheduling of the delivery of the Bank Street Park. AOC is willing to collaborate closely with INSW, DPHI and Transport for NSW to ensure any disruption to the schedule is minimised and that current marina operations can continue either on the current site or an alternate location (1-3 Bank Street or interim facility) from 11 August 2025 onwards. MOD3 was granted on application by TfNSW, not AOC, and sought a longer term, which was reduced by Planning so as not to lock in uses while the longer term plans were still to be finalised. The matters covered in the MOD3 application, the construction standards and operational procedures for the marina were all designed for long term usage. There are no lesser standards for five year operations. AOC considers that the impacts of the marina operation, whether on a recurring temporary basis over a 5-year period, or on a conditioned extended, or permanent, basis, are the same. As noted in the response to City of Sydney's submission above, the temporary nature of AOC's current approval was only intended to ensure no incompatibility of land use whilst a longer term plan for Blackwattle Bay was being finalised. Now that the plan has been developed and a day charter facility confirmed for this area, certainty should be granted to the marina operation in place of a temporary arrangement that is no longer needed. We understand that INSW supports the continued operation of the marina at Blackwattle Bay. In order to achieve this, AOC is willing to negotiate a timeframe for transfer of the land side facility in a way that allows for continuing operation, while avoiding constraints on its delivery of the Bank Street Park.
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Stakeholder	Date	Submission and key points raised	Response
		the application, the wording of the condition should be drafted such that it is tied to a defined and tangible milestone.	
Pymont Action Group	14/06/2024	Not supportive. Key points: • Raises concerns in relation to AOC's current operations at Bank Street, relating to: – Odour issues relating to sewage – Reports of regular contravention of the terms of lease approval (number of vehicles parked, number of vessels moored) – Visual amenity (lack of garden maintenance) • Raised previous support for recommendation, under the draft Blackwattle Bay State Significant Precinct Strategy (BBSSPS) (June 2021), that the AOC commercial marina would be moved to the south of the proposed Bank Street Park, and proposed instead, that the wharfage be used as a public marina. • Supports the continued occupation by AOC of its current site until such time as it is able to move its facilities further South near the current Fish Markets site in Bank Street. • Reiterates that it strongly opposes the continuing occupation by any commercial marina of sites in Bank Street zoned Public Recreation, which are to be developed as public parkland and facilities to support the passive boating activities.	With respect to odour from sewage, whilst not related to the modification, AOC are aware the Transport for NSW as landowner and builder of the marina has recently undertaken works to address this issue. Issues relating to parking of cars and vessels, as well as visual amenity do not relate to the proposed modification and where relevant, are compliance issues which are more appropriately directed through Council. Nonetheless, the issues raised are largely to be addressed in the redevelopment of Bank Street Park and relocation of the land side operations to 1-3 Bank Street. The submission supports the ongoing occupation of the site until such time as AOC is able to <i>"move its facilities further South near the current Fish Markets in Bank Street"</i>. AOC advises that it is not aware of any such location and the State Significant Precinct Plan rezoning for Blackwattle Bay has concluded the existing site is appropriate for ongoing day charter marina operations.
Jacqueline Stoeckli and David James	18/06/2024	Not supportive. Key issues mentioned: • The open-ended nature of the proposed change to the condition (being generally unsuitable).	It should be noted that the majority of the issues raised in these objecting submissions relate to the temporary landside component of the marina, and not the continued operation of the waterside component by AOC.
Neville and Cushla Monk	8/06/2024	• Operational issues and complaints relating to AOC's activities under the existing approval:	Operational and compliance issues are not relevant to the administrative changes proposed in the Mod 4 application, which address only the timing and continuance of land side (and by extension, water side) operations, and which do not otherwise
N/A	19/06/2024		

² Schedule 2, Section 3BA(6) of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017

Stakeholder	Date	Submission and key points raised	Response
N/A	18/06/2024	– predominantly breaches of approval conditions and lease agreement by AOC, regarding the number of cars parked at the land side facility, number of vessels moored, vessel boarding, and refuelling	change the operational conditions or any other environmental conditions of the approval. Compliance matters are more appropriately directed to the City of Sydney.
Chris Durman	15/06/2024	– amenity issues at the temporary marina office, particularly sewage odour, but mention is also made of noise nuisance, a lack of garden maintenance by AOC, and unsightly rubbish and storage.	As noted in the response above (to Pyrmont Action Group), land side marina facilities will be improved – and associated issues resolved – in the proposed Banks Street Park plan. The eventual relocation of the land side facilities, whether they occur within the original timeframe or in accordance with a newly negotiated timeframe, will address the majority of these issues (e.g. parking, visual amenity, etc.).
Heiko and Gisela Spallek	7/06/2024 8/06/2024	• Concerns regarding impacts to parking in the local area, both under the current arrangement and the future plan for the marina. • Desire to see Bank Street Park delivered promptly/unhindered and prioritised over commercial/private operations at the marina, and prioritising of public access and use of the marina. • Desire to see the marina put up for public tender. • Opposition to elements of the Banks Street Park proposal (e.g. locating of AOC commercial office and storage within the proposed community building at 1 – 3 Bank Street). • Character and safety history of the operator.	Any concerns regarding plans for the future development of the area (Bank Street Park) should be addressed to the relevant application and assessment process (INSW's Bank Street Park application, Application No: SSD-53386706), and not to this modification application. Other issues raised are not considered relevant to this proposed modification.
Andrew Dauod	14/06/2024	Supportive. Key points: • The continued operation of the marina by AOC is essential to support the economy and community activities, supporting local businesses and tourism, and ensuring continuity of services and stability for the employees and clients who depend on AOC. • The request to keep the current offices until alternatives are available is reasonable and pragmatic.	AOC notes the points raised in the submission and agrees that maintenance of a working harbour within Blackwattle Bay is integral to the functioning of the wider Sydney Harbour given limited berth capacity and high demand, particularly from the vessels that service Sydney Harbour visitors. With the ongoing conversion of waterfront land to housing on the Sydney waterfront, there are limited sites available for tourism boating facilities. AOC's operations are a key contributor to the Sydney Harbour economy and tourism industry and provides for public amenities and social infrastructure. In a full year of operation, tens of thousands of visitors are taken by the vessels based at the marina for harbour cruises and events. The vessels also service high end visits to Australia, accommodating private tours for overseas dignitaries and celebrities. Continuation of the operations of AOC provides the best approach to achieving benefits whilst avoiding costs and impacts to the community and operator that would be incurred with a new site and project approval.