

11 February 2014

The Director, Industry, Key Sites & Social Projects  
Department of Planning and Infrastructure  
GPO Box 39  
SYDNEY NSW 2001

Dear Sir/Madam

**Re: Modification Request – Cronulla Marina – Tonkin Street Cronulla**  
**(MP06\_0063 MOD 1)**

I request my name not be made available on the Departments website.

Thank you for the opportunity to comment on the Modification of Approval for Cronulla Marina. I strongly object to the majority of the modifications proposed in the application and seek consideration of each of the points below. I do not believe that the application should be approved in its current form.

The significant increase in size of the slipway operations, loss of public waterway, foreshore and public open space land for a private business is not supported. If modifications to the development are supported these should be accommodated within the existing lease area.

**1. Existing use rights cannot be used on public land and public waterway currently used by the public boat ramp and parkland.**

- Although the application states that the proposal is using existing use rights, the questioned is raised whether existing use rights can be used for the proposed expansion of the slipway outside of the ‘land’ and waterway of the current slipway operations.
- The boundary adjustment to the north expands the slipway/dockyard operations and boundary 5metres to the north over the existing public boat ramp and 24metres over the waterway (as shown in Appendix 2 on the Site Analysis/Roof Plan). The waterway and land are zoned Zone 16 Environmental Protection (Waterways) and Zone 13 Public Open Space respectively and are used as a public boat ramp and open waterway for boating.
- The existing use rights for the slipway only relate to the “land” and waterway of the existing slipway operations.
- The proposed modification increases the hard stand area of the slipway/dockyard (including the substation) by approximately 39%.

- Existing use rights cannot be used and do not pertain to this “land” or waterway for the use as a slipway/dockyard or for the travel arms which extend out into the water or proposed substation.
- Section 106 of the EP&A Act, states that “*existing use means the use of a building, work or land*”. From this definition it can be said that there is no existing use by the slipway over the land currently used as a public ramp or over the public waterway which is proposed to be used for the travel arms. Nor is there any existing use over the open space parkland which is proposed to be used for the slipway and a substation.
- Clause 42 2(b) of the EP&A Regulations clearly states development consent is required for any enlargement, expansion or intensification of an existing use and that “*The enlargement, expansion or intensification:...(b)must be carried out only on the land on which the existing use was carried out immediately before the relevant date.*”
- In addition Clause 43 2(b) of the Regulation states that development consent is required for any alteration or extension of a building or work used for an existing use and that the alteration or extension “*must be erected or carried out only on the land on which the building or work was erected or carried out*”.
- Also the application does not state why the description of the “slipway” has changed to “dockyard”. Is there any change of use or operations proposed as part of the application? This should be clarified and the application re-exhibited if there are changes associated with this use.
- The proposed “enlargement or expansion or intensification” of the existing use is outside of the land which is currently leased by the slipway.
- The application should not be supported.

## **2. Proposed uses do not meet the objectives of land zoned for Public Open Space and are not permissible in this zone**

- The land to the north and east, where the boundary adjustment and expansion is proposed, is currently zoned Zone 13—Public Open Space under Sutherland Local Environmental Plan (SLEP 2006). The objectives of this zone are as follows:
  - (a) *to enable development of land for open space and recreation purposes,*
  - (b) *to provide active and passive open space, allowing for a range of recreational activities and facilities that meet the needs of all ages in the community,*
  - (c) *to enable development ancillary to the primary legal use of land that will encourage the enjoyment of land in the zone;*
  - (d) *to preserve public open space that enhances the scenic and environmental quality of Sutherland Shire.*
- **The proposed expansion of the slipway/dockyard and substation do not meet the objectives of this zone and are not permissible uses in the zone table and therefore should not be supported.**



**3. Proposed uses do meet the objectives of the Environmental Protection (Waterways) zoned land and are not permissible**

- The proposed expansion covers land/waterway zoned Zone 16 Environmental Protection (Waterways) under SLEP 2006. The objectives of this zone are as follows:
  - (a) *to recognise the importance of the waterways of Sutherland Shire as an environmental and recreational asset,*
  - (b) *to ensure development is carried out in a way that protects the ecology, scenic value or navigability of the waterways,*
  - (c) *to ensure aquatic environments are not adversely affected by the recreational use of the waterways,*
  - (d) *to allow private development only where it does not reduce or hinder the use of public beaches, intertidal areas or the waterways,*
  - (e) *to provide for viable aquaculture in the waterways.*
- The proposed development does not meet the objectives of this zone as it reduces and hinders the use of an intertidal area and waterway for the purpose of a private development.
- Under the development the waterway and existing foreshore area in front of the boat ramp will no longer be 'public'.
- Under Council's current Planning Proposal – Waterways Zoning, all of Gunnamatta Bay is proposed to be zoned W2 Recreational Waterway. The scale and size of the slipway operations do not reflect the objectives of this zone and should be located in a W3 Working Waterways zone which is more appropriately located in the industrial waterfront areas of Taren Point on Botany Bay.

**4. Significant loss of public waterway and public parkland land to private slipway operations, travel lift arms and substation**

- The proposed development results in a significant loss of public waterway, foreshore and public land. Approximately 1,099m<sup>2</sup> of public waterway and land is proposed to be incorporated into the private lease for the slipway/dockyard, travel arms and substation. The SEE does not state how much land and waterway is to be incorporated into the lease.
- Serious consideration needs to be given to the impacts of this expansion of the lease and loss of access to public land and waterways, given that there has already been approval for expansion of the marina & slipway. A large area of the head of Gunnamatta Bay is already occupied and leased by the marina and slipway operations. Once this land has been leased and developed for private use it is unlikely to ever return for public use and access.
- **The substation should be located within the existing lease area and development**
- **If there is no change in the size or number of boats to be managed by the slipway, why is the slipway expansion required.** It is understood that the slipway is being replaced with the installation of a commercial boat travel lift with two concrete travel arm tracks that extend into the waterway supported by steel piles. However from the plans and

review of other operations the size of the slipway expansion is not warranted and can be supported within the area already approved by the Department.

#### **5. Description of adjustment of property boundaries is misleading and unclear**

- The SEE states that *“it is proposed to adjust the property boundaries by extending to 5m to the north (landside) and between 1-2m to the east (landside)...and to extend to line of existing lease (water area)”*
- **The description of the boundary adjustment in the SEE is misleading and unclear and does not in any way reflect the boundary adjustments shown on the Site Analysis/Roof Plan. The description does not provide the public with a clear understanding of the size of the expansion proposed and the exact area of waterway and foreshore to be leased.**
- Reviewing the plans the northern boundary is being extended between 5metres (over and beyond the existing boat ramp) and up to 24metres (over the existing public waterway). The western boundary adjustment is varied and is over 40metres in distance from the existing boundary in sections.
- **The adjustment of the property boundaries results in a significant loss of public waterway, foreshore and public parkland. Approximately 1,099m<sup>2</sup> of public waterway and land is calculated to become privately leased for the purpose of a slipway/dockyard, travel arms and a substation.**
- It noted that the application has been lodged without land owners consent from Crown Lands. This approval should be obtained prior to submitting the application to ensure that the proposal is supported by Crown Lands.
- The expansion of the boundaries is not justified and should not be support.

#### **6. Installation of a commercial boat travel lift and gates changes the original approved form of the slipway and increase the scale of the operation**

- The commercial boat travel lift was not part of the original approval and results in a change of the operation of the area from a slipway to a dockyard.
- The SEE is unclear as to how the boat lift will operate. It only states that it will avoid drydock scheduling conflicts. The following questions are raised in relation to the travel lift: Is the travel lift the reason for the expansion of the slipway area? Is the travel lift to be stored inside of the dockyard area or outside over the waterway on the travel arms? How long are boats held in the travel lift? How many boats can be held in the dockyard (including the travel lift) at any one time? This information should be provided as part of the application and conditioned if approved.
- The travel lift will have a visual impact on the head of the Bay due to the 7.5metre height and distance the structure extends into the waterway. The travel lift would result in a visually more industrial scale of development.

#### **7. Unclear whether the size of the roof structure has increased in area**



- It unclear from the SEE and plans whether the roof structure over the slipway has increased in area. The revised design and finishes of the structure is an improvement on the original design.

#### **8. Relocation and enlargement of floating Pontoon**

- The increased size of the pontoon is unclear from the SEE. The proposed modification is for a 35metre long pontoon.
- The location of the pontoon and access to the pontoon is questioned as it is **located outside of the slipway lease area on public waterway and is proposed to be used and accessed from the dockyard for dockyard operations**. The SEE states that the pontoon *“will be accessed from the dockyard by a ramp down on the floating pontoon”*.
- Is public access only from the water or can it be accessed by the public from the foreshore ?
- The storage of dinghies, row boats and small craft owned/or operated by the marina should be contained within the marina and slipway lease area itself and not in the public waterway area. Also slipway boats/craft should not be permanently stored on this pontoon if it is to be a public pontoon.
- Also the SEE states on page 17 that *“public day berthing for small craft is still provided using the relocated pontoon”*. Is the pontoon only to be available for public use during the day?
- Who has care and control of this pontoon?
- Figure 4-4 Northern photomontage in the SEE shows a pontoon structure remaining in front of the cafe area. What is now proposed for this area?

#### **9. The location of the substation on public open space land is not supported.**

- The proposed substation is to be located on public open space land. The proposed adjustment to property boundaries extends the eastern boundary by 1-2metres in order to accommodate the substation and increase the area of the dockyard.
- The use of public land for the location of a private substation, which will service the marina and slipway, is not supported. The substation should be located within the existing property and/or lease area with no further use and loss of public land.
- The substation is a private utility and is not permissible within Zone 13 Public Open Space. Only “public utilities” are permissible in this zone.
- The noise impacts of this substation have not been addressed in the SEE.

- Does the location of the substation result in the loss of the existing figtree in the parkland and/or move the public access stairway further east (resulting in the loss of the figtree)?

**10. Does not comply with State Environmental Planning Policy No.71 – Coastal Protection**

- The proposal does not meet the aims of this policy.

**11. Installation of solar panels to dockyard roof may result in reflection impacts**

- The original approval MP06\_0063 Schedule 3, Condition 9 – Reflectivity required that *“where reasonable and feasible, the Proponent shall use non-reflective materials for the slipway roof structure”*.
- It is unclear whether the proposed installation of solar panels to the dockyard roof will result in reflection of the western sun. Residential properties and school on the western side of the Bay may be impacted by reflection from the panels. This has not been addressed in the SEE and further analysis of this should be undertaken prior to any approval.

**12. The stated hours of operation are incorrect and not consistent with original approval**

- Section 4.12 of the SEE states that *“the hours of operation for the marina, including fuel services, slipway and maintenance services will be unchanged from the original approval – that is 7am – 7pm, 7 days a week”*. This is incorrect.
- It is noted that the original approval MP06\_0063 Schedule 3, Condition 11 set operation hours for each of the activities (construction, berths, public fuel and slipway). The approved operating hours for the *“operation – slipway and maintenance”* is Monday – Sunday 8am-6pm.

**13. Noise impacts on properties to the east**

- The assessment of noise impacts does not address the impacts on the residential property to the east (adjoining Tonkin Oval and boat ramp carpark).

**14. Change in the description of the development from “slipway” to dockyard”**

- The application does not explain why there has been a change in the description of the “slipway” to “dockyard”. This information should be available if there any changes proposed to the operations and/or use of the slipway area.

**15. Sutherland Council Masterplan**

- It appears that the proposal has used Sutherland Council Masterplan for the Head of Gunnamatta Bay to justify and gain leverage for the expansion of the slipway operations. In order to achieve a boardwalk around the head of the Bay the Council has been required to work with the marina operators and incorporate changes into the development.
- In my submission on the Council Masterplan I had requested consideration be given to retaining an area of foreshore area with sand (as presently exists between the slipway and public boat ramp). This sandy shoreline provides an area for paddle craft, small craft, surf



club boats and sailing boats to set down prior to launching and is heavily used. With the expansion of the slipway/dockyard to the north this sandy area will be lost.

**16. Proposed modifications are significant and will have environmental impacts.**

- Section 96 1(A) of the EP&A Act states that a consent authority may modify a consent if:
  - “(a) *it is satisfied that the proposed modification is of minimal environmental impact, and*
  - (b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- The proposed modification is considered to have more than a minimal environmental impact due to the loss of foreshore land, piling for the travel arms and dredging for boat access.
- In addition **the proposed modification results in a development that is not substantially the same development due to the significant increase in size of the slipway, conversion from a slipway to dockyard, extensive adjustment of boundaries, change in the slipway floor levels and installation of a commercial boat lift.** The original approval was granted for the expansion of the marina and minor expansion of the slipway. The current modification is not considered a modification to this consent and should be a new application.

**17. Justification for the project is not strong given the loss of public lands and waterway and scale of the proposal**

- The justification that the proposal is needed due to a review of environmental standards and outcomes and methods of lifting and repairing vessels is not considered a strong case to expand into public waterway and public land. These operations should be contained within the existing lease area and should not result in further loss of public areas.
- The Council Masterplan boardwalk could be accommodated within the approved lease area with some modification to the design proposal. The expansion into public waterway and land is not required by the Masterplan or boardwalk.
- **There are no reasons or justification provided for the expansion and why the slipway is increasing significantly in area by 39% and a private substation is being located on public open space land.**

**18. Project staging is not clear**

- The SEE does not state when the project will commence and only states that construction will have regard to Council's proposed staged upgrade of the foreshore area. The status and timing of Council's Masterplan is not clear.
- The substation is the only component of the proposal which is to commence.

**19. The modified conditions proposed by the Proponent remove key conditions and controls on the development**

- Worley Parsons letter dated 15 January 2014 proposes modifications to the original conditions of approval. A key modification is that the condition in Schedule 3, Condition

4(c) – **“The Proponent shall.....only slip a maximum of four vessels at any one time...”** be deleted.

- It is unclear as stated above how many boats the proposed dockyard can accommodate at any one time. The application does not state that the holding capacity of the dockyard is to increase above the approved four vessels. Therefore the existing condition should be retained to control the number of boats to 4 being repaired in the dockyard.

Your consideration and review of the above comments is appreciated. If you wish to discuss any of these matters please contact me.

Regards