

DATE OF DETERMINATION	29 February 2024
DATE OF PANEL DECISION	29 February 2024
DATE OF PANEL MEETING	28 February 2024
PANEL MEMBERS	Peter Debnam (Chair), Brian Kirk, Sue Francis, David Logan
Apologies	Nicole Gurran
DECLARATIONS OF INTEREST	Zac Miles advised that as Council had made a submission on this DA, it would be inappropriate for him to sit on the Panel for this matter.

Public meeting held by teleconference on 28 February 2024, opened at 10.02am and closed at 12.34pm.

MATTER DETERMINED

PPSSNH-426 – DA 20230094 – Hunters Hill Council

2 C Margaret Street, Woolwich, legally described as Lots 2, 3 and 4 in DP880264 with an offshore component described as Lot 1 in DP1203041

Alterations and additions to the existing Woolwich Marina to expand the berthing facilities from 45 to 79 berths to enable a range of different vessel typologies (ranging in size from 10m to 35m in length).

Lot 1 in DP1203041 is subject to the following NSW Maritime Leases:

- Lease No. RP5298 (marina component)
- Lease No. CL6104 (swing mooring field)

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings listed at item 8 in Schedule 1.

Development application

The Panel determined to refuse the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The Panel's determination was unanimous.

REASONS FOR THE DECISION

The Panel determined to refuse the DA for the reasons below.

The Panel had met with Council and Applicant last year to discuss the proposal and issues of concern and was also briefed by Council prior to the public meeting. In the December 2023 meeting, the Panel had made clear to the parties the need to better communicate to identify and resolve issues of concern. It is apparent that did not happen, and significant issues remained unresolved.

The issues of concern were canvassed at length during the public meeting.

While the current marina has operated for a considerable time with community support, there was a lack of public support for expansion but there also seemed to be a lack of public awareness of the actual extent of the expansion plans and the realistic extent of their impact on water activities and the surrounding environment. The Panel is of the view that this reflects the inadequacies of the application.

During the public meeting, the Applicant also raised the prospect of amendments, which they said may alleviate public concerns. Those amendments had not been pursued or discussed with Council.

While Council's Assessment Report identified eleven (11) reasons for refusal, the Panel decided that the application and the Assessment Report lacked proper analysis of the SEARS, Heritage considerations (maritime, aboriginal and bushland), visual impacts both to and from the site, existing use rights and public consultation.



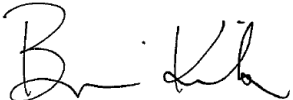

Consequently, while the Applicant sought a deferral of the determination to address any remaining concerns, the Panel determined that it was in the community interest the DA be refused for the following reasons, which in the opinion of the Panel are to be read in precedence over the recommended reasons for refusal:

1. The proposed development has not fully addressed the SEARS, including but not limited to the following matters:
 - a. incomplete community consultation, including with the Local Aboriginal Land Council regarding potential impacts on Aboriginal heritage values;
 - b. other heritage impacts, including a detailed analysis of the potential impacts of a known shipwreck (as requested by the Heritage Council of NSW); and
 - c. the navigational safety implications of the proposal having regard to current users of the waterway and the relevant legislation
2. The Visual Impact Assessment provided late in the assessment process has not provided sufficient detail or consideration of the visual impact of the proposal both to and from the site and having regard to the cultural heritage impacts of the proposal.
3. There is a lack of detail and assessment of the permissibility of the proposal particularly in respect of any existing use rights that may apply to the site, and as such, there is insufficient information to establish whether the proposal is permissible under the relevant zones.

In addition to these reasons, David Logan is of the opinion that the proposed development would result in unacceptable heritage impacts, particularly on Kellys Bush which is listed on the State Heritage Register as an item of State heritage significance (and is also arguably of National and International heritage significance). The proposed development would affect the setting of Kellys Bush in several ways, including when viewed from the waterway; the visual connections between Kellys Bush, the waterway, and Cockatoo Island; and the peaceful natural ambience and public enjoyment of Kellys Bush from within it.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered 121 submissions in objection, 311 in support (comprised of 3 unique submissions and 308 form letters), as well as the matters raised by members of the public during the public meeting. Issues of concern included Permissibility, Environment Protection and Biodiversity Conservation Act 1999, National Environmental Significance, waterway safety and navigational issues, impacts on Heritage Items and Conservation Area, adverse visual impacts, traffic and parking impacts.

PANEL MEMBERS	
 Peter Debnam (Chair)	 David Logan
 Brian Kirk	 Sue Francis

SCHEDULE 1

1	PANEL REF – LGA – DA NO.	PPSSNH-426 – DA 20230094 – Hunters Hill Council
2	PROPOSED DEVELOPMENT	Alterations and additions to the existing Woolwich Marina to expand the berthing facilities from 45 to 79 berths to enable a range of different vessel typologies (ranging in size from 10m to 35m in length). Lot 1 in DP1203041 is subject to the following NSW Maritime Leases: <ul style="list-style-type: none"> • Lease No. RP5298 (marina component) • Lease No. CL6104 (swing mooring field)
3	STREET ADDRESS	2 C Margaret Street, Woolwich, legally described as Lots 2, 3 and 4 in DP880264 with an offshore component described as Lot 1 in DP1203041
4	APPLICANT/OWNER	Applicant - Rhonda Carr (of Michael Fountain Architects Pty Ltd) Owner - Chan No. 1 Investments Pty Ltd, The State of NSW
5	TYPE OF REGIONAL DEVELOPMENT	Designated Development - Marina
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> • SEPP (Biodiversity and Conservation) 2021 • SEPP (Resilience and Hazards) 2021 • SEPP (Transport and Infrastructure) 2021 • Hunters Hill Local Environmental Plan 2012 (HHLEP 2012) • Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 • Hunters Hill Section 7.12 Local Infrastructure Contribution Plan 2020 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Hunters Hill Development Control Plan 2013 (HHDCP 2013) • Planning agreements: Nil • Relevant provisions of the Environmental Planning and Assessment Regulation 2021 • The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality • The suitability of the site for the development • Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations • The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Council Assessment Report dated 14 February 2024. • The Applicant’s response to Council’s assessment report dated 23 February 2024. • Environmental Impact Statement and Appendices

		<ul style="list-style-type: none"> • Applicant’s submission to DCCECW • Applicant’s Submission to Heritage NSW • Copy of all submissions • Written submissions during public exhibition: 121 in objection, 311 in support (comprised of only 3 unique submissions and 308 form letters, counted as a single unique submission). • Verbal submissions at the public meeting: <ul style="list-style-type: none"> • Members of the community – John Veale, Councillor Ross Williams, David Griffith, Beverly Bennett, Maureen Flowers Secretary Friends of Kelly's Bush, Chris Stannage President & Chief Enthusiasm Officer Hunters Hill Sailing Club, Ian Black, Terry Mott (on behalf of Tom Atkinson), Karyn Raisin President Hunters Hill Trust, Matthew Wood, Richard White, Jim Sanderson, Warwick Plumsted Sailing Manager Drummoyne Sailing Club, Kristen Lock, Andrew Glassock, Ely El-agma, Nick Mastro, Harold Lee, Darren McGregor, Matthew Beetram, John Chammas. • Council Assessment Officers – Michael Brewer, Steve Kourepis • On behalf of the applicant – Micheal Fountain, Tim Ward, Craig McLaren, Claire Jones, Rick Plain.
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • 18 October 2023 – Preliminary Briefing <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Brian Kirk, Nicole Gurrán ○ <u>Council assessment staff</u>: Michael Brewer ○ <u>Applicant</u>: Micheal Fountain, Rhonda Carr • 06 December 2023 – Briefing <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Brian Kirk, Nicole Gurrán, Zac Miles, David Logan ○ <u>Council assessment staff</u>: Michael Brewer, Steve Kourepis ○ <u>Applicant</u>: Micheal Fountain, Rhonda Carr, Chris Forrester, Alex Heath • 28 February 2024 - Final briefing to discuss council’s recommendation: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Brian Kirk, Sue Francis, David Logan ○ <u>Council assessment staff</u>: Michael Brewer, Steve Kourepis
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	N/A