



Hippocampus whitei

SYDNEY HARBOUR ASSOCIATION
PO Box 265 ROSE BAY NSW 2029

Director, Planning Frameworks
Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

planning.nsw.gov.au

Draft Environment SEPP: Explanation of Intended Effect

Having regard to the *Explanation of Intended Effect* (EIE) and specifically in relation to matters concerning the SREP *Sydney Harbour Catchment 2005* and its associated *Development Control Plan*, we offer these comments. They reflect our hope that the revisions contemplated in the EIE will produce documentation that not only means what it says, but also says it in such a direct way that it can and will be administered accordingly. We look forward to seeing the draft version of the revisions in due course.

Our approach recognises that no planning instrument can sensibly purport to cater in detail for all circumstances. The Harbour landform itself is physically volatile, and sea level change will continue to affect its precise water-body and foreshore boundaries. Social and economic activity associated with the Harbour is ever-varying according to fashion, technology, and hinterland developments. Accordingly, regulation of development about the Harbour and its foreshores, and of development elsewhere that impacts on the Harbour and its foreshores, needs to be underpinned by over-arching criteria by which assessments can be made with some confidence that the Harbour is and will remain protected in relation to clearly stated and enduring values.

For such purposes, we have consistently placed strong emphasis on the need for assessors to apply not only the detailed controls embodied in the relevant planning instruments, but also – and most importantly – to apply carefully and vigilantly the criteria presently enunciated in the SREP *Aims*. We cannot claim to have had much success in that endeavour.

The *Aims* stated in *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*, are unequivocal. *Clause 2: Aims*: states, among other matters,
(1)(a)..... to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained
(i) as an outstanding natural asset, and
(ii) as a public asset of national and heritage significance...

We have taken the wording to mean what it says. Thus, the Plan states that the Government formally intends to *ensure*...that the Harbour is *protected*, and *enhanced*, and *maintained*...as a *public asset*.

In practice we observe that it is only rarely that an applicant addresses the notion of *enhancing* the Harbour from other than an individual perspective. What is even more concerning is our experience that it is also rare for an assessor at any level to do so. The certainties implied by use of the word *ensure* are rarely confirmed and are too often absent. It is almost as if the words of the *Aims* are seen by applicants and assessors alike as mere verbal fluff instead of being relevant and focussed as they were originally intended to be when our predecessor body and others collaborated in drafting them.

Similarly, what are claimed to be slight/minor/minimal departures from stated *Principles* and specific development controls are frequently taken to be acceptable by applicants and assessors alike, without overt consideration of the cumulative effects of this kind of fudging or reference to any purpose of *ensuring* the *protection* and *enhancement* of the Harbour over the long term.

Against that background, we *recommend* that the revised instrument should enunciate and make unmistakable an overarching requirement for Harbour-related development to conform to what the *EIE* calls the *Vision*, which we presently see embodied in the *Aims* of the Plan. We note that the *Vision* term used in the *EIE* may well be modern, but it is fundamentally nebulous. A clear statement of *Government commitment* to application of its content is needed in order to make the recital of the *Aims/Vision* useful and relevant in practice.

Recreation and commercial uses and Harbour-dependence

We have serious concerns about aspects of the proposal to re-define *Aim 1(d)* as related to *recreation and commercial uses*. We know no cogent environmental reason for changing the terminology of the *Aims* Clause *as it was originally framed*.

The approach proposed in the *EIE* is based on a perception of *a shift away from traditional industrial and heavy shipping uses*, and so it contemplates recognition of what is termed *a more modern working harbour* (p.34).

Our consideration of various large-scale commercial developments in and around the Harbour proposed/implemented over time, and having the essential character of urban business zones, leads us to the view that an approach of the kind apparently envisaged for the amended *Aim 1(d)* would be inherently inimical to commitments of the kind presently embodied in the *Aims/Vision*.

An approach founded on the adoption of a snapshot view of the current industrial and heavy shipping uses would inevitably be overtaken by unforeseen (and perhaps un-foresee-able) events. Those uses will change in the future as they have done in the past. Their accommodation within a genuinely protective planning framework for Sydney Harbour of the kind that is stated in the (current) *Aims* would require careful understanding, definition and prescription of the nature of those activities that are fully compatible with the stated *Aims/Vision*. The detail involved in such a prescriptive approach, even if feasible, is unlikely ever to be sufficiently robust to ensure the maintenance, protection and enhancement of the Harbour over any but the most fleeting timescale.

Foresight can never be perfect, but the preclusion of potential future Harbour- dependent development options by the approval of non-Harbour-dependent developments of an essentially

urban municipal kind is short-sighted and inherently inconsistent with the *Aims/Vision*. Underlying the conflict is the question of whether specific developments are actually *necessary*.

A major problem lies in the absence of a reliable, relevant and defensible concept of what is actually Harbour-dependent activity. In this context, two examples may help to clarify our view:

- *The former Woolloomooloo wharves*: The alienation of the Woolloomooloo wharves from heavy shipping Harbour uses in favour of residential development that was not Harbour-dependent failed to anticipate the effects of the major enlargement of scale that has characterised cruise vessels in recent years. Consequently, the Harbour now has only one major shore-side deep-water berth for large commercial cruise vessels east of the Harbour Bridge. While cruise operator proposals to utilise Garden Island berths on an occasional/regular basis come and go, the reality is that the Defence uses of Garden Island will always take precedence over private enterprise. The lesson is salutary.
- *Boat storage*: Small vessels can readily be stored on land, as frequently occurs in suburban streets. On a collective scale, small craft storage may be an appropriate foreshore activity, although there may well be better justification for hinterland storage, since the vessels are so readily transported. Obviously, water access facilities are important in this context.

With the development of large-scale lifting, haulage, and launching equipment, large vessels can also be stored on land at varying distances from the waterbody, albeit at some cost.

In practice, while Harbour-side or on-water location for recreational boat storage is becoming much less technically *necessary*, the proliferation of larger recreational boats has led to allocation of specialised marina berths for them, with associated discouragement and displacement of marina berthing of small vessels. In effect, on-water and foreshore marina berthing have been/are being preferentially allocated for large craft storage, with attendant reduction of numbers of smaller craft being berthed, and implicit social discrimination. In crude arithmetic terms, the boat storage facilities of the Harbour have been made less *public* as marina clientele has become more size-selective.

While we argue that the practical application of relevant and clearly stated *Principles* and *Objectives* for assessment of development proposals is essential, compliance with them does not of itself provide assurance that the objectives and aims supposed to be *ensured* by the Plan are being or can or will be achieved. That is to say, *Principles* and *Objectives* are *necessary but not sufficient* for that purpose. Similar limitations apply to the relevant *design guidelines*, and other standards and criteria that are/will be included in the revised Plan/DCP. In real terms, compliance with the *Aims/ Vision* is only attainable if and when developments can clearly be required and seen to do what is stated there – that is *protect, maintain* and *enhance* the stated Harbour values of the public asset..

Which activities are necessary?

As Sydney's population increases, private development pressures on the Harbour and its foreshores (and hinterland) are intensifying,

A high degree of commitment to retention of the *public ownership* and protection of the natural values of the Harbour is required in its stewardship if the Harbour is to survive those pressures and retain its essential characteristics as a public asset. We see *the public* as a general and inclusive concept, and so we do not recognise sub-sets – such as the *boating fraternity*, or Harbour-front

residents— as having any generalised or special claim on exclusive access to, or occupation and use of the waterways and foreshores. They are not *the public*. They are *special interest categories of the community*.

Specifically, we reject any notion that general commercial or residential or entertainment or refreshment –related activities have any special claim to Harbour/foreshore access or facilities when they are so often predominantly inwards-focussed. While a Harbour view is highly prized in *al fresco* dining and some theatrical presentations and the like, such activities are obviously not inherently Harbour-dependent or even necessary for the public enjoyment of the Harbour.

There are many existing elements within the area of the Harbour’s National Park dedication that are patently anomalous in terms of the land reservation. Those anomalies do not justify the creation of further anomalies, especially when additional anomalies relate to activities that are not Harbour-dependent or necessary. Rather, they bring into bold relief the need for development discipline to ensure that the essential character of the Harbour – that character which is the reason for its dedication – is retained and protected and restored and possibly extended where it has been previously infringed.

In day-to-day terms, that means that developments and activities on and about the Harbour should be confined to those which are truly needed to sustain its character and are fully consistent with the terms of its National Park dedication. That would exclude development which is not needed to maintain, protect and enhance the Harbour itself as a public asset of national and heritage significance. Surely that is part of what the *Aims/Vision* statement is intended to convey by its reference to *enhancement*.

Minimising.....

At the level of individual residential properties having Harbour frontages, the provision of what are essentially private access/boat storage/bathing facilities through development including reclamation often appears to have been administered in such a manner (and perhaps with the objective) that revenue to the relevant land-owner/decision-making Harbour authority is maximised. In other instances, private developments of those kinds seem to be acceptable provided there is assessed to be minimum adverse environmental impact and minimum technical infringement of the regulatory rules pertaining to the public Harbour estate. What is *minimal* is strictly a matter of comparison rather than of scale, but the term has assumed a high degree of convenience for applicants and assessors alike who choose to present and interpret it as meaning *microscopic*. Of course, it does not.

Plainly, resort to the concept of minimal damage obscures and potentially defeats the stated purpose of the REP itself, in that the *Aims/Vision* is founded on supposedly *ensuring the maintenance and protection and enhancement* of the *public* estate, not on the notion of tolerating infractions of the development criteria provided they can be concealed under the cloak of minimalism.

It is no business of the planning regulatory process systematically to maintain, protect and enhance the *private* estates of individuals. Similarly, it is no business of the regulator(s) to endorse damage to the public estate for the benefit of private persons. Naming it and assessing it as *minimal* merely identifies the possibility that a greater adverse impact could be expected from a modified version of a development. That is not helpful for the Harbour, although it may well be helpful for other interests. In the latter case, the social inequities that arise from what is seen as special treatment for private Harbour-side landowners are a matter of well-founded concern.

Damage is damage, whether minimised or not. The protection of the Harbour would not be well-founded on a concept of *nett benefit* unless the dis-benefits involved were *unavoidable* in the pursuit of *essential* development – that is, development which is genuinely Harbour-dependent and is assessed as necessary in order to avoid deterioration of the characteristics which underlie its National Park and heritage status.

The EIE appears to contemplate continued and perhaps even more use of the minimal adverse impact concept in a context of private development that is neither necessary nor Harbour-dependent. If that is the intent, we think it should be abandoned. Real protection of the public Harbour estate requires much more serious management attention than that.

National Park lands

Government support for the State's National Parks system, as evidenced in the Environment and Heritage Department's resource allocation and management of its National Parks and Wildlife Service (NPWS), appears to have diverged markedly away from the fostering of traditional natural values, and moved to the active pursuit of revenue from commercial uses of National Park lands and buildings for purposes having no clear consistency with the actual National Park reservations.

One major example is apparent in the SHNP *Gap Bluff/South Head* sectors, where high-intensity event/entertainment proposals wholly unrelated to the Park values remain under active consideration by NPWS. Despite vigorous community protest to NPWS and the NSW Government, official responses/inaction to date signify a lack of real appreciation or understanding of - or commitment to – the fundamental function of the Service and the Government as trustee of what is, in real terms, a National icon. Rather, the policies and practice appear to suggest that the Government does not differentiate the South Head/Gap Bluff sector of the *Sydney Harbour National Park* from other, less distinguished elements of the public estate having no such specific reservation.

Instead, it is perceived that the Government has been /is acting/will act as if the *Park* were just another tract of publicly-owned, commercially attractive land of the high-value kind that has characterised so many of its recent urban public estate land transactions. The apprehensions arising from that view are certainly alarming, ranging as they do from visions of extensive commercialisation to virtual sale by long lease or even outright sale, almost regardless of the natural environmental consequences of such an approach, and with resultant associated management policies and practice necessarily focussed primarily on the interests of commercial lessees/tenants of (residual) lands. In that scenario, the *protection, maintenance and enhancement* of the characteristics of the land underlying their dedication for National Park purposes would become at best a second-order matter.

Were the essential features of such a scenario to eventuate in practice, the protective provisions of the *National Parks and Wildlife Act 1974 No 80 [NSW]* and the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* - and therefore the Government's custodial role - would inevitably be seen to have been totally discredited. Official entertainment of high-intensity commercial proposals un-related to the National Park purposes of land dedication, such as the offer said to be currently under revision by NPWS, reinforces that perception of disregard and dereliction of duty.

The visitor numbers, the location, the natural and cultural heritage and the history of the South Head/Gap Bluff sector of SHNP all signify unambiguously its immense value as *National Park* –land. The Government's ungenerous and evidently inadequate financial allocations for its upkeep are at

odds with the designated status of the lands, and inconsistent with the sustainability which is supposed to underpin the management of the lands as a National Park.

We have requested and hopefully await the promulgation of a new, sensitive and forward-looking approach to the protective management of these particular *National Park* lands. So far, we have received neither response nor cogent reason for its absence.

Taking South Head/Gap Bluff as an indicator, it seems that the specific National Parks legislation is inadequate for the purposes that are popularly assigned to and expected of it. The proposals in the present EIE do not seem very likely at face value to take the matter forward in a manner that would remedy this unfortunate situation.

Put simply and generally, we think the revised planning instruments should provide iron-clad protection for all lands designated as National Parks. That kind of protection would be feasible and practical – and potentially *ensured* - if commitment to and compliance with the terms of the (current) *Aims/Vision* statement of the REP were made mandatory.

Land-only development

The EIE proposal to remove *land-only development* types from the Harbour DCP is based on the premise that they are better managed by councils. Because council concerns typically concentrate on local issues whereas the Harbour foreshores are of interest to the public as a whole, we think that premise is not self-evident or valid for lands within the Harbour foreshores.

Land-only development about the Harbour perimeter is a topic of interest to the public at large. It is not merely a municipal matter.

Even if council compliance with the currently-worded *Aims/Vision* of the REP were mandated for the purpose, we would oppose the change because in practice municipal decision-making would not provide accessible accountability to the wider public.

Hylde Rolfe, Secretary
(Home: 41 Cove Street Watsons Bay 2030. T: 02 9337 5058;E:hyldarolfe@bigpond.com)
11 January 2018

Sydney Harbour Association was established in 2010, as successor body to Sydney Harbour and Foreshores Committee (est. 1979). The Association is an unincorporated body of individuals interested in Sydney Harbour. At all times we are concerned to support the objective of the NSW Government as stated in *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005, Clause 2: Aims:*

(1)(a)..... to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained

(i) as an outstanding natural asset, and

(ii) as a public asset of national and heritage significance,

for existing and future generations.