

WATERFRONT ACTION GROUP

WATERFRONT ACTION GROUP NSW INC

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23 January 2018

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

**Re: Submission in Respect of The Explanation of Intended Effect for the Environment SEPP, as it relates to Sydney Harbour
By - WATERFRONT ACTION GROUP NSW INC ("WAG")**

Dear Director,

Introduction

WAG is the peak stakeholder association representing Sydney Harbour residential property owners.

This letter supports the review of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (SREP 2005) and the SEPP (Environment) Explanation of Intended Effect (EIE), to update the legislation to reflect the way the harbour and waterways are used, whilst ensuring its significance is protected and natural qualities are retained and improved. The EIE update aims to emphasise public accessibility along with protection and enhancements to the natural and scenic qualities of the foreshore and waterways. Additionally, the consent authorities are required to give precedence to public good and prioritise the protection of the natural assets of the harbour, whilst amending and clarifying the aim of the 'working harbour' to include a range of recreational, transport, tourism and commercial uses. The below changes requested to the EIE and the subsequent Environment SEPP reflect these aims.

At the same time WAG believes, based on 12 years practical experience of many hundreds of members, that the assessment and consent process requires streamlining, that the zones require consolidation and simplification and that zone objectives should be amended to be practical and consistent with permitted activities for zone.

Specifics of Submission

We support preservation of foreshore and waterway areas in need of preservation

Many sites are unsuitable for development, owing to features, such as public intertidal access, remnant sandstone cliffs, rocks and caves, angophora trees, seagrass beds, navigation impact, preservation of views from public sites, visual impacts from the waterway, sandy beaches accessible to the public. However, there are many sites that are appropriate for development by private jetties and private marinas and mooring pens and these should be assessed on merit assessment, case by case.

RECOMMENDATION 1

We endorse and support the proposed change to W7

We endorse and support the proposed change to W7 which would permit mooring pens on a case by case merit assessment process.

RECOMMENDATION 2

We recommend the same change be made to W8 as proposed for W7

Mooring Pens and Private Landing Facilities should be permitted with consent in W8, on the same basis as now proposed in W7, subject to case by case merit assessment.

In most cases where there are private freeholds extending to Mean High Water Mark on Sydney Harbour, Middle Harbour, Lane Cove River, and Parramatta River there is impeded public access along the intertidal zone. Public access can be unavailable owing to local geography, steep cliffs, deep water, built form etc.

The draft planning review suggests widening permitted activity in W7, but it does not address the consequential need to amend the W7 zone objectives.

This pathway of amending W7 and W8 permitted activities, to allow mooring pens and private landing facilities and making slight alterations to the zone objectives, would allow better outcomes without having to re-visit all W8 areas in Sydney. This will allow the permitted activities in a zone to marry that zone's objectives and application by the authority.

These updates to *W7 and W8 zones* will align with the objectives of the EIE, specifically the aim of the 'working harbour (revised)' and promotion of public and private recreation uses of the foreshore and waterways. These changes will alleviate the demand for swing mooring space in the waterways, by allowing private landing facilities and mooring pens in appropriate locations and in accordance with suitable planning principles.

The current restrictive nature of the zoning and lack of ability to undertake a merit based assessment has created inflexibility in the existing control, that has led to poorer environmental outcomes, disadvantaged public users, disadvantaged private users, impacted on scenic and view quality and reduced safety on the waterways. This is especially obvious where deep waterfront properties satisfy the broad intent of the zone objectives, however, due to the unduly restrictive nature of the existing planning controls, the property owners are required to moor their boat on a swing mooring, rather than on a permanent mooring adjoining their property. As an outcome of the existing controls the increased use of swing moorings has led to:

- impediment to the public waterway use (boats on swing moorings with a greater area of imposition in an area used by the public);
- creation of navigational hazards and waterway obstructions in the publicly accessed areas of the waterway;
- having a detrimental visual continuity, scenic quality and view impacts to and from the water;
- creation of inconsistency between surrounding uses of the land and waterway

- and disharmony of uses in the surroundings and locality; and
- negligible and arguably increased impact on the ecological value and environmental impact.

Comment The proposed amendments to the *W8 Scenic Waters Passive Use* zone permitted use to allow Mooring Pens and Private Landing Facilities and alignment with the objectives, as indicated above, would have improved outcomes for the community and environment. Additionally, it would better align with the aims and objectives of the EIE. (DELETE “and Environment”)

RECOMMENDATION 3

We recommend amending Zone W7 objectives and Zone W8 objectives so as to be compatible with the permitted activities in those zones

The draft planning review suggests widening permitted activity in W7 *but it does not address the consequential need to amend the W7 zone objectives.* By amending W7 and W8 permitted activities and making amendments to the zone objectives, better outcomes would be allowed, without having to re-visit all W7 and W8 areas in Sydney Harbour. For example, one of the W8 zone objectives identified below in italics should be deleted, because that prevents jetties and mooring pens extending from shoreline

Why do we suggest this? Because sometimes the permitted activities in a zone are like one hand gives, but when that zone's objectives are applied, the other hand takes away what was given.

How to improve the W7 and W8 zone objectives based on 12 years experience and allow merit assessment

To allow merit assessment case by case, and to improve zone objectives, from what has been learned from 12 years operating experience, under the current planning instrument, we suggest

- i. Development can protect and maintain natural and cultural scenic quality of the surrounding area, however development cannot *improve* scenic quality (see W7 objective d)
- ii. Scale and size of development can protect natural assets and natural and cultural scenic quality, however scale and size of development cannot *improve* natural assets and natural and cultural scenic quality (see W8 objective e)
- iii. Development can maintain views to and from waters, however development cannot *enhance* those views (see W7 objective e)
- iv. Sharing of structures between neighbours has caused many disputes and litigation; practical sharing cannot function, unless the neighbours agree and co-operate; whereas Roads and Maritime Services (RMS) imposed sharing in 2005, RMS no longer requires sharing and RMS only agrees to sharing where the neighbours agree (see W7 objective f -- sharing of structures)
- v. Preference to unimpeded public access along the intertidal zone should only be assessed where public access actually exists (see W8 objective a)
- vi. Development close to shore only, automatically precludes jetties and mooring pens to be assessed on merit in appropriate locations (see W8 objective b)
- vii. Water-dependent development cannot *harmonise* with the planned character of the locality, if the planned character is imprecise, or has been overtaken by major developmental changes in most or many locations,

since the Landscape Character Types were surveyed and identified; these types are described in Sydney Harbour Foreshores and Waterways Area DCP 2005 (see W8 objective d); since the 2005 DCP was written, in reality Working Harbour has been replaced by tourism harbour, by recreational harbour, by high density residential harbour and by cruise ship port. Harbour-side industrial sites have closed and been replaced by high density residential development, ferry traffic has intensified and all major ferry wharves have been upgraded with bus and parking interchanges. Major dry-stack boat storage facilities have been developed by the harbour-side, with pick and drop-off of boat-owners by water to avoid road traffic. Swing mooring areas have grown and intensified. In many locations these changes have rendered the planned character superseded and undergoing continual change, excepting those foreshore areas immediately adjacent to national parks

Recommended revised zone objectives –

Zone No W7 Scenic Waters: Casual Use

The recommended revised objectives of this zone are as follows:

- (a) to allow certain water-dependent development (**DELETE “close to shore”**) to meet casual and permanent boating needs and other water access needs,
- (b) to allow such development only where it can be demonstrated that it achieves a predominantly open and unobstructed waterway and does not dominate the landscape setting,
- (c) to restrict development for permanent boat storage in locations, that are unsuitable, due to the adverse visual impact of such development, or to physical constraints, such as shallow water depth, severe wave action or unsafe navigation,
- (d) to ensure that the scale and size of development are appropriate to the location and protect (**DELETE “and improve”**) the natural and cultural scenic quality of the surrounding area, particularly when viewed from waters in this zone and areas of public access,
- (e) to maintain (**DELETE “and enhance”**) views to and from waters in this zone,
- (f) (**DELETE “to minimise the number and extent of structures over waters in this zone through mechanisms such as the sharing of structures between adjoining waterfront property owners,”**)
- (g) to ensure remnant natural features, aquatic habitat (including wetlands) and public access along the intertidal zone are not damaged or impaired in any way by development.

Zone No W8 Scenic Waters: Passive Use

The recommended revised objectives of this zone are as follows:

- (a) to give preference to unimpeded public access along the intertidal zone **INSERT “where such access is available”**, to the visual continuity and significance of the landform and to the ecological value of waters and foreshores,

(b) to allow low-lying private water-dependent development (**DELETE “close to shore only”**), where it can be demonstrated that the preferences referred to in paragraph (a) are not damaged or impaired in any way, (**DELETE “that any proposed structure conforms closely to the shore,”**) that development maximises open and unobstructed waterways and maintains (**DELETE “and enhances”**) views to and from waters in this zone,

(c) to restrict development for permanent boat storage and private landing facilities in unsuitable locations,

(d) to allow water-dependent development only where it can be demonstrated that it meets a demonstrated demand (**DELETE “and harmonises with the planned character of the locality”**),

(e) to ensure that the scale and size of development are appropriate to the locality and protect (**DELETE “and improve”**) the natural assets and natural and cultural scenic quality of the surrounding area, particularly when viewed from waters in this zone or areas of public access.

RECOMMENDATION 4

We recommend Replacement or Repair of approved pilings by Review of Environmental Factors without DA or CDC

To streamline the planning process and to improve safety on the water, piles which are shown to be part of a lawful structure should be permitted to be replaced or repaired, without need of a Development Consent or Complying Development Certificate (CDC). The exempt and complying development regulatory changes have been unsuccessful because

- a. the cost of achieving development consent to replace or repair a pile exceeds the cost of the work, ie removing degraded pile and driving a new pile
- b. there is no saving in a CDC over a DA to replace or repair a pile
- c. CDC is only available in those zones where the pile does not rely on existing use (only 1 in 9 zones can a CDC be utilised)

It is recommended that replacing piles and repairing piles be made exempt development if

1. replaced like for like, site for site
2. the pile being replaced or repaired is shown to have been lawfully approved
3. a Review of Environmental Factors for the work methodology is approved by RMS

RECOMMENDATION 5

We advise against the proposal to align W1 Maritime Waters with W3 Working Waterways, Standard Instrument – Principal LEP

It appears to be ill-conceived because

- a. it is contradicted by reality

- b. there are many private marinas (and commercial marinas) in W1 Maritime Waters and these would probably be prohibited in W3 Working Waterways, which will rely on existing use rights, which in turn means there can be no expansion or re-development
- c. there are virtually no boat building and repair facilities remaining in W1 and there are minimal wharf or boating facilities remaining in W1; in other words, W1 would not reflect reality or future intensification of residential development in adjoining inner-Sydney

RECOMMENDATION 6

We advise against the proposal to align W5 Water Recreation with W2 Recreational Waterways, Standard Instrument – Principal LEP

It also appears to be ill-conceived because

- a. the permitted activities in W2 are “Kiosks; Marinas”; this is imprecise and does not differentiate between commercial marinas, private marinas, mooring pens and even single jetty, ramp and pontoon adjoining a private residence
- b. the absence of specificity is a backward step; it leaves open opportunities for planning by policy pronouncement
- c. ambiguous permitted activity in a planning instrument promotes litigation and planning by case law

RECOMMENDATION 7

Alternative Proposal

We recommend -

1. **The working port areas which are presently W1 Maritime waters be aligned with Zone W3 Working Waterways under Standard Instrument – Principal LEP Zone**

Waterway areas

2. **W1 and Zone W5 and Zone W6 be combined and rezoned as Zone W6 Scenic Waters Active Use**

This would permit with consent the following private facilities

Private landing facilities

Mooring pens

Private marinas

This would permit with consent the following public activities

Boat launching ramps

Recreational or club facilities

Public water transport facilities

This would permit with consent the following commercial facilities

Boat repair facilities

Commercial marinas

Charter and tourism facilities

This would rationalise zoning, correct many inconsistencies, resolve incompatibilities and plan for responsible development consistent with future public, commercial and private needs and accommodate the needs of The Bays Precinct Urban Transformation.

Examples

W1 Maritime Waters permits Commercial Marinas, but does not permit Private Marinas serving domestic marinas leased by Owners Corporations. There are several large Private Marinas in W1 but which are presently prohibited development in W1; this means that the footprint of these marinas can only be extended if the extension is for commercial marina use which seems incongruous in what are now residential precincts. In fact residential development has intensified in and adjoining W1 areas since SREP 2005 and is likely to spread, into The Bays Precinct, for example.

W6 Scenic Waters Active Use permits Commercial Marinas and permits Private Marinas and permits Mooring Pens and permits Private Landing Facilities (jetty, ramp and pontoon) and should be the default or consolidated zoning for W1 and W5.

The two proposed alignments suggested in the EIE are not workable, will promote uncertainty and litigation and controversy, are inconsistent with reality, are incompatible with current and future trend away from working harbour to domestic and residential harbour, and most important -- will not deliver the expectations of NSW Government for The Bays Precinct Urban Transformation. However the alternative proposal will satisfy the above criteria.

RECOMMENDATION 8

Rectify inaccurate mapping in associated plans (Development Control Plan, SREP 2005, Ryde LEP & LPI Six Maps)

Map 2 of the DCP plan shows incorrect presence of mudflats and mangroves at the rear of properties in Lancaster Ave Melrose Park

1. Mudflats have returned to sandy beaches due to accretion in part from Rivercat wake action
2. There have never been large mangrove stands at the rear of properties 90-96 Lancaster Ave Melrose Park
3. Evidence from pictures from circa 1888 from Ermington Wharf confirms this historically is the case
4. Letter from Minister for Planning David Hay in 1991 confirmed private properties "form no part of the wetland"

RECOMMENDATION 9

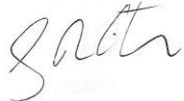
Proposal to amend clause 18A SREP 2005, to allow RMS to grant development consent for subdivision of foreshore land owned by RMS, for its management including long term lease and disposal

We endorse and support the proposal to amend Clause 18A SREP 2005, to allow RMS, as owner and consent authority of Sydney Harbour, to undertake its existing policy of subdivision on the Sydney Harbour foreshore, for the purposes of managing lawfully reclaimed harbour land, regardless of whether the land is zoned by a Council LEP.

We support the existing policy of management, including subdivision for long term lease and disposal to the adjoining freehold owner. We support the requirement, that as the consent authority, RMS consider whether and to what extent, subdivision is likely to result in any reduction in public access to the foreshore or waterways, including planned public access and potential future public access.

Yours faithfully,

WATERFRONT ACTION GROUP NSW INC

A handwritten signature in black ink, appearing to read 'G. Citer', written over a faint, illegible stamp or watermark.

George Citer
President