

# MICHAEL CHAPMAN, OAM BA LLB

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### **SUBMISSION ON EXPLANATION OF INTENDED EFFECT FOR THE ENVIRONMENT SEPP AS APPLIED TO SYDNEY REGIONAL ENVIRONMENT PLAN (SYDNEY HARBOUR CATCHMENT) 2005 (SREP)**

#### **STAKEHOLDER NAME**

Michael Chapman

#### **RELEVANT QUALIFICATIONS & EXPERIENCE**

Lawyer specializing in waterfront leasing and development and planning  
Advisor to commercial marinas and maritime industrial businesses and domestic waterfront lessees on Sydney Harbour

#### **RELEVANT BACKGROUND**

Former General Manager Property & Planning of Maritime Services Board of NSW, owner of Sydney harbor

Former General Counsel and Secretary Maritime Services Board of NSW

Former Managing Director Waterways Authority administering all leasing of Sydney harbor

Directly advised and assisted in drafting in 1990 both Sydney Regional Environmental Plan 22 Parramatta River, and Sydney Regional Environmental Plan 23 Sydney and Middle Harbours for landowner and consent authority which was then submitted to Department of Planning (Dr Gabriel Kibble and Ms Sue Holliday, Directors General)

Former in-house counsel Boral Ltd, Hunter Douglas Ltd

#### **BACKGROUND TO 2005 Sydney Harbour Catchment REP**

When the 2005 REP was drafted, apparently the Department of Planning's contract planners ran out of time and funds to examine and adequately zone Lane Cove River and most of the north shore of Parramatta River from Putney to Pulpit Point, Hunters Hill. As a consequence there is little compatibility between zoning of the foreshore and zoning of the adjoining land under the Council LEP.

The contract planners reverted to the default zone, W8. Most of the two rivers and particularly Lane Cove River, and the northern shore of Parramatta River from Putney to Hunters Hill is W8. That zone does not permit jetty, ramp and pontoon, and it does not permit mooring pens. This appears incongruous because many of these structures had previously been approved by Maritime Services Board, and had been built and held under lease at sites assessed as suitable against environmental and navigation criteria, and now prohibited.

The irony is that Lane Cove River was the only part of the harbour not previously zoned in 1990 and the contract planners failed to complete the job in 2005.

Lane Cove and Parramatta Rivers should be examined and zoned consistent with current adjoining land use, and undertaken properly and competently with adequate funding.

It is unfinished business from 2005.

#### **PROPER PROCESS IN 2005?**

Good planning process achieves compatibility between land use zoning and the adjoining waterway zoning, where there is no public intertidal access.

This certainly does not occur at our site or to any site in Longueville or Northwood or Greenwich on the Lane Cove River.

Those foreshores and most of the Hunters Hill shoreline on the river, are zoned W8. For example at Longueville there is no change in the W8 zone along the shoreline. Yet the shoreline changes from R2 low density residential to rowing club to public reserve to sailing club to public wharf to public reserve and back to R2 low density residential. In each case the low density residential land is not accessible to the public in the intertidal zone. The residences are typically sited on relatively steep land with overlooking. The foreshore features deep water without seagrass or remnant sandstone. These R2 shorelines are suitable for boating facilities but jetties and mooring pens are prohibited.

## **WHY ARE ONLY 2 SITES ON LANE COVE RIVER ZONED FOR PRIVATE MOORING PENS – SELL OFF BY THE STATE?**

Zoning Map Sheet 5 shows only two areas zoned for jetties with mooring pens—

- a. **Hunters Hill High School** site and a small area each side
- b. **Public reserve** between Gale Street and Collingwood Street Woolwich owned by State of NSW

Why would two sites in public ownership be zoned for private jetties and private mooring pens?

Does a State secondary school require multiple jetties and private mooring pens?

Does a public reserve require private jetties and private mooring pens?

Did the then NSW Government zone these sites for future sale to developers?

## **WAS THE ZONING PROCESS ROBUST?**

If not robust, can it now be done properly?

It appears that there is inadequate time to investigate site by site zoning – the published timetable does not facilitate or address this

## **IS THERE A COST EFFECTIVE MERIT BASED SOLUTION?**

There is an alternative cheap and effective solution which would rely on merit assessment -- apply the process which is outlined in the draft proposal for W7, to W8 and adjust the zone objectives of W7 and W8.

## **I support preservation of foreshore and waterway areas in need of preservation**

Many sites within W7 and W8 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 mooring pens and these should be assessed on merit assessment case by case.

## **RECOMMENDATION 1**

### **I 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**

### **I 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 revisit 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**

#### **I 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 devel-

oped 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**

##### **I 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**

**I 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**

**I 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**

**I 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.

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**

**I support the 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.

I 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.

## **RECOMMENDATION 9**

**I recommend that passive boat lifts be permitted in mooring pens provided that**

- a. **The boat lift is wholly within the approved mooring pen**
- b. **The height of the floating boat lift does not exceed 400mm above sea level thereby being of minimal visual impact**
- c. **The boat lift does not include any crane or winch or mechanical device but is a passive float onto which a vessel is driven for passive storage**
- d. **The passive boat lift is of neutral or recessive color, generally grey or similar to merge into the visual context of a mooring pen**

The definition of *Boat Lift* in the SREP 2005 means a device used for **lifting** or **steering** a vessel out of the water, but does not include such a device if it forms part of a boat repair facility or commercial marina

In 2005 floating boat lifts did not exist. However davits and travelifts and boat hoists and boat cranes did exist. Each of these lifting apparatus are active boat lifts and incorporate a mechanical device such as ropes and pulleys, manually operated wire winch, electric powered wire winch, boat slings with electric cable winch or powered hydraulic pump lifts. The boat lifts that existed in 2005 were active lifting apparatus.

A floating boat lift is not an active lifting apparatus but a passive floating ramp. There are no moving parts and no cables or winches or hydraulic pumps. So it may be differentiated from other boat lifting devices.

Neither does a floating boat lift or passive floating ramp STEER a boat out of the water. The boat's propulsion system and the steering system drives and steers the boat onto the floating ramp. The boat's keel is aligned with the channel in the float and when successfully located, the channel secures the vessel upright for storage.

New technology has since been developed and embraced by the boating industry and community with the result that passive boat lifts have been developed and RIBs are now very popular. RIBs are more stable, safer and lighter in weight and more fuel efficient than conventional boats. RIBs are unsuitable for the application of anti-foul paint to the hull surface

1. passive floating boat lifts for onwater storage have the following environmental and safety advantages
  - i. eliminate antifouling and ablading of anti-foul into the waterway
  - ii. reduce consumption of fuel
  - iii. provide greater boat stability
  - iv. are more accessible for users

In summary, passive boat lifts used for storage are environmentally friendly and visually unobtrusive from the public waterway if confined to an approved mooring pen. One could expect to see such a low profile float in a mooring pen without surprise. The elevation of a boat on a passive boat lift in a mooring pen would be approximately 500mm which is less than the height of a low profile cabin on a boat. It is stressed that passive boat lifts are not designed and are unsuitable for large boats and are generally used for RIBs and runabouts.

Yours Faithfully



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