

Dr Nicole McWilliam

60 Wunulla Road

Point Piper NSW 2027

by email information@planning.nsw.gov.au

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

STAKEHOLDER NAME

Nicole Judith McWilliam

STAKEHOLDER SITE

Adjoining 60 Wunulla Road Point Piper

BACKGROUND TO 2005 Sydney Harbour Catchment REP

When the 2005 REP was drafted, apparently the Department of Planning's contract planners had insufficient time and/or funds to examine and adequately zone much of Sydney harbor, particularly in the eastern suburbs.

In this area there is appears to be little consistency or logic to different zoning of very similar waterways and shorelines and the same land zoning. It is apparent that most of the waterway has reverted to W8 as the default zone. For example

- a. the north end of Wunulla Road terminates at Woollahra Point, having private waterfront land on each side for the last few hundred metres;
- b. on the east side the waterway is zoned W6 and the west side the waterway is zoned W8
- c. the land use zoning is the same on both sides, R2 Residential
- d. the W8 zoning on the west side of Woollahra Point to Lady Martins Beach prohibits jetties and mooring pens however on the other or east side of Woollahra Point the waterway zoning is W6 which permits these structures with consent
- e. in both areas there is no public intertidal access
- f. in both areas there are no public viewing points
- g. in both areas there is deep waterfrontage
- h. in both areas there are pre-existing jetties and 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.

PROPER PROCESS

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

It appears that there is inadequate time to review zoning, area by area – 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

Mooring pens should be permitted with consent in W7, on a case by case merit assessment process.

RECOMMENDATION 2

I recommend the same change be made to W8 as proposed for W7 and that private landing facilities also be permitted with consent

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, 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.

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 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

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 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

I 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.

Thank you for the opportunity to comment.

Yours faithfully



DATE 31 January 2018