

26 November 2012

**Planning Assessment Commission's Determination Report on the
Land-Based Development for the Sydney Super Yacht Marina, James Craig Rd,
Rozelle Bay, Leichhardt LGA**

Project Application

The Sydney Super Yacht Marina Pty Ltd is seeking project approval for the development of foreshore land adjoining the existing Super Yacht Marina in Rozelle Bay. The proposal comprises two buildings (both 2 storeys), a car parking structure and foreshore walkway upgrades and landscaping. The western building would mainly be used as a Yacht Club, with smaller spaces for marine uses and a provedore. The eastern building is proposed to provide space for marine uses with ancillary space for restaurants and bars on both the ground and first floors. A four level car park structure would be constructed behind the eastern building to accommodate approximately 120 car parking spaces.

The option to play outdoor live music on the forecourt is also sought as part of this project. However the Proponent has since agreed to a live music trial of up to eight days, recommended by the Department.

Delegation to the Commission

On 4 October 2012 the Acting Deputy Director-General of the Department of Planning and Infrastructure referred the project to the Commission for determination under the terms of the Minister's delegation.

Ms Gabrielle Kibble AO, the chair of the Planning Assessment Commission, nominated Mr Garry West to chair the Commission for the project and Ms Abigail Goldberg as the other member to constitute the Commission.

Department's Assessment Report

The Director-General's Environmental Assessment Report considered the following key issues:

- Land use and hours of operation;
- Noise impacts;
- Traffic and car parking;
- Built form; and
- Visual impacts.

Other issues considered in the report were master planning, public access to the foreshore, environmental impacts and social impacts.

Site Visit

On Friday 19 October 2012 the Commission visited the site and surrounds, including Bicentennial Park and the foreshore walkway opposite the site and in front of the residential units on the eastern side of Glebe Point Road.

Meetings

Proponent

On Thursday 8 November 2012 the Commission met with representatives of the Proponent. The Proponent outlined the history of the proposal and explained the intent to provide services for the Super Yacht Marina. The Proponent emphasised the significant economic

benefits of the operations of the Super Yacht Marina and the need for this project to service, support and enhance the marina.

The Proponent sought to explain that it recognised that the operations of the Liquidity restaurant, previously on the site, had not been well managed in terms of noise impacts and had caused significant problems for the residents of Glebe. The Proponent noted that the Liquidity building had been a shed retrofitted for the purpose, without air-conditioning or adequate insulation, contrary to the purpose-built structures that it is proposing.

The Commission questioned the Proponent regarding the proposed landuses, particularly the Yacht Club and the restaurants and bars. The Proponent explained that a new Yacht Club was proposed to support the marina facilities, and that it had carefully considered the floorspace requirements. The Proponent also explained it sought to create a mix of uses including restaurants and bars with a maritime theme, similar to areas around the harbours of Auckland in New Zealand and Vancouver in Canada, and provided photos of some of these spaces. Suggestions that the proposal had the potential to mirror Darling Harbour's use and activity were denied on the grounds of the relatively small site area.

Leichhardt Council

On Thursday 8 November 2012 the Commission also met with staff from Leichhardt Council. Council raised a number of concerns regarding the proposal, and the ad hoc development of the area overall prior to completion of the planning work being undertaken for the Bays Precinct. Particular concern was expressed regarding traffic, with Council noting that the Cruise Passenger Terminal would also use James Craig Road and that the cumulative traffic impacts from the terminal and other development along the foreshore should be considered.

As part of their consideration of the wider area, Council addressed the heritage significance of the Glebe Island Bridge and its potential use as a pedestrian cycleway. Council raised concerns that the bridge would be demolished unless the community was activated around this issue and contributions were sought from development in the area. The Council argued that the State Government should undertake a cost benefit analysis of the retention of the bridge. Council also raised concerns regarding potential impact on the seabed from Super Yacht marine activity.

In addition, Council raised concerns about the out of centre location and isolated nature of the site, indicating that they believed the potential for antisocial behaviour would be compounded by the proposed late closing hours. It discussed the potential noise impacts in broad terms and suggested that noise should be reviewed after 12 months.

Sydney City Council

Sydney City Council was invited to meet with the Planning Assessment Commission to discuss its views on the application, but did not seek to take up the invitation.

Public Meeting

A public meeting was held from 3 pm on Thursday 8 November 2012 at the Balmain Town Hall. Twelve speakers presented at the meeting and a list of these speakers is included in Appendix 1.

Noise

The main issue raised at the meeting was the potential noise impact on residents opposite the site on Glebe Point Road.

Residents were particularly concerned about the noise impact from the entertainment uses on the site, including from live music and amplified music, but also from patrons of the venues. The potential for loud conversations, conversations from large numbers of people

on the site, amplified speeches to be heard and to cause sleep disturbance, disruption and irritation was raised. Noise from radios used on board the yachts at the marina is already an issue for the residents and the previous operations of the Liquidity Restaurant on the site had caused many problems.

Residents explained the historical problems that had occurred with the previous operations of the Liquidity restaurant on the site, with issues including:

- regular disruption from amplified wedding speeches;
- excessive noise levels from amplified music and noisy patrons;
- noise impacts outside of operating hours from continued talking, partying and drinking in the car park and surrounds;
- lack of compliance and enforcement; and
- lack of consultation and consideration from the operators of the restaurant.

Residents also provided detailed analysis and explanation of the noise limits they believed to be appropriate for the operations and the causes and reasons for music and speech to have more significant impacts than other types of noise – such as constant background traffic noise coming across the water.

Complaints handling, compliance and enforcement in relation to noise were also raised as issues, particularly given the difficulties the residents had experienced in dealing with the impacts of the Liquidity restaurant.

Speakers noted that noise impacts were not just on residents, but on other people in the area as well, including people using Bicentennial and Jubilee Park and the foreshore walkway, as well as rowers, kayakers and dragon boat racers recreating in Rozelle Bay.

A number of residents suggested further restrictions to ameliorate noise impacts, including:

- restricting the use of PA systems for background music only;
- conditions to cover complaint management during operations;
- conditions to limit noise levels to those provided by the World Health Organisation;
- consideration of the impact of excessive base component in modern music and requirements for lower sound levels for this type of music;
- restrictions on the noise levels at the source, with ongoing calibration;
- limiting the number of days a year that live music would be allowed;
- ongoing compliance monitoring and noise auditing;
- mechanism for making, publishing, handling and responding to complaints;
- no merging of internal and external spaces;
- limits on the number of doors onto outdoor areas;
- no tables and chairs outdoors after 7 pm;
- establishment of a community liaison group.

Other Issues

Other issues raised at the meeting included:

- the project's proposed uses, arguing that the project mainly comprises ancillary/entertainment uses, not marine uses, and that the site should be preserved for working harbour uses;
- concerns about the size of the proposed Yacht Club, particularly given the associated marina only has 24 berths, considered inconsistent with the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*;
- the importance of providing public access to the foreshore was emphasised;
- concerns regarding the proposed dormitories and potential for antisocial behaviour from people using the dormitory;

- runoff to the harbour and the need to minimise the hardstand area;
- social impacts of the service of alcohol;
- insufficient community engagement and consultation by the Proponent;
- concerns about the potential loss of the historic Glebe Island Bridge;
- need to retain options for light rail; and
- concerns about future modifications to the project.

Other meetings and correspondence

On Wednesday 14 November 2012 the Commission met with the Department of Planning and Infrastructure to discuss the proposal and the issues raised at the public meeting. The Department agreed to make a number of changes to the recommended conditions based on the discussion, as described in the Commission's Comments section below.

On Tuesday 20 November 2012 the Department provided the Commission with an amended set of conditions for its consideration.

The Commission also received numerous emails subsequent to the public meeting, including from residents of Glebe and their families, the Glebe Society and users of the Rozelle Bay and Bicentennial Park.

Commission's Comments

Strategic Planning

Leichhardt Council and a number of residents raised concerns that the project is being considered ahead of any potential outcomes of work from the Bays Precinct Taskforce. The Commission sought advice from the Department on this matter. The Department noted that the Bays Precinct Taskforce Report is currently with the Minister for Planning and Infrastructure. The Department emphasised that the report was not a master plan for the area and advised that there is no conflict between the project and the Bays Precinct Taskforce Report. Consequently, the Commission is satisfied the project can be considered under the current planning framework without awaiting any potential outcomes of the Minister's consideration of the Bays Precinct Taskforce Report.

Land use mix

The issue of the appropriate land use and mix of land uses for the site was raised at the public meeting. The Department explained it had restricted the projects use through conditions and that only 15.6% of the site would be permitted to be used for ancillary restaurant and bar type uses. The Department also noted that the objectives of the zone as articulated in SREP 26 allow for "waterfront commercial and tourism facilities". The Commission is accordingly satisfied that the mix of uses specified in the conditions meet the objectives for the area.

In relation to the Community's concerns that the area designated for the Yacht Club may eventually be converted to some other use, the Department strengthened the condition limiting the use of the buildings by adding a definition for "Yacht Club". The Commission is satisfied this will ensure the Western Building is not converted into a function centre, or overburdened by ancillary uses unrelated to the marina and the maritime, foreshore location of the site.

Noise

The key concern raised by residents at the public meeting related to the potential impact of noise from operations of the proposed Yacht Club, restaurants and bars. The Commission has given this issue careful consideration and also discussed this issue at length with the Department.

Subsequent to the Commission explaining the concerns expressed by the residents, the Department added additional conditions relating to complaints handling and management, limiting amplified noise and limiting the use of balconies. The Commission has further strengthened these conditions by requiring doors and windows to be closed after 10 pm, as committed to by the Proponent. The Commission also reduced the operating hours of the ancillary uses, in line with the Proponent's commitment that they would close at 11 pm on Sundays. Furthermore, the Commission has restricted the location of speakers, so that amplified music can only be played inside the buildings (unless part of the proposed trial for outdoor live music performances).

On this note, the Department advised the Commission that live music is already permissible within buildings, consequently only the noise levels and outdoor music can be restricted. The Commission has accordingly further amended the conditions to clarify that the trial applies to outdoor live music. Moreover, the Commission has excluded Christmas day and Good Friday as trial special event days.

In relation to concerns about noise from outdoor seating areas, the Department has revised conditions to specify that further development consents will be required for any outdoor seating, including seating within any lease areas associated with the proposed new buildings. Consequently the issue of appropriate operating hours for these outdoor seating areas will need to be considered in a future application. In the interim, the requirement to close doors and windows by 10 pm should go some way to reducing noise levels, regardless of whether outdoor seating is allowed to be occupied.

The Commission notes that the Department has recommended noise limits relating to both licensed premises and general operations on site. The conditions now also require amplified music to be controlled by a calibrated limiter and appropriately secured to minimise the risk of tampering.

In relation to the outdoor performance of live music, conditions only allow an eight day trial at this stage. If the trial demonstrates that noise levels can be suitably managed, a modification application would have to be submitted to the Department for assessment and public consultation. Only if the modification was subsequently approved could any further outdoor live music events occur. If the Proponent cannot demonstrate compliance with the conditions during the trial, no further outdoor live music events may occur.

Complaints Handling

The Commission notes the resident's concerns about complaints management, particularly given the apparent difficulties with the previous restaurant use. Consequently, in addition to conditions about complaints handling, the Commission has added a condition requiring a Community Liaison Committee to be established for both construction and operations on site. The Proponent has already committed to establishing a Community Liaison Committee, but specified that it would include two representatives from the nearby residential area. The Commission is not satisfied this would provide sufficient community representation and so it has required representation from a broad range of stakeholders, including residents and interest groups.

The residents were also concerned that it may not be possible to get an immediate response or remedy to an incident, particularly if it occurred late at night. Consequently, the Commission has added a requirement to publish a direct telephone number for the onsite manager who is to be available during operating hours.

The community also raised concerns about enforcement of conditions and future modifications. The Department has confirmed that the Minister is the consent authority for the site, as set out in Schedule 6 of *State Environmental Planning Policy (Major Development) 2005* and Schedule 2 of *State Environmental Planning Policy (State and Regional Development) 2011*. Consequently, unless these policies change, any modifications or further development applications on the site will be assessed by the Department and determined by the Minister, or his delegate.

The Commission acknowledges the resident's previous difficulties in establishing which Authority was responsible for enforcement of conditions. Consequently, in addition to the community liaison committee and complaints handling requirements in the conditions, the Commission advises that there are two potential avenues for further action that the community should be aware of.

1. In the event that someone believes the project's conditions of approval have been breached, they can contact the Department's compliance team. For further information see the Department's Compliance Policy and Breach Management Guidelines.
2. The Office of Liquor, Gaming and Racing deals with noise and disturbance from licensed premises in NSW. In the event that there is an issue with licensed premises on the site, the Office of Liquor, Gaming and Racing also has a Disturbance Complaints Unit. For further information see the Disturbance Complaints Fact Sheets and Noise Complaints form.

Other issues

The Commission agrees with the Department's recommendation to reduce the height of the car park lift overrun. Any signage on this structure must be restricted to identification signage, and no advertising signage is allowed.

A number of people as well as Council also raised concerns about the future of the Glebe Island Bridge. The Commission acknowledges this issue, but does not believe there to be a direct nexus between this project and the future of the Bridge. The Commission also notes that the future of the Bridge is a policy issue for wider Government consideration.

Council's concerns regarding traffic issues in the wider area and the impact of a number of new developments are noted. However the Commission notes that the traffic volumes resulting from this proposal are comparatively small and will not significantly impact on the local area.

Council's concerns regarding potential impact on the sea bed from Super Yacht movements have not been considered as part of this application, which is wholly related to land based development.

Commission's Determination

The Commission has carefully considered the Director-General's Environmental Assessment Report, the recommended conditions and the submissions on the project.

The Commission has concluded that the potential impacts on the amenity of the area and nearby residential receivers can be adequately managed through the design of the buildings and the extensive and stringent controls and management measures prescribed in the conditions.

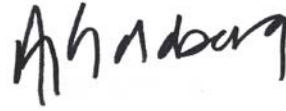
The Commission is also satisfied the project will provide services to support and enhance the operations of the Super Yacht Marina, is consistent with the relevant planning controls for the site and represents an improvement to, and more efficient use of, the site and the

foreshore as well as an opportunity to encourage greater marine investment in and tourist use of the location in line with objectives for the area.

Consequently the Commission has determined to approve the project, subject to conditions.



Mr Garry West
Member of the Commission



Ms Abigail Goldberg
Member of the Commission

Appendix 1

Speakers at the Public Meeting held on Thursday 8 November 2012

1. Colin Shroeder
2. Judith Byrne
3. Mary Hendrix
4. E/Prof Andrew Wood
5. Dr Martin Lawrence
6. Dr Marion Manton
7. Carolyn Foreman
8. Mark Dent
9. Robert Bruce
10. Dr Judy Cashmore
11. Ros Wheeler and Rosemary Adams