



Response to  
Submissions

MOD1 s75W Eastern  
Sector

# Sydney Superyacht Marina

MOD1 MP09\_0165



4/11/2015

## Details

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In respect of: Land based facilities associated with  
Sydney Superyacht Marina

Modification application MP 09\_0165 MOD 1

Applicant Name: Sydney Superyacht Marina Pty Ltd

Applicant Address: PO Box 436 Rozelle NSW 2039

Land on which activity to be carried out: Part Lot 32 and Part Lot 33 DP 1151746,  
Sydney Super Yacht Marina, 2 Maritime  
Court/Lot 2 James Craig Road Rozelle  
NSW 2039

Dated 4/11/2015

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## Definitions

2008 Consent	Development approval 088-05-88 granted by the delegate of the Minister for Planning on 29 August 2008 under Part 4 of the EP & A Act covering the water and land parts of the Site, but excluding that part of the Site on which the Liquidity building then stood.
2012 Consent	Development approval to MP09_0165 granted by the Planning Assessment Commission as delegate of the Minister on 26 November 2012 under the then Part 3A of the EP & A Act covering the land based part of the Site.
Conditions of Approval	The Minister's Conditions of Approval for the Project
Department, the	Department of Planning & Environment
Master Plan	Rozelle and Blackwattle Bays Maritime Precincts Master Plan dated 6 September 2002 made pursuant to Sydney Regional Environmental Plan No. 26 – City West.
Minister, the	Minister for Planning & Infrastructure.
NSW Maritime	Maritime Authority of NSW trading as NSW Maritime now comprised within the RMS
Proponent, the	Sydney Superyacht Marina Pty Ltd ABN 94 127 177 904
Site	Part Lot 32 DP1151746 being the subject of the 2012 Consent, now comprised in Lot 2 DP1209992

## Acronyms

DCP	Development Control Plan
EA MOD1	Environmental Assessment by Urban Perspectives dated 26 March 2015 on behalf of the Proponent for modification of development at the Site for MOD1
EP&A Act	Environmental Planning and Assessment Act 1979
GFA	Gross floor area (as defined under SREP 26)
GFC	Global Financial Crisis which cause a financial downturn during 2008 and subsequent years
LGA	Local Government Area
MOD1	The modification to which this Response to Submissions relates covering generally the water and eastern sector of the Site.
MOD2	The modification approved by the Department on 27 May 2015 which relates principally to the western building on the Site
PAC	Planning Assessment Commission
PPR	Preferred Project Report
RMS	Roads and Maritime Services
SEPP	State Environmental Planning Policy
SREP	Sydney Regional Environmental Plan
SREP26	Sydney Regional Environmental Plan No. 26 – City West
SSM	Sydney Superyacht Marina Pty Ltd ABN 94 127 177 904.

# 1. Introduction

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## 1.1 General

Major Project MP09\_0165 was approved in 2012 for the land based facilities at Sydney Superyacht Marina (2012 Consent). A modification application was approved by the Department on 27 May 2015 which relates principally to the western building on the Site (MOD2). That modification included some changes to the gross floor area (GFA) of the western building and MOD 2 was determined after the lodgement of this modification (MOD1). MOD1 principally considers modifications to the eastern building and car park and the inclusion of the water part of the marina within the 2012 Consent.

The Environmental Assessment Report for MOD1 (EA MOD1), was exhibited from 22 April 2015 until 22 May 2015. Submissions were received until September 2015 and each is considered in this Response. Eleven submissions were received from agencies, and 149 from the public and community groups, the majority of which objected to the proposed amendments. Two were supportive. Sydney Superyacht Marina Pty Ltd (SSM) has reviewed the submissions and responds in this document to the issues raised.

## 1.2 Principal Issues

The issues raised in submissions generally included:

- **Uses of the Site:** Many submissions mentioned concern about how the Site was to be used, reflecting concerns raised prior to the approval of the 2012 Consent. Those matters were considered and approved in the 2012 Consent. The primary concerns were that the area will change from a maritime precinct (working harbour) to an entertainment precinct; that there is an intensification of uses; that the marina was originally approved as a temporary location for the Sydney Olympics and lacks legitimacy as a permanent fixture; that the principles of SREP (Sydney Harbour Catchment) 2005 have not been met; access to the foreshore; and impacts on passive watercraft using the Bay.
- **Noise:** Many submissions raised noise concerns, the majority of which had been subject to extensive assessment and conditioned in the 2012 Consent. Principal concerns arising from the proposed modifications included:

- Increased noise from more boats, higher car park, extra level, outdoor seating
  - No noise controls on yachts
  - Further testing needed including at night
  - Noise travels over water
  - Will impact on residents and park users
  - Previously agreed controls between the community and the developer have been slanted in favour of the developer
  - Many or all noise controls agreed with the PAC are being withdrawn or unwound.
- **Traffic:** Concerns included that there are either too few or too many car parks; that the modification will lead to traffic congestion and that there were inadequate cycling opportunities.
  - **Navigation and water congestion:** Concerns included that the boats would expand further into the Bay; and that the increase in vessels would create navigational and safety issues for the rowers, dragon boaters and kayakers using the Bay.
  - **Environmental Impact on water quality:** Concerns were raised that the increase in boats would disturb contaminated sediments in the Bay and therefore create water quality issues.
  - **Visual Impact:** Many submissions indicated that the modifications were vast, overbearing, and removed vegetation. They also alleged that the applicant had used misleading images. These matters are presumed to generally arise from flyers issued by a community group which showed images of the adjacent Sydney Boathouse development, not SSM's proposed modifications.
  - **Pre-empting Urban Growth Bays Precinct Transformation:** Urban Growth NSW held its Bays Precinct Sydneysiders Summit on 16 and 17 May 2015, during which their discussion paper "Transforming City Living: The Bays Precinct" was disseminated. Several submissions suggest that the modification assessment should await the outcome of the Urban Growth process, given that they believe that the modification will impact on the future of the old Glebe Island Bridge.
  - **Community Consultation:** Some submissions raised concerns regarding the extent of community consultation.

Other issues which were raised in considerably lesser numbers by the public included:

- That the Global Financial Crisis provides no justification for the modification;
- That a s75W modification application was an inappropriate mechanism for the modifications requested; and
- The Community Liaison Group composition is inappropriate.

The issues raised by the Authorities generally reflected their charter of interest, however Leichhardt Municipal Council and the City of Sydney raised a variety of issues, generally reflecting the main issues of the public, but in addition raising other issues including:

- The legal framework for the requested modification; and
- The complexity of the approval process including the interplay of the Part 4 and Part 3A approvals.

In a letter from the Department of Planning to Urban Perspectives dated 9 June 2015, the Department requested various other issues also be addressed, including:

- Updating plans and documentation to take into account the approval of MOD 2 and the provision of landscape plans;
- Further details about the marina layout operation; and
- Further details about what consultation has occurred.

This Response sets out Sydney Superyacht Marina's response to the issues raised by the public submissions in Chapter 2. The Authorities' submissions are considered in Chapter 3. The Department issued a letter dated 9 June 2015 with a number of matters which are addressed in section 3.1. In each case the issue raised by the submission is set out and the response is detailed below. A summary document dealing with each submission is set out in **Appendix B** with a table with individual responses to points made in the submissions, which generally reference the responses made in Chapter 2 or 3.

### 1.3 Amendments to GFA as a result of the approval of MOD2

The EA MOD1 sought changes to the GFA figures approved in the 2012 Consent. On 27 May 2015, MOD2 was approved by the Department which principally made minor amendments to the western building, reduced the western building's GFA by 255m<sup>2</sup>, deleted 13 car spaces along the northern side of the western building and made amendments to the location of uses within the western building. This had the effect of

reducing the GFA and increasing the percentage restrictions for the ancillary and provided uses on the Site.

The EA MOD1 did not take into account the requested changes sought under MOD2, which was under assessment at the time of lodgement. The Department has requested that all documentation reflect the MOD 2 changes, including changes to gross floor areas, land uses, car parking and plans. To explain the variances in GFA arising from the impacts of MOD2, this matter is dealt with early within this Response.

Table 1 includes a summary of how the approved and requested figures have altered. It should be noted that due to recalculation of the GFA in accordance with SREP26, together with very minor building size amendments, MOD2 had the effect of reducing the yacht club GFA by 153m<sup>2</sup>, the provided by 15m<sup>2</sup> and the commercial maritime by 87m<sup>2</sup>, totalling a reduction of 255m<sup>2</sup>. This resulted in an amendment to condition A6(b) and (c) of the 2012 Consent of the maximum approved GFA for ancillary and provided from 1417m<sup>2</sup> or 22.9% of total GFA to 1402m<sup>2</sup> or 23.58% of total GFA.

This Response to Submissions, seeks to revert the maximum figures back to those originally approved in 2012. It is evident from Table 1 that the requested GFA figures under this Response are 5m<sup>2</sup> greater than under the EA MOD1. That alteration results from the recalculation of GFA under MOD2 and adoption of MOD2 into this MOD1. The physical size of the proposed modifications to the eastern building has not increased between the EA MOD1 and this Response. This Response is requesting the GFA figures set out in the final two columns of Table 1.

Table 1 Amendments to GFA and % of Uses

Use	Approved 2012		Approved MOD2 2015		Requested in EA MOD1 Min & Max		Proposed in Response for MOD1 Min & Max **	
	m <sup>2</sup>	% use	m <sup>2</sup>	% use	m <sup>2</sup>	% use	m <sup>2</sup>	% use
<b>A Marine</b>	2851	45.9	2764	46.5				
Min					3048	49.1	3019	48.6
Max					3718	54.0	3689	53.6
<b>B Yacht Club</b>	1932	31.2	1779	29.9				
Min					1745	28.1%	1779	28.6
Max					1745	25.4%	1779	25.8
<b>C Ancillary/ Restaurants</b>	966	15.6	966	16.2				
Min					952	15.3	981	15.8
Max					952	13.8	981	14.2
<b>D Provedore</b>	451	7.3	436	7.3				
Min					465	7.5	436	7.0
Max					465	6.8	436	6.3
<b>TOTAL:</b>	<b>6200</b>	<b>100</b>	<b>5945</b>	<b>100</b>	<b>Min 6210 Max 6880</b>		<b>Min 6215 Max 6885</b>	
<b>Ancillary + Provedore</b>	1417	22.9	1402	23.58				
Min					1417	22.8	1417	22.8
Max					1417	20.6	1417	20.6

\*\* This Response seeks approval for the figures set out in these two columns for m<sup>2</sup> and % use.

Conclusions from Table 1 include that under both the minimum and maximum scenarios of commercial maritime GFA:

- The proposed GFA and % of commercial maritime uses is greater than the original approval and as approved by MOD2;
- The GFA of the combined total of ancillary and provedore uses will remain the same as originally approved in 2012 with a lower % of the GFA than under the original 2012 and MOD 2 approvals;
- The GFA and % use of the Site by the yacht club will decrease from the original 2012 approval; and
- Leaving aside the flexible use GFA in the car park, the GFA in the two commercial buildings has increased by 10m<sup>2</sup>. 530m<sup>2</sup> of the 540m<sup>2</sup> on the second

level arises from a redistribution of GFA – 255m<sup>2</sup> from the recalculation of GFA in the western building and 275m<sup>2</sup> from the reduced floorplate of the eastern building to accommodate the larger car park.

Taking into account the amended GFA, the proposed distribution of uses over the Site is proposed as set out in Table 2.

**Table 2 Proposed Distribution of uses**

Building	Level	Max m <sup>2</sup> GFA	Land Use	Max m <sup>2</sup>	% GFA of Site	Max m <sup>2</sup>	%
Western	Ground	1233	A Marine	430	6.2		
			B Yacht Club	367	5.3		
			D Provedore	436	6.3		
	First Floor	1412	B Yacht Club	1412	20.5		
<i>Subtotal</i>						2645	38.4
Eastern	Ground	1550	A Marine	1024	14.9		
			C Restaurant/bar	491	7.1		
			First Floor	1550	A Marine	1025	14.9
			C Restaurant/bar	490	7.1		
	Roof level	540	A Marine	540	7.8		
<i>Subtotal</i>						3570	51.9
Car Park	Ground	220	A Marine	220	3.2		
	1, 2, & 3	450	A Marine	450	6.5		
<i>Subtotal</i>						670	9.7
<b>TOTAL</b>		<b>6885</b>		<b>6885</b>	<b>100.0%</b>	<b>6885</b>	<b>100.0%</b>

#### 1.4 Change in Title Details

On 30 July 2015 Lots 32 and 33 DP1151746 were subdivided into 5 lots by the landowner (the RMS) within DP1209992. The land side of the marina did form part of Lot 32, and the water section previously formed part of lot 33 which was the waters of Rozelle Bay.

Lot 1 DP1209992 covers the water area of the marina and is shown as 1.749 hectares in area. Although minor surveying alterations reflect a slight variation from the area, it is the same as the area approved in the 2008 Consent. Lot 2 of DP1209992 comprises the whole of the land side of the marina and is shown as 1.17 hectares in area. The title particulars for the 2012 Consent are requested to change accordingly to cover the whole of Lot 1 and Lot 2 DP1209992.

The new Deposited Plan is set out in **Appendix A**.

## 1.5 Summary of Changes between EA MOD1 and Response

Table 3 sets out the amendments to the proposed modification from the EA MOD1 which are requested as part of this Response to Submissions.

**Table 3 Amendments to EA MOD1 proposed in Response to Submissions**

Topic	Environmental Assessment	Change made in Response	Section in this Response
<b>Title Description</b>	Part Lot 32 and part Lot 33 in DP 1151746	Lots 1 and 2 in DP1209992	1.4 Appendix A
<b>Plans</b>	Car park lift overrun height at RL18.6	Lift overrun height reduced to RL17.9	1.3 DA08G, DA09F, DA10F, DA44, DA45
		Requested to show approved Sydney Boathouse marina plan	3.1 DA02E, DA04RF
		Relocation of the western building service lift to the east and resultant minor internal alterations and external northern façade amendments	3.1.2.1 DA05G, DA06F. See also DA30, DA31, DA32
		Small roof line amendment on western side of western building to accommodate the Ausgrid kiosk. Provision made for this in MOD 2	DA06, DA07, DA31
		Amended architectural plans	3.1.7
		Revised landscape plans	3.1.8
<b>Noise</b>	Air locks on Western building yacht club	No longer requested. Dealt with by conditions in MOD2	2.2.1
<b>Car Parking</b>	13 Spaces on northern side of western building to be removed	No longer required as approved in MOD 2	2.1.3, 5
<b>Conditions</b>		Take into account MOD 2, the new plans, altered title particulars and revised GFA figures	5 and Appendix J

## 2. Response to Key Issues in the Public Submissions

## 2. Response to Key Issues in the Public Submissions

The issues raised by the public submissions are categorised in section 1.2 above. **Appendix B** includes a detailed response to each individual submission. The issues and response to the categories are covered in this Chapter 2.

### 2.1 Uses proposed on the site

Concerns with the use of the site are summarised as:

- The land is zoned for marine use but being approved for and potentially expanded for an entertainment precinct/facility;
- The approved uses are inappropriate and the modifications will make it worse;
- The Superyacht Marina was originally approved temporarily for the superyachts during the 2000 Olympic Games and should never have been made permanent;
- The modifications include increases in matters such as numbers of boats, height of buildings and number of car spaces which represents developer creep;
- The land is publicly owned and should be protected for the public good which has precedence over the private good (essentially citing SREP (Sydney Harbour Catchment) 2005 objectives);
- There will either be reduced or no public access to the foreshore;
- A belief that the area of water occupied by the marina will expand further into the Bay;
- Passive water for community boating activities eg rowing and dragon boat racing will be interrupted; and
- Inadequate community consultation.

#### 2.1.1 The uses are not marine uses but an entertainment precinct

##### Issue

That the approved or the proposed modified development is not a marine precinct, rather it is an entertainment precinct.

Storage is an inappropriate use.

The new level 2 area's description as a 'commercial maritime' use is uncertain.

### Response

The GFA of uses, other than commercial maritime uses, will be less than that approved in 2012.

All of the requested increase in GFA over that approved in 2012 is for additional commercial maritime use.

The 2012 Consent Condition A6 clearly defines commercial maritime uses as:

*"Commercial maritime uses may include maritime offices, maritime workshops, chandlery, maritime retail, provisioning, maritime operations and dormitory style accommodation. Dormitory Style accommodation is restricted to 3 dormitories servicing commercial maritime operations only (refer Condition F11)".*

The definition is inclusive – not restrictive. Use of parts of the car park building for marine storage and for small marine businesses is not introducing new uses - they clearly form part of the approved uses on the Site. Commercial maritime is the use which is requested for Level 2 of the eastern building.

The proposed storage is ancillary to the commercial maritime uses at the site. It is proposed to store equipment associated with the marine businesses and vessels on site.

The proposed additional GFA increases the commercial maritime uses. The small increase in the ancillary and provided GFA allows the reduced levels under MOD 2 to revert to the GFA approved in 2012 (refer to Table 1). The proposed modifications as exhibited sought between 10m<sup>2</sup> and 680m<sup>2</sup> of additional GFA over the 2012 approved figures, the whole of which would be applied to commercial maritime uses as defined. Due to the approval of MOD2 the exact GFA has slightly altered but there remains no additional yacht club, ancillary or provided GFA sought above that approved in 2012.

The requested use of the 2<sup>nd</sup> level outside area is restricted to commercial maritime uses. It is proposed to include landscaping and seating and associated amenities such as BBQs depending upon the tenant's requirements, so that the commercial maritime tenancies can provide facilities for their staff and take advantage of the outlook from their offices. This area is not proposed for ancillary restaurants and cafes.

Ancillary uses are an accepted part of development (eg a café in an office building, or parking and offices for an industrial development). The use of outdoor areas is ancillary to the approved commercial maritime uses, yacht club and ancillary uses. They are not new uses, but allow Site users and visitors such as those using the foreshore access, to take advantage of the harbour location.

The land part of the site is zoned Waterfront Use Zone under SREP 26 City West, the objectives of which have been set out in the EA MOD1. There is nothing in the modification which is counter to those objectives.

### 2.1.2 Comparison as an entertainment district or precinct

#### Issue

This represents a mini-Darling Harbour, and is an entertainment precinct.

#### Response

Comparisons as a mini Darling Harbour are not particularly relevant. The three substantial developments around Darling Harbour total nearly 39,000m<sup>2</sup> of retail (including shops, cafes, restaurants and function areas). This is comprised of Harbourside at 20,820m<sup>2</sup><sup>1</sup>, Cockle Bay 8,000m<sup>2</sup><sup>2</sup>, and King Street Wharf at 10,000m<sup>2</sup><sup>3</sup>.

The total area of the SSM approved areas in 2012 which were not commercial maritime uses (yacht club, provedore and ancillary) was 3349m<sup>2</sup>. The requested non-commercial maritime uses in this Response is 3196m<sup>2</sup>, being approximately 8% that of Darling Harbour's non-commercial maritime uses. We do not consider it appropriate to compare a development with another that is over 90% larger.

### 2.1.3 Intensification of use

#### Issue

The intensification of the use is unwarranted. It introduces uses not canvassed in the original application.

#### Response

The modification as amended by this Response, seeks an increase in GFA in the eastern building of 270m<sup>2</sup>, although the GFA of the western building was reduced by MOD2 by 255m<sup>2</sup>. This represents a net increase of 15m<sup>2</sup> within the western and eastern buildings over the original 2012 approval.

<sup>1</sup> Savills Research NSW March 2015 *Spotlight Sydney CBD Retail* <http://pdf.savills.asia/asia-pacific-research/australian-research/australia-retail/savillsresearch-spotlight-sydney-cbd-retail-q4-2014.pdf> retrieved 29.06.15

<sup>2</sup> Civic Arts *Waterfronts* <http://www.civcart.com/downloads/WATERFRONTS.pdf> retrieved 29.06.15

<sup>3</sup> Brookfield Australia Vision comple6td with One Shelley Street <http://www.au.brookfield.com/latest-news/vision-completed-with-one-shelley-street> retrieved 29.06.15

The car park building is proposed to have some additional car spaces. The original approval was for 219 spaces on Site. At the request of the RMS, MOD 2 deleted 13 car spaces which were on the north side of the western building. From the original 2012 approval the increase in car spaces will be between 18 extra car spaces (if all of the flexible use spaces are used for the other commercial maritime uses) and 88 if none of the spaces are used for the commercial maritime uses. Approximately a half of the proposed additional uses in the flexible use car spaces will be for marine storage, which is not a high intensity activity. The spaces in the ground floor of the car park for commercial maritime uses are to enable small marine contractors the ability to undertake marine activities on Site. The carpark is behind the eastern building and not visible from across the Bay. The proposed commercial maritime uses will face to the north.

The request for use for outdoor seating was made in the original application. Outdoor seating for restaurants and cafes and the yacht club was taken into account in the noise modelling provided with the Preferred Project Report Addendum. The building design with decks and balconies was approved including with planter boxes on the decks on the basis that an application for outdoor seating would be made in future.

#### **2.1.4 Change from working harbour**

##### **Issue**

The area should be working harbour.

##### **Response**

The approved development, including the proposed modifications, continues to represent marine interests occupying the waterfront lands and supporting the marine industry of the Harbour.

The commercial maritime uses will occupy approximately 50% of the GFA of the Site. The GFA of uses other than commercial maritime uses (as defined in Condition A6(a) of the 2012 Consent) will be less than that approved in 2012.

#### **2.1.5 The Superyacht Marina was a temporary use for the 2000 Olympic Games**

##### **Issue**

Some are aggrieved that they were apparently advised prior to the Sydney Olympics in 2000 that the marina would be temporary. There is no legitimacy to the consents or modification because of that earlier advice.

**Response**

This modification will not alter the permanent nature of the existing consents.

NSW Maritime applied for the 2008 Consent which was approved by the Sydney Harbour Foreshore Authority as delegate for the Minister of Planning. It formalised a permanent approval for use of the water and the majority of the land part of the Site, excluding the area which included the Liquidity building. Permanent consent under Part 3A was also provided in November 2012 for uses and works on the land part of the Site. There already exist two consents which together provide for permanent use of this area as a marina.

**2.1.6 The marina will become a playground for the super-rich****Issue**

The modification will be a playground for the super-rich.

**Response**

The 2012 Consent provides for a yacht club (which is open to members and their guests), commercial maritime offices which support the marine industry generally around Sydney, and ancillary facilities which support those uses and which will be available to all who visit the site, including the broader public using the approved foreshore promenade. The modification would enable a greater use of the foreshore area by all visitors to the Site, irrespective of their income.

The 2008 Consent provides that the whole of the mooring area predominantly is to comprise superyachts with some smaller vessels. The requested increase in vessel numbers is to allow more vessels which are smaller than superyachts to moor, with the likelihood of attracting a broader ownership base. The area of water based use is not changed from the previous consent.

**2.1.7 The modification is on public land****Issue**

Some contend that a development of this kind should not occur on publicly owned waterfront land.

## Response

The modification will not alter the fact that there are approved commercial activities on this public land, which land will remain in public ownership. The ancillary uses and foreshore access will remain publicly accessible under the modification.

Sydney Harbour has vast areas of waterfront land which are publicly owned but on which private businesses operate on land leased from the State Government or a public entity. Sydney Harbour Foreshore Authority owns 60 hectares of waterfront leisure, entertainment and business areas at Darling Harbour and 36 hectares of waterfront land between Sydney Harbour Bridge and Sydney Opera House<sup>4</sup>. Numerous commercial activities take place on this land. The NSW State Government owns 25 ports around the state.<sup>5</sup> The RMS manages more than 2000 wetland leases covering foreshore structures in Sydney Harbour, Botany Bay, Newcastle Harbour and Port Kembla Harbour, including commercial and industrial business activities.<sup>6</sup> The Sydney Fish Markets operates on publicly held land in Blackwattle Bay.

The proposed uses will be the subject of leases. There is no permanent alienation of public land.

### 2.1.8 SREP (Sydney Harbour Catchment) 2005 principles

#### Issue

The modification does not meet the principles set out in section 2(2) of SREP (Sydney Harbour Catchment) 2005 which are adopted to enable the aims of the plan to be achieved. These are:

- (a) *Sydney Harbour is to be recognised as a public resource, owned by the public, to be protected for the public good,*
- (b) *the public good has precedence over the private good whenever and whatever change is proposed for Sydney Harbour or its foreshores,*
- (c) *protection of the natural assets of Sydney Harbour has precedence over all other interests.*

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<sup>4</sup> Sydney Harbour Foreshore Authority website "Places we Own"  
[http://www.shfa.nsw.gov.au/sydney-Our\\_places\\_and\\_projects-Places\\_we\\_own.htm](http://www.shfa.nsw.gov.au/sydney-Our_places_and_projects-Places_we_own.htm) accessed 13.08.15

<sup>5</sup> Superyacht Australia <http://www.superyacht-australia.com/nsw-land-and-property-management-authority/> accessed 13.08.15

<sup>6</sup> RMS Property and Planning <http://www.rms.nsw.gov.au/maritime/property-planning/leasing/index.html> accessed 13.08.15

There should be an increase in public benefit or an improvement in public space.

**Response**

These principles have a supporting role to achieve the aims set out in section 2(1) of the SREP which include:

- (b) to ensure a healthy, sustainable environment on land and water,*
- (c) to achieve a high quality and ecologically sustainable urban environment,*
- (d) to ensure a prosperous working harbour and an effective transport corridor,*
- (e) to encourage a culturally rich and vibrant place for people,*
- (f) to ensure accessibility to and along Sydney Harbour and its foreshores,*

The report by Marine Pollution Research Pty Ltd lodged with the EA MOD1 demonstrates that the sediments on the Bay floor will not be disturbed by the vessel movements. The necessary plans to manage any potential risks to the water environment have been recommended by the Marine Pollution Research Pty Ltd.

Additional commercial maritime use within the car park building and use of the outdoor areas for seating will not affect the health and sustainability of the land or water. The land based uses are already approved.

The modifications to the berthing layout will enable greater efficiency of use of the mooring area of the marina, thereby enhancing the prosperity of the working harbour and utilising the transport corridor of Sydney Harbour. The use of outdoor seating and increased maritime uses will not only increase the prosperity of the working harbour but also encourage the site to be vibrant and make the already approved foreshore access, more amenable.

Addressing the principles set out in section 2(2) of the SREP:

- (a) The whole of the marina will remain in public ownership and remain a public resource for future development, and the management plans will protect the Bay;
- (b) The submissions raised concern that the granting of consent to the modification will enable the private good to take precedence over the public good. The modification seeks to include within the 2012 Consent, water which is already included under a different consent for a marina and subject to leasing arrangements with SSM. If the modification is approved access to that area by the general public will not change from the current approval. However the

modification will amend the placement of pontoons and the number of vessels able to be moored. This will have a minimal increase in the vessel traffic in the Bay which is addressed in section 2.4 of this Response. On land, it will provide the ability for the public to appreciate the foreshore by using the outdoor seating areas. There will be both a public and a private benefit if the modifications are approved.

- (c) The natural assets of the Harbour are not affected to any significant degree by this modification. The water quality is not envisaged to be affected other than on a temporary and very limited basis when the piling works are conducted (see the Marine Pollution Research report accompanying the EA MOD1). The view across the Bay will not be significantly affected by the proposed increase in vessels moored, given that smaller vessels have a smaller view impact than superyachts. The increase in height of the buildings is demonstrated in the visual impact analysis in section 2.6 of this Response, to be minor. This is also demonstrated in Appendix G of the EA MOD1.

The benefit to the public from the modification will be the ability to access and make use of the ancillary facilities by sitting outdoors at the cafes and restaurants. Currently there is nowhere open to the public on Rozelle Bay where those using the foreshore walk can appreciate the Bay whilst having purchased refreshments. Increased maritime facilities will increase the prosperity of the working harbour.

### **2.1.9 The modification represents “developer creep”**

#### **Issue**

A community group, Save Our Bays undertook a campaign of objection to the proposed modifications. It highlighted articles in the Sydney Morning Herald referencing “developer creep” – firstly by Sean Nicholls on 16 May 2015 and also by Elizabeth Farrelly on 14 May 2015 and 4 June 2015. The contention is that the proposed modification is another example of this.

#### **Response**

Elizabeth Farrelly's 14 May article<sup>7</sup> commences with the following:

*“Private profit, public land. It's not always evil. Cafes, restaurants and boating businesses encrust our lovely harbour like salt on a margarita glass and many of*

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<sup>7</sup> Farrelly E Sydney Morning Herald 14.5.15 “Feckless regulators let developers run riot on Sydney's public land” <http://www.smh.com.au/comment/feckless-regulators-let-developers-run-riot-on-sydneys-public-land-20150512-gh0cwm> accessed 13.08.15

*us, myself included, would like more. So what principles should govern this lopsided dance between the wealthy few and the voiceless many? How can it be choreographed to benefit the city as a whole?"*

The article firstly addresses the revocation of an approval for an aged care facility by the then Prime Minister, questioning the reasons for that revocation. The article then expresses concern about perceived favours done to the rich at Barangaroo for James Packer. Whilst she does state "No private building on public land", that is not the main thread of her concern. Her concern is principally about favours done to the super rich, and our then Prime Minister being beholden to Alan Jones.

Elizabeth Farrelly's article of 4 June 2015 entitled "Kids' play for developers let loose on city" concerns itself with inappropriate development funded by government on large tracts of public land, including the Bays Precinct, however Darling Harbour is its principal target. Ms Farrelly pleads that the Bays Precinct and Central to Eveleigh not become a "mundane monoculture of flats". The article mentions with disdain a proposed 84 berth superyacht marina at Berry's Bay in Waverton with additional dry storage. There is nothing in this article which criticises a modification to an approved development for non-residential purposes at Rozelle Bay.

Sean Nicholls' article<sup>8</sup> addresses James Packer's casino at Barangaroo which was a modification to build a 170 metre hotel in the pier in the middle of the bay, then the revised plan to have the Crown building at 275 metres high. This is in addition to an almost doubling of the total floorspace from the original concept plan.

The proposed modification at the site cannot be compared in any respect to the huge modifications in the approvals at Barangaroo since the original concept plan. It is not possible to say that the proposed modifications render the development a different creature to the original proposal.

The proposed modifications and the examples used in the articles are not comparable.

### **2.1.10 Access to the foreshore**

#### **Issue**

Some submissions believe that the foreshore access already provided will be reduced, or that there will not be any foreshore access, or that the development alienates the public from the foreshore.

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<sup>8</sup> Nicholls S Sydney Morning Herald 16.05.15 "Developer creep puts James Packer's Barangaroo palace back in the spotlight" <http://www.smh.com.au/nsw/developer-creep-puts-james-packers-barangaroo-palace-back-in-the-spotlight-20150513-gh172o.html> accessed 13.08.15

**Response**

Access to the foreshore will not be amended, hindered or diminished by this modification. The 2012 Consent provides for 24 hour access for the public. The ability to appreciate the site in conjunction with that access will be enhanced by the development of the site to include outdoor seating.

**2.1.11 No facilities for low income users****Issue**

There are no facilities for low income users of the harbour eg small boat rentals, kayakers, rowers, walkers, picnickers or sailing schools.

**Response**

The site is not zoned for public open space and public uses. Other areas of the Harbour provide facilities for the mentioned users mentioned above. The provision of facilities for smaller craft is not compatible with the existing and approved superyacht marina where the principal operation is to accommodate and provide facilities for larger vessels. At present, rowers have their own clubhouses and facilities in Glebe. The concrete apron and drop to the water makes the Site unsuitable for the launch of kayaks or other small craft.

The dragon boaters have some facilities under Anzac Bridge, although there has been some level of interest by some clubs to base at the marina. This could be accommodated if storage of watercraft on the land is approved as part of the modification and once the pennant crane is in place.

There are at least four sailing clubs in close proximity including Drummoyne and Greenwich and two at Balmain, which provide facilities for smaller sailboats and dinghies including sailing schools.

Walkers and picnickers have a large area of land on the southern side of the Bay to walk. The 2012 Consent provides for a 24 hour foreshore walk on Site and this is not proposed to be amended in the modification. Public benches on the wharf are to be provided for public seating and are set out in the landscape plans accompanying this Response.

## 2.2 Noise

Many of the noise issues relate to issues previously raised and addressed in the 2012 Consent. Some of the issues raised do not relate specifically to the modification application but are instead general noise concerns. The principal issues raised about noise include:

- Increased noise from more boats, higher car park, extra level, outdoor seating and this is inadequately conditioned or assessed. The application fails to include testing at night and the impact of noise from alcohol fuelled visitors;
- Problems from Liquidity and party boats in the Bay;
- No noise controls on yachts;
- Noise travels over water and this is not adequately assessed;
- Previously agreed controls between the community and the developer have been slanted in favour of the developer. Those noise controls are being withdrawn or unwound from those negotiated by the community with the Planning Assessment Commission;
- The air locks on the yacht club first floor should not be removed (this matter is no longer relevant as their removal has been approved in MOD2);
- The development will impact on residents and park users;
- There should be no amplified announcements, or noise after 10pm and no loud music or amplified sound; and
- The yachts already hoot when leaving or arriving.

### 2.2.1 Noise controls are being reduced

#### Issue

Controls which are already in place negotiated by the community with the Planning Assessment Commission are either being withdrawn in full or in part.

#### Response

The 2012 Consent includes 18 conditions imposing noise limits and restrictions on the Site as set out below (references in brackets are to the condition numbering and SOC = Statement of Commitments):

- Noise Management Plan (E1 and E3 and SOC)
- Complaints procedure and complaints register (E5 and E6 and SOC)
- From 10pm balconies must not be used and all doors and windows must be closed. (F1, SOC)
- Operating hours restrict licensed activities to no later than midnight (F1 and SOC)

- Trial period for outdoor live music measured against OLGR noise criteria (F2). Various other restrictions on outdoor music (SOC)
- Noise from licensed premises not to exceed:
  - background noise + 5dB(A) in any octave band between 7am-midnight
  - background noise in any octave band between midnight – 7am (F3)
- Noise from licensed premises shall not be audible within any habitable room in any residential premises between midnight and 7am (F3)
- No transmission of offensive noise to any place of different occupancy for plant and equipment (F4)
- No exceedance of sound pressure level background (LA90) + 5dB(A) (source assessed as LA<sub>eq</sub>(15 min)) (F4)
- Industrial Noise Policy Noise limits imposed (F5 also AN5, and SOC)
- Amplification equipment not permitted outside or on external balconies. No sound to be directed there either (F6)
- Noise limiters on amplification equipment internal and external (F7).
- Substantiated noise complaints require ceasing of operation until attenuation works done (F8)
- Sound insulation rating of construction materials (SOC)
- Noise audit after 3 months of operation (SOC)
- Self-closing doors on level 1 west building with air locks (SOC) ((this is modified under MOD2)
- Calibration of speakers for outdoor live music (SOC) (Note this is subject to the condition for a trial period)
- Loading and unloading generally to the north of the buildings (SOC).

None of the conditions listed above are requested to be modified as part of this Application.

The statement of commitments which required air locks on the first floor yacht club was deleted as part of the approval of MOD2. A new condition C8 was included as follows:

*“Prior to the issue of the Construction Certificate for the Western Building, a suitably qualified acoustic consultant is to certify that the building design complies with the construction requirements recommended in the advice provided by Acoustic Logic titled “Sydney Superyacht Marina- Acoustic Review of Air Locks” dated 21/01/2014 (ie. 10.38 laminated glass and acoustic seals are to be installed on the first floor level of the buildings).”*

This modification application therefore does not include any request concerning the air locks.

The only change impacting upon these extensive noise controls covering the Site is that outdoor seating for ancillary uses and the yacht club, is requested to be restricted to between 7am – 10pm. The noise levels imposed already include anticipated noise from outdoor seating and the noise conditions set out above remain applicable irrespective of whether outdoor seating is approved or not.

The existing noise controls and limits on the Site will apply to the water area if the modification is approved. No increase in allowable noise is being requested.

### 2.2.2 Noise from intensified activity

#### Issue

The increased number of boats, higher car park, extra level on the eastern building and outdoor seating will increase the noise levels and there are no additional noise controls proposed to meet this. There are no noise controls on the yachts.

#### Response

Noise from the existing boats has already been included in the background readings used for the 2012 Consent assessments. All noise from the site including any additional noise arising from the modifications such as from the boats, and the outdoor seating, will be required to comply with the existing controls established after exhaustive testing and analysis prior to the granting of the 2012 Consent. Six noise reports were provided during the assessment period of the 2012 Consent. This is an area which has received extensive consideration and has taken into consideration the impacts of noise travelling over water and people conversing outside, and indeed outdoor music.

Some submissions requested further testing or modelling, including by the acoustic experts who undertook the original assessments. SSM instructed Benbow Environmental (the acoustic consultants who undertook the assessments for the 2012 Consent), to undertake additional modelling to incorporate the additional matters comprised in MOD 1. Benbow Environmental's report is attached in **Appendix C**. The additional noise impacts included in the modelling were:

- Increase in GFA of 540m<sup>2</sup> located on the second level of the eastern building;
- Additional car park noise with increase in car parks and additional level of building;
- Increase in number of people in the outdoor dining areas from 581 to 891;
- Additional boat noise from use of the marina;
- Additional ground floor uses of the car park building;

- Amendment to the yacht club glass by removal of the air locks and replacement by laminated glass with acoustic seals as required by the condition contained in MOD2; and
- Additional people using outdoor seating including on the 2nd level of the eastern building.

The same operating scenarios were used for modelling, namely:

- Scenario 1: Indoor moderate rock/jazz band
- Scenario 2: Outdoor Moderate jazz band
- Scenario 3: Outdoor moderate rock band.

Each was modelled under three conditions, namely:

- Condition A: Neutral weather conditions
- Condition B: 3m/s wind from source to receiver; and
- Condition C: 3°C/100m temperature inversion with a 2m/s wind from source to receiver.

The predicted results for Scenario 1 indicated that compliance is achievable for all considered residential receivers under neutral weather conditions, however minor noise exceedances in one frequency band up to 1dB were observed at receiver R5 (at Glebe Point) during the day and evening time period when the doors and windows are in the open position. This exceedance is considered to be negligible by the acoustic consultants, as human hearing cannot distinguish an increase of 1dB for a particular frequency band.

The predicted results for Scenario 2 and 3 indicated that compliance is not achievable for the nearest two receivers under neutral and adverse weather conditions, and minor noise exceedances of up to 2dB were observed at receivers R4 and R7 during the day and evening times under adverse weather conditions.

Scenario 1 is the scenario which would be the loudest operating scenario for the marina if this MOD1 is approved. Scenarios 2 and 3 are subject to condition F2 of the 2012 Consent which requires outdoor bands to be subject to a trial period, noise monitoring and a subsequent modification application. If the outdoor band trial period was commenced and noise monitoring undertaken in accordance with that condition, real time monitoring could be used to assess the noise impacts of bands. Condition F2 already provides for this and is not proposed to be amended by MOD1.

Benbow Environmental discusses that the anticipated boat noise from the marina is unlikely to change given the noise criteria and 15 minute assessment period applicable for that noise under the EPA's Industrial Noise Policy.

### 2.2.3 Noise from Liquidity and party boats and amplified music

#### Issue

The history of noise from Liquidity and party boats in the Bay shows how noise travels and the impacts on residents. Noise from amplified music is anticipated.

#### Response

Noise from party boats in the Bay does not form part of this modification application.

The modification does not include any alteration to the conditions which are imposed to prevent a recurrence of the noise issues which arose from the old Liquidity restaurant. Liquidity was a restaurant operating effectively in a tin shed with no air conditioning. The period of time when noise concerns arose was prior to the current operators' management of the site. The building had no sound attenuation and with no air conditioning, was opened to the Bay to provide fresh air.

The operational noise restrictions in the consent which related to Liquidity did not set noise limits. It required a Noise Management Plan citing types of activities, potential noise sources and levels, impacts and noise monitoring and consultation. It is not known whether this Noise Management Plan was in place. Condition 12 stated "No amplified music is permitted in outdoor areas and marques unless approved as part of the Noise Management Plan". This was the only condition which restricted noise in marked contrast to the numerous conditions already imposed on the Site and being retained for the development.

The existing noise controls constrain use of balconies and the opening of doors and windows after 10pm. Outdoor live music is conditioned to be subject to a trial period, testing and a subsequent (future) modification application. All licensed premises (which would include the outdoor areas) are subject to further noise controls in condition F3. None of these conditions are sought to be amended by the modification.

### 2.2.4 Noise will impact upon park users and nearby residents

#### Issue

Those using the parks in Glebe will be adversely affected by noise from the marina. The superyachts use their foghorn and that will increase with the number of boats.

## Response

As stated in section 2.2.2 above, the existing noise controls will continue to apply to the marina and would remain the same – changes arising from the modification would not be allowed to exceed the noise controls already in place.

The captains of the vessels which use and which are proposed to use the marina are professional captains with appropriate qualifications. All masters must be aware of the International Regulations for Preventing Collisions at Sea which are adopted in NSW through the *Marine Safety (General) Regulation 2009*. Those rules include special sound signals for powered vessels to indicate manoeuvring intentions when they are in sight of one another. Any vessel in the Harbour is required to comply with the International Regulations.

Vessels arriving and departing the marina are subject to a 4 knot limit. They are not driving at full throttle within the Bay and therefore produce minimal noise. See the noise report of Benbow Environmental in **Appendix C**.

### **2.2.5 Seeking outdoor seating is a repeal of a previous condition**

#### Issue

By requesting outdoor seating, the applicant is making a direct request for a repeal of a previous condition. If approved it should be subject to a trial period. Alternatively, that outdoor seating never originally formed part of the application.

#### Response

Condition A11 requires separate consent to be obtained for internal fitout works, signage and outdoor seating. The applicant is complying with the condition by seeking the consent, it is not seeking a repeal of it. Nothing in that condition requires a series of separate consents for individual tenancies of outdoor seating areas. Nor does it require a trial period.

The application for the 2012 Consent included outdoor seating. The noise reports for that application included 581 people talking outdoors. This number has been updated to 891 Benbow Environmental's modelling as a more rigorous test.

## **2.3 Traffic congestion on land**

The response from Transport and Traffic Planning Associates considers other traffic issues raised by authorities in their submissions.

### 2.3.1 Too many or too few car parks

#### Issue

Some submissions indicate that the increased number of car parks represents an over intensification of uses on the Site, or that it demonstrates that it will be an entertainment precinct. There will be too many car parks leading to congestion. Some say there will be an inadequate number of car parks.

#### Response

Currently the approved number of car spaces is 206 following the reduction in MOD 2 of 13 spaces. It is proposed to add 31 permanent car spaces with a further 70 car spaces proposed to be added with flexibility to be used for either parking or marine storage or commercial maritime uses.

Leichhardt Council includes minimum and maximum car park levels within its DCP, which, although not binding upon the Site, provide some guidance. Detailed analysis assuming that all of the uses are fully utilised, including all of the flexible use spaces being used for their maritime purposes, and the outdoor seating areas being fully occupied, indicates a minimum of 177 car parks and a maximum of 300 is required under the DCP. If no flexible use car spaces are used for maritime purposes there will be 307 car spaces. If all flexible use spaces are used for their maritime purposes there will be 237. Whilst the possible maximum slightly exceeds the DCP maximum it is unlikely that will occur, given that there are currently 28 storage containers on site. The minimum number of spaces is at the midpoint between the DCP minimum and maximum.

### 2.3.2 Traffic congestion

#### Issue

The increased number of car spaces will create traffic congestion on the surrounding roads, particularly given the lack of public transport in the area.

#### Response

The response from Transport and Traffic Planning Associates is attached in **Appendix D**. The response considers possible congestion and public transport issues and determines that the modification will not adversely affect these matters.

### 2.3.3 Insufficient provision for cycling

#### Issue

The development does not deliver a viable foreshore link for riders and walkers. The boardwalk is too narrow for concurrent walkers and riders which will restrict public access. This conflicts with Urban Growth which identifies a cycling path along the foreshore. Cycling links should be provided by s94 contributions by the developer.

#### Response

The modification is not amending the already approved foreshore promenade and public access. Cycle links beyond the Site have not been established by the landowner, although provision is made to enable linkages in future to sit to the east and west. No change to this is proposed in the modification.

## 2.4 Navigational issues and water congestion

### 2.4.1 Increase in water area of the marina

#### Issue

There is apparent confusion as to the area of water proposed for inclusion in the modification, with some believing the area will approximately double.

#### Response

The modification application does not seek to increase the water area covered by the marina. The 2008 Consent provides for use of approximately 17,490 m<sup>2</sup> of the waters of Rozelle Bay for a marina. The modification simply seeks to include the same area within the 2012 Consent. The limit of moorings remains the same. The water area has recently been subdivided to include that same area (save for minor surveying differences).

### 2.4.2 Water congestion and safety

#### Impacts

The increase in boats from 24 to 43 and the tenders will increase the traffic within the Bay with consequent conflict and safety concerns for passive watercraft including

rowers, dragon boaters and kayaks, using the Bay. This may reduce the ability of passive watercraft to use the Bay.

**Response**

Section 4.1 of the EA MOD1 discussed the navigational impacts arising from potential conflicts with passive watercraft. It assessed the daily vessel movements in the Bay and summarised the results of a survey conducted with the dragon boat and rowing clubs about conflicts within the Bay with passive watercraft.

A review of the websites for the dragon boat clubs indicates that training for dragon boats generally occurs Monday to Thursday between about 6pm and 8.30pm with some training on Saturday or Sunday mornings between 8am and noon. The rowing clubs train Monday to Friday morning between 5am and 9am and one also trains 5pm-7pm Monday to Friday.

The majority of vessel movements at the marina occur on Friday afternoon with a peak from noon to 5pm, when on a busy summer weekend about five large boats may leave. These vessels generally return either on Sunday between noon to 5pm or on Monday morning. These movements do not correspond with dragon boat training sessions, although some may correspond to the training time of the rowing clubs on Monday morning. The vessel movements are not great in number.

The approved number of boats at the marina is 24. Most (but not all) of these are Superyachts (defined by the RMS as vessels of 24 metres or more).

Boat movements from marinas were extensively surveyed by Christopher Hallam & Associates in connection with the proposed development of the Rose Bay Marina on behalf of Addenbrooke Pty Ltd. They covered Rose Bay Marina and Point Piper Marina (adjacent to each other), and the Royal Motor Yacht Club (RMYC) over two month periods and Double Bay Marina over an Easter period. At the time of the surveys, the marinas comprised:

**Table 4 Berths and swing moorings at marinas at eastern suburbs marinas**

Marina	Berths	Swing Moorings	Total
Rose Bay	29	72	101
Point Piper	23	100	123
Double Bay	40	25	65
Royal Motor Yacht Club	90	18	108

Summaries of Mr Hallam’s reports can be found in two of his reports dated July 2009 and November 2008<sup>9</sup>. The surveys consistently show a greater boat usage of swing moorings and yachts over berths and motor boats.

Whilst the 2008 Rose Bay Marina application was refused by the Land & Environment Court, (*Addenbrooke Pty Ltd v Woollahra Municipal Council* [2008] NSWLEC190) there is nothing in the judgment which disputes the findings of Mr Hallam in respect of the number of boat movements surveyed.

The time of most likely conflict at Sydney Superyacht Marina is in summer when boat usage is at its highest and the watercraft are training or racing. The figures from the Hallam surveys indicate the following set out in Table 2.9 of the Hallam 2008 report, and repeated in Table 5 below.

**Table 5 Percentage of boats used/berth per day summary of surveys by C Hallam**

Marina	Season	Boats used/berth %
Rose Bay	Autumn 2000	14.3
Rose Bay	Summer 2000/2001	15.3
Point Piper	Autumn 2000	11.1
Rose Bay & Point Piper	Winter 2006	5.5
Rose Bay & Point Piper	Spring/Summer 2006	3.6
Double Bay	Easter 2006	11.0
Double Bay	December 2006	15.0
Rose Bay & Point Piper	1/12/06 to 31/1/07 + hols	7.0
Rose Bay & Point Piper Mean Summer		11.1
Royal Motor Yacht Club	Winter weekends for berths and swing moorings	4.5

Table 2.18 of the Hallam 2008 report indicates that the total combined boats (swing and berth) used per day at Point Piper and Rose Bay Marinas between 1 July 2006 and 31 January 2007 showed a strong trend towards increasing boat usage during summer with mean usage as shown in Table 6 below.

<sup>9</sup> Christopher Hallam & Associates Pty Ltd, July 2009 Traffic and Parking Assessment of Proposed Modifications to Double Bay Marina and Christopher Hallam & Associates Pty Ltd Nov 2008 The Traffic and Parking Implications of Marina Developments  
[http://www.woollahra.nsw.gov.au/\\_data/assets/pdf\\_file/0004/51727/Appendix\\_C\\_Traffic\\_and\\_Parking\\_Assessment\\_B-and-W.pdf](http://www.woollahra.nsw.gov.au/_data/assets/pdf_file/0004/51727/Appendix_C_Traffic_and_Parking_Assessment_B-and-W.pdf) accessed 15.07.15

**Table 6 Mean Total & % of Boat Usage at Point Piper and Rose Bay Marinas/ day**

	July	August	September	October	November	December	January
Mean Number	6.2	5.7	6.9	6.9	5.8	11.6	9.2
% boats out of 224	2.7	2.5	3.1	3.1	2.6	5.2	4.1

During that survey period there were 6 peak days, including New Year's Eve, 2 January and 26 January. The mean boats used on those days were 24 – representing 10.7% of the boats being used on peak days.

Even at the highest use level from the surveys at 15.3% usage, this would indicate that if there were 43 vessels in the superyacht marina there would be 6.6 vessels (or a maximum of 13.1 movements per day).

If the marina housed 43 vessels and 36 tenders – extremely unlikely at any one time, 15.3% use is 12 vessels used per day or 24 movements. Together this illustrates that the estimates made in section 4.1.3.1 of the EA MOD1 are extremely conservative and the more likely maximum number of movements would be 24 movements per day. On weekdays it would likely be at less than half that number.

Given the peak time for vessel movements from the marina does not coincide with the dragon boaters or rowers, and the predicted low level of vessel movement in any event, it is unlikely that there will be any increase in safety risks arising from the increase in vessels moored at the marina. Both vessels moored at the marina and passive watercraft are subject to standard navigational rules governing the Harbour.

The RMS has prepared a rowing code of conduct to enhance marine safety and navigation which covers rowing/sculling craft, dragon boats and outrigger canoes over four metres in length between sunset and sunrise. This specified the lighting requirements for such boats, including those under the International Regulations For Preventing Collisions At Sea, adopted in NSW through the *Marine Safety (General) Regulation 2009* at Schedule 2. The code includes that all rowers and paddlers must have two all-round white LED lights at the forward and aft end. Details are set out on the RMS website<sup>10</sup>.

There is a 4 knot limit in the Bay. The captains of the vessels using the marina have professional qualifications. The area is under 24 hour surveillance by the adjacent RMS.

<sup>10</sup> Roads and Maritime Services Code of Conduct Rowing 2013  
<http://www.rms.nsw.gov.au/maritime/safety-rules/rules-regulations/codes-of-conduct/rowing.html> accessed 15.07.15

The number of anticipated vessel movements during the period when training occurs is not high. In these circumstances, it is unlikely that the increase in the number of vessels and tenders at the marina will have a marked impact on safety and congestion within Rozelle Bay.

## 2.5 Sediment disturbance and water quality

### Issue

Many were concerned that the increase in number of boats would disturb the contaminated sediments in the Bay, creating water quality concerns and perhaps endangering use of the Bay by passive watercraft.

### Response

This matter was extensively covered in the EA MOD1, including the report on Marine Ecology by Paul Anink of Marine Pollution Research Pty Limited at Appendix J of the EA MOD1. He undertook sediment sampling and noted that the contamination was similar to that elsewhere in the Harbour – reflecting historical uses. He advised that given the water depth and the manner in which the boats manoeuvre within close quarters of the marina, there is little likelihood of sediment mobilisation. It is noted that there is a 4 knot speed limit in the whole of Rozelle Bay. Mr Anink also identified no areas of concern from the proposal on the aquatic flora and fauna.

Submission Number 40 appended two articles by Knott and by Professor Birch which were requested to be taken into consideration. Both these articles have been reviewed and the following comments are made.

The article by Gavin Birch discusses the pollution present in Sydney Harbour. It promotes remedial work in the catchment and estuary to restore the harbour to support a complete and healthy ecological community. However it is not relevant to establishing whether the additional vessels would disturb the sediments.

The second attached article by Dr Nathan Knott and Dr Emma Johnston from the University of NSW includes results of experiments to assess the effects of resuspension of contaminated sediment on sessile animals of Sydney Harbour. The findings concluded that there is no support for the hypothesis that intense and repeated dosing of relatively clean or contaminated sediments over hourly, daily and weekly time scales has strong short-term effects on sessile invertebrates. Hence the article fails to indicate that even if the sediments were disturbed by the increased boat numbers, there would be any effect on the Harbour ecology.

## 2.6 Visual Impact

### 2.6.1 Use of misleading visual images

#### Issue

A number of submissions claimed that the montages used in the EA MOD1 were misleading, that they did not show the full extent of the development, or were applied on photographs which misrepresented the scale of the modifications.

#### Response

Montages were provided in the EA MOD1 in Appendix G, which from three angles showed the approved and proposed development and the view as at 25 March 2015. From Bicentennial Park the proposed modifications are barely discernible; from Glebe Point Level 2 of the eastern building appears well below the vegetation line of Victoria Road with the car park barely discernible; and from Blackwattle Bay Park Level 2 and the car park can be seen slightly above the approved development. These montages clearly illustrate the relatively minor visual impact of the proposed modifications.

On the final page of Appendix G were two montages clearly indicated as representing the adjacent Sydney Boathouse development – a development which does not form part of this application or the 2012 Consent. One of these images was used on a flyer by a community group to rally support for opposition to the modification application. It is likely that this caused considerable confusion amongst the community as is evident from many of the submissions.

An aerial montage was included on an information flyer distributed to the community by SSM on 3 September 2015 (set out in **Appendix F**). A copy of the montage is shown in Figure 1 below.



Figure 1 Aerial montage of proposed development with modification included in community flyer



Figure 2 Aerial montage of proposed development with modification with ghosted approved development from the adjacent Sydney Boathouse behind

Figure 2 shows the same image but with the ghosted approved Sydney Boathouse building behind which forms part of the adjacent development.

This visually demonstrates the extent of the SSM development site, and the modifications. It is clear that the scale of the western and eastern buildings is similar to the existing NSW Maritime building, and considerably smaller than the constructed and proposed Sydney Boathouse buildings adjacent and to the rear of the Site.

The montages accurately reflect the visual impact of the modifications. The level 2 is set back from the front which is why although it is 3.35m higher than the approved top of the eastern building, it does not appear overbearing. The additional car park level (extending 2.2m above the approved height) is largely hidden by the approved eastern building and the proposed level 2.

### 2.6.2 Interruption of views and vegetation loss

#### Issue

The following views will be interrupted or blocked: the view of vegetation along Victoria Road; views to the water (presumably from Victoria Road); and the visual heritage of the area. The view looking at lots of parked superyachts is unsightly. Some felt that there would be destruction of significant areas of vegetation by the modification.

#### Response

This modification will not affect the existing vegetation on or external to the Site.

The montages set out in Appendix G of the EA MOD1 clearly indicate that the view to the treeline on Victoria Road will remain in place.

Those montages also indicate that the modifications will not impinge on any view of the Glebe Island silos. It is clear that the view to the Harbour Bridge remains open from Bicentennial Park. It is accepted that from Blackwattle Bay Park the modification will have a minor impact on the view of the White Bay Power Station, however the connection between roofline and towers remains intact. It is noted that if the Sydney Boathouse second boatstore building is constructed (by others) this view of the Power Station will be almost entirely lost.

The photographs taken on 26 March 2015 illustrate the visual impact of the superyachts. Whilst the application is seeking an increase in the number of boats, this is to facilitate smaller vessels being able to use the marina, the visual impact of which will be less than the larger superyachts. The water part of the marina area will not expand from that currently approved under the 2008 Consent. The actual number of superyachts is

unlikely to increase if the modification is approved, given the limits of space within which they can moor.

### 2.6.3 Architectural merit

#### Issue

The design of the buildings is bad, does not respect the topography of the area or not in keeping with the area. A number of submitters appeared to confuse the project and modifications with the block shape of the Sydney Boathouse next door.

#### Response

The approved development presents as an articulated form. The primary architectural modification is the addition of the glazed, set back partial level 2 on the eastern building. As the montages show, the visual impact of this modification is slight. It reflects the articulated form below but in the glazed form sits lightly on the top. (See further discussion on this matter under the response to the City of Sydney in section 3.4.6).

The topography of the Site is flat with little vegetation. The Victoria Road embankment is some distance behind the proposed modifications and remains a visual delineator if the modification is approved.

Many of the submissions referenced the visual impact of the extreme size and extent of the proposed modifications. It can only be assumed that for at least some of these, there is confusion with the Sydney Boathouse – either due to the existing building or due to the unfortunate confusing of the two developments by an opposing community group's flyers.

The image below illustrates the proposed finished design for the eastern building.



**Figure 3** Proposed view of eastern building from the foreshore

## 2.7 Urban Growth and Bays Precinct Transformation

During the exhibition period, Urban Growth conducted a “Sydneyiders Summit” between 16-17 May 2015 on the Bays Precinct and published “*Transforming City Living: The Bays Precinct – A Discussion Paper*”. There was considerable scrutiny of the modification due to the coincidence of the summit with the exhibition period. Two principal issues arose – that determination of the modification should await the outcome of the Bays Precinct Urban Growth consideration, and secondly that the modification would negatively impact on the ability of the old Glebe Island Bridge to be a connection between the Bays Precinct and the City.

### 2.7.1 Await Urban Growth’s plan for the Bays Precinct

#### Issue

The assessment and determination of the modification should await the outcome of the Bays Precinct Transformation. No mention was made in the assessment of the Bays Precinct Transformation Plan. Alternatively, it is not in accordance with the Urban Growth stated principles.

**Response**

The EA MOD1 included a specific response to each of the recommendations and planning principles arising from the Bays Precinct Taskforce in section 3.6.2. Section 3.6.3 set out relevant Principles drafted by the Urban Growth Bays Precinct Urban Transformation Program which arose from the international summit held in November 2014. These are relatively generic principles. The discussion paper distributed during the May 2015 Sydneysiders Summit was not released at the time of the lodgement of the EA MOD1.

Section 3.2.1 of this Response in relation to the Urban Growth Submission discusses the modifications in relation to the Urban Growth discussion paper. Further consultation has occurred with Urban Growth and it is considered that there is nothing in the proposed modification that is contradictory to the achievement of Urban Growth's overarching objectives of the Bays Precinct Transformation. Further discussion is also set out in section 3.3.2 below responding to Leichhardt Council's submission.

**2.7.2 Glebe Island Bridge****Issue**

Any approval will adversely affect the desire of the community to reopen the old Glebe Island Bridge for foot, cycle and light rail connections between Sydney CBD and White Bay Power Station and the Bays precinct.

**Response**

This matter is considered in Section 3.3.6 below relating to the Leichhardt Council submission. The volume of potential traffic arising from the proposed ability to moor an additional 19 vessels at the marina plus tenders is likely to have such a small influence on the number of vessels passing through the bridge that any such influence is overstated when compared to the other commercial operations within Rozelle and Blackwattle Bays.

**2.8 Community Consultation****2.8.1 Level of Consultation****Issue**

Consultation with the community has been inadequate.

## Response

Consultation has occurred and is further documented in section 3.1 of this Response in relation to the Department's request for further information. This is a modification application to an approved development. Whilst the application does seek to include the area of the marina on the water and to increase the number and type of vessels berthed, the area of the marina will not extend beyond the area approved by the existing 2008 Consent and 2012 Consent. As indicated by the RMS, Transport for NSW, the Foreshores and Waterways Planning & Development Advisory Committee and the Office of the Environment and Heritage, there is little adverse impact anticipated on the visual impact and transport in the area arising from the modification.

### 2.8.2 Community Liaison Group

#### Issue

From two objectors there are various assertions that the Community Liaison Group (CLG) established pursuant to Condition A13 of the 2012 Consent, has not included an independent chair, does not comply with Condition A13 so far as appropriate representation, and that the plans were not presented at a CLG meeting. Further, the CLG should comply with Guidelines for Establishing and Operating Community Consultative Committees for Mining Projects.

#### Response

The proposed modifications for both this modification and MOD 2 were explained and shown to the CLG on 30 January 2014. This is regrettably not noted in the minutes. It is noted that one of the relevant objectors was invited to attend this meeting but declined the invitation.

The chairperson has been replaced by Robert Bruce, a lawyer and resident at 501 Glebe Point Road, whose independence has been confirmed by the Department in a letter dated 10 August 2015 and tabled at the most recent CLG meeting on 8 October 2015.

Condition A13 states that the CLG: *"must include a broad range of stakeholder representatives including the Proponent, any operators on site, the residents of 501 Glebe Point Road and from other residents and community interest groups in the area."*

The current membership includes representation by:

- A resident of 501 Glebe Point Road as Chair
- The previous Chair of the Strata Corporation of 501 Glebe Point Road

- A resident of Bridgepoint in Glebe and former resident of the Pavilions (501 Glebe Point Road) who operates a business at the nearby Sydney City Marine building.
- A representative from Leichhardt Municipal Council
- A representative of the RMS
- The convenor of the Bays and Foreshores subcommittee of The Glebe Society
- The Chair of White Bay Joint Steering Committee and member of Ports Liaison Group.
- A representative of Sunseeker Superyachts operating on site.
- The Chair of Sydney Superyacht Marina
- A minute secretary attends, as does the project manager and town planner for Sydney Superyacht Marina, to be available to provide information as requested on the project.

It is submitted that this range of participants does fully comply with the condition despite the fact that the objector is not personally on the CLG.

## 2.9 Global Financial Crisis

### Issue

Justification of the modifications using the Global Financial Crisis (GFC) is not sound, relevant or a valid excuse.

### Response

The discussion about the GFC is under the heading "Reasons for the Changes" and was included to illustrate the history behind why some of the changes are being sought. It is noted that the impacts arising from the GFC were significant enough to cause an amendment to the EP & A Act, when section 95(3A) was inserted to extend the lapsing period of consents granted during the GFC from a possible 2 years to 5 years.

The objects of the EP & A Act include the orderly and economic use and development of land. Economic impacts in the locality are also a matter for consideration under s79C(1)(b). Changes within the broader economy following the GFC have had an impact on the marina business and the proposed modification seeks to mitigate this impact.

## 2.10 Inappropriate use of a s75W modification process

### Issue

It is improper to use the mechanism of s75W to effect some or all of the proposed modifications. This is because Part 3A of the EP & A Act has been repealed, or because the scope of section 75W does not extend to the changes being requested.

### Response

#### (a) Repeal of Part 3A

It is noted that there are savings provisions within Schedule 6A of the EP & A Act for transitional Part 3A projects, of which the 2012 Consent is one. Further details are set out in Part 1A of the EP & A Regulations. Provided that the application falls within the scope of a s75W application, there is no reason why this mechanism cannot, or should not be used to modify the 2012 Consent.

Discussions commenced in 2013 with the Department about the proposed modification. It is clear from many cases that the boundaries of a Part 3A approval are capable of being extended by a s75W application. When the application was discussed with the Department shortly before submission, and since submission, the Department has not indicated any hesitation with the mechanism of utilising the s75W process for the proposed modification.

The Department will undertake the assessment and is the consent authority under both a s75W and a Part 4 application (by virtue of clause 9A and Schedule 6 of SEPP (Major Development) 2005). The section 75W modification application has been made available on the Department's website and open for public submissions for well over 30 days. Submissions have been received as late as 4 September 2015 – 4 months after going on exhibition.

The public do not have their opportunity to make a submission curtailed by the development being included within a s75W modification rather than a Part 4 application, illustrated by 149 submissions from the public and community organisations.

As a general concept, consents remain operative for many years. It is the nature of things that over time, changes are sought to reflect the economic, social and environmental variations and to respond to new legislation or policies. To have the whole of the marina operating under a single consent enables better integration between the support services and the water based part of the marina, and reduces the time and expense of the consent authority, other government agencies and the operator conducting double assessments to effect integrated updating in the future.

(b) Whether the modification is within power

The issue of the scope of the terms of s75W is dealt with generally in section 3.3.1 in the response to Leichhardt Council's submission. The Save Our Bays submission included a legal advice from HWL Ebsworth Lawyers. For completeness, a response to the Save Our Bays' submission, as well as the Save Our Bays' town planning advice from Jock Palmer & Associates, is included in section 3.3.1.

## 3. Department and Agency Submissions

## 3. Department and Agency Submissions

### 3.1 Department of Planning & Environment

The Department of Planning and Environment requested the proponent address a number of issues in their letter dated 9 June 2015, each of which is considered below.

#### 3.1.1 Consultation

##### Issue

Documentation detailing the consultation undertaken as part of the preparation of MOD 1 documentation and post-exhibition shall be provided.

##### Response

Consultation has been undertaken with a range of stakeholders over a period of time. Details are as follows:

##### 3.1.1.1 Dragon Boats NSW

Section 4.1 of the EA MOD1 discusses the survey undertaken of the dragon boat clubs and rowing clubs in the area and the discussions held with Dragon Boats NSW prior to lodgement of the EA MOD1. A copy of the survey and the responses received are included in **Appendix E**. A letter sent by Dragon Boats NSW following the meeting held on 11 March 2014 is also found in **Appendix E**.

##### 3.1.1.2 Community Liaison Group

The Community Liaison Group (CLG) which was established in accordance with condition A13 of the 2012 Consent met and discussed the modification on 30 January 2014 and 7 May 2015. At both these meetings the plans for both MOD 1 and MOD 2 were discussed and shown. The most recent meeting was held on 8 October 2015, at which two additional community invitees attended, the Terms of Reference were confirmed, and the MOD1 was discussed.

##### 3.1.1.3 Urban Growth

On 16 July 2015, consultation between Paul Hourigan of Urban Growth, Jack Borozan of the RMS, and Brian James, Tracey Wadsworth and Geoff Baxter representing the Sydney Superyacht Marina occurred. There was discussion concerning Urban Growth's broad planning objectives as set out in their website. It was acknowledged by Urban

Growth that the MOD 1 did not preclude the achievement of those objectives. Specifically:

- the foreshore walk is accommodated;
- density and residential development can still be developed to the north;
- the marine and supporting food, and club probably provide significant amenity to any residential and retail development; and
- the marina development would provide employment opportunities for surrounding residents.

#### 3.1.1.4 Community Consultation

On 3 September 2015 a letter box drop with a letter and flyer was conducted to the same area that received notification of the modification application by the Department of Planning & Environment. The text of the flyer is set out in **Appendix F**. It was delivered to the area shaded grey set out in the Figure 4 below:

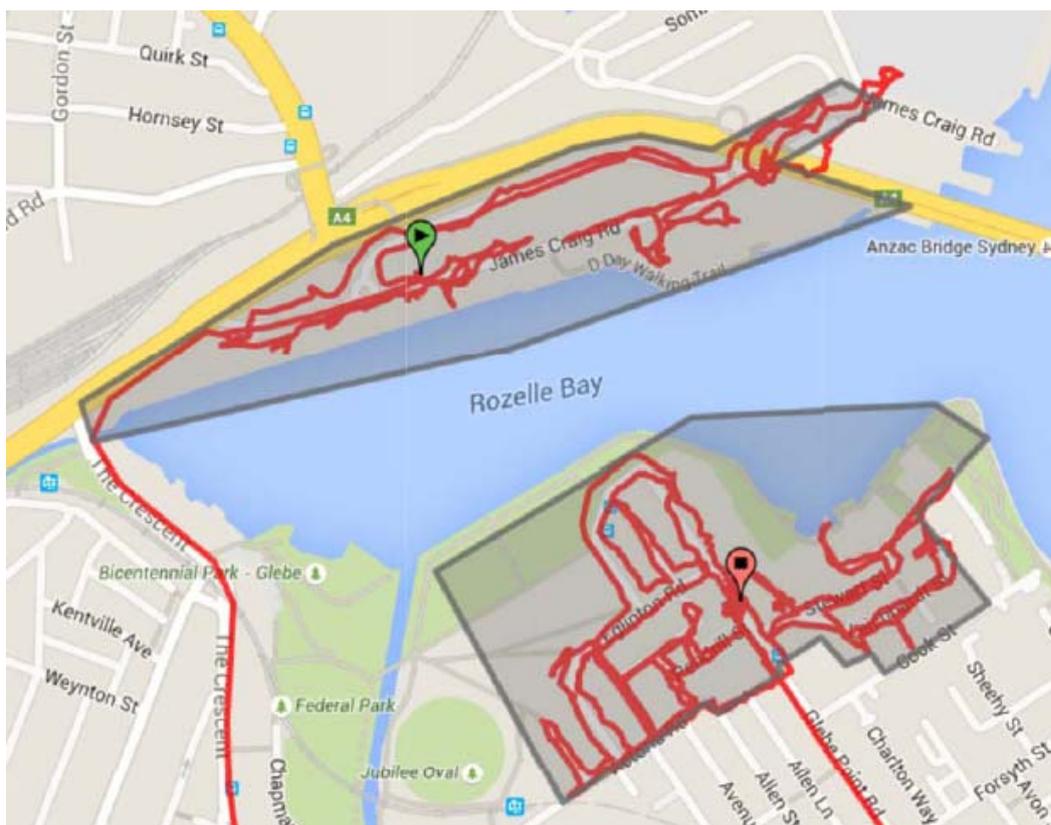


Figure 4 Area of community letter box drop

The community hotline number is established (1800 218 197) and was included in the flyer for further information. In response to the delivery of the flyers, one response was received. The area of concern appeared to be the method of communication in the flyer and accompanying letter. A redacted copy of that correspondence is in **Appendix F**.

On 7 September 2015 letters (with copies of the flyer) were sent to those community groups who had made submissions, Leichhardt and Sydney Councils, MPs and agencies who had expressed concerns, inviting meetings to discuss the modifications. The list of those provided with the invitation is included in **Appendix F** together with the template letters. The responses and actions from that invitation were:

- The office of Tanya Plibersek MP (Federal) responded but was unable to fit a visit into her schedule.
- Sydney Harbour Association declined the invitation, pending the response regarding the reduced number of large vessels proposed.
- The Save Rozelle Bay Association requested a meeting which was held on 22 September 2015. The minutes of that meeting are in **Appendix F**.
- A meeting was held on 19 October 2015 with representatives of Save Our Bays, The Glebe Society, Glebe Point Residents Group and the local NSW member of Parliament Jamie Parker MP. The matters discussed in that meeting included:
  - The use for the 2<sup>nd</sup> level to be commercial maritime as defined in the 2012 Consent
  - Projected workforce and numbers of people sitting outside
  - Indicative layout of outdoor seating as shown on the landscape plan, including on the western building decks
  - Seeking certainty of ability to lease areas for outdoor seating
  - Noise conditions not altering, including those for bands
  - Hours of operation
  - Width of foreshore access
  - Manner of ensuring compliance with consent conditions, including security
  - Future mix of vessels
  - Car park numbers and their use and
  - Community liaison group compositionSSM provided answers to the questions raised and notes of the meeting are being finalised.
- A meeting was arranged with Leichhardt Council for 22 October 2015 but was cancelled by Council that morning. A revised date has not yet been arranged.

### 3.1.2 Changes to plans

#### 3.1.2.1 Incorporate MOD2

##### Issue

Update all documentation to reflect MOD 2 changes, including, but not limited to, changes to gross floor area, land uses and car parking, plans etc.

##### Response

Section 1.3 of this Response sets out the amendments to GFA and land uses proposed, including those arising from MOD 2.

Amended plans are provided incorporating these changes. Larger scale plans have also been provided.

#### 3.1.2.2 Relocation of the western building service lift

There is a matter included in the plans relating to the western building which has not been previously raised. The applicant would like to amend the location of the service lift in the western building. This lift rises 3.6 metres and will be a hydraulic service lift but without a lifting beam which is required for the car park lift. The lift overrun is accommodated within the roof space.

The internal changes resulting from the requested change are:

- The service lift and service area is requested to be moved to the east with consequent layout alterations;
- The central toilets between the marine and provedore are relocated slightly to the west;
- There is a relocation of the toilets behind the yacht club bar at ground floor level; and
- There are two additional toilets in approximately the old lift location on the first floor.

The external changes resulting from this proposed amendment are all on the northern elevation of the western building as illustrated on DA 32:

- The relocation of the service entry roller door and a new service entry door;
- 3 new full height windows and the relocation of one at ground level. This will provide a more pleasant presentation to the northern façade and allow northern light to spill into the provedore tenancy;
- Minor relocation of entrance doors near store 1 on the first floor and one additional door into the kitchen area onto the walkway. This will be shaded by

the openable louvres on the northern side of the walkway and barely discernible; and

- No change to the roof plan.

As the lift overrun is wholly contained within the approved roof height, there will be no amendment to the external roof presentation from the relocation of the service lift, nor will there be any height extension. This can be seen from the plan DA31 which does not show any lift overrun within the roof plan.

In summary, the only visual external amendment will be a relocation of entranceways, two additional doorways and three additional full height windows along the northern façade. There is no environmental factor which would weigh against approval of this relatively minor matter.

### 3.1.3 Environmental Protection Licence

#### Issue

Clarify if the marina component of the development requires an Environmental Protection Licence (EPL) under the *Protection of the Environment Operations Act 1997* (POEO Act), particularly in relation to any potential boat construction or maintenance activities. The Environmental Protection Authority should be consulted if an EPL is required.

#### Response

A letter was sent to the EPA on or about 24 August 2015 stating that there are no potential construction or maintenance activities such as would require a licence under the POEO Act, nor are there proposed to be more than 79 boats on site. On 8 September 2015 the EPA responded confirming they will not be requiring an Environment Protection Licence. A copy of the letter and email in response are set out in **Appendix G**.

### 3.1.4 Car Parking

#### Issue

Identify the measures proposed to be included in the Car Park Management Plan (required under existing condition E2 and F9) to ensure sufficient car parking will be available during peak demand periods.

#### Response

See response prepared by Traffic and Transport Planning (Ross Nettle) set out in **Appendix D**.

### 3.1.5 Marina

#### Issue

- a) Clarify if brokerage berths form part of the application.
- b) Provide details on the operational management of the northern and southern limit of moorings areas which may require manoeuvring of boats into adjoining marine areas.
- c) Confirm the marina layout complies with AS 3962 Guidelines for Design of Marinas.
- d) Provide an updated marina plan to reflect the approved marina layout of the adjoining Dry Boat Storage and Marine Facility
- e) Further information is requested on the impacts of increased boat movements.

#### Response

- a) Brokerage berths do not form part of the application.
- b) Vessels manoeuvring at the western (southern) end of the marina near the Sydney Boatstore are restricted from moving beyond the leased area by a pontoon belonging to Sydney Boathouse which is directly on the lease boundary. The vessels need to head straight out within the leased area to avoid colliding with that pontoon. Any vessel in front of another on the eastern and western boundaries will need to be removed to move the inner vessel without going beyond the boundaries. On the eastern (northern side) the waters form part of Rozelle Bay which is available for use by all Bay users. See also the response from International Marina Consultants discussed below.
- c) A letter from International Marina Consultants who have carried out the engineering design of the proposed marina reconfiguration is attached in **Appendix H**. International Marina Consultants advise that the berths layout is compliant with the Guidelines for Design of Marinas AS 3962 except when vessels are mooring one in front of the other along the western sides of walkways E and D, or on the eastern sides of walkways C and D. The consultants note that such mooring is not uncommon and it is part of the marina's management to arrange for the moving of the outer vessel to allow the inner vessel passage in or out. The manoeuvre is not specifically covered by the Guidelines, however is not considered unusual. An email from the Manager Operations Sydney Harbour Boating Operations, Maritime Division of the RMS was also received on 7 October

2015, concerning the navigational aspects of the proposed marina and is attached in **Appendix H**. It states:

*“RMS (Maritime) assessed the proposal with regard to navigational safety. The assessment found there to be **no issues** with regard to navigational safety. When assessing the navigational safety, both the proposed marina layout/berthing and limit of mooring area were taken into account. RMS did not approve the marina design as RMS is not the relevant consent authority. The Permission to Lodge approval letter only granted land owner’s consent for the applicant to lodge the proposal to the relevant consent authority (Department of Planning) for its consideration of the merits of the proposal. ...*

*As you have rightly mentioned the berthing of vessels at a marina behind one another is extremely common and I am not aware of any issues arising from this practice.”*

- d) The updated plans DA04 from Scott Carver illustrate this.
- e) See section 2.4.

### 3.1.6 Lift Overrun

#### Issue

The Department requests that the lift overrun design be amended from the proposed RL 18.6 to comply with the existing maximum height of RL 16.9, or alternatively, further supporting justification be provided.

#### Response

This issue relates to the passenger lift within the car park building. The architects, Scott Carver, have reviewed documentation from various lift companies and have advised that the lift overrun can be reduced by 0.7 metres from RL18.6 to RL17.9. The proposed RL of the top of the car park is RL13.6. The lift car will sit approximately 2.3 metres above that floor level with further headroom required for the equipment – totalling 4.0 metres. The lift lid will require 0.3m. This results in a top of the lift tower at RL 17.9. An example of a typical style of lift is the Otis Gen2Focus2.

### 3.1.7 Architectural Plans

#### Issue

A full set of architectural plans with appropriate scale and RLs including the changes to the western building under MOD2 should be provided.

**Response**

These are provided.

**3.1.8 Landscape Plans****Issue**

An updated landscape plan should detail all updated landscaped components including treatment of the site at ground level, balcony and outdoor seating areas and all proposed green wall elements on the buildings.

**Response**

An updated set of landscape plans by Fiona Yeates Consulting accompanies this Response, detailing these elements. It includes an outline of where the extent of outdoor seating at ground floor level for the eastern building and indicative seating layouts,

**3.1.9 Status of Approvals – water-based consent reliance****Issue**

Confirm which development consent is being relied on for the operation of the water-based marina.

**Response**

If approved by the modification application, the Proponent intends to rely upon the modified 2012 Consent for the operation of both the land and water based parts of the marina. This is demonstrated on page 24 of the EA MOD1 and in the proposed condition A14. SSM is prepared to have the 2008 Consent surrendered within 7 days of the final occupation certificate. The landowner (RMS) must provide a written consent to effect the surrender and has been advised of this situation.

The terminology set out in EA MOD1 may have created some confusion as to whether or not there will remain ongoing aspects of the 2008 Consent.

Some elements of the 2008 consent have been completed including the removal of the fuel bowsers and the construction of some portions of the pontoons. These matters will remain as constructed or demolished in accordance with the terms of the 2008 Consent which was operative at the time of those works. The marina will continue to operate under the 2008 Consent until works are carried out under the 2012 Consent which will enable the marina operations to be conducted. There is no aspect of the 2008 Consent which is requested to be “included” within 2012 Consent.

To clarify the applicant's position, with respect to the water area, this application seeks to *inter alia*:

- expand the area of the 2012 Consent to include the area now known as Lot 1 DP 1209992 which aligns with the water area approved in the 2008 Consent;
- seek consent for the mooring of 43 vessels of 15 metres or more and up to 36 tenders within this area;
- Reconfigure the existing pontoon arrangement; and
- Surrender the entirety of the 2008 consent within 7 days of the final occupation certificate (subject to RMS consent).

Assessment of the impacts of these on-water matters was included in the EA MOD1, most particularly in sections 3.3, 4.1, 4.4.3.1, 4.5 and 4.6. No reliance was placed upon the environmental assessments conducted for the 2008 Consent nor are any conditions of consent or plans from the 2008 Consent being sought to be transferred into the 2012 Consent. If the modifications are approved in respect of the water area, development within the water area will be pursuant to the 2012 Consent as amended and hence comply with s75D of the now repealed Part 3A provisions.

If the 2008 Consent is surrendered this would be effected under either s80A(5) of the EP & A Act by way of a condition or consent, or under s104A of the EP & A Act by a voluntary surrender. Any such surrender must be effected in the manner set out in regulation 97 of the EP & A Regulations 2000. There is nothing within regulation 97 suggesting that there is any impact on the validity of works done in accordance with a consent prior to the surrender of that consent. At the time the work was done, it was authorised by a consent that was valid and in force. A later surrender cannot change the legal characterisation of those acts.

Hence the modification application is not seeking any retrospective consent for works done under the 2008 Consent.

### **3.1.10 Status of Approvals – Validity of Approvals**

#### **Issue**

Supply the necessary supporting documentation demonstrating validity of the 2008 Consent and 2012 Consent.

#### **Response**

Documents supporting the activation of these consents are in **Appendix I**.

The water based part of the marina currently operates under the 2008 Consent. On 29 May 2014 the RMS, (by Susannah Webb) confirmed by email that the 2008 Consent has been activated.

The 2012 Consent has been activated by the construction of the piling works for the western building. The activation is supported by:

- construction certificate No 132137 by City Plan Services dated 27 September 2013;
- certification by Vibro-pile (Aust) Pty Ltd of the design and construction of foundation piles dated 3 February 2014;
- the completion statement of CC 132137 by City Plan Services dated 4 February 2014; and
- certification of the as built piles by Hyder Consulting Pty Ltd dated 6 May 2015

A photograph of the completed piling works for the western building is in Figure 5.



**Figure 5** Completed piling works for the western building

### 3.2 Urban Growth NSW

Reference is made to the ongoing consultation between Urban Growth and SSM, set out in section 3.1.1.3 of this Response.

### 3.2.1 Incomplete Alignment with Government Priorities

Urban Growth NSW (Urban Growth) indicated that it is working together with the Department of Premier and Cabinet, Roads and Maritime Services, the Department of Planning & Environment, Transport for NSW and 5 other partner agencies on the Bays Precinct Urban Transformation Program (BPUTP). It is noted that of these partner organisations, Transport for NSW had no issues identified as part of the review process, the RMS simply requested that careful consideration of the impact of the proposal on the already restricted on-street parking within the vicinity of the site be made, and the Department of Planning & Environment raised no issues relating to government policies identified by Urban Growth.

Urban Growth NSW identified a number of existing and draft policies with which it indicated that the modification application was not achieving alignment. These are:

- a. NSW 2021 – A Plan to Make NSW Number One
- b. A Plan for Growing Sydney
- c. Draft Transforming City Living: the Bays Precinct – Discussion Paper
- d. Long Term Transport Master Plan
- e. Land Use and Economic Study of “Working Harbour” in and around the BPUTP which was underway between the RMS, Department of Premier and Cabinet, Transport for NSW and the Port Authority.
- f. Proposed Transport and Mobility Plan - preparation of which was to commence some time after 26 May 2015.

Urban Growth did not expand on why the application did not align but indicated that the (BPUTP) includes “*a future possible mix of uses of housing, employment, public realm and greater water usage being given focus. The usage should align with government priorities and consider opportunities for this area, to realise greater economic, cultural and social benefits for all.*”

The available policies and relevant objectives have been reviewed and the proposed modification is found to be consistent with each as set out below:

**a. NSW 2021 – A Plan to Make NSW Number One September 2011**

This document has 5 goals which are overarching and do not have any specific reference to the Site or the Bays Precinct:

- Rebuild the economy
- Return quality services, eg transport, health education
- Renovate infrastructure
- Strengthen the local environment and communities
- Restore accountability to government.

With the increase in marine activity resulting from the proposed modifications, the modification can only assist in achieving the goal of an improved NSW economy through increased job opportunities and investment.

Job creation during construction has been estimated at between 50-75 positions. Long term, there is an estimate of up to 170 employees on site.

#### **b. A Plan for Growing Sydney**

This report presents a vision for Sydney as a strong global city and a great place to live. Four goals are established and within the Central Subregion these goals are further delineated.

Most relevantly the goals include:

- Goal 1: A competitive economy with world class services and transport. Priorities include:
  - To protect Sydney Harbour's function as a working harbour and location for strategic naval facilities; and
  - Action 1.1.4, which includes the Bays Precinct requires the government:
    - To recognise, protect and maintain the foreshores, waterways and islands of Sydney Harbour as outstanding natural assets and as public assets of natural significance, for existing and future generations;
    - To improve public access to the Harbour and its foreshores, and maintain its ongoing role as a focus for major civic events and celebrations;
    - To improve the water quality and protecting biodiversity; and
    - To improve ferry services.
- Goal 3: A great place to live with communities that are strong, healthy and well connected. This goal includes creating a network of interlinked, multipurpose open and green spaces across Sydney. The existing approval enables the foreshores promenade to cover this part of Rozelle Bay. The site is not zoned to allow for the provision of parklands.

- Goal 4: A sustainable and resilient city that protects the natural environment and has a balanced approach to the use of land and resources. Priorities for the Central Subregion include:
  - To protect the natural attributes and visual amenity of the coastline and enhance opportunities for foreshore access; and
  - Protect the health of the subregion's waterways and aquatic habitats.

The priorities for strategic centres for the Bays Precinct (on page 11) are to:

- Implement the Urban Growth NSW urban renewal program for the Bays Precinct to provide capacity for housing and employment, improve public access to foreshore areas, revitalise the White Bay Power Station heritage asset, maintain working port functions and provide opportunities for maritime activities; and
- Improve public transport connections to the Bays Precinct.

The modifications will not impact upon the already approved public access to the foreshore, and will increase the opportunities for maritime activities. The other matters are beyond the scope of the land and its development.

Conditions are already in place to protect runoff into Rozelle Bay. Assessment by the aquatic expert Marine Pollution Research Pty Ltd has shown that disturbance of the Rozelle Bay sediments is not anticipated to have any impacts on the health of the Bay. The visual montages illustrate that the visual impact of the modifications are almost indiscernible from the approved development.

The proposed modifications are not contradictory to, and in some cases assist the realisation of the objectives of this report.

### **c. Transforming City Living: The Bays Precinct – A Discussion Paper 2015**

The objectives for the precinct identified by this document are:

- To deliver a hub of export-oriented knowledge-intensive jobs that can increase Sydney's global competitiveness
- To deliver enduring, socially inclusive and great places to benefit Sydneysiders and national and international communities
- To deliver housing choices, including affordable housing options, through design, finance and construction excellence
- To deliver a world-class mass and active transit and infrastructure solution that unlocks the economic and human potential of The Bays Precinct and demonstrates a model of environmental excellence

- To achieve building design excellence and quality urban design in all Destinations.

Most of these objectives are not specifically relevant to the Site. However the superyacht marina, including the yacht club and restaurants will enable Sydneysiders and other communities to benefit from enjoying Rozelle Bay in a way which is not currently open to them. The proposed modifications to the approved buildings are low key, and sit lightly upon the approved articulated design which is responsive to the location and site constraints.

Under the Paper, Rozelle Bay is a medium term Destination and there are no objectives given for that Destination yet. However the Site is part of the Bays Waterfront Promenade which forms part of the objectives for the immediate priority. The approval already provides for public access along the foreshore and the modification does not affect this.

Other relevant matters raised by the paper include:

- Environmental excellence. (The modification includes provision for appropriate plans to achieve environmental management)
- The ambition to drive an internationally competitive economy through the creation of great destinations on Sydney Harbour that will transform Sydney, NSW and Australia. To that end it (relevantly) seeks to:
  - add to the social and environmental life of the local area through networks of shared, active open spaces and unlocking public access to the water. (The modification does not impede the approved waterfront access and enables the public to share the open air space of Rozelle Bay by open air dining.)
  - Boost Sydney's international competitiveness by creating diverse and innovative jobs and workplaces. (The modification supports the food industry by making the Site more accessible with the open air dining. Clearly the increased maritime space also supports the approved maritime industry.)
- The possibilities noted on page 29 for Rozelle Bay and Bays waterways are to *"integrate a viable mix of new land and maritime uses including a mix of commercial, open space and other living uses, with working harbour industries and on-water recreation facilities. It would also include better public access to the waterfront."* Again, the mix of uses at the site, which supports a working harbour and recreational facilities and access to the foreshore, are all contained within the modification application.

- Of the matters listed on pages 32-35 the modification actively supports new global attractions, trade tourism and investment and a maritime playground.

There is nothing within the modification which is contrary to the matters raised in the Discussion Paper.

**d. NSW Long Term Transport Master Plan December 2012**

In this document of 424 pages there is reference to the Bays Precinct on page 117 within chapter 4 – Getting Sydney Moving Again. It briefly discusses White Bay and Glebe Island as port facilities and indicates that it has established the Bays Precinct Taskforce to advise on renewal opportunities and land use and transport planning for the wider site, with a priority of “*ensuing the precinct’s continued operation as a freight port, balanced with other mixed-use maritime, commercial, and recreational requirements.*” The proposed modification appears to be in line with that priority, given the mixed use maritime commercial and recreational activities approved on the site.

On page 356 there is reference to a desired medium to long term priority of developing a bicycle route from the Airport with connections along the Cooks River to White Bay corridor – parallel to the Inner West Light Rail Extension. The Modification will not impact upon any such proposal.

Page 25 includes a target of double the bicycle trips in Metropolitan Sydney by 2016. There is nothing in the modification which impacts negatively on achieving this goal. The proposed plans provide for 54 bike parking spaces.

Page 78 notes that urban areas with good local accessibility include convenient and safe access to a variety of destinations by walking and bicycle. The opening up of the promenade and provision of bicycle facilities are already approved.

The other two documents are either not available or not yet written.

**3.2.2 Upscaling of Land-Water Use and Activity**

Urban Growth references the two documents which are unavailable. It suggests that the modification application can be left in abeyance for some indeterminate period of time. Navigation aspects have already been considered in the EA MOD1, and as stated by Urban Growth will need to be included in the Vessel Traffic Management Plan. Urban Growth’s consideration of plans for the reconnection of the Old Glebe Island Bridge is beyond the scope of this modification application. There already exists a consent for the use of the water part of the marina. Whilst the modification application does seek an increase in the number of vessels the anticipated increase in vessel movements is relatively small (see section 2.4.2) and would not impact significantly

upon the more fundamental question of blocking Blackwattle Bay and Rozelle Bay from free thoroughfare to and from the various working harbour sites.

### 3.2.3 Transformation Plan October 2015

In October 2015 Urban Growth published "Transformation Plan: The Bays Precinct Sydney". This followed on from the discussion paper earlier in the year. Relevantly a new destination – Wentworth Park was added to the Bays Precinct and incorporates some ideas from the "Call for Great Ideas" in May 2015. Four new objectives were added to those set out in the discussion paper, namely:

- To provide ecological and marine water quality improvements to enable abundant biodiversity;
- To deliver integrated utilities solutions that enable advanced energy generation and technologies;
- To apply integrated planning within a land and water context that considers strategic policy decisions and the interrelationships between biophysical, social and economic aspects; and
- To celebrate heritage and culture by creating new experiences throughout The Bays Precinct.

Again, these objectives are broad. It is noted that the MOD 1 proposal includes the recommendation from the aquatic ecologist to include a Marina Operational Management Plan.

Other changes from the Discussion paper are a change in the Rozelle Bay and Bays Waterways destination from a moderate to a major focus, and in employment from a moderate to a minor focus, however this destination remains a medium terms focus. New features outlined are:

- Integrating living and working side by side with maritime uses;
- Providing new and upgraded maritime infrastructure;
- Providing staged public waterfront access; and
- Improving water quality.

Nothing in the proposed modifications affect the ability of Urban Growth to achieve these features, and the proposal to reconfigure the pontoons will upgrade the maritime infrastructure. Regarding the waterfront promenade, relevant new features include working towards the adaptive re-use of Glebe Island Bridge.

The Transformation Plan establishes a checklist of key criteria for waterfront development, as "excellence on the waterfront will be a principle against which all

development will be assessed". The checklist and response pertaining to the modification is set out in **Table 7** below.

**Table 7 Bays Transformation Plan waterfront development excellence and placemaking checklist**

Transformation Plan Checklist	Response applied to Modification
<b>Sensitivity of the design to water</b>	
Does the development use the "water" itself to draw attention to the greatest asset of the Sydney Harbour waterfront location and add value?	The modification allows the public to sit outside and appreciate the waters of Sydney Harbour. It adds value to the many customers and visitors to the area
Does it provide "active public enjoyment of the waterfront" and respond to the land-water character?	Yes, by 24 hour access, outdoor seating, public seating as shown on in the landscape plan. The public can participate in the amenity provided by the waterfront activity.
Do developments connect physically and psychologically to the water and minimise walls to the waterfront?	The MOD 1 cements the interrelationship between the land and the water. The development provides 24 hour public access.
<b>Quality and harmony of design</b>	
Do buildings harmonise, contribute to and enhance the setting in which they site be they natural or man-made?	Level 2 of the eastern building is set back from the waterfront. Extra level on car park is generally set behind the façade of the eastern building with less visibility from the foreshore. Landscape plan shows green wall effect on car park
If the site is appropriate for an iconic building, then does it serve a variety of functions rather than just being one-dimensional? Is it a good neighbour?	Not really the site for an iconic building as not on a headland. However provides a number of uses – commercial maritime, yacht club and public access ancillary restaurants. The scale is appropriate for the site.
Are the three-dimensional aspects of "space" considered to achieve spatial optimisation, rationalisation, flexibility and co-location on prime inner city waterfront land? (for example, parks, infrastructure, bridges, paths connecting the 'green	Presumably this means "is it efficiently laid out and appropriately connected?" The approved foreshore promenade allows for through connections in future when approved on surrounding sites

Transformation Plan Checklist	Response applied to Modification
grid', shared use facilities)	
<b>Balanced mix of land-water use and activity</b>	
Is there a mix of public and private uses integrated and is excessive privatisation avoided?	Private commercial maritime uses and yacht club, (although of course all members of the public can make application to join the club). The public will have access to the restaurants/cafes/ waterfront seating, and the 24 hour foreshore access.
Is there a balance of residential uses in Destinations and surrounds that are compatible? Is residential development not dominating?	Not applicable. Residential not zoned for this site.
Is there a balance of maritime, public waterways use and activity and are conflicts minimised?	See section 2.4 on navigational safety. The waterways area will remain the same as currently approved.
Is there "a diversity of uses from passive public parks to vibrant attractions"?	Yes. There is foreshore access and activation of the waterfront by the commercial maritime uses and ancillary activation. Passive public parks are on the other side of Rozelle Bay. Whilst this area may be described as an attraction, it is not envisaged that it would be a destination for entertainment.
Has the authenticity been retained and areas not become "too clean" and sterile at the expense of waterfront uses?	The site will essentially remain a superyacht marina supporting commercial maritime operations with excellence in architectural and landscape design.
<b>Environmental excellence and resilience</b>	
Are there highlighted environmental values? Has thinking on resilience been applied?	Environmental considerations have been assessed and found satisfactory.
<b>Civic, heritage, cultural and educational contribution</b>	
Are creative amenities, public art and temporary uses proposed for people's comfort and enjoyment and social	See landscape plan. 24 hour public access to the foreshore.

Transformation Plan Checklist	Response applied to Modification
interaction?	
Is local identity showcased by making the most of history, culture to create a unique sense of place, experiences, richness and community togetherness around the waterfront?	The applicant is open to including some historical references within the future landscaping of the public access areas.
Is equity fundamental? Will people of all incomes, ages and cultures feel welcome?	Yes – access to the foreshore is 24 hour open to all. Use of the cafes and restaurants and their outdoor seating will be open to the public
Is the “dynamism of the private sector, the stewardship of public agencies and the energy of the community captured”?	The marina will be operated by the private sector, but on public lands. It is certainly hoped that the beauty of the site and facilities will capture the enthusiasm of the community.

### 3.3 Leichhardt Council

#### 3.3.1 Legality of proposed development

##### Issue

Counsel Clifford Ireland has provided an opinion to Leichhardt Council. Council staff have formed the view that the proposed modification is beyond statutory power conferred by s75W and hence the proposal is open to challenge in Class 4 proceedings in the Land & Environment Court. No further details were forthcoming despite a request.

##### Response

Consideration of the Save our Bays’ legal and town planning submissions are included in this section for the purposes of concentrating the discussion into a single section.

##### (a) Scope of power

In *Barrick Australia Ltd v Williams* (2009) 764 NSWLR 733 Justice Basten with whom McColl JA agreed, held that s75W “confers on the Minister an implicit obligation to be satisfied that the request falls within the scope of the section”: at [38]. The comments set out in paragraph 53 are limited to general remarks which inform the content of the scope within which the terms of an approval to carry out a project may properly be sought to be changed: at [54]. The most relevant words are found in paragraph 53 as follows:

*“Secondly, the project is required to undergo environmental assessment and public consultation, of a kind not required of a modification. Construing s 75W in its context, it is clear that the modification of an approval was something intended to have limited environmental consequences beyond those which had been the subject of assessment. (Given the powers of the Director-General, it cannot be said, of course, that only modifications which properly required no further environmental assessment were envisaged.)”*

It is the applicant’s view that there are two ways of interpreting the matter of the “environmental consequences”:

- that the types of environmental consequences that might flow from the modified development must be of the same character as those which were assessed in the environmental assessment for the project approval; or
- that one focusses on the environmental consequences of the development as modified, irrespective of their nature, and whether those consequences are limited when compared with the environmental consequences that were the subject of assessment as part of the project application process.

The applicant considers that the latter is more consistent with Basten JA’s other comments concerning the scale of development with which Part 3A of the EP & A Act was concerned, and the role and flexibility allocated to the Minister in terms of identifying, approving and modifying projects. In this case, the EA MOD 1 and this Response has shown that the environmental consequences flowing from the proposed modifications, whilst of a different character (namely because they involve the water based activities) are limited as compared to those which were identified for the original land-based approval. There are no significant environmental impacts in terms of vessel movements, navigational and safety impacts, disturbance of pre-existing contaminated sediments, or visual, noise or traffic impacts.

The qualification by Basten JA set out in the parentheses is important and cannot be overlooked. Basten JA clearly envisaged that a s75W modification can require additional environmental assessment, as has been conducted by the applicant.

**i. On the Land**

In relation to the land based modifications sought, with the exception of the outdoor seating, the modifications all relate to works or uses which have already been approved. Although the 2012 Consent did not approve the outdoor seating, it formed part of the application, the noise from the outdoor seating was assessed as part of the original application and the nature of the approved buildings clearly envisage outdoor

seating. For instance 581 people talking outside were included in the 2012 Consent noise assessments. It is the Proponent's view that the incorporation of the outdoor seating which was always envisaged by the project, and assessed as part of the original application, does not take the project outside the terms of the approved development described as "*Land based redevelopment of the Marina, comprising:*

- *Construction of two commercial maritime buildings with ancillary uses*
- *Construction of a multi-level car park building*
- *Off-street car parking and associated landscaping."*

It is therefore considered that the Minister could reasonably be satisfied that changing the 2012 Consent to remove condition A11(d) and to make the other changes on the land based developments are well within the scope of s75W of the EP & A Act.

#### ii. On the Water

The modifications also seek to extend the boundaries of the 2012 Consent to include the same area of water as that currently comprised in the 2008 Consent, together with use of the area for 43 vessels and up to 36 tenders, and reconfiguration of the pontoons. The rationale as set out in section 2.12 of the EA MOD1 is to bring the land and water facilities within the same consent noting the inherent interlinking activities. Given the direct relationship between the land and water based operations, the previous consent history of the site, and despite the fact that activities proposed for the water-based area are necessarily different to those on the land-based area, there is a strong interdependence between the respective development on the two sites and it is open to the Minister to consider it appropriate in those circumstances to modify the 2012 Consent to bring the water based area within the scope of the 2012 Consent.

As set out above, Basten JA clearly envisages that a s75W modification may require further environmental assessment, although the environmental consequences should be limited. Assessment of the navigational safety, visual and noise impacts, and the possible movement of contaminated sediments are set out in the EA MOD1 and in this Response. Whilst the environmental consequences of the water activities are different to those on the land side, the assessments find that the environmental consequences of the requested modifications in the water area are extremely limited.

The proponent therefore considers it is reasonable for the Minister to be satisfied that the MOD 1 application with respect to the water area is one to which a s75W modification application applies.

(b) Save Our Bays Submission

Save Our Bays included a legal advice from HWL Ebsworth Lawyers. It concentrated discussion on the judgment of Basten JA in *Barrick Australia Ltd v Williams* [2009] NSWCA 275. In addition to the matters set out above, the following comments are made in respect of the HWL Ebsworth advice:

- The abstract extracted on page 3 of the advice, highlighted the second factor, but failed to highlight the qualifying statement in the parentheses to that factor – namely

*“(Given the powers of the Director-General, it cannot be said, of course, that only modifications which properly required no further environmental assessment were envisaged.)” at 53.*

It is the Proponent’s opinion that the failure to acknowledge that important qualification impacts on the weight that can be given to the advice. The HWL Ebsworth advice emphasises the fact that “no water-based development was ever contemplated in the Project Approval,” and “the modifications propose entirely new elements of the development...such that the environmental consequences are clearly beyond those which had been the subject of the Project Approval assessment”. By failing to acknowledge Basten JA’s qualification, the argument and hence conclusion reached by HWL Ebsworth is substantially weakened.

- With respect to the incorporation of the 2008 Consent into the 2012 Consent see the discussion set out in section 3.1.9 above.
- There is nothing in condition A11 which requires separate Part 4 consents to be obtained.
- The advice from HWL Ebsworth does concede that the Minister has the discretion to be satisfied that the modification falls within s75W. The assertion that a decision in this case that for the Minister to be so satisfied would fail the *Wednesbury* test of unreasonableness is far-fetched given the high bar set by that test.

Save Our Bays also included an objection by Jock Palmer & Associates Pty Ltd – Planning & Development Consultants & Landscape Architects. The basis of this objection relies upon a submission that there is a significant or substantial intensification of the approved development with a significant environmental affectation. Mr Palmer does not indicate from where the “significant/ substantial intensification” test is drawn. It is certainly not in the legislation, nor in the decision of *Barrick*, which specifically

rejected invitations to explain the statutory language by the formulation of any such test, in particular the “radical transformation” test applied in the court below.

Mr Palmer’s analysis includes a number of factual errors including:

- In paragraph Aii he advises that the original length approved was typically 15 metres. The 1999 approval was for 56 boats comprised of 29 boats of approximately 10 metres and 27 boats between 45-70 metres. The 2008 Consent allows for a selection of 24 vessels between 20-70 metres in length.
- He alleges that the intensity of the general water craft storage on the site is not specifically disclosed. It has been clearly stated that up to 20 car spaces along the foreshore could be used for watercraft storage.
- The increase in the car parking building size, is generally a function of enabling marine storage to be accommodated, and to allow additional small marine contractors to have a space to conduct their businesses. It also enables the 13 car spaces which were removed during MOD 2 to be reallocated on the Site.
- Regarding the comments under “Change of Use”, the marine uses of the car park fall within the definition of “Commercial maritime uses” set out in condition A6(a) of the 2012 Consent, which is an expansive definition. They are not new and additional uses, nor are they a change of use. The outdoor seating was requested and assessed under the original assessment and the building forms reflect that request. The outdoor seating does not introduce a new land use concept, it relates to the approved ancillary uses.
- An additional acoustic assessment is provided with this response.
- The use of the outdoor areas is not “entirely flexible” – it is restricted to outdoor seating. The noise controls are not vague and unenforceable. There are 18 separate conditions concerning noise control on the Site and these are not to be amended (see section 2.2.1 of this Response).
- Mr Palmer appears to have overlooked the assessment by Marine Pollution Research included in the EA MOD 1 concerning the impact on the Bay sediments from the boats. Attention is also drawn to the report provided by one other submitter and briefly discussed in section 2.5 above.

### 3.3.2 Bays Precinct Transformation Plan

#### Issue

This is a significant intensification when future management and development is under development. It potentially compromises the planning of other elements in the Bays precinct such as old Glebe Island Bridge and the reuse of the White Bay Power Station and relevant transport connections. There should be a delay until finalisation of the Bays Precinct Plan.

#### Response

The Bays Precinct has been the subject of continued consideration of planning since March 2007 when a community reference panel was established to provide input into future land use in the Bays Precinct. Whilst there has been a number of revisions since then of how to progress revitalisation of the area, there is still no decision. The applicant is entitled to lodge an application to modify an existing consent. The applicant is entitled to construct the 2012 Consent irrespective of anything arising out of the Bays Precinct Plan. The application does not introduce a use or structure which is so significantly different from the current and approved uses that it would be counter to any future planning proposals.

Consideration of Glebe Island Bridge is below in section 3.3.6.

### 3.3.3 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

#### Issue

The proposed intensification on land and water will result in non-compliance with the aims, principles and objectives of the SREP and zoning.

#### Response

No elaboration as to how it would not comply was included. See a discussion of the SREP in section 2.1.8.

### 3.3.4 Number of vessels

#### Issue

The vessel movements of the increase in boats will have a significant impact upon passive recreational use in the immediate surrounds and waterway approaches and will further privatise the Bay and limit public use.

#### Response

See discussion on anticipated increase in vessel numbers in section 2.4.2. The area will not increase, vessel captains are subject to the rules of maritime navigation wherein power gives way to sail or unpowered craft. No vessel owner will have any rights over the Bay greater than a passive watercraft user.

### 3.3.5 Impacts on users of the waterway

#### Issue

There will be disturbance of the seafloor which is contaminated and has the potential to impact Sydney Harbour and the immediate area, including rowing and exercising dogs. The State government and agencies need to carry out detailed sampling and analysis to identify the potential impacts and incorporate appropriate management measures.

#### Response

Sampling and analysis was conducted by Marine Pollution Research Pty Ltd as set out in Appendix J and discussed in section 4.5 and 4.6 of the EA MOD1. The report found that the contamination levels were similar to other central Port Jackson embayments that supported similar historic shipping, shore and industrial developments. See section 2.5 for further consideration.

### 3.3.6 Glebe Island Bridge

#### Issue

Vessel movements will increase through the Glebe Island Bridge. Any approval will compromise an independent cost benefit analysis on the retention of the Glebe Island Bridge and re-opening the Bridge as an active transport route between the LGA and City of Sydney and between the White Bay Power Station and Sydney CBD.

#### Response

The Glebe Island Bridge cost/benefit analysis is outside the scope and influence of this modification. However the following commentary is provided.

A cost benefit analysis of various options for the Glebe Island Bridge was commissioned by Transport for NSW and conducted by ACIL Allen Consulting in September 2013<sup>11</sup> and considered three broad categories of options with a number of options within each category:

- Restoration/preservation

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<sup>11</sup> ACIL Allen Consulting 2013 Cost Benefit Analysis of various options for Glebe Island Bridge <http://www.transport.nsw.gov.au/sites/default/files/b2b/media/ACIL%20Allen%20Glebe%20Island%20Bridge%20CBA%20final%20report%2016Sep13.pdf> accessed 09.08.15

- Removal/demolition
- Replacement/adaptation

Considered options included restoration of the bridge for two lanes of traffic. There was no consideration of restoration for foot, cycle and light rail transit only, however the following benefits and costs were quantified for the restoration option:

- Reduced maintenance costs relative to a simple base case restoration;
- Time cost of delays to vessel operators; and
- Time savings of cyclist and walkers commuting to work between Balmain or East Balmain and Sydney Inner City.

The report indicates that ACIL Allen Consulting conducted surveys and found that 78% of trips through the channel are for business rather than pleasure and that the RMS estimates on average up to 300 vessels currently pass through the channel each day with an estimated growth of 2% per annum. ACIL Allen estimate from NSW Bureau of Transport Statistics that there are 229 cyclists and 101 walkers each work day who could potentially enjoy time savings by commuting over a low level restored Glebe Island Bridge, saving on average 5 and 15 minutes respectively per trip. Recreational cyclists and walkers were not explicitly quantified but included within the unquantified benefits to make restoration a preferred option. In that case the report indicates that the amenity benefits to recreational cyclists and walkers would need to be \$5.5 million per year. Assuming 1000 trips are made each day by such cyclists and walkers, the community would have to value each trip at more than \$15.20 in 2013 dollars.

As set out in the section 2.4 on navigation, the estimated increase in boat numbers arising from the proposed increase in vessel berths is likely to represent a very small percentage of the estimated 300 trips through the Glebe Island Bridge – at a maximum of 24 vessels per day or 8% of the estimated total. For the Government to elect to reopen the Glebe Island Bridge for low level traffic it would need to consider the 78% of commercial traffic (or an estimated 234 vessels per day) which will be inconvenienced by even a partial closing of the Bridge.

The addition of a further 19 vessels, which at most on a busy Friday afternoon are likely to provide about another 6 boat movements is unlikely to be the definitive matter in contemplating whether or not to close the Bridge.

Urban Growth is seeking to upgrade the Fish Markets. Blackwattle Bay already houses an active charter boat industry and concrete batching plants. Rozelle Bay incorporates a number of “working harbour” marine industries such as Australian Wharf and Bridge, Waterways Constructions, Sydney City Marine, Clement Marine, the Heritage Fleet and Seawind Catamarans. These industries together with the Superyacht Marina and the

approved Sydney Boatstore with 670 boats, will be amongst the commercial activities which Urban Growth will need to consider when making recommendations about the future use of Glebe Island Bridge.

The Harbour Master's Directions for Sydney Harbour and Botany Bay dated February 2014 clause 2.46.9 indicates that the western channel of the Glebe Island Bridge is closed to all seagoing, commercial and recreational traffic over 15 metres in length. The eastern side of the bridge is open to all traffic.

The PAC indicated in their determination report on 26 November 2012 that it "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" (our emphasis).

It is submitted that the modification does not alter this summary.

### **3.3.7 Traffic generation and parking demand during events**

#### **Issue**

Additional information is required about peak event mode of the yacht club and restaurants at night time on weekends and weekdays, demonstrating bump in and bump out events and ability to cater for parking demand

#### **Response**

Assessment of the parking has been conducted under the Council's own DCP requirements which set both minimums and maximums. See the response from Transport and Traffic Planning Associates contained in **Appendix D**. At all times the number of available car parks is well above minimum numbers the Council requires.

Traffic assessment of the restaurants and yacht club was conducted for the 2012 Consent. There is no additional restaurant or yacht club gross floor area requested in the modification. The requested outdoor seating will need to be vacated by 10pm, in which case those patrons will either move inside and occupy the GFA already approved, or depart the site. The outdoor seating is unlikely to involve any large group event, hence there is no "bump in/bump out" activity which arises by virtue of the modification which would require any additional assessment.

### **3.3.8 Outdoor seating**

#### **Issue**

The inference is that the outdoor seating is creating a precinct of licenced premises in an area with very limited public transport and the modification allows for a major entertainment venue within a constrained industrial area.

## Response

Applications for liquor licences will need to be made separately by the tenants of the Site. Assessment of appropriate location will be made when those applications are made. The modification is not requesting liquor licences, simply enabling people to take advantage of being able to sit outside as part of the restaurants and cafes.

The modification is seeking additional commercial maritime GFA. It is not seeking to increase the restaurant or club GFA beyond that originally approved. The ability to sit on a balcony or deck or on the forecourt does not create an "entertainment precinct".

The Rozelle Bay Light Rail will be approximately 750 metres from the Site once access along the foreshore is provided through the other sites along the northern side of Rozelle Bay. By the existing access it is about 1.0 km to the light rail station. The bus stop on Victoria Road is approximately 820 metres or 1.2km (depending upon the route taken) from the Site.

It is noted that there are other locations such as Cockatoo Island which are far more constrained for public transport and yet are considered viable for use. The Quarantine Station at Manly, which has night tours and hosts weddings and conferences, ceases public transport after 7.23pm weekdays and 5pm on Saturdays, following which there is a 2km walk to the Manly Ferry.

### 3.3.9 Noise

#### Issue

The intensification of use (number of vessels, movements, cars and patrons) will likely see a significant increase in noise impacts.

#### Response

No basis is made for this assertion. Acoustic Logic provided assessment of the additional noise impacts from the proposed modifications and found that these were acceptable. In response to a number of submissions seeking further consideration of noise, Benbow Environmental has undertaken further modelling. A summary of that modelling is found in **Appendix C** and discussed in section 2.2.2 above.

### 3.3.10 Complexity of approval process

#### Issue

Various applications have been made over the past decade on the site and previous variations have been made under the now revoked Part 3A consent. Other parts of the site have approvals made under Part 4. Part 3A was revoked due to lack of transparency and failure to engage public input and comment.

**Response**

At the date of Council's submission on 29 May 2015, there was no approved Part 3A modifications notified to the applicant. MOD 2 was approved on 27 May 2015 but not notified to the applicant until 2 June 2015. The submission implies that there had already been a series of modifications to the 2012 Consent and is incorrect.

**3.4 City of Sydney**

The City of Sydney identifies a number of issues primarily it appears, on the basis that the application is an inappropriate accessing of the provisions of the now repealed Part 3A of the EP & A Act. These are as follows:

**3.4.1 Activation of consents****Issue**

The City of Sydney raised concern that neither consent, but in particular the 2008 Consent, had not been activated.

**Response**

The 2008 Consent and 2012 Consent have both been activated. See section 3.1.9 of this Response.

**3.4.2 Consolidation of approvals****Issue**

The City of Sydney states that the 2008 Consent and 2012 Consent are for *"vastly different purposes that share general connection to historical marine functions at the site."* It objects to consolidating the Part 4 consent into the Part 3A and says the Part 4 should be stayed. It then states that having two concurrent consents does not present insurmountable problems and that the current Part 4 consent was granted on the basis of being permanent not flexible. The application should not bypass the s96 EP & A Act test of "substantially the same", and despite asking for the Part 4 to be stayed, it then says that it should apply.

**Response**

There is no basis presented to any request for a stay of either consent.

As detailed in section 2.12 of the EA MOD 1, there are numerous interconnections between the water based part of the marina and the land based part which are complementary. The Council has indicated that the consents are for "vastly different

purposes". This is not the case. Both consents provide for facilities to conduct a permanent superyacht marina.

Council believes that the "substantially the same" test of section 96(1A)(b) of the EP & A Act should apply. If a modification application had been lodged to the 2008 Consent this may be relevant, however it was not. The applicant is entitled to lodge a s75W modification application by virtue of Schedule 6A, including section 3 of the EP & A Act under the transitional arrangements for the repeal of Part 3A. The "substantially the same" test is not included in the relevant s75W provisions.

### 3.4.3 Changes to approvals

#### Issue

The changes "comprise a substantial and radical transformation of the terms of the existing approvals", with the scope being "vastly different". The proposed modification should not be determined under either s75W or s96. The current approval is for superyachts and the "entire purpose of the development would be altered" by including vessels of 15 metres or more, not simply superyachts – radically eroding the terms of the 2008 Consent. A fresh Part 4 application is required and s75W limited to those matters determined under the 2012 Consent.

#### Response

Whether s75W requires that the modification not be a "radical transformation" was considered in *Barrick Australia Ltd v Williams* [2009] NSWCA 275, wherein Basten JA clearly indicated in paragraph 52 that the court should be wary of invitations to explain the statutory language and rejected an interpretation of s75W relating to "radical transformations". See the discussion on the scope of power in section 3.3.1 above.

The modification cannot be determined under s96 because it is not a modification to the Part 4, 2008 Consent. It is not explained by Council why it cannot be determined under s75W. See section 3.1.9 regarding clarification of the future of the 2008 Consent.

The 2008 Consent provides for a maximum of 24 vessels at the marina. The Statement of Environmental Effects (which is included within the approved 2008 Consent documents) establishes lengths of boats, eight of which are 20 metres – therefore less than the defined length of a superyacht of 24 metres or more. The consent only allows for 21 vessels of beyond 24 metres. The modification is seeking to allow 43 boats of 15 metres or more. It is incorrect to allege that the modification will for the first time allow "non-superyachts" to berth at the marina.

Council requests a new Part 4 consent. That would enable 3 consents to govern the marina. The Proponent is seeking to rationalise the approvals, rather than to complicate them further.

#### **3.4.4 Extent of flexibility**

##### **Issue**

There is too much flexibility requested hence the visual, noise and other environmental impacts are incapable of being assessed. There will be a greater extent of pontoons and gangways and increased vessel movements.

##### **Response**

The current pontoons and gangways have a length of approximately 300metres. The 2008 approved length is approximately 700 metres. The proposed length of pontoons and gangways is approximately 580 metres – less than the 2008 Consent.

Consideration of vessel movements is set out in 2.4. The traffic and parking assessment takes into account the worst case scenarios and is found to be satisfactory (see **Appendix D**). The visual impacts of the modifications are clearly demonstrated in the revised architectural and landscape plans accompanying this Response. Assessment of the environmental impacts is sufficiently certain to allow a determination.

#### **3.4.5 Surrender of Part 4 Consent**

##### **Issue**

The Part 4 2008 Consent should be surrendered on the granting of any Part 3A modification consent, consistent with the stated aim of only one approval – otherwise there is an “either/or scenario” which lacks planning certainty and creates a poor precedent.

##### **Response**

In the majority of cases an existing consent is not surrendered when a new consent is granted, even less so when a modification to another consent is proposed. This does not create planning uncertainty and is adequately managed by Councils and the Minister throughout the State.

The applicant is prepared to contemplate surrender of the 2008 Consent as a condition of consent, subject to certainty of approvals for existing works and use on the site, and subject to the consent of the RMS who, as landholder, is the only entity capable of signing the necessary paperwork for such a surrender.

To surrender the 2008 Consent upon the granting of any consent for this modification would leave the current operations effectively without any operative consent, given

that their current buildings are not envisaged by the 2012 Consent. The more appropriate time for any surrender is when the construction of the buildings under the 2012 Consent is completed.

### 3.4.6 Design Quality

#### Issue

Design quality and details are missing or have changed from the 2012 Consent. No landscaping plans were lodged. Further details are required.

#### Response

The architect Scott Carver, has responded to this issue as follows: *"The design of the modified Superyacht Marina, reflects all previously approved materiality and design intentions. The scheme represents an evolution from the current layout, with a third level to east building setback from the foreshore, to minimise visual impact. An honest and robust material selection, draws inspiration from the industrial maritime heritage of this inner city waterfront. This scale is in keeping with that envisaged on the site Master Plan, and well below the approved height of the Sydney Boathouse storage sheds (one of which is now completed)."*

The materials palette remains the same as already approved in the 2012 Consent. Landscape plans have been updated and accompany this Response.

### 3.4.7 Vessel Width Restriction

#### Issue

It appears there is an 18m width restriction going through the Glebe Island Bridge – an item of high heritage significance. Any modified development should not have the ability to cater for craft that have difficulty passing the Bridge. The Bridge will provide an important low level access across the bays in future.

#### Response

Sydney Harbour Superyacht Guidelines prepared by the RMS indicates that the swing span is 18.7 metres on the western side and 18.8 metres on the eastern side. No maximum width is specified for boats. However no vessel captains will be prepared to berth at the marina if they cannot safely navigate through the old Glebe Island Bridge. These are expensive vessels and captains will not put their valuable asset at risk of collision with the Bridge and its abutments.

Regarding future use of the old Glebe Island Bridge see section 3.3.6.

### 3.4.8 Consultation

#### Issue

The Director-General's requirements are not met regarding consultation as there was no consultation with the City of Sydney or its residents prior to lodgement of the application as required by NSW Planning & Environment's Guidelines for Major Projects Community Consultation.

#### Response

See section 3.1.1 for further details. The City of Sydney has not responded to the applicant's letter inviting them to a meeting. Consultation, including via the Community Liaison Group and meetings with interest groups has occurred and is documented in this Response. The community hotline number is established, and only one call has been received in the two months since the letter box drop which included this phone number in a letter and flyer.

## 3.5 Port Authority of NSW

### 3.5.1 Capacity of James Craig Road

#### Issue

Port Authority has concerns about the ability of James Craig Road to service all of the existing and proposed developments in the area, including port developments on Glebe Island. They requested time for a subsequent submission following consideration of the modelling program utilised by Transport and Traffic Planning Associates for the assessment.

#### Response

The Port Authority declined the invitation to make a further submission following their consideration of the traffic model utilised by Traffic and Transport Associates.

Please see the response from Transport and Traffic Planning Associates in relation to this submission in **Appendix D**.

### 3.5.2 Referencing of White Bay Cruise Terminal

#### Issue

This was incorrectly referenced as the Overseas Passenger Terminal in the Environmental Assessment and traffic assessment.

**Response**

This is noted, however it is not considered that any confusion or material issues resulted from this error.

**3.5.3 Berthing schedules****Issue**

The assumptions made in the traffic report for berthing schedules are incorrect. In calendar year 2016 there are scheduled to be over 155 ship visits to the White Bay Cruise Terminal and in peak season it is not uncommon for 5 or 6 vessels to be scheduled there per week, sometimes using both berths.

**Response**

A review of the Cruise Ship schedule (available on the Ports Authority website) at White Bay Cruise Terminal and White Bay 4 was conducted on 30 July 2015 for vessels proposed to visit between 1 August 2015 and 31 July 2016.

Cruise ship arrivals at White Bay Cruise Terminal (WBCT) and White Bay Berth 4 (WB4) are generally in the morning between 6-7am. Departures are usually in the evenings between 4pm-7pm. Disembarking and boarding may take at least one hour. The morning arrivals and disembarkation may coincide with morning peak hour, however this will not coincide with a peak time for any traffic associated with the uses on the Site including the club or restaurants. Similarly, traffic associated with boarding prior to the ships leaving does not coincide with any traffic peaks associated with the uses on the site including the club or restaurants, although it may coincide with the general peak hour.

Some of the conclusions arising from that review include:

- 138 vessels are proposed to berth between 1 August 2015- 31 July 2016, including 16 overnight stays – 13 of which are between 14 January and 23 February;
- This is an average of 2.63 vessels per week visiting the terminal;
- From Sunday to Saturday the weekly tallies of cruise boats using WBCT and WB4 are set out in Table 8:

**Table 8: Weekly tallies of proposed cruise boats at White Bay between 1.8.15 - 31.7.16**

Month	Week 1	Week 2	Week 3	Week 4	Week 5	Monthly total
August	1	0	3	1	-	5
September	2	1	2	1	0	6
October	1	1	1	3	3	9
November	1	3	2	8	-	14
December	4	4	2	1	3	14
January	4	3	3	8	-	18
February	5	6	6	5	-	22
March	3	2	1	2	2	10
April	3	2	3	1	-	9
May	2	2	4	3	-	11
June	2	3	4	2	2	13
July	0	3	3	1	-	7
<b>TOTAL</b>						<b>138</b>

- There are proposed to be 13 times between 1 August 2015 and 31 July 2016 (8 during February) when there is proposed to be two boats moored at the terminal simultaneously. There is proposed to be 177 hours (or 2% of the year) when there will be two cruise boats berthed simultaneously:
  - 24 November between 7am and 16:00
  - 25 November between 7am and 20:00
  - 16 January 2015 when there will be a cruise ship at the Cruise terminal until 3am, then shifting to WB4, to allow another ship to arrive at the cruise terminal at 3.30am to remain there until 21:00.
  - 26 January between 8am and 18:00.
  - 5 February between 12:00 5<sup>th</sup> February to 16:00 6<sup>th</sup> February.
  - 11 February between 7:00 and 16:00
  - 12 February between 7am and 22:00
  - 13 February 6am and 18.30
  - 14 February 7am and 16.00
  - 16-17 February 8am on 16<sup>th</sup> to 18.00 on the 17<sup>th</sup>
  - 23 February moored between 6am and 20.00
  - 24 February between 7am and 16.00
  - 9 May between 7am and 16:00.
- Other than busy periods:
  - in the last week of November,
  - around Australia Day,
  - between 11-17 February, and

- around 23-24 February there is only moderate activity at the terminal.
- There are only 6 weeks in the year (11.5%) when there will be 5 or more boats at the terminal during that week.

As explained in the advice of Traffic and Transport Associates in **Appendix D**, the figures used in the original assessment lodged with the EA MOD1 came from the AECOM study for the Glebe Island Interim Facility. A correction to the projected figures is included in **Appendix D**. However the times during which the cruise ships arrive and depart and the infrequency of multiple vessel berthings means that congestion arising from the additional uses associated with the proposed modification and the cruise boats is unlikely to be in any way significant.

### 3.5.4 Port Traffic

#### Issue

No consideration of the traffic from the ports tenants on Glebe Island, and they are not acknowledged in the Environmental Assessment.

#### Response

The truck movements from the existing Ports tenants are taken into consideration in the surveys conducted by Transport and Traffic Planning Associates and form part of their analysis. It is acknowledged that Cement Australia, Gypsum Resources Australia and Sugar Australia are tenants on Glebe Island.

### 3.5.5 Disturbance of the Seabed

#### Issue

Any proposed disturbance of the seabed will require the Harbour Master's approval under s67 of the Management of Waters and Waterside Lands Regulations NSW.

#### Response

This is noted. A separate application will be made under s67 as required.

### 3.5.6 Vessel Traffic Management Plan

#### Issue

The Vessel Traffic Management Plan will need to be prepared and implemented in consultation with the Harbour Master as well as RMS.

#### Response

This is noted. This can be conditioned and a revised plan prepared.

### 3.6 Roads & Maritime Services

#### 3.6.1 Navigation

The RMS noted "Subject to works being consistent with the issued PTL, Roads and Maritime raises no specific concerns with the proposal in terms of navigation." The revised plans are not so substantially different that they could be described as inconsistent with the plans issued with the PTL.

#### 3.6.2 On-street Parking

##### Issue

RMS requests careful consideration of the impact upon the already restricted on-street parking within the vicinity of the site.

##### Response

The minimum number of car parking spaces will be 237, well above the minimum car park provisions of Leichhardt Council's DCP requirement of at least 177 car spaces). In the event that all the flexible car spaces are used for car parking, the total number of spaces will be 307. The assessment reports by Traffic and Transport Associates in EA MOD1 and in **Appendix D** to this Response indicate that there will be sufficient parking on site to support the proposed uses, including those arising from the proposed modification.

### 3.7 Environmental Protection Authority

##### Issue

The EPA requested further information to ascertain whether or not the provisions of the Protection of the Environment Operations Act, in particular the requirement for an Environment Protection Licence would be required.

##### Response

A letter of advice was provided to the EPA setting out further details, and a response was received acknowledging that no environment protection licence would be required. These are included in **Appendix G**.

### 3.8 Transport for NSW

No issues were identified.

### **3.9 Foreshores & Waterways Planning & Development Advisory Committee**

The Committee advised that the overall increase in bulk and scale is considered minor and will not have an adverse impact upon the character of the locality when viewed from both the water or nearby public spaces. No issues were identified.

### **3.10 Office of Environment and Heritage**

The Office indicated that it has no interest in the matter, although the Heritage Division may provide a separate response. No such response was received. No issues were identified.

### **3.11 Sydney Water**

Sydney Water requested that a condition be included that the approved plans must be submitted to a Sydney Water Quick Check agent to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met. It is anticipated that this would be a condition of consent.

### **3.12 Department of Primary Industries**

The Department of Primary Industries comments were:

- Fisheries NSW have no objections but recommend sediment curtains be used during on-water construction of the marina.
- NSW Office of Water supports the proposed inclusion of a Water Quality Management Plan as a sub-plan of the Construction Environmental Management Plan.
- Although the area is covered by asphalt, opportunities to establish riparian vegetation on the reclaimed land are encouraged using appropriate local native plant species.

The first two matters can be conditioned. In relation to the third matter, given the concrete apron on piles overhanging a seawall, there are no opportunities to establish riparian vegetation. Native species have been included in the landscape plantings.

### 3.13 Sydney Harbour Association

This is an unincorporated association of individuals interested in Sydney Harbour formed upon the disbandment of the Sydney Harbour and Foreshores Committee in 2010. It appears to be based in Rose Bay.

#### 3.13.1 SREP (Sydney Harbour Catchment) 2005

##### Issue

They are concerned that the modification (particularly outdoor seating) is not ensuring the protection, enhancement and maintenance of the catchment, foreshores and waterways of Sydney Harbour as set out in SREP (Sydney Harbour Catchment) 2005.

##### Response

It is submitted that the foreshores are not in a natural state and outdoor seating will enable the appreciation of the harbour by those users of the marina such that their experience of the area can be enhanced.

#### 3.13.2 The site should remain a superyacht marina

##### Issue

The submission cites the recent proposal of Rose Bay Marina which sought to increase four berths from 30m to 37 metres "much to the alarm of the local community". It indicates that demand for vessels size will vary over time but that a superyacht marina should remain a superyacht marina. There is a reasonably clear inference from this submission that the Association wishes to ensure that as many superyachts as possible stay in Rozelle Bay and do not berth in Rose Bay.

##### Response

There is no change to the capacity of the superyacht marina site to accept superyachts.

#### 3.13.3 Tender vessels

##### Issue

The submission queries the need for a generous allocation of on-water tender vessels where superyachts should be the focus.

##### Response

Reference is made to section 2.12 of the EA MOD1. Superyachts require tender vessels, some of which are not appropriate to store on land. The tender vessels proposed are those associated with the other vessels moored at the site and for marina operations.

## 4. Amendments to Conditions

## 4. Amendments to Conditions

### 4.1 Amendments to Conditions

The following changes from the proposed changes to the Conditions from the EA MOD 1 are requested:

- Amend the title details to reflect the registration of the plan of subdivision (see section 1.4 of this Response)
- Amend the Definition of MOD2 to reflect its approval on 2 June 2015
- Insert in Schedule 1 a brief description of the modifications

In Schedule 2:

- Condition A1 revised GFA for eastern building to 3640m<sup>2</sup>
- Condition A1 Revised RL for lift overrun at RL 17.9
- Condition A1 Amendment to car park numbers outside the car park building from 66 to 62 rather than from 79 to 62
- Condition A2 Deletion of “berths and” in the proposed stage 7 as unnecessary
- It is noted that the following MOD 1 plans supersede the approved plans from MOD 2:

MOD1	MOD 2	Principal Change
DA30A 07/08/2015 West Building Ground Floor	2009002-AD-SK942 1/08/2014 Ground Floor West	C Service lift location, service areas, northern façade entrances /windows
DA31A 07/08/2014 West Building – First Floor / Roof	20090002-ADSK943 1/08/2014 First Floor West	C First floor Service lift, service areas to north and northern façade entrances
	20090002-AD-SK944 1/08/2014 Roof Level - West	C
DA13 D 29/09/2015	20090002-AD-SK946	A Service lift relocation

MOD1	MOD 2	Principal Change
Tenancy Diagram	03/04/2014 West Building Proposed Use	
DA08 G 07/08/2014 Elevations Sheet 1	DA08 F 07/02/2014 Elevations Sheet 1	Inclusion of eastern side of site, lift overrun height, alteration to northern façade windows and entrances
DA12 D 07/08/2015 Perspectives – Sheet 2	DA12 07/02/2014 Perspectives – Sheet 2	Inclusion of eastern side of site

- A6 Amendment of GFA table taking into account the flexible use of the GFA and the changes from MOD2. Reversion to originally approved area and percentages for ancillary and provided uses in A6(c).
- A7 car park numbers
- B8 amendments to GFA
- E8 amendments to GFA and height certification

The proposed amendments to conditions are set out in **Appendix J**.

#### 4.2 Amendments to Statement of Commitments

The following changes from the proposed changes to the Statement of Commitments in Schedule 3 of the Consent from the EA MOD 1 are requested:

- Reference Mod2 under the commitment titled "Environmental Assessment"
- Amend references to "Director-General" to read "Secretary"
- Either delete the commitment titled "Use of Buildings" (as this is covered by Condition A6), or state that the commitment is amended by Condition A6, Schedule 2.
- In the commitment titled "Outdoor Seating Areas" add the words "southern edge of the" before "western building deck". This is because during consultation, one person expressed confusion as to whether there would be any tables and chairs on the western building deck.

- Either deleted the table and preceding sentence in commitment titled “Operating Hours” (as this is covered by Condition F1) or state that the commitment is amended by Condition F1, Schedule 2.
- In the commitment titled “Closing of Doors and Windows” the words “and incorporate air locks” were deleted in MOD2.
- In the commitment titled “Restriction on car parks associated with ancillary restaurants, takeaways, cafes and bars” add “and providedore” in the title and include reference to the providedore within the commitment. The explanation is that if 1417m<sup>2</sup> is the maximum GFA for ancillary and providedore uses and a car park is applied at 1/80m<sup>2</sup> GFA, this requires 17.7 car parks. In this manner the GFA for those uses can be retained at the approved GFA without being subject to the ability to expand that GFA under the SEPP (Exempt and Complying Codes) 2008.

The proposed amendments to the Statement of Commitments are set out in **Appendix J**.

## 5. Summary

## 5. Summary

On the basis of the submissions received and further consultation with Authorities and community groups, further assessment has been undertaken and the application has been amended where necessary as follows:

- Further noise modelling has been conducted by the original acoustic experts as requested.
- Three dimensional imaging of the proposed development is set out in Figure 1 in section 2.6.1.
- An information flyer was delivered to the same area as the Department notification coverage. One response was received.
- Letters including the information flyer, inviting 15 community groups, two Members of Parliament and two councils to a meeting were distributed. Two meetings have been held including 4 community groups and one Member of Parliament. Others have either declined the invitation or not responded.
- Consultation with Urban Growth has occurred and assessed that there is nothing in the proposed modification which is counter to the attainment of the principles in the Bays Precinct Transformation Plan.
- The applicant has corresponded with the EPA about the impact of the modification on any required environmental protection licence and it has been determined that one will not be required.
- Details about compliance with AS3962 Guidelines for Design of Marinas have been obtained from the design engineer.
- Brokerage berths no longer form part of the application.
- The proposed lift overrun height on the car park has reduced from RL18.6 to RL17.9.
- The plans illustrate the approved Sydney Boathouse marina pontoon layout (see DA04). The plans have been provided in greater detail as requested (see DA30-DA45).

- Landscape plans have been provided including an indicative layout of the proposed outdoor seating, and extent and details of the green screen planting on the car park.
- Further details regarding traffic have been provided by the traffic consultant.
- Further analysis of anticipated boat movements has been undertaken which indicates that the likely boat movements are considerably less than set out in the EA MOD1.
- Consideration has been given to the scope of the power under s75W of the EP & A Act and it is the proponent's opinion that it is reasonably open to the Minister to be satisfied that the proposed modifications involving both the land-based area and water based parts of the marina are ones to which a s75W modification can apply.
- This Response clarifies that there are no conditions or plans from the 2008 Consent which are sought to be adopted into the 2012 Consent. The MOD1 application has carried out environmental assessment of the impacts of the modifications independent of the 2008 Consent and *inter alia* seeks an extension of the area of the 2012 Consent, together with use of that area for vessels and reconfiguration of pontoons.

Other changes have been made from the approval of MOD 2, including:

- Amendments to the GFA as set out in section 1.3
- Deletion of the requirement to remove 13 car spaces along the northern edge of the eastern building as this is already approved under MOD2
- Deletion of the request to remove the air locks in the first floor yacht club as this is already approved under MOD2
- Consequent amendments to the proposed amended conditions and statement of Commitments as set out in section 4 above.

Further noise modelling has demonstrated that save for a 1db exceedance at one frequency (which is not detectable by the human ear), even with a peak use of cars and peak use of commercial maritime space (which cannot both occur at the same time), and with an estimate of 891 people talking outside, the marina will remain within the noise controls established under the 2012 Consent. Exceedances which have been modelled whilst there are outdoor bands are to some extent not relevant, given that there is already condition F2 in place which requires a trial period, noise monitoring

and a separate application before any consent for outdoor bands can be made permanent.

It is unfortunate that so many of the submissions reflected an inaccurate understanding of:

- whether the modification affected the Sydney Boathouse development next door, or the Sydney Superyacht Marina;
- the size of the water part of the marina, with many believing that the area requested was greater than currently approved under the 2008 Consent; and
- the number of the noise controls to be removed or amended. No noise controls will be affected by the modification.

This Response and the issuing of the community flyer has hopefully rectified that confusion.

Having examined and addressed each submission carefully it is considered that the modification application has limited environmental consequences, that the Minister can be satisfied that the application falls within the ambit of a s75W application and that the proposed amendments to the conditions are suitable.