Submission to Planning Assessment Commission

Save Our Bays Inc Glebe

This submission formalises our oral submission at the public meeting on Friday 8 April 2016 at Glebe Town Hall and adds to our earlier submission to the Department of Planning in relation to:

Application No: MP 09_0165

Proponent: Sydney Super Yacht Marina Pty Ltd

Community’s concerns about the Super Yacht Marina development complex

Our concerns relate to four main issues:

1. Proposed increase in size and over-development
2. Lack of proper planning decision-making by Department of Planning
3. Noise
4. Lack of proper process in community consultation

SAVE OUR BAYS
1. Proposed increase in size of development and over-development

We bring to the PACS attention that over 92% of the 148 submissions made to the Department of Planning in the current round were against the Proponents’ further proposed changes. This is in addition to the extremely strong objections to the prior round in 2012. The current objections reflect the concern of Glebe and Rozelle residents and park users protesting that the proposed changes are not acceptable.

We present this with the expectation that the Planning Assessment Commission listens to what the community and residents are saying and does not give precedence to the interests of private developers where these override the public interest, particularly in light of the evidence that the proponents have not been dealing with the community in good faith. See Appendix D. We note the reasons the Planning Assessment Commission gave for the imposition of its approval conditions in 2012:

(1) to ensure the site is appropriately manage for the proposed use;
(2) to adequately mitigate the environmental construction impacts of the development;
(3) to reasonably protect the amenity of the local area; and
(4) to protect the public interest.

City of Sydney and Leichhardt Councils and Urban Growth all bring to your attention in their submissions that these modifications do not align with:

- The States’ priorities
- The Bays Urban Transformation program
- The 2002 MasterPlan

These organisations represent the views of government and the community, and should be taken very seriously. They are arguing for what should be the fundamental approach here: to follow the 2002 MasterPlan and principles of the Bays Precinct, allowing the foreshores to be enjoyed by the public, not alienated or used for private use at the expense of public amenity.

The MasterPlan should not be changed simply to accommodate a developer whose objectives are private profit on a precious public asset—harbour-front land and the bay. It is up to the developers to work within the constraints set by the MasterPlan, which is there for the communities’ protection as well as the developer’s convenience.

Developer Creep. We bring to the PACs attention detailed figures highlighting the degree of ‘developer creep’ in this matter. This is one of the sources of the community’s mistrust of the Proponent’s intention, particularly in the light of how they have failed to consult and engage with us (see below).
Site Dimension in relation to the 2002 MasterPlan Specifications

As noted above, we believe that the developer should be required to work within the constraints of the 2002 MasterPlan. The current proposal exceeds this in many ways:

- the Eastern Building height now proposed is **38% more** than the MasterPlan specifications.
- the Western Building height now proposed is **17% more** than the MasterPlan specifications.
- the car park height now proposed is **23% more** than MasterPlan specifications.
- total ground floor area now proposed is **15% more** than the Masterplan specifications.
- the number of car spaces now proposed has increased by nearly **40%**.
- marina berths proposed has increased by nearly **79%**.

All of these changes mean substantially more activity and greater impact on surrounding areas. It should also be noted that the GFA space and certainly the colouring in Figure 17 of the proposed land-use distribution misrepresents the ancillary uses because it does not colour all the balconies and outside seating areas orange as well.

**Visual impact**

One of the main objections to the increase in size is the visual impact of the increased building height of the Eastern building - from 11.9 to 15.25 m, an increase of 3.35 m. The MasterPlan sets a height limit of 11 m. The original height already exceeded that limit, and the new proposed height would exceed it by 4.25 m. The Department’s justification for accepting this increase is that it is “acceptable given the large-scale neighbouring development immediately to the north-west (Sydney Boat House)”. This is a curious argument: the community was shocked at the height and intrusiveness of that building, particularly as it has blocked the view of the landscape from Glebe Point Road and the Park, including what is expected to be a significant development of the White Bay power station. The community strongly objects to this mistake and visual intrusion being repeated.

The community is somewhat surprised by the Department’s considered view that the heights of the buildings would not impact on the waterfront setting of the site and would not compromise the urban design principles contained in the MasterPlan. Why does it imagine these limits were set in the first place? We seriously wonder whether any of the departmental staff responsible for the statements have actually visited the site and stood opposite and viewed it from Glebe. It is hard to believe anyone responsible for the first Environmental Assessment Report did so.

**Other unjustified arguments**

The reason given by the proponents for increasing the Marina berth size – and presumably the land based modifications as well – is that the development is not economically viable without it. This is a familiar but unjustified line of argument: developers were offered an opportunity to build a viable
business within the constraints of the MasterPlan, and one would expect them to have the skill to do so. The community backlash to the use of this approach in Barangaroo highlights how much we value public space, and object to its being compromised by this sort of developer creep.

**Marina Berths** - the Protection of the Environment Operations ACT 1997, Schedule 1, Section 5, Clause 25, states that if there are 80 vessels or more, a proposal is deemed 'A Controlled Activity' and therefore requires an Environmental Protection license. The Proponents 'coincidentally' are asking for 79 berths, one less than what would otherwise require them to obtain an EPA license for this proposal. We believe that the same standards of care should be exercised here as would be in considering an Environmental Protection license.


With such major changes (on average, increases of more than 35%), we strongly contest the Department’s claim that this Proposal can be reviewed under Section 75W and argue strongly in line with the legal argument presented in our submission of June 2015 that this modification must be lodged as a separate new development application under Part 4 of the Environmental Planning and Assessment Act (EP & A Act). We are not alone in this view – Leichhardt Council and the City of Sydney Council also objected, arguing that this modification is beyond the statutory power of section 75W of the of the EP & A Act. We note that the Department did not include this argument in the summary of key issues raised in public submissions in Table 2.

We note that the Planning Department states “The Department considers that the scope of Section 75W is not bound by the legislation limitations which would otherwise apply...”. No reasoning has been articulated to substantiate this position beyond stating that “the modification application will result in minimal environmental impacts”. But these are not minor changes, and unless clear and transparent and reasonable arguments are provided, this proposal should be lodged as a separate new development application under Part 4 of the Environmental Planning and Assessment Act (EP & A Act).

We object also to the consolidation of the existing Part 4 water-based consent into the existing Part 3A land-based project approval, as do Sydney City Council and Leichhardt Council. As argued in our earlier submission in June 2015, it is not lawful to “consolidate the provisions form one consent, authorising works that have already been carried out, in to another proposal”, consistent with the long line of authority in *Longa v Blacktown City Council* (1985) 54 LGRA 422. The question needs to be asked: if they are to be consolidated, why is not equally or more appropriate to consolidate them under Part 4, rather than under the repealed and discredited Part 3A provisions? From the developer’s perspective, the current direction gives them an advantage under sections Section 75R and Section 75J of the Act. Section 75R and 75J together mean that further modifications need not be subject to environmental assessment. We suspect that the proposed configuration to fit 79 boats (43 berths plus 36 tenders) in the space now allocated to 24 boats will
require further modifications that will be more easily granted under Part 3A, in a non-transparent and less accountable manner, particularly given the Department’s lack of concern in its current assessment of this matter.

The relevant and concerning sections of the Act (highlighted in sections 75R and 75J) state in relation to this proposed consolidation:

Section 75R Application of other provisions of Act
(1) Part 4 and Part 5 do not, except as provided by this Part, apply to or in respect of an approved project (including the declaration of the project as a project to which this Part applies and any approval or other requirement under this Part for the project).
(2) Part 3 and State environmental planning policies apply to:
   (a) the declaration of a project as a project to which this Part applies or as a critical infrastructure project, and
   (b) the carrying out of a project, but (in the case of a critical infrastructure project) only to the extent that the provisions of such a policy expressly provide that they apply to and in respect of the particular project.
(3) Environmental planning instruments (other than State environmental planning policies) do not apply to or in respect of an approved project.

Together with Section 75J Giving of approval by Minister to carry out project...
(3) In deciding whether or not to approve the carrying out of a project, the Minister may (but is not required to) take into account the provisions of any environmental planning instrument that would not (because of section 75R) apply to the project if approved. However, the regulations may preclude approval for the carrying out of a class of project (other than a critical infrastructure project) that such an instrument would otherwise prohibit.

This means that the project could thereby avoid the need to comply with the standards and restrictions included in otherwise applicable environmental planning instruments”. Again there is no justification for this.

Overall, like the proponents, the Department minimises community concerns. Their conclusion that the modification application will result in minimal environmental impacts and that the intensification of the land and water-based uses proposed in the application are capable of being considered and approved as a modification under section 75W of the EP & A Act are not shared by the community.
3. Noise

This needs to be considered in the light of what is known about what makes noise a problem for people and affects their stress levels, behaviour and health.

Research on ‘social psychology of noise’ (Cohen & Spacan, 1984) indicates the following factors.

- The intensity and level of the unwanted sound – interference with day to day living;
- The duration – short periods are manageable;
- Control – choosing to be subjected to it;
- The social context and the legitimacy of the source – whether it is necessary or not eg alarms, whether unfairly imposed, and expected – compared with people’s choice of the bay for a quiet environment both for passive enjoyment and residential purposes.

So the main issues are the level, intensity and duration of the noise, the necessity for it, and possible control over its intrusion.

Problems with the PAC’s 2012 approval conditions

- The Planning Assessment Commission set the noise level too high in 2012 allowing SSYM to generate noise that can be clearly heard above the noise from the Anzac Bridge (set at 5 dB above this background noise) until midnight. This noise will dramatically affect the amenity and peace for Glebe residents and for passive park and Bay users.
- The balconies and outdoor seating are not to be used after 10 pm and doors and windows closed but “ingress and egress to the ground level restaurants, cafes, takeaways and bars will be allowed through the external doors to outdoor seating areas between 10 pm and midnight” – thereby effectively nullifying the restriction.
- PAC conditions specify 501 Glebe Point Road as the closest residential building (R5) but this does not recognise the wider effects on the community based on earlier experiences, including complaints from people living much further afield eg near St Scholastica and beyond.
- The PAC conditions have acknowledged the need for a complaints process and a complaints register but require the proponent to manage this process. The community has no confidence in the proponents or the current Community Liaison Committee to do so. [The reasons are outlined in the following section.]
- There are no procedures for breaches of the noise management plan or specification of reasonable time limits.
- Condition F8 is unclear, stating: “Should noise complaints be received by the Department from a place of different occupancy, and the complaint be substantiated by a Department officer, the use of the area concerned must cease operation until ‘attenuation works’ are
carried to the Director-General’s satisfaction so that compliance with the relevant noise limits is achieved”. It is not clear what is meant by “a place of different occupancy” – does this protect those offering other services at the site of the development and does it include all residents?

Problems with the sound modelling and assumptions in the 2012 and current assessment

- The Department notes that the updated Noise Impact Assessment retains all assumptions and noise modelling outlined in the original NIA (p, 19); these assumptions are seriously flawed in relation to wind speed, and noise modelling has inherent inaccuracies in trying to measure the actual impact of noise with the variabilities of the ‘real world’.

- The Department acknowledges that in the Proponents’ Updated Noise Impact Assessment, the sound tests report stated that the maximum noise criteria would be exceeded if the wind was more than 5.8km/h.

- Save Our Bays has secured the 1998 to 2016 Wind Statistics from Bureau of Meteorology for the closest monitoring station at Fort Denison, which confirm the average wind speed from 3pm to 9pm is at least at 30km/h or 16 knots. That’s 5 times over the 5.8km/h limit at which maximum noise criteria would be exceeded in the proponents’ noise modelling scenario.

Residents of Glebe, and at Receiver R5 know that the wind in the summer months is predominately the Sydney nor’easter that blows at least at 30km/h or 16 knots during these hours.

This means, according to the proponents’ own sound tests, that maximum noise criteria will be exceeded on most days and evenings, and therefore will not meet acceptable noise limits.

As Dr Martin Lawrence points out in his submission, there is likely to be significant variability and noise modelling is inexact in representing the reality of noise intrusions for those living nearby and park and bay users.

Benbow noted that an increase of 1dB is undetectable. We are therefore asking the Planning Assessment Commission to reconsider the 5dB limit it imposed in 2012, in light of the flawed assumptions and problems of noise modelling. Residents and park users should be able to continue to enjoy the peace of the area and residents should be able to continue not be forced inside and to abandon their balconies and close their doors and windows to escape the level of noise produced by 890 people sitting outside and ‘music’ from the ancillary/entertainment complex opposite. The problem with music (selected and generated by others) is that over distance the ‘noise’ aspect remains but the quality degrades and bass/boom and the accompanying annoyance factor predominate.
Our Recommendations re Noise Management

- Separate approval to be required for layout of outdoor seating/dining areas – not under 75J of Part 3A legislation.
- A Noise Impact Assessment in relation to any such application.
- A restriction on the operating hours of outdoor seating/dining areas to those for balconies.
- No permission at any time for external music or bands
- A permanent noise-monitoring/recording device required to be installed at the site of the development and on the bay at several positions opposite the development, not just at R5.

How do Glebe Residents Lodge Noise Complaints

Residents' previous experience with Liquidity was that it was very difficult indeed to get any response at all to complaints, and certainly no immediate response. Complaints met jurisdictional constraints and were largely ignored. If this noise it to be inflicted upon the community, there must be proper and transparent means by which the concerns and complaints are responded to immediately, and with longer term resolution, with set time frames.

The options for residents could include notifying the:

- Community Liaison Group
- Proponents or operators at the site
- NSW Police or Water Police
- Department of Planning and Environment (PAC 2012 Approval Condition F8)
- City of Sydney
- Leichhardt Municipal Council
- Environment Protection Authority
- Community Justice Centre - Mediation process with Residents and Noise makers

Our Recommendations re Noise Complaint Management and Response

a) The Community Liaison Group act as the immediate point of contact for residents to register noise complaints – but this would only be a viable option if the community is able to have confidence in this process. This will require the group to be properly constituted, and independent of the developers or facility.

b) The Community Liaison Group should be required to advertise complaints procedure including telephone number and e-mail contact details and to provide a website and phone number for immediate contact. This should be provided directly to all those who may be affected.
c) A permanent real-time noise-monitoring/recording device should be required to be installed opposite the Super Yacht Marina, which records current noise and keeps a record of sound over time. 501 Glebe Point Road may be a logical choice as well as another point to assess noise exposure for other residents. See Appendix A for more details.

d) The Community Liaison Group should be required to publish ‘noise breach’ penalties under State legislation.

e) The Community Liaison Group to accept email registrations from people wanting to receive monthly updates of complaints received by the Community Liaison Group.

f) The Super Yacht Marina shall fund the work of the Community Liaison Group but it must be constituted to operate independently.

Hours of Operation

We urge the PAC to consider that this will be an unacceptably noisy development and the hours of operation should take into account the park and bay passive users and local residents.

We request the following changes to the “hours of operation”.

See Table of proposed changes to Hours of Operation Appendix B

Changes are highlighted using a pink background in the left hand column.

a. **Provedoring:** Monday to Sunday - Reduced from 11pm to 8pm.

Provedoring must also be defined because this can involve the moving vessels and equipment located on the land, thus creating unacceptable noise 24 x 7. The Sydney Boat House next door operates 8am to 5pm.

No permission should be given to allow operation 7 days a week or 24 hours per day. If permission is granted for 7 days x 24 hour operation to the Proponent, the Sydney Boat House is likely to argue they want the same conditions.

b. **Workshops:**
   
i. Monday to Friday – Reduced from 7pm to 5pm
   
ii. Saturday – Reduced from 7am to 8am and 8pm to 5pm
   
iii. Sunday – Reduced from 7am to 8pm To No Operations

c. **Yacht Club:** Restaurants and Bars - Monday to Sunday

Reduced from midnight to 10pm as this is a Marine Precinct not an Entertainment Centre – indeed, this is an acid test of whether the intention is for a marine facility or an entertainment complex. This must comply with the 2002 MasterPlan. *(See the attached Table)*

d. **Vessel Traffic Management Plan & Vehicle Traffic Management Plan**
While there are requests and recommendations for the Proponent to provide Management Plans for both Vessels & Vehicles, it is imperative that these plans be reviewed and approved by the Department of Planning or PAC, PRIOR to the approval of these modifications.

It is only logical to approve both Traffic Management plans first as they are a major consideration given the increased number of Vessels and Car spaces requested by the Proponent. Otherwise there is legitimate concern that these modifications may be incompatible with the issues the Traffic Management plans bring to light which after all is the whole point in doing the Traffic Management Plans in the first place.

4. Lack of Proper Community Consultation

The Department’s Modification of Minister’s Approval has not considered the issue of community consultation in any way. It appears that they consider it does not matter, or believe that it is working satisfactorily, despite clear evidence to the contrary (see Appendix C) and in submissions from the community. This is consistent with their assumption in the earlier EA Report that there were no residents nearby who would be affected, despite the obvious residential area 200 m across water with no barriers.

In response to similar concerns about the impact on the local community and the lack of proper consultation in Nov 2012, the Planning Assessment Commission included a condition of approval A13, that required a Community Liaison Committee to be established. This condition stated:

A 13. Community Liaison Committee for Construction and Operations

"From the commencement of construction, the Proponent must establish a Community Liaison Committee. The committee must be chaired by an independent person and 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."

There have been a number of problems with this approval condition:

1. The proponents were required to establish the committee;
2. There was no reference to the purpose or terms of reference of the committee;
3. There were no specifications concerning the appointment process, governance and oversight, and no definition of independence of chairperson;
4. The Department of Planning did not have any guidelines apart from the guidelines for mining projects and was critical of the loose wording of the condition and lack of specificity or compliance aspects.

None of this would have mattered so much if the Proponents had acted in good faith in establishing the committee. But:
The proponents selected a first ‘independent chairperson’ who was clearly not independent: at the time of his appointment, his business address was at the site of the development, and he was/is a director of the yacht club which is part of the development;

The proponents and/or the chairperson then selected the only two community members from 501 Glebe Point Road. There was no consultation with the community about this, and both people had prior social and/or business relationships with the proponents or the first non-independent chair. There has been no explanation as to how and why these 501 owners/residents were selected as either the 501 or broader ‘appointed representatives’.

No other residents or water users were invited - e.g. rowing clubs or Dragon boat clubs, although the Glebe Society was invited to join after questions were asked.

The community representatives have provided no information back to the wider community and have not consulted at all.

It appears that the proponents have continued to avoid engaging in good faith with the community that will be affected by their development. This has been a consistent theme: the Commission may remember that they first advertised the development application in the back pages of the Inner West Courier among the sex ads – hardly a sign of openness and transparency.

This means that there is a justified lack of trust in the current process and confidence in how the developers will consider the impact of their development on the local community or be willing to respond to concerns about noise. We ask the Commission to take this into account in accepting the bona fides of the developers and in any conditions you set.

**Save Our Bays** made various representations in relation to concerns about the Community Liaison Committee from September 2013 to:

- the Department of Planning (October 2013) and planning Assessment Commission (emails attached)
- the Minister for Planning and Infrastructure, Mr Brad Hazzard MLA (November 2013) – letter attached;
- A meeting with the Minister’s senior policy officer and a senior departmental officer (January 2014) confirmed concerns about lack of guidelines and non-independence of chairperson but no action was taken and we were provided with the community consultation guidelines for mining projects;
- A complaint to the Ombudsman both in relation to the Department’s lack of guidelines and in relation to the specific lack of proper process for that particular committee – letters attached.

The Department of Planning Initially dismissed our concerns about the lack of independence of the ‘independent’ chairperson and the appointment process for the community representatives. We were informed by the Department that they had simply asked the chair whether he was independent and had accepted his assurance that he had “no financial interest in Sydney
Superyacht Marina” as indicating that he had “an appropriate degree of independence to chair the Committee” [email Wednesday, 23 October 2013]. We submit that this is not an ‘appropriate degree of independence’ as it ignored his other interests in the matter.

However these representations by Save our Bays from October 2013 did finally result in in a direction from the Department in November 2014 that:

(1) the first chairperson step down, and

(2) the Department draft guidelines for community consultation committee.

Unfortunately, the proponents then appointed one of the appointees of the first non-independent chairperson as the second chairperson. This person has indicated in correspondence (email available) that the first chairperson is ‘his friend’ and a legal client – again, this is not a sufficient degree of independence and indicates the continuing lack of good faith in making these appointments. We were disturbed that the Department approved this appointment, accepting the nomination on face value with, as far as we know, no further examination or consultation with the community.

We can provide full documentation of our concerns on this point, and the time and persistence it took to have them heard. The current arrangement is still unsatisfactory and the community continues to lack confidence in this committee and its willingness and capacity to inform and consult with the community in good faith.

It is therefore critical that:

- The A 13 condition of approval in relation to the community liaison committee be revised in line with the Department’s new guidelines for such committees, with the additional requirement that the chair of the committee be a community member not selected by the proponents. If this is a community liaison committee, it must meet the needs of the community and be seen to be independent, and not under the influence of the proponents. It is particularly important that the chairperson is truly independent.

- A new committee be established with broader representation from local residents, the local community, and harbour water users including the rowing and Dragon boat clubs. They are currently unrepresented, but with up to 79 large vessels in this area, they will be severely impacted.

Conclusion

Our major concerns about the proposed modification relate to the failure of the modification to fit within the reasonable limits set by the 2002 MasterPlan, and the attempt to transform the functions of a substantial maritime area into an entertainment complex with extensive outdoor seating in close proximity across water to dense residential areas, parks and walkways. We are concerned that the noise assumptions of the modelling (an imperfect process at best) are seriously flawed, and that there has been little serious attempt to take into account the concerns
of the community and to consult in good faith. Further we are very concerned by the apparent acceptance by the Department of Planning of what in our view is a cynical process. It should be noted that our concerns are less with the maritime related activities and much more with the ancillary uses that are proposed and the intrusion they will bring, especially through music and entertainment, for residents and for park users.

We are not objecting to a bona fide Super Yacht Marina per se, operating only as a Maritime Industry in this Maritime Precinct.

What people are objecting to:

- An Entertainment Centre masquerading as a Super Yacht Club. Note that the words “Entertainment, Bar & Restaurant” do not appear anywhere in the 2002 MasterPlan.
- Liquidity (the previous tenant) at this location has already given us a foretaste of what it is like to live with this kind of noise and how very difficult it is to get any response to objections when they were operating outside restrictions.
- The lack of respect for due process: ignoring Government MasterPlans, and the lack of respect for the earlier PAC determination

We have seen the results of ‘developer creep’ elsewhere, maximising private profit at the expense of the whole community. The PAC is the one body that can defend the interests of the community in what is, in reality, a very stacked contest.

We ask the PAC to consider very carefully the impact this development and proposed changes will have on the local community, park users and on the waterfront use opposite and around this development. We submit that, as these are major changes, this proposal cannot simply be reviewed under Section 75W, but should be lodged as a separate new development application under Part 4 of the EP & A Act. Nor should the two proposals be consolidated under the provisions of the repealed Part 3A.

We urge the PAC to reject these proposed changes and listen to 92% of the submissions from Councils, Government Departments, Bay and park users and local residents, who reject this proposal in favour of compliance with the 2002 MasterPlan. These submissions are in addition to the earlier objections to the first round of the proponents’ application, and the compromises imposed on the community in 2012. It also needs to be seen in the light of a number of people now believing that there is little hope in trusting the Department or in these processes to protect the community and public interest.

Save Our Bays Glebe
APPENDICES

Appendix A – Noise Monitoring/Recording

1. Location of Microphone: Noise monitoring system should be located at Receiver R5, at the end of Glebe Point Road. This is a natural location, as the Benbow modelling shows, to monitor noise from the Sydney Super Yacht Marina.

2. Data Feed: Data is sent to the Community Liaison Group where it can be made available to the Sydney Super Yacht Marina and Residents.

3. Data Type: The Data type should be the same data format as used in the Benbow reports. Noise data should be processed at the microphone into LA10 dB levels, making data transfer much easier. Benbow data format follows:
   a. Site R5 only. Nine octave frequency bands. LA10 noise levels, expressed in units of dB(A) in each of these frequency bands (as used by Benbow and in the noise criteria). Noise values will result from measurement over a 15 minute interval. (Ref: Table 5-4 and others of Appendix C (Noise Impact Assessment (NIA)) of the SSYM response to submissions of 04 November 2015.)
   b. These data can then be readily compared with the “Project Specific Noise” levels (see NIA, Table 4.1). Every 15 minutes there will be a new set. These 15-minute data sets can be compared whenever there appears to be a lot of noise. Or, they can be set up to automatically flag exceedance of some chosen level in any octave frequency band.

   c. Note that the various noise terms are defined in the “Glossary of Noise Terminology” at the back of the NIA referenced above.

4. Hours of Operation: Noise monitoring system should run 24 hours a day, 7 days per week, with data being provided in near real-time.

5. Alarm System: Noise monitoring system needs to be set to produce an alarm when certain parameters are exceeded. This could be a text sent to mobile numbers of the Sydney Super Yacht Marine and the Community Liaison Group.
Appendix C: Correspondence in relation to A13: Community Liaison Committee

- Email correspondence with Department of Planning (October 2013) and Planning Assessment Commission (January 2014)
- Letter to Minister of Planning Mr Brad Hazzard 7 November 2013
- Letter of complaint to the Ombudsman 28 April 2014
- Ombudsman’s response December 2014
From: Heather Warton
Sent: Wednesday, 23 October 2013 8:00 PM
To: Judith Cashmore
CC: 
Subject: Sydney Superyacht Marina (MP 09-0165): Establishment of Community Liaison Committee

Dear Mark and Judy

Reference is made to your recent correspondence to the department in relation to the Community Liaison Committee required to be establishment in accordance with Condition A13 of the above approval.

The department has now had the opportunity to consider further information furnished by the proponent in relation to the matters you raised.

In general, the department is satisfied that the membership of the Committee represents an appropriate mix of stakeholders including community represents and that this will ensure transparency in the consideration of issues raised by the community and a balance outcome.

In respect to community representation, it is noted that the Mayor of Leichhardt Council and Paul Cooper (from Paul Cooper Realty, who is also a member of the White Bay Steering Committee and a member of the Ports Liaison Group) have been appointed to the Committee. These appointments are in addition to Robert Bruce and Shane Allen (who both represent 501 Glebe Point Road), Dennis Buttigieg (an executive from the RMS), Mike Garrett (representing the operator on the site) and Brian James (representing the proponent). It is also understood that Christine Waters is the Committee Secretary.

The Committee is to be chaired by John Waters. The department understands that Mr Waters resides in the Bridgepoint and therefore, is also a resident of the area. It has also been confirmed that Mr Waters has no financial interest in Sydney Superyacht Marina and therefore, has an appropriate degree of independence to chair the Committee.

Notwithstanding the above, the department has requested that a representative from either The Glebe Society Inc or the Glebe Point Residents Group also be represented on the Committee. The department has requested that this appointment be made as soon as possible and that it be advised when this occurs.

Thank you for your interest in this matter.

Regards

Heather

Heather Warton
Director
Subject: Emails to/from Megan Webb  28, 31 January 2014 and 6, 7 February 2014

Friday, 7 February 2014 7:59 AM
No problems Judy
Kind regards
Megan

Thursday, 6 February 2014 9:40 PM

>>> Judith Cashmore 02/06/14 21:43 PM

Dear Megan

Thank you very much for your email and my sincere apologies for not responding earlier - I just found the draft unsent in my outbox.

We appreciate very much your advice and will follow up. We may wish to quote from or forward your email in our further approaches. Is that ok with you?

Kind regards
Judy Cashmore

From: Megan Webb [Megan.Webb@planning.nsw.gov.au]
Sent: Friday, 31 January 2014 3:29 PM
To: Judith Cashmore
Cc:
Subject: Re: PAC approval condition A13 for Super Yacht Marina Development Rozelle Bay

Dear Judy

I am writing in response to your concerns about condition A13 of the Land Based Redevelopment of the Super Yacht Marina Project. I understand that you are concerned that the person who has been appointed to Chair the Community Liaison Committee is not independent as required by Condition A13. The Department of Planning and Infrastructure is responsible for managing compliance with the conditions and the conditions clearly specify that the Chair is to be independent. If the Chair is not an independent person then the condition is not met.

I can confirm that the Chair of the Commission to determine the project was also the Independent Chair of a number of Mining Community Consultative Committees at the time the decision was made. While the condition does not refer to the CCC guidelines for mining projects - as this is not a mining project, the intention that the Committee to be chaired by an independent person is very clear in condition A13. If you have any question about the independence of the appointed Chair, I suggest you contact the Department's compliance team (phone number 9228 2045), who is responsible for ensuring that the approved project is carried out in accordance with the conditions of approval.

Kind regards
Megan

Megan Webb
Team Leader, assisting the NSW Planning Assessment Commission
L13, 301 George Street, Sydney
GPO Box 3415 Sydney NSW 2001
Phone: (02) 9383 2113  Fax: (02) 9299 9835

From: Judy Cashmore
Sent: Tuesday, January 28, 2014 9:49 PM
To: megan.webb@planning.nsw.gov.au
Cc: 
Subject: PAC approval condition A13 for Super Yacht Marina Development Rozelle Bay

Dear Megan

Thank you very much for talking with me this afternoon about the Super Yacht Marina Rozelle Bay Community Liaison Committee and the concerns we and other members of the community have about this committee. For background, I have attached our letter to Minister Hazzard and also earlier letters from the Glebe Society and the Glebe Point Residents’ Association.

The Department of Planning is saying that the PAC approval condition A13 gives them no jurisdiction to intervene to ensure the chairperson is independent or that the committee’s processes and the way it is established are done in good faith and so serve the purpose it is set up for – to promote trust, put in place appropriate transparent processes and implement procedures that can help to inform the communities that are affected and resolve any problems that emerge during the construction and operation of the development.

As discussed, we are therefore asking whether we could obtain some clarification about what the PAC intended in relation to this condition – and particularly what it means by “independent chairperson” and the criteria that the PAC or its Commissioners use in defining “independent”, together with the process for selecting “representative committee members.

When we met with Tim Robertson, the Minister’s Senior Policy Adviser on 14 January and Chris Wilson, Executive Director of the Department of Planning and Infrastructure, Chris provided us with a copy of the Guidelines for Community Consultative Committees for Mining Projects and indicated that these should apply, but we have since been told that they do not because the PAC condition is not specific.

Any clarity or assistance would be much appreciated.

Kind regards
Judy Cashmore AO

Judy Cashmore
Letter to Minister of Planning Mr Brad Hazzard 7 November 2013
Mr Brad Hazzard MLA  
Minister for Planning and Infrastructure  
Parliament of NSW

Dear Mr Hazzard

Request for meeting re non-independent Community Liaison Committee  
Landbased Development Super Yacht Marina Rozelle Bay

Community consultation is vital in creating community trust that developments are not just in the interests of developers. Proper consultation is required to create confidence that any developments are in the interests of the communities in which they are located, are sustainable and not to the detriment of existing living conditions.

With this in mind we wish to draw attention to the inadequacy of current planning and consultation processes with reference to a current major planning development.

In the particular case of the Landbased Development Super Yacht Marina Rozelle Bay MP09_0165, the Planning Assessment Commission requires the developer/the proponents to establish a Community Liaison Committee (CLC) for Construction and Operations of this Development (Condition of Approval A13).

The condition states that:

From the commencement of construction the Proponent must establish a Community Liaison Committee. The Committee must be chaired by an independent person and 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. (p. 6)

There are, however, no criteria in relation to:

- the process by which this committee is to be established and run;
- the membership of the committee and the appointment of members able to liaise on behalf of the community nor
- the definition of ‘independence’ in relation to the independent chairperson.
A number of community members including the Glebe Society Inc, the Glebe Point Residents Group, Save Our Bays Inc and other residents are seeking but finding no answers to our questions about definitions and criteria.

The response to our letter of complaint to NSW Planning & Infrastructure was inadequate. The Department appears to have simply accepted the view of the proponent and the “independent chairperson”. Copies of these letters are attached.

Our lack of trust is a consequence of the poor process shown to date by the proponent and our concern about bias and lack of independence. The whole committee should be independent. Australian courts have expressed concern that one member of a committee with a conflict of interest can influence the other members and have developed a principle that one biased member can taint the whole committee (IW v City of Perth (Gummow J); McGovern v Ku-Ring-gai Council (2008).

We applaud the objectives you outlined in your Second Reading speech on October 22 2013 in which you stated that:

The Government’s agenda for the new system and the fundamental provisions of the planning bills is: an emphasis on strategic planning as the fundamental focus of the new planning system; community participation in strategic planning at the time when the ground rules are being created to ensure they are able to drive how to best cater for growth and protect the environment and local character of their areas; a more simple and transparent development assessment process with codes based on local circumstances; a clear framework that ensures that necessary infrastructure is provided alongside growth; laying the foundations to transform the planning system to an e-planning system that supplies reliable and quality information anywhere and anytime; a new delivery culture involving all the key players in the planning system to set a sound framework for the successful implementation and operation of the new system; a better building regulation system through more mandatory inspections during critical stages and tighter controls on private certifiers; and a system built on a partnership between State and local government to deliver real outcomes to the community. [bold added]
However, community consultation and Community Liaison Committees must have credibility within the community if they are to have any point. This requires proper process, adequate criteria for implementation and appropriate oversight to ensure compliance. Tokenistic processes create cynicism, frustration and distrust.

In terms of Community Liaison Committees, this means that the selection of the chairperson and its members as well as the processes by which the committee operates must be transparent in order to have legitimacy and encourage trust.

**The following questions apply to the overall planning process and to our particular matter:**

**What are the criteria in relation to:**

- **the process by which Community Consultation/Liaison Committees are established;**
- **the membership of the committee and the appointment of community and other members;**
- **the definition of 'independence' in relation to the independent chairperson and**
- **the oversight process to ensure that these processes are transparent and properly implemented (including being open to observers)?**

We would appreciate your answers to these questions and seek a meeting to discuss these issues with you.

Sincerely

Dr Judy Cashmore AO

7 November 2013
Letter of complaint to the Ombudsman 28 April 2014
Bruce Barbour, LLB
NSW Ombudsman

28 April 2014

Dear Mr Barbour,

**Failure of processes involved in establishing the Community Liaison Committee for the Superyacht Marina development at Rozelle Bay**

This complaint concerns the lack of action and appropriate communication in relation to our concerns about the failure of the Department of Planning and Infrastructure to ensure compliance with the approval conditions for the Superyacht Marina development at Rozelle Bay, Sydney Harbour. It also concerns the lack of guidelines for community consultation committees involved in such development processes.

The developers of the Superyacht Marina are required to establish a Community Liaison Committee for Construction and Operations with an independent chairperson and appropriate community representation as an approval condition required by the Planning Assessment Commission determination. This condition states at A13 that:

From the commencement of construction the Proponent must establish a Community Liaison Committee. The Committee must be chaired by an independent person and 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. (p. 6)
We first complained to the Department of Planning and Infrastructure about the composition of this Committee and particularly the lack of independence of the chair in September 2013. We have very strong reservations about the lack of proper process and good faith of the developers in relation to community consultation given our negative experiences with the developers through the development application process. We have sought resolution with the Department of Planning and Infrastructure through their compliance section but as at the end of April 2014 and after more than seven months we are waiting for further communication and more importantly for resolution of the matter.

What happened after we complained to the agency?

We received an email response to our initial letter to the Department of Planning and Infrastructure in September 2013 which we interpreted as saying that the proponents thought that the chair of the Community Liaison Committee for the Superyacht Marina development was independent and appropriate and that was seemingly the end of the matter.

We followed this with a letter to Minister Hazzard on 6 November 2013 (letter attached) which raised our concerns about the community consultation process in general and the lack of definitions - for example, “independent chairperson” - as well as our specific concerns about the Community Liaison Committee. We were initially offered a meeting in May 2014, which we refused on the grounds that that would have been far too late by that stage to have made any difference. We were subsequently offered a meeting in February and then finally in mid-January. On 14 January 2014, we met with Minister Hazzard’s senior policy adviser, Tim Robertson, and the executive director of the Department, Chris Wilson.

In response to the general enquiry about consultation processes and the definition of an “independent chairperson”, Chris Wilson indicated that we had neither been looking in the appropriate place nor asking the right people, and he tabled the Guidelines for Establishing and Operating Community Consultative Committees for Mining Projects (http://www.planning.nsw.gov.au/assessingdev/pdf/ccc_guidelines_2007.pdf) and indicated that these were applicable to our matter. Not surprisingly, we had not seen these as relevant to the Superyacht Marina development and suggested that proper guidelines for projects other
than mining projects should be developed and made accessible on their website. At the end of our meeting, both Chris Wilson and Tim Robertson indicated that we had made a good submission, had a strong case and that the committee was unlikely to ‘work’ with such lack of trust. We therefore expected a positive and speedy resolution to our complaint regarding the lack of the Department’s compliance with the approval condition required by the Planning Assessment Commission.

The following week the three of us who attended the meeting at the Minister’s office (Susan Cleary, Mark Dent and Judy Cashmore) received an email from the chair of the Superyacht Marina Community Liaison Committee asking us to attend a meeting of the Committee on 30 January 2014 “to explain our concerns about the project”. We declined that offer and explained to Chris Wilson that our refusal was on the grounds again of improper process, indicating that we saw it as inappropriate to attend and explain ourselves at a meeting chaired by the person about whom we had very strong reservations.

In a telephone conversation with Chris Wilson at this time, he indicated that the approval condition provided for by the Planning Assessment Commission had tied the hands of the Department because of its lack of specificity and the lack of monitoring and compliance powers given to the Department. I contacted Megan Webb at the Planning Assessment Commission to ask for some clarification as to what the Commissioner had in mind in relation to the requirements for a Community Liaison Committee as described with an independent chair and appropriate community representation. Our email communication is attached, with her consent to use it, and indicates that the Commissioner involved has experience as the independent chair of such committees in mining projects and that this would have informed that approval condition. Further attempts to discuss this with the Department have been unsuccessful.

I have been in contact with the Department including the compliance section on at least four occasions since then and also forwarded Megan Webb’s email to the Department (Chris Wilson and the Compliance Section). I have been promised some communication since March which at the end of April has still not materialised despite further calls.
What do we want to happen for our complaint to be resolved?

Our request for a resolution of our concerns would address the two main issues which we outlined in our letter to the Department seven months ago and to the Minister in November last year.

Our complaint would be resolved by the following actions:

1. The Department of Planning and Infrastructure should be required to establish and make publicly accessible the general principles pertaining to and defining 'community consultation' in relation to the formation of a Community Liaison Committee as required as an approval condition of a development application. In particular, the Department should clearly indicate:

- the process by which a Community Liaison Committees is to be established.
- how to appoint the community and other members to a Community Liaison Committee
- what is meant by 'independent chairperson', how this is determined, and the approval process involved.[The definition of an independent chairperson should include reference to being free from outside control, not subject to another's authority, not influenced by others or representing any interest group, impartial and unbiased.]
- that an oversight process has been put in place which ensures that all processes are transparent and properly implemented (including being open to community observers).
- That transparent processes have been established to enable the Community Liaison Committee to receive and respond to community complaints; these should include the Committee's response time frame, the response methodology, and the availability of a complaints log.

2. An investigation by the NSW Ombudsman into the failure of processes involved in establishing the current Community Liaison Committee for the Superyacht Marina development at Rozelle Bay and the clearly demonstrated lack of required community consultation. We would like this to include the circumstances surrounding the current appointments to the Committee of both the non-independent chair and the community representatives and why the current Committee does not meet its own Terms of Reference.

In summary, the resolution of the matters from our point of view would set in place transparent processes to restore our trust in the validity of the community consultation process,
trust that is sorely lacking given our past experience with this development. The local community has no trust or confidence in the present chair or some members of the current Community Liaison Committee and believe that the Committee is incapable of performing the role for which it was established. Nor do we have great faith in the Department’s interest in ensuring compliance with the approval conditions. The Director General’s environmental assessment report was clearly inadequate and indeed patently wrong and misleading in relation to the impact on residential areas during the development application process (see attached notes on community consultation) and did not inspire trust in their processes – though the Planning Assessment Commission conditions restored some of that trust. However, the Department’s current lack of response indicates a lack of interest in compliance.

Please feel free to contact me if there is any further information you require – my phone number is [redacted]

Yours sincerely

[Redacted]

Dr Judy Cashmore AO

On behalf of Save Our Bays

Attachments:

- Letter to the Minister November 2013
- Email correspondence with Megan Webb March 2014
- Terms of Reference of the committee - with which the committee is not compliant
- Notes on community consultation throughout this development application
Dear Dr Cashmore,

**Complaint about the Department of Planning and Environment**

I refer to your complaint about the Department of Planning and Environment (DP&E) concerning allegations about the community liaison committee for the development of the Sydney Super Yacht Marina (SSYM), Rozelle Bay. In particular you raised the following issues:

- Mr John Waters, the independent chair of the community liaison committee for the marina had alleged conflicts of interest which should have precluded him from chairing the committee. Those conflicts related to Mr Waters’ involvement in a marine business which will allegedly gain from the development and from his appointment as a director of the Sydney Super Yacht Club which had been established to operate from out of the SSYM.

- The DP&E guidelines for establishing consultative committees for mining projects are being incorrectly applied to the marina development.

- You claimed that you reported these issues to the DP&E but your concerns were not properly addressed.

As you are aware on 1 October 2014, I wrote to the DP&E and sought responses to the various issues you had raised. On 26 November I received a response in which the DP&E stated, inter alia:

> Mr John Waters’ independence has been compromised by his appointment as Director to the board of the SSYC. The appointment of Mr John Waters as Chairperson is also in direct breach of the Terms of Reference established specifically for the SSYM.

The DP&E also advised that it had written to the SSYM requesting that a suitably independent chairperson be appointed to the board by 17 December 2014.

DP&E stated that it is currently undertaking a review of its Guidelines for Establishing and Operating Community Consultative Committees for Mining Projects to expand the guidelines application to non-mining projects. DP&E further stated that this will ensure consistency and sound governance requirements for the establishment and operations of these types of committees in the future.

As I advised you during our telephone conversation of 27 November 2014, I consider the response by the DP&E to have addressed the issues you raised and I will therefore be taking no further action in regard to these matters.
I would like to take this opportunity to thank you for bringing your complaint to the attention of the NSW Ombudsman and I am pleased to have been of assistance.

Please contact me on (02) [Redacted] or email [Redacted] if you have any questions or require further information.

Yours sincerely

Max Britton
Senior Investigation Officer
for the Ombudsman
Appendix D: ‘Sleight of hand’ moves open to interpretation as lacking transparency or acting in good faith.

- The application to increase the size of both the land and water-based operations – ‘developer creep’.

- Request to bring the part for water-based operation under the repealed and discredited Part IIIA provisions.

- Calling the ‘yacht club’ a maritime activity rather than an ancillary activity when it is in fact a registered club and quite unlike other yacht clubs. Calling it a ‘yacht club’ allows it to escape the overall GFA space restriction for ‘ancillary activities’ under the 2012 PAC determination of 22.9%. The allocated GFA is 25.8% and for the cafes, bars and other services a further 14.2%.

- Water-based modification includes 79 vessels, just below the 80 mark whereby the Protection of the Environment Operations Act 1997 (Schedule 1, Section 5, Clause 25) comes into play. This states that if there are 80 vessels or more, a proposal is deemed ‘A Controlled Activity’ and therefore requires an Environmental Protection license. The Proponents ‘coincidentally’ are asking for 79 berths, one less than what would otherwise require them to obtain an EPA license for this proposal.

- The lack of proper process in relation to the community liaison committee required under condition of approval A 13 as determined by the Planning Assessment Commission, including the appointment of a clearly non-independent chair and committee members appointed by that person who are not representative of the community or its interests.

- The initial lack of transparency and intent to engage in proper community consultation by placing a small notice in the back pages of the inner West Courier among the sex advertisements.

- The initial ‘real estate’ photos’ earlier copied taken from the proponents’ website did not accurately represent the true distance to Glebe Point, some 200 m across water on the other side of Rozelle Bay.
A real difference in perspective ...

The view from the Superyacht Marina development according to the developers from their website 2-3 years ago –

And as it really is:
200-250 metres across water

Some of the residential area

And the Moreton Bay figs
The view from 501 Glebe Point Road – the nearest residence