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Dear Ben,

**RE: MP09\_0165 MOD 1 - Section 75W Modification – Sydney Superyacht  
Marina, Rozelle Bay**

The Glebe Society is pleased to provide its objections to the above request for modification of the **Sydney Superyacht Marina, Rozelle Bay**

The Glebe Society has made no reportable political donation in the last two years.

## 1. Summary

The Glebe Society has previously registered its objections to those aspects of the Superyacht Marina (SYM) development in Rozelle Bay<sup>1</sup> which will have an unacceptable and inappropriate impact on the Bay and the surrounding areas. Our concerns- which reflected those of many affected local residents- related to significant divergence from the existing Sydney Harbour SREP 26 and the Master Plan for Rozelle Bay and Glebe Island, the noise impact on residents and the growing numbers of users of the foreshore parklands in Glebe, the negative impact on longstanding, passive recreational activities (rowing and dragon boats) in the Bays and conflict with planned future uses of the Glebe Island Bridge.

This application seeks approval for:

- consolidation of separately approved land and water based components of the Sydney Superyacht Marina development into a single existing approval and associated changes to the site affected by this approval;
- reconfiguration of the marina, including an increase in the total number of berths from 24 to 43 (plus tender berths), and changes to berthing arrangements;
- increase the total approved GFA for the development from 6200 m<sup>2</sup> to 6880 m<sup>2</sup>;
- design changes to the eastern building, including removal of part of the north west corner and provision of an additional roof level with terrace;

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<sup>1</sup> Glebe Society Submission to the Planning Assessment Committee November 2012.

- design changes to the car park building, including provision of an additional level (from 4 to 5 levels) and an expansion of the building to the north;
- increase the total number of car parking spaces from 219 to 307, and changes to car parking arrangements;
- use of outdoor seating areas; and
- changes to staging.

In so far as these requested modifications constitute a major increase in the scale of both water based and on land approved development, as well as significant changes in activities and uses, the previously identified negative impacts will be very significantly exacerbated should the modifications be approved.

**Consequently the Glebe Society opposes major aspects of the requested modifications to both the water and land based components on the basis of their significant negative environmental impacts.**

The proponents request the consolidation of the separately approved land and water based components of the SYM into a single existing approval. This appears to be intended to sidestep the requirements for approval of the proposed water based modification under the existing Part 4 approval by bringing it within the less stringent and more flexible requirements of the (now repealed) Part 3 approval process.

**The Glebe Society strongly objects to the requested consolidation of the land and water based components of the SYM development.**

**Any modifications to the water based component of the SYM should be sought under its Part 4 approval through a new application.**

## **2. Broad Context**

The Glebe Society does not oppose development, including maritime and commercial development, within the Bays Precinct. It does, however, place great value on the strategic importance of this part of Sydney Harbour and in particular on the potential to utilise over 80 hectares of publicly owned foreshore land and 94 hectares of publicly owned waterways for the broad public good. The approval of the SYM in this strategic site and the granting of a long term lease, was one of a number of unfortunate one-off development decisions over the last decade which pre-empted the long sought, integrated planning approach to the redevelopment of the Bay Precinct. That integrated planning is now underway with UrbanGrowth NSW's Bays Precinct Urban Renewal Project.

Under its current approvals, aspects of the development are inappropriate to this harbour foreshore site and have pre-empted the more strategic approach UrbanGrowth will

hopefully bring to the urban renewal of the bays and their foreshores. The community must live with the existing approved development of the SYM, but there is wide opposition to further and more intensive inappropriate development on the site.<sup>2</sup>

If the requested modifications are approved, the extent of potential conflict between the larger vision to transform the Bays Precinct<sup>3</sup> and the over-development of the SYM will be considerably greater. We are especially concerned that the cumulative impact of the requested modifications will further erode the potential for renewal options which are important to the broad public good.

In this context we cite The Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 planning principle:

- (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*

The Glebe Society considers the SYM modification proposal constitutes a significant breach of this highly strategic principle. The benefits from this development will largely be to the private benefit of a small group.

### **3. Consolidation of land and water based components**

The proponents request the consolidation of the separately approved land and water based components of the SYM into a single existing approval.

This seeks to consolidate the existing Part 4 approval for the water based component within the Part 3 land based approved project statutory regime. It also seeks to gain approval for major requested upgrades to the original water based approval within this regime.

Although convenience is cited as justification, the requested consolidation appears intended to sidestep the more stringent requirements and likely difficulties that would flow from seeking the proposed upgrades as a modification to the original Part 4 approval. The (now repealed) Part 3 provisions will provide more flexible criteria for approval.

While we are not experts on the legal technicalities of the NSW planning legislation, we consider this proposal as extraordinary. The Part 3 provision was repealed because it was bad legislation and was conducive to deal making and corruption. It would be strange if the

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<sup>2</sup> The history of the morphing of approval for the temporary accommodation of 15 superyachts to facilitate wealthy tourist access for the 2000 Sydney Olympics to the current development reminds the community of the need to be alert to inappropriate 'developer creep'.

<sup>3</sup> See the UrbanGrowthNSW discussion paper: Transforming City Living: The Bays Precinct May 2015.

current legislation permitted approvals that were made under a Part 4 provision to be modified under the repealed Part 3 provision to evade the Part 4 requirements.

It would be a great disappointment if the Department or the Minister were to take the view that this was permissible – especially given the scale and the inappropriateness of the requested modifications- and allowed the application to be approved under the repealed Part 3 provisions.

We note that the City of Sydney Council ‘objects to the application on the grounds of inappropriate administration through an attempt to access the provisions within an Act now repealed.’<sup>4</sup> Their submission supports our contention that the effect of the consolidation would be to evade more stringent approval provisions under their current Part 4 approval:

*“Use of S75W of the former Part 3A of the Act to bring in a previous approval under Part 4 avoids the key threshold test under Section 96 of the Act of whether the development, as modified, is “substantially the same” as the original approval. This threshold is a cornerstone of Part 4, applicable to all of local government decision making processes and almost all development assessments. The Part 4 consent should continue to apply.*

*The proposed changes comprise a substantial and radical transformation of the terms of the existing approvals”<sup>5</sup>*

Legal advice sought by a bays community group also puts forward a detailed argument contesting the legal permissibility of the proposal:

*“...this proposed manner of dealing with the existing water-based development fundamentally misconceives the part 3A project approval provisions of the EPA Act ‘ Citing s75D of the EPA Act, the advice concludes: ‘the provision operates such that there is no power to the existing water-based development’ .... ‘It is not lawful “to consolidate the provisions of one consent, authorising works that have already been carried out, into another approval”.<sup>6</sup>*

Regardless of the resolution of contention as to the legalities, it is not acceptable public policy for a process to be utilised to negate the repeal of the Part 3 provisions of the Act to avoid a more stringent threshold test of Section 96 that requires a modification to be substantially the same as the original approval.

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<sup>4</sup> City of Sydney Council Submission 22<sup>nd</sup> May 2015

<sup>5</sup> Ibid

<sup>6</sup> Kirston Gerathy and John Paul Merino, HWL Ebsworth Lawyers: Advice provided on instruction from Save Our Bays inc 2/6/15

**The Glebe Society strongly objects to the requested consolidation of the land and water based components of the SYM development.**

**Any modifications to the water based component of the SYM should be sought under its Part 4 approval through a new application.**

#### **4. Scale and Scope of Requested Modifications**

Clearly the cumulative proposed modifications to the size of the development, intensification of uses and activities and changes in uses constitute a radical modification of both the land and water based components of the SYM.

##### **4.1. Increased berths and related modifications**

- The requested increase in berths from 24 to 43 (79%) is huge.

The current berths will be rearranged so that the additional berths fit within the existing approved area. This appears to create a very tight arrangement which it is difficult to see being viable over any length of time. It would likely generate a Part 3 request for modification in the future.

Other requested modifications include:

- Accommodation of 36 tenders associated with the yachts and related activity
- Traditional mooring of boats in the marina – numbers unknown as on demand
- The right to sell vessels within the marina – no details as to size
- The conversion of some car parking space on the waterfront to boat storage – limited information as to proposed numbers

The increase in the number of potential superyachts accessing the SYM would seem to be based on an assumption that none of the potential strategic future uses for Glebe Island Bridge – which would require it to be closed to large vessels for much of the time – will eventuate. (discussed later).

The increased intensity of activity that will accompany these larger vessel numbers will pose an increased barrier to the public's access to a future foreshore walk around Rozelle Bay.

The overall increased water activity associated with the SYM will create problems for ongoing safe rowing and other recreational activities in the Bays.

**The Glebe Society objects to the 79% increase in berths at the SYM on the grounds that is excessively intensive marina activity for the Rozelle Bay and will intensity pressure for the demolition – or partial demolition - of the heritage Glebe Island Bridge.**

## 4.2. Modifications to approved buildings

The scale of the requested modifications to buildings and proposed uses is major. Requested modifications include:

- Increase in the total GFA for the site from 6200 m<sup>2</sup> to 6800m<sup>2</sup>
- extra level for the car park from 4 to 5 levels and extension northwards
- additional level from one to two levels for the eastern commercial building with an additional terrace
- increase in on-site car parking spaces from 219 to 307

Requested modifications to approved land uses include:

- flexible usage of external areas for outdoor eating, entertainment increased to 2172 m<sup>2</sup>
- potential conversion of part of the car park building to enclosed storage
- potential conversion of part of the car park building to marine commercial tenancies

Cumulatively these requested modifications to signal a significant increase in the scale of the development, the nature of the landuse and the intensity of activity. The request for increased car parking reflects this increased intensity. It also flags the increased traffic implications for the site. The requested flexibility in relation to numbers of these modifications leaves a deal of uncertainty as to the final uses.

## 5. Increased noise impact

The impact of the noise emanating from the SYM – and in particular from its onshore ‘entertainment’ activities – was a major concern of the community in relation to the approved development. The proposed modifications can reasonably be expected to significantly exacerbate the noise impact. Community concern with this aspect is largely based on experience of disturbing noise levels from the SYM Liquidity restaurant which was located on the development site.<sup>7</sup>

The major modifications which will exacerbate the noise levels if approved include:

- The added floor space and intensification of uses will be a general factor
- The increase in outdoor areas available for seating are therefore entertainment uses – and especially the proposed new balcony on the proposed level two of the eastern building and the large rooftop area on the carpark
- A blanket approval for use of outdoor seating areas from 7am to 10pm (Annex B) . This would replace the current requirement for separate requests for use of outdoor seating areas. This is a direct attempt to roll back an existing protective provision

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<sup>7</sup> These comments have been informed by advice from Dr Martin Lawrence –an acoustics expert. Attached at appendix 1.

- While superyachts are not especially noisy the increased level of activity will make the noise that does emanate from them more consistent
- The proposed removal of the current requirement for airlocks in the western building first floor.

Glebe Point residents will be significantly affected. But the larger issue is the impact on users of the Glebe foreshore parks. Bicentennial Park and the Blackwattle Bay Foreshore walk attract large numbers of visitors from across Sydney. These are recognised as particularly special parks because of their foreshore location. The enjoyment and amenity of these parklands will be badly effected by noise from the SYM – largely emanating from the entertainment related venues.

The actual and potential increase in outdoor entrainment activities allowed by the proposed modifications will be a major source of increased noise disturbance for residents and users of the park.

**The Glebe Society is opposed to the proposed level 2 addition to the eastern building. If it the second level is approved, the balcony /deck should not be included.**

**Permission for outdoor seating should be limited in area; all areas should be subject to a trial period to determine whether there is a noise problem; separate approvals should be maintained for the use of all outdoor areas until it is established by trial that they do not generate a noise problem.**

## 6. Impact on Glebe Island Bridge

It is clear that the proposed 79% increase in the Super Yacht capacity (24 to 43 berths) is likely to pose a serious threat to the preservation of the heritage listed Glebe Island Bridge<sup>8</sup>. It is also evident that it will effectively pre-empt options currently under active consideration for future use of this significant item of public infrastructure as a much needed working bridge.

The Bays communities have for years consistently and strongly argued for the preservation of the Bridge both as a valued heritage item and as an important low level pedestrian and cycle commuter traffic connection between Rozelle/Glebe Island and Pyrmont, Darling Harbour and the CBD.<sup>9</sup> Both Leichhardt and City of Sydney Councils strongly support the preservation and reuse of the Glebe Island Bridge for pedestrian and cycle commuter traffic as a vital low level City crossing.

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<sup>8</sup> The Bridge has since 2013 been listed on the NSW State Heritage Register.

<sup>9</sup> For more detail on the recognised transport benefits see the Glebe Island Bridge website <http://www.glebeislandbridge.com/future.html>

With the long overdue restoration of light rail public transport to the inner west/city and the mega urban redevelopment project underway for the transformation of the Bays Precinct, the reintroduction of light rail utilising the Bridge is a definite option to help address the major challenge of providing adequate transport facilities for the future populations of the precinct - as well as alleviating the current chronic traffic congestion around the Bays.

It is quite feasible for the Bridge to be restored to provide the much needed commuter route and accommodate reasonable maritime access to the Bays. The Spit Bridge provides a working example.

The marina will accommodate many more large yachts. The maximum permitted width of vessels passing through it is 18 metres.<sup>10</sup> We understand, albeit on an anecdotal basis, that there may have been cases of superyachts exceeding that width passing through the Bridge.

It is a concern that the inevitable implications of the dramatic expansion to the berthing accommodation at the Marina will lead to commercially driven demands that provision be made for larger boats to have safe passage through the Bridge. This would require at least partial demolition of the Bridge and the pre-emption of its future potential role as significant transport infrastructure.

The proposed major expansion of super yacht berths will generate a major problem for this transport option. The inconvenience to the existing numbers of super yachts in Rozelle Bay is already cited as an obstacle to a restored working bridge. The virtual doubling of the yacht numbers – and associated maritime activity – will exacerbate that pressure.

**No modifications should be approved which will impede the option of this publicly owned infrastructure being restored to fulfil an important public need as a commuter link.**

To pre-empt the future public benefit of a working bridge providing needed transport links within a major urban renewal precinct in the interest of a small number of superyacht owners would very bad planning and unacceptable public policy. It would also be a spectacular example of private benefit overriding the public good.



Ted McKeown  
**President The Glebe Society Inc**  
12<sup>th</sup> June 2015

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<sup>10</sup> City of Sydney Council Submission 22<sup>nd</sup> May 2015