**Bowen Boat Harbour**

Background

Bowen Boat Harbour was one of the State boat harbours originally developed as part of a network of State boat harbours established as sheltered havens in locations nominally around 1 days sailing along the Queensland coast by the State Government in the 1960s & 1970s as part of a strategic decision to foster small craft boating (recreational and commercial). This strategic decision followed strong and increasing growth in vessel registrations with the government funding initial infrastructure to set up the boat harbours, such as dredging channels, providing breakwaters, public jetties, boat ramps and mooring piles, and also providing associated dry lands for public and commercial development with the long term view that the boat harbours would not be an ongoing drain on public funds, i.e. the boat harbours were in the end meant to at least cover the cost of managing and maintaining the facilities and land that made up a boat harbour through the generation of boat harbour fees and tenure rental and ultimately even generate a return on the assets involved. The various boat harbours all developed at varying rates with most now in effect fully or largely developed. However, Bowen Boat Harbour still has large undeveloped wet and dry lands areas available for development and wet areas available for re-development for more modern walk on walk off mooring facilities.

Main Issues to Consider/Resolve

* Lease certainty for existing tenants
* Mooring pile maintenance
* Entrance channel wave action
* NQBP replacement Abbot Point tug berth facilities
* Long term future of Bowen Wharf
* Potential future boat harbour developments (including a major re-development)

Lease Certainty for Existing Tenants

It is understood from the BCE meeting with DTMR on 8/6/22 that DTMR advised that tenants currently seeking tenure renewal had been advised that they need to provide capital budgets covering future development of their respective sites to DTMR for consideration to in effect justify a longer-term tenure. DTMR referred to a similar circumstance in Manly Boat Harbour where an existing tenant’s lease was not renewed as they were not prepared to provide sufficient capital budget improvements advice and the land went to public tender and subsequently a new tenant came in and spent millions of dollars improving the lease site. DTMR’s current tenure renewal approach seems to have been adopted in 2014.

Consistent feedback from my meetings/discussions with all current boat harbour tenants on 13 & 14/6/22 when in Bowen was that:-

* Significant angst and uncertainty as to tenant’s future at the boat harbour with many tenants being in the boat harbour for decades, some since virtually the beginning, and have sites that are in effect fully developed.
* Lack of business and investment certainty arising from DTMR’s lease renewal process.
* Lack of clarity as to detail of information DTMR actually require that allows for an acceptable lease renewal period.
* Process seems very bureaucratic and markedly different to previous approach where existing tenants could generally seek a tenure renewal after 80% of a tenure’s term had expired and were up to date with rental and tenure obligations, i.e. recognition of existing tenant’s site investment and tenure compliance were material considerations in the tenure renewal process.
* Concern with time it takes for DTMR to respond to information provided and queries raised.

Comments:

* DTMR’s mandated requirements for new tenure and tenure renewals seem more applicable to a new tenure development of boat harbour land than a renewal of an existing tenure, especially for a tenure site that has in effect been fully or largely fully developed during the term of an existing tenure.
* It is understood DTMR holds the land that makes up Bowen Boat Harbour as a perpetual lease under the Land Act 1994 from Department of Natural Resources and Mines (DNR&M) and accordingly is subject to the provisions of such Act. It would seem reasonable for DTMR in subsequently dealing with 3rd parties regarding boat harbour tenures under its perpetual lease that DTMR takes guidance from how the Land Act deals in similar matters, e.g. lease renewal matters. It would appear DNR&M does not experience anywhere near the issues with tenure renewal that DTMR is experiencing with its renewal process of the limited number of tenures in Bowen Boat Harbour.
* The Queensland Treasury document, Queensland Government Land Transaction Policy, has also been referenced by DTMR as being applicable to renewal of boat harbour tenures. This policy is intended to sit alongside individual agency land and property decision making processes with the aim to reduce red tape while maintaining a high level of integrity for property transactions. It specifically allows for in priority tenure renewals for existing tenure holders (section 4.2) provided certain criteria is met. From my understanding, the current Bowen Boat Harbour tenants (other than the not-for-profit Volunteer Coast Guard) pay a market rental for the land they occupy and the land is being used for boat harbour related purposes. The Volunteer Coast Guard tenure should be covered by section 4.3 of the policy which deals with subsidised tenures and is also a boat harbour related use. The provisions of sections 4.2 and 4.3 of this policy do not seem to prevent the tenures involved from being renewed and it could be argued by renewing the tenures for a reasonable term that this is the best value for Queensland in that the commercial tenures are paying a market rental for the relatively small land areas they occupy in a boat harbour that still has extensive areas available for development some 40-50 years since originally being established.
* Of the 6 boat harbour tenures (excluding the recent Whitsunday Shire Council park lease of boat harbour land), there are currently 3 boat harbour tenants who have tenures that have expired and are in effect on month to month tenancies, including the VMR who has been in such an uncertain position for over 11 years despite being a tenant at the boat harbour since around the time the boat harbour was first developed 40-50 years ago. This seems an extraordinary situation for a volunteer organisation that exists in the majority of boat harbours, if not all, and provides an essential service to the small craft (recreational and commercial) boating fraternity that would otherwise likely fall on government to fund.
* Without understanding the circumstances that occurred in the Manly Boat Harbour lease renewal instance, it could be argued the market in Bowen is somewhat different to that which exists in the heavily populated Brisbane market. As well, Manly Boat Harbour is pretty well fully developed from my understanding and has been for some time with Bowen Boat Harbour still having significant areas to be developed despite being in existence for 40-50 years.
* Requiring boat harbour tenants to undertake material capital investment as part of a tenure renewal process when a tenure site is in effect fully or largely fully developed is not likely to be a viable option for such tenants. It is also understood DTMR indicated at the BCE meeting on 8/6/22 that if a tenant’s capital investment was not completed in the required timeline, the tenant’s tenure would be terminated. This approach does not seem to recognise changing market conditions, e.g. in the last 15 years the word has experienced the Global Financial Crisis and the Covid-19 pandemic which has had a material impact on business conditions without even considering local business conditions impacting boat harbour tenants during this time.
* It also should be recognised that lending institutions traditionally have been reticent to lend funds against leasehold tenure, much preferring freehold tenure to deal with. It is suspected the current DTMR tenure renewal approach would likely further exacerbate this difficulty in obtaining finance to undertake business improvements.
* Provided tenure payments (including rental) are up to date and tenure obligations have in the main been complied with during a tenure term, renewal of an existing tenure should be the “business as usual norm” for a reasonable period of time to allow business certainty and continuity unless an existing overarching plan of the boat harbour exists that has been consulted on that clearly shows an alternate use for such land. Under the current DTMR tenure renewal approach, no or limited weight seems to be given to being an existing tenant, site investment and tenure compliance which seems unusual for a landlord that in effect is only leasing vacant land in the 1st instance to a tenant that is then required to fully invest in the site to undertake its business operations.
* It is unlikely that protracted negotiations and difficult to deal with landlords would be conducive to effective existing boat harbour operations and the timely development of boat harbour areas.

Suggestions:

* Clarify with DTMR as to whether boat harbour tenants were consulted with regarding the 2014 tenure renewal process changes and were the implications and changed requirements clearly articulated at that time;
* Clarify with DTMR whether tenants in other boat harbours managed by DTMR are experiencing similar difficulties with DTMR’s tenure renewal process;
* Ask DTMR to review their current boat harbour tenure renewal process with the view to appropriately recognising and giving weight to existing tenants who in the main have complied with their tenure obligations during the term of their tenure, including the timely payment of rent, and at the time of seeking a tenure renewal are currently not in breach of their tenure obligations.

Mooring Pile Maintenance

It is understood from the BCE meeting with DTMR on 8/6/22 that DTMR advised that minimal if any maintenance is to be performed on the mooring piles going forward and that this has applied for some time resulting in a large number of the piles being decommissioned due to their condition and accordingly, are no longer used for mooring of vessels despite still being in the boat harbour. Also, that as further pile moorings come to the end of their serviceable life and are not able to be used to moor vessels safely these will be decommissioned and not replaced meaning increasingly fewer moorings over time. DTMR advised there was over 20 useable moorings currently vacant and as such believed the remaining serviceable moorings (pile and drum moorings) were sufficient to meet demand going forward.

Comments:

* Traditionally, the North Queensland tropical cyclone season (1 November to 30 April each year) generally leads to vessels heading south away from impacted areas such as Bowen as it can be difficult to obtain viable insurance cover for a vessel owner moored in such areas. This leads to underutilisation of mooring facilities in such impacted areas like Bowen Boat Harbour during such periods.
* It could be argued that this lack of maintenance approach can be a self-fulfilling exercise as to meeting demand as the lack of maintenance leads to vessel owners poor perceptions as to the safety standard of the moorings and not visiting the boat harbour, thereby leading to less demand for moorings and so the downward spiral perpetuates until no useable moorings are available or the water areas developed with a more modern vessel mooring system, e.g. walk on walk off marina berths.
* While DTMR attitude to maintenance of the mooring piles is not ideal, it does provide an opportunity to consider earlier development of marina berthing facilities in the current 2 separate mooring piles areas in the main harbour by either:-
  + expansion of water areas of existing nearby tenure holders (additional dry land areas likely to be needed for expanded marina car parking facilities), or
  + the development of wet and abutting suitable dry land areas for new stand-alone marina berthing and associated facilities.

Suggestions:

* DTMRs attitude to maintenance of the mooring piles be noted provided it leads to the earlier development of marina berthing facilities in such areas.

Entrance Channel Wave Action

At the BCE meeting with DTMR on 8/6/22 DTMR provided a PowerPoint presentation on the results of the approximate 7-month entrance channel wave monitoring undertaken by the James Cook University (JCU) - in effect the monitoring appears to have been done mainly over the North Queensland tropical cyclone season which runs from 1 November to 30 April each year. DTMR advised the results indicated there was no material entrance channel wave action (highest recorded wave being 40mm) and accordingly considered the entrance channel safe to navigate in line with marina standards and that no further action was proposed. BCE boat harbour members at the meeting raised concerns with DTMR that such results were at odds with real world experience and questioned the accuracy of such results. DTMR advised it would seek further comments from JCU and get back to BCE.

Comments:

* Clarity on this entrance channel wave action issue is considered critical not only for ongoing existing boat harbour operations but for the future development potential of the boat harbour to be achieved. Real or perceived issues in such matters can quickly spread among the boating fraternity potentially materially impacting boat harbour usage/activities and future development potential.
* On the basis that it is accepted that an unacceptable entrance channel wave action does exist, below are 4 potential options to consider to remediate the wave action issue (entrance channel breakwater realignment/extension or separate new breakwater to prevent SE/SW direction wave action directly entering the harbour entrance):
  + DTMR to fund – DTMR has recently undertaken entrance channel capital dredging and breakwater extension works at the boat harbour so it is unlikely DTMR would have funding available in the short term to undertake further breakwater works to address this issue.
  + Fund as part of Abbot Point tug relocation involving new berthing facilities in the boat harbour – involves consideration of longer-term future of Bowen Wharf
  + Developer as part of a major boat harbour re-development
  + Combination of above options

Suggestions:

* DTMR be requested ASAP to provide a copy of JCU’s full wave action report for Council/BCE review and potential peer review of findings by a suitably qualified firm.

Potential Future Boat Harbour Developments (including a major redevelopment)

It is understood from the BCE meeting with DTMR on 8/6/22 that at this stage DTMR propose to commence a master planning process for Bowen Boat Harbour around June 2023 when the current fully funded ($300k +) master planning process for Manly and Scarborough Boat Harbours is expected to be completed by the consultant engaged by DTMR to complete such works. DTMR indicated that it would be expected that the Bowen Boat Harbour master planning process would take around 2 years meaning completion would not be expected before June 2025. However, DTMR confirmed no funding has yet been allocated for this master planning work.

Comments:

* As no funding has been allocated for the Bowen Boat Harbour master planning work, in effect there is no guarantee that such work will occur in the indicated timeframe or even if the work is to occur in the foreseeable future. There would be countless projects inside such a large organization as DTMR seeking funding for the Bowen Boat Harbour master planning process to compete against.
* Given the current tenure renewal concerns by boat harbour tenants, this funding uncertainty and extended timeframe for a Bowen Boat Harbour master planning process may not be considered acceptable.
* Any planning process for the Bowen Boat Harbour needs to appropriately take into consideration:-
  + the original purpose for the establishment of the boat harbour to foster local small craft (recreational and commercial) use;
  + existing boat harbour tenant interests; and
  + allow for future appropriately located small, medium or large development proposals on a commercial basis that assists with the improving the long-term viability of the boat harbour so it ultimately is not a drain on the resources of government and achieves a reasonable return on the investments made.

Suggestions:

* ASAP Council/BCE consider proactively undertaking a review/update of latest boat harbour development plan undertaken by DTMR (around 2013) by appropriately taking into consideration amongst other matters:-
  + the local government planning scheme for the boat harbour area and surrounds;
  + the original intention behind establishment of the boat harbour to foster local small craft (recreational and commercial) use as part of a network of sheltered boat harbours established by the State government in the 1960s and 1970s;
  + the boat harbour’s ongoing viability, including realistic future development potential.
  + existing tenure interests whilst allowing for the timely development of the underutilised and remaining undeveloped boat harbour areas to ensure the long-term viable future of the boat harbour for its intended purpose.

NQBP Replacement Abbot Point Tug Berth Facilities

NQBP’s CEO advised at the BCE meeting on 13/6/22 that NQBP is currently reviewing the recent options analysis report undertaken by MRP Consulting Services and is to consider costings and hopefully be in a position by late July/August 2022 to present findings to the BCE. This would likely then be followed by a potential 6-month stakeholder consultation period before a decision was made by NQBP.

Comments:

* While options presented in the MRP Consulting Services analysis are all reasonable engineering solutions, from a practical perspective there would seem land and services access issues to many of the options presented. Also, there may be other more viable options to consider, e.g. having the berthing facilities come off the existing dry land area behind Bowen Marina at the end of Henry Darwen Memorial Drive.
* From a development cost perspective it is usually preferable to leverage off existing land and infrastructure wherever practical. In addition, for any new relocated Abbot Point tug berthing facilities solution NQBP would likely need to resolve the future of Bowen Wharf and the costs involved as part of such internal considerations. It is understood Bowen Wharf is considered by the local community an important part of Bowen’s history that needs to be retained in some form for the future benefit of the community, irrespective of whether or not NQBP uses the wharf commercially as at present – a not insignificant consideration for NQBP given it holds a perpetual lease over the water area on which the wharf is constructed.

Suggestions:

* ASAP, a review from a practical perspective be undertaken of the MRP Consulting Services report to ascertain if there may be other more viable options to consider that also takes into account the longer-term future of Bowen Wharf and the development potential of Bowen Boat Harbour. This could be done as a separate process but in line with any re-fresh of the previous 2013 Bowen Boat Harbour development plan.
* See also “Suggestions” under the following “Long Term Future of Bowen Wharf” heading.

Longer Term Future of Bowen Wharf

The Bowen Wharf has been in existence for over 100 years and in its current extensive configuration plus given its age it is likely to be an expensive facility for NQBP to maintain for its current limited usage as a:-

* berthing and refueling facility for the tugs associated with the nearby Port of Abbot Point; and
* public promenade and fishing platform.

It is understood NQBP holds the following tenures relating to Bowen Wharf:-

* freehold over the reclaimed stem leading to the wharf structure situated below high-water mark; and
* perpetual lease from DNR&M over the below high-water mark area occupied by the wharf structure, i.e. the lease term is forever with expected associated maintenance responsibilities.

Comments:

* As part of any alternative Abbot Point tug berthing facilities to be provided by NQBP not involving Bowen Wharf, NQBP would likely need to be considering addressing not only the wharf structure itself but also its future role in managing and maintaining such wharf.
* The wharf is a very popular facility used by Bowen locals and given its history tied in with the town of Bowen, it is unlikely that the total removal of the wharf would be supported by the local council or community.
* It is unlikely DNR&M would agree to any request from NQBP to surrender the perpetual lease with the wharf improvements remaining. The normal approach from DNR&M in dealing with a tenant wishing to surrender their interest in a lease is for the area to be returned to its original condition, i.e. in this instance the total removal of the wharf at NQBP’s cost. It is unlikely DNR&M would have a funding source to do such work itself or for the ongoing maintenance of the wharf. This would likely apply to council as well so in effect NQBP would be left with being required to suitably maintain the wharf in its current extensive configuration as a public promenade and fishing platform for no commercial benefit if alternate sited berthing facilities for the Abbot Point tugs were to be provided.
* With NQBP holding a perpetual lease over the wharf structure below high water mark and currently reviewing the future tug berthing arrangements for the Port of Abbot Point that includes an option involving Bowen Boat Harbour to be used for establishing such facilities, this provides an opportunity to include the long term future of Bowen Wharf in such NQBP considerations that would benefit Bowen Boat Harbour (current operations and future development potential) in a cost effective manner.
* Tugs require water depths significantly greater than what currently exists in the Bowen Boat Harbour entrance channel. Capital dredging of the entrance channel and to any new constructed tug berthing facilities plus addressing the entrance channel wave action issue could be included as part of NQBP’s tug berth facilities location considerations (i.e. NQBP pay for such works or be responsible for arranging a funding source) if NQBP was provided with an opportunity to address its Bowen Wharf conundrum at the same time. This could make the Bowen Boat Harbour tug berth facility location option a potentially more attractive option overall.
* From an NQBP perspective, it would be expected that as long as another party took over its tenure responsibilities associated with Bowen Wharf then it would likely agree to transfer the perpetual lease to such other party. If this could be achieved as part of the Abbot Point tug berthing facilities being located inside the Bowen Boat Harbour this could be an attractive option for NQBP.
* The most likely alternative long-term holder of the Bowen Wharf tenure is the local council. However, given the age of the wharf it would be expected there would be material ongoing maintenance costs involved in its current extensive configuration. If this concept was to be “put on the table” to NQBP (even only as an informal concept for consideration and nothing assured), serious thought should be given as to how much of the existing wharf would need to be retained, or even the extent of a replacement new facility, that the local community can promenade and fish off bearing in mind the local council could be responsible for ongoing maintenance.
* If NQBP was not interested in funding the necessary boat harbour entrance channel capital dredging and wave action works, then NQBP would simply retain the perpetual lease for the Bowen Wharf and its associated maintenance responsibilities in effect forever.
* From a boat harbour perspective, this would solve 2 current key boat harbour limitations (entrance channel depth and wave action) and make the boat harbour a much more attractive investment and development opportunity for the private sector, e.g. much deeper draft vessels (potentially including superyachts) could access the boat harbour as well as resolving the entrance channel wave issue making the boat harbour a much more user-friendly experience for boaties.
* The disposal of dredged material from DTMR’s most recent entrance channel deepening and widening was placed on undeveloped boat harbour lands. Further deepening the entrance channel and any necessary dredging to constructed tug berthing facilities could also be contained within the undeveloped areas of the boat harbour, which should materially reduce the capital dredging approval process and costs involved.
* Bowen Boat Harbour is excluded from the Port of Abbot Point boundaries so any capital dredging approval process should not trigger any separate port dredging approval process restrictions that apply to capital dredging in port areas. This is evidenced by DTMR’s recently completed Bowen Boat Harbour entrance channel capital dredging works.
* If NQBP decides that the Abbot Point tug berth facilities are to be constructed inside the Bowen Boat Harbour boundaries, then the holder of the perpetual lease for the boat harbour (currently DTMR) would need to be consulted with at some point so that a suitable tenure could be negotiated and agreed upon.
* If NQBP decides that the Abbot Point tug berth facilities are NOT to be constructed inside the Bowen Boat Harbour boundaries, then this should not impact on the proposed re-fresh of the previous 2013 Bowen Boat Harbour development plan mentioned earlier.
* As DTMR has recently undertaken entrance channel capital dredging and breakwater extension works at the boat harbour, it is unlikely DTMR would be interested or have the necessary funds available to undertake any further capital dredging or breakwater works involving Bowen Boat Harbour to accommodate commercial tugs using the boat harbour.

Suggestions:

* Prior to NQBP concluding its internal considerations of the MRP Consulting Services options analysis (late July/August 2022), a short “window of opportunity” seems to exist for Council/BCE to leverage improved boat harbour entrance channel depth and wave climate outcomes by including the long-term future of Bowen Wharf in discussions with NQBP concerning its future Abbot Point tug berth facilities location considerations.
* Consideration be given to raising the longer-term future of Bowen Wharf with NQBP ASAP based on above discussion to ascertain NQBP interest in discussing further.
* See also “Suggestions” under the preceding “NQBP Replacement Tug Berth Facilities” heading.

INITIAL PRIORITY SUGGESTIONS

* DTMR be requested ASAP to provide a copy of JCU’s full wave action report for Council/BCE review and potential peer review of findings by a suitably qualified firm.
* ASAP Council/BCE consider proactively undertaking a review/update of latest boat harbour development plan undertaken by DTMR (around 2013) by appropriately taking into consideration amongst other matters:-
  + the local government planning scheme for the boat harbour area and surrounds;
  + the original intention behind establishment of the boat harbour to foster local small craft (recreational and commercial) use as part of a network of sheltered boat harbours established by the State government in the 1960s and 1970s;
  + the boat harbour’s ongoing viability, including realistic future development potential.
* ASAP, a review from a practical perspective be undertaken of the MRP Consulting Services report to ascertain if there may be other more viable options to consider that also takes into account the longer-term future of Bowen Wharf and the development potential of Bowen Boat Harbour. This could be done as a separate process but in line with any re-fresh of the previous 2013 Bowen Boat Harbour development plan.
* Consideration be given to raising the longer-term future of Bowen Wharf with NQBP ASAP and prior to NQBP concluding its internal considerations of the MRP Consulting Services options analysis (late July/August 2022) based on the discussion under headings “NQBP Replacement Tug Berth facilities” and “Long Term Future of Bowen Wharf” to ascertain NQBP interest in discussing further.