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Draft Land Owner's Consent Policy 2006  
NSW Maritime  
Locked Bag 5100  
Camperdown NSW 1450

CM013-07

By email: [policy@maritime.nsw.gov.au](mailto:policy@maritime.nsw.gov.au)

### **Re: NSW Maritime Draft Land Owners Consent Policy**

#### **Introduction**

The Sydney Coastal Councils Group (SCCG) is a Regional Organisation of Councils representing 15 Councils in the Sydney coastal region. The Group is concerned with the promotion of cooperation and coordination to achieve the sustainable management of the urban coastal environment. The SCCG would like to take this opportunity to provide comment on the Draft Land Owners Consent Policy.

A number of SCCG Member Councils will be effected by the *Draft Landowners Consent Policy (Draft Policy)* these include Botany Bay, Leichhardt, Manly, Mosman, North Sydney, Rockdale, City of Sydney, Sutherland, Willoughby and Woollahra Councils. These councils manage extensive foreshore lands that are utilised for a diverse range of uses such as environment protection, maintenance of open space as well as residential and commercial development. SCCG believes that the capacity of councils to manage these lands will be adversely effected by the *Draft Policy*.

It is essential that NSW Maritime retain an active role in assessing the appropriateness of proposed uses of public land under its control. Through NSW Maritime, the NSW Government has a duty as custodian of harbour and foreshore areas to ensure that these areas are managed in a coordinated and environmental sustainable manner.

In making this submission the SCCG is aiming to provide comments that will assist with the ongoing protection of public access and sensitive environmental values in the foreshore areas of Sydney Harbour, Botany Bay, Newcastle Harbour and Port Kembla Harbour. This submission will focus in the following areas of concern SCCG has with the *Draft Policy*:

1. The reduced role of NSW Maritime;
2. The removal of NSW Maritime development policies for issues including;
  - 2.1 Public Access
  - 2.2 Commercial Uses
  - 2.3 Scale and types of Developments.
3. The removal of NSW Maritime development assessment criteria; and
4. The greater demands to be placed on Councils that will result from the Draft Policy.

## **1. The reduced role of NSW Maritime**

The existing Land Owner's Consent Policy allows NSW Maritime to review use of the areas under its domain from a broad strategic perspective. This ensures that local development is regionally appropriate not excessive or ill-advised.

SCCG believes that there is a strong need for NSW Maritime to maintain a leading role in ensuring that public access and sensitive environments are protected in the areas of Sydney Harbour, Botany Bay, Newcastle Harbour and Port Kembla Harbour. The *Draft Policy* significantly reduces the role of NSW Maritime in acting as a custodian of public lands below the mean high water mark in these areas.

NSW Maritime's role in providing Land Owners Consent differs significantly from planning consent in that it is not subject to appeal. Therefore it represents a much stronger level of protection to the character and environmental values of Sydney Harbour, Botany Bay, Newcastle Harbour and Port Kembla Harbour than planning assessment as undertaken by Local or State Government consent authorities.

The foreword to the *Draft Policy* states that changes to the policy are designed to ensure that unnecessary duplication between NSW Maritime's function as landowner and the functions of other consent authorities is removed. The SCCG believe that it is appropriate for NSW Maritime as landowner to take an active role in deciding whether a proposed use is an appropriate one for foreshore areas. This is a separate role from the role of consent authority in deciding whether the proposal is acceptable on environmental, social and planning grounds.

SCCG believes that maintaining the separation in both of these roles is good governance, not a duplication of roles or extra red tape. This will ensure that the necessary checks and balances are retained and the character of Sydney Harbour is retained through a whole of harbour approach to development assessment.

## **2. The removal of NSW Maritime development policies**

The *Draft Policy* significantly reduces the range of development policies to be considered by NSW Maritime as part of any development application within foreshore areas of Sydney Harbour, Botany Bay, Newcastle Harbour and Port Kembla Harbour. These include policies on issues such as:

- Public access
- Commercial uses; and
- Scale and types of development.

SCCG believes the maintenance of development policies on these issues is important because unlike the rest of coastal NSW neither Sydney Harbour nor Botany Bay are covered by the coastal protection legislation and policies such as the *NSW Coastal Protection Act*, the *NSW Coastal Protection Policy 1997* and *State Environmental Planning Policy 71: Coastal Protection*.

In areas such Sydney Harbour and Botany Bay the Land Owner's Consent Policy provides an essential avenue of regional coordination and assessment not achieved through existing environmental planning instruments. A reduction in development policies considered by NSW Maritime will result in further weakening the Government's capacity to ensure protection of the natural and cultural assets in harbour and foreshore areas, which to date has been undertaken for the benefit of all.

## 2.1 Public Access

Of most concern to SCCG is the removal of policies that prevent approval of applications that reduce or obstruct public access as outlined in section 3.1 (Public access to submerged land) of the Land Owners Consent Manual. The ability for the public to access the foreshore is an important aspect of public use of waterways which should be protected by public authorities. This has been a central feature of previous NSW Governments and has resulted in the highly valued harbour Sydney has today. A strict approach to preserving public access can be seen in the current Land Owners Consent Manual, which states in Section 3.1:

*Structures must not obstruct or restrict existing and future safe and practical public access along and to the inter tidal zone or from the water, particularly where there are opportunities to improve that access.*

*Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* contains objectives and principles relating to public access to foreshore land (see cl 2(1)(f) and cl 14(b)), however these are principles for consideration which do not operate as an absolute veto to inappropriate development. Similar provisions can also be found in Local Environmental Plans relating to harbour lands, but these vary greatly between local government areas and don't address whole of harbour issues.

The SCCG believes that maintenance of public access is an issue which should be addressed by a policy of refusing owner's consent based on existing NSW Maritime policies, rather than through discretionary planning principles in environmental planning instruments. Through the use of discretionary principles the potential for approval of a single development that breaks up the continuity of public access along the foreshore is high. Such a precedent would then make it difficult for consent authorities to refuse similar proposals on adjacent sites.

## 2.2 Commercial Uses

Strict control of commercial development in foreshore areas is essential to protecting the existing character and environmental values of Sydney Harbour, Botany Bay, Newcastle Harbour and Port Kembla Harbour. The current Land Owners Consent Manual prohibits private development of submerged land adjacent to public foreshore land, subject to very limited exceptions (cl 3.6.1). The equivalent provision in the Draft Policy allows commercial developments adjacent to public land for an "activity serving the maritime needs of the public".

This exemption is very broad and has the potential to allow a broad range of boating-related uses to occur. SCCG believes that this is likely to result in inappropriate uses of public foreshore land for commercial purposes at the expense of local character and environmental values as well as reduce the multiple use functions of these foreshore areas.

## 2.3 Scale and types of Development

The current Land Owners Consent Manual contains the following provisions relating to structures on submerged lands which have the effect of tightly controlling new developments on the harbour:

- Where it is considered appropriate to minimise the number of structures, consent will only be granted for shared facilities;
- The excavation or cutting of natural rock within the inter-tidal zone is not permitted;

- Where possible, boatsheds should be located above mean high water mark;
- Private landing facilities should only take the form of a minimum sized pontoon and ramp, subject to limited exceptions;
- Private landing facilities are not to be more than 16m in length;
- No consent will be granted for swimming pools on submerged land; and
- Consent for marinas and boating industry facilities will only be given where structures are of the minimum necessary size, and building heights are generally restricted to one storey.

There are no similar provisions in the *Draft Policy*. The SCCG believes that the provisions outlined above should be retained in the final Land Owners Consent Policy

Equivalent provisions can be found in *Sydney Harbour Foreshores and Waterways Area Development Control Plan* (the DCP). Therefore the intent behind these changes seems to be to remove overlap between the DCP and NSW Maritime policies. However controls contained in a DCP are discretionary and may not be enforced by consent authorities or the Land and Environment Court where the impacts of a particular development are considered acceptable. SCCG is not aware of any equivalent provisions relating to lands outside Sydney Harbour. Therefore these changes are likely to result in an even lower level of protection for other submerged lands outside Sydney Harbour to which the *Draft Policy* relates.

### **The removal of NSW Maritime development assessment criteria**

The Draft policy removes a number of key criteria which currently apply to granting owners consent for development applications on Sydney Harbour, Botany Bay, Newcastle Harbour and Port Kembla Harbour. This includes the removal of key assessment criteria to limit the impacts of proposed developments on both man-made and biophysical environments.

The SCCG is concerned that the following criteria have been removed from the current Land Owners Consent Policy:

- Prohibition of excavation and cutting of rock within the intertidal zone;
- Requirements that boat sheds be located above the high water mark wherever possible;
- Restrictions on the size of private landing facilities;
- Restriction on the size of marina and boating facilities; and
- Prohibition of swimming pools on submerged lands.

The assessment criteria currently in place are not meant to provide a comprehensive environmental assessment of any application, this remains the responsibility of the consent authority. The assessment criteria do however provide an effective and appropriate preliminary assessment to determine the appropriateness of the development taking into consideration a detailed range of maritime issues.

The removal of key assessment criteria, as outlined above, considerably weakens NSW Maritime's role to protect and manage against the loss of valuable habitat and the degradation of foreshore and waterway values. SCCG believes the criteria outlined in the current Land Owners Consent Policy must be retained as they promote a process for determining appropriate development along foreshore areas.

## **The Greater demands to be placed on Councils that will result from the Draft Policy**

NSW Maritime has the expertise and capacity to efficiently assess the appropriateness of development proposals whilst relying on Local Government and Department of Planning to assess the detailed social, economic and non marine environmental considerations as required under the *Environmental Planning and Assessment Act 1979*.

At present NSW Maritime, through the Land Owners Consent Policy, is responsible for considering preliminary development assessment is coordinated and undertaken strategically. Removal of this critical role places greater emphasis on Councils who generally have limited expertise in dealing with marine related issues. This will result in decisions that are inconsistent and contradictory between local government boundaries and not in the interest of the foreshore management.

Of further concern to the SCCG is potential financial cost of the *Draft Policy* to Councils. As outlined above refusal of owner's consent is not subject to appeal, therefore it operates as an effective veto to inappropriate development of public land. Refusal of planning consent, on the other hand, can be appealed to the Land and Environment Court. The proposed changes are likely to result in taxpayer's money being wasted by consent authorities such as Councils attempting to defend legal appeals relating to individual waterfront sites, and potential incursions onto environmentally sensitive public lands. These costs can be circumvented at an earlier stage by refusing owner's consent on public policy grounds.

## **Conclusion**

The Current Land Owners Consent Policy promotes a process for determining appropriate development along foreshore areas that is based on sound policy and assessment criteria. This provides a consistent methodology for the assessment and determination of development in the foreshore areas of Sydney Harbour, Botany Bay, Newcastle Harbour and Port Kembla Harbour.

SCCG believes that if adopted, the Draft Policy will seriously compromise protection of aquatic environments and access to public open space within these areas. Therefore the SCCG makes the following recommendations:

1. NSW Maritime's current land owners consent function be maintained;
2. The final policy maintain NSW Maritime consideration of the following development polices when considering granting of Land Owners Consent:
  - Public access
  - Commercial uses; and
  - Scale and types of development.
3. The final policy maintain NSW Maritime consideration of the following development criteria when considering granting of Land Owners Consent:
  - Prohibition of excavation and cutting of rock within the intertidal zone;
  - Requirements that boat sheds be located above the high water mark wherever possible;
  - Restrictions on the size of private landing facilities;
  - Restriction on the size of marina and boating facilities; and
  - Prohibition of swimming pools on submerged lands.

I trust that the information provided in this submission will receive appropriate attention when assessing the Draft Land Owners Consent Policy. If you wish to clarify any matter in the submission or require further information, please contact Geoff Withycombe (Executive Officer) on 9246 7791 or [geoff@sydneycoastalcouncils.com.au](mailto:geoff@sydneycoastalcouncils.com.au)

Yours sincerely,

A handwritten signature in black ink that reads "Patricia Harvey". The signature is written in a cursive style with a large initial 'P'.

Clr. Patricia Harvey OAM  
**Chairperson**