

**Submission  
No 115**

## **INQUIRY INTO THE MANAGEMENT OF THE SYDNEY HARBOUR FORESHORE AUTHORITY**

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**Subject:**

**Summary**

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# Legislative Council

General Purpose Standing Committee No. 4

## Inquiry into the Management of the Sydney Harbour Foreshore Authority



### Submission by Friends of Pyrmont Point

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Part  
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# Executive Summary

"...it is manifest that there is a lack of trust in government, in the absence of proper process, and because of the track record of SHFA."

Justice Barry O'Keefe, *Closing Summary, National Trust Summit on Working Harbour, 24 October, 2003*

## Reason for this submission

The Friends of Pyrmont Point welcome the Parliamentary Inquiry into the management of the Sydney Harbour Foreshore Authority (SHFA) and are grateful for the opportunity to make a submission to the Inquiry.

Friends of Pyrmont Point is a community organisation created in response to plans by SHFA to alienate the publicly owned land at Pyrmont Point formerly occupied by the Water Police by handing it over to developers for private development of multi-storey commercial and residential buildings.

We believe that such treatment of significant publicly owned foreshore land is contrary to the community interest and does not reflect the principles on which SHFA was founded nor is it consistent with SHFA's primary functions as defined in its enabling legislation and espoused in SHFA's mission statement.

## Conclusions

SHFA is a deeply flawed organisation and these flaws arise out of the conflicting roles SHFA is charged with performing as conservator, planner of public amenity, landlord, realtor, developer and development consent authority. These conflicting goals are exacerbated when the organisation's management is structured as a private enterprise and its success judged by commercial key performance indicators.

SHFA is an unelected body carrying out a role the public expects to be executed by elected representatives. While the defence is often made that SHFA reports to an elected Minister of the crown, we all understand the reality that electors in Newcastle, Dubbo and Burke will determine their vote according to state-wide issues such as health, education and law enforcement and not on whether a piece of crown land in Sydney is to be developed as a block of flats or a park. The principle behind local government is that local representatives should determine issues that effect local amenity yet it is this fundamental tenet that is undermined by bodies such as SHFA.

SHFA makes much of its key role as landlord of a major tourist destination – The Rocks. It displays with pride its plans for Ballast Point Park. Yet SHFA and its predecessors played a key role in attempting to destroy these sites and many others such as Callan Park. These magnificent parks and heritage communities were only saved through the civil disobedience of local residents and trade unions such as the Builders and Labourers Federation who eventually won enough support in the wider community to force the government of the day to change its mind. *Surely there must be a better way to preserve the State's cultural heritage than this!*

## Recommendations

The development, assessment and place-management roles of SHFA should be split in three ways.

We recommend that:

- SHFA, or its successor, retain the role of place-management only for The Rocks, Darling Harbour and Technology Park
- SHFA's role as development consent authority be handed back to elected local councils
- A trust comprising foreshore councils and the Department of Infrastructure, Planning and Natural Resources be charged with administering publicly owned foreshore land and with developing a strategic plan for appropriate use of this heritage

## Part 2

# Introduction

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## Friends of Pyrmont Point – who are we?

### History

#### Formation

Friends of Pyrmont Point is an incorporated body formed in May 2003 to focus community opposition against SHFA's development plans for the public land at Pyrmont Point which was to be vacated by the NSW Water Police.

Friends of Pyrmont Point are an apolitical group.

#### The mission

The Friends of Pyrmont Point mission for retention of the Water Police site as a community resource is:

We are opposed to commercial and residential development on publicly-owned foreshore land. We continue to demand that the land on Elizabeth Macarthur Bay must be a community resource providing usable, public open space.

#### Why save Pyrmont Point?

Friends of Pyrmont Point are opposing the sell-off of the Water Police site on the following grounds:

- The land is public land and therefore an asset of the people of New South Wales; it should not be sold or leased for private development;
- The land, on the foreshores of Sydney Harbour is an irreplaceable asset for the local and the wider Sydney community; and
- There is already a shortfall or recreational usable green public open space available to the local community;

Given the intense development in Ultimo-Pyrmont in the last decade and the rapid increase in population there is, by any objective measure, insufficient open space for the population. The alienation of a foreshore land would deny the land to current and future generations of Sydneysiders.

The local and wider Sydney communities have given the Friends of Pyrmont Point a clear mandate to pursue the mission:

- Friends of Pyrmont Point is an incorporated organisation with 160 members and thousands of well-wishers and supporters;

- A number of public meetings and rallies have repeatedly endorsed the aims of the Friends of Pyrmont Point;
- Over 11,000 people have signed parliamentary petitions seeking retention of the Water Police site as a community resource providing green, open space
- The Harbourside councils of the City of Sydney, Willoughby and Leichhardt have expressed their support for the aims and mission of Friends of Pyrmont Point
- The Construction, Forestry, Mining and Energy Union, NSW has given tangible support by calling for retention of the land in public ownership and by the imposition of a Green Ban, the only such ban in more than two years, on the site
- A number of business, union, community and political organisations have confirmed their support, including:
  - The Greens Party
  - The Democrats Party
  - Protectors of Public Land
  - The National Trust (NSW)
  - NSW Trades and Labor Council
  - Pyrmont-Ultimo Chamber of Commerce
  - Liberal Party (NSW)
- At the request of Friends of Pyrmont Point, the City of Sydney Council initiated a multi-dimensional study into open space, traffic, parking and related issues for Ultimo-Pyrmont.

## Significance of the Sydney Harbour foreshore

Former Lord Mayor of Sydney, Lucy Turnbull, described the Sydney Harbour foreshore as a “trans-generational asset which should be held in trust for the people of Sydney.”

It is not the water that defines the essential qualities of Sydney Harbour. It is the environs that contain it. Many of these environs are breathtakingly beautiful and draw admiration from all around the world. Ironically, much of this beauty has been preserved simply through the good fortune that the land was in the hands of a disinterested Commonwealth Government, impervious to the demands of State Governments and the desires of developers.

The Commonwealth Government has now recognised the priceless quality of these assets and is preparing, through the Sydney Harbour Federation Trust, to hold them in trust and to make them accessible to the public for the enjoyment of current and future generations.

It is hoped that one of the outcomes of this Inquiry will be a similarly enlightened respect by State government instrumentalities, such as SHFA, for the remaining foreshore land under their control. We firmly believe that, so long as SHFA retains its current responsibilities, the inexorable pressure will be to continue the past practice of raising money by developing these lands, to the long term detriment of the people of New South Wales.



## SHFA's legacy

SHFA's responsibility for care of the harbour foreshores for current and future generations is encapsulated in the Sydney Harbour Foreshore Authority Act 1998, Section 12 (1) (a) of which provides that:

"The Authority has the following functions:

(1) (a) to protect and enhance the natural and cultural heritage of the foreshore area"

Irrespective of SHFA's other functions, this responsibility can only be discharged effectively through development of a long-term management plan. The handover of innumerable foreshore sites to developers for short-term profit has long-term consequences that are irreconcilable with the protection and enhancement of "the natural and cultural heritage of the foreshore area".

SHFA has the power to influence the aesthetics, utility and enjoyment of what most people in Australia, indeed the world, would regard as the feature that most defines Sydney. However, SHFA and its predecessors have utilised unique parts of the harbour foreshore as a cash-cow, alienating land from public ownership for short-term commercial gain and long-term loss of amenity. The underlying causes of this behaviour are detailed in the body of this submission. In brief, the cause is structural, stemming from conflict between SHFA's stewardship role for significant public assets and the need for it to operate as a commercial for-profit enterprise.

## SHFA's processes

Our submission is directed primarily towards the roles, management, processes, culture and behaviour exhibited by SHFA, its Chairman, its Board, and its Chief Executive Officer in relation to the former Water Police Site at Pyrmont Point. However, it is evident, that our experiences are closely paralleled by SHFA's activities on other foreshore lands.

To those affected by SHFA's decisions but disenfranchised from its processes, SHFA's purposes and actions appear hidden behind a labyrinth of "commercial-in-confidence-agreements".

The public consultation programs SHFA undertakes are too often couched as a choice between a) the devil; b) the deep blue sea; and c) hell. Heaven just doesn't get a look in as a viable option leaving residents with a belief they are being dictated to – not consulted.

Development assessment processes are loaded in favour of their instigators simply by the secrecy surrounding them. Local communities are in an information vacuum until the fleeting window of public comment on Development Applications. In the time available it is virtually impossible to assess the implications of a Development Application, let alone object to it.

By contrast, significant developments assessed by a local council will go through several iterations during which elected councilors, local residents and the developer publicly debate the merits of the application before it is approved. Local councils, even the City of Sydney Council, are powerless to counter SHFA's plans, yet councils and their constituents have to work with and live with the outcome of this process.

## Flawed Structures and Processes Lead to Flawed Outcomes

The outcome of redevelopment in Pyrmont is described by former Prime Minister, Paul Keating as a "lost opportunity"<sup>1</sup>. Mr Keating puts the dense, high-rise development that has eventuated in sharp contrast with the low rise village that was envisaged.

Inappropriately located and poorly planned developments such as the Sydney Casino have alienated the local community from the harbour and created a host of traffic, parking, and safety problems for nearby residents and businesses.

But for the actions of community groups such as Friends of Pyrmont Point, it is likely that the Water Police site would have already gone the same way, turning a location that had been planned as the heart of the Pyrmont peninsula into just another wall of flats hiding the historic sandstone cliffs and adding to the already horrendous transport problems in the area.

Inappropriate developments fostered by SHFA are everywhere to be seen. The process continues. On 24 November 2003 the City of Sydney Council unanimously resolved to issue a fact sheet informing the community of the undesirable consequences of current plans for publicly owned land on the Pyrmont Peninsula and nearby foreshore including:

- Water Police site
- Powerboat facilities in Bank Street
- Site M North, on Point Street, Pyrmont
- Sydney Fish Markets, including the wharves

## Community Condemnation of SHFA

Apart from the Parliamentary Petition mentioned above, the widespread community anger at its treatment by SHFA has been expressed in a variety of ways.

Community anger was expressed in a Green Ban imposed on the site on 12 November 2003. The Green Ban, the first to be applied by the CFMEU in more than two years was not imposed lightly. The Friends of Pyrmont Point were required to argue a detailed case before the State Executive of the Union. This examination was followed by site visits and more detailed investigation of a special sub-committee.

On 18 November 2003 a public meeting denounced SHFA's plans for the site and framed the following resolution:

That the delegation from the Friends of Pyrmont Point inform Mr. C Knowles, Minister for Infrastructure, Planning and Natural Resources of the following:

- That, given the actions and behaviour of the Sydney Harbour Foreshore Authority in relation to development in the Ultimo/Pyrmont area, this community has no trust or confidence in the Sydney Harbour Foreshore Authority.
- That the Ultimo/Pyrmont community rejects the Sydney Harbour Foreshore Authority's plans for the former Water Police site on Elizabeth Macarthur Bay
- That the land on Elizabeth Macarthur Bay be retained as public open space for use by the community.
- That this public open space be managed by the Sydney City Council for the benefit of the community.

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<sup>1</sup> Keynote address: Sydney City Council City Talk , 17 February 2004

Friends of Pyrmont Point presented this resolution to SHFA's Minister, Craig Knowles, Minister for Infrastructure, Planning and Natural Resources at a meeting with him on 20 November 2003.

Following these representations, Mr. Knowles stopped SHFA's Development Application, pending the outcome of the infrastructure study to be conducted by Sydney Council.

### Why does the community oppose SHFA?

The answer to this question is clear to the community. The community lives with the results of the work of SHFA, as well as other organisations such as Department of Infrastructure Planning and Natural Resources. They are also at the receiving end of arcane planning and statutory processes that they do not understand.

To oppose these processes requires substantial commitment and effort in the month or so following the posting of Development Applications. In the short period available the community is supposed to understand what is happening, carry out necessary research, prepare an objection, document the objection and lodge the objection.

The experience in Ultimo-Pyrmont of those intending to object to Development Applications involving SHFA and assessed by the DIPNR, its predecessor DUAP and now, SHFA is to be told by planners that their objections are "covered" in the development proposals, the inference being that their objections are a waste of time. Invariably, this proves to be true. Small wonder that the community perception, as with SHFA's plans for the Water Police site, is that these over-the-top developments are a "done deal."

Sadly, when the community attempts to work with the statutory process, the community finds that developments involving SHFA and DUAP/DIPNR, in practical terms, really are a fait accompli and the community loses out. As the consent power is held by the Minister for Infrastructure Planning and Natural Resources, who is also SHFA's Minister the whole development process from conception through planning, assessment and development is controlled by organisations directly responsible to the Minister and the Minister himself.

The City of Sydney Council, like any other party, can object to these developments, but has no power or control over the development assessment process controlled by an unelected SHFA. Time after time, Council objections to SHFA developments have failed.

### What does SHFA say about the community opposition ?

- "You came into the area knowing that it was going to be developed."

This is true for new residents, not for old. The buildings were only going to be 4 storeys high, leading residents to believe that they would not be a densely developed peninsula;

- "You are only concerned because it's going to block your views..."

The concerns of local residents (and the wider Sydney community) are about the potential irrevocable loss of public domain, the intense overdevelopment leading to long-term problems of parking, traffic chaos, anti-social behaviour and lack of recreational areas for an overwhelmingly unit-dwelling community.

- "We (SHFA) have engaged in extensive community consultation"

All consultation has been carefully orchestrated, as demonstrated by SHFA's sham architectural competition for the Water Police Site development which paid lip service to "community consultation" but offered no real

say in the development decision. SHFA also issues "updates" and "information nights" which merely outline SHFA's plans but community views are consistently ignored.

- "We take community concerns about open space into account

SHFA provides calculations of open space between the footprint of buildings, footpaths and walkways, pocket paths and other inaccessible or non-recreational areas to show that it provides for the community needs for open space.

## What does SHFA do about the community opposition?

- SHFA frustrates community opposition

A measure of SHFA's disdain for the community is its current Development Application for a "temporary" boat lift and anti-fouling business to be allowed on the Water Police Site, despite its Minister's promise to hold DA action pending the outcome of the infrastructure study to be conducted by the City of Sydney Council.

There is now a substantial residential population immediately adjacent to the Water Police Site in the community development housing overlooking the site and other nearby residential blocks. SHFA's failure to inform the immediate neighbours of the Development Application appears to be contrary to statutory requirements. It is, at the very least, a breach of sound consultation principles to fail to inform neighbours of the development. The action appears to be a flagrant breach of the Minister's undertaking of 20 November 2003 to halt SHFA's DA pending the outcome of the Sydney City Council infrastructure study which is yet to be completed.

By rushing through a Development Application which is contrary to the understanding arrived at with the Minister, SHFA appears to be attempting to frustrate any action to turn the Water Police Site into a community resource providing green, open space.

- SHFA wages a spurious public relations campaign

**Is it a co-incidence that, two days before the closing date for submissions to the Inquiry, SHFA releases a 33 page publication, ostensibly in recognition of the Year of the Built Environment, but actually praising itself? SHFA's document is specious. It claims responsibility for all improvements over a ten year period.**

- Illustrations and photographs compare the old industrial Pyrmont with the current urban area, with the suggestion that SHFA and its predecessors are responsible for the area's "renewal."
- Statistics comparing the old industrial area with the current residential area are simply invalid
- Photographs of the small green areas on the peninsular are taken with wide angle lenses to dramatically increase the appearance of their size
- Photographs are predominantly of the few green areas and the water, giving the area the appearance of a holiday resort
- No close ups are included of the high rise towers and overdevelopment, giving the impression that the intense overdevelopment has not occurred
- Selective use is made of statistics to convince the reader that through SHFA's efforts the area is a haven featuring vast expanses of green recreational areas:
- The inaccessible Wentworth and Tumblong Parks are included in the open space calculations
- SHFA lumps park space and "open" space together for its calculations
- Numerous so-called pocket parks are included in SHFA's calculations
- SHFA includes a footpath around the harbour in its open space calculations

- SHFA includes thoroughfares such as Union Square in its calculations for “new parks and open spaces
  - SHFA claims public access to the harbour is adequately provided by a 10 metre walkway
  - SHFA uses spurious calculations to demonstrate that the traffic situation has improved since 1993 (hardly a relevant benchmark) when anybody in the area knows it is bad and getting worse.
- SHFA uses delaying tactics and obfuscation to frustrate attempts to gain information about its processes

Friends of Pyrmont Point spent months through repeated attempts, including representations to the Office of the Ombudsman, to gain a few key documents giving an insight to the decision making process related to SHFA's architectural competition.

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## Pyrmont

## Pyrmont – perspectives

“SHFA has established a reputation for creating and caring for Sydney’s significant waterfront precincts. This reputation has been achieved thanks to the work of SHFA and its forerunner organisations, City West Development Corporation, Darling Harbour Authority and Sydney Cove Redevelopment Authority. SHFA aims to continue building this reputation by developing and implementing world’s best practice for place leadership and place management.”

SHFA publicity material

Contrast the above statement with the following extracts from Hon. Paul Keating’s City Talk at Sydney Town Hall on 17 February 2004.

“Development in Sydney is driven by a “tsunami” of development dollars that is unstoppable. Public land must remain in the public domain because once it is lost to private development for a few privileged people its lost forever.”

On development on the harbour foreshores, Mr Keating said:

“We owe Sydney a greater legacy than privileged Lego blocks occupying important points of Sydney Harbour. Development defended by archispeak and self-interest, while isolated elements only are regarded as places of state and national significance.”

Further on the piecemeal development around the harbour:

“I think the harbour should be viewed holistically and all of its foreshore declared an area of state significance. Because it is an area of true state significance. What we have to do is lift the public consciousness about the importance of these sites and make the political parties understand that there is a cost in abusing them. That under-the-carpet development between planning agencies and developers is not on. Because the developers are, in the main, unscrupulous, and they’ll put the squeeze on the system. They’re the ones that now fund the political parties, along with the hotels and the clubs.”

In question time Mr Keating said that Pyrmont represented a “lost opportunity.” He said the intense, high rise development that has taken place contrasted with the low rise village that was envisaged when the Commonwealth Government provided funds to build the light rail system under the Better Cities Program in the early nineties.

## Short term thinking for long term assets

In contrast to SHFA’s publicity material about “world’s best practice” the NSW Auditor-General Reports:

"We found that...the disposal of foreshore land appears to be considered largely at a project level, with inherent emphasis by the proponent on financial returns...."<sup>2</sup>

## Pyrmont Developments

### "Caring for waterfront precincts" – an example

It is doubtful whether any major developments in the Ultimo Pyrmont fulfil the planning criteria supposedly controlling them. Under the system of flexible planning controls, where buildings conform to the plans, the experience is that plans have been altered to accommodate increases in the building envelope, rather than buildings altered to fit the plan.

The following example of a development in Saunders Street, Pyrmont shows how developments in the area violate sensible planning criteria.



#### Before development:

- The Urban Development Plan (UDP) for Ultimo-Pyrmont states "Before granting consent to any such development, the consent authority must consider...the impact that the proposed development will have on the heritage significance of the heritage item and its setting or the conservation area." And:
- "The visibility of major cliff faces from public places and the water should be maintained"
- The UDP calls for an under-cliff walk along the cliff base which will provide an unbroken corridor of "urban forest"
- SHFA's Saunders Street Master Plan requires "a linear park for passive public recreation not less than 3,500 square metres at the lower level of the escarpment face..."

<sup>2</sup> Auditor-general's Report, Performance Audit , Disposal of Sydney Harbour Foreshore Land



**After development:**

- The heritage listed cliff face is almost completely obscured
- The under-cliff walk passes *through* the building
- The approved DA only provided for 2,414 square metres of open space which was claimed to be larger by the Department of Planning by counting footpaths and other space not in the immediate area

The pictures also illustrate the intensity of development which has taken place, and is still continuing, in the area.

### Elizabeth Macarthur Bay development creep

Further examples of “development creep” are to be found in the Lend Lease development on the old CSR site, now referred to as Jacksons Landing.

#### The Elizabeth tower

The first plan for the building now called “The Elizabeth” was for a 10 storey building “in keeping with the height of the old Pyrmont power station” which was originally on the site of the building. As the plans for the building progressed it was successfully argued by the developers that the height of the building should be the same as the height of the top of the old power station chimneys, thus allowing the developer to add two more storeys to the building.

It would be interesting to establish who obtained the benefit from the increase in height. Typically, developers reap large benefits from additional storeys as there is only marginal additional building cost (most site costs having already been absorbed) for a large return from the additional units. As Lend Lease had already paid a lump sum for the entire CSR site, it is presumed that the benefit from the additional units is entirely Lend Lease's. This benefit is at the expense of the entire community which has to suffer the effects of massive overdevelopment on the foreshore.

#### The Regatta Wharf towers

The next group of towers to be built at Jacksons Landing was the Regatta Wharf complex. Because The Elizabeth next door had been allowed to be built to the same height as the power plant chimneys the same building height was approved for the Regatta Wharf towers.



### Proposed tower, Water Police Site

Development creep permeates into SHFA's plans for the adjacent Water Police site on Elizabeth Macarthur Bay.

The original planning instruments for the Water Police site impose a height limit of around 3-4 storeys.

Under the conditions of SHFA's architectural competition for its proposed development of the site, architectural firms were able to exceed the Master Plan limitations for "innovative" proposals.

Unsurprisingly, two of the three finalists in the competition exhibited drawings featuring eight storey towers at the southern end of the site.

On 11 November 2003 at an "information" evening sketches and models showed the tower to be 13-14 storeys in height, and *at the same height as The Elizabeth*, nearby.

At the time of the display the Master Plan still did not permit a 14 storey building. However, given past experience, SHFA would vary the Master Plan to suit whatever configuration it required and obtain the Minister's consent so that the building conforms to the new requirements.

### Pyrmont Peninsula – population and open space

Given the scale and intensity of building development in Ultimo Pyrmont, a key concern in the community is the provision of sufficient public, green, open space for the well being of the rapidly increasing population.

#### Sydney City Council study 1995

A study into open conducted by the Council identified a shortfall of 14.5 hectares of open space. After the study Planning NSW and the Council amended the calculation by including half of Tumblong and Wentworth parks in the count, a dubious decision in the eyes of the local community. Tumblong Park was defined as an entertainment destination for tourists and a recreation space for the CBD, while Wentworth Park was counted in Leichhardt's open space.

Despite the counting of parts of Tumblong and Wentworth Parks, the result was still a shortfall of 8.5 hectares.

#### Planned vs. actual population

In December 1994, Sydney City Council's Section 94 contribution plan population forecast for 30 June 2001 Ultimo-Pyrmont was 5,200.

The actual population in August 2001, as measured by the National Census was 11,817, or 2.27 times the forecast. (A side issue to this discussion is the fact that the plans of planners seem to be accepted with a reverence that they do not deserve – time and time again they are found to be wrong, and, like SHFA, they are not held accountable for their actions).

#### Population vs. open space

Sydney Council planners have advised of a "generally accepted ratio" or 28 square metres per person.

However, in recognition of the already built up character of Ultimo-Pyrmont the planners settled on a desirable ratio of 19 square metres per person.

Council's Population and Employment Survey of 2001, based on the census figures determined an actual ratio of only 14.14 square metres per person, just half the "generally accepted ratio."

However, taking development since 2001 and the resultant population increase, the current ratio is estimated at around 11.4 square metres per person, way short of *any* acceptable ratio.

Furthermore the shortage of open space will be a more significant issue than is indicated by the raw figures:

- The overwhelming majority of residents are unit dwellers, with little, or no open space incorporated into their dwellings;
- A significant area measured as open space is poor quality e.g. areas under overpasses, windswept forecourts of buildings, footpaths and thoroughfares such as Union Square;
- Other areas are small, irregular, difficult to use areas, designated as "pocket parks";
- Hard to access, regional facilities such as Wentworth Park, and Tumblong Park have been incorporated in the count to boost numbers;
- There has been a huge increase (reported at over 400%) in the number of children – they have practically no suitable areas catering for their special needs – and the number continues to increase.

Despite its publicity material about how SHFA is "creating vibrant neighbourhood communities", SHFA is oblivious to the above issues. The open space issue and SHFA's contribution is discussed further under term of reference (e) multidimensional study, where we comment on SHFA's offer to participate in the study.

#### SHFA's misinformation on open space

Despite the obvious development creep, intense overdevelopment, inappropriate "Hong Kong" style development at the water's edge, SHFA's self-promotional publicity material continues to portray the Pyrmont Peninsula as generously served with open space. It's latest material claims that "A report undertaken in 2004 by urban planning firm Cox Richardson found that there is now 25.8ha of open space in the precinct."<sup>3</sup>

Interestingly, this report does not appear to have seen the light of day. Also, interestingly, the statement contradicts the publicity material's own table on the following page, summing up so-called open space at 10.4ha. This information is also disingenuous, as SHFA lumps unusable spaces such as thoroughfares and "pocket" parks under the heading of "Parks and Open Space."

It appears that SHFA prefers that the community should accept SHFA's arguments about the adequacy of open space rather than any open and objective assessment. In August, 2003 Friends of Pyrmont Point representatives met SHFA Chairman, Gerry Gleeson and CEO Rob Lang to ask for a stay on the Water Police Site development pending an independent study into open space requirements, traffic and related issues.

Friends of Pyrmont Point were told that such a study is "not on."

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<sup>3</sup> "Ultimo + Pyrmont – Decade of Renewal", Sydney Harbour Foreshore Authority 2004, pp 22-24.

Part  
4

## SHFA Management

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## Inquiry Terms of Reference

### (a) Roles

SHFA – foreshore protector, or real estate developer?

Auditor-General's performance audit

The Auditor-General has expressed concern about piecemeal development of the foreshores:

“Because Sydney Harbour is such an icon, our view is that decisions in relation to foreshore land need to be made on a more strategic basis, if the Government's aspirations for Sydney Harbour's Foreshores are to be met.

At present there are high-level “aspirations”, but there is no overarching strategy or plan for Sydney Harbour to guide individual decisions. Decisions to dispose of, retain, or change the use of individual properties tend to be triggered on a case-by-case basis. Decision-making is left with individual agencies and local councils that have no responsibility for whole-of-harbour outcomes.”<sup>4</sup>

Clearly, if SHFA is effectively exercising its role which includes the requirement under the act to:

...protect and enhance the natural and cultural heritage of the foreshore area,

and to:

...promote, coordinate, manage, undertake and secure the orderly and economic development and use of the foreshore area, including the provision of infrastructure...

Then there would be no cause for the Auditor-General to comment so critically on the overall management of Sydney's most defining asset. The piecemeal sell-off of foreshore land referred to in the Auditor-General's report has led to the description of SHFA in many quarters as “the State Government's real estate developer”.

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<sup>4</sup> Auditor-general's Report, Performance Audit , Disposal of Sydney Harbour Foreshore Land

## SHFA – Proposer, Assessor, Developer

What SHFA proposes, SHFA disposes

SHFA's powers across Sydney Harbour foreshores was designed to overcome the fragmented control by many bodies, including local councils, government departments and statutory bodies with a role in the development and management of foreshores.

Where land is under SHFA control, such as the Water Police site, SHFA is proponent, planner, developer, assessor and recommender for final approval. To cap it off, SHFA passes its development plans to its own Minister for final consent.

Thus SHFA exhibits the characteristics of a monopoly, with both horizontal and vertical integration of roles.

Aggregation of powers in an unelected SHFA Board goes hand in hand with diminution of powers of the councils who are the local elected representatives of the people and have to provide services to the people affected by SHFA's decisions.

Though SHFA claims it is "working with the community" the reality is that the community has little ability to impact on the control exercised by SHFA over the development process. Generally, when the community gets its opportunity under the statutory requirements, it is too late to mount any effective input.

The concentration of roles in SHFA shows almost complete disregard of a key feature of the Westminster system of government – the provision of checks and balances. Without checks and balances the tendency will be toward abuse of power, ineffective decision making and poor outcomes. All these appear to be present in the operations of SHFA.

Our recommendations focus on the need to bring accountability to the roles SHFA is exercising by splitting them to create improved access to decision making, consultation and accountability. True accountability to the communities that comprise Sydney Harbour constituencies most affected by developments can only be created if the power to establish planning limits and to assess and approve developments is given to the councils, who will then be accountable for the outcomes of the planning and assessment processes.

We recommend that local Councils be retain the power to set planning limits and to assess all proposed developments within their jurisdiction.

### Commercial vs. stewardship Roles – irreconcilable conflict

Despite the stewardship role to be exercised by SHFA in "protecting and enhancing the natural and cultural heritage of the foreshore area", there is a clear bias in the execution of SHFA's role towards the pursuit of short term gain from residential and commercial building developments, to the extent that SHFA is often referred to as "the government's real estate developer."

This role conflict is referred to in the Auditor-General's performance audit:

"It's (SHFA's) aims include protecting the natural and cultural heritage of the foreshore area and the provision of entertainment and recreational facilities. However, it is required under the NSW Treasury's Commercial Policy Framework to operate in a commercial manner in accordance with policies designed to emulate private sector practices."

So long as the stewardship role is within the responsibility is combined with a responsibility to operate as a commercial business within a private sector framework it is inevitable that the bias will be in favour of the commercial gain.

Clearly SHFA's primary response to its stewardship role is to sell or lease off properties as quickly as possible and for as much as possible.

Accordingly, our recommendation is that SHFA should be allowed to do what it undoubtedly does best and that is to continue to manage its commercial operations as a landlord of commercial properties. *All* potential development sites should be removed from SHFA's control. SHFA should only be responsible for landlord responsibilities for established sites such as Darling Harbour and The Rocks. Furthermore, should any further redevelopments be proposed for such properties, their development should be conducted by another body.

## b) Lines of Communication and Accountability

### SHFA accountability – for what?

SHFA's charter under its Act to "protect and enhance the natural and cultural heritage of the foreshore area" gives SHFA a unique responsibility for managing significant and unique assets, not merely for the current generation of Sydneysiders, but for generations to come. There are authoritative guidelines for the management of significant public assets, which as shown elsewhere in this submission, are breached by SHFA as standard practice.

Whatever SHFA states in its publicity material about "working to create a vibrant community" the behaviour and practice is to trifle with its accountability under the Act and to pursue short term profit at the expense of the community, irrespective of the wider community interest and the long-term consequences.

This is not simply a view portrayed by a narrow section of the community. On 24 November 2003 the Council of the City of Sydney unanimously resolved to issue a fact sheet informing the community of the State Government's plans (as proposed by SHFA) for the publicly owned land the Government holds in trust for the community on the Pyrmont Peninsula and along the foreshore.

The fact sheet, which was issued in early 2004, lists each of SHFA's proposed developments, all of which continue the past practice of cramped, overdevelopment without regard to the wider community interests. The fact sheet details the significance of each site, reasons why SHFA's development is inappropriate, and actions the State Government should take to ensure sensible, planned development of the sites for the future. Extracts from the fact sheet are shown below:

#### **Development of Water Police Site**

This is one of the few remaining publicly owned sites on the harbour foreshore that hasn't been developed. It is an ideal location for a foreshore park and the development of a creative public space for the local community. Parkland along the foreshore will also provide much needed relief from the high density built environment in the peninsula.

It will represent a continuation of the overdevelopment of the harbour foreshore which has been seen throughout Sydney and will ensure even more of our unique foreshore becomes a private backyard for a few residents.

The State Government should dedicate this land as park and community interests.

#### **Powerboat Facility in Bank Street**

The City of Sydney is committed to realising our vision for a continuous foreshore link with public access...

The proposal includes a two-lane launching ramp, boarding pontoon and parking for 60 boat trailers. This will prevent the continuous foreshore promenade and public access for pedestrians and cyclists becoming a reality.

This site should be dedicated to providing a vital foreshore link.

#### **Site M North, Point Street, Pyrmont**

This sloping site is one of the few remaining of Pyrmont's natural terrain. The light rail cutting adjacent should be opened to the public and landscaped bringing life to an area that is surrounded by apartment buildings.

The Government is proposing a gross overdevelopment ...with an eight storey tower, including 36 residential apartments and ground floor commercial space on a tiny site of just over 1,000 m<sup>2</sup>. This will prevent children from playing safely in Scott Street as they do now and result in the loss of much needed green open space.

The Government should cease any plans for development on this site and dedicate it as parkland.

#### **Sydney Fish Market Master Plan**

The Master Plan...will double the number of car spaces to almost 1,000 and introduce a multi-storey above ground car park. Retail and commercial uses will be intensified with a commercial tower of 34.8 metres in height, a significant increase on the current low-rise buildings. The City of Sydney has opposed the draft Master Plan because the proposal:

- Turns its back on Pyrmont and the local community and provides no access for pedestrians or cyclists from Bank Street.
- Does not incorporate future plans for a continuous foreshore promenade, with retail uses along the foreshore limiting public access to the area as a pedestrian and cycle link.
- Has inadequate provision for open space and landscaping within the development providing no relief from the surrounding built form.
- Has serious traffic implications both internally and on local streets that require further consideration before the proposal proceeds any further.

The State Government must revise the Master Plan to create a development sympathetic to the surrounding environment that addresses traffic issues.

#### **State Government Foreshore Land Opposite Wentworth Park**

This land is critical to the future of a continuous foreshore link from the east to the west of the City of Sydney. Ideally, in the long run, Pyrmont Bridge Road should be run underground or relocated to create a continuous park from William Henry Street to the foreshore.

It is understood the State Government is considering the redevelopment of this narrow strip of publicly owned land for residential apartments.

This will permanently block access to the foreshore for the public, result in further overdevelopment of publicly owned land and ensure, as with the Water Police Site, that more of our valuable

These development plans, and the City of Sydney's concern about their consequences highlight the irony that the City of Sydney, which *is* accountable to the people of Sydney has no power over the plans of a body that *is not* accountable to the people for the substantial impact its plans will cause to the community.

The fact that Sydney Council has seen it as necessary to inform the community of SHFA's plans and their undesirable consequences is sharp illustration of:

- The gross inappropriateness of SHFA's development plans
- The secretive nature of SHFA's planning, decision-making and operations
- SHFA's piecemeal approach to development (highlighted by the Auditor-General)

- SHFA's apparent lack of consultation with the Sydney Council, the body elected to provide essential services to the local community
- SHFA's unwillingness to discharge its accountability for the sites in its trust by dealing with the body elected to represent the community interest
- SHFA's quest for development for its own sake at the expense of the long term amenity of the local and wider Sydney community.

Current proposals show a seamless continuation of the patterns of behaviour and type of development of the past and feature:

- Progressive alienation of public land from the community to private interests
- At best, only token consideration of community interests, particularly in relation to community needs for open space, intensity of development, amenities for diverse emerging population, particularly children, integration of developments with the community as shown especially by successive developments (e.g. the Casino) "turning their back" on the community.
- Consistently failure to discharge the accountability prescribed under the Act to "protect and enhance the natural and cultural heritage of the foreshore area."

### SHFA accountability – to whom?

Under its Act, SHFA is "subject to the control and direction of the Minister", currently the Minister for Infrastructure Planning and Natural Resources.

However, the Minister is also the consent authority for proposals put forward by SHFA, and it would be quite improper for the Minister to dictate to SHFA the shape and form of proposals referred to SHFA for the Minister's consent. Indeed, the current Minister stated that very point to representatives to Friends of Pyrmont Point at a meeting with him on 20 November 2003.

This places even greater emphasis on the need for openness and transparency in the dealings of SHFA over the significant public assets which are placed in its trust.

As shown elsewhere in this submission, placement of trust in SHFA in the hope that it will ensure probity in its management of significant public assets is a pious hope.

### All care but no accountability

Questions about to whom SHFA is accountable, and for what, show that SHFA has operated, and continues to operate, for all practical purposes as a law unto itself. In doing so, SHFA violates the concepts of accountability which are a cornerstone of the Westminster system of government.

### Multi roles reduce accountability

The combination of proponent, planner, assessor, developer and in some cases also manager roles in one, in practice, simply mean that each role merely serves to pave the way for the next.

The suggestion that combining these roles in one authority would lead to more holistic planning and cut through the barriers of red tape holding up balanced development merely exchanges one flawed model for another.

The concentration of roles has not resulted in better planning and better outcomes. The result is that SHFA has been able to oversee gross overdevelopment on each site, far removed from the “urban village” envisaged in the early nineties.

Rather than the neighborhood portrayed in SHFA self-promotional literature, the reality is a high rise dormitory suburb, devoid of genuine usable recreational space, lacking in an appropriate business mix, dominated by alien development such as the Casino and suffering from looming traffic, parking, overcrowding problems. If SHFA has its way, the trend will continue, with a harbour walled off from the community by apartment blocks and accessible to the public along a 10 metre strip.

It is simply disingenuous for SHFA to suggest that members (as Chairman Gerry Gleeson did to Friends of Pyrmont Point) of the community will, under the statutory processes, be given a chance to comment on SHFA'S Development Applications. In the overall development timetable the proportion of time in the development timetable given for public comment is a mere fraction of the total. With flexible planning guidelines there is little to grasp when members of the community seek to object. This is why in the face of a seemingly irresistible processes the local community were initially convinced that SHFA's development plans for the Water Police site could not be stopped and they were regarded as “a done deal.”

The mere fact that the community regards these processes as “done deals’ is indicative of a lack of accountability.

Typically in public administration, the absence of appropriate checks and balances invites poor accountability and leads to low quality in administration, goal displacement and outcomes that are detrimental to the community interest.

Disingenuously, Chairman Gerry Gleeson told Friends of Pyrmont Point that independent assessors would be engaged by SHFA to assess its Development Application for the Water Police Site. Even if this is true, how independent would an assessor be whose future income would depend on further work from SHFA?

## (C) Potential conflicts of Interest

“This is a great example of what government can achieve when we work in partnership with the private sector to create greatly enhanced spaces and facilities for the community.” -- NSW Labor deputy premier Andrew Refshauge after chairperson of Sydney's Darling Harbour Authority Gerry Gleeson resigned his directorship of Amalgamated Holdings just 24 hours before the company received official approval for a \$1 million development at Darling Harbour.”

Quotation from Green Left Weekly

The accumulation of all roles in the development process from project inception to development creates a range of relationships rife with potential conflicts of interest.

The Independent Commission against Corruption (ICAC) provides an authoritative statement of the dangers of combining assessment development roles in one authority. Following revelations of corruption in Rockdale Council, the ICAC undertook extensive research into the corruption risks in local government. The ICAC position paper “Taking the Devil out of Development” released in December 2002 regards councils' development consent functions as a “unique function” and highlights the conflicts in interests arising from it. ICAC recommendations include that:



"To reinforce a council's unique function as a development consent authority, the council charter within the LG Act should be amended to require objective and transparent decision making in respect of the EP & A matters."<sup>5</sup>

That ICAC sees a need for councils to exercise this charter in an objective and transparent manner is interesting, given that council decisions over development applications are made in meetings open to the public. Although, council decision making processes are far more open and transparent than those of SHFA, ICAC recognises that the degree of openness and transparency is insufficient for the functions they perform.

In essence, the functions performed by SHFA are no different from those of a council. Yet SHFA processes are less open and transparent than those of councils.

Furthermore, elected councils are, at least accountable to those affected by their decisions. There is no such accountability in the unelected Board and management of SHFA.

SHFA is reputed to control the second largest real estate holding in Australia. These assets are held in trust for successive generations of Sydneysiders. It is unconscionable that there is higher potential for conflict of interest in the management of these assets than in local government, which has been found, on many occasions, to be corrupt.

## (d) Enhanced Consent Powers

### Roles – SHFA's Minister - planner or developer?

As Minister responsible for SHFA, the Minister for Infrastructure, Planning and Natural Resources is faced with a difficult potential role conflict.

Where SHFA has proposed a development, and then assessed its own proposal, then asked the Minister for final consent to whom will the Minister turn for assurance that the development assessment process has been conducted thoroughly, impartially, objectively?

Furthermore, the Minister, as Minister for SHFA is responsible to direct SHFA policy and direction. However, the Minister has a statutory responsibility as consent authority, to exercise his consent powers impartially and with objectivity. How can the Minister exercise consent powers impartially and objectively when the Minister has been responsible for SHFA's work on those developments.

A body with a developer role should not be responsible to the Minister for Planning.

There appears to be no justification for the transfer to SHFA of additional assessment powers from the Department of Infrastructure Planning and Natural Resources. It simply exacerbates the potential conflict of interest.

Even without such powers, as illustrated by numerous examples where SHFA did not have such assessment powers, the development process has been fraught with lack of openness, accountability and checks and balances. The transfer, on 4 August 2003, of additional assessment powers to SHFA consolidates the control that SHFA has over the development assessment processes and increases the potential to implement the intense, undesirable development that has been characteristic of SHFA in recent years.

SHFA's public relations sheet explaining the changes proclaims:

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<sup>5</sup> ICAC Position Paper, Taking the Devil out of Development, December, 2002 p.9

"The Government is keen to reduce red tape and simplify the planning system. This change is in the public interest. Reducing assessment times will benefit applicants and the community in general."

Friends of Pyrmont Point suggest the Standing Committee seek an answer to the question: "How is this change in the public interest?"

Given the experience of dealing with SHFA it is strongly suggested that where public land is involved, *any* external scrutiny of SHFA's processes, no matter how ineffectual, is better than a process allowing SHFA to scrutinise itself.

Furthermore we ask, "How will this change reduce assessment times? Is SHFA implying that it is a more efficient and effective assessor than any other possible body?"

We would also ask, "How does this benefit applicants and the community in general? The implication again is that SHFA's assessment processes are somehow superior to those of other bodies.

However, in relation to public land controlled by SHFA there is no doubt that the removal of external assessment might speed up the assessment process. As shown by SHFA's pursuit of intense development by any means the removal of external assessment from developments proposed by SHFA works against the community interest, not for it.

The SHFA public relations sheet goes on:

"SHFA will use its experience in planning assessment to implement the new functions and has developed processes and protocols that will ensure the assessment process is rigorous and transparent."

As shown by example in this submission, the SHFA processes have been anything but rigorous and transparent. The accrual of additional powers does nothing to make the processes more transparent – the reverse is more likely;

The SHFA sheet continues:

"Importantly, the Minister remains the consent and Master Plan approval authority and the transfer of these planning functions does not require any amendments to legislation."

The obvious conflicts in roles held by the Minister have already been pointed out. The further accrual of roles held between SHFA and the Minister exacerbates these conflicts. As a test of the effectiveness of the Minister's role as a genuine consent authority it is suggested that the Parliamentary Committee ask SHFA to provide details of all Development Applications and Master Plans submitted by SHFA that have been rejected by the Minister.

## (e) Multidimensional Study – role of SHFA

It is noted that the multidimensional study referred to in the terms of reference was approved by a resolution of the former Council of the City of Sydney shortly before it was sacked.

The multidimensional study is to be implemented by the newly constituted council.

As noted earlier in this submission the Pyrmont Peninsula has undergone intense development in the last few years. Extrapolation of population figures derived from the 2001 Census shows clearly that with the increase in population there has been a substantial decline in the ratio of open space to population which, at the time of the census were already below generally accepted planning ratios.

In light of the growing community concern about SHFA's proposed development of the Water Police Site and the potential loss forever by the community of one of the last pieces of public foreshore land Friends of Pyrmont Point sought a meeting with SHFA to seek a stay of the development pending conduct of an open space and traffic study in Ultimo-Pyrmont.

At the meeting with SHFA's Chairman, Gerry Gleeson and CEO, Rob Lang, Mr Gleeson's response to Friends of Pyrmont Point was that a study was "not on." Mr. Gleeson added that SHFA would follow the "statutory process" and Friends of Pyrmont Point would have their chance when the Development Application was lodged. Little wonder that Mr. Gleeson is keen to observe the statutory process over which SHFA has almost complete control.

The undertaking by the former Council of the 'City of Sydney to sponsor a multidimensional study contrasts starkly with the point blank refusal by SHFA's Chairman and CEO to even consider the need for such a study.

In subsequent correspondence, Mr Lang has informed Friends of Pyrmont Point about various inadequate and piecemeal studies in an attempt to justify the SHFA stance that a holistic study is unnecessary.

On 5 November 2003, Mr Lang wrote to the then Lord Mayor, Lucy Turnbull offering assistance to Council on the study. He also stated:

"On the matter of open space, the Authority has developed around 9 (nine) hectares of parkland in Pyrmont/Ultimo over the past ten years at a cost of around \$50 million. This has been a significant contribution to the community and amenity of the area, which seems to have been overlooked in recent times. I am sure this oversight will be corrected in any forthcoming study of open space."

Mr Lang's portrayal of the open land and amount spent is somewhat specious:

- Over \$100 million was provided by the Federal Government in the early 90's under its "Better Cities Program." Around \$27 million was spent on the light rail system. What happened to the rest?
- SHFA's predecessor the City West Development Corporation gained over \$90 million from the sale of redundant land
- SHFA claims to have gained over \$200 million from the sale or lease of land since 1996
- Mr Lang refers to what is provided, not whether existing space is sufficient to meet community needs
- As mentioned previously, much of the open space quoted by authorities such as Mr Lang is not usable green space as it comprises footpaths, throughways, unusable spaces under overpasses etc

It is doubtful, given the SHFA lack of openness and transparency, that SHFA would concern itself with any genuine attempt to identify and meet community needs. It appears that SHFA would rather believe its own publicity than contribute to any genuine attempt to meet community needs.

SHFA should be asked to provide details of its "contribution" of genuine, usable, green open space to the community rather than bald assertions.

## (f) Transparency of Planning Assessment Methods and Processes

There is an overall lack of transparencies in SHFA's assessment methods and processes. Even before the transfer of additional powers of assessment to SHFA by the Minister on 4 August 2003, the lack of transparency in methods and processes led to a lack of responsiveness to the community interest. Essentially, differences in views were then resolved between SHFA and DIPNA planners under the operation of flexible guidelines.

### SHFA and the miracle of the five storeys

Development creep allowed the envelope of the proposed tower on the Water Police site to increase from 3-5 stories to 8, then 13 storeys.

People on the Ultimo-Pyrmont peninsula are still scratching their head over the miraculous increase in the height of the Sydney Harbour Foreshore Authority's planned tower on the former Water Police site from 8 storeys to 13 storeys.

The tower's transformation puzzled locals even more than the way in which SHFA conducted its so-called community consultation process and architectural competition for the commercial and residential development.

The eventual winner's design went into the final stage at the beginning of 2003 with an eight storey tower that would turn the bottom end of Harris Street into a shady "canyon".

Imagine how that outraged the locals, given that the former Planning Minister, Andrew Refshauge promised the community that no building would rise above the top of the heritage-listed sandstone escarpment, effectively limiting the height of any building to three or four storeys.

Suddenly in a SHFA "fact" sheet in May 2003 the tower had miraculously grown to 13 storeys. Pretty good when you consider that SHFA's own master plan had a height limit that would only permit an eight storey building. One resident asked the (later winning) architect at the "voting" night why the tower had risen to such heights and was told, "SHFA told us that we had to have a greater 'yield' on the site". We ask what the truth of the matter is here.

On 11 November 2003 SHFA unveiled its plans for the Water Police site and other spots on the peninsula. Sure enough, the eight storey tower is now 13 storeys, and nobody seems able to explain how the transformation occurred. To reinforce the perception that SHFA is unresponsive to the community, or honours its promises to the community, an explanatory note next to the sketches proudly proclaims: "Most of the buildings will be below the height of the bottom of the buildings on the cliff top."

Broken promises, flagrant violation of planning guidelines and mysterious goings on behind closed doors all appear to be standard operating procedure for SHFA.

These and other mysteries about SHFA's management and processes suggest a serious lack of probity is inherent in the conduct of normal day to day business in SHFA.

For example, it is suggested that the Standing Committee determine whether SHFA has written procedures and processes for ensuring separation of its planning and assessment functions (as recommended by ICAC) and, if so, when these procedures were written and when they were implemented.

## SHFA processes lack probity

"Probity is an integral part of any purchasing process and should not be a last minute consideration."<sup>6</sup>

### Why probity?

The requirement for probity goes beyond a need for the existence of integrity in public administration; it also demands that probity must be able to be *confirmed* to be present through public scrutiny.

Friends of Pyrmont Point are of the view that SHFA's processes on the planned development of the Water Police site, show a clear lack of probity, particularly in relation to:

- Refusal to allow external oversight of the architectural competition (offered by the Royal Australian Institute of Architects, no less)
- Apparent favoritism to the eventual competition winner
- Selection of the competition winner
- Obfuscation, delay and obstruction in handling FOI requests related to the architectural competition.

Apart from flawed processes featuring lack of probity and disregard of probity principles, there appears to be a determined resistance (or perhaps appalling lack of commercial or political judgement) in relation any independent scrutiny of the process.

It would be expected that a probity process beyond any possible criticism would be mandatory for a project involving the potentially controversial handover of a public asset to developers for a large amount of money (upwards of \$30 million).

Friends of Pyrmont Point was concerned enough about the apparent confusion and lack of accountability of the architectural competition, revealed in the lack of cogent response to its and the community questions, to question whether SHFA was following good commercial practice undertaken by most government agencies and seeking an independent person, such as a probity officer to observe the process.

SHFA appears to believe it is more authoritative than the NSW Premier whose requirements on integrity, openness and transparency in dealing with sensitive and important matters affecting public assets seem to be flagrantly breached.

Despite numerous attempts and being provided many differing responses, Friends of Pyrmont Point felt it had to resort to obtain a meaningful response on this matter and did this formally through an application under the Freedom of Information Act.; Friends of Pyrmont Point secured the following file note from SHFA relating to probity of SHFA's architecture competition.

"On 26 November 2002 SHFA provided a briefing to probity consultants Deloitte regarding the Elizabeth Macarthur Bay architecture competition process. The basis of the briefing was to outline the method adopted by SHFA in the 2-stage competition process to arrive at a preferred proposal for the site.

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<sup>6</sup> ICAC, *Contracting for Services: the Probity Perspective* 1995 p.20

Following the meeting SHFA decided not to engage Deloitte as probity officers as the proposed process of selecting architects to produce a Development Application for the site is a procurement process within SHFA's procurement guidelines."

The file note raises more questions than it answers:

- Why was a probity officer not appointed for a process involving a multi-million dollar sell off of a foreshore asset?
- What do the procurement guidelines of SHFA say on this point?
- At what level of management was this decision made and was it endorsed by senior management?
- As probity is about *confirming* integrity to be present, how did SHFA intend to confirm a decision by an internal group that their own processes have probity?
- Why have a meeting among the SHFA officers if there is such confidence that their processes have probity?

SHFA should be asked to answer these questions. It has refused to provide any satisfactory answers to these questions.

#### SHFA Refuses Offer of External Oversight of Architectural Competition

Apart from SHFA's inability to justify a decision not to appoint a probity officer for its architectural competition, SHFA has rejected other means of providing internal input to the process.

It would be expected that decisions on the future of one of Sydney's most prized assets, a piece of public land on the foreshores of Sydney Harbour would be the subject of an open and transparent process. This is further demonstrated by the rejection of an offer by the Royal Australian Institute of Architects (RAIA) to be involved in the architectural competition.

Documents obtained under FOI reveal that on 21 May 2002 local retired architect and the community representative on the design panel, Geoffrey Twibill, wrote directly to SHFA Chairman, Gerry Gleeson, stating, among other things:

"Our principal concern is that the Draft Master Plan (even with the proposed revisions) would result in a disappointing development. ...

It follows that alternative design solutions, aimed at achieving your Board's objectives with better environmental outcomes, should be invited in the proposed Architectural Competition.

We are pleased to advise that the Royal Australian Institute of Architects (NSW Chapter) is willing and able to assist in drafting the competition conditions and in managing the process."

Friends of Pyrmont Point also have obtained a copy of a letter from the Institute making the same offer to Chairman Gleeson.

On 27 May 2002, Chairman Gleeson's responded:

"The Authority has previously conducted architectural competitions and is experienced in managing the process. Hence, the assistance of the Institute of Architects is not required."

It is not understood why oversight of a respected professional body such as the RAlA for its architectural competition.

Refusal to adopt the RAlA's offer means that SHFA would have very little external involvement in the whole process: it would develop its own Master Plan, establish the competition conditions, choose the competing architectural firms, select the winner, commission the development application, (with powers granted on 4 August 2003) to assess its own development application, then send the assessed application off to SHFA's own Minister for the final tick.

## SHFA's tender selection lacks transparency

### Did SHFA Help an Architectural Competition Entrant to Win?

SHFA may be able to produce "sensible sounding" reasons to explain why, behind apparent closed doors, it chose competitor B over competitor A in its architectural competition for the commercial and residential development it planned for the former Water Police site at Pyrmont Point.

Despite the fact that a community vote overwhelmingly preferred (or to be more accurate, detested least) Competitor A's design, SHFA announced competitor B the winner. This involves more than glory as the winner, architectural firm Engelen Moore went on to work on the development application and would be in a good position to win the subsequent design work for the development.

Documents obtained under FOI include a letter from jury panel member Geoffrey Twibill, a community member, who is also an architect.

Mr Twibill also seems curious about SHFA's selection of competitor B and makes strong suggestions that competitor B was the beneficiary of discussions with SHFA that were not available also to competitor B. In a letter to SHFA on 14 June 2003 Mr Twibill writes:

"I'd be most interested to know the outcome of your "negotiations" with the Architect for Scheme B – and I cannot help but think that a similar process should be (or should have been) followed with the Architects for Scheme A"

It seems that even a member of the jury panel did not know, or have a say, in what was going on.

Mr Twibill also says in the same letter:

"It is disappointing, as we agreed around the table, that neither scheme is the robust "standout" world class scheme that might reasonably have been expected from such a well-conducted competition process. Each has attractive aspects which, in an ideal world might easily have been rolled into one – but sadly were not."

Mr Twibill's air of dissatisfaction with the whole process and his final call (which was refused) for both A and B to be allowed to respond to an expanded brief suggest that SHFA's competition was never a "well-conducted process." aimed at producing the best result for the site, the community and for the people of Sydney (current and future residents).

Attempts to find out what took place in these "negotiations" have been unsuccessful. No answers are being provided by SHFA. However, it appears that additional opportunity of one form or another may have been provided to the eventual competition winner. Perhaps the criteria were modified to suit the winning entry, or additional information was provided for the winner only.

"In relation to transparency of process, the ICAC document "Contracting for Services: the Probity Perspective" of May 1995 provides:

- "For a purchasing process to be fair – and seen to be fair – criteria should not be changed midstream unless all bidders are given an equal opportunity to revise their bids.
- Criteria should never be altered to give advantage to any particular party and all bidders should have access to the same information.
- Confidential information must be protected and no information should be provided for the benefit, or to the detriment, of particular parties."

On behalf of the community, Friends of Pyrmont Point believes answers should be provided to the questions and issues raised by these actions.

## (g) Other Relevant Matters

### SHFA – a culture of arrogance

The aforementioned report by the Auditor-General raises serious questions about the management of Sydney's priceless asset, the harbour and its environs, particularly about the disposal of foreshore assets.

Responses from agencies are contained in the appendices to the Auditor-General's report. In contrast to the measured responses from other agencies the response by SHFA is strident, and, above all, arrogant, as shown by the following extract.

"The opinions and findings in this Report are flawed. The potential value of the Report is diminished by:

- Its failure to understand the new Ministerial and Government administrative arrangements made by the Premier in March when for the first time in the history of the NSW Government a single Minister was made accountable for land use planning and development, transport planning and infrastructure planning.
- Its failure to understand the subsequent role and functions of the new Department of Infrastructure Planning and Natural Resources and its responsibility for strategic planning for Sydney Harbour.
- Its failure to understand the legislation governing the establishment of SHFA and its functions in relation to core land and surplus land held by other Government Agencies on the harbour foreshore.
- Its failure to acknowledge that disposal decisions by Government Agencies have been made in the context of the strategic policies and objectives contained in existing environmental and planning instruments (SEPP56, REP 22, REP 23 and REP26), and that these instruments have led to the allocation of land for both open space and working harbour uses.
- Its failure to acknowledge the level of progress made in implementing the Premier's 1997 vision (including, in the case of Ballast Point, by acquisition) and the continuing measures underway, notably the Sharing Sydney Harbour Access Program that provides further public access to the harbour foreshores.
- Its failure to identify more clearly that the recent developments that have given concern are mainly privately owned sites under local government controls."<sup>7</sup>

Whether there is any merit or not in SHFA's sweeping generalities is beside the point. They are clearly intemperate and arrogant and are in sharp contrast to the considered responses by other Government agencies.

The behaviour of the people in an organisation reflects its culture. Our experience over the proposed development of the Water Police site, the other examples of SHFA behaviour relating

<sup>7</sup> Auditor-general's Report, Performance Audit , Disposal of Sydney Harbour Foreshore Land, p49



to the Pyrmont peninsula show a consistent pattern featuring determination to dictate what is right for the community, clandestine decision making, questionable internal processes, and resistance to any form of external scrutiny are all inappropriate behaviours for a Government agency, particularly one with responsibilities relating to such significant public assets.

It would seem, on the basis of press reports relating to dealings on a proposed development at Luna Park and SHFA's plans to purchase the Superdome, that these behaviours are standard practice across SHFA's range of activities.

In particular, SHFA's management, as encapsulated in Chairman Gerry Gleeson's statement that a study into open space and traffic in Ultimo-Pyrmont is "not on" is arrogant, uncaring unresponsive and typical of a culture that believes it can do as it wishes.

We believe that the culture and behaviour are a result of SHFA's underlying roles and responsibilities. In particular, SHFA's ability to control the development process from inception to conception results in a closed shop with SHFA being able to approve its own decisions in each subsequent step in the process.

The idea that giving SHFA hitherto unparalleled powers would lead to improved implementation of the development process to the benefit of Sydney is admirable in concept, but flawed in its application. SHFA's legislative charter is honoured in the breach rather than the practice.

Rather than serve the interest of the community of Sydney SHFA's main imperative is to serve its own interests.