

INQUIRY INTO THE MANAGEMENT OF THE SYDNEY HARBOUR FORESHORE AUTHORITY

Organisation: Leichhardt Council
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Date Received: 28/05/2004

Subject:

Summary

Contact: Annalene Lourenco
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27 May 2005

General Purpose Standing Committee No. 4
Parliament House
Macquarie Street
SYDNEY NSW 2000
ATT: Mr Steven Reynolds

Dear Mr Reynolds

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

I refer to the above-mentioned Inquiry and am pleased to advise that at its Ordinary Meeting on 25 May 2004, Leichhardt Council resolved to forward the attached submission.

Leichhardt Council requests that the Inquiry give consideration to the issues raised in the submission concerning the management of the Sydney Harbour Foreshore Authority (SHFA). The submission addresses the Terms of Reference of the Inquiry and are made within the context that it is Leichhardt Council's position that the planning and approval processes and management of significant foreshore sites should remain under the responsibility of the relevant democratically elected Local Government Authority.

Council also requests an opportunity for Councillors to make verbal presentations to the Standing Committee.

I thank the Committee for its consideration of Council's submission.

Yours sincerely,

Alice Murphy
MAYOR

**LEICHHARDT COUNCIL SUBMISSION TO THE PARLIAMENTARY INQUIRY
BY THE GENERAL PURPOSE STANDING COMMITTEE (LEGISLATIVE
COUNCIL COMMITTEE) INTO THE MANAGEMENT OF THE SYDNEY
HARBOUR FORESHORE AUTHORITY**

1. *The role of the Chairman, past and present Chief Executive Officers, the SHFA Board, and other executive officers in the management of land development issues under its control.*

Council officers have had limited involvement on land development matters with board members or other executive officers within the SHFA and are therefore unable to provide informed comment on the role of these persons. Notwithstanding, a recent Council submission to the Standing Committee on State Development Inquiry into Port Infrastructure in New South Wales was critical of government policies promoting development for “highest and best” use and Treasury rules that permit State budget dependant agencies to retain at least half the funds realised from disposal of an asset and others to retain the full amount.

This criticism was made on the basis that this structure encourages authorities such as the SHFA to pursue residential development of foreshore sites. Under this framework it is expected that senior SHFA officers and board members would be predisposed to developments which would generate the highest return. Coupled with the absence of an holistic strategy for Sydney Harbour and its foreshores it is unlikely that good planning outcomes can be delivered within this framework.

2. *Lines of communication and accountability between the Sydney Harbour Foreshore Authority and relevant Councils, the Premier and any other Ministers or their staff and advisors.*

The statutory instruments under which SHFA operates provide a satisfactory framework for consultation between the Authority and Council's concerning the preparation of masterplans and the assessment of development applications. Leichhardt Council officers have been kept well informed by SHFA officers of the progress of masterplans and development applications it has been responsible for in the Leichhardt LGA. However, there is no evidence that the Councillors and the community have been adequately consulted.

3. *Potential conflicts of interest in the Sydney Harbour Foreshore Authorities commercial relationships.*

Council believes that the scope of operations of the SHFA including land owner, plan-maker and consent authority presents an inherent conflict of interest. While it could be argued that local government possesses a similar range of functions it is submitted that local authorities are subject to a higher degree of Ministerial, departmental and legislative scrutiny and control. In addition, local government is more directly accountable to the community it represents than the SHFA.

In terms of achieving good planning outcomes, it is Council's view that there is the potential for the SHFA to utilise its statutory authority to advance its interests at the expense of third parties without statutory powers. An example of this type of scenario could include the SHFA making a s62 objection to a draft LEP to rezone land for land uses that would reduce the value of adjacent land owned by the SHFA. Whilst the use of its statutory powers may be appropriate and consistent with achieving a good planning outcome it should be acknowledged that there is the potential for decisions to be made with the commercial interests of the SHFA forming part of the decision-making process.

As a major part of the SHFA's operations involves the lease or sale of land to the private sector it is important that its development assessment role is independent. Consequently, any inquiry should examine the independence of these two functions within the organisation.

4. *The process by which the Sydney Harbour Foreshore Authority acquired enhanced consent powers, and the role of the Sydney Harbour Foreshore Authority as a consent authority for land that it administers.*

It is usual practise for Council's to engage independent consultant's to prepare reports on development matters concerning land owned by the Council. The consideration of development applications for Council owned land is also done by directly elected Councillors who are therefore accountable to the community for their decision. In the case of the consent role of the SHFA, it is understood that reports are prepared by

SHFA officers and applications determined by the Minister. While the Minister was also the consent authority under the previous consent arrangements, it is considered that assessment of development applications by another authority (DIPNR) ensured more rigorous scrutiny and separated the plan-making and approval processes.

5. *The role of the Sydney Harbour Foreshore Authority following the sacking of the City of Sydney and the South Sydney Councils, and the conduct of the Multidimensional Study of the Pyrmont Point site.*

These matters do not have a direct impact on Leichhardt Council.

6. *The transparency of planning assessment methods and processes employed by the Sydney Harbour Foreshore Authority.*

As noted above, the SHFA operates under the same environmental planning regime as Council's. Accordingly, problems concerning the assessment methods and processes of the SHFA are the same as those faced by local government. The practices under the Act can vary from Council to Council and instrumentality to instrumentality and may restrict the community's capacity to provide input to planning decisions. It is noted that major reviews of the environmental planning statutory framework are currently being undertaken by the DIPNR. The outcome of these reviews will have a bearing on the assessment roles of Councils and the SHFA.

In terms of the current reviews and the consistency of the planning systems under which SHFA and local Councils operate, it is noteworthy that Leichhardt Council has recently had proposed master planning provisions rejected by the DIPNR. This was on the basis that other planning mechanisms exist under the Act to control the development of land. As part of its decision, the DIPNR cited preliminary advice from a Ministerial taskforce on masterplans that it is 'likely' that Councils will not be permitted to continue to use masterplans in future LEPs. While no indication is made on whether SHFA will be permitted to continue to use masterplans, it would be of concern if this does not also apply to the SHFA, as it would create separate planning processes for land owned by it than exists for other land owners.

7. *Any other relevant matters.*

It is appropriate that the role and function of the SHFA be re-evaluated in recognition of current community views concerning the management of Sydney Harbour and its foreshores. In particular, the role of the SHFA as a place manager vis-à-vis land developer need to be considered as do its statutory role and function in relation to Councils and other State Government departments.