

20 February 2006

Draft Land Owner's Consent Policy
NSW Maritime
Via email: policy@maritime.nsw.gov.au



HEALTHY CATCHMENTS
HEALTHY OCEANS

Dear Sir or Madam

Submission re: Draft Land Owner's Consent Policy

This letter sets out the comments of OceanWatch Australia Ltd (OWA) in relation to NSW Maritime's Draft Landowner's Consent Policy (the Draft Policy). OceanWatch Australia is a national environmental, not-for-profit company that works to achieve sustainability in the Australian seafood industry through protecting and enhancing fish habitats, improving water quality and advancing sustainable fisheries through action based partnerships with the Australian seafood industry, government, natural resource managers, private enterprise and the community.

General Comments

Sydney Harbour, Botany Bay, Port Kembla and Newcastle Harbour contain significant aquatic habitats, including aquatic reserves, seagrass beds, mangroves, saltmarsh, intertidal mudflats and open water. Protection and enhancement of these habitats is crucial for sustaining healthy fisheries production.

NSW Maritime is the "owner" of the seabeds of all the above listed major ports as well as various intertidal zones and reclaimed lands along the foreshores of these waterways. For any development that is proposed on NSW Maritime land, NSW Maritime, as the landowner, has a responsibility to undertake land assessments on the proposed area to determine the impacts on the natural environment (particularly aquatic environment), as well as the social and economic factors i.e. brings additional responsibilities outside Maritimes Core Responsibilities). Under the current process, Maritime conducts such assessments in line with the 1998 Land Owner's Consent Manual. However, in order to "simplify", and "reduce duplication" in the planning processes, NSW Maritime has proposed a new Draft Policy (which applies to the above listed areas) to replace the 1998 Manual. Under the proposed Draft Policy, Maritime will cease to enforce environmental controls, public access requirements and provisions preventing unsightly overdevelopment of waterside structures such as commercial and residential marinas, jetties, and boatsheds at the land owner consent stage. Maritime will focus only on core responsibilities such as navigational safety. It is intended that these non-core responsibilities currently held by Maritime will be executed at the Development Assessment (DA) stage by the consent authority under the *Environmental Planning and Assessment Act, 1979* (EP&A Act).



The proposed approach raises serious concerns regarding the protection of aquatic habitat, public access, visual amenity, and inefficiency in the planning process via the loss of the strategic frontline assessment currently provided by NSW Maritime.

Current Process

Currently, developers who intend to develop on submerged harbour land or foreshores owned by NSW Maritime have to go through a 3-stage process:

1. seek land owners consent from NSW Maritime under cl 49 of the EP&A Act Regulation 2000:
 - a. The proponent is required to submit detailed environmental assessment and information requirements, adhere to strict limits on the types of development permitted in accordance with the existing 1998 *Land Owners Consent Manual*.
 - b. This is not generally subject to an appeals process.
2. Lodge a development application (DA) under the *Environmental Planning and Assessment Act 1979* to the relevant consent authority (usually local council or NSW Maritime) .
 - a. Subject to appeal through the Land and Environment Court.
3. Seek construction approval from NSW Maritime.

Under the existing approach outlined above, effective protection of natural resources, and aquatic habitats on Maritime Land is achieved as NSW Maritime:

- exercises a duty of care as a landowner to protect harbour beds and natural features of the tidal foreshores;
- assesses proposed developments for consistency under the Department of Primary Industry's (DPI) legislation to protect aquatic habitats and natural resources in Sydney Harbour and other major ports and their waterways at the land owner consent stage e.g. strict requirements to ensure "no adverse impact" on seagrass, mangroves and other intertidal and subtidal habitats). Any applications that are not consistent, do not proceed to the DA stage. This reduces the workload of DPI;
- ensures developers seek the concurrence of DPI for dredging affecting seagrass prior to issuing land owners consent;
- protects aquatic and terrestrial habitat as a whole of government responsibility; and
- ensures a strategic harbour-wide assessment of proposed developments.



Rationale for new approach

OWA understands that under the current process, proponents have to submit environmental assessment information at both the Land Owner's Consent and DA stages. The Land Owner's Consent process is not transparent and is not subject to appeal. New strategic planning (Sydney Harbour Regional Environmental Plan) supercedes the need for this level of assessment at the land owner's stage and now should be conducted at the DA stage. Thus, in order to address these issues, NSW Maritime has proposed a new approach for developers intending to develop on NSW Maritime land:

- 1) Seek Land Owner's Consent from NSW Maritime under the Draft Policy (no requirement for environmental, social or economic assessment, simply provision of information that will aid Maritime to assess navigation requirements – refer to Appendix B- *Information Requirements for Applicants*). (Not subject to appeals process).
- 2) Lodge a DA with the relevant consent authority. With the commencement of the *Sydney Harbour Regional Environmental Plan* (SREP), the relevant consent authority under the EP&A Act will be local council or NSW Maritime. The consent authority will be required to assess the environmental impact at this stage. (Subject to appeals process).
- 3) Seek construction approval from NSW Maritime.

Our concerns with the proposed changes

Inadequate protection of aquatic habitat and natural resources of harbour foreshores, seabeds and inter-tidal zones.

The new Draft Policy essentially removes the environmental assessment and development controls of the 1998 Manual at the Land Owner Consent stage. The information that the proponent has to provide NSW Maritime under the Draft Policy, outlined in Appendix B, is not an environmental assessment - it only provides sufficient detail such that NSW Maritime can assess navigation/safety issues in accordance with their core responsibilities. The only environmental assessment will be at the DA stage by the consent authority (usually local council). Thus OWA has the following concerns:

- There is a loss of a skilled approach (currently provided by NSW Maritime at the Land Owner Consent stage) to assess proposed developments for consistency under DPI's legislation to protect aquatic habitats and natural resources.
- Councils are often under resourced to effectively assess DAs and also have limited technical ability assess environmental matters relating to aquatic habitats effectively.
- The Draft Policy does not provide any reference to existing strategic plans in the assessment process eg SREP. This means councils, may ignore such documents in approving the DA – not a very integrated approach!



- There is a high risk that councils will not refer DAs to DPI if information on aquatic habitat is lacking (not required in Appendix B) or the proponent fails to note on the application that it is integrated development. Additionally, if such information is lacking, the ability of councils to implement the environmental provisions/protection measures of strategic plans such as the SREP and guidelines for building over seagrass, will be severely compromised, if skills and resources are inadequate.
- NSW Maritime may grant Land Owner's Consent to proposals that are inconsistent with state legislation and policy, such as the *Fisheries Management Act, 1994* (FM Act), only to be refused at the DA stage by the consent authority via the *Integrated Development Assessment* process. This will make councils and DPI vulnerable to legal challenges in the Land and Environment Court to proposals that should have been refused at the Land Owner Consent Stage. Natural resources will be degraded and more aquatic habitat will be lost if DPI or the local council does not choose to pursue legal action or if they lose the appeal.

Waste of resources/inefficiency in process

The proposed Draft Policy, which is intended to simplify and streamline the planning process, has a high chance of creating inefficiencies in the approval process, wasting resources of developers, local and State Government. This will occur when proposals are accepted at the Land Owners Consent stage, and then refused at the DA stage due to inconsistencies with State Legislation and policies. Under the current process, these applications would be refused at the Land Owners Consent stage.

Access to foreshores

The proliferation of private waterside structures such as jetties, boat ramps, and marinas alienates the community from using the foreshore for recreational activities.

The new Draft Policy does not have the public access requirements of the 1998 Policy. NSW Maritime claim that public access will continue to be protected by the SREP and the *Sydney Harbour Policy*, however OWA is concerned with the lack of resources to implement such plans.

The Draft Policy needs to ensure that private access to and utilisation of public land is not provided at the expense of scarce public natural resources such as riparian vegetation that protects the receiving waterways and their aquatic habitats; seagrass; mangroves; aquatic reserves; intertidal protected areas; and public access to the foreshore. The Draft Policy also needs to ensure that the spread of invasive species such as *Caulerpa taxifolia*, present in most of the major ports) is not facilitated by provision of such access and by the establishment of such structures.



Access to professional and recreational fishing

Provision of private access to NSW Maritime land may encroach on public access to recreational fishing areas and may hinder the operations of and access to professional fishing (particularly in Newcastle Port). The Draft Policy provides no protection for access to professional and recreational fishing.

Visual amenity

Under the Draft Policy, there is a high potential for large unsightly structures to be approved on Sydney Harbour and other major ports. The Draft Policy abandons NSW Maritime's current strict controls on unsightly development, limits on the length of structures and ability to tidy-up degraded foreshore areas. Under the proposed approach, approval of such structures will be at the discretion of the local councils which lack the resources, strategic approach and skills to adequately assess the impact such structures will have on an entire waterway, particularly the cumulative impact. (e.g. local councils have been left to approve a new marina at Cronulla and Sydney's biggest marina at Rose Bay).

Recommendations

We suggest that a mechanism needs to be established such that NSW Maritime's key responsibilities as landowners under the current 1998 Manual are not lost with the commencement of the Draft Policy (i.e. environmental controls, public access requirements, provisions that safeguard visual amenity).

It has come to OWA's attention that Landowner's Consent will not be granted under the proposed process without agreement from NSW Maritime to provide a lease for the proposed development. Thus OWA strongly recommends that:

- the agreement be subject to assessment under existing NSW Maritime legislation and policies (including Sydney Harbour REP, DCP) – environmental controls, public access requirements, provisions to guard against unsightly developments;
- the agreement be subject to concurrence of DPI to lease new waterside structures or extend existing structures over seagrass, in or adjacent to aquatic reserves and intertidal protected areas;
- the agreement consider and not compromise access to professional fishing areas and the viability of their business operations, as well as public access for recreational fishing;
- DPI provide NSW Maritime with information to assist in the determination of where development consent should and should not be granted in order to protect key aquatic/fish habitats; and
- Appendix B – Information to accompany the application should include requirements to document the presence of seagrass, mangroves, saltmarsh and the vicinity of the proposed



development to marine protected areas (Aquatic Reserves, Intertidal Protected areas) whereby photos and descriptions of each are provided to assist in identification. .

OWA also recommends that: within the Draft Policy there is another mechanism to ensure private access to and utilisation of public land is not provided at the expense of scarce public natural resources such as riparian vegetation that protects the receiving waterways and their aquatic habitats, seagrass, mangroves, aquatic reserves, intertidal protected areas and public access to the foreshore. The Draft Policy also needs to ensure that the spread of invasive species such as *Caulerpa taxifolia*, present in most of the major ports) is not facilitated by provision of such access and by the establishment of such structures

Conclusion

OceanWatch Australia will only support the proposed Draft Policy if NSW Maritime adopts the above recommendations such that the aquatic environment and natural foreshores, public access and visual amenity will not be compromised and will be protected. The proposed Policy will erode all confidence of current protection afforded.

Please do not hesitate to contact me on (02) 9660 2262 should you require further information regarding these comments made.

Yours sincerely



Anissa Lawrence
Chief Executive Officer
OceanWatch Australia Ltd

