

Plan for Implementation of Recommendations

Operation Vesta

Please complete this schedule with information about how your agency plans to implement each of the ICAC's corruption prevention recommendations arising from the investigation into Operation Vesta. The implementation plan should include details of the actions, timeframes and how your agency proposes to evaluate the effectiveness of the implementation of each recommendation. Please provide the name of a contact person in your agency from whom we can seek more detail if needed. This document should be returned to the ICAC in writing and electronically to [msland@icac.nsw.gov.au](mailto:moland@icac.nsw.gov.au) by no later than 12 April 2012.

Recommendation 1.

That the responsibility, authority and accountability for heritage protection be located within a single, independent role with a commensurate level of seniority within the Sydney Harbour Foreshore Authority (SHFA).

Summary of response

The recommendation will be:

<check one>

- Implemented as described in the report
- ~~Implemented in an alternative way~~
- ~~Partially implemented~~
- ~~Not implemented~~

Action proposed

Previous arrangements

During the period under review by the ICAC investigation (2006-2008), responsibility for both the property and leasing management and heritage protection functions rested with the Executive Director, Tenant and Asset Management Services.

Action 1 – Heritage and property management separation

In 2010, the Authority structurally separated the Authority's commercial and heritage protection interests within the organisation, by assigning responsibility for the property and leasing function to the General Manager, while the heritage and protection function remained under the responsibility of the Director, Asset Management Services.

This separation of responsibility has addressed the ICAC's recommendation that responsibility for heritage protection should rest with a single senior officer, independent of lease management.

The Heritage and Design team within the Asset Management Services division is responsible for:

- Statutory Role
 - managing the conservation of cultural heritage of sites through the Authority's statutory heritage delegations role (NSW Heritage Act)

- Heritage asset management and public domain management
 - preparing policies and guidelines, including Conservation Management Plans, to assist the Authority in making objective and consistent decisions
 - advising the Authority and its tenants on heritage and design issues
- Heritage promotion and interpretation
 - delivering research, archiving and promotional materials to record the cultural and physical changes to the Authority's precincts and presenting stories and information about Australia's past.

The Asset Management Services division is also responsible for developing, implementing and monitoring an asset management register for all Authority properties.

Heritage conservation is a key aspect of the Authority's asset management function, including the care, management and interpretation of the significant cultural heritage resource that exists within The Rocks.

The Authority actively maintains a s.170 Heritage and Conservation Register, which is available on the Authority's corporate website. In addition, a conservation management plan (CMP) has been prepared for each item listed on the State Heritage Register, and these CMP documents form the basis for assessing proposals for change to heritage buildings.

The Authority also maintains The Rocks Heritage Policy, a document which identifies and guides the retention of the significance of The Rocks and its precinct, and which is reviewed triennially.

Current position

In May 2011, responsibility for property and leasing transferred to the Director, Business and Financial Services, where it remains. This decision has strengthened the Authority's management of its leases by aligning the property, finance and stakeholder relations under a single director.

Other heritage protection measures

The Authority has delegation from the Heritage Council to determine applications for proposals to disturb or excavate any Authority land that is likely to contain archaeological relics, or carry out minor works to items listed on the State Heritage Register under the NSW Heritage Act.

The delegation requires the Authority to employ persons with appropriate heritage and archaeological knowledge, skills and experience and for their advice to be taken into account. This heritage and archaeological expertise is held within the heritage and design team. Following appropriate review, the manager of the team makes a formal recommendation to the Director, Asset Management Services to determine applications under delegation.

The statutory approvals process followed by the Authority is set out within the Heritage and Design Procedures Manual, which establishes a procedural flowchart as part of the internal processes for processing applications under the NSW Heritage

Act. The determination of these heritage applications is undertaken in accordance with this procedures manual, and is consistent with the procedures and processes of the NSW Heritage Office. In this context, the determination report remains a document internal to those with the delegated responsibility under the NSW Heritage Act. Copies of all approvals, including determination reports, are provided to the Heritage Office in regular quarterly reporting. A summary of all determinations is included in the Authority's Annual Report.

An independent audit by IAB of the heritage and design team conducted in October 2011 gave a rating of 4 out of 5 (well controlled). It concluded "...this is a commendable outcome, the Heritage and Design team have been able to maintain the same internal audit rating as was achieved per the December 2008 review undertaken, with no significant matters of concern arising. All the recommendations from the previous review have been effectively implemented by management, and they have a good understanding of their risk profile. As well, system efficiency improvements are continuing, with the introduction of a new electronic workflow system in relation to the determinations under the Heritage Act 1977".

Supporting material

Action 1

- Organisation charts showing the relative locations of the heritage protection and property and leasing teams within the Authority
- Heritage and Design Procedures Manual.

Proposed evaluation methods

- The Board will review the Executive organisation structure annually as part of the Authority's strategic planning process to ensure the structure supports the strategic direction set by the Board (*Action 1*)
- The Authority will seek a targeted review by its internal auditors of its performance in determining heritage-related works under delegation from the Heritage Council. The performance outcomes will be reported in the Authority's Annual Report (*Action 1*)
- The Authority will continue its program of reviewing and updating Conservation Management Plans for State Heritage listed buildings in accordance with NSW Heritage Office and statutory requirements (*Action 1*). The Authority has developed a template for CMPs which mirrors Heritage Office requirements. Using this template a typical CMP would include:

(See following page)

PART 1	EXECUTIVE SUMMARY Includes Summary Statement of Significance
PART 2	CONSERVATION POLICIES Includes Opportunities and Challenges & Recommendations
PART 3	HERITAGE SIGNIFICANCE Includes Curtilage Analysis; Comparative Analysis and Analysis under NSW Heritage Act Criteria.
PART 4	EVIDENCE Includes Analysis of Documentary & Physical Evidence. Consider use of annotated images for much of this section.
PART 5	ABOUT THIS CMP: Includes Outline of Brief, Authorship. Acknowledgements, Further Research required. References, Terms & Abbreviations
PART 6	ILLUSTRATED HISTORY
PART 7	SIGNIFICANCE AND RECOMMENDATIONS BY ELEMENT

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Recommendation 2.

- That heritage considerations relevant to any decisions on SHFA properties should record the factors considered and the reasons for decisions, and full transparency be given to both the matters considered and the reasons for the decisions.
- That the SHFA includes heritage considerations as a standard component in all board papers and executive memoranda dealing with property and leasing matters.

Summary of response

The recommendation will be:

<check one>

- Implemented as described in the report
- ~~Implemented in an alternative way~~
- ~~Partially implemented~~
- ~~Not implemented~~

Action proposed

Heritage role

One of Sydney Harbour Foreshore Authority's core functions, in accordance with the *Sydney Harbour Foreshore Authority Act 1998*, is to preserve and enhance the natural and cultural heritage of its precincts.

The Authority has prepared and regularly reviews Conservation Management Plans (CMPs) for every Authority-owned heritage building listed on the State Heritage Register, in keeping with NSW Heritage Council guidelines.

CMPs establish the relative significance of fabric and spaces within buildings, and identify whether this significance is Exceptional, High, Moderate, Low or Intrusive. This allows an understanding of whether or not there is likely to be an adverse impact on the heritage significance of the item due to impacts of the current use or proposed changes required by a particular tenant or use.

The Authority also maintains The Rocks Heritage Policy, a document setting out the significance of The Rocks and its heritage, which is reviewed triennially. The policy at clause 1.4.1 provides that:

- Heritage conservation should underpin other operational and management objectives affecting the urban fabric, uses and activities within The Rocks
- In cases where a balanced outcome is not achievable and other issues are in conflict with heritage values in The Rocks, heritage conservation requirements should prevail, subject to compliance with the performance requirements of statutory legislation.

Action 2 – new annual Lease Implementation Strategy

In February 2012, following stakeholder feedback in 2011, the Authority's Board endorsed the 2012-13 Lease Implementation Strategy, which aims to demonstrate:

- Fair processes and respectful treatment of all stakeholders
- Commitment to optimising commercial and heritage outcomes in The Rocks.

The criteria for evaluating heritage outcomes are outlined in Action 3 below.

The strategy incorporates ICAC guidelines on direct negotiations, including demonstrating value for money.

Action 3 – essential heritage criteria for lease applications

The new 2012-13 Lease Implementation Strategy sets criteria and weightings for evaluating prospective and existing tenants' lease applications as outlined below:

Technical / Operational (50% Total)

- Past experience operating a similar business (considerations include length of time, turnover, location, market)
- Proposed business operational information (business plan, marketing plan)
- Heritage and building considerations:
 - the degree of impact on significant fabric (internal and external and internal layout)
 - the degree of impact due to proposed use (considerations include additional requirements for building services or accessibility requirements)
 - the degree of impact on public access and interpretation of the building
- Retail offering:
 - product offering is currently under-represented in the precinct
 - product offering is not available elsewhere in The Rocks
 - product offering fits into one of the following categories: creativity, art, fashion; food experience; wellbeing
 - the degree to which the product offering has the potential to increase visitation and spend (Sydneyiders, interstate and international visitors)
 - the degree to which the product offering is compatible with the Authority's sustainability objectives.

Financial / Commercial (50%)

- Proposed rent compared to market valuation, and level of financial investment.

Applications will be scored at each stage of the evaluation process in accordance with the following scoring guideline:

Score	Indicators
10 Exceptional	Exceeds expectations and provides significant added value Exceptional response to requirements Has no risks, weaknesses or omissions
7 – 9 Superior	Fully acceptable in its current form Fully responsive to and compliant with requirements Has no risks, weaknesses or omissions of any significance
5 – 6 Acceptable	Acceptable, subject to some qualifications Responsive to and substantially compliant with requirements Has minor risks, weaknesses and/or omissions that would be reasonably easy to correct and make acceptable
0 – 4 Unacceptable	Unacceptable in its current form as a result of significant deficiencies Not fully responsive to or compliant with requirements Has significant risks, weaknesses and/or omissions that would be difficult to correct and make acceptable

Any application that fails to score at least 5 out of 10 in the 'heritage and building considerations' criteria will be set aside, regardless of scores in other criteria.

The heritage criteria are assessed by the Heritage and Design team, as part of the Retail Lease Strategy Implementation Group which meets weekly. Proposals are reviewed against the relevant CMP for the heritage item. The heritage and design team are now also required to provide 'heritage' comments as well as a score out of 10 on each 'heritage and building consideration'. Decisions to set aside any submissions must be substantiated and documented in the leasing evaluation report.

Action 4 – strengthened Lease Expiry Policy

The Lease Expiry Policy was strengthened and approved by the Board in February 2012 to ensure that each lease renewal proposal complies with heritage conservation and maintenance requirements.

When considering an application to renew a lease, the Authority now reviews the tenant's compliance with its existing lease against the following criteria (heritage being the first consideration):

1. Compliance with heritage conservation and maintenance requirements – the Manager, Heritage and Design and Facilities Manager will report on this on each lease renewal proposal
2. Punctual rental payments

3. Any breaches or non-compliance issues in the terms of the lease
4. Adherence to the permitted use
5. Record of customer complaints
6. Provision of sales data (where applicable)
7. Adherence to trading hours.

For heritage buildings, the determination to renew a lease must be consistent with recommendations contained in the relevant CMP for that property and other relevant statutory obligations. This requirement was also contained in the superseded lease expiry policy.

The new policy has been strengthened by adding the requirement that the Manager, Heritage and Design will also evaluate/consider and provide comment on the heritage impact of any proposed change of permitted use for a building as part of the Business Plan process. This will ensure that the Authority optimises heritage and commercial outcomes from such arrangements.

Changes to permitted use will be authorised in accordance with the Authority's delegations policy. A comprehensive business case will be required to substantiate the benefits to the Authority associated with the requested change of use. Suitable professional advice will be sought to quantify the benefits to the Authority. The Manager, Heritage and Design will also assess and provide comment on the impact of the change of use as part of the business case.

As for new lease applications, proposals for lease renewals are reviewed and certified by the Manager, Heritage and Design against the relevant conservation management plan (CMP) for the heritage item.

The updated policy was approved by the Authority's Board on 22 February 2012 and has been forwarded to the Minister for Planning and Infrastructure for review.

Action 5 – new Lease Expiry Policy publicly accessible

The Lease Expiry Policy is now publicly available on the Authority's website to ensure that for the first time, all tenants have access to the criteria the Authority applies when considering an application to renew an existing lease.

Action 6 – procedures to monitor third party works on heritage buildings

The Authority is also strengthening and further formalising its process to approve and monitor renovations undertaken by third parties on the Authority's heritage buildings. This entails the Authority developing new procedures to ensure tenants meet their statutory obligations and comply with all heritage approvals.

These procedures are to be presented to the Board for endorsement, and will include the following requirements:

- Tenant to engage a heritage consultant with demonstrated experience
- An Authority fitout manager to monitor work in progress on a regular basis
- Resolution of any conservation issues that arise during the work to be documented

- Terms of lease will not be activated until Authority heritage staff have reviewed sign-off from the heritage consultant that all work is in accordance with the CMP and complies with the statutory approvals.

Action 7 – new Board and executive paper templates

The Board paper template was updated in 2010 to require commentary on heritage issues in any property-related paper. This requirement was strengthened in March 2012 in relation to heritage properties or development sites within a heritage precinct. Board paper templates have now been amended to ensure the following specific elements are addressed:

- Known site use by the Eora Aboriginal people prior to European settlement
- Known site use during the early years of the colony
- Building history
- Building/site statement of significance
- Surrounding precinct analysis
- Conservation strategy, archaeological, urban design parameters
- The hierarchy of criteria used to assess any proposals for the site
- Stakeholder communication process
- Procurement process
- Analysis and assessment of proposals against the hierarchy of criteria
- Recommendation
- Statement of compliance with existing Authority leasing strategy and policies.

The Authority has also updated its executive paper template with the same requirement.

Action 8 – new strategic priority for heritage conservation

In 2012, the Board recognised the significance of heritage conservation in the Authority's business operations and identified a new strategic priority (one of four) in the Authority's Business Plan for 2012/13.

NSW 2021 strategic priority: Strengthen our local environment and communities.

Foreshore Authority strategic priority - Demonstrate leadership in conservation, interpretation, adaptation and activation of heritage properties and precincts.

Action 9 – new key performance indicator for Authority's heritage performance

To support this priority, the Authority introduced a new key performance indicator into its Statement of Business Intent under which the Authority is seeking to ensure continuing close liaison with the Heritage Office, which includes:

- Quarterly reporting to the Heritage Office on determinations carried out by the Authority under the NSW Heritage Act
- Liaison with the Heritage Office on individual projects to determine whether specific works fall within the Authority's delegation
- Regular officer-to-officer meetings with the Heritage Office.

These measures are in addition to existing procedures which require heritage consideration and endorsement by the Manager, Heritage and Design as part of all statutory approvals through the landowner's consent process.

Action 10 – improved access to heritage information

In 2012, the Authority has improved public access to information about its heritage protection initiatives by linking all internet entries in its heritage register to spatial data (maps and other land information) held by NSW Land and Property Information. In addition, the Authority is loading all its CMP documents onto the heritage register.

In relation to The Rocks properties, the Authority needs to balance the conservation of 93 heritage buildings in a commercial environment, working to secure tenants with a willingness to respect and work with these special properties while returning market rate rentals. Improved public access to information about the Authority's heritage buildings will increase awareness of this important function.

This approach aims to enhance the cultural heritage of The Rocks and secure orderly economic development of the precinct.

Action 11 – improved transparency through communication with stakeholders

In March 2012, the Authority presented its lease implementation strategy and new Lease Expiry Policy to The Rocks stakeholders. Both documents are also posted on the Authority's website.

Supporting material

Action 2, 3

- Lease Implementation Strategy 2012-13 - criteria and weightings for evaluating new and existing tenants' lease applications.

Action 4, 5

- Lease Expiry Policy 2012 – incorporating strengthened heritage protection measures.

Action 6

- No supporting material – procedures to be presented to Board.

Action 7

- Board paper template – compulsory Heritage Impacts section highlighted
- Executive paper template – compulsory Heritage Impacts section highlighted.

Action 8

- Extract from Business Plan 2012-13, showing heritage strategic priority.

Action 9

- Extract from key performance indicators, 2012-13 Statement of Business Intent, showing heritage indicator
- Landowner's Consent sign-off sheet – Manager, Heritage and Design sign-off highlighted.

Action 10

- No supporting material – internet entries linked to Land and Property Information spatial data – http://www.lpi.nsw.gov.au/mapping_and_imagery/spatial_data.

Action 11

- No supporting material – new strategy and policy presented to stakeholders and posted on Authority website at http://www.shfa.nsw.gov.au/sydney-For_business-Tenants_The_Rocks.htm.

Proposed evaluation methods

The Authority will:

- Have the Board annually review its Lease Implementation Strategy to ensure ongoing effectiveness (*Actions 2, 3*)
- Have the Board annually review its Lease Expiry Policy to ensure ongoing effectiveness (*Actions 4, 5*)
- Engage independent internal audit to verify compliance with its property-related policies and procedures including the heritage requirements in the Lease Implementation Strategy and the Lease Expiry Policy. This audit will review every proposal for changes to Authority properties with heritage implications (*Actions 2,3, 4, 5*)
- Review its policy for monitoring third party works on heritage buildings annually to ensure ongoing effectiveness, and will engage independent internal audit to verify compliance with the process (*Action 6*)
- Ensure all property-related Board and executive papers adequately address heritage elements (*Action 7*)
- Have the Board annually review the Business Plan to ensure ongoing relevance of strategic priorities (*Action 8*)
- Have the Board annually review the Statement of Business Intent to ensure ongoing relevance of key performance indicators (*Action 9*)
- Ensure all relevant heritage conservation internet entries are linked to LPI spatial data (*Action 10*)
- Regularly review website content to ensure strategies and policies are current (*Action 11*).

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Recommendation 3.

That the SHFA establishes a formal process that tenants are required to follow when applying for compensation on works they have carried out on SHFA properties (including a report prepared by suitably qualified professionals that documents the work undertaken, why it was necessary, and an itemised list of expenditure.

Summary of response

The recommendation will be:

<check one>

- Implemented as described in the report
- ~~Implemented in an alternative way~~
- ~~Partially implemented~~
- ~~Not implemented~~

Action proposed

Updated policy for tenants seeking compensation

In February 2012, the Lease Concessions and Compensation for Works Policy was updated to include a comprehensive process for tenants to follow when seeking compensation for works on the Authority's properties. Based on legal advice obtained by the Authority, the policy notes that tenants who carry out repairs without notifying the Authority have no automatic right to recover costs from the Authority.

Action 12 – new detailed claims criteria in policy

The new policy supersedes the previous Lease Incentives, Rental Concessions, Abatements and Repayment Plans Policy, which was originally introduced in 2006.

The old policy was silent on how the Authority should treat requests by tenants for compensation for building works. The new policy references the landlord's and tenant's works definitions in the standard lease memorandum, and identifies two scenarios that apply for a tenant seeking compensation for works that they believe are the responsibility of the Authority. One can arise from tenant undertaking work without the consent of the Authority (unauthorised works) and one where it is a result of approved works (authorised works).

The policy establishes criteria under which the Authority will consider claims for compensation and for claims in excess of \$50,000, as noted by ICAC in its corruption prevention recommendations. [p 41 – The Commission notes the SHFA is taking the following steps to strengthen the roles of expertise and guidelines in the decision-making process:

- It will obtain legal advice in regards to claims for compensation where the amount exceeds \$50,000.]

The policy requires tenants to provide independent reports from qualified professionals, including legal advice, to justify the quantum of the claim.

Action 13 – definition of parties’ responsibilities now included in policy

Since 2007, the Authority’s standard lease memorandum for both commercial and retail leases has made clear the distinction between structural works and the lessee’s fitout works. The lease memorandum’s definition of structural works is also included as an appendix to the Lease Concessions and Compensation for Works Policy.

The updated policy was approved by the Authority’s Board on 22 February 2012 and has been forwarded to the Minister for Planning and Infrastructure for review.

Action 14 – new Lease Concessions and Compensation for Works Policy publicly accessible

The Lease Concessions and Compensation for Works Policy is now publicly available on the Authority’s website to ensure that for the first time, all tenants have access to the criteria the Authority applies when considering tenants’ requests for financial relief.

Supporting material

Action 12

- Copy of Lease Concessions and Compensation for Works Policy.

Action 13

- Extracts from the standard retail and commercial lease memorandums, regarding structural and fitout works.

Action 14

- No supporting material – new policy posted on Authority website.

Proposed evaluation methods

The Authority will:

- Annually review its Lease Concessions and Compensation for Works Policy to ensure ongoing effectiveness (*Actions 12, 13, 14*)
- Survey property and leasing staff to measure understanding of Lease Concessions and Compensation for Works Policy (*Actions 12, 13, 14*)
- Engage independent internal audit to verify compliance with its property-related policies and procedures (*Actions 12, 13, 14*).

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Recommendation 4.

That where a recommendation to the general manager and Board of the SHFA would provide a significant client benefit, a comprehensive written business case is to be provided to the general manager and board by the responsible director.

Summary of response

The recommendation will be:

<check one>

- Implemented as described in the report
- ~~Implemented in an alternative way~~
- ~~Partially implemented~~
- ~~Not implemented~~

Action proposed

New policy introduced

A new Lease Concessions and Compensation for Works Policy was introduced in February 2012, and establishes criteria under which the Authority will consider claims by tenants for lease concessions and repayment plans, and compensation for building works.

Action 15 – improved procedures for authorising compensation

In determining what will constitute a 'significant client benefit', the Board has determined a threshold amount of \$50,000. The Board has also determined that any claim for compensation should be approved at the Director level and above, following the Chief Financial Officer reviewing and endorsing all recommendations prior to submitting to the delegated officer.

All claims up to \$50,000 are to be approved by the Director, Business and Financial Services.

Any claims in excess of \$50,000 must be submitted to the General Manager for approval, and claims in excess of \$100,000 must be submitted to the Board.

The policy has been updated to require all submissions for claims in excess of \$50,000 to be accompanied by a comprehensive written business case from the responsible director.

From March 2012, the Authority has developed an internal business case template which addresses the following:

- Business Case purpose
- Background of client benefit claim (concession or compensation)
- Legal advice received

- Suitably qualified professional advice received
- Chief Financial Officer comment
- Manager, Property and Leasing comment
- Statement of compliance with Lease Concessions and Compensation for Works Policy
- Policy Delegation reference
- Conflict of Interest declarations
- Recommendation.

Action 16 – independent verification of claims now required

Changes to permitted use of a tenancy will be authorised in accordance with the Authority's delegations policy. The Lease Concessions and Compensation for Works Policy requires a comprehensive business case supported by suitable professional advice be provided to substantiate the benefits to the Authority associated with the requested change of use. The Manager, Heritage and Design is also required to provide comment on the impact of the change of use.

From March 2012, the Authority will require tenants submitting a business case seeking changes to permitted use of a tenancy to address:

- Business case purpose
- Background of proposed change of permitted use
- Benefits to the Authority associated with the requested change of use
- Suitably qualified professional advice received
- Legal advice received.

The policy also requires claims for concessions for impacts on a tenant's business (retail or commercial) due to Authority works or building services failure to be verified by a suitably qualified officer or contractor. The impact needs to be quantified and documented.

Supporting material

Action 15

- Copy of Lease Concessions and Compensation for Works Policy.

Action 16

- Copy of Lease Concessions and Compensation for Works Policy.

Proposed evaluation methods

- The General Manager and Board will not accept submissions for claims in excess of \$50,000 unless accompanied by a comprehensive written business case from the responsible director (*Action 15*)
- The Authority will not accept submissions for change of permitted use of a tenancy unless accompanied by a comprehensive business case supported by suitable professional advice to substantiate the benefits to the Authority associated with the requested change of use (*Action 16*)

- The Authority will annually review its Lease Concessions and Compensation for Works Policy to ensure ongoing effectiveness, and will engage independent internal audit to verify compliance with its property-related policies and procedures. This audit will review every proposal for changes to Authority properties with heritage implications (*Actions 15, 16*).