



Planning & Infrastructure
Sydney Harbour Foreshore Authority

**DARLING
HARBOUR
ALLIANCE**

**PROTOCOL FOR SUBMISSION AND
EVALUATION PROCESS OF PROPOSALS
RELATING TO THE DARLING HARBOUR
PRECINCT**

1. INTRODUCTION

The Sydney Harbour Foreshore Authority ('the Authority') owns and manages some of the State's most significant assets, including Sydney's heritage and cultural precincts at The Rocks and Darling Harbour.

The Darling Harbour Precinct ('the Precinct') stretches from King Street Wharf to the Sydney Entertainment Centre and around Cockle Bay north to the Australian National Maritime Museum. The southern part of the Precinct stretches from the Western Distributor overpass at Sydney Convention and Exhibition Centre, past the Chinese Garden to the Sydney Entertainment Centre and Paddy's Markets.

Planning is currently underway for the construction of the Sydney International Convention, Exhibition and Entertainment Precinct (Darling Harbour Live), which will see the redevelopment of the Sydney Entertainment Centre and Sydney Convention and Exhibition Centre, due for completion in 2016.

2. DARLING HARBOUR ALLIANCE

The Authority is exploring a range of activation and marketing initiatives designed to support the existing tenants of the Precinct during the redevelopment project. To facilitate this process, the Authority and several key tenants in the Precinct have established a voluntary alliance, known as the Darling Harbour Alliance ('the Alliance'), which will allow tenants to submit proposals designed to attract visitors and businesses to the Precinct during the redevelopment project.

The Alliance has been established on an interim basis (for the duration of the redevelopment project) and has been formalised in a Memorandum of Understanding between the parties dated 1 July 2013.

3. PURPOSE OF PROTOCOL

The purpose of this Protocol is to set out the procedure and requirements for the submission of Proposals by Alliance members and evaluation of Proposals by the Authority.

4. DEFINITIONS

'Alliance' means the Redevelopment Alliance Darling Harbour.

'Applicant' means the Principal Alliance Member (or group of Principal Alliance Members) that submits a Proposal to the Authority.

'Authority' means the Sydney Harbour Foreshore Authority.

'Memorandum of Understanding' or **'MOU'** means the agreement between the Authority and selected Precinct tenants, dated 1 July 2013, which establishes the Alliance.

'Precinct' means the Darling Harbour Precinct as defined by the Authority.

'Principal Alliance Member' has the same meaning as in the Memorandum of Understanding.

'Proposal' means a proposal for the activation of the Precinct submitted by a Principal Alliance Member in accordance with this Protocol.

'Protocol' means this Protocol for the Submission and Evaluation of Proposals relating to the Darling Harbour Precinct.

5. SUBMISSION OF PROPOSALS

5.1. Conditions for submission

All Proposals must comply with the following requirements in order to be considered by the Authority:

- (a) Proposals may only be submitted by Principal Alliance Members, however other parties may be added as partners or subcontractors to the Applicant;
- (b) at least 75% of Alliance members must consent to a Proposal before it is submitted to the Authority;
- (c) a Proposal must be related to the Applicant's tenancy and the Precinct as a whole;
- (d) a Proposal must address all relevant policies, including the Authority's revised Outdoor Events Policy (available at http://www.shfa.nsw.gov.au/sydney-Resource_Centre-Policies.htm)
- (e) Proposals must be accompanied by:
 - (i) a Proposal Submission Form as specified in Attachment A; and
 - (ii) a signed Applicant Acknowledgement in the form specified in Attachment C (if a Proposal is submitted by a group of Alliance members, each Alliance member must sign an Applicant Acknowledgement); and

- (f) all relevant attachments and annexures (as required by Attachment A) must be submitted with the Proposal Submission Form.

The Authority may not consider a Proposal that does not satisfy the above requirements and may request the Applicant to amend the Proposal so that it complies with the requirements before it is considered by the Authority.

5.2. Development Approval

All Proposals will be subject to development approval. Planning and/or heritage approval is required for any development in the Authority's precincts, including changes of use, internal works, fit outs, signage and outdoor dining. City of Sydney Council is the consent authority for all development in the Precinct up to \$10 million. Any application for development over \$10 million must be submitted to the Department of Planning for approval. In addition, landowner's consent must be sought through the Authority prior to lodging a Development Application (DA) with the relevant consent authority. If a DA is approved, all work must comply with the conditions of consent. The Applicant will bear all costs of obtaining the necessary approvals.

5.3. Lodgement of Proposals

All Proposals must be lodged – in accordance with Attachment A) Proposal Submission Form.

5.4. Acknowledgement by Applicants

By submitting a Proposal, Applicants acknowledge that the Proposal, if approved by the Authority, is sufficient to address any impact that the redevelopment project may have on the Applicant.

6. EVALUATION BY THE AUTHORITY

6.1. Evaluation process

The Authority will evaluate each Proposal in accordance with the Evaluation Form at Attachment B, taking into account:

- (a) compliance with the conditions for submission in paragraph 5.1 above; and
- (b) the extent to which the Proposal meets the key activation brand pillars, namely:

- (i) tenant integration;

Activation that integrates and supports the Alliance partners in Darling Harbour (Australian National Maritime Museum, Cockle Bay Wharf, Darling Quarter, Harbourside, IMAX Theatre and Merlin Attractions) and the wider Darling Harbour businesses.

(ii) brand drivers;
Activation supports and enhances the Darling Harbour Brand Position and has elements of Dynamic, Innovative and Celebration at its core.

(iii) external partnerships; and
Activation leverages or links with other wider Sydney events that exist or are planned.

(iv) business drivers.
Activation that drives business, consumer spend and visitation into the Darling Harbour precinct. These may also align or support the Australian/International retail calendar (including but not limited to – Valentines Day, Easter, Mothers Day, Christmas in July, Fathers Day, Melbourne Cup Day, Christmas etc...)

As part of the evaluation, the Authority may request clarification or further information from an Applicant about its Proposal or invite the Applicant to make a presentation in support of its Proposal. The Authority at its sole discretion, may also undertake independent inquiries about Applicants and Proposals, including the use of external advisers.

The Authority has no obligation to accept any Proposal and will have the final right of endorsement or rejection in relation to a Proposal. The Authority will notify the Applicant in writing as to the outcome of the evaluation process.

6.2. Landowner's consent and development approval

Approval of a Proposal by the Authority will entitle the Applicant to apply for landowner's consent (LOC) through the Authority. Following the determination of the LOC, the relevant development approval will also be required. Planning and/or heritage approval is required for any development in the Authority's precincts, including changes of use, internal works, fit outs, signage and outdoor dining. City of Sydney Council is the consent authority for all development in the Precinct up to \$10 million. Any application for development over \$10 million must be submitted to the Department of Planning for approval. If a development application is approved, all work must comply with the conditions of consent. The Applicant will bear all costs of obtaining the necessary approvals.

7. DISCLAIMER

The Authority is not committed contractually or in any other way to Applicants or to any other party. The submission of a Proposal does not commit or otherwise oblige the Authority to proceed with the evaluation process or accept a Proposal. No contract will be formed between the Authority and an Applicant unless and until a written agreement is executed by both parties.

Whilst the information contained in this Protocol has been formulated with all due care, the Authority does not warrant or represent that the information is free from errors or omissions. The Authority, and its respective employees and agents, will have no liability (including liability by reason of negligence) for any loss, damage, cost or expense incurred or arising by reason of any person using or relying on the information and whether caused by reason of any error, omission or misrepresentation in the information or otherwise.

8. OWNERSHIP AND COPYRIGHT

Subject to law, all information submitted as part of a Proposal shall be treated as commercial-in-confidence and will be retained by the Authority.

9. DISCLOSURE OF INFORMATION

No Applicant shall disclose any information relating to this Protocol, the Alliance or a Proposal via any media release or other publication without the prior written consent of the Authority.

10. NO ECONOMIC OPPORTUNITY

By submitting a Proposal, the Applicant affirms that it has not given, offered to give, not intends to give at any time, any inducement or reward, including any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favour or service to any public servant or employee, agent or subcontractor of the Authority or the Government of NSW in connection with the submitted Proposal or any other offer or circumstances whatsoever.

If the Applicant is found to have offered any inducement or reward in accordance with the preceding paragraph, or is found to have engaged into corrupt conduct in accordance with the provisions of the *Independent Commission against Corruption Act 1988* (NSW), the Proposal will not be considered by the Authority and the Authority may prevent the Applicant from submitting future Proposals.

Applicants should note that any offer of an inducement or reward to any employee or agent of the Authority, or of the Government of NSW, in connection with a Proposal may constitute a criminal offence under the *Crimes Act 1900* (NSW) and/or corrupt conduct under the *Independent Commission against Corruption Act 1988* (NSW).

11. NSW GOVERNMENT CODE OF PRACTICE FOR PROCUREMENT AND THE AUTHORITY'S STATEMENT OF BUSINESS ETHICS

The Authority is committed to conducting its business in a sound commercial and ethical manner having regard to NSW Government and Authority policies.

Organisations and persons doing business with the Authority are required to respect and acknowledge the way in which the Authority conducts its business and ensure that they maintain a similar level of ethical behaviour in their dealings with the Authority, and must comply with the Authority's Statement of Business Ethics available at www.shfa.gov.au.

All Applicants must comply with the NSW Government Code of Practice for Procurement ('the Code'). The submission of a Proposal will be evidence of the Applicant's agreement to comply with the Code. If any Applicant fails, or has been shown to have failed to comply with the Code, the failure may be taken into account by the Authority when considering the Proposal (or any future Proposals) and may result in the Proposal being passed over.

ATTACHMENT A – PROPOSAL SUBMISSION FORM

Applicants must fill out the form below. Any additional information or supporting evidence should be included as an attachment or annexure to this form.

Note to Applicants: *by completing and submitting this form to the Authority, the Applicant represents and warrants that it has obtained the consent of at least 75% of Alliance members as required by paragraph 5.1(b) of the conditions of submission.*

1.	Applicant name	
2.	Trading name <i>(if different)</i>	
3.	Type of legal entity	
4.	ABN/ACN	
5.	Address	
6.	Phone number	
7.	Contact person <i>(please provide name and contact number)</i>	
8.	Key partners or subcontractors	
9.	Evidence of current tenancy	

10.	<p>Please provide evidence that at least 75% of Alliance members have consented in-principle to this Proposal.</p> <p>Please provide reasons for other Alliance members withholding consent.</p>	
11.	<p>Please identify any actual or potential conflict of interest you have with the Authority</p>	
12	<p>Insurance</p> <p><i>(please provide details of public liability insurance to a value of \$20 million per occurrence, noting Sydney Harbour Foreshore Authority as an interested party, and attach relevant documents)</i></p>	
13	<p>Compliance with work health and safety requirements</p> <p><i>(please provide details and attach relevant documents)</i></p>	
14	<p>Does the Proposal address the Authority's policies, including the revised Outdoor Events Policy?</p> <p><i>(please provide details of any non-compliances)</i></p>	
15	<p>How does the Proposal relate to the tenancy and Precinct as a whole?</p>	

16	How will the Proposal benefit the Precinct?	
17	How does the Proposal support the key activation brand pillars? a) tenant integration b) brand drivers c) external partnerships d) business drivers	

ATTACHMENT B – EVALUATION FORM (INTERNAL USE ONLY)

Applicant name		
Evaluation Criteria	Yes/No	Comments
<i>Does the Proposal comply with the Conditions for Submission?</i>		
a) Proposal is submitted by a Principal Alliance Member (or a group of Principal Alliance Members)		
b) Proposal has the consent of at least 75% of Alliance members		
c) a completed Proposal Submission Form has been submitted		
d) a signed Applicant Acknowledgement form has been provided (if a Proposal is submitted by a group of Alliance members, each Alliance member must sign an Applicant Acknowledgement)		
e) all relevant attachments and annexures have been submitted with the Proposal Submission Form		

f) the Proposal complies with the Authority's policies, including the revised Outdoor Events Policy		
g) the Proposal is related to the Applicant's tenancy and the Precinct as a whole		
<i>Does the Proposal benefit the Precinct?</i>		
<i>Does the Proposal support the key activation brand pillars?</i>		
a) tenant integration		
b) brand drivers		
c) external partnerships		
d) business drivers		
<i>Further comments</i>		
<i>Recommendation</i>		

ATTACHMENT C – APPLICANT ACKNOWLEDGEMENT

1. The Applicant represents and warrants that it is solvent, not bankrupt and that, where applicable:

(a) if the Applicant is a corporation:

(i) no controller (as defined in section 9 of the *Corporations Act 2001* (Cth)), trustee, administrator or similar officer is currently appointed in respect of the Applicant;

(ii) no liquidator or provisional liquidator is currently appointed in respect of the Applicant;

(iii) no application (not being an application withdrawn or dismissed within fourteen (14) days) has been commenced in court for an order, or an order made, or meeting convened, or a resolution passed, for the purpose of:

(A) appointing a person referred to in paragraphs (i) or (ii);

(B) winding up the Applicant; or

(C) proposing or implementing a scheme of arrangement other than under a solvent scheme of arrangement pursuant to Part 5.1 of the *Corporations Act 2001* (Cth);

(iv) it has not failed to comply with a statutory demand (as defined in the *Corporations Act 2001* (Cth)) as a result of the operation of Section 459F(1) of the *Corporations Act 2001* (Cth);

(v) no form of external administration, including the appointment of a liquidator or receiver is occurring or is likely to occur to the Applicant;

(vi) no winding up by resolution or an order of any court is occurring or is likely to occur to the Applicant; and

(vii) no arrangement or composition with the Applicant's creditors is in place.

(b) if the Applicant is not a corporation:

(i) no application (not withdrawn or dismissed within fourteen (14) days) has been commenced in court for an order, a meeting convened or a resolution passed for the purpose of implementing or agreeing:

(A) a moratorium of any debts of the Applicant;

(B) any other assignment, composition or arrangement (formal or informal) with the Applicant's creditors; or

(C) any similar proceeding or arrangement by which the assets of the Applicant are subjected conditionally or unconditionally to the control of the Applicant's creditors or a trustee

or any agreement or other arrangement of the type referred to in this paragraph (b) has been ordered, declared or agreed to.

2. The Applicant further represents and warrants that:

(a) it has read and understood the Protocol for Submission and Evaluation of Proposals relating to the Darling Harbour Precinct ('Protocol') and agrees to the terms and conditions of the Protocol;

(b) it has not engaged in any unethical behaviour or sought or obtained an unfair advantage in obtaining business with the Authority and will not in relation to this Proposal;

(c) to the best of its knowledge, and except as disclosed in the Proposal Submission Form, no conflict of interest exists between the Applicant's obligations to the Authority and its private interests or obligations;

(d) it (and all of its partners or subcontractors) has complied with the NSW Government Code of Practice for Procurement, the Authority's Statement of Business Ethics and any other probity requirements of the Authority; and

(e) all information provided by the Applicant in its Proposal Submission Form is correct.

SIGNED FOR AND ON BEHALF OF THE APPLICANT by its Authorised Representative

Signature of Authorised Representative

Signature of Witness

Name of Authorised Representative

Name of Witness

Title

Date