

First print



New South Wales

Walsh Bay Development (Special Provisions) Bill 1999

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to validate certain approvals granted under the *Heritage Act 1977* and certain development consents granted under the *Environmental Planning and Assessment Act 1979* in relation to the development of Walsh Bay, to the extent of any invalidity.

The approvals and development consents are the subject of proceedings before the Land and Environment Court.

The Bill also:

- (a) appoints the Minister who is to administer the proposed Act to be the consent authority for future development applications concerning Walsh Bay, and

- (b) prevents appeals from being made against future determinations under the *Heritage Act 1977* and the *Environmental Planning and Assessment Act 1979* in relation to Walsh Bay development, and
- (c) prevents the bringing of proceedings to restrain breaches of those Acts in relation to Walsh Bay development, except by that Minister or a person with the consent of that Minister.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Clause 3 defines certain words and expressions used in the proposed Act.

Clause 4 validates Permanent Conservation Order No 559 (*PCO No 559*) made under the *Heritage Act 1977*, to the extent of any invalidity.

Clause 5 provides that a certain part of Walsh Bay referred to in PCO No 559 is to be taken to be a single item (within the meaning of the *Heritage Act 1977*) and the whole of a building. This is done in order to assist the validation of the decision of the Heritage Council to approve the carrying out of works that included demolition of Wharves 6/7.

Clause 6 validates certain exemptions that were subsequently made to PCO No 559, to the extent of any invalidity.

Clause 7 validates certain approvals of the Heritage Council under the *Heritage Act 1977*, to the extent of any invalidity.

Clause 8 validates certain development consents granted under the *Environmental Planning and Assessment Act 1979*, to the extent of any invalidity.

Clause 9 appoints the Minister to be the consent authority under the *Environmental Planning and Assessment Act 1979* for future development applications made concerning development on land at Walsh Bay. The Minister's role as the consent authority may be terminated by a provision of a State environmental planning policy or regional environmental plan.

Clause 10 removes the right of an applicant to appeal against a decision under the *Heritage Act 1977* concerning development at Walsh Bay.

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Clause 11 removes the right of an applicant to appeal against a decision under the *Environmental Planning and Assessment Act 1979* concerning development at Walsh Bay.

Clause 12 removes the right of an objector to appeal against a decision under the *Environmental Planning and Assessment Act 1979* concerning development at Walsh Bay.

Clause 13 prevents proceedings from being brought under the *Heritage Act 1977* to restrain breaches of that Act in relation to development at Walsh Bay, except by the Minister or a person with the consent of the Minister.

Clause 14 prevents proceedings from being brought under the *Environmental Planning and Assessment Act 1979* to restrain breaches of that Act in relation to development at Walsh Bay, except by the Minister or a person with the consent of the Minister.

Clause 15 provides that the proposed Act is to have effect despite the existence of, or the decision in, any proceedings pending in any court immediately before the commencement of the proposed Act.

Clause 16 enables the Governor to make regulations of a savings or transitional nature as a consequence of the enactment of the proposed Act.

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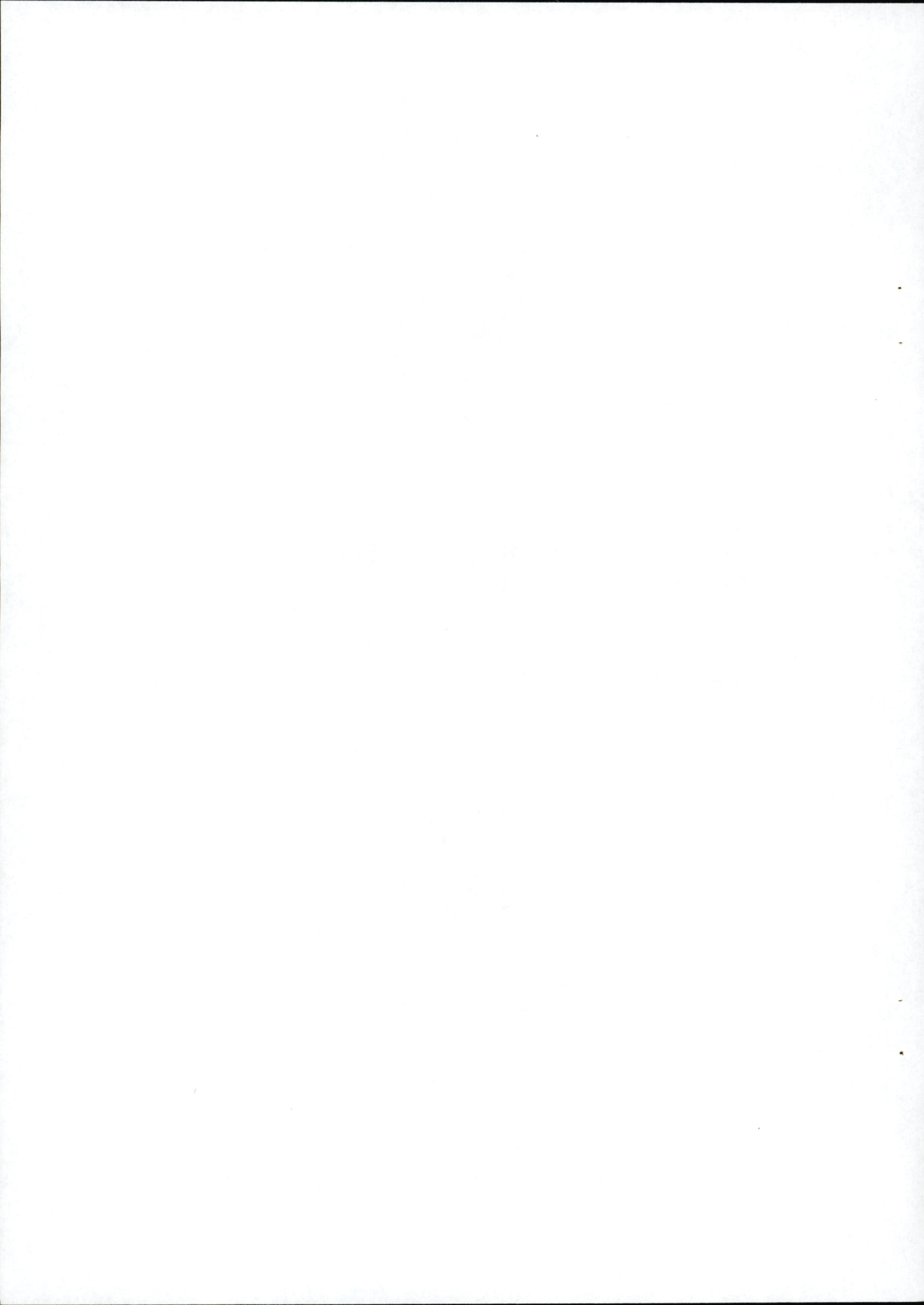


New South Wales

Walsh Bay Development (Special Provisions) Bill 1999

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New South Wales

Walsh Bay Development (Special Provisions) Bill 1999

No , 1999

A Bill for

An Act to declare the validity of certain approvals and consents in connection with the development of Walsh Bay; to facilitate the carrying out of development at Walsh Bay; and for related purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Walsh Bay Development (Special Provisions) Act 1999</i> .	3 4
2 Commencement	5
This Act commences on the date of assent.	6
3 Definitions	7
In this Act:	8
Director-General means the Director-General of the Department of Urban Affairs and Planning.	9 10
EPA Act means:	11
(a) the <i>Environmental Planning and Assessment Act 1979</i> , and	12
(b) the regulations under that Act, and	13
(c) any relevant environmental planning instruments under that Act,	14 15
as respectively in force at any relevant time.	16
Heritage Act means:	17
(a) the <i>Heritage Act 1977</i> , and	18
(b) the regulations under that Act, and	19
(c) any relevant order under that Act, and	20
(d) any relevant listing of an item on the State Heritage Register under that Act,	21 22
as respectively in force at any relevant time.	23
PCO No 559 means Permanent Conservation Order No 559 made, or purporting to be made, under the <i>Heritage Act 1977</i> by the Minister for Heritage and published in Gazette No 40 of 25 February 1988.	24 25 26 27
Walsh Bay means the land to which <i>Sydney Regional Environmental Plan No 16—Walsh Bay</i> applied immediately before the commencement of this Act, or any part of the land, and includes any thing in, on, under or over that land or any part of that land.	28 29 30 31

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- 4 Validation of PCO No 559** 1
- (1) PCO No 559 is validated (to the extent of any invalidity). 2
- (2) The order validated by this section is taken: 3
- (a) to be a permanent conservation order within the meaning of 4
the *Heritage Act 1977* as in force when the order was made, 5
or was purported to be made, and 6
- (b) to have been duly made in accordance with the Heritage Act 7
and otherwise in accordance with law, and 8
- (c) to have been duly made on the date on which it was made, or 9
purported to be made, and thereafter to be, and to have been 10
at all relevant times, a valid permanent conservation order. 11
- (3) Without limiting subsection (2), anything done or omitted to be done 12
on or after 25 February 1988 and before the commencement of this 13
Act is as valid as it would have been had the order been in force in 14
accordance with this section when the thing was done or omitted. 15
- (4) Clause 5 of Schedule 1 to the *Heritage Act 1977* applies to the 16
permanent conservation order validated by this section, and to any 17
item or land the subject of that permanent conservation order, as if 18
it were a permanent conservation order in force under Part 3 of that 19
Act immediately before the commencement of that clause. 20
- 5 Interpretation of PCO No 559** 21
- (1) For the purposes of the Heritage Act, "The Walsh Bay Finger 22
Wharves, Numbered 1 to 9 and associated interconnecting buildings 23
and bridges across Hickson Road" referred to in Schedule "A" to 24
PCO No 559: 25
- (a) is taken to be: 26
- (i) a single item (within the meaning of the *Heritage 27
Act 1977*), and 28
- (ii) the whole of a building, and 29
- (b) is taken to be such a single item and the whole of a building 30
on the date on which PCO No 559 was made, or purported to 31
be made, and thereafter to be, and to have been at all relevant 32
times, such a single item and the whole of a building. 33

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- (2) Without limiting subsection (1), anything done or omitted to be done on or after 25 February 1988 and before the commencement of this Act is as valid as it would have been had PCO No 559 been construed as required by this section when the thing was done or omitted. 1
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- 6 Validation of exemptions to PCO No 559** 6
- (1) Each of the following orders made, or purporting to be made, under the Heritage Act is validated (to the extent of any invalidity): 7
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- (a) the order under section 57 (2) of the *Heritage Act 1977* by the Minister for Local Government and Minister for Planning and published in Gazette No 78 of 23 June 1989, 9
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- (b) the order under section 57 (2) of the *Heritage Act 1977* by the Minister for Local Government and Minister for Planning and published in Gazette No 94 of 15 September 1989. 12
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- (2) An order validated by this section is taken: 15
- (a) to be an order under section 57 (2) of the *Heritage Act 1977*, and 16
17
- (b) to have been duly made in accordance with the Heritage Act and otherwise in accordance with law, and 18
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- (c) to have been duly made on the date on which it was made, or purported to be made, and thereafter to be, and to have been at all relevant times, a valid order. 20
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- (3) Without limiting subsection (2), anything done or omitted to be done on or after 23 June 1989 and before the commencement of this Act is as valid as it would have been had the orders referred to in subsection (1) (a) and (b) been in force in accordance with this section when the thing was done or omitted. 23
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- 7 Validation of Heritage Act approvals** 28
- (1) Each of the following decisions made, or purporting to be made, under the Heritage Act is validated (to the extent of any invalidity): 29
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- (a) the decision of the Director of the Heritage Office on 5 November 1997 concerning application number B578722 made by Walsh Bay Finance Pty Limited, 31
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- (b) the decision of the Heritage Council on 23 April 1998 concerning 3 applications numbered B578911 made by Walsh Bay Finance Pty Limited, 34
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- (c) the decision of the Heritage Council on 11 June 1998 concerning the decision referred to in paragraph (b) (although the decision referred to in paragraph (b) was expressed by the Heritage Council to be a decision of 30 April 1998) but as if the decision of 11 June 1998 were in the terms notified by the Director of the Heritage Office on 23 July 1998,
- (d) the decision of the Director of the Heritage Office on 23 July 1998 concerning the decision on 11 June 1998 referred to in paragraph (c),
- (e) the decision of the Heritage Council on 23 July 1998, stated in the minutes of the Heritage Council to be on 24 July 1998, that the proposed determination under the EPA Act by the consent authority of development application 60/97 made by Walsh Bay Finance Pty Limited was generally consistent with its decision of 23 April 1998 (although the decision was expressed by the Heritage Council to be a decision of 30 April 1998) and its decision of 11 June 1998.
- (2) A decision validated by this section is taken:
- (a) to be an approval under Part 4 of the *Heritage Act 1977*, and
- (b) to have been duly granted in accordance with the Heritage Act and otherwise in accordance with law, and
- (c) to have been duly granted on the date on which it was made, or purported to be made, and thereafter to be, and to have been at all relevant times, a valid approval.
- (3) Without limiting subsection (2), anything done or omitted to be done on or after 5 November 1997 and before the commencement of this Act is as valid as it would have been had the decisions referred to in subsection (1) (a)–(e) been in force in accordance with this section when the thing was done or omitted.
- 8 Validation of EPA Act consents**
- (1) Each of the following decisions made, or purporting to be made, under the EPA Act is validated (to the extent of any invalidity):
- (a) the determination by the Director-General on 4 December 1997 of Development Application No 55/97 made by Walsh Bay Finance Pty Limited,

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- (b) the determination by the Director-General on 20 August 1998 of Development Application No 60/97 made by Walsh Bay Finance Pty Limited, 1
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- (c) the determination by the Director-General on 15 January 1999 of an application to modify the development consent granted, or purporting to be granted, in respect of Development Application No 60/97 made by Walsh Bay Finance Pty Limited. 4
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- (2) A decision validated by this section is taken: 9
- (a) to be a development consent within the meaning of the *Environmental Planning and Assessment Act 1979* or the modification of a development consent within the meaning of that Act, as the case requires, and 10
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- (b) to have been duly granted in accordance with the EPA Act and otherwise in accordance with law, and 14
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- (c) to have been duly granted on the date on which it was made, or purported to be made, and thereafter to be, and to have been at all relevant times, a valid development consent or a valid modification of a development consent, as the case requires. 16
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- (3) Without limiting subsection (2), anything done or omitted to be done on or after 4 December 1997 and before the commencement of this Act is as valid as it would have been had the decisions referred to in subsection (1) (a), (b) and (c) been in force in accordance with this section when the thing was done or omitted. 21
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- 9 Consent authority** 26
- (1) The Minister is the consent authority under the EPA Act for development at Walsh Bay. 27
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- (2) This section extends to: 29
- (a) development applications lodged under the EPA Act before the commencement of this section that have not been determined before that commencement, and 30
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- (b) applications lodged under the EPA Act before the commencement of this section for the modification of a development consent, and 33
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(c)	applications lodged under the EPA Act after the commencement of this section for the modification of a development consent referred to in section 8.	1 2 3
(3)	A State environmental planning policy or regional environmental plan under the <i>Environmental Planning and Assessment Act 1979</i> may terminate the powers and functions of the Minister as the consent authority under the EPA Act for development at Walsh Bay and may appoint a person to be the consent authority.	4 5 6 7 8
10	Applicants appeals—Heritage Act	9
(1)	Section 70 of the <i>Heritage Act 1977</i> does not apply to an applicant who is dissatisfied with a determination of a kind referred to in that section in relation to an application concerning an item (within the meaning of that Act) at Walsh Bay.	10 11 12 13
(2)	Section 76 of the <i>Heritage Act 1977</i> does not apply to an applicant referred to in that section who, but for this subsection, would have a right of appeal arising from the making of a prescribed application (within the meaning of section 56 of the <i>Heritage Act 1977</i>) in respect of the doing or carrying out of an act, matter or thing at Walsh Bay.	14 15 16 17 18 19
11	Applicants appeals—EPA Act	20
	The provisions of sections 96 (6), to the extent applicable, and 97 of the <i>Environmental Planning and Assessment Act 1979</i> do not apply to an applicant who is dissatisfied with a determination or decision, or a failure to make a determination, of a kind referred to in those provisions in relation to a development application to carry out development on land at Walsh Bay.	21 22 23 24 25 26
12	Objectors appeals—EPA Act	27
	Section 98 of the <i>Environmental Planning and Assessment Act 1979</i> does not apply to an objector who is dissatisfied with a determination of the consent authority to grant consent to a development application of a kind referred to in that section in relation to a development application to carry out development on land at Walsh Bay.	28 29 30 31 32 33

13	Restraint of breaches of Heritage Act	1
	Proceedings under section 153 of the <i>Heritage Act 1977</i> may not be brought in connection with:	2
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	(a) a determination or decision concerning an item (within the meaning of that Act) at Walsh Bay, or	4
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	(b) any thing done or omitted to be done in compliance, or purported compliance, with a determination or decision referred to in paragraph (a),	6
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	except by the Minister or a person with the consent of the Minister.	9
14	Restraint of breaches of EPA Act	10
	Proceedings under section 123 of the <i>Environmental Planning and Assessment Act 1979</i> may not be brought in connection with:	11
		12
	(a) a determination or decision in relation to a development application, or the modification of a development consent, to carry out development on land at Walsh Bay, or	13
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	(b) any thing done or omitted to be done in compliance, or purported compliance, with a determination or decision referred to in paragraph (a),	16
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	except by the Minister or a person with the consent of the Minister.	19
15	Operation of Act	20
	This Act has effect despite the existence of, or the decision in, any proceedings pending in any court immediately before the commencement of this Act.	21
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16	Regulations	24
	(1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Act.	25
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	(2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.	28
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- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

