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**The Management of
Sydney Harbour Foreshores**

by

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EXECUTIVE SUMMARY

The planning and management of Sydney Harbour foreshores provide a good example of how difficult it is to manage public and private land to protect a natural asset such as Sydney Harbour. Important participants include numerous local councils, State Government agencies, the Commonwealth Government, and developers keen to redevelop old industrial sites. The combination of all these makes a formidable planning challenge (page 1).

The State Government has recognised that the planning and management of Sydney Harbour needs to be re-organised and strengthened to protect the natural and cultural heritage of the Harbour. A number of guiding principles have been developed which will guide future land use of publicly owned Harbour foreshore land. In addition, the Government is set to declare prime sites along the Harbour and Parramatta River, including land in Federal, State or private ownership, as sites of 'State significance'. These sites are to be identified in a State Environmental Planning Policy. The SEPP will ensure that the Minister for Urban Affairs will be the consent authority for some sites, and on other sites require the consent authority, usually local councils, to prepare strategic plans in accordance with guidelines published by the State Government (pages 2-3). The Government has also introduced legislation which amalgamates the City West Development Corporation, the Darling Harbour Authority and the Sydney Cove Authority (page 4).

The Government has also announced plans to appoint a Harbour Manager, to be a first point of contact for anyone dealing with the various government authorities and consent authorities, including local councils (pages 4-5).

The issue of the sale of Defence Force land around Sydney Harbour has created some controversy. Various locations around the Harbour have been important for defence purposes since the time of the First settlers. Some of these sites are now considered surplus to Defence Force requirements, and the question of the change in land use is confronting governments and communities. Whilst the Defence Force would generally like to see the maximum return possible on their assets, others in the community are against this and would prefer to see the public land retained in public hands as open space. The State Government has announced that Defence Force sites will be declared as sites of State Significance and that it will become the consent authority for any proposed redevelopments (pages 5-10).

1.0 Introduction

Since Sydney Harbour was discovered by European settlers it has always been described as a place of beauty and merit. A 1991 heritage study concluded the following in regard to the cultural significance of Sydney Harbour:

*Sydney Harbour and Middle Harbour form a complex cultural landscape. One of the world's great natural features, Sydney Harbour evidences both Aboriginal occupation and more than 200 years of European history. The harbours have outstanding visual and recreational value for present and future communities and continue to play a seminal role in the economic and functional livelihood of the city. In their fabric and continuing use, the harbour's historic places attest to the rich layering and process of Sydney's history.*¹

Public reserves have a long association with the Harbour, starting with Farm Cove and the Domain from Governor Macquarie's time. Whilst many of the early grants were for land to the high water mark, from 1828 all future grants were to include a 100 foot reserve above high water for public use. Much of the foreshore east of Balmain had been lost already but when local councils began to be incorporated in the late 1850s, most actively pursued the acquisition of waterfront land when the opportunity arose. The creation of parkland at the head of bays by the reclamation of swamps and creeks was also a reflection of the small amounts of open space available to the public.² The debate on access to harbour foreshores continues unabated to this day.

In 1997 the Government appointed Waterways Panel concluded that the people of Sydney consider Sydney Harbour to be of 'icon' status and worthy of protection. The Panel concluded that a key finding of their survey is that all groups in the community feel the lack of a commonly agreed upon, managed and enforced strategic plan, and that this compromises individual efforts to implement change.³ While the Panel was specifically referring to the Harbour in terms of water quality, it is largely the land use around the Harbour which has a major impact on water quality. Furthermore, the visual amenity of the Harbour is largely dependent upon the development or conservation of land on its foreshores. The upcoming Olympics has also provided the Government with a catalyst to ensure that the Harbour is showcased to the world in its best possible light.

It is with this background that the NSW Government foreshadowed and introduced a new planning regime for Sydney Harbour.

¹ NSW Department of Planning, *Sydney and Middle Harbours Heritage Study. Final Report.* prepared by Godden Mackay. July 1991 at 153.

² NSW Department of Planning, *Sydney and Middle Harbours Heritage Study. Final Report.* prepared by Godden Mackay. July 1991 at 86.

³ NSW Government, Waterways Advisory Panel. *Report to the NSW Government on the Proposal by Sydney Water Corporation for Sewage Overflow Abatement in Sydney Harbour*, 1997, at 178.

2.0 The Coordination of Harbour Planning

A persistent problem in the management of all waterways around Australia is institutional failure. This is usually manifested as a multitude of government authorities each having a role to play in the management of a resource but none having the ultimate authority to ensure the final result is as planned. The NSW Government has recently announced initiatives in an attempt to eliminate this institutional failure.

The NSW Government has recently made reference to a strategy to protect and enhance Sydney Harbour and its tributaries. As part of this strategy, a number of guiding principles to determine future land use of publicly owned Harbour foreshores have been formulated. These principles are as follows:⁴

- maximum public access and use of land on the foreshore
- land made available for public access and use should be retained or placed in public ownership
- public access links between existing foreshore open space should be retained and enhanced
- significant bushland and other natural features along the foreshore should be conserved and made available for the public's use and enjoyment
- any change in foreshore land use should protect and enhance the special visual qualities of the Harbour
- all items of heritage significance should be conserved and enhanced
- the first step in determining the future use of a surplus foreshore site should be to establish whether the site or part of the site is suitable for regionally and locally significant open space that will enhance the harbour foreshore open space network
- any development on land not required for regional open space should be compatible with the scale and character of its foreshore location. Significant proceeds from development of this land should be used to contribute to the establishment and maintenance of public open space
- to maintain the commercial viability of the Port of Sydney, consideration should be given to the retention of key waterfront industrial sites. However, wherever possible, public access through these sites to the foreshore should be provided.

A strategy such as this needs a vehicle for implementation. The provisions of the *Environmental Planning and Assessment Act 1979* are the principle mechanisms to control development on Sydney Harbour foreshores. For instance, Sydney Regional Environmental Plan (REP) No 23 "Sydney and Middle Harbours" aims to establish a framework which encourages a consistent and coordinated approach to the planning, development and management of the waterways, islands and foreshores of Sydney and Middle Harbours.

⁴ NSW Government, *Draft Development Control Plan and Guidelines. Sydney Regional Environmental Plan No. 22 - Parramatta River and Sydney Regional Environmental Plan No. 23 - Sydney and Middle Harbours*. Department of Urban Affairs and Planning. Office of Marine Administration. December 1997, at 1.

The REP establishes the planning framework and general principles for assessing development around Sydney Harbour. Appendix One reproduces REP 23 “Sydney and Middle Harbours”.

Under the umbrella of the above Regional Environmental Plan, the NSW Government released a draft Development Control Plan for Sydney Harbour Foreshores on August 19 1997. The Development Control Plan supplements the REP by establishing guidelines for development and activities. The Development Control Plan has four key aims:⁵

- minimising impacts on ecological communities
- ensuring that the scenic quality of the area is protected or enhanced
- providing siting and design principles for new buildings and waterside structures
- identifying locations with potential for foreshore access.

In addition, the State Government is set to declare prime sites along the Harbour and Parramatta River, including land in Federal, State or private ownership, as of ‘State significance’. These sites are to be identified in a State Environmental Planning Policy. The SEPP will ensure that the Minister for Urban Affairs will be the consent authority for some sites, and on other sites require the consent authority, usually local councils, to prepare strategic plans in accordance with guidelines published by the State Government. The SEPP will also cover areas not included as a State significant site, where the Government may issue a section 117 direction to local government to ensure that there is a consistent framework.⁶

In regards to Harbour foreshore defence lands, the Minister for Urban Affairs and Planning the Hon Craig Knowles is reported to have said “... the plan means that defence lands will, in advance of their sale, be earmarked sites of State significance and be conserved....We are saying emphatically ‘we are in control’. It says that we believe the Harbour needs to be managed as one place and with the high standards that reflect the value of the Harbour and Parramatta River to the entire nation.”⁷

Ten years ago such an announcement that the State Government would take over control from local councils of the planning of prime sites would have created a storm of protest. In 1998 the Sydney Morning Herald responded with the comment that the affected local councils are likely to greet the announcement with relief.⁸ The never ending conflict

⁵ NSW Government, *Draft Development Control Plan and Guidelines. Sydney Regional Environmental Plan No. 22 - Parramatta River and Sydney Regional Environmental Plan No. 23 - Sydney and Middle Harbours.* Department of Urban Affairs and Planning. Office of Marine Administration. December 1997, at 2.

⁶ NSWPD, Legislative Council, General Purpose Standing Committees Budget Estimates Hearings, Monday 22 June 1998.

⁷ “Carr to wrest planning control over plum Harbour sites.” in *The Sydney Morning Herald*, 10 March 1998.

⁸ “Harbour rescue a test of will” in *The Sydney Morning Herald* 11 March 1998.

between developers, local residents and resident action groups over waterfront development may 'at last' be the responsibility of someone else. The Mayor of North Sydney Council was reported to have said about the proposed changes: "As long as Councils retain their community consultative role and the two tiers of government work to a common goal, this could be a good thing."⁹ Clearly, some antagonism is to be expected between the two tiers of government when they differ in their opinion as to what to do with a particular site.

In February 1998 the NSW Government announced that a Sydney Harbour Manager would be appointed.¹⁰ The Harbour Manager will be the first point of contact for anyone dealing with the various government agencies and consent authorities, including local councils, which currently control what happens on the harbour and its foreshores. The Harbour Manager's responsibilities include:

- land use and planning around Sydney Harbour and its foreshores
- pollution control issues
- transportation issues
- urban design
- maintenance of a working harbour.

In his News Release the Premier stated that he would have all relevant Ministers and consent authorities sign a Memorandum of Understanding within the next two months.¹¹ The Minister for Urban Affairs and Planning Hon Craig Knowles MP stated in Estimates Hearings that the Government is currently in the process of signing off a Memorandum Of Understanding amongst all government agencies to acknowledge the status of the Harbour Manager.¹²

In early March 1998 the NSW Government also announced that the three major city authorities responsible for the inner Harbour - the City West Development Corporation; Darling Harbour Authority; and the Sydney Cove Authority will all be amalgamated into the one body. To achieve these aims and other effects two Bills were introduced into the Legislative Assembly on the 20 May 1998. The *Darling Harbour Authority Amendment and Repeal Bill* was introduced by the Hon Michael Knight MP, Minister for the Olympics. The Darling Harbour Authority was the consent authority for developments occurring within its precinct. The Bill removes this provision, and the consent authority is now the Minister for Urban Affairs and Planning. In addition, the Bill contains a sunset clause that will take effect not before January 1 2001 to dissolve the Authority, to be incorporated into the new foreshores authority. The Authority is required to stay in existence until after the

⁹ "Harbour rescue a test of will" in *The Sydney Morning Herald* 11 March 1998.

¹⁰ News Release: "NSW Government to appoint Sydney Harbour Manager" by The Hon Bob Carr MP, Premier of New South Wales. February 26 1998.

¹¹ News Release: "NSW Government to appoint Sydney Harbour Manager" by The Hon Bob Carr MP, Premier of New South Wales. February 26 1998.

¹² NSWPD, Legislative Council, General Purpose Standing Committees Budget Estimates Hearings, Monday 22 June 1998.

Olympics.

Similarly, the *Sydney Cove Redevelopment Authority Amendment Bill* removes the ability of the Authority to give consent to its own development proposals, and makes the Minister for Urban Affairs and Planning the consent authority. In addition, the development area of the Sydney Cove Authority will be subject to environmental planning instruments, whereas previously it was not. Both Bills were supported by the Opposition parties and in the Legislative Council by those on the Cross-benches. The Bills passed through all stages on 2 June 1998.¹³

Sydney Harbour is to be a major focus of the 2000 Olympic Games and is without doubt of 'icon status' for all Australia. For many years its management has been uncoordinated and unwieldy. With the appointment of the Minister for Urban Affairs and Planning as consent authority for a number of sites of State significance, and the appointment of a Harbour Manager, it is hoped that the natural and cultural beauty of the Harbour can be preserved.

3.0 Defence Force Land and Sydney Harbour¹⁴

The defence of Sydney Harbour and its settlement has relied on the provision of artillery batteries at strategic points around the Harbour, guarding against invasion by naval vessels. The first settlers established two defensive batteries for the protection of the colony. Naval guns were installed at Bennelong Point and Dawes Point, and were manned by marines of the First Fleet. In 1801, additional batteries were established at Garden Island and on Georges Head. A large fort was commenced on the top of Observatory Hill, named Fort Phillip, but was never finished. Until the 1840s, Dawes Point, Fort Macquarie at Bennelong Point and the unfinished Fort Phillip were the defensive backbone of Sydney.

In the late 1830s, plans were put in place to construct a substantial fort on Pinchgut, with batteries to be established on South Head, Bradley's Head and Kirribilli Point. By 1850, only the Bradley's Head Battery was complete. The outbreak of the Crimean War in 1854 renewed interest in defence, and a revised plan, which called for the completion of Fort Denison, enlargement of the Dawes Point and Fort Macquarie placements, and batteries to be established on Kirribilli Point and Mrs Macquarie's Point, was largely complete by 1858.

Following reports in 1865 and in 1870, the outer line of defence was given priority and

¹³ Both Bills were assented to on 15 June 1998. The *Darling Harbour Authority Amendment and Repeal Act 1998* was proclaimed on the 8 July (except for sections 5, 6 and 7 and Schedules 3 and 4), as was the *Sydney Cove Redevelopment Authority Amendment Act 1998*.

¹⁴ The historical introduction to this Section is taken from: NSW Department of Planning, *Sydney and Middle Harbours Heritage Study. Final Report*, prepared by Godden Mackay, July 1991.

construction commenced on fortifications on Middle Head, George's Head, South Head, Steel Point and Bradley's Head. The 1880s saw the introduction of breech loading guns with improved range and accuracy. New guns were installed on the coastal cliffs at Bondi, Coogee and Signal Hill for defence of the seaward approaches to the Harbour. With the outbreak of World War One in 1914 only minor improvements were needed for the seaward defences. The forts and batteries of the inner harbour defence, being Bradley's Head, Kirribilli Point, Mrs Macquaries Point, Fort Macquarie and Dawes Point were all largely unoperational by this time.

A new battery was installed at North Head in 1938, and was supported by guns on South Head, Middle Head and George's Head. With the outbreak of World War Two, harbour defence strategy was again based on these seaward facing coastal batteries, as well as an anti-submarine boom and net erected across the Harbour entrance between Green Point and George's Head.

The pre-eminent nature of Sydney Harbour has always meant that the Navy has had a strong presence. Following the formation of the Royal Australian Navy after Federation, the RAN inherited the establishments of the Royal Navy in 1913. At that time, Garden Island was the Royal Navy base in Sydney, having been dedicated for that purpose in 1856. Several other facilities such as Cockatoo Island, Spectacle Island and the Newington Armament Depot were also taken over by the RAN. HMAS Rushcutter was established in Ruschcutter's Bay in 1880 as headquarters for the NSW Volunteer Naval Brigade. The NSW Torpedo Corps was established in 1878, housed at Berry's Bay. HMAS Watson was established at Watsons Bay in 1942. The anti-submarine boom and net Harbour defences were housed at Waverton, commissioned as HMAS Waterhen in 1962, as a base for the Navy's small combat craft and patrol boats. At Neutral Bay a torpedo repair depot was built on an old gas works site in 1942, and in 1967 the base was commissioned as HMAS Platypus, the Navy's submarine base. HMAS Penguin was commissioned in 1942 at Balmoral as a naval hospital and accommodation base.

The Army's presence in Sydney Harbour is generally described by their manning of the Harbour and coastal artillery batteries. When these were all abandoned in 1962, the Army presence diminished at the various defensive positions. Middle Head, South Head and North Head all contain Army bases that now have little direct contact with the Harbour.

The Royal Australian Air Force has never had a base in Sydney Harbour but did use the Rose Bay Flying Boat Base during World War Two.

Now many of the original gun emplacements and fortifications are included in Sydney Harbour National Park. The NSW Government announced in early 1998 that the historic fortifications of George's Head are to be opened to the public under a \$10 million harbour facelift. Presently groups can tour the Middle Head forts and within the next two years the forts of George's Head, including tunnels up to 20 metres below ground, will be open for

inspection.¹⁵

In August 1997 the NSW Premier Hon Bob Carr MP released a statement about the Sydney Harbour Foreshore.¹⁶ The Statement noted previous agreements between the NSW and Commonwealth Governments about Defence Force land which was transferred to the Commonwealth with Federation in 1901. In 1979 the then Prime Minister Hon Malcom Fraser MP and the NSW Premier Hon Neville Wran MP reached an agreement in relation to the transfer of Defence Department land to the NSW Government which had become surplus to Commonwealth Government requirements. The agreement saw the transfer of 38.3 ha of land at Middle Head, 172.9 ha at North Head, 6.7 ha at South Head, and 46.43 ha at Dobroyd Head to the State.

More recently the issue of Defence land has been brought back into focus with the Commonwealth announcement that some Sydney Harbour defence sites are surplus to requirements due to the relocation of certain army units. Portions of land at Middle Head, Georges Heights, North Head and HMAS Platypus and Woolwich are in this category. HMAS Penguin, the Navy's base and hospital, and other Defence units will remain at Middle Head. At the heart of the controversy is the issue of selling of defence land 'to the highest bidder', to be developed as housing.

The Premier's Statement on Sydney Harbour Foreshores states that the Government's general objective is to use the disposal of surplus Defence properties around the Harbour to re-establish the Nielsen¹⁷ concept of a green belt around Sydney Harbour. The following foreshore sites have been identified as being surplus to Defence Force requirements.

Middle Head

The NSW Government position is that the Commonwealth land earmarked for possible residential development should remain in public ownership and be included in the Sydney Harbour National Park.

North Head

As agreed in 1979, the State Government intends to use any land released by the Commonwealth except for that required by Sydney Water for ocean outfall, for the Sydney

¹⁵ "History unearthed as foreshores reveal their defensive secrets." in *The Sydney Morning Herald*, 7 April 1998.

¹⁶ *Sydney Harbour Foreshore*. A Statement by the Hon Bob Carr, MP. Premier of New South Wales. August 1997.

¹⁷ In 1910/1911 The Hon NRW Nielsen was Minister for Lands. He was responsible for the resuming of large tracts of land which is now Taronga Zoo and Nielsen Park. The northern half of what is now Nielsen Park formed part of a 20ha land grant in 1793 to Thomas Laycock. Eventually the land was bought by William Wentworth in 1827, while the rest of Nielsen Park was acquired during the consolidation of his estate. In 1911 the NSW Government resumed the Bottle and Glass/Nielsen Park portion of the remaining Wentworth Estate, and the area was administered for many years by the Nielsen-Vaucluse House Trust. In 1975 Nielsen Park became one of the initial areas of the Sydney Harbour National Park.

Harbour National Park.

Woolwich

This land was not included in the 1979 Agreement. The NSW Government's view is that all land released in Woolwich should be preserved as public open space.

Berry's Bay (Balls Head)

The NSW Government has shelved plans to subdivide State owned land on the foreshore at Berry's Bay. The Government will forgo \$20 million from the planned residential subdivision. The Government supports any zoning of 'waterfront industrial' in the area, but if this is not possible due to inadequate water depth fronting the land then it should be retained as public open space.

HMAS Platypus

The NSW Government accepts that this site is a fully developed site, and that there would be substantial costs in dedicating this area as open space. A community reference group has been established to investigate and make recommendations on the future of the site. Consideration should be given to maintaining some small scale maritime activity using the current extensive wharf area. The Government maintains that any development must include substantial public foreshore of high standard, promoting active public use.

Garden Island

The NSW Government welcomes the Prime Ministers' confirmation that greater public access will be provided at the Garden Island site.

Cockatoo Island and Spectacle Island

Separate consultations with the Commonwealth are proposed for each of these islands. In these discussions the NSW Government will seek to ensure a commitment to maximum open space, all significant heritage being retained, and that the Commonwealth ensure that adequate remediation of the site is undertaken. More recently, the Commonwealth has declared that the sale of Cockatoo Island is no longer proposed.¹⁸

Strengthening the Planning Process

The Statement includes a proposal that the NSW Government will also strengthen the planning process for Harbour foreshore land by Ministerial Direction under s.117 of the *Environmental Planning and Assessment Act 1979*. Section 117 enables the Minister to issue directions to a public authority in regards to planning under an environmental planning instrument. For example, the direction may include a requirement that certain state and regional policies are to be implemented at the local level through Local Environmental Plans.

Since the release of the above Statement in August 1997, the Premier Hon Bob Carr MP has scorned suggestions that the Federation Fund should be used to purchase Defence Force

¹⁸ "Not for Sale" Letters to the Editor by Ross Bain, Assistant Secretary, Property Management, Department of Defence. In *The Sydney Morning Herald*, June 3 1998.

land around the Harbour.¹⁹

¹⁹ See for example: "Government yet to decide on foreshore land options" in *The Sydney Morning Herald*, 25 February 1998.

3.1 The Views of the Commonwealth in Relation to Defence Land around Sydney Harbour

It has recently been proposed that significant parcels of Defence Force land around Sydney Harbour be purchased with funds from the Federation Fund to hand back to State Government ownership. The Prime Minister has recently entered the debate and reportedly stated that Federation Funds would not be used to buy back land already owned by the Commonwealth but to underwrite the cost of relocating Defence personnel to other parts of Australia and to rehabilitate contaminated land. The Prime Minister is reported to have said: “One of the other proposals is the remediation and cleaning up of some of the [Defence Force] foreshore assets. Now if that occurs, there is a cost involved in that and I don’t think anyone can legitimately argue that isn’t a fair and proper and orthodox use of the Federation Fund.” Mr Howard said that the idea of linking open space on the harbour foreshores with the Centenary of Federation caught his imagination.²⁰

The Australia New Zealand Environment and Conservation Council, which is chaired by the Commonwealth, has produced a position paper on the financial liability of contaminated site remediation.²¹ ANZECC states that the polluter, where solvent and identifiable, should ultimately bear the cost of any remediation, even if a period of time had elapsed between the pollution event and remediation. ANZECC believes that the same rules for attaching liability should apply to Federal and State agencies and local governments which cause contamination as apply to private parties. All tiers of government who have contributed to or exacerbated contamination by the exercise of their operational functions should be liable on the basis of negligence under common law.

3.2 The Views of the Community in Relation to Defence Force Land around Sydney Harbour

In response to Commonwealth proposals to sell surplus Defence Force land, the Defence Department has established several community reference groups to liaise with local residents. In addition, community groups have been vocal in their opposition to the sell off and development of Defence land. Examples of community groups opposing redevelopment include the Headland Protection Group for Middle Head, the Lane Cove Bushland and Conservation Society, and representatives of Kelly’s Bush. In total, around 20 community sub-groups make up the coalition Defenders of Sydney Harbour Foreshores.²²

²⁰ “PM decries harbour’s ‘toaster’” in *The Sydney Morning Herald*, June 11 1998.

²¹ ANZECC, *Financial Liability and Contaminated Site Remediation. A Position Paper*, 1994

²² “Land Wars” in *The Bulletin*, 12 May 1998, at 36.

4.0 Conclusion

The management of Sydney Harbour must be one of the most important natural resource management roles for the Government. However, it is possibly also one of the most daunting. Problems include an evolving use of the Harbour. The use of the Harbour changes over time, and the potential for conflict between water based industries and the ever present demand for residential development can only increase without careful planning. The planning and development of Harbour foreshores is complicated by a multiplicity of government agencies and levels of government. In response to the difficulties of managing Sydney Harbour, the Government has announced the new position of a Harbour Manager. The Manager is to be a central point of contact and coordination for Harbour related activities.

In addition, and especially in regards to the planning around Sydney Harbour, the response of the State Government has been to introduce and foreshadow legislation to centralise planning control in the hands of the Minister for Urban Affairs and Planning. The declaration of Sites of State Significance around the Harbour will enable the Minister for Urban Affairs and Planning to be the consent authority for any proposed developments. It is hoped that with the assistance of expert Advisory Panels, the Minister will be able to 'massage' building and project proposals so that they contribute to an ecologically sustainable city and Harbour rather than detract from this goal.

Appendix One

Regional Environmental Plan 23 “Sydney and Middle Harbours”

This REP is reproduced from: Butterworths, *Local Government Planning and Environment New South Wales, Volume B, Planning and Environment*, 1993.