

**AUDITOR-GENERAL'S REPORT**

**PERFORMANCE AUDIT**

**Disposal of  
Sydney Harbour Foreshore Land**

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## Foreword

Sydney Harbour is recognised as one of the great harbours of the world. It has a rich cultural heritage, both as the traditional home of the Eora people and as the site of the first permanent European settlement in Australia.

The harbour is the gateway to Sydney, a major tourist attraction, an economic and transport feeder to the greater Sydney area, and an important recreational facility.

In recent decades, significant changes have occurred in the use of Sydney Harbour's foreshores, particularly as a result of the withdrawal of industry. It is not clear, however, the extent to which these changes were managed in a coordinated way.

Because Sydney Harbour is such an icon, our view is that decisions in relation to foreshore land need to be made on a more strategic basis, if the Government's aspirations for Sydney Harbour's foreshores are to be met.

At present there are high-level 'aspirations', but there is no overarching strategy or plan for Sydney Harbour to guide individual decisions. Decisions to dispose of, retain, or change the use of individual properties tend to be triggered on a case-by-case basis. Decision-making is left with individual agencies and local councils that have no responsibility for whole-of-harbour outcomes.

This report has examined some of the more recent foreshore property disposals handled by government agencies, particularly in relation to how proponents and regulators make assessments of the provision of public open space and the retention of a working harbour.

I hope the report provides some insight into the difficulties presently facing the multiplicity of government agencies involved with foreshore land, with no overall strategic land use and development plan for the harbour.

R J Sendt  
Auditor-General

November 2003



## Executive Summary

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## Executive Summary

**Why is foreshore land important?** Foreshore land is an integral part of Sydney Harbour. Sydney Harbour serves as a:

- working port
- major transport corridor
- major tourist attraction
- major recreational resource
- desirable place to live
- link with Aboriginal and colonial history.

**The audit** The Audit Office has undertaken a performance audit in relation to the disposal of Sydney Harbour foreshore land. The audit examines the processes that are expected to implement the policy decisions of government. It does not question those policy decisions or the amounts of land set aside for such purposes.

In particular, the audit has focused on how proponents and regulators make assessments in relation to two critical areas: the provision of public open space and the retention of a working harbour.

We wanted to know what guides decision-making by agencies about disposal options for foreshore land they own or have control over. To this end we asked questions such as:

- how are options identified and assessed?
- is this coordinated at any level?
- are decisions guided by a broader purpose?
- are long term objectives and implications examined?

**Audit Opinion** **Our view is that decisions need to be made on a more strategic basis, if the Government's aspirations for Sydney Harbour's foreshores are to be met.**

**At present there are high-level 'aspirations', but there is no overarching strategy or plan for Sydney Harbour that can guide individual decisions. Decision-making appears to be triggered when a proposal is made to dispose of a particular property. Decisions to dispose of, retain, or change the use of individual properties should be made in the context of a broader strategy, rather than on a case-by-case basis.**

**And, flowing directly from this, decision-making should not be left solely with individual agencies and local councils that have no responsibility for whole-of-harbour outcomes.**

**The Government is fairly well positioned to take what we believe is the vital next step - to consolidate all existing strategies and plans into an overall strategic land use and development plan for Sydney Harbour's foreshores.**



**We also believe that the current governance framework will not be sufficient for the challenges ahead. For what needs now to be done, we think that existing governance arrangements are too complex and are not equipped to be decisive or to drive actions in an holistic way.**

### **Audit Findings**

We have found that the Government has taken a number of significant steps to assist and guide the disposal of foreshore land:

- the Premier's 1997 Vision statement for Sydney Harbour emphasised the importance of maximising public access to, and use of, land on the foreshore and the retention of key waterfront industrial sites. This provides the overall context in which to assess disposals of foreshore land
- the Government has centralised planning control of significant foreshore developments. State Environmental Planning Policy no. 56 - *Sydney Harbour Foreshores and Tributaries* - lists a range of principles for consideration. Sydney Regional Environmental Plans and an associated Development Control Plan provide broad guidelines for development
- the Government's *Total Asset Management Manual* sets out comprehensive procedures for the disposal of land by public agencies. The Government Asset Management Committee has established a new mechanism with the potential to independently identify and address the non-commercial aspects of property disposal early in the process, based on Property Disposal Plans
- the Sydney Harbour Executive, representing 20 State and 3 Federal Government agencies, and the Sydney Harbour Councils group, representing 19 local councils, have facilitated communications and cooperation on a range of Harbour issues, projects and programs.

Whilst our audit identified a range of policies, strategies and plans that guide decision-making for the disposal of foreshore land, we found the effectiveness of assessments of the disposal of Harbour foreshore land to be limited by:

- a limited and varied understanding between the many stakeholders of the nature and extent of foreshore requirements, particularly for public open space and for working harbour
- guidance on requirements for the disposal of foreshore land being open to a variety of interpretations, resulting in a relatively unpredictable process with uncertain outcomes
- limited consideration at the time of the assessment of disposal of foreshore land of the economic and future place-management implications for Sydney Harbour as a whole
- little incentive for a commercially driven proponent to develop and consider options for the disposal and future use of foreshore land that offer a reduced, or zero, commercial return.

We found that:

- although much work has been initiated, as yet there appears to be no strategic land use and development plan for the Harbour including the development of its foreshore. Consequently it is very difficult to assess foreshore disposal outcomes
- the disposal of foreshore land appears to be considered largely at a project level, with inherent emphasis by the proponent on financial returns. For example, State Environmental Planning Policy no. 56 - *Sydney Harbour Foreshores and Tributaries* - requires only a *consideration* of aspects such as public open space and working harbour, with few specific requirements and no indication of priorities
- the Government has recognised that Sydney Harbour should be managed as a single complex place, but accountability for the future development of Sydney Harbour foreshore land appears fragmented and unclear
- future funding implications were not clearly evident in the decision making processes for overall planning and for specific disposal actions. It was not clear to us how the considerable costs, management effort and responsibilities involved in preserving, developing and maintaining land and infrastructure for public use and working harbour were to be provided for
- while there is considerable emphasis on public consultation following preparation by the proponent of a master plan and a development application, there is less emphasis on consultation at the initial decision to either redevelop a site or develop as public space
- there has been no means of readily determining what the Government's foreshore land holdings are and what agencies' intentions are for the land that they presently hold. Government committees are now seeking some of this information and the Waterways Authority has an information system covering its land and adjoining land.

## Recommendations

We recommend that the Government:

- revise the governance responsibilities and structures for the strategic development of Sydney Harbour foreshore land to ensure that they provide:
  - clear lines of authority and accountability for outcomes
  - a defined process
  - participation of affected groups
  - transparency.
- require in its planning instruments for Sydney Harbour that the long-term impact of foreshore land disposals on the whole of the Harbour is considered and assessed
- develop an overall strategic land use and development plan for the harbour
- require earlier development through the planning process of well-considered proposals for the non-commercial uses of foreshore land, such as public open space, and for working harbour
- balance the commercial pressures limiting disposal options with clear mechanisms for the funding, acquisition, development and management of public access and associated harbour infrastructure for the harbour as a whole. This should be coupled with clear guidelines on the use of funding mechanisms involving the private sector
- develop an information base with assistance from:
  - the Department of Lands to develop, map, and maintain a central register of foreshore land holdings
  - the Government Asset Management Committee in monitoring what agencies' intentions are for the land that they presently hold
  - Harbour agencies and local councils in establishing a means of identifying and monitoring key privately held sites.

## **Responses from Agencies**

Refer to the Appendices for agency responses to the report.

## **1. Competition for foreshore land**

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## 1.1 Disposal of foreshore land

<b>What is foreshore land?</b>	Foreshore land includes land with a water frontage and land that is separated from the waterfront by a public reserve, road or open space.
<b>Why is foreshore land important?</b>	<p>Foreshore land is an integral part of Sydney Harbour. Sydney Harbour serves as a:</p> <ul style="list-style-type: none"><li>▪ working port</li><li>▪ major transport corridor</li><li>▪ major tourist attraction</li><li>▪ major recreational resource</li><li>▪ desirable place to live</li><li>▪ link with Aboriginal and colonial history.</li></ul> <p>There are many stakeholders that use water space and foreshore land on Sydney Harbour, including:</p> <ul style="list-style-type: none"><li>▪ boat operators (government, commercial and recreational)</li><li>▪ marine businesses</li><li>▪ commercial businesses</li><li>▪ government agencies</li><li>▪ local residents</li><li>▪ tourists and the public in general.</li></ul> <p>Private interests, local councils, the State Government, and the Commonwealth Government all own Sydney Harbour foreshore land.</p>
<b>Why is disposal an issue?</b>	<p>There has been a significant change in the use of the foreshores of Sydney Harbour, particularly as a result of the withdrawal of industries from the foreshores. At the same time other activities such as recreational boating, the charter vessel industry, tourism, public transport, marine maintenance and residential development have increased.</p> <p>The disposal and redevelopment of foreshore land has strongly favoured residential development as:</p> <ul style="list-style-type: none"><li>▪ the value of foreshore land for residential use far exceeds that of any other use</li><li>▪ the Government has promoted a policy of urban consolidation.</li></ul>



### **Residential Development at 'Balmain Shores'**

Some community groups have been vocal in their opposition to the disposal of foreshore land, particularly for the development of large residential buildings close to the foreshore. Their concerns are partly driven by a growing demand for open space as a result of increasing densities, which are in turn a reflection of State and local planning policies.

Maritime users have also expressed concern that residential development renders foreshore sites unavailable for future use by the maritime industry or necessary support industries. Residential sites may also lead to noise and lighting restrictions on adjacent maritime sites and transport corridors.

The Government has issued planning policies that recognise the importance of increasing public access and protecting the working harbour.

## 1.2 Premier's Vision statement

In August 1997 the NSW Premier Hon Bob Carr MP released a Vision statement about the Sydney Harbour Foreshore that provides an overall context in which to assess disposals of foreshore land.

The use of the word 'vision' in this context suggests that there should be an ability to plan or form policy in a far-sighted way.

The Premier's statement:

- dealt with publicly owned land in the possession of the Commonwealth, State and Local Governments
- stated that the Government's general objective is to use the disposal of surplus Defence properties around the Harbour to re-establish the concept of a green belt around Sydney Harbour
- made reference to a strategy to protect and enhance Sydney Harbour and its tributaries
- emphasised the importance of maximising public access to, and use of, land on the foreshore and the retention of key waterfront industrial sites.

### **Guiding Principles for Determining the Future Use of Publicly Owned Foreshore Land**

- maximise public access to, and use of, land on the foreshore
- public access links between existing foreshore open space areas should be retained 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 in 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
- in order to maintain the commercial viability of the Port of Sydney, consideration should be given to the retention of key waterfront industrial sites. Wherever possible, public access through these sites to the foreshore should be provided.

**Source:** *Sydney Harbour Foreshore*, A Statement by the Premier of New South Wales, August 1997.

This statement of principles was given legislative backing when a similar set of principles was issued as State Environmental Planning Policy no. 56 - *Sydney Harbour Foreshores and Tributaries* - gazetted in 1998.



### 1.3 The audit

This audit approached issues of effectiveness and efficiency through examining the processes that are expected to implement the policy decisions of government in relation to the disposal and use of foreshore land. Disposal may be by sale or long-term lease, typically up to 99 years. It generally involves the release of land for a new purpose. The audit does not question those policy decisions or the amounts of land set aside for such purposes.

#### Scope

We examined a sample of the more recent foreshore property disposals handled by government agencies, particularly in relation to how proponents and regulators make assessments in relation to two critical areas:

- the provision of public open space
- the retention of a working harbour.

Key agencies included:

- Department of Infrastructure, Planning and Natural Resources
- Sydney Harbour Foreshore Authority
- Sydney Ports Corporation
- Waterways Authority.

#### Focus

The audit focused on whether management arrangements for the disposal of foreshore land incorporate:

- a coordinated and strategic approach to the disposal of foreshore land
- adequate policies and procedures to guide land disposals
- information systems to support the management of land disposals
- avenues for stakeholder consultation
- performance assessment and reporting
- oversight and accountability arrangements.

#### Limits

The audit has not reviewed:

- land disposals that are not in the vicinity of the foreshore
- any specific Ministerial, Commonwealth or Local Council decisions or the decisions of the NSW Land and Environment Court
- whether the disposals, including any lease payments, were likely to represent value for money to the State Government.

#### **1.4 Acknowledgements**

The Audit Office gratefully acknowledges the cooperation and assistance provided by representatives of:

- State agencies including Department of Infrastructure, Planning and Natural Resources, Sydney Harbour Foreshore Authority, Sydney Ports Corporation, Department of Lands, National Parks and Wildlife Service, Sydney Olympic Park Authority, and Waterways Authority
- Sydney Harbour Federation Trust
- local councils including North Sydney, Hunters Hill, Leichhardt and Woollahra
- stakeholder groups including *Defenders of Sydney Harbour Foreshores*, *Protectors of Public Lands*, *Sydney Harbour Maritime Forum*.

#### **1.5 Audit team**

Bettina Ocias, Chris Yates, Denis Streater and Stephen Horne.

#### **1.6 Cost of the audit**

The audit cost \$189,000 which includes printing costs of around \$6,000.

## **2. Assessing disposal options**

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## 2.1 Disposal procedures

We wanted to know what guides decision-making by agencies about disposal options for foreshore land they own or have control over. To this end we asked questions like:

- how are options identified and assessed?
- is this coordinated at any level?
- are decisions guided by a broader purpose?
- are long term objectives and implications examined?

### **Total Asset Management Manual**

The Government's *Total Asset Management Manual* sets out comprehensive procedures for the disposal of land by public agencies requiring:

- assets, identified by an asset strategy as surplus to service delivery requirements, to be assessed in detail
- the advantages to Government, agency and the community in divesting assets to be assessed
- opportunities for increasing asset value to be identified
- disposal requirements including probity considerations to be identified.

Assessments of disposal options may be made:

- early, when a proposal is still at the concept stage
- later when a master plan is developed reflecting a specific development
- much later when a design has been developed and a development application has been lodged.

### **Government Asset Management Committee**

The Government Asset Management Committee has established a new mechanism with the potential to independently identify and address the non-commercial aspects of property disposal early in the process, based on Property Disposal Plans. New procedures ask agencies to:

- annually prepare and submit Property Disposal Plans to the Committee
- identify properties of strategic value, defined as valued in excess of \$3 million or possessing other whole-of-government benefits.

However, the Committee must to a large extent rely on proposals submitted, as it is clearly not intended to develop alternative proposals itself. And there is little guidance that might assist it in targeting or assessing the options for foreshore land, with a particular risk that small pieces of property will 'slip through the net'.

In any case the Committee cannot override the legislative commercial requirements of State Owned Corporations to make best use of their assets, including disposal. Nor could it be expected to override the legislative requirements of some agencies for the use of foreshore land in support of their core activities.

**Property  
database**

The Government Property Register currently does not include any linkages to Sydney Harbour foreshores. It does provide a text base for determining what the government's foreshore land holdings are. However their significance, and what agencies' intentions are for the land that they hold, are not disclosed.

The Register does not hold information concerning privately held sites that may be of strategic importance to the attainment of the Government's policies for foreshore land. However, the core title, survey and mapping information is held by the Department of Lands.

In January 2002, the Audit Office report *Government Property Register* emphasised the need for coordinated development of Government property information, and the establishment of a single, comprehensive record of all NSW Government property, including Crown land.

The Department of Lands has since advised that it has made good progress in the redevelopment of the Register and will soon deliver a facility for on-line inquiries by owner agencies.

The Department has taken steps aimed at integrating and improving land and property information, including:

- integrating the Register with other data covering land titling, valuation, survey and mapping
- working to finalise a single authoritative map of property boundaries
- developing a new computerised mapping capability for data held by state agencies
- leading a whole of government approach to the collection and distribution of government agency data consistent with a national approach.

The Department has a sophisticated mapping capability that can produce hardcopy and online property maps of Government held land showing a combination of themes including location, extent, ownership, zoning, and other attributes.

<b>Recommendation</b>	<p>We recommend that the Government improve its information base by:</p> <ul style="list-style-type: none"><li>▪ the Department of Lands developing, mapping and maintaining a central register of foreshore land holdings</li><li>▪ the Government Asset Management Committee monitoring what agencies' intentions are for the land that they presently hold</li><li>▪ establishing a means of identifying and monitoring key privately held sites.</li></ul>
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## 2.2 Initial assessment of disposal options

<b>Broad options</b>	<p>Initial assessments can provide:</p> <ul style="list-style-type: none"><li>▪ an early consideration of broad options as to whether and what type of development should take place</li><li>▪ an early opportunity for an independent assessment of the commercial and non-commercial options for a piece of foreshore land.</li></ul>
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<b>Consultation</b>	<p>Initial decisions to either redevelop a site or develop it as public space have not generally been subject to public consultation and a formal review of alternatives. This is not required of private sector proponents and appears to have not been the practice of Government agencies.</p>
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The Government's *Total Asset Management Manual* requires Government agencies, when considering the disposal of land, to undertake a preliminary assessment of its potential as open space, in the context of State Government's Open Space Strategy.

<b>Assessment studies</b>	<p>As such we thought we might find studies early in the process to understand the land in question, statements of cultural significance and policy for the place accompanied by supporting evidence, and the involvement of community groups.</p>
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But we could find no examples in recent years where this had occurred. Moreover, the Government has not updated the State's Open Space Strategy since 1988. We are not suggesting that options have not been considered at all. But the initial agency focus, range of options considered, and process used in a lot of cases seems to us more limited than the policy requirements suggest.

<b>Recommendation</b>	<p>We recommend that the Government require earlier development through the planning process of well-considered proposals for the non-commercial uses of foreshore land, such as public open space, and for working harbour.</p>
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It was suggested to us that extensive consultation on options at an early stage would be impractical and lead to indecision. We can see the concern. But we think that there are better ways to do this.

As an illustration, we looked at the process used by the Commonwealth's *Sydney Harbour Federation Trust*, albeit with the simpler task of ensuring that its lands stay in public ownership. It undertakes extensive consultation and prior preparation of a plan.

**Case Study - Sydney Harbour Federation Trust  
Early identification of options and extensive consultation**

The *Sydney Harbour Federation Trust Act 2001* requires prior preparation of a plan that must include:

- a history and description of the plan area, including an identification of current land uses of the area or parts of the area
- an assessment of the interrelationship between the plan area and the surrounding region, including other public land in the Sydney Harbour region and other Trust land
- an identification of proposed land uses in the area or parts of the area
- an identification of the nature of possible future owners of the area or parts of the area
- detailed estimates of costs that may be incurred in respect of the area, including costs for remediation, rehabilitation and conservation of the area.

**Source:** *Sydney Harbour Federation Trust Act 2001* Part 5, Section 28

### 2.3 Commercial pressures limiting disposal options

Given the commercial focus of private and many public sector organisations, it is to be expected that those intending to dispose of foreshore land will first seek to maximise the disposal value.

There are no clear financial incentives in our view for agencies and local councils to reserve foreshore land for open space and working harbour.

**"Highest and best" use**

Agencies are confronted with tensions between aspirational government policies and commercial realities expressed in government guidelines, such as:

In order to maximise the disposal value, an assessment should be made of the likely uses of the property after disposal. The proposed use should be the "highest and best" use and the assessment therefore includes examination of options for development of the property.

**Source:** *Total Asset Management Manual 2000*, Asset Disposal Strategic Planning

Treasury rules permit State budget dependent agencies to retain at least half the funds realised from disposal of an asset. Some agencies, such as Health and Education, are permitted to retain the full amount.

**Continuing costs**

It is to be expected that agencies will seek to avoid or minimise any continuing costs associated with foreshore land. The costs, management effort and responsibilities involved in preserving, developing and maintaining land for public uses can be quite considerable.

For example:

- passive public areas, such as parks, require provisions for access, landscaping, safety, cleaning, security
- active public areas, such as sporting areas, require additional equipment, facilities and supervision
- contaminated areas require costly remediation and rehabilitation measures
- wharves and seawalls that support the working harbour, many of which date from the late 19th century, are often in a poor state of repair
- historic heritage assets, many of which are in poor condition, are costly to maintain and the *Heritage Act 1977* obligates agencies to protect and maintain heritage items with due diligence.

The difficulties that this presents are most evident in assessing disposal of foreshore land for public access and open space.

For example, an internal audit of the maintenance needs of the NSW National Parks and Wildlife Service historic heritage assets was conducted in 1995. The audit identified that the Service required around \$78 million to manage these assets over the following 10 years. For items of State and regional significance alone, \$48 million was required.



**Sources of funds**

We looked to see what sources of funds might be available to offset the considerable costs associated with foreshore land.

These could involve:

- funding available from individual agencies' core budgets
- government funding programs specifically aimed at acquiring and developing foreshore land for public use or working harbour
- funding obtained from private sector involvement in the development of foreshore land for public use or working harbour.

**Government funding**

We found that, other than the funding available from within individual agencies, there is no designated program to fund, acquire, develop and manage public access sites involving key foreshore agencies, as:

- the *Sydney Harbour Foreshore Fund*, established under the *Sydney Harbour Foreshore Authority Act 1998*, exists specifically to enable that Authority to exercise its functions
- an *Open Space and Heritage Fund*, designed to fund the purchase of open space and conservation of heritage items, has not operated for many years
- a *Sydney Region Development Fund*, originally established to purchase land for the expansion of Government infrastructure such as roads and later used to purchase open space including foreshore land, has allocated some funds to improve harbour access but is now mainly focused on disposal of surplus land and purchase of open space in Western Sydney
- levies raised on developments under Section 94 of the *Environmental Planning and Assessment Act 1979* can only be used in a limited range of ways. They must be expended in a way that directly relate to the new development. In terms of public access, these levies are usually limited to small open spaces, walkways and public access improvements.

**Private sector involvement**

The Government has developed and published extensive policy and guidelines for private sector participation - such as those concerning private provision of public infrastructure. These guidelines emphasise that in calling for expressions of interest and tenders, the Government's requirements will be expressed as much as possible in terms of the outcomes sought so as to provide maximum scope for private sector innovation.

There is specific guidance for future private sector involvement in providing active public use of foreshore lands and maintaining working harbour, in the areas now controlled by:

- the Sydney Harbour Foreshore Authority
- the new Sydney Olympic Park Authority
- certain sites owned by the Waterways Authority
- some limited use of buildings in areas such as Sydney Harbour National Park.

But there is little specific guidance beyond these areas, or for the harbour as a whole.

This limits the Government's ability to gain initial assessments of the potential, the options and the commercial implications associated with private sector involvement in increasing public use of foreshore land.

**Recommendation**

We recommend that the Government balance the commercial pressures limiting disposal options with clear mechanisms for the funding, acquisition, development and management of public access and associated harbour infrastructure for the harbour as a whole. This should be coupled with clear guidelines on the use of funding mechanisms involving the private sector.

### Illustration of complexity of funding

The lengthy process to secure private sector involvement in the preservation and use of the North Head Quarantine Station highlights the complexity of the funding issues involved. The process took over 15 years so far. Over this period the Station has suffered considerable damage due to lack of funding.

In 2002 a Commission of Inquiry recommended any planning approval be limited to 21 years.

#### Case Study - North Head Quarantine Station A Lengthy Process to Secure Private Sector Funding

- The North Head Quarantine Station is located in the Sydney Harbour National Park. By reason of this and its outstanding environmental qualities, historic, heritage and cultural values to both indigenous and non-indigenous Australians, it is a place of National and State significance.
- In accordance with Government policy, consideration of avenues to carry out and fund required conservation has been in progress since 1987. Over this period the Station has suffered considerable damage due to lack of funding to enable sufficient maintenance work to be undertaken. Further lengthy delays in respect of action to conserve the Station must be avoided in the interest of its continued well being in regard to both maintenance and security.
- The NPWS since 1987 in accordance with government policy has been undertaking action directed to leasing of the Quarantine Station to the private sector.
- Private sector lease involvement enables, in terms of public access and public interest, an immediate economic and environmentally sustainable approach to conservation of the Quarantine Station.
- An overwhelming number of submissions made to the Inquiry opposed involvement of the private sector in the control and management of the Station and in particular, the proposed tenure of 45 years.
- The above circumstances and others detailed in various sections of this report has persuaded the Commission to recommend that any planning approval granted should be limited to a consent period of 21 years.

**Source:** Commission of Inquiry into Adaptive Re-use of the North Head Quarantine Station, 2002

And on 30 October 2003 the NSW Legislative Council passed a bill to establish a trust as a consent authority and to prevent any long-term lease or sale.

## 2.4 Planning instruments guiding disposal assessments

### **Environmental Planning and Assessment Act 1979**

The Department of Infrastructure, Planning and Natural Resources administers the *Environmental Planning and Assessment Act 1979*, which establishes the legislative framework for land use planning, development control and environmental impact assessment in New South Wales.

Local environmental plans, regional environmental plans and State environmental planning policies provide the statutory and strategic basis for making land use decisions. These plans and policies are referred to as environmental planning instruments.

Typically an application by a proponent may involve preparation of a master plan and must be accompanied by an *Environmental Impact Statement* or a *Statement of Environmental Effects*, setting out an environmental impact assessment of the development taking into consideration social, economic and biophysical factors.

Sydney Regional Environmental Plan no. 22 - *Parramatta River* - and Sydney Regional Environmental Plan no. 23 - *Sydney and Middle Harbours* - establish the planning framework and general principles for assessing development around Sydney Harbour. A Development Control Plan supplements the Regional Environmental Plans by establishing broad guidelines for development and activities. It is intended that Local Councils develop local environmental plans incorporating these guidelines and principles.

### **State Environmental Planning Policy**

In addition, the State Government declared certain key sites along the Harbour and Parramatta River, including land in Federal, State or private ownership, as of 'State significance'. State Environmental Planning Policy no. 56 - *Sydney Harbour Foreshores and Tributaries* - ensures that the Minister for Planning is the consent authority for some sites, and on other sites the consent authority, usually local councils, is required to prepare master plans in accordance with guidelines published by the State Government. Potentially the Minister has control of all the key sites.

A new draft regional plan Sydney Regional Environmental Plan no. 32 - *Sydney Harbour Catchment* - is being prepared to consolidate the range of planning instruments applying to the whole of the Sydney Harbour catchment area, including the Parramatta River.

## Interpretation

While there are a considerable range of instruments to guide disposal considerations, our discussions with those involved strongly suggested that the framework is not as persuasive as it may appear. Compliance with these policies is difficult to assess because of their broad nature. The assertion that “everyone understands” the requirements and works in sympathy with them may be true in principle, but it is not clear in practice in our view.

The planning instruments that relate to the disposal of foreshore land are open to considerable interpretation. For example, State Environmental Planning Policy no. 56 - *Sydney Harbour Foreshores and Tributaries* - requires that 15 guiding principles be taken into consideration, including:

- increasing public access to, and use of, land on the foreshore
- the suitability of the site or part of the site for significant open space that will enhance the open space network existing along the harbour foreshores
- the maintenance of a working-harbour character and functions.

‘Working harbour’ refers to the many water based activities that require the use foreshore land in order to function and generate employment, including commercial, government and recreational activities.

However, these are effectively heads of consideration, which may be interpreted differently by different agencies and local councils, particularly those endeavouring to satisfy the competing interests that will arise from the use of a national asset such as Sydney Harbour.

For example:

- the guidelines for the provision of public space, public access and working harbour are very broadly expressed with little indication of what should be where and what should be protected
- the long list of (often conflicting) guiding principles requires one to ‘pick and choose’ as there is little chance of complying with them all
- the State Environmental Planning Policy indicates no preference or priority for any particular guiding principle; it requires only consideration of ‘increasing’ public access and use of the foreshore’, so allowing the possibility that in some cases a small increase may suffice
- the area to which the policy applies is unclear, as there is no consistent approach to the boundary of foreshore land, which may extend some considerable distance inland to a ridge line or catchment boundary

- there is no consistent approach to the foreshore building line to restrict buildings from the shoreline; some Councils have adopted a fixed line based on an arbitrary number, others have developed their own criteria.

These matters are left to individual agencies and local councils with:

- limited authority
- limited resources
- no responsibility for whole-of-harbour outcomes.

It was suggested to us that although the framework is very complex, decisions are guided using a pragmatic case by case approach. It was also suggested that the results have been good, and consistent with designed policy outcomes. This might be true, but our discussions did not leave us with a strong sense of unity in purpose and direction of those involved.

Without doubt a great deal of excellent work has been done. That is not in dispute. But how much of what has been achieved is the result of the planning framework is not sufficiently clear to us. For as many good examples as may exist, there are other examples which seem curious to us. For example, the sale of the Cremorne tram shed (see Case Study) and its development as a private residence illustrates some of the complexities. A historic structure was retained, but a privately owned residence now sits amid a crown land reserve at a prime harbour foreshore location.

### Case Study - Sale of the Cremorne Tram Shed

- the Cremorne tram shed is surrounded by Crown Land on the foreshore of Cremorne Point, facing the Opera House
- State Environmental Policy no. 56 - *Sydney Harbour Foreshores and Tributaries* - was approved by the Government in March 1998, and gazetted on 1 April 1999
- in December 1998 State Transit Authority sold the tram shed to a private buyer for \$1.1 million (the sale was not referred to the Government Asset Management Committee as it was less than \$3 million)
- North Sydney Council approved a development application to convert the tram shed to a private residence
- the (former) Director-General of Planning decided not to take legal action to have the approval rescinded.



Cremorne Tram Shed

The lengthy processes involving the disposal of Department of Health sites highlight the complexity and costs associated with issues such as the provision of open space.

**Case Study - Department of Health Sites**

- the Department of Health owns around 79 hectares of land at the Rozelle (Callan Park) and former Gladesville Hospital sites, which are used for a range of health purposes
- the sites contain many heritage buildings, some of which are neglected and poorly maintained
- a part of the Gladesville site, along the foreshore, has been transferred to the Parramatta Regional Park; a part of the Rozelle site was also proposed to be transferred to the Park
- the Department has commissioned master plans for both sites that suggested tens of millions of dollars might be raised in support of core service functions
- community pressure has led to the Callan Park (Special Provisions) Act 2002, the object of which is to ensure the whole of Callan Park remains in public ownership
- and the future of the Gladesville site remains in doubt with plans still in preparation.



**Gladesville Hospital Site**

To date there has been no systematic review of the effectiveness of the Government's planning instruments in supporting achievement of the Premier's Vision for Sydney Harbour's foreshores. This is likely to be addressed in the development of the new draft regional plan Sydney Regional Environmental Plan no. 32 - *Sydney Harbour Catchment*. However, it may be very difficult to assess the effectiveness of planning instruments where their intended outcomes are open to such a degree of interpretation.



### **3. Developing a more strategic approach to the disposal of foreshore land**

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### 3.1 Strategic limitations to disposal assessments

We looked for the extent to which disposal actions were undertaken with a view to the 'bigger picture' strategic objectives. Our thinking was that a strategic approach would be necessary if the long term policy aspirations of the Government were to be realised.

While policy and strategic material exists and has been disseminated, after discussing this issue widely our strong impression was that the disposal of foreshore land appears to be considered largely at a project level. A full assessment of the contribution of a project or local development to the future of Sydney Harbour would require an analysis of the role of the project in a much wider context.

#### Community asset

The new draft regional plan Sydney Regional Environmental Plan no. 32 - *Sydney Harbour Catchment* - refers to the catchment, foreshores, waterways and islands of Sydney Harbour as a community asset of national significance.

It could be expected that the disposal of foreshore land would be assessed in terms of its impact on the community asset as a whole. However, consideration of these strategic issues is beyond the scope of individual project environmental impact assessment or locally focused master plans.

#### Assessing impact

In our November 2001 report on *Environmental Impact Assessment of Major Projects in NSW*, we noted that project level assessment does not provide an adequate mechanism to consider the cumulative impacts of developments that may all be impacting on the same geographical area. This applies particularly to the use of foreshore land in the context of Sydney Harbour.

Project level assessment comes after the proponent has invested considerable effort in developing the favoured proposal, long after the foreclosure of broad options.

Nor does the process of exhibiting a proponent's assessment of a fully developed proposal and seeking written comments provide sufficient assurance of effective public involvement, since it:

- comes relatively late in the process of project definition and assessment
- requires the public to comprehend and address, within a relatively short space of time, the implications of a multi-volume (largely technical) document, usually shared amongst many people
- does not facilitate the input of community members or groups who feel unable or unwilling to prepare written submissions.

Master plans, which are now required for sites designated to be of 'State significance', offer an earlier opportunity for consideration. They are potentially very useful. But the scope and detail of the master plan may be little different to that of the specific project proposal. The master plan is not, for example, required to consider the whole of a bay.

**Recommendation**

We recommend that the Government's planning instruments for Sydney Harbour require that long-term impact of foreshore land disposals on the whole of the harbour to be considered and assessed.

### **3.2 Considering disposal in the context of the harbour as a whole**

Whilst in a specific sense, a piece of foreshore land may seem a prime location for a residential development, in a more strategic sense it may serve a less obvious purpose supporting other functions of the harbour as a whole.

***Sharing Sydney Harbour***

Under the heading *Sharing Sydney Harbour*, the Government has promoted a whole-of-government approach to the future development of Sydney Harbour.

In 2000 the Government issued the *Sharing Sydney Harbour Regional Action Plan*. It referred to four themes:

- *Natural harbour* - a healthy, sustainable environment on land and water
- *Urban harbour* - a high-quality urban environment
- *Working harbour* - a prosperous, working waterfront and an effective transport corridor
- *People's harbour* - a culturally rich, accessible, active place for people.

**Projects**

The *Sharing Sydney Harbour Regional Action Plan* consists of a number of projects, which have included:

- foreshore and access improvement program
- land supply for the working harbour
- 'framework' plans for strategic sites
- City Area Foreshores Strategy.

### 3.3 Assessing options to increase public access and open space

Public access and foreshore open space may take many forms, such as:

- parkland
- bushland
- walking tracks
- promenades
- boat ramps
- wharves and jetties
- roadways
- restaurants
- theatres
- retail areas.

The Government has estimated that around 60 per cent of the 230 kilometres of the foreshores of Sydney Harbour and its tributaries are publicly accessible, which compares favourably with other port cities.

Government policy does not anticipate that complete access to every inch of harbour foreshore will be possible. However, over time, maximum possible access is desired. The question is now how access to the remaining areas can be achieved. Clearly, it will be difficult. In our view it will not happen without deliberate, concerted and extended effort. We think that there are some important additional steps that can be taken towards realising this vision.

#### **Access improvements**

There is a clear awareness amongst the relevant agencies and local councils that public access is an essential component of all disposal decisions. We are told that this awareness extends to private sector developers.

But even so, there is as yet no well documented strategy for public access and open space, no open space network and no open space plan covering the area around Sydney Harbour, although there have been some significant programs that have moved in this direction.

The recently released *Harbour Access Plan* is an example of the Government working with local councils to develop a list of relatively low cost improvements to public access.

**Case Study - Improving Public Access  
Harbour Access Plan**

- In January 2003 the Government issued for public consultation a draft document showing potential improvements in public access to the Harbour.
- It emphasised the importance of not only improving public access along the foreshore, but improving public access to and from the waterway
- Potential public access improvements included boating access, walking tracks and cycle ways.
- The Government announced that it would provide \$2m a year for 5 years for projects, but only where local councils agreed to share the costs. Design and costing of potential projects is to be undertaken at a later stage.
- A similar program was initiated in 1995, known as the *Parramatta River Foreshores Improvement Program*. It led to the establishment of walking tracks, cycle ways and some improvements to open space on the foreshore.
- The program resulted from the combined efforts of Waterways Authority, Sydney Harbour Foreshore Authority and the Department of Infrastructure, Planning and Natural Resources.

**Open space improvements**

Open space might promote active public participation, passive participation, or just offer a break in the environment. Also, as community dynamics change, such as from an ageing population, requirements for open space will also continue to change. Consideration of open space needs expert assessment and economic costing.

**Green belt**

At a regional level, the Premier's 1997 statement referred to the re-establishment of a green belt around Sydney Harbour.

As a general objective, the NSW Government hopes to use the disposal of surplus Defence properties around the Harbour to re-establish the Nielsen concept of a green belt around Sydney Harbour.

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

The Government amended the National Parks and Wildlife Act to create a new category of protected area to enable lands to be reserved as Regional Parks. Seven new parks included foreshore land at the:

- Rozelle Hospital (Callan Park) site
- Gladesville Hospital site
- Concord Hospital site.

These were to be incorporated into a Parramatta River Regional Park. The boundaries of the park at Gladesville and Concord were agreed following lengthy negotiations between the Department of Health and the National Parks and Wildlife Service. There has, as yet, been no agreement in relation to Rozelle (Callan Park).

### **Planning future requirements**

The Government has previously emphasised the need for an open space network. Open space plans are emerging as a necessary tool in open space and recreation planning. This includes setting priorities and, where possible, identifying sites for purchase or improvement. An assessment of the existing supply of open space is an essential step. Over time demand the demand for open space may change, particularly in view of policies of increased urban consolidation. Also the usefulness of some open spaces may change, due to population changes or a change in recreational needs.

But as yet there is no open space network and open space plan covering the area around Sydney Harbour. The last review of Sydney's open space was the *Metropolitan Open Space Strategy*, issued in 1991. The last Sydney region open space survey was conducted in 1982.

In 1997 a Metropolitan Regional Parks Unit was created in the National Parks and Wildlife Service to coordinate the establishment, management and conservation of significant recreational and open space facilities within the Sydney Metropolitan Region. But the Unit has since been disbanded.

The Department of Infrastructure, Planning and Natural Resources has been working to establish an open space and outdoor recreational planning framework for Western Sydney. This could also be done for the area surrounding the harbour foreshores.

Planning for the range of other forms of regional public access and open space has tended to focus on the city foreshores area, particularly with the development of Darling Harbour, and the areas of the Sydney Harbour National Park, the Sydney Olympic Park Authority and the Sydney Harbour Federation Trust.

The following example illustrates efforts to formalise a foreshore promenade policy, albeit limited to the area controlled by the Sydney Harbour Foreshore Authority.

**Case Study - Planning Public Access  
Formulating a Foreshores Promenade Policy**

- Sydney Harbour Foreshore Authority has issued for public consultation a draft Foreshores Promenade Policy.
- The policy aims to provide a continuous foreshore promenade on all the city foreshore land that it owns.
- This includes, if necessary, the use of temporary board walks over water adjoining foreshore land.
- The report examines current setback widths and sets guidelines and principles for the provision of foreshore access along the missing foreshore links.
- It proposes a minimum promenade width on the Pyrmont peninsular of 6 metres and an average of 10 metres.



**Foreshore Promenade at Jackson's Landing**

### 3.4 Assessing options to maintain a Working Harbour

Although there are various plans and publications covering “working harbour”, our view is that there is as yet not a well documented strategy or plan to protect potential working harbour sites from being lost to other forms of development.

#### **Understanding the requirement**

The Government has indicated that the term ‘working harbour’ refers to a range of water-based activities that require the use foreshore land in order to function and generate employment (*Land Supply for the Working Harbour*, January 2003). This is a broad, aspirational-style policy. We tested how well it was understood and applied.

Amongst the many parties we spoke to we found no common understanding of the working harbour ‘character’ that the Government wishes to maintain, with the result that the requirement can be misinterpreted.

For example, is it to be representative of all functions, or heritage based? To what extent does it need to be economically viable? To what extent, for instance, does providing private berths for the boats of residents satisfy the requirement? We found that many former working harbour sites have been re-zoned residential, particularly smaller sites surrounded by residential areas.

#### **Rolls Report**

In 1999 the Waterways Authority commissioned the *Rolls Report* to provide an understanding of the sites available for the working harbour at that time, and the potential demand for those sites.

The *Rolls Report* identified industries likely to experience growth as:

- industries that serve recreational boating
- marine contractors that build or maintain waterfront structures on the harbour
- the commercial port activities
- the charter boat industry.

#### **Efforts to protect working harbour**

There have been efforts to protect working harbour, including:

- the Sydney Harbour Foreshore Authority, following representation from the charter boat industry and Waterways Authority, made provision for ongoing commercial vessel usage as part of the commercial redevelopment of Jones Bay Wharf and agreed that residential development would be incompatible with charter vessel activity
- the Government resisted re-zoning of the former Australian Defence Industries site at Ryde, which has been a boat building and repair facility for most of last century, but was purchased for residential development.



The Government has also introduced the concept of establishing maritime precincts - designated locations around the harbour where water-dependent industrial functions can cluster and operate without the threat of dislocation.

Three sites are presently being earmarked as maritime precincts:

- a master plan has been completed which secures over ten hectares of land at Rozelle and Blackwattle bays as a maritime precinct
- a master plan has been completed which secures about forty hectares of land at Glebe Island and White Bay as a commercial maritime precinct
- the draft master plan for the Homebush Bay West site, prepared for Waterways Authority and the Sydney Olympic Park Authority indicates that it will also be developed as a maritime precinct.

However, so far this process has been limited to:

- three specific sites, owned by Waterways Authority and Sydney Ports Corporation, identified for development as working harbour 'precincts'
- a Waterways Authority policy favouring the use of its surplus land for working harbour applications
- the availability of sufficient Waterways Authority land for this purpose
- Sydney Ports' strategy to retain and continue upgrading Sydney Harbour commercial port facilities and improve road and rail links to these facilities
- the potential availability of some surplus Defence land.

And the Premier on 5 October 2003 announced that, when the stevedoring leases at Darling Harbour East, Glebe Island and White Bay expire, they will not be renewed. Sydney Harbour will, over the next decade cease to be a container terminal.

#### **More strategic approach**

The Government has recognised the need for a more strategic approach:

As a result of these pressures, the land available for the working harbour has diminished to the extent that most of the key sites either in operation or vacant are in Commonwealth or State government ownership. **This places a responsibility on the NSW Government to ensure that a strategic plan is in place to protect potential working harbour sites from being lost to other forms of development.**

**Source:** NSW Government, *Land Supply for the Working Harbour*, January 2003

The report *Land Supply for the Working Harbour* identified 18 key Commonwealth, State and privately owned sites that are either vacant or under-utilised. It identifies future steps to include:

- assessing market response to a release of waterfront industrial land at Rozelle and Blackwattle Bay
- undertaking an economic analysis of the boat storage and repair sector
- assisting in a review of marinas and waterfront berthing
- gaining a better understanding of the availability of under-utilised waterfront land.

**Factors to consider**

Factors to consider in relation to marine use of foreshore land would also likely include:

- the overall nature, extent and impact of encroachment on working harbour sites, including limits to operations arising from complaints from new residential developments
- the demand for foreshore use by each segment of working harbour, both current and future
- any specific gaps in the supply and demand for foreshore land, indicating likely timing and location
- the alternatives and implications for each segment should foreshore land be unavailable, including current and projected industry structures where change is anticipated
- the cost structures and socio-economic benefits associated with each segment
- the contribution of working harbour 'character' associated with each segment.

As there are many segments involved, and as this would need to be undertaken in a consultative manner with the industry, it is evident that considerably more work needs to be done. We believe that there is a need to adopt a more proactive approach, looking more intensively at what is needed overall and what can be done to achieve that.



Sign says:            **'NOISE WARNING  
THIS IS A WORKING PORT  
THIS SITUATION WILL NOT CHANGE'**

### **3.5 Improving strategic planning**

We have reviewed many documents that are referred to by agencies as strategies and plans. These are important building blocks, and reflect an awareness of policy and strategy. However, in our view there is not as yet a coordinated strategic land use and development plan for Sydney Harbour.

#### **Need for coordination**

Conflicts and mismatches are inevitable when strategies and plans are developed separately for:

- increasing residential density and urban consolidation
- increasing public access and open space
- maintaining and protecting working harbour
- development control by local councils, covering extensive private land and locally managed public open space
- development by the Commonwealth of its former Defence sites, which cover a total of 137 hectares.

**Strategic land use and development plan**

The individual strategies and plans would be enhanced if they were coordinated and reconciled and the developments incorporated to form a strategic land use and development plan. The results need to be reflected in the Regional Environmental Plan.

The Government is fairly well positioned to take this next step, with its policies in place and plans in preparation giving a good base. However, it is an important next step to be taken.

To date, other than efforts to develop the *Harbour Access Plan*, strategic planning has been generally limited to the city foreshores area. The NSW Government developed the *City West Urban Strategy* in 1990 to guide the redevelopment of the Ultimo/Pymont peninsula. A draft *City Foreshores Area Strategy* issued in January 2003, has evolved from the original *City West Urban Strategy*. The strategy consists of a vision and broad development principles for each precinct in the city foreshore area. An important difference from the original strategy is an increased emphasis on the role of the port and other waterfront-dependent activities.

**Framework plans**

The Regional Action Plan 2000 included a project involving the preparation of framework plans for a number of strategic sites. The plans were intended to lay the groundwork for their future use and management by:

- describing the unique features of the sites
- briefly summarising the land use issues and future planning opportunities.

Compared to the master plan, which is prepared to statutory requirements, the framework plan could allow for quicker assessment of the potential opportunities and constraints and so allow for earlier public involvement and an independent assessment as it is not prepared by the proponent.

Completion of the framework plans, within an overarching plan for Sydney Harbour foreshores, could assist the Government to take a more proactive stance in relation to foreshore development.

Draft framework plans were prepared for around half of the 24 sites nominated. Up to 20 attendees including local government, community representatives, land owners and state agencies met to consider each site and agree on the broad elements of future development. However, the draft plans have not as yet been published to enable public consultation and there has been no further progress.

**Recommendation**

We recommend that the Government establish an overall strategic land use and development plan for the harbour.

It was put to us that the notion of such a strategic land use plan was unworkable, as it has not been possible to plan in such a level of detail. It was preferable to allow for flexibility, and to see what proposals might eventuate, and then to apply policy goals and planning instruments to specific situations.

We can understand the practical aspects involved and the desire to leave options open. But in our view this does not provide a tangible holistic future vision for the harbour.

Some argue that the current mix of aspirational statements, planning instruments, strategies and plans achieves this. We think that the current mix of such material may in fact be too complex. And even then it lacks the holistic and more detailed guidance which we think is necessary. Without such a “road map”, our concern is that decisions are made on a limited basis.

We think that the importance of the harbour warrants the effort required to give some guiding detail in the form of a strategic land use plan.

To some, this view may seem simplistic. But other jurisdictions have done so, and we see no reason why Sydney Harbour should not have one too. Such plans for the Thames estuary and Vancouver Port are but two of many examples.

**Case Study - Strategic Planning  
Vancouver Port Authority's *PORT 2010***

The Vancouver Port Authority's **strategic land use and development plan**, *PORT 2010*, was initiated during the early 1990s and approved in June 1994.

The goals of *PORT 2010* are to:

- establish and communicate long-term land use management policy and a strategic land use plan to Port customers and neighbouring communities
- establish land use designations throughout the Port to provide certainty of use in the future
- establish comprehensive processes for project review and environmental appraisal, which include appropriate consultation with neighbouring communities and government agencies.

The planning assumes:

- the Port is a major economic engine and a significant asset to attract new businesses
- the Port of Vancouver is a self-financing, working port
- the public benefits provided go beyond economics and include environmental stewardship, public parks and conservation areas, and public access to the water
- the public benefits must be balanced with operational realities.

*PORT 2010* sets out specific long-term land use policies that reflect Port operational and capacity needs. These policies describe the types of businesses that depend on a port location and the types of businesses that service/support port businesses. The policies also address public use and access to Port lands and water.

**Source:** Vancouver Port Authority, website accessed 5 September, 2003

## **4. Strengthening governance**

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### 4.1 Our Harbour - a single complex place

Elsewhere in this report we asked the question of what policies, strategies and plans guide decision-making for the disposal of foreshore land. Our examination identified a range of material. But our view is that an overarching or unifying strategic plan is a necessary next step towards holistic management of the disposal of foreshore land.

But regardless of what plans and policies may exist, it is agencies and local councils that collectively shape outcomes in practice. This leads us to ask questions about how foreshore land disposal actions are coordinated and, at a higher level, how disposal is governed towards the desired outcomes.

The Sydney Harbour foreshores are part of a highly complex place. The Government has recognised this:

the New South Wales Government sees the Sydney Harbour catchment as a system which must be managed as a single complex place

**Source:** 'Our Harbour' Agreement between the Minister for Planning, the Sydney Harbour Executive and the Sydney Harbour Councils, October 2002

#### Management

Managing the harbour as a single complex place requires:

- coordinating the efforts of agencies to achieve effective place management of its foreshores
- taking a strategic 'whole of harbour' approach to the development of the harbour foreshores
- ensuring that the outcomes for the harbour as a whole matter more than the outcomes for individually managed agencies
- taking a proactive role in promoting effective utilisation of the harbour foreshores.

A multiplicity of government agencies and levels of government complicate the management of harbour foreshores. For many of these agencies, the management of Sydney Harbour foreshore land is not core business.



<b>Management Responsibility</b>	<b>Foreshore Land</b>
Sydney Harbour Foreshore Authority	city foreshores area including The Rocks, Darling Harbour, and Pyrmont
Waterways Authority	owner of the harbour bed and many foreshore sites including King Street Wharf, Walsh Bay and Rozelle Bay
Sydney Ports Corporation	the passenger terminal at Circular Quay, Darling Harbour berths, Glebe Island and White Bay container terminals
National Parks and Wildlife Service	Sydney Harbour National Park, which includes North Head, Bradleys Head, Nielson Park, South Head, Fort Denison, and other islands
Department of Sport, Recreation and Tourism	regional parks including Parramatta River Regional Park
Sydney Olympic Park Authority	the park lands at Sydney Olympic Park
Sydney Harbour Federation Trust (Commonwealth)	former Defence lands, now considered surplus, including land at North Head, Middle Head, Woolwich, Garden Island, Cockatoo Island and Spectacle Island
State agencies such as Roads and Traffic Authority, State Transit Authority, Department of Health, Department of Education and Training, and Department of Lands	smaller foreshore holdings such as for roads, hospitals, schools
Local Councils	most of the remaining foreshore, except for special areas such as Taronga Zoo or the Opera House

The effectiveness of the Government's efforts to control the disposal, use and re-development of foreshore land depends on a close co-ordination of the efforts of agencies and local government.

This is a difficult situation. Agencies and local councils may legitimately be following different agendas within an overall strategy. Communication is needed of the right sort, at the right time, to the right people, on the right issues. General in-principle understandings would not be sufficient. This requires a dynamic and sophisticated matrix form of governance. The importance of Sydney Harbour demands no less.

## 4.2 Communication and coordination

### Sydney Harbour Committees

In a significant move, the Government in 1998 established a Sydney Harbour Manager as a central point of contact and coordination for harbour related activities, including land use and planning around the foreshores. The Government also established a number of committees to facilitate communications and cooperation on a range of harbour issues, projects and programs.

These include:

- *Sydney Harbour Executive*, which consists of senior executive representatives of 20 NSW Government agencies and three Commonwealth government agencies, each of which has specific interests in the harbour and its catchment.
- *Sydney Harbour Councils* group, supported by a *Sydney Harbour Councils Executive*, which represents 19 member councils whose local government areas fall within the harbour catchment area.
- *Sydney Harbour Catchment Management Board*, which is made up of representatives of government agencies, local councils and community groups.
- *Sydney Harbour Region Environment Forum*, which is a forum of non-government organisations with an environmental focus.
- *Sydney Harbour Maritime Forum*, representing shipping, boating, maritime construction, recreational and commercial interests of Sydney Harbour.

The *Sydney Harbour Executive* is the lead committee, tasked through a memorandum of understanding between agencies to:

- be the principal body for promoting strategic and coordinated whole-of-government management of Sydney Harbour and its catchment
- promote collaboration within government and between government and other peak stakeholder groups (including the other committees listed above)
- share information on the management of Sydney Harbour and its catchment and develop joint responses to emerging Sydney Harbour issues
- implement the *Sharing Sydney Harbour Action Plan*.

Another memorandum of understanding, the *Our Harbour Agreement*, commits the harbour councils to work with it.

**Monitoring disposal intentions**

Noting that in the past Sydney Harbour property dealings have tended to proceed in isolation to whole of government considerations, the *Sydney Harbour Executive* adopted a 'Protocol for Government Owned Land on Sydney Harbour Foreshore' on 13 November 2002. It stipulates that members must report on the following:

- a proposed disposal, acquisition or 10 years (or greater) lease commitment is under consideration
- where land is declared surplus
- where significant development or change of use of foreshore land is under consideration.

The position of Sydney Harbour Manager has since been abolished. While there is no direct hierarchical reporting relationship between the committees, there are indirect relationships, such as through the use of observers and the sharing of minutes. The committees continue to be supported by an Executive Officer tasked with:

- assisting the *Sydney Harbour Executive* in implementing the *Regional Action Plan* and other whole-of-government initiatives
- providing effective liaison and partnership building with government agencies, local councils, industry and other stakeholders
- providing a secretariat for the Sydney Harbour Executive, the Sydney Harbour Councils and the Sydney Harbour Councils Executive.

### 4.3 Governance structure

We have carefully examined how the governance framework operates and have spent much time listening to those involved and their varying views about this. Whilst each party has a clear view of their own approach and intentions, and there are various communication channels, we are not sufficiently confident that a unified strategy is operating in practice.

In our view, accountability for the future development of Sydney Harbour foreshore land is fragmented and not sufficiently clear. This is not a comment on the conscientiousness of the various bodies involved. It is an observation that at an overall level we think the picture is too complex. It is not clear how the many projects of Federal, State and Local government will be coordinated. There is not an obvious governance structure to implement Government's objectives for the harbour foreshores.

**Requirements** Governance refers to the processes by which entities are directed, controlled and held to account. Well-defined governance requires:

- clear lines of authority and accountability for outcomes
- predictability assured by legislation
- participation of affected groups
- transparency.

The Sydney Harbour Executive is a positive mechanism, but it could not completely fill this requirement.

Although tasked with being the principal body for promoting strategic and coordinated whole-of-government management of Sydney Harbour, its functions have been limited to promoting collaboration and sharing information, and participating in the *Sharing Sydney Harbour Regional Action Plan*.

It does not include representatives of the public, or represent other large landholders (including local councils). To suit its brief, it generally meets 4 times a year, with its meetings closed to the public and minutes not publicly available. There is no annual report. It has no significant resources, no legislative authority, no articulated strategy and no other stated purpose.

It has proven to be a very valuable network, with communication and coordination benefits. Without it, fragmentation would be an even greater issue. But in our view the question is what is needed to take things forward from here?

**Localised examples** Governance and place management are well defined in relation to some specific foreshore areas with a defined focus and resources, such as:

- the city foreshore area, where the Sydney Harbour Foreshore Authority has clear legislative authority and well-established governance processes within its defined area of responsibility for the city foreshores. Its aims include protecting the natural and cultural heritage of the foreshore area and the provision of entertainment and recreational facilities. However, it is required under NSW Treasury's Commercial Policy Framework to operate in a commercial manner in accordance with policies designed to emulate private sector practices. This includes the need to observe commercial confidentiality.
- Sydney Olympic Park, where the Sydney Olympic Park Authority's legislation requires a plan of management for the Parklands that categorises all areas of the Parklands as a natural area (for example, as bushland, wetland, escarpment, watercourse or foreshore), a sportsground, a park, an area of cultural significance or for general community use. The development of the Concept Plan for this was a collaborative and consultative effort involving a project team of 15 different organisations managed by the Olympic Co-ordination Authority. The team included specialists in landscape design, environmental management, recreation, and cost planning.

The Waterways Authority leads the protection of working harbour, but it is necessarily limited in how proactive it can be. It has no particular legislative authority to support its efforts, except in relation to land that it already owns.

Sydney Ports Corporation is involved in the protection of the working harbour for its commercial port purposes.

**Limitations**

In our view the current voluntary association of agencies is not sufficiently durable to provide the robust leadership and governance which a foreshore disposal and use strategy will demand if the Government's aspirations are to be realised. We think that the current arrangements lack the structure and accountability necessary to assure success. For the most part, Sydney Harbour's foreshores remain governed by a multitude of government authorities, each having a role to play in the management of the 'place', but none having the ultimate authority to ensure the final result is as planned.

**Options**

We believe that the current governance framework will not be sufficient for the challenges ahead. For what needs now to be done, we think that existing governance arrangements are too complex and are not equipped to be decisive or to drive actions in an holistic way.

There are various options for strengthening governance arrangements for a shared natural and socio-economic resource, which involves different levels of government.

These range from:

- advisory committees to governing boards, depending upon the degree of accountability sought
- voluntary associations, reflected in a memorandum of understanding, to structured organisations supported by legislation
- committees supported by a small secretariat to boards supported by a fully staffed executive
- bodies with no control over resources to those exercising complete control over resources.

We canvassed a variety of views about this. We found no uniform view. We identified a variety of approaches to similar situations overseas. But we found no uniform models. We did find that there are tensions between those involved, and a general preference for no change.

It was put to us in various ways that everyone is clear about their role and is following the general policy directions desired. It was also put to us that existing mechanisms may not be ideal, but were coping and were less problematic than change. We understand these concerns. But we believe that change can be approached in a positive way and could add value to existing arrangements. Moreover, we think that change is necessary to effectively govern the harbour foreshore outcomes.

This is clearly a highly sensitive issue. As such, it needs to be explored carefully.

We recommend that the Government revise the governance responsibilities and structures for the strategic development of Sydney Harbour foreshore land to ensure that they provide:

- clear lines of authority and accountability for outcomes
- a defined process
- participation of affected groups
- transparency.

## Appendices

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## **Response from Department of Infrastructure, Planning and Natural Resources**

*Thank you for the opportunity to respond to the final draft of the performance audit on Sydney Harbour Foreshore Land. I note the considerable effort your performance audit team has already put into this audit exercise and the previous consultative opportunities afforded to the departments whose actions and responsibilities are assessed in this report.*

*The Department is in general agreement that the performance audit provides some useful analysis of the issues facing Sydney Harbour and its effective management and governance. However, the audit has not sufficiently recognised the considerable efforts of the Government in recent years to develop appropriate controls and mechanisms to manage Sydney Harbour.*

*This commitment is evidenced through initiatives such as:*

- *The creation of the Department of Infrastructure, Planning and Natural Resources to provide the mechanism for strategic leadership on land use, infrastructure and natural resource outcomes,*
- *The purchase of significant sites for public benefit (such as Ballast Point),*
- *The commitment to retaining former federal defence lands in public ownership (Sydney Harbour Federation Trust lands),*
- *The creation of a single agency to deal with strategic foreshore sites in the harbour (SHFA),*
- *The creation of a governance structure to provide a mechanism and voice for harbour stakeholders (Sydney Harbour Executive, Sydney Harbour Councils, Sydney Harbour Research Forum etc),*
- *The creation of an advisory body to address foreshore design issues (Sydney Harbour Design Review Panel)*
- *The creation of a single planning instrument to regulate development on and around the harbour (REP 32); and*
- *The implementation of a wide range of projects and policies to enact the Premier's 1997 vision for the harbour (Sharing Sydney Harbour Access Program etc).*

*In addition, the Government has set in train initiatives which will address two of the most significant issues raised in the report, namely the need for a better strategic planning framework for the harbour and the need for a review of governance.*



*The development of a Sydney Harbour Strategy has already been initiated. When completed, the Strategy, combined with the draft Sydney Harbour REP 32, will provide the mix of strategic direction and regulatory controls needed to sustain the harbour well into the future.*

*As part of development of the Sydney Harbour Strategy, the Sydney Harbour Executive has itself initiated a reconsideration of the existing harbour governance structure to ensure it remains effective, streamlined and accountable. The Department does not consider it necessary or wise to embark on the creation of a new governance structure at this time. Rather DIPNR's enhanced strategic and coordination role, SHFA's potentially enhanced place manager role and Waterways role in the aquatic environment, are the way forward for simpler and stronger governance arrangements for the harbour.*

*I have provided more detail on the specific recommendations in your report in the attached pages.*

*(signed)*

*Jennifer Westacott  
Director-General*

*Dated: 10 November 2003*

### **2.1 Disposal Procedures**

***We recommend that the Government improve its information base by:***

- ***The Department of Lands developing, mapping and maintaining a central register of its foreshore land holdings***
- ***The Government's Asset Management Committee monitoring what agencies' intentions are for the land that they presently hold***
- ***Establishing a means of identifying and monitoring key privately held sites.***

*DIPNR has no problem with this recommendation although noting the resource implications of maintaining a database and monitoring indefinitely.*

### **2.2 Initial assessment of Disposal Options**

***We recommend that Government require earlier development through the planning process of well-considered proposals for the non-commercial uses of foreshore land, such as public open space, and for working harbour.***

*This recommendation is best addressed through the development of a land-use strategy as recommended at 3.5, which would provide a public articulation of the intended uses for land on a whole-of-harbour basis.*

### **2.3 Commercial Pressures limiting Disposal Options**

***We recommend that the Government balance the commercial pressures limiting disposal options with clear mechanisms for the funding, acquisition, development and management of public access and associated harbour infrastructure for the harbour as a whole. This should be coupled with clear guidelines on the use of funding mechanisms involving the private sector.***

*This recommendation is supported by DIPNR although further clarity regarding 'funding mechanisms involving the private sector' should be provided.*

The Government has already demonstrated a commitment to acquiring and maintaining significant harbour sites such as Ballast Point. The ability of Government to buy significant sites is limited and comes at a cost of land purchases for public benefit elsewhere in the state. It should be noted that there is significant commercial disadvantage in making public the Government's intent to purchase sites from private ownership. It should also be noted that a number of significant sites are due to return to the Government from the former defence sites managed by the Sydney Harbour Federation Trust and this will add to the significant open space assets around the harbour.

Many historic sites have substantial maintenance requirements and thus require consideration of potential off-set commercial funding mechanisms. Where a mix of commercial and non-commercial lands is managed by a single agency, it provides the opportunity to balance one use against the other. The Sydney Harbour Foreshore Authority has the ability to do this with the portfolio of land it manages. The coupling of this responsibility with clear guidelines on appropriate private sector funding mechanisms is supported.

### **3.1 Strategic Limitations to Disposal Assessments**

**We recommend that the Government's planning instruments for Sydney Harbour require that long-term impact of foreshore land disposals on the whole of the harbour to be considered and assessed.**

While a guiding principle regarding disposal of foreshore land could be incorporated into the existing harbour planning instruments or in the draft consolidated Sydney Harbour REP 32, it should be noted that planning instruments only have effect when a change of land-use is being considered (such as the construction of a building) or when a plan is being made (such as a LEP); not when a piece of land is sold or being considered for sale. The suggested requirement would not have any trigger mechanism and be impossible to police (particularly for private land). There already exists a mechanism for considering the disposal of significant public land (GAMC) in a strategic manner. The impact of foreshore lands on the whole of the harbour would best be considered through a harbour strategy (see point 3.5 below).

### **3.5 Improving strategic planning**

**We recommend that the Government establish an overall strategic land use and development plan for the harbour.**

DIPNR supports this recommendation and has already initiated the development of a Sydney Harbour Strategy.

### **4.3 Governance Structure**

***We recommend that the Government revise the governance responsibilities and structures for the strategic development of Sydney Harbour foreshore land to ensure that they provide:***

- ***Clear line of authority and accountability for outcomes***
- ***A defined process***
- ***Participation of affected groups***
- ***Transparency.***

*While DIPNR strongly supports the requirement for effective governance of Sydney Harbour, it does not agree with the report's assertion that*

*'voluntary association of agencies is not sufficiently durable to provide the robust leadership and governance which a foreshore disposal and use strategy will demand if the Government's aspirations are to be realised'.*

*Governance of Sydney Harbour is much more than simply the actions of state agencies. It includes the actions, policies and decisions of federal agencies, local councils, community and indigenous groups, commercial entities and industrial interests. The Government has already invested considerable effort in addressing the issue of the governance of Sydney Harbour, and developed an effective and flexible governance model based on a non-hierarchical structure which represents each of these interests.*

*With specific reference to the role of State agencies, the current move of the Government towards integration and catchment-based management will further favour the effective management of Sydney Harbour. DIPNR is now the most appropriate single agency to provide guidance on the strategic development of Sydney Harbour foreshore land. However, it will do so in close consultation with its partner agencies through the Sydney Harbour Executive and other appropriate mechanisms.*

*The Sydney Harbour Executive itself has already initiated a reconsideration of the existing harbour governance structure as part of the process of developing a Sydney Harbour Strategy, in order to ensure it remains effective, streamlined and accountable.*

## **Response from Sydney Ports Corporation**

*Thank you for the opportunity to provide a formal response to the Performance Audit on Sydney Harbour Foreshore Land.*

*One of Sydney Ports Corporation's key responsibilities is to manage and develop port facilities and services to cater for existing and future trade needs. As the report appropriately recognises, our focus is on maintaining and enhancing port land and infrastructure, so that Sydney remains a working harbour, and not on the disposal of land.*

*The report recognises the complexity of the existing governance arrangements for Sydney Harbour. Sydney Ports agrees that these arrangements need to be such that they ensure accountability and transparency.*

*Sydney Ports believes that a strategic land use and development plan for Sydney Harbour should incorporate the working harbour areas of Glebe island and White Bay and the passenger terminals at Darling Harbour and Sydney Cove as clearly identified commercial port precincts.*

*Sydney Ports is committed to continuing to work with other harbour agencies to improve the management of Sydney Harbour's foreshore land for the benefit of the community generally.*

*(signed)*

*Greg Martin  
Chief Executive Officer*

*Dated: 11 November 2003*

### **Response from Waterways Authority**

*I refer to the recent Performance Audit undertaken by the Auditor General regarding Sydney Harbour Foreshore Land. It appears to the Authority that the two main issues raised by the Auditor General's report are the need for an overall strategic plan for the Harbour and strengthened governance arrangements.*

*It is important to note that over recent years a number of initiatives have been implemented to address these two matters. With regard to the first, the Sharing Sydney Harbour Plan gave government support and impetus to implementing new visions for the Harbour such as 'working harbour' and led to the undertaking of much work that had never been attempted before. Most importantly it has produced results on the ground. Likewise, with regard to the second matter of governance, the establishment of the Sydney Harbour Executive produced for the first time a means of coordinating whole of government initiatives for the Harbour.*

*The Authority's view is therefore that to address the Auditor General's concerns, it is not necessary to 'reinvent the wheel' but rather to review and build on past strategic planning work (such as Sharing Sydney Harbour) and existing governance arrangements (such as Sydney Harbour Executive) to develop a more relevant and up to date planning and management framework.*

*The Authority is also aware of other recent government initiatives which will impact on any consideration of the Auditor General's report. These include the recent announcement of the establishment of Catchment Management Authorities and the preparation of a Metropolitan Strategy for Sydney. Clearly both of these initiatives will have a bearing on Sydney Harbour and will influence the form and timing of a response to the Auditor General's report.*

*The Authority will be pleased to provide assistance in relation to any further work required as a result of the Auditor General's report.*

*(signed)*

*Matthew Taylor  
Chief Executive*

*Dated: 12 November 2003*

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## Response from Sydney Harbour Foreshore Authority

### **EXECUTIVE SUMMARY**

#### **1. Audit Opinions and Findings:**

*The opinions and findings in this Report are flawed. The potential value of the Report is diminished by:*

- *Its failure to understand the new Ministerial and Government administrative arrangements made by the Premier in March when for the first time in the history of the NSW Government a single Minister was made accountable for land use planning and development, transport planning and infrastructure planning.*
- *Its failure to understand the subsequent role and functions of the new Department of Infrastructure Planning and Natural Resources and its responsibility for strategic planning for Sydney harbour.*
- *Its failure to understand the legislation governing the establishment of SHFA and its functions in relation to core land and surplus land held by other Government Agencies on the harbour foreshore.*
- *Its failure to acknowledge that disposal decisions by Government Agencies have been made in the context of the strategic policies and objectives contained in existing environmental and planning instruments (SEPP56, REP 22, REP 23 and REP 26), and that these instruments have led to the allocation of land for both open space and working harbour uses.*
- *Its failure to acknowledge the level of progress made in implementing the Premier's 1997 vision (including, in the case of Ballast Point, by acquisition) and the continuing measures underway, notably the Sharing Sydney Harbour Access Program that provides further public access to the harbour foreshores.*
- *Its failure to identify more clearly that the recent developments that have given concern are mainly privately owned sites under local government controls.*

## **2. Audit Recommendations:**

- *The value of this Report is that its recommendations should become the catalyst for the new Department of Infrastructure, Planning and Natural Resources to be more action and results oriented than its predecessor. The former Department of Urban Affairs and Planning produced many quality reports and draft plans but failed to deliver results within specific target dates.*
- *The Report has two key themes. First, the need for an overall strategic land use and development plan for the harbour and second, a revision of current governance responsibilities and structures.*
- *SHFA agrees that an overall strategic plan is now required and that this will be achieved through DIPNR finalising REP 32 which replaces a number of existing planning instruments and will be supported by revised local environmental plans for Darling Harbour, The Rocks and other precincts as required.*
- *SHFA opposes the establishment of any new agency for Sydney Harbour. The present governance structures can be more effective as a result of the new Ministerial arrangements, the establishment of DIPNR and the strengthening of the SHFA Act to control surplus land held by other Government Agencies on the foreshore.*

## **3. SHFA Recommendations:**

*SHFA considers that the way forward is to adopt the following recommendations for speedy implementation.*

- 1. Reconstitute the Sydney Harbour Executive as a consultative and advisory body to Government Agencies.*
- 2. DIPNR complete and exhibit draft REP 32 which consolidates existing plans for development on harbour foreshores.*
- 3. SHFA finalise and exhibit revised local environmental plans for Darling Harbour and The Rocks.*
- 4. A local environmental plan for Darling Harbour North - Wharves 3 to 8 be prepared and exhibited by July 2004.*
- 5. The SHFA Act be strengthened to ensure that foreshore land no longer required by Government Agencies for their core activities be transferred to SHFA.*
- 6. The Minister require local councils to submit special local environmental planning provisions for all developments within 100 metres of the foreshore.*



## STRATEGIC CONTEXT FOR DISPOSAL DECISIONS

### Key findings

The Audit Office has made a number of findings to the effect that disposal decisions are currently being made case by case in the absence of a strategic context. SHFA agrees that the Government is well placed to produce a consolidated harbour wide strategy and that such a strategy would be valuable, but believes the report should have recognized that:

- Aspirational statements such as the Premier's 1997 statement may not have been explicitly incorporated in an over-arching strategy but they have nonetheless been translated into very significant actions in recent years.

One key action is the transfer of a large parcel of surplus foreshore land at Berry's Bay to North Sydney Council for open space, with the retention of a section of the land in Government ownership for working harbour purposes. Another is the compulsory acquisition of the Caltex site at Ballast Point for major open space and marine refuelling.

- Disposals<sup>1</sup> of land by SHFA and its predecessors, the City West Development Corporation (CWDC) and Darling Harbour Authority, were not triggered by project proposals. They were taken in a strategic context adopted in the circumstances of the time. Open space and working harbour needs and opportunities have been considered.
- In the case of Darling Harbour, Government strategy was to create a major area close to the city for public recreation, entertainment and celebration, to replace a large area of land surplus to railway needs. Darling Harbour remains in public hands and is overwhelmingly devoted to public use, much remaining as open space.
- In the case of City West, SHFA and the CWDC have developed proposals in line with SREP 26. The strategy inherent in SREP26 was one of urban regeneration, seeking to increase population and business activity in an area in close proximity to the CBD. REP26 contained significant provision for open space and its mixed business/ residential zoning allowed for the continuation of working harbour uses.
- The increased focus in recent years on open space and working harbour can be seen in recent decisions in Pyrmont. For example, the foreshore promenade allocation in front of the proposed Elizabeth Macarthur Bay development has been increased at the discretion of the Minister from 10m to 20m, and a significant area of open space additional to that envisaged in REP26 is proposed.

<sup>1</sup> The question of what constitutes a long term lease and in what circumstances the granting of a lease constitutes "disposal" will be addressed later.

Similarly, concern in the Blackwattle Bay area (along Bank St) that working harbour uses would inevitably be displaced or rendered unviable by residential use, led to the removal of residential use from the list of permitted uses in that part of the area. For the same reason, residential use of Jones Bay Wharf was ruled out and SHFA imposed on the lessee a requirement that commercial vessels continue to be accommodated.

### **Recommendations**

#### **Require in planning instruments for Sydney Harbour that the long-term impact of foreshore land disposals on the whole of the Harbour is considered and assessed**

**SHFA Response:** This suggestion cannot achieve the improvement sought. Disposal is not development and so the act of disposal itself will not need consent under a planning instrument.

SHFA recommends instead that the strategic work of DIPNR, and the planning instruments which flesh out the strategy, consider the long term impact of various alternative uses on Sydney Harbour. Both public and private bodies must comply with these instruments, and provided these are in place and kept up to date, they will provide an effective check on the outcome.

#### **Develop an overall strategic land use and development plan for the Harbour.**

**SHFA Response:** SHFA accepts that in recent years the whole harbour catchment has become recognised as the appropriate focus and would welcome such a strategic framework, but notes that:

- A great deal of work has already been done on the draft Harbour REP, which is intended to replace and consolidate SEPP56, REP 22, REP 23, Darling Harbour Development Plan no 1 and Sydney Cove Redevelopment Plan.
- The Harbour REP plan needs to be of sufficient clarity to provide real guidance and it is agreed that it needs to go beyond heads of consideration, but it is likely that individual sites will still need to be dealt with by more tailored and detailed LEPs.
- For the strategic sites nominated in SEPP56, the research and strategic thinking contained in the framework plans (which the report notes have been done for around half of the 24 nominated sites) provide a good starting point for the drafting of LEP's and development control plans tailored to those sites.

- *State agencies are bound by statutory environmental instruments, as are councils. When this work is complete, decision making will necessarily occur in the context of a broader strategy, and does not rest solely with individual agencies. Completing this work can address two central propositions expressed by the Auditor Office.*
- *The recommendation focuses on the disposal actions of government agencies but the case made for it lies largely in the report's reference to vocal community opposition to large residential buildings close to the foreshore. The report does not acknowledge the fact that in most cases this has to do with old industrial enterprises selling up, not to do with disposal by governments. The report uses the development on the former site of the Balmain Power station to illustrate its point, but the community concerns cited have related mainly to private development on what has long been private land.*
- *SHFA suggests that if the construction on the foreshore of buildings regarded as overscaled is the nub of the problem, it should be dealt with in its own right, and not confused with the issue of disposal of land by government agencies. If there are flaws in the current planning controls, permitted densities, heights, setbacks from water, public open space provision, it is appropriate that these be addressed directly.*

*SHFA recommends that DIPNR publish the draft REP 32 and that work on supporting instruments be expedited.*

*SHFA recommends formal endorsement of the Harbour REP by the Cabinet Infrastructure Committee in addition to referral to the Sydney Harbour Executive, to ensure all agencies understand the strategic plan and factor it into their individual plans*

*SHFA recommends that revised LEP's be published as soon as possible for Darling Harbour and The Rocks, and that a draft local environmental plan for Darling Harbour North - wharves 3 to 8, be prepared and exhibited by July 2004.*

*SHFA recommends that the issue of scale and design be specifically dealt with by including special development controls on foreshore land in the Harbour REP. All foreshore land is significant, and SHFA recommends that the Minister require local councils to submit special local environmental planning provisions for developments within 100 metres of the foreshore.*

***Development of proposals for non-commercial uses of foreshore land, such as public open space and working harbour.***

*The significant actions taken in accordance with the Premier's 1997 statement have been discussed above.*

*Prior to the Premier's statement, proposals for open space were an integral part of the planning process for City West from the beginning. It would be rare for an environmental planning instrument applicable to the harbour foreshore to fail to deal with open space opportunities, and consideration of working harbour opportunities is increasingly common. The Harbour REP and associated LEP's are appropriate vehicles to progress this recommendation.*

***Balance commercial pressures with clear mechanisms for the funding, acquisition, development and management of public access and associated harbour infrastructure; clear guidelines on the use of funding mechanisms involving the private sector.***

*The high continuing cost of retaining and managing land is a real issue particularly for agencies whose core business does not include the long term management of land used for public open space and/or working harbour.*

*SHFA recommends below that the requirement that surplus foreshore land be transferred to SHFA be strengthened, but acknowledges that it would require funding if the transferring agencies are to be compensated. SHFA believes the report should have more clearly acknowledged:*

- *There has been extensive work on open space and public access for the purposes of the Sharing Sydney Harbour Access Program (which both identifies initiatives and provides a funding program to bring them to fruition). In the coming year matching State funding of \$1.3M has been made available for a range of harbour access capital projects, and a total of \$10M is available over 5 years. This program will become a key contributor to the creation of foreshore access over the coming years.*
- *The private sector is not likely to be "involved in" development of foreshore land for public use or working harbour, other than as a condition of consent to "highest and best use" developments. Some open space provision is commonly required by section 94 and this can be augmented in exchange for height and density elsewhere on the site. Such tradeoffs however result in greater bulk which itself attracts criticism.*

*It may be that expectations have risen beyond what section 94 can deliver and that there is a need to review that funding mechanism in the foreshore context.*

***Develop an information base (involving Department of Lands, GAMAC, Harbour agencies and local councils).***

*This recommendation is supported.*

## **GOVERNANCE ARRANGEMENTS**

*SHFA believes there is an obvious governance structure already in place and capable of implementing the Government's objectives for the Harbour foreshores.*

*The Sydney Harbour Executive in a reconstituted form can continue to be a useful forum for consultation and advice to agencies on harbour issues.*

*Planning and natural resources management was in March reorganized into a single Department (DIPNR). It is within DIPNR's charter to provide strategic leadership on the appropriate use of harbour land- whether currently in public or private ownership.*

*SHFA has a harbour focus rather than a functional focus. It is well placed to have a strengthened role in implementation of the strategic direction established by Government under the auspices of DIPNR, utilizing section 18 of the Sydney Harbour Foreshore Authority Act 1998.*

*If the Minister responsible for a public authority agrees that the agency is not using land within the SHFA area for its core purposes, that public authority is required by section 18 to transfer to the Authority either the land, or management of that land.*

*SHFA's functions are set out in section 12 of its Act and are broader than is perhaps commonly realized. Its functions include a range of non-commercial functions which would come to the fore in dealing with land designated for open space or working harbour by planning instruments:*

- *To protect and enhance the natural and cultural heritage of the foreshore area;*
- *To promote, co-ordinate, manage, undertake and secure the orderly and economic development and use of the foreshore area, including the provision of infrastructure;*
- *To promote, co-ordinate, organize, manage, undertake, secure, provide and conduct cultural, educational, commercial, tourist, recreational, entertainment and transport activities and facilities.*

*With some additional checks and balances, all the criteria stipulated in the Audit Office's report can be met, utilising existing mechanisms and existing agencies with the powers and responsibilities needed for the task of implementing strategic directions for the Harbour. There is no case for the creation of the committees, governing boards, and voluntary associations canvassed at page 53 of the report, and in SHFA's view they would tend to add to the complexity which concerns the Audit Office rather than reducing it.*

*It should be remembered that SHFA was established in the light of previous concerns that there were too many agencies involved in managing the harbour foreshores and that this was militating against integrated and coherent outcomes.*

*SHFA recommends that the Sydney Harbour Executive be reconstituted as a consultative and advisory body to Government agencies on harbour issues.*

*SHFA recommends that s.18 of the SHFA Act be strengthened to ensure that all foreshore land surplus to the needs of other agencies is recognized as being inherently of strategic importance, is transferred to SHFA. In recognition of the special nature of foreshore land all such transferred land could be automatically classified as "core" land. "Core land" cannot be sold, although it can be leased for up to 99 years with the consent of the Minister. Other agencies are not subject to this constraint.*

*This leads to the issue of what constitutes "disposal". It is not necessarily appropriate to equate even a 99 year lease with freehold in the case of governments because they are around for more than 99 years. Leases do come to an end and leasing rather than sale gives future generations the opportunity to reclaim land for public use if they wish. Nonetheless, some checks and balances additional to Ministerial approval may be warranted in the case of long leases.*

*Land required for special purposes such as working harbour could be leased by SHFA to Waterways for as long as it is needed for that purpose, and subleased to individual operators. If the main purpose is to be open space, councils may be the best eventual holding agency eg Berry's Bay.*

**Performance audits by  
the Audit Office of New South Wales**

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## Performance Auditing

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### What are performance audits?

Performance audits are reviews designed to determine how efficiently and effectively an agency is carrying out its functions.

Performance audits may review a government program, all or part of a government agency or consider particular issues which affect the whole public sector.

Where appropriate, performance audits make recommendations for improvements relating to those functions.

### Why do we conduct performance audits?

Performance audits provide independent assurance to Parliament and the public that government funds are being spent efficiently and effectively, and in accordance with the law.

They seek to improve the efficiency and effectiveness of government agencies and ensure that the community receives value for money from government services.

Performance audits also assist the accountability process by holding agencies accountable for their performance.

### What is the legislative basis for Performance Audits?

The legislative basis for performance audits is contained within the *Public Finance and Audit Act 1983, Part 3 Division 2A*, (the Act) which differentiates such work from the Office's financial statements audit function.

Performance audits are not entitled to question the merits of policy objectives of the Government.

### Who conducts performance audits?

Performance audits are conducted by specialist performance auditors who are drawn from a wide range of professional disciplines.

### How do we choose our topics?

Topics for a performance audits are chosen from a variety of sources including:

- our own research on emerging issues
- suggestions from Parliamentarians, agency Chief Executive Officers (CEO) and members of the public
- complaints about waste of public money
- referrals from Parliament.

Each potential audit topic is considered and evaluated in terms of possible benefits including cost savings, impact and improvements in public administration.

The Audit Office has no jurisdiction over local government and cannot review issues relating to council activities.

If you wish to find out what performance audits are currently in progress just visit our website at [www.audit@nsw.gov.au](http://www.audit@nsw.gov.au).

### How do we conduct performance audits?

Performance audits are conducted in compliance with relevant Australian standards for performance auditing and operate under a quality management system certified under international quality standard ISO 9001.

Our policy is to conduct these audits on a "no surprise" basis.

Operational managers, and where necessary executive officers, are informed of the progress with the audit on a continuous basis.

### What are the phases in performance auditing?

Performance audits have three key phases: planning, fieldwork and report writing.



During the planning phase, the audit team will develop audit criteria and define the audit field work.

At the completion of field work an exit interview is held with agency management to discuss all significant matters arising out of the audit. The basis for the exit interview is generally a draft performance audit report.

The exit interview serves to ensure that facts presented in the report are accurate and that recommendations are appropriate. Following the exit interview, a formal draft report is provided to the CEO for comment. The relevant Minister is also provided with a copy of the draft report. The final report, which is tabled in Parliament, includes any comment made by the CEO on the conclusion and the recommendations of the audit.

Depending on the scope of an audit, performance audits can take from several months to a year to complete.

Copies of our performance audit reports can be obtained from our website or by contacting our publications unit.

### **How do we measure an agency's performance?**

During the planning stage of an audit the team develops the audit criteria. These are standards of performance against which an agency is assessed. Criteria may be based on government targets or benchmarks, comparative data, published guidelines, agencies corporate objectives or examples of best practice.

Performance audits look at:

- processes
- results
- costs
- due process and accountability.

### **Do we check to see if recommendations have been implemented?**

Every few years we conduct a follow-up audit of past performance audit reports. These follow-up audits look at the extent to which recommendations have been implemented and whether problems have been addressed.

The Public Accounts Committee (PAC) may also conduct reviews or hold inquiries into matters raised in performance audit reports. Agencies are also required to report actions taken against each recommendation in their annual report.

To assist agencies to monitor and report on the implementation of recommendations, the Audit Office has prepared a Guide for that purpose. The Guide, *Monitoring and Reporting on Performance Audits Recommendations*, is on the Internet at [www.audit.nsw.gov.au/guides-bp/bpglist.htm](http://www.audit.nsw.gov.au/guides-bp/bpglist.htm)

### **Who audits the auditors?**

Our performance audits are subject to internal and external quality reviews against relevant Australian and international standards. This includes ongoing independent certification of our ISO 9001 quality management system.

The PAC is also responsible for overseeing the activities of the Audit Office and conducts reviews of our operations every three years.

### **Who pays for performance audits?**

No fee is charged for performance audits. Our performance audit services are funded by the NSW Parliament and from internal sources.

### **For further information relating to performance auditing contact:**

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## Performance Audit Reports

No.	Agency or Issue Examined	Title of Performance Audit Report or Publication	Date Tabled in Parliament or Published
64*	Key Performance Indicators	<i>Government-wide Framework Defining and Measuring Performance (Better practice Principles)</i> <i>Legal Aid Commission Case Study</i>	31 August 1999
65	Attorney General's Department	<i>Management of Court Waiting Times</i>	3 September 1999
66	Office of the Protective Commissioner Office of the Public Guardian	<i>Complaints and Review Processes</i>	28 September 1999
67	University of Western Sydney	<i>Administrative Arrangements</i>	17 November 1999
68	NSW Police Service	<i>Enforcement of Street Parking</i>	24 November 1999
69	Roads and Traffic Authority of NSW	<i>Planning for Road Maintenance</i>	1 December 1999
70	NSW Police Service	<i>Staff Rostering, Tasking and Allocation</i>	31 January 2000
71*	Academics' Paid Outside Work	<i>Administrative Procedures</i> <i>Protection of Intellectual Property</i> <i>Minimum Standard Checklists</i> <i>Better Practice Examples</i>	7 February 2000
72	Hospital Emergency Departments	<i>Delivering Services to Patients</i>	15 March 2000
73	Department of Education and Training	<i>Using Computers in Schools for Teaching and Learning</i>	7 June 2000
74	Ageing and Disability Department	<i>Group Homes for people with disabilities in NSW</i>	27 June 2000
75	NSW Department of Transport	<i>Management of Road Passenger Transport Regulation</i>	6 September 2000
76	Judging Performance from Annual Reports	<i>Review of Eight Agencies' Annual Reports</i>	29 November 2000
77*	Reporting Performance	<i>Better Practice Guide</i> <i>A guide to preparing performance information for annual reports</i>	29 November 2000
78	State Rail Authority (CityRail) State Transit Authority	<i>Fare Evasion on Public Transport</i>	6 December 2000

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79	TAFE NSW	<i>Review of Administration</i>	6 February 2001
80	Ambulance Service of New South Wales	<i>Readiness to Respond</i>	7 March 2001
81	Department of Housing	<i>Maintenance of Public Housing</i>	11 April 2001
82	Environment Protection Authority	<i>Controlling and Reducing Pollution from Industry</i>	18 April 2001
83	Department of Corrective Services	<i>NSW Correctional Industries</i>	13 June 2001
84	Follow-up of Performance Audits	<i>Police Response to Calls for Assistance</i> <i>The Levying and Collection of Land Tax</i> <i>Coordination of Bushfire Fighting Activities</i>	20 June 2001
85*	Internal Financial Reporting	<i>Internal Financial Reporting including a Better Practice Guide</i>	27 June 2001
86	Follow-up of Performance Audits	<i>The School Accountability and Improvement Model (May 1999)</i> <i>The Management of Court Waiting Times (September 1999)</i>	14 September 2001
87	E-government	<i>Use of the Internet and Related Technologies to Improve Public Sector Performance</i>	19 September 2001
88*	E-government	<i>e-ready, e-steady, e-government: e-government readiness assessment guide</i>	19 September 2001
89	Intellectual Property	<i>Management of Intellectual Property</i>	17 October 2001
90*	Intellectual Property	<i>Better Practice Guide</i> <i>Management of Intellectual Property</i>	17 October 2001
91	University of New South Wales	<i>Educational Testing Centre</i>	21 November 2001
92	Department of Urban Affairs and Planning	<i>Environmental Impact Assessment of Major Projects</i>	28 November 2001
93	Department of Information Technology and Management	<i>Government Property Register</i>	31 January 2002
94	State Debt Recovery Office	<i>Collecting Outstanding Fines and Penalties</i>	17 April 2002

No.	Agency or Issue Examined	Title of Performance Audit Report or Publication	Date Tabled in Parliament or Published
95	Roads and Traffic Authority	<i>Managing Environmental Issues</i>	29 April 2002
96	NSW Agriculture	<i>Managing Animal Disease Emergencies</i>	8 May 2002
97	State Transit Authority Department of Transport	<i>Bus Maintenance and Bus Contracts</i>	29 May 2002
98	Risk Management	<i>Managing Risk in the NSW Public Sector</i>	19 June 2002
99	E-government	<i>User-friendliness of Websites</i>	26 June 2002
100	NSW Police Department of Corrective Services	<i>Managing Sick Leave</i>	23 July 2002
101	Department of Land and Water Conservation	<i>Regulating the Clearing of Native Vegetation</i>	20 August 2002
102	E-government	<i>Electronic Procurement of Hospital Supplies</i>	25 September 2002
103	NSW Public Sector	<i>Outsourcing Information Technology</i>	23 October 2002
104	Ministry for the Arts Department of Community Services Department of Sport and Recreation	<i>Managing Grants</i>	4 December 2002
105	Department of Health Including Area Health Services and Hospitals	<i>Managing Hospital Waste</i>	10 December 2002
106	State Rail Authority	<i>CityRail Passenger Security</i>	12 February 2003
107	NSW Agriculture	<i>Implementing the Ovine Johne's Disease Program</i>	26 February 2003
108	Department of Sustainable Natural Resources Environment Protection Authority	<i>Protecting Our Rivers</i>	7 May 2003
109	Department of Education and Training	<i>Managing Teacher Performance</i>	14 May 2003
110	NSW Police	<i>The Police Assistance Line</i>	5 June 2003
111	E-Government	<i>Roads and Traffic Authority Delivering Services Online</i>	11 June 2003
112	State Rail Authority	<i>The Millennium Train Project</i>	17 June 2003
113	Sydney Water Corporation	<i>Northside Storage Tunnel Project</i>	24 July 2003

No.	Agency or Issue Examined	Title of Performance Audit Report or Publication	Date Tabled in Parliament or Published
114	Ministry of Transport Premier's Department Department of Education and Training	<i>Freedom of Information</i>	28 August 2003
115	NSW Police NSW Roads and Traffic Authority	<i>Dealing with Unlicensed and Unregistered Driving</i>	4 September 2003
116	NSW Department of Health	<i>Waiting Times for Elective Surgery in Public Hospitals</i>	18 September 2003
117	Follow-up of Performance Audits	<i>Complaints and Review Processes (September 1999)</i> <i>Provision of Industry Assistance (December 1998)</i>	24 September 2003
118	Judging Performance from Annual Reports	<i>Review of Eight Agencies' Annual Reports</i>	1 October 2003
119	Asset Disposal	<i>Disposal of Sydney Harbour Foreshore Land</i>	November 2003

\* Better Practice Guides

#### Performance Audits on our website

A list of performance audits tabled or published since March 1997, as well as those currently in progress, can be found on our website [www.audit.nsw.gov.au](http://www.audit.nsw.gov.au)

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