

**Place Management NSW
Regulation 2017
Regulatory Impact Statement**

May 2017

Contents

1.	INTRODUCTION	4
1.1	Approach Used to Prepare the RIS	4
1.2	Better Regulation Principles	4
2.	BACKGROUND TO THE REGULATORY PROPOSAL.....	5
2.1	Proposed Regulation	5
2.2	Regulatory Making Powers <i>Place Management NSW Act 1998</i>	5
2.3	Need for Government Action (Policy Response).....	6
2.4	Policy Objectives	8
2.5	Relevant Stakeholders	8
3.	OPTIONS TO ACHIEVE THE POLICY OBJECTIVES.....	9
3.1	Base Case – Do Nothing	9
3.2	Proposed Regulation	11
3.3	A More Restrictive Regulatory Proposal	12
4.	REGULATORY IMPACT ASSESSMENT FRAMEWORK.....	12
4.1	Creating Benefits for the Public.....	13
4.2	Diminishing Value of Benefits to the Public	13
4.3	Identification of Costs and Benefits for Each Option	14
5.	BASE CASE – DO NOTHING BENEFIT COST ANALYSIS.....	15
5.1	Costs – Base Case.....	15
5.2	Benefits – Base Case	16
5.3	Benefit Cost Analysis – Base Case.....	16
6.	PROPOSED REGULATION BENEFIT COST ANALYSIS.....	16
6.1	Costs – Proposed Regulation.....	16
6.2	Benefits – Proposed Regulation	16
6.3	Benefit Cost Analysis – Proposed Regulation.....	18
7.	MORE RESTRICTIVE REGULATORY PROPOSAL BENEFIT COST ANALYSIS.....	18
7.1	Costs – More Restrictive Regulation.....	18
7.2	Benefits – More Restrictive Regulation	19
7.3	Benefit Cost Analysis – More Restrictive Regulation.....	19
8.	COMMUNITY CONSULTATION STRATEGY.....	19
9.	CONCLUSIONS.....	20
10.	REFERENCES	21

Prepared by
AgEconPlus
CONSULTING

Michael Clarke

P: (02) 9817 5888

M: 043 8844024

E: clarke@AgEconPlu.com.au

W: www.AgEconPlus.com.au

Abbreviations

CPI	Consumer Price Index
FTE	Full Time Equivalent
NPV	Net Present Value
PINs	Penalty Infringement Notices
PV	Present Value
RIS	Regulatory Impact Statement
SHFA	Sydney Harbour Foreshore Authority

1. INTRODUCTION

Regulation:	Place Management NSW Regulation 2017
Enabling Act:	Place Management NSW Act 1998
Responsibility:	The Honourable Victor Dominello, MP Minister for Finance, Services and Property

Place Management NSW proposes to remake the Sydney Harbour Foreshore Regulation 2011 renamed as the Place Management NSW Regulation 2017. The Sydney Harbour Foreshore Regulation 2011 was made under the *Place Management NSW Act 1998* (formerly the Sydney Harbour Foreshore Authority Act 1998). A comparison of the key differences between the former 2011 regulation and the proposed 2017 regulation is at the table annexed.

The remaking of the regulation will produce a number of social and economic benefits and costs to government and the community. The *Subordinate Legislation Act 1989* therefore provides for the preparation of a Regulatory Impact Statement (RIS) prior to making the regulation.

A RIS is an assessment of all social and economic costs and benefits relating to the proposed regulation and other possible options to ensure that the approved regulation is the preferred course of action in achieving the policy objectives.

1.1 Approach Used to Prepare the RIS

The RIS was prepared in accordance with the *Subordinate Legislation Act 1989* and has followed the NSW Department of Finance, Services and Innovation's Better Regulation Principles (see below). The RIS will be finalised after consideration of feedback received following exhibition of the draft.

Cost benefit analysis of regulatory options was completed using the NSW Government Guidelines for Economic Appraisal prepared by the NSW Treasury. A real discount rate of 7% was used and a five year analysis period, consistent with the life of the regulation, was employed.

1.2 Better Regulation Principles

In accordance with the NSW Department of Finance, Services and Innovation's Guide to Regulatory Impact Assessments, this RIS also addresses the seven Better Regulation Principles. These principles are:

1. The need for government action should be established
2. The objective of government action should be clear
 - a. The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options
3. Government action should be effective and proportional

4. Consultation with business and community should inform regulatory development
5. The simplification, repeal, reform or consolidation of existing regulation should be considered
6. Regulation should be periodically reviewed and if necessary reformed to ensure its continued efficiency and effectiveness.

2. BACKGROUND TO THE REGULATORY PROPOSAL

2.1 Proposed Regulation

The proposed *Place Management Regulation 2017* addresses the regulation of conduct in public areas managed by Place Management NSW, specific conduct in Darling Harbour and other miscellaneous measures.

Measures pertaining to the regulation of conduct in public areas managed by Place Management NSW include the undertaking of commercial and other activities (e.g. sell goods, advertise, conduct a wedding, busk, use a radio, camp, climb or damage a tree, light fires, use firearms, skateboard, damage structures), public assemblies, use of land by buses, the right to close areas to the public, specific measures for New Year's Eve and Australia Day, prohibition of liquor, securing of vessels to wharves belonging to Place Management NSW and acting contrary to notices.

Specific conduct in Darling Harbour regulated by the proposed regulation includes prohibition on bringing a dog or any other animal into the Darling Harbour area, fishing in the Darling Harbour area, use of the stage in Tumbalong Park, use of the Chinese Garden, activities within Cockle Bay (e.g. no swimming, use of watercraft), activities that are not safe on Pyrmont Bridge, movement of vessels beneath Pyrmont Bridge and berthing of vessels within Cockle Bay.

Miscellaneous measures in the proposed regulation include the requirement to state name and address to a ranger or police officer, the right to remove persons from public areas, removal of obstructions from public areas, exemptions from the proposed regulation for Place Management NSW, declaration of core land and penalty infringement notices.

2.2 Regulatory Making Powers *Place Management NSW Act 1998*

The *Place Management NSW Act 1998 No 170* (current version May 2017) provides for the making of a regulation.

Section 46 of the Act provides for:

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) In particular, regulations may be made for or with respect to the following:
- a) the functions of Place Management NSW and any member of staff of Place Management NSW, including rangers,
 - b) the fees and charges that may be imposed for the purposes of this Act,
 - c) the procedures of advisory committees,
 - d) regulating the use by the public of core land, non-core land, managed land or the public domain,
 - e) regulating the use of facilities of Place Management NSW and the provision of services by Place Management NSW,
 - f) requiring the payment of fares or other charges for the use of any facility operated or service provided by Place Management NSW,
 - g) authorising a person granted a lease, licence or other authority by Place Management NSW to require the payment of fares or other charges for the use of any facility operated or service provided under the lease, licence or other authority,
 - h) ensuring the proper conduct and safety of persons on core land, non-core land, managed land or the public domain or while using any facility or service referred to in paragraph (e) or (f),
 - i) providing for the removal of trespassers and persons causing nuisance or annoyance to others while in the foreshore area,
 - j) conferring on Place Management NSW any function that may be exercised by a council in relation to a public place.
- (3) The regulations may create an offence punishable by a maximum penalty of 50 penalty units.

2.3 Need for Government Action (Policy Response)

The Place Management Regulation covers the areas ~~previously~~ managed by Place Management NSW and is collectively referred to in this RIS as the 'Place Management NSW estate'. The Place Management NSW estate includes:

- The Rocks – historic 26 ha retail and leisure precinct located at the southern end of the Sydney Harbour Bridge. The Rocks is the birthplace of modern Sydney and has the highest concentration of state-significant heritage items in any one location. The Rocks is a culturally vital place that hosts national celebrations, markets and events that annually attracts more than 14 million domestic and international visitors (SHFA Annual Report 2014-15).
- Circular Quay – is a key driver of the Sydney economy. It adjoins the World Heritage Listed Sydney Opera House and is a major transport hub. Circular Quay is the financial centre of Sydney and is where the global city interacts with the harbour. It is an iconic location for Australian and international visitors and is significant from both heritage and cultural perspectives (SHFA Annual Report 2014-15).

- Darling Harbour – gifted to the nation in 1988 as a place for celebration. It covers 60 ha of land and 28 ha of water known as Cockle Bay. Darling Harbour is Australia’s most popular foreshore gathering place. It includes the International Convention Centre which is Australia’s premier convention, exhibition and events destination. Darling Harbour hosts events of state significance including Australia Day and New Years’ Eve celebrations as well as free events and 25 diverse cultural festivals. Some 26 million people visit Darling Harbour each year (SHFA Annual Report 2014-15). Darling Harbour includes the Chinese Garden, Tumbalong Park, Cockle Bay Promenade, Pyrmont Bridge and Cockle Bay. (<https://www.property.nsw.gov.au/precincts>).
- King Street Wharf Promenade – is the public promenade area between King Street Wharves and Lime and King Streets. The area is managed by Place Management NSW on behalf of Roads and Maritime Services (<https://www.property.nsw.gov.au/precincts>).
- The Goods Line – a pedestrian and cycleway network from Ultimo to Darling Harbour. An urban hub connecting more than 80,000 students, locals and visitors to arts, education and cultural institutions, it includes spaces for public entertainment and recreation. It also provides easy access to Darling Harbour’s many retail, dining and tourist attractions and plays host to a range of public activities (SHFA Annual Report 2014-15 and 2015-16).
- Pyrmont Foreshore – including land, parks, wharves and the harbour side boardwalk (SHFA Annual Report 2014-15). The foreshore is used by residents in local high rise apartments and attracts visitors who cycle and walk between playgrounds, cafes and special event displays and markets.
- Ballast Point Park – Walama, Birchgrove. Ballast Point Park is bordered by Wharf Road, Ronald Street, Mort Bay and Snails Bay. The 2.5 ha of foreshore land formally an industrial site for Caltex underwent a renewal project to provide green picnic spots with walking paths, access for cyclists and panoramic views of the city and Harbour Bridge (<https://www.property.nsw.gov.au/precincts>).

The Place Management NSW estate managed by Place Management NSW covers natural and built environments. It includes public domain spaces and more than 140 heritage items. As a consequence, Place Management NSW is responsible for some of Sydney’s most historically and culturally significant waterfront locations.

To maximise the amenity of these locations they are open to visitors at all times. There are no gates and fences around any part of the public domain.

Electronic people counters are installed in key locations in Darling Harbour and The Rocks. The counters emit an infrared beam and each time a pedestrian breaks the beam a people movement is registered. Calibration and expansion calculations are applied to raw counts to ensure that final figures estimate total pedestrian flow. These figures include repeat visits made by visitors, workers and residents.

In the Rocks, approximately 14.5 million people movements were recorded in 2015-16, with people enjoying the entertainment, shopping and dining experiences on offer. In Darling Harbour approximately 25.9 million people movements were recorded in 2015-16, with people enjoying cultural festivals, attractions and events in the precinct (Property NSW Annual Report 2015-16).

As a consequence of the large number of people that visit the Place Management NSW estate, measures are required to protect people and assets and ensure visitors have an enjoyable time. It is also considered important to have enforceable rules that can be seen as a 'community contract' on how visitors may use the place in a fair and equitable way.

2.4 Policy Objectives

The objective of the proposed regulation, consistent with Section 12 of the *Place Management NSW Act 1998 No 170*, is for Place Management NSW to:

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

In addition Place Management NSW has the following functions in relation to particular classes of land within the foreshore area:

- in relation to core land—to develop and manage core land,
- in relation to non-core land—to develop, manage and deal in non-core land,
- in relation to managed land—to manage managed land in accordance with the terms of the agreement with the owner or occupier of the land,
- in relation to the public domain—to enhance and manage the landscape of the public domain and to improve, maintain and regulate the use of the public domain.

2.5 Relevant Stakeholders

Stakeholders relevant to the making of this regulation include the NSW community and various agencies of government, such as:

- Destination NSW
- Infrastructure NSW
- City of Sydney
- Carnival Australia
- Leichhardt Council
- Australian National Maritime Museum

- Darling Harbour Live
- Jones Lang Lasalle
- Lendlease
- Merlin Entertainments Group
- Mirvac
- AEG Ogden
- DTZ
- AMP Capital
- Grocon
- Museum of Contemporary Art
- Sydney Business Chamber
- Boating Industry Association
- Tourism & Transport Forum
- Luna Park Sydney
- The Rocks Chamber of Commerce
- Government agencies: Department of Premier and Cabinet; Treasury; Urban Growth NSW; the Barangaroo Development Authority; Transport for NSW; Department of Health; Office of Environment and Heritage; Office of Local Government; Department of Family and Community Services; Port Authority; Marine Estate Management Authority
- Metropolitan Local Aboriginal Land Council
- Friends of Sydney Harbour
- Pyrmont Action Group.

3. OPTIONS TO ACHIEVE THE POLICY OBJECTIVES

Specific options to address the policy objectives were identified:

1. Base Case – ‘Do Nothing’ and allow the Place Management NSW estate managed by Place Management NSW to operate without a regulation. There would be no rangers with compliance powers instead Place Management NSW would rely on ‘education officers’ and voluntary measures to manage the estate.
2. Proposed Regulation – including enforceable measures to address inappropriate personal conduct and ensure the delivery of public services. Enforceable measures are designed to protect the Place Management NSW estate assets and increase visitor enjoyment.
3. A More Restrictive Proposal – the proposed regulation plus additional restrictions on activities and access to protect people and assets.

3.1 Base Case – Do Nothing

The base case is the situation that would exist if nothing additional were done to protect assets and visitors in the Place Management NSW estate. Place Management NSW would need to rely on the NSW Police Force and employ its own education officers to communicate appropriate behaviour. Sydney foreshore areas would operate at lower levels of safety than nearby Barangaroo and Royal Botanic Gardens.

Under the 'do nothing' base case Place Management NSW could endeavour to protect people and assets and help ensure visitors have an enjoyable time in the Place Management NSW estate by imposing conditions of entry on visitors. Conditions of entry are used by shopping centres and others to establish contractual conditions with visitors, and at least in theory, the provisions of the proposed regulation could be made as Sydney foreshore conditions of entry.

However, in practice for conditions of entry to be enforceable against the public they would need to be simple and straightforward. Enforcement through the Local Court as trespass would be impractical. Large obstructive signage would be required and each of the proposed regulation provisions would need to be clearly signposted. Courts would need to be satisfied that all terms were clearly displayed and were reasonable. In practice, conditions of entry would not be able to cover the detail required in the proposed regulation. Simplification would be necessary and provisions would then be less than the proposed regulation. Rangers could not issue penalty infringement notices and enforcement would be difficult.

Furthermore, reliance on conditions of entry under the 'do nothing' base case would lead Place Management NSW to greater risk of exposure to liability under the *Civil Liability Act 2002*. Relying on conditions of entry means that Place Management NSW has chosen to not implement a regulation. This could be considered as Place Management NSW electing to not exercise all its functions over the Sydney foreshore. In the event of injury/loss, this leaves Place Management NSW open to criticism that it has not taken all reasonable measures to exercise its authority and functions.

Undesirable behaviour that would otherwise be restricted by the proposed regulation would not be enforceable by Place Management NSW rangers or other authorised persons. This would limit the authority of the Place Management NSW to only those provisions outlined within the *Place Management NSW Act 1998*. Place Management NSW does not contain effective provisions to do with personal conduct and protecting assets.

Place Management NSW rangers and other authorised persons would be without authority to impose penalties for offences outlined in the proposed regulation and would be unable to enforce other legislation that may prohibit unacceptable behaviour.

Thus restrictions on offences such as dangerous behaviour and vandalism which are controlled with specific regulations in neighbouring Barangaroo and Royal Botanic Gardens could not be enforced by Place Management NSW rangers.

The responsibility for regulating such anti-social behaviour in the Place Management NSW estate would fall to the NSW Police Force. However, the police would also lose the authority to regulate undesirable behaviour of particular relevance to a harbour side park and public open space setting that attracts large numbers of celebrating people.

In the absence of a regulation Place Management NSW would endeavour to meet the objectives of the Act using non-enforceable measures such as public education and voluntary codes of conduct. Its success with non-enforceable measures would be limited.

3.2 Proposed Regulation

Under the proposed regulation there will be enforceable provisions to address personal behaviour, damage to assets, consumption of liquor, public assembly, maximum number of people in certain areas, enforceable penalty infringement notices, fees and charges.

Provisions contained within the proposed regulation address the following subjects: personal conduct; services, facilities and powers as explained below.

Personal Conduct

Personal conduct provisions include requirements for authorisation of activities and services in the Place Management NSW estate, the specification of prohibited personal conduct, consumption of liquor, weddings and other organised ceremonies.

Under the proposed regulation a person must not engage in activities with the potential to affect public enjoyment without authorisation from Place Management NSW. These activities include, but are not limited to, selling goods or services, use of loudspeakers, advertising, conduct of a wedding, collect money, busk, conduct a game, operate a sound generating device (e.g. radio), camp, erect a sign, climb a tree, light a fire, set off a firework, possess a firearm, launch a hot air balloon, skateboard, damage a tree, damage a building or dig up a surface.

In Darling Harbour a person must not fish, make use of the Cockle Bay waterway for swimming or boating, behave in a dangerous way on the Pyrmont Bridge, bring a dog or other animal, use the stage in Tumbalong Park or enter the Chinese Garden without Place Management NSW authorisation. Place Management NSW authorisation may result in the charging of a fee.

Consumption of liquor in any part of the public domain can be disallowed by Place Management NSW. Persons must not secure a vessel to wharves or participate in a public assembly unless consent is granted by Place Management NSW and a fee is paid.

Services and Facilities

The proposed regulation includes provisions allowing Place Management NSW to regulate the use of buses in the public domain in the Place Management NSW estate.

Powers

Under the proposed regulation Place Management NSW will have the authority to close any part of the public domain in the Place Management NSW estate, limit the number of people who may enter a public area and charge admission on New Year's Eve and for other events such as Australia Day.

The proposed regulation establishes requirements to obey directions given by a ranger or a police officer, the right to remove certain persons from public areas, remove obstructions and require people to provide their name and address for the purposes of issuing penalty infringement notices.

3.3 A More Restrictive Regulatory Proposal

A further more restrictive regulatory option is also analysed. This option includes all measures associated with the proposed regulation plus (a) outright bans on certain activities that can be conducted with authorisation under the proposed regulation, (b) closure of parts of the Place Management NSW estate at night.

Activities that can be conducted with authorisation under the proposed regulation that would face an outright ban under a more restrictive regulatory proposal include:

- Selling articles – e.g. stalls at charitable fundraising events
- Public assemblies e.g. for commemoration of events and milestones in places like Ballast Point Park and the Pyrmont Foreshore
- Fireworks – at official occasions
- Dogs – in parts of the Place Management NSW estate outside of Darling Harbour
- Alcohol – a blanket ban on alcohol consumption in the Place Management NSW estate public domain.

In addition to an outright ban on activities a more restrictive regulatory proposal would prohibit public access and use of parts of the Place Management NSW estate public domain at night. Restricted access would be imposed on parts of Darling Harbour including Tumbalong Park, The Goods Line, Pyrmont Foreshore and Ballast Point Park. Consistent with the Royal Botanic Gardens, these parts of the estate will be fenced, gated and access prohibited between sunrise and sunset.

Additional restrictions on activities and access are aimed at further protecting people and assets in the public domain areas of the Place Management NSW estate.

This option will impose additional costs over the proposed regulation e.g. gates and fencing to prevent night time access and loss of revenues associated with activities that would otherwise have been authorised by Place Management NSW.

4. REGULATORY IMPACT ASSESSMENT FRAMEWORK

4.1 Creating Benefits for the Public

The overall value of public amenity benefits created in the Place Management NSW estate is significant – see Section 2.3. By way of illustration of these values, visitation benefits on their own without considering heritage and economic development values, are estimated at \$153.52 million per annum (a per visit value of \$3.80 estimated for the Parramatta Park Trust Regulation RIS 2012¹ and multiplied by an annual visitation of 40.4 million people).

Over time and with appropriate management these benefits will be even more important as more people live, work and visit the Sydney Harbour foreshore.

4.2 Diminishing Value of Benefits to the Public

Critical to the creation of public benefits in the Place Management NSW estate is appropriate visitor management with the power to modify the behaviour of a minority of individuals. Experience in the Place Management NSW estate and at similar locations (Royal Botanic Gardens, Barangaroo, Centennial Park, Parramatta Park, etc.) has shown that the actions of a small number of visitors necessitates intervention by rangers and that these rangers need to have the power to enforce a change in behaviour. In the absence of this power the actions of a small number of individuals will detrimentally affect the safety of people, public domain and heritage assets, and in so doing diminish the enjoyment of other visitors.

The persistence of anti-social, destructive or unwarranted behaviour is in conflict with the objectives of the *Place Management NSW Act 1998* which sets out to ‘protect and enhance the natural and cultural heritage of the foreshore area’ and to ‘promote...cultural, educational, commercial tourist, recreational, entertainment and transport activities and facilities’. In all cases, anti-social, destructive or unwarranted behaviour detract from the experience of others visiting the Place Management NSW estate and reduces the overall benefit that the public obtains.

In this regard, inappropriate behaviour by a few effectively imposes a cost on society, similar to that of an ‘externality’. Place Management NSW will therefore attempt to discourage individuals from engaging in these activities, thereby maximising the value that the community will derive from the enjoyment of the Place Management NSW estate. The implementation of the proposed regulation, supported with an appropriate compliance regime and penalties, will enable potential offenders to consider the costs of their inappropriate behaviour. The proposed regulation and penalties allows Place Management NSW to reduce these social costs by providing a direct financial deterrent.

¹ In a standalone economic analysis prepared to support the Parramatta Park Regulation RIS 2012, Arche Consulting 2012 derived per visitor benefit using the rigorous and widely reviewed Travel Cost Method (see James and Gillespie 2000). Surveys were used to establish the profile of visitors and cost incurred to enjoy Parramatta Park was used as a proxy for economic welfare. The Arche Consulting estimate of \$3.40 per visitor has been updated to \$3.80 per visitor to reflect changes in CPI and hence travel cost.

4.3 Identification of Costs and Benefits for Each Option

The above discussion on maintaining benefits to the public with the proposed regulation in place allows a framework to be developed for reporting and analysing government and community costs and benefits associated with regulatory options – Table 4.1.

Table 4.1 Costs and Benefits of Place Management NSW Regulatory Options

Option	Costs	Benefits
Base Case <ul style="list-style-type: none"> • 'Do nothing' • Use conditions of entry 	<ul style="list-style-type: none"> • Damage to Place Management NSW estate assets with associated repair and maintenance costs • Reduction in the public's enjoyment of the Place Management NSW estate • Cost of public education and voluntary codes of conduct to serve as an alternative to enforcement powers (including rangers) • Reduced ability to generate revenue from events 	<ul style="list-style-type: none"> • Comparable to the proposed regulation, there is less burden on Government resources as no rollover of the regulatory instrument is required.
Proposed Regulation	<ul style="list-style-type: none"> • Reduction in administration and compliance costs 	<ul style="list-style-type: none"> • A reduction in damage to Place Management NSW estate assets • An increase in the public's enjoyment of the Place Management NSW estate • Savings on public education and voluntary codes of conduct • Additional revenue associated with sale of services (e.g. events)
More Restrictive Proposal	<ul style="list-style-type: none"> • Regulation administration and compliance costs – consistent with the proposed regulation plus additional costs associated with more restrictive measures including further restriction of activities and measures (fences and gates) to prevent night time access to parts of the foreshore estate • Additional costs to those who would like to sell articles, participate in public assemblies, enjoy fireworks, bring dogs and other animals to parts of the foreshore estate where this is currently permitted, consume alcohol on authorised occasions and access the foreshore estate at night. 	<ul style="list-style-type: none"> • The potential for additional protection for people and assets over that achieved with the proposed regulation.

Analysis of each option is presented in the following chapters.

5. BASE CASE – DO NOTHING BENEFIT COST ANALYSIS

The *Place Management NSW Act 1998* itself does not allow Place Management NSW to prescribe the types of behaviour considered acceptable in the Place Management NSW estate, especially in matters of public safety and property violations. Without the proposed regulation, Place Management NSW is unable to impose any penalty for offences, which would act as a deterrent for such behaviour.

5.1 Costs – Base Case

Damage to Place Management NSW Estate Assets

Damage to the Place Management NSW estate – trees, heritage items, signage, street furniture and other public domain assets can be expected. Associated with this damage will be an increase in repair and maintenance costs.

Reduction in the Public’s Use and Enjoyment of the Sydney Harbour Foreshore

Anti-social behaviour in the Place Management NSW estate will detract from enjoyment of The Rocks, the Circular Quay foreshore, Darling Harbour, the King Street Wharf Promenade, The Goods Line, Pyrmont Foreshore and Ballast Point Park. Fewer visitors and residents will feel safe in these precincts and as a consequence they will be less likely to visit the Place Management NSW estate.

Cost of Public Education and Voluntary Codes

In the absence of capacity to impose penalties and enforce behaviour that is socially acceptable, Place Management NSW may incur costs to educate members of the public on what is and isn’t acceptable in the Place Management NSW public domain and communicate voluntary codes of conduct through its rangers. Place Management NSW will incur considerable cost persuading large numbers of visitors to comply with voluntary measures and even with this investment, damage to Place Management NSW estate assets and a reduction in public enjoyment may occur.

Diminished Ability to Generate Revenue from Events

The absence of a regulation will diminish Place Management NSW’s ability to generate revenue from short-term events such as outdoor corporate launches and private weddings. In the absence of the proposed regulation there will not be an efficient mechanism to allow short term allocation of Place Management NSW estate land to a single group or to collect a fee for this exclusive right. Place Management NSW will be limited to holding a smaller number of functions in its capacity as land manager.

The absence of a regulation will not affect operation of the Sydney International Convention, Exhibition and Entertainment Precinct, associated carparks and shop lease

revenue at Darling Harbour. It will affect small scale events whose operation depends on regulatory authority for the temporary alienation of public domain land.

Even with the rigorous use of conditions of entry, function numbers will be limited under the 'do nothing' base case. In the nearby Royal Botanic Gardens the hiring of land for small events generates more than \$2 million per annum (Royal Botanic Gardens and Domain Trust RIS 2013) and half this estimate is relevant to the Place Management NSW which includes open spaces in The Rocks, Pyrmont Foreshore and Ballast Point Park.

Loss of this anticipated revenue under the base case will reduce Place Management NSW's capacity to perform its functions outlined under the Act as is likely to impact maintenance and visitor enjoyment of the foreshore estate.

5.2 Benefits – Base Case

Less burden on Government resources as no rollover of the regulatory instrument is required.

5.3 Benefit Cost Analysis – Base Case

The base case is not able to deliver the objectives of the Act (i.e. protect and promote use of Place Management NSW assets) and as a consequence it is rejected.

6. PROPOSED REGULATION BENEFIT COST ANALYSIS

Many of the community and government costs incurred under the base case are benefits under the proposed regulation.

6.1 Costs – Proposed Regulation

Security rangers are required to communicate and enforce behavioural requirements consistent with the proposed regulation. Staff were required under the base case to communicate voluntary measures to visitors so consequently no additional staff are required under the proposed regulation. However, staff with enforcement powers are more likely to be successful in their endeavours.

Under the proposed regulation costs are incurred by Place Management NSW for the ongoing training of security rangers, maintaining administration systems, processing and on rare occasions prosecuting penalty infringement notices. These costs equate to approximately three full time equivalent (FTE) employees per annum, a cost of \$300,000 per annum.

6.2 Benefits – Proposed Regulation

Reduction in Damage to Place Management NSW Estate Assets

Trained Place Management NSW rangers with the power to intervene and prevent activities that threaten or damage Place Management NSW estate assets will diminish damage caused under the base case and assist with delivery of the objectives of the Act. Protecting assets for the community is one purpose of this policy intervention. Reduction in asset damage to the Place Management NSW estate compared to the base case will also manifest itself as a reduction in the cost of repairs and maintenance.

Advice from the Royal Botanic Gardens situated on the Sydney Harbour foreshore is that removal of their regulation and the ability to manage people in the Gardens would increase repair and maintenance costs on trees, buildings, fences, statues, sculpture, memorials, fountains, furniture, etc. by \$1 million per annum. The Royal Botanic Gardens receives annual visitation of 8.6 million (Royal Botanic Gardens and Domain Trust Regulation RIS 2013). Given that the Place Management NSW estate receives more than four times the number of visitors (40.4 million visitors per year in 2015-16) and has extensive assets including heritage items, the saving in cost from a reduction in damage to the Place Management NSW estate is conservatively estimated at twice the quantum attributed to the Royal Botanic Gardens – a saving of \$2 million per annum.

An Increase in Public Use and Enjoyment of the Place Management NSW Estate

Control of anti-social, dangerous and undesirable behaviour under the proposed regulation will increase the public's enjoyment of the Place Management NSW estate and annual visitation will grow at a faster rate than under the base case – Table 6.1.

Table 6.1 Visits to Place Management NSW Estate – Base Case and Proposed Regulation

Option	2018	2019	2020	2021	2022
Proposed Regulation					
Visitor numbers (millions of visits) [#]	40.8	41.0	41.2	41.4	41.6
Base Case					
Visitor numbers (millions of visits) [*]	40.6	40.7	40.8	40.9	41.0
Net increase in visitors associated with the Proposed Regulation	0.2	0.3	0.4	0.5	0.6
Benefit to additional visitors (\$'million)⁺	0.8	1.1	1.5	1.9	2.3

[#] Based on annual growth rate 0.5% delivered between 2015 and 2016 (Property NSW Annual Report 2015-16)

^{*} Annual growth rate assumed to halve due to prevalence of anti-social, dangerous and undesirable behaviour

⁺ Additional benefit to visitors estimated using a per visitor benefit of \$3.80 (Arche Consulting 2012) updated for CPI and multiplied by the increase in annual visitation

Savings on Voluntary Measures

Under the base case and in the absence of capacity to impose penalties and enforce behaviour that is socially acceptable, a cost is incurred to educate members of the public on what is and isn't acceptable in the Place Management NSW estate and develop and communicate voluntary codes of conduct. While this approach is to some degree useful, the absence of regulation does not allow this ideal to be enforced.

Savings are made under the proposed regulation when fewer voluntary measures such as education leaflets and displays, costing an estimated \$200,000 per annum, are no

longer required – socially acceptable behaviour is realised under the proposed regulation through the rarely used power to impose on-the-spot fines.

Additional Revenue Associated with Events

The proposed regulation allows Place Management NSW to generate revenue from short-term events such as outdoor corporate launches and private weddings. This revenue will assist Place Management NSW to perform its functions outlined under the Act including the maintenance of heritage assets. Revenue from events is forecast to contribute approximately \$1 million per annum (half that earned by the Royal Botanic Gardens).

6.3 Benefit Cost Analysis – Proposed Regulation

The proposed regulation addresses the policy objectives of protecting estate assets and promoting use of the facilities. Benefit cost analysis results show a positive net present value (NPV) and a benefit cost ratio for the NSW community of greater than 15:1 (i.e. for each dollar of cost, more than \$15.00 is returned as benefit).

7. MORE RESTRICTIVE REGULATORY PROPOSAL BENEFIT COST ANALYSIS

In addition to the community costs and benefits incurred under the proposed regulation, additional benefits and costs are incurred under a more restrictive regulatory proposal.

7.1 Costs – More Restrictive Regulation

The more restrictive regulatory proposal requires prohibition of activities permitted with authorisation under the proposed regulation and closure of parts of the Place Management NSW estate at night. All costs associated with the proposed regulation remain relevant with the addition of:

- Administrative costs – costs will be incurred liaising with community groups and individuals regarding the outright prohibition on activities such as selling articles, public assemblies, fireworks, prohibition of dogs in parts of the Place Management NSW estate that are outside Darling Harbour and alcohol consumption. One half FTE employee is required to provide this ongoing liaison, an annual cost of \$50,000.
- Gates and fences – required to prevent access to parts of the Place Management NSW estate after sunset and before sunrise and protection for estate assets. Restricted access would be imposed on parts of Darling Harbour including Tumbalong Park, The Goods Line, Pyrmont Foreshore and Ballast Point Park. Gates and fences would need to maintain the aesthetic of the foreshore and are expensive. A cost of \$2 million installed with no ongoing maintenance cost is assumed.

- Rangers – no change in ranger cost over both the base case and the proposed regulation. Even though parts of the Place Management NSW estate are closed after sunset ranger patrols are required to prevent illegal access.
- Visitor enjoyment – visitor enjoyment would be diminished under a more restrictive regulation. Community groups and individuals apply for a range of special use activities under the proposed regulation (i.e. selling articles and public assemblies). Refusal to grant special use activities is assumed to affect 700,000 visitors per annum. Furthermore, visitors use parts of the Place Management NSW estate after sunset and before sunrise for walking including walking their dogs. In the absence of electronic people counter data the following estimates are made – 100,000 evening walkers per annum prevented from using Tumbalong Park; 500,000 per annum prevented from using The Goods Line, 500,000 per annum prevented from using the Pyrmont Foreshore and 200,000 per annum prevented from using Ballast Point Park. An estimated 2 million people per annum have their enjoyment of the Place Management NSW estate diminished by the more restrictive regulation.

7.2 Benefits – More Restrictive Regulation

A more restrictive regulation was developed to offer additional protection for people and assets over that achieved with the proposed regulation. Prohibition of activities that are to be managed through authorisation under the proposed regulation and closure of parts of the Place Management NSW estate at night may further reduce the risk of anti-social behaviour, protecting people and assets. The cost of enforcing these additional provisions will be a reduction in estate visitation (Section 7.1).

7.3 Benefit Cost Analysis – More Restrictive Regulation

Under the more restrictive regulation fewer visitors enjoy the Place Management NSW estate than either the proposed regulation or the base case. Furthermore the more restrictive regulation imposes additional costs over both the base case and the proposed regulation (e.g. fencing costs estimated at \$2 million). The benefit cost ratio for this third option is less than that achieved for the proposed regulation. The more restrictive regulation only partially meets regulatory objectives – fewer people are encouraged to enjoy the Place Management NSW estate. As a consequence the more restrictive regulation is rejected.

8. COMMUNITY CONSULTATION STRATEGY

Stakeholders listed in Section 2.5 will be forwarded a copy of the draft regulation and draft RIS for comment and to inform decision-making and any further amendments before the regulation is finalised.

In addition the following consultation is proposed:

- Posting of intention to remake the regulation and the availability of a draft RIS in the NSW Government Gazette
- Public notices in NSW newspapers

- Use of the NSW Government's 'Have your say' website – www.haveyoursay.nsw.gov.au
- Posting of the draft RIS on the Property NSW website.

9. CONCLUSIONS

The proposed regulation addresses Place Management NSW's statutory objectives and delivers the greatest net benefit to the NSW community. The proposed regulation is preferred.

10. REFERENCES

AgEconPlus (2015) Barangaroo Delivery Authority Regulation 2015 Regulatory Impact Statement

Arche Consulting (2012) Parramatta Park Trust Regulation 2012 Regulatory Impact Statement. http://www.ppt.nsw.gov.au/park-management/2012-regulation-remake-2012/RIS%20-%20PPT%20Regs%20-%202012_FINAL.pdf

Better Regulation Office (2009) Guide to Better Regulation http://www.dpc.nsw.gov.au/_data/assets/pdf_file/0009/16848/01_Better_Regulation_eGuide_October_2009.pdf

James and Gillespie (2000) Guidelines for Economic Effects and Evaluation in Environmental Impact Assessment, Prepared for Planning NSW, Sydney

NSW Department of Finance, Services & Innovation (accessed 21 December 2016) Better Regulation Principles <https://www.finance.nsw.gov.au/better-regulation/regulatory-impact-assessments>

NSW Government Guidelines for Economic Appraisal (2007) www.treasury.nsw.gov.au/_data/assets/pdf_file/0016/7414/tpp07-5.pdf

Place Management NSW Act 1998 No 170 <http://www.legislation.nsw.gov.au/~view/act/1998/170/part4/div1/sec12>

Property NSW website (accessed 22 March 2017) <https://www.property.nsw.gov.au/precincts>

Property NSW (2016) Annual Report 2015-16 https://www.property.nsw.gov.au/sites/default/files/Property%20NSW%20Annual%20Review%202015-16_web_sml.pdf

Royal Botanic Gardens and Domain Trust Regulation 2013, Regulatory Impact Statement http://www.rbgsyd.nsw.gov.au/about_us/legislation/regulation2013

Sydney Harbour Foreshore Authority (2015) Annual Report 2014-15 <https://www.property.nsw.gov.au/sites/default/files/SHFA%20Annual%20Report%202014-15.pdf>

Draft Place Management NSW Regulation 2017

Comparison of provisions between the *Sydney Harbour Foreshore Authority Regulation 2011** and the proposed provisions of the *Place Management NSW Regulation 2017***

2011 Provision*	2017 Provision**	Proposed amendment
Clause 1	Clause 1	Name of the regulation is changed to <i>Place Management NSW Regulation 2017</i> . 'Authority' has been replaced with 'Place Management NSW' in subclauses of the 2017 Regulation.
Clause 2	Clause 2	2017 regulation commences on the day on which it is published on the NSW legislation website http://www.legislation.nsw.gov.au
Clauses 3 & 13	Clause 3	The relevant definitions previously located throughout 2011 Regulation have been consolidated for ease of reference unless specifically referred to in specific subclauses.
Part 2 Clause 4	Part 2 Clauses 4, 6, 7, 8 & 9	Title Amended. Clauses relating to the regulation of commercial activities <i>Part 2 Regulation of activities in public areas</i> in 2011 regulation are reorganised under new clauses and subclauses at <i>Part 2 Conduct prohibited in all public areas, Clauses 4 to 12</i> in 2017 draft regulation. Additional prohibited or regulated public activities now covered in the subclauses of Part 2 of the draft 2017 regulation include: <ul style="list-style-type: none"> • Leaving any rubbish or litter other than in a provided receptacle. Clause 4(1)(a). • Bring any waste (refuse, rubbish, industrial waste). Clause 4(1)(b). • Landing or launching an aircraft, remote control aircraft, drone, helicopter, parachute, hang glider or similar thing. Clause 9(d). • Conducting exercising classes, personal fitness sessions, fitness assessment or any other exercise program. Clause 10(a). • Using exercise equipment. Clause 10(b). • Leaving exercise equipment unattended for more than 1 hour. Clause 10(c). • Bringing in dog that is not on a leash. Clause 12(1)(a).

		<ul style="list-style-type: none"> • Being in charge of dog that is not on a leash. Clause 12(1)(b). • Leading or riding horse. Clause 12(1)(c). • Bringing in animal other than dog Clause 12(1)(d). • Leaving an animal unattended or untethered Clause 12(1)(e). • Unattended animals or animals brought in public areas to be removed by ranger or police officer Clause 12(2). • Obligation of persons to remove and dispose of dog faeces deposited in public area by dog under persons control Clause 12(3).
Clause 5	Clause 11	<p>Clauses 5 (1)(a)(b)(2)(3)(a)(b)(c) Public assemblies in the 2011 Regulation is reproduced at Clauses 11(1)(2)(a)(b)(c)(3)(a)(b) Conducting or participating in public assemblies of the draft 2017 regulations.</p> <p>Wording from the 2011 Regulation has been retained however subclauses are rearranged for ease of reference.</p>
Clause 6	Clause 17	<p>Clauses 6 (1)(2)(3)(a)(b)(c) Use of land by buses of the 2011 Regulation is reproduced in the 2017 draft regulation at Clauses 17(1)(2)(3)(a)(b) Using a bus contrary to rules.</p> <p>New clause retains same wording as the 2011 Regulation.</p>
Clause 7	Clause 13	<p>Closing of public areas Clauses 7(1)(2) of the 2011 Regulation is reproduced at Part 3 Further prohibitions imposed by directions, Closing of public area Clauses 13(1)(2) in the draft 2017 regulation.</p> <p>New clause retains same wording as the 2011 Regulation.</p>
Clause 8	Clauses 14 & 15	<p>Clause 8 New Year's Eve and other special events is replaced in the draft 2017 regulations with the following new clauses:</p> <p>Clauses 14(1)(2)(3)(a)(b)(i)(ii) Restrictions on the number of persons that may be in parts of public areas</p>

		<ul style="list-style-type: none"> • New clause allows Place Management NSW to provide directions limiting the number of persons who may enter or remain in any public areas or particular parts of public areas. Clause 14(1). • If persons enters or remains in public areas in wilful breach of a direction is guilty of an offence (10 penalty units). Clause 14(2). • Directions can be made via signage or by a verbal order of a Ranger or any other person appointed by Place Management NSW. Clause 14(3)(a)(b)(i)(ii). <p>Clauses 15(1)(2)(a)(b) Charges for entry during New Year's Eve and Australia Day activities</p> <p>Retains similar wording to 2011 clause however is rearranged for ease of reference and includes reference to Place Management NSW charging admission to public areas or any particular public area during special events.</p>
Clause 9	Clause 16	<p>Clauses 9(1)(2)(3)(4) Prohibition on liquor is replaced in the draft 2017 regulations by Clause 16(1)(a)(b)(2)(3)(4)(5)(6)(a)(b) Prohibitions on bringing in or drinking Liquor</p> <p>Retains similar wording of 2011 Regulation however simplified and amended to reflect the following new additions:</p> <ul style="list-style-type: none"> • A person must not enter a public area in contravention of prohibition. Clause 16(4). • Place Management NSW is to give public notice of prohibition. Clause 16(5). • 'Special event' defined in relation to prohibition. Clause 16(6).
Clause 10	Clauses 23	<p>Clause 10(1)(2)(a)(b)(3)(4) Securing of vessels to wharves of the Authority in the 2011 Regulation is replaced with Clause 23(1)(2)(a)(b)(3)(a)(b)(c)(4) Berthing of vessels within Cockle Bay in the draft 2017 Regulation.</p> <p>New clause has different wording at Clauses 23(3)(a)(b)(c)(4) which refers to :</p>

		<ul style="list-style-type: none"> • Use of a berthed vessel for tourist purposes. Clause 10(3)(a). • Bunkering of a berthed vessel. Clause 10(3)(b). • Disposal of garbage and sewage from a berthed vessel. Clause 10(3)(c). • Condition relating to the use of a berthed vessel for tourist purposes and regulation of fee that a tourist may be charged in relation to that use. Clause 10(4).
Clause 11	Clause 18	Clauses 11(1)(2)(3)(4) Acting Contrary to Notices of the 2011 Regulation is reproduced at Clauses 18(1)(2)(3)(4) Acting Contrary to Notices of the draft 2017 Regulation.
Clause 12	N/A	Clause not reproduced in draft 2017 Regulation.
Clause 13	Clause 3	Clause 13 Definitions of Darling Harbour and Pyrmont Bridge, Darling Harbour (a)(b)(c)(d)(e)(f), Pyrmont Bridge (a)(b)(c)(d) are simplified and consolidated in Clause 3 Definitions of the draft 2017 Regulation.
Clause 14	Clause 12	<p>Clauses 14(1)(2)(3)(4) Dogs or other animals of 2011 Regulation removed and replaced with Clause 12 Bringing dogs and other animals into public area (1)(a)(b)(c)(d)(e)(2)(4)(a)(b).</p> <p>New subclauses at Clause 12 refer to:</p> <ul style="list-style-type: none"> • Leading or riding horse. Clause 12(1)(c). • Obligation of persons to remove and dispose of dog faeces deposited in public area by dog under persons control Clause 12(3).
Clause 15	Clause 5	<p>Clause 15 Fishing in Darling Harbour area in 2011 Regulation is replaced by Clauses 5 (1)(2) Fishing in Darling Harbour area and from Pyrmont Bridge in draft 2017 Regulation.</p> <p>New clause retains similar wording of 2011 Regulation however also includes reference to prohibition of fishing from any portion of Pyrmont Bridge. Clause 5(2).</p>
Clause 16	Clause 20	Clause 16 Tumbalong Park of 2011 Regulation is reproduced in Clause 20 Using stage in Tumbalong Park in the draft 2017 Regulation.

		Wording of new clause slightly amended to read ‘A person must not use the stage in any area of Tumbalong Park or its facilities, except as authorised by Place Management NSW’
Clause 17	N/A	Clause not reproduced in draft 2017 Regulation.
Clause 18	Clause 19	<p>Clauses 18(a)(b)(c)(d)(e)(f) Activities within Cockle Bay of the 2011 Regulation is referred to at Clauses 19(1)(a)(b)(c)(d)(e)(f)(2)(a)(b)(c) Activities within Cockle Bay in the draft 2017 Regulation.</p> <p>The definition of ‘personal watercraft’ taken from Clause 3 Definitions, Personal Watercraft (a)(b)(c) of the 2011 Regulation has been added at Clauses 19(2)(a)(b)(c) of the draft 2017 Regulation.</p>
Clause 19	Clause 21	<p>Clauses 19(a)(b)(c)(d)(e) Activities on Pyrmont Bridge in 2011 Regulation now referred to in Clauses 21 (a)(b)(c)(d) Activities on Pyrmont Bridge in draft 2017 Regulation.</p> <p>Similar wording retained with the exception of the reference to fishing from Pyrmont Bridge which is now referred to in Clause 5(2) of the draft 2017 Regulation.</p>
Clause 20	Clause 22	Clauses 20(1)(2)(a)(b)(3)(4) Movement of vessels beneath Pyrmont Bridge of 2011 Regulation is reproduced at Clauses 22(1)(2)(a)(b)(3)(4) Movement of vessels beneath Pyrmont Bridge in the draft 2017 Regulation.
Clause 21	Clause 23	Clauses 21(1)(2)(a)(b)(3)(a)(b)(c)(4) Berthing of vessels within Cockle Bay of the 2011 Regulation is reproduced at Clauses 23(1)(2)(a)(b)(3)(a)(b)(c)(4) Berthing of vessels within Cockle Bay in the draft 2017 Regulation..
Clause 22	Clause 25	Clauses 22(1)(2)(a)(b)(3) Requirement to state name and address of the 2011 Regulation now referred to in in Clauses 25(1)(2)(a)(b)(3) Requirement to state name and address in the draft 2017 Regulation.
Clause 23	Clause 26	Clauses 23(1)(a)(b)(c)(2)(3)(4)(5)(6)(7) Removal of certain persons from public areas of the 2011 Regulation is replaced by Clauses 26(1)(2)(3)(4)(5)(6)

		<p>Removal of certain persons from public areas in the draft 2017 Regulations.</p> <p>Similar wording is retained from the 2011 Regulation however the new clause refers to a new offence:</p> <ul style="list-style-type: none"> A person who enters part of a public area in breach of a direction made under this or any other provision of the Regulation must leave that part of the public area when directed to do so by a Ranger (10 Penalty Units). Clause 26(1).
Clause 24	Clause 27	<p>Clauses 24(1)(2)(a)(b)(3)(4)(5)(6)(7)(a)(b)(c) Removal of obstructions from public areas in the 2011 Regulation is reproduced at Clauses 27(1)(2)(a)(b)(3)(4)(5)(6)(7)(a)(b)(c) Removal of obstructions from public areas in the draft 2017 Regulation.</p>
Clause 25	Clause 30	<p>Clauses 25(a)(b)(c)(d) Activities not effected by Regulation in the 2011 Regulation is reproduced at Clauses 30(a)(b)(c)(d)(e) No offence for certain acts or omissions in the draft 2017 regulation.</p> <p>Clause 25(a) of the 2011 regulation has been split into Clauses 30(a)(b) of the draft 2017 regulation.</p>
Clause 26	Clause 31	<p>Clause 26 Declaration of core land in the 2011 Regulation is reproduced at Clause 31 Declaration of core land in draft 2017 Regulation.</p>
Clause 27	Clause 28	<p>Clauses 27(a)(b) Penalty notice offences and penalties in the 2011 Regulation is reproduced at Clauses 28(a)(b) Penalty notice offences and penalties in the draft 2017 Regulation</p>
Clause 28	Clause 32	<p>Clauses 28(1)(2) Repeal and savings provisions in the 2011 Regulation is reproduced at Clause 32 Savings in the draft 2017 Regulation with simplified wording.</p>
Schedule 1	Schedule 1	<p>Schedule 1 of the draft 2017 legislation outlines relevant penalties for offences referred to in the regulations.</p> <p>No penalty increases for corresponding offences in the 2011 Regulation.</p>
N/A	Clause 29	<p>Clause 29(1)(2)(a)(b)(c)(3)(4) Authorisation may be</p>

		<p><i>granted by Place Management NSW.</i></p> <p>New clause not reproduced from previous 2011 Regulation.</p>
--	--	---