

NEW DARLING HARBOUR AUTHORITY ACT, 1984, No. 103

NEW SOUTH WALES.



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NEW DARLING HARBOUR AUTHORITY ACT, 1984, No. 103

New South Wales



ANNO TRICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 103, 1984.

An Act to constitute the New Darling Harbour Authority and to specify its powers, authorities, duties and functions. [Assented to, 28th June, 1984.]

See also Statutory and Other Offices Remuneration (New Darling Harbour Authority) Amendment Act, 1984.

New Darling Harbour Authority.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the "New Darling Harbour Authority Act, 1984".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Interpretation.

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"advisory committee" means an advisory committee appointed under section 58 (1);

"Authority" means the New Darling Harbour Authority constituted by this Act;

"building" includes a structure or part of a structure;

"Chairperson" means the Chairperson of the Authority;

"control", in relation to development, means consent to, permit, regulate, restrict or prohibit that development, either unconditionally or subject to conditions;

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“controlled land” means land that is for the time being vested in the Authority, or in a person on behalf of the Authority;

“Court” means the Land and Environment Court;

“development”, in relation to land, means—

- (a) the erection of a building on that land;
- (b) the carrying out of a work in, on, over or under that land;
- (c) the use of that land or of a building or work on that land;
or
- (d) the subdivision of that land;

“Development Area” means the land described for the time being in Schedule 1;

“development plan” means a development plan made under Part IV and in force;

“exempt land” means—

- (a) land comprising a main road; or
- (b) land the subject of an order in force under subsection (7);

“existing use” means the use of a building, work or land for a purpose for which the use of the building, work or land is prohibited by operation of a provision of a development plan, being—

- (a) a purpose for which the building, work or land was lawfully being used immediately before the coming into force of the provision; or
- (b) in the case of a building, work or land erected, carried out or used in accordance with a permit after the coming into force of the provision—a purpose specified in the application for the permit;

“General Manager” means the General Manager of the Authority;

“main road” means a main road within the meaning of the Main Roads Act, 1924;

“member” means a member of the Authority;

“member of staff”, in relation to the Authority, means a person employed under section 8 (1);

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“owner” has the meaning ascribed thereto in the Local Government Act, 1919;

“part-time member” means a member referred to in section 6 (4) (b);

“permit” means a permit granted under Part V;

“public authority” means a public or local authority constituted by or under any Act, a government department or a statutory body representing the Crown, and includes a person exercising functions on behalf of that authority, department or body;

“public land” means land that is vested in a public authority, or in a person on behalf of a public authority, but does not include controlled land;

“public road” means a road within the meaning of the Public Roads Act, 1902, but does not include a main road;

“regulation” means a regulation made under this Act.

(2) A reference in this Act to—

- (a) a function includes a reference to a power, authority and duty; and
- (b) the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) A reference in this Act to—

- (a) the erection of a building includes a reference to the rebuilding of, the making of structural alterations to, or the enlargement or extension of a building or the placing or relocating of a building on land;
- (b) the carrying out of a work includes a reference to the rebuilding of, the making of alterations to, or the enlargement or extension of a work;
- (c) the subdivision of land is a reference to—
 - (i) (without limiting the following provisions of this paragraph) the subdivision of land within the meaning of the Local Government Act, 1919;
 - (ii) any other division of land into 2 or more parts which, after the division, would be obviously adapted for separate occupation, use or disposition; or

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- (iii) the redivision of land, by such a subdivision or by any other division, into different parts which, after the redivision, would be obviously adapted for separate occupation, use or disposition,
and includes a reference to a subdivision effected under Division 1 of Part II of the Strata Titles Act, 1973; and
- (d) the carrying out of development includes a reference to the erection of a building, the carrying out of a work, the use of land or of a building or work, or the subdivision of land, as the case may require.
- (4) A power, express or implied, to give a direction under this Act includes a power to revoke or amend the direction.
- (5) A reference in this Act to the granting of a permit includes a reference to the granting of a permit subject to conditions.
- (6) A reference in this Act to a director of a corporation includes a reference—
- (a) to any person occupying or acting in the position of director of the corporation, by whatever name called and whether or not validly appointed or duly authorised to act in that position; and
- (b) to any person in accordance with whose directions or instructions the directors of the corporation are accustomed to act.
- (7) The Governor may, by order published in the Gazette, declare any land specified in the order to be exempt land for the purposes of this Act.

Act binds Crown.

4. This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Variation of Development Area.

5. (1) The Governor may, by regulation, amend Schedule 1—
- (a) by omitting therefrom any matter;

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- (b) by inserting therein any matter which specifies or describes any land at or in the vicinity of Darling Harbour, being land which, in the opinion of the Minister, is necessary for inclusion within the Development Area in order to enable the development of that Area in accordance with this Act; or
- (c) by altering any matter.

(2) The Governor may, by regulation, omit Schedule 1 and insert instead a Schedule which specifies or describes any land at or in the vicinity of Darling Harbour, being land which, in the opinion of the Minister, is necessary to constitute the Development Area in order to enable the development of that Area in accordance with this Act.

PART II.

CONSTITUTION OF THE AUTHORITY.

The Authority.

6. (1) There is hereby constituted a corporation under the corporate name of the "New Darling Harbour Authority".

(2) The Authority—

- (a) shall, for the purposes of any Act, be deemed to be a statutory body representing the Crown; and
- (b) shall, in the exercise of its functions (except in relation to the contents of a report or recommendation made by it to the Minister), be subject to the control and direction of the Minister.

(3) The Authority shall consist of not less than 5, and not more than 7, members who shall be appointed by the Governor.

(4) Of the members—

- (a) one shall, in and by the instrument by which the member is appointed, be appointed as General Manager of the Authority; and

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(b) the remainder shall, in and by the instruments by which the members are appointed, be appointed as part-time members.

(5) Of the part-time members, one shall, in and by the instrument by which the member is appointed or by another instrument executed by the Governor, be appointed as Chairperson of the Authority.

(6) Schedule 2 has effect with respect to the members.

(7) Schedule 3 has effect with respect to the procedure of the Authority.

Functions of General Manager.

7. The General Manager—

- (a) is responsible, as the chief executive officer of the Authority, for the management of the affairs of the Authority, subject to and in accordance with any directions of the Authority; and
- (b) shall have and may exercise such other functions as are conferred or imposed on the General Manager by or under this or any other Act.

Staff of the Authority.

8. (1) Such staff as may be necessary to enable the Authority to exercise its functions shall be employed under the Public Service Act, 1979.

(2) For the purpose of enabling the Authority to exercise its functions, the Authority may—

- (a) with the approval of—
 - (i) the Minister; and
 - (ii) the public authority concerned; and
- (b) on such terms and conditions as may be approved for the time being by the Public Service Board,

arrange for the use of the services of any staff or facilities of a public authority.

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(3) For the purpose of enabling the Authority to exercise its functions, the Authority may—

- (a) with the approval of the Minister; and
- (b) on such terms and conditions as may be approved for the time being by the Public Service Board.

appoint, employ or engage any suitably qualified person to provide the Authority with services, information or advice.

PART III.

OBJECTS AND FUNCTIONS OF THE AUTHORITY.

Objects of the Authority.

9. The objects of the Authority are to promote, encourage, facilitate, carry out and control the development of land within the Development Area.

Functions of the Authority generally.

10. (1) For the purpose of achieving any of its objects under this Act, the Authority shall have, and may exercise, such functions as are conferred or imposed on the Authority by or under this or any other Act.

(2) The Authority may do all such supplemental, incidental or consequential acts as may be necessary or expedient for the exercise of its functions.

(3) Nothing in this Act operates to limit any function which by law the Authority may, in its capacity as a corporation, exercise otherwise than pursuant to this Act.

Authority to promote development, etc.

11. The Authority may—

- (a) promote, organise and conduct tourist, educational, recreational, entertainment, cultural and commercial activities within the Development Area;

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- (b) construct, establish, maintain and operate tourist, educational, recreational, entertainment, cultural and commercial facilities within the Development Area;
- (c) construct, establish, maintain and operate transport facilities to, from and within the Development Area; and
- (d) carry out works for the purpose of beautifying the landscape of the Development Area.

Vesting of public land in the Authority.

12. (1) The Governor may, by order published in the Gazette, declare that any public land specified in the order, being land (other than exempt land) within the Development Area, be vested in the Authority.

(2) Upon the publication of an order under subsection (1), the public land specified in the order shall vest in the Authority for an estate in fee simple, freed and discharged from any trusts, obligations, estates, interests, charges and rates existing immediately before the publication of the order and from any claim for compensation arising as a consequence of the publication of the order.

(3) Notwithstanding anything contained in any other Act, land within the Development Area shall not be appropriated or resumed (otherwise than under this Act) except by an Act of Parliament.

Power to acquire land generally.

13. (1) The Authority may acquire land (other than exempt land) within the Development Area, including land previously appropriated or resumed for any purpose, by lease, exchange or purchase or by resumption or appropriation.

(2) A resumption or appropriation under subsection (1) shall be effected by the Governor under the Public Works Act, 1912, and, without affecting the generality of the foregoing, appropriation under that Act may be effected in respect of any public land (other than exempt land) within the Development Area.

(3) A resumption or appropriation under subsection (1) shall be deemed to be for an authorised work and the Authority shall be deemed to be the Constructing Authority.

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(4) Notwithstanding subsection (2), sections 34, 35, 36 and 37 of the Public Works Act, 1912, do not apply in respect of the expenditure on any works constructed in pursuance of this Act, but section 38 of that Act applies in respect of that expenditure.

(5) For the purposes of this section and not otherwise, Schedule 4 has effect.

Powers in respect of land generally.

14. The Authority may—

- (a) manage controlled land;
- (b) cause surveys to be made and plans of surveys to be prepared in relation to controlled land or in relation to any land proposed to be acquired by the Authority under this Act;
- (c) demolish, or cause to be demolished, any building on controlled land or on any other land within the Development Area of which it has exclusive possession;
- (d) provide, or arrange, on such terms and conditions as may be agreed upon for the location or relocation of utility services within the Development Area;
- (e) subdivide and re-subdivide controlled land and consolidate subdivided or re-subdivided controlled land;
- (f) erect, alter, repair and renovate buildings on and make other improvements to or otherwise develop controlled land or any other land within the Development Area, with the consent of the person in whom that other land is vested;
- (g) cause any work to be done on or in relation to any controlled land or any other land within the Development Area, with the consent of the person in whom that other land is vested, for the purpose of rendering it fit to be used for any purpose for which the Authority proposes to use the land or allow the land to be used; and
- (h) dedicate, by notification published in the Gazette, any controlled land as a reserve for public recreation or other public purposes and fence, plant and improve any such reserve.

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Grant of leases, easements and licences.

15. (1) In this section, "easement" includes an easement in favour of—

- (a) the Crown in right of the State or the Commonwealth; or
- (b) any public authority,

without a dominant tenement.

(2) The Authority may, for the purpose of the provision of services to be enjoyed in connection with controlled land and consistently with the good management of that land, from time to time and upon such terms and conditions as are approved by the Minister, grant—

- (a) subject to subsection (3), leases of controlled land;
- (b) easements through, upon or in controlled land—
 - (i) for the construction of pipelines, the laying or re-laying of cables or the construction of any apparatus to be used in connection with those pipelines or cables;
 - (ii) for the purpose of providing access to the dwellings situated on or within that land; or
 - (iii) for any other purpose it considers necessary and that would directly or indirectly assist in the attainment of its objects under this Act; and

(c) licences for the use of controlled land.

(3) A lease granted pursuant to subsection (2) may not have a term that, together with the term of any further lease which may be granted pursuant to an option contained in the lease, exceeds 8 years.

(4) Sections 88A and 181A of the Conveyancing Act, 1919, apply to and in respect of an instrument purporting to grant an easement under subsection (2).

(5) Without limiting the generality of subsection (2), the Authority may, from time to time and upon such terms and conditions as are approved by the Minister, grant licences authorising entry upon controlled land for the purpose of the maintenance, re-laying or repair of any pipelines or cables or the maintenance or repair of any apparatus used in connection therewith, being pipelines, cables or apparatus situated on or in that land as at the date the land became controlled land.

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Power to dispose of land, etc.

16. (1) The Authority may, with the consent of the Minister and in such manner and subject to such conditions as the Minister thinks fit, sell, lease, exchange or otherwise dispose of or deal with controlled land and grant easements or rights-of-way over that land or any part thereof.

(2) Without affecting the generality of subsection (1), a contract for the sale of controlled land may include conditions for or with respect to—

- (a) the erection of any building on that land by the purchaser within a specified period;
- (b) conferring on the Authority an option or right to repurchase that land if the purchaser has failed to comply with a condition referred to in paragraph (a);
- (c) conferring on the Authority an option or right to repurchase that land if the purchaser wishes to sell or otherwise dispose of that land before the expiration of a specified period or requiring the purchaser to pay to the Authority a sum determined in a specified manner where the Authority does not exercise that option or right; or
- (d) the determination of the repurchase price payable by the Authority pursuant to a condition referred to in paragraph (b) or (c).

(3) A condition included in a contract of sale pursuant to subsection (2) does not merge in the transfer of title to the land, the subject of the contract of sale, on completion of the sale.

(4) A lease granted pursuant to subsection (1) may not have a term that, together with the term of any further lease which may be granted pursuant to an option contained in the lease, exceeds 99 years.

(5) Subsection (1) does not require the Authority to obtain the consent of the Minister to the lease of controlled land where the term of the lease, together with the term of any further lease which may be granted pursuant to an option contained in the lease, does not exceed 3 years.

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Notification of interests.

17. (1) The Registrar-General shall, at the request of the Authority made in a manner approved by the Registrar-General and on payment of the fee prescribed under the Real Property Act, 1900, make, in the Register kept under that Act, a recording appropriate to signify—

- (a) that land specified in the request is held subject to a condition authorised under section 16 (2); or
- (b) that a recording made pursuant to paragraph (a) has ceased to have effect.

(2) The Authority shall not make a request pursuant to subsection (1) (a) except for the purpose of ensuring compliance with the conditions in the contract of sale under which the land was sold, but the Registrar-General shall not be concerned to inquire whether any such request has been made for that purpose.

(3) Where a recording pursuant to subsection (1) (a) has been made in respect of any land, the Registrar-General shall not register under the Real Property Act, 1900, a transfer of that land to or by a person other than the Authority unless the transfer would (but for this subsection) be so registrable and unless—

- (a) a recording pursuant to subsection (1) (b) has been made in respect of the land; or
- (b) the consent of the Authority to the transfer has been endorsed thereon.

Public roads within the Development Area.

18. (1) The Authority may—

- (a) by notification published in the Gazette, close or realign any public road, or part thereof, within the Development Area; or
- (b) set out and construct roads—
 - (i) on controlled land or on land within the Development Area of which the Authority has exclusive possession; or
 - (ii) on any other land within the Development Area, with the consent of the person in whom that other land is vested.

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(2) Notwithstanding anything in any other Act, upon the publication, pursuant to subsection (1) (a), of a notification closing a public road or part thereof, the estate or interest therein of any person or public authority shall vest in the Authority freed and discharged from any trusts affecting it immediately before the publication of the notification and freed and discharged from any rights of the public or any person thereto as a public road or highway.

Power to acquire property by gift, etc.

19. (1) The Authority may acquire, by gift inter vivos, devise or bequest, any property and may agree to any condition to which the gift, devise or bequest is subject.

(2) The rule of law against the remoteness of vesting does not apply to a condition to which the Authority has agreed under subsection (1).

(3) The Stamp Duties Act, 1920, does not apply to or in respect of any gift inter vivos, devise or bequest made or to be made to the Authority.

Dealings with certain property acquired by gift, etc.

20. (1) The Authority shall not sell, lease, exchange or otherwise dispose of or deal with property acquired by gift inter vivos, devise or bequest, except—

- (a) where the property has been acquired subject to a condition to which the Authority has agreed under section 19 (1)—in accordance with the condition; or
- (b) in any other case—with the approval of the Minister.

(2) Notwithstanding subsection (1) but subject to subsection (3), where the Authority decides that any property that has been acquired by the Authority subject to a condition to which the Authority has agreed under section 19 (1) is not required for the purposes of the Authority, the Authority may—

- (a) sell the property and retain the proceeds of the sale as property of the Authority;
- (b) exchange the property for other property; or

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- (c) if the Authority is of the opinion that the property is of no commercial value—dispose of the property without valuable consideration,

in contravention of the condition.

(3) The Authority shall not sell, exchange or otherwise dispose of any property under subsection (2) except with the consent of the Minister and in accordance with any condition the Minister may impose upon the grant of that consent.

(4) The Minister may consent to the sale, exchange or disposal of property for the purposes of this section and may impose any condition the Minister thinks fit upon the grant of that consent.

Agency agreements.

21. The Authority may—

- (a) appoint persons to act as agents of the Authority in New South Wales or elsewhere; and
- (b) act as agent for persons engaged in the provision of tourist, educational, recreational, entertainment, cultural or commercial services.

Joint action.

22. The Authority may exercise its functions within or outside New South Wales jointly or in association with any other person (including a corporation constituted otherwise than under an Act of the New South Wales Parliament) situated within New South Wales or elsewhere.

Agreements with other persons.

23. The Authority may enter into an agreement with any other person in relation to the construction, establishment, maintenance or operation of any facilities, the carrying out of any works or the promotion of any activities.

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PART IV.

DEVELOPMENT PLANS.

DIVISION 1.—*Procedures for making development plans.***Preparation of draft development plans.**

24. (1) The Authority may cause a draft development plan to be prepared in relation to the Development Area or any part thereof.

(2) Upon completion of the preparation of a draft development plan under subsection (1), the Authority shall cause a copy of the plan to be submitted to the Minister.

Approval of draft development plans.

25. The Minister may—

(a) approve a draft development plan—

(i) in the form in which it has been submitted to the Minister;
or

(ii) in that form, together with such variations as the Minister may specify in the approval; or

(b) refuse to approve the draft development plan.

Exhibition of draft development plans.

26. (1) Where the Minister approves a draft development plan, the Authority shall cause copies of the plan (as so approved) to be exhibited in such manner and during such period as the Minister may direct.

(2) Subsection (1) does not require the Authority to cause copies of a draft development plan to be exhibited where the Minister determines that the plan has the effect only of amending some other development plan in a manner that does not substantially affect the operation of that other plan.

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Public submissions.

27. Any person may, in such manner and before the expiration of such period as the Minister may determine, make submissions to the Authority with respect to the provisions of a draft development plan exhibited under section 26.

Consideration of public submissions.

28. The Authority shall consider any submission made to it under section 27 in relation to a draft development plan.

Reports.

29. (1) After considering all submissions made to it under section 27 in relation to a draft development plan, the Authority shall cause a report to be prepared in respect of those submissions.

(2) Upon completion of the preparation of a report under subsection (1), the Authority shall cause the report to be submitted to the Minister.

Making of development plans.

30. After considering a report prepared under section 29 (1), and after consultations with the Minister for Planning and Environment, the Minister may, in the light of the report and those consultations—

- (a) make a development plan—
 - (i) in accordance with the draft development plan the subject of the report; or
 - (ii) in accordance with that draft plan, together with such variations as the Minister may consider appropriate; or
- (b) refuse to make a development plan.

Amendment of development plans.

31. (1) A development plan may be amended or repealed, in whole or in part, by a subsequent development plan.

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(2) The amendment or repeal, whether in whole or in part, of any development plan does not affect—

- (a) the previous operation of the plan or anything duly suffered, done or commenced under the plan;
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under the plan; or
- (c) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation or liability,

and any such investigation, legal proceedings or remedy may be instituted, continued and enforced as if the amendment or repeal had not occurred.

Development plans—making, operation and inspection.

32. (1) Expressions used in a development plan shall, unless the contrary intention appears, have the same meanings respectively as they have in this Act.

(2) A development plan shall—

- (a) be published in the Gazette; and
- (b) take effect on and from the date of publication or a later date specified in the plan.

(3) Judicial notice shall be taken of a development plan and of the date of its publication in the Gazette.

(4) It shall be presumed, in the absence of evidence to the contrary, that all conditions and preliminary steps precedent to the making of a development plan have been complied with and performed.

(5) The validity of a development plan in relation only to any failure to comply with any formal or procedural requirements of this Division with respect to its making shall not be questioned in any legal proceedings except those commenced in the Court by any person within 3 months after the date of its publication in the Gazette.

(6) A copy of every development plan shall be available for public inspection, without charge, at the office of the Authority during ordinary office hours.

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(7) A development plan shall be deemed to have been published in the Gazette notwithstanding that any planning map or other instrument or material referred to, embodied or incorporated in the development plan has not been so published.

(8) A reference in subsection (6) to a copy of a development plan includes a reference to any planning map or other instrument or material referred to, embodied or incorporated in the development plan.

DIVISION 2.—*Form and content of development plans.*

Form of plans.

33. Subject to this Act and the regulations, a development plan or a draft development plan shall be in such form as the Minister may direct.

Content of development plans generally.

34. (1) A development plan may make provision for or with respect to—

- (a) controlling development; and
- (b) such other matters as are prescribed.

(2) Without limiting the generality of subsection (1), a development plan may provide that development specified therein—

- (a) may be carried out without the necessity for a permit being obtained therefor;
- (b) may not be carried out except with a permit being obtained therefor; or
- (c) is prohibited.

Development plans to specify land.

35. A development plan shall specify the land to which the plan applies.

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Suspension of laws, etc., by development plans.

36. (1) In this section, "regulatory instrument" means any Act (other than this Act), rule, regulation, by-law, ordinance, proclamation, agreement, covenant or instrument by or under whatever authority made.

(2) For the purpose of enabling development to be carried out in accordance with a development plan or in accordance with a permit, a development plan may provide that, to the extent necessary to serve that purpose, a regulatory instrument specified in that development plan shall not apply to any such development or shall apply subject to the modifications specified in that development plan.

(3) A provision referred to in subsection (2) shall have effect according to its tenor, but only if the Governor has, before the making of the development plan, approved of the provision.

(4) Where a Minister is responsible for the administration of a regulatory instrument referred to in subsection (2), the approval of the Governor for the purposes of subsection (3) shall not be recommended except with the prior concurrence in writing of the Minister so responsible.

(5) A declaration in a development plan as to the approval of the Governor as referred to in subsection (3) or the concurrence of a Minister as referred to in subsection (4) shall be evidence of the approval or concurrence.

Authorisation of matters under development plans.

37. A development plan may authorise any matter or thing to be from time to time determined, applied or regulated by the Minister or the Authority, or by such other Minister or public authority as may be specified in the development plan.

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PART V.

DEVELOPMENT CONTROL.

Restrictions on development.

38. (1) Subject to this Act, where a development plan provides that development specified therein may be carried out without the necessity for a permit being obtained therefor, a person shall not carry out that development on land to which that provision applies except in accordance with the provisions of that plan.

(2) Subject to this Act, where a development plan provides that development specified therein may not be carried out except with a permit being obtained therefor, a person shall not carry out that development on land to which that provision applies unless—

- (a) that permit has been obtained and is in force; and
- (b) the development is carried out in accordance with the provisions of any conditions subject to which that permit was granted and of that plan.

(3) Subject to this Act, where a development plan provides that development specified therein is prohibited, a person shall not carry out that development on land to which that provision applies.

Applications for permits.

39. (1) An application for a permit may be made by—

- (a) the owner of the land to which the application relates; or
- (b) any person, with the consent in writing of the owner of the land to which the application relates.

(2) An application under subsection (1) shall—

- (a) be made to the Authority;
- (b) be made in the prescribed form and manner; and
- (c) be accompanied by the prescribed fee.

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(3) An application for a permit may be withdrawn at any time prior to its determination by the Authority by service on the Authority of a notice to that effect signed by the applicant.

(4) An application withdrawn under subsection (3) shall be deemed for the purposes of this Act never to have been made.

(5) Where the applicant for a permit is not entitled to copyright in respect of any matter contained in or accompanying the application, the applicant shall be deemed to have indemnified all persons using the application in accordance with this Act against any claim or action in respect of breach of copyright.

Matters for consideration.

40. In determining an application for a permit, the Authority shall take into consideration such of the following matters as are of relevance to the development the subject of the application:—

- (a) the provisions of—
 - (i) any development plan; and
 - (ii) any draft development plan,
applying to the land to which the application relates;
- (b) any other prescribed matter.

Determinations.

41. (1) An application for a permit shall be determined by—

- (a) the granting of the permit, either unconditionally or subject to conditions; or
- (b) the refusing of the permit.

(2) A permit granted by the Authority, otherwise than in accordance with the provisions of this Act and of any development plan applying to the land to which the application for the permit relates, is void, but nothing in this subsection affects any liability of the Authority.

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Notices to applicants.

42. (1) Notice of a determination under section 41 (1) shall be given to the applicant concerned in the prescribed form and manner.

(2) Where a determination is made by the granting of a permit subject to conditions or by the refusing of a permit, the notice referred to in subsection (1) shall indicate the reasons for the imposition of the conditions or the refusal.

Failure to make determinations.

43. Where the Authority fails to determine an application for a permit within 60 days after the application is made, the Authority shall, for the purposes only of any appeal under section 48, be deemed to have determined the application by refusing the permit.

Day from which permit operates.

44. A permit takes effect on the day on which it is granted or, where a later day is endorsed on the permit in that regard, that later day.

Effect of permits to erect buildings.

45. A permit to erect a building shall be sufficient to authorise the use of the building, when erected, for the purpose for which it was erected where that purpose is specified in the application for the permit.

Lapsing of consents.

46. A permit shall lapse unless the development the subject of the permit is substantially commenced within 12 months after the day on which the permit took effect.

Existing uses and permits.

47. (1) Nothing in this Act, the regulations or a development plan prevents the continuance of an existing use.

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(2) The regulations may make provision for or with respect to existing uses and, in particular, for or with respect to—

- (a) the carrying out of alterations or extensions to or the rebuilding of a building or work being used for an existing use; and
- (b) the change of an existing use to another use.

(3) The provisions of any regulations in force for the purposes of subsection (2) shall be deemed to be incorporated in every development plan.

(4) Nothing in a development plan operates so as to require a permit to be obtained for the continuance of a use of a building, work or land for a lawful purpose for which it was being used immediately before the coming into force of the plan or so as to prevent the continuance of that use except with a permit being obtained.

Appeals by applicants.

48. (1) A person who is dissatisfied with a determination of the Authority with respect to an application for a permit made by that person may, in accordance with the regulations, appeal to the Minister within 28 days after the day on which notice of the determination was given to the person pursuant to section 42 (1) or the day upon which the application is deemed to have been determined under section 43.

(2) An appeal under subsection (1) shall be determined by the Minister.

(3) A determination under subsection (2) is final and binds the appellant and the Authority.

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PART VI.

LEGAL PROCEEDINGS.

Interpretation.

49. In this Part—

- (a) a reference to a breach of this Act is a reference to—
 - (i) a contravention of or failure to comply with this Act; and
 - (ii) a threatened or an apprehended contravention of or a threatened or apprehended failure to comply with this Act; and
- (b) a reference to this Act includes a reference to—
 - (i) a development plan;
 - (ii) a permit; and
 - (iii) a condition subject to which a permit was granted.

Restraint, etc., of breaches of this Act.

50. The Authority may bring proceedings in the Court for an order to remedy or restrain a breach of this Act, whether or not any right of the Authority has been or may be infringed by or as a consequence of that breach.

Orders of the Court.

51. (1) Where the Court, in respect of proceedings brought by the Authority under section 50, is satisfied that a breach of this Act will, unless restrained by order of the Court, be committed, it may make such order as it thinks fit to remedy or restrain the breach.

(2) Without limiting the powers of the Court under subsection (1), an order made under that subsection may—

- (a) where the breach of this Act comprises a use of any building, work or land—restrain that use;

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- (b) where the breach of this Act comprises the erection of a building or the carrying out of a work—require the demolition or removal of that building or work; or
- (c) where the breach of this Act has the effect of altering the condition or state of any building, work or land—require the reinstatement, so far as is practicable, of that building, work or land to the condition or state the building, work or land was in immediately before the breach was committed.

(3) Where a breach of this Act would not have been committed but for the failure to obtain a permit, the Court, upon application being made by the defendant, may—

- (a) adjourn the proceedings to enable an application for a permit to be made; and
- (b) in its discretion, by interlocutory order, restrain the continuance of the commission of the breach while the proceedings are adjourned.

(4) The functions of the Court under this Part are in addition to and not in derogation from any other functions of the Court.

Offences against this Act and the regulations.

52. (1) Where any matter or thing is by or under this Act (otherwise than by or under the regulations) directed or forbidden to be done, or where the Minister, the Authority or any other person is authorised by or under this Act (otherwise than by or under the regulations) to direct any matter or thing to be done, or to forbid any matter or thing to be done, and that matter or thing (if so directed to be done) remains undone, or (if so forbidden to be done) is done, a person offending against that direction or prohibition shall be guilty of an offence against this Act.

(2) Where any matter or thing is by or under the regulations directed or forbidden to be done, or where the Minister, the Authority or any other person is authorised by or under the regulations to direct any matter or thing to be done, or to forbid any matter or thing to be done, and that matter or thing (if so directed to be done) remains undone, or (if so forbidden to be done) is done, a person offending against that direction or prohibition shall be guilty of an offence against the regulations.

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(3) Nothing in subsection (1) or (2) applies to or in respect of a direction given under this Act by the Minister to the Authority or to any other public authority.

Penalties.

53. (1) A person guilty of an offence against this Act shall, for every such offence, be liable to the penalty expressly imposed or, if no penalty is so imposed, to a penalty not exceeding \$20,000 and to a further daily penalty not exceeding \$1,000.

(2) A person guilty of an offence against the regulations shall be liable to a penalty not exceeding \$2,000.

Proceedings for offences.

54. (1) Proceedings for an offence against this Act may be taken before a court of petty sessions held before a stipendiary magistrate sitting alone or before the Court in its summary jurisdiction.

(2) Proceedings for an offence against the regulations may be taken before a court of petty sessions held before a stipendiary magistrate sitting alone.

(3) If proceedings in respect of an offence against this Act are brought in a court of petty sessions held before a stipendiary magistrate, the maximum penalty that the court may impose in respect of the offence is, notwithstanding any other provisions of this Act, \$2,000 or the maximum penalty provided by this Act in respect of the offence, whichever is the lesser.

(4) If proceedings in respect of an offence against this Act are brought in the Court in its summary jurisdiction, the Court may impose a penalty not exceeding the maximum penalty provided by this Act in respect of the offence.

(5) Proceedings in the Court in its summary jurisdiction in respect of an offence against this Act may be commenced not later than 6 months after the offence was alleged to be committed.

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(6) Proceedings for an offence against this Act shall not be instituted in the Court in its summary jurisdiction without the written consent of the Minister or of such prescribed person or person of a class or description of persons prescribed for the purposes of this subsection.

(7) A person shall not be convicted of an offence against this Act where the matter constituting the offence is, at the date upon which the conviction would, but for this subsection, be made—

- (a) the subject of proceedings under section 50, which proceedings have not been concluded; or
- (b) the subject of an order made under section 51.

(8) Nothing in subsection (7) precludes a conviction being made where the proceedings referred to in paragraph (a) of that subsection are concluded otherwise than by the making of an order under section 51.

Offences by corporations.

55. (1) Where a corporation contravenes, whether by act or omission, any provision of this Act or a regulation, each person who is a director of the corporation or who is concerned in the management of the corporation shall be deemed to have contravened the same provision unless the person satisfies the court that—

- (a) the corporation contravened the provision without the knowledge of the person;
- (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision; or
- (c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.

(3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or a regulation on any corporation by which an offence against the provision is actually committed.

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Recovery of charges, etc.

56. Any charge, fee or money due to the Authority under this Act may be recovered as a debt or liquidated demand in a court of competent jurisdiction.

Proof of certain matters not required.

57. In any legal proceedings, no proof shall be required (until evidence is given to the contrary) of—

- (a) the constitution of the Authority;
- (b) any resolution of the Authority;
- (c) the appointment of, or the holding of office by, any member; or
- (d) the presence or nature of a quorum at any meeting of the Authority.

PART VII.**MISCELLANEOUS.****Appointment of advisory committees.**

58. (1) The Minister may appoint such advisory committees as the Minister considers appropriate.

(2) An advisory committee shall have such functions as the Minister may from time to time confer or impose on the committee.

(3) An advisory committee shall consist of such committee-members appointed by the Minister as the Minister thinks fit, of whom one shall, in and by the instrument by which the committee-member is appointed, be appointed as chairperson of the committee.

(4) A committee-member shall hold office for such period as is specified in the instrument of appointment of the committee-member, but any such appointment may be terminated by the Minister at any time.

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(5) A committee-member shall be entitled to be paid such fees and allowances (if any) as may be from time to time determined in respect of the committee-member by the Minister.

(6) The office of a committee-member shall, for the purposes of any Act, be deemed not to be an office or place of profit under the Crown.

Application of certain legislation within Development Area.

59. Except to the extent that the regulations otherwise provide and subject to any modifications specified in the regulations, the provisions of—

- (a) the Environmental Planning and Assessment Act, 1979;
- (b) Parts XI and XII of the Local Government Act, 1919;
- (c) the Height of Buildings Act, 1912;
- (d) the Heritage Act, 1977;
- (e) the Coastal Protection Act, 1979;
- (f) the Maritime Services Act, 1935;
- (g) the Rivers and Foreshores Improvement Act, 1948;
- (h) the Sydney Harbour Trust Act, 1900; and
- (i) any instrument in force under any of those Acts or those Parts, as the case may require,

do not apply to or in respect of land within the Development Area.

Disclosure of information.

60. A person shall not disclose any information obtained in connection with the administration or execution of this Act (or any other Act conferring or imposing functions on the Authority) unless that disclosure is made—

- (a) with the consent of the person from whom the information was obtained;
- (b) in connection with the administration or execution of this Act (or any such other Act);

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- (c) for the purposes of any legal proceedings arising out of this Act (or any such other Act) or of any report of any such proceedings;
- (d) in accordance with a requirement imposed under the Ombudsman Act, 1974; or
- (e) with other lawful excuse.

Penalty: \$2,000 or imprisonment for a term not exceeding 6 months.

Misuse of information.

61. (1) Where, through association with the Authority, a person has knowledge of specific information relating to proposals made, or to be made, by the Authority in respect of the acquisition, development or disposal of land and that information is not generally known but, if generally known, might reasonably be expected to affect materially the market price of that land, the person contravenes this subsection if the person—

- (a) deals, directly or indirectly, in that or in any other land for the purpose of gaining an advantage for the person by the use of that information; or
- (b) divulges that information for the purpose of enabling another person to gain an advantage by using that information to deal, directly or indirectly, in that or in any other land.

Penalty: \$2,000.

(2) Where, through association with the Authority, a person is in a position to influence proposals made, or to be made, by the Authority in respect of the acquisition, development or disposal of land and does influence the proposals by securing the inclusion or alteration of any matter in, or the exclusion or omission of any matter from, the proposals, the person contravenes this subsection if—

- (a) the person does so for the purpose of gaining an advantage for the person; or
- (b) the person does so for the purpose of enabling another person to gain an advantage.

Penalty: \$2,000.

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(3) Where—

- (a) a contravention of subsection (1) occurs and an advantage referred to in that subsection is gained from any dealing in land to which the contravention relates; or
- (b) a contravention of subsection (2) occurs and an advantage referred to in that subsection is gained from any dealing in land to which the contravention relates, being an advantage which would not have been gained if the proposals concerned had not been influenced,

any person who gained that advantage is, whether or not any person has been prosecuted for or convicted of an offence in respect of a contravention of subsection (1) or (2), as the case may be, liable to another person for the amount of any loss incurred by that other person by reason of the gaining of that advantage.

(4) Where a loss referred to in subsection (3) is incurred by reason of an advantage gained from a dealing in land, the amount of the loss is the difference between the price at which the dealing was effected and—

- (a) in the case of any dealing to which subsection (1) relates, the price that, in the opinion of the court before which it is sought to recover the amount of the loss, would have been the market price of the land at the time of the dealing if the specific information used to gain that advantage had been generally known at that time; or
- (b) in any case to which subsection (2) relates, the price that, in the opinion of the court before which it is sought to recover the amount of the loss, would have been the market price of the land at the time of the dealing if the proposals concerned had not been influenced.

(5) An action to recover a loss referred to in subsection (3) may not be brought after the expiration of 5 years next succeeding the dealing in land in relation to which the loss was incurred.

(6) For the purposes of this section a person is associated with the Authority—

- (a) if the person is a member, or a member of staff, of the Authority or a person of whose services the Authority makes use, or who is otherwise appointed, employed or engaged, pursuant to this Act;

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- (b) if the person is a committee-member of an advisory committee;
- (c) if the person is an officer within the meaning of the Environmental Planning and Assessment Act, 1979, or a person who is a member of a committee or subcommittee established by or under that Act;
- (d) if the person is an officer or a servant of a council;
- (e) if the person acts or has acted as banker, solicitor, auditor or professional adviser or in any other capacity for the Authority, the Minister, the Department of Environment and Planning or a council; or
- (f) where the person, so associated by virtue of paragraph (e), is a corporation, if the person is a director, manager or secretary of the corporation.

Delegation.

62. (1) The Authority may, by instrument in writing, delegate to—

- (a) the General Manager;
- (b) a committee comprised of members, including the General Manager or a member nominated by the General Manager;
- (c) a member of staff of the Authority;
- (d) a person for the time being holding or acting in a specified position in the staff establishment of the Authority; or
- (e) any person of whose services the Authority makes use, or who is otherwise appointed, employed or engaged, pursuant to this Act,

the exercise of such of the functions of the Authority (other than this power of delegation) as are specified in the instrument.

(2) A function the exercise of which has been delegated under this section may, while the delegation remains unrevoked, be exercised from time to time by the delegate in accordance with the terms of the delegation.

(3) Without limiting the operation of subsection (2), a function the exercise of which has been delegated under this section to the General Manager may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation by—

- (a) a member of staff of the Authority;

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(b) a person for the time being holding or acting in a specified position in the staff establishment of the Authority; or

(c) any person of whose services the Authority makes use, or who is otherwise appointed, employed or engaged, pursuant to this Act,

as authorised by instrument in writing by the General Manager in that behalf either generally or in a particular case or class of cases.

(4) A delegation or authorisation under this section may be made subject to such conditions or limitations as to the exercise of any function the subject thereof, or as to time or circumstances, as may be specified in the instrument of delegation or authorisation.

(5) Notwithstanding any delegation under this section, the Authority may continue to exercise any function delegated.

(6) Any act or thing done or suffered by a delegate acting in the exercise of a delegation under this section, or by a person duly authorised in that behalf by the General Manager under this section, has the same force and effect as it would have if it had been done or suffered by the Authority and shall be deemed to have been done or suffered by the Authority.

(7) The Authority may, by instrument in writing, revoke wholly or in part any delegation under this section, and the General Manager may, by instrument in writing, revoke wholly or in part any authorisation under this section.

(8) An instrument purporting to have been signed by a person in his or her capacity as a delegate of the Authority, or as a person authorised under this section, shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument duly executed by the Authority and shall, until the contrary is proved, be deemed to be an instrument signed by a delegate of the Authority or by a person duly authorised under this section, as the case may be.

(9) In subsection (8), a reference to a delegate includes a reference to the chairperson of a committee to which the exercise of a function has been delegated under subsection (1).

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Financial provisions.

63. (1) There shall be established in the Special Deposits Account in the Treasury a New Darling Harbour Authority Account into which shall be deposited all money received by the Authority and from which shall be paid all amounts required to meet expenditure incurred in the execution or administration of this Act.

(2) The financial year of the Authority shall be the year commencing on 1st July.

(3) As soon as practicable after being so directed by the Treasurer (which direction the Treasurer is hereby authorised to give), the Authority shall pay into the Consolidated Fund from the New Darling Harbour Authority Account referred to in subsection (1) such sum of money as is specified in the direction.

Reports.

64. (1) As soon as practicable after 30th June, but on or before 31st December, in each year, the Authority shall prepare and forward to the Minister a report of its work and activities for the 12 months ending on 30th June in that year.

(2) The Minister shall lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

(3) As soon as practicable after being so directed by the Treasurer (which direction the Treasurer is hereby authorised to give), the Authority shall furnish the Treasurer with such information concerning the exercise of its functions (including information comprising detailed estimates of money likely to be received, and expenditure likely to be incurred, by the Authority in respect of any specified period) as is specified in the direction.

Service of documents.

65. (1) A document may be served on, or given to, the Authority by leaving it at, or by sending it by post to—

(a) the office of the Authority; or

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(b) if it has more than one office—any one of its offices.

(2) Nothing in subsection (1) affects the operation of any provision of a law or of the rules of a court authorising a document to be served on, or given to, the Authority in a manner not provided for by subsection (1).

Authentication of certain documents.

66. Every summons, process, demand, order, notice, statement, direction or document requiring authentication by the Authority may be sufficiently authenticated without the seal of the Authority if signed by the General Manager or by any member of staff of the Authority authorised to do so by the General Manager.

Regulations.

67. (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 and, in particular, for or with respect to—

- (a) the functions of the Authority and of any member of staff of the Authority;
- (b) the records to be kept for the purposes of this Act;
- (c) the fees and charges that may be imposed for the purposes of this Act;
- (d) the procedures of advisory committees;
- (e) leases, easements and licences granted under this Act and the conditions to which any such leases, easements and licences shall be subject;
- (f) the form and content of development plans;
- (g) the amendment of applications for permits;
- (h) the conditions subject to which permits may be granted;
- (i) the amendment of permits and of the conditions to which permits are subject; and
- (j) the forms to be used for the purposes of this Act.

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(2) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind;
or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body.

or may do any combination of those things.

(3) A provision of a regulation may provide that a reference in any other Act or instrument to a specified body or person shall, for the purpose only of the application of that Act or instrument within the Development Area, be construed as a reference to such other body or person (whether or not the Minister, the Authority, a member of the Authority or a member of staff of the Authority) as is specified in the provision.

SCHEDULE 1.

(Sec. 3 (1).)

DEVELOPMENT AREA.

All that piece or parcel of land situate in the City of Sydney, Parish of St. Andrew and County of Cumberland: Commencing at the intersection of the north-western side of Ultimo Road with the northeastern side of Wheat Road; and bounded thence on the southeast by the northwestern side of Ultimo Road southwesterly to the easternmost corner of the land shown in Deposited Plan 76938; on the southwest by the northeastern boundary of that land and the northeastern extremity of Mary Ann Street northwesterly to the easternmost corner of lot 3, Deposited Plan 216854; generally on the southwest by the generally northeastern boundary of that lot generally northwesterly to the southernmost corner of lot 1, Deposited Plan 631345; generally on the southwest by the generally northeastern boundary of that lot generally northwesterly to the northernmost corner of that lot; on the southwest by a line northwesterly to the southernmost corner of the land in Deposited Plan 191714; on the southwest by the northeastern side of Pymont Street northwesterly to the southernmost corner of lot 14, Deposited Plan 632526; generally on the southwest by the generally northeastern boundary of that lot generally northwesterly to the easternmost corner of lot 5, Deposited Plan 632525; on the southwest by the northeastern boundary of that lot northwesterly to the southeastern side of Fig Street; on the southwest by the

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northeastern side of Pymont Street northwesterly to its intersection with the southeastern side of Murray Street; on the northwest and west by that side and the eastern side of that street northeasterly and northerly to the northwestern corner of the 1 rood 15½ perches parcel of land shown in plan catalogued Ms.4548SY; on the west by a line northerly to the westernmost corner of lot 1 Deposited Plan 562727 formed by boundaries shown bearing 342 degrees 23.315 metres and 72 degrees 5.5 metres on that plan; generally on the northwest by the generally northwestern boundary of that lot generally northeasterly to the easternmost northeastern corner of that lot; on the north by a line easterly to the westernmost southwestern corner of lot 1, Deposited Plan 252090; generally on the northeast by the southern and southwestern boundaries of that lot generally southeasterly to the southernmost corner of that lot; on the northeast by a line southeasterly to the southwestern corner of lot 2 of Deposited Plan 252090; on the north by the southern boundary of that lot easterly; on the east by the western boundary of lot 5 Deposited Plan 252090 southerly to the southwestern corner of that lot; on the north by the southern boundary of that lot and its prolongation easterly to a line along the southwestern side of Sussex Street; on the northeast by that line and that side of that street southeasterly to its intersection with the northwestern side of Day Place; on the southeast by that side of that place southwesterly to its intersection with the generally northwestern edge of road DD shown in Plan Registered No. 6003 412 BC 0159 at the Department of Main Roads, Sydney; generally on the southeast by that edge generally southwesterly to the northeastern corner of lot 4 Deposited Plan 10374; on the northeast by the northeastern boundary of that lot southeasterly to the easternmost corner of that lot; on the northeast by a line southeasterly to the northeastern corner of the land comprised in Certificate of Title volume 5011 folio 170; generally on the southeast by the generally southeastern boundary of that land generally southwesterly to the southeastern corner of that land; on the southeast by the northwestern side of Harbour Street and its splayed intersection with the northeastern side of Pier Street southwesterly to its intersection with the northern side of Pier Street; on the south and southeast by that side and the northwestern side of that street westerly and southwesterly to its intersection with the prolongation northwesterly of the southwestern side of Lackey Street; on the northeast by that prolongation southeasterly to its intersection with the southeastern side of Pier Street; on the southeast by that side of that street southwesterly to the westernmost corner of lot 2 Deposited Plan 612907; on the northeast by part of the southwestern boundary of that lot southeasterly to the northernmost corner of lot 1 Deposited Plan 613131; on the northeast by the northeastern boundary of that lot and the northeastern side of Wheat Road southeasterly to the point of commencement and having an area of 48 hectares or thereabouts.

All that piece or parcel of land situate in the City of Sydney, Parish of St. Andrew and County of Cumberland: Commencing at the intersection of the southeastern side of Pier Street with the northeastern side of Lackey Street and bounded thence on the northwest and on the north by the southeastern and southern sides of Pier Street northeasterly and easterly to its splayed intersection with the western side of Harbour Street; on the northeast and east by that splay and that side of that

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SCHEDULE 1—*continued.*DEVELOPMENT AREA—*continued.*

street southeasterly and southerly to its splayed intersection with the northern side of Little Pier Street; on the southeast, south and southeast by that splay and the northern and northwestern sides of that street southwesterly, westerly and southwesterly to its intersection with the northeastern side of Lackey Street; and on the southwest by the northeastern side of that street northwesterly to the point of commencement, and having an area of 3 096 square metres or thereabouts.

All those pieces or parcels of land situate in the City of Sydney, Parish of St. Andrew and County of Cumberland, being lots 1, 2 and 3, Deposited Plan 562950, lot 1 Deposited Plan 700398 and lots 1 and 2 Deposited Plan 921102 and having a total area of 1.526 hectares or thereabouts.

SCHEDULE 2.

(Sec. 6 (6).)

PROVISIONS RELATING TO THE MEMBERS OF THE AUTHORITY.**Age of members.**

1. (1) A person of or above the age of 65 years is not eligible to be appointed as General Manager or to act in the office of General Manager.

(2) A person of or above the age of 70 years is not eligible to be appointed as a part-time member or to act in the office of a part-time member.

Chairperson of the Authority.

2. (1) The Governor may remove a part-time member from the office of Chairperson.

(2) A person who is a part-time member and Chairperson shall be deemed to have vacated office as Chairperson if the person—

- (a) is removed from that office by the Governor under subclause (1);
- (b) resigns that office by instrument in writing addressed to the Minister; or
- (c) ceases to be a part-time member.

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SCHEDULE 2—*continued.*PROVISIONS RELATING TO THE MEMBERS OF THE AUTHORITY—*continued.***Acting members and acting Chairperson.**

3. (1) The Governor may, from time to time, appoint a person to act in the office of a member during the illness or absence of the member, and the person, while so acting, shall have and may exercise all the functions of the member.

(2) The Governor may, from time to time, appoint a part-time member to act in the office of Chairperson during the illness or absence of the Chairperson, and the part-time member, while so acting, shall have and may exercise all the functions of the Chairperson.

(3) The Governor may remove any person from any office to which the person was appointed under subclause (1) or (2).

(4) A person while acting in the office of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(5) For the purposes of this clause—

- (a) a vacancy in the office of a member or the Chairperson shall be deemed to be an absence from office of the member or Chairperson, as the case may be; and
- (b) a part-time member shall be deemed to be absent from office as a part-time member during any period that the member acts in the office of the General Manager pursuant to an appointment under subclause (1).

(6) In subclause (2), clause 10 and Schedule 3—

- (a) a reference to a member or part-time member includes a reference to a person acting in the office of a member or part-time member;
- (b) a reference to the appointment of a member includes a reference to the appointment of a person to act in the office of a member; and
- (c) a reference to the office of a member or part-time member includes a reference to the office of a person appointed to act in the office of a member or part-time member.

Terms of office.

4. Subject to this Schedule, a member shall hold office—

- (a) in the case of the General Manager—for such period not exceeding 7 years;
or

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SCHEDULE 2--*continued.*PROVISIONS RELATING TO THE MEMBERS OF THE AUTHORITY--*continued.*

(b) in the case of a part-time member--for such period not exceeding 5 years, as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

General Manager to be full-time member.

5. The General Manager shall devote the whole of his or her time to the duties of the office of General Manager, except as permitted by this Act or except with the consent of the Minister (which consent the Minister is hereby authorised to give).

Remuneration.

6. (1) The General Manager is entitled to be paid--

- (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act, 1975; and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the General Manager.

(2) A part-time member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the part-time member.

Filling of vacancy in office of member.

7. In the event of the office of any member becoming vacant a person shall, subject to this Act, be appointed to fill the vacancy.

Casual vacancies.

8. (1) A member shall be deemed to have vacated office if the member--

- (a) dies;
- (b) being the General Manager, absents himself or herself from duty for 14 days (whether or not wholly or partly consecutive) in any period of 12 months, except on leave granted by the Minister (which leave the Minister is hereby authorised to grant), unless the absence is occasioned by illness or other unavoidable cause;
- (c) being a part-time member, absents himself or herself from 4 consecutive meetings of the Authority of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted

New Darling Harbour Authority.

SCHEDULE 2—*continued.*PROVISIONS RELATING TO THE MEMBERS OF THE AUTHORITY—*continued.*

by the Minister (which leave the Minister is hereby authorised to grant) or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings;

- (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (e) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- (f) is convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or upwards, or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;
- (g) being the General Manager, engages in any paid employment outside the duties of the office of General Manager, except with the consent of the Minister (which consent the Minister is hereby authorised to give);
- (h) resigns the office by instrument in writing addressed to the Minister;
- (i) being—
 - (i) the General Manager, attains the age of 65 years; or
 - (ii) a part-time member, attains the age of 70 years;
- (j) is retired from office by the Governor under subclause (2); or
- (k) is removed from office by the Governor under subclause (3), (4) or (5).

(2) The General Manager may, after attaining the age of 60 years and before attaining the age of 65 years, be retired from office by the Governor and, if so retired, is entitled to such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines.

(3) The Governor may remove the General Manager from office for incapacity, incompetence or misbehaviour.

(4) The Governor may remove a part-time member from office.

(5) Without affecting the generality of subclauses (3) and (4), the Governor may remove from office a member who contravenes the provisions of clause 9.

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SCHEDULE 2—*continued.*PROVISIONS RELATING TO THE MEMBERS OF THE AUTHORITY—*continued.***Disclosure of pecuniary interests.**

9. (1) A member who has a direct or indirect pecuniary interest—
- (a) in a matter that is being considered, or is about to be considered, at a meeting of the Authority; or
 - (b) in a thing being done or about to be done by the Authority.

shall, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Authority.

- (2) A disclosure by a member at a meeting of the Authority that the member—
- (a) is a member, or is in the employment, of a specified company or other body;
 - (b) is a partner, or is in the employment, of a specified person; or
 - (c) has some other specified interest relating to a specified company or other body or a specified person,

shall be deemed to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

(3) The Authority shall cause particulars of any disclosure made under sub-clause (1) or (2) to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to the inspection of any person on payment of such fee as may be determined by the Authority from time to time.

(4) After a member has, or is deemed to have, disclosed the nature of an interest in any matter or thing pursuant to subclause (1) or (2), the member shall not, unless the Minister otherwise determines—

- (a) be present during any deliberation of the Authority, or take part in any decision of the Authority, with respect to that matter; or
- (b) exercise any functions under this Act with respect to that thing.

as the case may require.

(5) Notwithstanding that a member contravenes the provisions of this clause, that contravention does not invalidate any decision of the Authority or the exercise of any function under this Act.

(6) A reference in this clause to a meeting of the Authority includes a reference to a meeting of a committee of the Authority.

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SCHEDULE 2—*continued.*PROVISIONS RELATING TO THE MEMBERS OF THE AUTHORITY—*continued.***Effect of certain other Acts.**

10. (1) The Public Service Act, 1979, does not apply to or in respect of the appointment of a member and a member is not, as a member, subject to that Act.

(2) Where by or under any other Act provision is made requiring a person who is the holder of an office specified therein to devote the whole of his or her time to the duties of that office, or prohibiting the person from engaging in employment outside the duties of that office, that provision shall not operate to disqualify the person from holding that office and also the office of a part-time member or from accepting and retaining any remuneration payable to the person under this Act as a part-time member.

(3) The office of a part-time member shall for the purposes of any Act be deemed not to be an office or place of profit under the Crown.

Preservation of rights of General Manager previously public servant, etc.

11. (1) In this clause—

“statutory body” means any body declared under clause 13 to be a statutory body for the purposes of this Schedule;

“superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

(2) Subject to subclause (3) and to the terms of appointment, where the General Manager was, immediately before being appointed as General Manager—

(a) an officer of the Public Service or a Teaching Service;

(b) a contributor to a superannuation scheme;

(c) an officer employed by a statutory body; or

(d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee,

he or she—

(e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person;

(f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as General Manager; and

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SCHEDULE 2—*continued.*PROVISIONS RELATING TO THE MEMBERS OF THE AUTHORITY—*continued.*

- (g) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he or she had continued to be such an officer, contributor or person during his or her service as General Manager and—

- (h) his or her service as General Manager shall be deemed to be service as an officer or employee for the purposes of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred; and
- (i) he or she shall be deemed to be an officer or employee, and the Authority shall be deemed to be the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.

(3) If the General Manager would, but for this subclause, be entitled under subclause (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme, he or she shall not be so entitled upon becoming (whether upon appointment as General Manager or at any later time while holding office as General Manager) a contributor to any other superannuation scheme, and the provisions of subclause (2) (i) cease to apply to or in respect of him or her and the Authority in any case where he or she becomes a contributor to any such other superannuation scheme.

(4) Subclause (3) does not prevent the payment to the General Manager upon his or her ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be an officer or employee for the purposes of the scheme.

(5) The General Manager shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

General Manager entitled to re-appointment to former employment in certain cases.

12. (1) In this clause, "statutory body" means any body declared under clause 13 to be a statutory body for the purposes of this Schedule.

(2) A person who—

- (a) ceases to be General Manager by reason of the expiration of the period for which the person was appointed or by reason of resignation;
- (b) was, immediately before being appointed as General Manager—
- (i) an officer of the Public Service or a Teaching Service; or

New Darling Harbour Authority.

SCHEDULE 2—*continued.*PROVISIONS RELATING TO THE MEMBERS OF THE AUTHORITY—*continued.*

- (ii) an officer or employee of a statutory body; and
- (c) has not attained the age at which the person would have been entitled to retire had the person continued to be such an officer or employee.

shall be entitled to be appointed to some position in the Public Service, the Teaching Service or the service of that statutory body, as the case may be, not lower in classification and salary than that which the person held immediately before being appointed as General Manager.

- (3) Where subclause (2) does not apply to a person who—
 - (a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (2) (b); and
 - (b) is after that appointment appointed as General Manager,

the person shall have such rights (if any) to appointment as such an officer or employee, in the event of ceasing to be General Manager, as are specified in the instrument of appointment as General Manager or as are agreed upon by the person and by or on behalf of the Government.

Declaration of statutory bodies.

13. The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.

Liability of members, etc.

14. No matter or thing done by the Authority, and no matter or thing done by any member or by any person acting under the direction of the Authority, shall, if the matter or thing was done bona fide for the purposes of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand whatever.

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SCHEDULE 3.

(Sec. 6 (7).)

PROVISIONS RELATING TO THE PROCEDURE OF THE AUTHORITY.

General procedure.

1. The procedure for the calling of meetings of the Authority and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Authority.

Quorum.

2. Four members shall form a quorum and any duly convened meeting of the Authority at which a quorum is present shall be competent to transact any business of the Authority and shall have and may exercise all the functions of the Authority.

Presiding member.

3. (1) The Chairperson or, in the absence of the Chairperson, another part-time member elected as chairperson for the meeting by the members present shall preside at a meeting of the Authority.

(2) The person acting as chairperson at any meeting of the Authority shall have a deliberative vote and, in the event of an equality of votes, shall have a second or casting vote.

Voting.

4. A decision supported by a majority of the votes cast at a meeting of the Authority at which a quorum is present shall be the decision of the Authority.

Minutes.

5. The Authority shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Authority.

First meeting of Authority.

6. The Minister shall call the first meeting of the Authority in such manner as the Minister thinks fit.

New Darling Harbour Authority.

SCHEDULE 4.

(Sec. 13 (5).)

MODIFICATION OF THE PUBLIC WORKS ACT, 1912.

The Public Works Act, 1912, shall, for the purposes referred to in section 13, be deemed to be amended—

- (a) (i) by omitting from section 53 the words “so seised, possessed or entitled as aforesaid”;
- (ii) by omitting from section 53 the words “as in the preceding section mentioned” and by inserting instead the words “and may claim compensation in respect of the land resumed and agree to, settle and determine with the Constructing Authority the amount of such compensation”;
- (iii) by inserting in section 53 (3) after the word “release” the words “and to claim, agree to, settle and determine with the Constructing Authority the amount of compensation”;
- (iv) by omitting section 53 (5);
- (b) (i) by inserting in section 102 after the word “time” where secondly occurring the words “as the Constructing Authority allows or, in default of any such allowance of further time, within such time”;
- (ii) by omitting from section 102 the words “and upon the Crown Solicitor”;
- (iii) by inserting at the end of section 102 the following subsection:—
 - (2) Upon receipt of such notice of claim, the Constructing Authority shall obtain a report from a solicitor as to the title of the land in respect of which the claim has been served upon it by the claimant.
- (c) by omitting from section 103 the words “Crown Solicitor he shall forward the same, together with his report thereon to the Constructing Authority, who” and by inserting instead the words “Constructing Authority it”;
- (d) by omitting section 124 and by inserting instead the following section:—

124. (1) For the purpose of ascertaining the compensation to be paid, regard shall in every case be had by the Court not only to the value of the land taken but also to the damage (if any) caused by the severing of the lands taken from other lands or by the exercise of any statutory powers of the Constructing Authority otherwise injuriously affecting such other lands and the Court shall assess the compensation according to what it finds to have been the value of such lands, estate or interest at the time the notification was published in the Gazette and without being bound in any way by the amount of the valuation notified to such claimant and without reference to any alteration in such value arising from the construction of any works upon the land taken.

New Darling Harbour Authority.

SCHEDULE 4—*continued.*MODIFICATION OF THE PUBLIC WORKS ACT, 1912—*continued.*

(2) Notwithstanding subsection (1), the Court, in ascertaining such compensation, shall take into consideration and give effect to, by way of set-off or abatement, any enhancement in the value of the interest of any such owner in any land adjoining the land taken or severed therefrom by the construction of any works on the land taken, but in no case does this subsection operate so as to require any payment to be made by such owner to the Constructing Authority in consideration of such enhancement in value as aforesaid.

(3) Notwithstanding subsection (1), in the case of land under the surface taken or acquired by notification in the Gazette for the purpose of constructing a subterranean tunnel, no compensation shall be allowed or awarded unless—

- (a) the surface of the overlying soil is disturbed;
 - (b) the support of such surface is destroyed or injuriously affected by the construction of such tunnel; or
 - (c) any mines or underground working in or adjacent to such land are thereby rendered unworkable or are so affected as aforesaid.
- (e) by omitting section 126 (3);
- (f) (i) by omitting from section 135 (1) the words “such conveyances” and by inserting instead the words “conveyances or assurances of lands taken”;
- (ii) by omitting from section 135 (2) the words “incurred on the part as well of the vendor as of the purchaser.”.
-