

Attachment A

Darling Harbour Development Plan No.1 1985 as a contemporary EPI

The City submits that Darling Harbour Development Plan No.1 1985 fails the contemporary test by virtue of its age, its lack of strategic alignment with the NSW Government's Regional and District Plan, and its failure to respond to or address contemporary land use and planning issues facing the Harbour CBD.

Darling Harbour Development Plan No.1 1985 therefore, including:

- its objectives
- permissibility of and failure to address competition of uses
- lack of built form controls that inform appropriate development
- lack of built form controls that protect public amenity
- lack of maximum car parking rates
- failure to address increasing infrastructure needs, including affordable housing
- failure to address ecologically sustainable development principles

should be set aside in the consideration of any planning applications, with little weight attributed to it.

Weight should instead be placed on the objects of the Environmental Planning and Assessment Act 1971 and whether a proposal is consistent with contemporary evidence based strategic planning, including:

- Directions for a Greater Sydney 2017-2056
- Draft Greater Sydney Region Plan, October 2017
- Revised Draft Eastern City District Plan, October 2017
- Draft Future Transport Strategy 2056, October 2017
- Greater Sydney Draft Services and Infrastructure Plan, October 2017, and
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005, and
- the Central Sydney Planning Framework, including:
 - draft Central Sydney Planning Strategy, July 2016
 - Planning Proposal: Central Sydney
 - draft Sydney Development Control Plan 2012: Central Sydney Planning Strategy Amendment, and
 - draft Central Sydney Affordable Housing Program

The contemporary EPI test

The subject site is governed by a deemed regional environmental planning instrument (EPI) published in 1985, the Darling Harbour Development Plan No.1. The objects of the plan are to:

- (a) *promote the development of the Darling Harbour area as part of the State's Bicentennial Program*
- (b) *encourage the development of a variety of tourist, educational, recreational, entertainment, cultural and commercial facilities within that area, and*
- (c) *to make provision with respect to controlling development within that area.*

Australia's Bicentennial was 19 years ago. Almost every building delivered under the State's Bicentennial Program has since been demolished and replaced.

In August 2016, the NSW Government Department of Planning published a report describing a comprehensive review of the NSW Government's Rezoning Review process. A key finding of the review was that in determining the Strategic Merit of a rezoning the 'contemporary' nature of the relevant EPI will be considered when reviewing proposals. The review goes on to say:

The planning controls for a site will be considered contemporary if they have been in force for less than 5 years. This aligns with the requirements of the new Part 3B of the Environmental Planning and Assessment Act 1979, which requires a review of strategic plans in the Greater Sydney Region every 5 years.

The City submits that Darling Harbour Development Plan No.1 1985 fails the contemporary test by virtue of its age, its lack of strategic alignment with the NSW Government's Regional and District Plan, and its failure to respond to or address contemporary land use and planning issues facing the Harbour CBD.

Where Part 3B 'Strategic planning' of the EP&A Act 1979 requires the Greater Sydney Commission to review their regional plan every 5 years [section 75AE(4)] their district plans every 5 years [section 75AF(4)], and Council to review its LEP every 5 years, it is reasonable that Darling Harbour Development Plan No.1 1985 is held to the same contemporary test.

In failing the contemporary test any planning application should be subject to the Strategic Merit Test applied on Gateway determinations as outlined in the NSW Government's Planning Circular PS-12-006 in the public interest.

NSW Auditor General Performance Audit of Sydney Harbour Foreshore Lands

In November 2003 the NSW Auditor General published Performance Audit on Sydney Harbour Foreshore Land (Appendix 1). The purpose of the audit was to:

examine the processes that are expected to implement the policy decisions of government...

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

Observations and recommendations of the Audit included:

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

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

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

We also believe that the current governance framework will not be sufficient for the challenges ahead. For what needs now to be done, we think that existing governance

arrangements are too complex and are not equipped to be decisive or to drive actions in an holistic way.

We found that the disposal of foreshore land appears to be considered largely at a project level, with inherent emphasis by the proponent on financial returns.

These observations were 14 years ago. These matters remain unaddressed with commitments to repeal and replace Darling Harbour Development Plan No.1 with a coordinated strategic land use and development plan not met.

Key Move 3 of the draft Central Sydney Planning Strategy seeks to integrating disconnected precincts such as Darling Harbour back into the city under Sydney LEP 2012. A single consent authority and planning framework for Central Sydney land including Darling harbour will allow for the efficient and streamlined administration of planning functions under a single unified strategic plan that responds to the planning and land use philosophies of the City's Central Sydney Planning Strategy and the NSW Government's District Plan.