
**State Significant Sites and Part 3A of the
Environmental Planning and Assessment Act.**



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Abbreviations

DoP: Department of Planning

DGRs: Director General Requirements

EA: Environmental Assessment

NSW: New South Wales

SSS: State Significant Sites

SEPP: State Environmental Planning Policy

Regulation: Environmental Planning and Assessment Regulation 2000

The Act: Environmental Planning and Assessment Act 1979

Chapter 1: Part 3A and matters for the State

1.1 Introduction

The New South Wales (NSW) land use planning system has undergone significant reforms in recent years. These reforms have been in response to changing trends in the development industry, the economic status of NSW, increased public outcry towards development, and growing interest in providing a planning system that is increasingly more efficient, transparent and user friendly. Reforms of the planning system were guided by the appointment of Ministerial taskforces in 2003 (Williams 2005). These taskforces identified the need to address major development and infrastructure projects as one of the matters to be addressed by the then Government. As such, the reform that was commissioned resulted in arguably one of the largest changes to the NSW Planning system. These reforms included the conception of the Part 3A Major Projects regime.

On 1 August 2005 the New South Wales Government announced the commencement of new Part 3A Major Infrastructure and other projects to the Environmental Planning and Assessment Act 1979 (the Act). This new section of the Act was to facilitate the efficient assessment and approval of Major Projects, Critical Infrastructure and State significant development in NSW. Part 3A is designed to encourage economic development in New South Wales, whilst strengthening environmental safeguards and community participation (DIPNR 2005A).

As part of these reforms a new rezoning process was also implemented. This is known as the nomination of a State Significant Site (SSS). This new rezoning process was designed to facilitate the assessment and implementation of major projects and specific sites which are considered to be of environmental significance for the State of NSW. However a contentious issue associated with this new regime is the discretionary nature that the Minister for Planning is given. The Minister for Planning has the power to “call in” a proposal to consider it as a SSS thereby intervening in the assessment role that a relevant Council may have.

This chapter introduces the thesis, establishing the problem setting, followed by the problem statement and objectives, followed by the theoretical platform for the research and the research methodology utilised and a summarisation of each chapter of the thesis.

1.2 Problem Setting

In August 2005 the NSW Government announced the commencement of new planning reforms that resulted in arguably the most significant changes to the Act. The planning reforms were characterised by the introduction of *Part 3A Major infrastructure and other projects*. As part of the new Part 3A regime, a new *State Environmental Planning Policy (SEPP) (Major Projects)* was implemented in order to consolidate proposals that will be determined by the Minister and to specify clear criteria for development that is classified as a Major Project or that is considered State Significant. Under the SEPP, the Minister for Planning is the consent authority.

Under the SEPP for Major Projects, Schedule 3 lists sites that are of State Significance. Clause 8 of the SEPP allows for new sites to be listed under Schedule 3 via a SEPP Amendment mechanism. When determining that a site is of potential State Significance, it needs to be considered if the site shall help deliver key State Planning outcomes, such as the implementation of the Metropolitan Strategy (Department of Planning, 2007B). What is unique about SSS is that they are considered of such significance, that the listing of a site under Schedule 3 of the SEPP provides the planning regime for the respective site. Thus, the SEPP Amendment mechanism allows the Minister to establish an exclusive planning regime for the site, which generally includes zoning, gross floor areas and performance criteria.

A SSS and Part 3A project can be assessed and determined concurrently. This process represents a unique form of Strategic Environmental Assessment, where the controls for the assessment of a Major Project, are designed and implemented during the same period of assessment of the relevant Major Project via the SEPP Amendment process. This is a unique paradoxical planning process, given in normative planning environmental

impact assessment a project is moulded by the existing controls of the relevant consent authority. However in the subject assessment regime, a project is not limited by any existing controls and thus future controls are moulded by the project itself. This form of 'reserve cycle' planning approach is unique in NSW and therefore is of public and political interest.

Under Part 3A, the Minister is established as the sole determining authority. However it should be noted that recent reforms to Part 3A aim to alter the arrangements for the determination of Part 3A projects. Part 3A and State Significant site projects will be investigated through this thesis, with attention placed on the process, public consultation, appropriateness of legislation and appeal rights.

1.3 Problem Statement and Objectives:

Major Projects deliver key infrastructure for NSW and also aim to conceptualise the objectives of key Planning policies. As such, they are imperative for the states prosperity and for the future economic development of NSW. This thesis aims to investigate the process of Part 3A with particular attention to the role of State Significant Sites drawing on a study of Barangaroo, which has followed the Part 3A approval process.

This thesis illustrates the challenges of SSS and how they work, commenting on their appropriateness, public consultation mechanisms, reviewing common planning approaches and analysing the legislation. The main objectives of this thesis are:

- a) To illustrate and comprehend the Part 3A Planning Process, with particular attention to the appropriateness of Part 3A and State Significant Sites;
- b) Analyse the level of public consultation and detail the mechanisms for appeal rights and dispute resolution under Part 3A of the Act;
- c) To ascertain the impacts political donations have on Part 3A and State Significant proposals; and

- d) To establish an understanding on Part 3A projects delivering economic development and growth for NSW and if Part 3A considers appropriate environmental safeguards.

1.4 Theoretical/Conceptual Context:

The study is taken in the context of NSW land use legislation. The function of Part 3A is outlined in the problem setting and is based on a wider planning land use framework which is fashioned by concepts including: different Government Policies; appropriateness of Part 3A for the development assessment of major projects; details of the State Significant Site process; Part 3A public consultation processes; appeal rights for Part 3A.

Primary data is strengthened by the use of secondary data to obtain in-depth analysis of the topic. Academic journals and text include authors Whealy (2006), Davies (2007), Roberts (2008), Ratcliff (2006), Williams (2005) and others. They all comment on various parts of Part 3A, its implications, economics of development, sustainability, public consultation, appeal rights and land use planning reforms. The theoretical concepts they suggest are from various angles and approaches and therefore they have predominantly different ideologies on the Part 3A process. Davie (2007) argues that Part 3A of the act significantly reduces the scope and influence of public participation over environmental planning decisions. Davie (2007) suggests that Part 3A has given rise to serious questions regarding an apparent governmental bias towards development at the cost of community values and the environment. This angle of opinion shall be investigated and critiqued and in some cases has been challenged through the research undertaken.

It is noted that a thesis on Part 3A was undertaken in 2007 by a Bachelor of Planning graduate. Walmsley (2007) undertook a thesis on Part 3A and the land use planning system in NSW, with a case study on the Carlton United Brewery site in Sydney. Walmsley's thesis concludes with some recommendations into the topic area of Part 3A, sustainable initiatives and the land use planning system. Of particular attention is Walmsley's recommendation for: *"A study should be conducted into the implementation of*

Part 3A of the EPA Act holistically across the State of NSW to determine its appropriateness as a development assessment and approval process for Major Infrastructure and other projects". This study does not intend to answer this recommendation, but rather intends to investigate and comment on the appropriateness of Part 3A as an assessment process for major projects. This is one of the objectives of this thesis.

In a theoretical context, Part 3A has been a regularly critiqued and commented on by environmental groups, academics, lawyers and the media. This is largely due to the greater impacts Part 3A has on land use planning and also on related issues such as public consultation and appeal rights. However theoretical context and practical context are different and what is written on paper, is carried out differently in practice given many unforeseen issues can occur. Academia is excellent in judging the theoretical concepts of Part 3A, however is unproven in the practical application of its instruments. Modern day planning is a complexity process woven into a plethora of identified issues as well as unforeseen issues in the built environment. Such is the world of the modern day planner in NSW, that they must be always learning, adapting and developing skills in new areas. A planner in the public sector must juggle person ideals and skills with those of the bureaucracy. This is elaborated in the findings in Chapter 5.

1.5 Research Methodology

Initially the topic will be set amongst existing literature to obtain a more concise understanding of the problem setting and statement. Scholarly journals that comment on the Part 3A process and public consultation will be analysed and challenged. This will be utilised to formulate a literature review.

Following this, qualitative research will be conducted via the carrying out of in-depth interviews. Observations will be gathered from the interviews and the case study on Barangaroo. The case study is a site which has been assessed and approved under Part 3A and the State Significant Sites.

This thesis was undertaken in the following chronological order:

- a) Review and analysis of existing literature and determining it's relevance to the subject topic. Research Part 3A legislation;
- b) Establishment of problem setting and thesis objectives. The problem setting guided research and in general, was amended as thought necessary;
- c) Lodgement of ethics application with Ethics Panel;
- d) Receipt of ethics approval subject to conditions. Conduct necessary refinements to satisfy those conditions;
- e) Select case study, conduct site inspections and research about site;
- f) Determine suitable interview participants and request their participation;
- g) Conduct qualitative research comprising of three interviews with high ranking Government officials;
- h) Findings from qualitative research collaborated with literature findings; and
- i) Recommendations and results produced.

A detailed research methodology is provided in Chapter 4.

1.6 Chapter Summaries

Chapter 1: Provides an introduction into the thesis, including details of the problem setting, problem statement and objectives, theoretical platform and research methodology carried out for the project.

Chapter 2: Introduces the Part 3A legislation, detailing it's beginnings and current applicability. The chapter details the process of State Significant Sites sand how projects are facilitated. The chapter also details on the Governmental position for thesis projects and associated issues.

Chapter 3: Comments on the public consultation processes undertaken for Part 3A and State Significant Sites projects and details the various public concerns that have been raised, including appeal rights.

Chapter 4: Introduces the Case Study on Barangaroo and details the history of the site, and the approval of the Concept Plan under Part 3A. The chapter

also introduces the methodology for the thesis and details the research processes carried out.

Chapter 5: Lists and details the qualitative findings as ascertained through the facilitation of in-depth interviews. This chapter details the data obtained through the interviews and analyses the data, interpreting it's relevance to the thesis objectives. Theoretical assertions in Chapter 2 and 3 are also challenged in this chapter.

Chapter 6: The conclusion summarises the findings from Chapter 5 and ties them up to the theoretical matters raised through Chapters 2 and 3, responding to the objectives and detailing the significance of the topic.

Chapter 2: Theory and Policy

2.1 Introduction

On 1 August 2005 the New South Wales (NSW) Government announced the commencement of new planning reforms that resulted in some of the most extensive changes to the NSW land use planning system. These reforms introduced new provisions into the *Environmental Planning and Assessment Act 1979* (the Act) for dealing with assessment of major infrastructure and related projects. As part of these reforms a new rezoning process was also implemented. This is known as the nomination of a State Significant Site (SSS) under Schedule 3 of the Major Projects SEPP. The new rezoning process was designed to facilitate the assessment and implementation of major projects and specific sites considered to be of environmental planning significance for NSW. However a contentious issue associated with this new regime is the totalitarian power that is invested in the Minister for Planning for determining these projects. The Minister for Planning has the power to 'call in' a proposal to consider it as a matter of State significance thereby pre-empting the assessment role of the relevant local council. This then raises angst amongst the community, given the elected Councillors and representatives of the community are not given an opportunity to be involved in the decision making of the proposal. Part 3A has its supporters and its critiques. It has its positives and its imperfections. In essence, Part 3A challenges Council's role as consent authority and therefore Council is at a loss in the power ranks (Mant, 2008).

The purpose of this Chapter is to describe Government objectives that are related to Part 3A and discuss the political donations matter. This is followed by introducing the Part 3A land use system, deconstructing its application in the built environment and illustrating its numerous benefits and constraints.

2.2 Government Objective

Part 3A was designed to consolidate the assessment and approval regime for all major projects and critical infrastructure that require the approval of the relevant Minister for Planning (Whealy, 2006), thereby avoiding Council's involvement in assessing such projects. This position according to Whealy (2006) expresses the notion of 'Government knows best' and illustrates a move towards "in-house governmental, technocratic decision-making" (Ratcliff 2006). According to Whealy (2006) and Ratcliff (2006) the fact that the State Government intervenes in the Council's decision making role makes the State Government appear to be undermining Council's position and thereby expressing the belief that the 'they know best'.

In response the author is of the following opinion. Australia is a democracy and we vote for our Government. Therefore the idea that 'Government knows best' is part of being a democracy. The inherent meaning of a dictatorial nature is framed within the definition of Government. The Government will make decisions in response to public issues, opinions and lobbying and therefore will express the view that the decision they have made is the best option for the people and that they generally aren't wrong. The Government will make these decision based on their own research, inquiries and advice from their professional staff and general position of the public. Therefore the Government inevitably express that they know best, because they would not concede being wrong. This is inextricably connected to the subject topic and case study on Barangaroo. The Government is the consent authority for SSS and Part 3A proposals and therefore they will ensure that their opinion is correct for the people of NSW.

An issue that is of importance for the NSW, represents a trilogy of levels of issues which comprise of: local interests, regional interests and State interests. Thus a Council would probably do an excellent job at addressing local interests, however they would not have the capacity, resources or the ability to address both regional and state interests. This is raised in the findings in Chapter 5.

The suggestion that by the State Government intervening in Local Government decisions within the context of Part 3A, that the State Government is avoiding Council's involvement is inaccurate. This is of particular meaning with Barangaroo and is challenged through the findings in Chapter 5. This issue is addressed in the body of this thesis, however in summary throughout the Part 3A process local Government is engaged at various intervals and is continually consulted in order to ensure that all local interests of the community are identified and appropriately addressed. Furthermore the fact that the Part 3A laws passed New South Wales Parliament is a sign that these laws were voted upon by Ministers of Parliament who are the key representatives of local communities throughout NSW. If people had an issue with these laws, they should have voiced their concerns. Therefore to some degree the people of NSW are accountable for these laws because they did vote for the then Carr Labor Government and as one of my interviewees explicitly put it, "You get what you vote for" (Fterniatis 4 October 2008). The findings in Chapter 5 reiterate this position.

The authoritative nature of Part 3A was received with polar opposite interpretations. Developer groups widely supported this position, however local government representatives, community groups and environmentalists opposed this position (Whealy 2006). Contrary to the Government's exposition of Part 3A, environmental groups and community groups believe that Part 3A will reduce public consultation and engagement (Ratcliff 2006) and would assess projects in a more simplified and flexible approach (Williams 2007). Critics of Part 3A have described it as an example that the bureaucracy is always correct and should not be criticised when, and if, it does get it wrong (Ratcliff 2006). In theory this may seem the case, however in practice Part 3A goes to extraordinary lengths to ensure the public is informed of the project. This connects to one of the objectives of the thesis regarding public consultation which is addressed in Chapter 4 and the findings reiterate this assertion.

An apparent issue with Part 3A decision making is tied to the fact that the Minister for Planning and the Director-General of the Department of Planning (DOP) are the two people whom attain totalitarian power to make determinations relating to Part 3A and SSS proposals. Therefore critics of Part 3A feel uncomfortable about the fact that the Minister maintains a significant amount of power. However all decisions by the Minister and the Director-General are guided by the professional staff of the DOP. This is one of the reasons why there is so much emotion regarding Part 3A (Sydney Morning Herald, 2008). The Minister's decisions are guided and formed by the DOP and this will be raised in the case study and findings chapters.

2.3 Political donations and the planning system

The reforms undertaken in 2008 announced new legislation designed to mitigate the issues associated with political donations and planning decisions. The Local Government and Planning Legislation Amendment (Political Donations) Bill 2008 was assented to on 30 June 2008. This Act will amend the *Local Government Act 1993* and the *Environmental Planning and Assessment Act 1979* in relation to political donations. The legislation came into force on the 1 October 2008. This new legislation requires that proponents disclose any donations or gifts and the submitters of submissions commenting on a development proposal also disclose any donations or gifts. The legislation has been designed to improve transparency of the planning system, with particular attention to Part 3A proposals. Under the Act any donation or gift worth more than \$1000.00 that has been made within the previous two years and up until determination of the proposal must be declared.

Due to this new legislation, Council and NSW Government Consent Authorities must now alert proponents and the public of the ramifications of the new legislation. In terms of the lodgement of development proposals, application forms must now provide a section for proponents to declare any donations or gifts that they have made. In the notification process, consent

authorities must include a disclaimer stating that any submissions must also declare any donations or gifts.

Consent authorities must then make any disclosures publicly available via the internet within 14 days of the disclosure being made. Councils must also keep a register of the voting record of councillors on all development applications. This register must be made publicly accessible.

This thesis details that political donations should be banned in order to avoid any negative connotations. This is further reinforced by the findings in Chapter 5, but in summary, political donations leave a Government exposed and generate negative publicity.

2.4 The Beginning of Part 3A and State Significant Sites

The reforms to the Act were commissioned by the then Carr Labor Government. They commenced in 2003 with the established of eight Ministerial taskforces to review and report on aspects of the NSW Planning system that had been of concern (Williams 2005). One of the appointed taskforces was to examine 'major development and infrastructure projects'. (Williams 2005). This taskforce instigated the need for change in major projects, identifying the following factors for change:

- a) a need to address delays in the timely delivery of new infrastructure in NSW;
- b) the need to clarify the State's strategic plans, circulars and guidelines that planners need to consider thereby reducing the constant need to make or amend SEPPS;
- c) several recent reviews of the Act which had identified a need for reform (Campbell-Witt 2006).

On 30 September 2004 the NSW Government announced the commencement of new planning reforms that aimed to overhaul the NSW planning system by targeting the statutory planning system that facilitates the assessment of development proposals for infrastructure and major projects. The reforms introduced a new Part to the Act known as *Part 3A Major*

infrastructure and other projects and introduced a new approval system for major development and infrastructure projects in NSW.

The Part 3A Planning Reform was presented to the NSW Parliament as the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005* (NSW) and was passed unmodified by Parliament on the 9 June 2005. The reform came into effect on the 1 August 2005 (Campbell-Watt, 2006). Part 3A commenced with saving and transitional arrangements under *Environmental Planning and Assessment (infrastructure and other planning Reform) Regulation 2005*.

The introduction of Part 3A also included the commencement of a State Environmental Planning Policy (Major Projects) 2005 (Major Projects SEPP). The Major Projects SEPP facilitates the determining of a project that, in the opinion of the Minister for Planning, is a project to which Part 3A of the Act applies by providing the principles criteria for which development proposals are classified as Part 3A projects and require ministerial approval. Therefore the Major Projects SEPP facilitates the assessment of a proposal under the Part 3A approval system. The Major Projects SEPP was said to consolidate a plethora of over 16 SEPP's and 8 REP's (Walmsley, 2007). At the time, the NSW Government suggested that an assessment under such voluminous statutes is one of the reasons for a delayed assessment of major projects and infrastructure (Williams 2005). This improvement was marketed as one of the positive contributions that the SEPP will make to the determination of major projects within the NSW Planning system and the economic development of the state of NSW.

The type of development that the Part 3A legislation has been designed to dictate include: major infrastructure or other development that, in the opinion of the Minister, is of State or regional environmental planning significance; and major infrastructure or other development that is an activity for which the proponent is also the determining authority (within the meaning of Part 5) and that, in the opinion of the proponent, would (but for this Part) require an

environmental impact statement to be obtained under that Part (the Act, s 75B (2)). Part 3A was designed to consolidate the assessment and approval regime for all major projects and critical infrastructure that require the approval of the relevant Minister for Planning.

In a reading to the Legislative Assembly of NSW Parliament, the then Minister for Infrastructure and Planning and Natural Resources now DOP, the Hon Craig Knowles, detailed the aims and objectives of the Planning Reform Bill, of which Part 3A was a major component. In his reading Mr Knowles provides a detailed account of the proposed Part 3A regime, detailing its positive contributions to the NSW Planning system and the NSW community. Throughout Mr Knowles' speech, he reiterates the concept of the new reforms delivering major projects in a more efficient manner, whilst also maintaining positive environmental and community outcomes. These arguments are at the crux of the Part 3A system. The NSW Government at the time of these reforms stressed the importance of increasing private investment into the States infrastructure and at the time considered the existing Planning land use system to be increasingly inefficient and slow and therefore discouraging private investment into NSW.

Knowles (2005, pg 3) states how the "wellbeing of our economy depends on business being able to work with certainty, a minimum of risk, low transaction costs, and appropriate levels of regulation". Knowles focuses on the concept that economic benefits are intended to flow from reductions in time, cost and complexity in the assessment of major projects (Campbell-Watt, 2006). Knowles describes the Planning Reform's as having "the ability to establish greater certainty in the assessment of major projects and assists the Government's desire to afford opportunities for the private sector to participate in the delivery of our infrastructure", "to cut red tape at all levels" and to facilitate major project and infrastructure delivery "quickly and efficiently" (Williams 2007, pg 11). Thereby Part 3A was designed as a statutory planning regime that would provide a 'fast-track' system for development proposals for infrastructure projects, major projects over a certain Capital Investment Value (CIV) and state significant development.

Knowles summarises that the types of development that Part 3A will facilitate include:

- Development previously identified as State significant under Part 4;
- Government infrastructure projects which would require an Environmental Impact Statement under Part 5 of the Act; and
- Projects that are declared by the Government because of their economic, social or environmental planning significance to the State or region.

Knowles states that the Bill will introduce “a single assessment and approval system for major development and infrastructure projects, replacing approval processes currently scattered throughout several pieces of legislation ... allows for the State to focus properly only on those matters which are genuinely of State or Regional Significance...” (Knowles, 2005). Knowles further establishes that for “matters of State Significance, the new single assessment process will strengthen the rigour, transparency and independence of the process of assessment, providing higher levels of up-front certainty for the proponent and the community...” (Knowles, 2005). These principles are the basis of Part 3A.

Thus the primary objective's of Part 3A is to facilitate the efficient assessment of major projects thereby encouraging economic development of the state and investment of the private sector, whilst strengthening environmental safe guards and increasing community consultation (DOP, 2005A). These objectives are drawn up during the qualitative research process. Interviewees identified how Part 3A and in particular Barangaroo will have positive impacts to the wider community, such as “more jobs and employment opportunities” (SHFA, N Fterniatis, 4 October 2008). The emphasis on economic investment is also expressed by Fterniatis (2008) where it is stated that “Sydney is the key driver of the NSW economy. Therefore if we have a successful Sydney, then we will have a successful New South Wales... decisions made in NSW have flow on effects on regional centres around NSW (SHFA, N Fterniatis, 4 October 2008). These findings will be divulged in Chapter 5.

Specifically, the Part 3A reforms amended the Act by the following:

- Transferring the planning provisions for State Significant Development and private sector projects under Part 4 into the Part 3A.
- Transferring the planning provisions for Public infrastructure projects under Part 5 into the new Part 3A section.

Williams details how the transfer of existing approvals under Part 4 and 5 to Part 3A was designed to provide greater certainty and expedite the approval process (Williams 2007). Williams argues how economic development in Australia has been promoted through the Part 3A planning system through providing an efficient planning approval system. Williams reveals on the international platform, numerous countries have incorporated some form of planning reform to streamline existing statutory planning controls to 'fast-track' major projects, as exemplified through the NSW Part 3A Planning system. Such countries include Scotland and the United States of America.

Williams (2005) raises an interesting example of how the how the assessment and environmental management costs for a road proposal in the mid to late 1990's would generally be 7% of the costs of works, whilst in 2005 this had risen to more than 24% of the costs of works. This would increase is much associated with the general increase in materials and construction, however the NSW Government perceived such increases as a direct deterrent for future investment in NSW and Part 3A was specifically designed to reduce the overall costs for the approval of a major project.

2.5 Features of Part 3A and the process involved

Part 3A is a sequential process that commences with the declaration of a project being a project to which Part 3A applies by the Director General of the DOP under Clause 6 of the Act. A project is not considered a project until it is declared a project and an application for a project cannot be made unless a declaration has been undertaken. For a proposal to be considered a Major Project, the proposal must meet a specific threshold criteria listed under Schedule 1 of the Major Projects SEPP or an order must be made by the

Minister for Planning which is then published in the NSW Government Gazette. Schedule 1 listed the types of development which can be considered major projects, including development for residential development, industrial development and commercial development. Schedule 1 specifically lists a threshold criterion for the amount of CIV for a project or the number of operational employees of a project. If a proposal meets these requirements, then generally it is most likely it can be classified as a Part 3A project.

Under Part 3A, the Minister for Planning is the sole determining body. Therefore there is a high level of discretion in the Minister's approval. Most proposals that are subject to the Minister's approval are generally assessed through the Part 3A process. However, nothing in Part 3A restricts the minister from acting as the consent authority for proposals under Part 4 of the Act (s9A and Schedule 6 Major Projects SEPP)

Part 3A Planning system introduced new planning mechanisms, such as Concept Plans, Project Applications, Critical Infrastructure Approvals, and the new process for State Significant Sites, as well as the notion of Director General Environmental Assessment Requirements. In addition to this, Part 3A introduced a new SEPP.

Major Projects SEPP

The Major Projects SEPP is the primary instrument that governs Part 3A. The SEPP is a lengthy document that lists the criteria for a Part 3A project and lists the provisions for State Significant Sites under Schedule 3. The SEPP can be updated to lists new sites and site can be removed as required. Under the provisions of Part 3, s37 and s39 allows for a SEPP to be made by the NSW Governor. This provision also allows for a SEPP to be amended.

- Clauses 1 to 16: The SEPP lists relevant provisions for Part 3A project and SSS, as well as Schedules for the projects. Of particular relevance is Schedule 3 which lists all State Significant Sites and related controls and plans.

Concept Plan and Project Applications

Part 3A projects are classified as either being a Concept Plan or a Project Application. Concept Plans are proposals that provide detail at a broad level, similar to a Master Plan. They are not required to provide a detailed description of a proposal (s.75M(2) of the Act) but rather the basic information and numerical details. The concept plan provides the key framework for future project applications and lists any development options and plans for the staged implementation of a proposal. These are benefits of a Concept Plan, given they provide a platform for testing possible development options and investigation of alternative options in order to determine the best project. Whealy (2006) states how concept plans provide greater certainty to developers and the Government in marketing the proposal to financial lenders or the private sector, due to their flexibility. This demonstrates one of the key objectives of Part 3A which is to facilitate economic development of NSW.

Project Applications provide more detailed information and if a project application is based on a previously approved Concept Plan, than it will generally be in accordance with the conditions of approval for that Concept plan. The Department of Planning receives more Project Applications than Concept Plans with only 19 Concept Plans being approved in 2006-2007 (DOP, 2007a).

Director-General Environmental Assessment Requirements

Director-General Environmental Assessment Requirements are the key requirements that a Part 3A project must address and be assessed against. They are generally referred to as DGR's. Under s.75F(2) of the Act the Director-General of the DOP produces DGR's that have regard to any relevant guidelines in respect of a project. They are issued to the proponent in order for the preparation of an Environmental Assessment. DGR's are drafted on an individual basis per each project. In preparing DGR's, under s75F of the Act the Director-General is to consult with relevant public authorities and consider that the DGR's must have regard to any requirements raised by these public authorities.

Test of Adequacy

Once an EA has been prepared, the proponent will lodge the EA to the department for a test of adequacy. This test involves 'determining if the submitted EA adequately addresses the DGR's (s75H (2) the Act).

Statement of Commitments

Under s75F(6) the proponent is to provide a statement of commitments detailing any environmental management and mitigation measures the proponent is prepared to make on the site. Any obligations made in a proponents statement of commitments may be annexed as conditions of approval in the Minister's Approval (s75J(5) and s75O (5) the Act).

Preferred Project Report

A Preferred Project Report is an amended EA report that outlines proposed changes to the project based on issues raised during the projects public exhibition. Under S75H, the Director General will forward submissions to the proponent for their response. The proponent will then address the issues raised and lodge a preferred project in response. If not changes are proposed, than a preferred project is not required. Under S75H(7), if the preferred project significantly modifies the proposal, than the Director General may require the public exhibition of a the preferred project report. This is to the discretion of the Director General.

2.6 State Significant Sites and Schedule 3 of the Major Projects SEPP

State Significant Sites (SSS) is a planning terminology that is used to describe sites that are of State or Region significance for NSW. This means the site is an important urban, coastal or regional site that is recognised for it's economic, environmental or social significance. It also indicates that the orderly use, development and/or conservation of the site should be facilitated. This facilitation occurs via the implementation of a site specific planning regime that is incorporated into the Major Projects SEPP under Schedule 3. In essence, the Major Project SEPP is amended to include a new site. At the

crux of SSS is the request to rezone land. This is addressed in the findings in Chapter 5.

Schedule 3 of the Major Projects SEPP lists all SSS and their related planning provisions that relate to carrying out development on that respective site and details of development to which Part 3A of the Act applies. SSS are referred to as 'Discretionary proposals'. This is because the Minister has the discretion under the Major Projects SEPP to 'call in' proposals when the Minister is of the opinion that the proposal is of State or regional significance. Clause 8 of and Schedule 3 of the Major Projects SEPP allows for the expedient rezoning of land. It offers an efficient facility that is superior to that of a standard Council Local Environmental Plan rezoning. This is because Schedule 3 relies on the power and discretionary nature the Minister has in nominating a site (DOP, 2007D).

The process of SSS is a unique strategic land use regime whereby a site is nominated as being of State or regional Significance under the Major Projects SEPP. Under the SSS process, either a proponent may lodge a preliminary assessment requesting that the Minister consider the site as being potentially state significant or the Minister may nominate a site as being potentially state significant. A request to list a SSS may be made concurrent with concept plan or project application/s under the provisions of Part 3A. Clause 8 of the SEPP allows the Minister for Planning to nominate a site into Schedule 3 of the SEPP. Prior to adding the site into Schedule 3, the Minister must determine that the site is a Potential SSS. The Minister would generally publicise this decision in the form of a notice in the Government Gazette (Refer to Appendix 1 for an example). For this to occur, the Director-General must make arrangements for study requirements to be issued and for a study to be undertaken. This study will identify the area of land to be included in the SEPP and will provide relevant planning provisions. Planning provisions may relate to:

- zones and permitted land uses;
- core planning controls (eg building height and floor space ratio);
- development to be considered a Major Project under Part 3A;

- exempt and complying development; and
- arrangements for infrastructure contributions.

Technically there are two types of State Significant Sites:

- a) Proposed rezoning and change in land use: This generally requires a study to be undertaken.
- b) Rationalisation of existing controls for a site to be listed into Schedule 3 of the Major Projects SEPP. Unless there is a significant change in land use, it is unlikely that this process will require a study to be undertaken. An example of this is the Sydney Olympic Park Act, which was recently on public exhibition. It is proposed that the planning controls within this legislation be transferred into the Major Projects SEPP (DOP 2007B).

Barangaroo is type A above. For Barangaroo, the site was rezoned and a new planning regime was implemented to facilitate the development of the site. This is addressed in Chapter 4.

The theoretical objective of Schedule 3 is that sites within the schedule be kept under review and once the State's Planning objectives have been achieved, the planning controls for the site can be reverted back into the relevant Local Environmental Plan (LEP). To date no sites that have been listed in Schedule 3 have had their planning controls reverted back into relevant LEP's.

Guideline for State Significant Sites

The DOP has developed a guideline that includes the key criteria for the Minister to consider in determining whether a site is a Potential State Significant Site. This includes:

- (a) be of regional or State importance because it is in an identified strategic location (in a State or regional strategy); importance to a particular industry sector; or its employment, infrastructure, service*

delivery or redevelopment significance in achieving government policy objectives;

(b) be of regional or state environmental conservation or natural resource importance in achieving State or regional objectives;

(c) be of regional or State importance in terms of amenity, cultural, heritage or historical significance in achieving State or regional objectives;

(d) need for alternative planning or consent arrangements where:

(i) added transparency is required because of potential conflicting interests;

(ii) more than one council is likely to be affected (DOP 2007B).

A proposal for state significance is assessed on their compliance with the above criteria. For a site to be potentially state significant, the site must be identified within a Strategy and also meet the objectives of the relevant Strategy. For example, a site can be nominated in the NSW Metropolitan Strategy, but not be a State Significant Site, unless it meets the objectives of the relevant strategy or assists in meeting the objectives of that strategy. The hierarchy of relevant Strategies would be the Metropolitan Strategy and then the relevant Sub-Regional Strategies.

SSS utilise the opportunity of combining both strategic and statutory planning in order to obtain a site specific planning solution that caters for the objectives of the State whilst considering the needs of the public and the developer. By providing site specific planning provisions and concurrently assessing a concept plan or project application, the State can facilitate a planning regime that ensures the public are involved and that the growth of the state is facilitated through the development. The following diagram illustrates the sequential process for SSS.

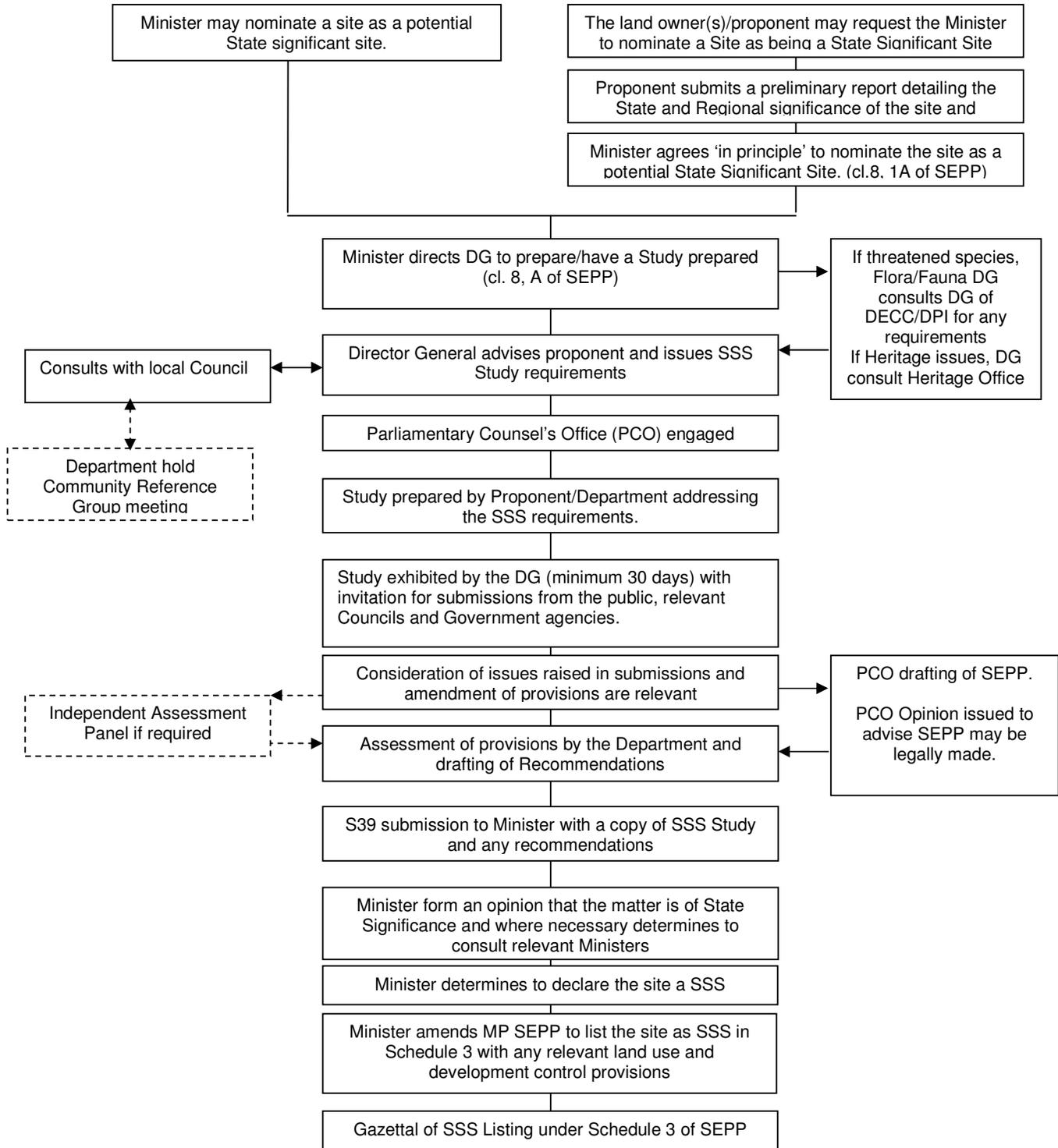


Figure 1: SSS process. DOP (2008) edited by Author 2008.

2.7 State Intervention

The Act provides for the Minister to intervene in a Council's assessment of a proposal where the council's performance has been deemed unsatisfactory (Ratcliff 2006). In this instance, it is the opinion of the Minister that the DOP can provide a more efficient, transparent and quicker assessment of the proposal. With no ill intentions to Local Government's, this assertion by the Minister is absolutely correct. Local Government's are hounded by political pressures from Councillors and are generally inundated with significant workload and most of the time they are under staffed and under resourced. In such a scenario, it is difficult for a Council to assess a major project that has potentially significant impacts on a larger scale. Such a situation results in a generally pro-longed assessment period with a significantly delayed determination and a flawed assessment that has been susceptible to incompetent decisions made by Councillors. This statement is reinforced by the findings in Chapter 5.

This is a poor process for the determination of a development proposal. Councillors are generally not qualified in urban planning, environment or heritage conservation. This is validated in the findings in Chapter 5. Therefore, Councillors cannot always make an informed opinion and in countless examples they do not take the advice of their professional Council staff and vote to either approve/refuse a development proposal based on their own decision which has been influenced by significant lobbying by interested stakeholders. It is noted that Councillor's are elected by the local community and therefore must have decision making opportunities. However, they should not be making determining decision for projects that have impacts on a regional or state platform.

Unlike the Minister for Planning who has a staff of advisors and a Department to directly advise on development issues, Councillors are independent of such advice. They do receive advice in the form of a Council report, but they are not required to agree with the Council report's recommendation. The State Government's intervention ensures that, in some instances, such a flawed assessment process is avoided and that the more efficient Part 3A system is afforded to the project. A major project being assessed by a Council would be

a calamity due to the lengthy assessment time and general bureaucratic nature of Local Government. This is enforced through the findings in Chapter 5.

2.8 Strategic Land use planning process

According to Gurrán (2007) strategic land use planning provides the basis for achieving the desired future of a particular place, by articulating a shared vision and or objectives and by establishing a legally enforceable framework to guide future decisions and actions consistent with these objectives. Gurrán produces the following diagram to identify an international model of the land use planning system. This model is relevant to NSW.

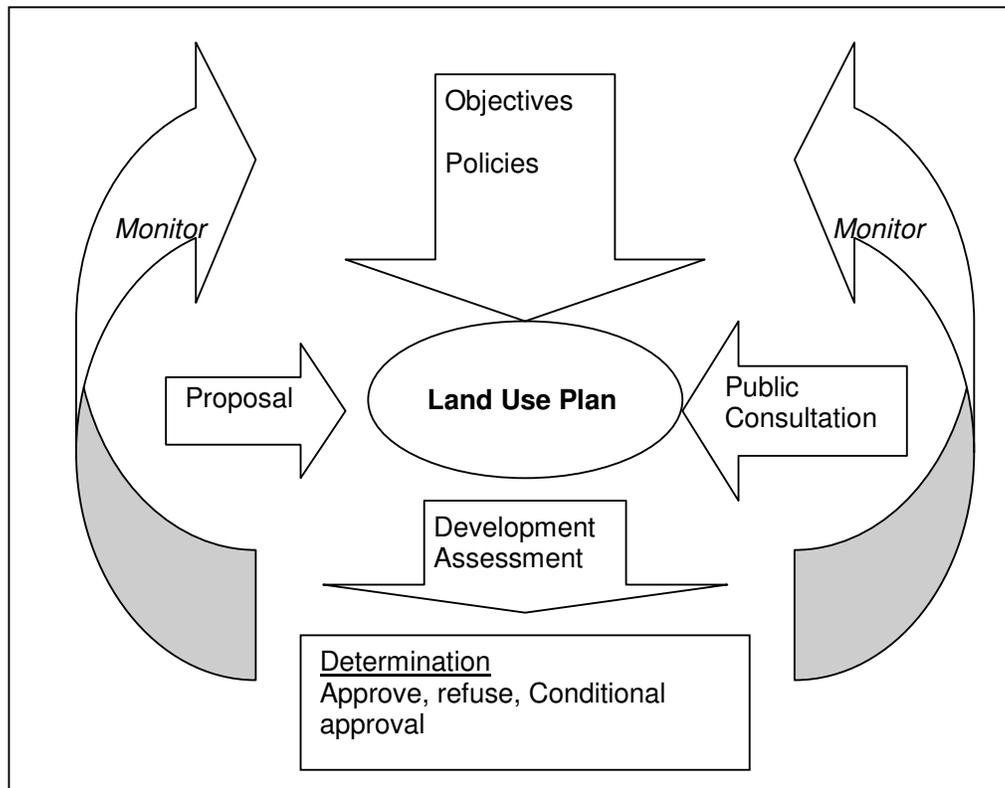


Figure 2: Land Use Process. Gurrán (2007) edited by Author 2008.

Gurrán (2007) illustrates how in theory statutory planning and strategic planning compliment each other to integrate the entire planning practice. Within the concept of Strategic Assessment, both statutory and strategic are combined in order to provide a personalised strategic plan that is completely

site specific. This is illustrated in the SSS process, where site specific legislation is formulated to cater for an individual site concurrently with an assessment of the proposal.

Gurran (2007) also illustrates a critical concept of the Strategic Planning process, saying that it is expensive and that by the requirements for a developer to provide necessary environmental and social studies, the project may be positioned in a compromising situation, where by it is more difficult to refuse a proposal that has already undergone significant investment from the developer in the form of studies and documentation. This is inextricably connected with Part 3A and SSS. Proponents undertake an investment in developing comprehensive project documentation to be lodged with the DOP and therefore would pressure the consent authority for a favourable result due to the cost associated with the project preparation. This is also addressed in Chapter 3.

Gurran (2007) further suggest that strategic objectives such as Environmental Planning Instruments should be clearly established prior to the assessment stage, in order to avoid a lengthy assessment process that will be subject to increased disputes between the Consent Authority, the developer and the public. The SSS process illustrates the opposite to this notion, however the repercussions Gurran raises are debatable. Gurran (2007) raises the issue that both developers and the community want certainty of being able to anticipate the likely future development of a parcel of land and to know at least what is likely and not likely to be permitted by the Consent Authority on that site . This is arguably an issue that influences people's property decision to purchase land and also raises the concept of the Not-In-My-Backyard (NIMBY) mentality, where the adjoining landowners are unsupportive and obstructive of a specific development proposal in their area. However it is difficult to comfortably predict the future development on a parcel of land, as a landowner may decide to redevelop a site and if the proposed development is permissible and complies with the relevant Consent Authority's provisions, then there is minimal scope for legitimate objection or appeal. However a development may not be permissible and still be approved via the SSS process if it is deemed to be classified as State significant for NSW.

The concept of knowing what will be built on a parcel of land is what is controversial about SSS. People want assurances that valued community assets such as parks and open space are retained and conserved for future generations and that they are not threatened by development. SSS indirectly reduces this level of assurance by providing a planning mechanism where land can be developed, even though it may not comply with any existing Environmental Planning Instruments. This position is reiterated in the findings in Chapter 5.

It must be reaffirmed that the SSS process is extremely stringent, complex and thorough and therefore any proposal that is recommended for listing has already been thoroughly assessed and considered and is therefore, in the opinion of the NSW Government a matter of State Significance.

2.9 Government Strategies

Part 3A has been designed to respond to the objectives and aims of key NSW Government strategies. A number of State strategies and subregional strategies have been produced by the NSW Government and DOP to facilitate the development of Sydney as a 'Global City' for the next 25 years. These strategies include:

- *NSW State Plan – A New Direction for NSW*
- *Sydney Metropolitan Strategy – City of cities: A plan for Sydney's future (2005)*
- *Sydney City Subregional Strategy*
- *East Subregional Strategy (Draft)*
- *Inner West Subregional Strategy*
- *Inner North Subregional Strategy (Draft)*
- *North West Subregional Strategy (Draft)*
- *North East Subregional Strategy (Draft)*
- *North Subregional Strategy (Draft)*
- *West Central Subregional Strategy (Draft)*

- *South Subregional Strategy (Draft)*
- *South West Central Subregional Strategy (Draft)*

These strategies provide the strategic direction for NSW and the relevant subregion in terms of employment generation; economic growth; infrastructure development; population targets; general services; health services; cultural and entertainment venues; and recreational areas. The strategies recognise the importance of a structured 'Global Sydney' and the composition of Sydney through Regional cities, specialised cities, Major centres, Employment land, Renewal corridors and Villages. In addition to these strategic centres, the strategies identify future planned centres and potential centres, identifying land that should be developed for residential, commercial and industrial purposes. The strategies recognise the existing forms of transportation and provide direction for new transport modes and routes.

Thus these strategies provide the key strategic movement for Sydney's future over the next 25 years. The objectives and general information contained within these strategies are utilised as a point of reference for the facilitation of Part 3A projects.

2.10 New Planning Reforms 2008 - Part 3A

In late 2007 the NSW Government announced the intention to reform the planning system. The planning reforms were announced by the then Minister for Planning Frank Sartor. The reforms were instigated by numerous events that were publicised during 2007/2008. These events include the general public outcry regarding controversial development proposals in environmentally sensitive areas; the lengthy assessment of small development applications by NSW Council's; the political donations matter; and the Wollongong City Council scandal (ICAC 2008). In response to these controversial and damaging issues, the NSW Government of the time, under the leadership of then Premier Morris Iemma and Planning Minister Frank Sartor, announced a reform of the system.

The new planning reforms of 2008 were assented to in June 2008. The reforms introduced the Local Government and Planning Legislation Amendment (Political Donations) Bill 2008 in response to the recent controversy of Wollongong City Council and media reports into corruption with Part 3A proposals (SMH 2008).

One of the new bodies that were introduced was the *Planning Assessment Commission (PAC)*. The PAC is a seven body commission with a full time chair, to be appointed by the Minister for Planning. Expressions of Interest for the PAC were advertised nationally from 18 July to 8 August 2008. The PAC model is based on the Development Assessment Commission that exists in South Australia (Mant 2008).

The PAC is to exercise State Level development control decisions, instead of the Minister for Planning. Therefore there would be fewer onuses on the Minister for Planning and increase transparency in determinations of major projects. This is one of the primary intentions of the PAC. The role of the PAC is to determine State significant major projects and provide advice to the Minister on planning and development issues.

Mant (2008) argues that the Minister should not have right to withdraw individual applications from the consideration of the PAC. This action can potentially raise further allegations of undue influence (Mant, 2008).

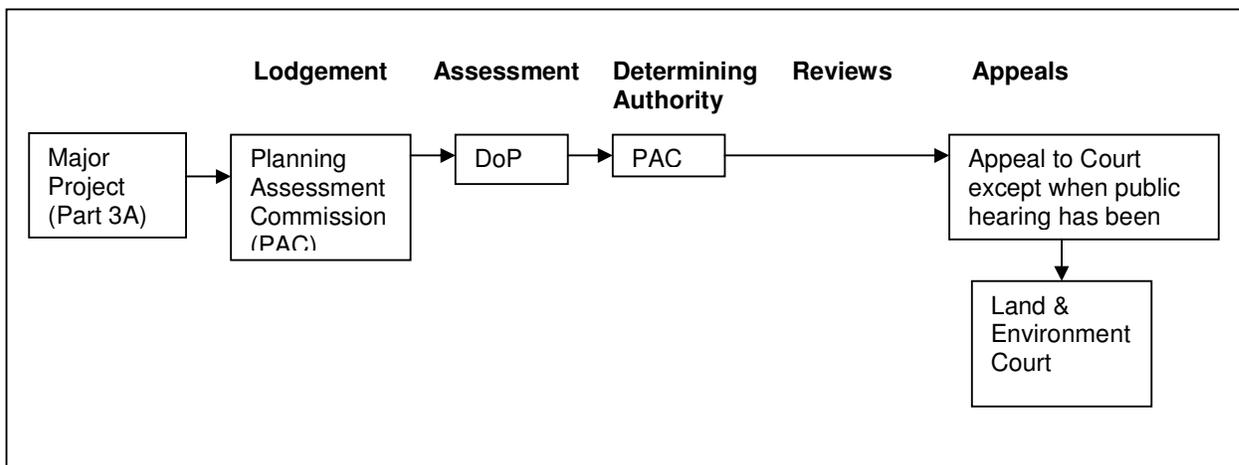


Figure 3: PAC. John Mant (2008) edited by Author 2008.

Under the functions of the PAC, a Part 3A proposal would be lodged with the PAC for declaration of the proposal is a project to which a Part 3A applies. The proposal will then be assessed independently under Part 3A by the DOP as per current arrangements. The Department will finalise a recommendation in the form of the Director-General's Environmental Assessment Report and forward this to the PAC for determination, with associated public hearing meetings to be conducted by the PAC.

In one of his last decisions as Planning Minister, on 3 September 2008 Frank Sartor announced the appointment of first PAC. The appointments were made by the Minister for Planning based on advised from a panel comprising the Director-General of the Department of Premier and Cabinet, the NSW Co-ordinator General and the Director-General of the NSW Department of Planning.

Mant (2008) argues that the Ministers new reform will created a more complex system by the incorporation of additional new decision-making and appeal bodies. Mant questions the Minister's new appeal system as, in his opinion, 'an arbitrator's hearing will be just like the Court's merit appeal, except that the arbitrator will not have the court's assumed lack of conflict of interest, freedom from executive influence and ability to make findings of law.

The implications of the PAC on SSS is that the Minister for Planning will no longer be the determining authority and therefore criticism would not be levelled at the Minister but rather at the PAC. The theoretical aim of this is to increase transparency of the determination of projects and to distance the Minister from any direct responsibility for the determination of Part 3A projects. This is substantiated in the findings in Chapter 5.

2.11 Conclusion

This chapter commenced with an introduction into the beginnings of the Part 3A planning reform and sought to understand the importance behind Part 3A and why it was initiated. Section 2.2 introduces Government objectives detailing how this connects directly to Part 3A and Section 2.3 details political donations. Section 2.3 establishes a background to Part 3A detailing how it was conjured up. Section 2.5 and 2.6 examines Part 3A and SSS in detail, commenting on the process and detailing the way Part 3A and SSS function in land use planning of NSW. The chapter then continued to comment on the State Government's intervention in Council assessment and the process of strategic land use assessment. The Chapter concluded with detailing relevant Government strategies and the more recent reforms to Part 3A.

Chapter 3: Public Consultation

3.1 Introduction

Public involvement is imperative to ensure the full implementation of a democratic society (Thompson 2008). The Environmental Planning and Assessment Act 1979 (the Act) and Environmental Planning and Assessment Regulations 2000 (the Regulations) unequivocally recognise that the public should be involved in planning decisions and that they should be given a clear opportunity to voice their concerns. This is represented in the numerous facets of planning decisions ranging from invitations for submissions from the public during exhibition of development proposals, proponent appeal rights for determinations, objector appeal rights and public submissions during strategic plan making. Public exhibition, public consultation, public involvement and appeal rights are an imperative part of statutory and strategic planning in Australia and New South Wales.

This chapter details public consultation in general and then details the public consultation process undertaken for State Significant Sites and Part 3A. The Chapter also discusses public appeals under Part 3A. These topics are intrinsically connected to the subject topic and the theory covered in this chapter is utilised in the findings discussed in Chapter 5.

3.2 Public Participation

Public participation in planning is imperative for positive results. Planning decision making including the preparation of legislation and policies and the assessment and determination of development applications has incorporated public involvement since the 1970's and 80's in Australia (Williams, 2007). As a result of this, planning legislation in each Australia constituency generally includes a planning objective for public consultation and a statutory requirement for community consultation (Williams, 2007).

Within the NSW, the Act and Regulations are the two instruments of legislations which govern statutory and strategic planning including provisions for public involvement. In this regard, NSW has a commanding focus on ensuring that the public are informed on a number of planning decisions and that they are consulted and invited to comment on proposed changes. This is recognised in the Objects of the Act under s.5C.

The planning process within Australia, be it at a local, state or national level of government, is essentially a decisional procedure that is influenced by political ideals, based on the notion that elected representatives are responsible for and able to, represent the interests of those who elect them (Zehner and Marshall 2007, p. 247). However, it is difficult for the ideals of elected representatives to represent all possible community interests and requirements, even when considering that planning determinations endeavour to provide an equitable, accessible, nurturing and improved quality of life for all citizens.

Davie (2007) provides a well described definition of public participation as requiring *“that the public has access to information, a forum to express their views and an opportunity to influence but not necessarily control the ultimate decision...Governments and communities will be more successful if participation is reconceptualised in this way”*. This suggested model is quite idealistic and it is up to Government bodies to consider such a model in their forming of public participation policies.

As a NSW resident, you would expect to be kept informed on Government decision by the Government in the form of media releases. This expectation extends to planning proposals and decisions. In particular statutory and strategic planning decisions are of importance as they generally have wider impacts on the community. For example, you would expect to be informed of development application for works to a property that adjoins your current place of residency. In this instance, you would expect a letter informing you of the proposed works and details of the exhibition period for the public to make any submissions. This is the standard local Government exhibition process,

however they differ between Council's based on their individual Public Notification policies. However public notification does generate a significant amount of critique and questioning with regards to what is meaningful public participation and should the bureaucracy genuinely consider the issues raised by the public (Davie 2007). This matter is popular amongst academics (Davie 2007), lawyers (Whealy 2007) and community groups (SMH 2008) whom regularly question the level of public involvement.

The engagement of public participation assists the bureaucracy in making informed decisions, alleviating public antipathy and increasing general consensus. Public participation assists in increasing public knowledge and of informing decision makers of stakeholder's values and thereby providing the final decision with a democratic input. In an ideal world this process would exist and public outcry would be negligible. However this is not the case and therefore public participation must be facilitated in increased volume in order to meet the requirements of the masses.

The NSW planning systems utilises consultation as an opportunity to identify and include the public and interested stakeholders in order to facilitate better project results. Public consultation assists the bureaucracy to improve community relations, as described by Kane and Bishop, consultative practices are a "means of improving representative government" (Kane and Bishop 2002, p93). On the other hand, some citizens feel the need that direct democracy must be transferred from the Government to the people in order for meaningful participation to occur (Bishop and David 2002). In an ideal world such a model for public consultation would exist, however in the planning circles it is logistically difficult to ensure that public consultation is considered meaningful by all peoples.

3.3 Part 3A and public involvement

Within the Part 3A regime, public consultation is afforded numerous opportunities. Part 3A provides its individual unique public consultation process. Under the provisions of Part 3A, the Department of Planning (DOP) provides a minimum of 30 days for public exhibition of any Part 3A proposal

(Part 3A of the Act). This includes a Concept Plan, Project Application or State Significant Sites. The 30 day period can be increased at the discretion of the DOP. The 30 day period provides certainty as to how long the public expect a proposal to be exhibited at minimum. In this instance, Part 3A provides stability when compared with other forms of consultation that occurred as part of development under different sections of the Act. As mentioned in Chapter 2, a Concept Plan application and Project Application can be exhibited concurrently with a SSS proposal. This can occur with all three being exhibited in one 30 day period. In this regard, 30 days may not be sufficient for such a large proposal that would include Concept Plan application, Project Application and State Significant Site proposal. Therefore in this instance the DOP would generally increase the exhibition period and would engage other forms of non-statutory consultation.

Williams (2007) states how opportunities for community engagement has existed as either a consequence of statutory requirement or as an expression of policy or 'good' practice that includes the public into the decision-making. This type of community engagement is illustrated during the State Significant Site listing process, where exhibition occurs of the study as per statutory requirements under Clause 8 (3) of the Major Projects SEPP and non-statutory consultation is undertaken by the DOP via a Community Reference Group (CRG) meeting. Community Reference Group (CRG) meeting is non-statutory consultation process that the Department undertakes to ensure interested community members are involved in the approval of SSS. This involves notifying residents in the immediate area of the development site for expressions of interest to be included in a future meeting. The Department then invites interested members to a meeting, where the proponent, Department staff and possibly Council staff will be present. A CRG allows interested stakeholders to work collaboratively towards a solution to the proposal, rather than solely complaining about the proposal. This is verified by the findings in Chapter 5.

The proposal is introduced to the community and discussed with generally two or three meetings being held with the aim of alleviating any concerns the

community may have with the proposal. CRG meeting's are conducted by the DOP on a good practice basis in order to ensure that public involvement is facilitated and encouraged on a more personal situation. This helps to ensure that a proposal is assessed in the most transparent nature and that the public are involved at the earliest possible stage. This also helps to increase community relationships and reduce any potential issues during preparation of the proposal by the proponent and assessment of the proposal.

Exhibition and consultation process

1. Once a proposal is declared a Part 3A project, the Department of Planning will consult with relevant Government agencies and stakeholders to provide input into Director-General Requirements. Generally a period of 2 to 3 weeks is provided for this. The public is not consulted at this stage. Under Clause 8C of the EPA Regulation 2000, the Director-General must provide DGR's within 28 days of receiving a request for them;
2. If a CRG meeting is to be conducted, it will be commenced at this stage, with letters sent out to the community to nominate themselves as being interested in being involved in future meetings.
3. Exhibition of proposal for a minimum of 30 days. Exhibition includes:
 - Notification letters to residents who live in the immediate vicinity of the site of the project. Notification letters contain basic information on the proposal, details of exhibition period, details on how to make a submission and details on where to find the project documentation;
 - Exhibition of the EA and documentation (including architectural plans) at the Department of Planning headquarters and where relevant, Department of Planning rural offices;
 - Exhibition of the EA and documentation at relevant Council offices;
 - Exhibition of the EA and documentation on Department of Planning's website;
 - Advertisement in local Newspaper and Sydney Morning Herald;
 - and
 - Exhibition of EA and documentation on proponent's website.

4. Submissions are received and are forwarded to the proponent to address issues raised. The proponent addresses submissions and then prepares a Preferred Project Report based on these issues.
5. Preferred Project Report is lodged with Department of Planning. If the PPR is significantly different, then the Department will exhibit the PPR. If not, the Department will continue to assess the proposal.
6. The proposal is assessed and issues raised in submissions are considered.
7. The proposal is determined by the Minister. Letters are sent to submitters advising of the determination of the proposal.

The topic of Part 3A and public consultation has received high publicity (SMH 2008) of mainly a negative nature from academics (Davie 2007), lawyers (Whealy 2006 and Ratcliff 2006) and the community (SMH 2008). This criticism may be valid on an individual project basis, however it is unjustifiable to generalise that all of public consultation under Part 3A is flawed. This is reiterated by the findings in Chapter 5.

At the Departmental level, for Part 3A and SSS projects the DOP consults with numerous Government agencies, including:

- Department of Environment and Climate Change;
- Department of Primary Industries;
- Roads and Traffic Authority;
- Relevant Council/s;
- Ministry of Transport;
- Railcorp; and
- Relevant Ministries.

The DOP would consult with the above agencies for input into DGR's as well as for comments during exhibition of a Part 3A project. In this regard, the DOP can identify local, regional and state interests and issues and assess them in a more efficient manner. The input of the above agencies and Council are critical in identifying all relevant issues.

Davie (2007) expresses the belief that Part 3A “significantly reduces the scope and influence of public participation over environmental planning decisions”. Davie (2007) utilises the Sydney Desalination proposal as a case example to qualify her assertions. However, Davie must recognise that the Sydney Desalination project is classified as Critical Infrastructure project under Schedule 5 of the Major Projects SEPP and therefore is limited to a stricter regime and is afforded no appeal rights. Therefore in retrospect Davies’ assertions can be challenged. The assertions put forward by Davie are flawed in that she generalises Part 3A based solely on one example which is evidently not the most suitable case study. Davie suggests that there is “an apparent governmental bias towards development at the cost of community values and the environment” (Davie, 2007, p). This is a misguided assertion, however in the context of the Sydney Desalination proposal, it may have been relevant. The subject thesis challenges this position by researching qualitative data to ascertain the concept that Part 3A does provide an substantial opportunity for community involvement. This is validated in the findings in Chapter 5.

Davie (2007) implies that public consultation is affected under Part 3A due to the Minister being afforded a high level of discretionary power and that the involvement of the public in the original decision-making process is uncertain. Davie is one of many critics of Part 3A. Further Ratcliff (2006) expresses the belief that under Part 3A the NSW Government is neglecting the fact that the public has an interest in planning outcomes, that decision makers can make wrong decisions and that environmental outcomes are subordinate to the economic growth of the State. As mentioned in Chapter 2 Ratcliff states how Part 3A reflects the idea that planning decisions are technical matters that do not gain from substantial community involvement. Part 3A does demonstrate the concept that ‘Government knows best’ however this does not entirely eliminate the opportunity for community involvement.

As part of his critique Ratcliff takes a further step by saying Part 3A is characterised by a “departure from the principles that the community would expect to find in a good decision-making process” which are “consistency, transparency, accountability and certainty.” The findings in Chapter 5 challenges Ratcliff’s assertion. However it should be noted that Ratcliff’s article is dated May 2006 and since then Part 3A has undergone minor amendments to address issues that were raised at the early stage of its commencement. Part 3A provides a public consultation process that is similar to local Government public exhibition, however provides additional facilities, such as electronic access to full project documentation, longer exhibition periods, and non-statutory consultation.

Ratcliff asserts that Part 3A proposals will not be published on the Department of Planning’s website. This is inaccurate, given all Clause 6 Opinions of a Part 3A proposal are published on the Department of Planning’s website under the ‘Major Projects Register’, which lists all current proposal. The website may not be the most user-friendly, however it does contain information on nearly every major project, including a register of Part 3A determinations for each year. It also provides a link to download an electronic copy of each projects’ documents.

Ratcliff criticises the idea of Concept Plan proposals, stating that because they do not require a detailed description of the proposal they do not provide the community with enough information and leaves much of the information for later in the process. However a Concept Plan application still requires the need for an Environmental Assessment which would assess the proposal’s impacts albeit at a broader level. This is an issue that Davie also argues. In response, any significant issues that are apparent with a proposal would be identified at a broad level and therefore appropriately addressed in the concept plan Environmental Assessment (EA).

Previously under Parts 4 and 5 of the Regulation, specific requirements for an Environmental Impact Statement (EIS) were listed. Part 3A does not require an EIS but rather an EA and the requirements of an EA, being Director-

General EA Requirements (DGRs), are drafted on an individual basis per each project. This is of a concern to Ratcliff, as he believes the community will not be able to prepare accurate information about the level of impact the proposal may have on the local environment during the exhibition of the proposal. Ratcliff is also concerned that under s75F there is no opportunity for the public to propose any issues be included in the DGR's. In response to this suggestion it would be incredibly impractical to afford the public an opportunity to raise issues as part of DGR's, primarily on the basis that DGR's must be issued within 28 days from Clause 6 opinion, but also on a logistical platform with regards to organising a community meeting and listing all the relevant issues that the community considers relevant. The issues raised by the community would generally be covered by the issues the local Council would raise and other Government agencies. Therefore this process of consulting the community for input into DGR's is superfluous.

However Ratcliff (2006) does raise an interesting point, by questioning that fact that once an EA has been determined by the Department and Director-General that is it adequate, then the impact submissions would have on a proposal are questionable. This issue is relevant however the Department requires the proponent to respond to all submissions raised and lodge a Preferred Project Report (PPR) based on these submissions. Therefore the submissions do have a significant impact on a proposal. They have the potential to significantly amend the proposal and for the proponent to genuinely consider the issues raised and respond to each issue. As such, the project is tailored to some degree by some of the relevant issues raised during public exhibition.

Williams (2007) states how the key aim of Part 3A was to amalgamate both Part 4 and Part 5 into Part 3A to deliver major infrastructure projects quickly and efficiently, rather than with minimum environmental impact. It has been suggested that a result of Part 3A is that complex major projects with the potential for greater environmental impacts would be potentially subject to a more simplified assessment process, whilst simpler projects with potentially less environmental impacts would still be subject to more complex

assessment procedures under Part 4. This is largely arguable. Part 3A provides an assessment platform that is high in rigour and thoroughly identifies and considers relevant environmental matters through consultation with Government agencies that are responsible for environmental matters. Through this, a Part 3A project would undergo rigid assessment and modification in order to satisfactorily address environmental issues. This is supported by the findings in Chapter 5.

An issue that has been raised includes the idea of the cost involved in application fees and the preparation of the Environmental Assessment. This is raised by Gurran (2007) and has been addressed in Chapter 2. When proponents pay large fees in application fees and develop expensive documentation, it may lead to the consent authority being placed in a compromising situation. This then raises the political innuendos regarding Part 3A decisions. This is not to say that because they have paid so much that the application should not be assessed in a transparent and impartial manner, but rather that the process of the assessment at the Department level will be subject to political involvement and influence from relevant Ministers due to the proponent knowingly paying a large sum, having powerful contacts and often lobbying relevant Ministers. As such the assessment can be potentially susceptible to external influence. Qualitative data compiled in Chapter 5 supports this position.

Davie (2007) works at this notion. She suggests consultation should be undertaken at an earlier 'policy formulation stage' rather than after costs have been incurred in the preparation of a project for planning approval. This is a valid suggestion. However consultation does occur at the preliminary stage for DGR's. At this stage, the proponent provides a preliminary assessment that does not assess any relevant issues, but rather summarises the project in context of Part 3A and the Major Projects SEPP. It is unfeasible that public consultation be undertaken at this stage.

3.4 Appeal Rights

Whealy (2007) comments on how developers must now look at the implications of Part 3A and question whether it provides the “certainty and bankable security” (2007, p58) which it was intended to provide due to the changes to appeal rights. Thus Whealy illustrates that there is some form of risk with a proposal under Part 3A. However this risk is inevitable in any planning project. The suggestion of ‘bankable security’ is out of context and almost laughable given no planning proposal can ever be considered to have a certainty of approval. If this were the case, everything in the State would be Complying Development.

Whealy illustrates the stark reality that proponents and developers must acknowledge that Part 3A has the potential to deprive them from appeal rights in certain circumstances. These circumstances relate to the following:

- Critical Infrastructure: A proposal under Schedule 5 of the *Major Projects SEPP*, e.g. Kurnell desalination plant;
- A project has been subject to a panel of experts or a commission of inquiry under s.75G of the Act; and
- The proponent for a project is a public authority.

Therefore, if a project or proponents meets the above criteria, then under the Act there would be no right of reviews of the Minister’s decisions. What is exceptionally appealing of these limited review rights is that under s.75G of the Act the Minister may appoint a panel of experts or commission of inquiry at his absolute discretion. Therefore the Minister can theoretically appoint a panel or commission for all Part 3A proposal’s, thereby eliminating any scope for appeal rights. In practice this would be extremely daunting to any developer. Say for instance a developer is lodging a proposal that they are aware is controversial and would potentially incur a panel of experts, then they are indirectly gambling with their appeal right potential, because if the proposal is controversial and the Minister does appoint a panel or commission, then automatically any appeal rights are forfeited. Refer to Section 75G of the Act.

Under *s.119 Public Inquiry* of the Act, details how a commission of inquiry can be made up one or more persons and an expert panel report may be solely one report, with both being on only one matter. Under subsection (5) of s.119, a Commission is to act independently and is not subject to any directions by the Minister or any other person in relation to its report, findings or recommendations. Furthermore, the findings of a Commission are to be reported to the Minister and the Director-General and then are to be made public.

However, Whealy alerts us to the fact that nowhere under the Act or Regulations is the Minister required to be bound by any findings, recommendations or advice by the Commission. Therefore the Commission's role is purely advisory and a matter to be considered by the Minister under s.75J and S.75O, for a project application or concept plan respectively.

A proponent must submit an appeal to the Land & Environment Court within 3 months of the Minister's determination of a concept plan. If an appeal is upheld then the Minister must approve the concept plan as determined by the Court (Lyster (ed) 2007). Carr (2007) suggests that the position for appeal rights undermines the objects of the Act, specifically being s5(c) "to provide increased opportunity for public involvement and participation in environmental planning and assessment". Carr is particularly critical of Part 3A and suggests that it does holistically undermine the objects of the Act, with particular attention to environmental safeguards and public consultation. The findings of this thesis challenge the above suggestion.

In summary, proponents and objectors can appeal to the Minister's decision for a Part 3A project so long as the project is not a critical infrastructure project and an expert panel has not been appointed to the proposal. Also it should be noted that there are no appeal rights for objectors to an approved Concept Plan (s.75L of the Act).

3.5 Conclusion

The Part 3A provides a public consultation process that is parallel with local Government consultation processes, however it provides an increased level of involvement through access to documents, increased notification periods and non-statutory consultation. This chapter commenced with an introduction into public consultation for planning decisions and the general attitudes and expectations of the public. Section 3.3 details public consultation as undertaken by Part 3A and the process involved. This is concluded with details on appeal rights under Part 3A.

Chapter 4: Case Study – Barangaroo

4.1 Introduction

East Darling Harbour is located within the Sydney CBD and within the Local Government area of the City of Sydney Council. It is a former port site with a lengthy maritime history. The site was previously used as a wharf and shipping dock and has been part of Sydney's history since the early 1830's (SHFA 2006). It's redevelopment was initiated by the NSW Government with an international design competition. The competition was marketed as the urban renewal of a Brownfield site to be developed as an extension to the existing Sydney CBD precinct. The site is to provide a mixture of uses including residential, commercial and open space. It's location along prime Sydney foreshore real estate ensured that the site would generate a high level of interest from developers and architects to provide the most suitable proposal for the site (Mossop 2006).

The redevelopment of the site was facilitated under Part 3A and the site was listed as a State Significant Site (SSS) in Schedule 3 of the Major Projects SEPP. The focus of this chapter is to detail the history and assessment of the site and describe the relevant issues that were raised during assessment. This chapter also details the research methodology for utilised for this thesis.

4.2 The site

East Darling Harbour is legally known as Lots 1 to 6 in Deposited Plan 876514 (Wharves 3, 4, 5, 7 and 9). The site is located on the north-western district of the Sydney CBD and is surrounded by the precinct's of Darling Harbour to the south, Millers Point and The Rocks to the east, and Walsh Bay to the north. The site fronts onto Hickson Road and is generally a rectangular site with a total area of 220,000 square metres (22 Ha) and 1.4km frontage to the foreshore. Figure 4 illustrates the site, in context to the surrounding Sydney CBD. Currently the site is a vacant concrete apron.

Barangaroo is an area of the CBD which is largely unknown to the public. It has been locked up and it's only public access was seen during Pope Benedict V's visit. People pass Barangaroo on regular basis, unsuspecting that this desolate foreshore land will become Sydney's next big commercial precinct. The redevelopment of this site will fuel the economic development and investment in Sydney and in NSW for the years to come.



Figure 4: Barangaroo with adjoining CBD Skyline, as viewed from East Balmain. Author (2008).

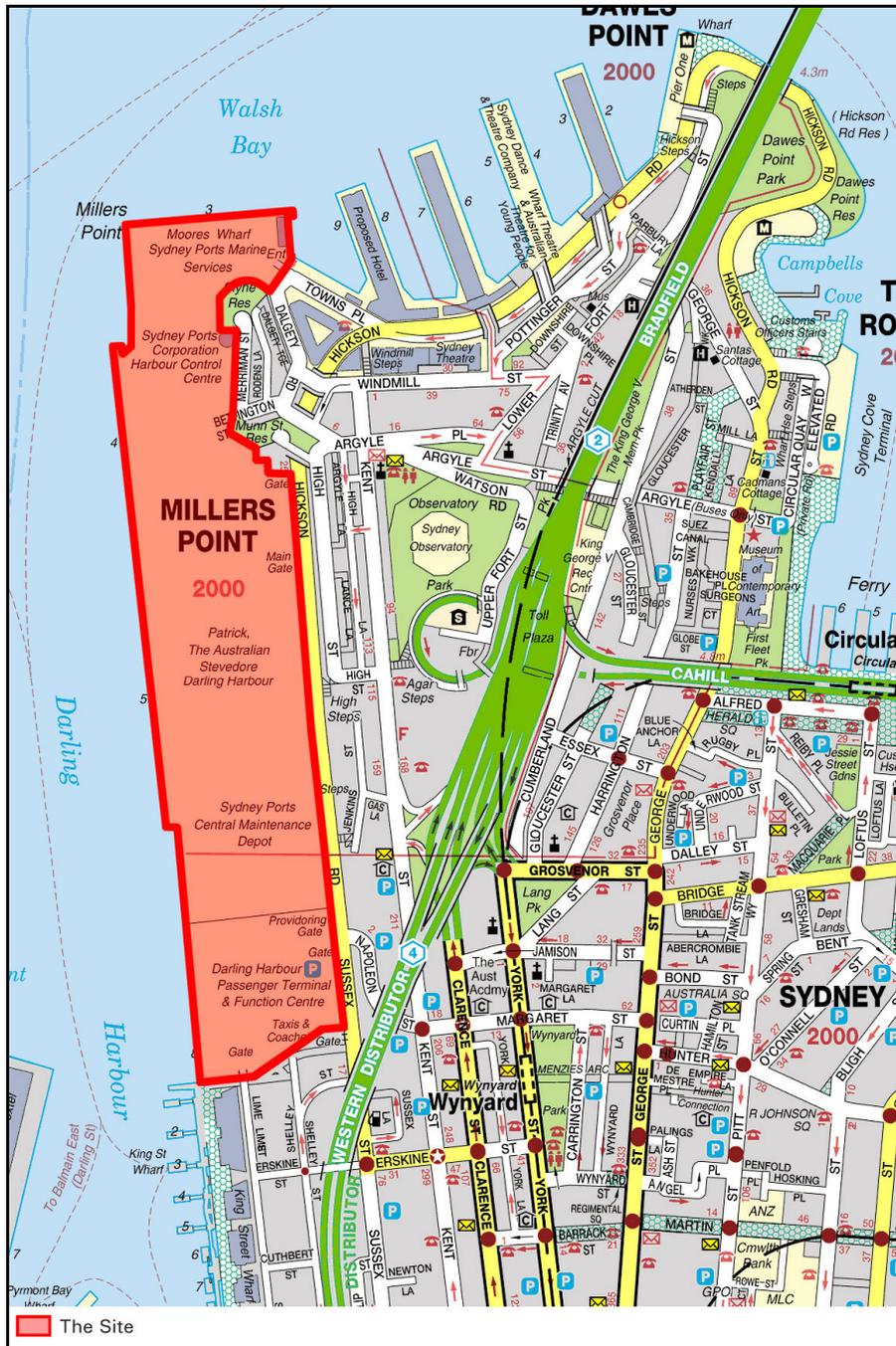


Figure 5: The Site in context of the Sydney CBD. JBA Planning(2006).

4.3 History of the site

A detailed history of the site has been undertaken by the Sydney Harbour Foreshore Authority. The following has been summarised from SHFA’s report dated 2006.

- Pre-1788: East Darling Harbour was part of the Cadigal territory and was used by the Aboriginal people as a fishing area.
- 1788: The arrival of the First Fleet in 1788 quickly decimated the Aboriginal population on the site due to the smallpox epidemic.
- 1788-1840's: The area of East Darling Harbour was under developed when compared with the adjoining Sydney Cove area. The sites steep terrain and poor land access rendered it to be under utilised by the First Fleet for the first 30 to 50 years of European occupation.
- 1820's: Much of the land at Millers Point had been granted into private ownership. Access issues from The Rocks and Sydney Cove to Millers Point were apparent due to the hill terrain and poor street arrangements.
- 1830's: Several wharves had been constructed at Walsh Bay and also at Darling Harbour. The establishment of the Markets in Darling Harbour instigated the increased commercial and industrial development of the area. East Darling Harbour at this stage remained largely untouched.
- Early 1840's: The population of Sydney doubled in the decade from 1833 to 1843 to 35,000 people and Sydney started to become a city. The Millers Point village began to develop. The establishment of The Lord Nelson Hotel and the Hero of Waterloo were the areas first pubs and are still there today.
- 1843: The Australia Gas Light Company constructed their gas works at East Darling Harbour after having purchased the land in the late 1830's. By early 1840's, the Australia Gas Light Company had installed over 600 private gaslights in Sydney. The gas works also instigated the construction of wharves at East Darling Harbour to receive coal for production. The gas works provided employment for local men through the construction of the wharves and working inside the gas works.
- 1850's: The end of the depression and the Gold Rush had a significant impact on the development of Millers Point. The area experienced unprecedented growth and economic expansion due to the establishment of industries and the construction of facilities from

Dawes Point through to Walsh Bay, Millers Point and all of East Darling Harbour area and Darling Harbour.

- Mid 1850's: Specialised merchant firms began to replace the major wool shippers and trade competition was intense. The wool industry ensured that abundance of work for the local population.

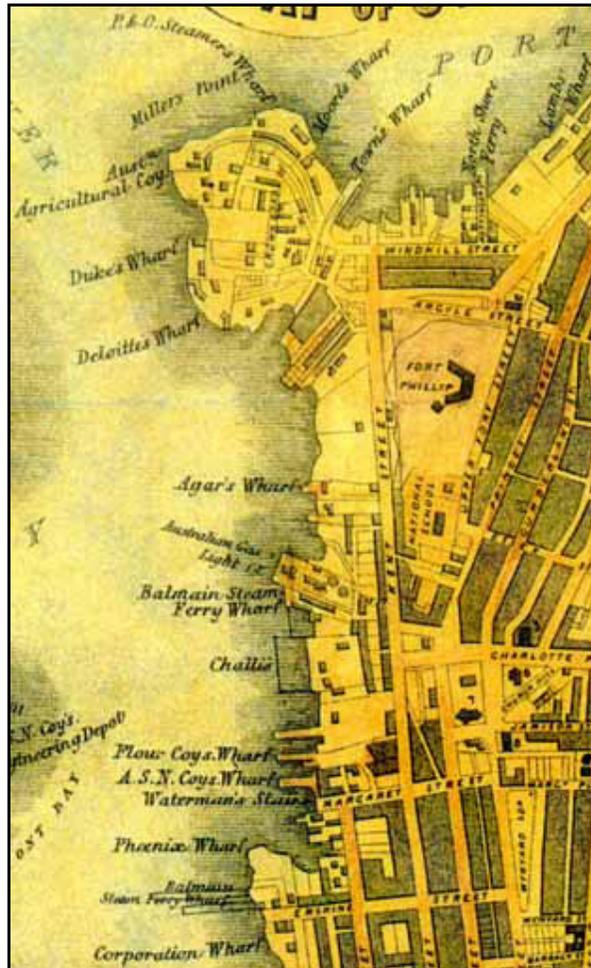


Figure 6: The site, as drawn by Smith & Gardiner's in 1855.

- 1870's: This decade saw dominance in export cargo and warehouse space within the area. By the mid 1870's the entire East Darling Harbour and surrounding foreshore area was occupied with wharves, stores and commercial premises.
- 1880's: This decade continued the trend towards industry and cargo usage on the wharves. New wharves were built to cater for larger ships and storage areas.

- 1900's: The bubonic plague broke out in Millers Point, The Rocks and most of the Sydney Cove Area. By this time, Millers Point was not considered as a desirable location. The area did not have adequate water or sewerage facilities. The wharves did not have proper seawalls and were a haven for rats and vermin. The plague was contracted by 303 people, and 103 people died from it, with only 3 of the 103 people dying in The Rocks and Millers Point area. The Government's intervention was to quarantine the entire Darling Harbour, Millers Point, Walsh Bay and The Rocks area.
- 1900-1902: The plague brought the wharf industry to a halt. The City of Sydney Council commenced a rigorous cleansing and disinfecting campaign and as a result much housing and wharves were subject to demolition. Once the rat issue was contained, the disease began to subside. The bubonic plague was used as a reason by the State Government to reclaim the land for cleansing and redevelopment.
- 1901 - The State Government established the Sydney Harbour Trust to administer the shipping and control the housing in the resumption areas. The objective of the Trust was to rebuild the Port of Sydney and to demolish any derelict housing and to retain housing and rent it out at market rates. The Trust was reluctant to provide affordable housing to workers in the area, however a community association was formed to pressure the Government and in 1909 the Trust finally provided housing for waterside workers, despite the fact they continued to argue the land was much too valuable for this use. This use of housing continues to this day in the area.
- 1909: This period was characterised by major work in the area, including the construction of Hickson Road. Hickson Road was intended to provide street access to the wharves and also to extend connectivity to Darling Harbour and the Pyrmont Peninsula area.
- 1904-1920's: Materials and labour were scarce due to World War I. The Trust also resumed the land owned by The Australia Gas Light Company and continued to build Hickson Road through the area.

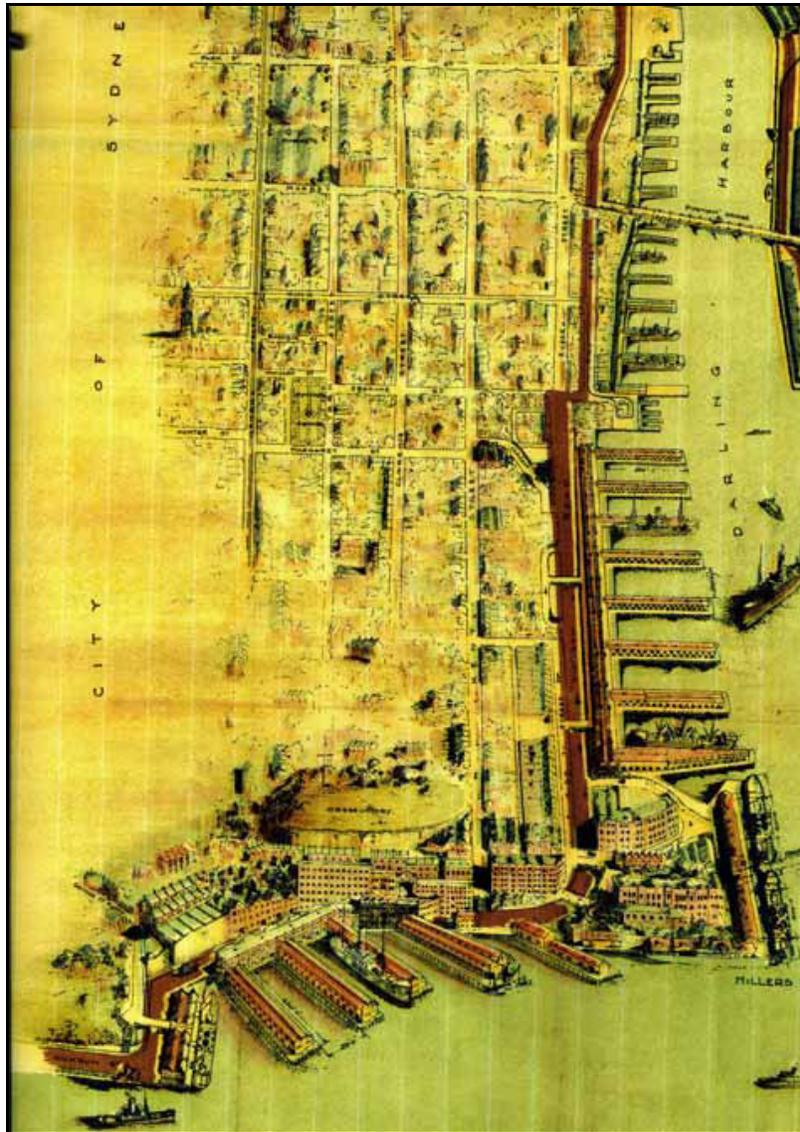


Figure 7: Sydney Harbour Trust 1912 Bird's Eye View (Source: SHFA Historic Maps and Plans collection)

- 1930's: There were ten new wharves along East Darling Harbour. These wharves were generally modular timber design with adjoining two storey shore sheds.
- 1930's: The great depression had reached Australia and Sydney experienced considerably economic downturn and unemployment. The site of East Darling Harbour was no longer a thriving port area. It was at this time that East Darling Harbour was labelled "The Hungry Mile" with reference to the distance workers would walk from one wharf to another along East Darling Harbour in search of work.

- 1960's: The industry had changed with an international shift in containerism and the large finger wharves had become redundant. This led to the wharves being replaced with the installation of a concrete apron to service the larger container ships.
- 1979: A new port is opened at Port Botany. New cargo transportation into Sydney commences to be transported to Port Botany instead of East Darling Harbour.
- 1980's: Darling Harbour had been redeveloped into an entertainment and tourism precinct. Due to the street configuration surrounding East Darling Harbour, the area was difficult for trucks to access. Containerisation was getting large and therefore required larger double trailer trucks to transport cargo. By this time the general industrial heart of Sydney had been relocated to Port Botany and Port Kembla.
- Late 1980's - 1990's: Due to increased cargo to Port Botany, East Darling Harbour commences to serve a new purpose as a docking facility for large cruise liners. Continues to receive cargo, however at a less frequent rate.
- 2000's: Patrick's Stevedore determined that the site is no longer commercially viable as a freight-shipping terminal and decide to permanently relocate stevedoring operations to Port Botany and Port Kembla.
- 2006: Patrick's Stevedores decides not to renew it's lease of the site and vacates East Darling Harbour, returning it to the NSW Government.
- Late 2006: NSW Government announces its urban renewal intentions for the site, to create it into a mixed use residential, commercial precinct as an extension to the existing Sydney CBD.
- 2006-2007: State Government announces international design competition for the site and lodges a Concept Plan application for the site rezoning and development of the site.
- 2008: The vacant site is used to cater for Pope Benedict V's visit to Sydney with a mass for over 100'000 people.
- Mid 2008: First demolition works commence on the site, as does remediation of the site.

- June 2008: Lodgement of Modification to increase floor areas as approved by the Concept Plan.



Figure 8: Aerial view of the site. (Source: DOP, 2007C).

4.4 Brownfield Urban Renewal Initiatives

Extensive research has been carried out on urban renewal in both a national and international platform. The topic of urban renewal projects is not the focus of this research and accordingly urban renewal is briefly addressed.

Barangaroo is a prime example of urban renewal initiative. Within Australia, the phenomenon of urban renewal initiatives has increased throughout the past 20 years. This is due to various reasons, which include the increase in property values within NSW, the reduction in available land, the emancipation of previously occupied land and the general increase in population (Clarke 2006). As such, the concept of restoring defunct and surplus land into prime real estate has become an increasingly attractive development technique. A positive outcome of urban renewal programs is that they supposedly improve the range of housing opportunities to households, in terms of dwelling type, tenure and location and commonly provide mixed use development, therefore providing employment opportunities. However, urban renewal programs

remain largely reliant on the economic feasibility of the project. Economic development is focused on maximising return on initial investment. Roberts (2008) argue that planners must be aware of economics of development (EOD) in order to negotiate better development outcomes. This statement is understandable, given planners are involved in the conception, assessment, approval and implementation of urban renewal programs. This is of relevance to Part 3A and SSS projects, given they facilitate key development and infrastructure which are deliver investment into NSW and the flow on economic development of NSW.

As such the success of urban renewal programs are measured by various indicators, including economical feasibility, housing outcomes and stock, post construction employment opportunities, social outcomes including gentrification and type of mixed use development (Ruming 2006). These indicators are encapsulated within the best practice triple bottom line approach of economic issues, environmental issues and social issues.

In metropolitan Sydney, there have been numerous Brownfield urban renewal projects which include Green Square, Carlton United Brewery site and Barangaroo.

4.5 International Urban Design Competition

An international urban design competition was announced by the NSW Government in 2005 to explore urban design issues such as built form, streetscape, landscape, land activation and programming in a broader context. 137 entries were received from around the World. This was culled to 5 finalists in August 2005. The finalists were publicly exhibition and comments were sought from relevant stakeholders, including Council's, Government agencies and the public. The designs were required to articulate the "relationship of built form and the public domain, the mix of uses and social and cultural positioning for access and connectivity" (DOP, 2007C). The competition jury selected the proposal by Hill Thalys Architecture + Urban

Projects, Paul Berkemeier Architect and Jane Irwin Landscape Architecture. This is shown in Figure 8.



Figure 9: Winning Urban Design. (Source: DOP, 2007C).

In essence the design competition refined the project for a suitable concept plan stage. However, as Fterniatis points out, the “winning scheme responded to the design principles, but also took things further and suggested other project refinements in response to both internal and external stakeholder expectations... A fair bit of testing was undertaken before a final concept plan could be developed” (Fterniatis, 4 October 2008). Therefore the design competition ensured that the concept plan approval process would be more streamlined and straight forward and design issues from a concept stage would have already been addressed.

4.6 Naming of East Darling Harbour

In 2006, the NSW Government held a State-wide naming competition. Over 1600 entries were submitted to the 'New Harbour Headland' Naming Competition. A Competition Jury was appointed to cull the submissions down to a shortlist for public discussion.

The Competition Jury consisted of the former Prime Minister The Hon Paul Keating, Ms Anne Macgregor and Ms Osmond. On 18 October 2006 the then Minister for Planning Frank Sartor, announced that the name **Barangaroo** was the new name for East Darling Harbour. The name was to "*honour of the wife of Bennelong*" (DOP, 2007C).

4.7 Barangaroo Concept Plan: Major Project 06_0162

Barangaroo is owned by the NSW State Government, under the Government agency known as the Sydney Harbour Foreshore Authority (SHFA). SHFA as landowner, under the direction of the NSW Government lodged a State Significance site and Concept Plan application for the rezoning and redevelopment of Barangaroo. This was known as Major Project 06_0162 (MP 06_0162). The application was a concurrent Concept Plan and State Significant Site listing proposal. The proposal was lodged on the 2006 and was approved on the 9 February 2007 by the then Minister for Planning, the Hon Frank Sartor MP (DOP, 2007C).

The cost of the development was \$1.5 Billion and was estimated to generate 15,000 jobs once the development was finalised. The development was marketed as a new "harbour precinct for Sydney providing an extension to the City's commercial centre and a significant new public headland park" (DOP, 2007C).

The Concept Plan approved the following:

- A mixed use development of commercial, residential, tourist, retail and community uses;

- Building envelopes with a distribution of GFA between the development blocks within the mixed use zone;
- New public open space / public domain, with a range of formal and informal open spaces serving separate recreational functions and including a 1.4km public foreshore promenade;
- A passenger terminal and a maximum of 3000m² GFA for active uses that support the public domain within the public recreation zone;
- Public domain landscape concept, including parks, streets and pedestrian connections;
- Creation of a partial new shoreline to the harbour and alteration of the existing sea walls; and
- Retention of the existing Sydney Ports Corporation Port Safety Operations and Harbour Tower Control Operations including employee parking (DOP, 2007C).

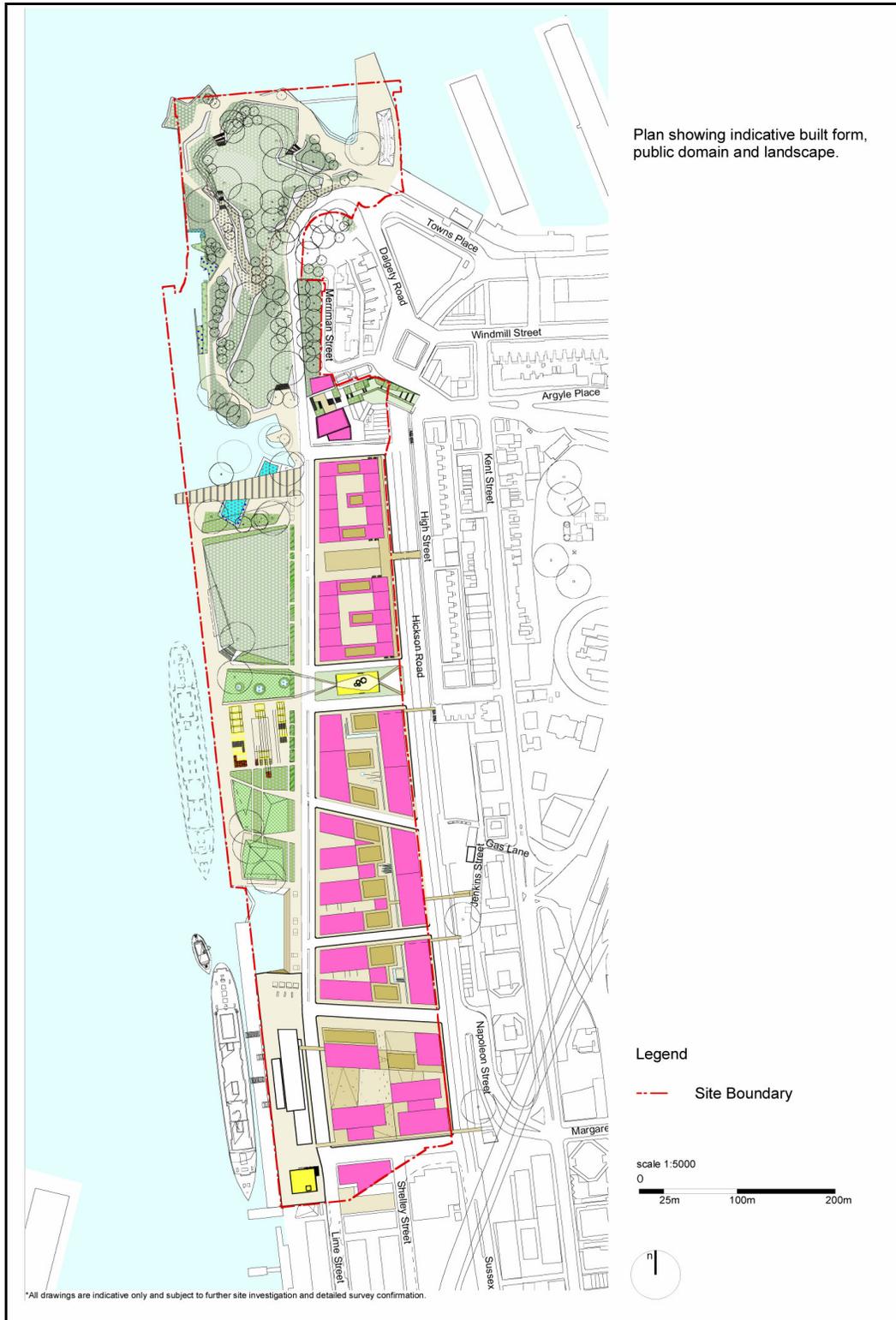


Figure 10: Proposed Concept plan. (Source: DOP, 2007C).

The SSS nomination facilitated the listing of the site in Schedule 3 of the Major Projects SEPP and listing a new planning regime for the site. Barangaroo was added under Part 12 of Schedule 3 of the Major Projects SEPP. This regime included development provisions for the site, including building heights, gross floor areas, heritage conservation, and zoning. These controls were supported by planning maps. The regime also detailed what future Part 3A applications would be applicable to the site (Major Projects SEPP, Part 12).

As such, the individual Part 3A project applications for individual buildings, services and infrastructure would be lodged at a later date. The Concept Plan provides the foundation for the entire development, and therefore future development would have to be consistent with the Concept Plan instrument of Approval and the Concept Plan statement of commitments. The controls listed within Schedule 3 for Barangaroo are quite broad and flexible in order to encourage investment into the site and potential long-term tenants (Fterniatis, 2008, pers. Comm., 4 October). All potential tenants of the site will be via long term leases with either SHFA or the NSW Government, given the site will remain as Crown Land under the SHFA Act, which cannot be sold. Further, the headland at the north of the site will be public land vested with SHFA. SHFA will develop the park and maintain the park and will remain publicly accessible (Fterniatis, 2008, pers. Comm., 4 October). In turn this would ensure that tenants would occupy the site for a long period of time, given these long-term leases are generally 99-year leases (Fterniatis, 2008, pers. Comm., 4 October), thereby entering into a long term investment with the site.

This verifies the statements made by Whealy (2006) that were covered in Chapter 2, about how Concept Plans provide greater certainty to developers due to their flexibility. A developer prefers a site with design that can be modified throughout the project due to feasibility or cost issues, and this is absolutely relevant in the case of Barangaroo. This is demonstrated in the current modification to increase the gross floor area for the site. As Fterniatis states, the “winning scheme has been modified to respond to community

expectations in terms to greater foreshore access and also increased commercial floor space opportunities in response to Sydney’s growing role as a global city in the South Pacific region, in order to attract future developers and tenants” (Fterniatis, 2008, pers. Comm., 4 October). Barangaroo does fulfil the economic development of NSW objectives of Part 3A.

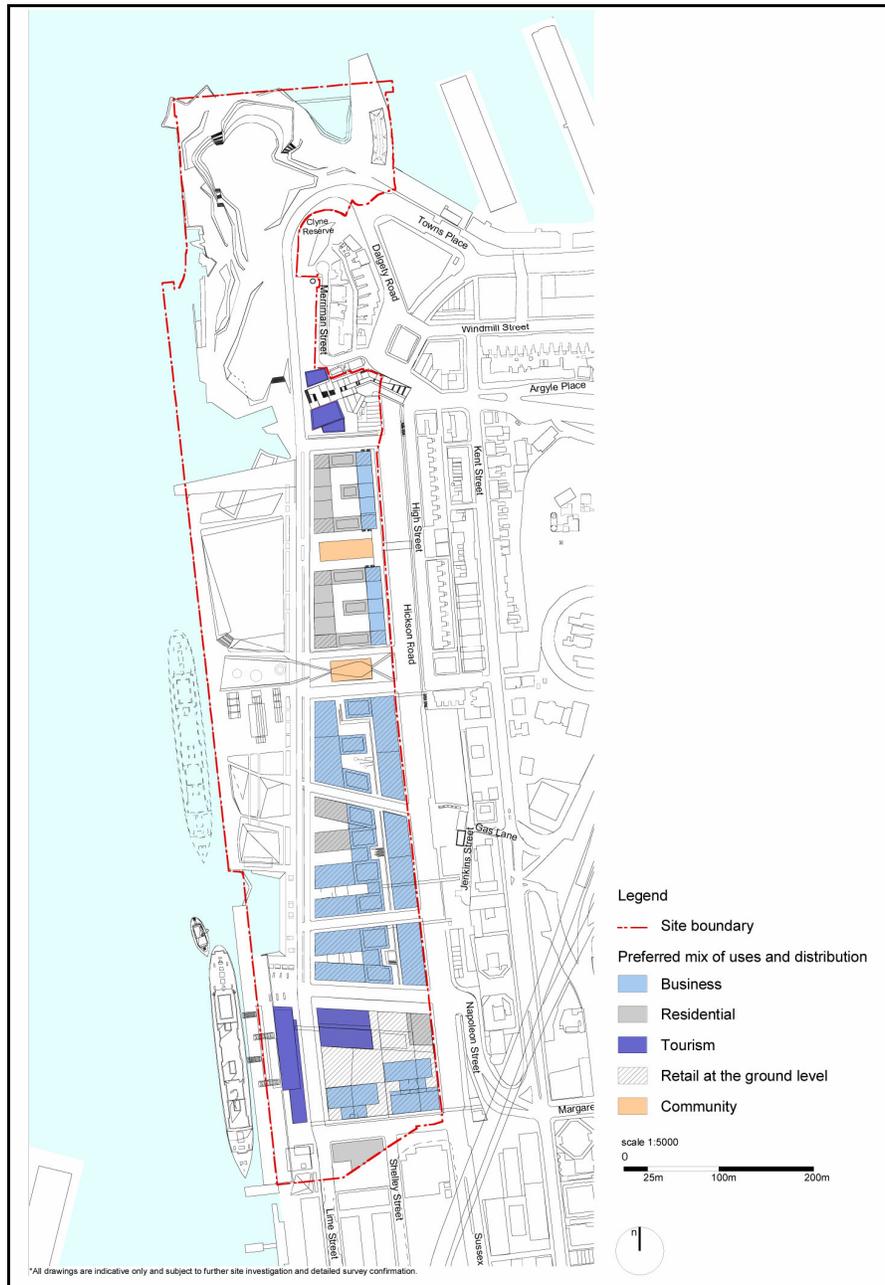


Figure 11: Proposed land use mix. (Source: DOP, 2007C).

4.8 Barangaroo stakeholders and timeline of Concept Plan

Barangaroo has been one of the largest rezoning and urban renewal redevelopment projects in Australia. As such, the project extensive significant stakeholder consultation and public involvement. The following table lists the stakeholders involved.

Public Sector	The Minister for Planning	The consent authority for the Concept Plan.
	SHFA	Land owner of the site, on behalf of the State Government and proponent for the concept plan. Engaged professional consultants to develop concept plan documentation.
	Department of Planning	Role of assessment of Concept Plan and SSS proposal. Rezoned the site, developed new planning regime for the site and approved redevelopment.
	City of Sydney Council (CoS)	Site is located within CoS LGA. CoS were consulted for input into DGR's and commented on the proposal during public exhibition.
	Other Government agencies	Other agencies consulted for DGR's and during public exhibition.
Private Sector	Patrick Stevedores	Previous landowner. Responsible for removing cargo and vacated site.
	JBA Urban Planning	Appointed by proponent as planning firm to develop documentation to support the concept plan.
	Hill Thalys Architecture + Urban Projects, Paul Berkemeier Architects and Jane Irwin Landscape Architecture	The firms that were selected by Design Panel as winners of the design competition. The Concept Plan was based on the design scheme produced by these firms.
Public/ community	NSW Public	Invited to make submissions during public exhibition of concept plan. Barangaroo is a project that represents local, regional and state interests.

Timeline of Concept Plan

Date	Action
24/02/06	JBA (on behalf of SHFA) wrote to Minister for Planning requesting the Minister to nominate Barangaroo as a SSS in Schedule 3 of the Major Projects SEPP and to form the opinion that the Barangaroo proposal constitutes a Major Project under the Major Projects SEPP and to authorise submission of a concept plan for the proposal.

22/03/06	Minister for Planning agreed to consider the site as a potential State significant site in Schedule 3 of Major Projects SEPP and authorised submission of a concept plan.
27/03/06	Proponent submitted request to Department seeking DGR's for SSS Study and Concept Plan.
May/June 2006	Planning Focus Meetings held. Conducted by DOP in conjunction with SHFA to identify issues for DGR's.
30/06/06	Director General issued final DGR's following consultation with Council, various government agencies and the Department's Regional branch.
13/10/06	Applicant lodges Environmental Assessment for public exhibition.
16/10/06	Department undertakes a test of adequacy of submitted documentation and advises proponent that submitted EA was satisfactory for public exhibition.
19/10/06 – 17/11/06	Public exhibition of proposal at the Department's Bridge Street office, on the DOP website and letters sent to Government agencies and relevant stakeholders.
24/11/06	Submissions sent to proponent to summarise and respond.
12/01/07	Proponent provides response to submissions, revised Statement of Commitments and preferred project report.
09/02/07	DOP forward the DG Report to Minister for Planning. Minister determines project.
March – August 07	DOP Continue drafting SEPP Amendment to include Barangaroo. Consultation with Legal and Parliamentary Counsel.
12/10/07	Barangaroo SEPP gazetted in Schedule 3 of Major Project SEPP.

Within the realm of Part 3A, an application is considered to be formally made once an Environmental Assessment is lodged with the DOP. Thus the assessment time for the Concept Plan was from 13/10/06 till 09/02/07, resulting in an assessment of 120 days.

4.9 Consultation

Consultation for DGR's

Prior to sending formal request for Director General Requirements inputs, the DOP and SHFA conducted separate 'Planning Focus Meetings' to identify issues. The Government agencies consulted at the DGR's stage included: City of Sydney Council, Department of Housing, Department of Transport, NSW Fire Brigade, Government Architects Office, NSW Maritime, NSW Police, RTA, STA, Sydney Ferries and Sydney Ports.

Exhibition

The Concept Plan was exhibited for a period of 30 days and a total of 91 submissions were received from government agencies and the public (DOP, 2007C). The proposal documentation was exhibited in the following locations:

- DOP Website;
- SHFA Website;
- DOP Head Office Information Centre; and
- COS Council Information Centre.

Comments on this exhibition process and its adequacy are revealed in the findings in Chapter 5.

4.10 Issues associated with proposal

The issues have been broadly categorised as follows:

- Public Domain;
- Building Form – building heights, bulk and scale, and GFA;
- Overshadowing;
- Traffic and Public Transport;
- Heritage buildings/items;
- Views;
- Pedestrian Access and connections to surrounding areas;
- Contributions/Developer Agreements;
- Delivery of Infrastructure;
- Affordable Housing;
- Wind and obstruction of sea breezes;
- Soil Contamination;
- Air pollution;
- Accuracy of documentation;
- Social sustainability; and
- Climate change/sea level rise.

The above issues were adequately addressed by the proponent and assessed by the DOP. In the findings in Chapter 5, the DOP officer whom assessed the proposal, reveals that the issues of the project were relatively straight forward and had already been refined through the design competition

and various Planning Focus Meetings. Therefore, when it came to the assessment stage, the project was already in a shape that needed only minor refinements.

Records could not be located to indicate if there has been any remediation of the site after the removal of the gas works in the mid 1900's, however it is assumed that the concrete apron was built over contaminated fill. Informal discussions with Fterniatis concur with this statement.

One of the main issues not mentioned in the list was the uncertainty associated with the lack of no development controls for the site. "The site was zoned Maritime Services under City of Sydney instrument and there were no controls for building heights and envelopes and therefore there was a lot of testing undertaken to minimise overshadowing, view loss and micro climate impacts such as wind tunnelling and so forth. A fair bit of testing of solutions was undertaken before a final concept plan could be developed" (SHFA, Fterniatis, 4 October 2008).

4.11 Research Methodology

4.11.1 Introduction

This thesis was undertaken over a 4 month period as the capstone to the Bachelor of Town Planning degree at the University of New South Wales. A literature and theoretical review has been provided in Chapters 2 and 3. In order to further develop recommendations from these chapters and in order to formulate final findings it was deemed necessary to collect and analyse both primary and secondary data. Through qualitative and quantitative research, the thesis objectives and problem setting was established and the thesis findings and recommendations were developed.

The incorporation of qualitative field research into this thesis has facilitated the development of sophisticated and unique findings. Babbie (2001) states how qualitative field research can provide the researcher with a comprehensive perspective on a topic. Through this process, the researcher

can develop a deeper and fuller understanding of the topic (2001, p 275). This was evident in the subject research. Through field research, several attitudes, beliefs and information was obtained.

This section aims to describe the research processes undertaken and outlines details for the selection of interview participants and case study selection and details the ethical considerations and limitations of the thesis.

4.11.2 Research Process

This thesis was undertaken in the following chronological order:

- j) Review and analysis of existing literature and determining it's relevance to the subject topic. Research Part 3A legislation;
- k) Establishment of problem setting and thesis objectives. The problem setting guided research and in general, was amended as thought necessary;
- l) Lodgement of ethics application with Ethics Panel;
- m) Receipt of ethics approval subject to conditions. Conduct necessary refinements to satisfy those conditions;
- n) Select case study, conduct site inspections and research about site;
- o) Determine suitable interview participants and request their participation;
- p) Conduct qualitative research comprising of three interviews with high ranking Government officials;
- q) Findings from qualitative research collaborated with literature findings; and
- r) Recommendations and results produced.

4.11.3 Literature Review

The thesis was commenced with a literature review of relevant publications to formulate the theoretical platform for the thesis and to develop the problem setting and objectives. The review was conducted utilising academic journals, abstracts, academic books, scholarly research, Government websites, Government media releases and Parliamentary and academic speeches.

Initially the topic was set amongst existing information to develop the problem setting and statement. Literature was selected on the basis of relevance to the subject topic, with most of literature directly referring to various elements of Part 3A, including its implications, economical development of NSW, public consultation and appeal rights. The theoretical concepts they suggest are from various angles and approaches and therefore they have predominantly different ideologies on the Part 3A process.

4.11.4 Case Study Selection

The primary case study is Barangaroo with smaller case examples being utilised to elaborate on the topic. Barangaroo was selected because it is an ideal example of a Part 3A project and a SSS. Barangaroo provides solid background for the consideration of principles during the assessment of SSS. Smaller cases which have been identified in the body of this thesis have been selected for their demonstration of the issues associated with State Significant Sites.

4.11.5 Interview Process

The thesis objectives and general findings from the literature were enhanced through the facilitation of in-depth interviews. The interviews allowed the researcher to ascertain a more detailed understanding of the participants experience with Part 3A and their personal regard for the Part 3A system.

The topics targeted within the interview questions included Part 3A in general; Part 3A and public consultation; SSS as a rezoning process; political donations; and questions on Barangaroo. The questions asked to all three participants remained largely the same, with minor amendments to relevant participants to obtain more detailed information based on their knowledge.

Participants were selected based on their knowledge and general experience of Part 3A. Initially, participants were approached via telephone and email consultation to introduce the subject topic and determine their level of interest in the project. It was decided to interview a Council employee, two staff Government employees and a lawyer. The varied selection of participants

would facilitate an interview that would generate a diverse perspectives and information.

All four potential participants were selected due to their involvement in the Part 3A field. Of the four, three participants agreed to participate. This is due to one participant, a leading lawyer failing to respond after numerous attempts. The participants were high ranking Government and Council officers, comprising of the following:

- Sydney Harbour Foreshore Authority: Strategic Planning Manager
- Department of Planning: Specialist Planner
- City of Sydney Council: Senior Planner

In general it was difficult to access these participants due to their busy work schedules. Ultimately it proved invaluable to interview all three. The information they provided was qualified and interesting and raw. As described by Desmond (2004, p264), studying an elite of whom exercises a share of authority in the field provides superior findings. This is verified through this research where the sophisticated findings are achieved through interviewing professional elites within the planning field. The interviewing of three elites with a wealth of knowledge in the topic produced interesting findings.

The questions utilised in the interviews were formulated and targeted to reveal issues associated with the thesis objectives. In general, qualitative research uses a range of questions to gather information. The questions utilised for the subject thesis included background questions to establish a interview foundation; descriptive questions on the case study and Part 3A; opinion/personal value questions on political donations and public consultation and knowledge questions on SSS (Minichello (ed), 1995).

A copy of the interview questions and the project information statement is contained in Appendix 2 and 3. All in-depth interviews were conducted during September 2008 and October 2008 and recorded using an audio device and transcribed.

4.11.6 Ethical and Political Considerations

Babbie (2001) states how research is subject to four main constraints, being scientific, administrative, ethical and political (p 469). Babbie (2001) further stresses how ethical and political considerations must be considered by researchers in the execution of any research. This was extremely relevant in the case of the subject research. The author submitted an application to the *UNSW Faculty of the Built Environment Ethics Panel* for approval to conduct research for the purpose of this paper. Approval was granted on 19 August 2008 (Refer Appendix 4). The author acknowledges the ethical issues associated with conducting research, especially with regards to interviews conducted. Research conducted has ensured the following:

- Participation in research was of a voluntary nature;
- Participants were subject to no harm;
- Participants could remain anonymous and data can remain confidential;
- Participants were not deceived into becoming involved.

Interviews were progressed through the following:

- a) Formal correspondence sent to the interview participants including Project Information Statement, sample of questions and consent forms;
- b) Discuss interview with participants over the phone;
- c) Obtain consent forms from participants prior to interviews;
- d) Conduct interview and record interview; and
- e) Collate and transcribe interview where relevant.

4.11.7 Limitations

The results and findings of this thesis are limited due to the project time frame and word limitations to the research. Other limitations included:

- Participants utilised for research were Government officers. Therefore there were two participants whom were reluctant to be named in the research and remained anonymous. These were the Department of Planning employee and City of Sydney Council employee.
- The researcher acknowledges they're employed by the Department of Planning and therefore has access to certain information. Due

diligence has been maintained to ensure all sensitive information is not divulged and remains confidential. Further all information contained within this thesis is for the sole purpose of the Bachelor of Planning program and is solely the view of the author and not that of the Department of Planning.

- Attempts were made to involve a lawyer whom had been quite critical of Part 3A. This would have allowed the author to be able to identify issues that supporters of Part 3A would not divulge.
- Two case studies could not be utilised due to the word limit restricting the length of the thesis.
- One of the participants requested that the interview be not taped. This made collation of data more difficult.

4.12 Conclusion

This chapter has examined the process for approval of the Barangaroo project. It has commented on the history of the site, the approval of the project and the issues associated with the project. This chapter has also commented on the design competition and connects with the findings listed in Chapter 5.

The chapter has also provided details on the research methodology carried out for the thesis and has identified the various issues associated with the research, including ethics process and limitations.

Chapter 5: Research Results

5.1 Introduction

The findings in this chapter have been developed through the facilitation of in-depth interviews as addressed in the methodology in Chapter 4. The questions have been designed to reflect the objectives of the thesis and to address literature findings that have been identified in Chapters 2 and 3. This chapter has divided the findings into relevant themes and analysed the data to correlate it with information detailed in Chapter 2 and 3. The findings have been analysed to

The in-depth interviews provided qualitative data that reinforced many of the arguments put forward in chapters 2 and 3 and also provided data that challenged theoretical assertions. This section details the findings of the research for this thesis.

5.2.1 General background on interviewee

To establish an understanding of participants experience with Part 3A, interviewees were asked to provide details on their position within their respective Government organisation. This question provided a foundation for understanding the interviewees' background with the topic and their level of experience. This also directly illustrates the level of involvement different organisations have with Part 3A projects.

Types of projects and area of expertise and experience

"I have been involved in commenting on the Concept Plan for Barangaroo and UTS site in Broadway" (City of Sydney, Senior Planner, 29 September 2008).

"Provide high technical planning advice to Major Projects, from concept stage to development stage... Examples include Darling Walk at Darling Harbour" (SHFA, N Fterniatis, 4 October 2008).

“Involved in the assessment of Part 3A projects and State significant site rezonings. These include Huntlee Newtown, Freeway North, numerous hospitals, Barangaroo and other rezonings” (DOP, Specialist Planner, 10 October 2008).

The above data demonstrates that under the current arrangements of Part 3A, the Department of Planning (DOP) is the main Government agency that assesses these types of projects. The City of Sydney Council is primarily involved in commenting on the proposals from a third party stakeholder role and the SHFA is involved in a developer/proponent role as well as landowner role. This is especially evident in the case of Barangaroo, where the developer is SHFA, the assessor is DOP and CoS Council is involved in commenting on the proposal. This is important because it illustrates how Part 3A is used by DOP to assess these proposals and how local Government is therefore included in the process, however they have no authority to dictate the final project result. This presents the background platform for the interviews.

5.2.2 Objectives of Part 3A

Interviewees were asked about their opinion on Part 3A and if it fulfils its theoretical objectives of being an efficient land use system, encouraging investment and economic development whilst retaining safeguards and increasing public consultation. The answers to these questions identified some opposite perspectives, but the majority were consistent answers. This is divided into four subcategories.

Economic Development

Part 3A was introduced as a planning system that will stimulate economic development in NSW through approving major projects and critical infrastructure. This is a key theme of Part 3A and was one of the questions directed at participants. A consistent response was given by participants.

“Part 3A does encourage private investment into Sydney. Way the system works is to streamline planning processes to obtain rezoning and development potential of the site as quickly as possible” (City of Sydney, Senior Planner, 29 September 2008).

“Sydney is the key driver of the New South Wales economy. Therefore if we have a successful Sydney, then we will have a successful New South Wales. Decisions made in New South Wales have flow on effects on regional centres around New South Wales and therefore Part 3A is important in approving key development” (SHFA, Fterniatis, 4 October 2008)

“Part 3A facilitates the economic growth of NSW, providing more jobs, community services, infrastructure and flow on effects on a local, regional and state platform” (DOP, Specialist Planner, 10 October 2008).

All three interviewees agreed that Part 3A does encourage investment and economic development of NSW through providing an efficient system for rezoning and development approval of a site. The key focus was that Part3A dictates development that has impacts on a local, regional and state platform and therefore are important to all of NSW.

Efficient system.

Part 3A was propogandised as being a planning process that would deliver major projects and critical infrastructure in a quick and efficient manner, thereby ensuring that the economic objectives of the State are delivered in an efficient manner. The participants concurred with this description of the process.

“If a proposal were bogged down in a local government process you wouldn’t have a fast process, as currently is under Part 3A. It’s neither a good or bad thing, but it does make for a more efficient land use process...Time is money, and a project gets caught down in bureaucracy, especially at Council. Part 3A does provide an efficient

mechanism for major projects. However it's not to say that you wouldn't arrive at the same outcome with either Council or State Government, but the timelines would be different.

When the State Government becomes involved, the process is done a lot more expeditiously than local government. Level of consultation and resourcing and amount of time that local government likes to spend assessing these sort of matters is quite long. They are generally not resourced to facilitate Part 3A projects. Elected councillors would become heavily involved and it would take Local Government a longer amount of time to process" (City of Sydney, Senior Planner, 29 September 2008).

"The State Government can balance local interests, regional interests and state wide interests, therefore consideration of a plethora of interests. It is important that the State does intervene to push forward the redevelopment of these sites. State will drive a project through and there is room for stakeholders to be involved in the project" (SHFA, Fterniatis, 4 October 2008).

"The Part 3A planning process facilitates large developments that Council's could not assess. Politically, it is difficult for Council's to assess or impossible when a project is located within two or more Council's area... This is logistically impossible for Council's to coordinate, however for the DOP this is a standard procedure and part of the process" (DOP, Specialist Planner, 10 October 2008).

According to the participants, Part 3A is an efficient system, especially when you compare it with a Council assessment system. The City of Sydney officer reaffirms this by specifically mentioning how local Government is bogged down in political conflict and therefore the process would be stagnant. However, the Council officer raises an interesting concept of how if a Part 3A project were to be assessed under either by a Council or the DOP, they would probably arrive at the same result. These findings reiterate the challenges put

forward in Section 2.6. In certain circumstances, the State needs intervene to ensure certain projects that are significant for the State are given the appropriate consideration.

Expense of environmental safeguards

Literature in Chapter 2 has identified authors that have suggested that Part 3A will approve development at the expense of the environment. The participants responded with the following:

“Council would consider environmental safeguards in general, plus these would be considered as part of other agency’s assessment such as Department of Environment and Climate Change, so it’s not at the expense of the environment” (City of Sydney, Senior Planner, 29 September 2008).

“No. Environmental safeguards are considered by DOP and other agencies during consultation and at the assessment stage” (SHFA, Fterniatis, 4 October 2008).

“DoP involve other Government agencies more regularly to identify issues and assess proposals throughout project cycle. Environmental safeguards would be identified by relevant agencies such as DECC, Department of Primary Industries and Council and therefore these issues would be addressed as part of the assessment process” (DOP, Specialist Planner, 10 October 2008).

In summary, the interviewees believed that environmental safeguards are given adequate consideration by the DOP under Part 3A. This result challenges all assertions made by Davie (2007), Whealy (2006) and Ratcliff (2006) (all of whom are not practising planners in the Part 3A field) that Part 3A lessens the level of environmental consideration given to projects. Three practising planners in the field have reiterated that this is not the case, and that Part 3A gives as much consideration to environmental issues as much as

a proposal under any other part of the Act. Therefore the assertions made by Davie (2007), Whealy (2006) and Ratcliff (2006) are dismissed.

Expense of community involvement

Again, literature in Chapter 2 and 3 has suggested that Part 3A will approve development at the expense of the community being involved. The participants responded with the following:

“Well, for the Barangaroo project ... there were timing issues with the 30 days. Councillors are the elected members of the community and therefore they should provide comment on the proposal. The process didn't allow the elected members to have a direct hand in formulating any of the Councils response. Level of community consultation that takes place within 30 days, given the scale and size of the project is not sufficient. Councillors were unhappy with response in that they would have like to change it however it was too late because the 30 days were over and the submission had already gone” (City of Sydney, Senior Planner, 29 September 2008).

“Wider community interests are identified during public exhibition and these would need to be balanced by the DOP with development issue. I don't think the legislation has compromised amenity of community, environment or public life. But nevertheless, this varies on different communities. But in general consultation is adequate” (SHFA, Fterniatis, 4 October 2008).

“DoP have greater levels of consultation than Council, but doesn't necessarily increase level of consultation, it is probably the same and is quite subjective” (DOP, Specialist Planner, 10 October 2008).

The City of Sydney Officer believed that 30 days was insufficient for Part 3A projects and particularly insufficient for the Barangaroo proposal, however both State Government officers believed that 30 days was adequate. The DOP officer conceded that the level of consultation was generally the same as

that of the Council, albeit the conduction of Planning Focus Meeting's and the provision of online documentation.

5.2.3 Appropriateness of State Significant Sites for rezoning

Questions were asked to interviewees on whether Part 3A and the SSS process is a suitable mechanism for the approval of rezoning applications and major project implementation. This category was sub-categorised into three sections.

One of the issues with Part 3A and the SSS is the role of the State Government and if their intervention provides the most suitable mechanism for the approval and rezoning of major projects.

“Well Part 3A is more efficient. But academics have their own way of thinking regarding Part 3A - they need practical application of the process to get a better understanding. Practical experience is foreign to them, in theory it is different to how it is in practice. The Part 3A system under the DOP is the more appropriate way to assess such complex and important projects” (City of Sydney, Senior Planner, 29 September 2008).

“We need to bear in mind that we are talking about State Significant parcels of land or state assets. Media suggestions that State Government is acting as ‘big brother’ is a pure fallacy. The role of the City of Sydney and role of the Sydney Harbour Foreshore Authority has distinct differences. SHFA plan for the long term sustainable redevelopment of the site and responds to the wider economy. We acknowledge local interests, but the site isn't a local site, it is a State Significant site and therefore there is a role for the State Government”.

“Part 3A is a step forward... provides up front certainty to both the NSW Government community groups and developers” (SHFA, Fterniatis, 4 October 2008).

“Yes, State Government intervention provides the most efficient approach. The SSS process is much quicker than a council rezoning. Council rezoning relies on endless Council resolutions and political interests and numerous LES (Local Environmental Studies). Council is under resourced, under funded and under staffed. SEPP amendment process is more efficient than an LEP amendment” (DOP, Specialist Planner, 10 October 2008).

The participants believed that the State Government does need to intervene to provide the most appropriate assessment of state significant development. In this instance, they disregard the negative comments made by Academics and lawyers, stating that these people don't have the technical or practical experience in utilising the Part 3A process to comment on it's issues.

These findings also reiterate the challenges put forward in Section 2.6. The State must intervene to provide a better process. Council's cannot assess these projects, and therefore they are limited to being involved in a third party manner. This may not be ideal, but it is the most efficient and practical process.

These findings indicate that Part 3A does not challenge the role of local Government, but rather keeps local Government involved throughout the process. It needs to be reaffirmed that Part 3A and SSS are projects which represent local, regional and state issues and therefore only the State Government is well equipped to identify and address these issues.

An example to verify this is the following:

A proposal for a residential development including rezoning of land at Sanctuary Villages in Cessnock Council. The Minister for Planning delegated his assessment role to Cessnock City Council. Cessnock Council employed an independent Consultant to assess the proposal. The Consultant and Council took over 6 months to issue Director General Environmental Assessment Requirements. Under the

Environmental Planning and Assessment Regulation 2000, Clause 8C provides that a maximum of 28 days applies to the issuing of DGR's. In this instance, the Minister revoked his delegation and assumed the role of assessment to the Department of Planning. This example explicitly demonstrates how Council's aren't aware of the Part 3A process and lack the resources to assess such proposals. Thus the DOP is the most appropriate agency to assess these proposals. This information was obtained through the DOP.

An interesting element of Part 3A and the SSS process is if these sites should be listed within the Major Projects SEPP, or should they be listed into individual instruments or into Council's existing instruments. The participants responded accordingly:

"With Barangaroo you could have it as an instrument in itself, or as an amendment. It is probably quicker to have it as an amendment to Schedule 3 of the Major Projects SEPP and then probably it will be handed back to the city once it has been done with an LEP amendment" (City of Sydney, Senior Planner, 29 September 2008).

"Ideally Foreshores site would have their individual LEP or REP. The Major Projects SEPP is quite a large and cumbersome document to work through...With that said, the listing process is well established, clear and transparent and this is why the process is quite popular with developers. The process seems to be working and delivering the results that the development community require".

"Ideally as sites get redeveloped, best practice suggest they revert back to the parent instrument, however strong consideration must be considered. It appears the theoretical intention is to return sites to the parent instrument, however if you look at Luna Park, the site is still listed as an item under Schedule 3, yet it has already been completely redeveloped. No one has actually asked the Department to remove it from Major Projects SEPP and probably no one wants it removed. The

Major Projects SEPP provides more certainty to developers” (SHFA, Fterniatis, 4 October 2008).

“It is better to have instruments consolidated under the one SEPP, then having them in numerous documents. The process is looked after the Policy team of the DOP, however they will probably be rolled into relevant LEP instruments in the future. But not all rezoning’s go into Schedule 3. Some proposal’s can utilise the MP SEPP to amend an LEP. This is called a self repealing SEPP process. As you know, a SEPP can amend anything. This is appropriate in the instance of only a rezoning. This is relevant when a proposal is not significant enough to be listed in Schedule 3, so we can just use Major Projects SEPP to amend a local instrument in a more efficient manner than a Council LES approach. An example of this is Pitt Town and Freeway North. This process still follows the usual Clause 8 of the SEPP and S37/S39 approach. The SEPP is self repealed when it is gazetted” (DOP, Specialist Planner, 10 October 2008).

The theoretical intention of SSS are that once the development has been facilitated and constructed, that the controls listed within Schedule 3 of the SEPP be removed into the relevant Council instrument. To date this has not occurred. However, this research indicates that this may occur in the future. It will be at the discretion of the DOP to review this and implement any changes.

As mentioned in Chapter 2, some critics have suggested that Part 3A provides simplified assessment process. This was put forward to the participants and they responded with a consistent answer.

“Proposal would not be subject to a more simplified process. It will have the same amount of rigour that goes into any major assessment, but its fault is that it is trapped into the timing that you have for that project. For Barangaroo specifically the information/history is available/known, but for a new site, there would need to be extensive

research and assessment carried out” (City of Sydney, Senior Planner, 29 September 2008).

“No because Part 3A has specific mechanisms to consider environmental, sustainable and public issues, therefore the process is still thorough” (SHFA, Fterniatis, 4 October 2008).

The above practitioners of Part 3A responded that the process does not result in a simplified process. Furthermore, the following example is provided:

- Huntingwood West – Major Project 08_0055: A Major Project proposal for the subdivision of a 46ha site in Blacktown into 6 super-lots. The subdivision was a paper subdivision only, and was designed to implement the objectives of a prior Concept Plan approval and to facilitate the sale of the site. The proposal had minimal environmental impacts and no CIV. In the scope of Part 3A projects this proposal was extremely minor, however due to the site being listed as a State Significant Site under Schedule 3 of the Major Projects SEPP, any subdivision of the site would be subject to Part 3A and in this instance, the proposal was still subject to consultation with Government Agencies and Blacktown City Council and was subject to the standard Part 3A thorough assessment. The proposal was also assessed efficiently, however the like nature of the proposal did not alter the level of assessment carried out.

This demonstrates that under Part 3A the DOP will assess all major projects in the same manner no matter how complex or minor they are. This finding challenges the assertions made in Chapter 2 and 3.

5.2.4 Barangaroo

The key issues with Barangaroo was how this new precinct in the CBD will be serviced by traffic, public access, pedestrian links and general built form issues. Participants were probed to discuss these issues and elaborate on any others that were relevant.

“Overshadowing, ground level wind effects, views loss, transport – how you get people to the site, including pedestrian links, public transport links” (City of Sydney, Senior Planner, 29 September 2008).

“Barrangaroo was marketed as an extension of the central Sydney CBD... Barangaroo was tied up in the International Design Competition that commenced the project. The Design Competition was initiated by SHFA and design Principles were agreed to and firms were directed to design as per these principles.

One of the major issues was the uncertainty associated with the lack of no development controls. The site was zoned Maritime Services under City of Sydney instrument. No controls regarding building heights and envelopes and therefore there was a lot of testing undertaken.

Barangaroo will be one of the first self-sustainable precincts in central Sydney. Appropriate use of resources, minimisation of energy consumption and site location of buildings has all been taken into account.

Project as it stands is tied to the redevelopment of the Metro west transport link – this is one of the primary transport links. Also a series of secondary transport such as enhanced bus services to the site, potential tram links to the site and pedestrian links to the site from Wynyard Station.

Barangaroo will not sit in isolation. It is a site that will be link and woven back to the urban fabric of central Sydney. The road network links back to the Sydney CBD area and so do the bus routes” (SHFA, Fterniatis, 4 October 2008).

Fterniatis indicates that the future public transport modes are largely dependent on the State Government budget due in November 2008.

Therefore it appears that the train access to the site remains unresolved and that the main access will be buses and pedestrian thoroughfares.

“The design competition set up the scale of development, therefore there weren’t many issues. Concept Plan was realising design competition proposal in a planning instrument. However there was a need to balance interests of various agencies. Issues included views and transport/traffic” (DOP, Specialist Planner, 10 October 2008).

The general consensus was that the design competition for Barangaroo provided a platform for the concept plan, and most of the issues associated with the proposal had already been considered at the design stage. The main issue appeared to be public transport with the project relying on the North-West rail link project, which appears to be heading for the shelf. Therefore the site will rely on existing rail services from Wynyard Station as well as increased bus services.

5.2.5 Public consultation and community involvement

A central issue with Part 3A is the level of public consultation and community involvement and the level of importance placed on community concerns. Participants were asked about the Part 3A public exhibition and consultation process and what their opinions were of it.

“One of the problems when Barangaroo was first referred to the City of Sydney Council was the timing involved, in that there were only 30 days to provide comments for one of the largest rezoning proposals in Australia. 30 days to gather that sort of information is quite difficult. Council did request the Department of Planning for further time, however the Department’s response was 30 day is sufficient” (City of Sydney, Senior Planner, 29 September 2008).

“30 days is sufficient, and relevant stakeholders are provided time to input into DGR’s therefore the project didn’t appear overnight. It has

been canvassed far and wide for the last three or four years. For Council not to respond in 30 days then there appears there are gaps in their procedures. It's most unfortunate for a council area which tries to promote itself as the leading council of Australia that they often struggle to provide comments within 30 days for these strategic sites.

In SHFA's statement of commitments it has continued to keep the community involved via the following:

- Barangaroo newsletter circulation*
- Dedicated Barangaroo websites*
- Regular Manager's meetings which involve members of the City council*

All part of keeping major stakeholders informed and involved in the development of the project. 30 day limit is quite arbitrary, may take more time or some times less, however this is more enough to provide detailed comments on a project" (SHFA, Fterniatis, 4 October 2008).

"For Barangaroo, specific 'Planning Focus Meetings' with agencies were conducted prior to DGR stage to identify relevant issues. Positive about these meetings is that it allows people to make solutions rather than just complain. 30 days is sufficient and in the case of Barangaroo, the Planning Minister is the Minister for both Department of Planning of SHFA, therefore it is in their interests to tick the boxes on both sides" (DOP Specialist Planner, 2008).

The general consensus was that public consultation was sufficient, however it is improved through the addition of non-statutory consultation processes such as Planning Focus Meetings or CRG meetings. The City of Sydney Council believed that for Barangaroo and similar complex projects, public exhibition should be increased to around 60 days or more. The DOP officer believed that any increase in time for consultation would result in further requests for time and a more lenient/relaxed approach by agencies and the public. The 30 day

exhibition ensures people are alert to the closing date and gather information quickly.

5.2.6 Political Donations

A key issue with Part 3A determinations is the perceived impact that political donations may have on the determining body and the general conflict of interest. This was put forward to participants with focus on the implications of political donations on the determining process and if the recent reforms would alleviate any public concerns with donations to political parties.

Does a political donation compromise the assessment process and what will the new laws do.

“The new Bill will ensure things are more transparent and it is a step forward in regard to alleviating the concerns people have in regards to transparency or process. I don’t know if a political donation compromises the assessment process, as the City does not assess Part 3A projects” (City of Sydney, Senior Planner, 29 September 2008).

“In an ideal world all political donations should be banned. This is my personal view. Banning of political donations would only work if the federal parties decide to ban political donations. It defeats the purpose of banning donations in NSW, when developers can make donations to the Federal Counterparts, and the Federal party will make these donations to the State party coffers.

Unfortunately, the new legislation won’t help the current situation. As it stands, all your being asked to declare is that you’ve made a donation. So what? What else flows on from that? What course of action is one to take? It has no bearing on the course of your determination. Essentially it’s a smoke screen to deflect public attention from the core problem. If society is serious about this issue, then it should be stopped at the Federal level.

This is what a democracy is all about, you take the good with the bad. It is an initiative that looks promising on paper but in practice it will not deliver the results we desire” (SHFA, Fterniatis, 4 October 2008).

“Well, It’s great if you have a relationship with the NSW Labor Government. In some cases, this is absolutely true. When decisions are made at a higher level that a site should be developed, it will inevitably be developed no matter what. Once this is done, it’s all about ramming the edges in response to concerns. However money does talk and it appears donations do go a long way.

For any change to occur all political donations must be banned. It is more than a coincidence that a proponent has made a donation and a project then must be approved. Political donations leave the Government exposed. There are many projects I have worked on that I don’t believe in. It is a personal struggle but it is part of the job. Some projects I have worked on are in the Department because of the relationship of the developer with the Labor party of NSW.

However, disclosure is better than no disclosure” (DOP Specialist Planner, 2008).

This was quite a sensitive question, however most participants answered it with a honest response. The two State Government agency employees were of the opinion that political donations should be banned all together. The City of Sydney officer wasn’t sure too sure if political donations make an impact on the assessment process and my initial perception was that they didn’t want to answer this question.

It is an interesting concept of banning political donations and Fterniatis raises the fact that political donations must be banned from the federal level in order to have any effect on the rest of the States. This is of extreme relevance for the planning process in NSW.

The fact that political donations must be disclosed is a step forward, however there is no direct results from disclosure. Disclosure only allows the public to know that a donation has been made

5.2.7 Evaluation on Part 3A

Finally the interview was wrapped up by asking what kind of evaluation the participants would give Part 3A. Of relevance was the response from Fterniatis.

“We live in a democracy and we vote for our Government. And if these laws (Part 3A) did pass NSW Parliament, then the NSW People are responsible. If the people of NSW have serious reservations regarding this approach of strategic planning for development then they need to make their local members aware of their concerns. Therefore to some degree the people of NSW are accountable for these laws because you get who you vote for.

However, it is too early to comment if this legislation has been successful or not. It is still a matter of time. We need to give the legislation more time and then decide wether it’s working or producing the outcomes we desire as a community.

Critics of Part 3A vary. If you visit some parts of Sydney, such as the Bankstown region and you compare the level of understanding of Part 3A out there with urban areas such as Balmain, then you would get completely different views. It depends on how vocal the community is and how a project is received. Therefore it depends if we are talking about urban sophisticates or mums and dads out in the suburbs” (SHFA, Fterniatis, 4 October 2008).

5.3 Findings Summary

- Objectives of Part 3A: That Part 3A does fulfil it’s objectives. In particular, Part 3A services well the economic development objective, the encouragement of investment into NSW and that environmental

safeguards are retained. However, from quantitative and qualitative findings, it is determined that public consultation could be improved.

- Appropriateness of Part 3A and SSS: It is determined that for state significant development and complex projects, the DOP under Part 3A is the most appropriate agency to assess these proposals. Schedule 3 of the Major Projects SEPP provides an efficient and streamlined process to assess these developments. A Council assessment is riddled with political involvement and poor resources, therefore the DOP is the most appropriate determining body for Part 3A and SSS projects.
- Public Consultation and community involvement: It is clear that developers would argue that current public exhibition processes under Part 3A are adequate. However the data raised by the CoS Council Officer must be considered and on that note, it is determined that public consultation, including between agencies and the public, can be improved. The existing process is adequate, however the process can be modified to better respond to stakeholder concerns.
- Political Donations: From the in-depth interviews, it is considered that political donations should be banned to mitigate any negative connotations on the Governments assessment of Part 3A and SSS projects. The current arrangements for declaration are a step forward however this research indicates that political donations can have an indirect bearing on the determination of projects and therefore to avoid any perceived conflicts of interest, political donations should be banned.

Chapter 6: Conclusion

6.1 Introduction

This chapter finalises the thesis by answering the objectives and detailing how they have been addressed through the study. In general, it is considered that Part 3A is still quite young and it is too early to obtain a holistic evaluation of its implications, appropriateness and associated issues. As stated by Fterniatis (2008), “it is a matter of time and we need to allow the legislation more time to flourish”. Only then can we decide whether it’s working or producing the outcomes we desire as a community.

In summary, Chapter 1 provided an introduction into the topic, outlining the problem setting and problem statement with thesis objectives. Chapter 2 and 3 introduced the theoretical background on Part 3A and outlined various views and assertions made by literature on Part 3A. Chapter 4 introduced Barangaroo as a case study and detailed the assessment and approval process involved. Chapter 4 also outlined the methodology carried out for the study. Chapter 5 outlined the findings and results of the thesis as developed through the in-depth interviews. This chapter also challenged assertions detailed in Chapters 3 and 4. The subject chapter provides a conclusion to the thesis detailing the responses to the objectives.

6.2 Research Statement and objectives

This thesis sought to research Part 3A and State Significant Sites and understand their application in NSW Land use planning. The thesis listed the key objectives of the study and these are responded as follows:

- a) *To illustrate and comprehend the Part 3A Planning Process, with particular attention to the appropriateness of Part 3A and State Significant Sites;*

The research has provided a detailed background into the Part 3A process, detailing its conception to its current status. The research concludes that Part 3A is a suitable mechanism for the assessment and approval of Major

Projects and State Significant Sites. This has been demonstrated through the theoretical research undertaken and the qualitative interviews. This research indicates that Part 3A provides a planning system that is thorough, secure and provides certainty to the Consent Authority, the public, associated Government agencies and the developer.

Fterniatis applauds the Part 3A system, insisting it has positive effects to NSW;

“Part 3A is a step forward. Provides up front certainty to both the NSW Government community groups and developers” (SHFA, Fterniatis, 4 October 2008).

The City of Sydney Officer states how Part 3A is a better process than an alternative local Government assessment:

“If a proposal were bogged down in a local government process you wouldn’t have a fast process, as currently is under Part 3A... Part 3A does provide an efficient mechanism for major projects” (City of Sydney, Senior Planner, 29 September 2008).

It is considered that Part 3A provides a system that does facilitate the proper assessment of major projects and critical infrastructure. This is demonstrated through the assessment and approval of over 500 projects since the commencement of Part 3A (DOP 2007A). Part 3A is a system that like all planning processes has its supported and objections. However, in essence the process does deliver key projects and implements the objectives of the State. The SSS process of implemented an exclusive planning regime for a site thereby provided a reverse cycle assessment process is unique and effective. This process has catered for over 15 sites (DOP 2007A) and continues to service development that is considered significant for NSW. Therefore Part 3A and the SSS process is appropriate for major projects and critical infrastructure.

b) Analyse the level of public consultation and detail the mechanisms for appeal rights and dispute resolution under Part 3A of the Act;

A contentious issue with Part 3A is the level of public consultation that is undertaken for projects and the associated appeal rights for determinations. At the crux of public consultation is the need for the community to be involved throughout the project and for them to comment on the project, and for the comments to be meaningfully considered by the consent authority. This is relevant for all types of projects, however public consultation is stressed for Part 3A projects because of the large ramifications they have. In certain circumstances, appeal rights under Part 3A do appear to be limited, therefore there is little scope for review. It must be stressed that this is only in the specific circumstances that were addressed in Section 3.4.

This research indicates that the current level of public consultation is adequate however there is room for improvement to alleviate stakeholder concerns.

c) To ascertain the impacts political donations have on Part 3A and State Significant proposals; and

It is debatable if political donations have an impact on Part 3A projects, however this research indicates that in some instances the impact political donations have is more than co-incidence and therefore they do have an undeniable potential to impact the determination of a project. The research findings reiterate this statement.

“It’s great if you have a relationship with the NSW Labor Government... When decisions are made at a higher level that a site should be developed... it’s all about ramming the edges in response to concerns. However money does talk and donations do go a long way (DOP Specialist Planner, 2008).

Participants largely felt that political donations should be banned to avoid any perceived impartiality and conflicts of interests. One of the participants responded by stating that:

“... You get who you vote for” (SHFA, Fterniatis, 4 October 2008).

And therefore, if the Government is serious about alleviating public concerns about political donations, then they must be banned from a Federal level.

d) To establish an understanding on Part 3A projects delivering economic development and growth for NSW and if Part 3A considers appropriate environmental safeguards.

Part 3A has been designed to facilitate the economic growth of NSW and to encourage investment into NSW. This is due to a need to increase infrastructure and services to NSW and to provide future investment opportunities in NSW. Part 3A does fulfil the economical and development objectives of the State Government and appropriately responds to the future development of NSW by providing a tailored planning system for major projects and key infrastructure. These major projects and key infrastructure provide the foundation for the prosperity of NSW.

“Sydney is the key driver of the New South Wales economy... Decisions made in New South Wales have flow on effects on regional centres around New South Wales and therefore Part 3A is important in approving key development” (SHFA, Fterniatis, 4 October 2008)

At the same time, Part 3A needs to consider the environment. This research indicates that the needs of the environment are appropriately identified and responded to.

Some literature has suggested that Part 3A will result in a process where complex major projects with the potential for greater environmental impacts would be potentially subject to a more simplified assessment process, whilst simpler projects with potentially less environmental impacts would still be subject to more complex assessment procedures under Part 4. This thesis

concludes contrary to such assertions. One of the participants responded to such a query with a clear answer of “No, under Part 3A projects would still be subject to the same rigour as other projects under other Parts of the Act” (Senior Planner, City of Sydney Council Officer).

6.3 Recommendations

The research concludes with the following recommendations:

1. Public Consultation under Part 3A can be improved by increasing the exhibition period and providing greater clarity under S75H of the Act. Additional exhibition time will allow the public to respond to projects and also contact a relevant DOP officer to get further information on a project.
2. To increase public consultation, a Preferred Project Reports should be publicly exhibited once it is lodged, no matter how significant the changes are. This will increase public certainty in the process and confidence in the community.
3. That the political donations issue be reviewed and that a more thorough and transparent system be implemented to avoid perceived impartiality.
4. That the criteria for a Part 3A project in Schedule 1 of the Major Projects SEPP be increased to cater for more development, in order to expedite the assessment of a broader range of projects. Such an example is to reduce the Capital Investment Value criteria for residential projects to allow Part 3A to apply to more projects.
5. Council's should be educated more regularly on the Part 3A system in order to understand the process and its time constraints. This has recently been conducted by the DOP under the 'Part 3A Road show' Program, which targeted various Council's in NSW.
6. That an appeal by an objector or proponent can still be lodged, despite the fact that the Minister has appointed an expert panel under S75G and has considered the findings of the panel. This would afford the public and proponents the opportunity to review the Minister's decision.

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Appendix 2
Project Information Statement

PROJECT INFORMATION STATEMENT

THE UNIVERSITY OF
NEW SOUTH WALES



FACULTY OF THE
BUILT ENVIRONMENT

Date: 2 August 2008

Project Title: Matters for the State of New South Wales. The role and process of State Significant Sites under Part 3A of the E P & A Act.

Approval No.:

Participant selection and purpose of study

You are invited to participate in a study as part of a final year Thesis for the Bachelor of Planning program. The Thesis is a major research project that is the culmination of the undergraduate planning program. The topic for this thesis is: **Matters for the State of New South Wales. The role and process of State Significant Sites under Part 3A of the E P & A Act.** The purpose of this study is to investigate the process of State Significant site and ascertain the challenges within the process and to determine the appropriateness of this process within Part 3A of the Act and the broader NSW planning process. You were selected as a possible participant in this study because of your expertise in the planning field; experience with the Part 3A process; and your knowledge of State Significant Sites.

Description of study

If you decide to participate, we will engage in a recorded interview. There shall only be one interview. The reason for recording the interview is so that I can transcribe and code the interview for further thorough analysis during the Thesis project. The interview process shall be conducted in-person in a venue to be decided however this venue shall be of convenience to you. The estimated total time is up to an hour.

Participants can remain anonymous if they desire.

There are no identifiable risks for participating in this study, however benefits that can arise include having an informative discussion regarding the topic and general exchange in ideas and information that can be potentially of assistance to participants. Nonetheless we cannot guarantee that you will receive any benefits from this study.

Confidentiality and disclosure of information

Any information that is obtained in connection with this study and that can be identified with you will remain confidential and will be disclosed only with your permission, or except as required by law. Results from the study will only be utilised for the Bachelor of Planning Thesis.

Recompense to participants

There will be no remuneration received by any participants. Participant's involvement in this study is voluntary however they will not incur any cost by participating. Participant's can withdraw from the study.

Your consent

Your decision whether or not to participate will not prejudice your future relations with The University of New South Wales or other participating organisations. If you decide to participate, you are free to withdraw your consent and to discontinue participation at any time without prejudice by completing the statement overleaf and returning this entire form to the Program of Planning at the Faculty of the Built Environment, University of New South Wales.

If you have any questions, please feel free to ask Wilfred Nino at email z3131443@student.unsw.edu.au. If you have any additional questions later, Dr Kristian Ruming, 9385 4245, kristianr@fbe.unsw.edu.au, will be happy to answer them.

Wilfred Nino

Appendix 3

Interview Questions

The following is a list of research questions that will be used for the interview.

1. Welcome to the interview. Could you please elaborate on your position within this Government Organisation and state what involvement you have with Part 3A/Major Projects/State Significant Sites? Any Major Projects that you would like to mention?
 2. Theoretically the principle intention of Part 3A is to provide an efficient assessment and approval land use system to encourage private investment into the state and increase the economic development of NSW, whilst retaining environmental safeguards and increasing public consultation. From your experience within the Department do major projects fulfil these theoretical objectives? What benefits do such large major projects have for the greater NSW community?
 3. Essentially, State Significant Sites are utilised to implement site specific planning provisions including the opportunity to rezone land. Generally this process can be done by the respective local Council. Does the State Government's intervention produce the most efficient and best practice approach?
 4. What do you think of the State Significant Site process, when compared with processes in other States in Australia that deliver major infrastructure projects or rezone land? E.g. Victoria.
 5. The provisions of Part 3A came into effect almost 3 years ago. Since then numerous sites have been listed as State Significant under Schedule 3 of the Major Projects SEPP. Currently these sites stand at around 10. The more sites listed in the Major Projects SEPP, the more lengthy the SEPP will become in detail. Is this process of nominating sites into Schedule 3 of the Major Projects SEPP better than having individual SEPP's or REP's or LEP's for individual sites?
 6. So is there a cap on the number of State Significant sites that can be listed under Schedule 3?
 7. Part 3A has been criticised (by academics/journalists/lawyers) as being focused on the economic development of NSW at the expense of the community and public involvement. What do you think of these suggestions?
 8. Barangaroo was one of the first sites to be listed as State Significant. I am aware you were involved with this project. What issues were apparent during the assessment of this proposal? Can you provide any information on the process for this sites being listed? Positives and benefits from the project to the community/State?
 9. It appears that the theoretical intention of the SSS process was that SSS will be kept under review and when the State's objectives have been achieved, the planning controls for the site will be implemented into the relevant local environment plan. This is stated on Fact Sheet 4 – State Significant Sites. Has this yet happened and will it happen?
-

10. Clause 15 of the Major Projects SEPP states that the SEPP will be reviewed on a regular basis, being on the first anniversary of the commencement of the SEPP and every five years after. Has this occurred?
11. Major Projects and State Significant Sites are exhibited for a period of 30 days or more. For a project like Barangaroo, is 30 days sufficient to comment on such complex planning proposals?
12. I am aware of other positive community consultation that occurs such as Community Reference Groups. Can you elaborate on this process?
13. Currently there is a modification application to increase the gross floor area of Barangaroo by 120,000m². What are the benefits of this new GFA? Can the site cope with such an increase in floor area and commuters? Have the issues raised as part of the Concept approval been dealt with as part of the Modification.
14. How will the land ownership arrangements work when construction commences and finishes. i.e will SHFA remain the land owner of the site and lease it out on 99-yr lease to successful tender? What about the sale/ownership of individual tenancy/apartments within buildings?
15. What sustainable measures have been incorporated into the Barangaroo proposal?
16. Recently there have been some reports into the potential conflicts of interest in the State Government determining Major Projects and State Significant Sites for proponents that have been involved in political donations to the NSW Government.

From this, there has been new legislation to address the Political Donations issue which recently commenced. The Bill intends to ensure that all political donations be disclosed. Do you think this can improve the current discomfort relating to political donations? How can these issues be handled to avoid any negative suggestions?

17. On a final note, what kind of evaluation would you kind Part 3A?

Is there anything you like to add on the topic area?

- 3 | The purpose of the Project Information Statement is to provide information about your research to your research participants. Please make a copy of the approved PIS available for each participant.

Approval is granted to the applicant for a twelve month period from the date of this letter, on condition that:

- The applicant fully understands, and agrees to ensure, that all questions put in questionnaires, interviews, and surveys, must strictly comply with the protocols, policies and rules of UNSW in relation to research data collection and must meet the overriding requirement of UNSW for 'minimal ethical impact' in research (the applicant is referred to: http://www.ro.unsw.edu.au/ethics/human/minimal_ethical_impact.shtml); and
- When required or applicable, Letters of Support (conforming to Form 6) will be obtained with a copy of each letter kept by the Course Authority to be made available to the HREAP when requested.

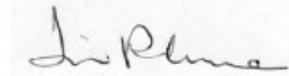
Any approval to conduct research given to the applicant Researcher is done so on the condition that the applicant Researcher is at the date of approval: (a) a Student undertaking an approved course of study in the FBE; or (b) a member of Academic Staff in the FBE. If, at any time subsequent to the date of approval and prior to completion of the research project the applicant Researcher ceases to be either of (a) and (b) above, then any prior approval given to the applicant Researcher to conduct will be deemed to be revoked forthwith. The applicant Researcher must inform the FBE HREA Panel immediately upon any change, or possible change, to the applicant's status that may affect any prior approval given by the Panel to the applicant Researcher to conduct research.

Evaluation Authority:



Michael Brand (Convener)
FBE HREA Panel

Approving Authority:

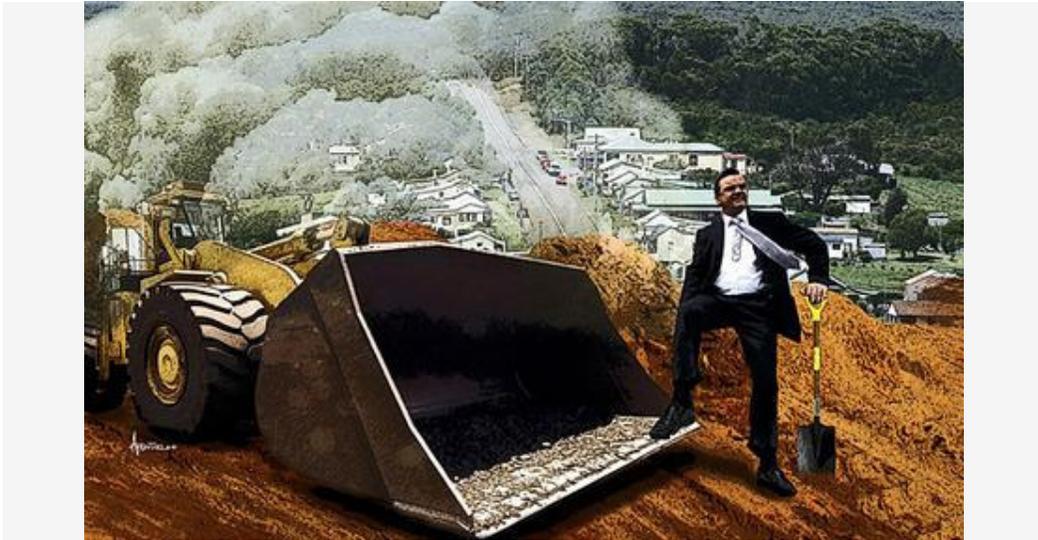


Jim Plume
Head of School
Faculty of the Built Environment

Copy to: Kristian Ruming, Supervisor

Appendix 5

Paving paradise to save it



Digital Illustration: Harry Afentoglou
April 12, 2008

Forget the planning, let's cut a deal. How Frank Sartor approved housing on unspoiled, unsuitable land in the lower Hunter. Minh Bui Jones, Matthew Moore and Wendy Frew report.

If ever there was a place unfit for development it was Sweetwater, a 2340-hectare spread of untouched lower Hunter spotted gum and iron bark forest. Kilometres from the nearest town, rich with rare vegetation and home to several threatened species, it was never considered a likely site for housing. It was so unsuitable it came last on a NSW Department of Planning survey of 91 sites where best to put new homes for the 125,000 people expected to settle in the region by 2031.

Just one place above it on the list was Catherine Hill Bay, an old mining village on the Wallarah Peninsula, 80 kilometres south-east of Sweetwater. Surrounded by coastal heath and bordered by unspoiled surf beaches, it is the last barrier holding back Sydney's suburban sprawl in its relentless march north to Newcastle.

No one was surprised when both sites were excluded from the department's draft *Lower Hunter Regional Strategy*, a critical document produced in 2005 to determine where people would live and work in the Hunter in the coming decades.

But something changed. Over the winter of 2006, and as the state election approached, the all-powerful state Planning Minister, Frank Sartor, had a huge change of heart. In a series of closed door meetings he struck a sweeping deal wrapping up Sweetwater and Catherine Hill Bay with several other highly sensitive areas in a final masterplan hailed by developers and branded a sell-out by affected communities.

To seal the deal, Sartor had to soften the Government's planning philosophy of urban consolidation where new housing is built near existing towns and transport services to avoid urban sprawl. In an unprecedented arrangement, some of the state's biggest developers and most generous donors to the NSW Labor Party were allowed to clear bushland and build new

housing estates in sensitive woodland and coastal areas in the lower Hunter in return for handing over 12,000 hectares of land for national parks.

The story of how developers rolled the planning department and won approval to develop their lower Hunter land can be found in eight cardboard boxes of documents locked up in an office of State Parliament's upper house. An upper house order to produce documents, known as a call for papers, produced the emails and briefing notes that detail much of what happened in the Hunter and reveals how business is done in NSW. Over seven months in 2006 big landowners, with Hardie Holdings, the Sweetwater developer, at the forefront, waged a relentless lobbying campaign to get the land bought years earlier included in the strategy, to guarantee they would benefit financially from the housing that would eventually be built there.

A government population study had originally estimated 125,000 people would move to the lower Hunter within the next 25 years. But the developers wanted more. They hired the consultants KPMG and MacroPlan to do population forecasts, and obtained a report that nearly doubled the numbers. Their strategy worked. By year's end the Government's estimated growth for the region was ramped up to 160,000, a 28 per cent increase. Land for 20,000 more houses was needed.

Reports from consultants were one weapon, donations another. When executives such as Duncan Hardie and his employee Matthew Somers were not lobbying ministers or hectoring bureaucrats, they had time to attend Labor Party fund-raisers or post cheques to Sussex Street.

Electoral Funding Authority records published this week show that in the four years before last year's election companies associated with Duncan Hardie donated \$174,600 to the NSW Labor Party, while a Catherine Hill Bay developer, Rose Group, gave \$143,500. Hardie Holdings would not discuss the donation, and a spokesman for Bob Rose said donating "remains a legitimate way of participating in the political process".

YOU only have to look at Duncan Hardie's sprawling faux Spanish villa in the Hunter's wine district to know this is a man who thinks big. Sweetwater Ridge is the realisation of the ultimate dream home for the chairman and founder of Hardie Holdings. Sweetwater was also the name the 57-year-old New Zealand-born speculator gave to another unlikely dream, a new city of 28,000 homes for 59,000 people, with a university and commercial centre thrown in.

Duncan Hardie declined to comment for this story. However, it appears he was so confident of winning government approval for the project, he began clearing the Sweetwater land without permission as early as 2002. He knew from the outset the Department of Planning would oppose his plans. In December 2005 Sartor told him in no uncertain terms there was no chance of including Sweetwater in the crucial regional plan.

But the correspondence in the eight boxes shows Hardie does not take no for an answer. In 2006 he hired the best-connected lobbyist in the business, Graham Richardson, the former boss of the Premier, Morris Iemma, to push his project.

Hardie and his then general manager, Matthew Somers, also began a letter-writing campaign targeting senior planning staff in the Hunter and at head office in Sydney's Bridge Street. The two men met planning officials whenever they could. They even leased an office in the same building in Honeysuckle Drive in the heart of Newcastle that housed the departmental staff working on the regional strategy.

Planning officers had to walk past Hardie Holdings's tinted window on their way to work and to and from the only cafe nearby. It was inevitable they bumped into each other. The then general manager of the Newcastle planning office, Steve Brown, mentioned in one email that

he was waylaid by Matt Somers on his way to work at a time when negotiations were becoming tense.

Hardie and Somers were never reluctant to complain. They went to head office in Sydney to complain that the Hunter office staff were biased against Sweetwater. Hardie protested to the department's head, Sam Haddad, that his department had released to a local environmental group under freedom-of-information laws details the selection criteria for land release. When that got them nowhere, they told Haddad they would go over him and lobby ministers directly.

"Unfortunately, wherever I go at the moment, particularly in the Hunter Valley, the environmental groups have been there before me, leaving copies of your document and enforcing the view 'Based on the Department of Planning [sic] own modelling Sweetwater should not be included in the strategy, and if it is, then obviously Hardie has corrupted the system'," he wrote.

"As I understood it, you were going to look at this model and rectify the false and misleading information and respond back to me. As this has not happened, we feel we have no option but to begin lobbying all cabinet ministers against the information contained in the departmental document and to refute it."

Hardie and Somers ran a parallel strategy, lobbying Sartor to use his special powers to declare Sweetwater a state significant site. If successful, they would be able to sidestep the local council planning laws developers hate.

On March 12 senior planning staff told Haddad there was nothing to justify using those powers. "The proposal is not a major project ... the site is not considered a potential state significant site", they said, recommending that Haddad notify Hardie Holdings "of the minister's decision".

Hardie Holdings was undeterred. Four months later, in July 2006, it said it had been subjected to an "orchestrated campaign" by some department officers to dissuade the Government from including Sweetwater in the regional strategy.

Somers wrote to Haddad complaining of a "maladministration of departmental guidelines to the detriment of our company". More letters followed on August 21 and August 24, with a further letter sent to Sartor's chief of staff, Tom Forrest.

They were not just writing letters of complaint, but also sending cheques to the Labor Party. On August 24, on the same day it was complaining of being unfairly treated, Hardie's wrote a \$5500 cheque to the NSW ALP.

Hardie Holdings was not the only developer to open its wallet. On May 29, 2006, seven companies, all involved in the lower Hunter regional strategy, each donated \$5500 to the ALP. Hardie Holdings made two donations on that date, while Somers made a cheque to the party on behalf of the Maitland Catholic Diocese.

A team of six planners in the Newcastle office had worked on the Hunter strategy for two years, and by April 2005 were well aware developers had like-minded thinkers in cabinet. In March the Minister for the Hunter, and now Treasurer, Michael Costa, addressed a meeting of planners at a pub in Merewether and told the head of the Newcastle planning office, Steve Brown, just what he thought of his policies.

In a bare-knuckle speech, he said Mr Brown with his pro-planning attitude would not last long in his job, that strategic planning was a waste of time, that planners were "obsessed with urban villages" and planners were too fixated on public transport because people liked to drive. Costa's attitude echoed the views of developers who wanted the Newcastle staff cut out of the process so they could deal directly with Sydney.

By winter 2006 Brown was frozen out of negotiations. He was not the only one. Local councils and community groups also complained their views were ignored as the future of the Hunter was determined by the minister behind closed doors.

The general manager of Singleton Council, Steve McGrath, wrote a furious letter to Haddad in October 2006 complaining his area had been excluded from the process and treated "with a form of contempt".

The big money game was played out in Sydney. The Department of Environment and Climate Change joined in about June, and it soon became a critical player by giving the Government justification for approving developments in sensitive areas.

Developers had bought a lot of sensitive land, and proposed handing over a lot of it in exchange for getting other landholdings included in the strategy. It was an offer the cash-strapped environment department found hard to refuse. As its deputy director-general, Simon Smith, wrote after a meeting where developers explained the proposal: "There are some great opportunities here for achieving early positive results for conservation."

The Newcastle office was worried it was a dangerous precedent. "Although the current negotiations have the potential to bring green corridors into public ownership, they could also be counter productive and produce a business-as-usual approach to future settlement patterns," Brown wrote. "This would undermine fundamental planning objectives such as more compact urban form, reduced infrastructure costs, accessibility to jobs and services and protection of rural land."

The fears of Mr Brown, who refused to comment for this article, were ignored. No consideration was given to other more suitable sites. By September Duncan Hardie agreed that half his Sweetwater land could be included in 12,000 hectares of land set aside for national parks. The deal was done. Lawyers went to work drafting the agreements.

Having secured a huge increase in the property's value last year, Hardie Holdings announced it had sold 75 per cent of its Sweetwater project.

YOU cannot see the beach from Brian Cogan's house in the tiny seaside village of Catherine Hill Bay, but you can hear the surf crash against the shore and smell the sea spray.

When you turn off the Pacific Highway onto the narrow, bush-lined road that sweeps down to the old coalmining town, you quickly forget about the suburban sprawl that threatens one day to join Sydney with Newcastle.

Like the former coal workers and their families who stayed on after the last mines closed in 2002, Cogan loves "Catho" for its isolation and its beaches. For more than 30 years state governments of both persuasions agreed. They earmarked the Wallarah Peninsula as a vital natural corridor on the Central Coast that needed permanent protection against development. But locals knew the Australian hankering for a place by the sea would eventually draw developers to the area and then the fight would be on.

While Hardie Holdings was lobbying for Sweetwater, RoseCorp and Coal & Allied were doing deals with the Government over land at the coast.

In September 2006 Cogan, then secretary of the Catherine Hill Bay Progress Association, was on holiday in Italy. Sartor rang to say he was thinking of doing a deal with a couple of big developers who wanted their land included in the Government's planning strategy for growth in the lower Hunter for the next 25 years. The developers would dedicate large tracts of land in return for being allowed to build large-scale housing complexes at sensitive and controversial sites such as Catherine Hill Bay, Nords Wharf and Cragan Bay.

Cogan recalls the phone call was a bombshell that would shatter the peace and quiet of "Catho".

"That was when I first found out about it," he said. "Everybody had agreed on the areas identified by the draft [lower Hunter] strategy but it was then changed privately by Sartor without any consultation ... he did it, and no one else had a say."

Cogan had many opportunities to talk to the minister about his concerns. He always said the problem with backing developments like those proposed for Catherine Hill Bay was that they were "clearly outside of the planning rules".

"You can't help people thinking that the developers are just waiting for you to approve it," he told Sartor. Cogan makes no allegations of corruption. But he says the planning system is now so thoroughly discredited that no one has any confidence in it.

"This is not corrupt, but it is a system that changes the onus from coastal protection to managing development in coastal areas. The debate is whether those areas are appropriate for development. We say they are not.

"The planning system is gradually being subverted to make these things possible."

Does he despair at Catho's fate? "All you can do is keep fighting."

SARTOR has not had a great year. The Independent Commission Against Corruption's revelations of the corruption of the planning process in Wollongong, endless revelations of developer donations, and a string of criticisms that too much power is centralised in his office have left him bruised and angry.

When the *Herald* asked to discuss his about-face on Sweetwater he agreed, but brought five staff with him. He had the feeling of a man who is tired of being ambushed.

You might expect a planning minister would praise the deal on planning grounds, but not Sartor. It is the conservation side of the equation, the extra land for national parks, that was the great outcome of the negotiations. "It was a bit of a golden opportunity that we seized," he said.

The way he explains it, the only way to protect land with high conservation values is to put it in a national park. It is as if he has no confidence that his planning system, no matter what the rules, can withstand pressure from developers and that his Government has no choice but to do deals. "It was really saying that these people are here wanting this, is there an opportunity, can we turn this bloody thing into an opportunity?"

One of the results of the deal he will not talk about was the inevitable end of a Department of Natural Resources investigation into alleged illegal land clearing of more than 200 hectares of native vegetation at Hardie Holdings property. Once the department learned Sartor had included Sweetwater in the regional strategy, it decided it had no choice but to suspend all compliance and legal activity against the company. How do you prosecute for land clearing on a site approved for development?

Asked whether he was comfortable negotiating with a company accused of flouting the law, Sartor would not comment. He did not want to get bogged in minutiae, but stressed the agreement was the best outcome for the community because of the big additions to the national parks.

"The fact was that unless there was going to be a big public benefit we weren't going to move. [Former environment minister Bob] Debus and I got together, and his department and said 'Hey, there is a real opportunity here'. That is when it all started to change."

Sartor would not discuss any influence Costa exerted in sealing the deal, but hinted at the tension between them.

"All I know is that the Treasurer, Costa, has had concerns about economic development, and he pushes that line, I don't think he makes any secret of it ... but that is a perspective a treasurer would normally take. Our perspective as gatekeepers is to make sure that we protect the public interest."

As for Costa's influence on Sweetwater's inclusion in the strategy? "Look, he is minister for the Hunter. I don't recall. At the end of the day, none of that was decisive. The two decisive factors were we had evidence that our growth projections were too low and we saw an opportunity of significant environmental gains and satisfying the growth projections at the same time."

Any pressure from Costa counted for nothing, the same as pressure from developers. "You get pestered by everyone in this job, residents, objectors ... developers ... We rise above all that. A lot of these people don't get what they want. End of story. At the end of the day that is our job."

Minh Bui Jones is a freelance journalist and a former member of the Catherine Hill Bay Progress Association.