



New South Wales

Barangaroo Delivery Authority Bill 2009

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The objects of this Bill are to establish the Barangaroo Delivery Authority (the *Authority*) and to provide for its functions and other matters relating to the development of Barangaroo.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 sets out the objects of the proposed Act, relating to the development of Barangaroo.

Clause 4 defines certain words and expressions used in the proposed Act.

* Amended in committee—see table at end of volume.

Clause 5 provides for the amendment of maps referred to in the proposed Act and enables them to be kept in electronic form. Maps will be made available on the NSW legislation website.

Part 2 Constitution and management of Authority

Clause 6 constitutes the Authority.

Clause 7 makes the Authority a NSW Government agency, which has the effect of conferring on the Authority the status, privileges and immunities of the Crown.

Clause 8 makes the Authority subject to the control and direction of the Minister.

Clause 9 constitutes the Board of the Authority (the *Board*), consisting of the Chief Executive Officer, the Secretary of the Treasury, a nominee of the City of Sydney Council approved by the Minister and not more than 4 other persons appointed by the Minister.

Clause 10 confers on the Chief Executive Officer of the Authority responsibility for the day-to-day management of the affairs of the Authority in accordance with the specific policies and general directions of the Board.

Clause 11 enables the Board to appoint advisory committees to advise the Board and the Authority for the purposes of the proposed Act.

Clause 12 enables the Authority to delegate its functions, other than the power of delegation.

Clause 13 provides that the Authority may exercise its functions by a private subsidiary corporation or in a partnership, joint venture or other association with public or local authorities or other persons or bodies.

Part 3 Functions of Authority

Division 1 Principal functions

Clause 14 sets out the main functions of the Authority, including promoting, procuring, facilitating and managing the orderly and economic development and use of Barangaroo and the provision and management of infrastructure. The functions conferred on the Authority also relate to cultural, educational, residential, commercial, transport, tourist and recreational activities and facilities at Barangaroo. It will also be a function of the Authority to develop and manage the Barangaroo Headland Park.

Clause 15 confers on the Authority any other functions conferred on it by or under the proposed Act or any other Act and the power to do supplemental, incidental or consequential acts that are necessary or expedient for the exercise of its functions.

Division 2 Ancillary functions

Clause 16 enables the Authority to acquire land by compulsory process for the purposes of the proposed Act.

Clause 17 confers on the Authority power to dispose of or otherwise deal with its land with the consent of the Minister, other than the Barangaroo Headland Park. The Minister's consent will not be required to a lease for a term (including any option to renew) of less than 10 years. The Authority is prohibited from granting a lease for a term (including any option to renew) of more than 99 years.

Clause 18 prohibits the Authority from selling or exchanging, or otherwise disposing of the fee simple estate in, the Barangaroo Headland Park. The Authority may dispose of other interests in the Park with the consent of the Minister. The Minister's consent will not be required to a lease for a term (including any option to renew) of less than 10 years. The Authority is prohibited from granting a lease for a term (including any option to renew) of more than 99 years.

Clause 19 enables the Authority to surrender land to the Crown to be dedicated for a public purpose or a public road, as notified in the Government Gazette.

Clause 20 requires the consent of the Authority before a road within Barangaroo can be provided, opened, dedicated, closed or realigned and makes the Authority a roads authority under the *Roads Act 1993* for any public roads vested in it.

Clause 21 enables the Authority to acquire property by gift, devise or bequest and removes the application of the rule against remoteness of vesting to any such gift, devise or bequest.

Clause 22 sets out the circumstances under which the Authority may sell, lease, exchange or otherwise dispose of or deal with property acquired by gift, devise or bequest.

Clause 23 enables the Authority to form, or participate in the formation of, a private subsidiary corporation and acquire or dispose of interests in such corporations, with the approval of the Minister.

Clause 24 enables the Authority to enter into an agreement with the Sydney Harbour Foreshore Authority (the **SHFA**) for the SHFA to exercise, in relation to the Barangaroo Headland Park and public domain of Barangaroo, its regulatory powers under the *Sydney Harbour Foreshore Authority Act 1998* and the regulations under that Act. The agreement will be able to specify conditions for the exercise of the regulatory powers and provide for fees to be paid to the SHFA as well as for other matters. Land covered by the agreement will be taken to be land within categories of land covered by the *Sydney Harbour Foreshore Authority Act 1998* and the regulations under that Act. The Minister will determine any dispute arising under the agreement.

Part 4 Transfer of land to Authority

Division 1 Transfer by operation of this Act

Clause 25 defines words and expressions used in the proposed Part.

Clause 26 transfers the land specified in proposed Schedule 2 (being the land within Barangaroo) to the Authority from a date specified by a notice by the Minister published in the Government Gazette. The proposed section also provides for the transfer of associated rights and liabilities to the Authority from that date.

Clause 27 prevents the transfer of the land under the proposed Division from being a breach of contract, a default under a contract or confidence or civil wrong or from giving rise to a remedy that may otherwise arise from the change of ownership.

Clause 28 provides for the payment of compensation for certain land transferred to the Authority.

Division 2 Transfer of land by agreement

Clause 29 provides for the transfer of land within Barangaroo to the Authority by a public authority by agreement if the Minister for that public authority agrees that the land is not being used or required for the core activities of the public authority. The proposed section also enables Crown land to be transferred and other interests in Crown land to be disposed of to the Authority by the Minister administering the *Crown Lands Act 1989*. A public authority whose land is managed by the Authority may delegate its functions to the Authority, despite any other Act.

Clause 30 provides for the transfer by the Authority to the Maritime Authority of NSW of land below the mean high water mark, on commencement of operation of a Barangaroo commuter ferry wharf or at such other time as the Ministers responsible for the Authorities may agree.

Part 5 Contributions and finance

Division 1 Contributions to Barangaroo

Clause 31 defines words and expressions used in the proposed Division.

Clause 32 requires the Authority to prepare and approve a Barangaroo contributions plan, which has no effect unless it is approved by the Minister. The plan must provide for the payment of a levy of 1% to the Authority in respect of the cost of development of land (the *development contribution*), the development to which the levy will apply, the manner in which the cost of development is to be calculated and the purposes for which the development contribution will be used. The plan may be amended or replaced with the Minister's approval.

Clause 33 makes development agreements between the Authority and developers subject to a condition that a development contribution must be paid in accordance with the Barangaroo contributions plan, if the agreement relates to development for

which a development contribution is payable under that plan. Failure to pay the development contribution will be enforceable as a breach of the development agreement. A developer may agree to provide works in kind or the dedication of land instead of paying the whole or part of the development contribution. A developer may not contract out of the condition imposed by the proposed section. A development agreement may also be a planning agreement under the *Environmental Planning and Assessment Act 1979*.

Clause 34 provides that provisions under the *Environmental Planning and Assessment Act 1979* and the *City of Sydney Act 1988* that provide for the payment of development contributions for development (other than provisions relating to planning agreements) do not apply to or in respect of any development for which a development contribution is payable under the Barangaroo contributions plan.

Clause 35 makes the Authority a planning authority within the meaning of the *Environmental Planning and Assessment Act 1979*, thus enabling it to enter into planning agreements under that Act. The proposed section also enables a planning agreement under that Act to provide for the payment of a development contribution under the proposed Act or works in kind or the dedication of land instead of such a contribution. This is in addition to any other matters that such an agreement may contain.

Division 2 Finance

Clause 36 establishes the Barangaroo Fund.

Clause 37 specifies the financial year of the Authority.

Clause 38 provides for the investment of money in the Barangaroo Fund.

Part 6 Miscellaneous

Clause 39 provides that duty under the *Duties Act 1997* is not payable for the vesting or transfer of land or property under the proposed Act (including arrangements under the proposed Act) or anything certified by the Minister as having been done in consequence of any such vesting or transfer.

Clause 40 requires the annual report of the Authority to contain a report as to the outcomes achieved by the Authority during the reporting period.

Clause 41 requires the Authority to provide reports about its activities and any other information if requested to do so by the Minister.

Clause 42 makes it an offence to disclose information obtained in connection with the administration or execution of the proposed Act, except in certain circumstances such as in connection with that administration or execution or in accordance with a requirement imposed under the *Ombudsman Act 1974*.

Clause 43 makes it an offence for a person to use information about land proposals obtained through association with the Authority to deal in land to gain an advantage or to divulge such information so that another person may gain an advantage by dealing in that or any other land. The proposed section also makes it an offence for a

person to attempt, through association with the Authority, to influence land dealing proposals by the Authority to gain an advantage or an advantage for another person. A loss incurred as a result of an action prohibited by the proposed section may be recovered by the person who suffered the loss from the person who gained the advantage from that action.

Clause 44 provides that proceedings for offences under the proposed Act are to be dealt with summarily before a Local Court.

Clause 45 enables penalty notices to be issued for offences under the proposed Act, if they are prescribed by the regulations for that purpose.

Clause 46 excludes a member of the Board, the Chief Executive Officer of the Authority, a member of an advisory committee established by the Board or a person acting under the authority of the Authority, the Board or the Chief Executive Officer from personal liability for an act or omission done in good faith for the purpose of executing the proposed Act or any other Act.

Clause 47 provides for the use of the seal of the Authority.

Clause 48 enables the Authority to recover any charge, fee or money due or payable to it as a debt in a court of competent jurisdiction.

Clause 49 makes provision for the service of documents under the proposed Act.

Clause 50 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 51 provides for the review of the proposed Act in 5 years.

Schedule 1 Members and procedure of Board

The proposed Schedule contains provisions relating to the members of the Board and the procedure of the Board.

Schedule 2 Land transferred to Authority

The proposed Schedule sets out the land that is to be transferred to the Authority by operation of the proposed Act.

Schedule 3 Savings, transitional and other provisions

The proposed Schedule contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 4 Amendment of Acts

Schedule 4.1 amends the *Fines Act 1996* to apply provisions under that Act relating to the operation and enforcement of penalty notices to penalty notices issued under the proposed Act.

Schedule 4.2 amends the *Public Finance and Audit Act 1983* to make the Authority subject to the audit and review provisions of that Act.

Schedule 4.3 amends the *Public Sector Employment and Management Act 2002* to create the Office of the Barangaroo Delivery Authority as a Division of the Government Service of New South Wales.

Schedule 4.4 amends the *Sydney Harbour Foreshore Authority Act 1998* to remove land that will be within Barangaroo from the Foreshore Area of the land covered by that Act.