

Place Management NSW Regulation 2022 Regulatory Impact Statement

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Acknowledgement of Country

As Tallawoladah (The Rocks) and Tumbalong (Darling Harbour) precincts' custodians, Place Management NSW (PMNSW) recognises and understands that it stands on Aboriginal land, the area we now know as Sydney.

We would like to acknowledge the Gadigal People of the Eora Nation as the Traditional Custodians of this area. PMNSW also recognises and acknowledges the Gadigal people's continued connection to the land, the sea and the sky – a connection that spans more than 60,000 years.

We acknowledge and show our respect for Gadigal Elders' past, present and future and extend that respect to all First Nations Australians who are connected to and visit our beautiful precincts.

Barangaroo also forms part of PMNSW-managed land, and people have been an integral part of the Barangaroo landscape for thousands of years. The original custodians, the Gadigal People, congregated at this place, hunting on the land and fishing in the harbour.

Barangaroo is named after a powerful Cammeraygal woman who lived in the area at the time of early colonial settlement. She was an important figure in local Aboriginal culture and community, and remains so today.

We look after land that has rich Aboriginal history and is also the point of first contact with colonial settlers. It's essential that Aboriginal and Torres Strait Islander cultures, history and heritage from this land are incorporated into the work we do within The Rocks, Darling Harbour and Barangaroo precincts.

This can only be achieved through engaging and creating meaningful and sustainable relationships with Aboriginal and Torres Strait Islander people.

Our vision is to create world leading precincts where the world's oldest continuous living cultures, Aboriginal and Torres Strait Islander Cultures, continue to thrive.

Abbreviations

CPI	Consumer Price Index
FTE	Full Time Equivalent
Hon	Honourable
MP	Member of Parliament
NPV	Net Present Value
PMNSW	Place Management NSW
PV	Present Value
RIS	Regulatory Impact Statement

EXECUTIVE SUMMARY

The *Place Management NSW Regulation 2017* is scheduled for automatic repeal on 1 September 2022 under the *Subordinate Legislation Act 1989*. The *Place Management NSW Regulation 2017* is to be remade as the matters it contains are required for future management of Place Management NSW managed land. Regulatory powers are conferred on Place Management NSW under the *Place Management NSW Act 1998*.

As of 4 March 2022, under operation of Section 24 of the *Barangaroo Act 2009*, management of the Barangaroo public domain land transferred from Infrastructure NSW to Place Management NSW. The remaking of the Place Management NSW Regulation will be expanded to incorporate relevant provisions of the *Barangaroo Delivery Authority Regulation 2015* for continuity of management. The Barangaroo Regulation has been renewed for a further year in this transition period and is scheduled for automatic repeal on 1 September 2023.

The Place Management NSW Regulation and Barangaroo Regulation are largely similar, with both being modelled on the earlier [Sydney Harbour Foreshore Authority Regulation 2011](#). Most of the proposed amendments incorporated in the new regulation are administrative to allow for consistent application and enforcement of regulations across Place Management NSW-managed land. The updated regulation will also capture provisions of the Barangaroo Regulation specific to the Barangaroo precinct (that are not contained in the Place Management NSW Regulation) prior to automatic repeal of the Barangaroo Regulation.

The objective of the proposed Place Management NSW Regulation, consistent with the *Place Management NSW Act*, is for Place Management NSW to:

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

Three options to address the policy objective were identified and evaluated:

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

The proposed 2022 regulation addresses PMNSW’s statutory objectives and delivers the greatest net benefit to the NSW community.

1. INTRODUCTION

Regulation:	Place Management NSW Regulation 2022
Enabling Act:	Place Management NSW Act 1998
Responsibility:	The Hon. Rob Stokes, MP Minister for Cities, and Minister for Active Transport

Place Management NSW proposes to remake the *Place Management NSW Regulation 2017* incorporating relevant provisions from the *Barangaroo Delivery Authority Regulation 2015*. The new regulation will be the *Place Management NSW Regulation 2022*. The *Place Management NSW Regulation 2017* was made under the *Place Management NSW Act 1998*. Changes to the current regulation are largely administrative and the overall intent of the regulation has not changed.

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

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

1.1 Approach Used to Prepare the RIS

This RIS was prepared in accordance with the *Subordinate Legislation Act 1989* and has followed the NSW Productivity Commission, Guide to Better Regulation and Checklist (see below). The RIS will be finalised after consideration of feedback received following exhibition of the draft.

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

1.2 Better Regulation Principles

In accordance with the NSW Productivity Commission Better Regulation, RIS Checklist the following principles were considered:

1. The need for regulation
 - Has the problem been identified?
 - Is the problem significant enough to warrant action?
 - Is government intervention required to address the problem?
2. Objectives
 - Are the objectives clearly defined?
 - Are the objectives appropriate, feasible, and consistent with the government's acceptable level of risk?

3. Options considered
 - Have all feasible options been explored?
 - Do the options considered address the policy problem?
 - Are the options feasible and can they be implemented?
4. Impact assessment
 - Have all costs and benefits of the options been adequately considered and evaluated?
 - Has sufficient evidence been considered in evaluating and determining costs and benefits?
 - Has a strong case been made for the preferred option?
5. Consultation
 - Has adequate consultation been undertaken?

2. BACKGROUND TO THE REGULATORY PROPOSAL

2.1 Proposed Regulation

The proposed *Place Management Regulation 2022* regulates the use of the Place Management NSW estate, addresses the regulation of conduct in public areas managed by Place Management NSW (including Barangaroo Reserve and Barangaroo Public Domain), specific conduct in Darling Harbour, and other miscellaneous measures.

Measures pertaining to the regulation of conduct in the public domain managed by Place Management NSW include harming the natural and built environment, harming animals or their habitats, bringing animals into the public domain, interfering with the amenity of the public domain, causing a nuisance, behaving unsafely, consuming liquor, carrying out unauthorised commercial activities, conducting exercise classes, cycling, swimming, use of aircraft/drones, conducting public assemblies, conducting weddings, the right to close the public domain, restrictions on the number of persons that may be in certain parts of the public domain, restrictions on liquor, entertaining areas reserved for events, ban on entry, use of vehicles and vessels, using a bus contrary to rules, fees, fees for entry during New Year's Eve and Australia Day, acting contrary to notices, removal of persons, and penalty provisions.

Specific conduct in Darling Harbour controlled by the proposed regulation includes swimming, use of watercraft, and the throwing of substances into Cockle Bay, use of the stage in Tumbalong Park, use of Pyrmont Bridge, the movement of vessels beneath Pyrmont Bridge, and the berthing of vessels within Cockle Bay.

Miscellaneous measures in the proposed regulation include the ability of Place Management NSW to grant exemptions, persons exempt from committing an offence, and declaration of core land.

2.2 Regulatory Making Powers *Place Management NSW Act 1998*

The *Place Management NSW Act 1998 No 170* (current version 1 July 2021) provides for the making of a regulation.

Section 46 of the Act provides for:

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, regulations may be made for or with respect to the following:
 - a) the functions of Place Management NSW and any member of staff of Place NSW, including rangers,
 - b) the fees and charges that may be imposed for the purposes of this Act,
 - c) the procedures of advisory committees,
 - d) regulating the use by the public of core land, non-core land, managed land, or the public domain,
 - e) regulating the use of facilities of Place Management NSW and the provision of services by Place Management NSW,
 - f) requiring the payment of fares or other charges for the use of any facility operated or service provided by Place Management NSW,
 - g) authorising a person granted a lease, licence, or other authority by Place Management NSW to require the payment of fares or other charges for the use of any facility operated or service provided under the lease, licence, or other authority,
 - h) ensuring the proper conduct and safety of persons on core land, non-core land, managed land, or the public domain or while using any facility or service referred to in paragraph (e) or (f),
 - i) providing for the removal of trespassers and persons causing nuisance or annoyance to others while in the foreshore area,
 - j) conferring on Place Management NSW any function that may be exercised by a council in relation to a public place.
- (3) The regulations may create an offence punishable by a maximum penalty of 50 penalty units.

2.3 Need for Government Action (Policy Response)

The Place Management Regulation covers the areas managed by Place Management NSW collectively referred to in this RIS as the 'Place Management NSW estate'. Visitation to the Place Management NSW estate is central to the need for a policy response. However, visitation has been constrained by the COVID-19 pandemic since midway through financial year 2019-20. Visitation estimates provided below are therefore longer term, and indicative averages.

The Place Management NSW estate includes:

- The Rocks – historic 26 ha retail and leisure precinct located at the southern end of the Sydney Harbour Bridge. The Rocks is the birthplace of modern Sydney and has the highest concentration of state-significant heritage items in any one location. The Rocks is a culturally vital place that hosts national celebrations, markets and events that annually attracts more than 14 million domestic and international visitors.
- Circular Quay – is a key driver of the Sydney economy. It adjoins the World Heritage Listed Sydney Opera House and is a major transport hub. Circular Quay is the financial centre of Sydney and is where the global city interacts with the harbour. It is an iconic location for Australian and international visitors and is significant from both heritage and cultural perspectives.
- Barangaroo – redevelopment of this precinct has always been about returning the western harbour to the people of Sydney. Once complete, more than 50% of Barangaroo will be open space including parklands, community spaces, waterfront walks, and active streetscapes. Barangaroo Reserve features lookouts, walking and cycling trails, idyllic coves, picnic spots and places to relax. Hickson Park is a cooler, shaded park with an open green lawn and native trees. Waterman’s Cove is an amphitheatre-style boardwalk that leads to Wulugul Walk, a tree-lined harbourfront path running north-south. Barangaroo is estimated to attract approximately 20 million domestic and international visitors each year.
- Darling Harbour – gifted to the nation in 1988 as a place for celebration. It covers 60 ha of land and 28 ha of water known as Cockle Bay. Darling Harbour is Australia’s most popular foreshore gathering place. It includes the International Convention Centre which is Australia’s premier convention, exhibition, and events destination. Darling Harbour hosts events of state significance including Australia Day and New Years’ Eve celebrations as well as free events and many diverse cultural festivals. Some 26 million people visit Darling Harbour each year. Darling Harbour includes the Chinese Garden of Friendship, Tumbalong Park, Cockle Bay Promenade, Pyrmont Bridge and Cockle Bay.
- King Street Wharf Promenade – is the public promenade area between King Street Wharves and Lime and King Streets. The area is managed by Place Management NSW on behalf of Roads and Maritime Services.
- The Goods Line – a pedestrian and cycleway network from Ultimo to Darling Harbour. An urban hub connecting more than 80,000 students, locals and visitors to arts, education, and cultural institutions, it includes spaces for public entertainment and recreation. It also provides easy access to Darling Harbour’s many retail, dining and tourist attractions and plays host to a range of public activities.
- Pyrmont Foreshore – including land, parks, wharves, and the harbour side boardwalk. The foreshore is used by residents in local high-rise apartments and attracts visitors who cycle and walk between playgrounds, cafes and special event displays and markets.
- Ballast Point Park – Walama, Birchgrove. Ballast Point Park is bordered by Wharf Road, Ronald Street, Mort Bay, and Snails Bay. The 2.5 ha of foreshore land formerly an industrial site for Caltex underwent a renewal project to provide green picnic spots with walking paths, access for cyclists and panoramic views of the city and Harbour Bridge.

The Place Management NSW estate managed by Place Management NSW covers natural and built environments. It includes public domain spaces and approximately 150 heritage items. Consequently, Place Management NSW is responsible for some of Sydney's most historically and culturally significant waterfront locations.

To maximise the amenity of these locations they are open to visitors at all times. There are no gates and fences around any part of the public domain. Post COVID19 restrictions, it is anticipated that visitation to the Place Management NSW estate will recover to something like its long-term average with 14 million people visiting The Rocks, 20 million visiting Barangaroo, and 26 million visiting Darling Harbour. Together these iconic locations managed by Place Management NSW will attract annual visitation of 60 million people each year.

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

2.4 Policy Objectives

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

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

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

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

2.5 Relevant Stakeholders

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

- Boating Industry Association
- Bus and Coach Association (NSW)
- Business Sydney

- Destination NSW
- Sydney Opera House Trust
- Australian National Maritime Museum
- Darling Harbour Live
- NSW Police Force
- Committee For Sydney
- Local Aboriginal Land Councils, including the Metropolitan Local Aboriginal Land Council and La Perouse Local Aboriginal Land Council.
- Local resident action groups including Friends of Sydney Harbour, Rocks Residents Action Group and Pyrmont Action Group
- Local businesses and tenants within the Place Management NSW estate
- Local government entities, including City of Sydney Council and Inner West Council
- Government agencies, including Department of Premier and Cabinet, NSW Treasury, Infrastructure NSW, Transport for NSW, Department of Planning and Environment, NSW Health, Department of Human Services, Port Authority NSW, Marine Estate Management Authority
- International Convention Centre Sydney
- Museum of Contemporary Art
- Royal Botanic Gardens and Domain Trust
- Luna Park Sydney
- Sydney Festival
- Tourism & Transport Forum Australia
- The Rocks Chamber of Commerce

3. OPTIONS TO ACHIEVE THE POLICY OBJECTIVES

Specific options to address the policy objectives were identified:

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

3.1 Base Case – Do Nothing

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

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

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

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

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

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

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

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

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

3.2 Proposed Regulation

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

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

Personal Conduct

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

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

Noting the transfer of operational and precinct management functions of Barangaroo to Place Management NSW in March 2022, the proposed regulation will also regulate personal conduct in the Barangaroo Reserve and the Barangaroo Public Domain as 'managed land' under the *Place Management NSW Act 1998*. Controls address causing disturbance or nuisance, harming the environment, harming animals or their habitat, bringing in dogs or horses, damaging buildings and structures, erecting structures and obstructions, commercial activities and raising money, behaving unsafely, swimming, cycling in unauthorised areas, skateboard use, and use of exercise equipment. Provisions controlling personal conduct will be consistent across the entire Place Management NSW estate (including Barangaroo). Place Management NSW authorisation of certain activities may result in the charging of a fee.

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

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

Services and Facilities

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

Powers

Under the proposed regulation Place Management NSW will have the authority to close any part of the public domain in the Place Management NSW estate, limit the number of people

who may enter a public area and charge admission on New Year's Eve and for other major or commercial events.

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

3.3 A More Restrictive Regulatory Proposal

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

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

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

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

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

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

4. REGULATORY IMPACT ASSESSMENT FRAMEWORK

4.1 Creating Benefits for the Public

The overall value of public amenity benefits created in the Place Management NSW estate is significant – see Section 2.3. By way of illustration of these values, visitation benefits on their own without considering heritage and economic development values, are estimated at \$248.67 million per annum (a per visit value of \$4.14¹ and multiplied by an annual visitation of 60 million people).

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

4.2 Diminishing Value of Benefits to the Public

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

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

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

¹ In a standalone economic analysis prepared to support the Parramatta Park Regulation RIS 2012, Arche Consulting 2012 derived per visitor benefit using the rigorous and widely reviewed Travel Cost Method (see James and Gillespie 2000). Surveys were used to establish the profile of visitors and cost incurred to enjoy Parramatta Park was used as a proxy for economic welfare. The Arche Consulting estimate of \$3.40 per visitor has been updated to \$4.14 per visitor to reflect changes in CPI and hence travel cost.

4.3 Identification of Costs and Benefits for Each Option

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

Table 4.1 Costs and Benefits of Place Management NSW Regulatory Options

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

Analysis of each option is presented in the following chapters.

5. BASE CASE – DO NOTHING BENEFIT COST ANALYSIS

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

5.1 Costs – Base Case

Damage to Place Management NSW Estate Assets

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

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

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

Cost of Public Education and Voluntary Codes

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

Diminished Ability to Generate Revenue from Events

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

The absence of a regulation will not affect operation of the Sydney International Convention, Exhibition and Entertainment Precinct and shop lease revenue at Darling Harbour. It will affect small scale events whose operation depends on regulatory authority for the temporary alienation of public domain land.

Even with the rigorous use of conditions of entry, function numbers will be limited under the ‘do nothing’ base case. In 2022-23 venue hire (public domain) is budgeted to generate \$0.83 million (Place Management NSW advice, 27 May 2022) and this is assumed to be forfeited under the base case.

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

5.2 Benefits – Base Case

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

5.3 Benefit Cost Analysis – Base Case

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

6. PROPOSED REGULATION BENEFIT COST ANALYSIS

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

6.1 Costs – Proposed Regulation

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

Under the proposed regulation costs are incurred by Place Management NSW for the ongoing training of security rangers, maintaining administration systems, processing and on rare occasions prosecuting penalty infringement notices. These costs equate to approximately four full time equivalent (FTE) employees per annum, a cost of \$480,000 per annum.

6.2 Benefits – Proposed Regulation

Reduction in Damage to Place Management NSW Estate Assets

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

Advice from the Royal Botanic Gardens situated on the Sydney Harbour foreshore is that removal of their regulation and the ability to manage people in the Gardens would increase repair and maintenance costs on trees, buildings, fences, statues, sculpture, memorials, fountains, furniture, etc. by \$1.5 million per annum. The Royal Botanic Gardens and The Domain receive annual visitation of 8.6 million (Royal Botanic Gardens and Domain Trust Annual Report 2019-20). Given that the Place Management NSW estate receives almost seven times the number of visitors (60 million visitors per year long-term average) and has extensive assets including heritage items, the saving in cost from a reduction in damage to the Place

Management NSW estate is conservatively estimated at twice the quantum attributed to the Royal Botanic Gardens and The Domain – a saving of \$3 million per annum.

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

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

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

Option	2023	2024	2025	2026	2027
Proposed Regulation					
Visitor numbers (millions of visits) [#]	60.3	60.6	60.9	61.2	61.5
Base Case					
Visitor numbers (millions of visits) [*]	60.2	60.3	60.5	60.6	60.8
Net increase in visitors associated with the Proposed Regulation	0.1	0.3	0.5	0.6	0.8
Benefit to additional visitors (\$'million)⁺	0.6	1.2	1.9	2.5	3.2

Based on annual growth rate 0.5% delivered after 2015 and before COVID19.

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

+ Additional benefit to visitors estimated using a per visitor benefit of \$4.14 (Arche Consulting 2012) updated for CPI and multiplied by the increase in annual visitation.

Savings on Voluntary Measures

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

Savings are made under the proposed regulation when fewer voluntary measures such as education leaflets and displays, costing an estimated \$300,000 per annum, are no longer required – socially acceptable behaviour is realised under the proposed regulation through the rarely used (existing) power to impose on-the-spot fines.

Additional Revenue Associated with Events

The proposed regulation allows Place Management NSW to generate revenue from short-term events such as outdoor corporate launches, private weddings, and private events. This revenue will assist Place Management NSW to perform its functions outlined under the Act including the maintenance of heritage assets. Revenue from events is forecast to contribute approximately \$0.83 million per annum in 2022-23 (Place Management NSW advice, 27 May 2022).

6.3 Benefit Cost Analysis – Proposed Regulation

The proposed regulation addresses the policy objectives of protecting estate assets and promoting use of the facilities. Benefit cost analysis results show a positive net present value (NPV) and a benefit cost ratio for the NSW community of 12.4:1 (i.e., for each dollar of cost, \$12.40 is returned as benefit).

7. MORE RESTRICTIVE REGULATORY PROPOSAL BENEFIT COST ANALYSIS

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

7.1 Costs – More Restrictive Regulation

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

- Administrative costs – costs will be incurred liaising with community groups and individuals regarding the outright prohibition on activities such as selling articles, public assemblies, fireworks, prohibition of dogs in parts of the Place Management NSW estate that are outside Darling Harbour/Barangaroo and alcohol consumption. One half FTE employee is required to provide this ongoing liaison, an annual cost of \$60,000.
- Gates and fences – required to prevent access to parts of the Place Management NSW estate after sunset and before sunrise and protection for estate assets. Restricted access would be imposed on parts of Darling Harbour including Tumbalong Park, Barangaroo, The Goods Line, Pyrmont Foreshore and Ballast Point Park. Gates and fences would need to maintain the aesthetic of the foreshore and are expensive. A cost of \$3 million installed with no ongoing maintenance cost is assumed.
- Rangers – no change in ranger cost over both the base case and the proposed regulation. Even though parts of the Place Management NSW estate are closed after sunset ranger patrols are required to prevent illegal access.
- Visitor enjoyment – visitor enjoyment would be diminished under a more restrictive regulation. Community groups and individuals apply for a range of special use activities under the proposed regulation (i.e., selling articles and public assemblies). Refusal to grant special use activities is assumed to affect 700,000 visitors per annum. Furthermore, visitors use parts of the Place Management NSW estate after sunset and before sunrise for walking including walking their dogs. In the absence of electronic people counter data the following estimates are made – 100,000 evening walkers per annum prevented from using Tumbalong Park; 500,000 per annum prevented from using The Goods Line, 500,000 per annum prevented from using Barangaroo, 500,000 per annum prevented from using the Pyrmont Foreshore and 200,000 per annum prevented from using Ballast Point Park. An estimated 2.5 million people per annum have their enjoyment of the Place Management NSW estate diminished by the more restrictive regulation.

7.2 Benefits – More Restrictive Regulation

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

7.3 Benefit Cost Analysis – More Restrictive Regulation

Under the more restrictive regulation fewer visitors enjoy the Place Management NSW estate than either the proposed regulation or the base case. Furthermore, the more restrictive regulation imposes additional costs over both the base case and the proposed regulation (e.g., fencing costs estimated at \$3 million). The benefit cost ratio for this third option is less than that achieved for the proposed regulation. The more restrictive regulation only partially meets regulatory objectives – fewer people are encouraged to enjoy the Place Management NSW estate. As a consequence, the more restrictive regulation is rejected.

8. COMMUNITY CONSULTATION STRATEGY

Stakeholders listed in Section 2.5 will be able to access a copy of the draft regulation and draft RIS per below methods of publication for comment and to inform decision-making and any further amendments before the regulation is finalised. Submissions will be reviewed and assessed by Place Management NSW.

In addition, the following consultation is proposed:

- Posting of intention to remake the regulation and the availability of a draft RIS in the NSW Government Gazette.
- Public notice in a NSW newspaper.
- Use of the NSW Government’s ‘Have your say’ website – www.haveyoursay.nsw.gov.au
- Posting of the draft RIS on the Place Management NSW or Transport for NSW website.

9. CONCLUSIONS

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

10. REFERENCES

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

AgEconPlus (2017) Place Management NSW Regulation 2017 Regulatory Impact Statement

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

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

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

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

Place Management NSW (2020) Annual Report 2019-20
<https://www.parliament.nsw.gov.au/tp/files/80853/2020-21%20Annual%20Report%20of%20Place%20Management%20NSW.pdf>

Place Management NSW (2021) Annual Report 2020-21
<https://www.parliament.nsw.gov.au/tp/files/80853/2020-21%20Annual%20Report%20of%20Place%20Management%20NSW.pdf>

NSW Productivity Commission Better Regulation, Regulatory Impact Assessment checklist
https://www.productivity.nsw.gov.au/sites/default/files/2018-05/Regulatory_Impact_Assessment_Checklist.pdf

Royal Botanic Gardens and Domain Trust Annual Report 2019-2020
<https://www.rbgsyd.nsw.gov.au/getmedia/4bad0b73-b106-43f3-a13c-6f7441462fa9/BG1685-ROYAL-BOTANIC-GARDENS-ANNUAL-REPORT-low-res-single.pdf.aspx>