

# Sydney Regional Environmental Plan No 22—Parramatta River (1990 EPI 493)

[1990-493]



New South Wales

## Status Information

### Currency of version

Repealed version for 1 March 2002 to 27 September 2005 (accessed 17 July 2024 at 22:12)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Repeal**

The plan was repealed by cl 8 (a) of the [Sydney Regional Environmental Plan \(Sydney Harbour Catchment\) 2005 \(590\)](#) (GG No 119 of 28.9.2005, p 7598) with effect from 28.9.2005.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 28 September 2005

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# Sydney Regional Environmental Plan No 22—Parramatta River (1990 EPI 493)



New South Wales

## Part 1 Preliminary

### 1 Name of plan

This plan may be cited as *Sydney Regional Environmental Plan No 22—Parramatta River*.

### 2 Aims, objectives etc

(1) The general aims of this plan are:

- (a) to establish a framework which encourages a consistent and co-ordinated approach to the planning, development and management of the waterway, Rodd Island and foreshore open space and facilities of the Parramatta River, and
- (b) to establish an efficient and effective development control system for the Parramatta River and its foreshores and Rodd Island, and
- (c) to ensure that the Parramatta River and its foreshores and Rodd Island are developed and promoted as a community asset, with due recognition being given to their role as a recreation and tourist focal point, and
- (d) to ensure that the special value of certain foreshore areas as access points to the waterway are fully considered in future planning and development control, and
- (e) to recognise, protect and enhance the natural, scenic, environmental, cultural and heritage qualities of the land to which this plan applies in future planning and development control, and
- (f) to ensure that existing open space and recreation resources are developed more effectively by more fully integrating land and water based recreation activities, and
- (g) to establish as a priority the development of boating and recreation facilities and open space with the overall aim of achieving a diversity of landscape settings and development with appropriate facilities, and

- (h) to identify, conserve and enhance the environmental heritage of the region, and
- (i) to ensure that consistent guidelines are applied to the assessment of development of the Parramatta River and its foreshores and Rodd Island.

(2) The specific aims of this plan are:

(a) in relation to administration and management:

- (i) to ensure that a consistent and co-ordinated development approval process applies to all development proposals whether they be above or below mean high water mark or span mean high water mark, and
- (ii) to ensure that for any development proposal there is only one consent authority, and
- (iii) to ensure that all consent authorities apply consistent criteria when considering development applications, and
- (iv) to establish clear and consistent guidelines on the use and development of the Parramatta River and its foreshores, and

(b) in relation to open space and recreation:

- (i) recognise the fundamental role that existing foreshore open space area have in providing access to the waterway and in accommodating water based recreational activities, and
- (ii) to give priority to recreational activities which require or are enhanced by a foreshore location, and
- (iii) to improve access to the waterway and from the waterway to foreshore parks, and
- (iv) to encourage in appropriate circumstances the provision of additional foreshore open space, and

(c) in relation to boating facilities:

- (i) to recognise the value of the Parramatta River as an outstanding location for recreational, tourism and sports boating activities, and
- (ii) to recognise the importance of having appropriate facilities for the storage, launching and maintenance of commercial, recreational and other vessels, and
- (iii) to make appropriate provision for the establishment of new boating facilities in a manner that is consistent with the environmental and cultural attributes of the land to which this plan applies, and

- (d) in relation to the natural environment:
  - (i) to protect flora and fauna habitats, including wetland areas, in a manner that is consistent with their conservation value, while also recognising the validity of other uses of the foreshores and the waterway, and
  - (ii) to improve and maintain the water quality of the river and to provide a healthy habitat for marine and bird life and for water based recreational pursuits, and
- (e) in relation to the visual environment:
  - (i) to protect and enhance the landscape and special scenic qualities of the Parramatta River, and
  - (ii) to ensure that adequate consideration is given to the visual impact of development, and
  - (iii) to preserve the natural foreshores of the Parramatta River and to ensure development does not detract from their natural character, and
- (f) in relation to the environmental heritage:
  - (i) to conserve and enhance the environmental heritage of the river and its foreshores and Rodd Island, including their underwater archaeological resources, and
  - (ii) to encourage an appreciation of the role of the river in the history of both Aboriginal and European settlement.

### **3 Land to which plan applies**

- (1) This plan applies to such part of the land declared to be the Sydney Region by the Minister for Planning by order published in Gazette No 38 of 7 April 1989 on page 1841, as is shown edged heavy black on the map, except for the following islands:
  - (a) Cockatoo Island,
  - (b) (Repealed)
  - (c) Snapper Island,
  - (d) Spectacle Island.
- (2) This plan (clause 28A (2) excepted) does not apply to land within the Homebush Bay Area within the meaning of [Sydney Regional Environmental Plan No 24—Homebush Bay Area](#).

### **4 Relationship to other environmental planning instruments**

- (1) In the event of an inconsistency between this plan and any other environmental

planning instrument (other than a State environmental planning policy), whether made before, on or after the date on which this plan takes effect and which applies to the land to which this plan applies, this plan shall, to the extent of the inconsistency, prevail.

- (2) Clause 7 (3) of *State Environmental Planning Policy No 4—Development Without Consent* does not apply to a building on land having a frontage to the waterway.

## 5 Definitions

- (1) In this plan:

**aboriginal relic** has the meaning given to it in the *National Parks and Wildlife Act 1974*.

**aids to navigation** means buoys, signs, lights or other structures, located on the waterway or on land, which are designed to assist the safe and efficient movement of vessels on the waterway.

**alter**, in relation to a heritage item or to a building or work within a conservation area, means:

- (a) the making of structural changes to the outside of the heritage item, building or work, or
- (b) the making of non-structural changes to the detail, fabric, finish or appearance of the outside of the heritage item, building or work but not including the maintenance of the existing detail, fabric, finish or appearance of the outside of the heritage item, building or work.

**aviation facilities** means an area of the waterway set aside, or a structure provided, for the purpose of aircraft landing or taking off.

**Board** means the Maritime Services Board of New South Wales.

**boardwalk** means a structure providing pedestrian access which extends over or beyond the intertidal zone but is not intended to provide direct access to a vessel.

**boating industry facilities** means buildings, structures or facilities used primarily for the construction, maintenance, repair, sale or hire of boats, whether or not including the storage of boats or other vessels, but does not include a marina or a large marina.

**boat launching ramp** means a structure designed primarily for the launching of trailer borne recreational vessels and includes associated car parking facilities.

**boat lift** means a device used for lifting or steering a vessel out of water but does not include such a device if it forms part of a boating industry facility, marina or large



marina.

**boat shed** means a building or other structure used for the storage and routine maintenance of a boat or boats and which is associated with a private residence, and includes any skid used in connection with the building or other structure.

**charter and tourism boating facilities** means any structure used for charter boating or tourism boating purposes which is only open to the users or operators of the structure and which has a direct structural connection between the shore and the waterway.

**clearing**, in relation to land, means the destruction or removal in any manner of trees, saplings, seedlings or shrubs growing on the land but does not include:

- (a) the destruction or removal of plants declared noxious by proclamation pursuant to section 467 of the [Local Government Act 1919](#), by means not likely to be significantly detrimental to the native ecosystem, or
- (b) the incidental destruction or removal of native plants lying adjacent to any such noxious plants.

**commercial port facilities** means any structure used in connection with the carrying of goods or persons by water from one port to another for business or commercial purposes and which has a direct structural connection between the shore and the waterway.

**Committee** means the Foreshores and Waterways Planning and Development Advisory Committee constituted under this plan.

**conservation area** means an area of heritage significance, being the land shown hatched on sheets 9, 10 and 11 of the map.

**conservation plan** means a document resulting from a detailed assessment of the elements of a site to establish its heritage significance and indicating policies to enable that significance to be retained in its future use and development.

**demolition**, in relation to a heritage item or to a building or work within a conservation area, means the damaging, defacing, destruction, pulling down or removal of the heritage item, building or work, in whole or in part.

**development** has the same meaning as in section 4 of the Act, and includes the clearing of land, earthworks, the placement of mooring piles and dredging.

**dredging** means removal of material from the sea or harbour bed or the bed of a river where the activity is for the purpose of construction of a new or deeper navigational area or channel or re-opening of a discontinued navigational area or channel, but does not include maintenance dredging.

**earthworks** means the addition or removal of any solid material on, to or from the land or any other work which will substantially alter the existing ground level or character of the surface of that land.

**flora and fauna enclosure** means a net or other structure used for the purpose of protecting or encouraging the growth of flora and fauna, including a structure used for the observation of flora and fauna or for the maintenance of the net or other structure.

**foreshore building line** means a line fixed by or in pursuance of an environmental planning instrument to indicate an area adjacent to the shoreline in which the erection of buildings is prohibited or restricted.

**heritage item** means a building, work, relic (including an underwater relic), tree or place of heritage significance to Parramatta River and its foreshores identified on sheets 9, 10 and 11 of the map.

**heritage significance** means historic, scientific, cultural, social, archaeological (terrestrial and underwater), architectural, natural or aesthetic significance.

**houseboat** means a vessel or structure which is floating on, or fixed in, the waterway and which is used for the purpose of providing permanent residential accommodation.

**land based development** means all development completely above mean high water mark and those categories of development listed in Schedule 1, but does not include land/water interface development.

**land/water interface development** means development listed in Schedule 2.

**large marina** means:

- (a) a boat storage facility, or
- (b) some other permanent boat storage structure,

located on the waterway which contains 30 or more berths (or other storage facilities) and associated support facilities and which may include shops, restaurants, offices and a manager's residence on an adjoining area of land or the waterway.

**maintenance dredging** means removal of material from the sea or harbour bed or the bed of a river where the activity is for the purpose of maintaining the previously established harbour or river depth.

**marina** means a permanent boat storage facility located on the waterway with support facilities on an adjoining area of land or the waterway, and includes any single mooring or multiple mooring managed in association with the facility and in its vicinity, but does not include a large marina.

**mean high water mark** means the position where the plane of the mean high water

level of all ordinary local high tides intersects the foreshore, being a height of 1.44 metres above the Zero of Fort Denison tide gauge and 0.515 metres Australian Height Datum.

**multiple mooring** means an apparatus located on or in the waterway and used for restraining two or more vessels.

**public water transport facilities** means any structure that will be used primarily in connection with transporting the public by water.

**recreation facility** means a building or place used exclusively for sporting or leisure activities, whether operated for the purpose of gain or not and whether used for activities based on land or water.

**relic** means any deposit, object or material evidence (terrestrial or underwater) relating to the use and settlement of the region covered by this plan which is 50 or more years old.

**sea wall** means a structure placed partially or wholly along the land/water interface to protect the land from the sea or to stop accelerated erosion of the shoreline, but does not include a breakwater.

**single mooring** means an apparatus located on or in the waterway and used for restraining one vessel.

**skid** means an inclined ramp used for the manual launching of small craft but does not include a slipway.

**slipway** means a structure, usually in the form of 2 supported parallel rails on which a wheeled cradle is run, to draw a vessel out of the water for maintenance and repair.

**swimming enclosure** means a net or other structure placed in the waterway for the purpose of providing a protected swimming area.

**the Act** means the [Environmental Planning and Assessment Act 1979](#).

**the map** means the map marked “Sydney Regional Environmental Plan No 22—Parramatta River (Amendment No 1)” deposited in the Head Office of the Department and a copy of which is deposited at the office of each consent authority.

**tourist facility** means a building or place, such as a hotel or motel, used by tourists or holidaymakers for the purposes of holiday accommodation, sport or recreation and includes:

- (a) shops attached to or incorporated within the building or located at the place, and
- (b) other facilities servicing the needs of tourists and holidaymakers using the building or place,

but does not include a caravan park.

**water based development** means all development completely below mean high water mark and those categories of development listed in Schedule 3, but does not include land/water interface development.

**water based restaurants and entertainment facilities** means floating or fixed structures on a waterway used as clubs or restaurants or for entertainment (on a commercial basis) and which have a direct structural connection between the shore and the waterway.

**water recreational facilities** means piers, wharves, boatsheds or other structures which have a direct structural connection between the shore and the waterway and are used primarily for public recreational purposes.

**waterfront access stairs** means stairs or a ramp for pedestrian access to the foreshore but not for the launching of or direct access to a vessel on the waterway.

**waterway** includes any bay, river or creek or part of any bay, river or creek to which this plan applies.

(2) In this plan:

- (a) a reference to a building or place used for a purpose includes a reference to a building or place intended to be used for the purpose, and
- (b) a reference to land within a zone specified in the Table to clause 8B is a reference to land shown on the map in the manner indicated in clause 8A as the means of identifying land of the zone so specified.

## 5A Adoption of Model Provisions

Nothing in this plan is to be construed as restricting or prohibiting or requiring development consent to be obtained for, or enabling the consent authority to restrict or prohibit or require development consent to be obtained for, the carrying out of development of any description specified in Schedule 1 to the *Environmental Planning and Assessment Model Provisions 1980*.

## 6 Suspension of laws

- (1) For the purpose of enabling development to be carried out in accordance with this plan (as in force at the time the development is carried out) or in accordance with a consent granted under the Act in relation to development carried out in accordance with this plan (as so in force), section 33 of the *Sydney Harbour Trust Act 1900*, to the extent necessary to serve that purpose, shall not apply to the development.
- (2) Nothing in this clause excludes the application of section 33 of the *Sydney Harbour Trust Act 1900* otherwise than in respect of the obtaining of development consent in

accordance with the plan.

- (3) Pursuant to section 28 of the Act, before the making of this clause:
  - (a) the Minister for the time being administering the provisions of the *Sydney Harbour Trust Act 1900* referred to in subclause (1) concurred in writing in the recommendation for the approval of the Governor of subclause (1), and
  - (b) the Governor approved of subclause (1).

## **7 Foreshores and Waterways Planning and Development Advisory Committee**

- (1) There is constituted by this plan the Foreshores and Waterways Planning and Development Advisory Committee the functions of which are:
  - (a) to advise a consent authority on matters relevant to any decision required to be made by the consent authority under this plan and under the Act, and
  - (a1) to advise a public authority or person carrying out certain development which does not require consent on relevant matters before such development is carried out, and
  - (b) to exercise any other functions conferred on it by this plan or any other environmental planning instrument.
- (2) The Committee is to consist of 3 members appointed by the Director.
- (3) Of the members:
  - (a) one is to be an officer of the Board nominated by the Board, and
  - (b) one is to be an officer of the Department selected by the Director, and
  - (c) one is to be a person nominated by the council of the local government area in respect of which a function of the Committee is being exercised or, if a function is being exercised in respect of more than one local government area, a person selected by the Director from persons nominated by the councils of those areas.
- (3A) If a function of the Committee is not being exercised in respect of land within a local government area but is being exercised in respect of land within a national park, the Committee is to include an officer of the National Parks and Wildlife Service selected by the Director-General of National Parks and Wildlife instead of the member referred to in subclause (3) (c).
- (4) The Director shall appoint one of the members of the Committee to be the Chairperson of the Committee.
- (5) The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings shall, subject to this plan and to any direction of the

Director, be as determined by the Committee.

## **8 Consent authority**

- (1) The consent authority for land based development or land/water interface development is the council of the local government area in which or nearest to which the land on which it is proposed to carry out the development is situated, except as provided by subclauses (2) and (3).
- (2) The consent authority for any such development is the Minister or the Director in a case in which:
  - (a) the land on which it is proposed to carry out the development is within a local government area, and
  - (b) another environmental planning instrument specifies the Minister or the Director as the consent authority for the same kind of development if it were proposed to be carried out on that land.
- (3) The consent authority for any such development is also the Minister or the Director in a case (such as may occur when land/water interface development is proposed to be carried out wholly or partly in the waterway) in which:
  - (a) the land on which it is proposed to carry out the development is not within a local government area, and
  - (b) another environmental planning instrument specifies the Minister or the Director as the consent authority for the same kind of development if it were proposed to be carried out on the nearest land that is within a local government area.
- (4) The consent authority for water based development proposed to be carried out on any land to which this plan applies is the Board.

## **Part 1A General restrictions on development of land**

### **8A Zones indicated on the map**

For the purposes of this plan, land to which this plan applies is within a zone specified below if the land is shown on the map in the manner specified below in relation to that zone:

Zone No 8 (a) National Parks—edged heavy black and lettered “National Parks” on the map.

### **8B Zone objectives and development control table**

- (1) The objectives of a zone are set out in the Table to this clause under the heading “Objectives of zone” appearing in the matter relating to the zone.

- (2) Except as otherwise provided by this plan, in relation to land within a zone specified in the Table to this clause, the purposes (if any) for which:
- (a) development may be carried out without development consent, and
  - (b) development may be carried out only with development consent, and
  - (c) development is prohibited,
- are specified under the headings “Without development consent”, “Only with development consent” and “Prohibited”, respectively, appearing in the matter relating to the zone.
- (3) Except as otherwise provided by this plan, the consent authority must not grant consent to an application to carry out development on land to which this plan applies unless it is of the opinion that the carrying out of the development is generally consistent with the aims and objectives of this plan and of the zone within which the development is proposed to be carried out.

Table

## **Zone No 8 (a) National Parks**

### **1 Objectives of zone**

The objectives of this zone are:

- (a) to identify land reserved or dedicated under the *National Parks and Wildlife Act 1974* as national parks, nature reserves, historic sites, State recreation areas, Aboriginal places and State game reserves, and
- (b) to allow for the management and appropriate use of that land as provided for in the *National Parks and Wildlife Act 1974*, and
- (c) to encourage visits to Rodd Island consistent with its natural attributes, cultural heritage and the facilities available, and
- (d) to facilitate development on Rodd Island compatible with the overall management strategy for the Sydney Harbour National Park.

### **2 Without development consent**

Aids to navigation; anything authorised by the *National Parks and Wildlife Act 1974*.

### **3 Only with development consent**

Nil.

## **4 Prohibited**

Any purpose other than a purpose included in item 2.

## **Part 2 Special provisions**

### **9 Reservation and use of certain land**

- (1) The land shown on sheet 2 of the map is reserved for the purposes of foreshore open space and may be developed for any purpose permissible on the land under any other environmental planning instrument, but only with the consent of the consent authority and the concurrence of the Director.
- (2) The owner of the land reserved under subclause (1) may, by notice in writing, require the corporation to acquire the land and the corporation shall acquire the land to which the notice relates.
- (3) In deciding whether to grant concurrence under subclause (1), the Director shall take into consideration:
  - (a) the effect of the proposed development on the costs of acquisition, and
  - (b) where the corporation has entered into negotiations with an owner for the acquisition of any land, the imminence of acquisition, and
  - (c) the cost of any necessary reinstatement of the land.
- (4) Once acquired by the corporation, the land may, with the consent of the consent authority, be developed for purposes which provide for the recreational use of the waterway or improve public access to waterway and foreshore areas or for any purpose for which land that is within Zone No 6 (a) under any other applicable environmental planning instrument may be developed.

### **10 Additional open space provision**

A council, when preparing a draft local environmental plan relating to land with a frontage to the waterway and which will result in a substantial change or intensification of land use, shall consider the need for and the desirability of providing for additional public access to the foreshore.

### **11 Foreshore open space**

- (1) This clause applies to land shown edged heavy black and numbered on sheets 3, 4 and 5 of the map.
- (2) A person may, on land to which this clause applies, carry out development without development consent for the purposes of:
  - (a) the reduction of bushfire hazards, or



- (b) gardening, or
  - (c) weed eradication, or
  - (d) the control of erosion.
- (3) Notwithstanding subclause (2), a consent authority may grant consent to development on land to which this clause applies for purposes listed in Schedule 4 in addition to development for any purpose for which that land may be developed under any local environmental planning instrument applicable to that land.

## **12 Environmental protection—wetlands**

- (1) This clause applies to land shown as existing mangroves or mangrove regeneration on sheets 6, 7 and 8 of the map.
- (2) A person shall not clear, drain, fill or construct a levee on land to which this clause applies for any purpose, except with the consent of the consent authority.
- (3) Subclause (2) does not apply to dredging or other acts done for the purpose of maintaining an existing navigational channel.
- (4) The consent authority shall not grant consent to an application made under this clause without the concurrence of the Director.
- (5) In deciding whether to grant concurrence under subclause (4), the Director shall take into consideration:
  - (a) the environmental effects of the proposed development, including the effect of the proposed development on:
    - (i) the growth of native plant communities,
    - (ii) the survival of native plant populations,
    - (iii) the provision and quality of habitats for both indigenous and migratory species,
    - (iv) the surface and groundwater characteristics of the site on which the development is proposed to be carried out and of the surrounding area, including salinity and water quality,
  - (b) the existence of feasible alternatives to the proposed development (either on other land or by other means), and if so, the reasons given for choosing the proposed development,
  - (c) whether adequate safeguards and rehabilitation measures have been or will be made in respect of the effect of the proposal on the wetland,

(d) the public interest (if any) in the carrying out of the proposal compared with the public interest in the preservation of the wetland, and

(6) The consent authority is to forward a copy of any application made under this clause to the Director-General of National Parks and Wildlife within 7 days of it being received.

### **13 Development in industrial and special uses zones**

- (1) This clause applies to land which, under an environmental planning instrument, is within a zone identified in that instrument as being an industrial or special uses zone.
- (2) A person may, with the consent of the consent authority, carry out development on land to which this clause applies for purposes specified in Schedule 5 in addition to development for any purpose permissible under a local environmental plan applicable to the land concerned.

### **14 Development—waterfront land**

A person may, with the consent of the consent authority, on land between a foreshore building line and the waterway, or, where there is no foreshore building line, on land adjoining or with frontage to the waterway, erect boatsheds, sea walls, slipways, jetties, wharves, waterway access stairs or swimming pools, or provide picnic facilities, cycleways or walking trails.

#### **14A Development on land in the waterway adjoining national parks**

Development for the purpose of anything authorised by the [National Parks and Wildlife Act 1974](#) may be carried out without consent in the waterway adjoining a national park where the development spans mean high water mark and is part of development or an activity being carried out in the national park.

#### **14B Development and activities in the vicinity of a national park**

A consent authority must not consent to the carrying out of development, and a public authority or other person must not carry out any development which does not require development consent, in any part of the waterway which, in the opinion of the consent authority, is likely to affect a national park unless it has given notice of the proposed development to the Director-General of National Parks and Wildlife and considered any comments of the Director-General on the proposal received within 30 days of the day on which notice of the proposal was given.

### **15 Earthworks**

A person shall not carry out earthworks on any land between a foreshore building line and the waterway except with the consent of the consent authority.

## **16 Consent for water based development**

- (1) A person shall not carry out water based development on land to which this plan applies, except with the consent of the consent authority.
- (2) Nothing in this clause requires a person to obtain development consent for aids to navigation, maintenance dredging or single moorings (other than single moorings that form part of a marina or a large marina).

## **17 Consent for land/water interface development**

A person shall not carry out land/water interface development on land to which this plan applies, except with the consent of the consent authority.

## **18 Consultation required for certain development applications**

- (1) The consent authority shall not grant consent to development listed in Schedule 6, or to development proposed to be carried out on land edged heavy black and numbered on sheets 3, 4 and 5 of the map, unless it has referred the development application to the Committee.
- (2) In the case of an application to carry out development part of which is listed in Schedule 6 and part of which is not so listed, the consent authority is only required to refer to the Committee that part of the application relating to the development listed in Schedule 6.
- (3) Where a development application has been referred to the Committee under this clause, the consent authority shall not determine the application until after:
  - (a) it has received a representation with respect to the application from the Committee, or
  - (b) a period of:
    - (i) in the case of development other than development referred to in subparagraph (ii)—30 days, or
    - (ii) in the case of designated development or development for which the concurrence of the Minister or a public authority is required—50 days,has elapsed from the date on which the application was forwarded to the Committee,whichever occurs first.

## **19 Consultation in the preparation of local environmental plans, development control plans and other development control guidelines**

- (1) In preparing a draft local environmental plan or a development control plan applying

to land having frontage to the waterway, a council may, prior to the public exhibition of the draft plan, refer a copy of it to the Committee.

- (1A) The Director should refer a copy of any proposed development control plan for land to which this plan applies prepared by the Director to the Committee before it is adopted.
- (2) If the Department or any other government organisation prepares any guidelines for development control affecting land having frontage to the waterway (whether or not the guidelines are in the form of a plan of management), the Department shall, and the government organisation should refer a copy of the guidelines to the Committee before they are adopted.
- (3) A council and the Department shall, and a government organisation concerned should have regard to any submission received from the Committee within 30 days after the date on which the draft plan, development control plan or guidelines were forwarded to the Committee.

## **20 Matters for consideration in determining development applications**

A consent authority must not consent to the carrying out of development unless it is satisfied that the proposed development is consistent with development of the land to which this plan applies in accordance with the objectives of this plan, and it has considered such of the following matters as are of relevance to the development:

- (a) the appearance of the development from the waterway and the foreshores,
- (b) whether the development will cause pollution or siltation of the waterway to an extent that would jeopardise any existing or potential uses of the waterway,
- (c) whether the development will have an adverse effect on wetlands or flora and fauna habitats,
- (d) the noise likely to be generated by the development and any adverse effect that any such noise would have on existing uses of the waterway or nearby land,
- (e) whether the development will have an adverse effect on drainage patterns or cause shoreline erosion,
- (f) whether the development will cause excessive congestion of, or generate conflicts between, people using the waterway or the waterfront,
- (g) the demand for storage space for boats on the Harbours or on the Parramatta River,
- (h) whether the development warrants a foreshore location,
- (i) whether the development will have an adverse effect on the views to and from the waterway as a result of the size of the vessels capable of being accommodated within

the development,

- (j) (Repealed)
- (k) the Australian Standard AS 3962-1991—*Guidelines for design of marinas*,
- (l) (Repealed)
- (m) any other relevant plan of management, urban design or other development control guidelines that apply to Parramatta River and its foreshores and which has been notified and provided to the consent authority by a public authority,
- (n) the effects of that development on the heritage significance of a heritage item, its site, its vicinity or on a conservation area,
- (o) any representations of the Committee,
- (p) whether the development will affect swimming in the locality,
- (q) the provision of pedestrian access in the locality of the development and the impact of the development on existing pedestrian access,
- (r) the importance of giving priority to onshore access to the foreshore and waterway rather than access by means of boardwalks,
- (s) any development control plan prepared in respect of this plan or, until such a plan has been prepared, the “Design and Management Guidelines for Parramatta River” a copy of which is available at the Head Office of the Department.

## **21 Preparation of plans of management**

- (1) A council may prepare a plan of management in respect of any land within the council’s area, whether or not in conjunction with the Board.
- (2) The Board may prepare a plan of management in respect of any part of the waterway under its control, whether or not in conjunction with one or more councils.
- (3) The format, structure and procedures for the preparation, public exhibition, approval, amendment and repeal of a plan of management is to be in accordance with Part 3 of the *Environmental Planning and Assessment Regulation 1980* which is to be read as if:
  - (a) a reference to a development control plan were a reference to a plan of management,
  - (b) a reference to a local environmental plan were a reference to this plan, and
  - (c) a reference to the council were a reference to the council (if the plan relates to land within the council’s area) or to the Board (if the plan relates to part of the waterway) or to both of them to the extent that they may agree to exercise or

perform any function jointly.

- (4) A plan of management may, in respect of land to which it applies:
  - (a) specify the types of recreational purposes for which the land may be used, and
  - (b) specify the siting of all buildings or structures on, and landscaping details in respect of, the land.
- (5) Before a plan of management is adopted and is made available for public inspection pursuant to subclause (6), a copy of it is to be referred to the Committee by the council or the Board and any representations made by the Committee in respect of the plan are to be considered.
- (6) A plan of management adopted in accordance with this clause is to be available for public inspection, without charge, at the offices of the relevant council or the Board (or, in the case of a joint plan, of the relevant council and the Board) during ordinary office hours.

#### **21A Referral of development proposals which do not require development consent**

- (1) This clause applies to the following development:
  - (a) development listed in Schedule 6, and
  - (b) development that requires the provision of services (including water, sewerage or stormwater systems).
- (2) Before carrying out any development to which this clause applies which does not require development consent, the person whether or not a public authority, carrying out the development must:
  - (a) give notice of the proposed development:
    - \* in the case of development listed in Schedule 6, to the Committee, or
    - \* in the case of development that requires the provision of services, to the public authority responsible for providing the service concerned, and
  - (b) consider any matters concerning the development raised by those bodies which have been notified to the person not later than 30 days after the giving of such notice.

#### **22 Heritage items**

- (1) A person shall not, in respect of a building, work, relic or place that is a heritage item:
  - (a) demolish or alter the building or work, or
  - (b) damage or move the relic, including excavation for the purpose of exposing the

relic, or

(c) damage or despoil the place or tree, or

(d) erect a building on or subdivide the land on which the building, work or relic is situated or that comprises the place, or

(e) damage any tree on land on which the building, work or relic is situated or on the land which comprises the place,

except with the consent of the consent authority.

(2) The consent authority shall not grant consent to a development application made under subclause (1) unless it has made an assessment of:

(a) the significance of the item as a heritage item,

(b) the extent to which the carrying out of the development in accordance with the consent would affect the heritage significance of the item and its site,

(c) whether the setting of the item, and in particular, whether any stylistic, horticultural or archaeological features of the setting should be retained,

(d) whether the item constitutes a danger to the users or occupiers of that item or to the public, and

(e) measures to be taken to conserve heritage items including any conservation plan prepared by the applicant.

### **23 Conservation areas**

(1) A person shall not, in respect of a conservation area:

(a) demolish or alter a building or work within the area,

(b) damage or move a relic, or excavate for the purpose of exposing or removing a relic, within the area,

(c) damage or despoil a place within the area, or

(d) erect a building on or subdivide land within the area,

except with the consent of the consent authority.

(2) The consent authority may not grant consent to an application under this clause unless it has taken into consideration the extent to which the carrying out of the proposed development would affect the heritage significance of the conservation area.

(3) The consent authority may not grant consent to an application made in pursuance of this clause, being an application to erect a new building or to alter an existing

building, unless the consent authority has made an assessment of:

- (a) the pitch and form of the roof, and
- (b) the style, size, proportion and position of the openings for windows and doors, and
- (c) whether the colour, texture, style, size and type of finish or the materials to be used on the exterior of the building are compatible with the materials used in the existing buildings in the conservation area.

#### **24 Development in the vicinity of a heritage item or a conservation area**

The consent authority shall not grant consent to development on land adjacent to a building or work that is a heritage item or within a conservation area unless it is satisfied that the development will not adversely affect the heritage significance of the item or conservation area.

#### **25 Development in the vicinity of Aboriginal relics**

Where the consent authority receives an application to carry out development on land within the vicinity of an Aboriginal relic, the consent authority shall not grant consent to the application until 14 days after it has notified the Director-General of National Parks and Wildlife of its intention to do so.

#### **26 Heritage advertisements and notifications**

(1) Except as provided by subclause (2):

(a) the provisions of sections 84, 85, 86, 87 (1) and 90 of the Act apply to and in respect of:

- (i) the demolition of a building or work that is a heritage item, and
- (ii) the demolition of a building or work within a conservation area,

in the same way as those provisions apply to and in respect of designated development, and

(b) where a person makes a development application to demolish a building or work that is a heritage item or within a conservation area, the consent authority shall not grant consent to that application until 28 days after the consent authority has notified the Secretary of the Heritage Council of its intention to do so.

(2) Subclause (1) does not apply to the partial demolition of a heritage item or a building or work within a conservation area if, in the opinion of the consent authority, the partial demolition will be of a minor nature and will not adversely affect the heritage significance of the heritage item or building or work in relation to the environmental heritage of the Parramatta River.



## **27 Conservation incentives relating to heritage items**

- (1) Nothing in this plan prevents a person, with the consent of the consent authority, from:
  - (a) using for any purpose a building within a conservation area or the land on which that building is erected, or
  - (b) using for any purpose a building that is a heritage item or the land on which that building is erected,if:
  - (c) using the building or land for that purpose will have little or no adverse effect on the amenity of the area, and
  - (d) the conservation of the building depends on the consent authority granting consent under this clause.
- (2) Nothing in this plan prevents a consent authority, when considering an application to erect a building on land on which there is a building which is a heritage item, from excluding from its calculation of the floor space of the proposed building the floor space of the heritage item for the purposes of determining:
  - (a) the maximum floor space, and
  - (b) the number of parking spaces to be provided on the site,but only if the consent authority is satisfied that the conservation of the building depends on the consent authority granting consent in pursuance of this subclause.

## **27A Protection of archaeological significance of heritage items and their sites**

- (1) Where a consent authority has received an application for consent to carry out development on the site of a heritage item or a site within a conservation area, the consent authority must not grant consent to the application unless:
  - (a) it has assessed whether the item or its site or the site within the conservation area has any potential archaeological significance and considered the likely impact of the proposed development on any potential archaeological significance of the item or its site or that site,
  - (b) in the case of a site of European heritage significance, any necessary excavation permit under the *Heritage Act 1977* has been granted, and
  - (c) in the case of a site of an Aboriginal place as defined in the *National Parks and Wildlife Act 1974* or an Aboriginal relic, the Director-General of National Parks and Wildlife has been notified of the proposal and any comments which have been received within 28 days of such notification have been considered.

- (2) Nothing in this clause affects any obligation to obtain a permit or consent under Part 6 of the *National Parks and Wildlife Act 1974*.

## **28 Development in national parks by NPWS**

Nothing in this plan prohibits or requires development consent to be obtained for the carrying out of development by the National Parks and Wildlife Service on land dedicated or reserved under the *National Parks and Wildlife Act 1974* as a national park.

### **28A Certain development near Homebush Bay Area**

- (1) A person must not carry out land/water interface development in the Parramatta River on land to which this plan applies adjoining or adjacent to the northern boundary of the Homebush Bay Area, except with the consent of the Minister.
- (2) A person must not carry out development involving the remediation of land in Homebush Bay on land to which this plan applies adjoining or adjacent to the eastern boundary of the Homebush Bay Area or comprising the foreshore or otherwise in the vicinity of Homebush Bay, except with the consent of the Minister.
- (3) The Minister, in determining whether to grant consent to development to which this clause applies must take into consideration the provisions of *Sydney Regional Environmental Plan No 24—Homebush Bay Area*.
- (4) In this clause, **Homebush Bay Area, land/water interface development** and **remediation of land** have the same meanings as in *Sydney Regional Environmental Plan No 24—Homebush Bay Area*.

### **28B Development affecting heritage items**

A public authority or any other person must not carry out development which does not require development consent and which is likely to affect significantly a heritage item unless it has sought the views of the Heritage Council on the proposed development and considered any comments of the Heritage Council notified to the public authority or person within 30 days of the day on which notice of the proposed development was given to the Heritage Council.

## **29 Transitional provision**

- (1) Any development application lodged before the commencement of this plan but not determined before its commencement, is to be determined as if the plan had not been made.
- (2) This plan does not apply:
  - (a) to an activity within the meaning of Part 5 of the *Environmental Planning and Assessment Act 1979* in respect of which an application for approval made to a determining authority within the meaning of that Part has been made, but not

determined, immediately before the commencement of this plan, or

- (b) to an activity within the meaning of that Part which was approved by a determining authority within the meaning of that Part before the commencement of this plan and which commences pursuant to that approval not later than 3 years after the commencement of this plan.

## **Schedule 1 Land based development**

(Clause 5, definition of “land based development”)

The following categories of development are land based development for the purposes of this plan, except where the development forms part of a category of development listed in Schedule 2 or 3:

- (a) boat sheds,
- (b) reclamation,
- (c) sea walls,
- (d) swimming pools,
- (e) waterfront access stairs.

## **Schedule 2 Land/Water interface development**

(Clause 5, definition of “land/water interface development”)

The following categories of development are land/water interface development for the purposes of this plan. When any of the following categories of development include as part of that development a category of development listed in Schedule 1 or 3 then that part is also to be taken to be listed in this Schedule:

- (a) boating industry facilities,
- (b) boat launching ramps,
- (b1) boardwalks,
- (c) large marinas,
- (d) marinas,
- (e) public water transport facilities,
- (f) water based restaurants and entertainment facilities,
- (g) water recreational facilities,
- (h) development for the purposes of any of the following, when carried out wholly or partly in waterway:
  - (i) dwellings of any type (including serviced apartments),

- (ii) commercial premises,
- (iii) tourist facilities,
- (iv) shops and retailing,
- (v) restaurants,
- (vi) recreation facilities,
- (vii) car parking.

### **Schedule 3 Water based development**

(Clause 5, definition of “water based development”)

The following categories of development are water based development for the purposes of this plan, except where the development forms part of a category of development listed in Schedule 2:

- (a) aids to navigation,
- (b) aviation facilities,
- (c) boat lifts,
- (d) charter and tourism boating facilities,
- (e) commercial port facilities,
- (f) dredging,
- (g) flora and fauna enclosures,
- (h) houseboats,
- (i) maintenance dredging,
- (j) multiple moorings,
- (k) single moorings,
- (l) skids,
- (m) slipways,
- (n) swimming enclosures,
- (o) wharves, jetties, pontoons.
- (p), (q) (Repealed)

### **Schedule 4 Additional permissible development on foreshore open**

## **space**

(Clause 11)

- (a) boat launching ramps,
- (b) charter and tourism boating facilities,
- (c) large marinas,
- (d) marinas,
- (e) public water transport facilities,
- (f) swimming enclosures,
- (g) swimming pools,
- (h) water based restaurants and entertainment facilities,
- (i) water recreational facilities,
- (j) wharves, jetties, pontoons.

## **Schedule 5 Additional permissible development in industrial and special uses zones**

(Clause 13)

- (a) boat launching ramps,
- (b) boating industry facilities,
- (c) charter and tourism boating facilities,
- (d) large marinas,
- (e) marinas,
- (f) public water transport facilities,
- (g) swimming enclosures,
- (h) swimming pools,
- (i) water based restaurants and entertainment facilities,
- (j) water recreational facilities,
- (k) wharves, jetties, pontoons.

## **Schedule 6 Development to be referred to the committee**

(Clauses 18, 21A)

Development for the purpose of the following:

- (a) aviation facilities,
- (b) boardwalks,
- (c) boating industry facilities,
- (d) boat launching ramps,
- (e) boat lifts,
- (f) boatsheds,
- (g) charter and tourism boating facilities,
- (h) commercial port facilities,
- (i) dredging,
- (j) flora and fauna enclosures,
- (k) houseboats,
- (l) large marinas,
- (m) marinas,
- (n) multiple moorings,
- (o) public water transport facilities,
- (p) reclamation,
- (q) sea walls,
- (r) skids,
- (s) swimming enclosures,
- (t) water based restaurants and entertainment facilities,
- (u) wharves, jetties, pontoons,
- (v) a commercial, residential or retail use of land carried out below or partly below mean high water mark,

but not including any alterations or additions to any existing building or works which, in the opinion of the consent authority, are minor and do not, to any significant extent, change the scale, size or degree of the existing development.