

# Sydney Regional Environmental Plan No 23—Sydney and Middle Harbours (1990 EPI 494)

[1990-494]



New South Wales

## Status Information

### Currency of version

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The plan was repealed by cl 8 (b) of the [Sydney Regional Environmental Plan \(Sydney Harbour Catchment\) 2005 \(590\)](#) (GG No 119 of 28.9.2005, p 7598) with effect from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

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New South Wales

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# Sydney Regional Environmental Plan No 23—Sydney and Middle Harbours (1990 EPI 494)



New South Wales

## Part 1 Preliminary

### 1 Name of plan

This plan may be cited as *Sydney Regional Environmental Plan No 23—Sydney and Middle Harbours*.

### 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, islands and foreshores of Sydney and Middle Harbours, and
- (b) to establish an efficient and effective development control system for the Harbours and their foreshores and islands, and
- (c) to ensure that the Harbours and their foreshores and islands 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 appropriate facilities are provided for water based and foreshore recreational activities which are compatible with the commercial role of the Port of Sydney and give due regard to environmental and cultural attributes, and
- (g) to encourage balanced multiple use of the Harbours and their foreshores and islands, in a manner that is consistent with their environmental and cultural

attributes and the commercial functions of the Port of Sydney, and

- (h) to ensure that consistent guidelines are applied to the assessment of development of the Harbours and their foreshores and islands, and
- (i) to encourage an appreciation of the Harbours and their foreshores and islands as areas of outstanding heritage significance and, in particular, the significance of individual heritage items within those areas, and
- (j) to encourage an appreciation of the remaining natural foreshores around the Harbours.

(2) The specific aims of this plan are:

- (a) in relation to commercial, governmental and administrative uses and activities:
  - (i) to maintain the role of the Port of Sydney in a manner that is consistent with the environmental and cultural attributes of the land to which this plan applies, and
  - (ii) to establish an appropriate balance between commercial, governmental and administrative activities and recreational activities, and
- (b) 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 Harbours and their foreshores, and
- (c) in relation to open space and recreation:
  - (i) to recognise the fundamental role that existing foreshore open space areas 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
- (d) in relation to boating facilities:
  - (i) to recognise the value of the Harbours 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
- (e) 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 Harbours and to provide a healthy habitat for marine and bird life and for water based recreational pursuits, and
  - (iii) to more carefully identify the biological resources of the inter-tidal and sub-tidal zones, and
  - (iv) to preserve known areas of biological conservation value in the inter-tidal and sub-tidal zones, and
- (f) in relation to the visual environment:
  - (i) to protect and enhance the landscape and special scenic qualities of the Harbours, and
  - (ii) to ensure that adequate consideration is given to the visual impact of development, and
  - (iii) to preserve the natural foreshores of the Harbours and to ensure development does not detract from their natural character, and
- (g) in relation to the environmental heritage:
  - (i) to conserve and enhance the environmental heritage of the Harbours and their foreshores and islands, including their underwater archaeological resources, and
  - (ii) to encourage an appreciation of the role of the Harbours 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.
- (2) In addition, Part 4 of this plan extends to any land upon which there is a heritage item (within the meaning of that Part) even if the land is not identified in subclause (1).

### 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.
- (3) Clause 73 of [North Sydney Local Environmental Plan 1989](#) has effect despite the provisions of Part 4 of this Plan.

### 5 Definitions

- (1) In this plan:

**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.

**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 [Sydney Regional Environmental Plan No 22—Parramatta River](#).

**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.

**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.

**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 authority** has the same meaning as in the Act.

**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.

**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 23—Sydney and Middle Harbours (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** means those parts of Sydney Harbour and Middle Harbour to which this plan applies within Zone No W1, W3, W4 or W5.

(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 10 is a reference to land shown on the Map in the manner indicated in clause 9 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, 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 this 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**

The functions of the Committee 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
- (b) to exercise any other functions conferred on it by this plan.

#### **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 of Planning 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 of Planning 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 2 General restrictions on development of land**

### **9 Zones indicated on the Map**

- (1) For the purposes of this plan, land to which this plan applies shall be within a zone specified hereunder if the land is shown on the Map in the manner specified hereunder in relation to that zone:
  - Zone No W1—General Waterways—edged heavy black and lettered “General Waterways” on the Map.
  - Zone No W3—Environmental Protection—edged heavy black and hatched on the Map.
  - Zone No W4—Naval Waters—edged heavy black and lettered “Naval” on the Map.
  - Zone No W5—Aviation—edged heavy black and lettered “Aviation” on the Map.
  - Zone No 8 (a)—National Parks—edged heavy black and lettered “National Parks” on the Map.
- (2) A boundary or part of a boundary of a zone shown on the Map as following the water’s edge is taken to follow the mean high water mark.

## **10 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 shall 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 W1 General Waterways**

#### **1 Objectives of zone**

The objective of this zone is to permit waterway activities and facilities and land/water interface development which:

- (a) maintains or enhances important, natural and visual attributes of the Harbours, and
- (b) is compatible with the existing or planned future character of the waterway and adjoining foreshores.

#### **2 Without development consent**

Aids to navigation; maintenance dredging; single moorings (other than single moorings that form part of a marina or large marina).

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

Any purpose other than a purpose included in item 2 or 4.

#### **4 Prohibited**

Large marinas.

### **Zone No W3 Environmental Protection**

#### **1 Objectives of zone**

The objectives of this zone are:

- (a) to identify and protect areas of the waterway having significant natural or cultural conservation value, and
- (b) to permit waterway activities and facilities while ensuring that development does not adversely impact on any significant natural or cultural conservation value of adjoining land.

#### **2 Without development consent**

Aids to navigation; flora and fauna enclosures.

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

Any purpose other than a purpose included in item 2 or 4.

#### **4 Prohibited**

Aviation facilities; boat lifts; boat sheds; boating industry facilities; charter and tourism boating facilities; commercial port facilities; houseboats; marinas and large marinas; reclamation; swimming pools; water based restaurants and entertainment facilities.

### **Zone No W4 Naval Waters**

#### **1 Objectives of zone**

The objectives of this zone are:

- (a) to identify the areas of the waterway required for naval activities, and
- (b) to ensure that other activities and facilities are compatible with naval uses.

#### **2 Without development consent**

Aids to navigation; maintenance dredging; uses or activities conducted by the Royal Australian Navy.

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

Any purpose other than a purpose included in item 2 or 4.

### **4 Prohibited**

Any use or activity prohibited under the *Control of Naval Waters Act 1918* of the Commonwealth; large marinas.

## **Zone No W5 Aviation**

### **1 Objectives of zone**

The objectives of this zone are:

- (a) to identify the area of the waterway used for marine aviation activities, and
- (b) to ensure that aviation activities safely co-exist with other activities and facilities.

### **2 Without development consent**

Aids to navigation; maintenance dredging; single moorings (other than single moorings that form part of a marina or large marina).

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

Any purpose other than a purpose included in item 2 or 4.

### **4 Prohibited**

Large marinas.

## **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 Clark Island, Fort Denison, Goat Island and Shark

Island consistent with their natural attributes, cultural heritage and the facilities available, and

- (d) to facilitate development on those islands 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 3 Special provisions**

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

- (1) The consent authority shall not grant consent to development listed in Schedule 4, 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 4 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 4.
- (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.



## **12 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.

## **13 Referral of proposed actions by the National Parks and Wildlife Service**

- (1) In the preparation of any plan of management for land reserved or dedicated under the *National Parks and Wildlife Act 1974*, comprising land having frontage to the waterway, the Director of National Parks and Wildlife may refer the plan to the Committee.
- (2) The Director of National Parks and Wildlife should have regard to any submission received from the Committee within 30 days after the date on which the plan was forwarded to the Committee.
- (3), (4) (Repealed)

### **13A 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 shall be in accordance with Part 3 of the *Environmental Planning and Assessment Regulation 1980* which shall 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.

**13B Referral of development proposals which do not require development consent**

- (1) This clause applies to the following development:
- (a) development listed in Schedule 4, 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 4, 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.

#### **14 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.

#### **15 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.

#### **16 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.

#### **17 Development within 20 metres of boundary of Zone No W3**

Notwithstanding any other provision of this plan, a consent authority may grant consent to the development of land which is within 20 metres of the boundary of Zone No W3 and another zone for a purpose for which development may be carried out in either Zone No W3 or the adjoining zone.

#### **18 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 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 vessels capable of being accommodated within the development,
- (j) the effect of the development on any conservation area or on any building, work, relic, tree or place that is a heritage item of significance to the locality and the effect on its site and in its vicinity,
- (k) (Repealed)
- (l) the Australian Standard—AS 3962-1991—*Guidelines for design of marinas*,
- (m) (Repealed)
- (n) any other relevant plan of management, urban design or other development control guidelines that apply to Sydney and Middle Harbours and their foreshores and which have been notified and provided to the consent authority by a public authority,
- (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 foreshores 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 *Sydney and Middle Harbours—Design and Management Guidelines* a copy of which is available at the Head Office of the Department.

## **19 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.

## 20 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 Act 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.

## Part 4 Heritage provisions

### 21 Definitions

In this Part:

**alter**, in relation to a heritage item that is a building, means:

- (a) make structural changes to the outside of the building, or
- (b) make non-structural changes to the detail, fabric, finish or appearance of the outside of the building, other than non-structural changes due to the maintenance of the existing detail, fabric, finish or appearance of the outside of the building.

**conservation** includes preservation, protection, restoration and enhancement.

**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** of a heritage item means the damaging, defacing, destruction, pulling down or removal of the heritage item, in whole or in part.

**floor space ratio**, in relation to a building, means the ratio of the gross floor area of the building to the area of the site on which the building is, or is proposed to be, erected.

**gross floor area** means the sum of the areas of each floor of a building where the area of each floor is taken to be the area within the outer face of the external enclosing walls as measured at a height of 1 400 millimetres above each floor level, excluding the

following:

- (a) columns, fin walls, shade devices, awnings and any other elements, projections or works outside the general lines of the outer face of the external wall,
- (b) lift towers, cooling towers, machinery and plant rooms and ancillary storage space and air-conditioning ducts,
- (c) car-parking needed to meet the requirements of the consent authority and any internal access to that car-parking,
- (d) space for the loading and unloading of goods,
- (e) internal public arcades and thoroughfares, terraces and balconies with outer walls less than 1 400 millimetres high.

**heritage item** means a building, work, relic, tree or place described in Schedule 5. References to local government areas in that Schedule do not form part of the Schedule but are intended only to assist identification of the items.

**heritage significance** means historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance.

**relic** means any deposit, object or material evidence relating to:

- (a) the use or settlement of the land to which this plan applies, not being Aboriginal habitation, which is more than 50 years old, or
- (b) Aboriginal habitation of the land to which this plan applies commencing before and continuing after its occupation by persons of European extraction, including human remains.

## 22 Development control—heritage items

- (1) A person shall not, in respect of a building, work, relic, tree or place that is a heritage item:
  - (a) demolish or alter the building or work,
  - (b) damage or move the relic,
  - (c) excavate for the purpose of exposing the relic,
  - (d) damage or despoil the place or tree,
  - (e) erect a building on, or subdivide, land on which the building, work or relic is situated or land which comprises the place, or
  - (f) damage any tree on land on which the building, work or relic is situated or which comprises the place,

except with the consent of the consent authority.

- (2) The consent authority must not grant consent to a development application required by subclause (1) unless it has taken into consideration the extent to which the carrying out of the proposed development would affect the heritage significance of the item and any stylistic or horticultural features of its setting.
- (3) The consent authority may decline to grant consent to a development application required by this clause until it has considered a conservation plan that will enable it to consider fully the heritage significance of the item and the impact of the proposed development on the significance of the item and its setting.
- (4) This clause does not apply to land reserved as a national park under the *National Parks and Wildlife Act 1974*.

### **23 Development in the vicinity of heritage items**

The consent authority must not grant consent to an application to carry out development on land in the vicinity of a heritage item or land on which there is a heritage item unless it has made an assessment of the effect the carrying out of that development will have on the heritage significance of the item and its setting.

### **24 Heritage advertisements and notifications**

The provisions of sections 84, 85, 86, 87 (1) and 90 of the Act apply to and in respect of development which consists of or includes the demolition of a heritage item in the same way as those provisions apply to and in respect of designated development.

### **25 Demolition of heritage items**

Before granting consent to an application for consent to carry out development which includes the demolition of a heritage item, the consent authority must seek the views of the Heritage Council of New South Wales on the proposed development and consider any comments of the Heritage Council received within 30 days of the day on which notice of the proposed development was given to the Heritage Council.

### **26 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.

### **27 Conservation incentives**

- (1) Nothing in this plan or in any other environmental planning instrument prevents the

consent authority from granting consent to the use, for any purpose, of a building, work or structure that is a heritage item or the land on which the building, work or structure is erected if it is satisfied that:

- (a) the proposed use would have little or no adverse effect on the amenity of land in the vicinity of the item, and
- (b) the conservation of the building, work or structure would be assisted by the consent authority's granting consent.

(2) When considering an application for consent to erect a building on land on which a building, work or structure which is a heritage item is situated, the consent authority may:

- (a) for the purpose of determining the floor space ratio, and
- (b) for the purpose of determining the number of parking spaces to be provided on the site,

exclude from its calculation of the gross floor area of the buildings erected on the land the floor area of the heritage item, but only if the consent authority is satisfied that the conservation of the building, work or structure depends upon the consent authority's making that exclusion.

## **28 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, the consent authority shall not grant consent to the application unless:

- (a) it has assessed whether the item or its site 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,
- (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 a relic (within the meaning of this Part) relating to Aboriginal habitation, 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*.



## **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 the 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 Development to be referred to the Committee**

(Clauses 11 (1); 13B (1))

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) water recreational facilities,
- (v) wharves, jetties, pontoons,
- (w) 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 buildings 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.

## **Schedule 5 Heritage items**

(Clause 21)

### **City of Sydney Area**

Ferry wharves—Alfred Street, Circular Quay

Man O'War Steps—Farm Cove Crescent

The Andrew Charlton Pool—Mrs. Macquarie's Road

Site of Robinson's Baths—Mrs. Macquarie's Road

Woolloomooloo Deep Sea Wharves Nos 6, 7, 8, 9 and 11 and Cargo Sheds at Cowper Wharf Road and Lincoln Crescent, Woolloomooloo, and the land and the waterway between Wharf 11 and the other Wharves

### **Ku-ring-gai Council Area**

Remains of Roseville Baths—99 Babbage Road, Roseville

Remains of Old Roseville Bridge—Babbage Road, Roseville

Site of Echo Point Farm—Echo Point Park, Babbage Road, Roseville

### **Lane Cove Council Area**

Greenwich Baths—Albert Street, Greenwich

Remains of Greenwich Point Wharf—21 George Street, Greenwich

Electricity tunnel—foreshore Manns Street, Greenwich

Boat sheds and slips—O'Connell and Albert Streets, Greenwich

### **Leichhardt Council Area**

Thames Street Wharf/Jetty—Thames Street, Balmain

Waterview workshops—37 Nicholson Street, Balmain

Remains of Morts Dock—foreshore of park, Balmain

Site and remains of ferry wharf—Yeend Street, Balmain

Urban Transit Authority Ferry Maintenance Depot—Alexander and Waterview Streets, Balmain

Site of Rowntree's Floating Dock—Hart Street and The Avenue, Balmain

Fenwick and Co. Tug Depot—2 to 8 Weston Street, Balmain

Stannard Bros. Launch Service Depot—19 Wharf Road, Balmain

Remains of Former Tasmanian Ferry Terminal—Yeend Street, Balmain

Tidal Pool—13 Simmons Street, Balmain

Brown Bros. Marina Pty Ltd—7 Alexander Street, Balmain

Site of Darling Street Wharf—Darling Street, Balmain (currently occupied by rebuilt wharves)

Site of the Jubilee Floating Dock—Datchett Street, Balmain

### **Manly Council Area**

Manly Wharf—The Esplanade, Manly

Obelisk, North Head—North Head Scenic Drive, North Head

Remains of outer North Head searchlights—North Head Scenic Drive, North Head

Site of Manly Cargo Wharf—East Esplanade, Manly (now Manly Fun Pier)

Remains of tram terminus and wharf for tram punt—Avona Crescent, Seaforth

Remains of vehicular ferry ramp—Avona Crescent, Seaforth

Remains of former bridge—Avona Crescent, Seaforth

Grotto Point lighthouse and remains of former wharf—Grotto Point, Balgowlah

Middle Harbour submarine syphon—Holmes Avenue, Clontarf

Manly Rowing and Sailing Club—East Esplanade, Manly

Little Manly Cove Pool—Stuart Street, Manly

Fairlight Pool—Lauderdale Avenue, Fairlight

Site and remains of Brightside cargo wharf—Stuart Street, Manly

Site and remains of harbourside pool and steps—Stuart Street, Manly

Remains of former Manly Gasworks—Little Manly Point, Carey Street, Manly

Remains of Manly public baths—East Esplanade, Manly

### **Mosman Council Area**

The Explosives Wharf—Spit Road, Mosman

Remains of former “Grant Wharf”—The Spit, Mosman

Remains of old ferry wharf—Musgrave Street, Mosman

Mosman Bay sea wall—Mosman Bay, Mosman

Navigation Light Tower—Bradley’s Head

Wharf remains—Bradley’s Head Road, Mosman

Stone wharf—Bradley’s Head, Mosman

Clifton Gardens Wharf and Pool—Clifton Gardens

Rosherville Lighthouse—Parrawi Road, Mosman

Mosman Rowing Club—Mosman Bay, Mosman

Site of Mosman Ferry Wharf—Avenue Road, Mosman

Athol Gardens Dance Hall and Wharf remains—National Park, Bradley’s Head

Stone wharf—National Park, Bradley’s Head

Sandstone Pillar—National Park, Bradley’s Head

**North Sydney Council Area**

Remains of North Shore Gas Company Works—High Street, Kirribilli

Cremorne Point lighthouse—Cremorne Point

Former Quarantine Station Boat Depot—Balls Head Drive, Waverton

Stone wharf—off Ross Street, Wollstonecraft Bay, Wollstonecraft

Lavender Bay waterfront relics—foreshore of Lavender Bay from McMahons Point to Harbourview Crescent, Lavender Bay

“Sydney Harbour Queen”—moored west of Luna Park, Milsons Point

Site and remains of Cremorne copper smelter—off Green Street, Cremorne

Woodleys Slipways and shipyard—waterfront southern extremity of Balls Head Road, Waverton

Site and remains of Port Jackson and Manly Steamship Company depot—Kurraba Point Reserve, Kurraba Road, Neutral Bay

Site of Cavill’s Baths—foreshore of Lavender Bay

Site of Old Cremorne Wharf—near Green Street, Cremorne (new ferry wharf built on site)

Site of former Jeffrey Street Ferry Wharf—(now occupied by modern wharf)—Jeffrey Street, Kirribilli

Site and remains of sewerage farm—Primrose Park, Cliff Avenue, Cammeray

Coal loader—Balls Head Drive, Waverton

Ship building and repair works—Munro Street, McMahons Point

Boatshed wharfage and slipway—23a King George Street, McMahons Point

Site and remains of Eaton’s Sawmill—Sawmill’s Reserve, French Street, McMahons Point

Former Dorman Long wharf—Luna Park, Milsons Point (Crystal Palace built on wharf)

Remains former Neptune Engineering Slipway—off King George Street, Lavender Bay, McMahons Point

Group of slipways—12, 14 and 26 West Crescent Street, McMahons Point

Site and remains of Blues Point vehicular ferry dock—Blues Point Road, McMahons Point

Site and remains of Blues Point Ferry wharves—Blues Point Road and Henry Lawson Drive, McMahons Point

Remains of Sydney ferries lay-up wharf—McMahons Point

Neutral Bay Wharf Group—Hayes Street, Neutral Bay

Remains sea wall—former railway marshalling yards, Milsons Point

Sea wall—boundary of Luna Park, Milsons Point

Remains of Milsons Point ferry wharf and tram turning circle—Olympic Drive, Milsons Point

Site and remains of Cremorne coal mine shaft—foreshores in front of No 5 Bromley Avenue, Cremorne

Remains of original Cremorne Point wharf—near Kareela Road, Cremorne

Sydney Amateur Sailing Club—off Green Street, Cremorne

Remains of Ben Boyd Whaling Station—Ben Boyd Road, Neutral Bay

Former Holmes slipway—11a Henry Lawson Drive, Neutral Bay

Lavender Bay ferry wharf—Walker Street, Kirribilli

Paton's slipways—Willoughby Street, Kirribilli

Careening Cove slipways—Bradley Avenue, Kirribilli

Site of McMahons Point ferry wharf—McMahons Point (now occupied by new wharf)

### **South Sydney City Council Area**

Site of Ithaca Road ferry wharf—Ithaca Road, Elizabeth Bay

### **Warringah Council Area**

Bantry Bay Public Powder Magazine—foreshores of Bantry Bay, Killarney Heights

Flat Rock Landing Place—Killarney Drive, Killarney Heights

Former Killarney Picnic Ground—partially Garigal National Park, partially Mosman Rowing Club, Killarney Drive, Killarney Heights

### **Willoughby Council Area**

Site and remains of wharfage—Fig Tree Point, Hallstrom Close, Northbridge

Remains of H.C. Press picnic ground and public baths—Cammeray Road, Castle Cove

Willis Road wharf—Willis Road, Castle Cove

Sailors Bay boatshed—Clive Park, Northbridge

Former Horsley's Boatshed and sea wall—217B Edinburgh Road (now a house)

Site and remains of early wharfage (now occupied by Castlecrag Marina)—Rockley Street, Castlecrag

Stone walls—297A Edinburgh Road, Castlecrag

Remains of Municipal Baths, structures and access steps—241 Edinburgh Road, Castlecrag

Stone walls, steps and baths—213 to 217B Edinburgh Road, Castlecrag

### **Woollahra Council Area**

Ferry pier—Military Road, Watsons Bay

West Parsley Bay obelisk—65 Fitzwilliam Road, Vaucluse

East Parsley Bay obelisk—between properties 36A and 38 The Crescent, Vaucluse

Eastern channel leading light (front)—80 Wentworth Road, Vaucluse

Eastern channel leading light (rear)—12 Wentworth Road, Vaucluse

Remains of bath house and site of jetty—Darling Point Road, Darling Point

Pilot station—Marine Parade and Salisbury Street, Watsons Bay

Green Point obelisk—off Pacific Street, Watsons Bay

Site of former Rose Bay Flying Boat Base—Lyne Park, Rose Bay

Watsons Bay Pool—Marine Parade, Watsons Bay

Remains of old Watsons Bay Pool—Marine Parade and Salisbury Street, Watsons Bay

Gladswood House private jetty—11 Gladswood Gardens, Double Bay

Remains of Vaucluse Point ferry wharf—83 Fitzwilliam Street, Vaucluse

Remains of Western Rose Bay ferry wharf—New South Head Road, Rose Bay

Group of remains of wharf, baths and waterfront relics—including former Tivoli Pier and former Thorne's (or Claremont) Wharf—Bayview Hill Road, Rose Bay

Camp Cove tide gauge—Cliff Street, Camp Cove

Parsley Bay Suspension Bridge—Parsley Bay, Vaucluse

Vaucluse Baths—68 Wentworth Road, Vaucluse

Site of Public Baths—Lyne Park, Rose Bay

Parsley Bay Ferry Wharf—The Crescent, Vaucluse

Former Nielson Wharf remains—Steel Point, Vaucluse

Parsley Bay Suspension Bridge—Parsley Bay, Vaucluse

Shark Beach promenade and amenities—Nielson Park, Steel Point, Vaucluse



Hermit Bay Wharf, slipway and landing—Vaucluse Road, Vaucluse

Site of wharf—Wingadal Place, Point Piper

Site of Village Point Wharf—Wharf Road, Watsons Bay

Site of Public Wharf—Bay Street, Double Bay (now occupied by new wharf)

**Other items**

Shark Island, Sydney Harbour

Clark Island, Sydney Harbour

Fort Denison, Sydney Harbour

Goat Island, Sydney Harbour including:

- Former Harbour Master's Residence
- Pathway from Magazine Precinct to Water Police Station Precinct
- Former Ordinance Magazine
- Former Laboratory (original Cooperage)
- Former Cooperage
- Wall, Gate and sentry post (entry to magazine area)
- Former Barracks
- Former Kitchen
- Andersons Couch
- Lime Kiln
- Barney's Cut
- Former Water Police Station

Navigation light tower—western channel (Georges Head), Sydney Harbour

Navigation light tower—eastern channel (Bottle and Glass Rocks), Sydney Harbour

Wreck of the "Itata" and wrecks of other unnamed vessels—Salt Pan Creek, Middle Harbour

Wreck of Maritime Services Board Hopper Barge—foreshore of Berrys Bay, Sydney Harbour

Navigation light tower—off Shark Island, Sydney Harbour