

# Sydney Regional Environmental Plan No 16—Walsh Bay (1989 EPI 351)

[1989-351]



New South Wales

## Status Information

### Currency of version

Repealed version for 26 November 2021 to 28 February 2022 (accessed 23 November 2024 at 9:47)

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—

- **Deemed SEPP**  
From 1 July 2009 this plan is taken to be a State environmental planning policy (see clause 120 of Schedule 6 to the [Environmental Planning and Assessment Act 1979](#)).
- **Repeal**  
This Policy was repealed by [State Environmental Planning Policy \(Precincts—Eastern Harbour City\) 2021 \(726\)](#), Sch 9, sec 9 with effect from 1.3.2022.

### 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 26 November 2021

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## Part 1 Preliminary

### 1 Name of plan

This plan may be cited as *Sydney Regional Environmental Plan No 16—Walsh Bay*.

### 2 Aims, objectives etc

This plan aims—

- (a) to allow an appropriate range of uses to encourage the adaptive re-use of existing structures while not required for commercial port uses,
- (b) to identify and protect the heritage significance of the area by establishing a conservation zone and providing appropriate controls for adaptive re-use, demolition and alteration,
- (c) to ensure that development is compatible with the scale and character of existing built structures in the area,
- (d) to control the use of the waterways between the wharves to ensure that any activities associated with any development are compatible with the commercial shipping and navigational requirements in Sydney Harbour,
- (e) to identify a consent authority for development approvals,
- (f) to identify matters to be considered when determining development applications,
- (g) to ensure the provision of public access to the waterfront, including the wharves, and
- (h) to ensure that development—
  - (i) provides appropriate parking facilities and traffic management which minimises impact on the amenity of the area, adjoining residential areas and the Sydney Cove Redevelopment Area,
  - (ii) does not adversely affect the arterial road network in the City of Sydney,

- (iii) preserves views to and from Sydney Harbour,
- (iv) is compatible with the adjacent existing residential community, and
- (v) provides a public transport system which can be integrated with the existing public transport services in the City of Sydney.

### 3 Land to which plan applies

This land applies to land within the City of Sydney and land within Sydney Harbour as shown edged heavy black on the map.

### 4-6 (Repealed)

### 7 Definitions

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.

**alter**, in relation to a building or work within the Walsh Bay Conservation Zone, means—

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

**commercial premises** means a building or place used as an office or for other business or commercial purposes, except—

- (a) a building or place elsewhere specifically defined (or used for a purpose elsewhere specifically defined) in this clause or in clause 4 of the *Environmental Planning and Assessment Model Provisions 1980*, or
- (b) a building or place used for the purpose of parking vehicles for fee or reward.

**demolition**, in relation to a building or work within the Walsh Bay Conservation Zone means the damaging, defacing, destruction, pulling down or removal of the building or work, in whole or in part.

**development** has the same meaning as in section 4 of the Act, and includes clearing of vegetation, cultivation, filling, excavation and dredging.

**dredging** means removal of material from the sea or harbour bed or the bed of a river by a dredge where the activity is part of the 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.

**floating restaurants or entertainment facilities** means any floating structure on the waterway used as a restaurant or for commercial entertainment, but does not include a boat or other vessel.

**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 structures used for the observation of flora and fauna and the maintenance of any such structure.

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

**marina** means a boat storage facility located on the waterway together with any maintenance, slipway or refuelling facilities on an adjoining area of land or the waterway.

**mean high water mark** means a height of 1.44 metres above the Zero of Fort Denison tide gauge.

**mooring facilities** means a single structure or series of buoys or other structures located in the waterway for the mooring or storage of vessels and which does not have maintenance, slipway or refuelling facilities on nearby land or a wharf but which has direct structural connection between a wharf and the waterway.

**relic** means any deposit, object or material evidence relating to the settlement (including aboriginal habitation) of the area covered by the plan which is 50 or more years old.

**Sydney Region** means the Sydney Region declared under section 4 (6) of the Act to be a region for the purposes of the Act.

**TfNSW** means Transport for NSW constituted under the [Transport Administration Act 1988](#).

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

**the map** means the map marked *Sydney Regional Environmental Plan No 16—Walsh Bay* deposited in the office of the Department of Planning.

**the waterway** means that part of Sydney Harbour to which this plan applies which is within Zone 2.

**zone** means land shown on the map in some distinctive manner for the purpose of indicating the restrictions imposed by this plan on the development of the land.

## 8 Adoption of Model Provisions

The [Environmental Planning and Assessment Model Provisions 1980](#) (except the definitions of **commercial premises**, **tourist facilities** and **transport terminal** in clause 4 (1)) are adopted for the purposes of this plan and any reference in those provision to a local environmental plan shall, for the purposes of this plan, be read as a

reference to a regional environmental plan.

## **9 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 1901*, 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 1901* 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 provision of the *Sydney Harbour Trust Act 1901* 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).

## **10 Consent authority**

The Council of the City of Sydney is the consent authority for the purposes of this plan, except as provided by the Act or the [City of Sydney Act 1988](#).

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

### **11 Zones indicated on the map**

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 1—Walsh Bay Conservation Zone—edged black and marked Zone 1.

Zone 2—Walsh Bay Waterway Zone—edged black and marked Zone 2.

### **12 Zone objectives and development control table**

- (1) The objectives of a zone are set out in the Table to this clause under the heading “Objective 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,
  - (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 of this plan and the objectives of the zone within which the development is proposed to be carried out.

Table

## **Zone 1 Walsh Bay Conservation Zone**

### **1 Objectives of zone**

The objectives of this zone are—

- (a) to allow an appropriate range of uses to encourage the adaptive re-use of existing structures while not required for commercial port uses,
- (b) to ensure that development is consistent with the heritage significance, the scale, the built form and the materials of existing structures in the zone and adjoining areas,
- (c) to ensure that development is compatible with and does not detract from the financial, commercial and retail functions of the existing city central business district and the Sydney Cove Redevelopment Area, and
- (d) to ensure that development is compatible with and does not adversely impact on the residential amenity and function of the adjoining areas.

### **2 Without development consent**

Nil.

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

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

### **4 Prohibited**

Bus depots, bus stations, car repair stations, gas holders, generating works, helipads, heliports, industries (other than home industries and light industries), institutions, junk yards, liquid fuel depots, marinas, mines,



roadside stalls, road transport terminals, sawmills.

## **Zone 2 Walsh Bay Waterway Zone**

### **1 Objectives of zone**

The objectives of this zone are—

- (a) to control the use of the waterway between the wharves to ensure that any activities associated with any development are compatible with the commercial shipping and navigational requirements in Sydney Harbour,
- (b) to ensure that the Harbour and Harbour foreshore is recognised as a community asset, and
- (c) to limit mooring facilities for private vessels used by the lessees and tenants of property in Zone 1.

### **2 Without development consent**

Aids to navigation, maintenance dredging, maintenance of mooring facilities, mooring of vessels owned by TfNSW.

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

Boating or waterway access stairs, dredging, emergency vehicle accessways, floating restaurants or entertainment facilities, flora and fauna enclosures, mooring facilities, mooring of fishing and charter vessels, pontoons, public walkways, utility installations (other than gas holders and generating works).

### **4 Prohibited**

Any purpose other than a purpose included in item 2 or 3.

## **12A Exceptions to development standards**

- (1) The objectives of this clause are as follows—
  - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
  - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this

or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—
  - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless—
  - (a) the consent authority is satisfied that—
    - (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and
    - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
  - (b) the concurrence of the Planning Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—
  - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
  - (b) the public benefit of maintaining the development standard, and
  - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.
- (6) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant’s written request referred to in subclause (3).
- (7) This clause does not allow development consent to be granted for development that would contravene any of the following—
  - (a) a development standard for complying development,

- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* applies or for the land on which such a building is situated.

## **12B Conversion of fire alarms**

- (1) This clause applies to a fire alarm system that can be monitored by Fire and Rescue NSW or by a private service provider.
- (2) The following development may be carried out, but only with development consent—
  - (a) converting a fire alarm system from connection with the alarm monitoring system of Fire and Rescue NSW to connection with the alarm monitoring system of a private service provider,
  - (b) converting a fire alarm system from connection with the alarm monitoring system of a private service provider to connection with the alarm monitoring system of another private service provider,
  - (c) converting a fire alarm system from connection with the alarm monitoring system of a private service provider to connection with a different alarm monitoring system of the same private service provider.
- (3) Development to which subclause (2) applies is complying development if it consists only of—
  - (a) internal alterations to a building, or
  - (b) internal alterations to a building together with the mounting of an antenna, and any support structure, on an external wall or roof of a building so as to occupy a space of not more than 450mm × 100mm × 100mm.
- (4) A complying development certificate for any such complying development is subject to a condition that any building work may only be carried out between 7.00 am and 6.00 pm on Monday to Friday and between 7.00 am and 5.00 pm on Saturday, and must not be carried out on a Sunday or a public holiday.
- (5) In this clause—

***private service provider*** means a person or body that has entered into an agreement that is in force with Fire and Rescue NSW to monitor fire alarm systems.

## **Part 3 Special provisions**

### **13 Walsh Bay Conservation Zone**

- (1) A person shall not, in respect of the Walsh Bay Conservation Zone—

- (a) demolish or alter a building or work within the Zone,
- (b) damage or move a relic, including excavation for the purpose of exposing or removing a relic, within the Zone,
- (c) damage or despoil a place within the Zone,
- (d) erect a building on or subdivide land within the Zone, or
- (e) damage any tree within the Zone,

except with the consent of the consent authority.

- (2) The consent authority shall not grant consent to an application under 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 Walsh Bay Conservation Zone.

#### **14 Advertising of applications**

- (1) Except as provided by subclause (2), the provisions of sections 84, 85, 86, 87 (1) and 90 of the Act apply to and in respect of—

- (a) the demolition of a building or work within the Walsh Bay Conservation Zone, and
- (b) development for any purpose,

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

- (2) Subclause (1) does not apply to—

- (a) the partial demolition of a building or work within the Walsh Bay Conservation Zone 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 building or work, or
- (b) development which in the opinion of the consent authority, is of a minor nature and is consistent with the heritage significance of any building or work within the Walsh Bay Conservation Zone.

#### **15 Development control code**

- (1) If the consent authority considers it necessary or desirable to provide more detailed provisions than are contained in this plan in respect of a part or parts of the land to which this plan applies, the consent authority may, in accordance with this clause, prepare or cause to be prepared a development control code.

- (2) The format, structure, subject-matter and procedures for the preparation, public

exhibition, approval, amendment and repeal of a development control code shall be in accordance with the provisions of 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 development control code,
  - (b) the reference to a local environmental plan were a reference to this plan, and
  - (c) a reference to the council were a reference to the consent authority.
- (3) A development control code shall promote the general and specific aims of this plan, and shall generally conform to the provisions of this plan.
- (4) A development control code shall be available for public inspection, without charge, at the offices of the Department of Planning and the Council of the City of Sydney during ordinary office hours.
- (5) The consent authority shall not grant consent to an application to carry out development on land to which this plan applies to which a development control code applies unless it has taken provisions of the code into consideration.

## **16 Matters for consideration**

In determining a development application, the consent authority shall take into consideration—

- (a) (Repealed)
- (b) any conditions imposed by the Heritage Council under section 63 of the *Heritage Act 1977*,
- (c) in relation to any development within Zone 2, the requirements of TfNSW concerning the impact of the development on commercial shipping, recreational boating and navigational issues on Sydney Harbour,
- (d) the “Walsh Bay Redevelopment Conservation Guidelines dated February 1988” prepared for the Maritime Services Board and appended to the “Walsh Bay Regional Environmental Study 1989”,
- (e) Any urban design guidelines designated as such and prepared by or on behalf of the consent authority in relation to land to which this plan applies and current on the date the development application is made,
- (f) the “Walsh Bay Regional Environmental Study 1989” prepared by the Director of Planning and held in the Department of Planning,
- (g) the “Central Sydney Strategy 1988” published jointly by the Council of the City of Sydney and the Department of Planning,

- (h) the adequacy of public access to the wharf aprons and to the foreshore,
- (i) where the development is or provides a public transport facility, whether that facility integrates with existing public transport services in the City of Sydney and provides an adequate level of service,
- (j) whether the development affects the continued use of wharf No 4 or 5 as a theatre complex and certain sites for TfNSW purposes,
- (k) any plan which indicates the location of, or likely location of, any archaeological material prepared by the Heritage Council, and
- (l) whether the development generates traffic which adversely impacts on the amenity of the area, adjoining residential areas and the Sydney Cove Redevelopment Area.

### **17 Commercial premises**

- (1) This clause applies to land within Zone 1.
- (2) The consent authority may grant consent to an application to develop land for the purposes of commercial premises if—
  - (a) the development would result in a floor area used for the purposes of commercial premises in Zone 1 not greater than 30 per cent of the total floor area used for any purpose within that Zone at that time, and
  - (b) in the opinion of the consent authority, the impact of traffic likely to be generated by the development does not have a significant adverse impact on the local and arterial road network.

### **18 Designated development**

For the purposes of this plan, mooring facilities are designated development.

### **19 Preliminary development and temporary uses of land**

Regardless of any other provision of this plan, the consent authority may grant consent for the carrying out of—

- (a) any temporary development within Zone 2 that does not involve the erection of permanent structures or carrying out of works of a permanent nature, and the purpose of which is to facilitate the carrying out of any other development that may be carried out on land within or adjacent to Zone 2 with or without development consent, or
- (b) any development, other than designated development, within Zone 1 or 2, if it is carried out for a period of not more than 28 days (whether consecutive or non-consecutive) in any one year.