

ITEM 11. MILLERS POINT HERITAGE CONSERVATION AREA - AMENDMENT TO PLANNING CONTROLS**FILE NO: S122551****SUMMARY**

Millers Point, located at the north western edge of Central Sydney, brings a unique character and amenity to the door step of Australia's premium place of economic and tourist activity, Sydney CBD.

The NSW Government's announcement to sell 293 government properties, including heritage listed items in Millers Point, has prompted a review of the primary planning controls. This is to ensure the national significance of the properties is protected as they move into private ownership.

The *Sydney Local Environmental Plan 2012* (Sydney LEP) and *Sydney Development Control Plan 2012* (Sydney DCP) came into operation on 14 December 2012. The planning controls are a translation of previous controls into a single local environmental plan and development control plan in the NSW Government's standard format. One of the key aims of Sydney LEP is to conserve the heritage significance of heritage items and heritage conservation areas. The Millers Point planning controls were not reviewed or refined as part of the City Plan process because no change was envisaged to the properties under government ownership.

The City regularly reviews its planning controls to ensure Council's environmental, social and economic aims for development can be achieved.

The City has recently commenced a review of its heritage conservation areas, with the aim of conserving their heritage significance through appropriate planning controls. This review is timely, as it is almost 10 years since the City started the previous heritage reviews and studies which informed the current Sydney LEP and Sydney DCP. The Millers Point Heritage Conservation Area is included in the review and is being brought forward because of the start of the sale of NSW Government properties.

The NSW Government and the Council have recognised the very high heritage significance of Millers Point by listing the area and almost all properties within it on the State and local heritage lists.

In 2003, Millers Point Heritage Conservation Area became one of the first areas to be entirely listed on the State Heritage Register. The listing recognises its high degree of heritage significance and value to the people of NSW and the local area. Millers Point Heritage Conservation Area and the majority of individual buildings within the conservation area are also heritage listed under Sydney LEP. Individually listed items are also listed on the State Heritage Register.

The State Heritage Register's Statement of Significance for the conservation area states:

"Millers Point is an intact residential and maritime precinct of outstanding state and national significance. It contains buildings and civic spaces dating from the 1830s and is an important example of nineteenth and early twentieth century adaptation of the landscape. The precinct has changed little since the 1930s."

The full Statements of Significance for the listings of Millers Point are at Attachment C.

On 19 March 2014, the NSW Government announced the sale of 293 government owned properties, including heritage listed items in Millers Point. The NSW Heritage Council, in a letter dated 8 July 2014, requested the City urgently review the planning controls for Millers Point in response to the sale.

The planning controls for the Millers Point Heritage Conservation Area are the translation of previous controls under *Sydney Local Environmental Plan 2005*. The maximum floor space ratio is 2:1 and maximum height is 9m. These controls are inconsistent with heritage conservation controls. This Planning Proposal will address this by prioritising the heritage significance of the area and heritage items to deliver Council's objectives for the conservation area.

The Planning Proposal seeks to amend Sydney LEP so that a building's existing height and floor space ratio will be the height and FSR control. In addition, the Planning Proposal seeks to introduce a clause that will require any height and floor space increase for a heritage item to be consistent with an endorsed conservation management plan. This unique approach is appropriate for the Millers Point Heritage Conservation Area only due to its integrity and significance recognised by three separate heritage listings.

The City will be able to consider minor increases in height and floor space under clause 4.6 of Sydney LEP which allow variations to development standards. Conservation management plans will also be required to be considered in the assessment of a proposal.

Statutory development approval is required to undertake most work on Millers Point properties. The City of Sydney Council and the NSW Heritage Council are the primary consent authorities under the *Environmental Planning and Assessment Act 1979* and the *Heritage Act 1977*. Development applications for works will continue to be undertaken under the same process.

NSW Department of Family and Community Services commissioned heritage professionals to prepare conservation management plans for each heritage listed property. A conservation management plan will be provided with the sale documents to ensure prospective buyers are fully aware of their roles and responsibilities and the limitations on future development of the heritage properties. The NSW Heritage Council has recently endorsed the conservation management plan for Milton Terrace 1-19 Lower Fort Street, Millers Point properties. This is timely, with the recent sale of [REDACTED] a property in Lower Fort Street.

This unique approach is consistent with the very high level of heritage significance recognised at the state and local level and very limited alterations to the original building fabric. It will align the development standards with the intent of the heritage listings.

This report recommends that the Central Sydney Planning Committee approve the Planning Proposal to amend Sydney LEP at Attachment A for submission to the Department of Planning and Environment for Gateway Determination. Approval is also sought to publicly exhibit the Planning Proposal in accordance with the Gateway Determination, concurrently with a draft DCP to amend the Millers Point Locality Statement and the Building Contributions Map in Sydney DCP as shown at Attachment B.

The new controls will be a matter for consideration once the public exhibition period commences.

RECOMMENDATION

It is resolved that:

- (A) the Central Sydney Planning Committee approve the *Planning Proposal: Sydney Local Environmental Plan 2012 - Millers Point Amendment*, shown at Attachment A to the subject report, for submission to the Minister for Planning under Section 57(2) of the *Environmental Planning and Assessment Act 1979* with a request for a Gateway Determination;
- (B) the Central Sydney Planning Committee approve the *Planning Proposal: Sydney Local Environmental Plan 2012 – Millers Point Amendment* for public authority consultation and public exhibition in accordance with any conditions imposed under the Gateway Determination;
- (C) the Central Sydney Planning Committee note the recommendation to Council's Planning and Development Committee on 28 October 2014 that Council seek authority from the Secretary of the Department of Planning and Environment to exercise the delegation of the Minister for Planning of all of her functions under section 59 of the *Environmental Planning and Assessment Act 1979* to make the local environmental plan;
- (D) the Central Sydney Planning Committee note the recommendation to Council's Planning and Development Committee on 28 October 2014 that Council approve the *Draft Sydney Development Control Plan 2012 – Millers Point Amendment*, shown at Attachment B to the subject report, for public authority consultation and public exhibition in parallel with the Planning Proposal;
- (E) the Central Sydney Planning Committee delegate authority to the Chief Executive Officer to make minor changes to the *Planning Proposal: Sydney Local Environmental Plan 2012 – Millers Point Amendment*, following receipt of the Gateway determination to prepare for public exhibition; and
- (F) the Central Sydney Planning Committee note the recommendation to Council's Planning and Development Committee on 28 October 2014 that Council delegate authority to the Chief Executive Officer to make any minor changes to the *Draft Sydney Development Control Plan 2012 – Millers Point Amendment* following receipt of the Gateway Determination.

ATTACHMENTS

- Attachment A:** *Planning Proposal: Sydney Local Environmental Plan 2012 – Millers Point Amendment*
- Attachment B:** *Draft Sydney Development Control Plan 2012 - Millers Point Amendment*
- Attachment C:** Statements of Significance for Millers Point
- Attachment D:** Letter dated 8 July 2014 from the NSW Heritage Council

BACKGROUND

1. The *Sydney Local Environmental Plan 2012* (Sydney LEP) and *Sydney Development Control Plan 2012* (Sydney DCP) came into operation on 14 December 2012. The planning controls are a translation of previous controls into a single local environmental plan and development control plan in the NSW Government's standard format. A key aim of Sydney LEP is to conserve the heritage significance of heritage items and heritage conservation areas.
2. The City regularly reviews its planning controls to ensure Council's environmental, social and economic aims for development can be achieved. The review of planning controls is consistent with objective 9.4.1 of *Sustainable Sydney 2030* to regularly review and streamline development controls.
3. The City has recently commenced a review of its heritage conservation areas with the aim of conserving their heritage significance through appropriate planning controls. This review is timely as it is almost 10 years since the City started the previous heritage reviews and studies which informed the current Sydney LEP and Sydney DCP. Changes to the height and floor space ratio controls for the conservation area are being brought forward after the start of the sale of government owned properties.
4. This report recommends that the Central Sydney Planning Committee amend key planning controls applying to the Millers Point conservation area and submit the *Planning Proposal: Sydney Local Environmental Plan 2012 – Millers Point Amendment* (Planning Proposal) to the Minister for Planning to request a Gateway Determination to amend Sydney LEP. An amendment is also proposed to the Millers Point locality statement and Building Contribution map in Sydney DCP. The purpose of this amendment is to ensure the area and items are conserved.
5. Millers Point Heritage Conservation Area is located at the north western edge of Central Sydney, between The Rocks and Barangaroo. The Millers Point Heritage Conservation Area, shown in Figure 1, is of local, state and national heritage significance.
6. Three conservation area listings apply to Millers Point. The Millers Point Heritage Conservation Area is listed under Sydney LEP. The area is also listed twice on the State Heritage Register and individual items are listed on the State Heritage Register and Sydney LEP. This unprecedented degree of listing, unique to Millers Point, reflects the high significance of the conservation area.
7. Each listing recognises the conservation area's high level of heritage significance and value to the people of NSW and the local area. The State Heritage Register's Statement of Significance for Millers Point states that the area:

“is an intact residential and maritime precinct of outstanding state and national significance. It contains buildings and civic spaces dating from the 1830s and is an important example of nineteenth and early twentieth century adaptation of the landscape. The precinct has changed little since the 1930s.”

8. The Millers Point Heritage Conservation Area is also significant for its development as a Government corporate town, probably one of the first such developments in Australia. It is significant for its complete and highly original fabric. Every decade between 1820 and 1930 is strongly represented in the fabric and intact residential areas. The full statements of significance and boundaries from the three conservation area listings of each are included at Attachment C.
9. A number of background studies have been prepared for NSW Government owned properties at Millers Point which have all said the area has a very high level of significance. The Conservation Management Guidelines (The Guideline) for Millers Point was developed by the NSW Government Architects Office in 2001 and revised in 2007. The Guideline describes Millers Point as a *“rare urban precinct and an important remnant of the early port of Sydney with much of it dating from the late 18th Century, which has remained relatively unchanged since the 1930s; conserved primarily due to public ownership of the area and it retains a high degree of authenticity and integrity.”*
10. In 2006, the City commissioned consultants Paul Davies Pty Ltd to undertake the Millers Point and Walsh Bay Heritage Review to inform the heritage conservation area boundary for the new LEP. This review recognised its outstanding heritage significance for the City of Sydney and New South Wales. The Review recommended that Millers Point be listed as a heritage conservation area. The recommendations found that the whole area is of very high heritage value and should be retained and managed with controls that conserve the heritage significance of the area.

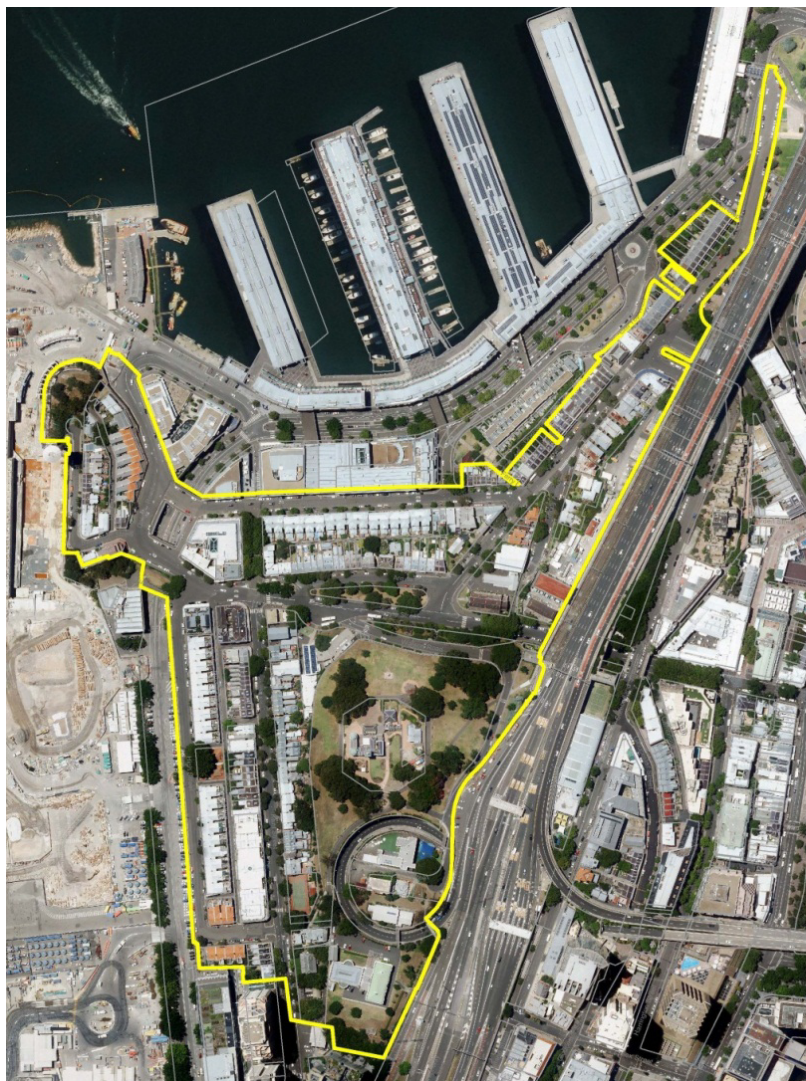


Figure 1: Millers Point Heritage Conservation Area boundary under Sydney LEP

Sale of Government Properties

11. Millers Point has a long history of government ownership. The area was resumed after the 1900 plague then developed with infrastructure and housing for the maritime industry and its workers. Since the early 1980s, the State Government departments responsible for housing have managed residential properties for social housing.
12. On 19 March 2014, the NSW Government announced the sale of 293 government owned properties, including heritage listed items in the Millers Point Heritage Conservation Area. NSW Family and Community Services has started to sell public housing assets. The sale of all properties is likely to occur within a two year period. All NSW Government owned properties in the Millers Point Heritage Conservation Area are shown in Figure 2 below.

13. The NSW Heritage Council wrote to the City requesting the urgent review of the planning controls for Millers Point under Sydney LEP and Sydney DCP to ensure future development maintains its heritage significance. A copy of this letter is provided at Attachment D. City staff have also met with NSW Department of Family and Community Services and Office of Environment and Heritage staff to discuss how the heritage significance of these properties should be protected.
14. Once properties are sold, the statutory means of conserving and managing the heritage significance of Millers Point will be through the NSW Heritage Act, 1977 provisions, the endorsed conservation management plans and the planning controls within Sydney LEP and Sydney DCP.

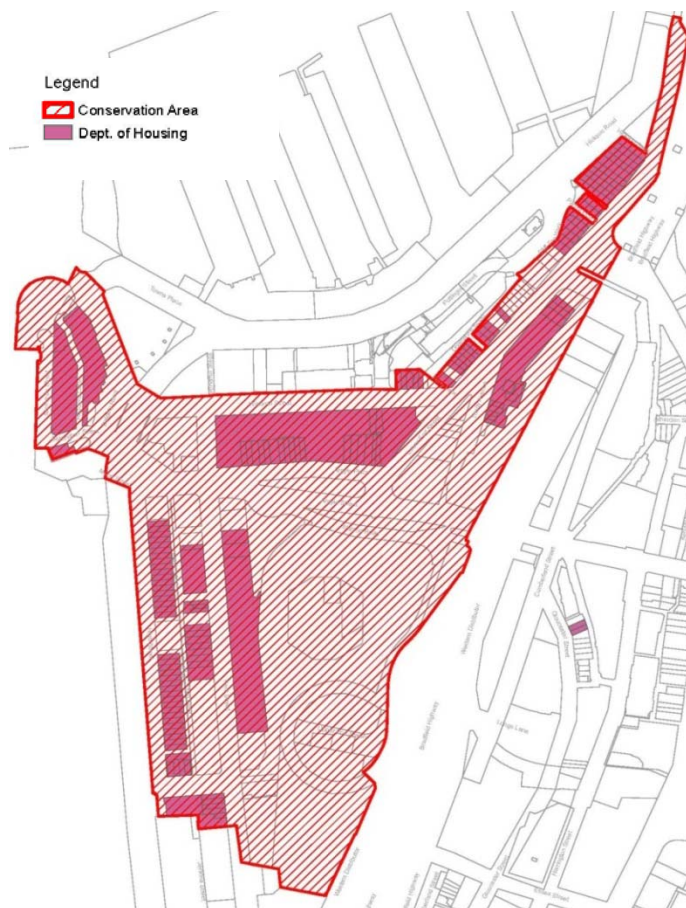


Figure 2: NSW Government owned properties in the Millers Point Heritage Conservation Area

Development Assessment and Approvals Process

15. The majority of properties in Millers Point Heritage Conservation Area subject to this Planning Proposal are listed on the State Heritage Register. Statutory development approval is required to undertake most works on Millers Point properties. In some instances the NSW Heritage Council has exempted the need for approval for minor maintenance and repairs, repainting, and limited excavation. There are no changes proposed to the statutory development process as a result of this amendment or sale of NSW Government properties.

16. The City of Sydney Council and the NSW Heritage Council are the primary consent authorities under the Environmental Planning and Assessment Act 1979 and the Heritage Act 1977. Development approval for an item on the State Heritage Register is undertaken through the Integrated Development Approval process where both the City of Sydney Council and the NSW Heritage Council consider and determine the development application. An endorsed conservation management plan must also be provided with any development application to undertake works.
17. For the five properties subject to this Planning Proposal that are not heritage listed, but fall within the Millers Point Heritage Conservation Area, the City of Sydney Council is the consent authority for development. Any development application must be accompanied with an endorsed heritage impact statement.

Current Planning Controls

18. The current planning controls applying to the Millers Point Heritage Conservation Area are in the Sydney LEP and came into effect in December 2012. The building height and FSR controls are a translation of previous controls under Sydney Local Environmental Plan 2005. A comprehensive review of the controls for Millers Point was not undertaken as part of the Sydney LEP 2012, as development was not expected while in government ownership.
19. The maximum floor space ratio for all properties in the conservation area is 2:1 and the maximum building height is 9m. Millers Point is listed as a Heritage Conservation Area and most properties are individually listed heritage items. The Millers Point Heritage Conservation Area does not include the Walsh Bay Precinct. An extract of the Sydney LEP Heritage map showing the Millers Point Heritage Conservation area and heritage items boundary is at Figure 3. It shows that all but nine properties are individually listed.
20. The Millers Point Heritage Conservation Area includes a range of building forms and building heights. Amongst this varied built form are distinct rows of terrace houses that are generally two storeys in height. The application of a maximum building height limit of 9m and FSR of 2:1 is not an accurate indication of the architectural diversity of existing built form.
21. The sale of properties to private owners is likely to result in development applications. Development potential varies by lot size and the gross floor area of existing buildings. Developing heritage items to the maximum floor space ratio under Sydney LEP would likely impact on the significance of the items and the conservation area.
22. An analysis was carried out to estimate how much floor space is available under the current controls to determine the impact on the significance of the items and conservation area. This analysis involved a review of approved development applications of five properties where up to date information of existing built floor area was available. It showed the available capacity for properties under the current controls is likely between 30sqm and 110sqm, which is equivalent to between one bedroom and a new floor. Additions of this size will have a significant impact on the items and the integrity of the conservation area and heritage items.



Figure 3: Sydney LEP Millers Point Heritage Conservation Area and heritage listed items

Planning Proposal

23. The Planning Proposal seeks to amend Sydney LEP so that the building's existing height and floor space ratio will be the height and FSR control. In addition, the Planning proposal seeks to introduce a clause that will require any height and floor space increase for a heritage item to be consistent with an adopted conservation management plan. To retain the heritage significance, it is important to ensure consistency in the built form. This approach will provide the most appropriate planning controls to conserve the significance of the conservation area and items.
24. The amendment will apply to 135 sites within the Millers Point Heritage Conservation Area as shown in Figure 4. This includes five privately owned properties non-heritage items 65-69 and 89-105 Kent Street, Millers Point and 45A, 45B and 45C Lower Fort Street, Dawes Point. Applying the same controls to these properties will allow appropriate management of development in the area, preventing development that is inconsistent with the conservation area. A heritage impact statement or conservation management plan must be prepared for development on these properties.
25. A new local clause will set the maximum height and floor space ratio for development in Millers Point. The 9m height control on the Building Heights Map and 2:1 floor space control on the Floor Space Ratio Map will be removed. The new clause will also require the consent authority to consider the recommendations of any conservation management plan prepared for a site. The height and floor space controls will support the conservation policies in conservation management plans.
26. Council will be able to use the new local provisions, the conservation management plans and clause 4.6 of Sydney LEP to consider minor additions that exceed the existing height and floor space controls. Clause 4.6 allows controls to be varied where compliance with the control is unreasonable or unnecessary.
27. The integrity of the terrace housing stock in Millers Point is of very high cultural significance and is unique in Australia. The area and buildings have changed little, if any, since their construction. Only minor additions could be contemplated for some items. The amendments to the planning controls will protect the significance of the conservation area by ensuring sympathetic infill development is consistent with the scale and form of existing development.
28. The planning proposal will not prevent development, but will ensure that the heritage significance of items is not impacted by the change likely to be sought following the sale to private owners.
29. The amendment will also remove the existing 9m building height and 2:1 floor space ratio control for properties in the Millers Point Heritage Conservation Area currently zoned RE1 Public Recreation. This includes 2 Merriman Street, Millers Point, 2 Rhodens Lane, Millers Point and 5 and 5B Dalgety Road, Millers Point, and existing parks located at the end of Merriman Street. There are no specific height and floor space controls for land zoned RE1 Public Recreation, eg, parks, under Sydney LEP. Removing these controls for RE1 zoned land within the Millers Point Heritage Conservation Area will not affect how the parks currently operate, and it ensures a consistent approach across the Local Government Area..

Conservation Management Plans

30. NSW Department of Family and Community Services are preparing conservation management plans for each heritage listed property. A conservation management plan will be provided with the sale documents to provide guidance to prospective buyers. The conservation management plans will provide guidance to owners and consent authorities on the appropriate treatment of places gained from an understanding of the place's significance. As part of the assessment for proposed changes to a place, Council and the NSW Heritage Council may also consider other matters outside the scope of the conservation management plans.
31. Conservation management plans set out the history and significance of an item and the policies for how they are to be conserved. The policies address treatment of fabric, interpretation of place, use of place, adaptation of fabric to be conserved, conservation procedures and practices and additions and other new features.
32. Conservation Management Plans are guided by the Conservation Management Guidelines prepared for Millers Point in 2007 and the national standard processes from the Burra Charter. All conservation management plans for Millers Point properties will be endorsed by the NSW Heritage Council.
33. A conservation management plan for Millers Point properties will provide guidance on works relating to the exterior of the building, interior works to common areas and treatment of rear elevations and whether any additions can be made. The new conservation management plan includes relevant information about the significance of the building and a short preface of frequently asked questions to help prospective buyers understand their responsibilities. The conservation management plan will also show possible locations for new additions and openings.
34. An example is the endorsed conservation management plan for Milton Terrace, 1-19 Lower Fort Street. This conservation management plan includes 80 conservation policies for the treatment of fabric, interpretation, use, adaptation and additions. It includes a section and site plan of ■ a property in Lower Fort Street showing all possible changes to building exteriors and locations for new additions and openings. The plan and section is shown at Figures 5 and 6 below.



Figure 4: Properties within the Millers Point Heritage Conservation Area to which this Planning Proposal applies

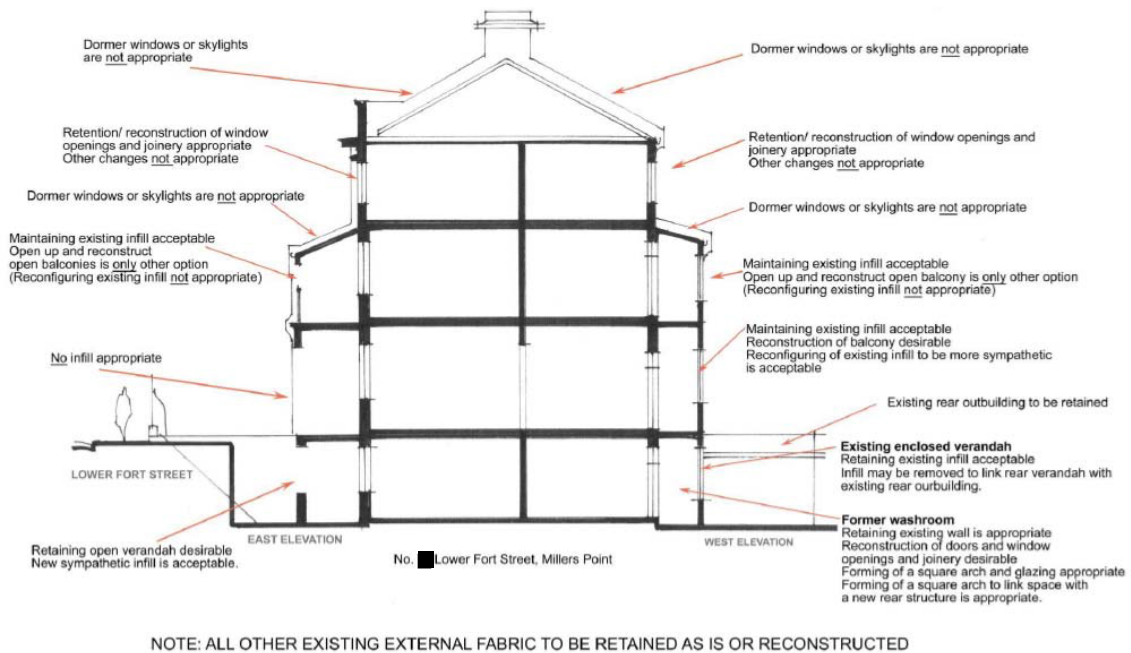


Figure 5: Section through [redacted] a building in Lower Fort Street showing possible changes to building exteriors (*Milton Terrace 1-19 Lower Fort Street, Millers Point Conservation Management Plan* (Volume 1), Clive Lucas, Stapleton and Partners Pty Ltd, 2014, prepared for NSW Land and Housing Corporation Department of Family and Community Services, p. ix (reproduced with permission).

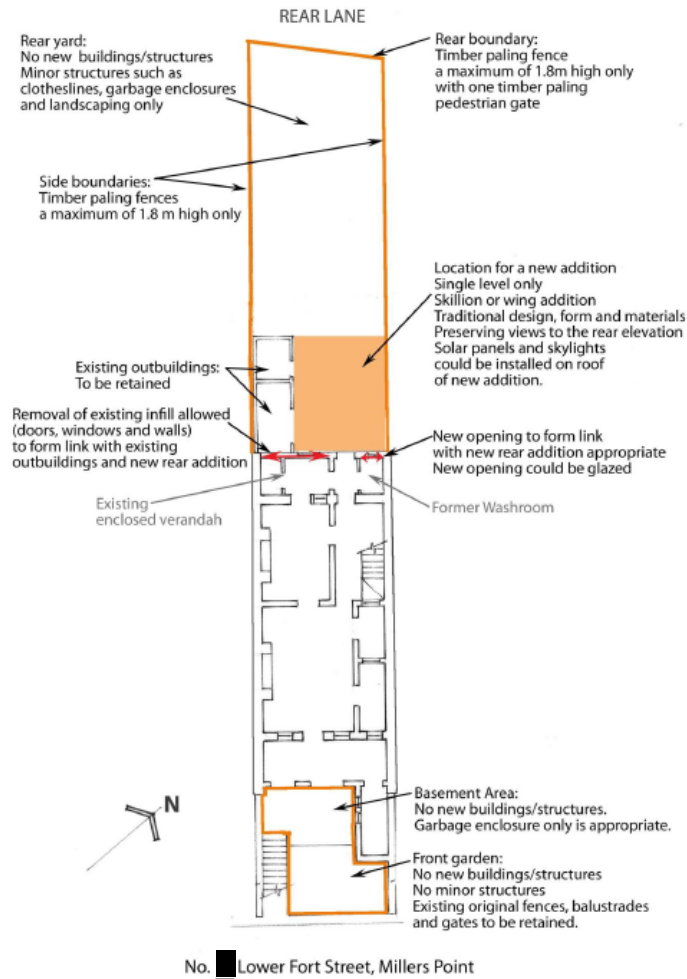


Figure 6: Site plan for [redacted] a property in Lower Fort Street showing possible locations for new additions and openings (Clive Lucas, Stapleton and Partners Pty Ltd, 2014; p.x)

Draft Sydney Development Control Plan 2012

35. Section 2 of Sydney DCP includes locality statements and supporting principles for development within all areas and neighbourhoods of the council area. Each statement draws on the unique qualities of each area to provide direction for development controls and built form.
36. It is proposed to amend the locality statement and principles for Millers Point to be consistent with the statement of significance for the Millers Point Heritage Conservation Area. The amendment recognises the significance of Millers Point as a substantially intact residential and maritime precinct with unique characteristics and architectural diversity, but highly consistent townscape. New principles require development to respect the significance of the conservation area and be consistent with an endorsed CMP.

37. It is proposed to amend the Building Contributions Map in Sydney DCP to identify buildings within the Millers Point Heritage Conservation Area as contributory, neutral or detracting. The corresponding map will support the statutory listings of individual heritage items in Millers Point and is the result of the work undertaken for the area in the Millers Point and Walsh Bay Heritage Review in 2007 and recent work by City staff. Sydney DCP will also help conserve Millers Point through the existing controls for terrace houses, warehouses and industrial buildings, historic pubs and hotels, traditional shopfronts and important public and community buildings.

KEY IMPLICATIONS

Strategic Alignment - Sustainable Sydney 2030 Vision

38. Sustainable Sydney 2030 is a vision for the sustainable development of the City to 2030 and beyond. It includes 10 strategic directions to guide the future of the City, as well as 10 targets against which to measure progress.
39. This report is aligned with the following Sustainable Sydney 2030 strategic direction 9 – Sustainable Development, Renewal and Design. Action 9.3.4 is to protect the heritage value of objects, buildings, places and landscapes. Action 9.4.1 is to regularly review and streamline development controls. The proposed amendment to the height and floor space controls will protect the heritage significance of the Millers Point Heritage Conservation Area consistent with the state and local heritage listings.

Risks

40. This Planning Proposal amends the planning controls to conserve and protect the heritage significance of Millers Point and individually listed items. The Planning Proposal is a priority, given the start of the sale of NSW government owned properties. Not proceeding with this Planning Proposal and retaining existing controls allows for development which is likely to have a negative effect on the significance of Millers Point.

Social/Cultural/Community

41. The heritage listings identify Millers Point as having a very high level of heritage significance and being of important cultural value to the people of NSW and the local area. This Planning Proposal will help conserve the heritage significance and cultural value.

RELEVANT LEGISLATION

42. *Environmental Planning and Assessment Act 1979 (EP&A Act)*, *Environmental Planning and Assessment Regulation 2000 (EP&A Regulation)*, and *Heritage Act 1977*.

CRITICAL DATES/TIME FRAMES

43. The NSW Government is planning to sell 293 properties, including heritage listed items in the Millers Point Heritage Conservation Area, over the next two years and has started.

44. Under section 79C(1)(a)(ii) of the EP&A Act, as soon as the Planning Proposal is placed on public exhibition, its provisions become matters for consideration by the consent authority when assessing development applications.

PUBLIC CONSULTATION

45. If the recommendations of this report are adopted, the Planning Proposal will be forwarded to the Minister for Planning in accordance with Section 56 of the EP&A Act. The Minister will then provide a Gateway determination to either proceed – with or without variation – to consultation, or to resubmit the Planning Proposal.
46. The Planning Proposal will be publicly exhibited in accordance with the Gateway Determination. It is anticipated that the Planning Proposal and Draft DCP will be exhibited for at least 28 days. The City will also further consult with public authorities, including the NSW Department of Family and Community Services and the NSW Heritage Council during this time.
47. Public exhibition will include:
- (a) notification through the City of Sydney website and newspapers that circulate widely in the area;
 - (b) written notification of the public exhibition to all owners, occupants, local interest groups and residents in adjacent sites; and
 - (c) information relating to the Planning Proposal and draft DCP will be made available on the City of Sydney website and on display at the City's One Stop Shop.
48. The outcomes of the public authority consultation and public exhibition will be reported to Council and the Central Sydney Planning Committee.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

(Marie Ierufi, Planner)