

ITEM 9. MILLERS POINT CONSERVATION AREA - AMENDMENT TO PLANNING CONTROLS - REVISION OF PLANNING PROPOSAL**FILE NO: S122551****SUMMARY**

The Central Sydney Planning Committee approved a planning proposal on 30 October 2014 to amend the Sydney Local Environmental Plan (the LEP) to conserve the heritage significance of Millers Point.

The NSW Department of Planning and Environment provided a Gateway Determination in response to the City's request to exhibit the planning proposal. The Department noted that the intention to protect the heritage significance and conservation values of Millers Point is supported. However, it requested further justification to support the amendments, including why heritage impacts cannot be managed through other controls and the effect on buildings that are not owned by government or are not heritage items.

The City has amended the planning proposal to provide further justification for the amendments and answer the Department's questions. The proposed LEP controls have also been revised following that work and further discussion with the NSW Heritage Division and the NSW Land and Housing Corporation.

The planning proposal was initially prepared in response to the Government's decision to sell its properties in Millers Point after the NSW Heritage Council wrote to the City requesting a review of the planning controls for Millers Point. It was found that the existing 2:1 floor space ratio control (FSR) and 9 metre building height control enable development inconsistent with the heritage significance of the area. The planning proposal seeks to replace these controls with height and density controls that will conserve the significance of the area.

The proposed planning controls will set the existing building height and FSR as the maximum and allow additions to heritage items subject to consideration of a conservation management plan (which is to be an endorsed plan if it is for a state heritage item) and other heritage impacts. The existing development potential of buildings that are not heritage items will be retained.

The revised planning proposal has provided further justification that the existing height and FSR controls will not deliver the intended planning and heritage outcomes for Millers Point. The FSR control enables additions that are half to four times the size of the existing buildings for about 60 per cent of the heritage items in Millers Point. These additions would be inconsistent with the Conservation Management Plans for the heritage items endorsed by the NSW Heritage Council. The existing FSR is excessive compared to other conservation areas, despite these areas having lesser significance, and the 9 metre height control does not accurately reflect the complex and varied scale of the heritage items. These impacts cannot be managed through other controls, as planning legislation does not allow DCP controls inconsistent with LEP standards, such as height and FSR.

The proposed controls reinstate a similar approach to previous planning controls. They are the preferred approach as a conflicting layer of controls will be removed. Decisions under the *Environmental Planning and Assessment Act 1979* and the *Heritage Act 1977* will be aligned and based on conservation management plans which are the most thorough analysis of each heritage item. The proposed controls will reduce assessment costs and time for proponents, Council and the community, and provide greater certainty.

It is recommended Council approve the revised planning proposal at Attachment A and request a Gateway Determination to allow the proposal to be publicly exhibited.

RECOMMENDATION

It is resolved that:

- (A) the Central Sydney Planning Committee approve Planning Proposal: Sydney Local Environmental Plan 2012 – Millers Point, shown at Attachment A to the subject report, for submission to the Greater Sydney Commission with a request for a Gateway Determination;
- (B) the Central Sydney Planning Committee approve Planning Proposal: Sydney Local Environmental Plan 2012 – Millers Point 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 15 March 2016 that Council seek authority from the Greater Sydney Commission to exercise the delegation of the Greater Sydney Commission of all the functions under section 59 of the Environmental Planning and Assessment Act 1979 to make the local environmental plan to put into effect Planning Proposal: Sydney Local Environmental Plan 2012 – Millers Point; and
- (D) the Central Sydney Planning Committee note the recommendation to Council's Planning and Development Committee on 15 March 2016 that authority be delegated to the Chief Executive Officer to make any minor variations to Planning Proposal: Sydney Local Environmental Plan 2012 – Millers Point following receipt of the Gateway Determination.

ATTACHMENTS

Attachment A: Planning Proposal: Sydney Local Environmental Plan 2012 – Millers Point

Attachment B: Gateway Determination, NSW Department of Planning and Environment, 21 January 2015

BACKGROUND

1. The Millers Point Heritage Conservation Area is one of the most significant urban places in NSW and the City of Sydney Council area. The area is listed as a conservation area on the NSW State Heritage Register and the *Sydney Local Environmental Plan 2012* (the LEP). In addition to the area listing, almost all properties are also listed as individual heritage items on the State Heritage Register and the LEP. This unprecedented degree of listing reflects the very high significance of the conservation area.
2. 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:

"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... An integrated port town developed between the 1810s and the 1930s and little changed since then; considered remarkable for its completeness and intactness. Its components include deep-sea wharves and associated infrastructure, bond and free stores, roadways and accessways, public housing built for port workers, former private merchant housing, hotels and shops, schools, churches, post office and community facilities."

3. 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 is continuing to sell the properties.
4. The NSW Heritage Council wrote to the City on 8 July 2014 requesting the urgent review of the planning controls for Millers Point under the LEP and *Sydney Development Control Plan 2012* (the DCP) to ensure future development maintains the heritage significance of the area and individual properties.
5. The planning controls for Millers Point in the LEP came into effect in December 2012 and are a translation of the previous controls. The maximum floor space ratio for the whole area is 2:1 and the maximum building height across the whole area is 9 metres. Millers Point includes a range of building forms and building heights. The 9 metre maximum building height and 2:1 floor space ratio controls do not accurately reflect the architectural diversity of the existing and significant built form of Millers Point. Developing heritage items to the maximum floor space ratio under the LEP would result in the significance of the Millers Point heritage items and conservation area being lost.
6. The City prepared a planning proposal to amend the excessive floor space ratio and inaccurate height controls and ensure the significance of Millers Point would be protected from unsympathetic development. In summary, the proposal is to remove the 2:1 and 9 metre controls, set the existing height and floor space of a building as the maximum height and floor space for a building and then permit additions to buildings subject to consideration of an endorsed conservation management plan and the potential impact on the heritage significance of the item and area.

7. On 30 October 2014, the Central Sydney Planning Committee approved the planning proposal for public exhibition and resolved to request a Gateway Determination from the NSW Department of Planning and Environment to allow the exhibition of the planning proposal.
8. The NSW Department of Planning and Environment provided a Gateway Determination in response to the City's request to exhibit the planning proposal. The Gateway stated the Department's in principle support for a planning proposal to conserve the significance of Millers Point. However, the Department requested further justification to support the amendments, including why heritage impacts cannot be managed through other controls and the effect on buildings that are not owned by government or are not heritage items.
9. The City has carried out further work to justify the proposed changes to the planning controls. The planning proposal has been updated to provide further justification for the changes and address the issues raised by the Department. Amendments have also been made to the proposed controls following discussions with the NSW Heritage Council and the NSW Land and Housing Corporation. The updated planning proposal is at Attachment A. This report recommends Council approve the updated planning proposal for public exhibition and request a new Gateway Determination to allow the planning proposal to proceed.
10. Council also approved a draft DCP for public exhibition in November 2014. No changes are proposed to the Draft DCP in this report and it is intended to proceed to public exhibition alongside the updated planning proposal.

KEY IMPLICATIONS

11. The updated planning proposal is at Attachment A. Part 2 of the planning proposal explains the proposed planning controls and has been updated to deal with buildings that are not listed as heritage items. Part 3 of the planning proposal provides the justification for the proposed changes to the planning controls. This section has been updated to further justify the need to amend the controls and why the proposed controls are the preferred approach for ensuring the significance of Millers Point is retained. The key implications of the updated planning proposal are explained in the follow paragraphs.

Need to amend the controls

Current controls facilitate large additions that would have a major impact on heritage significance

12. The City has prepared an additional Urban Landscape Study to show the likely built form of additions under current height and floor space ratio controls. This study is included as Appendix D to the planning proposal, which is at Attachment A to this report. The study estimates the size of potential additions compared to the existing building and drew examples of what that building form might look like. The key findings of the study are shown in Figure 1 below and demonstrate that the FSR control permits additions that are half to four times the size of the existing buildings for about 60 per cent of the heritage items in Millers Point. The study also shows that because the area is highly intact and highly visible from public spaces, the potential additions would result in the loss of the significant and intact pattern of rear wings and roof forms that characterise the area.

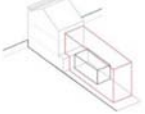

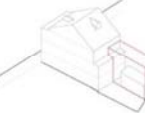

BAND	ADDITIONAL FLOOR AREA	No. of sites		BUILT FORM OUTCOME
E	+91-320% current FSR 0.45 - 1.04	44	15%	
D	+49-90% current FSR 1.05 - 1.34	137	46%	
C	+15-48% current FSR 1.35 - 1.74	32	11%	
B	+3-14% current FSR 1.75 - 1.94	11	4%	
A	+0-2% current FSR 1.95 - 2.0	37	12%	
--	sites not studied	36	12%	

Figure 1: Findings of the urban landscape study illustrating the extent of impact on items in Millers Point

FSR is inconsistent with endorsed Conservation Plans and assessments under the Heritage Act 1977

- As the items and area are listed on the State Heritage Register, approval for most works is also needed from the NSW Heritage Council under the Heritage Act. Endorsed conservation management plans are a matter for consideration when determining an approval. The size and form of additions enabled by the current FSR controls are significantly larger than those envisaged by the conservation management plans endorsed by the NSW Heritage Council. Figure 2 compares an acceptable addition under a conservation management plan with that possible under the planning controls.

FSR is excessive compared to other heritage areas

- The 2:1 FSR is excessive when compared to the FSR for other conservation areas in the City, despite these areas having lesser significance. The FSR for terrace houses in these conservation areas is commonly between 1:1 and 1.5:1 depending on the size of the lot. Eighty-six (86) per cent of the 13,700 two storey terraces in the City's conservation areas have an FSR control greater than 1:1 and less than 1.75:1, with about two thirds either 1.25:1 or 1.5:1.

The height control is inaccurate

- The 9 metre height control does not accurately reflect the complex and varied scale of the heritage items and will be ineffective in conserving the scape of the area. Some buildings in Millers Point are approximately 9 metres, while others are above or below; due to the topography of the area, some buildings are 9 metres at the street front, but are higher to the rear; some buildings have a parapet rather than pitched roofs and are lower despite the same number of storeys. An analysis of existing building height has shown that the majority of buildings are estimated to exceed 9 metres, with only 13 estimated to have a height of 7 to 9 metres consistent with the control. Given the significance and intactness of the area, it is highly desirable the existing scale of buildings is maintained.

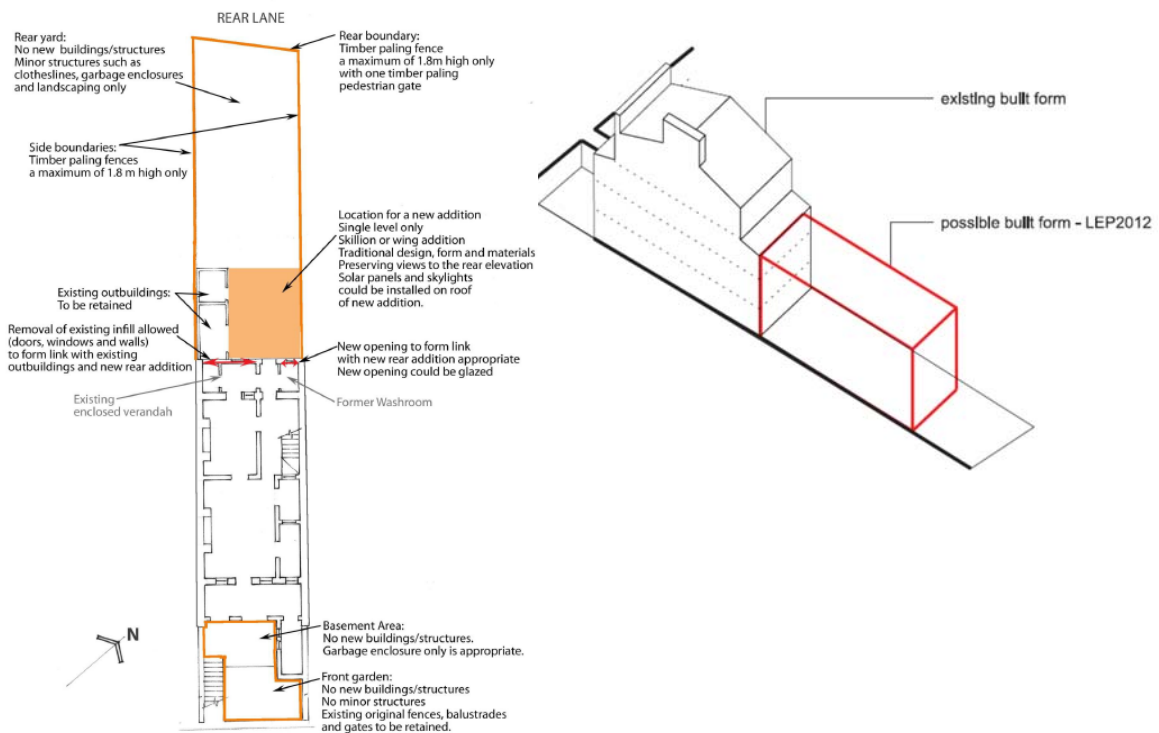


Figure 2: Comparison of additions envisaged under an endorsed CMP (on left with area for additions coloured orange) and those enabled by the current FSR control (on right with volume of additions outlined in red).

DCP controls cannot reduce FSR

16. Planning legislation sets a hierarchy of planning controls which restricts the possibility for development control plans (DCP) to manage the impacts of the excessive FSR in the LEP. Section 74BA of the EP&A Act indicates that the purpose of a DCP is to provide guidance for development proposals and to facilitate development permissible under the LEP. It also states that DCP requirements are not statutory. In addition, section 74C (5)(b) of the EP&A Act indicates that a provision of a DCP has no effect if it is inconsistent with a provision of an LEP. DCP heritage provisions are useful in locating permitted floor space in a sympathetic way. However, DCP controls cannot restrict how much floor space is permitted if the FSR is too high (as is the case with Millers Point) as this would be inconsistent with the LEP. In response to the Department's Gateway Determination, the planning proposal includes a catalogue of the relevant heritage controls applying to Millers Point at Appendix E with commentary on the capacity of those controls to manage the state and local heritage significance of the conservation area and the items.

Changes to proposed controls

17. Part 2 of the planning proposal explains the proposed controls. The planning proposal proposes amendments to the controls that will:
 - (a) remove the existing FSR and height controls;
 - (b) set the existing height and floor space of a building as the maximum;
 - (c) allow variations to the maximum for heritage items subject to consideration of a conservation management plan (endorsed by the Heritage Council where it is for a state heritage item) and impacts on the item and area; and
 - (d) allow variations to the maximum for buildings that are not heritage items up to 2:1 FSR subject to consideration of the impacts on the area and nearby items.
18. The proposed controls are the preferred solution because they will remove a conflict between the heritage objectives and floor space controls and align decisions under the EP&A Act and the Heritage Act by making endorsed conservation management plans a matter for consideration. Conservation management plans also provide the best guidance for changes to heritage items, as they are the most thorough analysis of each item and are required to be considered in approvals under the Heritage Act. Removing conflicts and aligning matters for consideration will reduce costs and time for assessments and provide greater certainty for proponents, Council and the community.
19. The proposed controls reinstate an approach of previous LEPs. Sydney LEP 2005 and Central Sydney LEP 1996 set the floor space ratio for Millers Point at 2:1, but included a clause which limited the floor space ratio for heritage items to the existing floor space ratio and enabled development to exceed the existing floor space ratio if heritage criteria were met. This clause was not included in the translation of the 2005 LEP to the 2012 LEP, which had to be drafted in the Government's standard format. The proposed control re-establishes this successful approach.

20. The proposed clause allows applications to be submitted for alterations to a heritage item without an endorsed conservation management plan. The risk of heritage impact is lower with alterations as they typically do not result in changes to the significant built form.

Effect on particular properties

Privately owned buildings

21. Heritage items that are publicly or privately owned demonstrate state and local significance regardless of their ownership. Appropriate controls are needed to retain the significance of Millers Point regardless of properties. The maximum FSR and height will be set at that of the existing building and additions may be approved subject to consideration of a conservation management plan and impacts to the area and item. Given the state and local significance of these items, it is reasonable to consider a conservation management plan prior to additions being approved, irrespective of the ownership. This is consistent with legislation. Under clause 5.10(6) of the LEP, Council can request a conservation management plan for any heritage item and, under the Heritage Act, the Heritage Council can only consider a conservation management plan that has been endorsed.

Buildings that are not heritage items

22. Buildings that are not heritage items (whether publicly or privately owned) are still part of the state and local conservation area listings. Changes to these buildings could positively or negatively affect the significance of the whole area. Appropriate planning controls are needed to manage those changes. For these buildings, the maximum height and FSR will be set at that of the existing building. Council may then approve development up to 2:1 FSR and 9 metres only after it has considered the impact on the area and heritage items in the vicinity. This retains the current development potential and no conservation plan needs to be submitted.
23. Pages 22 to 24 in part 3 of the planning proposal describe the likely effect of the proposal controls on a number of notable properties that were not owned by the NSW Land and Housing Corporation or are not heritage items. The proposed changes to the controls will not unreasonably affect any of these properties for the reasons described above.

Strategic Alignment - Sustainable Sydney 2030 Vision

24. *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. The planning proposal is aligned with the SS2030 strategic direction and objective 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.

NSW Government's A Plan for Growing Sydney

25. The NSW Government's *A Plan for Growing Sydney* sets the direction for heritage within the context of planning for growth and development in metropolitan Sydney. Direction 3.4 promotes Sydney's heritage, arts and culture. The Government's intent is to assess the potential for additional housing to be located in heritage conservation areas in Sydney, without compromising the protection of heritage significance.
26. Millers Point is part of a diverse mixed use precinct that is relatively dense in the Sydney metropolitan area. Owing to its very high level of heritage significance, it has not been identified as an area for redevelopment or growth in metropolitan or subregional strategies. The planning proposal is consistent with *A Plan for Growing Sydney* as it has assessed the potential for additional housing in Millers Point. Given the heritage listings and the need to largely retain the existing building stock, there is little potential for additional housing in Millers Point. Retaining the 2:1 FSR would not deliver additional houses, only larger dwellings with resulting impacts on the state and local heritage significance. The existing height and FSR controls are retained for buildings that are not heritage items which will allow for appropriate infill development.

Social / Cultural / Community

27. 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

28. *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

29. The NSW Government is continuing to sell properties in Millers Point, including heritage listed items in the Conservation Area. 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**Consultation with NSW Government**

30. On 8 July 2014, the NSW Heritage Council wrote requesting the City to urgently review the planning controls for the Millers Point Heritage Conservation Area. The NSW Heritage Council is concerned the development potential available under the existing controls may result in unacceptable impacts on the significance of heritage items and the conservation area. City staff met with the NSW Department of Family and Community Services and Office of Environment and Heritage staff to discuss approaches protecting the significance of Millers Point.

31. Since the request from the Department for further justification, the City has further consulted with NSW Government agencies. The City presented findings of the further research and discussed the proposed planning controls with the NSW Heritage Council Millers Point Sub-committee and the Millers Point Steering Committee involving NSW Family and Community Services and Government Property NSW. The City has prepared the planning proposal to balance the different objectives of each agency. Officers from the NSW Heritage Council and NSW Family and Community Services have been given the opportunity to comment on a draft of the updated planning proposal.
32. Officers from the NSW Heritage Council have noted that the proposed changes to the controls are generally supported and that previous comments provided to the Department relating to conservation plans for buildings that were not heritage items have been addressed. Further review and formal comments will be provided during the public exhibition.
33. Officers from NSW Family and Community Services have questioned the need to have an 'endorsed' conservation management plan. They note conservation plans are only being endorsed for Millers Point as they are government properties and it is consistent with government guidelines. Endorsed conservation plans are not needed for the sale of private properties. In response, it is recommended the proposed controls retain the need to have an endorsed conservation management plan considered in a proposal for additions to heritage items in Millers Point. A conservation management plan is not needed for the sale of the properties or even if alterations are being made to the property, only if an application is submitted for additions to the item. The NSW Heritage Council considers endorsed conservation management plans when determining applications under the Heritage Act. As the approvals are needed from both the Heritage Council and Council for additions, it is appropriate to have the same documents considered in each assessment to provide consistency and certainty for proponents. The proposed controls are also generally supported by the Heritage Council.

Proposed public exhibition

34. If the recommendations of this report are adopted, the Planning Proposal will be forwarded to the Greater Sydney Commission in accordance with Section 56 of the EP&A Act. The Commission will then provide a Gateway determination on whether the planning proposal can proceed.
35. 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.
36. 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 relevant NSW Government agencies; 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.

37. 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

(Ben Pechey, Manager Planning Policy)