

ATTACHMENT A

**PLANNING PROPOSAL:
SYDNEY LOCAL ENVIRONMENTAL PLAN
2012 – MILLERS POINT,
NOVEMBER 2017**

**(POST-EXHIBITION CHANGES SHOWN
WITH ~~STRIKETHROUGH~~ (DELETIONS) AND
BOLD ITALICS (ADDITIONS))**

Planning Proposal: Sydney LEP 2012 – Millers Point

City of Sydney
Town Hall House
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Sydney NSW 2000

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Introduction

This Planning Proposal explains the intent of, and justification for, the proposed amendment to the planning controls for Millers Point Heritage Conservation Area under *Sydney Local Environmental Plan 2012* (Sydney LEP). This Planning Proposal seeks to amend the controls so that a building's existing height and floor space ratio will be the **maximum** height and floor space control **and no floor space ratio control will apply**.

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. The NSW Heritage Council in a letter dated 8 July 2014 requested the City urgently review the planning controls for the Millers Point Heritage Conservation Area in response to the sale.

The planning controls for the Millers Point Heritage Conservation Area are in the Sydney LEP and came into effect in December 2012. The building height and floor space controls are a translation of previous controls under *Sydney Local Environmental Plan 2005*. The maximum floor space ratio is 2:1 and maximum height is 9 metres. These controls are inconsistent with the 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.

This approach is appropriate for the Millers Point Heritage Conservation only due to its integrity and heritage significance.

This planning proposal has been updated to address the Department of Planning and Environment's request for further justification dated 21 January 2015.

Area and context

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 an intact residential and maritime precinct of outstanding state and local significance due to its unique characteristics, architectural diversity and continuity of 19th and 20th century residential and maritime elements. The precinct has changed little since the 1930s. The area is characterised by a fine grain subdivision pattern, two to three storey residential terraces and similar scaled commercial buildings.

Heritage Significance

Three conservation area listings apply to Millers Point. In 1999 properties owned by the Department of Housing in Millers Point were listed on the State Heritage Register under the *Heritage Act, 1977*. In 2003 Millers Point was listed on the State Heritage Register as the Millers Point and Dawes Point Village Precinct allowing for the management of the whole of the precinct. Millers Point is also listed in Sydney LEP as the Millers Point Heritage Conservation Area. Individual properties are also listed as items on the Sydney and State Heritage Register.

Each listing recognises the high level of significance and value to the people of NSW and the local area. 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.”¹

Figure 1: Millers Point Heritage Conservation Area boundary under Sydney Local Environmental Plan 2012



¹ NSW State Heritage Register, Millers Point Conservation Area, 2001, <http://bit.ly/YUYbYI>

Sale of Government Properties

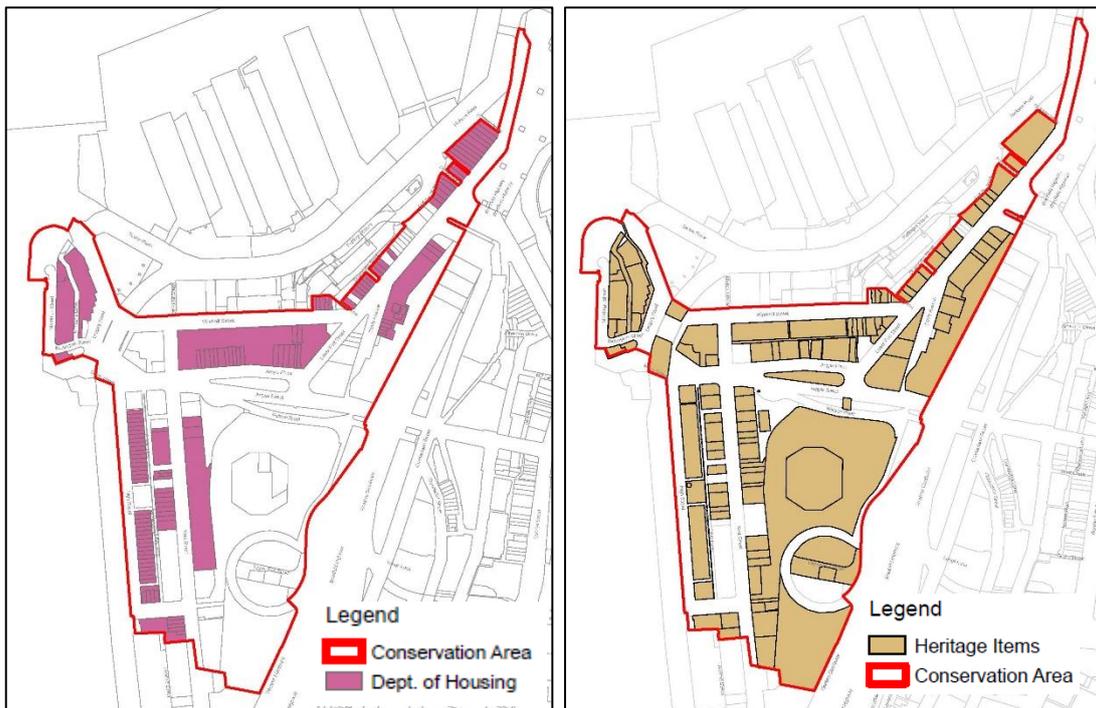
Millers Point has a long history of government ownership. The area was resumed after the 1900 plague then developed with infrastructure and housing for the maritime industry and its workers. Since the early 1980s the Department of Housing has managed residential properties in Millers Point for social housing.

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 have started to sell the 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.

The NSW Heritage Council wrote to the City requesting the urgent review of the planning controls for Millers Point Heritage Conservation Area under Sydney LEP and Sydney DCP. 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 will be protected.

The properties being offered for sale retain a significant level of original building fabric, form and architectural detailing. Together and individually they are rare and unique in Australia. The sale to private owners is likely to result in applications for works to the properties.

Figure 2: Government owned properties (left) as at October 2014 and heritage items (right)



Current Planning Controls

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 floor space controls are the translation of previous controls under *Sydney Local Environmental Plan 2005* and are almost 10 years old. A comprehensive review of the

controls for Millers Point was not undertaken as part of the Sydney LEP as development was not expected while most properties were in government ownership.

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 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 boundary is at Figure 2.

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 of 9 metres and FSR of 2:1 is not an accurate indication of the architectural diversity of existing built form in Millers Point. 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.

Part 1: Objectives and intended outcomes

The intended outcome of this Planning Proposal is to implement appropriate height and floor space controls in the Sydney LEP 2012 for the Millers Point Heritage Conservation Area, as identified in the LEP.

The objective of this Planning Proposal is to protect the state and local heritage significance of the Millers Point Heritage Conservation Area and individually listed items with appropriate height and density controls.

Part 2: Explanation of provisions

The objectives of the provisions are to conserve the heritage significance of the Millers Point Conservation Area and the Heritage Items within the area, retain the significant built form and to ~~ensure~~ **promote the application of** endorsed conservation management plans ~~are considered~~ in the assessment of development.

The clause is to apply to development of land within the Millers Point Heritage Conservation area.

The provisions and maps will establish the maximum height of a building ~~and maximum gross floor area~~ as the existing height ~~and the existing floor area~~ of the building-, **and remove the maximum Floor Space Ratio (FSR) control.**

The consent authority may vary the maximum height ~~or gross floor area~~ of a building having regard to this provision.

When **In** determining **the suitability of development** ~~whether to vary the maximum height and gross floor area of a heritage item~~, the consent authority must consider the significance and built form of the heritage item and the conservation area. **It can be guided on that assessment by** ~~and a~~ **any applicable** conservation management plan, which is to be endorsed by the NSW Heritage Council where that item is on the State Heritage Register, **or any other conservation management plan to the satisfaction of the consent authority if an endorsed plan is not available.**

When determining *an application for the development of* whether to vary the maximum height and gross floor area for land that is not a heritage item, the consent authority may approve development with a floor space ratio up to 2:1 and a building height up to 9 metres only after it has considered the effect of the development on the significance of the Millers Point Conservation Area and nearby heritage items.

Drafting instructions

1. Amend **Height of Buildings Map** – Sheets HOB_013 and HOB_014 by removing the 9m height control for the Millers Point Heritage Conservation Area and showing the area as Area 7. The maps in Part 5 show the proposed amendments.
2. Amend **Floor Space Ratio Map** – Sheet HOB-~~FSR_013~~ and HOB ~~FSR_014~~ by removing the 2:1 floor space ratio for the Millers Point Heritage Conservation Area and showing the ~~Area as Area 11~~ as **white with no FSR control**. The maps in Part 5 show the proposed amendments.
3. Introduce a new provision that:
 - a. Establishes objectives to conserve the heritage significance of the Millers Point Conservation Area and the Heritage Items within the area, retain the significant built form and to ensure endorse conservation management plans are considered in the assessment of development **that is an addition to a building**;
 - b. ~~establishes the maximum building height and the maximum gross floor area of a building in the Millers Point Conservation Area (shown as areas 7 and 11 on the relevant Height of Buildings and Floor Space Ratio maps) to be the existing building height and existing floor area;~~
b. For development applications relating to a heritage item, requires the consent authority to consider the impacts of development on the significance and built form of the heritage item, any nearby heritage items and the heritage conservation area;
 - c. ~~Requires enables the consent authority to vary the maximum height and floor space for of a heritage item after it has considered any a conservation management plan for the Heritage Item, which is to be that has been endorsed by the Heritage Council under section 38A of the Heritage Act where the item is on the State Heritage Register, or any other conservation management plan prepared to the satisfaction of the consent authority if there is no endorsed plan for the item when determining and the effect impact of the development on the built form and heritage significance of the heritage item and the Millers Point Conservation Area. This provision does not exclude the application of clauses 5.10 and 4.6 of the LEP.~~
 - d. ~~eEstablishes the maximum building height and the maximum gross floor area of a building in the Millers Point Conservation Area (shown as areas 7 and 11 on the relevant Height of Buildings and Floor Space Ratio maps) to be the existing building height and existing floor area; similar to clause 4.3(2A) of the LEP, but in a separate provision so that clause 4.6 can be applied.~~
 - e. ~~enables the consent authority to approve development with a floor space ratio of up to 2:1 and a height up to 9 metres for a building that is not a heritage item only after it has considered the effect of the development on the significance and built form of the Millers Point Conservation Area and nearby heritage items.~~
 - e. Enables the consent authority to approve development with a floor space ratio of up to 2:1 and a height up to 9 metres for a building that is not a heritage item

only after it has considered the effect of the development on the significance and built form of the Millers Point Conservation Area and nearby heritage items.

- f. Define an 'endorsed conservation management plan' to mean a plan that has been endorsed by the NSW Heritage Council under section 38A of the *Heritage Act 1977* and includes a plan for which the endorsement has expired but is relevant having regard to the extent of change to the item and the consistency with the plan.

Example clause

1. The objectives of this clause are as follows:
 - a. to conserve the heritage significance of the Millers Point Conservation Area and the heritage items in the Millers Point Conservation Area,
 - b. to conserve the significant built form of the Millers Point Conservation Area and heritage items, and
 - e. to ensure **any** conservation management plans endorsed by the NSW Heritage Council **are is** considered in the assessment of development **relating** that adds floor space to a heritage item.
2. This clause applies to land within the Millers Point Heritage Conservation Area.
3. Despite any other provision of this Plan, the maximum height of a building on land shown as Area 7 on the Height of Buildings Map is the height of the building on the land as at the commencement of this Plan.
- ~~4. Despite any other provision of this Plan, the maximum floor area of a building on land shown as Area 11 on the Floor Space Ratio Map is the floor area of the building on the land as at the commencement of this Plan.~~
- ~~5. Development consent may be granted for development that exceeds the existing height and floor space of a building subject to clauses (6) and (7).~~
4. Development consent must not be granted for development **that is an addition of to** a heritage item ~~and that exceeds the existing height and floor space of the heritage item~~ unless the consent authority has considered:
 - a. **the impact of the development on the built form and fabric of the heritage item and conservation area; and**
 - b. **the impact of the development on the heritage significance of the heritage item and conservation area.**
 - c. **a any endorsed** conservation management plan for the heritage item, and where the item is also listed on the State Heritage Register the conservation management plan has been endorsed by the NSW Heritage Council under section 38A of the Heritage Act 1979; **or any other conservation management plan prepared to the satisfaction of the consent authority, if there is no endorsed plan for the item.**
 - ~~b. the impact of the development on the built form and fabric of the heritage item and conservation area; and~~
 - ~~c. the impact of the development on the heritage significance of the heritage item and conservation area.~~
5. Development consent must not be granted for development of a building that is not a heritage item ~~and that exceeds the existing height and floor space of the building unless:~~

- a. the consent authority has considered the impact of the development on the built form and heritage significance of the conservation area and heritage items in the vicinity;
- b. the floor space ratio does not exceed 2:1; and
- c. the height does not exceed 9 metres.

6. In this clause an endorsed conservation management plan means such a plan that has been endorsed by the NSW Heritage Council under section 38A of the Heritage Act 1977 and includes a plan for which the endorsement has expired but is relevant having regard to the extent of change to the item and the consistency with the plan.

Part 3: Justification

This section sets out the reasons why the Council proposes to change the planning controls for Millers Point including:

- the background to the proposed change,
- the problem with the current planning controls, including why the heritage significance cannot be managed by other planning controls, and
- the reasons why the proposed controls are the best approach to address the problem and deliver the intended planning outcome.

This section addresses the further information requested by NSW Department of Planning and Environment in the Gateway Determination of 21 January 2015.

Summary

The planning proposal addresses a conflict in the current planning controls that places the NSW Government's and the City's intended heritage outcomes for Millers Point at risk. The planning proposal responds to a request from the NSW Heritage Council to amend the planning controls to ensure the heritage significance of Millers Point can be conserved.

In summary, the existing height and FSR controls will not deliver the intended planning and heritage outcomes for Millers Point because:

- 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 FSR control permits additions that are inconsistent with endorsed Conservation Management Plans,
- The FSR is excessive compared to other conservation areas despite these areas having lesser significance,
- Millers Point is highly intact and significant additions will result in this important quality and the area's significance being lost,
- FSR is an ineffective control for managing specific significant building forms,
- The 9 metre height control does not accurately reflect the complex and varied scale of the heritage items, and
- Planning legislation restricts the possibility for DCP controls to manage the impacts of excessive FSR.

The proposed amendment is the preferred solution because:

- A conflicting layer of planning controls will be removed,
- It reinstates an approach used under previous planning controls for the area,
- It aligns decisions under the *Environmental Planning and Assessment Act 1979* (the Act) and the *Heritage Act 1977*,
- It bases decisions on conservation management plans which are the most thorough analysis of each heritage item and are required to be considered in approvals under the Heritage Act, and
- It will reduce costs and time by aligning decisions, removing inconsistencies and providing greater certainty.

Background

Significance of Millers Point

The purpose of heritage conservation is to retain the cultural significance of a place or building. The Burra Charter, which guides conservation practice in Australia, states that we conserve because “*Places of cultural significance enrich people’s lives, often providing a deep and inspirational sense of connection to community and landscape, to the past and to lived experiences.*”²

Millers Point is one of the most significant urban places in NSW and the City of Sydney. The statement of significance on the NSW Government’s State Heritage Register describes Millers Point’s importance as:

*“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.”*³

The register then describes the physical condition of the area stating:

“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.”

The heritage significance of the area is recognised by government and the community in its listing. It is listed as a heritage conservation area on both NSW State Heritage Register and the *Sydney Local Environmental Plan 2012* (the LEP). Almost all properties within the conservation area are also individually listed as items on the State Heritage Register and the LEP. The area is also one of only four areas⁴ listed on the State Heritage Register in NSW, the only urban precinct and the only one with almost all buildings also individually listed on both local and NSW registers.

² *The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance*, 2013, p1

³ State Heritage Register, no 00884, 2 April 1999, NSW Department of Housing listing, <http://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=5001049>

⁴ Braidwood (SHR#01749), Hill End Historic Site Bathurst (SHR#00993), Thompson Square Conservation Area Windsor (SHR# 00126) and Millers Point (SHR#s 01682 and 00884)

Millers Point in context

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.

Millers Point is one of 73 conservation areas in the City of Sydney. These conservation areas are high density mixed use precincts that provide homes for over 100,000 residents and work places for 60,000 people. Three of Australia's four densest suburbs—Woolloomooloo, Darlinghurst and Surry Hills—are largely covered by conservation areas. The City's conservation areas provide diverse and adaptable housing and workspaces. Much of the City's work force growth between 2006 and 2011 occurred in conservation areas that provide the grain and character that is attractive to small to medium sized innovative and creative businesses.

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 renewal or growth in metropolitan or subregional strategies.

In 2011 the population of the Millers Point suburb was 1,736 persons⁵ and there were 2,037 people employed in the area⁶. The resident and job density of the suburb is 8,152 persons per square kilometre⁷ and 7,145 workers per square kilometre. In comparison, the tenth densest SA2 census district in Australia is 'Bondi – Tamarama – Bronte' at 8,265 persons per square kilometre.

What are the problems with the current planning controls?

In 2012 the City consolidated three sets of planning controls applying to the council area and translated those controls into the NSW Government's standard local environmental plan template.

For Millers Point, the new LEP retained the floor space ratio, height controls and heritage item listings from the Sydney LEP 2005 but also listed Millers Point as a new conservation area, recognising the State Heritage Register listings that had been in place in 1999 and 2003.

Under Sydney LEP 2012, the current floor space ratio for buildings in Millers Point is 2:1 and the maximum height is 9 metres. Under the previous LEP, Sydney LEP 2005⁸, and the preceding LEP, Central Sydney LEP 1996, the floor space ratio for Millers Point was also 2:1. However, the 2005 and 1996 LEPs also included a clause which limited the floor space ratio for heritage items to the existing floor space ratio, but enabled development to exceed the existing 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

⁵ Australian Bureau of Statistics, 2011 Census

⁶ NSW Bureau of Transport Statistics, Source: Population and Employment Travel Zone Forecasts - September 2014 Release, BTS Travel Zones: 6, 10, 7, 12, 8, 19, 18, <http://visual.bts.nsw.gov.au/tz/#18,19,8,12,7,10,6>

⁷ Australian Bureau of Statistics, Census of Population and Housing, 2011 (Enumerated data), Based on an amalgam of the following SA1 areas: 1133726, 1133725, 1133724, 1133730, 1133742, 1133743

⁸ Clause 71(1) of Sydney LEP 2005 states: 'The maximum floor space ratio for a heritage item is the floor space ratio of the item when this plan commenced, except as provided by subclauses (2), (3) and (4).' The subclauses enable the existing floor space to be exceeded subject to not material affecting the heritage item, the involving mainly internal works or being on part of the site not occupied by the heritage item and being compliant with the mapped FSR.

drafted in the government's standard format, resulting in the maximum floor space ratio of 2:1 for all Millers Point properties regardless of heritage significance.

There are a number of problems with the current planning controls including:

- The FSR permits additions that are half to four times the size of the existing buildings for almost three quarters of the heritage items in Millers Point,
- The FSR control enables additions that are inconsistent with endorsed Conservation Management Plans,
- The FSR is excessive compared to other conservation areas with lesser significance,
- Millers Point is highly intact and significant additions will erode this important quality,
- FSR is an ineffective control for managing specific significant building forms,
- The 9 metre height control does not accurately reflect the complexities of the significant scale of the heritage items, and
- Planning legislation restricts the possibility for DCP controls to manage the impacts of excessive FSR.

The FSR controls enable unsympathetic and significant additions

The current FSR controls promote development that is inconsistent with the NSW Government's and the City of Sydney's intentions to conserve the very high heritage significance of the Millers Point. This conflict did not exist before 2012 as the floor space of heritage items was limited to the existing building under the 2005 LEP.

The inconsistency between the intended heritage outcomes and the key built form controls creates inappropriate development expectations for owners that cannot be realised, reduces the reliability and usefulness of the controls and ultimately makes the development process costly and time consuming for owners, government and the council.

Millers Point is one of the most significant urban areas in Sydney, NSW and Australia. Key parts of the place's significance are that:

- The form and fabric of the buildings, including the facades, roofs, rear wings, arrangement of spaces, footprints, setbacks and materials, have changed very little since their construction. This high degree of intactness across a whole precinct is very rare, if not unique in NSW, particularly in urban areas, and reflects the long history of government ownership.
- The buildings are visible in the round due to the changes in topography and the public spaces of Millers Point. This means that the significant form and fabric of the rear wings, roofs and setbacks are critical to the significance of Millers Point.
- While individual items and rows of terraces differ, the buildings and streets generally show a very high level of consistency in form, scale, setbacks and materials.

Permitting development to the maximum 2:1 FSR control will result in the significant qualities of Millers Point and the individual items being lost. The City has undertaken an urban landscape study to illustrate the impact of development up to the 2:1 FSR in Millers Point. This study is at Appendix A.

The study used building plans to estimate the existing floor space for 261 of the 297⁹ sites in Millers Point. The study then assumed additions would be made to the buildings up to the maximum permitted under the 2:1 FSR and drew examples of the resulting building bulk. The study then grouped the findings into five categories by the size of the addition relative to the existing building to understand the impact of the heritage items and the area.

The study found that 72 per cent of buildings in Millers Point would be significantly affected by development permitted under the FSR control. 15 per cent of sites would be able to have additions double to four times the size of the existing building. Half would be able to have additions half to double the size of the existing building. The findings are summarised in Figure 3 below which also illustrates the size of the potential additions.

Figure 3: Findings of the urban landscape study illustrating the extent of impact on items in Millers Point

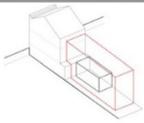
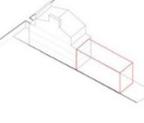
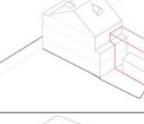
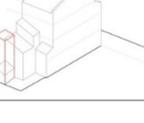
BAND	ADDITIONAL FLOOR AREA	No. of sites		BUILT FORM OUTCOME
E	+91-320% current FSR 0.45 - 1.04	44	15%	
D	+49-90% current FSR 1.05 - 1.34	137	46%	
C	+15-48% current FSR 1.35 - 1.74	32	11%	
B	+3-14% current FSR 1.75 - 1.94	11	4%	
A	+0-2% current FSR 1.95 - 2.0	37	12%	
--	sites not studied	36	12%	

Figure 4 shows the distribution of the affected properties across Millers Point to illustrate the extent of change that would occur under the existing FSR control. Figure 5 shows that almost all the terraces are seen in the round, which is a significant quality of Millers Point. There are eleven groups of terraces and all but three have visible rear elevations which contribute to the significance of the area. It also means that additions cannot be hidden to the rear, as additions often are in conservation areas of lesser significance and integrity.

The study shows the impacts from development would be significant for conservation areas of less significance than Millers Point, however for Millers Point those changes would result in the loss of the key qualities of Millers Point's heritage significance.

⁹ The buildings not measured were unusual building types, properties with an FSR already greater than 2:1 and buildings are not heritage items.

Inconsistency with endorsed Conservation Management Plans

Inconsistency between the planning controls and the endorsed conservation management plans reduces certainty for owners and increases costs and time for owners, council and government.

Development of heritage items in Millers Point require approvals from both the Council, under the EPA Act, and the NSW Heritage Council, under the Heritage Act. The Council considers planning and heritage matters including FSR and the Heritage Council considers heritage matters including endorsed conservation management plans. The high FSR for properties in Millers Point under Council's planning controls is inconsistent with the conservation management plans (prepared by NSW Land and Housing Corporation) endorsed and considered by the NSW Heritage Council.

The conservation management plans are the result of the most detailed investigation into each heritage item and provide the most comprehensive approach to towards changes to the buildings that respect the significance of the item and area.

The NSW Government has committed to preparing conservation management plans for each property to be sold. The NSW Heritage Council is required to consider an endorsed conservation management plans under section 62 of the Heritage Act when considering an application for works to an item on the State Heritage Register. The City can also request the preparation of a conservation management plans be submitted with a development application for a heritage item under the LEP. However, there is no requirement for this to be endorsed by the NSW Heritage Council and risks two different conservation management plans being considered.

A conservation management plan for item in Millers Point will provide guidance on works to the exterior, interior works and treatment of rear elevations and whether any additions can be made. An example is the endorsed conservation management plan for a row of terraces on Lower Fort Street. It includes a section and site plan of one of the terraces showing possible changes to building exteriors and locations for new additions and openings. The plan and section is shown at Figures 6 and 7 below. Figure 7 shows the general location and size of an addition that would be appropriate to the significance of the place. This addition is considerably smaller than that permitted under the 2:1 FSR and 9 metre height control.

Retaining the FSR would be inconsistent with decisions made by the NSW Heritage Council about the potential additions that would be appropriate to the items in Millers Point. This creates a potential conflict between the City's assessment under EPA Act and the Heritage Council's assessment under the Heritage Act.

Conservation Management Plans endorsed by the Heritage Council under section 38A of the Heritage Act are valid for a period of five years, which in practice indicates when the conservation management plan should be reviewed. This period may not be sufficient to allow for the preparation of a development application for additions to a heritage property, particularly as some Conservation Management Plans have been issued prior to the sale of a property.

The period of endorsement of a conservation management plan is proposed to be extended. For the assessment of any subsequent applications the endorsed Conservation Management Plan will need to be updated to reflect the new works. This proposed amendment will minimise the costs of updating a Conservation Management Plan and ensure that an endorsed Conservation Management Plan is valid to form the basis of one development application.

It is proposed to allow expired conservation management plans to be considered provided they remain relevant having regard to the extent of change to the item and whether the change has generally been consistent with the plan.

Figure 4: Distribution of affected items across Millers Point

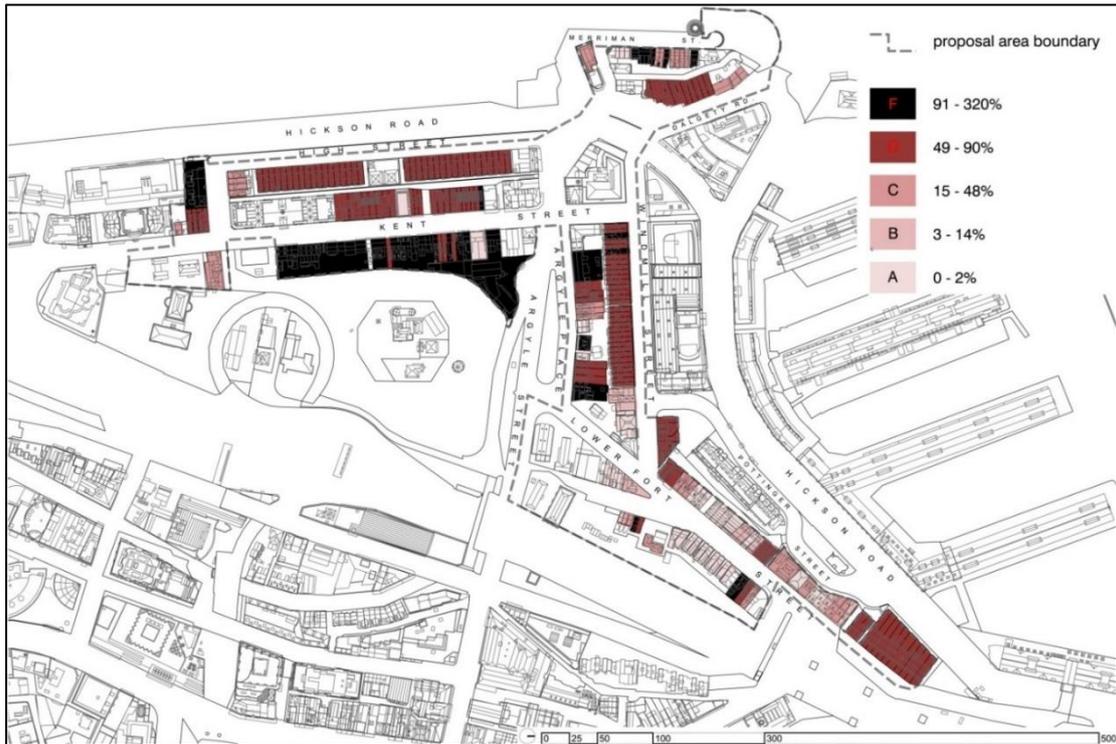


Figure 5: Views to rear elevations from public spaces



Figure 6: Section from endorsed Conservation Management Plan for a Millers Point terrace showing possible changes (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

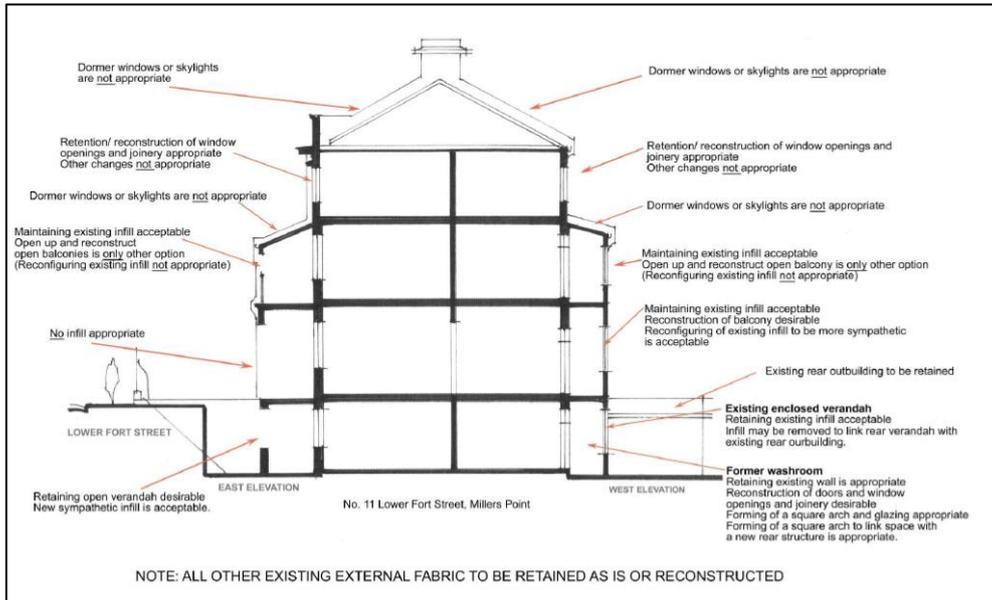
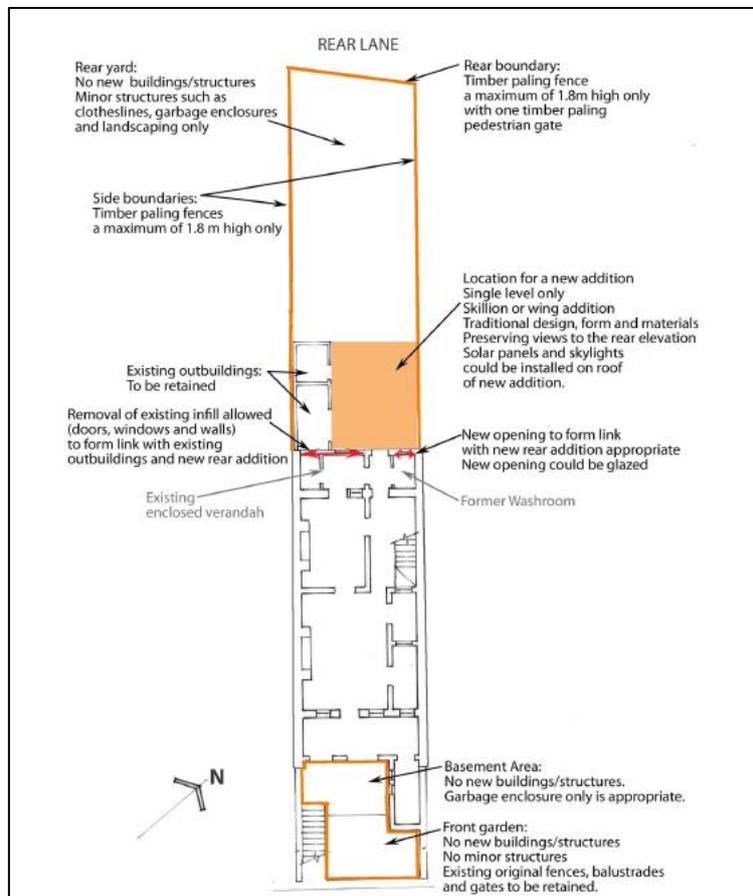


Figure 7: Plan from endorsed Conservation Management Plan for Millers Point terrace showing possible locations for new additions and openings (Clive Lucas, Stapleton and Partners Pty Ltd, 2014, p.x)



The FSR is higher than conservation areas with less significance

The 2:1 FSR for Millers Point is inconsistent with the City's approach to density in other conservation areas and in urban renewal areas. The City has 73 conservation areas comprising about 22,000 individual properties. About two thirds of properties are two storey terrace houses, which is the building type most common in Millers Point.

The City's planning controls, including the LEP and DCP, allow a reasonable degree of flexibility to make additions to the rear of properties in heritage conservation areas. This recognises the amount of change that has occurred in these areas and the relative local heritage significance. The FSR for two storey terrace houses in these conservation areas is commonly between 1:1 and 1.5:1 depending on the size of the lot. 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 FSRs applying to terraces in conservation areas is shown in Figure 8.

Figures 9 and 10 are examples of the types of additions the City approves in conservation areas. Both examples are below the applicable 1.5:1 FSR control. In conservation areas, FSRs over 1.5:1 typically apply to infill development opportunities, such as older warehouses, or shop top housing on high streets. Outside the conservation areas, the City uses FSRs of 2:1 to 3:1 for the Green Square urban renewal area.

Figure 8: FSRs of two storey terraces in conservation areas in the City

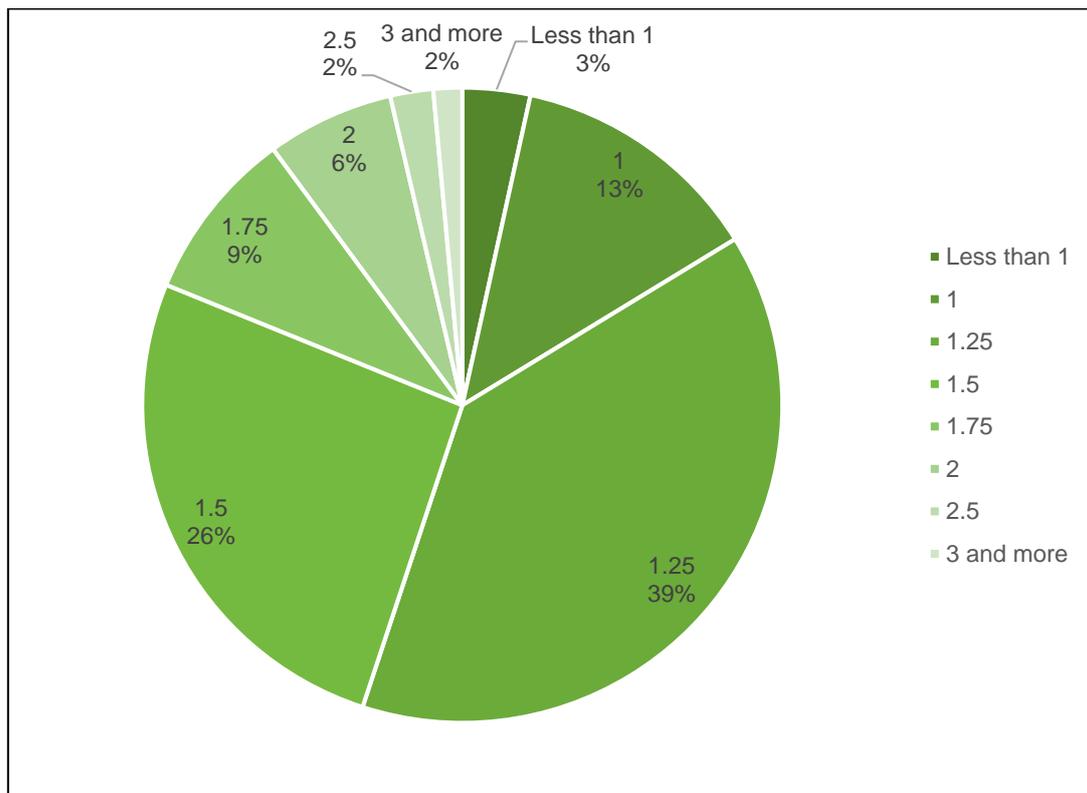


Figure 9: Example of additions to a two storey terrace in a conservation area in the City. The additions included a two storey rear extension, attic conversion, front dormer and rear garage. The proposed FSR was 1.11:1 and less than the 1.5:1 control.

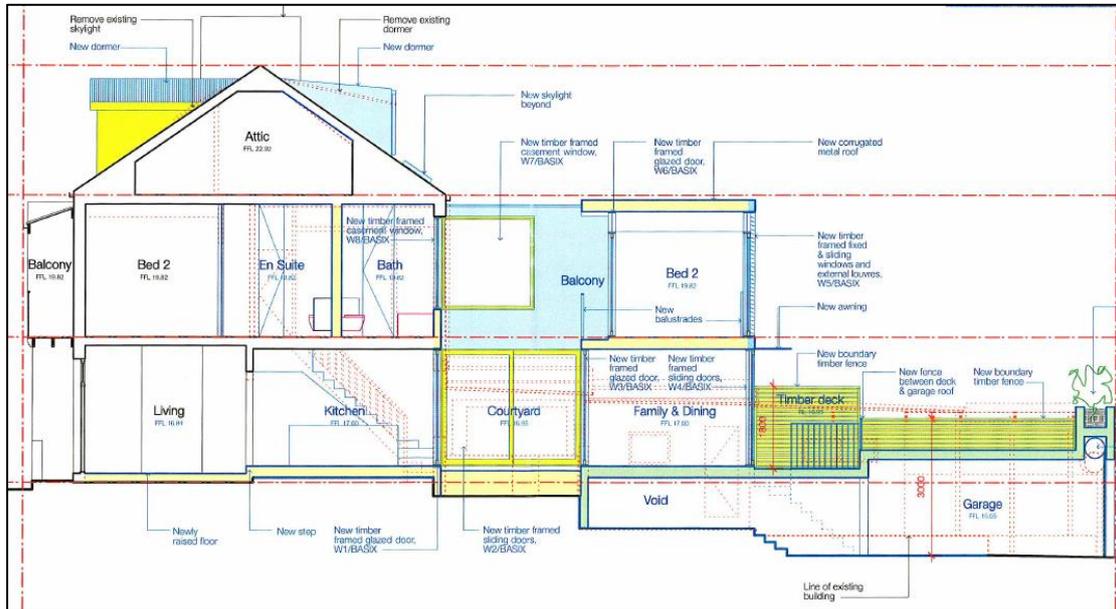
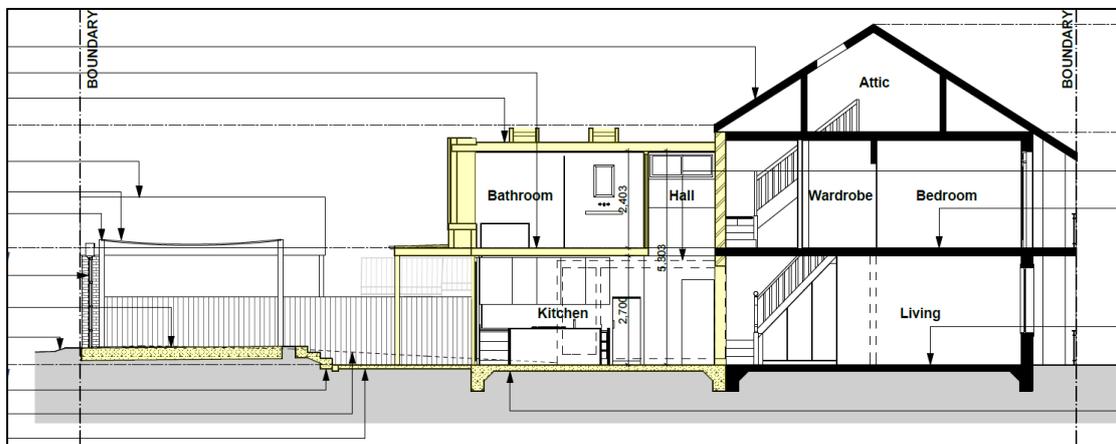


Figure 10: Example of additions to single storey terrace in a conservation area in the City. The additions ground floor extension, attic conversion, rear roof addition and a rear garage with a studio. The proposed FSR was 0.83:1 and less than the 1.5:1 control.



FSR is an ineffective planning tool for Millers Point

FSR controls the amount of floor space allowed on a site and not the form it takes. It allows flexibility for that space to be laid out. This is an issue when the floor space allowed is inconsistent with the desired building form, particularly a building form with heritage significance.

FSR does not strongly regulate or guide the built form of a building. It sets the amount of floor space allowed relative to the site area. FSR is useful to regulate relative density across a wider area and allows flexibility in arranging floor space on a site to manage potential impacts. The flexibility provided by FSR is useful for urban renewal areas.

However, FSR is not the most effective planning tool for managing heritage items and areas as FSR is a poor indicator or regulator of built form. FSR describes how much floor space is permitted but not where it should be located or how it should be arranged on a site. This is a problem for heritage items and areas because these places are commonly significant for the built form and the consistency of the built form in an area or street. FSR can be detrimental for heritage areas if the FSR is too high and arranging the permitted floor space results in impacts to the significant built form.

For FSR to be effective in a heritage conservation area it needs to be accurate and based on an understanding of the existing built form relative to the size of sympathetic additions. The Urban Landscape Study at Appendix A shows the FSR of existing buildings ranges widely from 0.45:1 to about 2:1. Determining the appropriate addition for each heritage item accurately adds another degree of variability and complexity. Therefore, using FSR to control the built form in Millers Point is not appropriate ~~and an alternative development control is needed.~~ ***should be removed. Conservation Management Plans for heritage items in Millers Point will provide guidance on works to the exterior, interior works and treatment of rear elevations and whether any additions can be made. The Conservation Management Plan will provide more effective guidance on appropriate additions than a maximum FSR.***

The height control is inaccurate

The maximum height of building control across the Millers Point conservation area is 9 metres. 9 metres is generally appropriate for two storey terrace houses as it allows for two floors of 3 metres each and a pitched roof of about 3 metres.

If developing a new area or controlling infill development a blanket height control is appropriate. In Millers Point the scale of the existing buildings is significant and it is desirable for development to maintain the scale, whether it is above or below 9 metres. 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. Figure 12 shows the estimated maximum height from the existing ground level to the top of the building structure on each lot based on the City's 3D digital map. It shows that many properties are over the 9 metre height control. Figure 13 shows all the properties that have at least a storey difference between the front and the rear of the dwellings.

A blanket 9 metre height control does not account for different building heights, typologies and the topography. It will restrict reasonable development in some instances and allow inappropriate development in others. Given the heritage significance of the area an alternative height control mechanism is needed to effectively manage development.

Figure 11: Estimated existing building heights showing most are greater than the 9 metre control

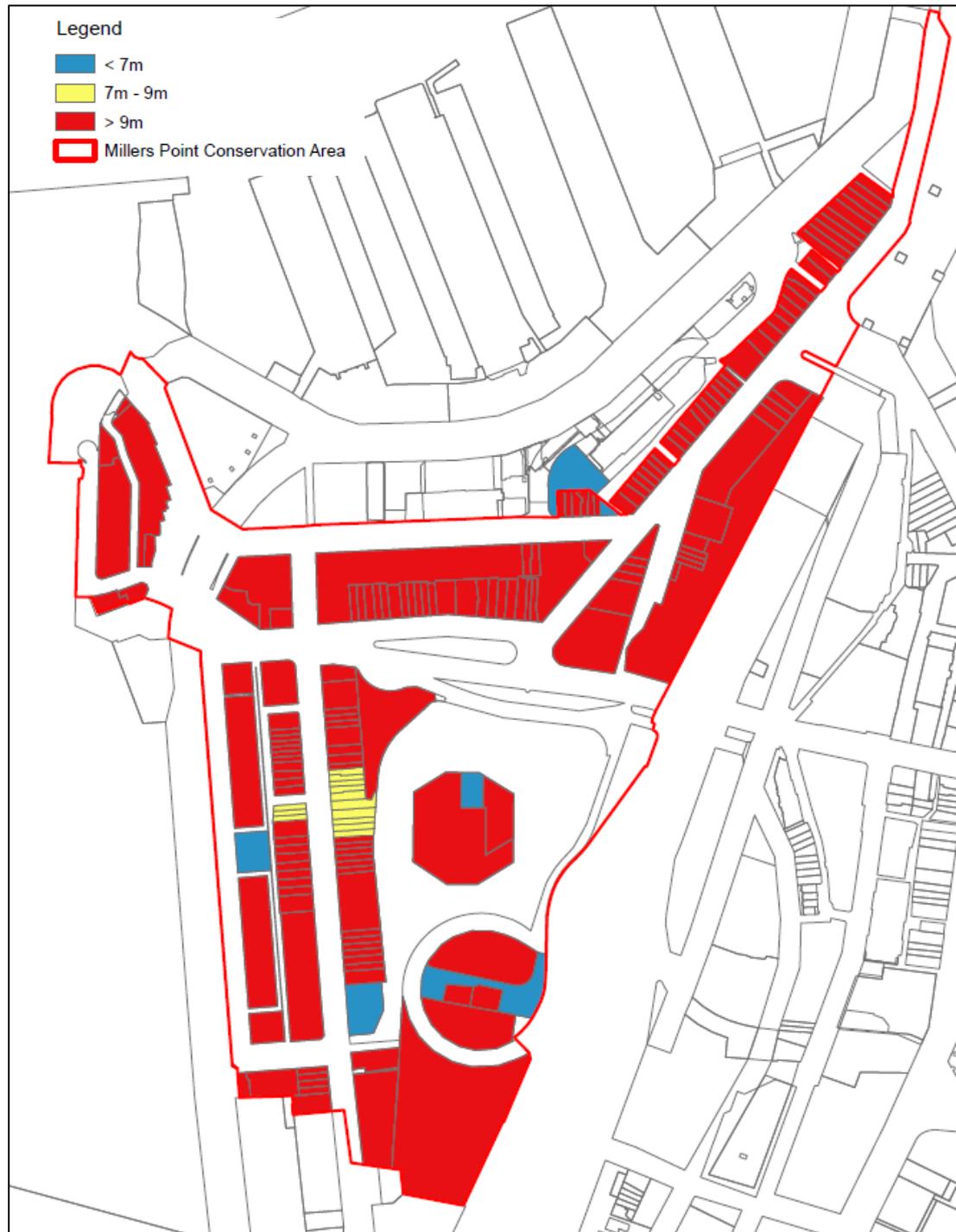


Figure 12: Buildings that have at least one storey height difference between the front and rear elevation (shown orange)



Why can't the heritage significance be managed by other planning controls?

There is an inconsistency between the heritage and FSR controls of the LEP. The FSR enables development that has been shown to be inconsistent with the objectives for heritage conservation under clause 5.10 of the LEP. This inconsistency didn't exist under the previous LEP, which set the maximum FSR for heritage items at that for existing buildings. While the inconsistency can be managed on an application by application basis, it is undesirable to retain that inconsistency because it creates unreasonable expectations for development, risks achieving heritage outcomes and adds costs and time to the assessment process for applicants and Council.

The inconsistency cannot be addressed by other controls as Development Control Plans (DCP) cannot override the LEP. The development standards in the LEP set out the permitted uses and the density and height of development on a site. The DCP then provides guidelines to manage the design and impacts of the permitted development. This hierarchy of controls is set by the EPA Act. Section 74BA of the Act indicates that the purpose of a DCP is to provide guidance for development proposals and to facilitate development permissible under the LEP [emphasis added]. It also states that DCP requirements are not statutory. In addition, section 74C (5)(b) of the EPA Act indicates that a provision of a DCP has no effect if it is inconsistent with a provision of an LEP. Therefore, DCP controls cannot restrict how much floor space is permitted on the site, where the FSR is too high as is the case with Millers Point, as this would be inconsistent with the LEP.

A catalogue of the relevant heritage controls applying to Millers Point is at Appendix B with commentary on the capacity of those controls to manage the state and local heritage significance of the conservation area and the items. DCP controls are not statutory requirements and are of no effect if they are inconsistent with the LEP. Nevertheless, the catalogue of controls shows that they are insufficient to manage the very high level of significance and unique built form of Millers Point. The controls provide general guidance for development of heritage items and buildings throughout conservation areas. They generally allow more substantial additions than those considered acceptable in the endorsed conservation management plans.

Why is the proposed control the preferred solution?

The planning proposal proposes to:

- remove the existing FSR and height controls;
- set the existing height and floor space as the maximum;
- allow variations to the maximum for heritage items subject to consideration of an endorsed CMP and impacts on the item and area; and
- allow variations to the maximum for buildings that are not heritage items up to 2:1 FSR and up to a height of 9 metres subject to consideration of the impacts on the area and nearby items.

The proposed controls are the preferred solution because:

- A conflicting layer of planning controls will be removed,
- It reinstates an similar approach to previous planning controls,
- It aligns decisions under the EPA Act and the Heritage Act,
- It bases decisions on conservation management plans which are the most thorough analysis of each heritage item and are require to be considered in approvals under the Heritage Act,

- It will reduce costs and time by aligning decisions, removing inconsistencies and providing greater certainty,
- It retains the development potential of existing buildings that are not heritage items, and
- It allows applications to be submitted for alterations without an endorsed CMP as the risk of heritage impact is lower.

How does the proposal affect buildings that are not heritage items or are privately owned?

The planning proposal applies to the entire Millers Point Conservation Area. The significance of the area as a whole has been recognised by the NSW Government and the City in the listings. Conservation areas are listed for the heritage values of the place as a whole and not necessarily because it is a collection of individual heritage items. The development of buildings that make a neutral contribution or detract from the significance of an area also affect the significance of a conservation area and therefore need to be considered for their potential impact.

While there is a history of government ownership which has shaped the significant qualities of Millers Point and the items, the significance of the area and the individual items is not dependant on the ownership. The items have been assessed as having state and local significance regardless of their ownership. The appropriate planning controls should apply to all sites within the conservation area to manage the significance of the items and the area as a whole.

The planning proposal applies to all properties in the Millers Point Heritage Conservation Area, as defined in the LEP, regardless of their ownership or individual listing. As the whole area has been identified as having state and local significance. The proposed amendment will manage buildings that are not heritage items and buildings that are privately owned as described below.

- Buildings that are publicly or privately owned and heritage items

These buildings demonstrate state and local significance regardless of their ownership. 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 any additions being approved, irrespective of the ownership. This is consistent with legislation as Council can request a conservation management plan for any heritage item under clause 5.10(6) of the LEP and the Heritage Council can only consider a conservation management plan that has been endorsed under clause 62(c1) of the Heritage Act. If an item is only listed on the LEP, and not the State Heritage Register, a conservation management plan is not required to be endorsed.

- Buildings that are publicly or privately owned and *not* heritage items

These buildings are part of the state and local conservation area listings. Changes to these buildings could positively or negatively affect the significance of the 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 the current control of 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 management plan needs to be submitted.

The effect of this approach on notable sites is:

- 45A-C Lower Fort Street

These are three contemporary infill terrace houses that are not heritage items. The estimated FSR is 1.83:1 across the three sites. The proposed controls do not reduce the maximum floor space and would enable an application for an addition to be determined subject to consideration of its impact on the area and adjoining items. No conservation management plan would need to be submitted. The existing height is an appropriate maximum as the existing buildings fit within the scale of the conservation area.

- 64-80 Kent Street

These are heavily modified two storey terraces that are owned by NSW Land and Housing Corporation but are not listed as heritage items. The proposed controls do not reduce the maximum floor space and would enable an application for an addition to be determined subject to consideration of its impact on the area and adjoining items. No conservation management plan would need to be submitted. The existing height is an appropriate maximum as the existing buildings fit within the scale of the conservation area.

- 89-105 Kent Street

This is the Langham Hotel, a modern hotel that is not a heritage item. It is generally compatible with the built form of the conservation area. The existing floor space is estimated to be 4.13:1¹⁰ and the height is three to four storeys. The proposed controls set the maximum height and FSR at that of the existing building, which is greater than the 9 metre and 2:1 control. No conservation management plan would need to be submitted. This property will therefore benefit from the proposed amendment.

- 65-69 Kent Street

This property is a modern commercial building that is not a heritage item. It has two storeys with a third in a mansard roof and has an estimated FSR of 2.6:1. The building is generally compatible with the built form of Millers Point. The proposed controls set the maximum height and FSR at that of the existing building, which is greater than the 9 metre and 2:1 control. This property will therefore benefit from the proposed amendment.

- 87 Lower Fort Street

This property is a single storey mid twentieth century community centre owned by NSW Land and Housing Corporation. It is not a heritage item. It is part of the super-lot comprising 1-75 Windmill Street. The proposed controls do not reduce the maximum floor space and would enable an application for an addition to be determined subject to consideration of its impact on the area and adjoining items. No conservation management plan would need to be submitted.

- 2 Watson Road

This property is owned by the State of NSW and under the care and control of the City. It features a number of community buildings including the heritage listed Abraham Mott Hall and mid twentieth century single storey buildings. The Hall is listed only on the LEP and not on the State Heritage Register. The proposed amendments would set the maximum FSR and height of the heritage building at that of the existing and additions may be approved subject to consideration of a conservation management plan and impacts to the area and item. The

¹⁰ D/1990/346/A

conservation management plan would not need to be endorsed as the item is not listed on the State Heritage Register. Proposals that do not result in additions do not necessarily need to consider a conservation management plan. For the remainder of the site, Council may 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.

- 24 Trinity Avenue

This site is owned by Ausgrid and used as a small playground by the City of Sydney. It is zoned R1 General Residential. It is not listed as a heritage item. Under the proposed controls the consent authority may 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.

- 36-65 Trinity Avenue

This site is a heritage item owned by Transport for NSW (Railcorp). The site is zoned 'SP2 Infrastructure – Railways' and uses are generally restricted to railways purposes and ancillary uses. The proposed amendments would set the maximum FSR and height at that of the heritage building and additions may be approved subject to consideration of a conservation management plan and impacts to the area and item. This would enable additions or new development for uses permitted under the zoning. If the site was to be divested by the NSW Government it would need to be rezoned to permit a wider range of uses. An appropriate height and FSR for infill development could be investigated at that time.

Section A – Need for this planning proposal

1. Is the planning proposal a result of any strategic study or report?

No. Properties in the Millers Point Heritage Conservation Area have a significant level of intact original fabric and form and architectural detailing. Individually and as a group, they are a rare and potentially unique heritage resource in Australia. The NSW Governments announcement to sell 293 properties, including heritage listed items in the Millers Point Heritage Conservation Area prompted the NSW Heritage Council to write to the City with a request to urgently review the planning controls for the Millers Point Heritage Conservation Area in response to the sale.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. This proposal is the best means of achieving the objectives and intended outcomes as the built form controls in the LEP need to support the heritage listings and conservation of the Millers Point Heritage Conservation Area. The need to change the controls has been set out previously in this planning proposal.

Other options considered and not pursued are:

No change to the controls: This option places the heritage significance of Millers Point at risk due to the high FSR control which is inconsistent with state and local objectives to conserve the heritage of the place. The need to change the controls is addressed previously in this planning proposal.

~~No FSR and height controls and rely on heritage assessment only: This option is not supported as it does not improve certainty for proponents, Council and the NSW Government. Using endorsed conservation management plans provides clear guidance for proponents and consistency between consent authorities. Also, this~~

~~option does not adequately deal with the redevelopment of buildings that are not heritage items.~~

Specific height and FSR controls for each building: This approach is highly impractical for a number of reasons. The specific FSR would be highly prescriptive and may not enable well designed additions that would be consistent with the endorsed conservation management plans. Accurately measuring existing buildings (including gaining access) and drawing appropriate building envelope additions for almost 300 properties is extremely resource intensive and unlikely to be achieved. The many and small graduations of FSR categories would be inconsistent with mapping requirements of the NSW Government's standard LEP.

3. Is there a net community benefit?

The planning proposal will provide a net community benefit because it will protect heritage items in Millers Point and the Millers Point Heritage Conservation Area. The significance of the Millers Point Heritage Conservation Area is important to the local community and heritage groups and the broader NSW community who over the years have recognised and taken action to protect the heritage values of individual buildings and the whole precinct.

Section B – Relationship to strategic planning framework

4. Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and the exhibited draft strategies)?

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.

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 renewal or growth in metropolitan or subregional strategies.

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. The planning proposal is consistent with *A Plan for Growing Sydney* as it has considered the potential for additional housing in Millers Point.

Key directions under the *Draft Sydney City Subregional Plan (2008)* are to plan for housing choice and to enhance the City's prominence as a diverse global cultural centre.

The planning proposal does not propose to rezone land from involve a change in zone from the existing R1 General Residential. The amendment proposed to the primary development controls for heritage listed items in Millers Point will recognise the significance of these items and the cultural landscape of Millers Point.

Improve the quality of the built environment and aim to decrease the subregion's ecological footprint - Subregional Strategy Action E6.1.2 encourages Councils to update out of date or adequate heritage studies as part of the preparation of their Principal LEPs. Sydney LEP and Sydney DCP came into operation of 14 December

2012. The controls are a translation of previous controls into a single local environmental plan and development control plan. The building height and FSR controls are a translation of previous controls under *Sydney Local Environmental Plan 2005*. The Millers Point planning controls were not reviewed when Sydney LEP 2012 was prepared as no change to properties was envisaged whilst under government ownership.

Subregional Strategy objective 6.2.1 requires councils to recognise where Sydney’s cultural heritage contributes to its character and quality and manage change appropriately. This Planning Proposal to amend the controls will make the existing height and floor space the maximum permitted. This approach is consistent with the very high level of significance and very little change seen in the area. The amendment recognises the significant cultural heritage of Millers Point by aligning the development standards with the intent of the heritage listings.

The planning proposal will recognise and protect the range of architectural styles that are intact and good examples of their typology.

5. Is the planning proposal consistent with the local council’s Community Strategic Plan or other local strategic plan?

The City’s Community Strategic Plan is *Sustainable Sydney 2030* (SS2030), a vision for a ‘green’, ‘global’ and ‘connected’ City of Sydney that sets targets, objectives and actions for the sustainable development of Sydney to 2030 and beyond. The vision was adopted by Council in 2008 and includes 10 strategic directions to guide the future of the City, as well as 10 targets against which to measure progress. Of particular relevance to this proposal is Direction 9 – Sustainable Development, Renewal and Design. Action 9.3.4 is to protect the heritage value of objects, buildings, places and landscapes and action 9.4.1 is to regularly review and streamline development control. 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.

6. Is the planning proposal consistent with applicable State Environmental Planning Policies (SEPPs)?

The Planning Proposal is consistent with applicable State Environmental Planning Policies (SEPPs) and Deemed State Environmental Planning Policies (former REPs) as shown in Table 2 Consistency with State Environmental Planning Policies.

Table 1: Consistency with State Environmental Planning Policies (SEPPs)

Consistency with State Environmental Planning Policies	
SEPPs with which the Planning Proposal is consistent. The Planning Proposal will not constrain or hinder the Application of the SEPP	6 Number of Storeys in a Building; 22 Shops and Commercial Premises; 32 Urban Consolidation (Redevelopment of Urban Land); 33 Hazardous and Offensive Development; 55 Remediation of Land; 60 Exempt and Complying Development; 64 Advertising and Signage; 65 Design Quality of Residential Flat Development; 70 Affordable Housing (Revised Schemes); SEPP (Building Sustainability Index: BASIX) 2004; SEPP (Housing for Seniors or People with a Disability) 2004; SEPP (Major Development) 2005; SEPP (Infrastructure) 2007; SEPP (Temporary Structures) 2007; SEPP (Exempt and Complying

Consistency with State Environmental Planning Policies

	Development Codes) 2008; SEPP (Affordable Rental Housing) 2009
SEPPS that are not applicable to the Planning Proposal	Development Without Consent and Miscellaneous Exempt and Complying Development; 10 Retention of Low Cost Rental Accommodation; 14 Coastal Wetlands; 15 Rural Landsharing Communities; 19 Bushland in Urban Areas; 21 Caravan Parks; 26 Littoral Rainforests; 29 Western Sydney Recreation Area; 30 Intensive Agriculture; 36 Manufactured Home Estates; 39 Spit Island Bird Habitat; 41 Casino Entertainment Complex; 44 Koala Habitat Protection; 47 Moore Park Showground; 50 Canal Estate Development; 52 Farm Dams and Other Works in Land and Water Management Plan Areas; 59 Central Western Sydney Regional Open Space and Residential; 62 Sustainable Aquaculture; 71 Coastal Protection; SEPP (Kurnell Peninsula) 1989; SEPP (Penrith Lakes Scheme) 1989; SEPP (Sydney Region Growth Centres) 2006; SEPP (Kosciuszko National Park— Alpine Resorts) 2007; SEPP (Mining, Petroleum Production and Extractive Industries) 2007; SEPP (Miscellaneous Consent Provision) 2007; SEPP (Rural Lands) 2008; SEPP (Western Sydney Employment Area) 2009; SEPP (Western Sydney Parklands) 2009; SEPP (Urban Renewal) 2010; SEPP (SEPP 53 Transitional Provisions) 2011; SEPP (State and Regional Development) 2011; SEPP (Sydney Drinking Water Catchment) 2011; SEPP (Three Ports) 2013

Consistency with Deemed State Environmental Planning Policies (former REPs)

Deemed SEPPS that are not applicable to the Planning Proposal	5 (Chatswood Town Centre); 8 (Central Coast Plateau Areas); 9 Extractive Industry (No 2—1995); 11 Penrith Lakes Scheme; 13 Mulgoa Valley; 16 Walsh Bay; 17 Kurnell Peninsula (1989); 18 Public Transport Corridors; 19 Rouse Hill Development Area; No 20 Hawkesbury- Nepean River (No 2—1997); 24 Homebush Bay Area; 25 Orchard Hills; 26 City West; 28 Parramatta; 29 Rhodes Peninsula; 30 St Marys; 33 Cooks Cove; Sydney REP (Sydney Harbour Catchment) 2005; Greater Metropolitan REP No 2 Georges River Catchment
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7. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

The Planning Proposal is consistent with the applicable Ministerial Directions, with the exception of Direction 1.1 and 3.1, with justification provided below. Table 2 identifies

whether the Planning Proposal is consistent, inconsistent or not applicable with the Directions. Key issues arising from particular directions and the necessary justification is discussed below.

Table 2: Consistency with applicable Ministerial Directions under Section 117

Consistency with directions	
Directions with which this Planning Proposal is consistent	2.3 Heritage Conservation; 3.3 Home Occupations; 3.4 Integrating Land Use and Transport; 4.4 Acid Sulfate Soils; 6.1 Approval and Referral Requirements; 6.2 Reserving Land for Public Purposes; 6.3 Site Specific Provisions; 7.1 Implementation of the Metropolitan Plan for Sydney 2036
Directions with which the Planning Proposal is inconsistent	<p><i>Direction 1.1 Business and Industrial Zones</i></p> <p>This Planning Proposal is inconsistent with this Direction in that it reduces the total potential floor space area for employment uses and related public services in business zones (4)(c). However the Direction allows inconsistency if the change is considered to be of minor significance.</p> <p>Seven properties in Millers Point including a church, Carlton Hotel and small scale local businesses that serve the immediate locality are zoned B1 neighbourhood centre and are heritage listed items under Sydney LEP 2012.</p> <p>The Planning Proposal will remove the 9m height control and floor space control of 2:1 and make the existing height and floor space the maximum permitted. Additions can be approved subject to assessment against a CMP and heritage impacts.</p> <p>The proposed amendment will continue to facilitate these uses. The businesses serve the local area which is not expected to grow because of the heritage significance of the area and of the individual properties.</p> <p>The inconsistency is necessary to enable consistency with Direction 2.3 Heritage Conservation.</p> <p><i>Direction 3.1 Residential Zones</i></p> <p>This planning proposal is inconsistent with this direction as amendment reduces the permissible residential density. Inconsistency is permitted by this direction if the planning authority can demonstrate that the provisions of the draft LEP are of minor significance. The Millers Point Heritage Conservation Area is one of the most significant urban precincts in NSW, if not Australia. It is listed on the State Heritage Register and the LEP. Most properties are also individually listed on the State Heritage Register and the LEP. The area is not identified as an urban renewal or growth precinct in any local or regional planning strategies.</p> <p>The change in density is of minor significance. The precinct is not expected to deliver additional dwellings or a greater variety</p>

Consistency with directions

of dwelling types given the high level of significance and the comprehensive state and local heritage listings. Changing the density is necessary to provide consistency with direction 2.3 Heritage Conservation. Maintaining the density would enable unsympathetic additions that will erode the significance of the area without delivering more dwellings.

The planning proposal's consistency with the objectives of this direction is described below:

(a) to encourage a variety and choice of housing types to provide for existing and future housing needs - The existing building stock contributes to the variety of housing types that will continue to provide for the range of housing needs in the council area.

(b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services – new dwellings are not expected in the Millers Point Conservation Area due to the state and local heritage listings.

(c) to minimise the impact of residential development on the environment and resource lands – changing the density will not impact in the environment or resource lands.

Directions that are not applicable to the Planning Proposal

1.2 Rural Zones; 1.3 Mining, Petroleum Production and Extractive Industries; 1.4 Oyster Aquaculture; 1.5 Rural Lands; 2.1 Environment Protection Zones; 2.2 Coastal Protection; 2.4 Recreation vehicle Areas; 3.2 Caravan Parks and Manufactured Home Estates; 3.5 Development Near Licensed Premises; 3.6 Shooting Ranges; 4.2 Min Subsidence and Unstable Land; 4.3 Flood Prone Lane; 4.4 Planning for Bushfire Protection; 5.1 Implementation of Regional Strategies; 5.2 Sydney Drinking Water Catchment; 5.3 Farmland of State and Regional Significance on the NSW Far North Coast; 5.4 Commercial and Retail Development along the Pacific Highway, North Coast; 5.8 Second Sydney Airport, Badgerys Creek; 5.9 North West Rail Link Corridor Strategy;

Section C – Environmental, social and economic impact

8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The planning proposal does not adversely affect any critical habitat or threatened species, populations or ecological communities, or their habitats.

9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

No. There are no likely environmental effects arising from this planning proposal.

10. Has the planning proposal adequately addressed any social and economic effects?

Millers Point includes examples of buildings demonstrating each stage of the area's post-settlement history. This amendment will ensure Millers Point continues as a place of social and cultural significance for the people of New South Wales.

Floor space, height, heritage controls and conservation management plans create greater certainty for future owners about the development potential of individually listed items.

Section D – State and Commonwealth interests

11. Is there adequate public infrastructure for the planning proposal?

The changes do not require the need for public infrastructure.

12. What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

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 have 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.

Since the request from the Department for further justification the City has further consulted with the NSW Government. The City has presented findings of the further research and discussing the proposed planning control with NSW Heritage Council Millers Point Sub-committee and the Millers Point Steering Committee involving NSW Family and Community Services and Government Property NSW. 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.

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.

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.

Part 4: Mapping

The Planning Proposal amends the Building Height and Floor Space Ratio Map in the Sydney Local Environmental Plan 2012 by:

- removing the existing building height control of 9 metres and floor space ratio control of 2:1 for the Millers Point Heritage Conservation Area, and
- identifying the conservation area as Area 7 and Area 11 on the height and FSR maps respectively. These areas are referred to in the proposed new provisions described in Part 2.

The amended maps follow and are:

- HOB_013
- HOB_014
- FSR_013
- FSR_014



**Height of Buildings Map
- Sheet HCB_013**

Maximum Building Height (m)



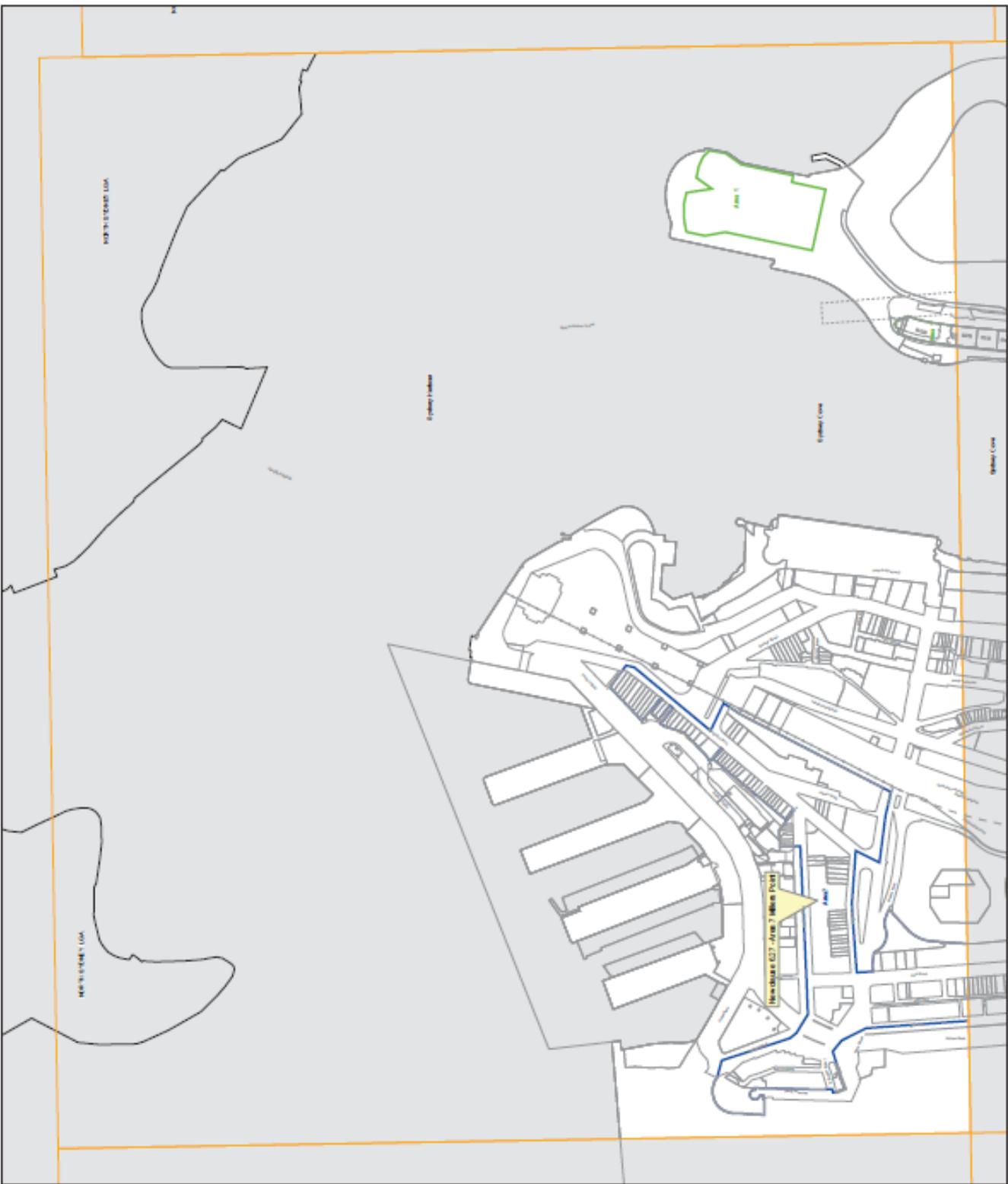
Maximum Building Height (m)
Height shown on map in RL (m)

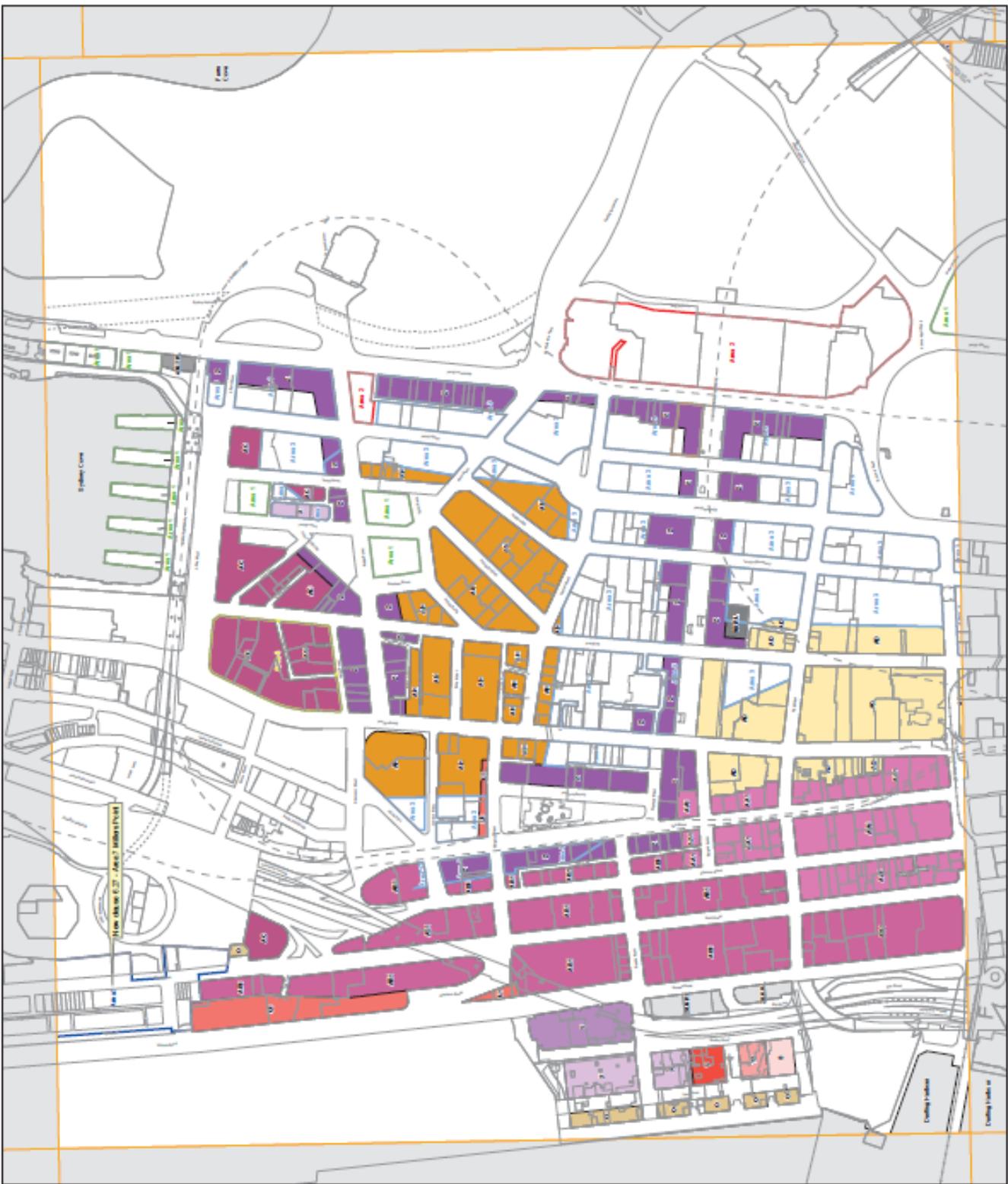


City of Sydney
Council 15/06/2014 © City of Sydney



Projection: GDA1984
Date: 18
Map Authority: NSW LEP
2012 - LEP - 15/06/2014 - 15/06/2014





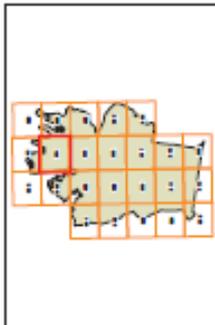
**Sydney
Local Environmental
Plan 2012**

**Height of Buildings Map
- Sheet HOB_014**

Maximum Building Height (m)	Color
2.3	Lightest Purple
3	Light Purple
4.5	Medium-Light Purple
6	Medium Purple
7.5	Dark Purple
9	Lightest Orange
11	Light Orange
12	Light Yellow
15	Yellow
16	Light Green
18	Light Green
22	Light Green
24	Light Green
25	Light Green
26	Light Green
27	Light Green
28	Light Green
29	Light Green
30	Light Green
35	Light Green
38	Light Green
40	Light Green
42	Light Green

Maximum Building Height (m) Heights shown on map in RL (m)	Color
10	Lightest Grey
15	Light Grey
20.6	Medium-Light Grey
25	Medium Grey
30	Dark Grey
35	Very Dark Grey
40	Black
45	Black
50	Black

Card Site
Candidate 15/06/2012 © City of Sydney



Prepared by City of Sydney
Date: 15/06/2012
Map Information: LEP 2012, HOB_014, 00_2012-12

**Sydney
Local Environmental
Plan 2012**

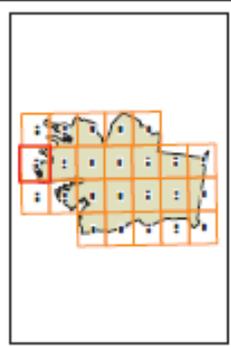


**Floor Space Ratio Map -
Sheet FSR_013**

Maximum Floor Space Ratio (m:1)

0.4	0.5	0.6	0.7	0.8	0.9	1.0	1.1	1.25	1.5	1.75	2	2.5	3	3.25	3.5	3.75
4	4.5	5	6	6.5	7	7.5	8	9	10	11	14	15A	15B	15C	15D	15E

Refer to clause 6.14
 Refer to clause 6.15A
 Refer to clause 6.27
 Refer to clause 6.4
 Calculate 15/100/2014 © City of Sydney



Prepared by: GHA
 Date: 08
 2012/04/10 File: EIS_00_214182



**Sydney
Local Environmental
Plan 2012**

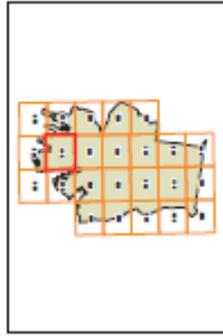


**Floor Space Ratio Map -
Sheet FSR_014**

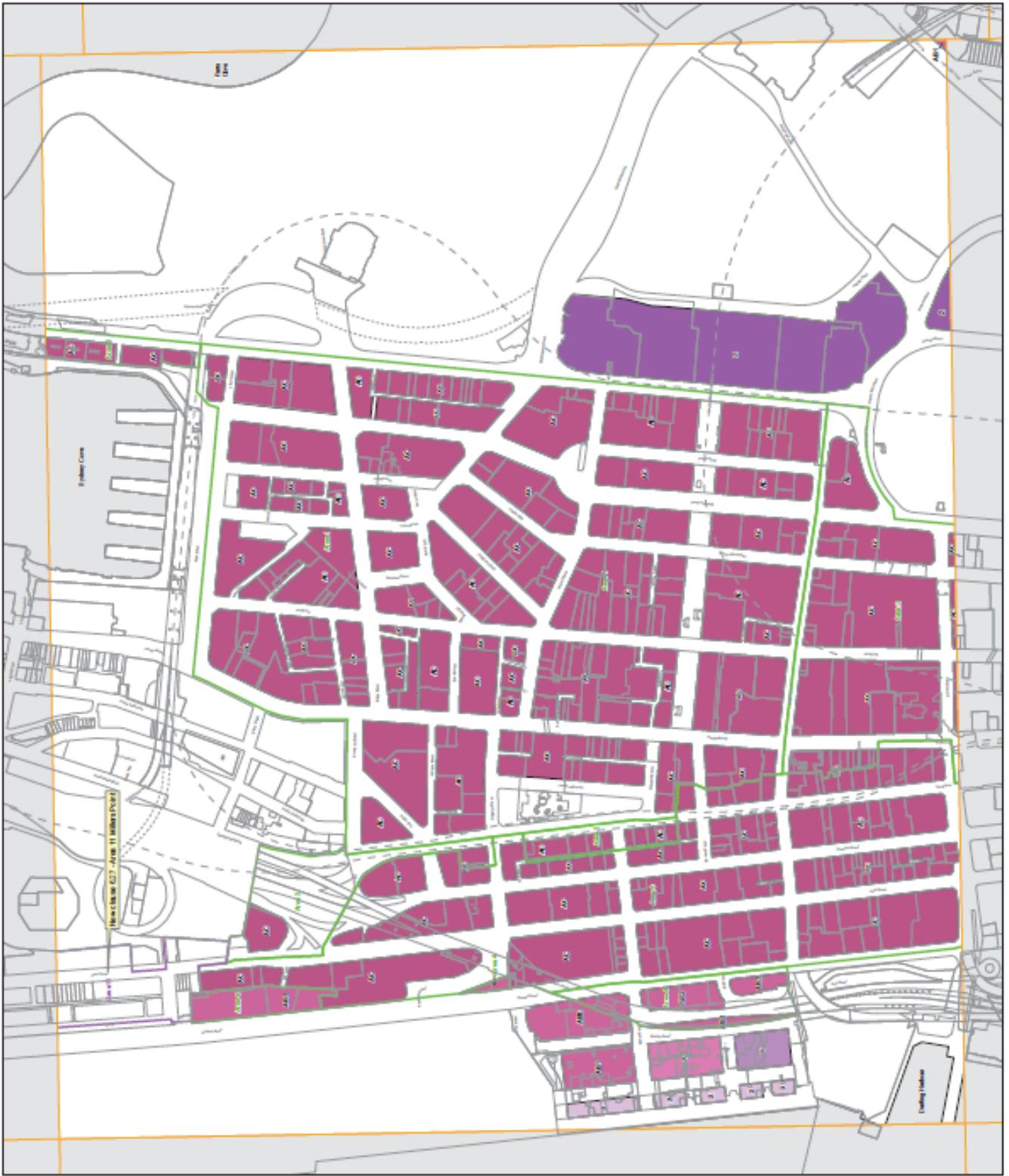
Maximum Floor Space Ratio (m:1)

0.6	0.7	0.8	0.9	1.0	1.1	1.25	1.5	1.75	2	2.5	3	3.25	3.5	3.75
0.6	0.7	0.8	0.9	1.0	1.1	1.25	1.5	1.75	2	2.5	3	3.25	3.5	3.75
0.6	0.7	0.8	0.9	1.0	1.1	1.25	1.5	1.75	2	2.5	3	3.25	3.5	3.75

Refer to clause 6.14
 Refer to clause 6.15A
 Refer to clause 6.27
 Refer to clause 6.4
 Cadastre
 © City of Sydney 15/06/2014 © City of Sydney



N
 Scale: 1:5,000 @ A3
 Date: 15 DEC 2014
 Prepared by: GWS
 Date: 15 Dec 2014
 File Path: \\GIS\GIS\Projects\2014\2014_06_2014\FSR_014_014_2014.mxd



Part 5: Community consultation

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.

Public exhibition will include:

- notification through the City of Sydney website and newspapers that circulate widely in the area,
- written notification of the public exhibition to all owners, occupants and local interest groups and relevant NSW Government agencies, and
- 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.

Part 6: Project Timeline

It is estimated that this amendment to Sydney LEP will be completed by November 2017 in accordance with the Gateway Determination.

Stage	Timing
Submit to the Greater Sydney Commission for Gateway Determination	March 2016
Gateway Panel consider Planning Proposal	March to April 2016
Receive Gateway Determination	November 2017
Public Exhibition of Planning Proposal	February 2017
Review of submissions received	March 2017
Post Exhibition report to Council and CSPC Meetings	May November 2017
Drafting by Parliamentary Counsel	June December 2017
LEP Amendment is published and completed	July January-February 2018

Appendices

- A. Millers Point Urban Landscape Study
- B. Catalogue of relevant controls applying to Millers Point



Appendix A: Millers Point Urban Landscape Study



Appendix B: Catalogue of relevant controls applying to Millers Point