

ATTACHMENT E

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SUMMARY OF SUBMISSIONS

	Key Issues Raised	Response	Recommendation
1.	<p>Support changes which will allow for timely determination of DAs and promotes cost effective delivery of positive heritage outcomes for the local and wider community.</p> <p>The proposed height and floor space controls are supported because the amendments ensure that the existing built form and scale is retained with appropriate new development that is sympathetic to the heritage item and conservation area.</p> <p>Support for the proposed planning controls and request that they be implemented with some urgency due to the privatisation of the housing stock in Millers Point.</p>	Noted	Noted
2.	<p>Support for any changes to planning controls that would benefit the Millers Point community. Notes the changing demographic of the area and trusts that the planning changes will enable the church to serve the evolving community in practical and meaningful ways.</p>	<p>Noted.</p> <p>Although heritage listings identify Millers Point as having a very high level of heritage significance and being of important cultural value to the community, this planning proposal addresses changes to the development (height and FSR) controls rather than social and demographic changes in the Millers Point area.</p>	Noted
3.	<p>Commends the City of Sydney for the work carried out to address the NSW Heritage Council's request to amend the planning controls to protect the heritage of Millers Point.</p> <p>The amendments protect the heritage significance of Millers Point by ensuring that the existing built form</p>	Noted	Noted

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	<p>and scale is retained with appropriate new development that is sympathetic to the heritage item and conservation area.</p> <p>The proposed controls will align decisions under the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Heritage Act 1977</i> by making endorsed CMPs a matter for consideration during the assessment process for the City of Sydney.</p> <p>The draft amendments to the DCP are supported. The proposed updates to the Millers Point locality statement and supporting principles will provide additional guidance for development proposals and the retention of the character and built form of the Millers Point conservation area.</p>		
4.	<p>Purchasers were not made aware of the proposals at time of purchase.</p> <p>No consultation was undertaken by the City prior to the public exhibition of the proposals.</p>	<p>The City has followed the legislation and the Department for Planning and Environment's established process for obtaining the Department's consent to place a planning proposal on public exhibition.</p> <p>The Millers Point planning proposal was originally reported to the City's Planning and Development Committee on 28 October 2014 and again after the further justification for the proposals requested by the NSW Department of Planning and Environment on 16 March 2016 seeking approval to request a gateway determination to publicly exhibit the proposals. A gateway determination</p>	Noted

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		<p>allowing the planning proposal to be placed on public exhibition was not received until 24 November 2016.</p> <p>As owner or former owner of the majority of properties in Millers Point, the NSW Department of Family and Community Services, has been consulted on the proposals since 2014.</p>	
5.	<p>The current controls are sufficient and the proposal is unnecessary.</p>	<p>The planning proposal was prepared at the request of the NSW Heritage Council after the announcement of the sale of Government properties in March 2014. The existing controls enable development inconsistent with the heritage significance of the area and items. Many properties already exceed the 9m height control and the FSR is much higher than in other, less significant conservation areas of the city. If fully developed the 2:1 FSR could enable additions that are half to four times the size of most of the existing buildings.</p> <p>The proposed change is necessary to remove a conflict between the state and local heritage objectives and controls and the FSR control.</p> <p>Prior to the sale, heritage values managed through government ownership and redevelopment of properties had not been contemplated. As these properties are transitioning into private ownership, the controls must not be in conflict with heritage objectives or contain an opportunity for inappropriate development.</p>	<p>No change.</p>

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6.	<p>The proposal introduces another conflicting planning control which makes the planning process for development in Millers Point more complex.</p>	<p>A FSR control describes the maximum amount of floor space permitted on a site, but does not indicate where it should be located or how it should be arranged. This can be a problem in heritage areas where the arrangement of floor space can have significant impacts on the built form.</p> <p>In the exhibited proposals, two controls apply in the consideration of applications to increase floor space in a heritage item – a maximum floor space standard set as the existing floor space - and heritage considerations, including a conservation management plan.</p> <p>An endorsed conservation management plan which provides guidance on works and areas for potential future development which are acceptable to the NSW Heritage Council, is a more effective control of floor space than a FSR control or existing floor space as a maximum.</p> <p>Post-exhibition changes propose the removal of all FSR control for heritage properties to provide more clarity about the floor space permissible on a site. The removal of FSR control places more emphasis on the content of conservation management plans and site-specific heritage assessments. This approach is similar to that applied in other state listed conservation areas in NSW and other locally listed conservation areas like Paddington in Woollahra.</p>	<p>Post-exhibition amendments simplify the controls by removing the maximum FSR for heritage properties in the Millers Point conservation area. The conservation management plan will guide the approval of applications for increased floor space on a site.</p>

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7.	The planning proposal may reduce property values.	Issues such as property values, boundary disputes or commercial competition are examples of matters that cannot be taken into account in planning decisions.	No change
8.	The proposals have failed to consider the precinct as a whole and has not applied the new controls to Walsh Bay or The Rocks.	The City is not able to make changes to the planning controls for The Rocks and Walsh Bay because they are under the planning control of the NSW Government. The City is not the consent authority and the Sydney Local Environmental Plan (LEP) 2012 does not apply.	No change
9.	<p>The requirement for endorsed conservation management plan places these owners at a disadvantage compared to other owners of heritage properties in other conservation areas in the city.</p> <p>The requirement for an endorsed conservation management plan is unnecessary and will result in significant costs for an applicant.</p>	<p>The proposed planning controls for Millers Point are different to other conservation areas in the city because of the very high level of integrity and significance of the conservation area. The precinct is also unique because of its history of Government ownership, and its current transition from public housing into private ownership.</p> <p>The NSW Government included endorsed conservation management plans with the sale of properties. The Heritage Council must consider these plans when determining proposals. Council can also ask for a conservation plan for any heritage item. The proposed controls will help align Heritage Council and City decisions. It also creates greater certainty for owners about the form of acceptable additions. The controls have been amended to allow greater flexibility on the type of conservation plans which can be considered, and no longer requires an endorsed</p>	No change

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		plan before a DA can be approved.	
10.	A master conservation management plan for the precinct should be endorsed by the NSW Heritage Council.	Noted. The Heritage Council, not the City, is responsible for endorsing conservation plans under the <i>Heritage Act 1977</i> . It is understood a common template for Millers Point conservation plans has been developed and is now in use by the Heritage Council and proponents.	No change
11.	To make a conservation management plan mandatory for minor works would result in significant re-development costs.	The exhibited controls intended to require an endorsed conservation plan only for additions, not alterations. The controls have been amended so that a conservation plan is not mandatory, but only considered if one exists.	No change
12.	Owners with 99 year leases have not been issued a conservation management plan by NSW Department of Family and Community Services. As a result of the proposal these owners are excluded from applying for development consent.	Post-exhibition changes are proposed to allow the submission of a development application without an endorsed conservation management plan.	Post-exhibition changes propose to allow the consideration of 'any' endorsed conservation management plan.' This reflects the wording of a similar provision in the Heritage Act 1977. This means that a property owners without an endorsed conservation management plan can still lodge a development application.
13.	The endorsed conservation management plan only has a life of five years and the updating of this plan will result in an unacceptable financial burden on property owners. One conservation management plan applies to Milton Terrace and renewal dates differ due to different sale dates.	Endorsed conservation management plans have an expiry period of five years, which in practice indicates when these documents should be reviewed by the NSW Heritage Council. The updating or review of a conservation management plan every five years may only be necessary if a development application is proposed for further additions. A conservation management plan is not required for an	Post exhibition amendments enable an endorsed conservation management plan that has expired to be considered in a development application. This could be longer than five years and remove the cost of updating a conservation management plan.

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		<p>application for minor alterations that does not result in additions to a property.</p> <p>The five year validity may not be sufficient to allow for the preparation of a development application for additions to a heritage property. If the endorsement of the conservation management plan expires before a development application is lodged, a property owner may incur the cost of updating the plan before applying for an addition or significant works</p> <p>The Heritage Council is able to advise on how a review of a conservation management plan would be undertaken for Milton Terrace.</p>	
14.	<p>The absence of a legal requirement for the endorsement of a conservation management plan and right of appeal against refusal or failure to respond may limit a property owners' ability to access the planning system.</p>	<p>Section 38A of the <i>Heritage Act 1977</i> provides the flexibility for the Heritage Council to endorse conservation management plan if requested, however does not require the Heritage Council to endorse. If the Heritage Council stops endorsing conservation management plans, the City's exhibited controls, which require the consideration of endorsed conservation management plans, cannot be implemented.</p> <p>It is not the intention of the controls to exclude individuals from the planning process or create onerous costs for applicants.</p> <p>A post-exhibition change removes the requirement for the consent authority to consider a conservation management plan and proposes to allow the</p>	<p>Post-exhibition amendments are proposed to allow consideration of 'any' endorsed conservation management plan. This wording reflects the similar provision for the Heritage Council in section 62(c1) of the <i>Heritage Act 1977</i>. This post-exhibition change will allow a landowner who does not have an endorsed conservation management plan to lodge a development application.</p>

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		<p>consideration of ‘any’ endorsed conservation management plan.’ The effect of this change is to allow applications to be considered even if there is no conservation plan or no endorsed plan but promote the assessment against an endorsed plan where one exists.</p> <p>All applications, with or without an endorsed conservation management plan will be required to include an assessment of the impact of the proposals on the heritage item and values of the conservation area.</p>	
15.	<p>The ‘Built Form Outcomes’ section of the <i>Millers Point Urban Landscape Study</i> includes omissions and inaccuracies and is not a credible basis for changing the planning controls.</p> <ul style="list-style-type: none"> • Inclusion of property 64-80 Kent Street distorts the results • The inclusion of 14-16 Merriman Street inappropriate when compared with the development undertaken at this property • Updating of property subdivision information is required • Examples of 24 Arygle Place, 17 Fort Street and 31 Lower Fort Street are inappropriate as these models of development would be refused. <p>The Study should have examined the actual development that has occurred and been approved through development applications.</p>	<p>The <i>Millers Point Urban Landscape Study</i> was undertaken in 2016 as further justification requested by the NSW Department of Planning and Environment in the first gateway determination. The objective of the Study was to demonstrate the potential development outcomes that could result if the current 2:1 FSR and 9m height control were fully exploited, not the form of past development undertaken or approved in Millers Point.</p> <p>This study followed an initial analysis reported to Committee in October 2014 of approved development applications of five properties where up to date information of existing built floor area was available. It showed the available capacity for properties under the current controls is likely between 30sqm and 110sqm, which is equivalent to between one bedroom and a new floor.</p>	No change

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		<p>The Study is an estimate of the development potential under the 2:1 FSR control. The study shows the conflict between the FSR control and the state and local heritage controls and objectives. The problem with the control is also illustrated in comparison to other less significant conservation area, which have FSRs of 1;1 to 1.5:1 and that prior to 2013, the area had a planning control that limited the FSR to the existing floor space.</p> <p>The inclusion of 64-80 Kent Street as a non-heritage item in Band E is an error. If this site is included as an excluded site the percentage of properties severely affected by the 2:1 FSR reduces from 15% to 14%. This does not change the findings of the study which shows that 60% of the sites in Band D or E would be adversely or severely affected by the realisation of a 2:1 FSR.</p> <p>The Study demonstrates the potential capacity for redevelopment at 14-16 Merriman Street, not what has been undertaken or approved. It demonstrates that the 2:1 FSR is inappropriate.</p> <p>The inclusion in the Study of examples at 24 Argyle Place, 17 Fort Street and 31 Lower Fort Street also demonstrates the capacity afforded by the current 2:1 FSR and that this level of development, which the submitter states would not be approved, is inappropriate.</p>	
16.	Development in other conservation areas shows	Agreed. The Study has demonstrated that the 2:1	Post-exhibition amendments remove the maximum FSR for

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	<p>that there is no justification that all property owners will build to the maximum 2:1 FSR.</p> <p>Most properties in Millers Point have been restored and adapted in a sympathetic manner, using far less footprint and FSR than suggested in the estimates.</p>	<p>FSR is a conflicting and inappropriate control and does not encourage adaptation and restoration in a sympathetic manner.</p> <p>Other conservation areas in the City, with less significance than Millers Point do not have the ability to build to a FSR of 2:1. These areas have FSRs between 1:1 and 1.5:1.</p> <p>Notwithstanding the above, post-exhibition changes proposed to remove all FSR control from Millers Point.</p>	<p>heritage properties in the Millers Point conservation area. The conservation management plan will guide applications for increased floor space on a site.</p>
17.	<p>The proposals restrict the opportunity for adaptive reuse.</p>	<p>The intent is to enable additions to buildings as guided by the conservation plans and heritage controls.</p> <p>A post-exhibition change to the planning proposal removes all FSR control to allow property owners to make a case for their development proposals for adaptive reuse which will be guided by the content of a conservation management plan and a site-specific heritage assessment.</p>	<p>Post-exhibition amendments remove the maximum FSR for heritage properties in the Millers Point conservation area.</p>
18.	<p>There are numerous examples of where a 2:1 FSR has been successfully achieved without affecting heritage values.</p>	<p>No examples are provided in the submission. The City's research has shown in many cases the 2:1 FSR will have a detrimental impact and that a blanket 2:1 FSR is inappropriate in the Millers Point conservation area.</p> <p>A post-exhibition change to the planning proposal removes all FSR control to allow property owners to make a case for their development proposals for adaptive reuse which will be guided by the content of a conservation management</p>	<p>Post-exhibition amendments remove the maximum FSR for heritage properties in the Millers Point conservation area. The conservation management plan and heritage assessments will guide the approval of applications for increased floor space on a site.</p>

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		plan and a site-specific heritage assessment.	
19.	Council may approve development of non-heritage items up to the current control of 2:1 FSR and heights of 9 metres which may result in excessive development.	The proposal only allows Council to approve development of non-heritage buildings to exceed the existing floor space and height up to 2:1 FSR if it has considered the impacts on built form and heritage significance of the area.	No change
20.	City should be providing greater resources to assist with the promotion of heritage values and not trying to hinder this period of change which will enhance heritage in the area.	The planning proposal ensures that the heritage values of the area are conserved but retains the flexibility to make sympathetic alterations and additions.	No change
21.	The proposals to restrict height and floor space to the existing building are unprecedented and inconsistent with good planning practice in other conservation areas in the LGA.	<p>The Millers Point conservation area is one of the most significant urban places in NSW and the City of Sydney Council area. The degree of heritage recognition and protection is unprecedented, with the conservation area and almost all properties comprising it listed on both the NSW State Heritage Register and the <i>Sydney Local Environmental Plan 2012</i>. Other less significant conservation areas in the LGA have FSRs of 1:1 to 1.5:1, considerably less than the more significant Millers Point conservation area. The 2:1 FSR controls could enable additions that are half to four times the size of the existing buildings.</p> <p>The proposals are a translation of the controls included in the previous Sydney LEP 2005. The 2005 LEP applied a FSR of 2:1 and included a clause which limited the FSR of heritage items to the existing FSR,</p>	Post-exhibition amendments remove the maximum FSR for heritage properties in the Millers Point conservation area. The conservation management plan will guide the approval of applications for increased floor space on a site. The existing height of the building will be retained as the maximum height control.

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		<p>only allowing development if it met heritage criteria. 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 current planning proposal seeks to reinstate these previous successful approach.</p> <p>Notwithstanding the above, post-exhibition changes remove the FSR control in Millers Point. This approach is similar to other state-listed conservation areas</p>	
22.	<p>The proposals are inconsistent with the heritage listing because the listings were made within the existing planning regime which enabled a flexible application by the Heritage Council when considering applications.</p>	<p>The proposals controls do not affect the Heritage Council's consideration of proposals. The State listings were made in 1999 and the local listings in 2000. When the buildings were listed in 2000, the control limiting the floor space to the existing building was put in place.</p> <p>Nevertheless, post-exhibition changes remove the FSR control and enable sufficient flexibility.</p>	No change
23.	<p>Loss of development potential, property owners purchased under present controls with the expectation that changes can be made.</p>	<p>A gateway determination from the Department of Planning determines when consultation on a planning proposal can proceed. If purchasers were not aware of the reports to Committee in October 2014 and March 2016, they would not have been made aware of the proposals by the City until the notification of the proposals for consultation on 6 February 2016. As owner or former owner of the majority of properties in Millers Point, the NSW Department of Family and Community</p>	<p>Post-exhibition amendments remove the maximum FSR for heritage properties in the Millers Point conservation area. The conservation management plan will guide the approval of applications for increased floor space on a site. The existing height of the building will be retained as the maximum height control.</p>

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		<p>Services, has been consulted on the proposals since 2014.</p> <p>The current height and FSR controls create a perception of development potential which cannot be realised through the planning system. A FSR of 2:1 would result in a scale of development inconsistent with the heritage significance of properties in Millers Point.</p> <p>The planning proposal aligns the development standards with the intent of the heritage listings and conservation management plan. The proposed controls allow sympathetic changes to be made.</p> <p>Post-exhibition changes remove all FSR control in Millers Point.</p>	