

Item 6.

Public Exhibition – Planning Proposal – Conservation Areas Review – Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012 Amendment

File No: X031159

Summary

The City's Heritage Conservation Areas (conservation areas) are terrace rich and diverse in history and character. Conservation areas are more than a collection of individual heritage items. They are areas in which the urban place origins and relationships between the various elements create a sense of place that is worth keeping and reveal part of our cultural history.

As per the City's 2022 Housing Audit and adjustments to the 2017 Floor Space and Employment Survey, conservation areas are the home for approximately 102,320 people and provide workplaces for almost 54,000 people. The small lot sizes, variety of building types and over two centuries of accumulated growth have produced successful dense urban environments that accommodate change while warranting protection.

The City's planning controls enable genuine adaptation and sympathetic change to buildings in conservation areas to meet contemporary housing and workspace needs while also conserving the highly valued character of the area.

The City has carried out a review of the planning controls applying to heritage conservation areas to ensure they continue to conserve their valued heritage character and meet contemporary spatial needs.

The planning controls that apply in conservation areas have evolved over time, including the consolidation of controls from former South Sydney and parts of Leichhardt Councils in 2003 and 2004 when they were amalgamated with the City of Sydney. The review has identified improvements to the planning controls to address issues that have arisen primarily from the transfer and translation of planning controls to the NSW Government's 'standard instrument' Local Environmental Plan template in 2012.

When the 'standard instrument' LEP was introduced in 2012, planning controls for height were required to be 'smoothed' across street blocks. This meant that height controls are sometimes inconsistent with the existing buildings on the site and do not respond to the heritage value of the site. In some areas, the height control was set before heritage controls were determined, creating further misalignment between the controls and the heritage value of the sites. In other areas, height controls were set less than what was already built on site. These inconsistencies result in additional administrative requirements which cause delays and additional costs for landowners and Council alike.

Council has reviewed the planning controls in our conservation areas to address concerns that there are tensions between the heritage and height standards within Sydney Local Environmental Plan 2012 (Sydney LEP) and the existing planning controls are not consistently achieving ideal development outcomes in the conservation areas.

The proposed planning controls for heritage conservation areas aim to:

- support the retention and adaptation of buildings that contribute to the significance of an area;
- provide for equitable approaches for reasonable alterations and additions that meet contemporary amenity expectations;
- reduce complexity and increase certainty in the planning controls;
- allow for appropriate infill development; and
- update heritage policy to reflect changes that have occurred within conservation areas.

The proposed planning controls introduce a new approach for 'small scale buildings' in conservation areas. The term 'small scale buildings' refers to buildings on lots in conservation areas that have been identified and mapped for the purposes of these provisions. These lots are either a historic dwelling, terrace type or traditional shop-type buildings in a residential, mixed-use or local centre zone.

It is proposed to replace the mapped height of building control for all the sites mapped as 'small scale buildings' with a written provision that limits building height to the existing height of the building on the site or 7.5 metres, whichever is greater. This will ensure that all buildings, even single-storey buildings, can potentially accommodate a two-storey rear addition, in line with Sydney DCP.

It is proposed to revise the heritage controls in the Sydney Development Control Plan 2012 (DCP) to strengthen controls relating to the conservation of significant fabric of heritage items and in conservation areas in line with best practice.

This approach is considered to provide the clearest direction for the community in regard to how a 'small scale buildings' in a conservation area can be appropriately altered and added to.

In addition, the maps of boundaries of some conservation areas are proposed to be updated, to strengthen the integrity of the conservation areas by adding sites and removing sites which do not contribute to their significance. A review of the building contribution maps regarding the grading of buildings in conservation areas as either contributing, detracting or neutral will be reported to Council at a later time.

The proposed planning controls will better align with desirable heritage outcomes, improve clarity, certainty and confidence for landowners and neighbours and contribute to diverse housing and workspace options. They will improve the efficiency of the development application process, improving assessment timeframes and reducing costs for both landowners and Council.

Recommendation

It is resolved that:

- (A) Council approve Planning Proposal – Conservation Areas Review, shown at Attachment A to the subject report, for submission to the Department of Planning and Environment with a request for a Gateway Determination;
- (B) Council approve Planning Proposal – Conservation Areas Review, shown at Attachment A to the subject report for public authority consultation and public exhibition in accordance with any conditions imposed under the Gateway Determination;
- (C) Council seek authority from the Department of Planning and Environment to exercise the delegation of all functions as the relevant local plan making authority under Section 3.36 of the Environmental Planning and Assessment Act 1979 to make the local environmental plan and put into effect the Planning Proposal – Conservation Areas Review;
- (D) Council approve draft Sydney Development Control Plan 2012 Amendment – Conservation Areas Review, shown at Attachment C to the subject report, for public authority consultation and public exhibition together with the planning proposal; and
- (E) authority be delegated to the Chief Executive Officer to make any minor variations to Planning Proposal – Conservation Areas Review and draft Sydney Development Control Plan 2012 Amendment – Conservation Areas Review, to correct any drafting errors or to ensure consistency with the Gateway Determination.

Attachments

- Attachment A.** Planning Proposal - Conservation Area Review
Appendix A1 - Sydney Local Environmental Plan 2012 Heritage and Height Maps
- Attachment B.** Justification for Adjustments to the Conservation Areas Boundaries
- Attachment C.** Draft Sydney Development Control Plan 2012 Amendment – Conservation Areas Review
Appendix C - Draft Sydney Development Control Plan 2012 Maps

Background

1. There are 75 heritage conservation areas (conservation areas) as shown in Figure 1. Conservation areas are rich and diverse in history and character. As per the City's 2022 Housing Audit and adjustments to the 2017 Floor Space and Employment Survey, they are the home for approximately 102,320 people and provide workplaces for around 54,000 people.
2. Conservation areas are more than a collection of individual heritage items. They are areas in which the urban place origins and relationships between the various elements create a sense of place that is worth keeping and reveal part of our cultural history.
3. There are more than 22,000 buildings in the conservation areas, including the majority of around 15,000 (70 per cent) terrace houses, 1,500 freestanding houses, 1,200 apartment buildings, 1,200 shops, 700 warehouses and 200 church, community and public buildings.
4. Of the more than 22,000 buildings, almost 90 per cent of the buildings contribute to the rich heritage significance of these conservation areas and are classified as 'contributory buildings' in the planning controls.
5. The buildings range in age from the Colonial Period (1788–c.1840), the Victorian Period (c.1840–c.1890) and the Federation Period (c.1890–1915) through to the 21st century.
6. The City's conservation areas provide housing at some of the highest population densities in Australia. According to the 2021 Census, four of the 10 densest SA2 areas in Australia are in these conservation areas. The small lot sizes, variety of accommodation types and over two centuries of accumulated growth have produced successful urban environments that accommodate change and warrant protection.
7. Through our consultation for Sustainable Sydney 2030-2050, we heard that the city's unique character, which includes our local architecture and unique heritage, should be protected and celebrated.
8. We've also heard from the community that awareness of conservation areas is high and support for conservation of our environmental heritage is strong.
9. Planning controls which enable adaptation and sympathetic change to contributory buildings allow conservation areas to evolve for contemporary needs while conserving the highly valued character of the area.
10. Appropriate changes to existing buildings in conservation areas provide for diversity of housing choices and workplaces that are not provided in new developments. This ensures space for families that are not accommodated in the one or two-bedroom apartments expected to be developed across the city over the next 20 years.

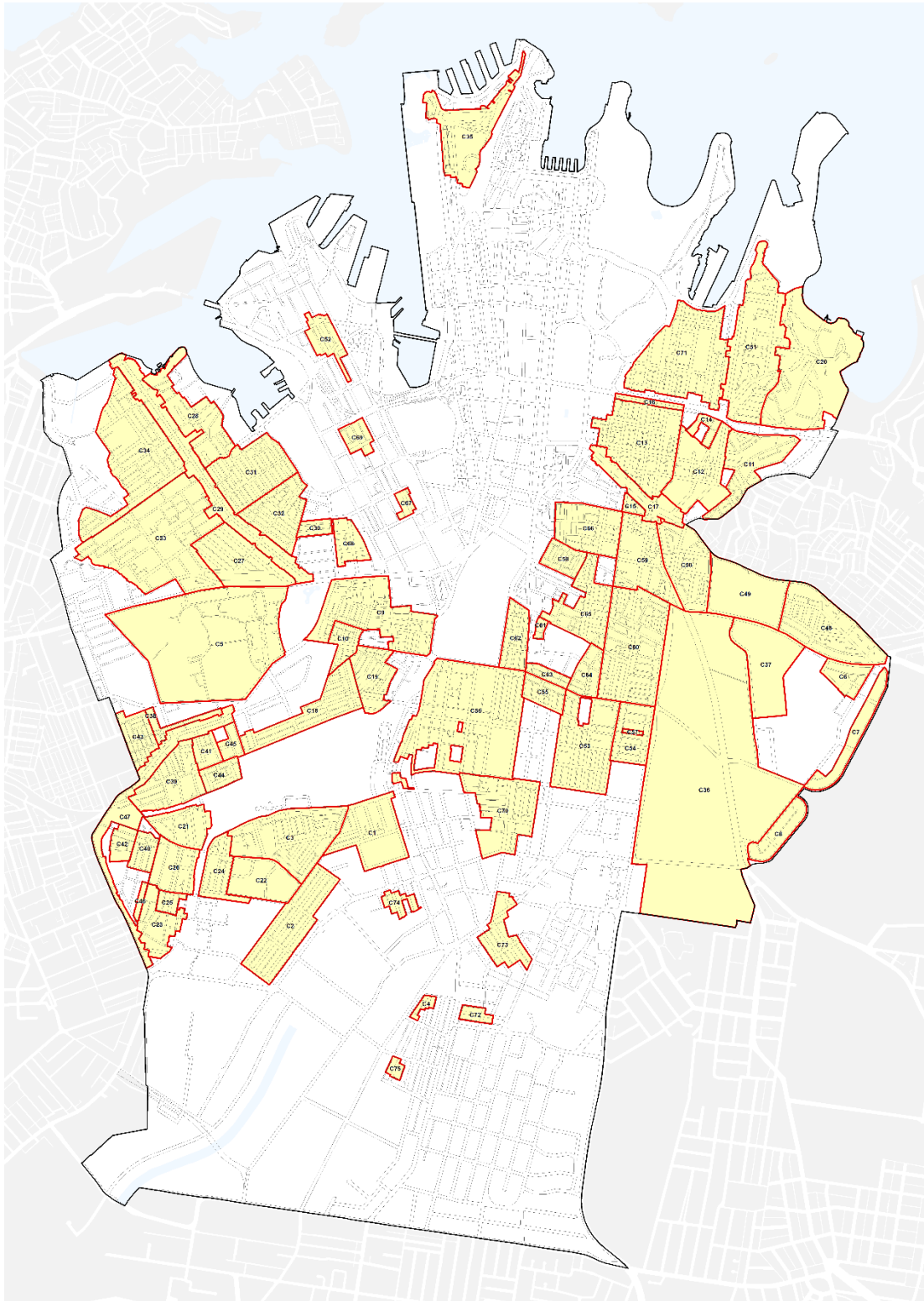


Figure 1: Map of existing conservation areas within the City

Note: Millers Point is included in this statistical analysis of conservation areas but is not subject to the planning proposal

The current heritage planning controls

11. The Sydney LEP identifies heritage items and conservation areas on the Heritage Map. Heritage items are located across the Sydney LGA, with many located within conservation areas. The Sydney LEP contains provisions to conserve the heritage significance of heritage items and conservation areas, including archaeological sites, Aboriginal objects and Aboriginal places of heritage significance.
12. Within the conservation areas, each property is graded on a Sydney DCP Building contributions map as contributory, neutral or detracting to indicate the site's contribution to the heritage significance of the conservation area.
13. Buildings and sites within conservation areas make different contributions to the heritage significance of the area, based on their period of construction, integrity and compatibility of alterations and additions.
14. 'Contributing buildings' and sites make a positive contribution to the heritage significance of a conservation area.
15. 'Neutral buildings' and sites neither contribute nor detract from the heritage significance of the conservation area. Neutral buildings or sites are either:
 - (a) substantially altered buildings or sites from a significant historical period; or
 - (b) sympathetic buildings and sites from a non-significant historical period that do not detract from the heritage significance of the conservation area.
16. 'Detracting buildings' and sites are not from a significant historical period and are unsympathetic to the significant historical features and patterns of the conservation area.
17. As described below, the Sydney LEP also contains FSR and height of building maps, which are intended to identify maximum building heights and the maximum amount of floor space permissible on a site.
18. The Sydney DCP supports the Sydney LEP with detailed provisions regarding the conservation and management of heritage items and conservation areas.

The review identified various issues with the current planning controls

19. Research revealed that where development controls are in contradiction or not aligned, applications that meet some but not all standards are received and, in turn, this results in greater complexity in the assessment task. Greater complexity and consultation requires more time to resolve issues and complete assessments.
20. The main issues included:
 - (a) applicants misunderstanding the relationship between maximum floor space, maximum height and heritage provisions in the Sydney LEP and the number of storeys control of the Sydney DCP;
 - (b) differences between the height standard and the conservation of contributory buildings as in some cases the height allows excessive alterations and additions, in some cases the height does not allow for an acceptable two storey addition; and
 - (c) difficulty in understanding the definitions and actions of the various contributory status of buildings, particularly, in relation to neutral buildings in conservation areas.

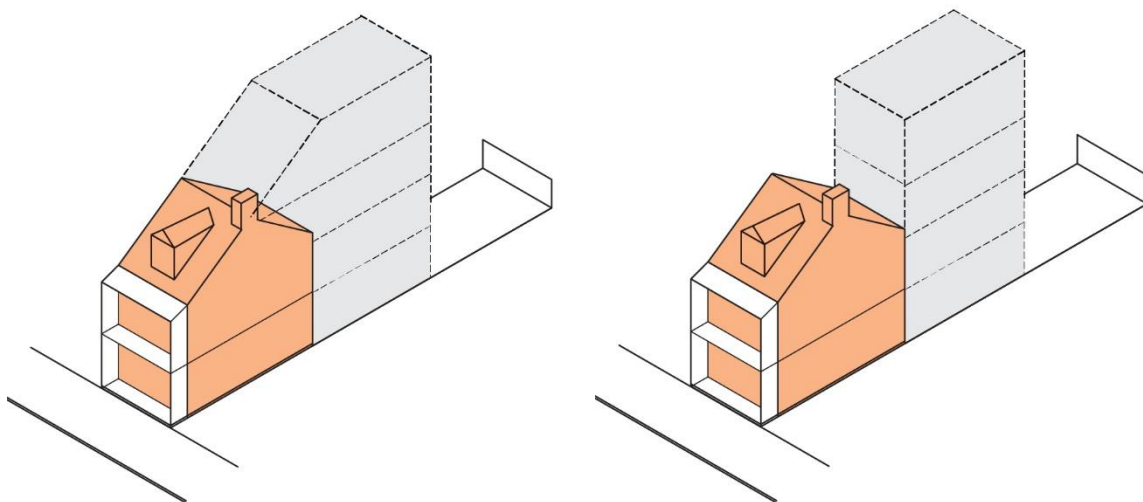


Figure 2: Example forms with inappropriate excessive rear additions

Origins of the current planning controls

21. In the introduction to the NSW Government's standard instrument Local Environmental Plan (LEP) in 2012, several changes to the planning controls have led to issues with the application of planning controls in conservation areas.
22. During the preparation of the standard instrument Sydney LEP, the Department of Planning and Environment directed the City away from preparation of fine grain height maps in conservation areas and required controls to be 'smoothed' across street blocks based on the highest building in the block. The site-by-site heights appropriate for the individual building typologies were 'smoothed' up, increasing heights as part of an effort to simplify the Sydney LEP maps.

23. This meant that in parts of the city, a number of heritage conservation areas have numerical planning controls in the LEP which are inconsistent with the heritage context. Where LEP heights conflict with heritage conservation controls in the Sydney DCP, they place pressure on heritage conservation objectives.
24. In other parts of the city, height controls are set less than what was already built on site. This requires applicants to prepare Clause 4.6 variation requests to justify new works above the mapped height limit, but below the existing building height. These variations need to be regularly reported to Council.
25. Clause 4.6 variation requests for height are the most common variation request that the City approves outside of Central Sydney. By replacing the mapped height of building control with a written provision that limits building height for small-scale buildings to the existing height of the building on the site, or 7.5 metres, whichever is greater, applicants and the City will no longer need to consider as many time-consuming requests, streamlining the assessment process.

Aims of the review

26. The current controls can be too permissive or too restrictive depending on the site. The proposed changes intend to reduce the instances of this occurrence and create greater certainty for heritage and housing outcomes. The review aims to address these issues by:
 - (a) strengthening provisions on retaining buildings and the elements that contribute to the heritage significance of conservation areas;
 - (b) ensuring equitable opportunity for alterations and additions based on the existing height of buildings;
 - (c) promoting housing diversity by allowing for appropriate additions to historic building forms which will allow families, larger households to grow and stay in the area;
 - (d) meeting modern amenity expectations of dwellings and ensuring historic buildings can be adapted to provide high amenity spaces for households;
 - (e) reducing the need to use exceptions clause being Clause 4.6 variations to height development standards as requested by the Department of Planning and Environment;
 - (f) improving community understanding of what can be done on their land and neighbouring sites;
 - (g) reviewing heritage contributory grading to ensure that gradings reflect the building fabric and current heritage values; and
 - (h) ensuring conservation area map boundaries reflect the heritage significance of the area to ensure conservation areas are robust and defensible.

The review has been informed by a field survey

27. A field survey was conducted by heritage specialists who inspected every property in the conservation areas externally from public places (streets, lanes and parks) and selected properties bordering these areas.
28. The survey focused on establishing a comprehensive knowledge base to enable an understanding of the complexity and diversity of the building stock in the conservation areas.
29. The data collected includes: the type of buildings, their number of storeys, their original period of construction and the period of subsequent major change, the distribution of attics, basements, rear extensions, car parking, the number of frontages and a comprehensive photographic survey.
30. Each building's contribution status as contributory, neutral or detracting was separately checked and confirmed. Any changes to the building contribution maps regarding the grading of buildings in conservation areas as either contributing, detracting or neutral will be reported to Council at a later time.
31. The field survey found that, in general, buildings are capable of maintaining a significant contribution to the conservation areas and accommodate appropriate alterations and additions to support contemporary and diverse housing needs.

Proposed approach to managing our conservation areas

32. The review seeks to reconcile council and the community's support for both conservation and suitable homes and workplaces with a more effective set of planning controls.
33. Within conservation areas, there is generally a high level of consistency of building typologies but variability in site size and additions.
34. To better align development standards with desirable heritage and housing outcomes and improve clarity, certainty and confidence for landowners and neighbours, it is proposed to amend the Sydney LEP, as outlined in the planning proposal at Attachment A, and the Sydney DCP Amendment – Conservation Area Review (draft DCP), as outlined in Attachment C.
35. The proposed planning controls introduce a new approach for dwellings, terraces and shop-type buildings in our residential, mixed use and local centre zones.

LEP Amendments

36. The proposed amendments to the Sydney LEP apply to small scale buildings in conservation areas. The term 'small scale buildings' refers to identified buildings which fall within one of the below categories:
 - (a) single dwellings, terraces and shop-type buildings in conservation areas that are in the R1 General Residential zone and R2 Low Density Residential zone; or

- (b) single dwellings, terraces and shop-type buildings in conservation areas that are in the E1 Local Centre zone and MU1 Mixed Use zone.
37. Sites to which these provisions apply are identified on the amended Height of Building Maps at Attachment A1.
 38. The proposed amendments to the Sydney LEP do not apply to other larger building typologies such as warehouses, industrial and institutional buildings, commercial buildings and residential flat buildings.

Amendments to the building height controls

39. As outlined in the planning proposal for 'small scale buildings' in conservation areas, it is proposed to replace the mapped height of building control in the Sydney LEP with a written provision in the Sydney LEP that limits building height for identified 'small-scale buildings' to the maximum existing height of the building on the site, or 7.5 metres, whichever is greater. This will ensure that all buildings, even single storey buildings, has the potential to accommodate a two-storey rear addition in line with Sydney DCP. This will also ensure that additions to buildings in a heritage context will not be significantly higher than the existing building and be compatible with its context.
40. For 'small scale buildings' on sites within the Toxteth Estate Heritage Conservation area, a separate height of buildings control will be introduced to provide a maximum building height reflecting the maximum existing height of the building on the site or 6 metres, whichever is greater. This is to reflect the unique character of that conservation area and ensure that buildings which are not currently higher than one storey cannot accommodate development greater than one storey and an attic.
41. Currently, each site in the conservation areas has a maximum height of building identified on the Height of Building map in the Sydney LEP.
42. The review identified the height standard in the Sydney LEP can conflict with the conservation of contributory buildings as in some cases the height standard allows excessive and incompatible contrasts in built form. In other instances the height standard does not permit a reasonable two storey rear addition.
43. For contributory buildings and neutral buildings from a significant historical period, the draft DCP will ensure retention of the main building form, which contributes to the conservation area and provides guidance on acceptable alterations and additions.
44. For neutral buildings not from a significant period and for detracting buildings in conservation areas, those buildings can be demolished and replaced with a new building no higher than the existing building on the site, or 7.5 metres, whichever is greater. For 'vacant' sites without any buildings, the maximum height of building control will be the height of a building on one of the neighbouring sites or 7.5 metres, whichever is the higher.
45. Amended controls in the draft DCP for new infill buildings will ensure any new or replacement building improves the relationship between the site and the conservation area.

Amendments to conservation area boundaries

46. As outlined in the planning proposal, conservation area boundaries will be amended to reflect the current state of conservation areas and strengthen the robustness of conservation areas.

47. The boundaries of conservation areas are mapped in the Sydney LEP. Under existing controls, each property in the conservation areas is identified as either contributory, neutral or detracting on the DCP 2012 Building Contributions map to indicate their overall contribution to the significance of the area.
48. Amendments to conservation area boundaries are proposed to ensure that sites are contained within the most suitable conservation area, to correct errors in conservation area boundaries, to remove detracting or neutral buildings on the edges of conservation areas, and to add additional contributory buildings to the conservation areas. The amendments result in two properties shifting from one conservation area to another, twelve properties added to conservation areas and 23 removed from conservation areas.
49. The full list of proposed adjustments to conservation area boundaries is contained at Attachment B.

DCP Amendments

50. The proposed Draft Sydney Development Control Plan 2012 - Conservation Area Review (draft DCP) introduces a range of amendments to strengthen heritage conservation.

Amendments to heritage provisions

51. The proposed controls update the heritage provisions in line with the current version of the Burra Charter and current recommended practice of the Office of Environment and Heritage. They will increase clarity and certainty of controls relating to contributory, neutral and detracting buildings.
52. Within the Sydney DCP, the definitions and planning controls for contributory, neutral and detracting buildings can be ambiguous and seemingly contradictory. Past Land and Environment Court decisions have found the intended meanings of the language to be ambiguous and leading to inconsistent interpretation.
53. The proposed controls improve the definitions of contributory, neutral and detracting buildings, and provide greater clarity on the conservation and restoration of significant building features, to ensure that the contributory fabric of conservation areas is not eroded.
54. The proposed controls, as outlined in the draft DCP at Attachment C, strengthen the controls relating to the conservation of significant fabric and guide infill development, to ensure that development reinforces and complements the significant historical features and patterns of the heritage context.

Amendments to the Height in storeys maps

55. Amendments to the Building Height in Storeys map and Building Street Frontage Height in Storeys map will remove the controls from small scale buildings in conservation areas, except buildings within the Toxteth Estate Heritage Conservation Area.
56. The existing controls in the Sydney DCP nominate a building height in storeys and a building street frontage height in storeys for many sites across the LGA. For small scale buildings, these controls are redundant due to the proposed change to the height limit. They are retained however for larger sites where they have utility in guiding future change and a single storey control is proposed for buildings within the Toxteth Estate Heritage Conservation Area, north of Wigram Road and east of Ross Street, as these buildings are a unique single storey dwelling typology within the City, with a unique roof form.
57. As outlined above, the proposed amendments to the Sydney LEP will further resolve conflict between planning controls of the Sydney LEP and the Sydney DCP and place a greater emphasis on built form controls in the draft DCP.
58. The proposed built form controls in the draft DCP will strengthen controls relating to the retention and restoration of significant buildings and fabric. As such, the existing Building height in storeys map and Building street frontage height in storeys map will no longer be required to apply to small-scale buildings in heritage conservation areas.

Conservation area statements of significance will be reviewed

59. If there is support for the proposed approach to managing conservation areas, the supporting non-statutory statements of significance for each conservation area will be reviewed for alignment with the draft DCP following adoption of the new planning controls. Each conservation area heritage listing has a non-statutory statement of significance which outlines the history of the area, its level of intactness and recommended management principles.
60. Following public exhibition and consideration of the submissions received, the supporting statements of significance will be amended to reflect the proposed approach to managing development in conservation areas. This will remove conflicts between statements of significance and the controls in the Sydney DCP and ensure consistency of management across conservation areas.

Key Implications**Strategic Alignment - Planning**

61. The Greater Cities Commission's Greater Sydney Region Plan and Eastern City District Plan are used to shape strategic planning and infrastructure in metropolitan Sydney and align planning from the broadest regional area down to the local area. The City's Local Strategic Planning Statement sets the land use planning strategy for the city which is required to align with the Region and District Plans. The City's planning controls are then required to give effect to the strategic plans.
62. The Region Plan, District Plan and Local Strategic Planning Statement adopt planning priorities of similar themes, being infrastructure, liveability, productivity, sustainability and governance.

63. **Liveability** - the proposal aims to conserve and enhance environmental heritage, reflecting the heritage values and character of local places and how they contribute to the significance of conservation areas. The draft planning controls support sympathetic built form controls to manage the conservation of heritage significance, combining the local heritage with modern design that achieves an urban environment that demonstrates shared values and contributes to a sense of place and identity. The proposal gives effect to the following strategic planning priorities:
- **Eastern City District Plan** planning priority E6 - Creating and renewing great places and local centres, and respecting the District's heritage, and
 - **Local Strategic Planning Statement** planning priority L2 - Creating great places, in particular Action 2.9(c) which requires a review of LEP development standards to address inconsistencies with the conservation of heritage items and conservation areas.
64. **Productivity** - the conservation areas include land zoned for employment purposes. The draft controls permit rear additions that facilitate commercial and retail uses. For larger sites in business zones, height and FSR is retained to provide certainty for development and business space delivery.

Strategic Alignment - Sustainable Sydney 2030-2050 Continuing the Vision

65. Sustainable Sydney 2030-2050 Continuing the Vision renews the communities' vision for the sustainable development of the city to 2050. It includes 10 strategic directions to guide the future of the City, as well as 10 targets against which to measure progress. This planning proposal and draft DCP align with the following strategic directions:
66. **Direction 4** - Design excellence and sustainable development - by strengthening provisions on retaining buildings of heritage significance while guiding appropriate additions to ensure development in conservation areas achieves a high standard of design.

Relevant Legislation

67. Environmental Planning and Assessment Act 1979
68. Environmental Planning and Assessment Regulation 2021

Public Consultation

69. The minimum public exhibition process for this planning proposal will be determined by the Department of Planning and Environment. It is proposed that the public exhibition of the planning proposal and draft DCP will run concurrently. The consultation will be in accordance with the requirements of:
- (a) the Gateway Determination issued by the Department of Planning, Industry and Environment under section 3.34 of the Act;
 - (b) the Environmental Planning and Assessment Regulation 2021; and
 - (c) the City of Sydney Community engagement strategy and participation plan 2022

70. Public exhibition would be a minimum of 42 calendar days (six weeks), with notification on the City's Sydney Your Say website. The planning proposal and draft DCP will be publicly exhibited online on the City of Sydney website in accordance with the Environmental Planning and Assessment Regulation 2021.

GRAHAM JAHN AM

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