

CATALOGUE OF RELEVANT CONTROLS APPLYING TO MILLERS POINT

This document catalogues the relevant heritage and built form controls applying to Millers Point and provides commentary on the capacity of those controls to manage the state and local heritage significance of the conservation area and the items. The effect of the *Environmental Planning and Assessment Act 1979* on the relationship of Local Environmental Plan (LEP) and Development Control Plan (DCP) controls is also discussed. Copies of the relevant legislation and controls are included after the summary and commentary of each.

It has been prepared in response to the Department of Planning and Environment's request for further justification to support the Planning Proposal to amend the floor space ratio and height controls for the Millers Point Conservation Area.

Summary of findings

The relevant state and local controls applying to Millers Point are:

- *Heritage Act 1977*
- Sydney LEP 2012
- Sydney DCP 2012

The controls will not manage the very high level of significance and unique built form of Millers Point because:

- There is the potential for inconsistencies between assessments under the Heritage Act and the EPA Act in relation to Conservation Management Plans,
- DCP controls cannot manage the impacts of excessive and inaccurate FSR and height controls as under the EPA Act, DCP controls are not statutory requirements and are of no effect if they are inconsistent with the LEP, and
- The DCP controls provide general guidance for development of heritage items and buildings throughout all the City's conservation areas and generally allow more substantial additions than those shown in the endorsed conservation management plans for heritage items in Millers Point.

Heritage Act 1977

The relevant provisions are:

- Section 38A gives the Heritage Council the power to endorse a conservation management plan for an item listed on the State Heritage Register.
- Section 57 sets out that an approval is required for works to items on the State Heritage Register.
- Section 62 sets out the matters to be considered in determining an application for approval. Those matters are the effect on the significance of the item, the representations received in relation to the application, relevant matters relating to the conservation of the item, any applicable endorsed conservation management plan and other matters that seem relevant.
- Section 63 enables an approval to be granted unconditionally or with conditions or be refused. An application for the demolition of a whole building must be refused.

The Heritage Act enables a merit assessment of works proposed to items on the State Heritage Register. The endorsed Conservation Management Plan is one of the key matters for consideration. There is no requirement under the Act for a proposal to be consistent with a Conservation Management Plan. It is noted that the CMP being considered needs to be endorsed by the Heritage Council, meaning other CMPs cannot be considered.

In relation to Millers Point, a proposal for an item would need to be considered against the significance of the individual item and the Conservation Area as well as the relevant policies and recommendations in the endorsed CMP for the individual item.

Heritage Act 1977 No 136

Current version for 11 January 2013 to date (accessed 14 December 2015 at 11:59)

[Part 3A](#) » [Section 38A](#)

38A Conservation management plans for State heritage items

- (1) The Heritage Council may, for the purposes of this Act, endorse a conservation management plan for an item listed on the State Heritage Register.
- (2) The regulations may make provision for or with respect to conservation management plans for items listed on the State Heritage Register.
- (3) In this section:

conservation management plan means a document that:

- (a) identifies the State heritage significance of an item, and
- (b) sets out policies and strategies for the retention of that significance, and
- (c) is prepared in accordance with the guidelines for the preparation of conservation management plans (if any) publicly issued from time to time by the Heritage Council.

Heritage Act 1977 No 136

Current version for 11 January 2013 to date (accessed 14 December 2015 at 12:01)

[Part 4](#) » [Division 2](#)

Division 2 Controlled activities

57 Effect of interim heritage orders and listing on State Heritage Register

- (1) When an interim heritage order or listing on the State Heritage Register applies to a place, building, work, relic, moveable object, precinct, or land, a person must not do any of the following things except in pursuance of an approval granted by the approval body under Subdivision 1 of Division 3:
 - (a) demolish the building or work,
 - (b) damage or despoil the place, precinct or land, or any part of the place, precinct or land,
 - (c) move, damage or destroy the relic or moveable object,
 - (d) excavate any land for the purpose of exposing or moving the relic,
 - (e) carry out any development in relation to the land on which the building, work or relic is situated, the land that comprises the place, or land within the precinct,
 - (f) alter the building, work, relic or moveable object,
 - (g) display any notice or advertisement on the place, building, work, relic, moveable object or land, or in the precinct,
 - (h) damage or destroy any tree or other vegetation on or remove any tree or other vegetation from the place, precinct or land.
- (1A) In the case of an interim heritage order made by a council, subsection (1) does not apply to:
 - (a) State significant development within the meaning of the *Environmental Planning and Assessment Act 1979*, or
 - (b) development, or demolition of a building or work, carried out by or on behalf of the Crown (with **Crown** including the persons prescribed for the purposes of Division 4 of Part 4 of the *Environmental Planning and Assessment Act 1979* as referred to in section 88 (2) (a) of that Act).
- (1B) Subsection (1) does not apply to anything that is exempted from the operation of this Part by a heritage agreement.
- (1C) Subsection (1) (d) does not apply in the case of a relic to which an interim heritage order made by a council applies.
- (1D) Subsection (1) does not apply to anything that is exempted from the operation of this Part by a conservation management plan (within the meaning of section 38A) endorsed by the Heritage Council.
- (2) The Minister, on the recommendation of the Heritage Council, may, by order published in the Gazette, grant an exemption from subsection (1) or such of the provisions of that subsection as are specified in the order in respect of the engaging in or carrying out of such activity or class of activities by such person or class of persons in such circumstances as may be so specified. The Minister's power under this subsection extends to apply in respect of interim heritage orders made by councils.
- (3) A council may, by order published in the Gazette, grant an exemption from subsection (1) or such of the provisions of that subsection as are specified in the order in respect of the engaging in or carrying out of such activity or class of activities by such person or class of persons in such circumstances as may be so specified. Such an exemption has effect only in respect of an interim heritage order made by the council concerned.

Heritage Act 1977 No 136

Current version for 11 January 2013 to date (accessed 14 December 2015 at 12:02)

[Part 4](#) » [Division 3](#) » [Subdivision 1](#) » [Section 62](#)

62 Matters for consideration

In determining an application for approval in respect of an item or land, the approval body shall take into consideration:

- (a) the extent to which that application, if approved, would affect the significance of any item as an item of the environmental heritage,
- (b) the representations, if any, made with respect to that application under section 61 (3),
- (c) such matters relating to the conservation of that item or land as to it seem relevant, and
- (c1) any applicable conservation management plan (within the meaning of section 38A) endorsed by the Heritage Council, and
- (d) such other matters as to it seem relevant.

Heritage Act 1977 No 136

Current version for 11 January 2013 to date (accessed 14 December 2015 at 12:03)

[Part 4](#) » [Division 3](#) » [Subdivision 1](#) » [Section 63](#)

63 Determination of application

- (1) Except as provided by subsection (2), the approval body may determine an application for approval by granting approval to that application, either unconditionally or subject to conditions, or by refusing approval.
- (1A) The determination of an application for approval in relation to integrated development is subject to Division 5 of Part 4 of the *Environmental Planning and Assessment Act 1979*.
- (2) Where:
 - (a) an application for approval is made to demolish the whole of a building or work, or
 - (b) an application for approval is made which would, if it were approved, necessitate the demolition of the whole of a building or work,the approval body shall determine that application by refusing approval.
- (3) Nothing in subsection (2) prevents the approval body from approving an application referred to in that subsection if:
 - (a) it is of the opinion that the building or work constitutes a danger to the users or occupiers of that building or work, the public or a section of the public, or
 - (b) it is a condition of the approval that the building or work be relocated on other land, or
 - (c) the building or work is situated (whether wholly or partly) in a place or precinct that is an item of State heritage significance, but is not itself such an item, and the approval body is of the opinion that the demolition of the whole of the building or work will not have a materially detrimental effect on the heritage significance of the place or precinct.
- (4) Without limiting or restricting the power of the approval body to impose conditions under subsection (1), it may, in granting approval to an application for approval, impose, as a condition of its approval, a condition:
 - (a) that the applicant give security in such form and such amount as is determined by the approval body having regard to the nature and extent of the work referred to in the approval to ensure the satisfactory completion of that work, and
 - (b) that where the approval is to the demolition, in whole or in part, of a building or work, such measures as are specified in the approval be taken in the interests of public safety and convenience with respect to the demolition.

Sydney Local Environmental Plan 2012

The LEP set out the land uses that are permitted or prohibited, contains the primary development standards including, height and floor space and identifies Heritage Items and Conservation Areas. The relevant provisions are:

- Clause 4.3 Height of Buildings sets objectives for the height of buildings and specifies that a building must not exceed the maximum height shown on the Height of Buildings Map. The maximum height for Millers Point is 9 metres.
- Clause 4.4 Floor Space Ratio (FSR) sets the maximum gross floor area that can be developed on a site relative to the site area. The maximum FSR for Millers Point is 2:1.
- Clause 5.10 Heritage Conservation sets out the provisions to conserve heritage items and areas. It sets out when consent is required, requires the consent authority to consider the effect of development on heritage significance, enables the consent authority to require submission of a heritage management document, enables the consent authority to require submission of a conservation management plan for a heritage item and provides incentives for the flexible use of heritage items despite the zoning.

There is a conflict between the built form (height and FSR) and heritage provisions which means LEP controls will not sufficiently protect the significance of the items and the conservations area.

The problems with the current LEP controls for Millers Point include:

- The FSR control 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 impact of the FSR control has been shown in the Millers Point Urban Landscape Study.
- The development possible under the numeric FSR control of 2:1 is inconsistent with both the FSR and heritage objectives. FSR objective 1(d) of Clause 4.4 is to ensure new development reflects the desired character of the locality. The objective for heritage conservation under clause 5.10(1) is to conserve the heritage significance of heritage items and heritage conservation areas including fabric, settings and views. The FSR of 2:1 is inconsistent with both objectives.
- The FSR is excessive compared to other conservation areas with lesser significance. 86 per cent of two storey terraces in the City's other conservation areas, which are of lesser significance, have an FSR between 1:1 and 1.75:1.
- FSR manages the amount of floor space relative to the area of a site. It doesn't manage how that floor space is to be laid out or arranged on the site. It is therefore an ineffective tool for managing specific building forms that have heritage significance.
- The 9 metre height control does not accurately reflect the range of existing building heights and the changes in building height between the front and rear of items. It is estimated that all but 17 buildings exceed the 9 metre height controls and 53 buildings in Millers Point have a different height in storey between the front and rear due to the topography and building form.
- The heritage provisions only set heritage significance as a matter for consideration and do not override FSR and height development standards.
- While the City can require submission of a CMP under clause 5.10(6) there is no requirement for it to be an endorsed CMP for a State Heritage Register item. This could lead to inconsistencies between the City's and the Heritage Council assessments against CMPs.

Sydney Local Environmental Plan 2012

Current version for 23 October 2015 to date (accessed 14 December 2015 at 11:53)

[Part 4](#) » [Clause 4.3](#)

4.3 Height of buildings

- (1) The objectives of this clause are as follows:
 - (a) to ensure the height of development is appropriate to the condition of the site and its context,
 - (b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,
 - (c) to promote the sharing of views,
 - (d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,
 - (e) in respect of Green Square:
 - (i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and
 - (ii) to ensure the built form contributes to the physical definition of the street network and public spaces.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

Note. No maximum height is shown for land in Area 3 on the Height of Buildings Map. The maximum height for buildings on this land are determined by the sun access planes that are taken to extend over the land by clause 6.17.
- (2A) Despite any other provision of this Plan, the maximum height of a building on land shown as Area 1 or Area 2 on the Height of Buildings Map is the height of the building on the land as at the commencement of this Plan.

Sydney Local Environmental Plan 2012

Current version for 23 October 2015 to date (accessed 14 December 2015 at 11:55)

[Part 4](#) » [Clause 4.4](#)

4.4 Floor space ratio

- (1) The objectives of this clause are as follows:
 - (a) to provide sufficient floor space to meet anticipated development needs for the foreseeable future,
 - (b) to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic,
 - (c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,
 - (d) to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.
- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

Sydney Local Environmental Plan 2012

Current version for 23 October 2015 to date (accessed 14 December 2015 at 11:58)

[Part 5](#) » [Clause 5.10](#)

5.10 Heritage conservation

Note. Heritage items (if any) are listed and described in Schedule 5. Heritage conservation areas (if any) are shown on the Heritage Map as well as being described in Schedule 5.

(1) Objectives

The objectives of this clause are as follows:

- (a) to conserve the environmental heritage of the City of Sydney,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) to conserve archaeological sites,
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

(2) Requirement for consent

Development consent is required for any of the following:

- (a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance):
 - (i) a heritage item,
 - (ii) an Aboriginal object,
 - (iii) a building, work, relic or tree within a heritage conservation area,
- (b) altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 5 in relation to the item,
- (c) disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,
- (d) disturbing or excavating an Aboriginal place of heritage significance,
- (e) erecting a building on land:
 - (i) on which a heritage item is located or that is within a heritage conservation area, or
 - (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance,
- (f) subdividing land:
 - (i) on which a heritage item is located or that is within a heritage conservation area, or
 - (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.

(3) When consent not required

However, development consent under this clause is not required if:

- (a) the applicant has notified the consent authority of the proposed development and the consent authority has advised the applicant in writing before any work is carried out that it is satisfied that the proposed development:

- (i) is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or archaeological site or a building, work, relic, tree or place within the heritage conservation area, and
- (ii) would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place, archaeological site or heritage conservation area, or

(b) the development is in a cemetery or burial ground and the proposed development:

- (i) is the creation of a new grave or monument, or excavation or disturbance of land for the purpose of conserving or repairing monuments or grave markers, and
- (ii) would not cause disturbance to human remains, relics, Aboriginal objects in the form of grave goods, or to an Aboriginal place of heritage significance, or

(c) the development is limited to the removal of a tree or other vegetation that the Council is satisfied is a risk to human life or property, or

(d) the development is exempt development.

(4) Effect of proposed development on heritage significance

The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).

(5) Heritage assessment

The consent authority may, before granting consent to any development:

- (a) on land on which a heritage item is located, or
- (b) on land that is within a heritage conservation area, or
- (c) on land that is within the vicinity of land referred to in paragraph (a) or (b),

require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.

(6) Heritage conservation management plans

The consent authority may require, after considering the heritage significance of a heritage item and the extent of change proposed to it, the submission of a heritage conservation management plan before granting consent under this clause.

(7) Archaeological sites

The consent authority must, before granting consent under this clause to the carrying out of development on an archaeological site (other than land listed on the State Heritage Register or to which an interim heritage order under the *Heritage Act 1977* applies):

- (a) notify the Heritage Council of its intention to grant consent, and
- (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.

(8) Aboriginal places of heritage significance

The consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance:

- (a) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and

- (b) notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.

(9) Demolition of nominated State heritage items

The consent authority must, before granting consent under this clause for the demolition of a nominated State heritage item:

- (a) notify the Heritage Council about the application, and
- (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.

(10) Conservation incentives

The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that:

- (a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and
- (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and
- (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and
- (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.

Sydney Development Control Plan 2012

Sydney Development Control Plan 2012 provides guidelines on how to carry out development that is permitted under the LEP. Sections relevant to Millers Point are:

- Section 2.8 Locality statement,
- Section 3.9 Heritage (general provisions), and
- Section 4.1 Single Dwellings, Terraces and Dual Occupancies.

General relationship of DCP to other controls

The power of DCP controls to manage development at Millers Point is constrained by the hierarchy of planning controls is set by the EPA Act.

Section 74BA of the Act says the purpose of a DCP is to provide guidance for development proposals and to facilitate development permissible under the LEP. It states DCP requirements are not statutory, whereas LEP requirements are statutory. In addition, section 74C (5)(b) of the Act says that a provision of a DCP has no effect if it is inconsistent with a provision of an LEP.

DCP heritage provisions are useful in guiding how permitted floor space should be located or arranged to protect heritage significance. However, DCP controls cannot restrict how much floor space is permitted on the site if the FSR is too high, as is the case with Millers Point. This would be inconsistent with the LEP FSR control and is therefore of no effect under the Act.

Section 2.8 Millers Point Locality Statement

This section describes the character of Millers Point and sets principles for development to reinforce and enhance the character of the area. The principles for development address heritage, scale, character of existing buildings and views.

A Draft DCP to amend the Millers Point Locality Statement will be exhibited with the Planning Proposal. The principles have been amended to better reflect the state and local statements of significance.

Under the Act, these controls could not address the impacts from the amount of floor space but could assist in guiding the arrangement of an appropriate amount of floor space.

Section 3.9.5 Heritage Items

These controls provide general guidance for the consideration of potential heritage impact all 3,000 heritage items throughout the council area. The controls deal with minimising change, using traditional building materials and techniques, interpretation, removal of unsympathetic additions and for new additions to complement the envelope, proportions, materials and alignment of the item.

Under the Act, these controls could not address the impacts from the amount of floor space but could assist in guiding the arrangement of an appropriate amount of floor space. The controls do not provide the specific guidance found in the policies of the endorsed conservation management plans that have been prepared for items in Millers Point.

Sections 3.9.6 and 3.9.7 Heritage Conservation Areas and Contributory Buildings

The intent of these provisions is to ensure new development and infill buildings in conservation areas are designed and located to respect neighbouring contributory buildings and the significance and character of an area. A Building Contributions Map identifies contributory, neutral and detracting buildings for each conservation area. The controls require consideration of topography, landscape, subdivision pattern, setbacks, bulk, scale, roof forms and materials. Controls for contributory buildings aim to retain those buildings and for development to respect the forms and fabric that contributes to the significance of the area.

The controls apply to about 22,000 buildings in 73 conservation areas in the council area. They are not specific enough to deal with the high level of significance of Millers Point. The controls do not provide the specific guidance found in the policies of the endorsed conservation management plans that have been prepared for items in Millers Point. Under the Act, these controls could not address the impacts from the amount of floor space but could assist in guiding the arrangement of an appropriate amount of floor space.

Section 4.1 Single Dwellings, Terraces and Dual Occupancies

The relevant controls in this section of the DCP are:

- Section 4.1.1 Building Height sets a maximum number of storeys and that buildings should be consistent with others in the street.
- Section 4.1.2 Building Setbacks requires new development to generally maintain front, rear and side setbacks.
- Section 4.1.4 Additions and Alterations facilitate sympathetic development that maintains the traditional character of heritage buildings.
- Section 4.1.5 Roof alterations and additions facilitates changes to traditional roofs such as dormers and rear roof extensions.

The controls apply to about 22,000 buildings in 73 conservation areas in the council area. They facilitate the flexibility, change and amount of development that is consistent with the significance of most conservation areas. This degree of change is delivered with FSRs of 1:1 to 1:75. The DCP figures below illustrate the changes that are facilitated by the controls. These changes are inconsistent with the endorsed CMPs for Millers Point items and would have adverse impact on the very high level of state and local significance of the items and the area. Generally, the development facilitated includes:

- Additional storeys to the rear of buildings which would be visible in the Millers Point area and reduce the intactness and significance of the place and items, and
- Lean-to, rear-wing, pavilion and rear roof extensions could potentially result in the demolition of significant fabric and impact on consistent and intact rows of rear wings and roofs which characterise the area.

Development facilitated by the DCP would have a substantial impact on the high level of significance of Millers Point. Millers Point is highly intact and visible. The changes facilitated by the DCP would result in the loss of significant original fabric, building forms, pattern of rear wings, roofscapes and characteristic views from public places. Changes consistent with the DCP would also be inconsistent with the endorsed CMPs for items in Millers Point.

Millers Point also affords diverse views from many publicly accessible vantage points within the precinct. Views across the precinct are also characterised by roof tops and rear wings, chimneys and balconies that share a common rhythm and pattern. It is one of Sydney's most highly visible conservation areas with many unique publicly accessible views over, across and through the precinct from a number of vantage points. Development consistent with the DCP would involve the demolition or obscuring of significant rear wings or the destruction of the original and intact arrangement of internal and external spaces and pattern of rear wings.

ATTACHMENT A

Various DCP figures illustrating additions that are acceptable in many conservation areas but that would have an adverse impact on the very high level of significance of the Millers Point area and items

Figure 4.4

Additional storeys viewed from the street. These examples demonstrate how a single storey building fronting the street may have two storeys behind

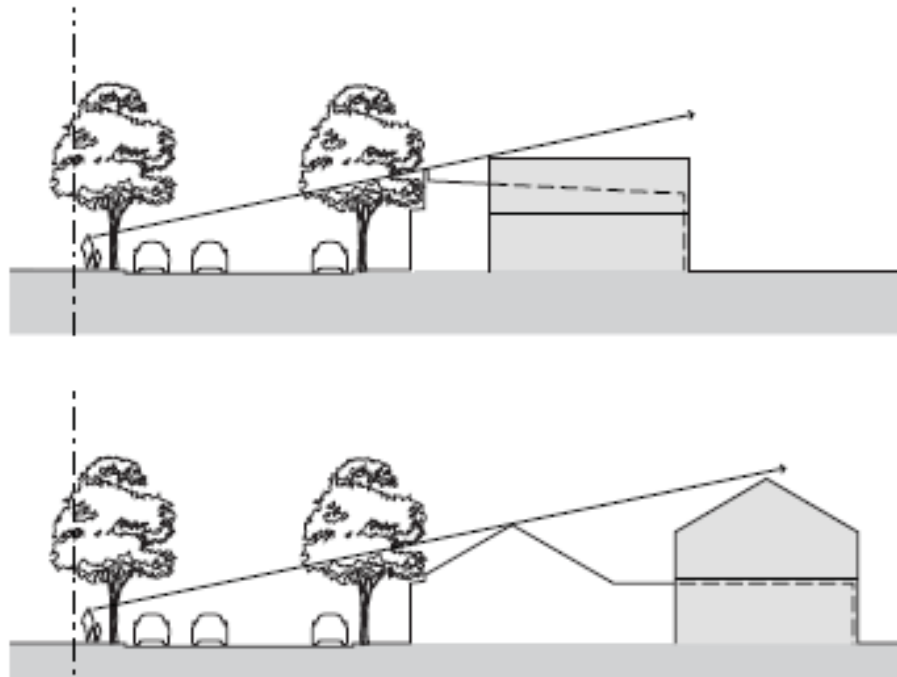


Figure 4.10

Examples of additions to terraces houses, demonstrating appropriate building forms

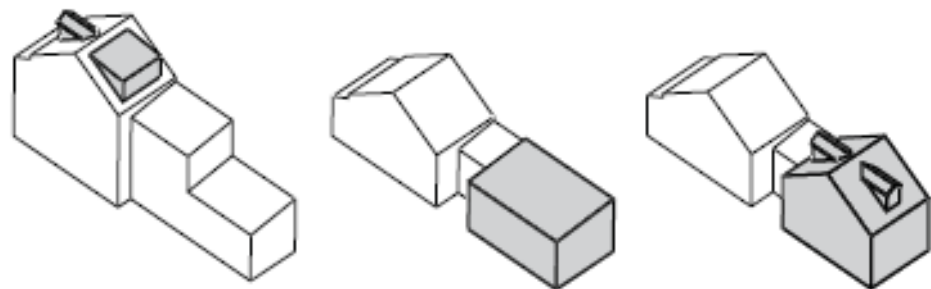


Figure 4.9
Example of a pavilion addition

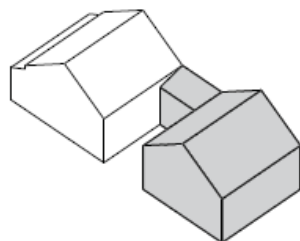


Figure 4.16
Rear roof extensions are to be set in by a minimum of 500mm from side walls

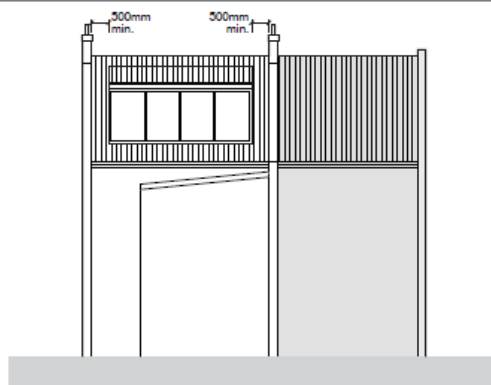


Figure 4.7
Example of a lean-to addition

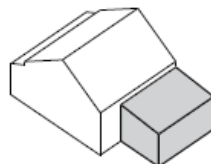


Figure 4.8
Example of a wing addition

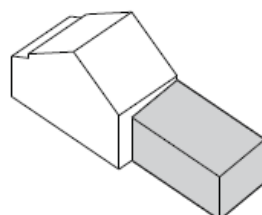
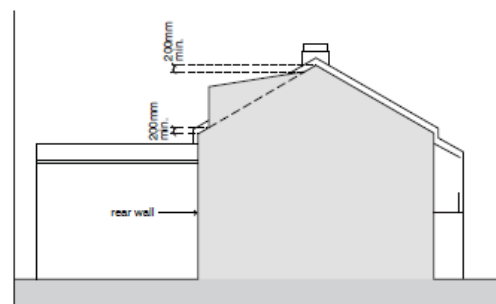


Figure 4.17
Rear roof extensions are to be set down a minimum of 200mm below the ridge line and a minimum of 200mm up from the rear wall



Environmental Planning and Assessment Act 1979 No 203

Current version for 1 December 2015 to date (accessed 14 December 2015 at 12:06)

[Part 3](#) » [Division 6](#) » [Section 74C](#)

74C Preparation of development control plans

- (1) The relevant planning authority may prepare a development control plan (or cause such a plan to be prepared) if it considers it necessary or desirable:
 - (a) to provide the guidance referred to in section 74BA (1), or
 - (b) to identify development as advertised development (so as to make additional but not inconsistent requirements to those imposed by the regulations in relation to development applications), or
 - (c) to provide for (or exclude) public or particular advertising or notification of any of the following:
 - (i) a development application for specified development (other than State significant development or designated development or advertised development),
 - (ii) a request for the review of a determination of a development application where the applicant for review makes amendments to the development described in the original development application,
 - (iii) an application for the modification of a development consent for specified development (including advertised development but not State significant development or designated development), or
 - (iv) (Repealed)
 - (d) in the case of a council—to specify criteria (in addition to but not inconsistent with any criteria prescribed by the regulations) that the council is to take into consideration in determining whether or not to give an order under Division 2A of Part 6, or
 - (e) to make provision for anything permitted by this Act to be prescribed by a development control plan.

Note. See for example section 26 (4) (a).

- (2) Only one development control plan made by the same relevant planning authority may apply in respect of the same land. This subsection does not apply to:
 - (a) a plan prepared for the purposes of subsection (1) (d) or for any other purpose prescribed by the regulations, or
 - (b) a plan prepared for the purpose of amending an existing plan.

If this subsection is not complied with, all the development control plans concerned have no effect.

Note. A planning authority may prepare one development control plan for the whole of its area or one plan for each precinct or locality in its area, or prepare one plan for a site (and exclude that site from the area to which other plans apply).

- (3) A development control plan may adopt by reference the provisions of another development control plan.
- (4) A development control plan may amend, substitute or revoke another development control plan.
- (5) A provision of a development control plan (whenever made) has no effect to the extent that:
 - (a) it is the same or substantially the same as a provision of an environmental planning instrument applying to the same land, or
 - (b) it is inconsistent or incompatible with a provision of any such instrument.

Environmental Planning and Assessment Act 1979 No 203

Current version for 1 December 2015 to date (accessed 14 December 2015 at 12:04)

[Part 3](#) » [Division 6](#) » [Section 74BA](#)

74BA Purpose and status of development control plans

- (1) The principal purpose of a development control plan is to provide guidance on the following matters to the persons proposing to carry out development to which this Part applies and to the consent authority for any such development:

- (a) giving effect to the aims of any environmental planning instrument that applies to the development,
- (b) facilitating development that is permissible under any such instrument,
- (c) achieving the objectives of land zones under any such instrument.

The provisions of a development control plan made for that purpose are not statutory requirements.

- (2) The other purpose of a development control plan is to make provisions of the kind referred to in section 74C (1) (b)–(e).
- (3) Subsection (1) does not affect any requirement under Division 3 of Part 4 in relation to complying development.

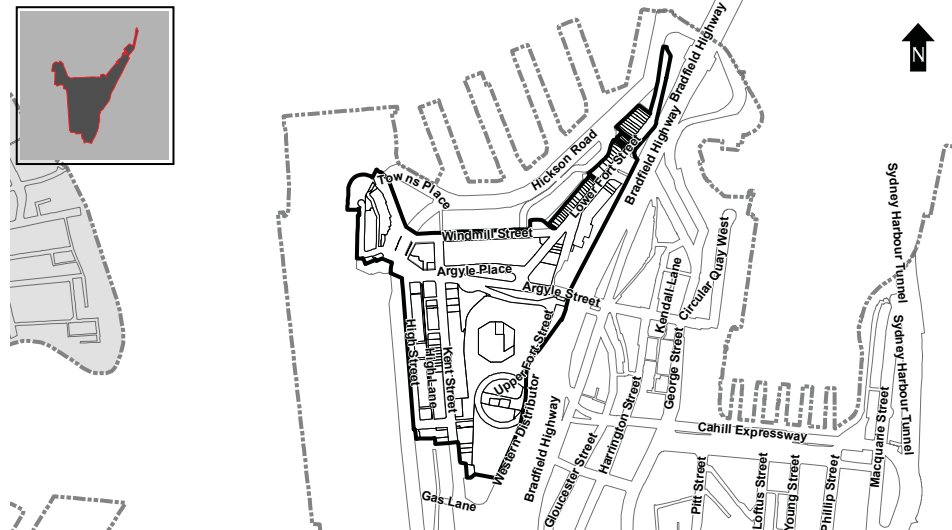
Sydney Development Control Plan 2012

Text



2.8

Millers Point



The locality consists of a residential community, which is unique in City terms for its strong identity and self-containment with employment, housing and community facilities available within the area. Government ownership has played an important role in the area with successive demolitions and redevelopments since the Darling Harbour Resumptions in the 1900s, the involvement of the Sydney Harbour Trust from 1908, the Housing Board in the inter-war period and more recently the Department of Housing.

The area's steep, coastal topography and early development have generated its character and built form with evidence of quarrying, retaining walls, and a public domain which includes public staircases, laneways, pedestrian pathways, bridges and parks of a variety of scales. The area south, along Kent Street, forms a transition in scale to the City, while two storey development is a dominant character on Kent Street.

There is a significant change in level to the west with the lower buildings addressing Hickson Road. The area affords significant views to and from the water and of the Harbour Bridge. A significant panorama of the Harbour and the City is gained from Observatory Hill.

The area is characterised by a fine grain subdivision pattern, the use of sandstone and other traditional building materials, two to three storey residential terraces, similar scaled commercial buildings (often pubs) defining the corners and pitched roofs. While there is a consistency of materials, scale and form, a variety of styles and street alignments are represented, with many of the terraces setback at street level.

Principles

- (a) Development must achieve and satisfy the outcomes expressed in the character statement and supporting principles.
- (b) Retain and conserve the heritage significance of Millers Point.
- (c) Development is to respond to and complement heritage items and contributory buildings within heritage conservation areas, including streetscapes and lanes.

- (d) Ensure that new development respects the scale, character and significance of existing buildings.
- (e) Maintain existing views and vistas into and out of the precinct to the water and Harbour Bridge north and to the city south, and Observatory Park.
- (f) Conserve the continuity of Millers Point and maintain the diverse social mix of the area.

3.9

Heritage

Heritage planning aims to ensure that the significant elements of the past are appropriately managed and respected by new development. Heritage conservation does not preclude change but rather responds to different constraints and opportunities.

This DCP is consistent with the Australia International Council on Monuments and Sites (ICOMOS) Charter for Conservation of Places of Cultural Significance (The Burra Charter).

These provisions are based on the underlying principles that:

- Change should be based on an understanding of heritage significance; and
- The level of change should respect the heritage significance of the item or area.

The intention of these provisions is to ensure that decisions about change are made with due regard to heritage significance, and that opportunities to improve the understanding and appreciation of this significance are taken.

A list of heritage practitioners can be found on the website of the Heritage Branch, NSW Department of Planning at www.heritage.nsw.gov.au.

Heritage items, contributory, neutral and detracting buildings are identified on the *Building contributions map*.

Objectives

- (a) Ensure that heritage significance is considered for heritage items, development within heritage conservation areas, and development affecting archaeological sites and places of Aboriginal heritage significance.
- (b) Enhance the character and heritage significance of heritage items and heritage conservation areas and ensure that infill development is designed to respond positively to the heritage character of adjoining and nearby buildings and features of the public domain.

Provisions

3.9.1 Heritage Impact Statements

- (1) A Heritage Impact Statement is to be submitted as part of the Statement of Environmental Effects for development applications affecting:
 - (a) heritage items identified in the *Sydney LEP 2012*; or
 - (b) properties within a Heritage Conservation Area identified in *Sydney LEP 2012*.
- (2) The consent authority may not grant consent to a development application that proposes substantial demolition or major alterations to a building older than 50 years until it has considered a heritage impact statement, so as to enable it to fully consider the heritage significance of a building and the impact that the proposed development has on the building and its setting.
- (3) A Heritage Impact Statement is to be prepared by a suitably qualified person, such as a heritage consultant. Guidelines for the preparation of Statements of Heritage Impact are available on the website of the Heritage Branch, NSW Department of Planning at www.heritage.nsw.gov.au.

- (4) The Heritage Impact Statement is to address:
 - (a) the heritage significance of the heritage item or the contribution which the building makes to the heritage significance of the heritage conservation area;
 - (b) the options that were considered when arriving at a preferred development and the reasons for choosing the preferred option;
 - (c) the impact of the proposed development on the heritage significance of the heritage item, heritage items within the vicinity, or the heritage conservation area; and
 - (d) the compatibility of the development with conservation policies contained within an applicable Heritage Conservation Management Plan or Conservation Management Strategy, or conservation policies within the Sydney Heritage Inventory Report.
- (5) Where the site adjoins another local government area, the Heritage Impact Statement is to address the potential impact on adjoining or nearby heritage items or heritage conservation areas in the adjoining local government area.
- (6) Where the development application proposes the full or substantial demolition of a heritage item, or a contributory building within a heritage conservation area, the Heritage Impact Statement is to:
 - (a) demonstrate why the building is not capable of retention or re-use;
 - (b) include a statement from a quantity surveyor comparing the cost of demolition to the cost of retention if the demolition is recommended primarily on economic grounds;
 - (c) include a report by a suitably qualified structural engineer if the demolition is proposed on the basis of poor structural condition; and
 - (d) include a pest inspection report if the building is a weatherboard building.
- (7) When giving consent to the full or partial demolition of a heritage item, a building in a heritage conservation area, or a building older than 50 years, Council may require photographic recording of the building as a condition of consent.

3.9.2 Conservation Management Plans

Definition

A Conservation Management Plan (CMP) is a comprehensive document which identifies the heritage significance of a place and should be prepared in accordance with the NSW Heritage Manual published by the NSW Heritage Office, the Australian ICOMOS Burra Charter Process and the Conservation Plan by J.S Kerr, which is available from the NSW National Trust. The Conservation Management Plan is to also consider compliance with any recommended management policies contained in the Heritage Inventory Report for the property or heritage conservation area.

Provisions

- (1) A conservation management plan prepared by a suitably qualified heritage practitioner for development applications is required for the following:
 - (a) a change of use of a heritage item of State heritage significance;
 - (b) any alteration to the fabric or setting of a heritage item of State heritage significance which requires consent;

- (c) an award of heritage floor space under *Sydney LEP 2012*; or
 - (d) substantial alterations and or additions to a heritage item considered by the Council to be of high local significance, unless the consent authority determines that it is not required.
- (2) The conservation management plan is to include:
- (a) the investigation of the physical and documentary evidence of the heritage item;
 - (b) a comparative analysis and curtilage assessment;
 - (c) assessment of the significance of the heritage item;
 - (d) the investigation of the constraints and opportunities for the item including the owner's needs and resources, and external constraints;
 - (e) conservation policies which address the following:
 - (i) conservation of the fabric and setting of the heritage item;
 - (ii) appropriate uses of the heritage item;
 - (iii) appropriate ways to interpret the significance of the heritage item;
 - (iv) management of the heritage item;
 - (v) guidelines for future development; and
 - (f) priorities for instigation of conservation policies.
- (3) In certain cases, the consent authority may accept a conservation management strategy in place of a conservation management plan for heritage items of local significance. A conservation management strategy is to be prepared in accordance with the format prepared by the NSW Office and Environment and Heritage.

3.9.3 Archaeological assessments

- (1) An archaeological assessment is to be prepared by a suitably qualified archaeologist in accordance with the guidelines prepared by the NSW Office and Environment and Heritage.
- (2) For development proposals in Central Sydney, refer to the *Central Sydney Archaeological Zoning Plan* to determine whether the development site has archaeological potential.
- (3) An archaeological assessment is to be submitted as part of the Statement of Environmental Effects for development applications affecting an archaeological site or a place of Aboriginal heritage significance, or potential archaeological site that is likely to have heritage significance.
- (4) An archaeological assessment is to include:
 - (a) an assessment of the archaeological potential of the archaeological site or place of Aboriginal heritage significance;
 - (b) the heritage significance of the archaeological site or place of Aboriginal heritage significance;
 - (c) the probable impact of the proposed development on the heritage significance of the archaeological site or place of Aboriginal heritage significance;
 - (d) the compatibility of the development with conservation policies contained within an applicable conservation management plan or conservation management strategy; and

- (e) a management strategy to conserve the heritage significance of the archaeological site or place of Aboriginal heritage significance.
- (5) If there is any likelihood that the development will have an impact on significant archaeological relics, development is to ensure that the impact is managed according to the assessed level of significance of those relics.

3.9.4 Development of sites of State heritage significance or containing more than one heritage item

- (1) This provision applies to development that will introduce major changes to a heritage item identified in Schedule 5 of the *Sydney LEP 2012* as being of State heritage significance or to a site containing more than one heritage item, if the development involves:
 - (a) demolition that will result in a reduction of the building envelope of the heritage item by more than 35%;
 - (b) an increase in the size of the building envelope of the heritage item by more than 20%; or
 - (c) building over more than 20% of a heritage item's building footprint within the airspace above the item, but not within the airspace next to the item.
- (2) When considering an application for development to which this provision applies, the consent authority is to:
 - (a) appoint a committee that includes heritage professionals to examine and advise on the merits of the proposal;
 - (b) be satisfied that that committee has followed an appropriate public process for the purpose of that examination; and
 - (c) consider the advice of the committee, but is not bound by the advice of the committee.

3.9.5 Heritage items

Development in the vicinity of a heritage item can have an impact upon the heritage significance of the item. The determination of the setting of a heritage item should consider the historical property boundaries, significant vegetation and landscaping, archaeological features, and significant views to and from the property.

Objective

- (a) Ensure that development in the vicinity of heritage items is designed and sited to protect the heritage significance of the item.

Provisions

- (1) Development affecting a heritage item is to:
 - (a) minimise the extent of change to significant fabric, elements or spaces;
 - (b) use traditional techniques and materials where possible unless techniques and materials can offer substantial conservation benefits;
 - (c) enable the interpretation of each of the significant values of the item through the treatment of the item's fabric, spaces and setting;
 - (d) provide a use compatible with its significance and which with any changes proposed, including any BCA upgrade or the introduction of services will have minimal impact on significant fabric, elements or spaces;

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- (e) the provision of on-site interpretation, or a combination of each of these measures;
 - (f) not reduce or obscure the heritage significance of the item; and
 - (g) be reversible where necessary so new work can be removed with minimal damage, or impact to significant building fabric.
 - (h) be consistent with an appropriate Heritage Conservation Management Plan, Conservation Management Strategy, or policy guidelines contained in the Heritage Inventory Assessment report for the item;
 - (i) ensure that any changes to the original/significant room configuration is evident and can be interpreted; and
 - (j) respect the pattern, style, dimensions or original windows and doors.
- (2) Development should enhance the heritage item by removing unsympathetic alterations and additions and reinstating missing details, building and landscape elements, where physical or documentary evidence is available.
- (3) Alterations and additions to buildings and structures and new development of sites in the vicinity of a heritage item are to be designed to respect and complement the heritage item in terms of the:
- (a) building envelope;
 - (b) proportions;
 - (c) materials, colours and finishes; and
 - (d) building and street alignment.
- (4) Development in the vicinity of a heritage item is to minimise the impact on the setting of the item by:
- (a) providing an adequate area around the building to allow interpretation of the heritage item;
 - (b) retaining original or significant landscaping (including plantings with direct links or association with the heritage item);
 - (c) protecting, where possible and allowing the interpretation of archaeological features; and
 - (d) Retaining and respecting significant views to and from the heritage item.

3.9.6 Heritage conservation areas

Buildings and sites within heritage conservation areas are identified on the *Building contributions map* as being contributory, neutral or detracting to the character and heritage significance of the heritage conservation area.

The contribution of these buildings is based on studies carried out by heritage consultants for the City.

New development in heritage conservation areas must be designed to respect neighbouring buildings and the character of the area, particularly roofscapes and window proportions. Infill development should enhance and complement existing character but not replicate heritage buildings.

- (1) Development within a heritage conservation area is to be compatible with the surrounding built form and urban pattern by addressing the heritage conservation area statement of significance and responding sympathetically to:
- (a) topography and landscape;
 - (b) views to and from the site;

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- (c) significant subdivision patterns and layout, and front and side setbacks;
 - (d) the type, siting, form, height, bulk, roofscape, scale, materials and details of adjoining or nearby contributory buildings;
 - (e) the interface between the public domain and building alignments and property boundaries; and
 - (f) colour schemes that have a hue and tonal relationship with traditional colour schemes.
- (2) New infill buildings and alterations and additions to existing buildings in a heritage conservation area are not to be designed as a copy or replica of other buildings in the area, but are to complement the character of the heritage conservation area by sympathetically responding to the matters identified in (1)(a) to (e) above.
 - (3) Infill development is not to include garages and car access to the front elevation of the development where these are not characteristic of the area.
 - (4) Development within a heritage conservation area is to be consistent with policy guidelines contained in the Heritage Inventory Assessment Report for the individual conservation area.

Figure 3.13

Infill development
Iglu Central,
Chippendale
(student
accommodation)



3.9.7 Contributory buildings

Contributory buildings are buildings that make an important and significant contribution to the character and significance of the heritage conservation area. They have a reasonable to high degree of integrity and date from a key development period of significance of the heritage conservation area. They are buildings:

- from a significant historical period and are highly or substantially intact; or
 - from a significant historical period and are altered yet recognisable and reversible.
- (1) Contributory buildings are to be retained unless the consent authority determines the replacement is justified in exceptional circumstances.

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- (2) Alterations and additions must not significantly alter the appearance of principal and significant facades of a contributory building, except to remove detracting elements.
- (3) Alterations and additions to a contributory building are to:
 - (a) respect significant original or characteristic built form;
 - (b) respect significant traditional or characteristic subdivision patterns;
 - (c) retain significant fabric;
 - (d) retain, and where possible reinstate, significant features and building elements, including but not limited to original balconies and verandahs, fences, chimneys, joinery and shop front detailing;
 - (e) remove unsympathetic alterations and additions, including inappropriate building elements;
 - (f) use appropriate materials, finishes and colours; and
 - (g) respect the pattern, style and dimensions of original windows and doors.
- (4) Where an addition to the building is proposed, significant external elements are to be reinstated.
- (5) Foyers or other significant interior features, including hallway detailing, panelling and significant staircases, designed to be visible from the street, are to be retained especially where they form part of the building's contribution to the character of the heritage conservation area.

Figure 3.14
Single storey
contributory
buildings, Glebe



3.9.8 Neutral and appropriate infill buildings

Neutral buildings are buildings that do not contribute nor detract from the significant character of the heritage conservation area.

Neutral buildings are:

- From a significant historical period, but altered in form, unlikely to be reversed;
- sympathetic contemporary infill; or
- from a non-significant historical period but do not detract from the character of the Heritage Conservation Area.

- (1) Demolition of neutral buildings will only be considered where it can be demonstrated that:
 - (a) restoration of the building is not reasonable; and
 - (b) the replacement building will not compromise the heritage significance of the heritage conservation area.
- (2) Where demolition of a neutral building is allowed, a photographic record of the building may be required to be submitted to the City.
- (3) Alterations and additions to a neutral building are to:
 - (a) remove unsympathetic alterations and additions, including inappropriate building elements;
 - (b) respect the original building in terms of bulk, form, scale and height;
 - (c) minimise the removal of significant features and building elements; and
 - (d) use appropriate materials, finishes and colours that do not reduce the significance of the Heritage Conservation Area.

3.9.9 Detracting buildings

Detracting buildings are buildings that are intrusive to a heritage conservation area because of inappropriate scale, bulk, setbacks, setting, design or materials. They do not represent a key period of significance and detract from the character of a heritage conservation area.

- (1) Development on sites containing detracting buildings is to improve the contribution of the site to the character of the heritage conservation area.
- (2) Alterations and additions to, or redevelopment of, detracting buildings are to:
 - (a) remove inappropriate elements or features that are intrusive to the heritage significance of the heritage conservation area; and
 - (b) respect the prevailing character of the area and street in terms of bulk, form, scale and height.

3.9.10 Building materials for heritage items and buildings within heritage conservation areas

- (1) Where residential flat buildings have foyers or other significant interior features, including hallway detailing, panelling and significant staircases, that are designed to be visible from the street, these are to be retained.
- (2) Existing face brickwork and stone walls are not to be coated, rendered or painted.
- (3) Original materials are to be retained, unless it can be demonstrated that significant deterioration has occurred and repair is not practical. Any replacement should be with similar materials.
- (4) New materials are to complement the colour, finishes and proportion of existing materials on the building and be identifiable as new on close inspection without detracting from the character and heritage significance of the building.
- (5) Development along King Street, Newtown and certain properties adjacent is to be consistent with the King Street and Enmore Road Paint Scheme, available on the City's website, www.cityofsydney.nsw.gov.au.
- (6) Solar water heater storage tanks, ventilators, wind generators, air conditioning units, satellite dishes and antennae and the like, are not to be located on the principal roof plane of heritage items or contributory items in heritage conservation areas.

- (7) Solar collector or photovoltaic panels may be located on buildings in a heritage conservation area. Where solar collector or photovoltaic panels are proposed on the principal roof plane of a contributory building in a heritage conservation area, the panels are to be removable, parallel to the pitch of roof and preferably integrated with the roof. The panels must make minimal intrusive change to significant roof fabric.

3.9.11 Conservation of public domain features in heritage conservation areas

- (1) The following elements of streets, lanes, parks and other areas of the public domain are to be retained if they contribute to the heritage significance of the heritage conservation area:
- (a) evidence of early road surfaces and associated features;
 - (b) stone kerbing, guttering and paving;
 - (c) sandstone steps and retaining walls;
 - (d) street furniture;
 - (e) cast iron letterboxes;
 - (f) signposts;
 - (g) light posts;
 - (h) original pavement lights;
 - (i) fences;
 - (j) railings;
 - (k) trachyte or sandstone; and
 - (l) milestones and ward markers.
- (2) The removal of significant public domain features will only be considered if their retention in situ is not feasible and has been demonstrated in a Heritage Impact Statement.
- (3) If significant public domain features are to be removed, they are to be replaced in one of the following ways:
- (a) detailed and made of materials to match the period and character of the street or park in which they are located; or
 - (b) a contemporary interpretation of traditional elements.

Figure 3.15
Significant public domain elements:
Ward boundary marker, Cardigan Street and El Alamein fountain



3.9.12 Reduction of rising damp and salt attack in buildings constructed prior to 1920

Older masonry buildings without an effective damp proof course can suffer rising damp leading to deterioration of the walls. A well ventilated subfloor can reduce rising damp. Replacing a timber floor with a concrete floor on the ground level will cause rising damp and damage to the building. Further information can be found in the publication '*Attack and Rising Damp*' by David Young available on the NSW Heritage Office website at: http://www.heritage.nsw.gov.au/docs/HVC014_Salt_Damp_tech_guide_FA_web.pdf

Provision

- (1) Where a heritage item or a building within a heritage conservation area constructed prior to 1915 has no damp proof course, the ventilated sub floor space must be retained to avoid potential damage caused by rising damp and migrating salts. Concrete slabs laid directly on the ground are not permitted within such buildings, including verandahs, or as paving slabs laid adjacent to external walls.

3.9.13 Excavation in the vicinity of heritage items and in heritage conservation areas

Excavation beneath, adjacent to, or in front of early buildings has the potential to adversely impact on their structural integrity. Understanding the nature of construction of all structures on the site and neighbouring sites and the ground conditions is necessary to assess the effects of excavation.

Provisions

- (1) Excavation beneath, or adjacent to heritage items and/or buildings in heritage conservation areas will only be permitted if it is supported by both a Geotechnical Engineering report and a Structural Engineering report.
- (2) Excavation will not be permitted if:
 - (a) it will occur under common walls and footings to common walls, or freestanding boundary walls, or under any other part of adjoining land, and
 - (b) it will occur under or forward of the front facade.

3.9.14 Heritage inventory assessment reports

The City maintains a database of Heritage Inventory Assessment Reports for heritage items and heritage conservation areas. The report includes a description of the item or area. Statement of Heritage Significance and Recommended Management provisions. Heritage Inventory Assessment Reports are available by contacting the City or online through the NSW Heritage Office at: www.heritage.nsw.gov.au.

Provision

- (1) Development to a heritage item or within a heritage conservation area or special character area is to be consistent with the policy guidelines contained within the Heritage Inventory Assessment Report.

4.1

Single Dwellings, Terraces and Dual Occupancies

This Section applies to single dwellings, terraces and dual occupancies.

Not all provisions within this Section apply to the Rosebery Estate. Refer to Section 5.6 Rosebery Estate, Rosebery, of this DCP for additional provisions relating to single dwellings, terraces and dual occupancies in the Rosebery Estate, which take precedence if the provisions are inconsistent with those in this Section.

4.1.1 Building height

The following objectives and provisions relate to the height in storeys and the street frontage height in storeys. These controls work together with the building height in metres control in the *Sydney Local Environmental Plan 2012* which establishes the maximum permissible height for every property.

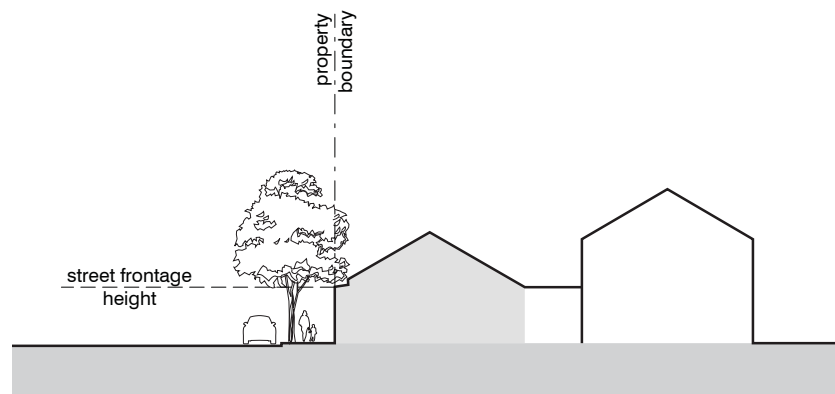
The street frontage height control is not identified for all areas and is defined in the locations where the street frontage height needs to be maintained for streetscape amenity and consistency.

The height in storeys control works with the maximum height in metres control to ensure development relates to the character of a neighbourhood and streetscape. The maximum height in metres allows for expressive pitched roofs or roof structures, such as enclosed plant or lift overrun, in addition to the number of storeys. Figure 4.2 demonstrates the relationship between the controls on a typical terrace building with a pitched roof. The difference between the height in storeys and maximum height does not imply that an additional storey is permitted or that there is a mismatch in controls

Definitions

Street frontage height in storeys is the vertical height of the part of the building closest to the street boundary and does not apply to laneways. Refer to Figure 4.1 *Street frontage height*.

Figure 4.1
Street frontage
height



ATTACHMENT A

Figure 4.2
Relationship
between height
in metres control
in Sydney LEP
2012 and height
in storeys control
shown for a typical
two storey terrace

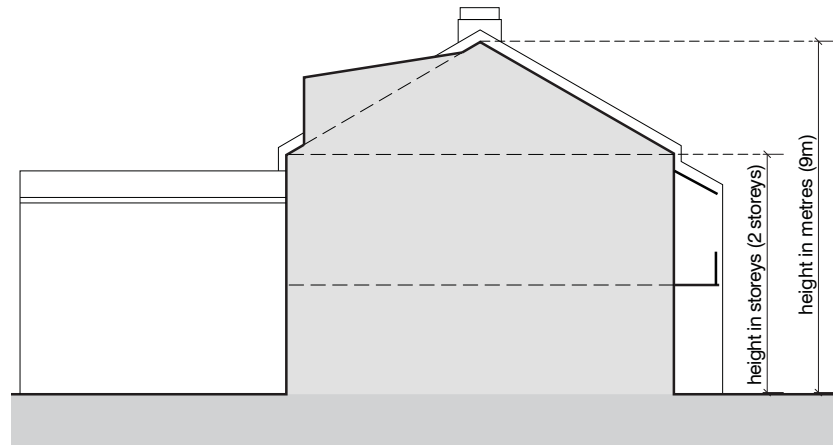
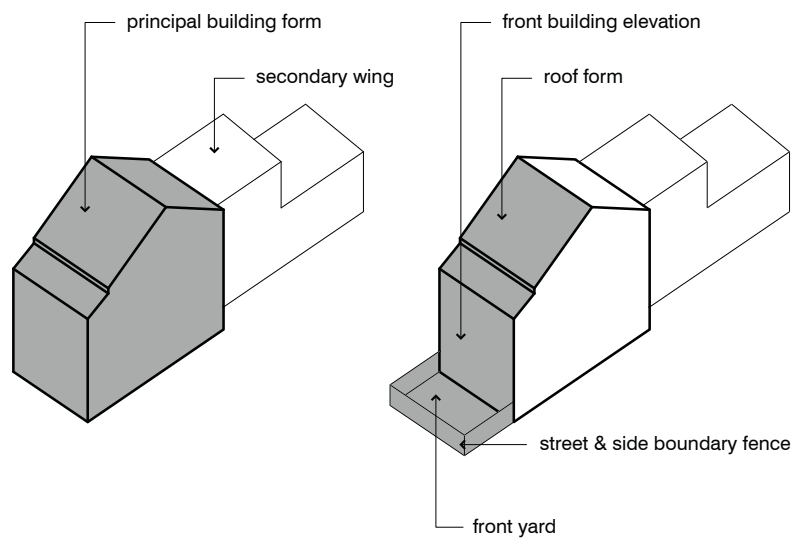


Figure 4.3
Retain and conserve
the principle built
form



Objectives

- (a) Ensure development reinforces the existing and desired neighbourhood character with an appropriate height in storeys and street frontage height in storeys.
- (b) Ensure development in heritage conservation areas relate to the existing neighbourhood character in terms of height in storeys and street frontage height in storeys.
- (c) Retain and conserve the principle building form and its relationship to the street for heritage items and contributory buildings in heritage conservation areas.

Provisions

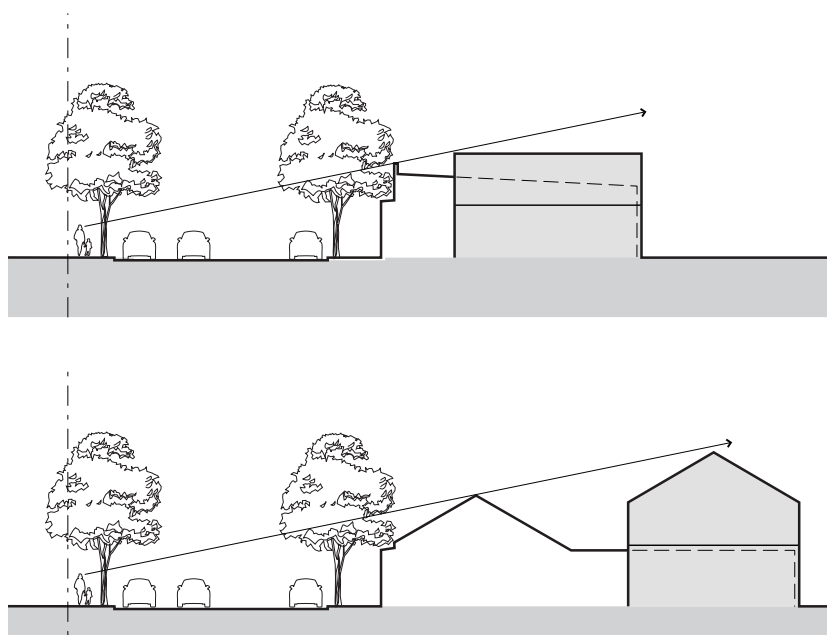
- (1) Development is not to exceed the maximum number of storeys as shown on the *Building height in storeys map*. The maximum may only be achieved where it can be demonstrated that the proposed development:
 - (a) reinforces the existing and desired neighbourhood character;
 - (b) is consistent with the character, scale and form of surrounding buildings in heritage conservation areas; and
 - (c) does not detract from the character, and significance of the existing building.

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- (2) The street frontage height of a building must not exceed the maximum height shown for the street frontage on the *Building street frontage height in storeys map*.
- (3) Where the *Building street frontage height in storeys map* does not indicate the maximum height, the maximum street frontage height is to generally be consistent with the street frontage heights of adjacent buildings, or the predominant street frontage height in storeys in the vicinity of the proposed building.
- (4) In a heritage conservation area, an additional storey must not be visible above the ridge line or parapet of the existing building on the primary street frontage as shown below in Figure 4.4.
- (5) The cutting of a sloping site is to minimise excavation. For sites that slope to the rear where the ground floor is raised above street level, the area of blank retaining fences and walls fronting the public domain is to be minimised.

Figure 4.4

Additional storeys viewed from the street. These examples demonstrate how a single storey building fronting the street may have two storeys behind



4.1.2 Building setbacks

Objectives

- (a) Ensure that new development relates to the existing setback patterns.
- (b) Maintain the setting of heritage items and of buildings within a Heritage Conservation Area.

Provisions

- (1) Front setbacks are to be consistent with the *Building setbacks map*. Where no front setback is shown on the map, the front setback is to be consistent with the predominant setting in the street.
- (2) Within heritage conservation areas, new development is to relate to the established development pattern including the subdivision pattern, front, side and rear setbacks.
- (3) A greater front, side or rear setback may be required for development within the vicinity of a heritage item in order to maintain the visual setting of the heritage item. This is to be determined on a site by site basis.

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- (4) New development and alterations and additions must respect and be sympathetic to the predominant rear building line.
- (5) Corner buildings are to be built to the street boundary in areas where corner buildings are typically built to the street boundary on one or more frontages.

Figure 4.5

An example of new development that relates to the existing setback pattern



4.1.3 Residential amenity

The following objectives and provisions will ensure high quality residential amenity for dwellings.

Objectives

- (a) Maintain or enhance residential amenity by ensuring adequate solar access, landscaping, deep soil planting, visual and acoustic privacy and ventilation.
- (b) Reduce urban heat load and increase canopy coverage and ground absorption of water.

4.1.3.1 Solar access

Objectives

- (a) Buildings are to be designed and sited to provide solar access to:
 - (i) private open space within the site and of adjoining dwellings;
 - (ii) habitable rooms within the development and in adjoining developments;
 - (iii) public open space including bushland reserves; and
 - (iv) solar collectors of adjoining development.

Provisions

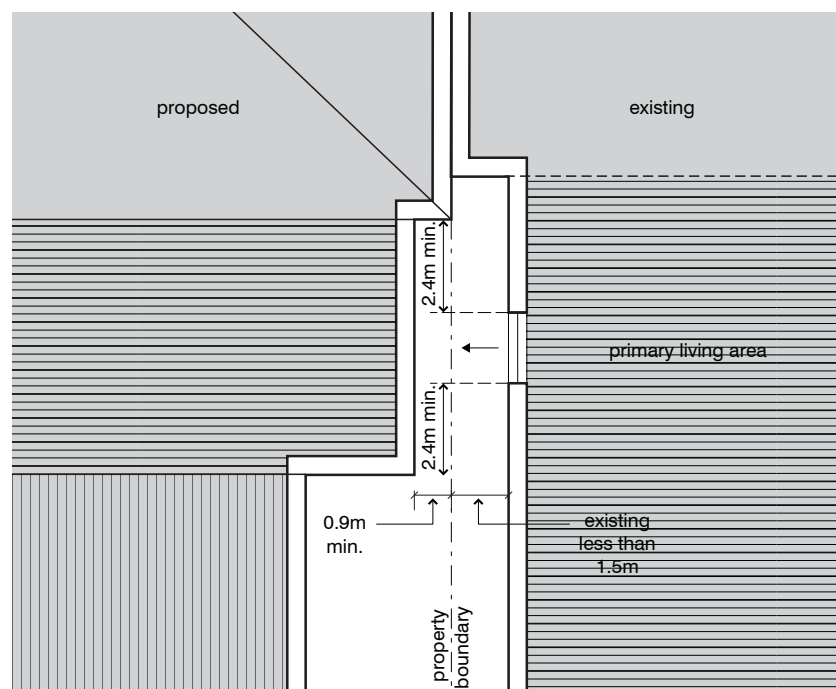
- (1) Development sites and neighbouring dwellings are to achieve a minimum of 2 hours direct sunlight between 9am and 3pm on 21 June onto at least 1sqm of living room windows and at least 50% of the minimum amount of private open space.
- (2) New development must not create any additional overshadowing where solar access is less than two hours between 9am and 3pm on 21 June. This control does not apply to windows on a side boundary or windows only separated from a side boundary or passageway.

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- (3) The development application is to include diagrams in plan and elevation that show the shadow impact of the proposal at 9am, 12 noon, and 3pm at midwinter.
- (4) Address solar access by:
 - (a) optimising orientation and placement of windows and habitable rooms;
 - (b) providing skylight or clerestory windows to improve solar access and provide shared light to poorly lit parts of a dwelling; and
 - (c) locating non-habitable rooms, such as service areas and circulation areas on the south side of the buildings where possible.
- (5) Overshadowing of windows along side boundaries by new development is permissible, except in the circumstances within provision (6) below.
- (6) Daylight access is to be addressed where:
 - (a) the side windows of an adjoining dwelling are facing and/or perpendicular to the boundary and are less than 1.5m from the side boundary; and
 - (b) the side windows in (a) are the only windows to the primary living area of a neighbouring dwelling;

then the proposed development is to be set back by a minimum of 900mm (inclusive of gutters and eaves) from the boundary opposite these windows extending for a minimum distance of 2.4m to either side of these windows. Refer to Figure 4.6.
- (7) Generally, the depth of a habitable room should not exceed 10m from the openings that receive daylight.
- (8) Extensive glazing that is unprotected from mid-summer sunlight is to be avoided. The reliance upon high performance tinting or glazing as a mid-summer sun control device instead of shading devices is not appropriate.

Figure 4.6
Daylight access to
primary living areas
of existing dwellings



4.1.3.2 Solar collectors

- (1) The use, location and placement of photovoltaic solar panels is to take into account the potential permissible building form on adjacent properties.
- (2) Where possible, proposals for new buildings, alterations and additions to buildings or major tree plantings are to maintain solar access to existing photovoltaic solar panels having regard to performance, efficiency, economic viability and reasonableness of their location. A development proposal may be modified to protect solar access to existing solar collectors.

4.1.3.3 Landscaping

- (1) A landscape plan may be required to be prepared and submitted with the development application concerning heritage items. The landscape plan is to be prepared by a landscape architect experienced in dealing with heritage gardens and at a minimum is to include:
 - (a) the retention of original and or significant landscaping (including plants with direct links or association with the heritage item);
 - (b) reinstatement of significant landscape features and plantings that have been removed; and
 - (c) details of how new plantings retain significant views to and from the heritage item.
- (2) Natural features such as cliff lines and rocky outcrops, are to be retained.
- (3) Existing trees are to be retained and protected by locating paved areas, underground services such as water tanks and detention tanks and external structures where there will be minimum impact on the growing conditions needed by those trees.
- (4) Landscaping is to include permeable surfaces to assist with on-site management of stormwater.
- (5) Generally, landscaping is to limit turf and give precedence to species with low water needs, include native plant species. Select and position trees and shrubs to manage sun access and wind impacts.

4.1.3.4 Deep soil planting

For the purposes of this provision 'deep soil area' is an area of natural ground with relatively natural soil profiles and it excludes areas above a structure, pools and non-permeable paved areas.

- (1) For lots greater than 150sqm, the minimum amount of deep soil is to be 15% of the site area. The deep soil area can include porous paving of up to 1.2m wide providing there is a deep soil area on one side level with the paved area.
- (2) Where site conditions allow, the deep soil area should be consolidated to one location on site for effective planting and to assist with detention of stormwater.

4.1.3.5 Private open space

- (1) Private open space at the ground level is to have a minimum area of 16sqm and minimum dimension of 3m.
- (2) Private open space is to be directly accessible from the living area of the dwelling and capable of serving as an extension of the living area.

4.1.3.6 Visual privacy

- (1) Development is to maximise visual privacy to side and rear boundaries through the following measures:
 - (a) offsetting the location of ground and first floor windows so that viewing is oblique rather than direct;
 - (b) building to the boundary where appropriate;
 - (c) setting back the first floor from the side boundary;
 - (d) providing sill heights of 1.4m above finished floor level; and
 - (e) screening devices such as landscaping, fencing, obscure glazing, timber screens, external ventilation blinds or window hoods and shutters.
- (2) Screening devices such as obscure glazing, timber screens, external ventilation blinds, window hoods and shutters are to be at least 60% obscure, permanently fixed and made of durable material.

4.1.4 Additions and alterations

Additions to a building generally consist of adding more rooms or extending the floor area. The potential for additions is dependent upon the size of the site, the context of the building, heritage significance of the building and the impact upon neighbouring properties and the wider area.

This Section includes objectives and provisions for additions and more specific examples of addition types. The illustrations show examples of additions to a terraced property however, the types of additions detailed may also be appropriate for other forms of development.

Objectives

- (a) Achieve sympathetic development and maintain the fabric of existing terraces.
- (b) Protect and respect the traditional character and heritage significance of heritage items and heritage conservation areas and contributory buildings by:
 - (i) ensuring additions are of an appropriate scale and appearance and relate to the scale and character of the existing building and the street;
 - (ii) minimising alteration of the original building and respecting the uniformity of an intact pair, group or row of buildings.

Provisions**4.1.4.1 General**

- (1) Additions must not remove significant building or site elements or outbuildings that contribute to the heritage significance of the heritage item or conservation area.
- (2) Additions must maintain the profile and form of the original building, including the roof form, and allow the original building to be discerned.
- (3) Additions must not extend beyond the predominant rear building alignment at any level of a group or row of buildings.

4.1.4.2 Lean-to additions

Lean-to additions are the most traditional form of rear extension and are suitable for most buildings.

- (1) Generally, lean-to additions are to have a skillion roof with a low pitch falling away from the main building as shown in Figure 4.7 *Example of a lean-to addition*.

4.1.4.3 Wing additions

Wing additions allow for larger floor areas and ceiling heights.

- (1) The roof pitch of a wing addition is to respect the roof pitch and gutter line of the existing building sloping to the side as shown in Figure 4.8 *Example of a wing addition*.
- (2) Wing additions must respect characteristic detailing of the existing building.

Figure 4.7
Example of a
lean-to addition

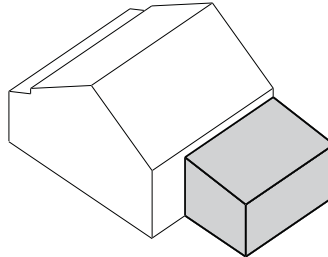
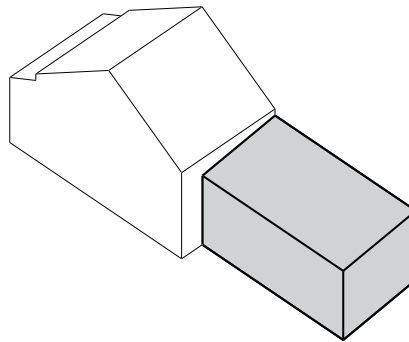


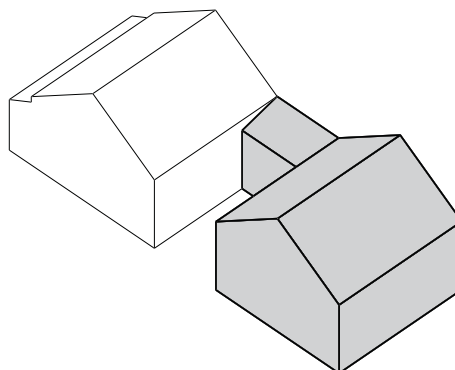
Figure 4.8
Example of a wing
addition

**4.1.4.4 Pavilion additions**

Pavilion additions offer design flexibility and are often suited to buildings of heritage significance or in situations where it is best to leave the existing building intact.

- (1) The roof pitch of pavilion additions must respect the roof pitch of the existing building, and be suitable to the particular building and its setting as shown in Figure 4.9 *Example of a pavilion addition*.
- (2) The element that links the pavilion extension to the existing building is to be of low scale and minimise the impact on significant building fabric as shown in Figure 4.9 *Example of a pavilion addition*.
- (3) The roof of a pavilion addition is not to accommodate a roof terrace or useable open space.

Figure 4.9
Example of a
pavilion addition



4.1.4.5 Basement additions

Basement additions may be suited to sloping sites and sites where basements can be accommodated with minimal excavation.

Applications that propose basement additions may be required to provide a Structural Report to confirm that the proposed excavation will not adversely affect the building or adjoining properties. The report should be provided as part of the development application.

- (1) External entrances and exits to basement additions are to be located to the rear, except where a front or side entry or exit is prevalent in the street.
- (2) Windows and light wells are to match the details and layout of those on the existing building and adjacent buildings where possible.

4.1.4.6 Additional storeys

Upper floor additions to the rear that retain the main form of a building and do not exceed the main roof ridge height are generally more acceptable than changes that alter the height, scale or form of the original building.

Refer to the *Street frontage height in storeys map* to determine the street frontage height in storeys.

Converting an existing roof space for a useable attic is not an additional storey.

- (1) Additional storeys to the main building or street frontage are generally not supported where:
 - (a) a building is part of an intact group or streetscape;
 - (b) the existing building height is comparable to a consistent or predominant building height in the streetscape; or
 - (c) the character of an area is part of its heritage significance and the additional storey would compromise the character.
- (2) Additional storeys are to respect the height of the parapet or ridge line of immediately adjoining buildings.
- (3) Additional storeys located behind parapets to buildings with flat or skillion roofs are only appropriate where the addition:
 - (a) will not be visible from the surrounding streets and lanes, and
 - (b) will not have an adverse impact upon the uniformity of a group, row or semi-pair of buildings.
- (4) Where the rear of a terrace group displays a consistent form and strong rhythm visible from a public space, additions are restricted to the ground floor.

4.1.5 Roof alterations and additions

Roof additions include rear roof extensions and dormer windows. Roof additions should be designed to permit the original roof form, slope and ridge of the building to be easily discerned, and should not overwhelm the integrity of a contributory building.

Objectives

- (a) Minimise the impact of dormers and skylights on the form, appearance and fabric of the principal roof form.
- (b) Ensure dormers to Victorian and Federation period terraces are traditional in form, proportions, scale and material.
- (c) Minimise interference to the original form of the building.

- (d) Minimise the impact on original and existing building elements.
- (e) Retain original roofing materials on heritage items and contributory and neutral buildings in heritage conservation areas.

4.1.5.1 Ensuring sympathetic roof alterations and additions

- (1) Roof alterations and additions must:
 - (a) complement the details and materials of the original roof;
 - (b) not detract from the architectural integrity of the principal elevation of a heritage item, contributory building, or an intact group of buildings in a heritage conservation area; and
 - (c) respect the form, pitch, eaves and ridge heights of the original building.
- (2) Roof additions are to be set below the ridge line to allow the original form of the main roof to be clearly discerned.
- (3) The existing ridgeline of the building is to be maintained and not raised to accommodate a roof addition.
- (4) Roof additions are not to include inset balconies, roof terraces or external staircases.
- (5) Roof additions are not permitted on buildings with front or side parapets where the addition will adversely affect the silhouette of the parapet line.
- (6) Windows in roof extensions must relate to the proportion and orientation of original windows in the building.

Figure 4.10

Examples of additions to terraces houses, demonstrating appropriate building forms

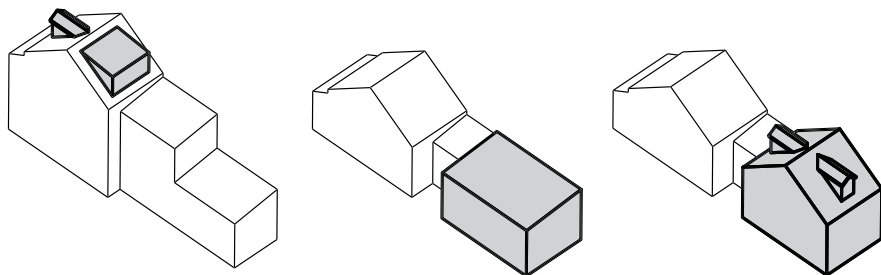
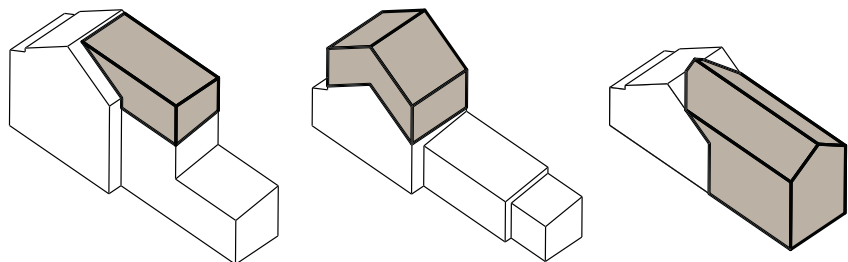


Figure 4.11

Examples of additions to terraced houses, demonstrating inappropriate building forms



4.1.5.2 Roof features

- (1) On heritage buildings and contributory and neutral buildings in heritage conservation areas:
 - (a) chimneys, and chimney detailing, are to be retained, even where fireplaces are no longer working;

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- (b) significant or original roof features, such as gables and finials, are to be retained; and
 - (c) missing significant or original roof features are to be reinstated when major works to the roof are proposed.
- (2) Solar water heater storage tanks, ventilators, wind generators, air conditioning units and satellite dishes and antennae are not to be located on the principal roof elevations of heritage items or buildings in heritage conservation areas.
 - (3) Solar collector panels may be located on roof plane visible from the public domain where they are parallel to the roof plane, there is minimal change to structure or fabric of the roof, removable and do not exceed 25% of the area of the roof plane.
 - (4) Notwithstanding provision (3), the installation of solar collectors and photovoltaic panels are not acceptable if it results in adverse impacts on the subject building and the streetscape.

4.1.5.3 Roof materials on heritage buildings and in heritage conservation areas

Roofing materials include the roof covering, details, joinery and plumbing features. The appearance of a building can be significantly influenced by the form and profile of roofing materials, including the detailing of eaves and ridgelines. Where re-roofing is proposed on heritage items and buildings in heritage conservation areas, this should be based on evidence of the traditional form and materials of the existing building.

The original presentation to the street can be maintained and enhanced by transferring good tiles or slates from side and rear elevations to the front elevation, or through the use of second-hand materials with a similar aging pattern to the original material. Corrugated galvanised steel in an unpainted finish or dark tone may be suitable where corrugated iron requires replacement.

- (1) Original roofing materials on heritage items and contributory and neutral buildings in heritage conservation areas are to be retained, unless it can be demonstrated that significant deterioration has occurred and repair is not practical.
- (2) New materials are to match original materials as closely as possible in terms of the colours, materials, finishes, sizes and profiles. Where contemporary materials are proposed, they are to be compatible with the period or architectural style of the building.
- (3) Where an application proposes re-roofing a building, the applicant may be required to reinstate a traditional verandah or balcony roof.
- (4) Reinstate appropriate roofing materials and detailing, original separate verandah or balcony roofs and exposed party walls above roofs.

4.1.5.4 Traditional front dormers

Dormer windows are vertically proportioned windows providing natural light and ventilation to an attic room. Due to their limited size and traditional detailing they may be appropriate on the front plane of the roof in very limited circumstances. If the primary function of the dormer is to provide additional headroom, it will be considered under the provisions for roof extensions, and is only appropriate for the rear of the building.

- (1) Front dormer windows are not permitted on:
 - (a) the front roof of buildings within the Lang Road and Martin Road Heritage Conservation Areas; or
 - (b) buildings where the roof pitch is shallow; or

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- (c) buildings with a scale, style or architectural character not suited to dormer windows; or
 - (d) sections of roof with gable ends.
- (2) Dormer windows are not permitted unless there is an established pattern of dormer windows on adjacent properties that form a consistent row or group and the proposed front dormer windows match those in the row. Exceptions will only be supported where the detailing, materials and proportions are traditional and will serve as an appropriate precedent for adjoining properties.
 - (3) When the width of the building is:
 - (a) less than 6m wide, one dormer window is preferred, except where there is a predominant two dormer precedent along the row. The width of one dormer window must not exceed one third of the width or the roof up to a maximum of 1.3m, including the width of the frame, refer to Figure 4.12; and
 - (b) greater than 6m wide, two dormer windows may be considered, except where there is a predominant single dormer precedent along the row. The width of any dormer is not to be more than 1.3m, refer to Figure 4.13.
 - (4) The existing pitch or ridge height of a building must not be altered to accommodate a dormer.
 - (5) Dormer windows are to be proportioned at a height to width ratio of between 1.5 to 1 and 2 to 1 measured from head to sill of the window frame, and placed symmetrically on the roof. Refer to Figure 4.14.
 - (6) The total width of the architraves must not exceed 140mm.
 - (7) Dormer windows must not include finials and decorative fretworks, unless documentary or physical evidence showing the original detail is available.
 - (8) The apex of the gable or top of the dormer roof is to be at least 200mm below the ridge height of the main roof. Refer to Figure 4.15.
 - (9) The top of the dormer window sill must be set at least 400mm above the finished floor level. Refer to Figure 4.15.
 - (10) Depending on the period and architectural style of the building, the window frame within the dormer window is to be timber framed and a single sash, double hung or double casement type.
 - (11) Dormer windows must not include windows or skylights to the side walls or within the apex of the gable.
 - (12) The external side walls of dormers are to be of timber weatherboards of a profile and section consistent with the period and style of the building.
 - (13) A curved dormer window is only appropriate where ground floor windows have a curved head, and there is no established pattern of gabled dormers in the vicinity of the site.
 - (14) Plans for dormer windows must be submitted at a scale no smaller than 1:50.
 - (15) Dormer windows are not to be fitted with external louvers, shutters or other external shading devices. Shading control measures are to be internal only.

Figure 4.12

Single dormer window on a building less than 6m in width

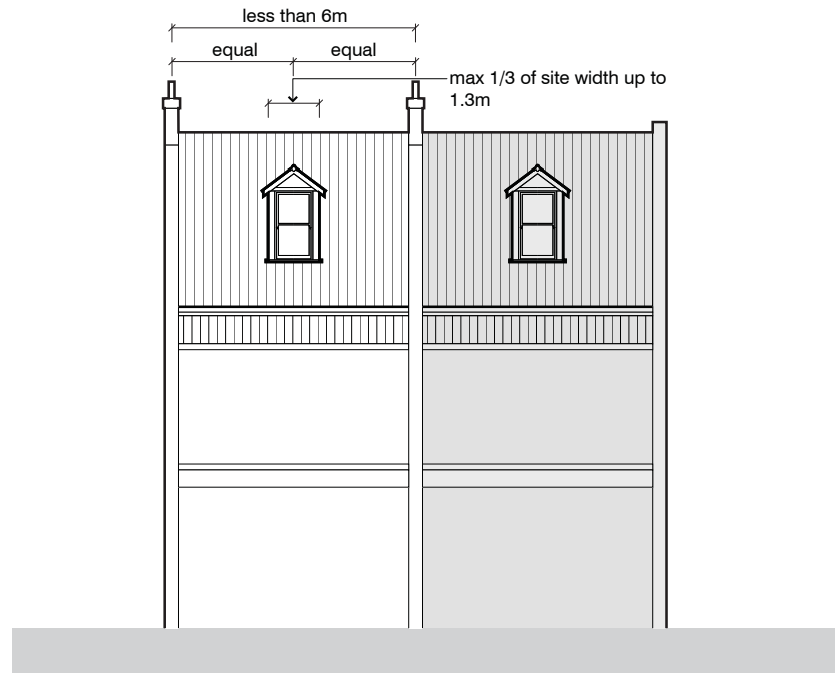


Figure 4.13

Two dormer windows on a building more than 6m wide

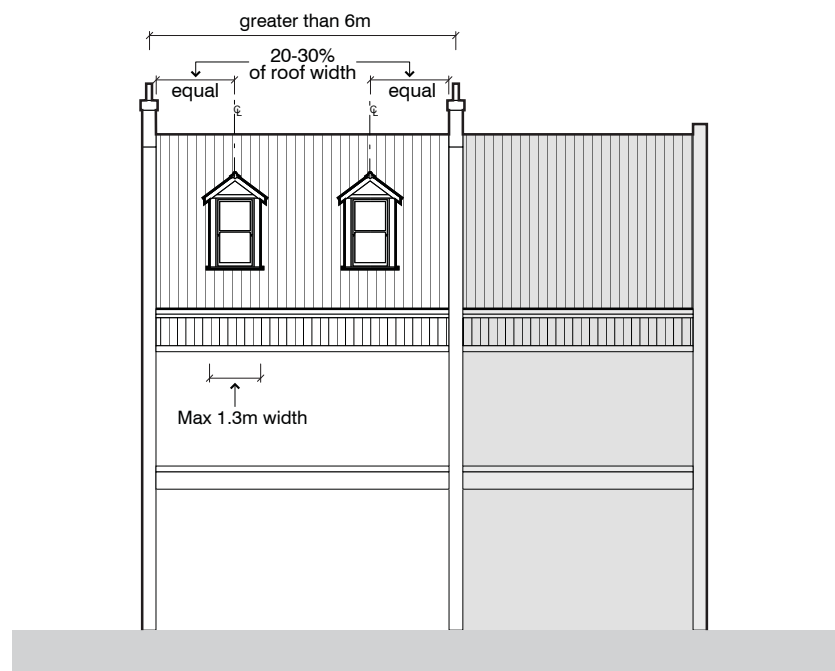


Figure 4.14

Proportion and ratio of a dormer window and dormer window details

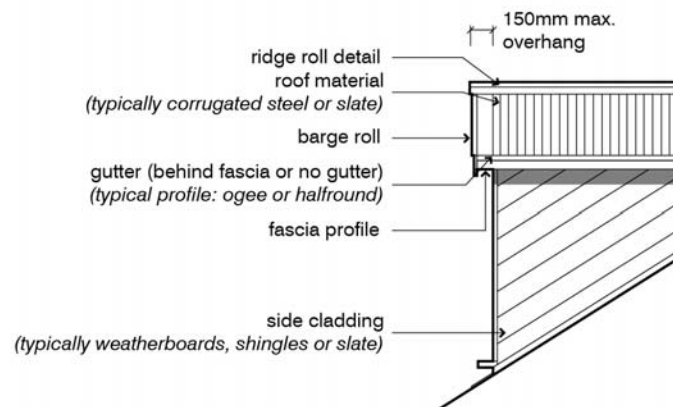
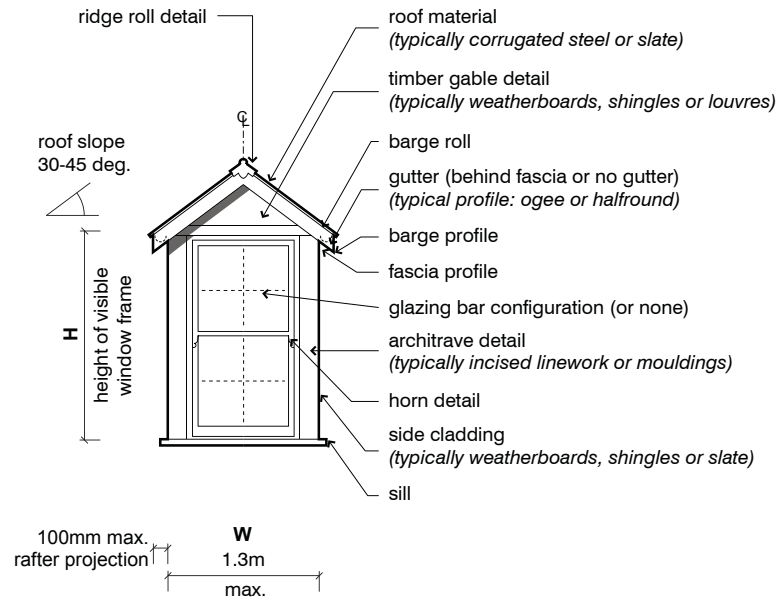
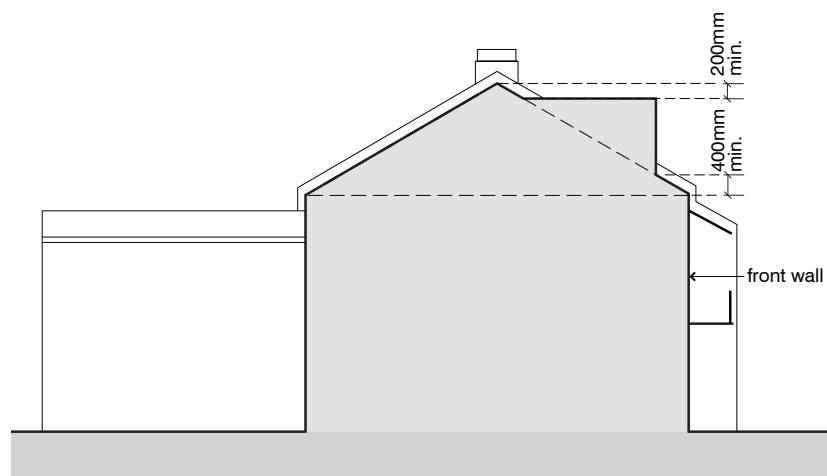


Figure 4.15

The apex of the gable or top of the dormer roof is to be at least 200mm below the ridge line of the main roof



4.1.5.5 Rear roof extensions

Rear roof extensions are usually large structures with horizontal proportions and skillion roofs. They are typically used to increase useable space and headroom within a roof space or attic, and to provide natural light and ventilation. The design of rear roof extensions needs to consider impacts on the building's heritage significance, particularly where it is part of an intact pair or row. This is particularly important where the rear elevation is visible from an adjoining public place such as a reserve, square, major street or laneway.

In the case of buildings greater than 5m in width, multiple traditional dormer windows may be a more appropriate solution than a single rear roof extension.

Provisions

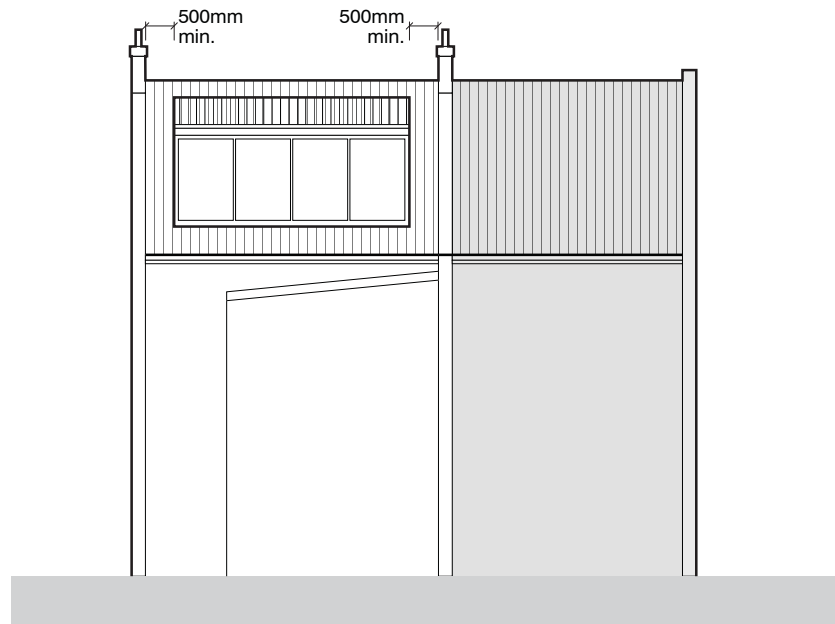
- (1) Rear roof extensions may not be appropriate:
 - (a) on a heritage item where the skillion form will adversely impact on the building's significance;
 - (b) where it replaces traditional dormers that are a consistent feature of a pair, row or group;
 - (c) where there is no established pattern of rear roof extensions;
 - (d) on sites where the rear of the roof is highly visible from a public place. In these instances a traditional dormer form may be permitted; and
 - (e) where rear roof forms in the immediate locality are highly intact.
- (2) Rear roof extensions are to be:
 - (a) set back a minimum of 500mm from side walls as measured from the inner edge of the buildings side or party walls as shown in Figure 4.16;
 - (b) set back a minimum of 200mm from the rear wall as measured along the roof plane from the outer face of the rear wall as shown in Figure 4.17.
 - (c) set down a minimum of 200mm below the ridge line as measured along the roof plane from the ridge as shown in Figure 4.17, except in the following circumstances where no set down may be acceptable:
 - (i) where the rear roof junction cannot be viewed from a rear lane, street or public way; or
 - (ii) where it is required to match an appropriately designed precedent on an immediately adjoining property; or
 - (iii) where it relates to a small terrace (generally less than 4.2m wide) where there is minimal roof space and the set down would make the ceiling head height generally unusable.
- (3) Rear roof extensions are to use skillion or single pitch roofs sloping down from the ridge towards the rear elevation of the property as shown in Figure 4.17.
- (4) The design of the rear roof dormer window is to be vertically proportioned with suitable proportioned timber frames.
- (5) The external width of the roof attic including side walls and roof is not to exceed 4000mm.
- (6) Flashing or waterproofing of rear roof extensions must not span the roof ridge and are not to be visible from the street to the front of the building.
- (7) Windows are to be traditionally proportioned, timber frame, double hung or casement windows.
- (8) Windows located on rear roof extensions must contain fixed, opaque glazing, up to a sill height of 1.4m above the floor level.

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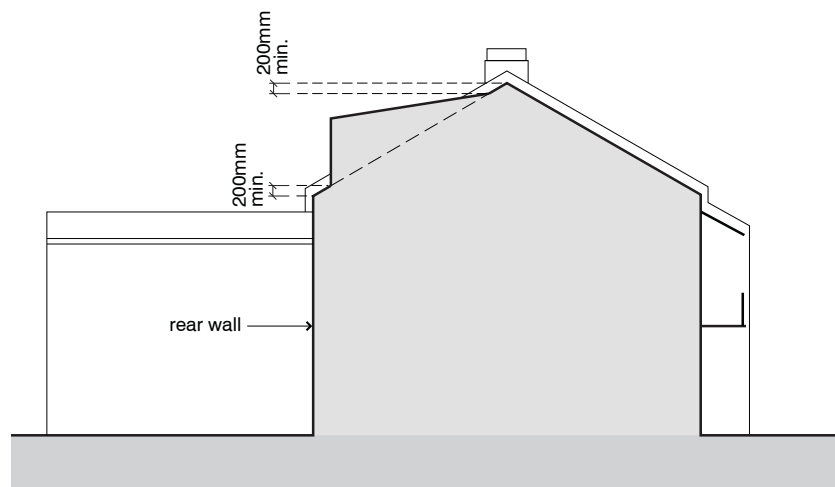
- (9) Windows to bathrooms must contain fixed, opaque glazing up to a sill height of 1.4m.
- (10) Where a traditional dormer to a rear roof extension is preferred, it is to comply with the design controls for front dormers.

Figure 4.16

Rear roof extensions are to be set in by a minimum of 500mm from side walls

**Figure 4.17**

Rear roof extensions are to be set down a minimum of 200mm below the ridge line and a minimum of 200mm up from the rear wall



4.1.5.6 Skylights

Skylights are a simple and cost effective way to increase natural light and ventilation to an attic or roof space.

Provisions

- (1) Skylights are not to be located on the front roof plane of heritage items or buildings in heritage conservation areas where they are visible from the public domain.

When the width of the property is:

- (a) less than 6m wide, one skylight is preferred. Two skylights will be considered when they relate to the pattern of openings on the building below. Where only one skylight is possible it is not to exceed one third of the width of the roof up, to a maximum of 1300mm; and

- (b) greater than 6m wide, two skylights are permissible, except where there is a predominant single skylight precedent along the row. The width of any one skylight must not be more than one fifth of the roof width.
- (2) Skylights are to be fitted flush with the roof plane and have vertical proportions.
- (3) Skylights are to be predominantly glazed with simple unobtrusive detailing and the frame of the skylight is to have the same colour as the roofing material.

4.1.6 Secondary and laneway dwellings

A secondary dwelling is a self-contained dwelling located on the same land title as the principal dwelling. The *Sydney LEP 2012* defines and permits secondary dwellings in certain zones and establishes their maximum size.

Objectives

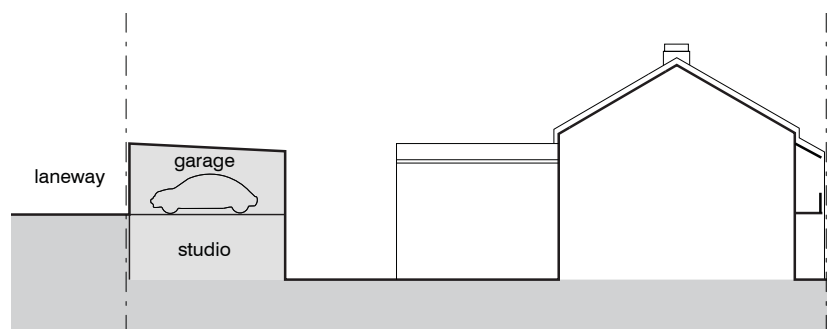
- (a) Ensure secondary dwellings activate lanes and address the public domain.
- (b) Maintain a reasonable level of amenity to the principal dwelling, the site, surrounding properties, and any adjoining lane.
- (c) Ensure the scale and type of development is compatible with the width of the lane, the significance and the scale of heritage items and heritage conservation areas.

Provisions

4.1.6.1 General

- (1) A one storey structure with an attic above is permissible adjacent to a rear lane, provided the height does not exceed 5.4m and amenity to adjacent sites is maintained.
- (2) On lots smaller than 150sqm, a secondary dwelling is not permitted unless it can achieve a minimum consolidated area of private open space for the principal dwelling of 16sqm with a minimum dimension of 3m.
- (3) The roof pitch of a rear lane building must not exceed 40°.
- (4) The secondary dwelling on a lot adjoining a rear lane is to be clearly subservient to the principal dwelling.
- (5) A habitable space may be located below a garage where:
 - (a) where the rear lane is at a higher level than the private open space for the principal dwelling; and
 - (b) the floor level of the habitable space is at the same level and contiguous with the private open space for the principal dwelling, as shown in Figure 4.18 *Habitable space located below a garage*.

Figure 4.18
Habitable space
located below a
garage



4.1.6.2 Heritage items and heritage conservation areas

- (1) Despite provision (1) in Section 4.1.6.1, a two storey structure to the rear lane may be appropriate where there is an existing pattern in the laneway.
- (2) Where a property is a heritage item or is located within a heritage conservation area, development to the rear lane is only possible where it is consistent with the heritage significance of the property, particularly:
 - (a) the ability to appropriately accommodate additional development at the rear of the property; and
 - (b) in terms of its scale and configuration.
- (3) Retain stables or significant structures that contribute to the history, character and significance of the heritage item or heritage conservation area.
- (4) Where a rear lane is highly intact, the pattern of original outbuildings, fences and laneway widths must be retained.
- (5) Development is to retain the predominant scale of the lane, particularly where that scale is single storey, and any landscape features including mature trees.

4.1.7 Fences**Objectives**

- (a) Maintain passive surveillance between public and private spaces.
- (b) Contribute to the character of the street.
- (c) Respond to the style of the building.
- (d) Conserve the setting and character of heritage items and contributory buildings.

Provisions**4.1.7.1 Front fences**

- (1) Front fences are to be provided where it is a predominant feature of a street frontage within a street block.
- (2) Front fences are to align with the front property boundary or reflect the predominant fence alignment along the street.
- (3) Height, materials and architectural design and styling of new fences must be consistent with fences that were typical of the period in which the street was predominantly developed, or period the dwelling was built.
- (4) The height of the fence above footpath level excluding the height of any retaining wall and as shown in Figure 4.19 is to be:
 - (a) 0.9m for solid masonry fences; and
 - (b) 1.2m on open or partially transparent styles such as palisade or picket fences, and any associated posts and piers are to be no higher than 1.5m.
- (5) The height of the fence must step to follow any change in level along the street boundary.
- (6) Fencing is to be located to ensure sight lines between pedestrians and vehicles exiting the site are not obscured and so gates do not open over the public roadway or footpath.