

Millers Point Heritage Conservation Area

Proposal Title : **Millers Point Heritage Conservation Area**

Proposal Summary : **Amend Sydney Local Environmental Plan (LEP) 2012 to:**

- remove the current maximum building height of 9 metres and current maximum floor space ratio (FSR) of 2:1 in the Millers Point heritage conservation area;
- insert new local clauses to make a building's existing height and floor space ratio the maximum height and FSR; and
- insert a new site specific provision for the Millers Point heritage conservation area that only permits a breach of the maximum height and FSR controls under clause 4.6 Exceptions to Development Standards when the consent authority has considered the endorsed conservation management plan.

PP Number : **PP_2014_SYDNE_009_00**

Dop File No : **14/18988**

Proposal Details

Date Planning
Proposal Received : **18-Nov-2014**

LGA covered : **Sydney**

Region : **Metro(CBD)**

RPA : **Council of the City of Sydney**

State Electorate : **SYDNEY**

Section of the Act : **55 - Planning Proposal**

LEP Type : **Policy**

Location Details

Street :

Suburb :

City :

Postcode :

Land Parcel : **Various sites in Argyle Place, Bettington St, Dalgety Rd, Hickson Rd, High St, Kent St, Lower Fort St, Merriman St, Mumm St, Watson Rd, Windmill St and Rhodens Lane, Millers Point.**

DoP Planning Officer Contact Details

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RPA Contact Details

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DoP Project Manager Contact Details

Contact Name :
Contact Number :
Contact Email :

Land Release Data

Growth Centre :	Release Area Name :
Regional / Sub Regional Strategy :	Consistent with Strategy :
MDP Number :	Date of Release :
Area of Release (Ha) :	Type of Release (eg Residential / Employment land) :
No. of Lots : 0	No. of Dwellings 0 (where relevant) :
Gross Floor Area : 0	No of Jobs Created : 0

The NSW Government **Yes**
Lobbyists Code of
Conduct has been
complied with :

If No, comment : **The Department of Planning and Environment's Code of Practice in relation to communication and meetings with lobbyists has been complied with. Sydney Region East has not met any lobbyist in relation to this proposal, nor has the A/Director been advised of any meetings between other Department officers and lobbyists concerning this proposal.**

Have there been **No**
meetings or
communications with
registered lobbyists? :

If Yes, comment :

Supporting notes

Internal Supporting
Notes :

External Supporting
Notes : **On 19 March 2014, the NSW Government announced the sale of 293 Government owned properties, including heritage listed items in the Millers Point heritage conservation area (HCA). In a letter dated 8 July 2014, the NSW Heritage Council, requested the City of Sydney Council urgently review the planning controls for the Millers Point HCA in response to the sale. Council staff have met with NSW Department of Family and Community Services and Office of Environment and Heritage to discuss how best to protect the**

heritage significance of these properties could be protected.

Council has recently commenced a review of heritage conservation areas with the aim of conserving their heritage significance through appropriate planning controls. The Millers Point HCA was included in this review and has now been brought forward because the sale of NSW Government properties has started. This is to ensure the national significance of these properties is protected as they move into private ownership. The sale of properties to private owners may result in development applications.

Council has also undertaken a site-by-site review to estimate how much floor space is available under the current density controls to determine the impact existing controls may have on the significance of the heritage items and conservation area. The review estimated the available capacity to be between 30 and 110 square metres, which is equivalent to between one additional bedroom through to an additional floor. Additions of this size may have a significant impact on the integrity and significance of the items and the conservation area.

The proposed LEP amendments will apply to 135 sites within the Millers Point HCA. This includes five privately owned non-heritage listed properties at 65-69 and 89-105 Kent Street, Millers Point and 45A, 45B and 45C Lower Fort Street, Dawes Point. Applying the same controls to these properties will allow appropriate development that is sympathetic to the Millers Point HCA. Not all government housing proposed for sale will be covered by the amendment.

The planning controls for the Millers Point HCA are in the Sydney LEP 2012, which came into effect in December 2012. The building height and FSR were a translation of previous Sydney LEP 2005.

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ORIGINAL GATEWAY DETERMINATION - RESUBMIT

On 21 January 2015, the LEP Panel resolved that the proposal should be resubmitted after being amended to comply with the following conditions:

- a. a detailed inventory of controls currently applying to all properties in the conservation area and further justification for why the existing local planning controls and State heritage controls are not considered sufficient to protect the conservation area; and
- b. justification for including non-heritage items and private properties in the planning proposal.

See Assessment criteria section for detailed discussion of amendments to the proposal.

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The objective of this proposal is to protect the State and local heritage significance of the Millers Point HCA and individually apply new height and density controls.**

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **ORIGINAL PROPOSAL**
The proposal seeks to amend the planning controls and introduce local provisions for Millers Point in Sydney LEP 2012 as follows:

- **Height of Buildings Map – Amend sheets HOB_013 and HOB_014 by removing the 9 metre maximum building height for the Millers Point HCA and showing the area as Area 7.**

- Floor Space Ratio Map – Amend sheet HOB_013 and HOB_014 by removing the 2:1 maximum floor space ratio for the Millers Point HCA and showing the area as Area 11.

- Insert new local clause to introduce:

- o A site specific provision that a building's existing height will be the maximum height and a building's existing floor space ratio will be the maximum floor space ratio; and

- o a new provision for the Millers Point Heritage Conservation Area that only permits a breach of the maximum height and floor space ratio controls under clause 4.6 when the consent authority has considered an endorsed conservation management plan.

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AMENDED PROPOSAL

After consultation with the Heritage Office and further analysis in the Urban Landscape Study, Council has introduced the following provision for non-heritage items within the Millers Point HCA.

- allow variations to non-heritage buildings up to 2:1 FSR, subject to consideration of the impacts on the area and nearby items.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

2.3 Heritage Conservation

3.3 Home Occupations

3.4 Integrating Land Use and Transport

4.4 Planning for Bushfire Protection

6.1 Approval and Referral Requirements

6.2 Reserving Land for Public Purposes

6.3 Site Specific Provisions

7.1 Implementation of A Plan for Growing Sydney

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP No 6—Number of Storeys in a Building

SEPP No 22—Shops and Commercial Premises

SEPP No 32—Urban Consolidation (Redevelopment of Urban Land)

SEPP No 33—Hazardous and Offensive Development

SEPP No 55—Remediation of Land

SEPP No 60—Exempt and Complying Development

SEPP No 64—Advertising and Signage

SEPP No 65—Design Quality of Residential Flat Development

SEPP (Building Sustainability Index: BASIX) 2004

SEPP (Exempt and Complying Development Codes) 2008

SEPP (Housing for Seniors or People with a Disability) 2004

SEPP (Infrastructure) 2007

SEPP (Major Projects) 2005

SEPP (Temporary Structures and Places of Public Entertainment) 2007

SEPP (Affordable Rental Housing) 2009

e) List any other matters that need to be considered :

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Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

Council identified inconsistencies with the following s117 Directions:

Direction 1.1 Business and Industrial Zones

The proposal is inconsistent with Direction 1.1 as it reduces the total potential floor space area for employment uses and related public services in business zones within the heritage conservation area. Seven properties in Millers Point including a church, Carlton Hotel and small scale local businesses are zoned B1 neighbourhood centre and are heritage listed items under Sydney LEP 2012.

The planning proposal will remove the 9 metre height and 2:1 floor space ratio and make the existing height and floor space the maximum permitted. This change will result in reduced development potential for five of the seven properties which are currently built below the floor space control. However, the businesses serve the local area which is not expected to grow because of the heritage significance of the area and of the individual properties.

Minor increases in height and floor space ratio will be considered under clause 4.6 to allow variations to development standards consistent with an adopted conservation management plan.

Direction 3.1 Residential Zones

The proposal is inconsistent with Direction 3.1 as it reduces the permissible residential density. Council argues the change in density is of minor significance as the precinct is not expected to deliver additional dwellings or a greater variety of dwelling types given the high level of state and local heritage listings. Changing the density also supports Direction 2.3 Heritage Conservation. Maintaining the current density controls may enable unsympathetic housing additions that will erode the heritage significance of the area and will not deliver more dwellings.

It is recommended that the Secretary approve the inconsistencies with s117 Direction 1.1 and 3.1 on the basis that they are minor inconsistencies.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

Maps provided are considered adequate.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

Consultation should be undertaken in accordance with the Gateway determination. Council suggests that an exhibition period of 28 days would be appropriate.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

Proposal Assessment

Principal LEP:

Due Date : **December 2012**

Comments in relation to Principal LEP : **The Sydney LEP 2012 was notified in December 2012.**

Assessment Criteria

Need for planning proposal :

ORIGINAL PROPOSAL

Council argues the draft planning policy contained in the proposal is the only means of achieving the objectives and intended outcomes, as the built form controls in the LEP need to support the heritage listings and conservation of the Millers Point HCA.

While Council's position is noted, there is currently a significant level of heritage control placed on the Millers Point HCA and individual lots. Council should further investigate why the existing heritage controls are not sufficient to protect the heritage value of the Millers Point Conservation Area.

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AMENDED PROPOSAL

Council has provided additional justification for protection of the heritage value of the Millers Point Conservation Area. See Assessment criteria section for detailed discussion of amendments to the proposal.

Consistency with strategic planning framework :

The proposal is generally consistent with key directions of the draft Sydney City Subregional Strategy, as the proposed development controls for heritage listed items in Millers Point will recognise the significance of these items and the cultural landscape of Millers Point, aims to decrease the subregion's ecological footprint and encourage Council to update out of date or inadequate heritage studies. The proposal seeks to recognise and protect a range of intact architectural styles.

Environmental social economic impacts :

ORIGINAL PROPOSAL

The proposal does not adversely affect any critical habitat or threatened species, populations or ecological communities, or their habitats. There are no likely environmental effects arising from this proposal.

Heritage Significance

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

Three conservation area listings apply to Millers Point. In 1999 properties owned by the Department of Housing in Millers Point were listed on the State Heritage Register under the Heritage Act, 1977. In 2003 Millers Point was listed on the State Heritage Register as the Millers Point and Dawes Point Village Precinct allowing for the management of the whole of the precinct. Millers Point is also listed in Sydney LEP 2012 as the Millers Point HCA. Individual properties are also listed as items on the Sydney and State Heritage Register.

On 1 December 2014, the Heritage Council provided comments to the Department. The Heritage Council is generally supportive of the proposed amendments for the conservation area, however, they also raise questions in regards to private properties, leased properties and non-heritage items within the conservation area.

The Heritage Council seeks clarification on:

- how the costs of a conservation management plan for minor development will be applied

to the 25 privately owned properties;

- whether the lessee or the Land and Housing Corporation is responsible for the costs of preparing a conservation management plan for properties that are currently on a 99 year lease; and
- whether the conditions for preparing a conservation management plan also apply to non-heritage items.

The Heritage Council suggests that they will work with Council to resolve these issues and determine if any of the above mentioned properties should be granted an exemption from the proposed amendments.

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AMENDED PROPOSAL

On 23 March 2016, Council resubmitted a revised proposal and an Urban Landscape Study.

The proposal has addressed the amendments requested by the LEP Panel in the following manner:

- a. a detailed inventory of controls currently applying to all properties in the conservation area and further justification for why the existing local planning controls and State heritage controls are not considered sufficient to protect the conservation area.

Council has prepared an additional Urban Landscape Study (Study) to show the likely built form of additions under current height and floor space ratio controls. The key findings of the Study are:

Current floor space ratio

The current FSR control permits additions which are half to four times the size of the existing buildings for about 60 per cent of the heritage items in Millers Point. The study also shows that because the area is highly intact and highly visible from public spaces, the potential additions would result in the loss of the significant and intact pattern of rear wings and roof forms which characterise the area.

Inconsistent with endorsed Conservation Plans

The size and form of additions enabled by the current FSR controls are significantly larger than those envisaged by the conservation management plans endorsed by the NSW Heritage Council.

Current building height

The 9 metre building height control does not accurately reflect the complex and varied scale of the heritage items and will be ineffective in conserving the building scale of the area. The analysis of existing building height provided by the Study has shown that the majority of buildings are estimated to exceed 9 metres, with only 13 of the 135 buildings estimated to have a height of 7 to 9 metres. Given the significance and intactness of the area, it is highly desirable the existing scale of buildings is maintained.

- b. justification for including non-heritage items and private properties in the planning proposal.

To address concerns for non-heritage items in the Millers Point conservation area, Council has introduced a provision to allow variations to these properties of up to 2:1 FSR, subject to the assessment of impacts on adjoining properties.

In regards to privately owned properties, Council concludes heritage items that demonstrate State and local significance should be included in the proposed amendments regardless of their ownership.

Overall intent

The proposed controls will remove a conflict between heritage objectives and planning

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controls and align decisions under the EP&A Act and the Heritage Act by making endorsed conservation management plans the principal matter for consideration.

Conservation management plans provide the best guidance for changes to heritage items, as they are the most thorough analysis of each item and are required to be considered in approvals under the Heritage Act.

Removing conflicts and aligning matters for consideration will reduce costs and time for assessments and provide greater certainty for proponents, Council and the community.

Flexibility

The Department met with OEH and Council to discuss potential minor amendments to the proposal to provide some flexibility for new and future landowners. An amendment to allow landowners to exercise clause 4.6 has been generally supported as an option to allow some flexibility for future alterations and additions to heritage items in Millers Point.

Assessment Process

Proposal type :	Routine	Community Consultation Period :	28 Days
Timeframe to make LEP :	12 months	Delegation :	RPA
Public Authority Consultation - 56(2)(d) :	Department of Family and Community Services Office of Environment and Heritage		

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Council Letter - Millers Point.pdf	Proposal Covering Letter	Yes
Planning Proposal - Millers Point.pdf	Proposal	Yes
Millers Pt GWD 21-01-2015.pdf	Determination Document	Yes
ConcilLetter_March2016.pdf	Proposal Covering Letter	Yes
Millers Point Planning Proposal_March2016.pdf	Proposal	Yes
Planning Proposal - Appendix A - Study Part 1.pdf	Proposal	Yes

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Planning Proposal - Appendix A - Study Part 2.pdf
Planning Proposal - Appendix B - Catalogue of
controls.pdf

Proposal
Proposal

Yes
Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions: **2.3 Heritage Conservation**
 3.3 Home Occupations
 3.4 Integrating Land Use and Transport
 4.4 Planning for Bushfire Protection
 6.1 Approval and Referral Requirements
 6.2 Reserving Land for Public Purposes
 6.3 Site Specific Provisions
 7.1 Implementation of A Plan for Growing Sydney

Additional Information : **It is recommended that the planning proposal proceed, subject to the following conditions:**

- 1. Prior to public exhibition, Council is to amend the planning proposal to allow the consent authority to consider variations to the maximum height or gross floor area of a building under clause 4.6.**
 - 2. The planning proposal be publicly exhibited for a period of not less than 28 days.**
 - 3. Council is to consult with:**
 - Office of Environment and Heritage; and**
 - Department of Families and Community Services.**
 - 4. A public hearing is not required.**
 - 5. The planning proposal is to be finalised within 12 months from the date of the gateway determination.**
- Supporting Reasons : **The planning proposal is supported as it seeks to apply further protection to an area of State heritage significance.**

Signature:



Printed Name:

KAREN ARMSTRONG

Date:

18/11/16

