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HANDBOOK

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## INTRODUCTION

This handbook has been prepared to assist prospective purchasers of the Land & Housing Corporation's Millers Point properties through the provision of:

- A brief history of the Millers Point precinct and its heritage significance.
- An understanding of:
  - ~ the role of The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance 2013 (Burra Charter);
  - ~ the role of the Conservation Management Plan (CMP) prepared for the property in guiding conservation and upgrading work; and
  - ~ the relevant statutory approvals processes required in order to undertake works.
- An understanding of property maintenance obligations.

## MILLERS POINT HISTORY AND HERITAGE SIGNIFICANCE

Millers Point is a rare urban residential precinct, an important remnant of the early port of Sydney, which has remained relatively unchanged since the 1930s; conserved primarily due to public ownership of the area. The adaptation of landform and layers of port history are evident in the Millers Point cultural landscape, which retains tangible and intangible evidence of maritime community associations. It includes an extraordinary range of fine buildings and public spaces, which survive from the 1830s to the 1920s with high individual and collective integrity and authenticity, including an important collection of Government designed housing types built for port workers.

One of the very few heritage precincts listed on the NSW State Heritage Register, the collective value of its history, topography, urban form, streetscapes, predominant residential use and maritime associations is exceptionally significant in heritage terms.

In addition to listing within a precinct, most Millers Point properties are individually listed on the State Heritage Register and also listed both individually and as part of a Conservation Area in the City of Sydney Local Environmental Plan (LEP).

Millers Point has also been classified as an Urban Conservation Area by the National Trust since 1978.

After more than a century in public ownership, most of the Millers Point properties now being offered for sale retain a remarkable level of original and intact building fabric, form and architectural detailing and finishes. Together and individually they are a rare, potentially unique, heritage resource in Australia

### **The Burra Charter – its importance in guiding the conservation of the Millers Point precinct as a whole**

In Australia, the Burra Charter is the main reference document that provides guidance for the conservation and management of places of cultural or heritage significance. The Charter sets out national practice standards for those who provide advice, make decisions about, or undertake works to places of heritage significance, including owners, managers and custodians, consultants, contractors and trades people.

Its basic philosophy is that understanding the significance of the place should guide all development and conservation decisions. The 2013 Burra Charter can be downloaded at

<http://australia.icomos.org/publications/charters/>

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In Millers Point the significance of the precinct is evident in the many layers of development from Aboriginal occupation by the Gadigal (Cadigal) people, through early European settlement for residential, maritime and industrial uses. Its history is all around, in the buildings, quarried cliff faces and public spaces that have been developed from the early nineteenth century to the early twentieth century.

Ongoing associations of Aboriginal occupation and interactions with the European community in Millers Point may exist and will be of importance to the contemporary Aboriginal community. Archaeological evidence and values associated with it, whilst likely to be somewhat changed by waves of landscape modification and development, is protected under the NSW National Parks and Wildlife Act 1974.

Many groups of buildings in Millers Point, such as the rows of terrace houses, are unified by their history, construction and type, even if they are individually titled. They form important streetscapes, and share unifying architectural details and paint schemes which need to be consistently maintained to conserve the areas heritage significance. Such issues are addressed in the Conservation Managements Plans.

Conservation and upgrade works to the heritage properties in Millers Point will vary from simple repairs and upgrade works to specific conservation works, and in each case, they should begin by considering all the aspects of heritage significance, which are fully described in the property specific CMPs. The works should recognise both the intangible social and historic aspects of each property, as well as the more tangible architectural fabric, form and elements.

Early consultation with an experienced heritage professional will be of assistance when developing proposals for change.

An individual building may demonstrate a range of periods through 'layering' i.e. changes to building fabric over time. It is appropriate to conserve the 'layers' of fabric, rather than to seek to restore the building back to a single earlier known state.

Repairing original or early fabric (replacing as little as necessary and retaining as much as possible) is the basic requirement to retain the heritage significance of the Millers Point precinct. Incremental loss of fabric through comprehensive replacement ultimately will reduce the integrity and authenticity of the place, and therefore the significance of Millers Point precinct as a whole.

### **The role of the CMP in guiding conservation and upgrade works to the specific property**

To guide the process of change as Millers Point properties move into private ownership, the NSW Land and Housing Corporation (LAHC) has prepared CMPs covering each Millers Point property. Each of these CMPs has been prepared in accordance with the requirements of the Heritage Council of NSW under S38A of the Heritage Act 1977, confirming the assessment of significance and the detailed conservation policies that will guide management and change of the property. The CMP forms part of the sales documentation for every property.

It includes historical research and clear conservation policies specific to each property.

When applications for change are proposed, these CMPs provide all the basic heritage documentation needed as reference by the consent authorities in assessing and determining development applications submitted for approval, and will be carefully considered along with public comments received when such applications are advertised.

No repairs or works are required to be undertaken as a condition of purchase. However, owners are legally required to meet the s118 minimum standards of maintenance and repair under the Heritage Act. The CMP will assist owners to identify, develop and correctly prioritise essential, necessary and desirable works, and provide an indication of the cyclical maintenance that the property will need ahead.

Every CMP includes a short preface in the form of frequently asked questions to assist incoming owners understand the stewardship responsibilities of owning a house in Millers

Point. Property specific guidance is provided about common issues such as:

- Additions and changes, e.g. conserving or inserting new windows and doors;
- Opening up balconies and verandahs;
- Constraints on dormer windows and skylights;
- Accessibility e.g. lifts and parking;
- Solar panels, security measures, air conditioning and satellite dishes;
- Fences and landscaping;
- Interior fittings, flooring and finishes;
- Locations for potential new bathrooms and kitchens

Best practice requires that all CMPs should be reviewed and updated by the owner on a five yearly basis, or following approved works, in order to ensure that any changes or discoveries are fully documented.





## STATUTORY APPROVALS TO UNDERTAKE CONSERVATION AND UPGRADE WORKS

Statutory development approval is required in order to undertake most forms of work on Millers Point properties. In some circumstances, basic maintenance, repairs and minor alterations may be subject to exemption from approval, however, these must be formally confirmed with both the City of Sydney Council (council) and the Heritage Council of NSW in writing, prior to any work proceeding.

It is recommended that an owner work with an experienced heritage professional to identify and document their requirements for change and development, and confirm that proposed works align with the heritage significance and policy parameters of the CMP for the specific property as well as the applicable Local Environment Plan (LEP) and Development Control Plan (DCP). The objective of working with a heritage professional from the start of the project is to avoid any adverse impacts, and thereby reduce delays, minimise conditions attached to approvals or refusal of the development application (DA).

A heritage architect, for example, will be able to assist owners in appropriate design solutions for new facilities and also in identifying and selecting appropriate tradespeople to work on the property. Skilled tradespeople with experience in dealing with the construction methods and materials of older properties

are a fundamentally important part of any development project involving heritage considerations. Other heritage professionals such as heritage engineers, planners and archaeologists may also be needed. There is no formal accreditation system for heritage professionals in Australia. However, the Heritage Division of the Office of Environment and Heritage (the secretariat of the Heritage Council of NSW), maintains a directory of heritage consultants and service providers, which can be accessed at <http://www.environment.nsw.gov.au/heritage/index.htm>



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## APPLICATIONS FOR DEVELOPMENT APPROVAL

The City of Sydney and the Heritage Council of NSW are the primary consent authorities respectively under the Environmental Planning and Assessment Act, 1979, and the Heritage Act, 1977.

Because Millers Point properties are all State-listed heritage items, applications for approval to undertake works on them can be made in one of two ways:

- **Integrated Development Application (IDA) Process**

Development Application (local Council) followed by S60 Application (Heritage Council)

or

- **Section 60 Application Process**

S60 Application (Heritage Council) followed by Development Application (local Council)

Early consultation PRIOR to submitting a formal application for approval to undertake development works is recommended in order to identify all pertinent issues. To avoid delays, it is important to ensure that when submitted, the IDA, DA, Section 60 application and the accompanying Heritage Impact Statement (HIS) comprehensively address the scope of work for which approval is sought, thereby giving the application the best chance of prompt assessment.

## THE INTEGRATED DEVELOPMENT APPLICATION (IDA)

This application mode is particularly encouraged in Millers Point to facilitate efficient processing of applications and consideration of all heritage and planning issues.

Following lodgement of the application with the City Council, it is formally referred to the Heritage Council for consideration and general terms of approval (or refusal) before the City of Sydney determines the application.

The City Council advertises the application for public comment, and the submissions received are taken into consideration by both of the consent authorities. The IDA consent issued by the City Council must be consistent with the Heritage Council of NSW's general terms of approval (GTA). An IDA that has been approved by the Heritage Council of NSW can still be rejected by the City council for non-heritage reasons.

Following completion of the IDA process, a Section 60 application is submitted to the Heritage Council of NSW. This application must take account of the Heritage Council of NSW's general terms of approval for the IDA application and any conditions imposed by council.

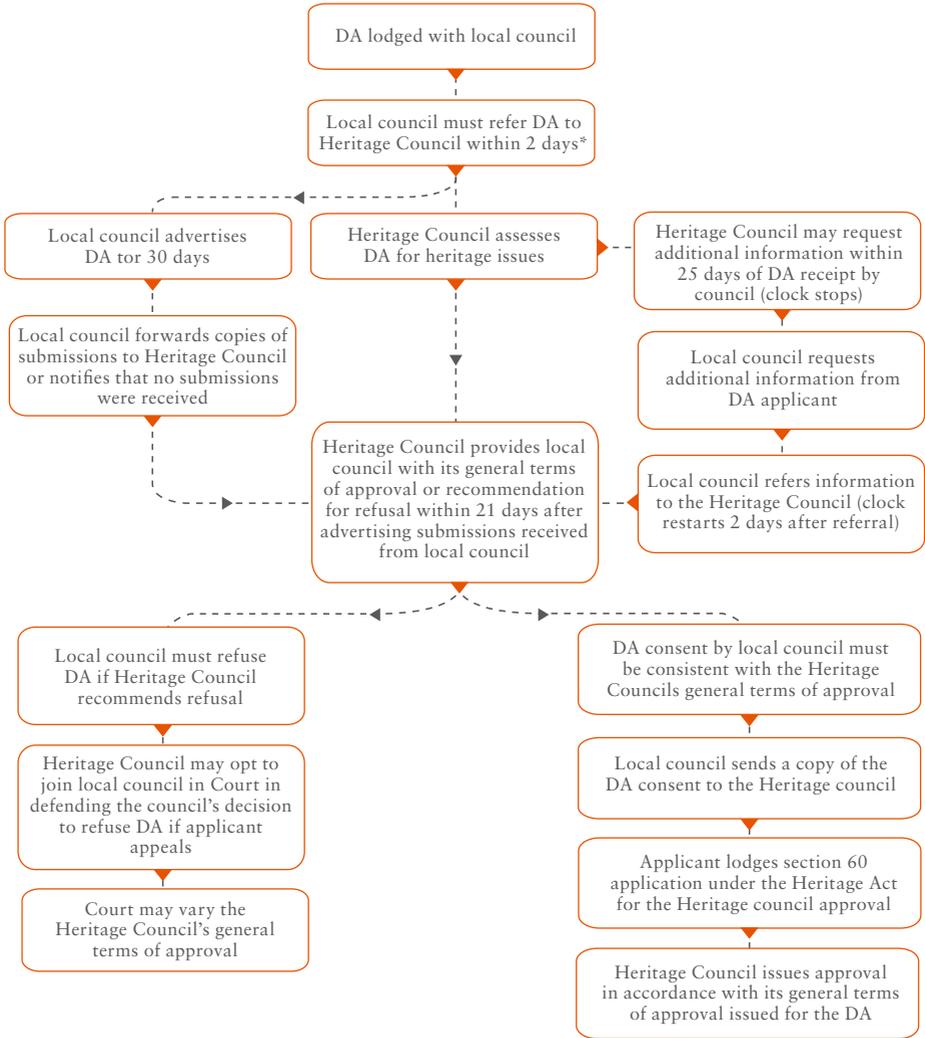
For a general explanation of the IDA process, refer to The Approvals Process, issued by the Heritage Council of NSW, which can be found at:

<http://www.environment.nsw.gov.au/resources/heritagebranch/heritagecouncil/hcapprovals.pdf>

The following diagram provides a graphic illustration of the processes involved. Note, some of the timeframes cited may have changed as a result of the Environmental Planning and Assessment Regulation 2010. However, at the time of printing the flowchart had not been updated.



**APPLICATIONS FOR INTEGRATED DEVELOPMENT - PROCESS FOR ITEMS ON THE STATE HERITAGE REGISTER OR SUBJECT TO AN INTERIM HERITAGE ORDER.**



Source: Extract from The Approvals Process, Heritage Council of NSW

The process used by the Heritage Council in assessing the s60 application following an IDA is illustrated in a flowchart at Appendix A.

## THE SEPARATE SECTION 60 APPLICATION AND DA PROCESS

An alternative method is to make a separate application to the Heritage Council of NSW, under Section 60 of the Heritage Act, 1977 followed by a DA (Please refer to <http://www.environment.nsw.gov.au/Heritage/development/section60.htm>)

If approval to undertake works is granted by the Heritage Council of NSW, any general terms of approval that the Heritage Council requires will be included as part of the council's development consent conditions.

The process used by the Heritage Council of NSW in assessing the s60 applications is illustrated in a flowchart at Appendix B.

Once a Section 60 approval is received from the Heritage Council of NSW, a DA approval is required under the City of Sydney LEP from the council. The DA process of the council is described at: <http://www.cityofsydney.nsw.gov.au/development/application-guide/application-process>

Any application for approval to undertake works needs to be accompanied by the endorsed CMP and a Heritage Impact Statement (HIS) which is generally prepared by a heritage professional. The HIS examines the proposed works and identifies any impacts on the assessed significance of the place and includes any measures to mitigate impacts. The Heritage Council of NSW guidelines on Statements of Heritage Impact can be downloaded from: [www.environment.nsw.gov.au/resources/heritagebranch/heritage/hmstatementsofhi.pdf](http://www.environment.nsw.gov.au/resources/heritagebranch/heritage/hmstatementsofhi.pdf)

## THE ROLE OF THE ENDORSED CONSERVATION MANAGEMENT PLAN (CMP) AND HERITAGE IMPACT STATEMENT (HIS) IN THE DEVELOPMENT APPLICATION PROCESS

Whether the preferred application route of an IDA is used, or the separate Section 60 application and LEP DA process is followed, the Heritage Council of NSW will refer to the statement of significance and the policies of the CMP for the property in determining applications made under Section 62 (c1) of the Heritage Act, 1977, and the City of Sydney Council will use the CMPs when assessing DAs made under the City of Sydney LEP. When such applications are advertised, public comments are also carefully considered along with the CMP. As with all DAs, talking through proposals with neighbours can be a useful preliminary step.

The HIS that accompanies the application will assess in detail how the proposal affects the heritage significance of the property, what alternatives were considered to avoid any adverse impacts, and may recommend mitigating actions to reduce material affects. The HIS should follow the standards for such reports issued by the Heritage Council of NSW. It is recommended that the HIS be prepared by a Heritage Professional. Refer to:

<http://www.environment.nsw.gov.au/resources/heritagebranch/heritage/hmstatementsofhi.pdf>

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## EXEMPTIONS FROM THE DEVELOPMENT CONSENT PROCESSES

Some exemptions from standard consent processes are available to efficiently facilitate regular maintenance and minor repairs that do not affect the building's significance. The application of this limited range of exemptions from the need to obtain development consent must be confirmed in writing with the relevant authority, prior to commencing such activities.

### CITY OF SYDNEY COUNCIL

Exempt and complying development under the standard provisions of LEP Part 3 or State Environmental Planning Policy 2008, does NOT apply to state-listed heritage items under the City of Sydney LEP such as Millers Point.

However, City of Sydney Council (council) provides some exemptions to the standard consent processes to recognise the importance of regular maintenance and minor repairs that do not have any adverse impacts on heritage significance, such as re-painting a building in an original or appropriate colour scheme, replacing rusty gutters and downpipes to match original details or restoring a front verandah to its original detail. Pre-application advice from the relevant council staff is needed before submitting such an application. There is no fee for this request.

**To eliminate any doubt about whether exemptions may apply to proposed works, council needs to be notified in writing (using a Request for Confirmation that Heritage Works**

**do not Require Development-Consent form) of the details of ALL work on properties in Millers Point - Section 76 of the Environmental Planning and Assessment Act 1979 (EP&A Act).**

**All works, including urgent conservation work, need to be confirmed by council in writing as acceptable prior to commencement.**

Please note that confirming that something is exempt from requiring approval by the City of Sydney Council does not mean that it is also exempt from requiring approval from the Heritage Council of NSW. It is essential to confirm the applicability of exemptions with both Council and the Heritage Council. Refer to:

[http://www.cityofsydney.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0004/195241/Request-for-confirmation-that-Heritage-works-do-not-require-Development-Consent.pdf](http://www.cityofsydney.nsw.gov.au/__data/assets/pdf_file/0004/195241/Request-for-confirmation-that-Heritage-works-do-not-require-Development-Consent.pdf)



## HERITAGE COUNCIL OF NSW

The Heritage Council of NSW also provides some exemptions to the standard consent process for basic maintenance, repairs and some minor alterations if they will have minimal impact on the heritage significance of the item. The applicability of Heritage Act standard exemptions must be specifically confirmed with the Heritage Council of NSW before proceeding with any works, including urgent repairs, the removal of damaged or non-significant fabric, landscaping involving excavation in yards and gardens and conservation works. To eliminate doubt, the Heritage Council of NSW needs to be notified in writing of proposed works using the Exemption Notification form (Request for confirmation that heritage works do not require development consent—Section 57 (2) of the Heritage Act).

All works, including urgent conservation work; need to be confirmed in writing as acceptable by the Heritage Council or its delegate prior to commencement.

Standard exemptions for state listed heritage items have specific notes and definitions to guide their implementation. Any works done using the standard exemptions must be carried out in accordance with relevant guidelines issued by the Heritage Division including *The Maintenance of Heritage Assets: A Practical Guide*, 1998; *Movable Heritage Principles*, 2000; and *The Heritage Council Policy on Managing Change to Heritage Items*, 2005. Please refer to:

<http://www.environment.nsw.gov.au/resources/heritagebranch/heritage/standardexemptions.pdf>



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There is also potential for site-specific exemptions to be made for a particular heritage item by the Minister for Environment and Heritage, on the recommendation of the Heritage Council of NSW. Site specific exemptions are often identified in a CMP, but they can also be found under the relevant site listing on the State Heritage Register. Note 'Site Specific' Exemptions should not be confused with the 'Standard' Exemptions

<http://www.environment.nsw.gov.au/heritageapp/heritagesearch.aspx#amapsearch>

If it is unclear whether proposed development satisfies the requirements of these exemptions; an application will be required under Section 60 of the Heritage Act.

Pre-application advice from the Heritage Division is recommended before submitting such

an application. Applicants need to complete and return the Exemption Notification form under section 57 (2) of the Heritage Act and receive confirmation that heritage works do not require development consent (a s60), prior to commencing any works, including urgent conservation works. There is no fee for lodging this notification under s57 (2). The form can be downloaded at:

<http://www.environment.nsw.gov.au/resources/heritagebranch/heritage/formexemptionnotifications57.pdf>

The process used by the Heritage Council of NSW in assessing applications for exemptions is illustrated at Appendix C.



## STATE ENVIRONMENTAL PLANNING POLICY (SEPP) EXEMPT AND COMPLYING DEVELOPMENT CODES

The SEPP Exempt and Complying Development Codes, whereby some development with minimal impact can be undertaken without consent, DO NOT apply to the houses in Millers Point, since they are all heritage items listed on the State Heritage Register (other than a few minor exceptions where S57 exemptions have already been granted under the NSW Heritage Act to specific properties). Refer to:

[http://www.planning.nsw.gov.au/Portals/0/BuildingInNSW/EC/EC\\_POLICY\\_1\\_1\\_OVERVIEW\\_EXEMPT\\_DEVELOPMENT.pdf](http://www.planning.nsw.gov.au/Portals/0/BuildingInNSW/EC/EC_POLICY_1_1_OVERVIEW_EXEMPT_DEVELOPMENT.pdf)

## ARCHAEOLOGY IS SIGNIFICANT IN MILLERS POINT DEVELOPMENT

Archaeological sites and relics are automatically protected under the Heritage Act. A relic is an archaeological deposit, resource or feature that has heritage significance at a local or state level.

Development proposals that affect archaeological sites and deposits need to include an Excavation Permit (in the form of Section 60 Application for sites listed on the SHR) from the Heritage Council of NSW for permission to disturb the site. All areas in Millers Point are potentially archaeologically significant and require approval for works which may impact archaeology. Archaeological resources in Millers Point may include artefact deposits within

building cavities such as floor, ceiling spaces, wall spaces and in fireplaces. Archaeological advice should be sought where any works are proposed that may disturb 'relics' (as defined in Section 4(1) of the Heritage Act).

If works are proposed which involve building demolition, new construction, modification of existing open spaces (including gardens) and the provision of underground services (sewerage, storm water, power, etc.), excavation or opening up of building cavities (including subfloor areas), an archaeological assessment should be undertaken prior to design development, to inform the design proposal, and confirm if an excavation permit is needed. In some circumstances an excavation permit may not be necessary, however, an Exemption Notification Form will be required to be submitted for consideration and confirmed in writing by the Heritage Division.

The CMP will provide polices to be followed in dealing with the potential archaeology of each site. Further detail can be obtained from The Rocks and Millers Point Archaeological Management Plan (Higginbotham, Kass and Walker, 1991).

Due to the intensive use of the area post European settlement, it's unlikely that substantial archaeological remains of the Aboriginal occupation of Millers Point will survive intact. However, there may be evidence in disturbed contexts, such as historical archaeological or fill layers, or within any remnant natural soil horizons. Such archaeology is afforded protection under the NSW National Parks and Wildlife Act 1974-

<http://www.environment.nsw.gov.au/legislation/NationalParksAndWildlifeAct1974.htm>.

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## MINIMUM MAINTENANCE STANDARDS APPLY IN MILLERS POINT

Millers Point properties listed on the State Heritage Register are required to be maintained in accordance with Section 118 of the Heritage Act. The Minimum Standards of Maintenance and Repair require weatherproofing, fire protection, security, and essential maintenance and repair. If a property falls short of statutory minimum maintenance standards as specified by the Heritage Act, the provisions of the Act can be enforced to ensure that such works are carried out.

The Heritage Act Minimum Maintenance Standards can be accessed at:

<http://www.environment.nsw.gov.au/resources/heritagebranch/heritage/infominimumstandards.pdf>

CMPs include a recommended cyclical maintenance schedule for each property to assist owners to plan ahead for the ongoing upkeep and conservation of their property.



## BUILDING CODE OF AUSTRALIA

The National Construction Code (NCC) incorporates the Building Code of Australia (BCA). It is a national set of building regulations with some state-specific variations, including mandatory performance requirements for fire protection, fire warning, and egress, equality of access and equal provision of facilities.

Compliance with such building regulations should be achieved using the objectives and performance requirements of the regulations, rather than deemed-to-satisfy provisions. In many cases, the buildings in Millers Point will not comply with the deemed-to-satisfy requirements because of the original construction methods and materials used. The BCA permits alternatives to its deemed-to-satisfy requirements provided that these can be demonstrated to achieve at least the same level of compliance with its performance requirements. Changes to Millers Point buildings to achieve fire safety may be acceptable provided they occur in areas of lower rather than higher significance and all alternatives are conscientiously—and demonstrably—investigated.

The Fire, Access and Services Advisory Panel of the Heritage Council of NSW may be able to assist in resolving conflicts between heritage and regulatory requirements. For more information about the panel refer to:

<http://www.environment.nsw.gov.au/heritage/conservation/fireaccessservices.htm>

## MILLERS POINT CONSERVATION REFERENCE DOCUMENTS

Planning and design processes for approval to undertake works on heritage properties in Millers Point will be guided by the policies of the CMP. Other significant guiding documents include:

- The Australia ICOMOS Burra Charter, 2013
- City of Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012 and their successor documents
- Higginbotham, E (with Kass, T and Walker, M) 1991, The Rocks and Millers Point Archaeological Management Plan
- JS, Kerr 2013 The Conservation Plan
- Godden Mackay Logan 2001, The Rocks Heritage Management Plan (Understanding the Rocks Aboriginal Context)
- Government Architect's Office 2005, The Millers Point Vegetation Assessment
- NSW Heritage Office 1998, The Maintenance of Heritage Assets: A Practical Guide
- Department of Environment and Climate Change 2010, Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW
- NSW Heritage Office 2005, The Heritage Council Policy on Managing Change to Heritage Items

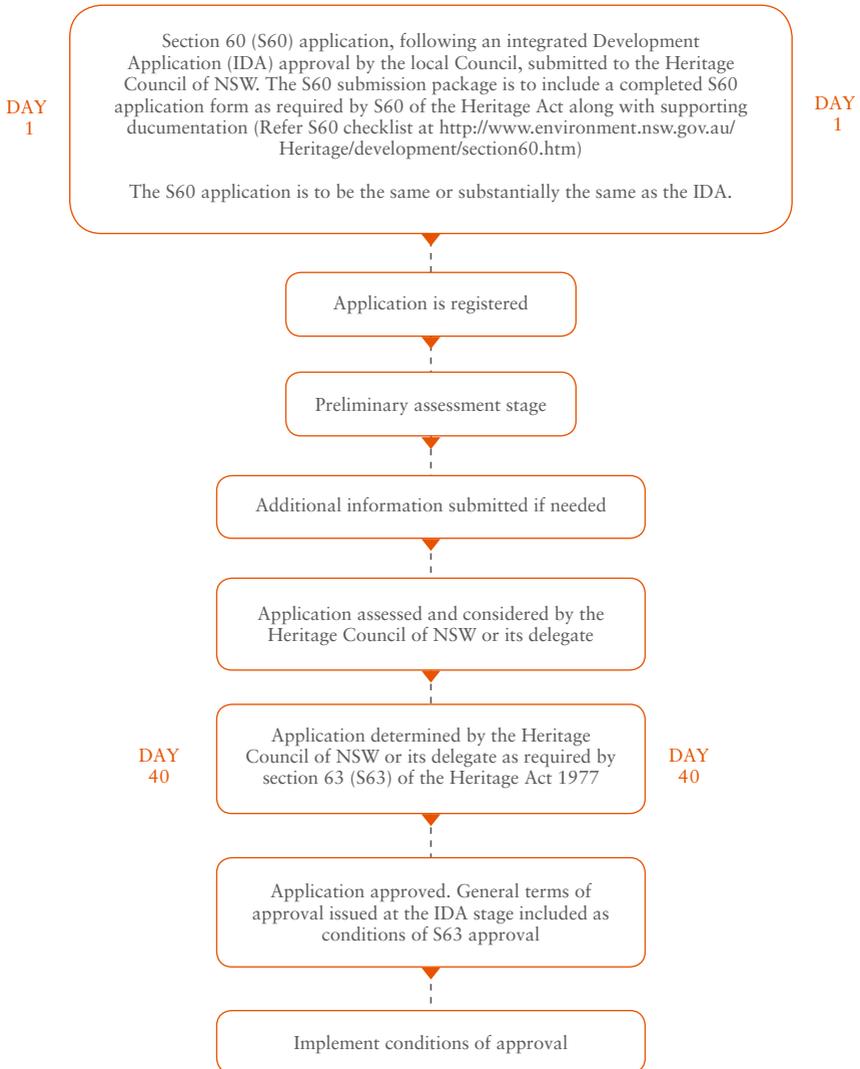




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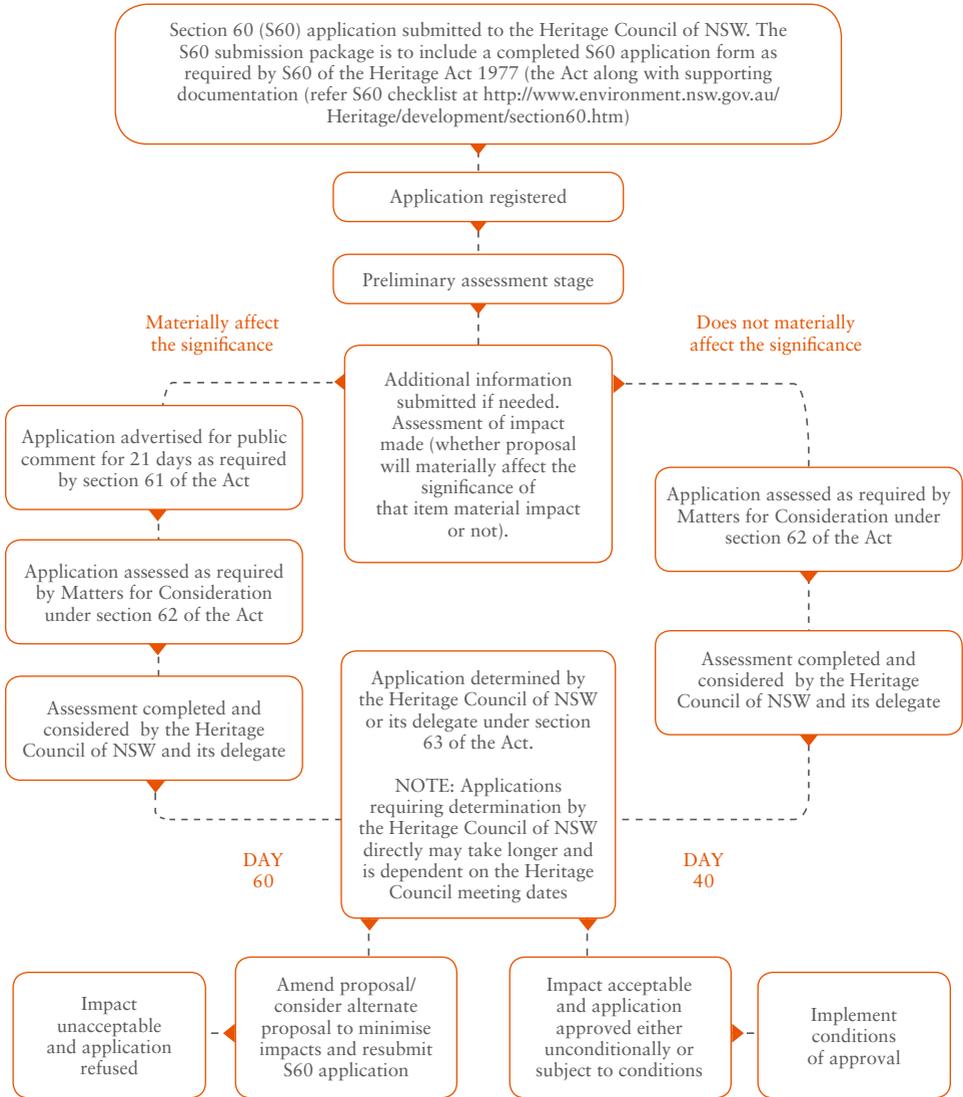
# APPENDIX A

The process used by the Heritage Council of NSW in assessing the S60 application following an IDA.



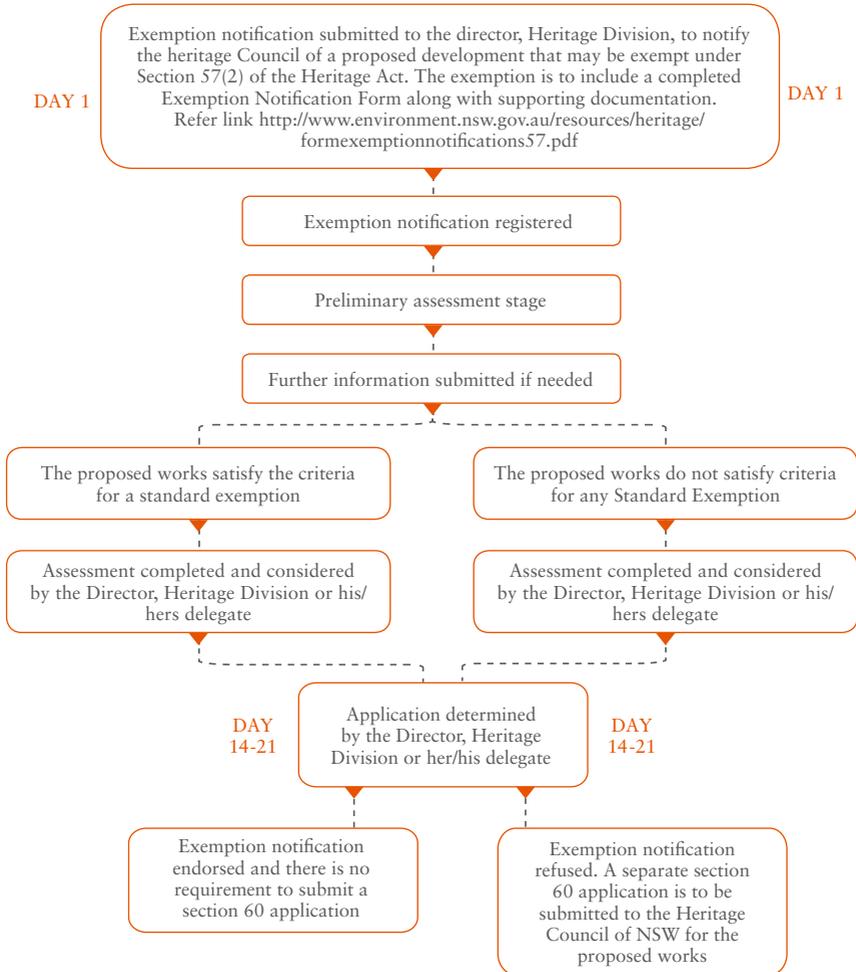
## APPENDIX B

The process used by the Heritage Council of NSW in assessing the S 60 applications.



# APPENDIX C

The process used by the Heritage Council of NSW in assessing applications for exemptions.



<sup>1</sup> Conservation Management Guidelines Housing NSW Properties Millers Point, 2007



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## WHERE CAN I FIND MORE INFORMATION

### Australia ICOMOS

<http://australia.icomos.org/>

### Heritage Council of NSW

3 Marist Place

Parramatta NSW 2150

Ph: 02 9873 8500

<http://www.environment.nsw.gov.au/heritage/index.htm>

### City of Sydney

Town Hall House

Level 2, 456 Kent Street

Sydney NSW 2000

Ph: 02 9265 9333

<http://www.cityofsydney.nsw.gov.au/>

### Department of Planning and Infrastructure

22-33 Bridge Street

Sydney NSW 2000

Ph: 02 9228 6111

<http://www.planning.nsw.gov.au/>

### Government Property NSW

Level 9, 4-6 Bligh Street

Sydney NSW 2000

Ph: 02 9273 3800

<http://www.property.nsw.gov.au/>

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This handbook has been prepared for the general information of prospective owners. You should not rely on the contents. It is not legal advice, architectural advice, heritage advice, planning advice, building advice or any other professional advice and should not be regarded as a substitute for the said advices. To the fullest extent allowed by law, the New South Wales Land and Housing Corporation excludes all liability (whether arising in contract, negligence or otherwise) in respect of all and each part of this communication, including without limitation, any errors or omissions.