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# C7 Culture and Heritage

## A. Background

### Overview of Controls

This DCP applies to 'heritage items', 'heritage conservation areas' and 'archaeological sites' listed in Schedule 5 of Penrith Local Environmental Plan (LEP) 2010. It also applies to land within the vicinity of heritage items and heritage conservation areas. In addition, the DCP applies to Aboriginal places of heritage significance and land on which Aboriginal objects are located. (Penrith LEP 2010 includes the definitions of these terms). This section of the DCP supplements Penrith LEP 2010, particularly clause 5.10 Heritage conservation, by providing controls to manage the heritage of Penrith City.

Controls include guidelines to conserve the heritage significance of the natural and built environment and ensure new development is sympathetic with the identified heritage values. The controls address design, streetscapes, site planning, fences, gates and landscaping. Heritage controls aim to ensure that future development takes place in a way that does not detract from the heritage values of the Penrith area.

### Heritage Significance

The concept of heritage significance is based upon an idea that a building, relic or place may have historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance for past, present and future generations. The Heritage Council has established widely accepted criteria to be used in ascertaining heritage significance. An item or area will be considered to be of heritage significance if it meets one or more of the following Heritage Council criteria:

- 1) **Criterion (a):** An item is important in the course, or pattern, of NSW's cultural or natural history (or the cultural or natural history of the local area);
- 2) **Criterion (b):** An item has strong or special association with the life or works of a person, or a group of persons, of importance in NSW's cultural or natural history (or the cultural or natural history of the local area);
- 3) **Criterion (c):** An item is important in demonstrating aesthetic characteristics and/or a high degree of creative or technical achievement in NSW (or the local area);
- 4) **Criterion (d):** An item has strong or special association with a particular community or cultural group in NSW (or the local area) for social, cultural or spiritual reasons;
- 5) **Criterion (e):** An item has potential to yield information that will contribute to an understanding of NSW's cultural or natural history (or the cultural or natural history of the local area);
- 6) **Criterion (f):** An item possesses uncommon, rare or endangered aspects of NSW's cultural or natural history (or the cultural or natural history of the local area);
- 7) **Criterion (g):** An item is important in demonstrating the principal characteristics of a class of NSW's (or the local area's):
  - 1) Cultural or natural places; or
  - 2) Cultural or natural environments.)

It is important to note that a heritage building does not have to be completely intact or in good condition for it to be of heritage significance. Rather, it is the building's ability to demonstrate the above criteria and historical themes that is important.

Before any alterations or new works are proposed to a heritage item or within a conservation area there must be a thorough understanding of its heritage significance. Once this is known

decisions about the future of the site, such as new works, can be more easily and appropriately determined.

The concept of heritage significance is explained more fully in the Australia ICOMOS (International Council on Monuments and Sites) Burra Charter, 2013 and the document entitled 'Assessing heritage significance' prepared by the NSW Heritage Office, 2001.

## **B. General Objectives**

- a) To promote the wise management, development and conservation of the heritage assets of Penrith;
- b) To conserve the environmental heritage of Penrith;
- c) To conserve the heritage significance of the existing fabric, relics, settings and views associated with heritage items and heritage conservation areas;
- d) To ensure that alterations, additions and infill development are sympathetic and respectful of the values of the heritage place;
- e) To promote the protection of places which have the potential to have heritage significance but are not identified as heritage items, places or heritage conservation areas;
- f) To ensure that the heritage conservation areas throughout Penrith retain their heritage significance;
- g) To provide guidance on the range and application of available conservation incentives;
- h) To control the demolition of heritage items and archivally record a heritage place in circumstances of demolition;
- i) To ensure archival records of heritage items and potential heritage places are undertaken in certain circumstances to a prescribed standard; and
- j) To ensure that proposals for development of environmental heritage are undertaken in a sustainable and appropriate way that conserves its values.

## **C. Other Information**

People seeking further information on heritage places or preparing development applications may wish to refer to the following:

- 1) Penrith City Council - *Heritage Study Volume 2: Thematic History May 2006* prepared by Paul Davies Pty Ltd
- 2) Penrith City Council - *Heritage Study Volume 3: Locality Profiles November 2007* prepared by Paul Davies Pty Ltd
- 3) *The Burra Charter* (Australia ICOMOS, 2013)
- 4) *Assessing Heritage Significance* (NSW Heritage Office, 2001)
- 5) *How to carry out work on heritage buildings and sites* (NSW Heritage Office, 2002)
- 6) *Statements of Heritage Impact* (NSW Heritage Office and Department of Planning, 1996)
- 7) *Local Government Heritage Guidelines* (NSW Heritage Office, 2002).
- 8) *Conservation Management Documents* (NSW Heritage Office and Department for Planning, 2002).
- 9) *Maintenance Series*, NSW Heritage Office.

## 7.1. European Heritage

### A. Background

Heritage provides both physical and cultural links to a locality's identity and assists in the creation of a sense of place and community. Heritage items are an integral part of Penrith's setting and need to be protected for the benefit of future generations. European heritage includes built items and relics, areas of conservation value due to past associations and natural environments.

#### 7.1.1. Determining the Impact on Heritage Significance

- a) Where a proposed development could affect the heritage significance of a heritage item or heritage conservation area, the applicant is required to lodge a *Heritage Impact Statement* or *Conservation Management Plan* (as required).
- b) A proposed development could affect the heritage significance of a heritage item or heritage conservation area if it is either in that item, place or conservation area or it is in the vicinity of that item, place or conservation area.
- c) Impact on a heritage item, place or conservation area can include, but is not limited to:
  - i) Affecting the item, place or area itself;
  - ii) Affecting a significant view to or from the item;
  - iii) Affecting the setting or heritage curtilage, including any landscape or horticultural features of the item;
  - iv) Overshadowing of the item;
  - v) Affecting the form of any historic subdivision pattern;
  - vi) Undermining or otherwise causing physical damage to the item; or
  - vii) Otherwise having an adverse impact on its heritage significance.
- d) A Heritage Impact Statement or Conservation Management Plan must be prepared by a qualified Heritage Consultant.
- e) A Heritage Impact Statement must address the issues set out in this section of the DCP and the Submission Requirements for applications in Appendix F3 of this DCP.

#### 7.1.2. Heritage Items

### A. Background

Heritage items comprise buildings, sites, places, archaeological sites and landscapes of both State and local significance, and are identified on the State Heritage Register and/or in Schedule 5 of Penrith LEP 2010.

Any proposals for development involving a heritage item must achieve a reasonable balance between protecting the heritage significance of the item and adaptation to meet amenity and contemporary needs.

### B. Objectives

- a) To encourage the retention of existing heritage items and their significant elements;
- b) To ensure development is based on the understanding and conservation of the heritage significance of the item;

- c) To encourage heritage items to be used for purposes that are appropriate to their heritage significance;
- d) To maintain the setting of the heritage item including the relationship between the item and its surroundings;
- e) To encourage the removal of inappropriate alterations and additions, and the reinstatement of significant missing details and building elements; and
- f) To protect and conserve built heritage in accordance with the principles of the Burra Charter.

## **C. Controls**

### **1) Development Application**

- a) Any Heritage Impact Statement for development that may impact on a heritage item must address the following (at a minimum):
  - a) The heritage significance of the item as part of the environmental heritage of Penrith;
  - b) The impact that the proposed development will have on the heritage significance of the item and its setting, including any landscape or horticultural features;
  - c) The measures proposed to conserve the heritage significance of the item and its setting;
  - d) Whether any archaeological site would be adversely affected by the proposed development;
  - e) The extent to which the carrying out of the proposed development would affect the form of any significant subdivision pattern; and
  - f) The issues raised by any submission received in relation to the proposed development in response to the notification or advertising of the application.
- b) Development of a heritage item must:
  - a) Be consistent with an appropriate Heritage Impact Statement or Conservation Management Plan;
  - b) Be consistent with the information on the State Heritage Inventory for that heritage item;
  - c) Protect the setting of the heritage item;
  - d) Retain significant internal and external fabric and building elements;
  - e) Retain significant internal and external spaces;
  - f) Remove unsympathetic alterations and additions;
  - g) Reinststate missing details and building elements; and
  - h) Use materials, finishes and colours that are appropriate to the significant periods of development or architectural character of the item.
- c) Alterations to the room layout of heritage items are to ensure that the original room configuration remains discernible and can be interpreted.
- d) If there is any likelihood of an impact on any significant archaeological relics from a period prior to the current building, development must ensure that the impact is managed according to the assessed level of significance of those relics.

### **7.1.3. Heritage Conservation Areas**

#### **A. Background**

In some instances, individual built or landscape items are not listed, but rather a heritage conservation area is listed. Heritage conservation areas are listed in Schedule 5 of Penrith LEP 2010.

Each conservation area is important for different reasons and therefore any changes which are proposed must take into account the nature of the heritage significance of the particular area (embodied in its statement of significance found on the State Heritage Inventory).

#### **B. Objectives**

- a) To ensure that any development within a heritage conservation area is compatible with the important or significant characteristics of the conservation area as a whole.

#### **C. Controls**

- 1) Any Heritage Impact Statement for development that may impact on a heritage conservation area must address the following (at a minimum):
  - a) The heritage significance of the heritage conservation area and the contribution which any building, work, relic, tree or place affected by the proposed development makes to this heritage significance;
  - b) The impact that the proposed development would have on the heritage significance of the heritage conservation area;
  - c) The compatibility of any proposed development with nearby original buildings and the character of the heritage conservation area, taking into account the size, form, scale, orientation, setbacks, materials and detailing of the proposed development;
  - d) The measures proposed to conserve the significance to the heritage conservation area and its setting;
  - e) Whether any landscape or horticultural features would be affected by the proposed development;
  - f) Whether any archaeological site would be adversely affected by the proposed development;
  - g) The extent to which carrying out of the proposed development would affect any historic subdivision pattern; and
  - h) The issues raised by any submission received in relation to the proposed development in response to the notification or advertising of the application.
- 2) New development within a heritage conservation area is to be sited and designed so as not to adversely impact upon the existing or original landscape and spatial qualities of the area.
- 3) New buildings are to complement existing buildings of significance with respect to bulk, scale and façade geometry, and be of a simple, contemporary design that avoids 'heritage style' replication of architectural or decorative detail.

### **7.1.4. Design Guidelines**

#### **A. Background**

This section provides guidance to applicants for any proposed development associated with heritage items. It is for guidance only and not intended to be prescriptive. The individual

circumstance of the heritage place will influence the design solution. Applicants are strongly advised to seek professional advice from a heritage architect to create a site responsive design solution.

## **B. Objectives**

- a) To conserve and maintain established setbacks to streets;
- b) To ensure adequate curtilage and landscape setting for the item;
- c) To ensure the integrity of the heritage item and its setting, or the conservation area, is retained by the careful siting of new buildings and alterations and additions to existing buildings;
- d) To ensure that the subdivision of land on which a heritage building is located does not isolate the building from its setting or context, or adversely affect its amenity or privacy;
- e) To ensure that the development of land or a building in the vicinity of a heritage item is undertaken in a manner that complements the heritage significance of the site;
- f) To ensure that new development is carefully sited so as to avoid causing physical damage to any heritage item especially where sited within the same curtilage as the heritage item;
- g) To ensure that new development, including alterations, additions, extensions, additional buildings or structures, are designed to minimise any potential impacts to adjoining heritage items;
- h) To protect the heritage significance of heritage items and items within heritage conservation areas;
- i) To conserve and protect significant items of European heritage that are located in the industrial areas of the City;
- j) To prevent the demolition of heritage items or items within heritage conservations areas; and
- k) To ensure that new development located within the curtilage of a heritage item is in keeping with the context and setting of the heritage item.

## **C. Controls**

### **1) Site Planning**

Any new development should be positioned to ensure that the visual prominence, context and significance of the existing heritage item and its setting are maintained.

Front and side boundary setbacks are a major contributor to the character and significance of a heritage item or heritage conservation area. Existing patterns should be maintained in new development to continue the established rhythm of buildings and spaces.

- a) Development should conform to the predominant front setbacks in the streetscape.
- b) Development should respect side setbacks and rear alignments or setbacks of surrounding development.
- c) Front and rear setbacks should be adequate to ensure the retention of the existing landscape character of the heritage item or conservation area and important landscape features.
- d) Any significant historical pattern of subdivision and lot sizes is to be retained. Subdivision or site amalgamation involving heritage items or contributory buildings should not compromise the setting or curtilage of buildings on or adjoining the site.

## **2) Alterations and Additions**

This section includes general provisions for alterations and additions to heritage items.

- a) Single storey additions may comprise the following forms:
  - i) Linked pavilions;
  - ii) Attached wings;
  - iii) Detached pavilions; and
  - iv) Attached L-shaped wings.
- b) Additions should not extend beyond side boundary setbacks.
- c) Attached additions shall have wall indentations to clearly separate the old from the new and articulate wall length.

## **3) Subdivision and Site Analysis**

The subdivision of land upon which a heritage building is located has the potential to isolate the building from its setting thereby reducing its cultural or historical significance.

The setting of a heritage building is often referred to as the curtilage and may include the immediate garden, mature trees, original allotment boundaries, paddocks, fencing, outbuildings, archaeological sites, views/vistas or any other feature or space which allows a greater understanding of its historical context. The curtilage is therefore essential for retaining and interpreting the heritage significance of that building.

- a) Proposals for subdivision should define an appropriate setting or 'curtilage' for the heritage building as part of the Heritage Impact Statement or Conservation Management Plan.
- b) In determining the curtilage of a heritage building, consideration is to be given to the following:
  - i) The original form and function of the heritage building: The type of structure that constitutes the heritage building should be reflected in the curtilage. For example, it may be appropriate that a larger curtilage be maintained around a former rural homestead than that of a suburban building;
  - ii) Outbuildings: A heritage building and its associated outbuildings should be retained on the same allotment; and
  - iii) Gardens, trees, fencing, gates and archaeological sites: Features that are considered valuable in interpreting the history and in maintaining the setting of a building should be identified and, where possible, retained within the curtilage.
- c) New development shall be of a scale and form that does not detract from the historical significance, appearance and setting of the heritage item. In this way, the following elements require specific consideration:
  - i) The height of new development near heritage items shall be less than the subject item. Increases in height shall be proportional to increased distance from the items and will be considered on merit;
  - ii) Views and vistas to the heritage item from roads and other prominent areas are key elements in the landscape and shall be retained;
  - iii) If the development site can be viewed from a heritage item(s), any new development will need to be designed and sited so that it is not obtrusive when it is viewed from the heritage item(s); and
  - iv) Curtilages shall be retained around all listed items sufficient to ensure that views to them and their relationship with adjacent settings are maintained.

#### **4) Gardens, Landscaping and Fencing**

In many circumstances it is important to protect, not only the heritage item or conservation area itself, but also the land around it which contributes to its setting, therefore enhancing its heritage significance.

Curtilages shall be established by evaluating the components of a site relative to the building. Key aspects of a property's curtilage include any gardens, entrances, fencing and outbuildings.

The curtilage shall maintain the relationship between these elements so as to allow the heritage item and its site to be understood. As a result, these elements shall be used in determining a suitable curtilage and shall be retained where suitable.

- a) In order to preserve and maintain an appropriate scale and the visual prominence of a heritage item, the building height of new development shall generally not exceed that of the original heritage item. New development or large additions or alterations must provide a transition in height from the heritage item.
- b) Development proposals, which involve large scale redevelopment and alteration to the original character of the heritage item and will negatively impact on the heritage significance of the curtilage, will not be permitted.
- c) The colours and materials used in a new development (whether an extension or addition) should complement the colours and materials of the heritage item. New development within the curtilage must not adversely impact upon the significant fabric of a heritage item.
- d) Where possible, existing fences that have been identified as significant or that contribute to the overall setting or character of a heritage item are to be retained or repaired, rather than replaced.
- e) New fences should either match as closely as possible the original fencing, or if the original fence type is not known, specifically relate to the architectural character and period of the existing heritage item with respect to design, materials, colour and height. Old photographs or careful inspection of remaining fabric can often reveal the original fence type.
- f) New development shall not be sited in front of the front building line of the existing heritage item nor shall it extend beyond the established side building lines of the heritage item.
- g) New development within the same curtilage as a heritage item shall generally not be larger in scale than the heritage item. Reference shall be made to the building height of the heritage item as the maximum permissible building height of alterations or additions.
- h) Vegetation around a heritage item shall be assessed for its value to the item and retained where required.

#### **5) Garages and Carports**

This section includes general provisions for garages and carports on properties containing heritage items.

- a) Garages and carports may comprise the following forms:
  - i) Double garage or carport at the rear of the lot; and
  - ii) Carport set behind the building line at the side of a dwelling.
- b) Garage and carport roof forms will depend on the setting and context of the property.
- c) Carports are appropriate beside a dwelling. They are to be flat roofed with fringing pergola elements which suggest a garden structure form.

## **7.1.5. Development in the Vicinity of a Heritage Item or Conservation Area**

### **A. Background**

A development in the vicinity of a heritage item or a heritage conservation area must be assessed to determine whether it will have any impact on the significance and visual setting of that item or conservation area.

### **B. Objectives**

To ensure that the development of land or a building in the vicinity of a heritage item or heritage conservation area is undertaken in a manner that complements the heritage significance of the site or area.

### **C. Controls**

- 1) A Heritage Impact Statement shall be lodged with a development application for buildings or works in the vicinity of a heritage item or heritage conservation area. This clause extends to development that:
  - a) May have an impact on the setting of a heritage item or conservation area, for example, by affecting a significant view to or from the item or by overshadowing; or
  - b) May undermine or otherwise cause physical damage to a heritage item; or
  - c) Will otherwise have any adverse impact on the heritage significance of a heritage item or any heritage conservation area within which it is situated.
- 2) The following issues must be addressed in the Heritage Impact Statement:
  - a) The impact of the proposed development on the heritage significance, visual curtilage and setting of the heritage item;
  - b) Details of the size, shape and scale of, setbacks for, and the materials to be used in, any proposed buildings or works; and
  - c) Details of any modification that would reduce the impact of the proposed development on the heritage significance of the heritage item.

## **7.1.6. Archaeological Sites**

### **A. Background**

This section of the DCP provides guidance to applicants regarding development that involves archaeological sites. For the purposes of this section an archaeological site means the site (as listed in Schedule 5 – Environmental Heritage of Penrith LEP 2010) of one or more relics.

### **B. Objectives**

- a) To ensure that development is undertaken in a manner that acknowledges and protects sites of archaeological significance.

### **C. Controls**

- 1) Any application which proposes the disturbance or development of an 'archaeological site' listed in Schedule 5 – Environmental Heritage of Penrith LEP 2010 is to undertake an archaeological assessment and to submit that assessment as part of the Heritage Impact Statement or Conservation Management Plan.

- 2) The archaeological assessment is to:
  - a) Evaluate the probable extent, nature and integrity of the site and determine its significance;
  - b) Define appropriate management measures for the site having regard to its significance; and
  - c) Is to be prepared in accordance with guidelines contained within the document entitled "Assessing Significance for Historical Sites and 'Relics'" (Heritage Branch, Department of Planning, 2009).
- 3) Where the development or disturbance of an archaeological site is proposed, the applicant will be required to liaise with the Heritage Division of the Office of Environment and Heritage to ensure any related statutory requirements of the *Heritage Act, 1977* are complied with prior to the submission of the development application. For example, any proposal to disturb or excavate land which will or is likely to result in a relic (whether or not that relic is listed as an archaeological site under Penrith LEP 2010) being discovered, exposed, moved, damaged or destroyed requires an excavation permit to be obtained from the Heritage Council (Heritage Division of the Office of Environment and Heritage).
- 4) If relics are discovered during construction or operation, works should cease immediately and the Heritage Division contacted. At that time, the Heritage Division may request an archaeological assessment before any further work can commence.

### **7.1.7. Potential Heritage Items**

#### **A. Background**

This section provides guidance to applicants wanting to lodge an application that involves a building, relic or structure that is more than 50 years old.

#### **B. Objectives**

To protect buildings that may have heritage significance, but are not listed in Schedule 5 – Environmental Heritage of Penrith LEP 2010.

#### **C. Controls**

- 1) Where it is proposed to develop or demolish a building, relic or structure not listed in Schedule 5 – Environmental Heritage of Penrith LEP 2010 that is older than fifty years, Council may require the submission of a Heritage Impact Statement that addresses those issues referred to in Clause 5.10 of Penrith LEP 2010 or in this DCP, so as to enable it to fully consider the impact of the development upon the significance of the building, relic or structure.

### **7.1.8. Demolition**

#### **A. Background**

While a key objective of heritage conservation is the preservation of heritage items, occasionally, there will be circumstances where it is not possible to preserve a heritage item on its original site, and where applications for demolition are received.

Applicants must demonstrate that all possible options for retention of the heritage item have been exhausted prior to applying for a demolition permit, and that if a demolition permit is issued, the item will be adequately documented, made available for salvage and commemorated, where appropriate.

## **B. Objectives**

- a) To ensure that adequate consideration is given to the significance of a heritage item and any alternative options, where the demolition of a heritage item is proposed.

## **C. Controls**

- 1) The demolition of a heritage item is contrary to the intent of heritage listing and is considered a last resort option that will only be considered where:
  - a) All other alternatives have been investigated and ruled out;
  - b) It can be satisfactorily demonstrated that the item does not satisfy the criteria for listing established by the NSW Heritage Council, nor provide physical evidence of one of the historical developmental themes established by the Penrith Heritage Study; or
  - c) The structure is considered incapable of repair.
- 2) Where consent is issued for demolition, a comprehensive diagrammatic and photographic archival record is to be made of the structure to be demolished (refer to 7.1.9). This must be undertaken to Council's satisfaction prior to commencement of any demolition works.

### **7.1.9. Archival Recording**

#### **Archival Recording Requirement**

Council shall require an archival recording as a condition of development consent for development involving the demolition or partial demolition of a heritage item or a place within a heritage conservation area.

#### **Standard of Recording**

The minimum standard for preparing archival records is available from the Heritage Division of the Office of Environment and Heritage (please refer to the documents entitled 'How to Prepare Archival Records of Heritage Items' and 'Photographic Recording of Heritage Items Using Film or Digital Capture'). A heritage consultant experienced in preparing archival records should be engaged to undertake this task.

#### **Deferred Commencement Consent**

A development consent issued by Council for the demolition or partial demolition of a heritage item or a place within a heritage conservation area shall be in the form of a deferred commencement. This is to ensure that the archival recording is completed to Council's satisfaction before the consent becomes operable.

### **7.1.10. Business, Office and Retail Buildings**

#### **A. Background**

Due to the prominent function that frontages can play for the economic viability of business, office and retail premises, they are frequently subject to pressures for alteration. Where unsympathetic alterations occur to the ground floor frontages of heritage items used for business, office and retail premises, these can result in the loss of an integral element of their character or heritage significance.

#### **B. Objectives**

- a) To retain and conserve the heritage significance of heritage protected business, office and retail buildings; and

- b) To protect the distinctive and characteristic elements of business, office and retail buildings and ensure the integration of these features into subsequent uses.

### **C. Controls**

- 1) Ornamental parapet detailing (such as pediments, urns and finials) are important elements of business, office and retail heritage items as they help to establish what period they were erected in. As such, their removal negatively impacts on the architectural significance of such buildings and is not permitted.
- 2) Structural alteration of interior features of heritage protected business, office and retail buildings is not permitted without prior consent from Council.

## **7.1.11. Conservation Incentives and Fee Concessions**

### **A. Background**

In recognition of the needs of heritage items, Council provides conservation incentives to help conserve Penrith's heritage for the community's benefit.

### **B. Objectives**

To provide incentives to owners/applicants for development applications involving heritage items.

### **C. Controls**

- 1) Subclause 5.10(10) 'Conservation incentives' of LEP 2010 allows Council to consider an application for the use for any purpose of a building that is a heritage item or within a heritage conservation area even though the use would otherwise not be permitted under the LEP. In assessing such an application, Council shall consider the matters listed in this subclause, and may require a detailed long term maintenance plan for the building.

### **Fee Concessions**

An applicant may apply, in writing, to Council to have fees refunded (partially or fully) for a development application, construction certificate or building compliance certificate for approved development for buildings or works to a heritage item or a place within a heritage conservation area under the following circumstances:

- 1) Sympathetic restorations, alterations and additions to original buildings used for residential purposes;
- 2) Sympathetic restorations, alterations and additions to original buildings to accommodate community facilities, home activities and home businesses; or
- 3) Sympathetic restorations of non-building places.

Requests for application fee refunds will be assessed in accordance with the following criteria:

- 1) Overall scale of the development;
- 2) Compliance with a development consent and any consent conditions;
- 3) Compliance with a construction certificate and any consent conditions;
- 4) Compliance with the provisions of this section;
- 5) Conservation of the original building fabric and landscape elements; and
- 6) Any other relevant heritage conservation matter.

## Other Concessions

In relation to an application for the use for any purpose of a building that is a heritage item or within a heritage conservation area, an applicant may apply in writing to Council to have waived the following contributions or requirements associated with undertaking an approved development:

- 1) Section 94 Developer Contributions under the *Environmental Planning and Assessment Act 1979*;
- 2) On-site car parking requirements; or
- 3) Other development requirements of Council which ordinarily would be applied to the type of proposal.

To obtain a concession, applicants will need to demonstrate that their development proposal will:

- 1) Ensure the long-term conservation and management of the heritage values of the building or place;
- 2) Result in the conservation of the original building fabric, landscape elements or archaeological resources;
- 3) Ensure that the concession sought maintains the public interest and that the development proposal will on balance result in a net public benefit; and
- 4) Not result in any significant adverse impacts on the amenity of adjacent properties or the surrounding environment.

Requests to obtain a concession will be assessed on their merits and reported to Council for determination.

## 7.2. Aboriginal Culture and Heritage

### A. Background

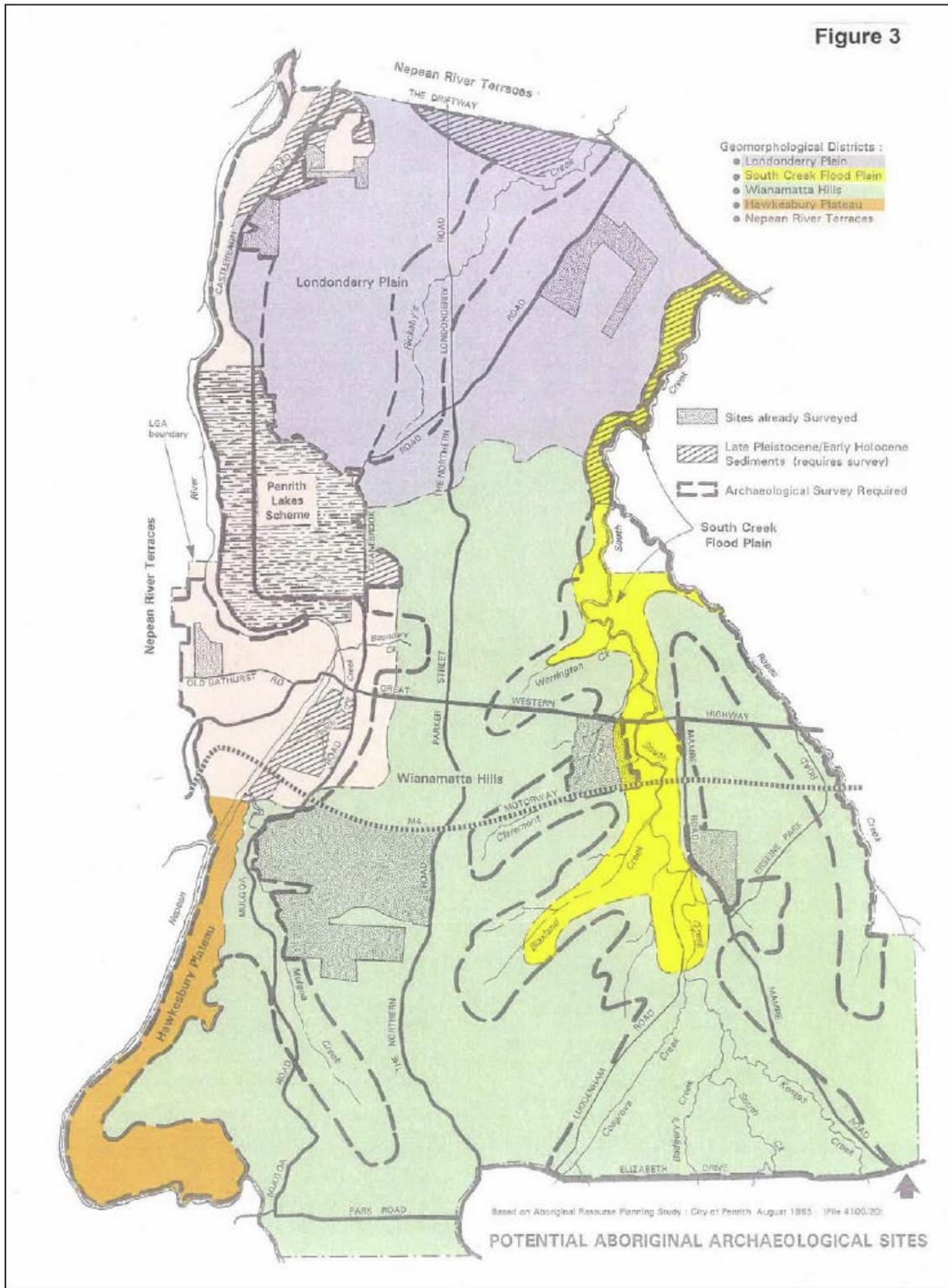
Aboriginal heritage consists of objects and places that are of significance to Aboriginal people because of their traditions, observances, lore, customs, beliefs and history. It may comprise of physical or non-physical elements. For example, it includes items made and used in traditional societies, such as stone tools, art sites and ceremonial or burial grounds, as well as more contemporary items such as places of spiritual importance. 'Aboriginal object' is defined in Penrith LEP 2010. Aboriginal places are areas of land that have no Aboriginal objects, but instead have special significance to Aboriginal culture because of their spiritual, natural resource usage, historical, social, educational or other type of significance.

Aboriginal people are the cultural owners and managers of information about their heritage. Aboriginal culture has existed for over 50,000 years. Aboriginal people have strong spiritual and cultural ties with places throughout NSW. It is vital to indigenous people that these important spiritual and cultural links to land are maintained. This is achieved by continuing traditional practices and beliefs and preserving and protecting places of cultural significance. It is equally important that indigenous heritage and culture is properly recognised and preserved.

Given Penrith's history of Aboriginal settlement, some land within the City may have archaeological potential. It is important to preserve and/or record any remaining archaeological resources.

Figure C7.2 depicts which parts of the City have the potential to be archaeologically sensitive.

Figure C7.2



The Office of Environment and Heritage keeps a register of notified Aboriginal objects and declared Aboriginal places in NSW. This register is called the Aboriginal Heritage Information Management System (AHIMS). Applicants can search AHIMS to determine if an Aboriginal object has been recorded, or an Aboriginal place declared, on a parcel of land.

As indicated in Figure C7.2, surveys for Aboriginal objects have not been done in many parts of the City. Aboriginal objects may therefore exist on a parcel of land even though they have not been recorded in AHIMS.

Aboriginal heritage should be considered in any site selection and site analysis. The site analysis should identify the more obvious items, such as landforms, scarred trees and middens, and establish their significance.

At the planning and design stage, more detailed survey work may need to be undertaken, especially in areas where minimal disturbance by agriculture or other previous land uses has occurred. In some cases, an archaeological investigation may be necessary. The purpose of the archaeological investigation is to learn about past human societies through the study of material remains and historical, oral and environmental sources. The 'Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW' specifies the minimum standards for such an investigation. It is also likely that information will also need to be sourced from the Local Aboriginal Community. (See 'Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010').

If Aboriginal items are present on the site, the development should be designed, wherever possible, to ensure there is no disturbance or impact on their significance or setting. In areas where there has been minimal disturbance, items may not be noticed or evident until site works commence. If Aboriginal items are discovered during construction or operation, works should cease immediately and the Office of Environment and Heritage contacted. Prior to further disturbance occurring to Aboriginal items, an approval will be required from the Office of Environment and Heritage.

## **B. Objectives**

To preserve items and sites of Aboriginal archaeological significance located within the City of Penrith.

## **C. Controls**

- 1) If the development, including subdivision, but not strata subdivision, is on land identified as potentially archaeologically sensitive, an archaeological investigation is required with the development application. The Office of Environment and Heritage should be contacted for advice on survey needs and requirements.
- 2) Despite (a) above, an archaeological assessment is required if the site area is 5 hectares or more. The archaeological assessment should determine whether or not Aboriginal archaeological resources are present on the site, and where appropriate, identify management principles to be implemented.
- 3) The requirements stated in (a) and (b) above will not apply to developments where there is no:
  - a) disturbance of the soil, or
  - b) construction works on the land. For the purposes of this section, any internal or external works to an existing building is not deemed to be construction work.

## 7.3. Significant Trees and Gardens

### A. Background

Major components of our heritage are the trees and gardens found throughout the City of Penrith. This vegetation contributes markedly to a greater understanding of the history and development of the City.

Penrith LEP 2010 provides protection to significant trees and gardens located within Penrith from unsympathetic or indiscriminate development. Applicants should consult with Council's Tree Management Officer for advice.

### B. Objectives

- a) To promote greater public awareness of the significant trees and gardens in the City of Penrith;
- b) To ensure that existing and future landowners are made aware of the significant trees and gardens, which may be located on their properties;
- c) To ensure that development adjacent to and in the vicinity of any significant tree or garden does not affect the ongoing viability of that tree or garden; and
- d) To ensure that those qualities intrinsic to the significance of a garden be retained and protected from unsympathetic future development.

### What is a Significant Tree or Garden?

The significance of trees or gardens may be determined by an assessment in line with the following broad categories:

- Cultural significance;
- Historical significance;
- Scientific significance;
- Aesthetic significance.

### Cultural Significance

The cultural value of a tree, garden or natural vegetation community may:

- mark important cultural town features such as reserves, showgrounds and stockyards;
- reflect different periods in a towns development.

### Historical Significance

Trees or gardens may be of significance when associated with important eras, buildings, events or people and fall within the following categories:

- an example of a specific era of landscape design;
- association with historic buildings;
- commemorate an important historical event;
- plantings which were the result of famous persons.

### Scientific Significance

Trees or gardens may be valuable for a range of scientific reasons. These may include trees or components of gardens that are poorly known, rare, vulnerable or endangered species.

## **Aesthetic Significance**

Trees or gardens are of aesthetic significance if they comprise important features in a townscape, screen unattractive buildings or are exceptionally beautiful. Aesthetic qualities of trees or gardens include qualities of flower, colour, shape, fragrance, texture, shade or seasonal qualities.

These broad categories may be further refined into more specific categories including:

- 1) Any tree notable for its height, trunk circumference or canopy spread;
- 2) Any tree associated with Aboriginal activities;
- 3) Any tree or garden that occurs in a unique location or context and so provides a contribution to the landscape;
- 4) Any tree of a species or variety that is rare or of very localised distribution;
- 5) Any tree of horticultural or general value that could be an important source of propagating stock;
- 6) Any tree which exhibits a curious growth form.

## **C. Controls**

### **Owner's Responsibility**

If a tree, or trees, has been identified as significant, the owner or any person proposing to do any work on that defined area has the following responsibilities:

- 1) The owner shall not ringbark, cut down, top, lop, or wilfully destroy any tree, except with the consent of Council.
- 2) Development in the vicinity of a significant tree or garden should not result in the destruction or damage of that tree or garden.
- 3) The owner of any property, which has a tree or garden located on the site, should take into consideration the significance of the tree or garden and design development accordingly.