

# Equitable access, fire safety and maintaining heritage significance

## Who is this information sheet for?

Owners, designers and contractors of heritage buildings who are planning alterations, additions, a change of use or new work to a heritage building, that is used or will be used by the public.

The advice provided in this information sheet does not apply to residential buildings used as a private residence, unless the premises or part of the premises are used for:

- hire for functions and events
- short term holiday accommodation.

The regulatory requirements for private buildings can be significantly different to public buildings and owners of private dwellings should seek guidance from suitably qualified professionals.

## Overview

- In NSW, consent authorities (usually local councils) assess and approve new work to existing buildings through development applications.
- Building and development regulations are generally not retrospectively applied to existing buildings when no new work is being undertaken.
- New work to existing buildings must comply with the National Construction Code (NCC) and the [Disability \(Access to Premises – Buildings\) Standards 2019](#) (Premises Standards).
- Consent authorities have the power to request access upgrades to existing (including heritage) buildings in conjunction with other required upgrades, such as fire safety.
- The [Environmental Planning and Assessment Regulation 2000](#) (Regulations) gives consent authorities flexibility to consider different solutions to enable changes of use, and achieve accessibility standards in existing buildings. Generally, these are in the form of Performance Solutions consistent with the NCC and the Premises Standards.
- Heritage significance and conservation needs to be considered alongside NCC and Premises Standards.

## Investigating, assessing and managing significance

In NSW, the heritage significance is understood and conserved using three steps: investigate, assess and manage significance. The process produces a statement of significance that:

- defines why an item is significant

- establishes its level of significance (local, state, national, world)
- is the basis for conservation and management plans and policies for the item.

Heritage buildings are usually managed using a [conservation management plan](#), which guides owners and managers on what needs to be conserved in order to maintain heritage significance.

Proposal for change may be tested against the statement of significance within statutory registers if there is no conservation management plan.

[Heritage NSW](#) have resources to assist people to identify, assess and manage significance.

### Clauses 93 and 94 of the Regulations

Clauses 93 and 94 refer to existing buildings, which includes heritage buildings.

The intent of these clauses is to make buildings safe.

When assessing development applications for existing buildings, consent authorities must consider:

- [Clause 93](#), for change of use: appropriateness of the proposed fire safety and structural capacity
- [Clause 94](#), for extensive alterations and additions or if existing fire safety measures are inadequate: whether it is appropriate to require all or part of the building to be brought into full or partial compliance with the NCC.

When a change of use is proposed and existing fire safety measures are inadequate, the consent authority must require compliance with fire safety standards, even if the resulting works are not part of the original proposal.

The relevant consent authorities should determine the level of compliance needed by considering the:

- occupant characteristics, nature and proposed use of the building
- physical constraints of the building including heritage significance
- type of materials and structures used in the building
- existing standard of building services
- degree of fire safety already provided
- heritage significance (in the case of heritage buildings).

Clauses 93 and 94 are important to understand when planning new works to a heritage building. Upgrading to achieve compliance with the NCC needs to consider heritage features to minimise the upgrade's impact on the building's heritage significance.

Using standard methods to upgrade a heritage building for fire safety, services, structural capacity or access may damage or destroy heritage significant fabric and impact the heritage significance of the building. Specially-designed methods are often required to successfully undertake upgrades that do not make unacceptable interventions into heritage fabric or impact heritage significance.

### The National Construction Code

The [Environmental Planning and Assessment Act 1979](#) (the Act) and Regulations requires new work in an existing building to comply with the NCC Volumes 1 or 2 (depending on building use).

NCC Volumes 1 and 2 are often referred to as the Building Code of Australia (BCA) and can be obtained from the [Australian Building Codes Board](#).

The NCC prescribes Performance Requirements that can be met by either:

- **deemed-to-satisfy provisions:** technical provisions or methods detailed in the NCC that satisfy the Performance Requirements
- **performance solutions:** individually developed solutions that demonstrate compliance with the Performance Requirements.

Performance solutions should be prepared and evaluated by people qualified and experienced in the relevant areas of building design, materials and the NCC. This may include a suitably skilled built heritage practitioner working with:

- fire safety engineers
- NCC or BCA consultants
- structural engineers
- service engineers
- access consultants
- acoustic consultants
- landscape architects
- environmental consultants.

If a consent authority requires a building (or its parts) to be upgraded, they may express the conditions to be met in one of several ways:

- **to meet the BCA** allows owners to achieve compliance with the Performance Requirements by meeting deemed-to-satisfy provisions or by using a performance solution (or a mixture)
- **to meet the BCA deemed-to-satisfy provisions** allows the owner to achieve compliance only by meeting the requirements expressed in specific deemed-to-satisfy provisions
- **to meet the performance requirements of the BCA or another performance standard agreed with the consent authority** allows the owner to comply by developing an upgrade fire safety strategy, services upgrade strategy or access. This is the most flexible option.

**BCA issues should be identified and resolved in the planning and detailed design stages prior to the development application process. However, sometimes new evidence of heritage significance becomes apparent during construction or renovation and a modified design response to conserve the heritage significant elements. If this happens a section 4.55 application to vary the original development application consent may be necessary.**

If there are no new works to an existing building, there is no statutory requirement for all parts of an existing building to comply with the NCC or the Premises Standards. However, consent authorities often use provisions in the NCC, the Premises Standards and referenced Australian Standards as a yardstick to determine the:

- 'appropriate' standard for a building element
- building elements that should be allowed to remain without alteration
- upgrades to building elements that are required to achieve an acceptable performance level.

Consent authorities must consider and resolve these matters when determining development applications for new work to existing heritage buildings.

## Consultation with consent authorities and government agencies

Effective consultation:

- begins in the planning and detailed design stages of a development application process
- helps to establish the fire safety, structural capacity and access needs for the existing building or elements
- determines the extent of the upgrades that are needed
- should discuss the most appropriate way to meet provisions of the NCC and the Premises Standards.

Owners of local or state heritage listed buildings should discuss proposed work with relevant authorities before lodging a development application.

[Heritage NSW](#) provides advice to owners of state listed heritage items about conserving or minimising impacts to heritage fabric, spaces and structures.

[Fire and Rescue NSW](#) may participate as a stakeholder in discussing options for a building to meet the requirements of a fire safety upgrade. This usually occurs as part of a fire engineering brief process.

[Australian Human Rights Commission](#) can provide advice about disability standards.

**Engineers, builders and heritage professionals experienced in heritage developments should provide advice on how to satisfy NCC provisions while retaining heritage elements.**

An accredited member of the [Association of Consultants in Access Australia](#) can assist with access advice.

Consent authorities determine methods a building must use to meet NCC provisions or the objectives of clauses 93 or 94.

Some consent authorities allow applicants to discuss the advice of other authorities with them prior to the lodging development application.

## Other changes to heritage buildings

In addition to fire safety, structural capacity and equitable access, changes to heritage buildings, designed to enhance ongoing use, may include:

- upgrading existing building services
- inserting new services
- improving energy efficiency.

Moreover, the power given to consent authorities under Clause 94 to require that a building comply (in whole or in part) with the NCC, potentially allows the authority to require that other aspects of the NCC (such as energy efficiency) are also brought into compliance. The same considerations apply to all such changes. They should be designed and implemented to minimise adverse heritage impacts and take advantage of every opportunity for site-specific performance solutions.

This approach requires that all potential changes be considered together so that proposed solutions:

- are integrated, where possible, to reduce possible impacts on heritage significance
- do not have a cumulative impact on heritage significance

- can be reversed, where possible
- work together to achieve the best possible outcome with the least impact on significance.

## References

Association of Consultants in Access Australia (2020) [Association of Consultants in Access Australia](#) [Association of Consultants in Access Australia website], Association of Consultants in Access Australia, accessed 13 April 2021.

Australian Building Codes Board (n.d.) [National Construction Code](#) [online document], Australian Building Codes Board, accessed 20 January 2021.

## Further information

For further information please contact Heritage NSW. Requests for assistance in balancing fire safety requirements and heritage considerations may be referred to the Heritage Council of NSW's Technical Advisory Panel (TAP).

The publication [Access to heritage places guidelines: NSW](#) (Eric Martin and Associated Architects 2018) provides information to assist people involved with providing disability access to heritage places. It contains statutory requirements, a process to solve issues and illustrated examples of how some heritage places have improved access.

The Heritage Council of NSW publication [Fire and heritage buildings](#) contains a range of options that can be considered when addressing fire protection methods.

In some cases, section 129 of the [Heritage Act 1977](#) allows the Minister to set aside other NSW legislation for buildings listed on the State Heritage Register or subject to an interim heritage order. Contact Heritage NSW on +61 2 9873 8500 or [heritagemailbox@environment.nsw.gov.au](mailto:heritagemailbox@environment.nsw.gov.au) for more information.

Australian Human Rights Commission (n.d.) [Disability Standards](#) [Australian Human Rights Commission website], Australian Human Rights Commission, accessed 23 March 2021.

The Australian Building Codes Board's [resource library](#) has resources to guide professionals in the National Construction Code and its application.

Fire and Rescue NSW (n.d.) [Building Fire Safety](#) [Fire and Rescue NSW website], Fire and Rescue NSW, accessed 20 January 2021.

Heritage Council of NSW (2011) [Heritage listing explained: what it means for you](#), [Heritage NSW website], Heritage NSW, accessed 20 January 2021.

Heritage NSW (2020) 7. [Fire Safety and detection systems](#) [Heritage NSW website], Heritage NSW, accessed 20 January 2021.

Heritage NSW (n.d.) [Protecting our heritage](#) [Heritage NSW website], Heritage NSW, accessed 20 January 2021.

Society for Fire Safety, NSW Chapter, Engineers Australia (2012) [Practice note for fire and life safety in existing buildings during construction](#) [online document], Engineer's Australia, accessed 20 January 2021.

## Acknowledgements

Originally published as Heritage Council of NSW (2014) *Change to heritage buildings*, NSW Heritage Office, Parramatta.

This updated guideline was prepared by the Heritage Council's Technical Advisory Panel (TAP). It was coordinated by Leah Domanski.

## Copyright notice and disclaimers

© State of New South Wales through the Heritage Council of New South Wales, 2014, updated 2021.

This work (except for third party material) may be freely reproduced and distributed for any non-commercial purpose (including personal and educational). Permission must be received from the Heritage Council of New South Wales for any commercial purposes. You must attribute the State of New South Wales through the Heritage Council of New South Wales as being the owner of the copyright in the work (except for third party material).

Wherever a third party owns copyright in this work, the copyright remains with that party. The third party's permission may be required to use the material. Please contact the third party directly.

While this work has been prepared with all due care, the State of New South Wales does not warrant or represent that it is free from errors or omission, or that it is exhaustive. The State of New South Wales disclaims, to the extent permitted by law, all warranties, representations or endorsements, express or implied, with regard to the work including but not limited to, all implied warranties of merchantability, fitness for a particular purpose, or non-infringement.

The State of New South Wales further does not warrant or accept any liability in relation to the quality, operability or accuracy of the work.

The work is made available on the understanding that the State of New South Wales, its employees and agents shall have no liability (including but not limited to liability by reason of negligence) to the users of the work for any loss, damage, cost or expense whether direct, indirect, consequential or special, incurred by, or arising by reason of, any person using or relying on the work and whether caused by reason of any error, omission or misrepresentation in the work or otherwise. Users of the work will be responsible for making their own assessment of the work and should verify all relevant representations, statements and information with their own professional advisers.