

Heritage Curtilages



HERITAGE OFFICE
Department of Urban Affairs and Planning

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ACKNOWLEDGEMENTS

This text was originally prepared by Warwick Mayne-Wilson during the professional placement component of his Master of Heritage Conservation for the University of Sydney in 1992 and expanded subsequently by additional research. Don Godden & Associates' 1989 curtilage study of heritage properties in Hunters Hill is acknowledged as an important source of material for these guidelines.

COVER

The incorporation of Abbotsford House into an industrial site retained the view to the Parramatta River, but compromised its curtilage on the sides and rear. When the factory buildings are replaced by medium density housing the new structures will be set further back to provide an adequate curtilage for the historic property (see pp 14/15).

Photo: Jeff O'Loughlin

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Foreword

Craig Knowles

*Minister for Urban Affairs and Planning
and Minister for Housing*

Retaining an appropriate area of land, or curtilage, around a heritage item can be integral and essential in retaining and interpreting its significance.

The identification of heritage curtilages is usually reasonably straightforward. Sometimes, however, there are quite complex cases which require the weighing up of many alternative approaches. These guidelines present various issues to be taken into account in defining heritage curtilages.

A handwritten signature in black ink, appearing to read 'Craig Knowles', with a small dot at the end of the signature.

Background

When a heritage item is being considered for listing or management purposes, a decision usually needs to be made about the extent of land around it which should be defined as encompassing its heritage significance. This area of land is known as a “heritage curtilage”.

The nature of heritage curtilages can vary, depending on the purposes for which they are established. The need for curtilages around significant items in the built environment is generally understood. A curtilage can also be used, however, to establish the boundaries of a visual catchment or zone, including all or part of a cultural landscape, which may be worthy of special protection. Different types of protective management controls may be appropriate for different types of heritage curtilages.

These guidelines describe four types of heritage curtilages and propose various considerations to be taken into account in identifying them. They are not mutually exclusive. In many cases, there will be more than one compelling reason for establishing a heritage curtilage.

These guidelines should be used in conjunction with the *NSW Heritage Manual* (1996) for the assessment of the heritage significance of heritage items, including their curtilages. *Conservation Areas* (1996) provides additional guidance for the assessment and management of heritage conservation areas. Heritage Planning Notes in the *NSW Heritage Manual* (1996), should be referred to when land identified by heritage curtilages is being proposed for listing and protection through a local environmental plan (LEP).

Heritage Curtilages has been developed to assist property owners, heritage practitioners, local councils and State government agencies to identify and assess curtilages for both heritage items and heritage conservation areas. The term “heritage item” is used to encompass heritage conservation areas as well as individual items, unless indicated otherwise.

Definition

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In these guidelines the term “heritage curtilage” means the area of land (including land covered by water) surrounding an item or area of heritage significance which is essential for retaining and interpreting its heritage significance. It can apply to either:

- land which is integral to the heritage significance of items of the built heritage; or
- a precinct which includes buildings, works, relics, trees or places and their setting.

See the Appendix for further information on the background to this definition.



HERITAGE CURTILAGES

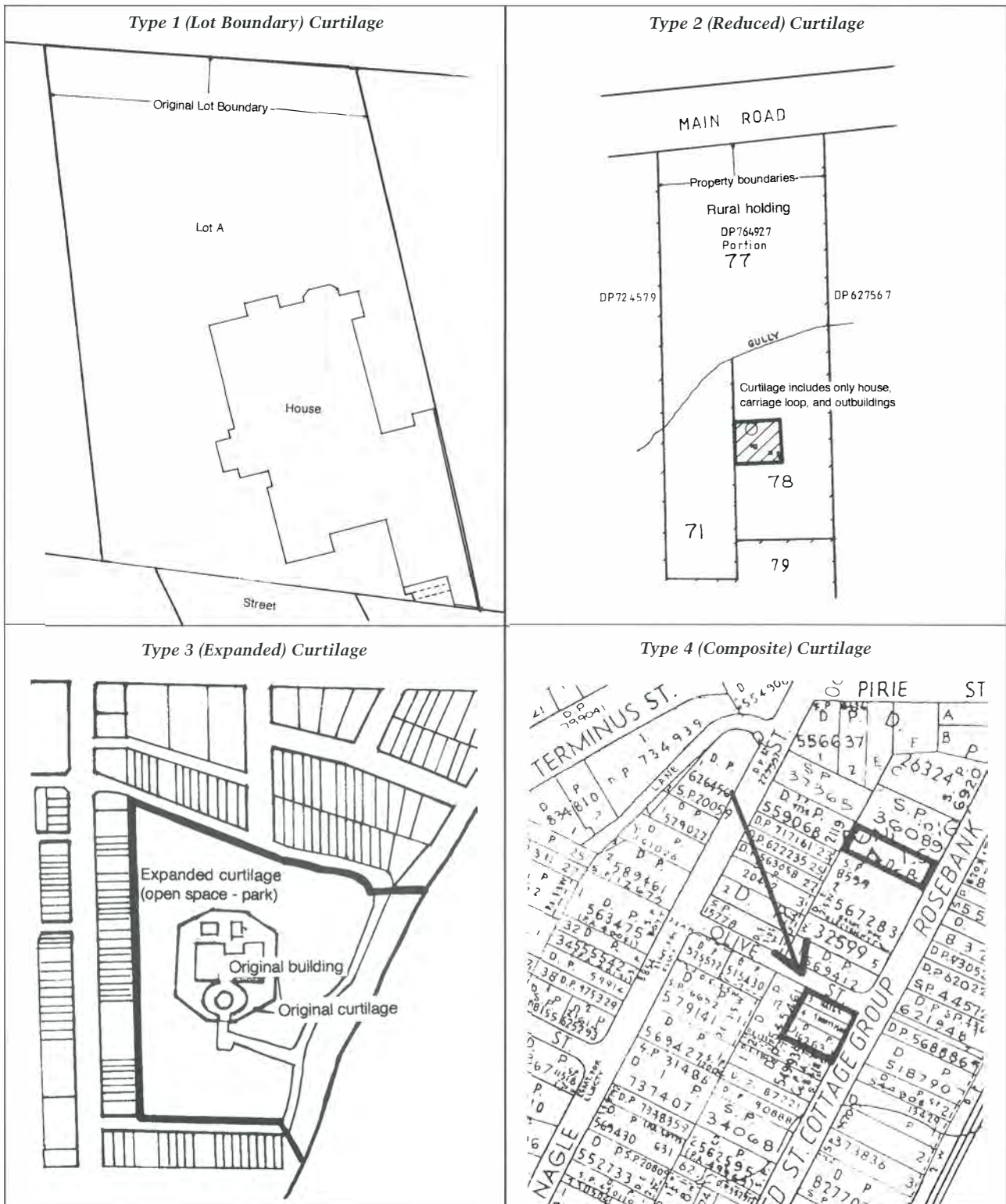


Figure 1
These sketches show the four different types of curtilages: Type 1, where the property's legal boundary and the significant land coincide; Type 2, where the significant land is smaller than the legal boundary; Type 3, where the significant land is greater than the legal boundary; and Type 4, where a composite curtilage embraces a whole precinct or village.

Curtilage Types

The heritage curtilage should contain all elements contributing to the heritage significance, conservation and interpretation of a heritage item. The curtilage is defined by a line on a map, which will not necessarily coincide with the property boundary.

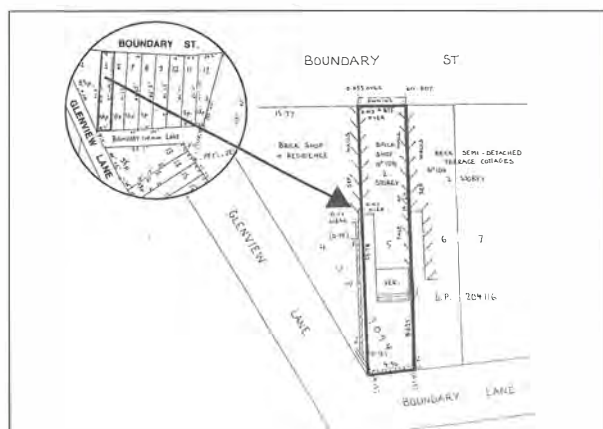
Four types of heritage curtilage are described below:

LOT BOUNDARY HERITAGE CURTILAGE

The most common type of heritage curtilage comprises the boundary of the property containing the heritage item as shown on the lot plan (see Figures 1 and 2). The property may also contain associated buildings, gardens and other significant features, including walls, fences, driveways or tennis courts, which contribute to the heritage significance of the property.

While this option will not protect heritage significance adequately in all cases, most suburban dwellings of heritage significance will not require any other sort of heritage curtilage (see Figure 3), though the street itself may contribute to heritage significance. A rare exception is a structure which was an outbuilding to a more important structure. If the main building still exists, it may be desirable to provide a heritage curtilage which maintains the link between the two.

Figure 2
A Lot Boundary (Type 1) curtilage, where the significant land around the principal heritage item coincides with the legal boundary (heavy black line). The great majority of urban heritage places fall into this category.



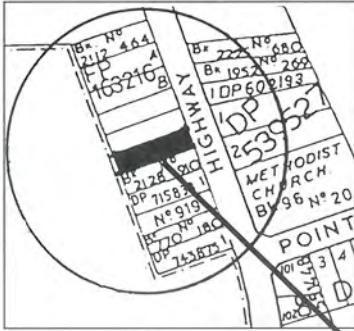


Figure 3
The photograph shows a heritage vernacular building, the Miner's Cottage, Princes Highway, Bulli, on its original lot. The boundary of the allotment provides an adequate curtilage for this type property.
Photo: Lindy Kerr

REDUCED HERITAGE CURTILAGE

This type of heritage curtilage is less than the lot boundary of the property. It arises where the significance of an item may not relate to the total lot, but to a lesser area, and is often only defined when development occurs. An example is when a large estate containing a heritage item is to be subdivided (see Figure 4), or when a second dwelling is proposed to be constructed on land containing a heritage item. In these cases it is necessary to identify a heritage curtilage which is less than the property boundary, but is still sufficient to maintain the heritage significance of the item.

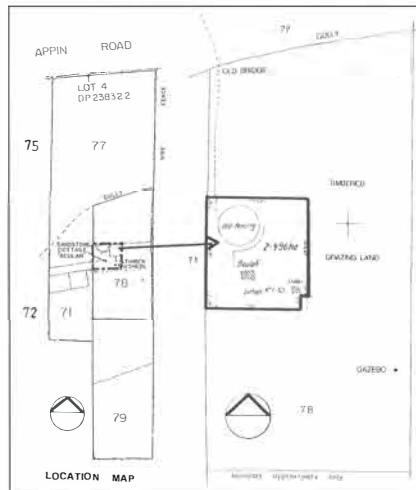


Figure 4
The plan illustrates a reduced (Type 2) curtilage determined for the heritage homestead of Beulah, near Appin, by a Commission of Inquiry in 1987. As the location map shows, this was considerably smaller than the boundary of the whole property. While the relationship of the buildings to each other was maintained, their relationship to the original farm (including the creek and main road) was lost, making subsequent interpretation and understanding of its significance more difficult.

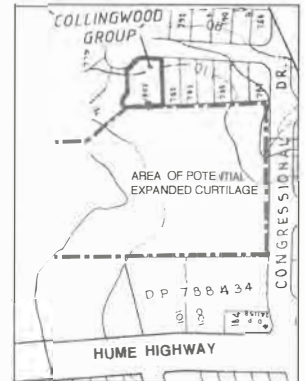


Figure 5
An expanded (Type 3) curtilage, where the land in front of the old homestead of Collingwood at Liverpool is functioning as an expanded curtilage. Photo: Warwick Mayne-Wilson

EXPANDED HERITAGE CURTILAGE

There may be circumstances where the heritage curtilage may need to be greater than the property boundary (see Figures 1, 5 and 6). Depending on the topography, an expanded curtilage may be required to protect the landscape setting or visual catchment of a heritage item.

In defining an expanded heritage curtilage, it is important to identify the prominent observation points from which the significant item can be viewed, interpreted and appreciated. Other factors to be considered are:

- views to and from the heritage item
- the possible need for a buffer area between the curtilage and the adjoining land
- the visual and historical relationship between the item and its environs.

An expanded heritage curtilage may also be needed to provide a public open space foreground setting to a heritage item or to allow it to be viewed “in the round” (see Figures 6 and 7).



Figure 6 (top)
This photograph of the Sydney Opera House shows the extensive forecourt (made possible by an extended curtilage) which provides not only for the circulation of people and vehicles around it, but also sufficient space for the dramatic forms of the building to be fully experienced from the land. Photo: Warwick Mayne-Wilson.

Figure 7
The second photograph shows how the expanded curtilage around the Opera House allows it to be fully experienced in its harbour setting. The harbour itself provides an additional visual curtilage, enabling the concept of the building’s “sails” to be appreciated. It also allows the Opera House to be viewed “in the round” and against various backdrops, but always as a landmark and symbol of Sydney’s cultural vitality. Photo: Department of Public Works and Services.



HERITAGE CURTILAGES



COMPOSITE HERITAGE CURTILAGE

This type of curtilage applies to heritage conservation areas and defines the boundaries of land required to identify and maintain the heritage significance of an historic district, village or suburban precinct (see Figures 1, 8 and 9). The curtilage will encompass heritage items which have a distinctive homogeneous character. An example is the village of Berrima (Figure 8).

The heritage significance of many suburban buildings is derived from their contribution to a group or cluster of similar buildings (Figure 9). In these cases, the curtilage is based on the perimeter of the whole precinct, not individual lot boundaries.

Defining the boundaries of a composite heritage curtilage can be difficult. The following are useful to take into account:

- the boundaries of the original settlement, land grant or subdivision
- edges suggested by a concentration of early buildings and sites
- edges defined by old maps
- the collective significance of items in the area
- the quality of the major public spaces
- the landscape setting of the area
- the heritage significance of individual items and their place in the area.

For further information regarding this type of curtilage refer to *Conservation Areas* (1996).

Figure 8
The outside perimeters of fifteen land units with various heritage values (outlined by dotted lines) in the town of Berrima in New South Wales together constitute a composite curtilage for the village. Map: Lester Firth and Murton Pty Ltd.



Figure 9
These old vernacular buildings in Windsor Street, Richmond derive much of their heritage significance from constituting an intact group, or precinct. A composite curtilage would follow the perimeter of the whole group of cottages, as shown on the map. Photo: Warwick Mayne-Wilson.

Establishing Curtilages

THE IMPORTANCE OF RESEARCH

Thorough research on the heritage significance of the item is essential prior to defining a heritage curtilage. This may already have been undertaken by a heritage consultant as part of a heritage study or in the development of a conservation plan. If you are commissioning research, you will need to ensure that the consultant follows the procedures described in the *NSW Heritage Manual* (1996) and James Kerr's *The Conservation Plan* (1990).

The research should not only establish the heritage significance of the item, but also make recommendations on related factors, including:

- historic land subdivision patterns
- archaeological features
- visual, physical, historical and functional links with important features in the area
- setting, views and landmark qualities.

These factors must be taken into account when a heritage curtilage proposal is being prepared as part of a heritage study, conservation plan or planning instrument. If the need to protect heritage curtilages is not clearly proposed and justified at the research stage, it will be difficult to defend them at later stages.



HERITAGE CURTILAGES

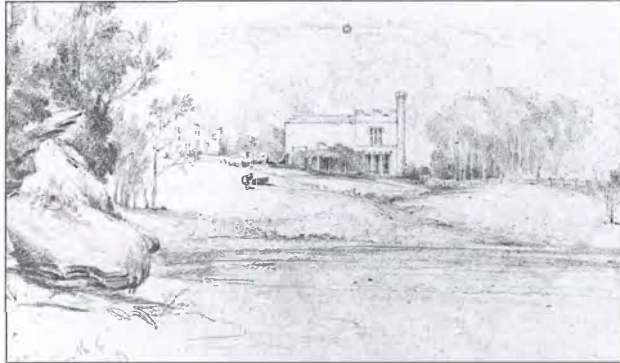


Figure 12
Conrad Marten's sketch of 1860 shows how Vacluse House was originally conceived as a marine villa, placed in a picturesque setting at the head of Vacluse Bay and backed by a high ridge with "wild" vegetation. Source: Mitchell Library.



Figure 13
The aerial view of the Vacluse estate in 1979 shows how, while the setting remains much the same, the concept of the marine villa has been largely lost because of later planting between the house and Vacluse Bay, and by the residential subdivisions around the sides of the bay and on the ridge. However, the core area of the original estate has been kept largely intact. Photo: Jeff O'Loughlin.

Heritage curtilages are essential for our ability to interpret the significance of heritage items. A curtilage should contain evidence of any cultural associations as well as providing a visual and aesthetic context for the item. For example, the interpretation of Vacluse House would have been improved with a more ample curtilage to retain the original "marine villa" concept (see Figures 12 and 13). However, some of this land is in public ownership and the historically important links to the water are maintained.

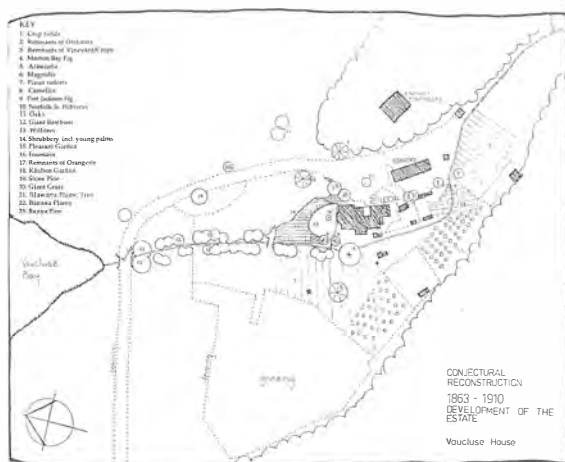


Figure 14
This plan shows the layout of Vacluse Estate – the residence, together with its out-buildings, driveways, pleasure garden, fencing and principal trees. All these elements provide valuable information about the design ideas, style and tastes of the period. Fortunately, most have been retained within its present curtilage. Source: Vacluse Estate, Heritage Conservation Group Study, University of Sydney, 1992.

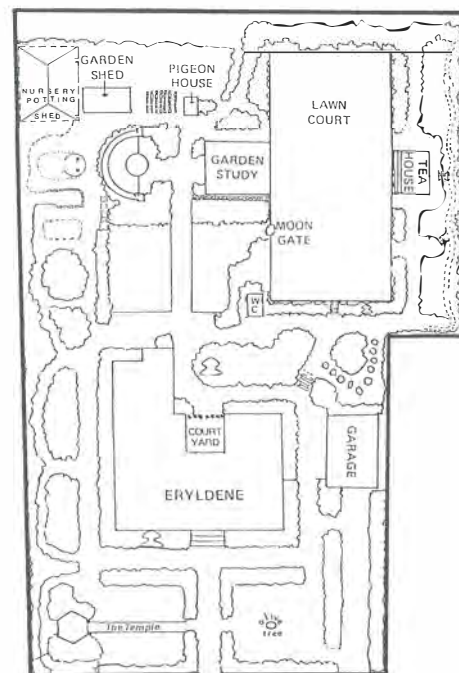


Figure 15
The plan of Eryldene, Gordon shows the combination of the residence and its associated "garden rooms", courtyard, "temple", tennis court, tea house, pigeon house, garden study, nursery potting shed, etc. It is essential for a curtilage to include all these significant elements (which fortunately it does). Source: Eryldene Trust.



DESIGN, STYLE AND TASTE

The design of a heritage item and its grounds can reveal much information about the architectural ideas, style and taste of its historical period. It can also be an essential part of the heritage significance of the item. Associated elements such as driveways, visual axes, plantings and fencing can provide valuable additional interpretive information. Accordingly, a heritage curtilage should include these elements. The plan of Vaucluse Estate (Figure 14) shows the location of such features which contribute to our understanding of mid-19th century garden and estate design.

The relationship of a heritage item, including a building, work, relic or tree with its setting may be an indivisible part of the heritage significance of a site or place. An example of this is the case of buildings where forecourts, courtyards, patios and garden "rooms" have been deliberately designed to integrate the house into the garden, ensuring easy visual and physical access between the two elements (eg Eryldene and its garden – Figure 15).

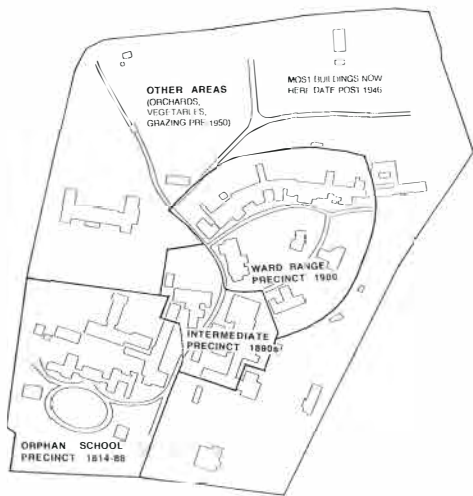


Figure 18 (above)
The sketch shows, from bottom left, the successive development of the various precincts of Rydalmere from 1814 to post-1946. Sketch: Schwager Brooks and Partners.

Figure 16 (right)
This old painting of the rear of Abbotsford, near Picton, illustrates the setting of the homestead in a bowl of land between the hill at its rear (the foreground of this picture) and the hills of the distant Razorback Range. The small township of Picton at the foot of the range is linked to the homestead by the road, with its planted carriage drive.



Figure 17
This pre-1950 aerial photograph of the Rydalmere Hospital complex shows the original association of the Female Orphanage (bottom left), both with the Parramatta River and with the land to the north of it, which contained orchards, vegetable gardens, etc. Photo: Jeff O'Loughlin.

FUNCTIONAL USES AND INTERRELATIONSHIPS

The significance of heritage items often involves their wider setting. This may provide evidence of historical, social and cultural associations and uses which is integral to the heritage significance of the items. It is often the interaction of a heritage item with its surroundings through activities, functions and visual links that enables its heritage significance to be fully appreciated (Figure 16).

Well-considered landscape curtilages can provide physical evidence of historical associations between the land and successive human activities and structures upon it. Rydalmere Hospital (Figures 17 and 18) shows how the complex grew from the Female Orphan School of 1814 to a series of mental health building precincts. One aspect of the site's heritage significance is evident from the way it reveals the growth of mental health care in NSW.





The heritage significance of many rural properties is derived partly from the range of activities carried out on the surrounding area over time and from their relationships to the main building(s). This is well demonstrated at Rouse Hill House, Rouse Hill (see Figure 19). Wherever possible, sufficient area should be included within a heritage curtilage to enable such relationships to be appreciated.

Figure 19 (right)

This sketch plan of the Rouse Hill estate shows the range of activities (indicated by the numerous out-buildings) which were originally carried out there, and which add greatly to its interpretation. A curtilage for such properties needs to include all of these elements in a way that allows their functions and inter-relationships to be understood. Source: Michael Bogle, Historic Houses Trust.

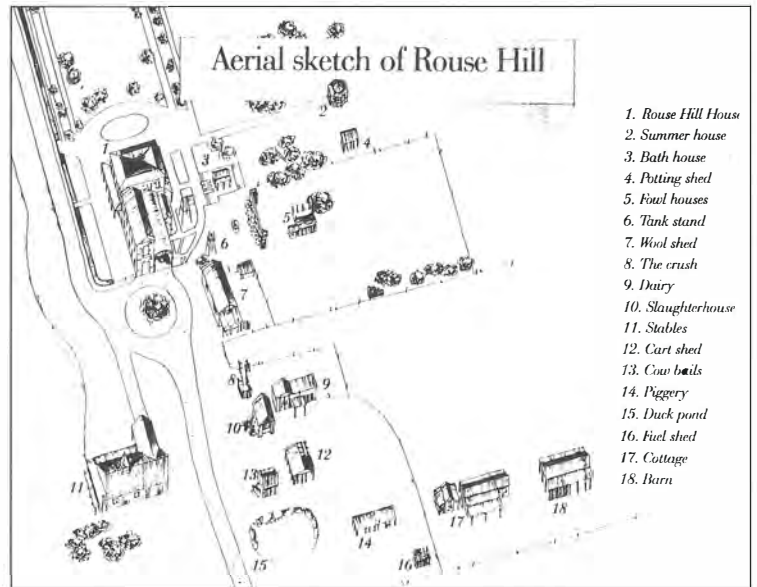


Figure 20 (left)

This 1994 photograph of Lyndhurst in Hunters Hill shows the visual link between the mansion and the distant city. Originally, the grounds extended to the river, but because only a small curtilage was provided, subsequent subdivisions resulted in the erection of buildings in the intervening space. Fortunately this has been done in such a way that, in conjunction with the steepness of the slope, the original visual link with the city has been retained. Photo: Warwick Mayne-Wilson



Figure 21

This photograph from around 1950 of the view from Swifts, Darling Point illustrates the original visual link between the mansion and the harbour. The advent of very tall apartment blocks in the 1970s and 1980s has greatly reduced this view. It demonstrates the need to maintain stringent height controls and visual curtilages in areas where visual links need to be maintained for the full heritage significance of a place to be gained.



VISUAL LINKS

The heritage significance of some properties includes a visual link between them and a harbour, river, transport mode, topographic feature, area of work or recreational area. Harbourside properties are good examples of this (see Figures 20 and 21). The ability to interpret heritage significance is increased if the heritage curtilage can also maintain the earlier physical link.

The heritage significance of some buildings and their gardens can best be interpreted and appreciated if the original views of a river (Abbotsford House, Abbotsford – see Figures 22 and 23), harbour (Vaucluse House – see Figure 13), or mountain range (Moonby – see Figure 24) are retained.

It is important that planning controls or other development guidelines ensure any new development which may be introduced respects these visual corridors.



Figure 24
This close-up photograph from the mid-1980s shows Moonby, Kootingal in its rural setting, backed by a range of hills.



Figure 22 (top)

This recent photograph shows Abbotsford House, Abbotsford, which has been surrounded by factory buildings for many years. The lack of a curtilage on the sides and rear prevented an appreciation of the house in its original setting.

Figure 23

Fortunately, however, the visual catchment to the Parramatta River, shown in this photograph, was retained.

Photos: Stuart Humphreys.



SCALE

Care is needed to ensure there is a satisfying proportional relationship between the heritage item and the area of land proposed as a curtilage.

Mass and scale should be considered when establishing heritage curtilages for large urban properties in original 19th century allotments. This issue is illustrated in Figures 25 and 26 of Abbotsford House, Abbotsford, and around homesteads in rural estates near expanding townships (eg. Moonby, see Figure 24).

Some properties have become important landmarks contributing significant panoramic views in the locality. They often provide visual pleasure and a reference point for travellers. It is important not to lose these qualities through inappropriate high-rise development on surrounding land (eg. Swifts at Darling Point Figure 27).



Figure 25

This early undated photograph of Abbotsford House, Abbotsford taken from the western side, reveals the eucalypt forest which originally surrounded the residence. At that time the house was in proportion to the scale of the forest. Photo: Courtesy of Edgar Parson.

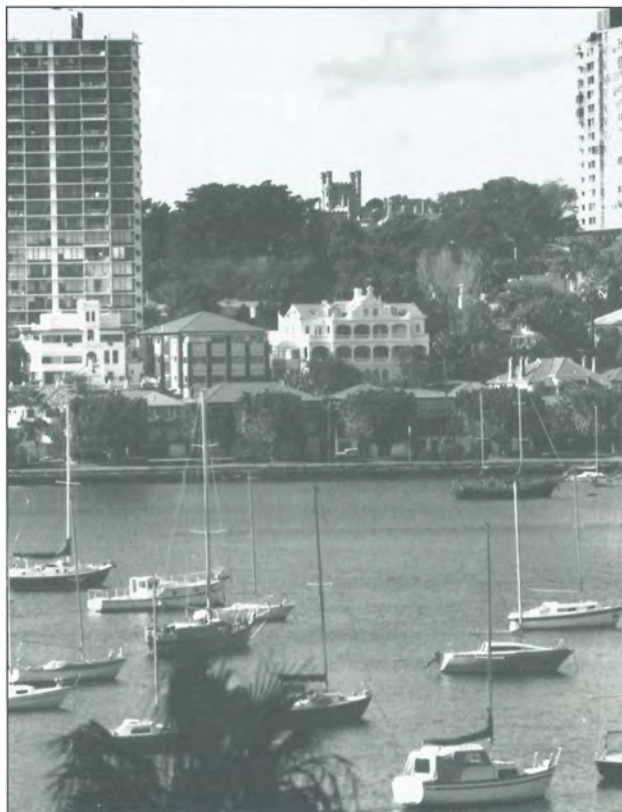


Figure 27

This 1983 photograph shows how the original landmark quality of Swifts from the harbour has been lost through the erection of high-rise apartment blocks in close proximity to it. Photo: Jeff O'Loughlin.



Figure 26

This 1980 photograph shows the overall site in which Abbotsford House is located. The mansion would be dwarfed by the scale of a bare site when the factory buildings are removed. They will be replaced by medium density housing similar in scale to the original forest, but set further back than the present factory buildings, providing an adequate curtilage for the house. Photo: Jeff O'Loughlin.



SIGNIFICANT FEATURES

These include bridges, outbuildings, gazebos, ornamental pools, planting features, moon gates, tennis courts, wells, paths and driveways, fences, jetties or wharves. They may have historical, aesthetic, scientific or social importance which contribute to the heritage significance of the property. Figs 28 and 29 show a tennis court and an ornamental pond which contribute to the heritage significance of the garden and mansion of Whitley, Sutton Forest. Such elements were also included in the design for the Wisteria Gardens in the grounds of Cumberland Hospital, Parramatta (see Figure 30) and should be considered in any future heritage curtilage.

Significant features may not necessarily be grand or attractive to all eyes. They can be as simple as the double-seater privy in the back yard of a miner's cottage at Hill End (see Figure 31) or a stone wall marking the boundary of an early subdivision (see Figure 32). Not only do these items have historical and social significance in their own right, but they can be used to help define a heritage curtilage for the main heritage structures.



Figure 28

The tennis court at Whitley, Sutton Forest is an important element that should be included in the curtilage of this significant garden. It also contributes to understanding the role played by the owners of this country residence in the recreational and social life of the area.

Photo: Warwick Mayne-Wilson



Figure 29

This ornamental pool, also at Whitley, is another important element that needs to be included in the curtilage for this garden. Photo: Warwick Mayne-Wilson.

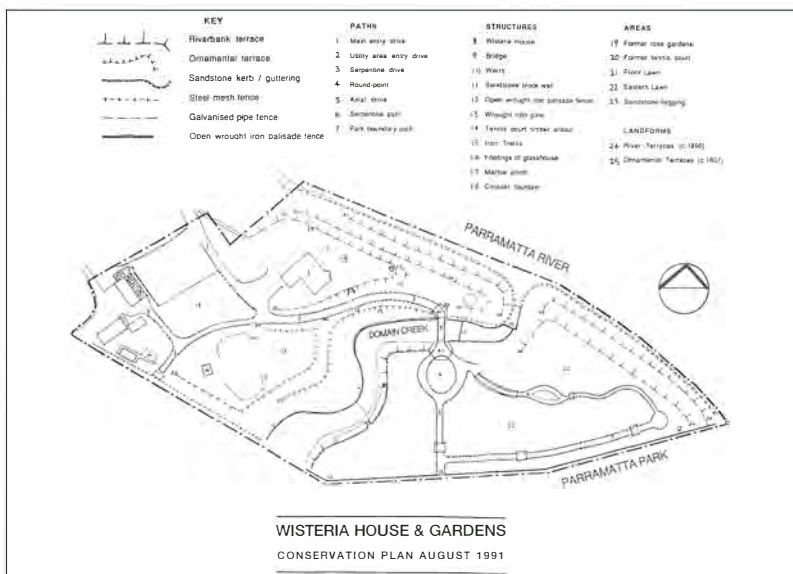


Figure 30

This 1991 plan of the Wisteria Gardens in the grounds of Cumberland Hospital, Parramatta shows the many components that its designers used to create the total effect. They are all included in the curtilage of this significant garden.

Source: Tropman & Tropman Architects.



Figure 31
This old privy in the backyard of a miner's cottage in the Hill End conservation area is a significant feature that tells not only about sanitary arrangements in this gold mining town but also about family size and social behaviour. Its position at the back of the yard helps to define the curtilage for the rear of the property. Photo: David Beaver.

VEGETATION

Trees or shrubs may be the sole remnants of:

- the original garden, (as in abandoned farm house at Burra Burra – see Figure 33)
- avenue entry drives, (as at Abbotsford, Picton – see Figure 34)
- perimeter or feature planting, (as at Bella Vista, Kellyville – see Figure 35).

They may have historical, aesthetic and scientific value for such reasons and be significant in their own right.

There may also be smaller plantings, including small trees, shrubberies, perennials and ground covers which were part of the garden design and setting of a building. As at Vaucluse House, they may be elements of a particular garden style of heritage significance in its own right. These plantings should be included within a heritage curtilage and can often help to define its perimeter.



Figure 32
This original stone wall marks the boundary of the first sub-division in Stanley Road, Hunters Hill and is a significant heritage item because it clearly reveals part of the settlement pattern of the area. It could also be used to help define part of the curtilages for historic items, such as churches, mansions and schools, which were built within it. Photo: Warwick Mayne-Wilson.



HERITAGE CURTILAGES

It may be necessary to retain plantings to frame or screen heritage items (see Figures 36 and 37 of Closebourne, Morpeth). These may include original plantings which are of historical or scientific significance or those contributing to the visual amenity of the area, protecting it from visual intrusion or consolidating its “sense of place”.

Trees may also enhance the appreciation of some heritage items by providing:

- an enclosed environment (as at Bella Vista, Kellyville – see Figure 35)
- a landmark (as at Tebbutt’s Observatories, Windsor – see Figure 38)
- a soft backdrop when viewed from a distance.

Trees of heritage significance may be protected by tree preservation orders, heritage listing in a planning instrument or, in special circumstances, by orders under the Heritage Act, 1977 where their level of significance may warrant such action.



Figure 35

The rows of bunya pines leading up to the homestead of Bella Vista at Kellyville focus attention on the homestead when viewed from a distance, and also frame the view out from the homestead. In the future this avenue will also help as a visual buffer to screen proposed nearby residential development. It is intended to increase both avenues in the curtilage for this heritage property. Photo: Lindy Kerr.



Figure 33

A fence of aloes around an old farm house on a property near Burra Burra, South Australia. This type of fencing was often used in the 19th century, particularly where local timber was scarce. Its sharp pointed leaves also kept stock from trying to eat it or break through it. This fence planting provides an obvious curtilage for the homestead paddock. Photo: Warwick Mayne-Wilson.



Figure 34

The remaining trees in front of Abbotsford, Picton indicate the position of the original driveway to the house. This avenue not only created a sense of arrival to the homestead, but also framed the vista from the house to the distant Razorback Range. It should have been included in the curtilage for Abbotsford for these reasons. Photo: Jeff O’Loughlin.



HERITAGE CURTILAGES

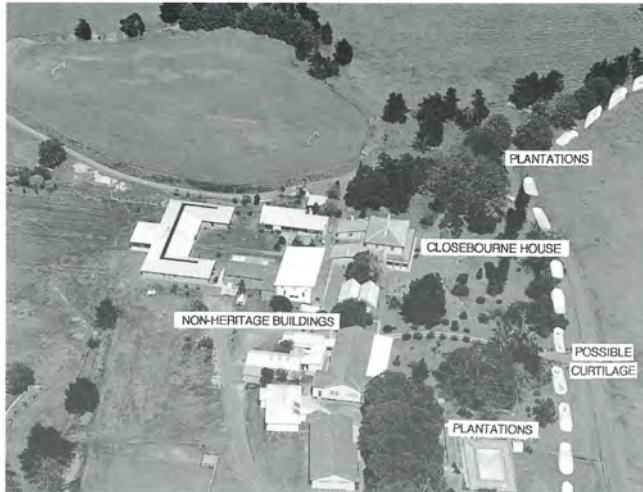


Figure 36

This aerial photograph shows the original tree planting around Closebourne at Morpeth, which screens from public view the later, non-heritage buildings adjacent to it, and helps protect the hill-crest property from winds. Photo courtesy of Closebourne Anglican Conference Centre, Morpeth.

Figure 37

The photograph shows in elevation how these plantations of trees effectively frame Closebourne and screen its adjacent, non-heritage buildings. While they suggest a logical curtilage for the front of the property, the original planting concept was also to frame the view out to the Maitland River and Great Dividing Range from the front of the house. Accordingly, provision for a visual curtilage reflecting the cone of vision out to those elements would also need to be included in the final curtilage.

Photo: Tropman & Tropman Architects.



Figure 38

This photograph shows how the mature 19th century plantings of araucarias, pines, cabbage tree palms and cypresses at Tebbutt's Observatories at Windsor give a landmark quality to this heritage place. Items like these should be included in curtilages for heritage places.

Photo: Warwick Mayne-Wilson.



HERITAGE CURTILAGES

ARCHAEOLOGICAL FEATURES

Many properties, particularly remainders of original estates, contain archaeological elements such as old foundations, wells, pits, paths and drains. These elements, which have research potential, may be underground (eg. original foundations) or even underwater (eg. shipwrecks). Such elements should be included within the curtilage, even when they extend beyond property boundaries (eg. the Old Stockade Site, Newcastle – see Figure 39, and First Government House, Sydney).

Old mining areas also contain a range of industrial relics, as well as dams, water races, old tailing deposits, pits, and mine shafts. The heritage curtilage should encompass such elements to enable the functional relationships of the whole site to be conserved and interpreted (eg. at Adelong, Joadja, Hill End and Junction Reefs Dam – Figure 40).

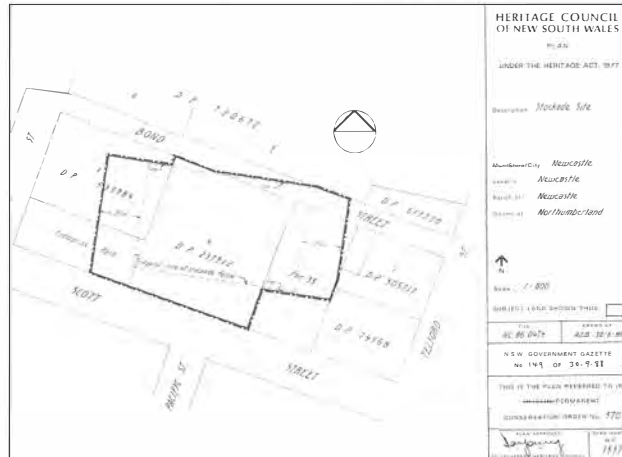
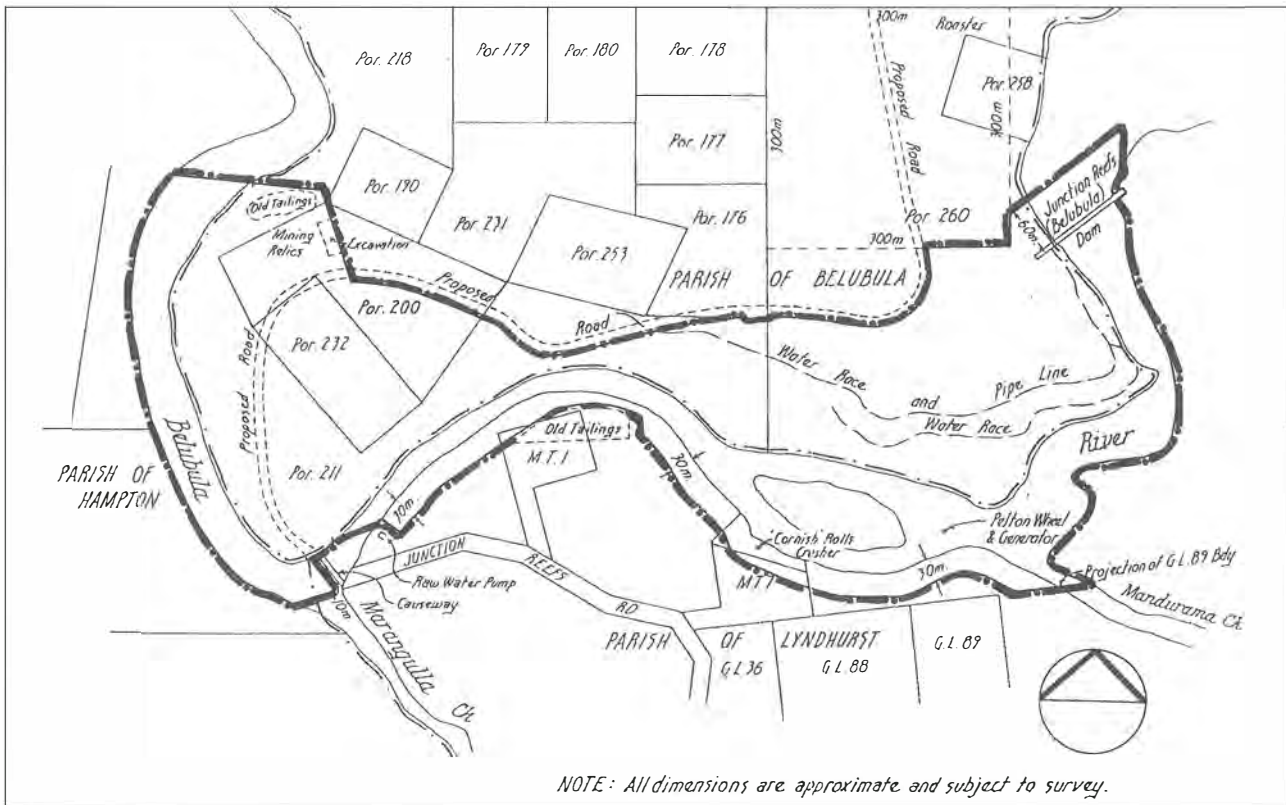


Figure 39
The map shows how a curtilage has been provided, through a permanent conservation order, to protect the foundations of the stockade site at Newcastle, even though they are no longer visible. Note that the curtilage is larger than that of the foundations themselves, making it an example of a Type 3 curtilage.



NOTE: All dimensions are approximate and subject to survey.

Figure 40
This map shows the curtilage around the old mining complex at Junction Reef near Blayney. It includes the most significant sections of the complex, such as dams, water races, old tailing deposits, generators and crushers.

Managing Curtilages

Once the heritage significance of an item has been assessed and an appropriate heritage curtilage established to conserve the heritage significance of the item, the next step is to protect and manage this curtilage. Statutory and non-statutory protection and management tools are available.

For further guidance, refer to *Conservation Areas* (1996) and Heritage Planning Notes 1 and 2 in the *NSW Heritage Manual* (1996). Note No. 2 includes standard heritage provisions for draft LEPs.

STATUTORY CONTROLS

Statutory heritage listing protection is available through:

- listing in a regional environmental plan (REP)
- listing in a local environmental plan (LEP)
- in special cases, an order under the Heritage Act, 1977.

Heritage curtilages can be protected through zoning and special provisions in REPs and LEPs. Development control plans (DCPs) can also be used to support the provisions of an REP or LEP. DCPs can define the curtilages of items, encourage compatible forms of development and provide more detailed design requirements.

Other statutory protection is available through the provisions of the Local Government Act, 1993 (eg demolition control, local approval and order policies applying to heritage). Also items in State government ownership are identified through Section 170 of the Heritage Act, which requires government agencies to prepare heritage and conservation registers of their heritage assets and manage them accordingly.



HERITAGE CURTILAGES

NON-STATUTORY CONTROLS

Non-statutory controls can be introduced through conservation or management plans which supplement or support a statutory protective mechanism. Such documents should clearly state how they apply to the assessment of development applications for items with heritage curtilages. For example, they could set out the matters that ought to be taken into account in the decision-making process and how they should be considered.

DEVELOPMENT CONTROL MECHANISMS

Relevant development control mechanisms include:

- listing a heritage item in an environmental planning instrument, by special markings or colouring on a map, including all the significant elements within the heritage curtilage which are to be protected;
- listing a heritage conservation area in an environmental planning instrument;
- appropriate zoning, e.g. open space or environmental protection;
- specifying permissible land uses, subdivision or development within or near heritage curtilages;
- the identification of visual catchments to protect the setting and any visual links between the heritage item(s) and significant elements in the vicinity (eg Barooka and Minimbah near Singleton);
- height, form, scale, and setback limits for development within heritage curtilages or adjacent buffer areas and visual catchments;
- screening through planting, mounding or fencing between heritage properties and proposed new subdivision or development;
- archaeological excavation permits within heritage curtilages or areas of archaeological potential; and
- Tree Preservation Orders for special stands or individual specimens of heritage significance.

PERIMETERS OF COMPOSITE CURTILAGES

When determining the perimeter of a composite heritage curtilage, consideration should be given to:

- the heritage significance of the area, including its history and original subdivision boundaries
- the physical integrity of the area (eg, one with consistent streetscapes or landscapes defined by features such as streets, freeways, railways, water courses and changes in land use) for parks and gardens –
 - the furthest extent of drives and path systems originating from the principal residence or other main features;
 - the location of entrance gates and lodges
 - the pattern of plantations, especially perimeter belts.

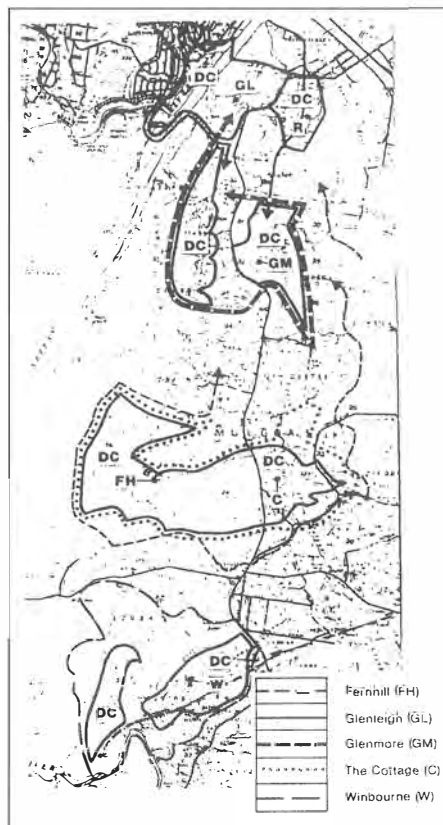


Figure 41

This map shows the historic curtilages defined for heritage properties in the Mulgoa Valley in Sydney Regional Environmental Plan No. 13.

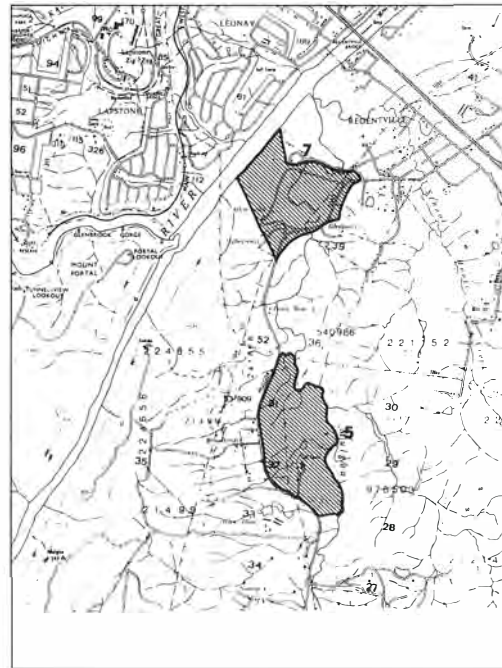
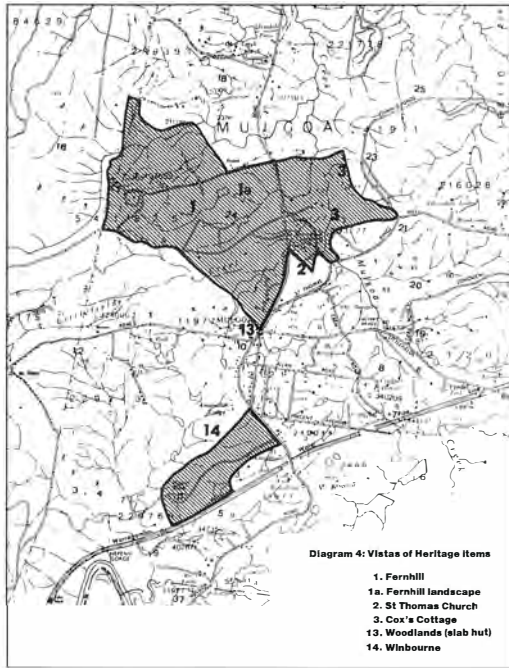


Figure 42
These maps from Sydney Environmental Plan No. 13 show the vistas of some heritage items in the Mulgoa Valley.

The drawing of perimeters may also be influenced by other factors, such as:

- changes in land use;
- street patterns and widths;
- concentrations of buildings of the same historical period; and
- building setback lines.

There are practical issues in drawing composite curtilages. Should they be drawn down the centre of roads or rivers, along one kerb or the other? Alternatively, should they follow rear property boundary lines to ensure that the sense of enclosure and the interrelationship of items within streets are retained? The statement of heritage significance for the area should help clarify these issues.

OTHER NOTATIONS

In the land beyond the heritage curtilage, there may be important views which should be recorded. In Regional Environmental Plan No. 13 Mulgoa Valley, the historical curtilages were recorded separately from the viewsheds. However, curtilages and viewsheds can be combined on one curtilage map for each site (see Figures 41 and 42). In Britain, lands which have a connection with, but are outside the area being protected, are noted as contributing to the significance of this area.

PERMITTED USES

LEPs and DCPs should include appropriate heritage conservation provisions to facilitate development or uses which will not adversely affect the heritage significance of the heritage items within a proposed heritage curtilage. The provisions should be used to reassure owners of properties with heritage curtilages that appropriate changes of use can be permitted. The aim is to ensure the conservation of such properties by maintaining their economic viability.

Attention should be given to proposed development within a heritage curtilage, such as building extensions, garages, car parks, tennis courts, and swimming pools. These proposals must be assessed against criteria for determining heritage curtilages to ensure that there is no adverse impact on the heritage significance of the item or its setting.

URBAN CONSOLIDATION

The NSW State government's urban consolidation policy has encouraged many applications for the subdivision of land from old suburban allotments. If a council agrees, this land may be sold to permit a new dwelling to be erected on a separate title, or pooled to create an area sufficient for medium density development.



If the property is of heritage significance, approval should only be given after consideration of any potential impact on its heritage significance. Options for ameliorating any potentially adverse impact on the heritage significance of the item or its setting should also be considered.

STREETSCAPES

Care should be taken to ensure that, where a heritage curtilage is proposed for a streetscape, the streetscape is of clearly established heritage significance. Areas with general amenity features the community may wish to maintain should be controlled by other means (eg non-heritage planning controls).

Where a streetscape is of heritage significance, it may be necessary to consider an expanded heritage curtilage (eg. a heritage conservation area) in order to place stricter controls over permissible activities in the vicinity. A DCP can provide appropriate heads of consideration for new development to ensure compatibility with the heritage streetscape.

Significant street features including kerbing, fences and street furniture should be included in any identification, assessment and management processes.

Appendix

Definition Precedents

COURTS AND COMMISSIONS OF INQUIRY

In 1955 a judge of the Full Bench of the High Court of Australia said a curtilage was “...a larger area of land [than the footprint of the building] which subserves the purposes of the building. The land surrounds the building because it actually or supposedly contributes to the enjoyment of the building or the fulfilment of its purposes... [In deciding on a curtilage] one would do one’s best to fix on an area of land which is seen to comprise all that is really devoted to the better use or enjoyment of the house as a dwelling ...” (see *Royal Sydney Golf Club v Federal Commissioner of Taxation*, 1955, 51.610 at 626).

Although the term curtilage was not often used by heritage consultants and conservationists in the 1970s, the concepts of setting, visual catchments, serial/sequential views, cultural landscapes and spatial qualities have been addressed in conservation and heritage studies undertaken for Berrima (1979), based on a 1972 study by Pike and Latona in which the term “visual catchment” was first used. In 1982, consultants undertaking a heritage study for the Blue Mountains stated that much of the significance of each heritage item in the Blue Mountains depended upon its immediate surrounds and broader setting. “Setting (Curtilage)” was defined as “the area of influence or setting of a heritage item which may vary from the surrounding garden and fields of a country house to the pavement of an urban building”.

In 1983, a Commission of Inquiry found that the area proposed as a curtilage for Swifts, Darling Point, formed “an integral part of the original design of the grounds”. It saw the “special relationship of the grounds to the mansion” as “a significant factor in determining the status of the grounds as an item of the environmental heritage” (see Figure 43).



A similar finding was made in 1986 for the Hotel Carrington at Katoomba. The Commissioner ruled that the area of significant land should include not only the hotel itself, but supporting outbuildings and the landscaped grounds (as shown in historical photographs). However, not all Commissioners of Inquiry have found in favour of proposed curtilages – see, for example, decisions on Moonby (Kootingal, 1981), Abbotsford (Picton, 1983) and Lansdowne (Goulburn, 1984). These items have narrow curtilages containing the principal outbuildings. Arguments for a wider concept of “setting” were dismissed.

NATIONAL TRUST (NSW)

The Trust has been refining its attitude to curtilages since 1982. A continuing concern has been how to protect items of lesser heritage significance on land surrounding major heritage buildings. Over the years it came to be recognised that the area of land over which protective controls may be needed should be greater than the mere “footprint” of those items. Buffer zones were one such control.

HISTORIC BUILDINGS COUNCIL, VICTORIA

In Victoria, registration includes the area of significant land bounded by a heavy black line on the plan as well as the significant items shown

numbered within that area, as illustrated in Figure 44. This not only protects the numbered items, but also controls development within the defined area. Such a listing has legal effect because it applies to an area of land in the same way as other laws control land use.

HERITAGE COUNCIL OF NSW

A similar approach applies to orders made under the NSW Heritage Act, 1977. The word “setting” has been adopted in the standard heritage provisions used in heritage LEPs. The words “in the vicinity” are also used. These expressions are used to mean “surroundings, context, environment or vicinity” of a heritage item.

WORLD HERITAGE CONVENTION

The criteria of the World Heritage Convention (1972) for listing include items which “are outstanding examples of... exceptional combinations of natural and cultural elements”, and places which “meet the test of authenticity in design, materials, workmanship or setting...”. While the Convention does not use the term “curtilage”, part of the definition of cultural heritage includes **“the placement of groups of buildings in the landscape”**. [Emphasis added.] All these characteristics are well illustrated in Figure 45.



Figure 43

This photograph of Swifts, Darling Point shows the spatial relationship between the mansion and the large grounds, which provide both a suitable aesthetic setting and appropriately scaled spaces for recreational and functional activities related to the mansion's many openings. The curtilage (dotted line) agreed to by a Commission of Inquiry comprises the original grounds bounded by the perimeter walls and trees.



HERITAGE CURTILAGES

AUSTRALIA ICOMOS BURRA CHARTER

While the Burra Charter also does not use the term “curtilage”, it states that “conservation requires the maintenance of an appropriate visual setting” and that “no new construction, demolition or modification which would adversely affect the setting should be allowed” (Article 8).

Environmental intrusions which adversely affect appreciation or enjoyment of the place should be excluded.” As Figure 46 shows, this is not always achieved, as shown by rural homesteads such as Moonby, which is being surrounded by subdivisions.

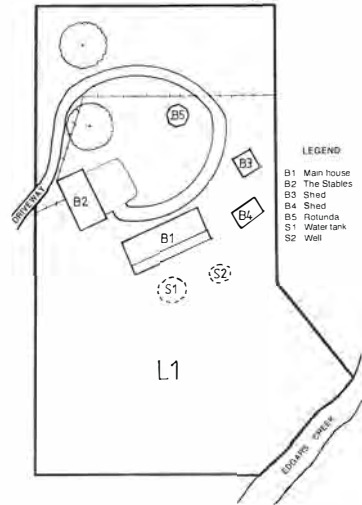


Figure 44

This sketch shows the curtilage around a farm in Victoria. The individual heritage items are numbered B1, B2, etc. within an appropriate area of significant land, shown as L1. This area is contained within the heavy black line, which has legal status on land maps.



Figure 45

This aerial view of the Thomas Walker Hospital in Concord shows the skilful placement of a group of elegantly designed and constructed buildings in the landscape. In this case the river, with its riparian vegetation, and the perimeter planting on the land together provide a natural curtilage to the estate. Photo: Jeff O’Loughlin.



Figure 46

The photograph was taken at the same time as Figure 24 from the most frequent viewing point of Moonby from the New England Highway. It shows how the setting of the house (in the distance, centre left) has been spoiled by providing too small a curtilage and allowing modern township subdivisions too close to it within its visual catchment.



“THE CONSERVATION PLAN”

James Kerr notes that the term “curtilage” remains an elusive legal concept, with either no definition or a distinctly ambiguous one. He prefers the use of “setting” to “curtilage” if a more general designation of a surrounding area is required, such as a visual catchment. He defines “setting” as “an area surrounding a place whose limits may be determined by sensory criteria: for example, visual (enclosing ridgelines or roofscapes), auditory (adjacent waterfalls or gravel quarries) and olfactory (tannery district).”

AUSTRALIAN HERITAGE COMMISSION

In the Australian Heritage Commission Act, 1975 a listed “place” includes the immediate surroundings of the place. A Commonwealth development adjacent to a listed place may invoke the provisions of the Act if it might significantly affect the National Estate values of the listed place.

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