

Planning and Assessment

IRF19/6032

Plan finalisation report

Local government area: Woollahra

1. NAME OF DRAFT LEP

Woollahra Local Environmental Plan (LEP) 2014 (Amendment No 13)

2. SITE DESCRIPTION

The planning proposal (PP_2018_WOOLL_001_00) (**Attachment A**) applies to the Rose Bay Uniting Church and Wesley Hall group of buildings (the site) at the corner of Old South Head Road and Dover Road, Rose Bay. The street address of the site is 518a Old South Head Road, Rose Bay, and is legally described as Lot 37, Section A, in DP 4567 (Figure 1).

The church and the two-storey school hall occupy most of the site. There are two small areas of lawn and landscaping on either side of the church building and a play area at the rear adjacent to the hall. The complex is surrounded by a brick and roughcast fence fronting Old South Head Road and Dover Road, and a timber paling fence along Dover Lane and the southern common boundary with the neighbouring site at 518 Old South Head Road.

The site is owned by the Uniting Church in Australia Property Trust (NSW).

The original church building was designed in the Gothic Revival style and constructed in 1905, with later additions in 1924 including a front entry porch and school room extensions to the rear. The church occupies a prominent street corner location and is a local landmark (Figure 2).

The school hall was constructed in 1929 comprising a first floor hall space with a capacity of 300 people and class room and ancillary spaces on the ground level. Modern amenities were added in the 1970's.

The church building has been leased as a dance studio and the school hall was used as a kindergarten facility until the end of 2017.



Figure 1 Aerial photograph of subject site (Source: Six Maps)



Figure 2 View of Rose Bay Uniting Church from Old South Head Road (Source: Planning Proposal, Woollahra Municipal Council)



Figure 3 Bird eyes' view of the subject site (Source: Rose Bay Residents Association)

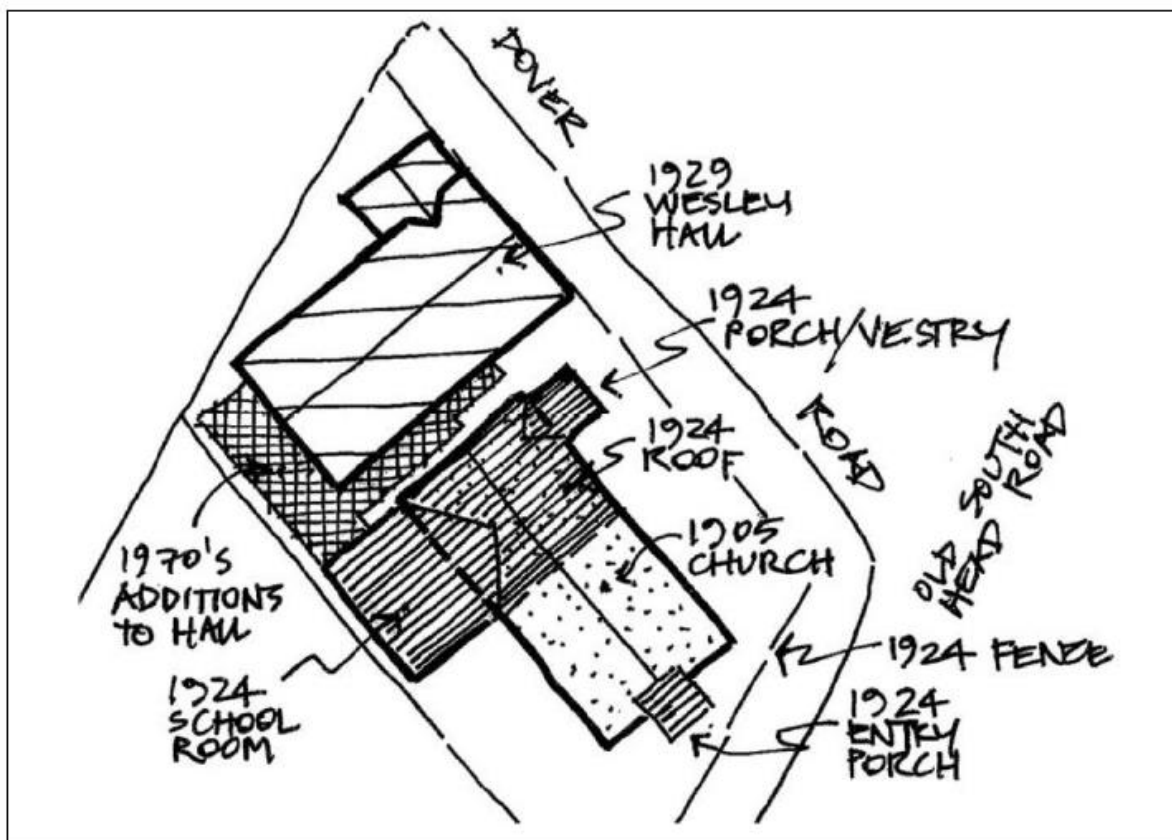


Figure 4 Stages of construction of the Rose Bay Uniting Church (1905 and 1924 extensions) and Wesley Hall (1929) (Source: RA Moore, February 2018, as extracted in Woollahra Municipal Council's Environmental Planning Committee report dated 5 August 2019)

3. PURPOSE OF PLAN

The draft LEP seeks to amend the Woollahra Local Environmental Plan 2014 as follows:

- Insert a listing for the site - church and interiors (including moveable heritage, vestry and 1924 additions) and Wesley Hall and interiors, in Part 1 *Heritage Items* of Schedule 5 *Environmental Heritage*;
- Amend the Heritage Map (Sheet HER_005) to identify a heritage item on the subject site at 518a Old South Head Road, Rose Bay (Lot 37, Section A, in DP 4567); and
- Insert a savings provision to apply to any development application lodged but not determined prior to the commencement of the amendment, as required by condition 1 of the Gateway determination issued by the then Department of Planning and Environment on 16 August 2018.

The draft LEP will not facilitate any additional dwellings or jobs within the Woollahra LGA.

4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Vaucluse state electorate. Ms Gabrielle Upton MP is the State Member.

The site falls within the Wentworth federal electorate. Mr Dave Sharma MP is the Federal Member.

To the Eastern Harbour City team's knowledge, neither MP has made any written representations regarding the proposal.

NSW Government Lobbyist Code of Conduct: There have been no meetings or communications with registered lobbyists with respect to this proposal.
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NSW Government reportable political donation: There are no donations or gifts to disclose and a political donation disclosure is not required.

5. GATEWAY DETERMINATION AND ALTERATIONS

Gateway determination:

The Gateway determination issued on 16 August 2018 (**Attachment B**) determined that the proposal should proceed subject to conditions. The determination did not grant Council delegation of the plan making authority and included condition 1, which states: "*The planning proposal is to be updated to include a reference to a savings provision to apply to any development application lodged but not determined.*"

The effect of the savings provision is that if a development application for the site has been submitted but not determined before the commencement of the LEP amendment, the application must be determined as if there is no heritage item on the site.

Gateway alteration:

The Gateway determination was altered on 9 April 2019 to amend condition 7 to extend the timeframe for completing the LEP by 16 February 2020 (**Attachment C**).

The Department received the request by Council to finalise the planning proposal prior to the due date. The Department is now satisfied that Council has met the conditions of the Gateway determination and the planning proposal is adequate for finalisation.

Background

Gateway review:

On 27 September 2018, Council sought a review of the Gateway determination requesting the removal of condition 1 and that reconsideration be given to Council being authorised as the local plan making authority.

On 8 February 2019, the review was referred to the Independent Planning Commission of NSW (IPC) for advice. The IPC considered the review and, on 15 March 2019, provided the following advice:

- *condition 1 should remain as part of the Gateway Determination;*
- *conditions 2 to 7 of the Gateway Determination are relevant and applicable and should remain; and*
- *Council should not be authorised to be the local plan making authority.*

Development application:

- On 20 April 2018, the land owner lodged a development application with Council (DA/160/2018) for adaptive reuse of the original 1905 church for potential retail or business premises; demolition of Wesley Hall and part of the church; and construction of a four-storey shop-top housing development with ten apartments and ground floor retail.
- On 22 June 2018, the land owner lodged a class 1 appeal in the Land and Environment Court based on a deemed refusal of the development application by Council.
- On 16 August 2018, the Woollahra Local Planning Panel refused the development application, based on a number of planning, design and heritage issues.
- On 31 May 2019, the Land and Environment Court upheld the appeal and approved an amended version of the development application, which retains and adaptively re-uses the 1905 church and 1924 additions but allows full demolition of Wesley Hall.

6. PUBLIC EXHIBITION

The proposal was publicly exhibited by Council from 10 April 2019 to 10 May 2019.

The proposal was re-exhibited from 12 June 2019 to 12 July 2019. The reason for the re-exhibition is that the proposal was amended (after the initial exhibition) to address conditions 1 and 2 of the Gateway determination to include:

- A reference to a savings provision to apply to any development application lodged but not determined prior to the making of the LEP.
- A rewording of the explanation of provisions to plain English.
- An updated project timeline.

The re-exhibition involved the following:

- 1) notices of the re-exhibition in the Wentworth Courier;
- 2) a public exhibition page on Council's website;

- 3) display of exhibition material at the Customer Service counter of the Woollahra Council Chambers at Double Bay; and
- 4) notification letter or email to stakeholders, including the owner of the site, adjoining and nearby property owners, Rose Bay Residents' Association, Waverley Council, the former OEH and anyone who made a submission to the original exhibition.

Council received a total of eight (8) submissions (**Attachment D**) in response to both the exhibition and re-exhibition of the planning proposal. A summary of the issues raised in the submissions and Council's response (**Attachment D**) are outlined below:

- The Woollahra History and Heritage Society and two local residents supported the planning proposal.
- The Secretary of the Rose Bay Precinct was concerned about increased traffic generated by new residential development. Council noted that this submission appeared to relate to the development application for the site rather than the subject planning proposal. The issue of traffic generation is not relevant to the subject planning proposal which seeks to include the group of buildings on the site as a local heritage item.
- Two submissions were made by Ethos Urban on behalf of the landowner, which did not support the planning proposal. These two submissions object to the heritage listing of the whole site on the following grounds:
 - Heritage listing of the whole site is not supported by the heritage submission prepared by Curio Projects dated May 2019.
 - The Uniting Church is facing financial pressures due to the relocation of the congregation and childcare. The income raised from congregation funding and rent of the property will not meet the costs for future conservation and maintenance of the buildings. The financial gain from the development of the site would allow for the Church's ongoing range of community activities both on and off the site, including affordable housing projects.
 - The heritage listing of all structures on the site would prohibit the development of the site having regard to the future character of the area. The development of the Wesley Hall portion of the site would allow adaptive reuse and retention of the church building and enhance activation, passive surveillance and public amenity along all street frontages.
 - The B4 Mixed Use zoning of the site facilitates the desired future character of the Rose Bay South mixed use centre and adaptive reuse of the existing building. The Woollahra Development Control Plan (DCP) identifies the Uniting Church as a local landmark but not the Wesley Hall; therefore the reuse of the Wesley Hall site would not undermine the presence of the church as a local landmark.
 - The heritage listing of the site should relate to the Church building and annex room only. The inclusion of a savings provision should be upheld.

Council's response is as follows:

- Council appointed Robert A. Moore, heritage architect and heritage consultant to undertake a heritage significance assessment of the site in accordance with the NSW Heritage Office guidelines. The assessment determined that the entire site has local heritage significance. The objection has not presented any information to indicate that the site does not meet the criteria for heritage listing.

- Financial viability is not applicable to heritage significance assessments or to heritage listing. Heritage listing does not preclude adaptive reuse, changes (including contemporary changes) or demolition (where appropriate and justified). Clause 5.10(10) of the Woollahra LEP includes conservation incentives for heritage items by permitting development for any purpose even though development for that purpose would otherwise not be allowed under the LEP, provided the heritage significance of the site is conserved and the amenity of the surrounding area is not adversely affected.
- The heritage listing of a site does not exclude alternative uses, alterations and additions or further development. A skilful proposal for the site could provide an outcome that meets the desired future character of the Rose Bay South mixed use centre, irrespective of heritage listing.
- The heritage significance assessment commissioned by Council determined that the entire site has heritage significance. Part D2 of the Woollahra DCP 2015 identifies the Uniting Church at 518a Old South Head Road as local landmark. As the site of 518a Old South Head Road encompasses both the church and associated buildings, the desired future character relates to the entire site, not just the church building. The desired future character of Rose Bay South centre promotes a number of development outcomes, including compatible land uses and vibrant centre activities. The conservation and adaptive reuse of the site are consistent with the desired future character of the Rose Bay South centre.
- Council does not support the inclusion of a savings provision in the LEP amendment. As will be discussed in the “Post-Exhibition Changes” section of this report, it is considered that a savings provision is no longer required.

The public exhibition requirement of the Gateway determination has been satisfied. Having regard to the above, it is considered that the issues raised in the submissions have been appropriately addressed.

7. ADVICE FROM PUBLIC AUTHORITIES

Council was required to consult the former Office of Environment and Heritage (OEH) (currently part of the Department of Premier and Cabinet) (DPC) in accordance with the Gateway determination.

The former OEH / DPC issued two letters (**Attachment E**) on 18 April 2019 and 24 July 2019 respectively raising no objection to the planning proposal. The DPC also encouraged Council to work with the applicant to minimise any further heritage impacts caused by the approved development of the site.

8. POST-EXHIBITION CHANGES

Council did not make any amendments to the planning proposal following public exhibition.

At the Ordinary Council Meeting of 12 August 2019, Council resolved to proceed with the planning proposal, as exhibited, and forward the proposal to the Department for finalisation and making of the LEP.

Council also resolved to request the Department not to include an amendment to Clause 1.8A of the LEP, that is, not to include a specific or additional savings provision applying to the site as part of the LEP amendment.

At the time when the Gateway determination was issued, there was an active development application for a mixed use development for the subject site (DA/160/2018), which was subject to proceeding at the Land and Environment Court. As such, a Gateway condition was included to require a savings transition clause to apply to any development application

lodged but not determined prior to the commencement of the LEP amendment. This will ensure the Court process could continue and that the Court could make an independent determination of the merit of the development application, while the planning proposal was being progressed.

As the above development application was approved by the Land and Environment Court on 31 May 2019, it is considered the savings transition clause as required under condition 1 of the Gateway determination is no longer relevant. As such, the savings transition clause is not included in the final draft LEP.

Note: a search of Council's DA tracker shows that there is no current development application relating to the site, apart from the aforementioned redevelopment proposal the subject of the Land and Environment Court proceeding, which has since been approved.

9. ASSESSMENT

It is recommended that the LEP be made as:

- The planning proposal will facilitate the conservation of the Rose Bay Uniting Church and Wesley Hall group of buildings, including interiors and moveable heritage items, which have been found to have local heritage significance in accordance with a heritage assessment report commissioned by Council. The report contains a comprehensive analysis of the built fabric and moveable elements, and a detailed assessment against the Heritage Office guidelines. In particular, the Uniting Church has also been identified as a local landmark under Part D2 of the Woollahra DCP 2015.
- The proposed listing would enable consideration to be given to the nature of any future changes and their potential impact on the heritage significance of the building group through the application of Clause 5.10 of the Woollahra LEP 2014. In the scenario where the existing development consent is not activated, the assessment of any new development application will be required to consider the heritage significance of Wesley Hall as part of the group.
- The proposed listing does not preclude any future development of the property, such as change of use, renovation, alterations, additions or adaptation. The listing will ensure that the effect of any proposed development on the heritage significance will be considered prior to a development consent being granted. As part of the development application process, the consent authority may require a heritage management document (e.g. heritage conservation management plan or heritage impact statement) to be prepared to assess the effect of the development and to enable informed decisions to be made. As such, the proposed heritage listing, including the church and hall, their interiors and moveable items, is not considered to unreasonably restrict future development of the site. It will ensure due process will be undertaken that considers the potential impacts on the heritage significance.
- The submission from the owner's heritage consultant fails to provide solid justifications and relevant information against the listing of the entire site, including Wesley Hall, as a heritage item. Despite its position against the heritage listing of the Wesley Hall portion of the site, the submission notes that the significance of the hall is intrinsically related to its ancillary support to the main church building (p. 33, Curio Projects report, May 2019). Overall, the owner's heritage report is not considered to have successfully argued against Council's heritage assessment.
- Given that the development application for a mixed use development on the subject site was approved by the Land and Environment Court on 31 May 2019, it is considered the savings transition clause as required under condition 1 of the

Gateway determination is no longer relevant. As such, the savings transition clause is not included in draft LEP.

- The planning proposal complies with all conditions of the Gateway determination (**Attachment B**).
- The planning proposal satisfies all applicable Section 9.1 Directions and State Environmental Planning Policies.
- The planning proposal is consistent with the relevant provisions and actions of the Eastern City District Plan.

9.1 Section 9.1 Directions

The proposal is consistent with the applicable section 9.1 Ministerial Directions.

Direction 2.3 Heritage Conservation

The Direction applies to the planning proposal. It requires that a planning proposal contains provisions that facilitate the conservation of items identified in a study of the environmental heritage of the area.

The proposal is consistent with this Direction as it seeks to amend Schedule 5 of the Woollahra LEP to address and recognise the heritage significance of the group of buildings, including interiors and moveable heritage items, on the subject site as identified in a heritage study commissioned by Council.

9.2 State environmental planning policies

The proposal is considered to be consistent with all relevant State Environmental Planning Policies (SEPPs).

9.3 State, regional and district plans

Region

Greater Sydney Region Plan

In March 2018, the Greater Sydney Commission released *The Greater Sydney Region Plan – A Metropolis of Three Cities* (the Region Plan) which aims to coordinate and manage the growth of Sydney. The Region Plan contains specific objectives for the region over the next 40 years and informs the actions and directions of the District Plans.

Of particular relevance in the Region Plan is '*Objective 13: Environmental Heritage is identified, conserved and enhanced.*' Specifically, the plan outlines strategies to achieve the above objective by:

- *“engaging with the community early in the planning process to understand heritage values and how they contribute to the significance of the place”*
- *“applying adaptive re-use and interpreting heritage to foster distinctive local places”*
- *“managing and monitoring the cumulative impact of development on the heritage values and character of places”*

The planning proposal is consistent with the above provisions of the Region Plan as the heritage listing of the Rose Bay Uniting Church and Wesley Hall group will provide ongoing protection and recognition of the heritage significance of the site. The community has been consulted as part of the exhibition of the planning proposal.

District

Eastern City District Plan

The Eastern City District Plan gives effect to the Greater Sydney Region Plan. The Eastern City District Plan encompasses the Woollahra Local Government Area.

The planning proposal is consistent with the relevant directions and objectives in the plan as follows:

Planning Priority	Action	Comments
E6 Creating and renewing great places and local centres, and respecting the District's heritage	<p>Action 26:</p> <p>Identify, conserve and enhance environmental heritage by:</p> <ul style="list-style-type: none"> a. Engaging with the community early in the planning process to understand heritage values and how they contribute to the significance of the place. b. Applying adaptive re-use and interpreting heritage to foster distinctive local places. c. Managing and monitoring the cumulative impact of development on the heritage values and character of places. 	<p>The proposal is considered to be consistent with this priority as it seeks to provide the statutory mechanism required to protect and respect the District's heritage and to conserve the significance of the building group, including interiors and moveable elements.</p> <p>The proposal is consistent with Action 26 as it identifies and enhances heritage in the local area. The proposal recognises the significance of the site and will enable its appreciation by members of the community.</p>

Local

Woollahra Community Strategic Plan – 'Woollahra 2030'

The planning proposal is consistent with the relevant provisions of the Woollahra Community Strategic Plan. Specifically, the proposal satisfies *Strategy 4.3 Protect our heritage, including significant architecture and the natural environment* under *Goal 4: Well planned neighbourhoods*, through identifying and protecting the heritage significance of the site by the proposed listing.

Draft Woollahra Local Strategic Planning Statement (LSPS)

The Draft Woollahra LSPS sets out a 20-year land use vision and planning priorities for the future of the LGA. The Draft LSPS was placed on public exhibition from 2 September to 8 November 2019.

Planning Priority 5 '*Conserving our rich and diverse heritage*' is relevant to the subject proposal. Action 23 requires Council to "*Continue to proactively conserve and monitor heritage in the Municipality*". The planning proposal is consistent with the above by facilitating the conservation of a building group that has been found to have local heritage significance in accordance with the heritage assessment commissioned by Council.

10. MAPPING

The proposal requires an amendment to the Heritage Map (Sheet HER_005) (**Attachment Map**) under Woollahra LEP 2014 to identify the site of the Rose Bay Uniting Church and Wesley Hall group of buildings – Wesley Hall and interiors, church and interiors (including vestry, 1924 additions and the following items of moveable heritage – altar table,

communion rail, reredos, pulpit, choir rails, pews, marble font, hymnal board, flower stands) as "Item – General".

The draft mapping was submitted via the ePlanning Portal. The mapping has been examined by GIS staff and is considered to satisfy relevant technical requirements.

11. CONSULTATION WITH COUNCIL

Council was consulted on the terms of the draft instrument under clause 3.36(1) of the *Environmental Planning and Assessment Act 1979* (**Attachment F**). Council confirmed on 25 November 2019 that it was satisfied with the draft and that the plan should be made (**Attachment G**).

12. PARLIAMENTARY COUNSEL OPINION

On 28 November 2019, Parliamentary Counsel provided the final Opinion that the draft LEP can legally be made. This Opinion is provided at **Attachment PC**.

13. RECOMMENDATION

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- The planning proposal will facilitate the conservation of a group of buildings, including interiors and moveable items, that have been found to be of local heritage significance in accordance with the heritage assessment report commissioned by Council. The proposal will also facilitate conservation of the Uniting Church which has been identified as a local landmark under the Woollahra DCP 2015.
- The planning proposal complies with the conditions of the Gateway Determination.
- There are no outstanding matters arising from the exhibition of the proposal. Council's response to the submissions, including those from the landowner, are adequate.
- The planning proposal complies with the applicable Section 9.1 Directions and SEPPs, as well as the relevant provisions from the Eastern City District Plan.



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