

ITEM NO: 19

SUBJECT: DRAFT AMENDMENT 5 - LEP 2015 - HERITAGE REVIEW

FILE NO: F10392 - 17/123610

Delivery Program Link

Principal Activity: Using Land

Service: Land Use Management

Recommendations:

1. *That the Council endorses the proposed changes to the draft heritage schedule, heritage mapping and inventory sheets provided at Enclosures 2 and 9, following Stage 1 - preliminary community consultation of the Heritage Review;*
 2. *That the Council resolves to proceed with the planning proposal, prepared under s.55 of the Environmental Planning and Assessment Act 1979, to make changes to Schedule 5 (Heritage) of Blue Mountains Local Environmental Plan 2015 and the associated heritage maps in accordance with the schedules and supporting documents; and*
 3. *That the Council endorses the planning proposal be sent to the Greater Sydney Commission requesting a Gateway Determination under s.56 of the Environmental Planning and Assessment Act 1979, to proceed to formal public exhibition.*
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Report by Director, Development & Customer Service:**Reason for report**

At the 25 October 2016 Ordinary Council meeting, the Council received a report on the Heritage Review 2017 (the Review), and resolved to proceed with Stage 1 preliminary community consultation. The Stage 2 of the Review proposes changes to Schedule 5 (Heritage) of Blue Mountains Local Environmental Plan 2015 (LEP 2015), to the associated statutory heritage mapping, and to the supporting heritage inventory sheets.

The preliminary consultation was carried out in three separate consultation components between 16 November 2016 and 3 May 2017. This report describes the processes and subsequent outcomes of the preliminary community consultation. Attached to the report is a detailed response to the submissions received. A significant proportion of the submissions received raised questions or concerns with the listing of interiors. As such, this aspect of the Review has been addressed in particular detail, including preparation of a fact sheet for the public to describe the legislative context around the listing of interiors, the establishment of a clear methodology for consideration and assessment of interiors, and a graded approach to the listing of interiors.

The relevant heritage documents have been updated following the review of the submissions received. The documents are the heritage schedule, the heritage mapping, and the heritage inventory sheets. These are attached at Enclosures 2 and 9 to this report.

Attached to this report is a draft planning proposal to be sent to the Department of Planning and Environment (the Department), seeking approval for formal public exhibition of the proposed changes (Stage 2 of the community consultation process). The updated

documents (heritage schedule, heritage mapping and heritage inventory sheets) form the core supporting material for the planning proposal. Other supporting material includes previous Council reports and the studies on which the recommendations for change are based.

Upon receipt of the Gateway Determination, Stage 2 public exhibition of the Review can occur. This is planned to commence in early 2018. The minimum consultation period for Stage 2 exhibition will be determined by the Department. The results from that formal consultation process will be reported back to the Council.

Background

The Heritage Review process is part of Council's ongoing role to manage and protect the environmental and cultural heritage of the Blue Mountains. The *Blue Mountains 2035* Community Strategic Plan (CSP) sets out values and outcomes which include:

Cultural and built heritage: local heritage and places of natural, cultural and historical significance are retained and enhanced by the active use of appropriate methods.

The CSP goes on to specifically identify one of Council's responses for 2017-2021 is to "complete the Heritage Inventory Review of the Local Environmental Plan" and this report is a key step in that process.

The heritage provisions of Clause 5.10 of LEP 2015 outline the requirements for heritage conservation and management. These LEP heritage provisions are a standard statewide requirement for all local councils. Heritage management occurs through listing items of significance in the Council's LEP, which appear in Schedule 5 (the heritage schedule) and in the accompanying LEP heritage mapping.

The listing description in the schedule explains the elements that are significant and the heritage mapping clarifies the lots or areas that are affected. A supporting heritage inventory sheet for each item details specific values through description and assessment. These values have been set out by the NSW Heritage Council within the State Government.

The inventory sheet information is non-statutory, although it can be used for development assessment, court proceedings, or as a resource for owners and prospective developers.

It is important that Council regularly reviews its heritage listings to ensure the values of the inventory remain sound and information is up to date. Changes will typically include adding new items, removing items no longer of significance or superseded, and modifying existing items.

In October 2016 (prior to the Stage 1 public exhibition), the Review proposed the following changes:

- 68 proposed new heritage items;
- 32 proposed items to be deleted; and
- 303 existing items proposed to be modified.

Community consultation is a critical component of making heritage changes, as the *prima facie* purpose of heritage listing is to provide broad community benefits through the protection of heritage properties and their contribution to community character and history. However, it is individual property owners who bear the responsibility for maintaining heritage values through heritage fabric retention and maintenance, and thus the cooperation of owners with Council and their support for the processes that directly affect them is critical.

Thus the Review proposed a two-stage consultation process, which is in line with current best practice, to provide ensure that the maximum levels of engagement were achieved. Stage 1 consultation has been carried out and is now complete.

Stage 1 community consultation procedures

Stage 1 community consultation was carried out between November 2016 and May 2017 as follows:

16 November 2016 to 31 January 2017: Endorsed consultation period, generally for all items affected by the Review (with the exception of properties affected by the Gundungurra Indigenous Land Use Agreement (ILUA). This is referred to below).

Consultation involved:

- Letters including relevant documentary information (heritage inventory sheets and mapping) sent individually to all property owners;
- Letters sent to all known heritage societies and groups in the Mountains;
- Hard copy full sets of the documentary material available in five locations: Council headquarters in Katoomba and Springwood, and Blaxland, Springwood and Katoomba libraries;
- Digital versions of the heritage inventory sheets and mapping changes available on Council's Have Your Say website;
- A presentation made to Council's Heritage Advisory Committee on 19 October 2016.

Properties affected by the ILUA were deferred from this period of consultation, such that a separate and closed consultation process could be held. The intention of this process was to seek submissions from the Gundungurra Tribal Council and the Gundungurra Aboriginal Heritage Association, prior to the material being exhibited publicly.

1 February – 28 February 2017: Extension of endorsed exhibition period resolved by Council at Ordinary Council meeting of 31 January 2017.

- Notification of the extension of the exhibition period for the Review was placed in the Blue Mountains Gazette on 22 February 2017.

6 December 2016 to 23 February 2017: Consultation with the Gundungurra ILUA Consultative Committee. A Council report was presented on this consultation to the Ordinary Council meeting of 28 March 2017.

Consultation involved:

- Attendance at the Quarter 3 Gundungurra ILUA Consultative Committee meeting of 6 December 2016;
- Written correspondence sent to the Gundungurra Aboriginal Heritage Association Inc. and the Gundungurra Tribal Council Aboriginal Corporation on 12 December 2016;
- Digital versions of the heritage inventory sheets and mapping changes available on Council's Have Your Say website in a closed forum;
- Confirmation of requested changes at the quarterly Gundungurra Consultative Committee meeting of 23 February 2017.

Refer to the previous Council report of 28 March 2017 for full details of the consultation.

5 April to 3 May 2017: Exhibition of properties affected by the ILUA and previously deferred from *16 November 2016 to 31 January 2017* consultation period.

Consultation involved:

- Letters including relevant documentary information (heritage inventory sheets and mapping) sent individually to all property owners.
- Hard copy full sets of the documentary material available in five locations: Council headquarters in Katoomba and Springwood, and Blaxland, Springwood and Katoomba libraries.
- Digital versions of the heritage inventory sheets and mapping changes available on Council's Have Your Say website.

Stage 1 community consultation – Summary of submissions

100 submissions were received during the preliminary community consultation process. Submissions were received from a diverse mix of private property owners, interested individuals, building tenants, state agencies, community groups and historical societies. The types of properties were also a diverse mix and included dwellings, shops, churches, schools, guesthouses, archaeological sites, natural sites and utility sites (railway corridor and water facilities).

The extensive submission period enabled a high level of engagement with Council's Review team through phone calls and counter enquiries. This process was generally very positive. Some initial enquiries did not lead to a submission, others led to the formulating of a submission, and others also led to a site visit by one of Council's heritage specialists.

The breakdown of submissions, organised by submitter group and submission type, is provided below. It is noted that overall, submissions are evenly arrayed between support and objection. Objections overwhelmingly related to the listing of interiors, and this has been addressed in detail at section 5 of this report.

	Support	Support – refinements requested	Comment	Comment – refinements requested	Object	Object – changes requested
Owner – individual	1		3	15	10	28
Owner – community	1	2	2	2	2	7
Owner – state agency		4	2			1
Historical group/society		1		1		1
Interested individual	3	2		7	1	1
Tenant	1			1		1
TOTALS	6	9	7	26	13	39
				48		52

State agency submissions

Submissions were received from most of the state agencies affected by the Review. The submissions were generally supportive of the Review process and provided in-principle

support for the changes. In some cases, further information and further clarification was required. This is ongoing and expected to be resolved in Stage 2 consultation.

Submissions were received from:

- Sydney Trains (26 properties affected);
- Sydney Water (3 properties affected);
- Department of Education (5 properties with 12 buildings affected);
- Department of Health (1 property affected)
- Group submission from the Office of Environment and Heritage (OEH), NSW Heritage Division and National Parks and Wildlife Service (NPWS).

Importantly, OEH has provided in-principle preliminary support for the Review process. This agency has also requested that all original studies be provided with the planning proposal. These studies are provided at Enclosure 6, and will be forwarded with the planning proposal.

Historical societies

The following societies provided submissions:

- BMACHO
- Glenbrook and District Historical Society
- Woodford Academy Management Committee (National Trust)
- Members of Blue Mountains Heritage Advisory Committee

Individuals

The majority of submissions were from individual property owners. Individual submissions were also from interested individuals, including commercial tenants and community members interested in heritage. Submissions covered a range of issues. These included support for changes, the provision of historical information for updating, and support for certain changes - notably Woodford Memorial Park Group (inclusion of railway footbridge) and the new listing of 170-174 Leura Mall. Submission also covered objections and concerns over proposed new listings or changes to listings.

Response to submissions

Enclosure 1 to this report provides a detailed response to each submission received during the public notification periods. These responses are grouped as follows:

- Response to general or miscellaneous submissions (no particular property identified, or new properties beyond the current scope of the Review identified);
- Responses to proposed new heritage items;
- Responses to existing heritage items proposed to be modified.

There were no submissions in regard to existing items proposed to be deleted.

Following the consideration of the submissions, a range of changes have been made. These are summarised as:

1. Two proposed new items no longer proceeding due to a re-assessment of significance.
2. One existing item to be deleted due to loss of significance following information update (building demolished).
3. Mapping updates to modify the curtilage of existing items.
4. The words 'and interiors' removed from some properties.
5. The wording relating to the interiors in the listing description modified.
6. Minor updates to correct further errors uncovered in mapping or lot and DPs.
7. Heritage inventory sheets modified with additional information:
 - a. A statement regarding Aboriginal significance added to properties listed under Schedule G of the indigenous land use agreement (ILUA).
 - b. Additional information about interiors (supplemented and/or removed)

- c. Physical description updated
- d. Condition and modification updated
- e. Recommended management updated
- f. Statement of significance and assessment modified
- g. Historical notes updated
- h. Update notes amended
- i. References supplemented

Each of these recommended changes / updates is detailed in the enclosures to this report.

Requests for changes beyond the current scope of the Review

A number of submissions included requests for changes that were beyond the current scope of the Review (approximately 8 requests for listing changes to additional properties). Where sufficient documentary evidence was provided, the changes were subject to a heritage assessment and changes proposed if appropriate. However, where insufficient detail was provided, the item was noted and proposed to be deferred to a future review stage, pending the provision or collection of sufficient detail to carry out an assessment.

Site visits

52 site visits were carried out either at the invitation or with permission of property owners. The purpose of the majority of site visits was to clarify the intention of the proposed 'interiors' listings or to seek Council's heritage assessment of property interiors. Other site visits were an invitation to Council to visit the property to view the condition, to provide Council with additional historical notes and updates, to seek advice or clarification about changes, or to express concerns about listing proposals. Some site visits led to the provision of further historical information or clarification of changes over time.

The site visits were a very successful component of the consultation for the Review. In some cases, this was the first interaction between particular property owners and Council in regard to heritage, and the face-to-face meeting was considered a positive process. Property owners were generally proud of their property and they were maintained it in good condition. There was an opportunity to discuss some of the challenges of maintaining and developing their heritage property, and clarify the significance of the property.

Interiors

Approximately half the submissions were from owners regarding interiors listings. Where owners were private individuals, the submissions mostly expressed concern and sought clarity, with regard to interpreting the changes and the implications of those changes.

The letter sent to property owners notifying them of the public exhibition process, made particularly reference to the listing of building interiors, and invited owners to contact Council to discuss and arrange for a site inspection.

Site visits were carried out to inspect the interiors of many properties, primarily shops, but also guesthouses, schools and private school facilities, and other business premises. In many cases, initial concern was to various degrees allayed through a subsequent site visit. The condition, description and significance of the interiors were clarified on site, including the recording of interior elements through photographs.

The site visits and photographs allowed a detailed further assessment by Council of the interiors of properties inspected. An interiors analysis process and methodology was developed, to provide for an objective, consistent assessment of intactness and heritage significance. Table 1 provides an example of an assessment of the interiors of a building where they were found to be intact and retain their significance. An assessment of each affected item is included at Enclosure 1 to this report.

Original or early interior elements – typical examples given	Present	Intactness – high, moderate, low	Value – high, representative /moderate, low
Internal layout/evidence of rooms	Y – clear evidence of room layout of shop and residence with all internal walls intact	High	High
Flooring – floorboards, wooden sills, marble sills, terrazzo sills	Y – marble sill to shop entry, likely floorboards under carpet		
Ceilings – timber lining boards, pressed metal, timber batten	Y – timber lining boards to front shop no cornice, plaster to rear residence rooms no cornice	High	High
Walls internally – brick, timber lining boards, fibro	Y – plaster over brick,	High	High
Joinery – picture rails, dado, panelling, door architraves, door leafs	Y – timber architraves	Moderate (door leafs missing)	Moderate
Fireplaces including mantels, chimney breasts, hearths	Y – chimney breast to living room, decorative timber mantel,	Moderate (partially intact)	Moderate
Fittings – kitchens, bathrooms, laundry	N		
Built in furniture – cupboards,	N		
Overall values (significant, moderate, low)	Significant	High	High
Condition	The interiors are in good condition.		
Summary	Intact evidence of previous use of the building as a shop and residence through room layouts and interior fabric. Rare type of shop building, despite changes to shopfront and rear addition. Interiors are significant, excluding rear room changes.		

Table 1: An assessment of an interior where the interiors were found to retain significance.

The definition of a 'significant interior' varies depending on the type of property (period, style, architect) and its rarity value. In the Blue Mountains, most properties are 'vernacular' (traditional styles by local builders), and 'representative' (demonstrate the principal characteristics) of a particular period and style, which is generally Victorian, Federation or Inter-War. The significant interiors identified in the Review have a quality that expresses "a *'period statement'* that conveys a sense of stylistic cohesiveness of a particular period".

Building type summary results

- All churches inspected satisfy the criteria tests as they retain their original use, are treasured by their community, and are often the result of highly experienced craftsmen and in many cases architects as well.
- Civic buildings such as schools are purpose-built community facilities that are generally well-preserved and maintain their original use.

- Shop buildings had the highest level of internal alteration, but a small number were intact and/or rare in design.
- A number of properties were of high value and interest due to adaptive re-use or a visible history of changes and layers.

A strategy for proceeding to a final decision about each interior that had been visited emerged. The information collected from the site visit, and the subsequent interiors analysis was synthesised into three response options. This approach seeks to maximise heritage protections whilst acknowledging the challenges property owners face in terms of building maintenance costs and business needs. A reasonable approach to heritage protections is required to retain engagement with property owners. Thus the approach seeks to utilise heritage protection mechanisms within the listing description and inventory sheet, as follows:

1. Where the interiors are intact and retain significance, the words 'and interiors' are recommended to be retained in the listing description. In a few isolated cases, extra words are proposed, for example, 'part interiors', or 'Arts and Crafts interiors', to improve clarity, and protect specific elements or fabric.
2. Where the interiors are only partially intact, remove the words 'and interiors' from the listing description, but update the heritage inventory sheet to include a description of the remaining original elements and recommend that they be retained in new work.
3. Where the interiors are no longer intact, remove the words 'and interiors' from the listing description. Where concealed fabric may exist that was not visible at the site visit, update the heritage inventory sheet to make reference to retaining potential original layers under later claddings.

It is noted that many shops have 'shop-top housing'. This was not inspected during site visits, as it is not 'publicly accessible'. This is noted in the inventory sheets.

Further clarification was provided during site visits regarding inclusions and exclusions, in order to address concerns raised by property owners:

1. Adding the interiors to the listing description does not include furniture or other moveable items.
2. Further clarification is provided in the heritage inventory sheet with regard to the inclusion of the words 'and interiors' in the inventory sheet. For example, the inventory sheet may clarify that the interiors of the church are significant, but that the interiors of the church hall are not significant. One of the broad functions of inventory sheets is to provide detail beyond the scope of the listing description.

A fact sheet on heritage interiors has been prepared and will be distributed during the Stage 2 public exhibition to all property owners where the words "and interiors" are recommended to be retained in the listing description. This fact sheet is provided at Enclosure 4 to this report. The fact sheet provides detailed explanatory material on the interiors listing process, and the requirements around development consent including minor works requests and exempt development. The fact sheet further clarifies how approvals for works to heritage properties are also covered by State government legislation.

Properties Deferred from LEP 2015 – R1 and R6 zoned land

A number of properties in the Review are located on land currently deferred from LEP 2015. Some of these properties are included in Amendment 1 to LEP 2015 (which primarily relates to R1 zoned land), and are expected to be incorporated into LEP 2015 prior to the conclusion of the Heritage Review. As such, these properties will be included in the planning proposal.

A number of properties affected by the Review are within the Living – Conservation zone (proposed R6 zone) and therefore currently deferred from LEP 2015. These properties include three (3) proposed new heritage items and 21 heritage items proposed to be modified.

Given the likely delay in the establishment of a residential character zone to replace the Living – Conservation zone, these properties cannot be included in the planning proposal as they are not part of LEP 2015. It is intended that the heritage changes to these properties, will be incorporated into a future planning proposal for the rezoning of Living – Conservation land to the R6 – Residential Character zone, and this would allow for a second stage exhibition process for these sites.

However, for completeness and to appropriately recognise submissions made in relation to these sites, the response to public submissions on these properties has been included within the assessment of all affected properties at Enclosure 1. A note has been added to these properties to identify they are deferred from LEP 2015.

Planning proposal – Amendment 5 (Heritage Review) LEP 2015

The draft planning proposal to make heritage changes to LEP 2015 – known as Amendment 5 (Heritage Review) to LEP 2015 - is attached to this report. Endorsement is sought to submit the draft planning proposal to the Department.

The planning proposal includes:

1. The detailed submission review following preliminary consultation;
2. The updated list of changes to the heritage schedule, heritage maps and heritage inventory sheets following Stage 1 consultation;
3. Previous Council reports relevant to the Review;
4. Supporting studies that include recommendations for the changes;
5. Other supporting material (interiors fact sheet, list of deferred sites, items not being progressed).

Following submission of the planning proposal to the Department, a gateway determination is expected to be received. The gateway will approve the public exhibition (Stage 2) of the Review, which is notionally planned for early 2018. A further report will be submitted to Council to seek endorsement to commence Stage 2 formal public exhibition.

Once Stage 2 formal public exhibition is completed, further submissions will be reviewed and the material updated with any final amendments. A final report will be brought to Council seeking endorsement to submit the final planning proposal to the Department for gazettal.

Sustainability Assessment

Effects	Positive	Negative
Environmental	Advancing the overall protection of items and areas of environmental and cultural heritage by clarifying the significance of existing heritage items, and granting statutory protection to new items.	Nil

Effects	Positive	Negative
Social	The community consultation has provided an opportunity for transparent communication interaction with the community, and the opportunity to reinforce the importance of heritage as a key element of the identity of the Blue Mountains. This is facilitating an increased awareness of the heritage significance of the Blue Mountains within the community. Support for the Review has been demonstrated in a significant number of positive submissions.	Some community members have objected to changes in the statutory status of their property. Early contact and good communication of issues and potential impacts has reduced owner concerns and offset negative reactions to some degree. Some owners may have ongoing concerns and continue to object to changes.
Economic	Clarification of heritage significance and additional detail of significance of items provides greater certainty around development and management of items and provides for more efficient application processes. Some listings will provide the basis for access to funding opportunities and grant schemes.	Ongoing perceptions of some community members that regulatory requirements of a heritage listing may unreasonably restrict development.
Governance	Finalising the Heritage Review ensures Council is pursuing the priorities set out in the Community Strategic Plan and expressed within the aims of the LEP, to protect the environmental heritage of the Blue Mountains.	Nil

Financial implications for the Council

The financial implications of the report recommendations are associated with the preparation of documentation for the planning proposal, which necessitates staff resourcing and use of approved operational budgets for 2017-2018, aligned with the outcomes of the 2017-2018 operational plan.

Legal and risk management issues for the Council

The Stage 1 (non-statutory) public consultation has served to minimise risks associated with any errors or anomalies contained in current heritage listings. The early phase of consultation has encouraged community involvement and ensured open and transparent communication.

The process of preparing, submitting and exhibiting a planning proposal to amend an LEP is mandated within the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation*.

The Stage 2 public exhibition process will occur following submission of the planning proposal to the Department. This exhibition will contribute to fulfilling Council's obligations in regard to making changes to Council's LEP. The process follows the State government requirements for making changes to an LEP and is part of Council's heritage management strategy.

External consultation

A high degree of community consultation has occurred in this stage of the Heritage Review, as detailed in the body of the report.

The consultation with Aboriginal groups in regard to proposed heritage changes was required and desirable under the agreement (indigenous land use agreement or ILUA) that Council has with the Gundungurra Tribal Groups. The process was successful and led to improvements to the relevant heritage documents.

The wider community consultation that is the subject of this report was carried out as best industry practice and although beyond the legislative requirements of preparing an LEP amendment is considered highly desirable. The process was successful and a number of positive outcomes have been achieved.

Conclusion

Stage 1 preliminary community consultation has been successfully concluded, with a high level of community engagement resulting in positive outcomes and recommended improvements to the heritage schedule. The submissions received during Stage 1 consultation have been reviewed in detail, with changes incorporated into the heritage documents.

Endorsement of the changes is sought, in order to submit the updated heritage documents to the Greater Sydney Commission Department of Planning and Environment as a planning proposal to amend the heritage schedule and maps of LEP 2015.

ATTACHMENTS/ENCLOSURES

1	Response to submissions	17/185200	Enclosure
2	Schedule of proposed changes	17/185139	Enclosure
3	Planning Proposal for Draft Amendment 5 (Heritage Review) to LEP 2015	17/177542	Enclosure
4	Heritage Interiors Fact Sheet	17/177500	Enclosure
5	Previous Council reports	17/185178	Enclosure
6	Supporting studies	6a17/185271 6b17/185273 6c17/185274 6d17/185279 6e117/185282 6e217/185285 6f17/185290 6g17/185319	Enclosure
7	Deferred sites – Amendment 1 and Amendment 2 LEP 2015	17/185161	Enclosure
8	Proposed items not proceeding to planning proposal	17/185212	Enclosure
9	Supporting heritage mapping and heritage inventory sheets	Folder 2: 17/185198 Folder 3: 17/185241 Folder 4: 17/185246 Folder 5: 17/185248 Folder 6: 17/185249	Enclosure

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