

Greater Sydney, Place and Infrastructure

IRF20/2081

Plan finalisation report

Local government area: Inner West

1. NAME OF DRAFT LEP

Marrickville Local Environmental Plan 2011 (Amendment No 17)

2. SITE DESCRIPTION

The planning proposal applies to land at 73 and 73A The Boulevard, Dulwich Hill.

The sites are located on the eastern side of The Boulevard between Eltham Street to the north and Pigott Street to the south (see **Figure 1**).



Figure 1: Site context

No 73 is legally described as Lot 1 DP 301656 and has a site area of 662sqm. The lot contains a two storey dwelling house and a swimming pool (See **Figure 2**). The house is setback approximately 10m from the street.

No 73A is legally described as Lot X DP 411590 and has a site area of 621sqm. The lot also contains a two storey dwelling house and a swimming pool (See **Figure 3**). The house is setback approximately 5m from the street.



Figure 2: No 73 The Boulevard (Source: GBA Heritage Review)



Figure 3: No 73A The Boulevard (Source: GBA Heritage Review)

3. PURPOSE OF PLAN

The draft LEP seeks to:

- list the house at 73 The Boulevard as a local heritage item within Part 1 Heritage Items of Schedule 5 Environmental Heritage;

- list the house at 73A The Boulevarde as a local heritage item within Part 1 Heritage Items of Schedule 5 Environmental Heritage; and
- amend and replace the relevant Heritage Map.

4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Summer Hill state electorate. Jo Haylen MP is the State Member.

The site falls within the Grayndler federal electorate. Anthony Albanese MP is the Federal Member.

NSW Government Lobbyist Code of Conduct: There have been no meetings or communications with registered lobbyists with respect to this proposal.

NSW Government reportable political donation: There are no donations or gifts to disclose and a political donation disclosure is not required.

5. BACKGROUND

Development application

On 5 February 2018, a development application (DA201800049) was lodged with Council to demolish the house at 73 The Boulevarde and to construct a four storey residential flat building.

At the time, the neighbour at the adjoining 73A The Boulevarde objected to the proposal and submitted a heritage assessment prepared by Sue Rosen Associates (**Attachment I2**). The heritage assessment recommended No's 73 and 73A The Boulevarde be listed as local heritage items. The owner of 73A The Boulevarde indicated in its submission that it supports the heritage listing of their house.

Interim heritage order (IHO)

In response to this submission, Council undertook a preliminary heritage assessment of 73 The Boulevarde. The preliminary assessment indicated that it is likely, on further inquiry or investigation, that the property be found to be of local heritage significance. The General Manager imposed an IHO on 73 The Boulevarde which was published in the Gazette on 23 March 2018. Under the terms of the IHO, the order lapsed six months from the date it was made unless Council passed a resolution to list the item. As such, Council engaged Robertson & Hindmarsh to conduct a heritage assessment to determine whether the houses at 73 and 73A meet the criteria for local heritage listing (**Attachment I5**).

Land and Environment Court NSW (LEC) appeal

The owner of 73 The Boulevarde appealed the IHO imposed by Council to the LEC, however the Court dismissed the appeal on 3 August 2018. In preparing evidence, the landowner commissioned Urbis to conduct a heritage assessment of the house (**Attachment I3**). The Urbis heritage assessment includes supplementary preliminary assessments by NBRS and GML Heritage (**Attachment I4**). In its judgement, the Court determined that upon further investigation, the dwelling at 73 The Boulevarde is likely to be found to be of local heritage significance.

Council heritage assessment

The Robertson & Hindmarsh heritage assessment (**Attachment I5**) commissioned by Council found that both 73 and 73A meet the threshold for heritage listing. It recommended both be listed as local items. Robertson & Hindmarsh also prepared a response (**Attachment I6**) to the Urbis heritage report which the landowner had prepared to support the LEC appeal (see above).

Planning Proposal

Council prepared a planning proposal based on the Robertson & Hindmarsh recommendations and referred it to the Inner West Local Planning Panel meeting of 28 August 2018. Just prior to the meeting, the landowner submitted a further objection on 27 August by Urbis (**Attachment I7**). At its meeting, the LPP recommended Council support the listing without amendment.

Council resolved at its meeting later that day on 28 August 2018 to:

Consider the advice from the Inner West Local Planning Panel in relation to 73 and 73A The Boulevarde, Dulwich Hill. Subject to Council's consideration of this advice:

- a) resolve to include 73 The Boulevarde, Dulwich Hill (Lot 1 DP 301656) in Schedule 5 of the Marrickville Local Environmental Plan 2011 as a local item of environmental heritage. The listing is to include the interiors of the intact rooms, including the inglenook;*
- b) resolve to include 73A The Boulevarde, Dulwich Hill (Lot X DP 411590) in Schedule 5 of the Marrickville Local Environmental Plan 2011 as a local item of environmental heritage. The listing is to include the front garden, path & fence, the exterior of the front section of the house (in front of the first floor addition); and the interior of the front section of the house (including the interiors of the intact rooms, including the ceilings and fireplaces);*
- c) submit the planning proposal and the advice of the Inner West Local Planning Panel to the Minister for Planning for a Gateway determination to include Nos. 73 and 73A The Boulevarde, Dulwich Hill as items of environmental heritage in Schedule 5 of the Marrickville Local Environmental Plan 2011, in accordance with Section 3.34 of the Environmental Planning & Assessment Act 1979;*
- d) requests that delegated plan making functions be granted in relation to the planning proposal; and*
- e) publicly exhibit the planning proposal following a Gateway determination being issued.*

Council submitted the planning proposal to the Department in accordance with the Council resolution, and commissioned Robertson & Hindmarsh to prepare a response (**Attachment I8**) to the Urbis objection dated 27 August 2018. The Robertson & Hindmarsh response was completed on 1 October 2018 and was provided to the Department.

6. GATEWAY DETERMINATION

The Gateway determination issued on 7 November 2018 (**Attachment B**) determined that the proposal should proceed subject to conditions, including:

- consultation with landowners during public exhibition;
- an exhibition period of a minimum of 28 days; and
- consultation with the former Office of Environment and Heritage (OEH).

Delegation was not provided to Council to make the plan.

7. PUBLIC CONSULTATION

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 13 November 2018 to 18 December 2018.

A total of 50 submissions were received, mostly comprising submissions in support and three submissions opposing the proposal.

One submission was received from the OEH and is discussed in **Section 8** below.

The landowner of 73 The Boulevard advised Council on 18 January 2019 that it had not received a letter in relation to the consultation and had only become aware of the planning proposal over the Christmas period. In response, Council provided the owner with additional time to provide a submission in response to the proposal. The landowner made a submission on 11 February 2019 which is considered in Council's submissions report.

The two objections to the proposal made by parties other than the landowner raised the following issues:

- neither property is unique;
- the locality needs more housing rather than preserved average old buildings;
- it is unfair on land owners and future residents to down zone the land by a heritage listing; and
- Council should seek to identify heritage properties ahead of time, rather than listing them in response to redevelopment proposals.

Council has responded to these two objections in the submissions report adequately by noting:

- the Council commissioned Robertson & Hindmarsh heritage assessment recommends that both properties should be heritage listed; and
- council is undertaking a heritage review across the LGA in preparation of its comprehensive LEP.

The submission from the landowner of No. 73 also included a peer review (**Attachment I9**) of the Robertson & Hindmarsh heritage assessment. The peer review was undertaken by Paul Davies and concludes that the house at 73 The Boulevard:

- is not exceptional externally or internally;
- is not of regional significance as stated in the Robertson & Hindmarsh report;
- is not rare;
- is highly altered and does not have integrity;
- is a relatively ordinary example of its type that does not exhibit design excellence, craftsmanship or innovation; and
- does not reach a threshold to be considered for local heritage listing.

In response, Council commissioned Robertson & Hindmarsh to provide a response (**Attachment I10**). The response addresses the issues raised by Paul Davies and reaffirms that the house should be heritage listed.

Consideration of the various heritage reports and related contentions is located at **Section 10** below.

8. ADVICE FROM PUBLIC AUTHORITIES

Council was required to consult OEH in accordance with the Gateway determination.

OEH provided a submission (**Attachment H**) which states that it would not provide specific comment since the subject items are not listed on the State Heritage Register. OEH noted that it welcomes recognition of locally significant heritage items being added to LEPs.

Council adequately considered the OEH comment in the submissions report.

9. POST-EXHIBITION CHANGES

Council did not modify the planning proposal following public consultation. Upon consideration of the submissions report, Council resolved at its meeting of 12 March 2019 to submit the proposal to the Department for finalisation.

10. HERITAGE PEER REVIEW

The heritage assessments undertaken on behalf of Council, the owner of 73A The Boulevard and the former owner of 73 The Boulevard are summarised below.

Consultant	Date	Commissioned by	Recommendation	Attachment
Sue Rosen Associates	March 2018	Landowner of 73A The Boulevard	Inclusion of 73A & 73	I2
Urbis	May 2018	Landowner of 73 The Boulevard	Against including 73	I3
NBRS (within Urbis report)	May 2018	Landowner of 73 The Boulevard	Against including 73	I4
GML Heritage (within Urbis report)	May 2018	Landowner of 73 The Boulevard	Against including 73	I4
Robertson & Hindmarsh	June 2018	Council	Inclusion of 73A & 73	I5
Robertson & Hindmarsh	July 2018	Council	Inclusion of 73A & 73	I6
Urbis	August 2018	Landowner of 73 The Boulevard	Against including 73	I7
Robertson & Hindmarsh	October 2018	Council	Inclusion of 73A & 73	I8
Paul Davies	February 2019	Landowner of 73 The Boulevard	Against including 73	I9
Robertson & Hindmarsh	February 2019	Council	Inclusion of 73A & 73	I10

In response to the objections received for the listing of the house at 73 The Boulevard, the Department commissioned GBA Heritage to independently review (**Attachment I1**) all heritage assessments of the site. This was to provide the Department with a final recommendation of the merits of the proposed heritage listing at No 73.

The GBA peer review (**Attachment I1**) concludes that the house at 73 The Boulevard should be listed as a heritage item of local significance in the LEP. The review finds that the house satisfies the following criteria:

Criterion A

An item is important in the course, or pattern, of the cultural history of the local area.

The house at 73 The Boulevard is of local historical significance for its important contributory role in demonstrating the development of the 1880s Lewisham Estate subdivision as a prestige housing area within the inner western suburbs of Sydney through into the 1920s.

Criterion C

An item is important in demonstrating aesthetic characteristics and/or a high degree of creative or technical achievement in the local area.

The house is an unusual example of the Federation Bungalow style, made more distinctive by the concrete verandah columns and hipped verandah roof. The qualities, design and integrity of the “Craftsman” style interiors, the important components of which survive, add greatly to its aesthetic significance.

Criterion G

An item is important in demonstrating the principal characteristics of a class of the local area’s cultural places; or cultural environments.

Architecturally, the house at 73 The Boulevard is an important example of a good quality Federation Bungalow house as the style evolved in the early 1920s across the inner western suburbs, and elsewhere in Sydney. It is important because of the subtle external variations of the decorative columns supporting the verandah roof and the separate hipped verandah roof, whereas the vast majority of such houses across Sydney were notable for their gabled verandah roof composition and timber support posts set on brick piers.

It is also an important representative of the evolutionary growth in quality housing in this section of the former Lewisham Estate between the 1880 and the 1920s.

In addition, its importance as a representative example is reinforced by the quality and integrity of its surviving “Craftsman” interior decoration and detailing, irrespective of whether this feature is normally appreciable by the public at large.

Whilst this conclusion differs to those of the former landowner, and the assessment against the criteria for heritage significance differs to the reports prepared by Sue Rosen and Robertson & Hindmarsh, the recommendation is clear that the property exceeds the threshold for criteria for listing as a local heritage item.

Item name (description)

The resolution of Council to list the property only notes ‘*the interiors of the intact rooms, including the inglenook*’. In order to be consistent with this resolution, but also to reflect the comprehensive GBA Heritage assessment, the Department will require the final LEP to modify the heritage item name to broadly encompass the house and its interiors. A similar simplification of the item name will be made with regards to No 73A for the purpose of consistency.

Council has been consulted about the proposed draft provision and does not raise an issue (See **Section 13**). The Department has made the GBA peer review available to Council and will allow it to complete the detailed state heritage inventory listings following notification of the LEP.

In conclusion, the Department adopts the recommendation of GBA Heritage and will finalise the planning proposal to list both properties.

11. ASSESSMENT

The Department has considered the submissions received during the public consultation and the recommendation of the GBA Heritage peer review. It is recommended that the draft LEP be supported for the following reasons:

- the draft LEP will ensure the ongoing conservation of the houses, which have been demonstrated to exhibit local heritage significance;
- both properties are good examples of the Federation Bungalow style and demonstrate the development of the Lewisham Estate;
- the draft LEP is consistent with Planning Priority E6 of the Eastern City District Plan, which seeks to create and renew great places and local centres, and respecting the District's heritage; and
- the draft LEP is consistent with all relevant SEPPs and Section 9.1 ministerial directions.

9.1 Section 9.1 Directions

Direction 2.3 Heritage Conservation

This Direction requires that a planning proposal contain provisions that facilitate the conservation of items identified in a study of the environmental heritage of the area.

The planning proposal is consistent with this Direction as it seeks to amend Schedule 5 of the Marrickville LEP 2011 to address the heritage significance of the two properties.

9.2 Section 9.1 Direction

The draft LEP is consistent with all relevant SEPP's.

9.3 State, Regional and District plans

The Eastern City District Plan gives affect to the Greater Sydney Region Plan. The Eastern City District Plan encompasses the Inner West LGA.

Planning Priority E6 – Creating and renewing great places and local centres and respecting the District's heritage is relevant to the planning proposal. 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 subject properties.

12. MAPPING

The draft maps have been checked by the Department's ePlanning Team and will be made available to Parliamentary Counsel at notification stage.

13. 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 D**). Council confirmed on 5 May 2020 that it is satisfied with the draft and that the plan should be made (**Attachment E**).

14. PARLIAMENTARY COUNSEL OPINION

On 11 May 2020, Parliamentary Counsel provided the final opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PCO**.

15. 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:

- it will facilitate the conservation of properties that have been found to have local heritage significance.
- the conditions of the Gateway have been satisfied.
- there are no outstanding matters raised during exhibition that have not been adequately addressed.
- it complies with the applicable Section 9.1 Directions, SEPPs and the relevant provisions of the Eastern City District Plan.

22 May 2020
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30 May 2020
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