



Ku-ring-gai Council

SECTION 59 PLANNING REPORT

**To heritage list 27 Finlay Road,
Warrawee**

June 2016

PLANNING PROPOSAL DETAILS:

PP_2016_KURIN_004_00

PLANNING PROPOSAL SUMMARY:

To amend Ku-ring-gai Local Environmental Plan 2015 to heritage list "Exley House" 27 Finlay Road, Warrawee, as an item of local heritage significance

DATE OF GATEWAY DETERMINATION:

28 April 2016

1.0 SUMMARY

Relevant background issues and rationale for proceeding with the proposal:

On 6 October 2015, Council resolved to make an Interim Heritage Order (IHO) over 27 Finlay Road, Warrawee. The property had been advertised for sale and promoted as a potential knock down and rebuild. The IHO was published in the government gazette on 9 October 2015. The IHO provided Council with time to undertake further historical research and an independent heritage assessment of the property to establish if it warrants a formal heritage listing.

An independent heritage assessment of 27 Finlay Road, Warrawee was undertaken by the heritage consultant Perumal Murphy Alessi Pty Ltd. The assessment found that 27 Finlay Road, Warrawee is of local heritage significance and should be included as a heritage item under Schedule 5 and on the heritage map of the KLEP 2015.

On 8 March 2016, Council resolved to adopt the planning proposal to amend the KLEP 2015 to include 27 Finlay Road, Warrawee (dwelling house and interior) as a potential heritage item in Schedule 5 and on the heritage map.

A Gateway Determination was issued on 28 April 2016. The planning proposal was publically exhibited between 6 May 2016 and 20 May 2016, in accordance with the requirements of the Gateway Determination.

Council considered the submissions received during the public exhibition at its meeting of 14 June 2016, where it resolved to proceed with the heritage listing of 27 Finlay Road, Warrawee.

The rationale for proceeding with the planning proposal to heritage list 27 Finlay Road, Warrawee is to ensure that Ku-ring-gai's heritage is protected and conserved.

Zones/development standards to be amended:

The zoning and development standards applying to the site are not proposed to be amended as part of this planning proposal.

The planning proposal seeks to amend Schedule 5 of the KLEP 2015 to list 27 Finlay Road, Warrawee as an item of local environmental heritage, and to amend the heritage map to indicate 27 Finlay Road, Warrawee as a heritage item.

Key exhibition dates:

The planning proposal was publically exhibited between 6 May 2016 and 20 May 2016.

Main points raised in submissions:

A total of 8 submissions were received in response to the public exhibition of the planning proposal.

5 submissions objected to the heritage listing and raised issues such as:

- lack of heritage significance
- heritage listing will prevent extensions and additions to house
- ugliness of the house
- the possibility that the house would become derelict
- possibility that the heritage listing would impact the sale of the property and devalue the property
- financial impacts on the owners
- support for development application for the subdivision of property

3 submissions did not object to the heritage listing, and raised the following matters:

- appropriate heritage curtilage should be used to define extent of heritage listing rather than listing the whole site
- request for Council to approved subdivision of property into two lots

Summary of any key amendments made to the planning proposal as a consequence of public exhibition or agency consultation:

There are no amendments to the planning proposal as a consequence of the public exhibition or agency consultation.

Other relevant background:

A Development Application has been lodged with Council for the subdivision of the property into two lots. A number of the submissions received in response to the public exhibition of the planning proposal expressed support for the subdivision of the property. The submissions from the owner and their heritage consultants requested that Council determine the Development Application for the subdivision and that the planning proposal be amended to reflect the subdivision.

The assessment of heritage significance under the planning proposal and the determination of the Development Application for the subdivision are two separate

processes. Council is obliged under the conditions of the Gateway Determination to complete the planning proposal process within 6 months. As the timeframe and determination (approval/refusal) of the Development Application are unknown, Council is obliged to proceed with the planning proposal to list the whole site as it currently stands. In the event that the subdivision is approved, Council will have the opportunity to revisit the heritage listing applying to the new lot.

2.0 GATEWAY DETERMINATION

Date Determination issued:

28 April 2016

Timeframe for completion of proposal:

6 months from the week following the date of the Gateway determination

Was the Gateway determination subject to a review request, if so what were the outcomes of that request?

No, the Gateway determination was not subject to a review request

Have the conditions included in the Gateway Determination been complied with, if not, what is the justification for the non-compliance, and what are the impacts non-compliance may/will have on the LEP?

Yes the conditions of the Gateway determination have been complied with as follows:

Condition1 – Prior to the exhibition of the planning proposal, Council amended the planning proposal to include a heritage map that shows the existing status of the site as a non-heritage item.

Condition 2 (a) – The planning proposal was publically exhibition for a minimum period of 14 days between 6 May 2016 and 20 May 2016.

Condition 2 (b) – The planning proposal was notified in accordance with the requirements of *A Guide to Preparing LEPs*. The planning proposal was advertised within the local paper, on Councils website and letters were sent to the affected properties advising them of the public exhibition.

Condition 3 – No agency consultation was required under section 56(2)(c) and 57 of the Act. The Heritage Division of the Office of Environment and Heritage was consulted with prior to Council submitting the planning proposal for Gateway.

Condition 4 – A public hearing was not required to be held under section 56(2)(e) of the Act.

Condition 5 – The planning proposal has been completed within the 6 months required by the Gateway determination.

3.0 COMMUNITY CONSULTATION

Dates of exhibition:

6 May 2016 – 20 May 2016

Number of submissions received:

8 submissions received – 5 objecting to heritage listing and 3 did not object heritage listing.

Issues raised during exhibition and responses to issues:

Issue	Response
- Lack of heritage significance - House is ugly	The heritage assessments by Council's heritage consultant and the owner's heritage consultant have found that 27 Finlay Road has heritage values which make it worthy of conservation. The house has aesthetic significance as a good and highly intact example of the Post-War Modern architectural style dwelling. It has historical significance as it demonstrates a shift away from more 'traditional' styles of architecture towards 'modern' influences that respond to the site and socio-economic climate of the period following the Second World War, and it has historical association significance as a design of prominent architect Harry Seidler.
Heritage listing will prevent extensions to house	Modifying or renovating a heritage place requires a development application or a minor works approval that demonstrates the works will not degrade the heritage significance of the place.
Possibility that house will become derelict	The house has been rented for many years and is currently leased. Real estate is a diverse market, with numerous consumers and different places provide different opportunities. Maintenance and repairs are part of owning any house.
Heritage listing impact on sale of	Evidence of house sales in Ku-ring-gai has demonstrated that

property - Devalue property - Financial impacts on owners	heritage listing does not make a place unsaleable. Numerous statistical studies have been undertaken which show that the impact of designation is negligible while other factors such as proximity to schools, number of bedrooms and car spaces have a greater impact on house prices. It is acknowledged that a potential sale did not complete following the placement of the IHO during a period of uncertainty for the buyer and seller. A gazetted heritage listing has certainty, and along with it opportunities which are provided by the incentives clause of the LEP.
- Support for development application for subdivision - Request that Council approve subdivision	The application for the subdivision is being considered under a separate process to this planning proposal. Councils DCP does not prohibit subdivision, but requires it to be consistent with Councils Development Controls.
Appropriate heritage curtilage should be used to define the extent of heritage listing rather than listing the whole site	In line with the Standard Technical Requirements for Spatial Datasets and Maps (30 November 2015) the heritage map for the standard template LEP is as follows: Heritage items – the land (lot, lots) on which a heritage item is situated will be coloured brown and labelled with a number corresponding to the description of the item in Schedule 5. However, on very large rural lots where heritage items such as a well or tool shed may be found, only the immediate location of the item may be coloured. As such, the entire lot is to be defined by the map as a heritage item. In the event that the subdivision development application is approved, Council will have the opportunity to revisit the appropriateness of the listing applying to the new lot.
Planning proposal should be deferred until after DA for subdivision is approved	The planning proposal for the heritage listing of the site and the development application for the subdivision of the site are two separate processes. Council is obliged under the conditions of the Gateway Determination to complete the planning proposal within 6 months from the Gateway Determination. As the timeframe for the assessment and determination (approval/refusal) of the Development Application are unknown, Council is obliged to proceed with the planning proposal. In the event that the Development Application for the subdivision is approved, Council will have the opportunity to revise the heritage listing applying to the new lot.
- Objection to use of term “international style” to describe house - Seidler never liked the term	The well- respected text <i>A Pictorial Guide to Identifying Australian Architecture</i> by R.Apperly, R.Irving and P.Reynolds does identify Harry Seidler as a practitioner of the Post-War

	International Style and uses an image of a Turramurra house designed by Seidler as an example of the style in the book. While Seidler may have objected to the term, it is commonly known as such as the description is used in numerous architectural texts.
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Was the Planning Proposal re-exhibited, if so, provide all relevant details as above?

No, the planning proposal was not re-exhibited.

Were the consultation requirements included in the Gateway Determination complied with?

Yes, the consultation requirements included in the Gateway Determination were complied with as follows:

1. The planning proposal was amended prior to exhibition in accordance with Condition 1 of the Gateway Determination
2. The planning proposal was exhibited and made publically available for a minimum period of 14 days in accordance with Condition 2 of the Gateway Determination
3. No agency consultation was required in accordance with Condition 3 of the Gateway Determination.
4. No public hearing was required in accordance with Condition 4 of the Gateway Determination.

Were amendments made to the Planning Proposal in response to the issues raised during public exhibition?

No amendments were made to the planning proposal in response to the issues raised during the public exhibition.

4.0 VIEWS OF PUBLIC AUTHORITIES

Which agencies were consulted?

The Gateway Determination required no consultation with public authorities under Section 56(2)(d) of the EP&A Act, as Council had already consulted with the Heritage Division, Office of Environment and Heritage prior to submitting the planning proposal for Gateway.

Which agencies provided a response?

The Heritage Division, Office of Environment and Heritage provided a response on 8 April 2016.

What were the views of those agencies?

The Heritage Division advised:

The Heritage Division, OEH, raises no objections to the inclusion of an additional item of heritage significance, the listing of the site will assist in providing a link between past, present and future generation. Should a subdivision application be lodged in the future, a merit based assessment would need to be undertaken by Ku-ring-gai Council and the matters listed in the GML report may be considered as relevant issues.

Subsequently, OEH supports the listing of 'Exley House' as a heritage item of local significance within Schedule 5 of Ku-ring-gai LEP 2015, because it will provide 'Exley House' and its setting with statutory protection vis-à-vis the heritage provisions of Clause 5.10. The heritage provisions will also assist conservation and management of 'Exley House' and its setting.

How were any objections or issues resolved?

There were no objections or issues to be resolved as a result of the comments received from the Heritage Division, Office of Environment and Heritage.

Did agency consultation occur in accordance with the requirements of the Gateway determination?

Condition 3 of the Gateway Determination outlined that no consultation is required with public authorities under Section 56(2)(d) of the EP&A Act, as Council consulted with the Heritage Division, Office of Environment and Heritage prior to the planning proposal being submitted for Gateway.

What amendments were made to the Planning Proposal to respond to the issues raised by agencies?

No amendments were required to be made to the planning proposal in response to the comments received from the Heritage Division, Office of Environment and Heritage.

5.0 CONSISTENCY WITH S.117 DIRECTIONS AND OTHER STRATEGIC PLANNING DOCUMENTS

Is the planning proposal consistent, justifiably inconsistent or inconsistent with all relevant s117 Directions?

The following table identifies applicable s117 Directions and outlines this planning proposals consistency with those Directions:

Directions under S117	Objectives	Consistency
2. ENVIRONMENT AND HERITAGE		
2.3 Heritage Conservation	The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance	Consistent. The planning proposal is consistent with this direction and it will result in the conservation of a property that has been assessed to satisfy the NSW Heritage Council's criteria for local heritage significance.
3. HOUSING, INFRASTRUCTURE AND URBAN DEVELOPMENT		
3.1 Residential Zones	The objectives of this direction are: (a) To encourage a variety and choice of housing types to provide for existing and future housing needs (b) To make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services (c) To minimize the impact of residential development on the environment and resource lands	Consistent. The planning proposal relates to an established dwelling, and in this regard will have no effect on the housing choice, infrastructure or environment.
3.3 Home Occupations	The objective of this direction is to encourage the carrying out of low-impact small businesses in dwelling houses	Consistent. The planning proposal does not preclude the carrying out of a home occupation.
6. LOCAL PLAN MAKING		
6.1 Approval and Referral Requirements	The objective of this direction is to ensure that LEP provisions encourage the efficient and	Consistent. The planning proposal will not result in the requirement for

	appropriate assessment of development.	concurrence, consultation or referral of a future development application to a Minister or public authority as a result of the proposed local heritage listing.
7. METROPOLITAN PLANNING		
7.1 Implementation of the Metropolitan Strategy	The objective of this direction is to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in the Metropolitan Strategy.	Consistent. The planning proposal will not adversely affect the directions and actions outlined in the strategy to achieve the four goals relating to economy, housing, environment and community.

Is the planning proposal consistent, justifiably inconsistent or inconsistent with all relevant SEPPs?

The following table identified the key applicable SEPPs and outlines this planning proposal's consistency with those SEPPs:

SEPP	Comment on consistency
SEPP 55 Remediation of Land	Consistent. There is no evidence to suggest that the subject site could be affected by contamination from past land uses or activities being carried out on the land.
SEPP (Housing for Seniors of People with a Disability) – 2004	Consistent. The planning proposal is not inconsistent with the aims of the policy.
SEPP Building Sustainability Index : BASIX 2004	Consistent. The planning proposal is consistent with the aims of the policy.
SEPP Infrastructure 2007	Consistent. The planning proposal is consistent with the aims of the policy.
SEPP Affordable Rental Housing 2009	Consistent. The planning proposal is consistent with the aims of the policy.
SEPP Exempt and Complying Development Codes 2008	Consistent. The planning proposal is consistent with the aims of the policy.
SREPP	Comment on consistency
Sydney REP 20 – Hawkesbury-Nepean River	Consistent. The planning proposal is consistent with the aims of the policy and will have no adverse impacts on the Hawkesbury-Nepean River.
Sydney REP (Sydney Harbour Catchment) 2005	Consistent. The planning proposal is consistent with the aims of the policy and will have no adverse impacts on the Sydney Harbour Catchment.

Is the planning proposal consistent, justifiably inconsistent or inconsistent with all other strategic planning documents?

Yes. This Planning Proposal is consistent with the outcomes stated under the six themes of the Ku-ring-gai Council Community Strategic Plan 2030. The themes, listed below, seek to provide for a sustainable environment for Ku-ring-gai's future.

1. Community, People and Culture
2. Natural Environment
3. Places, Spaces and Infrastructure
4. Access, Traffic and Transport
5. Local Economy and Employment
6. Leadership and Governance

The planning proposal is consistent with the following objectives under the Community Strategic Plan theme 3. Places, Spaces and Infrastructure:

P1.1 Ku-ring-gai's unique visual character and identity is maintained

P2.1 A robust planning framework is in place to deliver quality design outcomes and maintain the identity and character of Ku-ring-gai

P5.1 Ku-ring-gai's heritage is protected, promoted and responsibly managed

The planning proposal is also consistent with the following aims of the KLEP 2015:

(a) To guide the future development of land and the management of environmental, social, economic, heritage and cultural resources within Ku-ring-gai

(f) To recognise, protect and conserve Ku-ring-gai's indigenous and non-indigenous cultural heritage

6.0 PARLIAMENTARY COUNSEL OPINION

Was an Opinion was sought and given by Parliamentary Counsel?

Council sought an opinion from Parliamentary Counsel on 16 June 2016. Parliamentary Counsel issued the opinion on 29 June 2016.

7.0 OTHER RELEVANT MATTERS

Have representations been received on the Planning Proposal from State or Federal members of Parliament?

No representations have been received on the planning proposal from State or Federal members of Parliament.

Has Council has met with the Minister in relation to the Planning Proposal?

Council has not met with the Minister in relation to the planning proposal.

8.0 MAPPING

Proposed LEP Maps are attached in the Appendix to this Report, and will be uploaded to the online planning portal prior to Council requesting the LEP be notified.

9.0 RECOMMENDATION

At Council's meeting on 14 June 2106, Council resolved the following:

- A. That the planning proposal to list the property known as 'Exley House' at 27 Finlay Road, Warrawee as a local heritage item under the Ku-ring-gai Local Environmental Plan 2015 proceed without variation.
- B. That Council proceeds to make the Plan, using its delegated authority, under Section 58(2) of the *Environmental Planning & Assessment Act 1979*
- C. That those who made submissions be notified of Council's decision.

APPENDICES

- PCO Legal Drafting - signed under delegation
- Proposed LEP Maps
- Department's Attachment 5 - Delegated plan making reporting template
- Gateway Determination
- Planning Proposal