

Planning Services

IRF19/3663

Gateway determination report

LGA	City of Sydney
PPA	City of Sydney Council
NAME	46 Chisholm Street, Darlinghurst
NUMBER	PP_2019_SYDNE_003_00
LEP TO BE AMENDED	Sydney Local Environmental Plan 2012
ADDRESS	46 Chisholm Street, Darlinghurst
DESCRIPTION	Lot 71 DP 602585
RECEIVED	27 May 2019
FILE NO.	IRF19/3663
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1. INTRODUCTION

1.1 Description of planning proposal

The planning proposal seeks to amend Schedule 5 of Sydney Local Environmental Plan 2012 (Sydney LEP 2012) by listing the property at 46 Chisholm Street, Darlinghurst as an item of local heritage significance.

1.2 Site description and site history

The site is located at 46 Chisholm Street, Darlinghurst and is formally identified as Lot 71, DP 602585 (**Figure 1**). The site encompasses an approximate total site area of 106m² and has a 6.3 metre (m) frontage to the east of Chisholm Street.

The site comprises a single storey, weatherboard cottage constructed during the late-Victorian era (**Figure 2**). In 1794, 70 acres was granted to John Palmer which became known as George Farm. In 1855, James Chisholm purchased a block of 8 acres, bounded by Taylor, Flinders, Hannam and South Dowling Streets, and developed the Chisholm Estate. James Chisholm was an early settler, and many major NSW landholders descended from him. The Chisholm Estate was subsequently subdivided in circa 1875. The cottage was constructed in circa 1876, with the address being recognised as 46 Chisholm Street in 1882.

The site is located within the Paddington Urban Heritage Conservation Area (Paddington HCA). The site is identified as a contributory item within the Paddington HCA. The Sydney Development Control Plan 2006 – Heritage, defines contributory buildings as buildings that make an important and significant contribution to the character of the heritage conservation area or heritage streetscape.

The site has a slight slope from the south western corner towards the north-eastern corner. The site can only be accessed from Chisholm Street.

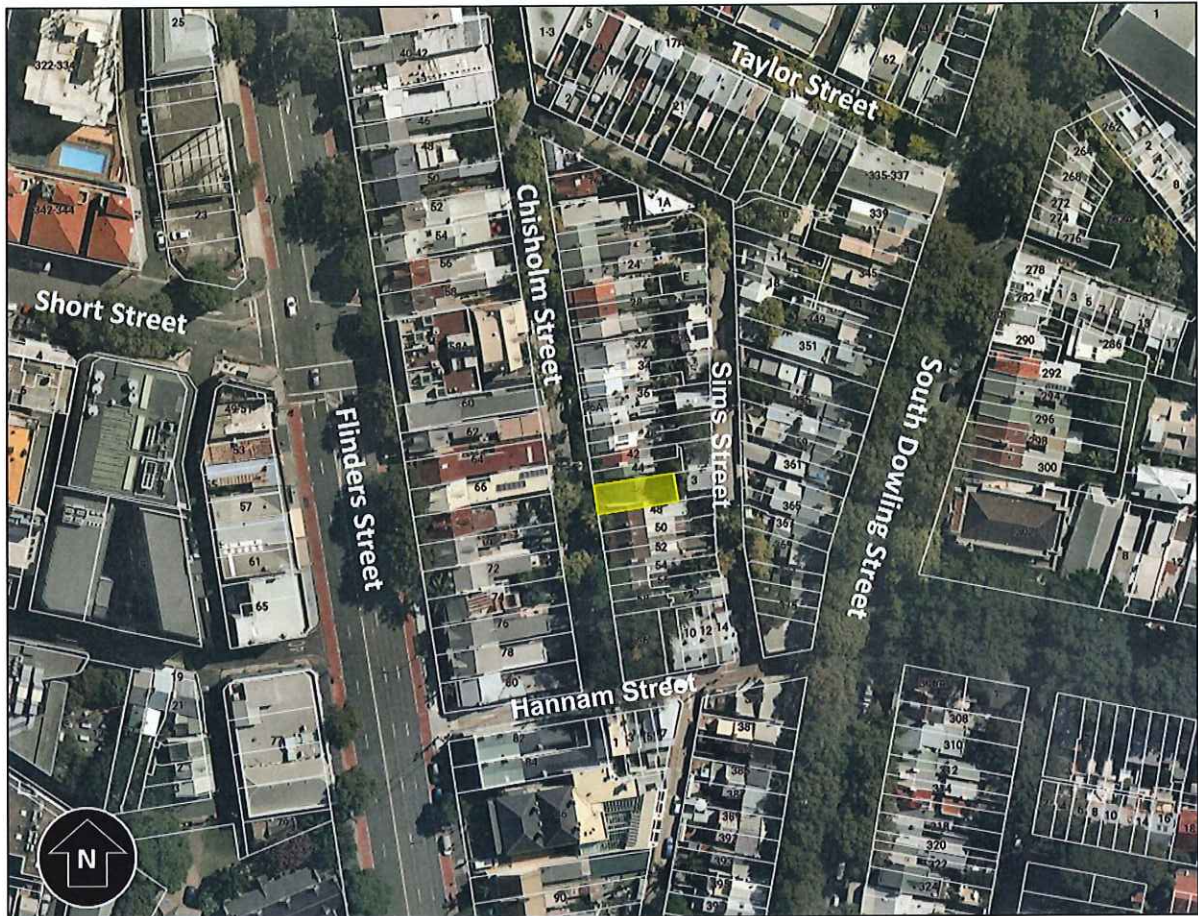


Figure 1: Site Locality Map, site shown in yellow (Source: Nearmaps)



Figure 2: Front elevation of 46 Chisholm Street (Source: John Oultram & Design Heritage Assessment)

1.3 Surrounding area

The subject site is located on the eastern fringe of the Sydney CBD in Darlinghurst and is within 200m walking distance of bus stops along Flinders Street. South Dowling Street and Flinders Street connect to Oxford Street, which provides a direct route into the Sydney CBD (**Figure 3**). St Vincent's Hospital is also located approximately 200m from the site.

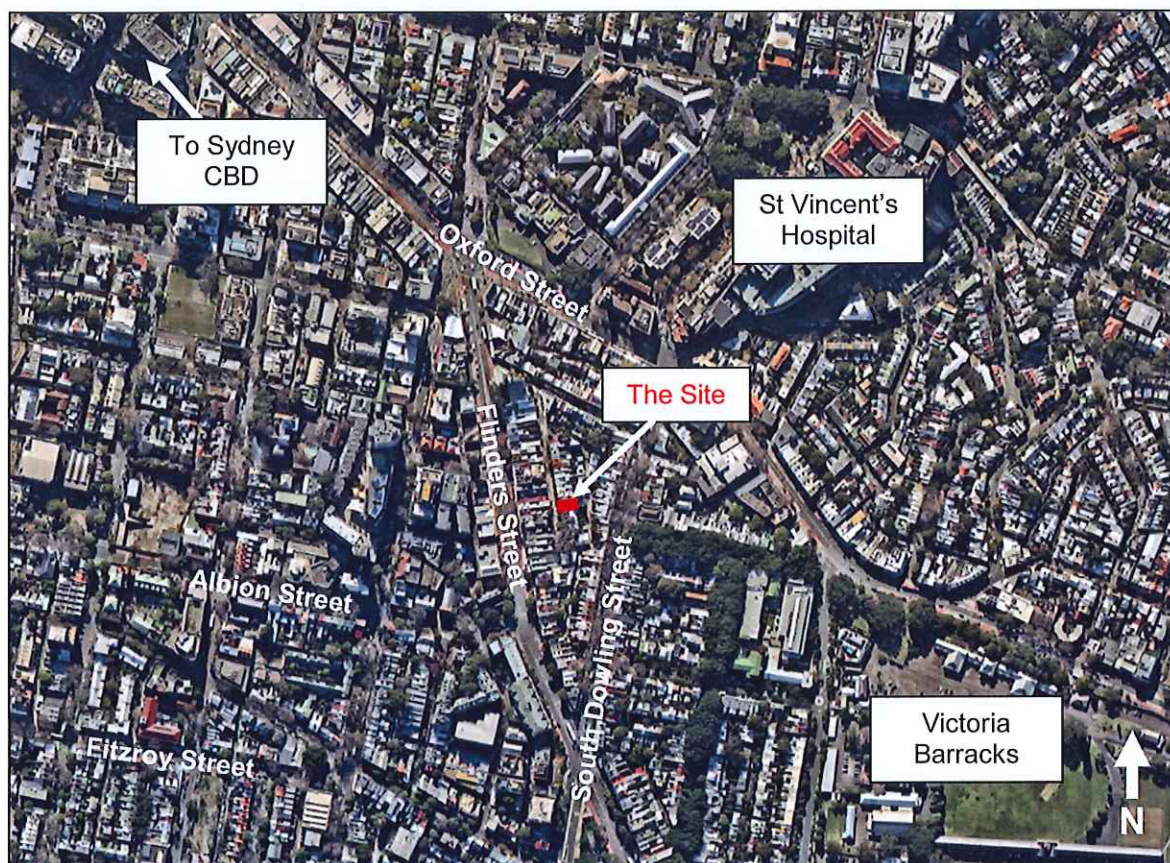


Figure 3: Surrounding area, site shown in red (Source: Nearmap)

The local character surrounding the subject site is a mix of Victorian and Federation terraces to the north and south. Chisholm Street, and the neighbouring Sims Lane has a predominately residential character, dominated by two-storey terrace housing. The streetscape has a dense street tree canopy, which further contributes to a leafy residential amenity.

The planning proposal does not include a description of the surrounding area. For the purpose of public exhibition, the Department recommends as a condition of Gateway that the planning proposal be updated to include a description of the surrounding area.

1.4 Background

On 12 December 2017, Council conducted a site visit of the subject site in response to a pre development application (DA) submission. On 13 December 2017, Council provided pre-lodgement advice to the land owner, advising that Council would not support a DA for the demolition of the existing weatherboard cottage and erection of two semi-detached dwellings.

On 30 May 2018, the landowner lodged a DA for the site proposing:

- demolition of the existing weatherboard cottage;
- torrens title subdivision of the existing lot into two lots; and
- erection of two semi-detached dwellings.

On 21 September 2018, Council refused the DA on the grounds that the proposal would have adverse heritage and streetscape impacts.

On 12 December 2018, the landowner lodged a section 8.2 Review of determination under the *Environmental Planning and Assessment Act 1979* (the Act). Council commissioned John Oultram Heritage & Design (JOHD) to commence a heritage assessment for the subject site. The Heritage Assessment recommended the property be listed as a local heritage item for its rarity, historic and representativeness values. On 15 March 2019, Council's Section 8.2 Review upheld the original refusal.

The landowner has lodged an appeal of the refusal to the Land and Environment Court. The Department understands the Section 34 Conciliation Conference is scheduled to be held in November 2019.

1.5 Existing planning controls

Under the Sydney LEP 2012, the site has the following planning controls:

- Zoned R1 General Residential (**Figure 4**);
- Floor space ratio of 1.75:1 (**Figure 5**); and
- Maximum building height of 9m (**Figure 6**).

As the site is located within the Paddington HCA (**Figure 7**), clause 5.10 of the Sydney LEP 2012 applies to the site, which will require the heritage impacts to be further considered prior to development consent being issued.

The site is also identified as a Contributory Item in the Sydney DCP 2006 (**Figure 8**).

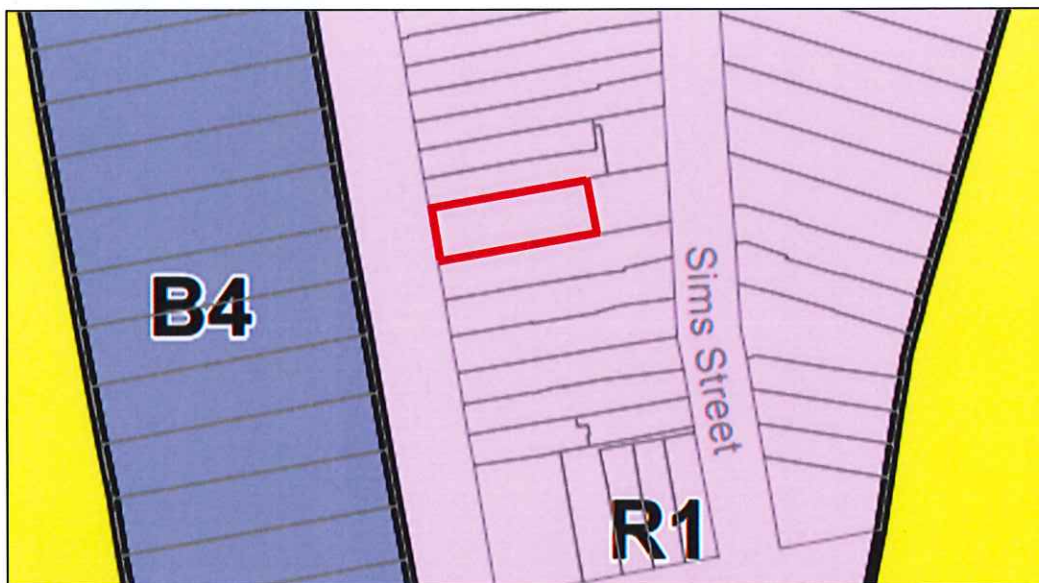


Figure 4: Land Zoning Map, with the site shown in red (Source: Sydney LEP 2012)

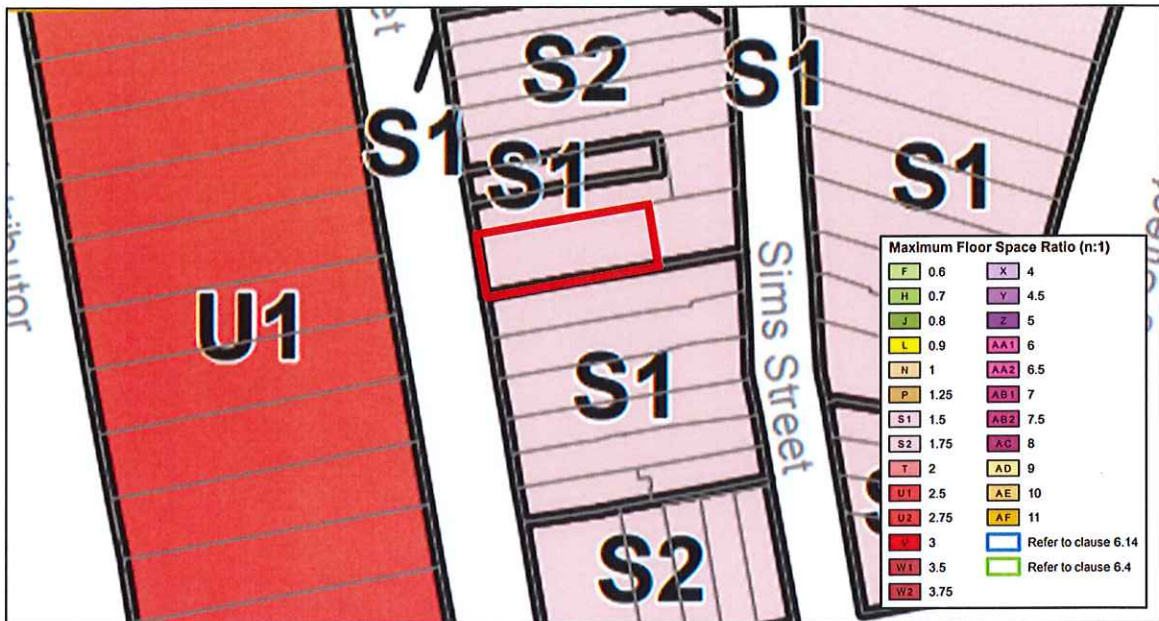


Figure 5: Floor Space Ratio Map, with the site shown in red (Source: Sydney LEP 2012)

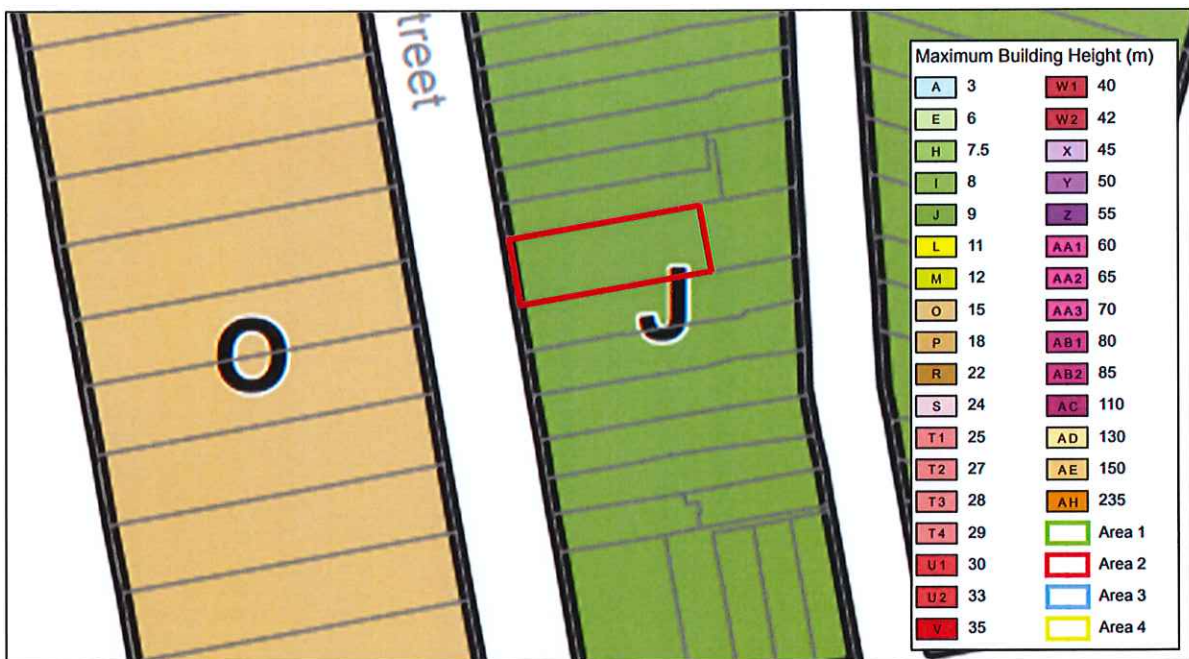


Figure 6: Height of Buildings Map, with the site shown in red (Source: Sydney LEP 2012)

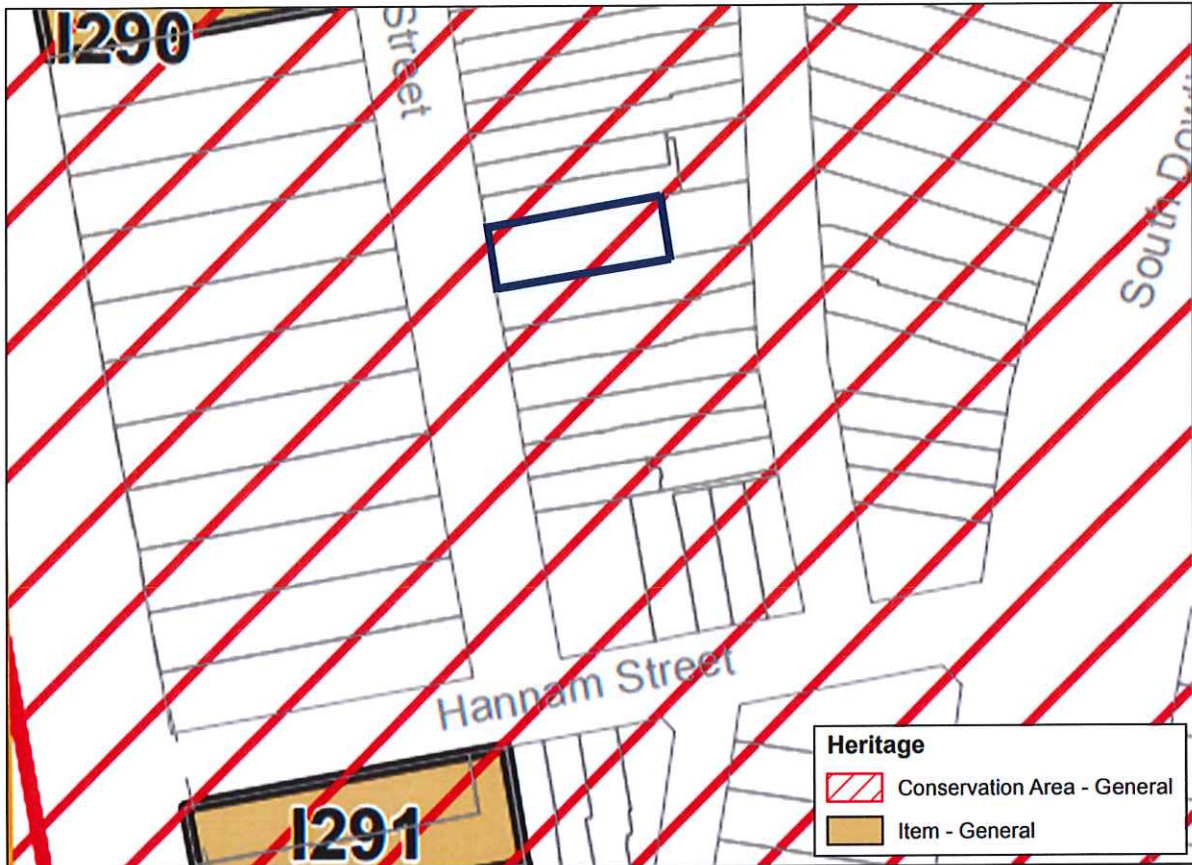


Figure 7: Heritage Map, with the site shown in navy blue (Source: Sydney LEP 2012)

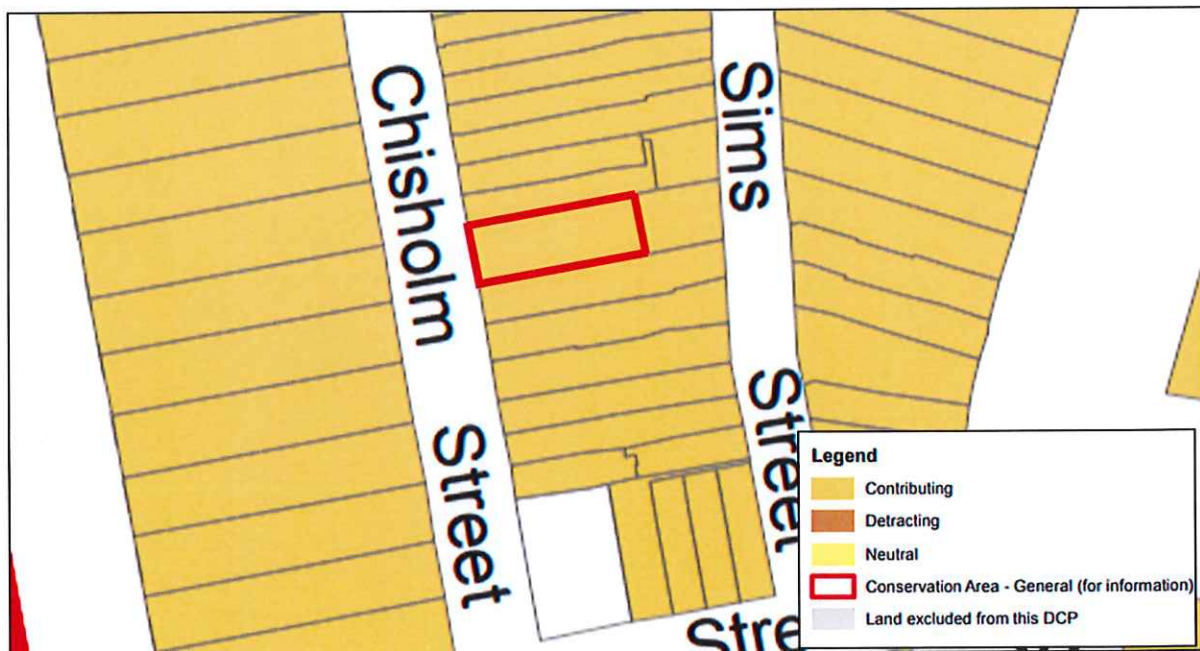


Figure 8: Paddington Heritage Conservation Area, with the site shown in red (Source: Sydney DCP 2006)

The Department notes that the planning proposal does not identify the existing planning controls for the site. For the purpose of public exhibition, the Department recommends that as a condition of Gateway that the planning proposal be updated to include the existing planning controls for the site.

2. PROPOSAL

2.1 Objectives or intended outcomes

The intended outcome of the proposal is to list 46 Chisholm Street, Darlinghurst a local heritage item under Schedule 5 of Sydney LEP 2012.

The objective and intended outcomes are considered adequate and are not required to be updated prior to public exhibition.

2.2 Explanation of provisions

The proposal seeks to achieve its intent by amending Schedule 5 of Sydney LEP 2012 to list 46 Chisholm Street, Darlinghurst as a local heritage item. A draft amendment has been provided below:

Locality	Item Name	Address	Property Desc.	Significance	Item No.
Darlinghurst	Weatherboard Cottage	46 Chisholm Street, Darlinghurst	Lot 71 DP 602585	Local	I2292

The Department considers the draft amendment to be consistent with existing listings under Schedule 5 and the directions of the Standard Instrument (LEPs) Order 2006.

2.3 Mapping

The proposal seeks to amend Sheet _023 of the Heritage Map to identify the site as a local heritage item. A draft map has been provided as part of the planning proposal and is considered adequate for the purpose of public exhibition.

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal states that the need to amend Sydney LEP 2012 has arisen as the result of a heritage assessment of the subject site. The heritage assessment resulted from a DA which sought demolition of the existing weatherboard cottage.

Council's cannot issue an Interim Heritage Order (IHO) under the *Heritage Act 1977*, as the site is located within an existing heritage conservation area.

A planning proposal is the only means to alter Schedule 5 of Sydney LEP 2012 to reflect the heritage significance of the property. The planning proposal is considered to be the best means of achieving the intended outcome of the proposal.

4. STRATEGIC ASSESSMENT

4.1 District

Eastern City District Plan

In March 2018, the Greater Sydney Commission released the Eastern City District Plan. The Eastern City District Plan encompasses the Sydney local government area and operates as a link between the Greater Sydney Region Plan and the District Plan.

The proposal is consistent with the outcomes and directions outlined in the plan, particularly those associated with heritage. Planning Priority E6 requires “*creating and renewing great places and local centres, and respecting the District’s heritage*”. Within Planning Priority E6, Action 20 seeks to protect, conserve and enhance environmental heritage.

The objective also identifies a strategy that comprises three components:

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

The Department considers the proposal is consistent with Priority E6 and Action 20 of the District Plan as it seeks to provide the statutory mechanisms required to protect the proposed heritage item’s significance and provide appropriate provisions for conservation management.

4.2 Local

Council’s *Sustainable Sydney 2030 Community Strategic Plan* is the vision for the sustainable development of the City of Sydney to 2030 and beyond. It includes 10 strategic directions to guide the future of the City and 10 targets against which to measure progress. This planning proposal is consistent with key directions of the strategic plan as demonstrated in **Table 1**.

Table 1: Consistency with Sustainable Sydney 2030

Consistency with Sustainable Sydney 2030	
Direction	Comment
Direction 7 – Vibrant local communities and economies	The Department considers the proposal is consistent with Direction 7, as it supports the cultural life and diversity of Sydney through the retention of a historic dwelling. This direction also includes recording, sharing and promotion of the history of the city and the related conservation of its diverse built heritage.
Direction 9 – Sustainable development, renewal and design	The Department considers the proposal is consistent with Direction 9, as the retention of historic buildings contribute to community and cultural life.

4.3 Section 9.1 Ministerial Directions

The Planning Proposal's consistency with applicable Ministerial (Section 9.1) Directions is set out below in **Table 2**.

Table 2: Ministerial Directions

Section 9.1 Direction	Consistent	Comment
2. Environment and Heritage		
2.3 Heritage Conservation	Yes	The proposal is consistent with this direction as it proposes to amend Schedule 5 of Sydney LEP 2012 to reflect the heritage significance of the weatherboard cottage. Part 4(a) of the direction requires that a planning proposal contains provisions that facilitate the conservation of heritage items in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item. The heritage assessment includes an assessment of significance, which has addressed the significance of the items in relation to these categories.
5. Regional Planning		
5.1 Implementation of Regional Strategies (refer to Section 4.1 of this report).	Yes	<u>Eastern City District Plan</u> The proposal is consistent with the District Plan as it seeks to protect and conserve the weatherboard cottage at the subject site which has been identified as being of local heritage significance. The community and landowner will have the opportunity to comment on the heritage significance of the item when the planning proposal goes to public exhibition.
7 Metropolitan Planning		
7.1 Implementation of a Plan for Growing Sydney	Yes	Refer to response to s.9.1 Direction 5.1 above.

4.5 State Environmental Planning Policies (SEPPs)

The proposal is considered consistent with and is not expected to hinder the application of any relevant SEPPs, as outlined in **Table 3**.

Table 3: Assessment of proposal against relevant SEPPs and deemed SEPPs

SEPP	Requirement	Proposal	Complies
SEPP 55 – Remediation of Land	Clause 6 of SEPP 55 requires that the planning authority to be satisfied that the land is suitable or can be rehabilitated for all permissible uses in the zone.	This planning proposal does not seek to amend the zoning or the land use. Therefore, the site is suitable for its intended use. Future DA's will need to consider SEPP No 55.	Yes

5. SITE-SPECIFIC ASSESSMENT

5.1 Environmental

The planning proposal references a study of weatherboard buildings commissioned by South Sydney City Council in 2002 which informed the Sydney DCP 2012. Weatherboard cottages are amongst the oldest buildings in Sydney and demonstrate aspects of 19th and 20th century life. These buildings contribute a unique character to the City of Sydney and a diversity in housing stock. Council states it endorsed numerous heritage listings of weatherboard cottages as a result of the study. The

Department requested a copy of the 2002 study, however Council stated it was unable to provide the report as it was never finalised.

The need for the planning proposal has arisen from a heritage assessment of the site prepared by JOHD. The JOHD Heritage Assessment outlined that the proposed heritage item meets at least three out of seven of the NSW heritage criteria. The JOHD Heritage Assessment concludes the item meets the threshold for inclusion in Schedule 5 of the Sydney LEP 2012 as:

- the cottage is emblematic of the early development of the area for small-scale housing (Historic Significance);
- the single-storey, weatherboard dwelling is uncommon in the locality, which comprises of two-storey, masonry terraces (Rarity); and
- the dwelling is an example of a mid-Victorian weatherboard cottage that retains its early form and detail to the front (Representativeness).

As discussed in relation to Section 9.1 Direction 2.3 Heritage Conservation, the planning proposal includes a heritage assessment which demonstrates it is consistent with Direction 2.3 Heritage Conservation.

The Department considers there are no anticipated environmental impacts from the proposal as there are no proposed changes to land-use permissibility or development standards.

The Department agrees with the findings of the JOHD Heritage Assessment and considers the weatherboard cottage to be of local heritage significance. The Department received further information on the significance of the Chisholm Estate from Council. The Department recommends that Council update the planning proposal to include the additional information on the significance of the Chisholm Estate for the purposes of the public exhibition.

5.2 Social

The Department considers there are no social impacts associated with the planning proposal. Conserving the property of heritage significance will allow the community to have a positive understanding and connection with the area's history.

The Department recommends that the Heritage Council of NSW and the former Office of Environment and Heritage be consulted prior to the planning proposal being exhibited. The public exhibition of the planning proposal will provide the opportunity for landowner and the wider community to determine whether the listing is appropriate.

5.3 Economic

Should the proposal proceed to list the site as an item of heritage significance, Clause 5.10 of the Sydney LEP 2012 will continue to apply to any development on the site.

Under Clause 5.10 of Sydney LEP 2012, the relevant consent authority may require a heritage management document and/or a heritage conservation management plan to be prepared prior to development being granted. Notwithstanding, as the building is located within an HCA, Clause 5.10 of the Sydney LEP 2012 would already apply to the site.

The Department considers the listing of the proposed heritage item is not anticipated to have a substantial impact on the local economy.

6. CONSULTATION

6.1 Community

The planning proposal states that it will be exhibited on Council's website and that a notification will be published in the local newspaper. Council also proposes to write to the land owner, adjoining landowners and the surrounding community.

Council's approach is considered adequate and the planning proposal should be publicly exhibited for a minimum of 28 days.

6.2 Agencies

Council proposes to consult with the Heritage Council of NSW during the public exhibition period. The proposal states that it is unnecessary to consult with any other public agencies. However, the Department considers that Council should also consult with the Department that supports the Heritage Council.

7. TIME FRAME

Council has provided a project timeline as part of the planning proposal anticipating a timeframe for completion of seven months. Considering the nature of the proposal, a 12-month timeframe for completion is considered appropriate. This does not preclude Council from finalising the planning proposal within its projected timeframe.

8. LOCAL PLAN-MAKING AUTHORITY

Council has requested authorisation to act as the local plan-making authority. It is considered that Council should not be the local plan-making authority for this planning proposal as the proposal is the result of a DA that is currently before the Land and Environment Court.

9. CONCLUSION

The planning proposal is recommended to proceed subject to conditions as:

- the JOHD Heritage Assessment identifies that the subject site has local heritage significance and meets three out of seven of the NSW heritage criteria;
- it is consistent with the objectives and directions of strategic and statutory planning frameworks; and
- it will allow for the greater management and conservation of identified heritage in the Paddington HCA.

10. RECOMMENDATION

It is recommended that the delegate of the Minister for Planning and Public Spaces determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal should be made available for community consultation for a minimum of 28 days.

2. Council must write to the land owner whose property is proposed to be listed and provide a copy of the planning and supporting studies during public exhibition.
3. Prior to community consultation the planning proposal is to be amended to:
 - update the project timeline to allow for 12 months completion;
 - include a description of the surrounding area;
 - include details of the existing planning controls applicable to the site; and
 - provide further information of the importance of the Chisholm Estate.
4. Consultation is required with the following public authorities:
 - Heritage Council of NSW; and
 - The former Office of Environment and Heritage.
5. The time frame for completing the LEP is to be 12 months from the date of the Gateway determination.
6. Given the nature of the planning proposal, Council should not be authorised to be the local plan-making authority to make this plan.

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