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Plan finalisation report – PP_2019_SYDNE_002_00

Sydney Local Environmental Plan 2012 – 46 Chisholm
Street, Darlinghurst

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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Sydney Local Environmental Plan 2012 (Amendment No. 61).

1.1.2 Site description

Table 1 Site description

Site Description	Type	Council Name	LGA
The planning proposal (Attachment A) applies to land at 46 Chisholm Street, Darlinghurst	Site	City of Sydney	Sydney

The planning proposal applies to land at 46 Chisholm Street, Darlinghurst, which is legally described 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, and has been identified by City of Sydney Council as having local heritage significance. This is as the cottage, which was constructed in circa 1876, is the only remaining timber weatherboard cottage from the Chisholm Estate. James Chisholm was an early settler, and many major NSW landholders descended from him.

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, and is shown in Figure 1.

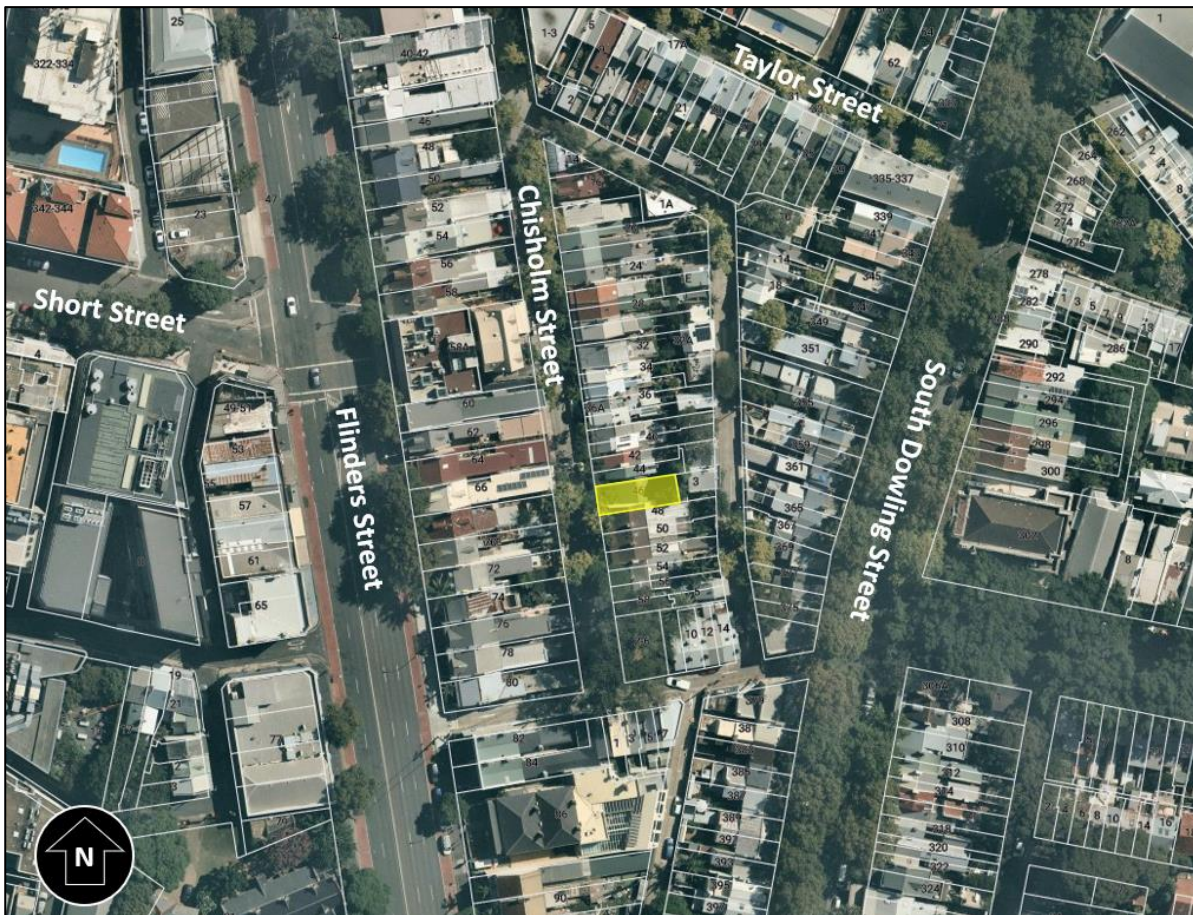


Figure 1 Subject site

1.1.3 Purpose of plan

The draft LEP seeks to amend Schedule 5 of the Sydney Local Environmental Plan 2012 (Sydney LEP 2012) to list 46 Chisholm Street, Darlinghurst as a local heritage item.

1.1.4 State electorate and local member

The site falls within the Sydney state electorate. Alex Greenwich MP is the State Member.

The site falls within the Sydney federal electorate. Hon Tanya Plibersek MP is the Federal Member.

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

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination and alterations

The Gateway determination issued on 17/10/2019 (**Attachment B**) determined that the proposal should proceed subject to conditions which included consultation with the Heritage Council of NSW and the former Office of Environment and Heritage.

In accordance with the Gateway determination the proposal was due to be finalised on 17/10/2020.

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 25/11/2019 to 23/12/2019.

A total of 15 submissions were received during the first exhibition including 1 petition.

Due to a miscalculation of days during the first exhibition time period in late 2019, Council was required to re-exhibit the planning proposal. The second exhibition period was held from 5 May 2020 to 3 June 2020. A further 4 submissions were received during the second exhibition period. Previous submissions from the first exhibition period were still considered, and submissions were not required to be resubmitted. A total of 19 submissions were received during the two exhibitions and these are summarised in the Summary of Submissions (**Attachment D**).

3.1 Submissions during exhibition

3.1.1 Submissions supporting the proposal

A total of 10 out of 19 submissions, including the submission by Heritage NSW, expressed support for the listing. The key themes in the submissions are outlined below:

- it retains the built heritage.
- it is a rare item of historical, social and architectural significance within the LGA.
- it ensures the full fabric of the area is conserved for future generations.

3.1.2 Submissions objecting to and/or raising issues about the proposal

There were 19 submissions received from individuals and organisations including the submission from Heritage NSW.

Of the individual submissions, 9 objected to the proposal (47.4%) and 10 supported the proposal (52.6%).

Table 2 Summary of Key Issues

Issue raised	Council response and Department assessment of adequacy of response
Condition of the building and past building works diminishes the potential heritage significance of the site	<p>Submissions (including one by the landowner) which opposed the heritage listing identified that the existing condition and extent of previous changes diminished the potential heritage significance of the site.</p> <p>Council states that despite the loss of fabric the building still meets the criteria for listing. As noted in the Heritage Assessment prepared by JOHD, the cottage retains its original form and detail to the front, even if it has lost much of its original fabric. Council also states that historic timber buildings in Sydney, especially those approximately 140 years old, are likely to have undergone substantial loss of original organic fabric.</p> <p>Noting that Council's technical expert has identified that the building has heritage significance notwithstanding the submissions received, the Department agrees with the findings of the heritage assessment prepared by JOHD.</p>

Issue raised	Council response and Department assessment of adequacy of response
<p>Process and the refused development application (DA) within the context of the proposed heritage listing</p>	<p>Submissions which opposed the heritage listing queried the proposed heritage listing in context of the DA for the site, including concerns regarding process and that the landowner had not been consulted when developing the listing or seeking access to the property.</p> <p>Additionally, a submission on behalf of the landowner noted previous heritage assessments had not determined that the site had any heritage significance. The submission also contained a copy of the Heritage Impact Assessment prepared for the DA, dated April 2018, and a review of Kovacs report by Weir Phillips Heritage, dated 25 August 2009. In response, Council states the independent heritage assessment was carried out separately to but concurrently with the DA process and concluded the cottage meets the threshold for inclusion as a local heritage item. In addition, a comparative analysis within the JOHD Heritage Assessment supports the heritage listing of the site. Council also notes that the assessment of heritage significance was carried out independently and that Council requested, and was provided, access from the landowner's representative for Council staff and the consultant to inspect the property.</p> <p>The Department notes that at the time the planning proposal was being assessed at Gateway, the landowner had lodged an appeal for the refused DA. A history can be found in the Gateway determination report (Attachment D).</p> <p>On 4 August 2020, the LEC handed down its decision to uphold the appeal, and the demolition of the existing dwelling, subdivision and construction of the 2 x 2-storey terraces is approved.</p> <p>However, notwithstanding the current DA on the subject site, the Department notes that Council experts continue to maintain that the site contains heritage significance and should be listed. In particular, Council states that it has clearly advised it does not support the proposed demolition of the cottage for a number of reasons, including the existing contributory status of the building within the conservation area as the planning controls require conservation of contributory buildings.</p> <p>The Department notes that the listing of the Heritage Item does not affect the current active Development Consent issued by the Land and Environment Court dated 4 August 2020. At the time of finalising this report the consent has not been activated or any works commenced on site.</p>

Issue raised	Council response and Department assessment of adequacy of response
Ongoing maintenance required for the site and building.	<p>Submissions which objected to the heritage listing referred to the ongoing maintenance required at the site.</p> <p>Council contends that all historic properties require regular maintenance, especially Victorian timber structures and that this does not preclude heritage listings.</p> <p>The Department agrees with the response by Council and notes that the listing of the Heritage Item does not affect the current active Development Consent issued by the Land and Environment Court dated 4 August 2020.</p>
Current amenity provided by the existing building	<p>Submissions which objected to the heritage listing referred to the current amenity of the existing dwelling.</p> <p>Council states that heritage listing a property does not preclude change to increase amenity, such as the introduction of insulation within walls and ceilings to minimise discomfort during the extremes of summer or winter.</p> <p>The Department agrees with the response by Council and notes that the listing of the Heritage Item does not affect the current active Development Consent issued by the Land and Environment Court dated 4 August 2020.</p>

Issue raised	Council response and Department assessment of adequacy of response
Previous studies	<p>Submissions which objected to the heritage listing referred to the fact that no previous Council study had identified the site as having individual heritage significance.</p> <p>Council states heritage items are generally identified through placed based or thematic studies or individual assessments as the potential significance of a site becomes known.</p> <p>The planning proposal references a study of weatherboard buildings commissioned by South Sydney City Council in 2002. Council states the study led to the current weatherboard provisions within the Sydney Development Control Plan (DCP) 2012. During the assessment of the planning proposal for Gateway, the Department requested a copy of the 2002 study, however Council stated it was unable to provide the report as it was never finalised.</p> <p>Council states there were no specific recommendations made for the site as part of the 2002 study, and it does not negate the recommendation of the 2019 independent heritage assessment.</p> <p>Council states it commissioned an independent heritage assessment of the property at the time of the DA process to determine if the site met the threshold for inclusion as a heritage item. Within the heritage assessment, a comparative analysis was prepared which indicated that the site has all of the characteristics of heritage listed weatherboard cottages with a comparable degree of significance and intactness.</p> <p>The Department agrees with the response by Council and notes that the listing of the Heritage Item does not affect the current active Development Consent issued by the Land and Environment Court dated 4 August 2020.</p>

3.2 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with the Heritage Council of NSW and the former Office of Environment and Heritage.

Council consulted with Heritage NSW, who are a branch within the Department of Premier and Cabinet, and the former Office of Environment and Heritage. Heritage NSW also acted as delegate of the Heritage Council of NSW.

Heritage NSW stated in its submission that it encourages the listing of new heritage items on Council's Local Environmental Plan. It also stated Council should satisfy itself that the necessary assessments, notifications and due diligence have been completed.

The Department and Council note the submission from Heritage NSW.

3.3 Post-exhibition changes

There were no post-exhibition changes.

4 Department's Assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination (**Attachment B**) and subsequent planning proposal processes. It has also been subject to public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal (as modified).

As outlined in the Gateway determination report (**Attachment C**), the planning proposal submitted to the Department for finalisation:

- Remains consistent with the regional and district plans relating to the site.
- Remains consistent with the Council's Local Strategic Planning Statement.
- Remains consistent with all relevant Section 9.1 Directions.
- Remains consistent with all relevant SEPPs.

The following tables identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters these are addressed in Section 4.1.

Table 3 Summary of strategic assessment

	Consistent with Gateway determination report Assessment	
District Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

Table 4 Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report Assessment	
Social and economic impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Environment impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Infrastructure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

4.1 Detailed Assessment

The following section provides details of the Department's assessment of key matters and any recommended revisions to the planning proposal to make it suitable.

Heritage Significance

For a site to be of local significance, it must meet at least one of the seven criteria outlined within the Heritage NSW guideline “Assessing Heritage Significance”. The Heritage Assessment, prepared by JOHD, 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).

A submission on behalf of the landowner noted previous heritage assessments had not determined that the site had any heritage significance. The submission also contained a copy of the Heritage Impact Assessment prepared for the DA, dated April 2018, and a review of Kovacs report by Weir Phillips Heritage, dated 25 August 2009.

In response, Council states the independent heritage assessment was carried out separately to but concurrently with the DA process and concluded the cottage meets the threshold for inclusion as a local heritage item. In addition, a comparative analysis within the JOHD Heritage Assessment supports the heritage listing of the site. Council contends that it has clearly advised it does not support the proposed demolition of the cottage for a number of reasons, including the existing contributory status of the building within the conservation area as the planning controls require conservation of contributory buildings.

The Department agrees with the findings of the JOHD Heritage Assessment and notes that the listing of the Heritage Item does not affect the current active Development Consent issued by the Land and Environment Court dated 4 August 2020.

5 Post assessment consultation

The Department has consulted with the following stakeholders after the assessment.

Table 5 Consultation following the Department’s assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	1 map has been prepared by the Department’s ePlanning team and meet the technical requirements.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Council	<p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i> (Attachment F).</p> <p>Council confirmed on 21/01/2021 that it was agreeable with the draft and that the plan should be made (Attachment G)</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Parliamentary Counsel Opinion	On 22/01/2021, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at Attachment E .	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

6 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 draft LEP has strategic merit being consistent with Eastern City District plan.
- It is consistent with the Gateway Determination.
- Issues raised during consultation have been addressed, and there are no outstanding agency objections to the proposal.

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Attachments

- [Attachment A – Planning Proposal](#)
- [Attachment B – Gateway Determination](#)
- [Attachment C – Gateway Determination Report](#)
- [Attachment D – Summary of Submissions](#)

Attachment E – Parliamentary Counsel Opinion