

Planning Services

IRF19/1230

Gateway determination report

LGA	Ku-ring-gai
PPA	Ku-ring-gai Council
NAME	149 Livingstone Avenue, Pymble
NUMBER	PP_2019_KURIN_001_00
LEP TO BE AMENDED	Ku-ring-gai Local Environmental Plan 2015
ADDRESS	149 Livingstone Avenue, Pymble
DESCRIPTION	Lot 3 DP 607951
RECEIVED	21 February 2019
FILE NO.	IRF19/1230
POLITICAL DONATIONS	There are no donations or gifts to disclose, and a political donation disclosure is not required
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 the planning proposal

The planning proposal seeks to include 149 Livingstone Avenue, Pymble (Lot 3 DP 607951) as a local heritage item in schedule 5 of the Ku-ring-gai Local Environmental Plan (LEP) 2015. No rezoning or other development standards are proposed to be amended.

The planning proposal is in response to a development application lodged in April 2018 to demolish structures on three lots (DA0152/18), including the subject property. The development application was refused by Council in August 2018 and is currently subject to an appeal in the Land and Environment Court. A conciliation conference was held on 7 May 2019 and the applicant is amending the development application in response to the issues raised. It is understood that the matter will be considered by the Court from 19-21 August 2019.

An interim heritage order (IHO) for the site was issued in May 2018 to enable Ku-ring-gai Council to investigate any potential local heritage significance at the site (**Attachment E**). Another IHO was issued in May 2019 and expires on 12 May 2020.

1.2. Site description

The site contains a single-storey house (a Federation-style bungalow) on the west side of Livingstone Road (Figures 2 and 3, pages 2 and 3).

1.3. Surrounding area

The site is in Pymble in a suburban setting surrounded by predominantly low-density residential development and characterised by one-storey to two-storey residential dwellings. Pymble Station is approximately 1.8km (23 minutes walk) from the site (Figure 1, next page).

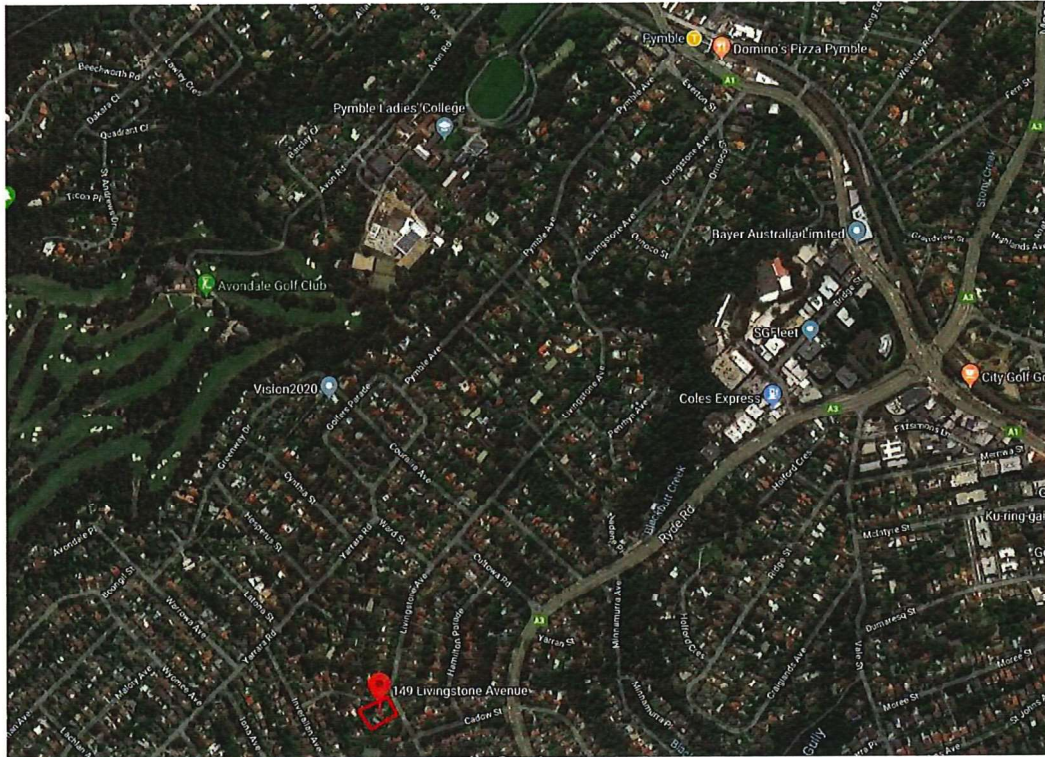


Figure 1: Site locality map, with Pymble Station north-east of the site.

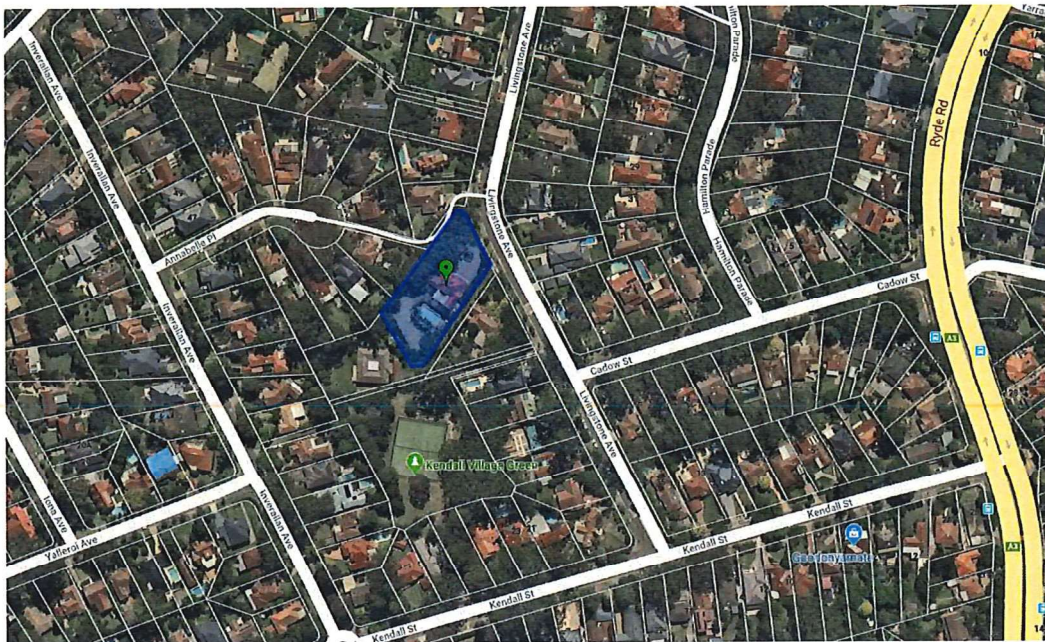


Figure 2: Aerial view of the subject site to be heritage listed.



Figure 3: Front elevation of 149 Livingstone Avenue, Pymble (source: Anne Warr heritage assessment report).

1.4. Existing planning controls

The subject site and surrounding area are zoned R2 Low Density Residential under the Ku-ring-gai LEP 2015 (Figure 4).

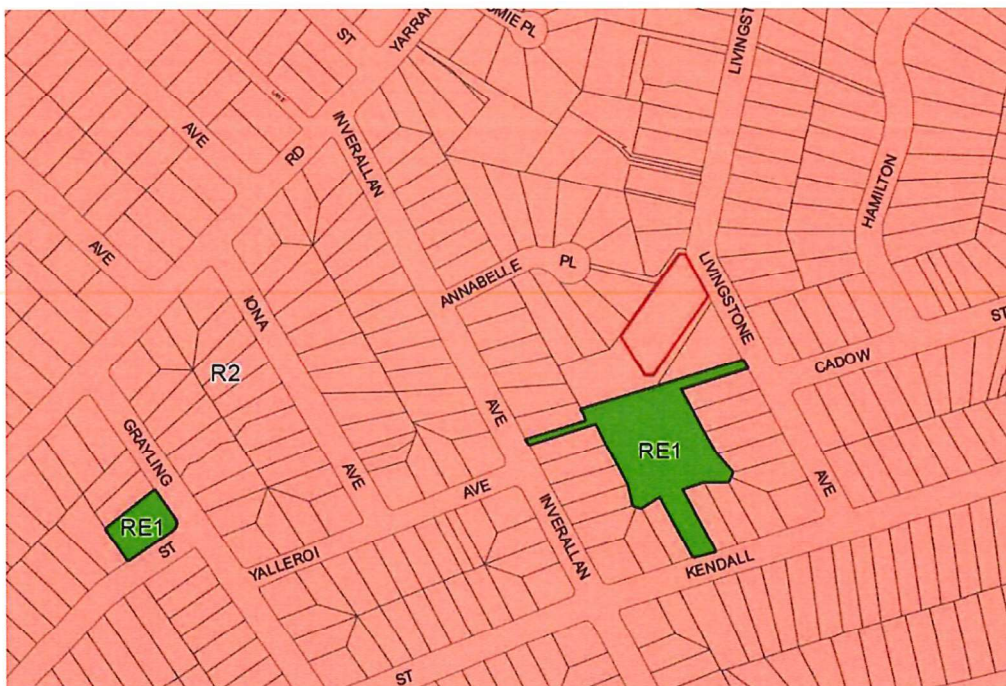


Figure 4: Land zoning map, with the subject site (outlined in red) and surrounding area zoned R2 Low Density Residential (pink) and RE1 Public Recreation (green) to the south and south-west of the site.

1.5. Summary of recommendation

As discussed in detail in section 5.3 of this report, the proposal contains heritage advice from three sources. The advice given by these sources is contradictory:

- The heritage assessment by Paul Davies Pty Ltd on behalf of the landowner states that the site's historical value is nominal.
- A heritage study commissioned on behalf of the Residents' Action Group 149 found there was local heritage significance based on associations with the Hamilton family, who owned substantial lands in Pymble, and the architect Thomas Darling (**Attachment A2**).
- Council's independent heritage review by Anne Warr found the property had been significantly altered and was therefore not of local heritage significance (**Attachment A1**).

It is considered that the planning proposal does not have sufficient strategic merit to incorporate the site as an item of local heritage significance under schedule 5 of the Ku-ring-gai LEP 2015.

The proposal is recommended not to proceed.

2. PROPOSAL

2.1. Objectives or intended outcomes

The planning proposal is to include 149 Livingstone Avenue, Pymble as an item of local heritage significance in schedule 5 of the Ku-ring-gai LEP 2015.

2.2. Explanation of provisions

Part 2 of the proposal includes the following provisions:

1. Amend Schedule 5 Environmental Heritage of the Ku-ring-gai Local Environmental Plan 2015 by including one additional heritage item:

Suburb	Item Name	Address	Property Description	Significance	Item No.
Pymble	Former "Clooneen"	149 Livingstone Avenue	Lot 3, DP 607951	Local	I1110

Amend Ku-ring-gai Local Environmental Plan 2015 – Heritage Map – Sheet HER_008 to identify 149 Livingstone Avenue as a local heritage item (number I1110).

2.3. Mapping

Part 4 of the proposal includes the relevant heritage LEP map, HER_008, and detailed extracts from the current and proposed maps identifying the change (Figure 5, next page).



Figure 5: Proposed heritage mapping of subject site (circled in red) affecting 149 Livingstone Avenue, Pymble (Lot 3 DP 607951).

3. NEED FOR THE PLANNING PROPOSAL

The most effective way to conserve any local heritage value on the site is to include the site as an item of local heritage significance in schedule 5 of Council's LEP.

As mentioned in section 1.1 of this report, Council prepared this proposal to protect the site from being demolished through a development application (DA0152/18). An IHO was placed on the site, allowing Council to examine the site's heritage significance.

4. STRATEGIC ASSESSMENT

4.1. Greater Sydney Region Plan

The relevant direction and objective to this proposal is Direction 5 – Designing places for people and Objective 13 – Environmental heritage is identified, conserved and enhanced. The planning proposal identifies that the proposal can be consistent with this direction and objective as it involves the heritage listing in schedule 5 of the Ku-ring-gai LEP 2015 of a local heritage item.

The heritage advice submitted with the proposal is conflicting. There is no consensus that the site has heritage significance.

4.2. North District Plan

The proposal has been assessed against the North District Plan and in general it is consistent with the priorities under this plan, specifically Liveability Priority N6. This priority is focused on creating and renewing great places and local centres. The proposal seeks to respect the District's heritage, which is consistent with this priority.

The proposal has engaged the local community early in the planning process. However, there is no consensus in the heritage reports that the site has heritage significance.

4.3. Local

Our Ku-ring-gai 2038

The proposal has been assessed against *Our Ku-ring-gai 2038: Community Strategic Plan*. The proposal states it is consistent with the plan, particularly:

- P1 – Preserving the unique visual character of Ku-ring-gai;

- P2 – Managing urban change; and
- P5 – Heritage that is protected and responsibility managed.

The proposal submitted is an effort to preserve an established character, manage urban change and protect heritage. However, there is no consensus in the heritage reports submitted that the site has heritage significance and can be consistent with the above.

The proposal states it is consistent with 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.*

The planning proposal can be consistent with these objectives as it aims to conserve cultural heritage. However, heritage significance has not been established.

4.4. Section 9.1 Ministerial Directions

The proposal is consistent with all relevant section 9.1 Directions except for the following:

Direction 2.3 Heritage Conservation

This Direction seeks to conserve items, areas, objects and places of environmental and indigenous heritage significance.

Three heritage studies have been prepared for the site, including:

- an independent study by Anne Warr commissioned by Council in July 2018;
- a heritage assessment by Paul Davies Pty Ltd, on behalf of the Goldfields Group (the applicant of DA/0152/18); and
- a third, privately commissioned heritage study commissioned on behalf of the Residents' Action Group 149 (**Attachment A2**), which was provided by Betteridge Heritage to Council in support of the listing of 149 Livingstone Avenue, Pymble.

The heritage assessments undertaken by Anne Warr and Paul Davies conclude that the site does not meet the criteria for local or state heritage listing. Further details of these assessments are provided in section 5.3 of this report.

The assessment undertaken by Betteridge Heritage found the dwelling on 149 Livingstone Avenue, Pymble has local heritage significance based on strong historical associations with the Hamilton family and the architect Thomas Darling.

This study stated that the property has aesthetic significance for its landmark qualities in the local cultural landscape, and as a representative example of a Federation bungalow. It was stated that this report was prepared without having access to the site, and therefore no physical investigation of the property was undertaken.

On 16 October 2018, Council's Heritage Specialist Planner and heritage staff peer reviewed the three heritage reports and supported Anne Warr's recommendation to not support the heritage listing (**Attachment A3**).

This position was supported by the Ku-ring-gai Local Planning Panel. On 17 December 2018, the panel advised Council not to refer the planning proposal to the Department of Planning and Environment for a Gateway determination (**Attachment A4**). Council

resolved to prepare the planning proposal in February 2019. Only the privately commissioned study on behalf of the Residents' Action Group 149 supported listing the property as a local heritage item (Council minutes - **Attachment F**).

The Department considers that the proposal is inconsistent with this Direction as it lacks evidence identifying the site for heritage conservation. This is due to conflicting heritage advice for the subject site and the lack of support from the Ku-ring-gai Local Planning Panel and Council's Heritage Specialist Planner.

4.5. State environmental planning policies (SEPPs)

The proposal is consistent with all relevant SEPPs and deemed SEPPs.

5. SITE-SPECIFIC ASSESSMENT

5.1. Social

The proposal is not anticipated to have adverse social impacts. The planning proposal identifies that the site may have historical social significance and requests to preserve existing buildings, which is discussed further below.

5.2. Environmental, economic and infrastructure

The proposal is not anticipated to have adverse environmental or economic impacts, nor would it increase the demand for additional infrastructure.

5.3. Heritage advice

Three heritage reports have been prepared for the site. Council engaged an independent heritage consultant, Anne Warr, to undertake a heritage review of the property. The assessment found the property is not of local heritage significance. The report identified that the house had been altered and the setting greatly diminished, both of which are generally impracticable to reverse (**Attachment A1**).

Two other heritage assessments were submitted to Council as part of the public exhibition of development application DA0152/18 to demolish existing structures (on 149, 151 and 159 Livingstone Avenue) and construct multi-dwelling seniors housing.

The heritage assessment by Paul Davies Pty Ltd on behalf of the Goldfields Group (the landowner) stated the historical value of the subject site with the architect Thomas Darling and the Hamilton family is nominal, and the property does not represent a good example of this type of architecture in Ku-ring-gai due to negative cumulative changes in the last century.

The Paul Davies assessment states that the property does not demonstrate the design quality, form, scale and attention to detail that would make it compatible with other Federation heritage-listed properties. In general, Paul Davies' findings on historical association are consistent with the Council-commissioned Anne Warr heritage assessment.

A third, privately commissioned heritage study on behalf of the Residents' Action Group 149 (**Attachment A2**) found there was local heritage significance based on strong historical associations with the Hamilton family and the architect Thomas Darling. This study also found aesthetic significance for the building's landmark qualities in the local cultural landscape and as a representative example of a Federation bungalow. It was identified that the report was prepared without the expert having access to the site or property.

On 16 October 2018, Council's Heritage Specialist Planner peer reviewed the three reports and supported Anne Warr's recommendation. It was recommended not to support the heritage listing (**Attachment A3**).

Findings from heritage assessments

The following assessment considers only the Anne Warr, Betteridge and the Council Officer heritage submissions as the Paul Davis report was not submitted with the planning proposal. The Paul Davis report gave only a general assessment of the property without going into detail or using the seven heritage criteria discussed below. The views presented by the Davies assessment were in agreement with the findings of the more detailed Anne Warr heritage review.

The NSW Heritage Manual determines seven criteria that heritage items of local significance are assessed against. Key findings of the Anne Warr and Betteridge Heritage reports were peer reviewed by Council's Heritage Specialist Planner. A summary of the information in the heritage reports and Council's reports (two Council reports have been prepared for the planning proposal) for each criterion is provided below:

1. *Historical significance – whether an item is important in the course, or pattern, of the cultural or natural history of the local area.*

- Anne Warr: The house and grounds demonstrate the process of land subdivision in West Pymble for over a century. However, they have been substantially subdivided and significantly altered since the construction of the house in 1912.
- Betteridge: This property has an association with a significant historical phase in the development of Pymble from the larger family landholdings of the 1880s through to the re-subdivision into smaller residential lots. It retains considerable original physical fabric in the form of a residential dwelling and gardens with early ornamental plantings, and camphor laurels on the property's boundary are evidence of this earlier development.
- Council: The Betteridge study stated the considerable original physical fabric is still retained. However, this report was prepared without access to the site and therefore without a physical investigation of the exterior and interior of the property. According to the Anne Warr assessment, the original form and setting of the house have been largely lost due to several subdivisions of the block, including:
 - the addition of second-storey attic windows;
 - a change to the interior layout because of the open-plan living area;
 - the replacement of the original terracotta roof tiles;
 - over-painted original internal joinery;
 - infill of front verandah;
 - over-painted face brickwork;
 - an attached carport;
 - a timber verandah floor;
 - major additions at the rear; and

- modification of the garden. The original three-acre site has been reduced to 2732m². The orchard, vegetable garden, rose garden and tennis court described by Margaret (the eldest child of Thomas Darling) no longer exist.
2. *Historical association significance – whether an item has a strong or special association with the life or works of a person, or group of persons, of importance to the local area's cultural or natural history.*
 - Anne Warr: Thomas Darling could not be confirmed as the architect of the subject property. He purchased the property and lived there with his family between 1919 and 1922. There is a minor association with FJ Hamilton, as his unmarried children lived there between 1926 and the 1960s.
 - Betteridge: This property and land have strong historical associations with the architect Thomas Darling and the Hamilton family, who owned substantial lands in Pymble.
 - Council: The architect of the property is unknown, and the strong historical association with the Hamilton family is disputed. They occupied the property as one of the many owners, and there were no historically significant local events recorded during their residency. What is consistent between the Anne Warr and Betteridge reports is that the association of the Hamilton family with the property was 'minimal'.
 3. *Aesthetic significance – whether an item is important in demonstrating aesthetic characteristics and/or a high degree of creative or technical achievement in the local area.*
 - Anne Warr: The name of the architect remains unknown. While the house was a competent and well-built example of the Federation style of architecture from 1912, the original form and setting of the house have been lost significantly due to several subdivisions and alterations.
 - Betteridge: The house and its setting have landmark qualities in the local cultural landscape, and the house demonstrates a particular architectural style.
 - Council: This property does not have a landmark value as it does not serve a wayfinding purpose and is not a landmark to the wider Ku-ring-gai community. While the property does not exemplify a particular style, its positive qualities have been more than temporarily degraded, and it has been assessed as having little aesthetic significance.
 4. *Social significance – whether an item has a strong or special association with a particular community or cultural group in the local area for social, cultural or spiritual reasons.*
 - Anne Warr: The subject property does not have a special association with a particular community or cultural group in NSW.
 - Betteridge: Social value is hard to quantify, but the local community show their concerns about the loss of the subject property through its proposed demolition and subsequent redevelopment, which contributes to the community's sense of place. Therefore, it is considered to have local social significance.
 - Council: The community's concerns to retain this property were noted. The Council report explains that where the community seeks the retention of an item in preference to the alternative (in this case, demolition and redevelopment), the

NSW Heritage Manual recommends that 'there must be evidence that the item is separately valued under this criterion or one of the other criteria to have any validity as a significant heritage item'. The Council report outlines that the assessment of this property and setting under the other criteria also fails to reach the threshold for local significance.

5. *Technical/research significance – whether an item has the potential to yield information that will contribute to an understanding of the local area's scientific, cultural or natural history.*
 - Anne Warr: The archaeological potential of the site is low.
 - Betteridge: The property is not assessed to have technical/research potential.
 - Council: The Council report did not record comment under this criteria.
6. *Rarity – whether an item possesses uncommon, rare or endangered aspects of the local area's cultural or natural history.*
 - Anne Warr: It could not be established that the property was architecturally designed and it is not a rare type, being a Federation bungalow.
 - Betteridge: The property is not assessed to have rarity value.
 - Council: The comparative assessment by Anne Warr shows examples of several intact bungalows of a similar architectural type with better quality and retention of original internal and external finishes, details and settings. The Council report states that due to many changes to the property, the cumulative effect is that the building and setting are no longer intact and do not represent a good example of this type of architecture in the LGA.
7. *Representativeness – whether an item is important in demonstrating the principal characteristics of a class of the local area's cultural or natural places; or cultural or natural environments.*
 - Anne Warr: This site is a representative example of the early subdivision as part of the early development of West Pymble. It was also a representative example of Federation-style architecture but was extensively altered, and many of the original features and details are no longer extant.
 - Betteridge: The subject property is representative at a local level of a particular architectural style, i.e. a Federation bungalow.
 - Council: Council considers that the findings of the Anne Warr, Betteridge and Paul Davies reports agree that the house was found to be a competent and well-built example of a Federation bungalow. However the Anne Warr and Paul Davies reports state that the cumulative impact of changes during the last century has reduced the quality of the house and setting.

Department comment

All three heritage reports have been reviewed and the inconsistencies between them are documented above. The Department notes the following points, which were drawn from the expert advice that was submitted:

- This site was built on three lots of the Hamilton Estate (an established business by FJ Hamilton in 1890) and then subdivided several times; therefore, all sold lots located in the estate (except 104 Livingstone Avenue, which was designed

explicitly for the Hamilton family and was the home of FJ Hamilton) have equal value. The subject site was sold several times during the last century, resulting in significant alterations by different owners.

- George Hamilton built this property in 1912 and put the dwelling on the market. There is no evidence to demonstrate the property was designed and built specifically for the Hamilton family to settle there.
- There is no evidence to support the historical association of the property with architect Thomas Darling as a designer. He bought and lived in this property for four years and sold it.
- This property is not a rare example of the type, and the original Federation-style house has undergone significant alterations over time, reducing its historical and aesthetic values.

The Department supports the conclusions of the Anne Warr report, commissioned by Council. This report delivered the most detailed analysis and was supported by the most thorough assessment, involving both on-site investigation and historical analysis.

6. CONSULTATION

6.1 Community

The planning proposal is not supported to proceed to public exhibition.

6.2 Agencies

The planning proposal is not supported; therefore, no further agency consultation is required.

7. TIME FRAME

No time frame is required as the proposal is recommended not to proceed.

8. LOCAL PLAN-MAKING AUTHORITY

There is no requirement to appoint a local plan-making authority as the proposal is recommended not to proceed.

9. CONCLUSION

It is recommended that the planning proposal does not proceed. It is considered that the proposal does not provide sufficient evidence that the site should be identified as a local heritage item, considering:

- there was no formal investigation into the site's potential heritage significance until a development application was lodged for the site. At that time, the community requested an IHO be placed on the site to prevent the dwelling's demolition;
- the proposal contains conflicting heritage advice commissioned by different sources: Council; the proponent of the development application; and the residents' action group;
- one report, commissioned by the Residents' Action Group 149, recommended heritage listing the property based on the dwelling containing historic, associational, aesthetic and social values. The expert who prepared this report did not have access to the site;

- two reports, one commissioned by Council and one by the development application proponent, did not support listing the item, identifying that the dwelling does not contain a sufficient level of heritage significance and has been altered over time; and
- when resolving to prepare the planning proposal, the Ku-ring-gai Local Planning Panel did not support the listing and advised Council not to refer the planning proposal to the Department for a Gateway determination.

10. RECOMMENDATION

It is recommended that the Deputy Secretary, Planning Services, as delegate of the Secretary:

1. note that the consistency with section 9.1 Direction 2.3 Heritage Conservation remains unresolved due to the conflicting heritage advice to identify the heritage significance of the subject site.

It is recommended that the Deputy Secretary, Planning Services, as delegate of the Minister for Planning and Public Spaces, determine that the planning proposal should not proceed for the following reasons:

1. there is conflicting heritage advice and the proposal was not supported by the local planning panel and Council's Heritage Specialist Planner; and
2. insufficient justification has been presented to support the heritage listing of the site. The original Federation-style house has undergone significant alterations over time, resulting in a reduction of its historical and aesthetic values, which are unlikely to be reversed.



31/05/2019

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4/06/2019

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