

Planning Services

Plan Finalisation Report

Local Government Area:

PP Number: PP_2018_WILLO_002_00

1. NAME OF DRAFT LEP

Willoughby Local Environmental Plan (LEP) 2012 Amendment No.13.

2. SITE DESCRIPTION

The planning proposal applies to land at 9 Centennial Avenue, Chatswood.

The site is situated on the northern side of Centennial Avenue, on the western corner of Centennial Ave and Jenkins Street, Chatswood and is legally known as Lot D, DP336587. The site has a total area of 1,561m² (Figure 1) and is zoned R2 low density residential.

The site contains a two-storey dwelling constructed around 1895 and a separate single storey double garage added around 1933 fronting Jenkins Street (**Figures 2 and 3**).



Figure 1: Aerial view of subject site (Source: Nearmap)



Figure 2: View of site from Centennial Avenue, Chatswood, looking north (Source: Google Maps)

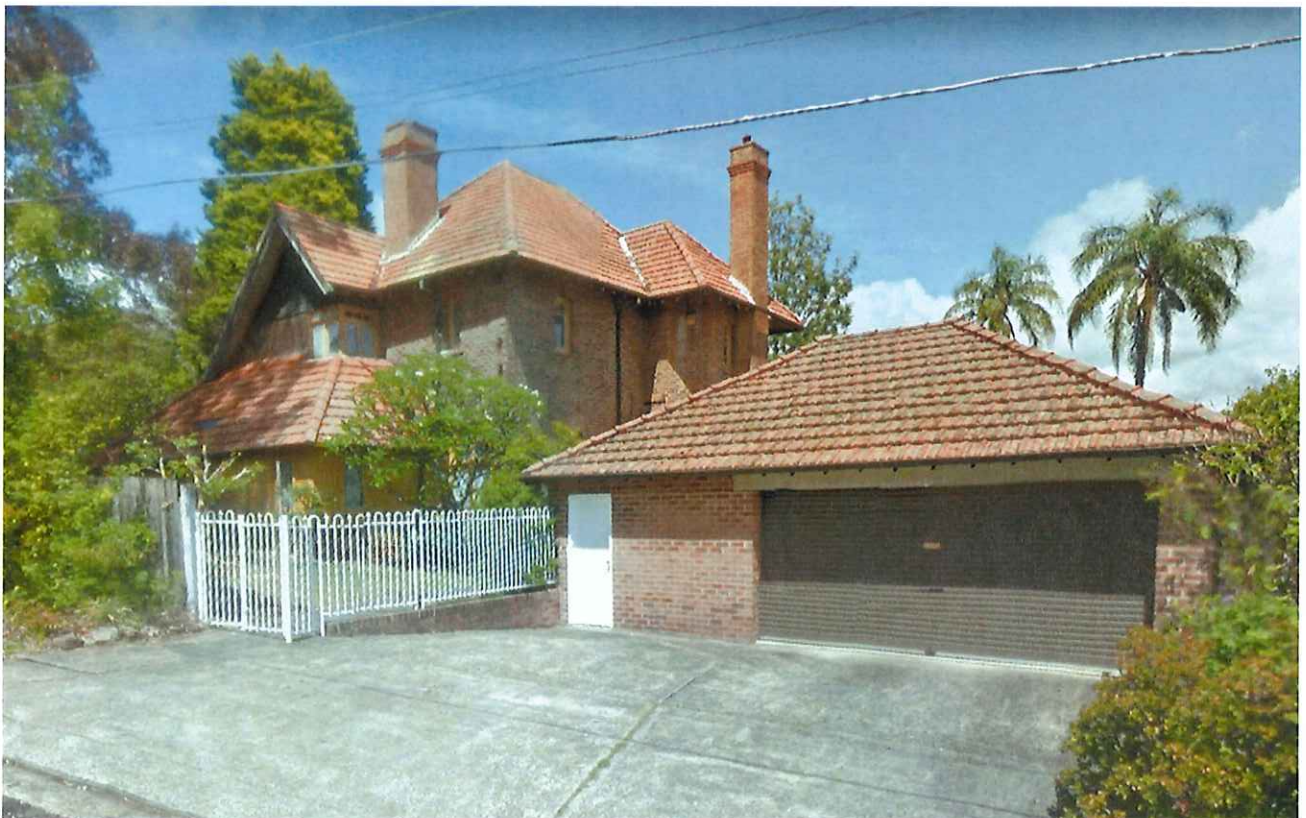


Figure 3: View of site from Jenkins Street, Chatswood, looking west (Source: Google Maps)

3. PURPOSE OF PLAN

The draft LEP seeks to amend Willoughby LEP 2012 to list 9 Centennial Avenue by adding:

- the site to Schedule 5 as a heritage item of local significance for its exterior and interior; and
- the property to the heritage map as a heritage item (no. I245) of local significance.

4. STATE ELECTORATE AND LOCAL MEMBER

The sites fall within the Willoughby State Electorate. Hon Gladys Berejiklian MP is the State Member for Sydney.

The sites fall within the North Sydney Federal Electorate. Trent Zimmerman MP is the Federal Member for Wentworth.

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

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

A preliminary heritage assessment was carried out by independent heritage consultants Robert Moore in 1996 and Graham Brooks in 2009 which both supported the property's listing as a local heritage item. Council proposed listing the site on numerous occasions but resolved not to proceed.

On 24 May 2005, a request was received by Willoughby District Heritage Society to include the property as a local heritage item. Council resolved to inspect the property but took no further action as no response was received from the owner.

At a meeting on 23 March 2009, Council resolved to incorporate 9 Centennial Avenue as a local heritage item in the draft Willoughby LEP 2009. This was deferred by Council so that the landowner could be informed of the proposal. Council received notification from the landowner's solicitor outlining concerns such as inconsistencies in the history of the property and the age and financial situation of the owner.

On 25 May 2009, council resolved to expedite the heritage listing of the property. The incorporation of the property as a local heritage item into the Draft Willoughby LEP 2009 took place in an exhibition between 25 March 2010 and 20 May 2010. Two submissions were received from family members objecting to the listing.

A report to the Council meeting on 3 November 2010 recommended the inclusion of the property as a heritage item. Council received notification from the owner's solicitor that an inspection of the property by Council would be refused.

On 22 November 2010, Council received a petition from residents in the West Ward requesting that Council investigate listing the property. At a meeting on 28 February 2011, Council resolved to take no further action to visit the property. The property was subsequently sold in 2017.

On 6 February 2018, council received notification from a private certifier advising of the intention to approve a complying development certificate to demolish the dwelling on the site. Council obtained legal advice about issuing an Interim Heritage Order.

Council was notified by local residents on 12 February 2018 that demolition of the building had commenced. After a visit from a compliance officer, the builder agreed to stop work and Council resolved to make the IHO at a meeting on that date.

An Interim Heritage Order (IHO) for the property was issued on 14 February 2018, temporarily preventing the demolition of the building. This order was confined to the dwelling house and curtilage. The garage structure was not likely to be of any heritage significance and therefore excluded from the IHO. A condition of the IHO was that it ceased effect after 6 months from the date of issue unless Council resolves to proceed to list the property as a heritage item under Willoughby LEP 2012.

Council also noted that between the time when demolition began and the IHO, numerous correspondents emailed or wrote to Council regarding the protection of the building. This including a petition of 49 signatures received February 2018 requesting the property to be heritage listed. The National Trust indicated its intention to consider the listing of the property on the National Trust register.

The property owner appealed the IHO in the Land and Environment Court on 12 April 2018 and a decision was made on 31 May 2018 upholding the IHO.

The landowner commissioned four reports on the condition of the building. A hazards material survey by Airsafe OHC Pty Ltd dated 26 September 2018 found asbestos and lead paint at the site. Two engineering reports were from JAS Engineers on 12 October 2018 and Geoff Ninnies Fong and Partners Pty Ltd on 22 October 2018. Both reports stated that the building was structurally unsound and recommended the building be demolished. A heritage assessment was conducted by Archnex Designs on 20 October 2018 agreeing with the engineering reports that the house required major repairs. The heritage report also found the house had limited intact fabric and its attribution to architect F G Castleden has not been proven.

Council engaged a heritage consultant to prepare a heritage assessment which was completed in 14 August 2018. The assessment found that the house had been designed by prominent Australian architect F G Castleden and is one of the first substantial houses in Centennial Avenue.

Council had proposed to heritage list the site on several occasions but due to the continued reluctance from the owners at that time, resolved to not proceed. Council acted now after notification from a private certifier advising of the intention to approve a complying development certificate to demolish to dwelling on the site.

The heritage significance of the site has been proven in three separate heritage assessments and the expert opinions by the landowner's consultants have been found to be invalid.

On 24 April 2019, the National Trust listed the house, 'Toonburra', 9 Centennial Avenue, Chatswood, on the National Trust Register as one of the oldest buildings in Chatswood. The listing report states that the house has social significance for its previous owners and is an essential part of the streetscape (**Attachment D**). Council was advised of the National Trust's decision on 10 May 2019.

6. GATEWAY DETERMINATION

The Gateway determination issued on 21 September 2018 (**Attachment C**) determined that the proposal should proceed subject to conditions which included consultation with the Office of Environment and Heritage (OEH). Council was not delegated as plan-making authority due to the Interim Heritage Order.

The anticipated timeframe for the completion of the planning proposal was 21 June 2019.

7. PUBLIC EXHIBITION

In accordance with the Gateway determination, Council publicly exhibited the planning proposal from 11 October 2018 to 8 November 2018. A total of 88 submissions were received during the exhibition period including 11 in support of the listing and 77 objecting to the listing.

Supporting Comments

Comments in support of the planning proposal were from local residents and the West Ward Progress Association and based around the building's historical significance and value to the local community.

A petition containing over 400 signatures at Change.org to 'Save this Historic Home' is in support of listing the property but was not considered as an official submission in response to the exhibition of the draft LEP.

The National Trust indicated its intention to consider the listing of the property on the National Trust Register.

Objections

Submissions objecting to the listing came mostly from local residents and business owners including the Chinese Community Council of Australia. Comments noted the dilapidated condition of the house which could pose safety issues for passing pedestrians. Questions were raised as to why Council had not proceeded with listing the house previously and why there was no reference to heritage listing when the owner purchased the property.

Council's Response

Council noted that they had not resolved to list the property on previous occasion as the previous owner was opposed to the listing and access to the property was refused. The landowner's heritage assessment questioned the attribution to architect F G Castleden and stated that there was limited original fabric. Council commissioned a peer review of the landowner's assessment that found the house can be attributed to F G Castleden.

Council's assessment stated that subject site was one of a rare and unique group of houses designed by Castleden and only four of these Gentleman's houses remain. These houses are unique because they are representative of the different styles popular in one decade. The subject site retains a high level of integrity despite recent unauthorised demolition work. The peer review pointed to the lack of detail in the landowner's heritage assessment that did not substantiate or refute the facts or address the detail information in the inventory sheets provided.

On 6 February 2019 the landowner provided access to the property which was attended by Council staff, the owner, her representatives and the heritage and engineering consultants engaged by Council. This inspection confirmed that the fabric damage is easily recoverable and does not impact on its heritage significance. It was also noted that the building had deteriorated since the initial assessment in 1996.

Council commissioned a peer review of the landowner's reports on the structural condition of the building. This was conducted by Paul Connett of TTW Engineers who attended the site on 6 May 2019. He concluded that demolition cannot be justified on structural or geotechnical grounds. Further investigation is required to establish the soil and footing conditions, but poor bonding of the bricks and the proximity of trees has caused cracking that is repairable.

The engineering report noted that the dilapidated state of the house was due to the removal of the roof tiles and tarpaulins currently in position were not of a high grade. He also pointed out that the house was not secured against intruders and therefore an increased risk of further damage. TTW stated that with the input of a heritage architect and builder the

building can be restored to a habitable condition. Council acknowledged that repairs would be expensive, and these would be the responsibility of the owner not Council.

The building has some evidence of damage but is not in a position of imminent collapse and is contained well within the site. It poses no danger to pedestrians and construction fencing surrounding the site has been dealt with by the owner.

Some submissions referred to the current owner not being informed of the buildings potential heritage listing when it was purchased in November 2017. A planning certificate would not include any information on the heritage potential of the property or a restriction on Complying Development. Council acknowledges that the timing of the listing and events surrounding this matter has been unfortunate.

8. ADVICE FROM PUBLIC AUTHORITIES

Council was required to consult with the OEH in accordance with the Gateway determination. The OEH provided a response dated 26 October 2018 supporting the proposal to list the property. OEH noted the proposal is supported by the Willoughby City Council *Heritage Study Review* prepared by Architectural Projects completed on 14 August 2018. This study review found that the house at 9 Centennial Avenue is one of a rare and unique group of houses designed by Frederick George Castleden in 1895 and constructed in 1896. The subject site met five of the seven Heritage Council's criteria due to its historical significance, historic association, aesthetics, rarity and representativeness.

The study review also confirmed heritage significance of the site in previous studies undertaken by Robert A Moore in 1996 and Graham Brooks in 2006.

An Interim Heritage Order (IHO) was instigated by Council on 14 February 2018 after receiving a Complying Development Certificate on 9 February 2018 to demolish the dwelling. An appeal was lodged by the landowner on 12 April 2018 but on 31 May 2018 the Land and Environment Court found that the IHO had been validly made.

9. POST EXHIBITION CHANGES

Council sought to amend Willoughby LEP 2012 to list the property as a heritage item of local significance and to include the site on the Dual Occupancy Restriction Map. This map includes other heritage listed sites in the Willoughby LEP that would be affected by dual occupancy and subdivision. On 25 March 2019 Council voted to proceed with the listing of the property as a heritage item but not to include the property in the Dual Occupancy Restriction Map.

On 1 April 2019, Council staff and the landowner met and discussed potential subdivision and dual occupancy of the site. The owner conceded that not including the property on the Dual Occupancy Restriction Map will facilitate a redevelopment of the site to increase the number of dwellings and accommodate family members in one location. At the meeting, the architect has indicated that they will present a proposal at a pre-DA meeting with Council. The architect also requested to reinstate the tiled roof to enable maintenance without consent subject to Council approval.

The site is approximately 1,562m² and the minimum lot size for subdivision is 650m². The current dwelling is to the eastern side of the site which could enable a subdivision to create a new lot to the west of the existing house. This would be an incentive to the landowner to retain the existing house while developing the site, subject to Council approval. Council note that development application fees are waived for heritage items. The planning proposal was updated to remove the reference to the dual occupancy restriction.

10. ASSESSMENT

10.1. Department's Assessment

The Department has considered submissions received during exhibition period and found that the planning proposal to heritage list site is supported by three heritage assessments by Robert Moore in 1996, Graham Brooks in 2009 and Jennifer Hill of Architectural Projects in 2018. It is recommended that the draft LEP be supported for the following reasons:

- the Office of Environment and Heritage supports the proposal to list the property. OEH noted the proposal is supported by the Willoughby City Council *Heritage Study Review* prepared by Architectural Projects completed on 14 August 2018;
- the subject site was found to have historic significance in its architectural qualities and place in the development of Centennial Avenue;
- it has associative value in its connection with local identities and aesthetic significance in design and contribution to the character to the streetscape;
- the house is found to have rarity in its stylistic features and intactness with representative value in its exhibition of a particular style and development in the history of the city;
- the appeal against the IHO that was lodged by the landowner on 12 April 2018 was dismissed by the Land and Environment Court that:
 - found that the IHO had been validly made;
 - relied on expert evidence given by Jennifer Hill of Architectural Projects; and
 - stated that on further investigation the property was likely to be of local heritage significance; and
- the house 'Toonburra', was listed on the National Trust Register on 24 April 2019

As such 9 Centennial Avenue, Chatswood meets five of the seven Heritage Council's criteria due to its historical significance, historic association, aesthetics, rarity and representativeness.

Council has held discussions with the landowner and the landowner's architect to discuss options for the site including possible subdivision. This will allow the landowner to develop the site while retaining the heritage item, listing of the property will allow better conservation management of the property.

Council advises that in August 2019, the landowner has had two pre-DA meetings with Council staff and informally submitted draft plans. These are currently being reviewed by Council's heritage architect and discussions are ongoing.

10.2. Section 9.1 Ministerial Directions

The proposal is consistent with the following relevant Section 9.1 Ministerial Direction:

2.3 Heritage conservation

This direction applies to the planning proposal as it affects a site found to be of heritage significance. The direction requires that a planning proposal contain provisions that facilitate the conservations of items identified in a study of the environmental heritage of the area.

The proposal is consistent with this direction as it proposes to amend Schedule 5 of Willoughby LEP 2012 to reflect the heritage significance of the building.

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 item in relation to these categories.

10.3. State environmental planning policies

The planning proposal is considered to be consistent with all relevant State Environmental Planning Policies (SEPP).

10.4. Strategic Planning Framework

Greater Sydney Region Plan

The Plan aims to coordinate and manage population growth in Sydney. Of relevance in the plan is 'Objective 13: Environmental heritage is identified conserved and enhanced'. This objective seeks to protect environmental heritage for its social, aesthetic, economic, historic and environmental values.

The proposal is consistent with the Region Plan as it seeks to protect and conserve the property that has been identified as being of local heritage significance by three heritage assessments. Council has conducted community consultation in relation to the heritage significance of the property buildings. The consultation raised matters in the objections which were not significant to not list the property.

The heritage listing of the building will allow for the future conservation and re-use of the site, including dual occupancy if considered appropriate. This will assist in maintaining the building's contribution to the streetscape.

As such, the proposal is considered to be consistent in relation to the Greater Sydney Region Plan.

Northern District Plan 2018

The District Plan intends to inform local councils planning and guide assessment of planning proposals. The proposal is consistent with the outcomes and directions in the plan, particularly those associated with heritage.

There are also three actions contained in "Action 21" of the District plan, which reiterates those described above in relation to the Region Plan.

The proposal is consistent with the Planning Priority N6 and Action 21 of the District Plan as it seeks to provide the statutory mechanisms required to protect the heritage item and provide appropriate provisions for heritage conservation management.

Our Future Willoughby 2028

The strategic plan provides a long-term vision for the future of the Willoughby and used to inform Council's decision making and planning. Outcome 2 – A City that is connected and inclusive in part 2.2 states that community priorities are to respect and celebrate our history and heritage sites. Recognising the past while creating new liveable places is an important aspect of *Our Future Willoughby 2028*.

The planning proposal is consistent with this action as it provides for the protection of the property, which has been found to be of local heritage significance by three heritage consultants.

11. MAPPING

The planning proposal seeks to amend the Willoughby LEP 2012 Heritage Map (Sheet HER_004) by inserting a new item into Part 1 of Schedule 5 and by applying number I245 to 9 Centennial Avenue, Chatswood as an item of local significance including the original interiors.

Council submitted the maps via the Department's e-Planning Portal and these have been checked by the e-planning data and information team.

12. 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 C**). Council confirmed on 12 August 2019 that it was happy with the draft and that the plan should be made. (**Attachment C**)

13. PARLIAMENTARY COUNSEL OPINION


On 12 August 2019 Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.

14. 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 property is supported by three heritage assessments that identify the subject building as being of heritage significance;
- the Land and Environment Court found in the landowner's appeal against the Interim Heritage Order that the house is likely to be of heritage significance with further investigation;
- it is included on the National Trust Register for its social significance, its contribution to the streetscape and it is one of the oldest buildings in Chatswood;
- objections to the listing of the building as a local heritage item during public exhibition did not raise issues that would prevent its listing;
- it is consistent with the objectives and directions of the Greater Sydney Region Plan, the Eastern City District Plan and Council's community strategic plan; and
- it will allow conservation management of the property, thereby enabling appropriate modification and ongoing use of the building.

Brendan Metcalfe
Team Leader, North District


Amanda Harvey 2/10/19
Director, North District
Eastern Harbour City
Place, Design and Public Spaces

Contact Officer: Christina Brooks
Para-planner, Eastern Harbour City
Phone: 9274 6045