

## DE20.94 Preliminary Consultation Outcomes - Berry Heritage Investigations

**HPERM Ref:** D20/346787

**Section:** Strategic Planning

**Approver:** Phil Costello, Director Planning Environment & Development Group

### Reason for Report

Report the outcomes of the Berry Heritage Investigations preliminary consultation and obtain direction from Council regarding proposed heritage listings in Berry.

Note: this item was deferred at the July 2020 meeting to enable a briefing to be held. The Councillor briefing was held on 30 July 2020. This matter is now resubmitted for consideration.

### Recommendation (Item to be determined under delegated authority)

That Council:

1. Support an amendment to Schedule 5 of Shoalhaven Local Environmental Plan 2014 (LEP) to list the:
  - a. Twelve (12) dwellings identified in Figure 2 in the report as heritage items in Part 1 of the LEP.
  - b. Queen Street and Showground areas (as shown in Figure 2 in the report) as Heritage Conservation Areas in Part 2 of the LEP.
2. Prepare and submit a Planning Proposal to the NSW Department of Planning, Industry and Environment for Gateway determination and if favourable, proceed to formal public consultation in accordance with the terms of the determination.
3. Advise affected landowners and relevant community groups of this resolution, noting the opportunity for formal consultation on the resulting Planning Proposal later in the process.

### Options

1. As recommended.

Implications: This is the preferred option as it allows the listing of the twelve (12) heritage items and two (2) conservation areas within Berry that possess heritage significance and contribute to the character of the town.

This option does not include the listing of individual items where the landowners objected to the listing. It does, however, include retaining all properties within the boundaries of the two proposed Heritage Conservation Areas (HCAs), including those properties whose owners objected to the inclusion. Regardless of the inclusion of these individual properties in the HCA, they would still be within the vicinity of the HCA and would still need to demonstrate the extent that any future development would impact upon the heritage significance of the HCA. As such, inclusion of these properties in the formal HCA area provides greater certainty for landowners in terms of assessment requirements and will help better preserve the character of Berry. Further and importantly, this approach maintains the integrity of the two proposed HCAs as they would remain complete.

2. Adopt an alternative recommendation. This could include amending the two (2) Heritage Conservation Areas to exclude the ten (10) properties whose owners opposed the inclusion in the HCAs (or the non-contributory lots with objections).

Implications: This option is not preferred as the ten (10) properties, regardless of their inclusion in the HCA, would still be within the vicinity of the HCA and would still need to demonstrate the extent that any future development would impact upon the heritage significance of the HCA. Retaining these properties within the boundaries of the HCAs will inform current and future landowners of this requirement and better help preserve the character of Berry. Their inclusion also maintains the integrity of the two proposed HCAs as they would remain complete.

3. Not adopt the recommendation.

Implications: Not implementing appropriate heritage protection for individual items and areas within Berry could result in adverse impacts on the heritage and character of Berry through unsympathetic development.

## Background

In response to community concerns that unsympathetic development was eroding the unique heritage character of Berry, Council's Development Committee resolved (MIN17.613) on 17 July 2017 to investigate 29 items (dwellings) and 2 Heritage Conservation Areas in Berry for potential heritage listing within Schedule 5 of Shoalhaven Local Environment Plan (SLEP) 2014.

Consistent with this resolution, Council's Heritage Consultant (Louise Thom) researched and prepared inventory sheets for the 29 dwellings and 2 HCAs. A summary of the findings is provided below:

- 4 of the properties (50, 66 and 70 Albert Street and 31 Albany Street) did not meet the threshold required for local heritage listing.
- The remaining 25 properties and 2 Heritage Conservation Areas possess heritage significance and were recommended for heritage listing in Schedule 5 of SLEP 2014.
- 2 additional properties (30 and 40 Alexandra Street) were identified to potentially possess heritage significance but required further investigation.

On 2 July 2019, Council's Development & Environment Committee resolved (MIN19.460) to:

1. *Provide in principle support to the proposed heritage listing of the 25 properties and 2 Heritage Conservation Areas in Shoalhaven Local Environmental Plan 2014, as identified in Table 1, in this report for preliminary consultation only.*
2. *Investigate the heritage significance of No. 30 and No. 40 Alexandra Street, Berry as recommended by the Heritage Consultant.*
3. *Following part 2 of this recommendation, commence preliminary community consultation with the affected landowners, the Berry Forum, Berry Showground Management Committee, Berry Chamber of Commerce and Berry & District Historical Society regarding the Berry Heritage Investigations work to date.*
4. *Advise relevant stakeholders (affected landowners, the Berry Forum, Berry Showground Management Committee, Berry Chamber of Commerce and Berry & District Historical Society) of this decision.*
5. *Receive a further report outlining the findings of the supplementary heritage investigations and preliminary community consultation.*

As per Part 2 of the 2019 resolution, further investigations were undertaken by Council's Heritage Consultant regarding the heritage significance of 30 and 40 Alexandra Street, Berry. 30 Alexandra Street was identified as an inter-war timber house and 40 Alexandra Street was identified as a federation bungalow. Both are described as good representations of architecture from their respective eras and as a result were recommended to be listed as individual heritage items.

### Preliminary Consultation

Consistent with the 2 July 2019 Council resolution (MIN19.460), a community information session was held at the Berry School of Arts on 28 August 2019. All affected landowners, the Berry Forum, Berry Showground Management Committee, Berry Chamber of Commerce and Berry & District Historical Society were advised in writing of this information session.

The community information session was held to discuss the potential heritage listings (see **Figure 1**) and answer questions from the community regarding the proposal.



**Figure 1: Existing and Proposed Heritage Items and Heritage Conservation Areas Subject to Consultation**

There was a mixed reaction from the community, with some pleased that Council were taking steps to preserve the character of Berry, whilst others were concerned that a heritage listing would limit the development and resale potential of their property.

At the community information session, all affected landowners were given a copy of the Heritage Inventory Sheet for their property and a questionnaire. Questionnaires were requested to be returned to Council by 20 September 2019 to ascertain whether the proposed listings were supported or opposed. A copy of the relevant Heritage Inventory Sheet and questionnaire was also posted to all landowners who were not able to attend the community information session.

As a result of the preliminary community consultation, 34 completed questionnaires were received in total from the following:

- 29 questionnaires from affected landowners.
- Two (2) questionnaires from community groups.
- Two (2) questionnaires from the community.

- One (1) submission from Sydney Trains.

The consultation exercise resulted in a wide exposure and a good level of feedback which is discussed in detail in the subsequent sections below.

On 20 July 2020, Council's Development & Environment Committee considered the Berry Heritage Investigations report and resolved (MIN20.464) to defer to a briefing before the next Development & Environment Committee meeting. The Councillor Briefing was held on 30 July 2020. A number of matters were discussed, including the:

- Berry Spinners and Weavers proposal: Council resolved to identify a potential location for the group on 9 June 2020 (MIN20.397). Lot 3 DP 840080, which is owned by Council, is currently the preferred location. Any development application on this site would require consideration of heritage, regardless of whether the lot is in the proposed HCA or not. This is because the existing State listed Berry Railway Station Group (Item 94) is located immediately to the south of the site and the Berry Showground Group (Item 32) is located to the north of the site. Council may require the preparation of a heritage study or statement to outline the impact of the development on the state and locally listed items in the vicinity, which would also consider the proposed HCA, as appropriate.
- Exclusion of dwellings on the eastern side of Alexandra Street from the proposed Showground HCA. Essentially, the majority of these dwellings make no contribution to the HCA. Only 30 and 40 Alexandra Street have historical significance, however are isolated and do not provide sufficient historic or aesthetic context to be included within the HCA area.

### Proposed Heritage Items - Consultation Outcomes Discussion and Recommendations

A summary of key issues relating to the proposed heritage items raised during the preliminary community consultation, and brief staff comment is provided below in **Table 1**.

**Table 1: Summary of responses from preliminary community consultation – heritage items**

Summary of issues raised	Staff comment
Two (2) questionnaires supported the proposed listing of heritage items within Berry: <ul style="list-style-type: none"> <li>• Berry Museum</li> <li>• Berry &amp; District Historical Society Inc</li> </ul>	<i>Support noted.</i>
Four (4) landowners supported the individual heritage listing of their properties at: <ul style="list-style-type: none"> <li>• 27 Albany Street</li> <li>• 46 Albert Street</li> <li>• 64 Princess Street</li> <li>• 44 Victoria Street</li> </ul>	<i>Support noted. The proposed heritage listing will provide formal recognition of the site and recognise the heritage significance of the items into the future.</i>
Fifteen (15) landowners opposed the individual heritage listing of their properties. <ul style="list-style-type: none"> <li>• 17 Albany Street</li> <li>• 3 Albert Street</li> <li>• 30 Alexandra Street</li> <li>• 40 Alexandra Street</li> </ul>	<i>The landowner objection is noted. The questionnaires received raised the following concerns:</i> <ul style="list-style-type: none"> <li>• <i>Previous alterations to properties detract from the existing heritage significance,</i></li> <li>• <i>Future renovations would be more difficult,</i></li> </ul>

<ul style="list-style-type: none"> <li>• 39 George Street</li> <li>• 19 Prince Alfred Street</li> <li>• 33 Prince Alfred Street</li> <li>• 45 Prince Alfred Street</li> <li>• 44 Princess Street</li> <li>• 53 Queen Street</li> <li>• 59 Queen Street</li> <li>• 68 Queen Street</li> <li>• 70 Queen Street</li> <li>• 50 Victoria Street</li> <li>• 73 Victoria Street</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Prospective buyers may be less inclined to purchase a heritage listed property (value).</i></li> </ul> <p><i>In similar circumstances in the past Council has previously not pursued listings where they are not supported by the affected landowner.</i></p>
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Of the 15 landowners who objected to the proposed heritage listing of their property, one of the main reasons for this related to development consent requirements for future work to the items.

Clause 5.10 of SLEP 2014 specifies that development consent from Council is required for any proposed development that involves:

- the demolition, moving or altering the exterior of a heritage item.
- altering a heritage item via structural changes.
- erecting a building on land on which a heritage item is located.
- subdividing land on which a heritage item is located.

This approval process helps to ensure that development of a listed heritage item is sympathetic to that item and that any changes retain the significance of that item, as well as contributing positively to the character of the surrounding area (as appropriate). Whilst development consent is required for significant works, clause 5.10(3) of SLEP 2014 also contains criteria for minor works and/or maintenance to a heritage listed item that can be undertaken without development consent, provided written authorisation is received from Council. Approval is also not required from the Heritage Council of NSW.

It is also noted that the *State Environmental Planning Policy (Exempt and Complying Development) 2008* (Codes SEPP) limits exempt and complying development opportunity on heritage listed land identified as an LEP, including draft heritage items.

The other key areas of concern related to the impact that unsympathetic changes to the item over time may have had both on the item and on property values. Council's Heritage Consultant has identified that all items subject to consultation have heritage values worthy of listing regardless of the nature of the additions which may have occurred over time. Further, there is no definitive information that indicates listing properties as a heritage item has a negative impact on property value, and according to a report produced by the [Heritage Council of NSW](#), in certain circumstances the listing may improve resale potential and value, where premium prices are offered for residences that maintain their heritage features and value.

Regardless of the above, and to be consistent with Council's previous approach to heritage listing where the affected owner does not support it, it is recommended that the fifteen (15) dwellings subject to the objections should not be listed in Schedule 5 of SLEP 2014 at this point in time. Listing could be reconsidered in the future as ownership changes.

Four (4) landowners supported the proposed listing of their property. A response was not received from the remaining landowners which is taken to indicate support (as per standard convention). It is also noted that the Berry Museum and Berry & District Historical Society Inc. support the listing of all items subject to the consultation. As such, it is recommended that the following twelve (12) dwellings proceed to be heritage listed in Schedule 5, Part 1 of SLEP 2014:

- 27 Albany Street - Inter war federation style weatherboard cottage

- 29 Albany Street - Inter war weatherboard & fibro cottage
- 46 Albert Street - Federation weatherboard cottage
- 36 Prince Alfred Street - Federation weatherboard cottage
- 64 Princess Street - Federation weatherboard cottage
- 71 Princess Street - Federation weatherboard cottage
- 51 Queen Street - Federation weatherboard cottage
- 54 Queen Street - Federation weatherboard cottage
- 44 Victoria Street - Federation weatherboard cottage
- 63 Victoria Street - Inter-war weatherboard cottage
- 69 Victoria Street - Federation weatherboard cottage
- 75/77 Victoria Street - Inter-war Californian bungalow

### Proposed Heritage Conservation Areas (HCA) – Consultation Outcomes Discussion and Recommendations

A summary of key issues relating to the proposed HCAs raised during the preliminary community consultation, and brief staff comment is provided in Table 3.

**Table 2: Summary of responses from preliminary community consultation**

Summary of issues raised	Staff comment
Two (2) questionnaires in support of the proposed listing of heritage items within Berry: <ul style="list-style-type: none"> <li>• Berry Museum.</li> <li>• Berry &amp; District Historical Society Inc</li> </ul>	<i>Support noted.</i>
Four (4) landowners supported the inclusion of their property within the proposed HCAs. Showground HCA: <ul style="list-style-type: none"> <li>• 21 Albany Street</li> <li>• 27 Albany Street</li> <li>• 73 Victoria Street</li> </ul> Queen Street HCA: <ul style="list-style-type: none"> <li>• 115 Queen Street</li> </ul>	<i>Support noted. The HCA will assist in preserving the heritage characteristics of Berry.</i>
Eight (8) landowners opposed the inclusion of their properties within the proposed HCAs. Seven (7) - Showground HCA ( <i>Note</i> : total number of owners approximately 27): <ul style="list-style-type: none"> <li>• 17 Albany Street</li> <li>• 35 Albany Street</li> <li>• 65 Victoria Street</li> <li>• 67 Victoria Street</li> <li>• 69 Victoria Street</li> <li>• 81 Victoria Street</li> </ul> * plus, Sydney Trains, owner of Lot 1 and 2 DP 1001740 discussed in the next row. One (1) - Queen Street HCA ( <i>Note</i> : total number of owners approximately 25): <ul style="list-style-type: none"> <li>• 94-96 Queen Street</li> </ul>	<i>Objection is noted. The concerns largely related to the potential adverse effects the proposed HCA may impose on the value of the property.</i>  <i>Potentially excluding these lots from the Showground and Queen Street HCAs would not negate the heritage requirements under clause 5.10 of SLEP 2014 - refer to further discussion below.</i>  <i>However, by retaining these lots within the boundaries of the two (2) proposed HCAs, both current and future landowners will be aware of the HCA requirements, and the aim to protect the character of this area into the future.</i>  <i>It is recommended that the properties in question are included in the proposed HCA areas.</i>
Sydney Trains objected to the inclusion of Lot 1 and 2 DP 1001740 within the proposed	<i>Objection noted.</i>

<p>Berry Showground HCA as the properties are already listed as a state heritage item (<i>Berry Railway Station Group (SHR 0184)</i>) and do not contribute to the heritage significance of the Showground HCA.</p>	<p><i>Council's Heritage Consultant has advised that Lot 2 DP 1001740 is contributory to the significance of the Showground HCA for the following reasons:</i></p> <ul style="list-style-type: none"> <li><i>Contains the State listed Berry Railway Station Group which contributes to the historic and representative significance of Berry Showground HCA.</i></li> <li><i>Both the Berry Railway Station and Showground HCA were integral to the historical development of Berry, and both were interconnected in their contribution to the annual Berry Show.</i></li> <li><i>An 1887 newspaper report from the Kiama Independent describes a special train to Berry Station that conveyed exhibits and patrons to the Berry Show: as well as transport for goods and animals.</i></li> </ul> <p><i>Although Lot 1 DP 1001740 has a neutral relationship to the heritage significance of the Showground HCA, removing the property from the proposed HCA area would not negate the heritage requirements under clause 5.10 of SLEP 2014.</i></p> <p><i>It is recommended that Lot 1 and 2 DP 1001740 remain in the Showground HCA area.</i></p>
<p>Two (2) questionnaires were received in relation to the inclusion of 122 Queen Street within the proposed Queen Street HCA.</p>	<p><i>122 Queen Street is a Strata property, consisting of one residential and one commercial unit. A questionnaire was received from each of the landowners; one in support and one objecting the proposed HCA listing.</i></p> <p><i>Excluding the property from the HCA would not negate the heritage requirements under clause 5.10 of the SLEP 2014 - refer to further discussion below.</i></p> <p><i>By retaining the property within the boundary of the proposed HCA, both current and future landowners will be aware of the HCA/heritage requirements, and the character of this part of Berry will be protected into the future.</i></p>

HCA's are a collection of places (e.g. streetscape) that together possess significance, but individually may not. The implementation of an HCA manages sympathetic change by seeking to protect overall character without overly restricting future development opportunity.

Ten (10) landowners (out of a total of approximately 54 owners) objected to the inclusion of their property in the proposed HCA's (including one of the 122 Queen Street owners). The spatial location of the objections can be seen in **Figure 2**. Concern was raised regarding issues around future development potential and property value.

Under Clause 5.10 of SLEP 2014, location in an HCA does not prohibit development from occurring, however proposed development would require development consent. Whilst development consent is required for significant works, clause 5.10(3) identifies criteria for minor works and/or maintenance to a building or tree to be undertaken in an HCA without development consent, provided written authorisation is received from Council. It is noted that the Codes SEPP also restricts certain development within an HCA or draft HCA.



Whilst the landowner's objections are acknowledged, removing these properties from the proposed HCAs would not necessarily negate the heritage requirements under clause 5.10 of SLEP 2014. Due to their proximity to the HCA, they would still need to demonstrate the extent that any future development would impact upon the heritage significance of the HCA, regardless of whether the property itself is within the HCA area or not.

In most cases, listing properties within an HCA does not affect property value and according to a report produced by the [Heritage Council of NSW](#) in certain circumstances the listing may improve resale potential and value.

Following the objection from Sydney Trains regarding the inclusion of Lot 1 and 2 DP 1001740 in the Berry Showground HCA given its state listing, further advice was requested from Council's Heritage Consultant on the merit of removing the station from the Showground HCA. The advice concluded that there is a connection between the Berry Railway Station and the Berry Showground HCA, and that the station is contributory to the economic, social and cultural history and significance of the proposed HCA. Investigations determined the Berry Railway Station is contributory to the heritage significance of the Showground HCA in accordance with the State Heritage Register (SHR) criterion (a) Historical Significance and (g) Representativeness. Although Lot 1 DP 1001740 is neutral to all criteria, it is not intrusive to the HCA, and due to its proximity to the HCA, any future development would be required to demonstrate the extent of impacts on the heritage significance of the HCA regardless of whether the lot is included in the HCA or not.

The objections to properties being included within either of the two HCAs are considered differently to the objections to proposed individual heritage items. Listing properties within an HCA is intended for a different purpose. Where individual items focus on the significance of the items only, an HCA considers the character of an area. They are usually streetscapes but can be clusters of items which have a broader significance. They can include individual items, but generally focus on architectural style, historical significance and other contributory items like landscaping (which is the case for both the proposed Showground and Queen Street HCAs). Inclusion in an HCA helps ensure future development is sympathetic to the surrounding area and the approval process promotes sympathetic changes to retain the overall character of areas. As such, it is recommended that these properties remain within the proposed HCA.

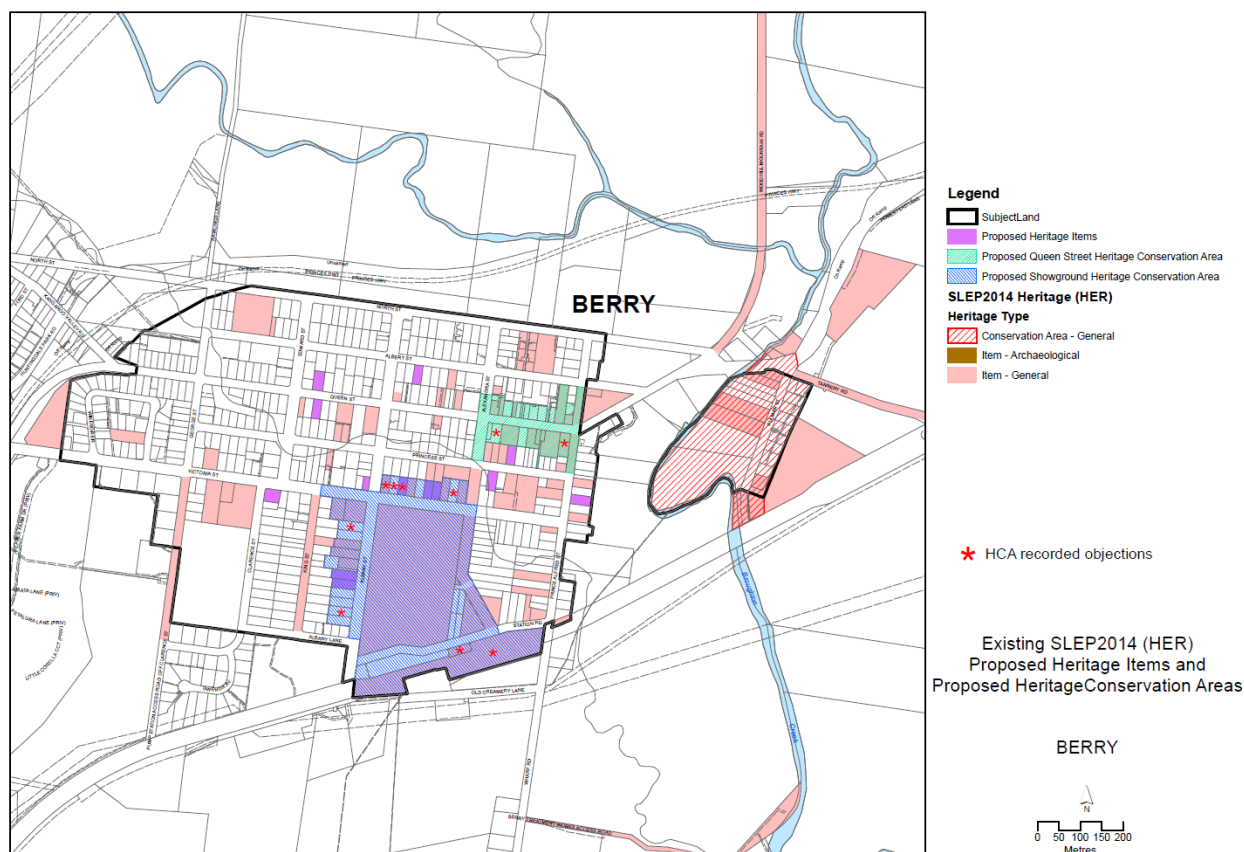
Five landowners (including one of the 122 Queen Street owners) supported the inclusion of their property in the HCAs. A response was not received from the remaining landowners which is taken to indicate support (as per standard convention). It is also noted that the Berry Museum and Berry & District Historical Society Inc. support the two HCAs.

It is recommended that SLEP 2014 be amended to include the proposed Queen Street HCA and Showground HCA identified in **Figure 2** below.

## Conclusion

It is recommended that Council now endorse the preparation of a Planning Proposal (PP) to amend Schedule 5 of SLEP 2014 to list the twelve (12) dwellings and two (2) Heritage Conservation Areas as shown in **Figure 2** below.





**Figure 2: Proposed Heritage Items, Heritage Conservation Areas and Recorded HCA Objections**

## Community Engagement

Should the recommendation be endorsed and following a Gateway determination, any resulting PP would be exhibited in accordance with Council's Community Participation Plan, the Gateway determination, and any relevant legislative requirements.

The Gateway determination will specify the minimum exhibition period and any government agencies who should be consulted. Any directly affected landowners will again be advised of the exhibition arrangements in writing, as will the Berry Forum, Berry Showground Management Committee, Berry Chamber of Commerce, Berry Museum and Berry & District Historical Society.

## Policy Implications

One of the key principles of the Illawarra-Shoalhaven Regional Plan (ISRP) is for Councils to "conserve heritage assets when undertaking local strategic planning and development". As such the recommended PP is generally consistent with the ISRP.

Four (4) questionnaires were accompanied by additional submissions with proposed revisions to the prepared Heritage Inventory Data sheets. Should Council endorse the progression of a PP, the merit of these suggestions will be considered and may result in updates to the Heritage Inventory Data sheets as required.

Proceeding as recommended is also generally consistent with the vision statement and relevant heritage objective within the Berry Community Strategic Plan:

- Berry is highly valued by both its residents and its visitors for its location and its heritage village atmosphere.... Future development, infrastructure improvement and growth of*

*tourism will be carefully balanced with a heightened focus on Berry's unique historic charm, rural character, and renown as "The Town of Trees".*

- *Maintain the history, setting and unique character of the Berry area through careful planning and development*

### **Financial Implications**

There are no immediate financial implications for Council. The recommended PP will be resourced from the Strategic Planning budget.

### **Risk Implications**

Not including the twelve (12) dwellings and the two (2) Heritage Conservation Areas within Schedule 5 of SLEP 2014 may result in unsympathetic development which could impact on the existing heritage significance and character of Berry.