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Gateway determination report – PP-2021-2376

Local heritage listing of 780-786 New South Head
Road, Rose Bay

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Planning Proposal – Hillcrest, 780-786 New South Head Road, Rose Bay, 13 April 2021
“Hillcrest”, 780-786 New South Head Road, Rose Bay Heritage Significance Assessment Report, Robert A Moore Pty Ltd, December 2020
Heritage Inventory Sheet Part 1 and Heritage Inventory Sheet Illustrations
Woollahra Municipal Council Ordinary Council Meeting Minutes, 22 February 2021

Environmental Planning Committee Agenda, 1 February 2021

Woollahra Local Planning Panel (Public Meeting) Agenda, 17 December 2020

Woollahra Local Planning Panel (Public Meeting) Minutes, 17 December 2020

Environmental Planning Committee Agenda, 2 November 2020

Woollahra Municipal Council Ordinary Council Meeting Minutes, 23 November 2020

1 Planning Proposal

1.1 Overview and objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objectives of the planning proposal are to recognise the heritage significance of the residential flat building known as ‘Hillcrest’, including the interiors and gardens at 780-786 New South Head Road, Rose Bay and provide it with additional statutory protection.

The objectives of the planning proposal are clear and adequate.

The planning proposal is supported by the following report:

- “Hillcrest”, 780-786 New South Head Road, Rose Bay Heritage Significance Assessment prepared by Robert A Moore Pty Ltd.

Table 2 Planning proposal details

LGA	Woollahra
PPA	Woollahra Municipal Council
NAME	Local heritage listing of ‘Hillcrest’ (including interiors and gardens) at 780-786 New South Head Road, Rose Bay
NUMBER	PP-2021-2376
LEP TO BE AMENDED	Woollahra Local Environmental Plan 2014
ADDRESS	780-786 New South Head Road, Rose Bay
DESCRIPTION	SP 30455 (on Lot C 177878)
RECEIVED	18/03/2021 (adequate 13/4/2021)
FILE NO.	IRF21/1488
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

1.2 Site description and surrounding area

The subject site is located at 780-786 New South Head Road, Rose Bay and is legally described as SP 30455 (**Figure 1**), which stands on Lot C in DP 177878. The site is occupied by an existing three-storey residential flat building (RFB), containing six apartments (two on each level), known as ‘Hillcrest’.

The site is rectangular in shape and approximately 1,710 sqm in area. The site has a frontage of approximately 32m to New South Head Road, a rear boundary of 31.96m and a depth of between 52.33m and 54.42m. The site slopes down to the west towards the Sydney Harbour foreshore. The site is one of four lots zoned R3 Medium Density Residential, in an area predominantly zoned R2 Low Density Residential under the Woollahra Local Environmental Plan (WLEP) 2014.

The residential flat building (RFB) is set on the site in a manner that the ground floor level is significantly below the footpath level so that only the top floor is visible from New South Head Road. The site has generous side setbacks, which accommodate communal gardens to the north and south. A carport is located at the front of the development at street level, with parking capacity for four cars.

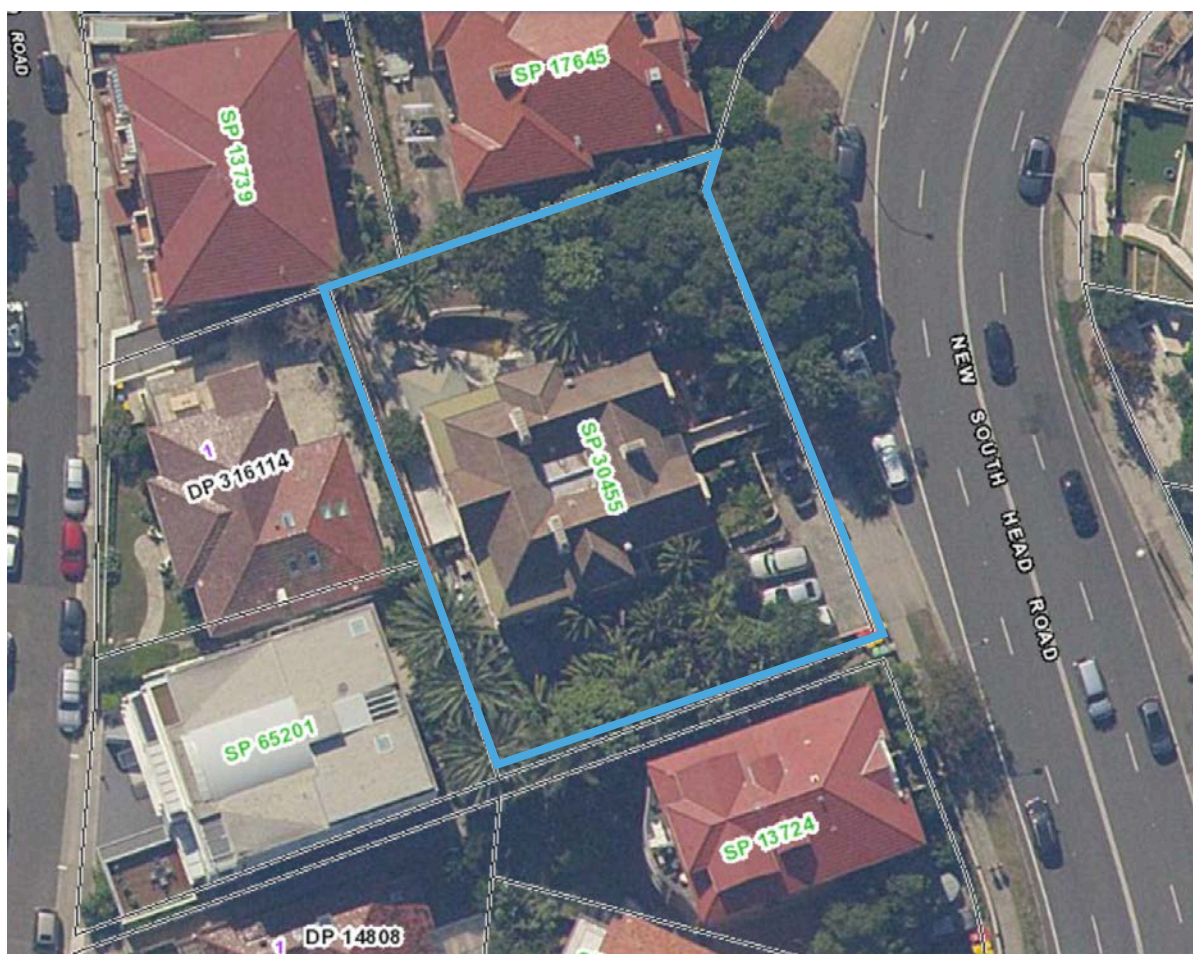


Figure 1 Subject site outlined in blue (source: Sixmaps)

The site is in an established residential area, with a mix of single dwellings and RFBs of varying ages and styles. Development on adjoining sites consists of a RFB to the north at 788 New South Head Road, a RFB to the south at 778 New South Head Road; a RFB at 7 Dumaresq Road and a single dwelling at 9 Dumaresq Road to the west, which are at the rear of the site.

The site is not located in a heritage conservation area (HCA), nor is it located in the immediate vicinity of any heritage items or HCAs. The closest heritage items to the site are shown in **Figure 2** and are listed as follows:

- Local heritage item 309 *Fernleigh Castle - main building and interiors* at 5 Fernleigh Gardens, Rose Bay
- State heritage item 310 *Ficus superba* var. *henneana* (Cedar fig) at 3/3A Fernleigh Gardens and 20 Rawson Road, Rose Bay

- Local heritage item 325 Kambala School – building formerly Tivoli and interiors, gateposts, gates and flanking walls with railing facing Tivoli Avenue, 2 Norfolk Island Pines at 794 New South Head Road, Rose Bay

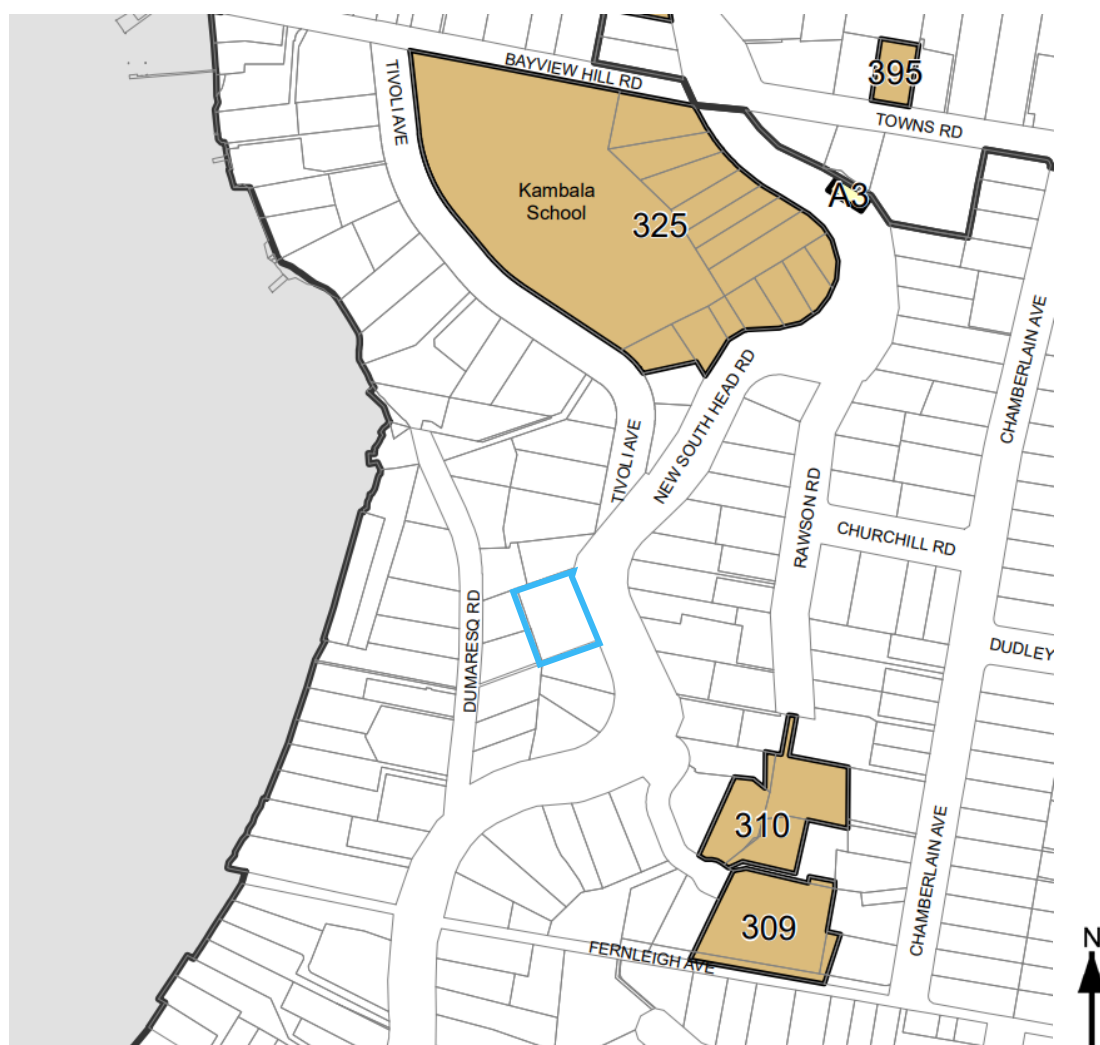


Figure 2 Surrounding heritage items with the site outlined in blue

Images of the 'Hillcrest' development are shown below at **Figures 3 to 7**.



Figure 3 Site frontage and entry bridge to the top floor apartments (source: Heritage Inventory Sheet)



Figure 4 (left) View of the South East corner and 5 (right) view from North West corner (source: Heritage Inventory Sheet)

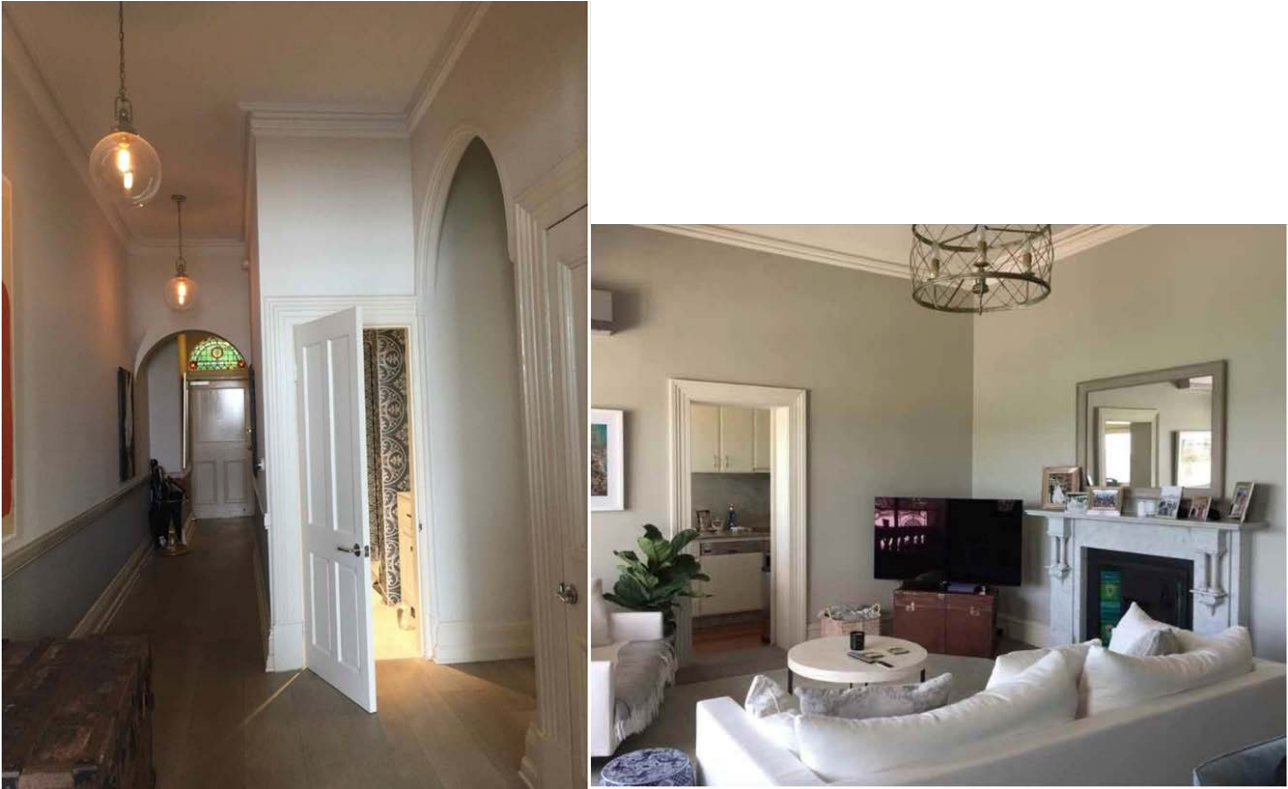


Figure 6 (left) View of the former main hall and 7 (right) view of the former bedroom (source: Heritage Inventory Sheet)



Figure 8 View of the front palisade fence (source: Heritage Inventory Sheet)

2 Proposal

2.1 Explanation of provisions

The planning proposal seeks to amend the WLEP 2014 to:

- Insert a local heritage listing for *780-786 New South Head Road, Rose Bay, known as 'Hillcrest' (including interiors and gardens)* in Part 1 (Heritage items) of Schedule 5 (Environmental Heritage); and
- Amend the Heritage Map (Sheet HER_005) of the WLEP 2014 to identify 780-786 New South Head Road, Rose Bay as a heritage item.

The planning proposal adequately explains how the objectives of the proposal will be achieved.

2.2 Background

On 3 February 2020, a development application (DA) (DA 19/2020/1) was lodged with Council for the demolition of the three-storey RFB, 'Hillcrest' at 780-786 New South Head Road, Rose Bay.

Council's Heritage Officer considered the demolition proposed by the DA and provided a preliminary assessment of the heritage significance of the building under the seven criteria identified in the NSW Heritage Office (now Heritage NSW) Guidelines 'Assessing Heritage Significance'. Based on the assessment the building was considered to have potential to meet the threshold for local heritage significance.

On 4 June 2020, the Woollahra Local Planning Panel (LPP) resolved to refuse the DA based on heritage grounds and a lack of adequate information. After the refusal of the DA, an Interim Heritage Order (IHO) was issued for the site under section 25 of the *Heritage Act 1977* and Council engaged Robert A Moore Pty Ltd to prepare a Heritage Significance Assessment (HSA) (**Attachment D**) for the site. The HSA concluded that the site satisfied the criteria for listing as a local heritage item.

On 2 November 2020, a report was presented to Council's Environmental Planning Committee (EPC) recommending a planning proposal be prepared to list Hillcrest, including interiors and gardens at 780-786 New South Head Road as a local heritage item in the WLEP 2014.

On 23 November 2020, Council resolved that a planning proposal to list Hillcrest as a local heritage item be prepared and referred to the Woollahra LPP for advice.

On 17 December 2020, the Woollahra LPP resolved that Council should proceed with the planning proposal. On 1 February 2021, a report including the advice of the Woollahra LPP was presented to the EPC and on 23 February 2021 Council resolved that the planning proposal be forwarded to the Department with a request for a Gateway determination to allow public exhibition.

On 22 December 2020, a Class 1 appeal against the refusal of DA 19/2020/1 and seeking to revoke the IHO was filed with the NSW Land and Environment Court (LEC). The matter was scheduled for directions hearing on 28 April 2021.

A new DA (DA 30/2021) for the site was lodged on the 29 January 2021 for alterations and additions to the existing RFB, including two new wings, an additional floor level with roof addition and two basement levels access via car lift. It is noted that the planning proposal does not reference this DA. As of the date of writing, the DA remains under assessment. A Gateway condition is recommended to require the planning proposal to be updated to include details of this DA. The Department understands this DA is also subject to a Class 1 appeal against the deemed refusal.

2.3 Statement of significance

The Heritage Significance Assessment includes a statement of significance for the site, as follows:

'Hillcrest', No.780-786 New South Head Road, Rose Bay, is the residential flat building built c.1890 as a pair of semi-detached dwellings originally known as 'Dalkey' and 'Bionopa', and converted to six flats in the early 1900s. It is of local heritage significance within the Municipality of Woollahra for its historic, aesthetic and associative values, particularly within the Rose Bay locality. Within its locality and LGA context it also demonstrates a rarity of its type, design and developmental history and context, supported by its relative integrity.

Built by the prominent businessman and local alderman Morrice Alexander Black, the building was the first to be built in the land subdivided in 1889 from Black's 'Tivoli' Estate. Adopting an urban form of semi-detached dwellings, usually seen in more closely developed city and urban streets, the building took advantage of its harbourside sit to present as a prestigious 'marine villa' set in complementary gardens like its earlier grand but distant neighbours. However, in the context of increasingly closer subdivision and greater densities, with purpose designed flat buildings becoming the first -builds on surrounding lots, the two aesthetically designed, Victorian Italianate semi detached houses became four and later six flats, sold and successively owned by investors.

Renamed 'Hillcrest', the building remains significantly intact despite its adaptive re-use and retains key dimensions and qualities of its original spacious garden setting, to maintain its historic and aesthetic contextual significance. 'Hillcrest' contributes distinctively to the locality in which it is a landmark and an interpretable milestone of evolving development.

2.4 Mapping

The planning proposal includes mapping showing the proposed changes to the Heritage Map, which is suitable for community consultation. It is noted that the heritage item number '699' as shown in **Figure 10** is indicative only and will be confirmed by Council at finalisation stage.

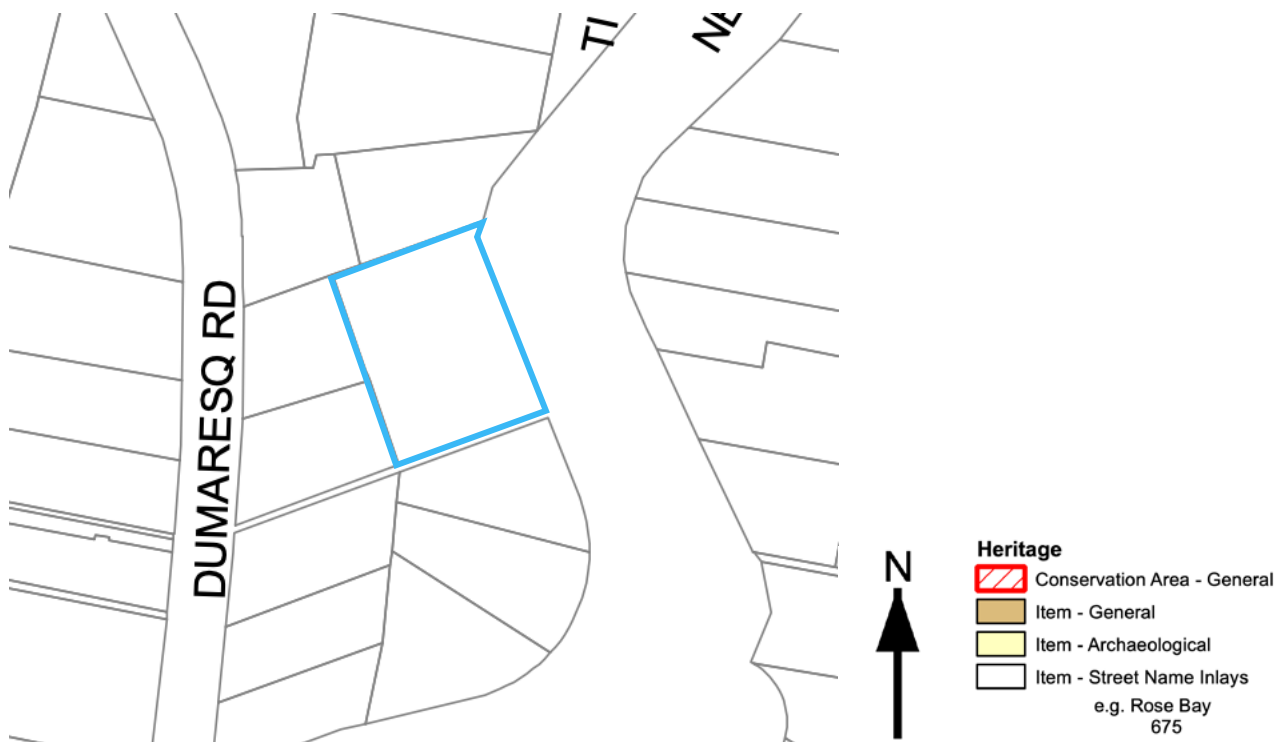


Figure 9 Current heritage map (Sheet HER_005) with the site outlined in blue



Figure 10 Proposed heritage map

3 Need for the planning proposal

The planning proposal is based on the recommendation of the Heritage Significance Assessment (HSA) prepared by Robert A Moore Pty Ltd for Council. The report concluded that 'Hillcrest', including its interiors and gardens, meets the criteria for local heritage significance. The HSA recommends that the development should be included as a local heritage item in Schedule 5 of the WLEP 2014.

The HSA was undertaken in accordance with NSW Heritage Office Guidelines, 'Assessing Heritage Significance'. The key findings of the assessment against the NSW Heritage Office criteria are:

- **Historical significance** - *"Hillcrest is a marker of transition in its locality, unusually a pair of grand, semi-detached houses while still a 'marine villa', reflecting the ambitions and harbour associations evident in its neighbours."*
- **Historical association significance** - *"The names and milestones revolving around the history of the building are important associations and support arguments for its pivotal role and marker-presence in the development of its locality across the Nineteenth and Twentieth Centuries."*
- **Aesthetic significance** - *"Aesthetically distinctive, a landmark in both the physical and temporal sense, 'Hillcrest' is a strong statement of taste, style and concept."*
- **Rarity** - *"Hillcrest is a curious, distinctive example of the 'marine villa', which figured prominently in the development of harbourside lands, but for a short period."*
- **Representativeness** - *"Hillcrest is an unusual, representative exemplar of its type within its local area and the Woollahra LGA, being important not only for its rarity, but also for its*

related illustration of the course and pattern of development of local history, relative integrity and authenticity, and relationship within its setting.”

- **Social significance and technical/research significance** - Hillcrest is not considered to meet the threshold for these criteria, however, may upon future specific investigation.

The HSA has established the heritage values of the site. As the proposed listing includes the interiors and garden, it is recommended that photographs of these aspects of the property be included in the planning proposal and HSA to clearly illustrate the values of the proposed item. This will be required via a Gateway condition.

The planning proposal states that the best and only way of achieving the intended objective is through the planning proposal process. Other options, such as adding site specific objectives and controls to Woollahra Development Control Plan (WDGP) 2015 or including heritage conservation conditions to a potential development consent will not provide the same level of heritage protection and recognition. The proposal notes that without the listing, the structures may be able to be fundamentally altered under the provisions of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP).

The Department agrees that the planning proposal process is the best means for protecting the site.

4 Strategic assessment

4.1 Region Plan

The planning proposal is consistent with the objectives of the Greater Sydney Region Plan: *A Metropolis of Three Cities*.

Table 2 Region Plan assessment

Regional Plan Objectives	Justification
Objective 13: Environmental heritage is identified, conserved and enhanced.	<p>Objective 13 states that <i>‘heritage identification, management and interpretation are required so that heritage places and stories can be experienced by current and future generations.’</i> It notes that environmental heritage should be protected for its social, aesthetic, economic, historic and environmental values.</p> <p>Environmental heritage is defined as <i>‘the places, buildings, works, relics, moveable objects and precincts of State or local heritage significance.’</i></p> <p>The HSA considers that the Hillcrest development should be included as a local heritage item under the WLEP 2014 as the property meets historical, associational, aesthetic, rarity and representative criteria in line with the NSW Heritage Office Guidelines.</p> <p>The planning proposal is consistent with this Priority as it seeks to recognise and protect these identified heritage values.</p>

4.2 District Plan

The site is located within the Eastern City District. The Greater Sydney Commission released the Eastern City District Plan on 18 March 2018. The plan contains planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets.

The planning proposal is consistent with the priorities for ‘liveability’ identified in the plan.

The Department is satisfied that the planning proposal gives effect to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*. The following table includes an assessment of the planning proposal against relevant directions and actions.

Table 3 District Plan assessment

District Plan Priorities	Justification
Planning Priority E6: Creating and renewing great places and local centres, and respecting the District's heritage	<p>Commentary around Planning Priority E6 states that <i>'identifying, conserving, interpreting and celebrating Greater Sydney's heritage values leads to a better understanding of history and respect for the experiences of diverse communities.'</i></p> <p>Action 20 states that environmental heritage should be identified, conserved and enhanced by:</p> <ul style="list-style-type: none"> a. <i>Engaging with the community early in the planning process to understand heritage values and how they contribute to the significance of the place</i> b. <i>Applying adaptive reuse and interpreting heritage to foster distinctive local places</i> c. <i>Managing and monitoring the cumulative impact of development on the heritage values and character of places</i> <p>The planning proposal is consistent with this Priority as it seeks to provide the statutory mechanism to protect and respect the District's heritage. The proposal will further recognise and provide ongoing protection of the heritage significance of Hillcrest with its interiors and garden through listing it on the WLEP 2014.</p>

4.3 Local

The planning proposal is consistent with the following local plans and endorsed strategies, as stated in the table below:

Table 4 Local strategic planning assessment

Local Strategies	Justification
Local Strategic Planning Statement (LSPS)	<p>The planning proposal is consistent with the endorsed Woollahra LSPS, particularly with Planning Priority 5 – Conserving our rich and diverse heritage, under the theme of Liveability.</p> <p>The proposal intends to facilitate the conservation and protection of the site which has been identified as having local heritage significance in a HSA commissioned by Council.</p>
Community Strategic Plan (CSP)	<p>The planning proposal is consistent with Council's CSP, particularly with strategy 4.3 in Goal 4 (Well-planned neighbourhood) – Protect our heritage, including significant architecture and the natural environment.</p> <p>The planning proposal seeks to recognise and protect the local heritage significance of the site.</p>

4.4 Local Planning Panel (LPP) recommendation

On 17 December 2020, the Woollahra LPP considered a report on the planning proposal for the local heritage listing of Hillcrest and recommended Council proceed with the proposal and forward it to the Department for a Gateway determination.

4.5 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

Table 5 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
2 Environment and Heritage		
2.3 Heritage Conservation	Consistent	<p>This Direction requires that a planning proposal must contain provisions which facilitate the conservation of items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance, as identified in a study of the environmental heritage of the area.</p> <p>The planning proposal is informed by a HSA prepared by Robert A Moore Pty Ltd. The assessment was undertaken in accordance with the NSW Heritage Office Guidelines and concludes that the site satisfies the relevant criteria for local heritage listing.</p> <p>The proposal will facilitate the conservation and protection of the site and is therefore considered to be consistent with this Direction.</p>
5 Regional Planning		
5.10 Implementation of Regional Plans	Consistent	<p>The planning proposal is consistent with the objectives of the Greater Sydney Region Plan: <i>A Metropolis of Three Cities</i>, particularly Objective 13: Environmental heritage is identified, conserved and enhanced.</p> <p>The heritage listing of Hillcrest, including interiors and gardens at 780-786 New South Head Road, Rose Bay, will provide ongoing protection and recognition of the heritage significance of the item.</p>
7 Metropolitan Planning		
7.1 Implementation of A Metropolis of Three Cities (March 2018)	Consistent	<p>The planning proposal is consistent with the objectives of the Greater Sydney Region Plan: <i>A Metropolis of Three Cities</i>, particularly Objective 13: Environmental heritage is identified, conserved and enhanced.</p>

4.6 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs.

5 Site-specific assessment

5.1 Environmental

The site does not contain any critical habitat areas, threatened species, populations or ecological communities or their habitats. Therefore, the proposed amendment to the WLEP 2014 is not likely to result in any adverse impacts on the environment.

5.2 Social and economic

The following table provides an assessment of the potential social and economic impacts associated with the proposal.

Table 7 Social and economic impact assessment

Social and Economic Impact	Assessment
Social	The planning proposal is unlikely to result in any adverse social impact. Listing the site as a heritage item will help conserve its heritage significance.
Economic	<p>The planning proposal could result in minor economic impacts on the owners of the site, as there are additional costs involved in preparing a DA for heritage listed sites. Listing the property as a heritage item will prevent certain works from being undertaken as exempt or complying development.</p> <p>However, the proposal does not change the zoning, or development standards applicable to the site and the heritage listing of the site would conserve the significance of the building and its contribution to the character of the area.</p>

5.3 Infrastructure

There is no significant infrastructure demand that will result from the planning proposal as it does not involve any amendments to the planning controls that will facilitate intensified development. The site has access to adequate public infrastructure such as water, sewer, electricity, telephone services and is located in close proximity to transport services.

6 Consultation

6.1 Community

Council proposes a minimum community consultation period of 28 days.

Council states that the public notification of the exhibition will comprise:

- Weekly notice in the local newspaper (the Wentworth Courier) for the duration of the exhibition period, when a hard copy version of that newspaper is being published
- A notice on Council's website
- A letter to landowners in the vicinity of the site

- Notice to the local community, resident and business groups such as the Woollahra History and Heritage Society and the Rose Bay Resident's Association.

The exhibition period is appropriate and forms a condition of the Gateway determination.

Landowner consultation

The planning proposal states that consultation with the landowners and their representatives commenced during the process of accessing the site for the purposes of preparing the HSA. Landowners were informed by letter dated 10 July 2020 of the making of an IHO over the site.

On 29 September 2020, Council staff sent letters to the owners and occupiers of each of the units as well as the strata managers advising them of the appointment of Robert A Moore Pty Ltd to undertake the HSA for the site and to request internal access. Three of the six apartments permitted access to Council's staff and site visits were carried out on 7 and 9 October 2020.

The landowners were also notified of each of the EPC, LPP and Council meetings where the matter was considered.

Correspondence was submitted by Jennifer Hill of Architectural Projects on behalf of the owner to be considered on each occasion, requesting the listing be amended to pertain to the building exteriors only, with interiors and garden excluded.

On 9 April 2021, the Department received correspondence from the landowners' legal representative requesting that the planning proposal be refused and the assessment process of DA 30/2021 be allowed to continue to completion, including any LEC processes. The correspondence also raised discrepancies regarding the extent of the heritage significance of the site.

The Department notes the proposal will be subject to further consultation and the owner will have a further opportunity to provide feedback on the planning proposal during exhibition. Council is required to consider all submissions as part of finalisation, including any submission and heritage impact statement prepared on behalf of the landowner. It is noted this may result in post-exhibition changes to the extent of the listing.

The Department notes that the consideration of local heritage is a local matter. Further, the issue of a Gateway determination to proceed will not prevent the consideration of the matter by the LEC.

6.2 Agencies

Council has nominated the agencies to be consulted about the planning proposal. It is recommended the following agencies/organisations be consulted on the planning proposal and given 21 days to comment:

- Heritage NSW
- The National Trust of Australia (NSW)

7 Timeframe

Council proposes a 6-month time frame to complete the LEP from the receipt of a Gateway determination (by September 2021).

The Department recommends a time frame of 9 months to allow some flexibility for Council to finalise the planning proposal and ensure it is completed in line with the Department's commitment to reducing processing times. This is also recommended in light of Council election in September and the preceding caretaker period.

A condition to the above effect is recommended in the Gateway determination.

8 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making authority.

As the planning proposal is of local significance, the Department recommends that Council be authorised to be the local plan-making authority for this proposal.

9 Assessment Summary

The planning proposal is supported to proceed with conditions for the following reasons:

- The proposed heritage listing is supported by a Heritage Significance Assessment report and inventory sheet which determine that Hillcrest, including its interiors and gardens are of local heritage significance. The HSA has been undertaken in accordance with the NSW Heritage Office Guidelines;
- The proposal will recognise and provide ongoing protection of the heritage significance of Hillcrest, including its interiors and gardens; and
- The proposal is consistent with the Eastern City District Plan, Council's local strategic plans, and relevant SEPPs and Section 9.1 Directions.

As discussed in the body of this report, the proposal should be updated before consultation to:

- Include photographs of the interiors and garden areas of the residential flat building in the planning proposal and heritage significance assessment report.
- Include details of the latest development application for alterations and additions to the existing residential flat building on the site.
- Amend the project timeline to reflect the timeframe allowed to complete the LEP.

10 Recommendation

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal is to be updated prior to community consultation to:
 - Include photographs of the interiors and garden areas of the residential flat building in the planning proposal and heritage significance assessment report.
 - Include details of the latest development application for alterations and additions to the existing residential flat building on the site.
 - Amend the project timeline to reflect the timeframe allowed to complete the LEP.
2. Consultation is required with the following public authorities/organisations:
 - Heritage NSW
 - The National Trust of Australia (NSW)
3. The planning proposal should be made available for community consultation for a minimum of 28 days.
4. The planning proposal must be placed on public exhibition no later than 2 months from the date of the Gateway determination.
5. The planning proposal must be reported to council for a final recommendation no later than 6 months from the date of the Gateway determination.
6. The timeframe for completing the LEP is to be 9 months from the date of the Gateway determination.

7. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.



Simon Ip
Manager, Place and Infrastructure



9 June 2021

Laura Locke
Director, Eastern and South Districts

Assessment officer

Lawren Drummond
Planning Officer, Eastern and South Districts
9274 6185