

ORDINARY MEETING OF COUNCIL – 15/11/2022

Subject: Post exhibition consideration of submissions - Planning Proposal to amend Schedule 5 - Environmental Heritage and associated Heritage Maps
Minute Number: 257
Notes:
File Reference: S13388 2022/257835

Resolved:

[Moved: Councillors Spencer/Ward]

That:

- A. Council adopt the Planning Proposal to correct or clarify local heritage listings in Schedule 5 of the Ku-ring-gai Local Environmental Plan 2015 and the associated heritage mapping.
- B. Council proceed to make the plan, using its delegated authority under section 3.36(2) of the Environmental Planning and Assessment Act 1979.
- C. delegation be given to the General Manager and Director of Strategy and Environment to correct any inconsistencies or errors in the Planning Proposal prior to it being submitted to the Department of Planning and Environment for finalisation.
- D. those who made submissions be notified of Council's decision.

CARRIED UNANIMOUSLY

[Open Item in Minutes](#)

POST EXHIBITION CONSIDERATION OF SUBMISSIONS - PLANNING PROPOSAL TO AMEND SCHEDULE 5 - ENVIRONMENTAL HERITAGE AND ASSOCIATED HERITAGE MAPS

EXECUTIVE SUMMARY

PURPOSE OF REPORT:

For Council to consider submissions made to public exhibition of the Planning Proposal to correct or clarify local heritage listings in Schedule 5 of the Ku-ring-gai Local Environmental Plan 2015 and associated mapping.

BACKGROUND:

In June 2022, Council resolved to adopt and submit the Planning Proposal to correct or clarify local heritage listings in Schedule 5 of the Ku-ring-gai Local Environmental Plan 2015 and associated mapping for a Gateway Determination under section 3.34 of the Environmental Planning and Assessment Act 1979.

A Gateway Determination was received on 12 August 2022. The Planning Proposal was placed on public exhibition between 16 September – 30 September 2022.

This report reviews the outcomes of public exhibition and recommends proceeding with the Planning Proposal.

COMMENTS:

A total of eight (8) submissions were received from the community during the public exhibition. Five (5) submissions were received in support of the Planning Proposal. One (1) submission was received in support of the Planning Proposal, subject to a suggested amendment. Two (2) submissions were received in opposition to the Planning Proposal.

RECOMMENDATION:

That the Planning Proposal to correct or clarify local heritage listings in Schedule 5 of the Ku-ring-gai Local Environmental Plan 2015 and the associated heritage mapping proceeds and that Council resolves to make the Plan under section 3.36 of the *Environmental Planning & Assessment Act 1979*.

PURPOSE OF REPORT

For Council to consider submissions made to public exhibition of the Planning Proposal to correct or clarify local heritage listings in Schedule 5 of the Ku-ring-gai Local Environmental Plan 2015 and associated mapping.

BACKGROUND

This report provides an overview of the submissions received during the public exhibition of the Planning Proposal to correct or clarify local heritage listings in Schedule 5 of the Ku-ring-gai Local Environmental Plan 2015 ('KLEP 2015') and the associated heritage mapping. The Planning Proposal is included at **Attachment A1**.

Schedule 5 of the KLEP 2015 provides a comprehensive list of Heritage items (Part 1) and Heritage conservation areas (Part 2) that have been identified for their heritage significance across the local government area. This list provides a description and name of the item, the item number and the item's property identifiers which include street address, relevant lot and deposited plan and/or strata plan number. The KLEP 2015 is accompanied by a series of maps, including the Heritage Maps (HER) which identify the local of heritage items and heritage conservation areas listed in Schedule 5.

Council has an ongoing role in managing and conserving the broad range of heritage items and conservation areas throughout the local government area ('LGA'). Throughout the operation of the KLEP 2015 several errors and anomalies in Schedule 5 – Environmental Heritage of the Plan and the heritage maps have been identified. As part of this Planning Proposal, a thorough review of the Schedule 5 heritage list and its related maps was undertaken to identify any inaccuracies or errors.

The review identified that:

- 81 sites of heritage significance require amendment in Schedule 5;
- 27 heritage mapping changes are required; and
- existing heritage conservation areas require a name change and amalgamation into 9 heritage conservation areas to reflect the consolidation of the former Ku-ring-gai Local Environmental Plan 2012 (Local Centres) with the current KLEP 2015.

The review involved:

- a desktop review of the information included in Schedule 5, such as checking the property information for each heritage item is correct and checking for duplicate item numbers;
- a review of individual properties where a change may be required in response to an issued development consent, for example where land containing a heritage item has been subdivided and built upon and a curtilage needs to be amended; and
- a comparison of Schedule 5 against the State Heritage Register.

A Planning Proposal has been prepared to rectify the identified errors. The Planning Proposal has been prepared in accordance with section 3.33 of the *Environmental Planning and Assessment Act 1979* ('EP&A Act') and the relevant guidelines prepared by the New South Wales ('NSW')

Department of Planning and Environment ('DPE'), including Local Environmental Plan Making Guideline (December 2021).

With the exception of 21 Cleveland Street, Wahroonga - this housekeeping Planning Proposal has been limited to administrative corrections where no independent studies are considered necessary to inform the changes. No new heritage items are proposed as part of these amendments.

These changes will ensure that Schedule 5 and the associated maps are as accurate as possible and will provide greater clarification and protection of our items of local heritage significance. The appropriate protection of Ku-ring-gai's heritage places and will contribute to the ongoing conservation of Ku-ring-gai's valued landscape and garden suburbs. A detailed table of the proposed amendments is outlined in **Attachment A2**.

21 Cleveland Street, Wahroonga

The proposed amendment for 21 Cleveland Street, Wahroonga (St Lucy's School) is the sole amendment based on merit in terms of assessed heritage significance because of prior landowner engagement and submitted supporting justification. A Pre-Planning Proposal meeting was held on 28 May 2020, in which the owners of the site proposed an amendment to the KLEP 2015 to amend the extent of the heritage listing to reflect the current heritage significance of the site. Council recommended a preparing a conservation management plan to assess the significance of the site, to inform the proposed curtilage adjustment and ongoing conservation of significant features. In 2021, Council advised St Lucy's School of the intention to prepare a heritage housekeeping Planning Proposal, with an offer to include the school's proposal as part of the Council-led Planning Proposal, should sufficient information in the form of a conservation management plan be provided to the satisfaction of Council's heritage specialist. A conservation management plan was reviewed and supported by Council's heritage specialist and incorporated as a proposed amendment in the Planning Proposal. The conservation management plan for St Lucy's School is included as **Attachment A3**.

The Planning Proposal can be classified as a 'Basic Planning Proposal' in line with the Local Environmental Plan Making Guidelines (December 2021). A basic planning proposal refers to any one or more of the following proposed LEP amendment types, including an amendment to correct an administrative error or a few minor 'housekeeping' amendments.

COMMENTS

The proposed outcome of Planning Proposal will be achieved by amending the KLEP 2015 in the following manner:

Schedule 5 – Environmental Heritage text and map amendments

Part 1 - Heritage items

The text amendments sought by the Planning Proposal are minor in nature and generally fall into the following categories:

- Amendment of Lot and DP numbers to reflect current legal descriptions
- Updates to property addresses and listed suburbs
- Updates of heritage item names where historically or logically appropriate

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- Consolidation or division of listings for clarity
- Updates to reflect state listings
- Appointment of new heritage item numbers in place of duplicate item numbers
- Correction of administrative errors
- Correction of the Schedule to ensure all mapped items are listed
- Removal or adjustment of heritage listings as a result of approved and completed demolition and redevelopment to exclude contemporary features of no assessed heritage significance
- Removal or adjustment of heritage listings in cases where administrative errors have occurred

The mapping amendments sought by the Planning Proposal are minor in nature, and generally fall into the following categories:

- consolidation or division of listings for clarity;
- updates to reflect state listing;
- appointment of new heritage item numbers in place of duplicate item numbers;
- adjustment of mapped extent due to road widening;
- correction of maps to ensure all listed items are mapped; and
- removal or adjustment of heritage curtilage as a result of approved and completed demolition and redevelopment to exclude contemporary features of no assessed heritage significance.

One merit based amendment is proposed for 21 Cleveland Street, Wahroonga, to:

- reduce curtilage to reflect the significance of the item based on the supported conservation management plan.

The existing development standards and zoning applying to the sites are not proposed to change as a result of this Planning Proposal. A detailed list of the proposed Schedule 5 amendments is included as **Attachment A2**. The proposed mapping changes are included in Part 4 of the Planning Proposal, included as **Attachment A1**.

Part 2 - Heritage conservation areas

The Planning Proposal seeks to amend the names of heritage conservation areas (HCAs) previously separated across two LEPs to reflect the consolidation of the former KLEP 2012 (Local Centres) with the current KLEP 2015. There are no proposed changes to the mapped boundaries of the heritage conservation areas ('HCA's). The proposed amendments for the HCAs are included in **Attachment A2**.

The heritage inventories on the online State Heritage Inventory or in Council's records contain supporting information for listed places. These inventories do not form part of the statutory listing proposed for amendment. Existing items and areas that are the subject of this proposal have existing inventories that were generally generated at the time of the original listing. For non-merit based administrative changes, the information in the existing heritage inventory will be retained and only updated where necessary to reflect the proposed change to schedule 5, such as to item names and land parcels. For the single merit-based amendment for 21 Cleveland Street, Wahroonga, the inventory will be updated to reference and include some of the information from

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the conservation management plan that is attached to the Planning Proposal. The heritage inventories become public when they are published online when the listing or subsequent amendment is made. Council is in the process of updating and improving all online heritage inventories progressively for approximately 1000 heritage items and 55 conservation areas.

Public Exhibition

A total of eight (8) submissions were received from the community during the public exhibition period. The Submission Summary Table is included as **Attachment A4**.

Support

Five (5) submissions were received in support of the Planning Proposal. These submissions made specific reference to a number of 'sites' as referred to in the Planning Proposal.

- 47 Highfield Road, Lindfield is identified as 'Site 22' in the Planning Proposal. For this site, it is proposed to update and clarify the property description and remove the redeveloped land from the list via an amendment to the heritage map. A submission was received in support of this proposed amendment.

Response: Support for the proposed amendment as part of the Planning Proposal is noted.

- 62 Kissing Point Road, Turramurra is identified as 'Site 54' in the Planning Proposal. For this site, it is proposed to update the property description and remove the subdivided redeveloped land from the listing, via an amendment to the heritage map. A submission was received in support of this proposed amendment.

Response: Support for the proposed amendment as part of the Planning Proposal is noted.

- 21 Cleveland Street, Wahroonga is identified as 'Site 57' in the Planning Proposal. For this site, it is proposed to update and clarify the street address, property description and item name, and remove the redeveloped land from listing via an amendment to the heritage map. A submission was received in support of this proposed amendment.

Response: Support for the proposed amendment as part of the Planning Proposal is noted. The suggestion to cross reference the heritage map within the written instrument is not part of the standard drafting convention. However, in order to provide greater clarity, the supporting information in the heritage inventory for this item will include a further description.

Support with amendment

One (1) submission was received in support of the Planning Proposal, subject to a suggested amendment.

- 1-5 Tryon Road, Lindfield is identified as 'Site 25' in the Planning Proposal. For this site, it is proposed to update the property description. The submission suggested that the proposed property description be amended to refer only to the church, and not the church hall abutting the church.

Response: It is not proposed as part of this administrative Planning Proposal to remove the hall from listing, requiring a merit assessment of significance, but to correct the property description to identify the full church site, as currently mapped as a heritage item. The church hall abutting

the earlier church forms part of the church complex, contributing to its history, community use and setting. Further justification would be required to consider a listing reduction that has not been provided with this submission, including a heritage assessment prepared in accordance with Heritage Council criteria and guidelines. The relative significance of different features on a listed site is taken into account through the normal development assessment process for a heritage item.

Opposition

Two (2) submissions were received in opposition to the Planning Proposal.

- 41 and 41a Nelson are identified as 'Site 8' in the Planning Proposal. For this site, it is proposed to merge related heritage items into one listing with the item number I215. The submission does not accept the premise that the proposed change is merely an administrative correction, and that there is no mapping error associated with this heritage listing that requires 'correction'. The submission notes that 41 and 41a Nelson Street, Gordon are separately owned and rated, and that the lots have been subject to separate heritage listings for many years.

Response: Both properties are currently listed as heritage items. This is an administrative change as no change to the heritage listing status or extent is proposed; only merging two related heritage item numbers into one. It is appropriate for these to be listed together because the two properties contain a single detached house. This is consistent with other heritage items where multiple connected buildings are listed as a single heritage item under a single item number, such as semi-detached houses or terraced rows. These are typically in separate ownership and/or rated separately. The ownership and rates do not affect or direct the listing. It is noted that the two subject owners are related through the registered business owner.

Corrections

A number of minor corrections have been made to the post-exhibition version of the Planning Proposal attached to the report, to ensure the most accurate information has been used. The recommendation of this report seeks for delegation be given to the General Manager and Director of Strategy and Environment to correct any inconsistencies or errors in the Planning Proposal prior to it being submitted to the Department of Planning and Environment for finalisation. With respect to the nature of this Planning Proposal, this recommendation will ensure any errors identified by Council staff or the Parliamentary Counsels Office can be rectified efficiently.

INTEGRATED PLANNING AND REPORTING

Theme 3: Places, Spaces and Infrastructure

Community Strategic Plan Long Term Objective	Delivery Program Term Achievement	Operational Plan Task
Ku-ring-gai's heritage is protected, promoted and responsibly managed.	Strategies, plans and processes are in place to effectively protect and preserve Ku-ring-gai's heritage assets.	Implement, monitor and review Ku-ring-gai's heritage planning controls including the development of a heritage strategy.

GOVERNANCE MATTERS

The preparation and implementation of Planning Proposals is governed by the provisions within the *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulation 2000*.

Under the Ministerial Direction *Local Planning Panels Direction – Planning Proposals* and the delegations granted to the General Manager, this matter was not required to be referred to Ku-ring-gai Local Planning Panel on the basis that the proposed amendments are administrative in nature and will not have any significant adverse impact on the environment or property owners.

Council's resolution from OMC 28 June 2022 requested that Council be authorised as the local plan-making authority to exercise the functions under section 3.36(2) of the *Environmental Planning and Assessment Act 1979* to finalise the Planning Proposal. In issuing the Gateway determination on 12 August 2022, the DPE considered the nature of the Planning Proposal and conditioned the Gateway determination for Council to be authorised as the local plan-making authority.

This report addresses the post exhibition stage of the planning proposal process, to consider State agency and stakeholder feedback. Council can resolve to make the plan in accordance with section 3.36(2) of the EP&A Act and liaise with Parliamentary Counsel's Office (PCO) to draft the required Local Environmental Plan to give effect to the Planning Proposal, as well as the Ministers function in making the plan.

RISK MANAGEMENT

There is a community expectation that places of heritage significance within the Ku-ring-gai Council LGA will be identified and protected. There is a strategic risk of damaging the reputation of Council if these culturally significant places are not accurately identified and protected.

FINANCIAL CONSIDERATIONS

The cost of preparing this report is covered by the Ku-ring-gai - Urban Planning & Heritage Budget – Strategy and Environment Department.

SOCIAL CONSIDERATIONS

The identification and protection of Ku-ring-gai's heritage places contributes to the ongoing conservation of Ku-ring-gai's community-valued historic landscape and garden suburbs. The Planning Proposal will not adversely impact on existing social infrastructure. Any potential effects resulting from the Planning Proposal are considered positive, as having clear and accurate identification of heritage items will benefit social and cultural connection within the Ku-ring-gai community. Correct and accurate identification of heritage items could also facilitate clarity of appropriate development choices in relation to heritage items and in the vicinity of heritage items.

ENVIRONMENTAL CONSIDERATIONS

The retention and conservation of heritage places has an important role in protecting the environment. The environmental sustainability benefits afforded by the retention and conservation of heritage places includes the substantial reduction in building demolition and new construction waste, and the conservation of embodied energy in the existing buildings.

COMMUNITY CONSULTATION

The Planning Proposal was placed on public exhibition between 16 September 2022 – 30 September 2022 in accordance with the requirements of the Gateway determination and Ku-ring-gai's Community Participation Plan. 357 affected property owners were notified of the public exhibition in writing and were invited to provide feedback during the formal exhibition period. As a result of the public exhibition, a total of 8 submissions from the community were received. All persons who made a submission were notified of this matter being reported back to Council.

In accordance with the requirements of the Gateway determination, Heritage NSW, NSW Crown Lands, Transport for NSW, Sydney Water and the Department of Education were notified of the exhibition through the Planning Portal. No state agency submissions were received during the agency notification period. The Planning Proposal and supporting information was made available on Council's website and was available to be viewed online at the customer service desk in accordance with Ku-ring-gai's Community Participation Plan. All persons who made a submission were notified of this matter being report back to Council.

INTERNAL CONSULTATION

Consultation with relevant Departments of Council has taken place in preparing this report. In addition, a summary of the proposal was reported to and supported by Council's Heritage Reference Committee ('HRC') in 2021.

SUMMARY

This report provides an overview of the outcomes of the public exhibition. As a result of the public exhibition, a total of eight (8) submissions were received from the community. This report considers the submissions received and recommends that Council proceed to make the plan, using its delegated authority.

RECOMMENDATION:

That:

- A. Council adopt the Planning Proposal to correct or clarify local heritage listings in Schedule 5 of the Ku-ring-gai Local Environmental Plan 2015 and the associated heritage mapping.
- B. Council proceed to make the plan, using its delegated authority under section 3.36(2) of the Environmental Planning and Assessment Act 1979.
- C. Delegation be given to the General Manager and Director of Strategy and Environment to correct any inconsistencies or errors in the Planning Proposal prior to it being submitted to the Department of Planning and Environment for finalisation.
- D. That those who made submissions be notified of Council's decision.

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Attachments:	A1	Planning Proposal to amend Schedule 5 - Environmental Heritage and associated Heritage Maps	2022/294750
	A2	Appendix 1 - Table of Amendments	2022/294751
	A3	Appendix 2 - Conservation Management Plan - St Lucy's	2022/153369
	A4	Submission Summary Table	2022/294691