

**DECISION OF 3767th COUNCIL MEETING
HELD ON MONDAY 10 OCTOBER 2022**

10.4. Planning Proposal 8/22 - Heritage Listing of No.15 Allister Street, Cremorne

AUTHOR: Tom Mojsiejuk, Strategic Planner

To present to Council the assessment report to consider a planning proposal to amend the North Sydney Local Environmental Plan 2013 to identify the property at 15 Allister Street, Cremorne as a heritage item under Schedule 5 - Environmental Heritage and be identified on the Heritage Map. This report includes the advice of the North Sydney Local Planning Panel meeting of 14 September 2022.

In March 2022, a petition was provided to Council signed by over 100 individuals requesting that North Sydney Council investigate imposing an Interim Heritage Order (IHO) on the property.

In response to these concerns, Council considered a Notice of Motion at its meeting on 28 March 2022, and resolved:

- 1. THAT Council obtain urgent advice as to an Interim Heritage Order being supported on 15 Allister Street, Cremorne.*
- 2. THAT Council receive the tabled petition in this matter.*

In response to this resolution, Council engaged Kemp & Johnson Heritage Consultants to prepare a preliminary heritage assessment (Preliminary Assessment) to determine if the properties may potentially satisfy the criteria for heritage listing under North Sydney Local Environmental Plan 2013 (NSLEP 2013).

The Preliminary Assessment identified that the site may be eligible for heritage listing with the potential to meet the following Heritage Listing Criteria:

- a) Historical significance;
- b) Historical Association;
- c) Aesthetic and Technical Significance;
- f) Rarity; and
- d) Representativeness

Furthermore, Council Officers identified that the site was under threat of harm as a result of an active development application which sought to demolish the existing building on the site, which is one of the mandatory criteria before an IHO can be imposed. Subsequently, on 31 May 2022, the Acting General Manager, under delegation, authorised an IHO on the site which was published in the Government Gazette on 3 June 2022.

In response to the outcomes and recommendations of the final Heritage Assessment report produced by Kemp and Johnson, a planning proposal has been prepared to amend NSLEP 2013 such that the property at 15 Allister Street, Cremorne is identified as a local heritage item through its listing within Schedule 5 - Environmental Heritage and identification on the Heritage Map.

Prior to the Council considering a Planning Proposal, it must be referred to the North Sydney Local Planning Panel which performs an advisory role. The Planning Proposal was considered by the Panel on 14 September 2022. The Panel considered that whilst advice from the applicant's heritage expert against the listing of the subject site and discussion of amended architectural plans retaining the subject site was provided for the benefit of the Panel, it was not persuaded that the subject site did not meet the threshold for listing under the Heritage Assessment Guidelines.

The Panel considered that the Planning Proposal has strategic and site-specific merit and that the public exhibition of a Planning Proposal would allow for the further investigation as to the significance of the subject building, and an appropriate inventory, in particular whether its interiors are also worthy of protection.

This report notes the Panel's advice and observations. Whilst it is acknowledged that various expert opinions have been canvassed, on the basis of the independent heritage advice provided to Council, the planning proposal is considered to be satisfactory and consistent both with that independent advice as well as the various legislative and applicable plan making guidelines. This report recommends that the Planning Proposal be forwarded to the Department of Planning and Environment for Gateway Determination.

Preparing and exhibiting a planning proposal to amend the North Sydney Local Environmental Plan in the manner proposed represents a modest investment in Council resources. These can be accommodated within existing budget lines.

The cost of the engagement of specialist Heritage advice and reports, including that prepared to initiate the Interim Heritage Order, has been in the order of \$23,000. It is anticipated that the public exhibition of the planning proposal would generate several submissions. As a result, further engagement of heritage specialist advice may be required to review these submissions, which could be in the range of \$2,000-\$3,000.

Exclusive of staff time, the total cost of the IHO and Planning Proposal process is estimated to be \$25,000. These costs exclude costs incurred as a result of the applicant's appeal against the IHO to date.

RECOMMENDATION:

- 1. THAT** Council resolves to endorse the Planning Proposal attached to the report to the North Sydney Local Planning Panel on 14 September 2022 and forward it to the Minister for Planning in order to obtain a Gateway Determination in accordance with section 3.34 of the Environmental Planning and Assessment Act, 1979.
- 2. THAT** upon receipt of Gateway Determination, the Planning Proposal be exhibited consistent with Council's Community Engagement Protocol.
- 3. THAT** a further report be presented to Council following the public exhibition of the Planning Proposal detailing submissions received.

The following person spoke on this item as part of the Public Forum:

- Lara Bate

The Motion was moved by Councillor Welch and seconded by Councillor Gibson.

The Motion was put and **Carried**.

Voting was as follows:

For/Against 10 / 0

For: Councillor Baker, Councillor Beregi, Councillor Bourke, Councillor Drummond, Councillor Gibson, Councillor Lamb, Councillor Santer, Councillor Spenceley, Councillor Mutton and Councillor Welch

Against: Nil

Absent: Nil

319. RESOLVED:

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AUTHOR: Tom Mojsiejuk, Strategic Planner

ENDORSED BY: Joseph Hill, Director City Strategy

ATTACHMENTS: Nil

PURPOSE:

To present to Council the assessment report to consider a planning proposal to amend the North Sydney Local Environmental Plan 2013 to identify the property at 15 Allister Street, Cremorne as a heritage item under Schedule 5 - Environmental Heritage and be identified on the Heritage Map. This report includes the advice of the North Sydney Local Planning Panel meeting of 14 September 2022.

EXECUTIVE SUMMARY:

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Furthermore, Council Officers identified that the site was under threat of harm as a result of

an active development application which sought to demolish the existing building on the site, which is one of the mandatory criteria before an IHO can be imposed. Subsequently, on 31 May 2022, the Acting General Manager, under delegation, authorised an IHO on the site which was published in the Government Gazette on 3 June 2022.

In response to the outcomes and recommendations of the final Heritage Assessment report produced by Kemp and Johnson, a planning proposal has been prepared to amend NSLEP 2013 such that the property at 15 Allister Street, Cremorne is identified as a local heritage item through its listing within Schedule 5 - Environmental Heritage and identification on the Heritage Map.

Prior to the Council considering a Planning Proposal, it must be referred to the North Sydney Local Planning Panel which performs an advisory role. The Planning Proposal was considered by the Panel on 14 September 2022. The Panel considered that whilst advice from the applicant's heritage expert against the listing of the subject site and discussion of amended architectural plans retaining the subject site was provided for the benefit of the Panel, it was not persuaded that the subject site did not meet the threshold for listing under the Heritage Assessment Guidelines.

The Panel considered that the Planning Proposal has strategic and site-specific merit and that the public exhibition of a Planning Proposal would allow for the further investigation as to the significance of the subject building, and an appropriate inventory, in particular whether its interiors are also worthy of protection.

This report notes the Panel's advice and observations. Whilst it is acknowledged that various expert opinions have been canvassed, on the basis of the independent heritage advice provided to Council, the planning proposal is considered to be satisfactory and consistent both with that independent advice as well as the various legislative and applicable plan making guidelines. This report recommends that the Planning Proposal be forwarded to the Department of Planning and Environment for Gateway Determination.

FINANCIAL IMPLICATIONS:

Preparing and exhibiting a planning proposal to amend the North Sydney Local Environmental Plan in the manner proposed represents a modest investment in Council resources. These can be accommodated within existing budget lines.

The cost of the engagement of specialist Heritage advice and reports, including that prepared to initiate the Interim Heritage Order, has been in the order of \$23,000. It is anticipated that the public exhibition of the planning proposal would generate several submissions. As a result, further engagement of heritage specialist advice may be required to review these submissions, which could be in the range of \$2,000-\$3,000.

Exclusive of staff time, the total cost of the IHO and Planning Proposal process is estimated to be \$25,000. These costs exclude costs incurred as a result of the applicant's appeal against the IHO to date.

RECOMMENDATION:

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LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

4. Our Social Vitality

4.3 North Sydney's history is preserved and recognised

BACKGROUND

Previous Heritage Studies

There have been three previous major heritage studies for the entire Local Government Area undertaken on behalf of North Sydney Council as follows:

- *North Sydney Heritage Study (1981). Latona Masterman Associates.*
- *North Sydney Heritage Study Review (1993). Godden Mackay Logan Pty Ltd.*
- *North Sydney Heritage Review (2007). Architectus in association with John Oultram Heritage and Design.*

The subject site was not previously identified as having heritage significance under any of these broad studies.

Development Applications

On 11 November 2021, a development application (DA375/2021) was lodged with Council seeking the demolition of an existing residential flat building and a multi-dwelling housing development and construction of a new four storey residential flat building over two levels of basement parking, landscaping, fencing and associated works at 15 Allister Street, Cremorne.

In March 2022, a petition was provided to Council signed by over 100 individuals requesting that North Sydney Council consider imposing an IHO on the property. The petition notes:

"15 Allister Street, built in 1913, was designed by prominent architect, Clifford Finch. From 1927-30, Finch was in partnership with renowned architect, John Burcham Clamp, and jointly designed many significant buildings including Sydney's Tattersall's Club, Lawson House (212-218 Cumberland Street), Canberra Grammar School and the Ainslie Hotel, Canberra. Finch also practiced as an independent architect. Several of his designs are listed as local heritage items in the Ku-Ring-Gai LGA. Art-Deco residential flat buildings need to be acknowledged and protected as part of North Sydney's heritage. The Art-Deco era is Cremorne's theme as acknowledged in North Sydney Council's urban design branding."

Council Resolution and IHO Listing

In response to these concerns, Council considered a Notice of Motion at its meeting on 28 March 2022, and resolved:

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In accordance with this resolution, Council engaged Kemp & Johnson Heritage Consultants to prepare a preliminary heritage assessment (Preliminary Assessment) to determine if the properties may potentially satisfy the criteria for heritage listing under North Sydney Local Environmental Plan 2013 (NSLEP 2013).

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- f) Rarity; and
- g) Representativeness

Furthermore, Council Officers identified that the site was under threat of harm as a result of an active development application which sought in part to demolish the existing building on the site, which is one of the mandatory criteria before an IHO can be imposed. Subsequently, on the 31 May 2022, the Acting General Manager under delegation, imposed an IHO on the site, which was published in the Government Gazette on 3 June 2022.

It should be noted that the IHO is time limited and expires 6 months after the date it was made. If during this period Council resolves to progress the planning proposal, an additional 6 months will be added to the IHO bringing the total time of validity to 1 year from the date of it being made.

Court Proceedings

On 1 July 2022 Council was served with a Class 1 Appeal (No.2022/00188395) relating to the property at 15 Allister Street, Cremorne seeking the revocation of the Interim Heritage Order.

This matter is scheduled for a conciliation conference on 25 October 2022. It is understood that the applicant is exploring alternate design options to retain, partly or wholly, the building at 15 Allister Street, Cremorne.

CONSULTATION REQUIREMENTS

Community engagement will be undertaken in accordance with Council's Community Engagement Protocol.

DETAIL

1. Local Planning Panel

The planning proposal was considered by the North Sydney Local Planning Panel (NSLPP) on 14 September 2022. The Planning Panel performs an advisory role to Council. The Panel made the following assessment of the proposal:

A copy of the minutes and recommendation of the NSLPP Report is available online via the following link:

https://www.northsydney.nsw.gov.au/files/assets/public/docs/1_council_meetings/committees/nslpp/14_september_2022/nslpp_-_planning_proposal_jm_minutes_14_september_22_003_-_nmc_edit.pdf

One speaker, a heritage expert representing the applicant, advised that amended plans have been submitted incorporating the retention of the subject site at No. 15 Allister Street, Cremorne which would require the repurposing of the building to entail both internal and external alterations and development at the rear of the building, and the adjacent site to the south at No. 13 Allister Street. The speaker also objected to the description of No. 15 Allister Street as a 'Functionalist' interwar flat building and contended that it does not meet the heritage criteria for listing in that it was not remarkable, not distinguishable, not aesthetic and not uncommon.

At the time of finalisation of this report, no amended DA plans have been received by Council.

In response to this, the Panel recommended the following to Council:

- (i) *Seek confirmation of whether an amended DA has been lodged that retains the subject building. At the same time it is recognised, this may not necessarily ensure the retention of the building, however, it may lead to adaptive re-use and inform the extent of an inventory as to elements to be retained.*
- (ii) *The Panel accepts that there is a degree of heritage significance for the subject site. However, this needs to be further investigated and it is recommended this also be done in the context of the subject site with the adjoining site at No. 17 Allister Street, and the adjoining heritage item at No.7 Cranbrook Avenue, contributing to the heritage streetscape and potentially a grouping or conservation area.*
- (iii) *Given the circumstances and the need for certainty as to the future of the building, the Panel recommends the Council proceed to 'Gateway' and this will allow exhibition and further enquiry to inform the heritage significance of the building in isolation, or whether it is of more heritage significance in its context with No 17 Allister Street and the heritage item at No.7 Cranbrook Avenue.*

The Panel considers that public exhibition will also allow further investigation as to the significance of the subject building and an appropriate inventory, in particular whether its interiors are also worthy of protection.

The Panel considers the planning proposal has sufficient site specific and strategic merit to proceed to “Gateway”, to allow public exhibition.

NSC Officer response: The NSLPP has noted the differing professional opinions that have been provided in relation to the Heritage significance of the property that is the subject of this report. Having considered the detailed report prepared by Kemp & Johnson Heritage Consultants, Council officers are satisfied that the relevant criteria as set out by the NSW Heritage Office have been adequately addressed.

2. Assessment

A copy of the Council Officer NSLPP detailed Assessment Report, including Planning Proposal and detailed Heritage Assessment, is available online via the following link:

[https://www.northsydney.nsw.gov.au/files/assets/public/docs/1_council_meetings/committees/nslpp/14_september_2022/pp01_15_allister_street_cremorne - pp822 rpt.pdf](https://www.northsydney.nsw.gov.au/files/assets/public/docs/1_council_meetings/committees/nslpp/14_september_2022/pp01_15_allister_street_cremorne_-_pp822_rpt.pdf)

The key issues have been addressed below:

2.1 Heritage Context and Justification

A final detailed Heritage Assessment report was produced by Kemp & Johnson Heritage Consultants on 23 June 2022 (forming Appendix 3 to the Planning Proposal).

The report included an assessment of significance of the property in accordance with the standard criteria established in the NSW Heritage Office guidelines. These guidelines provide the framework for heritage assessment and incorporate the five types of cultural heritage values identified in the Burra Charter into a structured framework. The detailed assessment against this framework can be found on pages 31-38 of the detailed Heritage Assessment report.

The detailed assessment concluded the existing residential flat building meets the criteria for heritage listing at a local level for the following reasons (as discussed in detail on pages 31-36 and summarised on page 37 of the report):

- *Criteria (a): The residential flat building at 15 Allister Street Cremorne is of local historical significance as a fine example of inter-war period architectural design philosophies.*
- *Criteria (b): The building has historical association with its’ designer, well-known Sydney Inter-war period architect Clifford H. Finch.*
- *Criteria (c): The building is of local aesthetic significance as a fine example of an architect-designed Interwar Functionalist style residential flat building and a fine example of the residential work of architect Clifford H. Finch. Features include use of curved balconies, fine tapestry brickwork, curved glass, stained glass window to stairwell, and staircase with curved cast iron balustrade and timber handrail.*
- *Criteria (f): The building is a locally rare example of an Inter-war Functionalist style residential flat building (only three other known examples in North Sydney LGA).*

- *Criteria (g): The building is a fine, intact, representative example of the residential work of architect Clifford H. Finch and of Inter-war Functionalist style residential flat buildings generally.*

The final detailed Heritage Assessment report also recommended that Council prepare a planning proposal to amend Schedule 5 and the Heritage Map to NSLEP 2013 to include the following item of local heritage significance:

1. The residential flat building at 15 Allister Street, Cremorne

Having considered the detailed report prepared Kemp & Johnson Heritage Consultants, Council Officers are satisfied that the relevant criteria as set out by the NSW Heritage Office has been addressed. In accordance with legislative requirements, it is proposed that the property be listed as a heritage item of local significance.

Process

If Council endorses the Planning Proposal, it will be referred to the Department of Planning and Environment (DPE) for a Gateway Determination, which when issued, will enable the formal public exhibition of the proposed amendment.

Following exhibition, the matter will be reported to Council including a discussion of all submissions made. Council will then consider the final endorsement of the amendment. If endorsed, it will be referred to the DPE for its review, approval and ultimate gazettal.

Although this can vary considerably, amendments to a Local Environmental Plan can typically take 12-18 months from inception to gazettal. Council Officers have limited control over this timeline given a large portion of it is reliant upon DPE. In the context of the IHO expiring on 31 May 2023, Council Officers will work with DPE to ensure that this amendment is expedited to meet this deadline.

Conclusion

The Planning Proposal seeks to amend NSLEP 2013 such that the property at 15 Allister Street, Cremorne is identified as a heritage item through the listing within Schedule 5 - Environmental Heritage and identification on the Heritage Map.

For the reasons discussed in detail above, it is recommended that the Planning Proposal is supported as it:

- Generally complies with the relevant Local Environment Plan making provisions under the Environmental Planning & Assessment Act 1979;
- Generally complies with the Department of Planning and Environment's 'Local Environmental Plan Making Guideline' (December 2021); and
- On balance, does not contradict the ability to achieve the objectives and actions of high level planning strategies.