

**DECISION OF 3787th COUNCIL MEETING
HELD ON MONDAY 14 AUGUST 2023**

10.2. Planning Proposal 5/23: 115 - 125 Holt Avenue Cremorne

AUTHOR: Amita Maharjan, Strategic Planner

PURPOSE:

The purpose of this report is to advise Council of the recommendations of the North Sydney Local Planning Panel (NSLPP) on Planning Proposal 5/23 applying to properties at 115 - 125 Holt Avenue Cremorne and to seek Council's endorsement of the Planning Proposal to progress it to Gateway Determination.

- Planning Proposal 5/23 (PP 5/23) proposes to amend the North Sydney Local Environmental Plan (NSLEP) 2013 by identifying and listing six new local heritage items in Holt Avenue, Cremorne in Council's Heritage Schedule.
- The Planning Proposal is supported by a revised heritage assessment undertaken by an independent heritage consultant, GML Heritage. The assessment demonstrates that the subject sites meet the threshold for local heritage listing, consistent with the criteria set out by the NSW Heritage Office.
- The Planning Proposal is generally consistent with the applicable state and local plans and policies. A minor inconsistency with the Local Planning Direction- 6.1 Residential Zones (previously Ministerial Direction) is considered justified as detailed in the report considered by the NSLPP on 19 July 2023.
- The Planning Proposal appropriately responds to matters previously raised by the Department of Planning & Environment (DPE), the Independent Planning Commission, and (the Commission) the North Sydney Local Planning Panel (the Panel) in regard to a previous Planning Proposal (PP 7/22) applying to the subject sites.
- Having considered the detailed report prepared by GML on the heritage significance of the subject items, strategic merit consideration of the proposal, the response to the matters raised by the Commission, Gateway Determination, and the Panel on the previous PP, Council Officers are satisfied that the Planning Proposal has addressed all outstanding matters for it to progress to Gateway Determination.
- The Council-issued Interim Heritage Order (IHO) on the subject sites has already expired. The current IHO was issued by the Minister for Environment and Heritage on 2 March 2023. The IHO is effective for a period of 12 months from its issue date. In order to provide permanent protection, inclusion of these items within the NSLEP 2013 is required. The Planning Proposal is the appropriate process to achieve this.
- Council has been made aware that the owner of 115 - 119 Holt Avenue has lodged an appeal (Class 4 proceedings) within the Land and Environment Court against the IHO issued by the Minister. At the date of preparation of this report no hearing dates had been set.

RECOMMENDATION:

- 1. THAT** Council note the recommendations of the North Sydney Local Planning Panel Meeting of 19 July 2023 on Planning Proposal PP 5/23.
- 2. THAT** Council endorse the Planning Proposal to amend the North Sydney Local Environmental Plan 2013 such that the properties at 115, 117, 119, 121, 123 & 125 Holt Avenue, Cremorne are identified as local heritage items through their listing within Schedule 5 – Environmental Heritage and identification on the Heritage Map.
- 3. THAT** Council resolve to forward the Planning Proposal to the Department of Planning and Environment to seek a Gateway Determination.
- 4. THAT** upon receipt of a Gateway Determination, the Planning Proposal be publicly exhibited.
- 5. THAT** the outcomes of any public exhibition be reported to Council.

This item was brought forward as part of the Public Forum (see page 5).

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

- Catherine Clarke (on behalf of the Harrison-Bennett precinct)
- Fiona Gracie (on behalf of Cremorne Conservation Group)
- Sarah Kok (Cremorne resident)
- Ben Salon (Solicitor acting for the owner of the properties)
- John Oultram (Heritage Consultant, on behalf of the Owner)

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

The Motion was put and **Carried**.

Voting was as follows:

For/Against 8 / 2

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

Against: Councillor Gibson and Councillor Lepouris

Absent: Nil

233. RESOLVED:

- 1. THAT** Council note the recommendations of the North Sydney Local Planning Panel Meeting of 19 July 2023 on Planning Proposal PP 5/23.
- 2. THAT** Council endorse the Planning Proposal to amend the North Sydney Local Environmental Plan 2013 such that the properties at 115, 117, 119, 121, 123 & 125 Holt Avenue, Cremorne are identified as local heritage items through their listing within Schedule 5 – Environmental Heritage and identification on the Heritage Map.
- 3. THAT** Council resolve to forward the Planning Proposal to the Department of Planning and Environment to seek a Gateway Determination.
- 4. THAT** upon receipt of a Gateway Determination, the Planning Proposal be publicly exhibited.
- 5. THAT** the outcomes of any public exhibition be reported to Council.

ADDENDUM TO REPORT OF NEAL McCARRY, ACTING MANAGER STRATEGIC PLANNER

SUBJECT: 10.02 Planning Proposal - 115-125 Holt Avenue Cremorne
AUTHOR: Neal McCarry, Acting Manager Strategic Planning
DATE: 14 August 2023

Attachment:
Letter Mills Oakley – 11 August 2023 (6 pgs)

SUMMARY

This addendum report has been prepared in response to a letter received (copy attached) from the representative of (unspecified) owners of properties within Holt Avenue Cremorne. The letter requests that Council's consideration of the draft Planning Proposal (seeking Local Heritage Listing) be deferred to allow Council time to review and consider several Heritage reports that present alternate conclusions to that presented in the Heritage Assessment Report prepared by GML Heritage (on behalf of Council).

The letter also contends that Council may be in breach of its obligations under the Local Government Act and Code of Conduct around acting fairly, giving regard to all known relevant facts and procedural fairness. Specifically, the contention focuses around not adequately drawing to Councilor's attention the various heritage consultants reports that present a contrary view.

This addendum report summarises key relevant aspects of the history of this Planning Proposal and outlines the various instances where regard has been given to the contents of these reports.

The report before Council recommends that Council request a Gateway Determination from the Department of Planning and Environment. Should a Gateway Determination be issued the Planning Proposal would be the subject of a formal public exhibition process. Any submissions received during any public exhibition process would be given consideration before any further decision is made by Council.

BACKGROUND

The report presented to the North Sydney Local Planning Panel of 19 July 2023 (link included within Item 10.2) includes a detailed history (pages 4-7) of the key elements of relevance with respect to the events and processes that have occurred with respect to these sites. Further background information is also contained within the Planning Proposal document itself (at pages 3-6 & 28-30).

Of particulate note are the following matters;

18 - 19 July 2022 - The Land and Environment Court heard the appeal for 115-119 Holt Avenue against the Interim Heritage Order issued on the site. On 17 August 2022 the Court's decision was handed down, dismissing the appeal. In coming to this decision, the Commissioner found that after hearing evidence from respective parties that the dwellings may, upon further enquiry, be found to be worthy of Heritage listing. As part of these court proceedings, the expert witness appearing for Council had the benefit of review of all alternate Heritage reports that had been put forward by the (DA) applicant.

13 July 2022 - The North Sydney Local Planning Panel considered a draft Planning Proposal for the heritage Listing of the subject sites. At this meeting, the Panel heard from the applicants various Heritage advisors as to why they felt that the items in question were not of Heritage value.

25 July 2022 - Council considered the Planning Proposal at its meeting and resolved to support its progression to Gateway Determination. In this report (Refer item 8.5 – Executive Summary Page 2) the Council were made aware of various alternate views held by the (DA) applicant's Heritage consultants. These alternate views are also reflected in the advice and Minutes of the North Sydney Local Planning Panel which were attached to this report.

7 October 2022 - the DPE wrote to Council, formally rejecting the Planning Proposal and declining the Gateway Determination.

21 November 2022 – Following a Council resolution of 14 November 2022, a Gateway Review Request formally lodged with DPE.

23 February 2023 – The Gateway Review request was heard by the Independent Planning Commission.

9 March 2023 – The Independent Planning Commissions issued its advice. The IPC did not recommend a change to the Gateway Determination but did recommend that any new planning proposal should, among other matters, respond to the findings of the heritage reports.

Following the receipt of this advice from the Independent Planning Commission, Council engaged GML Heritage to undertake further work to respond to the both the reasons for non-issue of the Gateway Determination and the advice of the Independent Planning Commission as well as conduct further investigation to support any listing that Council may seek to pursue. This work included a review of the applicant's Heritage reports. A revised Study was subsequently prepared.

Re: Planning Proposal – 115 - 125 Holt Avenue, Cremorne

19 July 2023 - The North Sydney Local Planning Panel (NSLPP) considered a draft Planning Proposal for the heritage Listing of the subject sites. At this meeting the Panel heard from the (DA) applicant's various Heritage advisors as to why they felt that the items in question were not of Heritage value. Attendees at this meeting are included in the minutes of the NSLPP and are included in Council's business paper. The panel's advice to Council concluded that the Panel is of the opinion that the Planning Proposal should proceed to exhibition notwithstanding the contrary heritage views presented.

CONCLUSION

As part of the preparation of the new Planning proposal, Council has had the benefit of advice from GML Heritage as to whether any information (original and revised) presented by the applicants' heritage consultants has altered their professional opinion with respect to heritage listing. GML Heritage did not form the view that these alternate opinions changed their recommendation. GML discusses these reports in its findings at pages 127-129 of that report.

With respect to the contentions contained in the attached letter, throughout the events associated with these properties, Councillors have been made aware that the (DA) applicant has received advice from Heritage consultants that offer a differing view. It is held that in now presenting this matter to Council due regard has been given to these Heritage reports.

The matter currently before Council recommends that a Gateway Determination be sought from the Department of Planning and Environment. Should a Gateway Determination be issued the Planning Proposal would be the subject of a formal public exhibition process. Any submissions received during any public exhibition process would be given consideration before any further decision is made by Council.

The request to defer the matter to allow further consideration of alternate Heritage reports is ultimately a decision for Council, however, any decision to do so should be cognisant of the time limitation of the Interim Heritage Order (IHO) that currently applies to the site and the fact that this report merely seeks approval to formally exhibit the Proposal for public comment and input. The IHO offers temporary protection and is due to expire in March 2024.

RECOMMENDATION:

1. THAT Council note the attached letter and information contained in response within this addendum report.

SIGNED

N. McCarry

Neal McCarry – Acting Manager Strategic Planning

From: "Madison Campion" <mcampion@millsoakley.com.au>
Sent: Fri, 11 Aug 2023 11:39:30 +1000
To: "council" <council@northsydney.nsw.gov.au>
Cc: "Ben Salon" <bsalon@millsoakley.com.au>
Subject: Letter re Item 10.2 for Council meeting - 14 August 2023 (Planning Proposal 5-23 Holt Avenue)
Attachments: 2023 08 11 - mo letter to nsc re item 10.2 for council meeting on 14 aug 2023 re planning proposal 5-23 (holt avenue).pdf

You don't often get email from mcampion@millsoakley.com.au. [Learn why this is important](#)

CAUTION: Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Council

Please see **attached** our correspondence of today's date.

Kind regards,
Madison

Madison Campion | Law Graduate | Planning & Environment

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11 August 2023

Your ref:
Our ref: AJWS/BMSS/3687329**Attn: Therese Manns**
General ManagerNorth Sydney Council
200 Miller Street North
Sydney NSW 2060**BY EMAIL:** council@northsydney.nsw.gov.auAll correspondence to:
PO Box H316
AUSTRALIA SQUARE NSW 1215**Contact**
Ben Salon +61 2 8035 7867
Email: bsalon@millsOakley.com.au**Partner**
Anthony Whealy +61 2 8035 7848
Email: awhealy@millsOakley.com.au

Dear Ms Manns,

Meeting of the North Sydney Council on 14 August – Agenda Item 10.2
Planning Proposal 5/23: 115 - 125 Holt Avenue Cremorne.

1. We refer to Planning Proposal 5/23 (the '**Planning Proposal**'), the subject of which is the properties at 115-125 Holt Avenue Cremorne (the '**Properties**'), and confirm we act for the owner of the Properties, Holt Avenue Cremorne Pty Ltd ('**our Client**').
2. On Monday 14 August 2023, North Sydney Council (the '**Council**') will meet to discuss the Planning Proposal under item 10.2 of the agenda for the meeting (the '**Agenda**'). The report to Council set out in the Agenda for the meeting (the '**Report to Council**') recommends, amongst other things, that Council resolve to forward the Planning Proposal to the Department of Planning and Environment and seek a Gateway Determination. As will be detailed below, the Report to Council does not adequately draw the Councillor's attention to seven highly relevant heritage reports in Council's possession that hold contrary views to the recommendation made in agenda item 10.2 of the Report to Council.
3. We write to put Council **on notice** that should it resolve to progress the Planning Proposal to Gateway Determination on basis of the information contained in the Report to Council as set out in item 10.2 of the Agenda, then those resolutions will be **liable to be set aside in Land and Environment Court proceedings** for a breach of the *Local Government Act 1993* (NSW) (the '**LG Act**') and a breach of the rules of procedural fairness. Further, any resolution to progress the Planning Proposal to Gateway Determination on basis of the information contained in the Report to Council as set out in item 10.2 of the Agenda would likely constitute a breach of Council's Code of Conduct which can lead to disciplinary action including the suspension of Councillors and Council staff.
4. Accordingly and in our view, item 10.2 of the Agenda should be **deferred to a subsequent meeting** of Council so that Councillors have a reasonable time to read and appropriately consider all the information that is relevant to that agenda item as is required by the *LG Act*, Council's Code of Conduct and the rules of procedural fairness.

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The Report to Council

5. While the PP Report notes that the Planning Proposal is supported by the heritage assessment completed by Godden Mackay Logan dated July 2023 ('**GML Report**'), and the advice of the North Sydney Local Planning Panel (the '**NSLPP**'), it fails to **expressly acknowledge or put before Council for consideration** the seven heritage reports obtained by our Client from leading heritage experts, all of which note that **none of the Properties, either alone or as a group, have any heritage value that would warrant them being listed as local heritage items**. In summary, the reports find as follows:
- i. Detailed Heritage Assessment Report prepared by Urbis dated 4 July 2022 which concluded:

... that none of the properties located at 115-119 Holt Avenue, Cremorne warrant an individual heritage listing, nor do they warrant a group listing. Therefore, they are not required to be retained on heritage grounds.
 - ii. Detailed Assessment Report prepared by John Oultram Heritage & Design dated June 2022 which concluded:

[t]he properties at 115-119 Holt Avenue do not meet the Heritage Manual criteria for identification as places of local significance ...
 - iii. Heritage Report prepared by Urbis dated July 2022 which concluded:

... none of the three properties meet the criteria for individual heritage listing, nor do they meet the criteria for a group listing at a State or local level ...
 - iv. Detailed Heritage Impact Statement prepared by Weir Phillips Heritage and Planning dated March 2023 which concluded:

... [t]he individual integrity of these dwellings has been reduced through successive alterations and roof additions as well the erosion of the general setting as part of surrounding high-density development ... [t]here are other, better examples of the period to be found throughout the North Sydney Council area that demonstrate the style through their greater integrity or are associated with prominent architects or individuals.
...
 - v. Detailed Heritage Assessment prepared by John Oultram Heritage & Design dated January 2023 which concluded:

... [t]he properties at 115-123 Holt Avenue do not meet the Heritage Manual criteria for identification as places of local significance
 - vi. Detailed Heritage Assessment prepared by City Plan Heritage Pty Ltd dated 7 November 2022 which concluded:

... the five cottages do not, either individually or as a group, meet the threshold for listing as heritage items and the Local or State Level under any of the criteria set out by the NSW Heritage Council for assessing environmental heritage ...
 - vii. Detailed Heritage Assessment prepared by NBRS dated 12 December 2022 which found:

Based on the detailed analysis set out in this report, 115, 117, 119, 121 and 123 Holt Avenue, Cremorne, do not meet the criteria for cultural significance established by Heritage NSW.
- (the '**Seven Heritage Reports**').
6. The Seven Heritage Reports have been in the possession of Council since at least 13 July 2023 and are clearly relevant to the consideration by Council of whether the Planning Proposal should progress towards Gateway Determination. Copies of the Seven Heritage Reports can be downloaded [here](#).

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Council's obligations under the LG Act

7. Council has an obligation under section 439 of the *LG Act* to conduct itself with a reasonable degree of care and diligence when carrying out the functions of Council.
8. Further and pursuant to section 440(5) of the *LG Act*, Councillors, Council staff and delegates of Council must comply with Council's adopted code of conduct. Council adopted its current code of conduct on 8 August 2023 (the '**Code of Conduct**').
9. Part 3 of the Code of Conduct stipulates the following:

*3.3 You must consider issues consistently, promptly and **fairly**. You must deal with matters in accordance with established procedures, in a non-discriminatory manner.*

*3.4 **You must take all relevant facts known to you, or that you should be reasonably aware of, into consideration and have regard to the particular merits of each case.** You must not take irrelevant matters or circumstances into consideration when making decisions.* (our **emphasis** added)
10. Section 8A of the *LG Act* provides the guiding principles for Councils. Section 8A(1)(h) of the *LG Act* states that:

(h) Councils should act fairly, ethically and without bias in the interests of the local community
11. Further to this, section 8A(2)(a) of the *LG Act* prescribes that a decision-making principle that applies to decision-making by Councils, is that Council should consider "**diverse local community needs and interests**".
12. In our view, the requirements of the *LG Act* and Code of Conduct set out above **require** Council staff to expressly draw Council's attention in the Report to the Seven Heritage Reports prepared by leading heritage experts, each of which hold a contrary view on the need for a local heritage listing of the Properties. That is, the Properties should not be listed as local heritage items. **It is misleading to not provide these to the Council for consideration, and with adequate time to consider them.**
13. Further, in our view the requirements of the *LG Act* and Code of Conduct set out above **require Councillors to give adequate and genuine consideration of the Seven Heritage Reports** when deciding on whether to resolve to put the Planning Proposal forward for Gateway Determination. This is for reasons including that failing to include or expressly acknowledge the Seven Heritage Report in the Report to Council:
 - (a) is a failure of Council staff to exercise reasonable care and diligence in the exercise of Council functions as required by section 439 of the *LG Act*;
 - (b) is a failure of Council staff to consider issues **fairly** in the exercise of Council functions as required by clause 3.3 of the Code of Conduct, and prevents Councillors from meeting the same requirement when deciding on whether to resolve to put the Planning Proposal forward for Gateway Determination;
 - (c) is a failure of Council staff to **take all the relevant facts into consideration** as required by clause 3.3 of the Code of Conduct, and prevents Councillors from

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meeting the same requirement when deciding on whether to resolve to put the Planning Proposal forward for Gateway Determination;

- (d) means that the guiding principle for Council in 8A(h) of the *LG Act* has and will be thwarted due to a failure to act fairly, ethically and without bias in the interests of the local community; and
- (e) means that the decision-making principle to consider diverse community interests will not have been applied as required by section 8A(2)(a) of the *LG Act*.

Procedural Fairness: The Hearing Rule

- 14. As Council would be well aware, the rules of procedural fairness require decision makers such as Council to act fairly in the exercise of its functions and in the making of decisions. This is especially so where a decision will have an effect on the interests of an individual, such as here, where the subject of the Planning Proposal is our Client's Properties: *South Australia v O'Shea* (1987) 163 CLR 378 at 389; *Minister for Arts, Heritage and Environment v Peko-Wallsend Ltd* (1987) 15 FCR 274 at 307; *Kioa v West* (1985) 159 CLR 550 ('**Kioa**') at 582.
- 15. In our view, the provisions of the *LG Act* and Code of Conduct referred to above are in place to ensure Council exercises its functions and makes decisions in accordance with the rules of procedural fairness. For that reason alone, the failure to meet those requirements of the *LG Act* and Code of Conduct in our view mean that Council is **breaching its requirements** under the rules of procedural fairness.
- 16. While it is acknowledged that our Client will have an opportunity to speak at the meeting of Council on 14 August 2023, it is our view that the Councillors will not be in a position to give genuine and proper consideration to any submissions on the Seven Heritage Reports, and therefore the Planning Proposal, if they have not had adequate time to specifically read and consider the Seven Heritage Reports which as detailed above, are clearly relevant to the item but have not been included or expressly mentioned in the Report to Council. In our view this means that even if our Client has the opportunity to speak at the meeting, it would **not constitute the requisite reasonable opportunity to be heard, and therefore be a breach of the rules of procedural fairness**: *Kanda v Government of Malaya* (1962) AC 322 at 337; *Kioa* at 569-570 and 628.

Next Steps

- 17. As has been detailed above, should Council resolve to progress the Planning Proposal to Gateway Determination on basis of the information contained in the Report to Council as set out in item 10.2 of the Agenda, then those resolutions will be **liable to be set aside in Land and Environment Court proceedings** for a breach of the *LG Act* and a breach of the rules of procedural fairness. Further, such a resolution would likely constitute a breach of Council's Code of Conduct which can result in disciplinary action including suspension of Councillors and Council staff.

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18. Accordingly and in our view, item 10.2 of the Agenda should be **deferred to a subsequent meeting** of Council so that Councillors have a reasonable time to read and appropriately consider all the relevant information, and in particular the Seven Heritage Reports. In our view this is what is required in order for Council to give genuine and proper consideration of the issues related to item 10.2 of the Agenda, and enable our Client to have the requisite reasonable opportunity to be heard on the issues.
19. As Council is now on notice of this issue, should Council proceed then in our view it will constitute a **direct breach** of the *LG Act*, the rules of procedural fairness, and Council's Code of Conduct. Our client would reserve all of its rights in that regard.

If you have any questions regarding this letter or require further information, please do not hesitate to contact Anthony Whealy at awhealy@millsoakley.com.au or on direct line (02) 8035 7848, or Ben Salon on direct line +61 2 8035 7867 or bsalon@millsoakley.com.au.

Yours sincerely



Anthony Whealy
Partner

Accredited Specialist — Local Government and Planning

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10.2. Planning Proposal 5/23: 115 - 125 Holt Avenue Cremorne

AUTHOR	Amita Maharjan, Strategic Planner
ENDORSED BY	Marcelo Occhiuzzi, Director Community, Planning and Environment
ATTACHMENTS	Nil
CSP LINK	<div>2. Our Built Infrastructure</div> <div>2.2 Vibrant public domains and villages</div> <div>3. Our Innovative City</div> <div>3.3 Distinctive sense of place and design excellence</div> <div>4. Our Social Vitality</div> <div>4.3 North Sydney's history is preserved and recognised</div> <div>5. Our Civic Leadership</div> <div>5.1 Lead North Sydney's strategic direction</div> <div>5.3 Community is engaged in what Council does</div>

PURPOSE:

The purpose of this report is to advise Council of the recommendations of the North Sydney Local Planning Panel (NSLPP) on Planning Proposal 5/23 applying to properties at 115 - 125 Holt Avenue Cremorne and to seek Council's endorsement of the Planning Proposal to progress it to Gateway Determination.

EXECUTIVE SUMMARY:

- Planning Proposal 5/23 (PP 5/23) proposes to amend the North Sydney Local Environmental Plan (NSLEP) 2013 by identifying and listing six new local heritage items in Holt Avenue, Cremorne in Council's Heritage Schedule.
- The Planning Proposal is supported by a revised heritage assessment undertaken by an independent heritage consultant, GML Heritage. The assessment demonstrates that the subject sites meet the threshold for local heritage listing, consistent with the criteria set out by the NSW Heritage Office.
- The Planning Proposal is generally consistent with the applicable state and local plans and policies. A minor inconsistency with the Local Planning Direction- 6.1 Residential Zones (previously Ministerial Direction) is considered justified as detailed in the report considered by the NSLPP on 19 July 2023.
- The Planning Proposal appropriately responds to matters previously raised by the Department of Planning & Environment (DPE), the Independent Planning Commission, and (the Commission) the North Sydney Local Planning Panel (the Panel) in regard to a previous Planning Proposal (PP 7/22) applying to the subject sites.

- Having considered the detailed report prepared by GML on the heritage significance of the subject items, strategic merit consideration of the proposal, the response to the matters raised by the Commission, Gateway Determination, and the Panel on the previous PP, Council Officers are satisfied that the Planning Proposal has addressed all outstanding matters for it to progress to Gateway Determination.
- The Council-issued Interim Heritage Order (IHO) on the subject sites has already expired. The current IHO was issued by the Minister for Environment and Heritage on 2 March 2023. The IHO is effective for a period of 12 months from its issue date. In order to provide permanent protection, inclusion of these items within the NSLEP 2013 is required. The Planning Proposal is the appropriate process to achieve this.
- Council has been made aware that the owner of 115 - 119 Holt Avenue has lodged an appeal (Class 4 proceedings) within the Land and Environment Court against the IHO issued by the Minister. At the date of preparation of this report no hearing dates had been set.

RECOMMENDATION:

- 1. THAT** Council note the recommendations of the North Sydney Local Planning Panel Meeting of 19 July 2023 on Planning Proposal PP 5/23.
- 2. THAT** Council endorse the Planning Proposal to amend the North Sydney Local Environmental Plan 2013 such that the properties at 115, 117, 119, 121, 123 & 125 Holt Avenue, Cremorne are identified as local heritage items through their listing within Schedule 5 – Environmental Heritage and identification on the Heritage Map.
- 3. THAT** Council resolve to forward the Planning Proposal to the Department of Planning and Environment to seek a Gateway Determination.
- 4. THAT** upon receipt of a Gateway Determination, the Planning Proposal be publicly exhibited.
- 5. THAT** the outcomes of any public exhibition be reported to Council.

Background

Advice Report of the Commission and the previous Gateway Determination

In July 2022, Council submitted a Planning Proposal (PP 2022-2712) to identify and list properties at 115, 117, 119, 121, 123, 125, 131, and 133 Holt Avenue Cremorne as local heritage items in the NSLEP 2013. In October 2022, the DPE issued a Gateway Determination advising that the Planning Proposal should not proceed for the matters specified in the Gateway Determination.

On 11 October 2022, Council provided the DPE with a notice of intent that it will be seeking a Gateway Review from the Commission. Council submitted its formal Gateway Review Request to the DPE on 21 November 2022. The Commission received the request for advice on 8 February 2023. On 23 February 2023, a hearing was convened by the Commission and representations made by Council staff, the Mayor and Council's heritage specialists.

On 9 March 2023, the Commission's Advice Report, *Holt Avenue Cremorne Gateway Review PP-2022-2712/GR- 2022-22*, was released and recommended that the planning proposal, as submitted, should not proceed past Gateway Determination.

Interim Heritage Order (IHO) and Land and Environment Court Appeals

On 2 March 2023, the Minister for Environment and Heritage imposed an Interim Heritage Order (IHO) applying to 115, 117, and 119 Holt Avenue Cremorne. An IHO was previously issued by Council (under delegation) applying to the properties at 115, 117, 119, 131, and 133 Holt Avenue that lapsed on 10 March 2023.

Appeals against the imposition of the Council-issued IHO were subsequently lodged by proponents of development of 131 - 133 Holt Avenue (DA 239/21) and 115 - 119 Holt Avenue (DA 243/21) respectively. On 6 and 7 June 2022, the Land and Environment Court heard the appeal for 131-133 Holt Avenue against the IHO. On 29 July 2022, the Court upheld the applicant's appeal. The properties at 131 and 133 Holt Avenue were subsequently demolished following the Court's decision. On 18 and 19 July 2022, the Land and Environment Court heard the appeal for 115-119 Holt Avenue against the IHO. On 17 August 2022, the Court dismissed the applicant's appeal.

Council has been made aware that the owner of 115 - 119 Holt Avenue has lodged an appeal (Class 4 proceedings) within the Land and Environment Court against the IHO issued by the Minister. At the date of preparation of this report no hearing dates had been set.

Active Development Applications

DA 243/21 was lodged with Council on 9 August 2021, seeking the demolition of existing structures and construction of a residential flat building with basement parking at 115, 117, and 119 Holt Avenue Cremorne. This DA is currently the subject of a Court Appeal against Council's "deemed" refusal. The Court hearing of this DA is an ongoing matter.

On 4 April 2023, a new development application (DA 115/23) was lodged with Council seeking the demolition of three existing dwelling houses at 115, 117, and 119 Holt Avenue and ancillary works, and construction of a residential flat building of 16 dwellings, including basement parking, rooftop communal open space, landscaping, and associated works. This application is currently under assessment.

Report

1. Planning Proposal

1.1 Proponent

The Planning Proposal has been prepared by North Sydney Council.

1.2 Site Description

The subject sites are located along the northern side of Holt Avenue, between Spofforth Street and Military Road in Cremorne. Access to the sites is directly via Holt Avenue. The legal property description of the sites is outlined in Table 1:

Address	Lot and DP
115 Holt Avenue, Cremorne	Lot 1 DP 929395
117 Holt Avenue, Cremorne	Lot 1 DP 980 449
119 Holt Avenue, Cremorne	Lot 1 DP 929074
121 Holt Avenue, Cremorne	Lots 1 and 2 DP 135515
123 Holt Avenue, Cremorne	Lot 1 DP 947542
125 Holt Avenue, Cremorne	SP 11200

Table 1

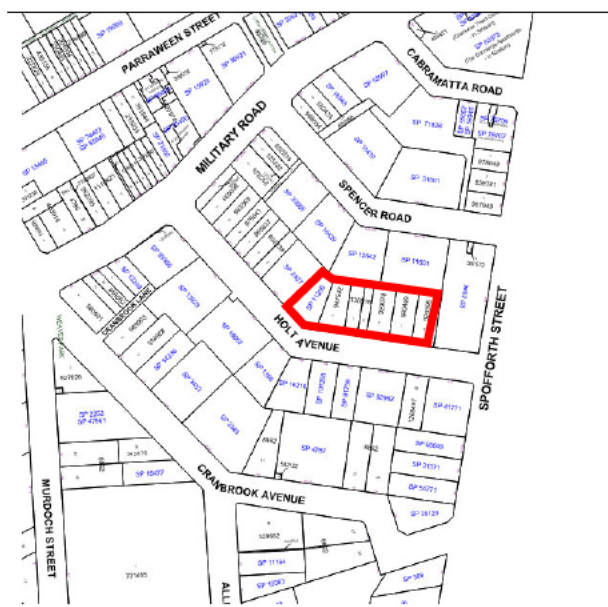


FIGURE 1: Subject sites



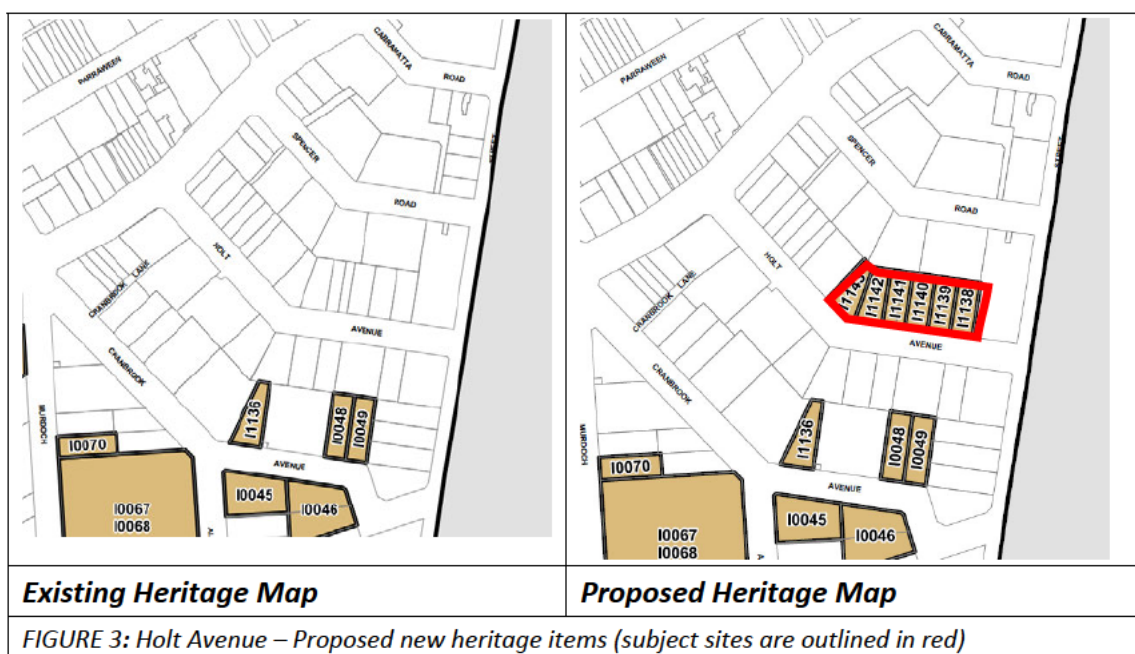
FIGURE 2: Aerial photo of subject sites

1.3 Proposed Instrument Amendment

The Planning Proposal (PP 5/23) seeks to amend NSLEP 2013 such that the properties at 115, 117, 119, 121, 123, and 125 Holt Avenue Cremorne are identified as heritage items of local significance through their listing within Schedule 5 - Environmental Heritage and identification on the Heritage Map.

The Planning Proposal seeks to achieve the intended objectives and outcomes by amending NSLEP 2013 as follows:

- amend the *Heritage Map* (ref: 5950_COM_HER_003_010_20200810) to add 115, 117, 119, 121, 123, and 125 Holt Avenue Cremorne as local heritage items as indicated in Figure 3 below.
- Amend Schedule 5 - Environmental Heritage to include the properties at 115, 117, 119, 121, 123, and 125 Holt Avenue Cremorne as local heritage items as indicated in Table 2 below (blue underline represents an insertion):



Locality	Item Name	Address	Property description	Significance	Item No.
<u>Cremorne</u>	<u>House</u> <u>(Holt Avenue Group)</u>	<u>115 Holt Avenue</u>	<u>Lot 1 DP 929395</u>	<u>Local</u>	<u>11138*</u>
<u>Cremorne</u>	<u>House</u> <u>(Holt Avenue Group)</u>	<u>117 Holt Avenue</u>	<u>Lot 1 DP 980449</u>	<u>Local</u>	<u>11139*</u>
<u>Cremorne</u>	<u>House</u> <u>(Holt Avenue Group)</u>	<u>119 Holt Avenue</u>	<u>Lot 1 DP 929074</u>	<u>Local</u>	<u>11140*</u>
<u>Cremorne</u>	<u>House</u> <u>(Holt Avenue Group)</u>	<u>121 Holt Avenue</u>	<u>Lots 1 and 2 DP 135515</u>	<u>Local</u>	<u>11141*</u>
<u>Cremorne</u>	<u>House</u> <u>(Holt Avenue Group)</u>	<u>123 Holt Avenue</u>	<u>Lot 1 DP 947542</u>	<u>Local</u>	<u>11142*</u>

Locality	Item Name	Address	Property description	Significance	Item No.
<u>Cremorne</u>	<u>"Carina"</u>	<u>125 Holt Avenue</u>	<u>SP 11200</u>	<u>Local</u>	<u>I1143*</u>

Table 2: Proposed Schedule 5 Additions

Note: *Heritage Item Nos. are indicative only at this stage and are to be confirmed at the finalisation stage.

2. Assessment

By Ministerial Direction, all Planning Proposals are required to be referred to the Local Planning Panel for advice prior to council determining whether the planning proposal should be forwarded to the DPE for the purposes of seeking a Gateway Determination.

A detailed assessment of the proposal is provided within the Assessment Report considered by the NSLPP on 19 July 2023:

<https://www.northsydney.nsw.gov.au/downloads/file/2636/pp02-115-125-holt-avenue-cremorne-pp523-19-july-2023>

3. Local Planning Panel

The NSLPP (the Panel) considered the Planning Proposal at its meeting on 19 July 2023, where it agreed with the recommendations of Council officer's detailed assessment report which recommended that the Planning Proposal be supported to proceed to Gateway Determination as the Planning Proposal demonstrated the necessary strategic and site-specific merit, including a response to the matters raised by the Commission, the DPE and the Panel in relation to the previous planning proposal applying to the subject sites.

The following is an extract from the Minutes of the NSLPP meeting of 19 July 2023 and can be accessed via <https://www.northsydney.nsw.gov.au/downloads/file/2660/nslpp-minutes-19-july>

The Panel recommendations:

The Panel is satisfied the updated revised report addresses the issues raised by the IPC. In particular, the Panel notes that this is a new Planning Proposal and the heritage significance of the group (115-123 Holt Ave, Cremorne), requires an assessment that includes the cohesiveness and integrity of the external fabric of the group. In addition the individual listing of (125 Holt Avenue, Cremorne), as a local heritage item has been considered in the revised heritage report. Given the above defined criteria, the Panel is of the opinion the Planning Proposal should proceed to exhibition.

As such, the Panel, recommends to the Council that the Planning Proposal proceed to Gateway and any draft instrument should provide clear explanatory notes for the 'group listing'.

By way of comment the Panel is of the opinion that the Council continue to pursue with high priority a heritage review for the LGA.

In coming to its recommendations, the Panel considered the written submissions received following the publication of the NSLPP report on Council's website. The applicant presented copies of the previous heritage reports (not supporting the proposed listing) to the Panel for its consideration. The Panel also heard from all those wishing to address the Panel at the meeting.

4. Key Issues

4.1 Strategic Merit

The Planning Proposal is generally consistent with both State and local plans and policies including the Greater Sydney Region Plan, North District Plan, Council's Local Strategic Planning Statement, Community Strategic Plan, and Local Housing Strategy.

The Planning Proposal is also consistent with the applicable State Environmental Planning Policies (SEPPs) and the Local Planning Directions (formerly Ministerial Directions), in particular Direction 3.2 Heritage Conservation and Direction 6.1 Residential Zones.

On the basis of the above, the Planning Proposal is considered to satisfy the strategic merit test as it does not contradict the ability to achieve the objectives and actions of high-level planning strategies; has been prepared in accordance with the requirements of s.3.33 of the Environmental Planning and Assessment Act 1979 and DPE's *A guide to preparing planning proposals*, September 2022, and will contribute to the preservation of the character and built heritage of the Cremorne Area.

4.2 Site-specific Merit

4.2.1. Matters raised by the Commission, the DPE and the Panel

As noted in the detailed assessment report of the Planning Proposal, this Planning Proposal is a result of the recommendations of the Commission's Advice Report dated 9 March 2023, which was provided in response to Council's request for a Gateway Review in relation to a previous planning proposal (PP-2022-2712) applying to the subject sites.

Based on the recommendations of the Advice Report, the DPE subsequently advised Council on 15 March 2023 that it would be receptive to preparation of a new planning proposal that addresses the recommendations outlined in the Commission's advice.

The detailed assessment report considered by the Panel on 19 July 2023 includes Council's detailed response to the above matters. The Panel's recommendation confirms that the Planning Proposal has addressed the above matters to the Panel's satisfaction.

4.2.2. Heritage Context and Justification

A revised heritage assessment report prepared by GML Heritage (July 2023) formed an Appendix to the report considered by the Panel.

The report included an assessment of significance of the subject properties in accordance with the standard criteria established in the NSW Heritage Office guidelines. These guidelines provide the framework for heritage assessment and incorporate the seven types of cultural heritage values identified in the Burra Charter into a structured framework.

The detailed heritage assessment against this framework can be found in Section 7.2 (Pg 111-117) of the GML report for the Group item and in Section 7.3 (Pg 118-123) for the Individual item. The assessment of the properties concluded that the following group and individual items meet the threshold for heritage listing at a local level:

- The Holt Avenue group (115 - 123 Holt Avenue) meets the threshold for cultural significance under historic, associative, aesthetic, rarity, and representative values, as a rare group of Federation Bungalows constructed as part of a speculative housing development in Cremorne; and
- Individual Item, 125 Holt Avenue, meets the threshold for cultural significance for historic, associative, aesthetic, rarity, and representative values, as a rare extant two-storey Federation Bungalow in the Cremorne area.

Following are relevant excerpts from the revised GML (pages 124-126) report which establishes a detailed statement of heritage significance of the subject items:

The 'Holt Avenue Group' - 115-123 Holt Avenue, Cremorne

The Holt Avenue Group has historic, associative, aesthetic, rarity and representative value to the Cremorne area as a rare, intact group of Federation Bungalows developed during a period of speculative housing development in the Cremorne area.

Originating from land that was owned by Daniel and John Cooper from Alfred Thrupp's grant, the properties formed part of the 1885 Longview Estate subdivision, which was advertised as an area soon to be the most fashionable in the locality. The properties maintain the subdivision pattern of the 1885 Longview Estate.

Constructed between 1907 and 1909, the dwellings present as a cohesive group of characteristic Federation Bungalow dwellings. Single-storey in scale, the properties demonstrate characteristic elements of the typology such as projecting gable bays with overhanging eaves, roughcast rendered chimneys, timber shingles (apart from 119), timber-framed casement windows, hipped roof with tiling (apart from 119), and timber joinery to the verandah. The group maintains its original scale, siting and setbacks, and displays a generally consistent building line. Although the properties have been modified, additions have been generally contained to the rear of the dwellings, concealed from the public domain. Works to the primary elevation are sympathetic to the character and materiality and do not detract from, nor obscure, the legibility of the design.

Although modified, the dwellings are good examples of their type, and provide an understanding of modest middle-class dwellings which were developed in

proximity to transport routes. They provide a counterpoint to the more ornate and substantial Federation housing stock created for more affluent dwellings towards the foreshore and communicate the varied social makeup of the suburb in the early twentieth century. The properties retain much of their original setting, maintaining pleasant front gardens, and collectively provide an understanding of the historic character of the Cremorne area in a significant period of expansion.

Significantly, the properties are also representative of the phenomenon of speculative building developments in Cremorne. Nos 115–121 were developed by Thomas Ross, with 123 constructed by Richard Henry Pearce. Archival documentation shows that these builders, along with the architect Edward Skelton Garton whose designs they often employed, owned several leases of land throughout the former Longview Estate which they developed for sale. Garton was a prolific and significant architect in the lower North Shore area, primarily for his work in Cremorne and Mosman. Nos 115–121 provide evidence of his design for modest homes in the Federation period. These developments established the residential character and scale in the area, and the Holt Avenue Group demonstrates the shared architectural character, consistent form and siting, typical of such a group with one subdivision of the era.

Later development and re-development has led to the loss of similar properties throughout the Cremorne area, and the Holt Avenue Group now provides a rare instance of what was once a widespread development. As such, while the properties have undergone some modification, they can be readily understood as a group, and provide a rare understanding of the early character of the northern area of Cremorne. They are particularly representative of a phase of development which at one time defined the character of the area, before the transition to the more intense residential development of the interwar period.

Although there are some extant groupings of Federation properties throughout the Cremorne and Cremorne Point areas, these groups are generally representative of grander housing designed for affluent residents, and were often constructed sporadically, rather than as part of an intentional group development. The Holt Avenue Group thus has a high degree of representative significance, providing evidence of middle-class housing and lifestyles in Cremorne in the twentieth century.

‘Carina’ - 125 Holt Avenue, Cremorne

The dwelling at No. 125 has historic, associative, aesthetic, rarity and representative value to the Cremorne area as a well-maintained, remnant example of a two-storey Federation Bungalow.

The property originates from the 1885 Longview Estate subdivision which created the street layout and lot forms of Holt Avenue. Although the property was not completed until November 1914, it retains its original lot. Much of the surrounding area within the Longview Estate was developed as part of a series of speculative building developments, with the south-eastern portion of Holt Avenue developed

by builders Thomas Ross and Richard Henry Pearce, largely to designs by Edward Skelton Garton. Although built by Pearce, likely to Garton's design, No. 125 is a rare instance of a two-storey dwelling constructed in the midst of these single-storey workers' dwellings, and would have been one of the grander residences in the streetscape. Garton was a prolific and significant architect in the lower North Shore area, notably in Cremorne and Mosman. No 125 provides evidence of his design for modest middle-class homes in the Federation period.

Although later development has eroded much of the surrounding Federation developments, No. 125 is largely externally intact, retaining much of its original form and fabric. Significantly, the property retains its setback and a manicured garden, and being located at a bend in the road on the downwards slope of the street, and surrounded by hedges, it retains much of its historic setting, providing an understanding of its late Federation character and presentation.

Aesthetically, the property demonstrates typical elements of the Federation Bungalow style including a projecting gable bay, wide wraparound verandah and decorative roughcast render and timber detailing. Although the property is modest and restrained compared to the homes of affluent residents towards the south of the suburb, it has rarity as a grander example of middle-class housing. It is particularly well maintained at its street-facing elevation, and compared to similarly restrained two-storey Federation dwellings it demonstrates a good degree of decorative detailing.

Historically, it is representative of a period of transition in Cremorne. While the building's ornamentation is typically Federation, its restrained rectangular form is an early example of the two-storey flat buildings that in the area following the Federation period. Having been converted to flats in the interwar period, the property is demonstrative of the built form response to the influx of workers in this period, and the concurrent intensification of residential development. As a rare example of this type, the property has a high degree of representative value in the Cremorne area.

The final detailed report made the recommendation that Council prepare a planning proposal to amend Schedule 5 of the Heritage Maps of the NSLEP 2013 to include the following items of local significance:

1. The 'Holt Avenue Group', comprising property Nos. 115, 117, 119, 121, and 123 Holt Avenue, Cremorne as a group heritage item; and
2. 'Carina', No. 125 Holt Avenue, Cremorne as an individual item.

Having considered the detailed report prepared by GML on the heritage significance of the subject items, strategic merit consideration of the proposal and the response to the matters raised by the Commission, Gateway Determination, and the Panel on the previous PP, Council Officers are satisfied that the Planning Proposal has addressed all outstanding matters for it to progress to the next stage.

5. Submissions

There are no statutory requirements to publicly exhibit a planning proposal before the issuance of a Gateway Determination. However, Council sometimes receives submissions in response to planning proposals which have been lodged but not determined for the purposes of seeking a Gateway Determination.

Following the publication of the NSLPP report on Council website, the Panel received the following submissions:

- 42 submissions supporting the proposed heritage listing; and
- seven submissions against the proposed heritage listing.

Options

Council has the following options in relation to this matter:

1. Do nothing/take no action
2. Delaying the endorsement of the Planning Proposal
3. The recommended option

These options are assessed in the table below.

Option	Finance/Resourcing	Risk/Opportunity	Consultation
1.	Taking no action will have a negligible financial/resourcing impact.	<p>Not endorsing the Planning Proposal and abandoning it would mean that the temporary protection of the IHO would lapse (March 2024).</p> <p>Upon the expiry of the IHO, demolition of the subject sites can be sought via a new application under the Complying Development Code.</p> <p>Council has no authority to issue an IHO twice on the same property.</p>	Beyond this report, consultation would not be required should the Planning Proposal be abandoned.
2.	Delaying the endorsement of the Planning Proposal will not have a financial impact.	<p>Delaying the endorsement of the Planning Proposal for any reasons (such as pending court decision or other) will have the same risk as noted under Option 1.</p> <p>The IHO will expire 1 March 2024.</p>	Delaying the endorsement of the Planning Proposal would delay the formal exhibition of the Planning Proposal, a key milestone for a comprehensive community/ stakeholder consultation and engagement.

Option	Finance/Resourcing	Risk/Opportunity	Consultation
		The Planning Proposal must be made prior to the IHO expiring on 1 March 2024.	
3.	Pursuing the recommended action will have negligible financial/resourcing impacts.	Endorsing the Planning Proposal to progress it to the DPE to seek Gateway Determination means Council could achieve key milestones as stipulated in Part 6: Project Timeline of the attached Planning Proposal, to ensure the subject items are listed in Council's LEP 2013 prior to expiry of the IHO.	A comprehensive community and stakeholder consultation and engagement would occur in accordance with the requirements set by the DPE in Gateway Determination to be issued.

Option 3 is recommended for the following reasons:

- Pursuing Option 3 will have negligible financial/resourcing impacts as the resourcing requirement is being met by an existing work program of the Strategic Planning Team.
- Option 3 is fundamentally a policy response to continue protection to the subject sites against demolition by listing them as heritage items in Council's LEP prior to expiry of the Ministerial issued IHO. Council has no authority to reissue another IHO after the expiry date. Failure to identify the subject sites as heritage items means a new application under the Complying Development Code can seek demolition of these items upon the expiry of the IHO.

Consultation requirements

Should the Planning Proposal be supported, community engagement will be undertaken in accordance with Council's Community Engagement Protocol and the conditions of any Gateway Determination issued by the Department of Planning and Environment.

Financial/Resource Implications

Progressing and finalising the plan making process for this Planning Proposal to amend NSLEP 2013 in the manner proposed represents a modest investment in Council resources. This can be accommodated within existing budget lines.

Legislation

The legislative requirements associated with issuing of IHO are in accordance with the Heritage Act 1977. If the Planning Proposal is endorsed by Council to progress it to the DPE for a Gateway Determination, the LEP making process will proceed in accordance with the requirements of the Environmental Planning and Assessment Act 1979.