
Item No: 7.3
Subject: **PLANNING PROPOSAL TO AMEND THE HERITAGE LISTING FOR 83 FITZWILLIAM ROAD, VAUCLUSE**
Author: Eleanor Banaag, Senior Strategic Heritage Officer
Kristy Wellfare, Team Leader Heritage
Approver: Anne White, Manager Strategic Planning & Place
Scott Pedder, Director Planning & Place

Purpose of the Report:

To seek Council's approval to progress a planning proposal to amend the name of local heritage item I357 so that it is identified as follows "*Vaucluse Point Ferry Wharf – remnants of wharf, and dwelling/former shop (including interiors) and associated landscape elements*" in Schedule 5 of the Woollahra Environmental Plan 2014.

Alignment to Delivery Program:

4.2 Conserving our rich and diverse heritage.

Recommendation:

THAT Council:

- A. Note the advice provided by the Woollahra Local Planning Panel on 19 September 2024 regarding the planning proposal to amend the local heritage listing at 83 Fitzwilliam Road, Vaucluse to include the dwelling/former shop (including interiors), and associated landscape elements.
- B. Endorse the planning proposal as contained at **Attachment 1** of the report to the Environmental Planning Committee of 4 November 2024 to include the dwelling/former shop (including interiors) and associated landscape elements at 83 Fitzwilliam Road, Vaucluse (LOT: 100 DP: 1304245) on the existing listing for I357 "Remains of Vaucluse Point ferry wharf", in Schedule 5 of the Woollahra Environmental Plan 2014 and resolves to forward this to the Department of Planning, Housing and Infrastructure with a request for Gateway Determination to allow public exhibition.
- C. Request the Minister for Planning and Public Spaces (or delegate) authorise Council as the local plan-making authority in relation to the planning proposal, to make the local environment plan under section 3.36 of the Environmental Planning and Assessment Act 1979.

Executive Summary:

This report seeks a resolution from Council to endorse the planning proposal (as contained in **Attachment 1** of the report to the Environmental Planning Committee of 4 November 2024) to update/amend the existing listing for local heritage item I357 to include the dwelling on the site. The heritage item at 83 Fitzwilliam Road, Vaucluse (LOT: 100 DP: 1304245) should be identified as "*Vaucluse Point Ferry Wharf – remnants of wharf, and dwelling/former shop (including interiors) and associated landscape elements*", in Schedule 5 of the Woollahra Environmental Plan 2014 (Woollahra LEP 2014). Should Council support the planning proposal, it will be forwarded to the Department of Planning, Housing and Infrastructure (DPHI) with a request for a Gateway determination to allow public exhibition.

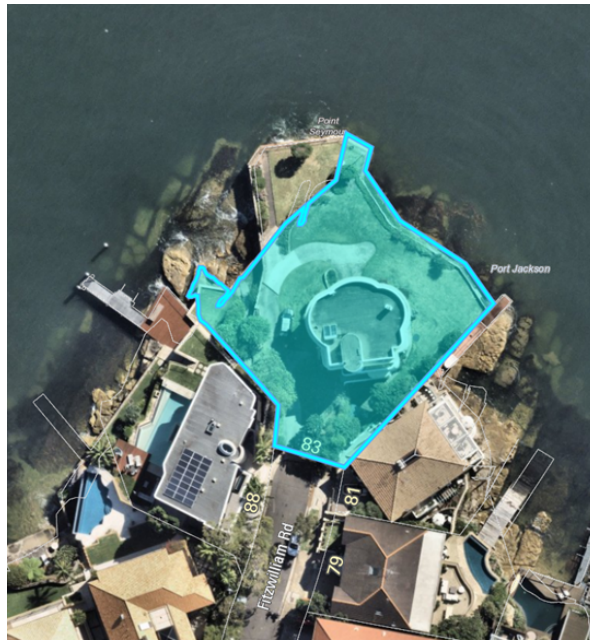


Figure 2: Aerial photo of 83 Fitzwilliam Road, Vaucluse as at 7 April 2024. LOT: 100 DP: 1304245 (highlighted in blue) is the lot containing the dwelling (Source: Woollahra MAPS, 2024)

Existing heritage status

Lots comprising 83 Fitzwilliam Road are listed on the Woollahra LEP 2014 as Item I357, “Remains of Vaucluse Point ferry wharf” (see **Figure 3**).

A heritage study, independent of Council staff, was undertaken on the dwelling by Lisa Trueman Heritage Advisor. This study was received by Council in February 2024. The study identified the potential significance of the dwelling, and that the current heritage listing being limited to the wharf remains may not appropriately cover all elements of significance on the site. While the entirety of the site is mapped as a heritage item, Council staff were concerned that the “item” as a distinct element of significance, is limited to the ferry wharf remnants and excluded the extant dwelling on the site.



Figure 3: Aerial photo of 83 Fitzwilliam Road, Vaucluse. LOT: 100 DP: 1304245 is highlighted in brown, indicating heritage listing and number, I357 (Source: Woollahra MAPS, 2024)

Interim Heritage Order (IHO)

On 10 June 2024, a Complying Development Certificate (CD 2024/64/1) (CDC) was issued for internal and external alterations to the dwelling at 83 Fitzwilliam Road, Vaucluse. The CDC was informed by a heritage report commissioned by the owner whose findings were that the dwelling had lost any association with the historic ferry wharf onsite, and despite having landmark qualities did not meet the criteria for individual heritage listing. The report was prepared by Zoltan Kovacs, architect and heritage consultant.

In response to the CDC, Council's heritage officers undertook a preliminary heritage assessment with regards to the building. The staff assessment was prepared consistent with the NSW Department of Planning and Environment's guidelines, *Assessing heritage significance: Guidelines for assessing places and objects against the Heritage Council of NSW Criteria (2023)*. It concluded that the dwelling at 83 Fitzwilliam Road was likely to have heritage significance and meet the threshold for local heritage listing. Council's heritage officers considered that the scope of work in the CDC posed a risk to the potential significance of the dwelling. For these reasons, Council used its delegation under Section 25 of the *Heritage Act 1977* to make an Interim Heritage Order (IHO) to protect the potential heritage item from harm and allow Council to undertake a formal heritage assessment for the dwelling.

In accordance with the Ministerial Order authorising local councils to make IHOs published in the NSW Gazette on 12 July 2013, an IHO can be made if, among other things, the following pre-conditions are in place:

“(1)(b) it has considered a preliminary heritage assessment of the item prepared by a person with appropriate heritage knowledge, skills and experience employed or retained by the Council and considers that:

- i. The item is or is likely to be found, on further inquiry and investigation, to be of local heritage significance;*
- ii. The item is being or is likely to be harmed;*
- iii. The IHO is confined to the item determined to be under threat.”*

The Order also specifically states in Schedule 2 (2) that *“A council must not make an IHO where: (a) the item is listed on: (i) an environmental planning instrument as an item of environmental heritage”*. Council sought legal advice regarding whether the existing heritage listing on the site included the dwelling house the subject of the CDC and thus precluded Council from exercising the power to make an IHO on the site. The legal advice indicated that Council was empowered to issue an IHO on the dwelling due to the listing not specifically including the dwelling house in its description.

The Director of Planning & Place authorised the making of an IHO (IHO No. 11) and this was published in the NSW Government Gazette on 28 June 2024. The IHO will remain in place for an initial period of six months which gives Council the opportunity to fully assess the heritage significance of the building and identify whether the listing should be amended for the subject site. In order to meet the conditions of the IHO (Schedule 2 (5) (i)), Council must make a resolution within 6 months (or 28 December 2024), otherwise the IHO will lapse. If within these six months Council resolves to proceed with the listing of the building, the order remains in place for an additional six months, i.e. to 28 June 2025.

A Class 1 appeal against the IHO was listed at the Land and Environment Court Sydney on 31 July 2024. However, this appeal was subsequently discontinued on 23 October 2024.

Assessment of Significance

In July 2024, Council staff engaged GML Heritage to undertake a further independent Heritage Assessment of the dwelling using the Heritage NSW significance assessment guidelines and criteria. Rebecca Hawcroft at GML Heritage is a well-known expert in the interwar and modern movement periods and has published widely on heritage and architectural history. Ms Hawcroft is the current deputy editor of *Historic Environment*, the academic journal of Australia ICOMOS.

As part of the heritage assessment, GML and Council's *Team Leader – Heritage* attended the site for an internal site inspection on 30 July 2024.

The property was assessed against the seven criteria in the guidelines (see **Table 1** below). Each criterion includes 'significance indicator' and 'significance threshold' guidelines, which are used to assist in the assessment process. If an item meets one of the seven heritage criteria at a local level, and retains the integrity of its key attributes, it can be considered to have local heritage significance.

Table 1: NSW Heritage assessment criteria summary

Criteria		
(a)	Historic significance	An item is important in the course, or pattern, of NSW's cultural or natural history (or the cultural or natural history of the local area)
(b)	Historical association	An item has strong or special association with the life or works of a person, or group of persons, of importance in NSW's cultural or natural history (or the cultural or natural history of the local area)
(c)	Aesthetic/creative/technical achievement	An item is important in demonstrating aesthetic characteristics and/or a high degree of creative or technical achievement in NSW (or the local area)
(d)	Social, cultural and spiritual significance	An item has strong or special association with a particular community or cultural group in NSW (or the local area) for social, cultural or spiritual reasons
(e)	Research potential	An item has potential to yield information that will contribute to an understanding of NSW's cultural or natural history (or the cultural or natural history of the local area)
(f)	Rare	An item possesses uncommon, rare or endangered aspects of NSW's cultural or natural history (or the cultural or natural history of the local area)
(g)	Representative	An item is important in demonstrating the principal characteristics of a class of NSW's <ul style="list-style-type: none">• cultural or natural places; or• cultural or natural environments.• or a class of the local area's• cultural or natural places; or• cultural or natural environments.

GML provided Council with a Draft Heritage Assessment in September 2024 (**Attachment 2**), which concluded that the dwelling at 83 Fitzwilliam Road Vacluse, also known as "Point Seymour", notwithstanding the work that had been approved as part of the CDC, meets the threshold of significance at local level under five of the seven criteria as outlined below:

- Criterion A (historic significance)
 - Demonstrates an important period in the history of Woollahra including the subdivision of the Vacluse Estate and the development of a ferry service.
 - Associated with important broader historical phases including the development of maritime transport within Sydney Harbour and the expansion of visitors to Parsley Bay and the local area.

- Criterion C (aesthetic significance) and Criterion D (social significance)
 - Recognised as a landmark – highly regarded and recognised as a key landmark in the physical environment due to its prominent siting, setting, landscaping and design; and
 - Important as a place of symbolic meaning and community identity.
- Criterion E (research potential) – the subject site has research potential in that it:
 - Is part of a group of significant sites associated with nineteenth and twentieth century water-based transport and recreation on Sydney Harbour and is able to yield information about this group as a whole.
- Criterion G (representative)—The subject site is a good representative example of:
 - A former harbour ferry wharf that can be seen as a cultural landscape reflecting the late nineteenth and early twentieth century history of harbour based transport in the area and the wider network of similar former ferry wharf sites including tea rooms and associated facilities.
 - Functionalist architecture within the Woollahra LGA, of which few examples are heritage listed.

Table 2: NSW Heritage criteria assessment summary

Property	(a) historic	(b) historical association	(c) aesthetic/ creative/ technical	(d) social	(e) technical/ research	(f) rarity	(g) representative
<i>Vaucluse Point Ferry Wharf – remnants of wharf, dwelling/former shop (including interiors), and associated landscape elements</i>	✓	✗	✓	✓	✓	✗	✓

The Draft Heritage Assessment Report recommends that the details for heritage item I357 as per the Woollahra LEP 2014 Schedule 5 should be updated to include the dwelling, including all internals, and associated landscape elements, in order to reflect the significance of the site. As an administrative task, and subject to endorsement, Council staff will update the existing heritage inventory sheet for the local heritage item (I357) to include the information in the Draft Heritage Assessment Report, including an assessment against all criteria. The detail in the inventory sheet will include specific elements of the interiors that are considered significant to the dwelling, and specific landscape elements that have significance associated with the site.

Planning Proposal

Consistent with the recommendations of the Draft Heritage Assessment report, a planning proposal was prepared that details an amendment to the existing listing for item I357 “Remains of Vaucluse Point ferry wharf” at 83 Fitzwilliam Road, Vaucluse in the Woollahra LEP 2014.

The amendment will involve two changes to heritage item I357 on the *Woollahra LEP 2014 Schedule 5 Part 1*. It proposes to change the item name to “*Vaucluse Point Ferry Wharf – remnants of wharf, and dwelling/former shop (including interiors) and associated landscape elements*”. It also proposes to update the property description with the correct Lot and DPs following the consolidation of lots on 27 May 2024.

The planning proposal was prepared in accordance with section 3.33 of the Act and the document prepared by the former NSW Department of Planning and Environment titled *Local Environmental Plan Making Guideline* (August 2023).

The planning proposal satisfies the requirements of section 3.33 of the Act as it includes:

- A statement of the objectives or intended outcome of the amendment to Woollahra LEP 2014.
- An explanation of the provisions that are to be included in the amendment to Woollahra LEP 2014.
- The justification for the objectives, outcomes and provisions and the process for their implementation.
- Details of the community consultation that is to be undertaken.

Objective of the planning proposal

The objective of the amendment to Woollahra LEP 2014 is to recognise the heritage significance of the dwelling at 83 Fitzwilliam Road, Vaucluse, through including details of the dwelling, and corrected Lot and DP, on the existing listing for Item I357.

There would be no changes to the address, or significance level (local) as the existing details continue to be relevant and accurate.

Advice of the Woollahra Local Planning Panel

The planning proposal was referred to the Woollahra Local Planning Panel (Woollahra LPP) for consideration on 19 September 2024. In the morning of 19 September 2024, three members of the Woollahra LPP carried out a site inspection of the site. An internal site inspection was not possible, as the building on the site is considered a construction site as the CDC has commenced.

Having considered the planning proposal, the Woollahra LPP provided the following advice to Council:

THAT the Woollahra Local Planning Panel advises Council to proceed with the planning proposal to include the dwelling in its entirety, both internal and external, and landscape elements at 83 Fitzwilliam Road, Vaucluse (LOT: 100 DP: 1304245) on the existing listing for I357 "Remains of Vaucluse Point ferry wharf", in Schedule 5 of the Woollahra Environmental Plan 2014.

The Woollahra LPP provided the following reason:

The GML heritage assessment has demonstrated that the wharf remnants, dwelling and landscape elements meet five of the seven criteria for significance at the local level to warrant amendment of the existing local heritage listing.

Consistent with the advice of the Woollahra LPP, staff have amended the recommendation to include the whole of the dwelling on the site (including interiors) and associated landscape elements.

Note: The members of the Woollahra LPP on 19 September consisted of Penelope Holloway (Chair), Graham Brown and Sharon Veale (independent experts) and Kenneth Raphael (community representative). Sharon Veale declared a Significant Non-Pecuniary interest in Item D1 (Planning Proposal Heritage Listing – 83 Fitzwilliam Road, Vaucluse) as she is the CEO at GML Heritage which was engaged by Woollahra Council to prepare a heritage assessment. GML have also been engaged to act for Council in the LEC regarding the matter. Sharon Veale did not attend the site visit, take part in the debate or vote on this matter. Under the Woollahra LPP Operational Procedures, the quorum for the panel is three members (clause 22 of Schedule 2 of the Environmental Planning and Assessment Act 1979 (Act)).

Options:

Subject to Council's decision, the planning proposal will be referred to the DPHI seeking a Gateway determination. This will allow the planning proposal to be placed on public exhibition. To streamline the plan-making process, the Minister can delegate some plan-making powers to Council for routine matters. In this case, Council may request authorisation to exercise the functions of the Minister to make an LEP under section 3.36 of the Act. Part C of the recommendation for this report deals with this request. After public exhibition, the planning proposal and submissions received will be reported to Council.

Alternatively, Council may decide to note the advice of the Woollahra LPP and not progress the planning proposal.

Community Engagement and / or Internal Consultation:

Council staff notified the owner when the IHO was made, and that the planning proposal was being considered by the Woollahra LPP on 19 September 2024. On behalf of the owner, Fiona Binns (heritage consultant and associate director at URBIS) addressed the Woollahra LPP.

If the planning proposal receives a Gateway determination, the landowner, surrounding landowners and the wider community will be notified via the exhibition process. Public exhibition of the planning proposal would be undertaken in accordance with the requirements of the Act, the *Environmental Planning and Assessment Regulation 2021*, the *Woollahra Community Participation Plan 2019* and any conditions of the Gateway determination.

Policy Implications:

Should Council resolve to progress a planning proposal, and should the planning proposal progress to finalisation, there will be policy implications by amending a local heritage listing in the Woollahra LEP 2014, Schedule 5, Part 1.

Financial Implications:

Council staff engaged GML Heritage to undertake the Draft Heritage Assessment which has been used to inform the planning proposal. There will be some costs associated with progressing and exhibiting a planning proposal and making further amendments to the Draft Assessment as a consequence of issues raised in submissions. However, these are considered appropriate considering the work required.

Resourcing Implications:

Staff resources will be associated with progressing a planning proposal which will include managing the public exhibition and preparing a post exhibition report to a meeting of Council.

Conclusion:

Council staff prepared a planning proposal to amend the existing listing for "Remains of Vacluse Point Ferry Wharf", Item I357 at 83 Fitzwilliam Road, Vacluse to include the dwelling on the site. This was considered by the Woollahra LPP on 19 September 2024 and staff note the endorsement from the Woollahra LPP to progress the planning proposal. Council staff recommend that Council endorses the planning proposal at **Attachment 1** and proceed with referring this to the DPHI requesting a Gateway determination to allow public exhibition.

Attachments:

1. Planning Proposal - 83 Fitzwilliam Rd Vacluse - Report - October 2024
2. 83 Fitzwilliam Rd, Vacluse - Heritage Assessment - September 2024

