

14.3 WOLLONDILLY HERITAGE PLANNING PROPOSAL STAGE 2 (DEFERRED ITEMS)

RESOLUTION 301/2024

Moved: Cr Paul Rogers

Seconded: Cr Ally Dench

That Council:

1. **Note the findings of the heritage assessment review undertaken of the items deferred from the initial Wollondilly Heritage Planning Proposal.**
2. ***Accept the findings of the heritage assessment review undertaken of the items deferred from the initial Wollondilly Heritage Planning Proposal, with the exception of the findings and information about “Kalinya Gardens and Landscape” – 60 Great Southern Road Bargo, which are not accepted.***
3. ***Note and accept that the Homestead and Gardens at Kalinya Gardens and Landscape were incorrectly heritage listed due to their construction post 1970’s, as outlined in the 12 December 2023 Ordinary Meeting of Council, Report 14.5 Draft Wollondilly Heritage Planning Proposal, and for that reason, should be delisted as a heritage item from the Wollondilly LEP 2011.***
4. **Support the preparation of a Planning Proposal to delist three items:**
 - a. ‘Cottage’ - 91 Hawthorne Road, Bargo.
 - b. ‘Farmhouse’ – 160 Dwyers Road, Pheasants Nest.
 - c. ‘Kalinya Gardens and Landscape’ - 60 Great Southern Road, Bargo.
5. **Note no action is required for:**
 - a. ‘Farmhouse’ - 2 Werriberri Road, Orangeville
 - b. ‘Cottage’ – 18 Webster Street, Picton;
 - c. ‘Store (Former)’ at 168 Argyle Street, Picton.
6. **Submit the Stage 2 Planning Proposal to the NSW Department of Planning, Housing and Infrastructure with a request for a Gateway determination, *with the justification for the delisting of Kalinya Gardens and Landscape as identified in Point 2.***
7. **Seek to be authorised as the Local Plan-Making Authority (LPMA) to exercise the plan making functions for this amendment.**
8. **Notify the affected landowners be notified of Council’s decision.**

On being put the meeting the motion was declared **CARRIED 9/0**

In Favour: Mayor Matt Gould, Cr Matthew Deeth, Cr Hilton Gibbs, Cr Paul Rogers, Cr Suzy Brandstater, Cr Jacqueline Jenson, Cr Trish Hill, Cr Benn Banasik and Cr Ally Dench

Against: Nil

14.3 WOLLONDILLY HERITAGE PLANNING PROPOSAL STAGE 2 (DEFERRED ITEMS)

Directorate: Shire Futures

Address: Various

Lot & DP: Various

Current Zoning: Various

Proposal: Stage 2 planning proposal to recognise places that have heritage significance by updating the heritage list of items under Schedule 5 'Environmental heritage' in the *Wollondilly Local Environmental Plan 2011*.

Stage 2 covers matters deferred from the initial Wollondilly Heritage Planning Proposal and seeks to delist three items.

Applicant: Wollondilly Shire Council

EXECUTIVE SUMMARY

On 12 December 2023, Council considered the Wollondilly Heritage Planning Proposal to comprehensively update heritage listings for the Shire following the completion of the Shire Wide Heritage Study.

Council supported progressing most of the amendments, however it deferred six items so that additional analysis of heritage merit could be undertaken. The resolution required the following amendments to progress as a separate proposal:

- Any item proposed for delisting/removal from the local environmental plan
- Store (Former) 168 Argyle Street, Picton.

The additional analysis has now been undertaken and has included site visits to ground truth information from heritage studies. An independent heritage consultant has also been engaged to peer review a heritage report submitted by a landowner and the relevant section of Council's heritage study prepared by City Plan Heritage for the former Store on Argyle Street, Picton.

Following the additional analysis, it is now recommended that:

- Two items should be retained as heritage items as they still contain sufficient elements of the original cottages to maintain heritage significance.
- The new listing of the Store (Former) on Argyle Street, Picton should not proceed.
- Three of the existing items should be removed from the heritage list (be delisted). This is because: they have either been changed so much over the years that their integrity has been lost and they do not meet the criteria for heritage listing; or updated information has determined that the basis for the original listing is not valid.

In the case of the two items to be retained as heritage items and the Store (Former) on Argyle Street, Picton, no further action is required.

In the case of the three existing items still recommended to be delisted, this report seeks Councils support to progress a stage 2 Wollondilly Heritage Planning Proposal for the deferred matters to update the *Wollondilly Local Environmental Plan 2011*.

RECOMMENDATION

That Council:

1. Note and accept the findings of the heritage assessment review undertaken of the items deferred from the initial Wollondilly Heritage Planning Proposal.
2. Support the preparation of a Planning Proposal to delist three items:
 - a. 'Cottage' - 91 Hawthorne Road, Bargo
 - b. 'Farmhouse' – 160 Dwyers Road, Pheasants Nest
 - c. 'Kalinya Gardens and Landscape' - 60 Great Southern Road, Bargo.
3. Note no action is required for:
 - a. 'Farmhouse' - 2 Werriberri Road, Orangeville
 - b. 'Cottage' – 18 Webster Street, Picton;
 - c. 'Store (Former)' at 168 Argyle Street, Picton.
4. Submit the Stage 2 Planning Proposal to the NSW Department of Planning, Housing and Infrastructure with a request for a Gateway determination.
5. Seek to be authorised as the Local Plan-Making Authority (LPMA) to exercise the plan making functions for this amendment.
6. Notify the affected landowners be notified of Council's decision.
7. Notify any relevant submitters for items discussed in this report of Council's resolution.

REPORT

Background

At its meeting on 12 December 2023, Council resolved to support progressing the Wollondilly Heritage Planning Proposal to facilitate updates to the relevant environmental planning instruments (legislation) that protect heritage items or places in Wollondilly.

The updates included reviewing existing listed items, heritage and landscape conservation areas and archaeological sites and to identify potential new heritage items for inclusion.

The proposed amendments were identified and informed by heritage studies undertaken as part of the Shire Wide Heritage Project.

The Wollondilly Heritage Planning Proposal is still underway and a final assessment and recommendations following the recent public exhibition is anticipated to be provided to the elected Council for consideration in the next few months.

As part of its consideration of the Wollondilly Heritage Planning Proposal in December 2023, Council resolved to defer six items from the proposal. This was to allow for additional analysis of the merit of the proposed amendments.

The deferred matters included:

1. All heritage items proposed to be removed (delisted) from the Schedule:
 - a. 'Cottage' - 91 Hawthorne Road, Bargo
 - b. 'Farmhouse' - 2 Werriberri Road, Orangeville
 - c. 'Farmhouse' – 160 Dwyers Road, Pheasants Nest
 - d. 'Cottage' – 18 Webster Street, Picton
 - e. 'Kalinya Gardens and Landscape' - 60 Great Southern Road, Bargo.
2. One proposed new heritage item:
 - a. 'Store (Former)' - 168 Argyle Street, Picton.

The following matters from Council's decision are relevant to the deferred items:

- The deferred items were to reported back to Council before April 2024.
- The deferred items are to be progressed separately if supported.
- Staff are to further assess the site-specific merit of the proposed changes. Where relevant, independent advice, is to be sought.
- Identify a process for independent peer review where warranted.
- Affected landowners of all sites under consideration were to be given an opportunity to have an on-site visit by council staff to ground truth the proposed listing and consider any issues or concerns regarding the heritage merit of the proposed listing.

A copy of the Minutes and report to Council at its meeting on 12 December are provided at **Attachment 1**.

A Councillor Briefing on this matter was held on 12 November 2024.

Further assessment of deferred items

Following Council's decision, the steps below were established to further assess the merits of the deferred items.

1.1 Site visit

A site inspection was undertaken by Council officers with heritage expertise accompanied by Council's regular external heritage consultant. The owner was also present.

These site visits took place in April and May 2024. At the inspection, the 'statement of significance' in the Inventory Sheet (which contains information on individual heritage listings) prepared by City Plan Heritage (CPH) for the Shire Wide Heritage Project was reviewed.

Owners were given an opportunity to explain their concerns and response to the heritage listing.

It is noted that the owners of two items, Kalinya Gardens and 160 Dwyers Avenue, Pheasants Nest, advised that their premises were not available at the time of inspection and had not requested an alternative date ahead of one being arranged. These two items are clearly visible from and were viewed from the public road.

For both of these items, other documentation including development application history, property searches and historic aerial photos were also used in the assessment.

1.2 Independent Review

A consultant, Kemp and Johnson Heritage Consultants, was engaged by Council to independently review the merit of the proposed listing of the Store (Former) on Argyle Street, Picton

The independent review included a peer review of any heritage reports that were commissioned by the owner, a site inspection, and review of the proposed listing.

It is noted that the owner of the former store is preparing a Development Application to seek consent to demolish and redevelop the site. The owner has engaged a heritage consultant to prepare a heritage report which refutes the site's heritage significance.

Kemp and Johnson Heritage Consultants, Council's consultant, inspected the site along with Council staff in June 2024.

1.3 Document search

In some instances, other resources were used to inform the additional analysis. This included reviewing development approval history, property files, and historic aerial photographs.

The additional work to further assess the deferred items was coordinated along with similar work for the Wollondilly Heritage Planning Proposal and has included procurement of a suitably qualified heritage consultant and liaising with multiple landowners to arrange site inspections with adequate forward notice.

Resolution 369/2023, called for the deferred items to be reported to Council by April 2024. Unfortunately, this was not possible for a number of reasons including engaging of suitably qualified heritage expert and these delays were communicated to the former elected Council via a memorandum in March 2024.

It is also noted that the additional time and analysis has enabled a far more detailed assessment, including internal building inspections in some cases, of individual items than would be practicable as part of a shire wide heritage study.

Review Findings

The outcome of the review of the deferred items is summarised in Table 1.

Item Name	Address	Original recommendation	Recommendation following additional review
'Cottage'	18 Webster Street, Picton	Remove from heritage list	Heritage listing should be maintained. No further action required.
'Farmhouse'	2 Werriberri Road, Orangeville	Remove from heritage list	Heritage listing should be maintained. No further action required.
'Store (Former)'	168 Argyle Street, Picton	Propose for inclusion on heritage list	Do not pursue heritage listing. No further action required.
'Cottage'	91 Hawthorne Road, Bargo	Remove from heritage list	Remove from heritage list. Progress amendment as part of stage 2 planning proposal.
'Kalinya'	60 Great Southern	Remove from	Remove from heritage list.

Item Name	Address	Original recommendation	Recommendation following additional review
Gardens and Landscape'	Road, Bargo	heritage list	Progress amendment as part of stage 2 planning proposal.
'Farmhouse'	160 Dwyers Road, Pheasants Nest	Remove from heritage list	Remove from heritage list. Progress amendment as part of stage 2 planning proposal.

Table 1: Summary of review outcomes

1.4 For retention

In this assessment, two items are recommended to be retained as heritage items as they still contain sufficient elements of the original cottages to maintain heritage significance.

- The **'Farmhouse'** on **Werriberri Road, Orangeville** is still at the core of the larger extension.
- The **'Cottage'** in **Webster Street, Picton** still retains the small form and roof elements of the original cottage. It is part of an important group of small workers cottages in Webster Street which could be restored and sympathetically extended at the rear.

Both these items have aesthetic, streetscape and historic value.

1.5 For Removal

Conversely, the items recommended to be removed from Schedule 5 (Environmental heritage) list, or not be added as a new heritage item, have had so much change to their fabric over the years that their integrity has been lost. They are no longer considered to meet the criteria for heritage listing.

- The **'Store (former)'** at Picton (**no. 168 Argyle Street, Picton**) has a historic association with a series of shopkeepers from 1840 up to the early 20th century.

However, the building was extensively altered in the mid to late 20th century to the extent that it lacks integrity, and no longer demonstrates the site's retail history or historical associations. The building is not considered to be a good representative example of a late 19th century retail building and fails to demonstrate historical significance, historical associations or aesthetic significance. Based on the peer review, it is now recommended that the proposed listing is no longer pursued.

It is noted that the site is located within the Picton Heritage Conservation Area and any future proposed development would still need to be designed in a sympathetic manner. The peer review has also made some recommendations to guide future development on the site.

A copy of the peer review is provided at **Attachment 2**.

- In the case of the **'Cottage'** at **Hawthorne Road**, it was incorrectly identified as one of the originally early buildings of Bargo. Instead, it was constructed in the 1930s and has a low level of intactness due to alterations over time.
- Most buildings and landscaping on the **'Kalinya Gardens and Landscape'** property were built post 1970s, with the exception of a small original cottage. Extensive

changes to both the original cottage and gardens have significantly affected the property's integrity. It is no longer considered to reflect the historical context or visual characteristics that were the basis for its initial heritage listing.

- The **'Farmhouse'** at **Dwyers Road** is a building constructed after 1988, in a style that imitates a Federation cottage and has no heritage significance.

An assessment of each deferred item is provided at **Attachment 3**.

Description of proposal

Following the further assessment, it is proposed to progress a second stage Wollondilly Heritage Planning Proposal to update heritage listings for the Shire and ensure Wollondilly's heritage places are properly identified, documented and managed.

For the stage two proposal, this would be achieved by amending the *Wollondilly Local Environmental Plan 2011* (WLEP 2011) by removing the following three items from Schedule 5 (Environmental heritage) and the associated Heritage Map.

The item proposed for removal are identified in Table 2.

Suburb	Item name	Address	Property Description	Significance	Item no
Bargo	Cottage	91 Hawthorne Road	Lot 92, DP 10336	Local	I27
Pheasants Nest	Farmhouse	160 Dwyers Road	Lot 51, DP 773133	Local	I126
Bargo	Kalina gardens and landscape	60 Great Southern Road	Lot 3, DP 9803	Local	I19

Table 2: Items proposed to be removed

Gateway Determination

If supported by Council, the Draft Planning Proposal will be submitted to the NSW Government Department of Planning, Industry and Environment for a Gateway determination.

PLANNING CONTEXT

The underlying objectives and intended outcomes and justification of strategic merit for the stage 2 proposal are the same as for the initial Wollondilly Heritage Planning Proposal. These were covered by the report to Council for the stage 1 proposal on 12 December 2023.

A brief summary is provided below.

Wollondilly 2040 Local Strategic Planning Statement (LSPS)

Wollondilly 2040, Council's Local Strategic Planning Statement 2040 (LSPS) is a 20 year land use vision for Wollondilly.

The draft proposal is consistent with the key planning directions outlined in the LSPS, including action 7.8 to review the heritage schedule.

Western City District Plan 2018

The Western City District Plan (District Plan) is a 20 year plan that guides the implementation of the Greater Sydney Region Plan and acts as a bridge between regional and local planning. It outlines a number of directions, priorities and actions for managing growth, delivering infrastructure and protecting and enhancing bushland and biodiversity.

The draft proposal is considered to be consistent with the District Plan.

Metropolitan Rural Area (MRA)

The draft proposal is consistent with provisions of the MRA which has importance for protecting heritage.

It is therefore considered consistent with the District Plan.

Section 9.1 Ministerial Direction

The Minister for Planning has issued a number of Directions under the *Environmental Planning and Assessment Act 1979* which apply to the assessment of planning proposals.

Of relevance is Direction 3.2 - Heritage Conservation. This Direction relates to conserving items, areas, objects and places of environmental heritage significance and indigenous heritage significance. The planning proposal intends to ensure that its heritage listings are up to date, by removing items on Schedule 5 and in the heritage mapping which no longer meet the criteria for heritage significance.

The draft proposal is considered consistent with the relevant ministerial directions.

State Environmental Planning Policies

The NSW Government publishes State Environmental Planning Policies (SEPPs). These documents deal with matters of state or regional planning significance.

The draft proposal is consistent with all applicable SEPPs.

CONSULTATION

Community Consultation

The report to Council on the Wollondilly Heritage Planning Proposal on 12 December 2023 provided an overview of stakeholder engagement during the preparation of the heritage studies and how community and stakeholder engagement was encouraged as part of the preliminary notification for the planning proposal.

In accordance with Council's Community Participation Plan and adopted Planning Proposal Policy, preliminary notification of the shire-wide Wollondilly Heritage Planning Proposal was undertaken from September to October 2023.

Of particular relevance to the items deferred by Council, three submissions were received from affected landowners in response to the preliminary notification of the Wollondilly Heritage Planning Proposal. These included:

- An objection to the proposed new listing of the former shop at No. 168 Argyle Street, Picton
- Support for delisting the cottage at No. 18 Webster Street, Picton
- Support for delisting the cottage at No. 91 Hawthorne Road, Bargo.

A more detailed summary of the submissions from the owners of the deferred items and Council's response is included in the more detailed assessment of the deferred items at **Attachment 3**.

The submissions were considered in the heritage assessment review and Council's response is provided in the 'conclusion' of the Attachment.

Council officers have had regular contact with each of the affected landowners as part of regular updates on the proposed amendments, the further assessment and through responding to queries. From these interactions it is noted that:

- The owners of the Kalinya Gardens item in Bargo do not object to the proposed delisting.
- There is frustration with the delay to delisting items from the original proposal.

Should the proposal proceed and receive a positive Gateway determination, formal public exhibition will be undertaken in accordance with Council's Community Participation Plan and any other requirements included in the Gateway determination. The affected landowners will also be notified of any public exhibition.

Consultation with Public Agencies

Comments were sought from two government agencies as part of the original Wollondilly Heritage Planning Proposal. The Department of Planning, Housing and Infrastructure and Heritage NSW have only raised procedural matters to date.

Further consultation will be undertaken as required by any Gateway determination issued by the Department.

Local Planning Panel Advice

As required by the ministerial direction issued on 27 September 2018, the original Wollondilly Heritage Planning Proposal was reported to the Wollondilly Shire Local Planning Panel (the Panel).

The Panel consists of independent qualified individuals and is required to provide advice on planning proposals to Council for its consideration before Council considers whether or not to forward it to the NSW Government.

The Wollondilly Heritage Planning Proposal was reported to the Panel at its meeting on 7 December 2023.

The Panel acknowledged the legitimate need to update the heritage listings. In particular, the Panel noted that staff will further investigate the site-specific merit of any potential changes and advise that *where proposed listings are disputed, staff should undertake site visits and seek independent advice to inform the final recommendation to Council after a public exhibition and prior to finalisation*.

It is noted that this advice has been implemented for the deferred items covered in this report.

A copy of the Panel's advice is provided at **Attachment 4**.

Options

The draft Planning Proposal will be prepared in accordance with Section 3.33 of the *Environmental Planning & Assessment Act 1979* and the guidelines published by the NSW Government.

Council's options are:

1. Resolve to support a second stage planning proposal to remove three heritage items in the form as described in the Description of Proposal section of this report.
2. Resolve to support a second stage planning proposal in another form.
3. Resolve not to support a second stage Planning Proposal to remove three heritage items. This will mean that the items will remain heritage listed.

With this option there is no further action to be taken on the Planning Proposal other than to inform the applicant, landowner/s and submitters that the draft Planning Proposal has not been supported.

There are no appeal rights through the Land and Environment Court against Council's refusal to support the draft Planning Proposal at this stage of the process.

Option 1 is the recommendation of this report.

FINANCIAL IMPLICATIONS

The second stage heritage planning proposal will implement the recommendations of the heritage assessment review. This was undertaken to implement the resolution of Council at its 12 December 2023 meeting.

The site visits, advice from independent heritage consultants and progressing the second stage planning proposal has been delivered within Council's 23/24 adopted budget, however, the additional expense required deferring other projects until the new financial year.

Risk Assessment

This project has been assessed against inherent risks outlined in the Risk Appetite Statement and poses no material impact on organisational objectives.

Conclusion

A heritage assessment review has been undertaken of six items deferred from the original Wollondilly Heritage Planning Proposal by the resolution of Council on 12 December 2023.

Following the review which has enabled a more detailed assessment, some changes have been identified from the original recommended approach.

It is now recommended that only three of the original five existing items be removed from the heritage list (be delisted) as detailed in this report. This is because they have had so much change over the years that their integrity has been lost, and they do not meet the criteria for heritage listing.

In one of the cases for delisting, the item was listed because it was thought to be older and more significant than it is. Another was built in the 1980s in the style of a heritage building.

Following a site inspection and further review it is no longer recommended to include as a new heritage item.

A second stage planning proposal should now commence to amend WLEP 2011 to remove the three items identified in the review from the heritage list under Schedule 5 of the WLEP 2011.

The draft Planning Proposal is consistent with Council's policies and it is therefore recommended that the proposal be supported by Council.

ATTACHMENTS

1. Wollondilly Heritage Planning Proposal - Minutes and report to Council 12 December 2023 [**14.3.1** - 14 pages]
2. Peer review of Store (Former) - 168 Argyle Street Picton prepared by Kemp and Johnson Heritage Consultants [**14.3.2** - 24 pages]
3. Assessment of each deferred item [**14.3.3** - 5 pages]
4. Wollondilly Shire Local Planning Panel Minutes from meeting Advice - 7 December 2023 [**14.3.4** - 3 pages]