

JRPP No.	2011SYE059
DA No.	DA201000599
Proposed Development	Demolition of existing buildings including the former Station Master's Cottage, removal of 21 trees and remediation of land at 117 Railway Road, Sydenham
Applicant:	RailCorp
Report By:	PANEL SECRETARIAT

Review Report and Recommendation

The Crown development application (the application) was referred to the Joint Regional Planning Panel (the JRPP) pursuant to section 89(2)(b) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

1. EXECUTIVE SUMMARY

A application was lodged by RailCorp (the applicant) and proposes the demolition of existing buildings (including a former Station Master's Cottage, outdoor toilet, carport and shed), removal of 21 trees and the remediation of land at 117 Railway Road, Sydenham in the Marrickville local government area.

The application has been recommended for refusal by Marrickville Council because the demolition of the former Station Master's Cottage (the Cottage) is not considered to be in the public interest as inadequate information on the heritage impacts of the works and justification for the demolition has been submitted. Further, the proposal fails to demonstrate that 'Category 1' remediation of the area under the Cottage is required. As such, the application was referred to the JRPP.

The Panel Secretariat has reviewed the application for the JRPP's consideration, including the views of Marrickville Council (the Council), the applicant (RailCorp) and submissions received by the Council.

The Panel Secretariat believes that the Cottage warrants a preliminary investigation to its heritage value for the following reasons:

- Its proximity to the State heritage listed Sydenham Railway Station Group and the local listing of Sydenham Railway Station;
- Its social value and association with the local community; and
- Its historic use as Station Master's residence.

Although the Cottage may not have been purposefully built for the use as a Station Master's residence, its heritage value in the local context has not been assessed.

The Panel Secretariat considers the determination of the application should be deferred pending an investigation of heritage significance being undertaken on the Cottage. This investigation will confirm the heritage value of the Cottage and better inform the JRPP's decision.

The Panel Secretariat has reviewed the other components of the application including demolition of other buildings (garden shed, carport and outdoor toilet), removal of trees and remediation of the site (in all open space areas but excluding the area under the Cottage) and does not consider there to be any impediments to the approval of these components of the proposed works.

2. SITE DESCRIPTION

The site is located at 117 Railway Road, Sydenham in the Marrickville local government area and is bounded by Burrows Road along the northern boundary and Railway Road along the eastern boundary. Refer to **Figure 1** for a Site Location. Secondary access to the site is also gained from Wright Street. The site is triangular in shape, has an area of approximately 926m² and slopes moderately to the south.

To the north of the site is the Illawarra railway line and Sydenham Station is located approximately 40m north east of the site. The site is surrounded by residential areas to the east and south.

The site is owned by RailCorp and has been vacant since 2004. The site contains a single storey detached brick building, formerly used as a dwelling house and as a Station Master's Cottage which fronts Railway Road. Other structures on the site, which are also proposed to be demolished, include a brick outdoor toilet, carport and garden shed located at the rear of the dwelling. Refer to the site plan in **Attachment 1** and site photographs in **Attachment 2**.



Figure 1 – Site Location

Source: NSW Department of Lands – SIX Viewer, 2008, www.six.nsw.gov.au

3. PROPOSAL

The application is for the demolition of existing buildings (including the former Station Master's Cottage, carport, garden shed and outdoor toilet), removal of 21 trees and remediation of the land at 117 Railway Road, Sydenham. Refer to **Attachment 1** which includes the Site Plan and the Tree Removal Plan.

RailCorp has stated in the Statement of Environmental Effects that the site has been declared as surplus land. The demolition of the existing buildings and removal of trees is required to facilitate the site's remediation and its future divestment.

4. BACKGROUND SUMMARY

The following is a summary of key chronology for the application.

- 13 September 2005 – Council approved an application at 117 Railway Road (the site) to demolish part of the existing improvements (which included the carport, garden shed and outdoor toilet but excluded the Cottage) and carry out Category 1 remediation works for the contaminated soil including the removal of 6 trees. The determination was modified on 13 September 2005 in relation to conditions of consent relating to hours of operation, landscaping and an easement. RailCorp has advised that the demolition of the Cottage was not included in the 2005 application as it was not considered to be financially viable at the time and RailCorp decided works would only be undertaken to remove environmental risks from the site.
- 14 December 2010 – The current development application for demolition of existing improvements, tree removal and remediation was lodged by RailCorp with Council.
- 20 December 2010 to 20 January 2011 - The proposal was notified and 17 submissions were received.
- 14 March 2011 – Letter from RailCorp submitted to Council addressing concerns raised in submissions.
- 5 April 2011 – Council's Development Application Assessment Report recommends refusal of the application.
- 5 April 2011 - Council resolved to refer the application to the Joint Regional Planning Panel as, under Section 89(1)(a) of the EP&A Act, Council must not refuse its consent to a Crown development application, except with the approval of the Minister for Planning. Under Section 89(2A), the application must not be referred to the Minister unless it is first referred to the applicable regional panel.
- 6 May 2011 – Panel Secretariat receives Crown development application referral from Council.
- 30 May 2011 – RailCorp provided comments to the Panel Secretariat on Council's draft without-prejudice conditions of consent.
- 30 May and 1 June 2011 – RailCorp provided comments to the Panel Secretariat on Council's reasons for refusal.
- 2 June 2011 – Council provides comments to the Panel Secretariat following a review of RailCorp's comments on the draft conditions of consent.

5. ENVIRONMENTAL PLANNING INSTRUMENTS

The environmental planning instruments (current and draft) applying to the proposal include:

- State Environmental Planning Policy No.55 – Remediation of Land (SEPP 55);
- Marrickville Local Environmental Plan 2001 (MLEP 2001); and
- Draft Marrickville Local Environmental Plan 2010 (MLEP 2010)

Other relevant planning controls applying to the development include:

- Marrickville Council Development Control Plan No. 29 – Contaminated Land Policy and Controls

Marrickville Local Environmental Plan 2001

The majority of the site is zoned Residential 2(A) with a small portion in the northern part of the site zoned Open Space 6(A) under *Marrickville Local Environmental Plan 2001* (MLEP 2001). The proposed development comprising demolition, tree removal and remediation is permissible with consent. An extract of the land use zoning is provided at **Figure 2**.

Marrickville Council has also prepared the draft *Marrickville Local Environmental Plan 2010* (MLEP 2010) which was recently exhibited between November 2010 and February 2011. The site is proposed to be zoned R3 Medium Density Residential. Refer to exhibited zoning plan at Figure 3.

The R3 zone provides for medium density housing in the form of multi dwelling housing (such as town houses and villas). However, residential flat buildings are prohibited on the site in the zone.

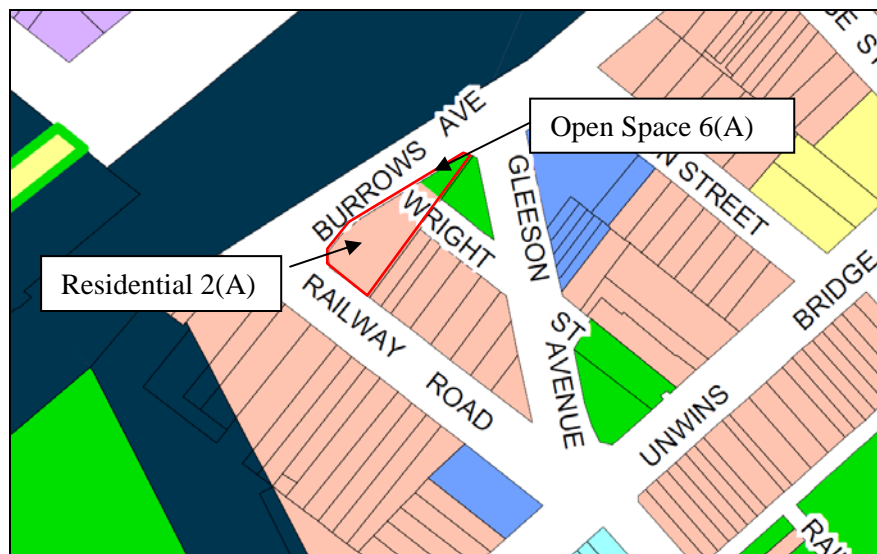


Figure 2 – Current Zoning Plan

Source: Marrickville City Council Zoning Plan, Marrickville Local Environmental Plan 2001

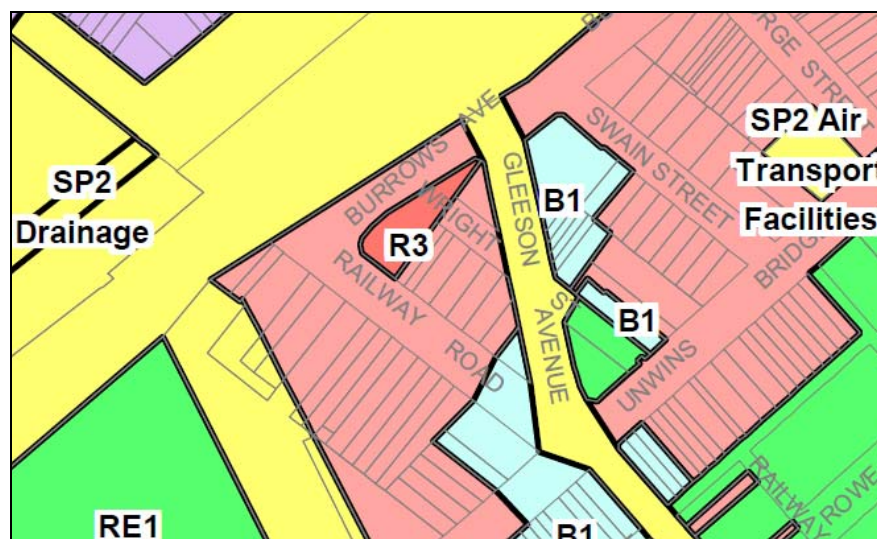


Figure 3 – Proposed Zoning Plan

Source: Exhibited draft Marrickville Local Environmental Plan 2010

State Environmental Planning Policy No.55 – Remediation of Land

The site is identified as being potentially contaminated and the application proposes the remediation of the site.

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) applies to the site as the development application proposes remediation. The remediation works proposed as outlined in the *Remedial Action Plan* (GHD, 2010) prepared for the application proposes to excavate 800mm of topsoil and dispose of the contaminated fill material off site.

Marrickville Council Development Control Plan No. 29 – Contaminated Land Policy and Controls (Marrickville DCP 29) also applies to the site. Section 6.23 (Tree Preservation) of the Marrickville DCP 29 states that “*Remediation work shall not be carried out within 4 metres of the base of a tree, or adversely affect the appearance, health or stability of a tree,*

where works affecting the tree require Council approval'. The application proposes works which would not comply with this requirement as remediation works are proposed within 4 metres of two existing street trees located on Railway Road. As such, in accordance with clause 9(f) of SEPP 55, the remediation works are classified as 'Category 1' works and requires consent. In addition, it is noted remediation is also a use which requires consent for land zoned Residential 2(A) under the MLEP 2001.

6. CONSULTATION AND PUBLIC EXHIBITION

The application was notified between 20 December 2010 to 20 January 2011 in accordance with the *Marrickville Council Development Control Plan No. 39 – Development Notification Policy*. In response to the notification, 17 submissions were received by Council including the Marrickville Heritage Society, and a petition with 314 signatories.

Key issues raised in these submissions include:

- Loss of the former Station's Master's Cottage;
- Loss of trees;
- Traffic and parking;
- Drainage; and
- Extent of contamination and acid sulfate soils

7. JRPP's STATUTORY ROLE

Section 89(1)(a) of the EP&A Act states that a consent authority must not refuse its consent to a Crown development application, except with the approval of the Minister.

Section 89(2)(b) of the EP&A Act provides that if a consent authority fails to determine a Crown development application within the prescribed time limit it may be referred by either the applicant or the consent authority to a JRPP.

Section 89(2A) of the EP&A Act provides that a Crown development application for which the consent authority is Council must not be referred to the Minister unless it is first referred to the applicable regional panel.

In this case, referencing Section 89(2) of the EP&A Act, Council has resolved to refer the application to the JRPP with a recommendation for refusal.

8. CONSIDERATION OF SECTION 79C(1) OF THE EP & A ACT

Council's officer has undertaken an assessment of the application with regard to the provisions of the EP&A Act and all matters specified under section 79C(1) and has recommended that the DA be referred to the Joint Regional Planning Panel with a recommendation to refuse the application.

9. POSITION OF EACH PARTY

The views of Council and the applicant are summarised as follows:

Marrickville Council

Assessment Staff

Council's assessment staff recommended the application be refused based on the following reasons:

- The proposal fails to justify the demolition of the former Station Master's Cottage on the site. Insufficient detail in relation to the heritage impacts of the proposal was submitted with the application.

- The proposal fails to demonstrate that Category 1 remediation of the area under the former Station Master's Cottage is required. A detailed assessment of the impact of the proposed demolition of the Cottage on the built environment therefore cannot be undertaken.
- In view of the above and the public submissions received raising concerns regarding the social and local heritage significance of the cottage, the proposed demolition of the cottage is not considered to be in the public interest.

Council

In the Development Assessment Committee Meeting (dated 5 April 2011), Council adopted the recommendations of Council's assessment staff as outlined above. In addition to the above, Council also recommended the following:

- Council has considerable concerns and is currently investigating options for heritage listing of the former Station Master's cottage and draws the Panel's attention to significant community concerns about the heritage significance of the building.

Applicant – RailCorp

- The applicant has provided a detailed response to Council's development assessment report and their reasons for refusal. Refer to **Attachment 4**. The applicant in response to the general assessment undertaken by Council raised the following issues:
 - Ability of Council to refuse development consent – The applicant considers Council's refusal is unlawful as it does not comply with clause 12(1) of SEPP 55 which requires Council not to refuse the application unless Council has not satisfied itself that "... *there would be a more significant risk of harm to human health or some other aspect of the environment from the carrying out of the work...*" Refer to further discussion in Section 10.2.
 - Council's consideration of all relevant environmental planning instruments – The applicant considers Council should have assessed the application against the relevant provisions of *State Environmental Planning Policy (Infrastructure) 2007* (ISEPP). RailCorp makes reference to Clause 79(2)(a)(iii) of the ISEPP which allows development (including demolition of a building) for the purpose of a railway or rail infrastructure facilities to be carried out by a public authority without consent on any land. Nevertheless, RailCorp has acknowledged that this clause does not apply to the application as the future use of the site is not for the purpose of a rail or rail infrastructure facility as RailCorp has indicated the site is surplus land to be used for future divestment.
- In response to each of Council's reasons for refusal, the applicant contends the following:
 - *Refusal reason 1*
 - a) *No justification for demolition*

The applicant contends that there is no planning or legislative requirement that requires an applicant to justify the demolition of a building that is not heritage listed and where the LEP allows for demolition with consent.

The applicant also contends that the depth of fill across the site (i.e. 0.8m) and excavation close to the building could compromise its structural integrity. It is likely

that fill materials adjacent to the footing would need to remain, thus preventing Category 1 remediation works.

b) Insufficient details on heritage impacts

Council has not identified the former Station Master's Cottage as an item of local heritage significance in the MLEP 2001. Council has also prepared and exhibited the draft MLEP 2010. In preparing the draft MLEP 2010, the Council undertook a review of potential heritage items for inclusion into the LEP, in the report titled "*Marrickville Review of Potential Heritage Items Vol.1: Final Report*" (prepared by Paul Davies Pty Ltd, dated June 2009). RailCorp notes the Cottage was not identified in Council's review.

The applicant contends that there have been numerous opportunities for the Cottage to be identified as a potential heritage item, including Council's recent review of potential heritage items conducted in June 2009. However, at no stage has the property been identified.

The applicant notes the site is proposed to be rezoned from R2 Low Density to R3 Medium Density (refer to **Figure 3**), which would allow for medium density development on the site. The applicant notes a medium density development could not be realised on the site if the Cottage were to remain as the existing building occupies approximately 50% of the site.

RailCorp also disagrees with comments made by Council in the Development Application Assessment Report (D0411 Item 8, dated 5 April 2011) which states that the former Station Master's Cottage may have been overlooked as a potential item for heritage review as the building is covered by foliage and located in a quiet side. RailCorp contends that earlier Heritage studies undertaken by council in 2001 and 1986 would have been undertaken in a period where the Cottage was occupied (it has been vacant since 2004) and easily identified.

c) No demonstration that Category 1 remediation is required under the Cottage

The applicant notes the RAP indicates that the site is contaminated from fill and that this fill is likely to be under the house given the proximity of the contamination to the house.

RailCorp did not conduct tests under the Cottage as it was assumed the Cottage would be demolished and testing of soils to confirm contamination could be undertaken afterwards.

▪ *Refusal reason 2*

- a) In view of public submissions raising concerns regarding the social and local heritage significance of the cottage, the proposed demolition of the cottage is not considered to be in the public interest.*

RailCorp contends that the refusal should not be based purely on public interest under Section 79C(1)(e) of the EP&A Act but all matters contained in Section 79C.

▪ *Refusal reason 3*

- a) Council has considerable concerns and is currently investigating options for heritage listing of the former Station Master's cottage and draws the Panel's attention to significant community concerns about the heritage significance of the building.*

RailCorp considers that Council has failed to assess whether public submissions are justified given that none provided evidence to support their claim that the

Cottage has heritage significance. Further, RailCorp considers that only a small portion of the submissions state an objection to the demolition of the building on heritage grounds. RailCorp is also concerned with the potential length of time it may take Council to undertake a heritage review of the Cottage.

- The applicant has also provided a response to the draft non-prejudice conditions of consent proposed by Council in the event that the application is approved by the JRPP. Refer to **Attachment 6**. RailCorp did not agree with 14 of the 50 conditions and requested amendments to 11 conditions. The Panel Secretariat referred RailCorp's comments to Council on 1 June 2011 and a response was received on 2 June 2011 (**Attachment 7**). The Panel Secretariat has reviewed RailCorp and Council's comments and has amended draft conditions of consent for the JRPP's review should the application be approved (**Schedule 1**).

10. DISCUSSION OF KEY ISSUES

There are a number of key points of contention between the Council's recommendation of refusal and RailCorp's comments on the recommendation. This includes:

- Whether the building is of heritage significance and whether RailCorp should be requested to provide an assessment of heritage significance;
- The nature of contamination underneath the Cottage and whether demolition of the Cottage is required to enable the remediation of the site; and
- The ability of the consent authority to refuse an application for remediation in accordance with SEPP 55.

10.1 Heritage Significance of Station Master's Cottage

A key issue raised in community objections and by Council's heritage officer concerns the loss of the former Station Master's Cottage (the Cottage) and its potential social and local heritage significance. As discussed earlier, one of Council's reasons for the refusing the application is that the demolition of the Cottage is not justified and there are insufficient details in relation to the heritage impacts of the proposal.

Site History

The exact date of the construction of the Cottage is unknown. However, historical title deeds show that ownership of the site was transferred to the Commission for Railways in 1885, prior to which the site was owned by various individuals including a market gardener (1875-1880) (GHD, 2010). The site has been vacant since 2004 and has been used for residential purposes including a portion of the time as a Station Master's residence (length of time unknown). This information suggests the Cottage was not specifically built for the purposes of a Station Master's Cottage.

Heritage Listings and proximity to known Heritage Items

The site is proximate to the Sydenham Railway Station Group which is listed on the State Heritage Register under the *Heritage Act 1977*. As outlined in the State listing (Listing no. 01254), the Sydenham Railway Station Group includes all platform buildings and awnings, parcels office, waiting shed, brick faced platforms, steel footbridge structure and stairs, Gleeson Avenue overbridge and brick perimeter walls. Sydenham Railway Station is also included as a local heritage item under the *Marrickville Local Environmental Plan 2001* (MLEP 2001).

The former Station Master's cottage is not listed as a local heritage item or located within a heritage conservation area under the MLEP 2001. However, Council in the Development

Assessment Committee meeting (dated 5 April 2011, D0411 Item 8) expressed their concerns with the demolition of the building and resolved to investigate options for the heritage listing of the former Station Master's Cottage.

As the demolition of the Cottage is proposed by the Crown, it is noted that Council are unable to issue an Interim Heritage Order under the *Heritage Act 1997* in order to complete a heritage assessment on the property and determine its heritage value.

The Cottage is not currently proposed to be included in the draft *Marrickville Local Environmental Plan 2010* (MLEP 2010). In the preparation of the draft MLEP 2010, a study was commissioned by Council to review 103 potential heritage items for possible listing in the draft LEP, titled "*Marrickville Review of Potential Heritage Items Vol.1: Final Report*" (prepared by Paul Davies Pty Ltd, dated June 2009). The list of potential heritage items for the study did not include the former Station Master's Cottage. The study included a comparative assessment of the heritage significance on each item to determine whether there was justification for adding the item onto Council's local heritage list.

The list of potential heritage items subject to the 2009 heritage review was developed from a larger list of potential heritage items arising from an earlier study (Tropman & Tropman Marrickville Heritage Study Review, prepared by Tropman & Tropman in 2001) which was reviewed by Council staff. The list also did not include the former Station Master's Cottage.

Section 170 Heritage and Conservation Register

In accordance with section 170 of the *Heritage Act 1977*, all State Agencies are required to keep a "Heritage and Conservation Register" (s170 Register). The s170 Register is to include items that are:

- Listed as heritage items under an environmental planning instrument made under the EP&A Act;
- Subject to an interim heritage order;
- Listed on the State Heritage Register; or
- Identified by the government instrumentality concerned as having State heritage significance.

The Cottage is not listed on the s170 Register maintained by RailCorp. RailCorp's in their response to submissions to Council (letter dated 14 March 2011) and submission to the JRPP (report dated May 2011) provided an explanation for the Cottage being excluded from the Register following a review by RailCorp's s170 Register Review Committee. The Committee was comprised of all internal stakeholders and was established to review the assessments and listing recommendations, drawing on internal asset knowledge and expertise.

A comparative assessment of other railway residences was undertaken by the Committee and it was determined that the Cottage did not have heritage significance and did not warrant listing on the s170 Register. It was considered to be a poor example of its type and did not form part of a heritage group. Examples given included railway residences at Ourimbah, Lithgow or Thirlmere, which RailCorp consider to be better examples of railway residences that also have a physical and historical relationship to a railway station precinct.

A copy of the comparative assessment has not been provided to the JRPP or to Council. RailCorp has advised that the comparative assessment document contains commercial-in-confidence material on other properties and as such can not be released to the public.

Panel Secretariat's Comments on Heritage Significance

RailCorp has not prepared a heritage significance assessment report in relation to the Cottage and considers that the Cottage is not of heritage value. RailCorp advises that the property was considered in its review of the s170 Register and was not been identified as

having potential heritage significance. Further, they advise that there is no planning or legislative requirement that requires them to justify the demolition of a building that is not heritage listed and where the LEP permits demolition with consent.

Council has resolved to refuse the application due to the lack of justification for the demolition of the Cottage including the lack of any written heritage assessment. Council's heritage officer (in the Council's Development Assessment report) raised the following key points:

- The property is a late Victorian free standing single storey dwelling and may have been purpose built as a Station Master's Cottage.
- The heritage status is questioned due to the lack of any written assessment or testimonial from a qualified heritage consultant.
- The fact that no expert has made note of the Cottage in the State listing of the Sydenham Station Group or in the MLEP 2001 does not qualify as an assessment.
- As the site is substantially covered by foliage and is located in a quiet side street, it is reasonable to see why it may have been overlooked.

Following a review of all available information, the Panel Secretariat considers that the heritage value of the former Station Master's Cottage warrants further investigation.

Section 79C (b) and (c) of the EP&A Act requires Council to assess:

- (a) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality, and*
- (b) the suitability of the site for the development,*

In addition, clause 52 of the MLEP 2001 requires that *"Consent must not be granted for development affecting land in the vicinity of a heritage item until the consent authority has considered an assessment of the impact that the development would have on the heritage significance and setting of the item, as well as the impact of the development on any significant views to or from the heritage item"*.

Based on the requirements of Section 79C(b) and (c) of the EP&A Act and clause 52 of the MLEP 2001, the Panel Secretariat considers a more thorough understanding of the heritage value of the Cottage is required in light of Council's assessment and the issues raised in submissions. The heritage assessment will confirm whether the Cottage is considered to have heritage significance.

The Panel Secretariat notes that, due to the ownership patterns of the site, the building may not have been purposefully built as a Station Master's residence. Notwithstanding, the Panel Secretariat considers that the Cottage could potentially be of local heritage significance due to its historic association with and proximity to the Sydenham Station Railway Group (a State and Local Heritage Item), as well as its association with the local community. It is not clear whether the Cottage was considered in the Sydenham Station Railway Group State heritage listing.

The Panel Secretariat notes that there have been a number of opportunities in Council's heritage item review processes for the Cottage to be identified for potential listing, including Council's recent heritage review conducted in 2009. However, it is understood the Cottage has not been identified as a potential item or been assessed for heritage significance. Nevertheless, it should not be assumed the Cottage lacks heritage significance by virtue of not being identified as a potential heritage item and included in Council's review process.

A full heritage study is not normally required for applications involving the demolition of a non-heritage item. However, in the circumstances presented in this application, further investigation is warranted as there is evidence that the Cottage has potential to be of heritage significance through its past uses, association to the community and proximity to other State and local listed heritage items.

The Panel Secretariat considers that a preliminary assessment of heritage significance for the Cottage be undertaken by an appropriately qualified heritage consultant. This should be undertaken prior to the determination of the application by the JRPP.

The preliminary assessment of significance should be undertaken in accordance with the *NSW Heritage Manual - Assessing Heritage Significance* (NSW Heritage Office, 2001).

10.2 Contamination and Site Remediation

A key reason for refusal listed by Council is that the proposal fails to demonstrate Category 1 remediation on the area under the Cottage is required.

RailCorp has advised in their response to submissions that the removal of trees and demolition of the Cottage are required to facilitate the remediation of the site. This is because RailCorp consider the contaminated soil extends under the Cottage.

Numerous site investigation studies have been undertaken which show that the site is contaminated with heavy metals, benzo(a)pyrene and polycyclic aromatic hydrocarbons but limited to fill material.

As outlined in the most recent *Remedial Action Plan* (GHD, 2010) (the 2010 RAP), the vertical extent of the contamination on site is confined to fill material to a maximum depth of approximately 0.8m. In contrast, the horizontal distribution of the impacted fill material is *“not isolated to an easily defined portion of the site and is assumed to extend across the entire site area”*. However, the 2010 RAP (p.16) made specific reference to the existing buildings on the site (which includes the Cottage) where it is stated that the *“Soils beneath the existing structures on the site, comprising an area of approximately 300 m², have not been assessed during previous investigations and the presence or otherwise of impacted fill material beneath the existing building structures has not been confirmed”*.

The 2010 RAP recommends that the surface soils beneath the buildings be investigated for contamination following their demolition and remediated accordingly. If the soils beneath the building footprints are not contaminated, then these areas can be excluded from the remediation area. This suggests that demolition of the Cottage may not necessarily be a prerequisite to the remediation of the site, given that it is unknown if the soils under the Cottage and other buildings are contaminated.

In an earlier *Remedial Action Plan* prepared for the site by HLA in 2004, referred to in the 2010 RAP (p.8), the preferred remediation strategy for the site was determined to be *“the excavation and off site disposal of identified contaminated soils in the open space areas of the Site along with the removal of the paint (lead-based) on the exterior of the Site dwelling. This methodology incorporates the waste minimisation strategy required by the NSW EPA (by leaving the house in situ) and considers the future residential land use at the Site”*. This recommendation suggests that there is opportunity to remediate the land to be suitable for residential use without the need to demolish the Cottage.

It is understood that at the time of preparing the 2004 RAP, RailCorp considered the total demolition of the Cottage was not financially viable and only determined the works required to remove environmental risks. Since that time, RailCorp advises that the demolition of the house and sale of the land is more viable due to increased land values (Refer to **Attachment 4**, Submission from RailCorp – p.17).

Having reviewed all relevant reports, the Panel Secretariat concludes that it is unknown whether the soil under the Cottage is contaminated and requires remediation. It is also unknown as to whether the site could be successfully remediated for residential use if the house were to remain in-situ as this was not part of the scope for the 2010 RAP. Investigations undertaken in 2004 by HLA seem to suggest that this is possible. Despite this, it is not disputed that portions of the open spaces of the site are contaminated and require Category 1 remediation works.

RailCorp, in their submission to the JRPP, states that in accordance with clause 12(1) of SEPP 55 Council is not to refuse an application for Category 1 remediation work unless Council has not satisfied itself that *“...there would be a more significant risk of harm to human health or some other aspect of the environment from the carrying out of the work than there would be from the use of the land concerned...”*

RailCorp suggests that the Council or the JRPP are required to approve the application in accordance with SEPP 55. The Panel Secretariat disagrees with this view and considers Council or the JRPP could refuse the application if, on the basis of an assessment in accordance with section 79C of the EP&A Act, there were other grounds of refusal such as heritage impacts.

Another point of contention raised by RailCorp is that demolition of the house is required due to the contamination risks posed by the building. RailCorp has advised that *“refurbishing the house is not possible or viable given the presence of asbestos, lead paint and termite damage. Even if it were, as the soils contains contamination that poses a risk to human health, the site could not be utilised for any residential use and some non-residential uses, and as such would have to be boarded up to prevent vandalism”*.

The Panel Secretariat has reviewed the *Hazardous Buildings Material Survey* (prepared by HLA, dated 2003) submitted with the application and considers that the report provides recommendations for the safe removal of hazardous building materials in the event that the property is either refurbished or demolished. The report outlines the extent and condition of asbestos and other hazardous materials present on the building structures and determines the impact of these materials on persons occupying the site or on any future demolition, refurbishment or building works. The report recommends:

- Asbestos found in the house are unlikely to pose a risk to occupants while they remain in-situ, undisturbed and in their present condition. However, cover moulds and battens around the study window and the ceiling of the rear lobby will need to be replaced as part of proposed refurbishment works.
- Paintwork where the percentage lead content exceeds 1.0% should be removed in a manner which does not liberate dust and be disposed of in accordance with Australian standards.

Based on the technical studies undertaken for the site, the Panel Secretariat concurs with the conclusions of Council and considers that the Cottage could be refurbished, as reports suggest that asbestos and lead contaminants in paintwork could be safely removed if refurbishment were considered. The technical reports do not specify the level of termite damage to the property and whether this affects the structural integrity of the building. These items could be addressed by the applicant following the findings of the heritage assessment as discussed in Section 10.1.

11. CONCLUSION

The Panel Secretariat has reviewed the following documents:

- Statement of Environmental Effects prepared by RailCorp (dated December 2010) including all attachments;
- Marrickville Council's Development Assessment Report – D0411 Item 8 (dated 5 April 2011);
- Minutes from Marrickville Council's Development Assessment Committee Meeting on 5 April 2011 (for D0411 Item 8);
- Submissions received by Marrickville Council in response to the public notification of the Development Application;
- RailCorp's Response to Submissions, letter dated 14 March 2011;
- RailCorp Submission to the Joint Regional Planning Panel, dated May 2011;

- RailCorp's comments on draft conditions of consent (received 30 May 2011)
- Marrickville Council's comments on RailCorp's comments on the draft conditions of consent (received 2 June 2011).
- Marrickville Review of Potential Heritage Items Volume 1: Final Report, prepared by Paul Davies Pty Ltd, dated June 2009;
- State Agency Heritage Guide issued by the Heritage Council, 2005; and
- Assessing Heritage Significance, NSW Heritage Office, 2005

Having regard to the Panel Secretariat's review, findings and conclusion, the following three options are open to the JRPP's consideration:

1. Accept Council's resolution and assessment on the application; and
 - Agree that there has been an insufficient level of heritage assessment undertaken on the former Station Master's Cottage to conclude that the building has no heritage value and refuse the application. Section 89(1)(a) of the EP&A Act states that a consent authority must not refuse its consent to a Crown development application, except with the approval of the Minister. In the circumstances, the JRPP should refer the application to the Minister for Planning and Infrastructure for determination.
2. Defer making a determination of the development application; and
 - Request the applicant (RailCorp) to provide a preliminary independent assessment of heritage significance on the Station Master's Cottage prepared by an appropriately qualified heritage consultant (the report);
 - The report be provided to the Panel Secretariat within 4 weeks;
 - The report be made available to the Council for comment;
 - If the report confirms the heritage value of Cottage, the applicant is to demonstrate there is no prudent or feasible alternative to the demolition of the Cottage.
 - A supplementary review report to be prepared by the Panel Secretariat for the JRPP's consideration.
3. Accept that further information on the heritage significance of the former Station Master's Cottage is not required and consent be granted to the application for the demolition of the existing improvements (including the Cottage), removal of trees and remediation of the site, subject to conditions of consent provided at **Schedule 1**.

12. RECOMMENDATION

It is recommended that the JRPP:

- (A) **consider** all relevant matters prescribed under the *Environmental Planning and Assessment Act 1979*, as contained in the DA and its associated documents, Marrickville Council's assessment report and resolution, the applicant response to Council's resolution and the findings and recommendations of this report; and
- (B) **resolve** that:
- 1) The evidence indicates the heritage value of the Station Master's Cottage has not been adequately addressed;
 - 2) The applicant be requested to provide a preliminary independent assessment of heritage significance. The report should be prepared by an appropriately qualified heritage consultant and provided to the Panel Secretariat within 4 weeks;
 - 3) Council be provided with the opportunity to comment on the heritage report prior to the Panel Secretariat finalising a supplementary review report; and
 - 4) A supplementary review report be prepared by the Panel Secretariat for the JRPP's consideration following the information being provided by the applicant and comments from the Council.

Prepared by:

Endorsed by:

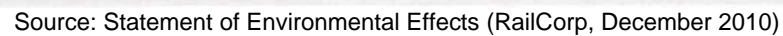
Paulina Hon
A/Team Leader, Panel Secretariat

Paula Poon
Director, Panel Secretariat

LIST OF ATTACHMENTS

1. Site Plan and Tree Removal Plan
2. Site Photographs taken by Council (dated 31 January 2011)
3. Marrickville Council Development Assessment Report, dated 5 April 2011
DA201000599/15143.11
4. RailCorp's submission to the JRPP (received 1 June 2011, dated May 2011)
5. Without prejudice draft conditions of consent prepared by Marrickville Council
6. Applicant's comments on draft conditions of consent (received 30 May 2011)
7. Council's response to applicant's comments on draft conditions of consent
(received 2 June 2011)

PLAN 1 - SITE PLAN



JRPP (Sydney East) Business Paper – 15 June 2011 – 2011SYE059

ATTACHMENT 2 SITE PHOTOGRAPHS

Attachment 3
Minutes to Development Assessment Committee Meeting
&
Marrickville Council Development Assessment Report
dated 5 April 2011

Attachment 4
RailCorp's submission to the JRPP

Attachment 5
Marrickville Council's Without Prejudice Conditions of Consent

Attachment 6
RailCorp's comments on draft conditions of consent

Attachment 7
Council's response to applicant's comments on draft conditions of consent

SCHEDULE 1

CONDITIONS OF CONSENT