



ADDENDUM TO REPORT TO COUNCIL MEETING 24 JULY 2023

SUBJECT: 10.01 Heritage Assessment of 53 and 55 Yeo Street, Cremorne

AUTHOR: Ben Boyd, Executive Strategic Planner

DATE: 19 July 2023

Attachments: Nil

SUMMARY

The main report considers the outcomes of the heritage assessment report prepared by Extent Heritage to determine if 53 and 55 Yeo Street Cremorne are worthy of local heritage listing under Council's Local Environmental Plan (LEP). It recommends that Council revoke the Interim Heritage Order (IHO), as the two properties have not been found to meet the various heritage listing thresholds.

The report was initially considered on 10 July 2023, and Council resolved that it be deferred to enable an urgent Councillor briefing. That briefing was held on Monday 17 July 2023.

1. Initial request

The initial notice of motion requested that council investigate the potential for the properties to be:

- (a) Heritage items in their own right;
- (b) Incorporated within the adjacent heritage conservation area; and
- (c) If incorporated within the adjacent heritage conservation area, their status within it (i.e., *contributory, neutral or uncharacteristic*).

The investigations were split into two stages, with the focus given to the assessment for eventual heritage listing due to the time limitations (six months) of the IHO which applies to the sites.

2. Protection from Demolition

Demolition of any dwelling may be undertaken, subject to first obtaining a development consent or a Complying Development Certificate (CDC) which may be issued by a private certifier.

An IHO grants *temporary protection* from demolition. An IHO can only be placed over a property if a preliminary assessment identifies that the properties may, upon further inquiry and investigation, be eligible for listing as local heritage items under a council's LEP. It cannot be used to establish or expand a heritage conservation area under a council's LEP.

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The IHO initially lasts for six months to enable a council to undertake detailed investigations to determine if a property is worthy listing as a local heritage item under its LEP. However, if a council makes a determination within six months of the gazettal of the IHO to progress a planning proposal to list the property as a local heritage item, then the IHO is extended for a further six months (i.e., a total of 12 months). The extension to the IHO timeframe is to provide enough time to enable the property to be formally listed under the LEP.

Six months is not a lot a long period within to arrive at a determination to proceed with a planning proposal to list a property as a local heritage item under Council’s LEP. Table 1 illustrates the basic steps in the process:

TABLE 1: IHO Heritage Listing Timeframe										
Action	Month									
	March	April	May	June	July	August				
IHO Gazetted	24 Feb									
Engage Consultant										
Prepare Heritage Assessment										
Review Heritage Assessment										
Prepare Planning Proposal										
Prepare Local Planning Panel Report										
NSLPP Meeting										
Prepare Council Report										
Council Meeting - Determination										14 Aug
IHO – 1 st Lapse point										24 Aug

The timeline within Table 1 clearly illustrates that there is insufficient time to seek additional or alternative heritage advice regarding their potential heritage listing.

3. Demolition under SEPP (Exempt and Complying Development Codes) (Codes SEPP)

Dwellings may be demolished as complying development under the Demolition Code (Part 7) to the Codes SEPP, subject to meeting a number of criteria. Clauses 1.17A and 1.19 contain specific exclusions where complying development must not be carried out. With regard to the Demolition Code, dwellings can not be demolished if the land on which they are located are identified as:

- a critical habitat;
- a wilderness area;
- a State Heritage Item listed on the State Heritage Register;
- being subject to an IHO;
- a heritage item identified under an environmental planning instrument (such as an LEP or SEPP); or
- being within an environmentally sensitive area.

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Once the IHO lapses or is revoked, there is potential for the dwellings to be demolished as complying development.

Whilst clause 7.1 (1) of the Codes SEPP outlines that dwelling houses may be demolished as complying development, clause 7.1(2) essentially prohibits the complete demolition of a dwelling if it is located within a heritage conservation area or a *draft* heritage conservation area, unless that demolition is limited to the interior of the dwelling or minor / ancillary structures not visible from the public domain.

As outlined in section 5 below, if it can be found that a conservation area amendment can be supported, it will not reach a “draft heritage conservation area” status until it is placed on public exhibition. Based on proceeding with the Stage 2 Heritage Assessment - *Conservation Area Investigation*, it could take approximately 10 months to reach draft status. Even if Council was in a position to resolve to proceed with an LEP amendment on 24 July 2023 to include the two properties into a conservation area, it could take six months to reach draft status. Importantly, the timing of the Department of Planning in issuing a Gateway Determination (see Table 2 below) to enable the exhibition of such amendment is not assured as it has shown that it will deliberate carefully when active development proposals are involved. In the interim, there would be nothing that could prevent their demolition under a CDC.

4. Heritage Listing

The Heritage Assessment undertaken by Extent Heritage was substantive (comprising more than 170 pages). The purpose of preparing such an extensive assessment, is to ensure that its recommendations could be defensible, if the imposition of the IHO was Appealed in the Land and Environment Court (which all recent IHOs have, including this one).

Further discussion with the consultant has indicated that it is unlikely that any new evidence will be found to support the meeting of the thresholds for heritage listing. It is therefore considered that this avenue has been exhausted in trying to protect the two dwellings.

5. Conservation Area Investigation

Concern was raised by the community that Council had not acted quickly enough with regard to assessing the properties’ potential inclusion within the adjacent conservation area.

As indicated, priority was given to completing the Stage 1 Heritage Assessment for individual listing. This was to ensure that if Heritage Assessment recommended that the properties be heritage listed, Council could make a determination before the IHO lapses.

The process and time required to achieve this is outlined in Table 2 on the next page. Whilst some criticism was levelled at Council for the “delay” in commencing heritage conservation area investigations, the Table 2 clearly shows that the process of inclusion of these properties within the adjacent conservation area, would have been required to have commenced in early-2022 to have achieved gazettal by 24 August 2023 and late 2022 to have achieved at least draft status by this date.

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TABLE 2: Conservation Area Listing Timeframe																	
Action	Month																
	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	
Prepare Heritage Assessment	■	■	■														
Review Heritage Assessment			■														
Prepare Planning Proposal			■														
Prepare Local Planning Panel Report			■	■													
NSLPP Meeting				■													
Prepare Council Report				■	■												
Council Meeting - Determination					27												
Seek Gateway Request						■											
Dept considers Gateway Request						■	■										
Gateway Determination Issued							■	■									
Prep Proposal for Exhibition								■	■	■							
Public Exhibition								■	■	■	■						
Post Exhibition Report										■	■	■	■				
LEP Making													■	■	■	■	
LEP Made															■	■	

Based on current timeframes, it is anticipated that an LEP amendment to amend the conservation area to include the properties would not occur until around September 2024 at the earliest. Following the lapsing or revocation of the IHO, and progression of the assessment of the development application via the Appeal process, it is highly likely that the two dwellings will have been demolished before the conservation area can be applied.

Pursuing the inclusion of the two properties within a conservation area may well prove futile and would not represent an efficient use of Council’s resources.

RECOMMENDATION:

- 1. THAT Council note this addendum.

Ben Boyd, Executive Strategic Planner