



New South Wales Government
Independent Planning Commission

Gateway Determination Review Request for 149 Livingstone Avenue, Pymble

Gateway Determination Advice Report

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12 May 2020

1 INTRODUCTION

1. On 17 April 2020, the NSW Independent Planning Commission (**Commission**) received a referral from the NSW Department of Planning, Industry and Environment (**Department**) to give advice pursuant to section 2.9(1)(c) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) in relation to a planning proposal and Gateway determination in respect of 149 Livingstone Avenue, Pymble (Lot 3 DP 607951) (the **Site**) within the Ku-ring-gai Council Local Government Area (**LGA**).
2. On 21 February 2019, Ku-ring-gai Council (**Council**) lodged the planning proposal (the **Planning Proposal**) with the Department, seeking to include 149 Livingstone Avenue, Pymble as a local heritage item in Schedule 5 to the *Ku-ring-gai Local Environmental Plan 2015* (**KLEP**). No zoning or development standards were proposed to be amended.
3. On 30 June 2019, as delegate of the Minister for Planning and Public Spaces (**Minister**), the Department issued a Gateway Determination that the Planning Proposal did not have strategic merit and should not proceed (the **Gateway Determination**).
4. On 20 September 2019, Council wrote to the Department requesting a review of the Gateway Determination.
5. The matter was referred by the Minister's delegate to the Commission for advice. The letter accompanying the referral requested that the Commission "*review the Planning Proposal and prepare advice concerning the merits of the review request. The advice should include a clear and concise recommendation to the Department confirming whether, in the Commission's opinion, the Planning Proposal should proceed past Gateway in accordance with the original submission*".
6. Mr Peter Duncan AM, Acting Chair of the Commission, nominated Ms Dianne Leeson (Chair) and Ms Wendy Lewin as the Commission's Panel providing advice on the review of the Gateway Determination.

1.1 Site and Locality

7. The Department's Gateway Determination Report (**Department's Gateway Report**) dated 4 June 2019 states the Site is 149 Livingstone Avenue, Pymble (Lot 3 DP 607951).
8. The 'Site' for the purposes of this Advice Report is defined as the property Lot 3 DP 607951 including the existing dwelling structure.
9. The Department's Gateway Report states:

The site is in Pymble in a suburban setting surrounded by predominantly low-density residential development and characterised by one-storey to two-storey residential dwellings. Pymble Station is approximately 1.8km (23 minutes walk) from the site...

The site contains a single-storey house (a Federation-style bungalow) on the west side of Livingstone Road...
10. The location of the Site is illustrated in Figure 1 below. The front elevation of the existing dwelling at the Site referred to in paragraph 9 is provided in Figure 2.
11. The Department's Gateway Report states the Site and surrounding area are zoned R2 Low Density Residential under the KLEP.

Figure 1 – Aerial view of the Site (Source: Department's Gateway Report)



Figure 2 – Front elevation of the Site (Source: Department's Gateway Report)



1.2 The Planning Proposal

12. The Department's Gateway Review Justification Assessment (**Department's Assessment**) accompanying the Department's referral to the Commission states:

The planning proposal seeks to amend Schedule 5 of Ku-ring-gai Local Environmental Plan 2015 and the corresponding Heritage Map to heritage list the dwelling house at 149 Livingstone Avenue, Pymble (Lot 3, DP 607951). No rezoning or other development standards are proposed to be amended.

13. The Department's Gateway Report states the Planning Proposal is in response to a development application (**DA0152/18**) submitted by Goldfields Central Pty Ltd (the **Applicant**) in April 2018 seeking to demolish structures on three lots including the existing dwelling on the subject Site. The Department Gateway Report states DA0152/18 was refused by Council in August 2018 and was subject to an appeal in the NSW Land and Environment Court (**NSWLEC**). The Department's Assessment states DA0152/18 was approved by the NSWLEC in *Goldfields Central Pty Ltd v Ku-ring-gai Council* [2019] NSWLEC 1434 (**NSWLEC Decision**).

1.3 History of the Planning Proposal and Gateway Determination

27 April 2018	The Applicant submitted DA0152/18 to Council
8 May 2018	IHO for the Site was issued by Council
21 August 2018	DA0152/18 refused by Council
16 October 2018	Council's Heritage Assessment recommending that Council does not proceed with the heritage listing of the Site was considered at the Ordinary Meeting of Council on 16 October 2018
17 December 2018	Ku-ring-gai Local Planning Panel advised Council not to refer the Planning Proposal to the Department for a Gateway Determination
21 February 2019	Council's Planning Proposal Report received by the Department
10 May 2019	IHO for the Site was issued by the Special Minister of State
30 June 2019	Department issued a Gateway determination that the Planning Proposal should not proceed
13 September 2019	NSWLEC Decision. DA0152/18 is approved subject to conditions.
17 September 2019	Council resolved to request the Minister review the Gateway determination
20 September 2019	Council lodged a request to review the Gateway determination
16 April 2020	Department's request to the Commission to review Gateway determination
17 April 2020	The Commission received the request to review the Gateway determination

1.4 The Department's Decision

14. The Department's Gateway Report states:

It is recommended that the planning proposal does not proceed. It is considered that the proposal does not provide sufficient evidence that the site should be identified as a local heritage item, considering:

- there was no formal investigation into the site's potential heritage significance until a development application was lodged for the site. At that time, the community requested an IHO be placed on the site to prevent the dwelling's demolition;*

- *the proposal contains conflicting heritage advice commissioned by different sources: Council; the proponent of the development application; and the residents' action group;*
 - *one report, commissioned by the Residents' Action Group 149, recommended heritage listing the property based on the dwelling containing historic, associational, aesthetic and social values. The expert who prepared this report did not have access to the site;*
 - *two reports, one commissioned by Council and one by the development application proponent, did not support listing the item, identifying that the dwelling does not contain a sufficient level of heritage significance and has been altered over time; and*
 - *when resolving to prepare the planning proposal, the Ku-ring-gai Local Planning Panel did not support the listing and advised Council not to refer the planning proposal to the Department for a Gateway determination.*
15. The Department's Gateway Report recommended the Planning Proposal should not proceed for the following reasons:
1. *there is conflicting heritage advice and the proposal was not supported by the local planning panel and Council's Heritage Specialist Planner; and*
 2. *insufficient justification has been presented to support the heritage listing of the site. The original Federation-style house has undergone significant alterations over time, resulting in a reduction of its historical and aesthetic values, which are unlikely to be reversed.*

2 THE COMMISSION'S CONSIDERATION

2.1 Material considered by the Commission

16. In this review, the Commission has carefully considered the following material (**Material**):
- the Heritage Significance Assessment (**Betteridge Heritage Assessment**), prepared by Betteridge Consulting Pty Ltd for Residents' Action Group 149 (**RAG149**), dated 18 June 2018;
 - the Heritage Assessment (**Anne Warr Heritage Assessment**) prepared by Anne Warr for Council, dated 27 September 2018;
 - the Heritage Assessment (**Council Heritage Assessment**) prepared by Council's Heritage Officer, dated 16 October 2018;
 - Council's Planning Proposal Report, dated February 2019;
 - the Department's Gateway Report, dated 4 June 2019;
 - the Heritage Assessment Report (**DFP Heritage Assessment**) prepared by DFP Planning Pty Ltd (**DFP**) for RAG149, dated September 2019;
 - the Heritage Peer Review (**Paul Davies Peer Review**) prepared by Paul Davies Pty Ltd (**Paul Davies**) for the Applicant, dated 4 March 2020;
 - the Heritage Peer Review (**Urbis Peer Review**) prepared by Urbis Pty Ltd (**Urbis**) for the Applicant dated 18 March 2020;
 - the Department's Assessment accompanying the Department's referral, dated 16 April 2020;
 - correspondence from the Minister's Office, dated 6 May 2020; and
 - correspondence from Council, dated 11 May 2020.

2.2 Statutory Context

NSW Heritage Manual – Assessing Heritage Significance (2001)

17. The Department’s Gateway Report states: “*The NSW Heritage Manual determines seven criteria that heritage items of local significance are assessed against*”.

18. The Department’s Assessment states:

The Department has assessed the review request documentation submitted by Council. This incorporates the Heritage Assessment Report prepared by DFP Planning Consultants which outlines new information that the property meets the threshold for inclusion as a heritage item under criteria (b), (c) and/or (d) of The NSW Heritage Manual.

19. The Commission notes that the *NSW Heritage Manual – Assessing Heritage Significance (2001)* (**NSW Heritage Manual**) states “*An item will be considered to be of State (or local) heritage significance if, in the opinion of the Heritage Council of NSW, it meets one or more of the following criteria*” set out in **Table 1** below.

Table 1 - NSW Heritage Assessment Criteria (Source: NSW Heritage Manual)

Criterion (a)	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);
Criterion (b)	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)
Criterion (c)	An item is important in demonstrating aesthetic characteristics and/or a high degree of creative or technical achievement in NSW (or the local area);
Criterion (d)	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
Criterion (e)	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)
Criterion (f)	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)
Criterion (g)	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 <ul style="list-style-type: none"> • cultural or natural places; or • cultural or natural environments.)

20. The Commission has therefore given consideration to the Material and above Criteria in sections 2.3 to 2.9 of this report.

2.3 Criterion (a) – Historical Significance

Betteridge Heritage Assessment

21. The Betteridge Heritage Assessment prepared for RAG149 dated 18 June 2018 states the Site is associated with a significant historical phase in the development of Pymble and retains considerable original physical fabric satisfying the inclusion guidelines for Criterion (a).

Anne Warr Heritage Assessment

22. The Anne Warr Heritage Assessment prepared for Council dated 27 September 2018 states the house and grounds demonstrate the process of land subdivision in West Pymble. The Anne Warr Heritage Assessment also states the house and grounds have been substantially altered since construction and concludes the Site has little State and local historical significance.
23. The Anne Warr Heritage Assessment also states:

Although the house is not deemed to meet the criteria for local or state heritage listing, it demonstrates changes to the suburb of West Pymble over the last century, and for this reason the house and grounds should be archivally documented before any future changes are made.

Commission's Findings

24. The Commission agrees with the Anne Warr Heritage Assessment in paragraph 22 and finds that the Site is not considered to have heritage value by reason of historical association significance for the reasons set out in paragraph 50 and therefore does not meet the threshold for inclusion as a heritage item in accordance with Criterion (a) of the NSW Heritage Manual.
25. The Commission agrees with the Anne Warr Heritage assessment in paragraph 23 that although the Site does not meet the criteria for heritage listing, the house and grounds at the Site should be archivally documented before any future changes are made.

2.4 Criterion (b) - Associative Significance

Betteridge Heritage Assessment

26. The Betteridge Heritage Assessment states:

The house and land at 149 Livingstone Avenue, Pymble have strong historical associations with the architect Thomas James Darling and the Hamilton family who owned substantial lands in Pymble and it was the sale of these lands which resulted in the modern subdivision patterns evident in major parts of Pymble today.

The subject property satisfies the inclusion guidelines for Criterion B at a local level

Anne Warr Heritage Assessment

27. The Anne Warr Heritage Assessment states:

it has been speculated that the house was designed by architect TJ Darling, who occupied the property with his wife and four children between 1919 and 1922, there is no evidence to substantiate this claim...

There is a minor association with Frederick James Hamilton, a prominent figure in the early development of West Pymble...

28. The Anne Warr Heritage Assessment concluded the Site has little State and local associative significance.

Council Heritage Assessment

29. The Council Heritage Assessment states:

The historical association with the architect Thomas Darling is disputed in the historical research in the Paul Davies Pty Ltd and the Anne Warr, Heritage Consultant reports who both state the identity of the architect, if any, is unknown...

The architect Thomas Darling did own the house and lived there but he was not the original owner and there is no conclusive evidence that he was the architect..

The strong historical association with the Hamilton family is also disputed. Paul Davies describes the association with the Hamilton family as nominal and Anne Warr describes this association as minor.

Department's Gateway Report

30. The Department's Gateway Report states:

George Hamilton built this property in 1912 and put the dwelling on the market. There is no evidence to demonstrate the property was designed and built specifically for the Hamilton family to settle there.

There is no evidence to support the historical association of the property with architect Thomas Darling as a designer. He bought and lived in this property for four years and sold it.

DFP Heritage Assessment

31. The DFP Heritage Assessment prepared for RAG149, dated September 2019 provided additional information "*which establish that a significant group of persons, namely the Hamilton family, had strong connection with the house at 149 Livingstone Avenue*". The DFP Heritage Assessment states: "*the house was built by George Hamilton and lived in by members of the Hamilton family for over 44 of its first 51 years*".

32. The DFP Heritage Assessment states there is:

a strong connection between the Hamilton family and the house for over 44 years of its first 51 years. In particular, they demonstrate that George Hamilton and Frederick Hamilton, who were influential members of the local community, had a strong association with the house at 149 Livingstone Avenue. Those facts, in my opinion, outweigh the facts that the house was not designed for the Hamilton family and that members of the Hamilton family were not the first persons to live in it.

In my opinion, this information adds weight to the property meeting the threshold for listing under criterion B.

Paul Davies Peer Review

33. The Paul Davies Peer Review, dated 4 March 2020 states:

The connection with George Hamilton’s parents-in-law does not change the speculative nature of the development and provides only a minor and peripheral link to the property...

the first heritage report by C Betteridge claimed the house was designed by the architect Darling as there is evidence he lived there. This was a major reason for the IHO being placed. This was not correct in that while he was a short-term owner, he did not design or build the house...

There is no link to an architect or designer that adds to the statement of significance

Urbis Peer Review

34. The Urbis Peer Review dated 18 March 2020 states:

no evidence has been presented, to date, which suggests that the entire family – including unnamed children of the patriarch who owned and occupied the subject dwelling – were of themselves of any great importance in the same way as Frederick James Hamilton. Moreover, there is no evidence that Frederick James Hamilton himself ever lived at the subject dwelling, nor that he had any particularly meaningful association with it.

35. The Urbis Peer Review concluded:

the subject site cannot be said to be “associated with a significant [...] person, or group of persons” as required by the guidelines for inclusion of this criterion. Rather, it can only be concluded, on the basis of the evidence provided, that the subject site only “has incidental or unsubstantiated connections with historically important people”, which would render it incapable of meeting the threshold to fulfil criterion (b).

Department’s Assessment

36. The Department’s Assessment states:

There is also no evidence that Frederick James Hamilton himself ever lived at 149 Livingstone Avenue. 149 Livingstone Avenue is thus not considered to have heritage value by reason of historical association significance.

The assessment by DFP Planning Consultants has not raised new evidence that the property meets the threshold for inclusion as a heritage item of criteria (b) in the NSW Heritage Manual.

Commission’s Findings

37. The Commission notes the historical association with the architect Thomas Darling is disputed in the expert reports. The Commission finds that although the aforementioned expert reports (**expert reports**) agree Thomas Darling bought and lived in the property for a short term, there is no conclusive evidence to support the historical association of the property with the architect Thomas Darling as its designer.

38. The Commission notes the historical association with the Hamilton family is also disputed in the expert reports. The Commission finds that although there may be an association with the Hamilton family, there is no evidence that Frederick James Hamilton, a prominent figure in the early development of West Pymble, ever lived at the subject dwelling, nor that he had any particularly meaningful association with it. The Commission is therefore of the view that the Site does not have any substantial connections with historically important people.
39. The Commission finds that the Site is not considered to have heritage value by reason of historical association significance for the reasons set out in paragraph 37 and 38 above and therefore does not meet the threshold for inclusion as a heritage item in accordance with Criterion (b) of the NSW Heritage Manual.

2.5 Criterion (c) – Aesthetic Significance

Betteridge Heritage Assessment

40. The Betteridge Heritage Assessment states:

The house and its setting at 149 Livingstone Avenue have landmark qualities in the local cultural landscape and the house exemplifies a particular architectural style. The house was also the home of architect Thomas James Darling, whose life and body of work deserve further research. The property is considered to satisfy the inclusion guidelines for this criterion.

Anne Warr Heritage Assessment

41. The Anne Warr Heritage Assessment states:

The house cannot be considered a major work of a prominent architect, as there is no evidence to substantiate it being a work of Thomas James Darling. The name of the original architect remains unknown.

42. In relation to the dwelling's aesthetic significance, the Anne Warr Heritage Assessment states:

The house is a competent and well-built example of federation style architecture from 1912. It is well-sited on its block and retains some charming original features such as a return verandah and two protruding bay windows facing north-east. Unfortunately, the original form and setting of the house have been largely lost due to the several subdivisions of the block and the 1998 addition which added two large dormer windows to the roof and demolished the rear of the house for a large family room, kitchen area. The face brickwork to the exterior has been painted and only one original chimney remains reducing the significance of the external façade. The original internal joinery is of a standard design of the era and has been over-painted in recent years, reducing its heritage value.

The 1998 building works saw roof dormers added for an attic bedroom suite and a large extension at the rear of the property which included a family room, kitchen, laundry, bathroom and pool area. Previous to these works a triple car-port had been added, the face brickwork over-painted, and a timber picket fence and gates added to Livingstone Avenue (1995). Only one of the original chimneys survives.

43. The Anne Warr Heritage Assessment concluded the Site has little State and local aesthetic significance.

Council Heritage Assessment

44. The Council Heritage Assessment states:

There are many small changes to the property that have a negative impact on its intactness. Isolated, these changes would not be reason enough to ignore the value of a Federation building to the heritage of this local area, but together the cumulative effect is a building and a setting that are no longer intact and do not represent a good example of type for this architecture in Ku-ring-gai. Other changes include the loss of original fabric like changes to the verandah detailing, lost chimneys, original facebrick has been painted, original Wunderlich ceilings removed and original interior joinery painted white. Other unsympathetic changes include the addition of a first floor in the roof space and with two new prominent gable dormers, the addition of a three car garage and the addition of an open plan family room at the rear of the house.

Department's Gateway Report

45. The Department's Gateway Report states:

This property is not a rare example of the type, and the original Federation-style house has undergone significant alterations over time, reducing its historical and aesthetic values.

DFP Heritage Assessment

46. The DFP Heritage Assessment states:

The reduction of curtilage, while regrettable, has not diminished the intrinsic values of the house. I have not inspected the house at the site, but I have seen the drawings prepared by Wayne McPhee and Associates in 1997; photographs of the house in the reports and read the descriptions of the house exterior and interior. The architect's drawings show that the ground floor alterations were at the rear of the house. The attic conversion has resulted in creation of an oversized dormer presenting to the street, which I, as an architect with extensive heritage experience, say is an inappropriate design approach. Nevertheless, the primary characteristics of the Federation period house remain and can be interpreted and appreciated.

Urbis Peer Review

47. The Urbis Peer Review states:

the existing dwelling demonstrates all of the guidelines for exclusion under this criterion, which are reproduced below:

- *An item is not a major work by an important designer or artist*
- *An item has lost its design or technical integrity*
- *[The] positive visual or sensory appeal or landmark and scenic qualities [of the item] have been more than temporarily degraded*
- *An item has only a loose association with a creative or technical achievement*

Department's Assessment

48. The Department's Assessment states:

The assessment by DFP Planning Consultants has not raised new evidence that the property meets the threshold for inclusion as a heritage item of criteria (c) in the NSW Heritage Manual. The relevant considerations raised were previously considered by previous heritage reports and the Gateway assessment

Commission's Findings

49. As stated in paragraph 37, there is no conclusive evidence to support the historical association of the property with architect Thomas Darling as a designer.
50. The Commission finds that although the original form and setting of the property and dwelling may be an example of Federation style architecture, there have been a number of alterations made which have had a negative impact on its intactness and have reduced its historical and aesthetic value. The Commission is of the view that the cumulative effect of the alterations has resulted in a building and setting that does not represent a good example of Federation style architecture in Ku-ring-gai.
51. The Commission agrees with the Urbis Peer Review that the existing dwelling meets the guidelines for exclusion under Criterion (c) as set out in paragraph 47.
52. The Commission finds that the Site is not considered to have heritage value by reason of aesthetic significance and for the reasons set out in paragraphs 49 to 51 does not meet the threshold for inclusion as a heritage item in accordance with Criterion (c) of the NSW Heritage Manual.

2.6 Criterion (d) – Social Significance

Betteridge Heritage Assessment

53. The Betteridge Heritage Assessment states:

Social value is hard to quantify without detailed surveys of those who have been associated with a place, but the very high degree of concern raised in the local community by the potential loss of the subject property through its proposed demolition and subsequent redevelopment suggests that the place is esteemed by a significant group in the local community and that it contributes to the community's sense of place and identity.

It is considered that the subject property satisfies the inclusion guidelines for Criterion D at a local level.

Anne Warr Heritage Assessment

54. The Anne Warr Heritage Assessment states:

As a private house, the subject property does not have a special association with a particular community or cultural group in NSW. Although it was part of the early development of West Pymble, it was not the first house built along Livingstone Ave, with a number of houses preceding its construction, such as the locally heritage-listed house Wood Martin at 104 Livingstone Avenue built in 1905, which is extant.

55. The Anne Warr Heritage Assessment concluded the Site has little State and local social significance.

Council Heritage Assessment

56. The Council Heritage Assessment states:

Consistent with the Assessing Heritage Significance guidelines, as the retention in preference to an alternative is the basis for the community support, for 149 Livingstone Avenue Pymble to have validity as an item there must be additional significance consistent with Criterion D (social significance) or one of the other criteria. The assessment of this building under the other criteria fails to reach the threshold for local significance.

Department's Gateway Report

57. The Department's Gateway Report states:

NSW Heritage Manual recommends that 'there must be evidence that the item is separately valued under this criterion or one of the other criteria to have any validity as a significant heritage item'. The Council report outlines that the assessment of this property and setting under the other criteria also fails to reach the threshold for local significance.

DFP Heritage Assessment

58. In relation to the inclusion guidelines for Criterion (d), the DFP Heritage Assessment states:

the local residents, including Residents' Action Group 149, who support the heritage listing of the Property, are clearly identifiable as a group.

These facts also indicate that retention of 149 Livingstone Avenue is important to the community's sense of place, which satisfies the second of the guidelines for inclusion.

The fact that Councillors, who represent residents, voted 9 to 1 on 12 February 2019 to proceed with an application for Gateway approval to list the Property as a heritage item is another factor indicating that the council recognises the importance of the Property to local residents.

59. The DFP Heritage Assessment states the exclusion guidelines for Criterion (d) are not applicable for the following reasons:

The first is: "only important to the community for amenity reasons". The Property does not provide the community with any amenity, other than visual in the streetscape.

The second guideline is "retained only in preference to a proposed alternative". That is not the case here as the local community wants the house heritage listed. It is not a question of the community being prepared to accept demolition of the house if an alternative development proposal is put forward which the community prefers to preservation of the house. A strict application of this guideline would mean that any proposal for heritage listing by a community group would be invalidated if some other development is proposed for a property. It must be read against the overwhelming satisfaction of the inclusion guidelines for criterion D.

Paul Davies Peer Review

60. The Paul Davies Peer Review provides the following comment on the DFP Heritage Assessment in relation to Criterion (d) – Social Significance:

The report by DFP takes a selective view of social significance and appears to ignore the extensive material written to assist in understanding this concept. It is well established that social significance does not reside in action groups arising to prevent particular developments irrespective of the value of the place subject to any particular proposal.

61. The Paul Davies Peer Review states:

The property at no. 149 has never been heritage listed (prior to the IHO which is a protection order and not a listing). There have been numerous heritage studies, reviews, public information sessions, advertising of studies and outcomes over decades in Kuring-gai and the community, often with the National Trust at the front, have been active in nominating places and precincts. In fact, the community mapping of precincts in particular has formed the basis of the current precinct listings.

The community, in a pro-active manner, acted, made representations and pushed for the recognition of heritage values across Kuring-gai and it could be argued that the social action over sustained periods has resulted in social significance being possible to attribute to a range of places. Interestingly however, that is not recognised in listings and rarely is.

The building at no. 149 has not been identified, nominated or suggested for heritage listing by the community (or by heritage consultants undertaking studies) throughout that period. There has been no community action or program seeking to expand the heritage listings of West Pymble.

62. The Paul Davies Peer Review states:

...prior to the current DA on the site there has been no traceable interest at any level community or otherwise in the property.

It is clear that there is a large community response to the development but this is not social value as set out in the criteria. A different view may be formed if the community action to heritage list this place had taken place separate to a development proposal so that the issue of community concern for the building could be ascertained in contrast to community concern in relation to a new development.

Urbis Peer Review

63. The Urbis Peer Review states:

the site does not fulfil the guidelines for inclusion under this criterion but, rather, that it can meet guidelines for exclusion. The residents' group which has recently formed to oppose this proposed development does not, in any meaningful sense, constitute an identifiable group; similarly, it has not been established that their opposition to this development has been derived from a particular inherent attachment to the existing dwelling. Moreover, the NSW Heritage Manual notes that a specific guideline for exclusion under this criterion is that "the community seeks [the item's] retention only in preference to a proposed alternative." The residents' action group was created out of opposition to the proposed development on the site. The manual further notes that, if attachment is created primarily out of community rejection of a proposed alternative, "there must be evidence that the item is separately valued in accordance with this criterion or one of the other criteria to have any validity as a significant heritage item." As social significance has not been fulfilled on the basis of the guidelines for inclusion – and as it has been demonstrated that none of the criteria can be fulfilled – a finding of social significance cannot be made.

Department's Assessment

64. The Department's Assessment states:

The assessment by DFP Planning Consultants has not demonstrated the property meets the threshold for inclusion as a heritage item of criteria (d) in the NSW Heritage Manual. The relevant considerations raised were previously considered by previous heritage reports and the Gateway assessment.

Commission's Findings

65. The Commission notes the social significance of the Site is disputed by the experts. The Commission agrees with the DFP Heritage Assessment in paragraph 58 that RAG149 support the heritage listing of the Site and are identifiable as a community group.
66. The Commission notes there have been numerous heritage studies in Ku-ring-gai, that the community have been active in nominating items for consideration and that the Site has not been identified, nominated or suggested for heritage listing by the community or by heritage consultants as stated in the Paul Davies Peer Review in paragraph 61. The Commission notes that prior to DA0152/18 there has been no traceable interest at any level, - community or otherwise - in the Site as stated in the Paul Davies Peer Review in paragraph 62. The Commission is of the view that the community response was created out of opposition to DA0152/18.
67. The Commission notes the NSW Heritage Manual states a specific guideline for the exclusion under Criterion (d) applies when "*the community seeks [the item's] retention only in preference to a proposed alternative*".
68. The Commission finds that the community interest has been created primarily out of community rejection of a proposed alternative. The Commission finds that it has not been established that the community opposition to DA0152/18 has been derived from a particular inherent attachment to the existing dwelling. The Commission is therefore of the view that the Site meets the exclusion guidelines for Criterion (d) of the NSW Heritage Manual.
69. The Commission finds that the Site is not considered to have heritage value by reason of social significance and does not meet the threshold for inclusion as a heritage item in accordance with Criterion (d) of the NSW Heritage Manual for the reasons set out in paragraphs 65 to 68.

2.7 Criterion (e) – Technical/Research Significance

Betteridge Heritage Assessment

70. The Betteridge Heritage Assessment states:

It is considered unlikely that further research of the physical fabric of the house or garden at 149 Livingstone Avenue, Pymble, has potential to yield new or substantial scientific or archaeological information but it is considered that further research of the historical records associated with the property and the Hamilton land holdings at Pymble could contribute to enhanced knowledge and understanding of the area's history.

It is considered that the property satisfies the Exclusion Guidelines for this criterion.

Anne Warr Heritage Assessment

71. The Anne Warr Heritage Assessment states:

The archaeological potential of the site is considered to be low with any early resources likely to have been highly disturbed by the extensive sub-division of the original block, by the major roof alterations of 1998, the demolition of all but one original chimney, the addition of ducted air conditioning throughout the house and the demolition of the rear portion of the house for a family room / kitchen addition on a concrete slab in 1998.

72. The Anne Warr Heritage Assessment concluded that the Site has little State or local significance with respect to Criterion (e).

Commission's Findings

73. The Commission agrees with the Anne Warr Heritage Assessment in paragraph 71 that due to the disturbed nature of the property the archaeological potential of the Site is considered to be low. The Commission agrees with the Betteridge Heritage Assessment in paragraph 70 that it is unlikely that further research has potential to yield new or substantial scientific or archaeological information.
74. The Commission finds that the Site is not considered to have heritage value by reason of technical/research significance and does not meet the threshold for inclusion as a heritage item in accordance with Criterion (e) of the NSW Heritage Manual.

2.8 Criterion (f) – Rarity

Betteridge Heritage Assessment

75. The Betteridge Heritage Assessment states:

Without further research of other examples of the Federation Bungalow architectural style across Ku-ring-gai and NSW, it is difficult at this stage to satisfy this criterion, therefore it is concluded that the property satisfies the Exclusion Guidelines for this criterion.

Anne Warr Heritage Assessment

76. The Anne Warr Heritage Assessment states:

The comparative analysis undertaken using the NSW state heritage register data-base revealed 544 houses listed as being of local significance built during the period 1915 to 1920, and 2011 locally listed items from the period 1900 to 1920. Most of these heritage-listed items demonstrated characteristics of intactness, original curtilage and setting, or special qualities of internal or external finishes and details. While 149 Livingstone Avenue is a competent and well-built house of its era, it does not exhibit any outstanding finishes or details that could be considered rare. Its original face brickwork and internal joinery has been over-painted and its original roofscape has been substantially modified.

Commission's Findings

77. The Commission agrees with the Anne Warr Heritage Assessment that the Site should not be considered as rare. The Commission agrees with the Betteridge Heritage Assessment that the Site satisfies the exclusion guidelines for Criterion (f).
78. The Commission finds that the Site is not considered to have heritage value by reason of rarity and does not meet the threshold for inclusion as a heritage item in accordance with Criterion (f) of the NSW Heritage Manual.

2.9 Criterion (g) – Representative Significance

Betteridge Heritage Assessment

79. The Betteridge Heritage Assessment states:

From the limited Comparative Analysis carried out for this Assessment, it is concluded that the subject property is representative of a particular architectural style i.e. Federation Bungalow. The property is considered to satisfy the Inclusion Guidelines for this criterion.

Anne Warr Heritage Assessment

80. The Anne Warr Heritage Assessment states:

149 Livingstone Avenue is:

- *A representative, but extensively altered, example of federation style architecture expressed in suburban Sydney, with many original features no longer extant.*
- *A representative example of a well-sited house on a suburban block, with living and main bedrooms facing north-east as well as a large return verandah.*
- *A representative example of the early subdivision of Lemon Hedge Farm by FJ Hamilton, as part of the early development of West Pymble.*

81. The Anne Warr Heritage Assessment concluded that the Site has little State and local representative significance.

Council Heritage Assessment

82. The Council Heritage Assessment states “*149 Livingstone Avenue, Pymble is not a rare type being a Federation bungalow*”.

83. As stated in paragraph 44, the Council Heritage Assessment states the cumulative effect of changes to the Site has resulted in a “*building and setting that are no longer in tact and do not represent a good example of type for this architecture [Federation] in Ku-ring-gai*”.

Department’s Gateway Report

84. The Department’s Gateway Report states: “*This property is not a rare example of the type, and the original Federation-style house has undergone significant alterations over time, reducing its historical and aesthetic values*”.

Urbis Peer Review

85. The Urbis Peer Review states:

While the dwelling is no doubt legible as an example of a Federation-era dwelling, it is by no means the best, or the most intact, or the most notable example within the local area.

The subject dwelling “has lost the range of characteristics of [the] type” and cannot be said to “represent well the characteristics that make up a significant variation of [the] type” – thus meeting two of the three guidelines for exclusion under this criterion. It is therefore unable to meet the threshold to demonstrate representative significance in any meaningful way.

Department’s Assessment

86. The Commission notes there are further comments in the Department Assessment in relation to the representative significance of the Site.

Commission’s Findings

87. As set out in paragraph 50, the Commission is of the view the cumulative effect of the alterations has resulted in a building and setting that does not represent a good example of Federation style architecture in Ku-ring-gai.

88. The Commission finds that the Site is not considered to have heritage value by reason of representative significance and for the reason stated in paragraph 87 does not meet the threshold for inclusion as a heritage item in accordance with Criterion (g) of the NSW Heritage Manual.

3 CONCLUSION: THE COMMISSION'S ADVICE

89. The Commission has undertaken a review of the Gateway Determination as requested by the Department and advises as follows.

90. Based on its consideration of the Material, the Commission advises that the merit of listing the Site as a local heritage item under Schedule 5 of the KLEP is not sufficiently justified as it is not able to fulfil any of the criteria used to assess heritage items in NSW.

91. The reasons for the Commission's position are as follows:

- the Site is not considered to have heritage value by reason of historical association significance and does not meet the threshold for inclusion as a heritage item in accordance with Criterion (b) of the NSW Heritage Manual, noting:
 - there is no conclusive evidence to support the historical association of the property with the architect Thomas Darling as the designer of the dwelling; and
 - there is no evidence that Frederick James Hamilton, a prominent figure in the early development of West Pymble, ever lived at the subject dwelling, nor that he had any particularly meaningful association with it.
- the Site is not considered to have heritage value by reason of historical, aesthetic and representative significance and does not meet the threshold for inclusion as a heritage item in accordance with Criteria (a), (c) and (g) of the NSW Heritage Manual, noting:
 - there have been a number of alterations made which have had a negative impact on its intactness and have reduced its historical and aesthetic value.
 - the cumulative effect of the alterations have resulted in a building and setting that no longer represents a good example of federation style architecture in Ku-ring-gai.
- the Site meets the exclusion guidelines for Criterion (d) of the NSW Heritage Manual and is not considered to have heritage value by reason of social significance and does not meet the threshold for inclusion as a heritage item in accordance with Criterion (d) of the NSW Heritage Manual, noting:
 - there have been numerous heritage studies undertaken in Ku-ring-gai prior to DA0152/18. Significantly, the Site has not previously been identified, nominated or suggested for heritage listing by the community or by heritage consultants;
 - the community interest has been created primarily out of community rejection of a proposed alternative;
 - prior to DA0152/18 there has been no traceable interest at any level community or otherwise in the property; and
 - it has not been established that the community opposition to DA0152/18 has been derived from a particular inherent attachment to the existing dwelling.
- the Site is not considered to have heritage value by reason of technical/research significance and does not meet the threshold for inclusion as a heritage item in accordance with Criterion (e) of the NSW Heritage Manual, noting:
 - due to the disturbed nature of the property the archaeological potential of the Site is considered to be low and it is unlikely that further research has potential to yield new or substantial scientific or archaeological information.
- the Site is not considered rare and meets the exclusion guidelines for Criterion (f)

thereby not meeting the threshold for inclusion as a heritage item in accordance with Criterion (f) of the NSW Heritage Manual:

92. The Commission advises that the Planning Proposal should not proceed past Gateway Determination.
93. The Commission further advises that the house and grounds at the Site should be archivally documented before any future changes are made.



Dianne Leeson (Chair)
Member of the Commission



Wendy Lewin
Member of the Commission