



New South Wales Government
Independent Planning Commission

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Holt Avenue Cremorne Gateway Review

PP-2022-2712/GR-2022-22

Advice Report

Dr Peter Williams (Chair)

9 March 2023



1. Introduction

1. On 8 February 2023, the NSW Independent Planning Commission (**Commission**) received a referral from the NSW Department of Planning and Environment (**Department**) requesting advice pursuant to section 2.9(1)(c) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) in relation to planning proposal PP-2022-2712 (**Planning Proposal**).
2. On 28 July 2022, North Sydney Council (**Council**) lodged the Planning Proposal with the Department, seeking to identify the residences at eight properties, being 115, 117, 119, 121, 123, 125, 131 and 133 Holt Avenue, Cremorne (collectively, the **Land**), as local heritage items under the North Sydney Local Environmental Plan 2013 (**NSLEP 2013**).
3. On 7 October 2022, as delegate of the Minister for Planning (**Minister**), the Department issued a Gateway Determination that the Planning Proposal should not proceed (the **Gateway Determination**).
4. On 11 October 2022, Council initiated Gateway Determination Review GR-2022-22 to review the Department's decision (**Review Request**).
5. On 8 February 2023, the Department requested the Commission review the Planning Proposal, consider the merits of the Review Request and provide advice, including a clear and concise recommendation to the Minister's delegate as to whether the Gateway Determination should be amended.
6. Professor Mary O'Kane AC, Chair of the Commission, nominated Dr Peter Williams to constitute the Commission Panel in providing advice to the Department on the Gateway Determination Review Request.

2. Gateway Determination Review

2.1 The Planning Proposal

7. The Department's Gateway Determination Report, dated 30 September 2022 (**Gateway Determination Report**), states that the objective of the Planning Proposal is to amend the NSLEP 2013 to identify eight properties as local heritage items to be included within Schedule 5 – Environmental Heritage and the Heritage Map of NSLEP 2013. The Land subject to the Planning Proposal is set out in Table 1 below. Council in its meeting with the Commission on 23 February 2023 confirmed that, as two of the properties (131 and 133 Holt Avenue) had been demolished, it was now seeking the listing of 115-123 Holt Avenue (as a group), and 125 Holt Avenue (as an individual item).

Table 1 - The subject Land (Source: Gateway Determination Report, pg 2)

Address	Property Description
115 Holt Avenue	Lot 1 DP 929395
117 Holt Avenue	Lot 1 DP 980 449
119 Holt Avenue	Lot 1 DP 929074
121 Holt Avenue	Lots 1 and 2 DP 135515

123 Holt Avenue	Lot 1 DP 947542
125 Holt Avenue	SP 11200
131 Holt Avenue	Lot 2 DP 602238
133 Holt Avenue	Lot 1 DP 602238

2.2 Site and Locality

8. The Land is located on the northern side of Holt Avenue, between Spofforth Street and Military Road in Cremorne. The Land is zoned R3 Medium-Density (115-125 Holt Avenue) and R4 High-Density Residential (131-133 Holt Avenue) under the NSLEP 2013. The location of the Land is shown in Figure 1.
9. Spofforth Street to the east is the border between North Sydney Local Government Area (**LGA**) and Mosman LGA. To the east of Spofforth Street is the Holt Estate Heritage Conservation Area (**HCA**) located within the Mosman LGA.

Figure 1 – The location of the subject sites



2.3 Background

10. The background to the Planning Proposal and Gateway Determination Review is set out in Table 2 below.

Table 2 - The Gateway Determination Review background actions timeline

Date	Action
2007	Council undertook a LGA-wide heritage review. 125 Holt Avenue was delisted as a heritage item under the NSLEP 2013
5 August 2021	DA 239/21 was lodged for the demolition of the existing structures at 131-133 Holt Avenue and the redevelopment of the site
9 August 2021	DA 243/21 was lodged for the demolition of the existing structures at 115-119 Holt Avenue and the redevelopment of the site
24 January 2022	Council resolved to investigate the preparation of an Interim Heritage Order (IHO) for land at Holt Avenue
11 March 2022	Council enacted a IHO over the properties at 115, 117, 119, 131 and 133 Holt Avenue for a period of 12 months
25 March 2022	A Class 1 appeal under s 30(1) of the <i>Heritage Act 1977</i> was lodged with the NSW Land and Environment Court (LEC) seeking the revocation of the IHO from 131-133 Holt Avenue A Class 1 appeal under s 30(1) of the <i>Heritage Act 1977</i> was lodged with the LEC seeking the revocation of the IHO from 115-119 Holt Avenue
3 June 2022	GML Heritage (GML) undertook a detailed heritage assessment on behalf of Council (GML Report)
13 July 2022	North Sydney Local Planning Panel (NSLPP) considered the Planning Proposal and did not support it. NSLPP recommended the preparation of a more detailed investigation to justify heritage listing
28 July 2022	Council lodged the Planning Proposal with the Department
29 July 2022	The LEC upheld the appeal and revoked the IHO over 131 and 133 Holt Avenue
17 August 2022	The LEC dismissed the appeal for the revocation of the IHO over 115-119 Holt Avenue
8 September 2022	The Department was made aware that the demolition of 131 and 133 Holt Avenue had begun under a complying development certificate
7 October 2022	The Department issued a Gateway Determination not to proceed with the Planning Proposal
11 October 2022	Council provided the Department with a notice of intent seeking a Gateway Review from the Commission
21 November 2022	Council submitted its Gateway Review Request to the Department
8 February 2023	The Commission received the request for advice from the Department
2 March 2023	The Minister for Environment and Heritage imposed a new IHO over 115, 117 and 119 Holt Avenue

2.4 Review Request

11. On 21 November 2022, Council submitted a request to the Department, seeking a review of the Department's Gateway Determination. Council's request was accompanied by a justification report, dated 17 November 2022 (**Justification Report**), responding to each of the reasons given by the Department.

3. The Commission's Consideration

3.1 Material Considered by the Commission

12. The Commission has considered the following material (**Material**) in the preparation of its advice:

- Council's Resolution, dated 24 January 2022;
- Council's Planning Proposal, dated 30 June 2022;
- the NSLPP meeting minutes, dated 13 July 2022
- the judgment of the Court in *Helm No. 18 Pty Ltd v North Sydney Council* [2022] NSWLEC 1406;
- the judgment of the Court in *Holt Avenue Cremorne Pty Ltd v North Sydney Council* [2022] NSWLEC 1428;
- the Department's Gateway Determination Report, dated 30 September 2022;
- the Department's Gateway Determination, dated 7 October 2022;
- Council's letter to the Department, dated 11 October 2022;
- Council's report for the Council meeting dated 14 November 2022;
- Council's Justification Report, dated 17 November 2022;
- the Department's Justification Assessment, dated February 2023;
- the heritage reports set out in Table 3 below;
- comments and presentation material at meetings with the Department and Council, as referenced in Table 4 below;
- the Department's response to the Commission, dated 24 February 2023;
- Council's comment on the heritage assessments, dated 2 March 2023; and
- the Government Gazette, dated 2 March 2023.

Table 3 – Heritage reports considered by the Commission

Date	Properties	Author
7 March 2022	115-125, 131-133 Holt Avenue	GML
3 June 2022	115-125, 131-133 Holt Avenue	GML
June 2022	115-119 Holt Avenue	John Oultram Heritage & Design (Oultram)
July 2022	115-119 Holt Avenue	Urbis Pty Ltd (Urbis)
July 2022	115-119 Holt Avenue	Weir Phillips Heritage and Planning (Weir Phillips)
October 2022	115-123 Holt Avenue	Oultram
7 November 2022	115-123 Holt Avenue	City Plan Heritage Pty Ltd (City Plan)
January 2023	115-123 Holt Avenue	Oultram

3.2 The Commission's Meetings

13. To inform its advice, the Commission undertook a site inspection and met with various persons as set out in Table 4. All meeting and site inspection notes were made available on the Commission's website.

Table 4 – Commission's Meetings

Meeting	Date	Transcript/Notes Available on
Site inspection	17 February 2023	21 February 2023
Department	23 February 2023	27 February 2023
Council	23 February 2023	27 February 2023

4. Key Issues

4.1.1 Removal of 131-133 Holt Avenue, Cremorne from the Planning Proposal

14. Council in its Justification Report noted that the demolition of the properties at 131 and 133 Holt Avenue had commenced following the decision of the Court in *Helm No. 18 Pty Ltd v North Sydney Council* [2022] NSWLEC 1406 which revoked the IHO for these properties. Council and the Department agree that the heritage listing of 131 and 133 Holt Avenue is without utility due to their demolition and support their removal from the Planning Proposal (Justification Assessment, p 10).

Commission's Findings

15. The Commission at the Site Inspection observed that 131 and 133 Holt Avenue have been demolished, therefore making heritage listing redundant. The Commission notes that if a new planning proposal is submitted by Council, these properties should be removed from the proposal.

4.1.2 North Sydney Local Planning Panel Recommendation

16. The Planning Proposal was considered by the NSLPP on 13 July 2022. The NSLPP stated that it was "*not persuaded the properties meet the threshold for listing under the Heritage Assessment Guidelines and that the current Planning Proposal lacks both site specific and strategic merit and does not meet the objectives of the Act*". The NSLPP noted that the heritage advice before them differed significantly and that a more thorough and lengthy inquiry to fully review and reconcile the matter was required.
17. Council in its Justification Report noted that the NSLPP did not have any heritage qualifications nor expertise. Council also stated that six heritage experts that objected to the GML Report were given the opportunity to address the NSLPP and that representatives from GML were not called upon for questioning.
18. The Department stated that the NSLPP recommendation is consistent with the decision of Commissioner Horton in *Holt Avenue Cremorne Pty Ltd v North Sydney Council* [2022] NSWLEC 1428 (see paragraph 31 below). In noting Council's concerns referenced above, the Department stated that hearing from Council's heritage expert was an option the NSLPP did not feel necessary to take up with the information provided being sufficient for their recommendation.

Commission's Findings

19. The Commission believes that further evidence of the strategic and site-specific merit of the Planning Proposal needs to be provided. It also acknowledges the NSLPP's recommendation for a more detailed investigation to comprehensively review the heritage significance of the subject residences. The Commission notes that Council has not undertaken further investigations in response to the NSLPP recommendations. The Commission agrees with the recommendation of the NSLPP and is of the view that Council should be given the opportunity to conduct further inquiry. Any new planning proposal submitted by Council should give consideration to the NSLPP recommendations.

4.1.3 125 Holt Avenue, Cremorne

20. Council in its Planning Proposal stated that the residence at 125 Holt Avenue was first identified as having heritage significance in a 1993 Godden Mackay Heritage Study Review, however was not identified as a heritage item within Council's LEP until the commencement of North Sydney LEP 2001, which came into effect on 1 June 2001. Council stated that as a result of the North Sydney Heritage Review 2007, 125 Holt Avenue was delisted and was not included as an item in the NSLEP 2013.
21. According to the GML Report 125 Holt Avenue meets the threshold for cultural significance for historic, aesthetic, rarity and representative values, as a rare extant two-storey Federation Bungalow in the Cremorne area. Council in its Justification Report stated that heritage values and the community's approach to heritage conservation change over time. Council also noted that the North Sydney Heritage Review 2007 was wide-ranging in nature and was a high level analysis and review of potential items. Council stated that the GML Report provided the "*opportunity for a far more thorough and detailed analysis of the potential value of the property and its context*".
22. The Department, in its Justification Assessment, noted that no heritage assessments aside from the GML Report had been conducted on 125 Holt Avenue. The Department stated that there were limitations noting that only two of the apartments had been inspected. The Department maintained its view that adequate justification had not been provided in the context of the NSLPP recommendations, the applicable LEC decisions and, for 125 Holt Avenue specifically, the proposed listing of a previously de-listed property.

Commission's Findings

23. The Commission acknowledges Council's view that the heritage value of an item can change over time. The Commission finds that the listing of 125 Holt Ave as a heritage item is capable of having merit – however, the Commission is of the view that adequate justification has not yet been provided. Consistent with the views of the Department, NSLPP and LEC, the Commission is of the view that Council should be given the opportunity to conduct further inquiry and provide further justification via a new planning proposal.

4.1.4 Section 9.1 Ministerial Direction 6.1 – Residential Zones

24. The Department's Gateway Determination stated that the Planning Proposal has not adequately addressed consistency with Section 9.1 Ministerial Directions - 6.1 Residential zones. The Department stated that the Planning Proposal would have implications for the future development on the Land and any higher density development proposed under the current zoning.

25. Council's Justification Report stated that the Planning Proposal is consistent with this direction as it will not reduce the ability to undertake residential development on those parcels of land where residential development is currently permitted. Council also noted that whilst a minor reduction in development capacity may be expected as a result of the Planning Proposal, residential development that is sympathetic to the heritage values of the subject dwellings can still occur. Council cited 125 Holt Avenue as an example, noting that it contains four-self-contained dwellings (Justification Report, p 5).
26. The Department noted Council's response that development sympathetic to heritage values may occur, however, the Department maintained its view that the Planning Proposal does not acknowledge the potential reduction in development capacity and that sufficient justification has not been provided.

Commission's Findings

27. The Commission notes that 131 and 133 Holt Avenue, which have been demolished, are located within R4 High Density Residential zone, and the remaining properties (115, 117, 119, 121, 123 and 125 Holt Avenue) are zoned R3 Medium Density Residential.
28. The Commission considers that the inconsistency of the Planning Proposal with Ministerial Direction 6.1 is capable of being justified, however, Council has not provided sufficient information. The Commission is of the view that Council should be given the opportunity to address this matter should any new planning proposal be submitted.

4.1.5 Interim Heritage Orders and LEC Findings

29. On 7 March 2022 Council's General Manager imposed an IHO on 115, 117, 119, 131 and 133 Holt Avenue, Cremorne, with the IHO published in the Government Gazette on 11 March 2022. Two Class 1 appeals were lodged with the LEC seeking the revocation of the IHOs relating to the properties at 115-119 Holt Avenue and 131-133 Holt Avenue respectively (Justification Report, p 4).

Helm No. 18 Pty Ltd v North Sydney Council [2022] NSWLEC 1406

30. The Class 1 appeal relating to 131-133 Holt Avenue was heard by the LEC on 6 and 7 June 2022. Acting Commissioner Sheridan reached a decision on 29 July 2022 to uphold the appeal and revoke the IHO. Acting Commissioner Sheridan stated that whilst the IHO had been issued correctly and it had served its statutory purpose in providing temporary protection, the subject properties did not warrant heritage listing and the IHO over 131-133 Holt Avenue was subsequently revoked.

Holt Avenue Cremorne Pty Ltd v North Sydney Council [2022] NSWLEC 1428

31. The Class 1 appeal relating to 115-119 Holt Avenue was heard by the LEC on 18 and 19 June 2022 with a decision handed down on 17 August 2022 to dismiss the appeal and retain the IHO. Commissioner Horton was of the view that "*there may be further inquiry or investigation to be carried out, after which the sites may likely be found to be of heritage significance*". Commissioner Horton further stated:

While I acknowledge the Applicant has undertaken research that reaches a conclusion to the contrary, and has sought peer review to the same effect, I consider it a real chance, on the basis of the degree of research contained in the 2022 GML Assessment, that further inquiry may support a finding that the sites at Nos 115-119 Holt Avenue are of heritage significance.

Interim Heritage Order No. 168

32. On 2 March 2023, the Minister for the Environment and Heritage issued a new IHO over 115, 117 and 119 Holt Avenue, Cremorne for a period of 12 months. The Minister for the Environment and Heritage in granting the IHO stated that these properties may, on further inquiry or investigation, be found to be of local heritage significance.

Commission's Findings

33. The Commission acknowledges that the Minister for the Environment and Heritage, Commissioner Horton, NSLPP and the Department are consistent in their views that further inquiry may support a finding that these properties are of heritage significance. The Commission shares this view and finds that Council should be given the opportunity to undertake further investigation. The Commission agrees with the Department's recommendations that a revised planning proposal accompanied by adequate additional justification be provided to support the proposed heritage listings and address all issues identified by the Department.

5. The Commission's Advice

34. The Commission has undertaken a review of the Gateway Determination as requested by the Department. In doing so, the Commission has considered the Material (see section 3.1 above), including heritage reports, Council and Department submissions, and the reasons given in the Department's Gateway Report.
35. For the reasons set in in this Advice Report, the Commission finds that the listing of the subject residences as local heritage items under Schedule 5 NSLEP 2013 has not been sufficiently justified.
36. The Commission advises that the Planning Proposal as submitted should therefore not proceed past Gateway.
37. The Commission is of the view however that further investigation may support a finding that the subject residences are of heritage significance and advises that Council should be given the opportunity to conduct further inquiry and submit a new planning proposal.
38. Any new planning proposal submitted by Council should:
- not include the demolished residences at 131-133 Holt Avenue Cremorne
 - clearly set out the basis of the nomination (i.e. group and/or individual listing);
 - give consideration to the LEC findings, NSLPP recommendations, Department's Gateway Determination and matters raised this Advice Report;
 - address Section 9.1 Ministerial Direction 6.1 in further detail;
 - respond directly to the findings of the heritage reports (see Table 3).



Dr Peter Williams (Chair)
Member of the Commission



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