



Purpose: To outline the Planning Proposal, the reasons why the original Gateway determination was made and to consider and assess the request for a review of a Gateway determination.

Dept. Ref. No:	PP_2019_KURIN_001_0
LGA	Ku-ring-gai
LEP to be Amended:	Ku-ring-gai Local Environmental Plan 2015
Address/ Location:	149 Livingstone Avenue, Pymble
Proposal:	The planning proposal seeks to include 149 Livingstone Avenue, Pymble (Lot 3 DP 607951) as a local heritage item in schedule 5 of <i>Ku-ring-gai Local Environmental Plan (LEP) 2015</i> . No rezoning or other development standards are proposed to be amended.
Review request made by:	<input checked="" type="checkbox"/> The council <input type="checkbox"/> A proponent
Reason for review:	<input checked="" type="checkbox"/> A determination has been made that the Planning Proposal should not proceed. <input type="checkbox"/> A determination has been made that the Planning Proposal should be resubmitted to the Gateway. <input type="checkbox"/> A determination has been made that has imposed requirements (other than consultation requirements) or makes variations to the proposal that the proponent or council thinks should be reconsidered.

BACKGROUND INFORMATION

Details of the Planning Proposal

Summary

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.

In May 2018, Council issued an interim heritage order (IHO) to investigate the site's potential local heritage significance (**Attachment K**).

On 10 May 2019, another IHO was issued by the Special Minister of State that expires on 10 May 2020.

On 30 June 2019 the delegate of the Minister for Planning and Public Spaces issued a Gateway Determination that the planning proposal did not have strategic merit and should not proceed.

Following the issue of the Gateway Determination, the Land and Environment Court upheld an appeal against Council's refusal of a development application at the site, and granted a deferred commencement consent (13 September 2019) to demolish the existing buildings (including the dwelling at 149 Livingstone Avenue) and to construct a senior's development (**Attachment L1 and Attachment L2**).

On 20 September 2019, the Council wrote to the Department requesting a review of the Gateway determination decision. This request is now forwarded to the Planning Commission for a recommendation

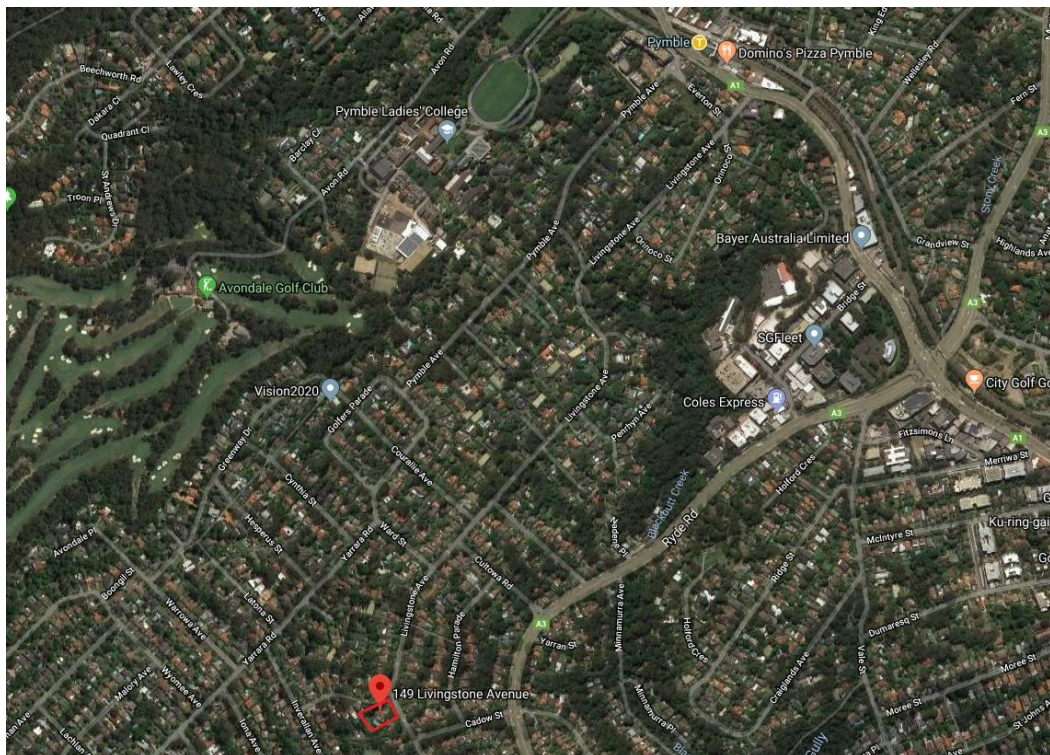


Figure 1: Site locality map, with Pymble Station north-east of the site.



Figure 2: Aerial view of the subject site to be heritage listed.



Figure 3: Front elevation of 149 Livingstone Avenue, Pymble



Figure 4: Proposed heritage mapping of subject site (circled in red) affecting 149 Livingstone Avenue, Pymble (Lot 30 DP 607951).

This site and surrounding area are zoned R2 Low Density Residential under Ku-Ring-gai LEP 2015.



Figure 5: Land zoning map, with the subject site (outlined in red) and surrounding area zoned R2 Low Density Residential (pink) and RE1 Public Recreation (green) to the south and south-west of the site.

Reason for Gateway determination

On 30 June 2019 the delegate of the Minister for Planning and Public Spaces issued a Gateway Determination that the planning proposal should not proceed on the basis that:

- there is conflicting heritage advice and the proposal was not supported by the local planning panel and Council's Heritage Specialist Planner; and
- insufficient justification has been presented to support the heritage listing of the

	<p>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.</p> <p>It was considered that the planning proposal did not have sufficient strategic merit to incorporate the site as an item of local heritage significance under schedule 5 of the Ku-ring-gai LEP 2015.</p>
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COUNCIL'S JUSTIFICATION FOR REVIEW

<p>Details of justification:</p>	<p>On 20 September 2019, Ku-ring-gai Council requested a review of the Gateway determination of the planning proposal.</p> <p>On 25 November 2019, the Department advised Council it would accept the request to review the Gateway determination despite the request being submitted outside the designated 42 days. Council was requested to submit its documentation outlining its reasons and justification for the review of the Gateway.</p> <p>On 10 December 2019, Council submitted the following justification for the Gateway review:</p> <p><i>With regards to 149 Livingstone Avenue Pymble, the “recent additional information... submitted by the local community to support the heritage listing of 149 Livingstone Avenue, Pymble” referred to in Cr Smith’s ‘Business Without Notice’ motion to the Ordinary Meeting of Council held on 17 September 2019 is understood to be the Heritage Assessment Report: Independent Review authored by Brian McDonald of DFP Consultants.</i></p> <p><i>In summary the report argues the property does have historical significance based on anecdotal evidence from a family member of the Hamilton family and social significance given the overwhelming community support for the listing.</i></p> <p>On 17 September 2019 Councillor M Smith put forward the following to Council:</p> <p><i>[A] Development Application [has been] approved by NSW Land & Environment Court that will enable the demolition of 149 Livingstone Avenue, Pymble. An Interim Heritage Order issued by the Minister is however still in place and recent additional information has been submitted by the local community to support the heritage listing of 149 Livingstone Avenue, Pymble. The reason the matter is urgent is two-fold: (1) the current Interim Heritage Order is good for 12 months to give the Council time to fully consider the heritage merit of the case— there is now new information which needs to be acted upon; (2) unless Council pursues this, a developer could simply wait for this to lapse then proceed with demolition plans.</i></p> <p>It was resolved that:</p> <p><i>That Council request the Minister for Planning and Public Spaces review the gateway determination made by the Minister’s delegate to enable the Planning Proposal to proceed for listing 149 Livingstone Avenue, Pymble, as an item of local heritage significance.</i></p>
<p>Material provided in support of application/proposal:</p>	<p>In addition to the planning proposal documentation originally submitted to DPE, Council provided the following documents to support the Gateway Review request:</p> <ul style="list-style-type: none"> • Minutes of Ordinary Meeting of Council - dated 17 September 2019 • Resolution for 149 Livingstone Avenue, Pymble – OMC 17 September 2019 • Heritage Assessment Report prepared by DFP Planning Consultants for the Residents’ Action Group 149 – dated 10 September 2019

The Heritage Assessment Report prepared by DFP Planning Consultants draws information from two sources. These are:

1. A discussion paper of the history of the dwelling at 149 Livingstone Avenue, labelled "Additional Information", prepared by Mr Simon Nelson. Mr Nelson is an architect who lives in a neighbouring property at 104 Livingstone Avenue. Mr Nelson objects to the potential demolition of the property at 149 Livingstone Avenue.
2. A letter from Mr Colin Hamilton McDonald, dated 23 July 2019. This letter argues that the Hamilton family was of greater heritage significance than identified by the Ann Warr and subsequent specialist heritage reports.

On 20 March 2020, two additional heritage reports were submitted to the Department, peer-reviewing the DFP Planning Consultant's report. These documents were submitted on behalf of Goldfields Central Pty Ltd and the landowners of 149 Livingstone Avenue. These reports were prepared by Stephen Davies of Urbis dated 18 March 2020, and Paul Davies of Paul Davies Pty Ltd dated 4 March 2020.

ASSESSMENT SUMMARY

Department's Assessment

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.

1. Criterion B

The assessment by Anne Warr acknowledges the house has a connection with the Hamilton family;

The house and grounds demonstrate the process of land subdivision in West Pymble for over a century. Built on 3 lots of the Hamilton Estate created in 1890, itself a subdivision of rural land purchased by FJ Hamilton in 1876, the subject property has been further sub-divided during the 20th century down to its current size of 2,732m² (0.67acres).

Ann Warr states that the property has minor association with Frederick James Hamilton, a prominent figure in the early development of West Pymble.

The 'new information' provided by DFP emphasises that the Hamilton Family, being "a significant group of persons" had a strong connection with the house at 149 Livingstone Avenue:

The house continued to house the Hamilton family for a substantial period... for over 44 years of its first 51 years

There is no evidence that the house was associated with historically significant local events. In addition, no evidence has been presented which indicates any of the family members – including the unnamed children of the patriarch who owned and occupied 149 Livingstone Avenue, were of themselves of importance in the cultural or natural history of the local area, in the same way as Frederick James Hamilton.

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. The relevant considerations raised were previously considered by previous heritage reports and the Gateway assessment.

2. Criterion C

The new heritage assessment by Brian McDonald of DFP Planning Consultants states that the property's reduced curtilage has not diminished the heritage value of the house. The author notes that no inspection of the site was undertaken in preparation of the report, and that the assessment of heritage value is based on photographs and descriptions of the property's interior:

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.

Mr McDonald states that "the primary characteristics of the Federation period house

remain and can be interpreted and appreciated”.

The assessment by Anne Warr addressed the existing built form and the alterations made to the property, pointing out that numerous additions and alterations had occurred to the heritage fabric of the building.

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).

The heritage report by Council’s heritage specialist Andreana Kennedy found that the property was a competent and well-built example of type, however *“the original setting of the house was substantially reduced through several subdivisions and the form of the house compromised by the 1998 alterations and additions.”*

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

3. Criterion D

The DFP report states that the large number of local residents that support the property’s heritage listing are clearly identifiable as a group. The report references the significant number of people that attended a site meeting, an on-site Land and Environment Court conciliation conference and at the Land and Environment Court proceedings as evidencing the retention of the property is important to the community’s sense of place.

The heritage report by Andreana Kennedy states that:

While 149 Livingstone Avenue is likely known by people living in the area as ‘that old house’ or ‘the heritage place’ it does not serve a wayfinding purpose and is not a landmark to the wider Ku-ring-gai community.

The Ann Warr Heritage Report notes that:

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.

The NSW Heritage Manual notes items are excluded from heritage listing if they are “only

	<p>important to the community for amenity reasons". The DFP Report notes that 149 Livingstone Avenue does not provide the community with any amenity, other than visual in the streetscape.</p> <p>The other ground for exclusion under Criteria D is where items are "retained only in preference to a proposed alternative". The DFP Report notes this exclusion should not be considered as "<i>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.</i>"</p> <p>The community objections have demonstrated opposition to Council's refusal of a development application for the site (DA0152/18) which was for the demolition of existing structures, consolidation of lots (including 149 Livingstone Avenue) and construction of a multi-dwelling housing development comprising 19 dwellings, basement car parking and associated works, which was subsequently approved by the Land and Environment Court <i>Goldfields Central Pty Ltd v Ku-ring-gai Council [2019] NSWLEC 1434</i>.</p> <p>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.</p>
<p>Attachments to this Report:</p>	<p>A1 Heritage assessment - Ann Warr</p> <p>A2 Heritage assessment - Chris Betteridge</p> <p>A3 Council heritage assessment - Andreeana Kennedy</p> <p>A4 Considering New Information - DFP Planning Consultants</p> <p>A5 Peer review of DFP Report - Paul Davies</p> <p>A6 Peer review of DFP Report - Stephen Davies</p> <p>B1 Planning Proposal</p> <p>B2 Gateway Determination Report - 30.06.19</p> <p>B3 Signed Gateway - 30.06.19</p> <p>C1 Ku-ring-gai Council Request for Gateway Review - 20.09.2019</p> <p>C2 Email - Ku-ring-gai Council Request for Gateway Review</p> <p>C3 Ordinary Meeting of Council 17.09.19 Minutes and Actions</p> <p>D INTERIM HERITAGE ORDER - 08.05.18</p> <p>E1 Land and Environment Court - Goldfields PL v Ku-ring-gai Council - 13.09.2019</p> <p>E2 Land and Environment Court - Annexure A Conditions of Consent - 13.09.2019</p>

COMMISSION'S RECOMMENDATION

Reason for review: A determination has been made that has imposed requirements (other than consultation requirements) or makes variations to the proposal that the proponent or council thinks should be reconsidered.

Recommendation:	<input type="checkbox"/>	The Planning Proposal should not proceed past Gateway in accordance with the original submission.
		<input type="checkbox"/> no amendments are suggested to original determination. <input type="checkbox"/> amendments are suggested to the original determination.
	<input type="checkbox"/>	The Planning Proposal should proceed past Gateway.