

IPC: The Commission understands that the IHO for 115-119 Holt Avenue expires on the 11 March 2023. Can the Department confirm whether an extension to the IHO is possible while the Planning Proposal is being considered? If so, who would extend the IHO?

DPE Response: There is no legislative pathway for extensions of Interim Heritage Orders (IHOs), particularly those which have been imposed by Council.

The Local Government Heritage Guideline (2002) states that Councils may only place an Interim Heritage Order over a potential heritage item once.

The Department is aware of extended protection from demolition via a new IHO being issued by the Special Minister of State. In one case, there were two successive Interim Heritage Orders (IHOs) gazetted for the site. The successive IHO was the result of Council's mayor requesting the Minister for Environment and Heritage for an extension of the IHO. This case has been provided as attachments, with one IHO Gazetted on 6 December 2019 and a successive IHO gazetted on 4 December 2020.

It is evident that IHOs may be successively applied when agreed to by the Minister upon request for an extension from Council. This appears to be the best approach to resolving this matter and may require an urgent Council meeting due to the tight timeframes, should Council proceed with this action.

The Department notes a Mayoral Minute will be put before Council's next meeting on 27 February 2023 that recommends Council to urgently write to the Minister for Heritage to make a successive IHO on the 115-119 Holt Avenue sites. This is consistent with the approach identified above.

Ministerial approval of this request would be needed before the caretaker period commences on 3 March 2023.

8.2. MM02: 115-125 Holt Avenue, Cremorne - Extension of Interim Heritage Order

On 23 February 2023 I attended the Independent Planning Commission (IPC) meeting with North Sydney Council in relation to Council's Gateway Review Application in respect of the Planning Proposal to list 115-119 and 125 Holt Avenue, Cremorne as heritage items (group) on North Sydney Local Environmental Plan 2013. The meeting was held via Zoom and attended by Commissioner Peter Williams and staff from the IPC. The following represented North Sydney Council:

- Neal McCarry, Team Leader, Strategic Planning;
- Ben Boyd, Acting Manager, Strategic Planning; and
- Lisa Trueman, heritage expert (author Godden McKay Logan heritage report).

The purpose of the meeting was for Council to address the purpose of the Gateway Review application and to answer any questions from Commissioner Williams. Council was exceptionally well served by the presentations from Neal McCarry, Ben Boyd and Lisa Trueman. Transcripts of the meeting will be published by the IPC in due course.

However, during consideration of the timing of the expiration of the current Interim Heritage Order, Council staff reminded Commissioner Williams that on 31 January 2023 the State Heritage Register Committee considered Council's request for the Minister to issue a new IHO in respect of these properties. The minutes of the committee meeting state that the Committee made the following recommendation to the Minister for Heritage, James Griffin MP:

Recommends that the Minister make an Interim Heritage Order over the property at 115,117 & 119 Holt Avenue, Cremorne, commencing on 11 March 2023.

Moved by Dr Brian Lindsay and seconded by Ms Colleen Morris

Ms Lisa Trueman left the meeting for the duration of this agenda item.

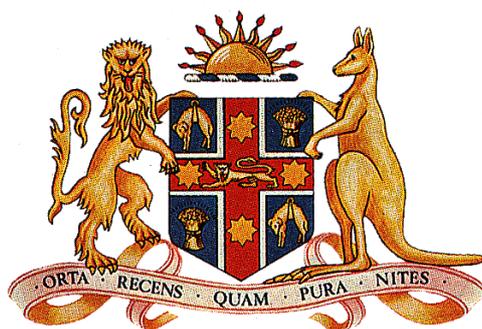
It is clear that the Minister has had that expert advice from his own Committee for more than 3 weeks. On 3 March 2023 the "caretaker period" commences prior to the State Election to be held on 25 March 2023.

It is a matter of urgency that the Minister act before 3 March 2023.

I therefore recommend:

1.THAT Council **urgently** write to the Minister for Heritage urging, in the strongest possible terms that he act immediately to make an Interim Heritage Order over the property at 115,117 & 119 Holt Avenue, Cremorne, commencing on 11 March 2023.

**COUNCILLOR ZOË BAKER
MAYOR**



Government Gazette

of the State of

New South Wales

Number 165

Friday, 6 December 2019

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GOVERNMENT NOTICES

Planning and Environment Notices

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Order under clause 6 of Schedule 2 to the Environmental Planning and Assessment
(Savings, Transitional and Other Provisions) Regulation 2017

Under delegation from the Minister for Planning, I declare the development specified in column 1 of the table in Schedule 1 to this Order on the land specified in the corresponding row in column 2 of the table in Schedule 1 to this Order to be State significant development under clause 6 of Schedule 2 to the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*, for the purposes of the *Environmental Planning and Assessment Act 1979* (the Act).

This Order takes effect upon publication in the New South Wales Government Gazette.

Dated: 28 November 2019

Anthony Witherdin
Director
Key Sites Assessments

SCHEDULE 1

Column 1 Development	Column 2 Land
Development known as the 'studio and office complex at the Australian Technology Park' (MP06_0149), approved by the Minister for Planning and as subsequently modified under section 75W of the Act.	All land identified in Schedule 1 of the approval to carry out the development (MP 06_0149) as in force on the date of this Order and now known as Lot 10 DP1136859. The application has been modified two times under Part 3A.

(n2019-3699)

HERITAGE ACT 1977

INTERIM HERITAGE ORDER NO. 150

46 Vaocluse Road, Vaocluse

In pursuance of Section 24 of the *Heritage Act 1977* (NSW), I, the Minister administering the *Heritage Act 1977*, do, by this my order:

- (i) make an interim heritage order in respect of the item of the environmental heritage specified or described in Schedule 'A'; and
- (ii) declare that the interim heritage order shall apply to the curtilage or site of such item, being the land described in Schedule 'B'.

The Hon Don Harwin MLC
Special Minister of State
Minister for the Public Service and Employee Relations,
Aboriginal Affairs, and the Arts
Vice-President of the Executive Council

Sydney, 28 Day of November 2019

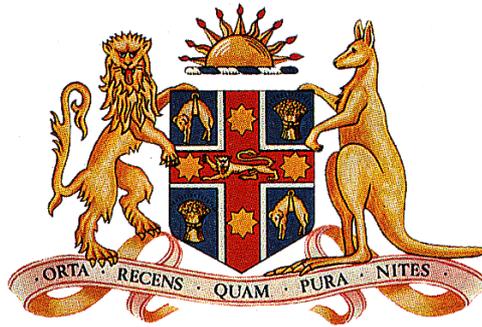
SCHEDULE "A"

The property known as 46 Vaocluse Road, Vaocluse, situated on the land described in Schedule "B".

SCHEDULE "B"

All those pieces or parcels of land known as Lot A DP367302 in Parish of Alexandria, County of Cumberland shown on the plan catalogued HC 3248 in the office of the Heritage Council of New South Wales.

(n2019-3700)



Government Gazette

of the State of

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Friday, 4 December 2020

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HERITAGE ACT 1977

INTERIM HERITAGE ORDER NO. 156

46 Vaocluse Road, Vaocluse

In pursuance of Section 24 of the *Heritage Act 1977* (NSW), I, the Minister administering the *Heritage Act 1977*, do, by this my order:

- (i) make an interim heritage order in respect of the item of the environmental heritage specified or described in Schedule 'A'; and
- (ii) declare that the interim heritage order shall apply to the curtilage or site of such item, being the land described in Schedule 'B'.

The Hon Don Harwin MLC
Special Minister of State
Minister for the Public Service and Employee Relations,
Aboriginal Affairs, and the Arts
Vice-President of the Executive Council

Sydney, Day of 2020

SCHEDULE "A"

The property known as 46 Vaocluse Road, Vaocluse, situated on the land described in Schedule "B".

SCHEDULE "B"

All those pieces or parcels of land known as Lot A DP367302 in Parish of Alexandria, County of Cumberland shown on the plan catalogued HC 3264 in the office of the Heritage Council of New South Wales.

LOCAL GOVERNMENT | HERITAGE GUIDELINES



The Local Government Heritage Guidelines (including the delegation of certain Heritage Council functions under the NSW *Heritage Act* 1977 and the authorisation to make Interim Heritage Orders)

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5.5 THE AUTHORISATION TO MAKE INTERIM HERITAGE ORDERS

At this stage the Minister has given the authorisation to make Interim Heritage Orders to councils who do not yet have fully comprehensive heritage management systems in place to assist them in managing their heritage. A list of those local councils authorised to make interim heritage orders is included in the Ministerial Order in Appendix 8.3.

The authorisation allows a council to make an Interim Heritage Order over an item, place or area, whilst it assesses whether statutory protection is warranted via a listing in a heritage schedule of a local environmental plan. The authorisation also allows a local council to become the approval body for approvals required under the *Heritage Act 1977*, once the Interim Heritage Order has been made. The matters that an applicant must obtain approval for are set out in full in section 57(1) of the Act. Council's authority to make approvals, however, only lasts for the duration of the Interim Heritage Order.

Councils can only make Interim Heritage Orders in those circumstances where a potential heritage item, place or area:

- is or is likely to be of heritage significance
- is under threat of demolition or unsympathetic alteration
- does not have statutory heritage protection under the *Environmental Planning and Assessment Act 1979* or the *Heritage Act 1977*.

The capacity to make an Interim Heritage Order should not become the sole form of heritage management in a local area. All councils are encouraged to undertake heritage studies and to fulfil their obligations to prepare a local environmental plan with a schedule of heritage items.

5.5.1 The Benefits of the Authorisation

The authorisation to make Interim Heritage Orders provides local councils with a number of benefits including:

- councils have the ability to provide short-term protection to items, places or areas of local significance under threat
- councils can quickly respond to an urgent need to assess and manage potential heritage items, place or areas
- conservation outcomes will be achieved which reflect the concerns of the local community
- heritage matters can be considered and approved speedily at a local level.

5.5.2 Conditions attached to use of the Authorisation to make Interim Heritage Orders

A number of conditions have been attached to the use of Interim Heritage Orders. The conditions appear in bold below with explanatory notes in italics.

1. A council must not make an Interim Heritage Order unless:

- a) **an environmental planning instrument, containing a schedule of heritage items derived from a heritage study and provisions for the management of those items, is in force in the local government area.**

Council must have an environmental planning instrument in place that can be amended to include items that are only temporarily protected by an Interim Heritage Order within the time frame stipulated in Condition 5.

- b) **it has considered a preliminary heritage assessment of the heritage item, prepared by a person with appropriate heritage knowledge, skills and experience, employed or retained by the council and considers that:**

- i) **the item is or is likely to be found on further inquiry and investigation to be of local heritage significance, and**
- ii) **the item is being or is likely to be harmed.**

Council's use of the authorisation is contingent on it commissioning or retaining a person with appropriate heritage knowledge, skills and experience to prepare a preliminary heritage assessment of the potential heritage item. The assessment must consider whether:

- a) the potential heritage item is likely to be of heritage significance
- b) the changes being proposed to the potential heritage item or the condition of the item is a threat to its heritage significance
- c) the condition of the item is such that it is likely that its heritage significance can be conserved

and include a site visit to the item.

The council or delegate's report must include a copy of the heritage expert's advice in full.

The person may be a Heritage Advisor, Heritage Officer or a consultant engaged by the council for a specific project. The person must have knowledge, skills and experience in heritage conservation work as an integral part of their professional practise.

Council must have considered a preliminary assessment of the potential heritage item and formed the view that the item is, or is likely to be, of heritage significance.

The potential heritage item must actually be under threat, that is, either full or partial demolition of the fabric may be possible, or the heritage significance of the item may be materially affected. The sale of a property does not mean that an item is under threat.

Council may learn that a potential heritage item is under threat from different sources including its own observations, notification under other legislation, pre-development application consultation, lodgement of a development application or community lobbying. Council should first consider holding discussions with the owner/developer to find out whether an alternative scheme can be developed rather than immediately making an Interim Heritage Order. In some cases the applicant may be

receptive to amending the proposal once the potential heritage significance of the place is explained.

- iii) **the Interim Heritage Order is confined to the item determined as being under threat.**

The intent of an Interim Heritage Order is to provide temporary protection for a potential heritage item under threat. The Interim Heritage Order must be limited to the specific property that the potential item is situated on and not the entire heritage schedule of a draft local environmental plan. The curtilage of the item to be encompassed by the Interim Heritage Order must be determined before the Order is made.

- c) **Where an Interim Heritage Order is made over land which includes an item which on further inquiry and investigation may be of significance to Aboriginal people, council must refer the proposal to the NSW Heritage Office. The Heritage Office will conduct an assessment regarding its significance, and undertake community consultation, before the Interim Heritage Order is made. Council must comply with the recommendations of the NSW Heritage Office, following its referral.**

The assessment of Aboriginal heritage is a specialised task. Aboriginal people must be included in identifying, assessing and making decisions about the potential heritage item. Most local councils in New South Wales do not have persons trained in Aboriginal heritage management on staff.

Council's referral of the proposal to the NSW Heritage Office enables consultation to take place with the Aboriginal Heritage Committee of the Heritage Council of NSW and other peak agencies, such as the National Parks and Wildlife Service, the Department of Aboriginal Affairs, the NSW Aboriginal Land Council and Local Aboriginal Land Councils.

- 2. A council must not make an Interim Heritage Order where:**

- a) the item is listed on:
- i) an environmental planning instrument
 - ii) the item is within a conservation area identified in an environmental planning instrument
- b) the item is covered by an order made pursuant to sections 130 or 136 of the *Heritage Act 1977*.

Councils should not make Interim Heritage Orders over potential heritage items that are already protected under the Environmental Planning and Assessment Act 1979 or Heritage Act 1977.

- c) the council has previously placed an Interim Heritage Order on the item.

Councils may only place an Interim Heritage Order over a potential heritage item once. After the Order has been placed, council has twelve months to finalise the assessment of the item, including to resolve to prepare a local environmental that will list the item in a heritage schedule and finalise preparation of that plan. Interim Heritage Orders can only be used to provide short-term protection for potential heritage items. Local councils should protect heritage items in the longer term through the planning system.

Its important to recognise that in instances where a council resolves not to make an Interim Heritage Order over an item under threat, the Heritage Council can still place an Order over it.

- d) the court has granted development consent in relation to the item, that permits the item to be harmed, and the development consent is still in force.

It is unreasonable for local councils to place an Interim Heritage Order over a potential heritage item, following a Land and Environment Court hearing on the matter. The Environmental Planning and Assessment Act 1979 establishes the process to be followed in the event of an appeal against council's decision. The Court in its hearing of the matter must consider all

relevant issues, including the heritage significance of the potential item and the impact of any development proposals.

3. A council must not make an Interim Heritage Order (IHO) over a potential heritage item that is located on land:

- that is Crown Land
- which is being developed for or on behalf of the Crown.

Councils should not make Interim Heritage Orders over land that is either Crown land or land that is being developed for or on behalf of the Crown. The Heritage Act 1977 provides that government agencies must manage and conserve heritage items owned, occupied or under their control.

- which is subject to a development declared to be “State significant development” under the *Environmental Planning and Assessment Act 1979*.

Councils should not make an Interim Heritage Order over land which is subject to development declared to be “State significant development” by the Minister for Urban and Affairs and Planning, under the Environmental Planning and Assessment Act 1979. Before determination of such applications the Minister must consider all planning considerations, including heritage.

For the purposes of this clause, the “Crown” includes State Government agencies, State owned corporations, statutory corporations, statutory authorities and ministerial corporations. “Crown” is taken to have the same meaning as included in section 57 (1A) (b) of the *Heritage Act 1977*.

4. A council must not make an Interim Heritage Order in respect of an item (that includes a building, work, relic or place) that is subject to an approval, consent, license, permit, permission or any other form of authorisation, that requires or permits the item to be harmed, and is issued by the Crown, an officer or employee of the Crown or Minister.

The authorisation to make Interim Heritage Orders is not intended to void Crown approvals.

For the purposes of this clause, the “Crown” includes State Government agencies, State owned corporations, statutory authorities and ministerial corporations. “Crown” is also taken to have the same meaning as specified in section 57(1A) (b) of the Heritage Act 1977. This clause does not apply to approval, consent, licence, permit, permission or any other form of authorisation that requires or permits the item to be harmed and is issued by council.

- 5. An interim heritage order made by a council must contain the following condition:**
- a) “This Interim Heritage Order will lapse six months from the date that it is made unless the local council has passed a resolution before that date either:**
 - b) in the case of an item which, in the council’s opinion, is of local significance, to place the item on the heritage schedule of a local environmental plan with appropriate provisions for protecting and managing the item; and**
 - c) in the case of an item which in the council’s opinion, is of State heritage significance, nominate the item for inclusion on the State Heritage Register.”**

Councils must establish whether a potential heritage item is of local or State significance within a reasonable time frame. As soon as possible after an Interim Heritage Order is made, the Heritage Advisor, council heritage officer or consultant should undertake a detailed assessment of the heritage significance of the item. The assessment should be prepared in accordance with Heritage Council guidelines. In some instances it may be necessary for council to engage a consultant with particular expertise to carry out the assessment.

Where council forms an opinion, following a detailed assessment, that the item is of heritage

significance, it should either resolve to list the item in its local environmental plan or refer the item to the Heritage Council for inclusion on the State Heritage Register.

Where council forms an opinion that the item is not of sufficient heritage significance to warrant protection under the local environmental plan, the Order should be revoked.

Should council make a resolution to either list the potential heritage item in its local environmental plan or nominate the item for inclusion on the State Heritage Register, the Interim Heritage Order will remain effective for a period of twelve months. By the end of this period a local environmental plan, which provides protection for the item, should have been prepared, exhibited and gazetted.

Alternately, the item should have been included on the State Heritage Register. Where council fails to resolve to list the item in the local environmental plan, or refers it to the nomination to the Heritage Council for the State Heritage Register, the Interim Heritage Order will expire six months from the date that it was made.

Flow chart 5 on the following page describes this process.