

22 February 2023

Mills Oakley
[REDACTED]

Your ref:
[REDACTED]

ATTN: Commissioner Peter Williams

All correspondence to:
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Dear Commissioner Williams

Submission to the Independent Planning Commission – Gateway Determination Review – PP-2022-2712

We refer to the Interim Heritage Order (**IHO**) made by North Sydney Council (**Council**) on 11 March 2022 with respect to the properties at 115, 117, 119, 131 & 133 Holt Avenue, Cremorne (**Properties**), the Planning Proposal put forward by North Sydney Council dated June 2022 (**Planning Proposal**) and the Gateway Refusal issued by the Department of Planning and Environment (**DPE**) on 7 October 2022.

This submission has been prepared on behalf of Holt Avenue Cremorne Pty Ltd, the owner of the properties at 115, 117 and 119 Holt Avenue (**Client** and **Subject Properties** respectively).

We have reviewed the report prepared by DPE confirming its decision to refuse the Gateway Application and it is our client's submission that the refusal should remain. The Subject Properties have consistently been confirmed as not historically significant by numerous independent assessors. This is noted in the Gateway Refusal by DPE and again is highlighted in its report to the IPC. It has now become abundantly clear that Council has acted solely in reaction to the community response that was generated by the development application on the Subject Properties and is not based on any real heritage evidence to support the listing of the Subject Properties. For these reasons and the reasons below, it is our submission that the Gateway Refusal should remain.

Background Facts

On 22 March 2021 Council put forward a motion as its meeting which proposed that Council obtain urgent advice on whether an interim heritage order could be supported in respect of the Properties. This motion was put and lost.

On 5 August 2021 Helm No.18 Pty Ltd lodged development application no. DA 239/2021, which sought development consent for 'demolition of existing structures and construction of a mixed-use development accommodating ground floor business premises and 24 dwellings at 131-139 Holt Avenue Cremorne'.

On 9 August 2021 Development Application No DA 243/21 was lodged by our client seeking development consent for the 'demolition of existing dwelling and construction of a new residential flat building and above basement car parking' on the Subject Premises (**Development Application**). At no stage during Council's assessment of this Development Application was heritage raised as a potential issue.

On 15 March 2022, Mr Marcelo Occhiuzzi issued a letter to our client which provided:

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“Council’s records indicate that you are the applicant for DA 22/0513 and DA 22/0535 at this address. **The potential heritage significance of the properties was brought to Council’s attention via submissions made in response to the lodgement of DA 239/21 at 131, 133, 135, 137 and 139 Holt Avenue, Cremorne and DA 243/21 at 115, 117 and 119 Holt Avenue, Cremorne.** Both DAs sought for the demolition of all buildings and structures on those sites and redevelopment for the excavation and construction of a five-storey mixed-use development with basement parking and stratum subdivision (DA 239/21) and for the construction of a residential flat building with basement parking (DA 243/21).

...
It is evident from the Preliminary Assessment, that the properties at 115, 117, 119, 121, 123, 125 and 131, 133 Holt Avenue, Cremorne, **have potential heritage significance and are worthy of further investigation as to whether they should be listed as a heritage item under NSLEP 2013.**

...
The IHO provides short term heritage protection over the identified properties for a period of 12 months. This will allow Council to undertake a comprehensive heritage assessment of the site to fully determine its heritage significance using the State Heritage Inventory criteria developed by the NSW Heritage Office. However, the IHO will lapse after only six months unless Council has passed a resolution before that date to progress a planning proposal to Gateway Determination that seeks to place the property within the heritage schedule to NSLEP 2013”. (our emphasis)

On 22 March 2022 our client commenced proceedings in the Land and Environment Court appealing the IHO (2022/00081791)

On 7 July 2022 the below email was received from Council, which stated as follows:

Planning Proposal

• PP 7/22 - 115, 117, 119, 121, 123, 125, 131 & 133 Holt Avenue, Cremorne

The planning proposal seeks to list the above properties as Heritage Items of Local Significance in the North Sydney Local Environmental plan (LEP). In accordance with relevant Ministerial Directions, Planning Proposals must be referred to a Local Planning Panel for advice prior to a council determining whether that planning proposal should be forwarded to the Department of Planning and Environment (DPE) for the purposes of seeking a Gateway Determination.

The email confirmed that the North Sydney Local Planning Panel would meet on 13 July 2022. The email included Council’s Report to the North Sydney Local Planning Panel (**LPP**) for item PP01 to the meeting of 13 July 2022.

On 19 July 2022 the minutes of the Panel Meeting were published. Included in the recommendation from the Panel was that:

“the Panel is 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”.

Ultimately, it is our view that Council’s desire for the Properties to be listed as Heritage items is driven solely from community interest and is not based on any real heritage evidence which is supportive of these properties being heritage listed.

Legal proceedings and supporting documentation

In response to the IHO, three independent heritage reports were prepared by the following highly regarded heritage experts in accordance with the Heritage Guidelines, and a copy was provided to DPE as part of our client’s submission to the Planning Proposal:

1. John Outram of John Outram Heritage, dated June 2022;

2. Stephen Davies of Urbis, dated July 2022; and
3. James Philips of Weir Philips Heritage dated July 2022.

All three of these reports concluded that the subject Properties are not of heritage significance.

As noted in the DPE Report our client's appeal against the IHO (with respect to the Subject Properties) has been determined by the Land and Environment Court. Commissioner Horton did not go as far to determine whether the sites were of heritage significance but rather determined that further investigation was required to adequately determine whether the subject Properties were of heritage significance or not. In response to this decision our client commissioned two further heritage reports. These reports were prepared by:

1. John Outram of John Outram Heritage, dated October 2022; and
2. Pamela Jeffery of City Plan Services dated November 2022.

Both of these reports concluded that the Properties do **not** meet the criteria for heritage listing. The reports indicate that the Subject Properties are likely to have been built by the same builder, but all of the properties have had significant contemporary alterations both internally and to the façade and therefore do not meet the criterion for heritage listing, either individually or as a group. More specifically, John Outram's report is highly critical of the conclusion reached in the Council's heritage assessment report (prepared by GML) which founded the IHO.

We attach a further report commissioned by our client from John Outram Heritage dated 24 January 2023 which assesses all five houses (being 115-123 Holt Avenue inclusive) in accordance with the heritage criteria. This report concludes that all of the properties do not meet the heritage criteria for listing as places of local significance.

It follows that further investigation that has been independently conducted following the determination in by Commissioner Horton in the IHO Appeal proceedings, confirm that the Subject Properties are indeed not heritage, which is in support of the DPE's Gateway Determination Refusal. Furthermore, the Council was requested by DPE to provide additional heritage evidence to support its position. Council did not undertake any further studies to support its position and has relentlessly maintained its position, despite all of the evidence to the contrary.

It is abundantly clear that Council's pressing for the Planning Proposal (in its current form) to proceed is purely a political response to the community reaction to our client's Development Application. This decision of Council has caused the Development Application to be on hold since it was lodged over 18 months ago.

The delay in determining our client's Development Application has caused serious financial implications for our client. Especially when additional reports have been commissioned by our client and provided to DPE and the Council to confirm the conclusion that the Subject Properties are not of any heritage significance, which was indicated in the first round of reports obtained by our client and provided to Council.

In considering the above, it is abundantly clear that the subject Properties do not attract any historical significance and the Gateway Refusal should remain.

Yours sincerely



Anthony Whealy
Partner
Accredited Specialist Local Government & Planning

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