



GATEWAY REVIEW

Justification Assessment

Purpose: To request that the Independent Planning Commission review the Gateway determination of the subject planning proposal, consider the information provided by Council and provide advice regarding the merit of the review request.

Dept. Ref. No:	GR-2022-22
LGA	North Sydney
LEP to be Amended:	North Sydney Local Environmental Plan 2013
Address/ Location:	115, 117, 119, 121, 123, 125, 131 and 133 Holt Avenue, Cremorne
Proposal:	Heritage Listing – 115, 117, 119, 121, 123, 125, 131 and 133 Holt Avenue, Cremorne
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	<p>Planning proposal</p> <p>The planning proposal (Attachment proposal) seeks to identify the properties at 115, 117, 119, 121, 123, 125, 131 and 133 Holt Avenue, Cremorne as local heritage items under Schedule 5 – Environmental Heritage of the North Sydney Local Environmental Plan (LEP) 2013 (PP-2022-2712). The proposal is derived from the recommendations of a detailed heritage report undertaken by GML Heritage (3 June 2022) that was commissioned by North Sydney Council (Attachment proposal; Appendix 2).</p> <p>The proposal seeks to amend the North Sydney LEP 2013 per the changes below:</p> <ul style="list-style-type: none"> • Insert eight (8) new items as local heritage items within Schedule 5 – Environmental Heritage of the North Sydney LEP 2013 (refer to table 1); and • Including eight (8) new items on the Heritage Map by replacing the following Sheet: <ul style="list-style-type: none"> HER_003 5950_COM_HER_003_010_20200810 (Figure 1); with HER_003 5950_COM_HER_003_010_20220621 (Figure 2)
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Table 1 Proposed additions to Schedule 5 – Environmental Heritage (source: Gateway determination report)

Locality	Item Name	Address	Property Description	Significance	Item No.
Cremorne	House (Holt Avenue Group)	115 Holt Avenue	Lot 1 DP 929395	Local	I1138
Cremorne	House (Holt Avenue Group)	117 Holt Avenue	Lot 1 DP 980 449	Local	11139
Cremorne	House (Holt Avenue Group)	119 Holt Avenue	Lot 1 DP 929074	Local	I1140
Cremorne	House (Holt Avenue Group)	121 Holt Avenue	Lots 1 and 2 DP 135515	Local	I1141
Cremorne	House (Holt Avenue Group)	123 Holt Avenue	Lot 1 DP 947542	Local	I1142
Cremorne	“Carina”	125 Holt Avenue	SP 11200	Local	I1143
Cremorne	House	131 Holt Avenue	Lot 2 DP 602238	Local	I1144
Cremorne	House	133 Holt Avenue	Lot 1 DP 602238	Local	I1145

The GML heritage assessment report supporting the proposal concluded that the properties meet the criterion for heritage listing at a local level in the following group, pair and individual item:

- The ‘Holt Avenue Group’ comprising 115-123 Holt Avenue, Cremorne
- ‘Carina’, 125 Holt Avenue, Cremorne
- ‘Victorian semi-detached houses’ comprising 131 and 133 Holt Avenue, Cremorne



Figure 1 Current heritage map (source: planning proposal)

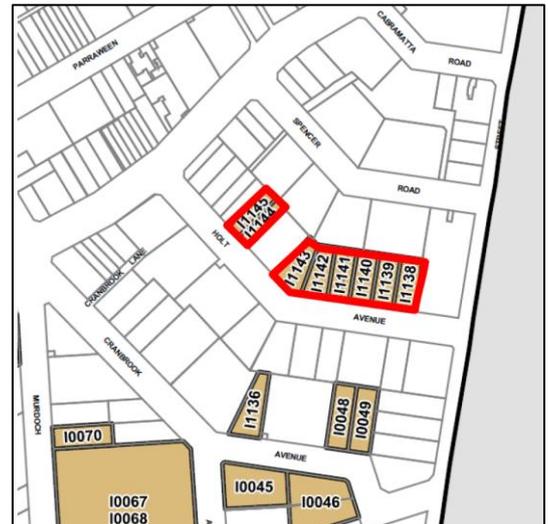


Figure 2 Proposed amended heritage map, subject sites highlighted in red (source: planning proposal)

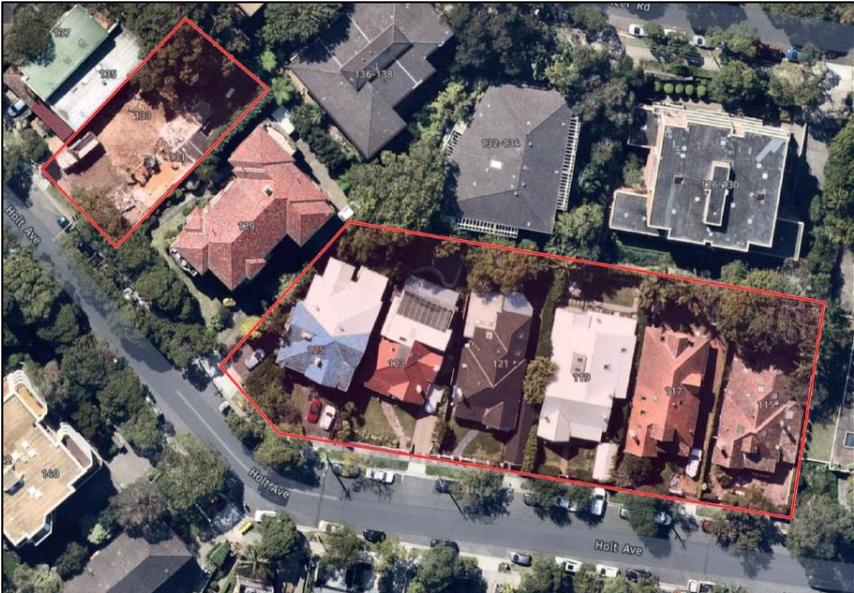
Background

Refer to the Gateway determination report section 1.6 (**Attachment Gateway Report**) for a comprehensive background for the planning proposal. The following (**Table 2**) provides a summarised timeline of events applicable to the proposal:

Table 2 Timeline of planning proposal background

<p>1981, 1993 & 2007</p>	<p>Three Local Government Area (LGA) wide heritage studies have been undertaken on behalf of North Sydney Council (Council). 125 Holt Avenue, Cremorne was identified as having heritage significance and was heritage listed in Council's NSLEP 2001. Following the 2007 heritage review, 125 Holt Avenue was removed as a heritage item under the current NSLEP 2013.</p>
<p>5 June 2021</p>	<p>DA 239/21 was lodged with Council seeking the demolition of existing structures, excavation and construction of a 5 storey mixed use development at 131-139 Holt Avenue.</p> <p>On 12 May 2022, a deemed refusal appeal was lodged with the Land and Environment Court (LEC).</p>
<p>9 August 2021</p>	<p>DA 243/21 was lodged with Council seeking the demolition of existing structures and construction of a 3 storey residential flat building at 115-119 Holt Avenue.</p> <p>On 30 July 2022, a deemed refusal appeal was lodged with the LEC.</p>
<p>24 January 2022 (Attachment F)</p>	<p>Council resolved to obtain urgent advice in relation to whether an Interim Heritage Order (IHO) can be supported on the sites subject to this planning proposal.</p> <p>Council also resolved to prepare an urgent report to assess whether a new Heritage Conservation Area (HCA) should be adopted in relation to the area bounded by Spofforth Street, Military Road, Cranbrook Avenue and Cabramatta Road, Cremorne (figure 3).</p>  <p>Figure 3 Subject sites in context of the potential HCA (source: GML Heritage Assessment Report)</p>
<p>7 March 2022 (Attachment proposal; Appendix B)</p>	<p>In accordance with the above Council resolution, GML prepared a preliminary heritage assessment and identified the sites subject to the DA's satisfying the requirements of placing an IHO. This preliminary assessment also concluded the desired HCA would be highly unlikely to meet the threshold for listing under any criteria.</p> <p>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.</p>

25 March 2022	A Class 1 appeal was lodged relating to the properties at 115-119 Holt Avenue and 131-133 Holt Avenue respectively, seeking the revocation of the IHO that Council placed on each of the properties.
3 June 2022 (Attachment proposal; Appendix 2)	A final detailed assessment report was produced by GML on 3 June 2022 finding that the properties in the outlined collective, pairing and single item meet the threshold for heritage listing under the NSLEP 2013. The report recommended a planning proposal be prepared to list the properties in the outlined arrangement.
29 July 2022 (Attachment E)	<i>Helm No. 18 Pty Ltd v North Sydney Council [2022] NSWLEC 1406</i> The Class 1 appeal relating to 131-133 Holt Avenue was heard by the NSW LEC on 6 and 7 June 2022 with a decision reached on 29 July 2022 to uphold the appeal and revoke the IHO.
11 August 2022 (Attachment B)	The Department wrote to Council following a review of the information submitted with the planning proposal, requesting the planning proposal be withdrawn and re-submitted to address the concerns outlined in the letter.
17 August 2022 (Attachment A)	<i>Holt Avenue Cremorne Pty Ltd v North Sydney Council [2022] NSWLEC 1428</i> The Class 1 appeal relating to 115-119 Holt Avenue was heard by the NSW LEC on 18 and 19 June 2022 with a decision reached to dismiss the appeal and retain the IHO. The most notable reason being: <ul style="list-style-type: none"> • The court is of the view that there may be further inquiry or investigation to be carried out, after which; the court considers it a real chance based on the existing research, that further inquiry may support a finding that the sites are of heritage significance. It is noted at the time the planning proposal was received by the Department; 28 July 2022; these court proceedings were ongoing and therefore not considered by Council in the proposal.
23 August 2022 (Attachment B)	Council responded to the withdrawal request, requesting the planning proposal proceed in its submitted form for the Department to consider a Gateway determination.
8 September 2022	The Department was made aware that demolition had begun on the structures at 131 and 133 Holt Avenue following the approval of a complying development certificate. This demolition has been completed as evidenced on 12 September 2022 in Figure 4 . On 27 September 2022, a LEC conciliation conference was held for the DA239/21 where the appeal was upheld and consent granted to the development application for a four to five storey mixed use development at 131-139 Holt Ave, Cremorne.

		 <p>Figure 4 Subject sites satellite image dated 12 September 2022 (source: Nearmap, subject sites outlined red, 131-133 located furthest left)</p>
	<p>June – November 2022 (Attachments G)</p>	<p>A number of heritage reports have been commissioned by landowners in response to the GML report conducted for Council. These have all been provided as attachments and all contest the properties do not meet any criteria for heritage listing.</p> <p>It is noted the assessments cover most properties, however no heritage assessment aside from GML has covered 125 Holt Avenue.</p> <p>Given the circumstances around the revocation of the IHO and subsequent demolition of 131-133 Holt Avenue, heritage studies commissioned for these sites have not been considered, however, these reports are available on Council’s website.</p>
<p>Reasons for Gateway determination</p>	<p>On 7 October 2022, the Department issued a Gateway determination (Attachment Gateway), which determined that the planning proposal should not proceed for the following reasons:</p> <ol style="list-style-type: none"> 1. The Department does not support the local heritage listing of the properties specified in this proposal without further inquiry, research and justification as reasoned in this determination to support any progression of the proposal. The Department notes a number of heritage assessments have been conducted by landowners in response to this planning proposal with findings contrary to that identified in Council’s commissioned assessment by GML that outline the extent of modifications to the subject properties. 2. The Department wrote to Council 11 August 2022 to provide an opportunity to withdraw, update and resubmit the planning proposal in response to the latest information, court decisions and heritage studies. Council declined this offer and requested that the Gateway determination was made based on the planning proposal as submitted. 3. The planning proposal in its current form seeks to heritage list 131 and 133 Holt Avenue where the Interim Heritage Order has been revoked with the Land and Environment Court unequivocally establishing that neither 131 nor 133 Holt Avenue are of heritage significance. The demolition of the properties has commenced and therefore the listing of these properties is not supported. 	

	<p>4. The proposal has not adequately addressed consistency with Section 9.1 Ministerial Directions - 6.1 Residential zones with regard to the R3 and R4 Medium and High Density Residential zonings under the North Sydney LEP 2013 that would allow development controls that provide capacity for higher densities under the current LEP.</p> <p>5. The Department notes the opinion of the North Sydney Local Planning Panel's 13 July 2022 consideration that due to the extent of alterations and additions to the subject properties, the proposal in its current form lacks both site specific and strategic merit. The Panel in its recommendation was not persuaded the properties meet the threshold for listing under the Heritage Assessment Guidelines.</p> <p>6. The Interim Heritage Order appeal relating to the properties 115, 117 and 119 Holt Avenue although dismissed, outlines the Land and Environment Court decision on the view that on the basis of the 2022 GML assessment, there is a real chance that further inquiry may support a finding that the properties are of heritage significance. Council has not provided any further inquiry or investigation to satisfy the decision to uphold the Interim Heritage Order on the sites.</p> <p>7. The property at 125 Holt Street was previously de-listed as a local heritage item due to lack of heritage significance.</p> <p>Details of the Department's Gateway assessment are provided in the Department's Gateway assessment report (Attachment Gateway report).</p>
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Council's views

<p>Details of justification</p>	<p>The Department has received a Gateway review request from Council in response to the Gateway determination that the planning proposal (PP-2022-2712) should not proceed. Accompanying the request is the Attachment Justification outlining Council's justification for the Gateway review.</p> <p>The Department's <i>Local Environmental Plan Making Guideline</i> states that if the Gateway determination is either to not proceed or to resubmit the planning proposal, the proponent or Council has 42 calendar days from notification to request a review of this determination. Council provided the Department with a notice of intent to seek a Gateway review on 11 October 2022, with the formal request progressed through the planning portal on 21 November 2022, which is consistent with the Guideline.</p> <p>The Department's reasons for refusing the proposal are stated in bold below. Council's response to each reason for refusal is summarised below.</p> <p>1. The Department does not support the local heritage listing of the properties without further inquiry, research and justification</p> <p><u>Council's response:</u></p> <p>Council acknowledges there is a degree of interpretation associated with assessing heritage values and state these values should not be determined by how many consultants share the same view. Council state the GML report was prepared by an independent heritage consultant with no brief other than to investigate the potential heritage significance of the precinct and individual sites.</p> <p>Council notes of the heritage studies raised by the Department, only three remain relevant given the demolition of 131-133 Holt Avenue. Council further notes in Commissioner Horton's decision in relation to 115-119 Holt Avenue that the Oultram assessment and Urbis assessment are similar, and in some cases</p>
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identical, therefore excluding the Oultram assessment as of no assistance to the Court.

2. The Department provided Council an opportunity to withdraw, update and resubmit the proposal in response to the latest information, court decisions and heritage studies

Council's response:

Council's 18 August 2022 letter to the Department urged the Department to consider a Gateway determination based on the available information as the most efficient manner to resolve the proposal. Given the IHO timeframe, Council considered the most efficient approach would be for 131-133 Holt Avenue to be sensibly removed from the proposal by way of condition.

3. The Department does not support the listing of 131 and 133 Holt Avenue

Council's response:

Council acknowledged in its 18 August 2022 letter to the Department that a complying development certificate had been issued for the demolition of the properties at 131-133 Holt Avenue following the revocation of the IHO. Council supports the removal of 131-133 Holt Avenue from the planning proposal.

4. Section 9.1 Ministerial Direction 6.1 Residential Zones has not been adequately addressed

Council's response:

Council states the planning proposal is consistent with the requirements of the Direction as it will not reduce the ability to undertake residential development on the parcels of land where residential development is currently permitted.

Council notes that the only R4 High Density Residential zone applying to the proposal was 131-133 Holt Avenue and as they have been demolished, the sites are effectively no longer applicable and a part 4 storey part 5 storey development for these sites has recently been approved.

The proposal effectively applies to only 6 allotments (115-125 Holt Ave) all zoned R3 Medium Density Residential with an 8.5m height limit in the NSLEP 2013. Council acknowledges a minor reduction in development capacity may be expected, however notes that development sympathetic to the heritage values of the properties can continue to occur. Council provided 125 Holt Avenue as an example, which contains 4 self-contained dwellings.

5. The North Sydney Local Planning Panel did not support the planning proposal

Council's response:

The North Sydney Local Planning Panel heard from six heritage experts representing either 131-133 Holt Avenue or 115-119 Holt Avenue with the Panel by its own admission not featuring any heritage qualifications nor expertise. In addition, the Panel did not allow Council's heritage expert from GML to be heard, even after being informed the expert was on standby (remotely) to answer any questions. All six experts on behalf of proponents were given extensive opportunity to address the Panel.

Council notes the Panel was also considering the potential listing of 131-133 Holt Avenue during its deliberations, which are effectively now voided, given their demolition.

6. Land and Environment Court decision relating to the Interim Heritage Order imposed on 115-119 Holt Avenue

	<p><u>Council's response:</u></p> <p>The Court, in Council's opinion, turned its mind to the threshold test for the making of the IHO and found that the necessary threshold had been met which is a strong affirmation of Council's position. Council believe the Department to have misinterpreted the judgement.</p> <p>Council refer to Commissioner Horton's reference to "further inquiry" as simply upholding the validity of the imposition of the IHO, stating Commissioner Horton was not making a recommendation or determining that further studies be undertaken. Council state this is consistent with the finding in Touma v Randwick City Council [2019] NSWLEC 1395.</p> <p>7. 125 Holt Avenue was previously de-listed as a local heritage item due to lack of heritage significance</p> <p><u>Council's response:</u></p> <p>Council acknowledge 125 Holt Avenue was de-listed as part of the finalisation of the NSLEP 2013 making process. Council state that heritage values and the community's approach to heritage conservation change over time. The 2007 investigations required a high level analysis and review of potential items, standing to reason the GML assessment provided the opportunity for a more thorough and detailed analysis.</p> <p>Council stands by the comprehensive nature of the GML investigations, superseding the previous LGA wide recommendations.</p> <p>The full justification of Council is provided as Attachment Justification.</p>																				
<p>Material provided in support of application / proposal</p>	<p>Council provided the following documents to support its Gateway determination review request:</p> <table border="1" data-bbox="335 1070 1422 1552"> <tr> <td>Attachment Cover</td> <td>Gateway Review Cover Letter</td> </tr> <tr> <td>Attachment Justification</td> <td>Gateway Review Summary of Council's Justification</td> </tr> <tr> <td>Attachment Proposal</td> <td>Planning Proposal dated 30 June 2022. This document is inclusive of the planning proposal report, GML heritage assessments, proposed mapping and additional relevant appendices as submitted by Council</td> </tr> <tr> <td>Attachment A</td> <td>Commissioner Horton's LEC Judgement relating to 115-119 Holt Avenue</td> </tr> <tr> <td>Attachment B</td> <td>Correspondence from Council and Report dated 14 November 2022</td> </tr> <tr> <td>Attachment C</td> <td>Council letter of intent to the Department dated 11 October 2022</td> </tr> </table> <p>For reference and consideration by the IPC, the following documents are also attached to this justification assessment report:</p> <table border="1" data-bbox="335 1688 1422 1986"> <tr> <td>Attachment Gateway</td> <td>Gateway determination issued by the Department dated 7 October 2022</td> </tr> <tr> <td>Attachment Gateway report</td> <td>Gateway assessment report prepared by the Department</td> </tr> <tr> <td>Attachment D</td> <td>North Sydney Local Planning Panel minutes dated 13 July 2022</td> </tr> <tr> <td>Attachment E</td> <td>Helm No. 18 Pty Ltd v North Sydney Council</td> </tr> </table>	Attachment Cover	Gateway Review Cover Letter	Attachment Justification	Gateway Review Summary of Council's Justification	Attachment Proposal	Planning Proposal dated 30 June 2022. This document is inclusive of the planning proposal report, GML heritage assessments, proposed mapping and additional relevant appendices as submitted by Council	Attachment A	Commissioner Horton's LEC Judgement relating to 115-119 Holt Avenue	Attachment B	Correspondence from Council and Report dated 14 November 2022	Attachment C	Council letter of intent to the Department dated 11 October 2022	Attachment Gateway	Gateway determination issued by the Department dated 7 October 2022	Attachment Gateway report	Gateway assessment report prepared by the Department	Attachment D	North Sydney Local Planning Panel minutes dated 13 July 2022	Attachment E	Helm No. 18 Pty Ltd v North Sydney Council
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Attachment F	Extraordinary Council Meeting Resolution dated 24 January 2022
Attachment G1	Urbis Heritage Assessment 115-119 Holt Avenue dated July 2022
Attachment G2	Weir Phillips Heritage Impact Statement Nos 115-119 Holt Avenue dated July 2022
Attachment G3	John Oultram Revised Heritage Assessment 115-119 Holt Avenue dated June 2022
Attachment G4	John Oultram Heritage Assessment 115-123 Holt Avenue dated October 2022
Attachment G5	City Plan Heritage Assessment 115-123 Holt Avenue dated November 2022

Assessment summary

Department's assessment	<p>The Department notes the justification provided by Council for the Gateway determination review. However, the Department's position remains unchanged and recommends that the planning proposal should not proceed.</p> <p>The key matters and reasoning behind the Department's position is outlined below:</p> <ol style="list-style-type: none"> The Department does not support the local heritage listing of the properties without further inquiry, research and justification <p><u>Department assessment:</u></p> <p>As acknowledged by Council, there is a degree of interpretation associated with assessing and determining heritage values. The Department is not satisfied the justification presented in the planning proposal is sufficient to list the properties in the context discussed in this report. The Department therefore did not support the planning proposal as submitted for the reasons outlined throughout the assessment.</p> <p>Specific to the first reason for refusal, the Department notes several heritage assessments have been undertaken by reputable, independent heritage experts on behalf of landowners that all conclude that no assessed properties meet the Heritage Council's seven criteria for heritage listing. Additionally, several heritage reports were conducted on the properties at Nos 131 and 133 Holt Avenue that were not considered due to the Court not supporting the heritage listing and the demolition of these properties.</p> <p>In addition to finding no heritage significance, contrary to the report commissioned by Council, the heritage reports provided as Attachments G outline the extent of modifications made to the relevant properties, particularly evident in the assessment undertaken by John Oultram (Attachment G4) that provides floor plans highlighting the additions and alterations to the properties.</p> <p>The Department does note no heritage assessments aside from GML have been conducted on 125 Holt Avenue, Cremorne.</p> <p>Adequate justification has not been provided to list the properties in the context of the Local Planning Panel recommendations and the Land and Environment Court decisions.</p> <p><i>Limitations of Council's GML Report</i></p> <p>The GML report identifies that <i>few properties other than 125 are likely to meet the threshold for individual listing</i>. The analysis undertaken by GML is on the collective of 115-123 Holt Avenue, and it is therefore unknown what conclusion GML would draw should they undertake a thorough individual assessment. The</p>
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Department acknowledges the analysis has been undertaken in accordance with the standard criteria established in the NSW Heritage Office guidelines.

GML concedes there are limitations in its report regarding physical inspections of the site, with this including only inspecting the interior of two apartments at 125 Holt Avenue, and that the inspections for 121 and 123 Holt Avenue have only been carried out from the public domain.

2. The Department provided Council an opportunity to withdraw, update and resubmit the proposal in response to the latest information, court decisions and heritage studies

Department assessment:

As outlined in the Department's letter to Council on 11 August 2022, following review of the information submitted with the planning proposal the Department requested that Council withdraw the proposal to respond to the new information in a re-submitted proposal (**Attachment B**). Namely, this requested Council respond to the Court outcomes of both IHO's and the North Sydney Local Planning Panel's (LPP) recommendation.

It is the Department's view that additional justification as specified by the LPP and Commissioner Horton, and a response to the finding of Acting Commissioner Sheridan should have been incorporated into the planning proposal.

The Department notes Council's time constraints regarding expiration of the remaining IHO however the further justification would be expected to apply to all properties, rather than the revoked IHO properties of 131 and 133 Holt Avenue.

3. The Department does not support the listing of 131 and 133 Holt Avenue

Department assessment:

The Department and Council agree that 131 and 133 Holt Avenue are unable to be heritage listed due to their demolition and support removal from the proposal.

4. Section 9.1 Ministerial Direction 6.1 Residential Zones has not been adequately addressed

Department assessment:

As assessed in **Attachment Gateway report**, the proposal does not address the current zoning of the properties as R3 Medium Density. Note that 131-133 Holt Avenue are within the R4 High Density Residential zones, however both Council and DPE agree to leave them out due to the demolition of the houses.

Heritage listing of the properties will have implications for future development on the sites and any higher density development envisaged under the current zoning. This is particularly relevant in the context of the development applications lodged to maximise the development potential on these sites.

The Department notes Council's response that development sympathetic to heritage values may occur, it remains that the proposal does not acknowledge the potential reduction in development capacity in the context of current and potential future development applications to utilise the extent of the LEP controls in the zones.

The Department notes an additional planning proposal of relevance being PP-2022-1167- Prohibition of Residential Flat Buildings in the R3 Medium Density Residential Zone that is currently at the post-exhibition stage. Of most

importance in the Gateway determination issued for PP-2022-1167 the following condition was inserted:

1. Prior to public exhibition, the planning proposal is required to be updated to:
 - a. Contain details regarding a savings provision for DAs lodged prior to the proposed amendment of the LEP and not yet determined.

The remaining development application applying to 115-119 Holt Avenue is subject to this savings provision and therefore the proposal should be able to be considered on merit rather than be subject to a prohibition. The subject planning proposal to heritage list the properties should address the implications a heritage listing will have on this development.

The RFB development application (DA 243/21) at 115-119 Holt Avenue is currently the subject of an appeal following Council's deemed refusal of the DA. This appeal was lodged on 1 August 2022 and a conciliation conference was held with the Land and Environment Court on 6 February 2022 (case number 2022/00219204).

5. The North Sydney Local Planning Panel did not support the planning proposal

Department assessment:

The North Sydney Local Planning Panel (LPP) was afforded the opportunity to receive reports, information and submissions regarding the potential heritage listing of the properties.

The LPP recommended the subject properties require a more thorough and lengthy inquiry to fully review and reconcile whether the properties warrant being heritage listed.

This recommendation is consistent with the decision of Commissioner Horton in the Land and Environment Court case. Based on the information before the Panel, the Panel was not persuaded the properties meet the Heritage Council's threshold for listing as heritage items. The planning proposal therefore lacks both site specific and strategic merit.

The Department acknowledges as pointed out by Council in its justification, GML's heritage expert was on standby to answer questions, an option the Panel did not feel necessary to take up, with the information provided sufficient for their recommendation. Of note, the LPP stated the "*extensive alterations and additions over decades, and in more recent years*" was a key consideration in forming its opinion.

6. Land and Environment Court decision relating to the Interim Heritage Order imposed on 115-119 Holt Avenue

Department assessment:

The Department maintains its interpretation of the decision by Commissioner Horton that states "*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*". Council does not acknowledge the additional statement of Commissioner Horton that reads "*On the basis of the 2022 GML Assessment, I am 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*".

Although requested by the Department, this further inquiry was not undertaken, and the Department is unable to progress the planning proposal contrary to the statements of Commissioner Horton and the recommendation of the LPP.

The Department provided Council an opportunity to address these decisions and recommendations prior to its Gateway assessment. The Department considers that a more thorough and lengthy investigation to fully review the listing of the properties should be undertaken by Council.

7. 125 Holt Avenue was previously de-listed as a local heritage item due to lack of heritage significance

Department assessment:

125 Holt Avenue, Cremorne was previously identified as having heritage significance under the 1993 heritage review and was listed as a heritage item within Council's NSLEP 2001. Following the 2007 LGA wide heritage review, 125 Holt Avenue was removed as a heritage item under the current NSLEP 2013.

The Department acknowledges heritage values and community's approach to heritage may change over time, however the de-listing of a heritage property within Council's LEP is a deliberate and considered decision made by heritage experts and approved by Council in the current LEP.

The Department recommends Council to provide further justification for listing a property that was previously de-listed. The justification of the North Sydney Heritage Review (2007) is not available publicly and not in the Department's records. It would be advisable for Council to provide this report with the reasoning behind removing 125 Holt Avenue as a heritage listing under the current LEP to assist in this case, and the justification for its relisting.

Developments since the Gateway was issued and options for the IPC to consider

Further heritage reports received

On 14 November 2022 the Department received two additional heritage reports (**Attachments G4 & G5**) from John Oultram Heritage dated October 2022, and City Plan Services dated November 2022 respectively. The Department has confirmed with IPC officers these can be considered in this Gateway review. The key difference is these reports address properties 115-119 and 121-123 Holt Avenue, with previous reports only assessing the properties subject to a DA.

The findings of these reports are consistent with all other landowner commissioned reports that find none of the subject properties are eligible for heritage listing, neither individually nor as a group.

It should also be noted the Department does not intend to commission its own independent appraisal of heritage reports, and therefore as stated throughout this report has requested Council reaffirm their findings through additional research and justification.

Additional investigation could include a review of the studies prepared on behalf of the landowners and information provided on alterations and additions to the properties.

Options for consideration

As outlined throughout this report the Department does not support the planning proposal as submitted. As Council also agrees to the removal of 131-133 Holt Avenue, the Department would encourage Council to resubmit a new planning proposal that addresses the concerns raised in the Gateway determination for properties 115-125 Holt Avenue.

It is important that any resubmission of this planning proposal include analysis of heritage studies provided by landowners that were submitted since the gateway determination, and adequate additional justification to support proposed heritage listings and address all issues. If a revised proposal is to be supported, then Council

	<p>will need to consider whether Group listing is recommended if some items are removed. The planning proposal should also consistently refer to listing as a group rather than as individual heritage items.</p> <p>It is acknowledged that the IHO for the properties 115-119 Holt Avenue will expire on 7 March 2023 and a resubmission of the planning proposal would extend beyond the protection the IHO currently affords to these properties.</p> <p>If further work is required to support the listings, then it may be appropriate to recommend a new planning proposal and new Gateway consideration, rather than a recommencement of the existing planning proposal.</p> <p>Recommendation</p> <p>The Department has provided Council the opportunity prior to Gateway to withdraw the proposal and respond to the recommendation of the LPP and Court decisions that highlighted a consistent opinion that further inquiry was required to support heritage listing. As this inquiry was not provided or undertaken, the Department recommends the planning proposal as submitted should not proceed.</p> <p>An acceptable approach however would be for Council to update to address these concerns and submit a new planning proposal to be considered through the Gateway process.</p>
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COMMISSION’S RECOMMENDATION

Reason for review: A determination has been made that the planning proposal should not proceed.

Recommendation	<input type="checkbox"/>	<p>The planning proposal should not proceed past Gateway.</p> <p style="margin-left: 20px;"><input type="checkbox"/> no amendments are suggested to original determination.</p> <p style="margin-left: 20px;"><input type="checkbox"/> amendments are suggested to the original determination.</p>
	<input type="checkbox"/>	<p>The planning proposal should proceed past Gateway in accordance with the original Determination.</p>