

## Item 6.

### Post Exhibition - Planning Proposal – Heritage Listing - 46 Chisholm Street, Darlinghurst - Sydney Local Environmental Plan 2012

File No: X020345

#### Summary

Heritage plays an important role in adding to the city's sense of liveability by conserving and enhancing historical places that contribute to the character and attractiveness of the city as a great place to live, work and visit. The property at 46 Chisholm Street, Darlinghurst is recommended for listing as an item of environmental heritage to recognise its local heritage significance. The dwelling is an example of a mid-late Victorian weatherboard cottage that retains its early form and its detail to the front. The property contains the only remaining, timber weatherboard cottage from the earliest development of the Chisholm Estate.

An independent heritage assessment by John Oultram Heritage + Design concluded that the cottage at 46 Chisholm Street, Darlinghurst meets the threshold for inclusion as a heritage item on Sydney Local Environmental Plan 2012 (the LEP) for its historic values, rarity and representativeness.

The property at 46 Chisholm Street is a single storey, late Victorian cottage built c1880 for James Parker who had purchased Lot 7 in Section 2 of the Chisholm Estate. The Chisholm Estate (Roll Plan 619) appears to have been subdivided in 1875 and occupied an area bordered by South Dowling Street, Taylor Street, Flinders Street and Hannan Street. The property was formerly part of Edward Riley's vast landholdings in the area that he purchased directly or later acquired, from John Palmer. The cottage is emblematic of the early development of the area for small-scale housing.

The single storey, weatherboard cottage type is uncommon in the area that largely comprises two storey masonry terraces. In the plan of 1888, only five, single-storey timber cottages are shown in the area and the subject cottage is now the only weatherboard house in the former Chisholm Estate subdivision and dates from the earliest building period for the area.

The house is considered a good example of a mid-Victorian weatherboard cottage that retains its early form and its detail to the front. The house retains a two-room arrangement to the front and though it has been altered internally with the loss of much of its original, internal features it remains a representative example of the type.

In May 2019, Council and the Central Sydney Planning Committee resolved to seek a gateway determination and exhibit the planning proposal to include 46 Chisholm Street as a heritage item on the LEP. The Department of Planning, Industry and Environment approved commencing public consultation for the planning proposal in its gateway determination issued on 17 October 2019. The planning proposal was exhibited from 25 November to 23 December 2019. 15 submissions were received in response to the initial public exhibition including one petition.

Due to a miscalculation of days of the exhibition time period in late 2019, the City was required to re-exhibit the planning proposal. This new exhibition period occurred from 5 May 2020 until 3 June 2020. Submissions on this proposed heritage listing received during the 2019 exhibition were included and considered. A further four submissions were received in response to the second public exhibition.

Of the 19 submissions received, those in support were mostly local residents, generally interested in the heritage listing as a means of retaining the area's built heritage for future generations. Heritage NSW supported the City with the listing of new heritage items the LEP, as long as the necessary assessments, notifications and due diligence had been completed.

Most of the submissions opposing the heritage listing focused on the condition of the existing building and the extent of previous changes, arguing that significance had been diminished. Several discussed the proposed heritage listing in the context of the refused development application for this site, citing concerns regarding process. Others referred to the current amenity of the existing dwelling, ongoing maintenance requirements, long period of family ownership and personal requirements/desires and the fact that no previous Council study had identified the site as having individual heritage significance.

This report recommends Council approve the planning proposal at Attachment A, for subsequent forwarding to the Department for making as a local environmental plan.

Progressing a local heritage listing will ensure the local heritage significance of this building is appropriately considered and maintained as part of any future development.

## Recommendation

It is resolved that:

- (A) the Central Sydney Planning Committee note the submissions received during the two public exhibitions and public authority consultation of the Planning Proposal - Heritage Listing - 46 Chisholm Street, Darlinghurst, shown at Attachment C to the subject report;
- (B) the Central Sydney Planning Committee I approve the Planning Proposal - Heritage Listing - 46 Chisholm Street, Darlinghurst, shown at Attachment A to the subject report to be made as a local environmental plan under section 3.36 of the Environmental Planning and Assessment Act 1979; and
- (C) authority be delegated to the Chief Executive Officer to make any minor variations to Planning Proposal - Heritage Listing - 46 Chisholm Street, Darlinghurst to correct drafting errors prior to finalisation of the local environmental plan.

## Attachments

- Attachment A.** Planning Proposal - Heritage Listing - 46 Chisholm Street, Darlinghurst
- Attachment B.** Heritage Assessment
- Attachment C.** Summary of Submissions
- Attachment D.** Heritage Inventory

## Background

### Site Identification

1. The property at 46 Chisholm Street, Darlinghurst is legally described as Lot 71 DP 602585 and has a total site area of approximately 106 square metres, as shown in Figure 1. The site is privately owned.
2. The site contains a single-storey timber cottage dating from circa 1880. External photographs are included at Figure 2.



Figure 1: Site of 46 Chisholm Street, Darlinghurst



Figure 2: Front façade, 46 Chisholm Street, Darlinghurst

3. Chisholm Street, Darlinghurst is a narrow street, part of a tight knit pattern of streets and lanes bounded by Oxford Street, Flinders Street and South Dowling Street. Chisholm Street is lined to the east with two-storey, Victorian houses, mostly terraces. The western side of the street has the rear wings and garages of the properties fronting Flinders Street with some later infill development to the north.
4. The timber weatherboard cottage at 46 Chisholm Street, is located within the Paddington Conservation Area and identified as a contributory building.

### **Planning Background**

5. Weatherboard buildings are an important element to the City of Sydney's character as they are amongst the oldest buildings in the City. These buildings contribute a unique character to their streets and a diversity to city life. However, they are becoming increasingly rare and have been under threat of demolition.
6. Following concerns about the number of applications for demolition or redevelopment of weatherboard buildings in its area, South Sydney City Council commissioned a study of this type of building in 2002. After the amalgamation with the City of Sydney in 2004, the City endorsed a number of heritage listings of weatherboard cottages, and soon after incorporated guidelines for weatherboard buildings into the development control plan. They provide guidance for development within conservation areas and specifically of weatherboard buildings older than 50 years.
7. In December 2017, a pre-DA meeting and site inspection was held about the proposed demolition of the weatherboard cottage, subdivision of the site and erection of two semi-detached dwellings at 46 Chisholm Street, Darlinghurst. The proponent was advised that the proposed development was not supported, noting its contributory status within the Conservation Area.
8. In mid-2018, the City of Sydney received a development application (D/2018/591) for a proposed development at 46 Chisholm Street involving the demolition of the existing single-storey weatherboard cottage and construction of a pair of two-storey semi-detached terraces.
9. In September 2018, the proponent was requested to withdraw the development application as Council was likely to refuse the application. Subsequently, the development application was refused by the City under delegated authority.
10. In December 2018, a section 8.2(1)(a) review of determination application was lodged (RD/2018/591/A) and additional information supporting this was forwarded by the applicant in February 2019, including a revised Structural Engineer's Report, and cost estimates to make good existing dwelling and to construct two proposed terraces.
11. In February 2019, the review panel met and deferred consideration until an independent heritage assessment was reviewed and site inspected. Following this, the RD/2018/591/A application was refused in March 2019.

12. As the potential heritage significance of the site was being considered during the assessment process, the City of Sydney commissioned a heritage assessment to determine if the site should be included as a heritage item within Schedule 5 of Sydney Local Environmental Plan 2012 (LEP). This independent heritage assessment by John Oultram Heritage + Design concluded that the cottage at 46 Chisholm Street, Darlinghurst meets the threshold for inclusion as a heritage item on the LEP for its historic values, rarity and representativeness. The assessment notes that the cottage is an example of mid-late Victorian weatherboard cottage that retains its early form and its detail to the front. The property contains the only remaining, timber weatherboard cottage from the earliest development of the Chisholm Estate.
13. In March 2019, the property owner lodged a Class 1 appeal with the Land and Environment Court in respect of the refusal of their development application (D/2018/591). This matter is expected to go to a hearing later this year.

### **Planning Proposal**

14. The purpose of the planning proposal, provided at Attachment A, is to recognise and protect the heritage significance of the dwelling at 46 Chisholm Street, Darlinghurst by proposing to include the site as a heritage item in the LEP.
15. No other changes to the planning controls are proposed.
16. On 13 and 5 May 2019, respectively, Council and the Central Sydney Planning Committee resolved to seek a gateway determination and exhibit the planning proposal to include 46 Chisholm Street as a heritage item in Schedule 5 of the LEP.
17. The planning proposal was submitted to the Department of Planning, Industry and Environment (the Department), with a request for a gateway determination in accordance with section 3.34 of the Environmental Planning and Assessment Act 1979. The City also requested authority to exercise the delegation of the Minister of all his functions under section 3.36 of the Act to make the local environmental plan.
18. The gateway determination, issued on 17 October 2019, by the Department enabled the City to proceed with the public exhibition of the planning proposal.
19. Conditions of the gateway determination required consultation with Heritage NSW. Conditions also required some minor amendments to the planning proposal to update the mapping and further describe the surrounding area and the planning controls applicable to the site.
20. The Department did not authorise the City to exercise its delegation from the Minister for Planning and Public Spaces to make the LEP.

### **Public Exhibition**

21. The City of Sydney consulted the owner, members of the public and the Heritage Council and its department through the exhibition of this planning proposal in accordance with the requirements of the Department's gateway determination.
22. The public exhibition period ran from 25 November to 23 December 2019, with the public invited to make comments on the proposal. Notification letters were sent to the owner, surrounding properties and Heritage NSW. A notice was placed in the Sydney Morning Herald, inviting comments. All information for the proposal was made available on the City's website, Sydney Your Say, and at the One Stop Shop, Town Hall House and the Kings Cross Customer Service Centre.

23. Due to a miscalculation of days for the exhibition time period, the City was required to re-exhibit the planning proposal. This new exhibition period occurred from 5 May 2020 until 3 June 2020, with the public invited to make comments on the proposal. Notification letters were sent to the owner, surrounding properties and Heritage NSW. A notice was placed in the Sydney Morning Herald, inviting comments. All information for the proposal was made available on the City's website, Sydney Your Say. Previous submissions from the 2019 exhibition were still considered, and submissions were not required to be resubmitted.

### Submissions

24. The City initially received 15 submissions from the property owner, their consultant, community members and Heritage NSW. A further four submissions were received in response to the second public exhibition, making a total of 19 submissions. The submissions ranged from support to objecting to the proposed heritage listing. These submissions are summarised and responded to in the table at Attachment C.
25. Of the 19 submissions received, those in support were mostly local residents, interested in the heritage listing as a means of retaining the area's built heritage for future generations.
26. Heritage NSW supported the City with the listing of new heritage items on the LEP generally, as long as the necessary assessments, notifications and due diligence had been completed.
27. There were a number of consistent themes in the objections to the proposed heritage listing. These are summarised below, followed by the city's response.

### Condition of the building and past building works

28. Most of the submissions opposing the heritage listing focused on the condition of the existing building and the extent of previous changes, indicating that (in their opinion) this diminished the potential heritage significance of the site.
29. A submission to the second exhibition period included a detailed Fabric Analysis Report, which concluded that some of the original structure is extant (boundary and front walls, and some internal walls) and that there is limited other original fabric remaining. The floor structure, front verandah, most external materials and all internal materials have been replaced, mostly since the early 1990s. The report notes that there are some original weatherboards on the front façade and some original (or early) shingles under the metal roof.
30. The information submitted on behalf of the landowner has been reviewed. The integrity of the building and loss of fabric is understood and was known (to reasonable extent) when the independent assessment was carried out. As a result of the increased detail in this fabric analysis the draft inventory sheet has been updated.
31. The information submitted has been considered and despite the loss of fabric the building still meets the criteria for listing. Historic timber buildings in Sydney, especially those approximately 140 years old, are likely to have undergone substantial loss of original organic fabric. As noted in the heritage assessment, the cottage retains its original form and detail to the front, even if it has lost much of its original fabric. Nonetheless, for its historic significance, representativeness and rarity value, it has been assessed as having heritage significance.

#### Ongoing maintenance required

32. Many of the objections referred to the ongoing maintenance required at the site. The City contends that all historic properties require regular maintenance, especially Victorian timber structures and that this does not preclude heritage listing.

#### Process and the refused development application

33. Several submissions discussed the proposed heritage listing in the context of the refused Development Application for this site, citing concerns regarding process. These concerns include not consulting with the landowner when developing the listing and access to the property.
34. Since pre-development application discussions in late 2017, the City has clearly advised it does not support the proposed demolition of the cottage for a number of reasons, including the existing contributory status of the building within the conservation area as the planning controls require conservation of contributory buildings.
35. The assessment of heritage significance was carried out independently before being considered by staff and reported to Council and CSPC with a recommendation to consult on a proposed listing.
36. The period for consulting with all interested parties is during public exhibition after Council and the CSPC have resolved to proceed with consultation. Relevant information is then made public and the public and relevant parties notified to enable an equitable consultation process. During this period any additional evidence or views may be submitted which are then considered by staff before Council and CSPC determine whether to proceed with a listing.
37. During the preparation of the heritage assessment, the City requested and was provided access from the landowner's representative for staff and the consultant to inspect the property.

#### Current amenity provided by the existing building

38. Other objections referred to the current amenity of the existing dwelling. The City notes that heritage listing of a property does not preclude change to increase amenity, such as the introduction of insulation within walls and ceilings to minimise discomfort during the extremes of summer or winter.

#### Previous studies

39. Several objections referred to the fact that no previous Council study had identified the site as having individual heritage significance.
40. Heritage items are generally identified through placed based or thematic studies or individual assessments as the potential significance of a site becomes known. Assessing and identifying heritage items on an individual basis as their potential significance is revealed, often in the context of development proposals, is a common process and one supported through heritage legislation.

41. The site was not identified in the South Sydney City Council Weatherboard Buildings Study commenced in 2002, however, this study was not comprehensive. Though the Study led to the current weatherboard provisions in the DCP. While there were no specific recommendations made for this site as part of the 2002 study, this does not negate the recommendation of the 2019 independent heritage assessment.
42. The City commissioned an independent heritage assessment of the property at the time of the development application process to determine if the site met the threshold for inclusion as a heritage item. This assessment was carried out separately to, but concurrently with, the development application assessment process. A comparative analysis was prepared which indicated that the subject site has all of the characteristics of heritage listed weatherboard cottages in the City with a comparable degree of significance and intactness.

### **Heritage Significance**

43. The NSW Heritage Office guideline "Assessing Heritage Significance" outlines the Heritage Council criteria of local heritage significance to determine whether a place warrants local heritage listing. Only one of these seven criteria needs to be satisfied at the local level for local heritage listing.
44. An independent heritage assessment of the building by John Oultram Heritage + Design was completed in February 2019.
45. This assessment concluded that the cottage at 46 Chisholm Street, Darlinghurst meets the threshold for inclusion as a heritage item on the LEP for its historic values, rarity and representativeness. The assessment notes that the cottage is an example of a mid-late Victorian weatherboard cottage that retains its early form and its detail to the front. The property contains the only remaining, timber weatherboard cottage from the earliest development of the Chisholm Estate.
46. Based on this, progressing local heritage listing for the subject site will ensure the local heritage significance of this property is appropriately considered and maintained as part of any future development.

### **Next steps**

47. As Council has not been authorised to exercise its delegation to make the plan following completion of the gateway process, it is recommended that the planning proposal at Attachment A be approved by Council and the Central Planning Committee, and to be subsequently forwarded to the Department to make the local environmental plan.
48. Progressing a local heritage listing will ensure the local heritage significance of the site is appropriately considered and maintained as part of future plans or redevelopment.

## Key Implications

### Strategic Alignment - Eastern City District Plan

49. The Eastern City District Plan completed by the Greater Sydney Commission in March 2018 is a 20 year plan to manage growth in the context of economic, social and environmental matters. The district plan identifies 22 planning priorities and associated actions that support a liveable, productive and sustainable future for the district. This planning proposal gives effect to planning priority "E6 – Creating and renewing great places and local centres and respecting the District's heritage" and Action 20 to identify, conserve and enhance environmental heritage.
50. This priority seeks to enhance the district's liveability and foster great places by identifying, conserving and enhancing historical place-makers. The district plan notes that heritage buildings contribute to an area's sense of place, its distinctive character, and diversity of built form and uses, and bring people together. Conserved heritage buildings are some of the attributes of liveable great places acknowledged in this plan, which attract residents, workers, visitors, enterprise and investment into local centres.
51. This planning proposal will address the district plan by respecting the City's heritage and fostering great places to bring people together. The retention of the weatherboard cottage at 46 Chisholm Street has potential to enhance the character and distinct sense of place of Darlinghurst.

### Strategic Alignment - Sustainable Sydney 2030

52. Sustainable Sydney 2030 is a vision for the sustainable development of the City to 2030 and beyond. It includes 10 strategic directions to guide the future of the City, as well as 10 targets against which to measure progress. This report is aligned with the following strategic directions and objectives:
  - (a) Direction 7 - A Cultural and Creative City - The planning proposal identifies 46 Chisholm Street, Darlinghurst as a local heritage item. The local heritage listing for this proposed heritage item will ensure that the local heritage significance of this site is appropriately considered and maintained as part of future plans or redevelopment.

### Strategic Alignment - Local Strategic Planning Statement

53. Listing and retention of 46 Chisholm Street is consistent with the City's Local Strategic Planning Statement, in particular the liveability priority to "create great places" (priority L2). The proposal to list a place of assessed heritage significance delivers on the great place objectives to conserve and maintain heritage and protect and celebrate the character of unique neighbourhoods. Identifying places of local heritage significance on the Local Environmental Plan is an action of the planning statement (L2.9.b).

## Relevant Legislation

54. Environmental Planning and Assessment Act 1979.
55. Environmental Planning and Assessment Regulation 2000.
56. Heritage Act 1977.

### **Critical Dates / Time Frames**

57. The gateway determination issued by the Department of Planning Industry and Environment requires the amendment to the local environmental plan to be completed within 12 months, being 17 October 2020.

### **Public Consultation**

58. The Heritage Council and supporting department, affected landowner, neighbours and community were consulted as outlined above with submissions summarised at Attachment C.

### **GRAHAM JAHN, AM**

Director City Planning, Development and Transport

Matt Devine, Senior Specialist Planner (Heritage)