

Relevant Information for Council

FILE: X109515, X098649, X091578 **DATE:** 13 December 2024

TO: Lord Mayor and Councillors

FROM: Graham Jahn AM, Chief Planner / Executive Director City Planning,
Development and Transport

SUBJECT: Information Relevant To Item 11.3 – Public Exhibition - Planning Proposal -
Modern Residential Flat Buildings, Powerhouse Museum and Oxford Street
LGBTIQA+ Heritage Items – Sydney Local Environmental Plan 2012
Amendments

Alternative Recommendation

It is resolved that:

- (A) Council approve the Planning Proposal - Modern Residential Flat Buildings Heritage Items, shown at Attachment A to the subject report, for submission to the Department of Planning, Housing and Infrastructure with a request for a gateway determination;
- (B) Council approve the Planning Proposal - Modern Residential Flat Buildings Heritage Items as shown at Attachment A for public authority consultation and public exhibition in accordance with any conditions imposed under the gateway determination;
- (C) Council seek authority from the Department of Planning, Housing and Infrastructure to exercise the delegation of all the functions under section 3.36 of the Environmental Planning and Assessment Act 1979 to make the local environmental plan and to put into effect the Planning Proposal - Modern Residential Flat Buildings Heritage Items;
- (D) authority be delegated to the Chief Executive Officer to make any minor variations to the Planning Proposal - Modern Residential Flat Buildings Heritage Items to correct any drafting errors or to ensure consistency with the gateway determination;
- (E) Council approve the Planning Proposal - Oxford Street LGBTIQA+ Heritage Items, shown at Attachment B, to the subject report, for submission to the of Planning, Housing and Infrastructure with a request for a gateway determination;
- (F) Council approve the Planning Proposal - Oxford Street LGBTIQA+ Heritage Items as shown at Attachment B for public authority consultation and public exhibition in accordance with any conditions imposed under the gateway determination;

- (G) Council seek authority from the Department of Planning, Housing and Infrastructure to exercise the delegation of all the functions under section 3.36 of the Environmental Planning and Assessment Act 1979 to make the local environmental plan and to put into effect the Planning Proposal - Oxford Street LGBTIQA+ Heritage Items;
- (H) authority be delegated to the Chief Executive Officer to make any minor variations to the Planning Proposal - Oxford Street LGBTIQA+ Heritage Items to correct any drafting errors or to ensure consistency with the gateway determination;
- (I) ***the Chief Executive Officer be requested to investigate the local heritage listing of 273 Crown Street, Surry Hills, 40-42 Flinders Street, Darlinghurst and 207 Oxford Street, Darlinghurst, and if supported, submit a draft planning proposal in 2025.***
- (J) ***Council defer consideration of the Planning Proposal - Powerhouse Museum Heritage Item Amendment, shown at Attachment C to the subject report, to enable a review of the purpose and whether any additional benefit is gained from the local listing against the recently expanded State heritage listing.***
- ~~(K) Council approve the Planning Proposal - Powerhouse Museum Heritage Item Amendment, shown at Attachment C to the subject report, for submission to the Department of Planning, Housing and Infrastructure with a request for a gateway determination;~~
- ~~(L) Council approve the Planning Proposal - Powerhouse Museum Heritage Item Amendment as shown at Attachment C for public authority consultation and public exhibition in accordance with any conditions imposed under the gateway determination;~~
- ~~(M) Council seek authority from the Department of Planning, Housing and Infrastructure to exercise the delegation of all the functions under section 3.36 of the Environmental Planning and Assessment Act 1979 to make the local environmental plan and to put into effect the Planning Proposal - Powerhouse Museum Heritage Item Amendment; and~~
- ~~(N) authority be delegated to the Chief Executive Officer to make any minor variations to the Planning Proposal - Powerhouse Museum Heritage Item Amendment to correct any drafting errors or to ensure consistency with the gateway determination.~~

Additions shown in ***bold italics***, deletions shown in ~~strikethrough~~.

Background

At the 9 December 2024 meeting of Council's Transport, Heritage and Planning Committee, further information was sought on the following matters raised in submissions and by speakers.

At the 12 December 2024 meeting of the Central Sydney Planning Committee, it determined to defer consideration of the Planning Proposal - Powerhouse Museum Heritage Item Amendment to enable a review of the purpose and additional benefit of the local listing against the recently expanded State heritage listing.

Modern Residential Flat Buildings

Information was sought on ability to upgrade residential flat buildings should they be heritage listed.

There are currently 270 residential flat buildings and shop top residences in the City of Sydney Local Government Area (LGA) that are listed as local heritage items (note that this excludes many heritage listed attached and detached residential properties.) Council records show that many changes or adaptations have occurred to these buildings through heritage exemptions or development applications.

Each of the 9 inventory sheets supporting the planning proposal have or will have management recommendations that individual unit interiors are excluded from the proposed heritage listings.

These management recommendations enable minor works that will not affect the significance of the building bypass the development application (DA) process. The management recommendations guide the heritage exemption process. For example, management recommendations may allow for internal changes to occur without a DA. Examples can extend to the removal of non-loadbearing walls, bathroom and kitchen renovations and flooring upgrades on a case-by-case basis.

Should their heritage listing be supported, each of the proposed buildings will have their own management recommendations informed by public submissions and which we will develop in consultation with the building owners.

More substantive works, such as the removal of load bearing walls, can be carried out with approval through a development application. This enables a more thorough assessment and the imposing of conditions to ensure the significance of the place is maintained. Should development consent be required, management recommendations can also reduce the need for detailed heritage impact assessments.

Powerhouse Museum

Submissions to Councillors and a speaker at the Transport, Heritage and Planning Committee supported the proposed heritage listing but raised heritage concerns with the Infrastructure NSW State Significant Development application (SSD-67588459) and the impact of the SSD on the Wran Building. Councillors sought further information on the Wran Building and information in relation to the SSD.

Effect of the state and local listings on the Wran Building

The State Heritage Register (SHR) listing of the Powerhouse Museum site was revised in July 2024, to expand the listing to include the Wran and Harwood buildings. The Powerhouse Museum Complex is now State heritage listed for its historic, associative, aesthetic and social significance. This expanded listing is consistent with the City's proposed expanded local listing other than the site-specific exemptions.

The expanded State listing includes the following site-specific exemptions that relate to the Wran Building:

- all works to non-significant interior fabric, fittings, finishes, lighting, layouts and furnishings within buildings inserted since 1980,

- all works to the exterior of buildings erected on the site since 1980, not including works which would significantly alter the significant visual connections between individual buildings within the complex, or the distinct roof form of the Wran building, and
- changes to internal layouts, fittings and furnishings constructed post 1980 to support function of the Powerhouse Museum Complex.

The expanded State listing, in particular the site-specific exemptions which are issued under the NSW Heritage Act 1977 as an Exemption Order and published in the NSW Government Gazette, provide strong guidance as to what has been determined significant fabric by the Heritage Council of New South Wales.

The State issued site-specific exemptions clearly protect the distinct roof form of the Wran building as significant and suggest other external and internal fabric has been deemed less significant.

Local listing requires development consent be granted for works and that the impact on the heritage significance of the item to be considered. For items that are also listed on the State Heritage Register, such as the Powerhouse, a consent cannot be inconsistent with an approval under the Heritage Act 1977 in relation to heritage matters. Effectively a local listing cannot overcome or vary the site-specific exemptions provided under the Heritage Act 1977.

State significant development proposal

Infrastructure NSW's state significant development application for the Powerhouse Ultimo Revitalisation (SSD-67588459) is being assessed by the NSW Department of Planning, Housing and Infrastructure. The Minister (or delegate) is the consent authority.

The City's responses to date have been to support the proposal in principle whilst, in relation to heritage, clearly recommend the proponent carry out a more detailed analysis of the extent and nature of the development and its impact upon the heritage significance of the place as a whole.

Deferral of Central Sydney Planning Committee determinations

At the 12 December 2024 Central Sydney Planning Committee (CSPC) meeting, the CSPC determined to defer consideration of the Planning Proposal - Powerhouse Museum Heritage Item Amendment to enable a review of the purpose and whether any additional benefit is gained from the local listing against the recently expanded State heritage listing.

The CSPC is established by the City of Sydney Act 1988. The Act states that Council must not prepare a planning proposal or submit a planning proposal to be made unless the CSPC has approved of the planning proposal (section 39).

This means that where the CSPC has not approved a planning proposal, Council cannot submit the planning proposal to the Department to be made. Further, if Council makes amendments to a planning proposal, that proposal would need to be referred back to the CSPC for reconsideration and approval before it can be submitted to the Department.

The following alternate recommendation is provided to Council for consideration at the Monday 16 December 2024 Council meeting:

Council defer consideration of the Planning Proposal - Powerhouse Museum Heritage Item Amendment, shown at Attachment C to the subject report, to enable a review of the purpose and whether any additional benefit is gained from the local listing against the recently expanded State heritage listing.

Oxford Street LGBTIQA+ Heritage Items

It was noted by Council at the Transport, Heritage and Planning Committee on 9 December 2024, that the Tanner Kibble Denton Architects Oxford Street LGBTIQA+ heritage study, in support of the subject planning proposal, identified a further 2 sites of potential local significance outside the boundaries of the Oxford Street LGBTIQA+ Social and Cultural Place Strategy and Creative and Cultural Precinct Planning Controls:

- Ruby Reds, 273 Crown Street, Surry Hills
- Taxi Club, 40-42 Flinders Street, Darlinghurst

The study is inconsistent in its recommendations for listing a further site, Whitty's Wine Bar/The Bookshop at 207 Oxford Street, Darlinghurst. When sites are identified as having potential local significance, a full assessment against the NSW criteria for heritage significance is carried out to determine whether a draft listing should proceed.

As requested by Councillors, the following additional recommendation is provided to Council for consideration at the Monday 16 December 2024 Council meeting:

the Chief Executive Officer be requested to investigate the local heritage listing of 273 Crown Street, Surry Hills, 40-42 Flinders Street, Darlinghurst and 207 Oxford Street, Darlinghurst, and if supported, submit a draft planning proposal in 2025.

Traditional ownership references

Council noted an inconsistent approach taken by the 3 independent heritage consultants in relation to referencing traditional owners/ownership terminology. This inconsistency is present in the heritage inventories for the proposed local heritage items.

The City will amend this inconsistency across the heritage inventories prior to public exhibition, in line with the minor variations delegation provided to the Chief Executive Officer and the City's Aboriginal and Torres Strait Islander Protocols.

Prepared by: Tim Wise, Manager Planning Policy

Approved

A handwritten signature in black ink, appearing to read 'GJahn', is positioned to the right of the 'Approved' text.

GRAHAM JAHN AM

Chief Planner / Executive Director City
Planning, Development & Transport