

**Item No:** C1216 Item 3

**Subject:** 39 SMITH STREET SUMMER HILL - PLANNING PROPOSAL

**File Ref:** 16/4718/129356.16

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**Authorised By:** Phil Sarin - Director, Planning and Environment

### **SUMMARY**

A Planning Proposal has been received on behalf of the site owner to remove 39 Smith Street, Summer Hill from Schedule 5 of the Ashfield LEP 2013 as a locally listed heritage item. The proposal has been put on preliminary public exhibition in accordance with the previous Council's policy and public submissions have been received and commented on in this report. This report recommends that Council refer the application to the Gateway Panel (State Government) seeking authorisation to process and determine the application to delete the property as a heritage item.

### **RECOMMENDATION**

1. That Council resolve to progress a Planning Proposal to amend Ashfield Local Environmental Plan (LEP) 2013 to delete Heritage Item no 620, from Schedule 5 Environmental Heritage of the Ashfield LEP 2013.
2. That Council forward the Planning Proposal to the Department of Planning and Environment for Gateway Determination to allow the LEP plan amendment process to commence under Section 56 of the Environmental Planning and Assessment Act 1979 (EP&A Act).
3. That Council resolve to request The Department of Planning and Environment to issue written authorization to Council's General Manager to exercise and implement delegations in accordance with Section 23 of the EP& A Act 1979 to facilitate the plan making process following the Gateway determination.
4. That following the Gateway Determination by the Department of Planning and Environment, the Planning Proposal be progressed by Council, be put on formal public exhibition, and procedures carried out as required under the EP& A Act 1979.
5. That people who made a submission as part of the preliminary community engagement process be advised of Council's decision.

### **1.0 Overview of Planning Proposal**

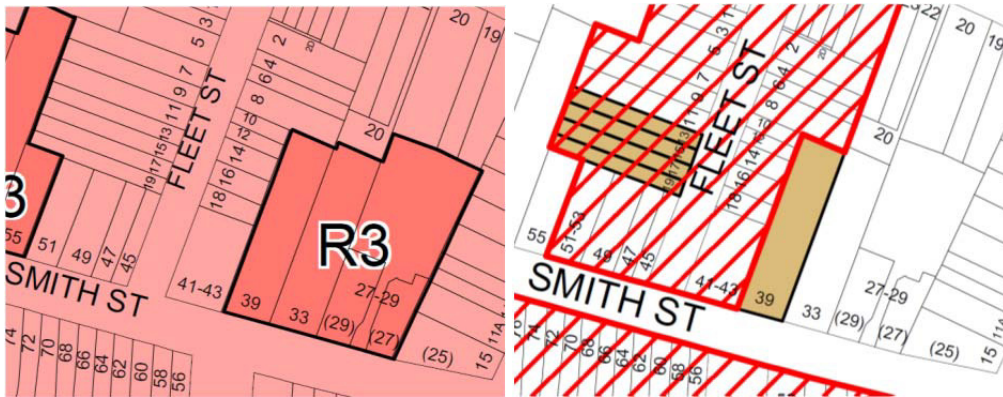
The Planning Proposal is contained in **Attachment 1** and seeks to remove the property's heritage listing from the Ashfield LEP 2013. A Planning Proposal is a document that explains the intended effect of a proposed Local Environmental Plan (LEP) amendment and provides the justification for proceeding, in accordance with the Department Guidelines - "A Guide to preparing Planning Proposals".

The applicant's heritage report is contained in **Attachment 2**.

The proposal states that the existing property does not warrant heritage listing and does not meet the relevant listing criteria outlined in "Assessing Heritage Significance, NSW Heritage Manual" (refer to pages 26 - 29 of **Attachment 2** for the detailed assessment). This includes that there is no association with any significant event or person, and the building is not aesthetically architecturally significant, and has been so altered so as to not be able to demonstrate any particular historical period or technological achievement.

## 2.0 Site, existing zoning and heritage listing.

39 Smith Street, Summer Hill is currently zoned R3 - Medium Density Residential under the Ashfield LEP 2013 (see **Figure 1**). The site is listed as heritage item number 620 under in Schedule 5 – Environmental Heritage of the LEP.



**Figure 1 - Extract of Ashfield LEP 2013 Land Zoning Map showing 55-63 Smith Street, Summer Hill and existing R3 – Medium Density Residential zone, and showing the Heritage Conservation Map and 39 Smith Street Heritage item location.**

Existing buildings on the site include:

- A house at the front of the property originally constructed in the late 1800s which had additions to the rear constructed in the late 1980s.

The house was listed as a heritage item in 2003 via LEP amendment No 92. The inventory sheet from the Ashfield Heritage Study Review for Areas Zoned 2b and 2c in 2001 is contained in **Attachment 3**.

- At the rear of the site is a factory building and car parking area (approved in 1965).



**Figure 2 Aerial view - 39 Smith Street is within red boundary**

No 33 Smith Street (adjacent site to the east) was the subject of a development application for part 2 and 3 storey apartments and is also zoned R3 - Medium Density Residential. This application was recently approved by the Inner West Planning Panel.

No 41-43 Smith Street (adjacent to the west – see photo below) is within the Fleet Street Heritage Conservation area and contains a house which has a 'neutral' ranking as it is from a construction period which is outside of the key period of significance for the area.



**Figure 3 41 - 43 Smith Street – left side of picture, adjacent 39 Smith Street**

The southern side of Smith Street opposite the site contains the Quarantine Ground Conservation Area.



#### 4.0 Preliminary notification and public submissions

In accordance with Council's Notification Policy the proposal was put on preliminary exhibition between 9 August 2016 and 7 September 2016 in order to obtain public feedback to assist the Council in making a decision on whether or not to proceed further with the Planning Proposal.

Six submissions were received. To comply with guidelines issued by the Information and Privacy Commissioner, copies of actual submissions have not been included as attachments to this report, as this would reveal personal information of people who made submissions. The following table instead identifies each individual submission without stating the details of the person, and summarises the comments made.

**Table 1**

Submissions	Issues raised	Officer Response
Submission 1	Objects to removal of Heritage listing.	
	Removal of heritage listing would result in a loss of character of Smith Street.	It is correct that potential demolition of the existing house and redevelopment of the site will impact on this part of Smith Street. However, these are not grounds or rationale for heritage item listings.
	Removal of the heritage listing will affect the listing of the Fleet Street Conservation Area.	The Fleet Street Conservation Area listing will remain and is not affected this Planning Proposal.
	Removal of the listing would lead to redevelopment of the site which would lead to a loss of sunlight and privacy.	The site is currently zoned R3 - Medium Density Residential and an application could therefore be prepared and submitted to redevelop the site in accordance with this zoning based on current planning controls, which include relevant amenity considerations. Issues such as solar access and privacy would need to be addressed as part of any redevelopment of the site, regardless of whether or not the site had a heritage affectation.
Submission 2	Objects to removal of Heritage listing.	
	Removal of Heritage listing would result in loss of character of Smith Street.	Refer to previous comments.
	Removal of the heritage listing will affect the listing of the Fleet Street Conservation Area.	This is not the case - refer to previous comments.
	Removal of the listing would lead to redevelopment of the site which would lead to a loss of sunlight and privacy.	Refer to previous comments.
Submission 3	Objects to removal of Heritage listing.	

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	Removal of the listing would lead to redevelopment of the site which would lead to a loss of character in Smith Street	Refer to previous comments.
	Removal of the listing, and consequent demolition of the house, is contrary to the Ashfield LEP clause 1.2, 2(b) "aims to retain and enhance identity of Ashfield an early residential suburb with local service industries and retail centres", and this is in conflict with protecting the environment.	The first and primary consideration is whether the heritage listing in the Ashfield LEP 2013 is warranted, using Burra Charter and Heritage Manual provisions. Clause 1.2, (2) b of the Ashfield LEP 2013, does not override this consideration.

Submission 4	Supports removal of Heritage listing of 39 Smith Street.	
	Raises other matters that do not affect this Planning Proposal.	

Submission 5	Supports removal of Heritage listing of 39 Smith Street.	
	Raises other matters that do not affect this Planning Proposal.	

Submission 6	Refers to 2010 Inventory sheet found on Council's website for 39 Smith Street and that it is not comprehensive.	The inventory sheet contains a basic level of information outlining the reasons for the initial listing.
	Raises objection to removal of listing, if surrounding properties are not given equivalent development standards that benefit the R3 – Medium Density Standards of 39 Smith Street.	This is not a justifiable reason for applying an R3 zone to adjacent R2 Low Density Residential Zones.

#### **4.0 Council Heritage adviser's comments**

Council's Heritage Adviser, Robert Moore, has advised that:

*I refer to the meeting with Ms. Marilyn Lean now some weeks ago, in which argument and evidence in a heritage assessment and impact statement were presented in support of a request to take the property off Council's list of heritage items. I suggested that an inspection*

*of the property was necessary and on Tuesday 27 September Mr. Con Colot and I inspected the house.*

*It is evident that much change has occurred to the property over its lifetime. Internally all ceilings and cornices have been replaced and other details, such as chimney pieces, have no clear authenticity. Joinery has also been incrementally changed.*

*Having regard to its degree of intactness and low level of retained original detail, I agree that the listing of the property is no longer warranted. I could not, in all conviction, argue in Court that this house was of such history and qualities in its fabric that it should remain an item of environmental heritage for Ashfield. It does not compare with other important properties that have been given this recognition.*

*Accordingly, in my opinion, Council could agree to include the property in such forthcoming adjustments to the schedule as are programmed.*

### **5.0 Conclusion on whether to proceed with Planning Proposal.**

The Planning Proposal is in a preliminary part of the processing with the initial decision being a requirement to refer the proposal for gateway Determination.

The Planning Proposal document contains the required necessary documentation which addresses Section 55 of the EPA AC 1979 and the State Government Department of Planning guidelines. Strategically, it seeks to correct what it says was an inappropriate listing in the Ashfield LEP 2013 regarding 39 Smith Street, Summer Hill and so implicitly have the LEP have a more accurate alignment with Council's heritage strategy as expressed in the Ashfield Urban Strategy 2010. This will better align with Council's Housing Strategy.

Given the circumstances and current condition of the existing site and buildings, the arguments put forward in the applicant's Heritage Study (**Attachment 3**) including that the house does not currently meet the relevant heritage listing provisions, Council's Heritage Adviser's analysis of that document, site inspection and comments, it is agreed that the Planning Proposal should be progressed to the next procedural stage by Council. Further scrutiny of the application will be required through the referral processes as part of the formal public exhibition phase (see part 6 below).

### **6.0 Next steps**

The Council is required to determine whether or not to proceed with the Planning Proposal. If Council resolves to proceed with the Planning Proposal the next steps are to follow the Department of Planning & Environment's LEP plan making process:

- Department of Planning and Environment undertakes an assessment and, if supportive of the proposal, will issue a Gateway Determination which will give Council the authority to continue the process and specify whether any additional studies are required.
- Council formally exhibits the Planning Proposal.
- Council considers submissions received and following community engagement decides whether or not to submit the LEP amendment to Minister/Department of Planning and Environment for gazettal if the plan making function is delegated to Council.
- The plan is then notified and comes into effect.

**6.0 LEP (plan-making) delegation former Ashfield LGA**

In November 2012 the Minister for NSW Planning & Infrastructure delegated certain powers to councils to make and determine LEP amendments. This enables councils to exercise the Minister's Plan making functions after the Gateway Determination stage.

The former Ashfield Council resolved to use the delegation on the proviso that the General Manager exercises the delegation with prior approval from Council whenever a Planning Proposal is processed. It is therefore recommended that Council resolve that the current General Manager be authorized to exercise the delegation for this particular proposal.

**CONCLUSION**

It is recommended Council endorse the Planning Proposal and forward the documentation to the Department and request the Minister to issue the relevant Gateway Determination to allow the process of preparing an LEP to commence with progression to formal community engagement.

It is also recommended that Council seek authority from the Gateway Panel to use the Council 'Authorisation' to process the Planning Proposal.

**ATTACHMENTS**

1. Planning Proposal
2. Heritage Impact Assessment
3. Inventory sheet