

# GATEWAY DETERMINATION (LETTER, NOTICE AND REPORT)



Mr Rik Hart  
Interim General Manager  
Inner West Council  
17-15 Wetherill Street,  
LEICHHARDT NSW 2040

Dear Mr Hart

**Planning proposal PP\_2018\_IWEST\_001\_00 to amend Marrickville Local Environmental Plan 2011**

I am writing in response to Council's request for a Gateway determination under section 3.34(1) of the *Environmental Planning and Assessment Act 1979* (the Act) 2 November 2018 in respect of the planning proposal to explain the intent of and justification for an amendment to Marrickville Local Environmental Plan 2011 to list 73 and 73A The Boulevarde, Dulwich Hill, as item of environmental heritage on Schedule 5.

As delegate of the Greater Sydney Commission, I have now determined that the planning proposal should proceed subject to the conditions in the enclosed Gateway determination.

I have considered Council's request to be the local plan-making authority and have determined not to condition the Gateway for Council to be the local plan-making authority given the differences between the land owner of 73 The Boulevarde, Dulwich Hill and Council in relation to the extent of the heritage listing on the site.

The amending Local Environmental Plan (LEP) is to be finalised within 9 months of the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request for the Department of Planning and Environment to draft and finalise the LEP should be made 8 weeks prior to the projected publication date.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Greater Sydney Commission may take action under section 3.32(2)(d) of the Act if the time frames outlined in this determination are not met.

Should you have any further enquiries about this matter, I have arranged for Ms Laura Locke to assist you. Ms Locke can be contacted on 8275 1307.

Yours sincerely



**Amanda Harvey** 7/11/18  
**Director, Sydney Region East  
Planning Services**

Encl: Gateway determination

## Gateway Determination

**Planning proposal (Department Ref: PP\_2018\_IWEST\_001\_00):** to list 73 and 73A The Boulevarde, Dulwich Hill as an items of local heritage under Schedule 5 and relevant heritage map of Marrickville Local Environmental Plan 2011.

I, the Director, Sydney Region East at the Department of Planning and Environment, as delegate of the Minister for Planning, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Marrickville Local Environmental Plan (LEP) 2011 to list the subject sites as a heritage items under the Marrickville LEP 2011 should proceed subject to the following conditions:

1. Consultation is required with the landowners during public exhibition.
2. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
  - (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
  - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment 2016).
3. Consultation is required with the Office of Environment and heritage under section 3.34(2)(d) of the Act. The Office of Environment and Heritage is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.
4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
5. The time frame for completing the LEP is to be **9 months** following the date of the Gateway determination.

Dated 7<sup>th</sup> day of November 2018.

  
**Amanda Harvey**  
Director, Sydney Region East  
Planning Services  
Department of Planning and Environment

**Delegate of the Minister for Planning**



## Planning Services

### Gateway Determination Report

<b>LGA</b>	Inner West
<b>PPA</b>	Inner West Council
<b>NAME</b>	Proposal to list two heritage items
<b>NUMBER</b>	PP 2018 IWEST 001 00
<b>LEP TO BE AMENDED</b>	Marrickville Local Environmental Plan 2011
<b>ADDRESS</b>	73 and 73A The Boulevard, Dulwich Hill
<b>DESCRIPTION</b>	Lot 1 DP 301656 and Lot X DP 411590
<b>RECEIVED</b>	2 November 2018
<b>FILE NO.</b>	IRF18/5739
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal

## INTRODUCTION

### Description of planning proposal

The planning proposal seeks to amend Schedule 5 of Marrickville Local Environmental Plan 2011 (MLEP 2011) to include sites at 73 and 73A The Boulevard, Dulwich Hill as heritage items of local significance.

### Site description

The sites are located in Dulwich Hill on the eastern side of The Boulevard between Eltham Street to the north-east and Pigott Street to the south-west.

The site at 73 The Boulevard is legally described as Lot 1 DP 301656 and has a site area of 662m<sup>2</sup> (**Figures 1 and 2**). Existing on the site is a 2 storey dwelling house that is setback approximately 10m from the street (**Figure 3**). The rear yard includes a pergola, paved area and a swimming pool.

The site at 73A The Boulevard is legally described as Lot X in DP411590 and has a site area of 621m<sup>2</sup> (**Figures 1 and 2**). Existing on the site is a 2 storey dwelling house, setback approximately 5m from the front boundary (**Figure 4**). The rear yard also includes a pergola at the back of the house, lawn area and a swimming pool



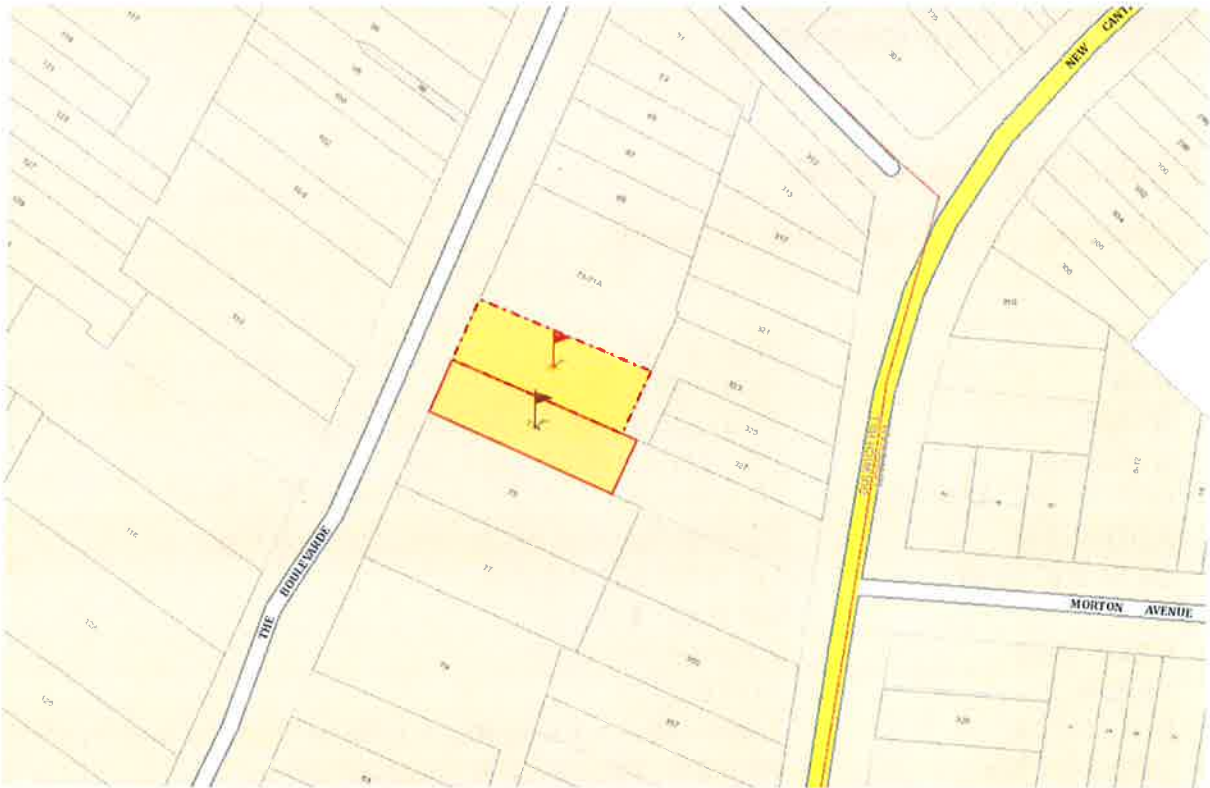


Figure 1: Subject Sites (Source: Six Maps)



Figure 2: Subject Sites (Source: Six Maps)



Figure 3: 73 The Boulevarde, Dulwich Hill (Source: Inner West Council Planning Proposal)



Figure 4: 73A The Boulevarde, Dulwich Hill (Source: Inner West Council Planning Proposal)



## Existing planning controls

Both properties are currently zoned R1 General Residential under the MLEP 2011. The R1 General Residential Zone permits a variety of land uses including residential flat buildings, multi dwelling housing, boarding houses, seniors housing and child care centres.

Clause 4.4 of MLEP 2011 contains varying FSR provisions based on development type. Dwelling houses, attached dwellings and semi-detached dwellings are permitted to be developed to a maximum FSR of 0.5:1 on lots over 400m<sup>2</sup>, whilst other development types (except residential flat buildings) have a maximum FSR of 0.6:1. An additional FSR of 0.25:1 is afforded where development is for the purposes of a residential flat building.

The permitted maximum height of buildings permitted under Clause 4.3 of MLEP 2011 is 14m.

There are no existing heritage items in the immediate vicinity of the site and the site is not located in a Heritage Conservation Area (HCA). The Lewisham Estate HCA (labelled C26) is located to the north and south of the sites, the Hoskins Park and Environs (Dulwich Hill) HCA (labelled C36) is located to the west and the Dulwich Hill Commercial Precinct HCA (labelled C28) is located to the south (**Figure 6**).

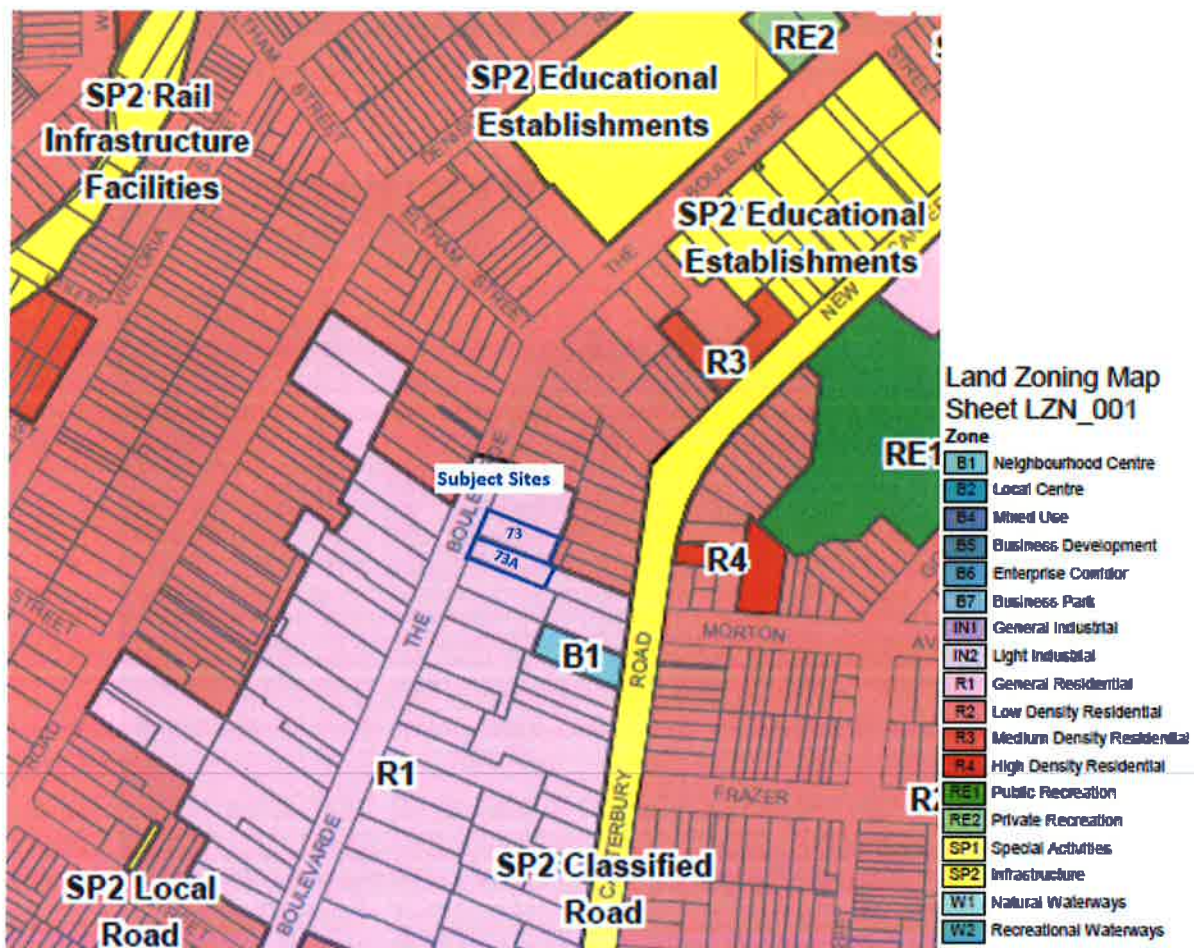


Figure 5: Marrickville LEP 2011 Zoning Map



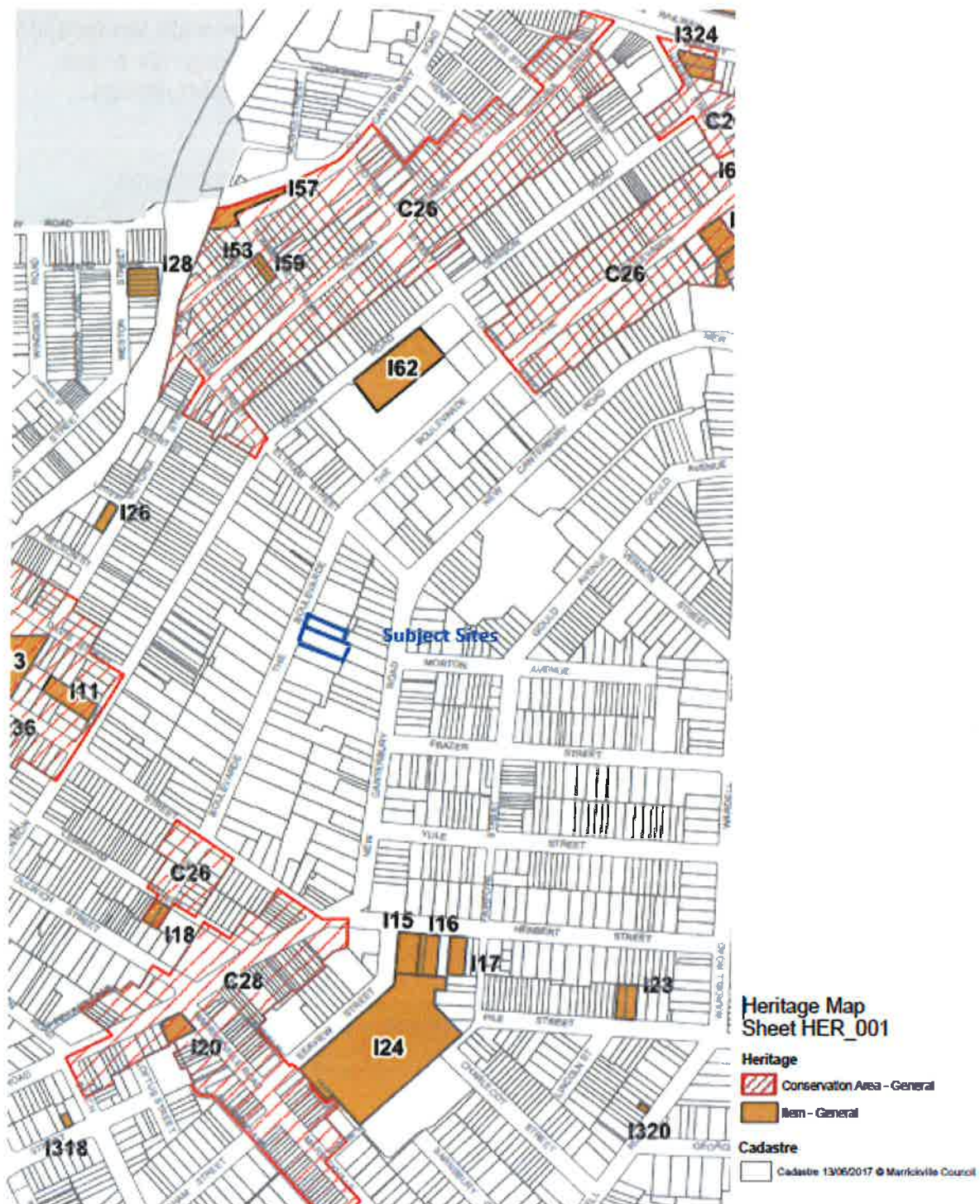


Figure 6: Marrickville LEP 2011 Heritage Map

### Surrounding area

To the north-east of the sites at 71 The Boulevard, there is a face brick three storey residential flat building located above semi-basement car parking.

To the south-west of the sites at 75 The Boulevard, there is existing four storey residential flat building. To the east (rear) of the sites addressed to New Canterbury Road are a mix of dwelling houses and residential flat buildings.

The broader streetscape of this section of The Boulevard includes wide landscaped footpaths containing mature trees. The housing generally comprises a mix of one and two storey dwelling houses and two to four storey residential flat buildings.

### Summary of recommendation

It is recommended that the planning proposal proceed, subject to conditions because:

- the dwelling at number 73 is subject to an Interim Heritage Order that has been upheld by the Land & Environment Court;
- it is consistent with the East District Plan and relevant Ministerial Section 9.1 Directions to retain and conserve heritage values of a local area; and
- it will allow for better conservation management of the properties which have been identified to be local heritage significance.

## PROPOSAL

### Objectives or intended outcomes

The planning proposal documentation states that the proposal intends to amend Marrickville LEP 2011 to include both 73 and 73A The Boulevard, Dulwich Hill as local heritage items. This approach is consistent with the findings of the heritage assessment undertaken by Robertson & Hindmarsh Pty Ltd, submitted with the planning proposal.

It also states that the Planning Proposal is to conserve the local environmental heritage in the local government area by conserving the heritage significance of identified local heritage items, including associated fabric, settlings and views.

### Explanation of provisions

The planning proposal states that it seeks to insert the following new local environmental heritage items into the Part 1 of Schedule 5 of Marrickville LEP 2011:

Locality	Item name	Address	Property description	Significance	Item No.
Dulwich Hill	Interwar bungalow'- "Bertsonie", including inglenook and interiors and Norfolk Island pine tree in the front garden	73 The Boulevard	Lot 1 DP 301656	Local	I392
Dulwich Hill	Interwar bungalow, including ceilings, fireplaces and interiors and front garden, path and fence	73A The Boulevard	Lot X DP 411590	Local	I393

## Mapping

The planning proposal does not currently include any mapping. It is recommended that the planning proposal is revised prior to exhibition to include the proposed amendments to Marrickville LEP 2011 Heritage Map, as condition of Gateway conditions.

## BACKGROUND

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The planning proposal has been prepared in response to a development application (DA201800049) submitted to Council on 5 February 2018. The DA relates to the site at 73 The Boulevarde and proposed the demolition of the dwelling and the construction of a four-storey residential flat building with basement parking.

The adjoining neighbour at 73A The Boulevard, Dulwich Hill objected to the proposed development and included in their submission to Council a heritage assessment prepared by Sue Rosen Associates, which they had commissioned. This heritage assessment considered that both 73 and 73A The Boulevarde, Dulwich Hill have a high degree of local historical significance and recommended that the individual heritage status of each property be reassessed with a view to potentially listed as items local heritage significance. The owner of number 73A informed Council they supported the listing of their dwelling and wanted Council to consider a broader Heritage Conservation area.

The Council engaged heritage consultant Robertson & Hindmarsh to provide a heritage review. This review determined that both 73 and 73A The Boulevarde satisfy the NSW Office of Environment and Heritage's criteria for local heritage significance and recommended that both properties be heritage listed under Schedule 5 of MLEP 2011 as local heritage items.

The review by Robertson & Hindmarsh also advised that without imposing an Interim Heritage Order (IHO) Council cannot protect 73 The Boulevarde, Dulwich Hill from demolition, which could occur as Complying Development. Consequently an IHO was Gazetted on 23 March 2018 to protect the property, while the heritage assessment was being undertaken.

The proponent for the DA for 73 The Boulevarde made an appeal to the Land and Environment Court (Court) against the making of an IHO by Council.

On 3 August 2018 the Court upheld the IHO. The Commissioner determined that based upon further inquiry or investigation, that the dwelling is likely to be found to be of local heritage significance and therefore that the IHO should remain.

On 28 August 2018 the planning proposal was considered by the Inner West Local Planning Panel (LPP) and supported the planning proposal. In addition, the Panel noted that:

- the mission interior of the dwelling is found in other heritage listed, which suggest that is worthy of being listed;
- other examples in the report by Urbis (prepared for the proponent for the DA) are not from the interwar period; and
- that the other examples in the report by Urbis are not in the local area, which suggested that mission interior of the dwelling at 73 The Boulevarde is rare in the local area.

At its meeting on 28 August 2018 the Council resolved to support the panel recommendation to submit a planning proposal for gateway determination.

The proponent for the DA submitted a heritage report to Council in relation to number 73 that stated that the dwelling does not meet the criteria for heritage listing.

The proponent's lawyer Conomos Legal submitted a letter to Council on 27 August 2018 stating that there is a Land and Environment Court appeal for the DA for 73 The Boulevarde (based upon deemed refusal) and in their view the court should resolve the matter rather than through a Planning Proposal.

## **NEED FOR THE PLANNING PROPOSAL**

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The planning proposal states that the listing of the properties in Schedule 5 of MLEP 2011 is the only way to ensure the heritage significance of the property, particularly the significant interiors, are conserved. Without the listing, Council cannot protect the property from demolition, which could occur under a Complying Development Certificate.

The Council and the owner of 73A The Boulevarde have submitted reports supporting the heritage listing, and the owner of 73 The Boulevarde has submitted its own separate report to the Council and the Land and Environment Court opposing the listing.

These findings and recommendations of the various heritage reports by council and the proponent for the DA for 73 The Boulevarde are summarised below:

### **Report by Robertson & Hindmarsh prepared on behalf of Council (August 2018)**

The report prepared by Robertson & Hindmarsh Pty Ltd for 73 and 73A The Boulevarde Dulwich Hill (revised October 2018), which was commissioned by Council recommends that both properties 73 and 73A be listed as items of environmental heritage as:

- No 73 The Boulevarde, Dulwich Hill ("Bertsonie") is of historical significance at a Local level as an example of an interwar bungalow that constituted an important component in the infill development of the inner west suburbs (in between earlier Victorian and Federation houses) as well as being the result of the demolition of larger houses and subdivision of their grounds.
- The ground floor plan remains almost intact and the original room uses are evident and so the house still allows an interpretation of the historic uses of the rooms and an understanding of the way of life.
- The survival of the 1920s asbestos cement-clad garage is of significance as tangible physical evidence of the spread of car ownership in the interwar period.
- No 73A The Boulevarde, Dulwich Hill is of historical significance at a Local level as an example of an interwar bungalow that constituted an important component in the infill development of the inner west suburbs (in between earlier Victorian and Federation houses) as well as being the result of the



demolition of larger houses and subdivision of their grounds. The front portion of the ground floor plan remains almost intact and the original room uses are evident in this section.

- No 73A The Boulevarde, Dulwich Hill is of social significance as an example of the work of builder/developer, William Mitchell, who developed, financed and let houses in the wider Sydney area.
- No 73A The Boulevarde, Dulwich Hill is of aesthetic significance at a Local level because of the intact nature of the decorative ceilings, fireplaces and joinery in the front section of the house as applied to a house intended for the upper middle-class mass housing market.
- This report also recommends that Council investigate the possibility of the two houses being listed as a small group (including interiors but excluding the non-original additions) of a Heritage Conservation area. In response to this, Council has stated that the possibility of a HCA will be considered as part of their broader local environment plan review and will not form part of this Planning Proposal.

**Report by Sue Rosen prepared on behalf of the owner for 73A The Boulevarde (March 2018)**

This report recommended that the individual status of 73 and 73A The Boulevarde be reassessed both individually and as a pair with for consideration to be listed as an environmental heritage significance as:

- Both sites have a high degree of local historical significance due to them capacity to demonstrate housing development in the interwar period and the consolidation of the area as a residential suburb.
  - They are capable of demonstrating the NSW historic theme of, "Towns, suburbs and villages" and the National theme "Building settlements, towns and cities" due to the historic subdivision pattern created by the formation of the lots in the mid 1910s as villa estates were consolidated.
  - They can also demonstrate the NSW theme "Accommodation" as suburban bungalows developed in the interwar period.
  - The arrangement of the interior rooms and their finishing make comment on the NSW historic theme of "Domestic Life" and the national historic theme of "Developing Australia's cultural life" illustrating living standards and expectations of the 1920s. As finely detailed and intact exemplars of the Californian bungalow they also illustrate the NSW theme of "Creative endeavour".
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- They have a high degree of local associative historical significance due to their association with builder, William George Mitchell and a high degree of local aesthetic significance as examples of Federation and Californian Bungalow styles. As a relatively intact pair they have exceptional local significance at a local level under the rarity criterion and a high degree of local significance as representative examples of their kind.

## **Report by Urbis on behalf of owner of 73 The Boulevarde (June 2018)**

Report by Urbis for 73 The Boulevarde Dulwich Hill for the owner of this property in response to the IHO listing. This finds that site at 73 The Boulevarde does not meet the criteria to be an item of environmental heritage significance as the dwelling:

- occupies the site is typical bungalow found in the Dulwich Hill and Inner West area that was constructed during the inter-war period, c.1923 and alterations have taken place in the interior and exterior of the dwelling replacing of a lot of the original features of the property; and
- has representative qualities of the period, however is located in an area that has been subject to residential flat development. The changes to the street and the original subdivision has meant the dwelling does not contribute to a consistent group of dwellings of the period.

Advice was additionally provided by NBRS Architecture since the Land and Environment Court case for the IHO and the proposed listing of the site at 73 The Boulevarde.

Overall the three reports differ in recommendations about the heritage significance of the properties. However, the Department notes that the Land and Environment Court determined that further investigation about the heritage significance of the site at 73 The Boulevarde is warranted, hence the retention of the IHO. The issuing of a Gateway will allow the proposal to proceed to exhibition, and further consideration of the merits for the listing of both sites and referral to the Office of Environment & Heritage for comment and consideration.

## **STRATEGIC ASSESSMENT**

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### **State**

#### Greater Sydney Region Plan

In March 2018, The Greater Sydney Commission released *The Greater Sydney Region Plan – A Metropolis of Three Cities* (the Region Plan) which aims to coordinate and manage the growth of Sydney. The Region Plan contains specific objectives for the region over the next 40 years and informs the actions and directions of the District Plans.

Of particular relevance in the Region Plan is 'Objective 13: Environmental Heritage The planning proposal is identified, conserved and enhanced.' This objective seeks to protect environmental heritage for its social, aesthetic, historic and environmental values.

The objective also identifies a strategy that comprises of three components:

- "engaging with the community early in the planning process to understand heritage values and how they contribute to the significance of the place"
- "applying adaptive re-use and interpreting heritage to foster distinctive local places"
- "managing and monitoring the cumulative impact of development on the heritage values and character of places"

The planning proposal is consistent with the Region Plan as heritage listing of the 73 and 73A The Boulevarde, Dulwich Hill will provide ongoing protection and recognition of the heritage significance of both sites. As such, the planning proposal is considered to be consistent in relation to the Greater Sydney Region Plan.

## District

### Eastern City District Plan

The Eastern City District Plan operates to give effect to the regional plan. The Eastern District Plan encompasses the Inner West Local Government Area.

The planning proposal is consistent with the outcomes and direction in the plan, however of particular relevancy are those associated with heritage, see **Table 1** below.

Planning Priority	Objective	Comments
<u>Planning Priority E6</u>	Creating and renewing great places and local centres and respecting the District's heritage	
Action 20	Identify, conserve and enhance environmental heritage by: <ul style="list-style-type: none"> <li>a. Engaging with the community early in the planning process to understand heritage values and how they contribute to the significance of the place.</li> <li>b. Applying adaptive re-use and interpreting heritage to foster distinctive local places.</li> <li>c. Managing and monitoring the cumulative impact of development on the heritage values and character of places.</li> </ul>	The proposal can be considered consistent with Priority E6 as it seeks to provide the statutory mechanisms required to protect and respect the local heritage and to conserve the aesthetic significance of architecture within this part of the Inner West Government Area. The proposal is consistent with Action 20 as it seeks to clearly identify and enhance heritage and enables the community to consider the heritage value of these items and whether this should be conserved through mechanisms under Marrickville LEP 2011.
<u>Planning Priority E16</u>	Protecting and enhancing scenic and cultural landscapes	
Action 63 and 64	<ul style="list-style-type: none"> <li>i. Identify and protect scenic and cultural landscapes and</li> <li>ii. Enhance and protect views of scenic and cultural landscape from the public realm.</li> </ul>	The proposal is consistent with Action 63 and 64 as Planning Proposal states that the listing of the 73 The Boulevarde, Dulwich Hill which has a substantial setback and a Norfolk Island pine on the site may offer a broader leafy streetscape of the Boulevarde.

**Table 1:** Eastern City District Plan Directions.

## Local

The Inner West Community Strategic Plan (IWCSP 2036) identifies the community's vision for the future, long-term goals, strategies to get there and how to measure progress towards that vision. The proposal is consistent with Strategic Direction 2 of the plan as outlined in the table below.

Outcomes	Strategies	Comment
Strategic direction 2: Unique, liveable, networked neighbourhoods		
2.2 The unique character and heritage of neighbourhoods is retained and enhanced	1. Provide clear and consistent planning frameworks and processes that respect heritage and the distinct characters of urban villages 2. Manage change with respect for place, community history and heritage	The protection of these two 'interwar bungalows', including the substantially intact interiors and external landscape and setting, will conserve the environmental heritage and allow understanding of how we dwelled in the

**Table 2:** The Inner West Community Strategic Plan (IWCSP 2036)

## Section 9.1 Ministerial Directions

The proposal is consistent with the applicable Section 9.1 Ministerial Directions of particular note Direction 2.3.

### Direction 2.3 Heritage Conservation

The Direction applies to the planning proposal as it seeks to ensure items of environmental heritage significance are conserved. It requires that a planning proposal contain provisions that facilitate the conservation of items identified in a study of environmental heritage of the area.

The proposal is consistent with the direction as it proposes to amend Schedule 5 of the Marrickville LEP 2011 to reflect the heritage significance of the properties.

The proposal will not alter the existing heritage conservation provisions of MLEP 2011, which already satisfy the requirements of this Direction. Therefore, the proposal is considered to be consistent with Direction 2.3 Heritage Conservation.

## State environmental planning policies

The proposal is consistent with all relevant State Environmental Planning Policies (SEPPs).

## SITE-SPECIFIC ASSESSMENT

### Social & Economic

Listing the both sites as a heritage items will provide the community with greater certainty about the heritage significance of these sites and therefore help to conserve their heritage significance.

Where works have the potential to affect the significance of the heritage on the sites, a development application would need to be lodged with Council (as opposed to a Complying Development Certificate application). This process will allow a merit-

based assessment to be undertaken for any new development on the sites in accordance with the EP&A Act.

Additionally, the public exhibition of the planning proposal will provide opportunity for the owners of the properties and the wider community comment on whether the listings are appropriate.

### **Environmental**

The planning proposal is unlikely to adversely affect any critical habitat or threatened species, populations or ecological communities or their habitats. The proposal seeks to protect two sites that have the potential for heritage significant in the area.

The Gateway determination has been conditioned to require consultation with the Office of Environment and Heritage.

### **Infrastructure**

The outcome of this planning proposal will not require any additional public infrastructure.

## **CONSULTATION**

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### **Community**

Council has proposed an exhibition period of 14 days however, it is considered that 28 days is more appropriate and will allow the affected landowners and the public more time to consider and respond to the reports and information accompanying the planning proposal.

It is also recommended that both affected land owners be given notice of the proposal and exhibition period.

### **Agencies**

The Office of Environment and heritage should be consulted during public exhibition as the proposal relates to a heritage item.

## **TIME FRAME**

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Councils has proposed a timeframe for competition of the LEP in five months. Given the nature of the plan, a nine-month timeframe is considered appropriate to allow sufficient time for community consultation.

## **LOCAL PLAN-MAKING AUTHORITY**

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The Department has considered Council's request to be the local plan-making authority and has determined not to condition the Gateway for Council to be the local plan-making authority for the following reasons:

- The differences between the land owner of 73 The Boulevard, Dulwich Hill and Council in relation to the heritage listing
- The DA proceedings for 73 The Boulevard, Dulwich Hill in the Land and Environment Court currently set down for a hearing in April 2019.



## CONCLUSION

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The planning proposal is supported to proceed subject to conditions as outlined below. The planning proposal is consistent with the Greater Sydney Regional Plan and the Eastern City District Plan as it provides long-term protection of the heritage and social significance of the subject sites.

## RECOMMENDATION

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It is recommended that the delegate of the Greater Sydney Commission, determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal should be made available for community consultation for a minimum of 28 days.
2. Consultation is required with the both landowners during public exhibition.
3. Consultation is required with the Office of Environment and Heritage.
4. The time frame for completing the LEP is to be 9 months from the date of the Gateway determination.
5. Given the nature of the planning proposal, Council should not be authorised to exercise delegation to make this plan.
6. The planning proposal is to be updated to include the proposed map amendments to Marrickville LEP 2011 Heritage MAP



**Laura Locke**  
Team Leader, Sydney Region East



**Amanda Harvey** 7/11/18  
Director, Sydney Region East  
Planning Services

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