

Item No: R2 Recommendation to Council

Subject: **DRAFT DCP TO ENHANCE THE NEIGHBOURHOOD HERITAGE CONSERVATION AREAS CONTROLS**

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File No: 21/87548

Reason for Report: To respond to a Notice of Motion adopted by Council on 10 December 2018 requesting a review of the provisions for Neighbourhood Heritage Conservation Areas in the Woollahra Development Control Plan 2015. To obtain Council's approval to exhibit a draft development control plan to amend the Woollahra Development Control Plan 2015.

Recommendation:

- A. THAT the report on the review of the provisions for Neighbourhood Heritage Conservation areas in the Woollahra Development Control Plan 2015 be received and noted.
- B. THAT Council resolves to exhibit *Draft Woollahra Development Control Plan 2015 (Amendment No.19)* as contained in **Annexure 1** of the report to the Environmental Planning Committee on 15 June 2021.

1. Background

This report responds to the following Notice of Motion adopted by Council on 10 December 2018, where Council resolved:

- A. *THAT Council review its current planning controls in its Neighbourhood Heritage Conservation Areas (NHCAs) located in Darling Point, Bellevue Hill, Rose Bay and Vaucluse, to determine and establish more stringent conservation controls to maintain the cultural and heritage value of these areas.*
- B. *In undertaking this task, that Council consider and explore:*
- (i) *whether current controls are strong enough to maintain the heritage of these significant areas; and*
 - (ii) *the mechanisms (including changes that are required to Council's development and planning controls) required to give effect to preservation of the heritage of the built and natural form in these areas, with focus on preservation of existing assets and built fabric.*

The following background information accompanied the Notice of Motion on the meeting agenda:

Council is committed to protecting local heritage and significant architecture (Delivery Program 2018 – 2021 & Operational Plan 2018 – 2019 at page 53).

There are 14 Heritage Conservation Areas within the Municipality that are identified in the Woollahra LEP 2014, with the 3 main areas identified as:

- *Chapter C1 – Paddington HCA*
- *Chapter C2 – Woollahra HCA*
- *Chapter C3 – Watsons Bay HCA.*

The NHCAs are identified in Chapter B2 as:

- *Etham Ave, Darling Point*
- *Darling Point Rd, Darling Point*
- *Mona Rd, Darling Point*
- *Loftus Rd and Mona Rd, Darling Point*
- *Aston Gardens, Bellevue Hill*
- *Victoria Rd, Bellevue Hill*
- *Balfour Rd, Rose Bay*
- *Beresford Estate, Rose Bay*
- *Rose Bay Gardens Estate, Rose Bay*
- *Kent Rd, Rose Bay*
- *Bell St, Vacluse.*

The cultural significance of these NHCAs is embodied in the subdivision pattern, building materials, styles, forms, details and arrangements of the heritage items, buildings and streetscape elements. Together these elements create a shared history, historic character, sense of place, and shared aesthetic or visual presence that has been identified as of particular value to the community.

These NHCAs have been identified following studies and assessments by Council, including documentary investigation and fieldwork surveys. Specific elements of significance are identified in each conservation area. The periods and styles of the buildings within the NHCAs include Late Victorian cottages, Federation Arts and Crafts dwellings, Federation Queen Anne dwellings, Federation Bungalows, and Inter-War flat buildings in the Art Deco, Spanish Mission, Georgian Revival and Functionalist styles.

The 3 main Heritage Conservation Areas have stringent planning and development controls, which guide what is permissible development in the area.

The current controls in the smaller NHCAs are not as detailed, nor stringent, with the result that the heritage value of these areas may be severely diminished. For example, the controls in some NHCAs permit whole buildings to be demolished and replaced with newly built forms, without any building fabric being preserved.

This is the recent experience with 5 new development applications currently being assessed by Council's planning department in Kent Rd, Rose Bay, which is in a NHCA. The mass effect of these developments in this NHCA, which all currently contemplate knock down of Federation Arts and Crafts flats and/or Inter-war flat buildings would have a significant detrimental effect to the heritage of this area.

The NHCAs are recognised as having a particular cultural significance based on their aesthetic, historic, scientific and/or social values. These are areas in which the cultural significance and relationships between the various characteristics creates a sense of place that is worth conserving. If whole buildings can be knocked down and rebuilt on mass, as is contemplated in Kent Rd, what is the purpose of having these areas identified as conservation areas?

2. Heritage Conservation Areas in Woollahra

There are 15 heritage conservation areas (HCAs) in the Woollahra Municipality. Whilst they vary in size and location, they are all identified as locally significant in Schedule 5 of the *Woollahra Local Environmental Plan 2014* (Woollahra LEP 2014).

Paddington, Woollahra and Watsons Bay are the largest HCAs, and each has its own chapter in the *Woollahra Development Control Plan 2015* (Woollahra DCP 2015) containing local planning provisions.

There are 11 Neighbourhood Heritage Conservation Areas (Neighbourhood HCAs) in the Woollahra LGA. These are located in the suburbs of Darling Point, Bellevue Hill, Rose Bay and Vaucluse. The relevant provisions for the Neighbourhood HCAs are contained in Chapter B2 Neighbourhood HCAs (Chapter B2) of the Woollahra DCP 2015. Chapter B2 contains:

- An introduction with objectives and overarching policies for all Neighbourhood HCAs;
- Individual sections at B2.2 to B2.12 for each Neighbourhood HCA, including a map, statement of significance, desired future character and area specific provisions (objectives and controls).

Each of the HCAs in the Woollahra LGA and the relevant chapters in the Woollahra DCP 2015 are provided in the table below.

Chapter of Woollahra DCP 2015	
B2 Neighbourhood HCAs	Applies to: <ul style="list-style-type: none">• Etham Ave, Darling Point• Darling Point Rd, Darling Point• Mona Rd, Darling Point• Loftus Rd and Mona Rd, Darling Point• Aston Gardens, Bellevue Hill• Victoria Rd, Bellevue Hill• Balfour Rd, Rose Bay• Beresford Estate, Rose Bay• Rose Bay Gardens Estate, Rose Bay• Kent Rd, Rose Bay• Bell St, Vaucluse
C1 Paddington HCA	This applies to Paddington but also includes part of the suburb of Edgecliff
C2 Woollahra HCA	Applies to most land in the Woollahra suburb
C3 Watsons Bay HCA	Applies to most land in the Watsons Bay suburb
D5 Double Bay Centre	Applies to the Double Bay Centre, including Transvaal Avenue HCA.

3. History of the Neighbourhood Heritage Conservation Areas

3.1. Heritage Listing of the Woollahra Neighbourhood HCAs

The Woollahra Neighbourhood HCAs were first identified as a consequence of the *1997 Tanner Architects Heritage Study* (the Tanner study). At this time, Council engaged a team of heritage consultants led by Tanner and Associates to undertake a heritage study aiming to identify individual heritage items and/or areas of environmental heritage in the medium density residential areas of Bellevue Hill, Darling Point and Rose Bay.

The Tanner study led to a series of preliminary recommendations to further investigate individual heritage items, conservation areas, conservation groups, streetscapes and landscape features. Since the year 2000, and mostly based on the recommendations of the Tanner study, Council commissioned a number of heritage studies that ultimately led to the listing of all the Neighbourhood HCAs in the Woollahra LEP 1995. Listing the Neighbourhood HCAs offered the buildings in these areas with statutory protection.

When the Woollahra LEP 1995 was translated into the now Woollahra LEP 2014, Council was required to comply with the relevant standards, provisions and definitions of the Standard Instrument Template. The terms “conservation group” and “streetscapes” were not included in the Standard Instrument Template. Consequently the “conservation groups” were identified as heritage items in the Woollahra LEP 2014 and “streetscapes” were identified as HCAs. The following table lists the relevant heritage studies that led to the listing of each of the 11 Neighbourhood HCAs, and **Figure 1** below shows the location of each of these Neighbourhood HCAs.

Heritage Study	Notes	LEP Amendment
1997 Heritage Assessments in Darling Point Road, Darling Point	Following the lodgement of development applications (DA) for demolition, and based on the preliminary Tanner study recommendations, Council engaged heritage consultant Hugh Fraser to undertake a heritage assessment of these properties. Mr Fraser recommended the creation of an HCA.	<ul style="list-style-type: none"> Darling Point Road HCA was listed on 3 July 1998.
2000 Etham Avenue Heritage Study, Darling Point	Following the lodgement of DAs for demolition and following the recommendations from the Tanner study, Council engaged heritage consultant Hugh Fraser to assess the significance of the three properties. Mr Fraser recommended the creation of an HCA	<ul style="list-style-type: none"> Etham Avenue HCA was listed on 22 June 2001
2002 Mona Road Heritage Study, Darling Point	Following the recommendations from the Tanner Study, heritage consultant Mark Robinson was appointed to undertake a heritage assessments of nominated properties in Darling Point. Mr Robinson recommended the creation of two HCAs.	<ul style="list-style-type: none"> Mona Road HCA was listed on 27 February 2004 Loftus Road and Mona Road HCA was listed on 22 July 2005
2002 Kent Road, Balfour Road and Beresford Estate Heritage Studies in Rose Bay and Bellevue Hill	Based on the Tanner study to further analysis properties in Kent and Balfour Road and other areas in Rose Bay, heritage consultancy Noel Bell Ridley Smith were appointed to undertake heritage assessments of nominated properties in Rose Bay. The study recommended the creation of three HCAs and a number of individual heritage items.	<ul style="list-style-type: none"> Kent Road HCA was listed on 27 February 2004 Balfour Road HCA was listed on 27 February 2004 Beresford Estate HCA was listed on 27 February 2004.
2002 Aston Gardens and Rose Bay Gardens Estate Heritage Studies in Rose Bay and Bellevue Hill	Based on the recommendations in the Tanner study, heritage consultant Ian Kirk was engaged to assess two groups of inter-war flat buildings in the Rose Bay Gardens Estate in Rose Bay and Aston Gardens in Bellevue Hill. The study recommended the creation of two HCAs.	<ul style="list-style-type: none"> Aston Gardens HCA was listed on 27 February 2004 Rose Bay Gardens Estate HCA was listed on 27 February 2004.
2003 Bell Street Vacluse HCA	This study was undertaken in house by Council staff as a consequence of DA lodged in Bell Street. The study recommended the creation of an HCA.	<ul style="list-style-type: none"> Bell Street HCA was listed on 27 February 2004.

Heritage Study	Notes	LEP Amendment
2002 Victoria Road Heritage Study, Bellevue Hill	The study was undertaken in-house by Council's staff based on the recommendations of the Tanner study. The study recommended the creation of an HCA.	<ul style="list-style-type: none"> Victoria Road HCA was listed on 5 May 2006

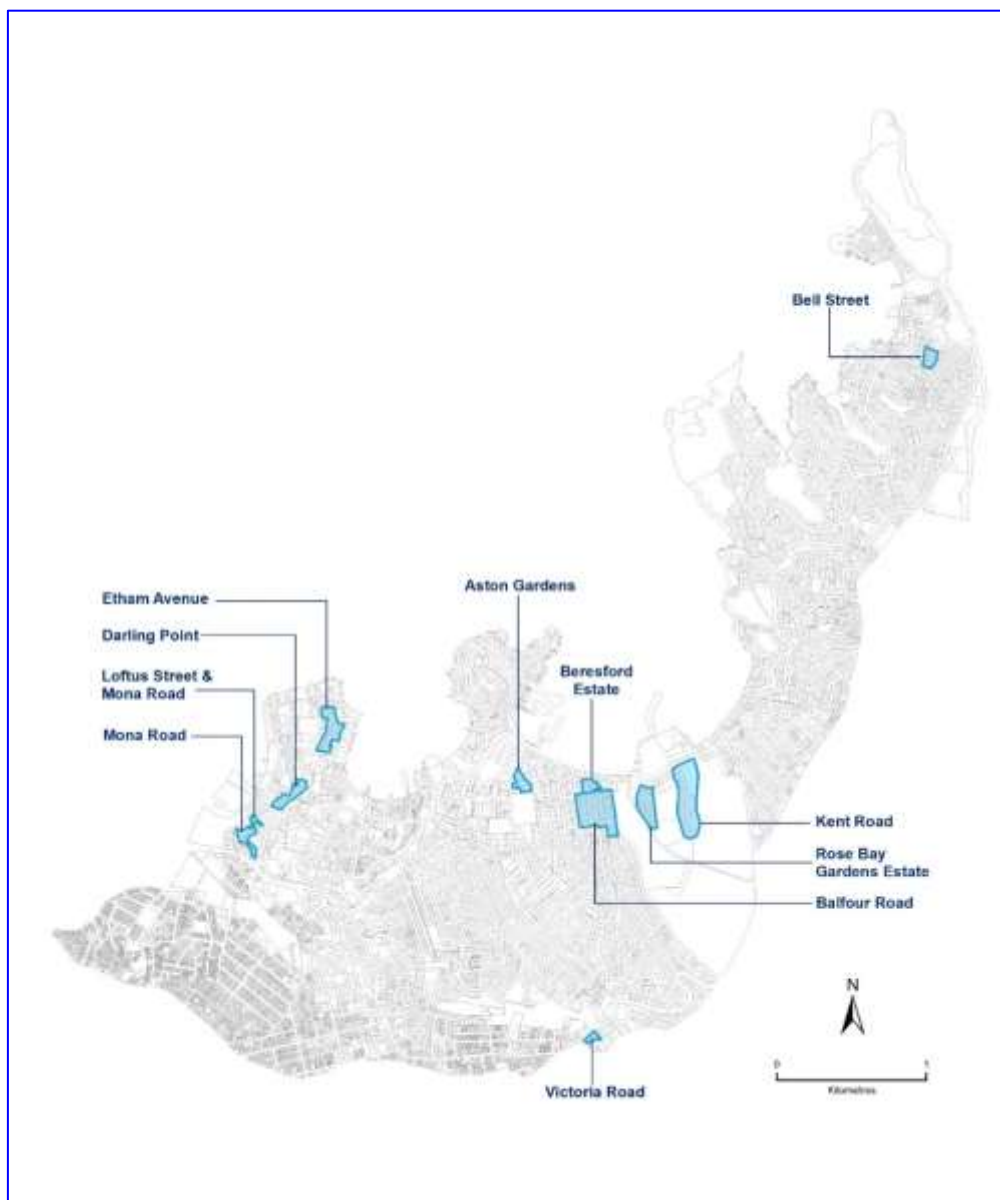


Figure 1: Map of the Neighbourhood HCAs in the Woollahra local government area

3.2. Current DCP provisions

Following the finalisation of each heritage study, an area specific set of local DCP provisions were prepared to guide and manage future development in the Neighbourhood HCAs. These provisions were prepared by multiple authors. Some were completed in-house, while others were prepared by external consultants.

These controls were contained in the Woollahra Residential DCP 2003 which applied to all residential areas outside of the Paddington, Watsons Bay and Woollahra HCAs. The provisions relating to the Neighbourhood HCAs were translated into Chapter B2 when the Woollahra DCP 2015 was being prepared.

Given the various authors of the heritage assessments and the DCP provisions, the nature of these provisions vary. For example, some are generic whilst others put a greater emphasis into the protection of specific building styles or typologies.

4. Neighbourhood Heritage Conservation Areas Review

The NOM dated 10 December 2018 required staff to review the current planning controls for these Neighbourhood HCAs, and determine and establish more stringent controls to maintain the cultural and heritage value of these areas. Part B of the NOM required staff to consider the strength of the current controls, and what mechanisms are required to enhance the preservation of the built and natural form of our Neighbourhood HCAs. In order to respond to this request, staff have undertaken the following:

4.1. Recent development applications and court cases

We have reviewed recent development approvals in Neighbourhood HCAs (since 2003) to assess the relative strength and weaknesses of the current Woollahra DCP 2015 provisions. We also reviewed court judgements in order to identify opportunities to address the issues raised, including where an applicant proposed the full demolition of a building in an HCA. This included reviewing the court cases where the applicant was seeking the demolition of properties in Kent Road, Rose Bay.

Our review of past DA and court cases has revealed the following opportunities to enhance our current planning provisions.

- Identifying contributory building in the Neighbourhood HCAs to clarify which buildings are considered contributory;
- Enhance the statements of significance to ensure that the key elements of significance for each Neighbourhood HCA are clearly articulated;
- Ensure that the objectives and controls cover all relevant building types, thereby not excluding other styles and typologies that may exist in the Neighbourhood HCA.
- A need to highlight the underlying philosophy of the *Australia ICOMOS Burra Charter 2013* (the Burra Charter), to illustrate during the development assessment process that Council's planning provisions are consistent with best heritage practice.
- Identifying other contributory items that may be present in the Neighbourhood HCA such as sandstone walls, sandstone kerbs and gutters and street trees. There is currently no consistent approach to the protection of these elements.

4.2. Planning principles

We have considered best planning practice by reviewing the relevant planning principles which are formulated by Commissioners of the NSW Land & Environment Court. Planning principles are tests that assist in making a planning decision in the following instances:

- where there is a void in policy
- where policies expressed in qualitative terms allow for more than one interpretation
- where policies lack clarity.

The planning principles are regularly updated, and a full list of planning principles can be found at the following website <https://www.caselaw.nsw.gov.au/>.

Most relevantly, the *Helou v Strathfield* planning principle provides a test to assess demolition in HCAs and is used to assess relevant applications. When a building in an HCA is proposed for demolition, the planning principle requires the consideration of the following questions:

- (i) What is the heritage significance of the conservation area?
- (ii) What contribution does the individual building make to the significance of the conservation area?
- (iii) Is the building structurally unsafe?
- (iv) If the building is or can be rendered structurally safe, is there scope for amending the application in a way that would have a lesser effect on the integrity of the conservation area than demolition?
- (v) Are these costs so high that they impose an unacceptable burden on the owner of the building? Is the cost of altering, extending or incorporating the building into a development of the site so unreasonable that demolition should be permitted?
- (vi) Is the replacement of such quality that it will fit into the conservation area?

In response to this planning principle, we have identified the following opportunities to enhance our current planning provisions:

- Identify contributory buildings in each Neighbourhood HCA to provide clarity on the answer to question (ii) of the planning principle.
- Insert references to the *Helou v Strathfield* planning principle in the DCP
- Amend our DA Guide to refer to the planning principle, and clarifying the requirements of a Demolition Report.

4.3. Review and update of existing provisions

We have carried out a comparative analysis of Chapter B2 of the Woollahra DCP 2015 against the more comprehensive chapters for Paddington, Woollahra and Watsons Bay HCAs. In particular, Chapter C1 which applies to the Paddington HCA is regarded as an exemplar in the heritage industry. Where the controls in these chapters can be used to enhance the provisions in Chapter B2, we are recommending that this occurs.

4.4. Summary of the proposed amendments

In summary, Council staff has identified the following opportunities for improvement to Chapter B2. In particular, the following key issues have been identified:

- The need to have a consistent set of controls for all Neighbourhood HCAs, which avoids repetition and eliminates gaps for typologies or styles in individual Neighbourhood HCAs;
- Opportunities to strengthen statements of significance and desired future character statements in light of recent approvals and issues raised in the consideration of court cases;
- The identification of individual contributory items in each Neighbourhood HCA which, paired with stronger statements of significance, will provide clarity about the importance of each building located in the HCA and provide a stronger protection for contributory fabric during the assessment process;
- Inserting the Burra Charter conservation philosophy to justify the underlying approach of the Woollahra DCP 2015; and
- The need to enhance references to the planning principle of *Helou v Strathfield*.

5. Proposed amendments to the Woollahra DCP 2015

In collaboration with staff from Council's Development Control Teams, we have prepared *Draft Woollahra DCP 2015 (Amendment No 19)* (see **Annexure 1**) which seeks to enhance and strengthen the existing controls for the Neighbourhood HCAs in Chapter B2 of the Woollahra DCP 2021. **Annexure 2** contains a consolidated set of proposed provisions to be seen in context against the existing provisions in Chapter B2. The table below summarises the proposed amendments to Woollahra DCP 2015, and the comments in the right hand column contain an explanation of the anticipated outcomes.

Proposed amendments	Proposed outcomes
Chapter A3 Definitions	
- Enhance the definitions of 'contributory item' and 'neutral item'	- Ensure that the definitions of contributory and neutral item are stronger in the assessment of future DAs.
Chapter B2 Neighbourhood HCAs	
B2.1 Introduction <ul style="list-style-type: none"> - Insert a combined and consolidated set of provisions for all Neighbourhood HCAs; - Strengthen existing objectives in B2.1.3 to make reference to the Burra Charter; - Insert definitions and diagrams to ensure a consistent interpretation of the new provisions; - Insert new objectives and controls based on best heritage practice; and - Reference to the <i>Helou v Strathfield</i> planning principle for demolition in an HCA. 	<ul style="list-style-type: none"> - Provide a stronger justification to retain significant fabric in Neighbourhood HCAs; - Provide consistency with other Chapters of the Woollahra DCP 2015 related to Paddington, Woollahra and Watsons Bay, which are based on the methodology of the Burra Charter; - Provide definitions to ensure the correct interpretation of the proposed provisions; - Avoid repetition; - Avoid gaps in terms of typologies and styles applicable to each Neighbourhood HCA; - Enhance the protection of significant interiors; - Enhance the protection of pairs or group of buildings; - Provide design suggestions for rear additions (including diagrams); - Require materials finishes and colours schemes for alterations and additions to be sympathetic in the context; and - Protect sandstone kerb and guttering.
B2.2-B2.12 <ul style="list-style-type: none"> - Amend individual statements of significance and desired future character of each Neighbourhood HCA. - Identify and tabulate all contributory items² in each Neighbourhood HCA, including but not limited to sandstone walls, sandstone kerb and guttering and street trees. 	<ul style="list-style-type: none"> - Strengthen statements of significance in light of recent court approvals. - Avoid repetition and inconsistency between the statements of significance and the desired future character statements. - Remove information that is not relevant to the statements of significance.

In addition to the amendments to the Woollahra DCP 2015, Council staff will be updating the DA Guide to refer to the *Helou v Strathfield* planning principle whilst also enhancing the requirements for a Demolition Report.

² In order to identify the buildings that contribute to each Neighbourhood HCA, an extensive street-by-street survey was undertaken by Council staff, which was informed by the relevant heritage studies listed in 3.1 above. Staff were then able to ascertain the level of intactness of the buildings in order to finalise the list of contributory items for each Neighbourhood HCA.

6. Next steps

If Council supports the proposed amendments to Woollahra DCP 2015, the next step is exhibit the draft DCP. The process for amending a DCP is set out in the *Environmental Planning and Assessment Act 1979*, the *Environmental Planning and Assessment Regulation 2000*, and the *Woollahra Community Participation Plan 2019*.

The draft DCP must be publicly exhibited for a minimum of 28 days. Public notice will be given in the Wentworth Courier each week of the exhibition and on Council's website.

Owners of buildings located in each Neighbourhood HCA will be notified during the public exhibition period, and the following residents groups will also be notified:

- Darling Point Society
- Rose Bay Residents' Association
- The Paddington Society
- The Watsons Bay Association
- Vaucluse West Residents Association
- Watsons Bay & Vaucluse Social history Group
- Woollahra History & Heritage Society


The outcome of the public exhibition will be reported to a future Committee meeting.

7. Conclusion

In response to a NOM adopted on 10 November 2018, staff have reviewed the planning controls for Neighbourhood HCAs in the Woollahra DCP 2015. Based on this review, staff have identified a number of opportunities to strengthen the existing provisions in Chapter B2 to enhance the preservation of the built and natural form of our Neighbourhood HCAs. In addition, changes to the DA Guide will be implemented

Staff recommend that Council resolve to exhibit the Draft Woollahra Development Control Plan 2015 (Amendment No 19) as contained in **Annexure 1**.

Annexures

1. Draft Woollahra Development Control Plan 2015 (Amendment No.19) [↓](#) 
2. Relevant Extracts from the Woollahra DCP 2015 - Chapters A3 and B2 [↓](#) 