

Item No:	12.2
Subject:	ADVICE OF THE WOOLLAHRA LOCAL PLANNING PANEL - PLANNING PROPOSAL - HERITAGE LISTING OF 53 & 55 DRUMALBYN ROAD, BELLEVUE HILL
Authors:	Flavia Scardamaglia, Strategic Heritage Officer Anne White, Manager - Strategic Planning
Approver:	Scott Pedder, Director - Planning & Place
File No:	22/42236
Purpose of the Report:	To provide Council with the advice of the Woollahra Local Planning Panel. To obtain Council's approval to proceed with the planning proposal to list 53 and 55 Drumalbyn Road, Bellevue Hill as local heritage items in Schedule 5 and on the Heritage Map of the Woollahra Local Environmental Plan 2014.
Alignment to Delivery Program:	Strategy 4.3: Protect our heritage, including significant architecture and the natural environment.

Recommendation:

- A. THAT Council note the advice provided by the Woollahra Local Planning Panel on 17 March 2022 for the planning proposal to list 53 and 55 Drumalbyn Road, Bellevue Hill as local heritage items in Schedule 5 and on the Heritage Map of the Woollahra Local Environmental Plan 2014.
- B. THAT Council endorse the planning proposal as contained in **Attachment 5** of the report to Council of 28 March 2022, and resolve to forward this to the Department of Planning and Environment with a request for gateway determination to allow public exhibition.
- C. THAT Council request the Minister for Planning and Public Spaces (or delegate) authorise Council as the local plan-making authority in relation to the planning proposal, to make the local environment plan under section 3.36 of the *Environmental Planning and Assessment Act 1979*.
- D. THAT Council endorse investigating the potential State significance of 55 Drumalbyn Road, Bellevue Hill and if found to have State significance, progress a nomination to the State heritage register.
- E. THAT the Mayor writes to the NSW Heritage Council notifying them that 55 Drumalbyn Road, Bellevue Hill may be of State significance.
- F. THAT consistent with the adopted Woollahra Heritage Gap Analysis, Council progress the heritage program with a proactive approach to heritage identification and conservation including a Modern Heritage study.

Executive Summary:

The purpose of this report is to provide Council with the advice of the Woollahra Local Planning Panel (Woollahra LPP) on the listing of the following properties as local heritage items in Schedule 5 and the Heritage Map of the *Woollahra Local Environmental Plan 2014* (Woollahra LEP 2014):

- 'House (including interiors), garage, outbuilding, gardens (including retaining walls)' at 53 Drumalbyn Road, Bellevue Hill 2023 (Lot 3, DP 316390)
- 'House (including interiors), garage, outbuilding, gardens (including retaining walls)' at 55 Drumalbyn Road, Bellevue Hill 2023 (Lot B, DP 186880)

In summary, we recommend that Council resolve to endorse the planning proposal as contained in **Attachment 4** of the report to Council of 28 March 2022, and resolve to forward this to the Department of Planning and Environment (DPE) with a request for gateway determination to allow public exhibition. We also recommend progressing the potential State significance of 55 Drumalbyn Road, Bellevue Hill.

Discussion:

The sites

The land at 53 Drumalbyn Road Bellevue Hill at Lot 3, DP 316390, is an Inter-War Spanish Mission house designed by Bohringer Taylor & Johnson for G J Wells in 1929 (see **Figures 1, 2 & 3** below).

The land at 55 Drumalbyn Road Bellevue Hill at Lot B, DP 186880 (see **Figures 1, 4 & 5** below) is an Inter-War Functionalist house designed by Craig & Brindley for A K Jones in 1937.

Currently neither of these properties have statutory heritage protection, nor are located in a heritage conservation area.



Figure 1: Cadastral map, with sites highlighted in red. (Source: Woollahra MAPS, 2021)



**Figure 2: Current aerial photo, with 53 Drumalbyn Road highlighted in red.
(Source: Woollahra MAPS, 2022)**



**Figure 3: Front elevation of 53 Drumalbyn Road in April 2010.
Source: www.realestate.com.au.**



**Figure 4: Current aerial photo, with 55 Drumalbyn Road highlighted in red.
(Source: Woollahra MAPS, 2022)**



**Figure 5: Front elevation of 55 Drumalbyn Road.
(Source: Woollahra Council, 2022)**

Interim Heritage Orders

On 22 September 2021, a development application (DA) was lodged with Woollahra Council to demolish both buildings at 53 & 55 Drumalbyn Road, Bellevue Hill, amalgamate the two sites and construct a new seniors' housing development (DA2021/416/1).

Council staff engaged an external heritage consultant Scott Robertson of Robertson & Hindmarsh Pty Ltd to undertake a preliminary heritage assessment of both properties, which was finalised on 16 December 2021. A copy of the preliminary heritage assessment is at **Attachment 2**.

This assessment was prepared in accordance with the document titled *Assessing heritage significance*, published by the NSW Heritage Office in 2001 and *Investigating heritage significance: A guide to identifying and examining heritage items in NSW*, published by Heritage NSW in 2021.

The two properties were assessed against the seven criteria in the guidelines. Each criterion has inclusions and exclusions guidelines which are used to assist in the assessment process. If an item meets one of the seven heritage criteria at a local level, and retains the integrity of its key attributes, it can be considered to have local heritage significance.

To be assessed for State significance an item will meet more than one of the seven heritage criteria at a State level, or if an item satisfies only one of the criteria, the item is of such particular significance to NSW that it should be listed.

The preliminary assessment concluded that both properties were at least of local significance under the following heritage criteria:

53 Drumalbyn Road Bellevue Hill	55 Drumalbyn Road Bellevue Hill;
✓ Criterion (a): Historical significance	✓ Criterion (a): Historical significance
✓ Criterion (b): Associative significance	✓ Criterion (c): Aesthetic significance
✓ Criterion (c): Aesthetic significance	✓ Criterion (f): Rarity
✓ Criterion (f): Rarity	✓ Criterion (g): Representativeness
✓ Criterion (g): Representativeness	

Under a Ministerial Order, the Authorisation for Local Councils to make Interim Heritage Orders (IHOs), published in the Government Gazette on 12 July 2013 and under a sub-delegation to the *Director of Planning & Place* they may, on behalf of Council, make an IHO. An IHO can be made if, among other things, the following pre-conditions are in place:

- (b) *it has considered a preliminary heritage assessment of the item prepared by a person with appropriate heritage knowledge, skills and experience employed or retained by the Council and considers that:*
- i The item is or is likely to be found, on further inquiry and investigation, to be of local heritage significance;*
 - ii The item is being or is likely to be harmed;*
 - iii The IHO is confined to the item determined to be under threat.*

Given DA2021/416/1 proposed the demolition of all structures on both sites, and that both sites were potentially of local heritage significance, the *Director of Planning & Place* formed the opinion that the above circumstances were in place.

Subsequently, the *Director of Planning & Place* authorised the making of two IHOs. The IHOs were issued under section 25 of the *Heritage Act 1977* (IHO No. LC-5) and were published in the NSW Government Gazette No. 646 of 17 December 2021.

The orders will remain in place for an initial period of six months which gives Council the opportunity to fully assess the heritage significance of the sites and identify whether they should be listed as State and/or local heritage items. If within these six months Council resolves to proceed with the listing of the items, the orders remain in place for an additional six months.

Under section 57 of the *Heritage Act 1977*, when an IHO applies to a place or building a person must not, among other things, demolish, damage or carry out development except in pursuance of an approval granted by the approval body, i.e. Council.

On 17 December 2021, three appeals against the issue of both IHOs and the DA deemed refusal were lodged in the NSW Land and Environment Court. DA2021/416/1 is currently under assessment and was reported to the meeting of the Woollahra LPP on 17 March 2022. At that meeting, the Woollahra LPP supported the staff recommendation to refuse the DA.

A consolidated Section 34 conference is scheduled for 20 April 2022. A Section 34 Conference under the *NSW Land and Environment Court Act 1979* involves the parties to the Court proceedings holding discussions to identify the issues in dispute, consider options and endeavour to reach an agreement. If an agreement is not reached on the day, the matter may be terminated and it may then go to a full hearing, subject to the Commissioner's decision. Alternatively, a negotiation may be agreed by both parties.

Due to the urgency imposed by the upcoming Section 34 Conference, this report has been referred directly to a meeting of Council.

Assessment of heritage significance

Having carried out a preliminary heritage assessment, a comprehensive assessment of heritage significance was carried out for both 53 & 55 Drumalbyn Road, Bellevue Hill by Scott Robertson of Robertson & Hindmarsh. Informed by a site inspection on 1 March 2022 and the documents that were lodged to accompany the DA, these assessments were prepared in accordance with the document titled *Assessing heritage significance*, published by the NSW Heritage Office in 2001 and *Investigating heritage significance: A guide to identifying and examining heritage items in NSW*, published by Heritage NSW in 2021.

The two properties were again assessed against the seven criteria in the guidelines. A copy of the two assessments is provided at **Attachments 3** and **4**¹. A copy of the heritage inventory sheets, including an assessment against all criteria, is attached as appendices.

The assessments concluded that both properties were at least of local significance under the following heritage criteria:

53 Drumalbyn Road Bellevue Hill	55 Drumalbyn Road Bellevue Hill;
✓ Criterion (a): Historical significance	✓ Criterion (a): Historical significance
✓ Criterion (b): Associative significance	✓ Criterion (b): Associative significance
✓ Criterion (c): Aesthetic significance	✓ Criterion (c): Aesthetic significance
✓ Criterion (f): Rarity	✓ Criterion (f): Rarity
✓ Criterion (g): Representativeness	✓ Criterion (g): Representativeness

Recommendations of the Assessment of Heritage Significance report

The heritage significance assessment reports have assessed the heritage significance of both 53 & 55 Drumalbyn Road, Bellevue Hill in accordance with the NSW Heritage Manual.

¹ Since the heritage assessment reports were presented to the meeting of the Woollahra LPP of 17 March 2022, minor typographical errors have been corrected. These are administrative only.

The reports concluded that, based on the information available at the time of writing, both buildings meet at least the threshold for listing as an item of local heritage significance.

Planning Proposal

Consistent with the recommendations of the assessment of heritage significance report, a planning proposal has been prepared to list:

1. 'House (including interiors), garage, outbuilding, gardens (including retaining walls)' at 53 Drumalbyn Road, Bellevue Hill
2. 'House (including interiors), garage, outbuilding, gardens (including retaining walls)' at 55 Drumalbyn Road, Bellevue Hill

as local heritage items in Schedule 5 and on the Heritage Map of the Woollahra LEP 2014. The planning proposal has been prepared in accordance with section 3.33 of the *NSW Environment Planning and Assessment Act 1979* and the NSW Department of Planning and Environment titled *Local Environmental Plan Making* (December 2021).

The planning proposal satisfies the requirements of section 3.33 of the Act as it includes:

- A statement of the objectives or intended outcome of the amendment to Woollahra LEP 2014.
- An explanation of the provisions that are to be included in the amendment to Woollahra LEP 2014.
- The justification for the objectives, outcomes and provisions and the process for their implementation.
- Details of the community consultation that is to be undertaken.

Advice of the Woollahra Local Planning Panel

The planning proposal was referred to the Woollahra Local Planning Panel (Woollahra LPP) on 17 March 2022 (see **Attachment 1**), where they provided the following advice to Council:

THAT the Woollahra Local Planning Panel advises Council to:

- A. *Proceed with the planning proposal to list the following as local heritage items in Schedule 5 and on the Heritage Map of the Woollahra Local Environmental Plan 2014:*
 - i *'House (including interiors), garage, outbuilding, gardens (including retaining walls)' at 53 Drumalbyn Road, Bellevue Hill.*
 - ii *'House (including interiors), garage, outbuilding, gardens (including retaining walls)' at 55 Drumalbyn Road, Bellevue Hill.*
- B. *Proceed to investigate the potential State significance of 55 Drumalbyn Road, Bellevue Hill and if so, progress to nomination to the State heritage register.*
- C. *Advise the NSW Heritage Council that 55 Drumalbyn Road, Bellevue Hill on further investigation may prove to be of State significance*
- D. *Progress with a proactive approach to heritage identification and conservation including a Modern Heritage study and investigating other buildings in the Bellevue Hill suburb and other areas in the Woollahra LGA.*

The planning proposal (attached at **Attachment 5**) has been updated to include the advice from the Woollahra LPP.

Late correspondence was tabled at the Woollahra LPP meeting of 17 March 2022. This is included at **Attachment 6** to this report. Correspondence in favour of the staff recommendation was received from Council's consultant Robertson & Hindmarsh. Correspondence against the staff recommendation was received from Boskovitz Lawyers, GBA Heritage and Zoltan Kovacs Architect.

Cr Lucinda Regan, Cr Isabelle Shapiro, Cr Toni Zeltzer spoke in favour of the staff recommendation, and the applicants consultant team spoke against the staff recommendation. This included Shabnam Mehr (from GBA Heritage) Anthony Boskovitz (from Boskovitz lawyers), Ronnie Shulkin and Zoltan Kovacs Architect spoke against the staff recommendation. It is noted that the Woollahra LPP considered a request for the matter to be deferred for a period of two weeks. However, the Woollahra LPP did not feel that this request was justified as further opportunities for consultation and representation would be available when the matter comes before Council.

Implementation of the Woollahra LPP advice

Council staff note the support from the Woollahra LPP to progress the local heritage listing of both properties and to proceed with the planning proposal.

Council staff also note the support from the Woollahra LPP to progress further investigations into the potential State significance of 55 Drumalbyn Road, Bellevue Hill. Based on discussions at the Woollahra LPP, it is understood that the justification for the potential State significance is related to the use of early and innovative features showing the influence of modernism at 55 Drumalbyn Road, Bellevue Hill. This matter will be further investigated should Council endorse recommendation D of this report.

Council staff support the Woollahra LPP advice to progress a proactive approach to heritage identification and conservation including a Modern Heritage study. Having a proactive approach to heritage listing, in particular for buildings showing Modernist influences has been identified as a High Priority in the Heritage Gap Analysis Action Plan which was endorsed by Council on 25 October 2021. Recommendation F is consistent with this approach.

Options:

Subject to Council's decision, the planning proposal (with updates to make reference to the Council decision) will be referred to the DPIE for a Gateway determination. This will allow the planning proposal to be placed on public exhibition.

The public exhibition of the planning proposal will be undertaken in accordance with the requirements of the *Environmental Planning and Assessment Act 1979* (the Act), the *Environmental Planning and Assessment Regulation 2021* and the Gateway determination issued by the Department as delegate for the Minister.

The Gateway determination will specify the minimum duration of the public exhibition period. This period is usually a minimum of 28 days, which is consistent with Council's standard practice for the exhibition of a planning proposal.

Public notification of the exhibition will comprise:

- A weekly notice in the Wentworth Courier for the duration of the exhibition period (if a hardcopy is being published).
- A notice on Council's website.
- A notice to local community, resident and business groups.

To streamline the plan-making process, the Minister can delegate some plan-making powers to Council for routine matters. In this case, Council may request authorisation to exercise the functions of the Minister to make an LEP under section 3.36 of the Act. Part C of the recommendation for this report deals with this request. After public exhibition, the planning proposal and submissions received will be reported to Council.

Alternatively, Council may decide to note the advice of the Woollahra LPP and not progress the planning proposal and not progress the further investigations into the State significance of 55 Drumalbyn Road, Bellevue Hill.

Community Engagement and / or Internal Consultation:

On 17 December 2021, Council staff sent correspondence to the owners of both 53 and 55 Drumalbyn Road, Bellevue Hill, informing them that an IHO on both properties had been published in the NSW Government Gazette.

A reply was received from the owner of 55 Drumalbyn Road only. On 13 January 2022, Council staff sent an additional letter to the owners to:

- inform them that Council had engaged a heritage consultant to prepare a detailed heritage assessment to investigate the heritage significance of their property; and
- request access to their property.

A site inspection took place on 1 March 2022.

As identified above, the applicants consultant team addressed the Woollahra LPP on 17 March 2022.

No other community engagement has been undertaken to date. Public exhibition of the planning proposal will be undertaken in due course and in accordance with the Gateway Determination conditions and the *NSW Environment Planning and Assessment Act 1979*.

Policy Implications:

Should Council resolve to endorse the planning proposal and forward this to the DPE, and should the planning proposal progress to exhibition and finalisation, there will be policy implications by listing both properties as heritage items in the Woollahra LEP 2014.

Financial Implications:

Should Council resolve to investigate the potential Stage significance of 55 Drumalbyn Road, Bellevue Hill there will be financial implications as it is recommended that this assessment is prepared by an external consultant.

There will also be financial implications when Council staff progress the Modern Heritage study, consistent with the adopted Woollahra Heritage Gap Analysis.

Resourcing Implications:

Staff resource implications will be associated with progressing the planning proposal which will include managing the public exhibition and preparing a post exhibition report to a meeting of Council. There will also be resource implications in the management of external consultants to progress the Modern Heritage study and should Council resolve to investigate the potential state significance of 55 Drumalbyn Road Bellevue Hill.











Conclusion:

A planning proposal to list 53 & 55 Drumalbyn Road, Bellevue Hill as local heritage items in Schedule 5 and on the Heritage Map of the Woollahra LEP 2014 was considered by the Woollahra LPP on 17 March 2022. At this meeting, the Woollahra LPP provided advice to Council that it supports the planning proposal, and that Council should:

- investigate the potential State significance of 55 Drumalbyn Road, Bellevue Hill,
- advise the NSW Heritage Council that 55 Drumalbyn Road, Bellevue Hill, on further investigation may prove to be of State significance and
- progress with a proactive approach to heritage identification and conservation including a Modern Heritage study.

Council staff recommend that Council endorses the planning proposal at **Attachment 5** and proceed with referring this to the DPIE requesting a gateway determination to allow public exhibition.

Attachments

1. Report to the Woollahra Local Planning Panel - 17 March 2022 (attachments removed)
 
2. Preliminary Assessment of Heritage Significance for 53 and 55 Drumalbyn Road Bellevue Hill - 16 December 2022  
3. 53 Drumalbyn Road Bellevue Hill - Heritage Assessment (including heritage inventory sheet)  
4. 55 Drumalbyn Road Bellevue Hill - Heritage Assessment (including heritage inventory sheet)  
5. Planning Proposal - Heritage Listing of 53 and 55 Drumalbyn Road Bellevue Hill - March 2022  
6. Late correspondence tabled at the Woollahra LPP of 17 March 2022 