

Item No:	R1 Recommendation to Council
Subject:	ADVICE OF THE WOOLLAHRA LOCAL PLANNING PANEL - PLANNING PROPOSAL - HERITAGE LISTING OF 364 EDGECLIFF ROAD, WOOLLAHRA
Author:	Kristy Wellfare, Strategic Heritage Officer
Approvers:	Anne White, Manager - Strategic Planning Scott Pedder, Director - Planning & Place
File No:	22/104004
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 364 Edgecliff Road, Woollahra as a local heritage item 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 19 May 2022 for the planning proposal to list 364 Edgecliff Road, Woollahra as a local heritage item 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 the Environmental Planning Committee of 6 June 2022 to list *The Corner House (house, including interiors), garage, and garden sandstone fence base* at 364 Edgecliff Road, Woollahra (Lot 1, DP 224367) as a local heritage item in Schedule 5 and on the Heritage Map of the *Woollahra Local Environmental Plan 2014* 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*.

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 Corner House (house (including interiors), garage, and garden sandstone fence base)* at 364 Edgecliff Road, Woollahra (Lot 1, DP 224367) as a local heritage item in Schedule 5 and on the Heritage Map of the *Woollahra Local Environmental Plan 2014* (Woollahra LEP 2014):

In summary, we recommend that Council resolve to endorse the planning proposal as contained in **Attachment 5** of the report to the Environmental Planning Committee of 6 June 2022, and resolve to forward this to the *Department of Planning and Environment* (DPE) with a request for gateway determination to allow public exhibition.

Discussion:

Background

On 13 October 2021, a development application (DA) was lodged with Woollahra Council for both 364 and 364A Edgecliff Road, Woollahra (DA2021/455/1). The DA proposes the amalgamation of the two sites and substantial alterations and additions to the building at 364 Edgecliff Road, and the demolition of the existing building at 364A Edgecliff Road, and the construction of a residential flat building.

As part of the notification of the DA, Council received a submission from LSJ Architects (Lucas Stapleton Johnston) dated 9 November 2021 that included a preliminary assessment of the potential heritage significance of the site (**Attachment 1**). The submission identified that the Corner House at 364 Edgecliff Road was of potential heritage significance, and requested that an Interim Heritage Order (IHO) be placed on the property to allow for Council to undertake an assessment of the heritage significance of the site.

Schedule 2, Clause (2)(a)(ii) of the Ministerial Order dated 12 July 2013, identifies the circumstances in which a Local Council can make an IHO over a property. Under this Ministerial Order, a Council can only make an IHO where the potential heritage item does not already have statutory heritage protection under the *Environmental Planning and Assessment Act 1979* or the *Heritage Act 1977*. As this site is located in the Woollahra Heritage Conservation Area, it is currently afforded a level of heritage protection, and accordingly Council does not have the authority to issue an IHO.

At its meeting of 22 November 2021, Council considered a Notice of Motion relating to the subject site and subsequently resolved:

THAT Council:

- A. *Notes that the property – 364 Edgecliff Road, Woollahra - is identified as a contributory item (being part of the heritage conservation area of West Woollahra in the C2.1.2 of the Woollahra DCP 2015).*
- B. *Requests staff to undertake, as a matter of urgency:*
 - i) *a report to investigate the potential heritage significance of the building in order to identify whether the site warrants a listing as:*
 - *a local heritage item in the Woollahra Local Environmental Plan 2014 (WLEP); and/or*
 - *an item on the State Heritage Register under the Heritage Act 1977.*
- C. *Writes to the Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts to request that an IHO is placed on the property under section 24(1) of the Heritage Act 1977.*

In response to this Council decision, on 6 December 2021 the *Director of Planning and Place* sent correspondence to the (then) *Special Minister of State, Minister for the Public Service & Employee Relations, Aboriginal Affairs* (the Minister), and the Arts requesting that an IHO be placed onto 364 Edgecliff Road under Section 24 of the Heritage Act.

Concurrently, Council staff engaged an external independent heritage consultant, Dr. Scott Robertson of *Robertson & Hindmarsh Pty Ltd* to undertake a preliminary heritage significance assessment of the site at 364 Edgecliff Road.

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 property was 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 the site is likely to fulfil the following criteria for listing as a heritage item of local significance:

- ✓ Criterion (a): Historical significance
- ✓ Criterion (b): Associative significance
- ✓ Criterion (c): Aesthetic significance
- ✓ Criterion (f): Rarity
- ✓ Criterion (g): Representativeness

This assessment also included a preliminary assessment of the neighbouring site at 364A Edgecliff Road and found that this site would be unlikely to fulfil the criteria for listing as a heritage item. A copy of the preliminary heritage assessment is at **Attachment 2**, and a copy was forwarded to the Minister and Heritage NSW.

The Interim Heritage Order

The Minister authorised the making of an IHO under section 24 of the *Heritage Act 1977* and notice of the IHO was published in the NSW Government Gazette No. 88 of 4 March 2022. The IHO included both the site at 364 Edgecliff Road and the adjacent site at 364A Edgecliff Road that was the subject of development application DA2021/455/1.

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. Heritage NSW.

The IHO will remain in place for twelve months, until 4 March 2023, 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.

It is noted that the assessment of DA2021/455/1 is ongoing, and, at the time of writing, the DA is yet to be determined. On 5 May 2022, an appeal against the deemed refusal of the DA was lodged with the NSW Land and Environment Court and a Directions Hearing is scheduled for 3 June 2022.

The sites

The land at 364 Edgecliff Road, Woollahra at Lot 1, DP 224367, is a two storey Arts and Crafts style house designed by Waterhouse & Lake for Alan Lee Holt in 1919. The garage onsite was designed by the same architect in 1920 (see **Figure 1, 2, 3 & 4** below).

The land at 364A Edgecliff Road, Woollahra at Lot 2, DP 224367, is a two storey post-World War 2 house designed by Thompson, Spooner & Dixon for Mrs A.A. Marks in 1964/65.

The property at 364 Edgecliff Road is identified as a contributory item (being part of the heritage conservation area of West Woollahra in C2.1.2 of the Woollahra DCP 2015). 364A Edgecliff Road is not identified as a contributory item in the Woollahra DCP.

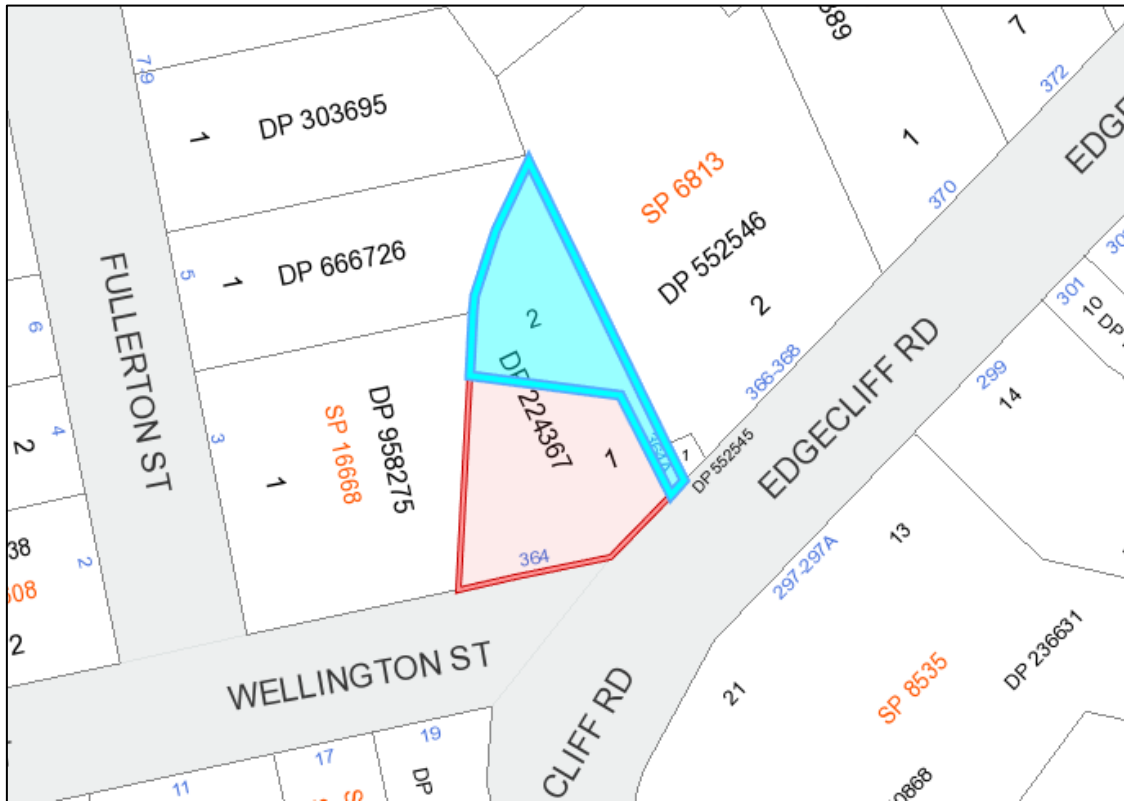


Figure 1: Cadastral map, with 364 Edgecliff Road, Woollahra (highlighted red) and 364A Edgecliff Road, Woollahra (highlighted blue). (Source: Woollahra MAPS, 2022)



Figure 2: Current aerial photo, with 364 Edgecliff Road, Woollahra highlighted in red and 364A Edgecliff Road, Woollahra highlighted in blue. (Source: Woollahra MAPS, 2022)



Figure 3: 364 Edgecliff Road, Woollahra viewed from south-east in March 2022.
Source: Robertson and Hindmarsh



Figure 4: 364 Edgecliff Road, Woollahra – northern façade.
Source: Art in Australia – 1 May 2022 – Taken from Robertson and Hindmarsh

Assessment of Significance

Having carried out the preliminary heritage assessment, and further to the IHO, a comprehensive assessment of heritage significance was carried out for both 364 & 364A Edgecliff Road, Woollahra by Scott Robertson of Robertson & Hindmarsh. Informed by a site inspection on 9 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. The Draft Heritage Assessment Report for the sites at 364 and 364A Edgecliff Road, Woollahra was received by Council staff on 7 April 2022 (**Attachment 3**), with the recommendation that “The Corner House” at 364 Edgecliff Road, Woollahra, should be listed as a heritage item of local significance in Schedule 5 and on the Heritage Map of the Woollahra LEP 2014.

The Draft Heritage Assessment concluded that 364 Edgecliff Road was of **local** significance under the following heritage criteria:

- ✓ Criterion (a): Historical significance
- ✓ Criterion (b): Associative significance
- ✓ Criterion (c): Aesthetic significance
- ✓ Criterion (f): Rarity
- ✓ Criterion (g): Representativeness

A copy of the heritage inventory sheet, including an assessment against all criteria, forms part of **Attachment 3**.

This report also considered the potential heritage significance of the site at 364A Edgecliff Road that is also subject to the IHO. The report confirmed that the site at 364A Edgecliff Road did not fulfil the criteria for listing as a heritage item at either a local or a state level.

It should be noted that the Draft Heritage Assessment recommended an expanded curtilage for the proposed heritage item at 364 Edgecliff Road, and that this curtilage should be extended over the neighbouring site at 364A Edgecliff Road. This expanded curtilage is not reflective of the significance of the site at 364A, but rather sought to preserve the northern aspect of the proposed heritage item at 364 Edgecliff Road which formed part of its original design intent.

In the discussion of the recommended curtilage for the proposed heritage item at 364 Edgecliff Road, the Draft Heritage Assessment Report identifies:

“The design of the house emphasised the main living areas of the house facing the rear, private garden and facing the sun for comfortable living conditions, especially in winter. The subdivision of the allotment into two lots preserved the solar access into the north-facing living rooms of the house but cut off access to the former rear, private garden.”

(Draft Heritage Assessment Report – 364 Edgecliff Road Woollahra, p.61)

The report addresses the use of an expanded heritage curtilage for the proposed heritage item at 364 Edgecliff Road, and the report contains the following two paragraphs:

“The reduction of the original site means that a heritage curtilage that encompasses the rear allotment, 364A Edgecliff Road would require an Expanded Heritage Curtilage. This would impose restrictions on the redevelopment of the rear allotment regarding overlooking and overshadowing the house and garden at 364 Edgecliff Road. Whilst this might seem onerous to any owner of the rear allotment it should be noted that the proponents of the current redevelopment of both sites propose to consolidate the allotments back into one lot. It should be

noted also that the proponent of the construction of the current house at 364A Edgecliff Road placed the new house at the far north end of the site to minimise overshadowing of the house and garden at 364 Edgecliff Road.

An alternative to an Expanded Heritage Curtilage covering both allotments would be to restrict the heritage curtilage to the site of 364 Edgecliff Road in a Lot Boundary Heritage Curtilage and rely on the LEP controls regarding development near a heritage item to protect both the amenity and the heritage significance of the extant house and garden.” (p.61-62)

Council staff considered both options regarding the curtilage of the proposed item at 364 Edgecliff Road. On balance, given the identified significance of the site, it was considered appropriate to recommend the curtilage remain with the current allotment boundary of 364 Edgecliff Road only. Under this option, any DA on a neighbouring site would require an assessment against the provisions of *Clause 5.10 Heritage Conservation* of the Woollahra LEP 2014. In this regard, any development in the vicinity of a listed heritage item should protect the heritage significance and the amenity of the house and garden at 364 Edgecliff Road.

Planning Proposal

Consistent with the recommendations of the assessment of heritage significance report, a planning proposal was prepared to list *The Corner House (house (including interiors), garage, and garden sandstone fence base)* at 364 Edgecliff Road, Woollahra as a local heritage item 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 document prepared by 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 19 May 2022 (see **Attachment 4**), where they provided the following advice to Council:

THAT the Woollahra Local Planning Panel advises Council to proceed with the planning proposal to list The Corner House (house (including interiors), garage, and garden sandstone fence base) at 364 Edgecliff Road, Woollahra as a local heritage item in Schedule 5 and on the Heritage Map of the Woollahra Environmental Plan 2014.

It is noted that the the Woollahra LPP provided the following **reasons for its decision**:

The significance of the design of the property at 364 Edgecliff Road in relation to its original curtilage is recognised. However, an appropriate strategic response is the listing of Lot 1 DP 224367 only, and due regard being given in the consideration of any development application at 364A Edgecliff Road to the light, design & amenity impacts to the property at 364 Edgecliff Road.

The Panel recognised the level of intactness and rarity of the interiors and exteriors at 364 Edgecliff Road, and the associative value of the garage to the significance of the property.

The Panel noted the correspondence from Heritage NSW. The Panel is satisfied that the requirements set out in the letter have been fulfilled.

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

Late correspondence was tabled at the Woollahra LPP meeting of 19 May 2022 from Heritage NSW (see **Attachment 6**) which included the following paragraph:

We encourage identification and heritage listing of new heritage items to environmental planning instruments which provide for greater heritage protection, provided all necessary due diligence, assessments and notifications have been done. Prior to finalising the planning proposal, the Panel and Council should be satisfied that this is the case.

It is noted that the Woollahra LPP considered this correspondence, and were satisfied that the requirements set out in this correspondence were fulfilled (as identified in their **reasons for its decision**).

Correspondence against the staff recommendation was tabled from Paul Rappaport: Director Heritage 21 (see **Attachment 7**).

Charles Mendel (resident) and Kate Denny (Lucas Stapleton Johnson Architects) spoke in favour of the staff recommendation, and the applicants consultant team spoke against the staff recommendation. This included Paul Rappaport (Heritage 21) and Anthony Boskovitz (Boskovitz lawyers).

It is noted that subsequent to the meeting of the Woollahra LPP, Council received correspondence from Heritage NSW (see **Attachment 8**). In this correspondence, Heritage NSW thanked Council for the Assessment of Heritage Significance and clarified that Heritage NSW will not be progressing a state significance assessment of the site (unless further information comes to light).

Options:

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

Subject to Council's decision, the planning proposal (with updates to make reference to the Council decision) will be referred to the DPE seeking 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 land owners, 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.

Community Engagement and / or Internal Consultation:

The notification of the IHO to the owners of the site would have been undertaken by Heritage NSW who were responsible for issuing the IHO.

No other community engagement has been undertaken to date, other than a notification to the owner and the owners consultant team of the Woollahra LPP meeting.

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 prepare a planning proposal (having considered the advice of the Woollahra LPP), and should the planning proposal progress to finalisation, there will be policy implications by listing the property as a heritage item in the Woollahra LEP 2014.

Financial Implications:

NIL

Resourcing Implications:

Staff resource implications will be associated with progressing a planning proposal which will include managing the public exhibition and preparing a post exhibition report to a meeting of Council.

Conclusion:

A planning proposal to list "The Corner House" (house, garage, and garden sandstone wall base) at 364 Edgecliff Road, Woollahra as local heritage items in Schedule 5 and on the Heritage Map of the Woollahra LEP 2014 was considered by the Woollahra LPP on 19 May 2022. At this meeting, the Woollahra LPP provided advice to Council that it supports the planning proposal.

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

Attachments

1. Lucas Stapleton Johnson Architects submission - Request for IHO 364 Edgecliff Road Woollahra
2. Preliminary Assessment of Heritage Significance – 364 Edgecliff Road Woollahra - Scott Robertson

3. Draft Heritage Assessment Report - 364 Edgecliff Road, Woollahra - Scott Robertson - 7 April 2022
4. Woollahra Local Planning Panel - Report (Attachments Removed) - 19 May 2022
5. Planning Proposal - 364 Edgecliff Road, Woollahra (updated 26 May 2022)
6. Late correspondence tabled at the Woollahra LPP of 19 May 2022 from Heritage NSW
7. Late correspondence tabled at the Woollahra LPP of 19 May 2022 from Paul Rappaport (Heritage 21)
8. Correspondence from Heritage NSW regarding the Interim Heritage Order for "The Corner House" at 364 Edgecliff Road, Woollahra (23 May 2022)