

Date of Determination	21 February 2019
Type of Determination	Electronic Determination
Panel Members	Steve O'Connor (Chair) Jennifer Bautovich (Independent Expert) Ian Stapleton (Independent Expert) Peter Graham OAM (Community Representative)
Declarations of Interest	Nil

MATTER DETERMINED

Planning Proposal to Heritage List 68 Denistone Road, Denistone under Ryde LEP 2014

PANEL CONSIDERATIONS AND DECISION

At its meeting of 14 February 2019, the Panel considered the material listed at item 7, and the material presented at meetings and the matters observed at the site inspection listed at item 8 in Schedule 1.

The Panel unanimously determined to defer its decision to an electronic determination to be made at a later date, pending further advice from Council.

On 15 February 2019, Council's Director City Planning & Environment presented a memo to the Panel along with a submission from the landowner.

The memo and submission are included in this determination after Schedule 1.

Having considered the Landowner's submission and the response provided by staff, the Panel confirmed their advice electronically:

The Ryde Local Planning Panel recommends to Council that:

The Planning Proposal seeking to include 68 Denistone Road, Denistone as a Heritage item in Ryde LEP 2014, Schedule 5 Environmental Heritage and include the property in Ryde LEP 2014 Heritage Map be forwarded to the Minister of Planning for Gateway Determination under 3.34 of the Environmental Planning and Assessment Act 1979.

SCHEDULE 1

1	DA Number	NA
2	Site Address	68 Denistone Road, Denistone
3	Proposal	Heritage list subject property under Ryde LEP 2014
4	Applicant / Owner	City of Ryde Council / 777 Trading Pty Ltd
5	Reason for Referral to IHAP	Required by Ministerial Direction made under Section 9.1 of the <i>Environmental Planning and Assessment Act 1979</i> dated 27 September 2018
6	Relevant Mandatory Conditions	NA
7	Material Considered by the Panel	Strategic Planner's report & supporting documents
8	Meetings & Site Inspection by the Panel	Site inspection & briefing meeting on 14 February 2019
9	Recommendation	That the planning proposal seeking to list the subject site as a Heritage Item under the provisions of Ryde Local Environmental Plan 2014, Schedule 5 Environmental Heritage and amend the Heritage Map be forwarded to the Minister of Planning for Gateway Determination under 3.34 of the Environmental Planning and Assessment Act 1979

MEMORANDUM

To: Ryde Local Planning Panel members convened on 14 February 2019

From: Liz Coad – Director City Planning and Environment

Date: 15 February 2019

Subject: **Planning Proposal for 68 Denistone Rd, Denistone**

Dear Panel Members,

As you are aware, at the Ryde Local Planning Panel (the Panel) meeting of 14 February 2019 the Panel deferred consideration of this Planning Proposal seeking advice from Council in response to the submission provided by the Owner of 68 Denistone Rd:

The Panel determined to defer the decision pending further advice from Council. The determination will be made electronically and posted on Council's website in due course.

As requested, staff have reviewed the submission provided by the Owner (attached) and provide the following advice (numbers correspond to the numbering used in the Owner's submission):

1. Council staff consider the report provided by Paul Davis Pty Ltd to be satisfactory for the purposes of proceeding to a Gateway Determination. It is noted that should a Gateway Determination be issued, the owner of the property would be afforded the opportunity to provide a fulsome and detailed submission as part of the subsequent public exhibition process. Council has provided a Heritage Assessment Report by a qualified heritage professional, the panel has undertaken a site inspection and has also been provided the staff report providing an assessment against the relevant strategic merit considerations. This is considered sufficient information for advice to be provided to Council. The owner's alternate Heritage Assessment would be considered should the proposal receive a Gateway Determination and proceed to public exhibition. Council may choose to have both reports peer reviewed during the exhibition period.
2. This is not a relevant consideration with respect to the matter before the Panel. The Panel is requested to provide advice to Council on the Strategic Merit of the planning proposal only and is not required to consider Council's enforcement decisions related to the IHO.
3. As above, the information claimed to be confidentially provided is not a relevant consideration with respect to the Strategic Merit of the proposal nor does it prejudice an assessment of the significance of the current property. Further, it is the view of staff that no conflict of interest could arise or could reasonably be construed to arise from the owner's contact with the author of the Heritage Assessment Report, nor does this contact in any way undermine the veracity of the assessment.

4. See response to 3 above. No confidential information is contained in the Heritage Assessment Report and neither the legality of the previous works nor the IHO are relevant considerations in relation to the significance of the site in its current form and the Strategic Merit of the Planning Proposal.
5. It is the view of staff that should the applicant seek to take action with respect to trespass this would have no bearing on the veracity of the Heritage Assessment Report, nor is it a relevant consideration with respect to the Strategic Merit of the Planning Proposal.
6. The Heritage Assessment Report provides an assessment of the current structure in its current condition against the relevant criteria. It does not presume that further works would be required to address the relevant criteria.

Given the above, and the panel's own visit to the site, staff are of the view that there is sufficient and reliable information available to the Panel to provide advice to the Council on the Strategic Merit of the Planning Proposal. It is noted that should a Gateway Determination be issued, the matter would proceed to public exhibition and the owner and the public would have the ability to consider the information available and make submissions to Council.

This advice is provided in my capacity as Director City Planning and Environment following consultation with the City of Ryde's General Counsel.

Regards,
Liz Coad
Director City Planning and Environment

15/2/2019

Attached – Written Submission from the Owner of 68 Denistone Rd, Denistone

Written Submission of Owner of 68 Denistone Road, Denistone NSW 2114

- The owner has engaged Stephen Davies of Urbis, former chair of the NSW Heritage Council, to prepare a rebuttal report:** In summary his key points are, a) whilst it is a prominent interwar dwelling on a corner location it does not reach the threshold for listing on historic or aesthetic grounds, b) it is in extremely poor physical condition, c) Ms. Kemp did not do an internal inspection and it deserves such before a recommendation can be made, d) the dwelling is a good example of an interwar bungalow and has representative elements of a building of the period, it is enhanced by large site, but is otherwise typical of the period, e) it is a quality of building that would be included as “contributory” if it were in a group of houses of comparable quality but it is not considered to reach the threshold for individual aesthetic significance, f) the building represents typical face brick and render exterior and has no external features that are rare or unusual and which are not represented in other dwellings of the period, g) it is not by a well-known designer nor is it exceptional architecturally, h) it has a standard form and layout, i) he read the history of the site and does not agree that it has historic significance for Ryde. There is no more significance than other lots in the vicinity, j) no historic event or person is associated with the site, k) there is nothing exceptional about the history or the type or form of subdivision, l) the building has been said to be rare in Ryde, but it is noted that the interwar bungalow is not a rare or endangered building in Ryde or the Sydney region and there are many areas which comprise groups of buildings of similar qualities that are protected as conservation areas, m) the City has been surveyed for heritage buildings and this building is prominent and was not considered to meet the threshold in those studies, n) buildings should not be listed because people seek to retain the status quo of their locality. It must be a rigorous process as the implications are significant, o) the dwelling is said to contribute to the character of the area but there is no character identified by Ms. Kemp so it’s a statement with no exhibited research, p) he has inspected the interior and notes the ceilings are collapsed due to poor condition of the roof and water penetration. The roof needs replacing due to structural failure and most decorative ceilings will have to be removed, q) building is subject to severe cracking and this starts at the entrance steps and moves through the entire building, r) an engineering report must be read in conjunction with an internal inspection by Council staff before a decision on listing is made, s) real estate photos are not an indication of the structural condition of the building, t) the imposition of IHO’s as a planning tool is not a satisfactory process to achieve other planning outcomes. The process diminishes the voracity of the planning system and the importance of heritage identification and listing through a proper Municipal wide assessment, u) he does not believe the building to be of such significance to meet the threshold as an individual item, requests the IHO be removed and the recommendation to add to heritage schedule be discontinued.
- LEC:** Council had its chance to sue the owner over IHO breach but dropped the claim and served an amended Summons which only sought orders that the IHO not be breached and keeping roof tarp on. Final orders were made to that effect.
- Author of the Heritage Study did not disclose potential conflict of interest:** The owner’s solicitor contacted Cherry Kemp (on 10/10/18). He disclosed to her confidential information of the owner with the view of engaging Paul Davies to produce a report. The owner was shocked to see that Cherry Kemp authored the Heritage Study. The solicitor emailed the owner on 10/10/18 to report the details of the contact with Ms. Kemp so there is point in time evidence.
- Ms. Kemp has a duty to disclose the contact in the Heritage Study and give reasons. The conflict arises where Ms. Kemp has, or potentially has, confidential information of one side which she can, or potentially can, use against the other. At pg310 Ms. Kemp said, “Note that damage to the interior shown on the site visit photos is a result of illegal building work to the house which occurred prior to the imposition of the IHO on the property.” Ms. Kemp placed the “illegality” before the IHO knowing that the owner was arguing that it did not do illegal works after the IHO. It is highly suspect the date of the final revision (pg 305) was on 22/11/18 which was the same day that the Council consented to final orders dropping its claim that the owner breached the IHO. The possibility of lack of impartiality is enough. The LPP system was introduced to ensure transparency, impartiality, and integrity. Not only must the process be fair and impartial, it must also be seen to be fair and impartial. Ms. Kemp’s failure of the ethical duty to disclose or explain the contact means that if her report is to be given any weight it’ll fundamentally taint the process.
- Evidence in Heritage Study illegally obtained:** On 10/10/18 owner’s solicitor gave written notice to the Council’s solicitors that said, “To avoid any doubt, our client gives notice that unless by compulsion of law your client and its agents are not permitted to enter the land at 68 Denistone Road, Denistone, without our client’s prior express consent, and any implied right to enter is expressly withdrawn.” Wendy Crane of Paul Davies was an agent of the Council. Photos were in locations that go far beyond any implied right to entry (like a peeping tom). The photos taken on 14/11/18 arose out of illegal activity. If the panel gives the Heritage Study any weight then it’s condoning illegality. Permission to enter should have been sought by the Council and if it did then the structural problems could have been explored in detail.
- The Heritage Study’s conclusion on the integrity of the property is a glaring mistake:** Pg 360 says, “The house and property exhibit a substantial degree of integrity...” That is a glaring mistake. Ms. Kemp by labelling the works as “illegal” presumes that the owner can be compelled at law to repair the works. That incorrect assumption artificially inflates the heritage value of the property. Ms. Kemp failed entirely to consider if heritage listing would put an unreasonable financial burden on the owner to maintain the property given the severe structural problems.
- Should this go to the gateway process, under the patina of credibility from a fundamentally flawed report, then the panel is giving blessings which can mislead the public. Public confidence in the process must be the highest priority. The panel needs reliable information in order to make an informed decision which the Council has failed to provide. The panel is the guardian of a fair and transparent process and given the serious problems identified it is respectfully submitted that it should reject the proposal.