








INNER WEST COUNCIL

DEVELOPMENT ASSESSMENT REPORT

Application No.	D/2019/143
Address	41 Trafalgar Street, Annandale NSW 2038
Proposal	Removal of two trees
Date of Lodgement	10 April 2019
Applicant	Mrs K M Johnson
Owner	Mrs K M Johnson
Number of Submissions	Six (6)
Value of works	\$12,000
Reason for determination at Planning Panel	Heritage Item (tree removal)
Main Issues	The trees are considered to be healthy and significant, with no adequate justification to support removal.
Recommendation	Refusal
Attachment A	Reasons for refusal
Attachment B	Plans of proposed development
Attachment C	Statement of Heritage Significance



LOCALITY MAP

Subject Site		Objectors		 N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for removal of two existing *Cedrus deodara* (Deodar Cedar) growing in the front and rear of the site at 41 Trafalgar Street, Annandale. The application was notified to surrounding properties and six (6) submissions received.

The main issues that have arisen from the application include:

- The proposed removal is not supported by Council's Landscape Architect
- The trees appear to be in reasonably good health and vigour. No obvious significant defects could be seen from ground level that would suggest that either tree had become imminently hazardous. Both trees are seen to be positively contributing to the aims and objectives of Council's Tree Management Controls and from an Arboricultural standpoint, no justification could be found to support tree removal.

The removal of the existing trees is considered to be non-compliant with Council's Tree Management Controls. The proposed non-compliances are not considered to be acceptable and therefore the application is recommended for refusal.

2. Proposal

The current application seeks Council's consent to remove two existing *Cedrus deodara* (Deodar Cedar) trees from the property known as 41 Trafalgar Street, Annandale. The trees proposed to be removed are located within the front yard and rear yard, as highlighted by the blue circles in picture 1 below. The trees proposed to be removed are identified as being approximately 13m tall, with a canopy of approximately 10m and trunk diameter of 500mm and estimated to be approximately 30 years in age.



(Picture 1 location of trees to be removed).

3. Site Description

The subject site is located on the eastern side of Trafalgar Street, between Collins Street and Albion Street. The site consists of one allotment and is generally rectangular in shape with a total area of approximately 633.29sqm.

The site has a frontage to Trafalgar Street of 9.8 metres and a total length of 60m.

Currently located upon the site is a two storey sandstone brick and slate dwelling house, which is identified as an item of local heritage significance under the Leichhardt Local Environmental Plan 2013. The adjoining properties to either side of the subject site, support a single storey red brick and tile dwelling house and a four (4) storey brick industrial building, which has been converted into a residential flat building accommodating roughly 35 units.

The subject site is listed as a heritage item, being identified as significant 'House', "Edwinville", including interiors. The subject site is listed as (185) on the heritage register. The property is also located within the Annandale Heritage Conservation Area (C1) and within close proximity to the following heritage items:

- 'Former Beales Piano Factory, including interiors (86)
- 'Annandale Public School, including interiors' (134)

Located upon the site is a number of significant trees, the majority of which are positioned within the rear yard of the site.

4. Background

4(a) Site history

The following application outlines the relevant development history of the subject site and any relevant applications on surrounding properties.

Subject Site

Application	Proposal	Decision & Date
BA/1996/7720	Erection of brick veneer cottage	Approved
T/2001/149	Removal of 1 x Eucalyptus Tree	Cancelled
D/2019/143	Removal of two trees	Current application

Surrounding properties

Application	Proposal	Decision & Date
45 Trafalgar Street, Annandale		
D/2018/170	Pruning of 15 trees in main garden and removal of Evergreen Fraxinus at rear of main building	Refused

4(b) Application history

The following table outlines the relevant history of the subject application.

Date	Discussion / Letter / Additional Information
10 April 2019	Current Development application lodged with Council
29 April 2019	Site inspection carried out
7 May 2019	Applicant informed that Landscape Arborist does not consent to tree removal. Applicant provided with opportunity to withdraw application or proceed to determination by Inner West Local Planning Panel.
8 May 2019	Applicant outlines request for application to proceed to Inner West Local Planning Panel for determination.

5. Assessment

The following is a summary of the assessment of the application in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

5(a) Environmental Planning Instruments

The application has been assessed against the relevant Environmental Planning Instruments listed below:

- *State Environmental Planning Policy No. 55—Remediation of Land*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*

The following provides further discussion of the relevant issues:

5(a)(i) State Environmental Planning Policy No 55—Remediation of Land

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. LDCP 2013 provides controls and guidelines for remediation works. *SEPP 55* requires the consent authority to be satisfied that “the site is, or can be made, suitable for the proposed use” prior to the granting of consent.

The site has not been used in the past for activities which could have potentially contaminated the site. It is considered that the site will not require remediation in accordance with *SEPP 55*.

5(a)(ii) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

An assessment has been made of the matters set out in Division 2 Matters for Consideration of the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*. It is considered that the carrying out of the proposed development is generally consistent with the relevant matters for consideration of the Plan and would not have an adverse effect on environmental heritage, the visual environment, the natural environment and open space and recreation facilities.

5(a)(iii) State Environmental Planning Policy (Vegetation in Non-Rural Areas) (Vegetation SEPP)

Vegetation SEPP concerns the protection/removal of vegetation identified under the SEPP and gives effect to the local tree preservation provisions of Council’s DCP.

The application seeks the removal of vegetation from within the site. The application was referred to Council’s Tree Management Officer whose comments are summarised as follows:

- The trees appeared to be in reasonably good health and vigour
- No obvious significant defects could be seen from ground level that would suggest that either tree had become imminently hazardous
- Both trees were seen to be positively contributing to the aims and objectives of Council’s Tree Management Controls and from an Arboricultural standpoint, no justification could be found to support tree removal in this instance.

Overall, the proposal is considered not to be acceptable with regard to the *Vegetation SEPP* and the DCP, as such the application is recommended for refusal.

5(a)(iv) *Leichhardt Local Environment Plan 2013 (LLEP 2013)*

The application was assessed against the following relevant clauses of *the Leichhardt Local Environmental Plan 2013*:

Clause 1.2 - Aims of the Plan
 Clause 2.3 - Zone objectives and Land Use Table
 Clause 5.10 - Heritage Conservation
 Clause 6.1 - Acid Sulfate Soils

(ii) Clause 2.3 - Land Use Table and Zone Objectives

The site is zoned R1 – General Residential under the *LLEP 2011*. The *LLEP 2013* defines the development as:

- Tree removal associated with a residential dwelling house.

The development is permitted with consent within the land use zone.

The development is not consistent with the objectives of the R1 General Residential zone, particularly those relating to the protection and enhancement of landscape, neighbourhood character and residential amenity, as the proposed tree removal will not provide landscaped areas for the use and enjoyment of residents and does not protect or enhance the amenity of residents and the neighbourhood.

5(b) *Development Control Plans*

The application has been assessed and the following provides a summary of the relevant provisions of Leichhardt Development Control Plan 2013.

LDCP2013	Compliance
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part B: Connections	
B1.1 Connections – Objectives	Yes
Part C	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.4 Heritage Conservation Areas and Heritage Items	Yes
C1.12 Landscaping	No – see discussion
C1.14 Tree Management	No – see discussion
Part C: Place – Section 2 Urban Character	
Trafalgar Street Distinctive Neighbourhood	No – see discussion

The following provides discussion of the relevant issues:

Landscaping

The proposal has been assessed against the landscaping provisions of the DCP and is considered not to comply with the objectives and controls C3 and C4. These controls and objectives outline that development/works within the locality should retain and protect trees that contribute to the character and quality of the area and provide for the retention of existing and/or planting of additional trees.

The proposal in its current form is not considered to meet these controls and objectives as it seeks consent to remove two healthy and significant on-site trees, which are of a high retention value. The trees currently contribute positively to urban canopy, streetscape quality and habitat. The proposal is not accompanied by an arborist report supporting the proposed removal or outlining justification for why the proposed removal may be required.

Justification for why this tree removal is requested is outlined within the applicants Statement of Environmental Effects, which states that tree one (1) at the front of the property, is lifting and destroying the slate tiling at the front of the facade and tree two (2) in the rear garden is too close to the terrace and considerably overhangs the neighbouring property.

In response to the concern regarding the lifting of slate paving at the front of the property, Council makes the following response from the Landscape Arborist:

It is considered that remediation work required can be undertaken by reasonable and practical means without requiring the tree to be removed.

It is recommended that the paving around the area that has been uplifted by the tree is removed to allow for the expansion of the trees root crown as it continues to grow. Alternatively, the paving can be relayed over a bed of sand and ramped to allow for suitable access. It is considered that this could be feasibly undertaken as a suitable and cost effective solution whilst retaining the specimen in the landscape.

The submitted reasons for tree removal have been assessed and are not considered to be sufficient to warrant removal of such large and significant trees. It is considered that removal of these two significant trees, which contribute to the character of the locality, would result in a loss of significant environmental quality, urban character and attractive streetscape. The proposed tree removal is therefore not supported and is recommended for refusal.

Tree Management

The proposal in its current form results in non-compliance with Council's tree management objectives and controls outlined within the DCP. These objectives and controls outline that, trees and their contribution to the visual, social and cultural amenity of the Leichhardt LGA must be protected and to facilitate a healthy tree canopy across the LGA. In this instance the proposal has been assessed against the provisions of C13, which outlines a criteria for assessment. This control outlines that trees may be removed if Council is satisfied of any of the following:

- The tree is located where the prevailing environmental conditions are unsuitable
- The tree is in a state of irreversible decline or is dead
- The tree is a threat to human life or property
- The tree is causing significant damage to public infrastructure which cannot be remediated
- Tree is not considered to be of landscape significance

In this instance Council's Landscape arborist has reviewed the proposal and outlined that there is no obvious signs of defects, no signs that the trees have become a hazard and that

both trees contribute positively to the aims and objectives of the tree management controls. In this instance the applicant has failed to satisfy that the proposed trees to be removed meet any of the above criteria and as such it is recommended that the application be refused.

Trafalgar Street Distinctive Neighbourhood

The proposal in its current form results in a variation to clause C11, which requires that the prevalence of street trees in addition to mature and visually significant trees on private land be maintained. The trees proposed to be removed are considered to be visually significant and large (as demonstrated in photo's 2 and 3 below). It is considered that the removal of these trees would be against the provisions of the Distinctive Neighbourhood controls and desired future character.

The current application is not accompanied by sufficient justification to warrant the removal of the two existing trees and significantly alter the existing streetscape and locality. It is considered that should the trees be demonstrated to meet the criteria of clause C13 above then their removal may be supported, however until such a time Council does not agree with the proposed removal and the application is recommended for refusal.



(Photo 2 – Photo of tree one (1) to be removed within front yard)



(Photo 3 – Photo of tree two (2) to be removed within rear yard)

5(d) The Likely Impacts

The assessment of the Development Application demonstrates that the proposal will significantly alter the existing streetscape and result in a loss of two significant and visually prominent trees for the locality. Concerns from neighbouring properties have also highlighted that removal of the proposed trees results in a loss of green visual outlook and has the potential to impact upon amenity with the existing trees providing shading within the summer months. It is considered that removal of the two trees will result in impacts to the locality which are not supportable at the present time.

5(e) The suitability of the site for the development

It is considered that the proposal will have an adverse impact on the adjoining properties and therefore it is considered that the site is unsuitable to accommodate the proposed development.

5(f) Any submissions

The application was notified in accordance with Leichhardt Development Control Plan 2013 for a period of 14 days to surrounding properties. A total of six (6) submissions were received. Matters raised within these submissions are addressed below:

Issue: Impact to visual outlook (loss of green and views of trees)

Comment: The proposed tree removal is recommended for refusal based upon the reasons outlined above under the assessment section of this report.

Issue: The trees proposed to be removed are iconic/significant.

Comment: Council's landscape arborist has reviewed the proposal and agrees that the trees are significant and has outlined an objection to the removal. The proposed removal is not supported and is recommended for refusal.

Issue: Loss of habitat for birds/wildlife

Comment: The proposed tree removal is recommended for refusal based upon the reasons outlined above under the assessment section of this report.

Issue: Insufficient justification for removal

Comment: Council has undertaken an assessment of the proposed reasons for tree removal and agrees that they are insufficient. The application is therefore recommended for refusal.

5(g) The Public Interest

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are appropriately managed.

The proposal is contrary to the public interest in that the public benefit of retaining the trees outweighs any private interest in having them removed.

6 Referrals

6(a) Internal

The application was referred to the following internal sections/officers and issues raised in those referrals have been discussed in section 5 above.

- Heritage Advisor – Council's Heritage Advisor has reviewed the proposal and outlined that the trees proposed to be removed are not listed as a factor contributing to the heritage significance of the building. The paving being lifted is likely a later addition to the site and not considered to be of substantial heritage significance. Council's Heritage Advisor made further comments that the removal of the tree would improve the visibility of the heritage item, but did not outline how its removal may impact the heritage significance of the locality.
- Landscape Arborist – Council's Landscape Arborist has outlined an objection to the proposal, stating that the trees appeared to be in reasonably good health and vigour. No obvious significant defects could be seen from ground level that would suggest that either tree had become imminently hazardous. Both trees were seen to be positively contributing to the aims and objectives of Council's Tree Management Controls and from an Arboricultural standpoint, no justification could be found to support tree removal in this instance.

Both specimens could be seen from Trafalgar Street and were considered to be prominent in the landscape. A review of the submitted SEE has found that the reasons stated by the applicant perusing tree removal conflict with Control C11 of C2.2.1.5 *Trafalgar St Distinctive Neighbourhood* which seeks to "maintain the prevalence of street trees in addition to mature and visually significant trees on private land".

Given the above, and the information submitted at the time of assessment, tree removal is not supported in this instance.

7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions/7.12 levies are not payable for the proposal.

8. Conclusion

The proposal does not generally comply with the aims, objectives and design parameters contained in *Leichhardt Local Environmental Plan and Leichhardt Development Control Plan 2013*.

The development will result in any significant impacts on the amenity of the adjoining properties and the streetscape and is considered not to be in the public interest.

The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

9. Recommendation

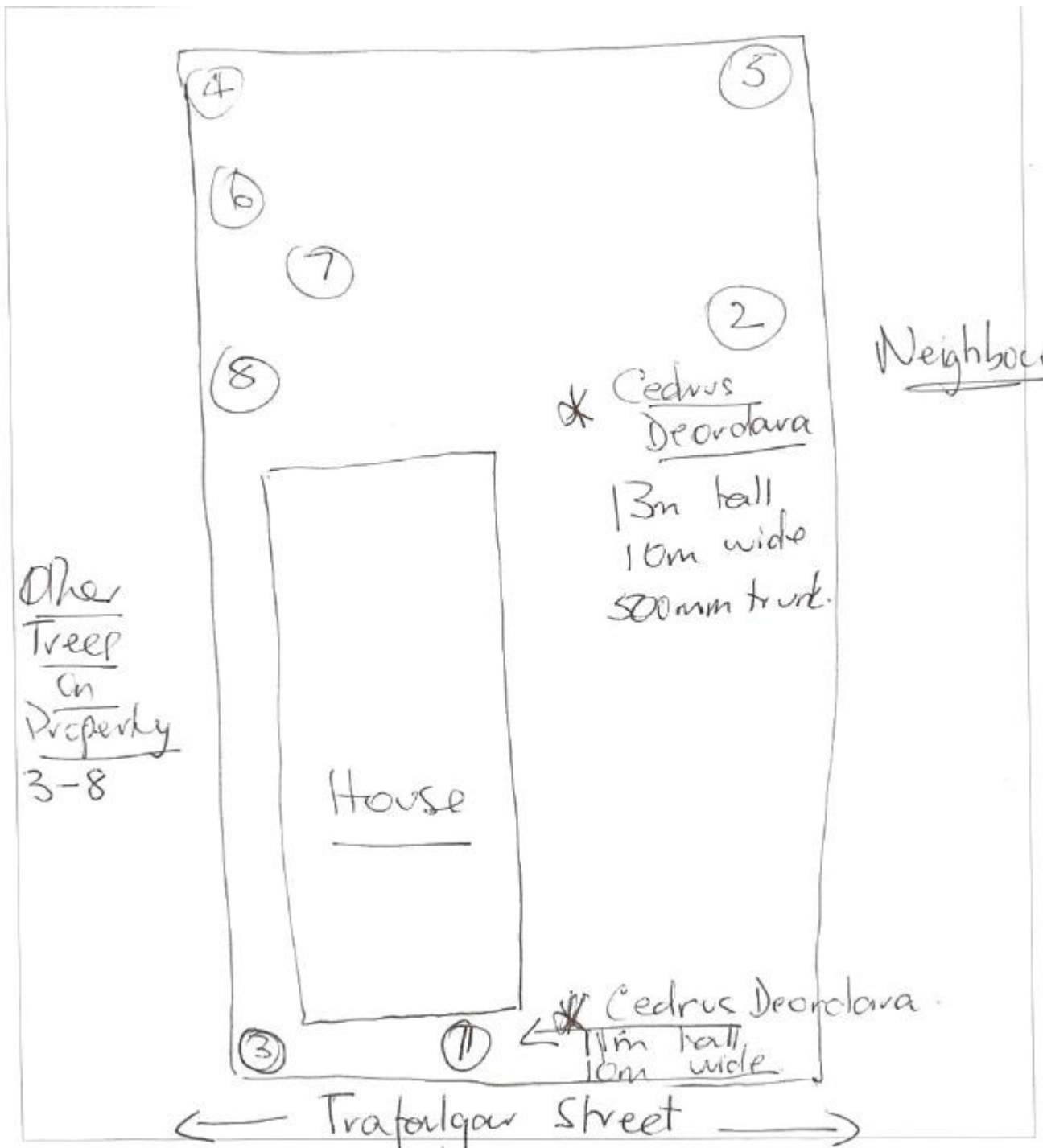
- A. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, refuse Development Application No. D/2019/143 for Removal of two trees at 41 Trafalgar Street, Annandale for the following reasons:
1. The proposal does not satisfy the following Parts of the Leichhardt Development Control Plan 2013, pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979:
 - vii) Part C – Section 1 – C1.12 Landscaping
 - viii) Part C – Section 1 – C1.14 Tree Management
 - ix) Part C – Section 1 – C2.2.5 Trafalgar Street Distinctive Neighbourhood
 2. The proposal is considered to result in adverse environmental impacts on the built environment pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979.
 3. The proposal is not considered suitable for the site in its current form pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
 4. Pursuant to the provisions of Section 4.15(1)(d)(e) of the *Environmental Planning and Assessment Act 1979*, it is considered that the proposal would not be in the public interest.

Attachment A – Recommended Reasons for Refusal

REASONS FOR REFUSAL

1. The proposal does not satisfy the following Parts of the Leichhardt Development Control Plan 2013, pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979:
 - a. Part C – Section 1 – C1.12 Landscaping
 - b. Part C – Section 1 – C1.14 Tree Management
 - c. Part C – Section 1 – C2.2.5 Trafalgar Street Distinctive Neighbourhood
2. The proposal is considered to result in adverse environmental impacts on the built environment pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979.
3. The proposal is not considered suitable for the site in its current form pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
4. Pursuant to the provisions of Section 4.15(1)(d)(e) of the *Environmental Planning and Assessment Act 1979*, it is considered that the proposal would not be in the public interest.

Attachment B – Plans of proposed development



Attachment C – Statement of Heritage Significance

"Edwinville", house

Item details

Name of item: "Edwinville", house

Type of item: Built

Group/Collection: Residential buildings (private)

Category: House

Primary address: 41 Trafalgar Street, Annandale, NSW 2038

County: Cumberland

Local govt. area: Leichhardt

All addresses

Street Address	Suburb/town	LGA	Parish	County	Type
41 Trafalgar Street	Annandale	Leichhardt		Cumberland	Primary Address

Statement of significance:

No. 41 Trafalgar Street, "Edwinville" is of high historic, aesthetic and technological significance as a fine and highly intact late Victorian/ Federation period dwelling constructed in the early 1890s. The building design has been attributed to architect George Allen Mansfield. The building is also associated with a local family of stone masons and sculptors, the Skerriks, who occupied the house for over 80 years. The building retains its original form and character and distinctive stone façade with Australian and classical motifs and elements that remain as a good example of the craftsmanship of the Skerriks and make a positive and unique contribution to the Trafalgar Street streetscape.

Note: This inventory sheet is not intended to be a definitive study of the heritage item, therefore information may not be accurate and complete. The information should be regarded as a general guide. Further research is always recommended as part of the preparation of development proposals for heritage items.

Date significance updated: 28 Nov 12

Note: The State Heritage Inventory provides information about heritage items listed by local and State government agencies. The State Heritage

*Inventory is continually being updated by local and State agencies as new information becomes available. Read the OEI **copyright and disclaimer**.*

Description

Physical description:	A two storey stone and brick building with hipped roof clad in slates with wide eaves, face brick and rendered chimneys and timber framed windows and doors. The front façade of the building is constructed of stone with dressed stone corner quoins framing the rock face ashlar wall plane. The façade features a prominent two storey stone bay with elaborate stone carvings with Australian flora and fauna motifs, carved faces and classical details around the curved timber framed double hung windows and conical roof over. A small recessed porch with tessellated floor tiles is located at the north western corner of the building. The porch opening is framed by an arch and pilasters with classical details supporting an entablature bearing the name "Edwinville" in relief lettering and stone pediment over. The main roof continues over a cantilevered balcony fixed to the face brick, southern façade with cast iron columns and decorative cast iron lace balustrade, frieze and brackets and timber boarded soffit. The southern façade also features contrasting brick details. The rear wing of the building is setback from the southern main wall. The building is constructed very close to the northern site boundary and is setback from the street frontage which features a wrought iron decorative palisade fence with stone base and piers. A mature pine and jacaranda are located in the front setback. A cast iron lamp post is also located adjacent to the front gate. Stone and tiled paving extends across the front and driveway along the south eastern section of the site. A flat roofed car port with matching cast iron details is located at the south eastern corner of the main part of the house.
Physical condition and/or Archaeological potential:	The house appears to be in sound and very good condition and appears well maintained. Some minor spalling and staining of the stonework is evident. Date condition updated: 28 Nov 12
Modifications and dates:	1965: Internal office partitions. Toilet and shower (BA/1965/6816). 1966: Erection of brick veneer cottage (No. 39 Trafalgar Street, BA/1966/7720).
Further information:	The mature trees in the front yard and within close proximity of the neighbouring building, former Piano Factory Nos. 43-47 Trafalgar Street, obscures some views to the building.

Current use: Residential

Former use: Residential

History

Historical notes: The site is part of 290 acres which was originally granted in 1799 to Major, later Colonel, George Johnston, a marine officer of the First Fleet. His son Captain Robert Johnston later leased portions and oversaw the first subdivisions, known as North Annandale Estate from 1874. In 1877 John Young, a prominent building contractor in the late 19th century and Mayor of Leichhardt (1879-80 and 1884-86), consolidated 280 acres and transferred it to the Sydney Freehold Land, Building and Investment Company Ltd which he formed in 1878 and which proceeded to subdivide and sell residential allotments over the next 30 years. Annandale was to be a "model township". Young created the 100ft wide boulevard along the main ridge, Johnston Street, which was intended to be the finest street in the Colony and encouraged the symmetrical street grid pattern. Annandale Street was designed as a wide 80 ft street whilst Trafalgar, Nelson and Young Streets and the four cross streets, Collins, Booth, Piper and Rose Streets were designed with a 66 ft width. The site was part of a larger allotment purchased by Alexander Sherriff, a sculptor from Scotland, in 1886. A Sydney Water plan dated 1889 and revised in the early 1890s shows the larger site, occupied by a single house "Edwinville", constructed close to the northern site boundary. The plan also indicates that the house was constructed during this period. The design of the building has been attributed to prominent Sydney architect George Allen Mansfield who designed a number of large homes, public buildings and schools during this period. Members of the Sherriff family, including Alexander's sons David, a stone mason, and Ed, a stone carver who worked on prominent public buildings in Sydney are assumed to have contributed to the construction of "Edwinville" and the elaborate stone carvings on the front façade, continued to occupy the building until 1973 when "Edwinville" was sold. In 1964, the vacant block of land, now known as No. 39, was given to Richard Sherriff, David's grandson, on the occasion of his marriage and existing house was constructed on the site from this time in the late 1960s. Photographs dating from the 1970s show a face brick front fence with end piers and wrought iron gate indicating that the front fence has been replaced since that time.


Historic themes

Australian theme (abbrev)	New South Wales theme	Local theme
4. Settlement- Building settlements, towns and cities	Accommodation-Activities associated with the provision of accommodation, and particular types of accommodation – does not include architectural styles – use the theme of Creative Endeavour for such activities.	(none)-

Assessment of significance

- SHR Criteria a)** [Historical significance] The building is a good and intact example of late Victorian/ early Federation development of the local area.
- SHR Criteria b)** [Associative significance] The site and building are associated with the Skerriff family, prominent stone masons and sculptors who worked on a number of public buildings in the city. The house was occupied by members of Skerriff family for over 80 years and bears a family name. The design of the building has been attributed to the architect George Allen Mansfield.
- SHR Criteria c)** [Aesthetic significance] The building is a fine and intact example of a late Victorian/ early Federation dwelling that incorporates a finely crafted stone façade and decorative elements that make a positive contribution to the Trafalgar Street streetscape.
- SHR Criteria e)** [Research potential] The building retains a fine sandstone façade that may reveal information about stone construction techniques and craftsmanship of late 19th/ early 20th centuries.
- SHR Criteria f)** [Rarity] The building retains stone carvings and details which are unique and remain as a rare example of the residential work and craftsmanship of a family of local stone masons and sculptors.
- SHR Criteria g)** [Representativeness] The building is a representative example of a late Victorian/ early Federation dwelling in the local area.

Integrity/Intactness:High

Assessment criteria: Items are assessed against the  **State Heritage Register (SHR) Criteria** to determine the level of significance. Refer to the Listings below for the level of statutory protection.

Recommended management:

The two storey form, scale and details of the building should be retained and conserved, particularly: - the form and details of the stone front façade, including curved bay and conical roof; - roof form and chimneys and wide eaves; - cantilevered balcony on the southern façade and associated cast iron details; and - front stone and wrought iron fence. Elements that have not been painted such as the stone and face brick facades should not be painted. Elements that have been painted such as timberwork and metalwork should continue to be painted in appropriate colours. Any additions and alterations should be confined to the rear of the building and not detract from the stone façade. The mature trees in the front yard should be monitored and cut back to insure no damage to the building and fence fabric.

Listings

Heritage Listing	Listing Title	Listing Number	Gazette Date	Gazette Number	Gazette Page
Local Environmental Plan		185	23 Dec 13		

Study details

Title	Year	Number	Author	Inspected by	Guidelines used
Leichhardt Municipality Heritage Study	1990		McDonald McPhee Pty Ltd (Craig Burton, Wendy Thorp)		Yes