

INNER WEST COUNCIL – WESTCONNEX M4 EAST

EXTENT OF SALVAGE OBLIGATION

SUMMARY OF FIRST MEMORANDUM OF ADVICE

1. On 22 July 2016, I advised that the RMS was under an obligation to consider salvaging contributory dwellings which were to be partially or wholly demolished within the Haberfield Heritage Conservation Area (**HCA**), whether or not they were individually listed as heritage items under the LEP. I am asked to provide a summary of my advice.
2. The construction works are controlled by the Minister's Project Approval. The RMS is bound by the Approval, whether or not the works are carried out on its behalf by an agent or contractors.
3. The RMS claims that it is under no obligation to salvage items from buildings in the HCA which are not individually listed heritage items. Most of the buildings destroyed in the course of the Haberfield works were contributory items within the HCA, but not themselves individually listed as a heritage item.
4. Condition B24 of the Approval imposed an obligation to salvage heritage items. "Heritage item" was defined to include a precinct of heritage significance. The HCA is such a precinct. Contributory buildings within it were therefore required to be salvaged, if practicable.
5. Consistently with this interpretation of B24, the Approval also imposes an explicit obligation on the RMS to consider the salvage of materials from contributory items within the HCA. Condition A2(c) requires the RMS to implement its commitments in the Submissions Report (**the Report**). The Report (prepared on behalf of the RMS as part of the environmental assessment process) amended the RMS commitments in the EIS, because of criticism by the Heritage Council, amongst others, of its failure to extend the salvage obligation to those contributory items. Measures NAH8 and

- NAH9 in the Report refer. The Report prevails over the EIS, as it is later in time: Conditions A2, A3.
6. In my opinion, Condition A2 required the RMS and its construction team to salvage materials from demolished houses within the HCA, according to the same criteria that applied to listed individual heritage items, and no discrimination between them was authorised by that condition.
 7. Condition D57(c)(ii)(E) required a Construction Heritage Management Plan (**the Plan**) to be prepared which included the salvage of materials from contributory items. The RMS must implement the Plan. The Plan is the instrument which for all practical purposes controls day to day works.
 8. Subsequently, a Heritage Salvage Report was published under the Approval and the Plan, which considered among other things the suitability of contributory items for salvage. The heritage consultant who prepared this report recommended that 9 out of 29 contributory items be salvaged.
 9. No doubt on advice from the RMS, the Salvage Report failed to refer to the binding commitments in the Submissions Report, but only to the commitments in the EIS, which the Submissions Report had displaced. The failure by the RMS to recognise the obligation to salvage those items biased the recommendations of the consultant in favour of salvaging individually listed heritage items, which she described as the "primary target".
 10. It is the case, however, that consideration was given to salvaging the contributory items, but it is unknown whether more would have been salvaged had the heritage consultant addressed the correct question.



T F ROBERTSON SC

Frederick Jordan Chambers

Phone: 9229 7337

Fax: 9221 5747

28 September 2016