

BURWOOD COUNCIL

heritage ■ progress ■ pride

Director-General
Department of Planning
GPO Box 39
SYDNEY NSW 2001

File No: F08/3302
Doc No: 10/30478

9 August 2010

Attention: Ms Rosalind Louis, Team Leader, Sydney Region East

Dear Ms Louis

Minor Amendment to the *Burwood Local Environmental Plan (Burwood Town Centre) 2010* under Section 73A

In accordance with Section 73A of the *Environmental Planning and Assessment Act 1979* and Planning Circular PS 06-014, Council seeks a minor amendment to the *Burwood Local Environmental Plan (Burwood Town Centre) 2010*. The amendment seeks to rectify a minor anomaly in the numbering of heritage items upon the Heritage Map.

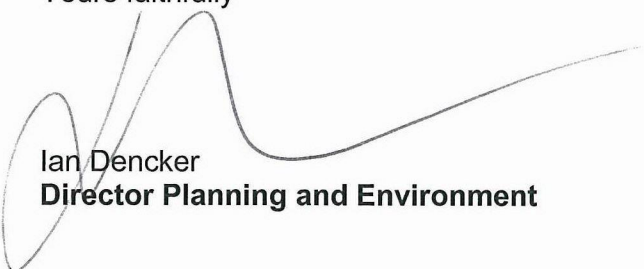
Council at its meeting on 27 July 2010 resolved to endorse a submission to the Department of Planning for the minor amendment under Section 73A of the Act.

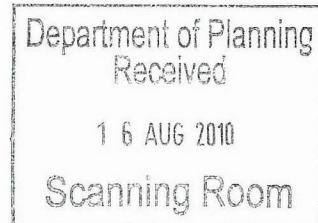
Accordingly, please find enclosed the following supporting documents:

- (i) Section 73A Pro-Forma Submission as provided in Planning Circular PS 06-014.
- (ii) Heritage Map revised to correspond with Schedule 5 of the LEP.
- (iii) Council Report of 27 July 2010.
- (iv) Draft minutes of the Council meeting. The minutes are not taken to be endorsed until the following Council meeting of 24 August 2010 and may be forwarded at that time should you require.

Should you have any queries concerning this matter, please contact Council's Strategic Planning Team on 9911 9911.

Yours faithfully


Ian Dencker
Director Planning and Environment





Section 73A EP&A Act submission

Part A. Council to complete

Subject:

LEP Amendment No. 1 - Amendment of Item Numbering Upon Heritage Map

Report requesting the making of amending local environmental plan under section 70 and section 73A.

Background:

Burwood Council resolved on 27 July 2010, to amend *Burwood Local Environmental Plan (Burwood Town Centre) 2010* (the 'LEP') and to request that the Minister for Planning make the plan under section 70 and section 73A of the *Environmental Planning and Assessment Act 1979*.

The draft amending plan is attached. (*Attach copy of resolution.*)

The land to which this amendment applies is:

Heritage items numbered 9, 10, 11, 12, 13, 14, 15 and 16 in Schedule 5 of the LEP, being 134A Burwood Road; 135-139 Burwood Road; 157-159 Burwood Road; 166 Burwood Road; 168A Burwood Road; 170-174 Burwood Road; 171-171C, 185D, 185E and 187 Burwood Road; and 185-185A Burwood Road respectively.

Why there is a need for the amendment:

The numbering used to identify heritage items in Schedule 5 of the LEP needs to correspond with the numbering of those same items upon the Heritage Map. Accordingly, the Heritage Map requires amendment.

What the amendment does:

The amendment would amend the numbering of heritage items upon the Heritage Map such that the numbers correspond to Schedule 5.

Why the amending plan is suitable to be made in accordance with section 73A:

Planning Circular PS 06-014 states that a 'minor discrepancy between the map and the written instrument' would be an example of a "misdescription" under Section 73A of the Act. The proposed amendment is consistent with the aforementioned example given within the Circular. Amendment of the map numbering is of an administrative nature and would not have any material effect "on-the-ground".

The council requests that the Minister agree to make draft LEP Amendment No. 1

Signed: Date: 10/8/10

Name: Ian Dencker Position: Director Planning and Environment

On behalf of: Burwood Council



Section 73A EP&A Act submission

Part B. Department of Planning use only

Date of referral to LEP Review Panel: (Insert date)

Department position:

The draft LEP amendment has been considered by the Department and it is satisfied that the amendment can be considered as a minor amendment under section 73A (see advice tagged 'A').

Parliamentary Counsel opinion:

The Parliamentary Counsel has provided an opinion indicating that the plan may legally be made (tagged 'B').

Recommendation:

It is recommended that the Minister:

- (a) under sections 70(1)(a) and (8) and section 73A of the *Environmental Planning and Assessment Act 1979* make tagged 'B')
(Name of LEP)
- (b) authorise the Department to advise council of the Minister's decision.

Date:

Signed: Name:

Position:
for Director-General

**Burwood Local
Environmental
Plan (Burwood
Town Centre) 2010**

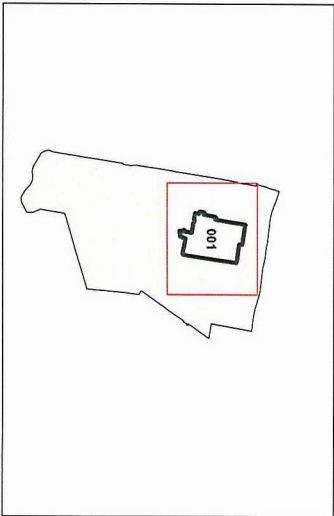
Heritage Map - Sheet HER_001

Heritage

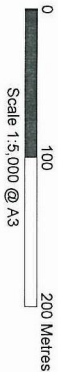
Item - General

Cadastre

Cadastre 26/08/09 @ Burwood Council



N



Projection GDA1994
Zone 56

Map Identification Number:
1300_CEN_HER_001_005_20091029



(ITEM 65/10) MINOR AMENDMENT TO THE BURWOOD TOWN CENTRE LOCAL ENVIRONMENTAL PLAN UNDER SECTION 73A

File No: F08/3302

REPORT BY DIRECTOR PLANNING & ENVIRONMENT

Summary

This report seeks Council's endorsement of a minor amendment to the *Burwood Local Environmental Plan (Burwood Town Centre) 2010* in relation to the numbering of heritage items on the Heritage Map. Section 73A of the *Environmental Planning and Assessment (EP&A) Act 1979* provides for expedited amendments of environmental planning instruments in circumstances such as these.

Proposal

The *Burwood Local Environmental Plan (Burwood Town Centre) 2010* (the LEP) and its accompanying maps were notified and became effective on 10 May 2010. However, a minor required change has been identified upon the notified Heritage Map. The numbering system used to identify heritage items on the Heritage Map needs to correspond with the numbers in Schedule 5 of the written instrument. Accordingly, the numbers upon the Heritage Map require alteration.

The required change does not affect the protection of the heritage items, but alteration of the numbering system would avoid potential confusion by the community when comparing the schedule of heritage items with the Heritage Map. Alteration of the map numbering is sought in the interests of clarity.

Section 73A of the EP&A Act allows specific types of minor amendments to be made to environmental planning instruments without the requirement of public exhibition of an amending LEP. The provision covers specific amendments, including description, numbering and spelling etc. The Department of Planning's (DOP) *Planning Circular PS 06-014* provides further information on the Section 73A provisions and guidance on the process to be followed (refer Attachment 1).

In making an application to the DOP for a Section 73A amendment, the Council is required to make a resolution in respect to the matter and submit to the DOP a completed pro-forma submission. A submission has been prepared at Attachment 2, which sets out the justification for the proposed minor amendment. The submission is also in accordance with the procedure outlined in the DOP's *Guide to Preparing Local Environmental Plans* for circumstances where the DOP may dispense with all or part of the usual plan making process, such as community consultation.

This report seeks the Council's endorsement of the submission to the DOP for a minor amendment to the LEP under Section 73A.

Consultation

A minor amendment under Section 73A does not require public exhibition or consultation with property owners because the change is of an administrative nature and it would not have any material effect "on-the-ground". Consultation with the DOP has indicated that the matter may be addressed as a minor amendment under Section 73A and requires a resolution to make the minor amendment from Council, instead of the Burwood Town Centre Planning Panel, who has finished its role when the LEP came into force.

Planning or Policy Implications

The application under Section 73A would seek to make a minor amendment in the Heritage Map. The amendment would ensure that the LEP instrument and maps remain accurate and user-friendly.

The affect of the amendment is set out in the table below:

Property Address	Item Number as Shown in Schedule 5 of the LEP	Item Number as Shown Incorrectly upon the Heritage Map
134A Burwood Road, Burwood	9	15
135-139 Burwood Road, Burwood	10	9
157-159 Burwood Road, Burwood	11	10
166 Burwood Road, Burwood	12	11
168A Burwood Road, Burwood	13	16
170-174 Burwood Road, Burwood	14	12
171-171C, 185D, 185E and 187 Burwood Road	15	13
185-185A Burwood Road, Burwood	16	14

Note: The DOP numbering protocol involves an "I" prefix for each number, which should not be confused with the number "1".

Versions of the notified and updated Heritage Map are shown at Attachment 3 and Attachment 4 respectively.

Financial Implications

There are no direct financial implications for Council as a result of this report.

Options

An option is to not progress the minor amendment. This may cause confusion upon comparing the schedule of heritage items with the Heritage Map.

The recommended option is that the minor amendment be sought such that the required change be made.

Conclusion

Council's endorsement is sought for a minor amendment to the LEP to rectify the numbering of heritage items on the Heritage Map under the provisions of Section 73A of the EP&A Act. It is recommended that a submission be forwarded to the Department of Planning to progress this matter.

Recommendation(s)

1. That Council note the contents of the report.
2. That Council endorse the submission to the Department of Planning for a minor amendment to *Burwood Local Environmental Plan (Burwood Town Centre) 2010* involving the numbering upon the Heritage Map under Section 73A of the *Environmental Planning and Assessment Act 1979*.

Attachments

- | | | |
|---|---|---------|
| 1 | Planning Circular PS 06-014 - Minor amendments to local environmental plans using section 73A | 3 Pages |
| 2 | Section 73A Pro-Forma Submission | 2 Pages |
| 3 | Heritage Map as Notified | 1 Page |
| 4 | Heritage Map with Amendments | 1 Page |

ITEM 65/10 Minor Amendment to the Burwood Town Centre Local Environmental Plan under Section 73A

Planning Circular PS 06-014 - Minor amendments to local environmental plans using section 73A



NSW GOVERNMENT
Department of Planning

PLANNING circular

PLANNING SYSTEM

Local planning

Circular	PS 06-014
Issued	12 July 2006
Related	

Minor amendments to local environmental plans using section 73A

This circular provides guidance on the process for amending local environmental plans in accordance with section 73A of the *Environmental Planning and Assessment Act 1979*.

Introduction

The 2005 NSW planning reforms included the introduction of section 73A of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Section 73A allows certain types of minor amendments to be made to environmental planning instruments (EPIs) without following the usual procedures for preparing an EPI (particularly public exhibition) under Part 3 of the EP&A Act.

This circular provides guidance on the process to be followed when a council wishes to prepare an amendment to a local environmental plan (LEP) in accordance with section 73A.

What is a section 73A amendment?

Section 73A may be used to prepare a LEP to amend or repeal another LEP to:

- correct an obvious error in the principal instrument such as a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error,¹ or
- address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature.

The ability to make an amendment in accordance with section 73A will need to be assessed on the facts of each individual case. While judgement will

need to be exercised in such assessments, the consequence of an amendment being made in accordance with section 73A should be that:

- there is no need for exhibition of the draft instrument (eg public exhibition has previously occurred and gazettal of the section 73A amendment will be sufficient notification), and
- the amendment will not have any material effect 'on-the-ground'.

Types of amendments that might be permitted using section 73A

Some examples of the types of amendments that might be permitted using section 73A are outlined below. (These examples are intended as a guide only and, as mentioned above, proposed amendments will need to be considered on the facts of each individual case.)

- The correction of a minor typographical error would be considered an appropriate amendment to be made in accordance with section 73A(a).
- An amendment to resolve a minor discrepancy between the map and the written instrument would be considered under section 73A(a) as a 'misdescription'.
- An amendment to a LEP to update a reference to the date of adoption of a development control plan (DCP) that contains exempt and complying development controls would be a 'consequential amendment' under section 73A(b) if there is no change to the exempt and complying development controls in the DCP. Such an amendment may arise if:
 - a number of DCPs, including exempt and complying development DCPs, are amalgamated and, as a result, the LEP's

¹ It should be noted that typographical errors in environmental planning instruments may also be corrected through a Statute Law Revision Bill. However, such Bills are only prepared twice a year and, as such, will only be appropriate for local environmental plan amendments that are not urgent. Section 73A amendments can be made at any time.

ITEM 65/10 Minor Amendment to the Burwood Town Centre Local Environmental Plan under Section 73A

Planning Circular PS 06-014 - Minor amendments to local environmental plans using section 73A

Department of Planning circular PS 06-014

- reference to the exempt and complying development DCPs needs to be changed to a reference to the exempt and complying development controls within the amalgamated DCP, or
- if there is a subsequent amendment to some part of the amalgamated DCP, but not to the exempt and complying development controls within the amalgamated DCP and, as a result, the LEPs reference to the date of adoption of the amalgamated DCP needs to be updated.

Types of amendments that would not be permitted using section 73A

Some examples of LEP amendments that would not be permitted under section 73A are outlined below. As with the examples provided above, these examples are intended as a guide only and proposed amendments will need to be considered on the facts of each individual case.

- A change to a LEP to amend a SEPP or REP would not be permitted by section 73A. This is because such a change would be likely to have policy implications, the effect of which would need to be considered under the usual process for making a LEP under Part 3 of the EP&A Act.
- An amendment to a LEP to change a definition generally would not be permitted under section 73A (except, for example, if the amendment was to correct a spelling error in the definition).
- An amendment to a LEP to adjust zone boundaries would not be permitted under section 73A.

Process for making a section 73A amendment

Amendments can be made using section 73A without complying with the usual process for preparing LEPs under Part 3 of the EP&A Act. While there is nothing to stop council from complying with those processes if it considers it appropriate, council does not have to comply with requirements such as:

- formal notification of the Director General of the council's decision to make the LEP under section 54 of the EP&A Act
- public exhibition of the draft LEP under section 65 of the EP&A Act.

Given that the process for making LEP amendments using section 73A is not encompassed by the EP&A Act or Regulations, the Department will administer a process that comprises the following steps:

1. Council will first need to resolve to prepare a LEP amendment in accordance with section 73A. The resolution should set out:

- why there is a problem
- what needs to be done to rectify the problem
- the proposed amendment
- a statement indicating why the proposed amendment is suitable to be made in accordance with section 73A.

Council should then advise the Department of Planning of the proposed amendment. To do this, council should submit all of the information for the council resolution, set out in accordance with the **attached pro forma Section 73A EP&A Act Submission**. This will serve as a draft report, which can be endorsed by the Department before being provided to the Minister.

2. The Department will check the information submitted by the council and, if it agrees that all the relevant information has been provided and that the proposed amendment is subject to section 73A, the application will be referred to the LEP Review Panel for consideration. The Department's target benchmark for considering section 73A proposals is 15 days.
3. If the LEP Review Panel does not agree that the amendment is subject to section 73A, the Department will inform the council of this in writing. This advice will include reasons why the amendment may not be made in accordance with section 73A and any suggestions for addressing any outstanding issues.
4. If the proposed amendment is considered appropriate for section 73A, the Legal Services Branch of the Department will prepare drafting instructions for the Parliamentary Counsel and request an opinion.
5. Once the Department receives the Parliamentary Counsel's Opinion it will confirm with council that it wishes to proceed with the amendment.
6. The Department will then forward the Parliamentary Counsel's Opinion, along with the report prepared by council in accordance with Step One and endorsed by the Department, to the Minister.
7. The Minister will decide whether to make the plan amendment under section 70 of the EP&A Act and in accordance with section 73A.
8. If the Minister decides to make the plan amendment, public notification will occur through the publication of the amending LEP in the Government Gazette.

ATTACHMENT 1

ITEM 65/10 Minor Amendment to the Burwood Town Centre Local Environmental Plan under Section 73A

Planning Circular PS 06-014 - Minor amendments to local environmental plans using section 73A

Department of Planning circular PS 06-014

Further information

For more information, please contact the relevant Department of Planning local planning team.

Regional NSW

Barwon	02 6764 6831
Central Coast	02 4323 7000
Central West/Far West	02 6884 2560
Hunter	02 4904 2700
Illawarra/South Coast	02 4224 9450
Murray/Murrumbidgee	02 6297 6477
North Coast	02 6640 2160

Sydney East

City/East	02 8374 5915
Inner North/Inner West	02 8374 5913

Sydney North West

North/North East	02 8374 5926
North West	02 8374 5925

Sydney South West

South West	02 9895 7633
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General enquiries

Information Centre	02 9228 6333
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Note: This and other Department of Planning circulars are published on the web at www.planning.nsw.gov.au/planningsystem/practicenotes.asp.

Authorised by:

Sam Haddad
Director General

Important note

This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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DOP 06_001

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ATTACHMENT 2

ITEM 65/10 Minor Amendment to the Burwood Town Centre Local Environmental Plan under Section 73A Section 73A Pro-Forma Submission

Part A. Council to complete

Subject:

LEP Amendment No. 1 - Amendment of Item Numbering Upon Heritage Map

Report requesting the making of amending local environmental plan under section 70 and section 73A.

Background:

Burwood Council resolved on 27 July 2010, to amend *Burwood Local Environmental Plan (Burwood Town Centre) 2010* (the 'LEP') and to request that the Minister for Planning make the plan under section 70 and section 73A of the *Environmental Planning and Assessment Act 1979*.

The draft amending plan is attached. (*Attach copy of resolution.*)

The land to which this amendment applies is:

Heritage items numbered 9, 10, 11, 12, 13, 14, 15 and 16 in Schedule 5 of the LEP, being 134A Burwood Road; 135-139 Burwood Road; 157-159 Burwood Road; 166 Burwood Road; 168A Burwood Road; 170-174 Burwood Road; 171-171C, 185D, 185E and 187 Burwood Road; and 185-185A Burwood Road respectively.

Why there is a need for the amendment:

The numbering used to identify heritage items in Schedule 5 of the LEP needs to correspond with the numbering of those same items upon the Heritage Map. Accordingly, the Heritage Map requires amendment.

What the amendment does:

The amendment would amend the numbering of heritage items upon the Heritage Map such that the numbers correspond to Schedule 5.

Why the amending plan is suitable to be made in accordance with section 73A:

Planning Circular PS 06-014 states that a 'minor discrepancy between the map and the written instrument' would be an example of a "misdescription" under Section 73A of the Act. The proposed amendment is consistent with the aforementioned example given within the Circular. Amendment of the map numbering is of an administrative nature and would not have any material effect "on-the-ground".

The council requests that the Minister agree to make draft LEP Amendment No. 1

Signed: Date:

Name: Ian Dencker Position: Director Planning and Environment

On behalf of: Burwood Council

ATTACHMENT 2

ITEM 65/10 Minor Amendment to the Burwood Town Centre Local Environmental Plan under Section 73A Section 73A Pro-Forma Submission

Part B: Department of Planning use only

Date of referral to LEP Review Panel: (Insert date)

Department position:

The draft LEP amendment has been considered by the Department and it is satisfied that the amendment can be considered as a minor amendment under section 73A (see advice tagged 'A').

Parliamentary Counsel opinion:

The Parliamentary Counsel has provided an opinion indicating that the plan may legally be made (tagged 'B').

Recommendation:

It is recommended that the Minister:

(a) under sections 70(1)(a) and (8) and section 73A of the *Environmental Planning and Assessment Act 1979* maketagged 'B')
(Name of LEP)

(b) authorise the Department to advise council of the Minister's decision.

Date:

Signed: Name:

Position:
for Director-General

ATTACHMENT 3

ITEM 65/10 Minor Amendment to the Burwood Town Centre Local Environmental Plan under Section 73A Heritage Map as Notified

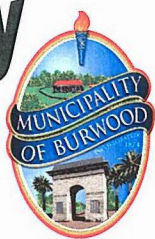


ATTACHMENT 4

ITEM 65/10 Minor Amendment to the Burwood Town Centre Local Environmental Plan under
Section 73A
Heritage Map with Amendments



Extract Only



Burwood Council

heritage ■ progress ■ pride

BURWOOD COUNCIL MEETINGS

MINUTES OF THE MEETING OF THE COUNCIL OF BURWOOD held at the Council Chamber, Suite 1, Level 2, 1-17 Elsie Street, Burwood on Tuesday, 27 July 2010 commencing at 6:05pm.

ATTENDANCE

Councillor Christine Donayre
Councillor Sally Deans
Councillor John Faker
Councillor Lesley Furneaux-Cook (Deputy Mayor)
Councillor Henson Liang
Councillor John Sidoti (Mayor)
Councillor Ernest Wong

Mr S Blackadder, Acting General Manager
Mr B Olsen, Acting Director Planning & Environment
Mr L Hullick, Director Executive Services
Mr J Inglese, Acting Director Technical Services & Operations
Mr M Walker, Chief Finance Officer
Ms D Luo, Manager Strategic Planning
Ms P Viney, Governance Co-ordinator
Ms Y Tome, Governance Officer

(ITEM 65/10) MINOR AMENDMENT TO THE BURWOOD TOWN CENTRE LOCAL ENVIRONMENTAL PLAN UNDER SECTION 73A

File No: F08/3302

Summary

This report seeks Council's endorsement of a minor amendment to the *Burwood Local Environmental Plan (Burwood Town Centre) 2010* in relation to the numbering of heritage items on the Heritage Map. Section 73A of the *Environmental Planning and Assessment (EP&A) Act 1979* provides for expedited amendments of environmental planning instruments in circumstances such as these.

154/10 RESOLVED (Carried Unanimously)

1. That Council note the contents of the report.
2. That Council endorse the submission to the Department of Planning for a minor amendment to *Burwood Local Environmental Plan (Burwood Town Centre) 2010* involving the numbering upon the Heritage Map under Section 73A of the *Environmental Planning and Assessment Act 1979*.

(Moved Councillor Lesley Furneaux-Cook/Seconded Councillor Ernest Wong)