



Burwood Council

heritage ■ progress ■ pride

Planning Proposal

Heritage Listing of Ely House - 122-126 Burwood Road, Burwood

Revised November 2017

A Planning Proposal is the first step in proposing amendments to Council's principle environmental planning instrument, known as the Burwood Local Environmental Plan (BLEP) 2012. A Planning Proposal explains the intended effect of the proposed amendment and also sets out the justification for making the change. The Planning Proposal is submitted to the NSW Department of Planning and Environment (DP&E) for its consideration, referred to as the Gateway Determination, and is also made available to the public as part of the community consultation process.

Part 1 – Objectives or Intended Outcomes

The Planning Proposal seeks to facilitate the heritage listing of the properties known as Ely House at 122-126 Burwood Road, Burwood under Schedule 5 of the Burwood Local Environmental Plan (BLEP) 2012.

Part 2 – Explanation of the Provisions

Ely House (comprising four land parcels) would be listed in Schedule 5 of the BLEP 2012. In doing so, the Heritage Conservation provisions under clause 5.10 of the BLEP would apply to the properties.

The Heritage Map of the BLEP 2012 would be amended to include the property at 122-126 Burwood Road, Burwood.

Note: This section was added to address requirements of the Gateway Determination.

The heritage listing would apply to the whole of the properties, as is the usual case for listings under Schedule 5 and the Heritage Map. The 'Item name' column in Schedule 5 would then specifically identify those parts of the property that are of heritage significance. The elements of heritage significance comprise:

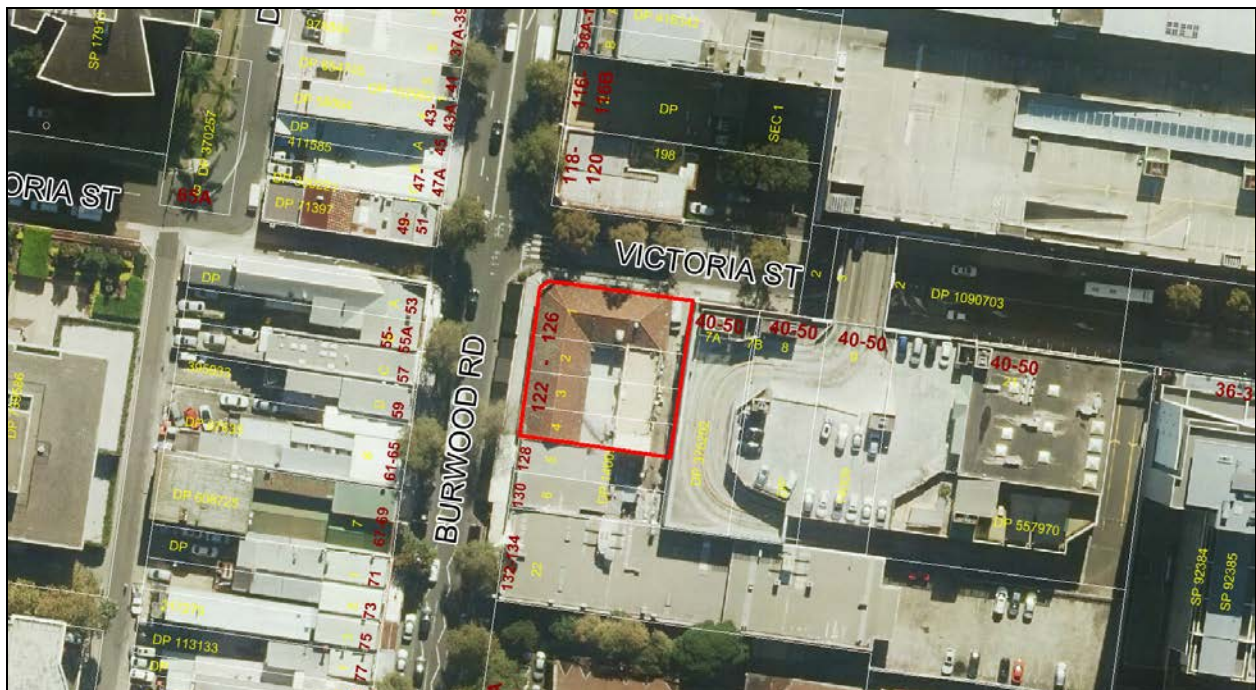
Facades, building name, balconies, French doors, windows, shutters, internal terrace with its surrounding walls, and staircase components on the first floor; the residential entrance way, staircase components, and Victoria Street facade to the ground floor; and the structural layout, location of openings, roof, box awnings and form of the building generally.

The Gateway Determination advocates an approach that lists all elements of heritage significance (see above). Council proposes that a simpler approach would be to exclude those parts of the building which have been significantly altered, such as:

“Ely House” excluding ground floor shopfronts.

The latter approach would ensure that historically significant elements have not been inadvertently left unprotected, by omission. This latter approach is most similar to the majority of heritage items already listed in Schedule 5 of the BLEP which identify the property name or building type, e.g. “Cranbrook” or Federation House.

The wording of any BLEP provisions will be subject to liaison with, and possible revision by, the Parliamentary Counsel's Office.



Aerial Photograph of Ely House.
Subject site is shown outlined in red.



Photograph of Ely House.
Source: Google Street View.

Part 3 – Justification

Section A – Need for the Planning Proposal

1. *Is the planning proposal part of any strategic study or report?*

Yes. At its meeting on 24 August 2015, Council considered the findings of the *Assessment of Potential Heritage Items - Stage 1*, a study of several potential heritage items conducted by City Plan Heritage Pty Ltd. The study recommended that several properties be listed as heritage items of local significance, including Ely House at 122-126 Burwood Road, Burwood.

Council resolved to undertake preliminary consultation with property owners which was the subject of a subsequent report at the Council Meeting on 22 March 2016. Council resolved to undertake further investigation of four potential items. This peer review included Ely House and the findings of the second study (conducted by Colin Israel Heritage Advice) were reported to Council in November 2016.

At its meeting on 22 November 2016, a representative for the owners of Ely House spoke at the Council meeting against the heritage listing of that property. Council resolved (in part) at the meeting:

That heritage listing for 122-126 Burwood Road Burwood be deferred to enable the owner to make a written submission.

In accordance with Council's resolution, a letter was sent inviting the owners of Ely House to make a submission. The submission, prepared by Urbis Pty Ltd, was received by Council in February 2017. The submission objected to the heritage listing of Ely House.

Council considered the submission at its meeting on 25 July 2017. It was resolved at the meeting:

1. *That Council endorse the preparation of a Planning Proposal for the heritage listing of Ely House at 122-126 Burwood Road Burwood and submit the Planning Proposal to NSW Planning and Environment for a Gateway Determination.*
2. *That subject to the Gateway Determination, the Planning Proposal be publicly exhibited and consultation with any relevant public authorities be undertaken.*
3. *That the results of the public exhibition and consultation be reported back to Council.*

This Planning Proposal seeks to implement the Council resolution.

2. *Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?*

Yes. The Planning Proposal is the best means of achieving conservation of the subject properties through a heritage listing in the BLEP. A Planning Proposal is the established procedure for implementing heritage listings.

Section B – Relationship to Strategic Planning Framework

3. *Is the planning proposal consistent with the objectives and actions of the applicable regional and sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?*

Yes. The proposal is consistent with the draft metropolitan, subregional and district strategies.

The Metropolitan Strategy for Sydney, 'A Plan for Growing Sydney' makes limited reference to heritage, but it does identify the vision for Sydney to 2031 as being a strong global city and a liveable local city. Inherent in such a vision is the protection of heritage assets which provides for a diverse built environment and a desirable place to live.

In November 2016, the Greater Sydney Commission released a draft amendment to update the abovementioned Strategy, titled 'Towards our Greater Sydney 2056'. This document describes a metropolitan priority which aims to '*respect and enhance heritage areas and assets*'.

The Draft Subregional Strategy for the Inner West Subregion identifies one of its Key Actions as '*identify and promote heritage assets*'. Action E6.2 of the Draft Subregional Strategy refers to recognising where Sydney's cultural heritage contributes to its character and managing change appropriately to reinforce local distinctiveness. The Planning Proposal is in keeping with this action.

The Subregional Strategy also recognises that *‘the subregion has experienced many successive waves of development which have resulted in an eclectic mix of housing types and some of the nation’s richest heritage suburbs’*. The heritage designation of several of the subject properties seek to conserve early housing forms.

The Greater Sydney Commission released draft District Plans in November 2016. The Draft Central District Plan states that *‘with change will come the need for smarter planning that protects the District’s strong European and Aboriginal heritage’* and includes in its vision that *‘cultural and environmental heritage will be celebrated’*.

The Draft Central District Plan contains “Livability Action” L13 being: *‘Conserve and enhance environmental heritage including Aboriginal, European and natural’*. The accompanying outcome is the: *‘identification and protection of heritage elements’*. The Planning Proposal is in keeping with this action.

4. *Is the planning proposal consistent with a council’s local strategy or other local strategic plan?*

Yes. The Burwood 2030 Community Strategic Plan recognises the challenge of balancing growth with maintaining lifestyles, preserving heritage and protecting the environment, while ensuring progress and innovation.

In developing the Community Strategic Plan, the Burwood community identified the importance of preserving heritage as a means of establishing a ‘Sense of Community’. The Plan describes a Sense of Community as *‘people being proud of where they live, feeling safe and engaged in the community and having access to facilities and services that ensure they can lead a healthy and satisfying lifestyle’*.

Strategic Goal 1.5.4 of the Community Strategic Plan is to *‘identify ways to promote heritage and encourage the preservation of Burwood’s historic buildings’*. This Planning Proposal is in keeping with this Strategic Goal.

Council does not have any other current local planning strategy in place.

5. *Is the planning proposal consistent with applicable State Environmental Planning Policies?*

Yes. There are no State Environmental Planning Policies (SEPPs) which would be contravened by the amendments proposed in the Planning Proposal.

All SEPPs applicable to the Burwood local government area are set out in the table below, together with a comment regarding the Planning Proposal’s consistency:

SEPP	Comment
SEPP No. 1 – Development Standards	Not relevant. BLEP 2012 contains a clause which replaces this SEPP in relation to variations to development standards.
SEPP No. 19 – Bushland in Urban Areas	Not relevant.
SEPP No. 21 – Caravan Parks	Not relevant.
SEPP No. 30 – Intensive Agriculture	Not relevant.

SEPP No. 33 – Hazardous and Offensive Development	Not relevant.
SEPP No. 50 – Canal Estate Development	Not relevant.
SEPP No. 55 – Remediation of Land	Not relevant. There is no indication that previous uses at the subject sites would trigger site remediation requirements.
SEPP No. 64 – Advertising and Signage	Not relevant
SEPP No. 65 – Design Quality of Residential Apartment Development	Not relevant. Applicable to development of three storeys or more, while the subject building is only two storeys at present. The SEPP may become relevant should a redevelopment of the site be proposed in the future, in which case the heritage and design controls under the Apartment Design Guide (ADG) would need to be considered.
SEPP No. 70 – Affordable Housing (Revised Schemes)	Not relevant. The subject properties are not known to contain affordable housing.
SEPP (Building Sustainability Index: BASIX) 2004	Not relevant.
SEPP (Housing for Seniors or People with a Disability) 2004	Not relevant.
SEPP (Major Developments) 2005	Not relevant.
SEPP (Infrastructure) 2007	Not relevant.
SEPP (Miscellaneous Consent Provisions) 2007	Not relevant.
SEPP (Mining, Petroleum and Extractive Industries) 2007	Not relevant.
SEPP (Repeal of Concurrence and Referral Provisions) 2008	Not relevant.
SEPP (Exempt and Complying Development Codes) 2008	Not relevant. The heritage listing of properties may alter whether development under the Codes SEPP may be carried out on that site, but this Planning Proposal would not contravene the SEPP in any way.
SEPP (Affordable Rental Housing) 2009	Not relevant. The heritage listing of properties may alter whether development under the ARH SEPP may be carried out on that site, but this Planning Proposal would not contravene the SEPP in any way.
SEPP (Vegetation in Non-Rural Areas) 2017	Not relevant. While this SEPP contains provisions in respect to heritage trees, there are no known trees on the subject site.
SEPP (Educational Establishments and Child Care Facilities) 2017	Not relevant.
Draft Coastal Management SEPP	Not relevant. The subject properties are not located within the coastal areas identified by this SEPP.

6. *Is the planning proposal consistent with applicable Ministerial Directions (s. 117 directions)?*

Yes. Consistency with the list of Directions (under section 117(2) of the Environmental Planning and Assessment Act 1979 issued by the Minister for Planning) is set out in the following table.

Direction	Issue Date / Date Effective	Comment
1. Employment and Resources	1 July 2009	
1.1 Business and Industrial Zones		Not relevant.
1.2 Rural Zones		Not relevant.
1.3 Mining, Petroleum Production and Extractive Industries		Not relevant.
1.4 Oyster Aquaculture		Not relevant.
1.5 Rural Lands		Not relevant.
2. Environment and Heritage	1 July 2009	
2.1 Environment Protection Zones		Not relevant.
2.2 Coastal Protection		Not relevant.
2.3 Heritage Conservation		The Planning Proposal seeks the conservation of items of local heritage significance. Clause 5.10 of the BLEP has been implemented under the Standard Instrument in satisfaction of the Direction.
2.4 Recreation Vehicle Areas		Not relevant.
3. Housing, Infrastructure and Urban Development	1 July 2009 (Except for new Direction 3.6 – effective 16 February 2011)	
3.1 Residential Zones		Not relevant. The properties are zoned Business B4 (Mixed Use). The Planning Proposal does not seek to amend the zoning or range of permissible uses on the site. The sensitive development of heritage properties is supported by Council's Development Control Plan (DCP).
3.2 Caravan Parks and Manufactured Home Estates		Not relevant.
3.3 Home Occupations		Not relevant.
3.4 Integrating Land Use and Transport		The Planning Proposal does not alter the land zoning, and as such, would not affect travel demand or the availability of transport options.
3.5 Development Near Licensed Aerodromes		Not relevant.
3.6 Shooting Ranges		Not relevant.
4. Hazard and Risk	1 July 2009	
4.1 Acid Sulfate Soils		All the properties have been identified as Class 5 on the Acid Sulfate Soils Map, representing the lowest probability of containing Acid Sulfate Soils.
4.2 Mine Subsidence and Unstable Land		Not relevant.
4.3 Flood Prone Land		Not relevant.
4.4 Planning for Bushfire Protection		Not relevant.

5. Regional Planning	1 July 2009 (Except for new Direction 5.4 effective 29 Nov 2009 & Direction 5.2 effective 3 Mar 2011 & Direction 5.9 effective 30 Sep 2013)	
5.1 Implementation of Regional Strategies		Not relevant.
5.2 Sydney Drinking Water Catchments		Not relevant.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast		Not relevant.
5.4 Commercial and Retail Development along the Pacific Highway, North Coast		Not relevant.
5.5 (Revoked 18 June 2010)		Not relevant.
5.6 (Revoked 10 July 2008)		Not relevant.
5.7 (Revoked 10 July 2008)		Not relevant.
5.8 Second Sydney Airport: Badgerys Creek		Not relevant.
5.9 North west Rail Link Corridor Strategy		Not relevant.
6. Local Plan Making	1 July 2009	
6.1 Approval and Referral Requirements		The Planning Proposal will not contain provisions which require the concurrence, referral or consultation of other public authorities, nor identify any use as designated development.
6.2 Reserving Land for Public Purposes		Not relevant.
6.3 Site Specific Provisions		Not relevant.
7. Metropolitan Planning	1 February 2010	
7.1 Implementation of A Plan for Growing Sydney		The NSW Government's Metropolitan Plan for Sydney refers to heritage matters in only general terms. The Planning Proposal is not inconsistent with the overall intent of the Plan, and does not undermine the achievement of its vision, land use strategy, policies, outcomes or actions. Section B, 3 of this Planning Proposal describes its consistency with the most recent versions of metropolitan and district planning documents.
7.3 Parramatta Road Corridor Urban Transformation Strategy	9 December 2016	Not relevant. The subject properties are not within the Parramatta Road corridor, nor undermine the achievement of that Strategy's vision or objectives.

Section C – Environmental, Social and Economic Impact

- 7. *Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?***

No. There is no known critical habitat or threatened species, populations or ecological communities, or their habitats affected by the Planning Proposal.

- 8. *Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?***

No. There are no other likely environmental effects as a result of the Planning Proposal, such as flooding, landslip, bushfire hazard and the like.

- 9. *How has the planning proposal adequately addressed any social and economic effects?***

The Planning Proposal is not expected to have any adverse social or economic effects. Council holds there to be social benefits, particularly to the local community, to be gained from the conservation of items and places of cultural heritage.

Section D – State and Commonwealth Interests

- 10. *Is there adequate public infrastructure for the planning proposal?***

The Planning Proposal is not expected to generate demand for additional infrastructure or services.

- 11. *What are the views of State and Commonwealth authorities consulted in accordance with the gateway determination?***

Council proposes that the NSW Office of Environment and Heritage be consulted (following a positive Gateway Determination) as the Planning Proposal relates to heritage matters.

The Gateway Determination will confirm and specify any consultation required with State and Commonwealth authorities on the Planning Proposal.

Part 4 – Mapping

The Planning Proposal seeks to identify 122-126 Burwood Road, Burwood as a heritage item upon the Heritage Map.

A draft Heritage Map is contained at Page 11. The Heritage Map incorporates two heritage items and one amendment which are proposed under LEP Amendment No. 13. LEP Amendment No. 13 is expected to be finalised ahead of any LEP Amendment resulting from this Planning Proposal.

The Planning Proposal does not seek to alter the zoning, height of buildings, floor space ratio, or any other BLEP maps.

Part 5 – Community Consultation

Burwood Council has consulted the property owners ahead of preparing this Planning Proposal.

In view of the minor nature of the Planning Proposal and its application to a small number of properties, the Planning Proposal is considered to be of low-impact. As such, Council proposes that the Planning Proposal be placed on public exhibition for a period of 14 days.

The Gateway Determination will confirm and specify the community consultation that must be undertaken on the Planning Proposal.

Part 6 – Project Timeline

Anticipated date of Gateway Determination	By end of October 2017
Anticipated timeframe for the completion of required technical information	End November 2017
Timeframe for government agency consultation	December 2017
Commencement and completion dates for the public exhibition period	Mid to late January 2018
Dates for public hearing	Not applicable
Timeframe for consideration of submissions	End February 2018
Timeframe for the consideration of a proposal post exhibition	End February 2018
Anticipated date RPA will make the plan (if delegated)	March 2018
Anticipated date RPA will forward to the department for notification (if delegated)	End March 2018

Appendix One

- Proposed Amendments to Schedule 5

Appendix Two

- Delegation Checklist

Supporting Documentation


- Heritage assessments and other supporting documents provided under separate cover.


Links to Supporting Material

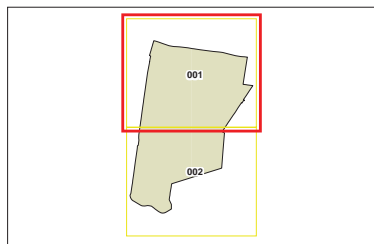
- Council Report of 24 August 2015 is available on Council's website (refer Item 83/15):
http://www.burwood.nsw.gov.au/verve/resources/CM_24082015_AGN_AT.PDF
- Council Report of 22 March 2016 is available on Council's website (refer Item 16/16):
[http://www.burwood.nsw.gov.au/verve/resources/CM_22032016_AGN_AT\(LowRes1\)_file_1.pdf](http://www.burwood.nsw.gov.au/verve/resources/CM_22032016_AGN_AT(LowRes1)_file_1.pdf)
- Council Report of 22 November 2016 is available on Council's website (refer Item 68/16):
http://www.burwood.nsw.gov.au/verve/resources/CM_22112016_AGN_AT.pdf
- Council Report of 25 July 2017 is available on Council's website (refer Item 40/17):
http://www.burwood.nsw.gov.au/verve/resources/CM_25072017_AGN_AT_website3.pdf
- Burwood 2030 Community Strategic Plan is available on Council's website:
http://www.burwood.nsw.gov.au/verve/resources/FINAL_BURWOOD_CSP_2030_low_res.pdf

Mapping

Site Identification Map
- Sheet SIM_001

 Subject Land

 Cadastre 01/09/2017 © Burwood Council



Projection GDA 1994
Zone 56

Map Identification Number:
1300_COM_SIM_001_010_20170901



Heritage Map
- Sheet HER_001

Heritage

-  Conservation Area - General
 Item - General

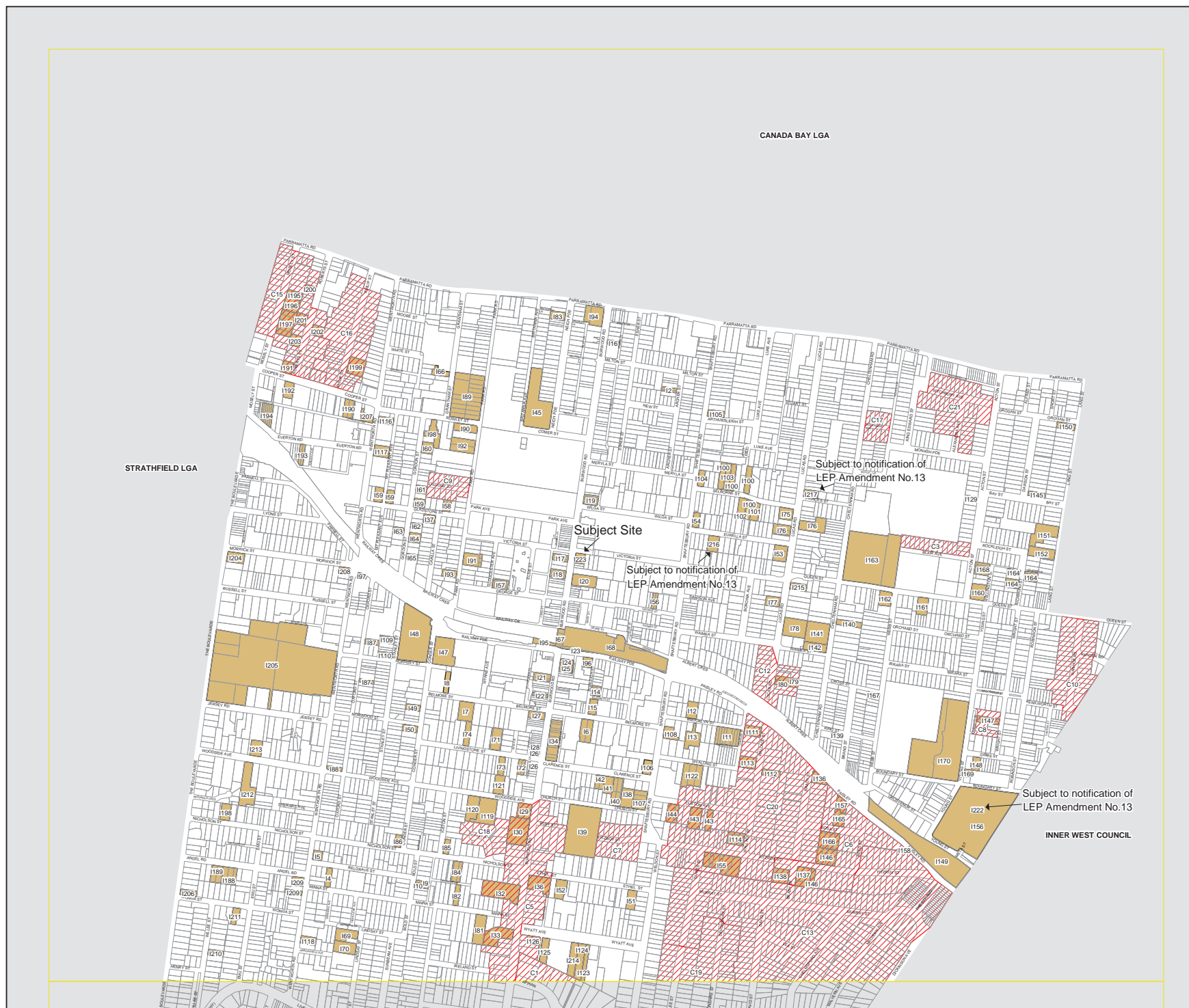
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☐ Cadastre 01/09/2017 © Burwood Council



Projection GDA 1994
Zone 56

Map Identification Number:
1300_COM_HER_001_010_20170901



Appendix One

Proposed Amendment to Schedule 5

The proposed heritage item would be inserted into Schedule 5 of the BLEP 2012 (in alphabetical order by suburb and address).

For the avoidance of doubt, the following table sets out the proposed new Schedule 5 text.

Suburb	Item name	Address	Property description	Significance	Item no
Burwood	"Ely House" excluding ground floor shopfronts	122-126 Burwood Road	Lots 1-4, DP 14009	Local	i223

The wording of any BLEP provisions will be subject to possible revision by the Parliamentary Counsel's Office. There is further discussion available on Page 2 of the Planning Proposal.

Appendix Two

Delegation Checklist and Evaluation Criteria

Checklist for the review of a request for delegation of plan making functions to councils
Local Government Area:
Burwood.
Name of draft LEP:
Heritage listing of Ely House.
Address of Land (if applicable):
122-126 Burwood Road, Burwood.
Intent of draft LEP:
The heritage listing of the subject properties.
Additional Supporting Points/Information:
Please refer to the PP.

Evaluation criteria for the issuing of an Authorisation

(NOTE – where the matter is identified as relevant and the requirement has not been met, council is attach information to explain why the matter has not been addressed)	Council response		Department assessment	
	Y/N	Not relevant	Agree	Not agree
Is the planning proposal consistent with the Standard Instrument Order, 2006?	Y			
Does the planning proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?	Y			
Are appropriate maps included to identify the location of the site and the intent of the amendment?	Y			
Does the planning proposal contain details related to proposed consultation?	Y			
Is the planning proposal compatible with an endorsed regional or sub-regional planning strategy or a local strategy endorsed by the Director-General?	Y			
Does the planning proposal adequately address any consistency with all relevant S117 Planning Directions?	Y			
Is the planning proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?	Y			
Minor Mapping Error Amendments	Y/N			
Does the planning proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed?	N			
Heritage LEPs	Y/N			
Does the planning proposal seek to add or remove a local heritage item and is it supported by a strategy/study endorsed by the Heritage Office?	Y*			
Does the planning proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?		N/A		
Does the planning proposal potentially impact on an item of State Heritage Significance and if so, have the views of the Heritage Office been obtained?		N/A		
Reclassifications	Y/N			
Is there an associated spot rezoning with the reclassification?		N/A		
If yes to the above, is the rezoning consistent with an endorsed Plan of Management (POM) or strategy?		N/A		
Is the planning proposal proposed to rectify an anomaly in a classification?		N/A		
Will the planning proposal be consistent with an adopted POM or other strategy related to the site?		N/A		
Will the draft LEP discharge any interests in public land under section 30 of the <i>Local Government Act, 1993</i> ?		N/A		

* It is proposed that the PP be submitted to the NSW Heritage Office during the consultation stage. Heritage assessments have been carried out in accordance with NSW Heritage Office Guidelines.

If so, has council identified all interests; whether any rights or interests will be extinguished; any trusts and covenants relevant to the site; and, included a copy of the title with the planning proposal?		N/A		
Has the council identified that it will exhibit the planning proposal in accordance with the department's Practice Note (PN 09-003) <i>Classification and reclassification of public land through a local environmental plan and Best Practice Guideline for LEPs and Council Land</i> ?		N/A		
Has council acknowledged in its planning proposal that a Public Hearing will be required and agreed to hold one as part of its documentation?		N/A		
Spot Rezoning	Y/N			
Will the proposal result in a loss of development potential for the site (ie reduced FSR or building height) that is not supported by an endorsed strategy?	N			
Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP format?	N			
Will the planning proposal deal with a previously deferred matter in an existing LEP and if so, does it provide enough information to explain how the issue that lead to the deferral has been addressed?	N			
If yes, does the planning proposal contain sufficient documented justification to enable the matter to proceed?		N/A		
Does the planning proposal create an exception to a mapped development standard?		N/A		
Section 73A matters				
<p>Does the proposed instrument</p> <p>a. correct an obvious error in the principal instrument consisting of 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?;</p> <p>b. address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?; or</p> <p>c. deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land?</p> <p>(NOTE - the Minister (or Delegate) will need to form an Opinion under section 73(A)(1)(c) of the Act in order for a matter in this category to proceed).</p>		N/A		
<p>NOTES</p> <ul style="list-style-type: none"> Where a council responds 'yes' or can demonstrate that the matter is 'not relevant', in most cases, the planning proposal will routinely be delegated to council to finalise as a matter of local planning significance. Endorsed strategy means a regional strategy, sub-regional strategy, or any other local strategic planning document that is endorsed by the Director-General of the department. 				

Supporting Documentation

**Heritage assessments and other supporting documents are provided
under separate cover**

Enclosure No.	Description
1	Assessment of Potential Heritage Items undertaken by City Plan Heritage in March 2015.
2	Peer Review undertaken by Colin Israel Heritage Advice in September 2016.
3	Submission on behalf of property owner prepared by Urbis in February 2017.