



Planning,
Industry &
Environment

IRF21/8331

Plan finalisation report – PP-2021-3311

Housekeeping amendments to Burwood Local
Environmental Plan 2012 (Amendment 22)

August 2022



Published by NSW Department of Planning, Industry and Environment

dpie.nsw.gov.au

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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Burwood Local Environmental Plan (LEP) 2012 (Amendment No. 22).

1.1.2 Site description

Table 1 Site description

Site Description	The amended planning proposal (Attachment A) applies to various sites identified in Figure 1 to Figure 3 .
Type	Various sites
Council	Burwood Council
LGA	Burwood

The sites related to this planning proposal are identified below.

1. Livingstone Street and Sym Avenue, Burwood

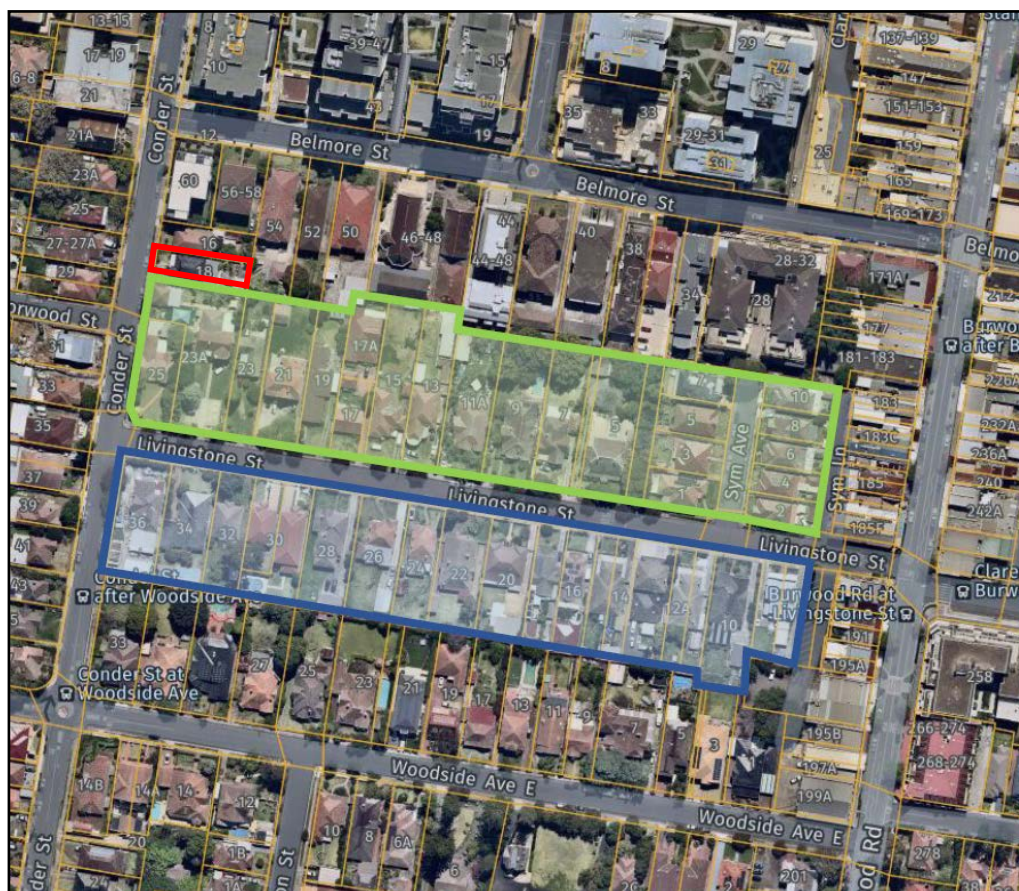


Figure 1 Sym Avenue and the north side of Livingstone Street (identified by the green shading). The southern side of Livingstone Street is identified by the blue shading. The 18 Conder Street site is identified by the red outline (Base source: Nearmap)

2. Sites within the Mitchell and Kembla Streets Heritage Conservation Area (HCA)



Figure 2 Relevant sites in the Mitchell and Kembla Streets HCA (identified by the red shading). Note the HCA also includes properties on the southern side of Mitchell Street and on Kembla Street (Base source: Nearmap)



Figure 3 The former Masonic Hall at 45 Belmore Street, Burwood (identified by the red outline) (Base source: Nearmap)

1.1.3 Purpose of plan

The planning proposal seeks to:

- Rezone land in Livingstone Street and Sym Avenue, amend building height and floor space ratio (FSR) controls and introduce local provisions (**Figure 1**)
- Rezone properties in the Mitchell and Kembla Streets Heritage Conservation Area (HCA) from R3 Medium Density Residential to R2 Low Density Residential (**Figure 2**)
- Update the address and lot details in the Heritage Schedule and land parcel shown in the Heritage Map for the local heritage listed former Masonic Temple (**Figure 3**).

The current and proposed controls for these sites under the Burwood LEP are outlined below in **Table 2**.

Table 2 Current and proposed controls

Control	Current	Proposed
Northern side of Livingstone Street and Sym Avenue, Burwood		
Zone	R2 Low Density Residential	R1 General Residential
Maximum building height	8.5m	17m
Floor space ratio	0.55:1	1.8:1
Building Height Plane	<ul style="list-style-type: none"> Southern boundary of 18 Conder Street subject to the Building Height Plane 'Line E' control of 1.8m Building Height Plane control 'Line B' (1.8m) for land along Sym Lane See Figure 4 .	<ul style="list-style-type: none"> Remove the Building Height Plane control from 18 Conder Street, Burwood Increase the Building Height Plane control from 1.8m to 7.2m for 'Line B' for land along Sym Lane See Figure 4 .
Southern side of Livingstone Street, Burwood		
Zone	R2 Low Density Residential	R3 Medium Density Residential
Maximum building height	8.5m	10m
Floor space ratio	0.55:1	1.2:1
Local Provisions		
Site-specific provisions for land in Livingstone Street and Sym Avenue, Burwood	N/A	<ul style="list-style-type: none"> 6m minimum front setback 8m minimum setback to heritage items (<i>additional 2m to the building separation requirements in the Apartment Design Guide</i>) 8m and 11m street wall height (Figure 5) minimum 28m frontage for residential flat buildings, attached dwellings and multi dwelling housing development minimum site area of 1,500sqm for development containing a heritage item maximum basement footprint – the basement will not extend beyond the

Control	Current	Proposed
		building's footprint, or occupy more than 70% of the site area
Mitchell and Kembla Street Heritage Conservation Area, Enfield		
Zone	R3 Medium Density Residential	R2 Low Density Residential
Maximum building height	8.5m	8.5m (no change)
Floor space ratio (FSR)	0.55: 1	0.55:1 (no change)
Heritage amendment		
Heritage Map and Schedule 5 – Former Masonic Temple	47 Belmore Street, Lot 1 DP 309715	Update address and lot details in Schedule 5 and land parcel on the Heritage Map: 45 Belmore Street, Part Lot 104, DP 1258893

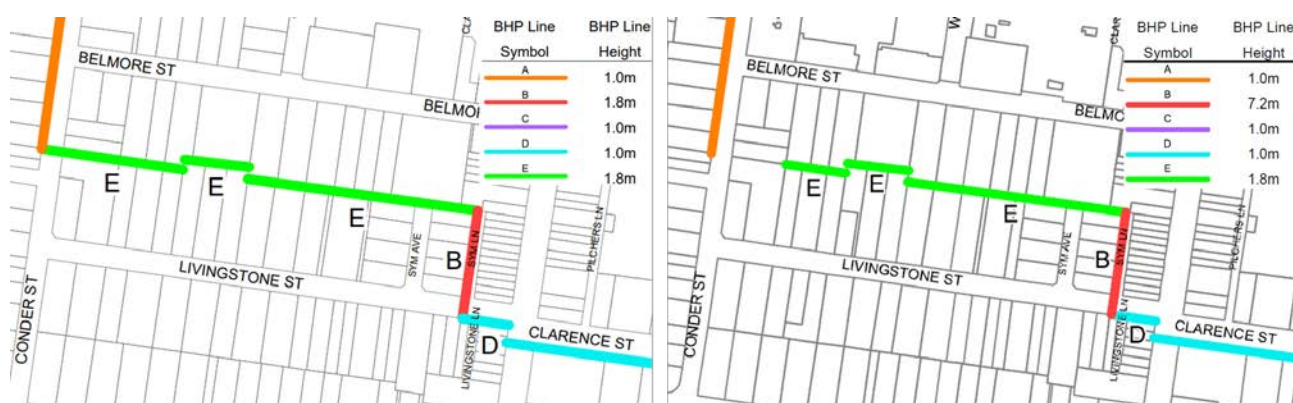


Figure 4 Building Height Plane map changes – current (left) and proposed (right)

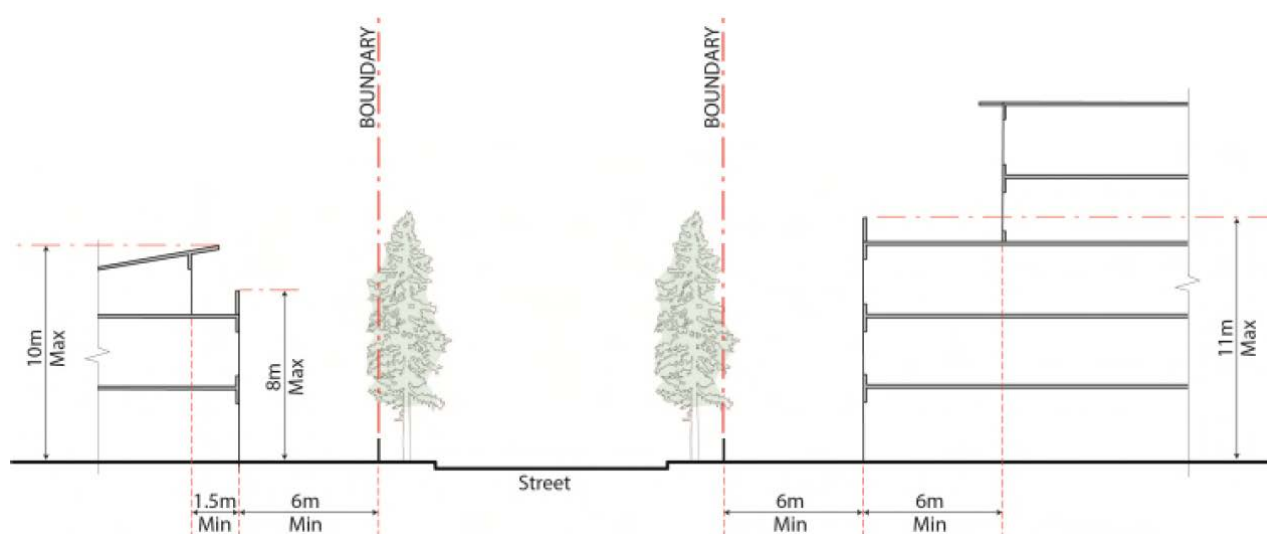


Figure 5 Proposed maximum street wall heights – 11m for all streets except the southern side of Livingstone Street which is 8m (Source: Planning proposal)

1.1.4 State electorate and local member

The site falls within the Strathfield state electorate. Mr Jason Yat-Sen Li MP is the State Member.

The site falls within the Reid federal electorate. Fiona Martin MP is the Federal Member.

To the team's knowledge, neither MP has made any written representations regarding the proposal.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination and alterations

The Gateway determination issued on 8 June 2021 (**Attachment A**) determined that the proposal should proceed subject to conditions.

The Gateway determination required the planning proposal to be amended prior to public exhibition. The required amendments are outlined below in **Table 3**.

Council has met all the Gateway determination conditions, except for adhering to the timeframe to complete the LEP.

In accordance with the Gateway determination the proposal was due to be finalised on 8 March 2022.

Table 3 Consistency with Gateway determination conditions

Gateway condition	Consistency
Condition 1(a): Demonstrate consistency with the following 9.1 Directions: <ul style="list-style-type: none"> 2.3 Heritage conservation 2.6 Remediation of Contaminated Land 	The planning proposal was updated prior to exhibition to address Direction 2.3 Heritage Conservation and 2.6 Remediation of Contaminated Land. This is addressed further in Section 4.1.3 .
Condition 1(b): Remove the following provision from the planning proposal: <i>"Uninterrupted building frontage: a maximum length of uninterrupted building frontage of 12m for terrace or townhouse development in order to achieve substantial articulation in the form of an indent, recess or physical break along the length of the elevation".</i>	This amendment was deleted from the planning proposal prior to exhibition.
Condition 1(c): Delete all provisions seeking to introduce a minimum site area for boarding house developments	This amendment was deleted from the planning proposal prior to exhibition.

Gateway condition	Consistency
<p>Condition 1(d):</p> <p>Provide further justification to support the proposed Additional Local Provisions proposed for the Livingstone and Sym Avenue Precinct as the best means to manage future development and impact to heritage items</p>	<p>The planning proposal was updated prior to exhibition to include a Memorandum from Council's Heritage Advisor (Attachment F). The Memorandum outlined support for the provisions on the basis they would strengthen the protection of heritage items while allowing medium density housing in the precinct.</p> <p>The Memorandum states that proposed local provisions including setbacks and minimum site area requirements, will strengthen the protection of heritage items while allowing redevelopment to occur. The advice concludes that the proposed local provisions would retain the visibility of side elevations, maintain visual dominance of heritage items in the streetscape and minimise future impacts on heritage items.</p> <p>The Department's Urban Design Team have further considered the proposed provisions and consider the additional setbacks to heritage items would assist in mitigating privacy and overshadowing impacts to heritage items.</p> <p>The Department considers the Gateway condition has been satisfied. The planning proposal's consistency with Ministerial Direction 3.2 Heritage Conservation is addressed in Section 4.1.3 of this report.</p>
<p>Condition 1(e):</p> <p>Update the proposal to include the existing address of the Masonic Temple (47 Belmore St) as referenced in Schedule 5 of the Burwood LEP.</p>	<p>The planning proposal was amended prior to exhibition to include the correct address details for the former Masonic Temple.</p>
<p>Condition 1(f):</p> <p>Update Part 4 Mapping to include red highlight for proposed change locations to mapping.</p>	<p>The planning proposal was amended prior to exhibition to identify areas subject to proposed changes.</p>

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Burwood Council from 30 June 2021 to 28 July 2021.

Prior to exhibition, the planning proposal was updated in accordance with the Gateway conditions.

The State Government introduced legislation in March and April 2020 in response to COVID-19 which made changes to the *Environmental Planning and Assessment Regulation 2000*, temporarily removing the requirement for councils to display physical copies of exhibition documents at their offices and to notify planning processes in local newspapers.

The planning proposal and associated documents were made available on Council's website.

Council sent letters to affected landowners and residents to advise them of the public exhibition. A letter was also sent to members of the community who had previously contacted Council in relation to this proposal.

The public exhibition resulted in 11 submissions from members of the public and three submissions from Government agencies.

The planning proposal was considered by Council at its meeting on 28 September 2021 and authorised the General Manager to make any necessary minor modifications to the proposal required and submit to the Department for finalisation and plan making.

One change was recommended to the planning proposal as a result of the community submissions which is discussed at **Section 3.3.1** of this report.

A site-specific DCP has been prepared by Council which came into effect on 21 November 2021. The DCP will apply to future development applications (DAs).

3.1 Submissions from members of the public

Of the 11 submissions received from members of the public, three were received from landowners on the northern side of Livingstone Street who supported the proposed zoning, height and FSR controls.

Table 4 below outlines the key issues raised in submissions and Council's response. A detailed discussion of submissions and Council's response is provided in the Council Report dated 28 September 2021 (**Attachment C**). The Department is satisfied that Council has adequately addressed matters raised in the submissions.

Table 4 Summary of key issues

Issue raised	Council response and Department assessment of adequacy of response
<p><u>Support for the proposed controls on the northern side of Livingstone Street</u></p> <ul style="list-style-type: none"> three submissions supported the proposed zone, FSR and Building Height for the northern side of Livingstone Street. 	<p>Noted.</p>
<p><u>Zoning for the northern side of Livingstone Street</u></p> <ul style="list-style-type: none"> three submissions noted a strong preference for the northern side of Livingstone Street to be rezoned to B4 <p><u>Setbacks</u></p> <ul style="list-style-type: none"> the Burwood Town Centre has a side setback of 0 m. The proposed 6m - 8m side setback for the Livingstone Street Precinct is unfair. 	<p>Council noted the option to extend the Burwood Town Centre and rezone this area to B4 which was considered at the April 2021 Council meeting. This option was not supported as:</p> <ul style="list-style-type: none"> mixed use and commercial development would have the potential to completely change the streetscape character. mixed-use development podiums would be built boundary-to-boundary and prevent open space, deep soil planting and landscaped areas at street level. rezoning this area to B4 would have significant flow-on impacts on the low-rise residences to the south.

Issue raised	Council response and Department assessment of adequacy of response
	The Department notes Council's response.
<p><u>Overdevelopment</u></p> <ul style="list-style-type: none"> one submission raised concerns with overdevelopment and noted that Council had already achieved their housing target. the submission noted that there were other opportunities in the LGA to create more housing 	<p>Council noted the submission and commented that:</p> <ul style="list-style-type: none"> housing supply in the Burwood LGA for 2016-2021 presents a shortfall from the target set in the Eastern City District Plan for 2,600 dwellings over this period. This proposal will potentially contribute to additional housing needed to meet these targets. the Livingstone Street and Sym Avenue precinct is an appropriate location for additional housing growth as it: <ul style="list-style-type: none"> affords easy access to retail, commercial and public transport services is identified as a Local Character Investigation Area in the Burwood Local Strategic Planning Statement (LSPS) the majority of participants in the community consultation prior to submitting the planning proposal preferred apartment development in the precinct. <p>The planning proposal will provide the opportunity for increased housing diversity and housing choice and aligns with the objectives of the approved Burwood Local Housing Strategy (see Section 4.1.2 of this report).</p>
<p><u>Heritage</u></p> <ul style="list-style-type: none"> concerns were raised in relation to the impact of the proposed amendments on local items of heritage significance. concerns were raised with the potential impact of medium-density housing on the streetscape 	<p>Council commented that the Additional Local Provisions and the DCP would protect streetscape character, achieve acceptable design outcomes and minimise negative impacts on local heritage items. Council's heritage advisor also concluded the proposed controls would strengthen the protection of heritage items within the precinct.</p> <p>The Department considers Council have adequately assessed the potential impact of the proposal on items of local heritage significance and the streetscape.</p>
<p><u>94 and 96 Mitchell Street, Enfield</u></p> <p>Four submissions related to 94 and 96 Mitchell Street, Enfield. The submissions raised concern with the proposed R2 zoning and noted that there were sites in the heritage conservation area that had achieved medium-density development. The submissions highlighted that the majority of properties in Mitchell Street had a frontage of less than 13 m and a site area of less</p>	<p>In response to the submissions, Council recommended a post-exhibition change to permit multi dwelling housing at the rear of 94 and 96 Mitchell Street, Enfield. Council's Heritage Advisor prepared a Memorandum (Attachment E) assessing the potential heritage impact arising from permitting the additional permitted use at the site.</p> <p>The post-exhibition change is discussed in Section 3.3.1 of this report.</p>

Issue raised	Council response and Department assessment of adequacy of response
<p>than 600 sqm which would limit redevelopment for medium density housing.</p> <p>The submissions advised that 94 Mitchell Street, has a site area of approximately 1700 sqm and could be redeveloped in association with 96 Mitchell Street. The submissions requested the inclusion of multi-dwelling housing as an additional permitted use (APU) at the rear of 94 and 96 Mitchell Street.</p>	

3.2 Advice from agencies

In accordance with the Gateway determination, Council consulted with Heritage NSW, Transport for NSW (TfNSW), Energy Australia and Sydney Water Corporation.

Responses were received from Heritage NSW, TfNSW, and Sydney Water Corporation. A summary of the responses is provided in **Table 5**.

A detailed summary of agency submissions and Council's response is provided in the 28 September 2021 Council Report (**Attachment C**).

Table 5 Advice from public authorities

Agency	Nature of submission	Council response and Department assessment of adequacy
Heritage NSW	<p>No objection and note that there would be no impact to any item of State heritage significance.</p> <p>Noted the positive heritage impact on four items of local heritage significance arising from rezoning Mitchell Street properties and updating the Heritage Schedule and Map.</p> <p>Commented that Council were responsible for the assessment and consideration of any impacts on local heritage items. Also commented that Council should be satisfied that any heritage impacts have been suitably addressed.</p>	<p>Council noted the submission and commented that Council staff have undertaken heritage assessments and endeavoured to address any heritage impacts resulting from the planning proposal.</p> <p>The Department considers the updated planning proposal and the two Memorandums prepared by Council's Heritage Advisor have addressed the potential impact of the proposal on local heritage items.</p> <p>Potential impacts to heritage items and mitigation measures will need to be addressed in future DAs.</p>

Agency	Nature of submission	Council response and Department assessment of adequacy
Transport for NSW (TfNSW)	<p>TfNSW noted that several bus stops are located near the Burwood Road/Livingstone Street/Clarence Street intersection. TfNSW expressed their preference to retain these existing bus stops as close as possible to their current location.</p> <p>TfNSW requested that Council consult with TfNSW in relation to future signalisation works if they had any impact on the location of bus stops.</p>	<p>Council noted the submission.</p> <p>The Gateway determination report noted that intersection upgrades may be required for the Livingstone Street and Sym Avenue intersection to support future development. Any potential relocation of bus stops, and other necessary traffic upgrades, will be addressed as part of detailed design for future development in consultation with TfNSW.</p>
Sydney Water Corporation	<p>No objection.</p> <p>Noted that information relating to proposed staging and projected growth distributions would be required to assist with infrastructure planning.</p>	<p>Council noted the required information can be provided to Sydney Water once Council has endorsed the planning proposal.</p> <p>Council resolved to forward the planning proposal to the Department for finalisation on 28 September 2021 and can now supply the information to Sydney Water.</p>

The Department considers Council has adequately addressed matters raised in the submissions from public authorities.

3.3 Post-exhibition changes

3.3.1 Council resolved change

At Council's Ordinary Meeting on 28 September 2021, Council resolved to proceed with the planning proposal with one post-exhibition change. In response to submissions from members of the public, Council resolved to include multi dwelling housing as an additional permitted use (APU) at the rear of 94 and 96 Mitchell Street, Enfield.

The planning proposal seeks to rezone properties within the Mitchell and Kembla Street Heritage Conservation Area (HCA) from R3 Medium Density Residential to R2 Low Density Residential. This includes the properties at 94 and 96 Mitchell Street. The post-exhibition change does not alter the HCA or proposed rezoning to R2 Low Density Residential, but seeks to include multi dwelling housing as an Additional Permitted Use (APU) in the LEP for the rear of 94 and 96 Mitchell Street.

Council's heritage advisor reviewed the proposed post-exhibition change and advised that sympathetic development at the rear of 94 and 96 Mitchell Street may be supported, subject to merit consideration and addressing the heritage controls in the Burwood LEP 2012 and Burwood DCP in particular relating to design, form and character.

Council considers it reasonable to include multi dwelling housing development as an APU under Schedule 1 – Additional Permitted Uses of the Burwood LEP for 94 and 96 Mitchell Street, while continuing with the proposed rezoning to R2 Low Density Residential zone for the HCA.

It is noted that the adjacent site at 104-106 Mitchell Street is already developed for medium density housing, was excluded from rezoning in the proposal and will remain zoned R3 Medium Density Residential.

The proposed inclusion of multi dwelling housing as an APU at the rear of both 94 and 96 Mitchell Street will ensure a coordinated development at the rear of existing dwellings, aims to provide better outcomes in terms of access and heritage, and aims to ensure development does not result in an isolated lot at 96 Mitchell Street.

3.3.2 Department initiated change

The Department requested an Additional Local Provisions Map be prepared to identify land where the local provisions will apply in the Livingstone Street and Sym Avenue, Burwood precinct area. This map was not publicly exhibited but is consistent with the Gateway condition which required mapping to be updated to clearly show areas of proposed change.

This additional map does not change the intent of the planning proposal as the map will identify the areas where the local provisions apply.

3.3.3 Justification for post-exhibition change

The Department considers these post-exhibition changes to minor and justified and re-exhibition is not required. The Department also considers these changes:

- are a reasonable response to comments provided by members of the public
- do not alter the intent of the planning proposal
- represent a minor amendment to the planning proposal.

The Department considers the post-exhibition changes to be acceptable.

4 Department's Assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination (**Attachment A**) and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement.

The proposed LEP will increase opportunities for medium density housing close to the Burwood centre, while protecting local heritage and character. The proposal is consistent with the relevant state Government policies and planning controls

The proposal is recommended for approval. Further consideration of built form outcomes and potential impacts will be considered and addressed at the DA stage.

The following section reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council's Local Strategy Planning Statement. It also reassesses any potential key impacts associated with the proposal (as modified).

The planning proposal, as amended following the Council meeting on 28 September 2021:

- remains consistent with the Greater Sydney Region Plan and Eastern District Plan;
- remains consistent with the Council's Local Strategic Planning Statement;
- demonstrates consistency and/or resolves the inconsistency with Section 9.1 Direction 2.3 – Heritage Conservation, Direction 2.6 – Remediation of Contaminated Land and Direction 3.1 – Residential Zones;
- remains consistent or justifiably inconsistent with all other Section 9.1 Directions;
- resolves the inconsistency with Housing SEPP (formerly Affordable Rental Housing SEPP); and
- remains consistent with all other State Environmental Planning Policies.

The following tables identify whether the proposal, as amended post exhibition, is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters these are addressed in **Section 4.1**.

Table 6 Summary of strategic assessment

	Consistent with Gateway determination report Assessment	
Regional Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
District Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Local Strategic Planning Statement (LSPS)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Section 9.1 Ministerial Directions	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No (refer to section 4.1.3)
State Environmental Planning Policies (SEPPs)	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No (refer to section 4.1.4)

Table 7 Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report Assessment	
Social and economic impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Environment impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Infrastructure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

4.1 Detailed Assessment

The following section provides details of the Department's assessment of key matters and any recommended revisions to the planning proposal to make it suitable.

4.1.1 Relevant Strategies

Burwood Local Housing Strategy (LHS)

On 31 May 2021, the Department approved the Burwood LHS, subject to conditional requirements. The consistency of the planning proposal with the approved LHS is demonstrated below in **Table 8**.

Table 8 Consistency with the approved LHS

Aspect of Local Housing Strategy	Consistency
<p>The objectives for housing in the Burwood LGA:</p> <ul style="list-style-type: none"> • increase housing diversity • make housing more affordable • preserve local character • plan for longer term housing needs • support the vibrancy, vitality and activity of centres 	<p>The planning proposal is generally consistent with the objectives of the Local Housing Strategy as it:</p> <ul style="list-style-type: none"> • supports the vibrancy, vitality and activity of Burwood Town Centre by increasing density at its periphery • increases supply and enables greater housing choice and diversity through the introduction of the R1 and R3 zone • introduces greater density and a height transition surrounding the Burwood Town Centre • aims to preserve local character through the introduction of additional local provisions and the rezoning of land within the Mitchell and Kembla Street HCA. <p>The Department considers the intent of the proposed amendments are consistent with the Burwood LHS objectives.</p>
<p>Increase housing diversity and choice to meet the community's changing needs:</p> <p><i>Action 1 – Investigate rezoning land in the density gradient area around the Burwood Town Centre to the R3 zone</i></p>	<p>The planning proposal would enable medium density residential development on the periphery of the Burwood Town Centre.</p> <p>Economic viability testing has been undertaken at typical sites on Livingstone Street to demonstrate that:</p> <ul style="list-style-type: none"> • five storey residential apartments are economically viable if two or three sites are consolidated • three storey terraces or town houses may be economically viable provided two sites are consolidated achieving a minimum frontage of 40 m and depth of 48 m.
<p>Protect local character:</p> <p><i>Action 10 Review minimum site frontage and lot size controls for dual occupancy and multi dwelling housing development, with the intention of placing minimum standards in the LEP</i></p> <p><i>Action 11 Protect identified areas with heritage significance or significant local character from rezoning to facilitate increased housing density</i></p>	<p>The planning proposal includes minimum frontage controls for dual occupancies, attached dwellings and multi dwelling housing.</p> <p>The planning proposal includes local provisions for the Livingstone Street and Sym Avenue precinct that aim to protect streetscape character and minimise impacts on heritage items. The proposal aims to increase housing diversity close to the Burwood town centre while balancing heritage conservation. The existing heritage provisions in the Burwood LEP 2012 and Burwood DCP 2013 will need to be addressed as part of future development.</p>
<p>6-10-year housing targets:</p> <p>The Burwood LHS identifies a 6-10 year housing target of 2,200-2,500 dwellings.</p>	<p>The planning proposal will contribute toward Council's 6-10 housing target. The proposal will provide capacity for 505 additional dwellings including a mix of medium density dwellings and low-rise apartments close to the Burwood town centre.</p>

The Department is satisfied that planning proposal is consistent with the approved LHS.

4.1.2 Section 9.1 Ministerial Directions

As part of reforms to the NSW planning system, the Plan Making Ministerial Directions have been updated to align with the new planning focus areas. These housekeeping updates, including new reference numbers, came into effect on 1 March 2022. The new reference numbers have not been reflected in this finalisation report as the updated directions apply only to planning proposals lodged with the Department on or prior to the date the directions were issued and commenced.

The following 9.1 Ministerial Directions were identified in the Gateway determination report as inconsistent or requiring additional information. Consistency with these Directions has been resolved since the Gateway by amendments to the proposal and/or provision of additional information prior to public exhibition as follows:

9.1 Ministerial Direction 3.1 – Residential Zones

The Gateway determination report determined that the planning proposal was inconsistent with Ministerial Direction 3.1 – Residential Zones. The inconsistency was primarily due to the proposed amendment relating to a minimum lot size for boarding house development however as noted in **Section 2** of this report, this was removed from the proposal prior to exhibition which resolved this inconsistency.

The rezoning of properties in the Mitchell and Kembla Street HCA from R3 Medium Density Residential to R2 Low Density Residential will potentially reduce the permissible residential density of land and is therefore inconsistent with Direction 3.1(2)(b).

The planning proposal argues that the proposed rezoning does not impact the development potential of properties subject to rezoning. The R2 Low Density Residential zone and R3 Medium Density Residential zone are subject to the same height and FSR controls and the planning proposal does not seek to change the existing height limit of 8.5m or FSR control of 0.55:1 for subject land. The Department is satisfied the inconsistency is justified and considered to be of minor significance.

9.1 Ministerial Direction 2.3 - Heritage Conservation

The Gateway determination report outlined the need for further justification to support rezoning of land containing local heritage items and to justify why the proposed additional provisions are the best means to mitigate potential impacts of future development. The planning proposal was updated prior to exhibition to address this Direction.

As outlined in the amended planning proposal, existing heritage provisions in the Burwood LEP 2012 will not be altered and the proposal includes additional provisions to facilitate the protection of local heritage items. The amended planning proposal is consistent with this Direction.

9.1 Ministerial Direction 2.6 - Remediation of Contaminated Land

The Gateway determination report determined that the planning proposal had not sufficiently addressed consistency with this Direction in relation to the rezoning of Livingstone Street and Sym Avenue and the Mitchell and Kembla Street HCA. The Department did not consider the planning proposal would contravene the intent of this Direction but concluded it must be considered nonetheless. The planning proposal was updated prior to exhibition with further information to address consistency with this Direction. The Department is satisfied that the planning proposal is consistent with this Direction.

4.1.3 State Environmental Planning Policies

Since issuing the Gateway determination, the NSW Government has combined state environmental planning policies as part of a broader suite of reforms to deliver a better planning system for NSW. On 1 March 2022, 45 prior State Environmental Planning Policies (SEPPs) were consolidated into new 11 theme based SEPPs. Separate to this consolidation process, the five former SEPPs

relating to housing have been consolidated into the State Environmental Planning Policy (Housing) 2021 which came into effect on 26 November 2021.

Consistency with the relevant SEPPs is considered below.

Housing SEPP

The Gateway determination report identified that planning proposal was inconsistent with the former State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP) (now the Housing SEPP).

The inconsistency related to the proposed minimum lot size for boarding house development. As noted in **Section 2** of this report, a Gateway condition was imposed to require the proposed boarding house amendment be removed from the planning proposal prior to public exhibition.

The planning proposal was amended prior to exhibition to remove the proposed boarding house amendments. The planning proposal is consistent with the Housing SEPP.

SEPP 65 – Design Quality of Residential Apartment Development

This SEPP aims to improve the design quality of residential apartment development in NSW. The Apartment Design Guide supports SEPP 65 and sets out design consideration and criteria for residential development. The planning proposal is supported by indicative development scenarios for typical development sites that are capable of complying with SEPP 65 and ADG requirements.

The Gateway report noted the information supplied in the planning proposal was adequate for public exhibition purposes, but further urban design analysis may be required to demonstrate compliance with the ADG. The Department has undertaken further urban design analysis as discussed in the following section.



Figure 6 – Council’s massing study of the precinct (Source: Burwood Council)

Building separation

The proposal seeks to introduce local provisions for residential development that would require building setbacks to heritage items in the Livingstone Street and Sym Avenue precinct. The proposal proposed an additional 2m setback to the building separation requirements in the ADG. This is equivalent to an 8m building setback to a heritage item.

As stated earlier in the report, the Department’s Urban Design team considered the proposed heritage setbacks and minimum building separation requirements in the ADG to ensure that future building envelopes would be capable of achieving the minimum setback to heritage items. The analysis confirms that the setback requirements do not impact the ability of future residential development to comply with the requirements of the ADG.

The proposal is also supported by site-specific provisions in Section 3.3.7 of the Burwood Development Control Plan (DCP), which outlines specific and building siting and design provisions which future DAs will need to consider.

Overshadowing

As outlined in the Gateway determination report, the proposed envelopes are generally capable of complying with the minimum solar access requirements for residential apartments.

Due to the proximity of heritage items to property boundaries, there is potential for future development to overshadow neighbouring heritage items.

Solar analysis undertaken by the Department's Urban Design team demonstrates that future development is unlikely to result in additional overshadowing to heritage items between 10am and 1pm in mid-winter.

Section 3.2.7 of the Burwood DCP also contains provisions to ensure neighbouring properties receive a minimum of 3 hours sunlight between 9.00am and 3.00pm mid-winter. This requirement will be a consideration for future development to ensure solar access impacts to heritage items are addressed and minimised.

A further comprehensive assessment of compliance with SEPP 65 and the ADG will be undertaken at the DA stage.

5 Post assessment consultation

The Department consulted the following stakeholders after its assessment.

Table 10 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	Eight maps have been prepared by Council and reviewed by the Department's GIS team and meet the technical requirements.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Council	Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i> (Attachment H). Council confirmed on 22/08/2022 that it was agreeable with the draft (Attachment I).	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	On 19/08/2022, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at Attachment PC .	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

6 Recommendation

It is recommended that the Minister's delegate as the local plan-making authority determine to make the amended draft LEP under clause 3.36(2)(a) of the Act because:

- the draft LEP has strategic merit being consistent with the Burwood Local Strategic Planning Statement, Burwood Local Housing Strategy, the Eastern District Plan and it is consistent or justifiably inconsistent with all relevant section 9.1 Directions and SEPPs

- it is consistent with the Gateway determination and has addressed all Gateway conditions
- there are no outstanding agency objections to the proposal
- issues raised during consultation have been addressed
- post-exhibition changes are minor and directly respond to issues raised in submissions
- it will contribute to the housing targets and housing diversity objectives in the Burwood Local Housing Strategy
- any potential impacts can be adequately addressed during development assessment. A site specific DCP has been adopted by Council which provides design guidelines and controls for future development.



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Attachments

Attachment	Document
A	Gateway Determination dated 8 June 2021
B	Planning proposal as amended prior to exhibition dated June 2021
C	Submission's summary in Council Report dated 28 September 2021
D	Council Minutes dated 28 September 2021
E	Planning proposal as amended post exhibition dated 28 September 2021
F	Heritage Memorandum – 94 and 96 Mitchell Street
G	Heritage Memorandum – Livingstone Street and Sym Avenue Precinct
H	Section 3.36(1) consultation with Council

I	Council comments on the draft LEP
PC	Parliamentary Counsel's Opinion
Maps	Draft LEP Maps
MCS	Map Cover Sheet
LEP	Draft LEP