

10.4. Expansion of Conservation Area to include 53 & 55 Yeo Street, Cremorne

AUTHOR	Ben Boyd, Executive Strategic Planner
ENDORSED BY	Marcelo Occhiuzzi, Director Community, Planning and Environment
ATTACHMENTS	Nil
CSP LINK	4. Our Social Vitality 4.3 North Sydney's history is preserved and recognised

PURPOSE:

The purpose of this report is to provide advice as to whether Council should pursue the inclusion of 53 and 55 Yeo Street Cremorne in the adjoining Cremorne Conservation Area.

EXECUTIVE SUMMARY:

- In response to resident's concerns about the loss of two potential heritage items in connection with DA 334/22, Council resolved on 13 February 2023 to investigate whether 53 and 55 Yeo Street Cremorne could be identified as individual heritage items and/or incorporation into the adjoining Cremorne Conservation Area.
- On 22 February 2023, the General Manager, under delegation, imposed an Interim Heritage Order (IHO) over the two properties to enable a more detailed heritage investigation to be undertaken, with formal notification of the IHO's imposition being published in the NSW Government Gazette on 24 February 2023 and which took effect from this date.
- On 24 July 2023, Council considered a report that dealt with the issue as to whether the two properties should be heritage listed under North Sydney Local Environmental Plan (NSLEP) 2013. The report recommended that Council not pursue the heritage listing of the two properties under NSLEP 2013 as they were not able to adequately satisfy the criteria for heritage listing. Council resolved to adopt the recommendations of the report and include the following two additional resolutions:

5. THAT Council pursue the inclusion of 53 and 55 Yeo Street Cremorne in the Cremorne Heritage Conservation Area.

6. THAT Council provide an urgent report as to the basis of the exclusion of these two properties from the Cremorne Heritage Conservation Area when the conservation area was created.

- This report outlines the additional investigations undertaken to determine if the two properties should be included in the adjacent Cremorne Conservation Area.

RECOMMENDATION:

1. THAT Council note the report and that no further action be taken to pursue an extension of the Cremorne Heritage Conservation to include 53 and 55 Yeo Street, Cremorne.

1. Background

On 3 November 2022, Development Application No. DA334/22 (the DA) was lodged for the demolition of two x two-storey dwelling houses and associated structures at 53 and 55 Yeo Street Cremorne and construction of a new four-storey residential flat building over two levels of basement parking, landscaping, fencing, and associated works.

During the assessment of this DA, residents made representations with a request that Council urgently impose an Interim Heritage Order (IHO) on the properties. In response to these concerns, Council considered a Notice of Motion at its meeting on 13 February 2023, where it resolved:

- 1. THAT Council obtain urgent advice in relation to whether an Interim Heritage Order(s) can be supported in respect of dwellings known as 53 and 55 Yeo Street, Neutral Bay. That the advice include an assessment of local heritage significance under the Wycombe Road Group NSH1255 listing.*
- 2. THAT Council prepare an urgent report to assess whether 53 and 55 Yeo Street, Neutral Bay ought to be included in the South Cremorne Heritage Conservation Area.*
- 3. THAT the review consider whether the 53 and 55 Yeo Street properties may be heritage or contributory items within the conservation area.*

In response to this resolution, Council's Conservation Planners prepared a Preliminary Heritage Assessment which identified that the properties may (upon further inquiry and investigation) be eligible for listing as local heritage items under North Sydney Local Environmental Plan (NSLEP) 2013.

On 22 February 2023, the General Manager under delegation, imposed an IHO over the two properties to enable a more detailed heritage investigation to be undertaken. Formal notice of the imposition of the IHO was subsequently published in the NSW Government Gazette on 24 February 2023 and took effect from this date.

On 23 March 2023, the property owners of the subject sites filed a Class 1 Appeal in the Land and Environment Court (L&EC) against the imposition of the IHO.

On 8 June 2023, Council received a more in-depth and detailed heritage assessment prepared by Extent Heritage which concluded that despite the dwellings being good examples of Federation era dwellings, they do not reach the threshold for listing as individual heritage items at the local level. In addition, whilst acknowledging that the dwellings show stylistic similarities to contributory buildings within the adjacent heritage conservation area, further work would be required to justify their inclusion in that heritage conservation area as a formal amendment to NSLEP 2013.

On 24 July 2023, Council considered a report outlining the conclusions of the detailed heritage assessment prepared by Extent Heritage. The report recommended:

- 1. THAT Council note the recommendations of the comprehensive and independent Heritage Assessment prepared by Extent Heritage forming Attachment 1 to this report.*

2. THAT pursuant to s.29(4) of the NSW Heritage Act, 1997, Council revoke IHO 1/2023 in relation to 53 and 55 Yeo Street, Neutral Bay as both properties have been found not to adequately satisfy the threshold criteria for listing as a local heritage item.

3. THAT pursuant to s.29(5) of the NSW Heritage Act, 1977, Council:

(a) publish a notice in the NSW Government Gazette that the IHO has been revoked.

(b) notice of the IHO's revocation is given to NSW Minister for Heritage and NSW Heritage Council and to each affected property owner or occupier.

(c) notice be given of the IHO's revocation on Council's website and in the Mosman Daily.

4. THAT Council advise its legal representatives assisting in the Land an Environment Court Appeal against the imposition of the Interim Heritage Order of the outcome of Council's consideration of this report.

Council resolved to adopt the recommendations of the report and include the following two additional resolutions:

5. THAT Council pursue the inclusion of 53 and 55 Yeo Street Cremorne in the Cremorne Heritage Conservation Area.

6. THAT Council provide an urgent report as to the basis of the exclusion of these two properties from the Cremorne Heritage Conservation Area when the conservation area was created.

On 4 August 2023, a notice of Council's revocation of the IHO was published in the NSW Government Gazette. The property owners subsequently dropped their Appeal against the imposition of the IHO over the properties on 11 August 2023.

2. Report

2.1. Demolition of 53 and 55 Yeo Street

On 15 August 2023 Council received two 'Advice of application for a Complying Development Certificate' (CDC) from a registered certifier, in relation to the proposed complete demolition of all dwellings and structures on land at Numbers 53 and 55 Yeo Street Cremorne.

An 'Advice of Application' is required to be provided under clause 132 of the Environmental Planning and Assessment Regulation 2021 and prevents any certifier from issuing a CDC within 14 days of this notice.

Whilst at the time of writing, a CDC had not been issued for their demolition, there is technically nothing that can prevent these CDCs from being approved. It is anticipated that CDC may be issued within two weeks of 29 August 2023 (two weeks being the typical timeframe for approval of a CDC).

At the time of writing this report, the buildings had yet to be demolished.

2.2. Conservation Area Boundary Investigations

As indicated in Section 2.1 of this report, the dwellings at 53 and 55 Yeo Street are likely to be approved for demolition in the near future. Accordingly, there is little benefit in progressing any detailed heritage investigations and assessment to determine if the two properties should be incorporated within the adjoining conservation area.

Despite their likely demolition, in accordance with the resolution of 24 July, Council staff commenced an investigation to determine how the adjoining Cremorne Conservation Area was established and why 53 and 55 Yeo Street had been excluded from this conservation area.

The extent of investigation has generally been limited to a review of the existing heritage studies undertaken on behalf of Council and their implementation into Council's LEP. There was insufficient time to delve deeper into Council's record systems to locate other relevant Council reports and the like.

2.2.1. North Sydney Heritage Study (1981)

On 25 March 1981, Council, the NSW Department of Environment and Planning and the NSW Heritage Council commissioned Lantona Masterman & Associates to prepare an LGA-wide heritage study, which was the first of its type and scale in the State.

The Study was commissioned in response to the significant and sustained building boom which had commenced in the 1960s and included the construction of the Warringah Freeway, which was having a significant impact on the social, environmental, and historical fabric of North Sydney.

The study was also prepared to take advantage of the then recent introduction of new legislation which gave increased weight to heritage considerations including:

- the NSW Heritage Act, 1977;
- the Burra Charter, 1979; and
- the Environmental Planning and Assessment Act, 1979

The primary purpose of the Study was to:

- establish a new approach to the conservation of heritage values across an entire LGA (i.e., was to be a prototype for other LGAs to follow);
- prepare a series of historical themes related to major economic, social, and environmental events;
- identify all items of heritage value related to the identified historical themes; and
- identify areas of historical significance which warrant special planning controls.

Heritage Items

The Study sought to identify all those buildings or places which have natural or cultural significance and was largely based on the detailed identification work already completed by several specialist agencies including the Natural Trust of Australia, the Australian Heritage Commission, the North Shore Historical Society, the Royal Institute of Architects, and the

National Parks and Wildlife Service. Identification of heritage items was based on the criteria established under the Burra Charter.

The Study identified approximately 630 items of individual heritage significance (covering approximately 900 individual buildings/sites) and approximately 2,440 items that *contribute to the predominant character of an area*.

Both 53 and 55 Yeo Street were identified as two of the 2,440 items under the Study as *buildings and structures contributing to the predominant character of an area*.

Conservation Areas

The Study recommended the establishment of nine conservation areas. Their identification was determined after a coordinated consideration of the historical themes and the predominant heritage character of the suburbs. A “predominant character” was based on the following criteria:

- individual buildings and structures;
- groups of buildings;
- consistency of street character;
- private gardens;
- street plantings;
- fencing walling, paving, kerbing etc;
- maintenance of historic patterns of land use;
- road alignments of heritage significance;
- relationship of built form to landscape;
- relationship to Sydney Harbour;
- land form and topography;
- internal and external views;
- natural landscape features;
- parks and open spaces;
- archaeological significance; and
- community and sense of space.

In addition, the Study states (emphasis added):

It should be noted that whilst this selection procedure is still not mathematically quantifiable, it nevertheless identifies the thematic and character reasons for the selection of Heritage Areas. It should also be noted that the method ties historical and environmental information, and as such is a more informed method of area selection than the more visual linking together of heritage buildings to form conservation areas. The examination of the predominant character of an area also considers items additional to the normal elements of the built environment, and in particular, is concerned with those elements relation to the natural environment, open spaces, aboriginal sites, and community perceptions.

Boundaries of the Heritage Area have been determined to reflect their historical and environmental significance (and generally avoid the “linking historic buildings” approach) and to provide some sensibility in the future examination of these areas for the purposes of preparing appropriate planning controls.

Despite their identification as “contributory items”, 53 and 55 Yeo Street were not recommended for inclusion within a heritage conservation area. Figure 2 on the next page illustrates that the subject sites were located just outside of the proposed Cremorne Point / Kurraba Point Conservation Area.

It would appear that the properties in Yeo Street have been specifically excluded due to:

- an inconsistent street character (i.e., the northern side of the street was being used for commercial activities, and properties to the east of the subject sites being predominantly used for residential flat buildings);
- a lack of maintenance of historic patterns of land use (the northern side of the street had changed from residential to commercial uses).

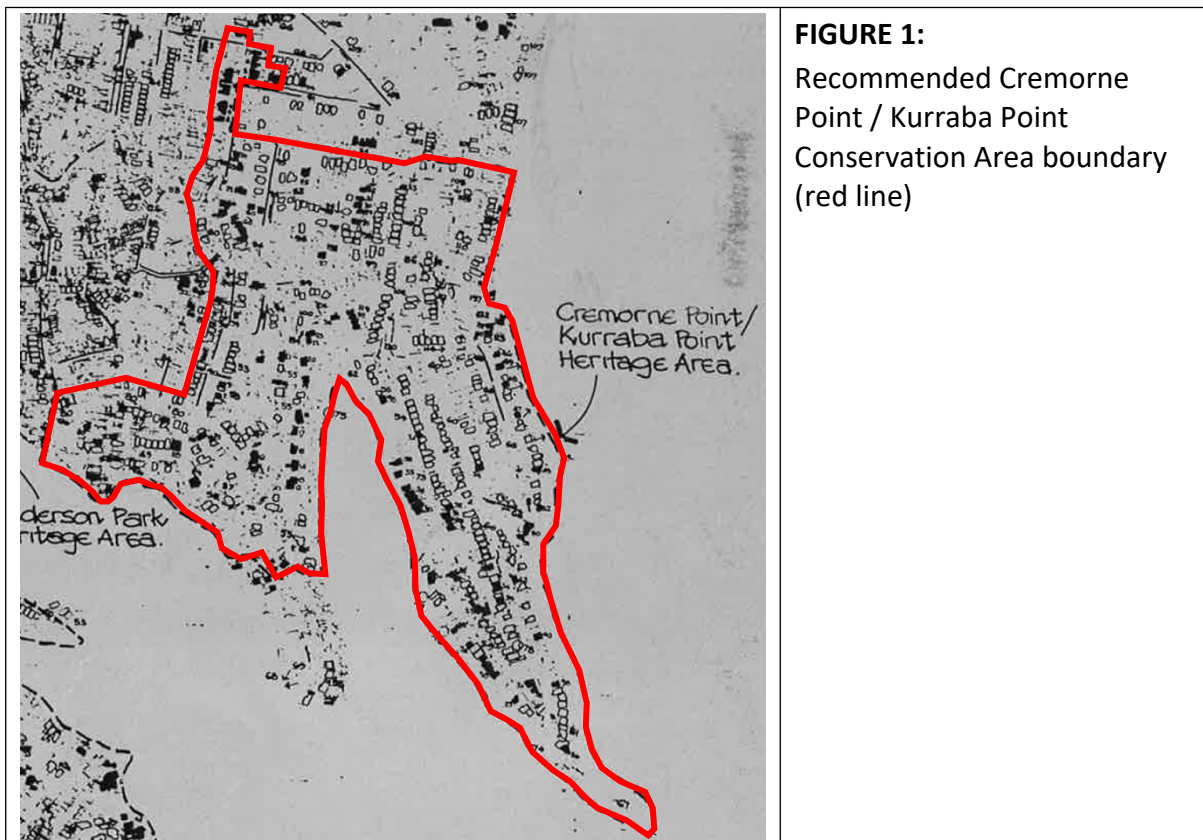




FIGURE 2:
Detailed image of the subject sites (highlighted green) in relation to the recommended Conservation Area boundary (red line)

2.2.2. North Sydney LEP 1989

The outcomes of the 1981 Heritage Study eventually made their way into NSLEP 1989.

Whilst work on this LEP originally commenced in 1980, much of its delay was associated with the extent of heritage identification and conservation area boundaries and the inclusion of several development controls (e.g., landscaped area) to ensure adequate amenity was being provided.

Of particular note was an expansion of the 1981 Heritage Study’s recommended conservation area boundary under NSLEP 1989 to include additional properties along Harrison and Bennett Streets. However, the conservation area was not extended to incorporate the subject sites as illustrated in Figure 3 below.

At the time of writing this report, no evidence could be found to determine as to how the amended conservation area boundary was determined.

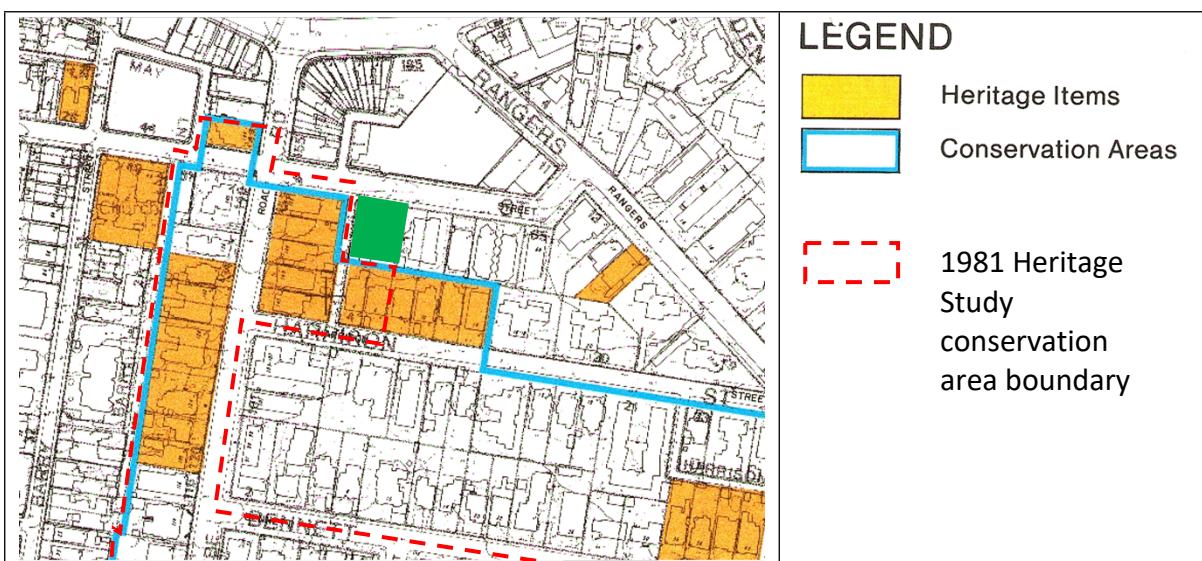


FIGURE 3: NSLEP 1989 – Extract of the Heritage Map

2.2.3. North Sydney Heritage Study Review (1993)

In 1991, consultants Godden Mackay were engaged by Council to undertake a comprehensive review of the 1981 Heritage Study with a view to supporting and extending its efforts in caring for its own properties and historic resources whilst considering contemporary approaches to conservation.

Heritage Items

The review identified 1,388 individual items of heritage significance. Neither 53 nor 55 Yeo Street were identified as items of heritage significance.

Conservation Areas

The review recommended increasing the number of conservation areas from nine to 22. The significant increase in number principally resulted from the division of the existing conservation areas into smaller areas which have been identified as having particular characteristics and heritage value.

In essence, the rationale behind the determination of the conservation areas was placed on the identifiable characteristics of each area and specific assessment of heritage values.

The review identified that the establishment of the nine original Conservation Areas was *derived from the pioneering work of the Urban Conservation Committee of the National Trust of NSW in the late 1970s – early 1980s*. Since their initial establishment numerous issues had arisen including, but not limited to:

- unclear character statements;
- need to consider subdivision patterns;
- utilising uncharacteristic elements to justify undertaking uncharacteristic works;
- blanket listings without designated localities within conservation areas;
- lack of emphasis on streetscape elements;
- potential for new conservation areas;
- loss of characteristic buildings within conservation areas; and
- conservation area are too big with poor or vague boundaries, with too many insignificant items which can create adverse precedents and the impossibility of assessing the impact of changes to any one site within such a large conservation area.

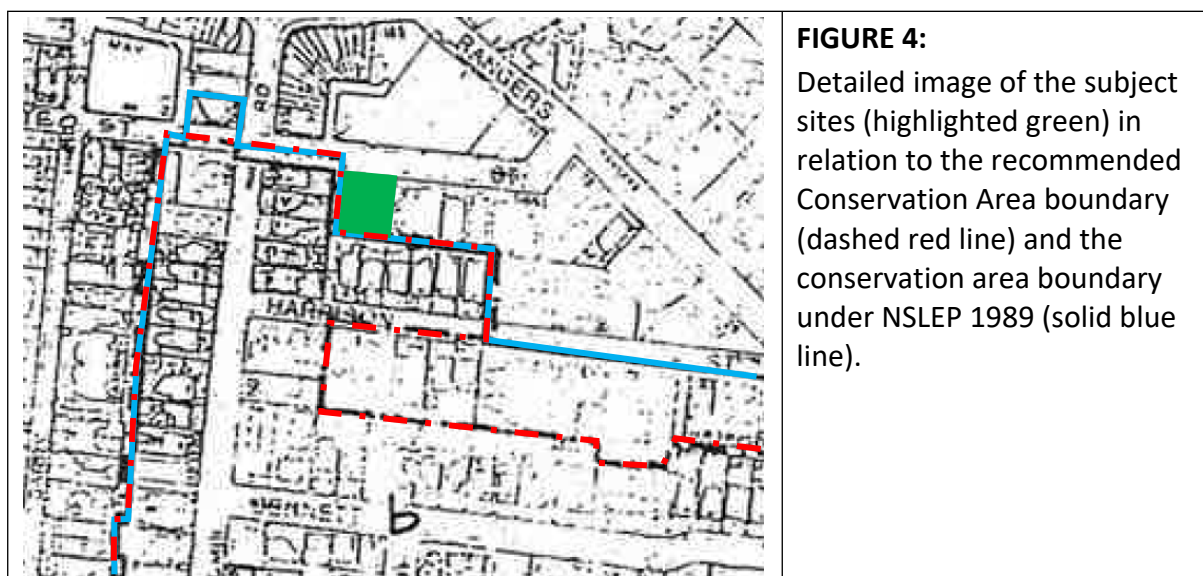
The identification of conservation areas under the review was established by ensuring:

- that the conservation area can be comprehended as a discrete unit (identification of character), which results from a strong historical/cultural context, including aesthetic, scientific or social values;
- that the conservation area is reflected physically by the architecture of its buildings, the urban and landscape surrounds and through its response to the site particulars e.g. topography, aspect and views;
- the basis of the conservation area is premised on its underlying subdivision pattern, which will affect the built form outcomes of a locality and its landscape setting;

- the conservation area boundaries maintain a discrete, but cohesive and distinct area with unique features; and
- buildings with a high degree of intactness should be numerous within a conservation area, with the test being whether the area would be diminished by their absence; and
- the conservation area has identifiable physical characteristics.

With respect to the Cremorne Conservation Area, the review identified that it was a very mixed urban form with a rectilinear and meandering street pattern. This street pattern, together with the through traffic movement, effectively divides the Conservation Area into five sub-areas, generally divided more by topographic and sub-division patterns rather than by architectural style. These sub areas were: Lower Wycombe Road, Upper Wycombe Road/Bennett Street, Guthrie/Claude Streets, Boyle Street, and Florence Lane.

As illustrated in Figure 4 below, the properties at 53 and 55 Yeo Street were not considered part of the Cremorne Conservation Area. In addition, it is noted that the review recommended a slight amendment to the Cremorne Conservation Area in its north-western corner by excluding 144 Wycombe Road (north of Yeo Street) and all properties fronting the southern side of Harrison Street.



It is reasonable to assume that 53 and 55 Yeo Street were excluded from the recommended conservation area boundary based on the criteria established in the Review. In particular, these properties are likely to have been excluded due to diminished urban and landscaped context similar to the original 1981 Review.

2.2.4. 1998 Heritage & Cultural Resources Study

In 1995, Council’s Social Plan recommended that the conservation of culture and lifestyle be incorporated into the statutory planning process.

In response to this, Council engaged the Australia Street Company, in conjunction with Paul Davies Architects and Spackman and Mossop to prepare the *Heritage & Cultural Resources Study*, which was completed in 1999.

The purpose of the Study was to build on the work undertaken in the previous heritage studies and assist in the preparation of a new development control plan that was focused on place-based outcomes (i.e., Part C – *Area Character Statements* to NSDCP 2013) rather than just managing impacts from particular types of developments (i.e. Part B – *Development Controls* to NSDCP 2013).

With regard to conservation area component of the Study, it stated:

The specific purpose of this component of the broader study is to review the existing conservation areas within the Council area.

The first task was to assess the adequacy of the current conservation areas in terms of integrity and appropriateness of the areas listed, to review the current heritage items for their status in terms of change since the listings were prepared, to review the continuing status of places previously scheduled as heritage items and to re-survey the remaining buildings in the conservation area to determine if they have either heritage item status or status of a new type of heritage place called “contributory item”. This new category was introduced by Council to address the large group of buildings that are considered essential to retain the character of conservation areas but which do not in their own right have the qualities that warrant individual listing as heritage items. If new information comes to light to reveal the elements /items of previously unrecognised heritage significance, and it is found that these elements/items are such that they can achieve the status of a heritage item, they may from time to time, be considered for heritage listing.

The Study also looked at identifying properties or places that are intrusive or detract from the heritage value of the conservation area. This has resulted in the identification of a new place called an “uncharacteristic element”. Places which do not contribute or detract from the significance of a conservation area were to be known as “neutral items”.

The Study also reviewed the boundaries and the integrity of the character of each conservation area and recommended that the boundaries to a number of conservation areas be adjusted, and in some instances, significantly reduced in area. In undertaking this review, the areas were assessed against the criteria established in the NSW Heritage Council’s publication “*Conservation Areas*” (1996).

With regard to the Cremorne Conservation Area, it recommended:

This area has an overall high level of integrity with only minor perimeter changes recommended to tighten the overall area. The area also has a reasonable amount of diversity reflecting its large size. The changes proposed are the deletion of small areas on the west of Wycombe Road which contain unit and apartment developments, the deletion of a group of strata title properties to the north of Bennett Street and the addition of part of Harrison Street which contains a number of items and contributory items.

Even though the area contains a number of intrusive buildings they are predominantly on the main road and do not reduce the overall value of the precinct.

Interestingly the precinct is quite varied in character and it would be possible to divide it into future precincts if desired. This could result in the exclusion of some of the more intrusive groups of buildings that are currently located in the centre of the conservation area.

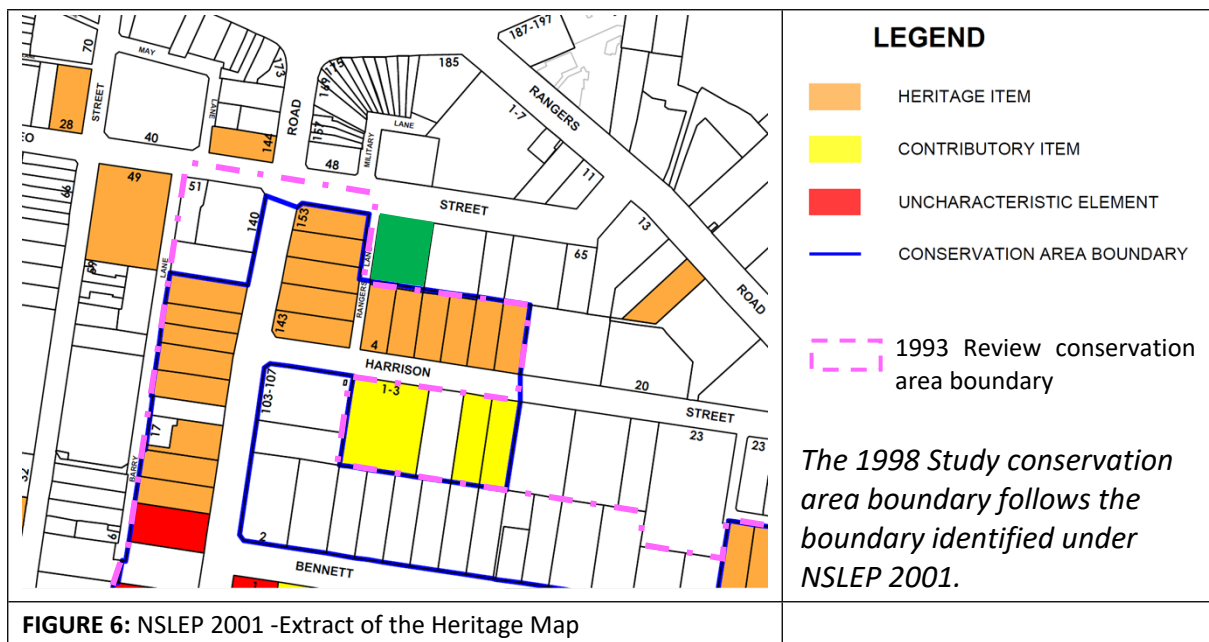
The extent of the recommendations as it relates to the Cremorne Conservation Area and the subject sites are outlined in Figure 5 below.



FIGURE 5:
Extract of the Study's recommended Cremorne Conservation Area boundary (solid black line) and the existing conservation area boundary under NSLEP 1989 (dotted black line).

2.2.5. NSLEP 2001

The recommendations of the 1993 *Heritage Review* and 1998 *Heritage & Cultural Resources Study* with regard to the extent of the conservation area boundaries, identification of “heritage items”, “contributory items”, “neutral items”, and “uncharacteristic elements” made their way into NSLEP 2001. This is reflected in Figure 6 on the next page.



2.2.6. 2004 North Sydney Conservation Area Review

In November 2003, Council resolved to undertake a comprehensive review of all conservation areas in North Sydney as part of its ongoing commitment to the heritage planning process. The objectives of the review were to:

- research and investigate the condition of North Sydney’s Conservation Areas;
- review the current boundaries of North Sydney’s Conservation Areas;
- identify any potential Conservation Areas that should be included but which have been overlooked in previous studies;
- extend Council’s Heritage Inventory to include any additional contributory or heritage items identified as part of this study; and
- systematically review all properties within conservation areas, in terms of heritage, contributory, neutral, and uncharacteristic status, according to an established set of guidelines.

City Plan Heritage was engaged by Council in January 2004 and the review was completed in September 2004. In determining the extent of a conservation area, the Review stated (emphases added):

Conservation areas can be recognised and assessed in a number of ways. One such way is to rank and map the elements of an area to determine the cohesiveness and integrity of a place. A conservation area will demonstrate a high proportion of contributory items in comparison to all other items. As well as demonstrating the proportion of significant elements topographically a conservation area should also be evident in its visual experience. A Conservation area will become apparent when one moves into it due to the cohesive building forms, materials and scale which create a sense of place. When one can recognise that an area has a sense of place it becomes a matter of determining why that sense of place exists by articulating the physical and historical characteristics which define it, and if it then demonstrates sufficient value to be considered significant through those characteristics. Therefore as well as having a high proportion of significant items these

elements must also be visually apparent within the area. An understanding of historical patterns of subdivision and development within a locale will also aid in the identification of Conservation Areas as one will be able to determine where such areas potentially exist only to qualify if its original elements are intact and interpretable.

In its preliminary assessment, the review stated:

The conservation areas generally demonstrate accurate boundaries as a result of the most recent review. Sections of conservation areas and adjacent areas have been recognised in this preliminary survey as of questionable significance (either to be added or removed). Some of these areas were addressed in the last study often resulting in a rationalisation of the boundaries removing neutral and uncharacteristic items. Areas which have been previously removed from a Conservation Area will remain outside the area. The detailed survey phase will demonstrate if existing boundaries have been eroded due to changes since the last review or if there are any remaining inaccuracies.

With regard to the Cremorne Conservation Area the review sought to specifically:

- investigate area around Reed Street for deletion; and
- check rankings and update listings.

The Study also looked at potential new conservation areas. The subject sites were not located within any of identified potential future conservation areas.

As part of the detailed survey of the Cremorne Conservation Area, the review recommended:

The Cremorne Conservation Area demonstrates diverse character comprised of a variety of built forms predominantly from the Federation period with some buildings in the Vitoriana and Inter War periods as well as some uncharacteristic flat building developments. The place features a variety of dwelling types including detached cottages, substantial villas, early walk up flat buildings, and some large apartment blocks. The boundary was revised in the previous Review to remove some uncharacteristic elements and this survey has found that there is no opportunity to extend the boundary in order to enhance the significance of the area. As substantial number of new contributory items have been recommended and there have been only a few heritage items that have been downgraded to contributory as most have retained their integrity show that there has been perhaps less pressure on development in this area compared to some other areas. One contributory item has been upgraded to a heritage item as restoration works undertaken since the last survey have enhanced its significance.

Of particular note was that there were no changes proposed in the vicinity of the subject sites (refer to Figure 7 on the next page). This would appear to indicate that 53 and 55 Yeo Street have been reviewed and were not considered worthy of inclusion within the Conservation Area due to their compromised visual curtilage.

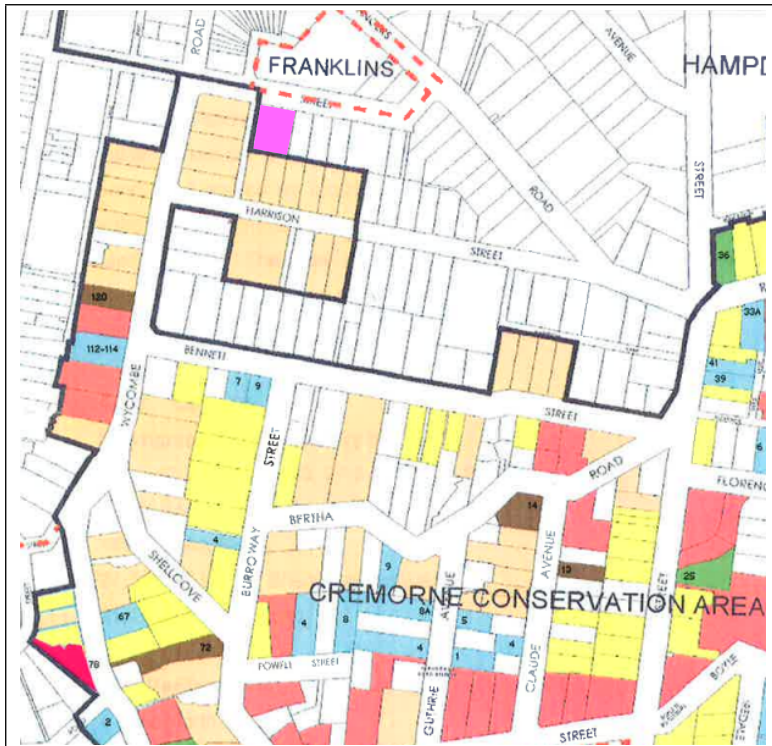


FIGURE 7:
2004 Heritage Review -Extract
of recommendations to the
Cremorne Conservation Area
Subject sites highlighted in
pink.

Map Colour	Definition
Orange	Existing Heritage Item
Yellow	Existing Contributory Item
White	Neutral
Red	Uncharacteristic Item
Brown	Downgrade to Contributory Item
Pink	New Heritage Item
Blue	New Contributory Item
Green	New Neutral (downgrade or upgrade)
Light Green	Unable to Assess retain listing until further information is available
Dark Green with border	(Shaded green with border) New or Extended Conservation Area
Red with border	(Shaded red with border) Study area <u>not</u> recommended as a Conservation Area

Despite completion of the review, its recommendations were never implemented. This resulted from the Department of Planning’s reluctance at the time to support any further expansion of heritage listings or identification of conservation areas statewide, due to potential conflicts with State Government initiatives in the planning reform process.

2.2.7. 2007 Heritage Review

Following the release of the Standard Instrument Local Environmental Plan in 2006, upon which all NSW council LEPs are now based, Council engaged Architectus to prepare the 2007 North Sydney Heritage Review.

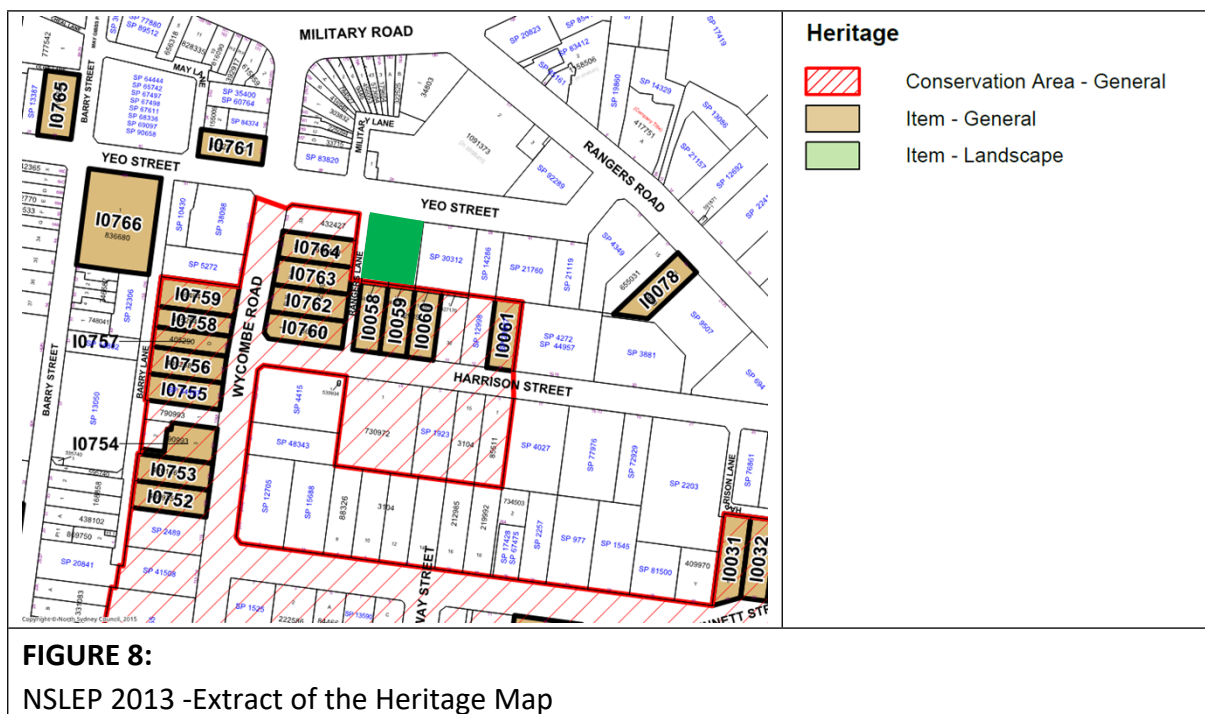
The primary aim of the review was to establish a robust basis by which important heritage buildings may be protected in the future, whilst creating a better balance between cultural heritage conservation and the reasonable development of heritage listed properties and those located within conservation areas. The review consisted of the following components:

- **Heritage Listings Review** – a review of the status of existing residential properties listed as heritage items of local significance in Council’s LEP and updating associated inventory datasheets where necessary;

- **Assessment of Conservation Areas** – a critique of the significance of existing conservation areas and the accuracy of their associated DCP Character Statements; and
- **Heritage Conservation Policy Review** – a review of Council’s current heritage conservation policies, recommending improvements and amending the DCP to reflect the recommendations.

The review was primarily focused on the clarifying the existing extent of heritage listings and conservation areas and improving conservation policy. It did not specifically look at expanding or creating new conservation areas.

The review did not recommend any further amendment to any of the conservation area boundaries. The outcomes of this Review were eventually incorporated into NSLEP 2013 and NSDCP 2013 (refer to Figure 8 below). The biggest change was that the “contributory items” and “uncharacteristic elements” were transferred to NSDCP 2013.



3. Options

Council has the following options in relation to this matter:

1. Note the outcomes of the prior investigations and take no further action.
2. Proceed with investigations to include 53 and 55 Yeo Street within the adjoining conservation area.

These options are assessed in Table 1 below.

TABLE 1: Options Table			
Option	Finance/Resourcing	Risk/Opportunity	Consultation
1.	No additional finance or resourcing is required.	As the properties are proposed to be demolished, there is no need to undertake further actions to determine if the sites should be included in the adjacent conservation area. Notwithstanding their potential demolition, the reason for the sites not being included in the Conservation Area is now better understood.	No additional consultation is required.
2.	Additional financial and staff resources will be required to complete the investigations. This work had already been budgeted for when it sought to complete the first stage of heritage assessment. Potential requirement for additional resources to be expended to defend any proposal seeking their inclusion in a conservation area in light of their proposed demolition.	The criteria for inclusion within a conservation area has remained largely unchanged since the first heritage study undertaken in 1981. The sites have been subject to 5 separate heritage reviews, none of which have recommended that these sites be included within a conservation area. Progression now would appear contrary to this large body of evidence and their proposed demolition. If progressed, Council could be open to legal challenge.	Consultation on any draft amendment to the LEP would be required in accordance with any Gateway Determination and Council's Community Engagement Protocol.

Option 1, is recommended for the following reasons:

- Five comprehensive heritage reviews have been undertaken, none of which have identified the subject sites for inclusion in the adjoining conservation area.
- The two dwellings are soon to be approved to be demolished via a Complying Development Certificate.

- There is no benefit to incorporate the two sites within the Cremorne Conservation Area as any replacement development is unlikely to positively contribute to the significance of the Cremorne Conservation Area, nor adequately meet the criteria for inclusion within a conservation area.
- There is potential that progressing the incorporation of the two sites within the Cremorne Conservation Area could be challenged on process grounds. It is also uncertain that in the circumstances, the Department of Planning would issue Gateway Determination to proceed with such a proposed amendment to NSLEP 2013.
- There is a reduced impact on financial and staff-based resources by not progressing the detailed investigations and any subsequent planning instrument amendments.

4. Consultation Requirements

Community engagement is not required.

5. Financial/Resource Implications

There are no financial or resource implications arising from not pursuing the expansion of the Cremorne Conservation Area to incorporate the two sites.

6. Legislation

Compliance with the relevant provisions of the following legislation have been addressed throughout this report:

- NSW Environmental Planning and Assessment Act, 1979 and accompanying Regulations (2021)
- NSW Heritage Act, 1977 and accompanying Regulations (2012)
- NSW Local Government Act, 1993 and accompanying Regulations (2021)