



24 September 2018

**Advice for Rezoning Review Request
68-72 Railway Parade and 2-2A, 4-10 Oxford Street, Burwood**

1. INTRODUCTION

1. On 24 August 2018, the Independent Planning Commission (**Commission**) received a request for advice regarding a rezoning review of a planning proposal that seeks to amend the Burwood Local Environmental Plan 2012 (**BLEP**). The amendment relates to development controls applying to land at 68-72 Railway Parade and 2-2A, 4-10 Oxford Street, Burwood, currently zoned as R1 – General Residential.
2. Pacific Planning Proprietary Limited (the **Proponent**) is seeking to increase the maximum building height and floor space ratio (**FSR**) controls for the site (68-72 Railway Parade and 2-2A, 4-10 Oxford Street, Burwood). On the 21 March 2018, the Proponent requested a rezoning review from the Department of Planning and Environment (**Department**) because Burwood Council (**Council**) did not support a request to prepare a planning proposal for the site. *Figure 1* below identifies the site, highlighted in yellow.

Figure 1 – Rezoning Review Request site (highlighted in yellow)



Source: Proponent's rezoning review request

3. On 17 October 2017 the planning proposal was referred to the Sydney Eastern City Planning Panel (the **Planning Panel**) to complete a review. On 31 May 2018 the Planning Panel recommended the planning proposal not be submitted for a Gateway determination because it did not demonstrate

strategic and site-specific merit.

4. The Commission has been requested by the delegate of the Minister for Planning, the Department, in accordance with section 3.34(5) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*, “to undertake a further rezoning review of the planning proposal and advise on whether it should be submitted for a Gateway determination”.
5. Professor Mary O’Kane AC, Chair of the Commission, nominated Ms Dianne Leeson (Chair) and Mr Chris Wilson to constitute the Commission to provide advice for the rezoning review request.

1.1 Summary of Planning Proposal

6. On 13 February 2017, the Proponent lodged a planning proposal with Council to amend the BLEP 2012 to:
 - increase the maximum building height from 26 metres (m) to 58m; and
 - increase the maximum FSR from 3:1 to 5.45:1.
7. The intended outcome of these arrangements is to facilitate a residential apartment development, including an 18-storey signature corner building with two lower 14-storey building elements to the street edges, separated by a recessed building edge. The development includes approximately 219 units, which would represent 132 additional apartments to that in a previous development approval for 68-72 Railway Parade and 2-2A Oxford Street (DA 74/2015).
8. The Commission notes that in addition to a previous development approval for the site for an 8-storey residential flat building, on 6 August 2018 Council approved a development application (124/2017) for a residential and retail development for the site, including a 10-storey building at the corner of Railway Parade and Oxford Street, two lower buildings of 8 and 6 storeys, and one retail premise on the ground floor.

1.2 Proposed revision to Planning Proposal

9. Following the lodgement of the planning proposal, Council appointed an independent consultant, Cardno, to review the proposal and provide recommendations to Council. Two of the recommendations stated that:
 - “the proposed 14-18-storey building height limits are considered excessive; and
 - a maximum of 12 storeys (39m) is considered appropriate. This includes a 10-storey (32m) element away from the corner on Railway Parade and a nine-storey (29m) element away from the corner on Oxford Street.”
10. On 25 July 2017 Council considered the planning proposal and rejected the proposal, which included the recommendation of Council officers that development, in line with the Cardno recommendations, be supported without a revised planning proposal being submitted.
11. On 24 August 2017, the Proponent lodged a revised planning proposal with Council to provide for a part 12-storey (46m) corner building with one 10-storey (40m) and one nine-storey (36m) building elements, with an associated FSR.

12. On 18 September 2017, Council advised the Proponent that under clause 10A of the *Environmental Planning and Assessment Regulation 2000*, the request for reconsideration to prepare a planning proposal was not supported. Council advised the Proponent to lodge a new planning proposal for consideration.
13. On 17 October 2017, the Proponent lodged a rezoning review request with the Department in response to Council's letter refusing to consider the request for reconsideration of the updated planning proposal.
14. The Department reviewed this request and advised the Proponent that the rezoning review request could not be considered as it did not reflect the original proposal considered at Council's meeting of 25 July 2017. The Department's *A guide to preparing local environmental plans (the Guide)* specifies that a planning proposal that has been amended after Council has resolved to refuse the original proposal is not eligible to be considered under a rezoning review.
15. The Department advised the Proponent that if they wished to continue to progress the rezoning review request, the proposal be amended to match the one that was originally lodged with Council on 13 February 2017.
16. The Proponent has subsequently revised the rezoning review request to reflect the original planning proposal considered at Council's 25 July 2017 meeting, that being the 58m proposal.
17. The Commission notes that, consistent with the Guide, it is only able to undertake a rezoning review of the planning proposal outlined in paragraph 6. The Commission has not considered the revised planning proposal (12-storey) option outlined in paragraph 11.

2. THE PLANNING PANEL'S REZONING REVIEW

2.1 Referral of rezoning review to the Commission

18. On 31 May 2018, the Planning Panel recommended that the planning proposal should not proceed to Gateway determination because it did not demonstrate strategic and site-specific merit.
19. The Proponent has raised concerns to the Department alleging that certain members of the Planning Panel did not comply with the Planning Panel's Code of Conduct in relation to conflicts of interest. To address any perception that the rezoning review has not been impartially considered, the Commission has been requested to undertake a further rezoning review and advise on whether the planning proposal should be submitted for a Gateway determination.

2.2 Record of Decision

20. In its Record of Decision for the rezoning review, dated 31 May 2018, the Planning Panel considered that,
"there is no valid strategic planning reason why the density (proposed 5.58:1) and height (proposed 18 and 14 storeys) should be increased for this site in relation to the numerous

other sites in the R1 zone. The Panel notes that the existing planning strategy is to encourage high density tall buildings in the Strathfield and Burwood Town Centres and tapering heights and densities between the two. The existing height and density controls appear, in the Panel's view, to be appropriate for this location.

The Panel is aware of a reduced density and height proposal which was discussed at the meeting being a reduced height to 12, 10 and 9 storeys with a FSR in the order of 4.5:1. Likewise the Panel does not consider this has strategic or site specific merit."

21. The Commission notes that while the Planning Panel has commented on the reduced density option of 12, 10 and 9 storeys with a FSR in the order of 4.5:1, it has provided no reasons for not supporting this option, and further, it remains unclear whether the Panel was able to consider the alternative design.

3. THE COMMISSION'S MEETINGS AND SITE INSPECTION

22. As part of this rezoning review, on 13 September 2018 the Commission met with the Department, Council and the Proponent to discuss their considerations of the planning proposal. The Commission also visited the site on 13 September 2018. Meeting transcripts and site inspection notes have been made available on the Commission's website since 18 September 2018.

4. ADDITIONAL INFORMATION

23. At its meeting with Council on 13 September 2018 the Commission was provided with additional information, including shadow diagrams and maps of the site. This additional information has been available to view on the Commission's website since 13 September 2018.
24. At its meeting with the Proponent on 13 September 2018 the Commission was provided with additional information, including an analysis of the proposed residential flat building overshadowing Burwood Public School recreational turf area. This additional information has been available to view on the Commission's website since 13 September 2018.
25. On 21 September 2018 the Commission requested further information from Council clarifying whether it was meeting its housing targets. Council provided this clarification on 21 September 2018, which is available to view on the Commission's website.

5. THE COMMISSION'S CONSIDERATION

26. In reviewing the rezoning request, the Commission has carefully considered the following material (the **Material**):
 - the Proponent's planning proposal, dated February 2017;
 - the Department's Rezoning Review – Briefing Report (**Rezoning Review**), dated 21 March 2018, including all attachments;
 - the Proponent's Rezoning Review Application Package, including all attachments, dated 21 March 2018;
 - Burwood Council's submission to the Department, dated 17 April 2018;

- Sydney Eastern City Planning Panel’s Rezoning Review Record of Decision, dated 31 May 2018;
- information discussed with the Commission at its meeting with the Department on 13 September 2018 and provided in the transcript published on the Commission’s website;
- information discussed with the Commission at its meeting with Burwood Council on 13 September 2018 and provided in the transcript published on the Commission’s website;
- information discussed with the Commission at its meeting with the Proponent on 13 September 2018 and provided in the transcript published on the Commission’s website;
- *Planning Circular 16-004 – Independent reviews of the plan making decisions* (the **Planning Circular**);
- *Local Environment Plans: A guide to preparing local environment plans 2016* (the **Guide to LEPs**);
- *A Metropolis of Three Cities – the Greater Sydney Region Plan*, dated March 2018; and
- *Eastern City District Plan*, dated March 2018.

27. In undertaking a review of the planning proposal, the Commission has considered the strategic and site-specific merits of the planning proposal as required by the Planning Circular and Guide to LEPs, which states:

“The relevant Planning Panel or Commission will undertake a strategic and site-specific merit assessment of rezoning review proposals.”

5.1 Strategic Merit

Proponent’s consideration

28. In its planning proposal, dated February 2017, the Proponent stated that:

“while the planning proposal is not specifically a result of any strategic study or report, it is a response to an opportunity following a land consolidation and the strategic planning framework provided for by A Plan for Growing Sydney, the draft Central District Plan and the Burwood 2030 Community Strategic Plan.”

29. The Commission notes that since Proponent lodged the planning proposal with the Department, *A Metropolis of Three Cities* has become the applicable Region Plan and the *Eastern City District Plan* has become the applicable District Plan. Both plans were released on 18 March 2018. The Proponent states in its Rezoning Review Request Application Package, dated 21 March 2018, that the planning proposal is consistent with the strategic direction and vision of these plans. In addition, in its Rezoning Review Request Application Package the Proponent states that:

“the current development controls are now five years old and don’t necessarily match the existing infrastructure, the role of Burwood as a Strategic Centre and the ability of the area to support appropriate growth as part of a Priority Precinct planning process.”

30. At its meeting with the Commission on 13 September 2018, the Proponent noted the site, which they consider has good access to transport networks and employment opportunities, being approximately 500m from both Burwood and Strathfield Town Centres, has strategic merit. The Proponent also cited comparisons with another development the subject of a separate planning proposal in the Burwood Town Centre, ‘Burwood Place’, as part of their strategic merit argument for the increase in height and density sought in their planning proposal. The Proponent noted at the meeting that Council has supported a Gateway determination for this development with a

maximum building height of 144m, which had significantly increased the height controls of Council's LEP. The Proponent stated that the proposed increase in the height and scale of its planning proposal was proportionate to that of the Burwood Place proposal.

31. At its meeting with the Commission, the Proponent also noted that Burwood Council is currently meeting their housing targets.

Council's consideration

32. In its submission to the Department, dated 17 April 2018, Council stated that:

"1. There is no justification for the planning proposal's uplift in height and density in any strategic plans or studies.

2. The planning proposal compromises the hierarchy of heights established by LEP 2012 between Burwood and Strathfield Town Centres."

33. In addition, Council also stated that:

"The placement of a taller residential building outside both the Strathfield and Burwood Town Centres could set an undesirable precedent for other sites and undermine the principles of town centre planning which call for lower density areas outside town centres."

34. At its meeting with the Commission on 13 September 2018, Council stated that one of its key concerns was that the planning proposal may pre-empt the results of further strategic planning work that it anticipated for the Burwood and Strathfield Town Centres as part of the Department's proposed 'Planned Precinct' for the area. While Council acknowledged that boundaries for this precinct had yet to be established, they expected the precinct to encompass the planning proposal site and to outline controls for staging, building heights and densities of development within them, supported by evidence in the form of studies. Council noted that the planning proposal may be inconsistent with the controls proposed in these precincts and highlighted to the Commission that further strategic planning work is likely to emerge from a review of their Local Environmental Plan which is to be undertaken in the near future.

35. With regards to comparisons between the planning proposal and the Burwood Place development, Council also noted at the meeting that the Burwood Place development is likely to be one of the largest sites to be developed in the Burwood Town Centre and holds stronger strategic merit than the planning proposal, with greater public benefits.

36. In its clarification provided to the Commission on 21 September 2018, Council noted that its five-year (2016-2021) housing targets of 2,600 dwellings for the Burwood local government area under the *Eastern City District Plan* can easily be achieved.

Commission's consideration

37. The Commission notes that, as outlined in paragraph 20, the Planning Panel considered that there was no strategic planning reason why the density and height should be increased for this site, and that the existing planning strategy is to encourage high density tall buildings in the Strathfield and

Burwood Town Centres and tapering heights and densities between the two.

38. The Commission finds that although the site is located in proximity to both Burwood and Strathfield Town Centres, there is a clear hierarchy of heights between these two centres because of the tapering in building heights as outlined in the BLEP 2012. The Commission supports the Planning Panel considerations referred to in paragraph 20 and finds that there is insufficient justification to amend the current controls under the BLEP 2012 to support the increase in density and building height proposed by the planning proposal in this location at this time for the reasons given by the Planning Panel in paragraph 20.
39. The Commission supports Council's consideration, outlined in paragraph 35, and is not convinced that the Gateway determination for Burwood Place, which involves a doubling of the height from 70 to 144m within the Burwood commercial core and adjacent to Burwood Station, provides strategic context for the planning proposal and the doubling of height within its urban context. The Commission also supports Council's consideration, outlined in paragraph 35, that the planning proposal would not provide sufficient public benefit to justify its strategic merit.
40. The Commission notes Council's consideration, outlined in paragraph 32, that there is no justification for the planning proposal's uplift in height and density in any strategic plans or studies. The absence of a strategic plan or study to support the planning proposal has also been acknowledged by the Proponent, as outlined in paragraph 28. Additionally, the Commission notes that the Proponent has previously accepted an alternative 12-storey option as proposed by Cardno which was supported by Council officers. The Commission also notes that the Proponent has development approval for a lower height (10 storeys) and density option on site via application 124/2017.
41. The Commission acknowledges Council's statement in paragraph 34 that current planning controls will be reviewed through either the Planned Precinct process and/or the LEP review and local housing strategy process, consistent with the strategic directions in *A Metropolis of Three Cities* and *Eastern City District Plan*. This was also confirmed by the Department at its meeting with the Commission on 13 September 2018.
42. The Commission finds that despite BLEP 2012 being more than 5 years old, the planning proposal is premature and does not have strategic merit given:
 - pending key strategic planning investigations, including the 'Planned Precinct' process, Council's review of the BLEP, and the preparation of a local housing study, as noted in paragraph 34;
 - it is not necessary to meet Burwood Council's 5-year housing target (2016-2021) of 2,600 dwellings, as outlined in paragraphs 31 and 36; and
 - it is unlikely to deliver significant public benefits that would potentially justify increased density and heights at the subject location, as outlined in paragraph 39.

5.2 Site-specific merit

43. The Commission notes the Planning Circular states that:

“Having met the Strategic Merit Test, the relevant Planning Panel or the Commission must then determine if the proposal has site-specific merit . . .”

44. As noted in paragraph 42, the Commission finds that the planning proposal does not have strategic merit.
45. Notwithstanding the above, the Commission has considered the planning proposal’s site-specific merit in reviewing the rezoning review request in line with the requirements of the Planning Circular and Guide to LEPs, having regard to:
- i. the natural environment (including known significant environmental values, resources or hazards);
 - ii. the existing uses, approved uses and likely future uses of land in the vicinity of the land subject to the proposal; and
 - iii. the services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.

Proponent’s consideration

46. In its Rezoning Review Request Application Package, dated 21 March 2018, the Proponent states that:
- *“The site is not flood prone and is therefore not known to contain any critical habitat or threatened species, populations or ecological communities or habitats.*
 - *The urban design analysis has studied the overshadowing impacts on an hourly basis through mid-winter and comply with all controls and objectives of the Apartment Design Guide.*
 - *The full range of utility services including electricity, telecommunications, water, sewer and stormwater are all currently available on the site.*
 - *The site is well serviced by public transport being within 500 metres walking distance from Burwood train station and 510 metres walking distance from Strathfield train station. Railway Parade is also on a bus corridor with the nearest bus station approximately 50 meters to the east.*
 - *The increased traffic generated by the development will have minimal impact on the surrounding road network.”*

Council’s consideration


47. With regards to site-specific matters relating to the planning proposal, in its submission to the Department, dated 17 April 2018, Council states that:
- “3. The planning proposal has significant impacts on the amenity of the surrounding residents and school community.*
 - 4. The planning proposal has significant overshadowing and overlooking on the playground of Burwood Public School.*
 - 5. The bulk of the building as viewed from Railway Parade will dominate the streetscape and have adverse visual impact.*
 - 6. There is no documentation outlining the impacts of the planning proposal on nearby heritage items.*
 - 7. There is lack of modulation in the building as presented in the plans.”*

Commission's consideration

48. The Commission supports Council's considerations of the planning proposal outlined in paragraph 47, with regards to its impact on the amenity of existing uses in the vicinity of the site.
49. The Commission considers that the planning proposal sufficiently demonstrates site-specific merit in relation to matters i) and iii) outlined in paragraph 45. However, the Commission finds that the planning proposal has not demonstrated sufficient site-specific merit in relation to matter ii) due to its potential impact on the amenity of existing uses in the vicinity of the site.

6. THE COMMISSION'S ADVICE

50. The Commission has undertaken a further rezoning review, as requested by the Minister's delegate, as set out in paragraph 4, and provides the following advice on whether the planning proposal should be submitted for a Gateway determination.
51. The Commission has reviewed and considered the Material and met with the Department, Council and the Proponent.
52. For the reasons set out in paragraphs 38, 39, 41 and 42, the Commission finds that the Proponent has not sufficiently demonstrated strategic merit for amending the BLEP 2012.
53. For the reasons set out in paragraphs 48 and 49, the Commission finds that the planning proposal does not demonstrate site-specific merit.
54. The Commission supports the Planning Panel's recommendation and advises the Minister's delegate that the planning proposal should not be submitted for a Gateway Determination.



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Member of the Commission



Chris Wilson
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