



21 February 2019

ADVICE FOR GATEWAY DETERMINATION REVIEW

642-644, 650-658 Canterbury Road, 1-3 Platts Avenue, 2, 2A, 2B, 2C and 2D Liberty Street, Belmore (PP_2015_CANTE_006_01)

1. INTRODUCTION

1. On 7 January 2019, the NSW Independent Planning Commission (the Commission) received a referral to review a Gateway Determination pursuant to section 2.9(1)(c) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) in relation to a Planning Proposal for the site at 642-644, 650-658 Canterbury Road, 1, 3 Platts Avenue, 2, 2A, 2B, 2C and 2D Liberty Street, Belmore (the Site).
2. Pacific Planning Pty Ltd (the Proponent) seeks to amend the planning controls of *Canterbury Local Environmental Plan 2012* (Canterbury LEP 2012) to:
 - rezone the Site from part B6 Enterprise Corridor and part R3 Medium Density Residential to B5 Business Development;
 - alter the maximum building heights from 8.5 metres (m) and 12 m to variable heights, including 0 m, 3 m, 14 m, 16 m, 17 m, 18 m, 22 m and 25 m; and
 - identify the subject site as a key site under clause 1 of schedule 1 of the Canterbury LEP 2012.
3. The Proponent states that the Planning Proposal aims to enable the Site to be redeveloped for high-density mixed-use development.
4. The Deputy Secretary, Planning Services, of the Department of Planning and Environment (the Department) as delegate of the Greater Sydney Commission (at that time the relevant authority) had determined that the Planning Proposal not proceed past Gateway.
5. The Proponent requested a review of that Gateway Determination. The matter was referred to the Commission for advice to the Minister for Planning, pursuant to section 2.9(1)(c) of the EP&A Act. In providing its advice the Commission has been:

“requested to review the planning proposal and prepare advice concerning the merits of the review request. The advice should include a clear and concise recommendation to the Minister’s delegate confirming whether, in its opinion, the planning proposal should proceed past Gateway.”

6. Professor Mary O’Kane, Chair of the Commission, nominated Dr Peter Williams (Chair) and Russell Miller AM to constitute the Commission to review the Gateway Determination.

1.1 Subject site

- The Site is legally described as Lots 1, 2 and 4 DP5208, Lots A and B DP383957, Lots 1 and 2 DP514813 and Lot 51 DP6042, and is located at 642-644, 650-658 Canterbury Road, 1-3 Platts Avenue, 2, 2A, 2B and 2C – 2D Liberty Street, Belmore, within the Canterbury-Bankstown Local Government Area (LGA) (refer to **Figure 1**).

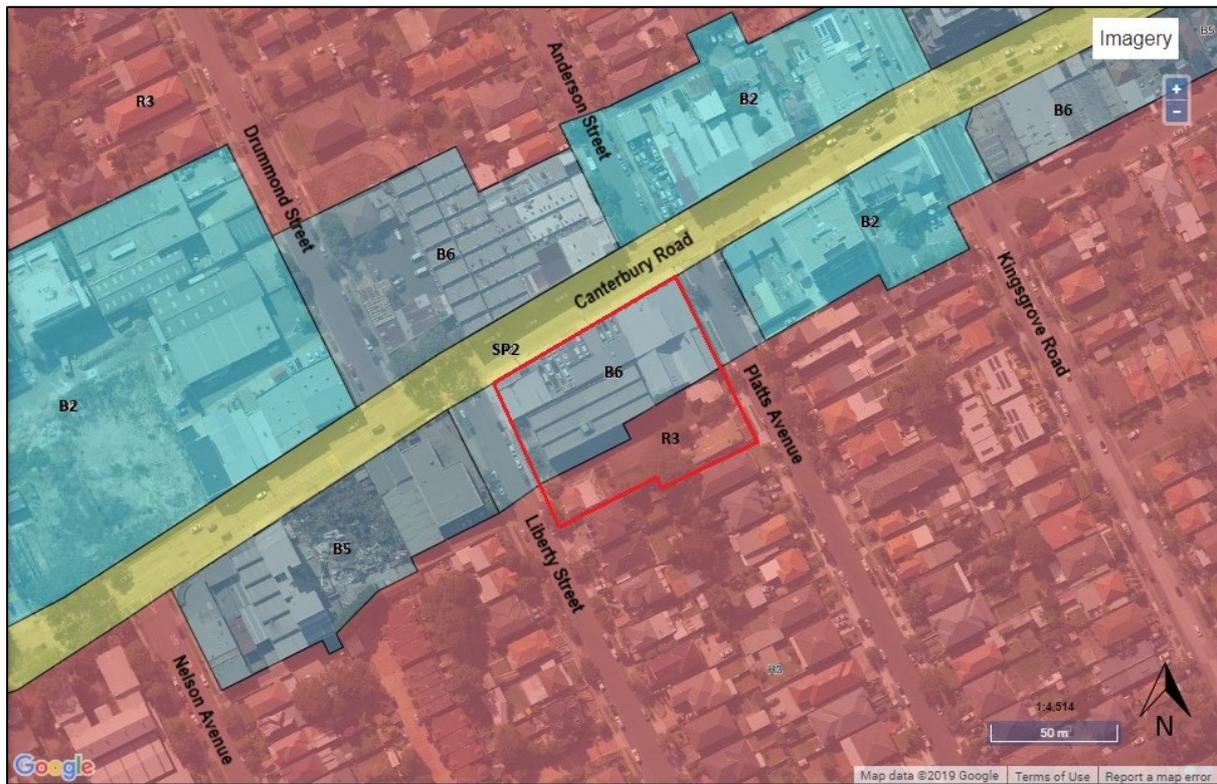


Figure 1: Site location and zoning

- The Site has an area of approximately 5,546 m². Of this, approximately 3,553 m² (64%) of the Site is zoned B6 Enterprise Corridor and 1,993 m² (36%) is zoned R3 Medium Density Residential (refer to **Figure 1**).
- The Site has frontages to Canterbury Road, Platts Avenue and Liberty Street and the land adjoining the Site is zoned SP2 Infrastructure, B2 Local Centre, B5 Business Development, B6 Enterprise Corridor and R3 Medium Density Residential.
- The Site is not wholly owned by the Proponent's principal. While the Proponent's principal owns Site A (i.e. Lots 1, 2 and 4 DP5208, Lot B DP383957, Lot 2 DP514813 and Lot 51 DP6042), a separate private landowner owns Site B (i.e. Lot 1 DP514813 and Lot A DP383957) (refer to **Figure 2**).
- Site B is wholly zoned B6 Enterprise Corridor and there is an operating smash repairs and mechanical repairs shop with petrol bowsers located on it. Under the B6 zoning, these are permissible uses as light industrial and urban service uses.
- With the exception of the land zoned R3 Medium Density Residential with three residential dwellings located on it, Site A is zoned B6 Enterprise Corridor and there is a disused furniture store and a two storey light industrial building used as a metal heat treatment factory located on it, which are both light industrial and urban services uses.



Figure 2: Site A and Site B (Source: Department's referral letter to the Commission, dated 21 December 2018)

13. Except for the two storey light industrial building, all buildings on the Site are single storey in height.

1.2 Proponent's request for Gateway Determination review

14. On 23 August 2018 the Department, as delegate of the Greater Sydney Commission, altered the original conditional Gateway Determination, and determined that the Planning Proposal not proceed past Gateway (see **section 1.4**). The Proponent then provided further information to the Department to support the Planning Proposal and reserved its right to a Gateway review.
15. On 18 October 2018, the Department issued a letter to the Proponent reaffirming its decision not to proceed with the Planning Proposal.
16. On 26 October 2018, the Proponent requested a review of the Gateway Determination in accordance with the Department's *A Guide to Preparing Local Environmental Plans* (2016).
17. On 7 January 2019, the Commission was requested to undertake the relevant review of the Gateway Determination and prepare advice concerning the merits of the review request.

1.3 Summary of Planning Proposal and Gateway Determination

18. The Gateway Determination relates to a Planning Proposal to amend the Canterbury LEP 2012 in the manner as referred to in **paragraph 2**.

1.4 History of Planning Proposal and Gateway Determination

19. The Planning Proposal to develop Site A has had a long history, commencing with an application to the then Canterbury Council in December 2014. It is not necessary to recite the whole of that history, as it is set out in the Department's Gateway Determination Report, dated 21 December 2018, and in the documentation and transcripts on the Commission's and the Department's websites.
20. A key part of that history is that on 16 October 2015, a Gateway Determination for the Planning Proposal was issued, subject to a number of conditions. The conditions required the Planning Proposal be amended to include an updated Traffic Assessment to address the requirements of Road and Maritime Services (RMS). RMS advised in its letter to Council dated 14 October 2016 that a number of these requirements had not been satisfied, and the Commission understands that the requirements have not been met at this point in time.
21. On 3 December 2015 the Proponent lodged a development application (DA-591/2015) for Site A with Council to support the current Planning Proposal. The Commission was provided with plans that accompanied the development application by the Proponent on 23 January 2019, which are available on the Commission's website.
22. In 2016 Council resolved to undertake a review of the cumulative impacts of approved and proposed development along the Canterbury Road Corridor, known as the *Canterbury Road Review*.
23. Pending that review, the Council resolved to defer all planning proposals in the Canterbury Road corridor, including the subject Planning Proposal, until the *Canterbury Road Review* was finalised.
24. The *Canterbury Road Review*, published in July 2017, proposed a new strategic planning direction for land along the Canterbury Road corridor. Both the Department and Council have advised the Commission that the Review and its supporting studies provide an overall guiding planning framework resulting in the adoption of a new strategic direction for the Canterbury Road corridor.
25. In response to the *Canterbury Road Review*, at its meeting of 26 June 2018 Council resolved not to proceed with the subject Planning Proposal, after an assessment by the Canterbury Bankstown Local Planning Panel on 13 June 2018. The primary points for refusal include:
 - insufficient justification has been provided for rezoning employment land (i.e. B6 Enterprise Corridor) to another alternate use;
 - the subject land is not within a proposed junction or locality pursuant to the *Canterbury Road Review*; and
 - the proposed maximum height and FSR is not in keeping with the maximum height of six storeys and the maximum FSR of 2.5:1 defined in the *Canterbury Road Review*.
26. On 12 July 2018, Council wrote to the delegate requesting the Planning Proposal not proceed.
27. On 21 August 2018, pursuant to section 3.34(7) of the EP&A Act, the delegate issued an alteration of the Gateway Determination, determining the subject Planning Proposal should not proceed.

28. On 13 November 2018, Council referred the Proponent's development application to the Sydney South Planning Panel recommending it be refused on the basis that the proposed development is not permitted and does not accord with the current building height controls. The Sydney South Planning Panel resolved to defer determination of the development application pending the outcome of the Gateway Determination review.

2. THE COMMISSION'S MEETINGS

29. As part of the Gateway Determination review, the Commission met with representatives of the Proponent and Canterbury-Bankstown Council on 23 January 2019, and representatives of the Department on 29 January 2019.
30. Transcripts of those meetings and the copies of the documentation presented by the Proponent and the Council was made available on the Commission's website on 24 January 2019.
31. The Commission undertook a site inspection on 23 January 2019.

3. ADDITIONAL INFORMATION

32. On 6 February 2019, the Commission received further information from the Proponent in response to questions raised by the Commission at its meeting with the Proponent on 23 January 2019. This additional information was made available on the Commission's website and included:
 - a cover submission;
 - a report by Pacific Planning (undated) addressing compatibility of the Planning Proposal with the strategic planning framework and processes; and
 - a report by Lyle Marshall & Partners Pty Ltd dated 6 February 2019 addressing the Planning Proposal's compliance with RMS traffic requirements.
33. On 21 February 2019, the Commission received further information from Council in response to questions raised by the Commission at its meeting with Council on 23 January 2019. This additional information was made available on the Commission's website and included:
 - a cover submission;
 - a letter from RMS dated 23 August 2018 regarding the development application for Site A; and
 - a copy of the Proponent's Clause 4.6 variation dated November 2015 regarding the development application for Site A.
34. The Commission also received unsolicited submissions opposing the Planning Proposal from:
 - the landowners of Site B, dated 31 January 2019;
 - residents residing in the vicinity of the Site, dated 31 January 2019; and
 - 'Keep Our Area Suburban', dated 2 February and 20 February 2019.
35. Copies of these submissions were made available on the Commission's website shortly following their receipt.

4. THE COMMISSION'S CONSIDERATION

4.1. Material considered by the Commission

36. In reviewing the Gateway Determination, the Commission has carefully considered the following material (the **Material**):
- the Planning Proposal, dated August 2015;
 - the Department's Canterbury Road, Belmore, Gateway Determination Report PP_2015_CANTE_006_01 and attachments, dated 21 December 2018 (the Gateway Determination Report);
 - the Department's referral letter to the Commission, dated 21 December 2018;
 - the Council's letter to the Department, dated 5 December 2018;
 - the Proponent's letter to the Department, dated 13 November 2018;
 - the Department's letter to the Proponent, dated 18 October 2018;
 - the Gateway Determination for PP_2015_CANTE_006_00, dated 16 October 2015;
 - the Alteration of Gateway Determination for PP_2015_CANTE_006_00, dated 21 August 2018;
 - minutes of the ordinary meeting of Canterbury Bankstown Council, held 26 June 2018;
 - minutes of the meeting of the Canterbury Bankstown Local Planning Panel, held 13 June 2018;
 - current planning controls under the Canterbury LEP 2012;
 - *Draft Canterbury Road Masterplan* (Canterbury City Council, 2010);
 - *Canterbury Residential Development Strategy* (GLN Planning, 2013);
 - *Canterbury Road Review* (Canterbury-Bankstown Council, 2017);
 - *Greater Sydney Regional Plan* (Greater Sydney Commission, 2018);
 - *South District Plan* (Greater Sydney Commission, 2018); and
 - *Sydenham to Bankstown Urban Renewal Corridor Strategy* (Department of Planning and Environment, 2017).
 - information presented and discussed with the Commission at its meeting with the Proponent and Council on 23 January 2019, and the Department on 29 January 2019, set out on the Commission's website on 24 January 2019 and on 30 January 2019, respectively, and in the publicly available transcripts;
 - additional information provided by the Proponent, dated 6 February 2019;
 - additional information provided by Council, dated 21 February 2019; and
 - three public submissions (including the owner of Site B) submitted to the Commission, one of which was received in two parts.
37. Additionally, in reviewing the Gateway Determination, the Commission has considered the views of the Department, Council, the Proponent, the issues raised in the public submissions and findings from the inspection of the Site. The Commission considered the Planning Proposal from both a strategic and site-specific viewpoint.

4.1.1. Proponent's consideration

38. In its meeting with the Commission on 23 January 2019, the Proponent reiterated its reasons for requesting the review of the Gateway Determination, as outlined in its letter to the Department, dated 13 November 2018.

39. Additionally, the Proponent provided further information to the Commission on 6 February 2019 to support the Planning Proposal. In this information, the Proponent provided a detailed response on the strategic planning framework, including the *Greater Sydney Regional Plan* and *South District Plan*, and stated that the Planning Proposal complies with several of their objectives. Additionally, the Proponent provided information to demonstrate that the support of RMS for the Planning Proposal could be obtained.
40. In response to Council’s position that insufficient justification has been provided for rezoning employment land to another alternate use, the Proponent stated, “*the loss of employment land that might arise from the scheme is insignificant*”.
41. The Proponent also stated, “*the topography of the site does not easily facilitate bulky goods type land uses and therefore the development proposal is a site-specific response to achieving employment floorspace*”.
42. Additionally, the Proponent states that if the Planning Proposal is not approved:

“The outcome here will be an isolated B6 zone surrounded by a mixed use centre, something which conflicts with the objectives of the B6 zone. Retaining the B6 zone is not appropriate or consistent with the findings of the Review or the objectives of the zone, will create land use conflict as well as make it difficult to develop in accordance with the zone from a viability aspect.”
43. In response to Council’s position that the subject land is not within a proposed junction or locality pursuant to the *Canterbury Road Review*, the Proponent acknowledges that the Site is not located within an identified junction or locality. However, the Proponent notes that the Site does adjoin the Burwood Road Neighbourhood Centre (Centre E) (see **Figure 3**) and states that the boundaries of the junctions and localities should not be applied rigidly in decisions on Planning Proposals.



Figure 3: Location of site in relation to junctions and localities identified in the *Canterbury Road Review* (Source: Proponent’s letter to the Department, dated 13 November 2018)

44. The Proponent also notes that the Site is directly between two sections of land either currently zoned B2 Local Centre or proposed to be zoned B2 in the *Canterbury Road Review*, and that if the Planning Proposal is not approved, it could result in an outcome that “causes an inconsistent island land use between the other land uses”.
45. The Proponent considers that, “it is clearly a better planning outcome to maintain a consistent zoning and land use outcome rather than what is proposed by the Review”.
46. Further, the Proponent notes that the Site:
- “is opposite a site (677, 687 Canterbury Road and 48 Drummond Street, Belmore) with a Site Compatibility Certificate (SCC) under the Affordable Rental Housing SEPP [State Environmental Planning Policy] which means that that site has been considered suitable for mixed used development as part of an affordable housing scheme.”*
47. In response to Council’s position that the proposed maximum height and FSR is not in keeping with the maximum height and FSR defined in the *Canterbury Road Review*, the Proponent states that Council’s position is, “oversimplified and lacks nuance”. The Proponent states that the *Canterbury Road Review* “omits other approved 8 storey developments nearby, and these omissions have the effect of making the planning proposal more dramatic than what it would in fact entail”.
48. The Proponent points out that the Planning Proposal is a scheme of mixed heights ranging from 0 m, 3 m, 14 m, 17 m, 20 m and 25 m (8 storeys) and notes that, “the scheme is lower than the heights proposed to be able to be achieved in the Review if significant public benefit is provided and on average lower than the heights proposed by the then Council staff in 2014 when it made the original recommendation to the then Council for a blanket 18 m height limit across the site”.
49. The Proponent also states that the Planning Proposal does meet a number of the requirements of the *Canterbury Road Review*, including:
- that it provides for a rear laneway across the back of the subject site, which would also assist in traffic management;
 - that the proposed buildings are further setback from Canterbury Road to enable the planting of urban trees in the verge and setback; and
 - that it provides for amenity improvements such as setbacks and street improvements, which should qualify it for development uplift.

4.1.2. Public consideration

50. Submissions from the public raised a number of issues, including:
- the Planning Proposal to rezone land from B6 Enterprise Corridor and R3 Medium Density Residential to B5 Business Development is not consistent with the *Canterbury Road Review* and the *South District Plan*;
 - the current land uses on Site B, that being a motor vehicle workshop, smash repairs and service station, are not permissible uses in land zoned B5 Business Development and that they would need to rely on existing use rights to continue their current use;
 - the Planning Proposal would result in land use conflicts, including between the proposed residential development and the current land uses on Site B and the proposed residential development and the land zoned R3 Medium Density Residential in the adjoining streets;

- there is no restriction on FSR in land zoned B5 Business Development;
- there would be negative traffic management and flow impacts from the increased traffic volume associated with the proposed residential development, which in turn could result in increased risks to pedestrian safety;
- the Planning Proposal would result in loss of amenity for residences within the land zoned R3 Medium Density Residential in the adjoining streets, including overshadowing, privacy and noise impacts, which could subsequently result in a loss in property values;
- there would be a loss of employment generating lands;
- there is a history of no community support for the Planning Proposal; and
- that the views of the community have not been considered in the Planning Proposal.

51. Additionally, the submitters requested a meeting with the Commission in order to have their views directly heard. Included amongst these was the owner of Site B, who objects to the Planning Proposal. However, as the submitters concerns were clearly articulated in their submissions, the Commission believed that it was fully appraised of these concerns and so did not meet with the submitters.

4.1.3. Council's consideration

52. The Council reconfirmed that it does not support the Planning Proposal for the following reasons:

- consistent with the *Canterbury Road Review*, the Site should remain employment land and not be rezoned for primarily residential purposes;
- rezoning the Site as requested would be inconsistent with, and have an adverse impact on, the plan to establish junctions and localities along the Canterbury Road corridor;
- additional multi-storey housing development would have significant traffic impacts which have not been modelled;
- B5 zoning for the Site is incompatible with appropriate management of height and density along the Canterbury Road corridor;
- there is no FSR control on any land zoned B5 Business Development along Canterbury Road, so that the only control on density is height;
- inconsistency with the *South District Plan*;
- the owner of Site B (see **Figure 2**) objects to the Planning Proposal.

53. In summarising its objections to the Planning Proposal based on its inconsistency with the *Canterbury Road Review*, Council stated:

“Rezoning the land to permit high density mixed use development would not be in keeping with the findings and recommendations of the review and as such it is considered that the land should remain in the B6 Enterprise Corridor and R3 Medium Density Residential zone.”

54. In regard to the Planning Proposal's inconsistency with section 9.1 of the EP&A Act, Council states:

“Justification is not able to be provided for rezoning employment land to another alternate use (i.e. the proposed rezoning of B6 Enterprise Corridor zoned land to allow mixed use development). Under section 9.1 of the Environmental Planning and Assessment Act 1979, Council is required to consider policy directions for plan making (i.e. for amending the CLEP). Direction 1.1 relates to retaining areas and locations of existing business and industrial zones and Direction 7.1 relates to the NSW Government's 'A Plan for Growing Sydney'. Under both directions, strong justification must be provided for rezoning employment land to another use and this has not been provided.”

55. Further in regard to the Planning Proposal's inconsistency with section 9.1 of the EP&A Act, Council states that:

“Under Planning Priority S10 of the Greater Sydney Commission's South District Plan, industrial and urban services land such as the B6 Enterprise Corridor zone is to be planned, retained and managed. Action 39 of the plan states:

Retain and manage industrial and urban services land, in line with the Principles for managing industrial and urban services land, in the South District by safeguarding all industrial zoned land from conversion to residential development, including conversion to mixed-use zones. In updating local environmental plans, councils are to conduct a strategic review of industrial lands.

Justification has not been provided by the applicant for rezoning employment land to another alternate use. Council will be undertaking a strategic review of its employment lands as part of its new LEP.”

56. With respect to the Proponent's statement that *“the topography of the site does not easily facilitate bulky goods type land uses”*, Council notes that, *“there's a number of ways to overcome a sloping site.”*
57. Council also states that, *“the direction from the Greater Sydney Commission is clear around maintaining and retaining employment and urban services land.”*

4.1.4. Department's consideration

58. In relation to strategic merit, the Department states that:

“The site of the Planning Proposal is not within the proposed centres or localities identified in the Canterbury Road Review. The Review was based on comprehensive traffic, urban design and economic studies and is aligned with the directions set out in the Greater Sydney Regional Plan and South District Plan”

59. In regard to site-specific merit, the Department states that:

“The Planning Proposal is contrary to the site-specific land use and built form recommendations of the Canterbury Road Review, including:

- *restricting multi-storey housing on this site;*
- *maintaining the B6 Enterprise Corridor zone or a similar zone;*
- *maintaining the R3 Medium Density Residential zone or a similar zone; and*
- *maintaining the current floor space and height controls for the site.”*

4.2. Commission's consideration

60. Based on the Material before it the Commission considers that, having regard to both strategic and site-specific considerations, the Planning Proposal should not progress past Gateway Determination.
61. In regard to strategic considerations, the Commission acknowledges that the landscape of the strategic planning framework has changed since the Department issued the Gateway Determination on 16 October 2015. The proposal to rezone the Site is inconsistent with the current framework, including the *Canterbury Road Review*, *Greater Sydney Regional Plan*, *South District Plan* and *Sydenham to Bankstown Urban Renewal Corridor Strategy*. While it is noted that the report by Pacific Planning does identify some areas of consistency of the Planning Proposal with the strategic planning framework, these are, in the Commission's opinion, clearly outweighed by several significant inconsistencies. These include retaining areas and locations of existing business and industrial zones; under the Greater Sydney Commission's South District Plan, industrial and urban services land such as the B6 Enterprise Corridor zone is to be planned, retained and managed; and consistent with Canterbury Road Review, the Site should remain employment land and not be rezoned for primarily residential purposes
62. Specifically, in regard to the *Canterbury Road Review*, the Planning Proposal does not correspond with any of the recommendations for the Site in terms of restricting multi-storey residential development, maintaining existing B6 Enterprise Corridor (or similar) and R3 Medium Density Residential zonings, and maintaining current height and Floor Space Ratio (FSR) provisions.
63. In respect to site-specific considerations, the Commission accepts that the reasons given by the Council and the Department for opposing rezoning of the Site are valid as outlined in the Department's Gateway Determination Report, as are the objections of the landowner of Site B.
64. Regarding the Proponent's argument that the Site would be an isolated B6 zone surrounded by a mixed use centre if the Planning Proposal is not approved, the Commission considers rezoning the Site as requested would be inconsistent with the approach of the *Canterbury Road Review*, which aims to establish mixed use development with multi-unit housing at junctions and localities along the Canterbury Road corridor, interspersed by islands of light industrial and urban service uses. Rather than leaving an isolated site, the intention of the Canterbury Road Review is to avoid unbroken high-rise residential development along Canterbury Road, by having it interspersed with employment and urban services uses.
65. Regarding the SCC for mixed use development proposed for the site across Canterbury Road from the Site, which is due to expire on 15 July 2019, the Commission notes that the Proponent, Council and the Department had differing views about whether the development would proceed. Regardless, if a development application were to be lodged for that site, it would need to comply with the relevant planning controls that apply to the site, which include a maximum height limit of 12 m (i.e. 3 storeys). If the development does not proceed, the zoning would remain as is (i.e. B6 Enterprise Corridor).

66. The Proponent, via a submission dated 6 February 2019, sought to demonstrate whether the support of Roads and Maritime Services (RMS) for the Planning Proposal would be capable of being obtained. While the Commission acknowledges that such support might be possible in the future, the current position of RMS, as indicated in its most recent advice of 14 October 2016, is to the contrary as RMS has recommended that planning proposals for Canterbury Road not proceed until the strategic planning direction for the Canterbury Road corridor has been finalised, so that improvements (i.e. land and infrastructure components) can be determined. The information provided in the Proponent's submission does not address this recommendation. RMS concerns address broader strategic planning issues, which cannot be dealt with through traffic management treatments at the development application stage, which the Proponent has sought to demonstrate.
67. Although at this Gateway review stage it is not for the Commission to assess the development application, the Proponent provided it to the Commission to indicate the type of development that might be undertaken on the Site. The Commission noted that the development application did not envisage more than 804 m² of net commercial space within Site A (split over two levels with 381 m² at ground level and 421 m² at lower ground level), and the requirements for meaningful employment uses in a B5 Business Development zone could only be achieved if Site B were to be developed.
68. Further, having visited the Site and observed the topography and existing uses of the Site, the Commission does not agree with the Proponent's argument that *"the topography of the site does not easily facilitate bulky goods type land uses"*, and considers that the Site is suitable for employment uses consistent with the current B6 Enterprise Corridor zoning.
69. The Commission also notes the strong objection of the landowner of Site B and the apparent inconsistency of the current land use of Site B with the proposed B5 Business Development zoning.

5. THE COMMISSION'S ADVICE

70. For the reasons set out in this report, the Commission advises the Minister's delegate that the Alteration of Gateway Determination, dated 21 August 2018, should not be overturned and accordingly the Proponent's application should be rejected.



Dr Peter Williams (Chair)
Member of the Commission



Russell Miller AM
Member of the Commission