

Our Ref: TAN.1607636

13 November 2018

Mr Marcus Ray  
Deputy Secretary, Planning Services  
NSW Department of Planning and Environment  
320 Pitt Street  
SYDNEY NSW 2000

By email: [marcus.ray@planning.nsw.gov.au](mailto:marcus.ray@planning.nsw.gov.au)

Dear Marcus

**Gateway Determination Review (PP\_2015\_CANTE\_006\_00)  
642-644, 650-658 Canterbury Road, 1-3 Platts Avenue and 2-2D Liberty Street, Belmore**

As you know, we act for the proponent of this Planning Proposal.

As foreshadowed in previous correspondence, we write to you in relation to a Planning Proposal to amend the land use zone and maximum building height control under the Canterbury LEP 2012 for land at 642-644, 650-658 Canterbury Road, 1-3 Platts Avenue and 2-2D Liberty Street, Belmore.

Specifically, on 21 August 2018, as delegate of the Greater Sydney Commission, you determined under section 3.34(7) of the *Environmental Planning and Assessment Act 1979* (NSW) (**EP&A Act**) to alter the Gateway determination dated 16 October 2015 from "should proceed" to "should not proceed".

In accordance with the Department of Planning and Environment's "*A Guide to Preparing Local Environmental Plans (August 2016)*", a Gateway determination review was requested on 26 October 2018 because the Gateway has determined that "the planning proposal should not proceed". The original request and acknowledgment of receipt is included at **Attachment 1**.

This submission explains why our client has sought the Gateway determination review.

## 1. The site

We are instructed of the following:

1. The site is located on the southern side of Canterbury Road, Belmore between Platts Avenue and Liberty Street in Belmore. The concept plan for the site also includes 650-658 Canterbury Road and 2 Liberty Street to prevent it from becoming an isolated site. Figure 1 differentiates between the two sites currently under separate land ownership.
2. The land is currently occupied by low grade industrial and disused commercial units, a service station with ancillary auto electrical mechanic workshop with single storey residential dwellings to the south of the site.

COLIN BIGGERS  
& PAISLEY PTY LTD  
ABN 28 166 080 682  
T +61 2 8281 4555  
F +61 2 8281 4567

Level 42  
2 Park Street  
Sydney NSW 2000  
Australia

GPO Box 214  
Sydney NSW 2001  
Australia  
DX 280 Sydney

3. The following land use zones and development controls currently apply to the site.
  - (a) Land Use zone – part B6 Enterprise Corridor and part R3 Medium Density Residential; and
  - (b) Maximum building height of part 12 metres and part 8.5 metres.
4. The photo at Figure 1 below identifies the site.



**Figure 1:** Site identification

## **2. Background**

In relation to the relevant background, we are instructed as follows:

### **Canterbury Residential Development Strategy**

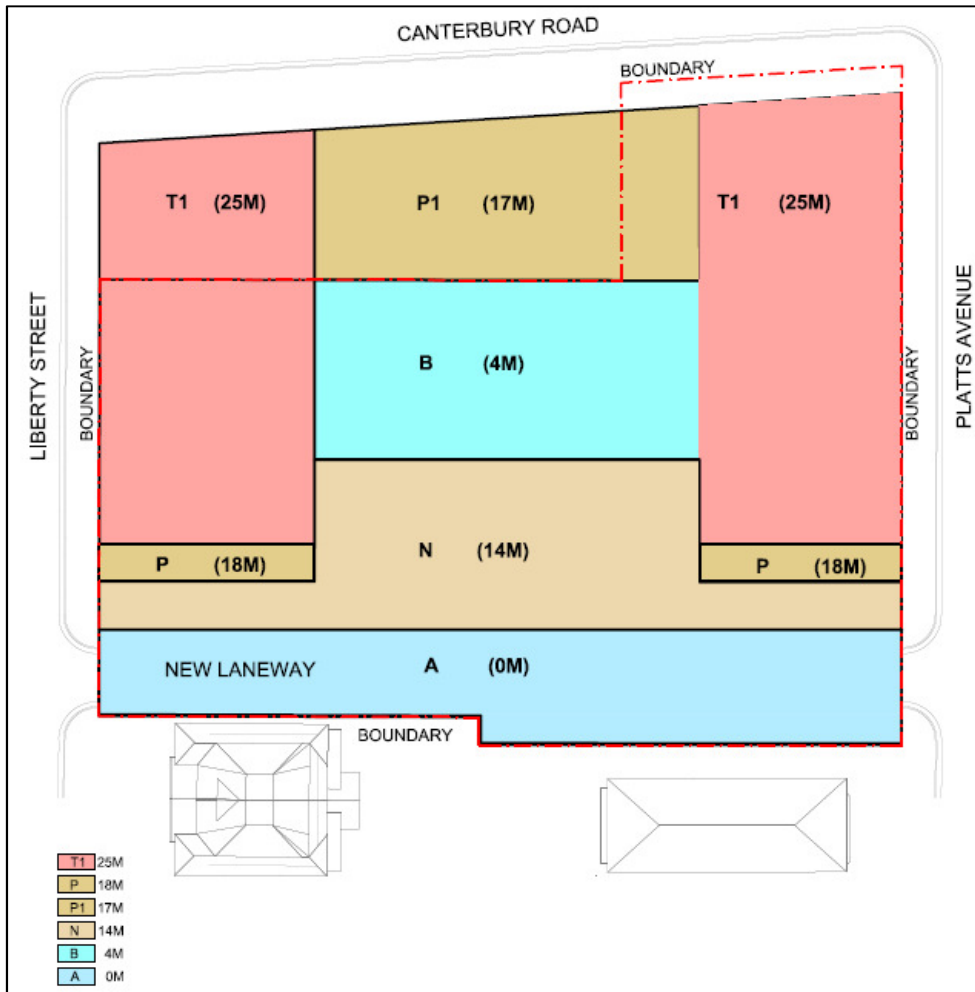
5. The subject site was initially part of the Canterbury Residential Development Strategy (RDS), which identified a preferred zone of B5 Business Development and a maximum height of 18 metres in line with the building height elsewhere in the B5 zone. The proposal applied to the broader block, that being 642-658 Canterbury Road and 2, 2B and part 2C-2D Liberty Street, Belmore.
6. The Canterbury RDS Planning Proposal received a Gateway determination on 7 March 2014 and was publicly exhibited in June and July 2014. The matter was reported back to Council on 2 October 2014 where Council resolved:

*“Proposed changes to 677-687 Canterbury Road and 48 Drummond Street, Belmore, 642-658 Canterbury Road, and 2, 2B and part 2C-2D Liberty Street, Belmore be deferred to allow further community consultation, traffic impact and consideration of the proposed building mass on the site and that the current planning controls remain in place for Lot 91 in DP 3682”.*

7. A new Planning Proposal was anticipated for the subject site and no further assessment or consultation was undertaken.

**New Planning Proposal PP\_2015\_CANTE\_006\_00 (Planning Proposal)**

8. The Planning Proposal was lodged with Canterbury City Council (**Council**) on 11 December 2014. The Planning Proposal was sought to amend the Canterbury LEP 2012 as follows:
  - (a) to rezone the subject site from part B6 Enterprise Corridor and part R3 Medium Density Residential to B5 Business Development; and
  - (b) amend the maximum building height from 12 metres to a range of heights including 4 metres, 14 metres, 25 metres and 30 metres.
9. In March 2015, Council engaged Annand Associates Urban Design to provide an independent Urban Design assessment of the subject planning proposal. The independent Urban Design analysis supported an amendment to the development controls for the subject site as follows:
  - *“Increase building height to 25 metres, 8 storeys maximum*
  - *Rezone the site to B5 Business Development*
  - *The 45° height planes should remain from the new residential boundary at the rear;*
  - *Permit localised building heights to 8 storeys with some reduction of central Canterbury Road frontage to 4 storeys.”*
10. Subsequently the Planning Proposal was progressed in accordance with the independent review to the Department of Planning and Environment for a Gateway determination. A Gateway determination was issued on 16 October 2015 by the Department of Planning and Environment as the Minister’s delegate.
11. The site-specific planning process to the land enabled further and more detailed planning consideration for the land. The result was an application with a range of heights and the incorporation of a through site link laneway to assist with traffic management and transition to lower density zones. This is depicted in Figure 2 below.



**Figure 2:** Proposed Maximum Height of Building Map

12. A Development Application was also lodged in December 2015 (at Council's request) to assist with the assessment of the Planning Proposal by Council and the RMS by providing details of the development outcome sought.
13. A Development Application with detailed urban design was prepared addressing the matters raised by Council's independent consultant. This included a maximum height of 8 storeys, with 4 storeys across part of the frontage to Canterbury Road. Further, it was important to ensure 45° height planes could remain from the new residential boundary at the rear. The result was a variety of building heights across the south of the site. This is illustrated in the diagrams in Figure 3.



**Figure 3:** Indicative concept plans

14. The Planning Proposal was exhibited in August 2016 following the resolution of issues raised by the RMS. These included the submission of a DCP that contained the site-specific traffic issues requested by the RMS.
15. RMS' support for the Planning Proposal following public exhibition was made subject to the implementation of local traffic management measures.
16. Despite the extensive work undertaken and the general support for the design, density and variety of heights on the site, Council resolved at its meeting of 22 November 2016 to defer a number of planning proposals *"until review of the Canterbury Road Corridor has been finalised and a clear policy direction is endorsed"*. An extract from the Council report is included below as it relates to the subject site:

642 Canterbury Road, Belmore	Rezone from part B6 and part R3 to B5  Range of building heights up to 25 metres  Remove FSR controls	Conditional Gateway Determination issued	Defer until the review of the Canterbury Road Corridor has been finalised and a clear policy direction is endorsed.
------------------------------	---	--	---

**Figure 4:** Extract from Council resolution of 22 November 2016

### 3. Canterbury Road Corridor Review (Review)

We are instructed to make the following remarks about the Review given the Review appears to have formed an important factor in the 21 August 2018 decision:

17. The formal genesis of the Review occurred on 26 July 2016 and 23 August 2016, when the Administrator of the new merged Council (City of Canterbury Bankstown) resolved to

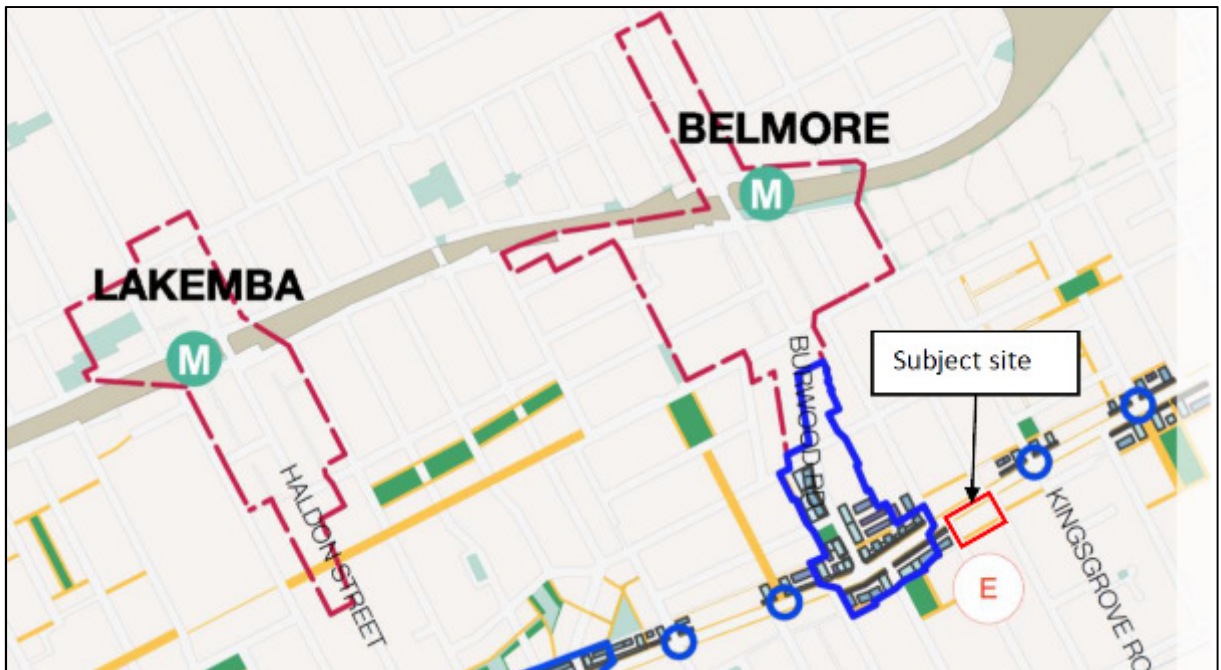
commence a strategic review of the existing policy framework for the Canterbury Road corridor indicating that Council together with the Department of Planning and Environment would undertake a review of the planning controls for Canterbury Road.

18. The Review would establish the long-term vision for the Corridor, considering:
  - (a) Recent approvals.
  - (b) Current Planning Proposals.
  - (c) The current planning framework.
  - (d) The proposed traffic solutions such as laneways.
  - (e) The draft Sydenham to Bankstown Corridor Strategy.
19. Council endorsed the establishment of a steering committee with the Department of Planning and Environment and other NSW Government agencies such as the RMS.
20. Almost a year after the initial resolution, on 25 July 2017, the Council endorsed the Canterbury Road Review for the purposes of public exhibition. The Review was supported by Urban Design, Economic and Transport and Traffic Studies.
21. The key findings identified in the Review (to create a new vision for the Corridor) include:
  - (a) A concentration of mixed use development with multi-unit housing in 7 identified junctions – locations where streets that connect north to the railway line form a junction with Canterbury Road.
  - (b) Additional mixed-use housing in a further 11 localities. These locations are on land that provides for housing in a mixed-use development.
  - (c) To exclude multi-storey housing from other land fronting Canterbury Road.
  - (d) Potential streetscape enhancement works concentrated in the junctions and localities.
  - (e) An indicative built form with a maximum of 6 storeys.
  - (f) A longer-term investigation of the possibilities to address the critical shortage of open space.
22. In relation to Planning Proposals within the corridor, the Review states:

*“Council will need to review outstanding Planning Proposals for consistency with this review. Where a Planning Proposal is not consistent with this Review proponents will have the opportunity to revise proposals to demonstrate compliance or to propose other actions that achieve the corridor vision, for example land offsetting or dedication of open space.”*
23. This is important considering the Planning Proposal pre-dated the Review.
4. **Relevance of Corridor Review to 642 – 644, 650-658 Canterbury Road, 1-3 Platts Avenue, 2A, 2B, 2C and 2D Liberty Street, Belmore**

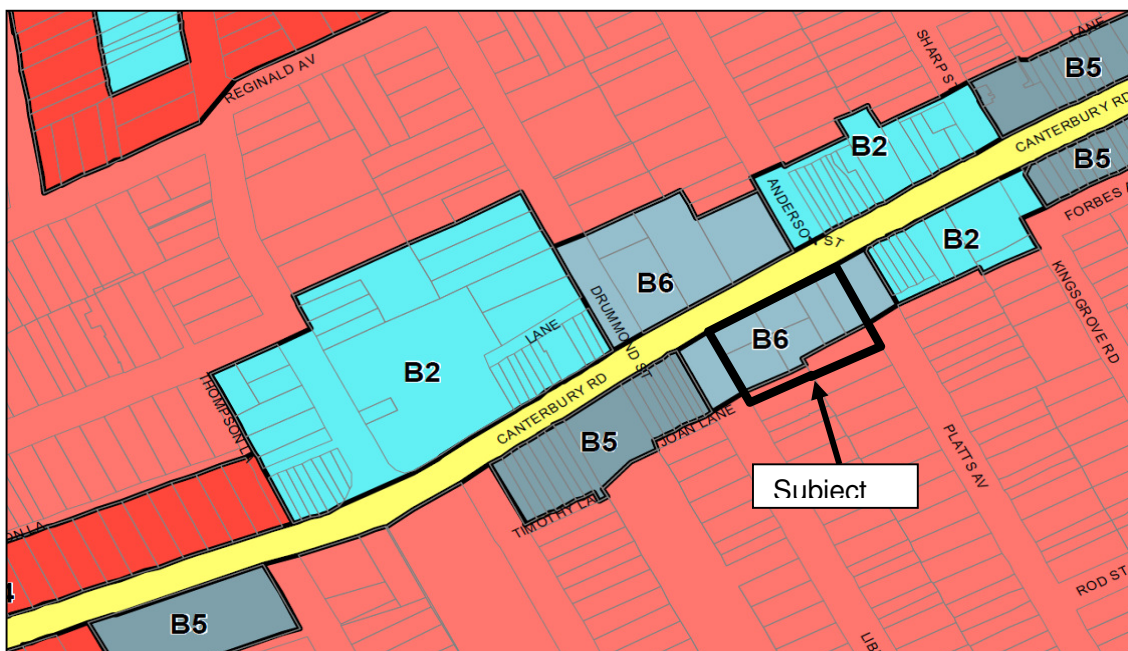
We are instructed to make the following comments about the Review as it relates with the site:

24. The site is not located within one of the 7 junctions or 11 localities identified along the Canterbury Road corridor. It does however adjoin Centre E – Burwood Road Neighbourhood Centre. This is shown at Figure 5 below.



**Figure 5:** Site location in context of Canterbury Road Corridor Review

25. Figure 6 below shows the site in its zoning context.



**Figure 6:** Canterbury LEP Zoning Map

26. As can be seen from the recommendation of the Canterbury Road Corridor Review (Figure 5) and the existing zoning map (Figure 6), the site:
- essentially adjoins *existing* B2 zoned land to the east;

- will adjoin future B2 zoned land to the west;
  - is diagonal to a stretch of B2 zoned land on the north side of Canterbury Road;
  - 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 which means that that site has been considered suitable for mixed use development as part of an affordable housing scheme.
27. In relation to this last point, it should be noted that the Department of Planning and Environment recently considered Council's request to revoke the SCC for the site opposite. This request was rejected by the Deputy Secretary of the Department of Planning and Environment on 2 November 2018, further reinforcing the suitability of the location for mixed use development. A copy of the Department of Planning and Environment's advice is included at **Attachment 2**.
28. The proponent is perplexed as to why the site, which has well advanced applications on it, lacks the strategic and site specific merit for the Planning Proposal to proceed since the effect of the decision is to render the site as an isolated site surrounded by mixed-use development. This is also at odds with the existing zone objective for the B6 Enterprise Corridor to promote business along main roads, when the site is surrounded by mixed-use development. The decision is even more confounding when one considers the land surrounding the site which is considered suitable for mixed use development. For reasons that have not been explained, the effect of the decision to alter the Gateway in effect implies that the subject site is not considered appropriate for mixed use development, despite the extensive urban design analysis undertaken through the Part 3 and Part 4 processes over the last 5 years, and potential future land use conflict associated with development in the B6 zone.
29. Finally, a report was considered by Council at its meeting of 22 May 2018 in relation to the Review. The report, in noting the status of the Review, states:
- "In order to address the majority of submissions made in relation to the Canterbury Road Review detailed in Attachment C and D, it is important to gain the in-principle agreement for the review and commence the further work which will provide the detail required to articulate the benefits or otherwise prior to Council making any final decisions."*
30. Subsequently, Council resolved the following:
- "Council adopt in-principle the Canterbury Road Review included at Attachment A subject to further work and reporting back to Council for approval, with the exception of Recommendation 14."*
31. In this statement and resolution, Council implicitly acknowledges that further work and scrutiny of more detailed planning of the Corridor is required. It cannot and should not be taken to be the final strategic planning document for the area. The Review has been adopted "in-principle" and "further work" is required. It is clearly not the intention of the Review to create an isolated site surrounded by mixed use development. This does not achieve the objectives or vision for urban renewal of the Review, and will only result in significant land use conflict.

## 5. Gateway Review Request

We are instructed to make the following remarks about Council's reasoning in recommending the Planning Proposal not proceed given these appear to have been given weight in the decision to alter the Gateway determination:



32. The Planning Proposal was considered by Council on 26 June 2018. It resolved that a request be made to the Department of Planning and Environment that the matter 'not proceed'.
33. The report makes three primary points for refusal:
- (a) Insufficient justification has been provided for rezoning employment land to another alternate use (i.e. the proposed rezoning of B6 Enterprise Corridor zoned land).
  - (b) The subject land is not within a proposed junction or locality pursuant to the Canterbury Road Review.
  - (c) The proposed maximum height and FSR is not in keeping with the maximum height of 6 storeys and the maximum FSR of 2.5:1 (residential 1.9:1 and 0.6:1 commercial) defined in the review.
34. After Council's resolution was made, on 21 August 2018 the Gateway determination was altered as follows:

*"I have reviewed the information and the reasons Council has provided requesting that the planning proposal not proceed. I have determined as the delegate of the Greater Sydney Commission, in accordance with section 3.34(7) of the Environmental Planning and Assessment Act 1979, to alter the Gateway determination dated 16 October 2015 for planning proposal no. PP\_2015\_CANTE\_006\_00 (as since altered) 14 November 2016".*

35. Additional material was provided by this office to the Department for consideration on 21 August 2018 - about the same time as the altered Gateway determination occurred. This material was considered and a response received on 18 October 2018, which concluded:

*"Having examined the issues you raise, I am satisfied that the Department gave proper consideration to Council's request and has followed the statutory process in altering the Gateway determination so the planning proposal does not proceed."*

*"Your client's rights to a review of my decision should they seek a Gateway review, as previously advised, may be requested within 21 days from receipt of this letter."*

36. In accordance with the Deputy Secretary's comments, on 26 October 2018, we requested such a review by the Independent Planning Commission (**IPC**). As mentioned previously, the purpose of this submission is to inform that review of the proponent's reasons as to why the decision on 21 August 2018 should be reversed.
37. Using the reasoning of Council, which was referred to in the altered Gateway determination, we set out below our client's reasons in support of the request:

(a) **Insufficient justification re employment land**

The Gateway determination and letter at **Attachment 4** addresses this issue. This letter clearly states that the Secretary has considered the issue of the relevant s117 Direction 1.1 (now 9.1 Direction) Business and Industrial Zones as being of minor significance. It was stated that **no further approval is required in relation to this direction**. This direction from the delegate to the Council formally approved any inconsistency and as a result it should not be an issue for consideration, as to do so undermines the authority of the Minister.

Even if the undermining of the s117 Direction were accepted, it is instructive to consider the logic behind the delegate forming this conclusion. The reason is very simple. The loss of employment land that might arise from the scheme is insignificant. Currently the employment component on the land provides a GFA of approximately 2,188sqm (source DPE planning team report 16 Oct 2015). At the time of the delegate considering this issue it was considered that the Planning Proposal would result in 1,245sqm of commercial space and as such was a minor impact.

Further study and detailed analysis that has been provided following the initial Gateway determination through an assessment of the development potential of the site including a detailed development application and study of site A and site B as required by one of the conditions of the Gateway. The actual result when a final development is completed will be the provision of approximately 2,490sqm of commercial GFA. Ironically, this is greater than the amount currently provided and of a far superior standard, and more likely to produce meaningful employment generating space attached to a mixed use development with facilities. Further, 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. For the Council report to claim that an alleged reduction in employment land was a reason for the Planning Proposal not to proceed is with respect absurd, considering that the above.

The recommendations of the Review were in part informed by the SGS Economics and Planning's study of the Canterbury Road corridor. PPM Consulting were engaged by the proponent to undertake a critique of the SGS study. The critique is included as an attachment to the submission to the Review included at **Attachment 5**.

In summary, the critique by PPM Consulting concludes that "*nodal intensification will leave swathes of the corridor dilapidated and under-developed, and may result in higher vacancies as businesses move to new premises under residential developments.*" Further, the SGS analysis itself makes clear that bulky goods retailers cannot attract enough passing traffic to stop, due to the spread-out nature of the offering, lack of parking and other restrictions on viability.

Accordingly, 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.

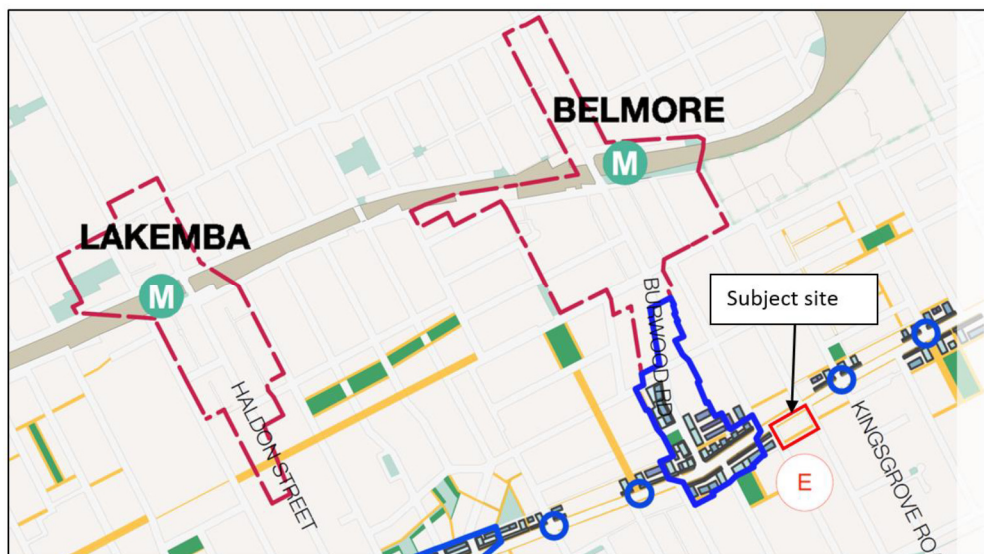
(b) **The land is not within a proposed junction or locality**

This statement is oversimplified and omits the bigger picture. It provides a convenient way to dismiss the Planning Proposal instead of considering the broader implications. What should be stated is that the site is directly between two sections of current and proposed B2 zoned land, as prescribed in the draft Review. A detailed submission was provided to the Council during the exhibition process (**Attachment 5**) of the draft Review which questioned the logic for the 'boundaries', since they will create an outcome that results in an isolated site and an island sandwiched between two B2 sites thereby generating land use conflicts and an irregular development pattern along this section Canterbury Road.

The reason provided by Council for this disparity was to protect employment land. We again draw attention to point (a) above where it is clearly shown that additional employment floorspace will be provided in a new scheme over and above what is provided now.

The Council's statement that the Planning Proposal is inconsistent with the Review is unsound for the reasons that are set out below.

- (i) Firstly, it needs to be considered whether the site is located within one of the 7 junctions or 11 localities identified along the Canterbury Road corridor. It is conceded that the site is not located within a junction or locality. However, importantly, it instead adjoins Centre E - Burwood Road Neighbourhood Centre, as is demonstrated by the image extracted from Figure 5 of the Canterbury Road Review dated July 2017, that has been marked up with the location of the site below.



- (ii) It is noted that there is no built form massing identified for the site in the Review, yet the Review recommends quite prescriptive controls for the junctions. Despite this, no detailed site-specific assessment of the application of these controls has been undertaken in the Review. This questions the integrity of the boundaries to the junctions and localities, and the exclusion of the site demonstrates this point. Moreover, no rationale has been provided (even upon request) for the Burwood Road Neighbourhood Centre boundary, which draws the conclusion that it is because it is arbitrary. The intention of the Canterbury Road Review was set out in the agenda to the Council meeting that occurred on 25 July 2017, together with the full report. The agenda stated the intended use of the report was to "Inform decisions on planning proposals related to the corridor and surrounding land." Therefore, the report is not intended to determine the outcome of planning proposals but to inform them. To emphasise that point, the Review also states that its recommendations:

*"Are a guide against which current Planning Proposals for land on the Canterbury Road Corridor can be evaluated".*

Given the status of the Canterbury Road Review - a guide - we strongly disagree with the rigid application of the Review because the land is not within an arbitrarily defined "centre". The dogmatic application of the centre in this circumstance will lead to an absurd planning outcome for this site.

- (iii) What should be stated is that the site is directly between two sections of current B2 land and proposed future B2 land as prescribed in the draft Review. A detailed submission was provided to the Council during the exhibition of the draft Review. That submission called into question why an

outcome would be proposed that causes an inconsistent island land use between two other land uses (i.e. a B6 use between a current B2 Kingsgrove centre and a proposed new Burwood Road centre to be considered as B2). The Planning Proposal actually seeks to provide a scheme which is more consistent with the character of the adjoining existing Kingsgrove centre and the proposed Burwood Road centre.

Further, as previously discussed the land directly opposite benefits from a SCC that will facilitate mixed use development because the Department of Planning and Environment considers this use to be 'compatible' with its surroundings.

It is clearly a better planning outcome to maintain a consistent zoning and land use outcome rather than what is proposed by the Review. Our client's contend that because this application was initiated from the previous Council's strategic planning, this proposal has been dismissively typecast as inappropriate without proper merit assessment of the site's attributes and how the issues raised can be resolved.

(c) **The proposed height and FSR is inconsistent with the draft strategy**

Again, this statement is oversimplified and lacks nuance. It does not properly compare the scheme with Council's own draft strategy provisions.

The Review identifies that where density is aligned with amenity, heights of 6-9 storeys can be accommodated. Page 5 of the Urban Design report states:

*"An integrated approach is also proposed where higher density forms of 6-9 storeys are located to overlook the new network of parks and green streets. In this way there is a strong alignment of urban density and amenity which is significantly bolstered by the green grid\* initiatives."*

In this regard, the Review foreshadows increased densities where amenity improvements are created, such as adjoining public open space. The yield table only identifies 6 storey and 9 storey footprints. The site is located between centres E and F for which no 9 storey development is proposed. It conveniently 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.

This Planning Proposal is a result of a detailed and independent Council appointed urban design study. It also reflects consultation by the Proponents' architectural team and Council staff. The result is a scheme of mixed heights ranging from 0m, 3m, 14m, 17m 20m to 25m (8 storeys). 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 18m height limit across the site.

The Review seeks the provision of rear laneways across the back of the subject site to be dedicated. This assists with the Review objective "to provide a variety of well distributed local parks and connective streets, lots could be required to make dedications to qualify for development uplift". In this respect, increases in yield are proposed where land dedications are sought, such as laneways and front setbacks, which this Planning Proposal provides. The provision of a laneway is included to also assist traffic management, which is a significant public benefit.

26 October 2018  
Mr Marcus Ray

The Review proposes buildings being further setback from Canterbury Road to enable the planting of urban trees in the verge and setback. Again, this application provides for exactly that outcome.

The Review includes the site within the contributions schedule to provide for amenity improvements such as setbacks and street improvements in order to qualify for development uplift. That issue has been a key primary merit consideration for this Planning Proposal that has resulted in detailed and considered merit based study and endorsement by Council on these very issues, all of which has created a high-quality scheme.

## 6. Conclusion

38. This request is submitted to the Department of Planning and Environment in support of the request dated 26 October 2018 to review the Gateway determination dated 21 August 2018.
39. We request that this submission be provided to the IPC for consideration.

Yours faithfully



**Todd Neal**

Partner

Email: [todd.neal@cbp.com.au](mailto:todd.neal@cbp.com.au)

Direct Line: 02 8281 4522

## **Attachments**

Attachment 1 – Formal Request for Review dated 26 October 2018 and acknowledgment dated 29 October 2018.

Attachment 2 – Department of Planning and Environment advice regarding Site Compatibility Certificate dated 2 November 2018.

Attachment 3 – Chronology.

Attachment 4 – Gateway determination and letter.

Attachment 5 – Submission to Canterbury Road Corridor Review.

Attachment 6 – Submission to CBLPP.

Attachment 7 – Ann and Associates Independent Report.

Attachment 8 – Draft DCP.

Attachment 9 – DA 25 metre height plane.

Attachment 10 – Certification of ADG.

Attachment 11 - SEPP 65 compliance statement and certification.

Attachment 12 – DA Photomontage.

Attachment 13 – Stanisic Plans: Site A and Site B Study.

Attachment 14 – Landscape Plan.