

Abigail Goldberg
Chair
Sydney Central City Planning Panel
GPO Box 39
SYDNEY NSW 2001

Dear Ms Goldberg,

Planning proposal PP_2016_THILL_016_01 – Review of Additional Information and Recommendation to finalise

I refer to the planning proposal PP_2016_THILL_016_01 to amend the land use zone, building height and floor space ratio development standards under *The Hills Local Environmental Plan (LEP) 2019* for the land at 360-378 Windsor Road, Baulkham Hills, known as the 'Bull and Bush Hotel' site.

This letter provides an update on progress of the proposal since the Sydney Central City Planning Panel's (the Panel) May 2020 Determination (**Attachment A1**) and September 2020 Record of Briefing (**Attachment A2**), and a review of the information submitted (**Attachments C1, C2**).

The applicant and Council have provided written progress updates to the Department in accordance with the Panel's May 2020 determination which have been issued to the Planning Panels Secretariat previously. A significant amount of work has been undertaken by both parties with the proponent submitting specialist consultant reports and a draft Development Control Plan for the Department's and Panel's consideration, and a draft Voluntary Planning Agreement (VPA) which is currently being considered by The Hills Shire Council (Council).

This planning proposal is required to be finalised by the 31 December 2020 as per the Gateway alteration issued in November 2020. Council's letter dated 3 November 2020 (**Attachment B1**) states that *"if DPIE requires the Panel to make a final decision on the proposal prior to 31 December 2020, it is considered that there would be no reasonable option but for the Panel to determine that the proposal not proceed, given there would be no agreed or executed VPA and no draft or adopted Development Control Plan"*. Council also wrote to the Panel (**Attachment B2**) reiterating its objections to the proposal proceeding.

At the date of this letter additional work is required on the draft Local VPA and draft DCP prior to finalising these documents. The terms of the draft VPA have not been agreed upon in respect of a number of matters including components from Council's September 2020 resolution, the VPA has not been executed by the proponent and it has not progressed to public exhibition.

Securing the public benefit associated with this planning proposal is fundamental to the Department's support for the scheme. It is critical that the public benefit, particularly the community facility and library, is defined, agreed and secured before

the rezoning takes place. The Department's view is that the local contributions have not been agreed to and secured, and therefore the planning proposal is not supported.

However, the mechanisms below are suggestions as to how the outstanding matters might be able to be addressed if the Panel directs the Department to finalise the LEP:

- A deferred commencement of the LEP is recommended until June 2021 to allow a DCP to be in place and guide design of the development. A clause will also be inserted to require the preparation of a development control plan prior to development consent being granted;
- Require a minimum floor space area of 6,040m² of commercial premises (which would include a pub), 2,500m² for a community facility including library and a dwelling cap of 200 dwellings;
- Additional provisions regarding design excellence as outlined in **Attachment C1**;
- Additional provisions requiring Transport for NSW concurrence to a development application prior to development consent as outlined in **Attachment C1**;
- The requirement for the concurrence of the Planning Secretary to be issued prior to development consent being granted. The Planning Secretary is to consider the following:
 - The function and interface of the public domain, public plaza and pedestrian through site-link, to the built form;
 - Interpretation of the heritage item, bull and bush hotel (item I30);
 - Delivery of community facility and library.

The outcomes of the Department's assessment of outstanding matters including the DCP, employment floorspace, height and previous matters raised by the Panel are outlined in **Attachment C1**.

If the Panel determines the proposal is to proceed to rezoning, it is recommended that the Panel continues to work with the Department to refine the DCP with the Department in 2021. The DCP can be made by the Planning Secretary.

If you have any questions in relation to this matter, I have arranged for Ms Elizabeth Kimbell to assist you. Ms Kimbell can be contacted on 9860 1521.

Yours sincerely,



26/11/2020

Catherine Van Laeren
Executive Director, Central River City & Western Parkland City
Greater Sydney, Place and Infrastructure

Attachments:

- A1 – Panel Determination May 2020
- A2 – Panel Record of Briefing September 2020
- B1 – Council letter dated 3 November 2020
- B2 – Council letter to Panel dated 23 November 2020
- C1 – Review of additional information and Department advice
- C2 – Summary of additional information submitted
- D1 – Draft DCP
- D2 – Summarised key issues
- D3 – A peer review of the proposed public domain
- D4 – Traffic Statement
- D5 – Preliminary Arboricultural Assessment
- D6 – Baulkham Hills Retail and Commercial Assessment
- D7 – Gilbert Tonin letter – VPA
- D8 – Knight Frank covering letter 6.10.2020
- D9 – Knight Frank covering letter supporting reports
- D10 – Knight Frank covering letter supporting revised DCP

Attachment C1 Review of Additional Information and Department advice

1. Panel advice – September 2020 Record of Briefing

The Panel's advice from the September 2020 Record of Briefing (**Attachment A2**) identified matters the proponent should address in further development of the draft DCP. This section includes:

- Section 1.1 identifies the key issues raised by the Panel and where the DCP address those issues.
- Section 1.2 outlines matters the Panel did not support (at that stage),
- Section 1.3 provides the Department's recommendations with progressing the draft DCP.

1.1 Draft Development Control Plan

The draft DCP provides objectives and controls to guide development on the subject site. Key controls are summarised below:

ISSUE	DRAFT DCP LOCATION
ACTIVE FRONTAGES	Section 2.1(d) include a list of speciality retail shops to meet active frontage requirements. Section 2.4 includes a new map of active and desired active frontages for built form.
HEIGHT OF BUILDINGS CONTROL & CORRELATION WITH STOREY CONTROL	Section 2.7 provides objectives and controls relating to building height eg. transition of height. Number of storeys are shown in Figure 4 indicating maximum of 15 storeys. Cross sections are included under Section 2.13 identifying the 49m height plane and lift overrun/ penthouse.
FUNCTION OF THROUGH-SITE LINK/PUBLIC PLAZA	<p>Section 2.13 provides objectives to guide the creation of the proposed public domain. These objectives were recommendations from Conybeare Morrison's review of proposed public domain (Attachment D3).</p> <p>Section 2.13 also provided development controls which require a pedestrian site-through link with minimum dimensions of 13m in width, and 950m² in area, between Conie Avenue Reserve and Windsor Road. A Civic Plaza with outdoor dining opportunities, with minimum dimensions of 10m in width and 700m² in area to link Seven Hills Road and Windsor Road.</p> <p>Conybeare Morrison's report provides solar diagrams to illustrate solar access both spaces will receive throughout the year. The proposed through site link will have more than 3 hours of solar access in mid-winter between 9am-12noon. The Civic Plaza has better solar access due to its north-south orientation. Most of the area will have solar access between 9am and 2pm in winter solstice.</p>
INTEGRATION WITH FORM AND FUNCTION OF FUTURE BUILDINGS	Section 2.3 'addressing the public domain' outlines objectives to minimise the extent of blank walls facing the street, awnings along road frontages, appropriate tree plantings, aligning ground floor level with corresponding level of footpath.

	<p>Section 2.4, Active frontage map identifies one side of the through-site link and civic plaza as requiring an active frontage. The other side is identified as desired active frontage.</p> <p>Section 2.13 includes cross sections showing outdoor seating. An Arts and Cultural Plan is to be prepared, it is envisaged artwork will occupy the space.</p>
RETAINING CORNER PRIMACY	<p>Objective of the DCP (Section 1.3) refers to reinterpretation of the Bull & Bush Hotel into future development on the site which respects the role the site has as a cultural landmark.</p> <p>Section 2.18 includes an objective to create a slender and elegant tower form as a landmark at the intersection of Seven Hills Road and Windsor Road.</p>
INTEGRATION OF PUBLIC PLAZA AND COMMUNITY SPACES SOUTH WEST	<p>Diagrams through out the DCP identify the public plaza has been re-orientated to link Seven Hills Road and Windsor Road (NE-SW direction).</p>
QUANTIFICATION OF BUILDING SETBACKS	<p>Section 2.8 includes a building setbacks map showing the 11m and 10m setbacks required for Windsor and Seven Hills Roads. 6m setback for northern and western boundaries.</p> <p>Section 2.13 includes a cross section (section 4) which shows Windsor Road, 6.5m setback from the kerb to the property boundary, 11m setback required from the boundary to building. Zero setback from new boundary to community facilities/library. Setback shown for upper levels but not quantified.</p> <p>Cross section (section 1) identifies a 10m setback from property boundary on Seven Hills Road. Zero setback from new boundary to the Bull and Bush hotel and above stories.</p>
DEEP SOIL PLANTING/ LANDSCAPE OPEN SPACE	<p>Section 2.13 includes sections which identify the deep soil in through-site link. Section 2.15 states the extent and location of deep soil zones will generally be provided consistent with Figure 8 of the DCP, landscape design should consist of both softscape and hardscape elements which respond to the purpose and activities within open space areas. Section 2.14, communal open space shall be provided at an equivalent to the rate of 2m² per dwelling, it may be provided in the form of amenities eg gymnasium, the orientation and location of communal open space should maximise solar access.</p>
HERITAGE IMPACT STATEMENT	<p>No updated report was provided. The proponent sought to rely on the existing 2016 heritage report as it considered the history of the heritage item, the impact of a potential redevelopment of the site and provides a range of mitigation measures (mitigation actions included under Section 2.5 of the DCP). The report considered the impact of upgrades within Windsor and Seven Hills Road would have resulted in the substantial partial demolition of the Bull and Bush hotel.</p> <p>In the above circumstances, the report found that a proposal for redevelopment that includes a new hotel and provides for appropriate site interpretation is acceptable in heritage terms.</p> <p>The Department notes the following from the Heritage report:</p>

	<ul style="list-style-type: none"> • Partial demolition of the hotel will be required as a result of the grade separation works, which are not supported by Transport for NSW. • Commentary on the architecture of the building, in particular the Inter War character. A strong element of the Inter War design is the symmetry of the building around the central and axial gabled two storey form. The lower wings to the north and south are deliberately subservient to this with their low spreading roofs and use of gables for first floor accommodation. • The road widening works (grade separation) will remove a substantial portion of the northern wing destroying the symmetry and the original design intent of the building addressing the intersection. • Heritage item inventory states 'significance lies in the site and is continuity of use from 1822 to the present as an inn at the junction of the two major roads...'. Council's heritage listing does not mention the existing building as having particular significance. <p>It is noted that Section 2.5 of the DCP states 'the materiality of the podium element should form part of the heritage interpretation strategy and draw directly from the colonial heritage of the original building'.</p>
SERVICE DELIVERIES	<p>Section 2.10, additional objective regarding servicing and loading arrangements to be integrated within redevelopment of the site. Additional development controls supporting Traffic and Vehicular access to guide service vehicles within the development.</p> <p>A Traffic Statement was submitted (Attachment D4) which explores access to the site with the removal of the right turn from Windsor Road.</p>
ARBORIST REPORT	<p>Section 2.15 includes an objective stating opportunities for landscaping are maximised, including the retention and/or planting of trees within deep soil areas to contribute towards the urban tree canopy cover</p> <p>Section 2.15 also refers to obtaining an arborist report to support a development application.</p> <p>Preliminary Arboricultural report submitted (discussed in Attachment D5).</p>
DESIGN EXCELLENCE COMPETITION	<p>Section 2.18 refers to a new building or external alterations to an existing building with a height of 25m or more is subject to CI 7.7 of The Hills LEP – design excellence.</p> <p>A letter submitted by Knight Frank (Attachment D9) states the draft DCP addresses both architectural and urban design outcomes for the site as a landmark site and major contributor to the Baulkham Hills Town Centre. The draft DCP references the revised concept plan and urban design review by Conybeare Morrison. As such, the proponent considers this site-specific urban design response and DCP chapter, the design excellence criteria set out in Clause 7.7(4) of the LEP have already been satisfied. The Proponent recommend that a design excellence provision only apply where there is an incentive to do so.</p>
CAR & BICYCLE PARKING	<p>Additional controls provided under Sections 2.11, 2.12. The draft DCP adopts Council's existing DCP parking controls for residential, commercial and retail premises. Bicycle parking shall be provided in accordance with the requirements of 'Planning Guidelines for Walking and Cycling'.</p>

1.2 Matters the Panel did not support

As recorded in the Panel's September 2020 record of briefing, the Panel did not support:

- The proponent's request to remove the minimum employment floor space provision; and
- The proponent suggests that the proposed 15 storeys can be achieved within the 49m building height control. The Panel is not satisfied that 15 storeys can be accommodated within that building height because greater floor to ceiling heights are likely to be required for ground floor retail and community uses.

Employment floor space

The proponent submitted a Baulkham Hills Retail and Commercial Demand Assessment (**Attachment D6**), a high-level assessment of the likely demand for retail and commercial spaces on the subject land. The report recommended 2,000m² gross lettable area retail which may include neighbourhood supermarket/fresh food grocery store, tavern of approximately 1,000m², and potentially a gymnasium of around 500m² equating to approximately 2,500m² of commercial floor space (noting a gymnasium is not included within the group term of commercial premises).

This is contrary to the 6,040m² included within the current development concept. It is also unlikely that these uses alone would activate the extensive ground floor area shown as "active frontage" in the DCP.

The requirement for the provision of a minimum commercial floor area has been deleted from the draft DCP.

It is important to understand the context to which a minimum of 6,040m² for commercial premises (including retail and pub) was arrived at for the planning proposal. Council's 2014 Baulkham Hills Town Centre Masterplan identified 4,000m² of retail for the subject land. In 2016 when the proponent and Council were discussing the different development options for the Bull & Bush site, Council advised the provision of commercial floorspace was a positive element to the proposal. In response to this, the proponent increased the proportion of commercial and retail floor space (including hotel/pub) to 6,042m². This concept was formally considered by Council on 8 November 2016 and supported to proceed to Gateway assessment by the Department.

As this planning proposal seeks to rezone land from a residential land use zone to a B2 Local Centre, the focus of the function of this land shifts to providing employment opportunities, a range of business, entertainment and community uses to serve the needs of residents and the community. It is important to ensure that a balance is achieved between the core objectives of the B2 land use zone and residential land uses which are also permissible.

The Department supports the inclusion of a minimum floor area of 6,040m² for commercial premises as it will support the creation of active frontages and lively, safe

public spaces and will ensure the development supports the land use zone objectives.

Height in storeys

It is recommended that the heights in storey controls be reviewed, which may have implications for the resulting floor space ratio achievable on site.

1.3 Outstanding matters for the draft DCP

Following the Department's analysis, we suggest that the following matters need to be resolved:

- The concept supporting the DCP needs to clearly demonstrate the land required to be dedicated for road widening, and then the resulting setbacks on private land. A 0m private setback to the road reserve (which will include some footpath) on the busy corner of the site is not appropriate. This review may have implications for building footprints and the development capacity of the site.
- Further investigations into the role and function of the public plaza link and through-site link is required, looking at precedent projects in other centres, to ensure that the resulting spaces are functional, safe and active where appropriate.
- Further consultation with Transport for NSW regarding the 10 and 11m setbacks is required to determine whether the setbacks required can be reduced at the intersection, to improve the pedestrian experience, and ensure that the corners retain their geometry, as suggested in the heritage report.
- Investigate opportunities for the heritage interpretation, including how the future building could replicate the Bull & Bush Hotel's current relationship with the intersection. This work should be supported by a revised heritage report.
- Further review of the heights within storeys to determine the number of storeys that can be accommodated under the 49m LEP height limit. The DCP process and final built form controls for the site may mean that it's not possible to achieve the maximum height of building and floor space ratio.
- It is suggested the significant trees identified in the specialist report should be identified for retention where possible, particularly where those trees are in setbacks and in the proposed deep soil areas.

An assessment of the additional information provided by the proponent is detailed in Attachment C2.

2. Department advice to address May 2020 Panel Determination

ISSUE	RESPONSE
TRANSPORT CORRIDOR CONSIDERATION	<p>It is recommended that an additional clause is inserted into the LEP to require the consent authority to obtain concurrence from Transport for NSW prior to determining a development application on the site. This is to ensure the setbacks are provided within a development and to also allow flexibility if a design solution can be achieved to retain some land at the intersection to assist with retaining the relationship between the future building and intersection.</p>
DESIGN EXCELLENCE	<p>It is recommended development on the site is required to address design excellence provisions under Clause 7.7 Design Excellence of The Hills LEP and to include two additional provisions regarding public domain and landscape design (as per cl 8.6(4)(f)(xii),(xiii) of The Hills LEP).</p> <p>Development on the site should also be subject to the design review panel whereby the consent authority is required to take into account the findings of the panel. This clause exists under Parts 8 & 9 of The Hills LEP (metro station precincts) and is a separate process to provisions under Clause 7.7 of the LEP.</p>
VEGETATION ON SITE	<p>Consideration as to how significant trees can be integrated into the concept layout for the site such as in the civic plaza/through site link/setbacks could be undertaken with further refinement of the DCP.</p>
PROVISION OF LOCAL INFRASTRUCTURE	<p>Should the Panel direct the Department to finalise the LEP and rezone the site, it is proposed to include a concurrence clause which requires that the Planning Secretary must be satisfied with the level of impact on infrastructure prior to development consent being granted. In deciding whether to grant concurrence, the Planning Secretary will consider if the community facility and library have been secured.</p>

Attachment C2 - Table 1 summary of additional information provided

Document	Comment
Draft DCP (Attachment D1)	<p>Amendments include:</p> <ul style="list-style-type: none"> • Controls relating to the design siting, layout of the ground floor plan and active frontage requirements (2.1 (d)) • Additional objective supporting pedestrian access from the Civic Plaza (2.9 (ii)) • Additional sections showing height of buildings, setbacks, deep soil. • Additional objective regarding servicing and loading arrangements (2.10 (iv)). Additional development controls supporting Traffic and Vehicular access to guide service vehicles within the development • Additional controls regarding bicycle parking provision and car parking. • New open space and plaza objectives focusing on accessibility and connection of spaces, creating a human scale streetscape for pedestrians throughout the plaza. • Removal of sunlight coverage of the existing Conie Ave Reserve from a minimum of 50% on 21st June • Numerical standards included in the Landscaping and Existing Vegetation section – 7% of site area must be landscaped open space, a minimum of 50% of deep soil landscaped space is to be provided at ground level • Additional controls regarding environmentally sustainable design for non-residential development • Removal of controls regarding efficiency of hot water systems and artificial lighting and design lightning
Summarised Key Issues Table (Attachment D2)	Revised document provides additional detail regarding key differences to Council's DCP.
A peer review of the proposed public domain (Attachment D3)	<p>The report provided:</p> <ul style="list-style-type: none"> • Five (5) examples of successful laneways in Sydney/Melbourne • Identified six (6) key urban design principles that affect the performance of a space. • Comments on the two open spaces within the proposal; the through site link to the north and a civic plaza. • Supports podium-tower built forms, with the height creating a human scale environment. Greater details needed to understand articulation and modulation of proposed built form. • Through site link connecting Windsor Road to Conie Avenue Reserve provides a straightforward line of sight. • No significant level change within the proposed open spaces, the new hotel and library will have levelled access to the open spaces • Solar diagrams illustrate both spaces will receive adequate solar access throughout the year • Recommended seven (7) objectives to guide future development of the proposed public domain.
Traffic Statement (Attachment D4)	<p>The report provided:</p> <ul style="list-style-type: none"> • Guiding principles to loading dock and servicing management. No specific servicing arrangements were identified due to the absence of an actual site layout, and the site's significant size would not compromise servicing. • Other travel patterns were identified for motorists to gain access to the site if the right hand turn from Windsor Road was removed. • Car parking and motorcycle rates utilised from Council's DCP. • Bicycle parking rates utilised from NSW Government Planning Guideline for Walking and Cycling.

Preliminary Arboricultural Assessment (Attachment D5)	<p>The report found:</p> <ul style="list-style-type: none"> • Higher value trees that may be unprotected include Trees 20, 21 and 22 which are existing mature trees in the beer garden courtyard area • Tree 23 has compromised structural condition • Trees on western neighbouring property near the boundary are unlikely to be affected by proposed development • Trees 12, 13, 14 are mature eucalypts have medium to high retention value • Trees 15, 16, 16A, 16B, 18A, 18B and 19 have a high retention value
Baulkham Hills Retail and Commercial Demand Assessment (Attachment D6)	<p>The report recommended a mix of employment uses that may be appropriate on the site subject to market conditions:</p> <ul style="list-style-type: none"> • Retailing of approximately 2,000m² GLAR which may include a neighbourhood supermarket • A number of speciality stores eg liquor store, food and drink premises, hair and beauty • A tavern of approximately 1,000m² • Potentially a gym (500m²), medical centre or pharmacy <p>Baulkham Hills Town Centre cannot compete with Norwest and Castle Hill in terms of attracting commercial office tenants.</p>
Letter from Gilbert Tobin – VPA (Attachment D7)	<p>Letter outlining background of proposal, Council's September 2020 resolution regarding the draft VPA and a commitment to work constructively with Council during the legal review process, with a view to negotiating a finalised VPA that reflects the requirements of Council and the Planning Panel as soon as reasonably practicable.</p>