

## Planning, Place and Design

### Plan finalisation report

IRF19/3286

**Local government area:** Burwood

#### 1. NAME OF DRAFT LEP

Burwood Local Environmental Plan 2012 (Amendment No 16)

#### 2. SITE DESCRIPTION

The planning proposal applies to land at 2-18A Cooper Street (excluding 2B) and 43A and 45 Wentworth Road, Strathfield. The site is comprised of 14 parcels of land in multiple ownership with a total area of approximately 15,500sqm. The site is bound by Cooper Street to the north, Wentworth Road to the east and Cowdery Lane to the south. The western side of the site adjoins 20 Cooper Street (not part of the site) which contains residential dwellings adjoining Cooper Lane to the west.

The site comprises a mixture of one and two storey detached dwellings. Substantial front setbacks are provided to dwellings to Cooper Street with a strong landscape character providing a low-scale built form to the streetscape. The dwellings on the site are constructed from mixed periods (predominantly late 1890's to the 1940's). There is a predominant row of late Victorian villas to Cooper Street, with some inter war period and early twentieth century development.



**Figure 1:** Subject site

The lot and DP numbers of the effected land in the planning proposal are:

**Table 1:** Site descriptions

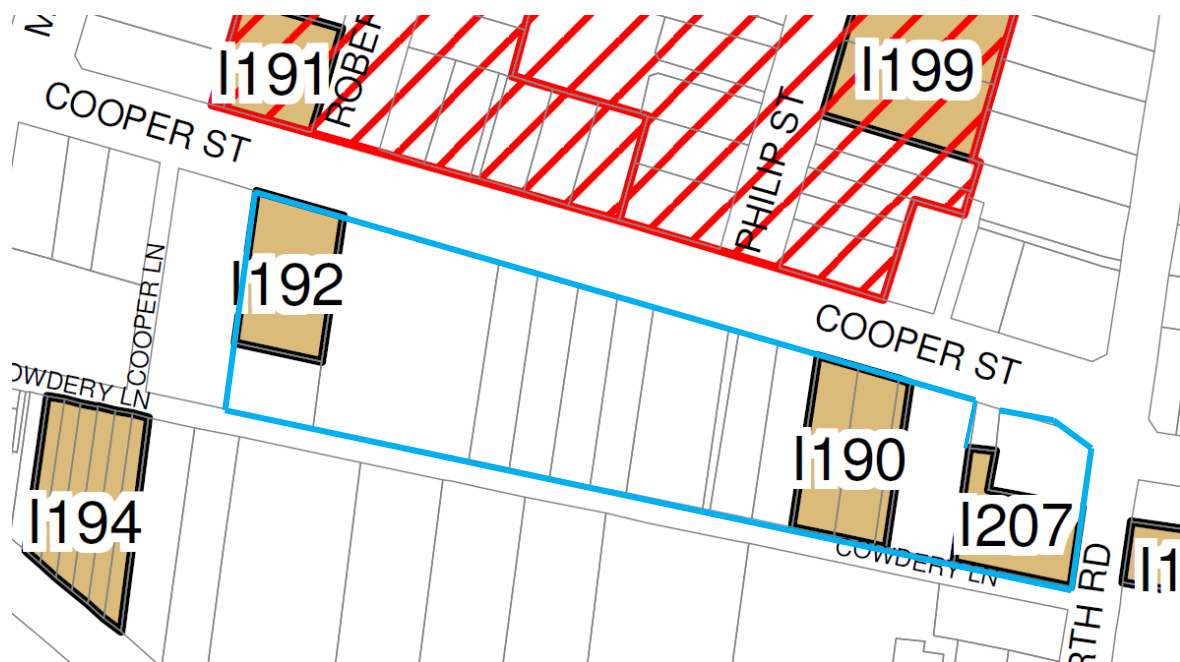
Street Number	Street	Lot	Street	DP
2A	Cooper	1	Cooper Street	320099
2	Cooper	23	Cooper Street	2089
		24	Cooper Street	2089
		1	Cooper Street	455342
4	Cooper	22	Cooper Street	2089
6	Cooper	21	Cooper Street	2089
		1	Cooper Street	911709
8	Cooper	1	Cooper Street	925133
10	Cooper	1	Cooper Street	1040940
		17	Cooper Street	2089
12	Cooper	16	Cooper Street	2089
14	Cooper	15	Cooper Street	2089
18	Cooper	1	Cooper Street	339188
18A	Cooper	1 and 2	Cooper Street	229007
43A	Wentworth	A	Wentworth Road	33503
45	Wentworth	B	Wentworth Road	33503

The site included three heritage items of local significance as shown in Figure 2.

The site is not located within a heritage conservation area. However, the Philip Street Heritage Conservation Area is located on the opposite side of Cooper Street to the north of the site. The location of heritage items and the Philip Street Heritage Conservation area is shown in Figure 2.

**Table 2:** Heritage descriptions (Burwood LEP 2012)

Address	Item No.	Significance
18A Cooper Street	192	1950's house and garden
2 Cooper Street	190	Victorian House
45 Wentworth Road	207	Victorian House



**Figure 2:** Heritage Map Burwood LEP 2012

### 3. SURROUNDING DEVELOPMENT

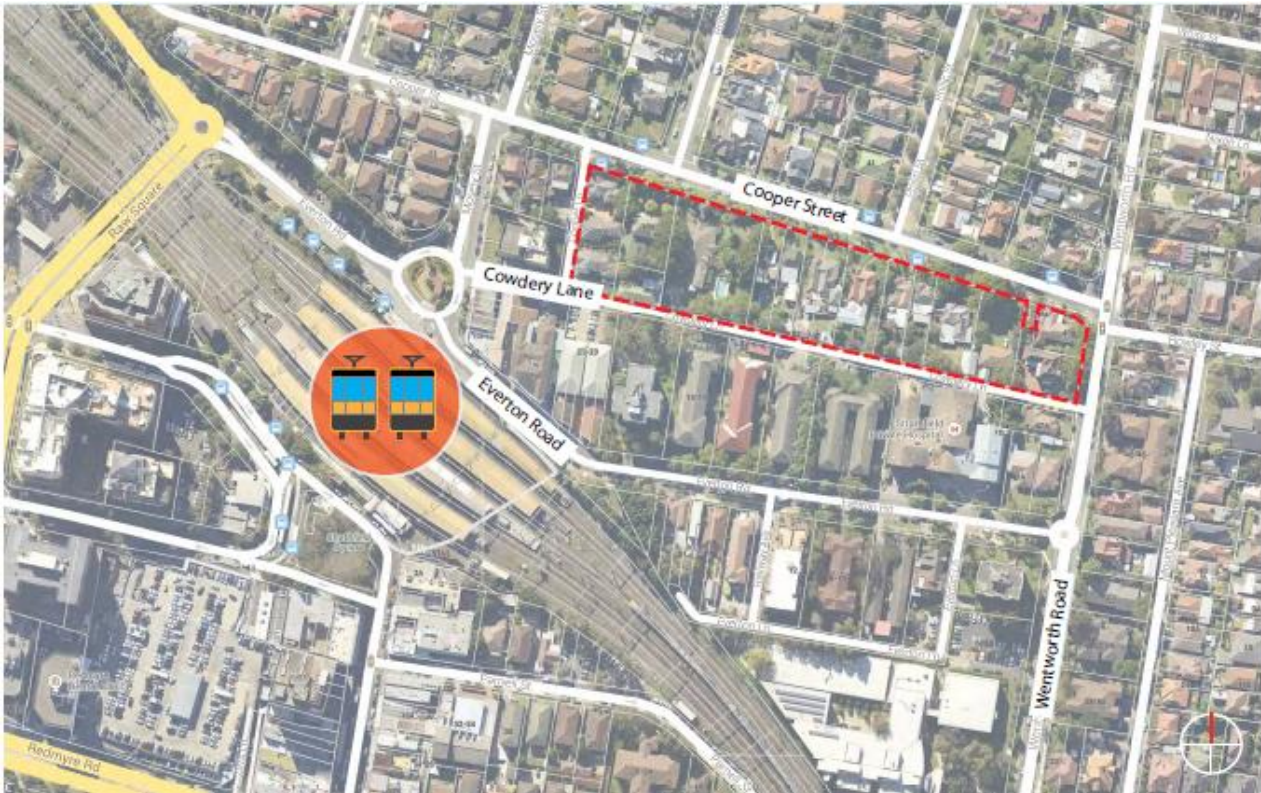
The site is located at a transition area between the denser urban area environment around Strathfield station and the lower scale residential suburban dwellings to the north of Cooper Street.

On the opposite side of Cooper Street to the north of the site are low scale residential dwellings. This forms part of two heritage conservation areas, identified as “The Mosely and Roberts Streets Heritage Conservation Area” (Item C15) and the “Philip Street Heritage Conservation Area” (Item C16). These dwellings comprise a range of consistent dwellings from the late nineteenth to early twentieth centuries. Cooper Street is generally characterised as low scale with a strong landscape element.

Cowdery Lane to the south of the site is generally characterised by 3 to 4 storey residential flat buildings and two high rise residential towers. Wentworth Road is characterised by a mixture of single dwellings and town house development.

The site is in close proximity to a number of public transport options including Strathfield station (400 metres) and buses along Cooper Street. The site is approximately 360 metres from Parramatta Road to the north of the site which provides further public transport options.





**Figure 3:** Site context map

#### **4. PURPOSE OF PLAN**

The draft LEP seeks to amend Burwood Local Environmental Plan 2012 in relation to land at the southern side of Cooper Street to:

- rezone the land from R2 Low Density Residential to R1 General Residential;
- increase the maximum building height from 8.2 metres to:
  - 11 metres at 43A and 45 Wentworth Road and 2 and 2A Cooper Street, Strathfield;
  - 14 metres at 4 and 6 Cooper Street, Strathfield; and
  - 20.5 metres at 8, 10, 12, 14 and 18A Cooper Street, Strathfield.
- increase the maximum FSR from 0.55:1 to:
  - 1.5:1 at 2, 2A, 4 and 6 Cooper Street and 43A and 45 Wentworth Road, Strathfield; and
  - 2.3:1 at 8, 10, 12, 14 and 18A Cooper Street, Strathfield.
- remove Item I192 (1A Cooper Street) as a local heritage item.

A preferred concept has been prepared providing buildings ranging from 3 to 6 storeys in height for approximately 245 dwellings.

Note: Council has resolved to not support the planning proposal. Post exhibition changes have been undertaken to the planning proposal to reduce the extent of the planning proposal and is described in detail under Section 10.





- the proposed building height and FSR controls were greater than the adjacent Everton Road precinct to the south, posing a mismatch with the surrounding future character envisaged in the Burwood LEP 2012.

On 3 February 2016, the former Sydney East Regional Planning Panel considered the proposal as part of a pre-Gateway review and considered that the planning proposal demonstrated strategic merit and additional density to be justified. As part of this decision, the Panel recommended that additional information be provided prior including:

- an independent heritage study and justification for the removal and/or adaptive re-use of the heritage items on the site;
- suggested FSR and justification for it;
- urban design analysis; and
- consideration of heritage incentives.

On 3 August 2016, the Panel considered the amended planning proposal and was satisfied that the planning proposal should proceed subject to:

- the FSR and height of building be provided as basic controls, without the bonus FSR and height of buildings for area B-9 as heritage incentives;
- no heritage incentives controls to be included; and
- based on the independent heritage study the Panel agreed to the exhibited draft LEP de-listing of 18A Cooper Street as a heritage item.

#### Planning Proposal Authority

Following the Pre-Gateway review, Burwood Council accepted the Planning Proposal Authority (PPA) role for the proposal.

### **6. STATE ELECTORATE AND LOCAL MEMBER**

The site falls within the Strathfield state electorate. Jodi Mackay MP is the State Member for Strathfield.

The site falls within the Reid federal electorate. Craig Laundry MP is the Federal Member for Reid.

To the regional planning team's knowledge, neither MP has made any written representations regarding the proposal.

**NSW Government Lobbyist Code of Conduct:** There have been no meetings or communications with registered lobbyists with respect to this proposal.

**NSW Government reportable political donation:** There are no donations or gifts to disclose and a political donation disclosure is not required.

### **7. GATEWAY DETERMINATION**

The Gateway determination issued on 21 December 2016 (**Attachment C**) determined that the proposal should proceed subject to conditions.

### **8. PUBLIC EXHIBITION**

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 6 June to 4 July 2017.

The key issues in community submissions are summarised below. Council's post-exhibition report (**Attachment D**) also provided a detailed analysis of all submissions.

A total of 22 submissions were received objecting to the planning proposal and four were received in support. Of the 22 submissions objecting to the planning proposal, concerns were raised in relation to the following key issues:

- heritage;
- amenity impacts;
- traffic and transport;
- infrastructure provision; and
- building height.

Council resolved following exhibition of the planning proposal to not support the planning proposal for the following reasons:

- adverse impacts on the effectiveness of Cooper Street acting as a buffer zone between the higher density development south of Cooper Street and the low-density residential areas of heritage character on the north;
- adverse impacts on the existing heritage items within the subject land and on the heritage items and heritage conservation areas in the vicinity;
- insufficient information in the heritage impact statement to justify the delisting of 18A Cooper Street;
- adverse impacts on the streetscape character of Cooper Street;
- proposed building height and FSR standards pose a mismatch with those for the surrounding land established in the Burwood LEP; and
- strong objections from the community in the submissions received.

A summary of the concerns raised during public exhibition are provided below.

#### Heritage and local character

A number of the objections raised concern with the heritage impacts of the proposal. Concern was raised that the proposal would affect the low scale setting and character of Cooper Street and the detrimental loss of 18A Cooper Street as a local heritage item.

#### *Council response*

In response, Council states that the exhibited planning proposal is out of character and not in keeping with the surrounding area and the heritage conservation area. Impacts on heritage and local character is stated as being one of the key concerns that prevented Council from supporting the planning proposal following exhibition.

#### *Department response*

The Department agrees that the exhibited planning proposal does not provide an adequate response to the character and heritage significance of the site and its contribution to the area. The Department advised Council at the Gateway stage, that Council may still need to obtain the agreement of the Department's Secretary to comply with the requirements of 9.1 Direction 2.3 Heritage Conservation. The Department advised Council that this should occur prior to the plan being made.

No evidence was provided to the Department that Council had attempted to resolve or respond to concerns relating to heritage. Subsequently, the Department engaged a heritage consultant to review the proposal to determine the impacts of the planning proposal and provide recommendations. The heritage review was undertaken by GML Heritage **(Attachment B)** and concluded that:

- the heritage assessment provided by the proponent was inadequate and lacked the detailed and rigorous analysis required to justify the proposal;
- the property at 18A Cooper Street should remain listed as a local heritage item; and
- the proposal has been assessed as having a high level of impact on the heritage item at 18A Cooper Street, a high to moderate level of impact on the heritage items at 2 Cooper Street, 2B Cooper Street, 45 Wentworth Road and a moderate level of impact on the Mosley and Roberts Street Conservation Areas.

The Review recommended that should rezoning of the site be pursued, the heritage impacts should be avoided and/or mitigated. It was recommended that in order to mitigate the heritage impact of any rezoning of the site, the area of increased height and density should be limited to the southern half of the block, with retention of the heritage items and low-density zoning along the northern half of the block. The house at 18A Cooper Street should be retained as a heritage item and should not be demolished.

Subsequently, the Department engaged with the proponent to provide an amended scheme that addresses heritage and character concerns. Post exhibition changes have been undertaken including:

- the retention of 18A Cooper Street as a local heritage item;
- reduction in the FSR for 18A Cooper Street from 2.3:1 to 1.5:1 and reduction in the maximum height control from 20.5m to 14m. This results in the following changes to potential future built form outcomes:
  - the proposed building heights at the eastern end of the site are reduced to 3 storeys in recognition of the heritage items I19 and I207.
  - the proposed development at the western end of the site allows for 6 storeys with a lower 3 scale development within 11 metres of Cooper Street.
- introduction of a site specific LEP clause to introduce building setback requirements to mitigate the impacts of built form and scale. This also intends to provide a suitable transition between the lower scale heritage conservation area to the north and apartment development to the south.

These changes have been undertaken in direct response to concerns raised from the community and are discussed in greater detail under Section 10. The Department considers that these changes will provide an appropriate framework for ensuring an acceptable heritage outcome is achieved as part of any future development.

### Amenity Impacts

Objections were raised relating to amenity impacts arising from the planning proposal including:

- overshadowing;
- visual privacy; and
- construction impacts.

### *Council response*

Council states that should the planning proposal be supported, the design of the proposed buildings would be assessed at the development application (DA) stage. Any future DA would be assessed against Council's Development Control Plan, State Environmental Planning Policy No. 65 (SEPP 65) and the Apartment Design Guide.



Council states that these planning provisions have specific controls relating to building separations, setbacks, privacy, access to sunlight, landscaping, open space and parking aimed at mitigating and/or managing any impacts on neighbouring land.

Council considers that impacts during construction are normally considered short term and there are conditions that developers must adhere to before and during construction.

#### *Department response*

The Department considers that amenity impacts arising from any future planning proposal are capable of being addressed as part of any future development applications. The planning proposal has been amended to reduce the height and density across the site which will assist in responding to overshadowing and solar access impacts to neighbouring sites. Further overshadowing assessment is discussed later in this report and demonstrates that acceptable impacts are capable of being achieved.

Concerns relating to visual privacy will need to be further considered as part of any future development application and an appropriate response to SEPP 65 and ASG requirements. Likewise, any construction associated impacts are capable of being addressed as part of future development consent conditions that will address impacts on the locality.

#### Traffic and parking

Objections were raised with impacts arising from the increased density relating to:

- traffic congestion; and
- street parking provision.

#### *Council response*

Council states that overall traffic and parking impacts could not be the sole ground for Council to reject the planning proposal. Council states that the additional vehicle trips generated by future development would not impact heavily on the existing road network.

Council states that future development applications will be encouraged to comply with the parking rates stipulated in the Burwood DCP.

#### *Department response*

The Department considers the site is suitably located to existing public transport services and is within walking distance of the site including Strathfield Station and a number of bus services. Both rail and bus services provide connections to jobs and employment that will assist in reducing car reliance on private car usage.

The planning proposal is supported by a Traffic and Transport Study to demonstrate the impacts of the proposal on the surrounding road network. This study was based on the exhibited planning proposal which it states comprised a total of 245 residential apartments and a total of 280 car parking spaces. It concludes that the planning proposal will have no detrimental impact on operational characteristics of the road network and that all intersections will continue to operate at a good level of service.

In relation to car parking, the traffic study suggests that a total of 280 car parking spaces should be provided based on the exhibited planning proposal. The number has been suggested based on analysis of both the Burwood DCP parking requirements and the rates outlined in the RMS Guide to Traffic Generating Developments. This number is below the Burwood DCP requirements but above that of the RMS Guide. The application considers that this level of car parking is more appropriate for the site considering its proximity to commercial and retail activities of the Town Centre and its accessibility to public transport. The amended planning proposal has reduced the density even further and therefore any impacts will be reduced even further.

The Department considers that the planning proposal will not create any unreasonable impacts on the road network. Adequate information has been provided with the planning proposal to demonstrate that acceptable impacts will be achieved on the surrounding road network. Comments were also received from Roads and Maritime Services and TfNSW who raised no objection to the planning proposal.

The Department considers that final car parking numbers should be further considered as part of any future development application(s). The Department agrees that the site's proximity to a number of public transport options provides the opportunity for reduced car parking requirements, however this should be appropriately considered and addressed by Council as part of detailed development assessment.

### Infrastructure and Services

Objections were raised regarding the capacity of existing infrastructure to cope with the increased density of the proposal. This includes:

- capacity of Strathfield Station and overcrowded trains;
- capacity of schools;
- capacity of existing infrastructure (gas, water, sewer pipes); and
- lack of open space and community facilities.

#### *Council response*

Council notes that responses from the public agencies do not raise any objections to the planning proposal in relation to infrastructure provision.

#### *Department response*

The Department notes that the planning proposal was referred to public authorities including Transport for NSW, Energy Australia, Sydney Water and NSW Department of Education. Comments were received from TfNSW and Energy Australia who raised no objection to the planning proposal. TfNSW also advised that the proposal was reviewed by Sydney Trains who raised no objection.

The Department is satisfied that existing infrastructure provision is capable of being utilised or augmented to cater for any future development. This should be addressed further as part of any future development application(s).

### Building Height and Scale

Objections were raised with the building height of the proposal and its impact on the existing character of the area.

#### *Council response*

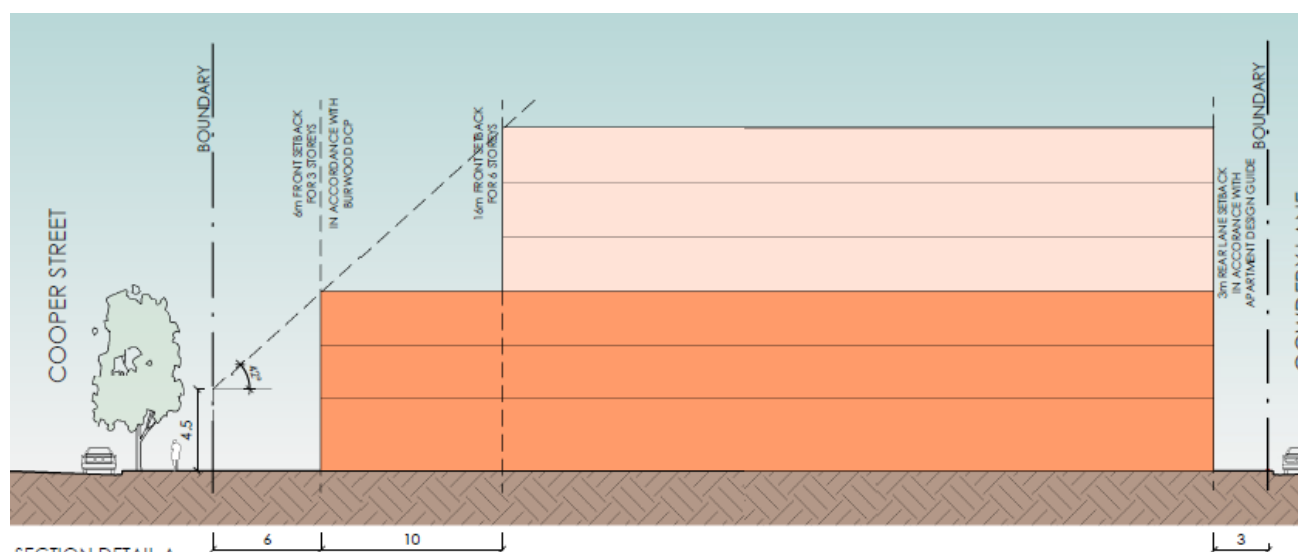
Council states that the stepped building height seeks to place increased height in closer proximity to Strathfield Station and to have regard to the heritage items at 45 Wentworth Road and 2 Cooper Street to the east of the site. Notwithstanding this, Council considers that any future development at the proposed building heights would change the streetscape of Cooper Street. Council considers that a maximum height of 11 metres would provide a better transition towards to the northern end of Cooper Street.

#### *Department response*

The Department agrees the heights and density of the exhibited planning proposal would create adverse impacts on the character of Cooper Street and heritage significance. As discussed, post exhibition changes have been undertaken to the planning proposal that have been developed to respond to adverse building heights and impacts on the low scale character of Cooper Street. This includes:

- a reduction in height of 18A Cooper Street from 20.5m to 14m and reduction in FSR from 2.3:1 to 1.5:1. This has been undertaken to reduce impacts on the retention of 18A Cooper Street as a local heritage item;
- reduction in FSR at the eastern end of the site from 1.5:1 to 1.2:1 to reduce overall densities in proximity to the existing heritage items; and
- introduction of a site-specific clause requiring a minimum 6 metre setback of built form to Cooper Street with any built form within a 16 metre setback to Cooper Street to be restricted to 11 metres.

These amendments to the planning proposal considerably reduce bulk and scale impacts particularly to Cooper Street with a substantial setback requirement introduced. Whilst a 6-storey development is still possible within part of the site, this will be required through a modulated built form requiring a 3-storey podium as shown in Figure 7.



**Figure 7:** Amended section view showing setback requirements to Cooper Street for maximum 6 storeys

The setback requirements in the LEP intend to provide a transition to the lower scaled heritage conservation area and respond to the existing low scale streetscape character of Cooper Street. Any upper level setback above 3 storeys will be required to be setback at least 16 metres from the Cooper Street frontage which will ensure the low scale setting of Cooper Street is retained. Lower heights of 3 to 4 storeys will be required in locations across the site that adjoin heritage items allowing for a suitable transition across the site.

The Department considers these post exhibition changes adequately address bulk and scale concerns and will provide a sympathetic development opportunity.

## 9. ADVICE FROM PUBLIC AUTHORITIES

In accordance with the Gateway determination, the following public agencies were consulted:

- Sydney Water;
- Energy Australia/Ausgrid;
- Transport for NSW (TfNSW);
- Roads and Maritime Services (RMS);
- Department of Education (OEH);
- Office of Environment and Heritage; and
- NSW Ministry of Health.



Responses were received from Ausgrid, RMS and TfNSW. These authorities raise no objection to the planning proposal.

OEH also provided a response and offered the following comments:

- The proposal is likely to alter the historic low density setting of the heritage conservation area (HCA) in the area, adversely impacting on the heritage character of Cooper Street and on the heritage items within the subject land and in the vicinity.
- It is recommended that Council consider alternative options which do not involve the removal of 18A Cooper Street, and consider any adverse impact that the proposal may have on the significance of other heritage items within the subject land the heritage items and HCA's in the vicinity.

#### *Department response*

As discussed, the Department agrees that the exhibited planning proposal was unacceptable in its heritage impacts. The post exhibition changes undertaken will retain 18A Cooper Street as a local heritage item and reduce the density of the planning proposal to respond to its heritage context. These changes are considered to appropriately respond to the concerns raised by OEH.

## **10. POST-EXHIBITION CHANGES**

### Council resolution

As discussed, on 24 October 2017, following public exhibition of the planning proposal Burwood Council resolved to not support the planning proposal (**Attachment D**). Council concluded that an assessment of the submissions received from the exhibition of the planning proposal suggests that adverse impacts on heritage and streetscape character prevent Council from supporting the planning proposal to proceed to finalisation.

On 3 November 2017, Council wrote to the Department requesting that the planning proposal not proceed.

### Updates to planning proposal

As discussed, the Department commissioned an independent heritage peer review to be undertaken to provide recommendations on the merits of the planning proposal. Following the heritage peer review, Department staff held discussions with the proponent to discuss the concerns with the proposal. Following a number of revisions, the proponent provided an amended planning proposal which comprised:

- retention of 18A Cooper Street as a local heritage item;
- reduction in permitted height of No. 18A Cooper Street from 20.5m to 14m;
- reduction in FSR of 18A Cooper Street from 2.3:1 to 1.5:1; and
- reduction in FSR at 43A and 45A Wentworth Road and 2 and 2A Cooper Street from 1.5:1 to 1.2:1.

The amended planning proposal also includes an updated heritage impact assessment and concept design as reflected under figures 8 to 11. The updated concept design provides a substantial setback of all buildings to Cooper Street with a further upper level setback above the podium. This is intended to mitigate impacts of scale and provide a transition between the lower scale heritage conservation area and existing streetscape of Cooper Street and the existing apartment development to the south.

A comparison between the exhibited planning proposal and the amended planning proposal are provided in Table 3.

**Table 3:** Comparison table of exhibited and amended planning proposal

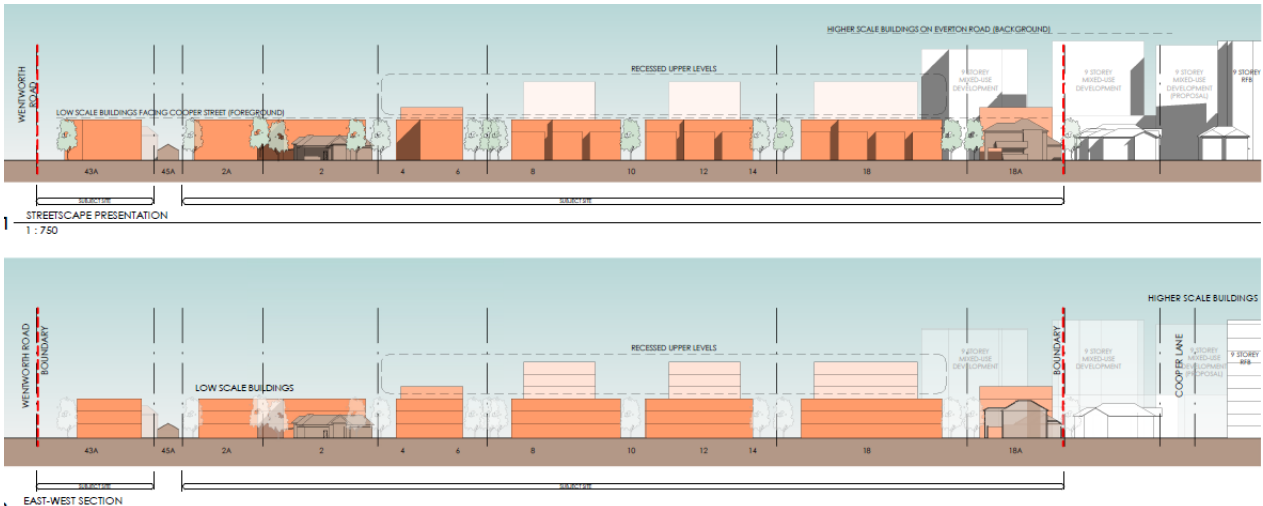
<b>Property</b>	<b>Development standard</b>	<b>Exhibited development standard</b>	<b>Amended development standard</b>
All properties	Zoning	R1 General Residential	R1 General Residential (no change)

<b>Property</b>	<b>Development standard</b>	<b>Exhibited development standard</b>	<b>Amended development standard</b>
2, 2A Cooper Street and 43A and 45 Wentworth Road	FSR	1.5:1	1.2:1 (reduced)
4 and 6 Cooper Street	FSR	1.5:1	1.5:1 (no change)
8, 10, 12 and 14	FSR	2.3:1	2.3:1 (no change)
18A Cooper Street	FSR	2.3:1	1.5:1 (reduced)

<b>Property</b>	<b>Development standard</b>	<b>Exhibited development standard</b>	<b>Amended development standard</b>
2, 2A Cooper Street and 43A and 45 Wentworth Road	Height	11 metres	11 metres (no change)
4 and 6 Cooper Street	Height	14 metres	14 metres (no change)
8, 10, 12 and 14	Height	20.5 metres	20.5 metres (no change)
18A Cooper Street	Height	20.5 metres	14 metres (reduced)



**Figure 8:** Amended concept plan



**Figure 9:** Amended elevation drawings





**Figure 10:** Perspective view from Cooper Street looking east



**Figure 11:** Perspective view from Cooper Street facing west

## 11.ASSESSMENT

The revised proposal is supported because:

- the conditions of the Gateway determination have been satisfied;
- issues raised in submissions have been addressed and post-exhibition changes have been undertaken in response to submissions and concerns raised by Council;
- the amended planning proposal responds to its strategic context in close proximity to a range of public transport infrastructure. It provides a well-considered response to ensure the character and heritage significance of the site and area is maintained whilst providing for increased development potential;
- the bulk and scale impacts of any future development will be subject to substantial building setback requirements in the LEP. This will ensure a suitable transition in building height is provided to Cooper Street and lower density development to the north; and

- the proposal is consistent with the Greater Sydney Region Plan, Eastern City District Plan and relevant SEPPs and section 9.1 Directions.

## **Section 9.1 Directions**

The relevant 9.1 Directions are discussed below.

### *Direction 2.3 Heritage Conservation*

This Direction applies to the planning proposal as it conserves an item of environmental heritage. It requires that a planning proposal contain provisions that facilitate the conservation of items identified in a study of environmental heritage of the area.

As discussed, a rigorous heritage assessment of the planning proposal has been undertaken with updates to respond to heritage concerns. As a result of amendments to the planning proposal, it is considered that the revised planning proposal is consistent with this Direction.

### *Direction 3.1 Residential Zones*

This Direction applies to the planning proposal as it affects an existing and proposed residential zone.

The proposal is consistent with this direction as the rezoning of the land will not reduce the permissible residential density of the land.

### *Direction 3.4 Integrating Land Use and Transport*

This Direction seeks to ensure development is appropriately located to improve access and transport choice and reduce car dependency.

The site is suitably located to utilise existing public transport services within walking distance of the site. Both rail and bus services provide connections to jobs and employment that will assist in reducing reliance of private car usage. The planning proposal is consistent with the requirements of this direction.

### *Direction 4.1 Acid Sulphate Soils*

This direction requires that an acid sulphate soils study must be considered prior to rezoning land mapped as containing ASS.

The planning proposal impacts on land identified with Acid Sulphate Soil risk Class 5. The Burwood LEP 2012 contains existing provisions to ensure the consideration of ASS during development assessment. As adequate provisions already exist and the nature of the proposal, it is considered any inconsistency with this direction is justified as being of minor significance.

### *Direction 6.3 Site Specific Provisions*

This objective of this direction is to discourage unnecessarily restrictive site-specific planning controls.

The Department has recommended the inclusion of a clause in the Burwood LEP 2012 specifying the minimum setback distance requirements for any future development. The intent of this is to protect the character of Cooper Street including buildings of heritage significance.

The inclusion of this clause will not restrict the ability of the permitted land use to be carried out. The planning proposal is considered to be consistent with the requirements of this direction.

## **State environmental planning policies**

### SEPP No. 65 (Design Quality of Residential Apartment Development)

SEPP No. 65 includes a number of design principles that are required to be considered as part of any future development assessment.

The updated concept design includes indicative floor layouts showing the potential of any future development to respond to solar access and cross ventilation requirements of the Apartment Design Guide (ADG).

#### *Solar Access and Ventilation*

The site will receive northerly solar access due to the low scale density of development to the north of Cooper Street. This will provide adequate opportunity for any future residential apartments to achieve adequate compliant levels of solar access in accordance with ADG recommendations. The updated concept design demonstrates the capability of a future proposal to achieve ADG compliance and can be assessed in greater detail as part of a future development application.

Diagrams have also been provided to demonstrate that cross ventilation requirements of the ADG will be capable of being met.

#### *Overshadowing*

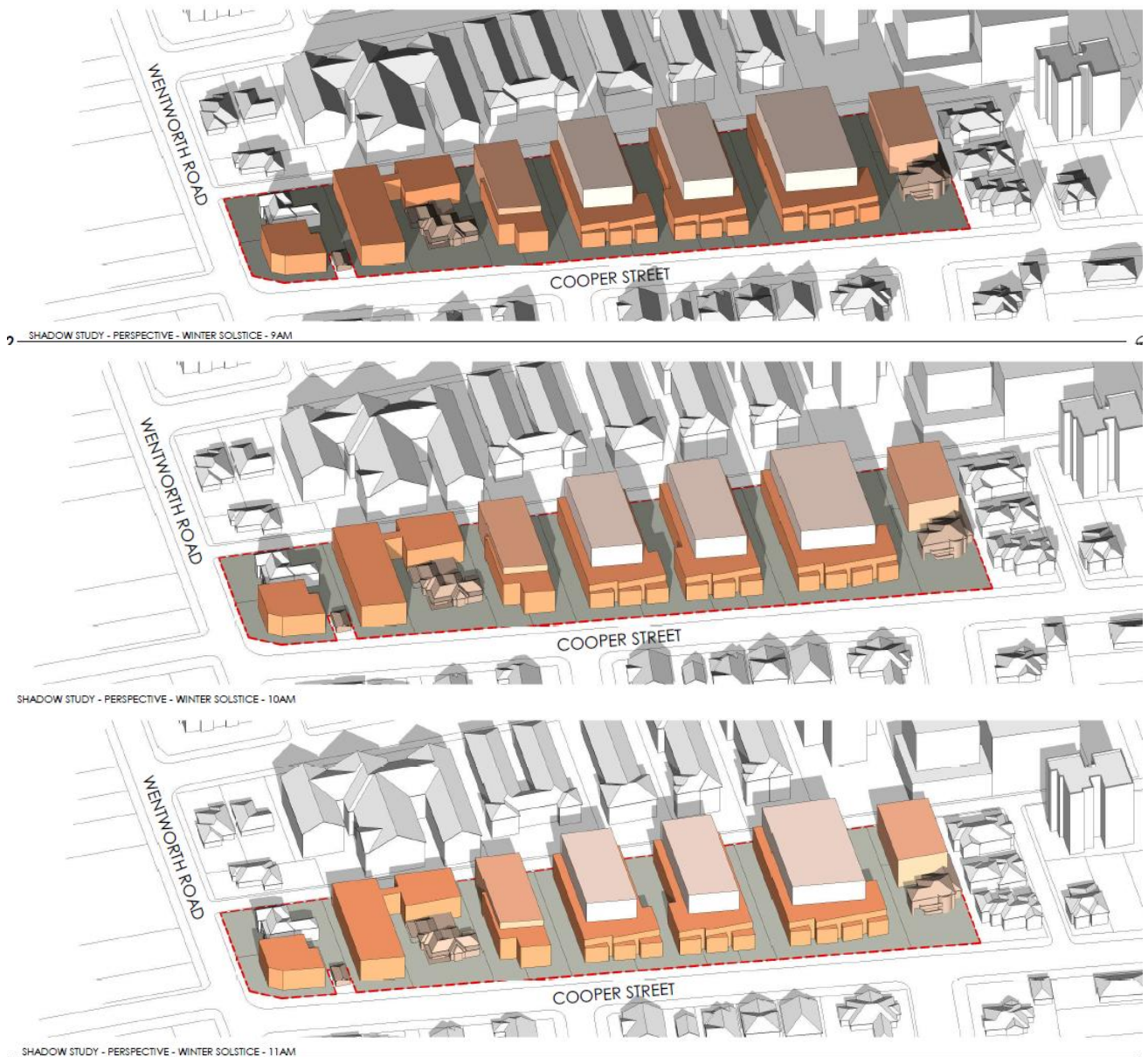
The Department acknowledges that additional overshadowing will arise from the LEP amendment. The increased building heights will create some additional impacts particularly to the rear of existing residential apartments fronting Cowdery Lane.

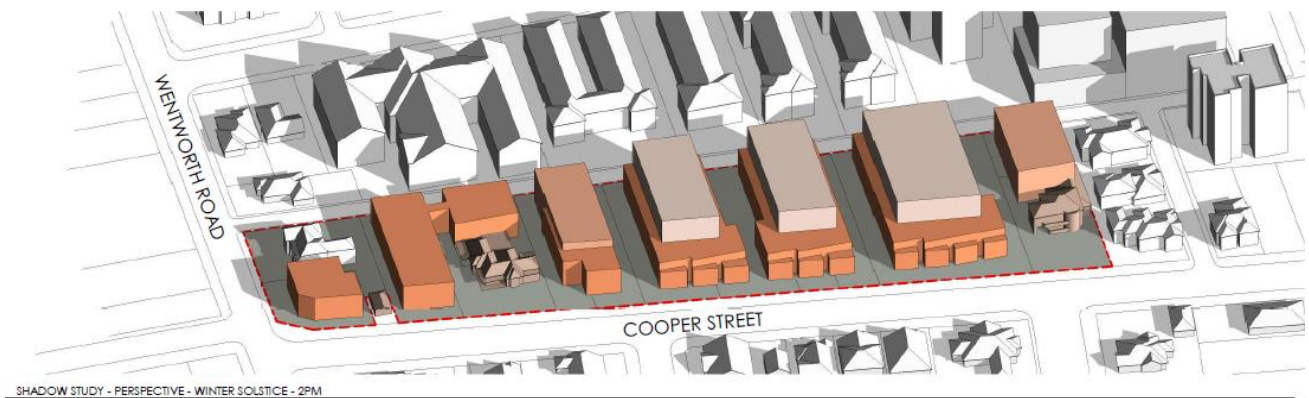
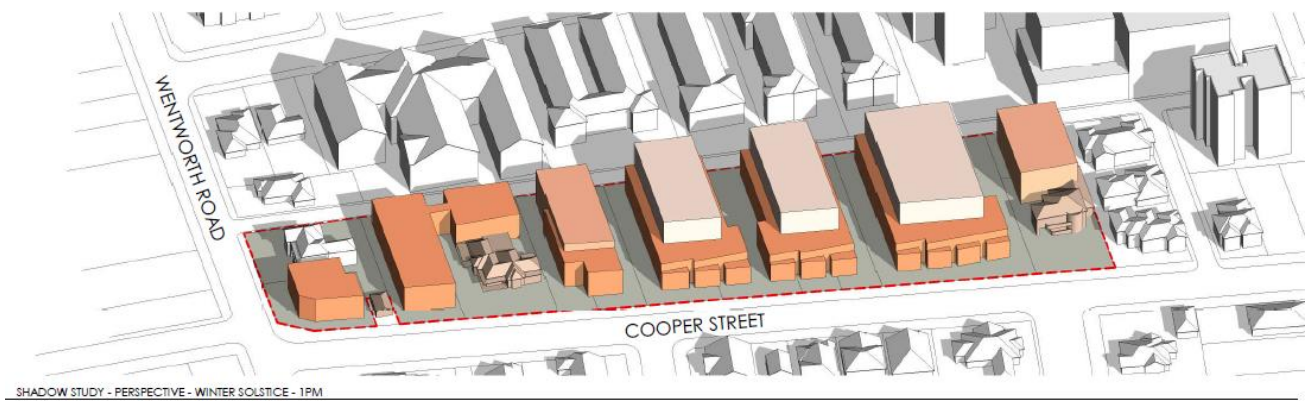
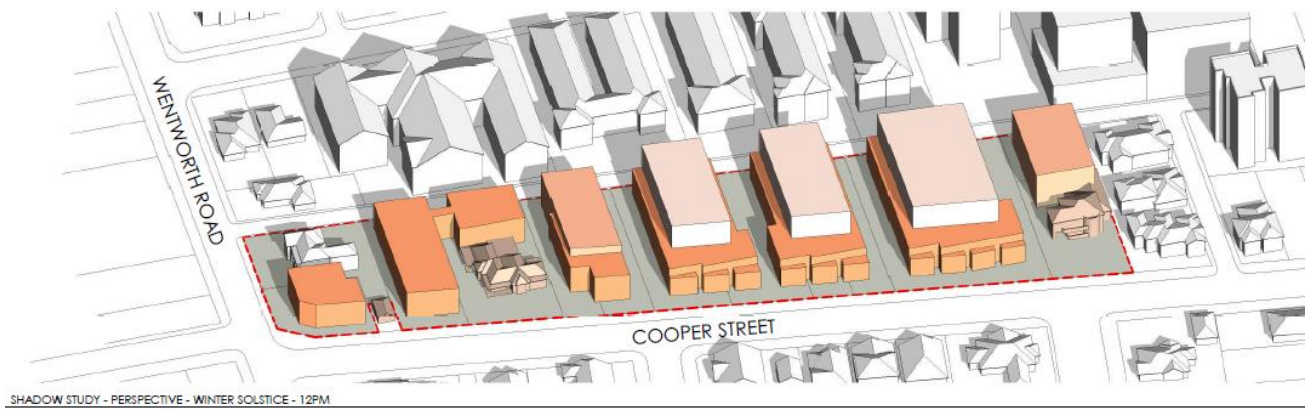
The proponent has provided updated overshadowing diagrams to show impacts arising from the amended concept design. Figures 12 and 13 reflect overshadowing impacts between 9:00am and 3:00pm at the winter solstice.

To the south of the site are residential apartment blocks ranging in height from 3 storeys to approximately 10 storeys. The largest impact will be to the 3 storey apartment blocks which are provided with substantial setbacks to Cowdery Lane. The increased height from the planning proposal will result in some additional overshadowing to these properties including the north facing elevations which includes a mixture of windows and balconies. However, these diagrams show that a large portion of the additional overshadowing will be experienced to the rear setback areas. This predominantly comprises at grade car parking areas, garages, garbage storage and residential access points.

Whilst there will be some additional impacts to these properties, the Department is satisfied that an acceptable provision of solar access will be available to living and private open space areas of neighbouring dwellings. Any impacts on the windows and balconies of these apartments will need to be considered as part of a detailed development assessment.







**Figure 13:** Perspective view facing south of overshadowing impacts

### Building Separation and Visual Privacy

The ADG provides a guidance for separation distances which increases proportionally to the building height as follows:

**Table 4:** Building separation requirements of ADG

Building Height	Separation distance
9 storeys and above	12-24m
Up to 8 storeys	9-18m
Up to 4 storeys	6-12m



The updated concept design includes analysis to show that a future design can be incorporated that meets these ADG separation requirements. This can be further assessed as part of the assessment of any future development application(s).

The Department notes that the concept design assumes future amalgamation of lots to achieve the design outcome reflected. This will need to be considered by Council as part of any future development assessments. It is noted that the Burwood DCP currently requires a minimum frontage requirement of 20 metres for residential flat buildings which will assist in guiding future built form across the site. Council also has the opportunity to prepare a site specific DCP to further guide future development.

## **State, regional and district plans**

### Eastern City District Plan

The Eastern City District Plan (the Plan) contains planning priorities and actions to guide growth of the Eastern District while improving the district's social, economic and environmental assets. It contains planning priorities and actions for implementing the Greater Sydney Region Plan, A Metropolis of Three Cities, at a district level and is a bridge between regional and local planning.

The proposal is located within the Eastern City District and is considered to give effect to the priorities and actions of the Plan. In particular, the following priorities have been identified as relevant to the planning proposal:

#### *Planning Priority E1 Planning for a city supported by infrastructure*

The priority highlights the importance of aligning infrastructure with forecast growth. It also states that aligning land use and infrastructure planning will maximise the use of existing infrastructure.

The subject site is appropriately located to benefit from existing infrastructure provision, most notably Strathfield Station which is located within 400 metres of the site. The planning proposal is in keeping with this priority by providing additional housing opportunity in proximity to a range of existing infrastructure investment.

#### *Planning Priority E4 fostering healthy, creative, culturally rich and socially connected communities*

This priority seeks to create communities that are healthy, resilient and socially connected. The priority highlights that the Strathfield and Burwood local government areas demonstrate the strongest linguistic diversity with more than 65 per cent of residents speaking a language other than English at home.

The proposal is considered to respond to this priority by contributing to a diversity of housing that is within a walkable distance of services and public transport. This will provide the potential for any future development to build social connections in the area for a diversity of people.

#### *Planning Priority E5 providing housing supply, choice and affordability, with access to jobs and services*

This proposal will assist in contributing to housing supply and choice in an area close to existing transport and employment opportunities.

Council has not developed an Affordable Housing Scheme therefore restricting the ability of an LEP amendment for affordable housing. Opportunities remain for planning agreements to occur between the proponent and Council as part of any future development applications.

*Planning Priority E10 Delivering integrated land use and transport planning and a 30-minute city*

The planning proposal will provide additional housing in a well-connected area to adjoining strategic centres such as Parramatta, Burwood and the Sydney CBD. The proposal is considered to effectively build on the objective of integrating land-use and transport plans to deliver a 30-minute city.

*Planning Priority E17 Increasing urban tree canopy cover and delivering Green Grid connections*

The delivery of urban tree canopy coverage will need to be assessed as part of any future development application. Cooper Street currently contains substantial trees that should be considered as part of any future developments. The LEP requirement to setback buildings from Cooper Street will assist in achieving tree canopy protection. This will need to be further considered as part of future development assessments.

*Planning Priority E20 Adapting to the impacts of urban and natural hazards and climate change*

This priority seeks to ensure effective planning occurs that can reduce the exposure to natural and urban hazards and build resilience to shocks and stresses. The planning proposal will not inhibit the potential for any future development application to effectively respond to this priority.

Draft Burwood Local Strategic Planning Statement

The draft Burwood Local Strategic Planning Statement was exhibited between 6 August and 16 September 2019. The LSPS will set out:

- the 20-year vision for land use in the local area
- the special characteristics which contribute to local identity
- shared community values to be maintained and enhanced
- how growth and change will be managed into the future

The LSPS identifies seven areas for further investigation of their existing character and emerging character, and the subsequent development of controls to guide that character. The southern side of Cooper Street is identified as part of this and outlines the following aims to be revised through further investigation:

- ensure a sensitive transition to the heritage conservation areas to the north of Cooper Street.
- conserve significant heritage buildings and integrate these into the new built fabric.
- provide generous setbacks that enable a green, leafy character in new developments.
- ensure a high-quality standard of new buildings and public domain.
- ensure development does not jeopardise the operation and function of Strathfield Hospital.

The amended planning proposal is considered to respond to these aims in that it:

- has been reduced in scale to respond to the context of the site along Cooper Street and its relationship to the adjoining heritage conservation area.
- it now retains all heritage buildings across the site.



- a site specific LEP clause will be introduced requiring substantial transitional building setback requirements which will assist in providing the opportunity for tree canopy along Cooper Street.
- is not considered to jeopardise the function and operation of Strathfield Hospital. A Gateway condition included the requirement that the traffic and transport assessment be updated following consultation with Strathfield Hospital. Council states in its post exhibition report that this has occurred and informed the traffic and transport assessment placed on exhibition.

The Department acknowledges that Council is currently undertaking strategic work to give effect to its LSPS which has identified this site for its character. However, the subject planning proposal has been under consideration since 2014 when it was originally lodged with Council. The Department considers it unreasonable to delay the finalisation of this planning proposal to await the findings of the further investigation to be undertaken.

As outlined above, the amended planning proposal has been updated and appropriately responds to the aims identified above. The Department is satisfied that in addition to this, SEPP 65 and the ADG provide extensive planning guidance to be considered as part of any future development applications along with Council's LEP and DCP. The finalisation of this planning proposal does not prevent Council further investigating the area for its existing and future character.

## 12. MAPPING

The following maps have been prepared by the Department's ePlanning team with assistance from the Eastern and South District team and have been sent to Parliamentary Counsel for notification:

- Land zoning map;
- Height of buildings map; and
- Floor Space Ratio map.

## 13. CONSULTATION WITH COUNCIL

Council was consulted on the terms of the draft instrument under clause 3.36(1) of the *Environmental Planning and Assessment Act 1979* (**Attachment E**).

Council responded on 23 August 2019 raising some concerns that it requested the Department review further prior to finalisation including:

### Anomalies with existing LEP provisions

Council states that it requests that the FSR and building heights be reviewed as follows:

- The proposed FSR of 2.3:1 at 8, 10, 12, 14 and 18 Cooper Street be reduced to 2:1.
- The proposed FSR of 1.5:1 at 4, 6 and 18A Cooper Street be reduced to 1.2:1.
- The proposed height of building of 20.5 metres at 8, 10, 12, 14 and 18 Cooper Street be reduced to 20m.

Council states that the reasons for the requested changes are as follows:

- This would ensure consistency with existing FSR and height of building control ranges in the Burwood LEP 2012.
- Concern is raised that the revised FSR's are excessive and would produce much larger and bulkier buildings than the proponent indicates in the concept. Council

states that the floorplate efficiencies would be higher than the efficiency rate in the Apartment Design Guide.

#### *Department response*

The Department is satisfied that the revised FSR controls are reasonable to proceed as part of the LEP amendment for the following reasons:

- the revised FSR and heights have been developed to respond to the concerns raised by the community, council, OEH and the Department. The planning proposal is site specific and therefore has the potential to provide for differing FSR and height controls than currently exist in the Burwood LEP 2012. The Department does not consider this raises any unreasonable impacts to the future use and function of the Burwood LEP 2012.
- further detailed assessment of the building envelopes will be undertaken as part of any future development applications. The Department is satisfied that the revised height and FSR's provide sufficient scope for further detailed assessment to be undertaken as part of any future development application.
- sufficient planning controls relating to heritage, built form and amenity are provided within the Burwood LEP 2012, Burwood DCP and SEPP 65 to guide future development of the site and achieve an acceptable outcome.

#### Incorrect identification of DCP controls

Council states that the updated concept design incorrectly references provisions in the Burwood DCP including:

- reference is made to a 45-degree sightline in the Burwood DCP that has been considered in the concept design. Council states that this control only applies in Centres and Corridors, not to residential land. Council is concerned that the proposed buildings are set too far forward of the heritage items at a number of points.
- reference is made to a 3 metres setback requirement in the Burwood DCP. Council considers that the concept design does not meet this requirement in some parts of the site as it is measuring this from the heritage building and not the site boundary.

#### *Department response*

The Department considers these issues can be further addressed as part of any future development application. The updated concept design is considered to show that a suitable design response can be achieved on the site taking into consideration heritage constraints.

An additional site specific LEP clause has been included requiring a minimum 6 metres setback of built form to Cooper Street with any built form within a 16 metre setback to Cooper Street restricted to 11 metres (3 storeys). This clause has been introduced to mitigate the impacts of built form and scale. It also intends to provide a suitable transition between the lower scale heritage conservation area to the north and apartment development to the south.

The Burwood LEP 2012 and DCP contain a number of heritage controls that will need to be considered as part of any future development applications. SEPP 65 also provides further guidance regarding setback and separation requirements that will need to be considered. The Department is satisfied that sufficient controls are in place to appropriately guide heritage and built form assessment in future development applications.

#### Additional requested LEP clause

Council requested that an additional clause be introduced into the LEP requiring a minimum frontage of 24 metres to Cooper Street for all sites. This is due to the proponent's plan

assuming amalgamation of the site. Council considers that this is required as the Burwood LEP 2012 does not currently contain minimum site area provisions for residential flat buildings.

#### *Department response*

The Department requested that Council provide additional information to the reasoning for the request for a 24 metre frontage and how this figure has been arrived at. Council responded by stating that the request for 24 metres is a nominal figure. Council also states that the Burwood DCP has a minimum frontage requirement of 20 metres for residential flat buildings, so the proposal needs to align with that at a minimum.

The Department considers that insufficient reasoning and evidence has been provided to demonstrate the requirement for a 24 metres frontage. The Department is satisfied that the Burwood DCP requirement for a frontage of 20 metres provides appropriate planning provisions to guide future allotment sizes. Council will have the opportunity as part of any future development assessments to address this issue further. Additionally, Council has the opportunity to prepare its own DCP to further guide future development across the site.

#### Basement excavation

Council states that no basement excavation should be permitted within 4 metres of a boundary shared with heritage items. This is requested to ensure the structural integrity of existing heritage items, allow deep soil planting, ameliorate amenity impacts from the proximity of driveways and be consistent with the Burwood DCP 2012.

#### *Department response*

The Department considers that issues relating to the structural integrity of buildings will need to be addressed and considered as part of any future development applications. This is not a matter to be considered further under this LEP amendment.

### **14. PARLIAMENTARY COUNSEL OPINION**

On 26 July 2019 Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.

### **15. RECOMMENDATION**

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- it is consistent with all relevant section 9.1 Directions and SEPP's;
- it is consistent with the Eastern City District Plan and Greater Sydney Region Plan;
- it encourages development that will facilitate increased housing provision in a location serviced by substantial public transport infrastructure and in proximity to employment opportunities;
- it will ensure the retention of all existing heritage items on the site;
- it responds to its heritage context by ensuring any future development will be subject to substantial street setback requirements to Cooper Street and building height requirements near retained heritage items; and
- it will have satisfactory environmental, social and economic impacts.

A handwritten signature in black ink, appearing to be 'Kris Walsh', with a long horizontal flourish extending to the right.

**Kris Walsh**  
**Acting Team Leader, Eastern**  
**and South District**

A handwritten signature in black ink, appearing to be 'Laura Locke', with a large, stylized 'L' and a long horizontal flourish extending to the right.

**Laura Locke**  
**Acting Director Eastern and South**  
**District**  
**Place, Design and Public Spaces**