

CCL585-15 PLANNING PROPOSAL REQUEST - 29-31 MACMAHON ST
HURSTVILLE

Report Author/s	Senior Strategic Planner, Ms H Singh Manager Strategic Planning, Ms C Gregory		
File	14/1818		
Previous Reports Referenced	CCL294-14 - Submissions received to Public Exhibition - Draft Hurstville Local Environmental Plan (Hurstville City Centre) 2014 and Draft Amendment to Development Control Plan No 2 - Hurstville City Centre - Council - 17 Sep 2014 7:00pm		
Community Strategic Plan Pillar	Economic Prosperity		
Existing Policy?	Yes	New Policy Required?	No
Financial Implications	Within Budget		
Reason for Report	For Approval		
Interested Parties	The Churches of Christ Property Trust, KPoint Investments Pty Ltd		
Company Extract included	Yes		

EXECUTIVE SUMMARY

Council has received a Planning Proposal for Nos. 29-31 MacMahon Street, Hurstville (the Site) (Figure 1). The Proposal requests that the draft Hurstville Local Environmental Plan (Hurstville City Centre) 2014 (draft City Centre LEP) be amended as follows:

- Amend the Height of Buildings Map for the Site from 40 metres to 55 metres (allowing approximately 17 storeys);
- Amend the Floor Space Ratio (FSR) Map for the site from 4.5:1 to 7:1 (this includes an FSR of 1:1 for a 'community facility' in accordance with a new clause in the draft City Centre LEP);
- Amend the FSR Map by including a reference to a new clause in the draft City Centre LEP relating to 'community facility' floor space of approximately 1200sqm;
- Amend the draft City Centre LEP Written Instrument in Part 4 – Principle development standards, by adding a new subclause 4.4(3) (a) to allow the specified maximum FSR of 6:1 for the Site to be exceeded by up to 1:1 (allowing a total FSR of 7:1) if the additional FSR is used for a 'community facility' of which, at least part is located at ground floor level.

The proposal would provide a potential for approximately 70 apartments along with a community facility floor space and a place of public worship on the ground and first floor of approximately 1200sqm.

This report provides Council with a copy of the applicant's Planning Proposal and the outcome of an assessment of the Planning Proposal.

This report recommends that Council not support the Planning Proposal to amend the planning controls for the Site. The Planning Proposal is not supported as it seeks to amend the draft City Centre LEP, which has not yet been made and the terms of which are not yet known; the proposed development controls exceed those adopted by Council in the draft City Centre LEP and the existing controls under 'DCP No. 2' and is inconsistent with the Hurstville City Centre Transport Management and Accessibility Plan (TMAP) Report 2013 adopted recommendations for floor space in the City Centre.

Council at its meeting on 4 March 2015 considered a report on a Planning Proposal for 29-31 MacMahon Street Hurstville (Figure 1) and resolved that *"the matter be deferred to the Meeting of 1 April 2015."*

It is noted that the applicant submitted additional information on 23 March 2015 to support the Planning Proposal and a response to Council's assessment of the Proposal (refer to Attachment 5 and Attachment 6).

The additional information has been reviewed and the Planning Proposal is still not supported for the reasons outlined in the Council report on 4 March 2015. The recommendations to not support the Proposal are maintained.

AUTHOR RECOMMENDATION

THAT Council not support the Planning Proposal for 29-31 MacMahon Street, Hurstville which seeks to amend draft Hurstville Local Environmental Plan (Hurstville City Centre) 2014 Height of Buildings and Floor Space Ratio controls for the following reasons:

1. The Planning Proposal requests to amend the draft City Centre LEP, which was recently adopted by Council, but has not been made by the Minister for Planning and the terms of which are not yet known. The proposal is premature as it seeks to amend a draft LEP.
2. The proposed building height and floor space ratio under the Planning Proposal exceed those recently adopted for the Site under the draft City Centre LEP.
3. The proposed building height and floor space ratio are the same as those presented in the submission to Council on the exhibited draft City Centre LEP. These amendments were not supported by Council at its meeting of 17 September 2014.
4. The proposed building height and floor space ratio under the Planning Proposal exceed the existing controls for the Site under Development Control Plan No. 2 – Hurstville City Centre.
5. An amendment to Hurstville LEP 1994 which currently applies to the Site is not supported on the basis that this LEP is not consistent with the Standard Instrument LEP and does not include development standards for building height and FSR. The height and FSR controls are contained in the Development Control Plan No. 2 – Hurstville City Centre.
6. The Planning Proposal will result in an increase in the total floor space in the draft City Centre LEP and will be inconsistent with the Hurstville City Centre Transport Management and Accessibility Plan (TMAP) Report 2013 adopted recommendations for floor space in the City Centre. This will result in potential

- impacts on traffic and infrastructure within the City Centre.
7. The Planning Proposal is not consistent with all of the objectives of Section 117 Direction 3.4 Integrating Land Use and Transport.
 8. The Planning Proposal should not be considered in isolation as Council has received other Planning Proposals in the Hurstville City Centre seeking increases to the development controls. The impact of increasing the development controls on sites across the City Centre is unknown. An integrated approach should therefore be undertaken for reviewing all future and undetermined Planning Proposals for sites within the City Centre.
 9. A precedent would be set if the Planning Proposal was supported.

THAT Council undertake an integrated approach for reviewing planning proposals requesting amendments to the height and floor space ratio controls within the Hurstville City Centre, in consultation with the Department of Planning and Environment.

THAT any future planning proposals seeking amendments to the height and/or floor space ratio controls under the draft City Centre LEP 2014 have regard to the cumulative impact of increases to planning controls in the context of the TMAP recommendations and urban design outcomes for the Hurstville City Centre.

THAT Council write to the applicant to advise of Council's decision.

FURTHER THAT Council advise the Department of Planning & Environment of its decision.

REPORT DETAIL

BACKGROUND

17 July to 14 August 2014	<p>Exhibition of draft City Centre LEP (2014) and draft DCP No.2 – Hurstville City Centre (2014)</p> <p>The draft City Centre LEP was exhibited with a maximum building height of 40 metres and FSR of 4.5:1 for the Site.</p>
	<p>Submission by Willana Associates relating to 29-31 MacMahon Street. Submission did not support the exhibited building heights and FSR for the Site and requested maximum building height of 55 metres and FSR of 7:1 for the Site. This included an FSR of 1:1 for a 'community facility' in accordance with a new clause in the draft City Centre LEP.</p> <p>Submission by Executive Ministry Director, Churches of Christ in NSW relating to 29-31 MacMahon Street. Submission did not support the exhibited building heights and FSR for the Site and supported the request made by Willana Associates.</p>
17 Sept 2014	<p>Council adopted the draft City Centre LEP (2014) and approved the draft DCP 2 (2014)</p> <p>The above submissions to the draft City Centre LEP requesting variation to the building height and FSR were not supported by Council for reasons related to integrated land use and transport planning.</p>

	The approved DCP 2 (2014) will become effective when the City Centre LEP is made by the Minister for Planning and becomes effective.
7 Nov 2014	Planning Proposal submitted by KPoint Investments Pty Ltd.
28 Nov 2014	Council acknowledged receipt of the Planning Proposal and requested additional information.
4 Dec 2014	Letter from KPoint Investments Pty Ltd providing additional information.
15 Dec 2014	Submission of revised level 1 and level 2 concept plans for the planning proposal.
4 March 2015	Council resolved to defer the matter to the Meeting of 1 April 2015.
23 March 2015	Additional information submitted by applicant.

ADDITIONAL INFORMATION SUBMITTED BY APPLICANT

In response to Council's resolution to defer the matter to the Council Meeting of 1 April 2015, the applicant has submitted additional information to support the Planning Proposal (Refer to Attachment 5 and Attachment 6).

In response to the applicant's submission in Attachment 5, that sites in the vicinity of 29-31 MacMahon Street Hurstville have achieved development approval with greater FSR and height than the adopted draft City Centre LEP, the following points are made:

- ~~€€€~~ 454-456 Forest Road Hurstville – The Land and Environment Court has approved (November 2013) a height of 37.5m.
- ~~€€€~~ 93 Forest Road Hurstville – The original development approval for the East Quarter site (03/DA-1046) provided for an FSR of 2.63:1. The Development Application No 11/DA-21(8 November 2011), which replaced Stage 2 of 03/DA-1046, increased the total FSR to 2.77:1. The current Planning Proposal requests an overall increase in the FSR for the site to 3.5:1.

SITE DESCRIPTION

The Site is located at Nos. 29 and 31 MacMahon Street, Hurstville and consists of three lots (Figure 1). The site is rectangular in shape with the MacMahon Street frontage of 30.18m and an overall area of 1112.6m². The Site is owned by The Churches of Christ Property Trust and contains an existing two storey residential apartment block and a single storey Church. Vehicular access is off MacMahon Street.

Table 1: Site Details

Site	Site Area (Approximate)
29 MacMahon Street, (Lot 1 SP 12396) (north-eastern lot) Contains two storey residential flat building	556.3m ²
31 MacMahon Street (Lot 11, DP 455603) (central lot) Contains single storey Church	172.8m ²
31 MacMahon Street (Lot 10 Section A, DP 1297) (south-western lot) Contains single storey Church	383.5m ²

Total Site Area

1,112.6 m²



Figure 1: Site Location

Site Context

The Site is located in the City Centre North precinct identified within the Hurstville City Centre Concept Masterplan and draft *DCP 2*. It is in close proximity to the Civic Centre and the transport hub that includes Hurstville Bus Interchange and Hurstville Railway Station.

The Site forms part of a block bounded by MacMahon Street, Park Road, Woodville Street and Barratt Street. The Site fronts MacMahon Street which is characterised by buildings that are set back from the street and includes some major public buildings.

To the north-east and adjacent the Site is a thirteen (13) storey mixed-use building at 23-27 MacMahon Street that includes the old Fire Station building, which is a heritage item. To the south-west and adjacent the Site is a six (6) storey commercial strata building on the corner of MacMahon and Barratt Street.

To the south-east of the Site is a proposed seven (7) and fourteen (14) storey mixed-use building currently under construction. To the north-west and opposite the site on MacMahon Street is the Hurstville City Council Civic Centre, which is a two (2) storey building.

Existing Planning Controls - Hurstville LEP 1994 & DCP 2

The Site is currently zoned 3(b) - City Centre Business under *Hurstville LEP 1994*. This LEP does not have any building height or FSR controls.

The current building height and FSR controls are contained in *DCP No. 2 – Hurstville City Centre*. Council incorporated these controls into the DCP on 1 August 2012. The maximum building height is currently 40 metres and the maximum FSR is 4.5:1 (see Table 2).

Draft City Centre LEP Planning Controls

The Site is zoned B4 Mixed Use under the draft City Centre LEP. The objectives of this zone include:

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- To allow for residential development in the Hurstville City Centre while maintaining active retail, business or other non-residential uses at street level.

The maximum building height in the draft City Centre LEP is 40 metres and the maximum FSR is 4.5:1 (Refer to **figures 2, 3 and 4**).

Figure 2a: Hurstville LEP 1994 (Zoning)



Figure 2b: Draft City Centre City Centre LEP (Zoning)

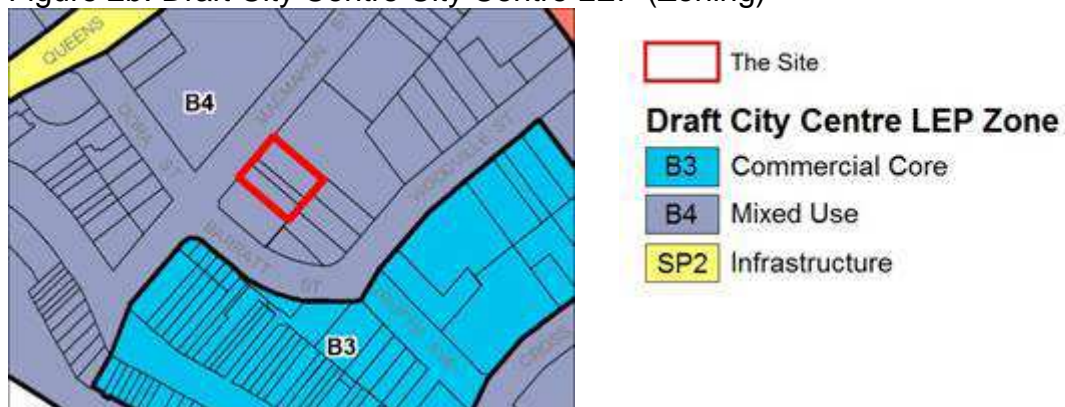


Figure 2c: Planning Proposal Request (Zoning) – no change to draft City Centre LEP



Figure 3a: Existing Height of Buildings - DCP No. 2

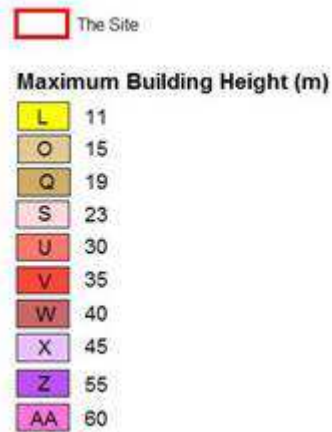


Figure 3b: Draft City Centre LEP 2014 (Height of Buildings)



Figure 3c: Planning Proposal Request (Height of Buildings)



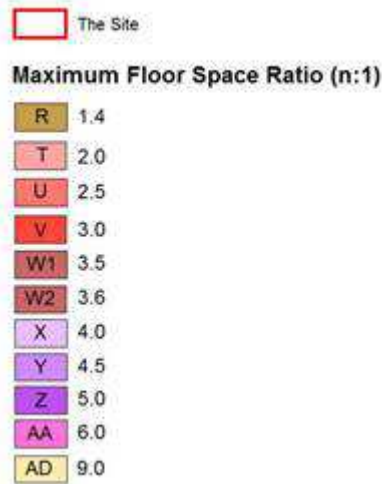
Figure 4a: Existing Floor Space Ratio - DCP No. 2



Figure 4b: Draft City Centre LEP (Floor Space Ratio)



Figure 4c: Planning Proposal Request (Floor Space Ratio)



Note: The Planning Proposal proposes the following new subclause in the draft City Centre LEP:

Clause 4.4 (3)

Despite subclause 4.4 (2), the floor space ratio for a building may exceed the maximum floor space ratio allowed under that sub-clause by up to:

(a) 1:1 – if the building is at 29-31 MacMahon Street (Lot 10, section A in DP 1297; Lot 11 in DP 455603; Lot 1 in DP 527460; Lot 12, section A in DP 1297) in Area 1 identified on the Floor Space Ratio Map and the additional floor space ratio is utilised by the provision of a community facility of which, at least part is located at ground floor level.”

Table 2: Comparison of existing / draft City Centre LEP / Planning Proposal Request (as shown in Figures 2, 3 and 4)

The Site	Existing HLEP 1994 / Draft City Centre LEP Zone	Planning Proposal Zone	Existing DCP 2 / draft City Centre LEP Height	Planning Proposal Height	Existing DCP2 / draft City Centre LEP FSR	Planning Proposal FSR
29-31 MacMahon St	3(b) City Centre Business B4 Mixed Use	B4 Mixed Use (No change to draft LEP)	40m	55m	4.5:1	7:1*

Note: *The total FSR requested includes an additional FSR of 1:1 to be utilised for the provision of a community facility of which, at least part is located at ground level under a new clause 4.4(3)(a). This would require amendments to clause 4.4 *Floor space ratio* in the draft LEP Written Instrument and the draft City Centre LEP FSR maps.

DESCRIPTION OF PLANNING PROPOSAL

The Planning Proposal seeks amendments to the draft City Centre LEP as follows:

- ~~€€€~~ Amend the Height of Buildings Map for the Site from 40 metres to 55 metres (allowing approximately 17 storeys);
- ~~€€€~~ Amend the FSR Map for the site from 4.5:1 to allow up to 7:1 (this includes an FSR of 1:1 for a 'community facility' in accordance with a new clause in the draft City Centre LEP);
- ~~€€€~~ Amend the FSR Map by including a reference to a new clause in the draft City Centre LEP relating to 'community facility' floor space of approximately 1200m²;
- ~~€€€~~ Amend the draft City Centre LEP Written Instrument in Part 4 – Principle development standards, by adding a new subclause 4.4(3) (a) to allow the specified maximum FSR of 6:1 for the Site to be exceeded by up to 1:1 (allowing a total FSR of 7:1) if the additional FSR is used for a 'community facility', of which, at least part is located at ground floor level.

The proposal would provide a potential for approximately 70 apartments along with community facility floor space and a place of public worship on the ground and first floor of approximately 1200sqm.

The proposal does not request any change to the B4 Mixed Use zoning for the Site under the draft City Centre LEP.

The Planning Proposal outlines *“the objective and intended outcomes of the proposed instrument are to provide yield from the site at 29-31 MacMahon Street Hurstville, under the existing ‘draft’ B4 zoning, enabling an outcome which fully funds the development of a new community facility on the ground and first floor, with associated car parking.”*

In summary, the Planning Proposal aims to *“provide a higher yield from the subject site under the draft zoning, B4 Mixed Use, enabling a multi-purpose facility providing for its existing and future community uses.”*

The Planning Proposal notes that Council amended the Town Centre DCP No 4 on the request of the Church to include community/church and commercial uses and explored redevelopment opportunities for the Site in 2003/4 (refer to section on Draft Hurstville LEP (Hurstville City Centre) 2014 and draft DCP 2 below). The Church was unable to proceed as the development partner found the commercial space available after providing the community facilities to be unviable.

The Planning Proposal notes that the commercial market in Hurstville is currently flat and is still an unviable development alternative. Thus, they have proposed to combine community facilities with upper level residential development in the current proposal.

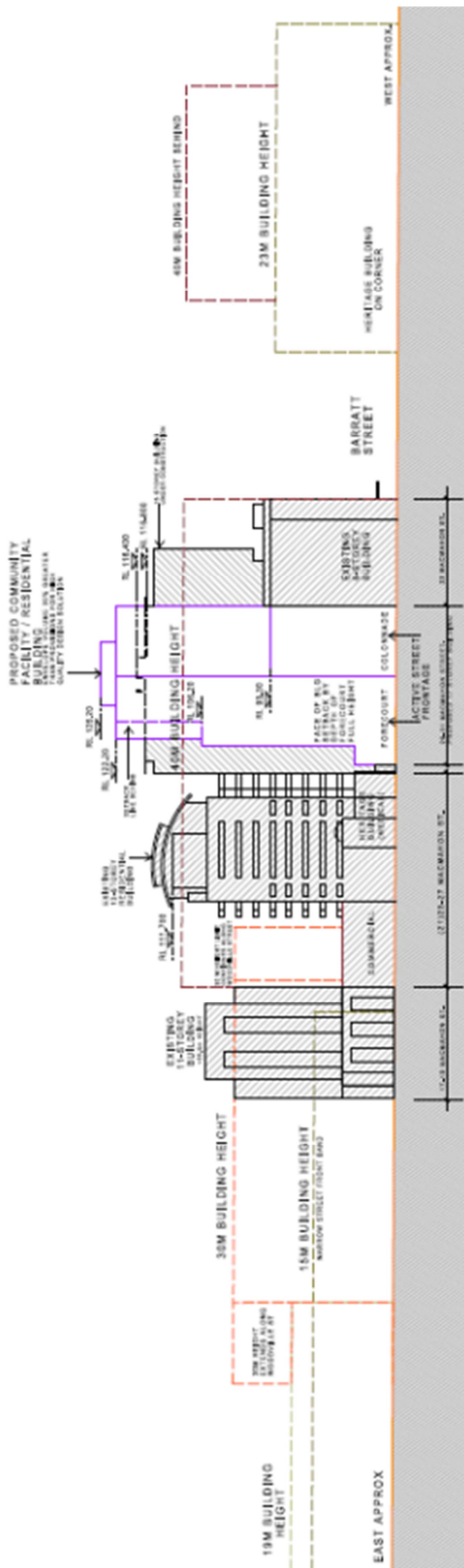


Figure 6: Planning Proposal Sectional Elevation along MacMahon Street (Blackwood Seddon Architects, 2014)

Planning Proposal Documentation

The Planning Proposal submitted to Council on 7 November 2014 was supported by the following documents which are attached to this report.

Attachment 1: Planning Proposal Submission, October 2014 (KPoint Investments Pty Ltd). This includes:

- Urban Design considerations
- Streetscape Analysis
- Relationship of Planning Proposal to Height and FSR clauses in the draft City Centre LEP
- Development Yield analysis

Attachment 2: Submission to draft City Centre LEP, August 2014, prepared by Willana Associates. This includes:

- Survey
- Building Envelope Plan (Blackwood Seddon, July 2014)
- Concept Drawings (Blackwood Seddon, July 2014)
- Traffic Report, (Colston Budd, June 2014)

ASSESSMENT OF PLANNING PROPOSAL

The Planning Proposal has been assessed under the relevant sections of the Environmental Planning and Assessment Act 1979 and Regulation, “*A guide to preparing planning proposals*” (October 2012) and “*A guide to preparing local environmental plans*” (April 2013) prepared by the then Department of Planning and Infrastructure.

The assessment includes a review of the strategic planning framework and a site-specific assessment as listed below:

1. Hurstville City Centre Concept Masterplan 2004
2. City Centre Background Studies
3. Hurstville Local Environmental Plan 1994
4. Development Control Plan No. 2 – Hurstville City Centre
5. Draft Hurstville Local Environmental Plan (Hurstville City Centre) 2014 and draft DCP 2 (2014)
6. Legal Advice on Planning Proposals in the City Centre
7. Metropolitan Plan for Sydney to 2036
8. A Plan for Growing Sydney 2014
9. South Subregion – Draft Subregional Strategy (November 2007)
10. State Environmental Planning Policies
11. Ministerial Section 117 Directions
12. Traffic, Infrastructure and Access Issues (including the Transport Management and Accessibility Plan (TMAP 2013))
13. Environmental Impacts
14. Social Impacts
15. Economic Impacts
16. Services and Infrastructure

1. Hurstville City Centre Concept Masterplan 2004

Council in collaboration with the NSW Government Architect Chris Johnson developed a Concept Master Plan for Hurstville City Centre, which was adopted in 2004. This Concept Master Plan includes a 10-point strategy to improve the public

infrastructure and amenity in Hurstville City Centre. The Masterplan divides the City Centre into six precincts, each having unique characteristics. The Site is located within the City Centre North precinct that includes the Civic spine.

The Masterplan notes that the area along MacMahon Street contains a number of important buildings which were built from 1920 to 1930. The public buildings include three churches, Council's Civic Centre and the St George Museum. The Site adjoins the old Fire Station building, which is a heritage item.

2. City Centre Background Studies

The Masterplan 2004 recommended that Council should undertake subsequent investigations and studies to further develop and implement the Masterplan principles and inform the preparation of the draft City Centre LEP. Council undertook these background studies in 2007. They include:

- Hurstville City Centre Traffic Study, May 2007
- Hurstville City Centre Market Forecast Study, Sep 2007
- Hurstville City Centre Public Domain Plan, Oct 2007
- Hurstville City Centre Urban Form Study, Oct 2007
- Review of Heritage Items within Commercial Centres, Nov 2007

3. Hurstville Local Environmental Plan 1994

Currently, the Hurstville City Centre is governed by Hurstville LEP 1994 and the Site is zoned 3(b) City Centre Business. Uses permissible in this zone are similar to those permitted in B4 Mixed Use Zone under the draft City Centre LEP and are listed in the section on the draft City Centre LEP below.

Comment: Hurstville LEP 1994 is the LEP which currently applies to the land. The proposed land uses are permissible under the LEP. The LEP however provides no building height or FSR controls.

As outlined in the legal advice obtained by Council (see below), amendments to HLEP 1994 are not supported on the basis that this LEP is not consistent with the Standard Instrument LEP and does not include development standards for building height and FSR. The height and FSR controls are contained in *DCP No. 2*. Council has resolved to adopt the draft City Centre LEP and it is intended to replace HLEP 1994.

In addition, the proposed development would not be consistent with one of the objectives of this zone, "*to improve traffic flow in and around the Hurstville Town Centre*". This is addressed further under Traffic Issues.

4. Development Control Plan No. 2 – Hurstville City Centre

The development controls for all land within the City Centre are currently contained within *DCP No. 2* until such time as the draft City Centre LEP is made. On 1 August 2012, Council incorporated the adopted draft City Centre LEP Maps into *DCP No. 2*. These included the Height of Buildings, Floor Space Ratio and Active Street Frontages maps.

The Sites' maximum building height is currently 40 metres and maximum FSR is 4.5:1

A history of evolution of height and FSR controls on the Site is tabulated in the section below.

Comment: The Planning Proposal is not consistent with the building height and FSR controls in DCP No. 2.

Summary of evolution of planning controls for the Site

The table below provides a summary of key stages in the evolution of controls on the Site since 2003.

Year / Time period	Document / Public Exhibition	Heights and FSR Controls
Pre June 2003	Hurstville Town Centre DCP No 4 (Block 13B) 29-31 MacMahon Street Hurstville	Height: 4 Storeys FSR: 2:1
2004 (effective 13/01/04)	Amended controls for (Block 13B), 29-31 MacMahon Street in Hurstville Town Centre DCP No 4	Height: 10 Storeys FSR: 4.7:1
2004	Hurstville City Centre Concept Masterplan 2004	
2007	Hurstville City Centre Public Domain Plan	
	Hurstville City Centre Market Forecast Study	
	Hurstville City Centre Urban Form Study	Height: 10 Storeys FSR: 4.5:1*
	Hurstville City Centre Traffic Study	
	Review of Heritage Items within Commercial Centres	
2009	Preparation of draft City Centre LEP and draft DCP for City Centre	
20 Oct 2010	Department required Council to undertake the TMAP process, prior to considering the draft City Centre LEP	
23 Jan-29 Feb 2012	First Public Exhibition of draft City Centre LEP 2012	Height: 55 metres (approx. 17 Storeys) FSR: 4.5:1
12 April 2012	Council adopted an information report on submissions to the draft City Centre LEP. It was resolved to amend heights and FSRs on various sites in the City Centre including this Site.	Height: 40 metres (10-12 Storeys, as per use) FSR: 4.5:1
14 June-12 July 2012	Public Exhibition of draft DCP 2 amendment to incorporate the adopted Height of Buildings, FSR and Active Street Frontage maps	
1 Aug 2012	Council adopted the amendments to DCP 2	Height: 40 metres (10-12 Storeys, as

Year / Time period	Document / Public Exhibition	Heights and FSR Controls
		per use) FSR: 4.5:1
June 2013	Council adopted the TMAP and resolved to amend the draft City Centre LEP and draft DCP 2 based on the TMAP.	
10 Dec 2013	Council adopted the draft City Centre LEP after 'evening out' FSR on specific sites in response to the TMAP recommendations. Council also resolved to prepare an amendment to DCP 2.	
17 Jul-14 Aug 2014	Second Public Exhibition of draft City Centre LEP 2014 and draft DCP 2	Height: 40 metres (10-12 Storeys, as per use) FSR: 4.5:1
17 Sept 2014	Council adopted draft City Centre LEP 2014 and approved draft DCP 2 (which will become effective when LEP is made) Council resolved to consult with the Department to achieve an integrated approach for reviewing future Planning Proposals for sites in the City Centre.	Height: 40 metres (10-12 Storeys, as per use) FSR: 4.5:1
1 Oct 2014	Council forwarded the draft City Centre LEP 2014 to the Department for finalisation.	

Note: * FSR 4.5:1 if totally commercial floor space, lesser in the case of mixed use.

5. Draft Hurstville LEP (Hurstville City Centre) 2014 (draft City Centre LEP 2014) and draft DCP 2 (2014)

The Site is zoned B4 Mixed Use under the draft City Centre LEP 2014. The objectives of the zone are to provide a mixture of compatible land uses and to allow for residential development in the Hurstville City Centre while maintaining active retail, business or other non-residential uses at street level.

The maximum building height is 40m and maximum FSR is 4.5:1.

Permissible uses under this zone include: *“Child care centres; Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Function centres; Hostels; Hotel or motel accommodation; Information and education facilities; Medical centres; Multi Dwelling Housing; Passenger transport facilities; Places of Public Worship; Recreation Areas; Recreation facilities (indoor); Registered clubs; Residential Flat Buildings; Respite day care centres; Restricted premises; Roads; Seniors housing; Service Stations; Shop top housing; Signage; Tourist and visitor accommodation”.*

Comment: The uses proposed in the Planning Proposal, i.e. Commercial, Community Uses, Place of Public Worship and residential accommodation are permissible under the current and draft City Centre LEP zones.

The definition of a 'Community facility' under draft City Centre LEP 2014 is:

Community facility' means a building or place:

- (a) owned or controlled by a public authority or non-profit community organisation, and*
 - (b) used for the physical, social, cultural or intellectual development or welfare of the community,*
- but does not include an educational establishment, hospital, retail premises, place of public worship or residential accommodation.*

The Planning Proposal requests to amend the FSR for the Site from 4.5 to 6:1 and provide for an additional FSR of 1:1, for a community facility.

In accordance with the definition of *gross floor area (GFA)*, the GFA includes '*the sum of the floor area of each floor of a building measured....*'. Thus, the GFA for the community facility cannot be measured separately and the total FSR requested for the Site is 7:1.

It is also noted that the Standard Instrument definition of 'community facility' under the draft City Centre LEP 2014 does not include a 'place of public worship' which is a separately defined land use.

It is noted that the adopted draft City Centre LEP total floor space for the City Centre remains higher than the recommended floor space under the TMAP land use Scenario 5. Therefore any further increases to the floor space under the draft City Centre LEP would have implications on the traffic and infrastructure for the City Centre.

Status of draft City Centre LEP and draft DCP 2

On 17 September 2014, Council adopted the draft City Centre LEP and on 1 October 2014 forwarded the draft LEP to NSW Department of Planning and Environment for finalisation.

Council also resolved to approve the draft DCP No. 2 at this meeting. The draft DCP No. 2 will become effective when the LEP is made by the Minister for Planning.

Integrated Approach on Planning Proposals

On 17 September 2014, Council resolved to consult with the Department of Planning and Environment to achieve an integrated approach for reviewing future Planning Proposals lodged for sites in the Hurstville City Centre.

Council has sought direction from the Department on this issue. The Planning Proposal should not be considered in isolation of other planning proposals in the City Centre. It is important that the cumulative impact of the proposals be assessed in relation to the TMAP recommendations, the effect on floor space and potential impacts on traffic and other infrastructure within the City Centre.

6. Legal Advice on Planning Proposals in the City Centre

Legal advice was obtained in October 2014 in relation to the lodgement of planning proposals in the City Centre that requested to amend the development controls in the draft City Centre LEP recently adopted by Council. In summary, the legal advice did not provide support for these planning proposals for the following reasons:

1. The Planning Proposals are considered premature insofar as they seek to amend the draft City Centre LEP, which has not yet been made and the terms of which are not yet known.
2. Generally, the proposed amendments to the draft planning controls are the same as those presented in submissions to Council on the exhibited draft City Centre LEP. These amendments were not supported by Council at its meeting of 17 September 2014. Council officers do not consider that there is any reason why Council would come to a different view in relation to the Planning Proposals.
3. Any amendments to HLEP 94 are not supported on the basis that this LEP is not consistent with the Standard Instrument LEP and does not include development standards for building height and FSR. The height and FSR controls are contained in the DCP No. 2 – Hurstville City Centre. Council has resolved to adopt the draft City Centre LEP and it is intended to replace HLEP 1994.

Comment: Based on the legal advice, the Planning Proposal is not supported.

7. Metropolitan Strategy for Sydney to 2036

The Metropolitan Plan vision notes that by 2036, Sydney will be a more compact, networked city with improved accessibility, capable of supporting more jobs, homes and lifestyle opportunities within the existing urban footprint.

The Metropolitan Plan has a number of objectives and actions relating to residential and employment lands. The Planning Proposal includes some of the relevant objectives and actions:

- ~~€€€~~ *Plan for centres to grow and change over time (Action B1.1).*
- ~~€€€~~ *Aim to locate at least 80% of all new housing within the walking catchments of existing and planned centres of all sizes with good public transport (Action B1.3).*
- ~~€€€~~ *Locate at least 70% of new housing within existing urban areas (Action D1.1).*

Comment: The draft City Centre LEP includes two major zones, B4 Mixed Use and B3 Commercial Core which meet the Metropolitan Plan objectives relating to planning for growth of centres and location of residential development. A wide range of housing types are permitted in the Hurstville City Centre in the B4 Mixed Use zone. This includes dual occupancies, multiple dwelling housing, shop top housing,

seniors housing and residential flat buildings. It is anticipated that a significant amount of residential development will be accommodated through to 2036 if the draft City Centre LEP is made.

The Planning Proposal seeks to increase the height and floor space for the Site. This is not consistent with the draft City Centre LEP and adopted TMAP recommendations which provide a total 'sustainable' floor space for the City Centre. Refer to comments on integrating land use and transport planning in the Section 117 table below.

8. A Plan for Growing Sydney 2014

The recently released *A Plan for Growing Sydney* classifies Hurstville as a Strategic Centre and recognises that the State Government needs to work with Council to:

- Retain a commercial core in Hurstville, as required, for long-term employment growth; and
- Provide capacity for additional mixed-use development in Hurstville including offices, retail, services and housing.

'Strategic centres' are defined as locations that currently or are planned to have least 10,000 jobs. These are priority locations for employment, retail, housing, services and mixed-uses.

Comment: Council already retains a Commercial Only Core within the City Centre as part of the 3(d) – City Centre Commercial Core Zone under HLEP 1994. The adopted floor space in the draft City Centre LEP is anticipated to cater to the provision of the additional mixed use development in Hurstville.

9. South Subregion – Draft Subregional Strategy (November 2007)

The draft South Subregional Strategy sets dwelling and employment targets for the South subregion to 2031. The dwelling target for the Hurstville LGA to 2031 is 4,100 additional new dwellings and the employment target is 3,000 additional new jobs. The Strategy identifies the Hurstville City Centre as a 'Major Centre'. The Metropolitan Plan describes a "major centre" as "the main shopping, business and civic centres for their subregions".

Comment: The draft City Centre LEP provides increased dwelling and employment capacity which will satisfy the targets set in the draft Strategy. Although the Planning Proposal is consistent with the draft Strategy, as it proposes to provide dwellings and some employment within the Site, it results in additional floor space above and beyond that adopted in the draft City Centre LEP and TMAP for the City Centre.

It is noted that a new Subregional Plan will be prepared for the South Subregion following the release of "*A Plan for Growing Sydney*" in December last year.

10. State Environmental Planning Policies (SEPPs)

The full assessment of the Planning Proposal against all applicable SEPPs is provided in Attachment 3 and within the applicant's submission. Provided below is an assessment of the relevant SEPPs.

SEPP 65 – Design Quality of Residential Flat Development

This Policy aims to improve the design quality of residential flat development in NSW by:

- (a) *to ensure that it contributes to the sustainable development of New South Wales:*
 - (i) *by providing sustainable housing in social and environmental terms, and*
 - (ii) *by being a long-term asset to its neighbourhood, and*
 - (iii) *by achieving the urban planning policies for its regional and local contexts, and*
- (b) *to achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define, and*
- (c) *to better satisfy the increasing demand, the changing social and demographic profile of the community, and the needs of the widest range of people from childhood to old age, including those with disabilities, and*
- (d) *to maximise amenity, safety and security for the benefit of its occupants and the wider community, and*
- (e) *to minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions.*

There are ten design quality principles that need to be taken care of that include Context, Scale, Built form, Density, Resource, Energy and water efficiency, Landscape, Amenity, Safety and security, Social dimensions and Housing affordability and Aesthetics.

Comment: The Planning Proposal notes that “*compliance with this SEPP will need to be demonstrated with a future development application. The concept drawings supporting this planning proposal have been developed with regard to the SEPP*”. The planning proposal provides limited details of the proposal's compliance with SEPP 65, however some details have been provided in relation to building setbacks, separation and amenity considerations. It is noted that no shadow diagrams have been prepared for the proposed height of 55m; the shadow diagrams in the planning proposal have been prepared for a 40m maximum building height.

The planning proposal is not considered to satisfy the aim of this SEPP of ‘ensuring that the proposed development contributes to the sustainable development...’ as the floor space generated by the Planning Proposal controls is not consistent with the total ‘sustainable’ floor space for the City Centre as recommended in the *Hurstville City Centre TMAP 2013* and adopted in the draft City Centre LEP. This will have implications on the traffic and infrastructure for the City Centre.

SEPP (Infrastructure) 2007

Clause 104 – *Traffic generating development* applies to any other development having ancillary parking accommodation. These developments are to be referred to Transport for NSW.

Comment: A Traffic Report was submitted with the Planning Proposal which examined the transport aspects of this planning proposal. The report noted a small increase in traffic generation that would not have noticeable effects on the operation of the surrounding road network.

Please refer to comments in the s.117 table below relating to integrating land use and transport.

11. Ministerial Directions (Section 117 Directions)

Attachment 4 of this report provides the checklist of Ministerial Directions within the Planning Proposal. The Directions that are relevant to the Planning Proposal are outlined below.

Section 117 – Key Objectives	Comment
<p>Direction - 2.3 Heritage Conservation</p> <p>The objective of this direction is to “<i>is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.</i>”</p> <p>A planning proposal must contain provisions that facilitate the conservation of Aboriginal and European heritage.</p> <p>A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning that the heritage significance is conserved by existing or draft planning instruments or the provisions of the planning proposal that are inconsistent are of minor significance.</p>	<p>The Planning Proposal states that it is “consistent” with the objectives of Direction 2.3 in that:</p> <p><i>The site is not identified as containing any heritage items, or being within a heritage conservation area. There are no known items of indigenous heritage significance at the site.</i></p> <p><i>There is a council registered heritage item of local significance on an adjoining property.</i></p> <p>Comment: The area along MacMahon Street is unique and includes a number of public buildings and a number of heritage items, including the adjoining old Fire Station at 27 MacMahon Street. A heritage impact statement has not been included in the Planning Proposal.</p> <p>The concept drawings in the Planning Proposal provide a forecourt around the Fire Station to preserve its significance, but do not acknowledge the presence of other heritage items in the vicinity. These include the Friendly Societies’ Dispensary Building at 17 MacMahon Street, the Hurstville City Museum and Gallery Building at 14 MacMahon Street and the Presbyterian Church at 1 MacMahon Street, Hurstville.</p>
<p>Direction - 3.4 Integrating Land Use and Transport</p> <p>The objectives of this direction are to ensure that urban structures, building forms, landuse locations, development designs, subdivision and street</p>	<p>The Planning Proposal states that it is consistent with the objectives of this Direction.</p> <p>Comment: The Planning Proposal does not fully meet the objectives of Direction 3.4 as it is not consistent with all of the aims, objectives and principles of Improving</p>

Section 117 – Key Objectives	Comment
<p>layouts achieve the following planning objectives:</p> <ul style="list-style-type: none"> a. improving access to housing, jobs and services by walking, cycling and public transport, and b. increasing the choice of available transport and reducing dependence on cars, and reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and c. supporting the efficient and viable operation of public transport services, and d. providing for the efficient movement of freight. 	<p>Transport Choice – Guidelines for planning and development (DUAP 2001), and The Right Place for Business and Services – Planning Policy (DUAP 2001).</p> <p>Council was required to undertake a TMAP exercise in response to the amount of floor space (1,141,000sqm) contained in the draft City Centre LEP, the potential accessibility and infrastructure implications and inconsistency with s117 Direction 3.4 Integrating Land Use and Transport.</p> <p>The TMAP was adopted in June 2013 and recommended Land Use scenario 5 which provided a potential to develop 363,000sqm additional GFA resulting in approx. 861,354sqm by 2036. This meant that the FSR in the City Centre needed to be reduced.</p> <p>Council endeavoured to reduce the FSR in the draft City Centre LEP on specific sites that resulted in a decrease in floor space of approximately 50,000sqm. The draft City Centre LEP still retains a level of inconsistency with Direction 3.4 as the total GFA after the FSR reduction is approx. 1,091,000sqm which is 229,646sqm more than recommended in the TMAP.</p> <p>Although the draft City Centre LEP seeks to achieve the dwelling and employment targets as set out in the Metropolitan Plan for Sydney 2036, A Plan for Growing Sydney; Council's long term vision (of an emerging role of serving the South subregion and supporting future growth along key metropolitan urban renewal corridors); and address the integration of land use and transport, the draft City Centre LEP still retains a level of inconsistency with Direction 3.4 due to the higher level of GFA provided compared to the TMAP recommendations.</p> <p>Despite this inconsistency the TMAP provides Council with strategies for increasing the use of public transport, active transport, constraining vehicle demand, and road network improvements.</p> <p>Any proposal that requests greater FSR in the City Centre thus, is effectively amplifying the inconsistency with Direction 3.4.</p> <p>The Traffic Report supporting the Planning</p>

Section 117 – Key Objectives	Comment
	<p>Proposal indicated that “the 30 additional dwellings would result in some 10 vehicles per hour two-way during the peak periods”.</p> <p>The Traffic Report examines the impact of the 30 additional dwellings provided over and above the adopted height and FSR along with a 1200sqm floor space for a Church and community facility. The Traffic Report does not examine traffic movements from the total proposed development that includes 70 dwellings or the cumulative impacts of the existing land uses, all approved and proposed developments.</p>

12. Traffic, Infrastructure and Access Issues

The Planning Proposal includes a Traffic Report prepared by Colston Budd. The Report notes that the Hurstville TMAP identified appropriate works to cater for future growth of the Hurstville City Centre, including the future development of the sites under the draft City Centre LEP planning controls. Key recommendations from the applicant’s report include:

- The additional 30 residential units will result in an additional traffic generation of some 10 vehicles per hour two-way during peak periods;
- Such a small increase in traffic generation would not have noticeable effects on the operation of the surrounding road network and will not result in changes to the recommended road works identified in the Hurstville TMAP to cater for future growth in the Hurstville City Centre”.

Comment: Please refer to comments on integrating land use and transport planning in the S117 table above.

13. Environmental Impacts

The Planning Proposal does not have major identifiable environmental impacts. In relation to compliance with SEPP 55 – Remediation of Land, the Planning Proposal notes that the site history indicates it is likely to be suitable for community, commercial and residential uses.

The Site is situated within an urban context surrounded by mixed-use buildings with retail/commercial use on lower levels and basement car parking. The Site adjoins a heritage item at the old Fire Station building at 27 MacMahon Street, Hurstville.

Comment: The Planning Proposal indicates that there would be no solar access and overshadowing impacts on the public domain as the public domain lies to the north of the Site. The shadow diagram included in the Planning Proposal demonstrates that the proposed building will cast shadows on the mixed use development under construction to the south-east. This overshadowing impact is based on a 40m height and no detailed shadow analysis has been provided with the Planning Proposal for the proposed height of 55m.

The concept drawings included in the Planning Proposal indicate a forecourt adjoining the heritage item, the old Fire Station building at 27 MacMahon Street Hurstville. This will preserve the heritage significance of the Fire Station as well as maintain character of MacMahon Street. The Planning Proposal needs to further acknowledge the presence of other heritage items in the vicinity.

14. Social Considerations

The Planning Proposal proposes a Church and a community facility of approximately 1200 m² on the ground and first floor levels with residential use on the upper floors. The Planning Proposal indicates that there will be two Church services per week on Sunday and the community facility will be used for the following programs:

- English classes
- Asian women at Work
- Toddler Time
- Alcoholics Anonymous

The Planning Proposal indicates that the community facility will be privately run.

Comment: The Planning Proposal requests an extra FSR of 1:1 for the provision of the proposed community facility of approximately 1200 m² that includes a place of public worship under the Planning Proposal.

Although the community facility and the place of public worship is permissible under the draft City Centre LEP, the site is opposite the Civic Centre and Entertainment Centre which also provide community facility spaces.

15. Economic Effects

The Planning Proposal includes that *“the net economic benefit generated for the Hurstville community, if this proposal proceeds, will be significant. For example, it would:*

- *Reduce the burden on the council to provide community services, always in short supply.*
- *Bring more money into City Centre via rates & charges for council and resident incomes for spending with local business, thus helping underpin employment levels.*
- *Save on state and local government infrastructure costs, as transport, utilities and essential services fully exist to cope with the increased FSR generated by this planning proposal – in contrast with (say) the R3 medium density zone in the vicinity of Forest & Bonds Roads Peakhurst, where R2 low density zoning is being introduced due to inadequate public transport, utilities and road infrastructure. Council believe the development capacity from this area would be better delivered by the Hurstville City Centre. The Provisions in this planning proposal would, in some way, go towards making up that capacity.*
- *The new building would employ technologically advanced energy saving and management systems which may even provide power back into the main grid.*

Adopting the objectives and provisions of this planning proposal provides economic viability for the redevelopment to proceed. It would provide significant additional employment to HCC during the 18 months – 2 year construction period and beyond due to the expanded Community Facilities operations, building management activities and additional business use opportunities in the new building”.

Comment: It is noted that the Planning Proposal does not include an Economic Feasibility Study to support the economic benefits listed.

It is noted that that the Site is located directly opposite the Hurstville Civic Precinct. The Masterplan 2004 proposes approximately 27,000sqm of commercial floor space and 2000sqm of community floor space in the Civic Precinct. Public car parking will be provided in the basement.

16. Services and Infrastructure

The Planning Proposal indicates that the site can be connected to available utilities and services, making efficient use of existing infrastructure. It does not analyse whether sewerage, water, stormwater and gas infrastructure would need to be upgraded if the Site is redeveloped. Further consultation with the relevant Authorities would be required if the Planning Proposal is supported and progressed.

SUMMARY OF ASSESSMENT

In summary the Planning Proposal to amend the height and FSR controls for 29-31 MacMahon Street Hurstville is not supported. The key reasons include:

1. The Planning Proposal requests to amend the draft City Centre LEP, which was recently adopted by Council, but has not been made by the Minister for Planning and the terms of which are not yet known. The proposal is premature as it seeks to amend a draft LEP.
2. The proposed building height and floor space ratio under the Planning Proposal exceed those recently adopted for the Site under the draft City Centre LEP.
3. The proposed building height and floor space ratio are the same as those presented in the submission to Council on the exhibited draft City Centre LEP. These amendments were not supported by Council at its meeting of 17 September 2014.
4. The proposed building height and floor space ratio under the Planning Proposal exceed the existing controls for the Site under Development Control Plan No. 2 – Hurstville City Centre.
5. An amendment to Hurstville LEP 1994 which currently applies to the Site is not supported on the basis that this LEP is not consistent with the Standard Instrument LEP and does not include development standards for building height and FSR. The height and FSR controls are contained in the Development Control Plan No. 2 – Hurstville City Centre.
6. The Planning Proposal will result in an increase in the total floor space in the draft City Centre LEP and will be inconsistent with the Hurstville City Centre Transport Management and Accessibility Plan (TMAP) Report 2013 adopted recommendations for floor space in the City Centre. This will result in potential impacts on traffic and infrastructure within the City Centre.

7. The Planning Proposal is not consistent with all of the objectives of Section 117 Direction 3.4 Integrating Land Use and Transport.
8. The Planning Proposal should not be considered in isolation as Council has received other Planning Proposals in the Hurstville City Centre seeking increases to the development controls. The impact of increasing the development controls on sites across the City Centre is unknown. An integrated approach should therefore be undertaken for reviewing all future and undetermined Planning Proposals for sites within the City Centre.
9. A precedent would be set if the Planning Proposal was supported.

It is recommended that Council undertake an integrated approach for reviewing planning proposals requesting amendments to height and floor space ratio controls within the City Centre, in consultation with the Department of Planning and Environment. Any future planning proposals seeking amendments to the height and/or floor space ratio controls under the draft City Centre LEP 2014 should have regard to the cumulative impact of increases to planning controls in the context of the TMAP recommendations and urban design outcomes for the Hurstville City Centre.

NEXT STEPS

Pre-Gateway Review

If Council resolves to adopt the recommendation in this report not to support the Planning Proposal, the applicant has the opportunity to request a pre-Gateway review by the Department of Planning and Environment. The applicant has 40 days from the date of notification of Council's decision to request a review.

The Department will notify Council of an applicant's request for review if it is confirmed to be eligible and complete. The Council will have 21 days to provide a response in relation to why the original request to Council was not supported. The Department will review the proposal and the Director General will make the final decision whether the proposal proceeds to Gateway or not.

If Council Supports Planning Proposal

If Council supports the Planning Proposal it would be necessary for Council to provide the reasons and justification for supporting the Planning Proposal. Also the applicant should be requested to:

- Consolidate all the documents submitted for the Planning Proposal into one Planning Proposal document to assist in the assessment and exhibition of the proposal
- Align the concept plans with the three dimensional sketch, e.g. the size of forecourt in the Level 1 and level 2 Plans does not match with the building envelope view
- Submit any additional information required by Council.

Council would then forward the Planning Proposal to the Department of Planning and Environment for Gateway determination in accordance with Section 56 of the Environmental Planning and Assessment Act 1979.

With regard to public exhibition, if the Gateway is issued by the Department, it will specify the community consultation that must be undertaken on the Planning Proposal.

Timeframes

The Planning Proposal includes an indicative project timeline which provides the projected times for each stage of the local environmental plan process. It is noted that these timeframes would need to be revised whether Council resolves to support or defer the Planning Proposal.

ATTACHMENTS

[View attachments related to Planning Proposal for 29-31 MacMahon Street Hurstville](#)

[View video relating to Planning Proposal for 29-31 MacMahon Street Hurstville](#)

APPENDICES

- Appendix [View1](#) Company Extract - K Point Investments Pty Ltd - 29-31 MacMahon St Hurstville (Confidential)
- Appendix [View2](#) The Churches of Christ Property Trust Information - ABN Lookup - Charitable Institution (Confidential)
- Appendix [View3](#) ASIC - Non Registered Entity Summary - The Churches of Christ Property Trust (Confidential)

Minute No. 203

RESOLVED THAT Council not support the Planning Proposal for 29-31 MacMahon Street, Hurstville which seeks to amend draft Hurstville Local Environmental Plan (Hurstville City Centre) 2014 Height of Buildings and Floor Space Ratio controls for the following reasons:

1. The Planning Proposal requests to amend the draft City Centre LEP, which was recently adopted by Council, but has not been made by the Minister for Planning and the terms of which are not yet known. The proposal is premature as it seeks to amend a draft LEP.
2. The proposed building height and floor space ratio under the Planning Proposal exceed those recently adopted for the Site under the draft City Centre LEP.
3. The proposed building height and floor space ratio are the same as those presented in the submission to Council on the exhibited draft City Centre LEP. These amendments were not supported by Council at its meeting of 17 September 2014.
4. The proposed building height and floor space ratio under the Planning Proposal exceed the existing controls for the Site under Development Control Plan No. 2 – Hurstville City Centre.
5. An amendment to Hurstville LEP 1994 which currently applies to the Site is not supported on the basis that this LEP is not consistent with the Standard Instrument LEP and does not include development standards for building height and FSR. The height and FSR controls are contained in the Development Control Plan No. 2 – Hurstville City Centre.
6. The Planning Proposal will result in an increase in the total floor space in the draft City Centre LEP and will be inconsistent with the Hurstville City Centre Transport Management and Accessibility Plan (TMAP) Report 2013 adopted recommendations for floor space in the City Centre. This will result in potential impacts on traffic and infrastructure within the City Centre.
7. The Planning Proposal is not consistent with all of the objectives of Section 117 Direction 3.4 Integrating Land Use and Transport.
8. The Planning Proposal should not be considered in isolation as Council has received other Planning Proposals in the Hurstville City Centre seeking increases to the development controls. The impact of increasing the development controls on sites across the City Centre is unknown. An integrated approach should therefore be undertaken for reviewing all future and undetermined Planning Proposals for sites within the City Centre.
9. A precedent would be set if the Planning Proposal was supported.

THAT Council undertake an integrated approach for reviewing planning proposals requesting amendments to the height and floor space ratio controls within the Hurstville City Centre, in consultation with the Department of Planning and Environment.

THAT any future planning proposals seeking amendments to the height and/or floor space ratio controls under the draft City Centre LEP 2014 have regard to the cumulative impact of increases to planning controls in the context of the TMAP recommendations and urban design outcomes for the Hurstville City Centre.

THAT Council write to the applicant to advise of Council's decision.

FURTHER THAT Council advise the Department of Planning & Environment of its decision.

(Moved Councillor V Badalati / Councillor R Kastanias)