



Contact: Ms Casey Farrell
Phone: (02) 8575 4132
Fax: (02) 9228 6244
Email: casey.farrell@planning.nsw.gov.au
Postal: GPO Box 39, Sydney NSW 2001

Our ref: PP_2014_BURWO_003_00 (14/16950)
Your ref: 14/45282

Mr Michael McMahon
General Manager
Burwood Council
PO Box 240
Burwood NSW 1805

Dear Mr McMahon

Planning proposal to amend *Burwood Local Environmental Plan 2012*

I am writing in response to Council's request for a Gateway determination under section 56 of the *Environmental Planning and Assessment Act 1979* (the Act) for a planning proposal to insert two clauses under the *Burwood Local Environmental Plan 2012*, providing a bonus residential Floor Space Ratio (FSR) mechanism through a Voluntary Planning Agreement and requiring design excellence for all new development of three or more storeys.

As delegate of the Minister for Planning, I have now determined the planning proposal should proceed subject to variations as outlined by the conditions in the attached Gateway determination.

The intent of the planning proposal to improve the form and amenity of Burwood Town Centre is supported. However, the Department has concerns with the mechanism by which Council is seeking to achieve its objectives.

Council cannot provide bonus development incentives in exchange for mandatory development contributions through an environmental planning instrument. Therefore, the planning proposal is to be amended to remove all references that mandate or infer that a developer must enter into a Voluntary Planning Agreement with Council, dedicate land and/or undertake works, in exchange for bonus floor space.

The planning proposal is to be revised to allow bonus residential floor space to be granted, up to a maximum of ten percent of the total permissible floor space in Area 1 and Area 2 of the Burwood Town Centre. The bonus FSR is to subsequently increase the floor space above and beyond the maximum FSR applying to the Areas, so that total potential floor space for commercial or other permissible uses is not restricted or reduced. In addition, the planning proposal is to include a plain English explanation of the intended effect of the proposed changes.

In regard to the proposed design excellence provisions, the Department supports the application of the clause being limited to the Burwood Town Centre.

Plan making powers were delegated to councils by the Minister in October 2012. It is noted that Council has requested to be issued with delegation for this planning proposal. I have considered the nature of Council's planning proposal and have decided not to issue an authorisation for Council to exercise delegation to make this plan due to the significance of the amendments.

The amending Local Environmental Plan is to be finalised within **9 months** of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request for the Department of Planning and Environment to draft and finalise the Local Environmental Plan should be made 6 weeks prior to the projected publication date.

Council should consider recently drafted design excellence clauses such as Clause 6.7 Design Excellence of Strathfield Town Centre under *Strathfield Local Environmental Plan 2012* to ensure alignment with recently approved clauses. The Department will work with Council and Parliamentary Counsel on the content of the final clauses at the drafting stage.

Should you have any queries in regard to this matter, please contact Ms Casey Farrell of the Department's regional office on (02) 8575 4132.

Yours sincerely



Marcus Ray
Deputy Secretary
Planning Services

11/04/2015

Encl:
Gateway Determination