

To provide a mechanism for bonus FSR in Burwood Town Centre and a design excellence clause for the Local Government Area under Part 6 Additional Local Provisions of the Burwood Local Environmental Plan 2012

Proposal Title : To provide a mechanism for bonus FSR in Burwood Town Centre and a design excellence clause for the Local Government Area under Part 6 Additional Local Provisions of the Burwood Local Environmental Plan 2012

Proposal Summary : To insert two new local clauses into Part 6 Additional Local Provisions of the Burwood Local Environmental Plan 2012.

The proposed new clauses will:

1. Provide for bonus Floor Space Ratio (FSR), up to 10 per cent of the maximum FSR, for residential development within the Commercial Core and Middle Ring of the Burwood Town Centre. The application of the bonus residential FSR may be subject to a Voluntary Planning Agreement between a developer and Council for a material public benefit;
2. Apply a design excellence clause for all new buildings, three or more storeys, across the Local Government Area (LGA).

PP Number : PP_2014_BURWO_003_00 **Dop File No :** 14/16950

Proposal Details

Date Planning Proposal Received : 05-Feb-2015 **LGA covered :** Burwood

Region : Metro(CBD) **RPA :** Burwood Council

State Electorate : STRATHFIELD **Section of the Act :** 55 - Planning Proposal

LEP Type : Precinct

Location Details

Street :

Suburb : Burwood **City :** Sydney **Postcode :** 2134

Land Parcel : Multiple

DoP Planning Officer Contact Details

Contact Name : Casey Farrell

Contact Number : 0285754132

Contact Email : casey.farrell@planning.nsw.gov.au

RPA Contact Details

Contact Name : Diwei Luo

Contact Number : 0299112288

Contact Email : diwei.luo@burwood.nsw.gov.au

DoP Project Manager Contact Details

Contact Name : Diane Sarkies

Contact Number : 0285754111

Contact Email : diane.sarkies@planning.nsw.gov.au

To provide a mechanism for bonus FSR in Burwood Town Centre and a design excellence clause for the Local Government Area under Part 6 Additional Local Provisions of the Burwood Local Environmental Plan 2012

Land Release Data

Growth Centre :		Release Area Name :	
Regional / Sub Regional Strategy :		Consistent with Strategy :	
MDP Number :		Date of Release :	
Area of Release (Ha) :		Type of Release (eg Residential / Employment land) :	
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0
The NSW Government Lobbyists Code of Conduct has been complied with : Yes			
If No, comment :			
Have there been meetings or communications with registered lobbyists? : No			
If Yes, comment :			

Supporting notes

Internal Supporting Notes : **On 26 September 2014, Burwood Council submitted a planning proposal to the Department of Planning and Environment (Tag B), seeking to insert two new local clauses into Part 6 Additional Local Provisions of the Burwood Local Environmental Plan 2012 (Burwood LEP 2012). The proposed clauses apply to different parts of the Local Government Area (LGA). The Department has requested additional advice and information from Council in respect of this planning proposal.**

The Department has been working with Council to resolve legal and policy issues with the planning proposal and develop solutions acceptable to both parties.

THE PROPOSAL

The planning proposal seeks to insert two clauses into the Burwood LEP 2012:

- 1. Clause 6.5 to provide a mechanism for bonus FSR, up to 10 per cent of the maximum allowable FSR, for residential development in the Commercial Core and Middle Ring of Burwood Town Centre. Bonus FSR may be subject to a Voluntary Planning Agreement between the developer and Council; and,**
- 2. Clause 6.6 to apply a design excellence clause for all new developments, three or more storeys, across the Local Government Area (LGA).**

Council has drafted proposed clauses and they have been attached as an appendix to the planning proposal (Tag D).

The planning proposal is supported by two studies – the Burwood Town Centre Urban Design Study (Tag F) and the Burwood Community Facilities and Open Space Study (Tag G).

CURRENT DEVELOPMENT CONTROLS

The following development controls apply in the Burwood Town Centre:
• B4 Mixed Use zone (Tag I);

To provide a mechanism for bonus FSR in Burwood Town Centre and a design excellence clause for the Local Government Area under Part 6 Additional Local Provisions of the Burwood Local Environmental Plan 2012

- Maximum Building Height (Tag J):
 - o 70 metres for Area 1 (the Commercial Core);
 - o 60 metres for Area 2 (the Middle Ring); and,
 - o 30 metres for the Perimeter area and 15 metres for Transition area.
- Maximum FSR (Tag K):
 - o 6:1 for Area 1 (the Commercial Core);
 - o 4.5:1 for Area 2 (the Middle Ring); and,
 - o 3:1 elsewhere.
- Active street frontage and building height plane requirements apply.

Despite the FSRs for Burwood Town Centre, Clause 4.4A of the Burwood LEP 2012 restricts FSR for residential development in identified areas. Specifically, Clause 4.4A restricts residential FSR to:

- 2.0:1 in Area 1 (the Commercial Core);
- 3.0:1 in Area 2 (the Middle Ring); and,
- 2.7:1 in Area 3 (partly Transition Area – not subject of this proposal).

The reduced residential FSRs for Burwood Town Centre under Clause 4.4A are in line with State planning policy that seeks to drive Burwood as a commercial and retail hub.

The planning proposal seeks to increase the maximum residential FSR to:

- 2.60:1 for Area 1 (the Commercial Core);
- 3.45:1 for Area 2 (the Middle Ring); and,
- No change for Area 3.

Various development controls apply to the rest of the LGA.

DESIGN EXCELLENCE

The Burwood LEP 2012 does not currently contain a bonus provision planning mechanism or design excellence clause. Burwood Development Control Plan 2013 does contain design excellence clauses for identified centres within the LGA, specifically:

- Burwood Town Centre;
- Strathfield Town Centre (part in Burwood);
- Enfield Local Centre;
- Croydon Park Local Centre;
- Croydon Neighbourhood Centre; and,
- Parramatta Road Corridor.

While a design excellence clause exists under the Development Control Plan, Council wish to insert a design excellence clause in the Burwood LEP 2012 which would apply to the entire LGA, as the Local Environmental Plan has legal weight.

Design excellence clauses have been incorporated into other Local Environmental Plans, but these clauses only apply to nominated areas, particularly town centres (for example, Strathfield Town Centre or Manly Town Centre). No other known Local Environmental Plan in NSW requires design excellence across an entire LGA.

COUNCIL'S SUPPORT FOR AMENDMENTS

Council are seeking these amendments for the following reasons:

1. The proposed bonus provision will address a mismatch identified by Council between current FSR and height controls in Burwood Town Centre. Council has found maximum FSR is often reached before the maximum height limit, which has led to short bulkier development. Council want to encourage taller, more slender buildings in Burwood Town Centre;
2. Burwood Town Centre is able to support additional residential and mixed use development. Development within the town centre has largely been commercial and retail (which is in line with strategic planning policy). However, Council argues the market and town centre could support increased residential development;

To provide a mechanism for bonus FSR in Burwood Town Centre and a design excellence clause for the Local Government Area under Part 6 Additional Local Provisions of the Burwood Local Environmental Plan 2012

3. A planning mechanism for bonus residential FSR in Burwood Town Centre would encourage developers to provide housing in an area well serviced by public transport, jobs, services and retail facilities. It would also increase housing choice with additional high density housing options. Council argue additional residential development in Burwood Town Centre will assist in meeting its subregional housing targets under the previous Draft Inner West Subregional Strategy;
4. Design excellence will improve the quality of development and amenity within the LGA. Through the Burwood LEP 2012, design excellence would have legal weighting and the consent authority would have to consider excellence in applicable future development applications.

SUMMARY OF ISSUES

The planning proposal, as it currently stands, raises a number of legal and policy issues which need to be resolved. Particularly:

- Whether it is permissible under the Environmental Planning and Assessment Act 1979 for a consent authority to charge two different types of developer contribution levies in exchange for a benefit;
- Whether it is permissible under the Environmental Planning and Assessment Act 1979 for a development contribution levy to be requirement in a standard instrument Local Environmental Plan;
- The elimination of choice if a Voluntary Planning Agreement (VPA) is a requirement in exchange for bonus FSRs. Requiring a VPA removes the 'voluntary' aspect of this type of contribution;
- Isolating bonus FSR mechanisms to one type of development, where strategic planning policy encourage a different development type in that locality;
- The planning proposal's consistency with A Plan For Growing Sydney;
- The feasibility, equity and cost of requiring design excellence for all new developments three or more storeys across the entire LGA and whether such a clause should be better targeted;
- Implications of a design excellence clause for new residential developments, particularly residential flat buildings, and its interaction with SEPP 65 Design Quality of Residential Flat Development and the Residential Development Code; and,
- Identifying subject land. Burwood Town Centre is identified in Burwood's Development Control Plan, not the Local Environmental Plan. The 'Commercial Core' and 'Middle Ring' areas do not have any meaning under Burwood LEP 2012. Under the Burwood LEP 2012, these areas are identified as 'Area 1' and 'Area 2' respectively.

Should the planning proposal proceed to public exhibition, the planning proposal would need to be amended to state the height, in metres not storeys, that would trigger the design excellence clause.

It is important to note that the proposed link between bonus residential FSR in exchange for a Voluntary Planning Agreement is prohibited under the Environmental Planning and Assessment Act 1979.

In its planning proposal, Council has provided an indicative list of the community facilities it believes can be funded through Voluntary Planning Agreements (Tag E and Tag G), including open space, exercise equipment for older people, multipurpose courts, meeting rooms and 405 childcare places.

External Supporting
Notes :

Burwood Council has submitted a planning proposal which seeks to insert two new clauses into Part 6 Additional Local Provisions of the Burwood LEP 2012.

The proposed clauses will:

1. Provide for bonus FSR, up to 10 per cent of the maximum FSR, for residential development within the Commercial Core and Middle Ring of the Burwood Town Centre. The application of the bonus residential FSR may be subject to a Voluntary Planning Agreement between a developer and Council for a material public benefit;
2. Require design excellence for all new buildings, three or more storeys, across the entire LGA.

To provide a mechanism for bonus FSR in Burwood Town Centre and a design excellence clause for the Local Government Area under Part 6 Additional Local Provisions of the Burwood Local Environmental Plan 2012

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment :

The objectives of this planning proposal are to:

- Provide a planning mechanism to allow for bonus residential floor space in return for a public benefit. The bonus would apply to the Commercial Core (Area 1) and Middle Ring (Area 2) of Burwood Town Centre;
- Require design excellence in developments involving the erection of a new building comprising of three storeys or more. The requirement would apply to the whole Burwood Local Government Area (LGA).

Through both clauses, Council intends to fund the procurement and embellishment of open space and community facilities as well as improve the design and shape of the LGA (particularly the town centre).

Council states the bonus residential floor space ratio would result in increased housing supply, which would help Council to meet the housing target, previously set out by the State Government.

The objectives of the planning proposal are clear.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment :

An explanation of the requested provisions has been provided.

Council states the objectives of the planning proposal will be achieved by amending the Burwood LEP 2012 to include the two new clauses – clause 6.5 and clause 6.6 – under Part 6 Additional Local Provisions (Tag D).

The planning proposal explains each of the draft proposed clauses.

Draft clause 6.5 aims to provide additional floor space for residential accommodation (10 per cent of maximum FSR) for two identified areas within Burwood Town Centre. Bonus residential FSR would be in exchange for a developer entering into a Voluntary Planning Agreement with Council. The draft clause states the Voluntary Planning Agreement is to be acceptable to Council and over and above any section 94 contributions. The clause only applies to Area 1 (Commercial Core) and Area 2 (Middle Ring) of Burwood Town Centre.

Draft clause 6.6 aims to deliver the highest standard of design for buildings and public spaces in Burwood. This clause will introduce design excellence across the LGA for all new buildings three or more storeys. It will require the consent authority to consider additional matters (for example, building form and bulk and interaction with the streetscape) when assessing development applications.

The explanation of provisions clearly outlines the purpose, intent and application of the proposal.

Although the explanation of provisions is clear, draft clause 6.5 as currently written (Tag D) is not legally permissible under the Environmental Planning and Assessment Act 1979. The Act (s.93I) states that any environmental planning instrument that either requires a voluntary planning agreement to be entered into before a development application is considered or that prevents a development application from being considered until an agreement is reached has no effect.

The planning proposal does not reflect on how the proposed design excellence clause will

To provide a mechanism for bonus FSR in Burwood Town Centre and a design excellence clause for the Local Government Area under Part 6 Additional Local Provisions of the Burwood Local Environmental Plan 2012

interact with SEPP 65 Design Quality of Residential Flat Development or the Residential Flat Design Code for residential flat buildings but the SEPP would override design excellence provisions for residential flat development in the Burwood LEP 2012.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

2.3 Heritage Conservation

* May need the Director General's agreement

3.1 Residential Zones

3.4 Integrating Land Use and Transport

6.1 Approval and Referral Requirements

6.3 Site Specific Provisions

7.1 Implementation of A Plan for Growing Sydney

Is the Director General's agreement required? **No**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

N/A

e) List any other matters that need to be considered :

****NOTE: At the time the planning proposal was lodged, the Metropolitan Plan for Sydney 2036 was the key strategic planning document. The Metropolitan Plan and the draft Inner West Subregional Strategy have been superseded by A Plan For Growing Sydney.**

****NOTE: Under the previous metropolitan strategy, Burwood was considered to be a Major Centre. Burwood has been elevated to Strategic Centre status under A Plan for Growing Sydney.**

The following strategic planning policies have been identified and considered in the assessment of this planning proposal:

STATE ENVIRONMENTAL PLANNING POLICY

In the planning proposal, Council states there are no SEPPs that the planning proposal would contravene.

SEPP 65 Design Quality of Residential Flat Development has not been identified and considered in the relevant section of the planning proposal; however, it is relevant to the proposed design excellence clause.

SEPP 65 – DESIGN QUALITY OF RESIDENTIAL FLAT DEVELOPMENT

The aim of SEPP 65 is to improve the design and form of residential flat development across NSW. Residential flat buildings are buildings that comprise or include (a) three or more storeys and (b) four or more self-contained dwellings but not Class 1a or Class 1b buildings under the Building Code of Australia.

SEPP 65 applies the following ten design principles to residential flat buildings: context, scale, built form, density, resource, energy and water efficiency, landscape, amenity, safety and security, social dimensions and housing affordability, and aesthetics.

The design excellence clause, as proposed, will apply to all new buildings, three or more storeys, across Burwood LGA. The clause will require the consent authority to consider a range of issues on development application, including (but not limited to) building form and bulk, streetscape, amenity, and heritage.

It is Council's intention that the design excellence clause will apply to a wide range of building types and the clause duplicates considerations under SEPP 65 for residential flat buildings. However, SEPP 65 will override design excellence for residential flat buildings and the outcomes Council want to achieve can be met through SEPP 65.

To provide a mechanism for bonus FSR in Burwood Town Centre and a design excellence clause for the Local Government Area under Part 6 Additional Local Provisions of the Burwood Local Environmental Plan 2012

The Department is satisfied that the inconsistency with this policy is justifiable, as the SEPP will override considerations for residential flat buildings.

S.117 DIRECTIONS

The following section 117 directions have been identified as being relevant to this proposal:

1.1 Business and Industrial Zones

The objectives of the direction are to encourage employment growth in suitable locations, protect employment land in business and industrial zones and support the viability of identified strategic centres. The direction applies where a proposal affects land within an existing or proposed business or industrial zone.

The direction requires that a planning proposal must retain areas and locations of existing business and industrial zones and must not reduce the total potential floor space for employment uses and related public services in business zones.

While this direction was not addressed in the planning proposal, the direction is applicable as the proposed bonus mechanisms will alter development controls in a business zone – Burwood Town Centre is zoned B4 Mixed Use. Outside of Burwood Town Centre, there are approximately 17 small pockets of industrial or business zoned land to which the design excellence clause would apply (Tag N).

Council has provided a study, Burwood Town Centre Urban Design Study (Tag F), which recommends a bonus mechanism to increase FSR in order to gain better design outcomes. The bonus mechanism supports Council's intent for more streamlined, taller and less bulky buildings in the town centre.

The Department is concerned the bonus FSR mechanism, as currently written, will erode potential commercial floor space in Burwood Town Centre. At present, the maximum FSR within the Commercial Core is 6:1 and 4.5:1 for the Middle Ring. Clause 4.4A of the Burwood LEP 2012 restricts residential floor space to 2:1 in the Commercial Core and 3:1 in the Middle Ring. Should bonus residential FSR of 10 percent be provided, the additional residential FSR will eat into the total permissible FSR, thereby reducing the FSR available for other uses. The Department notes Council's argument the maximum FSR limit is often reached in Burwood Town Centre before the height limit.

By way of example, under the current provisions, if a development is part commercial and part residential (and the development uses FSR to the maximum permissible), the commercial component is limited to 4:1 which allows the residential component to reach 2:1, totalling the maximum 6:1.

Under the proposal (as written), the bonus residential FSR will eat into the permissible commercial floor space. Following on from the previous example, with the bonus FSR, the maximum permissible commercial floor space will be restricted to 3.4:1 to allow for a 2.6:1 residential FSR.

The Department is of the view that the bonus FSR mechanism should be expanded to provide bonus FSR of 10 percent for all permissible uses in the Commercial Core and Middle Ring. This will allow for residential FSR to increase without reducing potential commercial floor space (a key consideration under A Plan For Growing Sydney).

The Department considers the planning proposal to be consistent with this direction insofar as the proposal does not alter or remove business zones. However, the proposal is inconsistent with this direction, as the direction requires that planning proposals are not to reduce potential maximum floor space for employment uses.

The proposal, as currently written, has the net effect of reducing employment

To provide a mechanism for bonus FSR in Burwood Town Centre and a design excellence clause for the Local Government Area under Part 6 Additional Local Provisions of the Burwood Local Environmental Plan 2012

(commercial) uses in Burwood Town Centre and is therefore unjustifiably inconsistent with this direction.

2.3 Heritage Conservation

The objective of this direction is to conserve items which have heritage significance. The direction requires a planning proposal to include conservation provisions for items that have historical, scientific, cultural, social, archaeological, aesthetic, architectural or natural significance.

There are 28 heritage items within the Burwood Town Centre and 213 items in the LGA. There are no heritage conservation areas in the Town Centre and 21 conservation areas across the LGA. Clause 5.10 of the Burwood LEP 2012 states development consent is required for proposed works to heritage items in the LGA.

Council contends the proposed design excellence clause will provide additional protection to heritage items as the clause will require the consent authority to take heritage into consideration when assessing development applications. The proposal does not alter the Heritage Schedule in the Burwood LEP 2012.

The Department is satisfied that the proposed bonus residential FSR clause does not trigger consideration under this direction and is consistent with the direction.

The Department considers the planning proposal to be consistent with this direction.

3.1 Residential Zones

The objectives of this direction are to encourage a variety of housing types, make efficient use of existing infrastructure, and minimise the impact of residential development on the environment and resource lands. The direction applies where a planning proposal affects land in:

- a) An existing or proposed residential zone; or,
- b) Any other zone (non-residential) in which significant residential development is permitted or proposed to be permitted.

Council are seeking the bonus residential FSR mechanism to increase residential density in Burwood Town Centre (zoned B4 Mixed Use), as well as increase housing supply and choices in a location that is close to public transport, commercial activities and services and improve the urban amenity of the Town Centre.

Council's objectives with this clause are partly supported. Increased housing supply in accessible locations, like Burwood Town Centre, with access to jobs is supported under this direction. Planning Principle 1 under A Plan For Growing Sydney also supports increased supply of a range of housing options near centres.

The Department notes that the bonus residential FSR clause is consistent with the objectives of this direction. Additional residential floor space will enable more residential options in the town centre and increased housing would be supported by existing infrastructure (physical and soft).

Council's design excellence clause will apply to all developments three or more storeys across the LGA, across all zonings (residential and non-residential). Council contends the design excellence clause will demand future new development to be of good design – a requirement of this direction. The clause Council are seeking to adopt is similar in nature to other design excellence clauses in other Local Environmental Plans.

Mandating design excellence for all developments three or more storeys across Burwood LGA has substantial and significant policy and delivery implications. Design excellence requires proponents to prepare reports and consider a wider range of controls prior to lodging development applications with consent authorities. The regulatory burden of complying with design excellence is high and these costs will be

To provide a mechanism for bonus FSR in Burwood Town Centre and a design excellence clause for the Local Government Area under Part 6 Additional Local Provisions of the Burwood Local Environmental Plan 2012

passed on.

The Department is satisfied that proposed bonus residential floor space ratio clause is consistent with this direction. The Department notes that, while the proposed design excellence demonstrates consistency with the direction, there are external policy and delivery issues that may prevent the outcomes of this direction from being realised.

3.4 Integrating Land Use and Transport

The objectives of this direction are to ensure the built form improves access to housing, jobs and services by walking, cycling or public transport use. This direction applies when a proposal seeks to alter a provision relating to urban land.

Council states the planning proposal is consistent with this direction, as the proposed bonus residential FSR clause will encourage additional development in Burwood Town Centre and the town centre already has good access to public transport, housing, jobs and services. It is agreed with Council that the bonus mechanism is consistent with the objectives of the direction.

The proposal does not comment on how the design excellence clause meets the objectives of this direction, and this is acceptable as the direction is not applicable to design excellence.

The planning proposal is consistent with this direction.

7.1 Implementation of A Plan for Growing Sydney

This direction gives legal effect to the planning principles, directions, and priorities contained in A Plan for Growing Sydney. The direction applies when a relevant planning authority prepares a planning proposal for land within the Greater Metropolitan Region.

The planning proposal was submitted to the Department prior to the release of A Plan for Growing Sydney and Council could not have provided an assessment of the planning proposal against this direction.

The planning proposal demonstrates some consistency with planning principles contained in A Plan for Growing Sydney, including increasing residential density in strategic locations and locating housing and jobs near transport. A Plan For Growing Sydney also contains principles about retaining and boosting employment uses around strategic centres (such as Burwood). A full analysis of the planning proposals consistency with A Plan For Growing Sydney is provided later.

A Plan for Growing Sydney is silent on providing direction on urban design and design excellence matters.

The proposal is generally consistent with the principles and directions contained in A Plan For Growing Sydney.

Should the planning proposal proceed to public exhibition, Council will need to address this section 117 direction.

A PLAN FOR GROWING SYDNEY

Council lodged the planning proposal with the Department prior to the December 2014 release of A Plan For Growing Sydney. An analysis of the planning proposal's consistency with the broad objectives of A Plan For Growing Sydney has been completed and detailed below:

Planning Principle 1: Increasing housing choice around all centres through urban renewal in established centres

This planning principle seeks to increase housing in centres and near stations to enable

To provide a mechanism for bonus FSR in Burwood Town Centre and a design excellence clause for the Local Government Area under Part 6 Additional Local Provisions of the Burwood Local Environmental Plan 2012

greater connectivity and access to jobs and services.

The planning proposal is consistent with this planning principle, as it will increase residential floor space in Burwood Town Centre.

The Department considers the planning proposal to be consistent with this planning principle.

Planning Principle 2: Stronger economic development in strategic centres and transport gateways

This planning principle aims to drive business and employment in strategic centres and around transport gateways. Under A Plan For Growing Sydney, Burwood has been elevated to strategic centre status from Major Centre under the former Metropolitan Plan for Sydney 2036.

The planning principle states strategic centres are important areas that will be focused on driving growth, primarily due to their locations, sizes, diversity of uses, access to labour and access to facilities (legal precincts, hospitals).

Burwood, particularly Burwood Town Centre, has been established under previous strategy and in their LEP as an employment and commercial centre. Residential floor space in the town centre has been deliberately restricted so that commercial development could be the priority.

The Department considers increasing residential floor space in Burwood Town Centre to the detriment of commercial floor space, contrary to the intent of Planning Principle 2.

Planning principle 2 overrides planning principle 1, as planning principle 2 is specific to strategic centres (including Burwood) and supports long-held government policy to shape Burwood as a commercial and employment centre.

Direction 1.7 Grow Strategic Centres – providing more jobs closer to home. Concentrating office development in strategic centres is a key objective of this direction. The direction aims to locate office development close to homes, other businesses and transport.

The proposed bonus residential FSR clause will allow for additional residential floor space within Burwood Town Centre, providing extra dwellings close to public transport and local employment. However, bonus residential FSR may reduce attractiveness of commercial and retail floor space in the Town Centre, conflicting with this direction and state policy.

Under this direction, there are two actions that are relevant to this planning proposal – Action 1.7.1 Invest in Strategic Centres across Sydney to grow jobs and housing and create vibrant hubs of activity and Action 1.7.3 Work with the Greater Sydney Commission to develop job targets for strategic centres. Both Actions relate to attracting investment and jobs into strategic centres as well as boosting housing. The bonus residential FSR may assist in increasing dwellings in Burwood Town Centre (located within the Burwood Strategic Centre), but the intent of the Town Centre was to be a commercial hub for the inner west, not a residential centre.

Subregional planning for the Central Subregion (including Burwood LGA) has yet to be completed. However, priorities for Burwood as a strategic centre include increased capacity for mixed use development and investigation to potentially run a light rail corridor through Burwood.

The Department considers the planning proposal to be inconsistent with Planning Principle 2. Planning principle 2 is the guiding principle for strategic centres and

To provide a mechanism for bonus FSR in Burwood Town Centre and a design excellence clause for the Local Government Area under Part 6 Additional Local Provisions of the Burwood Local Environmental Plan 2012

provides direction for commercial and employment growth in these centres over residential use. The Department considers the planning proposal to be inconsistent with the relevant Actions under Direction 1.7.

**** NOTE:** On 14 December 2014, A Plan For Growing Sydney was released. From that date, the Metropolitan Plan for Sydney 2036, the draft Inner West Subregional Strategy and the draft Metropolitan Strategy were replaced and A Plan For Growing Sydney prevails where there are any inconsistencies.

DRAFT INNER WEST SUBREGIONAL STRATEGY

Council has identified three relevant directions under the draft Inner West Subregional Strategy to the planning proposal:

- Support and differentiate the role of strategic centres;
- Plan for 12,500 new jobs and provide 30,000 new homes in the Inner West; and,
- Focus housing in and around existing strategic and local centres.

The following Objectives and Actions are relevant to this proposal:

- Action A1.1: Provide a framework for accommodating jobs across the subregion;
- Action B2.1.1: Plan for housing in centres consistent with their employment role;
- Action B3.4: Ensure sufficient commercial office sites in strategic centres;
- Action B4.1: Concentrate retail activity in centres, business development zones and enterprise corridors; and,
- Action C2.1: Focus residential development around centres, town centres, villages and neighbourhood centres.

BURWOOD 2030 COMMUNITY STRATEGIC PLAN

Council has identified the following strategic goals under the Burwood 2030 Community Strategic Plan as being relevant to the proposal:

- Strategic Goal 3.1: Maintain and enhance open green spaces and streetscapes;
- Strategic Goal 4.5: Vibrant and clean streetscape;
- Strategic Goal 5.1: Support and manage Burwood's major centre status.

Have inconsistencies with items a), b) and d) being adequately justified? No

If No, explain :

Council has attempted to justify inconsistencies between the planning proposal and relevant strategic planning policy documents, in particular in relation to promoting residential development.

It is acknowledged there are some overlaps in strategic planning policy between increased residential density and protecting Burwood Strategic Centre as a future employment, commercial, retail and services centre.

While Council has identified a range of strategic policy objectives and actions applicable to the proposal and has provided an assessment of how the proposal meets these actions with regards to residential development, the impact on future commercial and employment development has not been adequately addressed.

The proposal is considered to be generally inconsistent with policy regarding employment related uses in Burwood Town Centre. The Burwood LEP 2012 deliberately restricts residential floor space in Burwood Town Centre to support the wider strategic planning goal of encouraging commercial and retail development. Allowing additional residential FSR without simultaneously increasing commercial FSR undermines the long-held policy position, as well as A Plan For Growing Sydney, to encourage commercial and employment land uses in Burwood Town Centre. The Department considers the planning proposal to be generally inconsistent with state planning policy for Burwood.

Further, the application of a design excellence clause across the entire LGA or for the requested height trigger has not been justified. The Department considers a design

To provide a mechanism for bonus FSR in Burwood Town Centre and a design excellence clause for the Local Government Area under Part 6 Additional Local Provisions of the Burwood Local Environmental Plan 2012

excellence restricted to identified centres in the LGA is more appropriate and can achieve the outcomes Council is seeking.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **Council has proposed to exhibit the planning proposal for a minimum of 14 days, as Council argues the proposal is minor in nature.**

However, the insertion of a bonus FSR mechanism and design excellence clause into the Burwood LEP 2012 will impact and reshape future development within Burwood Town Centre and across the Local Government Area. The Department recommends a public exhibition period of a minimum of 28 days.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment : **Yes, the proposal is considered adequate and sufficient detail has been provided.**

Proposal Assessment

Principal LEP:

Due Date :

Comments in
relation to Principal
LEP :

Assessment Criteria

Need for planning
proposal : **Council has prepared this planning proposal in response to a Council meeting resolution on 25 August 2014.**

Council are seeking to amend development controls under the Burwood Local Environmental Plan 2012 applicable to different areas in the Local Government Area. A planning proposal is needed as a change to the Comprehensive LEP has been requested. The requested amendments cannot be advanced without a planning proposal.

To provide a mechanism for bonus FSR in Burwood Town Centre and a design excellence clause for the Local Government Area under Part 6 Additional Local Provisions of the Burwood Local Environmental Plan 2012

Consistency with strategic planning framework :

Council states the planning proposal is consistent with a number of objectives of NSW strategic planning framework, including:

- Metropolitan Plan for Sydney 2036 (the strategic plan applicable at the time the planning proposal was lodged);
- Draft Metropolitan Strategy for Sydney to 2031; and,
- Draft Inner West Subregional Strategy.

The Department agrees that the planning proposal does demonstrate some consistency with certain policy objectives, in particular relating to residential development. However, the planning proposal is also inconsistent with strategic planning policy to increase the commercial uses and floor space in Burwood Town Centre.

Additionally, A Plan For Growing Sydney aims to increase commercial development in strategic centres and planning principle 2 Stronger Economic Development in Strategic Centres and Transport Gateways supports additional commercial uses over residential development. The planning proposal is therefore inconsistent with the intent and directions of A Plan For Growing Sydney.

While it is acknowledged that bonus residential FSR will encourage more residential development in the town centre and allow for taller buildings, a conflict arises between increasing dwelling densities and supporting Burwood Town Centre as a commercial hub.

The Department acknowledges that various policy objectives support residential development in strategic centres; however, objectives under previous strategic planning policies and A Plan For Growing Sydney support Burwood as a commercial core as the key priority.

It is the Department's recommendation that a bonus FSR mechanism should apply to all permissible development types within Burwood Town Centre. Further, any bonus FSR provided for residential purposes should not reduce or restrain the maximum permissible FSR for commercial development. Given the evidence that maximum FSR is often reached in the town centre before the maximum height limit, applying the bonus FSR to all permissible uses will enable additional residential density without jeopardising commercial and employment objectives.

It is also the Department's recommendation that the proposed design excellence clause is revised so that the clause only applies to identified centres zoned B4 Mixed Use and B2 Local Centre. This will enable targeted design outcomes in centres without placing additional compliance on the whole LGA. It is also recommended that the heads of consideration under the design excellence clause be aligned (as much as possible) to the Strathfield Town Centre design excellence clause.

Environmental social economic impacts :

ENVIRONMENTAL:

It is agreed with Council that there are no known critical habitats or threatened species, populations or ecological communities or their habitats which will be affected by the proposal.

Other environmental effects (bushfires, land slips and flooding) are unlikely in Burwood LGA and the proposal will not impact or enhance environmental risks.

SOCIAL:

The planning proposal raises four key social considerations:

- Heritage;
- Increased population in Burwood;
- Design excellence and compliance; and
- Employment land and job targets.

Heritage

The planning proposal states the proposed clauses will not have an adverse impact on local heritage items in Burwood Town Centre or across Burwood Local Government Area.

To provide a mechanism for bonus FSR in Burwood Town Centre and a design excellence clause for the Local Government Area under Part 6 Additional Local Provisions of the Burwood Local Environmental Plan 2012

Council argue the design excellence clause will assist in the protection of heritage items and local streetscape by requiring heritage to be considered as part of a development application (as Council has proposed design excellence to apply to the entire Local Government Area).

The Department agrees with Council that a design excellence clause will require the consent authority take heritage items into consideration and design excellence has a higher threshold to meet prior to consent being granted. While the Department does not recommend the design excellence clause applying to the entire Local Government Area, it is noted that there are other mechanisms within Burwood LEP 2012 that support the protection of heritage items in Burwood (namely clause 5.10) and this clause is appropriate.

Increased population

Burwood has been identified in strategic planning policies as a centre for population growth and a commercial hub and employment centre. This vision is supported by Burwood's location and good supporting transport and infrastructure networks. The Department forecasts the population of Burwood to increase to over 45,000 people by 2031 (up from a projected 37,850 in 2016). Population growth may impact on Council's ability to provide dwellings required and may impact on hard and soft infrastructure.

Council argue the proposed bonus residential FSR clause will produce two social benefits. First, residential development within Burwood Town Centre takes advantage of good public transport, access to jobs, services and retail in the town centre. Second, the provision of bonus residential FSR in exchange for a VPA will enable Council to provide additional social and community services. A list of items that could be funded by the bonus residential FSR is set out in the Open Space and Community Facility Study as well as in the Council Resolution (Tag E and Tag G). Council also contend that residential development in the town centre will generate additional population and stimulate demand for retail and service activities.

Council also argues that the B4 Mixed Use zoning of the town centre allows for the future provision of schools and hospitals and Council states population demand together with market conditions influence the supply of social infrastructure. Public consultation will also investigate social impacts of the planning proposal.

It is agreed with Council that the planning proposal may produce a social benefit. In particular, the Department agrees that the design excellence clause, applied to defined centres, can produce good built environment and public benefit outcomes. While the Department acknowledges Council's intention to provide public space and community facilities through a VPA, a VPA cannot be required as a condition of consent or through a Local Environmental Plan.

Design Excellence and regulatory costs

The planning proposal intends to apply a design excellence clause across the entire LGA for all new development three or more storeys. Design excellence sets a higher standard for compliance.

Council wishes to apply the design excellence clause across the LGA to improve the amenity, design and streetscape of Burwood.

The Department is satisfied that a design excellence clause in Burwood will produce the amenity and design outcomes Council wish to achieve. However, requiring design excellence across the entire LGA will increase compliance and compliance costs, which could lead to Burwood being uneconomical to develop in. This would undermine housing and employment targets.

In order to avoid excessive regulatory costs in Burwood, the Department is of the view that

To provide a mechanism for bonus FSR in Burwood Town Centre and a design excellence clause for the Local Government Area under Part 6 Additional Local Provisions of the Burwood Local Environmental Plan 2012

a design excellence clause is appropriate for centres within Burwood LGA but not the whole LGA. By limiting the design excellence clause to centres (namely, Burwood Town Centre, part Strathfield Town Centre, Enfield Local Centre, Croydon Park Local Centre and possibly the Parramatta Road Enterprise Corridor), regulatory burden will be restricted to those areas but these centres will also benefit from improved amenity.

It should be noted that the Department has considered whether the design excellence clause should be applied to land zoned B6 Enterprise Corridor, which runs along Parramatta Road. Burwood's portion of Parramatta Road is part of UrbanGrowth NSW New Parramatta Road project. The project will include specific building and design standards for all new development along Parramatta Road. It may not be appropriate to advance a design excellence clause for the B6 zoning along Parramatta Road ahead of the release of Urban Growth's detailed requirements.

Employment targets

Under A Plan For Growing Sydney, as with previous metropolitan strategies, Burwood has been identified as a centre for increased commercial and employment uses. The Burwood LEP 2012 supports this policy by containing the maximum permissible residential floor space in the town centre, effectively driving commercial uses.

A Plan For Growing Sydney has a target of delivering 689,000 jobs across Sydney's strategic centres by 2031.

Council have been unable to provide quantitative data on the number of jobs that could be potentially reduced or gained through the proposed amendments to the FSR in the town centre and the design excellence clause. This is fair due to the nature of the proposed changes.

It is the Department's view that any amendment which has the potential to reduce commercial floor space in Burwood Town Centre is not supported. The proposed bonus residential FSR will effectively reduce the amount of floor space available for other non-residential uses.

It is the Department's recommendation that the proposed amendment to provide for bonus residential FSR of 10 per cent of the maximum FSR be revised to apply to all permissible development types within Burwood Town Centre.

ECONOMIC:

The economic impact of the planning proposal has not been fully addressed by Council.

Council argue that allowing housing in Burwood Town Centre will generate interest and stimulate the local economy. Conversely, additional commercial development in the town centre could also stimulate the local economy over the longer term, despite the current market conditions for commercial floor space.

Council contend the application of the design excellence clause will lead to better urban and design outcomes. While this is true, the necessity of applying design excellence across the entire LGA is questionable.

The economic cost of applying a design excellence clause across the LGA for all new developments three or more storeys are not fully understood. The cost of meeting design excellence has to be recovered somewhere and the cost impact will be greater on the smaller buildings (like RFBs) as there are less apartments to share the costs.

To provide a mechanism for bonus FSR in Burwood Town Centre and a design excellence clause for the Local Government Area under Part 6 Additional Local Provisions of the Burwood Local Environmental Plan 2012

Assessment Process

Proposal type : **Routine** Community Consultation Period : **28 Days**

Timeframe to make LEP : **9 months** Delegation : **RPA**

Public Authority Consultation - 56(2) (d) : **Department of Education and Communities
Office of Environment and Heritage
Energy Australia
Transport for NSW
Department of Health
Transport for NSW
Transport for NSW - Sydney Trains
Transport for NSW - Roads and Maritime Services
State Water Corporation
Sydney Water
Telstra**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **No**

If no, provide reasons :

Resubmission - s56(2)(b) : **Yes**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Tag A - Request for Delegation and Checklist.pdf	Study	Yes
Tag B - Letter from Council submitting planning proposal - 26 September 2014.pdf	Proposal Covering Letter	Yes
Tag C - Planning Proposal - Bonus Development and Design Excellence - as amended 23 October 2014.pdf	Proposal	Yes
Tag D - Proposed Clauses.pdf	Study	Yes
Tag E - Burwood Council Resolution - 25 August 2014.pdf	Study	Yes
Tag F - Burwood Town Centre Urban Design Study (July 2014).pdf	Study	Yes
Tag G - Burwood Community Facilities and Open Space Strategy (July 2014).pdf	Study	Yes

To provide a mechanism for bonus FSR in Burwood Town Centre and a design excellence clause for the Local Government Area under Part 6 Additional Local Provisions of the Burwood Local Environmental Plan 2012

Tag H - Map - Land to which proposal applies.pdf	Map	Yes
Tag I - Current Land Zoning.pdf	Map	Yes
Tag J - Current Height of Buildings.pdf	Map	Yes
Tag K - Current Floor Space Ratio.pdf	Map	Yes
Tag L - Proposed Floor Space Ratio.pdf	Map	Yes
Tag M - Burwood Town Centre Map with Areas.pdf	Map	Yes
Tag N - Burwood LGA Map with Town, Local and Neighbourhood Centres.pdf	Map	Yes
Tag O - Strathfield Town Centre Design Excellence Clause.pdf	Study	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions: **2.3 Heritage Conservation**
 3.1 Residential Zones
 3.4 Integrating Land Use and Transport
 6.1 Approval and Referral Requirements
 6.3 Site Specific Provisions
 7.1 Implementation of A Plan for Growing Sydney

Additional Information : **The intent of the proposal is generally supported. It is considered that a bonus FSR mechanism is appropriate in the Commercial Core and Middle Ring of the Burwood Town Centre, particularly if better designed buildings and spaces can be created. Additionally, a design excellence clause for the Burwood Town Centre is also supported.**

The Department does not support a bonus provision allowing additional residential FSR at the expense of commercial floor space.

The Department does not support incentive clauses that are explicitly tied to a requirement to enter into a planning agreement to dedicate land or provide a material benefit above and beyond local development contributions.

The planning proposal is recommended to proceed with the following conditions:

- 1. Prior to undertaking public exhibition, the planning proposal is to be revised to demonstrate consistency with 'A Plan for Growing Sydney', released on 14 December 2014;**
- 2. Prior to undertaking public exhibition, the following amendments to the planning proposal are made:**
 - a. A plain English explanation is provided for Clause 6.5 and Clause 6.6;**
 - b. The requirement, explicit or implicit, for a developer to enter into a Voluntary Planning Agreement for a material public benefit with Council in exchange for bonus residential FSR is removed;**
 - c. The proposal and proposed Clause 6.5 reflect that the bonus 10 per cent FSR mechanism is to apply, on application, to all permissible use types in Area 1 (Commercial Core) and Area 2 (Middle Ring) of the Burwood Town Centre;**
 - d. The proposal and bonus FSR state any additional resident FSR given by Council will not simultaneously reduce, restrict or otherwise limit the overall floor space available for commercial or other uses;**
 - e. The design excellence clause for all new development three or more storeys is to apply only to the following zones within Burwood Town Centre: B4 Mixed Use and B2 Local Centre**
 - f. Council are to give consideration as to whether the design excellence clause should also apply to the B6 Enterprise Corridor and consult with UrbanGrowth NSW on their proposed design provisions;**
 - g. Council are to consider whether the design excellence clause should also apply to major alterations, additions and extensions within the defined zones; and,**
 - h. The heads of consideration for the design excellence Clause 6.6 (subclauses 4(a) to (l)) are reviewed and aligned closer to Strathfield Council's Town Centre design**

To provide a mechanism for bonus FSR in Burwood Town Centre and a design excellence clause for the Local Government Area under Part 6 Additional Local Provisions of the Burwood Local Environmental Plan 2012

excellence clause

3. Council are to place the planning proposal on public exhibition for a minimum of 28 days; and,

4. In addition to the public agencies identified, Council are also to consult with UrbanGrowth NSW specifically on the design excellence clause potentially applying to the B6 Enterprise Corridor.

Supporting Reasons :

The Gateway conditions are recommended for the following reasons:

- Requiring a VPA to be entered into between a developer and Council in a Local Environmental Plan contravenes the Environmental Planning and Assessment Act 1979;
- Mechanisms for negotiating VPAs between Councils and developers are outside the LEP and not consistent with the Standard Instrument LEP;
- A requirement for a VPA under a LEP would make the VPA an obligation rather than a voluntary undertaking;
- Burwood Town Centre has been identified as a Strategic Centre, focused on commercial and retail activity and it is long-held government policy to drive commercial or employment uses in Burwood Town Centre. Increasing residential FSR without increasing commercial floor space undermines this policy;
- The application of a design excellence clause across the LGA for all new developments, three or more storeys, is excessive and will lead to additional costs for developers and the community. While the idea behind the design excellence clause is valid, the economic and social ramifications are problematic; and,
- The planning proposal is also inconsistent with section 117 direction 1.1 Business and Industrial Zones.

Signature:



Printed Name:

Diane Sarkies

Date:

4/3/15