

Appendix Two

Council Report and Resolution of 25 August 2014

(ITEM 74/14) VARIATION OF DEVELOPMENT STANDARDS IN RETURN FOR A PUBLIC BENEFIT AND DESIGN EXCELLENCE

That above item be considered in Closed Session to the exclusion of the press and public in accordance with Section 10A(2) (c) of the Local Government Act, 1993, as the matter involves information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.

File No: 14/35021

REPORT BY MANAGER STRATEGIC PLANNING

Summary

An Urban Design Study for the Burwood Town Centre (BTC) and an Open Space and Community Facilities Study for the Burwood Local Government Area (LGA) have been undertaken by consultants. The Consultancy Reports suggest possible scope for a bonus scheme which offers additional floor space ratio (FSR) in return for public benefits. The Urban Design Study also identifies areas in the Burwood Development Control Plan (BDCP) that could be improved to strengthen the design quality. The bonus scheme and/or design excellence require an amendment of the Burwood Local Environmental Plan (BLEP) and the BDCP.

Background

Council, at its Meeting of 21 October 2013, considered a report titled "*varying a development standard through a voluntary planning agreement (VPA) in exchange for a public benefit*". It resolved to:

1. Undertake strategic analysis of the types and details of infrastructure that would be suitable for public benefits.
2. Investigate Clause 4.6 of the BLEP 2012, which may allow a variation of development standards by up to 10%, and how the variation may be justified by design principles and merit-based assessment.

In response to Resolution 1, Council's Community Services Team commissioned Cred Community Planning and Hill PDA to undertake an Open Space and Community Facilities Study. The open space and community facilities needs for the LGA are identified in the study.

Also in response to Resolution 1, Council's Traffic & Transport Team had identified areas within the BTC, where additional public car parking, as a public benefit, could be provided.

In response to Resolution 2, Council's Strategic Planning Team reported the variation of development standards in cases of design excellence to the 17 February 2014 Council Meeting, where it was resolved to defer the matter pending a Councillor Workshop.

The above works led to the commission of an Urban Design Study for the BTC. The study investigates whether the existing development standards of FSR and/or height under the BLEP could be increased based on design merits and in return for public benefits to be provided by developers.

A Councillor Workshop was held on 14 July 2014, where the Urban Design Consultants from GM Urban Design & Architecture (GMU) presented the design excellence principles and the key findings of the BTC Urban Design Study.

Key Findings of the Urban Design Study

The study analyses the testing results of a number of sites in the BTC. Its key findings are:

1. Two options of a bonus scheme could be considered:
 - Option 1 – a maximum FSR bonus of 5% within the Commercial Core and 15% within the Middle Ring, and no bonus for the Perimeter and Transition areas of the BTC.
 - Option 2 – a maximum FSR bonus of 10% for both the Commercial Core and Middle Ring, and no bonus for the Perimeter and Transition areas of the BTC.
2. Any bonuses are to be for residential purposes.
3. Bonuses could be considered for sites that:
 - Provide open space, pedestrian links and arcades, to which the general public has access, and community facilities etc
 - Present built forms that exhibit design excellence and follow the 'best practice' urban design principles
 - Demonstrate how the built form responds to the site character and would enhance the quality of the public domain
 - Propose a built form that has been discussed and agreed with Council at Pre-Development Application (DA) stage
 - Propose a built form that seeks to achieve the maximum height under the BLEP and display an elegant and slim tower form.

Needs of Open Space and Community Facilities

It is stated in the Open Space and Community Facilities Study that the following will be in demand by 2031:

Open space and parks

- An additional open space of 165,055m²
- Quality of open space over quantity
- Green open space, especially in the north of the LGA
- Places for informal recreation and social gatherings
- Shaded seating, tables and games which make "parks as living rooms"
- Exercise equipment for older people
- Adventure play grounds for a range of age groups
- Multipurpose courts and fields over single purpose

Community facilities

- An additional floor space of 2,169m² for community facilities
- Small meeting rooms
- 405 child care places
- Two community gallery or exhibition spaces
- One creative arts space
- Multipurpose and flexible facilities
- One youth space and one seniors space which can be within a multipurpose facility
- Space in Burwood Park to support events
- Facilities especially in the south of the LGA

Sale of Bonus Floor Space

It is recommended by Hill PDA, the Economic Consultant who was co-commissioned to undertake the Open Space and Community Facilities Study, that:

- Both the developer and Council share equally the financial benefit from the bonus scheme
- A sale price be set at \$800 per m² bonus floor space for the BTC in the current market
- The sale price be subject to periodic reviews by a suitably qualified firm

Consultation

Legal advice was sought concerning the use of Clause 4.6 and providing exceptions to development standards in the BLEP for a bonus scheme, details of which are set out below.

The experiences of the City of Sydney and Canada Bay Councils were investigated for this Report. Officers from the two Councils were contacted.

Planning or Policy Implications

Mechanism for Bonus Development

No mechanism or provisions are currently available in the BLEP and BDCP for any bonus scheme. Legal advice dated 11 July 2014 states that:

- Clause 4.6 in the BLEP is not an appropriate mechanism to utilise for FSR and/or height bonuses. This clause requires justification that compliance with the development standard is unreasonable and unnecessary, and that the proposed development is consistent with the objectives of the particular standard and the zone. The fact that a developer has offered to pay a monetary contribution or provide a material public benefit is not relevant to the determination under the clause and should not be used to justify the bonus development.
- If Council wishes to allow for a bonus scheme in return for a developer providing a monetary contribution or public benefit, it would need to seek an amendment to the BLEP to include provisions to that effect.
- The provision of a monetary contribution and/or a material public benefit over and above the requirements of the Section 94A Contributions Plan (S94A Plan), in the context of a particular DA, would need to be achieved by Council and the developer entering into a VPA in connection with the DA. Planning legislation does not allow Council to impose a condition on the development consent to require the provision of the public benefit.

The BDCP also requires an amendment to detail the type and possible location of public benefits to support the additional development over and above the requirements of the S94A Plan. In addition, the amendment would establish the process of applying for a bonus and progressing the development.

The sale price of \$800/m² bonus floor space in the BTC is to be included in Council's Schedule of Fees and Charges, which can be reviewed and/or indexed as appropriate annually. A developer will not be able to negotiate and vary the price.

Council has also received enquiries about potential bonus development in return for public benefits in the Strathfield Town Centre. This requires the same planning mechanism. If Council were to extend the bonus, the extent of bonus and the bonus floor space price would need to be determined (through external consultants) before the BLEP and BDCP amendment comes into force.

Types of Public Benefits

Various infrastructure, facilities or monetary contributions (the sale of bonus floor space) have been identified in the BTC Urban Design Study and the Open Space and Community Facilities Study, as public benefits. Public benefits may also include the payment for, or the provision of, public car parking.

A distinction needs to be made between those "benefits" which are reasonable to expect any developer to provide under the BDCP controls, because they do not pose a significant cost/yield imposition or they may also benefit developers (eg. façade treatment, slender tower, curtilage for a heritage item), versus those that provide a genuine benefit to the community (eg. a room at street level as a community meeting room, gallery or multipurpose facility).

Section 3.9 of the BDCP requires developers to provide open spaces, forecourts and pedestrian links, which are to be made available for public use, in conjunction with development at certain locations within the BTC. Complying with these public domain provisions will not leverage any bonus floor space, since there will not be any loss of development potential and the BDCP went through public exhibition and adoption by Council before coming into force. New public domain provisions of open spaces and pedestrian links, if added to the BDCP, could be considered for a bonus floor space.

To ensure a transparent and conducive process, the public benefits that developers will provide must be able to be valued in dollar terms. This means that developers should pay a monetary contribution at \$800/m² bonus floor space, as recommended by Hill PDA, towards the provision of the public benefits by Council, or provide a material public benefit, that can be valued at an equivalent amount.

It should be noted that the public benefit to be provided in a bonus scheme is over and above the requirements of the S94A Plan, and that any bonus development is still subject to the payment of S94A contributions.

Design Excellence

The BTC Urban Design Study also concludes that:

- The current BLEP, in conjunction with the BDCP provisions, presents mismatches between the maximum FSR and maximum height development standards.
- The current BLEP and BDCP do not adequately encourage design excellence and would result in lower and bulkier buildings, which would have greater impacts on the streetscape and the amenity of adjoining properties.
- The BLEP and BDCP should be reviewed and amended to strengthen the design quality.
- The review of the BDCP should focus on the controls of podium heights (with podium height in Burwood Road in particular), building length, built form as a result of complying with the Building Height Plane and setback controls, sites within a split Commercial Core, Middle Ring, Perimeter and/or Transition areas.
- For sites of more than 3,000m², any request for bonuses should be supported by a Master Plan, which identifies the areas subject to the bonus and assesses the potential environmental impacts of the increased FSR. The development can be staged as appropriate.
- For all sites seeking a FSR bonus, the Applicant should have a Pre-DA meeting with Council to discuss the proposed building envelope. Council should provide written comments to the Applicant suggesting changes and/or endorsing the building envelope at this stage.

The BLEP could be amended, through a Planning Proposal process, to incorporate additional design excellence provisions based on the recommendations of the BTC Urban Design Study and similar provisions in other Councils' LEPs. Provisions in the BLEP would carry more weight than in the BDCP. This is the case especially for a merit-based design, which might present non-compliances with several BDCP controls.

GMU (urban design consultants) has indicated two options for a BDCP review and amendment. Option 1 involves a comprehensive review of the BDCP and the establishment of 3D building envelope controls for the Burwood Town Centre. Option 2 involves a piecemeal review and amendment of the BDCP and will not provide any 3D building envelope controls. Both options could be staged. The first stage of both options would be the preparation of an issues paper. The issues paper once prepared could be workshopped with Councillors and reported back to Council before Council deciding which amendment option to take.

Design excellence provisions in both the BLEP and BDCP would apply to all developments involving a podium and tower form in the LGA, whether or not any bonus is proposed.

Council at its Meeting of 28 July 2014 considered a Mayoral Minute, and resolved to amend the Pre-DA Fact Sheet, to require the submission of a digital building envelope model at the Pre-DA stage. This has now been done.

Maximum FSR and Maximum Residential FSR

The BTC Urban Design Study points out that the current BLEP, together with the BDCP podium height controls, presents a mismatch between the maximum FSR and the maximum Residential FSR standards, in the Commercial Core area of the BTC. The reason for this is that:

- Not all allowable commercial floor space can be accommodated within the podium. Commercial floor space within the tower above the podium would not provide a floor plate desirable for commercial uses, apart from serviced apartments.
- A large podium, in a height above the current BDCP podium height control, in order to accommodate the allowable commercial floor space, would result in a low and bulky built form.

One of the main objectives behind the BLEP provisions is to ensure that the BTC has sufficient capacity for employment generating and service providing development, and to focus such development on sites with good public transport accessibility. Balancing residential, employment-generating and service development is necessary to help achieve BTC's role as an employment and service Major Centre of the Inner West.

The issue is a complex one, involving a review of not only urban design, but also market demand as well as research on the experience of other Councils, Major Centres and even overseas. It should be addressed separately, after this round of BLEP and BDCP review and amendment.

It is understood that any bonus floor space if proposed would be for residential purposes, which would arguably alleviate the issue to some extent.

Options

Option 1:

This option involves amending the BLEP and BDCP to allow for the consideration of a bonus scheme, as well as to incorporate design excellence principles.

Pros:

- Provides an incentive for developers to provide public benefits
- Promotes design excellence and better designed buildings and streetscape
- Council has received enquiries concerning the bonus development. This option would address this apparent demand.

- More housing in the LGA, especially in the BTC, to help meet the population targets for Burwood
- Will not cause undue long term impact on the amenity of residents and users of the BTC

Cons:

- Complex system
- Requires resources (staff, time and cost) to set up the planning system
- Takes longer time to process a DA due to VPA involvement, if a bonus FSR is proposed
- Requires resources (legal and staff) to progress and administer VPAs
- May be criticised by the community for probity reasons

If this option is pursued, it is recommended that a maximum 10% bonus of the total FSR will be made available for the Commercial Core and Middle Ring areas of the BTC. This is the second bonus option recommended in the BTC Urban Design Study (the first option being 5% bonus in Commercial Core and 15% bonus in Middle Ring). This bonus option would stimulate more development activities in the Commercial Core and is a simpler concept.

Also if this option is pursued, any new BLEP clauses will be vetted by Council's lawyers as well as the State Government, and may be subject to change or negotiation.

Option 2:

This option does not allow for a bonus scheme, but involves amending the BLEP and BDCP to apply design excellence provisions to all development involving a podium and tower form in the LGA.

Pros:

- Simpler system
- Focus on achieving design excellence
- Emphasises good design as an expectation of all (major) development
- Requires comparatively less resources of staffing, time and cost
- Applies to development sooner

Cons:

- No incentive for developers to provide public benefits over and above S94A

Option 3:

This option seeks to amend the BDCP only to strengthen the design quality, based on the BTC Urban Design Study and further input from the consultants

Pros:

- Simple system
- Promotes better design of buildings and streetscape
- Requires the least resources and time, in comparison with Options 1 and 2
- Do not require referral to the State Government
- Applies to development sooner

Cons:

- No incentive for developers to provide public benefits over and above S94A
- A merit-based assessment could create uncertainty and is more vulnerable in case of legal challenge

Preferred Option

Option 1 is recommended in view of the benefits it can provide.

Financial Implications

All options discussed above mainly incur staff resources and time. It would take approximately 12 to 18 months to prepare and progress a Planning Proposal and BDCP amendment, including public consultation.

Option 1 would require the necessary review of proposed BLEP provisions by Council's lawyers, at an estimated cost of \$5,000 - \$10,000. All options would require further inputs from Urban Design Consultants, at an estimated initial cost of \$9,000 for preparing an issues paper. These costs have not been included in the Strategic Planning Team's budget and would have to be allocated from other areas of Council.

Any monetary contribution (over and above S94A contributions) paid to Council through a VPA is expected to be kept in the VPA account. The funds should be used for the provision of the public benefits of open space, community facilities or public car parking, and should not be used for other purposes. The same rules as those identified in the Addendum to the Planning Agreement Policy for parking contributions should apply to these funds.

Determination of the extent of bonus and the sale price of bonus floor space in the Strathfield Town Centre or any location outside the BTC, requires additional budget allocation.

All options would require on-going input from Urban Design Consultants, such as the assessment of Master Plans and building envelopes at Pre-DA stage.

Conclusion

There are merits in setting up a system, by way of an amendment to the BLEP and BDCP, to allow for bonus development in return for a monetary contribution and/or a material public benefit, and encourage better designed buildings in the LGA.

Recommendation(s)

1. That Council note the information presented in this Report.
2. That Council approve the allocation of \$19,000 to fund the legal review of the BLEP amendment and the preparation of a BDCP issues paper by the urban design consultants.
3. That a Planning Proposal be initiated to amend the BLEP to allow for a maximum FSR bonus of 10% for development in return for public benefits in the Commercial Core and Middle Ring areas of the BTC, and impose requirements for achieving design excellence for all development involving a podium and tower form in the LGA. This is the second bonus option recommended by GMU in the BTC Urban Design Study.
4. That the issues paper, referred to in Item 2, be reported back to Council prior to further BDCP amendment being undertaken.
5. That the BDCP be amended to detail the type of public benefits and the process to facilitate bonus development, and address the design quality issues as identified in the BTC Urban Design Study.
6. That a bonus scheme for areas outside of the BTC not be considered at this stage.

7. That a bonus FSR in return for a monetary contribution or a material public benefit, may only be achieved through Council and the developer entering into a VPA.
8. That the Fees and Charges will be publicly exhibited in accordance with Section 610F of the *Local Government Act 1993*.

Attachments

There are no attachments for this report.

	that it was available. A clear breakdown in communication which has now been corrected The information was available at Library electronically on Friday 1 August 2014.
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No Decision – Information Item Only

THERE WERE NO REPRESENTATIVES FROM THE PUBLIC TO ADDRESS THE COUNCIL BEFORE THE RESOLUTION TO MOVE INTO CLOSED SESSION WAS CARRIED.

THE MEETING MOVED INTO CLOSED SESSION AT 7.25PM THE PUBLIC AND PRESS EXCLUDED FROM THE MEETING.

THE MEETING RESUMED IN OPEN SESSION AT 8.15 PM

CONFIDENTIAL ITEMS - CLOSED SESSION

113/14 RESOLVED

That the meeting move into closed session in order to consider Items 74/14 Variation of Development Standards in return for a public benefit and design excellence, Item TE5/14 Tender for Provision of Stormwater Drainage Maintenance and Investigation, Item 75/14 Adoption of Council's Draft Property Strategy 2013-2018, Item PO1/14 Replacement of Council's Desktop Computers and Item TE6/14 Southern Sydney Regional Organisation of Councils (SSROC) – Supply and Install, Maintenance or Road and Traffic Control Equipment Panel to be considered in Closed Session to the exclusion of the press and public in accordance with Section 10A(2) (c) of the *Local Government Act 1993*, as the matter involves information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business and Section 10A(2) (d) of the *Local Government Act 1993* as the matter involves commercial information of a confidential nature that would, if disclosed (i) prejudice the commercial position of the person who supplied it; or (ii) confer a commercial advantage on a competitor of the Council; or (iii) reveal a trade secret.

(Moved Deputy Mayor Tony Doueihi/Seconded Councillor George Mannah)

COUNCILLOR TONY DOUEIHI LEFT THE MEETING, THE TIME BEING 07:24 PM

COUNCILLOR TONY DOUEIHI RETURNED TO THE MEETING, THE TIME BEING 08:15 PM

(ITEM 74/14) VARIATION OF DEVELOPMENT STANDARDS IN RETURN FOR A PUBLIC BENEFIT AND DESIGN EXCELLENCE

File No: 14/35021

That above item be considered in Closed Session to the exclusion of the press and public in accordance with Section 10A(2) (c) of the Local Government Act 1993, as the matter involves information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.

114/14 RESOLVED

1. That Council note the information presented in this Report.
2. That Council approve the allocation of \$19,000 to fund the legal review of the BLEP

amendment and the preparation of a BDCP issues paper by the urban design consultants.

3. That a Planning Proposal be initiated to amend the BLEP to be lodged by 30 September 2014 to allow for a maximum FSR bonus of 10% for development in return for public benefits in the Commercial Core (Area 1) and Middle Ring (Area 2) areas of the BTC, and impose requirements for achieving design excellence for all development involving a podium and tower form in the LGA. This is the second bonus option recommended by GMU in the BTC Urban Design Study.
- 3a. That Council endorse Council Officers to accept and consider applications following a positive gateway determination.
4. That the issues paper, referred to in Item 2, be reported back to Council prior to further BDCP amendment being undertaken.
5. That the BDCP be amended to detail the type of public benefits and the process to facilitate bonus development, and address the design quality issues as identified in the BTC Urban Design Study.
6. That a bonus scheme for areas outside of the BTC not be considered at this stage.
7. That a bonus FSR in return for a monetary contribution or a material public benefit, may only be achieved through Council and the developer entering into a VPA.
8. That the Fees and Charges will be publicly exhibited in accordance with Section 610F of the *Local Government Act 1993*.

(Moved Councillor George Mannah/Seconded Councillor Sally Deans)

Cr Furneaux-Cook requested that her name be recorded as voting against the motion.

(ITEM TE5/14) TENDER FOR PROVISION OF STORMWATER DRAINAGE MAINTENANCE AND INVESTIGATION

File No: 14/35557

That above item be considered in Closed Session to the exclusion of the press and public in accordance with Section 10A(2) (c) (d) of the Local Government Act 1993, as the matter involves information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business; AND commercial information of a confidential nature that would, if disclosed (i) prejudice the commercial position of the person who supplied it; or (ii) confer a commercial advantage on a competitor of the Council; or (iii) reveal a trade secret.

115/14 RESOLVED (Carried Unanimously)

1. That in relation to the Tender for the Provision of Stormwater Drainage Maintenance and Investigation, the proposed appointments of the following Contractors be accepted and awarded as a Panel Source supplier in order of preference stated to Burwood Council for the period of 1 September 2014 to 31 August 2016.

		1ST	2ND	3RD
		PREFERENCE	PREFERENCE	PREFERENCE
1a	Job Specific Relining job (Quotations for	Interflow Pty Limited	Insituform Pacific Pty Limited	Aqua-Assets Pty Limited