

**PLANNING PROPOSAL
PROPOSED REZONING
135-137 LIVERPOOL ROAD
BURWOOD**

1 December 2009

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1. INTRODUCTION

Nexus Environmental Planning Pty Ltd has been requested by Mr Woratsep and Mrs Thitima Ponggun (the "**Applicants**") to prepare a Planning Proposal to accompany a request to Burwood Council (the "**Council**") to rezoning land at Nos.135-137 Liverpool Road, Burwood (the "**Site**") to permit a restaurant. The Site location is shown on **Figure 1**.

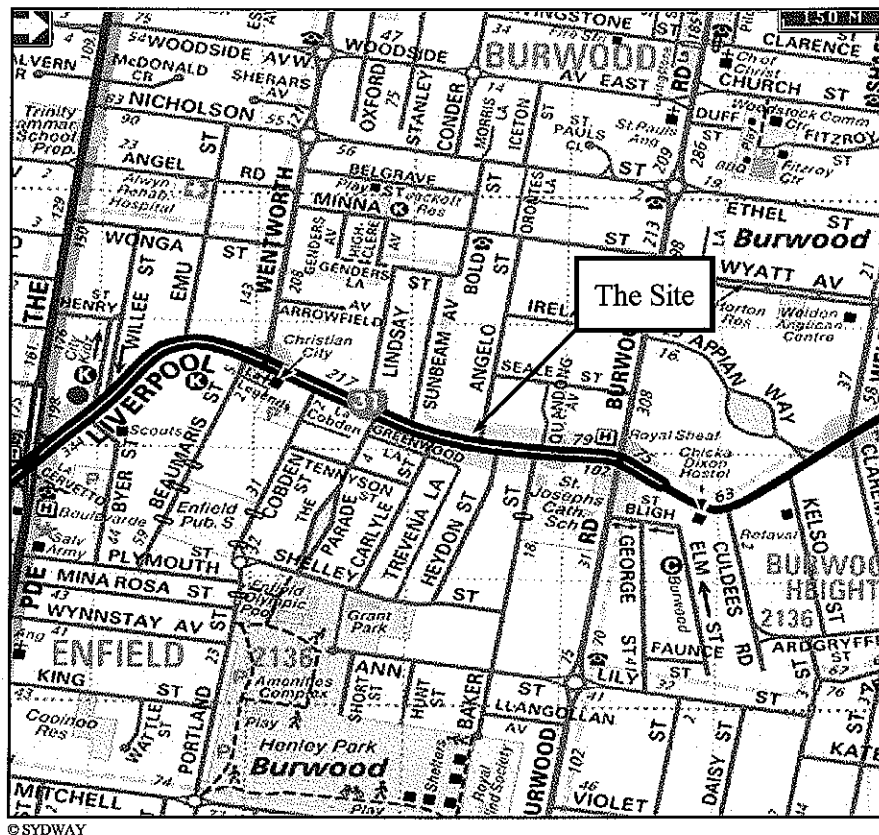


Figure 1: Site Location Map

This planning proposal provides a description of the Site, provides details of the previously approved uses of the Site, and addresses the requirements of the NSW Department of Planning document "*A guide to preparing planning proposals*".

2. THE SITE

The Site is:

Lot 1, DP 329914
Nos.135-137 Liverpool Road
BURWOOD

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- Figure 1: Site location map
Figure 2: Extract from an aerial photograph of the Site
Figure 3: Extract from the Burwood Planning Scheme Ordinance Map
Figure 4: Reduced copy of a survey of the Site

An aerial photograph of the Site is at **Figure 2** below.



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Figure 2: Extract from an aerial photograph of the Site.

The Site is within the 3(b) Business Special Zone pursuant to the Burwood Planning Scheme Ordinance ("BPSO"). An extract from the BPSO Map is at **Figure 3**.

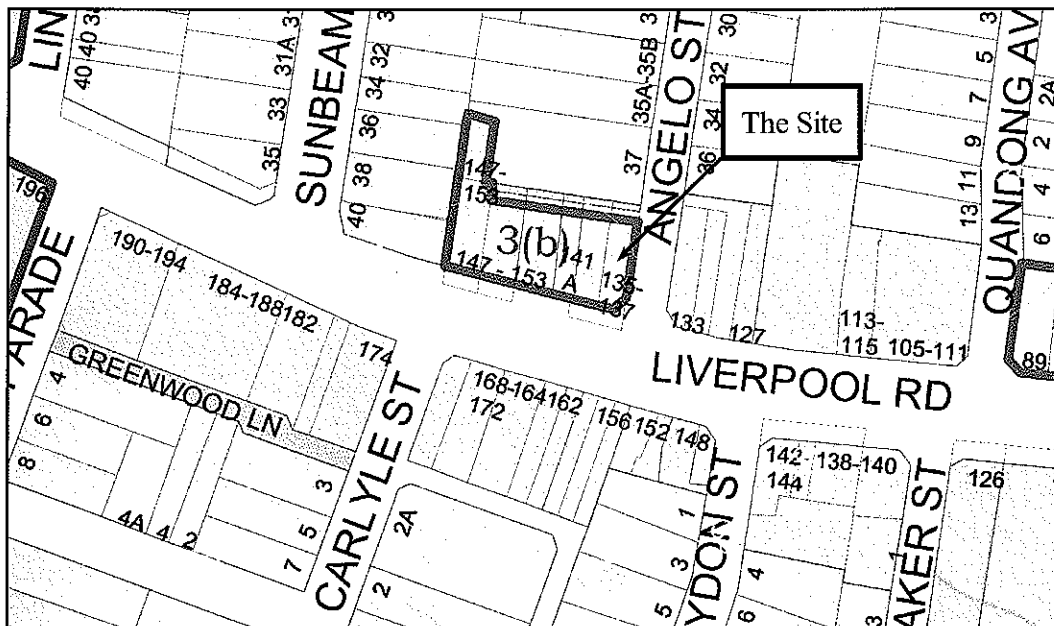


Figure 3: Extract from the Burwood Planning Scheme Ordinance Map

The Site is located on the northern side of Liverpool Road on the north western corner of the intersection of Liverpool Road with Angelo Street, and has an area of 256.825m² of which 29.91m² is a Right of Way 3.05m wide serving as part of the rear access to the properties fronting Liverpool Road. A copy of part of a survey plan of the Site is reproduced below as Figure 4.

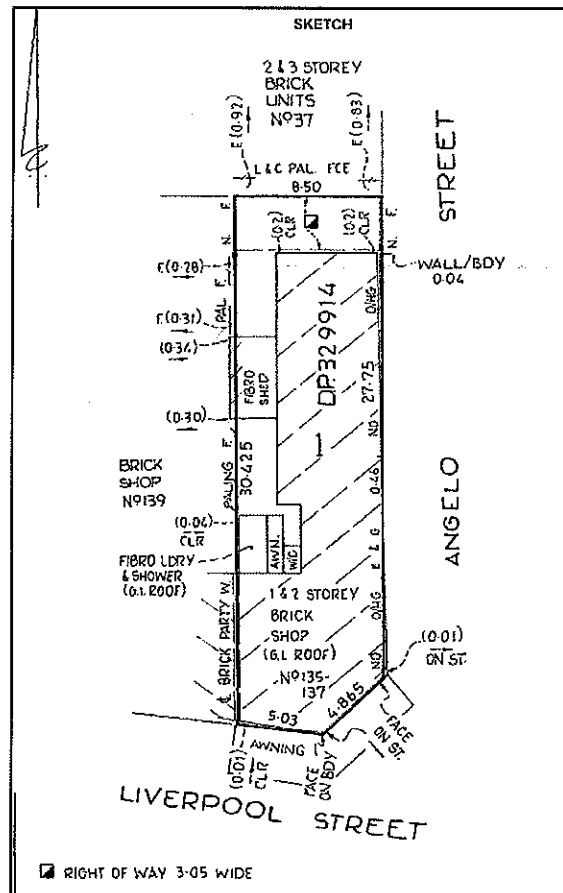


Figure 4: Reduced copy of a survey plan of the Site

The Site is developed as a part 1 and part 2 storey commercial building.

Existing development within the vicinity of the Site in the 3(a) General Business Zone includes:

- Manenti Quinlan & Associates
- Ying Wei Lighting
- DKP Embroidery & School Uniform
- Comfort Inn & Suites
- Leap Microsystem
- the Rice Box Thai Restaurant
- Il Buco Italian Restaurant
- Good Luck Chinese Restaurant.

Existing development in the vicinity of the Site in the 3(b) Business Special Zone includes:

- Buddha Raksa Thai Restaurant
- Global Design Technology
- P J Campbell Funerals.

3. PREVIOUS USE OF THE SITE

The Council records indicate that the Site has been used for a number of purposes.

The following details are provided of the approvals which have been issued by the Council for use of the Site.

Development Application No.86/76

Approval was granted "*... to use part of the ground floor of the ... premises for the display of tiles and remainder of the ground floor and first floor for ancillary storage.*"

Development Application No.73/81

Approval was granted to "*... use shop for the sale of tiles.*"

Development Application No.22/86

Approval was granted to "*... use the premises as an office/showroom for plan printing and draughting including the ancillary retailing of draughting equipment and stationery.*"

Development Application 77/86

Approval was granted for the "*... use of the ground floor premises as a denture clinic for the fitting, making and repairing of artificial teeth.*"

Development Application No.70/89

Approval was granted for "*Use of the premises as a Retailer/Wholesaler of Panel Beating and Spray Painting Supplies.*"

Development Application No.90/89

Approval was granted for "*Use of the premises as Office, Display and Wholesale Storage of Toys and Associated Products.*"

Development Application No.110/89

Approval was granted for "*Use of premises as office, wholesale & distribution & repair of tennis racquets, with ancillary retailing of tennis racquets.*"

Development Application No.340/2004

Approval was granted to *"Use premises to sell swimming pool products, accessories & spas."*

4. OBJECTIVES OR INTENDED OUTCOMES

The Applicants currently operate the Buddha Raksa Thai Restaurant from No.141A Liverpool Road.

Due to the significant success of the Buddha Raksa Restaurant, the Applicants wish to relocate to a larger and more efficient premises and have thus purchased the Site. The current Buddha Raksa Restaurant is operating as a tenant at No.141A Liverpool Road.

As seen on the extract from the BPSO Map at **Figure 3** above, both the existing restaurant at No.141A Liverpool Road and the Site are located within the small section of 3(b) zoned land in this area of Liverpool Road, with all other commercial sites in the vicinity being zoned 3(a).

Clause 4 of the BPSO contains definitions of terms used in the BPSO. In this regard, the most appropriate use for both the existing and proposed restaurants would be a *"refreshment room"* which is defined as:

"refreshment room" means a restaurant, café, tea room, eating-house or the like;"

A review of the Land Use Table to the BPSO sees that the land uses permitted with the consent of the Council in the 3(a) and 3(b) zone differ in that a *"refreshment room"* is permitted in the 3(a) zone but prohibited in the 3(b) zone.

It is the intended outcome of the planning proposal that the BPSO be amended to permit, with the consent of the Council, *"refreshment rooms"* on the Site.

As seen on the map at **Figure 3**, apart for the small section of land being Nos.135-153 Liverpool Road, all commercial land fronting Liverpool Road in the vicinity of the Site is zoned 3(a), thus permitting, with the consent of the Council, the establishment of a *"refreshment room"*. Indeed, there are a number of restaurants located in that 3(a) zone.

The BPSO does not contain objectives for the zones which apply within the Burwood Local Government Area. As such, it is not possible to determine why, in the opinion of the Council, there is a need to discriminate between land zone 3(a) and land zoned 3(b) with regard to the permissibility of a *"refreshment room"* and, indeed, why there is a small section of 3(b) zoned land in this particular part of Burwood. There is little, if any, difference from a land use or strategic planning perspective which would elevate Nos.135-153 Liverpool Road such that a determination could be made that a *"refreshment room"* should be a permissible land use in the 3(a) zone but not on the Site. As such, there is no planning reason, other than the historic zoning of the Site, which would suggest that a *"refreshment room"* is not an

appropriate land use for the Site. This is particularly the case when comparison is made between the Site and No.131 Liverpool Road in close proximity to the Site which is zoned 3(a) and has recently been developed as a "*refreshment room*".

In light of the above, it is requested that the Site be rezoned to permit, with the consent of the Council, a "*refreshment room*". In this regard, it is noted that the BPSO contains numerous clauses which have, over time and as required, been added to the BPSO to permit, with the consent of the Council, land uses which are not permitted in the generic Land Use Table. Those land uses are considered by the Council as being land uses which are appropriate for a particular land parcel. It is proposed that a similar planning approach be adopted for the Site. In this regard, **Clause 78D** of the BPSO would be the appropriate mechanism with the Site subsequently being added to **Schedule 8** of the BPSO with the listing that a "*refreshment room*" is a permitted land use on the Site. In this regard, the Council, at its 24 November 2009 Meeting, resolved, among other things:

- "1. That Council endorse the spot rezoning of 135-137 Liverpool Road, Burwood to amend the Burwood Planning Scheme Ordinance 1979, to permit '*refreshment rooms*' on the subject land, which is currently zoned 3(b) Business Special."

5. EXPLANATION OF PROVISIONS

In order to give effect to the planning proposal, a draft Local Environmental Plan will be required to insert "*refreshment rooms*" as a land use permissible with the consent of the Council on the Site.

The BPSO would be amended in the following manner:

1. Insert in appropriate order in the definition of *scheme map* in clause 4 (1):

Burwood Local Environmental Plan No xx

2. Insert in Schedule 8 the following:

Land known as 135-137 Liverpool Road, Burwood (Lot 1, DP 329914), as shown edged heavy black and hatched on the map marked "Burwood Local Environmental Plan No xx" deposited in the office of the Council - refreshments rooms.

6. JUSTIFICATION

6.1 Section A - Need for the planning proposal

1. Is the planning proposal a result of any strategic study or report?

The planning proposal is not the result of any strategic study or report.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The intended outcome is for "*refreshment rooms*" to be a permitted use on the Site. The planning proposal is considered to be the best means of achieving the intended outcome.

3. Is there a net community benefit?

The net community benefit is that the Site will be able to be used as "*refreshment rooms*" consistent with other commercially zoned land in the vicinity of the Site. Consequently, there would be no comparative advantage for a site within the 3(a) zone compared to the Site when there are no reasonable planning grounds for the existing discrimination between the use of the Site and the use of 3(a) zoned land in the immediate vicinity of the Site.

6.2 Section B - Relationship to strategic planning framework

4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

The State government has prepared its Metropolitan Strategy which is designed to direct land use planning in the Sydney metropolitan area. The Metropolitan Strategy documents state:

"The NSW Government has undertaken broad planning reform over recent years in order to ensure that the directions of the Metropolitan Strategy and Subregional Strategies are achievable through the planning system.

These reforms include a standard template for Local Environmental Plans (LEPs). Some of the key challenges of the Metropolitan Strategy are to manage the growth and change implications of accommodating an additional 1.1 million people, requiring 640,000 new homes and capacity for 550,000 new jobs to 2031.

Due to the size and complexity of the Metropolitan region, draft Subregional Strategies have been prepared to interpret the actions and objectives of the Metropolitan Strategy for application at local and subregional levels to aid local government and agencies in strategic planning.

The draft Inner West Subregional Strategy will guide the preparation of new Principal LEPs which each council has undertaken to complete within two to five years. The new LEPs will reflect the strategic planning objectives of their region and, in the case of Sydney, outlined in the Metropolitan Strategy, City of Cities, released in 2005.

Subregional strategies are the next step in translating the objectives for the whole city into strategies for each grouping of local government areas and the many communities of Sydney. The Subregional Strategies are based on the Metropolitan Strategy and propose actions to be undertaken by NSW Government agencies and local government.

The Subregional Strategies will provide:

- *a vision for the future role of the subregion;*
- *clarity on the future roles of centres;*
- *staging and prioritisation of renewal;*
- *a framework for potential agreements between local governments concerning*
 - *coordinated planning*
 - *funding and development contributions*
 - *local transport*
 - *open space networks*
 - *biodiversity;*
- *a framework for better aligning NSW Government infrastructure spending with expected growth; and*
- *local government area housing targets and employment capacity targets to 2031."*

Burwood is identified as a Major Centre in the Metropolitan Strategy, however, the Site is not located within the 1km radius which defines that Major Centre.

A review of the draft Inner West Subregional Strategy reveals that there are no specific State or regional strategic requirements for the Liverpool Road area which affect the Site.

5. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

There are no Community Strategic Plans or other local strategic plans relevant to the Site.

6. Is the planning proposal consistent with the applicable state environmental planning policies?

There are no State Environmental Planning Policies which are relevant to the planning proposal.

7. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

The relevant s.117 Direction is Direction 1.1 - Business and Industrial Zones. The objectives of this direction are to:

- "(a) encourage employment growth in suitable locations,*
- (b) protect employment land in business and industrial zones, and*
- (c) support the viability of identified strategic centres."*

The direction applies:

"... when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed business or industrial zone (including the alteration of any existing business or industrial zone boundary)."

As such, Direction 1.1 applies to this planning proposal.

The direction details what a council must do if the direction applies. Below is a list of what the Council must do (in italics) with comments provided with regard to the planning proposal.

"A planning proposal must:

- (a) give effect to the objectives of this direction,"*

Comment: The planning proposal seeks to add an additional land use which would be permissible with the consent of the Council on the Site. All existing permissible land uses will be retained. The planning proposal will encourage the potential for employment growth by virtue of that additional permissible land use which would otherwise not be permitted on the Site while at the same time protecting the existing employment generating land uses permitted on the Site.

- "(b) retain the areas and locations of existing business and industrial zones,"*

Comment: The planning proposal will not alter areas and locations of existing business zones.

"(c) not reduce the total potential floor space area for employment uses and related public services in business zones,"

Comment: The planning proposal is to add an additional commercial land use to those permitted with the consent of the Council on the Site. The planning proposal will not reduce the potential floor space for employment uses and related public services in the 3(b) zone.

"(d) not reduce the total potential floor space area for industrial uses in industrial zones, and"

Comment: The Site is not within an industrial zone.

"(e) ensure that proposed new employment areas are in accordance with a strategy that is approved by the Director-General of the Department of Planning."

Comment: The planning proposal will not create a new employment area.

The planning proposal to insert *"refreshment rooms"* as a permissible use on the Site is not inconsistent with any other s.117 Directions issued by the Minister.

6.3 Section C - Environmental, social and economic impact

8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

No critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal.

9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The planning proposal seeks to allow, with the consent of the Council, *"refreshment rooms"* to be located on the Site. There are no environmental effects likely as a result of the planning proposal.

10. How has the planning proposal adequately addressed any social and economic effects?

It is unlikely that any social or economic effects will flow from the planning proposal other than to allow the development of "*refreshment rooms*" on the Site in a similar fashion to the 3(a) zoned land.

6.4 Section D - State and Commonwealth interests

11. Is there adequate public infrastructure for the planning proposal?

The planning proposal will not increase demand for any public infrastructure.

12. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

There has been no consultation with either State or Commonwealth public authorities in the preparation of the planning proposal.

7. Community Consultation

In accordance with the NSW Department of Planning document "*A guide to preparing local environmental plans*", the planning proposal is classified as "*Low impact*". As such, it is envisaged that community consultation will be undertaken for a period of 14 days in accordance with Section 4.5 of "*A guide to preparing local environmental plans*".

8. CONCLUSION

It is proposed to rezone Lot 1, DP 329914, Nos.135-137 Liverpool Road, Burwood to permit, with the consent of the Council, the establishment of a "*refreshment room*" on that site.

The subject site is currently zoned 3(b) whereas the vast majority of commercial land in the vicinity of that land is zoned 3(a) which permits a "*refreshment room*" with the consent of the Council.

There is no strategic planning document or reasoning which would suggest that the subject land is different to other land in the vicinity which is either already developed as a "*refreshment room*" or is capable of development as a "*refreshment room*". It is considered that the subject site is suitable for use as a "*refreshment room*" as proposed by the Applicants and endorsed by Burwood Council.

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