

(ITEM 133/09) REZONING APPLICATION FOR 135-137 LIVERPOOL ROAD, BURWOOD

File No: 08/14525

REPORT BY MANAGER STRATEGIC PLANNING

Summary

Council previously resolved to endorse a planning proposal prepared by a planning consultant on behalf of the proponent of 135-137 Liverpool Road, Burwood to amend the Burwood Planning Scheme Ordinance (BPSO) 1979. Council resolved to permit 'refreshment rooms' on all land zoned 3(b) Business Special in the Burwood local government area (LGA) in order to enable a restaurant to operate on the land. The proponent's planning consultant's planning proposal was forwarded to the Department of Planning (DOP), who has advised that the planning proposal requires additional information. In light of the comments of the DOP this report recommends that Council endorse a one-off spot rezoning of 135-137 Liverpool Road and that the applicant be advised to amend the planning proposal for resubmission to the DOP.

Do not delete this line

State Government Plan Making

In July 2009, the State Government changed the way that Local Environmental Plans (LEPs) are prepared and approved. The system, known as the 'gateway' plan-making process, aims for an overall reduction in the time taken to produce LEPs.

The gateway process has the following steps (a flow chart is provided in Attachment 1):

- **Planning Proposal** – A planning proposal is prepared, which explains the effect of, and provides justification for, the proposed LEP.
- **Council Resolution** – The Council resolves whether to proceed. If so, the planning proposal is forwarded to the DOP.
- **Consideration by DOP** – The planning proposal is considered by the relevant regional team of the DOP, and if all matters are adequately addressed, the proposal is then referred to the Department's LEP Review Panel for consideration.
- **Gateway Determination** – The Minister determines whether the planning proposal is to proceed. The gateway determination seeks to ensure that the proposal is justified before further resources are allocated to the preparation of a LEP. The extent of community consultation is also determined at this time. Consultations occur with relevant public authorities and, if necessary, the proposal is varied.
- **Community Consultation** – The proposal is publicly exhibited. Generally, low impact proposals are exhibited for 14 days, and more significant proposals for 28 days.
- **Assessment** – The Council considers any submissions received and the proposal is varied as necessary. The proposal is then forwarded to the DOP for its assessment.
- **Draft LEP** – Should the Department agree to proceed with the proposal, Parliamentary Counsel is instructed to prepare a draft LEP, that is, the legal instrument.
- **Decision** – With the Minister's approval the plan becomes law and is gazetted.

Background

The property at 135-137 Liverpool Road, Burwood is located on the northern side of Liverpool Road, on the corner of Angelo Street. Council has received a rezoning application for this property prepared on behalf of the operators of the Buddha Raska Thai Restaurant located at 141A Liverpool Road, who have purchased the subject property with the intention of relocating the restaurant. The land at 135-137 Liverpool Road is currently zoned 3(b) Business Special under the BPSO which prohibits 'refreshment rooms' including restaurants. The application therefore requests that Council amend the BPSO to permit 'refreshment rooms' on the subject land.

Council has previously resolved to give the application further consideration provided that a submission be lodged with Council prepared by a qualified town planner in respect of the rezoning of all land zoned 3(b) Business Special in the Burwood LGA, based on an approach which deals with all like cases consistently and provides for strategic planning decisions.

While the submitted material was being assessed by Council staff, the system for making new LEPs was changed by the State Government. In accordance with the new legislation the applicant recently submitted a planning proposal on 10 September 2009 to allow 'refreshment rooms' on all land zoned 3(b) Business Special in the BPSO, including the subject land, prepared by Nexus Environmental Planning Pty Ltd.

Council at its meeting of 22 September 2009 considered the matter and resolved to endorse the planning proposal and forward it to the DOP for a gateway determination.

Verbal and email responses have been received from the DOP, advising that the planning proposal in its current form requires additional information to be assessed under their gateway determination process and that the planning proposal should:

1. Explain how the matters relating to 135-137 Liverpool Road, Burwood will be addressed through rezoning all 3(b) Business Special land in the LGA.
2. Identify the net community benefit of the zoning change, explain the difference between the 3(a) and 3(b) Business zones under the BPSO and explain why this proposal is considered to be of minor significance.
3. Justify the commercial need generated by the subject site on all land zoned 3(b) Business in the LGA, which includes land on Parramatta Road and Liverpool Road.
4. Provide an in-depth analysis of the impact of allowing refreshment rooms on land designated as future Enterprise Corridors (Parramatta Road), which under the Standard Instrument are shown as providing employment uses.
5. Provide a strategic study or assessment to support the proposed rezoning, including consideration of the broader Burwood LGA and surrounding land uses.
6. Demonstrate how the proposal is consistent with the Section 117 Directions.
7. Give special consideration to Section 117 Direction - 1.1 Business and Industrial Zones, particularly in relation to 4(a): demonstrating how allowing a non-employment related use would not 'reduce the total potential floor space area for employment uses'.
8. Describe how the intended future zone along Parramatta Road, under the Comprehensive LEP will be different to the 3(a) and 3(b) Business land use zones along Liverpool Road and show how allowing refreshment rooms across all such areas under the Planning Proposal will be consistent with this intended future strategic outcome.

Council staff have discussed this matter further with the DOP who has advised that Council may wish to consider other ways of dealing with this matter.

Proposal

In view of the DOP's advice on the planning proposal and new legislative provisions, this report recommends that Council consider a one-off spot rezoning of 135-137 Liverpool Road, Burwood by amending the BPSO to permit 'refreshment rooms' only on the subject land.

It is also recommended that the planning proposal be amended to reflect the aforementioned matters raised by the DOP such that it may be submitted to the DOP for a gateway determination

The planning proposal will require amendment by a planning professional on behalf of the proponent.

Consultation

The planning proposal as submitted has outlined the community consultation that is to be undertaken in respect to the rezoning. It proposes to exhibit the planning proposal for 14 days as it would fall under the "low impact" category. The nature and duration of community consultation would be determined by the DOP as part of the gateway determination process.

Planning or Policy Implications

The revised planning proposal to Council is to be prepared in accordance with the new section 55 of the EP&A Act. The requirements for a planning proposal are specified in the DOP's *"Guide to Preparing Planning Proposals"*.

The revised planning proposal will seek to amend the BPSO to allow 'refreshment rooms' on 135-137 Liverpool Road, Burwood.

Financial Implications

Facilitation of the planning proposal and LEP process would have staff resource implications for Council.

Options

Council may continue to endorse the rezoning of all land zoned 3(b) Business Special to permit 'refreshment rooms' within that zone. This option was advocated within the previous planning report of 22 September 2009 in order to provide a consistent and strategic approach to all 3(b) zones.

A further option is for Council to endorse a one-off spot-rezoning of the subject property. This option would not have impacts beyond the immediate locality. It would also enable Council to support the relocation of a local business and ensure that the business is retained within the LGA. It is recommended that this option be progressed as a stand-alone amendment to the BPSO such to limit delays to the property owner and consequential impacts upon their business.

Conversely, Council may resolve to progress the matter as part of the Comprehensive LEP for the whole LGA. This option may cause considerable delay for the applicant and property owner.

Conclusion

In view of the DOP's advice, it is concluded that Council should endorse the application for a spot rezoning of the land at 135-137 Liverpool Road, Burwood to permit 'refreshment rooms' on the subject land, which is currently zoned 3(b) Business Special.

The planning proposal will need to be amended by a planning professional on behalf of the proponent to reflect the aforementioned matters raised by the DOP. Council will then forward the amended planning proposal to the DOP for a gateway determination in accordance with the new Part 3 of the EP&A Act.

Do not delete this line

Recommendation(s)

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.

2. That Council request that the applicant submit a revised planning proposal in line with the spot rezoning to be prepared by a qualified town planner.
3. That Council forward the amended planning proposal to the Department of Planning for a gateway determination in accordance with new Part 3 of the Environmental Planning and Assessment Act 1979 and the Department of Planning guidelines.
4. That the applicant be advised of Council's resolution.

Do not delete this line

Attachments

1 Flow Chart Illustrating New LEP Process 1 Page [View](#)



BURWOOD COUNCIL

heritage ■ progress ■ pride

BURWOOD COUNCIL MEETINGS

MINUTES OF THE MEETING OF THE COUNCIL OF BURWOOD held at the Council Chamber, first floor, 2 Conder Street, Burwood on Tuesday, 24 November 2009 commencing at 6:00pm.

GENERAL BUSINESS

(ITEM 133/09) REZONING APPLICATION FOR 135-137 LIVERPOOL ROAD, BURWOOD

File No: 08/14525

Summary

Council previously resolved to endorse a planning proposal prepared by a planning consultant on behalf of the proponent of 135-137 Liverpool Road, Burwood to amend the Burwood Planning Scheme Ordinance (BPSO) 1979. Council resolved to permit 'refreshment rooms' on all land zoned 3(b) Business Special in the Burwood local government area (LGA) in order to enable a restaurant to operate on the land. The proponent's planning consultant's planning proposal was forwarded to the Department of Planning (DOP), who has advised that the planning proposal requires additional information. In light of the comments of the DOP this report recommends that Council endorse a one-off spot rezoning of 135-137 Liverpool Road and that the applicant be advised to amend the planning proposal for resubmission to the DOP.

256/09 RESOLVED (Carried)

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.
2. That Council request that the applicant submit a revised planning proposal in line with the spot rezoning to be prepared by a qualified town planner.
3. That Council forward the amended planning proposal to the Department of Planning for a gateway determination in accordance with new Part 3 of the Environmental Planning and Assessment Act 1979 and the Department of Planning guidelines.
4. That the applicant be advised of Council's resolution.

(Moved Councillor John Faker/Seconded Councillor Ernest Wong)

MAYOR

GENERAL MANAGER