

## ITEM 9.3 PLANNING PROPOSAL - 160 BURWOOD ROAD, CONCORD (BUSHELLS SITE)

**Reporting Manager** Manager Strategic Planning

- Attachments:**
1. Planning Proposal - 160 Burwood Rd Concord (as exhibited) *(Provided in Attachment Booklet)*
  2. LEP maps (revised post-exhibition) *(Provided in Attachment Booklet)*
  3. Report on submissions (final) *(Provided in Attachment Booklet)*
  4. Urban Design Review by Council *(Provided in Attachment Booklet)*
  5. DCP-03\_Part-B-General-Controls *(Provided in Attachment Booklet)*
  6. DCP-12\_Part-K-Special-Precincts\_Former-Bushells-Factory *(Provided in Attachment Booklet)*
  7. Survey *(Provided in Attachment Booklet)*
  8. Urban Design Report *(Provided in Attachment Booklet)*
  9. Concept Plan, Analysis and SEPP 65 Certification *(Provided in Attachment Booklet)*
  10. Landscape Master Plan *(Provided in Attachment Booklet)*
  11. Public Domain Plan *(Provided in Attachment Booklet)*
  12. Traffic Impact Assessment *(Provided in Attachment Booklet)*
  13. Aborigicultural Development Assessment Report (revised post-exhibition) *(Provided in Attachment Booklet)*
  14. Heritage Listing Nomination Report *(Provided in Attachment Booklet)*
  15. Heritage Significance Assessment *(Provided in Attachment Booklet)*
  16. Heritage Response to Local Planning Panel *(Provided in Attachment Booklet)*
  17. Statement of Heritage Impact *(Provided in Attachment Booklet)*
  18. Facade Report *(Provided in Attachment Booklet)*
  19. Draft Letter of Offer *(Provided in Attachment Booklet)*
  20. Affordable Housing Contribution Scheme *(Provided in Attachment Booklet)*
  21. Economic Impact Assessment *(Provided in Attachment Booklet)*
  22. Retail Demand Assessment *(Provided in Attachment Booklet)*
  23. Aboriginal Due Diligence Assessment *(Provided in Attachment Booklet)*
  24. Preliminary Soil Contamination Assessment *(Provided in Attachment Booklet)*
  25. Additional Contamination Assessment *(Provided in Attachment Booklet)*
  26. Preliminary Geotechnical Investigation *(Provided in Attachment Booklet)*
  27. Additional Geotechnical Investigation *(Provided in Attachment Booklet)*
  28. Sustainability Strategy *(Provided in Attachment Booklet)*
  29. Social Infrastructure and Community Uses Demand Assessment *(Provided in Attachment Booklet)*
  30. Flood Report (revised post-exhibition) *(Provided in Attachment Booklet)*
  31. Detailed Site Investigation (Round 1) *(Provided in Attachment Booklet)*
  32. Alteration of Gateway determination (PP-2021-6099) - Letter to Council *(Provided in Attachment Booklet)*

**RECOMMENDATION OF DIRECTOR ENVIRONMENT AND PLANNING**

That:

1. Council notes the Report on Submissions at Attachment 3 and the Urban Design Review at Attachment 4 and the Alteration of Gateway Determination at Attachment 32.
  2. That the Planning Proposal – 160 Burwood Road, Concord at Attachment 1 be submitted to the Department of Planning and Environment for making as a Local Environmental Plan, subject to the following amendments:
    - (a) The Land Use Zones being consistent with the proposed Land Zoning Map at Attachment 2.
    - (b) The maximum building heights being consistent with the proposed Height of Building Map at Attachment 2.
    - (c) The maximum Floor Space Ratio being consistent with the proposed Floor Space Ratio Map at Attachment 2 with the LEP including a bonus 0.15 Floor Space Ratio where the Central Roasting Hall is retained and adaptively reused.
    - (d) The Local Heritage Listing being consistent with the proposed Heritage Map at Attachment 2.
    - (e) The Foreshore Building Line being consistent with the proposed Foreshore Building Line Map at Attachment 2.
    - (f) Reduction of the minimum amount of non-residential floor space from 10,000sqm to 7,500sqm.
    - (g) Additional permitted uses to be limited to office premises, shops, restaurants, and cafes within the proposed R3 Medium Density Residential zone.
    - (h) Reduce the Affordable Housing Contribution from 10% to 7%.
  3. The draft Development Control Plan at Attachments 5 and 6 be adopted and come into effect upon the gazettal of the Local Environmental Plan.
  4. The draft Affordable Housing Contribution Scheme at Attachment 20 be adopted and come into effect upon the gazettal of the Local Environmental Plan.
  5. Authority be delegated to the General Manager to make any minor modifications to the Planning Proposal and draft Development Control Plan prior to finalisation.
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**PURPOSE**

To report on the outcome of the public exhibition of the Planning Proposal for 160 Burwood Road, Concord and to seek endorsement to submit the Planning Proposal to the Department of Planning and Environment (DPE) for finalisation.

This report was considered by Council at its ordinary meeting on 6 December 2022 [Item 9.3] where Council resolved as follows [MIN No. 291/22]:

1. *The matter be deferred for a Councillor workshop to consider the issues raised by residents at the Council meeting of 6 December 2022, and to discuss the amendments recommended in the Council report.*
2. *The matter be reported to a future Council meeting in 2023.*

A Councillor workshop was held in accordance with this resolution and this matter is again submitted for Council's consideration.

## EXECUTIVE SUMMARY

A Planning Proposal has been prepared to amend the planning controls at 160 Burwood Road, Concord by amending the *Canada Bay Local Environmental Plan 2013* (LEP). The Planning Proposal is seeking to facilitate urban renewal of industrial land into a mixed-use development comprising residential, retail/commercial (including light industrial uses) and recreational uses.

The Planning Proposal was publicly exhibited from 10 June 2022 to 08 July 2022 (28 days), in accordance with the requirements of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the Gateway Determination dated 31 October 2021. 187 submissions were received during the public exhibition.

Issues raised in submissions have been comprehensively assessed and an independent Urban Design Review undertaken to investigate these issues. The Urban Design Review assessed the key urban design issues, giving specific consideration to whether the proposed layout, massing and built form of the proposed development provide an appropriate response for the location and surrounding context of the site. The Urban Design Review recommends various amendments to the proposal.

Following a request to the Department of Planning and Environment (DPE) for an extension of time to further consider issues raised by the community at the Council meeting of 6 December 2022, the Planning Proposal needs to be submitted to DPE for finalisation before 26 May 2023 (refer to the Alteration of Gateway Letter to Council at Attachment 32).

It is recommended that the Planning Proposal be amended as per the recommendations of the Urban Design Review and the Submissions Outcome Report and submitted to DPE for finalisation. It is also recommended that the amended draft Development Control Plan and the amended draft Affordable Housing Contribution Scheme be adopted.

## STRATEGIC DIRECTION

This report supports Our Future 2036 outcome area:

Direction 3: Vibrant Urban Living

Goal VUL 1: Creative vibrant local village centres and community hubs

## BACKGROUND/DISCUSSION

A Planning Proposal was originally lodged with Council on 30 July 2018. The applicant was advised of various issues that should be addressed prior to the progression of the Planning Proposal.

Amended plans were submitted on 7 February 2019, which were the subject of a report to the Local Planning Panel on 6 June 2019. The Local Planning Panel provided advice about the proposal.

On 18 June 2019, Council considered a report on the Planning Proposal and resolved that it be deferred until after a meeting with representatives of the community to workshop key issues, and a subsequent Councillor workshop. The community representatives' workshop was held on 24 July 2019 and the outcome of the workshop was presented at a Councillor Briefing.

On 15 October 2019, Council resolved to forward the Planning Proposal, as amended to address the recommendations of the Canada Bay Local Planning Panel and the Residents Workshop – Outcomes Report, to DPE for a Gateway determination.

However, prior to submission of the Planning Proposal to DPE, the proponent lodged an application for a Gateway Review on the basis that Council had not made a decision within 90 days of its submission to Council.

The Planning Proposal was then amended to address certain matters raised by the Local Planning Panel and was assessed by the Eastern City Planning Panel (the Panel) on 31 March 2020. The Panel recommended that the Planning Proposal should proceed to a Gateway determination.

A Gateway determination was issued in October 2021 and an amended Gateway determination granting an extension of time was issued in January 2023. This is discussed later in this report.

### The Planning Proposal

The Planning Proposal is seeking to:

- Rezone the subject site from the existing IN1 General Industrial land zone to part B1 Neighbourhood Centre, part R3 Medium Density Residential, and part RE1 Public Recreation;
- Amend Part 6 Additional Local Planning Provisions of the Canada Bay LEP to:
  - Apply a Foreshore Building Line to the portion of the site proposed to be zoned RE1 Public Recreation; and
  - Introduce a development standard for the site which sets out a minimum provision of 10,000m<sup>2</sup> GFA for non-residential uses, of which a minimum 3,000m<sup>2</sup> GFA shall be light industrial uses.
- Amend Schedule 1 Additional Permitted Uses to permit "Commercial premises" within that part of the site proposed to be zoned R3 Medium Density Residential;
- List the Former Bushells Factory Building as an item of Local Heritage in the Canada Bay LEP;
- Increase the maximum height of buildings from 12m to various heights across the site ranging from 12m (3 storeys) to 21m (6 storeys), plus a height for the Central Roasting Hall that is the same as the existing height (RL 46.6).
- Increase the maximum FSR from 1:1 to 1.25:1, comprising a range of FSRs for different blocks across the site of 1.15:1, 1.85:1, 2.1:1, 2.2:1 and 3.05:1.
- The key changes from the original planning proposal are shown in the table below.

	Date of planning proposal version					
	June 2017 Refused	July 2018	Feb 2019	Sept 2019	June 2020 Gateway Review	May 2022 The subject Planning Proposal
<b>Zoning</b>	B4 Mixed Use		B1 Neighbourhood Centre; R3 Medium Density Residential; RE1 Public Recreation			
<b>Height</b>	121.5m	12m, 22m, 25m, 46m	12m, 16m, 21m, 24m and 30m. RL 46.6 to reflect existing roof height of Central Roasting Hall		12m, 15m, 17m, 18m, and 21m. RL 46.6 to reflect existing roof height of Central Roasting Hall	
<b>FSR</b>	1.95:1	1.6:1	1.5:1	1.25:1	1.25:1, comprising 1.13:1, 1.81:1, 2.1:1, 2.4:1 and 2.74:1	1.25:1, comprising 1.15:1, 1.85:1, 2.1:1, 2.2:1 and 3.05:1
<b>Additional local provisions</b>	No change				Foreshore Building Line in RE1 zone. Minimum 10,000m <sup>2</sup> GFA for non-residential uses, of which a minimum 3,000m <sup>2</sup> GFA for light industrial uses	
<b>Additional permitted uses</b>	Boat sheds, jetties, moorings, water recreation structures	Multi-unit dwellings	Light Industries in the R3 zone	No change	Commercial Premises in the R3 zone	

<b>Schedule 5 Environmental Heritage</b>	No change	Former Bushells Factory Building
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#### *Assessment by the Eastern City Planning Panel*

The Panel recommended certain conditions be attached to the Gateway determination:

1. Light industrial (IN2) uses be permissible on the site.
2. A minimum provision of non-residential uses of 10,000 sqm be provided, with a minimum of 3,000 sqm to be provided for 'urban services' (aka light industrial uses)
3. Satisfactory arrangements made to allow for the maintenance on the site of:
  - Minimum of 8,900 sqm of Public Open Space
  - Minimum of 10% affordable housing to be provided in perpetuity.
4. A DCP be prepared/exhibited and include certain urban design, landscaping, sustainability, and heritage criteria.

#### *Gateway determination*

The current Planning Proposal responds to the Gateway conditions issued by DPE on 31 October 2021. The major changes required by the Gateway were that, prior to public exhibition, the planning proposal was to be revised to:

- a. Include provisions to ensure spatial needs of light industry uses are addressed, including requirements for light industry to be located on the lower and upper ground floor levels of the Central Roasting Hall, and appropriate floor-to-ceiling heights.
- b. Update the draft DCP to address the spatial needs of light industrial uses as well as detailed design considerations such as floor to ceiling height spans, loading docks and vehicle access/parking, vehicle circulation, waste disposal, storage, and service areas/ corridors, etc.

In response to Council's request for additional time to further consider issues raised by the community at the Council meeting of 6 December 2022, an Alteration of Gateway determination was issued by DPE on 19 January 2023 granting an extension of time to 26 May 2023 to finalise the planning proposal.

#### *Draft Development Control Plan*

A draft Development Control Plan (DCP) has been prepared to complement the planning proposal. The draft DCP includes guidance that will need to be considered by proponents, Assessment Officers and Consent Authorities when considering future development applications.

#### *Draft Affordable Housing Contribution Scheme*

A draft Affordable Housing Contribution Scheme (AHCS) has been prepared that amends Council's current AHCS, incorporating the affordable housing rate recommended by feasibility testing commissioned by Council. The independent feasibility test assessed different affordable housing rates and recommended an affordable housing contribution rate of 7%. Factors that have influenced the recommended rate include:

- Industrial property prices having increased as a result of uplift in value of industrial uses, narrowing the development site value.
- Revenue potential having improved. The downsizer market is particularly strong, with recent evidence that buyers are willing to pay premium prices for a premium product, including waterfront properties in Concord.
- Construction costs having increased, but not as much as revenue potential for waterfront housing.

- The residential GFA having decreased slightly since 2019, when the current AHCS was tested, and which included additional non-residential GFA requirements. All things being equal, residential is currently generally more valuable than non-residential uses.

#### *Public Exhibition*

The planning proposal and supporting information was publicly exhibited from 10 June to 08 July 2022 (28 days), in accordance with the requirements of the *Environmental Planning and Assessment Act 1979* (the EP&A Act) and the Gateway Determination dated 31 October 2021.

A notification letter was sent to 2,317 landowners and residents and 11 State Government agencies.

A total of 187 submissions were received during the exhibition period, including 5 from government agencies.

A Councillor workshop was held on 7 March 2023 to enable Councillors to further consider issues raised by the community at the meeting of 6 December 2022.

#### *Review of submissions*

The primary issues raised in submissions related to:

- Density, scale, and height
- Traffic
- Transport and cycleways
- Parking
- Heritage
- Environmental impacts
- Natural environment
- Open space
- Services and facilities
- Ownership and maintenance of foreshore
- Development Control Plan (DCP)

All issues raised in submissions have been comprehensively assessed. Refer to [Attachment 3 - Report on Submissions](#) for a summary of issues raised and response.

The post-exhibition review also included an independent Urban Design Review commissioned by Council, to provide objective feedback about various aspects that had urban design implications (refer [Attachment 4 – Urban Design Review](#)). The recommendations of the Urban Design Review informed responses to issues raised in submissions and changes to the planning proposal.

It is recommended that Council endorse the planning proposal for finalisation subject to recommended changes being made prior to submission to DPE, including the following key changes:

- Relocate the proposed B1 Neighbourhood Centre zone and the light industrial uses internally within the site, to activate the waterfront and respect the low-density residential character of Burwood Road.
- Reduce the minimum amount of non-residential floor space to be provided on site from 10,000sqm to 7,500sqm.
- Limit additional permitted uses to office premises, shops, restaurants, and cafes within the R3 Medium Density Residential zone.
- Amend the maximum building heights to ensure the proposed number of storeys is not exceeded.



- Revise the maximum Floor Space Ratio (FSR) map to include block by block maximum FSRs and with an additional bonus 0.15:1 Floor Space Ratio permissible for Block 4, the Central Roasting Hall, if it is retained and adaptively re-used. This will provide further incentive to retain and protect the building. The recommended Floor Space Ratios arise from an amended site layout that reduces the overall building depths, accommodates balconies within the building envelopes, increases building setbacks and introduces upper storey setbacks.
- Introduce a new LEP clause that limits the maximum FSR for the whole site to 0.96:1, plus the additional bonus FSR of 0.15:1 for retention and adaptive re-use of the Central Roasting Hall. This gives a total of 1.11:1 FSR, down from the proposed 1.25:1.
- Amend the LEP Heritage Map to strengthen the 'landscape garden setting' for the Central Roasting Hall.
- Adjust the Foreshore Building Line so that it follows the outer edge of the building footprint facing Exile Bay.
- Reduce the Affordable Housing Contribution from 10% to 7%, as recommended by feasibility testing undertaken by Council.

The table below provides a summary of these changes in the context of the earlier iterations of the proposal.

	Date of planning proposal version						
	June 2017 Refused	July 2018	Feb 2019	Sept 2019	June 2020 Gateway Review	May 2022 subject Planning Proposal	Dec 2022 Recommendation
Zoning	B4 Mixed Use		B1 Neighbourhood Centre; R3 Medium Density Residential; RE1 Public Recreation				
Height	121.5m	12m, 22m, 25m, 46m	12m, 16m, 21m, 24m and 30m. RL 46.6 to reflect existing roof height of Central Roasting Hall		12m, 15m, 17m, 18m, and 21m. RL 46.6 to reflect existing roof height of Central Roasting Hall		11, 15m, 18m and 20m.
FSR	1.95:1	1.6:1	1.5:1	1.25:1	1.25:1, comprising 1.13:1, 1.81:1, 2.1:1, 2.4:1 and 2.74:1	1.25:1, comprising 1.15:1, 1.85:1, 2.1:1, 2.2:1 and 3.05:1	0.96:1 with the ability to achieve 1.11:1 where the roasting hall is retained and adaptively re- used, comprising 1.0:1 (3.0:1), 1.1:1, 1.3:1, 1.8:1 and 2.1:1
Additional local provisions	No change				Foreshore Building Line in RE1 zone. Minimum 10,000m <sup>2</sup> GFA for non- residential uses, of which a minimum 3,000m <sup>2</sup> GFA for light industrial uses		Foreshore Building Line to follow outer edge of building fronting the foreshore. Minimum 7,500m <sup>2</sup> GFA for non-residential uses, of which a minimum 3,000m <sup>2</sup> GFA for light industrial uses
Additional permitted uses	Boat sheds, jetties, moorings, water recreation structures	Multi- unit dwellings	Light Industries in the R3 zone	No change	Commercial Premises in the R3 zone		Office premises, shops, restaurants and cafes in the R3 zone
Schedule 5 Heritage	No change			Former Bushells Factory Building (roasting hall)			

It is also recommended that Council endorse the revised draft Development Control Plan, which includes the following key changes:

- Reduction of the depth of the 5 and 6 storey buildings along the eastern boundary and setback the uppermost floor to minimise the overshadowing impact and visual bulk.
- Increased setback of buildings fronting Massey Park Golf Course from 3.0m to 4.5m.
- Reduction of overall building depths to accommodate balconies within building envelopes and avoid encroachments into side setbacks.

- Strengthen controls in relation to overlooking and privacy and include controls that permit common open space on roof tops only if the area does not adversely impact adjoining residents.
- Increased building separation distances where they do not achieve the minimum criteria set out in the *Apartment Design Guide*.
- Modified footprint of building W1 (north-western corner of the site) to minimise the encroachment over the proposed road over Massey Park Golf course.
- Inclusion of a definition for 'landscaped setting' and reduce the building footprints of buildings to the south of the Central Roasting Hall to ensure that the 'Factory in a Garden' setting is retained. Also, strengthen the detailed objectives, controls and provisions for the conservation, adaptive reuse, and interpretation of the heritage item.
- Reconfiguration of the proposed basement ramps of the three-storey terraces along Burwood Road to ensure each terrace is provided with the required private open space.
- Inclusion of additional controls to minimise the impact of light industrial uses on site, including acoustic mitigation measures.

### *Conclusion*

The planning proposal for 160 Burwood Road, Concord (the Bushells site) was publicly exhibited, and submissions received have been assessed. An independent Urban Design Review of the planning proposal has assessed the urban design implications including those arising from feedback received in submissions; and has recommended changes that would improve the proposed layout, massing and built form of the development given the location and context of the site.

The accompanying draft DCP has been revised to respond to recommendations in the Urban Design Review and matters raised in submissions. The draft Affordable Housing Contribution Scheme has been revised to respond to feasibility testing that recommends an affordable housing contribution rate of 7%.

It is recommended that the Planning Proposal be submitted to the Department of Planning and Environment for finalisation, subject to the changes outlined in the Report on Submissions and the Urban Design Review; and the draft DCP and draft Affordable Housing Contribution Scheme be adopted.

## **TIMING AND RISK CONSIDERATIONS**

### *Gateway determination*

The Alteration of Gateway determination requires that the Planning Proposal be finalised before 26 May 2023. Council is not the local plan-making authority to make the LEP, and the Department of Planning and Environment will be responsible for making the final LEP. Council should therefore be cognisant of the deadline to finalise the LEP specified by DPE. To meet this deadline, Council would need to submit the Planning Proposal to DPE, allowing sufficient time for the plan to be made prior to 26 May. It is noted that the plan making stage usually requires approximately 6 weeks.

Should Council wish to proceed with the Planning Proposal as per the report recommendation, it is also recommended that Council make a decision about the draft Planning Agreement. Council typically requires registration of a Planning Agreement on the title of the land to which it applies, to ensure delivery of the public benefits outlined in the Planning Agreement. There is a significant risk for Council if it were to proceed with the Planning Proposal without proceeding with an associated Planning Agreement, as once a Planning Proposal is finalised (gazetted), then Council's ability to seek public benefits associated with land value uplift is lost.

The Alteration of Gateway determination letter to Council advises that "The extensive community consultation that has occurred ensures Council can make a final recommendation to the Department as the local plan making authority. This includes any changes to the planning proposal Council considers necessary to adequately respond to submissions." DPE is therefore unlikely to approve a



further extension of time and, should Council fail to submit the planning proposal to DPE within this timeframe, DPE may choose to finalise the plan without further involvement from Council.

#### *Foreshore Park*

The proposed RE1 Public Recreation zoning and dedication to Council of the foreshore park is the only reliable means to ensure Council is able to maintain control of future uses of this public space in perpetuity, including for landscaping, bush care, litter and rubbish removal, graffiti removal etc.

An alternative ownership scenario via a public easement over the land will not provide Council or the community with the same level of certainty over how the land is managed into the future, as all future activities and management of the land will be limited to those listed on the Land Title, and/or that are decided by the relevant Strata Committee/Community Association. That is, unless Council is the owner of this land, it will have no ability to influence uses that are not envisaged at the time of registration of the easement/restriction or that emerge as necessary or desirable in the future.

### **FINANCIAL CONSIDERATIONS**

A future development will be subject to the *Canada Bay Local Infrastructure Contribution Plan* and the *Canada Bay Affordable Housing Contribution Scheme*.

The Planning Proposal and associated Contribution Plans will ensure that appropriate measures are in place to provide local infrastructure that complements the planned increase in population.

A draft Planning Agreement has also been prepared and exhibited; and is the subject of separate report to Council.

### **LEGISLATIVE AND POLICY CONSIDERATIONS**

The Planning Proposal has been reviewed in accordance with the *Canada Bay Local Strategic Planning Statement* (LSPS) and the *Canada Bay Local Housing Strategy* (LHS).

Once finalised, the Planning Proposal will amend the *Canada Bay Local Environmental Plan 2013* and the adopted Development Control Plan and Affordable Housing Contribution Scheme will come into effect upon gazettal of the LEP.

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**ITEM 9.4 PLANNING AGREEMENT - 160 BURWOOD ROAD, CONCORD (THE BUSHELLS SITE)****Reporting Manager** Director Environment and Planning

**Attachments:**

1. **Draft Planning Agreement 160 Burwood Road, Concord** (*Provided in Attachment Booklet*)
2. **Key Issues Table** (*Provided in Attachment Booklet*)
3. **Risk Assessment** (*Provided in Attachment Booklet*)

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**RECOMMENDATION OF DIRECTOR ENVIRONMENT AND PLANNING**

That:

1. Council endorses and approves the Draft Planning Agreement for 160 Burwood Road Concord between the City of Canada Bay and New Concord Development Pty Ltd, attached to the report at Attachment 1.
  2. Authority be delegated to the General Manager to execute the Draft Planning Agreement for 160 Burwood Road Concord between the City of Canada Bay and New Concord Development Pty Ltd and sign all documents necessary to register the Draft Planning Agreement on the title to the land to which it relates.
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**PURPOSE**

The purpose of this report is to seek Council's endorsement and approval to enter into the draft Planning Agreement for 160 Burwood Road, Concord (the Bushells site) as exhibited.

This report was considered by Council at its ordinary meeting on 6 December 2022 [Item 10.1] where Council resolved as follows [MIN No.292/22]:

1. *The matter be deferred for a Councillor workshop to consider the issues raised by residents at the Council meeting of 6 December 2022, and to discuss the amendments recommended in the Council report.*
2. *The matter be reported to a future Council meeting in 2023.*

A Councillor workshop was held in accordance with this resolution and this matter is again submitted for Council's consideration.

**EXECUTIVE SUMMARY**

On 15 October 2019, Council resolved to forward a Planning Proposal for 160 Burwood Road Concord, to the Department of Planning and Environment for Gateway determination. The Planning Proposal was issued a Gateway determination on 31 October 2021, and progressed to public exhibition from 10 June to 8 July 2022.

On 19 May 2020, Council resolved that delegation be granted to the General Manager to negotiate the terms of a Planning Agreement. A draft Planning Agreement between the City of Canada Bay (Council) and New Concord Development Pty Ltd (Developer) has subsequently been negotiated and achieves a public benefit associated with delivery and dedication of the new Foreshore Park, and the provision of publicly accessible open space within the development, with further developer works to be affected through conditions of consent relating to any Development Application.

On 16 August 2022, Council resolved to place the draft Planning Agreement for 160 Burwood Road, Concord on public exhibition. The draft Planning Agreement was exhibited between 20 September 2022 and 28 October 2022 and received 47 submissions.

This report seeks Council's endorsement and approval to enter into the draft Planning Agreement for 160 Burwood Road, Concord (the Bushells site) as exhibited, if Council resolves to proceed with the Planning Proposal.

## STRATEGIC DIRECTION

This report supports Our Future 2036 outcome area:

Direction 1: Connected Community

Goal CC 5: Provide open space, facilities, and programs that promote active lifestyles

## BACKGROUND/DISCUSSION

On 15 October 2019, Council resolved to forward a Planning Proposal for 160 Burwood Road, Concord, known as the 'Bushell's site' and comprising Lot 5 in DP129325, Lot 2 in DP230294, Lot 398 in DP 752023 and Lot 399 in DP 752023 (Subject Land) to the Department of Planning and Environment for Gateway determination.

The Subject Land has a land area of 39,440 square metres and is currently zoned Industrial (IN1) as shown located at Diagram 1 below.



Diagram 1- Location Plan

### ***The Planning Proposal***

On 19 May 2020, Council resolved to accept the role as Planning Proposal Authority and a Gateway determination was issued on 31 October 2021. The key changes to the current planning controls proposed within the Planning Proposal (relevant to the Planning Agreement) are referenced at Table 1 below.

The Planning Proposal was placed on public exhibition from 10 June to 8 July 2022 and is subject to a separate Council report, recommending further amendments to the planning controls as shown in Table 1.

	Existing	Proposed	Recommended by Council
<b>FSR</b>	1:1	1.25:1	1.11:1
<b>Non-residential sqm</b>	NA	10,000 (3,000 for Light Industrial)	7,500 (3,000 for Light Industrial)
<b>Zoning</b>	IN1 General Industrial	B1- Neighbourhood Centre, R3 -Medium Density Residential, RE1- Public Recreation;	B1- Neighbourhood Centre, R3 -Medium Density Residential, RE1- Public Recreation;
<b>Affordable Housing Contribution</b>	NA	10% of Gross Floor Area (GFA)	7% of GFA

Table 1- Key planning control amendments relevant to the draft Planning Agreement

A draft Planning Agreement has now been negotiated in consideration of the proposed amendments to the planning controls listed at Table 1 and seeks value for money through the delivery of the following public benefits:

1. Dedication of the New Foreshore Park (subject to the renewal of the seawall and remediation of the park to the satisfaction of Council), as shown at Diagram 2; and
2. Embellishment of the New Foreshore Park; and
3. Registration of an easement over the Public Domain Land to enable public access to the open space, as shown at Diagram 2.

Whilst an Affordable Housing contribution is not a direct public benefit within the draft Planning Agreement it is considered a public benefit that affects this site, and the value of this contribution needs to be considered when determining value for money as outlined in this report.

This draft Planning Agreement has now been exhibited and the Developer has executed a copy of the draft Planning Agreement. If Council resolves to enter into the draft Planning Agreement, it can proceed directly to executing it, at which time it will come into effect.

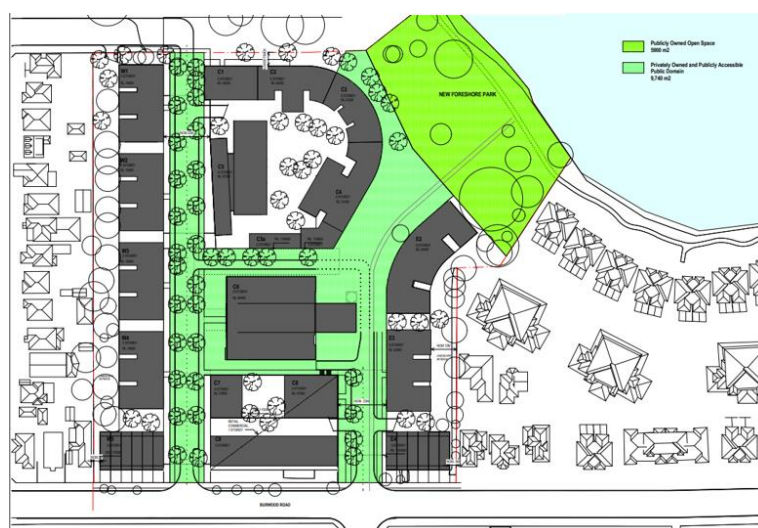


Diagram 2- Proposed public and private open space

### ***Affordable Housing Contributions Scheme (AHCS)***

Affordable housing contributions seek to capture a share of the value uplift that is created when development consent is granted for residential development. The draft Planning Agreement also seeks to capture a share of the value uplift created by a change in planning controls which permits additional development. For these reasons, it is considered reasonable to acknowledge the contribution that will be made towards affordable housing when negotiating the draft Planning Agreement.

The Affordable Housing Contributions permissible under the AHCS are applicable regardless of the draft Planning Agreement and are being amended as part of the Planning Proposal.

### **Public Consultation**

The draft Planning Agreement was placed on public exhibition from 20 September 2022 to 28 October 2022. The public consultation included:

- Exhibition on Council's Collaborate page – 273 visits
- Notification letter - 2165 letters sent.

### **Submissions**

Council received a total of 47 submissions. The items raised within these submissions are summarised in the issues paper, shown at Attachment 2. The issues raised can be grouped under four key themes, as outlined in Table 2 below.

Theme	Issue raised	Council response
<b>Theme 1. Dedication of the park to Council</b>	<ul style="list-style-type: none"> <li>- The park is not a public benefit.</li> <li>- Council should not own the park, or the sea wall. The public should have access and the land be maintained by the complex in line with adjoining complexes.</li> </ul>	<ul style="list-style-type: none"> <li>• The provision of new open space is supported by both local and district planning strategies and the proposed park on this site has been found to have merit by the Local Planning Panel, the Regional Planning Panel, and Council's urban design consultant.</li> <li>• The proposed new park will have an area of approximately 5,900 sqm, is north facing and fronts to Exile Bay. The location and orientation of the park will have a high level of amenity for local residents by providing opportunities for passive recreation, ie. green space, picnics, dog walking, play.</li> <li>• This park will complement the green link along the foreshore, leading to the Massey Park Golf Course, and aligning with the principles within the Canada Bay Foreshore Access Strategy.</li> <li>• The City of Canada Bay has many areas of open space located on the foreshore of the Parramatta River. The majority of this open space is in the ownership of Council or the Crown. It is not uncommon for Council to be the owner of local parks.</li> <li>• By owning the park Council: <ul style="list-style-type: none"> <li>○ Is able to control to manage and deal with noise and anti-social behaviour.</li> <li>○ Can implement park improvements to improve the quality and functionality of the park and to plan for changes to meet the needs of the growing population.</li> </ul> </li> </ul>



Theme	Issue raised	Council response
<b>Theme 2. Maintenance and improvements</b>	<ul style="list-style-type: none"> <li>• Council and rate payers will pay to maintain the park and the sea wall.</li> <li>• There are limited amenities proposed for the park.</li> </ul>	<ul style="list-style-type: none"> <li>• Council is responsible for the maintenance of all local parks zoned RE1 Public Recreation.</li> <li>• The park represents a significant waterfront asset.</li> <li>• The draft Planning Agreement sees Council owning and maintaining this park. This ensures Council has control of the park and can modify the park and its use over the years to meet the changing needs of the community.</li> <li>• The seawall will be renewed and brought up to a Condition 1 rating (at a cost of approx \$2M by the Developer). Council's management of the seawall aligns with the proposed ownership of the park. The renewed sea wall will have a useful life of 80 years.</li> <li>• There are no plans for an amenity block within this park as part of this development, however under the draft planning agreement, embellishments will include landscaping, lighting, park benches, pathways and associated improvements, similar to other passive recreation areas. There are plans for an upgrade of the amenities at Bayview Park in 23/24.</li> </ul>
<b>Theme 3. Contamination</b>	<ul style="list-style-type: none"> <li>• contamination is a concern and needs to be managed in the Planning Agreement</li> <li>• Council needs to manage the delivery of the public benefits.</li> </ul>	<ul style="list-style-type: none"> <li>• The conditions dealing with contamination within the draft Planning Agreement are very thorough. There is a requirement for a suitably qualified contaminated land expert to certify the land is suitable for recreational use with no ongoing environmental management requirements for Council. This will ensure that appropriate remediation and environmental monitoring occurs on the land.</li> <li>• Council Officers are required to approve design, delivery, handover of the park, remediation, seawall repair and park embellishments. Should the works not be undertaken to Council's requirements we will not agree to the handover of the park. Should they not remedy we may use their security deposit to rectify the works.</li> </ul>
<b>Theme 4. Value for Money</b>	<ul style="list-style-type: none"> <li>• There are not as many public benefits compared to the previous planning agreement, ie. Re-activating the Ferry Wharf, parking, bus service for 3 years.</li> <li>• There are better public benefits, such as community rooms, and the community should be asked to suggest</li> </ul>	<ul style="list-style-type: none"> <li>• Previous public benefits put forward by the applicant related to different iterations of the planning proposal. As the previous planning proposal had a greater amount of Gross Floor Area (GFA), there was greater capacity for the increased amount of the value uplift generated by development to be provided towards public benefits.</li> <li>• The draft AHCS requires an affordable housing contribution of 7% of the proposed Gross Floor Area. This equates to up to \$28.8M worth of Affordable Housing which should be taken into consideration when determining the value of public benefits contemplated by the draft Planning Agreement.</li> <li>• The draft Planning Agreement is a mechanism to enable the delivery of the foreshore park identified in the Planning Proposal. The park was always contemplated as part of the development, and public ownership of open space on the foreshore is consistent with both Council and State government strategies.</li> <li>• Valuation of public benefits is informed by Council's Planning Agreement Policy and advice from Council's</li> </ul>

	<p>alternate public benefits.</p> <ul style="list-style-type: none"> <li>• The dedication of the park does not represent value for money.</li> <li>• How did Council determine the value and costs associated with the public benefits?</li> </ul>	<p>Economic Consultant and Valuer. When calculating the value of public benefits, Council must consider the value generated by both the affordable housing contribution and the value of the proposed park and works to the park in this location.</p> <ul style="list-style-type: none"> <li>• Council obtained both a valuation to determine the value uplift, the value of the parkland and determined the equivalent amount of Affordable Housing Contributions for this site.</li> </ul>
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Table 2- Table of Issues

## RISK CONSIDERATIONS

A key risk consideration relates to options around ownership of the foreshore park. The risks of retaining the proposed foreshore park in private ownership versus the risks of dedicating the foreshore park to Council have been summarised in the risk assessment provided at Attachment 3.

Given this risk assessment, it is recommended that Council accept the dedication of the park and its associated maintenance responsibilities, including the seawall. The draft Planning Agreement includes requirements for the land to be remediated, for the park to be designed in consultation with Council, and for the seawall to be renewed. These requirements will ensure that the condition and quality of the assets are fit for purpose upon dedication of the park. This will minimise maintenance costs and maximise the life cycle of these assets, effectively mitigating this risk.

Another key risk relates to implications arising if Council resolves not to proceed with the Planning Proposal. Should Council resolve not to support the Planning Proposal, then a Planning Agreement is not required. However, as the Minister for Planning is the local plan making authority, it is possible that the Minister could still proceed to make the local environmental plan (ie rezoning the land and enabling development to occur on the site). Should Council resolve not to proceed with the Planning Proposal, it is recommended that the draft Planning Agreement be deferred until such time as the position of the Minister for Planning (or their delegate) regarding the future of the site has been confirmed. This would provide Council with the ability to determine whether the draft Planning Agreement to deliver some public benefit should proceed in a situation where the land was rezoned.

Should Council resolve not to proceed with the Planning Proposal and make no provision for any future consideration of the draft Planning Agreement, there is a significant risk that the land could be rezoned without any of the public benefits currently in the draft Planning Agreement being delivered.

## FINANCIAL CONSIDERATIONS

The draft Planning Agreement proposes public benefit to an amount equivalent to an appropriate share of the uplift in value of the land, given the change in zoning and increase in GFA of the proposed development. In addition to the public benefits outlined in the draft Planning Agreement (ie dedication of public open space and the creation of an easement for public access), future development will also be required to make a contribution towards Affordable Housing.

Council is satisfied that the value of both the public benefit and the Affordable Housing contributions is reasonable and appropriate given the development proposed.

## LEGISLATIVE AND POLICY CONSIDERATIONS

The draft Planning Agreement has been prepared in accordance with the provisions of the *Environmental Planning and Assessment Act (1979)*, and the *Canada Bay Planning Agreement Policy*.

The proposed dedication of the foreshore park aligns with Council's adopted *Foreshore Access Strategy*.