

15 June 2020

Our Ref: S17/75

Contact: Josh Ford 9562 1634

Brendan Metcalfe  
A/ Director, Eastern and South Districts  
Greater Sydney, Place and Infrastructure  
Department of Planning, Infrastructure and Environment  
Locked Bag 5022  
PARRAMATTA NSW 2124

Dear Mr Metcalfe,

**RE: Request for a Rezoning Review – RR\_2020\_BSIDE\_002\_00**

I refer to your letter dated 9 June 2020, advising that the Minister has received a Rezoning Review request for the Planning Proposal to amend the *Botany Bay Local Environmental Plan 2013* in relation to land at 152 Bunnerong Road, Eastgardens (Westfield Eastgardens).

**History & Assessment of Planning Proposal**

On 29<sup>th</sup> May 2017 a draft Planning Proposal was submitted to Council. The draft Planning Proposal requested Council to initiate an amendment to the *Botany Bay Local Environmental Plan 2013* (Botany Bay LEP 2013) at 152 Bunnerong Road, Eastgardens, to amend the Height of Building (HOB) control to permit a maximum height of 34 metres, and amend the Floor Space Ratio (FSR) control to permit a maximum FSR of 1.7:1.

On 21<sup>st</sup> March 2018, Council received an addendum to the draft Planning Proposal, proposing a maximum FSR of 1.7:1, a maximum HOB of 34 metres over the existing shopping centre; and a maximum HOB of 70 metres generally along the Bunnerong Road frontage.

The proponent was requested to revise the Planning Proposal and provide additional information / justification to address a number of matters. In summary:

- the scale and massing of potential built form outcomes at the Bunnerong Road and Wentworth Avenue frontages was unacceptable;
- the economic impacts of, and justification for, the proposed intensification of development in this location;
- the submitted Planning Risk Assessment had not adequately taken into consideration the increased height of buildings; and
- insufficient detail was provided in the submitted site specific Development Control Plan.

On 5 March 2019, a revised draft Planning Proposal was submitted to Council, proposing a maximum FSR of 1.85:1 and HOB controls of part-34 metres; part-40 metres and part-70 metres.

The proponent was requested to revise the addendum draft Planning Proposal and provide additional information / justification to address several remaining concerns with the proposal, in summary:

- insufficient details of proposed improvements to the public domain and to pedestrian safety at Westfield Drive, adjoining the BATA site.
- unreasonable overshadowing of properties located on the southern side of Wentworth Avenue.
- insufficient detail contained in the submitted site specific Development Control Plan in key areas such as activation of the northern boundary of the site; height strategy; public domain improvements generally; landscaping; and built form controls.
- Inappropriate street wall heights.

On 23<sup>rd</sup> December 2019, the proponent submitted a revised draft Planning Proposal and supporting documents. In summary, the Planning Proposal proposes to:

- Amend the Botany Bay LEP 2013 HOB to increase the maximum HOB from 25 metres to part-34 metres; part-40 metres and part-59 metres; and
- Amend the Botany Bay LEP 2013 FSR Map to increase the maximum FSR from 1:1 to 1.80:1.

Council has not received an offer of a Voluntary Planning Agreement (VPA).

### **Bayside Local Planning Panel Recommendation**

The Planning Proposal was reported to the Bayside Local Planning Panel on 18 February 2020. The community were notified of the Planning Proposal. The officer's recommendation in the report to the Bayside Local Planning Panel was:

- 1 *That the Bayside Local Planning Panel recommend to Council that pursuant to section 3.34 of the EPAA, the draft Planning Proposal for 152 Bunnerong Road, Eastgardens be submitted to the DPIE for a Gateway Determination subject to:*
  - a *The draft DCP being updated to include further details and controls in relation to:*
    - *landscape strategy;*
    - *public domain interfaces and active street frontages;*
    - *car park screening;*
    - *maximum building length, maximum footprint area, building depths and articulation;*
    - *pedestrian connections;*
    - *building separation;*
    - *building height strategy; and*
    - *primary and secondary building setbacks.*

- b Further refinement of the built form to ensure reasonable solar access is provided to dwellings located on the southern side of Wentworth Avenue.*
- 2 If the DPIE issue a Gateway Determination that permits exhibition of the proposal, a post-exhibition report be prepared for consideration by the Bayside Local Planning Panel before making any further recommendations to Council.*

After considering the officer's report, the Bayside Local Planning Panel recommended to Council:

- 1 Pursuant to section 3.34 of the EPAA, the draft Planning Proposal for 152 Bunnerong Road, Eastgardens be submitted to the DPIE for a Gateway Determination subject to:*
  - a The draft DCP being updated to include further details and controls in relation to:*
    - landscape strategy with the provision of canopy trees;*
    - public domain interfaces and active street frontages;*
    - car park screening;*
    - maximum building length, maximum footprint area, building depths and articulation;*
    - pedestrian connections;*
    - building separation;*
    - building height strategy; and*
    - primary and secondary building setbacks.*
  - b Further refinement of the built form to ensure reasonable solar access is provided to dwellings located on the southern side of Wentworth Avenue.*
- 2 If the DPIE issue a Gateway Determination that permits exhibition of the proposal, a post-exhibition report be prepared for consideration by the Bayside Local Planning Panel before making any further recommendations to Council.*

The Bayside Local Planning Panel's reason for the recommendation was:

*The Panel considers the site has both strategic and site specific merits and intensification of uses on the site and commercial office space for employment is consistent with the Metropolitan, District and Local strategies and plans for the area. Furthermore, the increase in FSR and height on the subject site provides the opportunity to incorporate sustainability measures in the DCP/ concept plan.*

The recommendations of the Bayside Local Planning Panel were included in the report to the Council Meeting of 8 April 2020.

### **Bayside Council Resolution**

The Planning Proposal was reported to Bayside Council on 8 April 2020. The community was notified of the Planning Proposal. The officer's recommendation in the report to Bayside Council was:

- 1 That, pursuant to section 3.34 of the Environmental Planning and Assessment Act 1979 (EPAA), Council considers the recommendation of the Bayside Local Planning*

*Panel from 18<sup>th</sup> February 2020 and forwards the draft Planning Proposal for land known as 152 Bunnerong Road, Eastgardens to the Department of Planning, Industry and Environment (DPIE) for a Gateway Determination.*

- 2 *That, pursuant to Clause 18 of the Environmental Planning and Assessment Regulation 2000, if a Gateway Determination is issued by DPIE, Council publicly exhibits the site-specific Development Control Plan (DCP) concurrently with the Planning Proposal for 28 days, subject to the following refinements being made to the site-specific DCP prior to exhibition:*
  - a *The draft DCP being updated to include further details and controls in relation to:*
    - *landscape strategy with the provision of canopy trees;*
    - *public domain interfaces and active street frontages;*
    - *car park screening;*
    - *maximum building length, maximum footprint area, building depths and articulation;*
    - *pedestrian connections;*
    - *building separation;*
    - *building height strategy; and*
    - *primary and secondary building setbacks.*
  - b *Further refinement of the built form to ensure reasonable solar access is provided to dwellings located on the southern side of Wentworth Avenue.*
- 3 *The Council invite the Scentre Group to enter into a Planning Agreement with Council to ensure public benefits are provided to the local community, in accordance with the provisions of the Environmental Planning and Assessment Act 1979.*
- 4 *That if a Gateway Determination is issued by DPIE, a further report be presented to Council following the public exhibition period to demonstrate compliance with the Gateway Determination, and to provide details of any submissions received throughout that process.*

Bayside Council resolved:

*That this item be deferred for an independent peer review of the work to be done and be referred back to Council.*

The Councillors cited the following reasons for deferring the matter for an independent review, in summary:

- Council's Customer Service Centre and Library are located within the Westfield Eastgardens centre and therefore there may be a perceived conflict of interest
- That insufficient details had been provided in relation to car parking, including staff car parking

- That insufficient details had been provided in the draft Development Control Plan as detailed in the officers recommendation
- That a Voluntary Planning Agreement had not been entered into and therefore Council was not able to consider the broader public benefit of the Planning Proposal.

### **Independent assessment**

On 1<sup>st</sup> May 2020, Council staff engaged an independent planning consultant to undertake a review of Council's assessment in accordance with Council's resolution.

The independent assessment will also include an assessment against the new Botany Industrial Park (BIP) Quantitative Risk Assessment (QRA) 2018 endorsed in January 2020, superseding the model used in the risk assessment supporting the current Planning Proposal.

DPIE requested that Sherpa Consulting be engaged by Council to run the Planning Proposal through the BIP QRA 2018 model. The findings will be provided to Council and the proponent to enable the risk assessment to be updated. Sherpa Consulting were engaged by Council staff on 19<sup>th</sup> May 2020 and their modelling is currently being progressed.

### **Next Steps**

Council staff will continue to progress the independent assessment, including the updated risk assessment, while DPIE prepare their Rezoning Review report for consideration by the Sydney Eastern City Planning Panel (SECPP). Council understands that DPIE will notify Council of SECPP's recommendation.

Should you have any queries in relation to this matter, please contact myself on 0404 163 594 or Josh Ford on 9562 1634.

Yours faithfully

*Clare Harley* 22/6/2020

Clare Harley  
**Manager Strategic Planning**