

Our Ref: 0091/17LT1 Pre-Gateway Review

2 August 2022

The Regional Office
Department of Planning and Environment
4 Parramatta Square, 12 Darcy Street
Locked Bag 5022
PARRAMATA NSW 2124

Dear Sir/Madam,

**APPLICATION FOR A REZONING REVIEW
PLANNING PROPOSAL APPLICATION FOR 187 SLADE ROAD, BEXLEY NORTH**

This cover letter has been prepared by Planning Ingenuity acting on behalf of the landowner for No. 187 Slade Road, Bexley North. This letter accompanies an application for a Rezoning Review by the Department and the Sydney Eastern City Planning Panel. The application for Rezoning Review has been lodged via the NSW Planning Portal with application reference number PP-2022-2456.

This Planning Proposal was lodged in December 2019 which pre-dated electronic submission of Planning Proposals on the Planning Portal. Given this fact there has been some administrative delays in uploading an electronic version of the Planning Proposal and undertaking a Rezoning Review.

This request for a Rezoning Review has been prepared in accordance with the *Local Environmental Plan Making Guideline* dated December 2021 (LEP Guideline).

EXECUTIVE SUMMARY

The redevelopment of the subject site at No. 187 Slade Road, Bexley North, also known as the Bexley North Hotel, was first raised with Council in August 2017 at a Pre-DA meeting. The Council raised a number of issues at the Pre-DA meeting which were addressed by the applicant prior to the lodgement of DA-2017/541 on 27 October 2017.

The DA sought development consent for the retention of existing pub and bottle shop known as Bexley North Hotel as well as demolition of the existing motel and a portion of the pub component and construction of a mixed use development comprising of a six (6) storey motel containing 66 rooms; a nine (9) storey shop top housing development fronting Sarsfield Circuit containing 80 dwellings and 1,267sqm of commercial floor space at ground level over three (3) basement levels.

This development application was withdrawn by the applicant on 12 February 2018 following meetings with Council officers who encouraged that the proposal should be submitted as a Planning Proposal rather than a development application, given variations sought to the planning controls. This set in motion the Planning Proposal process.

The Planning Proposal for the site was lodged on 19 December 2019 and sought to amend the development standards of Rockdale Local Environmental Plan (RLEP) 2011 to:

- amend the height of buildings control to permit buildings to a maximum height of 20m and 35m;
- amend the FSR control to permit buildings with a maximum FSR of 3.2:1 and 3.6:1; and,
- exclude the site from "Area C" on the Height and FSR Maps.



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Council gave a file number of F19/1273 for the Planning Proposal. The documents and plans submitted with the original Planning Proposal are submitted with this Cover Letter.

Since lodgement of the Planning Proposal, the applicant has sought to work collaboratively with Council and Council's external urban design consultants throughout the assessment. There have been a number of amendments to the Planning Proposal and additional details provided on 7 April 2020, 26 August 2020 and 16 June 2021 with regard to the concept design and details, however the key metrics for changes to the development standards have remained the same. This will be discussed in detail below.

On 16 December 2021 the Planning Proposal Report was tabled to the Bayside Local Planning Panel (BLPP). The BLPP report was a largely positive report detailing that the site demonstrated both strategic and site specific merit to warrant changes to the planning controls. After much deliberation, the BLPP members recommended that the Planning Proposal (F19/1273) be progressed to Gateway determination. Importantly, the reasons for the BLPP determination are as follows:

- *The Panel considers the proposal is consistent with a number of objectives and planning priorities of the Greater Sydney Region Plan and elements of the Eastern City District Plan. In particular, the proposal will advance the growth and revitalisation of an existing local centre identified in the Eastern City District Plan.*
- *The site is located in close proximity to mass transit and would therefore concentrate high density urban growth within a local centre adjacent to public transport corridors.*
- *After considering the likely environmental impacts of the proposal, the Panel is satisfied that it is suitable for being referred to the Department of Planning, Industry and Environment for a Gateway determination under s.3.34 of the Environmental Planning and Assessment Act 1979, subject to the imposition of conditions detailed above.*
- *Although the Panel is of the view that a development control plan should be prepared and exhibited in conjunction with the planning proposal, it is also strongly recommended that Clause 6.16 of the Bayside LEP 2021 be amended to include the site so that the LEP to include a requirement that a development control plan be prepared prior to the redevelopment of the site. Applying Clause 6.16 to the site will ensure that an overall strategic design approach will still be implemented in the event that a draft development control plan is not prepared prior to exhibition of the planning proposal.*
- *The Panel acknowledges the officer's concerns about progressing the proposal further in the absence of an overall strategic plan for the centre. However, the Panel considers that the need to revitalise this local centre and the consistency of the proposal with regional and district strategies justifies progression to Gateway Determination.*
- *In the absence of a masterplan or strategic planning and urban design work for the Local Centre as a whole, the development control plan will play an important role in advancing the potential for this spot rezoning to result in a high-quality development that sets a benchmark that may stimulate the renewal of the Centre as a whole.*
- *Without a development control plan and in the absence of strategic planning work for the locality, there is a significant risk that the planning proposal may result in a scale and/or form of development that inhibits the medium-term goal of a renewed local centre with a high degree of amenity.*

The applicant agrees and accepts the recommendations of the BLPP. Notwithstanding the variations to the height and FSR development standards to be refined with a DCP, the BLPP members considered that the need to revitalise this

local centre and the consistency of the proposal with regional and district strategies justifies the progression to Gateway Determination.

One of the most important considerations raised by the BLPP members was the preparation of a Site Specific DCP. Council Staff and their external consultants requested the lodgement of the Site Specific DCP prior to Gateway Determination, however it was envisaged by the applicants that the Site Specific DCP would be prepared after Gateway Determination and prior to the exhibition period. That is, the applicant did not want to risk the expense and effort of a Site Specific DCP without at least in-principle support of the redevelopment concept. The applicant's position was validated by the BLPP and one of the recommendation conditions requires a detailed Site Specific DCP prior to the exhibition period.

Council staff prepared a further assessment report that broadly followed the recommendation of the BLPP. The further assessment was reported to the City Planning and Environment Committee meeting on 9 March 2022. Contrary to the expert recommendations of Council staff and the BLPP members, the Councillors of the sub-committee resolved as follows:

1. *That Council considers the draft Planning Proposal for 187 Slade Road, Bexley to be an overdevelopment of the site based on a range of factors including but not limited to excessive increased height limits and floor space ratios.*
2. *That Council does not endorse the Planning Proposal for a Gateway Determination."*

In our opinion, the Committee decision did not thoroughly consider the expert opinions of Council staff and the BLPP members nor acknowledge the additional work recommended to address urban design detail. The Committee resolution was largely a political decision.

In accordance with Council procedures, the recommendation of the City Planning and Environment Committee was forwarded to the Full Council meeting on 27 April 2022 who, unsurprisingly, resolved to confirm the recommendation of the City Planning and Environment Committee.

As a result of the Full Council decision on 27 April 2022, the applicant formally requests that a Rezoning Review be undertaken by the Department and the Sydney Eastern City Planning Panel. The strategic and site specific merit has been confirmed by Council Staff and Council's external consultants and also by the expert BLPP members, but was largely ignored by the elected Councillors.

We consider that the documentation submitted with this Cover Letter demonstrates there is strategic and site specific merit and respectfully requests that the matter be progressed to Gateway Determination.

DOCUMENTATION SUBMITTED WITH THE REZONING REVIEW

This application contains all the necessary information as required in the LEP Guideline which includes the following:

A copy of the proponent's original and latest version of the planning proposal, including all supporting material and information that was submitted to council:

- The original Planning Proposal application report by Planning Ingenuity dated 19 December 2019 and documents supporting the original application being:
 - o Urban Design Report by GM Urban Design dated 18 December 2019;
 - o Phase 1 and 2 Environmental Site Assessment by Environmental Investigation Services (EIS) dated 19 March 2018;
 - o Initial Flood Report by GRC Hydro Pty Ltd dated 8 October 2019;

- Traffic Impact Assessment by Traffix dated October 2019; and
 - Voluntary Planning Agreement letter of offer dated 18 December 2019.
- In response to Council's email dated 27 February 2020, the following documentation was provided to Council on 7 April 2020:
 - Response to Request for Additional Information prepared by Planning Ingenuity dated 7 April 2020;
 - Concept Plans to scale prepared by GM Urban Design;
 - Updated GBA/FSR calculations prepared by GM Urban Design; and
 - Scale proposed Height of Buildings and FSR maps.
- The revised Planning Proposal application report by Planning Ingenuity dated 26 August 2020 developed after extensive consultation with Bayside Council and their external consultants (AJ&C) and the documents supporting this revised application being those lodged with the original application as well as:
 - Updated Environmental Site Assessment by JK Environmental dated 18 September 2019;
 - Revised Flood Study by GRC Hydro Pty Ltd dated 26 August 2020;
 - Revised Traffic Impact Assessment by Traffix dated August 2020; and
 - Urban Design Response prepared by GM Urban Design in response to comments made of the Planning Proposal.
- Further revised documentation was provided on 16 June 2021 and included the following documents:
 - Urban Design Response by GM Urban Design dated June 2021;
 - Flooding Report by GRC Hydro dated 11 June 2021; and
 - Risk Assessment Report by Arriscar Risk Engineering dated 8 February 2021.

See all attachments for details.

All correspondence that the proponent has received from the council in relation to the planning proposal request, including (if relevant) any copies of the council's written advice to the proponent and/or the Council resolution not proceed with the proposal

- Pre-lodgement advice prior to the preparation of the application for a Planning Proposal dated 7 August 2017 including Bayside Design Review Panel dated 3 August 2017;
- Additional Information Email from Council dated 27 February 2020;
- Email from Council with comments on the Planning Proposal Report, Traffic, Stormwater and Flooding issues dated 9 April 2020;
- Email from Council raising issues with Hazards and Risks, Flooding, Traffic and Urban design dated 5 October 2020;
- Email from Council summarising the issues in the AJ&C Urban Design Response dated 11 December 2020;
- Email from Council regarding Flooding issues dated 9 February 2021;
- Email from Council outlining their position in relation to Traffic, Flooding, Hazards and Risks and Urban Design dated 15 September 2021;
- Email from Council outlining the considerations for the future BLPP report dated 5 November 2021;
- Bayside Local Planning Panel Meeting Agenda of 16 December 2021;
- Bayside Local Planning Panel Meeting Minutes of 16 December 2021;
- Bayside Council City Planning and Environment Committee Agenda 13 April 2022;
- Bayside Council City Planning and Environment Committee Minutes 13 April 2022; and
- Bayside Council Ordinary Council Meeting Minutes 27 April 2022

See Section 2 for details.

All correspondence and written advice from other public authorities and government agencies, if available

All information as detailed in the Assessment Reports prepared by Council staff and attached with this Cover Letter.



The proponent's written justification of the strategic and site-specific merit to confirm why a review is warranted

See Strategic Merit and Site-Specific Merit considerations below.

Disclosure of reportable political donations under section 10.4 of the EP&A Act, if relevant

Not applicable.

The rezoning review fee to the Department

To be paid via the Planning Portal.

BACKGROUND AND CHRONOLOGY OF THE PLANNING PROPOSAL

1. Background

1.1 Pre-lodgement Application and Bayside Design Review Panel

On 3 August 2017 the Bayside Design Review Panel (BDRP) first considered a preliminary concept for the redevelopment of the site (Council Reference PDA-2017/28).

At the time the provisions of the Rockdale Local Environmental Plan 2011 applied to the site. The concept proposal for a mixed use development including the retention of the Bexley Hotel proposed a maximum building height of 31.5m and a FSR of 2.58:1. BDRP made recommendations for revision of the concept design which are summarised as follows:

- A Masterplan is needed particularly to integrate retention of the hotel and for perimeter treatments
- Identify potential for land acquisition to achieve continuous ground level activation including along the southern boundary
- Aim for design integration with low density residential development in Sarsfield Circuit addressing solar access, privacy, traffic and noise
- Enhance ground level visual and physical activation to all street frontages and the adjoining Council car park
- Incorporate landscaping to the pedestrian network

All of these issues were considered in the preparation of the application for the Planning Proposal.

Advice from Bayside Council development assessment staff in response to the pre-lodgement meeting held on 7 August 2017 was provided in a letter dated 14 August 2017. The concept design was broadly consistent with that considered by the BDRP but provided additional information as follows:

- Address the potential for land use conflict between retention of the existing hotel use and adjoining residential uses and Council's car park; and
- A Masterplan which includes an analysis of context and neighbourhood character including:
 - Built form, scale and density
 - Sustainability measures
 - Amenity, safety and security of multiple uses and neighbouring uses
 - Improve pedestrian network

Based on this feedback, the applicant prepared a Development Application for the subject site.



1.2 DA-2017/541

DA-2017/541 was lodged on 27 October 2017 and incorporated a number of changes as discussed by the BDRP and Pre-DA meeting. The DA sought development consent for the retention of existing pub and bottle shop known as Bexley North Hotel; demolition of the existing motel and a portion of the pub component and construction of a mixed use development comprising of a six (6) storey motel containing 66 rooms; a nine (9) storey shop top housing development fronting Sarsfield Circuit containing 80 dwellings and 1,267sqm of commercial floor space over three (3) basement levels.

This development application was withdrawn by the applicant on 12 February 2018 following meetings with Council officers who encouraged that the proposal should be submitted as a Planning Proposal rather than a development application, given variations sought to the planning controls. This set in motion the subject Planning Proposal application.

2. Chronology of the Planning Proposal

A brief chronological timeline of the Planning Proposal is detailed below:

- **19 December 2019** – original Planning proposal submitted to Bayside Council.
- **27 February 2020** - Additional Information Email from Council.
- **7 April 2020** - In response to Council's email dated 27 February 2020, the first revised Planning Proposal was submitted to Bayside Council.
- **9 April 2020** - Email from Council with comments on the Planning Proposal Report, Traffic, Stormwater and Flooding issues.
- **26 August 2020** – In response to the issues raised on 9 April 2020, the second revised Planning Proposal application was submitted to Bayside Council.
- **5 October 2020** - Email from Council raising issues with Hazards and Risks, Flooding, Traffic and Urban design.
- **11 December 2020** - Email from Council summarising the issues in the AJ&C Urban Design Response.
- **17 December 2020** - Copy of AJ&C Urban Design report dated 25 November 2021 received via GIPA Application.
- **9 February 2021** - Email from Council regarding Flooding issues.
- **16 June 2021** – In response to the number of issues raised above, a third revised Planning Proposal was submitted to Bayside Council.
- **15 September 2021** - Email from Council outlining that the Traffic, Flooding, Hazards and Risk issues had been largely resolved but concerns remained with the Urban Design aspects of the Planning Proposal. A AJ&C response table was provided in this email.
- **5 November 2021** - Email from Council outlining the considerations for the future BLPP report.



- **16 December 2021** - Bayside Local Planning Panel Meeting.
- **13 April 2022** - Bayside Council City Planning and Environment Committee Meeting.
- **27 April 2022** - Bayside Council Ordinary Council Meeting.

THE PLANNING PROPOSAL

1. Original Planning Proposal

The original Planning Proposal application was lodged with Bayside Council on 19 December 2019.

Broadly, the Planning Proposal sought the following changes to Rockdale Local Environmental Plan (RLEP) 2011:

- amend the height of buildings control to permit buildings to a maximum height of 20m and 35m;
- amend the FSR control to permit buildings with a maximum FSR of 3.2:1 and 3.6:1; and,
- exclude the site from "Area C" on the Height and FSR Maps.

It is noted that the existing controls permitted a maximum height of 16m (plus 6m as the site was located within Area C) and a maximum FSR of 2:1 (plus 0.5:1 as the site was located with Area C). That is, the existing planning controls permitted a maximum height of 22m and maximum FSR of 2.5:1 with the Planning proposal seeking up to 13m of additional height and 1.1:1 of additional FSR.

The vision for the site as established by this Planning Proposal is as follows.

- Establish a 'landmark' development at a key gateway to the Bexley North local centre, forming a visual marker and reinforcing the importance and identity of the Bexley North local centre;
- Contribute towards the revitalisation of the local centre by establishing uses and activation adjacent to the Council car park and Slade Road;
- Establish a 'destination' through the provision of ground level café, pub and retail tenancies linked to publicly accessible open space;
- Enhance pedestrian permeability through the site to link surrounding sites and public spaces;
- Address housing affordability by providing a mix of housing choices;
- Create liveable communities by providing high quality amenities and open space to meet the needs of existing and future residents of Bexley North;
- Deliver the highest standards of urban planning and excellence in architectural design.

An Urban Design Report (UDR) and indicative concept proposal was prepared by GMU. The UDR demonstrates that the proposed LEP changes will facilitate high quality urban form compatible with the context and setting of the broader locality and the immediate surroundings. Furthermore, the UDR and indicative concept proposal shows future development can relate positively to the features of the site as well as to surrounding public spaces and residential buildings. The indicative concept proposal will provide for the following:

- The construction of two buildings, comprising a 4-5 storey eastern building predominantly comprising residential apartments and a 6-10 storey western building comprising commercial, hotel and residential uses;
- Publicly accessible open space located between the two buildings;
- Approximately 83 apartments across the two buildings;
- Café on the ground floor of the eastern building fronting Slade Road;
- Two retail tenancies fronting the public open space;



- Retention of the Bexley North Hotel on the Ground Level and Level 1;
- A gym on Level 1 of the western building;
- A hotel in the northern portion of the western building on Levels 2-5; and
- Three basement levels providing for up to 214 car parking spaces.

The redevelopment of the site will provide a significant number of public benefits which include the following:

- The renewal of the existing Bexley North Hotel and associated Motel building will act as a catalyst for the future redevelopment of the urban block bounded by Bexley Road, Slade Road and Sarsfield Circuit;
- The provision of a high quality mixed use building that defines the street frontage and provides generous and well defined open spaces for residents on the upper levels;
- The provision of a through site link to connect to a potential future “Urban Piazza” or other redevelopment on Council land currently occupied by an existing carpark;
- The redistribution of massing away from the sensitive eastern boundary (reducing the currently allowable height at this edge of the site) towards the northern and western boundaries will provide increased visual amenity through delivery of a ‘landmark’ building with generous building separation;
- A variation to building heights within future development will contribute to a varied and more interesting skyline which will positively contribute to the creation of an attractive Bexley North Town Centre;
- Improvements to public safety and amenity by rationalising the width and number of driveway crossovers on the site to a single point from Sarsfield Circuit;
- Retain the existing Bexley North Hotel as a destination which is enhanced by additional retail and food and drink premises to contribute towards the economic vitality and increased activation on the primary frontage to Slade Road, within an easy and safe walking distance to a catchment of local residents;
- The provision of lower density residential uses fronting Sarsfield Crescent to provide a transition in scale to the low density residential development to the east and provide increased natural surveillance of the public domain, and
- Deliver the highest standards of urban planning and excellence in architectural design.

As part of the assessment, Bayside Council engaged Allen Jack + Cottier Architects (AJ&C) to provide Council with independent urban design advice.

2. First Revision to the Planning Proposal

On 27 February 2020, Council staff emailed the applicant detailing a number of additional information requests which can be summarised as follows:

- Provide scale drawings at a commonly-used scale of the site plan, indicative concept layouts, indicative basements and indicative sectional studies;
- Provide a level-by-level breakdown of the proposed GBA and GFA through an area schedule and measured area plans of all levels including assumptions made, as well as a short description of how the GFA/FSR was measured/calculated;
- Provide HOB and FSR maps that have been notated with dimensions sufficient to accurately identify the division of the site into the two separate sections that delineate where the various heights are apportioned and the areas upon the FSR calculations have been based;
- Provide a draft version of the DCP as part of the current document submission so that it can be shown to the Bayside Local Planning Panel and Council to assist with the assessment of whether the Planning Proposal has merit.



As a result of this email, the first revised Planning Proposal was submitted to Council on 7 April 2020. The first revision to the Planning Proposal did not alter the essence of the original Planning Proposal but provided additional technical details and updated maps to justify the original concept plans and documentation.

In response, the following documents were submitted to Council:

- Response to Request for Additional Information prepared by Planning Ingenuity;
- Concept Plans to scale prepared by GM Urban Design;
- Updated GBA/FSR calculations prepared by GM Urban Design; and
- Scale proposed Height of Buildings and FSR maps.

3. Second Revision to the Planning Proposal

On 9 April 2020, Council raised a number of issues relating to the documentation provided with the original Planning Proposal. The concerns can be summarised as follows:

- Details contained in the Planning Proposal Report needed to be updated to address concerns of Council's referral officers and provide responses to all the priorities of the applicable Strategic Plans, SEPP's and ministerial directions;
- Details to be provided with regard to parking and access for the basement and provision of parking compliant with the requirements of Council's DCP; and
- Details addressing the stormwater and flooding considerations in an around the site.

In response to these concerns and after significant consultation with Council staff and their external consultants, the second revised Planning Proposal was submitted to Bayside Council on 26 August 2020. Again, the second revised Planning Proposal did not alter the essence of the original Planning Proposal but provided additional technical details and updated plans and documents to address Council and their external consultants concerns.

The second revised Planning Proposal included the following documents:

- Revised Planning Proposal Report prepared by Planning Ingenuity;
- Updated Environmental Site Assessment by JK Environmental;
- Revised Flood Study by GRC Hydro Pty Ltd;
- Revised Traffic Impact Assessment by Traffix; and
- Urban Design Response prepared by GM Urban Design in response to comments made of the Planning Proposal.

4. Third Revision to the Planning Proposal

On 11 December 2020, Council provided an email summary of the urban design issues raised by AJ&C which was almost one (1) year after the original Planning Proposal was lodged. This email represented the first urban design comments received by Council and their external consultants. The formal Urban Design Report dated 25.11.21 was obtained from Council on 17 December 2020.

The primary recommendations from the December 2020 AJ&C comments can be summarised as follows:

- Setbacks should be increased throughout to meet ADG and DCP minimums, including treating the Council Car Park as a standard shared property boundary rather than publicly-accessible space as currently shown;
- The Height-of-Buildings Map should be aligned with the proposed envelope, or the three small upper levels removed;



- Any FSR increase should include a maximum residential FSR, separate to the maximum non-residential FSR;
- All building uses should be provided with a street address, meaning residential and hotel lobbies should be reoriented to public streets;
- The southern through-site link should be redesigned as a Local Road, per the LEP Land Reservation Map. This will require reducing the basement and increasing ADG-imposed setbacks;
- Additional documentation is required to show that the proposed rezoning of 187 Slade will have no additional impact on the residential properties 22-40 Sarsfield Circuit when compared with the likely impact under existing LEP controls.

In response to the urban design and other technical concerns raised by Council staff and their external consultants, the third revised Planning Proposal was submitted to Bayside Council on 16 June 2021. A number of refinements were made to the built form in response to issues raised by Council and their external consultants, however, the third revised Planning Proposal did not alter the essence of the original Planning Proposal.

The third revised Planning Proposal included the following documents:

- Urban Design Response by GM Urban Design;
- Flooding Report by GRC Hydro; and
- Risk Assessment Report by Arriscar Risk Engineering.

COUNCIL ACTIONS

1. Response to the Revised Planning Proposal

On 15 September 2021, Council provided the applicant with an email stating that the traffic, flooding, hazard and risk issues were satisfied with the remaining issue being the urban design considerations. AJ&C provided an Urban Design Response table which directly responded to the issues raised by GMU in their June 2021 Urban Design Report.

Importantly, the email from Council on 15 September 2021 was the first time Council had provided any indication that the Planning Proposal had some site specific or strategic merit. However, the email was not definitive and continued to raise concerns with the urban design issues and prematurity of the Planning Proposal.

In terms of the urban design issues, the applicant has always maintained that the concerns of AJ&C can be resolved by a Site Specific DCP. The key difference between Council and the applicant appears to be the timing of the Site Specific DCP. The applicant was not prepared to undertake a Site Specific DCP unless the Council (or their external consultants) were prepared to provide, at least, in-principle support to the concept proposal and resultant built form. Up until this email, there was no indication of any support of the Planning Proposal and therefore a Site Specific DCP was not prepared.

In terms of the prematurity of the Planning Proposal, the very existence of a Planning Proposal necessitates changes to the planning controls that do not follow Council's strategic timeline. Clearly, to be included in the BLSPS, Council considers that the Bexley North Town Centre is worthy of further investigation on uplift to density. As discussed above, the applicant contends that the Planning Proposal will assist in revitalising the Town Centre and set a new benchmark for redevelopment in the centre.

Given the email stated that the Planning Proposal would be reported to the BLPP in December 2021, there was no further ability to undertake any changes or further discussions with Council and their external consultants. In any event, the three revisions to the Planning Proposal primarily related to technical information and the provision of additional details / clarifications. Whilst a number of refinements were made to the built form in response to issues raised by

Council and their external consultants, the essence of the original Planning Proposal has remained unchanged from that submitted on 19 December 2019. That is, despite the 2.5 years of consideration by Bayside Council the original variations to the planning controls are still being sought as follows:

- amend the height of buildings control to permit buildings to a maximum height of 20m and 35m;
- amend the FSR control to permit buildings with a maximum FSR of 3.2:1 and 3.6:1; and,
- exclude the site from “Area C” on the Height and FSR Maps.

On 5 November 2021, the applicant received an email from Council stating that a report will be prepared for BLPP on 16 December 2021. A summary of the issues raised in the email foreshadowed the following:

- the assessment report would not provide a “yes or no” recommendation to Gateway Determination;
- the assessment report will indicate the Planning Proposal has Strategic Merit being aligned with Bayside Local Strategic Planning Statement (BLSPS) specifically Page 57 which commits Council to future investigation of the Bexley North centre but notes that the timeframe for this investigation is the medium term (6-10 years ie. 2026 to 2030). Furthermore, the Planning Proposal is aligned with the Bayside Local Housing Strategy which identifies the Bexley North as an investigation area for redevelopment of the centre (see extracts below); and
- the assessment report will outline a number of outstanding Urban Design issues raised by AJ&C.

Extract from Page 57 to the BLSPS (dated March 2020):

MEDIUM (6-10 years)

- ▶ Investigate opportunities for urban growth at Bexley North
- ▶ Investigate opportunities for residential growth in other centres identified by the Local Housing Strategy and the Centres and Employment Lands Strategy

Extract from Page 43 to the Bayside Local Housing Strategy (dated July 2021):

INVESTIGATION AREA: BEXLEY NORTH

- ▶ Redevelopment of this centre would be subject to confirmation with gas pipeline operators that it would not pose excessive risk.
- ▶ High densities could be achieved in the centre, subject to further investigation and master planning.
- ▶ There are opportunities for moderate change immediately adjacent to the centre and adjacent to the Railway Line where there are relatively large lot sizes.
- ▶ Lower-scale infill development, which is sympathetic to the existing character, would be appropriate elsewhere.

That is, the assessment report to BLPP will be a balanced report that identifies outstanding issues but demonstrates site specific and strategic merit. This will be discussed below.

2. Bayside Local Planning Panel

The assessment report by Council’s Strategic Planning Officer was reported to the BLPP on 16 December 2021. The assessment report provided a balanced but largely positive assessment of the Planning Proposal to the BLPP. The report recommended the following:

“1. That the Bayside Local Planning Panel consider the draft Planning Proposal for 187 Slade Road, Bexley North and provide feedback to the proponent as follows:

- a. *While the timing of the draft Planning Proposal is premature when considered against the timeframes for investigation into the Bexley North area (6-10 years) in both the Bayside Local Strategic Planning Statement and Bayside Local Housing Strategy, the site is within an existing Local Centre identified in the Eastern City District Plan, and therefore there is merit in supporting an increase in development potential;*
- b. *The draft Planning Proposal has strategic merit due to its close proximity to mass transit, and its ability to contribute to the growth and expansion of an existing Local Centre, which are planning outcomes sought under Planning Priorities E10 and E11 of the Eastern City District Plan (ECDP).*
- c. *The draft Planning Proposal is consistent with Objectives 10, 14 and 22 of the Greater Sydney Region Plan, and Planning Priorities E5, E6, E10 and E11 in the ECDP, as the proposal would facilitate higher density development in a Local Centre that is close to frequent public transport, potentially providing additional jobs and housing supply in this accessible location.*
- d. *The draft Planning Proposal is consistent with Planning Priorities 5, 6, 12 and 15 of the Bayside LSPS, as the proposal would concentrate high density urban growth/expansion within a Local Centre adjacent to public transport corridors, promote integrated land use, and enable potential investment and business opportunities in a centre within Bayside Local Government Area.*

2. That the Bayside Local Planning Panel recommend that the proponent provide additional information to demonstrate that the building envelopes resulting from the Floor Space Ratio and Height of Buildings requested are achievable on the site without being detrimental to local character, residential amenity, and the potential future uses of Council's adjoining car park.

3. That the final version of the Planning Proposal be reported back to the Bayside Local Planning Panel for advice prior to being reported to Council for a Gateway decision."

The above recommendation clearly indicates that the Planning Proposal has strategic and site specific merit but raised concerns with the urban design aspects and the changes being premature in terms of Council's strategic timeline. Furthermore, the recommendation requested that the final version be reported back to the BLPP.

The BLPP members undertook detailed consideration of the Planning Proposal application and, based on their independent expert knowledge, provided support to progress the Planning Proposal to Gateway Determination subject to a number of conditions. The recommendation of the BLPP is as follows:

"The Panel has considered the material presented in the officer's report and the various planning reports supplied by the proponent.

The Panel also heard from the applicant's town planner.

The Panel recommends to Council that the planning proposal be referred to the Department of Planning Industry and Infrastructure for a Gateway Determination under s.3.34 of the Environmental Planning and Assessment Act 1979, subject to the following conditions being applied to the Gateway Determination:

- 1. Prior to commencing public exhibition of the planning proposal the applicant shall consult with Council to ascertain the appropriate building height limit and floor space ratio for the site based on urban design principles and compliance with the Apartment Design Guide.*
- 2. A site-specific development control plan (DCP) shall be prepared by the applicant in consultation with the Council to demonstrate that the building envelopes resulting from the floor space ratio and height of buildings sought in the planning proposal are achievable on the site without being detrimental to local character, residential amenity and the potential future uses of Council's adjoining car park.*

3. *Without limiting the contents of the DCP, it should include elements of the urban design study submitted in support of the planning proposal as agreed by Council and requirements that:*
 - a. *the western building footprint be used for commercial floor space only; and*
 - b. *an appropriate interface and setback be provided to the existing public car parking area.*
4. *Consideration should be given to converting the proposed new central laneway (not the site through link) as an area of communal open space to be used by the residential component of any future development and for that space to be safe, secure, well designed and to be of high quality and amenity.*
5. *The DCP should include pedestrian circulation in and around the site and sensitive and careful siting of the driveway access, potential 'back of house' operations, loading and unloading areas and general Hotel and pub operations that often impact on the amenity of adjoining properties. These activities should be considered in the DCP to provide greater certainty for any future design and minimize impacts.*
6. *The DCP should also provide for the eastern boundary to include deep soil areas (minimum of 2m wide), well landscaped areas with some larger canopy trees to soften the development and enhance the transition of the built form down to the lower scaled residential development to the east.*
7. *Consideration should be given to providing some commercial floor space and/or design apartments to include studios and home offices. Spaces should be flexible and adaptable.*
8. *A variety and mix of residential apartments is also encouraged.*
9. *To ensure and secure the proposed non-residential component of the development which comprises of some 1.41:1 of FSR, Council could consider amending Clause 6.17 of the Bayside LEP 2021 by highlighting certain controls and provisions which could be incorporated (as a minimum) for the future redevelopment of the site. This is at Council's discretion.*
10. *At the time of preparing the DCP consideration may be needed to the provisions of the Draft Place and Design State Environmental Planning Policy.*
11. *The planning proposal should include a provision that amends Bayside Local Environment Plan 2021 (BLEP 2021) to provide that both the active street frontage and design excellence clauses of LEP 2021 apply to the site.*
12. *The planning proposal should also include a provision that amends clause 6.16 of BLEP 2021 to add the subject site and the requirement that a development control plan be prepared for the site prior to any redevelopment.*
13. *The planning proposal and draft DCP should be exhibited concurrently.*
14. *Council should also consider negotiating the dedication of some affordable rental housing as part of the scheme.*

The applicant agrees and accepts the recommendation of the BLPP members as it is broadly consistent with the anticipated pathway of the applicant. In this regard, the recommended design changes can be easily incorporated into any revised concept scheme and that the Site Specific DCP would be prepared post Gateway Determination and exhibited with the Planning Proposal.

The BLPP members gave detailed reasons for the support of the Planning Proposal which are as follows:

Reasons for Panel Recommendation

- *The Panel considers the proposal is consistent with a number of objectives and planning priorities of the Greater Sydney Region Plan and elements of the Eastern City District Plan. In particular, the proposal will advance the growth and revitalisation of an existing local centre identified in the Eastern City District Plan.*
- *The site is located in close proximity to mass transit and would therefore concentrate high density urban growth within a local centre adjacent to public transport corridors.*
- *After considering the likely environmental impacts of the proposal, the Panel is satisfied that it is suitable for being referred to the Department of Planning, Industry and Environment for a Gateway determination under s.3.34 of the Environmental Planning and Assessment Act 1979, subject to the imposition of conditions detailed above.*
- *Although the Panel is of the view that a development control plan should be prepared and exhibited in conjunction with the planning proposal, it is also strongly recommended that Clause 6.16 of the Bayside LEP 2021 be amended to include the site so that the LEP to include a requirement that a development control plan be prepared prior to the redevelopment of the site. Applying Clause 6.16 to the site will ensure that an overall strategic design approach will still be implemented in the event that a draft development control plan is not prepared prior to exhibition of the planning proposal.*
- *The Panel acknowledges the officer's concerns about progressing the proposal further in the absence of an overall strategic plan for the centre. However, the Panel considers that the need to revitalise this local centre and the consistency of the proposal with regional and district strategies justifies progression to Gateway Determination.*
- *In the absence of a masterplan or strategic planning and urban design work for the Local Centre as a whole, the development control plan will play an important role in advancing the potential for this spot rezoning to result in a high-quality development that sets a benchmark that may stimulate the renewal of the Centre as a whole.*
- *Without a development control plan and in the absence of strategic planning work for the locality, there is a significant risk that the planning proposal may result in a scale and/or form of development that inhibits the medium-term goal of a renewed local centre with a high degree of amenity."*

As stated above, the applicant agrees and accepts the reasons for the recommendation of the BLPP members. However, in accordance with Council's policy and procedures the matter must be reported to the City Planning and Environment Committee and Full Council prior to Gateway Determination. This process is detailed below.

3. Bayside City Planning and Environment Committee

In accordance with Council's procedures, an assessment report was tabled at Council's City Planning and Environment Committee on 13 April 2022. The assessment report reflected the above positive recommendation of the BLPP and comprised of the following recommendation:

“Officer Recommendations



1. *That Council considers the draft Planning Proposal for 187 Slade Road, Bexley to have strategic merit due to:*
 - a. *its proximity to mass transit and its ability to contribute to the growth and expansion of an existing Local Centre, which are planning outcomes sought under Planning Priorities E10 and E11 of the Eastern City District Plan (ECDP);*
 - b. *its consistency with Objectives 10, 14 and 22 of the Greater Sydney Region Plan, and Planning Priorities E5, E6, E10 and E11 in the ECDP, as the proposal would facilitate higher density development in a Local Centre that is close to frequent public transport, potentially providing additional jobs and housing supply in this accessible location; and*
 - c. *its consistency with Planning Priorities 5, 6, 12 and 15 of the Bayside LSPS, as the proposal would concentrate high density urban growth/expansion within a Local Centre adjacent to public transport corridors, promote integrated land use, and enable potential investment and business opportunities in a centre within the Bayside Local Government Area.*
2. *That Council endorses the Planning Proposal for a Gateway Determination, a request for which will be sent to the Department of Planning and Environment pursuant to section 3.34 of the Environmental Planning and Assessment Act, 1979;*
3. *That, prior to commencing public exhibition of the Planning Proposal, the proponent consults with Council to ascertain the appropriate building height limit and floor space ratio for the site based on urban design principles and compliance with the Apartment Design Guide, and provides additional information to demonstrate that the building envelopes resulting from the proposed amendments to the Floor Space Ratio and Height of Buildings standards are achievable on the site without being detrimental to local character, residential amenity, and the potential future uses of Council’s adjoining car park;*
4. *That, prior to commencing public exhibition of the Planning Proposal, a site-specific development control plan (DCP) shall be prepared by the proponent, in consultation with Council, to demonstrate that the building envelopes resulting from the floor space ratio and height of buildings sought in the Planning Proposal are achievable on the site without being detrimental to local character, residential amenity and the potential future uses of Council’s adjoining car park. The DCP will also have regard to the recommendations of the Bayside Local Planning Panel in its minutes of the meeting of 16 December 2021.”*

The report recommendation requires the applicant to collaborate with Council staff to ascertain the appropriate building height and FSR development standards for the site and prepare a Site Specific DCP. The applicant accepts the above recommendations of Council Staff and sought to progress the Planning Proposal to Gateway Determination.

Despite the positive recommendation of Council staff, Council’s City Planning and Environment Committee resolved as follows:

1. *That Council considers the draft Planning Proposal for 187 Slade Road, Bexley to be an overdevelopment of the site based on a range of factors including but not limited to excessive increased height limits and floor space ratios.*
2. *That Council does not endorse the Planning Proposal for a Gateway Determination.”*

The above recommendation by Council’s City Planning and Environment Committee, in our opinion, does not pay sufficient regard to the collaborative work between Council and the applicant over the 2.5 year life of the Planning



Proposal nor does it acknowledge the strategic and site specific merit. Rather, the recommendation ignores the expertise of Council staff and the BLPP members in determining that the Planning Proposal has sufficient strategic and site specific merit and reduces the collaborative work to an “overdevelopment” without providing sufficient justification. In our opinion, the Council decision was not based on strategic or site specific merit, but rather was political in nature.

4. Bayside Full Council Meeting

In accordance with Council's procedure, the recommendation of the City Planning and Environment Committee was reported to Full Council on 27 April 2022. The above recommendation that the matter not proceed to Gateway Determination was tabled in the public agenda with Council's Strategic Planning Officer report supporting the Planning Proposal attached as an Annexure.

The Council Minutes report the resolution to not support the Planning Proposal application and are recorded as follows:

“RESOLUTION

Minute No. 2022/123

Resolved on the motion of Councillors Saravinovski and Jansyn

1. *That Council considers the draft Planning Proposal for 187 Slade Road, Bexley to be an overdevelopment of the site based on a range of factors including but not limited to excessive increased height limits and floor space ratios.*
2. *That Council does not endorse the Planning Proposal for a Gateway Determination.”*

The recommendation of the City Planning and Environment Committee was endorsed at Full Council and it was resolved the Council not support the Planning Proposal.

The notification of the resolution not to forward the Planning Proposal to Gateway determination was notified by letter dated 18 May 2022.

5. The Next Steps

As a result of the recommendation of the Bayside Councillors, contrary to the recommendations of Council staff and the BLPP members, the applicant is seeking a Rezoning Review of the Planning Proposal application.

The applicant no longer has faith that Council supports the Planning Proposal, despite the clear expert recommendations in support of the Planning Proposal from Council staff and the BLPP members. This lack of support is highlighted by the fact that the Voluntary Planning Agreement submitted with the Planning Proposal in December 2019 has not been considered at all during the 2.5 year assessment process.

It is clear from the above correspondence, reports and recommendations of the professional experts assessing the application that the proposal has site specific and strategic merit. These issues will be discussed below.

There is a clear commitment from Council and the applicant to continue the collaborative work to refine the concept scheme in terms of the height and FSR development standards and a DCP and we therefore seek the opportunity to continue the Planning Proposal through the Rezoning Review process.

SUMMARY OF PLANNING MERIT

1. Strategic Merit

The *LEP Guidelines* details that in order to demonstrate strategic merit, the Planning Proposal must align with the NSW strategic planning framework. The matters for consideration in testing strategic merit are listed in Sections A and B in Table 3 to the LEP Guideline and asks does the Planning Proposal:

- *Give effect to the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, and/or corridor/precinct plans applying to the site. This includes any draft regional, district or corridor/precinct plans released for public comment or a place strategy for a strategic precinct including any draft place strategy; or*
- *Demonstrate consistency with the relevant LSPS or strategy that has been endorsed by the Department or required as part of a regional or district plan; or*
- *Respond to a change in circumstances that has not been recognised by the existing planning framework*

The revised Planning Proposal application demonstrates that the Planning Proposal has strategic merit. This is demonstrated in the Revised Planning Proposal Report prepared by Planning Ingenuity and summarised as follows:

- The proposal is consistent with the strategic planning documents prepared by the Greater Sydney Commission, including *A Metropolis of 3 Cities: The Greater Sydney Region Plan* and the *Eastern City District Plan*;
- The proposal is consistent with the strategic planning documents prepared by Bayside Council, including the *Bayside Community Strategic Plan 2018-2030* and the *Bayside Local Strategic Planning Statement*; and
- The proposal is consistent with the relevant SEPPs and Ministerial Directions.

The proposal is consistent with the above documents as it provides a mixed use development that incorporates additional housing supply, commercial floor space and new publicly accessible open space within the Bexley North local centre. The concept scheme will assist in the revisitation of a local centre and provide a transit orientated development due to the excellent access to public transport including Bexley North Railway Station (200m walking distance).

Whilst there are no specific strategic studies for the Bexley North Town Centre, the strategic merit of the site is confirmed by Council Staff in the report to the BLPP on 16 December 2021 which concluded the Planning Proposal application had “significant strategic merit” because of its consistency with relevant policies of the Greater Sydney Regional Plan and the Eastern City District Plan, SEPPs and Ministerial Directions as well as the site’s setting within a Local Centre and proximity to public transport.

Importantly, the Council officer’s report to the City Planning and Environment Committee on 13 April 2022 concluded that the proposal has strategic merit, for the reasons stated in the Recommendation of the report as follows:

“a) its proximity to mass transit and its ability to contribute to the growth and expansion of an existing Local Centre, which are planning outcomes sought under Planning Priorities E10 and E11 of the Eastern City District Plan (ECDP);

b) its consistency with Objectives 10, 14 and 22 of the Greater Sydney Region Plan, and Planning Priorities E5, E6, E10 and E11 in the ECDP, as the proposal would facilitate higher density development in a Local Centre that is close to frequent public transport, potentially providing additional jobs and housing supply in this accessible location; and

c) its consistency with Planning Priorities 5, 6, 12 and 15 of the Bayside LSPS, as the proposal would concentrate high density urban growth/expansion within a Local Centre adjacent to public transport corridors, promote integrated land use, and enable potential investment and business opportunities in a centre within the Bayside Local Government Area.”

It is clear that the Planning Proposal will give effect to the strategic planning framework including the local strategic requirements of the LSPS and the Housing Strategy and the broader priorities of the Greater Sydney Region Plan and the Eastern City District Plan.

Whilst the Planning Proposal application pre-dates the timing nominated by Council for investigation of Bexley North, it is reasonable that the applicant take the initiative and respond to favourable circumstances and existing character that has not been considered by Council. The Planning Proposal seeks to undertake a collaborative approach with Council to revitalise the Bexley North Town Centre and provide a benchmark for future development rather than wait for the project to be resourced in 2026 to 2030.

2. Site-specific merit

The *LEP Guidelines* details that in order to demonstrate site specific merit, the Planning Proposal must identify the potential environmental, social, and economic impacts of the proposal and outline proposed mitigation measures and justification. The matters for consideration in testing site specific merit in the LEP Guideline asks the Planning Proposal to give regard to and assess:

- *the natural environment on the site to which the proposal relates and other affected land (including known significant environmental areas, resources or hazards)*
- *existing uses, approved uses, and likely future uses of land in the vicinity of the land to which the proposal relates*
- *services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision*

The revised Planning Proposal application demonstrates that the Planning Proposal has site specific merit. This is demonstrated in the Revised Planning Proposal Report prepared by Planning Ingenuity and summarised as follows:

Natural Environment, Resources or Hazards

There are no natural features of the site that require specific design considerations to avoid, mitigate and manage. The topography of the site and surrounds is sloping and the urban design report is expected to best address cut and fill and site levels including the creation of an accessible network of pathways linking the publicly accessible open space on the site to the current open space surrounding the Council car park site.

The site is flood affected and the future management of flood waters has been addressed in the revised Flood Report submitted with the Planning Proposal application. Flooding, and all other hazards, have been addressed and considered to be capable of resolution by Council.

Existing, Approved and Likely Future Land Uses

The Planning Proposal seeks to retain the B4 Mixed Use zoning of the locality and provide a mixed use development that is compatible with the existing and approved uses in the immediate locality. The Planning Proposal necessitates further work with Council to refine and investigate the redevelopment potential of the site to set a benchmark for redevelopment and revitalisation of the Bexley North Town Centre.

The current development standards under BLEP 2021 do not recognise a transition in form from the B4 mixed use zoning of the site to the R2 – low density residential zoning on the opposite side of Sarsfield Circuit. This Planning



Proposal will ensure a transition in scale and the redistribution of bulk away from the sensitive eastern boundary to the northern and western boundaries fronting Slade Road or the Council owned carpark. The Planning Proposal, in fact, proposes a reduction in height along the Sarsfield Circuit frontage compared with the current controls with redistribution of building mass to less sensitive parts of the site and to capitalise on unique opportunities to integrate with the surrounding town centre.

Services and Infrastructure to meet demands and any financial arrangements for infrastructure provision

The site is serviced by all essential infrastructure. The site is located within 200m of Bexley North Railway Station, is in the B4 mixed use zone of the Town Centre and adjacent to many parks and open space areas that can support the additional height and density proposed.

A VPA letter of offer has been submitted to Bayside Council which sought to consider a variety of public benefits that could be delivered however Council have not undertaken any consideration of this VPA.

Based on the above and the detailed in the Revised Planning Proposal Report prepared by Planning Ingenuity, there is site-specific merit in the Planning Proposal application progressing to Gateway Determination. Conditions in the Gateway determination could include the recommendations of the BLPP as well as the provide Council with some control as to the timing of the investigations and potential adoption of LEP amendments.

CONCLUSION

The applicant is seeking a Rezoning Review of the Planning Proposal application for No. 187 Slade Road, Bexley North.

It is clear from the above correspondence, reports and recommendations that Council strategic planning staff and the independent experts of the Local Planning Panel consider the Planning Proposal has strategic and site specific merit. It has only been the elected Councillors that have resolved not to permit the Planning Proposal to proceed to Gateway Determination ignoring the expert advice from Council staff and the BLPP members.

The application for a Planning Proposal will give effect to the strategic planning framework including the Eastern City District Plan, the Bayside LSPS and the Housing Strategy. Whilst the Planning Proposal application pre-dates the timing nominated by Council for investigation of Bexley North, it is reasonable that the applicant take the initiative and respond to favourable circumstances and existing character that has not been considered by Council. The Planning Proposal seeks to undertake a collaborative approach with Council to revitalise the Bexley North Town Centre and provide a benchmark for future development rather than wait for the project to be resourced by Council in 2026 to 2030.

The application for a Planning Proposal will give affect to site specific benefits on a large site in single ownership close to public transport and within an existing Local Centre. The site constraints have been resolved collaboratively with Council staff and redevelopment of the site has significant benefits by providing a better transition and reduced impacts to the lower density residential properties on the periphery of the B4 zone by redistributing mass towards Slade Road and the Council car park. The redistribution of massing away from the sensitive low density residential zone interfaces will reduce the impacts but at the same time provides a visual landmark in an appropriate location for the Bexley North Town Centre.

We look forward to your favourable consideration of this application for a Rezoning Review given the application has strategic and site specific merit. Should you have any questions or require any clarification of the content of this letter please contact the undersigned.





Yours faithfully,
Planning Ingenuity Pty Ltd

David Waghorn
DIRECTOR

