



1 December 2020

Dianne Leeson
Chair
C/o Office of the Independent Planning Commission NSW
Level 3, 201 Elizabeth Street
SYDNEY NSW 2000

By email: [REDACTED]

Dear Dianne,

[Gateway Determination Review Request](#)
[30-46 Auburn Road, Regents Park](#)

I write in relation to a Gateway Review Request (the Request) related to a Planning Proposal for land at 30-46 Auburn Road, Regents Park. The Gateway Review Request is to be considered by the Commission on Wednesday 2 December 2020.

The Request seeks a review of the Gateway determination issued by the Department of Planning, Industry and Environment (the department) on 26 February 2020. Specifically, the Request seeks a review of the FSR control, which we request should reflect that of the findings of the department's own independent urban design review of 2.4:1, rather than their own internal review. The Request also seeks a review of the maximum height of building controls as the height in metres does not accurately reflect the recommended height in storeys.

Following the publication of the department's Assessment Report, it has been observed that the historical context for the independent review process have been omitted and the logic and recommendation set out by the Department appears to contradict the objectives and purpose of the Part 3 process and role of the ADG to determine the principle development controls at this stage.

The purpose of this letter is therefore to provide this information to the Commission and provide the necessary context to assist with its deliberations and consideration of the request.

Background to Department's Independent Review

- In February 2018, the department implemented a peer review of the applicant's scheme that supported the principle development controls sought by the Planning Proposal. In doing so it appointed an expert independent urban designer with additional specific landscape architecture experience to provide advice

to the Part 3 process as to how a better planning outcome with increased central open space could be achieved.

- Senior staff at the department at that time, advised that it was seeking to ensure that urban renewal projects are aligned with the Minister's policy position of improved amenity outcomes for the community. Thus, they were seeking to progress a review process where significant open space benefits could be achieved and would seek to enable controls that incentivise an applicant to achieve that outcome of improved design and urban amenity.
- The selected expert was McGregor Coxall, who were issued with a specific scope to "*undertake a comprehensive urban design review to propose an appropriate FSR for the site*".
- The outcome of that review process was that a revised scheme was proposed by the expert with a density of 2.4:1, as per the letter dated 9 October 2019, which contained a revised urban design methodology that contained a central contiguous open space.
- The applicant, despite the considerable resources and process applied to progress an alternate scheme, (which included a concept development application for that urban layout footprint under the current land use controls) readily accepted the department's expert's new scheme layout as it was considered a better option to meet the desired outcome of a central open space which was a key theme of the department's targeted outcome.
- It was at the time considered that this outcome would enable a progression of the plan making process. However, the council clearly defied the position of the independent expert and the department turned from its original advice that the outcome from the independent expert would be supported to then opposing that recommendation.
- It is a serious waste of public and private resources to encourage an investor of housing to enter a process with a defined outcome and then not adhere to the principles that were set to guide the process at its commencement. In doing so the department has also not adhered to its own guidelines of plan making policy.

Independent Review Recommendation

- The purpose of the department led independent review process as discussed above, was to undertake an urban design review to inform an appropriate FSR.
- The department's own independent consultant recommends a FSR of 2.4:1 as appropriate as a land use control via a Part 3 process while providing an opportunity for high standards of design amenity and urban outcomes for current and future residents.
- The department's later internal urban design review (which was commenced without advice that such a process would be implemented) makes the error of assuming that the quantum of open space proposed in the McGregor Coxall scheme and then refined by MRA & Smith & Tzannes must remain. If the open space was revised to ADG compliance there would be more of the site area available for building footprints, which would result in a different FSR again. However, given the public benefits associated with the open space, we have in good faith adopted the department's independent consultant recommendation.
- It is our position that the corporate memory of the department has been lost through personnel change that occurred under the extended time period this process has taken. Council pressure then applied without the memory of the original objective unfortunately diverted the process.

Part 3 vs Part 4 Processes

- We now have been part of a process that is more typical of a Part 4 assessment where the department has attempted to use its own assessment process to undermine their own independent's expert's advice on a high level urban design outcome.
- The department has gone outside its remit of a Part 3 process and progressed detailed part 4 matters which in the context of this process are impossible to appropriately consider.
- It is our view the department has over complicated the defined Part 3 process as it has sought to balance between the will of a council to undermine a density and urban renewal outcome for the site and its role as an assessment authority of a Part 3 process. A process which was entered in good faith by the applicant that was originally guided by a scope of independent design which they have effectively abandoned, to land on a result that is basically in the middle of the density outcomes of the council and the independent expert. Such is bad public policy.
- The department late in the process used internal resources in urban design who are accustomed to review State Significant Development projects with existing land use controls and not for a higher-level Part 3 process. In doing so have undermined the states own policy guidelines of how the SEPP65, the ADG and the guide to plan making process is to be applied.

Application of the ADG and SEPP 65

- The report prepared by the Department of Planning raised issues with the additional floor space sought on the basis of amenity. Analysis undertaken by council and the department's urban design team was concerned that the higher floor space ratio proposed could not be achieved without either compromising the solar access to apartments, or the size and amenity of the central public space.
- Achieving both the solar access to apartments and the central public space (including the solar access to it) is considered important by the proponent. The achievement of both will depend both on the final site layout, footprint and orientation of the buildings and the final apartment layout. There are many combinations of these that can be tested, some can result in greater footprints, others result in higher GFA efficiencies (than the ADG guidelines). It is appropriate that this testing be undertaken as part of the detailed design phase (as part of the Part 4 DA process). The planning proposal process should not be analysing a hypothetical DA without the benefit of the design work done in preparing a DA.
- What is important for this site is not how 'efficient' the floor plates are, but that a built form provides high levels of amenity (both internal and external) and an urban form that integrates with the context.
- Appropriately, a design excellence clause can provide the incentives, and can lock in these important elements of the independent experts masterplan into the LEP. This will allow for the design team to spend the time to provide an outcome that can maximise the public benefit as well as provide a return for the proponent.
- If the design team is unable to satisfy the design excellence clause it will not be awarded the bonus and the lower floor space ratio would be the standard against which the DA will be assessed.

Conclusion

- Since the commencement of this Part 3 process over 5 years ago, it has become clear that there are multiple options for redeveloping the site, with schemes from Architectus, Stanisis Architects, McGregor Coxall, Studio MRA and Smith & Tzannes all showing alternative redevelopment outcomes.
- We respectfully feel that the way forward and the appropriate outcome, in the context of how this process of review commenced in this process, is for the Commission to adopt the original opinion of the McGregor Coxall independent expert urban design report outcome of 2.4:1 for the site density control but implement a design excellence clause into the future EPI for this site that enables such densities to only

be achieved in a Part 4 assessment process where certain defined design outcomes of excellence are achieved. By doing so such land use controls incentivise the land owner to achieve a better urban outcome for the community whilst having the stabilising influence of the ability to reach an important economic aspect of per unit cost savings for the delivery of the better outcome.

- Such an outcome at this stage then serve the economic reality of incentivising a landowner and investor to achieve the desired open space and amenity outcomes of the state as originally defined. A process which can be tested with all the guidance and legislative process and boundaries of a Part 4 process.
- Therefore, having regard to the above background context, and process under a Part 3 process, we request that the Gateway determination be altered to provide for the following controls:
 - A maximum FSR control of 2.4:1.
 - Maximum building height controls of:
 - 25 metres (for 6 storeys);
 - 31 metres (for 8 storeys)
 - 41 metres (for 12 storeys)

We look forward to a further discussion on Wednesday 2 December in relation to the Gateway Review Request and appreciate the opportunity to present to you and hopefully achieve the right outcome for the site. Please do not hesitate to contact me on [REDACTED] if you require any further information.

Yours sincerely



James Mathews
Planning Director
Pacific Planning