



New South Wales Government  
Independent Planning Commission

# Gateway Determination Review for 30–46 Auburn Road, Regents Park

## Gateway Determination Advice Report

Dianne Leeson (Chair)

18 December 2020

## 1 INTRODUCTION

1. On 18 November 2020, the NSW Independent Planning Commission (**Commission**) received a referral from the NSW Department of Planning, Industry and Environment (**Department**) to provide advice pursuant to section 2.9(1)(c) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* in relation to a Planning Proposal and Gateway Determination in respect of 30–46 Auburn Road, Regents Park (the **Site**) within the Canterbury Bankstown Local Government Area (**LGA**).
2. In 2015, Pacific Planning Pty Ltd (the **Proponent**) submitted a Planning Proposal request to Bankstown Council (now City of Canterbury Bankstown Council) (**Council**), which sought to amend the planning controls for the Site under the Bankstown Local Environmental Plan 2015 (**BLEP 2015**) to increase the maximum Floor Space Ratio (**FSR**) from 0.6:1 to 4:1 and maximum building height from 13 metres to a range from 17 metres to 64 metres (five to 20 storeys).
3. Council did not support the controls proposed for the Site by the Proponent in its ordinary meeting (26 July 2016) and instead recommended a maximum FSR of 1.75:1 with maximum building heights up to 27 metres (eight storeys). Given the disagreement in controls, the Planning Proposal was subject to numerous detailed reviews.
4. On 27 July 2016, Council submitted a Planning Proposal to the Department seeking Gateway determination to increase the Site's development controls to a maximum FSR of 1.75:1 and maximum building heights of six storeys and eight storeys (**Planning Proposal**).
5. On 23 September 2016, as delegate of the Greater Sydney Commission, the Department issued a Gateway Determination for the Planning Proposal with conditions (the **Gateway Determination**). While the Gateway Determination stated that the Planning Proposal should proceed, the Department identified that further analysis was required to determine the appropriate density controls for the Site.
6. On 26 February 2020, subsequent to additional detailed analysis, the Department issued an alteration to the Gateway Determination (the **Altered Gateway Determination**) described in the Alteration of Gateway Determination Report (the **Department's Gateway Report**). The Altered Gateway Determination allows for a maximum FSR of 2:1 and building heights of 19 metres (six storeys), 25 metres (eight storeys) and 38 metres (12 storeys).
7. On 17 April 2020, the Proponent requested a review of the Altered Gateway Determination and submitted supporting material in August and September 2020.
8. The Department's letter of referral to the Commission, received on 18 November 2020, requested the Commission:

*...review the decision and prepare advice concerning the merits of the request. The advice should include a clear and concise recommendation confirming whether, in the Commission's opinion, the Department's decision should stand or be altered as proposed by the Department in the report in response to the proponent's submission.*
9. The development standards that are the subject of this Gateway Determination review are the maximum FSR and maximum building height standards.
10. **Table 1** and **Table 2** provide a summary of the development controls proposed by the Applicant, Council and the Department.

11. Professor Mary O’Kane AC, Chair of the Commission, nominated Dianne Leeson (Chair), to constitute the Commission providing advice on the review of the Gateway Determination.

### 1.1 Site and Locality

12. The Site is located at 30–46 Auburn Road, Regents Park, and comprises Lot 1 in DP 656032 and Lot 2 in DP 433938.
13. The Department’s Gateway Review Justification Assessment Report (**Department’s Assessment**) referred to the Commission on 18 November 2020 stated:

*The site has an area of 21,170m<sup>2</sup>, is located within 500 metres walk to the Regents Park train station, and is bound by Auburn Road to the east, industrial land to the north, freight and commuter rail lines to the south and west...*

*Despite being zoned for high-density residential purposes, the site is currently used as a construction training school and for light industrial purposes.*

*More widely, the site sits approximately 3.5 kilometres south-east of the Bankstown CBD and surrounded by industrial / employment land to the north and north west, and low-density residential land to the south, south west, east and north east.*

14. The location of the Site is illustrated in **Figure 1** and **Figure 2** below.

Figure 1: Location of Regents Park (source: Google Maps)

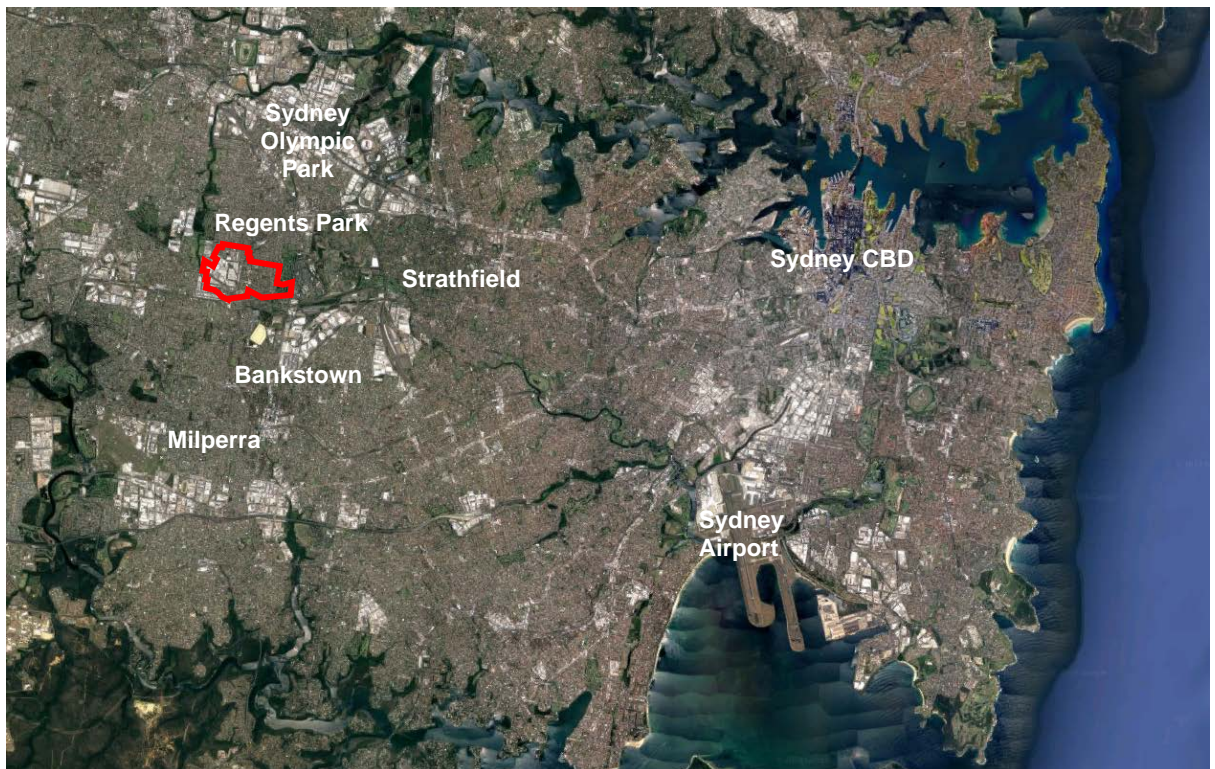


Figure 2: Site Location (source: McGregor Coxall Urban Design Review)



## 1.2 The Planning Proposal

15. The Department's Assessment describes the Planning Proposal as follows:

*The proposal... seeks to increase the prescribed maximum building height and floor space ratio (FSR) controls under the Bankstown Local Environmental Plan 2015 (LEP 2015) that apply to 30–46 Auburn Road, Regents Park.*

16. The Planning Proposal's history is described in the Department's Assessment, which stated:

*The proposal has a lengthy strategic planning history. Both strategic and site specific merit for increased building height and FSR controls to facilitate greater residential yield and density has been agreed to by Canterbury-Bankstown Council, the Sydney West Joint Regional Planning Panel and the Department.*

*It is the scale of development, expressed through allowable heights and floor space ratio, that remains contended between the proponent, the Department and the Planning Proposal Authority (Canterbury-Bankstown Council).*

17. A summary of the proposal's history, as set out in the Department's Assessment, is provided at **Appendix A**.

### 1.3 Proponent's Request

18. This review of the Altered Gateway Determination was sought by the Proponent.
19. The Proponent considers the development controls for the Site should be increased to allow for a maximum FSR of 2.4:1 and maximum building heights of 25 metres (six storeys), 31 metres (eight storeys) and 41 metres (12 storeys).
20. The Proponent's justification for seeking a formal review of the Altered Gateway Determination is set out in its letter dated 17 April 2020. The Proponent considers:

*The review process did involve significant detailed discussion and responses to the process that we felt had resulted in a general understanding of an appropriate outcome for the land use controls in late 2019. However, after a period of further delay in late 2019 a gateway was issued that did not reflect those outcomes and was attached to an officer recommendation that we feel contains numerous errors and assumptions that does not seem to have had proper reflection to the significant rigorous evidence based study and detail supplied to the department over the course of the process.*

21. The Proponent's letter stated the following regarding FSR:

*The Department's basis in the planning team report... is incorrect and unsubstantiated to inform the FSR for the site.*

*The impact of the result of the gateway determined density of 2:1 from the previously considered density to support the urban scheme if maintained will undermine the original intent of the review process by limiting the ability of the project to provide a high-quality urban design and balanced affordable living environment. It also undermines the outcome of the independent review process that concluded an outcome of 2.4:1.*

*To conclude, the process with a density of 2:1 seems to adopt a figure in between that recommended by the department's independent consultant (2.4:1) and the council's preferred density (1.75:1) that is based on a completely different scheme, not based on the site specific rigour applied during the review process.*

22. The Proponent's letter stated the following regarding building height:

*The height of buildings advanced by the urban design analysis undertaken by the Department's independent consultant and the Department's internal assessment provided for a desired outcome for the site that includes a maximum of 6 storeys along Auburn Road, 12 storeys at the north western corner, and 8 storeys for the remainder of the site.*

*The heights provided for in the altered gateway determination of 19 metres, 25 metres and 38 metres unfortunately, if applied in a part 4 process, cannot achieve this objective. As such the review process showed the maximum heights as advised by the Department's consultant is different to that issued in the gateway.*

23. The Proponent also stated:

*To ensure a compliant application and to avoid a clause 4.6 request for the lift overruns and roof features, the heights [requested] are required.*

24. The Department's Assessment stated:

*[The Proponent] justifies the increased height on the 6 and 8 storey buildings as necessary to accommodate roof top communal open space and to allow for roof gardens.*

25. The Proponent's request is compared against previous recommendations and the Altered Gateway Determination at **Table 1** and **Table 2**.

*Table 1: Proposed controls prior to 2020 (source: Material set out in paragraph 38)*

| <b>Proponent's Original Planning Proposal Request (2015)</b> | <b>Council's Planning Proposal (2016)</b>                | <b>Department's Gateway Determination (2016)</b> | <b>McGregor Coxall Advice to the Department (2019)</b>                            | <b>McGregor Coxall Addendum Advice to (2019)</b> |
|--|--|--|---|--|
| <b>Floor Space Ratio</b>                                     |  |  |   |  |
| 4:1  | 1.75:1   | <i>Subject to investigation</i>                  | 2:1   | 2.4:1  |
| <b>Height</b>  |  |  |   |  |
| 17 metres<br>(5 storeys)<br><br>64 metres<br>(20 storeys)    | 19 metres<br>(6 storeys)<br><br>25 metres<br>(8 storeys) | <i>Subject to investigation</i>                  | 23 metres<br>(6 storeys)<br>29 metres<br>(8 storeys)<br>47 metres<br>(12 storeys) | N/A  |

*Table 2: Proposed controls 2020 (source: Material set out in paragraph 38)*

| <b>Department's Altered Gateway Determination (February 2020)</b>                         | <b>Proponent's Request at Lodgement of Gateway Review (April 2020)</b>                    | <b>Proponent's Amended Request (August 2020)</b>  | <b>Council Response (June 2020)</b>  | <b>Department's Recommendation (November 2020)</b>  |
|---|---|---|--|---|
| <b>Floor Space Ratio</b>  |   |   |  |   |
| 2:1   | 2.4:1   | 2.4:1   | 1.75:1   | 2:1   |
| <b>Height</b>   |   |   |  |   |
| 19 metres<br>(6 storeys)<br><br>25 metres<br>(8 storeys)<br><br>38 metres<br>(12 storeys) | 23 metres<br>(6 storeys)<br><br>29 metres<br>(8 storeys)<br><br>47 metres<br>(12 storeys) | 25 metres<br>(6 storeys)<br><br>31 metres<br>(8 storeys)<br><br>41 metres<br>(12 storeys) | 22 metres<br>(6 storeys)<br>28 metres<br>(8 storeys)<br>41 metres<br><i>(although 12 storeys is not supported)</i> | 23 metres<br>(6 storeys)<br><br>29 metres<br>(8 storeys)<br><br>41 metres<br>(12 storeys) |

## 1.4 Council's View

26. The Department's Assessment notes that Council was advised of the Proponent's review request on 11 May 2020.
27. Council provided a response to the Department regarding the Proponent's review request on 15 June 2020, which stated:

*Council's decision to support an FSR increase to 1.75:1 was founded on evidence-based analysis of the proposed design, which included multiple urban design peer reviews, traffic analysis and more recently, a detailed ADG analysis of the latest design.*

*Council's analysis indicates that the proposal would facilitate development that is out of scale and context for Regents Park, is inconsistent with Council's Local Strategic Planning Statement, and would result in multiple non-compliances with the ADG particularly in relation to building separation, solar access and cross ventilation.*

28. Council's response maintains that its recommended FSR of 1.75:1 is appropriate based on consideration of the Site's strategic context.
29. Council's response notes the Proponent's concerns regarding inconsistencies with the method of measuring height. Council requested its urban design consultant, Architectus, undertake a review of the height provisions against the Apartment Design Guide (**ADG**) requirements to provide appropriate heights. Council's response stated:

*Council officers acknowledge Architectus' methodology and recommendation for a metric height of buildings limit of 22m along Auburn Road and 28m across the remainder of the site, which are consistent with the intent of the Council resolution for 6 and 8 storeys.*

30. Council's response stated that the following planning controls would enable an appropriate development outcome in response to the Site's opportunities and constraints:

- a) FSR: 1.75:1
- b) Heights of Buildings (HOB):
  - Auburn Road – 22m for 6 storeys built form
  - rest of Site – 28m for 8 storeys built form
- c) Delivery of public benefits to support the increased residential density through a Planning Agreement for:
  - publicly accessible 'Central Green' open space
  - Magney Reserve, street tree, cycle link and footpath upgrades
  - affordable Housing contributions

31. Council's consultant, Architectus, provided the following additional advice:

*In view of the many non-compliances with the ADG and urban design issues associated with the proposed envelopes, it is doubtful that the density proposed is achievable. Unless a viable scenario can be demonstrated that addresses all the key issues identified above with a greater degree of certainty, a density of 2.4:1 cannot be supported.*

*Architectus' previous recommendation of 1.75:1 for the site stands with a maximum height of part 28m (8 storeys) and part 22m (6 storeys).*

## 1.5 Department's View

32. The Department's views are set out in the Department's Assessment:

*Additional densification of the site is not supported by the Department.*

*...the Department is in support of an alteration to the maximum building heights to align with the ADG, but does not agree that the maximum FSR of 2:1 should be increased.*

33. With regard to the application of the ADG, the Department states:

*Department staff and the Government Architects office also discourage deviating from the guidance of the ADG. As such, the Department does not consider there is any reasonable basis to justify any increase beyond a maximum FSR of 2:1 and buildings of up to 6, 8 and 12 storeys.*

*...the Department supports an amendment to the Gateway determination [as altered], to reflect maximum building heights calculated in accordance with the ADG.*

34. The Department supports an alteration to the maximum building heights (in metres) above the Altered Gateway Determination but does not support any increase of building heights in storeys beyond six, eight and 12 storeys. The Department recommends:

- 23 metres for six storeys (a four-metre increase);
- 29 metres for eight storeys (a four-metre increase); and
- 41 metres for 12 storeys (a three-metre increase).

35. The Department's Assessment states:

*The proponent's various iterations of proposed heights are not supported. The Department considers that supporting height in metres proposed by the proponent, is inconsistent with the ADG and could allow for additional storeys being accommodated on the site above what has been supported through this planning proposal process.*

*The Department does not consider any additional storeys as being appropriate in this location based on the available evidence...*

*The Department does not agree with the proponent's contentions that the increased height is needed to provide sufficient flexibility to accommodate the site topography and allow for the inclusion of roof top communal open spaces, avoid Clause 4.6 variation processes and meet the objectives of the proposal.*

36. The Department's views on urban design and amenity outcomes are stated in the Department's Assessment:

*...the Department has reviewed FSR and building heights with regard to amenity and found that the proponent's most recent scheme, by Studio MRA, with an FSR of 2.4:1 fails to comply with the minimum numerical requirements of the ADG relating to solar and daylight access (both at a precinct and building scale). Whilst solar access may be improved through fewer south facing units, it would result in other adverse outcomes, such as loss of the consolidated green space.*



*The Department considered whether it would be possible for the proposed scheme to comply with the ADG with some variations and determined that under the proponent's proposed heights and FSR, the site is unlikely to achieve good amenity. The building envelopes in the proponent's scheme encroach into setback areas on all frontages and would limit opportunities to provide suitable amenity, landscaping and relationship to streetscape / adjoining development.*

## 2 THE COMMISSION'S CONSIDERATION

### 2.1 The Commission's Meetings

37. As part of its review, the Commission held the meetings and undertook a site inspection (**Site Inspection**) as set out in Table 3. All meeting transcripts and notes were made available on the Commission's website.

*Table 3: Commission's Meetings*

| Meeting         | Date of Meeting  | Transcript / Notes Available on |
|-----------------|------------------|---------------------------------|
| Department      | 30 November 2020 | 3 December 2020                 |
| Council         | 2 December 2020  | 4 December 2020                 |
| Proponent       | 2 December 2020  | 4 December 2020                 |
| Site Inspection | 5 December 2020  | 7 December 2020                 |

### 2.2 Material Considered by the Commission

38. In this review, the Commission has carefully considered the following material (the **Material**):

- Council's letter to the Department regarding Council's decision to submit a Planning Proposal (Section 56 Notification), dated 27 July 2016, including Council's report and Planning Proposal;
- the Department's Gateway Determination, dated 23 September 2016;
- Urban Design Review prepared by McGregor Coxall (on behalf of the Department), dated 9 January 2019;
- addendum to the Urban Design Review prepared by McGregor Coxall (on behalf of the Department), dated 9 October 2019;
- the Department's Alteration of Gateway Determination and determination report, dated 26 February 2020;
- the Proponent's review request and justification submission, dated 17 April 2020 (including appendices);
- Council's response to the Proponent's Gateway review request, dated 15 June 2020;
- the Department's urban design comments, dated 24 July 2020;
- the Government Architect NSW's comments, dated 11 August 2020;
- the Proponent's further submission to the Department, dated 26 August 2020;
- the Proponent's architectural plans prepared by Studio MRA, dated August 2020;
- the Proponent's solar analysis prepared by Walsh 2 Analysis, dated 15 September 2020;
- the Proponent's natural ventilation assessment prepared by SLR, dated 16 September 2020;

- the Proponent's supplementary review (**Supplementary Review**) prepared by Smith and Tzannes, dated 21 September 2020;
- the Department's urban design review, dated 12 November 2020;
- the Department's letter of referral, dated 17 November 2020;
- the Department's Assessment, dated 17 November 2020;
- the Proponent's submission to the Commission, dated 1 December 2020;
- Council's peer review of the Proponent's Supplementary Review (**Council's Submission**), dated 2 December 2020;
- the Department's response to the Commission's question taken on notice, dated 2 December 2020; and
- transcripts of the meetings identified in Table 2.

### 2.3 Strategic Merit

39. The Commission notes that the Department considers the Site has strategic merit for increased building height and FSR controls to facilitate greater residential yield and density, in accordance with the *Greater Sydney Region Plan*.
40. The Department's previous assessment of the Planning Proposal, set out in the Department's Gateway Report, found that increased residential density on the Site would be consistent with relevant planning priorities under the *South District Plan*, including:

- *Planning Priority S4 – Fostering healthy, creative, culturally rich and socially connected communities;*
- *Planning Priority S5 – Providing housing supply, choice and affordability with access to jobs, services and public transport; and*
- *Planning Priority S6 – Creating and renewing great places and local centres, and respecting the District's heritage.*

41. The Department's views about the Site's local context is described in the Department's Assessment:

*The Department considers that a density of up to 2:1 is appropriate in this location. The site is located approximately 500m from Regents Park town centre and railway station. Regents Park is identified as a small village centre in Council's LSPS and Local Area Plan and its allocation in the hierarchy of centres is further reiterated in the recent exhibition of Council's consolidated Canterbury Bankstown LEP.*

*The site is surrounded by industrial uses and low density residential development, and although the site is zoned R4 High Density Residential, consideration must still be given to its built environment.*

42. The Commission notes that Council also considers increased density on the Site to be consistent with the *Greater Sydney Region Plan* and relevant planning priorities under the *South District Plan*. Council's response to the Proponent's review request on 15 June 2020 stated:

*Located within a 500 metre walk of the Regents Park train station, 30–46 Auburn Road in Regents Park, at roughly 2 ha in area, has the potential to transform the subject site into a high amenity residential community if planned appropriately...*

*The overarching proposal to increase housing on the site has strategic merit as it will provide additional housing stock close to public transport and amenities in line with the Greater Sydney Regional Plan and Planning Priority 5 of the South District Plan.*

43. Council noted the strategic planning objective to retain industrial and employment lands across the Greater Sydney region:

*Due to the retain and manage approach for industrial and employment lands across the Greater Sydney region and within the South District Plan, redevelopment of the existing industrial area is unlikely in the short to medium term. However, any proposed development should be appropriately designed to future proof the subject site especially in relation to the road network, surrounding interfaces and setbacks.*

44. Council also stated:

*While the site presents an opportunity to provide further forms of housing in close proximity to a public transport corridor... the low density character needs to be considered when determining appropriate heights and FSR on the subject site.*

*Council does not agree with the applicant's argument that an increase to the provision of housing as per the Greater Sydney Regional Plan Priority should be the primary objective for increasing FSR (and consequently density) on a site such as 30–46 Auburn Road, Regents Park. A nuanced site specific response is required to ensure minimal impact to existing and future residents, with consideration of strategic merit and site specific tests as required in the assessment of any planning proposal.*

45. The Commission notes that while Council supports an uplift in density at the Site, Council is concerned that the Proponent's revised proposal would result in inconsistencies with the current and future desired development scale for Regents Park and inconsistencies with Council's own suite of local strategic plans. Council's response to the Proponent's review request on 15 June 2020 stated:

*...the proposal is inconsistent with the hierarchy of centres as outlined within Council's newly adopted Local Strategic Planning Statement (LSPS) [and supporting] North Central Local Area Plan (NCLAP) that spans across the Canterbury Bankstown LGA.*

*...with Regents Park identified as a Small Village Centre, an R4 High Density Residential Zoning within this centre should generally be developed up to a height of 3-4 storeys and an FSR of 0.75:1 to 1:1... higher FSRs above 2:1 are generally reserved for B2 Local Centre zoning as opposed to residential zones. This is generally consistent across the Canterbury Bankstown LGA, where there are very few exceptions for additional FSR above 2:1 for high density residential zones.*

*However, as an identified 'opportunity site' increased provisions of 1.75:1 FSR and 6-8 storeys has been supported at 30–46 Auburn Road in Regents Park with appropriate setbacks.*

46. Council's submission to the Commission dated 2 December 2020, prepared by Architectus, restated this position.
47. Council's response to the Proponent's review request on 15 June 2020 sets out the apartment yields and potential number of residents under different density scenarios. A summary of Council's findings is presented in **Table 4** below.

Table 4: Apartment Yield Scenarios (source: summary of Table 3 of Council's response to the Proponent's review request on 15 June 2020)

|  | <b>Council's Recommendation</b> | <b>Department's Altered Gateway Determination</b> | <b>Proponent's Request</b> |
|--|---------------------------------|---|----------------------------|
| <b>FSR</b>   | <b>1.75:1</b>                   | <b>2:1</b>  | <b>2.4:1</b>               |
| <b>Site Area</b>   | 21,170 m <sup>2</sup>           | 21,170 m <sup>2</sup>                             | 21,170 m <sup>2</sup>      |
| <b>Gross Floor Area (GFA)</b><br><i>(calculated at 75% efficiency of GFA)</i>  | 37,048 m <sup>2</sup>           | 42,340 m <sup>2</sup>                             | 50,808 m <sup>2</sup>      |
| <b>Apartment Yield</b><br><i>(approximate – based on 85m<sup>2</sup> per apartment)</i>  | 581                             | 664   | 797                        |
| <b>Potential Residents</b><br><i>(approximate – based on Australian Bureau of Statistics (ABS) data of 3 persons per household for the suburb)</i> | 1,743                           | 1,993   | 2,391                      |

48. The Commission notes that the Proponent's request represents an increase of 133 apartments (or 20%) when compared to the apartment yield possible under the Altered Gateway Determination.
49. The Commission has considered Council's presentation during the meeting with the Commission on 2 December 2020 (available on the Commission's website). The Commission understands that Council is of the view that the Proponent's revised proposal is not consistent with local strategic plans and does not meet the strategic merit tests.

#### *Commission's Finding*

50. The Commission is of the view that the Site is unique as it is a large site comprised of two consolidated lots zoned R4 High Density Residential and is within walking distance of Regents Park Village Centre and Regents Park Train Station.
51. The Commission agrees with the Department and Council that there is strategic merit for increased residential density on the Site.
52. The Commission accepts Council's view of the role of Regents Park in the hierarchy of centres within the Canterbury Bankstown LGA.
53. The Commission finds that the FSR and building height controls approved under the Altered Gateway Determination represent a significant uplift in density for the Site compared to current controls (FSR increased from 0.6:1 to 2:1 and maximum building height increased from 13 metres to a maximum of 38 metres).
54. The Commission finds that the overriding objective for any future increase in density on the Site should be to ensure that high levels of residential amenity can be achieved.

## 2.4 Site Specific Merit

55. The Department's Assessment states that site-specific merit for increased building height and FSR controls to facilitate greater residential density has been agreed to by the Department and Council.
56. The Commission acknowledges that the Department, Council and the Proponent have divergent views on appropriate density controls for the Site.
57. The Commission notes that the Department does not support additional density on the Site beyond the density approved under the Altered Gateway Determination, as stated in the Department's Assessment:

*Additional densification of the site is not supported by the Department. The site is located approximately 500m south of Regents Park which is identified as a small village centre by Council's Local Area Plans and LSPS. The site is constrained by the freight line to the south and west which has the potential to compromise amenity, and furthermore, the area remains generally characterised by low density residential development.*

58. The Commission notes the Department's view that the Altered Gateway Determination should remain unchanged with respect to FSR; however, that the Department considers there is scope to alter the maximum building height controls (in metres) to align with the ADG formula for building heights in storeys.
59. Although Council's view is that the Site does have merit for additional density, Council has concerns about the Proponent's proposed scheme, including its overall height, bulk and scale, and its interfaces with the surrounding local context. Council's key concerns are summarised in the Department's Assessment, which stated:

*Council considers the proponent's scheme and standards being proposed do not:*

- *comply with setback, building length, cross ventilation, building orientation and solar access requirements specified under the relevant State and local planning provisions*
- *comply with the urban design principles advocated under the McGregor Coxall scheme including setbacks, street address, private outdoor living and open space provision, and internal road layout*
- *provide suitable transition with surrounding low-density areas*
- *provide adequate treatment of interface with surrounding uses such as Auburn Road, railway line and industrial uses to the north, which will result in poor amenity for residents onsite and raise issues with ongoing employment activity.*

60. The Commission has considered Council's presentation during the meeting with the Commission on 2 December 2020 (available on the Commission's website). The Commission understands that Council is of the view that the Proponent's proposed scheme does not meet the site-specific merit tests.
61. The Commission notes the Proponent's view that its proposed development scheme has been refined to appropriately manage site-specific constraints and has merit for additional uplift beyond the density approved under the Altered Gateway Determination.

62. In its review request letter dated 17 April 2020, the Proponent states that it:
- ...decided in good faith to adopt the concept advanced by McGregor Coxall and undertaken further testing to refine the built outcome and form, and compliance with the ADG. Through a collaborative process working with the department and McGregor Coxall, a final FSR was arrived upon at 2.4:1.... However, the gateway determination appears to have not reflected the years of study and refinement and misrepresented the findings of the independent consultant's recommendation. A gateway review is therefore sought to amend the final height and FSR controls consistent with that recommended by McGregor Coxall and the refined DA level drawings prepared by the proponent.*
63. The Commission has considered the Proponent's submission to the Commission dated 1 December 2020, which stated:
- ...it has become clear that there are multiple options for redeveloping the site, with schemes from Architectus, Stanisic Architects, McGregor Coxall, Studio MRA and Smith & Tzannes all showing alternative redevelopment outcomes.*
64. The Proponent also noted its concern about the level of detailed testing being undertaken for the Site at the Planning Proposal stage:
- 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.*
65. The Commission has considered the Proponent's presentation during the meeting with the Commission on 2 December 2020 (available on the Commission's website).

#### *Section 9.1 Ministerial Directions*

66. The Commission notes the Department's comments regarding Section 9.1 Ministerial Directions in the Department's Gateway Report, dated 26 February 2020:
- The planning proposal's consistency with Section 9.1 Ministerial Directions has been previously assessed and is presented in the Planning Team Report (September 2016). Since the original assessment, this matter needs to be re-reviewed as part of the revised planning proposal recommended as part of the conditions of the altered Gateway determination.*

#### *State Environmental Planning Policies (SEPPs)*

67. The Commission notes the Department's comments regarding relevant SEPPs in the Department's Gateway Report, dated 26 February 2020:
- The planning proposal's consistency with SEPPs has been previously assessed and is presented in the Planning Team Report (September 2016). However, given the alterations to the proposal's scope and given the time that has elapsed since the proposal was last assessed against relevant SEPPs, it is recommended that as condition of the altered Gateway that consistency with relevant SEPPs be revised as part of the updated and revised planning proposal.*

#### *Commission's Finding*

68. The Commission agrees with the Department, Council and the Proponent that the Site is suitable for increased residential density.

69. The Commission agrees with the Department and Council that the Site's surrounding land uses present amenity constraints for future development, in particular the adjoining rail corridor and industrial-zoned land. The Commission agrees with Council that development should achieve a suitable transition in scale to surrounding low-density residential areas.
70. Given the size of the Site, the Commission is of the view that there is an opportunity for development to achieve good urban design outcomes, notwithstanding the proximity of the Site to the rail corridor.
71. The Commission notes that although the Site is within walking distance of Regents Park Village Centre and Regents Park Train Station, there is currently relatively poor pedestrian and bicycle infrastructure and amenity.
72. The Commission agrees with the Proponent that considerable detailed design work has been undertaken by various consultants on behalf of Council, the Department and the Proponent to a level of detail not normally required of a Planning Proposal.
73. The Commission also agrees with the Department that any future development on the Site should be capable of complying with ADG requirements.
74. The Commission notes that while the ADG is not an environmental planning instrument (EPI) itself, *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65)* requires consent authorities to consider the ADG when determining development applications (Clause 28(2)(c)). Additionally, it is noted that SEPP 65 requires that any future site-specific Development Control Plan (DCP) for the Site must be consistent with the ADG (Clause 6A).
75. The Commission agrees with the Department's comments regarding Section 9.1 Ministerial Directions and SEPPs. The Planning Proposal's consistency with relevant directions and EPIs should be revised as part of the updated and revised Planning Proposal.

## 2.5 FSR and Building Height Controls

76. The Commission acknowledges that the Department, Council and the Proponent have divergent views on appropriate density controls for the Site and that considerable detailed design work has been undertaken to consider the appropriate density outcomes for the Site.

### 2.5.1 FSR

77. The Commission notes the Department's view stated in the Department's Assessment:
 

*Despite the contentions made under Council's response and those raised by the proponent, the Department maintains that a maximum FSR of 2:1 is suitable for the site...*
78. The Commission notes Council's view, as stated in its response to the Proponent's review request on 15 June 2020:
 

*Council's recommended 1.75:1 FSR is not due to existing infrastructure capacity constraints, but in response to suitable urban design outcomes and an ADG compliant development being achievable.*
79. The Proponent is seeking an FSR of 2.4:1 based on modelled outcomes and McGregor Coxall's advice.

80. The Commission understands the Proponent has applied a building efficiency rate of 80% (or higher) in the calculation of FSR, while the Department recommends a building efficiency rate of 70-75% is used.

81. The Commission notes the Department's Assessment, which stated:

*The [ADG] indicates that in order to calculate FSR, the GFA of a residential building typically fills 70-75% of the intended / deemed suitable maximum building envelope for a site... while commercial development typically fills 80-85% of this intended envelope.*

#### *Commission's Finding*

82. The Commission considers that the Proponent's proposed FSR of 2.4:1 would represent a significant increase in FSR for R4 zoned land in the Canterbury Bankstown LGA.

83. The Commission finds that the FSR controls approved under the Altered Gateway Determination already represent a significant uplift in density for the Site compared to current controls (FSR increased from 0.6:1 to 2:1).

84. The Commission finds that there is insufficient justification to deviate from the ADG given that this is a Gateway review. The Commission recommends a building efficiency rate of 70-75% is used to calculate FSR.

85. Through consideration of amenity outcomes including solar access, acoustic and visual privacy, open space and internal site circulation, the Commission finds an FSR of 2:1 affords greater confidence in achieving high quality urban amenity outcomes than an FSR of 2.4:1. The Commission therefore finds that an FSR of 2:1 is appropriate for the Site.

#### **2.5.2 Building Height**

86. The Commission notes that the Department and the Proponent both agree that height limits up to six storeys fronting Auburn Road, 12 storeys in the northwest corner and eight storeys across the remainder of the site can be achieved while ensuring high amenity outcomes. The Commission acknowledges that Council strongly objects to any 12 storey development.

87. The Commission notes that the Proponent considers additional height is required beyond the Department's recommended maximum building heights (in metres) for six and eight storeys to accommodate roof features, such as lift overruns or roof gardens. The Commission notes that Council and the Department do not consider this a reasonable justification for additional building height given Clause 5.6 of the BLEP 2015 provides opportunities for architectural roof features to exceed the maximum building height (where it does not include floor space area and is not reasonably capable of modification to include floor space area, and will cause minimal overshadowing).

88. The Commission notes the Department's view that any future development on the Site should not exceed the controls set out under the ADG. The Department's Assessment notes that both the Department and the Government Architect NSW discourage deviating from the guidance of the ADG. However, the Department does support an increase in the height in metres for six and eight storeys to align with the established building height metrics under the ADG.

#### *Commission's Finding*

89. The Commission agrees with the Department's approach and finds that establishing building heights (in storeys) based on the metrics established under the ADG is appropriate.



90. The Commission agrees with the Department's recommendations that six storeys fronting Auburn Road, 12 storeys at the Site's north west corner and eight storeys across the remainder of the Site are appropriate building heights for the Site.
91. The Commission does not consider there is any reasonable basis to justify increased building heights beyond six, eight and 12 storeys.
92. The Commission finds the Department's recommended building heights of 23 metres (six storeys), 29 metres (eight storeys) and 41 metres (12 storeys) are appropriate for the Site.
93. The Commission agrees that Clause 5.6 of the BLEP 2015 can be used to accommodate minor roof features that form an integral part of the building's design and exceed the maximum building height development standard (where criteria under Clause 5.6(3) can be met) without having to rely on Clause 4.6 of the BLEP 2015.
94. The Commission notes that achieving 41 metres at the Site's north-west corner presents urban design challenges to be resolved through detailed design.

## 2.6 Other Considerations

### 2.6.1 Setbacks

95. Council's recommended setbacks are based on Council's *North Central Local Area Plan*. In its response letter dated 15 June 2020, Council compared its recommended setbacks with the Proponent's proposed setbacks (based on the Proponent's April 2020 scheme). A summary is provided below:
  - Auburn Road setback:
    - Council: 6 metres
    - Proponent: 2.8 metres to 3.7 metres
  - Industrial land setback:
    - Council: 10 metres to 24 metres
    - Proponent: 2.3 metres to 18 metres
  - Rail corridor setback:
    - Council: 6 metres
    - Proponent: 1.5 metres to 2 metres
96. Council stated:

*Council does not support the decreased setbacks due to a lack of suitable privacy, acoustic separation, allowance for appropriate landscaping and adequate relationship with the neighbouring streetscape conditions being demonstrated by the applicant. Nor does Council consider that these outcomes can be achieved in setbacks that are as little as 1.5m in some areas before any private gardens, which brings the boundary setback down to as little as 0.6m in other areas.*
97. The Commission agrees with Council's view on setbacks. The Commission considers that appropriate setbacks are essential to provide deep soil planting for noise attenuation from the rail corridor and visual privacy from the industrial site to the north, which Council noted is unlikely to be redeveloped in the short to medium term in its response letter dated 15 June 2020.
98. Notwithstanding any potential longer-term residential rezoning of the industrial land, the Commission finds that appropriate setbacks should be achieved on Site and any future development to the north should not be burdened with disproportionate setback requirements.

### 2.6.2 Solar Access

99. The Commission finds any future development on the Site should achieve or exceed minimum solar access standards under the ADG.
100. The Commission notes the Department's comments in the Department's Assessment:
- ...the Department has reviewed FSR and building heights with regard to amenity and found that the proponent's most recent scheme, by Studio MRA, with an FSR of 2.4:1 fails to comply with the minimum numerical requirements of the ADG relating to solar and daylight access (both at a precinct and building scale). Whilst solar access may be improved through fewer south facing units, it would result in other adverse outcomes, such as loss of the consolidated green space.*
101. The Commission acknowledges the challenges of achieving adequate solar access given the scale and height of potential buildings; however, the Commission finds that given the project is at Planning Proposal stage, imposing an FSR control of 2:1, rather than 2.4:1, gives greater confidence of achieving or exceeding minimum solar access standards.

### 2.6.3 Communal Open Space

102. The Commission finds that communal open space requirements should be achieved at ground level without need for recourse to rooftop open space.
103. The Commission agrees with Council's comments that any future development should comply with the urban design principles advocated under the McGregor Coxall scheme of adequate communal open space and private outdoor living provision.

### 2.6.4 Public Benefit

104. The Commission understands that requirement for a public benefit offer to justify the maximum FSR was removed from the Department's September 2016 Gateway Determination.
105. The Commission noted Council's comment during the meeting with the Commission on 2 December 2020 (transcript available on the Commission's website) that Council understands the Proponent would not support providing additional public benefits unless they receive a significant uplift (such as 2.25:1 to 2.4:1 FSR).
106. The Commission notes Council's view of appropriate public benefit contributions, as stated in its response letter dated 15 June 2020:
- Due to the resultant increase in the local population, the NCLAP identified the following infrastructure needs to support the increased number of pedestrians and cyclists movements produced by the proposed development:*
- a) Embellish Magney Reserve to create an inviting place where people choose to walk, relax, sit and talk that functions as a focal point for the community.*
  - b) Construct footpaths on both sides of Auburn Road and the streets surrounding Magney Reserve to complete the footpath network with kerb build-outs installed at appropriate locations.*
  - c) Embellish Auburn Road and local streets with street trees to create a pleasant place to walk and cycle.*
  - d) Formalise a north-south regional cycle link along Auburn Road.*
107. The Commission recommends that the matter of requirement for a public benefit offering commensurate with the scale of the potential uplift on the Site be revisited.

### 2.6.5 Design Excellence

108. The Commission acknowledges the Proponent has suggested a design excellence clause be inserted into the BLEP 2015 such that an FSR of 2.4:1, rather than 2:1, be applied where design excellence can be demonstrated.
109. The Commission notes that the BLEP 2015 includes a design excellence clause (clause 6.12), however that the clause that is limited to identified sites in Bankstown's city centre and does not provide bonus provisions for sites that are not specifically identified, such as the subject Site.
110. The Commission finds that whilst this suggestion has some merit to achieve design excellence, an FSR of 2.4:1 represents a substantial increase of 20% above the existing Altered Gateway Determination of 2:1 FSR and is not justified from a strategic or site-specific merit perspective.
111. The Commission finds that the increased density controls approved under the Altered Gateway Determination already represent a significant uplift in density for the Site.

## 3 CONCLUSION: THE COMMISSION'S ADVICE

112. The Commission has undertaken a review of the Altered Gateway Determination as requested by the Department. In doing so, the Commission has considered the Material (paragraph 38), submissions by Council and the Proponent and reasons given for the determination in the Department's Assessment.
113. The Commission considers that the overriding objective for the Site should be to ensure high levels of amenity are afforded to future residents and that appropriate controls are applied to achieve such outcomes.
114. Given that this Advice Report is advice for a Gateway review of a Planning Proposal, not a detailed development application, the Commission considers the application of the ADGs is appropriate.
115. The Commission finds an alteration to the maximum building heights (in metres) to align with the ADG standards, while maintaining the maximum number of storeys already approved, is appropriate. The Commission supports building heights of 23 metres (six storeys), 29 metres (eight storeys) and 41 metres (12 storeys).
116. The Commission considers that the maximum FSR of 2:1 should be maintained.
117. The reasons for the Commission's position are as follows:
  - it is appropriate that the Site be deemed an opportunity site given its scale and location;
  - however, the location of the Site, and its strategic context, do not justify an FSR above that recommended by the Department and already determined. Regents Park is a Small Village Centre and an FSR of 2:1 is a significant uplift;
  - the application of the ADGs is relevant and appropriate to guide the establishment of robust controls to ensure appropriate outcomes;
  - a maximum FSR of 2:1, and maximum building heights of 23 metres, 29 metres and 41 metres afford greater confidence in achieving high-quality urban amenity than an FSR of 2.4:1, principally:
    - solar access;
    - noise and visual privacy (by providing appropriate setbacks);
    - open space; and
    - internal site circulation.

118. The Commission recommends that further consideration be given to requiring a public benefit offering commensurate with the scale of the uplift.
119. The Commission notes the Department's intention is to issue a new Gateway Determination and update the Planning Proposal timeline rather than amending the existing Gateway Determination following receipt of the Commission's advice. The Commission endorses this approach and notes the Proponent is supportive of this approach.

A handwritten signature in black ink, appearing to read "Dianne Leeson". The signature is fluid and cursive, with a large initial "D".

**Dianne Leeson (Chair)**  
Member of the Commission

## APPENDIX A

*Table 5: Proposal History (source: Department's Assessment)*

| Date                     | Description  |
|--------------------------|--|
| 2015                     | The Proponent submitted a Planning Proposal request to Council, which sought a maximum FSR of 4:1 and a maximum building height ranging from 17m to 64m (5 to 20 storeys).   |
| August 2015              | Council's urban design consultant, Architectus, recommended a maximum FSR of 1.75:1 with building heights up to 25 metres (8 storeys).   |
| March 2016               | Given the disagreement in controls, the Proponent requested an independent Pre-Gateway Review. The proposal was reviewed by the Sydney West Joint Regional Planning Panel who recommended the proposal should proceed with a maximum FSR of 1.75:1.  |
| July 2016                | Based on the outcomes of the Pre-Gateway Review and further consideration of the proposal, Council resolved to lodge a Planning Proposal with a maximum FSR of 1.75:1 and maximum height of six (6) storeys for Auburn Road and eight (8) storeys for the remainder of the site.   |
| 23 September 2016        | The Department issued a Gateway Determination for the Planning Proposal with conditions. The Gateway Determination supported the proposal to proceed but required further analysis to be undertaken to confirm the appropriate density control.  |
| December 2016 – May 2017 | Council engaged Architectus to conduct an urban design review and recommend a suitable FSR for the site. Architectus concluded an FSR of 1.75:1 would be appropriate with a maximum height of 19 metres to 25 metres (6 to 8 storeys).<br><br>Concerns continued to be raised by the Proponent. Given this, Council engaged Olsson Architects to conduct a further review. This review concluded a maximum FSR of 1.75:1 and heights up to 6 and 8 storeys should be supported, consistent with Architectus' review. |
| July 2017                | The Independent Hearing and Assessment Panel (IHAP) undertook a further review and recommended a maximum FSR of 1.75:1 for the site. The IHAP noted that there may be potential for additional FSR up to 2.25:1 where certain criteria could be satisfied.   |
| February 2018            | While Council resolved to proceed with a maximum FSR of 1.75:1, the Proponent formally sought a revised Gateway Determination seeking a maximum FSR of 2.25:1.   |
| May 2018 – January 2019  | The Department engaged McGregor Coxall to undertake an urban design review of the site and previous structure plans to identify appropriate maximum controls.<br><br>McGregor Coxall recommended a maximum FSR of 2:1 and maximum building heights of 23 metres (6 storeys), 29 metres (8 storeys) and 47 metres (12 storeys).   |

|                   |   |
|-------------------|---|
| March 2019        | <p>Council and the Proponent were provided an opportunity to review and respond to the McGregor Coxall review.</p> <ul style="list-style-type: none"> <li>• Council generally supported the McGregor Coxall scheme, though did not agree to heights above 8 storeys. Architectus, on behalf of Council, maintained that a maximum FSR of 1.75:1 with a maximum height of 6 to 8 storeys is appropriate.</li> <li>• The Proponent generally agreed with the McGregor Coxall scheme, though argued an FSR of 2.6:1 should be permitted as a minimum and recommended the Department consider a greater FSR of 3.45:1 with heights up to 18 storeys.</li> </ul> |
| April 2019        | <p>The Department was not supportive of additional height, however facilitated a discussion between the Proponent and McGregor Coxall regarding the recommended maximum FSR of 2:1. The Department requested McGregor Coxall test the Proponent's model in order to address its concerns.</p> <p>McGregor Coxall's review tested the building efficiency rates used to determine the GFA and subsequent FSR, noting that the Proponent sought an efficiency rate of 80+% of gross building area (GBA) to determine the GFA.</p>   |
| October 2019      | <p>McGregor Coxall provided an addendum letter to its Urban Design Report supporting a maximum FSR of 2.4:1. This larger FSR was supported by McGregor Coxall after it consulted other architectural practices who in some cases considered greater efficiency rates than those specified under the Apartment Design Code (<b>ADG</b>).</p>   |
| January 2020      | <p>The Department's Urban Design Team undertook a peer review of the scheme and calculations by McGregor Coxall.</p> <p>The Urban Design Team determined that when applying a 75% efficiency GBA to McGregor Coxall's original scheme and the Proponent's scheme, and using the heights supported under McGregor Coxall scheme, the maximum achievable FSR was 2:1.</p>   |
| 26 February 2020  | <p>An alteration to the Gateway Determination was issued by the Department for a maximum FSR of 2:1 across the site and maximum building heights of 19 metres along the site's Auburn Road frontage, 38 metres in the site's north-west and 25 metres across the remainder of the site.</p>   |
| 17 April 2020     | <p>The Proponent submitted the current request for a review of this Gateway Determination.</p>  |
| 15 June 2020      | <p>Council responded to the Proponent's Gateway Review request.</p>   |
| 27 August 2020    | <p>The Proponent submitted an additional peer review which justified its proposed FSR and proposed further alternative heights.</p>   |
| 23 September 2020 | <p>The Proponent submitted further information including a supplementary review by Smith and Tzannes. The amended architectural plans present another configuration on the site with an FSR of 2.4:1.</p>   |

|                  |  |
|------------------|--|
| November 2020    | <p>The Department's urban design team reviewed the Proponent's additional submission. The review determined that in its current form the proposed scheme (FSR 2.4:1) fails to comply with the solar and daylight access requirements of the ADG both at a precinct and building scale.</p> <p>It was determined the highest FSR that was possible while maintaining ADG standards for solar access was 2.1:1, but this FSR results in an encroachment to the setbacks proposed by Council for inclusion in a future site-specific DCP.</p> <p>The Department's urban design team further tested the Proponent's scheme against the setbacks proposed by Council. They considered that to respond to Council's recommended setbacks, achieve adequate solar access and retain the green open space, the maximum FSR would be 1.9:1.</p> |
| 17 November 2020 | <p>The Department referred the request for Gateway review to the Commission (received by the Commission on 18 November 2020).</p>  |