



**Purpose:** To request that the Independent Planning Commission review the Gateway determination taking into account information provided by the proponent and provide advice regarding the merit of the review request.

|                               |  |   |
|-------------------------------|--|---|
| <b>Dept. ref. no</b>          | GR_2020_CBANK_001_00 (PP_2016_CBANK_001_01)  |   |
| <b>LGA</b>                    | Canterbury-Bankstown Council   |   |
| <b>LEP to be amended</b>      | Bankstown Local Environmental Plan 2015  |   |
| <b>Address/ location</b>      | 30 – 46 Auburn Road, Regents Park<br>(Lot 1 DP 656032 & Lot 2 DP 433938)           |   |
| <b>Proposal</b>               | To increase the maximum building height and floor space ratio controls at the site |   |
| <b>Review request made by</b> | <input type="checkbox"/> Council   |   |
|                               | <input checked="" type="checkbox"/> A proponent                                    |   |
| <b>Reason for review</b>      | <input type="checkbox"/>   | A determination has been made that the planning proposal should not proceed.  |
|                               | <input type="checkbox"/>   | A determination has been made that the planning proposal should be resubmitted to the Gateway.  |
|                               | <input checked="" type="checkbox"/>  | A determination has been made that has imposed requirements (other than consultation requirements) or makes variations to the proposal that the proponent or Council thinks should be reconsidered. |

## Background Information

|   |   |
|---|---|
| <b>Details of the planning proposal</b> | <p>The proposal (<b>Attachment A</b>) seeks to increase the prescribed maximum building height and floor space ratio (FSR) controls under the <i>Bankstown Local Environmental Plan 2015</i> (LEP 2015) that apply to 30 – 46 Auburn Road, Regents Park.</p> <p><b>The site</b></p> <p>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 (<b>Figure 1</b>).</p> <p>Despite being zoned for high-density residential purposes, the site is currently used as a construction training school and for light industrial purposes.</p> <p>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.</p> |
|---|---|



Figure 1 - Site location

### The Development Controls

The site is zoned R4 High Density Residential with a maximum floor space ratio (FSR) of 0.6:1 and maximum building height of 13 metres. The maximum FSR and building height standards are the subject of this review.

#### Floor Space Ratio

Floor Space Ratio (FSR) is the relationship of the total gross floor area (GFA) of a building relative to the total site area it is built on. The definition of GFA of a building under the Standard Instrument –Local Environmental Plan and Bankstown LEP 2015 is highlighted below.

#### **Gross Floor Area is:**

*the sum of the internal floor area of each floor of a building including —*

- *mezzanines*
- *habitable rooms in a basement or an attic*
- *shop, auditorium, cinema, in a basement or attic*

*but excluding —*

- *common vertical circulation, such as lifts and stairs*
- *basement storage, vehicle access, loading or garbage areas*
- *service rooms (i.e. plant, lift towers, mechanical or ducting)*
- *car parking*
- *loading or unloading areas*
- *terraces and balconies, and*
- *voids.*

The Apartment Design Guide (ADG) is the NSW Government's best practice guideline for informing land use planning decisions regarding apartment development. The

Guide advocates for site specific building envelopes to be tested when considering potential development uplift / increased development standards.

The Guide 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 (pg. 32), while commercial development typically fills 80-85% of this intended envelope (pg. 33). This is because important building components that do not count as GFA but contribute to building design, use, articulation and circulation also need to be accommodated onsite but within a supportable building envelope.

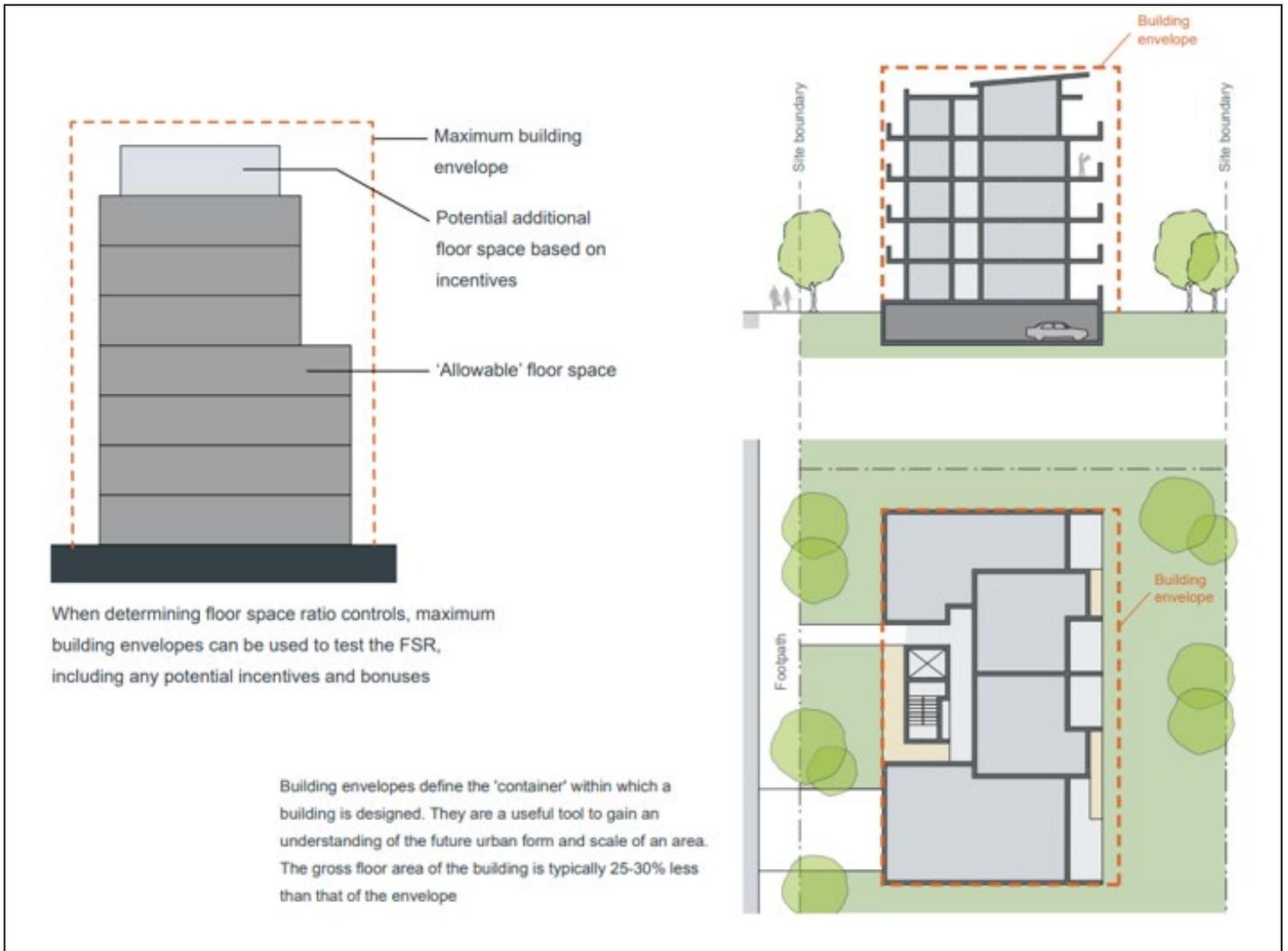


Figure 2 – Guide to Setting Building Envelopes (Source: Apartment Design Guide)

### Building Height

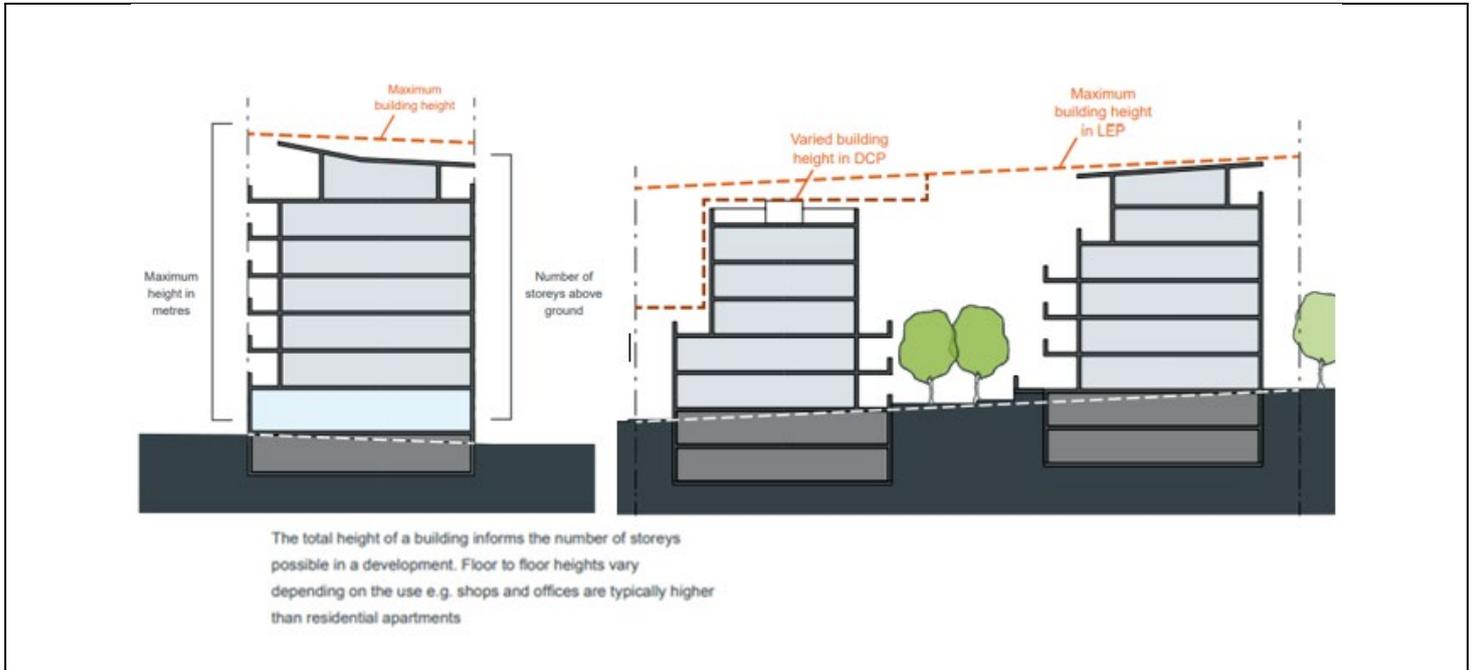
The definition of 'building height' under the Standard Instrument – Local Environmental Plan and Bankstown LEP 2015 is provided below.

***Building Height is:***

*the vertical distance from ground level (existing) to the highest point of the building including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues, and the like.*

Building height, under the Bankstown LEP 2015 is measured in metres.

|  |   |
|--|---|
|  | <p>The ADG specifies that building heights should be set considering the desired number of storeys and comprising the following metrics:</p> <ul style="list-style-type: none"> <li>• 0.4m per floor structure</li> <li>• 3.3m ceiling height for ground floor residential / commercial</li> <li>• 2.7m ceiling height for above ground residential</li> <li>• 1m for rooftop articulation</li> <li>• up to 2m for topographic changes</li> <li>• consider flooding / fill requirements.</li> </ul> |
|--|---|



**Figure 3 – Guide to Setting Building Heights (Source: Apartment Design Guide)**

|                           |   |
|---------------------------|---|
|                           | <p><b>Proposal History</b></p> <p>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.</p> <p>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).</p> <p>An extensive historical overview of this site is provided in the Department’s Alteration of Gateway Determination Report provided under <b>Attachment F</b>; though a summary of key events since the commencement of the current planning proposal process is provided below.</p> |
| <p><b>Date</b></p>        | <p><b>Activity</b></p>  |
| <p><b>2015</b></p>        | <p>The proponent submitted a planning proposal request to Bankstown Council, which sought a maximum FSR of 4:1 and a maximum building height ranging from 17m to 64m (5 to 20 storeys).</p>   |
| <p><b>August 2015</b></p> | <p>Bankstown Council’s urban design consultant, Architectus, recommended a maximum FSR of 1.75:1 with heights of up to 27 metres (8 storeys).</p>   |

|                                 |   |
|---------------------------------|---|
| <b>March 2016</b>               | Given the disagreement in controls, the proponent requested an independent Pre-Gateway Review. Through this review process, the Sydney West Joint Regional Planning Panel recommended the proposal should proceed with a maximum FSR of 1.75:1.   |
| <b>July 2016</b>                | Based on the outcomes of the Pre-Gateway Review, though following further consideration of the proposal, the new City of Canterbury-Bankstown Council (Council) resolved to lodge a planning proposal with a maximum FSR of 1.75:1 and maximum height of six storeys for Auburn Road and eight storeys for the remainder of the site.   |
| <b>September 2016</b>           | <p>The Department issued a Gateway determination for the planning proposal with conditions (<b>Attachment B</b>).</p> <p>Acknowledging the merit for uplift at the site along with the continued disagreement regarding FSR, the Gateway determination supported the proposal to proceed but required further analysis to be undertaken to confirm the appropriate density control. Specifically, the condition required the planning proposal be amended to reflect the outcome of an FSR review (either 1.75:1 or 2.25:1, or an alternative FSR).</p> <p>Other conditions of the Gateway determination required:</p> <ul style="list-style-type: none"> <li>• removing the requirement for a public benefit offer to justify the maximum floor space ratio</li> <li>• undertaking contamination and flooding investigations</li> <li>• resubmission of the amended planning proposal and additional information to the Department for endorsement before community consultation</li> <li>• consultation with relevant Government agencies</li> <li>• community consultation</li> <li>• a timeframe for making the LEP.</li> </ul> |
| <b>December 2016 - May 2017</b> | <p>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 19m to 25m (6-8 storeys).</p> <p>Concerns continued to be raised by the proponent, who sought an alternative development outcome at the site from what was being presented by Architectus.</p> <p>Given this, Council engaged Olsson Architects to also conduct a review of the site and previous structure plans provided by Architectus and the proponent. This review concluded a maximum FSR of 1.75:1 and heights up to 6-8 storeys should be supported, consistent with the Architectus review.</p> <p>The proponent disagreed with the findings and requested Council consider an alternative FSR to a maximum of 4:1.</p>  |
| <b>July 2017</b>                | <p>The Independent Hearing and Assessment Panel (IHAP) undertook a further review and recommended a maximum FSR of 1.75:1 for the site.</p> <p>The Panel did note that there may be potential for further additional FSR up to 2.25:1, where the following may be satisfied:</p> <ol style="list-style-type: none"> <li>(a) provision of a masterplan/DCP for guiding layout, envelopes, heights, access arrangements;</li> <li>(b) indicative strata or community title details;</li> <li>(c) opportunities for Affordable Housing provision; and</li> <li>(d) delivery of public benefit through both infrastructure charges and/or works.</li> </ol>   |

**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.

In seeking this review, the proponent advised the Department that in response to the additional matters listed by the IHAP to support a maximum FSR of 2.25:1:

- (a) a DCP can be made a requirement, but noted a concept approval with a maximum FSR of 0.6:1 and height of two and three storeys has previously been approved over this site;
- (b) plans demonstrating future private and publicly accessible communal land have been provided to Council;
- (c) affordable housing provision of up to 5% (five units) will be provided; and
- (d) discussions had commenced with Council regarding infrastructure and public domain improvements including:
  - ensuring publicly accessible 'Central Green' open space at the site
  - upgrades to Magney Reserve, which sits to the east of the site, as well as pedestrian and cycle links from the site to the Regents Park village and train station.

**May 2018 – January 2019**

The Department engaged McGregor Coxall to undertake an independent Urban Design Review of the site and previous structure plans to identify appropriate maximum controls.

McGregor Coxall prepared an indicative scheme for the site (**Figure 4**). This included six building floorplates within maximum heights of 12 storeys at the site's north west corner, 6 storeys fronting Auburn Road and 8 storeys for the remainder of the site (**Attachment C**).

Based on a 75% efficiency rate for setting the maximum FSR, and based on its own intended maximum building heights, McGregor Coxall recommended the following development standards to support the delivery of its scheme.

| FSR             |
|-----------------|
| McGregor Coxall |
| 2:1             |

| Building Heights |
|------------------|
| McGregor Coxall  |
| 6 storeys – 23m  |
| 8 storeys – 29m  |
| 12 storeys – 47m |



### March 2019

The proponent and Council were provided opportunity to review and respond to the McGregor Coxall review.

- 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.
- Council generally supported the McGregor Coxall scheme, though did not agree to heights above 8 storeys.
- The proponent generally agreed with the McGregor Coxall scheme and, in the opinion of the proponent, refined this further under its own scheme through a floor-by-floor / unit-by-unit analysis and assessment against the ADG (**Figure 5**). This alternative scheme did include additional height (7, 9 and 13 storeys) from those supported under the Gateway determination.

Through this analysis the proponent questioned the efficiency rates and calculations applied by McGregor Coxall for determining its recommended maximum FSR. The proponent indicated an increased maximum FSR should be supported to achieve the scheme and in-turn promote dwelling yield, diversity and ensure the proposed communal / accessible open space on the site can be delivered.

As a minimum, in their response dated 26 March 2019, the proponent indicated the FSR should be 2.6:1. However, the response recommended the Department consider an FSR of 3.45:1 and heights up to 18 storeys, to yield 841 dwellings and allow for the provision of public benefits, including open space, to Council.



Figure 5 – Proponent Scheme – March 2019

|                            |   |
|----------------------------|---|
| <p><b>April 2019</b></p>   | <p>The Department was not supportive of additional height, however, facilitated a discussion between the proponent and McGregor Coxall regarding the recommended maximum 2:1 FSR and requested McGregor Coxall to further test the proponent's model in order to address their concerns.</p> <p>McGregor Coxall was requested to review 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>  |
| <p><b>October 2019</b></p> | <p>McGregor Coxall provided an addendum letter to its Urban Design Report supporting a maximum FSR of 2.4:1 (<b>Attachment D</b>).</p> <p>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.</p> <p>It is noted that in reaching this FSR, McGregor Coxall based their calculations on a model provided the proponent, which included an additional storey to all buildings (7, 9 and 13 storeys).</p>                                   |
| <p><b>January 2020</b></p> | <p>Considering the ongoing contentions regarding alternative / incorrect calculations and efficiency rates being applied across the various schemes, the Department's Urban Design Team undertook a peer review of the scheme and calculations by McGregor Coxall.</p> <p>Utilising correct land survey data provided by the proponent, the Urban Design Team tested:</p> <ul style="list-style-type: none"> <li>the McGregor Coxall January 2019 scheme (i.e. 6, 8 and 12 storeys) (<b>Figure 6</b>)</li> <li>the proponent's proposed scheme (ie.7, 8 and 9 storeys) (<b>Figure 7</b>)</li> </ul> |

- the proponent's proposed scheme but utilising the heights supported under the McGregor Coxall scheme (i.e. 6, 8 and 12 storeys) (**Figure 8**).

While minor variations to McGregor Coxall's calculations were identified, the Urban Design Team determined that when applying a 75% efficiency to the GBA under McGregor Coxall's original scheme (**Figure 6**) and the proponent's scheme when utilising the heights supported under McGregor Coxall scheme (**Figure 8**), the FSR was 2:1 (or less) (**Table 1**).

Further to this, the Urban Design Team indicated that this FSR would enable a proposal of reduced bulk and scale and provide better design flexibility to achieve ADG criteria and better urban design outcomes.

In relation to height, the Bankstown LEP 2015 measures these in metres and the McGregor Coxall scheme was, for the most part, considered in storeys through the Department's review.

The Department concluded that maximum building heights should be specified under the Gateway determination utilising standards under the LEP. These heights facilitated the McGregor Coxall scheme and ensured the number of storeys permitted at the site did not increase (i.e. above 6, 8 and 12 storeys).

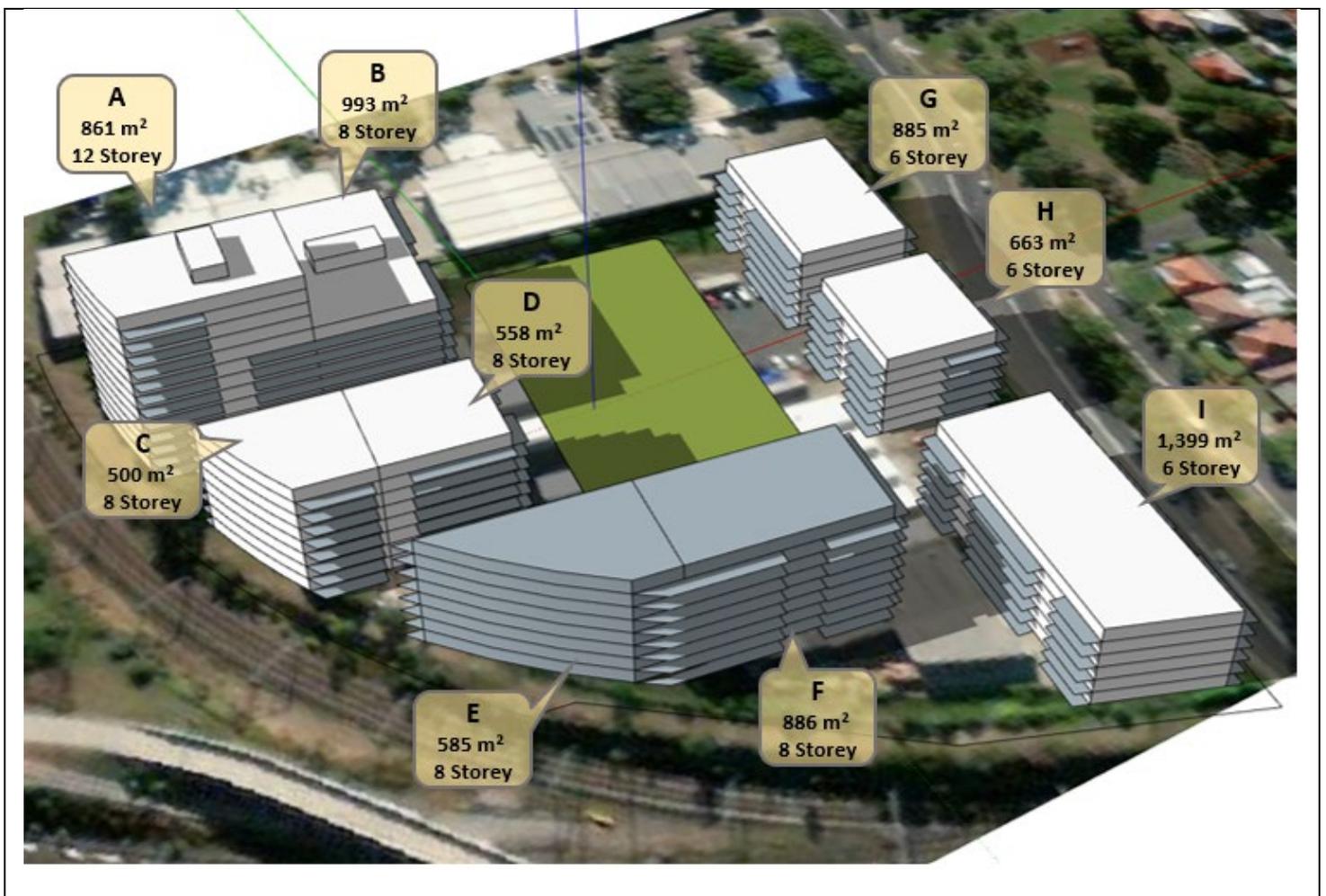


Figure 6 – McGregor Coxall's Scheme January 2019 (Image prepared by DPIE)

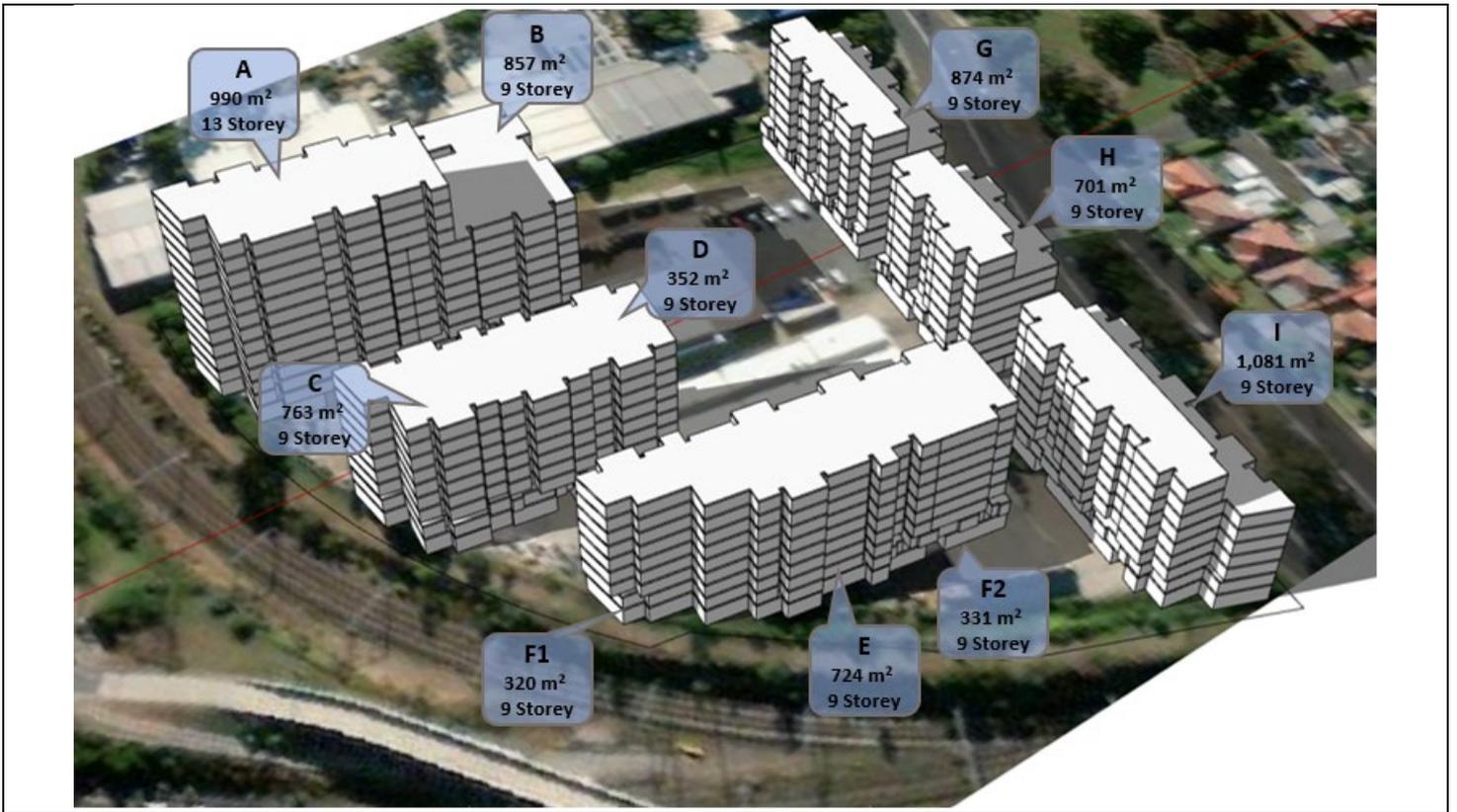


Figure 7 - Proponent's Proposed Scheme (Image prepared by DPIE)

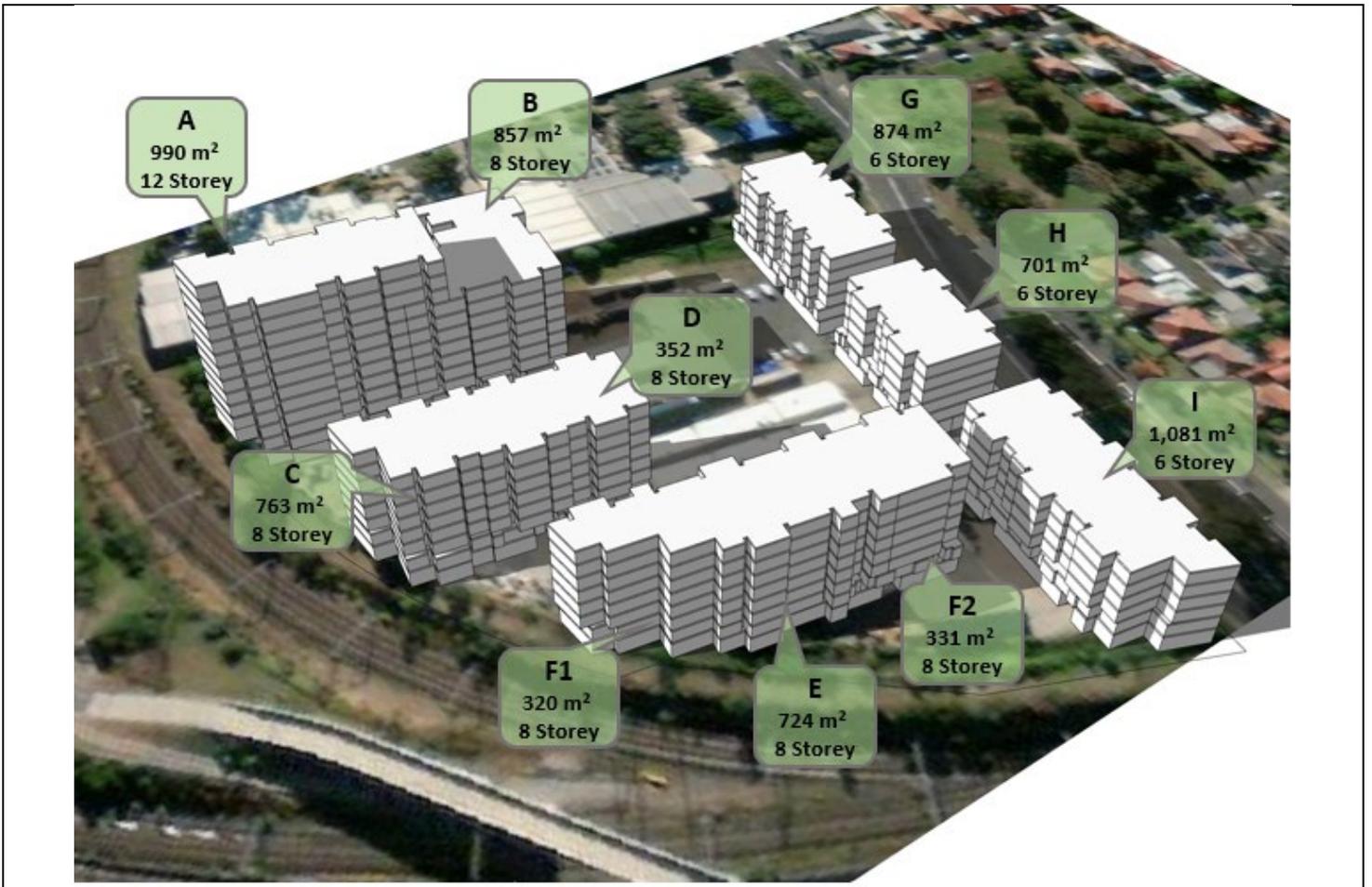


Figure 8 - Proponent's Proposed Scheme with McGregor Coxall Heights (Image prepared by DPIE)

**Table 1 – Comparison of Floor Space Across the Various Schemes**

|  | <b>McGregor Coxall<br/>(Figure 6)</b> | <b>Proponent Scheme<br/>(Figure 7)</b> | <b>Proponent Scheme with<br/>McGregor Coxall Heights<br/>(Figure 8)</b> |
|--|---------------------------------------|--|---|
| <b>Gross Building Area (m<sup>2</sup>)</b> | 56,182                                | 64,061                                 | 54,594  |
| <b>Gross Floor Area (m<sup>2</sup>)</b>    | 42,136                                | 48,046                                 | 40,946  |
| <b>Site Area (m<sup>2</sup>)</b>           | 21,170                                | 21,170                                 | 21,170  |
| <b>Floor space ratio</b>                   | 1.99:1                                | 2.27:1                                 | 1.93:1  |
| <b>Central Green Area (m<sup>2</sup>)</b>  | 3,676                                 | 3,363                                  | 3,363   |

|                          |   |
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| <b>February 2020</b>     | <p>An Alteration to the Gateway determination (<b>Attachment E</b>) was issued on 26 February 2020, for:</p> <ul style="list-style-type: none"> <li>• a maximum FSR of 2:1 across the site</li> <li>• maximum building heights of <ul style="list-style-type: none"> <li>○ 19 metres along the site’s Auburn Road frontage,</li> <li>○ 38 metres in the site’s north-west and</li> <li>○ 25 metres across the remainder of the site.</li> </ul> </li> </ul> <p>The Department’s Alteration of Gateway Determination Report is at <b>Attachment F</b>.</p>   |
| <b>17 April 2020</b>     | <p>The proponent submitted the current request for a review of this Gateway determination.</p>  |
| <b>27 August 2020</b>    | <p>The proponent submitted an additional peer review which proposed further alternative heights and justified their proposed floor space ratio (<b>Attachment I</b>).</p>   |
| <b>23 September 2020</b> | <p>The proponent submitted further information including a supplementary review by Smith and Tzannes (<b>Attachment L1</b>), refined architectural plans by Studio MRA (<b>Attachment L2</b>), a solar access assessment by Walsh2 Architects (<b>Attachment L3</b>) and a ventilation assessment by SLR Consulting (<b>Attachment L4</b>).</p> <p>The amended architectural plans present another configuration on the site with a FSR of 2.4:1 and respond to issues raised in the Architectus review (prepared on behalf of Council) in relation to amenity.</p> <p>The proponent asserts that a development contained within the proposed building envelopes can meet the Apartment Design Guide Objectives and Design Criteria with respect to solar access and cross ventilation.</p> <ul style="list-style-type: none"> <li>• 74% of dwellings will achieve 2 hours or more of sunlight to living area windows and private open space between 9am and 3pm on June 21 (satisfies ADG minimum requirement of 70%).</li> <li>• 16% of dwellings will receive no direct sunlight between 9am and 3pm on June 21 (minor departure from ADG maximum requirement of 15%).</li> <li>• Over 60% of dwellings are naturally cross ventilated per building.</li> </ul> <p>It is noted that the solar access assessment was conducted on a whole of site basis as opposed to a building by building basis as described in the ADG.</p> |
| <b>November 2020</b>     | <p>The Department’s Urban Design Team reviewed the proponent’s Studio MRA scheme (<b>Attachment M</b>). The review considered whether the proponent’s scheme, with some adjustments, can accommodate ADG standards for good amenity.</p> <p>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 (Section 4A) of the ADG, both at a precinct and building scale:</p> <ul style="list-style-type: none"> <li>• three of the six buildings fail to meet the ADG requirement for the maximum</li> </ul>  |

- number of dwellings that receive no direct sunlight in mid-winter
- two of the six buildings also fail to meet the ADG requirement for the minimum number of dwellings that receive at least 2 hours of direct sunlight in mid-winter.

The Department notes that the ADG design criteria for amenity are typically applied to each building, as opposed to a precinct-based approach.

The Department considers that the poor amenity results from:

- the large proportion of south-facing units which are unable to receive direct sunlight
- the layout of the development which results in internal overshadowing between the buildings
- the cumulative impacts of bulk and height of the buildings resulting from the proposed FSR (2.4:1).

The Department's Urban Design team considered adjustments to the scheme that might improve solar access such as fewer south facing dwellings and reorientating units. However, changes in building footprints were found to result in adverse impacts on the consolidated green open space, street frontage heights and building separation.

The highest FSR that was possible while maintaining ADG standards for solar access and the 'Central Green' was 2.1:1, but this FSR results in encroachment upon setbacks proposed by Council for inclusion in a future site-specific DCP.

The Department's Urban Design Team further tested the proponent's scheme against the setbacks proposed by Council.

The proponent's scheme encroaches into the setbacks proposed by Council for inclusion in a future site-specific DCP (**Figure 9**).

The Department's Urban Design team considered the impacts of responding to Council's recommended setbacks, together with adequate solar access and retention of green open space, and found that these parameters delivered an FSR of 1.9:1

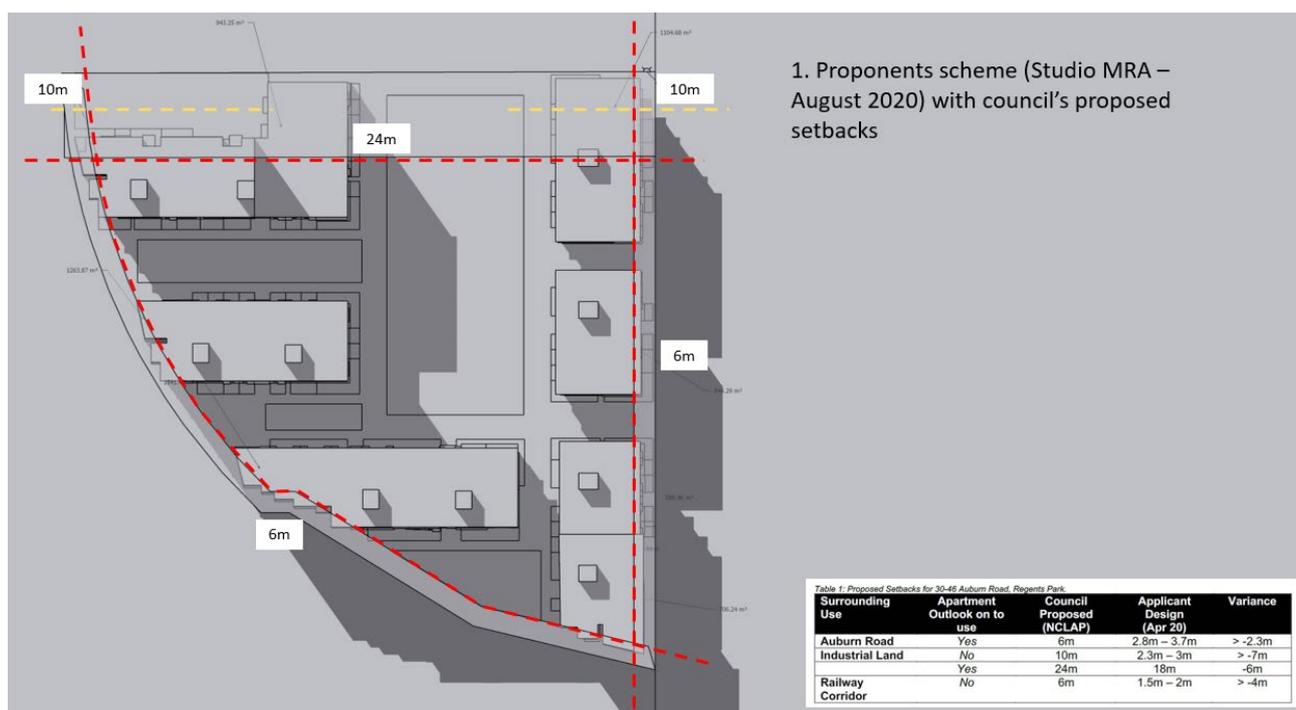


Figure 9 – The Proponent's Proposed Studio MRA Scheme with Council's proposed setbacks (Image prepared by DPIE)

## Proponent's Justification

### Details of justification

The proponent's justification for seeking a formal review of the Gateway determination (as altered) is provided at **Attachments G1 - G11**.

As part of this review, the proponent has provided an updated Design Review Report from its own architectural consultant, MRA Design, to demonstrate that their own scheme delivers the objectives, density and height of the McGregor Coxall scheme, whereas the height and density controls under the altered Gateway determination do not.

On 26 August 2020, the proponent submitted another urban design review prepared Smith and Tzannes. This review sought to justify the proposed floor space ratio, by demonstrating that a proposal compliant with the ADG could be achieved. This review also proposed alternative heights to all other Gateway review documentation that was submitted.

These reviews form part of **Attachments G 1 - G11**.

On 23 September 2020, the proponent submitted a further review prepared by Smith and Tzannes together with revised architectural plans by Studio MRA, a ventilation assessment by SLR Consulting and a solar access assessment by Walsh2 Architects (**Attachments L1 - L4**).

This review presented a revised layout to improve amenity to dwellings, responding to issues raised in the Architectus review in relation to solar access and cross ventilation. The review sought to demonstrate that apartments could be configured on the site with an FSR of 2.4:1 and achieve appropriate amenity.

The key contentions made under the submission are outlined below.

#### Floor Space Ratio

The proponent is seeking a review of the maximum FSR control which has been applied under the Gateway determination (as altered), pursuing an increase from 2:1 to 2.4:1.

The proponent is concerned that the FSR standard applied under the Gateway determination (as altered) is being derived from a blanket approach contained in a guiding design document (the ADG) and not based on any site-specific rigour. The proponent provides that a maximum FSR standard of 2.4:1 is not a hypothetical / general application of efficiency rates, but an actual detailed design and site-tested outcome.

The proponent contends that its scheme has been prepared based on a floor-by-floor analysis, to ensure suitable residential amenity and compliance with the ADG. For example, design outcomes such as enclosed balconies for dwellings fronting industrial / rail land have been included to manage perceived land use conflicts, Elements such as this, as well as other site-specific design responses, are what the proponent contends are necessary and warranting additional FSR (amongst other matters).

The submission (August 2020) of an additional review by Smith and Tzannes states that it is not the role of a planning proposal to consider specific detailed matters such as apartment layouts and conformance with the ADG. Even so, the Smith and Tzannes report undertakes a detailed analysis of the proponent's scheme particularly in relation to solar access and cross ventilation amongst other requirements.

The report notes that the proponent's scheme would not meet ADG requirements. Despite this, the Smith and Tzannes report supports a floor space ratio of 2.4:1, indicating that alternative designs could achieve ADG compliance and that they are matters for the development application stage. Further the report states that the site lends itself to a higher FSR due to its location on a rail line, and being a large, unconstrained, clear site outside of the Regents Park Centre.

A further submission (September 2020) by Smith and Tzannes included alternative architectural plans, a ventilation assessment by SLR Consulting and a solar access

assessment by Walsh2 Architects. Changes to apartment layouts were made to achieve greater compliance with ADG requirements. Under the revised scheme, the solar access assessment indicates that 74% of dwellings (444 units) will achieve 2 hours of solar access between 9am-3pm on June 21, complying with the ADG requirement of 70%. However, 16% of dwellings (96 units) will receive no direct sunlight between 9am-3pm on June 21, departing from the ADG requirement of 15%.

The solar access assessment was conducted on a site-based approach, as opposed to a building-by-building approach described in the ADG.

The ventilation assessment indicates that natural cross ventilation could be enhanced by utilising building slots and recesses with windows attached. Taking this into account, the ventilation modelling indicates that over 60% of the apartments in each of the buildings are capable of achieving cross ventilation requirements consistent with the ADG.

The proponent has also noted that on 1 November 2019, McGregor Coxall provided an addendum to its initial findings, confirming that a maximum FSR of 2.4:1 is suitable and reflects the intended density and floor area for the site, as intended under the McGregor Coxall scheme.

The proponent does not consider that the FSR provided under the altered Gateway determination, being 2:1, facilitates the delivery of the McGregor Coxall scheme, its own scheme which it believes ensures a superior outcome, nor the delivery of a viable development at the site with any significant public benefit.

### Building Heights

The proponent is seeking an increase in the maximum building heights from the Gateway alteration. The Gateway review as submitted, is seeking heights of:

- 23m for the 6 storey component
- 29m for the 8 storey component
- 47m for the 12 storey component.

The proponent has indicated that the heights provided under the Gateway determination do not reflect nor facilitate the McGregor Coxall scheme. It contends that the heights supported under the altered Gateway determination are taken from the existing controls under the LEP height table and do not take into account site levels, lift overrun and floor to ceiling heights, which in turn, have been factored into McGregor Coxall's and the proponent's scheme.

The proponent is concerned that the heights supported under the Gateway determination (as altered) would either require complicated Development Application processes, including the use of Clause 4.6 under the LEP to seek variations to building height standards, or alternatively result in an inferior development outcome at the site. A lesser development outcome, as contended by the proponent, is inconsistent with the intent and agreed merit of the planning proposal as well as the urban principles supported through the McGregor Coxall scheme (i.e. housing diversity, residential amenity, social connectivity, interaction, and walkability).

In the proponent's recent submission, further alterations to the height limit are sought. The proponent has now requested heights that align with the Smith and Tzannes report, which recommends:

- 25m for the 6 storey component
- 31m for 8 storey component
- 41m for the 12 storey component.

The report 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.

The standards identified under McGregor Coxall's scheme, the altered Gateway determination, the proponent's request for Gateway review and the proponent's revised request are identified below.

| FSR             |                                    |                   |
|-----------------|------------------------------------|-------------------|
| McGregor Coxall | Gateway determination (as altered) | Proponent Request |
| 2:1             | 2:1                                | 2.4:1             |

| Building Heights |                                    |  |                             |   |
|------------------|------------------------------------|--|-----------------------------|---|
| McGregor Coxall  | Gateway determination (as altered) | Proponent Request at lodgement of Gateway Review | Proponent's amended request | Height based on ADG requirements listed above |
| 6 storeys – 23m  | 6 storey – 19m                     | 6 storeys – 23m                                  | 6 storeys – 25m             | 6 storeys – 22.2m                             |
| 8 storeys – 29m  | 8 storeys – 25m                    | 8 storeys – 29m                                  | 8 storeys – 31m             | 8 storeys – 28.4m                             |
| 12 storeys – 47m | 12 storeys – 38m                   | 12 storeys – 47m                                 | 12 storeys – 41m            | 12 storeys – 40.8m                            |

**Material provided in support of the application/proposal**

The proponent submitted the following in support of its request for a review of the Gateway determination:

- Gateway determination review application form;
- Covering letter and a justification for a request for the review of the Gateway determination; and
- Gateway determination (September 2016)
- Concept DA Consent (November 2017)
- McGregor Coxall Report (January 2019)
- Pacific Planning Response to McGregor Coxall Report (March 2019)
- McGregor Coxall Addendum Letter (October 2019)
- Pacific Planning submission to DPIE (November 2019)
- Architectus Review (December 2019)
- Alteration of Gateway Determination (February 2020)
- Architectural Design Report (April 2020)
- Traffic Impact Assessment (June 2015)
- Traffic Addendum Letter (August 2015)
- Review of FSR prepared by Smith and Tzannes (August 2020)
- Supplementary Review Letter (solar access and cross ventilation) prepared by Smith and Tzannes (September 2020)
- Revised Architectural Plans prepared by Studio MRA (September 2020)
- Expert Option: Solar Access prepared by Walsh2 Architects (September 2020)
- Natural Ventilation Assessment prepared by SLR Consulting (September 2020)



Figure 10 - Proponent's Proposed Scheme (April 2020)

## Council Views

|   |  |
|---|--|
| <p><b>Date Council advised of request</b></p> | <p>Council was advised of the proponent's review request on 11 May 2020.</p>   |
| <p><b>Date of Council response</b></p>        | <p>15 June 2020</p>  |
| <p><b>Council response</b></p>                | <p>Council provided a detailed submission to the proponent's request, which reiterates its position for alternative building heights and a reduced floor space ratio allowance from what has been supported under the altered Gateway determination (<b>Attachment H</b>).</p> <p>Council's submission is supported by a peer urban design review, prepared by Architectus, which collectively raise concerns regarding the proposed controls, and more directly, the proponent's proposed scheme. These concerns are based on perceived inconsistencies with the current and future desired development scale for Regents Park, the ADG and Council's own suite of local strategic planning documents.</p> <p>Salient points of Council's submission include:</p> <p><u>Strategic Merit</u></p> <p>Council considers the height and FSR standards being sought by the proponent are inconsistent with the hierarchy of Canterbury-Bankstown centres, as outlined within its Local Strategic Planning Statement (LSPS) – Connective City 2036 and supporting Local Area Plans (LAPs) (both adopted post-commencement of this planning proposal process).</p> <p>Council also considers the proponent's scheme is inconsistent with the planning priority for retaining and managing employment land through land use decisions, as advocated</p> |

under the Greater Sydney Region and South District Plan due to the perceived land use conflicts associated with site setbacks (see below).

Site Specific Merit

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.

Given the above, Council has indicated that it is unlikely to support the proposed scheme through any future DA process.

Council acknowledges that there have been many variances in the way that maximum building heights have been measured throughout this planning proposal process. Through this submission and supporting review by Architectus, Council confirms that it would support changes to the maximum building heights, though reiterates that Council has previously only endorsed building heights of up to 8 storeys at the site.

Council does not support any further increase to FSR and rather, reiterates Council’s preferred maximum FSR of 1.75:1 for the site.

The tables below indicate the heights and FSR recommended by Council’s technical staff in its response to this Gateway Review, compared to those previously referenced.

| FSR             |                                    |                   |                  |
|-----------------|------------------------------------|-------------------|------------------|
| McGregor Coxall | Gateway determination (as altered) | Proponent Request | Council Response |
| 2:1             | 2:1                                | 2.4:1             | 1.75:1           |

| Building Heights |                                    |                   |  |   |
|------------------|------------------------------------|-------------------|--|---|
| McGregor Coxall  | Gateway determination (as altered) | Proponent Request | Proponent’s amended request (following Council’s response) | Council Response  |
| 6 storeys – 23m  | 6 storey – 19m                     | 6 storeys – 23m   | 6 storeys – 25m  | 6 storeys – 22m   |
| 8 storeys – 29m  | 8 storeys – 25m                    | 8 storeys – 29m   | 8 storeys – 31m  | 8 storeys – 28m   |
| 12 storeys – 47m | 12 storeys – 38m                   | 12 storeys – 47m  | 12 storeys – 41m   | 12 storeys – 41m (although 12 storeys is not supported) |

The Department provided a copy of Council’s submission to the proponent for its consideration, and notes that the proponent does not consider many of the concerns being raised by Council in its submission are matters for consideration under this review process. That is, they are not specific to merely height and FSR standards but rather an assessment against a proposed development product. A copy of this submission from the proponent (August 2020) is provided for the Panel’s consideration (**Attachment I**).

Further supplementary information submitted by the proponent (September 2020) responding to Council’s concerns about solar access and cross ventilation is provided for the Panel’s consideration (**Attachments L1 – L4**).

Due to the two late submissions by the proponent, Council were not given the opportunity to provide any further comment. However, Council was provided a copy for their information to facilitate their discussions with the IPC.

## Department Assessment

### Department's Assessment

The Department has reviewed both the proponent's request and Council's response and considers that the Gateway determination should remain unchanged with respect to FSR though there is scope to alter the maximum building height controls. The Department considers that the standards supported under this planning proposal should reflect the McGregor Coxall scheme and importantly, State legislation and policy, namely:

- a) The Standard Instrument— Local Environmental Plan, definition, and calculation method for Floor Space Ratio.
- b) The ADG and efficiency rates provided to residential (70 – 75%) and commercial (80%) developments.

This is discussed in more detail below.

#### Floor Space Ratio

The proponent's submission is specific, challenging the 75% efficiency rates which have been applied through this planning proposal process and under the Gateway determination (as altered) to determine the maximum FSR of 2:1. This includes the scheme prepared on behalf of the proponent to support increased FSR which considered the findings and recommendations of McGregor Coxall review commissioned by the Department.

The Department however considers the FSR standard should be applied based on the directions under the Government endorsed and industry standard, being the ADG. In making this decision, the Department has again sought advice from its Urban Design team as well as the Office of the Government Architect NSW.

The Department's Urban Design Team has reiterated its previous comments from February 2020, that the Department should not depart from the definitions, methods and acceptable standards for GFA and FSR in accordance with the definition and calculation method for GFA and FSR under the Standard Instrument—Local Environmental Plan and ADG (**Attachment J**).

In reviewing the scheme presented by the proponent, the Urban Design Team acknowledged that enclosed balconies have merit in noisy or polluted environments and may lead to extra floor area, though there is also a requirement to provide good ventilation and solar shading, which could compromise benefits of enclosed balconies. Specifically, while the Urban Design Team noted some of the design principles being put forward in the proponent's scheme in support of increased floor area, may not always be possible to reach (or go beyond in this instance) due to site constraints and other requirements to ensuring suitable design responses.

The Urban Design Review team reconsidered its calculations provided in February 2020 and did not indicate any requirement to vary its previous recommendations.

The Office of the Government Architect NSW were also consulted and confirmed that they would also defer to the ADG recommendations for calculating gross floor area and floor space ratio (**Attachment K**).

The review of FSR prepared by Smith and Tzannes on behalf of the proponent argues for additional FSR due to the size and location of the site, and the ability of the site accommodate an ADG compliant scheme at an FSR of 2.4:1. This was supported by submission of an alternate design by Studio MRA together with solar access and ventilation assessments.

ADG compliance is not the Department's primary concern as this is a matter for the development application. However, 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.

The Department also considered Council's recommended setbacks, together with adequate solar access and retention of green space and estimated that the site could deliver an FSR of 1.9:1 using Council's setbacks (**Attachments M**).

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. Smith and Tzannes describe the site as large and unconstrained that can lead to greater densities. On the contrary, the Department considers the adjoining freight and passenger rail line, the railway overpass and the adjoining industrial land to the north to be constraints that must be considered when allocating development standards.

The Department agrees that the site is an opportunity site, capable of accommodating additional FSR and height above what is currently allowed. The FSR of the current Gateway (as altered) at 2:1 would allow for a development of a bulk and scale that responds to its surroundings and provides an appropriate level of amenity for future residents. It is considered that an FSR of 2:1 within the accepted heights of 6, 8 and 12 storeys would allow for flexibility in the future design to provide increased setbacks from the street, incompatible industrial uses and rail infrastructure.

This recommended FSR and height also facilitates suitable communal open space and an acceptable level of amenity consistent with the ADG. Further, a scheme similar to that proposed by McGregor Coxall could be accommodated, delivering the objectives of the masterplan, without a need to increase building footprints, reduce building separation, or compromise on both indoor and outdoor communal spaces.

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, consistent with the agreed McGregor Coxall scheme and determinations made to-date under this planning proposal process.

#### Building Heights

As noted previously, the ADG specifies that building heights should be set considering the desired number of storeys and comprising the following metrics:

- 0.4m per floor structure
- 3.3m ceiling height for ground floor residential / commercial
- 2.7m ceiling height for above ground residential
- 1m for rooftop articulation
- up to 2m for topographic changes
- consider flooding / fill requirements.

When applied based on the supported maximum storeys under the original McGregor Coxall scheme, this equates to the following:

- 6 storeys / 22.2m
- 8 storeys / 28.4m
- 12 storeys / 40.8m

These figures can then be rounded to the closest building height unit currently applied through the Bankstown LEP 2015 building height table:

- 6 storeys / 23m
- 8 storeys / 29m
- 12 storeys / 41m

These heights differ from those which are currently supported under the Gateway determination (as altered).

The Department considers that amending the Gateway determination to align the maximum building heights with the ADG formula is reasonable to ensure the number of storeys identified under the McGregor Coxall scheme can be achieved. It is also noted that these measurements are similar to those recommended under Council's submission to this Gateway Review (**Attachment H**).

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 considers that as the site is located on the periphery of Regents Park, which is identified as a small village centre in both the Local Area Plan and Local Strategic Planning Statement, and as it is adjacent to low scale residential and industrial uses, any further increase in height cannot be justified in the context.

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. The ADG formula for calculating height provides for topographical variations and roof top communal open space is a detailed design element that is not guaranteed to be provided as part of any future development.

The height section below provided by the proponent under its updated Design Review Report (**Figure 11**) clearly indicates that the appropriate number of storeys i.e. 6, 8 and 12 storeys can be achieved within a building height limit of 23m, 29m and 41m under the proponent's scheme. On this basis, the Department supports an amendment to the Gateway determination, to reflect maximum building heights calculated in accordance with the ADG.

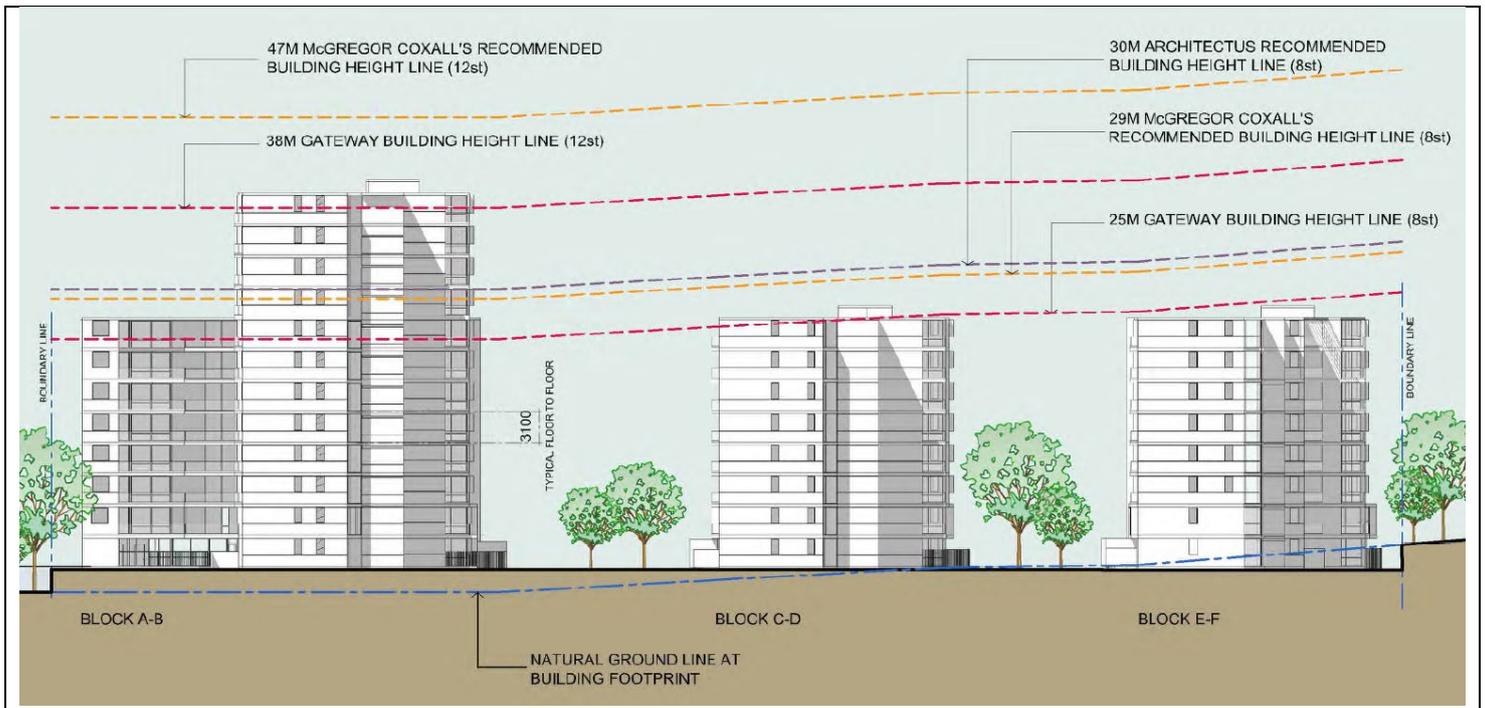


Figure 11 - Proponent's Proposed Scheme (April 2020) showing various building height standards

## Recommendations

### Department's Recommendation

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. Additionally, 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.

In conclusion, 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. The standards supported by the Department under this review are given in the right hand columns of the tables below.

| FSR                       |                                    |                   |                  |                           |
|---------------------------|------------------------------------|-------------------|------------------|---------------------------|
| McGregor Coxall (Revised) | Gateway determination (as altered) | Proponent Request | Council Response | Department Recommendation |
| 2.4:1                     | 2:1                                | 2.4:1             | 1.75:1           | 2:1 (no change)           |

| Building Heights |                                    |                   |                  |                           |
|------------------|------------------------------------|-------------------|------------------|---------------------------|
| McGregor Coxall  | Gateway determination (as altered) | Proponent Request | Council Response | Department Recommendation |
| 6 storeys – 23m  | 6 storeys – 19m                    | 6 storeys – 23m   | 6 storeys – 22m  | 6 storeys - 23m (+4m)     |
| 8 storeys – 29m  | 8 storeys – 25m                    | 8 storeys – 29m   | 8 storeys – 28m  | 8 storeys - 29m (+4m)     |
| 12 storeys – 47m | 12 storeys – 38m                   | 12 storeys – 47m  | 12 storeys – 41m | 12 storeys - 41m (+3m)    |

Following the IPC advice, the Department intends to issue a new Gateway determination and update the planning proposal timeline rather than amending the existing Gateway determination following the IPC advice. The proponent supports this approach.

This subsequent revised planning proposal will outline a pathway to finalisation that the Department will monitor closely. No further Gateway reviews will be entertained given that the Gateway will be based on the finding of this Gateway review and considering the prolonged and exhaustive considerations that have already taken place in determining the appropriate development controls for the site.

## Attachments

|          |   |
|----------|---|
| A        | Planning Proposal                                     |
| B        | Gateway Determination                                 |
| C        | McGregor Coxall Urban Design Report                   |
| D        | McGregor Coxall Addendum                              |
| E        | Alteration to Gateway Determination                   |
| F        | Alteration to Gateway Determination report            |
| G (1-11) | Proponent review request and justification submission |
| H        | Council response to Gateway review request            |
| I        | Further submission from proponent                     |
| J        | DPIE urban design comments                            |
| K        | Government Architect NSW comments                     |
| L (1-4)  | Proponent's Supplementary Review                      |
| M        | DPIE urban design comments                            |

Note: A separate pack of attachments relating to history of the proposal has also been provided.

Prepared by:

**Eastern Harbour City, Department of Planning, Industry & Environment**