



Mr Todd Neal
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Dear Mr Neal

I'm writing to respond to your correspondence dated 21 August 2018 in relation to the planning proposal for the site at 642-644, 650-658 Canterbury Road, 1-3 Platts Avenue and 2-2D Liberty Street, Belmore. The planning proposal involved amending the *Canterbury Local Environmental Plan 2012* to:

- rezone the site from B6 Enterprise Corridor and R3 Medium Density Residential to B5 Business Development (which permits shop top housing);
- increase the maximum building height from 12m and 8.5m, to 0m, 3m, 14m, 16m, 17m, 18m, 22m and 25m; and
- identify the subject site as a 'key site'.

I have examined the material put forward in your letter and confirm my decision that the planning proposal should not proceed, as requested by the council. I have set out my consideration of your material below.

Strategic merit

The preparation and in principle endorsement of the *Canterbury Road Review* by the council is based on comprehensive traffic, urban design and economic studies. The review and its supporting studies provide an overall guiding planning framework that has resulted in the council adopting a new strategic direction for the Canterbury Road corridor.

The review has also been prepared considering of the directions set by the recent *Greater Sydney Region Plan* and *South District Plan*. These are now statutory strategic plans that guide local planning carried out by councils and are to be reflected in all planning proposals.

There are seven key centres and ten localities along the Canterbury Road corridor that the review concludes would be best placed to support additional development. The site of the planning proposal is not within these centres and localities, nor is it adjacent to any of them.

The planning proposal is also contrary to the site-specific land use and built form recommendations of the review, including:

- restricting multi-storey housing on this site;
- maintaining the B6 Enterprise Corridor zone or similar zone;
- maintaining the R3 Medium Density Residential zone or similar zone; and

- maintaining the current floor space and height controls for the site.

In considering the council's request to not progress the planning proposal, the Department considered the local and regional strategic merits of the proposal. As the strategic planning work carried out by the council was substantial and well founded, the Department supports review being applied.

The material that you have provided is not of sufficient weight to justify a change in this position and I am satisfied that the strategic merit of the planning proposal was adequately considered by the council and the Department.

Creation of legitimate expectation as to the progression of the planning proposal

Department staff undertake their duties at all times within the government sector employment framework and the ethical framework for the public sector. Planning functions are carried out under the *Environmental Planning and Assessment Act 1979* and follow the relevant policies and procedures that apply.

I have reviewed your chronology of events regarding the Department's interactions with your client regarding the planning proposal. I have not identified anything to suggest that the Department or its staff have created a legitimate expectation that the planning proposal would proceed to a particular timeframe or to a particular outcome. The Department's interactions with your client have been consistent with the statutory framework and the applicable policies, including the document *Local Environmental Plans – a guide to preparing local environmental plans*.

The Department cannot comment on the history of representations made by the council. I note that the council is the planning proposal authority for this matter and is responsible to progress the planning proposal (subject to any requirements of a gateway determination).

Denial of a fair hearing

Your letter claims that the council denied your client procedural fairness during June 2018 leading up to its decision not to proceed further with the planning proposal. You identify the following conduct of the council and its local planning panel during this time:

- the local planning panel deferred consideration of the planning proposal to allow a submission to be made by your client about the council's report;
- representatives of your client addressed the panel at its meeting on 13 June 2018; and
- the council was given copies of the submissions to the panel for consideration at its meeting on 26 June 2018.

The other parts of the letter also indicate a history of extensive consultation between your client and the council since the proposal was initiated in 2014.

As the planning proposal authority, the council can vary a proposal or decide that it should not proceed at any time and for any reason. My role as the delegate of the Greater Sydney Commission is to consider a request to determine that a planning proposal not proceed and respond by either agreeing to or refusing the request.

I am satisfied that the statutory process has been followed for this planning proposal, and that the council has given your client opportunities to participate in the decisions made by it as the planning proposal authority.

Apprehension of bias

Your letter claims that decisions made by the council 'have been tainted by unfounded and inaccurate suggestions that the proposal was enabled by the alleged corrupt conduct of the former staff within Council'. This claim, as I understand it, is based on a former council staff member's statements before a hearing relating to the Independent Commission Against Corruption (ICAC) inquiry into allegations concerning former Canterbury Council.

The council decided that the planning proposal should not proceed at its meeting on 26 June 2018. I have reviewed the minutes of the council meeting and the material supporting it and note that there are no references to statements made by the former council staff member or the ICAC inquiry.

In any event, I note that the council's role as planning proposal authority gives it responsibility for considering changes to development controls that are based on strategic and site-specific planning merit. The council is not required to be neutral in the exercise of these functions, in particular where a planning proposal has been prepared at the request of a land owner or development proponent.

Having reviewed the information you have provided, I am satisfied that the proper statutory process has been followed by the council in requesting that the planning proposal not proceed further.

Failure to adequately consider matters

I note that the Canterbury Road Review was not considered as part of the original gateway determination as it had not commenced. The alteration to the gateway on 14 November 2016 did not have regard to the Canterbury Road Review as it had not yet been released by Council. The gateway alteration related to an extension of time to complete the proposal and a change to the property description.

The delegate of the Greater Sydney Commission is required to have consideration for the current strategic context at any time during the planning proposal process. The fact that the delegate did not reference the review in the gateway determination or subsequent alteration does not mean it should not have been a consideration for the planning proposal at any time after the review was released. I note that your client made representations to the council at the time the review was exhibited for public comment, and that the council resolved not to alter the review's recommendation regarding the future planning of the site.

When the council requested that the planning proposal not proceed, the Department considered the findings and recommendations of the review as it provided the up to date strategic context for the corridor.


The issuing of a gateway determination is to enable the rezoning process to commence and to undertake the necessary supporting studies or investigations. A

gateway determination does not guarantee that the proposal will result in an amendment to the LEP.

Having examined the issues you raise, I am satisfied that the Department gave proper consideration to Council's request and has followed the statutory process in altering the Gateway determination so that the planning proposal does not proceed.

Your client's right to a review of my decision should they seek a Gateway review, as previously advised, may be requested within 21 days from receipt of this letter.

If you have any questions relating to this letter of response, I have requested that Ms Amanda Harvey, Director, Sydney Region East to assist you. Ms Amanda Harvey can be contacted on Ph 8275 1128.



Marcus Ray
Deputy Secretary
Planning Services Division

18/10/2018