

19 November 2008

Mr Pat Romano
General Manager
Burwood Council
PO Box 240
Burwood NSW 1805

By email: council@burwood.nsw.gov.au

Dear Mr Romano

Re: Draft Burwood Town Centre Local Environmental Plan 2008

The Urban Taskforce is an industry organisation representing Australia's most prominent property developers and equity financiers. Our membership also includes key infrastructure providers, economists, planners, architects and lawyers involved in responsible and sustainable property development. We are pleased to provide the following comments for your consideration.

1. Mixed use planning

The *Draft Burwood Town Centre Local Environmental Plan 2008* ("the draft LEP") capitalises on Burwood's identification in the draft Inner West Subregional Strategy ("the subregional strategy") as a major retail, commercial and administrative hub for the Inner West Subregion.

The subregional strategy suggests that

parts of the main retail strip have become degraded and there is a need to reactivate the main street.¹

Providing for a mix of uses for centres well serviced by public transport is widely accepted as a planning response that would more readily encourage investment and urban renewal. We congratulate the authors of the draft for recognising that centre creation is dynamic and evolutionary. **The use of the more flexible mixed-use zone is an excellent example of 21st century planning.**

2. Aims of the plan

Section 25(3) of the *Environmental Planning and Assessment Act* makes clear that if a provision of a local environment plan is genuinely capable of different interpretations, that interpretation which best meets the aims stated in plan is preferred.² For this reason, it's important that the aims of the draft LEP are rational, well written and understandable.

Burwood's "status" as a "Major Centre"

Clause 1.2(2)(a) of the draft LEP says that the plan aims

to provide a planning framework for the Burwood Town Centre consistent with its status as a Major Centre ...

The reference to "Major Centre" has been capitalised, suggesting that the term is not to be given its plain English meaning. This, taken together with the reference to Burwood's "status", suggests that an aim of the Draft LEP is to implement the "summary" for a "Major Centre" set out in table 7 of the subregional strategy (page 47).

¹ DoP (2008) *Inner West Subregion – Draft Subregional Strategy*. NSW Department of Planning, July 2008 pp. 48 & 49.

² See, for example, *Jim Rannard & Associates Pty Ltd v North Sydney Municipal Council* (1992) 75 LGR 274.

This table says a “Major Centre” is a

[m]ajor shopping and business centre serving immediate subregional residential population usually with **a** full scale shopping mall, council offices, taller office and residential buildings, central community facilities and a minimum of 8,000 jobs [bold emphasis added].

The subregional strategy, if applied (directly or indirectly) by statutory instruments, has the potential to inappropriately limit competition and consumer choice. The reference to “**a** full-scale shopping mall” appears to discourage the development/expansion of a competing shopping mall to the existing dominant mall in the town centre

There should be no references (implicit or direct) to the subregional strategy in the draft LEP. We recommend that the Clause 1.2(2)(a) of the draft LEP be re-drafted to read

to provide a planning framework for the Burwood Town Centre to ensure it becomes a major centre ...

A consequential change would also be required to clause 4.4(1) which also refers to Burwood's “status” as a “major centre”.

Car usage

Clause 1.2(2)(f) of the draft LEP says that the plan aims

to provide for development that maximises public transport patronage and encourages walking and cycling ...

It is desirable for Burwood town centre to become a diverse, compact, pedestrian friendly community, with a mix of uses, supported by high quality public transport. Achieving this goal will mean many people shopping in, or working in Burwood will be able to avoid using a private motorcar. In fact, some local residents may even choose to do without a car altogether.

However, the private motorcar will continue to be a necessity for many households. For example, households that include

- older people;
- children;
- people with disabilities

are likely to continue to require a motor vehicle to get on with the basics of life.

Even single and couples are still, generally speaking, likely to need a motor vehicle, if only to attend to shopping and social activities which are inaccessible or impractical by walking or public transport.

The benefits of compact, pedestrian friendly communities are that car use is likely to be reduced, not eliminated. Sensible land use and transport planning allows for all modes of transport (cars, transit, walking and cycling).

An LEP aim that elevates development which maximises public transport patronage without also acknowledging the need to provide for transport choice may reduce the attractiveness of Burwood as a major centre. In particular, commercial, retail and apartment developments will generally require a reasonable amount of car parking spaces.

Good access to alternative forms of transport can mean a reduction in car parking, but we should not think that we could unrealistically restrict car parking. If people demand access to private motor vehicles, the market will require that provision be made for car parking. Developments that are not able to meet community expectations in this regard are unlikely to be built. **Planning should continue to provide car related infrastructure (parking and roads), but at a rate appropriate for the location.**

While the proposed aim draws on the objective for the mixed use zone, the surrounding words are different, and the meaning has been changed as a consequence. A mixed use zone's objective is

to integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

Unlike the draft LEP aim, this wording does not suggest that any particular development must maximise public transport patronage and encourage walking and cycling. Instead this wording explains that public transport, etc is maximised *through the integration* of business, office, residential, retail and other development in accessible locations.

The aims of the draft LEP should be revised to better reflect the need to provide transport choice. We recommend that the Clause 1.2(2)(f) of the draft LEP be re-drafted to read

to give the community the choice of using public transport, walking or cycling, as an alternative to private motor vehicle transport.

Creation of buffer zones

Clause 1.2(2)(h) of the draft LEP says that the plan aims

to minimise site isolation...

This aim may reduce opportunities to develop larger buildings in the town centre.

These provisions may ultimately empower landholders whose lot might be located near proposed apartment developments to extort developers into buying them out. If a developer does not pay an overblown price for the property concerned, the landholder may threaten litigation and in doing so, rely (in part) on this aim.

This could introduce the sort of buffer zone requirements that have existed for years for mines to urban development. In mining, it is routine for mining operators to pay many times the market value to nearby landholders in order to secure a buffer zone around their very noisy and polluting operations.

Apartments, office towers and retail developments bear absolutely no relationship to any aspect of heavy industry, and nor is such development anywhere near as profitable as operating a mine.

This aim may significantly increase the cost of development, sterilise opportunities to contribute to Burwood's renewal and could help give NIMBY landholders a right to veto nearby construction.

The draft LEP aim limiting development that may isolate sites should be removed.

3. Burwood Town Centre Boundary



Figure 1: Land Application Map LAP 001

The draft LEP will only apply to the area defined on the land application map. While it is acknowledged that this LEP is to apply to the "town centre" it is not clear why the Council has adopted the southern most boundaries for the town centre.

The Burwood Town Centre and Burwood generally has been identified as the major centre servicing the inner west of the Sydney Metropolitan area and it is surprising that opportunities to permit centre expansion don't seem to have been considered.

While expansion south may not be required now, there may be a need for expansion some time in the future. Further examination of land to the south of the town centre for inclusion in the Town Centre boundary is suggested.

While areas of medium density development and heritage items do exist to the south of the town centre, future expansion is still possible in sympathy with local conditions.

Council should avoid consideration of the locality as it is today and should ensure that it has properly provided for the future. **Opportunities to support significant additional higher density residential and non-residential uses in the vicinity of the town centre should be examined.**

Even if the Council is hesitant to include these areas as part of the town centre, the potential to apply a high density (R4) residential zoning with appropriate permissible uses, floor space ratio and height should be explored. This approach would be consistent with Burwood's future role as the major centre for the Inner West.

4. Discouraging residential development in some areas

Density and land use mix are crucial to the success of a centre.

Many successful places include a mix of uses, including jobs, retail, entertainment and residential apartments all coexisting. These different uses can work together to make a centre attractive and successful at all times of the day and week. Centres without retail, entertainment and residential uses can be lifeless, cold and uninviting places outside of business hours.

It is well understood that "land use patterns have a significant influence on how well public transport services can be delivered and utilised."³ By introducing more land use flexibility in the vicinity of new transport infrastructure, the infrastructure itself benefits in terms of patronage, and therefore viability. Without an appropriate mix of complementary land uses, people will be less inclined to use public transport, as their ability to access a variety of destinations will be limited.⁴

Research consistently shows that population density has a significant impact on the use of public transport. For instance it was found that every 10-percent increase in population density was associated with about a 6-percent increase in boardings at transit stations.⁵ If this argument is accepted, then caution must be exercised when considering a local environment plan that actively seeks to limit town centre residential opportunities.

While the draft LEP does not prohibit residential development within the town centre, it imposes a significant floor space penalty on such development. For example, a maximum floor space ratio (FSR) of 6.0:1 is permitted in the town centre, but residential FSR in the same location is restricted to 2.0:1. This will severely impact the feasibility of residential development in this location and will potentially stall investment and urban renewal.

This level of regulation and prescription of uses is unnecessary and must be avoided. For instance, if market conditions mean that non-residential development is not viable at a particular point in time, FSR penalties may prevent any urban renewal in a given area from proceeding.

On the other hand, if residential and non-residential uses are treated equally, residential development can contribute to urban renewal when commercial or retail development is not viable.

We recommend that the residential FSR be raised to the same level as the non-residential FSR.

³ Alford, G., 2006, Integrating Public Transport and Land use Planning – Perspectives from Victoria. *Australian Planner*, Vol. 43, No. 3, pp. 6-7.

⁴ Cervero, R., Ferrell, C., and Murphy, S. 2002, Transit-Oriented development and Joint Development in the United States: A Literature Review. Transit Cooperative Research Program. Research results digest. October 2002—Number 52 [http://onlinepubs.trb.org/Onlinepubs/tcrp/tcrp_rrd_52.pdf, accessed 7 April, 2008]

⁵ Parsons, Brinckerhoff, Quade and Douglas et al. 1995 in Cervero, R., Ferrell, C., and Murphy, S. 2002, Transit-Oriented development and Joint Development in the United States: A Literature Review. Transit Cooperative Research Program. Research results digest. October 2002—Number 52 [http://onlinepubs.trb.org/Onlinepubs/tcrp/tcrp_rrd_52.pdf, accessed 7 April, 2008]

The Urban Taskforce asks that you carefully consider the contents of this submission. There is a summary of the changes we have requested in an attachment to this letter.

Thank you for providing us with the opportunity to offer our comments and should you require any further clarification of the content of this correspondence, please feel free to contact me.

Yours sincerely

Urban Taskforce Australia

A handwritten signature in black ink that reads "Aaron Gadiel". The signature is written in a cursive style with a long horizontal stroke extending from the end of the name.

Aaron Gadiel
Chief Executive Officer

Draft Burwood Town Centre Local Environmental Plan 2008

Summary of Urban Taskforce's Recommendations

- The use of the more flexible mixed-use zone is an excellent example of 21st century planning and is supported.
- There should be no references (implicit or direct) to the subregional strategies in the draft LEP. We recommend that the Clause 1.2(2)(a) of the draft LEP be re-drafted to read
to provide a planning framework for the Burwood Town Centre to ensure it becomes a major centre.
- Planning should continue to provide car related infrastructure (parking and roads), but at a rate appropriate for the location.
- The aims of the draft LEP should be revised to better reflect the need to provide transport choice. We recommend that the Clause 1.2(2)(f) of the draft LEP be re-drafted to read
to give the community the choice of using public transport, walking or cycling, as an alternative to private motor vehicle transport.
- The draft LEP aim limiting development that may isolate sites should be removed.
- Opportunities to support significant additional higher density residential and non-residential uses in the vicinity of the town centre should be examined.
- We recommend that the residential FSR be raised to the same level as the non-residential FSR.