

30 March 2012

Mr Michael McMahon
General Manager
Burwood Council
PO Box 240
Burwood NSW 1805

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

Dear Mr McMahon

Re: Draft Burwood Local Environmental Plan 2012

The Urban Taskforce represents Australia's most prominent property developers and equity financiers. We provide a forum for people involved in the development and planning of the urban environment to engage in constructive dialogue with both government and the community.

The Urban Taskforce has reviewed the draft Burwood Local Environmental Plan 2012 ("the plan") and identified some issues of concern.

Our concerns are generally outlined below for your consideration.

1. The Parramatta Road corridor should be zoned B4 mixed use

The Parramatta Road corridor is a challenging redevelopment proposal. All would agree that there is potential and a desperate need to renew this corridor of land. To incentivise development there is a need to provide flexibility in the planning controls to ensure that there is opportunity to provide for innovative design solutions.

We must not lose sight of the fact that there is considerable investment in road infrastructure and more significant investment is planned. The M4 East project and improvements to the rail system including a Parramatta Road metro will drastically change the Parramatta Road corridor environment. We must ensure that the opportunities that these projects provide are maximised.

It is acknowledged that careful land use strategies and design solutions will need to be devised to minimise land use conflict, but the presence of an extensive road corridor and future infrastructure improvements must be seen as an advantage and valued.

The nature of development along Parramatta Road is such that it is not realistic to expect that a local environmental plan on its own will provide sufficient direction and/or opportunity for the redevelopment required. The Parramatta Road corridor will have need of its own strategy that will most likely involve adjacent local government areas. It is for this reason that the most flexible approach to zoning needs to be adopted.

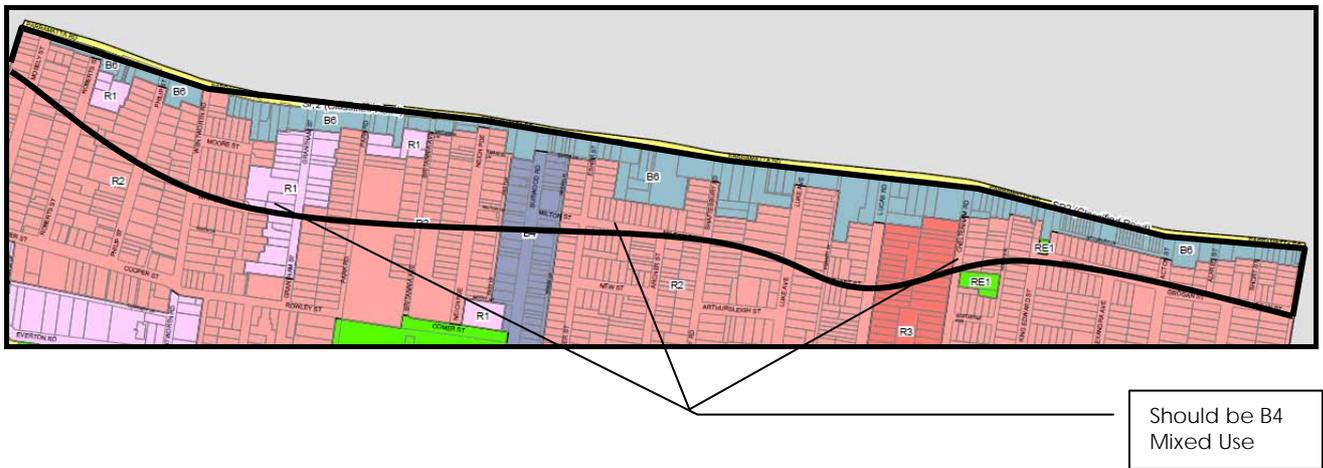
The Urban Taskforce is a strong advocate of mixed use development. We argue that vibrant, exciting places are those that include a mix of compatible land uses. If the Council wants a lively, active and safe city, then residential land use must be actively encouraged along the Parramatta Road corridor, not limited to shop top housing.

Applying a FSR penalty, limiting the residential component of development to 0.2:1 within enterprise corridor zones will not encourage renewal. Limiting residential development in such a way is not only unimaginative and restrictive but is also in conflict to contemporary planning philosophy. Progressive and contemporary planning focuses on land use mix and considers that successful places include a mix of uses, including jobs, retail, entertainment and residential apartments all coexisting, working together to make a place attractive and successful at all times of the day and week.

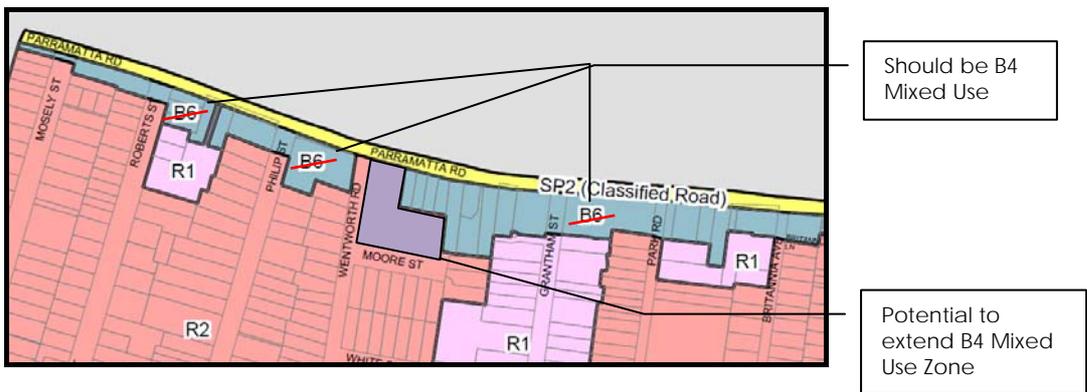
Land in the vicinity of Parramatta Road should not be subject to limiting and overly prescriptive development controls. In fact, this area should be viewed as an area of “opportunity” and commerce. This should be an area where, business activity is permitted. Within this area, appropriately designed and constructed residential development should also be permitted.

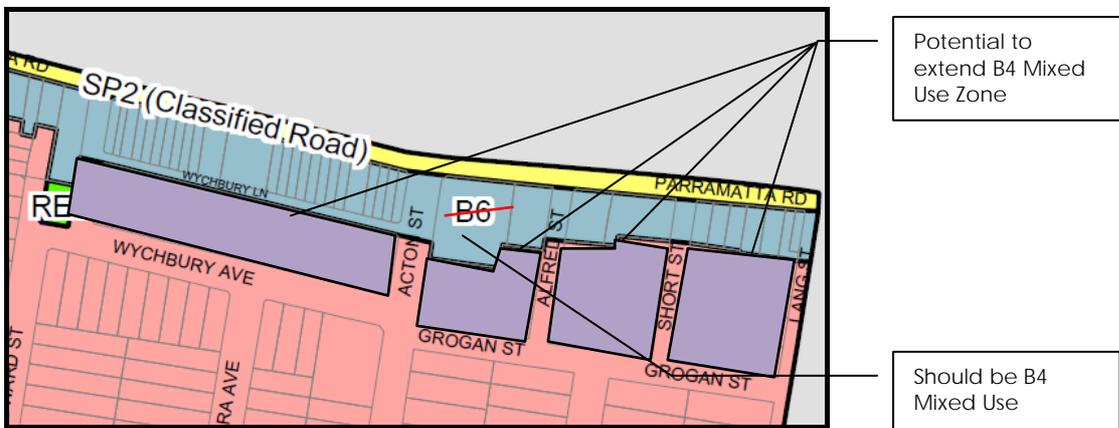
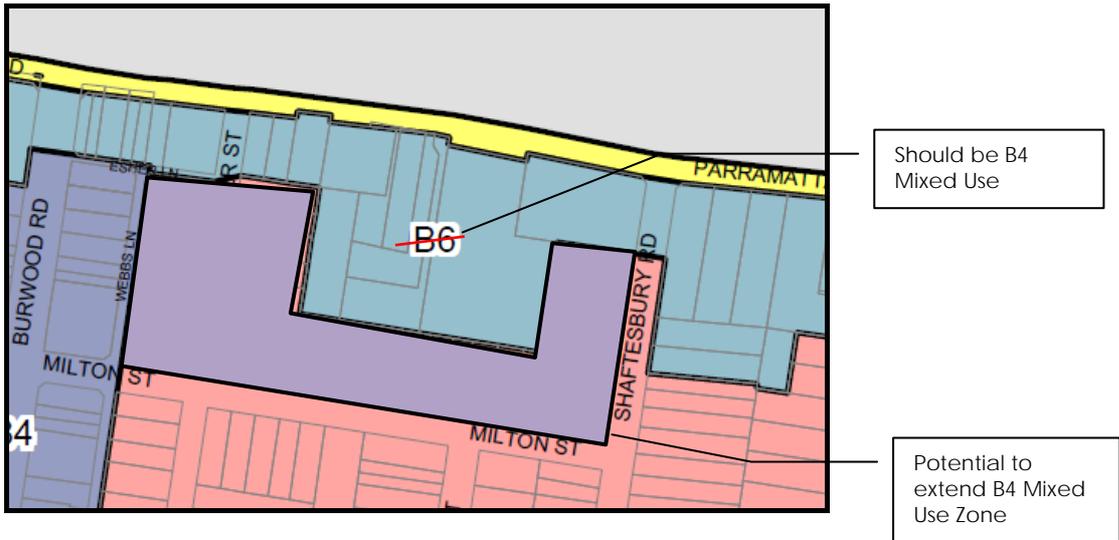
Shop top housing may be a viable option in some circumstances, while a standalone residential development, particularly where deep lots exist, may be an attractive option in other circumstances. There could even be options for commercial development fronting Parramatta Road with residential flat development at the rear. The B6 Enterprise Corridor zone does not provide for this flexibility. However, the B4 Mixed Use zone does provide the necessary flexibility to permit innovative land use and design solutions to a challenging locality.

Furthermore, a flexible mixed use zone will provide the base for future regional/corridor land use strategies for Parramatta Road. **All the land zoned B6 Enterprise Corridor along Parramatta Road should be zoned B4 Mixed Use.**



It is also suggested that the flexible B4 Mixed Use zone should extend deeper into the adjacent R1 - General Residential and some parts of the R2 - Low Density Residential zones in the vicinity of the Parramatta Road corridor as indicated above. This is particularly the case where there are opportunities for development sites to be serviced from the rear, off existing roads, that run parallel to Parramatta Road as shown on the following figures.





2. Parramatta Road corridor is the appropriate place for higher density development

The Parramatta Road corridor is clearly an ideal location for urban renewal. This is the location that must be supported with development controls that can kick-start new mixed use developments.

With the appropriate zoning and development controls Parramatta Road could be an urban renewal corridor. This corridor could support higher density development that will not only enable additional housing needs of a growing Sydney to be met, but will at the same time provide opportunities for the creation of vibrant, healthy and livable urban communities.

Urban renewal is reliant upon private sector investment. It is the private sector that will bring about beneficial changes to the private and public domains. This will only happen if development controls recognise development feasibility and a need for a return on investment. Unfortunately, the approach taken by Council on this and previous occasions does not demonstrate an understanding of the economy of development. Put simply, if investment in urban renewal is slow under existing development controls, not increasing development capacity will obviously further delay investment and hence renewal of the Parramatta Road corridor.

Therefore, if the Council wants to encourage renewal, then Council must provide controls to increase urban density, not controls that will bring about a reduction in urban density and population intensity in key locations.

What is an appropriate density along Parramatta Road will depend on many contextual and environmental matters. However, a FSR of only 1.75:1 (0.2:1 for residential) and building height of only 15 metres cannot be considered appropriate to encourage renewal.

If the Council was committed to encouraging urban renewal within areas such as Parramatta Road, it must look for opportunities to incentivise the market. One of the most effective means of doing this is to provide appropriate FSR and height controls.

3. Aims and zone objectives of the plan require rewording and/or deletion for improved clarity

After completing numerous reviews of comprehensive local environmental plans, and working with members of the Urban Taskforce who are regulated by local environmental planning laws, the importance of clarity in aims is vitally important. In this regard, we are of the view that there is considerable opportunity to refine and/or clarify the aims of the plan whilst still achieving the same end result. Council is urged to reconsider the use of subjective terms that will be open to interpretation and adopt a drafting approach that simplifies and clarifies the plan aims. For instance, plan aim 1.2(2)(a) which says

(a) to create a land use framework that allows detailed provisions to be made

will prove problematic.

There is no need to say that the plan aims to "create a land use framework" as the Environmental Planning and Assessment Act 1979 already provides the land use framework. Furthermore, "allows detailed provisions to be made" does not have any meaning. This phrase begs the question, detailed provisions about what and in which circumstances?

Plan aim 1.2(2)(b) which says

(b) to encourage or restrict development of land according to its suitability for various purposes,

is equally unclear. Firstly, a local environmental plan will either permit or prohibit development of land, hence if this is what is meant by "encourage or restrict", then the plan aim should say so. Secondly, the introduction of phrase "suitability for various purposes" is also subjective in nature. What is meant by various purposes and by what measure will "suitability" be measured against?

In reality, if Council's desire was to promote development that was "appropriate to its context and protects the local amenity, then the deletion of plan aims 1.2(2)(a) and (b) and the replacement with an aim that simply states that the aim of the plan "is to implement the objects of the Environmental Planning and Assessment Act 1979" the vast majority of the matters that should be of concern to the Council when considering development of land would be incorporated in one simple and clearly worded aim.

It is argued that the plan aims should be modified to say

The particular aims of this Plan are as follows:

- a) to promote ecologically sustainable development;**
- b) to provide for an increase in dwelling stock;**
- c) to provide for a range of housing types;**
- d) to provide for growth in business and employment opportunities ; and,**
- e) to implement the objects of the Environmental Planning and Assessment Act 1979**

Zone B1 Neighbourhood Centre

It is unfortunate that Burwood Council has fallen into the trap of adding an additional zone objective that is not required. That is, the Council inserted objective to Zone B1 seeks to address matters that are adequately considered under the provisions of the Environmental Planning and Assessment Act 1979.

For instance, Council has inserted a zone objective which says

- To conserve the heritage character of neighbourhood centres.

This objective is not only unnecessary, but is also subjective. Heritage conservation is a matter worthy of consideration and clause 5.10 of the standard instrument is designed to ensure that heritage matters are properly dealt with. Hence a specific zone objective is not necessary.

Additionally, section 79C of the Environmental Planning and Assessment Act provides considerable opportunity to consider the impact of development on the natural and built environment and hence the heritage significance of a locality.

79C Evaluation (1) Matters for consideration—general states that:

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

The Council inserted zone objective seek to deal with heritage matters refers to the "heritage character" of neighbourhood centres. This is a subjective term that will cause confusion and disputation.

The Urban Taskforce has made numerous submissions to State and Local Government on draft local environmental plans. Our submissions have highlighted the importance of correct and consistent language when drafting local environmental plans, particularly in relation to plan zone objectives. The NSW Department of Planning and Infrastructure hold similar concerns with poor drafting practices displayed by many local councils. Their concern culminated in the release of a LEP practice note addressing this matter. Council will be aware that this practice note gives clear direction to Council when drafting LEP aims and objectives. Specifically the LEP practice note includes:

- In many instances there will be no need for a council to add any additional objectives;
- Aspirational objectives for the local government area that are supported by policies or provisions outside of the LEP (e.g. community consultation process, development assessment procedural matters, desired urban design outcomes or building development standard) should not be included as a zone objective;
- Do not describe development control matters that are addressed through a development control plan in objectives, e.g. design requirements, setbacks, building envelope, site analysis or construction standards;
- Do not repeat matters set out in section 79C—Evaluation of the Environmental Planning and Assessment Act 1979;
- Avoid using subjective language open to different interpretation, e.g. 'well-designed', 'high quality', 'liveable', 'economically sound' or a vague phrase such as 'creating a sense of place'.¹

It is worth considering this advice provided by the Department of Planning and Infrastructure and the use of clause 5.10 of the LEP as a means of heritage preservation. In this regard, the Urban Taskforce suggests that **the last Council inserted zone objective to the Neighbourhood Centre Zone which says "To conserve the heritage character of neighbourhood centres" be deleted.**

¹ NSW Department of Planning 2009. LEP Practice Note – Local environmental plan zone objectives. PN 09-005. 10 September 2009.

I confirm that the Urban Taskforce does not support the draft Burwood Local Environmental Plan as exhibited for the reasons detailed above. However, we are willing to work closely with the Council to address these concerns, particularly regarding development along the Parramatta Road corridor. I have included a link to a recent Urban Taskforce publication that considers corridor development for your information. <http://www.urbantaskforce.com.au/urbanideas/feb2012/>

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 blue ink, appearing to read 'Chris Johnson', with a long horizontal flourish extending to the right.

Chris Johnson
Chief Executive Officer