



NORTH SYDNEY COUNCIL

Council Chambers
3 March 2022

I wish to inform you that a Meeting of the **NORTH SYDNEY LOCAL PLANNING PANEL** will be held in the Supper Room Council Chambers, via zoom, at 12.00pm on Wednesday, 9 March 2022 when your attendance is requested.

Your attention is directed to the accompanying statement of the business proposed to be transacted at such meeting.

KEN GOULDTHORP
GENERAL MANAGER

BUSINESS

1. Minutes

Confirmation of Minutes of the previous Planning Proposal Meeting held on Wednesday, 23 February 2022.
(Circulated)

2. PP01: 153 & 157 Walker Street, North Sydney - PP4/21

Report of Ben Boyd, Executive Strategic Planner

On 8 July 2021, Council received a Planning Proposal to amend North Sydney Local Environmental Plan 2013 (NSLEP 2013) as it relates to land located at 153 and 157 Walker Street, North Sydney. In particular, it seeks to insert a new local provision to NSLEP 2013 that would effectively result in a bonus height provision of 23m (RL 215 to RL 238) if the two sites are developed under a single development application and satisfies the following criteria:

- Does not result in additional overshadowing to land zoned *RE1 Public Recreation*;
- A nil setback to the northern boundary where the consent authority can be satisfied that the proposed development exhibits visual articulation to the northern façade;
- At least a 4m setback to a 3-storey podium form to Little Walker Street and a nil setback to the tower levels above;
- At least a 5m minimum setback at the ground level to the southern boundary with a 4m setback to the levels above;
- Provision of a publicly accessible through site link to the satisfaction of the consent authority; and
- The proposal exhibits commitments to sustainable building outcomes that actively reduce energy and water consumption and waste generation.

On 29 September 2021, the North Sydney Local Planning Panel (NSLPP) considered Council's assessment of the Planning Proposal which recommended that the Planning Proposal not proceed to Gateway Determination. The NSLPP resolved to defer issuing its advice as to whether the Planning Proposal should be supported to proceed to Gateway Determination, to enable the applicant to provide additional information to address a number of concerns raised in Council's assessment report.

Following a meeting between Council and the applicant in October 2021, the applicant submitted additional information via the NSW Planning Portal on 8 February 2022 in response to issues raised by the NSLPP and Council's initial assessment report. Immediately after lodging additional information on the NSW Planning Portal, the applicant lodged a Rezoning Review request with the Department of Planning and Environment on 10 February 2022.

Acknowledging the request for a Rezoning Review, Council staff have resolved to report the matter back to the NSLPP for their advice with regard to the additional information submitted.

The submission of additional information has not satisfactorily addressed the issues raised in Council's initial assessment considered by the NSLEP and 29 September 2021. Accordingly, it is recommended that the Planning Proposal not be supported to proceed to Gateway Determination for the following reasons:

- The proposal does not demonstrate strategic merit as it challenges the implementation of a number of recently adopted policies including the *North Sydney Local Strategic Planning Statement (LSPS)* and would significantly undermine the extensive place-based strategic planning work that has been undertaken in the locality which is enshrined within

the LSPS, particularly the *North Sydney CBD Public Domain Strategy* (PDS).

- The proposal is contrary to delivering on a number of key priorities of the North District Plan, namely:
 - Action 11 - as it will result in a negative impact to the amenity of the public domain of Little Walker Street and not positively contribute to the delivery of a comfortable human scale;
 - Action 19 – as it does not use a place based approach to deliver great places due to its inconsistency with the PDS;
 - Action 36 – as the envisaged built form envelope will not focus on delivering on a human scale public realm or creating a vibrant, safe place or quality public realm.
- The proposed local clause is inconsistent with Section 9.1 Ministerial Direction 6.3 *Site Specific Provisions*.
- The proposal does not demonstrate site specific merit due to the following:
 - the expected reduction in sunlight and daylight access to Little Walker Street resulting from a nil above podium setback to Little Walker Street;
 - there is no substantive evidence that that a consolidated proposal can't be feasibly erected under the current controls;
- The proposal is inconsistent with the desired direction to quantify above podium setback and tower separation controls to improve daylight and solar access to the public domain and improve internal amenity to towers.

The applicant does not have the consent of the owners of 157 Walker Street.

Recommending:

That the Panel resolves not to support the Planning Proposal being forwarded to the Department of Planning and Environment seeking a request for a Gateway Determination.

3. PP02: All land zoned R3 Medium Density Residential throughout the entire North Sydney local government area - PP 4/22

Report of Marcelo Occhiuzzi, Manager Strategic Planning

In response to the ongoing submission and approval of development applications exploiting the existing use rights provisions of the Environmental Planning and Assessment Act (the Act) for residential flat buildings (RFBs) in the lower density residential zones, in March 2017, Council resolved to:

...call for a report on its previous controls which applied to existing use rights in residential zones where flats were not permissible uses, and whether any measures can now be taken to reintroduce these controls in some form.

To remove this capacity, Council pursued an amendment to make RFBs permissible in the Medium Density R3 zone ("R3 zone"). This automatically removed existing use rights for older RFBs that occurred within this zone whilst ensuring compliance with the envelope controls that would otherwise apply to the medium density development that was already permissible in the zone.

Council considered the initial report in November 2019 (as part of the broader North Sydney Local Environmental Plan review) and endorsed the amendment for exhibition. The amendments were exhibited between May 2020 and June 2020 and they were finally endorsed by Council in August 2020. The resulting amendment to NSLEP 2013 was gazetted on 30 June 2021 (amendment 30).

At its meeting on 10 January 2022, Council resolved:

THAT Council urgently begins the appropriate process to amend the North Sydney LEP to remove the addition of residential flat buildings as a permissible use in the R3 Medium Density Zone in the land use table which came into force in Amendment 30 to the North Sydney LEP on 30 June 2021 by removing residential flat building from the R3 Land use table and updating the LEP as required to remove the residential flat buildings in the R3 Zone.

This report is in response to that resolution and represents the commencement of this process.

There is a considerable list of approvals that exploited the existing use rights provisions of the Act. More recently, however, there has been a softening of the interpretation of the extent to which development standards and development controls provisions may be taken into account as relevant matters for consideration (in particular *Saffioti v Kiama Council* [2019] NSWLEC 57). As a result, the urgency of addressing the existing use rights issues that resulted in Amendment 30 to the NSLEP 2013, may have dissipated somewhat.

Recommending:

That the Panel resolves to support the Planning Proposal being forwarded to the Department of Planning, Industry and Environment seeking a request for a Gateway Determination.



NORTH SYDNEY LOCAL PLANNING PANEL

PLANNING PROPOSAL

DETERMINATIONS OF THE NORTH SYDNEY LOCAL PLANNING PANEL MEETING HELD IN THE COUNCIL CHAMBERS, NORTH SYDNEY, ON WEDNESDAY 23 FEBRUARY 2022, AT 12.00PM.

PRESENT

Chair:

Helen Lochhead in the Chair.

Panel Members:

Jan Murrell, Panel Member
John McInerney, Panel Member
Jane van Hagen, Community Representative

Staff:

Administrative Support

Marcelo Occhiuzzi, Manager Strategic Planning
Ben Boyd, Executive Strategic Planner
Neal McCarry, Team Leader Policy
Peita Rose, Governance Officer (Minutes)

In accordance with the Covid 19 Public Health Order this meeting was conducted by remote (Zoom) means.

1. Minutes of Previous Meeting

The Minutes of the NSLPP Meeting of Wednesday, 29 September 2021 were confirmed following that meeting.

2. Declarations of Interest

Jane Van Hagen declared a potential conflict of interest on Item 1 and absented herself from the consideration and deliberation of this matter.

3. Business Items

The North Sydney Local Planning Panel is a NSW Government mandated Local Planning Panel exercising the functions of North Sydney Council, as the Consent Authority, under Section 4.8(2) of the Environmental Planning and Assessment Act, 1979 as amended, and acts pursuant to a Direction of the Minister for Planning issued under Section 9.1 of the Act, dated 23 February 2018.

The Panel has considered the following Business Items and resolves to determine each matter as described within these minutes.

ITEM 1

| | |
|------------------------|---|
| PP No: | 2/21 |
| ADDRESS: | 253-267 Pacific Highway, North Sydney |
| PROPOSAL: | Local Environmental Plan 2013 as follows: <ul style="list-style-type: none"> • Amended building height controls across the site with maximum heights of 15m, 29m and 37m; • Provide a maximum FSR of 4.83:1 to Nos 253-261 Pacific Highway and a maximum FSR of 1.83:1 to Nos 265-267 Pacific Highway; and • Provide a minimum non-residential FSR control of 1:1. |
| REPORT BY NAME: | Annelize Kaalsen (AK Planning) |
| APPLICANT: | Tim Turpin Legacy Property |

Public Submissions

2 Written Submissions were received prior to the public meeting

| Submitter | Applicant/Representative |
|--|--|
| Vincent & Wendy Lam - Resident | Tim Turpin - Legacy Property - Applicant |
| Wu Qiong - Resident | Adam Peacock - Legacy Property – Applicant |
| Wen & Yao Xiao - Resident | Siobhan McInerney - PTW Architects |
| Tim and Georgina Harricks (observing only) | Samantha Polkinghorne - NBRS Architecture |
| | Chris Croucamp - Urbis |
| | Stephen White - Urbis |

The key issues raised in the public submissions included light and solar access, privacy and overlooking, height and bulk, impacts on heritage precinct and vehicular access. Concerns around construction impacts were also raised, however the Panel Chair noted that these impacts will be considered as part of the development application assessment process.

Panel Recommendation:

The Panel members have undertaken independent site inspections prior to the meeting and the Panel has considered all written and oral submissions made on the Planning Proposal in making its recommendation to Council.

Council's Consultant Report is endorsed by the Panel.

The Panel recommends support of:

- the Planning Proposal being forwarded to the Department of Planning, Industry and Environment seeking a request for a Gateway Determination; and
- site specific DCP provisions to help guide future detailed design and the development application process.

It is also recommended that:

1. the maximum height be 37m to accommodate the sloping topography, lift overrun and a floor-to-floor height of 4.4m for the ground floor, (noting that the maximum number of storeys is to remain the same);
2. the setback of the tower on the Pacific Highway elevation be modified to provide a minimum tower setback above the podium of 1m, with at least 30% of the envelope setback to 3m, to provide façade articulation and wind mitigation. The setbacks to all other frontages are to remain as per the draft DCP.

The Panel noted that subject to an assessment of the impacts for any development application the maximum FSR for the site may not be able to be achieved.

The Panel encourages the applicant to respond to the recommendation for an updated Travel Plan, while waiting for a Gateway Determination, to enable the additional information to be placed on exhibition with the formal Planning Proposal.

Panel Reasons:

The Planning Proposal is supported as it:

- generally complies with the relevant Local Environment Plan making provisions under the Environmental Planning & Assessment Act 1979;
- generally complies with the Department of Planning, Industry and Environment's 'A Guide to Preparing Planning Proposals (August 2016);
- on balance, does not contradict the ability to achieve the objectives and actions of high-level planning strategies;
- the proposed height is consistent with that anticipated under the Civic Precinct Planning Study (CPPS);
- the location / placement of the towers is generally consistent with that anticipated under the CPPS;

- will provide higher density development near the new Victoria Cross Metro Station consistent with the Metropolitan and District Planning Strategies, delivering the best planning outcome for this precinct;
- the future building form will have an acceptable overshadowing impact on North Sydney Demonstration School;
- includes a stepped podium resulting in human-scale spaces along Pacific Highway and an appropriate interface and scale with the contributory building at No. 6-8 McLaren Street;
- the proposal will have an acceptable impact in relation to heritage and conservation in relation to the curtilage and relationship to the existing heritage item on the site at No. 265 Pacific Highway and its height relationship with the adjoining conservation area.

The amended Planning Proposal and Reference Design Scheme is considered to be consistent with the LSPS position of only supporting amendments to the NSLEP which are supported by an endorsed precinct wide based planning study.

Voting was as follows:

| Panel Member | Yes | No | Community Representative | Yes | No |
|----------------|-----|----|--------------------------|--------|----|
| Helen Lochhead | Y | | Jane van Hagen | Absent | |
| Jan Murrell | Y | | | | |
| John McInerney | Y | | | | |

ITEM 2

| | |
|------------------|---|
| PP No: | 6/20 |
| ADDRESS: | 45 McLaren Street, North Sydney |
| PROPOSAL: | <p>To amend North Sydney Local Environmental Plan 2013 as follows:</p> <ul style="list-style-type: none"> • Rezone the site from R4 High Density Residential to B4 Mixed Use; • Increase the maximum height of building limit from 12m to part RL 103 (36-43m) and Part RL 115 (approximately 47-51m); • Impose a maximum floor space ratio of 6.25:1; • Introduce a non-residential floor space ratio of 1:1; • Amend Clause 4.4A – Non-Residential floorspace ratios to permit residential development at ground level facing Walker Street; and • Amend Clause 6.12A – Residential flat buildings in Zone B4 Mixed Use to permit residential development at ground level facing Walker Street. |

| | |
|------------------------|---|
| | To ensure that the envisaged built form outcome is achieved, the Planning Proposal is accompanied by suite of suggested site-specific development controls to be incorporated within North Sydney Development Control Plan (NSDCP) 2013 and offer to enter a Voluntary Planning Agreement to deliver a number of public benefits. |
| REPORT BY NAME: | Ben Boyd, Executive Strategic Planner |
| APPLICANT: | 45 McLaren Pty Limited |

Public Submissions

3 Written Submissions were received prior to the public meeting.

| Submitter | Applicant/Representative |
|----------------------------------|---|
| Susan Fryda-Blackwell - Resident | Michael Grassi - Director, Podia -Developer and applicant |
| | Stephen White - Director, Urbis |
| | Sophie Purton Town Planner, Urbis |
| | Matthew Davis - Architect, Bates Smart |

The key issues raised in the public submissions included light and solar access, privacy and overlooking, height and bulk, vehicular access, retention of trees and consideration of cumulative impacts of all recent development.

Panel Recommendation:

The Panel members have undertaken independent site inspections prior to the meeting and the Panel has considered all written and oral submissions made on the Planning Proposal in making its recommendation to Council.

The Council Officer's Report is endorsed.

The Panel recommends support of:

- the Planning Proposal being forwarded to the Department of Planning, Industry and Environment seeking a request for a Gateway Determination; and
- site specific DCP provisions to help guide future detailed design and the development application process.

It is also recommended that:

1. the visual assessment report be amended to provide increased illustrative analysis of the view impacts from residential properties located to the west and fronting McLaren and Miller Streets, before being placed on public exhibition;
2. consideration be given to the provision of affordable housing given the development uplift; and

3. all vehicular access and servicing be provided from Walker Street and included in the DCP to be exhibited.

Panel Reasons:

The Planning Proposal is supported as it:

- generally complies with the relevant Local Environment Plan making provisions under the Environmental Planning & Assessment Act 1979;
- generally complies with DPIE's *A Local Environmental Plan Making Guideline* (December 2021);
- on balance, does not contradict the ability to achieve the objectives and actions of high level planning strategies;
- is generally consistent with and promotes the desired future outcomes of the Ward Street Precinct Masterplan; and
- the scale and bulk of any future development on the site is unlikely to result in any significant adverse impacts on the environment or wider community, or could be appropriately mitigated as part of the implementation of appropriate standards within NSDCP 2013 and the development application process; and
- will contribute to the delivery of several public benefits in the immediate locality of the site.

The Panel noted that the planning proposal has minimised the overshadowing and solar impacts of a future development of the site, by containing it within the overshadowing from the already approved development at 168 Walker Street, North Sydney in line with the proposed amendments to the site specific DCP.

Voting was as follows:

| Panel Member | Yes | No | Community Representative | Yes | No |
|----------------|-----|----|--------------------------|-----|----|
| Helen Lochhead | Y | | Jane van Hagen | Y | |
| Jan Murrell | Y | | | | |
| John McInerney | Y | | | | |

The public meeting concluded at 1.02 pm.

The Panel Determination session commenced at 1.10 pm.

The Panel Determination session concluded at 2.20 pm.

Endorsed by Helen Lochhead
North Sydney Local Planning Panel
23 February 2022