

## **8.8. Planning Proposal - 173-179 Walker Street and 11-17 Hampden Street North Sydney**

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**ENDORSED BY:** Joseph Hill, Director City Strategy

### **ATTACHMENTS:**

1. 173-179 Walker and 11-17 Hampden Street North Sydney - Gateway Determination [8.8.1 - 3 pages]

### **PURPOSE:**

To seek Council's endorsement for a submission to planning proposal (Ref No's PP3/19, PP\_2020\_NORTH\_004) at 173-179 Walker Street and 11-17 Hampden Street North Sydney, the public exhibition of which, was conducted by the NSW Government's Planning Panel's Secretariat.

### **EXECUTIVE SUMMARY:**

This report is presented to Council to seek endorsement of a submission to a planning proposal that was previously not supported by Council. The progression of the Planning Proposal is contrary to Council's Local Strategic Planning Statement and Civic Precinct Planning Study. An objection in this regard is recommended.

Following the lodgement of a Rezoning review by the applicant and consideration by the Sydney North Regional Planning Panel, a Gateway Determination was issued. The public exhibition of the planning proposal is being administered by the Planning Panels Secretariat in a manner that has made it difficult for the community to interpret and understand. This is recommended to be outlined in Council's submission.

### **FINANCIAL IMPLICATIONS:**

This report and recommendation do not give rise to any direct financial implications.

### **RECOMMENDATION:**

**1. THAT** Council make a submission to the planning proposal for 173-179 Walker Street and 11-17 Hampden Street outlining the following matters, which are elaborated on in this report:

- a) The progression of the planning proposal is contrary to the Objectives and Actions contained within North Sydney Council's finalised Local Strategic Planning Statement;

- b) The planning proposal is inconsistent with elements of Council's Civic Precinct Planning Study;
- c) The basis of satisfaction and compliance with the conditions of the Gateway Determination are unclear, further inhibiting public engagement and confidence in the process;
- d) The form of the public exhibition of the planning proposal has not assisted the wider community fully engaging with the process given the volume and manner in which exhibition material has been presented;
- e) The planning proposal may give rise to excessive and unreasonable view loss impacts on surrounding properties.

**2. THAT** Council write to the Greater Sydney Commission's District Commissioner expressing its concern at the undermining of best practice local strategic planning processes.

## **LINK TO COMMUNITY STRATEGIC PLAN**

The relationship with the Community Strategic Plan is as follows:

1. Our Living Environment
  - 1.3 Quality urban greenspaces
  - 1.4 Public open space and recreation facilities and services meet community needs
2. Our Built Infrastructure
  - 2.1 Infrastructure and assets meet community needs
  - 2.2 Vibrant centres, public domain, villages and streetscapes
  - 2.4 Improved traffic and parking management
3. Our Future Planning
  - 3.1 Prosperous and vibrant economy
  - 3.4 North Sydney is distinctive with a sense of place and quality design
4. Our Social Vitality
  - 4.4 North Sydney's history is preserved and recognised
5. Our Civic Leadership
  - 5.1 Council leads the strategic direction of North Sydney
  - 5.2 Council is well governed and customer focused

## **BACKGROUND**

On 22 March 2019, Council received a Planning Proposal to amend North Sydney Local Environmental Plan 2013 (NSLEP 2013) as it relates to land located at 173-179 Walker Street and 11-17 Hampden Street, North Sydney. The Planning Proposal seeks the following amendments to NSLEP 2013:

- Increase the maximum building height from 12m to RL133 (representing approximately 62-72m of additional height)
- Establish a minimum floor space ratio of 6.1:1
- Introduce a new special provision to establish controls for the site relating to overshadowing, community infrastructure and allowance for maximum height (RL 148) and FSR (6.9:1) associated with amalgamation of all lots within the site.

Council refused the Planning Proposal at its meeting on 26 August 2019. In response, the applicant lodged a request with the Department of Planning, Infrastructure and Environment (DPIE) on 2 September 2019 for a Rezoning Review.

On 12 February 2020, the Rezoning Review request was formally considered by the Sydney North Regional Planning Panel (SNRPP), which handed down its recommendation on 20 February 2020. The SNRPP recommended that the planning proposal should progress to Gateway Determination, subject to conditions.

In its correspondence of 20 February 2020, the SNRPP also sought Council's advice with regard to accepting the role of Planning Proposal Authority (PPA). The PPA is responsible for progressing planning proposals through the plan making process, including ensuring the planning proposal is consistent with the gateway determination, the public exhibition process, consideration of submissions and the making of an amendment to Council's local environmental plan to give effect to the planning proposal.

On 6 April 2020, Council considered a report and resolved not to accept the role of PPA. The reason for this was that, at the time, Council had undertaken significant strategic work in the precinct but did not have a resolved position with respect to the strategic direction for its future development. The acceptance of the PPA role may have represented conflicting positions and been difficult to reconcile with a reasonable degree of impartiality.

On 6 July 2020, the (delegate for) Minister for Planning and Public Spaces, determined that the planning proposal should conditionally proceed and issued a Gateway Determination (Attachment 1). Condition No. 8 of this document included a requirement that prior to the completion of the LEP the planning proposal authority is to consider any outcomes of the North Sydney Council's draft or final Civic Precinct Planning Study.

The site is located within the area subject to the Civic Precinct Planning Study. On 26 October 2020, Council considered the outcomes of the exhibition of the Civic Precinct Planning Study and resolved to adopt the study, subject to several amendments, none of which were of relevance to the site the subject of this report. This resolution is currently the subject of a rescission motion which will be considered at the Council's meeting of 30 November 2020.

On 29 October 2020, the NSW Government (DPIE) placed a notice in the Mosman Daily advising of the public exhibition of the planning proposal for this site. A letter was also sent to surrounding property owners and occupiers. The exhibition ran from 29 October to 26 November 2020. Hard copies of the exhibition material were provided for display at Council's administration building and the Stanton library. Documentation was also provided on the DPIE's LEP tracking portal. Written submissions were invited to the public exhibition and for these to be directed to the Planning Panels Secretariat.

Due to the exhibition closure date occurring prior to the Council meeting date (30 November 2020), an interim submission has been lodged as a 'draft'. Subject to Council's resolution on this matter, an endorsed version will be provided after the exhibition closure date.

## CONSULTATION REQUIREMENTS

Community engagement is not required by Council. The public exhibition is being undertaken by the Planning Panel's Secretariat. It is noted that some submissions and enquiries may be directed (or copied to Council). Any submissions received by Council will be forwarded to the Planning Panel's Secretariat to ensure they are considered before a final decision is made.

## DETAIL

The following section outlines the key concerns arising from the public exhibition of the planning proposal. Due to the timeframes permitted, an exhaustive assessment of all documentation on exhibition has not been able to be undertaken. Many of the issues arising however have been raised previously in Council officers detailed assessment report. This is available at:

[https://www.northsydney.nsw.gov.au/Council\\_Meetings/Meetings/Council\\_Meetings/Council\\_Reports\\_26\\_Aug\\_2019](https://www.northsydney.nsw.gov.au/Council_Meetings/Meetings/Council_Meetings/Council_Reports_26_Aug_2019) (refer item CiS04).

### 1. Consistency with Local Strategic Planning Statement

The preparation of a Local Strategic Planning Statement (LSPS) is a relatively new requirement of the Environmental Planning and Assessment Act. The LSPS forms the basis for strategic planning in an area and is intended to create a clear line-of-sight between the identified priorities and actions at the regional level and what this means at the local area level.

North Sydney Council's LSPS was prepared and exhibited through 2019. Following exhibition, the North Sydney LSPS was endorsed by Council in November 2019 and a letter of assurance issued by the Greater Sydney Commission (GSC) in early 2020. This gives statutory weight to the LSPS in consideration of any planning proposal.

The GSC's North District Plan's Planning priority N5 states:

*Providing housing supply, choice and affordability with access to jobs, services and public transport.*

In response to this Planning priority, the North Sydney LSPS includes action (L1.5) which reads:

*L1.5 – Council will only support Planning Proposals that are consistent with Council's endorsed planning studies, that have identified growth being delivered in locations that support the role of centres and have critical infrastructure and services in place to support the North Sydney community*

Whilst the site is located in an accessible and well serviced location, the proposal is not consistent with important elements of Council's planning study that includes this site.

This is discussed in more detail below, however, in principle, the progression of this planning proposal represents a direct undermining of the North Sydney LSPS and the statutory framework within which strategic planning operates. For this reason, a specific recommendation is included to also write to the GSC’s District Commissioner, to express this concern.

## 2. Consistency with Council’s endorsed Civic Precinct Planning Study

In early 2019, Council commenced the initial community consultation for the Civic Precinct Planning Study. This piece of work was instigated to respond to the new (northern) Metro portal, located on the corner of McLaren and Miller Streets, and the increased level of development pressure in this precinct. To help manage growth pressures, North Sydney Council has an established record of leading robust and comprehensive planning studies, underpinned by community consultation. These studies have also included identified public benefits to supplement the anticipated levels of growth. This has served Council well as individual sites are then best positioned to respond to Council’s study, with clear expectations, rather than Council dealing reactively to site specific and *ad hoc* proposals.

The Civic Precinct Planning Study included provisions relevant to this site including an identified maximum height limit of 20 storeys for a portion of the site. The proposal seeks to facilitate development of the site at up to 29 storeys in height which represents an almost 50% exceedance of Council’s study. This is contrary to the height transition principle in the Civic Precinct Planning Study. Below are extracts from the applicant’s revised design concept showing the potential arrangement of the building height and massing on the site and the potential site layout and arrangement.



**Figure 1. Extract from applicants Urban Design report (prepared by SJB – Sept 2020) - consolidated site redevelopment (amalgamated site).**



**Figure 2. Extract from applicants Urban Design report (prepared by SJB – Sept 2020) – consolidated site redevelopment (amalgamated site).**

In responding to Gateway Condition No 1 (e), the applicant has addressed the Civic Precinct Planning Study by revising elements of the design concept. Elements of these amendments are noted as improvements, for example the provision of a physical break and separation between the buildings fronting Walker Street and the amended podium height and relationship to Walker and Hampden Streets. However, other key fundamental elements of the study, such as the preferred land use (commercial floorspace) remain unchanged and are at odds with Council’s preferred strategic direction.

The extracts above (Figures 2 and 3) are contingent on the applicant achieving an amalgamation with 11-17 Hampden Street. It is understood that there is currently a commercial agreement in place for the site to be developed as one amalgamated site, however, the planning proposal as currently on exhibition does not require or mandate this occur. Provided as an appendix to the Urban Design Report is what is described as ‘alternative reference design’. The built form outcome arising from the development of 173-179 Walker Street only, would be even further divergent from Council’s endorsed Civic Precinct Planning Study. An extract of this potential built form is provided below. This would include two separate towers across the site (ie one on 173-179 Walker Street and one at 11-17 Hampden Street).



**Figure 3. Extract from applicants Urban Design report (prepared by SJB – Sept 2020) – two tower scheme.**

It is further noted that a number references have been made by both the Planning Panel and in the Department of Planning’s Gateway Determination Report, to the fact that the current applicants had sought to progress a planning proposal prior to the Civic Precinct Planning Study. The inference somehow being that there should be special consideration of this factor in decision making. A planning proposal represents an amendment to gazetted legislation. Any amendment to facilitate an uplift in development potential needs to be well founded in relevant policy and strategic direction and approached with due care and consideration including community engagement. The applicants’ length of ownership and commercial development ambitions should not weigh unduly (if at all) as a consideration on the relevant planning authorities’ decision-making, particularly if it is at the expense of or undermines good strategic planning processes. The inclusion of reference to what are extraneous factors, in the Department of Planning Gateway Determination report is concerning.

### **3. Satisfaction and Compliance with Gateway Determination Conditions**

When Council exhibits a planning proposal, it typically prepares a document outlining how the proponent has responded to and satisfied the applicable Gateway



Determination conditions. This allows the community to get a more complete understanding of how the proposal may have changed and the basis of decision making. A similar document **has not** been exhibited with the proposal.

It is understood that due to the Planning Panel undertaking the role of PPA, that upon receipt of information to address conditions, internal briefing notes were prepared (by Departmental staff) for the Panel's consideration. At the time of drafting of this report, access to this technical assessment was not available. The basis for satisfaction of the some of the Gateway Conditions remains unclear. This is of relevance in that the earlier Gateway Determination Report prepared by the Department made a number of references to key issues that required resolution (such as view sharing, consistency with Civic Precinct Planning Study, building bulk, design features, heritage impacts and the like). It is unclear how the revised scheme was deemed to have acceptably addressed these.

The revised reference schemes contained in the Urban Design Report are also not accompanied by detailed area schedules. This is important as this information should be provided to demonstrate that the planning controls being sought (height and floor space ratio) will facilitate an acceptable built form. It is uncertain as to whether the built form presented is an accurate reflection of what may be developed under the proposed controls.

It is also noted that Gateway Determination condition No. 1 required the Draft Site Specific Development Control plan to be updated. A document has been included in documentation available, however, as no reference is made to this planning control being the subject of public exhibition, it is not deemed to currently be the subject of exhibition. Council will have ultimate carriage of any DCP amendment and no detailed engagement has occurred in this regard. The Planning Panels secretariat has confirmed the current status as being for information purposes only. This is also of relevance in that the Gateway Determination Report makes multiple references and reliance upon the DCP being the appropriate tool to deal with desired design outcomes.

This does not provide a level of transparency in decision making process nor instil confidence in the planning assessment process.

#### **4. Public Exhibition Process**

The form of the public exhibition of the planning proposal has not assisted the wider community fully engaging with the process given the volume and manner in which exhibition material has been presented. More specifically, the display of documentation material on the Department's website includes the placement of 42 separate documents in an illogical and confusing sequence, duplication of documents, confusing title references, no logical grouping of document types and inclusion of superseded information with no explanation or contextual reference.

Further, the resident mailout letter and notice placed in the local newspaper included an incorrect description of the proposed planning controls. Specifically, a reference was made to further FSR bonuses being available (up to 6.9:1) where this provision was specifically excluded via the imposition of Gateway Determination condition No. 1a. The accurate description of the intended planning controls and affected land is an important procedural step in the public exhibition of a planning proposal.

This has served to further confuse the communities' ability to accurately interpret and understand the nature of the proposal. This is contrary to best practice guidelines and principles that Council seeks to employ when engaging with the community and a specific recommendation is included to also write to the GSC's District Commissioner, to express this concern.

## **5. View Impacts**

A key concern previously expressed among the residents of surrounding buildings has been the impact on views. The documentation currently on exhibition includes a View Impact Assessment. This document was prepared and submitted with the original planning proposal and does not appear to have been updated to respond to the revised schemes.

It is understood that the redevelopment of this area of the Civic Precinct Planning Study will result in a compromising of some views currently enjoyed from surrounding dwellings. The reference schemes currently on exhibition present two potentially significantly different outcomes in respect to view loss/impact.

If a single tower form is progressed (as indicated in Figure 1) then dwellings located along Walker Street will retain a greater extent of views towards the east. However, if a dual tower built form layout (as presented in Figure 3) is progressed, then a greater extent of view loss may occur due to the siting of a longer tower form along Walker Street. Conversely, different view impacts in some cases more beneficial to residents located further to the north, would result were a dual tower form to be progressed.

These matters would be the subject of further detailed analysis at the Development Application stage, however, the awarding of building height and FSR controls as part of this planning proposal requires a degree of clarity to enable the community to understand the potential impacts arising.

## **Conclusion**

The progression of this planning proposal runs contrary to Council's Local Strategic Planning Statement and Civic Precinct Planning Study. The planning proposal was previously not supported by Council.

The public exhibition of the planning proposal has been co-ordinated and run by the Planning Panels Secretariat in a manner that has made it difficult for the community to interpret and understand.

It is therefore recommended that Council register its objection to the proposal for the reasons detailed in this report.



## Gateway Determination

**Planning proposal (Department Ref: PP\_2020\_NORTH\_004\_00):** to facilitate a residential development by increasing development standards and establishing a new special provisions map and site specific clause pertaining to land at 173-179 Walker Street and 11-17 Hampden Street, North Sydney.

I, the Executive Director, Eastern Harbour City at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to *North Sydney Local Environmental Plan (LEP) 2013* to facilitate a residential development at 173-179 Walker Street and 11-17 Hampden Street, North Sydney should proceed subject to the following conditions:

1. Prior to public exhibition the planning proposal, Urban Design Report and Draft Site Specific Development Control Plan are to be updated to consider the Sydney North Planning Panel's recommendations to:
  - a. Demonstrate a new special provisions scheme which is compliant with the revised proposal considering the removal of the proposed bonus FSR provision;
  - b. Reconsider the podium based built form to better respond to the site's residential zoning and impacts on nearby heritage properties;
  - c. Include greater vertical building breaks with greater consideration of view impacts arising from the street level and properties located west of the site on Walker Street;
  - d. Better mirror the rhythm and bulk of adjacent heritage items located on the northern side of Hampden Street; and
  - e. Consider the design guidelines contained in North Sydney Council's draft Civic Precinct Planning Study.

The revised proposal and design reference schemes are not to result in any greater overshadowing impact, loss of further on street parking or reduce the net proposed provision of public open space. The revised proposal is to be submitted to the Department and approved prior to the commencement of public exhibition.

2. The planning proposal is to be updated to include a discussion outlining its consistency with both the North Sydney Local Strategic Planning Statement and North Sydney Local Housing Strategy. This to be submitted to and approved by the Department prior to the commencement of public exhibition.
3. Should it be determined that the proposed development requires a permit to conduct a controlled activity within the prescribed airspace under the *Airports Act 1996*, under section 9.1 Direction 3.5 Development Near Licensed Aerodromes, the planning proposal authority is to seek permission from the

relevant Commonwealth authority prior to the commencement of public exhibition.

4. Public exhibition is required under section 3.34(2)(c) and Schedule 1, clause 4 of the Act as follows:
  - (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
  - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018).
5. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:
  - Civil Aviation Safety Authority;
  - Sydney Airport Corporation;
  - Transport for NSW;
  - Transport for NSW (Roads and Maritime Branch);
  - Ausgrid;
  - Sydney Water;
  - NSW Department of Education; and
  - NSW Department of Health

Each public authority/organisation is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal.

6. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
7. The planning proposal authority is authorised as the local plan-making authority to exercise the functions under section 3.36(2) of the Act subject to the following:
  - (a) the planning proposal authority has satisfied all the conditions of the Gateway determination;
  - (b) the planning proposal is consistent with Section 9.1 Directions or the Secretary has agreed that any inconsistencies are justified; and
  - (c) there are no outstanding written objections from public authorities.

8. Prior to completing the LEP the planning proposal authority is to consider any outcomes of North Sydney Council's draft or final Civic Precinct Planning Study.
9. The time frame for completing the LEP is to be **12 months** following the date of the Gateway determination.

Dated                    6 July 2020.



**Malcolm McDonald**  
**Executive Director, Eastern Harbour City**  
**Greater Sydney, Place and Infrastructure**  
**Department of Planning, Industry and**  
**Environment**  
**Delegate of the Minister for Planning and**  
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