

8.8. Post Gazettal report - NSLEP 2013 Amendment No.31 (173-179 Walker Street and 11-17 Hampden Street North Sydney)

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ENDORSED BY: Joseph Hill, Director City Strategy

ATTACHMENTS:

1. Amendment No 31 - 173-179 Walker and 11-17 Hampden Streets North Sydney [8.8.1 - 3 pages]

PURPOSE:

The purpose of this report is to present to Council the details and implications of a recent amendment to North Sydney Local Environmental Plan 2013 (Amendment No.31) relating to land at 173-179 Walker Street and 11-17 Hampden Street, North Sydney.

EXECUTIVE SUMMARY:

On 22 March 2019, Council received a Planning Proposal to amend North Sydney Local Environmental Plan 2013 (NSLEP 2013) as it relates to 173-179 Walker Street and 11- 17 Hampden Street, North Sydney.

The Planning Proposal sought 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, and allowance for maximum height and FSR greater than the above 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 Rezoning Review with the Department of Planning, Infrastructure and Environment (DPIE) on 2 September 2019. On 12 February 2020, the Rezoning Review request was considered by the Sydney North Regional Planning Panel (SNRPP), which recommended that the Planning Proposal progress to Gateway Determination.

A Gateway Determination was issued on 6 July 2020 enabling the Planning Proposal to be exhibited subject to various conditions. Following the exhibition of the Planning Proposal, to which 139 objections were received, the SNRPP conducted a public hearing on 17 March 2021 and on 23 March 2021, issued a report recommending that the Planning Proposal proceed to be made.

On 30 July 2021, the DPIE advised Council that NSLEP 2013 (Amendment No.31) had been made under section 59(2) of the EP&A Act giving effect to the Planning Proposal. NSLEP 2013 (Amendment No.31), will come into force on 31 August 2021.

FINANCIAL IMPLICATIONS:

Nil.

RECOMMENDATION:

1. THAT Council receive and note the report.

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

2.3 Sustainable transport is encouraged

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

4.1 North Sydney is connected, inclusive, healthy and safe

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 (NSLEP) 2013 as it relates to 173-179 Walker Street and 11-17 Hampden Street, North Sydney. The Planning Proposal sought the following amendments to NSLEP 2013:

- Increase the maximum building height from 12m to RL133 (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 and FSR greater than the above associated with amalgamation of all lots within the site.

At its meeting on 26 August 2019, Council resolved to refuse the Planning Proposal. On 2 September 2019, the applicant lodged a Rezoning Review with the Department of Planning, Industry and Environment (DPIE), in response. At its meeting on 12 February 2020, the Sydney North Regional Planning Panel (SNRPP) recommended that the Planning Proposal proceed to Gateway Determination.

At its meeting of 6 April 2020, Council resolved that it would not be performing the role of the Planning Proposal Authority (PPA). A Gateway Determination was subsequently issued on

6 July 2020 by DPIE in the further processing of the Proposal. The SNRPP was appointed the PPA for this Proposal.

The Planning Proposal was publicly exhibited from 29 October to 26 November 2020. On 30 November 2020, Council considered a report on the public exhibition of the proposal and resolved to object to the proposal.

Following the exhibition of the Planning Proposal, to which 139 objections were received, the SNRPP conducted a public hearing on 17 March 2021 and on 23 March 2021. It subsequently issued a report recommending that the Planning Proposal proceed to be made. In light of this decision, Council has made written representations to the Minister for Planning, Infrastructure and Environment, Local members and the Greater Sydney Commission reiterating its strong concern over the proposal.

CONSULTATION REQUIREMENTS

Community engagement is not required.

DETAIL

1. Amendment

On 31 July 2021, the Executive Director, Eastern Harbour City of the DPIE, as the Minister for Planning's delegate, advised Council that NSLEP 2013 (Amendment No.31) had been made under section 59(2) of the EP&A Act giving effect to the Planning Proposal. In addition, it was advised that under section 34(5) of the EP&A Act, that the LEP would take effect when published on the NSW Legislation website.

NSLEP 2013 (Amendment No.31) gives effect to the Planning Proposal and will come into force on 31 August 2021. Specifically, it:

- Amends the Maximum Height of Buildings Map to allow a building up to apply a maximum RL's of 84, 89 and 133 to the site,
- Introduces a special local provision that, if site amalgamation occurs allows a height of up to 148 (approx. 30 storeys) on a part of the site,
- Amends the Maximum Floor Space Ratio Map to apply a maximum FSR of 6.1:1 to the site,
- Introduces a special local provision to protect solar access to an identified area of public open space (being Doris Fitton Park) between 12-2pm and
- Introduces a special local provision to prevent the application of Clause 4.6 (variations to development standards) from applying to the site.

A copy of the instrument is provided at Attachment 1.

2. Implications

The implications of this decision have outlined previously in Council's reports of 6 April 2020 and 30 November 2021. Notably they were:

- The progression of the Planning Proposal is contrary to the Objectives and Actions contained within North Sydney Council's finalised *Local Strategic Planning Statement*;
- The planning proposal is inconsistent with elements of Council's *Civic Precinct Planning Study*, in particular maximum height;
- The basis of satisfaction and compliance with the conditions of the Gateway Determination are unclear, further inhibiting public engagement and confidence in the 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;
- The planning proposal may give rise to excessive and unreasonable view loss impacts on surrounding properties.

3. Development Control Plan and Voluntary Planning Agreement

On 24 May 2021, Council resolved to support a draft Development Control Plan (DCP) amendment for the site and to place the Draft DCP on public exhibition for public comment. The draft DCP contains design parameters which are intended to assist in the design and development assessment process of a future development application, as envisaged under the higher-order planning controls applying to the site in the LEP.

It is acknowledged that the future adoption of DCP provisions will not address Council and the community's previously expressed key concerns. However, in the circumstances, the inclusion of these provisions may help guide a better built form outcome than may otherwise occur in their absence. The draft DCP was publicly exhibited (26 July – 23 August 2021), concurrently with a draft Voluntary Planning Agreement. The outcome of the public exhibition will be the subject of a future report to Council.

4. Conclusion

On 30 July 2021, Council was advised by DPIE that NSLEP 2013 (Amendment No.31) has been made under section 59(2) of the EP&A Act giving effect to the Planning Proposal. NSLEP 2013 (Amendment No.31) will come into force on 31 August 2021 following its publication on the NSW legislation website.



New South Wales

North Sydney Local Environmental Plan 2013 (Amendment No 31)

under the

Environmental Planning and Assessment Act 1979

The following local environmental plan is made by the local plan-making authority under the *Environmental Planning and Assessment Act 1979*.

M. McDonald 28 July 2021
Malcolm McDonald
Executive Director, Eastern Harbour City
Department of Planning, Industry & Environment
As Delegate of the Minister for Planning and Public Spaces

North Sydney Local Environmental Plan 2013 (Amendment No 31) [NSW]

North Sydney Local Environmental Plan 2013 (Amendment No 31)

under the

Environmental Planning and Assessment Act 1979

1 Name of Plan

This Plan is *North Sydney Local Environmental Plan 2013 (Amendment No 31)*.

2 Commencement

This Plan commences on 31 August 2021 and is required to be published on the NSW legislation website.

3 Land to which Plan applies

This Plan applies to the following land in North Sydney, identified as “Area 1” on the Special Provisions Area Map under *North Sydney Local Environmental Plan 2013*—

- (a) SP 11082, SP 86752, SP 9808 and SP 64615, 173, 175, 177 and 179 Walker Street,
- (b) Lot 1, DP 119732, 11 Hampden Street,
- (c) Lots 1 and 2, DP 591516, 15 and 17 Hampden Street.

4 Maps

The maps adopted by *North Sydney Local Environmental Plan 2013* are amended or replaced, as the case requires, by the maps approved by the local plan-making authority on the making of this Plan.

Schedule 1 Amendment of North Sydney Local Environmental Plan 2013

[1] Clause 4.6 Exceptions to development standards

Insert after clause 4.6(8)(c)—

- (ca) clause 4.3 in relation to land identified as “Area 1” on the Special Provisions Area Map, other than subject land within the meaning of clause 6.19C,
- (cab) clause 4.4, 5.6 or 6.19C in relation to land identified as “Area 1” on the Special Provisions Area Map,

[2] Clause 6.19C

Insert after clause 6.19B—

6.19C Development at Hampden and Walker Streets, North Sydney

- (1) This clause applies to Area 1 land.
- (2) Despite clause 4.3, development consent may be granted to development involving the erection of a building on the subject land with a height not greater than RL 148 metres, if the consent authority is satisfied that—
 - (a) all Area 1 land will be consolidated into a single lot, and
 - (b) any building on Area 1 land will not result in a net increase in overshadowing of Doris Fitton Park between 12pm and 2pm from the March equinox to the September equinox, inclusive.
- (3) In this clause—
 - Area 1 land** means the land identified as “Area 1” on the Special Provisions Area Map.
 - Doris Fitton Park** means the land known as Doris Fitton Park and identified as a “Special Area” on the North Sydney Centre Map.
 - subject land** means the following land within Area 1 land—
 - (a) SP 64615, 179 Walker Street,
 - (b) Lot 1, DP 119732, 11 Hampden Street.

[3] Dictionary

Insert in alphabetical order—

Special Provisions Area Map means the North Sydney Local Environmental Plan 2013 Special Provisions Area Map.