

## 8.9. PP2/22 – 12-14 Waters Road, Neutral Bay

**AUTHOR:** Neal McCarry, Team Leader - Policy

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

**ATTACHMENTS:** Nil

### **PURPOSE:**

To present to Council the assessment report of Planning Proposal No.2/22 for Nos. 12-14 Waters Road, Neutral Bay which seeks to amend the North Sydney Local Environmental Plan 2013, following its review by the North Sydney Local Planning Panel. A Voluntary Planning Agreement offer is also presented as part of this report.

### **EXECUTIVE SUMMARY:**

On 29 December 2021, Council received a Planning Proposal to amend North Sydney Local Environmental Plan 2013 (NSLEP 2013) as it relates to land located at 12-14 Waters Road, Neutral Bay. The Planning Proposal seeks to amend NSLEP as follows:

- Increase the maximum height control for the site from 16m to 26m;
- Introduce a minimum 1.2:1 Non-residential Floor Space Ratio Standard.

The indicative concept scheme accompanying the Planning Proposal includes a 6-storey mixed use building, comprising approximately 7,312m<sup>2</sup> Gross Floor Area, and basement car parking over four basement levels.

The Planning Proposal is accompanied by a draft Voluntary Planning Agreement offer which proposes to provide:

- A 1.5m wide building setback from Waters Lane with an easement for public access;
- Embellishment of the public domain within the Neutral Bay Town Centre to a value of \$1,925,000.00 (excl. GST) which would include the full length of Waters Lane and either a portion of Grosvenor Street or Grosvenor Plaza (to the agreement of Council).

The Planning Proposal is also accompanied by a draft site-specific Development Control Plan which proposes to introduce built form controls to help guide the assessment of any future development application on the site.

On 13 April 2022, the North Sydney Local Planning Panel (NSLPP) considered a report on this planning proposal and recommended that the Planning Proposal lacks strategic merit and must be considered in the context of a new study for Neutral Bay, and an *ad hoc* rezoning is therefore not supported.

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 Action L1.5 of the *North Sydney Local Strategic Planning Statement*. In particular, it seeks to progress a planning proposal that is not endorsed by any planning study. This would result in the ad hoc redevelopment of the area and potentially give rise to poor and unplanned outcomes for the Neutral Bay community.
- The proposal does not demonstrate site specific merit due to the following:
  - the height being sought by the proposal is excessive given its stated objectives of achieving a single additional storey; and
  - the proposed underground portion of commercial floor space is of sub-standard amenity.

### **FINANCIAL IMPLICATIONS:**

Should the Planning Proposal be supported, the costs associated with the administration and any exhibition of the Planning Proposal and DCP will be drawn from existing budget lines which anticipate this type of activity. The Planning Proposal is accompanied by a draft Voluntary Planning Agreement (VPA) offer which proposes to provide:

- A 1.5m wide building setback from Waters Lane with an easement for public access;
- Embellishment of the public domain within the Neutral Bay Town Centre to a value of \$1,925,000.00 (excl. GST) which would include the full length of Waters Lane and either a portion of Grosvenor Street or Grosvenor Plaza (to the agreement of Council).

### **RECOMMENDATION:**

**1. THAT** Council resolves to not support the Planning Proposal proceeding to Gateway Determination, for the following reasons:

- The proposal does not demonstrate strategic merit as it challenges the implementation of Action L1.5 of the *North Sydney Local Strategic Planning Statement* (LSPS). In particular, it seeks to progress a planning proposal that is not endorsed by any planning study. This would result in the ad hoc redevelopment of the area and potentially give rise to poor and unplanned outcomes for the Neutral Bay community.
- The proposal does not demonstrate site specific merit due to the following:
  - the height being sought by the proposal is excessive given its stated objectives of achieving a single additional storey; and
  - the proposed underground portion of commercial floor space is of sub-standard amenity.

**2. THAT** Council notifies the applicant of Council’s determination in accordance with Section 9 of the Environmental Planning and Assessment Regulation 2021.

### **LINK TO COMMUNITY STRATEGIC PLAN**

The relationship with the Community Strategic Plan is as follows:

## 1. Our Living Environment

### 1.4 Public open space and recreation facilities and services meet community needs

## 2. Our Built Infrastructure

### 2.2 Vibrant centres, public domain, villages and streetscapes

## 5. Our Civic Leadership

### 5.1 Council leads the strategic direction of North Sydney

## BACKGROUND

A detailed history to the background of the Planning Proposal is contained in Council's Assessment Report which was considered by the North Sydney Local Planning Panel (NSLPP) on 13 April 2022, a copy of which can be viewed at:

[https://www.northsydney.nsw.gov.au/files/assets/public/docs/1\\_council\\_meetings/committees/nslpp/13\\_april\\_2022/pp03\\_12-14\\_waters\\_road\\_neutral\\_bay\\_-\\_pp222\\_rpt.pdf](https://www.northsydney.nsw.gov.au/files/assets/public/docs/1_council_meetings/committees/nslpp/13_april_2022/pp03_12-14_waters_road_neutral_bay_-_pp222_rpt.pdf)

### ***Military Road Corridor Planning Study Stage 1 – Future Directions Report (MRCPS)***

On 22 February 2021, Council adopted the Stage 1 post-exhibition report of the Military Road Corridor Planning Study – Stage 1 Future Directions Report (MRCPS).

The report was the product of three community consultation periods. An initial community survey was run in mid-2018. The aim of the Report was to provide a framework to guide ongoing discussion with local landowners about the future development of the Centre. Its intent was to manage jobs and housing growth, while maintaining the village atmosphere of the Neutral Bay Town Centre whilst leveraging public domain and facilities embellishments and improvements to achieve these outcomes.

The most specific direction of the Study relating to the subject site, was the identification of a height uplift of 1 storey (from five to six stories) and a corresponding increase in the non-residential floor space requirements. The rationale for this was to ensure commercial floor space was provided in the centre to arrest the decline of such floor space as new, mainly residential development occurred under the current planning rules. It was intended that more detailed provisions would be outlined in a future amendment to the North Sydney Development Control Plan (NSDCP) 2013. Such draft amendments, however, were subsequently rejected by Council at its meeting on 23 August 2021.

At its extraordinary meeting on 24 January 2022, Council resolved to rescind this study:

- 1. THAT** Council notes the submissions received and the issues raised during the exhibition.
- 2. THAT** Council notes the strong community feedback on the height and scale of the existing report received during the recent election.
- 3. THAT** Council does not adopt the Future Directions Report (dated 22 February 2021), as amended, as the strategic development framework for the Neutral Bay town centre.
- 4. THAT** That Council conduct a briefing on the rescission of the Future Directions Report prior to proceeding to Point 5 below.

**5. THAT Council adds to its program and budget, the creation of an updated strategic development framework for the Military Road Corridor including Neutral Bay centre by engaging with the community and stakeholders to prepare a revised recommendation that has a better balance between development height and the provision of additional public open space.**

Whilst the Planning Proposal at hand has been prepared in response to the MRCPS, given the study has been formally rescinded, it is no longer a consideration in the assessment of this proposal. This is a fundamental consideration and is discussed in further detail in the NSLPP Assessment Report. Notwithstanding this, the proposal has been assessed against other existing strategic documentation relevant to the site.

#### ***Development Applications at the Site***

A number of development applications have been approved at the site within the last two years.

##### DA 104/20

On 7 October 2020, the North Sydney Local Planning Panel granted development consent for a five storey shop top housing (mixed use) development at No.12 Waters Road only.

##### DA 92/21

On 27 October 2021, the Sydney North Planning Panel granted a deferred commencement consent for a five (5) storey shop top housing (mixed use) development with 36 apartments on the upper levels, with substantial commercial/retail tenancies on the ground and lower ground levels and basement parking for 100 cars at Nos. 12-14 Waters Road, Neutral Bay. Consent was issued on 22 December 2021.

#### ***Ministerial Order***

On 26 November 2021, the Minister for Planning and Public Spaces made the Environmental Planning and Assessment (Statement of Expectations) Order 2021. The Order establishes various expectations in relation to Council's development assessment, planning proposal and strategic planning roles and expected levels of performance. In particular, the Minister confirms his expectations that Councils should:

*...make a decision as to whether to support or not a proponent led planning proposal as soon as practical and no longer than 90 days.*

The Order includes an explanatory note which states:

*...If a Council is found not to be meeting these expectations, the Minister can take these matters into consideration as part of determining if it is appropriate to appoint a planning administrator or regional panel to exercise Council's functions.*

In the context of this Order, Council staff have sought to finalise its assessment and reporting of the proposal with minimal delay.

## CONSULTATION REQUIREMENTS

Community engagement will be undertaken in accordance with Council’s Community Engagement Protocol.

### DETAIL

#### 1. Planning Proposal

##### 1.1 Applicant

The applicant for the proposal is CE Waters Road Pty. Ltd.

##### 1.2 Site Description

The subject site comprises two parcels of land located at 12 and 14 Waters Road, Neutral Bay. It is legally described as SP 68360 and Lot 18 in DP 53700.

The site is generally rectangular in shape covering an area of 1627sqm, with a 31m frontage to Waters Road, a 31m boundary to Waters Lane and 55m frontage to Grosvenor Street.

The land generally falls in a north-westerly direction from its south-eastern corner down to the north-western corner of the site.



**FIGURE 1: Subject Site**



**FIGURE 2: Aerial Photo**

The southern allotment (12 Waters Road) currently accommodates a four-storey commercial building. The northern allotment (14 Waters Road) currently accommodates a three-storey commercial building. Vehicular access to the existing buildings is provided from Waters Lane.

### 1.3 Proposed Instrument Amendment

The Planning proposal seeks to;

- amend the Height of Buildings Map to NSLEP 2013 such that a maximum building height for 12-14 Waters Road, Neutral Bay, is increased from **16m to 26m**; and
- amend the Non-residential Floor Space Ratio Map to NSLEP 2013 such that a minimum Non-residential Floor Space Ratio Map of **1.2:1** applies to 12-14 Waters Road, Neutral Bay.

### 1.4 Assessment

By Ministerial direction, all planning proposals are required to be referred to the Local Planning Panel. A detailed assessment of the proposal is provided within the Assessment Report considered by the NSLPP on 13 April 2022, a copy of which is available at; [https://www.northsydney.nsw.gov.au/files/assets/public/docs/1\\_council\\_meetings/committees/nslpp/13\\_april\\_2022/pp03\\_12-14\\_waters\\_road\\_neutral\\_bay\\_-\\_pp222\\_rpt.pdf](https://www.northsydney.nsw.gov.au/files/assets/public/docs/1_council_meetings/committees/nslpp/13_april_2022/pp03_12-14_waters_road_neutral_bay_-_pp222_rpt.pdf)

The assessment report concluded that the Planning Proposal should not be supported.

### 1.5 Local Planning Panel

The NSLPP considered the proposal at its meeting on 13 April 2022, where it recommended that *the Council Officer's Report is endorsed by the Panel and for the reasons articulated in the report, the Panel recommends to the Council that this planning proposal not proceed to Gateway. The Panel considers the proposal lacks strategic merit and must be considered in the context of a new study for Neutral Bay, and an ad hoc rezoning is not supported.*

A copy of the NSLPP recommendation can be found at;

[https://www.northsydney.nsw.gov.au/Council\\_Meetings/Meetings/NSLPP/2022/13\\_April\\_2022](https://www.northsydney.nsw.gov.au/Council_Meetings/Meetings/NSLPP/2022/13_April_2022)

## KEY ISSUES

### 1.6 Strategic Merit

The North Sydney Local Strategic Planning Statement (LSPS) was adopted by Council on 25 November 2019, and subsequently assured by the Greater Sydney Commission (GSC) on 20 March 2020. One of the key roles of the LSPS is to draw together, in one document, the priorities and actions for future land use planning, and present an overall land use vision for the North Sydney LGA for the next 20 years. The LSPS must be considered as part of the LEP making process (planning proposals) and forms part of the strategic merit test for a Gateway Determination.

The proposal is in conflict with Action L1.5 of the LSPS. The action states;

*“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.”*

The Military Road Corridor Planning Study was endorsed by Council at its meeting in February 2021 which provided a sound basis for Planning Proposals to be considered within its context and hence manage change. However, Council formally rescinded the Study at its meeting on 24 January 2022. Council therefore does not have an endorsed planning study, as required by the LSPS, to facilitate changes to planning controls within this precinct.

This LSPS action was put in place to ensure that any proposed increase to development intensity on a site was sufficiently aligned to the broader strategic vision of the area, which takes into consideration the cumulative impacts of such development and ensures that appropriate infrastructure is in place to support any increase to development intensity in an area. This is in line with community expectations and represents good planning practice.

North Sydney Council has a strong and consistent practice of guiding and managing growth on the basis of comprehensive planning studies that are the subject of community consultation and technical analysis. This approach has served Council well for many years and it sends a strong message to the development industry that growth is responsibly managed by Council and speculative *ad hoc* planning proposals are not supported without an endorsed framework that foreshadows and guides changes to the prevailing planning controls. It also helps manage community expectations and achieve a level of community engagement in the change process. Action L1.5 of the North Sydney LSPS reinforces this strong commitment to strategic planning as the best way of managing growth and change.

Whilst the Planning Proposal seeks to provide worthwhile community benefits in the form of public domain improvements in the locality, such offers cannot be allowed to fundamentally influence the Council's regulatory responsibilities.

It should be noted that the MRCPS established expectations amongst many stakeholders and Council's subsequent rescission of the Study cannot be put aside on an *ad hoc* basis. Other Planning Proposals in the precinct have been and will continue to be lodged and Council's response to the current proposal will serve as a strong guide to other applicants in the precinct.

The strong guidance provided by Council's Study on the scale, height, intensity and impacts of development that may assist in delivering public benefits, is of prime importance. The plan that was previously endorsed but now formally rescinded, tried to strike a balance of both these key drivers, incorporating a range of planning considerations. This is where publicly ventilated and endorsed Council planning studies and strategies are so critically important to ensure certainty for all parties, both in terms of public benefit, but also in built form outcomes and performance.

In the absence of an endorsed planning study and in consideration of the yet to be determined timeframe for the creation of a new strategy, it would be inappropriate to progress the proposal and subsequently contribute to the *ad hoc* redevelopment of the area.

As such, it is considered that the proposal to amend the NSLEP 2013 is inconsistent with the NSLSPS and should be refused on this basis.

## **1.7 Site-specific Merit**

### **1.7.1 Maximum Building Height**

The proposal seeks to facilitate the development of a 6-storey building, with the intention of implementing a 26m height limit to facilitate this.

It is considered that an overall height of 26m for a 6 storey building is overly generous. It is noted that Council's current height limit of 16 metres has facilitated the development of 5 storey development throughout the Military Road Corridor. Even though the additional floor level of commercial or retail floor space will be required to be more generously proportioned than a residential level, the Planning Proposal's request to accommodate a change of height from 16 metres to 26 metres is incongruous with the additional height required for a single level of additional floor space. Height is clearly sensitive in this corridor and this proposal is excessive for its intended 6 storey outcome and is therefore rejected.

### **1.7.2 Building Depth**

At Waters Lane and Waters Road frontages, the proposed building at 12-14 Waters Road has party walls joining adjacent 8 Waters Road. At the centre of the site, the north-south orientation of units has approximately 21m building depth. As one of the design criteria from the Apartment Design Guide (ADG), the overall depth of a cross-over or cross-through apartment should not exceed 18m. The proposed cross-ventilated unit depth does not comply with the ADG requirement. This has impacts on the solar access, ventilation and visual privacy of future occupants at the site.

Whilst this can be dealt with at the development application stage of such a proposal, it is prudent to raise this matter early in the process. Should the proposal progress, it is recommended that to comply with ADG cross ventilation requirements, the cross-over unit depth should reduce to a maximum of 18m which would increase building separation to 9m. This would improve visual privacy, natural ventilation, and solar access to the units.

### **1.7.3 Non-residential FSR**

According to the Concept Architectural Drawings, 2,046m<sup>2</sup> non-residential GFA is provided on site which equates to a 1.26:1 non-residential FSR. It is noted that 1,140m<sup>2</sup> non-residential GFA is located at the Basement Level.

In consideration of the internal amenity of the building's future occupants, below ground areas are less acceptable for many uses and are typically provided as basement and storage areas due to lack of natural light and ventilation.

The intent of the increased Non-residential Floor Space Area in Neutral Bay is to support the accommodation of local businesses in commercial suites above ground. There is concern that approval of a below ground commercial area would result in an area of sub-standard quality and amenity and would be inconsistent with the general aims of the LSPS and NSDCP 2013. Furthermore, it is considered that such an area would create a precedent for future proposals to seek to provide employment generating floorspace below ground.

## **2 SUBMISSIONS**



There are no statutory requirements to publicly exhibit a planning proposal before the issuance of a Gateway Determination.

However, Council sometimes receives submissions in response to planning proposals which have been lodged but not determined for the purposes of seeking a Gateway Determination. The generation of submissions at this stage of the planning process, arise from the community becoming aware of their lodgement through Council's application tracking webpage. These submissions are normally considered as part of Council's assessment report for a planning proposal, to illustrate the level of public interest in the matter before Council makes its determination.

At the time of reporting, one submission had been received. It raised the following concerns:

- *Its principal argument is the Military Road Corridor Planning Study which has been rescinded by Council.*
- *There has already been a substantial breach of the Height Limit incorporated in the approved development, DA 92/21.*
- *The proposed Height Limit is out of character with its environs and is excessive.*
- *A significant proportion of the non – residential space is proposed to be underground.*
- *There is inadequate public benefit being offered in the Voluntary Planning Agreement.*
- *Approval of this Planning Proposal would set an undesirable precedent.*

These concerns have been addressed in the detailed assessment report.

## **CONCLUSION**

The Planning Proposal seeks to amend North Sydney Local Environmental Plan 2013 at 12-14 Waters Road, Neutral Bay to increase the maximum height control for the site from 16m to 26m and introduce a minimum 1.2:1 Non-residential Floor Space Ratio to the site.

The Planning Proposal is not supported for the following reasons:

- The proposal does not demonstrate strategic merit as it challenges the implementation of Action L1.5 of the *North Sydney Local Strategic Planning Statement* (LSPS). In particular, it seeks to progress a planning proposal that is not endorsed by any planning study. This would result in the ad hoc redevelopment of the area and potentially give rise to poor and unplanned outcomes for the Neutral Bay community.
- The proposal does not demonstrate site specific merit due to the following:
  - the height being sought by the proposal is excessive; and
  - the proposed underground portion of commercial area is of sub-standard amenity.