

DECISION OF 3652nd COUNCIL MEETING HELD ON 18 AUGUST 2014

Councillor Marchandau declared an interest in PDS02 and PDS03 and left the meeting at 8.15pm.

322. PDS02: Planning Proposal - 18 Berry Street and 144-154 Pacific Highway, North Sydney - Relevant Planning Authority Question

Report of Ben Boyd, Executive Strategic Planner

On 18 November 2013, Council considered an assessment report for a Planning Proposal seeking to amend North Sydney Local Environmental Plan 2013 in relation to land at 18 Berry Street and 144-154 Pacific Highway, North Sydney. Council subsequently resolved not to support the Planning Proposal proceeding to Gateway Determination.

On 17 January 2014, Council received a letter from the Department of Planning and Environment (DPE) advising that the proponent has lodged a request a pre-Gateway Review in response to Council's resolution of the Planning Proposal. At the completion of its review and with advice from the Planning Assessment Commission, the DPE now recommends that the Planning Proposal proceeds to Gateway Determination and has requested if Council would like to be the Responsible Planning Authority.

This report seeks Council's decision on whether it should be the Responsible Planning Authority for the Planning Proposal.

Recommending:

- 1. THAT** Council decline the offer to be the Relevant Planning Authority for the Planning Proposal affecting land at 18 Berry Street and 144-154 Pacific Highway North Sydney.
- 2. THAT** in issuing the Gateway Determination, that the DPE be requested to include a condition that requires the Planning Proposal to be amended to apply a minimum non-residential floor space ratio of 1.4:1 across the entire site to which the Planning Proposal relates with no maximum requirement imposed.
- 3. THAT** Council delegate to the General Manager the decision to decline to be the Relevant Planning Authority for any Planning Proposal which is the subject of a pre-Gateway Review determination that does not align with Council's strategic planning position and/or resolutions.

The Motion was moved by Councillor Baker and seconded by Councillor Reymond.

- 1. THAT** Council accept the offer to be the Relevant Planning Authority for the Planning Proposal affecting land at 18 Berry Street and 144-154 Pacific Highway North Sydney.
- 2. THAT** in issuing the Gateway Determination, that the DPE be requested to include a condition that requires the Planning Proposal to be amended to apply a minimum non-residential floor space ratio of 1.4:1 across the entire site to which the Planning Proposal relates with no maximum requirement imposed.
- 3. THAT** Council seek an urgent meeting with the Secretary of Environment and Planning and the Minister for Planning to discuss the issue of Council's controls along the Pacific Highway and the anomaly of the position under the Act whereby Council may be the relevant planning authority and Council may not support the proposal.

Voting was as follows:

For/Against 7/0

Councillor	Yes	No	Councillor	Yes	No
Gibson	Y		Barbour	Y	
Reymond	Y		Morris	Y	
Clare	Absent		Burke	Absent	
Baker	Y		Marchandean	DoI	
Carr	Y		Bevan	Absent	
Beregi	Y				

RESOLVED:

1. **THAT** Council accept the offer to be the Relevant Planning Authority for the Planning Proposal affecting land at 18 Berry Street and 144-154 Pacific Highway North Sydney.
2. **THAT** in issuing the Gateway Determination, that the DPE be requested to include a condition that requires the Planning Proposal to be amended to apply a minimum non-residential floor space ratio of 1.4:1 across the entire site to which the Planning Proposal relates with no maximum requirement imposed.
3. **THAT** Council seek an urgent meeting with the Secretary of Environment and Planning and the Minister for Planning to discuss the issue of Council's controls along the Pacific Highway and the anomaly of the position under the Act whereby Council may be the relevant planning authority and Council may not support the proposal.



Report to General Manager

Attachments:

1. DPE letter dated 17 January 2014
2. Council letter dated 7 February 2014
3. DPE letter dated 22 May 2014 and Assessment of Review request
4. PAC letter dated 12 June 2014
5. DPE letter dated 14 July 2014

SUBJECT: Planning Proposal - 18 Berry Street and 144-154 Pacific Highway, North Sydney - Relevant Planning Authority Question

AUTHOR: Ben Boyd, Executive Strategic Planner

ENDORSED BY: Joseph Hill, Acting Director Planning and Development Services

EXECUTIVE SUMMARY:

On 18 November 2013, Council considered an assessment report for a Planning Proposal seeking to amend North Sydney Local Environmental Plan 2013 in relation to land at 18 Berry Street and 144-154 Pacific Highway, North Sydney. Council subsequently resolved not to support the Planning Proposal proceeding to Gateway Determination.

On 17 January 2014, Council received a letter from the Department of Planning and Environment (DPE) advising that the proponent has lodged a request a pre-Gateway Review in response to Council's resolution of the Planning Proposal. At the completion of its review and with advice from the Planning Assessment Commission, the DPE now recommends that the Planning Proposal proceeds to Gateway Determination and has requested if Council would like to be the Responsible Planning Authority.

This report seeks Council's decision on whether it should be the Responsible Planning Authority for the Planning Proposal.

FINANCIAL IMPLICATIONS:

Nil

RECOMMENDATION:

1. **THAT** Council decline the offer to be the Relevant Planning Authority for the Planning Proposal affecting land at 18 Berry Street and 144-154 Pacific Highway North Sydney.
 2. **THAT** in issuing the Gateway Determination, that the DPE be requested to include a condition that requires the Planning Proposal to be amended to apply a minimum non-residential floor space ratio of 1.4:1 across the entire site to which the Planning Proposal relates with no maximum requirement imposed.
 3. **THAT** Council delegate to the General Manager the decision to decline to be the Relevant
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Planning Authority for any Planning Proposal which is the subject of a pre-Gateway Review determination that does not align with Council's strategic planning position and/or resolutions.

LINK TO DELIVERY PROGRAM

The relationship with the Delivery Program is as follows:

Direction : 2. Our Built Environment

Outcome: 2.2 Improved mix of land use and quality development through design excellence
2.3 Vibrant, connected and well maintained streetscapes and villages that build a sense of community

Direction : 3. Our Economic Vitality

Outcome: 3.1 Diverse, strong, sustainable and vibrant local economy
3.2 North Sydney CBD is one of Australia's largest commercial centres

Direction : 5. Our Civic Leadership

Outcome: 5.1 Council leads the strategic direction of North Sydney

BACKGROUND

On 18 November 2013, Council considered an assessment report for a Planning Proposal seeking to amend North Sydney Local Environmental Plan 2013 in relation to land at 18 Berry Street and 144-154 Pacific Highway, North Sydney. In particular it sought to amend the non-residential floor space ratio (FSR) range requirements of NSLEP 2013 from part 3:1 - 4:1 and part minimum of 0.5:1 to a minimum of 0.5:1 across the entire site with no maximum requirement. It primarily sought to do this by amending the Non-Residential Floor Space Ratio Range Map to NSLEP 2013. Council resolved:

1. *THAT Council refuse the Planning Proposal from proceeding to Gateway Determination.*
2. *THAT Council notifies the applicant of Council's determination in accordance with clause 10A of the Environmental Planning and Assessment Regulations 2000.*
3. *THAT Council notifies the Department of Planning and Infrastructure of its determination, with a copy of this report*

The application was refused for the following reasons:

- *It will result in a reduction of commercial floor space over the site which is inconsistent with Direction 1.1 – Business and Industrial Zones to the s.117 Directions under the Environmental Planning and Assessment Act, 1979.*
 - *It is contrary to meeting a number of objectives and actions under the relevant regional and subregional strategies applying to the land. In particular, the proposal does not:*
 - o *contribute to the meeting of employment targets,*
 - o *does not protect nor promote lands for commercial development directly adjacent to the commercial core of an important existing Strategic Centre nor allow for future growth,*
 - o *does not reinforce and promote existing centres*
 - o *lead to improved housing affordability for key workers,*
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- *Sufficient residential capacity is already provided under NSLEP 2013 to meeting the State housing targets, without the need to change the land use mix on the subject site.*
 - *Many of the justifications are based on comparing inconsistent data sets.*

On 17 January 2014, Council received a letter from the Department of Planning and Environment (DPE) (Attachment 1) advising of the proponent's request for a pre-Gateway Review and invited Council to provide additional justification for its determination. A proponent is able to request a pre-Gateway Review if a council has notified the proponent that their Planning Proposal is not supported or where a council has not made a determination within 90 days.

Documentation relating to the proponent's pre-Gateway review is available on the DPE's website at <http://pgrtracking.planning.nsw.gov.au>.

Council responded to this letter on 7 February 2014 (Attachment 2) by reinforcing its original position and providing comments responding to the applicant's response to Council's reasons for refusal. In addition, Council requested that if the pre-Gateway Review request proceeds to the next stage, that it be reviewed by the Planning Assessment Commission (PAC) instead of the Joint Regional Planning Panel (JRPP). This was to ensure a level of transparency in decision making, given that the JRPP had approved the development application on the subject site contrary to the recommendations of assessment officer's report and elected Council.

The review process is informed by advice from the JRPP or the PAC. The JRPP or PAC provides advice to the Minister for Planning on whether the Planning Proposal should proceed to Gateway Determination. The Minister's final decision is informed by the JRPP or PAC's advice and views of the DPE, Council and the proponent.

On 23 May 2014, Council received a letter from the DPE (Attachment 3) advising that:

- they had completed their assessment of the pre-Gateway Review application with a recommendation that the Planning Proposal proceed to Gateway Determination subject to the following (Attachment 3):
 - o that the Review application be determined by the Planning and Assessment Commission (PAC); and
 - o that a minimum non-residential FSR of 1.4:1 be applied to the entire site.
- the Planning Proposal has been forwarded to the PAC for determination.

On 28 May 2014, Council was contacted by the PAC requesting a meeting with Council to discuss the Planning Proposal. The meeting subsequently took place on the 4 June 2014 where Council reinforced its position in relation to the matter.

On 12 June 2014 Council received a letter from the Planning Assessment Commission (refer to Attachment 4) which recommended that *'the proponent's planning proposal has merit to proceed to the Gateway for determination under Section 56 of the Environmental Planning and Assessment Act 1979'*.

On 28 July 2014 Council received a letter from the DPE dated 18 July 2014 (Refer to Attachment 5) outlining that the PAC has recommended that the matter proceed to Gateway

and requested Council to make a make a determination as to whether it would like to accept the role of being the Responsible Planning Authority (RPA) in progressing the Planning Proposal. Council was given 14 days for the date of the DPE's letter within which to make a decision.

Council contacted the DPE on 29 July 2014 to seek an extension to the timeframe within which to nominate the RPA for the Planning Proposal. The extension was to allow Council to give due consideration of the implications of the options presented to Council. The DPE verbally accepted an extension, to allow the matter to be considered and reported to the next available council meeting.

CONSULTATION REQUIREMENTS

If the Gateway Determination is issued, community engagement will be undertaken in accordance with Council's Community Engagement Protocol and the requirements of any Gateway Determination issued in relation to the Planning Proposal

SUSTAINABILITY STATEMENT

The sustainability implications were considered and reported on during the initiation phase of this project.

DETAIL

1. Options for progressing the Planning Proposal

Following the issue of a Gateway Determination, the RPA would be responsible for progressing the Planning Proposal through the next stages of the plan making process. This includes finalisation of Planning Proposals, consulting with the community and relevant agencies, considering submissions, finalising assessment of the proposal and should the plan progress to final stage, request the making of the plan (being amendments to NSLEP2013). The Gateway Determination merely enables a Planning Proposal to progress to public exhibition.

Before it determines its position, Council needs to consider the implications of the two options currently before Council before it makes its decision.

1.1 Council as the RPA

If Council chooses to accept the role of RPA, it would have greater control of the plan making process including public exhibition, post exhibition report and finalisation of the amendment to the relevant LEP. Council would also be required to submit, for Gateway Determination, a Planning Proposal, which meets the requirements of the DPE's pre-Gateway Review determination within 40 days of the DPE's letter (14 July 2014).

An RPA must be satisfied with the content of a Planning Proposal and the quality of the

information provided in support of the proposal. In addition, it must ensure that the information is accurate, current and sufficient for issuing a Gateway Determination.

Council's assessment of the Planning Proposal identified a number of deficiencies with the information submitted and did not provide adequate justification to support the progression of the Planning Proposal. This position was supported by the elected Council. It is considered that a proponent of a Planning Proposal is unlikely to amend their Planning Proposal to address Council's concerns, as it would be generally detrimental to their case to progress. However, it is unclear what implications there may be for Council if it is perceived to be preventing the progression of the Planning Proposal. The DPE may reallocate the RPA role to an alternate body.

With respect to the timeframe within which a Planning Proposal is to be submitted to the DPE, Council staff have advised the DPE that the timeframe could be problematic, especially given the issues raised in the paragraph above and the need for the applicant to pay the second stage application fee.

In consideration of a post exhibition report, Council would still have the ability to recommend that the Planning Proposal not proceed any further. However, the Minister or their delegate would have the final say as to whether a local environmental plan should be made implementing the intentions of the Planning Proposal.

1.2 *Alternative RPA*

If Council decides not to accept the role of RPA, an alternate RPA may be appointed to prepare the Planning Proposal and undertake the next stages of the plan making process including exhibition, post exhibition report and finalisation of the amendment to the relevant LEP. An alternate RPA may include the JRPP, Director General of DPE or any other person or body authorised under the Environmental Planning and Assessment Regulations 2000.

If Council does not accept the role of RPA, it is considered highly likely that it will be allocated to the JRPP. The JRPP has been nominated as the RPA in all instances where Council has resolved not to accept the role.

Despite not having control of the plan making process, Council will be provided the opportunity to provide a submission when the Planning Proposal is publically exhibited, in a similar way to Council addressing Development Applications that are determined by the JRPP.

1.3 *Preferred option*

Option 2 is the preferred option for the following reasons:

- The Department's views (following advice from the PAC) is not consistent with Council's views on the Planning Proposal and the strategic intent of the site.
- Council's role is fettered to developing a proposal contrary to its strategic position and would provide a recommendation to the Minister for Planning only.
- Given the legislative opportunities for the proponent to apply for reviews at key milestones in the Gateway process and Council's ability to affect the outcome is

anticipated to be limited.

Accordingly, this report recommends that Council declines the offer to be the RPA.

2. Future Pre-Gateway Reviews

This report also recommends that Council make a policy decision with respect to consideration of future Planning Proposals subject to pre-Gateway Reviews, especially as the DPE only allows 14 days within which to provide a response on whether Council would accept the role as the RPA. In this regard it is recommended that Council delegates to the General Manager the decision to decline the offer to be the RPA, if the determination by the DPE on the pre-Gateway Review is not consistent with Council's views and or resolutions on the Planning Proposal.

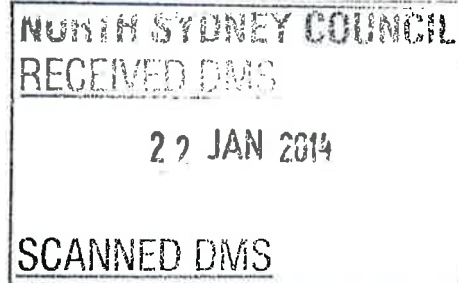
3. Conclusion

The lack of support from Council's professional officers to the proposal as well as the lack of political support from Council places Council in a difficult position to progress the Planning Proposal further as the RPA. Therefore, it is recommended that Council advise the DPE that:

- it does not wish to prepare the Planning Proposal to reduce the non-residential FSR requirements on the site under NSLEP 2013; and
 - the Planning Proposal be amended to require a minimum non-residential FSR of 1.4:1 over the entire site in accordance with the recommendations of the assessment report prepared by the DPE.
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Planning & Infrastructure



14/01612

Warwick Winn
Acting General Manager
North Sydney Council
PO Box 12
NORTH SYDNEY NSW 2001

Attention: Ben Boyd

Dear Mr Winn

Re: Request for Pre- Gateway Review – PGR_2014_NORTH_001_00

I am writing to notify Council that a pre-Gateway review request has been submitted to the Minister for Planning and Infrastructure for consideration.

The review request relates to a proposal to amend the North Sydney LEP 2013 for 144-154 Pacific Highway and 18 Berry Street North Sydney. The proponent is seeking to amend the non-residential floor space ratio that applies to 144-154 Pacific Highway, North Sydney to a minimum of 0.5:1 with no maximum non-residential floor space ratio.

The request states that the proponent is seeking a pre-Gateway review as Council has confirmed in writing that the request to prepare a planning proposal is not supported.

Council is invited to provide its views about the proposal and/or provide a response detailing why the original request to council was not progressed. A response must be submitted within 21 days from the date of this letter to the Metropolitan Delivery (CBD) office of the Department of Planning and Infrastructure.

The views of the Council will be taken into consideration by the Department and the Joint Regional Planning Panel when considering whether to recommend if the proposal should be supported and proceed to Gateway as a planning proposal.

Council can check the progress and status of the review on the Department's LEP Tracking System, at <http://pgrtracking.planning.nsw.gov.au>

Should you have any further enquiries about this matter, I have arranged for Mr Martin Cooper of the Department of Planning & Infrastructure to assist you. Mr Cooper may be contacted on (02) 8575 4109.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Tim Archer'.

17.1.14

Tim Archer
A/Director
Metropolitan Delivery (CBD)
Growth Planning & Delivery

Original signed by Joseph Hill on 5/2/14
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Tim Archer
Acting Director Metropolitan Delivery (CBD)
Growth Planning and Delivery
Department of Planning and Infrastructure
Attention: Martin Cooper
GPO Box 39
SYDNEY NSW 2001

BB3 (PDS)

5 February 2014

Dear Tim

**REQUEST FOR PRE-GATEWAY REVIEW – PGR_2014_NORTH_001_00:
18 BERRY STREET & 144-154 PACIFIC HIGHWAY, NORTH SYDNEY**

I refer to your letter dated 17 January 2014 notifying Council of the lodgement of a pre-Gateway Review request in relation to North Sydney Council's (Council) determination of a Planning Proposal which sought amendment to North Sydney Local Environmental Plan 2013 as it relates to 18 Berry Street and 144-154 Pacific Highway, North Sydney.

Council's justification for recommending that the Planning Proposal not proceed to Gateway Determination under s.56 of the *Environmental Planning and Assessment Act, 1979* was detailed in its assessment report considered by Council on 18 November 2013. A CD containing an electronic copy of Council's report and resolution were forwarded to the Department of Planning and Infrastructure (DoPI) on 22 November 2013 for its information. This documentation also comprises part of Appendix H to the applicant's pre-Gateway Review request. The key reasons for not supporting the Planning proposal were as follows:

- *It will result in a reduction of commercial floor space over the site which is inconsistent with Direction 1.1 – Business and Industrial Zones to the s.117 Directions under the Environmental Planning and Assessment Act, 1979.*
- *It is contrary to meeting a number of objectives and actions under the relevant regional and subregional strategies applying to the land. In particular, the proposal does not:*
 - *contribute to the meeting of employment targets,*
 - *does not protect nor promote lands for commercial development directly adjacent to the commercial core of an important existing Strategic Centre nor allow for future growth,*
 - *does not reinforce and promote existing centres,*
 - *lead to improved housing affordability for key workers.*
- *Sufficient residential capacity is already provided under NSLEP 2013 to meet the State housing targets, without the need to change the land use mix on the subject site.*
- *Many of the justifications are based on comparing inconsistent data sets.*

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Whilst Council still supports the recommendations and resolution outlined in its report considered on 18 November 2013, Council would like the opportunity to respond to the applicant's submission of the *Pre-Gateway Review Application – Supplementary Report* (Supplementary Report). The applicant's Supplementary Report provides an assessment and response to Council's assessment of the Planning Proposal and subsequent resolution.

The following subsections outline Council's concerns:

Associated Development Applications

It is important for the DoPI to note that the subject Planning Proposal had been lodged in conjunction with a development application (DA 239/13) for the same site and to know the status of that development application.

The Planning Proposal, Council's assessment report and the request for a pre-Gateway Review all make reference to DA 239/13. At the time of lodgement of the Planning Proposal and Council's consideration of the assessment report, DA 239/13 had yet to be determined. On 17 December 2013, the DA was considered by the Joint Regional Planning Panel (JRPP), due to its value exceeding \$20 million. The application was approved by the JRPP subject to conditions, which was contrary to the recommendation of Council's assessment officer. The development consent relating to this approval was finalised and issued on 22 January 2014.

Whilst assessed against the provisions of North Sydney Local Environmental Plan 2001 (NSLEP 2001) and North Sydney Development Control Plan 2002 (NSDCP 2002), the scale of the approved development is well in excess of the controls that currently apply to the subject site under North Sydney Local Environmental Plan 2013 (NSLEP 2013) and North Sydney Development Control Plan 2013 (NSDCP 2013). In particular, it:

- exceeds the height limit under NSLEP 2013 by 31m resulting in 8 additional storeys on the site;
- fails to provide a podium setback between levels 5-12 on Berry Street under NSDCP 2013 (5m is required); and
- fails to provide suitable building separation to the north in accordance with NSDCP 2013 and SEPP 65 (up to 9m required).

A large portion of the site (all of the subject site, but excluding 154 Pacific Highway) also has the benefit of a development approval (DA 467/11) determined by the Land and Environment Court. This approved development also greatly exceeds the built form controls that applied to the subject site.

Proposed Amendment to NSLEP 2013

The intent behind the extent of change to the non-residential FSR ratio over the subject site is questioned. In particular, DA 239/13 initially proposed a non-residential FSR of 1.4:1 (actually 1.37:1 as calculated by Council – refer to page 11 of Council's assessment report of 18 November 2013) across the entire site, yet the Planning Proposal seeks to apply a rate significantly less (0.5:1) than that proposed in the DA. The applicant has repeatedly tried through its development applications to minimise the level of commercial floor space provided across the subject site and the Planning Proposal would merely provide another way to further reduce the provision of commercial floor space. This argument is further explained on pages 11 and 12 of Council's assessment report of 18 November 2013.

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North Sydney Centre Economic Study (Hill PDA, August 2013)

The Supplementary Report makes reference to information contained within the *North Sydney Centre Economic Study* (refer to page 7), to justify the proposed change to the non-residential FSR requirement for the subject site. This Study was formally received by Council for information purposes only on 11 November 2013. Council strongly objects to the way that the applicant has selectively omitted certain details of this Study to justify their arguments.

The purpose of the Study is to:

- *consider the Centre's current economic performance, the external forces that will influence its economic outlook and the land use requirements generated by those trends;*
- *test alternate planning scenarios to establish the economic impacts of allowing residential use in the Centre's commercial core; and*
- *identify initiatives that can support the Centre's small businesses and make a fundamental improvement to the local economy.*

The study identifies 4 broad scenarios which could direct future planning policies and controls. Each scenario is supported by a set of suggested recommendations and a brief analysis of pursuing each of the scenarios. However, these recommendations have not been analysed in terms of their impacts on meeting the outcomes of the relevant metropolitan and subregional strategies (i.e. the ability to meet the employment targets under the Strategies has not been considered). Council has not endorsed pursuing any of these scenarios.

Furthermore, the specific recommendation which the Supplementary Study utilises to justify the applicant's arguments, merely forms one of many recommendations that can be used to achieve a particular scenario. Therefore, the use of only a single recommendation out of the *North Sydney Centre Economic Study* is considered to be a flawed approach and should not be used to justify the Planning Proposal.

Justification for 3:1 – 4:1 Non Residential FSR Range

The applicant states on page 8 of the Supplementary Report that there is no justification for imposing the 3:1 – 4:1 non residential FSR range over the subject site or elsewhere in the LGA.

In the preparation of NSLEP 2013, Council initially resolved to translate the provisions of NSLEP 2001 into the Standard Instrument LEP template whilst addressing any objectives and targets of any relevant strategic planning policies. The subject site and many of those surrounding the subject site had a 3:1 – 4:1 non residential FSR range under NSLEP 2001 and therefore there had been no change. This is consistent with s.117 Directions relating to the retention of commercial floor space. However, as indicated in Council's assessment report (refer to pages 12-13) Council resolved to reduce the non-residential floor space requirements to some of the land zoned mixed use to provide increased incentives for redevelopment at the periphery of the CBD. The subject site and those located at 20 and 30 Berry Street and 100, 112, 116 and 120 Pacific Highway retained their former non residential FSR range of 3:1-4:1 as they provided a transition in required commercial floor space between the commercial core of the CBD and residentially zoned land beyond.

The applicant states (refer to page 8 of the Supplementary Report) that no evidence-based rationale behind the boundaries between the different non-residential ratios has been provided in the supporting documentation to NSLEP 2013, nor has evidence been provided to suggest that buffer is required.

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As indicated above and stated on page 12 of Council's assessment report, NSLEP 2013 represents a translation of the controls under NSLEP 2001 and that the non-residential ratio rates were amended at the periphery of the North Sydney Centre to improve opportunities for redevelopment of sites that were not as well serviced by mass public transport and other services. The subject site is located directly adjacent to the commercial core of the North Sydney Centre, and therefore should support the highest proportion of commercial floor space in a mixed use development.

Furthermore, the applicant claims that Council's documentation states that a higher non-residential FSR is required because of the "gateway and prominent corner status of the site" (refer to page 8 of the Supplementary Report). Council staff have been unable to locate any such statement made in relation to the subject site, the provision of non-residential floor space and the preparation of NSLEP 2013 and therefore is considered to be unsubstantiated. Irrespective of this, it is noted that Council's Design Excellence Panel have stated that the subject site does not constitute a "gateway site" in response to arguments led by the applicant of DA's 467/11 and 239/13.

Promotion of Existing Centres

The applicant claims (refer to page 9 of the Supplementary Report) that Council's arguments regarding the promotion of existing centres are wrong. In particular, it claims that Council has not acknowledged that mixed use developments help to improve the strength and character of centres. The subject site already permits a mix of uses and the Planning Proposal merely seeks to change the extent of this mix.

As previously discussed, the applicant has obtained a development consent for a development well in excess of a scheme that fully complies with Council's key built form controls for the subject site. This additional development bonus comprises of residential apartments. It is suggested that this additional residential bonus will lead to the strengthening of the Centre, and not the reduction in commercial floor space which the Planning Proposal seeks to do.

Housing Affordability

The applicant claims (refer to page 9 of the Supplementary Report) that the development does not raise the issue of housing affordability as a major issue. Council contends that the Planning Proposal contains multiple references to housing affordability and even dedicates specific sections within the main report and supplementary reports addressing these matters. If this was not considered a major issue, it is questioned why so much effort was spent raising the issue and analysing the impacts.

Residential Capacity

The applicant claims (refer to pages 9-10 of the Supplementary Report) that Council has not demonstrated how it will meet new requirements for additional housing for the "Central Region" under the draft Metropolitan Strategy. Whilst Council acknowledges that there has been an increase in the population targets under this draft Strategy, no targets have been set for individual council areas (which are normally done at the sub-regional level). The applicant suggests using an average rate of increase across all council areas. However, this approach is flawed, given that each individual council area has different capacity constraints to consider. It is further understood that from informal advice from the DoPI, that the extent of subregions under the Draft Strategy may be subject to amendment in response to submissions made during its public consultation. This places further confusions as to what targets Council is expected to meet.

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Notwithstanding, Council is currently undertaking strategic planning studies for the North Sydney Centre which will address any new residential population and housing targets set in any new Regional and Subregional strategies.

The Supplementary Report also claims that Council has not been able to demonstrate that the Current LEP meets the current targets of the draft inner north subregional Plan. Contrary to this claim, Council's Residential Development Strategy clearly demonstrates how this is to be achieved. A copy of this Strategy may be obtained at the following link:

http://www.northsydney.nsw.gov.au/files/e72244cc-cdc0-474e-bd19-a12400c2223b/RDS_2009.pdf

The DoPI supported the findings of this Strategy when issuing the s.65 Certificate enabling the public exhibition of NSLEP 2013 in draft form.

Inconsistent Data Sets

Whilst the applicant notes Council's issue regarding inconsistent data sets (refer to page 10 of the Supplementary Report), it claims that the use of the Property Council of Australia's Office Market Report is acceptable because of its industry accepted status and that "most of the commercial development is located in the CBD".

Council does not object to the use of the Property Council of Australia's Office Market Report, but it does object to the applicant and their consultants comparing this data with data that only applies to that occurring within the North Sydney Centre as defined by NSLEP 2013. This enables the applicant and their consultants to manipulate the data to suit their own needs, rather than providing an accurate assessment. Accordingly, the applicant's use of different data sets does not provide an accurate picture of what is occurring, nor what impact the proposed development is likely to have.

Financial Viability

Through the assessment of the two development applications for the subject site, Court Case and Planning Proposal, the applicant has claimed that the planning controls applying to the subject site, including the non-residential floor space ratio, do not make the development financially viable. No evidence has been provided to Council that clearly demonstrates that application of the planning controls are unviable.

It should be noted however, that the two approvals issued over the subject site (for DA467/11 and DA239/13) were for developments that substantially exceeded the built form envelopes anticipated for the subject site as previously described. This clearly demonstrates that the development has obtained a substantial profit margin over a fully complying development scheme.

Transparency in Decision Making

It is understood that if the pre-Gateway Review Request proceeds to the next stage (i.e. Post DoPI merit review), it will then be subject to a detailed review by the JRPP. As indicated, the subject Planning Proposal is associated with DA239/13 which was recently approved by the JRPP, contrary to the Council officer's recommendations. It is questioned whether there is an adequate level of transparency where the same JRPP is responsible for determining a development application and Planning Proposal relating to the same development/site. This approach also appears to be contrary to the outcomes of the new planning legislation.

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To ensure that there is a level of transparency, Council requests that should the pre-Gateway Review Request proceed to the next stage, then the application be reviewed by the Planning Assessment Commission rather than the JRPP.

Enquiries should be directed to Ben Boyd or the undersigned on **9936-8100**.

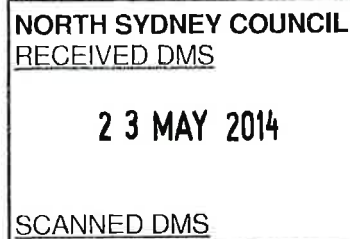
Yours sincerely

Joseph Hill
ACTING DIRECTOR
PLANNING & DEVELOPMENT SERVICES



Planning & Environment

Mr Warwick Winn
General Manager
North Sydney Council
PO Box 112
NORTH SYDNEY NSW 2059



14/08217

Attention: Joseph Hill

Dear Mr Winn

Re: Request for Pre-Gateway Review (PGR_2014_NORTH_001_00)

I am writing to Council in relation to the request for a pre-Gateway review (PGR_2014_NORTH_001_00) related to 144-154 Pacific Highway and 18 Berry Street, North Sydney.

The Department of Planning and Environment has considered the request for review, together with the outcomes of an assessment, advice provided by Council on 7 February 2014, and other relevant considerations of the proposed instrument. Based on this consideration, the Department has determined there may be merit in the proposed instrument proceeding to gateway determination. The review request will now be referred to the Planning Assessment Commission for detailed review.

Should the Commission have specific questions for clarification about the proposed instrument, it may choose to contact Council to seek its views prior to the completion of the review.

The Department's '*A guide to preparing local environmental plans*' provides advice on procedures for the various stages in the independent review process. The guide is available on-line at www.planning.nsw.gov.au/gateway-process. You can also check the progress of this request for review on the Pre-Gateway Review Tracking System at <http://pgrtracking.planning.nsw.gov.au/>

If you have any further enquiries about this matter, I have arranged for Ms Sandy Shewell to assist you. Ms Shewell may be contacted on (02) 8575 4115.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Neil McGaffin'.
Neil McGaffin
General Manager, Metropolitan Delivery
Growth Planning and Delivery

22.5.14



Planning & Infrastructure

PRE-GATEWAY REVIEW Information Assessment and Recommendation Report

Purpose: To identify whether the information provided by a proponent with their request for a pre-Gateway review of a proposed instrument is sufficient for assessment purposes and whether the request should proceed to the PAC for consideration.

Dept. Ref. No:	PGR_2014_NORTH_001_00		
Address/ Location:	144-154 Pacific Highway and 18 Berry Street, North Sydney		
LGA:	North Sydney		
LEP to be Amended:	North Sydney Local Environmental Plan 2013		
Reason for review:	☒ Council notified proponent it will not support proposed amendment		☐ Council failed to indicate support for proposal within 90 days
Assessment Fee:	☒ Provided and correct ☐ Not provided / incorrect	Comment:	

Summary of proposal:

The planning proposal seeks to reduce the level of commercial floor space required in a mixed use development of 144-154 Pacific Highway, North Sydney, by decreasing the minimum non-residential floor space ratio from 3.0:1 to 0.5:1 and removing the 4.0:1 maximum non-residential floor space ratio, commensurate with the 0.5:1 non-residential FSR applying to 18 Berry Street, North Sydney. To achieve this objective, the planning proposal seeks to amend the North Sydney LEP 2013 Non-Residential Floor Space Ratio Map to extend Area 9 controls across 144-154 Pacific Highway in order to reduce the commercial floor space requirement for mixed use development (refer to table below and attached map).

On 20 January 2014, the Joint Regional Planning Panel approved a mixed use development for the subject site, consisting of 181 residential apartments and 3,773m² of non-residential floor space. Whilst the application sought 2,345m² of non-residential floor space, the JRPP approval conditioned that Level 3 of the building (with a gross floor area of 1,428m²) be used for commercial purposes. If the planning proposal proceeds, the proponent intends to lodge a Section 96 application to reduce the non-residential floor space to 2,345m² through the conversion of Level 3 to residential uses.

The subject sites have a combined area of 1681.8m² and are currently developed for mixed commercial and residential uses, consisting of 4,550m² leasable commercial floor space and 8 dwellings.

The subject sites are zoned B4 Mixed Use under the North Sydney LEP 2013. A maximum building height limit of RL 106m (18 Berry Street) and RL 125m (144-154 Pacific Highway) applies pursuant to Clause 4.3 of the LEP. Clause 4.4A of the LEP stipulates the following non-residential floor space ratio ranges for the subject sites, as identified on the Non-Residential Floor Space Ratio Map:

Site	Minimum Non-Residential FSR	Maximum Non-Residential FSR
144-154 Pacific Highway, North Sydney	Area 8 - 3.0:1	Area 8 - 4.0:1
18 Berry Street, North Sydney	Area 9 - 0.5:1	N/A

North Sydney Council does not support the proposal as it will result in a reduction of commercial floor space over the site and is contrary to meeting a number of objectives and actions in relevant regional and subregional strategies.

Copy of initial request to council to prepare planning proposal:	☒ Provided ☐ Not provided	Comment:	The planning proposal was lodged on 19 August 2013. A revised planning proposal was lodged on 11 October 2013 and was considered by Council on 18 November 2013.
Is a disclosure statement relating to reportable political	☐ Provided	Comment:	

donations under s147 of the Act required and provided?	☒ N/A		
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Required for all proposals (under s55(a) – (e) of the EPandA Act)

Requirement	Yes	No	Comments
Objectives and intended outcome Is it clear what the proposal is trying to achieve?	☒	☐	The primary objective of the planning proposal is to reduce the non-residential floor space ratio to 0.5:1 for 144-154 Pacific Highway North Sydney.
Explanation of provisions Does the proposal include details about the provisions in the LEP that may/will need to be amended to deliver desired outcome?	☒	☐	The following provision is suggested: 1. Amend the Non-Residential Floor Space Ratio Map (Sheet LCL_002A) by extending Area 9 over 144-154 Pacific Highway North Sydney.
Justification and process for implementation (including initial compliance assessment against relevant section 117 direction/s) Does the proposal include information about consistency with strategic planning framework including regional/sub-regional strategies and s117 Directions etc?	☒	☐	The proposal includes information about consistency with strategic planning framework discussed under Proposal Assessment below.
Mapping Does the proposal include sufficient (draft) mapping and other material such as aerial photographs to clearly identify the site, current and proposed zoning, etc to clearly explain the intent of the proposal?	☒	☐	
Community consultation (including agencies to be consulted) Does the proposal contain details relating to any agencies that will need to be consulted to progress the proposal? Does it include details about any consultation that has already occurred with agencies/stakeholders? Does the proponent discuss any potential future community consultation?	☒	☐	The proposal does not specify an exact period for community consultation, however notes that planning proposals are generally exhibited for a minimum of 14 or 28 days, as established in the 'guide to preparing local environmental plans'.

Summary:

Is there sufficient (preliminary) information provided to address relevant key issues associated with the proposal?

Yes ☒ No ☐

Additional Comments:
Views of council

Date council advised of request:	17 January 2014
Date of council response:	7 February 2014
Council response: List issues / points provided in response	North Sydney Council does not support the proposal. The key reasons for not supporting the planning proposal, as identified in the report to Council on 18 November 2013, were as follows: - It will result in a reduction of commercial floor space over the site which is inconsistent with s 117 Direction 1.1 – Business and Industrial Zones. - It is contrary to meeting a number of objectives and actions under the relevant regional and subregional strategies applying to the land. In particular:

	– contribute to meeting of employment targets; – does not protect nor promote lands for commercial development directly adjacent to the commercial core of North Sydney CBD nor allow for future growth; – does not reinforce and promote existing centres; – lead to improved housing affordability for key workers. • Sufficient residential capacity is already provided under North Sydney LEP 2013 to meet State housing targets, without the need to change the land use mix on the subject site. • Many of the proposal's justifications are based on comparing inconsistent data sets. Further reasons for Council's lack of support include: • The Joint Regional Planning Panel approved a development application (DA293/13) for the site on 20 January 2013. The approved development conforms to the non-residential provisions of North Sydney LEP 2013, however exceeds the height limit by 31 metres, enabling a further 8 storeys. • DA293/13 originally sought a reduced non-residential FSR of 1.4:1. The planning proposal seeks to reduce this further to 0.5:1. Should the planning proposal proceed, it will enable the proponent to reduce the non-residential FSR below that originally envisaged in DA293/13. • DA293/13 is preceded by a development application approved by the Land and Environment Court on 11 January 2013 (DA 467/11). The approved development does not include 154 Pacific Highway as the proponent had not yet secured an option over the site. The approved development greatly exceeds the built form controls for the site. • The 3:1 – 4:1 non-residential FSR range applying to the site and adjoining sites zoned B4 Mixed Use seeks to provide a transition between the commercial core of North Sydney CBD and residential zoned land beyond. • Through North Sydney LEP 2013, Council has reduced the non-residential FSR applying to sites on the periphery of the B4 Mixed Use zone in North Sydney that do not adjoin the commercial core. • The subject site is located directly adjacent to the commercial core of North Sydney and therefore should support the highest proportion of commercial floor space in a mixed use development. • Through the assessment of the two development applications for the site, the Court case and the planning proposal, the proponent has failed to provide Council with evidence that the planning controls applying to the site make development financially unviable. • Council argues that the approved developments, which substantially exceed the built form envelopes and height controls, have achieved a significant profit margin over fully compliant development through provision of additional residential apartments. • The additional development bonus afforded through the development consents for the site will strengthen and improve the character of the North Sydney Centre, not the reduction of commercial floor space which the planning proposal seeks to do. Council has recommended that, should the pre-gateway review proceed, the Planning Assessment Commission undertake the review. Council is concerned with the level of transparency in decision making if the JRPP that approved the development application undertakes the review of the planning proposal.
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Background supporting information

List information provided by the proponent:

The application was supported by the following material:

1. Pre-Gateway Review Application Supplementary Report, JBA, December 2013;
2. Planning Proposal, Boston Blyth Fleming, October 2013 (as refused by Council);
3. Letter to North Sydney Council to support the Planning Proposal, Pikes and Verekers, August 2013;

4. Letter to Strand Estates requesting amendments to Planning Proposal, North Sydney Council, September 2013;
5. Architectural Plans, Nettleton Tribe, November 2013;
6. SEPP 65 Design Checklist, Nettleton Tribe, November 2013;
7. Traffic Assessment, Traffix, July 2013;
8. Envisaged Non-Residential Floor Space, Nettleton Tribe, December 2013;
9. Letter to Strand Estates advising outcome of 18 November 2013 Council Meeting and Copy of Report to Council, North Sydney Council, November 2013;
10. Land Use and Apartment Mix: Commercial and Residential Market Report, JBA, July 2013;
11. Optimising Development Typology in North Sydney, Urbis, July 2011.

Is the supporting information provided more than 2 years old?

Yes ☒ No ☐

If 'yes', explain/detail currency of information

All supporting information is less than 2 years old with the exception of the Optimising Development Typology in North Sydney Report prepared by Urbis in July 2011 for the proponent. The information in the report is considered to be current and relevant to the planning proposal. The report provides an analysis of the commercial and residential property market in North Sydney.

Is there documented agreement between the proponent and the council regarding the scope/nature of supporting information to be provided?

Yes ☐ No ☒

Comment:

Is there evidence of agency involvement in the preparation of any supporting information or background studies?

Yes ☐ No ☒

Comment:

Proposal assessment

STRATEGIC MERIT ASSESSMENT	
Relevant regional strategy	The proposal is consistent with the Metropolitan Plan for Sydney 2036 (2010), draft Metropolitan Strategy for Sydney to 2031 (2013) and draft Inner North Subregional Strategy (2007) in that it: • supports growth within Metropolitan Sydney; • delivers increased housing diversity and choice through the provision of housing stock to suit the needs of a changing population; • capitalises on existing market demand by providing housing in a desirable locality, close to infrastructure and jobs. The proposal also represents an inconsistency with the Metropolitan Plan for Sydney 2036 (2010) and draft Metropolitan Strategy for Sydney to 2031 (2013) and draft Inner North Subregional Strategy (2007) in that it: • reduces the amount of commercial floor space availability in the mixed use zone located on the periphery of the North Sydney CBD; • reduces the subject sites contribution to the additional 15,000 jobs for North Sydney CBD specified in draft Subregional Strategy, of which 11,000 are to be accommodated in the North Sydney CBD.
Relevant local strategy	The proposal is generally consistent with the North Sydney Residential Development Strategy (2009), which identifies potential for an additional 6,199 dwellings in the North Sydney by 2031. Specifically, the proposal contributes towards the 2,023 additional dwelling target specified for the mixed use zoned land of the periphery of the North Sydney Centre. The proposal is inconsistent with the 'Economy and Employment' provisions of the North Sydney Local Development Strategy (2009). The proposed reduction in commercial floor space will not assist Council in achieving the 15,000 additional job target specified in the Strategy. The proposal is accompanied by additional supporting information to justify this inconsistency, as detailed in 'Additional supporting information provided' section of this report.

	The proposal is generally consistent with the 'Housing' provisions of the North Sydney Local Development Strategy (2009), by contributing towards the 5,500 additional dwellings target identified in the Strategy.
Relevant s117 Directions	1.1 Business and Industrial Zones The proposal is inconsistent with this direction as it reduces the amount of commercial floor space in a mixed use zone. 3.1 Residential Zones The proposal is consistent with this direction as it encourages a variety of housing types to provide for existing future housing needs in location well serviced by existing infrastructure and in close proximity to services. 3.4 Integrating Land Use and Transport The proposal is consistent with this direction as it provides additional housing in close proximity to jobs and in a location well serviced by existing public transport infrastructure. 7.1 Implementation of the Metropolitan Strategy for Sydney The proposal is partially consistent with this direction in that it promotes a variety of housing stock within close proximity the North Sydney CBD and public transport options. However, the reduction in non-commercial floor space is contrary to objectives of the Strategy to provide for commercial and retail jobs in highly accessible Strategic Centres.
Additional supporting information provided	The proponent has provided the following additional studies to justify the partial inconsistency with current metropolitan and regional strategies and inconsistency with s117 Direction 1.1: • Land Use and Apartment Mix: Commercial and Residential Market Report; • Optimising Development Typology in North Sydney. In summary, the Commercial and Residential Market Report identifies an additional 160,000m² to 190,000m² of additional commercial floor space is likely to be required in the North Sydney CBD to accommodate the growing working population and to meet job targets specified for the North Sydney LGA. The study suggests that future commercial floor space in the CBD will exceed these estimates taking into consideration recent Part 3A approvals totalling 166,000m² coupled with an additional 71,000m² in potential projects. Furthermore, the Optimising Development Typology in North Sydney suggests that there is a substantial oversupply of commercial office space in North Sydney and that there is limited demand for office space on the periphery of the centre. Conversely, there is an undersupply of residential apartments, particularly smaller apartments. The report supports the need to permit a higher proportion of residential uses on the subject site. Planning and Infrastructure's views: The current vacancy rate in commercial office space and undersupply of residential apartments on the periphery of the North Sydney CBD is acknowledged. The loss of commercial floor space on the site will be offset as new commercial buildings are developed over time in the North Sydney CBD to accommodate a growing working population. While Planning and Infrastructure supports a reduction in non-residential floor space, this should be to the level of commercial floor space proposed by the applicant (2,345m² which equates to an FSR of 1.4:1) not an FSR of 0.5:1.

SITE-SPECIFIC MERIT ASSESSMENT	
Natural environment	No critical habitat or threatened species populations or ecological communities or their habitats would be adversely affected as a result of the proposal. Planning and Infrastructure's views: The proposal's conclusion is supported.
Existing, approved, likely future use of land	The combined area of the subject site is 1681.8m². The site has a Pacific Highway frontage of 36.75 metres and 43.79 metres to Berry Street. The lots are currently developed as mixed use commercial and residential buildings, consisting of 4,550m² of leasable commercial floor space and 8 residential dwellings. A development application (DA 467/11) for mixed use redevelopment of 144-150 Pacific Highway and 18 Berry Street, North Sydney, was approved by the Land and Environment Court on 11 January 2013. The approved development has a total of 3,461m² of non-residential gross floor area (equating to a non-residential FSR of 2.65:1) and 84 residential units. A SEPP 1 objection was supported which sought deviation from the non-residential FSR requirements of North Sydney LEP 2001 (3:1 - 4:1). A development application (DA293/13) for mixed use development of 144-154 Pacific Highway and 18 Berry Street North Sydney was approved by the Joint Regional Planning Panel on 20 January 2014. The development application is an expanded version of DA467/11, which extends development onto the adjoining site at 154 Pacific Highway North Sydney. The approved development has a total of 3,773m² of non-residential gross floor area (compliant with the 3:1 – 4:1 non-residential FSR control) and 181 residential apartments. DA293/13 originally sought consent for 2,345m² of non-residential floor space and 197 residential apartments, equating to a non-residential FSR of 1.4:1. The JRPP approval conditioned that Level 3 of the mixed use building, with a gross floor area of 1,428m² be commercial rather than residential. Should the planning proposal proceed, the proponent intends to lodge a section 96 application to reduce the non-residential floor space to 2,345m² enabling residential uses on Level 3 of the development. Planning and Infrastructure's views: Existing development approvals for the site have set a precedent in deviating from Council's adopted built form controls. It is acknowledged that the Land and Environment Court determination accepted a reduction in commercial floor space, pursuant to a SEPP 1 objection, whereas the more recent JRPP development approval conditioned Level 3 of the building be used as commercial floor space, meeting Council's non-residential FSR minimum of 3:1. A reduction in the commercial floor space requirement to 1.4:1 is supported.
Services and Infrastructure	The site is located on the northern periphery of the North Sydney CBD and is well serviced by all necessary urban services and infrastructure. The site is within close proximity to public transport options including North Sydney Station (approximately 570 metres) and bus stops on the Pacific Highway (40 metres). Traffic and Parking A traffic assessment (Traffix July 2013) was prepared to support the mixed use development application for the site. The traffic and parking assessment calculations were based on 204 residential apartments and 2,398m² commercial floor space. The assessment concluded that the proposal was fully compliant with Council's Development Control Plan (DCP), meeting the number of required car parking spaces, provisions for disabled parking, motor cycling parking, bicycle facilities, car wash facilities and service arrangements. Car parking on-site will reduce demands on on-street car parking. Implementation of Council's DCP requirements will underpin objectives to promote the use of alternate, non-car dependent travel modes.

	Planning and Infrastructure's views: The proposal's conclusion is supported. It is acknowledged that the proposal is well serviced by and makes use of existing urban services and infrastructure. The site's close proximity to public transport options and the implementation of Council's DCP controls will encourage the use of alternate, non-car dependent travel modes.
Other relevant matters	There are a number of recent mixed use development approvals and planning proposals that have reduced the non-residential FSR controls in the B4 zone for sites adjoining and in close proximity to the subject site, as discussed below: 156-158 Pacific Highway A development application (DA291/11) for mixed use development was approved by the Joint Regional Planning Panel on 7 December 2011, subject to the gazettal of a planning proposal. This site immediately adjoins the subject site to the north. The approved development has a total of 404 m² of retail floor space and 40 residential apartments. Amendment No. 44 to North Sydney LEP 2001 was notified on 7 October 2011, which varied the non-residential FSR from 3:1 – 4:1 to 0.5:1. This amendment was consistent with the provisions of draft North Sydney LEP 2009, and is reflected in North Sydney LEP 2013. 211-223 Pacific Highway A development application (DA503/10) for mixed use development was approved by the Joint Regional Planning Panel on 29 April 2011. This site is located north east of the subject site on the opposite side of the Pacific Highway. The approved development consists of four floors of non-residential uses and 144 residential apartments. Amendment No. 49 to North Sydney LEP 2001 was notified on 12 October 2012, which varied the non-residential FSR from 3:1 – 4:1 to 0.5:1. This amendment was consistent with the provisions of draft North Sydney LEP 2009, and is reflected in North Sydney LEP 2013. A development application (DA343/12) for mixed use development was approved by the Joint Regional Planning Panel on 14 February 2012. The approved development, which is currently under construction, consists of commercial and retail floor space and 228 residential apartments. 12-16 Berry Street A development application (DA494/10) for mixed use development was approved by the Joint Regional Planning Panel on 18 May 2011, subject to the gazettal of a planning proposal. This site immediately adjoins the subject site to the west. The approved development consists of 2 levels of retail/commercial and 48 residential apartments. Amendment No. 45 to North Sydney LEP 2001 was notified on 5 August 2011, which varied the non-residential FSR from 3:1 – 4:1 to 0.5:1. This amendment was consistent with the provisions of draft North Sydney LEP 2009, and is reflected in North Sydney LEP 2013. Viability of existing non-residential FSR controls The proponent has argued that application of the current 3:1 – 4:1 non-residential FSR control over the majority of the site (144-154 Pacific Highway) provide an insufficient mix of land uses to cater and meet market demands. The reduction in commercial floor space is sought to enable acquisition and amalgamation of 154 Pacific Highway into the site. If the planning proposal is not supported, the proponent intends to commence with DA467/11, which will see 154 Pacific Highway isolated between two approved mixed uses developments. Planning and Infrastructure's views: Mixed use development approvals and planning proposals to reduce the

	commercial floor space for sites adjoining and in close proximity to the subject site have set a precedent for varying the non-residential FSR controls for land within the B4 Mixed Use zone on the periphery on the North Sydney CBD. The subject site differs to those listed above in that it directly adjoins the North Sydney CBD commercial core. Council has sought to maintain the highest level of commercial floor space in mixed use developments on sites directly adjoining the commercial core, whilst supporting a reduced commercial floor space for sites located further away from the CBD. This rationale is reflected in the range of non-residential FSR controls outlined in Clause 4.4A of the North Sydney LEP 2013. It is acknowledged that the proponent seeks a reduction in the commercial floor space requirement to enable the acquisition and redevelopment of 154 Pacific Highway, as envisaged under DA293/13, and argues the existing FSR requirement will render this development unfeasible. The proponent states this is due to the high cost in acquiring 154 Pacific Highway (with 11 different owners) which is not economically viable with the current minimum requirement for commercial floor space. The planning proposal seeks to reduce the non-residential FSR to 0.5:1, however DA293/13 originally sought 2,345m² of commercial floor space equating to an FSR of 1.4:1. Council has expressed concern that should an FSR of 0.5:1 be supported, the proponent will reduce the floor space below the 2,345m² originally proposed under DA293/13. A non-residential FSR of 0.5:1 is not supported. It is recommended that a non-residential FSR of 1.4:1 be supported, which will enable: • redevelopment of the proposal site as originally proposed under DA293/13 with 2,345m² of commercial floor space; • a higher level of commercial floor space on the site compared to that of adjoining sites in the mixed use zone thereby maintaining Council's preference for higher levels of commercial floor space adjacent to the commercial core; • a transition between the mixed use/commercial core interface and residential land beyond.
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Planning and Infrastructure's assessment - Summary	The proposal demonstrates strategic merit and is generally consistent with current metropolitan, regional and local planning framework. Deviation from s117 Direction 1.1 Business and Industrial Zones and objectives of the Metropolitan Plan for Sydney 2036 to plan for commercial and retail jobs in highly accessible Strategic Centres is justified for the following reasons: • the proposal will deliver a variety of housing stock to suits the needs of a growing population within close proximity the North Sydney CBD and public transport options; • the reduction of commercial floor space (1,428m²) on the site is offset by approved and proposed commercial floor space development within the commercial core of the North Sydney CBD; • redevelopment of the subject site will strengthen and improve the character of the North Sydney Centre; • a precedent for the reduction in non-residential floor space ratio controls on land zoned B4 Mixed Use on the northern periphery of the North Sydney CBD has been established. Planning and Infrastructure considers the proposal may proceed subject to the following: • a minimum non-residential floor space ratio of 1.4:1 be established across the proposal site, which can be achieved through amending the Non-Residential Floor Space Ratio Map (Sheet LCL_002A) by extending Area 4 (equating to a non-residential FSR range of 1:1 – 2:1) over the site.
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Information assessment

Criteria	Yes	No	Comments
Has all information referred to by proponent in their application been provided?	☒	☐	
Is information appropriate to support review?	☒	☐	
Is further information required?	☐	☒	List additional information required:
Any additional requirements:			

RECOMMENDATION

☒ The request is eligible for review and sufficient information has been provided. The request may proceed to review by PAC.	Any additional comments:
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Prepared by:
Martin Cooper

Endorsed by:

Director
Metropolitan Delivery CBD

General Manager
Metropolitan Delivery

Deputy Director General
Growth Planning and Delivery

B.T.14

8/4/14

12 June 2014

**PRE-GATEWAY REVIEW
144-154 PACIFIC HIGHWAY AND 18 BERRY STREET, NORTH SYDNEY**

INTRODUCTION

The subject pre-Gateway review application was lodged by the proponent with the Department of Planning and Environment (the Department) on 9 December 2013. The review was requested because North Sydney Council did not support the proponent's planning proposal.

On 23 May 2014 the General Manager (Metropolitan Delivery) of the Department referred the review to the Planning Assessment Commission (PAC) for advice. Abigail Goldberg (Chair) and Gabrielle Kibble AO constituted the Commission for this matter.

BACKGROUND

The site has been the subject of a number of planning applications, as summarised below:

2013 Court approval

In January 2013 consent was granted by the Land and Environment Court for a mixed use commercial/residential building on the site (with the exception of 154 Pacific Highway).

2013 Planning Proposal

On 18 November 2013 Council resolved not to support a Planning Proposal to reduce the minimum non-residential floor space ratio (FSR) to 0.5:1 on the combined sites.

2013 Joint Regional Planning Panel (JRPP) approval

On 17 December 2013 the JRPP granted consent to the construction of a mixed use building on the entire site (that is, including 154 Pacific Highway). The consent was issued subject to Level 3 (along with levels 1 and 2) being occupied by commercial floor space rather than residential, as proposed. The consent resulted in a commercial FSR of 2.24:1 and a building height that exceeded the maximum building height provided under North Sydney LEP 2013 by 31 metres.

PLANNING PROPOSAL

The site is zoned B4 Mixed Use under North Sydney Local Environmental Plan (LEP) 2013 and is subject to the following FSR controls:

	Minimum non-residential FSR	Maximum non-residential FSR	Proposed non-residential FSR
144-154 Pacific Hwy	3.0:1	4.0:1	0.5:1
18 Berry Street	0.5:1	No maximum	0.5:1 (no change)
Sites combined	2.24:1	4.0:1	0.5:1

The Planning Proposal seeks to reduce the minimum non-residential FSR of 144-154 Pacific Highway from 3.0:1 to 0.5:1, with no restriction on the maximum. The FSR on the remainder of the site (18 Berry Street) would be unaffected by the proposal.

MEETINGS/CONSULTATION

The PAC met with the proponent and representatives on North Sydney Council on 4 June 2014.

Council

The key reasons for Council objecting to the planning proposal were outlined as follows:

- The site has strategically been allocated a minimum non-residential FSR of 3.0:1;
- The reduction in non-residential FSR will have a negative impact on the North Sydney CBD and result in a loss of future employment opportunities;
- The Department has approved residential development on other sites where non-residential was the Council's preferred land use; and
- It will be difficult for the Council achieve state government employment targets if more commercial floor space is lost.

Proponent

The following justification for the proposal was provided by the proponent:

- The site is zoned mixed use and is not located within North Sydney's commercial core;
- The current development consent for the site (issued by the JRPP) has a non-residential FSR of 1.4:1, which exceeds what is requested as part of the Planning Proposal;
- A minimum non-residential FSR of 3.0:1 is not commercially viable due to the lack of demand in the area; and
- Precedents of other sites in North Sydney, including those adjacent to the subject site, where a reduction in non-residential FSR has been approved.

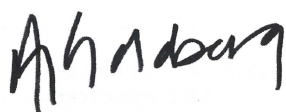
COMMISSION'S COMMENTS

The Commission has carefully considered the Planning Proposal and supporting documentation submitted by the proponent, as well as the Department's pre-Gateway review and the submissions prepared by North Sydney Council.

Having regard to all relevant matters, the PAC has decided that there is adequate justification for the Planning Proposal to proceed to the Gateway for detailed review. In reaching this decision the PAC considered the site's mixed use zoning and its location at the north-western edge of the North Sydney CBD, outside of the B3 Commercial Core zone. In addition, the proposed reduction in non-residential FSR is consistent with the proportion of commercial development required on properties immediately to the north and west, which are subject to a minimum non-residential FSR of 0.5:1.

COMMISSION'S RECOMMENDATION

The Commission considers that the proponent's planning proposal has merit to proceed to the Gateway for determination under section 56 of the *Environmental Planning and Assessment Act 1979*.



Abigail Goldberg
Commission Chair



Gabrielle Kibble AO
Commission Member



NORTH SYDNEY COUNCIL
RECEIVED DMS

28 JUL 2014

SCANNED DMS

Mr Warwick Winn
General Manager
North Sydney Council
PO Box 12
NORTH SYDNEY NSW 2059

14/10182

*Att: B. Boyd
cc'd: J. Hill*

Dear Mr Winn

Re: Request for Pre-Gateway Review – PGR_2014_NORTH_001_00

I refer to the request for a pre-gateway review lodged on 9 December 2013 for a proposal to amend North Sydney Local Environmental Plan 2013 in relation to 144-154 Pacific Highway and 18 Berry Street, North Sydney.

The Planning Assessment Commission unanimously recommended the matter proceed to gateway determination.

I have determined that the proposal should proceed to gateway determination stage. In making my decision, I considered the request for a pre-gateway review together with the recommendation of the Commission and advice provided by Council.

Consequently, Council is asked to advise within 14 days if it would like to be the Relevant Planning Authority for this proposal. Should Council agree to be the Relevant Planning Authority, it will need to prepare a planning proposal, and submit it for a gateway determination within 40 days of the date of this letter.

If Council does not wish to progress this matter, an alternate Relevant Planning Authority may be appointed to prepare the planning proposal.

You can check the request for a pre-gateway review on the Local Environmental Plan Tracking System at <http://pgrtracking.planning.nsw.gov.au/>

If you have any further enquiries about this matter, I have arranged for Mr Tim Archer of the Department of Planning and Environment to assist you. Mr Archer can be contacted on (02) 8575 4120.

Yours sincerely


Richard Pearson
Deputy Secretary
Growth Planning