

Ordinary Council Meeting 20 April 2015
PLANNING PROPOSAL TO AMEND HEIGHT CONTROL FOR 1-13A MARSHALL AVE, ST LEONARDS

Subject: Planning Proposal to Amend Height Control for 1-13A Marshall Ave, St Leonards
Record No: SU5763 - 19333/15
Division: Environmental Services Division
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Executive Summary

Council is requested to endorse the preparation of a planning proposal for 1-13A Marshall Avenue in order to provide planning certainty and clarity in relation to the height controls for the site.

The planning proposal would include the following amendments to Local Environmental Plan 2009:-

- (i) To amend the site's height from 65 metres to 94 metres – the purpose is to permit a building form with improved outcomes for the most properties, in particular in terms of overshadowing; and
- (ii) To amend the LEP's objectives relating to height control - to refer to such wording as optimising rather than minimising impacts, on the grounds that the latter may be inconsistent with the objectives of clause 4.6 of the Act of permitting design flexibility in appropriate circumstances. The wording would be determined in liaison with the Department.

The proposal aims to support the revitalisation of the St Leonards Specialised Centre in accordance with the Metropolitan Strategy for Sydney by supporting growth and public amenity in proximity to the St Leonards rail station. The planning proposal is consistent with this strategic context in that the St Leonards Specialised Centre is experiencing significant change in character and increase in scale across its three local government areas in proximity to the rail station.

Council and the Department have supported substantial height on the site over some years. This site's planning proposal was first approved by the Department for exhibition in 2012 at 78 metres, without nominated public benefits, and in the interim developments of over 30-50 storeys on the northern (North Sydney and Willoughby Councils) side of Pacific Highway have been submitted to the Department.

A development application for 1-13A Marshall Avenue was lodged by Loftex in September 2014 for a twenty-nine storey tower (94 metres), with a voluntary planning proposal for the public domain works for the proposed Rail Plaza. This application was, however, refused by the Joint Regional Planning Panel on 19 March this year as the mechanism of seeking a variation above the existing LEP height standard through a DA under clause 4.6 to vary the height from 65 metres was not supported.

This process issue would not apply provided that the LEP height standard is amended via a Planning Proposal to accord with the scale of 94 metres relating to the VPA exhibited and endorsed by Council in late-2014.

The LEP planning proposal would clarify Council's intentions to implement a voluntary planning agreement to provide significant public benefits which was endorsed by Council in November 2014.

Advice was received in a letter dated 2 April 2015 that Loftex wishes to lodge a planning proposal, on the following grounds:-

- The height increase would not result in any increase in the floor space ratio (FSR) applying to the site, but would permit the redistribution of the FSR across the site for improved outcomes in terms of overshadowing, view-sharing and urban design generally;
- The planning proposal would be accompanied by a Voluntary Planning Agreement for monetary contributions to Council to contribute to the construction of the St Leonards Rail Plaza, on substantially the same terms as negotiated, exhibited and endorsed by Council in

late 2014;

- Council has already considered the impacts of building height of 94 metres and found them acceptable, including in terms of SEPP 65 considerations;
- The JRPP's refusal of the recent development application (DA 14/143) is considered to be focussed on a technicality relating to a clause 4.6 application to vary from the development standard which would not apply to a planning proposal;
- The Department has already indicated its willingness in 2011 to agree to greater height i.e. 78 metres was permitted, without accompanying public benefits being specified under a VPA; and
- The Department approved a planning proposal in April 2012 for exhibition of a height standard of 78 metres for the site, without an associated public benefits scheme (other than the standard Section 94 contributions).

The Department had already approved a planning proposal in April 2012 for exhibition of a height standard of 78 metres for the site, without an associated public benefits scheme (other than the standard Section 94 contributions).

It is considered appropriate for Council to endorse the preparation of a planning proposal for the LEP height to be amended to 94 metres to align with the associated public benefits scheme under the Voluntary Planning Agreement (VPA) which was exhibited and endorsed in 2014.

The planning proposal would provide detailed information relating to expected design outcomes and consistency with planning policies in accordance with the formats under the NSW documents: "A Guide to preparing Planning Proposals" and "A Guide to preparing Local Environmental Plans".

Background

On 17 April 2012 the NSW Department of Planning & Infrastructure's LEP Gateway approved the exhibition of Planning Proposal 11 for the site's height to be increased to 78 metres. This height was a justifiable planning approach, in that it matched the level under a Part 3A approval given in 2011 to 88 Christie St (the Winten site), directly opposite across the rail line (approximately 69 metres). The purpose was to enable the distribution of the floor space in a tower at the eastern end of the site, in return for a low residential flats building adjacent to the west, with the aim of reducing the overshadowing on properties to the south while achieving the residential growth planned close to the St Leonards rail station.

Following exhibition of the proposal, Council resolved on 15 April 2013 to reduce the tower's height to 65 metres. This height was also a justifiable alternative planning approach, in that it matched the development standard applying to 88 Christie St, under the LEP (65 metres). Council, however, retained the potential for future height increases provided that public domain benefits were to be related to redevelopment: "Council indicate it will only consider any further height increase if the applicant enters into a suitable Voluntary Planning Agreement (VPA) to enhance the public domain in the vicinity of the site."

At that time of the 2012 exhibition, there had been no voluntary planning agreement proposed to contribute to the adjacent public domain works because the new Rail Plaza was still in only the preliminary stages of Council seeking State Government approval for the project.

Subsequently that situation changed significantly from 2013 onwards, to the point where Council has recently issued tenders and engaged an authorized engineering organization to undertake preliminary design stage in liaison with the State rail agencies.

Council consequently considered a report at its meeting of 21 July 2014 relating to an offer of a voluntary planning agreement by Loftex. As part of the development, Loftex proposed a variation under clause 4.6 of Local Environmental Plan 2009 to the building height development standard applying to the land so that the tower building would be approximately 94m above ground level.

A development application for 1-13A Marshall Avenue was formally lodged with Council on 15 September 2014 by Loftex, in accordance with the above report, for a mixed use development comprising a tower of 29 storeys and lower building of 5-6 storeys, principally of residential units with a small commercial component. An application under clause 4.6 of the Act sought a variation to the LEP height control from 65 metres to 94 metres.

On 17 November 2014, Council considered a report following exhibition of the draft VPA. The report summarized the proposal as follows:-

“The VPA offers an opportunity to revitalise an ageing precinct, improve public domain activation and circulation space and provide considerable public benefit. The funds would be utilised for the construction of a new public plaza over the railway line at St Leonards. In the event that the St Leonards Rail Plaza and Bus Interchange does not proceed, the funds may also be utilised by Council for the provision of public infrastructure within the section of St Leonards within the Lane Cove Local Government Area. The VPA is in addition to s94 Developer contributions...

It is considered that the community and future residents of the proposed development would benefit from the improvements to public infrastructure, in particular the plaza and bus rail interchange which the proposed VPA will contribute to. Approval of this VPA would achieve a better planning outcome by allowing height flexibility while maintaining the same GFA for this site and overall by improving shadow impacts for a greater number of properties than could be expected if both buildings were to be built to the maximum height permitted.”

A formula was adopted for calculation of the VPA which had regard to the additional floor space over the existing height control. Council resolved at that meeting to proceed with the Voluntary Planning Agreement in respect of the proposed development for the site.

The application was accompanied by the VPA subsequently approved by Council on 17 November.

The application was referred to the Sydney East Joint Regional Planning Panel as having a capital investment value of greater than \$20 million.

Discussion

SEPP 65 / Design Outcomes

It is important to note that the site's floor space ratio (FSR) and zoning are to remain unchanged by the planning proposal.

Although the recent development application has not proceeded, the DA process has provided confidence in the feasibility of a design within the parameters of the planning proposal now being put forward.

The design prepared in the development application was assessed and endorsed by the SEPP 65 consultant and recommended for support by Council's DA staff. The architect reviewing SEPP 65 design matters found that such a proposal would meet the objectives of the principles of good design. A development design with acceptable impacts was demonstrated and would provide a valuable addition to a future public square over the railway line.

In regards to the nine additional floors above the current height limit would add to visual impact, in close proximity to the building there would only be a marginal perception of difference to the 94m height level. A number of residential and commercial properties on the northern side of Pacific Highway have distant panoramic views including the city skyline, the Harbour Bridge and Sydney Opera House (approximately 5-6 kilometres away) and the proposed development would be assessed against view-sharing principles at the DA stage if the planning proposal proceeds. The aim of the proposal is also to redistribute the building's floor space so that buildings along Pacific Highway's south side would achieve improved views to the south than would be the case if the tower is lowered.

The proposal is supported on the basis that a taller, narrower tower is a preferred outcome to a lower, broader building, where both meet the FSR requirement. This is viewed as a positive trade-off in terms of sunlight impacts on the existing residents in the St Leonards South precinct:-

- A longer shadow would impact more residents further to the south, but only briefly; and
- A narrower shadow would impact nearby residents for a shorter period of time.

These matters would be the subject of further assessment upon lodgment of a subsequent DA if the planning proposal proceeds.

Strategic Context

Since 2011 when this site was first proposed for redevelopment in one ownership, Council has been exploring the opportunity for this site's redevelopment to meet those objectives. The site is considered to be of strategic significance in view of its location adjacent to the proposed Rail Plaza and proximity to St Leonards Station.

Specifically these processes have evolved through several stages:-

- On 17 April 2012, the NSW LEP Gateway approved exhibition of a planning proposal to increase the height from 36 metres to 78 metres - the proposal did not at that stage include a voluntary planning agreement for public benefits;

As stated in the Gateway determination of 17 April 2012: "The height and FSR for the majority of the site [i.e. the western two-thirds towards Berry Rd] has been reduced, with the exception of the eastern portion of the site which has been increased to allow a tower development and reduce overshadowing... It is noted that the planning proposal may potentially facilitate development which may include a tower component of some 78 metres in height.";

- On 15 April 2013, Council's resolution (see Background) to approve 65 metres introduced the concept for the site's height to be further increased subject to public benefits being provided;
- The new Rail Plaza plans were being developed and have become increasingly firm during this

period from 2013 onwards, a consideration which had not been available when the earlier recommendations as to scale had been made by staff. Investigations into the appropriate scale were then able to be undertaken in relation to the future design's integration with the public domain;

- On 17 November 2014, the Voluntary Planning Agreement was finalised following exhibition, relating to a proposed height of 94 metres; and
- Also reflecting of the changing character and scale of the St Leonards Specialised Centre during this recent period:-
 - On 27 October 2014, Council adopted after exhibition a planning proposal to rezone 472-504 Pacific Hwy for mixed use with significant height increases for towers of 27-43 storeys and an associated VPA to contribute to the Rail Plaza construction and other public benefits. This has provided a model for the planning proposal and VPA mechanism now being put forward for 1-13A Marshall Avenue;
 - Willoughby Council endorsed a proposal for towers up to around 50 storeys to be submitted to the Department; and
 - North Sydney Council exhibited a planning study to include four key sites with unspecified heights, and other sites already under construction include 6-16 Atchison St at a comparable height to the 29 storeys proposed for 1-13A Marshall Avenue.

In overview, an increasingly integrated vision for St Leonards' revitalisation is being established as a result of the range of proposals above, with increased scale interrelated with public domain improvements being a key emerging approach. The current LEP control of 65 metres for this site is no longer recommended as the benchmark for the desired future character of the area and, indeed, to retain it would constrain opportunities for enhanced public domain of capacity for the growing population and workforce of St Leonards in accordance with the NSW Metropolitan Strategy for Sydney.

The recommended planning process to be undertaken in order to confirm the new character of the site within the St Leonards Specialised Centre is that of a Planning Proposal to amend the LEP. This aims to provide planning certainty and clarity, as distinct from reliance on approval of a clause 4.6 variation within a development application.

The LEP amendments recommended to be made in the planning proposal would be as follows:-

- Amend the LEP's height objectives under clause 4.3 to remove the wording relating to minimising impacts – this term is inconsistent with clause 4.6's aim to allow variations to a development standard as being inconsistent

Community Consultation

Statement of Intent

The consultation is designed to inform the community and seek comments on Planning Proposal 22 – 1-13A Marshall Avenue, St Leonards. Any comments received would be reviewed and evaluated to determine whether or not to proceed with the proposal.

Method – Formal Exhibition after Gateway Notification

Level of Participation	Inform	Consult
Form of Participation	Open	Targeted
Target Audience	Lane Cove community and general public	Local properties, North Sydney & Willoughby Councils, other owners in those areas.
Proposed Medium	Advertisement, Public exhibition, Website exhibition, eNewsletter	Notification letters
Indicative Timing:	6 weeks following preparation of a draft DCP and VPA	Commencement of exhibition

Summary

- The planning proposal's purpose is to provide planning controls consistent with Council's endorsed objective of a VPA for public works;
- The proposal is consistent with Council's policies relating to the revitalisation of the St Leonards Specialised Centre;
- It supports the evolving character of the St Leonards Specialised Centre, and is complementary with proposed developments for the Rail Plaza on the opposite (Winton) site, as discussed in a separate report to Council at this meeting;
- The Department had already approved the exhibition in 2012 of a height increase to 78 metres, without a public benefits scheme;
- The JRPP decision indicates that an LEP planning proposal is the most appropriate method to achieve development integrated with a VPA for public benefits, rather than relying on a DA's clause 4.6 variation to the development standard;
- The proposal allows for redistribution of height but no change is to be made to the FSR or, therefore, traffic impacts;
- A substantial public benefits scheme would be provided under the VPA endorsed in 2014; and
- The height's design feasibility under SEPP 65 has been demonstrated, including through shadow diagrams.

Conclusion

The recent refusal by the Joint Regional Planning Panel of a DA for the site indicates a technical issue that the use of clause 4.6 to seek a variation to the current height standard lacks the legal strength which a planning proposal to amend the LEP would provide. The SEPP 65 advisory architect's assessment of the DA demonstrated, however, that a design within the proposed 94 metre height limit and associated controls would be feasible and acceptable in terms of impacts and would contribute positively to the public domain.

This Planning Proposal would confirm the LEP planning controls required to enable this site to

contribute to Council's long-standing vision for the revitalization of the St Leonards Specialised Centre. The proposed height would be consistent with the evolving character of the St Leonards Specialised Centre and would facilitate a development design able to contribute to the adjacent St Leonards Rail Plaza. A voluntary planning proposal would be required to accompany a subsequent development application in the terms approved already by Council in 2014 to contribute to the significant public domain improvements currently in train.

The site's extensive planning process over time has taken the concept of a tower integrating with, and contributing to, the new Rail Plaza to the level of detailed design feasibility and the VPA has been endorsed by Council after exhibition. This process now provides a clearly-defined basis for the planning proposal and VPA. Council is requested to support the preparation of the planning proposal on the basis indicated in this report.

RECOMMENDATION

That:-

1. Council approve the preparation and lodgement of a planning proposal for submission to the NSW LEP Gateway seeking approval for exhibition, to:-
 - (i) Amend the LEP height applying to 1-13A Marshall Avenue, St Leonards from 65 metres to 94 metres; and
 - (ii) Amend the wording of the LEP objectives relating to height, in liaison with the Department, to refer to optimising or similar wording rather than minimising impacts, on the grounds that the latter may be inconsistent with the objectives of clause 4.6 of the Act of permitting design flexibility in appropriate circumstances;
2. The Department be requested to issue delegation to Council's General Manager to undertake the planning proposal process;
3. Draft amendments to Development Control Plan 2010 relating to this planning proposal be prepared and exhibited with the planning proposal; and
4. The planning proposal's exhibition include the Voluntary Planning Agreement for the site endorsed in 2014.

Michael Mason
Executive Manager
Environmental Services Division

ATTACHMENTS:

AT-1 [View](#) Letter from Loftex re Planning Proposal 2 April 2015 2 Pages