

12 - 16 Berry Street, North Sydney

**Proposed Amendment to
North Sydney Local Environmental Plan 2001
Clause 31 - Floor Space Ratio**

Planning Proposal

December 2010

10159

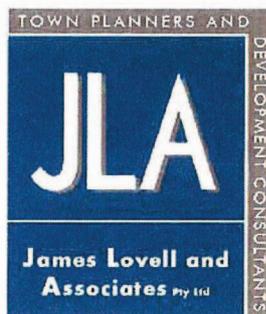


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1. INTRODUCTION

1.1 Preamble

This Report has been prepared to explain the intended effect of, and justification for, a Planning Proposal in relation to No's 12 - 16 Berry Street, North Sydney.

The subject site is located on the northern side of Berry Street, between Doohat Lane to the east and Edward Street to the west.

The site comprises three (3) adjoining allotments encompassing a total area of approximately 948.6m², with a frontage of 21.945 to Berry Street.

The site is zoned Mixed Use pursuant to *Clause 9* of the North Sydney Local Environmental Plan (LEP) 2001. *Clause 31* of the LEP specifies a minimum non-residential floor space ratio (FSR) of 3:1 - 4:1.

This Report has been prepared to accompany a formal request that Council prepare a Planning Proposal to amend *Clause 31* of the North Sydney LEP 2001 to accommodate a minimum non-residential FSR of 0.5:1.

In general terms, the minimum non-residential FSR control of 3:1 - 4:1 that currently applies to the site is inconsistent with the adopted planning initiatives of Council which seek to implement a minimum non-residential FSR of 0.5:1.

In the circumstances, the purpose of the Planning Proposal is to implement the adopted planning initiatives of Council in a timelier manner, and remedy the existing inconsistency which is unnecessarily restricting the redevelopment of the site.

1.2 Purpose

This Report has been prepared pursuant to the provisions of the Environmental Planning and Assessment Act 1979 and accompanying Regulation. To that end, it:

- identifies the site and describes the surrounding locality;

- describes the nature and purpose of the proposed LEP amendment;
- identifies the relevant planning controls and land use strategies; and
- provides a preliminary assessment of the proposed LEP amendment against the provisions of Section 55(2) of the Environmental Planning and Assessment Act 1979 to assist in the preparation of a formal Planning Proposal.

2. SITE DESCRIPTION

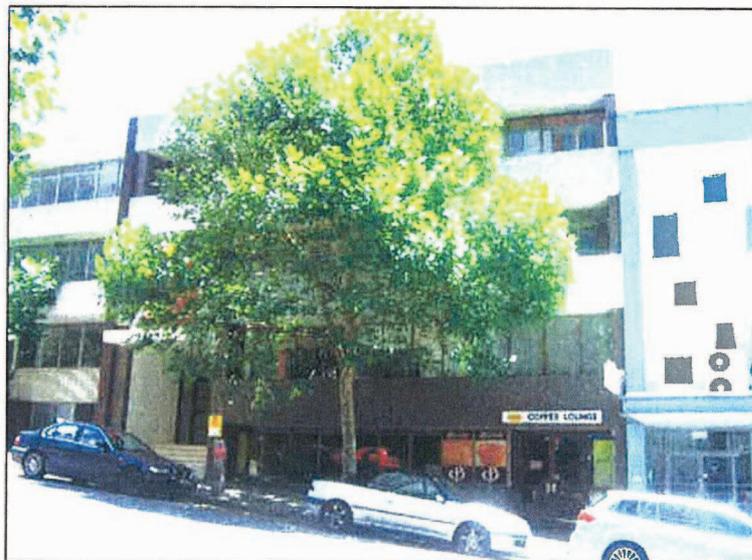
2.1 Site Details

The subject site formally comprises Lots 5, 6 and 7 in Deposited Plan 237104, and is commonly known as No's 12 - 16 Berry Street, North Sydney.

The site is located on the northern side of Berry Street, between Doohat Lane to the east and Edward Street to the west.

The site comprises three (3) adjoining allotments encompassing a total area of approximately 948.6m², with a frontage of 21.945 to Berry Street.

The site is currently occupied by two (2) x 4-storey commercial buildings providing a combined floor area of approximately 2,100m², with a café occupying a portion of the ground floor level fronting Berry Street.

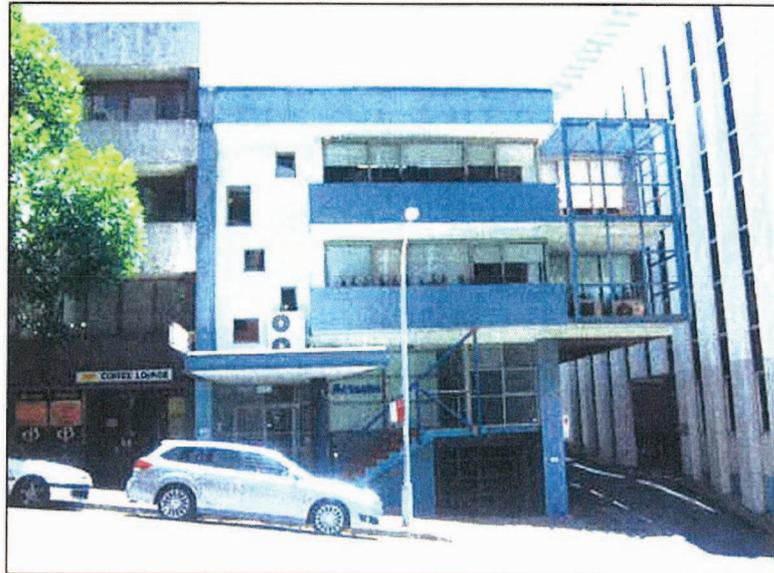


Photograph 1: Subject Site Viewed from Berry Street

2.2 Site Context

The site is located within an established mixed-use environment characterised by a diversity of land uses and building forms extending over multiple development eras, including detached dwellings, semi-detached dwellings, townhouses, commercial/retail buildings, and mixed-use buildings.

In more immediate terms, the adjoining development to the east comprises a 4-storey commercial building.



Photograph 2: Adjoining Development to the East

The adjoining development to the west comprises a 3 - 4 storey commercial building.



Photograph 3: Adjoining Development to the West

The adjoining development to the north comprises a series of 1 - 2 storey townhouses and dwellings, orientated towards Doohat Lane.



Photograph 4: Adjoining Development to the North

The existing development on the opposite side of Berry Street comprises a 10 - 11 storey mixed use building incorporating residential apartments above commercial/retail floor space at the lower levels.



Photograph 5: Development on the Opposite Side of Berry Street

3. BACKGROUND

3.1 Development

On 7 May 2007, Council granted Development Consent (DA 66/07) for the retention and refurbishment of the existing buildings, reconfiguration of the existing car parking areas, and construction of five (5) levels of residential accommodation.

The approved development provides a total floor area of approximately 5,270m², comprising 2,787m² of non-residential floor space and 2,483m² of residential floor space. As such, the approved development provides a non-residential FSR of 2.93:1.

Off-street car parking was approved for a total of 26 vehicles, with a separate loading dock, three (3) motorcycle parking spaces, and 18 bicycle rails.

On 8 December 2010, a Development Application (DA 494/2010) was submitted to Council for the demolition of the existing buildings, and the construction of a mixed-use development.

The proposed development provides a total floor area of approximately 4,113.2m², comprising 502m² of non-residential floor space and 3,611.2m² of residential floor space. As such, the proposed development provides a non-residential FSR of 0.53:1.

Off-street car parking is proposed for a total of 35 vehicles, with a separate loading space, four (4) motorcycle parking spaces, and bicycle storage.

On 14 December 2010, Council advised the Applicant that the variation to the non-residential FSR control incorporated in *Clause 31* of the LEP was more appropriately addressed via an amendment to the LEP, rather than through an objection pursuant to State Environmental Planning Policy (SEPP) No. 1 - Development Standards.

3.2 Context

The site is located within the area affected by Draft North Sydney LEP 2001 (Amendment No. 28). The Draft LEP was adopted by Council on 10

December 2007, however a subsequent decision of the Land and Environment Court found the resolution to be invalid and of no effect.

The deficiencies of the Draft LEP (which were unrelated to the site) were subsequently addressed, and the Draft LEP was again adopted by Council on 12 May 2008.

The Department of Planning requested additional information in relation to the overall provision of commercial floor space, and the Draft LEP was again adopted by Council on 8 September 2008 for the purposes of public exhibition. The Draft LEP was exhibited from 13 February 2009 to 16 March 2009.

On 10 August 2009, Council resolved to incorporate the provisions of the Draft LEP into the Draft North Sydney LEP 2009. On 30 November 2009, Council again adopted the Draft North Sydney LEP 2009 for the purposes of requesting a Section 65 Certificate to facilitate public exhibition.

The minimum non-residential FSR control of 0.5:1 incorporated in the Draft LEP has remained unchanged in respect of the site since the Draft LEP was originally adopted by Council in 2007, and has been consistently adopted by Council on 10 December 2007, 12 May 2008, 8 September 2008, and 30 November 2009.

The delay in the implementation of Draft North Sydney LEP 2001 (Amendment No. 28) has similarly affected a number of other properties within the general vicinity of the site including No. 225 Miller Street, No's 144 - 150 Walker Street, and No's 136 - 140 Walker Street.

The North Sydney LEP 2001 has recently been amended to remedy the inconsistencies between the existing and adopted non-residential FSR control in relation to No. 225 Miller Street (Amendment No. 36) and No's 144 - 150 Walker Street (Amendment No. 38), and a Gateway Determination (approval) has been issued in relation to No's 136 - 140 Walker Street.

4. LEGISLATIVE CONTEXT

The Environmental Planning and Assessment Amendment Act 2008 and the Environmental Planning and Assessment Amendment (Plan Making) Regulation 2009 commenced on 1 July 2009, and incorporate amended provisions relating to the making of environmental planning instruments.

The amended provisions introduce a system known as the "*gateway plan-making process*", intended to streamline the plan making process so that environmental planning instruments can be prepared, considered and approved in a much shorter timeframe.

Section 55(1) of the Environmental Planning and Assessment Act 1979 specifies that before an environmental planning instrument is made, the relevant planning authority is required to prepare a document that explains the intended effect of the proposed instrument, and sets out the justification for its making ("the Planning Proposal").

Section 55(2) specifies that the Planning Proposal is to include a statement of the objectives and intended outcomes of the proposed instrument, an explanation of the provisions that are to be included in the proposed instrument, the justification for those objectives, outcomes and provisions, maps to be adopted by the proposed instrument, and details of the community consultation that is to be undertaken before consideration is given to the making of the proposed instrument.

Further, the Department of Planning has published "*A Guide to Preparing Planning Proposals*" (July 2009), to explain the format and content of a Planning Proposal to be prepared by the relevant planning authority.

4.1 Objectives or Intended Outcomes

In general terms, the objective or intended outcome of the proposed LEP amendment is to facilitate development for the purposes of a mixed-use building incorporating a minimum non-residential FSR of 0.5:1.

4.2 Explanation of Provisions

The provisions of the Planning Proposal comprise the insertion into the definition of *map* in Schedule 2 of the North Sydney LEP 2001 a

reference to the FSR Map (currently Sheet 3 of Draft LEP Amendment No. 28) which includes a minimum non-residential FSR of 0.5:1.

4.3 Justification

Need for the planning proposal

1. *Is the planning proposal a result of any strategic study or report?*

The Planning Proposal stems from extensive analysis conducted as part of the formulation of Draft North Sydney LEP 2001 (Amendment No. 28) which generally aims to promote the primacy of the North Sydney Centre, and facilitate its overall expansion, and protect certain "special areas" including the Don Bank Museum, North Sydney Station, and Mount Street and Elizabeth Street Plazas.

The minimum non-residential FSR control incorporated in the Draft LEP has remained unchanged in respect of the site since the Draft LEP was originally adopted by Council in 2007, and has been consistently adopted by Council on 10 December 2007, 12 May 2008, 8 September 2008, and 30 November 2009.

2. *Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?*

The Planning Proposal is considered the most appropriate means of achieving the objective or intended outcome on the basis of its specificity with respect to the subject land and the nature of future development.

3. *Is there a net community benefit?*

The Planning Proposal will provide a net community benefit on the basis that:

- the site is located at the periphery of the North Sydney Centre and beyond the primary commercial core;
- the site is located within walking distance of North Sydney Railway Station and is well serviced by public bus services;
- the site is zoned for mixed-use purposes and is surrounded by a diverse mix of commercial, retail, residential and specialist uses;

- the potential reduction in non-residential floor space will not have a significant detrimental impact on the economic viability or vitality of the Centre;
- the North Sydney Centre is identified in the "*Draft Inner North Subregional Strategy*" (Department of Planning, 2007) as forming part of "*Global Sydney*", and the Planning Proposal will increase the potential residential development capacity of the site in accordance with the overall intent of the Metropolitan Strategy;
- the *North Sydney Draft Residential Development Strategy 2008* specifies that residential development should be encouraged in mixed-use areas outside of the primary commercial core;
- the Planning Proposal will provide sufficient flexibility regarding the future development of the site with respect to the minimum non-residential FSR; and
- the Planning Proposal will facilitate the timely implementation of the multiple resolutions of Council regarding the strategic direction for the site and immediate surrounds.

Relationship to strategic planning framework

4. *Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?*

In December 2005, the State Government published a Regional Plan for Sydney known as the *City of Cities - A Plan for Sydney's Future* ("the Metropolitan Strategy"). The Metropolitan Strategy was prepared to guide the growth of the Sydney Region for the next 25 years, and embodies major decisions on the location of urban growth, new housing areas, employment, transport, schools and hospitals.

The State Government anticipates that Sydney's population will increase by 1.1 million people between 2004 and 2031, necessitating an additional 640,000 dwellings and 500,000 jobs.

In July 2007, the *Draft Inner North Subregional Strategy* was released by the State Government to provide more detailed guidance as to how the objectives of the Metropolitan Strategy can be applied at the local and subregional level.

The *Draft Inner North Subregional Strategy* identifies that the Inner North is to accommodate 30,000 new dwellings and 60,100 new jobs between 2004 and 2031, of which North Sydney is required to contribute 5,500 dwellings and capacity for 15,000 new jobs.

In the circumstances, the Planning Proposal will reasonably contribute to subregional housing targets, and facilitate the timely implementation of the multiple resolutions of Council regarding the strategic direction for the site and immediate surrounds.

5. *Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?*

The *North Sydney Draft Residential Development Strategy 2008* is generally intended to facilitate the implementation of the *Draft Inner North Subregional Strategy*, and reflect the prescribed dwelling targets incorporated in the Metropolitan Strategy.

The *North Sydney Draft Residential Development Strategy 2008* specifies that residential development should be encouraged in mixed-use areas outside of the primary commercial core, consistent with the provisions of the *Draft Inner North Subregional Strategy*.

6. *Is the planning proposal consistent with applicable state environmental planning policies?*

The relevant state environmental planning policies include State Environmental Planning Policy (SEPP) No. 55 - Remediation of Land, and SEPP No. 65 - Design Quality of Residential Development.

SEPP No. 55 specifies that a consent authority must not consent to the carrying out of development on land unless it has considered whether the land is, or is likely to be contaminated, and if the land is, or is likely to be contaminated, whether the land requires remediation before the land is developed for the proposed use.

The site has an established history of commercial/retail related use, and evidently has not been used for industrial, agricultural or defense purposes at any time in the lands recent history. In the circumstances, there is no evidence to suggest that the land is likely to be contaminated

to the extent that would render it unsuitable for commercial/retail and residential use.

SEPP No. 65 aims to improve the design quality of residential development in New South Wales (NSW). The Policy is to be considered in the assessment of residential flat buildings of three (3) or more storeys, incorporating at least four (4) apartments.

SEPP No. 65 requires consideration of a range of design quality principles including context, scale, built form, density, resource, energy and water efficiency, landscape, amenity, safety and security, social dimensions, and aesthetics.

The future development of the site will be the subject of assessment pursuant to the provisions of Section 79C of the Environmental Planning And Assessment Act 1979. In any event, the size, configuration and dimensions of the site are such the compliance with the provisions of SEPP No. 65 can reasonably be anticipated.

7. *Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?*

The relevant Section 117(2) Directions (as amended) comprise Direction 1.1 - Business and Industrial Zones, Direction 3.1 - Residential Zones, Direction 3.4 - Integrating Land Use and Transport, Direction 5.1 - Implementation of Regional Strategies, Direction 6.1 - Approval and Referral Requirements, Direction 6.3 - Site Specific Provisions, and Direction 7.1 - Implementation of the Metropolitan Strategy.

Direction 1.1 - Business and Industrial Zones

Direction 1.1 generally aims to encourage employment growth in suitable locations, protect employment land in business and industrial zones, and support the viability of identified strategic centres.

The Direction specifies that a Planning Proposal must give effect to the objectives, retain the areas and locations of existing business and industrial zones, and not reduce the total potential floor space area for employment uses and related public services.

The Planning Proposal does not change the area or location of the existing business or industrial zones, and is unlikely to materially or substantially reduce the employment potential of the site. Further, additional residential accommodation on the site will support the viability and vitality of the commercial core of the North Sydney Centre, and make efficient use of existing infrastructure and services.

Direction 3.1 - Residential Zones

Direction 3.1 generally aims to encourage a variety and choice of housing types to provide for existing and future housing needs, make efficient use of existing infrastructure, and minimise the impact of residential development on the environment and resource lands.

The Direction specifies that a Planning Proposal must include provisions that will broaden the choice and locations available in the housing market, make efficient use of infrastructure, reduce the consumption of land on the urban fringe, and be of good design.

The Planning Proposal will potentially increase the variety and choice of housing, make more efficient use of existing infrastructure and services, and facilitate a high quality design.

Direction 3.4 - Integrating Land Use and Transport

Direction 3.4 generally aims to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve improved accessibility, increased choice of transport, reduced travel demand, and efficient movement of freight.

The Direction specifies that a Planning Proposal must locate zones that are consistent with the aims, objectives and principles of *"Improving Transport Choice - Guidelines for planning and development"* (DUAP 2001), and *"The Right Place for Business and Services - Planning Policy"* (DUAP 2004).

The Planning Proposal is consistent with the aims and objectives relating to urban consolidation. The site is located at the periphery of the North Sydney Centre and beyond the primary commercial core. Further, the site is located within walking distance of North Sydney Railway Station and is well serviced by public bus services.

Direction 5.1 - Implementation of Regional Strategies

Direction 5.1 generally aims to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies.

The Direction specifies that a Planning Proposal must be consistent with a regional strategy released by the Minister for Planning.

The *Draft Inner North Subregional Strategy* identifies that the Inner North is to accommodate 30,000 new dwellings and 60,100 new jobs between 2004 and 2031, of which North Sydney is required to contribute 5,500 dwellings and capacity for 15,000 new jobs.

The Planning Proposal will reasonably contribute to subregional housing targets, and facilitate the timely implementation of the multiple resolutions of Council regarding the strategic direction for the site and immediate surrounds.

Direction 6.1 - Approval and Referral Requirements

Direction 6.1 generally aims to ensure that LEP provisions encourage the efficient and appropriate assessment of development.

The Direction specifies the general concurrence, consultation and referral mechanisms, and the Planning Proposal will satisfy those requirements.

Direction 6.3 - Site Specific Provisions

Direction 6.3 generally aims to discourage unnecessarily restrictive site specific planning controls.

The Direction specifies the general content of an environmental planning instrument must not introduce any development standards or requirements in addition to those that already apply in the existing or proposed zone.

In general terms, the minimum non-residential FSR control that currently applies to the site is inconsistent with the adopted planning initiatives of Council. In the circumstances, the Planning Proposal will implement the adopted planning initiatives of Council in a timelier manner, and remedy

the existing inconsistency which is unnecessarily restricting the redevelopment of the site.

Direction 7.1 - Implementation of the Metropolitan Strategy

Direction 7.1 generally aims to give legal effect to the visions, and use strategy, policies, outcomes and actions contained in the Metropolitan Strategy.

The Direction specifies that a Planning Proposal shall be consistent with the Metropolitan Strategy.

The *Draft Inner North Subregional Strategy* identifies that the Inner North is to accommodate 30,000 new dwellings and 60,100 new jobs between 2004 and 2031, of which North Sydney is required to contribute 5,500 dwellings and capacity for 15,000 new jobs.

In the circumstances, the Planning Proposal will reasonably contribute to subregional housing targets, and facilitate the timely implementation of the multiple resolutions of Council regarding the strategic direction for the site and immediate surrounds.

Environmental, social and economic impact

8. *Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?*

The Planning Proposal will not affect any critical habitat or threatened species.

9. *Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?*

There are no environmental effects likely to arise as a consequence of the Planning Proposal that cannot be adequately controlled as part of the development assessment process.

10. *How has the planning proposal adequately addressed any social and economic effects?*

The Planning Proposal will reasonably contribute to subregional housing targets, and facilitate the timely implementation of the multiple resolutions of Council regarding the strategic direction for the site and immediate surrounds.

State and Commonwealth interests

11. *Is there adequate public infrastructure for the planning proposal?*

The site is serviced by all necessary public infrastructure.

12. *What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?*

Any comments from State and Commonwealth public authorities can be responded to if required.

4.4 Community Consultation

The community consultation process will be implemented in accordance with Section 57 of the Environmental Planning and Assessment Act 1979.

5. CONCLUSION

This Report has been prepared to explain the intended effect of, and justification for, a Planning Proposal in relation to No's 12 - 16 Berry Street, North Sydney.

Clause 31 of the North Sydney LEP 2001 specifies a minimum non-residential floor space ratio (FSR) of 3:1 - 4:1, and the Planning Proposal seeks to amend *Clause 31* to accommodate a minimum non-residential FSR of 0.5:1.

The site is located within the area affected by Draft North Sydney LEP 2001 (Amendment No. 28). On 10 August 2009, Council resolved to incorporate the provisions of the Draft LEP into the Draft North Sydney LEP 2009.

On 30 November 2009, Council adopted the Draft North Sydney LEP 2009 for the purposes of requesting a Section 65 Certificate to facilitate public exhibition.

The minimum non-residential FSR control of 0.5:1 incorporated in the Draft LEP has remained unchanged in respect of the site since the Draft LEP was originally adopted by Council in 2007, and has been consistently adopted by Council on 10 December 2007, 12 May 2008, 8 September 2008, and 30 November 2009.

In general terms, the minimum non-residential FSR control that currently applies to the site is inconsistent with the adopted planning initiatives of Council. In the circumstances, the purpose of the Planning Proposal is to remedy the inconsistency which is unnecessarily restricting the redevelopment of the site.

The site is located at the periphery of the North Sydney Centre and beyond the primary commercial core. Further, the site is located within walking distance of North Sydney Railway Station and is well serviced by public bus services.

The Planning Proposal will reasonably contribute to subregional housing targets, and facilitate the timely implementation of the multiple resolutions of Council regarding the strategic direction for the site and immediate surrounds.