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BB3 (CIS)  
Our Ref: PP2/19

Via email: [PlanComment@planning\\_panels.nsw.gov.au](mailto:PlanComment@planning_panels.nsw.gov.au)

18 February 2021

Dear Sir/Madam,

**RE: PLANNING PROPOSAL SUBMISSION  
2020SNH003-NORTH SYDNEY-PP-2020-74  
263-283 ALFRED STREET & 4 LITTLE ALFRED STREET, NORTH SYDNEY**

I refer to your letter dated 22 December 2020 notifying Council of the public exhibition of the above planning proposal.

As previously indicated to the Planning Panels Secretariat in December 2020, this submission comprises an unendorsed draft submission, due to the exhibition period ceasing (19 February 2021) before Council could formally consider its position on the matter (22 February 2021). The submission is based on the matters raised in a report to be considered by Council on 22 February 2021. This submission is therefore to be followed up by a second Council endorsed submission.

The following comprises Council's response to your invitation to comment.

**1. Planning Proposal Exhibition**

The handling of the public exhibition of the Planning Proposal has been conducted in a manner that has not demonstrated reasonable levels of clarity, transparency nor consistent with best practice. In particular, there have been issues with respect to:

- Commencement dates and timing of the exhibition;
- Lateness in issuing formal notification letters; and
- Orderliness and quantum of the exhibition documentation.

These issues are further discussed in the following subsections.

**1.1. Notification of exhibition**

Notification of the public exhibition of the Planning Proposal was first made through the publication of an advert within the Mosman Daily on 10 December 2020, with submissions invited up until the 29 January 2021. It stated that copies of the exhibition documents would be made available on the Department of Planning, Industry and Environment's (DPIE) website, Council's customer Service Centre and Stanton Library.

Hard copies of the exhibition material were provided to Council by DPIE prior to the commencement date and made available in Council's Customer Service Centre and at Stanton Library from the exhibition commencement date. However, no documentation or even a landing page was made available on the DPIE's website at the commencement of the public exhibition period contrary to the notification advert within the Mosman Daily of 10 December 2020. Exhibition documentation was not made available on DPIE's website until the 22 December 2020.

Formal notification letters dated 22 December 2020 outlining the public exhibition of the planning proposal were circulated from this date. Whilst Council received a copy of this letter by email on 22 December 2020, it is unlikely that many of the affected residents did not receive their notification letters until well after this date, given the closeness to Christmas and residents often taking extended periods of leave at this time. At this point, it was noted that the exhibition period had been extended until 19 February 2021. As the Mosman Daily was not in circulation at this time due to Christmas, there was no subsequent newspaper notification advising the wider community of the revised exhibition period indicated in the notification letter.

Despite the public exhibition lasting for more than 28 days, including taking into consideration the exclusion of 20 December until 10 January as per the DPIE's Community Participation Plan, the length of available time granted to residents to comment was poor, especially given the circulation of notification letters from the 22 December and no subsequent newspaper advert advising of revised exhibition dates to that first indicated on 10 December 2020.

It is best practice to ensure that affected residents receive notification letters prior to the commencement of the public exhibition process to ensure that they have sufficient time to comment.

This ad-hoc notification of the public exhibition of the planning proposal undermines the community's faith in the planning system.

## **1.2. Exhibition documents**

As indicated, whilst hard copies of the exhibition documents were made available from 10 December 2020, the exhibition documents did not appear on the DPIE's website until 22 December 2020, 12 days after the formal commencement of the exhibition period.

Once made available on the DPIE's website, it was found that there was a significant discrepancy between the quantum of documents made available on the DPIE's website (48) and the hard copies provided to Council (15) for display in its Customer Service Centre and Stanton Library. In particular, the following documents were missing from the hard copies provided to Council:

- Rezoning Review – Application Form for a Rezoning Review (21 June 2019)
- Rezoning Review - Applicant's Rezoning Review report (June 2020)
- Rezoning Review – Applicant's Planning Proposal as lodged to Council including appendices (March 2020)
- Rezoning Review - Record of Decision of Sydney North Regional Planning Panel (5 November 2019)
- Rezoning Review - Sydney North Regional Planning Panel Declarations (31 October 2019)

- Gateway Determination Report (IRF20/3677) – DPIE (undated)
- Gateway Determination – DPIE letter to Council (7 September 2020)
- Gateway Determination – DPIE letter to SNRPP (7 September 2020)

There was also an absence of documentation outlining Council's assessment and consideration of the Planning Proposal. In particular, the following were missing:

- The assessment report prepared by Ingham Planning on behalf of Council;
- The report to the North Sydney Local Planning Panel and their recommendation of 14 August 2019;
- The report considered by Council and its resolution of 26 August 2019.

This has further impacted on the community's ability to accurately interpret and understand the nature of the proposal. This is contrary to best practice guidelines and principles that Council seeks to employ when engaging with the community.

Furthermore, the quantum and labelling of the documents placed on public exhibition has not assisted the wider community fully engaging with the process. More specifically, the display of documentation material on the DPIE's website includes the placement of 48 separate documents in an illogical and confusing sequence, incorporates duplicated documents, confusing title references, no logical grouping of document types and inclusion of superseded information with no explanation or contextual reference. It is therefore unclear which document comprises the most recent planning proposal (including attachments) that is being requested to comment upon.

DPIE, in its Gateway Determination Report stated:

*The planning proposal is required to be updated to create a consolidated document combining the information contained within the original planning proposal, rezoning review, and additional information provided following the rezoning review. This is to ensure that the information displayed for public exhibition is consistent and easily legible for the community.*

This was incorporated as Condition 2 to the issued Gateway Determination. As demonstrated above, this has clearly not occurred. The degree of inconsistency in the documents being provided to view in different locations and missing information is unacceptable and results in low levels of transparency and accountability. On this basis alone, the entire proposal should be re-exhibited in a clear and coherent manner such that the wider community can properly understand what is being proposed and likely to be delivered.

Further, there is a significant possibility that any future LEP amendment giving affect to the the planning proposal could be invalidated, through Class 4 proceedings in the Land and Environment Court, due to the discrepancies between the exhibition documentation provided in different locations.

**1.3. Draft amendment to North Sydney Development Control Plan (NSDCP) 2013 and Letter of Offer to enter into a Voluntary Planning Agreement (VPA)**

Whilst a draft amendment to NSDCP 2013 and a letter of offer to enter into a VPA is included within the exhibition documents, these are not deemed to have been formally exhibited for the purposes of the Environmental Planning and Assessment Act, 1979 (EP&A Act).

It is best practice to publicly exhibit endorsed draft DCPs and draft VPAs with planning proposals concurrently as it improves clarity and certainty around what is being proposed and what is likely to be delivered.

Council had requested DPIE in March 2020 when declining to accept the Planning Proposal Authority (PPA) role, that the appointed PPA for the planning proposal also be appointed to progress the exhibition of a formal DCP amendment and VPA associated with the Planning Proposal. The DPIE has firmly advised Council that neither it nor the Sydney North Regional Planning Panel (SNRPP) will take carriage of the associated draft DCP amendment or draft VPA.

Furthermore, the issues with some of the proposed controls within the draft DCP and public benefit within the letter of offer to enter a VPA as outlined elsewhere in this submission have direct implications for the proposed planning controls outlined within the planning proposal. This has subsequently reduced confidence in the anticipated outcomes that could be delivered.

The DPIE has advised that mechanisms could be put in place (refer to sections 3 and 4 of this submission) to ensure the delivery of appropriate development controls within Council's DCP and public benefits through a VPA prior to the commencement of any LEP amendment giving effect to the planning proposal.

**1.4. Recommendation**

The exhibition process has not been undertaken in accordance with best practice, nor fully compliant with Condition 2 of the Gateway Determination. If the planning proposal is progressed there is a significant possibility that any future LEP giving effect to the planning proposal could be invalidated.

It is therefore recommended that:

**1.4.1. The planning proposal be re-exhibited in its entirety with:**

- (a) A common commencement and end date to the exhibition;**
- (b) Notification letters being distributed before the commencement of the exhibition period;**
- (c) The exhibition documents be labelled and grouped in a form that is easy to interpret;**
- (d) The number of documents exhibited on the website, being the same as that provided to Council in hard copy to display at its Customer Service Centre and Stanton Library;**
- (e) Council endorsed versions of the draft DCP amendment and draft VPA.**

## 2. **Assessment of the exhibited planning proposal**

The overall intent of the proposal remains largely identical to that when the proposal was first lodged and considered by Council, except that it now includes a letter of offer to enter into a Voluntary Planning Agreement and a revised site-specific DCP. Accordingly, the issues raised within Council's original assessment remain relevant. These are detailed in the report considered by Council on 26 August 2019. A copy of this report and Council resolution are available at:

[https://www.northsydney.nsw.gov.au/Council\\_Meetings/Meetings/Council\\_Meetings/Council\\_Reports\\_26\\_Aug\\_2019\\_\(item\\_CiS03\)](https://www.northsydney.nsw.gov.au/Council_Meetings/Meetings/Council_Meetings/Council_Reports_26_Aug_2019_(item_CiS03))

Council stands by these reasons for not supporting the progression of the planning proposal, which included:

- The indicative concept design fails to demonstrate how the site could be acceptably developed to the requested heights insofar that it does not respond adequately to the site attributes and context and will result in a significant level of public and private amenity impacts;
- It is contrary to objectives (c), (e) and (f) of the Height of Building controls under clause 4.3 to NSLEP 2013;
- It is contrary to the objectives (a) and (b) of the FSR controls under clause 4.4 to NSLEP 2013;
- It is inconsistent with a number of objectives and actions under the relevant Regional and District strategies applying to the land;
- It will have an adverse impact on the adjoining Whaling Road heritage conservation area;
- It will result in excessive overshadowing of adjoining properties including Alfred Street North Park;
- It will have an adverse visual impact and detract from the existing and desired future character of the area;
- It does not encourage the amalgamation of lots to:
  - allow adequate flexibility in the manner in which built form is distributed on the site to minimise impact;
  - minimise vehicular access points and parking related structures on Little Alfred Street and;
  - allow an appropriate and efficient basement parking arrangement;
- It provides minimal public benefit in that the public accessible areas within the site are mainly thoroughfares that provide access to commercial uses and have limited potential for use as open space and limited amenity;
- The provision of an LEP provision allowing an additional 2:1 FSR subject to design excellence competition requirements is contrary to the existing LEP provisions, has not been sufficiently justified and would result in a building of excessive height and /or bulk.

Further to its original assessment, Council has identified additional issues in response to the exhibited revised planning proposal including:

- Difficulty in understanding what is being proposed and its impacts due to the documentation not being sufficiently updated;
- Lack of amendment of key controls within the planning proposal to reflect amendments to the built form controls within the draft DCP;
- Potential for a significant reduction of commercial floorspace across the Precinct, contrary to Direction 1.1 of the s.9.1 Ministerial Directions;
- Poor justification for the inclusion of an FSR bonus;

- Poor boundary setbacks and internal tower separation distances impacting upon residential amenity and the heritage significance of adjacent Conservation Area;
- Insufficient height control over the eastern portion of the site;
- An assessment of revised traffic impacts;
- Lack of sufficient overshadowing analysis;
- Poor public domain benefits;
- Inclusion of signage controls, without being adequately discussed or justified;
- Increased heritage impacts due to a reduced setback to an adjoining Conservation Area; and
- Overstated compliance with Council's local strategic planning documents.

These issues are explained in detail in the following subsections.

### **2.1. Understanding of Concept Proposal & Built Form**

Section 3.12 of the Planning Proposal states that in response to issues raised by the SNRPP, a response package was submitted to DPIE on 5 June 2020 to address these issues which included the following amendments to the draft site specific DCP:

*Ground floor plane amendments: The ground floor plane in the DCP was revised to improve pedestrian linkages and increase building setbacks. The building setbacks along Alfred Street and Whaling Road were increased (by about 1.5m) to allow for greater landscaping opportunities and improvements to the public domain. The northern ground floor setback of Site A was increased from 2.4m to 6m which will create a better interface and provide a greater building separation with the properties to the north. Furthermore, the floor plate to the upper levels have been reduced to create a stepped built form along the northern boundary.*

*Slimmer profile for the Bayer Building: A provision in the DCP has been inserted to ensure the Bayer Building has a slimmer profile (as recommended by the NSPP) at its topmost levels which could incorporate chamfering to the edges of the building.*

*Basement entry: The DCP relocated the vehicle entry for Sites C and D from Little Alfred Street to Whaling Road to improve traffic flows and reduce traffic congestion.*

Of particular note, the applicant has omitted the proposed reduction in the proposed building setback from Little Alfred Street from a minimum of 4.2m to 0m as indicated in the figures to the draft DCP.

These amendments have resulted in a significant change to the anticipated built form on the site compared to that as originally lodged. However, the images and statistics of the concept proposal which inform the Planning Proposal and many of its supporting appendices have not been revised to reflect this amended built form. This has resulted in a very difficult to understand proposal given that all the images presented of the proposed built form do not reflect the proposed amendments to the planning controls. This in turn has made it difficult to determine the potential implications arising from the implementation of the proposed controls. The key issues arising from this are further addressed in the following subsections.

## 2.2. Floor Space Ratio

The proposed changes to the planning controls within the draft DCP will have a direct impact upon the achievable FSR on the site. In particular, compliance with the DCP will result in a substantial reduction in achievable floorspace. However, no subsequent change has been made to the concept proposal or the proposed FSR requirements within the Planning Proposal. This results in an overinflated future redevelopment potential of the Precinct in comparison to that which is fully compliant with all other built form controls being proposed.

This subsequently places pressure on breaching other built form controls to achieve the maximum floor space control. This is an unacceptable outcome.

Therefore, the Planning Proposal needs to be revised to adequately demonstrate what built form outcomes will be achievable in accordance with all the proposed built form controls including a revised FSR control.

## 2.3. Floor Space Ratio Bonus

Whilst the logic behind the inclusion of bonus FSR provision is understood, it is not supportable. The justification for this, a 2:1 FSR bonus based solely on “design excellence” alone, is unacceptable. All development should strive to achieve design excellence. Any bonus should be tied to the delivery of tangible public benefits.

Despite Council’s overall objection to the inclusion of the clause, if DPIE is of a mind to progress the Planning Proposal, the wording of the proposed clause is not supported. The proposal as currently worded, suggests that an FSR of 9.3:1 can be granted in addition to a base FSR of 7.3:1 (i.e. a total of 16.6:1), which is not the intent of the clause. Therefore, it is recommended that, that the wording of the clause be revised similar to that as follows:

## 4.4 Floor space ratio

- ....
- (2A) *Despite subclause (2), the floor space ratio of a building on land identified as “Area 1” on the Floor Space Ratio Map may exceed the maximum floor space ratio for the land on that Map if the consent authority is satisfied:*
- (a) *the FSR of the building does not exceed a floor space ratio of 9.3:1;*
  - and*
  - (b) *the building achieves design excellence in accordance with Clause # to this Plan.*

## 2.4. Non-residential Floor Space Control

The Planning Proposal suggests that the concept proposal would result in a small net decrease in commercial floorspace across the entire Precinct, yet the number of jobs would remain generally the same or increase due to better floorspace efficiencies. However, there is no guarantee that the level of total employment floorspace would be retained in practice. This is due to there being an absence of minimum non-residential floor space requirements.

The best way to protect the level of employment floorspace is to establish a minimum non-residential floorspace requirement across the Precinct. Council has consistently applied a non-residential floor space ratio across all lands zoned *B4 Mixed Use* to ensure that it can meet employment targets set out under the Regional and District Plans.

If a non-residential floorspace ratio is not applied, then there is a potential that a significant amount of jobs could be lost resulting in the proposal being inconsistent with Direction 1.1 to the s.9.1 Ministerial Directions.

The proposed revisions to the built form controls as depicted in the draft DCP would also result in a further potential loss of employment floorspace further exacerbating the issue.

The establishment of a consistent non-residential floorspace ratio control across the entire Precinct would seem appropriate. However, due to the highly fragmented ownership and likely consolidation patterns, it would be more appropriate to provide more sub-Precinct based controls. This aspect requires further investigation and analysis before the Planning Proposal can proceed, to ensure that a desirable outcome is achieved.

Inclusion of such a control would warrant an amendment to the Gateway Determination and re-exhibition of the planning proposal.

## 2.5. Building Setbacks & Separation

The proposed ground level and above podium setbacks, combined with nil basement level setbacks, will facilitate an overbearing built form with a poor interface to the heritage conservation area along Little Alfred Street and to the north. In addition, insufficient tower separation internally will ultimately result in poor amenity for future occupants. The proposed setbacks are also inconsistent with recommended setbacks under the Apartment Design Guidelines (ADG). Application of more appropriate setbacks in this context will result in a lowering of the achievable FSR than the concept design relied upon under the Planning Proposal.

The Urban Design Report (page 52 Appendix 4) sought to “*enhance landscaping to the site with the implementation of green buffer zones to the eastern and western edges of the precinct*”. The “Setback Strategy” on page 55 of the same report, indicates a 4m whole of building setback to the east and west. However, the draft DCP as exhibited identifies a substantially different outcome:

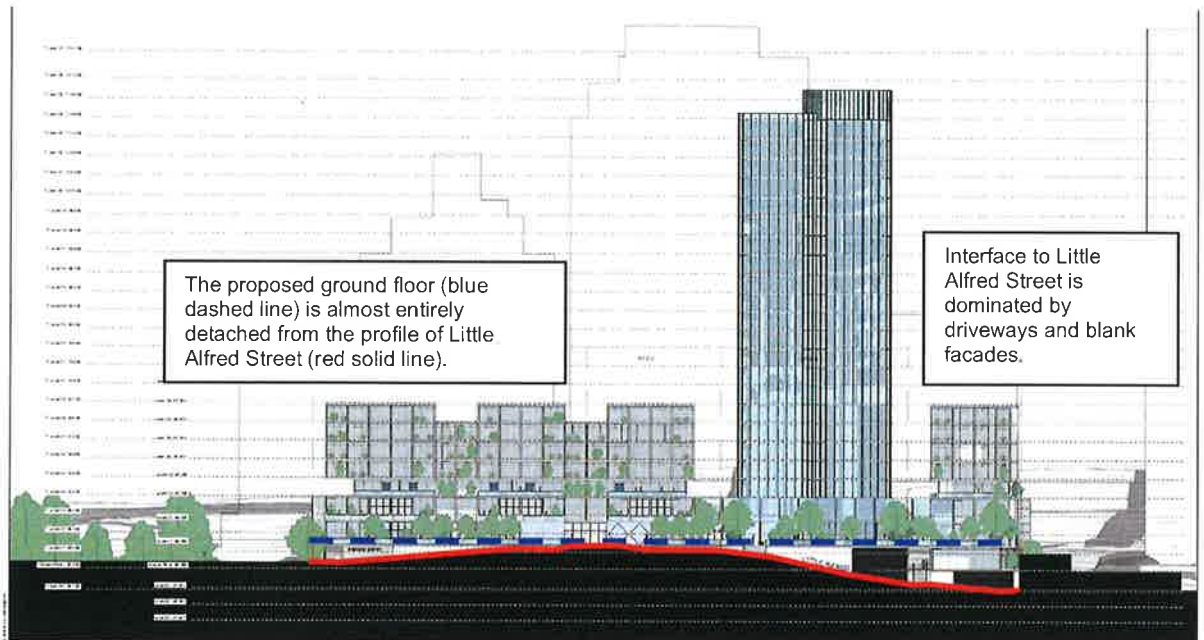
- 6.0m ground floor setback with 4.5m upper-level setback to Alfred Street;
- 0m whole of building setback to Little Alfred Street; and
- 2.4m setback to the north at Levels 2-6 and 6m setback at the ground level and levels 7-8.

However, in rationalising the built form levels across the length of the site, rather than working with the significant level changes of the street and laneway, the proposal would result in exposed basement/lower floor levels that create a hard, continuous edge along the eastern frontage to Little Alfred Street for approximately 80% of the frontage. Even if just looking at the basement level, it rises a full floor to the southern end of Little Alfred Street and two whole floors to the north (Figure 1). Whilst less extreme, it creates an awkward interface along the southern end of Alfred Street (Figure 2).

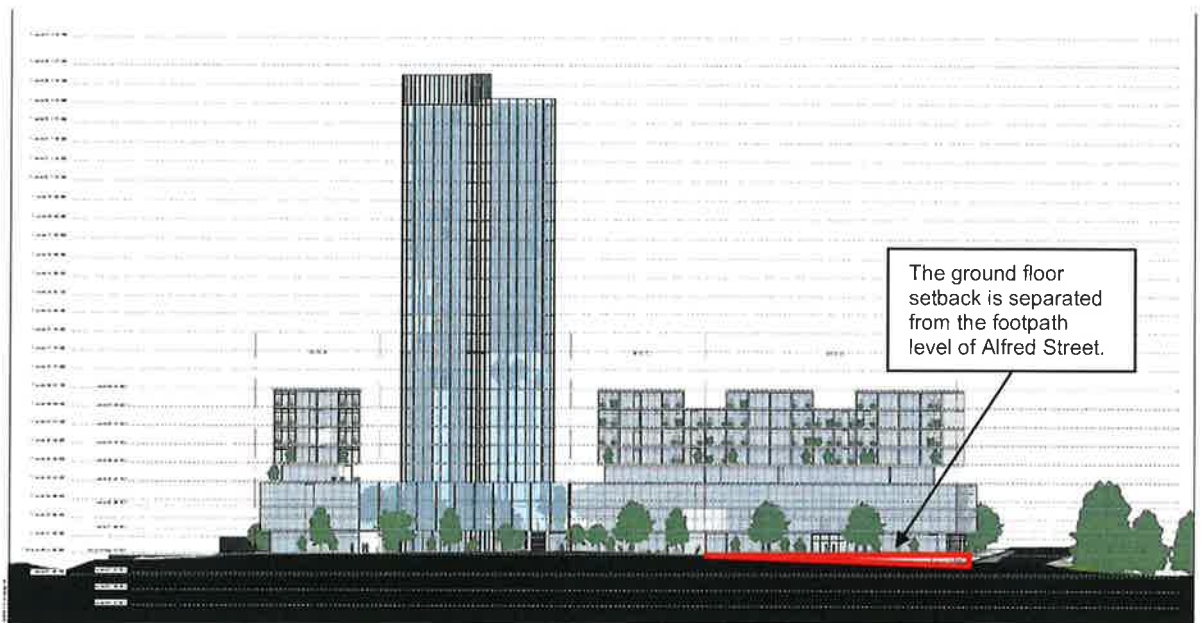


This nil setback results in the “closing in” of Little Alfred Street, with no additional space for pedestrian access and no deep soil to accommodate large canopy trees, which was also identified as a desirable outcome in Council’s unendorsed Planning Study for the Precinct. In addition, it would prevent the ability to deliver a fine-grain built form to positively interface with the adjoining heritage conservation area.

Furthermore, the proposed setbacks would result in an approximately 6m deep building, fronting Little Alfred Street, which provides poor potential for use as either residential or business uses. In addition, it removes the ability to establish a landscaped buffer to the Whaling Road Conservation Area.



**Figure 1 – Interface with Little Alfred Street**



**Figure 2 - Interface with Little Alfred Street**

The Urban Design Report (p.64 to Appendix 4 of the Planning Proposal) incorrectly states that the proposal complies with ADG requirements. The majority of proposed tower setbacks to the north and south are in fact non-compliant. The non-compliance is particularly acute to the north, where the proposal provides a minimum 2.4m setback to the *R2 Low Density Residential* zone when a minimum setback of between 7.5m if non-habitable, or 12m if habitable, is required. A comparison of the proposed reference design with the ADG setback requirements is provided in Table 1.

| <i>Side setback</i>                |                                       | <i>Site A (PP-8st)</i> |              | <i>Site B (PP - 24st)</i> |              | <i>Site C (PP - 8st)</i> |              | <i>Site D (PP - 8st)</i> |               |              |
|------------------------------------|---------------------------------------|------------------------|--------------|---------------------------|--------------|--------------------------|--------------|--------------------------|---------------|--------------|
|                                    |                                       | <i>North</i>           | <i>South</i> | <i>North</i>              | <i>South</i> | <i>North</i>             | <i>South</i> | <i>North</i>             | <i>Middle</i> | <i>South</i> |
|                                    |                                       | <i>h</i>               | <i>h</i>     | <i>h</i>                  | <i>h</i>     | <i>h</i>                 |              | <i>h</i>                 |               | <i>h</i>     |
|                                    |                                       | *                      |              |                           |              |                          |              |                          |               | **           |
| <i>ADG requirement</i>             | <i>Habitable façade</i>               | 12m                    | 9m           | 12m                       | 12m          | 9m                       | 9m           | 9m                       | 18m           | 9m           |
|                                    | <i>Unhabitable façade</i>             | 7.5m                   | 4.5m         | 6m                        | 6m           | 4.5m                     | 4.5m         | 4.5m                     | 9m            | 4.5m         |
| <i>Planning Proposal</i>           | <i>Residential upper floors (7 +)</i> | 6m                     | 3.6m         | 3.6m                      | 2.7m         | 4.5m                     | 3.6m         | 3.6m                     | 7.2m          | 11.0m        |
|                                    |                                       |                        |              |                           |              |                          |              |                          |               | ***          |
| <i>Compliance with ADG setback</i> |                                       | <i>No</i>              | <i>No</i>    | <i>No</i>                 | <i>No</i>    | <i>Yes</i>               | <i>No</i>    | <i>No</i>                | <i>No</i>     | <i>Yes</i>   |

\* – interface with residential conservation area – change in zoning

\*\* – interface with Whaling Road

\*\*\* – to the middle of Whaling Road

Table 1 demonstrates that most north-south facing facades are non-compliant, even when designed as non-habitable facades. Internal residential layouts are not included in the Urban Design Report and therefore it is unclear whether these residential apartments can achieve a satisfactory layout to support the large amount of unhabitable facades needed to achieve the minimum ADG separation requirements.

Overall, the Planning Proposal represents an exceptionally dense built form with poor separation and interface to the surrounding low density residential areas. It is recommended that the proposed setbacks within the draft DCP be revised to:

- provide a minimum 3m whole of building setback to the lot boundary to improve pedestrian safety and amenity at ground level and achieve a landscaped green buffer to the conservation area along Little Alfred Street. This setback should extend below ground level to enable deep soil for large tree canopies.
- Provide at least a 7.5m setback from the upper levels of Site A with the conservation area to the north, consistent with the minimum ADG requirement for unhabitable facades and including an additional 3m due to the change in zoning. This setback should provide vegetated transition to the conservation area in line with the ADG requirement.

- Strictly comply with ADG requirements across the Precinct and that further information be provided to demonstrate the feasibility of supporting non-habitable rooms to the north and south, if proposed.

Such a change to the proposed setbacks will also have an impact on the quantum of FSR achievable on the site and needs to be recalculated.

The Planning Proposal does not propose to encourage the amalgamation of sites. In addition to the built form issues outlined above, the future development of the land may result in four separate vehicle entries fronting Little Alfred Street, which is unsympathetic with the finer grain, residential frontage of the conservation area.

In addition to implementing greater setbacks, it is recommended that at least Sites A&B and Sites C&D be amalgamated to:

- Avoid isolated sites;
- Minimise vehicular entries;
- Provide adequate building transition to the low density residential zone to the east and north; and
- Provide adequate building separation between individual sites within the Precinct.

Furthermore, consideration needs to be given to the incorporation of below ground breakthrough walls to limit vehicular entries to no more than two to the Precinct, preferably off Little Alfred Street and subject to an appropriate transport impact assessment which determines that the level of impact is acceptable.

## 2.6. Building Height

Whilst an FSR control will somewhat temper building heights across the Precinct, there are insufficient controls to ensure an appropriate built form transition to the east. Despite the proposed DCP amendment seeking to identify a number of storeys across the Precinct, no height controls have been established for the proposed built form fronting Little Alfred Street (refer to Figure 3).

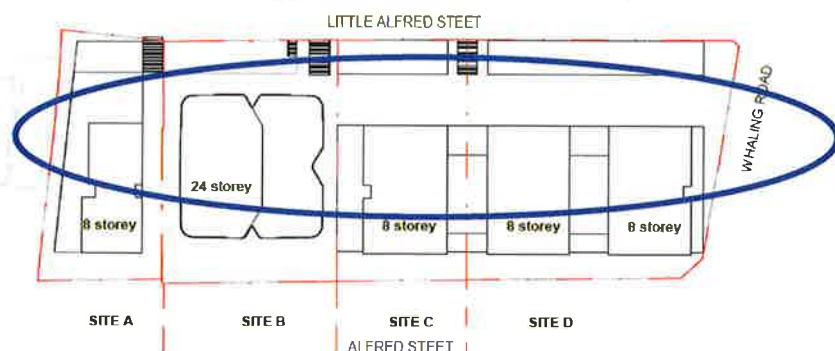


Figure 3 – Extract of draft DCP height controls

To ensure a greater level of clarity and certainty, split height controls should be established across the eastern portion of the site to set depths from Little Alfred Street to ensure the desired built form outcomes are achieved. This would be best achieved by further revisions to the Height of Buildings Map to NSLEP 2013 and supported by additional details in the proposed DCP amendment. Such an amendment would warrant a re-exhibition of the planning proposal.

## 2.7. Overshadowing Analysis

In accordance with recommendations of the SNRPP the Planning Proposal was amended to include an overshadowing analysis (Appendix 9 to the Planning Proposal). It provides a comparison of overshadowing impacts between the existing built form, the concept proposal as outlined in the Planning Proposal and against Council's unendorsed Planning Study for the Precinct.

With respect to the revised overshadowing analysis:

- it is unclear why it only considers the impacts at the Winter Solstice and not extend to include impacts between the March and September equinoxes, which result in a range of different impacts;
- it is unclear if the concept proposal's impact represents the base case or bonus case scenarios; and
- it appears to consider the concept proposal as lodged and not as modified by the revised draft DCP (e.g. it is assumed with reduced proposed setback controls to Little Alfred Street, that there would be an associated increase in overshadowing impact to the properties to the east over that originally lodged).

Accordingly, the information presented does not enable the impacts of a development that complies with future controls as proposed by the planning proposal and draft DCP to be adequately determined.

Notwithstanding these shortcomings:

- additional solar impact will occur on the southern properties along Whaling Road from May until July.
- the additional height on Site B will have additional solar impact north of Neutral Street during the Equinox.
- the upper level setback and 8 storey height on Sites A, C and D have only a minor solar impact on the properties north of Little Alfred Street compared to the existing overshadowing.
- solar impact of Site D onto the RE1 zone south of the area is comparable to the unendorsed Alfred Street Planning Study. Additional overshadowing onto RE1 zoned land should be minimised.
- one of the keys reasons Council did not endorse the draft Alfred Street Planning Study was in response to feedback regarding the solar and visual impacts arising from the additional height proposed.

The existing built form is already significantly out of scale with the local context. Any additional bulk and scale as a result of the planning proposal results in even greater solar impact on the adjacent Conservation Area, which is difficult to justify. The proposed nil setback to the Little Alfred Street will further exacerbate this issue.

Whilst the draft DCP states that “any proposed new tower shall comprise of a slimmer profile at the topmost levels”, it does not prevent the lower portions of the tower being bigger than that currently existing, which can lead to increased amenity impacts. One way to prevent this may be to stipulate a maximum building width and or floorplate control, which would provide increased levels of certainty.

It is therefore recommended that any amendment to the planning controls should ensure that the bulk and impact of any new tall building in the Precinct be similar to that of the existing tall building.

## **2.8. Public Domain/Benefits**

The concept proposal proposes to provide:

- a through-site link on Site A and B;
- a retail arcade through Site C and D; and
- a ground floor setback along Alfred Street as a widening of the existing footpath

In addition, the draft DCP suggests further public domain works that connect the Precinct with its surrounding:

- to connect the precinct with a potential improvement of the park to the south;
- provide increased landscaped buffers along Alfred and Little Alfred Streets to improve pedestrian amenity; and
- pedestrian improvements to Mount Street.

Of particular note is the built forms depicted in the draft DCP show a zero setback to Little Alfred Street resulting in a poor pedestrian environment, which is already heavily compromised.

The through site link is not well aligned with the topography to Alfred and Little Alfred Streets. This results in unnecessary stairs in the concept proposal and little to no deep soil landscaping opportunities. Amalgamating Sites A&B and Sites C&D would create an opportunity to provide a wider, at grade, through site link, with better natural light.

The location and design of the retail arcade also pose significant challenges. There’s no precedent, previous studies or related analysis of this area that demonstrates that a retail arcade running parallel to Alfred and Little Alfred Streets would be successful in this location. Half the north-south length of the internal pedestrian arcade is located adjacent to blank façade used to screen the relocated vehicular access to Whaling Road. This presents a poor outcome in terms of activation.

It is recommended:

- That the setback to Little Alfred Street be reinstated and that it designed as a natural extension to the public domain at grade.
- To encourage the amalgamation of sites, vehicular access points should be minimised, boundary setbacks increased and create wider through-site links, thereby improving the public domain experience.

- Exclude the internalised arcade, such that this space could be better utilised to improve the interface with Little Alfred Street.
- Provide a landscape masterplan, including improvements to the park to the south and Mount Street overpass.

### 2.9. Signage

The Planning Proposal's draft DCP includes clause 9.2 - "Advertising design Analysis" that would foreshadow rooftop signage "with business/building identification signs and roof or sky advertisements".

Rooftop signage is not in line with the change of zoning and the new character the concept proposal should aspire to align with. The view from the Warringah Expressway should clearly reflect the change to a predominantly residential use. Further, this would provide a better relationship with the adjoining neighbouring residential conservation area. Such roof top signage would be better aligned with the CBD location on the other side of the motorway.

Despite the inclusion of the proposed DCP amendment, there is insufficient information contained within the planning proposal to identify its need and or its justification.

It is therefore recommended that all aspects relating to signage be removed from the Planning Proposal and associated draft DCP amendment.

### 2.10. Heritage Impacts

In accordance with Condition 1 of the Gateway Determination, a Heritage Impact Assessment (HIA) has been submitted with the exhibited Planning Proposal.

This Assessment was referred to Council's Conservation Planners for comment and advised:

*The HIS accompanying the revised PP (prepared by Urbis and dated October 2020) presents the case for changes to the current statutory controls to enable the revised PP to progress. It does not address the issues raised in the previous heritage comments raised by Council. The net result of the revised PP is that the 4.5m setback at Little Alfred Street has been altered to a nil setback, the outcome of which compounds the impacts of the proposal on the heritage context of the site. The development remains isolated and overwhelming in terms of design resolutions that do not improve the developments transitory function to achieve an appropriate and sensitive interface with its heritage context. The access points to the development from Little Alfred Street have also been reduced further cutting the site off. Also, opportunities for relevant public art should also be explored and worked through into this early design phase. The revised PP is not supported, and the issues raised in the previous advice dated 28 June 2019 still stand.*

The proposal as amended for exhibition purposes results in a more significant impact upon the heritage significance of the Whaling Road Conservation Area and therefore cannot be supported in its current form until these issues can be adequately addressed.

### **2.11. North Sydney Local Strategic Planning Statement (LSPS)**

In accordance with Condition 3 of the Gateway Determination, Table 9 to the Planning Proposal outlines the proposal's consistency with Council's LSPS. However, some of the statements are questionable or exaggerated. In particular, the proposal will not:

- result in the delivery of significant levels of infrastructure to reflect the level of uplift within the Precinct (i.e. delivery of more open space to cater for increased population);
- create an opportunity to collaborate with the DPIE to deliver new housing, jobs and infrastructure to North Sydney (this is Council's responsibility not the applicant's);
- guarantee that it will provide increased community facilities and services to support a healthy, creative, diverse and socially connected community;
- improve the contextual relationship to the heritage conservation area to the east, due to a nil setback to Little Alfred Street;
- necessarily deliver a prosperous economy as the delivery of commercial floor space cannot be guaranteed without the imposition of a minimum non-residential floorspace control;
- protect and enhance North Sydney's natural environment and biodiversity, by increasing overshadowing over existing public open spaces; or
- result in an improved integrated green space system, by not providing sufficient deep soil areas across the Precinct to accommodate large canopy trees.

Therefore, the proposal does not align with the desired outcomes of Council's LSPS to the extent purported.

### **2.12. Redundant Council Strategies**

The Planning Proposal references that it has been prepared broadly consistent with the North Sydney Local Development Strategy (2009) and North Sydney Residential Strategy (2009). Its inclusion clearly relates to the previous versions of the Planning Proposal which have not been updated to reflect current policies. By retaining these references, it creates a level of confusion as to what is relevant in the assessment of the proposal.

These strategies have since been replaced with a Local Strategic Planning Statement (LSPS) and a Local Housing Strategy (LHS) both of which were adopted by Council in November 2019. The LSPS was assured by the Greater Sydney Commission (GSC) on 20 March 2020. Whilst at the time of writing, the LHS remains to be endorsed by DPIE it represents a more contemporary strategy that accounts for the required level of population and housing growth as outlined in the Greater Sydney Commission's strategic directions.

### **2.13. Traffic**

The revised Planning Proposal incorporates a number of amendments to the concept proposal which are also reflected in the revised version of the draft DCP. These amendments included changes to the vehicular access and achievable density. The accompanying Traffic Impact Assessment however, has not been updated to reflect these changes. It is therefore unclear as to the extent of likely impacts that might arise from any future development of the Precinct.

At a high level, there are potential safety concerns with regard to the location of the access point to Whaling Road adjacent to Little Alfred Street and Alfred Street.

It is further noted that the State Government has recently approved the EIS for the Western Harbour Tunnel proposal which includes changes to the road layout along Alfred Street, adjacent to the Precinct. This will have implications for the operation of the intersection of Alfred Street and Whaling Road.

No decision should be made to progress the Planning Proposal until such impacts can be properly quantified and assessed.

**2.14. Council's consideration of the planning proposal**

Section 3.11 of the provides commentary on the NSLPP's consideration of the Planning Proposal. In its commentary, the Planning Proposal stated:

*The NSLPP agreed to defer its consideration of the proposal to provide the Applicant with the opportunity to address the matters raised.*

*However, the recommendations of the Independent Planning Assessment Report and the NSLPP were scheduled to be considered at Council's Ordinary Meeting held on the 26 August 2019. However, the planning proposal was not considered at the meeting. Meeting minutes dated 26 August 2019 confirmed that Council had resolved not support the Planning Proposal notwithstanding the NSLPP's recommendation to defer the matter.*

It is further suggested that the matter was not considered by Council at its meeting of 26 August 2019, despite clearly having made a resolution not to support the Planning Proposal proceeding to Gateway Determination on this date.

Whilst it is acknowledged that the NSLPP recommended to defer making a recommendation at its meeting of 14 August 2019 to enable certain matters to be satisfactorily addressed, the matter was reported to Council for its consideration at its meeting of 26 August 2019.

The legislative requirements for plan making do not specifically require a Local Planning Panel to make a recommendation to support or not support the progression of a planning proposal to Gateway Determination before a council makes its formal determination. Therefore, despite the NSLPP having resolved to defer the matter until certain matters have been satisfactorily addressed, nothing prevented Council from making a formal determination on the matter, so long as it has considered the NSLPP's advice.

The Planning Proposal is therefore misleading in its description of the proposal's history and could be considered contrary to Condition 2 of the Gateway Determination.



## **2.15. Recommendations**

The planning proposal cannot be progressed in its current form due to a number of significant issues primarily arising from the proposal not being sufficiently revised to demonstrate what the likely built form outcome will be as a result of the proposed planning controls. In addition, an assessment of these revised changes has not been provided to determine the likely impact of these revised proposed planning controls.

If it is determined that the planning proposal should proceed, it would benefit from further amendment and re-exhibition to ensure that any potential impacts can be adequately addressed.

It is therefore recommended that:

### **2.15.1. *The planning proposal not be progressed for the following reasons:***

- (a) *The Planning Proposal and associated supporting documents have not been sufficiently amended prior to public exhibition to clearly indicate the likely built form outcome resulting from the changes to the proposed planning controls, preventing the potential impacts of the anticipated development to be properly assessed;***
- (b) *Overshadowing remaining a key impact;***
- (c) *Insufficient height controls being established across the eastern portion of the site to minimise amenity and heritage impacts to the east;***
- (d) *The Floor Space Ratio (FSR) controls as outlined in the Planning Proposal being far in excess of what could be achieved if the intent of the proposed DCP built form controls was to be complied with, which could compromise and undermine other built form controls applying to the site;***
- (e) *The absence of a minimum non-residential floor space ratio despite purporting to provide for employment floor space as a benefit of the development;***
- (f) *The bonus FSR controls cannot be supported, without some quantifiable increase in public benefit;***
- (g) *Setbacks and separation distances proposed within the draft DCP are sub optimal and require revision to ensure that the negative impacts on the heritage significance and residential amenity on the eastern side of Little Alfred Street and internally are minimised;***
- (h) *An amalgamation arrangement for the future development of the Precinct has not been stipulated which would result in a more orderly and managed development outcome.***

### **2.15.2. *That if the planning proposal is progressed:***

- (a) *that the following amendments be incorporated:***
  - (i) *if retained, a revised bonus FSR clause to ensure that no more 2:1 over the base amount can be achieved to avoid ambiguity or confusion;***

- (ii) *New height limits be established across the eastern side of the Precinct on the Height of Buildings Map to NSLEP 2013 and accompanying draft DCP to ensure that adverse impacts to the residential heritage area to the east are minimised;*
- (iii) *The Floor Space Ratio (FSR) controls be revised to reflect compliance with all other built form controls being proposed to be imposed;*
- (iv) *A minimum non-residential floor space ratio reflective of a revised concept proposal;*
- (v) *Any reference to signage be excluded from the Planning Proposal and draft DCP as it has not been adequately discussed or justified as part of a future concept development for the site and being inconsistent with the future residential use of the building and its setting in a low scale residential area with a significant Heritage Conversation Area status;*
- (b) *That the planning proposal be re-exhibited to enable an appropriate assessment of the likely impacts of the proposed planning controls.*

3. **Proposed amendment to North Sydney Development Control Plan (NSDCP) 2013**  
As indicated in Section 1.3 to this letter, the Planning Proposal is accompanied by a draft amendment to NSDCP 2013.

To aid clarity and transparency, any associated DCP amendments should have been placed on public exhibition concurrently with the Planning Proposal. This ensures that a holistic picture of the proposal can be adequately understood.

Notwithstanding, discussions with DPIE indicated that it could consider including a clause within the LEP that includes guiding principles for the DCP, prevents development consent from being granted prior to the implementation of a site specific DCP and identifies a deferred commencement date to allow Council sufficient time to negotiate with the proponent.

### 3.1. Recommendation

It is recommended that should the DPIE be of a mind to progress the Planning Proposal, that a savings provision be incorporated that prevents the determination of a Development Application within the Precinct, until such time as a DCP detailing development controls within the Precinct has been adopted by Council.

#### 3.1.1. *That if the planning proposal is progressed:*

- (a) *That a new provision be incorporated that prevents a development application from being approved within the Precinct unless a Development Control Plan for the Precinct has been adopted by Council; and*
- (b) *A savings provision which defers the commencement of any LEP amendment giving effect to the planning proposal to enable Council to negotiate with the applicant.*

### 4. Voluntary Planning Agreement

The Planning Proposal is accompanied by an offer to enter into a VPA with Council to deliver the following benefits:

- Monetary contributions towards:
  - affordable housing and/or provision of affordable housing within the North Sydney Local Government Area;
  - embellishment of surrounding public open spaces (with the option of upgrading Alfred Street North Park;
  - the upgrade of the Mount Street overpass;
- Works in kind, including:
  - Upgrade works to the footpaths along all street frontages.
  - Works for ground floor pedestrian arcade, with the value and scope of works to be negotiated with Council.

The letter of offer does not comprise a draft VPA and has not been formally placed on public exhibition, as reflected in the notification documents.

As indicated in Section 1.3 of this submission, the DPIE did indicate that should the LEP be recommended to proceed, a deferred commencement date could be included to allow additional time for Council and the proponent to negotiate the VPA and DCP. Council staff support this approach if the planning proposal is to proceed.

Notwithstanding the processing of the VPA, Council also has issues with the letter of offer. In particular, the letter of offer is very light on detail and only provides a high-level indication to enter into a VPA. However, as a result, it is not possible to undertake any meaningful analysis of the quantum and value of the offer. In a broad sense, the matters outlined would be beneficial, but to be meaningful, a measure of value would need to be ascribed to better understand the extent of this value. For example, the offer does not identify the quantum of affordable housing units or monetary contribution towards this, nor is there any qualitative or quantitative descriptions of the open space embellishments being proposed or upgrades to the Mount Street over pass, footpaths or pedestrian arcades identified in the letter of offer. The offer simply states that the value and scope of works is to be negotiated with Council. It needs to be noted too, that the Mount Street overpass is under the ownership of Transport for NSW and that they would also need to be a party to the VPA.

As the public benefit offer cannot be adequately assessed, it is difficult to support the accompanying planning proposal on its merits alone, especially given the level of impact that it is likely to create.

#### **4.1. Recommendation**

That should DPIE support the Planning Proposal to progress, that a deferred commencement date be included by DPIE to allow additional time for Council and the proponent to negotiate the proffered draft Voluntary Planning Agreement.

##### ***4.1.1. That if the planning proposal is progressed:***

- (a) A savings provision which defers the commencement of any LEP amendment giving effect to the planning proposal to enable Council to negotiate a VPA with the applicant.***

## 5. Conclusion

The Planning Proposal for the Alfred Street Precinct has been exhibited in a manner that has unfortunately, not demonstrated reasonable levels of clarity nor transparency. The exhibition commencing in mid-December, notification letters not reaching recipients until late December or possibly, even early January, online material not being available until well after the formal commencement of the exhibition commencement and online exhibition material being presented in a confusing manner have all contributed to this undermining of transparency and integrity.

The exhibition of the Planning Proposal does not formally include the proposed DCP amendments nor the VPA which are both referenced and foreshadowed by the Proposal. Importantly, the DCP amendments included in the exhibition material would have a material impact upon the built form, density and yield of the proposed development. By not formally exhibiting the DCP given its role in the refining any future development, represents an incomplete process.

Following a detailed assessment of the public exhibition documentation and the exhibition process, it is recommended that the planning proposal not progress through the planning making process due to:

- A less than ideal exhibition process.
- There being a fundamental problem with the Planning Proposal progressing ahead of a DCP amendment, the latter which, would potentially mediate some of the bulk, scale and amenity impacts of potential outcomes of the former.
- The inadequacy of the documentation being exhibited which has not been sufficiently amended to reflect the revised built form outcomes for the site.
- There being a disparity between Floor Space Ratio (FSR) controls as outlined in the Planning Proposal and DCP amendments which would require a “refinement” of the built form which would result in a reduction if achievable floor space.
- The bonus FSR provision be deleted from the proposal as it is not accompanied by a suitable public benefit.
- If retained, a rewording of the bonus FSR clause being required to avoid ambiguity or confusion.
- Insufficient height controls to minimise impacts of the residential development to the east.
- The proposal lacking a minimum non-residential, floor space ratio whilst purporting to provide for employment floor space as a benefit of the development.
- Setbacks and separation distances provided are sub optimal and recommended to be revised. This should occur through a DCP amendment as noted above.
- An amalgamation arrangement for the future development of the precinct has not been stipulated which would result in a more orderly and managed development outcome.
- Overshadowing remaining a key issue with increased height.

Should you have any queries, please direct them to either Ben Boyd, Executive Strategic Planner or the undersigned on **9936-8100**.

Yours faithfully



MARCELO OCCHIUZZI  
MANAGER STRATEGIC PLANNING