

**DECISION OF 3757<sup>th</sup> COUNCIL MEETING  
HELD ON MONDAY 28 MARCH 2022**

**8.4. Draft Amendment to NSDCP 2013 - 52 Alfred Street South, Milsons Point**

**AUTHOR:** Katerina Papas, Strategic Planner

To seek Council's endorsement of a draft amendment to North Sydney Development Control Plan 2013 as it relates to land at 52 Alfred Street South, Milsons Point and submit it to the Department of Planning and Environment to assist in its consideration of a request for a Gateway Determination of the associated Planning Proposal.

On 2 October 2020, Council received a Planning Proposal (PP5/20) to amend North Sydney Local Environmental Plan 2013 (NSLEP 2013) as it relates to land at 52 Alfred Street South, Milsons Point. The Planning Proposal seeks to increase the maximum building height control applying to the site from 40m to part RL87.1m (west) and RL84m (east).

The Planning Proposal was referred to the North Sydney Local Planning Panel (NSLPP) on 9 December 2020 and subsequently referred to Council on 22 February 2021. Consistent with the recommendations of the NSLPP, Council resolved not support the progression of the Planning Proposal to a Gateway Determination.

The applicant subsequently lodged a request for a Rezoning Review with the Department of Planning and Environment (DPE) on 29 January 2021.

The Rezoning Review request was heard by the Sydney North Planning Panel (SNPP) on 15 September 2021, and it made a formal recommendation on 22 September 2021. The SNPP recommended that the Planning Proposal proceed to a Gateway Determination on strategic and site-specific merit grounds, contrary to the recommendations of the NSLPP and Council's decision.

Whilst the SNPP has determined that an increased height limit would be appropriate on the site given the prevailing height of buildings in the near vicinity, it also expressed significant "concerns about the indicative future built form, particularly in relation to the amount of floor space and the massing of a future building on the site."

In the absence of a Floor Space Ratio (FSR) control for the site to manage the future distribution of height and massing across the site, the SNPP placed particular importance on the preparation of a site-specific DCP to ensure that local impacts and amenity issues are satisfactorily addressed during the assessment and determination of any future development application for the site. The SNPP specifically recommended that the site specific DCP address a list of various matters, including reduced massing of the proposed building envelope to achieve an appropriate built form outcome compared to that provided in the applicant's reference design.

In accordance with the recommendations of the SNPP, Council has prepared a draft site specific DCP addressing the concerns raised by SNPP and Council. This report seeks Council's endorsement of the draft DCP for the purposes of submitting it to the DPE for its consideration of a request for a Gateway Determination for the associated Planning Proposal.

It should be noted, that on 25 October 2021, Council resolved to accept the role of Planning Proposal Authority (PPA) for the ongoing processing of the Planning Proposal. Given the complexity of the site's attributes and how central the preparation of the DCP is to ensuring an appropriate built form outcome is achieved, it was recommended that Council accept the role of PPA in this instance.

Expenditure with respect to the public exhibition of the DCP amendment and its implementation will be modest and will be funded through existing recurrent budgeting lines.

**RECOMMENDATION:**

- 1. THAT** Council endorses the draft amendments to NSDCP 2013, as provided in Attachment 1 for the purposes of public exhibition.
- 2. THAT** the draft amendments to NSDCP 2013 be submitted to the Department of Planning and Environment to assist with its consideration of the Gateway Determination for the associated Planning Proposal.
- 3. THAT** the draft amendments to NSDCP 2013 be placed on public exhibition in accordance with any conditions of any Gateway Determination issued by the Department of Planning and Environment concurrently with the accompanying Planning Proposal.

**RESOLVED:**

- 1. THAT** Council endorses the draft amendments to NSDCP 2013, as provided in Attachment 1 for the purposes of public exhibition.
- 2. THAT** the draft amendments to NSDCP 2013 be submitted to the Department of Planning and Environment to assist with its consideration of the Gateway Determination for the associated Planning Proposal.
- 3. THAT** the draft amendments to NSDCP 2013 be placed on public exhibition in accordance with any conditions of any Gateway Determination issued by the Department of Planning and Environment concurrently with the accompanying Planning Proposal.

## **8.4. Draft Amendment to NSDCP 2013 - 52 Alfred Street South, Milsons Point**

**AUTHOR:** Katerina Papas, Strategic Planner

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

### **ATTACHMENTS:**

1. Attachment 1 - NSDCP 2013 – Draft Amendment to Part C Section 9 Lavender Bay Planning Area [8.4.1 - 42 pages]
2. Attachment 2 - SNPP Record of Decision - 52 Alfred St [8.4.2 - 4 pages]

### **PURPOSE:**

To seek Council's endorsement of a draft amendment to North Sydney Development Control Plan 2013 as it relates to land at 52 Alfred Street South, Milsons Point and submit it to the Department of Planning and Environment to assist in its consideration of a request for a Gateway Determination of the associated Planning Proposal.

### **EXECUTIVE SUMMARY:**

On 2 October 2020, Council received a Planning Proposal (PP5/20) to amend North Sydney Local Environmental Plan 2013 (NSLEP 2013) as it relates to land at 52 Alfred Street South, Milsons Point. The Planning Proposal seeks to increase the maximum building height control applying to the site from 40m to part RL87.1m (west) and RL84m (east).

The Planning Proposal was referred to the North Sydney Local Planning Panel (NSLPP) on 9 December 2020 and subsequently referred to Council on 22 February 2021. Consistent with the recommendations of the NSLPP, Council resolved not support the progression of the Planning Proposal to a Gateway Determination.

The applicant subsequently lodged a request for a Rezoning Review with the Department of Planning and Environment (DPE) on 29 January 2021.

The Rezoning Review request was heard by the Sydney North Planning Panel (SNPP) on 15 September 2021, and it made a formal recommendation on 22 September 2021. The SNPP recommended that the Planning Proposal proceed to a Gateway Determination on strategic and site-specific merit grounds, contrary to the recommendations of the NSLPP and Council's decision.

Whilst the SNPP has determined that an increased height limit would be appropriate on the site given the prevailing height of buildings in the near vicinity, it also expressed significant "concerns about the indicative future built form, particularly in relation to the amount of floor space and the massing of a future building on the site."

In the absence of a Floor Space Ratio (FSR) control for the site to manage the future distribution of height and massing across the site, the SNPP placed particular importance on the preparation of a site-specific DCP to ensure that local impacts and amenity issues are satisfactorily addressed during the assessment and determination of any future development application for the site. The SNPP specifically recommended that the site specific DCP address a list of various matters, including reduced massing of the proposed building envelope to achieve an appropriate built form outcome compared to that provided in the applicant's reference design.

In accordance with the recommendations of the SNPP, Council has prepared a draft site specific DCP addressing the concerns raised by SNPP and Council. This report seeks Council's endorsement of the draft DCP for the purposes of submitting it to the DPE for its consideration of a request for a Gateway Determination for the associated Planning Proposal.

It should be noted, that on 25 October 2021, Council resolved to accept the role of Planning Proposal Authority (PPA) for the ongoing processing of the Planning Proposal. Given the complexity of the site's attributes and how central the preparation of the DCP is to ensuring an appropriate built form outcome is achieved, it was recommended that Council accept the role of PPA in this instance.

#### **FINANCIAL IMPLICATIONS:**

Expenditure with respect to the public exhibition of the DCP amendment and its implementation will be modest and will be funded through existing recurrent budgeting lines.

#### **RECOMMENDATION:**

- 1. THAT** Council endorses the draft amendments to NSDCP 2013, as provided in Attachment 1 for the purposes of public exhibition.
- 2. THAT** the draft amendments to NSDCP 2013 be submitted to the Department of Planning and Environment to assist with its consideration of the Gateway Determination for the associated Planning Proposal.
- 3. THAT** the draft amendments to NSDCP 2013 be placed on public exhibition in accordance with any conditions of any Gateway Determination issued by the Department of Planning and Environment concurrently with the accompanying Planning Proposal.

## **LINK TO COMMUNITY STRATEGIC PLAN**

The relationship with the Community Strategic Plan is as follows:

1. Our Living Environment

1.3 Quality urban greenspaces

2. Our Built Infrastructure

2.2 Vibrant centres, public domain, villages and streetscapes

3. Our Future Planning

3.4 North Sydney is distinctive with a sense of place and quality design

4. Our Social Vitality

4.4 North Sydney's history is preserved and recognised

5. Our Civic Leadership

5.1 Council leads the strategic direction of North Sydney

## **BACKGROUND**

### **Planning Proposal**

On 2 October 2020, Council received a Planning Proposal (PP5/20) to amend North Sydney Local Environmental Plan 2013 (NSLEP 2013) as it relates to land at 52 Alfred Street South, Milsons Point. The Planning Proposal seeks to increase the maximum building height control applying to the site from 40m to part RL87.1m (west) and RL84m (east).

The intent of the Planning Proposal is to enable the redevelopment of the existing 13 storey commercial building (known as Kimberley Clark House) to accommodate a part 22-storey (west) and part 16-storey (east) mixed-use commercial/residential building. The reference scheme accompanying the Planning Proposal proposes 2,642 sqm commercial floor space, 20,603 sqm residential floor space (159 apartments), and 191 car parking spaces over 4 basement levels.



**FIGURE 1:** Reference design accompanying Planning Proposal for 52 Alfred Street South, Milsons Point (PP5/20).

The Planning Proposal was accompanied by a site-specific Development Control Plan (DCP), outlining proposed building envelope and massing controls including setbacks, through site links and number of storeys.

On 9 December 2020, the North Sydney Local Planning Panel (NSLPP) considered a Council Officer's detailed assessment report and recommendations. The NSLPP agreed with the reasons outlined in the Officer's report and recommended the Planning proposal not be supported to progress to a Gateway Determination for the following reasons:

- i. The Planning Proposal and Site-Specific DCP amendment fail to demonstrate how the site could be acceptably developed to ensure that the height proposed would not have a significant detrimental impact on the character of the area and impact on public and private amenity.*
- ii. From the information submitted, the Planning Proposal, indicative concept design and associated site-specific DCP amendment do not respond adequately to the site attributes and context and will result in a significant level of public and private amenity impacts.*
- iii. The Planning Proposal is contrary to the objectives of the Height of Building controls under clause 4.6 to NSLEP 2013;*
- iv. The Planning Proposal is inconsistent with the Milsons Point Town Centre Area Character Statement under Section 9.1 to Part C of NSDCP 2013;*

- v. *The Planning Proposal is inconsistent with a number of objectives and actions under the relevant Regional and District strategies applying to the land;*
- vi. *Sufficient residential capacity is already provided under NSLEP 2013 and identified in the NSLHS to meet State housing targets, without the need to change the land use mix on the subject site; and*
- vii. *The Planning Proposal if implemented, could have the potential to create a precedent that could undermine other established policies for the Milsons Point Town Centre and other mixed use zoned land in highly accessible locations without the benefit of a comprehensive planning study of Milsons Point.*

On 22 February 2021, Council considered the advice of the NSLPP and resolved not to support the Planning Proposal proceeding to a Gateway Determination.

The subject Planning Proposal represents the third attempt by applicant and landowner, Milsons Point 2 Pty Ltd, who has submitted two previous Planning Proposals involving similar building heights. The first proposal (PP7/17) was refused by Council in October 2018 following a recommendation from the NSLPP that the proposal not to proceed to a Gateway Determination. The second proposal (PP4/19) was refused by Council in August 2019 and subsequently not supported by the Sydney North Planning Panel (SNPP) at Rezoning Review in March 2020.

### **Rezoning Review**

On 29 January 2021, the applicant lodged a request with the Department of Planning and Environment (DPE) for a Rezoning Review due to Council having indicated it would not support the progression of the Planning Proposal.

The applicant's Rezoning Review request was heard by the Sydney North Planning Panel (SNPP) on 15 September 2021, and a formal decision was handed down on 22 September 2021. In its decision, the SNPP recommended the Planning Proposal proceed to Gateway Determination on strategic and site-specific merit grounds, contrary to the recommendations of the NSLPP and Council's decision. The SNPP determined that an increased height limit would be appropriate on the site given the prevailing height of buildings in the near vicinity. It also acknowledged that:

*"...the Panel has concerns about the indicative future built form, particularly in relation to the amount of floor space and the massing of a future building on the site."*

In its decision, the SNPP acknowledged Council's objections to the proposal are primarily based on the adverse internal and external outcomes relative to the sensitive and constrained context arising from the built form massing and extent of floor space on the site. The SNPP placed particular importance on the preparation of a site-specific Development Control Plan (DCP) to ensure that local impacts and amenity issues are satisfactorily addressed during the assessment and determination of a future development application.

The SNPP recommended the DCP submitted by the applicant be revised and amended to address a list of various matters, including a reduced massing of the proposed building envelope.

A copy of the SNPP's letter and record of decision form Attachment 2 to this report.

In recommending the Planning Proposal proceed to a Gateway Determination, the SNPP also requested Council indicate whether it would like to assume the role of Planning Proposal Authority (PPA) for the ongoing processing of the Planning Proposal (i.e. finalise the proposal, undertake public exhibition and prepare the post exhibition report) within 42 days of its letter.

### **Acceptance of PPA Role**

At its meeting on 25 October 2021, Council considered a report on the implications of accepting or declining the role of Planning Proposal Authority (PPA), in light of the SNPP's recommendations and Council's previous resolutions for the subject site.

In considering the implications, the report recommended Council accept the PPA role given the complexity of the site's attributes and issues, and how central the preparation of a site-specific DCP is to ensure an appropriate built form outcome is achieved. By accepting the PPA role, Council would have administrative control over the plan making process, and therefore greater control over the content, quality and clarity of information provided in the Planning Proposal, prior to it being placed on public exhibition. It is considered that given the central role the DCP plays in this Planning Proposal, the preparation of a DCP in this instance, is best controlled and managed by Council.

On 25 October 2021, Council resolved:

**1. THAT** Council accept the role of the Planning Proposal Authority for Planning Proposal 5/20 – 52 Alfred Street South, Milsons Point.

**2. THAT** in accepting the Planning Proposal Authority role, that Council advise the Department of Planning, Industry and Environment:

- a. any recommendations of the Sydney North Regional Planning Panel form conditions to any Gateway Determination issued;
- b. Council prepare a Development Control Plan that addresses the built form concerns raised by Council and the Sydney North Planning Panel;
- c. It consider Council's assessment report and resolution in relation to the progression of the Planning Proposal in determining the imposition of any conditions on the Gateway Determination;
- d. The terms of any draft Voluntary Planning Agreement or public benefit associated with the Planning Proposal be determined prior to the public exhibition of the Planning Proposal in conjunction with Council.



**3. THAT** Council advise the Sydney North Regional Planning Panel of its decision.

**4. THAT** once Gateway Determination be issued, the Planning Proposal, any VPA and site specific DCP controls, be placed on public exhibition concurrently.

**5. THAT** should Council resolve to accept the role of Planning Proposal Authority, that upon receiving Gateway Determination, Council seek stage 2 fees to progress the Planning Proposal prior to public exhibition.

In accordance with Resolution No. 2, Council advised the DPE in a letter dated 4 November 2021, that it would accept the role of PPA. It also recommended, consistent with the recommendations of the SNPP, that should a Gateway Determination be issued by the DPE, the following conditions be imposed:

- That a site specific DCP be prepared addressing the built form concerns raised by Council and the SNPP;
- the applicant be required to prepare and submit a revised reference scheme and detailed impact assessment, demonstrating consistency with the draft DCP prior to the commencement of public exhibition;
- the draft DCP amendment be placed on public exhibition concurrently with the revised Planning Proposal; and
- the applicant provide further details in relation to the public benefits broadly referred to in the Planning Proposal.

In its communications with Council, the DPE expressed a preference for Council to prepare and submit a revised draft DCP, along with the Planning Proposal, for a Gateway Determination within 42 days of accepting the PPA role.

In a letter dated 4 November 2021, Council advised the DPE that it would not be possible to obtain a Council endorsed DCP within 42 days due to the Local Government elections being held in early December 2021. The letter also noted that it is further complicated by the fact that it is unclear what the Planning Proposal itself might be in terms of designation of height on the site, given the extent of issues identified by the SNPP with respect to the applicant's reference design.

Council has now prepared the draft DCP addressing the various matters of concern raised by SNPP in its decision. This report is seeking Council's endorsement of the draft DCP for the purposes of submitting the draft DCP to the DPE for its consideration of a request for a Gateway Determination for the associated Planning Proposal.

## **CONSULTATION REQUIREMENTS**

Should Council resolve to endorse the draft DCP amendment, community engagement will be undertaken in accordance with, the requirements of any Gateway Determination issued in

relation to the associated Planning Proposal, Council's Community Engagement Protocol and the Environmental Planning and Assessment Regulations 2000.

## **DETAIL**

### **1. SNPP Recommendation**

In the absence of Floor Space Ratio (FSR) standards applying to the site under NSLEP 2013, Council relies on 'proxies' such as DCP setback controls, in conjunction with the LEP height standard, to limit the bulk and scale of development on the site.

The site specific DCP prepared and submitted by the applicant as part of its Planning Proposal submission, proposed controls that would essentially "lock in" a built form outcome that would result in considerable internal and external amenity impacts which the SNPP was critical of.

Council's concerns with respect to the reference design submitted with the Planning Proposal included overshadowing, loss of views, building separation and associated amenity/visual impacts and general Apartment Design Guideline (ADG) type concerns. In particular, Council raised concerns with respect to:

- Building setback/separation distances being substantially below minimum ADG requirements, particularly along the northern and southern boundaries;
- Loss of iconic views of Sydney Harbour and Sydney Harbour Bridge from the primary living areas of apartments at 37 Glen Street;
- Overshadowing impacts to Bradfield Park and surrounding residential buildings to the south, notably 38 and 48-50 Alfred Street and 2 Dind Street.

As correctly pointed out in the SNPP's decision, these issues largely stem from the applicant's unrealistic floor space expectations for the site. It is noted in the SNPP's decision that the floor space differences between the previously refused Planning Proposal and current proposal, is only 238 sqm (or less than 1% GFA). In its decision, the SNPP acknowledges that the constraints of the site necessitate a reduction of floor space to achieve an appropriate built form outcome than provided in the applicant's reference design.

To ensure that local impacts and amenity issues are satisfactorily addressed during the assessment and determination of a future development application for the site, the SNPP recommended the applicant's DCP be reviewed and amended as follows:

- *reduce the massing of the building envelope to better reflect the dual frontage character of the block and residential building typologies, two distinct tower forms above a podium may be more appropriate in this regard;*
- *the building envelope should ensure that view loss, overshadowing and other amenity impacts on neighbouring residential buildings and impacts on heritage and the public domain are minimised;*
- *any amendments should not compromise elements of the proposed DCP supported by the Panel, including provision of new and enhanced north-south and east-west through site links, active frontages along streets and through site links and reduced overshadowing of Bradfield Park;*
- *opportunities to ensure design excellence and improvements to the public domain are realised.*

Council has prepared a draft DCP amendment that addresses the built form concerns raised by the SNPP and Council.

## **2. Draft Amendments**

The draft amendments to NSDCP 2013 are contained in Attachment 1 to this report. The amendments apply to section 9 – Lavender Bay Planning Area to Part C of NSDCP 2013 (refer to pages C9-7 to C9-11).

The draft DCP includes detailed controls to guide and regulate future bulk, scale and massing of development on the subject site. The controls proposed include:

- establishment of rear setbacks/view lines to protect view corridors from adjacent residential buildings (37 Glen Street);
- appropriate (ADG compliant) side setbacks along the northern and southern boundaries;
- no increase in overshadowing of Bradfield Park between 12 noon and 3pm;
- provision of through-site links at the ground level with active frontages; and
- appropriate podium height and above podium setbacks to minimise impacts to adjacent heritage items and achieve appropriate scale at street level.

Council has undertaken internal modelling to understand, at a high level, the distribution of height and massing across the site under the proposed LEP and DCP controls.

Council's internal modelling indicates that with a built form setback above the podium from Glen Street behind the proposed view line, a reduction in the proposed height in part of the western portion of the site may be required (i.e. from the proposed 22 storeys to approximately 19 storeys) to comply with overshadowing controls to Bradfield Park and ADG setbacks along the southern boundary. Depending on the design of the building, further

variations in height across portions of the site may be required to comply with overshadowing controls.

Similarly, the draft DCP incorporates minimum street and side setbacks, as well as rear setbacks/view lines above the podium to better maintain view corridors and minimise overshadowing and other amenity impacts on neighbouring residential buildings and impacts on heritage and the public domain. Despite the stated minimums, the DCP also incorporates provisions that state that increased setbacks may be required to comply with SEPP 65 and ADG requirements and protect views.

The intent of the site-specific DCP, as stated by the SNPP, is to establish parameters to ensure a more appropriate future-built form outcome can be achieved on the site that minimises impact to surrounding properties. The controls identified in Council's draft DCP do not 'lock in' one specific design outcome and still provides a number of redevelopment options for the site.

The proposed DCP controls have been developed having consideration to Council's view impact analysis of 37 Glen Street and 70 Alfred Street, the SNPP's recommendations and the site's attributes, whilst citing what is considered a reasonable level of impact based on established planning principles.

It should be noted that, the proposed DCP does not guarantee zero impact to adjoining residential buildings. In developing the proposed DCP controls, efforts have been made to protect existing high value views to Sydney Harbour and the Sydney Harbour bridge from the primary living areas of both western and southern apartments at 37 Glen Street, whilst still enabling a reasonable level of development over 52 Alfred Street South.

Any future development on the site would be subject to a detailed assessment at the development application stage, and the reasonableness of the proposal's impact assessed against established view sharing planning principles.

Notwithstanding, should the draft DCP be adopted, it would necessitate a revision of the applicant's reference scheme and a significant reduction in floor space than that currently proposed.

The draft DCP was forwarded to the applicant and an opportunity provided to submit comments. The applicant expressed strong concerns that the draft DCP was overly restrictive and would reduce the viability of the development. Following consideration of the applicants' representations some adjustments were made to the draft DCP to provide greater clarity as well as clarify the basis of Council's recommended view line/corridor to the rear.

### **3. PPA responsibilities**

Having accepted the role of PPA, Council is responsible for progressing the Planning Proposal through the next stages of the plan making process. This includes submitting the Planning Proposal for Gateway Determination, ensuring the conditions of a Gateway Determination are sufficiently addressed, undertaking consultation with the community and relevant agencies, considering submissions, finalising the assessment of the proposal and, should the plan progress to the final stage, request the making of the plan (being amendments to NSLEP 2013).

The Department of Planning and Environment (DPE) is yet to issue a Gateway Determination for this proposal. Should Council endorse the contents of the draft DCP for the purposes of public exhibition, a copy will be provided to DPE for their information. It is anticipated that any Gateway Determination issued will contain a condition requiring the draft DCP to be exhibited concurrently with the Planning Proposal.

Amendments to DCPs are generally prepared and facilitated by councils as they are best placed to do so, and given the complexity of the site's attributes and issues involved, it has been recommended that Council undertake this work given its intimate knowledge of the proposal and its impacts.

Should Council be perceived to be preventing the progression of the Planning Proposal, the DPE has the power to remove the PPA role from Council and reallocate the role to an alternate body. Similarly, the Minister for Planning or their delegate has the ability under the Environmental Planning and Assessment Act 1979 (EP&A Act) to implement a DCP amendment.

### **Conclusion**

The SNPP has determined that an increased height limit would be appropriate on the site and that the Planning Proposal should be submitted to the Department of Planning and Environment (DPE) for a Gateway Determination. In doing so concerns were expressed about the built form presented by the applicant, in particular the amount of floor space and the massing of a future building envisaged on the site and its impact on the amenity of neighbouring residential buildings, heritage items and the public domain.

In response to this Council has prepared a draft site specific DCP for 52 Alfred Street South, Milsons Point. It is anticipated that any Gateway Determination issued will contain a condition requiring the draft DCP to be exhibited concurrently with the Planning Proposal.

The draft DCP includes detailed controls to better guide and regulate future bulk, scale and massing of development on the subject site as well as control overshadowing impacts on the public domain (specifically Bradfield Park). The controls identified in Council's draft DCP do not seek to deliver a 'zero impact' outcome for neighboring properties nor do they 'lock in' one specific design outcome on the site. If progressed the draft DCP would necessitate a

review and re-design of the reference scheme by the applicant, in accordance with the provisions of the revised DCP, which would likely substantially reduce the requested yield on the site.

### **Next Steps**

This report is seeking Council's endorsement of the draft DCP for the purposes of submitting the draft DCP to the DPE for its consideration of a request for a Gateway Determination for the associated Planning Proposal.

Should a Gateway Determination be issued, it is anticipated that any Gateway Determination issued will contain a condition requiring the draft DCP to be exhibited concurrently with the Planning Proposal. The outcomes of any public exhibition, would be reported to Council for its consideration before deciding whether to formally request the amendments to both the LEP and DCP be made.



SECTION 9 LAVENDER BAY PLANNING AREA

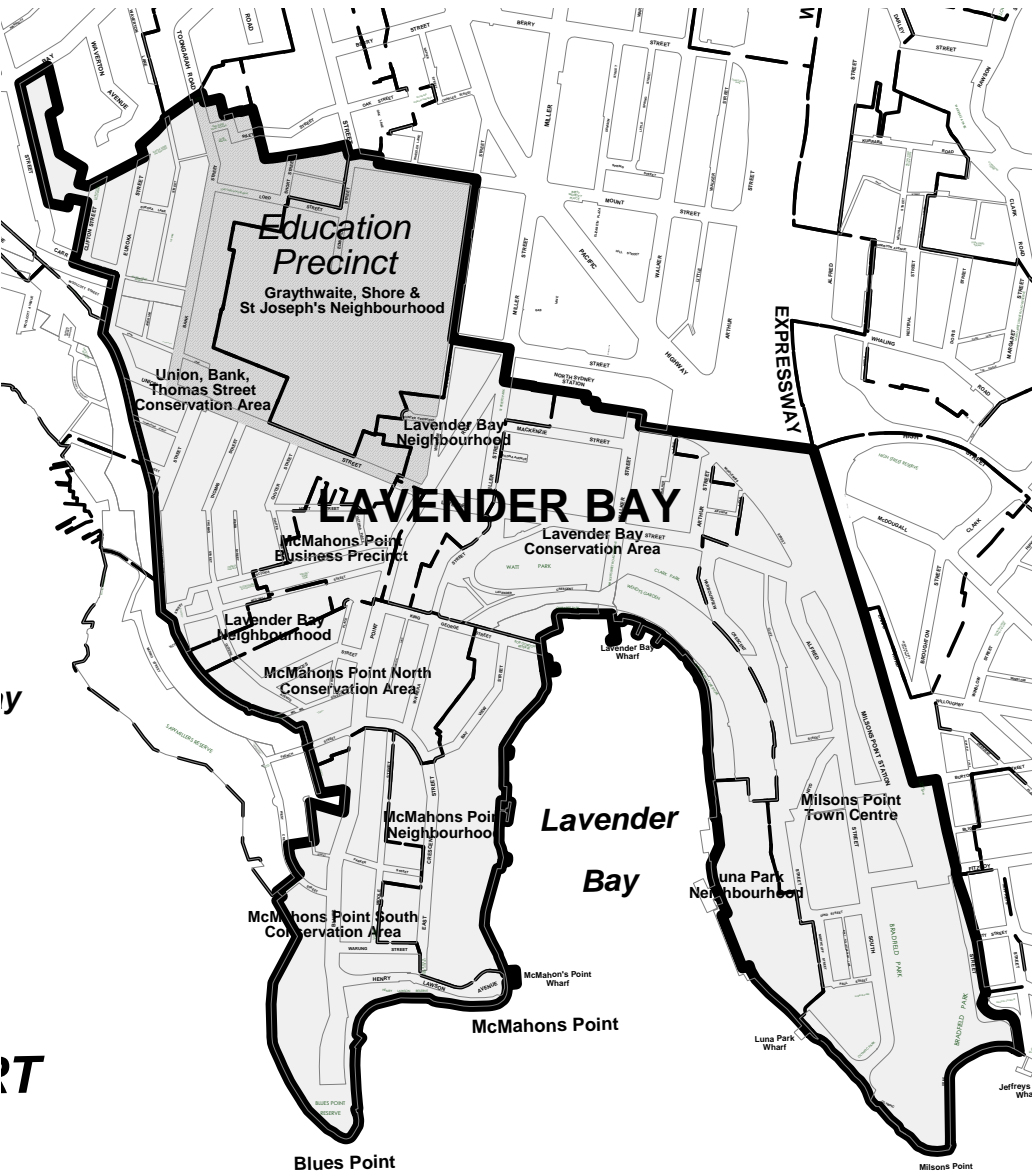


Figure C-9.1: Lavender Bay Planning Area and associated Locality Areas



## North Sydney Development Control Plan 2013

### Area Character Statements - Lavender Bay Planning Area

## 9.0 LAVENDER BAY PLANNING AREA CHARACTER STATEMENT



The following statement identifies the existing character and the desired future outcome for development in the Lavender Bay Planning Area.

The Lavender Bay Planning Area is a diverse area reflected by the very wide range of land uses occurring within the Area, including a mixture low, medium and high density residential accommodation, commercial premises, light industry, education establishments, places of worship and public recreational facilities. Many of these land uses are located in a leafy setting with strong links to Sydney Harbour and are often associated with landmark buildings such as Graythwaite, the Shore School and St Peter's Church.

The Planning Area is noted for its historical character arising from the retention of much of its original subdivision pattern and good examples of largely intact mid 19<sup>th</sup> century and early 20<sup>th</sup> Century buildings. Blues Point Road in McMahon's Point is a popular village centre enjoyed by local residents and visitors to the area with its outdoor cafes, galleries and small specialty shops.

A large portion of the Education Precinct is located in the Planning Area, which consists of landmark educational establishments such as the Australian Catholic University (ACU), the Sydney Church of England Grammar School (Shore) and North Sydney Demonstration School and supports a growing student population and workforce of teaching and support staff.

Milsons Point is on the shores of Sydney Harbour and consists of a large concentration of mixed residential and commercial towers located at the base of the Sydney Harbour Bridge, surrounded by landmarks such as Luna Park, Bradfield Park and North Sydney Pool.

Development within the Planning Area should result in:

- any residential growth being in accordance with the Residential Development Strategy, with high density residential accommodation mainly being accommodated within the mixed use zone at Milsons Point, with no substantial change in the other residential and light industrial areas.
- a wide range of single household residential types being distributed in a number of distinctive built forms/landscape areas, including purpose-built student accommodation to support the functioning of the Education Precinct.

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## North Sydney Development Control Plan 2013



## Area Character Statements - Lavender Bay Planning Area

- any retail premises being of a scale to cater to the local community and which provide a balance between basic (e.g. food and groceries) and recreational (e.g. cafes and galleries) needs.
- the conservation of features which positively contribute to the local identity.
- a vibrant and engaging Education Precinct with high quality built form, safe pedestrian networks and a range of formal and informal public spaces for students to study, socialise and engage with the local community.

and where:

**Function**

- the community centre is in an accessible location and provides a meeting place for the local community and is part of North Sydney's network of community and cultural centres.
- non-residential uses such as public recreation, schools, light industrial, places of public worship, railway and shops coexist peacefully with the residential character.
- public open space areas are utilised by local residents and the wider regional population for a variety of social and recreational activities.
- access to the Harbour foreshores is improved with pedestrian links from Luna Park to the public reserve in Munro Street, Waverton Park and Smoothey Park.
- public transport, cycling, and walking are the preferred means of transport.
- through traffic is discouraged from using the already overloaded road network and commuter parking managed through parking schemes.
- local identity, icons and heritage are conserved.
- Luna Park is a public recreational and amusement park, enjoyed by local, regional and international users, that is easily accessed by public transport.
- the boardwalk adjacent to Luna Park on the foreshore is always accessible to the general public maintaining links to the wharf, other landing facilities and adjoining foreshore land.
- local identity, icons and heritage are preserved.
- man-made features such as the railway and pedestrian cuttings through the approach to Sydney Harbour Bridge are maintained as local landmarks that are important to the community.

**Environmental Criteria**

- the remaining natural foreshores are conserved with improved pedestrian access to the foreshore.
- public open space is protected from the adverse effects of development – such as stormwater runoff, spread of introduced plants and weeds, and visual impact of structures.
- both residential and non-residential land uses minimise noise and air pollution.
- solar access is maximised to open space areas in public and private domains.
- natural features (rock formations, trees) are conserved and maintained.
- major views from Luna Park, lookouts, and other vantage points are not obscured by structures or landscaping.

**Quality Built Form**

- any development that occurs reflects and reinforces the existing distinctive built form/landscape areas and distribution of accommodation types.

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## North Sydney Development Control Plan 2013

### Area Character Statements - Lavender Bay Planning Area

- buildings in Milsons Point are designed to preserve views and prevent wind tunnels.
- there is adequate open space within Luna Park for passive recreation and free movement within the park.
- the character, bulk and scale of new development within Luna Park complement the original features of Luna Park and enhance its appearance when viewed from within and Sydney Harbour.
- development within Luna Park is complementary to redevelopment of adjacent SRA land.
- there is an appropriate built form on the foreshore to maintain the significance of Sydney Harbour.

#### Quality Urban Environment

- traffic flows are managed to promote pedestrian amenity and there are improved pedestrian links between Kirribilli and Milsons Point.
- through traffic is discouraged to prevent traffic congestion.
- development promotes the safety of people that is enhanced by good street lighting.
- public open space provides recreational opportunities and acts as a buffer to the high density development.
- the demand for on-street parking is managed by allowing only appropriate levels of development.
- backyards are used for a variety of activities particularly for families with children and for practical and recreation needs of residents in residential flat buildings.

#### Efficient Use of Resources

- stormwater is retained for reuse on site.
- existing buildings are maintained and adaptively reused to prevent unnecessary waste of building materials.

#### Public Domain

- buildings and street furniture are compatible with unique features of Milsons Point including Luna Park, the Olympic Pool and Sydney Harbour.
- street furniture and landscaping, outdoor advertising in McMahon's Point and Kirribilli respect the historical character of the area.
- educational establishments are oriented to the public domain to provide increased surveillance and activation.
- streetscape improvements within the Education Precinct occur in accordance with the *North Sydney Centre Public Domain Strategy* and *Education Precinct Public Domain Masterplan*.

In addition to the above character statement for the Planning Area, the character statements for the following Locality Areas also require consideration:

Section 9.1: Milsons Point Town Centre

Section 9.1.4: 52 Alfred Street

Section 9.2: McMahon's Point Business Precinct

Section 9.3: Luna Park Neighbourhood

Section 9.4: Graythwaite, Shore & St Joseph Neighbourhood

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**North Sydney Development Control Plan 2013****Area Character Statements - Lavender Bay Planning Area**

- Section 9.5: Lavender Bay Neighbourhood
- Section 9.6: McMahons Point Neighbourhood
- Section 9.7: McMahons Point North Conservation Area
  - Section 9.7.8: Blues Point Village
- Section 9.8: McMahons Point South Conservation Area
  - Section 9.8.8: 1 Henry Lawson Avenue
- Section 9.9: Lavender Bay Conservation Area
- Section 9.10: Union, Bank, Thomas Street Conservation Area

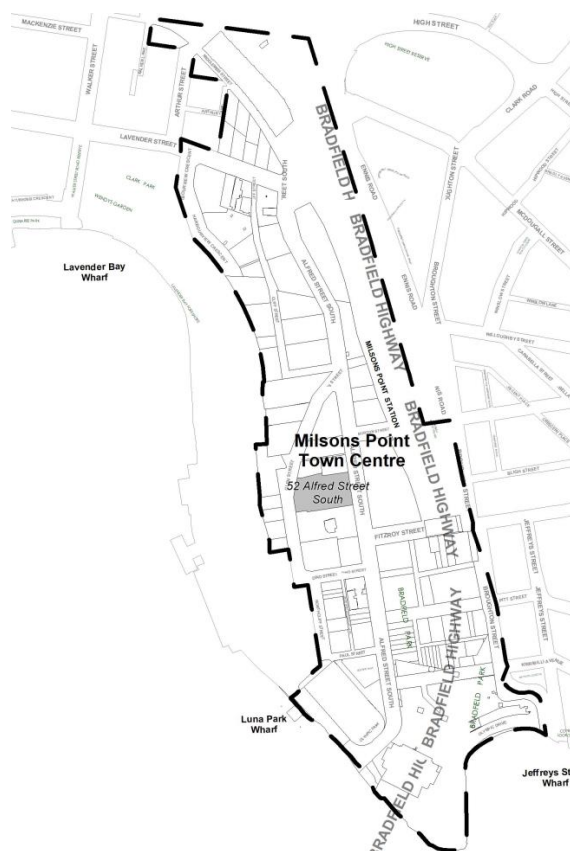
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The map shows the coastal area of Milsons Point, New South Wales, Australia. A horizontal red line divides the map into two sections. The top section is labeled 'Milsons Point Town Centre' and the bottom section is labeled 'Milsons Point'. The map includes the Sydney Harbour Bridge, Luna Park Wharf, Milsons Point Station, and various streets such as High Street, Milsons Point Road, and Sydney Harbour Bridge. The map is oriented with North at the top.

## North Sydney Development Control Plan 2013

## Area Character Statements - Lavender Bay Planning Area



## 9.1.1 Significant Elements

**Land Use**

- P1 Predominantly mixed commercial and residential development.
- P2 Passive and active recreational spaces.
- P3 Major road and railway infrastructure.

**Topography**

- P4 Generally falls to the south and south west from the Sydney Harbour Bridge down to Sydney Harbour.
- P5 Steep falls and cliffs adjacent to and along the western boundary of the Area.

**Natural Features**

- P6 Interface with Sydney Harbour.

**Views**

- P7 The following views and vistas are to be preserved and where possible enhanced:
  - (a) District views from streets and reserves to Sydney Harbour and beyond.
  - (b) Views to Lavender Bay from Luna Park Lookout (71), Harbour View Crescent.
  - (c) Views to Sydney Harbour from Bradfield Park No. 1 Lookout (69), Olympic Park Lookout (70); Alfred Street, Paul Street.

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## North Sydney Development Control Plan 2013

### Area Character Statements - Lavender Bay Planning Area

#### Identity / Icons

- P8 Luna Park.
- P9 North Sydney Pool.
- P10 Sydney Harbour Bridge and approaches.
- P11 Bradfield Park.
- P12 Sydney Harbour.

#### Subdivision

- P13 Large consolidated allotments reflective of the Area's previous commercial nature.
- P14 Heritage items have small rectilinear lots, reflecting original subdivision patterns.

#### Streetscape

- P15 Narrow footpaths and streets, except to Alfred Street which has wide fully paved verges incorporating street trees.
- P16 Buildings built to street and laneway frontages.

#### Public transport

- P17 Development should capitalise on the Area's high level of accessibility to high frequency public train, bus and ferry services.

### 9.1.2 Desired Future Character

#### Diversity

- P1 Medium to high-rise mixed residential and commercial development, built boundary to boundary, with setbacks at laneways, above podium and to public spaces.
- P2 Variety of different sized non-residential spaces and land uses which serve the local needs of residents (including convenience stores, cafes, medical centres etc).
- P3 Development for residential accommodation should be in accordance with Council's ~~Residential Development Strategy~~ Local Housing Strategy, with limited growth envisaged for the area.
- P4 Ground floors of mixed use development to operate land uses that promote pedestrian activity.
- P5 Existing heritage items shall be protected and retained where practical.
- P6 Provide a balance between the working and resident populations of the town centre, to ensure an active environment throughout the day.
- P7 Where existing commercial buildings are to be refurbished, retention of the existing level of commercial floor space is encouraged.

#### ~~Through-site~~ pedestrian links

- ~~P8~~ Pedestrian access is provided from ~~Glen Street to~~ Alfred Street to Glen Street:
  - (a) between 68 and 72 Alfred Street,
  - ~~(a)(b) along the southern boundary of 52 Alfred Street-~~

#### Traffic Management

- ~~P8~~P9 Existing one-way vehicular movements are maintained along Cliff Street.

### 9.1.3 Desired Built Form

#### Subdivision

- P1 Minimum frontage of 30m.

## North Sydney Development Control Plan 2013



## Area Character Statements - Lavender Bay Planning Area

**Form, massing and scale**

- P2 Buildings step down from **maximum LEP heights 40m** on the ridge of the peninsula (along Alfred Street from Lavender Street to Dind Street) to 10m on the shores of Lavender Bay.

**Setbacks**

- P3 Buildings are built to the street boundary at ground level, except as specified below:  
(a) Setback of 1.5m from a laneway at ground level.
- P4 Preserve and create spaces between buildings above podium height that will offer views of the Harbour and its foreshore areas to help break up the wall of development along Alfred Street.

**Podiums**

- P5 Podium of 13m (four storeys) to all buildings fronting Alfred Street, with a setback of 3m of all parts of the building located above the podium.
- P6 Podium of 10m (three storeys) to all buildings fronting Cliff or Glen Streets, Harbourview Crescent or railway land with a setback of 3m of all parts of the building located above the podium.
- P7 Podium of 10m (three storeys) to all buildings fronting any laneway with a setback of 3m of all parts of the building located above the podium.

**Building design**

- P8 Materials used are painted render, masonry, concrete with natural colours.
- P9 Buildings address every street frontage with no blank walls to streets, lanes, public space or railway land.

**Skyline**

- P10 Ancillary equipment, plant rooms are not visible from Sydney Harbour.
- P11 Existing buildings are recycled to accommodate mixed use developments.

**Street furniture, landscaping works, public art**

- P12 Street furniture, landscaping and/or public art adjacent to Luna Park and the Olympic Pool are compatible with their role as centres of entertainment and recreation.

**Noise**

- P13 Elevations of buildings facing the Sydney Harbour Bridge and its approaches are to be designed and incorporate features to minimise traffic and railway noise transmission (e.g. using design features such as cavity brick walls, double glazing, minimal glazing, solid core doors and concrete floors etc).

**Wind Speed**

- P14 Buildings are designed not to create wind tunnel effects along Alfred, Glen, Paul, Dind, Northcliff Streets and Harbourview Crescent.

**Reflected Light**

- P15 Reflected light for motorists on the Sydney Harbour Bridge and the Bradfield Highway is no greater than 20% nor is there excessive artificial light from outdoor advertising.

**Solar access**

- P16 There is no increase in overshadowing of Bradfield Park, Luna Park, and North Sydney Pool between 12 noon and 3pm.

**Views**

- P17 Spaces between buildings preserve views to Sydney Harbour, Sydney Opera House and Lavender Bay.

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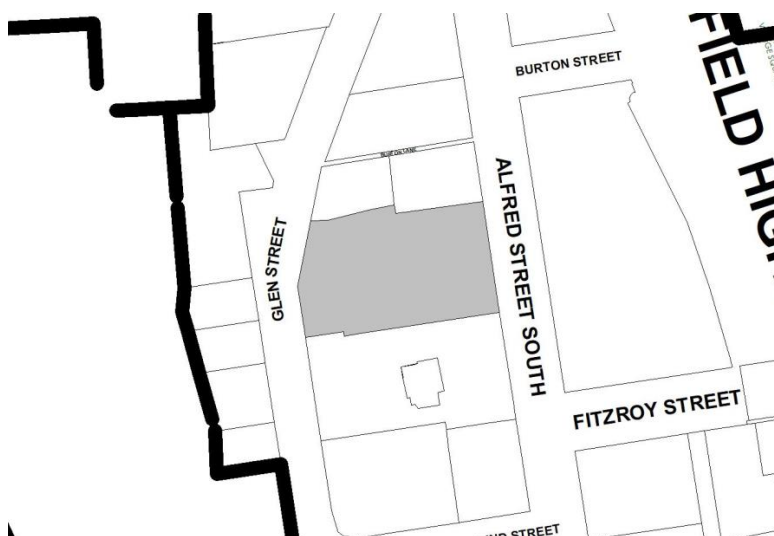
## North Sydney Development Control Plan 2013

### Area Character Statements - Lavender Bay Planning Area

P18 Buildings step down in height from ridge of the peninsula to a lower height on the foreshore to maintain views.

P19 Preserve existing views of Lavender Bay and Sydney Harbour along the railway track from the north side of the Sydney Harbour Bridge to North Sydney Station.

#### 9.1.4 52 Alfred Street, Milsons Point



##### 9.1.4.1 Desired Future Character, Design Objectives and Key Principles

P1 Development is to respond to the scale and character of existing development and desired future character of the surrounding area.

P2 Built form, scale and massing is to reflect the dual frontage character of the block and residential building typologies.

P3 Deliver a mixed-use development with active frontages to Alfred Street and Glen Street.

P4 Development is to ensure that view loss, overshadowing and other amenity impacts on neighbouring residential buildings and impacts on heritage and the public domain are minimised.

P5 Development is to maximise solar access to Bradfield Park.

P6 An improved pedestrian through-site link between Alfred Street and Glen Street with active frontages.

##### 9.1.4.2 Desired Built Form

###### Objectives

O1 To provide for increased opportunity for height and density in the Milsons Point Town Centre, in close proximity to public transport and services.

O2 To ensure that solar access to Bradfield Park is maximised.

O3 To ensure appropriate separation distances between existing and proposed buildings and ensure reasonable privacy, solar access and views are maintained to surrounding dwellings.

O4 To positively relate to the heritage context surrounding the site.

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## North Sydney Development Control Plan 2013

## Area Character Statements - Lavender Bay Planning Area

**Provisions****Solar access**

P1 Any development at 52 Alfred Street must not result in a net increase in overshadowing to Bradfield Park between 12 noon and 3pm.

**Street and Side Setbacks**

P2 Buildings must be setback:

- (a) 0m to Alfred Street and Glen Street, and
- (b) A minimum 6m to the southern boundary, and
- (c) A minimum 3m setback to the northern boundary where the site directly adjoins 37 Glen Street.

**Podium Height**

P3 Despite any other provision of this DCP, a podium must:

- (a) maintain a consistent overall height across the entirety of the site.
- (b) be 2 storeys in height along its southern boundary and positively relate to the height of the heritage listed Camden House at 56 Alfred Street to its south, and
- (c) be 2 storeys in height fronting Alfred Street, and
- (d) not exceed 4 storeys fronting Glen Street.

**Above Podium Setbacks**

P4 The following minimum setbacks must be provided above the podium:

- (a) 3m to the site's Alfred Street frontage, and
- (b) 3m to the site's Glen Street frontage, and any part of a building located above 8 storeys as viewed from Glen Street, must not be constructed westwards of a view line established from the eastern edge of living area windows to 37 Glen Street (located approximately 12.8m east of the Glen Street boundary projecting southwards across 52 Alfred Street site to the north-western corner of the residential flat building known as "The Milson" fronting Glen Street at 48-50 Alfred Street (approximately 3m east from the Glen Street boundary).
- (c) 9m to the site's southern boundary up to 8 storeys in height and 12m for any storeys located above, and
- (d) 9m to the site's northern boundary up to 8 storeys in height and 12m for any storeys located above, for that part of the site located directly adjacent to 37 Glen Street.

P5 Despite provision P4 (b) and (c), increased setbacks may be required to achieve adequate building separation in accordance with SEPP 65, protect views to from adjacent residential buildings (37 Glen Street) and help break up the wall of development along Alfred Street.

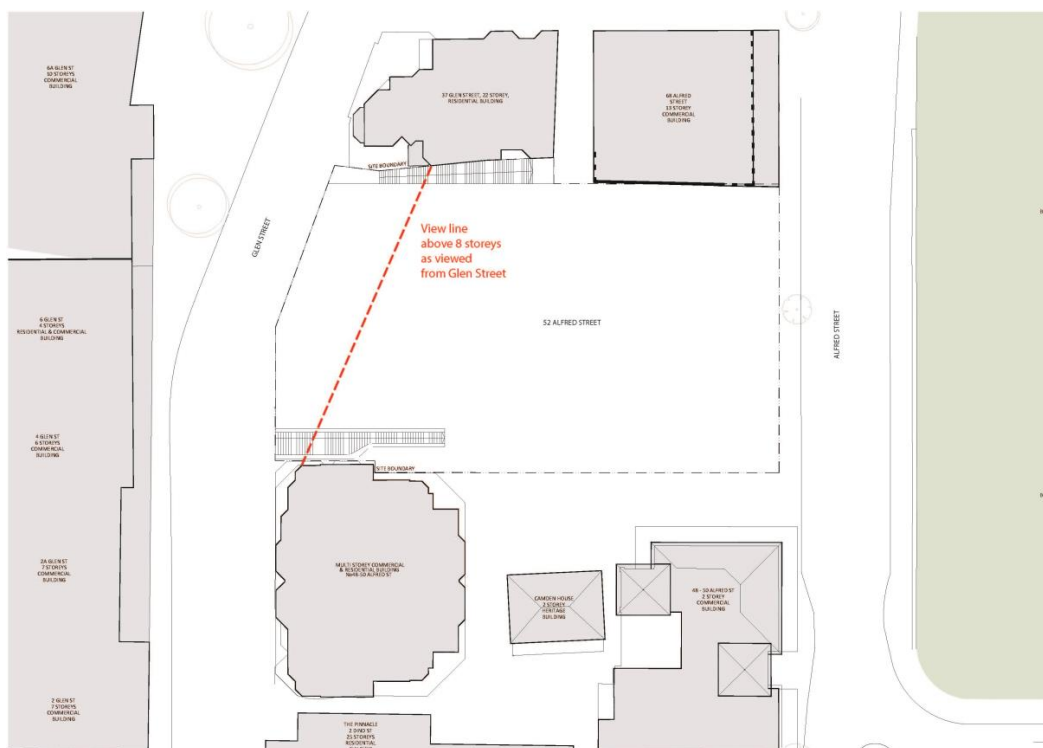
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### **Area Character Statements - Lavender Bay Planning Area**



**P6** The following thru site link is to be provided, retained or enhanced:

- (a) An east-west link from Alfred Street to Glen Street adjacent to the southern boundary of 52 Alfred Street. This link must be a minimum of 6m wide.

**North Sydney Development Control Plan 2013**

***Area Character Statements - Lavender Bay Planning Area***



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**Planning  
Panels**

**REZONING REVIEW  
RECORD OF DECISION  
SYDNEY NORTH PLANNING PANEL**

<b>DATE OF DECISION</b>	22 September 2021
<b>PANEL MEMBERS</b>	David Ryan (Acting Chair), Noni Ruker, Susan Budd and Kevin Alker
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	Peter Debnam, Julie Savet Ward, Brian Kirk, Stephen Barbour have previously considered a Rezoning Review for the site and was of the understanding that this might have led to perceived conflict.  Ken Robinson and Virginia Waller declared conflicts having voted on this proposal in their capacity as North Sydney Councillors.

**REZONING REVIEW**

RR-2021-82 – 52 Alfred Street, North Sydney (AS DESCRIBED IN SCHEDULE 1)

**Reason for Review:**

- ☐ The council has notified the proponent that the request to prepare a planning proposal has not been supported
- ☒ The council has failed to indicate its support 90 days after the proponent submitted a request to prepare a planning proposal or took too long to submit the proposal after indicating its support

**PANEL CONSIDERATION AND DECISION**

The Panel considered: the material listed at item 4 and the matters raised and/or observed at meetings and site inspections listed at item 5 in Schedule 1.

Based on this review, the Panel determined that the proposed instrument:

- ☒ **should** be submitted for a Gateway determination because the proposal has demonstrated strategic and site specific merit
- ☐ **should not** be submitted for a Gateway determination because the proposal has
- ☐ not demonstrated strategic merit
  - ☐ has demonstrated strategic merit but not site specific merit

The decision was unanimous.

**REASONS FOR THE DECISION**

**Strategic merit**

The Panel is satisfied that the planning proposal is consistent with the applicable strategic planning context of the site and thus demonstrates strategic merit.

**Site Specific merit**

The Panel notes that the earlier Panel's decision, that the planning proposal did not demonstrate site specific merit, was primarily based on the excessive building height fronting Glen Street. The planning proposal has subsequently been modified to reduce the height on that part of the site by 9.9 metres. The Panel supports this reduced height.

The Panel notes that the built environment around the site overwhelmingly exceeds the applicable 40 metre height standard, and the existing building on the site also exceeds that standard. As such, it appears anomalous to retain a height standard that evidently does not represent the established and likely future character of the locality. Since this planning proposal only involves an amendment to the building height standard in the LEP to one more consistent with the prevailing and likely future built environment, the Panel considers that it has site specific merit. The site, however, has a number of

constraints, including its relationship to a heritage item, to Bradfield Park and to existing residential towers. The ultimate built form will need to be carefully designed to respect these constraints and to provide a high level of amenity to the future occupants of any residential development on the site while minimising impacts on the amenity of the occupants of existing residential towers in close proximity to the site. The panel makes the following comments in relation to these matters.

#### **Development Control Plan**

The Panel acknowledges Council's objections to the proposal, which are primary based on what it considers to be adverse internal and external amenity outcomes relative to the sensitive and constrained context arising from future development as envisaged in the documentation accompanying the planning proposal, including the proposed Development Control Plan (DCP). It appears to the Panel that many of these concerns relate to built form massing and extent of floor space on the site, more than directly relating to the proposed building height.

Whilst the proponent's analysis has demonstrated the potential for amenity issues to be mitigated within the proposed building height and acknowledging that detailed impact assessment will be necessary at development application stage, the Panel has concerns about the indicative future built form, particularly in relation the amount of floor space and the massing of a future building on the site.

It is acknowledged that issues of building layout and massing unrelated to height are not directly the subject of this planning proposal. However, the Panel considers that in circumstances where there is no floor space ratio standard applicable to this site under the LEP and where Council relies on 'proxies' such as DCP setback controls, in conjunction with the LEP height standard, to limit building bulk and scale, the Panel places particular importance on the proposed DCP that accompanies the planning proposal (at the request of the previous Panel).

Whilst the Panel supports the reduction in the height fronting Glen Street, it notes that most of the associated 'lost' floorspace has been transferred to the middle of the proponent's reference scheme and DCP building envelope in place of a previous separation between the building elements.





The Panel therefore considers that the DCP should be reviewed and amended as follows:

- Reduce the massing of the building envelope to better reflect the dual frontage character of the block and residential building typologies. Two distinct tower forms above a podium may be more appropriate in this regard.
- The building envelope should ensure that view loss, overshadowing and other amenity impacts on neighbouring residential buildings and impacts on heritage and the public domain are minimised.
- Any amendments should not compromise elements of the proposed DCP supported by the Panel, including provision of new and enhanced north-south and east-west through site links, active frontages along streets and through site links and reduced overshadowing of Bradfield Park.
- Opportunities to ensure design excellence and improvements to the public domain are realized.

#### **Public benefits**

The planning proposal includes references to its public benefits, most particularly in the form of proposed ground level through site links. It also indicates a preparedness to enter into a VPA. However, it is noted that the full benefit of the links relies upon land not owned or controlled by the proponent. The planning proposal does not include a formal outline of offer in relation to these and other suggested benefits and how they would be secured.

The Panel considers the through site links to be positive elements of future site development that appear to be made possible by the total site redevelopment associated with the uplift in height. As such, the Panel suggests that more clarity and certainty is sought from the proponent as to its intentions in relation to formalising any such public benefit offer and if proposed, the mechanism through which those benefits will be secured.

PANEL MEMBERS	
 David Ryan (Acting Chair)	 Noni Ruker
 Susan Budd	 Kevin Alker

SCHEDULE 1		
1	<b>PANEL REF – LGA – DEPARTMENT REF - ADDRESS</b>	RR-2021-82 – 52 Alfred Street, North Sydney - 52 Alfred Street, Milsons Point
2	<b>LEP TO BE AMENDED</b>	North Sydney Local Environmental Plan 2013
3	<b>PROPOSED INSTRUMENT</b>	The proposal seeks to amend the North Sydney Local Environmental Plan 2013 to increase the maximum permitted building height at 52 Alfred Street, Milsons Point to facilitate mixed use development.
4	<b>MATERIAL CONSIDERED BY THE PANEL</b>	<ul style="list-style-type: none"> <li>Rezoning review request documentation</li> <li>Briefing report from Department of Planning, Industry and Environment</li> </ul>
5	<b>BRIEFINGS AND SITE INSPECTIONS BY THE PANEL/PAPERS CIRCULATED ELECTRONICALLY</b>	<p><b>Site inspection</b> has been curtailed due to COVID-19. Panel members to undertake site inspection individually.</p> <ul style="list-style-type: none"> <li><b>Briefing with Department of Planning, Industry and Environment (DPIE): 15 September 2021</b> <ul style="list-style-type: none"> <li>Panel members in attendance: David Ryan (Acting Chair), Noni Ruker, Susan Budd and Kevin Alker</li> <li>DPIE staff in attendance: Bailey Williams, Brendan Metcalfe and Charlene Nelson</li> </ul> </li> <li><b>Briefing with Council: 15 September 2021</b> <ul style="list-style-type: none"> <li>Panel members in attendance: David Ryan (Acting Chair), Noni Ruker, Susan Budd and Kevin Alker</li> <li>DPIE staff in attendance: Bailey Williams, Brendan Metcalfe and Charlene Nelson</li> <li>Council representatives in attendance: Marcelo Occhiuzzi, Katerina Papas, Alice Brown and Neal McCarry</li> </ul> </li> <li><b>Briefing with Proponent: 15 September 2021</b> <ul style="list-style-type: none"> <li>Panel members in attendance: David Ryan (Acting Chair), Noni Ruker, Susan Budd and Kevin Alker</li> <li>DPIE staff in attendance: Bailey Williams, Brendan Metcalfe and Charlene Nelson</li> <li>Proponent representatives in attendance: Ben Craig, Anna McLaurin, Weir Phillips, Koichi Takada, Georgia Wilson, Rohan</li> </ul> </li> </ul>

		<p>Dickson, Julia Moiso, Andrew Chung, Danica Canoza, Billy Leung and Sara Kwan.</p> <ul style="list-style-type: none"><li>• Papers were circulated electronically on 3 September 2021.</li></ul>
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