



Planning Panels Secretariat  
Locked Bag 5022  
PARRAMATTA NSW 2124

FAO: Adam Iskander

Our Ref: PP2/22  
DPE Ref: PP-2021-7492  
NM2 (CIS)

15 May 2023

Dear Adam

## **PP-2021-7492 - 12-14 WATERS ROAD, NEUTRAL BAY**

Reference is made to the recently exhibited Planning Proposal at the above site seeking to amend the North Sydney LEP 2013. This submission is to be read in conjunction with Council's detailed assessment report (considered by Council 26 April 2022) and Council's submission to the rezoning review dated 2 August. A copy of these documents are attached for your reference.

### **Planning Proposal Assessment**

We note that the Planning Proposal was the subject of a recommendation of support by the Sydney North Planning Panel and underwent subsequent revision prior to its formal public exhibition. The Planning Proposal, as exhibited, seeks to increase the maximum building height from 16m to 22m, amend the minimum non-residential FSR from 0.5:1 to 1.2:1 and introduce a site-specific height provision to allow an additional 2m for rooftop facilities bringing the total height for the site to a maximum of 24m.

### **Strategic Merit**

Council notes the Sydney North Planning Panel position that the Planning Proposal demonstrates strategic merit. It is North Sydney Council's position that the Strategic Merit Test is not met as the proposal does not demonstrate consistency with Council's assured LSPS, nor is it consistent with any strategy endorsed by the Department. The proposal seeks to progress a planning proposal that is not endorsed by any planning study and therefore challenges the implementation of Action L1.5 of the North Sydney LSPS.

### **Site Specific Merit Issues**

#### **Height**

Whilst noting the reduction in building height to that originally sought, the proposed height is considered in excess of that ordinarily required to accommodate a six-storey building. The extent of roof top facilities (at a height of 24m) is significant and the resulting proposal will read as an over scaled and visually dominant built form. The primary justification for the height sought has been the existing approved development - which significantly exceeded the existing 16m height limit. In a strategic planning context, the assignment of this height (22m + 2m) will set an undesirable precedent and potentially undermine Council's Strategic Planning study that is currently in progress.

**Building Depth**

The concerns expressed in Council's letter of 26 April 2022 remain. The facilitation of a greater number and proportion of dwellings that do not comply with the ADG requirement is not supported.

**Non-residential FSR**

As discussed in more detail in Council's letter of 26 April 2022, the intent of the proposed increase in non-residential floor space in Neutral Bay was to address the progressive quantum of employment floor space being lost in the centre and support the accommodation of local businesses in commercial suites above ground in addition to active uses at ground floor level. The plans accompanying the Planning proposal do not propose any additional non-residential floorspace.

**Exhibition Process**

The exhibition material and documentation are presented in a confusing and in some cases incorrect manner. Specific examples include;

- the description on the website initially provided the incorrect proposed building height, of 26m. Note - This was subsequently corrected after being advised by Council.
- a document entitled *draft Development Control Plan* is included as the first document (of 21). There is no draft Development Control Plan on public exhibition.
- 11 of the 21 documents available during the exhibition contain the primary title of '*Gateway Determination Report*'. Adding further confusion to the community is the sub titling of these documents where it is unclear as to content versions, use of opaque acronyms and no sequence or logic to the order or hierarchy of the documents.

**Conclusion**

For the reasons detailed in Council's assessment report (26 April 2022), summarized in Council's submission of 2 August 2022 and re-iterated in this letter, Council maintains its objection to the progression of this Planning proposal.

Yours sincerely



MARCELO OCCHIUZZI

**DIRECTOR - COMMUNITY, PLANNING AND ENVIRONMENT**



Brendan Metcalfe  
Director, North District  
Metro Central and North  
Department of Planning & Environment  
Locked Bag 5022  
Parramatta NSW 2124

Attention: Matthew Rothwell

Our Ref: PP2/22  
DPE Ref: RR-2022-13

2 August 2022

Dear Mr Metcalfe,

**RE: REQUEST FOR REZONING REVIEW - RR-2022-13  
12-14 WATERS ROAD, NEUTRAL BAY**

I refer to your letter dated 15 July 2022, notifying Council of the lodgement of a request for a Rezoning Review in relation to the Planning Proposal for 12-14 Waters Road, Neutral Bay.

The following comprises Council's response to your invitation to comment. This is to be read in addition to the detailed assessment report considered by Council at its meeting on 26 April 2022.

#### **1. Planning Proposal Assessment**

The Planning Proposal was lodged with Council on 29 December 2021. Over the course of its assessment a number of minor revisions were made to the proposal in response to concerns raised by Council Officers.

The Planning Proposal as modified, and considered by Council, seeks to make the following amendments to the North Sydney Local Environmental Plan 2013 (NSLEP 2013):

- Increase the maximum height control for the site from 16m to 26m;
- Introduce a minimum 1.2:1 Non-residential Floor Space Ratio Standard.

The planning proposal is accompanied by a concept building design for a 6-storey mixed use building, comprising approximately 7,312m<sup>2</sup> Gross Floor Area (GFA), and basement car parking over four basement levels.

On 13 April 2022, the North Sydney Local Planning Panel (NSLPP) considered a report on this Planning Proposal and recommended that the planning proposal not be supported for Gateway Determination.

At its meeting on 26 April 2022, Council resolved not to support the Planning Proposal proceeding to Gateway Determination, for the reasons outlined in the Council Officer's assessment report.

## 2. Strategic Merit

The Strategic Merit Test requires consideration of the following:

- a) *Does the proposal:*
- *Give effect to the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, and/or corridor/precinct plans applying to the site. This includes any draft regional, district or corridor/precinct plans released for public comment or a place strategy for a strategic precinct including any draft place strategy; or*
  - *Demonstrate consistency with the relevant LSPS or strategy that has been endorsed by the Department or required as part of a regional or district plan; or*
  - *Respond to a change in circumstances that has not been recognised by the existing planning framework.*

This has been considered below.

### 2.1. Regional / District plans and Local Strategic Planning Statement (LSPS)

The proposal does not demonstrate strategic merit as it challenges the implementation of Action L1.5 of the *North Sydney Local Strategic Planning Statement*. In particular, it seeks to progress a planning proposal that is not endorsed by any planning study. This would result in the ad hoc redevelopment of the area and potentially give rise to poor and unplanned outcomes for the Neutral Bay community.

## 3. Site-Specific Merit

The Site Merit Test requires consideration of the following:

- b) *Does the proposal have site-specific merit, having regard to the following?*
- *the natural environment on the site to which the proposal relates and other affected land (including known significant environmental areas, resources or hazards)*
  - *the built environment, social and economic conditions existing, approved and likely future uses of land in the vicinity of the land to which the proposal relates; and/or*
  - *services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision*

This has been considered below.

### **3.1. Height**

The proposal seeks to facilitate the development of a 6-storey building, with the intention of implementing a 26m height limit to the LEP to allow this.

It is considered that an overall height of 26m for a 6-storey building is well in excess of what is required to accommodate a 6 storey mixed use building. It is noted that Council's current height limit of 16 metres has facilitated the development of 5 storey development throughout the Military Road Corridor. The Planning Proposal's request to accommodate a change of height from 16 metres to 26 metres is incongruous with the additional height required for a single level of additional floor space. Height is clearly sensitive in this corridor and this proposal is excessive for its intended 6 storey outcome and is therefore rejected.

### **3.2. Building Depth**

At the Waters Lane and Waters Road frontages, the proposed building at 12-14 Waters Road has party walls joining adjacent 8 Waters Road. At the centre of the site, the north south orientation of units results in a building depth of approximately 21m . As one of the design criteria from the Apartment Design Guide (ADG), the overall depth of a cross-over or cross-through apartment should not exceed 18m. The proposed cross-ventilated unit depth does not comply with the ADG requirement. This has impacts on the solar access, ventilation and visual privacy of future occupants at the site.

### **3.3. Non-residential FSR**

According to the Concept Architectural Drawings, 2,046m<sup>2</sup> non-residential GFA is provided on site which equates to a 1.26:1 non-residential FSR. It is noted that 1,140m<sup>2</sup> non-residential GFA is located at the Basement Level.

In consideration of the internal amenity of the building's future occupants, below ground areas are less acceptable for many uses and are typically provided as basement and storage areas due to lack of natural light and ventilation.

The intent of the previously proposed increased Non-residential Floor Space Area in Neutral Bay was to support the accommodation of local businesses in commercial suites above ground. There is concern that approval of a below ground commercial area would result in an area of sub-standard quality and amenity and would be inconsistent with the general aims of the LSPS and NSDCP 2013.

Furthermore, it is considered that such an area would create a precedent for future proposals to seek to provide employment generating floorspace below ground.

#### 4. Rezoning Review Documentation

##### 4.1. Accuracy and Consistency

##### 4.1.1. Proposed Development Standard

Having reviewed the relevant documentation associated with the rezoning review, it has come to our attention that the development standards as described in the Rezoning Review Submission Form (uploaded on 17/06/2022), Attachment D1 – Rezoning Review Submission (dated 11/03/2022 - uploaded on 26/07/2022) and in the letter sent by DPE to Council (dated 15/07/2022) are **incorrect**. The description as put forward in the documents listed above is as follows:

*The Planning Proposal seeks to amend NSLEP as follows:*

- Increase the maximum height of building standard for the site from 16m to 24m (from 5 to 6 storeys);
- Introduce a minimum 1.2:1 Non-residential Floor Space Ratio Standard.
- Introduce a site specific clause to enable rooftop facilities on merit to obtain a maximum height of 26m.

This is **inconsistent** with the wording in the planning proposal document written by the applicant (dated 22/03/2022) and subsequently considered by Council at its meeting on 26 April 2022, which reads as follows:

- Increase the maximum height control for the site from 16m to 26m;
- Introduce a minimum 1.2:1 Non-residential Floor Space Ratio Standard.

Accordingly, we would request that the **wording be updated to reflect that as lodged and reported to Council.**

##### 4.1.2. Reference to 1.5m Setback to Waters Lane

In the document titled Attachment D1 – Rezoning Review Submission (dated 11/03/2022 - uploaded on 26/07/2022), multiple references are made to the provision of:

*...an additional 1.5m whole of building setback to Waters Lane.*

It should be noted that the Development Application (DA 92/21), which was approved on 27 October 2021 and is active on the site, provides a setback of 1.5m to Waters Lane. However, the wording of the documentation submitted for the Panels consideration suggests that this setback will be **only** achieved via the planning proposal.

The wording of this statement is misleading and should be either removed or amended to reflect the fact that the approved DA also includes this provision.

#### **4.1.3. Voluntary Planning Agreement (VPA)**

In the document titled Attachment D1 – Rezoning Review Submission (dated 11/03/2022 - uploaded on 26/07/2022), the public benefits associated with the Voluntary Planning Agreement (VPA) are described as follows:

*The proposal also includes several public benefits including an additional 1.5m setback to the podium and tower to Waters Lane to improve the amenity of the public domain and a voluntary contribution of \$1,925,000 towards public domain works (approx. \$2,500 per m<sup>2</sup> of additional residential floor area) to upgrade Water Lane to a shared laneway and to contribute to other public domain works in the Neutral Bay Town Centre.*

This is **inconsistent** with the wording in the Letter of Offer applicant (dated 29/03/2022) and subsequently reported to Council at their meeting on 26 April 2022, which reads as follows:

*The Planning Proposal is accompanied by a draft Voluntary Planning Agreement offer which proposes to provide:*

- *A 1.5m wide building setback from Waters Lane with an easement for public access;*
- *Embellishment of the public domain within the Neutral Bay Town Centre to a value of \$1,925,000.00 (excl. GST) which would include the full length of Waters Lane and either a portion of Grosvenor Street or Grosvenor Plaza (to the agreement of Council).*

We would request that the **wording be updated to reflect that as lodged and reported to Council** for the avoidance of confusion. Specifically, we would request that the reference '(approx. \$2,500 per m<sup>2</sup> of additional residential floor area)' be removed.

#### **4.2. General**

Aside from these specific matters, the Planning Proposal and accompanying documentation on the NSW Planning Portal is otherwise generally consistent with that submitted to Council.

#### **5. Planning Proposal Authority (PPA)**

The document titled *Local Environmental Plan Making Guideline December 2021* as authored by the Department of Planning and Environment (DPE) sets out the guidelines for the appointment of a Planning Proposal Authority (PPA).

Council Officers are of the understanding that for all planning proposals lodged post December 2021 (the date the new guidelines were implemented), if the proposal is refused by Council, then the relevant Regional Planning Panel will act as the PPA should the proposal proceed to gateway determination.

As stated above, North Sydney Council refused the proposal at its meeting on 26 April 2022. Accordingly, if the Panel determines that the proposal should proceed to gateway determination, as per the DPE 2021 guideline the Panel should act as the PPA for this proposal.

## 6. Conclusion

For the reasons discussed above and further detailed in Council's assessment report , the Planning Proposal is not supported as;

- The proposal does not demonstrate strategic merit as it challenges the implementation of Action L1.5 of the *North Sydney Local Strategic Planning Statement*. In particular, it seeks to progress a planning proposal that is not endorsed by any planning study. This would result in the ad hoc redevelopment of the area and potentially give rise to poor and unplanned outcomes for the Neutral Bay community.
- The proposal does not demonstrate site specific merit due to the following:
  - The height being sought by the proposal is excessive; and
  - The proposed underground portion of commercial floor space is of substandard amenity

Should you have any queries, please direct them to Jayden Perry of Council's Strategic Planning department on **9936-8331**.

Yours sincerely,

BEN BOYD  
**ACTING MANAGER STRATEGIC PLANNING**



## 8.9. PP2/22 – 12-14 Waters Road, Neutral Bay

**AUTHOR:** Neal McCarry, Team Leader - Policy

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

**ATTACHMENTS:** Nil

### **PURPOSE:**

To present to Council the assessment report of Planning Proposal No.2/22 for Nos. 12-14 Waters Road, Neutral Bay which seeks to amend the North Sydney Local Environmental Plan 2013, following its review by the North Sydney Local Planning Panel. A Voluntary Planning Agreement offer is also presented as part of this report.

### **EXECUTIVE SUMMARY:**

On 29 December 2021, Council received a Planning Proposal to amend North Sydney Local Environmental Plan 2013 (NSLEP 2013) as it relates to land located at 12-14 Waters Road, Neutral Bay. The Planning Proposal seeks to amend NSLEP as follows:

- Increase the maximum height control for the site from 16m to 26m;
- Introduce a minimum 1.2:1 Non-residential Floor Space Ratio Standard.

The indicative concept scheme accompanying the Planning Proposal includes a 6-storey mixed use building, comprising approximately 7,312m<sup>2</sup> Gross Floor Area, and basement car parking over four basement levels.

The Planning Proposal is accompanied by a draft Voluntary Planning Agreement offer which proposes to provide:

- A 1.5m wide building setback from Waters Lane with an easement for public access;
- Embellishment of the public domain within the Neutral Bay Town Centre to a value of \$1,925,000.00 (excl. GST) which would include the full length of Waters Lane and either a portion of Grosvenor Street or Grosvenor Plaza (to the agreement of Council).

The Planning Proposal is also accompanied by a draft site-specific Development Control Plan which proposes to introduce built form controls to help guide the assessment of any future development application on the site.

On 13 April 2022, the North Sydney Local Planning Panel (NSLPP) considered a report on this planning proposal and recommended that the Planning Proposal lacks strategic merit and must be considered in the context of a new study for Neutral Bay, and an *ad hoc* rezoning is therefore not supported.

It is recommended that the Planning Proposal not be supported to proceed to Gateway Determination for the following reasons:

- The proposal does not demonstrate strategic merit as it challenges the implementation of Action L1.5 of the *North Sydney Local Strategic Planning Statement*. In particular, it seeks to progress a planning proposal that is not endorsed by any planning study. This would result in the ad hoc redevelopment of the area and potentially give rise to poor and unplanned outcomes for the Neutral Bay community.
- The proposal does not demonstrate site specific merit due to the following:
  - the height being sought by the proposal is excessive given its stated objectives of achieving a single additional storey; and
  - the proposed underground portion of commercial floor space is of sub-standard amenity.

### **FINANCIAL IMPLICATIONS:**

Should the Planning Proposal be supported, the costs associated with the administration and any exhibition of the Planning Proposal and DCP will be drawn from existing budget lines which anticipate this type of activity. The Planning Proposal is accompanied by a draft Voluntary Planning Agreement (VPA) offer which proposes to provide:

- A 1.5m wide building setback from Waters Lane with an easement for public access;
- Embellishment of the public domain within the Neutral Bay Town Centre to a value of \$1,925,000.00 (excl. GST) which would include the full length of Waters Lane and either a portion of Grosvenor Street or Grosvenor Plaza (to the agreement of Council).

### **RECOMMENDATION:**

**1. THAT** Council resolves to not support the Planning Proposal proceeding to Gateway Determination, for the following reasons:

- The proposal does not demonstrate strategic merit as it challenges the implementation of Action L1.5 of the *North Sydney Local Strategic Planning Statement* (LSPS). In particular, it seeks to progress a planning proposal that is not endorsed by any planning study. This would result in the ad hoc redevelopment of the area and potentially give rise to poor and unplanned outcomes for the Neutral Bay community.
- The proposal does not demonstrate site specific merit due to the following:
  - the height being sought by the proposal is excessive given its stated objectives of achieving a single additional storey; and
  - the proposed underground portion of commercial floor space is of sub-standard amenity.

**2. THAT** Council notifies the applicant of Council’s determination in accordance with Section 9 of the Environmental Planning and Assessment Regulation 2021.

### **LINK TO COMMUNITY STRATEGIC PLAN**

The relationship with the Community Strategic Plan is as follows:

## 1. Our Living Environment

### 1.4 Public open space and recreation facilities and services meet community needs

## 2. Our Built Infrastructure

### 2.2 Vibrant centres, public domain, villages and streetscapes

## 5. Our Civic Leadership

### 5.1 Council leads the strategic direction of North Sydney

## BACKGROUND

A detailed history to the background of the Planning Proposal is contained in Council's Assessment Report which was considered by the North Sydney Local Planning Panel (NSLPP) on 13 April 2022, a copy of which can be viewed at:

[https://www.northsydney.nsw.gov.au/files/assets/public/docs/1\\_council\\_meetings/committees/nslpp/13\\_april\\_2022/pp03\\_12-14\\_waters\\_road\\_neutral\\_bay\\_-\\_pp222\\_rpt.pdf](https://www.northsydney.nsw.gov.au/files/assets/public/docs/1_council_meetings/committees/nslpp/13_april_2022/pp03_12-14_waters_road_neutral_bay_-_pp222_rpt.pdf)

### ***Military Road Corridor Planning Study Stage 1 – Future Directions Report (MRCPS)***

On 22 February 2021, Council adopted the Stage 1 post-exhibition report of the Military Road Corridor Planning Study – Stage 1 Future Directions Report (MRCPS).

The report was the product of three community consultation periods. An initial community survey was run in mid-2018. The aim of the Report was to provide a framework to guide ongoing discussion with local landowners about the future development of the Centre. Its intent was to manage jobs and housing growth, while maintaining the village atmosphere of the Neutral Bay Town Centre whilst leveraging public domain and facilities embellishments and improvements to achieve these outcomes.

The most specific direction of the Study relating to the subject site, was the identification of a height uplift of 1 storey (from five to six stories) and a corresponding increase in the non-residential floor space requirements. The rationale for this was to ensure commercial floor space was provided in the centre to arrest the decline of such floor space as new, mainly residential development occurred under the current planning rules. It was intended that more detailed provisions would be outlined in a future amendment to the North Sydney Development Control Plan (NSDCP) 2013. Such draft amendments, however, were subsequently rejected by Council at its meeting on 23 August 2021.

At its extraordinary meeting on 24 January 2022, Council resolved to rescind this study:

- 1. THAT** Council notes the submissions received and the issues raised during the exhibition.
- 2. THAT** Council notes the strong community feedback on the height and scale of the existing report received during the recent election.
- 3. THAT** Council does not adopt the Future Directions Report (dated 22 February 2021), as amended, as the strategic development framework for the Neutral Bay town centre.
- 4. THAT** That Council conduct a briefing on the rescission of the Future Directions Report prior to proceeding to Point 5 below.

**5. THAT Council adds to its program and budget, the creation of an updated strategic development framework for the Military Road Corridor including Neutral Bay centre by engaging with the community and stakeholders to prepare a revised recommendation that has a better balance between development height and the provision of additional public open space.**

Whilst the Planning Proposal at hand has been prepared in response to the MRCPS, given the study has been formally rescinded, it is no longer a consideration in the assessment of this proposal. This is a fundamental consideration and is discussed in further detail in the NSLPP Assessment Report. Notwithstanding this, the proposal has been assessed against other existing strategic documentation relevant to the site.

#### ***Development Applications at the Site***

A number of development applications have been approved at the site within the last two years.

##### DA 104/20

On 7 October 2020, the North Sydney Local Planning Panel granted development consent for a five storey shop top housing (mixed use) development at No.12 Waters Road only.

##### DA 92/21

On 27 October 2021, the Sydney North Planning Panel granted a deferred commencement consent for a five (5) storey shop top housing (mixed use) development with 36 apartments on the upper levels, with substantial commercial/retail tenancies on the ground and lower ground levels and basement parking for 100 cars at Nos. 12-14 Waters Road, Neutral Bay. Consent was issued on 22 December 2021.

#### ***Ministerial Order***

On 26 November 2021, the Minister for Planning and Public Spaces made the Environmental Planning and Assessment (Statement of Expectations) Order 2021. The Order establishes various expectations in relation to Council's development assessment, planning proposal and strategic planning roles and expected levels of performance. In particular, the Minister confirms his expectations that Councils should:

*...make a decision as to whether to support or not a proponent led planning proposal as soon as practical and no longer than 90 days.*

The Order includes an explanatory note which states:

*...If a Council is found not to be meeting these expectations, the Minister can take these matters into consideration as part of determining if it is appropriate to appoint a planning administrator or regional panel to exercise Council's functions.*

In the context of this Order, Council staff have sought to finalise its assessment and reporting of the proposal with minimal delay.

## CONSULTATION REQUIREMENTS

Community engagement will be undertaken in accordance with Council’s Community Engagement Protocol.

### DETAIL

#### 1. Planning Proposal

##### 1.1 Applicant

The applicant for the proposal is CE Waters Road Pty. Ltd.

##### 1.2 Site Description

The subject site comprises two parcels of land located at 12 and 14 Waters Road, Neutral Bay. It is legally described as SP 68360 and Lot 18 in DP 53700.

The site is generally rectangular in shape covering an area of 1627sqm, with a 31m frontage to Waters Road, a 31m boundary to Waters Lane and 55m frontage to Grosvenor Street.

The land generally falls in a north-westerly direction from its south-eastern corner down to the north-western corner of the site.



**FIGURE 1: Subject Site**



**FIGURE 2: Aerial Photo**

The southern allotment (12 Waters Road) currently accommodates a four-storey commercial building. The northern allotment (14 Waters Road) currently accommodates a three-storey commercial building. Vehicular access to the existing buildings is provided from Waters Lane.

### 1.3 Proposed Instrument Amendment

The Planning proposal seeks to;

- amend the Height of Buildings Map to NSLEP 2013 such that a maximum building height for 12-14 Waters Road, Neutral Bay, is increased from **16m to 26m**; and
- amend the Non-residential Floor Space Ratio Map to NSLEP 2013 such that a minimum Non-residential Floor Space Ratio Map of **1.2:1** applies to 12-14 Waters Road, Neutral Bay.

### 1.4 Assessment

By Ministerial direction, all planning proposals are required to be referred to the Local Planning Panel. A detailed assessment of the proposal is provided within the Assessment Report considered by the NSLPP on 13 April 2022, a copy of which is available at; [https://www.northsydney.nsw.gov.au/files/assets/public/docs/1\\_council\\_meetings/committees/nslpp/13\\_april\\_2022/pp03\\_12-14\\_waters\\_road\\_neutral\\_bay\\_-\\_pp222\\_rpt.pdf](https://www.northsydney.nsw.gov.au/files/assets/public/docs/1_council_meetings/committees/nslpp/13_april_2022/pp03_12-14_waters_road_neutral_bay_-_pp222_rpt.pdf)

The assessment report concluded that the Planning Proposal should not be supported.

### 1.5 Local Planning Panel

The NSLPP considered the proposal at its meeting on 13 April 2022, where it recommended that *the Council Officer's Report is endorsed by the Panel and for the reasons articulated in the report, the Panel recommends to the Council that this planning proposal not proceed to Gateway. The Panel considers the proposal lacks strategic merit and must be considered in the context of a new study for Neutral Bay, and an ad hoc rezoning is not supported.*

A copy of the NSLPP recommendation can be found at;

[https://www.northsydney.nsw.gov.au/Council\\_Meetings/Meetings/NSLPP/2022/13\\_April\\_2022](https://www.northsydney.nsw.gov.au/Council_Meetings/Meetings/NSLPP/2022/13_April_2022)

## KEY ISSUES

### 1.6 Strategic Merit

The North Sydney Local Strategic Planning Statement (LSPS) was adopted by Council on 25 November 2019, and subsequently assured by the Greater Sydney Commission (GSC) on 20 March 2020. One of the key roles of the LSPS is to draw together, in one document, the priorities and actions for future land use planning, and present an overall land use vision for the North Sydney LGA for the next 20 years. The LSPS must be considered as part of the LEP making process (planning proposals) and forms part of the strategic merit test for a Gateway Determination.

The proposal is in conflict with Action L1.5 of the LSPS. The action states;

*“Council will only support Planning Proposals that are consistent with Council’s endorsed planning studies, that have identified growth being delivered in locations that support the role of centres and have critical infrastructure and services in place to support the North Sydney community.”*

The Military Road Corridor Planning Study was endorsed by Council at its meeting in February 2021 which provided a sound basis for Planning Proposals to be considered within its context and hence manage change. However, Council formally rescinded the Study at its meeting on 24 January 2022. Council therefore does not have an endorsed planning study, as required by the LSPS, to facilitate changes to planning controls within this precinct.

This LSPS action was put in place to ensure that any proposed increase to development intensity on a site was sufficiently aligned to the broader strategic vision of the area, which takes into consideration the cumulative impacts of such development and ensures that appropriate infrastructure is in place to support any increase to development intensity in an area. This is in line with community expectations and represents good planning practice.

North Sydney Council has a strong and consistent practice of guiding and managing growth on the basis of comprehensive planning studies that are the subject of community consultation and technical analysis. This approach has served Council well for many years and it sends a strong message to the development industry that growth is responsibly managed by Council and speculative *ad hoc* planning proposals are not supported without an endorsed framework that foreshadows and guides changes to the prevailing planning controls. It also helps manage community expectations and achieve a level of community engagement in the change process. Action L1.5 of the North Sydney LSPS reinforces this strong commitment to strategic planning as the best way of managing growth and change.

Whilst the Planning Proposal seeks to provide worthwhile community benefits in the form of public domain improvements in the locality, such offers cannot be allowed to fundamentally influence the Council's regulatory responsibilities.

It should be noted that the MRCPS established expectations amongst many stakeholders and Council's subsequent rescission of the Study cannot be put aside on an *ad hoc* basis. Other Planning Proposals in the precinct have been and will continue to be lodged and Council's response to the current proposal will serve as a strong guide to other applicants in the precinct.

The strong guidance provided by Council's Study on the scale, height, intensity and impacts of development that may assist in delivering public benefits, is of prime importance. The plan that was previously endorsed but now formally rescinded, tried to strike a balance of both these key drivers, incorporating a range of planning considerations. This is where publicly ventilated and endorsed Council planning studies and strategies are so critically important to ensure certainty for all parties, both in terms of public benefit, but also in built form outcomes and performance.

In the absence of an endorsed planning study and in consideration of the yet to be determined timeframe for the creation of a new strategy, it would be inappropriate to progress the proposal and subsequently contribute to the *ad hoc* redevelopment of the area.

As such, it is considered that the proposal to amend the NSLEP 2013 is inconsistent with the NSLSPS and should be refused on this basis.

## **1.7 Site-specific Merit**

### **1.7.1 Maximum Building Height**

The proposal seeks to facilitate the development of a 6-storey building, with the intention of implementing a 26m height limit to facilitate this.

It is considered that an overall height of 26m for a 6 storey building is overly generous. It is noted that Council's current height limit of 16 metres has facilitated the development of 5 storey development throughout the Military Road Corridor. Even though the additional floor level of commercial or retail floor space will be required to be more generously proportioned than a residential level, the Planning Proposal's request to accommodate a change of height from 16 metres to 26 metres is incongruous with the additional height required for a single level of additional floor space. Height is clearly sensitive in this corridor and this proposal is excessive for its intended 6 storey outcome and is therefore rejected.

### **1.7.2 Building Depth**

At Waters Lane and Waters Road frontages, the proposed building at 12-14 Waters Road has party walls joining adjacent 8 Waters Road. At the centre of the site, the north-south orientation of units has approximately 21m building depth. As one of the design criteria from the Apartment Design Guide (ADG), the overall depth of a cross-over or cross-through apartment should not exceed 18m. The proposed cross-ventilated unit depth does not comply with the ADG requirement. This has impacts on the solar access, ventilation and visual privacy of future occupants at the site.

Whilst this can be dealt with at the development application stage of such a proposal, it is prudent to raise this matter early in the process. Should the proposal progress, it is recommended that to comply with ADG cross ventilation requirements, the cross-over unit depth should reduce to a maximum of 18m which would increase building separation to 9m. This would improve visual privacy, natural ventilation, and solar access to the units.

### **1.7.3 Non-residential FSR**

According to the Concept Architectural Drawings, 2,046m<sup>2</sup> non-residential GFA is provided on site which equates to a 1.26:1 non-residential FSR. It is noted that 1,140m<sup>2</sup> non-residential GFA is located at the Basement Level.

In consideration of the internal amenity of the building's future occupants, below ground areas are less acceptable for many uses and are typically provided as basement and storage areas due to lack of natural light and ventilation.

The intent of the increased Non-residential Floor Space Area in Neutral Bay is to support the accommodation of local businesses in commercial suites above ground. There is concern that approval of a below ground commercial area would result in an area of sub-standard quality and amenity and would be inconsistent with the general aims of the LSPS and NSDCP 2013. Furthermore, it is considered that such an area would create a precedent for future proposals to seek to provide employment generating floorspace below ground.

## **2 SUBMISSIONS**



There are no statutory requirements to publicly exhibit a planning proposal before the issuance of a Gateway Determination.

However, Council sometimes receives submissions in response to planning proposals which have been lodged but not determined for the purposes of seeking a Gateway Determination. The generation of submissions at this stage of the planning process, arise from the community becoming aware of their lodgement through Council's application tracking webpage. These submissions are normally considered as part of Council's assessment report for a planning proposal, to illustrate the level of public interest in the matter before Council makes its determination.

At the time of reporting, one submission had been received. It raised the following concerns:

- *Its principal argument is the Military Road Corridor Planning Study which has been rescinded by Council.*
- *There has already been a substantial breach of the Height Limit incorporated in the approved development, DA 92/21.*
- *The proposed Height Limit is out of character with its environs and is excessive.*
- *A significant proportion of the non – residential space is proposed to be underground.*
- *There is inadequate public benefit being offered in the Voluntary Planning Agreement.*
- *Approval of this Planning Proposal would set an undesirable precedent.*

These concerns have been addressed in the detailed assessment report.

## **CONCLUSION**

The Planning Proposal seeks to amend North Sydney Local Environmental Plan 2013 at 12-14 Waters Road, Neutral Bay to increase the maximum height control for the site from 16m to 26m and introduce a minimum 1.2:1 Non-residential Floor Space Ratio to the site.

The Planning Proposal is not supported for the following reasons:

- The proposal does not demonstrate strategic merit as it challenges the implementation of Action L1.5 of the *North Sydney Local Strategic Planning Statement* (LSPS). In particular, it seeks to progress a planning proposal that is not endorsed by any planning study. This would result in the ad hoc redevelopment of the area and potentially give rise to poor and unplanned outcomes for the Neutral Bay community.
- The proposal does not demonstrate site specific merit due to the following:
  - the height being sought by the proposal is excessive; and
  - the proposed underground portion of commercial area is of sub-standard amenity.