



## REZONING REVIEW

### RECORD OF DECISION

STRATEGIC PLANNING PANEL of the

SYDNEY NORTH PLANNING PANEL

DATE OF DETERMINATION	14 May 2024
DATE OF DECISION	5 May 2024
PANEL MEMBERS	Peter Debnam (Chair), Donna Rygate, Greg Woodhams, Ché Wall and Karla Castellanos
APOLOGIES	None
DECLARATIONS OF INTEREST	None

### REZONING REVIEW

#### RR-2023-36 – North Sydney LGA – PP-2023-699

183-185 Military Road, Neutral Bay (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 115 days after the proponent submitted a request to prepare a planning proposal.
- ☐ The council has not submitted the planning proposal for a Gateway determination within 28 days of indicating its support for the proposal.

### PANEL CONSIDERATION AND DECISION

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

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

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

The decision was 3-2 in favour, with Ms Karla Castellanos and Ms Donna Rygate considering the proposal did not have strategic merit.

### REASONS FOR THE DECISION

The Panel considered the documentation, was briefed by the Department of Planning, Housing and Infrastructure, and heard extensively from North Sydney Council and the proponent, PPD Planning & Equitibuild.

#### Strategic Merit

The majority of the Panel agreed that the planning proposal had Strategic Merit given that:

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- The planning proposal is consistent with applicable strategic planning documents, particularly as they relate to the general objectives for housing. These include the Greater Sydney Region Plan, 2018; Sydney North District Plan, 2018; and the North Sydney Local Strategic Planning Statement, 2020 (LSPS);
- Delivering housing supply is a priority issue for Sydney for all levels of Government;
- The provision of additional housing and employment space in this location has strategic merit;
- The previously endorsed, though rescinded, Military Road Corridor Planning Study and current work in the Neutral Bay Town Centre Planning Study, provide a clear indication of the Council's and community's desire to revitalise and renew Neutral Bay Town Centre; and
- The planning proposal is generally consistent with the rescinded Military Road Corridor Planning Study, which had been prepared by North Sydney Council Planners.

### **Site Specific Merit**

The Panel majority agreed the planning proposal had Site Specific Merit subject to revisions addressing site constraints and the recommendations below noting that:

- the site is a prominent location on the corner of Military and Rangers Road that could accommodate a higher building.
- The Draft Neutral Bay Town Centre Planning Study and Rescinded Military Road Corridor Planning Study identify the redevelopment of the site for mixed-used residential and commercial purposes and contributing to the Neutral Bay town centre/open plaza; and
- The proposed maximum building height and non-Residential Floor Space ratio are consistent with the provisions in the Rescinded Military Road Corridor Planning Study.
- Redevelopment of the site as proposed would not set a precedent for other sites in Neutral Bay given its special location adjoining the new plaza and identification as a Key Site.

### **Panel recommendations**

The Panel majority recommends that prior to submitting the Planning Proposal for a Gateway determination, the Planning Proposal be revised to address the following:

- the maximum Height of Building (HOB) is to be set to 44m including all roof structures, subject to further detailed modelling to ensure no further overshadowing of any north facing windows in any residential properties in Yeo Street at mid winter above and beyond that projected by Council's rescinded Military Road Corridor Planning Study and the Gateway approval for the neighbouring site at 1-7 Rangers Road and 50 Yeo Street as to be compliant with the Apartment Design Guide. Any necessary amendments to the proposal to achieve these requirements should not result in a reduction of the proposed ground level setbacks to Military Road and splayed setback area to the proposed public plaza;
- investigate opportunities for the provision of affordable housing as a key public benefit with a target of at least 5% affordable housing per the Greater Sydney Region Plan (this could be justified given Council no longer requires the proposed community facility to be located on this site); and
- update the Planning Proposal and supporting reports in accordance with the above points and the LEP Making Guidelines (August 2023) to reflect the Panel's decision.

The Panel will reconvene following the receipt of the revised Planning Proposal to determine whether the Proposal is suitable for submitting to a Gateway determination.

The Panel also recommends that the Proponent works with Council to produce a Site Specific Development Control Plan which should be placed on public exhibition alongside the planning proposal.

North Sydney Council did not support the planning proposal. In accordance with Section 3.32(1) of the *Environmental Planning and Assessment Act 1979*, the Planning Panel as delegate of the Minister for Planning has determined to appoint itself as the Planning Proposal Authority (PPA) for this planning proposal.

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Should the proponent fail to pay the PPA fee by the designated date, then the Panel will no longer proceed with the planning proposal and the making of a local environmental plan amendment.

The Panel requires confirmation from the proponent within two weeks of this determination, that they agree to revise the planning proposal to be consistent with the Panel's recommendations and pay the PPA fee. Should the proponent not agree to revise their proposal, then the Panel will reconvene to determine that the planning proposal does not have site specific merit and will not be submitted for a Gateway determination.

## **REASONS FOR THE DISSENTING DECISION**






Panel members Ms Karla Castellanos and Ms Donna Rygate do not consider that the planning proposal has strategic merit.

They are of the opinion that the planning proposal lacks strategic merit as it challenges the North Sydney Local Strategic Planning Statement 2020 (LSPS) requirement that "any planning proposals in the Local Government Area be underpinned by an endorsed place-based strategy". The proposal reflects a Council-authored place-based strategy that was originally endorsed but later rescinded on 24 January 2022 "due to ongoing community concerns regarding the proposed building heights and impact on the local centre".

The planning proposal for additional height and non-residential Floor Space Ratio (FSR) departs from the draft Neutral Bay Town Centre Planning Study (Planning Study) exhibited 27 February - 2 April 2024, which aims to "ensure that the scale of growth proposed has a better balance between development height and the provision of additional public open space compared with the rescinded study".

Ms Castellanos and Ms Rygate are also of the opinion that the approval of a 12-storey tower in place of the 8-storeys nominated in the Planning Study will set an unacceptable precedent for other similarly nominated sites in the Town Centre. The approval of the 12-storey height will irreversibly alter the harmonious built form relationships sought by the draft Planning Study. This effectively voids the strategic planning process undertaken by the Council since January 2022 and reverts to the nominated heights of the original and rescinded Neutral Bay Town Centre – Military Road Corridor Planning Study Stage 1.

Ms Castellanos and Ms Rygate disagree that the planning proposal should increase the height of the tower without a thorough analysis of the overshadowing impacts to the existing residential dwellings facing north on Yeo Street. The lack of clarity and currency in the overshadowing analysis presented by the proponent puts into question whether correct heights have been considered as part of the recently approved planning proposal (PP-2022-4350) for 1-7 Rangers Road and 50 Yeo Street, Neutral Bay. Therefore, the actual overshadowing impacts have not been properly demonstrated, analysed or considered. This would undermine this Panel's own previous decision for RR-2023-14 and PP-2022-4350 which resolved that the site specific DCP be amended to confirm solar access to Yeo Street properties "be in full compliance of the Apartment Design Guide".

PANEL MEMBERS	
 Peter Debnam (Chair)	 Greg Woodhams
 Donna Rygate	 Ché Wall
 Karla Castellanos	

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SCHEDULE 1		
1	<b>PANEL REF – LGA – DEPARTMENT REF - ADDRESS</b>	RR-2023-36 – North Sydney LGA – PP-2023-699 - 183-185 Military Road, Neutral Bay
2	<b>LEP TO BE AMENDED</b>	North Sydney Local Environmental Plan 2013
3	<b>PROPOSED INSTRUMENT</b>	<p>The planning proposal seeks to enable the redevelopment of the site for a mixed-use building comprising commercial, retail and residential uses and the delivery of community benefits, including a community facility and a contribution towards the public plaza.</p> <p>The planning proposal seeks to amend the North Sydney Local Environmental Plan 2013 by:</p> <ul style="list-style-type: none"> <li>● increasing the maximum height of buildings (HOB) from 16m to 43m; and</li> <li>● increasing the maximum non-residential floor space ratio 0.5:1 to 2:1.</li> </ul>
4	<b>MATERIAL CONSIDERED BY THE PANEL</b>	<ul style="list-style-type: none"> <li>● Rezoning review request documentation</li> <li>● Department of Planning, Housing and Infrastructure Rezoning Review Briefing Report, 19 April 2024</li> <li>● Slide presentations on 183-187 Military Road Neutral Bay Rezoning Review from DPPI, 1 May 2024; North Sydney Council, 1 May 2024; and AJC Architects for Equitibuild, 2 May 2024</li> </ul>
5	<b>SITE INSPECTIONS AND BRIEFINGS BY THE PANEL</b>	<ul style="list-style-type: none"> <li>● Site inspections <ul style="list-style-type: none"> <li>○ Site inspections were not held as sufficient background information was provided to all Panel members and some members had previously seen the site.</li> </ul> </li> <li>● Briefing with Department of Planning, Housing and Infrastructure (DPHI): 2:00pm – 2:45pm, 2 May 2024 <ul style="list-style-type: none"> <li>○ Panel members in attendance: Peter Debnam (Chair), Donna Rygate, Greg Woodhams, Che Wall and Karla Castellanos</li> <li>○ DPHI staff in attendance: Derryn John, Eleanor Robertson, Alex Galea, Shruthi Sriram, Michael Tran, Lisa Kennedy and Adam Williams.</li> <li>○ Key issues discussed: <ul style="list-style-type: none"> <li>● Locality and proposal</li> <li>● North Sydney Council's Draft Neutral Bay Town Centre Planning Study and Rescinded Military Road Corridor Planning Study – status, development controls comparison</li> <li>● Proposed public open space for the site and adjoining Woolworths development</li> <li>● Proposed building height, bulk, scale and massing of built form – new Building Commissioner floor to floor heights, lift overruns</li> <li>● Cumulative impact of overshadowing of Yeo Street – studies</li> <li>● Affordable housing – none in proposal</li> <li>● Community public benefits – Voluntary Planning Agreement including community facility and road widening along Military Road</li> </ul> </li> </ul> </li> </ul>

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- Briefing with North Sydney Council: 2:45pm – 3:35pm, 2 May 2024
  - Panel members in attendance: Peter Debnam (Chair), Donna Rygate, Greg Woodhams, Che Wall and Karla Castellanos
  - DPHI staff in attendance: Derryn John, Eleanor Robertson, Alex Galea, Shruthi Sriram, Michael Tran, Lisa Kennedy and Adam Williams
  - Council representatives in attendance: Neal McCarry
  - Key issues discussed:
    - North Sydney Council's Draft Neutral Bay Town Centre Planning Study and Rescinded Military Road Corridor Planning Study – change of strategy; low to mid rise housing planning reforms; status – public exhibition and reporting to Council; development controls comparison
    - Proposed building height, and bulk – excessive
    - Extent of public open space identified in the Draft Neutral Bay Town Centre Planning Study for the site
    - Council no longer requires a community facility for the site or a site through link from Military Road to Military Lane
    - Overshadowing of Yeo Street – requires further refinement
    - A site specific Development Control Plan could contain setback provisions
    - Character of building facades along Military Road – have no formal heritage status
    - Attenuation of noise impacts from Military Road
    - Council does not have an affordable housing policy
- Briefing with PPD Planning & Equitibuild (Proponent): 3:35pm – 4:30pm, 2 May 2024
  - Panel members in attendance: Peter Debnam (Chair), Donna Rygate, Greg Woodhams, Che Wall and Karla Castellanos
  - DPHI staff in attendance: Derryn John, Eleanor Robertson, Alex Galea, Shruthi Sriram, Michael Tran, Lisa Kennedy and Adam Williams
  - Proponent representatives in attendance: Tony Polvere, Harry Andrews and Duncan Corrigan
  - Key issues discussed:
    - Strategic merit
    - Site merit – approved development application for the site
    - Economic viability of proposal - minimum 12 storeys to achieve economic viability
    - Over-shadowing along Yeo Street - concept plan shows overshadowing at 9am and 3pm; over-shadowing by Woolworths proposal; further studies required
    - Council no longer requires a community facility for the site - what other community benefit may be provided
    - Viability of two storeys for commercial uses – have considered likely market demand supporting commercial uses

		<ul style="list-style-type: none"><li>● North Sydney Council’s Draft Neutral Bay Town Centre Planning Study and Rescinded Military Road Corridor Planning Study – additional height on transport node and provision of open space in town centre</li><li>● No provision of affordable housing – proposing other community benefits; if have the capability would consider</li><li>● Proposed height – inclusive of lift overrun; planning proposal is for 43m; Urban Design report seeking 44m to include lift overrun of 2.5m</li></ul> <ul style="list-style-type: none"><li>● Panel Discussion: 4:30pm – 4:52pm, 2 May 2024<ul style="list-style-type: none"><li>○ Panel members in attendance: Peter Debnam (Chair), Donna Rygate, Greg Woodhams, Che Wall and Karla Castellanos</li><li>○ DPHI staff in attendance: Derryn John, Eleanor Robertson, Alex Galea, Shruthi Sriram, Michael Tran, Lisa Kennedy and Adam Williams</li></ul></li></ul>
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