

Boston Blyth Fleming

5 March 2012

Notes in Reply to Assessment Report DA 467/11 – JRPP 7th July 2012.

144 – 150 Pacific Highway & 18 Berry Street North Sydney

Dealing with the draft reasons for refusal of the application.

1. The building heights and massing standards of the clause 28D of the North Sydney LEP 20011 concern objectives for a transition of building heights from the city core to its edges, shading impacts to open space and special areas (in this instance the Don Bank museum), privacy to residential areas, scale and massing to promote pedestrian comfort and opportunities for site consolidation. The assessment report accepts the proposal satisfies the performance outcomes in respect of shading and privacy and pedestrian comfort. The DA as submitted included details of negotiations associated with site consolidation and 154 Pacific Highway in the terms required by the NSW LEC planning principles. Issues of construction damage and dilapidation to the building at 154 Pacific Highway can be addressed by appropriate conditions.

The assessment report acknowledges the proposed building height satisfies the building height pursuant to the current LEP (p.20), but goes on to discuss building height in relation to the draft LEP 2009 standards. My submission to Council 6th February 2012 sets out why this draft planning instrument is not a matter for consideration with this application. In summary those reasons are that the draft LEP is not proceeding; the height provisions proposed do not translate the current height provisions as they apply to this site; the modeling which Council claims underpins those standards has not been disclosed to the applicant and in any event the standards as discussed are inconsistent and appear to be arbitrary given this report discusses a possible acceptable height of RL 135 (P15) but the draft LEP proposes a maximum height of RL 125 and the original Design Excellence Panel review and minutes indicated an acceptable height of RL 145 (p.9).

The objective of the standard is to gain an acceptable transition in height to the edge of the town centre, and the urban design consultants address this issue in some detail. The presence of the approval at 177 – 199 Pacific Highway, albeit pursuant to a Part 3A process, on the diagonally opposite corner is relevant to a consideration of this objective. Accordingly the issues of building height and massing devolves to the opinions of the Council assessing officer and the Urban Design consultant's opinions as presented with the Development Application. However, on the basis of those opinions there is nothing to indicate the proposal is contrary to the objectives of Clause 28D NSLEP 2001.

2. Preparation of the development application was preceded by formal pre-DA meeting and minutes. Those minutes do not disclose a requirement for a SEPP 1 objection as it relates to Clause 30 of the LEP as the Courts ruling at 136 Walker Street is applicable. The absence of a SEPP 1 submission is not applicable to a consideration of this application.
3. Issues of setback and form again reflect the difference in opinion between the assessing officer and the Urban Design Consultants.

Reasons 4, 5 and 6. The applicant has provided sketch plan details of possible design amendments that if made will address these matters which the assessment report acknowledges have been submitted but does not comment upon (p.12). The GMU report 2nd March 2012

comments on the detail of these issues and including the relevance of SEPP 65 to casual accommodation in the form of serviced apartments, but subject to the consideration of the sketch details it is submitted these issues can be addressed.

7 and 8. This is associated with the issue of site consolidation of 154 Pacific Highway and detail of individual windows. However we find it unusual that an issue of south facing windows adjacent to a common side boundary in an adjoining building is necessarily matters for this application.

In my opinion the building height satisfies the operable planning controls for the site and meets the objectives pertaining by the operation of clause 28D and (necessarily) 32 of the LEP. There is no obligation for a SEPP 1 objection in relation to clause 30 of the LEP and this issue devolves to a consideration of the proposed development satisfying the objectives at Clause 30(1) of the LEP.

Conclusion

If the Panel is disposed to deal with the application and to incorporate the sketch details as submitted with the clients submission 31st January 2012 to Council, the Panel could defer its consideration of the matter for a specified period to enable the receipt of those modified plans and subject to those plan details being received and being satisfactory, grant consent to the application in accordance with conditions to be specified. Those design details might include the thru site link as indicated to Doohat Lane; lobby and entry details to the service apartments; balcony detailing; setbacks to the laneway and discussion of light wells or other window treatment/protection to 154 Pacific Highway.

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