STRAND ESTATES

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9 December 2013

For the attention of Angela Kenna

Sydney East Joint Regional Planning Panel
GPO Box 39
SYDNEY, NSW 2001

Dear Sirs,

RE: DA 239/13 - 144 – 154 PACIFIC HIGHWAY & 18 BERRY STREET, NORTH SYDNEY

It has been suggested by our planning lawyer, Gary Green of Pikes & Verekers, that I write to the Secretariat with comments in respect of the Assessment Report and Recommendation issued by North Sydney Council.

I comment as follows:-

- As a general statement, the report places far greater emphasis on the provisions of LEP 2013, rather than the instrument under which the application was lodged, LEP 2001.

- Council's Traffic Engineer supports the proposal subject to the applicant being responsible for the upgrade of the western leg of the pedestrian crossing at the intersection of Pacific Highway and Berry Street. This is an unreasonable impost. The pedestrian crossing works efficiently and there is insufficient pedestrian traffic to require a signalised crossing. There is already a de facto control in that northbound traffic on Pacific Highway is stopped to permit pedestrians to cross from one side of Pacific Highway to the other. This facilitates the crossing of Berry Street. In the more than 20 years I have been in the building at 144-148 Pacific Highway, I have not witnessed an accident either at the intersection or on the crossing. There is also never any evidence of pedestrians experiencing delays in their attempt to cross Berry Street.

- There are a number of areas in the report where mention is made that the residential mix does not comply with the prescriptive mix in the DCP. It is worth noting that Clause 2.2.3 P5 of the DCP states:-

  > *"P5 Variations to the dwelling mix within P3 or P4 will not be considered, unless the applicant can adequately demonstrate by an authoritative analysis of current and future market demand that the suggested mix is not reasonable."*

  The DA was supported by reports prepared by Urbis and JBA, two leading economic and planning consultants. Both reports support the proposed mix. There is no acknowledgement of either of these reports. The proposed mix

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comprises 68.5% of studios and 1 bedroom units. The report states, *"Council has accepted a higher percentage of smaller apartments for new mixed use buildings in recent years on the basis of the location near a railway station. It has generally been no greater than 60%."* This is not correct:-

- The development at 200-220 Pacific Highway, Crows Nest has 70.9% of the total number of units as 1 bedroom and studios. In this instance, the departure from the prescriptive mix was supported due to the proximity to centres of employment and public transport. The subject site on the corner of Pacific Highway and Berry Street is closer to employment centres and also enjoys better public transport connections.
- At 211-223 Pacific Highway, Council was prepared to permit the applicant to have a mix of which 62.8% comprise 2 bedroom units, compared to the maximum in the DCP of 45%.
- At 83-89 Chandos Street, 71.4% of the approved units are 2 bedroom, compared to the 45% limit.
- At 621 Pacific Highway, 66.7% of the approved units are studio and 1 bedroom.
- At 11-19 Albany Street, 63.3% of the approved units are studio and 1 bedroom.
- At 51-53 Chandos Street, 62.5% of the approved units are studio and 1 bedroom.

- The report makes much of the inadequacy of the through site link and provides little credit for the planning benefit that flows from the facility. There is no recognition of the fact that what is being proposed is completely consistent with the Court approval. Mr Mossemenear was party to the negotiations regarding the design of the through site link and the hours on which it would open. The provision of the through site link should be viewed in the context that Doohat Lane will act as a service route for the proposed development and the adjoining developments at 12-16 Berry Street, 156-158 Pacific Highway and 8-10 Berry Street. DA 467/11 was accompanied by a report prepared by Traffix that stated:-

  > *"Surveys undertaken by TRAFFIX noted that pedestrian movements along Doohat Lane are moderate with an estimate of 60 movements per day."*

- The report states, *"The proposal results in a major reduction in the commercial office space existing on site."* The proposal provides some 55% less commercial floorspace than is in the current buildings.

  - Council has earlier accepted a loss of 81% of the commercial space previously on 12-16 Berry Street. The former buildings on the site had an area of 2,100m^2 and have been replaced by 404m^2.
  - At 211-223 Pacific Highway, Council has accepted the loss of 3,424m^2 or 82.5% of the commercial space previously on the site.
  - The DA for 225-235 Pacific Highway contemplates replacing two

substantial buildings with 867m^2 of commercial space, less than 30% of the current structures.

- There is an inconsistency in Council's criticism of the proposal. On the one hand there is recognition that *"the site is too small to provide high quality/large commercial floor plates".* Then there is criticism that *"The commercial floor plate upon the site is smaller than the required 1,000m^2 threshold."* There is an acknowledgement that high quality commercial floor space cannot be provided on the site, yet Council requires the provision of additional sub-optimal accommodation. The extent and configuration of the commercial floor space is dictated in part by the shape and topography of the site and need to accommodate the substantial residential core and structure. These factors have a negative impact on the quality and efficiency of space able to be provided in the proposed development.

- There is further inconsistency when the report states, *"The proposal will have a limited impact on amenity of the residential area adjoining to the north."* Yet, the height of the building and its proximity to this residential area is one of Council's major criticisms of the proposal.

- The report states, *"The proposed development is not considered to have an appropriate overall scale as the tower element is now closer to the lower scale residential zone to the north west."* The argument is continued with, *"The scale and massing is unsatisfactory with regard to visual dominance from nearby residential areas."* The report becomes quite repetitive when stating, *"The scale, form and massing is not considered suitable within the context of the locality and in particular the lower scale development adjoining the North Sydney Centre. The site is located almost adjacent to a low scale residential area."* In the second paragraph on Page 32, the report states, *"It cannot be assumed that the height considered acceptable by the Court on the corner should be extended further north particularly when it comes closer to the lower scale residential area."* In the SEPP 65 critique on Page 40, there is again reference to, *"the site is located almost adjacent to a low scale residential area."* This was one of the principal arguments in the Land & Environment Court. Any difference is marginal and there is no mention that the *"lower scale residential zone to the north west"* is actually zoned High Density Residential.

- The report states that, *"Part of the site directly adjoins the residential area while the rest of the site containing the tower element is about 15m away."* The site at 18 Berry Street has a northern boundary of just over 6m which abuts the residential zone. The proposed development is 17m away from this boundary. By comparison, the adjoining development at 12-16 Berry Street is just 6m away from the same boundary. Presuming the *"tower element"* commences at Level 12, on a horizontal plane, the closest part of the building is about 13m away. However, the building will be obscured by the adjoining development at 156-158 Pacific Highway and measured on a line of sight basis, the *"tower element"* is significantly further away.

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- The report states the L&EC approved the height of the tower for a number of reasons including, *"future development over No 154 was restricted to RL125 under the new LEP."* I do not believe this was the case. The application was considered in isolation. We were asked to model 154 Pacific Highway on a standalone basis predicated on a redevelopment to a height of RL125. I do not believe that height was ever a factor in the Court's decision. The various iterations of the DLEP always sought to impose the same height limit of RL125 on the three Pacific Highway sites at 144-154 Pacific Highway. The owners of 154 Pacific Highway were consistently a party to our various submissions in response to the DLEPs. They shared our argument that LEP 2013 unduly constrained the height of development on the Pacific Highway sites.

- The report goes on to state, *"My recollection of the evidence before the Court was that No 154 as an isolated site had the potential to build up to RL125 and this would provide a step in scale down to the recently constructed buildings at No 156-158 that directly adjoin the residential area."* I do not believe this was the case. If 154 were isolated, it is debatable as to whether it would be permitted to be developed to RL125 as with a site area of about 385m^2, it is considerably smaller than the threshold of 1,000m^2. The modelling was required to demonstrate 154 Pacific Highway might be able to be developed in isolation. It was never assumed that that height constraint would be imposed on the amalgamated site.

- It is acknowledged that the proposed development does not comply with the Height of Buildings Map in LEP 2013. However, Clause 6.3(3) of the LEP permits the consent authority to approve a development higher than permitted by the Height of Buildings Map provided it is satisfied that any overshadowing between 9am and 3pm does not reduce the amenity of any dwelling outside the CBD. The proposal does not reduce the amenity of any dwelling, yet the report makes no mention of it.

- The critique of the proposal under the heading of SEPP 65 states, *"Variations to the controls could only be supported if there are sound reasons based on urban design and being in context with recent developments in the immediate vicinity."* I believe the Court accepted we achieved this and the application now before the JRPP offers the significant benefit of incorporating 154 Pacific Highway in the redevelopment.

- At the top of Page 42, the report suggests the core could be moved to the south to provide *"more welcoming space"*. This is an impractical suggestion as moving the core has greater ramifications. In any event, the common areas are appropriately located in the heart of the floor and circulation space.

- The report states, *"..... the Court accepted a non-compliance with the Rule of Thumb requirement for 10% of units being single aspect and south facing. The Court accepted 16% being 13 of 84 apartments. The applicant is now proposing 22.3% being 44 out of 197 apartments. This is completely unacceptable."* This assessment is inconsistent with the approval granted in

respect of the immediately adjoining development at 12-16 Berry Street, where 37.5% of the total number of units are south facing.

- Under the heading "Apartment Mix" on Page 44, as noted earlier there is no mention of the Urbis and JBA reports. The report states, *"Market demand is dictating a larger number of small apartments. There is no information provided that there is no demand for two bedroom apartments. They may take more time to sell than the less expensive small apartments but they do sell."* This is an extraordinary argument. It is self-evident that if the market is demanding more smaller apartments, there will be less demand for larger apartments. The JBA and Urbis reports both support the proposed mix. In doing so, they took account of the demand for apartments of varying sizes, including two bedroom units. The true state of the market is reflected in the recent Section 96 Application lodged by Crown for their development at 211-223 Pacific Highway. They have applied to convert a number of two bedroom units to one bedroom and one bedroom and study apartments. The application follows the launch of stages 1 and 2 of their marketing program.

- The report states, *"Council has noted that the mix is generally not an issue with developments that have proper regard for SEPP 65 and RFDC."* Yet:-

  - At 200-220 Pacific Highway, Council accepted a non-complying mix with 56.9% of the units receiving 2 hours solar access. Conventional cross ventilation is available to only 51.5% of the units. A further 19.8% of the units achieve cross ventilation through the introduction of a mechanical system.
  - At 83-89 Chandos Street, Council accepted a departure from the prescriptive mix with 23% of the units being single aspect south facing. Further, several units have balconies with widths of 1m, areas below the DCP and RFDC thresholds and a width of only 3m.
  - At 51-53 Chandos Street, Council accepted a non-complying mix with 19% of the units being single aspect south facing and almost 20% of the 1 bedroom units being smaller than the RFDC and DCP requirements.
  - At 619 Pacific Highway, the approved mix does not comply, yet only 50% of the units are cross ventilated. The 2 bedroom units are smaller than contemplated by the DCP and RDFC.
  - At 621 Pacific Highway, the approved studios do not have balconies and there is cross ventilation to only 50% of the units.

- The report offers the JRPP three possible options should it consider the height of the proposed development to be too high. No credit is given for the amalgamation of 154 Pacific Highway with the sites at 144-150 Pacific Highway and 18 Berry Street. The building at 154 Pacific Highway comprises 13 strata lots with 11 different owners. Securing the agreement of all owners has been difficult and protracted. The modifications suggested in the report emasculate the development potential of 154 Pacific Highway. Its amalgamation with the neighbouring sites is rendered unviable by any of the options presented to the JRPP. A Section 96 Application amending the

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approved development is about to be lodged with the Court, thereby sterilising the future development potential of 154 Pacific Highway.

I am happy to respond to any queries.

Yours faithfully,

DAVID WALKER