



Brendan Metcalfe
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Department of Planning, Industry & Environment
Locked Bag 5022
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Our Ref: PP7/20

ATTENTION: BAILEY WILLIAMS

16 September 2021

Dear Brendan

REQUEST FOR REZONING REVIEW
391-423 Pacific Highway, 3-15 Falcon Street and 8 Alexander Street, Crows Nest
(Fiveways Triangle Site)

I refer to your letter dated 31 August 2021, notifying Council of the lodgement of a request for a Rezoning Review in relation to the Planning Proposal for the Fiveways Triangle Site, Crows Nest.

The following comprises Council's response to your invitation to comment.

1. Planning Proposal Assessment

The Planning Proposal was lodged with Council on 4 December 2020 and seeks to amend North Sydney Local Environmental Plan (NSLEP 2013) as it relates to the subject sites as follows:

- Increase the maximum building height control on the subject site from 16 m to 75 m;
- Increase the minimum Non-Residential Floor Space Ratio (FSR) control on the subject site from 0.5:1 to 2.5:1; and
- Establish an overall maximum FSR control on the subject site of 9.3:1.

The intent of the Planning Proposal as described by the proponent, is to deliver a 19-storey mixed-use development comprising a 3-4 storey commercial podium and 16-storey residential tower above. The indicative concept design submitted in support of the amendment, includes 233 residential apartments with a residential Gross Floor Area (GFA) of 21,818 sqm, a non-residential GFA of 8,002 sqm, and 385 car parking spaces over 7 basement levels.

The Planning Proposal is accompanied by an offer to enter into a Voluntary Planning Agreement (VPA) to provide either a monetary contribution for the purposes of improved open space and community facilities, or the dedication to Council of an unspecified number of one-bedroom apartments within the proposed development for affordable key worker housing.

On 26 February 2021, Council wrote to the proponent to advise that it had undertaken a preliminary assessment of the Planning Proposal against the outcomes of the *St Leonards and Crows Nest 2036 Plan (2036 Plan)* and that it could not be supported in its current form. The proponent was requested to either withdraw their Planning Proposal or re-submit a revised Planning Proposal that is compliant with the 2036 Plan. No withdrawal request or revised scheme was submitted to Council.

On 5 May 2021, the North Sydney Local Planning Panel (NSLPP) considered a Council officer's assessment report and recommendations. The report recommended that the Planning Proposal not proceed to a Gateway Determination for the following reasons:

- *The Planning Proposal is significantly inconsistent with the outcomes of the 2036 Plan in relation to the degree of non-compliance with building height and FSR. These non-compliances result in significant amenity impacts as detailed in this report.*
- *If such non-compliances are supported to any degree, the Planning Proposal will create a precedent for significant non-compliances with the maximum building height and FSR controls contained within the 2036 Plan and undermine the integrity of all strategic planning policies relating to the precinct including:*
 - *Greater Sydney Regional Plan ('A Metropolis of Three Cities') and North District Plan;*
 - *St Leonards and Crows Nest 2036 Plan and accompanying Special Infrastructure Contribution (SIC) Scheme;*
 - *North Sydney Local Strategic Planning Statement (LSPS); and*
 - *Civic Precinct Planning Study (CPPS).*
- *The Planning Proposal is inconsistent with Direction 5.10 - Implementation of the Regional Plan and Direction 7.11 - Implementation of St Leonards and Crows Nest 2036 Plan to section 9.1 Ministerial Directions under the Environmental Planning and Assessment Act 1979 (EP&A Act), which requires Planning Proposals to be consistent with the 2036 Plan and Greater Sydney Regional Plan.*

The NSLPP agreed with the analysis and reasons for not supporting the Planning Proposal outlined in the Council officer's assessment report. The NSLPP considered the Planning Proposal unacceptable for the following reasons:

- a) *The Panel is not persuaded that the numeric controls of the St Leonards and Crows Nest 2036 Plan ("the 2036 Plan") can be ignored for a preference to the more general "vision, objectives and actions" in the Plan. The Planning Proposal is inconsistent with 2036 Plan, in particular the metrics relating to the number of storeys and FSR which are an integral part of the 2036 Plan that was developed after years of study, consultation and investigation.*

- b) *The Planning Proposal if made would create an undesirable precedent and undermine the integrity of the recently adopted 2036 Plan.*
- c) *The Planning Proposal is also contrary to Direction 5.10 - Implementation of the Regional Plan and Direction 7.11 - Implementation of St Leonards and Crows Nest 2036 Plan to section 9.1 Ministerial Directions under the Environmental Planning and Assessment Act 1979, which permits Planning Proposals to be inconsistent with the 2036 Plan but only if any inconsistencies are of minor significance.*
- d) *The Planning Proposal does not satisfy all the requirements under the ADG and urban design excellence has not been established with the intensity of the development proposed.*
- e) *The 2036 Plan is based on contributions from the uplift of all the sites, having regard to infrastructure, public domain and urban design. The consideration of planning proposals on a site-by-site basis undermines the integrity of the planning system.*

The NSLPP noted that the proponent emphasised the public benefits of the Planning Proposal by the doubling of monetary contributions. However, the Panel did not consider this as justification for a height and FSR exceedance not envisaged in the 2036 Plan.

The NSLPP recommended that Council not support the progression of a site-specific Planning Proposal to Gateway Determination given the significant processes that have occurred in finalising the 2036 Plan.

At its meeting on 24 May 2021, 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

Inconsistency with 2036 Plan

Direction 7.11 - Implementation of St Leonards and Crows Nest 2036 Plan to section 9.1 Ministerial Directions under EP&A Act 1979 states that a Planning Proposal authority must ensure that a Planning Proposal is consistent with the 2036 Plan. A Planning Proposal may be inconsistent only if:

- (a) *the provisions of the planning proposal that are inconsistent are of minor significance, AND*
- (b) *the planning proposal achieves the overall intent of the Plan and does not undermine the achievement of the Plan's vision, objectives and actions.*

Council is of the opinion that the Planning Proposal is significantly inconsistent with the outcomes of the 2036 Plan with respect to maximum building height and FSR, with the degree of non-compliance being significant.

The 2036 Plan identifies a maximum building height of 16-storeys and a maximum FSR of 5.8:1 (which equates to approx. 18,560 sqm GFA) for the subject site. The Planning Proposal is seeking a maximum building height of 75 m (equivalent to a 22-storey

mixed-use building) and an overall FSR of 9.3:1 (29,760 sqm GFA) for the site, which represents an exceedance of approximately 11,200 sqm GFA (or 60%).

The proponent contends that the “test of consistency” with the 2036 Plan is not whether it complies with the height and FSR controls, but whether it achieves the vision, objectives and principles of the Plan. However, the 2036 Plan explicitly states (on page 34) that *‘the proposed built form controls and actions are informed by key urban design principles,’* suggesting the built form controls have been developed to achieve the key urban design principles envisaged by the Plan.

Council is of the view that the numeric built form controls of the 2036 Plan are an integral component of the Plan, developed after four (4) years of study, consultation and investigation. As outlined in section 3 of this letter, exceedances of the magnitude proposed (11,200 sqm GFA) will result in outcomes not envisaged under the 2036 Plan for the precinct.

Precedent

The 2036 Plan and accompanying Special Infrastructure Contribution (SIC) scheme have been developed with an assumed level of uplift and funding that will be generated to support growth within the precinct. The 2036 Plan explicitly states that the precinct has been planned to provide 16,500 new jobs and 6,683 new homes, with the number of new homes planned for the precinct having been reduced by more than 700 dwellings, following feedback received during the exhibition of the draft Plan.

The proposed increased density, over and above the maximum capacity identified in the 2036 Plan for the subject site, will facilitate a level of growth and demand for local and regional infrastructure assets and services (including open space, schools, community facilities), that have not been planned for and cannot be supported under the established infrastructure delivery programs and mechanisms.

Council has received numerous enquiries for sites within the St Leonards and Crows Nest precinct seeking to challenge the maximum height and FSR controls of the 2036 Plan. If the requested non-compliances are supported to any degree, the Planning Proposal will establish a precedent for significant non-compliances with the 2036 Plan, facilitating unanticipated levels of growth with cumulative impacts across the precinct. This has the potential to undermine the integrity of the 2036 Plan.

3. Site-Specific Merit

Height

The Planning Proposal is seeking to increase the maximum building height from 16m (under NSLEP 2013) to 75m to achieve a 19-storey mixed-use building. The proponent’s primary justification for the 19-storey proposal, is that a 16-storey pure commercial building would yield a height similar to a 19-storey mixed-use building (i.e., lower floor-to-floor heights for residential development). At 19-storeys, the proponent contends that the proposal is still consistent with the height transition principles of the 2036 Plan.

Council is of the view that the proposed height of 75 m is inconsistent with the 2036 Plan for the following reasons:

- The *SJB Urban Design Study* (which underpins the finalised built form outcomes in the 2036 Plan), assumes a 16-storey height for the site is based on a mixed-use building with a commercial podium and residential tower. This is reflected in the Land Use and Activity Map (on page 51) of the *SJB Urban Design Study*. It is therefore erroneous to rely upon a theoretical 16-storey pure commercial building height to justify a 19-storey proposal on the site;
- The subject site is located outside the height “Knuckle Area” (i.e., the 2036 Plan’s key transitional principle, where taller buildings are to be located 150-200 m of either station and transition in height, and bulk and scale to the surrounding neighbourhood areas) and located in a “transition area” (i.e., between low and high-rise developments). At 19-storeys, the proposal is close to or exceeds the maximum building heights for the Crows Nest metro site (21, 17 and 9-storeys) and is an abrupt increase in height from the adjacent 8-storey height limit immediately north;
- The proposed height of 75 m appears excessive for the proposed number of storeys and could potentially result in a built form of approximately 22-storeys on the subject site.

In setting building height controls within the precinct, Council has consistently relied upon the Apartment Design Guideline (ADG) considerations. A building height of 56 m for a 16-storey building has been considered appropriate on other mixed-use suites within the precinct with similar non-residential podium requirements.

FSR

The Planning Proposal is seeking to establish an overall FSR of 9.3:1 (approx. 29,760 sqm GFA) for the subject site, which represents an exceedance of 11,200 sqm GFA (or 60%) of the maximum FSR identified in the 2036 Plan.

The proponent’s justification for the proposed FSR is based on site testing of solar access and visual impact to surrounding streets, which demonstrates “*a greater density is possible within the envelope controls of the 2036 Plan.*” The proponent maintains that the Proof of Concept complies with the 2036 Plan’s solar access controls, and that the high level of visual impact is acceptable based on the site’s role as a “gateway” element to the precinct.

Council does not accept the proponent’s justification for the proposed FSR for the following reasons:

- The FSR control is the primary mechanism through which density is managed under the 2036 Plan and not ‘envelope controls’;
- The proposed height and scale of the residential towers casts significant, far-reaching shadows to the east and west of the site to surrounding low-density residential areas, including the nearby Heritage Conservation Areas (HCAs). Council’s internal modelling indicates that the proposed height and scale of the residential towers will result in a greater level of impact to the Holtermann Estate C HCA, than that of a compliant scheme. This is contrary to the 2036 Plan’s principles regarding the protection of HCAs, which states: ‘*new development*

nearby HCAs is to ensure minimal overshadowing and avoid unreasonable visual impact to the public domain or private open spaces of dwellings within these areas.'

- The visual impact of the proposed building massing is significant from several close and distant viewpoints with the loss of sky views from various viewpoints surrounding the site. The notion of 'gateway' sites was abandoned in the finalisation of the 2036 Plan. Notwithstanding, the *SJB Urban Design Study* (on page 47) states that the Fiveways site should be retained '*as a human scale entry point.*' On this basis, there is no justification for the significant visual impact of the proposal on the notion that it acts as a 'gateway element.'

The 2036 Plan explicitly identifies the Fiveways intersection (on page 36) as a 'transition' area. The site's proximity to Crows Nest Metro Station is only one part of the site's surrounding context, which includes Willoughby Road (Crows Nest Village) to the immediate north and low-scale residential areas and HCAs to the southeast of the site.

As outlined in the 2036 Plan's precinct wide design principles: '*new development must respond appropriately to the built form character of sub-precincts, including height, bulk and scale.*' Furthermore, to achieve optimal transitions between character areas: '*setbacks, variations in height, floor space ratios, and solar access controls will be used to ensure the level of transition from high density development to lower density development (i.e., HCAs) is appropriate.*'

It is evident that the proposed built form seeks to maximise the Gross Floor Area (GFA) on the site by proposing a building height well above 16-storeys with no stepping down, lowering or differentiation in heights across the site, minimal setbacks and building separation (particularly between the two proposed residential towers, which are substantially below minimum ADG requirements). This results in the building mass being read from most aspects as one, bulky tower form that overshadows and provides a poor transition to the low-scale HCA to the south-east of the site, and an unacceptable level of on-site residential amenity. The impacts are exacerbated by the proposal seeking to provide 11,200sqm GFA greater than that envisaged under the 2036 Plan.

It is Council's view that the overall height, bulk and scale of the podium and tower elements are excessive and does not respond appropriately to the site's immediate context, including surrounding heritage buildings. By seeking to maximise the GFA on the site, the proposal results in an excessively bulky and visually dominant built form at a prominent location within the St Leonards and Crows Nest precinct, contrary to the desired 'village' character of the locality set out in the 2036 Plan. The 2036 Plan does not contemplate a development of this scale on the site.

Public Benefits

Part of the proponent's justification for the additional height and density sought, is that the public benefits proposed to be delivered as part of the proposal (and accompanying VPA) is of '*exceptional value, beyond what could be secured under a standard practice approach that should be considered within the precinct*' (page 36, 2036 Plan). The 2036 Plan suggests the delivery of public benefits in exchange for additional height and density may be considered, but only in instances where the

proposal is consistent with the vision, objectives and actions, including solar access controls.

For the reasons previously outlined in this letter, the variations sought to the height and density controls contained within the 2036 Plan are not considered to be of minor significance and by virtue of the degree of non-compliance and impacts arising the Planning Proposal is inconsistent with the vision, objectives and actions of the 2036 Plan. The variations sought by the applicant is not considered to be of merit on this basis.

4. Rezoning Review Documentation

The Planning Proposal and accompanying documentation on the NSW Planning Portal is generally identical to that submitted to Council.

5. Proponent's request for a Rezoning Review

The applicant's letter of request for a Rezoning Review, prepared by City plan and dated 11 March 2021, has also been reviewed. It is noted that the letter contains additional commentary responding to specific matters raised by Council in its preliminary assessment letter (dated 26 February 2021). The information contained within the request is considered to be generally consistent with that contained within the Planning Proposal and supporting documentation, which has been addressed by Council in its detailed assessment report.

6. Conclusion

Council is of the opinion that the Planning Proposal is significantly inconsistent with the outcomes of the 2036 Plan with respect to maximum building height and FSR, and by virtue of the degree of non-compliance and impacts arising the Planning Proposal is inconsistent with the vision, objectives and principles of the 2036 Plan. The impacts are exacerbated by the proposal seeking to provide 11,200 sqm GFA (or 60%) greater than that envisaged for the site under the 2036 Plan. If the requested non-compliances are supported to any degree, the Planning Proposal will establish a precedent for significant non-compliances with the 2036 Plan, undermining the processes that have occurred in finalizing the 2036 Plan.

For the reasons outlined in Council's detailed assessment report, the proposal does not demonstrate strategic or site-specific merit and should not be supported to proceed to a Gateway Determination.

Should you have any queries, please contact Katerina Papas of Council's Strategic Planning department on **9936-8385**.

Yours sincerely



21.9.2021

JOSEPH HILL
DIRECTOR - CITY STRATEGY