

Rezoning Review Briefing Report – RR-2022-10

20 Berry Street, North Sydney (704 jobs) – Planning proposal seeks to rezone from B4 Mixed Use to B3 Commercial Core, increase maximum height for the site from RL145 to RL172, and include a new special area at 20 Berry Street on the NSLEP 2013 North Sydney Centre map.

Element	Description
Date of request	12 May 2022
Department ref. no	RR-2022-10
LGA	North Sydney
LEP to be amended	North Sydney LEP 2013
Address	20 Berry Street, North Sydney
Reason for review	<input checked="" type="checkbox"/> Council notified the proponent it will not support the proposed amendment <input type="checkbox"/> Council failed to indicate support for the proposal within 90/115 days, or failed to submit the proposal after indicating its support
Has council nominated PPA role	No. Council resolved not to accept the role of PPA (Attachment F2).
Consultation	The North Sydney Local Planning Panel (NSLLP) considered the planning proposal on 13 April 2022. The Panel considered that with further studies there may be merit for a planning proposal. It was recommended that the matter be deferred to allow the applicant the opportunity to submit further studies.
Brief overview of the timeframe/progress of the planning proposal	<p>20 August 2020 – Pre-lodgement meeting with Council.</p> <p>17 March 2021 – Planning proposal submitted to Council.</p> <p>29 March 2021 – Council request further information on issues such as the ‘special area’, address Ministerial Directions and revised reports such as an amended Aviation Report.</p> <p>7 April 2021 – Amended planning proposal submitted providing additional information to address items such as local strategies, provide further amended information on the proposed ‘special area’ and additional reports.</p> <p>15 April 2021 – Applicant lodged PP on the NSW Planning Portal.</p> <p>2 February 2022 – Applicant submitted amended concept design providing an increased Special Area from 200m² to 800m² and additional shadow diagrams to Council.</p>

Element	Description
	<p>13 April 2022 – Local Planning Panel considered the proposal.</p> <p>26 April 2022 – Council resolved to not support the PP proceeding for a Gateway Determination.</p>
Department contact:	Christina Brooks, Planning Officer, Metro Central and North District

Planning Proposal

Table 1. Overview of planning proposal

Element	Description
Site Area	1,420m ²
Site Description	One allotment legally described as Lot 1 DP 550167 with frontages to Berry Street, Pacific Highway and Angelo Street currently containing a 15 storey commercial building. Identified as within the 'Berry Street (West) Special Area'.
Proposal summary	<p>The planning proposal seeks to amend the North Sydney LEP 2013 for 20 Berry Street to:</p> <ul style="list-style-type: none">• rezone from B4 Mixed Use to B3 Commercial Core;• increase the maximum height from RL 145 to RL 172; and• include a new 'Special Area' of no less than 800m² at 20 Berry Street on the NSLEP 2013 North Sydney Centre map. <p>The amended planning proposal (Attachment D) is accompanied by a concept building design (Figure 3) for a 24-storey (102m) commercial building with an FSR of 16.35:1, and a total Gross Floor Area of 22,750m². The proposal also includes creation of a new 'Special Area' of approximately 800m² to offset additional overshadowing to the existing Berry Street (West) Special Area.</p> <p>The proposal seeks to facilitate the redevelopment of an existing 15 storey commercial building for a new landmark commercial office building within 100m of the new Victoria Cross Metro Station and provide improvements to the public domain. An indicative concept plan (Figure 3) proposes a tower design with massing that has a stepped form widest at mid-height and a saw-toothed façade. The building envelope responds to solar access controls in LEP to minimise impact to the proposed Berry Street Special Area.</p>

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Element	Description
Relevant State and Local Planning Policies, Instruments	<ul style="list-style-type: none">• Greater Sydney Region Plan• North District Plan• North Sydney LEP 2013<ul style="list-style-type: none">◦ Including clause 6.3 building heights and massing• North Sydney CBD Public Domain Strategy• Ministerial Directions:<ul style="list-style-type: none">◦ 1.1 Implementations of Regional Plans◦ 1.4 Site Specific Provisions◦ 3.2 Heritage Conservation◦ 4.4 Remediation of Contaminated Land◦ 5.1 Integrating Land Use and Transport◦ 5.3 Development Near Regulated Airports and Defence Airfields◦ 6.1 Residential Zones◦ 7.1 Business and Industrial Zones• State Environmental Planning Policies<ul style="list-style-type: none">◦ SEPP (Resilience and Hazards) 2021◦ SEPP (Transport and Infrastructure) 2021



Figure 1. Subject site (source: Nearmaps)

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The planning proposal seeks to amend the North Sydney LEP 2013 per the changes below.

Table 2. Current and proposed controls

Control	Current	Proposed
Zone	B4 Mixed Use	B3 Commercial Core
Maximum height of the building	RL145m	RL172m
Floor space ratio	N/A	N/A
Minimum Non-Residential Floor Space Ratio	3:1	N/A
Number of dwellings	N/A – commercial floorspace	N/A – commercial floorspace
Number of jobs	N/A	704
Special Provisions	Berry Street (West) special area Clause 6.3 requires that there is no net increase in overshadowing between 12pm and 2pm from March equinox to September equinox on land identified as a “Special Area”	New special area to the south-east corner of Berry Street Include a new special area on the south eastern corner of the site of approx. 800m ² .

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

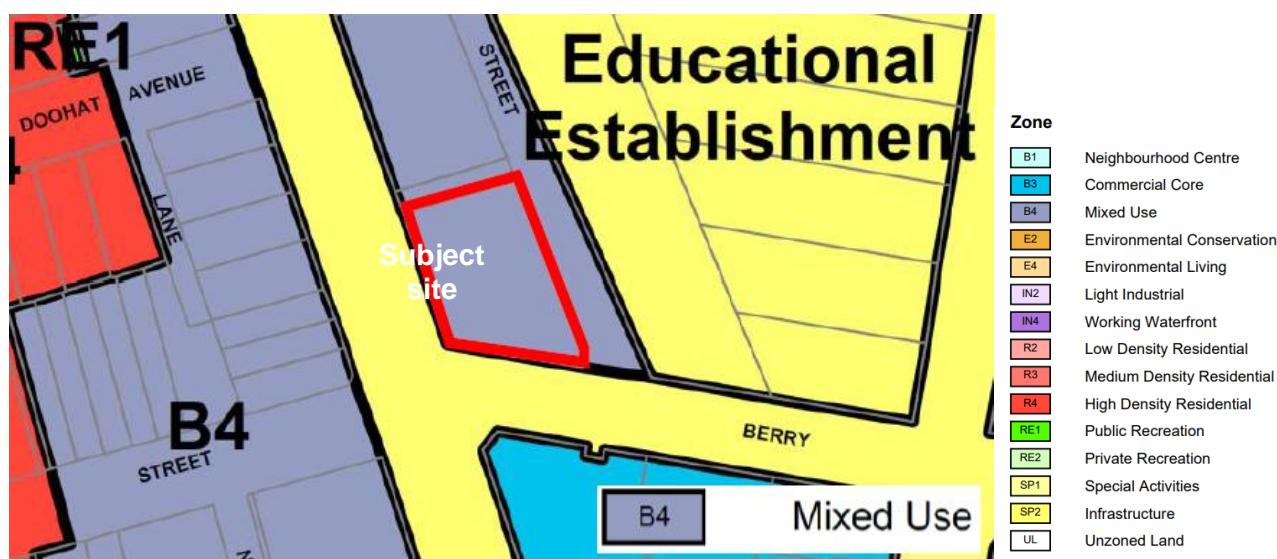


Figure 2. Current zoning (source: Gyde Planning Proposal April 2021)

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Figure 3. Concept Plan (source: Gyde Planning, Planning proposal, April 2021)



Figure 4. Berry Street (West) Special Area (source: Gyde Planning, Planning proposal, April 2021)

Council Comments

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Key Issues

Issue no. 1

Consistency with an endorsed plan or study and priorities of the relevant strategic plans.

Council view

- Council resolved not to support the proposal proceeding to Gateway determination as the proposal does not demonstrate strategic merit as it challenges the implementation of a number of recently adopted policies including the *North Sydney Local Strategic Planning Statement* (LSPS) and would significantly undermine the extensive place-based strategic planning work that has been undertaken in the locality which is enshrined within the LSPS, particularly the *North Sydney CBD Public Domain Strategy* (PDS).
- The site has been the subject of assessment through the North Sydney Centre Review which is embedded in the priorities and actions of the LSPS. No changes were identified on this site.
- The Public Domain strategy addresses the lack of public space in the CBD and included 'capturing the sun in the CBD' as a priority. The proposal is inconsistent with the future vision as outlined under the PDS.
- The proposal is contrary to the key priorities of the North District Plan as:
 - it will not deliver a great place, through the proposal's lack of prioritising a people-friendly public realm as a central organising design principle, nor comfortable human scale, due the excessive bulk and associated impacts along Berry Street; and
 - it will reduce the amenity of the public domain in terms of reduced access to sunlight and daylight.
- The adopted North Sydney Centre Capacity and Land Use Strategy (2017) did not identify any increase in height on the site and the planning proposal implementing the strategy was notified on 26 October 2018.
- Although the proposal would facilitate the development of a commercial building, Council is currently on track to meet its employment floor space targets within the North Sydney CBD.
- The proposed amendments to NSLEP 2013 are not necessary for the priorities listed under the Regional, District and Local Plans to be achieved and would in fact contribute to the erosion of these priorities through the impact on the public domain in the immediate vicinity of the site.

Proponent view

- On 13 April 2022, the Local Planning Panel (LPP) (**Attachment A2**) found that the planning proposal may have strategic and site-specific merit and unanimously resolved to defer the planning proposal to allow the submission of further supporting studies.
- Council's view is contrary to the Local Planning Panel who acknowledged that the proposal had strategic merit and was an opportunity for urban renewal, which would not otherwise be available under existing controls;
- The LPP recommended additional studies being undertaken, which the proponent can undertake and provide.
- The proposal is consistent with the applicable local and regional strategies including the relevant regional and district plans.

- The proposal will leverage off the proposed new Sydney Metro line supporting the NSW Government's investment and the Western Sydney Harbour Tunnel.
- The proposed development can provide an increased quantum of commercial floorspace (22,750m²) within walking distance to both the existing North Sydney train station and approximately 100m away from the new Victoria Cross Metro Station.
- The planning proposal will assist in meeting the employment target of 15,600 - 21,000 additional jobs for the North Sydney CBD by 2036.
- Council's LSPS identifies the value and significance of the North Sydney CBD to the Eastern Economic Corridor and to North Sydney's ability to provide for employment. The proposed development can provide approximately 704 direct jobs within walking distance to major public transport.
- The site currently comprises an ageing commercial office building. Redevelopment of the site will unlikely occur under existing controls, as the built form will result in an unfeasible building envelope with inefficient floorplates. The proposed controls will enable and encourage redevelopment, by providing a landmark commercial tower for the North Sydney CBD.
- The planning proposal provides an opportunity to expand and enhance the open space network in the North Sydney CBD, by providing a new special area, with an area of approximately 800m².

Issue no. 2

Overshadowing of the Berry Street (West) Special Area.

Council view

- Council resolved not to support the proposal proceeding to Gateway determination as the proposal does not demonstrate site specific merit due to the following:
 - the expected reduction in sunlight and daylight access to Berry Street resulting from the proposal; and
 - the proposed height is excessive and will result in overshadowing to the Berry Street (West) Special Area with potential to overshadow the Miller Street Special Area.
- The proposal will result in significant additional overshadowing of the Berry Street (West) Special Area during 12.00 pm and 2.00 pm between the March and September equinoxes, which aligns with the use of public domain area during lunchtime for many workers.
- Taking into account the significant overshadowing the proposal will create on the Berry Street (West) Special Area particularly during lunchtime hours and considering the proposed new special area does little to offset this overshadowing during this time, it is considered in this instance that the proposed overshadowing is unacceptable and is not adequately addressed through the design of the structure and associated new special area.

Proponent view

- The Local Planning Panel determined that the proposal has strategic and site specific merit and recommended further overshadowing analysis to determine the impact on the Berry Street 'Special Area' between 12pm and 2pm.
- Future redevelopment on the site is restricted by Clause 6.3 which requires that there is no net increase in overshadowing between 12pm and 2pm from the March equinox to the September equinox (inclusive) on land that is identified as the Berry Street West Special Area. At present, the "special area" provides a sub-optimal area of outdoor space within the North Sydney CBD.

- The proposed development will result in minimal but some additional overshadowing to the Berry Street (West) Special Area during the March and September equinoxes, which would result in a non-compliance with Clause 6.3(2)(a) of Council's LEP. Due to the overshadowing restrictions in the LEP and the proximity of the Berry Street (West) Special Area, the site is not feasible for redevelopment within the current planning controls.
- To offset the impact on the Berry Street (West) Special Area a new "special area" on the corner of Berry and Angelo Streets is proposed. This new "special area" will exceed the reduction of solar access to the existing "special area" on Berry Street caused by the proposed development.

Issue no. 3

Amenity of the proposed new 'Special Area' to offset impacts on the Berry Street (West) Special Area

Council view

- Council resolved that the proposed new Special Area does not provide a high enough level of public amenity to warrant classification as a Special Area nor does it adequately offset the reduction in solar access to the existing Berry Street (West) Special Area.
- The applicant's solar hours analysis indicates that the plaza and under-croft area will have poor solar access. Shadow diagrams of the plaza indicate poor solar access at the key morning hours and lunch time. The activation of the plaza edges is minimal as the site is subject to high traffic with an entry ramp and truck loading bay adjacent to the proposed plaza and wind impacts.
- The proposed new 'special area' is of marginal quality and does not sufficiently offset the impacts resulting from the proposal.

Proponent view

- The creation of a proposed Special Area to the south eastern corner of Berry Street has an area of 800 sqm, which is a 600sqm increase when compared to the original PP.
- The expanded special area receives an additional 48,490 solar hours, which is a 59% increase when compared to the existing special area (119,554 hours total). No other special areas (including the Miller Street Special Area) are shadowed by the proposed development. The calculation has been prepared for the period between March and September, consistent with the methodology outlined in Clause 6.3 of the NSLEP.
- The 'special area' will provide a unique plaza area for the North Sydney CBD and could incorporate active uses such as cafes, new landscaping and public domain features such as artworks and table/benches. The quantum of solar access and size will make a more area desirable than the existing Berry Street Special Area, which is heavily constrained with developed buildings and driveways.

Issue no. 4

Maximum Building Height, Podium and Tower Design

Council view

- Council resolved that the proposal will result in a built form that does not adhere to established or envisioned urban design elements including podium heights and setbacks, tower setbacks and the provision of awnings.
- The proposal seeks an increase to the maximum height from RL145 by 27 metres to RL 172. The proposed height is excessive and will result in additional overshadowing to the Berry Street (West) Special Area and potentially Miller Street Special Area.
- When comparing the proposal to its immediate block, it is significantly taller than adjacent development, with a considerable jump from RL 141.80 to the proposed RL 172 height.
- Although the tower has been sculpted to the south to minimise overshadowing, there is no staggering or stepping of the tower up to the maximum height from the north, weakening any height transition between the buildings and making the proposal appear to be overscale for the block.
- The proposed podium of five storeys across all elevations is considered to be excessive in bulk and scale and will result in an undesirable building form. A 2-3 storey podium along Angelo Street would be more suitable in its context as a narrow street and would provide a better human-scale.
- The updated concept design includes a reverse podium design to Angelo Street, which will overhang the proposed plaza resulting in a reduction in solar access and sky views, has the potential to increase wind levels in the plaza and reduces the potential for passive surveillance to occur. Council raises concern that this design will reduce any sense of human-scale to the development and will create a domineering structure impacting upon the pedestrian environment.
- The site was not identified as being suitable for any increase in height under the North Sydney CBD Capacity and Land Use Strategy and subsequent LEP amendment.
- Council's view is that a tower of the height and bulk proposed will be significantly out of context with surrounding buildings, will result in significant overshadowing impacts and taking into account Council's endorsed strategic direction for the site, the proposed height and tower design in this instance is not supported.

Proponent view

- The concept sits at the edge of a tall building cluster of the North Sydney CBD and would form a transition to the taller towers to the south and the residential/mixed use towers to the north and west.
- The envelope form of the proposal has been shaped to comply with the solar controls set out in NSLEP Clause 6.3 with the exception of "special area" opposite the site on the south side of Berry Street. The design minimises its impact to the Berry Street Special Area, with a massing design that has a stepped form that is widest at mid-height, and a podium with a saw-toothed façade. Pedestrian areas include the ground level perimeter, plaza proposed at the southeast corner, terrace on the podium and nearby sidewalks.
- The proponent states that the proposal has been developed to ensure it does not impact on the surrounding sites. The proponent acknowledges that there will be some additional overshadowing compared to the existing conditions on the site, however, this overshadowing will impact the carpark entrance to the Vodafone building to the west of the subject site.
- The Vodafone building contains an indoor Special Area which is semi publicly accessible during work hours. The proposal development will have an overshadowing impact to this plaza for 4 months of the year.

- The site will not impact of the surrounding sites including local heritage items in the vicinity.
- The surrounding street network and other services and infrastructure can accommodate the proposed development. This can be further assessed as part of a future development application.
- The concept responds to its surroundings and is only an indicative concept which can be refined at the DA stage.

Referral to Local Planning Panel (13 April 2022)

On 13 April 2022, the North Sydney Local Planning Panel (LPP) considered the Council Officer's report, where it recommended that the matter be deferred for consideration and that further information be prepared (**Attachment A2**).

The Panel considered that with further studies there may be merit for a planning proposal. However, further works would need to be undertaken to ensure that the "Special Area" of Miller Street is not unreasonably impacted in terms of solar access, and the proposed public domain area would provide appropriate amenity given a variety of weather conditions. The Panel considered the proposed public domain area as a public benefit in the context of the uplift in the potential development of the site, rather than as a "Special Area". It is noted that the scheme has limited, and possibly manageable, impact on the Berry Street "Special Area".

It was recommended that the matter be deferred to allow the applicant the opportunity to submit further studies including:

- details of the public domain area and provision of public access for the life of the development, landscape materials and finishes;
- analysis of the public benefit of the proposed newly created public domain;
- detailed wind analysis of the newly created public domain;
- detailed shadow analysis of the equinoxes impact on the Berry Street Special Area between 12pm and 2pm; and
- an incremental height analysis to interpret the potential overshadowing impact on the Miller Street Special Area with each additional level above RL145.

Council comments note that notwithstanding the Panel's recommendation, Council staff concluded that sufficient information had been submitted and recommended that the Planning Proposal not be supported to proceed to Gateway Determination. Council's assessment report notes that it has given careful consideration to the merits of the applicant's proposal, including a cross divisional assessment of the potential for the applicant's public space offering. The conclusion was reached that the space had relatively low prospects of success and its delivery was not sufficient to warrant deviation from Council's current policy position. Therefore, the provision of additional information and further revised designs was not required for assessment purposes.

Attachments

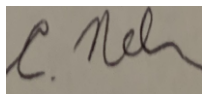
Attachment A – Rezoning Review Application (form and planning proposal)

Attachment B – Locality map

Attachment C – Existing maps and proposed LEP maps

Attachment D – Proponent's proposal documentation

Attachment E – Council's response to the Rezoning Review application



12/7/2022

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9 July 2022

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