



Brendan Metcalfe
Director, North District
Eastern Harbour City
Department of Planning, Industry and Environment
Locked Bag 5022
PARRAMATTA NSW 2124

Our Ref: PP3/21

Attention: Christina Brooks

4 July 2022

Dear Mr Metcalfe

**REQUEST FOR REZONING REVIEW - RR-2022-10
20 BERRY STREET, NORTH SYDNEY**

I refer to your letter dated 7 June 2022, notifying Council of the lodgement of a request for a Rezoning Review in relation to the Planning Proposal for 20 Berry Street, North Sydney.

The following comprises Council's response to your invitation to comment. This is to be read in addition to the detailed assessment report considered by Council at its meeting on 26 April 2022.

1. Planning Proposal Assessment

The Planning Proposal was lodged with Council on 15 April 2021. Over the course of its assessment a number of minor revisions were made to the proposal in response to concerns raised by Council Officers.

The Planning Proposal as modified seeks to make the following amendments to the North Sydney Local Environmental Plan 2013 (NSLEP 2013):

- Increase the maximum height control for the site from RL 145 to RL 172;
- Rezone from B4 Mixed Use to B3 Commercial Core;
- Include a new Special Area at 20 Berry Street on the NSLEP 2013 North Sydney Centre map.

The planning proposal is accompanied by a concept building design for a 24-storey (102 m) commercial building with an FSR of 16.35:1, and a total Gross Floor Area of 22,750 m². The proposal also includes creation of a new 'Special Area' of approximately 800 m².

On 13 April 2022, the North Sydney Local Planning Panel (NSLPP) considered a report on this planning proposal and recommended that the matter be deferred pending additional information being prepared. The Panel indicated that the scheme has limited, and possibly manageable, impact on the existing Berry Street "Special Area."

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.

At its meeting on 26 April 2022, 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

The Strategic Merit Test requires consideration of the following:

a) Does the proposal:

- *Give effect to the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, and/or corridor/precinct plans applying to the site. This includes any draft regional, district or corridor/precinct plans released for public comment or a place strategy for a strategic precinct including any draft place strategy; or*
- *Demonstrate consistency with the relevant LSPS or strategy that has been endorsed by the Department or required as part of a regional or district plan; or*
- *Respond to a change in circumstances that has not been recognised by the existing planning framework.*

This has been considered below.

2.1. Regional / District plans and Local Strategic Planning Statement (LSPS)

It is acknowledged that the planning proposal would facilitate the development of a commercial building on the site, in line the Regional, District and Local Plans. Notwithstanding this, North Sydney Council is currently on track to meet required employment floorspace targets within the North Sydney CBD and as such is already working effectively toward this priority. Furthermore, the proposed increase to height and resultant building will significantly impact solar access to the existing Berry Street (West) special area, which conflicts with priorities which seek to improve the public domain of the CBD. The proposed new special area does not negate these impacts and is not aligned to existing strategies which seek to address these priorities, including Council's Public Domain Strategy (PDS). On balance, 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.

2.2. North Sydney CBD Public Domain Strategy

The North Sydney CBD Public Domain Strategy (PDS) addresses the acute lack of public space in the CBD and identifies a suite of potential new high quality open spaces and stronger pedestrian networks across the CBD. The final PDS was endorsed by Council on 28 September 2020, following extensive community consultation.

The North Sydney Public Domain Strategy 2020 (PDS) includes 'Capturing the sun in the CBD' as a priority goal, noting that solar access in North Sydney CBD is limited to a few key spots in winter. Berry Street (West) is identified as a location with good solar access year-round. Berry Street is also identified as a key public domain project within the PDS. The project envisions the street as 'a pleasant, green and sunlit boulevard,' with 'new outdoor dining along [the] southern edge [of Berry Street] to take advantage of solar access.'

The PDS lists several positive environmental factors of the street including good natural light penetration to the central and west end of the street. The PDS envisages the transformation of Berry Street into a bidirectional road with slower traffic and footpath upgrading with additional street furniture. It has the potential to become a rich and attractive connection between the Victoria Cross Metro Station and nearby commercial businesses, including the education hub further to the west of the site. This will be strengthened by the completion of Miller Place (the closure of Miller Street between Berry Street and Pacific Highway). The creation of Miller Place will encourage existing retail tenancies to provide better activation to this highly pedestrianised area.

This vision, coupled with the Special Area's location at the intersection of the future pedestrianised Miller Place, further increases the potential value of the Berry Street (West) Special Area. What is being proposed is inconsistent with the future vision of the public domain in the area as outlined under the PDS.

2.3. Change of Circumstances

The Planning Proposal indicates it is motivated by the planned delivery of the LSPS, and therefore is responding to a change in circumstances. The subject site has already been the subject of assessment through the North Sydney Centre Review which is embedded in the relevant planning priorities and actions of the LSPS. No changes were identified on the site. These provisions were the subject of detailed strategic review within the last 6 years and this site was specifically not awarded any increase in height during this relatively recent process. It is considered that the actions outlined in the LSPS can be sufficiently addressed through the development of other sites identified in the CBD. Consequently, this is not considered to be a sufficient reason to give support to the proposal.

2.4. Conclusion

Based on the above, it is considered that the Planning Proposal does not have strategic merit for the main reason that it is contrary to the LSPS and would significantly undermine the extensive place-based strategic planning work that has been undertaken in the locality, which is integrated within the LSPS and PDS.

Given the adoption of the above suite of high-level strategic documents, which the Planning Proposal is inconsistent with, the proposal fails to demonstrate strategic merit.

3. Site-Specific Merit

The Site Merit Test requires consideration of the following:

“b) Does the proposal have site-specific merit, having regard to the following?

- the natural environment on the site to which the proposal relates and other affected land (including known significant environmental areas, resources or hazards)*
- the built environment, social and economic conditions*
- existing, approved and likely future uses of land in the vicinity of the land to which the proposal relates; and/or*
- services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision*

This has been considered below.

3.1 New Special Area/Access to Sunlight During Lunchtime Hours

To offset additional overshadowing to Berry Street (West) Special Area, a new Special Area approximately 800m² in size is proposed in the form of a large under-croft area beneath the tower connecting to an uncovered area on the south-eastern corner of Berry and Angelo streets.

The subject site is located directly north of the existing Berry Street (West) Special Area as identified in the North Sydney Local Environmental Plan (NSLEP) 2013. The North Sydney Public Domain Strategy 2020 (PDS) includes ‘Capturing the sun in the CBD’ as a priority goal, noting that solar access in North Sydney CBD is limited to a few key spots in winter. Berry Street (West) is identified as a location with good solar access year-round. Berry Street is also identified as a key public domain project within the PDS, with the strategy envisioning the street as ‘a pleasant, green and sunlit boulevard,’ with ‘new outdoor dining along [the] southern edge [of Berry Street] to take advantage of solar access.’ Both the NSLEP 2013 and North Sydney DCP 2013 include provisions that reflect the need to protect solar access to special areas.

The proposal results in significant additional overshadowing of the Berry Street (West) Special Area during the 12.00 pm-2.00 pm period between the March and September equinoxes, with the majority of additional overshadowing occurring in March and in September. The 12.00 pm-2.00 pm period aligns with the lunch periods for many workers and providing sun-lit streets and spaces to walk, eat and gather at this time is a key goal of the PDS.

With respect to the proposed new special area, solar hours analysis indicates that the plaza and under-croft area will have poor solar access across the year. Shadow diagrams of the plaza also indicate generally poor solar access at key times in the day - in the early morning when people arrive to work and during lunchtime hours. There is potential for high traffic and wind impacts on the area which is bordered by Pacific Highway, Berry Street and Angelo Street. The ground floor includes a vehicle entry ramp, as well as a truck loading bay entrance off Angelo Street, directly adjacent to the proposed plaza, which could create a noisy, and unpleasant environment, and limit use and utility. Activation of the plaza edges is minimal.

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.

3.2 Building Height, Podium and Tower Design

NSLEP 2013 identifies a maximum height of RL 145 for the site. The proposal seeks an increase to the maximum height of 27m up to RL 172. The height as proposed 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. While the top of the tower has been sculpted to the south to minimise overshadowing impacts, 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.

This is magnified by the overall bulk of the proposed building envelope. The proposed podium of five storeys across all elevations (excluding the northern elevation) is considered to be excessive in bulk and scale and will result in an undesirable building form. Considering the narrowness of Angelo Street, a 2-3 storey podium along Angelo Street rather than a five-storey podium would be more suitable for the immediate context and would provide a better human-scale to surrounding pedestrian environment, reflecting controls outlined in NSDCP 2013.

It is noted that in the updated concept design includes a reverse podium design to Angelo Street, with the amended design further 'stepping-in' of the podium to bring added sunlight to the plaza area. The reverse podium 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, reduces the potential for passive surveillance to occur and ultimately reduces any sense of human-scale to the development.

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. Considering 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.

3.3 Conclusion

Overall, the Planning Proposal is not considered to have site specific merit due to the following:

- the expected increase in overshadowing and the reduction in solar access likely to occur on the public domain and Berry Street (West) Special Area;

- inappropriate bulk and scale of the podium and tower including the reverse setback to Angelo Street which will create a domineering structure impacting upon the pedestrian environment;
- the proposed new 'special area' is of marginal quality and does not sufficiently offset the impacts resulting from the proposal.

4. Rezoning Review Documentation

4(a) Missing Urban Design Reports and Updated Special Area

Having reviewed the relevant documentation associated with the rezoning review, it has come to our attention that we believe there to be missing the most recent iteration of the Urban Design report and updated Planning Proposal cover letter, both dated 2 February 2022.

In response to a preliminary assessment letter sent by Council Officers to the applicant on 21 July 2021, on 13 October 2021 the applicant submitted a revised scheme which increased the size of the special area to approx. 780sqm and included an 'under-croft' area on ground level adjoining Berry and Angelo Streets.

In response to discussions with Council, on 2 February 2022 the applicant submitted a further revised special area which included changed the location of the vehicular egress/ingress points and the lift lobby, allowing for additional Special Area to be provided bringing the total to 800 sqm. Furthermore, the applicant provided additional overshadowing information.

It was with this document that the matter was reported to the North Sydney Local Planning Panel (NSLPP) on 13 April 2022 and Council on 26 April 2022.

Council considers that, were the rezoning review to go ahead utilising the previously proposed special area as referenced in the Urban Design Report dated April 2021 (as has been uploaded to the rezoning review), this would present as misleading to Council, the NSLPP and to the broader community.

As such, we request that the Urban Design report and Planning Proposal Addendum letter be updated to reflect the most recent documents, both dated 2 September 2022, prior to the matter being heard by the Panel.

4(b) General

Putting aside the above, the Planning Proposal and accompanying documentation on the NSW Planning Portal is generally consistent with that submitted to Council.

- Rezoning Review Submission Form

No objection is raised with respect to the inclusion of this additional document as it relates to the rezoning review in question.

5. Planning Proposal Authority (PPA)

Council at its meeting on 27 June 2022 considered a report on taking on the PPA role for this (and other) planning proposals. Council resolved the following:

1. ***THAT Council not accept the role of the Planning Proposal Authority for Planning Proposals 2/21 - 253-267 Pacific Highway North Sydney, 3/21-20 Berry Street, North Sydney and 7/21 - 378-390 Pacific Highway, Crows Nest and that the Department of Planning and Environment be advised accordingly.***

Accordingly, we advise that Council declines the role of PPA for this proposal, should the Panel recommend that the planning proposal should proceed to Gateway.

6. Conclusion

For the reasons discussed in detail above, the Planning Proposal is not supported 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 the *North Sydney CBD Public Domain Strategy* (PDS).
- The proposal is contrary to delivering on the key priorities of the North District Plan, namely:
 - 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; and
- 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 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 proposed new Special Area does not provide a high enough level of public amenity to warrant classification as a Special Area.

Should you have any queries, please direct them to Jayden Perry of Council's Strategic Planning department on **9936-8100**.

Yours sincerely

MARCELO OCCHIUZZI
MANAGER - STRATEGIC PLANNING