

8.10. PP3/21 – 20 Berry Street, North Sydney

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ATTACHMENTS: Nil

PURPOSE:

To present to Council the assessment report of Planning Proposal No.3/21 at No. 20 Berry Street, North Sydney which seeks to amend the North Sydney Local Environmental Plan 2013, following its review by the North Sydney Local Planning Panel.

EXECUTIVE SUMMARY:

On 15 April 2021, Council received a Planning Proposal to amend North Sydney Local Environmental Plan 2013 (NSLEP 2013) as it relates to land located at 20 Berry Street, North Sydney. The Planning Proposal seeks to amend NSLEP 2013 as follows:

- 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 (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.

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 conclude that sufficient information has been submitted and recommend that the Planning Proposal not be supported to proceed to Gateway Determination for the following reasons:

- 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.

FINANCIAL IMPLICATIONS:

Should the Planning Proposal be supported, the costs associated with the administration and any exhibition of the Planning Proposal will be drawn from existing budget lines which anticipate this type of activity.

RECOMMENDATION:

1. THAT Council resolves to not support the Planning Proposal proceeding to Gateway Determination, for the following reasons:

- a) 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).
- b) 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;
- c) 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;
- d) 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.

2. THAT Council notifies the applicant of Council's determination in accordance with Section 9 of the Environmental Planning and Assessment Regulation 2021.

LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

1. Our Living Environment

1.4 Public open space and recreation facilities and services meet community needs

2. Our Built Infrastructure

2.2 Vibrant centres, public domain, villages and streetscapes

3. Our Future Planning

3.2 North Sydney CBD is one of NSW's pre-eminent commercial centres

5. Our Civic Leadership

5.1 Council leads the strategic direction of North Sydney

BACKGROUND

North Sydney Centre Capacity and Land Use Strategy

On 1 May 2017, Council adopted the North Sydney Centre Capacity and Land Use Strategy which was prepared to explore opportunities for growth in order to improve the Centre's employment capacity, its resilience and vibrancy as well as its investment attractiveness.

The Strategy investigated a number of options to meet the key desired outcomes for the Centre, in particular the ability to provide capacity to accommodate an additional 11,600-15,000 jobs. It sought to achieve this additional capacity by increasing the maximum building height control to areas of commercially zoned land within the Core, whilst maintaining solar access to land zoned for residential outside of the Centre between 10am and 2pm and open space within the Centre in the middle of the day. The adopted Strategy identified a number of recommendations to deliver on the intended aims and objectives, including changing the height limit to a number of sites within the CBD area.

On 1 May 2017, Council resolved to support the progression of a planning proposal to Gateway Determination stage to give effect to the outcomes of the adopted Strategy. The planning proposal was published on 26 October 2018.

The adopted Strategy did not identify any increase in height on the site the subject of this application.

Council staff met with the applicant on various occasions prior to and post the lodgment of the Planning Proposal. The Planning Proposal was lodged on 15 April 2021.

Ministerial Order

On 26 November 2021, the Minister for Planning and Public Spaces made the Environmental Planning and Assessment (Statement of Expectations) Order 2021. The Order establishes various expectations in relation to Council's development assessment, planning proposal and

strategic planning roles and expected levels of performance. In particular, the Minister confirms his expectations that Councils should “*make a decision as to whether to support or not a proponent led planning proposal as soon as practical and no longer than 90 days*”.

The Order includes an explanatory note which states that “*If a Council is found not to be meeting these expectations, the Minister can take these matters into consideration as part of determining if it is appropriate to appoint a planning administrator or regional panel to exercise Council’s functions*”.

In the context of this Order, Council staff have sought to finalise its assessment and reporting of the proposal with minimal delay.

CONSULTATION REQUIREMENTS

Should the proposal progress, community engagement will be undertaken in accordance with Council’s Community Engagement Protocol and any requirements of a Gateway Determination.

DETAIL

1. Planning Proposal

1.1 Applicant

The applicant for the proposal is Holdmark NSW Pty Ltd.

1.2 Site Description

The subject site comprises one parcel of land located at 20 Berry Street, North Sydney. It is legally described as Lot 1, DP 550167.

The site is trapezoidal in shape covering an area of 1,420sqm, with a 34.6m frontage to Pacific Highway to the west, a 35m boundary to Berry Street to the south, a 48m frontage to Angelo Street to the east and a 30m side boundary to 211 Pacific Highway to the north.

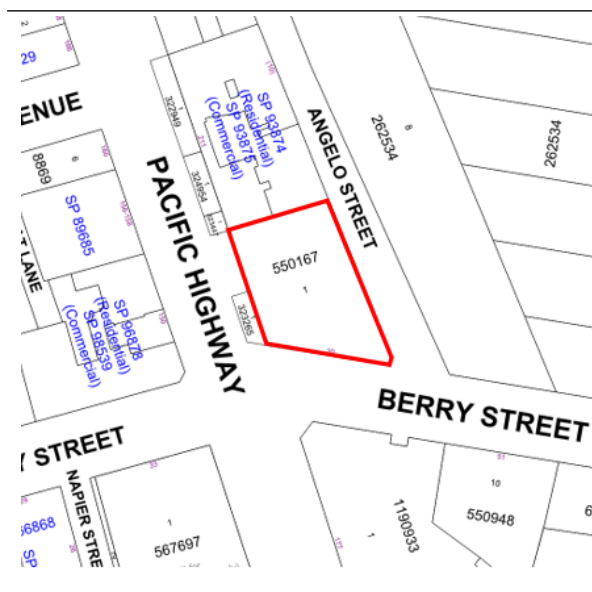


FIGURE 1: Subject Site

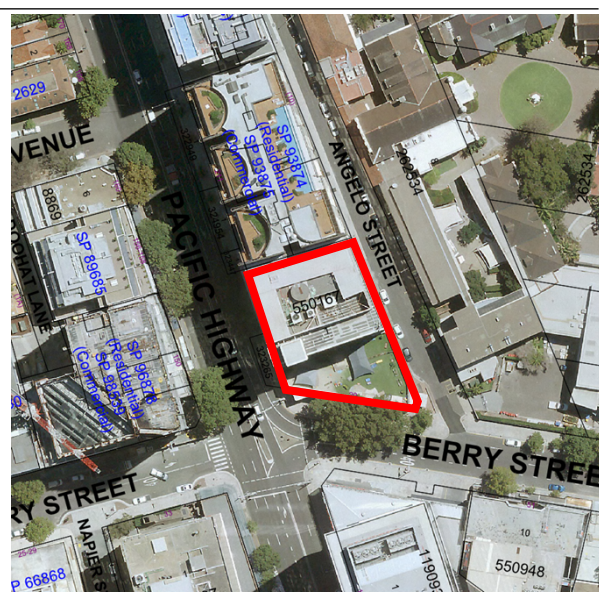


FIGURE 2: Aerial Photo

The site currently contains a 15 storey commercial office tower. The site benefits from frontages to Berry Street to the south, the Pacific Highway to the west and Angelo Street to the east. Vehicular access to the existing building is provided from Angelo Street.

1.3 Proposed Instrument Amendment

The Planning Proposal seeks to;

- amend the Land Zoning Map to NSLEP 2013 from B4 (Mixed Use) to **B3 (Commercial Core)**; and
- amend the Height of Buildings from **RL 145 to RL172**; and
- amend the North Sydney Centre Map such that a new Special Area is added to 20 Berry Street, North Sydney.

An indicative design, provided with the Planning Proposal is shown in Figure 3 below.



Figure 3 – Concept Design for 20 Berry Street

1.4 Assessment

By Ministerial direction, all planning proposals are required to be referred to the Local Planning Panel. A detailed assessment of the proposal is provided within the Assessment Report considered by the NSLPP on 13 April 2022, a copy of which is available at;

[https://www.northsydney.nsw.gov.au/files/assets/public/docs/1_council_meetings/committees/nslpp/13_april_2022/pp02 - 20 berry street north sydney -pp321 rpt.pdf](https://www.northsydney.nsw.gov.au/files/assets/public/docs/1_council_meetings/committees/nslpp/13_april_2022/pp02_-_20_berry_street_north_sydney_-_pp321_rpt.pdf)

The assessment report concluded that the Planning Proposal should not be supported.

1.5 Local Planning Panel

The NSLPP considered the proposal at its meeting on 13 April 2022 where it recommended that the matter be deferred for consideration and that further information be prepared. The panel's advice is provided below.

The Panel considered that with further studies there may be merit for the 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 does not see the proposed public domain area as a "Special Area", but rather a public benefit in the context of the uplift in the potential development of the site. It is noted that the scheme has limited, and possibly manageable, impact on the Berry Street "Special Area".

The Panel also considers that the height of the proposal in terms of the Berry Street "Special Area" to be acceptable this must be demonstrated through a detailed shadow analysis with half hour intervals between 12 noon and 2pm. This is to reference the impact of overshadowing set out in table 2 on page 22 of the report.

Given the above there may be both strategic and site-specific merit for a planning proposal and the Panel recommends to the Council that the matter be DEFERRED to allow the applicant the opportunity to submit further documentation including the following:

- Further details of the public domain area are to be provided detailing how public access is to be provided for the life of the development, and the landscape materials and finishes plan for this area according to the NSC Public Domain Style Manual and Design Code guidelines,*
- An analysis of the public benefit of the proposed public domain area,*
- A detailed wind analysis of the proposed newly created public domain area,*
- A detailed shadow analysis of the equinoxes impact on the Berry Street "Special Area" between 12pm and 2pm,*
- An incremental height analysis to interpret the potential overshadowing impact on the Miller Street "Special Area" with each additional level of the Planning Proposal above the gazetted height of RL145 per NSLPP 2013 Heights of Buildings, Map Extract on page 11 of NSLPP Report PP02 dated 13/04/22. (Noting that a prohibition currently applies in the LEP for any overshadowing on the Miller Street "Special Area" and Berry Street "Special Area").*

A copy of the NSLPP minutes and recommendation can be found at;

https://www.northsydney.nsw.gov.au/Council_Meetings/Meetings/NSLPP/2022/13_April_2022

NSC Council officer response – It is recognised that the approval of the existing 'Vodafone' building at 177 Pacific Highway under the, now repealed, Part 3A legislation, has limited to some extent, the potential for delivery of a contiguous, open to sky sun-lit boulevard as

envisaged along Berry Street. However, for the reasons articulated in the detailed assessment report and summarised further below, it is maintained that the preservation of sunlight during the winter months to the Special Area identified in the existing LEP (including areas along the frontage of and within the enclosed foyer of the Vodafone building) is warranted.

The Council initiated CBD Planning Proposal (Amendment No 23 Notified 26 October 2018), led to the assignment of increased maximum building heights to numerous sites, along with the review of existing Special Areas and both were undertaken within the last 5 years. This strategic work sought to strike a balance between the need to accommodate growth whilst ensuring other essential city building ingredients including solar access to specific areas were provided for. This work was then subsequently reinforced by the development of the Public Domain Strategy (endorsed September 2020). These important and comprehensive strategic projects resulted in a conscious, holistic and well considered decision to maintain solar access to the Berry Street Special Area.

Council 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. For the reasons detailed in the assessment report (including site attributes, topography, amenity, overshadowing, and wind condition), 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. In light of this, the provision of additional information and further revised designs is not required for assessment purposes.

KEY ISSUES

1.6 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 North Sydney CBD Public Domain Strategy recommends that publicly accessible spaces should have a high level of amenity, including good solar access, comfortable wind conditions, seating, and landscape elements.

The NSLEP 2013 currently requires that development consent must not be granted within North Sydney CBD if:

- a) The development would result in a new increase in overshadowing between 12.00 pm and 2.00 pm from the March equinox to the September equinox (inclusive) on land to which this Division applies that is within Zone RE1 Public Recreation or that is identified as "Special Area" on the North Sydney Centre Map (Clause 6.3(2)).

The North Sydney Development Control Plan (DCP) 2013 reflects this need for nil overshadowing to Special Areas in the Environmental Criteria for the North Sydney Planning Area Character Statement:

- Solar access to Special Areas and open spaces is maintained and contributes to the enjoyment of those spaces for use by the public.

Special Areas identified in NSLEP 2013 have been designated as such because they provide public domain spaces with generally good amenity, particularly good solar access. Therefore, any proposed new Special Area, especially one that is being proposed to offset overshadowing impacts to an existing Special Area, should be required to provide a high level of amenity, including solar access, to ensure that the quality of such spaces are not diminished.

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.

These issues highlight that the proposed new Special Area is not of a high enough level of amenity, nor does it achieve good levels of solar access to merit classification as a Special Area.

As such, it is recommended that as currently arranged, the proposed area should not qualify for classification as a Special Area in NSLEP 2013. In addition, it has been Council's experience that proposals for public benefit that are inter-related to the development of a building, can be further eroded in quality from this early concept stage, at a future DA stage, in favour of achieving better private outcomes for the development being proposed.

1.7 Strategic Merit

1.7.1 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.

1.7.2 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.

1.8 Site-specific Merit

1.8.1 Maximum Building Height

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.

The proposal purports to be of a relative scale to the surrounding context, with direct comparison to the Vodafone building south of the subject site (RL 195). However, 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 indicative 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 building envelope.

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 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 is not supported.

1.8.2 Podium and Tower Design

The proposed podium of 5 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 5-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. As such, it is not supported.

A structure and podium of lesser bulk and scale with increased setbacks would facilitate additional access to natural light to the surrounding public domain and to Berry Street (West) Special Area.

Taking into account the overbearing design of the proposed tower, the excessive podium height of the design and reverse setback to the podium along Angelo Street, it is considered that the proposed design of the overall structure is not supportable in its current form.

CONCLUSION

The Planning Proposal seeks to amend the North Sydney Local Environmental Plan as it applies to 20 Berry Street North Sydney as follows;

- amend the Land Zoning Map to NSLEP 2013 from B4 (Mixed Use) to **B3 (Commercial Core)**; and
- amend the Height of Buildings from **RL 145 to RL172**; and
- amend the North Sydney Centre Map such that a new Special Area is added to 20 Berry Street, North Sydney.

Notwithstanding the LPP's recommendation that the matter be deferred to enable the submission of additional information, the Planning Proposal is not supported for the following reasons:

a) 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).

b) 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;

c) 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;

d) The proposed new Special Area does not provide a high enough level of public amenity to warrant classification as a Special Area.