

Post-Exhibition Report – PP-2021-7492

The proposal seeks to amend planning controls by increasing the maximum building height to 22m, increasing the minimum non-residential FSR to 1.2:1 and introducing a site-specific provision to facilitate a mixed-use development on the site.

1 Introduction

The purpose of this report is to provide a summary of the key matters raised by members of the public, North Sydney Council (Council) and public agencies during the public exhibition of the planning proposal for 12-14 Waters Road, Neutral Bay (the site).

Element	Description
Date of request to exhibit PP	27 January 2023
Date of panel determination on rezoning review	1 September 2022
Planning Proposal no.	PP-2021-7492
LGA	North Sydney
LEP to be amended	North Sydney Local Environmental Plan 2013 (NSLEP)
Address	12-14 Waters Road, Neutral Bay (SP 68360 and Lot 18 in DP 537700)
Brief overview of the timeframe/progress of the planning proposal	<p>7 October 2020 - North Sydney Local Planning Panel (LPP) granted consent for a 5 storey shop top housing (mixed use) development at 12 Waters Road comprising 16 dwellings.</p> <p>22 February 2021 - Council adopted the Future Directions report for Military Road Corridor Planning Study.</p> <p>28 October 2021 -Deferred commencement consent was granted by the Sydney North Planning Panel for a 5-storey mixed use development on the sites at 12-14 Waters Road Neutral Bay, comprising 36 apartments (DA 92/21).</p> <p>22 December 2021 - Consent was issued on DA 92/21 (as deferred commencement conditions met).</p> <p>29 December 2021 - Planning proposal lodged with Council.</p> <p>24 January 2022 - Council resolved to rescind the Military Road Corridor Planning Study.</p> <p>22 March 2022 - Updated planning proposal submitted to Council.</p>

Element	Description
	<p>April 2022 -Construction certificate issued for the approved 5 storey DA. Construction is currently underway.</p> <p>13 April 2022 - LPP considered the proposal, recommending it not progress to Gateway determination.</p> <p>26 April 2022 - Council resolved not to progress the proposal to Gateway determination.</p> <p>17 June 2022 - Proponent requested a Rezoning Review.</p> <p>1 September 2022 - Sydney North Planning Panel (Panel) at a rezoning review (RR-2022-13) meeting determined the proposal should be submitted for a Gateway determination</p> <p>25 October 2022 - Final updated planning proposal was received to reflect the changes recommended by the Panel at the rezoning review.</p> <p>13 December 2022 - Panel decision endorsing planning proposal to proceed to Gateway determination.</p> <p>17 February 2023 – An Alteration of the Gateway Determination was issued, rectifying a misdescription of condition 2 reducing the exhibition period from 28 to 20 working days and replacing condition 3 to include North Sydney Council as a public authority for consultation.</p> <p>February/March – The proposal was placed on exhibition from 22 February 2023 to 22 March 2023.</p>
Finalisation date required by Gateway Determination	23 September 2023
Department contact:	Renee Ezzy, Senior Planning Officer

1.1 The site and local context

The site (**Figure 1**) consists of two lots with a total site area of 1,627m². The site has three street frontages, with the longest northern frontage to Grosvenor Street and the remaining two frontages addressing Waters Road to the east and Waters Lane to the west. The topography of the site has a fall of 3m from the front south-eastern corner to the rear north-western corner.

The site is located within the Neutral Bay Town Centre, 80m north of the intersection of Waters and Military Roads, 1.8km from the North Sydney CBD and within 4km of the Sydney Central Business District (CBD). This site's proximity to Military Road provides accessibility to bus transportation links which connect to the Sydney CBD and North Sydney CBD as well as the Northern Beaches.

The site is currently under construction for a 5-storey mixed use shop-top housing development containing 36 apartments.

To the north (across Grosvenor Street) is a 4-storey residential flat building at 80 Grosvenor Street and a 2-storey residential flat building at 76 Grosvenor Street.

Directly adjoining the site to the south at 4-8 Waters Road is a 5-storey mixed use building with commercial use on the ground floor and residential uses above.

To the east, across Waters Road are various mixed-use developments of 4-5 storeys in scale containing ground floor commercial uses with residential development above.

To the west, across Waters Lane, 41-53 Grosvenor Street is a 2-storey commercial building that accommodates a supermarket.



Figure 1 – Subject site (source: Planning Proposal-January 2023)

1.2 Planning Proposal

Table 1 – Overview of planning proposal

Element	Description
Site Area	1,627m ²
Site Description	12-14 Waters Road, Neutral Bay SP 68360 (northern lot) and Lot 18 in DP 537700 (southern lot)
Proposal summary	<p>The planning proposal seeks to amend the NSLEP to facilitate a future mixed-use development by:</p> <ul style="list-style-type: none"> Increasing the maximum building height from 16m to 22m; Amend the minimum non-residential FSR from 0.5:1 to 1.2:1 Including a site-specific provision allowing an additional 2m to the maximum height of building control to facilitate community facilities, plant equipment or vertical circulation.

Element	Description
Relevant State and Local Planning Policies, Instruments	<ul style="list-style-type: none"> Greater Sydney Regional Plan North District Plan Section 9.1 Ministerial Directions SEPP (Transport and Infrastructure) 2021 SEPP (Housing) 2021 SEPP 65 – Design Quality of Residential Apartment Development North Sydney Local Environmental Plan 2013 North Sydney Local Strategic Planning Statement (LSPS) North Sydney Local Housing Strategy (LHS) Future Transport Strategy 2056

The planning proposal (**Attachment A** and **Table 1**) seeks to amend the NSLEP per the changes in **Table 2** below.

Table 2 – Current and proposed controls

Control	Current	Proposed
Zone	MU1 Mixed Use (formerly B4 Mixed Use- amended as per Employment Zone Reforms)	No change
Maximum height of the building	16m	22m
Site-specific provision	N/A	New Clause 4.3A <i>Exceptions to height of buildings</i> , allowing development up to 24m
Minimum non-residential floor space ratio (FSR)	0.5:1	1.2:1
Number of dwellings	35 (approved DA)	37
Number of jobs	76	76

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

1.2.1 Mapping

The planning proposal includes amendments to the following maps:

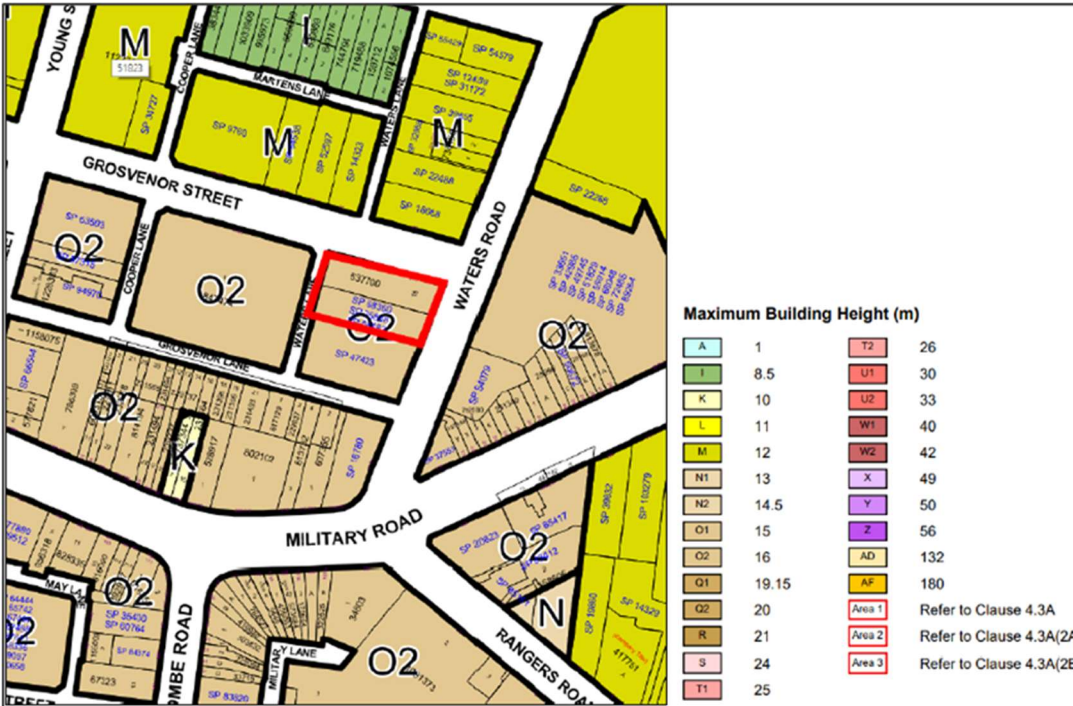


Figure 2. Current Height of Building Map (source: Council's assessment report)

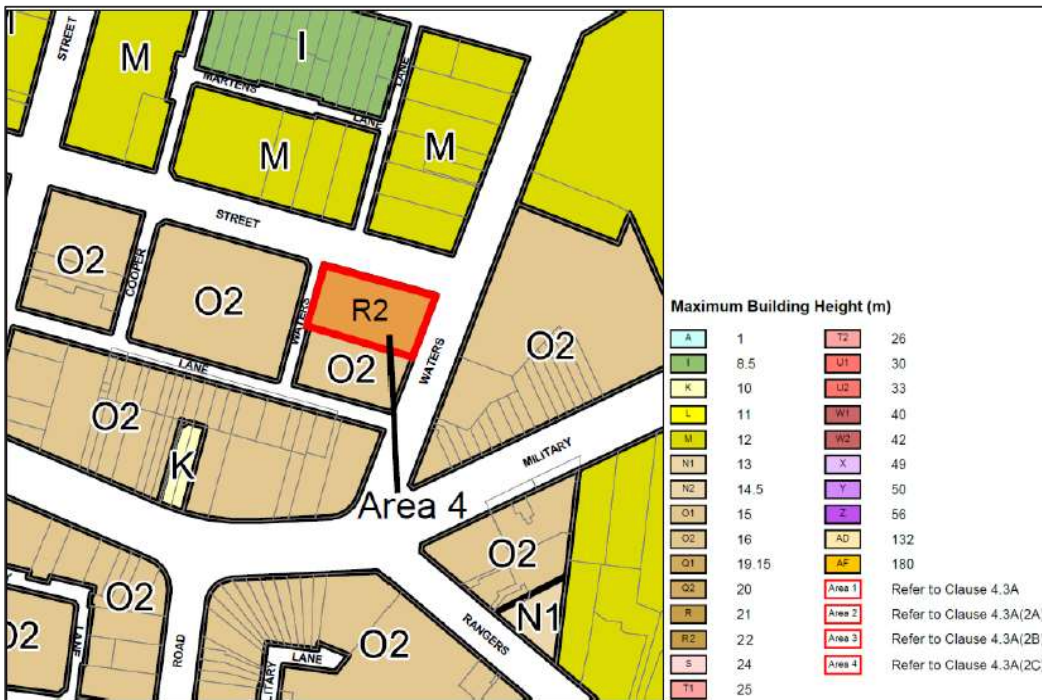


Figure 3: Proposed Height of Building Map (source: Central Element)

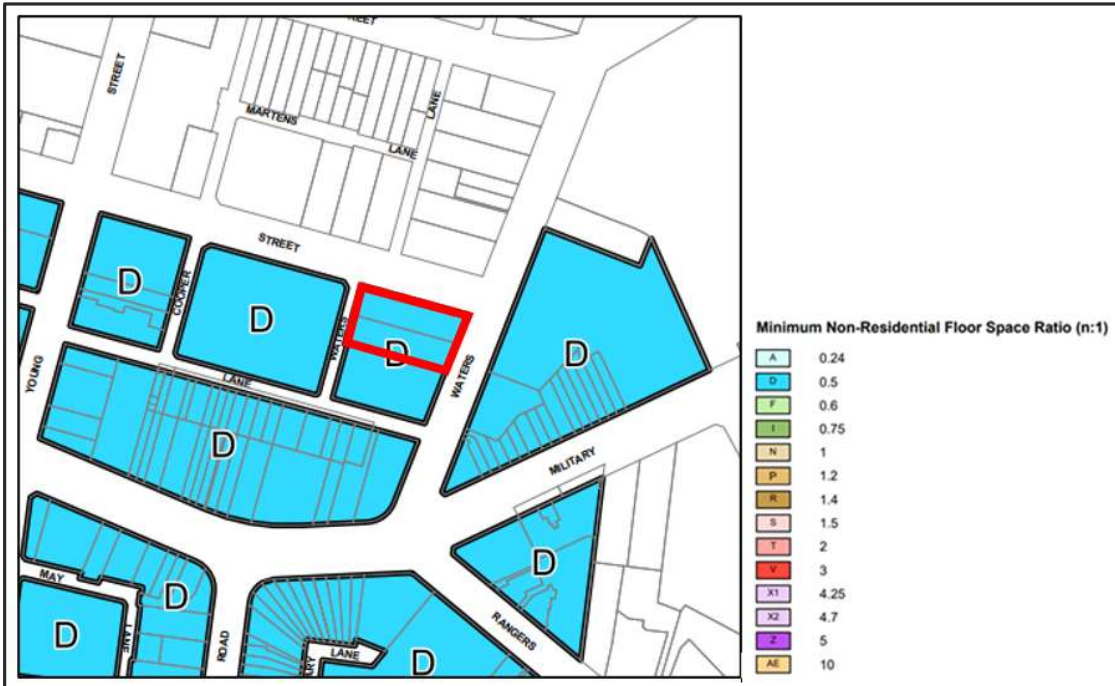


Figure 4: Current Minimum Non-Residential Floor Space Ratio Map (source: NSLEP 2013)

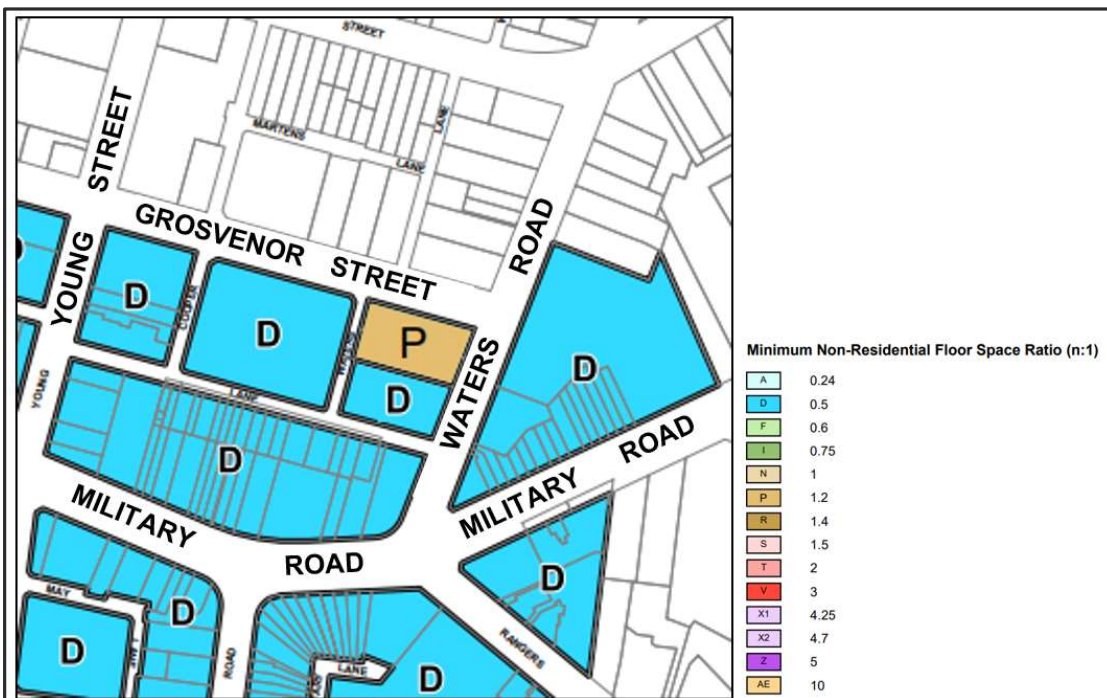


Figure 5: Proposed non-residential FSR map (source: Central Element)

1.3 Rezoning Review

On 1 September 2022, the Sydney North Planning Panel (the Panel) considered a rezoning review for the planning proposal as a result of Council notifying the proponent it would not support the proposed amendment.

The Panel determined to support the planning proposal as it had demonstrated strategic merit providing alignment with Council's planning and community consultation for the Future Directions Planning Study for the Neutral Bay Town Centre prior to it being rescinded by Council. The planning proposal was considered to support Council's objectives to find a balance between additional height, employment generating opportunities and additional open space in this area.

In terms of site-specific merit, the Panel agreed that the planning proposal should be amended to decrease the maximum height of building control (as mapped) from 26 metres to 22 metres however with a site-specific provision permitting an extra 2 metres height for rooftop open space and community facilities.

It was also recommended that the floor to ceiling height of the below ground commercial area and the ground level void be reconsidered in light of the overall maximum height of the building to better allow equitable access to roof top facilities. These minor amendments made by the Panel were based off Council's assessment of the planning proposal and their recommended height which was then offered by the proponent.

Subject to these amendments, the Panel concluded that the Planning Proposal would be consistent with Council's objective of finding an appropriate balance between additional height, employment generating opportunities, and additional open space.

The proponent submitted an amended planning proposal addressing the recommendations of the Panel for Gateway on 25 October 2022.

The Panel's determination and reasons for its decision are provided in **Attachment B**. The Panel appointed itself as the planning proposal authority (PPA).

Military Road Corridor Planning Study – Stage 1 Future Directions

The Military Road Corridor Planning Study – Stage 1 Future Directions (the Study) was adopted by North Sydney Council on 22 February 2021 and sought to gain community input *“to inform the desired future character of the corridor; develop a vision, structure plan and principles that will manage future development pressure; and ensure tangible public benefits and support job and housing growth by identifying necessary public domain upgrades and social infrastructure”*.

A key component of the Study included an increase in the height limit from five storeys to six storeys throughout most of the Neutral Bay Town Centre and a corresponding increase in the non-residential floor space requirements with the objective of addressing the declining employment floor space availability. For the subject site, the Study identified a maximum height of 6 storeys and a minimum non-residential FSR of 1.2:1.

The Study was rescinded by a recission motion of Council on 24 January 2022.

1.4 Gateway determination

The Gateway determination issued on 23 December 2022 (**Attachment C**) determined that the proposal should proceed, subject to the following conditions:

1. *Prior to community consultation the planning proposal is to be updated to address the following:*

- a) *update the Urban Design Report and associated reference scheme in the planning proposal report to reflect the height control of 22m (with additional 2m height for rooftop facilities), this includes referencing correct overshadowing diagrams in the planning report;*
 - b) *include RL's to the proposed top of building structure in all sections and elevations of the Amended Concept Drawings and updated Urban Design Report;*
 - c) *clarify the number of proposed apartments in the context of DA 92/21/3 modification to DA 92/2021 that amalgamates apartments 2.07 and 2.08 into one (1) apartment, ensuring this number is consistent across all documentation;*
 - d) *consolidate planning proposal assessments against regional, state and local plans to remove duplicate tables and sections;*
 - e) *provide further justification for Ministerial Direction 1.4 Site Specific Provisions;*
 - f) *revise Ministerial Direction 3.2 Heritage to rectify errors and remove content not applicable to this proposal;*
 - g) *amend planning proposal to remove errors and reference to requiring updates to SEPPs as the proposal addresses the current consolidated SEPPs;*
 - h) *update planning proposal to reflect the new letter of offer to Council and remove reference to the previous VPA;*
 - i) *provide improved resolution and clear images and mapping; and*
 - j) *include an updated timeline based on the issuing of the Gateway determination.*
2. *Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:*
- a) *the planning proposal is categorised as standard as described in the Local Environmental Plan Making Guidelines (Department of Planning and Environment, 2021) and must be made publicly available for a minimum of 28 working days; and*
 - b) *the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in Local Environmental Plan Making Guidelines (Department of Planning and Environment, September 2022).*
- Exhibition must commence within **3 months** following the date of the Gateway determination.*
- The Voluntary Planning Agreement (VPA) Letter of Offer for 12-14 Waters Road, Neutral Bay should be exhibited concurrently exhibited with the planning proposal (as far as practicable).*
3. *Consultation is required with the following public authorities and government agencies under section 3.34(2)(d) of the Act and/or to comply with the requirements of applicable directions of the Minister under section 9 of the EP&A Act:*
- *Ausgrid; and*
 - *Transport for NSW*
- Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material via the NSW Planning Portal and given at least 30 days to comment on the proposal.*
4. *A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the EP&A Act. This does not discharge Council from any obligation it*

may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

5. *The timeframe for completing the LEP is to be **9 months** from the date of the Gateway determination.*

1.4.1 Gateway Alteration

A Gateway alteration was approved on 17 February 2023 allowing the amendment of condition 2 to reflect an appropriate exhibition period of 20 working days.

Condition 3 was also amended to include North Sydney Council as part of the consultation given that the Sydney North Planning Panel is the PPA.

The Gateway determination (as altered) identifies that the proposal is to be finalised before 23 September 2023.

All conditions of the Gateway determination (as altered) have been met (see **Attachment C1**).

2 Community Consultation

2.1 Public Exhibition

On 20 February 2023 the Panel authorised the exhibition of the planning proposal (**Attachment E**).

In accordance with the Gateway determination, the planning proposal and supporting material were publicly exhibited on the NSW Planning Portal for 20 working days, from 22 February 2023 to 22 March 2023.

3 Submissions

3.1 Submissions during exhibition

There were 33 submissions received during the exhibition period from individuals, organisations and government agencies, including Transport for NSW, Ausgrid and North Sydney Council.

Of the 30 individual public submissions, 29 objected to the proposal (96.8%), and 1 supported the proposal (3.2%).

A table summarising the Department and Proponent's response to submissions is provided as **Attachment F** and the Proponent's response to the submissions is provided at **Attachment G**.

3.1.1 Submissions from Agencies and Council

In accordance with the Gateway determination, the following agencies were consulted:

- Ausgrid
- Transport for NSW (TfNSW)
- North Sydney Council (Council)

Submissions were received from both TfNSW and Ausgrid. Council provided a submission after the exhibition closing date on 17 May 2023 (**Attachment H**). Council's submission raised the following matters:

- Planning proposal is not endorsed by any planning study and challenges the implementation of the North Sydney Local Strategic Planning Study (LSPS).
- The proposed height is considered excessive.
- Some units do not comply with the Apartment Design Guide (ADG).
- The plans do not propose any additional non-residential floorspace.
- Confusing and incorrect description for the exhibition material and documentation (NB. the Planning Portal's public description of the proposal initially included a proposed height control of 26m. This was rectified during exhibition).

No issues were raised by the relevant agencies that would preclude the proposal proceeding. All agency submissions are provided in full at **Attachment I**.

3.2 Key Issues from submissions

The main concerns raised by the community are as follows:

- Building height and local character.
- Traffic and parking
- Amenity

Redacted copies of the public submissions are provided at **Attachment J**.

3.2.1 Issue No.1 – Building height and local character

The height is inconsistent with the character of the Neutral Bay Town Centre.

Community view

Concerns were raised in relation to the proposed height being excessive to accommodate 1 extra level. The submissions raise concerns relating to amenity impacts including overshadowing and loss of solar access as a result of the additional height. Further concerns that the additional height will set a precedent for other sites with no additional community benefit.

Council's view

The proposed additional height does not translate to any additional non-residential floorspace and is excessive to accommodate a 6 storey building. The primary justification for the additional height relies on the existing approved development which significantly exceeds the 16m height limit.

Proponent Response:

The additional height equates to a further 2.7m above the existing DA approval on the site (DA92/21) and is aligned with the Military Road Corridor Planning Study providing Council's objective for a "*better balance between development height and the provision of additional public open space*". The proposal will deliver substantial public benefit to support the village character of Neutral Bay.

Department Response:

The planning proposal submitted for Gateway determination reduced the proposed maximum height control from 26m to 24m to reflect Council's original assessment and recommendation of 24m.

The current proposed height (22m) is considered to facilitate Council's objectives (identified by the Military Road Corridor Planning Study) for retaining the amount of non-residential floor space,

provide for additional housing and facilitate public domain upgrades and community benefit with minimal impacts on surrounding development.

The planning proposal includes a Design Report (SJB, December 2022) (**Attachment A2**) demonstrates through height planes that the structure can be contained within the 24m height plane with only the rooftop structure above 22m (see Figures 6 and 7). These additional roof top areas will not be visible from the street or impact on the character at street level.

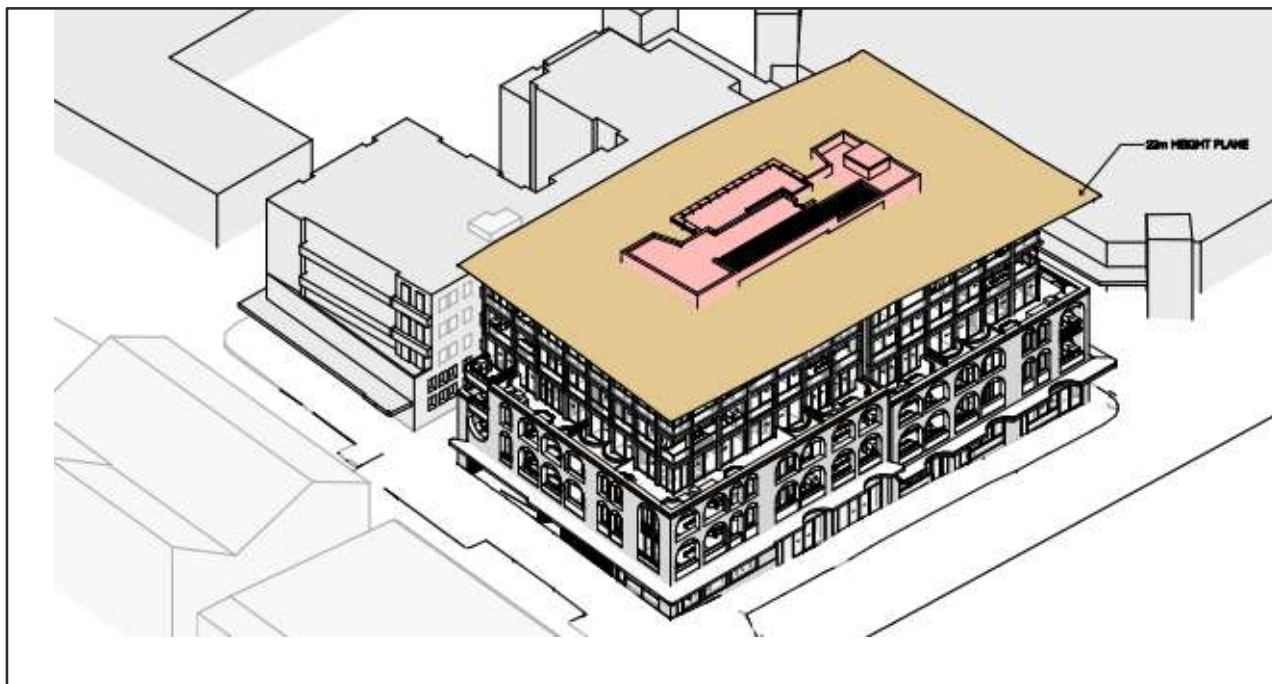


Figure 6: 22m height plan (source: Design Report, SJB December 2022)



Figure 7: 24m height plane (source: SJB, December 2022)

The planning proposal is also accompanied by a Letter of Offer (**Attachment A6**) to North Sydney Council which provides a mechanism to deliver new public infrastructure within Waters Lane through the dedication of a 1.5m wide strip of the site. This land will provide for improved public amenity and widening of the lane for pedestrianisation. In addition to this, a further contribution is proposed for use in public infrastructure upgrades across Neutral Bay Town Centre.

3.2.2 Issue No.2 – Traffic and Parking

The proposal will add to the existing traffic congestion problems in the area and lacks adequate parking.

Community view

The proposal lacks adequate parking. Development of the site would put increased pressure on the availability of on-street parking in the area.

Proponent Response:

The proposal is located within the Neutral Bay Town Centre and within 100m of the express B Line bus terminal. An additional 1-storey increase in height is considered to be suitably serviced by public transport with access to local services in walking distance.

The concept proposal includes 37 apartments. The proposal provides for the maximum amount residential parking permitted under the North Sydney DCP. Any additional residential parking would result in a non-compliance with the North Sydney DCP maximum parking control.

Department Response:

The previously approved development on the site (DA 92/21) for a 5 storey shop top housing development with 35 apartments provided 101 car parking spaces (34 residential, 6 visitor, 1 carwash and 60 commercial). While the additional level will facilitate an additional 2 apartments (37 total), the parking rates within North Sydney DCP 2013 provide for a maximum not a minimum. The proposed concept scheme provides for 89 car spaces which would likely satisfy these requirements subject to Council consent.

In terms of traffic generation and congestion, the proponent provided a Traffic Impact Assessment (TTPP Transport Planning, 16 January 2023) (**Attachment K**) which analysed the proposed additional generation from the 2 apartments to have negligible impact on the existing level of service for the intersections in proximity to the site.

TfNSW have also provided a submission raising no objections and indicated that the proposal is expected to generate low traffic volumes within an existing local centre resulting in minimal traffic impacts to the surrounding local and regional transport network.

3.2.3 Issue No.3 – Amenity

The quality of the underground commercial space, pressure on local amenity, environment and infrastructure, overshadowing and noise impacts.

Community view

The proposal does not provide a high-quality commercial space in the underground tenancies. Increase in apartments will put pressure on community spaces which the proposal does not seek to increase.

Proponent Response:

The additional level is not considered to result in any additional pollution or rubbish. The proposed

\$1,900,000 in voluntary contributions can be used to improve the environmental performance of the public domain.

Department Response:

At the Rezoning Review stage, the Panel recommended that the floor to ceiling height of the below ground commercial area and void be reconsidered. In considering this recommendation, the proponent advised the Department that:

“The floor to ceiling height for the loading area was the minimum supportable for a medium ridged vehicle for services delivery. The level of the loading bay was also set based on the flood level and maximum entry gradient for this area.

Notwithstanding this, we were able to reduce the overall height of the building to a maximum of 24m by one of the building lifts stopping at level 5 rather than rooftop, and a smaller low-rise lift without an overrun providing access from level 5 to the rooftop level.”

The site is currently under construction with the approved 5 storey shop-top housing development which includes the basement commercial space. The minor additional height and subsequent 2 apartments will not impose an unreasonable adverse impact on the amenity of surrounding developments.

4 Next Steps

The Department is the Local Plan-Making Authority (LPMA) for this planning proposal.

The Panel's decision and the final planning proposal will be submitted to the Department through the NSW Planning Portal for finalisation.

The Department's Planning Land Use and will prepare a finalisation report in accordance with the *LEP Making Guidelines* (Dec 2021) and will determine whether to make the LEP, with or without variation. The Department may defer the inclusion of a matter in the proposed LEP or not make the LEP.

In accordance with section 3.36(1) of the EP&A Act, the Department will organise drafting of the LEP and finalisation of maps and will consult the panel on any draft instrument.

5 Recommendation

Based on this post-exhibition report, it is recommended that the Sydney North Planning Panel determine that the planning proposal should be submitted to the Department for finalisation:

The planning proposal is considered suitable for finalisation because:

- The proposal demonstrates strategic and site-specific merit
- The conditions of the Gateway determination have been met
- Agency and community consultation has occurred in accordance with the Gateway determination
- Submissions raised have been adequately addressed and the proposal warrants support.

5.1 Attachments

Attachment A – A6 – Planning Proposal and attachments (January 2023)

Attachment B – Rezoning Review Record of Decision (September 2022)

Attachment C – Gateway Determination (December 2022)

Attachment C1 – Alteration of Gateway Determination (February 2023)

Attachment D – Assessment Against Gateway Determination

Attachment E – Panel authorisation of exhibition (February 2023)

Attachment F – Summary of community submissions and responses

Attachment G – Proponent response to submissions

Attachment H – Council submission

Attachment I – Agency submissions

Attachment J – Community submissions (redacted)

Attachment K – Traffic Impact Assessment



05/06/2023

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(Signature)

__9 June 2023_____
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