

**DECISION OF 3771st COUNCIL MEETING
HELD ON MONDAY 12 DECEMBER 2022**

10.7. Planning Proposal 5/22 - 71-89 Chandos Street, St Leonards

AUTHOR: Katerina Papas, Senior Strategic Planner

To present to Council the assessment report of Planning Proposal 5/22 at 71-89 Chandos Street St Leonards which seeks to amend North Sydney Local Environmental Plan 2013, following its review by the North Sydney Local Planning Panel on 9 November 2022.

On 25 March 2022, Council received a Planning Proposal to amend *North Sydney Local Environmental Plan 2013 (NSLEP 2013)* as it relates to the land at 71-89 Chandos Street St Leonards.

The site is located within the area covered by two planning studies, these being:

- 1) The *St Leonards/Crows Nest Planning Study – Precincts 2 & 3*, adopted by Council in May 2015; and
- 2) The *St Leonards and Crows Nest 2036 Plan*, adopted by the Department of Planning and Environment in August 2020.

The Planning Proposal seeks to amend NSLEP 2013 as it relates to the subject site as follows:

- Increase the maximum building height control from 20m to 44m;
- Impose a maximum floor space ratio (FSR) of 4:1;
- Increase the minimum non-residential FSR from 0.6:1 to 1:1; and
- Introduce a site-specific provision allowing the maximum building height to be exceeded to a maximum 46.7m for the purposes of providing inclusive access to communal open space at the rooftop level.

The intent of the proposal is to facilitate the delivery a 12-storey mixed-use building with a 4 storey podium and tower above. The indicative reference scheme includes 64 residential apartments with 7,401 sqm Gross Floor Area (GFA), 2,460 sqm non-residential GFA and parking over 2 basement levels.

The proposal is accompanied by a non-binding letter of offer to enter into a Voluntary Planning Agreement (VPA) with Council to provide public benefits as identified within Council's *St Leonards/Crows Nest Planning Study – Precincts 2&3 (2015)*. This includes the dedication and embellishment of private land to Council for the purposes of a linear park along Oxley Street; delivery of a pedestrian through-site link with public right of way connecting Chandos Street to Atchison Lane; and landscaping and improvements to the public domain on-site.

A detailed assessment of the Planning Proposal was undertaken and referred to the North Sydney Local Planning Panel (NSLPP) for its consideration on 9 November 2022. That report can be viewed via the following link:

https://www.northsydney.nsw.gov.au/files/assets/public/docs/1_council_meetings/committees/nslpp/9_november_2022/pp01_71-89_chandos_street_st_leonards_-_pp522_rpt.pdf.

The NSLPP agreed with the recommendations outlined in the Council officer's assessment report and recommended that the Planning Proposal be supported to proceed to a Gateway Determination. It did so subject to a maximum building height of 43 metres for a 12-storey building, and an additional local provision allowing the maximum building height to be exceeded by no more than 2 metres for the portions of the building providing inclusive access to the communal open space at the rooftop (i.e. lift overrun).

The Panel also recommended that the applicant be encouraged to investigate more affordable housing, which may be achieved through the provision of a mix of reduced dwelling sizes, and that the applicant be invited to consider making available a number of units to be managed by a housing provider for the purposes of key worker housing.

The Planning Proposal is accompanied by a letter of offer to enter into a Voluntary Planning Agreement (VPA) that proposes to provide in-kind contributions to Council. These include:

- The dedication and embellishment of private land (179 sqm) to Council and embellishment of public land (271 sqm) for the purposes of a linear park along Oxley Street (total 450 sqm); and
- A pedestrian through-site link (approx. 7m wide and open-to-sky) connecting Chandos Street to Atchison Lane with easement for public access 24 hours/7 days a week (total 250 sqm); and
- landscaping and improvements to the public domain on-site.

The site is subject to both a Special Infrastructure Contribution (SIC) for the delivery of regional infrastructure upgrades in the St Leonards and Crows Nest Planned Precinct, as well as Council's section 7.11 local infrastructure contributions to be levied with any future Development Application approval.

The modest costs associated with the administration and exhibition of the Planning Proposal will be drawn from existing budget lines which anticipate this type of activity. In addition, there is a provision within the draft VPA that Council's reasonable legal costs associated with drafting and review of this instrument be reimbursed by the applicant upon its finalisation.

RECOMMENDATION:

1. THAT the Planning Proposal be amended to Council's satisfaction addressing the recommendations outlined in the Council Officer's assessment report, specifically to show a maximum building height control of 43 metres, and an additional local provisions clause to be included allowing the maximum building height to be exceeded by no more than 2 metres for portions of the building providing inclusive access to the communal open space at the rooftop (i.e. lift overrun).

2. THAT upon satisfactory negotiation of the contents and detailed terms of the draft VPA and completion of Recommendation 1, the Planning Proposal be forwarded to the Department of Planning and Environment, in accordance with section 3.34 of the Environmental Planning and Assessment Act 1979 to seek a Gateway Determination.

3. THAT upon receipt of a Gateway Determination, the associated draft VPA be exhibited concurrently with the subject Planning Proposal.

4. THAT the outcomes of any public exhibition be reported to Council.

The following person spoke on this item as part of the Public Forum:

- Thomas Goode (planning consultant on behalf of the proponent)

The Motion was moved by Councillor Beregi and seconded by Councillor Gibson:

The Motion was put and **Carried**.

Voting was as follows:

For/Against 10 / 0

For: Councillor Baker, Councillor Beregi, Councillor Bourke, Councillor Drummond, Councillor Gibson, Councillor Lamb, Councillor Santer, Councillor Spenceley, Councillor Mutton and Councillor Welch

Against: Nil

Absent: Nil

410. RESOLVED:

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10.7. Planning Proposal 5/22 - 71-89 Chandos Street, St Leonards

AUTHOR: Katerina Papas, Senior Strategic Planner

ENDORSED BY: Joseph Hill, Director City Strategy

ATTACHMENTS: Nil

PURPOSE:

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EXECUTIVE SUMMARY:

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- Introduce a site-specific provision allowing the maximum building height to be exceeded to a maximum 46.7m for the purposes of providing inclusive access to communal open space at the rooftop level.

The intent of the proposal is to facilitate the delivery a 12-storey mixed-use building with a 4 storey podium and tower above. The indicative reference scheme includes 64 residential apartments with 7,401 sqm Gross Floor Area (GFA), 2,460 sqm non-residential GFA and parking over 2 basement levels.

The proposal is accompanied by a non-binding letter of offer to enter into a Voluntary Planning Agreement (VPA) with Council to provide public benefits as identified within Council's *St Leonards/Crows Nest Planning Study – Precincts 2&3 (2015)*. This includes the dedication and embellishment of private land to Council for the purposes of a linear park

along Oxley Street; delivery of a pedestrian through-site link with public right of way connecting Chandos Street to Atchison Lane; and landscaping and improvements to the public domain on-site.

A detailed assessment of the Planning Proposal was undertaken and referred to the North Sydney Local Planning Panel (NSLPP) for its consideration on 9 November 2022. That report can be viewed via the following link:

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The NSLPP agreed with the recommendations outlined in the Council officer's assessment report and recommended that the Planning Proposal be supported to proceed to a Gateway Determination. It did so subject to a maximum building height of 43 metres for a 12-storey building, and an additional local provision allowing the maximum building height to be exceeded by no more than 2 metres for the portions of the building providing inclusive access to the communal open space at the rooftop (i.e. lift overrun).

The Panel also recommended that the applicant be encouraged to investigate more affordable housing, which may be achieved through the provision of a mix of reduced dwelling sizes, and that the applicant be invited to consider making available a number of units to be managed by a housing provider for the purposes of key worker housing.

FINANCIAL IMPLICATIONS:

The Planning Proposal is accompanied by a letter of offer to enter into a Voluntary Planning Agreement (VPA) that proposes to provide in-kind contributions to Council. These include:

- The dedication and embellishment of private land (179 sqm) to Council and embellishment of public land (271 sqm) for the purposes of a linear park along Oxley Street (total 450 sqm); and
- A pedestrian through-site link (approx. 7m wide and open-to-sky) connecting Chandos Street to Atchison Lane with easement for public access 24 hours/7 days a week (total 250 sqm); and
- landscaping and improvements to the public domain on-site.

The site is subject to both a Special Infrastructure Contribution (SIC) for the delivery of regional infrastructure upgrades in the St Leonards and Crows Nest Planned Precinct, as well as Council's section 7.11 local infrastructure contributions to be levied with any future Development Application approval.

The modest costs associated with the administration and exhibition of the Planning Proposal will be drawn from existing budget lines which anticipate this type of activity. In addition, there is a provision within the draft VPA that Council's reasonable legal costs associated with drafting and review of this instrument be reimbursed by the applicant upon its finalisation.

RECOMMENDATION:

- 1. THAT** the Planning Proposal be amended to Council's satisfaction addressing the recommendations outlined in the Council Officer's assessment report, specifically to show a maximum building height control of 43 metres, and an additional local provisions clause to be included allowing the maximum building height to be exceeded by no more than 2 metres for portions of the building providing inclusive access to the communal open space at the rooftop (i.e. lift overrun).
- 2. THAT** upon satisfactory negotiation of the contents and detailed terms of the draft VPA and completion of Recommendation 1, the Planning Proposal be forwarded to the Department of Planning and Environment, in accordance with section 3.34 of the Environmental Planning and Assessment Act 1979 to seek a Gateway Determination.
- 3. THAT** upon receipt of a Gateway Determination, the associated draft VPA be exhibited concurrently with the subject Planning Proposal.
- 4. THAT** the outcomes of any public exhibition be reported to Council.

LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

- 1. Our Living Environment
 - 1.3 Clean and green places
 - 1.4 Well utilised open space and recreational facilities
- 2. Our Built Infrastructure
 - 2.1 Infrastructure and assets meet diverse community needs
 - 2.2 Vibrant public domains and villages
 - 2.3 Prioritise sustainable and active transport
- 3. Our Innovative City
 - 3.1 Our commercial centres are prosperous and vibrant
- 4. Our Social Vitality
 - 4.1 North Sydney is connected, inclusive, healthy and safe
- 5. Our Civic Leadership
 - 5.1 Lead North Sydney's strategic direction
 - 5.3 Community is engaged in what Council does

BACKGROUND

In February 2021, a pre-lodgement meeting was held between Council staff and the landowner's project team to discuss a preliminary concept for the site.

On 14 July 2021, a Planning Proposal (PP5/21) was lodged for the subject site (71-89 Chandos Street) and adjacent site to the south (58-64 Atchison Street), which is under the same land ownership. On 31 January 2022, the applicant advised Council staff that they intended to submit an amended Planning Proposal to address various concerns raised by Council staff with the submitted reference scheme.

On 25 March 2022, the applicant lodged an amended Planning Proposal which removed the southern site (58-64 Atchison Street), in order to address interface issues with the adjoining landowner. The amended Planning Proposal was submitted as a fresh application (PP5/22) which is the subject of this report, and the former Planning Proposal (PP5/21) was formally withdrawn on 31 May 2022.

Further details are provided in the report to the North Sydney Local Planning Panel.

Description of Planning Proposal

On 25 March 2022, the subject Planning Proposal (PP5/22) was lodged, seeking amendments to NSLEP 2013 as it relates to land at 71-89 Chandos Street, St Leonards.

The Planning Proposal, as originally submitted, sought the following amendments:

- Increase the maximum building height from 20m to 46m;
- Introduce a maximum Floor Space Ratio (FSR) control of 4:1; and
- Increase the minimum non-residential FSR from 0.5:1 to 1:1.

On 31 May 2022, Council sought further clarification from the applicant on issues relating to building height, podium height and treatment, building separation, and overshadowing. In response to Council's concerns, the applicant submitted an amended Planning Proposal report and reference design (14 July 2022), which seeks a maximum building height of 44m (previously 46m), and the introduction of a new site-specific provision to allow the maximum building height to be exceeded to a maximum of 46.7m for the lift overrun, to provide access to communal open space at the rooftop.

The amended reference design includes a 12-storey mixed-use development with a 4 storey podium and tower above; 2,460 sqm of commercial retail/office floor space in the podium; 64 residential apartments within the podium and tower; and 56 car spaces over 2 basement levels.

TABLE 1: Key design elements	
Land Uses	Mixed-use (Commercial retail/office and residential)
Indicative yield	64 residential apartments
Building Height	Max. 46.7m (RL131.920) for 12-storeys, inclusive of rooftop structures but with a predominant height of 44m
Floor Space Ratio (FSR)	4:1 (total)
Non-Residential Floor Space Ratio (FSR)	1:1
Gross Floor Area	9,861 sqm (total) - 2,460 sqm non-residential GFA - 7,401 sqm residential GFA
Built Form	4-storey podium (retail/commercial; residential) 8-storey tower (residential)
Setbacks (Whole of Building)	Chandos Street (north): 3m Oxley Street (east): 5m Atchison Lane (south): 1.5m Western boundary: 7m
Setbacks (Above podium)	Chandos Street (north): 3m Oxley Street (east): 7m Atchison Lane (south): 1.5m Western boundary: 4m
Car Parking	56 car spaces over 2 basement levels

The proposal is accompanied by a suite of suggested amendments to North Sydney Development Control Plan 2013 (NSDCP 2013), to provide increased certainty and to assist in the future assessment of any development application. These include controls relating to

building height, podium, setbacks, communal open space and landscaping, and car accommodation.

Draft Voluntary Planning Agreement

The Planning Proposal is accompanied by a non-binding letter of offer to enter into a Voluntary Planning Agreement (VPA) with Council to provide the following public benefits:

- Dedication and embellishment of private land (179 sqm) to Council the and embellishment of public land (271 sqm) for the purposes of a linear park along Oxley Street (total 450 sqm); and
- A pedestrian through-site link (approx. 7m wide and open-to-sky) connecting Chandos Street to Atchison Lane with easement for public access 24 hours/7 days a week (total 250 sqm); and
- landscaping and improvements to the public domain on-site.

The proposed public domain improvements are consistent with those identified for the site in Council's endorsed *St Leonards and Crows Nest Planning Study – Precincts 2 & 3*, and will improve permeability and activation in the area.

PANEL REFERRAL

On 23 February 2018, the Minister for Planning released a section 9.1 Direction which outlines the instances when a Planning Proposal must be referred to a Local Planning Panel for advice prior to a council determining whether that Planning Proposal should be forwarded to the Department of Planning and Environment (DPE) for the purposes of seeking a Gateway Determination.

All Planning Proposals are required to be referred to the Local Planning Panel, unless they meet any of the following exemptions:

- the correction of an obvious error in a local environmental plan;
- matters that are of a consequential, transitional, machinery or other minor nature; or
- matters that Council's General Manager considers will not have any significant adverse impact on the environment or adjacent land.

The Planning Proposal does not meet any of the exemption criteria and therefore must be referred to the Local Planning Panel for advice prior to Council making any determination on the matter.

CONSULTATION REQUIREMENTS

Should Council determine that the Planning Proposal proceeds, community engagement will be undertaken in accordance with Council's Community Engagement Protocol and the

requirements of any Gateway Determination issued by the Department of Planning and Environment (DPE).

DETAIL

1. Panel recommendation

Council officers prepared a detailed assessment report which was presented to the North Sydney Local Planning Panel (NSLPP). That report can be viewed via the following link:

https://www.northsydney.nsw.gov.au/files/assets/public/docs/1_council_meetings/committees/nslpp/9_november_2022/pp01_71-89_chandos_street_st_leonards_-_pp522_rpt.pdf.

On 9 November 2022, the NSLPP considered this report to assist with its deliberations. A copy of the NSLPP Minutes and recommendation is available via the following link:

https://www.northsydney.nsw.gov.au/files/assets/public/docs/1_council_meetings/committees/nslpp/9_november_2022/nslpp_-_planning_proposal.pdf.

The Panel recommended the following:

The Panel concurs with the Officer's Assessment Report and accordingly recommends to the Council that the Planning Proposal proceed to a Gateway determination, subject to the Planning Proposal being amended to a maximum building height of 43 metres for a twelve storey building, with an additional height allowance for the lift overrun and use of the rooftop for communal open space. These elements, including the balustrade, are all to be located to be not visible from the public domain at street level.

The Planning Proposal demonstrates both site specific and strategic merit and is consistent with the State 2036 Strategy and Local Government plans and policies.

The Panel endorses the comments provided in the Council Officer's report to assist the preparation of the development application to guide the built form outcome for this prominent corner site.

Further, by way of comment, the Panel considers that in the final detail of the architectural plans, consideration must be given to providing an appropriate interface to the lower density residential area to the east of Oxley Street. In this regard the design must consider the massing and architectural detail. This includes the height of the ground floor commercial area and fenestration, and consideration to respect the change in topography as well as the need to reduce the basement footprint to ensure deep soil planting with canopy trees on the Oxley Street setback.

The Panel considers that the entering into of a voluntarily planning agreement is a fundamental aspect in order to proceed with the Planning Proposal to ensure public domain improvements. In this regard the offer made by the applicant for an active through-site link, the dedication of land for a linear park and associated public domain works is required as a minimum. The Panel encourages the applicant to also

investigate more affordable housing which may be achieved through a mix of reduced dwelling sizes and minimisation of parking given the strategic location of the site close to public transport. Consideration should also be given to making available a number of units to be managed by a housing provider/authority for a period of 15 years for essential workers, and sustainability measures incorporated into the development.

2. Key issues

2.1 Strategic and Site-Specific Merit

The Planning Proposal is considered, on balance, to demonstrate strategic merit, the main reason being that it is consistent with the provisions of Council's *St Leonards/Crows Nest Planning Study – Precincts 2 & 3* and the DPE's *St Leonards and Crows Nest 2036 Plan*. The proposal is requesting a maximum building height of 12-storeys, an overall FSR of 4:1 and a minimum non-residential FSR of 1:1, which is consistent with the built form recommendations of the *2036 Plan*. It also seeks to deliver public domain upgrades (Oxley Street linear park) envisaged in Council's Study.

The Planning Proposal is also considered to demonstrate site-specific merit, as the accompanying indicative reference design adequately demonstrates that a building envelope consistent with key development standards under the Apartment Design Guidelines and other applicable site and DCP considerations (existing and proposed) can be accommodated on the subject site, that an appropriate level of amenity can be achieved and will not result in a level of impact (overshadowing, privacy, wind, traffic) significantly different to that envisaged under Council's Study and the *2036 Plan*.

It is recommended that the applicant's suggested amendments to NSDCP 2013 not be progressed at this time, as the suggested provisions are either consistent with existing DCP controls (setbacks, car accommodation) or align with proposed controls (podium, accessibility and permeability) under Council's *draft Amendment to NSDCP 2013 (2036 Plan)*, which was publicly exhibited from 4 October to 15 November 2022. The proposed public domain improvements will form part of the detailed terms of the VPA, which will be required to be negotiated and resolved prior to exhibition.

The Local Planning Panel, in its recommendations, has emphasised the importance of the final detailed architectural design on this prominent corner site, in order to provide an appropriate interface to the lower density residential area to the east of Oxley Street. As detailed in the Council's Officer's report, the *2036 Plan* and NSDCP 2013 requires a 4 storey podium be provided along the Chandos Street and Oxley Street frontages. Due to the length of the block (approximately 68m) and significant ground level changes across the site, a stepped podium is recommended to maintain a characteristic 4 storey podium height across the site, particularly along Oxley Street. Council's *draft Amendment to NSDCP 2013 (2036 Plan)* seeks to introduce the following provisions under section 3.1 to Part C to NSDCP 2013:

P2 – Corner sites are to maintain a consistent podium height to all street frontages to achieve consistent built form.

P5 – If required, podiums are to step down with the topography.

Council's *draft Amendment to NSDCP 2013 (2036 Plan)* also seeks to incorporate provisions that would require basements to be set back the same distance as any applicable whole of building setbacks, to ensure sufficient soil depth is provided to enable the planting of canopy trees. This is a provision that may also be included within the detailed terms of the VPA.

2.2 Affordable Housing

The Local Planning Panel recommended the applicant be encouraged to investigate more affordable housing, which may be achieved through the provision of a mix of reduced dwelling sizes, and be invited to consider making available a number of units to be managed by a housing provider for the purposes of key worker housing.

The lack of studio apartments and 2-bedroom apartments, and over-provision of 3-4 bedroom apartments is not supported, and a more appropriate dwelling mix consistent with the requirements of NSDCP 2013 is recommended, to better align with North Sydney's housing needs and to provide more affordable housing options. This can be addressed during the future detailed Development Application stage.

Council's ability to leverage any additional public benefits is significantly constrained by the imposition of a Special Infrastructure Contribution (SIC). Whilst the applicant may be invited to consider making available a number of units to be managed by a housing provider for the purposes of key worker housing, in the absence of an adopted Affordable Housing Scheme there is currently no mechanism to mandate the provision of affordable housing.

SUBMISSIONS

There are no statutory requirements to publicly exhibit a Planning Proposal before the issuance of a Gateway Determination. However, Council sometimes receives submissions in response to planning proposals which have been lodged but not determined, for the purposes of seeking a Gateway Determination. The generation of submissions at this stage of the planning process arise from the community becoming aware of their lodgement through Council's application tracking webpage and on-site signage.

At the time of reporting, one (1) submission had been received. Concerns were raised with respect to the proposed increase in height and density, and the overall scale and impact of the proposed development (overshadowing, privacy and loss of views), when compared to existing development in the area. These issues have been addressed in the body of the Council Officer's assessment report.

CONCLUSION

The Planning Proposal seeks to amend NSLEP 2013 to increase the maximum building height requirements. and to incorporate new FSR and non-residential FSR controls as it relates to land at 71-89 Chandos Street, St Leonards.

The Planning Proposal and accompanying reference design is considered, on balance to demonstrate strategic and site-specific merit as it:

- Achieves the objectives and actions of high-level strategic planning strategies relating to the site, including the Regional Plan, North District Plan and North Sydney Local Strategic Planning Statement;
- Is consistent with the provisions of the *St Leonards/Crows Nest Planning Study – Precincts 2 & 3*, the *St Leonards and Crows Nest 2036 Plan* and accompanying *Ministerial Direction 1.13 – Implementation of St Leonards and Crows Nest 2036 Plan*; and
- Demonstrates that the site can be acceptably developed to the requested height and density insofar that it achieves an appropriate level of amenity, and the impacts arising from the proposal (overshadowing, privacy, wind, traffic) are not significantly different to that anticipated under the *2036 Plan*.

To ensure future development on the site is consistent with the number of storeys under the 2036 Plan, it is recommended that the Planning Proposal be amended to a maximum building height of 43m, and an additional local provision allowing the maximum building height to be exceeded by no more than 2m for portions of the building providing inclusive access to the communal open space at the rooftop (i.e. lift overrun).

Further resolution on the detailed terms of the VPA offer (including provision of security, public domain treatment, registration on title and other matters) will be required to be negotiated prior to the exhibition. It is recommended that the Planning Proposal and draft VPA be exhibited concurrently, to allow the community full understanding of what is being proposed.

Whilst the applicant may be invited to reconsider its VPA offer to include making available a number of units to be managed by a housing provider for the purposes of key worker housing, in the absence of an adopted Affordable Housing Scheme, there is no mechanism for Council to mandate the provision of affordable housing.