

8 February 2010

**REVIEW OF RECOMMENDATION IN THE DIRECTOR GENERAL'S REPORT
COMMERCIAL/RETAIL AND HOTEL DEVELOPMENT
88 WALKER STREET AND 77- 81 BERRY STREET, NORTH SYDNEY**

1.0 INTRODUCTION

On 21 January 2010, the Minister for Planning requested the PAC to undertake a review of the reasonableness of the Department's recommendation to approve the above development subject to conditions.

The PAC consisted of Professor Kevin Sproats and Ms Donna Campbell. Professor Sproats chaired the Review.

2.0 NATURE OF REVIEW

The PAC has reviewed a copy of the Director General's Environmental Assessment Report (DG's Report) and the proponent's plans and photomontages. The PAC was also thoroughly briefed by senior staff from the Department of Planning on 1 February 2010.

The Department provided the PAC with copies of submissions from the Council and from residents of the adjoining Beau Monde building. The Sydney Harbour views enjoyed by some residents of this building are impacted by the proposal.

PAC members are familiar with the site and Ms Campbell undertook a site inspection.

3.0 PROPOSAL

The proposal is for commercial/retail and hotel development on two adjoining sites in North Sydney. A commercial tower is proposed for 77-81 Berry Street and a hotel is proposed for the site at 88 Walker Street. Construction will necessitate demolition of existing buildings on both sites.

The application and Environmental Assessment were placed on exhibition between 3 June 2009 and 3 July 2009. The application provided for a part 28/part 37 story commercial building on the Berry Street site; a 33 story x 200 room 4.5 star hotel on the Walker Street site; and associated pedestrian, car parking, road and public domain works.

Following exhibition of the Environmental Assessment and receipt of submissions, the Department identified issues relating to the height, urban design /built form matters and the need for cumulative wind and traffic assessments in light of another Part 3A proposal at 86-90 and 100 Mount Street.

The Department requested the proponent to address these issues and submit a Preferred Project Report (PPR).

The DG's Report provided to the PAC is based on the proposal as set out in the PPR. A detailed description of the proposal and the changes made in the PPR are set out at pages 15 and 16 of the Report.

The Report notes that building height was not reduced in the PPR. Instead, the proponent provided further justification for the height proposed in the initial application. The Department has noted that the PPR otherwise addressed all the matters that it had raised.

4.0 STRATEGIC PLANNING CONTEXT

The proposal is located within the heart of the North Sydney CBD, close to existing commercial, retail and community services and transport infrastructure.

The proposal will assist in meeting targets contained in the Sydney Metropolitan Strategy by providing new jobs in both the office and hotel /tourism sectors within a strategically located centre and economic corridor, whilst efficiently using current infrastructure.

The Draft Inner North Subregional Strategy requires that the Inner North Subregion provide 60,100 jobs by 2031. Of these, 12,500 jobs are to be provided within the North Sydney CBD.

It is estimated that the proposal will provide in the order of 70,000 square metres of non-residential floor space making a significant contribution to achievement of the employment objective.

5.0 STATUTORY CONTEXT

The sites will be covered by the proposed Draft North Sydney Comprehensive LEP 2009, adopted by Council on 30 November 2009. Details concerning the local planning instruments that currently apply to the sites and the draft Comprehensive LEP are provided in the DG's report (pages 21 and 22).

In brief, the proposed use of the sites for commercial/ retail and hotel development is permissible with consent under both the existing and proposed planning controls.

The DG's report contains tables showing the extent to which the proposal complies with the existing and proposed controls in relation to minimum site area, floor space ratio, gross floor area and height. (Tables 1 and 2 on pages 15 of DG's Report)

The proposal complies with the proposed Comprehensive LEP in all respects except in relation to the height of the commercial tower on 77-81 Berry Street. 28 storeys (RL 166m) are proposed for the northern part of the site and 37 storeys (RL 198m) for the southern part. The limit under the Comprehensive LEP is 25 storeys (RL 155m) for the northern part and 30 storeys (RL 170 m) for the southern part.

The height controls proposed in the Comprehensive LEP have been the subject of public consultation. The planning controls being replaced by the Comprehensive LEP do not impose a height limit but instead adopt shadowing restrictions. The DG's report notes that these composite shadow area controls have been subject to a review in response to widespread concerns of uncertainty.

A key objective for the controls in the Comprehensive LEP has been to determine maximum heights with built form defined by setbacks and site amalgamation criteria. The Comprehensive LEP height controls derive from extensive 3D modelling commissioned by the Council resulting in property specific spot heights for each CBD property.

The other key objective for the Comprehensive LEP has been to control the extent of additional shadowing of particular areas and sites within the CBD (heritage items, special areas, and public open space) and residential areas outside the CBD. The controls allow greater flexibility with the removal of the prohibition on any additional overshadowing of certain areas within the CBD between 10am and 12 noons year round.

Variations are permitted to the height controls subject to –

- The variation being justified by the merits of the proposal and public benefits
- Any increase in overshadowing not reducing the amenity of any land.

6.0 PUBLIC SUBMISSIONS

Public submissions were received on both the original application and Environmental Assessment and on the proposal as amended by the Preferred Project Report. In particular, objections to the proposal were received from Council and from residents of the Beau Monde building.

On the 20 July 2009, Council objected to the proposal on the grounds of excessive FSR and height, non compliance with planning controls, impacts on the public domain, overshadowing and loss of views to some residents of the Beau Monde building.

On the 9 November 2009, the Council continued its objection to the proposal despite the modifications in the PPR. However, the DG's report notes that on 30 November 2009 Council resolved to incorporate new height controls in its draft Comprehensive LEP that would largely permit the proposal subject to a reduction in height.

Submissions from residents of the Beau Monde building essentially focussed on the height, bulk and scale of the proposal and their subsequent loss of views and amenity.

A detailed submission was made by Ingham Planning on behalf of the residents and is summarised in the DG's report in Appendix G.

7.0 KEY ISSUES

The DG's Report identified the following key issues.

7.1 Height

7.1.1 Compliance with local planning controls

88 Walker Street (Hotel Tower)

The DG's Report notes that the height and envelope of the proposed building does not increase overshadowing to any key area within the CBD or residential development outside the CBD.

The height also complies with the draft Comprehensive LEP.

77 - 81 Berry Street (Commercial Tower)

The Department applied the height and shadow controls in the draft Comprehensive LEP.

The DG's report notes that the height of the proposed commercial tower exceeds the Draft Comprehensive LEP height limits. The northern part of the building exceeds the height limit by 3 storeys (11 metres) and the southern part exceeds the limit by 7 storeys (including 2

levels of plant room). The non-complying extra storeys result in a total additional GFA of 8,190sqm.

The Proponent has justified non-compliance with the height requirements on following grounds:

- The PPR provides an area of 1,100sq.m as ground level setbacks and public domain;
- A minimal increase in overshadowing of areas outside the CBD;
- An appropriate built form outcome in respect of the CBD skyline; and
- An additional 6m setback to the Beau Monde building, providing a benefit relating to views and separation amenity. This additional setback has resulted in 3,340sq.m less GFA than could be achieved in a complying envelope.

7.1.2 Views and outlook

The DG's Report has assessed the impact of the loss of views of residents on the southern side of the Beau Monde building at pages 30-35.

The Report notes that significant views on the southern side of the building generally commence at level 15 and above, with glimpses of Sydney Harbour and of the tops of the arches of the Sydney Harbour Bridge. The Department has advised that 83 out of the 241 apartments in the building are located on the southern elevation and, of these, 14 are the most significantly affected by loss of views and outlook. These are the apartments located in the centre of the southern side. Apartments on the southern side with a corner aspect enjoy a more expansive view and outlook to the south east and south west.

The Report notes that the proponent has provided an additional 6m setback to the Beau Monde building creating an overall separation distance of 24m and significantly improving the outlook and extent of the views for the corner apartments at all levels of the Beau Monde building.

However, to the extent that the Commercial Tower exceeds the Comprehensive LEP height limits, the Report concludes that this would have an additional adverse impact on levels 27-36 to varying degrees. Whilst the exceedences do not result in additional loss of Sydney Harbour or Sydney CBD skyline views, they do increase adverse impacts on those occupants in terms of bulk, scale and overbearing and loss of sky and outlook,

The impact on views and outlook has been assessed in the Report in accordance with the principles set out in the Land and Environment Court decision *Tenacity Consulting v Warringah Council*.

7.1.3 DG's recommendation on height limit

The DG's Report concludes that dramatic modifications would be required to the proposal to retain Sydney Harbour, Sydney Harbour Bridge and Sydney CBD skyline view lines for all the apartments in the Beau Monde building. Further, such a modification would be unsustainable and inequitable in the context of the strategic importance of the land and its ability to contribute significantly to strategic planning objectives for economic growth, job creation and the maintenance of North Sydney as a prime Sub regional Centre.

However, the Report recommends that a condition be imposed requiring a reduction in the height of the commercial tower by 7 storeys (except for the plant room levels) on the southern part of the site and by 3 storeys over the northern part. The proposal would then comply with the draft Comprehensive LEP (except for the plant room)

The Report recommends that the footprint of the 2 plant levels be reduced and setback, noting that if the east-west section of the plant room level is reduced, the additional height

would have no adverse impact on the upper levels of the Beau Monde building as the northern elevation of the plant room would be reduced in area.

7.2 Privacy, Amenity and Wind Impacts

The proposed development is set back 24m from the southern façade of the Beau Monde building which is 6m in excess of that required by SEPP65. The Department was satisfied that increased separation distance would assist in ensuring the privacy of the residents in Beau Monde and provide greater outlook for more apartments than would otherwise be provided.

In addition to the 24m separation distance, the Proponent is also proposing to install shading screens on the northern elevation of the commercial building in order to obscure views into and out of the proposed building.

The Department did not consider the minor overshadowing of residential properties at the western end of Whaling Road, Neutral Bay to adversely impact on the solar amenity of these residents.

The proponent included a Wind Report addressing the cumulative impacts from the proposal and future developments surrounding the subject site. This Report included several amelioration measures including landscaping, balustrades and awnings.

These measures were supported by the Department and have been incorporated into the proposal.

7.3 Transport, Access and Parking

Several issues were raised in submissions regarding traffic and transport impacts of the proposal. The Department was satisfied that the issues raised in submissions had been adequately addressed in the Proponent's PPR. The PPR included proposed arrangements for the Mount/ Walker and Berry Street Walker Street intersections.

Walker Street / Berry Street Intersection

The Proponent's Traffic Consultant was of the view that as traffic would be arriving at the site in the morning, the two proposed developments would impose little additional traffic on the Berry / Walker Streets intersection and the developments would therefore have minimal impact in the morning peak period.

However, in their submission, the RTA required the Proponent to provide improvements to the intersection of Berry Street and Walker Street. In response, the Proponent has suggested they provide a monetary contribution to Council of \$10,000 to undertake the works and this payment of the contribution form part of a VPA. This is reflected in the Department's recommendations.

The proposal includes the creation of the Denison Street public plaza which requires the reconfiguration of the existing laneway network. A new 12.2m wide one way through site link road running west is also proposed, linking Little Spring Street and Denison Street. The link will be open to vehicles and pedestrians 24 hours a day. To manage these changes it is proposed that Little Spring Street be reconfigured and widened, south of the through - site link to cope with increased traffic volumes.

It is proposed that all vehicle access for the commercial tower and hotel will be via the new basement entrance on the western side of Little Spring Street and a drop off zone specifically for hotel guests will be provided for on the eastern side of Little Spring Street.

The Department was supportive of these arrangements.

7.4 Other Issues

The Department has considered other issues relating to heritage, VPA/Section 94 Contributions, parking, noise and utilities. The PAC's review indicates that the Department has adequately addressed these issues.

8.0 CONCLUSION

The PAC considers that the Director-General's Report provides a comprehensive and thorough assessment of the proposal and that the proposed conditions are reasonable in ameliorating potential adverse impacts of the proposal.

In particular, the PAC considers that it is appropriate to apply the height restrictions in the draft Comprehensive North Sydney LEP.

There is no doubt that the proposal will still impact on the Harbour views enjoyed by the south facing apartments in the Beau Monde building from level 15 and above, despite the additional 6 metre setback from the Beau Monde building provided by the proponent. However, the PAC agrees that it would be unreasonable to require the proposal to be further modified to overcome those impacts given the strategic importance of the proposal and its ability to contribute to objectives for economic growth, job creation and the maintenance of North Sydney as a prime Sub -regional Centre.

The PAC concludes that the Department's recommendation to approve, subject to conditions, the Part 3A Major Project Application from Eastmark Holdings Pty Ltd for a commercial, retail and hotel development in North Sydney is reasonable.



Kevin Sproats
PAC member



Donna Campbell
PAC member