

Relevant Information for Council

FILE: X018299 **DATE:** 18 October 2021

TO: Lord Mayor and Councillors

FROM: Graham Jahn AM, Director City Planning, Development and Transport

SUBJECT: Information Relevant To Item 9.2 – Post Exhibition - Planning Proposal - 30-62 Barcom Avenue, Darlinghurst

Alternative Recommendation

It is resolved that the matter be deferred to the next meeting of Council to enable further consideration by the Central Sydney Planning Committee.

For Noting

In presenting the matter to the Central Sydney Planning Committee the following amendments, reflecting matters raised at the Transport, Heritage and Planning Committee were proposed.

It is resolved that Council:

- (A) Council note the requirements of the Gateway Determination issued by the Department of Planning, Industry and Environment to amend the contents of Planning Proposal: 30-62 Barcom Avenue, Darlinghurst prior to exhibition, as shown at Attachment D to the subject report;
- (B) Council note the matters raised in response to the public exhibition of Planning Proposal: 30-62 Barcom Avenue, Darlinghurst and Draft Sydney Development Control Plan 2012 - 30-62 Barcom Avenue, Darlinghurst, as shown at Attachment E to the subject report;
- (C) Council approve Planning Proposal: 30-62 Barcom Avenue, Darlinghurst, shown at Attachment A to the subject report and amended in response to submissions, to be made as a local environmental plan under Section 3.36 of the Environmental Planning and Assessment Act 1979;

- (D) Council approve Draft Sydney Development Control Plan 2012 - 30-62 Barcom Avenue, Darlinghurst, as shown at Attachment B to the subject report and amended in response to submissions, noting that the approved development control plan will come into effect on the date of publication of the subject local environmental plan **subject to the following amendments:**
- (i) Insert (as per the bold italic) an additional subclause (c) after provision (2)(b) in section 6.3.x.x Built Form, as follows:

*(2) Development is to provide third and fourth storey upper level setbacks to the building to deliver a building envelope which **achieves** responds to:*

 - (a) a predominant 3 storey street wall height to Barcom Avenue in accordance with the Building street frontage height map; and
 - (b) minimum solar access requirements for neighbouring dwellings and their private open space as detailed in provisions 4.1.3.1(1) and (2) of this DCP; and
 - (c) careful transitioning of any additional height at the side and rear boundaries to respond to the scale and amenity of the terrace houses and lower level apartments nearby the site and in any case the uppermost level (Level 4) is to be setback no less than 6m from the southern side boundary and 5.5m from the eastern rear boundary.***
 - (ii) Insert the following after provision (2) in section 6.3.x.x Built Form:

(3) Windows and private open space on the third and fourth storeys are to be screened or treated to provide high levels of privacy to nearby residential properties.; and
- (E) authority be delegated to the Chief Executive Officer to make minor variations to Planning Proposal: 30-62 Barcom Avenue, Darlinghurst and Draft Sydney Development Control Plan 2012 - 30-62 Barcom Avenue, Darlinghurst to correct any minor drafting errors prior to finalisation.

Purpose

To provide an Alternative Recommendation for Council's consideration, following the 11 October 2021 Transport Heritage and Planning Committee meeting and the 14 October 2021 Central Sydney Planning Committee meeting. The Central Sydney Planning Committee has deferred the matter for the purposes of an inspection of the subject site. The matter will be reported back to Council following a decision by the Central Sydney Planning Committee.

Background

At the 11 October 2021 Transport, Heritage and Planning Committee meeting further information was sought about the planning proposal and draft DCP amendment for 30-62 Barcom Avenue, Darlinghurst (the site) with regard to:

1. Overshadowing and setbacks;
2. Privacy; and
3. 6 star NABERs Energy requirements.

Overshadowing and setbacks

Sunlight for neighbours will be protected through existing DCP overshadowing controls and new DCP controls which require setbacks to ensure amenity, achieve sunlight and transition the scale of buildings. These controls are supported by an amendment to the proposed LEP control following submissions, which requires overshadowing to be considered before any additional floor space or height is awarded.

Sydney DCP 2012 requires a minimum of 2 hours direct sunlight between 9am and 3pm on 21st June (mid-winter) to at least 1 sqm of living room windows and to at least 50 per cent of the minimum amount of private open space. Where existing levels of solar access are less than this, new development is not to create any additional overshadowing (excluding side windows).

New development at 30-62 Barcom Avenue, Darlinghurst must be designed at the development application stage so as to ensure it meets the overshadowing requirements of the Sydney DCP 2012.

The overshadowing of dwellings neighbouring the site in mid-winter was analysed and attached to the subject report.

1A Barcom Avenue

No shadow is cast by the subject site over 1A Barcom Ave, which is located across Barcom Avenue to the north west. Due to the orientation of sites, shadows are cast along the alignment of Barcom Avenue at 9am in mid-winter with shadows from the subject site moving away from 1A Barcom Avenue as the sun moves north.

Addressing overshadowing

Whilst the maximum building envelope in the draft DCP that went on public exhibition generates only small increases in overshadowing to the private open space of two neighbours, until a detailed scheme is developed at the development application stage the full extent of overshadowing cannot be determined. The analysis demonstrates that a 4 storey building could be achieved on the subject site, but that detailed setbacks and height graduations for the third and fourth storeys will need to be implemented at the development application stage to comply with the overshadowing requirements of the DCP.

To ensure compliance with the overshadowing controls, particularly to the private open space of 64 Barcom Avenue and 61-63 McLachlan Avenue, it is recommended the Planning Proposal and draft DCP be amended to address the concerns raised by submitters. The subject report included the following amendments:

- a requirement in the LEP to ensure overshadowing is considered before awarding the maximum available height and floor space; and

- remove prescriptive height in storey and setback drawings in the DCP in favour of a performance based planning control that requires setbacks sufficient to achieve the overshadowing requirements of the DCP coupled with minimum setbacks for the uppermost level.

The recommended amendment is to require setbacks so that the additional height at the side and rear boundaries is to respond to and transition to the scale and amenity of the terrace houses and lower level apartments near the site. This may require a partial setback to part of Level 3 as well as minimum setbacks for Level 4.

This approach ensures the minimum required solar access of neighbouring dwellings under the Sydney DCP 2012 can be achieved.

A flexible approach to the building envelope will also allow for design inclusions and modifications to be made in pursuit of the 6 star NABERS Energy outcome. This will require building envelope maximises natural light and ventilation and to address passive heating and cooling amongst other design factors.

Privacy

Issues relating to privacy are best analysed and addressed at DA stage under existing Sydney DCP 2012 amenity controls when details around window size, placement and glazing are known. The consent authority can then impose conditions of consent to protect privacy such as requiring obscured glazing, limiting the size, placement or orientation of windows or setting limitations on use of any podium area, hours of operation and so on.

To ensure privacy is protected, it is proposed to include a further provision within the DCP which requires design and treatment of windows and any private open space associated with the commercial floor space to account for the need to provide high levels of privacy amenity for nearby residential properties.

NABERS Energy Requirements

The draft controls approved by Council and CSPC in September 2018 included a requirement for a 6 star NABERS Energy Commitment Agreement in both the Planning Proposal and the draft DCP.

The Gateway Determination issued by the Department in July 2019 required that the provision for the Commitment Agreement be removed from the Planning Proposal prior to public exhibition. A review of the Gateway condition by the Independent Planning Commission in May 2020 upheld the Gateway Determination.

The requirement for a 6 star NABERS Energy Commitment Agreement has been retained in the draft DCP. The commitment agreement and associated modelling will need to be submitted with a development application. A consent can then be conditioned to ensure the building is constructed to achieve the rating. The actual rating is then sought one year after the building begins operating in accordance with the Commitment Agreement.

Prepared by: Samantha Bird, Specialist Planner

Approved

A handwritten signature in black ink, appearing to read 'GJahn', positioned to the right of the 'Approved' text.

GRAHAM JAHN AM

Director City Planning, Development and
Transport