

<b>JRPP No:</b>	<b>2010SYE025</b>
<b>DA No:</b>	<b>DA 153/10</b>
<b>PROPOSED DEVELOPMENT:</b>	<b>545-553 Pacific Highway, St. Leonards</b> Demolition of existing buildings and erection of new mixed use development with basement car parking
<b>APPLICANT:</b>	P. D. Mayoh Pty Ltd Architects
<b>REPORT BY:</b>	Nicola Reeve, Senior Assessment Officer & Andy Nixey, Executive Planner  North Sydney Council 9936 8100

### **Assessment Report and Recommendation**

**Attached:** Advice and conditions of the Roads & Traffic Authority  
Traffic Engineer's referral comments  
Urban Design Advisory Panel minutes  
Photograph of existing view from Apartment 702W/599 Pacific Highway

<b>ADDRESS/WARD:</b>	545-553 Pacific Highway, St. Leonards (W)
<b>APPLICATION No:</b>	DA153/10
<b>PROPOSAL:</b>	Demolition of existing buildings and erection of new mixed use development with basement car parking
<b>PLANS REF:</b>	Drawings numbered A002E, A003E, A100E, A101E, A102E, A103E, A104E, A105E, A106E, A107E, A108E, A109E, A110E, A111E, A112E, A113E, A114E, A150E, A151E, A152E, A153E, A160E, A161E, A162E, A200A and A500A, dated 20 April 2010, drawn by P.D. Mayoh Architects, and received by Council on 23 April 2010
<b>OWNER:</b>	Matthew Lepouris Pty Ltd & WFM Motors Pty Ltd
<b>APPLICANT:</b>	P. D. Mayoh Pty Ltd Architects
<b>AUTHORS:</b>	Andy Nixey, Executive Planner/ Nicola Reeve, Senior Assessment Officer
<b>DATE OF REPORT:</b>	19 July 2010
<b>DATE LODGED:</b>	23 April 2010
<b>RECOMMENDATION:</b>	Refusal

## DESCRIPTION OF PROPOSAL

The subject application proposes demolition of the existing buildings and structures at 545-553 Pacific Highway, St Leonards, and construction of a new mixed use development on the site, which is 12-storeys in height from the Pacific Highway frontage and 13-storeys from the rear lane (Clarke Lane). The proposal has a maximum height of 42.1 metres, with the proposed building form being a 4-to-5 storey podium (extending to RL102.06) with a further 8-storey tower located over the southern end of the site (extending to RL127.36).

The proposed development incorporates the following:

- Provision of non-residential uses on the lower ground, ground and first floor levels of the building. The indicative uses proposed are a restaurant, café, motor showroom and recreational facility;
- Provision of 59 residential apartments on Levels 2 to 11, with the following composition proposed:
  - 2 x Studio apartments;
  - 16 x 1-bedroom (plus study) apartments;
  - 33 x 2-bedroom apartments; and
  - 8 x 3-bedroom apartments.
- Provision of communal facilities for residents on the rooftop of the podium (at Level 4). This area will contain a communal garden, lap pool, pool deck and BBQ area. A common room is also proposed adjacent to the communal garden;
- Basement car parking for 78 vehicles across three levels, with access to this parking provided from Clarke Lane. Of these car parking spaces, 50 spaces are allocated to residential (including 7 disabled spaces) and the remaining 28 spaces are allocated to the non-residential uses proposed within the development. Two loading spaces are also proposed within the car park; and
- Provision of landscaping and public domain works.

## STATUTORY CONTROLS

North Sydney LEP 2001

- Zoning – Mixed Use
- Item of Heritage – No
- In Vicinity of Item of Heritage – Yes (No.583 Pacific Highway, former Marco Building; No.28-34 Clarke Street, The St Leonards Centre)
- Conservation Area – No
- FSBL - No

Section 94 Contributions

Environmental Planning & Assessment Act 1979

SEPP No. 1 – Development Standards:

- Clause 29 (Building Height)

SEPP No. 55 – Remediation of Land

SEPP No.65 – Design Quality of Residential Flat Development

SEPP (Building Sustainability Index: BASIX) 2004

SEPP (Infrastructure) 2007

Sydney Harbour Catchment REP and DCP

## POLICY CONTROLS

DCP 2002

## DESCRIPTION OF LOCALITY

The site has a legal description of Lots 1 and 2, DP 1081379, Part Lots 3 and 4, DP 2872 and Lot 1, DP 432019, and is commonly known as 545 and 551 to 553 Pacific Highway, St Leonards. The site is located on the eastern side of the Pacific Highway, directly to the north of its intersection with Oxley Street. Clarke Lane abuts the rear (eastern) boundary of the site.

The site is rectangular in shape and has a frontage to the Pacific Highway of 47.33 metres, a frontage of 32.42 metres to Oxley Street (including splay corner), and a frontage of 50.28 metres to Clarke Lane. The total site area is 1492m<sup>2</sup>. The land slopes towards the rear (Clarke Lane) at a gradient of around 7%. The subject site currently contains two commercial buildings, one of which is occupied by a motor showroom (refer to **Figures 1 to 3**, below).

Adjoining the site to the north is No.563-565 Pacific Highway, containing a two storey building currently used as a retail showroom (refer to **Figure 4**, below). An unoccupied building and forecourt (previously utilised as a motor showroom) is located on the opposite side of Oxley Street. The St. Leonards Centre (listed as a heritage item under NSLEP2001) is located directly to the east of this site. To the west, on the opposite side of Clarke Lane, are a 6-storey commercial building known as No.38 Oxley Street and a 7 to 8-storey mixed use building known as No.34-36 Oxley Street. Further north along Clarke Lane is a 8-storey mixed-use building known as No.1-5 Albany Street.

The site is located within the St Leonards Town Centre. The subject site and adjacent land to the south, east and north are zoned 'Mixed Use' pursuant to NSLEP 2001. Sites to the west of the site, located on the opposite side of the Pacific Highway, are within the boundaries of Lane Cove Council and are zoned for commercial development.



**Figure 1 - The subject site as viewed from the western side of Pacific Highway**



**Figure 2 - The subject site as viewed from Oxley Street looking north-west**



**Figure 3 - The subject site as viewed from Clarke Lane looking north**



**Figure 4 - Existing development directly to the north of the subject site. The Abode building can be seen in the background.**

## RELEVANT HISTORY

### ***Relevant history prior to lodgement***

A pre-lodgement meeting for redevelopment of the site was held with Council staff on 3 June 2008. The form of development proposed was similar to that sought under the current proposal. The key issues identified with the proposal were:

- Height;
- View impacts; and
- Provisions of SEPP 65.

With particular regard to height, the applicant was advised that the extent of the variation sought to the development standard may not be able to be achieved through the use of SEPP No.1 and that consideration should therefore be given to a combined rezoning/development application under Section 72 of the Environmental Planning & Assessment Act, 1979.

*Development Application D81/09* was lodged on 17 March 2009. The application involved a similar form of development to that currently proposed with the main differences being that the tower extended a further 6.1 metres higher (to a maximum height of 48.2 metre) and the development contained a total of 61 residential apartments.

Council's Urban Design Advisory Panel (UDAP) reviewed the application on 1 April 2009. The Panel's comments concluded as follows:

*'The Panel does not support the proposal as it is out of scale with surrounding development. Although some aspects of the proposal have merit, a complete redesign is required to resolve the context, scale, built form and amenity concerns of the Panel.'*

The applicant was advised to withdraw the application in correspondence dated 8 April 2009 due to the extent of the non-compliance with Council's height control. The application was subsequently withdrawn on 15 May 2009.

Prior to the lodgement of a new development application, the proponents sought a pre-lodgement meeting with Council's UDAP. The revised proposal retained the previously proposed tower element and a height well in excess of the 26 metre height control. The meeting was held on 3 March 2010. The Panel provided the following conclusion:

*'Although the major improvement in amenity of the units is appreciated and the architectural character of the proposal is not at issue, the Panel cannot support the proposal as it is out of scale and context with surrounding development. The increased height is substantially above the desired future character of the area. Any change to the desired future character of the area should be the subject of review of the planning controls and is not a matter for the Panel to determine.'*

### ***History of the subject application***

The subject development application was lodged on 23 April 2010. Council's UDAP reviewed the application on 2 June 2010. The JRPP received a briefing on the proposal from Council staff on 16 June 2010.

Given the applicant clearly understood Council's position on the matter of height and use of SEPP1 yet chose to lodge the development application anyway, it was not considered a worthwhile exercise requesting the applicant to withdraw or significantly amend the application. The application therefore remains in the form that it was lodged.

## REFERRALS

### Roads & Traffic Authority

In accordance with the provisions of Clause 104 of the *State Environmental Planning Policy (Infrastructure) 2007*, the application was referred to the Roads and Traffic Authority (RTA) on 5 May 2010.

Council received a response from the RTA on 15 June 2010, advising that no objection is raised to the proposal and concurrence would be granted pursuant to Section 138(2) of the *Roads Act* for removal of the existing driveway accesses on the Pacific Highway.

The RTA also provided advisory comments to Council for consideration in the assessment of the application. These considerations and recommendations are able to be incorporated into conditions of any consent in the event that the Panel approves the subject application.

### Heritage

Council's Conservation Planner has raised no concerns with regard to impact on heritage items within the vicinity of the development.

### Traffic

The application was referred to Council's Traffic Engineer to assess the acceptability of the proposed development with regards to traffic and parking. It was advised that the following further additional information would be required to ascertain the impact of the proposed development

- Approximately how many cars a week/ month would be expected to go in and out of the showroom floor?
- If a customer has ordered a car and it has been delivered to the motor showroom, where is it parked until the car is picked up by the customer?
- Approximately how many cars a week/ month are delivered for collection by a customer?

The above list of additional information was provided to the applicant at a meeting on 2 June 2010. No further information has been provided to date.

**Given the application is recommended for refusal, the additional information and modifications sought in the above comments have not been pursued.** An additional reason for refusal has been included which pertains to the lack of information with regard to the comments above.

Nevertheless, in the event that the application is supported by the Panel conditions of consent can be imposed requiring either deferred commencement of the application to

resolve these matters or alternatively, provision of a detailed Transport Management Plan to address the operation and servicing of the development, with this information submitted to the satisfaction of Council. Alternatively, a condition could be imposed requiring the use of the showroom to be the subject of a further development application at a later date.

A copy of the referral comments of the Traffic Engineer has been attached for reference.

### **Building**

The application has not been specifically assessed for full compliance with the BCA, and any changes necessary for compliance with the BCA may require the submission of an application to modify the development consent.

### **Development Engineer**

Council's Development Engineer has raised no objection to the proposed development, subject to imposition of detailed engineering conditions being imposed on any consent.

### **Landscaping**

Council's Landscape Development Officer has advised that contrary to the proposed plans that the existing street trees along the Pacific Highway and Oxley Street frontages of the site are not suitable for retention. Instead, in the event of any approval of the application, it has been recommended that conditions be imposed requiring replacement street trees along these frontages and modifications to the proposed landscaping plan to require the planting of a more appropriate tree species on the Clarke Lane frontage.

### **Waste Management**

Council's Waste Educator has advised that the proposed location of the residential garbage storage area is unacceptable due to its proposed distance from the street and its internal layout. In the event of an approval, an appropriate condition can be imposed requiring revision of this garbage storage facility and submission of amended plans prior to the issue of a Construction Certificate.

### **Urban Design Advisory Panel**

Council's Urban Design Advisory Panel's (UDAP) considered the application at its meeting on 2 June 2010. A full copy of the minutes of this meeting are attached for reference, however, the conclusions made regarding the proposal are as follows:

*'The amenity of the units and the architectural character of the proposal is not at issue. The Panel has considered a taller tower on this site on two previous occasions and still cannot support the proposal as it is out of scale and context with surrounding development. Recent nearby developments have complied with the height control and having regard to consistency, non-compliance to the degree sought cannot be supported. The increased height is substantially above the desired future character of the area. Any change to the desired future character of the area should be the subject of review of the planning controls and is not a matter for the Panel (UDAP) to*



*determine.'*

## **SUBMISSIONS**

The owners of adjoining and nearby properties and the Holtermann Precinct Committee were notified of the proposed development, with the notification period being from 7 to 21 May 2010. In response to this notification, a total of **34 submissions** were received. The issues raised in the submissions are summarised as follows:

### **Basis of Submissions**

- Proposed height is out of scale and character with the surrounding area;
- Whilst documents submitted state that justification for additional height is not reliant on transitional heights, drawings submitted with the application include a diagonal transitional height line to demonstrate that the height is not excessive.
- Expect under the LEP height control for views to be protected above 8 levels. This proposal extends to 12 levels resulting in loss of view and amenity.
- The larger building will allow for more units drawing on the already extended facilities of the neighbourhood.
- Should the height be approved, we could expect future developers to use this as the new standard.
- Increased traffic congestion.
- Extent of breach to height control;
- Would establish a precedent for additional height along the Pacific Highway
- Would establish a precedent for additional height along the Pacific Highway;
- Any approval above the LEP height control would have serious implications for the quality of life and property values in the area;
- The proposed height is out of scale and uncharacteristic of the area.
- Additional height will restrict natural light;
- Will result in a loss of property values due to obstructed views;
- Lack of infrastructure and amenities in St Leonards to cope with increased population. No environmental impact studies have been submitted in this regard;
- Increased traffic during and after construction and would put increased strain on public parking.
- Loss of view and privacy arising from proposed height being significantly above the 26m development standard.
- Devalue apartment as it will tower above our building;
- Loss of natural light and loss of district and water views;
- Loss of privacy as a result of direct overlooking across the lane.
- Building is out of character with the area;
- Loss of privacy;
- Overdevelopment of the site and inconsistent with planning controls.
- Flaunting planning controls due to extent of non-compliance;
- Use of a restaurant/café at the proposed location on the Pacific Highway will not be utilised as it is devoid of character;
- Will set a precedent for other development along the Pacific Highway.
- Significant non-compliance with height development standard;
- Impact on views and natural light of nearby apartments;
- Change of tone for area, which has always been lower scale development in this area;
- Would create a precedent for further development in the area;
- Clarke Lane is narrow and will struggle to cope with the increased traffic.
- Far exceeds the height restrictions and sets precedent for further development;



- Results in a higher density for the entire area than was envisaged;
- Results in amenity impacts;
- Bought property on the understanding that development could only occur to height controls of Council.
- Impact on views, natural light and privacy from additional height;
- Concerned about extent of non-compliance with height control and precedent that such a development would have for area;
- Increased traffic movements in Clarke Lane, which has adverse impacts for pedestrians and vehicles;
- Greater traffic congestion for the surrounding streets.
- Object to extent of non-compliance with height control;
- Additional traffic both during construction and after completion;
- Impacts on availability of street parking;
- Amenity impacts on sunlight and views;
- If approved this development would set a precedent.
- Impact on views, natural light and privacy from additional height;
- Concerned about extent of non-compliance with height control and precedent that such a development would have for area;
- Increased density and population puts greater demand on facilities on the neighbourhood.

## CONSIDERATION

The relevant matters for consideration under Section 79C of the *Environmental Planning and Assessment Act 1979*, are assessed under the following headings:

## NORTH SYDNEY LEP 2001

The application has been assessed against the relevant numeric controls in NSLEP 2001 as indicated in the following compliance table. Additional more detailed comments with regard to the major issues are provided later in this report.

### Compliance Table


STATUTORY CONTROL – North Sydney Local Environmental Plan 2001				
Site Area – 1492m <sup>2</sup>	Existing	Proposed	Control	Compliance
Mixed Use Zone				
Building Height (Cl. 29) (max)	9.9m (545 Pacific Highway)  16.8m (551-553 Pacific Highway)	Podium: 13.6m to Pacific Highway  18m to Clarke Lane  Tower: 42.16m	26m	NO

Floor Space (Cl. 31) (max)	N/A	1.58:1	1:1 to 2:1	YES

## DCP 2002 Compliance Table

DEVELOPMENT CONTROL PLAN 2002		
	<b>Complies</b>	<b>Comments</b>
<b>6.1 Function</b>		
<b>Diversity of activities, facilities, opportunities and services</b>	Yes	The proposed development incorporates a suitable diversity of uses. The proposal includes appropriate retail and non-residential uses on the lower ground, ground and first floors of the development in accordance with the DCP. The proposal has incorporated an appropriate communal space for future residents within the development.
<b>Mixed residential population</b>	Yes  Yes	The proposed dwelling yield of one unit per 115.8m <sup>2</sup> of residential GFA is consistent with DCP provisions.  An appropriate dwelling mix is proposed, with only minor non-compliances with the DCP provisions, which are able to be supported. The development incorporates a total of six adaptable units in accordance with the requirements of the DCP.
<b>Maximum use of public transport</b>	Yes	Non-residential parking does not exceed DCP controls. The site has excellent access to public transport, located in close proximity to St Leonards railway station.
<b>6.2 Environmental Criteria</b>		
<b>Clean Air</b>	Yes	Satisfactory.
<b>Noise</b>	Yes (with conditions)	An Environmental Noise Assessment, prepared by Acoustic Logic, was submitted with the application. The report indicates that the proposal is capable of satisfying the DCP noise mitigation requirements subject to construction recommendations.
<b>Acoustic Privacy</b>	Yes (with conditions)	As noted above, an Environmental Noise Assessment, prepared by Acoustic Logic, was submitted with the application. The report indicates that subject to appropriate glazing, the proposal is capable of satisfying the DCP acoustic privacy requirements.

<b>Visual Privacy</b>	Yes (with conditions)	The proposal includes appropriate privacy mitigation measures and potential impacts that are able to be resolved by condition, as required.
<b>Wind Speed</b>	No	Although the proposed building exceeds 33m in height, a Wind Impact Report has not been submitted for assessment.
<b>Awnings</b>	Yes	An appropriate awning is proposed along the Pacific Highway frontage. Covered areas are also proposed within the building setback along Oxley Street.
<b>Solar access</b>	Yes	<p>There is no shadowing impact on existing or proposed areas of public open spaces between 11.30am and 2.30pm on the winter solstice as a result of the proposed development.</p> <p>The proposal incorporates an appropriate communal roof-top garden above the podium for use by residents, which receives adequate solar access.</p>
<b>Views</b>	Yes	<p>Compared to a form of development built to a compliant height of 26m across the site, the proposed reduction in the height below the maximum permissible across the northern portion of the site would result in less impact on views from some of the units within No.34-36 Clarke Lane (located on the eastern side of Clarke Lane).</p> <p>Although concern has been raised in a number of submissions regarding view loss from residential units located to the north of the site, an inspection of the view from one of the units within No.599 Pacific Highway (nominated by the Body Corporate as one of the most impacted units), it was concluded that no adverse impact in terms of view loss would arise from the proposed height non-compliance. A photo taken from the unit (702W) is provided directly after this table, refer to <b>Figure 5</b> (an A4-sized copy is also attached).</p>

		 <p><b>Figure 5 - The subject site viewed from unit 702W/599 Pacific Highway</b></p>
<b>6.3 Quality built form</b>		
<b>Context</b>	No	As a result of the proposed height, the building design is considered to be unacceptable and not suitably responding to the context (or future desired context) of the site.
<b>Skyline</b>	No	The extent of the proposed height non-compliance would result in a building that would appear uncharacteristic with the surrounding skyline.
<b>Public spaces &amp; facilities</b>	Yes	Appropriate integration of the non-residential areas with the public domain is proposed.
<b>Junction &amp; termination of streets</b>	Yes	The proposal accords with the control in that building height has been massed at the Pacific Highway/Oxley Street junction, with building height reduced on the northern section of the site. The key issue, however, is the extent of the height proposed.
<b>Through-site pedestrian links</b>	Yes	A through-site link is not required to be provided on this site.
<b>Streetscape</b>	Yes	Appropriate activation of the Pacific Highway, Oxley Street and Clarke Lane frontages would be achieved by the proposed non-residential uses.
<b>Subdivision</b>	Yes	Although formal site amalgamation does not appear to be proposed as part of this development application, the proposal would involve development across 5 lots and achieve a building with an appropriate frontage.
<b>Setbacks</b>	Yes	Appropriate setbacks are proposed. Refer to further discussion provided under Area Character Statement later in this report.
<b>Entrances and exits</b>	Yes	Satisfactory.
<b>Street frontage podium</b>	No	Although being 4-storeys, the Pacific Highway podium slightly exceeds 13

		metres in height. Refer to the Area Character Statement consideration of podiums later within this report.
<b>Laneway frontage podium</b>	No	<p>The Clarke Lane podium significantly exceeds the desired 10 metre (3-storey) podium height desired by the DCP for this part of St Leonards. No setbacks have been proposed on the uppermost floor of the podium in an attempt to achieve a more appropriate height to Clarke Lane.</p> <p>Refer to further assessment provided within the Area Character Statement consideration of podiums later in this report.</p>
<b>Building design</b>	<p>Yes</p> <p>No</p>	<p>No balconies are proposed to extend within the 3 metre setback above the podium.</p> <p>At 2.8 metres, the finished floor to ceiling height of the first floor fails to satisfy the 3.3 metre minimum requirement of the DCP and is marginal for a number of anticipated ground floor uses.</p>
<b>6.4 Quality urban environment</b>		
<b>High quality residential accommodation</b>	<p>Yes</p> <p>Yes</p> <p>Yes</p>	<p>All units meet the minimum size and width requirements and all are provided with balconies for private open space.</p> <p>The SEE states that 71% of units would receive two hours of solar access in midwinter. This is considered acceptable allowing for the orientation and size of the site and its location within a high density urban area.</p> <p>Appropriate cross-ventilation (80% of units) is proposed.</p>
<b>Balconies</b>	<p>Yes</p> <p>Yes</p>	<p>All of the proposed balconies would have a minimum area of 8m<sup>2</sup> and be at least 2 metres in depth.</p> <p>Balconies do not extend within the prescribed setback above the podium.</p>
<b>Accessibility</b>	<p>Yes (with condition)</p>	<p>No Accessibility report has been submitted with the application to demonstrate that the development would comply with requirements of AS1428.3 for disabled access.</p> <p>It is, however, noted that lift access is</p>

		proposed to all levels and level access is provided from all street entrance of the building, therefore, it is considered that compliance with AS1428.3 could be subject to a condition of consent.
<b>Safety and security</b>	Yes	Satisfactory.
<b>Car parking</b>	Yes	<p>The proposal provides a total of 78 parking spaces, 50 for residential use, 28 for the restaurant, café, motor showroom and recreational facility, and 2 courier spaces. It is also proposed to have 8 motorbike spaces, 24 bicycle lockers and 6 external bicycle rails. The proposed loading dock will have the capability of accommodating a medium rigid vehicle.</p> <p>As advised by Councils' Traffic Engineer, the proposal generally complies with the DCP parking requirements and is acceptable in this regard. Refer to the attached comments of the Traffic Engineer for further assessment.</p>
<b>Bicycle parking</b>	Yes	Refer to comment provided above, and can be conditioned to comply.
<b>Vehicular access</b>	Yes	A new driveway crossover will provide access from Clarke Lane, replacing three existing driveway crossovers on Clarke Lane and one on the Pacific Highway frontage.
<b>Garbage Storage</b>	No	As addressed previously within this report within the Waste Management referral comments, the proposed residential garbage storage area is not provided in an appropriate location to meet the requirements of Council, nor is the designated area of an appropriate size. An appropriate condition can be imposed to require amended plans be submitted to demonstrate compliance with Council's requirements.
<b>Commercial garbage storage</b>	Yes	Garbage storage for the non-residential uses will be located within the basement and will be collected by a private contractor.
<b>Site facilities</b>	Yes	Satisfactory.
<b>6.5 Efficient use and management of resources</b>		
<b>Energy efficiency</b>	Yes	A BASIX certificate for the residential component of the development has submitted and an appropriate condition can be imposed to ensure compliance with these commitments.

## NORTH SYDNEY LEP 2001

### 1. Permissibility within the zone:

The subject site is zoned Mixed Use pursuant to NSLEP 2001. Development for the purposes of the construction of a mixed use building is permissible with the consent of Council. The proposed uses are also permissible under the zoning with Council consent.

### 2. Objectives of the zone

The particular objectives of the Mixed Use zone, as stated in clause 14 of NSLEP 2001, are:

- “(a) encourage a diverse range of living, employment, recreational and social opportunities, which do not adversely affect the amenity of residential areas, and*
- (b) create interesting and vibrant neighbourhood centres with safe, high quality urban environments with residential amenity, and*
- (c) maintain existing commercial space and allow for residential development in mixed use buildings with non-residential uses at the lower levels and residential above, and*
- (d) promote affordable housing.”*

The proposed development is consistent with some of the objectives of the zone as the development would provide a benefit in terms of increasing the range of living, employment, recreational and social opportunities, and would improve the vibrancy of the St Leonards Town Centre.

However, the proposal would not result in a high quality urban environment due to the proposed height being clearly excessive in relation to the existing development and exceeding by sixteen (16) metres, the desired character of the area. Therefore, the application is not considered to satisfy the objectives of the zone.

### 3. Building Height

Clause 29(2) of NSLEP 2001 states that:

*“A building must not be erected in the mixed use zone in excess of the height shown on the map.”*

Pursuant to Map 2 – ‘Floor Space Ratios, Heights and Reservations’ of NSLEP2001, a maximum height of 26 metres is applicable to the subject site.

The tower element of proposed development would extend to a maximum height of 42.16 metres, whilst the podium element would extend to a maximum height of 13.6 metres on the Pacific Highway frontage and a maximum of 18 metres from the Clarke Lane frontage (measured to the roof of the proposed common room). Consequently, the overall height of the proposal would **exceed the maximum height specified in NSLEP 2001 by 16.16 metres (or by 62.1%)**.

The proposal is considered against the objectives of Clause 29 of NSLEP 2001 below:



- (a) *ensure compatibility between development in the mixed use zone and adjoining residential areas and open space zones*

The subject site does not adjoin a residential area or open space zone and no adverse shadow impact to properties within these zones would occur.

- (b) *encourage an appropriate scale and density of development for each neighbourhood that is in accordance with, and promotes the character of, the neighbourhood*

The proposed development fails to complement the desired future character of the locality which states that the characteristic building height in the St Leonards Town Centre should be buildings that scale down significantly from the Forum towards surrounding areas. The proposed height of the development would far exceed the maximum height of surrounding developments and accordingly, would clearly stand out as a development of uncharacteristic scale and density in the neighbourhood, and would not be compatible with the desired future character for the neighbourhood.

- (c) *provide reasonable amenity for inhabitants of the building and neighbouring buildings*

It is likely that the inhabitants of the proposed building would enjoy reasonable amenity. Residential units to the east would appear unlikely to be unreasonably impacted given the height over the northern portion of the site is below the maximum height control limit.

- (d) *provide ventilation, views, building separation, setback, solar access and light and to avoid overshadowing of windows, landscaped areas, courtyards, roof decks, balconies and the like*

The residential apartments have been designed in accordance with the principles of SEPP 65 and satisfy the various requirements such as ventilation, solar access and suitable sized balconies.

- (e) *promote development that conforms to and reflect natural landforms, by stepping development on sloping land to follow the natural gradient*

Given the narrow nature of the site, there is limited opportunity to step the development from east to west with the gradient of the site. The proposal is reasonable in this regard. However, it may have been reasonable to set back the top level of the podium fronting Clarke Lane to counteract the east/west slope of the land, and thus reduce the visual domination of the podium to Clarke Lane.

- (f) *avoid the application of transitional heights as justification for exceeding height controls.*

This objective does not support the use of existing surrounding buildings as a reason to exceed the control. However, the submitted SEPP No. 1 objection states that the development would be viewed against the backdrop of development further to the north-west (i.e. closer to the Forum development), including the IBM building and the adjoining building which have heights of up to 68 metres despite the LEP height controls of 49 metres and 40 metres, respectively. The SEPP No. 1 objection states

that in this context, the proposed tower element is not excessive.

The proposed building height is well above existing surrounding buildings including buildings that have been required by Council to comply or nearly comply with the current height controls. This is particularly so for the blocks bounded by the Pacific Highway, Albany Street, Hume Street and Oxley Street, where no development exhibits a height and massing relationship as exhibited by the proposal. Council's height controls support the future desired character of the area and not a repeat of development that may have been approved in the past under previous controls. The use of existing buildings further to the north of the subject site (noting that they were approved under previous controls and do not comply with current height controls) as justification for the proposed non-compliance does not recognise the period in which such buildings were approved (pre NSLEP 2001) and does not meet the objectives of the existing control and an argument on that basis would clearly undermine the purpose of the current height controls.

## Conclusion

A SEPP No. 1 objection has been submitted requesting a variation to the development standard and presents arguments generally based on the height of existing buildings to the north-west, the corner location of the site within the St Leonards Town Centre, the articulation of the design, a density consistent with the controls, and appropriate amenity for future residents of the building and neighbours.

Whilst there may be some merit in the proposed form of development compared to a strictly complying development, due to the extent of the breach sought (16.16 metres or 62.1%), it is considered that the use of SEPP No. 1 is not the appropriate mechanism for variation of the control in this instance. If approved, the proper statutory planning process and the height controls for St. Leonards under NSLEP 2001 would essentially be rendered meaningless. In this respect, it has long been recognised by the Land & Environment Court that the dispensing power under SEPP No. 1 is not a general planning power to be used as an alternative to the plan making power under Part 3 of the *Environmental Planning and Assessment Act, 1979* to change existing planning provisions.

In addition, the proposal fails to satisfy the objectives of the height control as detailed above. The SEPP No. 1 objection is therefore not well founded and is not supported. Such a substantial departure from the height control will require an LEP amendment for the site and potentially a wider review of the height controls for the St. Leonards precinct and the Pacific Highway corridor.

## 4. Floor Space

Clause 31(2) of NSLEP 2001 states:

*"A building must not be erected in the mixed use zone if the floor space ratio of the part of the building to be used for non-residential purposes is not within the range specified on the map."*

Pursuant to Map 2 – '*Floor Space Ratios, Heights and Reservations*' of NSLEP 2001, the non-residential component for a development on this site must have a floor space

ratio (FSR) of between 1:1 and 2:1. The proposed development has a non-residential FSR of 1.58:1, and is therefore, compliant with Clause 31 of NSLEP 2001.

## **5. Design of Development**

Clause 32 of NSLEP 2001 provides a number of objectives and controls with regard to the design of development in the mixed-use zone. The objectives seek to promote development containing a mix of residential and non-residential uses, the protection of amenity to residents and the concentration of the non-residential components of any development in the mixed-use zone at the lower levels of a building. The proposed development has been assessed as compliant with the design controls and objectives of Clause 32 of NSLEP 2001.

## **6. Excavation**

Clause 39 of NSLEP 2001 provides a number of objectives and controls with regard to minimising excavation and ensuring land stability and the structural integrity of neighbouring properties.

In this instance, the extent of excavation comprises three full levels of basement car parking which is required to satisfy Council parking requirements. The level of excavation is not considered excessive in the circumstances and the proposal satisfies the objectives of the control.

However, had the application otherwise been acceptable, a preliminary geotechnical report would have been required at the current stage to ensure the site, and neighbouring sites, could sustain the level of excavation required.

## **7. Heritage**

Council's Conservation Planner has raised no concerns with regard to the impact of the proposal on nearby heritage items. The proposal is therefore considered to satisfy the provisions of Clause 50 (*Development in the vicinity of heritage items*) of NSLEP2001.

### **SEPP No.55 (Remediation of Land) and Contaminated Land Management Issues**

The subject site has been considered in light of the Contaminated Lands Management Act and it is considered that as the site based on the previous uses of the site, contamination is unlikely to be an issue.

### **SEPP No.65 (Design Quality of Residential Flat Development)**

The application has been assessed by Council's Urban Design Advisory Panel in terms of the Design Quality Principles set out in SEPP 65 due to its substantial breach of the basic building height planning control over the site.

The design quality principles do not generate design solutions, but provide a guide to achieving good design and the means of evaluating the merit of the proposed solutions. The assessment is summarised as follows:

#### **Principles 1, 2 and 3: Context, Scale and Built Form:**

The context is set by the development surrounding the site and the development controls for the site. The proposal is not in context with existing surrounding development or the building height controls for the precinct containing the subject site. There are few exceptions in terms of height of developments approved in breach of the current height control in the surrounding area. The proposal would not be in context with the desired future character of the area and would be inconsistent with the scale and built form of surrounding development.

#### **Principle 4: Density**

The density is within the dwelling yield envisaged for mixed use development in the Residential Development Strategy for North Sydney, as expressed in Section 6.1 of the NSDCP 2002. However, it should be noted that this method of determining density is not a sound indication of the extent of development on site. The dwelling yield must also be considered with regard to the scale and built form controls.

#### **Principle 5: Resource, energy and water efficiency**

A BASIX Certificate has been provided with the application. Adequate cross ventilation and solar access has been provided.

#### **Principle 6: Landscape**

The proposed building covers almost the entire site and the only landscaping proposed at grade is a number of street trees within the proposed setback to Clarke Lane. A further landscaped area is proposed on the podium to create a useable outdoor space for residents.

#### **Principle 7: Amenity**

In terms of amenity is solar access, 71% of units would receive a minimum of two hours of solar access in midwinter, which complies with the minimum of 70% stipulated in the RFDC.

The layout and design of the proposed units are acceptable and will ensure a reasonable amenity for future occupants. Each unit is provided with private balcony that would function as extension of the living area. Cross ventilation to 80% of units has been achieved which is satisfactory.

#### **Principle 8: Safety and Security**

The proposed development is considered to provide adequately for the safety and security of future residents.

#### **Principle 9: Social Dimensions**

Having regard to the constraint on the site. It is considered that the development responds satisfactorily to the social context, with a satisfactory mix of dwelling types. A reasonable community area is proposed on site.

### **Principle 10: Aesthetics**

The proposed development is a contemporary design. It has modulation and articulation through the use of different setbacks, heights and materials. The aesthetics of the building are not at particular issue other than the height.

### ***Residential Flat Design Code***

SEPP 65 refers to a design code, titled the *Residential Flat Design Code*, published by PlanningNSW (2002). The provisions of Council's DCP 2002 and character statement generally contain similar or more specific design requirements than this design code in relation to local content, site design and building design. However the proposed development does generally satisfy the design code requirements where applicable.

### **SEPP (Building Sustainability Index: BASIX) 2004**

A suitable BASIX Certificate has been submitted with the application. In the event of approval, a condition would be imposed requiring compliance with the commitments contained in the certificate.

### **SEPP 2007 (Infrastructure)**

SEPP2007 (Infrastructure), among other things, establishes a framework for certain types of development to be referred to the Traffic Authority for consideration.

Given the nature of the proposed development and number of parking spaces proposed, the proposal is within the categories that require referral under Clause 104(3) of this SEPP. As noted previously in this report, the RTA has considered the proposed development and although no specific objection has been raised, the comments raise a number of issues that would require further investigation had the application otherwise been considered acceptable.

Concerns regarding traffic and parking have also been raised by Council's Traffic Engineer as noted previously in this report.

### **SREP (Sydney Harbour Catchments) 2005**

The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP. The site, however, is not located close to the foreshore and the application is considered acceptable with regard to the aims and objectives of the SREP.

### **Draft NSLEP 2009**

On 2 July 2010, the Department of Planning issued a conditional Section 65 Certificate (pursuant to Section 65 of the EP&A Act, 1979) authorising the public exhibition of the Council's Draft LEP 2009.

This draft instrument has yet to be formally exhibited, and as such, does not require formal consideration within planning assessment. However, it is noted that the conditional Section 65 Certificate issued by the Department of Planning does require a change in zoning to B3 -Commercial Core on the subject site and those properties

within the block to the north of the site (i.e. 545-583 Pacific Highway, St Leonards). A zoning of Commercial Core for this site would prohibit the proposed development, with development permitted being entirely commercial.

### **Suspensions of Covenants, agreements and similar instruments**

Council is unaware of any covenants, agreements or the like which may be affected by this application.

### **DEVELOPMENT CONTROL PLAN 2002**

The application has been assessed against the relevant controls in DCP2002 as indicated in the foregoing DCP 2002 compliance table.

### ***Relevant Planning Area (St Leonards/Crows Nest Planning Area)***

The overall St Leonards/Crows Nest Area Character Statement states, under 'Quality Built Form', the following:

*"buildings are scaled down significantly from the Forum development landmark towards Willoughby Road, Hume Street and Chandos Street, to fit in with lower scale development and to reduce adverse affects on those lower scale areas."*

Hume Street is located one block further to the south-east of the subject site along the Pacific Highway. The NSLEP 2001 maximum building height of this intervening block is 20 metres compared to 26 metres for the block that includes the subject site. This stepping down of building heights obviously supports the concept of scaling down development away from the Forum development.

As considered in detail in the consideration of '*Building height*' previously in this report, it is clear that the 42.16 metre height of the proposed tower would not satisfy this provision of the St Leonards/Crows Nest Character Statement as it would result in a marked increase in the scale of development towards Hume Street, which is out of character with surrounding development and the desired character of the area.

As defined in the Character Statement, the subject site is located within the St Leonards Town Centre, and a number of additional controls consequently apply to the subject site.

Of particular relevance are the following:

- **Subdivision:** *Where wider than 20m-40m, frontage is broken down by articulation, design and detailing, change in materials and colours:* The proposal is satisfactory in this regard.
- **Setbacks:** *1.5m from laneway frontage to building alignment; 3m on the street frontage of the building alignment above podium; Side setback of 3m above podium:* The proposed setbacks to the Pacific Highway, Oxley Street and Clarke Lane are acceptable. Appropriate setbacks above the podium are proposed.
- **Street frontage podium:** *Podium of 13m (4 storey):* The podium to the Pacific Highway does not exceed 4 storeys and is considered acceptable. Due to the lower ground level to Clarke Lane compared to the Pacific Highway, the podium

to Oxley Street exceeds both the 13 metre and 4 storey control, however, is acceptable in the circumstances.

- **Laneway frontage podium: 10m (3 storey) at the laneway frontage:** The proposal does not comply as the podium frontage to Clarke Lane extends to 18 metres and 5 storeys. The extent of non-compliance appears excessive and is not suitably offset by the increased setback to Clarke Lane. This aspect of the proposal would reasonably require amendment (i.e. through an increased setback for the top podium level on the laneway), were the application otherwise considered acceptable in terms of the principle issue of height.
- **Building design: *Balconies not accommodated in setback area*:** The proposal complies in that balconies do not extend within the setback area.
- **Characteristic building height: *Buildings are scaled down significantly from the Forum development towards surrounding areas and lower scale development on Chandos Street, Willoughby Road, Crows Nest Village, the Upper Slopes and Crows Nest Neighbourhood*:** As noted previously in this report, the proposal does not satisfy this control and is unacceptable in terms of height.

In conclusion, it is considered that the proposal **does not** satisfy a number of provisions of the St Leonards/Crows Nest Area Character Statement.

## SECTION 94 CONTRIBUTIONS

Due to the provision of additional commercial and residential floor space, a contribution would be levied in accordance with Council's Section 94 Contributions Plan. An appropriate condition is able to be imposed to ensure appropriate monies are paid to satisfy this policy.

## DESIGN

The design of the proposed development is unacceptable as detailed previously in this report.

## MATERIALS

The application is acceptable in this regard.

## ALL LIKELY IMPACTS OF THE DEVELOPMENT

All likely impacts of the proposed development have been considered within the context of this report.

## ENVIRONMENTAL APPRAISAL CONSIDERED

1.	Statutory Controls	YES
2.	Policy Controls	YES
3.	Design in relation to existing building and natural environment	YES



4.	Landscaping/Open Space Provision	YES
5.	Traffic generation and Car parking provision	YES
6.	Loading and Servicing facilities	YES
7.	Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	YES
8.	Site Management Issues	YES
9.	All relevant S79C considerations of Environmental Planning and Assessment (Amendment) Act 1979	YES

## **CLAUSE 14 NSLEP 2001**

### ***Consistency With The Aims Of Plan, Zone Objectives And Desired Character***

The provisions of Clause 14 of NSLEP 2001 have been examined. The development is inconsistent with the specific aims of the plan and the objectives of the zone and the objectives of the controls as outlined in this report and as such, consent must not be granted.

With regard to DLEP 2009, this draft instrument has recently been granted Section 65 certification by the Department of Planning, but has yet to be exhibited. Little or no weight can be given to the new instrument. However, it should be noted that no change to the height limit applicable to the site is envisaged at this time.

## **SUBMITTORS CONCERNS**

The concerns raised with regard to the impacts of the proposed height have been addressed within this report. It is agreed that the proposed height is out of context with the existing and desired character of the area. It is further agreed that approval of the proposed height through use of a SEPP No. 1 objection would undermine the certainty provided by the NSLEP 2001 controls and would no doubt be used a precedent for other developments in the area to seek similar significant non-compliances with the height control.

It would not appear, however, that the proposed height would result in any material loss of view, privacy or amenity to any neighbouring residential property. There will be some impacts on district and locality views.

With regard to traffic impacts, it is agreed that insufficient information has been submitted to allow the impact of the proposal, specifically the motor showroom, on traffic utilising Clarke Lane.

With regard to the issue raised regarding lack of infrastructure and amenities in St Leonards to cope with increased population, it is accepted that the proposed form of development would not result in any significant increase in the population of the building compared to a complying form of development. In addition, payments required with any consent under Council's Section 94 contributions plan would be utilised for spending on provisions such as open space acquisition, public domain improvements and traffic improvements.

## CONCLUSION

The proposed development cannot be recommended for favourable consideration primarily as it substantially exceeds the height control for the site, is not compatible with surrounding development and is not compatible with the desired character for the St Leonards Town Centre. The comments of the Urban Design Advisory Panel are fully supported in this regard. The proposal fails to meet the objectives of the controls including North Sydney Local Environmental Plan 2001 and North Sydney Development Control Plan 2002. The SEPP No. 1 objection to Clause 29 is not well founded and cannot be supported. It is considered that such a substantial departure to the 26 metre height control requires a Planning Proposal process to first amend the LEP and provide a wider strategic direction.

The applicant is obviously of the opinion that the proposed form of development represents a better outcome for the site and surrounding area than that allowed for by compliance with the existing height control. Whilst there may be some merit in the design approach, whether the height control should be increased by more than a relatively minor degree is a matter that needs to be considered as part of a strategic planning process involving public participation and not as part of an individual development application. This is particularly so given the likely ramifications in the form of further development proposals that significantly breach the height control, which would in all likelihood result from approval of the proposed development. Reliance on development outcomes that predate the existing controls cannot be endorsed.

In view of the above, it is concluded that the proposed development cannot be supported when considered against the objectives and controls contained in Council's LEP and DCP. Accordingly, the proposed development is recommended for refusal.

## RECOMMENDATION

### PURSUANT TO SECTION 80 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

- A. **THAT** the Joint Regional Planning Panel resolves to refuse development consent to Development Application No. 153/10 for development comprising demolition and erection of a mixed use development with basement car parking on land at No's 545-553 Pacific Highway, St. Leonards, for the following reasons:-
1. The proposed development does not satisfy the specific aims of North Sydney Local Environmental Plan 2001 (NSLEP 2001) as listed in Clause 3 (*Specific aims of this plan*) of NSLEP2001 or the objectives of the Mixed Use zone and as such does not satisfy the provisions of Clause 14 (*Consistency with aims of plan, zone objectives and desired character*) of NSLEP2001.
  2. The proposed development results in an unacceptable breach of Clause 29 (*'Building height'*) of NSLEP 2001, and is inconsistent with the objectives of the building height control. The proposed extensive breach of the height control would result in a building that is not compatible with the context of the site or the desired future character of the locality. The extent of the

breach is such that rezoning would be required to alter the maximum height control of the site. Accordingly, the SEPP No. 1 objection for the breach of the building height cannot be supported.

3. The proposed development fails to satisfy the provisions of the St Leonards/Crows Nest Area Character Statement with regard to the proposed height not satisfying the requirement for buildings to be scaled down significantly from the Forum development towards Hume Street. In addition, the proposed podium height to Clarke Lane is excessive.
4. The proposed development does not satisfy the Design Quality Principles set out in State Environmental Planning Policy No.65 (*'Design Quality of Residential Flat Development'*). In particular, the proposed height would not be in context with existing and desired surrounding development and is of an inappropriate scale.
5. The application fails to satisfy the development controls for the following sections of the NSDCP 2002 and is therefore considered unacceptable:
  - a. Section 6.2(e) Wind speed
  - b. Section 6.3(a) Context
  - c. Section 6.3(c) Skyline
  - d. Section 6.3(l) Laneway frontage podium
  - e. Section 6.3(m) Building design
  - f. Section 6.4(i) Garbage storage
6. The following information has not been submitted to allow adequate assessment of all aspects of the proposed development:
  - Preliminary geotechnical report.
  - Wind impact report.
  - View loss analysis considering the impact on the views of residential properties to the north of the subject site.
  - Sufficient traffic/car delivery/ parking layout and access information. Without this information, it is not possible to properly evaluate the impact of the proposal on Clarke Lane.

**ANDY NIXEY**  
**EXECUTIVE PLANNER**

**STEPHEN BEATTIE**  
**DEVELOPMENT SERVICES MANAGER**