

JRPP No:	2010SYE063
DA No:	DA316/10
PROPOSED DEVELOPMENT	Demolish existing buildings and construct a multi storey mixed use building comprising 2 levels of commercial space, 104 apartments, basement parking at No.136-140 Walker Street, North Sydney
APPLICANT:	Winten Developments Pty Ltd
REPORT BY:	Geoff Mossemeneer, Executive Planner, North Sydney Council

Assessment Report and Recommendation

EXECUTIVE SUMMARY

This development application seeks approval to demolish the existing dwellings and construct a mixed use development over twenty two levels consisting of 1609m² of non residential space, 104 apartments, roof top communal facilities with basement parking for 91 vehicles.

There is a long history for this site involving a number of appeals to the Land and Environment Court. Many hearing days were spent going through the controls in great detail. The site has been well tested resulting in Council granting a development consent to a development (smaller than the application that was the subject of the appeals) in 2008.

There will be no change to the overall height of the building or building footprint, and no significant change to external materials or finishes as compared to the multi storey mixed use building that Council approved on the site in 2008. The major changes relate to an increase in apartment numbers, decrease in commercial space and increase in parking numbers. Shadow impacts remain the same. A large electricity sub station is proposed on the western boundary that was unknown at the time of the previous application. The large wall on the boundary required a review of the previous proposal.

The Council's notification of the proposal has attracted 9 submissions raising particular concerns about traffic, parking and dwelling sizes. The assessment has considered these concerns as well as the performance of the application against Council's planning requirements.

Following this assessment the development application is recommended for **approval**.

DESCRIPTION OF PROPOSAL

The proposal involves the demolition of all existing buildings and the erection of a mixed use development over twenty two levels consisting of 1609m² of non residential space, 104 apartments, roof top communal facilities with basement parking for 91 vehicles.

STATUTORY CONTROLS

North Sydney LEP 2001

- Zoning – Mixed Use
- Item of Heritage - No
- In Vicinity of Item of Heritage - Yes
- Conservation Area - No

S94 Contribution

Environmental Planning & Assessment Act 1979

SEPP 1 Objection

SEPP 55 - Contaminated Lands

SREP (2005)

Local Development

POLICY CONTROLS

DCP 2002

CONSENT AUTHORITY

As this proposal has a Capital Investment Value (CIV) of greater than \$10 million the consent authority for the development application is the Joint Regional Planning Panel, Sydney East Region (JRPP).

DESCRIPTION OF LOCALITY

The property is located on the western side of Walker Street north of Berry Street. The site is rectangular in shape with an additional 1.5m wide handle at the rear linking the site to Harnett Street. It has a frontage of 28.84m to Walker Street, depth of 39.06/40.36m and site area of 1176.5m².

The land is sloped with a cross fall of 7m south-west to north-east. The property includes two residential flat buildings. No. 136 Walker Street is a two-storey late interwar face brick building with garaging underneath and a terracotta tile roof. The property retains the sandstone rock face at the SE boundary. No.138-140 Walker Street is a two storey late Federation filigree styled residential flat building designed with tuck pointed face brick walls and steep slate hipped roof with terracotta ridge details and corrugated metal sheeting to the two secondary hipped roofs.

The site lies within, but adjacent to the eastern boundary of, the “North Sydney Centre” identified on Sheet 2 of the map forming part of Amendment No. 9 of the LEP.

Directly to the north of the site is No. 142 Walker Street consisting of a two-storey apartment building similar to No. 138-140 Walker Street. There are windows on both levels of the southern wall of No’s 138-140 Walker Street facing towards the subject

site. The southern wall of No. 142 is setback around 1.4m from the common boundary with the subject site. Further north are four x two-storey residential buildings listed as heritage items (ie. No's 144- 150 Walker Street). These heritage listed properties are not within the "North Sydney Centre" as defined (but are within the mixed use zone). No's 144-150 Walker Street were the subject of DA 50/07 for partial demolition of and alterations to the heritage buildings on the site and the construction at their rear of an eight-storey mixed use building.

To the west is No's 3-11 Ward Street consisting of a vacant excavated site. No's 3-11 Ward Street have been purchased by Energy Australia for use as a large sub-station. A previous consent for a 20 storey building on this site has been surrendered.

To the north-west is a three-storey car park, the upper levels of which are accessed via Ward Street.

To the south is No. 76 Berry Street consisting of an 11-storey commercial building ("the People Telecom Building") with an elevated landscaped terrace adjacent to the common boundary with the subject site.

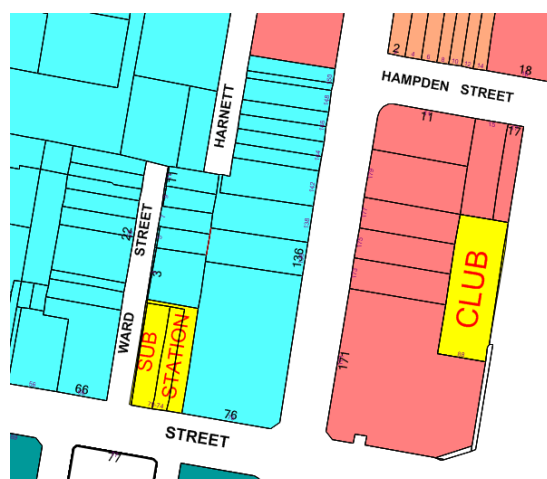
Land to the west and south of the site is within the "North Sydney Centre" as defined in the LEP.

To the east of the site beyond Walker Street are three-storey residential flat buildings (No's 173- 177 Walker Street). To the south-east is Century Plaza (No.171 Berry Street), a multi-storey residential flat building primarily oriented south-east towards Sydney Harbour with its north western elevation (containing bedrooms, or bedrooms used as studies) facing towards the site, diagonally across Walker Street. (The position of Century Plaza relative to the site results in the potential for afternoon overshadowing from a tall building erected on the subject site.)

Whilst land to the north, south and west of the site is zoned Mixed Use, land on the eastern side of Walker Street, north of Berry Street, is zoned Residential 2C and is outside the "North Sydney Centre" as defined in the LEP.

Land to the north, south and west of the site is zoned Mixed Use.

Location of Subject Site



RELEVANT HISTORY

DA 269/05 and related merits appeals

In June 2005 Castle Constructions Pty Ltd, lodged DA 269/05, to demolish the two existing buildings on the site and erect a 36-storey mixed use building comprising basement parking, a podium of five commercial floors and a tower of 26 residential floors. The proposed building had a maximum height of RL 175m. Council received 75 objections to the DA. In August 2005, Council determined DA 269/05 by refusing consent.

The Applicant appealed on the merits to the Land and Environment Court in Class 1 of the Court's jurisdiction. The appeal was heard and dismissed: *Castle Constructions v North Sydney Council* [2006] NSWLEC 5.

The Applicant appealed on questions of law from that decision to a Judge of the Court pursuant to s 56A of the *Land and Environment Court Act 1979*. The appeal was upheld by Talbot J (on 8 March 2006) in some respects but not in others, and the proceedings were remitted to a Commissioner for redetermination: *Castle Constructions Pty Ltd v North Sydney Council* [2006] NSWLEC 468.

The Chief Judge directed, pursuant to s 36 of the *Land and Environment Court Act 1979*, that the remitted proceedings be heard by the Senior Commissioner. Pursuant to s 57(1) and 4(c) of the *Land and Environment Court Act 1979*, the Applicant applied to the Court of Appeal for leave to appeal from the decision of Talbot J on what were said to be two questions of law that his Honour had decided in the negative, adversely to the Applicant:-

- whether clause 30 of the LEP is inconsistent with clause 28D so that by virtue of clause 28A, clause 28D must prevail over clause 30; and
- whether when ordering that the proceedings be remitted to a Commissioner for determination in accordance with his Honour's reasons, his Honour ought to have also ordered that they be remitted to a Commissioner other than the Senior Commissioner, because of apprehended bias.

On 27 July 2007, the Court of Appeal by majority decided both questions of law in the

affirmative and upheld the appeal: *Castle Constructions Pty Ltd v North Sydney Council* [2007] NSWCA 164. The Court of Appeal ordered that the proceedings be remitted to a Commissioner other than the Senior Commissioner for determination in accordance with the reasons of Talbot J as varied by the reasons of the Court of Appeal to the effect that clause 30 of the LEP was to have no application to that determination (ie. the determination of the first appeal in relation to DA 269/05).

Between July 2007 and December 2007 the Applicant pursued appeals relating to the planning process surrounding Draft LEP Amendment No. 28 and associated amendments to DCP 2002. Because of these planning process appeals, the merit appeal against Council's refusal of DA 269/05 was not heard by a Commissioner (Commissioner Bly) until December 2007. It continued to be heard during January and February 2008. The appeal was dismissed on 7 May 2008, around three weeks after the last of the planning process appeals had been determined by Lloyd J. The Council's contentions in the appeal heard by Commissioner Bly were that:-

(1) The proposed building:-

- was excessive in height and scale;
- did not provide an adequate setback from Walker Street;
- would have an unacceptable impact on heritage items in the vicinity;
- would overshadow the Century Plaza building; and

(2) The proposed building was inconsistent with Draft LEP Amendment No. 28 (the main inconsistency being an exceedance of the height control in Draft LEP Amendment No. 28 by around 60m).

In relation to Contention (2) above, Commissioner Bly in his decision made reference to the decision of Lloyd J in relation to the validity of the process surrounding Draft LEP. As for Contention (1), Commissioner Bly found:-

- that the proposed building was "much too high" (i.e. RL 162.5m);
- that a building with a top of building RL of about 130m "could be acceptable";
- that the proposed setback of the tower from Walker Street (between 7.2m and 7.9m excluding balconies) was generally satisfactory but for the north-east corner where the removal of the heavy frame around the balcony would be beneficial;
- that with a reduced building height of RL 130m there would be no adverse impact on the heritage items to the north of the site sufficient to warrant refusal; and
- that a SEPP No. 1 objection prepared in relation to Clause 28(2)(d) of the LEP (relating to overshadowing) in support of a development with a height of RL 130m could be considered to be well founded and could be upheld (ie. that it would be possible to conclude that a building with a height of RL 130m would not result in dwellings in the Century Plaza building having their amenity materially affected by further overshadowing). In submissions, the Applicant requested that if Commissioner Bly considered that the proposal could be approved with amendments that he refrains from making final orders so that the Applicant could consider its position. Commissioner Bly concluded that whilst a further lowering of the building could possibly be achieved by removing additional floors from the middle of the building, the removal of 11 floors would be so substantial that, in the context of the development application, it could not be done. Accordingly, the appeal was dismissed.

DA195/08

DA.195/08 for demolition of the two existing residential buildings, consolidation of the site and the construction of a 21-storey mixed use development containing retail/commercial space and 46 apartments with 3 levels of basement parking. The

application was lodged with Council on 14 May 2008. Assessment of the application was carried out by an independent Consultant Planner because of the history of the site and the likelihood of an appeal.

The application was also referred to the Design Excellence Panel to ensure that the merits of the proposal are thoroughly assessed by experts that have not been involved with the previous court cases. The Design Excellence Panel recommended a number of modifications that would soften the appearance and perceived scale of the development, enable additional landscaping and street trees to be planted at the street frontage, enhance the streetscape and achieve a reduction in afternoon shadows cast on dwellings in Century Plaza; the elements at the south-west and south-east corners of the building were to be modified to provide additional sunlight on the adjacent open space on private land to the south of the site; and the units in the NW corner were to be redesigned to take into account the likelihood of a future building on the adjoining site to the north.

The Consultant Planner supported the recommendations of the DEP. The Consultant Planner's assessment report was considered by Council at its meeting of 4 August 2008. Council RESOLVED:

- A. **THAT** Council defers consideration of development application No.195/08.
- B. **THAT** the applicant be requested to lodge amended plans addressing the following issues and changes:
 - (i) submit amended plans to address the recommendations of Council's Design Excellence Panel, Council's traffic engineer and Council's conservation planner (other than where inconsistent with the Design Excellence Panel's recommendations);
 - (ii) comply with Council's DCP parking requirements and remove excess parking spaces;
 - (iii) address non-compliance with the required range of non-residential floor space (ie. 3:1 to 4:1) in an SEPP No. 1 objection;
 - (iv) provide landscape details for the required 3.0m setback of the podium from the southern site boundary;
 - (v) provide landscape details of the 3.5m full width setback from the property boundary with Walker Street which is to continue the landscaped setting of buildings along Walker Street;
 - (vi) provide a construction management plan which includes details of how likely significant adverse amenity impacts on residents in No. 142 Walker Street in particular will be mitigated;
 - (vii) submit a geotechnical report providing details of the proposed excavation and construction methodology;
 - (viii) reduce the height of the building to be no higher than Century Plaza at RL120.
- C. **THAT** if amended plans are not submitted, Council pursuant to Section 377 of the Local Government Act 1993, grants delegated authority to the General Manager to resist the appeal to the Land and Environment Court on the grounds of bulk, scale, setbacks and amenity impacts.
- D. **THAT** a further overshadowing analysis be undertaken of the impact of the amended application on Century Plaza.

The applicant lodged an appeal to the Land and Environment Court on 2 July 2008 against Council's deemed refusal.

At its meeting of 8 September 2008, Council considered a report relating to the appeal. Council RESOLVED :

A. THAT the applicant be requested to lodge amended plans addressing the following issues and concerns

(a) The podium and the tower being set back further from the Walker Street boundary. This would soften the appearance and perceived scale of the development, enable additional landscaping and street trees to be planted at the street frontage, enhance the streetscape and achieve a reduction in afternoon shadows cast on dwellings in Century Plaza;

(b) The units in the NW corner being redesigned to take into account the likelihood of a future building on the adjoining site to the north

B. THAT subject to the Director General providing certification pursuant to Clause 28C(3) of NSLEP 2001, Council delegates to the General Manager pursuant to Section 377 of the Local Government Act 1993 the following functions in respect of Development Application No: 195/08:

(i) in the event that amended plans are lodged by the applicant, to determine whether or not to notify the amended application in accordance with the North Sydney Development Control Plan 2002; and

(ii) in the event that amended plans are lodged by the applicant, to determine the application having regard for the stated issues and concerns in (A) of this resolution subject to appropriate conditions. Such conditions to include the following:

- car parking
- construction management plan
- geotechnical report
- Section 94 contributions

(iii) In the absence of a discontinuance of appeal proceedings No. 10654 of 2008 in the Land and Environment Court against Council's refusal of Development Application No. 195/08, to deal with the matter by consent orders before the Court.

C. THAT if amended plans are not submitted, Council resist the appeal to the Land and Environment Court on the grounds of bulk, scale, setbacks and amenity impacts.

The applicant submitted amended plans on 12 September 2008 in accordance with the above resolution. The adjoining owners were notified and the plans were referred to Council's Planning Consultant for further assessment. Three submissions were received in response to the notification and have been addressed by the Planning Consultant in his final report recommending approval subject to the conditions prepared by Council's Executive Planner. Certification was received from the Director General on 9 October 2008. Development Consent was granted by the General Manager under delegation on 21 October 2008.

The applicant entered into negotiations to sell the property.

On 29 July 2010, Winten Developments Pty Ltd lodged a Section 96(2) application with Council seeking consent to modify the above consent for a multi-storey mixed use development with basement parking. The modifications include a substantial increase in the density, an additional storey (within the approved building envelope) and three

additional levels of basement parking with substantial increase in car spaces.

The Section 96 application was initially discussed to allow some modification to the development on the lower levels due to the proposed electricity sub station in Ward Street. The reduction in non-residential floor area required a Planning Proposal to alter the relevant control. It was not envisaged that the density would be increased to the degree now proposed. The increase in density to over 75 dwellings now requires referral of the application to the RTA for comment. Council considered that the proposal cannot be considered as substantially the same development as approved by Council which is the basic requirement for a Section 96 application. The applicant was advised to withdraw the application and lodge the proposal as a fresh application. The current application DA.316/10 was lodged on 19 August 2010.

The Proposal as compared to approved DA 195/2008

The proposed amendments primarily include:

- Reduction from 5 levels of commercial floor space to 2 levels with a total proposed non-residential gross floor area of 1609m² equivalent to and FSR of 1.37:1
- Reduction in ceiling height of previous commercial levels to 2.7 metres to meet residential ceiling height requirements and provision therefore of additional floor within the existing approved building envelope;
- Due to proposed adjoining sub station development, change to building massing at the rear lower levels so that up to level 8 of the tower would be partially built to the rear boundary (on the south side); offset by increase in rear setback to north side of rear façade;
- Changes to internal layouts of residential floors to provide a better mix of units in accordance with Council controls;
- Minor associated changes to the building envelope resulting from the internal unit amendments.
- Overall a net reduction to the envelope, especially at the north-east corner resulting in a reduction in overshadowing impacts arising from the proposal;
- Changes to the ground and first floor commercial layouts. The approved through site link will be retained in modified form.
- The previous pool has been deleted and communal space will be provided in the form of a meeting room and gymnasium at the first floor level and a new large roof terrace is proposed; and
- 3 additional levels of basement parking to account for the change in parking demand arising from the internal layout changes.

There will be no change to the overall height of the building or building footprint, and no significant change to external materials or finishes as compared to the approved building.

REFERRALS

Building

The application has not been assessed specifically in terms of compliance with the Building Code of Australia (BCA). It is intended that if approved, Council's standard condition relating to compliance with the BCA be imposed and should amendments be necessary to any approved plans to ensure compliance with the BCA, then a Section 96 application to modify the consent may be required.

Engineering/Traffic

Council's Traffic Engineer (C.Edwards-Davis) provided the following comments in relation to the development application:-

"I refer to your request for comments on the application for 136-140 Walker Street, North Sydney (195/08/2). I have read the Report on the Transport Implications of 136-140 Walker Street, North Sydney prepared by Colston Budd Hunt Kafes Pty Ltd dated July 2010 (ref: 7907).

Existing Development

The site is currently two low rise residential flat buildings. There is one off-street parking space.

The approved development includes 2,216 m² commercial floor space, 46 three-bedroom apartments and basement parking for 58 cars. Vehicular access is from Walker Street.

Proposed Development

The proposed development includes 1,110 m² commercial floor space, 104 apartments (15 studio, 18 one-bedroom, 42 two-bedroom and 29 three-bedroom) and basement parking for 91 cars. Vehicular access is from Walker Street.

Parking

The applicant is proposing 91 parking spaces. This generally complies with the North Sydney DCP 2002, for this size and type of development.

The proposed motorbike and bicycle parking generally complies with the North Sydney DCP 2002 and is therefore considered acceptable.

Traffic Generation

CBHK in calculating their traffic generation figures have compared the approved development with the proposed development. The proposed development is clearly a significant intensification of the site compared with the existing usage of the site. Therefore to get a true understanding of the likely impact of the proposed development, it is more appropriate to compare the existing residential development with the proposed development.

Of the proposed 91 spaces, 88 will be for residential use and 3 will be for commercial use. I concur with CBHK that the proposed development will generate 20 to 30 vehicles per hour in the peak. The existing residential site, with one parking space would generate approximately 1 vehicle per hour in the peak. There is therefore a net impact of 19 to 29 vehicles per hour in the peak.

I generally concur with CBHK that this development will not significantly impact on the operation of the surrounding road network. Intersections will likely continue to operate at similar levels of service.

Public Transport

The site has excellent links to public transport.

Loading Dock

The greatest concern associated with this development, is that the applicant has not provided a loading dock for furniture removalist vans. The applicant has proposed that provision be made for a small rigid truck. A development of this size with 104 apartments requires provision for a medium rigid truck.

The population of North Sydney is highly mobile. Nearly half of all residents rent and, over a five-year period, over 65% move to a new address. This is particularly the case for apartments, and particularly for the smaller apartments which have now been included in the proposed development. Smaller apartments are more likely to be utilised by renters, who move in and out more readily. Given that this development is for 104 residential apartments, it could be assumed that there will be a substantial number of residents moving in and out of the building on a weekly basis. It would be entirely unacceptable to have furniture removalist vans parked on Walker Street, North Sydney. Further, it is noted that removalist vans often double-park, park in "No Stopping" areas or other undesirable locations if they are unable to obtain a parking space directly in front of the building they wish to service. Furniture would have to be carried from the building to the kerb, across the footpath that is very heavily used by pedestrians during the week. Given the significant volume of vehicles and pedestrians that utilise Walker Street, this type of impact would be unacceptable. The developer is essentially trying to push service vehicles associated with this private development onto the public road, thus taking up a valuable community resource. It is therefore felt that furniture removalist vans must be accommodated on-site.

The removalist parking could double-up with the garbage truck collection, however not in the current proposed location. Parking, free of the travel lane, should to be found for both removalist and garbage vehicles.

Recommendations

Should Council resolve to approve this development application, it is recommended that the following conditions of approval be imposed:

- 1. That the development be modified such that it can accommodate on-site a medium rigid vehicle, as defined in Australian Standard 2890.2, for use by the residential and commercial residents and tenants of the building.*
- 2. That the location of any gate, intercom or security access point for driveway entry to the car park should be located 12 metres within the boundary of the property, such that two queued vehicles can be contained wholly within the boundary of the property, as per AS2890.1.*
- 3. That all aspects of the car park comply with the Australian Standard AS2890.1.*
- 4. That all aspects of parking spaces for people with disabilities comply with the Australian Standard AS 2890.6.*
- 5. That all aspects of the bicycle parking and storage facilities comply with the Australian Standard AS2890.3.*

6. That a “Stop” sign and “Give Way to Pedestrians” sign be installed at the exit from the driveway onto Walker Street.
7. That all vehicles, including removalist vehicles, delivery vehicles and garbage collection vehicles must enter and exit the site in a forwards direction.
8. That the driveways to the site must have minimum sight lines for pedestrian safety as per Figure 3.3 of AS 2890.1.
9. That the driveway in Walker Street be designed and installed as per Council’s standard Vehicular Access Application and Council’s Infrastructure Specification for Roadworks, Drainage and Miscellaneous Works.
10. That there be no net loss of on-street parking in Walker Street.
11. That a Construction Management Program be prepared and submitted to Council for approval by the North Sydney Traffic Committee prior to the issue of the Construction Certificate.
12. That the developer upgrade the street lighting in Walker Street adjacent to the site to the relevant Australian Standard. The design is to be submitted to Council for approval by the Director of Engineering and Property Services prior to the issue of the occupation certificate”.

Planning Comment: The above-mentioned conditions should be imposed as conditions of consent should the development application be approved.

Engineering/Stormwater Drainage/Geotechnical

Council's Development Engineer (Z.Cvekovic) assessed the proposed development and advised that the proposed development can be supported subject to imposition of a number of standard and site specific conditions relating to damage bonds, excavation, dilapidation reports of adjoining properties, construction management plan, vehicular crossing requirements and stormwater management. These conditions of consent should be imposed should the development application be approved.

Heritage

The works to 136-140 Walker Street, North Sydney have been assessed in terms of Clause 50 (Development in the Vicinity of Heritage Items) of the North Sydney LEP 2001 and Section 8.8 (Heritage Items and Conservation Areas) of the North Sydney DCP 2002.

The proposal is considered to be acceptable. It should be noted that the proposal is not located within a conservation area but is in the vicinity of heritage items. There is no physical impact on any of the heritage items in the vicinity.

DESIGN EXCELLENCE PANEL

The application was referred to Council’s Design Excellence Panel at its meeting of 16 September 2010. The minutes are reproduced as follows:

“PROPERTY: 136-140 Walker Street, North Sydney - DA 316/10

DATE: 16 September 2010 @ 3pm in the Supper Room
ATTENDANCE: Panel Members: Peter Webber; David Chesterman; Russell Olsson; apology from Philip Graus.
Council staff: Geoff Mossemeneer (chair) George Youhanna
Proponents: Mark Spence (architect), Terry Byrnes (planner), Chris Ryan (developer).

A site inspection was carried out by the Panel and Council staff prior to the meeting. This proposal is a development application that will be determined by the Joint Regional Planning Panel due to the cost of works involved.

The Proposal:

The proposal involves the demolition of all existing buildings and the erection of a mixed use development over twenty two levels consisting of 1609m² of non residential space, 104 apartments, roof top communal facilities with basement parking for 91 vehicles.

The architect Mark Spence provided a presentation of the proposal and was available for questions and discussion with the Panel. The Panel had been briefed on the recent history of the site.

Panel Comments:

Comments on the proposal are under the headings of the ten design quality principles set out in SEPP 65 to cover the issues that arise.

Context:

The Panel noted the context with the aid of the model and in light of the site inspection. The Panel considered that the proposed height of the tower was in principle consistent with the site's context and other buildings on the northern edge of the North Sydney CBD. The Panel noted that the design and extent of the building and the amenity for future residents benefits from and relies on the neighbouring developments to the north (a relatively small site which is likely to be isolated by other developments and is unlikely to achieve development of similar height and density to its neighbours), to the south (the existing commercial development has a substantial setback and open space terrace adjacent to the subject site) and the west (a site acquired by Energy Australia for a substation development). In particular the terrace on the adjoining building to the south is very attractively landscaped and has excellent amenity which would be compromised by the proposal by overlooking and overshadowing.

Whilst the future form of development to the north is not certain, it must be assumed that the adjoining site to the north could perhaps be developed with a building of some eight storeys in height, at least on the western part of the site. Since the subject building is proposed to be set back only some 3 metres from the common northern boundary, any residential units in this section of the development should be designed to take into account the possibility that a future adjoining development could well be located only 6 metres away for a height of about eight storeys. The Panel felt that the proposed 1400mm high sill windows on levels 3 to 9 in the north west corner could be reconsidered to improve the amenity of the units whilst still having regard to possible development of No.142. One possible approach would be to angle vertical windows so that direct cross viewing is restricted and views towards the street allowed. The applicant indicated that they are willing to find a better solution with regard to these apartments.

Scale:

The Panel considered the overall scale of the podium and tower building to be acceptable.

Built Form:

The Panel considered that the design of the development formed a simple tower element with a simple palette of materials, resulting in a development less dominant in the streetscape. The applicant's setback of the podium 3.0m from the southern boundary above the adjacent open space terrace was commended, and the Panel suggested that setting back balconies and other elements at the SW and SE corners of the building might ensure some additional sunlight is cast on this open space terrace to retain some of its amenity. The Panel noted the applicant's sun study diagrams in this regard and that the proposal showed some additional sunlight in the morning compared to the previous approved tower. It would appear that the substation to the west will overshadow the courtyard in the afternoon.

The Panel was of the view that the rock formation to the south east corner and onto the footpath should be preserved and incorporated into the design (as it was with the previous proposal).

Density:

The Panel did not specifically address this issue. The Panel was advised that the dwelling mix was in accordance with Council's DCP.

Resource, Energy and Water Efficiency:

The Panel did not comment on this issue but noted that a Basix certificate had been submitted with the proposal.

Landscape:

The Panel noted the improved landscape quality of the development by setting back the building from the Walker Street alignment with provision of landscaping integrated with appropriate public footpath treatment and street trees, thus softening its street level appearance at this CBD edge. The sandstone formation projecting at footpath level is an idiosyncratic element which is understood to have heritage listing, and does enhance the character of this section of the street. The tree growing above the rock should also be conserved as long as it is in reasonable health, and at least until new street trees mature. The applicant's intention to landscape the 3.0m podium setback area adjoining the adjacent open terrace on the south side of the building was noted positively by the Panel.

Amenity:

Generally the amenity of units appeared to be good. The Panel suggested that wind protection on the southern ends of balconies above level 14 be considered to improve amenity. The Panel noted that the communal facility for residents located at roof top would potentially be a very valuable amenity for residents enabling residents to participate in views, and commended this feature. The applicant should consider making the communal room larger and provide adequate wind protection to the open areas provided it does not lead to any additional shadow impacts. There would be no objection to one of the main lifts extending to the roof, provided that any overshadowing impacts were minimal.

Safety and Security:

The Panel did not specifically address this issue.

Social Dimensions:

The Panel noted the public benefit of the provision of a direct public walkway link on the north side of the development between Walker Street and Harnett Street. More active use of Harnett Street was considered likely in future. The Panel noted positively the provision of community / recreation uses on level 1, and the roof top

communal facilities for residents.

Aesthetics:

The Panel considered the colour scheme presented and raised some concern that the colours may be too dark. It was suggested that some photomontages be prepared to demonstrate the colours with regard to existing surrounding development. The Panel also requested additional details with regard to air conditioning and the location of plant on the balconies. The Panel felt that it was important to ensure that air conditioners on balconies are located appropriately to minimise their appearance and any noise impacts on neighbouring residents

Conclusion:

The proposal is supported. The Panel considered that the issues raised above should be addressed resulting in some minor modifications to the proposal."

SEPP 65 issues have been addressed within this report. The applicant responded to the DEP comments by agreeing to incorporate the following amendments to the proposal should the JRPP endorse the amendments:

- Enclose the south and east facing balconies to levels 15-19 to improve both acoustic insulation and protection from prevailing wind.
- Lower the sill heights of windows facing north on levels 3-9 from 1.4m to 0.9m. Add external adjustable privacy louvers to the windows to assist in improving potential overlooking to any future development on the adjoining property at No.142
- Retain the existing rock outcrop on the south eastern corner of the site and investigate potential retention of the tree rooted amongst the rock
- Extend one of the main lift cars to service the common area on level 22. Delete the additional separate lift and increase the area of enclosed common area.
- Amend the colour scheme to lighten the palette

The above modifications are supported and have been incorporated into the conditions.

External Referrals

The application was referred to the RTA on 24 August 2010 under the Infrastructure SEPP as it contains more than 75 apartments within 90m of Berry Street. There has been no response to date (well past 21 days) however the traffic and parking issues have been addressed by Council's Traffic Engineer in the comments above.

SUBMISSIONS

The application was notified to the Stanton and CBD precincts and surrounding owners and residents from 27/08/2010 to 10/09/2010. A total of 9 submissions were received with the main issues raised being summarised as follows:-

Name & Address of Submitter	Basis of Submissions
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- | | |
|------------------|---|
| Stanton Precinct | <ul style="list-style-type: none">• Increased excavation for parking• Vehicular entrance too narrow• Studio apartments will encourage short term lettings |
|------------------|---|

Owners Corporation 45 McLaren St	<ul style="list-style-type: none"> • Proposal does not meet Council controls • Increase in parking • Increase in traffic • Pedestrian safety • Non compliance with controls
Vergome Pty Ltd 142 Walker Street	<ul style="list-style-type: none"> • Oppose studio apartments within a high grade residential building • In negotiations with owners for possible amalgamation • If amalgamation does not proceed, would prefer a zero lot setback on the common boundary
Doug Sneddon Planning Pty Ltd On behalf of Energy Australia	<ul style="list-style-type: none"> • West facing terrace at level 9 poses potential security risk to sub station – request suitable barrier • Request physical separation between buildings by adopting a nominal building setback • Excavation of carpark is below foundations of sub station – request geotechnical investigations be carried out to ensure no damage to neighbouring properties • Proposed apartments will be adjacent to electricity sub station where electric and magnetic fields (EMF) are produced. Although EMF from sub station are below numerical health limits, recommended that the applicant and Council have adequate information and incorporate any required ameliorative measures in final design of development
K Halliday 9/191-195 Walker St	<ul style="list-style-type: none"> • Increase in traffic • Increased risk to nearby school
B Rodriguez- Carleton	<ul style="list-style-type: none"> • Increased traffic • Increased parking • Building too big
G Dixon 7/185 Walker St	<ul style="list-style-type: none"> • Increased traffic • Increased parking • Increased noise • Insufficient services • Existing buildings should be retained and converted instead of being pulled down • Wind tunnel effect
R Barnier 702/39 McLaren St	<ul style="list-style-type: none"> • Loss of light • Inadequate access • Inadequate street parking • Noise during construction
R Nelson 1104/39 McLaren St	<ul style="list-style-type: none"> • Increased bulk at lower levels • Increased basement levels • Inadequate separation distances to other buildings • Increased traffic

Amended plans have been submitted to Council during the assessment period in response to the Design Excellence Panel's comments. The most recent plans forming the basis of the assessment contained within this report propose a number of amendments which differ to the originally submitted proposal including:-

- Enclose the south and east facing balconies to levels 15-19 to improve both acoustic insulation and protection from prevailing wind.
- Lower the sill heights of windows facing north on levels 3-9 from 1.4m to 0.9m. Add external adjustable privacy louvers to the windows to assist in improving potential overlooking to any future development on the adjoining property at No.142

- Retain the existing rock outcrop on the south eastern corner of the site and investigate potential retention of the tree rooted amongst the rock
- Extend one of the main lift cars to service the common area on level 22. Delete the additional separate lift and increase the area of enclosed common area.

Section 4.2 of the North Sydney Development Control Plan (NSDCP) 2002 provides that

'if, in Council's opinion, the amendments are considered likely to have a greater adverse effect on or a different adverse effect on adjoining or neighbouring land, then Council will renotify:

- *Those persons who made submissions on the original application;*
- *Any other persons who own adjoining or neighbouring land and in the Council's opinion may be adversely affected by the amended application.*

Where the amendments in the Council's opinion do not increase or lessen the adverse affect on adjoining or neighbouring land, Council may choose not to notify or advertise the amendments.

Where the amendments arise from a Council-sponsored mediation, and it is considered that the amendments reflect the outcome of the mediation and do not otherwise increase the application's environmental impact, the amendments will not be notified or advertised.'

In this instance, it is considered that the amendments would be unlikely to materially affect adjoining or neighbouring land compared to the originally notified development and as such, re-notification is not required.

CONSIDERATION

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

The application has been assessed against the relevant numeric controls in NSLEP 2001 and DCP 2002 as indicated in the following compliance tables. 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				
North Sydney Centre	Existing	Proposed	Control	Complies
Height (Cl. 28D(2)(a))	RL 72.53m AHD	RL 132.5m AHD	RL 195m AHD	YES
Overshadowing of land (Cl. 28D(2)(b))	-	YES	Variation permitted	NO
Overshadowing of dwellings (Cl. 28D(2)(d))	-	YES	Variation permitted	NO
Minimum lot size (Cl. 28D(2)(e))	1176.5	1176.5	1000 min.	YES
Mixed Use Zone				
Building Height Plane (Cl.30)				

STATUTORY CONTROL – North Sydney Local Environmental Plan 2001				
North Sydney Centre	Existing	Proposed	Control	Complies
<ul style="list-style-type: none"> East Elevation 	N/A	N/A	Lloyd J concluded that the control does not apply to land in the North Sydney Centre covered by Division 3 of the LEP. Clause 30 is in Division 5. (The control is a 45° height plane from 3.5m above the centre line of Walker Street. Majority of the tower element exceeds this building height plane.)	N/A
Floor Space (Cl. 31) (max)	N/A	1.37:1	Within range of 3:1 to 4:1	NO*

* SEPP 1 objection lodged. Applicant has also submitted Planning Proposal to vary the FSR control to be a minimum of 0.5:1. See comments regarding floor space

DCP 2002 Compliance Table

DEVELOPMENT CONTROL PLAN 2002		
	<i>complies</i>	<i>Comments</i>
6.1 Function		
Diversity of activities, facilities, opportunities and services	Yes	<p>Different sized commercial units are provided. There is opportunity for a café at the ground floor level. Both outdoor (roof terrace) and indoor (gymnasium / meeting room) community spaces are provided.</p> <p>The total floor area for communal space is 225.7m² and complies with the requirement 1m² per bedroom (as there are 204 bedrooms proposed). All areas will have access to light and ventilation and are not located at basement level. Although less than 75% of the space is provided as indoor space, the mix of communal spaces is considered appropriate in this case and due to the high amenity of the proposed roof terrace it is expected that this area will have the highest utility and demand for use by the residents. All common areas (including the principal entrance to the</p>

		building) are accessible by all persons.
Mixed residential population	Yes	Under the proposal 104 units are provided over a gross floor area of 11000m ² resulting in a yield of 1 unit per 106m ² of gross floor area in accordance with DCP dwelling yield controls. The new scheme provides for a much greater mix of dwelling sizes. Whereas the existing approval includes only 2 and 3 bedroom apartments, the new scheme includes a range of studio and 1 bedroom apartments as well. Apartment mix will be: 14% studios; 17% 1 Beds; 40% 2 Beds; and 28% 3+ Beds. The scheme therefore fully complies with the dwelling mix under the controls. Adaptable housing can be dealt with as a condition of consent.
Maximum use of public transport	Yes	Non-residential parking is limited to 3 parking spaces for service vehicles in accordance with the controls. Bicycle parking is also provided. The proposal is consistent with the controls seeking to reduce long stay commuter parking and non residential parking.
6.2 Environmental Criteria		
Clean Air	Yes	A street tree is proposed to be planted in front of the site as a replacement for the Cheese Tree proposed to be removed and the proposal complies with DCP requirements for parking including motorcycle and bicycle parking.
Noise	Yes	All plant and machinery will be enclosed and away from residences.
Acoustic Privacy	Yes	In accordance with the controls, the amended layouts have located bedrooms away from service areas, foyers and all mechanical equipment. As with the conditions of the already approved scheme, a certificate from an Acoustic Engineer will be required with the Construction Certificate certifying that noise levels will comply with Council controls.
Visual Privacy	Yes	To ensure the privacy of the adjoining premises to the north, the approved scheme included privacy screens to the northern side of balconies and increased sill heights for openings in the northern elevation. Those features have been translated to the new scheme. There are no other changes in the new scheme which give rise to any privacy concerns.
Wind Speed	Yes	Wind turbulence should be unchanged from the approved scheme as the building generally retains the same form and has articulated fenestration within its facades.
Reflected light	Yes	Proposed materials and external finishes generally remain the same or similar to that already approved. As with the conditions of the approved development, the proposal shall comply with standard conditions requiring that the reflectivity index does not exceed 20% and that roofing materials are of low-glare properties.
Artificial light	Yes	In accordance with the controls, solar panels are incorporated into the design of the building. Entrances will be well lit but are far enough from adjoining premises that no adverse amenity

		impacts would arise.
Awnings	Yes	There is no significant change to the approved awnings: a metal clad canopy above the podium structure will be retained. A glass canopy over the central void area in the podium will also be retained. As such there will be no change to compliance with DCP controls in this regard.
Solar access	Yes	Solar access to adjoining sites is improved as compared to the existing approved scheme. Sun study diagrams A902 and A903 demonstrate that the proposed modifications improve solar access to the Century Plaza building, as well as a small net improvement in solar access to the courtyard of the adjoining commercial premises at 76 Berry Street. Floor plans have been designed to minimise south facing units as much as is possible.
Views	Yes	No impacts to views arise from the amendments. The building envelope is only materially altered at the rear lower levels and there are no views through this section of the site.
6.3 Quality built form		
Context	Yes	The proposed new scheme has been designed to respond to the changing context of the site: in particular, a likely redevelopment of the adjoining site to the rear as an electricity substation.
Public spaces and facilities	Yes	The slightly increased front setback provides a wider footpath and more opportunity for a range of activities in accordance with the controls.
Skyline	Yes	The amended scheme includes the provision of a roof terrace but the overall height of the roof does not alter. As required by the control, all plant and roof access will be incorporated into a single structure. That structure is similar in form to the already approved structure but is marginally enlarged to allow for lift access for all persons to the roof. As the lift is centrally located and part of the main roof structure, no shadowing or visual impacts arise from the minor change.
Through-site pedestrian links	Yes	It is proposed to retain a through site link as part of the scheme, albeit in a modified form from the 2008 approval. Some sections of the link will be less than 6 metres in width, but the narrow section will be adjacent floor to ceiling glazed internal walls allowing views into the gymnasium thereby ensuring an 'open' and 'safe' feeling to the link. The link will be open to the public 6am to 10pm daily. Stairs and a lift are included as part of the thru site link.
Streetscape	Yes	The proposal results in no change to compliance with streetscape controls: Commercial uses are retained at the ground level; floor level alignment remains unchanged from the 2008 approval and clear glazing is retained to the front façade at street level.
Subdivision	Yes	The proposal continues to incorporate consolidation of lots in accordance with the subdivision / amalgamation controls.
Setbacks	Yes	The front setback of the podium is marginally increased from the approved development. Other

		setbacks generally remain unchanged, with only minor changes to reflect the new internal layouts. The exception to this is the nil rear setback for part of the rear building line at levels 3 to 9. The new setback is sought to accommodate a redevelopment of the adjoining site as an electricity substation. The future substation is to be built to the common boundary, at least for part of the length of the boundary. The nil rear setback in this case allows for the future provision of an appropriately designed substation without resulting in adverse amenity impacts to the future occupants of the subject site.
Entrances and exits	Yes	All main entrances remain visible from the street, accessible for all persons, and unobstructed by landscaping in accordance with the controls. All entrance doors and circulation spaces have been designed to comply with AS142B.2 as required.
Street frontage podium	Yes	The control requires compliance with the character statement. Refer to discussion under the North Sydney CBD Character Statement.
Building design	Yes	Floor levels of the ground, first and second floors remain unchanged from the approved development. All residential units above that include a floor to ceiling height of 2.7m in accordance with the controls. Setbacks are varied from the original scheme to result in a better outcome as discussed above. Building façade elements and treatments are generally the same with minor alterations to the façade.
Nighttime appearance	Yes	Satisfactory

6.4 Quality urban environment

High quality residential accommodation	Yes	<p>In terms of minimum unit sizes, the proposal generally complies with Council controls. Five of the 104 units don't meet the minimum size requirements under the controls, with 4 of those units still achieving 77m² and therefore only marginally under the 80m² requirement. The new proposal results in a much greater mix of unit sizes to meet the wide range of family types and individual needs.</p> <p>Balconies have been designed to have access to sunlight for 2 hours a day in accordance with DCP controls. However due to privacy concerns on the northern side of the building, access to northern sunlight is constrained as balconies are orientated away from the northern elevation and windows are also limited in this elevation at the lower levels.</p> <p>Lobbies on each floor have a width of 2m in accordance with the controls and narrower corridors are limited to no more than 6.5m in length so that no significant amenity impacts arise. No more than 9 units are accessible from one lobby in accordance with the controls.</p> <p>All habitable spaces are less than 10 times the area of the window by which they are serviced. Generally, the maximum depth of a habitable room from a window is less than 10m in</p>
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		<p>accordance with the controls although some apartments have a depth of up to 11.5m. The areas that exceed the control are limited to circulation spaces, and in some cases a small desk / study area. Primary habitable spaces such as living rooms and bedrooms are all less than 10m in depth.</p> <p>Cross ventilation will be provided to 71% of units. Ceiling fans will be provided to all units which do not benefit from cross-ventilation.</p> <p>Glazing to the eastern and western facades is generally unchanged from the original scheme and shaded by adjoining balconies.</p> <p>All apartments exceed 4m in width,</p> <p>Most of the proposed single aspect apartments are limited in depth to 8m from a window. However, a few apartments have depths of 8.5m, 9.5m and one is 11.5m. In those cases, the areas furthest from the windows are generally limited to an entrance hallway, storage cupboard and possible small study / desk area.</p> <p>Primary living spaces and bedrooms are all located in close proximity to windows and openings.</p> <p>Access to residential lifts and parking will be by security access only.</p> <p>Light wells are provided to only two of the proposed 104 units. The light wells are small (around 4.3m²) but are considered adequate in this case as they do not provide the main source of light and ventilation to the living areas, but only to a second bedroom. Furthermore, the light wells are north facing, relate to a single storey only, and therefore receive very good solar access to ensure a good level of amenity to the adjoining rooms.</p> <p>All balconies achieve a minimum depth of 2 metres and an area of at least 8m² in accordance with the controls. The balconies have been integrated into the overall architectural form of the building, and are incorporated within the building envelope.</p>
Accessibility	Yes	<p>The amended internal design incorporates continuous paths of travel and will comply with all other aspects of access controls. Habitable units, lift design etc can be conditioned to comply.</p>
Safety and security	Yes	<p>The proposal includes the following safety design features:</p> <ul style="list-style-type: none"> • Access to the parking area will be secure. • All open spaces, entrances, pedestrian areas and lift lobbies will be well lit and all pedestrian routes clearly defined with direct sightlines. • The through site link and access to the rear laneway will be overlooked by the communal gymnasium and meeting room. • No security grilles are proposed. • Residential balconies will have a good view of the rear laneway to improve security to this area. • Easily identifiable street numbering will be

		provided at the Walker Street pedestrian entrance.
Car parking	Yes	The proposed development generates a requirement for 91 car parking spaces. 91 spaces are provided in accordance with the controls. All parking will be provided within basement levels. As required, no visitor parking is proposed and the accessible spaces will be designated as common property. Refer to traffic comments
Bicycle storage	Yes	A bicycle storage room is provided in the basement level for visitors and commercial users. There will also be some space for residential bicycles in this room. In addition, secure storage areas for most units are provided in the basement and will be large enough to incorporate bicycle storage. The proposal will therefore easily include bicycle parking at the rates required by the controls.
Vehicular access	Yes	Vehicular access to the site remains unchanged from the approved scheme. Refer to traffic comments.
Garbage Storage	Yes	Garbage storage areas are incorporated in the basement and are not significantly different from the approved waste storage areas.
Commercial garbage storage	Yes	Can be conditioned
Site facilities		Storage is incorporated into the units and within the basement levels. All other approved facilities such as clothes dryers provided within units, mailboxes incorporated into foyer design etc have been incorporated into the current design.
6.5 Efficient use and management of resources		
Energy efficiency	Yes	A Basix certificate is submitted with the application and therefore meets energy efficiency requirements.
Passive solar design	Yes	The overall orientation of the building remains the same as the already approved development. The new floor plans for all the residential floors have been designed to maximise solar access to primary living spaces and balconies as far as possible. Shading to windows is provided in accordance with the requirements of BASIX, as is thermal mass for walls and ceilings.
Waste management	Yes	The proposed waste management arrangements are similar to those of the approved scheme and can be conditioned to comply with Council controls.
Stormwater and water management	Yes	Stormwater management will be the same as the approved proposal. A similar condition to C11 of the 2008 approval could be incorporated requiring a detailed drainage management plan prior to the issue of a Construction Certificate.

NORTH SYDNEY LEP 2001

The proposal is permissible with consent in the Mixed Use zone.

North Sydney Centre

The site forms part of the North Sydney centre as identified on Sheet 2 of the map marked "North Sydney LEP 2001 (Amendment No. 9) North Sydney Centre". Division 3 of the LEP applies to the North Sydney Centre. Clause 28A of the LEP provides that Division 3 prevails over all other provisions of the LEP, to the event of any inconsistency, except for Part 4 of the LEP which deals with heritage provisions. It is because of Clause 28A that the Building Height Plane controls in Clause 30 (in Division 5) of the LEP do not apply to the proposed development, as per the decision of Lloyd J.

CLAUSE 28B - NORTH SYDNEY CENTRE OBJECTIVES

The proposed development responds to the specific objectives for the North Sydney Centre as described in the following table.

OBJECTIVE	RESPONSE
(a) to maintain the status of the North Sydney Centre as a major commercial centre within Australia.	The proposal results in an increase to the commercial floor space within the Centre, promoting its commercial viability. However, the commercial floor space is not within the range required. A SEPP No. 1 objection has been submitted in relation to the non-compliance. Council has accepted a Planning Proposal to reduce the required non residential floor space ratio for this site.
(b) to require arrangements for railway infrastructure to be in place before additional non-residential gross floor area is permissible in relation to any proposed development in the North Sydney Centre.	Council has instigated measures with State Rail to ensure that North Sydney Railway Station is upgraded. The applicant has been provided with a developer commitment deed.
(c) to ensure that railway infrastructure, and in particular North Sydney Station, will enable and encourage a greater percentage of people to access the North Sydney Centre by public transport than by private transport and will: <ul style="list-style-type: none"> (i) be convenient and accessible, and (ii) enable a reduction in dependence on private car travel to the North Sydney Centre, and (iii) be adequate to achieve no increase in car parking, and (iv) have the capacity to service the demands generated by development in the North Sydney Centre. 	Council has instigated measures with State Rail to ensure that North Sydney Railway Station is upgraded to improve patronage.
(d) to discourage use of motor vehicles in the North Sydney Centre	The proposed development provides car parking spaces in accordance with the DCP requirement.
(e) to encourage access to and within the North Sydney Centre for pedestrians and cyclists.	It is not proposed to obstruct any existing pedestrian or cycle routes through the Centre.
(f) to allow for 250,000m ² (maximum) non residential gross floor area in addition to the estimated existing (as at the commencement of this Division) 700,000m ² non-residential gross floor area.	The proposed development will result in an increase in non-residential gross floor area well within the additional 250,000m ² expected.
(g) to prohibit further residential development in the core of the North Sydney Centre.	The proposed development is not located within the core of the North Sydney Centre (as identified by a "commercial" zoning).

OBJECTIVE	RESPONSE
(h) to encourage the provision of high-grade commercial space with a floor plate, where appropriate, of at least 1000m ² .	The proposed commercial floor plate is smaller than the required 1000m ² threshold. However, the site area is only 1176m ² , meaning such a floor plate size would result in no setbacks at podium level, or through-site link, or terrace. Only if the site was amalgamated with 142 Walker Street, as anticipated by DCP 2002, could such a floor plate size be achieved.
(i) to achieve a variety of commercial space	The commercial components of the proposed building have been designed to be flexible in use.
(j) to encourage the refurbishment, recycling and rebuilding of older buildings.	The existing buildings on the site are not identified as having heritage significance.
(k) to encourage a diverse range of employment, living, recreation and social opportunities.	The proposed development provides flexible commercial spaces and a range of apartment types.
(l) to promote high quality urban environments and residential amenity	As per the findings of the Design Excellence Panel, minor design changes are required to ensure a quality design outcome. These changes potentially impact on the amenity of future residents within the development. The amenity of residents in parts of Century Plaza will be impacted by additional overshadowing. The extent of overshadowing associated with a building around 30m higher than that which is proposed has previously been held by the Land and Environment Court to have an acceptable impact on residential amenity. The residents in No. 142 Walker Street will, in particular, have their amenity impacted upon during the construction period and as a result of having a high blank wall along the common boundary with the subject site.
(m) to provide significant public benefits such as open space, through-site linkages, childcare and the like.	A through-site link is proposed between Walker Street and Harnett Street.
(n) to improve accessibility within and to the North Sydney Centre.	The building will be accessible to all people.
(o) to protect the amenity of residential zones and existing open space within and nearby the North Sydney Centre	The proposal will impact on north-west facing bedrooms and studies in Century Plaza, which is zoned Residential.
(p) to prevent any net increase in overshadowing of any land-zoned residential or public open space or identified as a special area.	The proposal will result in increased overshadowing of land zoned Residential.
(q) to maintain areas of open space on private land and promote the preservation of existing setbacks and landscaped areas, and protect the amenity of these areas.	No existing landscaped area on the site is to be retained except for part of the rock outcrop adjacent to Walker Street in the south-eastern corner of the site. The adjoining landscaped terrace to the south (in the People's Telecom Building) will have its amenity reduced by increased overshadowing, especially at lunchtime, by obstruction of outlook.

CLAUSE 28C - RAILWAY INFRASTRUCTURE

Subclause 28C(2) to the NSLEP states that:

“... Consent must not be granted to the carrying out of development on any land in the North Sydney Centre if the total non-residential gross floor area of buildings on the land after the development is carried out would exceed the total non-residential gross floor area of buildings lawfully existing on the land

immediately before the development is carried out”.

The proposed development has a total additional non-residential gross floor area of 1609m² and therefore does not comply. However, Subclause 28C(3) states:

“Despite subclause (2) but subject to subclause (5), consent may be granted to the carrying out of development on any land in the North Sydney Centre that would result in an increase in the total non-residential gross floor area of buildings lawfully existing on the land, but only if the Director-General has first certified, in writing to the consent authority, that satisfactory arrangements have been made for railway infrastructure that will provide for the increased demand for railway infrastructure generated by the development”.

The Applicant has submitted a signed deed with bank guarantee. The JRPP is unable to approve the proposal without the certification of the Director General that satisfactory arrangements have been made. Should the Panel favour the application a commitment deed will need to be certified by the Director General before consent can be granted.

CLAUSE 28D - BUILDING HEIGHT AND MASSING

Objectives

The proposed development is assessed below in relation to the objectives set out in subclause 28D(1) of the LEP as follows:

- (a) *to achieve a transition of building heights generally from 100 Miller Street (Northpoint) and 79 - 81 Berry Street (being the location of the tallest buildings) stepping down towards the boundaries of the North Sydney Centre.*

Whilst the proposal is opposite land to the east zoned for residential development that has a maximum height control of 12m and is proximate to a mixed use zone (north of No. 142) having a height control of 16m, the residential zoned land and the mixed use zoned land (north of No. 142) lie outside of the North Sydney Centre. Also, the north-eastern extremity of the North Sydney Centre extends beyond McLaren Street a significant distance further to the north. In May 2008, Commissioner Bly found that the controls anticipated a stepping down from the tallest buildings in the North Sydney Centre towards the boundaries of the Centre, that there is no indicated height limit on Sheet 2 of the map for this site, that the building height plane in Clause 30 does not apply, and that the controls in the LEP are indicative of an abrupt change in building heights at the boundary of the North Sydney Centre (and not a stepping down transition to properties outside of the Centre). Commissioner Bly also found that a building with a height of about RL 130m “might be acceptable”. The proposal has a maximum height of RL 132.5m. On this basis the proposal satisfies this objective.

- (b) *to promote a height and massing that has no adverse impact on land in the public open space zone or land identified as a special area on Sheet 5 of the map marked “North Sydney Local Environmental Plan 2001 (Amendment No. 9) - North Sydney Centre” or on heritage items.*

The proposed development will not result in any overshadowing of public space zones or special areas. It will cause shadow over the forecourt of 79-81 Berry Street during morning periods in mid winter. This area is a deferred area under NSLEP 2001. It is proposed to be zoned commercial with the northernmost part of the property identified as a special area with shadow impacts limited between 12 noon and 2.00pm. The proposed building will not overshadow the proposed special area within these hours.

In relation to the heritage items to the north of the site on No's 144-150 Walker Street, the Land and Environment Court has found that a building with a height of around RL 130m (as now proposed) would not have an adverse impact on the heritage items sufficient to warrant refusal of the application.

- (c) *to minimise overshadowing of land in the residential and public open space zones or identified as a special area on Sheet 5 of the map marked "North Sydney Local Environmental Plan 2001 (Amendment No. 9) - North Sydney Centre".*

No public open space zones or "special areas" will be overshadowed by the proposed development (see above). Residential zoned land to the south-east (upon which No. 173 Walker Street and No.171 Walker Street, known as Century Plaza, is erected) will be overshadowed by the proposed development.

- (d) *to protect the privacy of residents within and around the North Sydney Centre.*

The proposal is separated from residential development to the east by Walker Street. Impacts on the privacy of existing residents of No.142 will be unlikely to arise as the proposal incorporates a blank wall along the northern site boundary to a height of between 7-12m.

Council's Design Excellence Panel has recommended that units in the north-western corner of the proposed tower be redesigned and setback to reflect the possibility of redevelopment of No.142. The Applicant has agreed to make the design amendments but asks that this be a condition of consent.

There is no issue with regards to privacy of residents to the west or south.

On the above basis this objective can be satisfied.

- (e) *to promote scale and massing that provides for pedestrian comfort, in terms of weather protection, solar access and visual dominance.*

The scale and massing is similar to the previous approved building which satisfied this objective.

- (f) *to encourage consolidation of sites for provision of high grade commercial space and provision of public benefits.*

The subject site comprises the consolidation of 2 allotments into a site which exceeds the minimum lot size of 1,000m². However, No.142 Walker Street has not been amalgamated and will remain a remnant site with an area well below the required

minimal lot size (No. 142 has an area of around 569m²). This issue was dealt with in the Court and the previous application. Redevelopment of No.142 was found to be possible and the site would not be sterilised. It is understood that the current applicant is negotiating with the owner of No.142 which if successful is likely to lead to a new application for the amalgamated site, however no firm agreements have been reached.

Development Controls

Subclause 28D(2) sets out the building height and massing controls for proposed development within the North Sydney Centre. SEPP No. 1 cannot be used to vary the controls in (a), (b) or (c) below, but can be used to vary the control in (d).

(a) *the height of the building will not exceed RL 195 AHD, and*

The proposed building will have a maximum RL of 132.5m AHD and therefore complies with this control.

(b) *There is no net increase in overshadowing of any land between the hours of 9am and 3pm, 21 June outside the composite shadow area, as shown on the map marked "North Sydney Local Environmental Plan 2001 (Amendment No. 9)- North Sydney Centre" (except land that is in the Road or Railways Zone).*

Subclause (b) refers to "any land" outside the composite shadow area whilst subclause (d) (see below) refers to "any dwelling" within the composite shadow area. No's 173 and 171 (Century Plaza) both comprise land partly outside the composite shadow area, although No. 173 only to a very minor and insignificant extent. There will be an increase in over-shadowing of both these properties within the nominated hours.

In relation to No. 171 (Century Plaza), almost all of that part of the land outside the composite shadow area will be overshadowed by the proposal at 3.00pm in mid-winter. Despite this non-compliance, sub-clause 28D(4) enables Council to approve a variation to subclause 28D(b).

Subclause 28D(4) states that a consent authority may make a determination to vary, to a minor extent only, the operation of subclauses (2) (b) or (c), or both, in respect of a particular development application, but only if:

- (a) it is satisfied that the variation is justified due to the merits of the development application and the public benefit to be gained, and
- (b) it is satisfied that any increase in overshadowing will not reduce the amenity of any land, and
- (c) in relation to a variation of the operation of subclause (2) (b), the variation will result in not more than 2 hours net increase in overshadowing of land referred to in that paragraph between the hours of 9am and 3pm, 21 June, and
- (d) in relation to a variation of the operation of subclause (2)(c), the variation will result in not more than 15 minutes net increase in overshadowing of land referred

to in that paragraph between the hours of 10am and 12 noon, and no net increase between the hours of 12 noon and 2pm on any day.

The proposed development will not result in any overshadowing of the spaces as specified in Clause 28(2)(c). The extent of overshadowing of land outside the composite shadow area will be limited to about 1.30pm to 3pm. This period of time is less than the maximum permitted by subclause 28D(4)(c). In relation to (a) and (b), these requirements were addressed as follows by Commissioner Bly in his May 2008 decision:-

“The test associated with the merits of the development application raised by (a) above raises the question of whether the proposal is, apart from overshadowing, generally satisfactory and this question is to be answered by reference to the other issues in the case. As for the public benefit test, I am satisfied that this would be met by the proposal itself together with the applicant’s agreement/offer to provide certain benefits. These matters include the provision of commercial floor areas and housing, contributions under s94 of the Environmental Planning and Assessment Act 1979 and other contributions towards the upgrading of the North Sydney railway station and the provision of a pedestrian link through the site. As for the question of reduction of amenity of land in (4)(b) above (leaving aside for the moment the question of amenity impacts on the dwellings (Type D dwellings) in the Century Plaza building) I accept that that part [of] the Century Plaza building’s site will be overshadowed. However this was not raised as a matter of concern and I accept that amenity will not be relevantly reduced. In the circumstances I am satisfied that the variation of clause 28D(2)(b) is justified.”

If the Court was satisfied that these tests were complied with in the case of a building 30m higher than what is now proposed, it can reasonably be concluded that the Court would find that the current proposal also satisfies these tests. No issue is thus raised with (a) and (b) in Clause 28D(4).

- (c) *There is no net increase in overshadowing, between 10am and 2pm, at any time of the year, of any land this is within the North Sydney Centre and is within the public open space zone or within a special area as shown on Sheet 5 of the map marked “North Sydney Local Environmental Plan 2001 (Amendment No 9) - North Sydney Centre”,*

The proposed development will not overshadow any open space zone nor identified special areas.

- (d) *There will be no increase in overshadowing that would reduce the amenity of any dwelling that is outside the North Sydney Centre and falls within the composite shadow area referred to in paragraph (b), and*

All dwellings in No. 173 and those dwellings in the western half of No. 171 Walker Street are outside of the North Sydney Centre and within the composite shadow areas.

A significant number of dwellings in the western part of Century Plaza will generally be affected within a period of around 2.25 hours between 12.45pm and 3.00pm during the winter solstice with the affected areas being mainly bedrooms (some of which are used as sunrooms or reading rooms and studies), terraces and bathrooms.

Dwellings on the lower levels are more affected than dwellings on the upper levels. Impacts will generally extend for 60 to 90 minutes on any individual dwelling. At 12.45pm, only units in the western corner of Century Plaza up to the 6th level are affected by overshadowing for the proposed development. At 1.30pm, units up to the 12th level are impacted whilst at 2.30pm, units up to the 14th level are affected. At 3.00pm, units up to the 16th level are impacted. Because of this increased overshadowing, the amenity of each of the affected dwellings could be reduced, contrary to the requirements of sub-clause (d).

Once a conclusion is reached that the amenity of a dwelling is reduced, sub-clause (d) requires that there be no reduction in overshadowing. The proposal fails this test. However, Clause 28D(2)(d) is a development standard and variation to the standard is possible subject to an SEPP No. 1 objection. The Applicant's SEPP No. 1 objection is attached hereto. It is a revised version of the SEPP 1 objection relied upon in the appeal before Commissioner Bly. In that case, the Court concluded that the SEPP No. 1 objection was not well-founded and that it should fail. However, at para [67], Commissioner Bly stated:-

"67 However, having considered the SEPP 1 objection together with the evidence provided by Dr King and Mr. Byrnes, I believe that if the development were to be modified in accordance with the notional arc controls I could conclude that it is well founded and could be upheld. Similarly, I could accept that the underlying objective of the development standard to ensure that the existing dwellings should not have their amenity materially affected by further overshadowing is met. In reaching this conclusion I accept that amenity includes more than just solar access. Hence, taking into account the outlook available from the Type D dwellings, the nature and use of the affected rooms and terraces, the reduction and remaining availability of solar access, that is of concern to a number of residents, this does not indicate a material affectation of this amenity."

Taking into account the overshadowing impacts associated with the proposal, the proposal's compliance with the "notional arc" height controls in the DCP, the extent of solar access to be retained, the high level of amenity of the affected units associated with their Harbour views, and that most of the affected rooms are bedrooms, the Applicant's SEPP 1 objection is considered to be well-founded.

(e) *The site area is not less than 1,000m².*

The subject site is 1176.5m² in area.

(f) *to encourage consolidation of sites for provision of high grade commercial space and provision of public benefits.*

The proposal will result in the potential isolation of No.142 Walker Street which has an area of only 569m², well below the required 1,000m² minimum lot size required in the North Sydney Centre.

The issue of amalgamation was addressed by the Court in great detail and was not a contention when Commissioner Bly considered the previous application. There was

agreement between the experts at the hearing that redevelopment was possible on No.142 without the land being sterilised. Being a mixed use zone on the very edge of the centre, there is not the same demand for high grade commercial space. The potential for large commercial floor plates of over 1000m² is mainly in the Commercial core to the south. Public benefits are discussed below. It is understood that the current applicant is negotiating with the owner of No.142 which if successful is likely to lead to a new application for the amalgamated site, however no firm agreements have been reached.

Building Design and Public Benefits

Subclause 28D(5) requires the consent authority to consider the following matters:-

- (a) *the impact of the proposed development in terms of scale, form and massing within the context of the locality and landform, the natural environment and neighbouring development and in particular lower scale development adjoining the North Sydney Centre, and*
- (b) *whether the proposed development provides public benefits such as open space, through-site linkages, community facilities and the like, and*
- (c) *whether the proposed development preserves important view lines and vistas, and*
- (d) *whether the proposed development enhances the streetscape in terms of scale, materials and external treatments, and provides variety and interest.*

In relation to (a), it is considered that these requirements are satisfied.

In relation to (b), Both outdoor (roof terrace) and indoor (gymnasium / meeting room) community spaces are provided, as well as a through-site link connecting Harnett Street and Walker Street. The “community” rooms are, however, intended only for residents of the development and are thus “communal” spaces rather than “community” spaces.

In relation to (c), the proposal does not impact on view lines.

In relation to (d), the Applicant has responded to the requirements of Council’s Design Excellence Panel and the proposal is considered to be satisfactory .

CLAUSE 29 - BUILDING HEIGHT

Clause 29 of NSLEP forms part of Division 5 of the instrument, and contains objectives and refers to controls on building height in the Mixed Use zone. The control relates to the “height shown on the map”. The relevant map contains no height control for the subject site.

The Court of Appeal has held that the controls in Division 5 relating to the Mixed Use zone do not apply to land in the North Sydney Centre and that the provisions of Division 3 (which relate to the North Sydney Centre) prevail to the extent of any inconsistency.

Mixed Use Zone

CLAUSE 31 – FLOOR SPACE RATIO

Clause 31 establishes floor space objectives and controls for land in the Mixed Use zone. For the subject site, the LEP map sets a non-residential FSR range of 3:1 to 4:1.

The proposed FSR of the non-residential component of the building is 1.37:1 and therefore does not comply with the controls. However, this application is submitted concurrently with a planning proposal to amend the minimum non-residential FSR threshold to 0.5:1. At its meeting on 6 September 2010, Council resolved to forward a Planning Proposal for the site known as 136 & 138-140 Walker Street, North Sydney to the Department of Planning. The Planning Proposal seeks to amend North Sydney Local Environmental Plan 2001 to reduce the minimum non-residential floor space ratio on the subject site from 3:1 to 0.5:1. The Minister for Planning has subsequently issued a gateway determination which contains a condition requiring the Planning Proposal to go on public exhibition for a minimum period of 14 days. Accordingly the Planning Proposal was on public exhibition from Thursday 21 October 2010 to Wednesday 3 November 2010.

The Planning Proposal is consistent with the recommendations of North Sydney Residential Strategy and consistent with the proposed controls to be incorporated into the future draft comprehensive LEP for North Sydney. Therefore, although the proposed scheme does not comply with current controls, it complies with the likely future controls. Technically a planning proposal / LEP amendment is not required in order to approve the development as the variation to the numerical controls of the existing LEP can be considered under SEPP 1.

A SEPP 1 objection was also submitted with this Development Application. Council's normal practice is to require a planning proposal for major non compliances with the numerical controls and not utilize SEPP 1. Under the circumstances as the applicant has submitted a planning proposal AND Council has supported the planning proposal AND the Department has issued a Gateway determination AND the proposal has been exhibited, it is likely that the change to the LEP is imminent and the proposal would soon be fully consistent with the modified controls. The SEPP 1 objection is considered to be well founded and can be supported.

CLAUSE 32 – DESIGN OF DEVELOPMENT

Clause 32 of NSLEP 2001 establishes design objectives and controls for development in the Mixed Use zone.

The proposal is assessed below against the design objectives:-

(a) *promote development containing a mix of residential and non-residential uses*

The proposal satisfies this requirement.

(b) *protect the amenity and safety of residents*

The proposal satisfies this requirement.

- (c) *concentrate the non-residential component of the development in the Mixed Use zone at the lower levels of a building*

The proposal satisfies this design objective.

Design Controls

The proposal satisfies the design controls.

Clause 39 - Excavation of Land

The site will be excavated to accommodate the proposed basement car park. Clause 39 provides that excavation must be consistent with the objectives of the clause:

- a) *Retain existing vegetation and allow for new substantial vegetation and trees, and*
- b) *Minimise the adverse effects of excavation on the amenity of neighbouring properties, and*
- c) *Minimise excavation and site disturbance so as to retain natural landforms, natural rock faces, sandstone retaining walls and the like and to retain natural runoff patterns and underground water table and flow patterns, and*
- d) *Ensure the structural integrity of adjoining properties.*

There are no significant trees or vegetation on the site itself however a Cheese Tree which is local to the area is located on Council land at the front of the property towards the south east corner of the site. As with the already approved development, removal of all existing trees on the site is proposed, including the mature Cheese Tree located at the street frontage of the site on the grounds of its potential instability and impracticality of its retention.

The excavation for the basement will occur over most of the site however, with the normal procedures in place during construction, the proposal will have no impact on the amenity or structural integrity of adjoining buildings, This can be confirmed by a Geotechnical Report and dilapidation assessment prior to the issue of a Construction Certificate, and as per conditions similar to those imposed on the existing approval. There is a natural sandstone outcrop on the south-east corner of the site which is to be preserved and integrated into the front facade and entrance of the building. Runoff and underground water flows will not be adversely affected. The proposed excavation is therefore in accordance with the LEP requirements.

Clause 50 - Development in the vicinity of Heritage Items

The subject site does not include any heritage items, nor is it part of a conservation area. It is, however, within the vicinity of two heritage items, being the two storey terrace houses at No.144-150 Walker Street.

Clause 50 of the LEP requires that consideration must be given to the likely effect of the proposed development on the heritage significance of the item. The subject site does not immediately adjoin these properties and given the degree of separation in the existing context, the proposal would not adversely impact on them as heritage items. Commissioner Bly in his recent judgement also found that provided the height of the building was able to comply with the notional arcs *'there would be no adverse impact on the heritage items sufficient to warrant refusal of the application'*.

The modifications as compared to the approved building relate primarily to the interior of the building and the overall form, scale, materials and finishes are not substantially altered to the extent that they would result in any impacts to the significance of the nearby items.

Although the subject site is not located within a heritage Conservation Area, the proposal incorporates the natural sandstone theme that is somewhat evident in the northern end of Walker Street and immediate surrounds. Retention of the extensive sandstone outcrop is proposed and will be integrated into the facade and entrance of the building. Further, the large sandstone faced piers proposed at the main entrance to the building also complements this theme that has overt connection with the conservation values of the North Sydney area at large. This is consistent with the already approved development.

SEPP 55 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 has been used for residential purposes for many years, contamination is unlikely.

SREP (Sydney Harbour Catchment) 2005

The subject site is not within part of North Sydney that is required to be considered pursuant to SREP (Sydney Harbour Catchment) 2005.

SEPP 65 – Design Quality of Residential Flat Development

State Environmental Planning Policy No. 65 aims to improve the design quality of residential flat development in New South Wales by recognising that the design quality of residential flat development is of significance for environmental planning for the State due to the economic, environmental, cultural and social benefits of high quality design. The SEPP aims to:-

- (a) *to ensure that it contributes to the sustainable development of New South Wales:*
 - (i) *by providing sustainable housing in social and environmental terms, and*
 - (ii) *by being a long-term asset to its neighbourhood, and*
 - (iii) *by achieving the urban planning policies for its regional and local contexts, and*
- (b) *to achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define, and*
- (c) *to better satisfy the increasing demand, the changing social and demographic profile of the community, and the needs of the widest range of people from childhood to old age, including those with disabilities, and*
- (d) *to maximise amenity, safety and security for the benefit of its occupants and the wider community, and*
- (e) *to minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions.*

The primary design principles being Context, Scale, Built Form, Density, Resource Energy & Water Efficiency, Landscape, Amenity, Safety & Security, Social Dimensions, Aesthetics are discussed as follows:

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

The context, scale and built form generally remains unchanged from the already approved development on the site. The only difference is the site context — as it is now known that an electricity substation is proposed on the adjoining site. The proposed modifications to the building form at the rear of the site have been specifically included to address this change in context.

Principle 4: Density

There is no density control applicable to the overall development and compatibility of the built form to its context is probably a more appropriate consideration in this circumstance. Apart from some variations to the treatment of the facades the built form remains virtually unchanged as compared to the already approved development. The commercial component of the building will result in an FSR of 1.37:1 and this is entirely consistent with the North Sydney Residential Strategy, the likely new comprehensive LEP requirements and the Planning Proposal for the site which has been submitted concurrently.

Principle 5: Resource, Energy and Water Efficiency

A BASIX certificate for the proposal is submitted under separate cover which outlines all energy and water saving commitments. Energy efficient appliances and water efficient fixtures are also proposed for each of the units. Rainwater will be collected for landscape irrigation and demolished building materials will be reused and recycled where possible.

Principle 6: Landscaping

Open terraced areas and balconies within the building will be landscaped with planter boxes along their perimeters, providing a satisfactory level of plantings.

Principle 7: Amenity

The scheme has been well designed with regard to room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas.

Principle 8: Safety and Security

Overlooking of public and communal spaces has been provided: Balconies and living areas are oriented to look towards the street front. Entrance ways and ground areas will be well lit and security systems provided to all vehicle and pedestrian entrances.

Principle 9: Social Dimensions

The proposal will result in significant upgrading of a relatively unattractive development. The proposed building will combine to make a positive contribution to the social dimension of North Sydney.

Principle 10: Aesthetics

The composition of building elements and use of modern materials and finishes will result in a high quality external appearance of an attractively modulated residential

tower above a well integrated podium that together make an aesthetic contribution to North Sydney CBD that is of a high urban design standard.

Residential Flat Design Code 2002

The controls and objectives of the code are similar to many of the controls included in Council's Local Environmental Plan and Development Control Plan 2002 that has been thoroughly assessed above.

DEVELOPMENT CONTROL PLAN 2002

NORTH SYDNEY CENTRE PLANNING AREA / CENTRAL BUSINESS DISTRICT

The subject site is within the Central Business District which falls within the North Sydney Centre Planning Area. The proposed development complies with the planning controls for the Central Business District as set out below:

Diversity of activities, facilities, opportunities and services

The new proposal continues to comply with the relevant controls in that:

- A mixed use development is still provided;
- Although the floor plans are changed, different sized commercial units are still provided; and
- Both outdoor (roof terrace) and indoor (gymnasium / meeting room) community spaces are provided.

Public Transport

The proposed number of car parking spaces for the non-residential component amounts only to 3 and complies with the parking controls. Provision is also made for bicycle parking in accordance with the controls.

Awnings

There is no significant change to the approved awnings: a metal clad canopy above the podium structure will be retained. A glass canopy over the central void area in the podium will also be retained.

Solar Access

The proposed development does not result in any overshadowing of public open space or designated special areas and therefore complies with the control.

Views

The controls seek to retain views from Ward Street Plaza. As overall building massing remains generally unchanged as compared to the already approved development, there would be no change to the views that will be available from Ward Street Plaza.

Amalgamation

The site would be amalgamated in the same way as the 2008 approval.

Skyline

As no material change to building height or envelope is proposed as compared to the 2008 approval, skyline impacts remain the same and are consistent with the 'notional arc' and the existing skyline of the North Sydney Centre.

Thru-Site Links

Although not required by the controls, it is proposed to retain a through site link on the site.

Setbacks

The primary ground floor front setback will be marginally increased (from 3.6m under the 2008 approval) to 4.0m, slightly improving the extent of the non-compliance with Council's 7 metre setback control. Where the non-compliance was supported in 2008,

there is no reason why it should not be supported in a similar way under the current application.

Street Frontage Podium Height

Podium height is reduced under the proposal and will now be two storey in scale to reflect the two storeys of commercial use. It will therefore continue to comply with the maximum control of 5 storeys and will better relate to the podium of the adjacent development at 76 Berry Street and the scale of the heritage buildings to the north.

Above Podium Setbacks

The front setback of the main tower element remains unchanged from the approved scheme. Refer also to the judgement of Bly C who finds that for the most part that the setbacks are satisfactory.

Building Design

The proposed amendments relate primarily change to the rear of the lower levels to accommodate an adjoining substation redevelopment as well as significant internal layout redesign. External changes are generally limited to those necessary to accommodate those changes and overall building design is not significantly altered. The external architectural detailing including the detailing of its vertical treatment and subtle use of textures at the podium level through the use of sandstone piers and glass and the retention of the sandstone outcrop at the front of the site were features of the original application and are retained.

Energy Efficiency

A Basix certificate is included with the application to ensure the newly designed dwellings all meet accepted energy efficiency requirements. Passive features such as cross-flow ventilation to most apartments, use of appropriate levels of insulation to for the roofs and walls, external shading or high performance glazing for all north, east and west facing glazed elements and use of high performance glass for large glazed areas such as the Penthouse are proposed for the residential dwellings in the building.

Public Domain

No changes are proposed which affect the public domain. As with the approved proposal, a street tree is proposed to be planted in front of the site as a replacement for the Cheese Tree proposed to be removed.

Landscaping

The proposal continues to incorporate landscaping including planter boxes to the lower level terraces to provide amenity to the adjoining development and to enhance the urban environment,

SECTION 94 CONTRIBUTIONS

Section 94 Contributions in accordance with Council's S94 plan are warranted should the Panel consider the development application worthy of approval. The contribution is based on 1609m² of commercial space plus residential component of 15 x studios; 18 x 1 bed; 42 x 2 bed; 29 x 3 bed with allowance for existing dwellings of 2 x 2 bed and 4 x 3 bed:

Administration	\$14,156.49
Child Care Facilities	\$32,273.71
Community Centres	\$57,760.31

Library Acquisition	\$10,904.80
Library Premises & Equipment	\$33,653.17
Multi Purpose Indoor Sports Facilities	\$9,682.08
Open Space Acquisition	\$321,416.68
Open Space Increased Capacity	\$637,103.30
Olympic Pool	\$31,539.88
Public Domain Improvements	\$386,876.55
Traffic improvements	\$37,850.61
The total contribution is:	\$1,573,217.58

APPLICABLE REGULATIONS

Clauses 92-94 of the EPA Regulation 2000 require that Council take into consideration Australian standard AS 2601-1991: *the demolition of structures*, as in force at 1 July 1993. As demolition of the existing structures are proposed, a suitable condition should be imposed.

DESIGN & MATERIALS

The design and materials of the buildings have been assessed as being acceptable.

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 Carparking 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.

It is considered that the development is consistent with the specific aims of the plan and the objectives of the zone and of the controls.

As such, consent to the development may be granted.

SUBMITTORS CONCERNS

Nine submissions were received in relation to the proposed development raising concerns which including traffic, parking, size of apartments and a number of other issues. These issues have been mostly addressed within this report. Additional issues raised are addressed as follows:

- West facing terrace at level 9 poses potential security risk to sub station – request suitable barrier

Planning comment:

The concern relates to access onto the roof of the proposed sub station. A suitable condition can be imposed.

- Request physical separation between buildings by adopting a nominal building setback

Planning comment:

A suitable condition can be imposed both buildings cannot encroach the boundary.

- Excavation of carpark is below foundations of sub station – request geotechnical investigations be carried out to ensure no damage to neighbouring properties

Planning comment:

This is included as a condition of consent.

- Proposed apartments will be adjacent to electricity sub station where electric and magnetic fields (EMF) are produced. Although EMF from sub station are below numerical health limits, recommended that the applicant and Council have adequate information and incorporate any required ameliorative measures in final design of development

Planning comment:

Energy Australia recently exhibited a Part 3A application for the sub station with specific detailed reports stating that the substation would not produce EMF above accepted standards. The report concluded that the sub station was appropriate adjacent to residential development. There is no currently available information that would prohibit apartments adjacent to a sub station although it is recognised that there would be concerns from potential occupants of apartments. It is likely that the designer will have to incorporate all ameliorative measures to convince potential purchasers of minimal risks.

- If amalgamation does not proceed, would prefer a zero lot setback on the common boundary

Planning comment:

This relates to No.142 Walker Street. This request is unreasonable as it would limit the amount of north facing windows to the subject site. The approved development at 144-150 Walker Street is built to the northern boundary of No.142 to allow development without a side setback on No.142 Walker Street and to ensure that there can be adequate building separation between developments of different scale.

CONCLUSION

There is a long history for this site involving a number of appeals to the Land and Environment Court. Many hearing days were spent going through the controls in great detail. The site has been well tested resulting in Council granting a development consent to a development (smaller than the application that was the subject of the appeals) in 2008.

There will be no change to the overall height of the building or building footprint, and no significant change to external materials or finishes as compared to the multi storey mixed use building that Council approved on the site in 2008. The major changes relate to an increase in apartment numbers, decrease in commercial space and increase in parking numbers. Shadow impacts remain the same.

The application has been assessed against the relevant statutory controls. The 2 SEPP 1 objections are well founded and can be supported. The application was referred to Council's Design Excellence Panel for comment. Some minor modifications were suggested and there was support for the proposal by the DEP as an improvement on the previous 2008 proposal. The applicant responded to the DEP suggestions and the changes can be accommodated by conditions. The application is recommended for favourable consideration by the Panel. As indicated in the report, the JRPP is unable to approve the proposal without the certification of the Director General that satisfactory arrangements have been made with regard to Railway Infrastructure. Should the Panel favour the application a commitment deed will need to be certified by the Director General before consent can be granted.

RECOMMENDATION

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

THAT upon receipt of certification from the Director General of the Department of Planning Council pursuant to Clause 28C(3) of NSLEP 2001, the Joint Regional Planning Panel, as the consent authority, assume the concurrence of the Director General of the Department of Planning and invoke the provisions of SEPP 1 with regard to Clause 28D(2)(d) and Clause 31 and grant consent to 2010SYE063 – North Sydney - Development Application No.316/10 subject to the attached conditions.

Geoff Mossemenear
EXECUTIVE PLANNER

Stephen Beattie
MANAGER DEVELOPMENT SERVICES
