

JRPP No:	2010SYE0107
DA No:	DA494/10
PROPOSED DEVELOPMENT	Demolish existing buildings and construct a multi storey mixed use building comprising 2 levels of commercial space, 48 apartments, basement parking at No.12-16 Berry Street, North Sydney
APPLICANT:	Benson McCormack Architects
REPORT BY:	Geoff Mossemenear, Executive Planner, North Sydney Council

Assessment Report and Recommendation

EXECUTIVE SUMMARY

This development application seeks approval to demolish the existing three storey commercial building, and construct a nine (9) storey mixed use development. The building will consist of 48 residential apartments above commercial and retail tenancies located at Levels 1 and 2. Car parking for 43 vehicles and 3 motorbikes will be provided at basement levels 1 and 2.

The proposal involves a large reduction in commercial floor space from existing, well below the current control's minimum requirement. The applicant was advised that a SEPP 1 Objection could not be supported and a Planning Proposal was necessary due to the extent of the breach. The applicant lodged a Planning Proposal that is currently being dealt with. It is noted that the Planning Proposal has been endorsed by Council at its meeting of 31 January 2011 as the proposal was consistent with the FSR intended under Draft NSLEP 2009. As there is no additional commercial floor space proposed, the Railway Infrastructure Clause is not relevant and the applicant does not need to enter into a commitment deed with Council.

The overall height of the building is a floor over the height under Draft NSLEP 2009 but under the height approved by Council in 2007.

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

The original plans lodged were for 53 apartments and 35 parking spaces. In response to the submissions and concerns raised about the rear setbacks, the applicant submitted amended plans on 8 April 2011.

Following assessment of the amended plans, the development application is recommended for **approval**.

DESCRIPTION OF PROPOSAL

The proposed development involves the demolition of the existing three storey commercial building, and construction of a nine (9) storey mixed use development at 12-16 Berry Street, North Sydney.

The building will consist of 48 residential apartments above commercial and retail tenancies located at Levels 1 and 2. Car parking for 43 vehicles and 3 motorbikes will be provided at basement levels 1 and 2.

The building will be strata subdivided.

The original plans submitted were for 53 apartments and 35 cars spaces with a dwelling mix of 75% small apartments and 25% larger apartments. The applicant was advised of concerns with the rear setback of the upper floors and the dwelling mix. The plans were amended to reduce apartment numbers, increase setbacks and alter the dwelling mix.

The applicant has described the changes as follows:

Inadequate Building Setback from Northern Side

The accompanying drawings of the amended scheme illustrate the increased building setback of levels 5 & 6. Although the apartments to Level 5 are unchanged, removing the balconies of the apartments above this level increase the perceived setback of the building for these three (3) levels. Despite the increased setback, overlooking by the future occupants into the private open space of the Doohat Ave properties will not be compromised. The downward view angle from the apartments on Levels 5, 6 and 7 are still obscured and continue to add to the already well considered interface between this development and these neighbouring properties.

Inequitable Apartment Mix

The original design comprised 53 residential apartments, of which 40 dwellings (75% mix) were considered 'small' dwellings consisting of Studio, one Bedroom and one Bedroom + Study apartments. Incorporated in the changes described in the previous section (Building Setback), new larger apartments are proposed to Level 6 and 7 on the northern side of the development. The four new dwellings are 2 bedroom apartments replacing eight smaller dwellings previously proposed. Additionally, five loft style apartments previously proposed to Levels 8 and 9 on the northern wing of the scheme have been replaced by four (4) larger dwellings (2 x 3 bedrooms and 2 x 2 bedrooms). The total number of dwellings is now forty-eight (48); a reduction in total dwellings by five apartments. The mix of dwellings is also more favourable with twenty seven 'small' dwellings and twenty one 'medium-large' dwellings. As such, the mix of 'small' dwellings is now 56%.

Garbage Collection at Berry Street

Presently, garbage collection for the existing commercial building on the site is from Doohat Lane via the understorey of the neighbouring property to the east. Despite this, the increased serviceability resulting from this development will have an adverse impact on the residents adjacent to Doohat Lane and as such we propose garbage collection from Berry Street. A new service lift is now proposed for this purpose.

Height of lift Over-Run

Through enquires with lift manufacturers, it's apparent the height of the lift over-run previously proposed can be reduced in height. For this reason, the overall building height is reduced from AHD 112.950 to AHD 111.300 (1.65m).

General

Resulting from the amendments described above, some other minor considerations are worth noting. Despite the reduction in development yield from 53 apartments to 48, the more desirable apartment mix has allowed the development the benefit of eight additional car spaces; from 35 cars to 43 cars. Rather than adding an extra basement level to the development, the extra cars are proposed to be housed in stacking mechanisms. Some noteworthy changes include the further reduction in the Gross Floor Area (GFA) of the overall scheme, particularly in comparison with the previously approved development for the site. The GFA of the amended scheme is reduced by 34.4m², 1191.2m² less than the presently approved scheme for the site.

The dwelling mix proposed comprises 12 x studio; 15 x one bedroom; 19 x two bedroom and 2 x three bedroom apartments.

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

Draft North Sydney LEP 2009

POLICY CONTROLS

DCP 2002

Draft North Sydney DCP 2010

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 subject site is located on the northern side of Berry Street between Edward Street to the west and the Pacific Highway to the east. The site is generally rectangular in shape, with a frontage of approximately 21.9m to Berry Street, depth of 43.5m and a total site area of 952.4m².

A 6.095m wide easement for rights-of-carriageway and drainage encumbers the site. This dual easement is located over the rear portion of the site, 5.5m south of the northern boundary. The easement provides reciprocal rights of way and drainage provisions in favour of Lots 5, 6, 7 and 8 in DP 237104 (10 - 16 Berry Street) over lots 4,

5 6 and 7 in DP 237104 (12 - 18 Berry Street) enabling vehicular access and drainage across those properties.

The site contains two attached four-storey office buildings constructed in the 1970s. The gross floor area of the existing buildings is approximately 2,100m². A refreshment room is located on the lowest floor to 14 - 16 Berry Street. The buildings are built to all boundaries and are attached to the two commercial buildings located to the east and west of the site. The buildings are predominantly of masonry construction with flat metal decked roofs.

Despite having a direct frontage to Berry Street, no vehicular access is provided to the site from this frontage. Vehicular access to the site is available via Doohat Lane and over Lot 4 in DP 237104 (18 Berry Street), by right-of-way.

Parking for 27 vehicles is currently available on the site. These spaces are located beneath and to the rear of the existing buildings at ground level. Nine of these spaces are in a stacked configuration. Informal loading for the adjacent property at 10 Berry Street (to the west) currently occurs over the western most portion of the right-of-way.

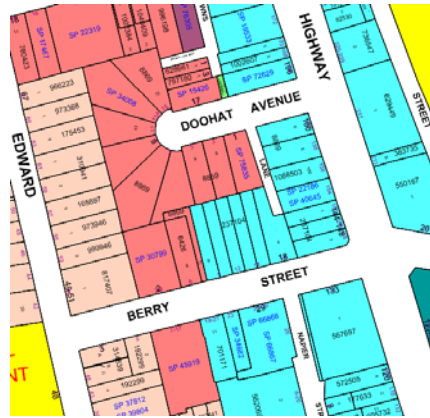
Directly to the north of the site lies a two storey residential detached dwelling. This dwelling is orientated to Doohat Lane. A mixture of low, medium and high density housing types and commercial premises are located further to the north.

A four storey commercial office building is located directly to the east of the site. The building is attached directly to the eastern façade of the building at 14 - 16 Berry Street for the entire boundary length. Further to the east predominantly lie commercial office towers with ground floor retailing generally ranging in height from 4 to 35 storeys.

Directly to the south of the site, on the opposite side of Berry Street lies an 11 level mixed use building incorporating 4 levels of commercial office space at the lower levels and 7 residential levels above.

A 3 storey commercial office building is located to the west of the site. The building is attached directly to the western façade of the building at 12 Berry Street for the entire boundary length. Further to the west lies predominantly residential development in varying densities from single storey detached dwellings to 4 storey apartment buildings. Also to the west is a child care centre and the Australian Catholic University.

Location of Subject Site



RELEVANT HISTORY

Development Application No.118/05 was lodged on 24 March 2005 and sought approval for demolition of all existing buildings and structures on the site; excavation of 5 levels for basement car parking for a total of 62 vehicles, comprising 35 residential spaces and 27 commercial spaces; construction of a 16 storey mixed use building, comprising 28 residential apartments and approximately 2,881.3m² of commercial floor space; and provision of communal facilities for residents including communal room, roof garden and swimming pool.

Council refused the application at its meeting of 11 July 2005 for the following reasons:

1. The proposed building is excessive in height and scale
2. The site is of insufficient size to provide for additional commercial floor space and isolates a smaller site to the west.
3. The proposed parking, loading and access arrangements are unacceptable
4. The proposal fails to provide adequate setback from the street.
5. The proposal would produce adverse impacts on residential amenity to the north and south due to its bulk and scale with regard to visual dominance, overshadowing and privacy.

On 14 March 2006, the applicant appealed to the Land and Environment Court against Council's decision.

The appeal was heard on 14 and 15 August 2006. The appeal was dismissed in judgement handed down on 22 August 2006.

The Court agreed with the evidence provided by Council in that the proposed 14-storey mixed-use building was excessive in terms of height and bulk.

In particular, the Court found that:

1. the breach of the building height plane control (cl.30 - NSLEP) was unacceptable and the SEPP 1 objection lodged seeking to justify the non-compliance with cl.30 could not be supported; and
2. that the proposal contravened cl.28D(2)(d) of NSLEP 2001 as the overshadowing would reduce the existing amenity upon 7-17 Berry Street.

Clause 28D(2)(e) of NSLEP provides that consent must not be granted to the erection of a building within the North Sydney Centre unless the site area is not less than 1000m². The proposal has a site area of 950m². The Council suggested that in order to satisfy this requirement, amalgamation with 8-10 Berry Street would be necessary. The Court did not regard that the failure to amalgamate would in itself be sufficient to justify refusal as the proposal just fell short of the 1000m² requirement.

Development Application No.66/07 was lodged on 27 February 2007 and sought approval for the retention of the existing commercial building and construction of multi storey mixed use development consisting of 20 apartments with associated parking.

Council approved the application at its meeting of 7 May 2007.

The subject application was lodged with Council on 8 December 2010. The application was notified and submissions received. A thorough assessment of the proposal was undertaken. The assessment concluded that:

- The setback from the rear residential boundary of the upper levels was insufficient resulting in the proposal being incompatible with the residential development adjoining. The SEPP 1 objection with regard to building height plane was therefore not considered well founded and could not be supported.
- The proposal involves a large reduction in commercial floor space from existing, well below the current control's minimum requirement. The applicant was advised that a SEPP 1 Objection could not be supported and a Planning Proposal was necessary due to the extent of the breach. The applicant lodged a Planning Proposal that is currently being dealt with. Consent cannot be granted until the Planning Proposal is finalized.
- The proposed dwelling mix is an issue, 75% of apartments are one bedroom or less with 25% as two bedroom. The maximum recommended is 45% for small apartments. Some variation could be supported having regard to the excellent public transport and the building not being suitable for families.
- The height of the building is generally acceptable although it is a floor above the height control under the draft LEP, the plant room is 4m higher than the roof of level 9. The plant room can be reduced by a floor with the southern apartments accessed from level 8 instead of level 9.
- The concerns could be resolved with amendments to the proposal.
- The changes require amendments to the plans and cannot be conditioned.

The following modifications were considered necessary:

- Lowering of plant room and lift
- Investigate possible collection garbage room in south east corner of building at Berry Street
- The rear setbacks of levels 5, 6 and 7 need to be increased by 2m to a minimum of 9m from the boundary.
- The balcony at level 8 should be setback an additional 2m making an 11m setback from the northern boundary.
- Consolidating apartments on levels 5, 6 and 7 on the northern building. The proposed 5 x 1 bedroom apartments on each level would become 2 x 2 bedroom

- + 1 x 1 bedroom apartments.
- A reduction of 6 apartments. The mix of apartments being increased from the proposed 75% small – 25% large up to 60% small – 40% large.

The applicant was advised of the above concerns and in response, submitted plans on 8 April 2011. The amended plans were not notified as the envelope of the building was not increased and all submissions would be considered in regard to the amended plans. The submitters were advised by letter of the changes and provided with copies of the amended plans to keep them informed about the application and amendments made to the proposal.

The amended plans as described in the description of proposal are the subject of this assessment.

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 proposed development at 12-16 Berry Street, North Sydney (DA 494/2010). I have read the Traffic and Parking Assessment Report prepared by Varga Traffic Planning Pty Ltd dated 6 December 2010 (Ref 10234).

Existing Development

The existing development is a three/ four storey commercial building, incorporating a café at ground level, with a floor space area of 2,104 m². The existing development has 27 cars, with access via Doohat Lane and a right-of-way.

Proposed Development

The proposed mixed use development will incorporate 53 residential apartments (14 x studio, 26 x 1-bedroom, 13 x 2-bedroom), 188 m² of retail space and 316 m² of commercial space. Off-street parking is proposed for 35 cars and 4 motorbikes. Access to the car park will continue to be via Doohat Lane and the right-of-way.

Parking

The North Sydney DCP 2002 outlines a maximum parking space provision as follows:

Development Component	Parking Rate	Maximum Parking
Retail (188 m ²) & Commercial (316 m ²)	1 space per 400 m ²	1.26
40 x studio & 1 bedroom	0.5	20

apartments		
13 x 2+ bedroom apartments	1	13
Total		35

The applicant is proposing the installation of 35 parking spaces which is consistent with the DCP and is therefore considered acceptable.

Traffic Generation

Varga have calculated that the proposed development will generate 13.7 peak hour vehicle trips.

I agree with Varga Traffic Planning that it is unlikely that the traffic generation associated with this site will be as high as that identified in the RTA's Guide to Traffic Generating Developments. I generally concur with Varga that the site will generate approximately 13.7 peak hour vehicle trips.

I agree with Varga Traffic Planning that the projected traffic generation should be offset or discounted by the traffic generation associated with the existing site. However, by my calculations the existing commercial building with 27 off-street parking spaces would generate approximately 13.5 peak hour vehicle movements. The proposed development will therefore generate approximately the same amount of traffic as the existing site. I therefore disagree with Varga's statement that it is likely there will be a net decrease in traffic associated with this site.

Notwithstanding the above comments, I agree with Varga that the traffic generation associated with the proposed development will not greatly impact on the operation of the surrounding road network.

Loading Dock

An issue of serious concern with regards to this development is the lack of appropriate loading dock facilities for the building.

A development of this size with 53 apartments, 188 m² of retail space and 316 m² of commercial space in this busy area of North Sydney requires provision for a medium rigid truck. That is a vehicle 8.8 metres long and 4.5 metres high as per Australian Standard 2890.2.

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 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 53 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 in Berry Street or Doohat Lane. 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 heavily used by pedestrian. Given the significant volume of vehicles and pedestrians that utilise Berry Street and Doohat Lane, this type of impact is 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.

It is noted that the Draft DCP 2010 outlines that at least one Medium Rigid Vehicle must be provided in developments containing more than 30 dwellings.

The loading dock should be located immediately adjacent to a lift, providing access to the residential floors of the building. Ramped or lift access should be available to the retail/commercial areas of the building.

All vehicles, including heavy vehicles, must enter and exit the site in a forwards direction.”

The applicant submitted further information on 7 March 2011 to demonstrate that loading can be provided on site but that the height was restricted by the building at No.18 Berry Street. Council’s Traffic Engineer provided the following additional comments:

“I refer to your request for comments on the proposed development at 12-16 Berry Street, North Sydney (DA 494/2010). I have read the further letter received from Varga Traffic Planning Pty Ltd dated 7 March 2011 (Ref 10234).

I accept the comments made by Varga Traffic Planning that the existing site entry clearance constraints via the Right Of Way (ROW) mean that it is not possible for a 4.5m high Medium Rigid Vehicle as defined in AS 2890.2 to be accommodated in the proposed development at this time.

I agree with the suggestion made by Varga Traffic Planning that the proposed development at 12-16 Berry Street be constructed such that the site could accommodate a 4.5m high Medium Rigid Vehicle as defined in AS 2890.2 in the future if 18 Berry Street is redeveloped and the ROW has a condition imposed such that the ROW has an overhead clearance of 4.5 metres high.

Conditions of Approval

Should this development be approved it is recommended that the following conditions of approval be imposed:

1. That provision be made for a Medium Rigid Vehicle which is 8.8 metres long and 4.5 metres high as per Australian Standard 2890.2 to be accommodated in the shared zone adjacent to the commercial tenancy at the rear of the site, with the understanding that this will only be accessible by 4.5 metre high vehicles if 18 Berry Street is redeveloped and a condition is imposed such that the Right Of Way has a minimum overhead clearance of 4.5 metres.
2. That a loading dock be provided for a Small Rigid Vehicle as per Australian Standard 2890.2.
3. That level/ ramped access be available from the Small Rigid Vehicle loading dock and the Medium Rigid Vehicle shared zone to the lifts and to all components of the development, residential, commercial and retail.
4. That the Small Rigid Vehicle loading dock and the Medium Rigid Vehicle shared zone be available for use by all components of the development, residential, commercial and retail.
5. That all vehicles, including heavy vehicles, delivery vehicles and garbage vehicles, must enter and exit the site in a forwards direction, unless under the direction of a RTA accredited traffic controller.
6. That a Construction Traffic Management Plan be prepared and submitted to Council for approval by the North Sydney Traffic Committee prior to the issue of the Construction Certificate. Any use of Council property shall require appropriate separate permits/approvals. The Construction Traffic Management Plan should specifically address the methodology to coordinate the construction vehicles associated with this development at 12-16 Berry Street, North Sydney and the construction vehicles associated with the development at 156-158 Pacific Highway, North Sydney should they be under construction at the same time.
7. That an Operational Transport Management Plan for heavy vehicles including garbage vehicles, retail and commercial deliveries and residential removalists to the site be

- prepared and submitted to Council for approval by the North Sydney Traffic Committee prior to the issue of an Occupation Certificate.
8. That the developer pay to upgrade the lighting levels to the Australian Standard in Berry Street, adjacent to the site.
 9. That 18 bicycle lockers and 4 bicycle rails be provided, as per Council's DCP 2002.
 10. That all aspects of the carpark comply with the Australian Standard AS2890.1 Off-Street Parking.
 11. That all aspects of the loading dock comply with the Australian Standard AS2890.2.
 12. That all aspects of parking spaces for people with disabilities comply with the Australian Standard AS 2890.6.
 13. That all aspects of the bicycle parking and storage facilities comply with the Australian Standard AS2890.3.

The amended plans were also referred for comment with regard to the additional parking proposed:

“Proposed Parking

The applicant is proposing the installation of 41 parking spaces.

The North Sydney DCP 2002 outlines a maximum parking allowance for the proposed development of 36 spaces. The applicant has provided no justification to deviate from the maximum permissible parking under the DCP.

The North Sydney DCP 2002 outlines maximum parking rates. These maximum parking rates recognise that North Sydney streets already experience very high levels of congestion. There is a direct correlation between parking provision and congestion. Therefore, Council has for many years restricted the amount of parking in new developments.

It is of great concern that the developer is proposing to install **14% more parking than is permitted under the DCP**. If Council were to permit all developments to provide 14% more parking than is permitted under the DCP, the road network in North Sydney, and particularly the North Sydney CBD where this development is located would increasingly reach failure point.

The Councillors would be aware that as part of the North Sydney Public Domain Strategy, Council has adopted a Traffic Management Plan, which makes a number of changes to traffic movement within the CBD. This TMP aims to remove vehicles from the core of the CBD, creating greater space for pedestrians, and public transport. Vehicles will be sent around the CBD. The TMP has been prepared, with associated traffic modeling on the basis of traffic generation caused by the parking provisions outlined in the DCP. If vehicle generation rates were to increase by 14%, then it is possible that some of the possible positive improvements outlined in the TMP could not be realised.

Given the very significant likely impacts on the traffic network in the North Sydney CBD if parking in new developments is allowed to be increased by a further 14%, the proposed 41 parking spaces is not supported. **It is therefore recommended that Council restrict the number of parking spaces to 36 as per the DCP.**

Mechanical Stackers

The use of mechanical stackers should always be the last alternative for parking. With any mechanical stackers, there are concerns that the residents will chose not to use the stacker because of the time delay and inconvenience, and this will place demands on the on-street parking. Particularly if residents are returning home for only a short time, they may not “bother” with the inconvenience of the car stacker.

Further, car stackers by their very nature are highly mechanical systems, which therefore makes them highly likely to break down. If there is a mechanical problem with the stacker

then residents may not be able to access their parked vehicle and/ or residents may not be able to get their vehicles into the stacker.

If the parking spaces are restricted to 36, then a mechanical stacker may not be required.

Conclusion

It is recommended that this development application be refused until such time as the number of parking spaces is restricted to 36."

Having regard to the access to the parking through the lane and over a right of way, parking should be strictly in accordance with the maximum requirements in Council's DCP. The parking numbers can be conditioned to a maximum of 36 spaces.

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 12-16 Berry 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 3 February 2011. The minutes are reproduced as follows:

"PROPERTY:	12-16 Berry Street North Sydney
DATE:	3 February 2011 @ 2.45 pm
ATTENDANCE:	Panel Members: Philip Graus; Russell Olsson; apologies from David Chesterman and Peter Webber

Council staff: Geoff Mossemeneer (chair) George Youhanna; Katie Miles.

Proponents: Glenn McCormack (architect), David Benson (architect), Teresa Wong (development manager), Aaron Hatch (development manager)

This application was the subject of a pre lodgement meeting on 27 October 2010. A site inspection was carried out by the Panel and Council Staff prior to that meeting.

This proposal is an application to be determined by the Joint Regional Planning Panel.

The Proposal:

The proposed development is summarised as demolition of existing office building and construction of mixed use development consisting ground floor and part first floor commercial with eight levels of apartments above and basement parking.

Pre lodgement plans were considered by the Panel last October and the following comments were provided:

“The Panel considered that the height of the development should be determined with regard to a thorough street analysis with the architect using a 3m floor to floor height for the residential levels. The Panel accepted that a nine storey building was appropriate for the site (inclusive of rooftop communal space) provided the upper two storeys are setback from the northern edge so as not to dominate the adjoining residential zone to the north.

The Panel also accepted that a front setback may not be necessary above the podium provided the balconies are within the setback area and the podium setback can be expressed architecturally.

The following issues or additional details were identified by the Panel that need to be addressed or considered by the architects:

- Solar access and cross ventilation to apartments, provide a compliance table with SEPP 65 standards to show the number of apartments that receive 2 or more hours of sunlight, cross ventilation and privacy between windows to habitable/non habitable rooms
- Provision of small communal meeting areas near the lift lobby. This need only be a small ‘alcove’ with a couple of comfortable chairs where residents would meet on an ‘accidental’ basis
- Possibility of small roof top communal room with views and good solar access.
- Increase the width of the internal courtyard by up to 1.5m with possible moving the northern component further north
- Locate the landscape courtyard at ground level rather than level 1, this would provide better retail/commercial space and entry for apartments plus link to rear landscaped area
- Provide for two storey commercial space to street, would provide compliance with minimum FSR requirements, provide base for building and would only impact the lower south facing apartments
- Move bathroom next to apartment entry for studio apartments for better amenity

Conclusion:

In summary, the Panel considered the bulk and size of the proposal to be generally acceptable having regard to the existing buildings and approved buildings. The ground level and courtyard requires some reconsideration as noted above. The Panel appreciates the opportunity to provide feedback during the design development phase. The Panel is confident that the issues identified can be addressed”.

A development application has been submitted for determination by the JRPP. The architect provided an outline of the proposal and how the above comments from the Panel had been addressed.

The proposal now before the Panel has been designed with the main objectives of softening the transition to the adjoining residential zone to the north, and providing space within the site for all users via the atrium, creating a sense of community in the development.

The proposal provides a setback to the northern boundary of 11.5m, which allows the right-of-way to be retained clear of structures, and also allows for 5.2m wide landscaped strip to be planted along the northern boundary of the site. The increased setback and additional landscaping provide an improved relationship to the adjoining dwellings to the north. The upper two levels of the building are setback from the northern boundary so as not to dominate the adjoining residential zone.

The provision of the centralized landscaped courtyard at Level 1 will be accessible by all users of the development. Its purpose is to provide a communal space that is the focus of the building, with the "wings" of the building built around this area addressing Berry Street and the rear of the property. The centralised courtyard also results in improved solar access and cross ventilation to units. Having the atrium and open passage ways at each level above Level 1 keeps the focus to the middle of the building, where the communal areas and entrances to units are located. This creates a sense of space and promotes casual surveillance and security for the users of the building. The lobby areas at each level also allow for informal meeting places.

In terms of presentation to Berry Street, the southern elevation has been designed to clearly define the lower portion which immediately addresses the street frontage, from the upper levels. Levels 1, 2 and 3 are articulated with more solid, heavier building elements than the upper levels. Such detail can be readily observed from the public domain and the lower levels will tie in within the podium levels of other development in Berry Street.

Panel Comments:

The Panel discussed the privacy devices on the northern elevation balconies and was satisfied that the northern neighbours privacy had been addressed.

The Panel also commented on the proposed windows in the western and eastern elevations on the boundaries. There was concern that these windows would eventually be built over and owners of these apartments would object to any new development adjoining to protect the amenity that the windows would provide. It was noted that a suitable condition could be imposed requiring a covenant on the strata title advising that the windows were not protected and could be built over in the future. The Panel stated that the windows should not be considered to meet any requirements concerning solar access or BCA compliance.

The Panel noted that communal spaces had not been provided as suggested at the last meeting but accepts that the central courtyard would serve as a reasonable communal area particularly if a café was established in the space.

The Panel also accepted that a front setback may not be necessary above the podium as the podium setback has been expressed architecturally.

The Architect advised that 66% of apartments receive a minimum of 2 hours on sunlight and over 80% have cross ventilation. The Design Principles contained in SEPP 65 are addressed as follows:

Principle 1 Context

It is considered that the development fits within the context of the area, The development provides a better relationship to the adjoining residential zone to the rear through the provision of a landscaped setback. The proposed building will fit within with the established character of the area.

Principle 2 Scale

The site is located within an established area consisting of commercial and mixed use buildings that have a height of up to 14 storeys. The proposed building is of an appropriate scale for the area in terms of its bulk and height.

Principle 3 Built Form

The built form of the building is appropriate to the site, in terms of building alignment, proportion and building type. The development also provides a reasonable internal amenity for residential development.

Principle 4 Density

The density proposed on the site is considered to be suitable, given the site is well located to public transport, shops, services and amenities.

Principle 5 Resource, Energy and Water Efficiency

A Basix Certificate was submitted with the application.

Principle 6 Landscape.

The landscaping on the site will be improved by the proposal. The new development will provide a landscaped rear setback to the northern boundary, which will allow for deep soil planting and will provide improved separation to the adjoining residential zone.

Principle 7 Amenity

The proposed development provides a floor layout allowing access to natural sunlight, with living areas orientated accordingly. Natural ventilation is available, and acoustic privacy as well as visual privacy has been considered as part of the proposed development.

Principle 8 Safety and Security

The proposed development has had regard to the principles of 'Safer by Design'. Aspects such as natural surveillance and controlled access have all been taken into consideration. The central access to the building is of an open design, with glazing allowing casual surveillance between the access point and the street.

Principle 9 Social Dimensions

The proposed development provides additional residential development within an established mixed use area, which is located near public infrastructure.

Principle 10 Aesthetics

The building aesthetics contribute to the desired future character of this area and is also consistent with the form of development existing in the area.

Conclusion:

In summary, the Panel considered the bulk and size of the proposal to be generally acceptable having regard to the existing buildings and approved buildings. The Panel supports the proposal."

External Referrals

There were no external referrals required.

SUBMISSIONS

The application was notified to the Edward, CBD and Union precincts and surrounding owners and residents from 17/12/2010 to 21/01/2011. A total of ten submissions were received with the main issues raised being summarised as follows:-

Name & Address of Submitter Basis of Submissions

Edward Precinct	<ul style="list-style-type: none">• Too bulky to provide a transition from commercial zone to heritage precinct• Exceeds building height plane requirements• Loss of privacy
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144-148 Pacific Highway 150 Pacific Highway 16 Berry Street	<ul style="list-style-type: none"> • Stepped down profile supported by the Court should be enforced • Traffic issues on Doohat Lane • Garbage collection should be carried out from Berry Street • Noise from plant and vehicles • Greater parking restrictions should be imposed in surrounding streets • Building signage of eastern elevation needs to be clarified • East elevation provides a number of windows on the boundary – need for condition so they do not prohibit development on adjoining site • Future development may be restricted to Lane only and not through to Berry Street
Suite 109, level 1 25-29 Berry Street 43 Edward Street	<ul style="list-style-type: none"> • Requests dilapidation surveys due to excavation to boundaries • Height and design will adversely affect the afternoon light available to our offices • Will dominate street in an unpleasing manner • Shadow on houses to the west • Out of proportion to most of Berry Street • Parking for only 35 vehicles • Number of small units • Accommodation likely to encourage investors • Doohat Lane not adequate for vehicle access
5 Doohat Avenue	<ul style="list-style-type: none"> • Traffic • Air conditioning plant on roof • Traffic congestion in Lane with other developments proposed • Garbage collection is deficient • Plans indicating privacy/line of sight are incorrect and misleading • Proposed tall trees are ambitious in growth expectation • Contravention of site area requirement • Contravention of BHP • Inappropriate bulk and scale as transition • Loss of privacy • Parking provision
8-10 Berry Street	<ul style="list-style-type: none"> • Requires right of way and not prepared to relinquish it • Any development must recognise and allow for the right of way
5/17 Doohat Ave	<ul style="list-style-type: none"> • Impact on amenity • Privacy • Insufficient parking provided
3 Doohat Ave	<ul style="list-style-type: none"> • Recommended mix of dwellings is not complied with • Plans indicating privacy/line of sight are incorrect • Commercial units overlook residents • Proposed trees will take long time to grow • Traffic congestion in Lane • Garbage collection inadequate • Air conditioning plant on roof • Car stacker system impractical • Noise for vehicles and plant • Vibration damage • Require dilapidation report
1A Doohat Lane	<ul style="list-style-type: none"> • Bulk and density at boundary zoning • Property damage from excavation to boundary • Change along common boundary • Block light into yard due to height • Traffic in lane • Privacy • Insufficient parking in area
1 Doohat Ave	<ul style="list-style-type: none"> • Noise from garbage • Loss of privacy • Traffic in lane

2/154 Pacific
Highway

- Air conditioning plant on roof
- In sufficient parking in area
- Bulk and scale inappropriate
- Noise from traffic and garbage collection
- Outside BHP
- Outside previous approved envelope
- Block views

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 92m AHD	RL 111.3m AHD	RL 195m AHD	YES
Overshadowing of land (Cl. 28D(2)(b))	-	NO	Variation permitted	YES
Overshadowing of dwellings (Cl. 28D(2)(d))	-	YES	Variation permitted	NO
Minimum lot size (Cl. 28D(2)(e))	952.4	952.4	1000m ² min.	NO
Mixed Use Zone				
Building Height Plane (Cl.30)				
<ul style="list-style-type: none"> • North Elevation 	5.5m	9m	45° height plane from 3.5m above rear boundary	NO
Floor Space (Cl. 31) (max)	2.98:1	0.53:1	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		
	complies	Comments
6.1 Function		
Diversity of activities, facilities, opportunities and services	No	No communal space provided for residents – relies on use of internal courtyard; commercial/retail space provided at base of building
Mixed residential population	No	56% of apartments are one bedroom or less with 44% as two bedroom. The maximum recommended is 45% for small apartments. The variation can be supported having regard to public transport and building not being

		suitable for families. Amended plans have reduced the number of small apartments to north that create privacy problems. Privacy impacts are reduced due to reduction in balcony numbers.
Maximum use of public transport	Yes	Commercial parking on site decreased; excellent access to public transport
6.2 Environmental Criteria		
Clean Air	Yes	Reduced level of parking, parking to be restricted to maximum under DCP
Noise	Yes	Acoustic report submitted, can be conditioned
Acoustic Privacy	Yes	Acoustic report indicates standards can be met
Visual Privacy	Yes	See comments below. Proposed windows on eastern and western boundaries have been designed to be bricked up at a later date should development occur. Privacy with apartments and north facing commercial windows can be conditioned to have appropriate privacy devices.
Wind Speed	NA	Building less than 33m high
Reflected light	Yes	Materials non reflective and can be conditioned
Artificial light	NA	No roof top advertising proposed
Outdoor lighting	Yes	Can be conditioned
Awnings	Yes	Continuous awning provided across Berry Street frontage
Solar access	Yes	Solar access to all northern balconies and windows to south facing apartments with roof windows proposed
Views	Yes	See comments below
6.3 Quality built form		
Context	Yes	Site analysis undertaken, building generally in context with desired character for area and development to south and east
Public spaces and facilities	NA	Site too small to provide spaces
Skyline	Yes	Upper levels designed to contribute
Through-site pedestrian links	NA	None required
Streetscape	Yes	Satisfactory.
Subdivision	No	Consolidation of sites not proposed contrary to character statement. See comments under site area
Setbacks	No	No side setbacks therefore future development could be built to boundary. Condition required. No Podium setback but considered satisfactory through architectural treatment being consistent with surrounding development. Proposal not setback in accordance with building height plane above commercial level. See comments about rear setback under building height plane discussion below
Entrances and exits	Yes	Visible from Berry Street
Street frontage podium	No	Podium level established by faced treatment – satisfactory as there are no podiums in street from recent developments
Laneway frontage	NA	No lane frontage
Building design	Yes	Generally satisfactory. Supported by Design Excellence Panel
Nighttime appearance	Yes	Can be conditioned
6.4 Quality urban environment		
High quality residential accommodation	Yes	Apartment areas comply
Accessibility	Yes	Accessibility report submitted
Safety and security	Yes	Satisfactory
Car parking	Yes	See comments below about provision and dimensions

Bicycle storage	Yes	Storage rooms provided but on lower level can be conditioned
Vehicular access	Yes	As existing via Doohat Lane and the right of way
Garbage Storage	No	Separate facilities provided. Garbage can be collected from Berry Street with service lift provided to transfer bins from basement to street level. A collection area in the south east corner of the building fronting Berry Street needs to be provided to avoid numerous bins on the footpath and street. The garbage collectors will remove the bins and replace them from the storage area. This can be conditioned.
Site facilities	Yes	Can be conditioned . Storage areas provided within basement and within apartments
6.5 Efficient use and management of resources		
Energy efficiency	Yes	Basix certificate submitted

NORTH SYDNEY LEP 2001

Permissibility within the zone:

The proposal is permissible with consent under the Mixed Use zoning.

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 a major reduction in the commercial floor space existing on site. The site is too small to provide for high quality/large commercial floor plates
(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.	The proposal does not increase the non residential floor area and accordingly arrangements are not required.
(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: (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 for a reduction in the non residential parking on site
(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. Cycle facilities are to be incorporated into the development to promote cycling.
(f) to allow for 250,000m ² (maximum) non	The proposed development will reduce 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.	residential floor space.
(g) to prohibit further residential development in the core of the North Sydney Centre.	The proposed development incorporates a residential component, however, it is not located within the core of the North Sydney Centre (as identified by a "commercial" zoning).
(h) to encourage the provision of high-grade commercial space with a floor plate, where appropriate, of at least 1000m ² .	The commercial floor plate upon the site is smaller than the required 1000m ² threshold (the site area is 952m ² and the restricted commercial floor plate is much smaller).
(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 is to be demolished. The parking is substandard at present.
(k) to encourage a diverse range of employment, living, recreation and social opportunities.	The proposed development provides flexible commercial spaces and quality residential apartments.
(l) to promote high quality urban environments and residential amenity	The proposal aims to maximise the amenity to residents internally. The design of the building is contemporary in nature.
(m) to provide significant public benefits such as open space, through-site linkages, childcare and the like.	The site is not large enough to provide any real public benefits as suggested.
(n) to improve accessibility within and to the North Sydney Centre.	The proposed buildings have been designed to be accessible.
(o) to protect the amenity of residential zones and existing open space within and nearby the North Sydney Centre	The proposal will have a limited impact on amenity of the residential area adjoining to the north
(p) to prevent any net increase in overshadowing of any land-zoned residential or public open space or identified as a special area.	The proposed development will result in some minor overshadowing of some residential premises.
(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.	Landscaped areas limited to internal courtyard and some deep planting on the northern boundary

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 existing buildings on the site have a total non-residential gross floor area of approximately 2,839m² and the proposal has a non residential floor area of 502m² resulting in a decrease over that which currently exists. The proposal therefore complies with Clause 28C(2).

CLAUSE 28D - BUILDING HEIGHT AND MASSING

Objectives

- (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.*

The proposed development is considered to have an appropriate overall scale however the proposal is non compliant with the building height plane and there was concern with the proposed setbacks of some of the upper levels located at the boundary of the North Sydney Centre. The amended plans have increased the setbacks to address the concern raised with the applicants during assessment of the proposal.

- (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.

- (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.

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

The proposed development has been separated from adjoining residential development and has incorporated some screening devices where privacy issues could occur. Additional screening may be required on the commercial levels to overcome concerns raised by residents. Conditions of consent would address this issue.

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

The architect has attempted to ensure that the streetscape has a comfortable human scale when viewed by passing pedestrians. A continuous awning is to be provided along the entire Berry Street façade to provide weather protection for pedestrians.

- (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 3 allotments to create a commercial floorplate, however, the application results in the isolation of No.8 - 10 Berry Street which would be unable to meet this objective. The issue of consolidation was considered by the Land and Environment Court. The Court did not regard that the failure to amalgamate would in itself be sufficient to justify refusal as the proposal just fell short

of the 1000m² requirement. The current controls are unlikely to permit a building much larger than the existing building on No.10 and therefore there is little financial incentive in pursuing consolidation.

Development Controls

Subclause 28D(2) sets out the building height and massing requirements for proposed development within the North Sydney Centre. Any development which exceeds these standards can not be consented to.

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

Utilising the LEP definition, the proposed building will have a maximum RL of 111.3 AHD (to the roof of the rooftop plant room) and therefore complies with this requirement.

(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).*

The proposed development will not result in overshadowing of land outside the composite shadow area.

(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", and*

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*

The proposed development will overshadow some residential premises outside the North Sydney Centre, primarily to the south-west of the site. However, these dwellings will generally only be affected for a maximum period of 30minutes between 9am and 9.30am during the winter solstice, and therefore will still be able to receive a reasonable level of solar access.

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

The subject site is 952.4m² in area which is less than the numerical requirement and therefore does not satisfy this standard. The applicant has submitted a SEPP 1 objection to vary this standard.

The area of the site itself represents a 4.7% shortfall in site area. The proposal involves consolidation of three lots. The adjacent site at No.8-10 Berry Street has a smaller site area and would be isolated to some extent. The issue of consolidation was considered by the Land and Environment Court. The Court did not regard that the failure to

amalgamate would in itself be sufficient to justify refusal as the proposal just fell short of the 1000m² requirement. The current controls are unlikely to permit a building much larger than the existing building on No.10 and therefore there is little financial incentive in pursuing consolidation. The future development of this site would not be compromised by the approval of this application.

The SEPP 1 objection with regard to the site area control is considered to be well founded under the circumstances of the subject site and can be supported.

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

No serious attempts have been made by the applicant to consolidate 8-10 Berry Street with the subject site. In recent cases before the Land and Environment Court (*Karavellas v Sutherland Shire Council* – 11658 of 2004), the general questions that need to be answered when dealing with amalgamation of sites or when a site is to be isolated through redevelopment are:

- Is amalgamation of the sites feasible?
- Can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible?

The current controls are unlikely to permit a building much larger than the existing building on No.8 - 10 and therefore there is little financial incentive in pursuing consolidation.

The proposal involves consolidation of two sites (3 allotments).

The Land and Environment Court did not accept Council's consolidation argument in the previous Court case as a reason that would warrant refusal of the application. It was concluded that there was little if any planning advantage in insisting on consolidation with Nos.8 – 10 Berry Street.

Building Design and Public Benefits

Subclause 28D(5) requires the consent authority to consider a number of provisions.

- (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.*

Some additional attention was considered necessary with regard to the separation to the lower scale residential development adjoining to the north. The application is generally acceptable with regard to its scale within the context of the locality. Recent mixed use, residential and commercial development on the southern side of Berry Street have heights of 10 levels and less. These sites are strata titled and not likely to be redeveloped. In the context of the western part of Berry Street, the scale of development should not exceed 10 levels.

The proposal provides no direct public benefits other than providing apartments in a well designed building and improving the parking on site. View lines from apartments on the southern side of Berry Street will be affected. The proposal is consistent in terms of scale and form to existing mixed use buildings in the locality. The provision of a podium and tower set back is addressed by the architectural treatment of the façade that is consistent with the area.

CLAUSE 29 - BUILDING HEIGHT

Objectives

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

The proposed development incorporates a suitable mix of commercial and residential uses. The building steps down slightly in height as it approaches its residential interface to the north of the site and the overall height could now be regarded as more compatible with the adjoining residential area provided the separation distance of the upper levels is appropriate. It is considered that the amended setbacks of levels 6 and 7 to a minimum of 9m from the boundary and the balcony at level 8 being setback an additional 2m making an 11m setback from the northern boundary is acceptable. Although the northern walls of those upper levels are all in breach of the building height plane, these more appropriate setbacks assist in ensuring compatibility.

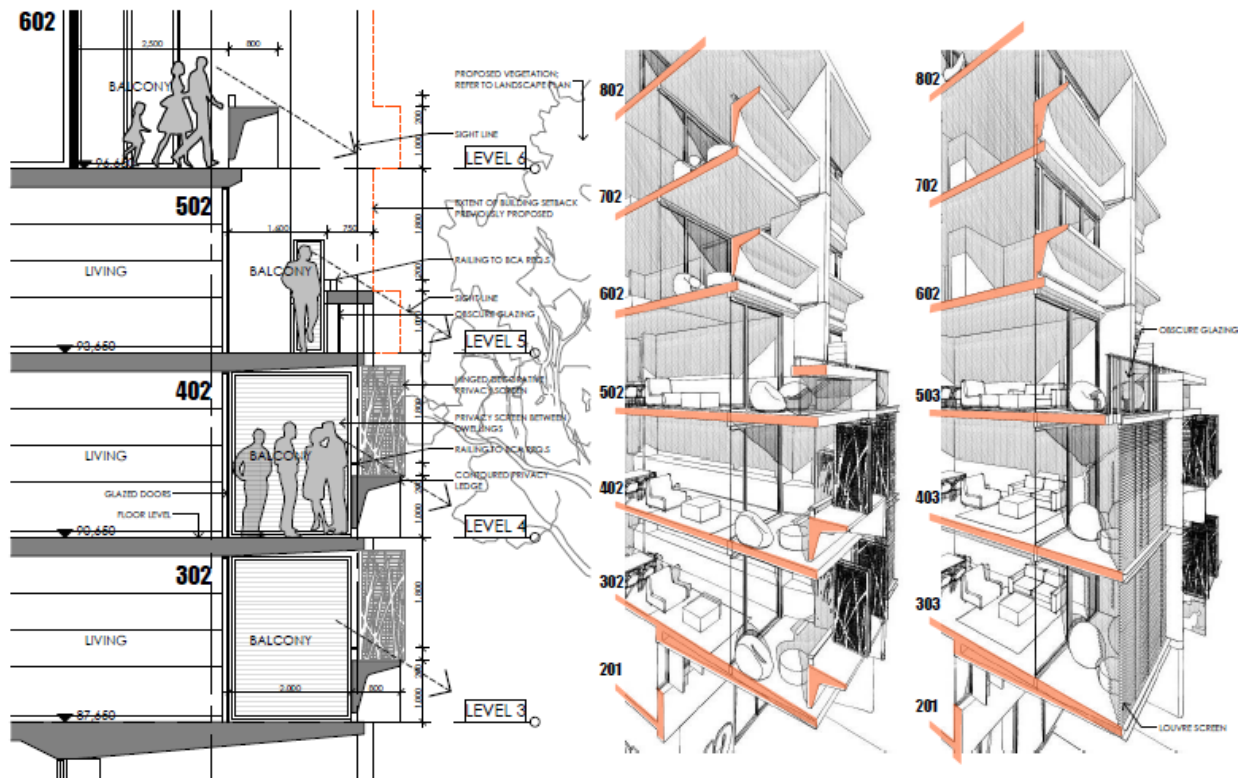
- (b) encourage an appropriate scale and density of development for each neighbourhood that is in accordance with, and promotes the character of, the neighbourhood, and*

The proposed development is generally considered to be an appropriate bulk and scale on the northern fringe of the North Sydney Centre.

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

Overlooking is the main concern from the balconies facing north. Privacy devices can be attached to the balustrades to address the problem. A sketch plan has been submitted detailing the privacy devices as shown below. The additional setback on levels 6 and 7 result in consolidating apartments on each level. This results in 2 less balconies on each floor (4 overall) facing the residential area as well as a reduction of 5 apartments. The mix of apartments has improved from the original proposed 75% small – 25% large up to 56% small – 44% large. The recommended mix is 45% small – 55% large. Having

regard to the location on the edge of the CBD and the excellent public transport facilities, the 56/44 mix can be supported.



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

The residential apartments have been designed in accordance with the principles of SEPP 65 with building separation the main concern with the original plans. The part of the building less than 12m in height will have a separation distance to the boundary of 7m. With the changes, the upper levels would have a distance of 9m and 11m which is more in keeping with SEPP 65.

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

The ground floor elevation of the proposed development has not been designed to follow the natural east-west slope of Berry Street. Entry to the site will be from the western end only. The ground floor retail spaces will relate to the internal courtyard which is considered satisfactory.

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

Pursuant to Clause 28D(2) of the NSLEP, a maximum RL height of 195 AHD applies to the site. The proposed development has a maximum height of RL 111.3 AHD.

Building Height Controls

Subclause 29(2) states that a “building must not be erected in the mixed use zone in excess of the height shown on the map”. The height Map to the North Sydney LEP does not specify a maximum height for the subject site. Height is primarily controlled by the provisions contained within Clause 28D and 29 as discussed above.

CLAUSE 30 - BUILDING HEIGHT PLANE

The objectives to the clause set out in subclause 30(1) are:

- (a) *ensure compatibility between development in the mixed use zone and adjoining residential or open space zones, and*
- (b) *minimise adverse effects on land in adjoining residential or open space zones in relation to ventilation, views, building separation, solar access and light and to avoid overshadowing of windows, landscaped areas, courtyards, roof decks, balconies and the like.*

The proposed development is considered to be compatible with the amended setbacks of the upper levels from the residential zone to the north. By providing setbacks more in line with SEPP 65 for the building above 12m in height, the bulk and scale has become more compatible when viewed from the adjoining rear yards. The increase in the building separation by 2m assists in reducing adverse effects on neighbouring properties. The modification also results in a more acceptable density and dwelling mix on the site.

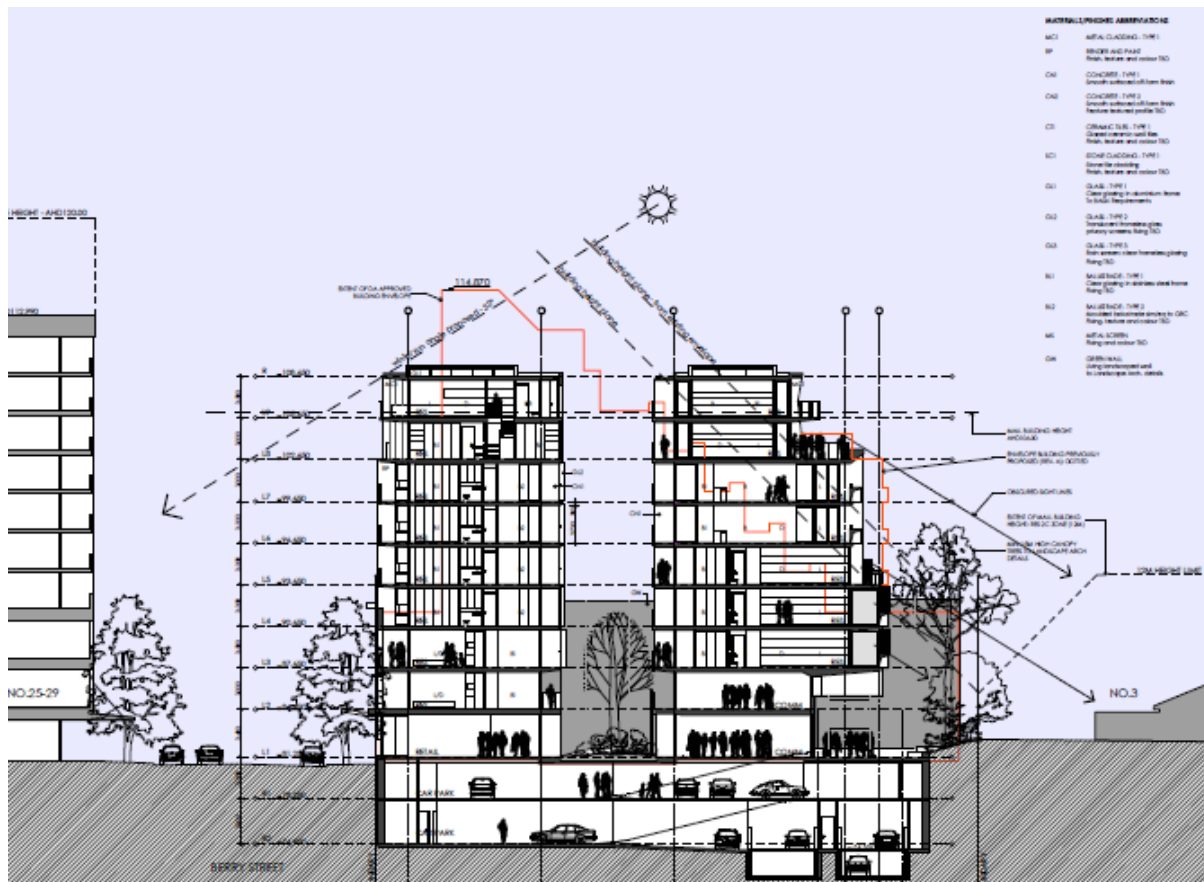
Building Height Plane Controls

Subclause 30(2) requires the implementation of a building height plane where a development within the mixed use zone adjoins residential zone. The northern boundary of the site directly adjoins the Residential C Zone. More specifically the clause requires that:

“A building must not be erected in the mixed use zone, on land that adjoins or is adjacent to land within a residential or open space zone, if any part of the building will exceed a building height plane:

- (c) *commencing 3.5 metres above existing ground level, projected at all points from each of the boundaries of the site which adjoin land within the residential C zone, or ”*

The proposed development projects through the building height plane as illustrated below.



A SEPP 1 objection has been submitted requesting a variation to the development standard.

The breach of the building height plane occurs above level 4. The building would appear as a 7 storey building from the adjoining rear yards from the boundary. The amended setbacks have increased the separation above the 4th storey to be consistent with SEPP 65 setbacks. This is considered to be compatible with the adjoining Residential C zone (maximum height of 12m) and will ensure that adverse effects are minimised in relation to building separation.

The SEPP 1 objection with regard to the building height plane control is considered to be well founded under the circumstances of the subject site and can be supported.

CLAUSE 31 - FLOOR SPACE

Subclause 31(2) states:

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

The floor space Map to the North Sydney LEP illustrates that the non-residential component of a development within the mixed use zone must have an FSR of between 3:1 and 4:1. The existing buildings on the site have a total non-residential gross floor area of approximately 2,839m² or a FSR of 2.98:1. The proposed development has a

non residential floor area of 502m² or a FSR of 0.53:1. A SEPP 1 objection has been submitted requesting a variation to the development standard.

The proposal involves a large reduction in commercial floor space from existing, well below the current control's minimum requirement. The applicant was advised that a SEPP 1 Objection could not be supported and a Planning Proposal was necessary due to the extent of the breach.

The applicant lodged a Planning Proposal that is currently being dealt with. It is noted that the Planning Proposal has been endorsed by Council at its meeting of 31 January 2011 as the proposal was consistent with the FSR intended under Draft NSLEP 2009.

The Planning Proposal was referred to the Department of Planning and gained Gateway Approval and has been on exhibition from 24 March until 7 April. No submissions were received and the Planning Proposal is to be reported to Council at its meeting of 2 May 2011. The Planning Proposal is then referred to the Minister for gazettal. This could take several weeks to several months. A consent could not be granted until the Planning Proposal is finalised.

CLAUSE 50 - DEVELOPMENT IN THE VICINITY OF HERITAGE ITEMS

Development in Vicinity Controls

Clause 50 states:

- (2) *When determining a development application relating to land in the vicinity of a heritage item the consent authority must consider the likely effect of the proposed development on the heritage significance of the heritage item and its curtilage.*
- (3) *Before determining a development application relating to land in the vicinity of a heritage item, the consent authority may require the submission of a statement of heritage impact on the heritage item and its curtilage.*

There are a number of heritage items in the vicinity of the subject site, the majority of which only have local significance. The significance of these items, primarily relates to their excellent and intact group of quality style dwellings of their period and reflecting early subdivision patterns in the locality. The proposal is located nearby to the Edward Street Conservation Area and is characterised by mainly single storey Federation style houses. It is considered that the proposal is sufficiently distanced from the Conservation Area to have negligible impact. The Conservation Area is already set against the backdrop of the North Sydney commercial centre.

The site is to the rear of a heritage item at No.1 Doohat Avenue. This item is considered to have local significance and its significance is identified as:

“.....an elaborately detailed house in good state of preservation and still set in original garden with stone fence”.

This property has already had its curtilage and landscape setting compromised at the

rear by subdivision and the construction of a second small dwelling c.1988. It is considered that the proposed development would be adequately stepped back (with amended setbacks), minimising the visual impact of the development relative to the residential scale of 1 Doohat Avenue.

Draft North Sydney Local Environmental Plan 2009

The Draft North Sydney Local Environmental Plan 2009 is currently on public exhibition from 20 January 2011 to 31 March 2011, following certification of the plan by the Director-General of the Department of Planning. It is therefore a matter for consideration under S.79C of the Environmental Planning and Assessment Act 1979. However at this stage little weight can be given to the plan since the final adoption of the plan is neither imminent nor certain.

The provisions of the draft plan have been considered in relation to the subject application, Draft LEP 2009 is the comprehensive planning instrument for the whole of Council's area which has been prepared in response to the planning reforms initiated by the NSW state government.

The provisions of the Draft Plan largely reflect and carry over the existing planning objectives, strategies and controls in the current NSLEP 2001 in relation to this site

The site is identified under Draft LEP 2009 as being included within the B4 mixed use zone as are adjoining sites. The proposed development is permissible in the draft zone.

The development standards applicable to the site under the Draft LEP (DLEP) 2009 generally reflect those which currently apply to the site under the current North Sydney Local Environment Plan 2001 (NSLEP) 2001. The development standards which apply to the proposed development under the DLEP are identified in the following compliance table:

COMPLIANCE TABLE – DEVELOPMENT STANDARDS			
Development standard	Requirement	Proposed	Complies
Clause 4.3: Height of buildings	RL 106	RL 111.3	NO
Clause 4.4: Floor space ratio	Minimum 0.5:1	0.53:1	YES
Clause 6.4: Building heights and massing	1000m ² site area	952m ²	NO

Note: A building height plane is a requirement under the draft DCP.

The proposed development has been considered against the development standard applicable under the Draft LEP and does not comply with the provisions of Clause 4.3 and Clause 6.4. The applicant has not addressed the departures from the draft development standards in the statement of environmental effects as the exhibition commenced after the development application was lodged with Council. The departure to the site area is supported in the circumstances. The departure to the height control is also supported in the circumstances. The height to the roof of the apartments is RL108.65. The height is in context with the buildings opposite in Berry Street and has no impact on the adjoining dwellings to the north. The height is well below the 2007

consent for the site and does not cause any unanticipated impacts.

Having regard to the provisions of section 79C of the Environmental Planning and Assessment Act 1979, the proposed development is considered to satisfactory with regard to the provisions of the Draft North Sydney Local Environmental Plan 2009.

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 commercial purposes, 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:

Principle 1 Context

It is considered that the development fits within the context of the area, The development provides a better relationship to the adjoining residential zone to the rear than the existing building through the provision of a landscaped setback. The proposed building will fit within with the established character of the area.

Principle 2 Scale

The site is located within an established area consisting of commercial and mixed use buildings that have a height of up to 14 storeys. The proposed building is of an appropriate scale for the area in terms of its bulk and height. A nine storey building adjacent to the residential zone is appropriate subject to adequate separation distances being provided.

Principle 3 Built Form

The built form of the building is appropriate to the site with regard to proportion and building type. The development also provides a reasonable internal amenity for residential development.

Principle 4 Density

The dwelling mix has a higher proportion of small dwellings to large dwellings (56/44). The density proposed can be supported given the site is well located to public transport, shops, services and amenities.

Principle 5 Resource, Energy and Water Efficiency

A Basix Certificate was submitted with the application.

Principle 6 Landscape.

The landscaping on the site will be improved by the proposal. The new development will provide a landscaped rear setback to the northern boundary, which will allow for deep soil planting and will provide improved separation to the adjoining residential zone.

Principle 7 Amenity

The proposed development provides a floor layout allowing access to natural sunlight, with living areas orientated accordingly. Natural ventilation is available, and acoustic privacy as well as visual privacy has been considered as part of the proposed development.

Principle 8 Safety and Security

The proposed development has had regard to the principles of 'Safer by Design'. Aspects such as natural surveillance and controlled access have all been taken into consideration. The central access to the building is of an open design, with glazing allowing casual surveillance between the access point and the street.

Principle 9 Social Dimensions

The proposed development provides additional residential development within an established mixed use area, which is located near public infrastructure.

Principle 10 Aesthetics

The building aesthetics contribute to the desired future character of this area and is also consistent with the form of development existing in the area.

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 proposal addresses the character statement as follows:

Provide diverse activities, facilities, opportunities and services

The mixed use development provides for commercial, retail and residential uses, with a landscaped communal area provided for all users. The new residential accommodation is provided in the fringe of the city centre, and not in the commercial core as per the Development Control Plan.

Promote public transport, reduce long stay commuter parking on site and reduce non residential parking on site

The site has excellent access to public transport and parking on site is satisfactory subject to the parking being limited to the maximum under the DCP.

Provide continuous awnings to commercial buildings and consider weather protection at entrances

An awning is proposed over the entrance along the Berry Street frontage, which is consistent with adjoining buildings.

Allow zero setbacks at ground floor and adjacent to heritage items

The building will retain the existing zero setbacks to front and side boundaries

Maximum five storey street frontage podium height along Berry Street, or may be reduced to that part of the building used for commercial use. Provide average of 5m street frontage setback above the podium in Berry Street

The podium height will apply to the lower 3 levels of the building, which is consistent with new development in Berry Street. The upper levels are not setback, however the detailing along the façade clearly define the podium of the building. The upper two levels are setback from the northern boundary so as not to dominate the adjoining residential zone.

Provide architectural detailing, high quality materials and a visually rich pedestrian environment with active street frontages. Buildings are to be energy efficient, minimise stormwater runoff, recycle where possible, and minimise waste consumption

The development is of a high quality design, with architectural detailing. The building provides a good relationship to the street frontage. The building will comply with the energy requirements of BASIX, Appropriate stormwater controls will be installed. Waste will be minimised where possible.

Have regard to Public Domain. Continue use of tree planting and use of native vegetation to enhance the urban environment

The development will not hinder the public domain. The development will provide a landscaped setback along the rear boundary, which will be a significant improvement for the site and the adjoining residences to the rear.

SECTION 94 CONTRIBUTIONS

Section 94 Contributions in accordance with Council's S94 plan are warranted and would be based on the total number of apartments with allowance for the reduction in commercial floor space. There are 12 x studio; 15 x one bedroom; 19 x two bedroom and 2 x three bedroom apartments with an allowance of 2337m² of commercial space.

Administration	\$246.93
Child Care Facilities	\$0.00
Community Centres	\$10,580.61
Library Acquisition	\$1,782.63
Library Premises & Equipment	\$5,634.68
Multi Purpose Indoor Sports Facilities	\$821.50
Open Space Acquisition	\$127,337.26
Open Space Increased Capacity	\$252,404.09
Olympic Pool	\$2,673.54
Public Domain Improvements	\$0.00
Traffic improvements	\$1,788.19
The total contribution is:	\$403,269.43

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 controls.

As such, consent to the development may be granted.

SUBMITTORS CONCERNS

Eleven submissions were received in relation to the proposed development raising concerns about bulk, scale, privacy, noise, traffic, parking, dwelling sizes and a number of other issues. These issues have been mostly addressed within this report. Additional issues raised are addressed as follows:

Too bulky to provide a transition from commercial zone to heritage precinct

The overall height of the building is acceptable. The bulk has been improved with additional setbacks of the upper levels from the rear boundary. It is not a heritage precinct directly adjoining the site. The adjoining residential zone is Residential C with a 12m height limit. A transition from 25m to 12m with SEPP 65 separation distances is considered appropriate.

Exceeds building height plane requirements

This is addressed within the report and the SEPP 1 objection is supported as the transition and separation distances are acceptable.

Loss of privacy

This has been addressed with appropriate devices to the balustrades of the rear balconies and treatment to the level 2 commercial windows. See sketch above.

Stepped down profile supported by the Court should be enforced

The Court did not support a stepped down profile that would be fully compliant with the building height plane. The Court found the previous proposal to be too high and incompatible with the residential development adjoining to the north. The Court was considering a 50m high building.

Traffic issues on Doohat Lane

The traffic generation remains the same as existing

Garbage collection should be carried out from Berry Street

The garbage is now proposed to be collected from Berry Street with the amended plans. The slope in Berry Street might allow for a collection area at the south eastern corner of the site with some internal changes that should not reduce floor space too much. Council's waste officer prefers that bins are kept within a small collection room fronting Berry Street where the collector can remove the bins and replace them rather than a number of bins being left on the footpath/roadway.

Noise from plant and vehicles

Vehicle noise remains similar to existing with perhaps more movements in the evenings. Noise from plant can be conditioned.

Greater parking restrictions should be imposed in surrounding streets

This is a separate matter for Council. Current policy is for new development not to be issued with parking permits so that if parking is limited, new residents would be limited with regard to car use/ownership.

Building signage of eastern elevation needs to be clarified

The perspective shows the name of the development, it is not part of the consent as the perspective is not part of the plans for approval. A separate application would be required for future signage. This can be conditioned.

East elevation provides a number of windows on the boundary – need for condition so they do not prohibit development on adjoining site

Both east and west elevations show windows on the boundary. The concern is that these windows would eventually be built over and owners of these apartments would object to any new development adjoining to protect the amenity that the windows would provide. A suitable condition could be imposed requiring a covenant on the strata title advising that the windows were not protected and could be built over in the future. The windows should not be considered to meet any requirements concerning solar access or BCA compliance.

Future development may be restricted to Lane only and not through to Berry Street

The property is assessed as not having access over the right of way to Berry Street.

Requests dilapidation surveys due to excavation to boundaries

This is a standard condition for development involving excavation near the boundary.

Will dominate street in an unpleasing manner

The scale of the building to the street is acceptable.

Shadow on houses to the west

There would be some minor shadow after 9am in mid winter for no more than 30 minutes.

Out of proportion to most of Berry Street

The building is consistent with the southern side of Berry Street and the desired character under the LEP controls.

Parking for only 35 vehicles

The amended plans increase parking to 43 spaces which is not supported. The parking numbers will be restricted to the maximum that complies with the DCP controls.

Number of small units

Agreed that the number of small units in the original proposal was excessive and needed to be reduced. The amendments to the proposal result in a lesser density and a more acceptable mix of small and large dwellings.

Accommodation likely to encourage investors

This is not a relevant consideration. The accommodation may also prove to be affordable for first home buyers.

Doohat Lane not adequate for vehicle access

It is a public road currently used for access. The existing right of way across the subject site in favour of No.10 does not encourage a change to access the site from Berry Street.

Proposed tall trees are ambitious in growth expectation

Mature trees can be conditioned. It is recognised that the landscaping will take time to establish. The trees have not been considered as a means of addressing privacy concerns. Privacy devices must be part of the building design and permanent. The landscaping will eventually partly screen the building and soften its appearance and reduce any dominance.

Car stacker system impractical

The car stacker system within the car park is limited and may not be required with parking being restricted to the DCP maximum.

Block light into yard due to height

The building is to the south of the residential properties and will not impact on sunlight/daylight.

Outside previous approved envelope

The previous consent related to a different proposal that involved a residential addition above the existing commercial building. Although the addition complied with the building height plane, there is no requirement for the proposal to comply with that envelope.

Each application is assessed on merit against the controls. The previous application was somewhat constrained by retaining the existing building and parking. The proposal has substantially less GFA than the previous approval.

Block views

Some district views would be affected to a small degree perhaps by the upper levels in the north west corner outside the building height plane. It is noted that adverse impact on views is to be minimized as an objective of the building height plane control. The additional amended setbacks assist in minimising any perceived adverse impacts. This in itself would not warrant refusal of the application.

Recommended mix of dwellings is not complied with

As indicated in the report the proposed mix is acceptable. The modified proposal with a 56/44 mix is supported.

Conclusion

The application has been assessed against the relevant statutory controls. The proposal is in breach of three development controls.

The site area breach is considered satisfactory as discussed within the report and the SEPP 1 objection can be supported.

The setback from the rear residential boundary of the upper levels has been increased resulting in the proposal being compatible with the residential development adjoining. The SEPP 1 objection with regard to building height plane is considered well founded and therefore can be supported.

The proposed development has a non residential floor area of 502m² or a FSR of 0.53:1. The proposal involves a large reduction in commercial floor space from existing, well below the current control's minimum requirement of 3:1. The applicant was advised that a SEPP 1 Objection could not be supported and a Planning Proposal was necessary due to the extent of the breach. The applicant lodged a Planning Proposal that is currently being dealt processed. The Planning Proposal was referred to the Department of Planning and gained Gateway Approval and has been on exhibition from 24 March until 7 April. No submissions were received and the Planning Proposal is to be reported to Council at its meeting of 2 May 2011. The Planning Proposal is then referred to the Minister for gazettal. This could take several weeks to several months. Consent cannot be granted until the Planning Proposal is finalised.

As indicated in the above report, the applicant has responded to a number of concerns raised with amended plans. These concerns with the original plans would have resulted in a recommendation for refusal. The amended plans have fully resolved the previous concerns.

The application is recommended for favourable consideration by the Panel. Should the Panel favour the application, the Planning Proposal will need to be gazetted before consent can be granted.

RECOMMENDATION

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

THAT upon gazettal of the Planning Proposal with regard to Clause 31, the Joint Regional Planning Panel, as the consent authority, assume the concurrence of the Director General of the Department of Planning and Infrastructure and invoke the provisions of SEPP 1 with regard to Clause 28D(2)(e) and Clause 30 and grant consent to 2010SYE107 – North Sydney - Development Application No.494/10 subject to the attached conditions.

Geoff Mossemeneer
EXECUTIVE PLANNER

Stephen Beattie
MANAGER DEVELOPMENT SERVICES
