

JRPP No:	2011SYE003
DA No:	DA 524/10
PROPOSED DEVELOPMENT:	83-89 Chandos Street, St. Leonards Demolition of existing buildings and erection of new 8 storey mixed use development with basement car parking
APPLICANT:	Architects + Partners
REPORT BY:	Ian Pickles, Executive Planner North Sydney Council Ph. 9936 8100

Assessment Report and Recommendation

Attached: Traffic Engineer's referral comments

ADDRESS/WARD: 83-89 Chandos Street, St. Leonards (W)

APPLICATION No: DA524/10

PROPOSAL: Demolition of existing buildings and erection of new 8 storey mixed use development comprising 695m² retail space and 47 residential units with basement car parking

PLANS REF: Drawings numbered A003, A101, A102, A103, A104, A105, A106, A107, A108, A109, A110, A111, A201, A202, A203, A301, A302 and A303, Issue B, dated 25 February 2011 drawn by Architects + Partners, and received by Council on 25 February 2011, drawing numbered A601, Issue A, dated 15 December 2011, drawn by Architects + Partners, and received by Council on 23 December 2010, and landscape plans numbered 1716-LP-01, 02 and 03, dated 22 December 2010, drawn by John Lock and Associates, and received by Council on 23 December 2010.

OWNER: TWT Development Pty Ltd

APPLICANT: Architects + Partners

AUTHORS: Ian Pickles, Executive Planner/

DATE OF REPORT: 15 April 2011

DATE LODGED: 23 December 2010

AMENDED: 25 February 2011

RECOMMENDATION: Refusal

DESCRIPTION OF PROPOSAL

The subject application proposes demolition of the existing buildings and structures at 83-89 Chandos Street, St Leonards, and construction of a new 8 storey mixed use development on the site. The proposal building form comprises a 4 storey podium with a further 4 storey tower extending to maximum height above ground of 27.5 metres.

The proposed development incorporates the following:

- Provision of three (3) retail suites with a gross floor area of 695 m² on the ground and lower ground levels;
- Provision of 47 residential units from ground level to level 7, comprising:
 - 3 x studio units, 5 x 1 bedroom units, 36 x 2 bedroom units, and 3 x 3 bedroom units;
 - The ground floor kitchens/ living rooms of six (6) x 2 storey units are located at the ground level on the eastern side of the building; the residential entry lobby to the building is on the Chandos Street frontage;
- Basement car parking for 44 vehicles (42 residential spaces and 2 retail spaces) and a car wash bay on two basement levels and part of the lower ground level; six (6) of the parking spaces are for disabled persons; vehicle access is by way of a 5.5m wide entry/ exit ramp to Atchison Lane on the south side of the building; also within the basement are various plant and services, water storage tanks, residential storage, motor cycle parking bays and bicycle storage, and a garbage compactor and bin storage area, and
- Provision of landscaping and related works in the form of a water feature at ground level within part of the Chandos Street setback area, a water feature at ground level at the base of the light wells in the centre of the building, and some shrub planting adjacent to the Chandos Street and Oxley Street frontages of the site and the planting of street trees.



Figure 1 - Photomontage of the proposed development
(source: applicant's amended plan documentation received 25/2/11)

STATUTORY CONTROLS

North Sydney LEP 2001

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

Section 94 Contributions

Environmental Planning & Assessment Act 1979

SEPP No. 1 – Development Standards:

- Clause 29 (Building Height)
- Clause 30 (Building Height Plane)
- Clause 32 (Design of Development)

SEPP No. 55 – Remediation of Land

SEPP No.65 – Design Quality of Residential Flat Development

SEPP (Building Sustainability Index: BASIX) 2004

SEPP (Infrastructure) 2007

Sydney Harbour Catchment REP and DCP

Draft North Sydney LEP 2009

POLICY CONTROLS

DCP 2002

Draft DCP 2010

DESCRIPTION OF LOCALITY

The subject site is located on the south-west corner of the intersection of Chandos Street and Oxley Street. Atchison Lane adjoins the site to the south. The site comprises the following four (4) allotments:

- . Lots A & B, DP 443166, Nos 83-85 Chandos Street
- . Lot 31 Sec 11 DP 2872, No. 87 Chandos Street
- . Lot 32, Sec 11 DP 2872, No. 89 Chandos Street

The subject site is rectangular in shape, with a consolidated frontage of 32.3 metres to the southern side of Chandos Street, 35.8 metres to the western side of Oxley Street and 32.3 metres to the northern side of Atchison Lane, and has a total site area of 1,156.7m². The site has slight slope of 1 in 18 from west to east with a total cross-fall of approximately 1.8m.

Existing development on the site comprises 1 x single storey and 2 x 3 storey commercial buildings with a total of approximately 18 car spaces on-site. Adjoining the site to the west is a two storey commercial development, and to the south of the opposite side of Atchison Lane there are one and 3 storey commercial / light industrial developments. To the north on the opposite side of Chandos Street there are a variety of commercial buildings up to 6 storeys in height, including a 5 storey commercial

development under construction. To the east of the opposite side of Oxley Street is a residential precinct comprising a variety of single storey and two storey detached dwellings and semi-detached and multi-unit dwellings.

The site is located on the north-eastern periphery of the St Leonards Town Centre, and is within 300 metres of the St Leonards railway station and within 230 metres of bus routes on the Pacific Highway and Willoughby Road.

Zoning: The subject site and adjacent land to the south and west are zoned 'Mixed Use' pursuant to NSLEP 2001. Sites to the east of the site, located on the opposite side of the Oxley Street, are zoned Residential C, and sites on the opposite side of Chandos Street to the north within the boundaries of Willoughby City Council are zoned for commercial development.



Figure 2 - Location of site: overhead view looking south (source: nearmap.com)



Figure 3 - The subject site as viewed from intersection of Chandos Street and Oxley Street, looking south-west.



Figure 4 - The subject site is to the right of Atchison Lane as viewed from Oxley Street, looking west



Figure 5 – Part of the subject site as viewed from Chandos Street looking south



Figure 6 - Existing residential development to the east, on the opposite side of Oxley Street, looking NNE.

RELEVANT HISTORY

Relevant history prior to lodgement

A pre-lodgement meeting for redevelopment of the site was held involving the proponents and Council staff on 7 September 2010. The form of development proposed was similar to that sought under the current proposal. The key issues identified with the proposal were:

- Height;
- Floor space ratio;
- Design of development; and
- Setbacks.

History of the subject application

The subject development application was lodged on 24 December 2010.

On 25 January 2011 Council forwarded a letter to the applicant requesting additional information and /or amended plans in relation to a Building Code of Australia Capability Review, loading dock design, space for an electricity substation, and garbage bin holding area, and advising that the plans were considered unsatisfactory in respect of location of the communal room, building height, provision of balconies within the Chandos Street setback area, and location of lower ground level retail space.

Council's Urban Design Advisory Panel (UDAP) reviewed the application on 2 February 2011, and the applicant was advised of the UDAP recommendations. The JRPP received a briefing on the proposal from Council staff on 2 March 2011.

On 25 February 2011 the applicant submitted amended plans and further information in

response to Council's request. The changes to the design of the development in the amended plans are summarised as follows:

- Loading dock redesigned with 4.1 m height, 8.8 m length and 3.5 m width, with residential and retail garbage bin storage areas to rear;
- Basement reconfigured to relocate communal room from basement to level 7 (top level) to give the communal room access to an external terrace, and relocate bicycle and residential storage and plant; gathering place with communal seating provided for residents provided in residential lobby
- Vegetation removed from lightwell / ventilation breezeways within building;
- Width of balconies of units within podium setback area at Chandos Street elevation decreased from 3 m to 2 m, to provide a 1.0 m podium setback to Chandos Street (levels 1 to 4);
- Setback of building at level 6 increased by 2m from eastern (Oxley Street) boundary, and 3 bedroom unit 601 reduced to 2 bedroom unit,
- Retail space at rear ground and lower ground levels reconfigured to give larger void to give some exposure of the lower ground level retail space to view from the laneway;
- Security grill in driveway entry to basement car park repositioned to be 12m from the Atchison Lane frontage, to allow queuing for 2 cars, and
- Provision for a 240 litre recycle bin adjacent to the garbage chute on each residential level.

These amended plans are the subject of this assessment.

The further information submitted by the applicant comprised a supplementary report by the applicant's traffic engineer concerning the loading dock design, an amended Building Code of Australia Capability Assessment, a substation design certification, revised shadow diagrams, and a retail consultant's advice.

REFERRALS

Traffic

The application was referred to Council's Traffic Engineer to assess the acceptability of the proposed development with regards to traffic and parking. The Traffic Engineer was generally satisfied except in relation to the design of the loading dock and inadequate queuing length at the driveway entry from the laneway. The applicant has addressed these issues in the amended plans received by Council on 25 February 2011.

The Traffic Engineer has recommended a number of conditions for imposition in the event of approval.

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

Building

Council's Executive Assessment Officer – Fire Safety (A Hilt) initially reviewed the application, as a result of which the applicant was requested to provide a more

comprehensive Building Code of Australia (BCA) Capability Report in particular addressing section J of the BCA (NSW provisions) and the manner in which the non-compliances with the deemed-to-satisfy provisions of the BCA, for instance in relation to fire isolated stairs) are overcome, in order that it is clear to Council that BCA compliance may be achieved at Construction Certificate stage without the need for major changes to the design of the building.

In response the applicant provided a further BCA report by VIPAC, received by Council on 25 February 2011. This has been reviewed by Council's Executive Assessment Officer – Fire Safety, who advises as follows:

"I consider that the development is capable of complying with the BCA provided that BCA Specification C1.1 Table 3 unit bounding windows adjacent to the breezeway that will require an FRL of -/60/60 are protected in both directions in accordance with BCA Clause C3.4 or protected as part of an alternative solution."

Development Engineer

Council's Development Engineer (Z Cvetkovic) has raised no objection to the proposed development, subject to imposition of detailed engineering conditions in relation to damage bonds, dilapidation reporting, construction management plan, vehicle crossing and road works design, excavation, and stormwater management, being imposed on any consent.

Landscaping

Council's Landscape Development Officer (B Smith) has reviewed the proposed landscaping and street tree planting, and concludes as follows:

- the removal of the existing trees on the property itself is acceptable, as these trees are both insignificant and inappropriate plantings.
- the removal of the three (3) London Plane street trees at the Chandos Street footpath as proposed is supported, subject to three (3) replacement London Plane (*Platanus X Hybrida*) trees being provided as part of the works.
- In relation to the proposed street tree plantings in the wide grass verge in Oxley Street, the proposed four (4) street trees should be altered to *Liriodendron tulipifera* "The Tulip Tree", the planter bed should be deleted and the planting locations should be set no closer than 8 metres from the face of kerb of Chandos Street and Atchison Lane at the eastern boundary alignment of the property.
- The footpath along the Oxley Street frontage should be reinstated as paving but should be widen from 1.2m to a minimum width of 2 metres, with the remaining area being retained as grass verge.

The Landscape Development Officer has recommended conditions concerning landscaping, street tree planting and footpath re-construction, for imposition in the event that the development is approved.

Waste Management

Council's Waste Educator (G Lewis) has reviewed the initial application plans and the amended plans and advises as follows:

- The proposed use of the delivery dock as a temporary garbage holding area is not satisfactory and a separate residential garbage bin holding area will need to be provided within 2m of the building's laneway frontage;

Urban Design Advisory Panel

Council's Urban Design Advisory Panel's (UDAP) considered the application at its meeting on 2 February 2011. The Panel minutes include the following findings under the *Design Principles* set out in SEPP No 65 (Design Quality of Residential Flat Buildings):

“Context: *The Panel considered the residential component fronting Oxley Street as appropriate, particularly given the interface with the adjoining Residential 2C zone to the east.*

Scale: *The Panel considers that the scale of the proposal is unsatisfactory with regard to the overall height of the building, the height of adjoining buildings and structures and the existing and draft height controls, which allow for a 6 storey building at a maximum height of 20m. The subject site is particularly sensitive given its location at the interface of the Residential C zone, with a height limit of 16m. Also of concern is the setting of an undesirable precedent if the 20m height limit is breached on the basis of claimed architectural excellence. The applicant was advised that the Draft NSLEP currently on exhibition retains the 20m height limit. It should be noted that there are no design excellence provisions in the current or draft controls that would justify a breach of development standards.*

In relation to the front setback, the Panel considered that the building should be set back consistent with the adjoining buildings (3m setback required).

Built Form: *The Panel considered that the “bird mouth” element of the building design which is designed to relate to the diagonally opposite building could also be achieved by adjusting the subject facades to comply with the setback requirements. Also, the aluminium louvre screen could potentially create visual interest above street level, particularly at night, however, the specific treatment of the metal screen would be crucial in achieving a satisfactory outcome. Additional details on the screen should be provided.*

The Panel noted that the lift lobby is shared by the residential and retail uses, and that there should be a separate residential lobby. In relation to the loading dock the Panel considered it likely that the dock width is inadequate at 3m. The loading area should be able to accommodate a medium rigid vehicle as per AS 2890.2.

The Panel had concerns with the lightwells, due essentially to the limited area at each floor combined with the 8 storey height of the lightwells. The Residential Flat Design Code recommends minimum dimensions of 6m x 6m for a 12m height (4 storeys) in relation to non-habitable rooms. As discussed under 'Scale', the front setback is unsatisfactory and a 3m setback is considered appropriate.

In relation to the basement retail area, the Panel expressed concern regarding the lack of activation at the street front (Chandos Street) and the retail area not being visible from the footpath. Additionally, the Panel considered that the retail space should be flexible and adaptable to a range of uses and not limited only to a restaurant. Basement retail should be visually connected with the street through double height/mezzanine type spaces on the ground floor. The fire exit and recessed alcove adjacent to the ground level retail on the Chandos Street frontage and the basement fire exit on the corner of Oxley street and Atchison lane were also considered to require redesign. The Panel also recommended that access to the retail areas complies with the Disability Discrimination Act.

Density: *The applicant discussed that the proposed FSR was equivalent to the achievable FSR in a complying building envelope. The Panel indicated that FSR is a crude envelope control and that in most cases it is not possible to achieve the maximum FSR indicated by a building envelope, as buildings require voids, openings, articulation, modulation, etc, to achieve a satisfactory SEPP 65 outcome. Given the above, the proposed density may be indicative of overdevelopment.*

Resource, energy and water efficiency: *The Panel raised concern that there was no natural ventilation inlet at the ground floor to facilitate air movement in the light wells. A BASIX certificate has been submitted with the proposal.*

Landscape: *The Panel noted that the proposed internal landscaping may not be viable due to the depth and dimensions of the light wells.*

Amenity: *The Panel requested that additional details of storage volumes for residential apartments be provided to ensure adequate storage is provided both within apartments and in the basement. Also, as previously discussed, the proposed lightwell dimensions are considered inadequate for an 8 storey building.*

The Panel considered the Resident's Meeting Room to be poorly located. The width of units 105, 210 & 305 was also of concern. At 3m wide, access to natural light is compromised and the location of the kitchen in the main hallway is also not compliant with the requirements of SEPP 65 residential flat design code.

Safety and security: *The Panel discussed safety issues relating to the combined retail and residential lobby (see earlier discussion in Built Form). The depth of the recess to the residential lobby access as well as the recess adjacent to the fire stair exit are potential entrapment spots and compromise the safety and security of the development. The configuration of the entry alcove and fire stair egress should be redesigned to eliminate potential entrapment spots.*

Social Dimensions: *The Panel did not discuss social dimensions.*

Aesthetics: *The Panel noted that the proposal was generally well-considered aesthetically. The Panel was concerned with the lack of detail of the operable aluminium louvre screen, particularly given the reliance on this façade element as part of the non-compliant setback argument.*

Panel Recommendation: *The Panel considered that the height and setbacks of the building are unsatisfactory and that a number of modifications are required to address issues relating to amenity, ventilation, storage, building design, retail and loading areas and street activation to Chandos Street”.*

The applicant has addressed some of these issues in the amended plans. A full copy of the minutes of this meeting is attached for reference,

SUBMISSIONS

The owners of adjoining and nearby properties and the Holtermann Precinct Committee were notified of the proposed development, with the notification period being from 14 to 28 May 2011. In response to this notification, a total of **two (2) submissions** were received. The issues raised in the submissions are summarised as follows:

Name & Address of Submitter	Basis of Submissions
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Holtermann Precinct

- Significant non-compliance with 20m height control and the bulk and scale of development at north-eastern end of the 20m mixed use height zone, is not compatible with, and is out of character with adjacent low scale residential to east;
- Amenity of existing and potential residential development to east with 16m height limit is adversely affected by unreasonable and excessive height;
- Amenity and shadow impacts of the height will unreasonably affect development potential of residential properties to east;
- Proposal does not follow gradient of landform and scaling down of height controls from the “Forum” building to Willoughby Rd.
- Non-compliance with building height plane control results in increased shadowing of existing low-scale dwellings to east and south-east;
- Reasonableness of proposed retail space at lower ground level is queried;
- Concern in regard to ground level residential space maximising residential at expense of commercial;
- Queries compliance in relation to setbacks, balconies within setback area, podium depths and cantilvered elements above podium;
- Insufficient public benefit given the non-

- 1 submission from resident:
Ms Caroline Payne, 33 Oxley Street, Naremburn
- compliances;
 - No affordable housing component;
 - Queries proposed meeting room in basement without access to natural light.
 - Notes that building at 80 Chandos Street opposite the site was erected prior to current 18m height control on north side of Chandos Street;
 - Notes non-compliance with building height plane above level 3 and non-compliant provision of residential at ground level;
 - On-site parking inadequate which will exacerbate parking by residents of 'Arden', 'Precision' and the 'Lyll' apartment buildings in northern end of Oxley Street;
 - Adverse traffic impact;
 - Huge ornamental screen appears to overwhelm the street and is very ugly;
 - Proposed development is too big for the Crows Nest end of St Leonards adjacent to the Naremburn Conservation Area.

CONSIDERATION

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

NORTH SYDNEY LEP 2001

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

Compliance Table

STATUTORY CONTROL – North Sydney Local Environmental Plan 2001				
Site Area – 1492m ²	Existing	Proposed	Control	Complies
Mixed Use Zone				
Building Height (Cl. 29) (max)	Existing buildings range in height from 6,7m to 11.3m	Tower: 27.5m at lift overrun, 27.3m at roof parapet of tower	20m	NO *
Building Height Plane (Cl. 30)	Complies	Breaches by up to 4.0m at parapets of level 4 and above (eastern elevation).	Commences 3.5m above centre of road separating site from Residential C	NO *

			zone.	
Non-Residential Floor Space (Cl. 31) (max)	N/A	0.6:1	0.6:1 to 2:1	YES
Design of Development (Cl. 32)	N/A	Building has both residential & non-residential uses, with non-residential (retail) at lower levels;	Building to have residential and non-residential uses, with non-residential at lower levels;	YES
		Some residential at ground level; separate residential entries;	No residential to be at ground level (except access); separate entrance for residential;	YES
		Tower is set back above podium	Building to be set back above podium	NO * (some residential at ground level) YES

* SEPP No 1 objections received from applicant

DCP 2002 Compliance Table

DEVELOPMENT CONTROL PLAN 2002		
	Complies	Comments
6.1 Function		
Diversity of activities, facilities, opportunities and services	Yes	<p>This mixed use proposal incorporates 3 separate retail spaces on the lower ground and ground levels, thus providing an adequate diversity of non-residential spaces and activities.</p> <p>An appropriate communal spaces of 23.5m² with direct access to a north facing 8.5m² balcony is provided for residents on the top residential level (level 7).</p>
Mixed residential population	Yes	The proposed dwelling yield of one unit per 122.5m ² of GFA (5,756m ²) is consistent with DCP provision of 1 unit per 100m ² -150m ² gross GFA.
	Yes	An appropriate dwelling mix is proposed; the only non-compliance with the DCP provisions is in relation to

		the lower proportion of 3 to 4 bedroom units, being 6.4% in lieu of the required 15%, which is acceptable. Five (5) adaptable units (10.5%) are provided in accordance with the DCP 10% minimum requirement.
	Yes	Non-residential parking does not exceed DCP controls. The site has excellent access to public transport, located within 300m of St Leonards railway station and 230m of bus routes on Willoughby Road and the Pacific Highway.
6.2 Environmental Criteria		
Clean Air	Yes	Satisfactory.
Noise and acoustic privacy	Yes (with conditions)	An Acoustic Report, prepared by Acoustic Logic, was submitted with the application. The report indicates that the proposal is capable of satisfying the DCP noise and acoustic privacy requirements subject to mitigation and construction recommendations.
Visual Privacy	Yes	The proposal includes appropriate design and privacy mitigation measures to ensure adequate visual privacy for occupants and neighbours. The separation distance between the development and the nearest dwelling is in excess of 20m.
Wind Speed	Yes	No wind impact assessment was submitted or is necessary having regard to the height of the development being under 33m.
Awnings	Yes (with conditions)	A condition is recommended to require the awning (which projects only 450mm over the Chandos Street footpath) to be widened to 2m with cut-outs for street trees, in front of the two retail spaces and the residential entry to improve amenity for footpath users. Smaller awnings and weather protection devices protruding up to 1.0m from the property boundary and building are proposed to parts of the Oxley Street frontage, and are satisfactory.
Solar access	Yes	There is no shadowing impact on existing or proposed areas of public open spaces between 11.30am and 2.30pm on the winter solstice as a result of the proposed development.

Views	Yes	The view analysis submitted with the application demonstrates that although there is minor loss of views due to the proposed building, no significant views (such as to Middle Harbour) from any nearby dwelling will be adversely impacted
6.3 Quality built form		
Context	No	The proposed height and scale, particularly at the eastern part of the development is considered inappropriate and does not represent a suitable response to the site's context at the sensitive eastern end of the mixed use zone close to the much lower scale residential zone to the east. The lack of an adequate podium setback to the Chandos Street elevation is also an unsatisfactory response to the context. In other respects the proposal is considered a satisfactory response to the site's context, with an innovative design. Some ground level residential on the eastern side of the building is appropriate in context to form an interface with the residential zone on the opposite side of Oxley Street.
Skyline	No	The extent of the proposed height non-compliance would result in a building that would stand out above the skyline, would appear uncharacteristic with the surrounding skyline, present and future. and would be inconsistent with the DCP Character Statement for St Leonards / Crows Nest which requires the significant scaling down of buildings from the "Forum" building to lower scale development on Willoughby Road.
Public spaces & facilities	Yes	Appropriate integration of the retail areas and residential entries with the public domain is proposed. The lower ground level retail is given limited exposure to view from the laneway by the proposed void.
Junction & termination of streets	Yes	The design provides an architectural feature emphasising the north-east corner at the junction between Chandos Street and Oxley Street. A splay corner is not necessary as the building is set back 3m from Chandos Street at this

		corner. However the key issue is the extent of the proposed overall height of the building.
Through-site pedestrian links	Yes	A through-site link is not identified in the DCP as being required on this site.
Streetscape	Yes	Appropriate activation of the Chandos Street frontage is provided by location of 2 of the retail premises with direct frontage to the street setback area. One of the retail suites extends through from Chandos Street to the laneway frontage of the site. The wide main entry to the residential component gives a further opportunity for outdoor seating adjacent to one of the retail premises. Some activation is provided to Atchison Lane by way of a small retail frontage including a void for passers bay to view down to the lower ground level retail from the laneway. It is not practicable to extend the active frontage to the laneway to 50% having regard for all the services and vehicle access that must be provided to the laneway frontage. The residential entries and small balconies of the five (5) apartments at ground level to the Oxley Street frontage give appropriate activation at this interface with the residential zone opposite.
Subdivision	Yes	The proposal involves amalgamation (by proposed condition) of the 4 lots comprising the site to form a 32.32m wide frontage which is consistent with the 20m-40m frontage nominated in the DCP character statement..
Setbacks	Yes	Setbacks are in accordance with the character statement for the St Leonards Town Centre, except in relation to the protrusion into the 3m Chandos Street setback by the balconies of apartments at levels 1 to 4 (resulting in a non-compliant setback of only 1m) - Refer to further discussion provided under Area Character Statement later in this report. The 3m above podium side setback to the west and the setback to the Oxley Street frontage are in accordance with the Character Statement.

Entrances and exits	Yes	Satisfactory, main residential entry at front of the site and readily visible from and at grade with the street. Separate retail entries.
Street frontage podium	No	The Chandos Street frontage podium is 4 storeys but has a height of 15.4m which exceeds the DCP 13m height. – this is acceptable - refer to the Area Character Statement consideration of podium design later within this report.
Laneway frontage podium	No	The Atchison Lane podium height (15.5m and 4 storeys) significantly exceeds the 10 m (3 storey) podium height desired by the DCP for this part of St Leonards – however this is acceptable - refer to the Area Character Statement consideration of podium design later within this report.
Building design	No	The balconies of the units at levels 1 – to 4 are not recessed behind the required 3m podium setback to Chandos Street, but protrude into the setback area. This is considered unacceptable as the podium setback should be consistent with other buildings to the west, and the applicant has failed to demonstrate that non-compliance with the 3m podium setback is justified. Council's Urban Design Advisory Panel did not support this variation from the setback control.
	Yes	The proposed 3.5m floor to ceiling height of the Chandos Street ground level retail and the 3.7m floor to ceiling height of the lower ground level retail is satisfactory, and compliant with the 3.3m minimum. No objection is raised to the 2.8m floor to ceiling height of the rear part of the ground level retail, as this is a relatively minor component of the retail space.
	Yes	All residential floors will have the required minimum 2.7m floor to ceiling height
6.4 Quality urban environment		
High quality residential accommodation	Yes	All units meet the minimum size and width requirements with the exception

		<p>of 3 of the 2 bedroom units (units 106, 211 and 306) which are 2m² under the desired size of 80m². This minor non-compliance is acceptable, noting that the 78m² minimum size exceeds the 'rule of thumb' minimum 70m² size for 2 bedroom units in the SEPP 65 Residential Flat Design Code.</p>
	Yes	<p>77% of units will receive at least two hours of solar access in midwinter, which is considered appropriate for a high density urban area.</p>
	Yes	<p>Appropriate cross-ventilation (81% of units) is proposed, exceeding the minimum 75% in the DCP.</p>
	No	<p>3 of the studio units (units 105, 210 and 305) have a width of only 3m, and do not achieve the desired 4m minimum width. It is noted that a redesign of the development to combine 3 units into 2 units at the north-east part of the building on levels 1 to 3 would enable the recessing of the balconies within the building (thus avoiding protrusion of the balconies into the podium setback) and provision of an adequate width for the units for greater amenity for the occupants.</p>
Lightwells and ventilation	Yes	<p>The development features two lightwells one of 20m² and one of 16m² serving the residential tower; these lightwells are connected at the ground level, and with the front entry lobby over a water feature. A smaller light well of 9.6m² on the western side of the podium extends from levels 1 to 4 only. These lightwells generally comply with the DCP and provide good natural ventilation to the apartments so that 81% of the apartments are naturally ventilated.</p> <p>Condition C41 is recommended to ensure that the security grill separating the internal residential entry lobby from the main street entry to the building is of open mesh construction to ensure air-flow to the lightwell when the security gate is closed.</p>

Balconies	Yes	All apartments have balconies, and all have a minimum width of 2m with the exception of 9 of the units facing south (levels 1-3); these have a width of only 1m but do have a generous length of over 7m.
	No	The balconies of the units at levels 1 – to 4 are not recessed behind the 3m podium setback, but protrude into the setback area, contrary to the DCP requirement – See earlier discussion concerning setbacks.
Accessibility	Yes (with condition)	An Accessibility Report has been submitted with the application to demonstrate that the development would comply with requirements of AS1428.3 for disabled access. Lift access is proposed to all levels and at grade access is provided from the main street entrance of the building, therefore, it is considered that compliance with AS1428.3 could be subject to a condition of consent.
Safety and security	Yes (with condition)	Satisfactory, subject to a proposed condition (I11) to restrict lift access to the residential levels of the building to residents and their visitors.
Car parking	Yes	<p>The proposal provides a total of 44 parking spaces, 42 for residential use (including 1 stacked space and 6 disabled spaces) and 1 car wash bay. The quantum of parking satisfies the maximum parking requirements of Section 9 of the DCP, as follows:</p> <ul style="list-style-type: none"> • 8 x studio/ one bedrm units @ 0.5 spaces per unit = 4 spaces • 39 x 2 or 3 bedrm units @ 1 space per unit = 39 spaces • 695 m2 non-residential @ 1 space per 400m2 = 2 spaces • Total = 4 + 39 + 2 = 45 spaces <p>It is also proposed to have 4 motorbike spaces.</p>
Bicycle parking	Yes	20 resident bicycle storage lockers are proposed on basement level 2. A consent condition is proposed to require 4 external bicycles rails as required by

		the DCP.
Vehicular access	Yes	<p>A 5.5m driveway crossover will provide access from Atchison Lane, replacing more extensive existing driveway cross-overs on Atchison Lane and Oxley Street;</p> <p>The security grill in the driveway entry to basement car park is positioned 12m from the Atchison Lane frontage, to allow queuing for 2 cars.</p> <p>The loading dock has width and length dimensions to accommodate a Medium Rigid Vehicle for deliveries in accordance with the requirements of AS/NZS 2890.2004.2. While the proposed 4.1m height is below the 4.5m height specified in the standard, this height is considered adequate to cater for most delivery vehicles likely to be associated with the development..</p>
Garbage Storage	No (condition may address the issue)	<p>As addressed previously within this report within the Waste Management referral comments, the proposed residential garbage storage area is not provided in an appropriate location to meet the requirements of Council. The design should be amended to provide the required residential garbage bin holding area within 2m of the laneway frontage of the building. It is not acceptable for the residential component of this new development to be denied access to Council's residential garbage collection service due to lack of the required bin holding area adjacent to the laneway frontage of the building.</p>
Commercial garbage storage	Yes	<p>Garbage storage for the non-residential uses will be located within the rear of the ground level and will be collected by a private contractor.</p>
Site facilities	Yes	Satisfactory.
6.5 Efficient use and management of resources		
Energy efficiency	Yes	<p>A BASIX certificate for the residential component of the development has submitted and an appropriate condition can be imposed to ensure compliance with these commitments.</p>

NORTH SYDNEY LEP 2001

1. Permissibility within the zone:

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

2. Objectives of the zone

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

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

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

Non-residential uses are at lower ground and ground level with residential above except for ground level residential at the Oxley Street frontage; this is acceptable as discussed later in relation to the ‘design of development’

However, the proposal would not result in a high quality urban environment due to the proposed height being clearly excessive in relation to the existing development and the desired character of the area, as discussed hereunder in relation to the building height and building height plane controls. Therefore, to this extent the application is not considered to satisfy objective (b) of the zone.

3. Building Height

Clause 29(2) of NSLEP 2001 states that:

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

Pursuant to Map 2 – ‘Floor Space Ratios, Heights and Reservations’ of NSLEP2001, a maximum height of 20 metres is applicable to the subject site.

The maximum height of proposed development is 27.5 metres at the top of the lift

overrun, whilst the maximum height of the roof of the top residential level is 27.2m. Consequently, the overall height of the proposal would **exceed the maximum 20m building height specified in NSLEP 2001 by 7.5m (or by 37.5%)**.

The applicant has submitted a SEPP No 1 objection in respect of the variation from the building height control. This objection seeks support for the non-compliance based on lack of unreasonable amenity impact such as shadowing, privacy and view loss on any adjacent dwelling, whilst maximising amenity for occupants by provision of the ventilation/ lightwells, compatibility with the established skyline including recent development approvals, and lack of adverse impact on the St Leonards skyline.

The proposal is considered against the building height objectives (a) to (f) of Clause 29 of NSLEP 2001 below:

- (a) ensure compatibility between development in the mixed use zone and adjoining residential areas and open space zones, and*
- (b) encourage an appropriate scale and density of development for each neighbourhood that is in accordance with, and promotes the character of, the neighbourhood*

The subject site is directly opposite a residential area zoned Residential C located on the eastern side of Oxley Street, to the east and south-east of the site. The existing residential development to the east is one and two storeys in height, and the building height control applying to this Residential C zone is 16m. In effect this results in the height of the proposed building being up to 11.5m above the 16m height limit applying to the residential zone opposite. This disparity in height creates an incompatibility in terms of scale and height between the proposed development and the adjacent residential neighbourhood.

The site is at the sensitive eastern end of the Mixed Use zone, where it is considered that the significant exceedance of the height control renders the development incompatible with the scale and height of the much lower scale residential development (existing and desired) to the east.

The proposed development fails to complement the desired future character of the locality which states that the characteristic building height in the St Leonards Town Centre should be "buildings that scale down significantly from the Forum towards the surrounding areas and the lower scale development on Chandos Street, Willoughby Road, Crows Nest Village, the Upper Slopes and Crows Nest Neighbourhood". The proposed height of the development would significantly exceed the maximum height of surrounding developments and accordingly, would clearly stand out in the skyline as a development of uncharacteristic scale and density in the neighbourhood, and would not be compatible with the desired future character for the neighbourhood.

However there are three factors which give the proposed development a measure of compatibility with the residential development to the east:

- 1: The proposed development will have no significant adverse impact on the amenity of any existing residential premises in terms of unreasonable overshadowing or loss of views or privacy. The only nearby residential properties affected by shadows cast by the proposed development are the

dwelling houses at Nos 66 and 68 Atchison Street to the south-east. The rear parts of these properties are impacted by shadows from the proposed development only after 3.00pm at the winter solstice thus these properties continue to receive well in excess of 3 hours winter sunlight;

- 2.: The eastern end of the proposed building is stepped from the Oxley Street boundary at the upper levels, somewhat ameliorating the visual impact of the development in relation to the residential development to the east; and
- 3: The design of the development with ground level residential and no commercial/ retail development facing Oxley Street presents a satisfactory interface between the Mixed Use and Residential zones.

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

It is likely that the future residents of the proposed building would enjoy good amenity. No existing dwellings near the site are unreasonably impacted by the development in terms of loss of sunlight, views, privacy or ventilation;

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

The residential apartments have been designed generally to satisfy the principles of SEPP 65 and the main requirements such as ventilation and solar access to dwellings. The proposed height would not result in any material loss of view, privacy or amenity to any neighbouring or nearby residential property. There will be minor impacts on some district and locality views from apartments in mixed use developments to the west and south-west, but these are not considered significant or material.

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

The site has only a slight gradient (approximately 1 in 18) and is not considered to be 'sloping land'. Nevertheless the design does incorporate stepping back at the upper levels from the Oxley Street frontage of the site.

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

This objective does not support the use of existing nearby buildings or approved development as a reason to exceed the control. The applicant seeks to justify the exceedance of the height control in the SEPP No 1 objection on the basis of "sitting comfortably within the St Leonards skyline and the pattern of building heights envisaged by the planning controls". However it is considered that the excessive height is not consistent with the character statement for the St Leonards town centre in the North Sydney DCP 2002. The character statement envisages "a skyline significantly scaling down from the 'Forum' development landmark towards Willoughby Road, Hume Street and Chandos Street, to fit in with lower scale development...". As noted above, there would be an abrupt 11.5m height difference between the proposed building and

complying future residential development to the east. This is not 'scaling down'.

It is considered that an approval to this non-compliant development would undermine the purpose of the height controls.

4 Building Height Plane

Clause 30(2)(d) of NSLEP 2001 applies to the subject site, and states 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:

- (d) commencing 3.5 metres above existing ground level, and projected at an angle of 45 degrees, from the centre of any road that separates the land from land within the residential C zone..."*

In this regard **the proposed building protrudes above the building height plane control applying the site's eastern (Oxley Street) frontage by up to 4.0m at the parapets of level 4 and above.**

The applicant has submitted a SEPP No 1 objection in respect of the variation from the building height plane control. This objection seeks support for the non-compliance on the basis of the design being compatible with the adjacent residential zone, with the building being stepped down towards the eastern boundary to reduce visual impact and provide an appropriate height transition between the 2 zones, provision of a sculptural screen to the eastern elevation to offer greater privacy to the residential properties to the east, and no unacceptable amenity impacts arising from the non-compliance.

The proposal is considered against the objectives for the building height plane control in clause 30(1) as follows:

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

See the discussion above concerning the similar objective (a) for the building height control. The proposal is not considered to be compatible with surrounding existing or desired future development.

- (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 consistent with this objective in that the proposal does not result in any unreasonable amenity impact on any adjacent residential property, as discussed elsewhere in this report.

Conclusion in relation to the SEPP No 1 objections concerning Building Height and Building height Plane

Whilst there is some merit in the proposed built form compared to a strictly complying development noting the absence of any unreasonable amenity impacts on any adjacent dwelling, the extent of the departure from building height control (7.5m or 37.5%) renders it inappropriate to use of SEPP No. 1 to vary the height control in this instance. In particular the scale and height of the proposed building is considered incompatible with the neighbourhood and the built form character statement for the St Leonards precinct. The non-compliance with the building height plane control exacerbates the unsatisfactory relationship and incompatibility with the residential precinct to the east.

If approved, the proper statutory planning process and the height controls for St. Leonards under NSLEP 2001 would essentially be rendered meaningless. In this respect, it has long been recognised by the Land & Environment Court that the dispensing power under SEPP No. 1 is not a general planning power to be used as an alternative to the plan making power under Part 3 of the *Environmental Planning and Assessment Act, 1979* to change existing planning provisions. There is currently no longer term planning proposal to increase building heights in this part of St Leonards.

The SEPP No. 1 objections are therefore not well founded and are not supported. The substantial departure from the height control will require an LEP amendment for the site and potentially a wider review of the height controls for the St. Leonards precinct.

5. Floor Space

Clause 31(2) of NSLEP 2001 states:

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

Pursuant to Map 2 – '*Floor Space Ratios, Heights and Reservations*' of NSLEP 2001, the non-residential component for a development on this site must have a floor space ratio (FSR) of between 0.6:1 and 2:1. The proposed development has a non-residential FSR of 0.6:1, and is therefore compliant with Clause 31 of NSLEP 2001.

5. Design of Development

Clause 32 of NSLEP 2001 provides a number of objectives and controls with regard to the design of development in the mixed-use zone. The objectives in clause 32(1) seek the following

- (a) *promote development containing a mix of residential and non-residential uses, and*
- (b) *protect the amenity and safety of residents, and*
- (c) *concentrate the non-residential component of development in the mixed use zone at the lower levels of a building.*

It is considered that the proposed development is generally consistent with these objectives.

In relation to the controls for the design of development in Clause 32 (2), the proposal is assessed as follows:

A new building in the mixed use zone must not be erected unless:

(a) the building contains both residential and non-residential uses,

Comment: The building complies in this regard with both apartments and retail floor space within the development.

(b) the non-residential component of the building is provided at the lower levels of the building and the ground level is not used for residential purposes, except access,

Comment: The proposed development contains the non-residential component (retail floor space) at the lower ground and ground floor levels, and therefore complies with the first part of this control.

However part of the ground floor level is used for the lower levels of the 2 storey dwellings located at the Oxley Street frontage of the building, and therefore contrary to the second part of this control.

In this regard the applicant has submitted a SEPP No 1 objection to enable a departure from this element of the control, on the basis that the provision of the ground level of the apartments to the Oxley Street frontage is consistent with the objectives for the standard. In this respect it is noted that:

- the development contains an appropriate mix of residential and non-residential uses,
- the amenity of residents is protected with separate entries to the ground level residential levels direct from Oxley Street, and the outlook from the ground level of the 5 dwellings is appropriately towards the residential precinct on the opposite side of Oxley Street, and
- The non-residential component (the retail floor space) is all concentrated on the lower ground and ground levels, and is clearly separated from the ground level residential space.

The control requiring the ground floor to be occupied only by non-residential development is considered to be 'development standard' which may be varied by use of SEPP No1. The definition of '**development standards**' in Section 4 of the *Environmental Planning & Assessment Act 1979* is (relevantly) as follows:

*"**development standards** means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:*

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,

It is considered that the requirement that no residential be located on the ground level relates to the 'location, siting and design' of the development and is therefore a 'development standard'.

- (c) *the residential component of the building is provided with an entrance separate from the entrances to the remainder of the building,*

Comment: All apartments have separate entrances to the non-residential component.

- (d) *the building is set back above a podium.*

The proposal includes a tower element above a podium.

In summary the proposed development is considered satisfactory in relation to the design controls and objectives of Clause 32 of NSLEP 2001. The applicant's SEPP No 1 objection in respect of this control is well founded and is supported.

6. Excavation

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

In this instance, the extent of excavation comprises two and a half levels of basement car parking which is required to satisfy Council parking requirements, as well as lower ground level retail space. The level of excavation is not considered excessive in the circumstances and the proposal satisfies the objectives of the control. Council's standard conditions concerning geotechnical and structural engineering certification to protect adjoining properties are recommended in the event of approval.

7. Heritage

The site is not a heritage or contributory item and is not located in the vicinity of any heritage item nor within a Conservation Area. Accordingly the heritage provisions of the NSLEP 2001 are not a relevant consideration.

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

The subject site has been considered in light of the Contaminated Lands Management Act and it is considered that based on the previous uses of the site, contamination is unlikely to be an issue requiring specific attention except in relation to removal of some potential asbestos (standard conditions recommended for imposition).

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

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

The design quality principles do not generate design solutions, but provide a guide to

achieving good design and the means of evaluating the merit of the proposed solutions. The assessment is summarised as follows:

Principles 1, 2 and 3: Context, Scale and Built Form: The context is set by the development surrounding the site and the development controls for the site. The proposal is not in context with existing surrounding development or the building height controls for the precinct containing the subject site. The proposal would not be in context with the desired future character of the area and would be inconsistent with the scale and built form of surrounding development, particularly the lower scale residential precinct to the east.

Principle 4: Density: The density is within the dwelling yield envisaged for mixed use development in the Residential Development Strategy for North Sydney, as expressed in Section 6.1 of the NSDCP 2002. However, it should be noted that this method of determining density is not a sound indication of the extent of development appropriate for a site. The dwelling yield must also be considered with regard to the scale and built form controls.

Principle 5: Resource, energy and water efficiency: A BASIX Certificate has been provided with the application. The design enables adequate cross ventilation and solar access to apartments.

Principle 6: Landscape: The proposed building covers almost the entire site and the only landscaping proposed at grade is a number of street trees within the proposed setback to Clarke Lane. A further landscaped area is proposed on the podium to create a useable outdoor space for residents.

Principle 7: Amenity: In terms of amenity is solar access, 77% of units would receive a minimum of two hours of solar access in midwinter, which complies with the minimum of 70% stipulated in the Residential Flat Design Code. The layout and design of the proposed units are acceptable and will ensure a reasonable amenity for future occupants. Each unit is provided with private balcony that would function as extension of the living area. Cross ventilation to 81% of units has been achieved which is satisfactory.

Principle 8: Safety and Security: The proposed development is considered to provide adequately for the safety and security of future residents, subject to a condition to restrict lift access to the residential levels of the building to residents and their visitors.

Principle 9: Social Dimensions: The development responds satisfactorily to the social context, with a satisfactory mix of dwelling types. A reasonable community area for residents on the top floor is proposed to promote social interaction.

Principle 10: Aesthetics: The proposed development is a contemporary and innovative design. It has modulation and articulation through the use of different setbacks, heights and materials. The aesthetics of the building are not at particular issue other than the excessive height and the non-complying protrusion of the balconies within the Chandos Street podium setback.

Residential Flat Design Code

SEPP 65 refers to a design code, titled the *Residential Flat Design Code*, published by PlanningNSW (2002). The design of the proposal is generally consistent with the 'rules of thumb' in this design code, with the exception of the following matters:

- Building depth: The proposed 31m building depth exceeds the recommended 10m-18m depth recommended in the code. This is acceptable due to the overall satisfactory performance in terms of light and ventilation, noting that 81% of the apartments have natural ventilation (exceeding the code's 60% minimum);
- Open space: The ground level open space areas of the 2 storey apartments at the Oxley Street frontage are less than minimum 25m² and 4m minimum dimension. Given the high density nature of the development this is acceptable;
- Acoustic privacy: The living rooms/ kitchens of some apartments are located adjacent to the bedrooms of other apartments. Potential acoustic impact may be addressed by conditions;
- Daylight / sunlight access: Although 77% of the apartments achieve 2 hours minimum sunlight access in at the winter solstice (thus exceeding the code's 70% minimum), 23% of the apartments are single aspect south facing and therefore do not meet the 10% minimum specified in the code. All these south facing apartments do have good amenity with natural ventilation via the lightwells within the building and no objection is raised to this non-compliance.

SEPP (Building Sustainability Index: BASIX) 2004

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

SEPP 2007 (Infrastructure)

SEPP 2007 (Infrastructure), among other things, establishes a framework for certain types of development to be referred to the Traffic Authority for consideration.

Given the nature, location and size of the proposed development and number of parking spaces proposed, the proposal is not within the categories that require referral under Clause 104(3) of this SEPP.

Concerns regarding traffic and parking have been raised by Council's Traffic Engineer as noted previously in this report, and appropriate conditions as recommended by the Traffic Engineer are proposed if approval is granted.

SREP (Sydney Harbour Catchments) 2005

The site is not located within or close to the Foreshore and Waterway Area designated in this SREP. The development is generally not observable from any part of the harbour and is unlikely to have any other affect of the harbour. Accordingly the

application is satisfactory in terms of the provisions of this SREP.

Draft North Sydney Local Environmental Plan 2009

The Draft North Sydney Local Environmental Plan 2009 was on public exhibition until 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 North Sydney LEP 2001 in relation to this site. The site is identified under Draft LEP 2009 as being included within the **B4 Mixed Use zone** with a 20m height control and a non-residential floor space ratio to be within the range 0.6:1 – 2:1, as are adjacent sites to the east and south, and the same as the current height and floor space ratio controls under the North Sydney LEP 2001. The proposed development is permissible in the draft B4 Mixed Use zone.

The sites within the residential precinct to the east on the opposite side of Oxley Street are identified as within the R4 High Density Residential zone with a 16m height control.

The proposed development is generally consistent with the draft development standards and local provisions except for the height control. Reference should be made in this regard to the discussion concerning the similar North Sydney LEP 2001 height control.

Suspensions of Covenants, agreements and similar instruments

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

DEVELOPMENT CONTROL PLAN 2002

The application has been assessed against the relevant controls in DCP 2002 as indicated in the DCP 2002 compliance table provided earlier in this report.

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

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

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

Clearly the height controls in the NSLEP 2001 establish the scale of development to reflect this element of the Character Statement, with a 20m maximum height on this site and the eastern part of the Mixed Use zoned block bounded by Chandos Street, Oxley Street, Mitchell Street and Atchison Lane, scaling down to a 16m height control for the residential precinct to the east of the site on the opposite side of Oxley Street.

The proposed building height of 27.5m exceeds the height control by 37.5% (7.5m) and will result in a marked disparity with the 16m height control of the residential area to the east. The proposed building would stand out as a development of uncharacteristic scale and density in the neighbourhood, at this sensitive north-eastern corner of the Mixed Use precinct. The stepping down of the building at its upper levels on the eastern (Oxley Street) elevation is insufficient to be considered 'scaling down' from the 'Forum' building to Willoughby Road.

As considered above and in the consideration of '*building height*' previously in this report, the height of the proposed building does not satisfy this provision of the St Leonards/Crows Nest Character Statement.

The Character Statement for the St Leonards Town Centre identifies a number of specific additional design controls applying to the subject site.

Of particular relevance are the following:

- **Subdivision: *Where wider than 20m-40m, frontage is broken down by articulation, design and detailing, change in materials and colours:*** The proposal with a 32.32m consolidated frontage is satisfactory in this regard.
- **Setbacks: *1.5m from laneway frontage to building alignment; 3m on the street frontage of the building alignment above podium; Side setback of 3m above podium:*** The proposed setbacks to the Oxley Street and Atchison Lane frontages are acceptable. Appropriate setbacks above the podium are proposed.
- **Chandos Street frontage podium: *Podium of 13m (4 storey):*** Although the podium to the Chandos Street frontage is 15.4m and thus exceeds the 13m requirement, the podium height is 4 storeys and is acceptable.
- **Laneway frontage podium: *10m (3 storey) at the laneway frontage:*** The proposal does not comply as the podium frontage to Atchison Lane extends to 15.5m and 4 storeys. The extent of non-compliance is not excessive and is acceptable in the circumstances.
- **Building design: *Balconies not accommodated in setback area:*** The proposal does not comply as the 2m wide balconies of apartments on levels 1 - 4 at the Chandos Street elevation are located entirely within the 3m podium setback area contrary to the requirements of section 6.24(a.b)(iv) of the North Sydney DCP 2002. This protrusion is considered unacceptable as the Chandos Street podium setback should be consistent with other buildings to the west, and the applicant has failed to demonstrate that non-compliance with the 3m podium setback is justified. Council's Urban Design Advisory Panel did not support this

variation from the setback control.

- **Characteristic building height:** *Buildings are scaled down significantly from the Forum development towards surrounding areas and lower scale development on Chandos Street, Willoughby Road, Crows Nest Village, the Upper Slopes and Crows Nest Neighbourhood:* As noted above, the proposal does not satisfy this control and is unacceptable in terms of height.

In conclusion, it is considered that the failure of the development design to satisfy the provisions of the St Leonards/Crows Nest Area Character Statement relating to scaling down of the built form and the Chandos Street podium setback is unacceptable.

Draft North Sydney Development Control Plan 2010

The North Sydney Development Control Plan (DCP) 2010 was on public exhibition until 31 March 2011 conjointly with the exhibited Draft North Sydney LEP 2009. 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 DCP 2010 support the Draft LEP 2009 and largely carry over the existing controls in the North Sydney DCP 2002. The provisions of the North Sydney DCP 2010 have been considered in relation to the application.

SECTION 94 CONTRIBUTIONS

Due to the provision of additional residential floor space, a contribution would be levied in accordance with Council's Section 94 Contributions Plan, based on 3 studio units, 5 x 1 bedroom units, 36 x 2 bedroom units, 3 x 3 bedroom units and 695 m² of retail / commercial floor space, less credit for the 2,300 m² of existing non-residential floor space on the site. An appropriate condition is recommended in the event of approval of the application, to ensure appropriate monies are paid to satisfy this Section 94 Contributions Plan.

DESIGN

While elements of the design are innovative and of high quality, the design of the proposed development is unacceptable principally in terms of height and scale as detailed previously in this report.

MATERIALS

The application is acceptable in this regard.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

ENVIRONMENTAL APPRAISAL CONSIDERED

1.	Statutory Controls	YES
2.	Policy Controls	YES
3.	Design in relation to existing building and natural environment	YES
4.	Landscaping/Open Space Provision	YES
5.	Traffic generation and Car parking provision	YES
6.	Loading and Servicing facilities	YES
7.	Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	YES
8.	Site Management Issues	YES
9.	All relevant S79C considerations of Environmental Planning and Assessment (Amendment) Act 1979	YES

CLAUSE 14 NSLEP 2001

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

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

SUBMITTORS' CONCERNS

The concerns raised with regard to the impacts of the proposed height have been generally addressed within this report. It is agreed that the proposed height and scale of the development is out of character and context with the adjacent low scaled residential to the east, and does not follow the gradient of landform and the scaling down of building heights from the 'Forum' to Willoughby Road.

However, the proposed height would not result in any material overshadowing or unacceptable loss of views, privacy or amenity to any neighbouring residential property.

The proposed on-site parking is consistent with Council's parking controls of Mixed Use development area, and the traffic impact of the proposed development is unlikely to be significant.

CONCLUSION

The application has been assessed against the relevant statutory controls.

The major issue of concern is the excessive height and scale of the building. The proposal exceeds the 20m height control by 37.5%, resulting in an abrupt 11.5m height difference between the proposed building and complying future development in the residential precinct to the east. The excessive height of the building renders it incompatible with the desired character for the St Leonards Town Centre identified in the North Sydney DCP 2002 as a scaling down of development from the 'Forum' building to Willoughby Road, and with lower scale residential development to the east.

The protrusion of the upper levels of the building above the building height plane compounds the unacceptable scale and bulk of the building. On balance the height and bulk of the proposed building is not considered supportable given the objectives of the current controls.

However it acknowledged that the proposed development has merit in terms of some elements of the design, resulting in good amenity for future residents and occupants of the developments, incorporating innovative design features and making a valuable contribution to the vibrancy of the area. In addition the proposal does not result in any unacceptable amenity impacts on any other residential property in terms of loss of views, privacy or sunlight view loss. The incorporation of the lightwells results in greater building bulk and partially offsets the yield that would otherwise be achievable within the current height and building height plane controls for a development without a lightwell.

The proposed development cannot therefore be recommended for favourable consideration primarily in view of the extent of the non-compliance with the height control for the site, and the applicant's SEPP No. 1 objections to the building height and building height plane standards are not well founded and cannot be supported. The proposed height of the development should be facilitated by a Proposal Proposal process to first amend the LEP in a proper strategic environment. It is inappropriate to use of SEPP No 1 in determination of an individual development application, to override the strategic planning process.

Approval to such a significant breach of a fundamental development control would undermine the certainty provided by the NSLEP 2001 controls and would act as a precedent for comprising the height control elsewhere.

The applicant's SEPP No 1 objection to allow ground level residential at the Oxley Street frontage is well-founded and is supported.

The non-compliance with the 3m podium setback control to Chandos Street is not supported and would result in a development inconsistent with existing development to the west.

The proposed development could be supported in terms of SEPP No 1 objections to the building height and building height plane controls in the event that the application is amended in the following manner:

- delete level 5, so that the maximum height of the development is reduced by 3m, and the extent of the non-compliance with the height control reduced to 22%;
- alter the design of levels 1, 2 and 3 to relocate the 2m wide balconies behind the 3m podium setback to Chandos Street, and redesign the apartments in the north-west part of levels 1, 2 and 3 in order that all living rooms have a minimum width of 4m and to accommodate the recessed balconies;
- reduce the size of the north-facing terraces on level 4 so they do not protrude into the 3m podium setback; and
- redesign the ground floor level to accommodate a holding area for residential garbage bins within 2m of the laneway frontage of the building, and to connect the loading dock to the lifts serving the residential floors via a suitable flat or ramped internal access (not via a garbage room).

In view of the above, it is concluded that application in its current form must be recommended for refusal.

RECOMMENDATION

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

A. **THAT** the Joint Regional Planning Panel resolves to refuse development consent to Development Application No. 524/10 for development comprising demolition of the existing buildings and erection of a mixed use development with basement car parking on land at No's 83-89 Chandos Street, St. Leonards, for the following reasons:-

1. The height and scale of the proposed building is excessive and would result in a building that is not compatible with the context of the site or the desired future character of the locality. In particular the proposal is not compatible with a scaling down of development from the 'Forum' building to Willoughby Road as identified in the character statement for the St Leonards area in the North Sydney DCP 2002, and its height is not compatible with lower scale residential development to the east;
2. The proposal is an unacceptable breach of the building height control pursuant to Clause 29 of NSLEP 2001, and extent of the breach is such that an amendment to the LEP height control would be required to alter the maximum height control of the site. Accordingly, the SEPP No. 1 objections in relation to the breaches of the building height and building height plane controls cannot be supported.
3. The proposal breaches the building height control of Clause 30 of the NSLEP 2001, and the SEPP No 1 objection in this regard cannot be supported as the development is incompatible in height and scale with the lower scale residential development to the east

4. The proposal application fails to satisfy the development controls for the NSDCP 2002 in terms of context, skyline, the street frontage podium setback to Chandos Street, and balconies protruding into the podium setback, and is considered unacceptable


IAN PICKLES
EXECUTIVE PLANNER


STEPHEN BEATTIE
DEVELOPMENT SERVICES MANAGER