

JRPP No:	2011SYE008
DA No:	DA 519/10
PROPOSED DEVELOPMENT:	156-158 Pacific Highway, Crows Nest Demolition of the existing building and erection of a 13 storey mixed use building containing 323m ² of retail floor space, 48 residential apartments and three levels of basement carparking for 45 vehicles.
APPLICANT:	LJB Urban Planning Pty Ltd
REPORT BY:	George Youhanna, Executive Planner, North Sydney Council

Assessment Report and Recommendation

EXECUTIVE SUMMARY

The proposal is for demolition of the existing building and erection of a 13 storey mixed use building containing 323m² of retail floor space, 48 residential apartments and three levels of basement carparking for 45 vehicles.

Council's Design Excellence Panel identified a number of substantial issues with the proposal and recommended that the building be completely redesigned, including a reduction in height by approximately 3 storeys, deletion of the tower element and reconfiguration of the building layout in relation to the remaining storeys. The applicant was advised of the Design Excellence Panel's concerns and additional concerns in relation to the adjoining residential zoned land and heritage item at No.1 Doohat Avenue, the undersized site area, impact on the development potential of the adjoining sites to the north and south and impact on the adjoining dwellings at No.152-154 Pacific Highway.

A Planning Proposal was lodged concurrently with the subject DA to reduce the minimum non-residential FSR from 3:1 down to 0.5:1. A Gateway Determination has been issued and the Planning Proposal was publicly notified with no objections received. However, in the event that the Planning Proposal is gazetted in due course, the subject DA will remain non-compliant with the new minimum FSR requirement and no SEPP 1 objection has been submitted to Council.

On 4 April 2011 the applicant sought Council's approval to lodge amended plans in order to address the concerns of Council and the Design Excellence Panel, by lowering the building height by 3 storeys and reconfiguring the lower levels. Council declined to accept amended plans, consistent with the provisions of Clause 55 of the Environmental Planning & Assessment Regulation 2000. The applicant subsequently advised Council that the application should be reported to the JRPP for determination on the basis of the original design. It should be noted that no amended plans have been provided to Council to date.

The application is considered unsatisfactory and is recommended for refusal.

DESCRIPTION OF PROPOSAL

The proposed 13 storey mixed use development comprises the following elements:

1. Demolition of the existing building on the site.

2. Construction of a new building fronting the Pacific Highway, with rear lane access via Doohat Lane. Details of the building are as follows:

Basement:

- 3 levels of basement parking accessed by 2 car lifts on Level 1 (via Doohat Lane), including lift and stair access to all three levels, parking for 45 cars and 5 motorcycles, bicycle racks and lockers, storage areas, utility and plant rooms.

Ground Floor (Pacific Highway street level)

- 2 retail areas (198m² and 125m²) with a total area of 323m², residential lobby, storage areas, pool, sauna, change rooms, lift and stair access to all floors, car lift shaft (no access).

Level 1

- 4 units, including 2 x 2 storey units, 2 light wells, residential garbage room and compactor, retail garbage room, loading area, plant room, gym, 2 car lifts.

Level 2

- 2 units (in addition to the upper level of the 2 storey units below), 2 light wells.

Level 3

- 7 units, including 2 x 2 storey units, 2 light wells.

Level 4

- 5 units (in addition to the upper level of the 2 storey units below), 2 light wells.

Level 5

- 7 units, including 2 x 2 storey units, 2 light wells.

Level 6 (top level of podium)

- 5 units (in addition to the upper level of the 2 storey units below), 2 light wells.

Level 7 (tower)

- 4 units.

Levels 8 & 9

- 4 units per floor.

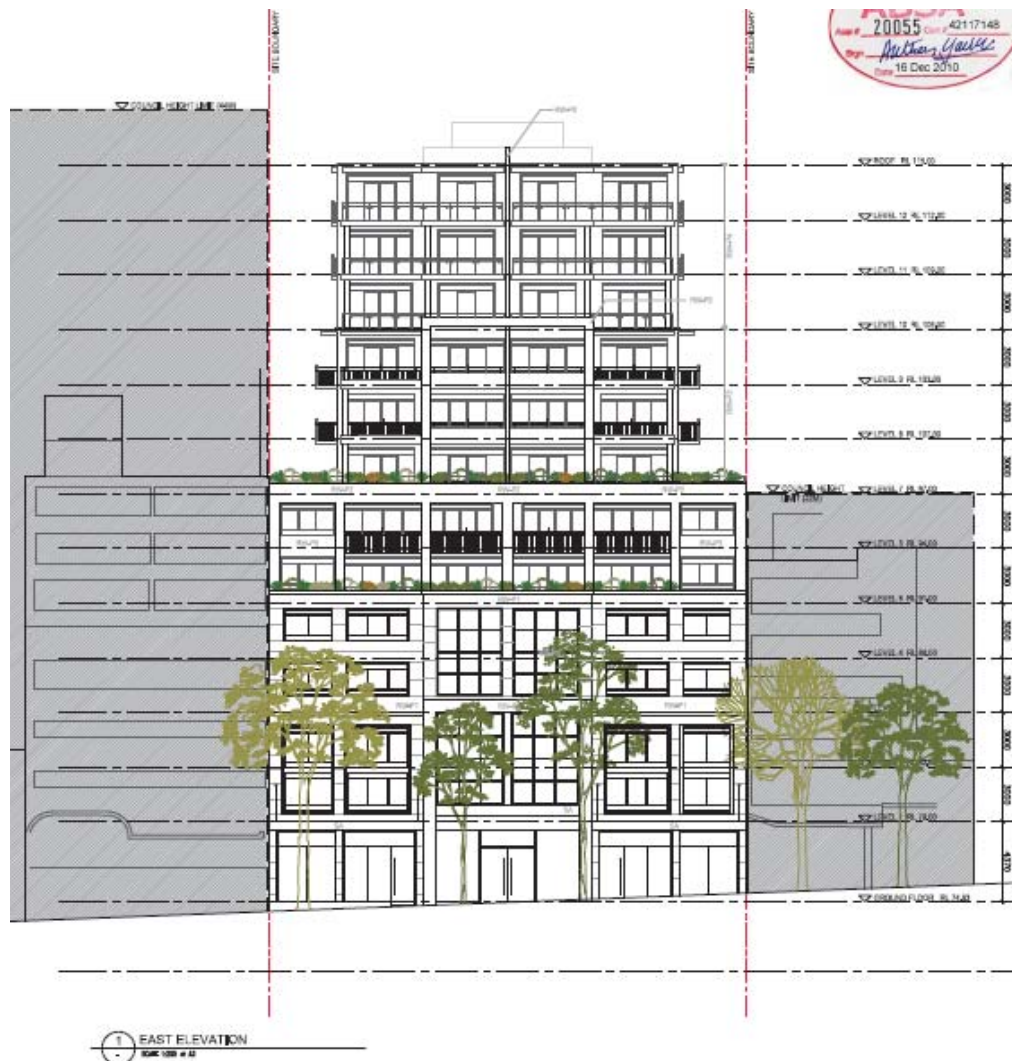
Levels 10-12

- 2 units per floor.

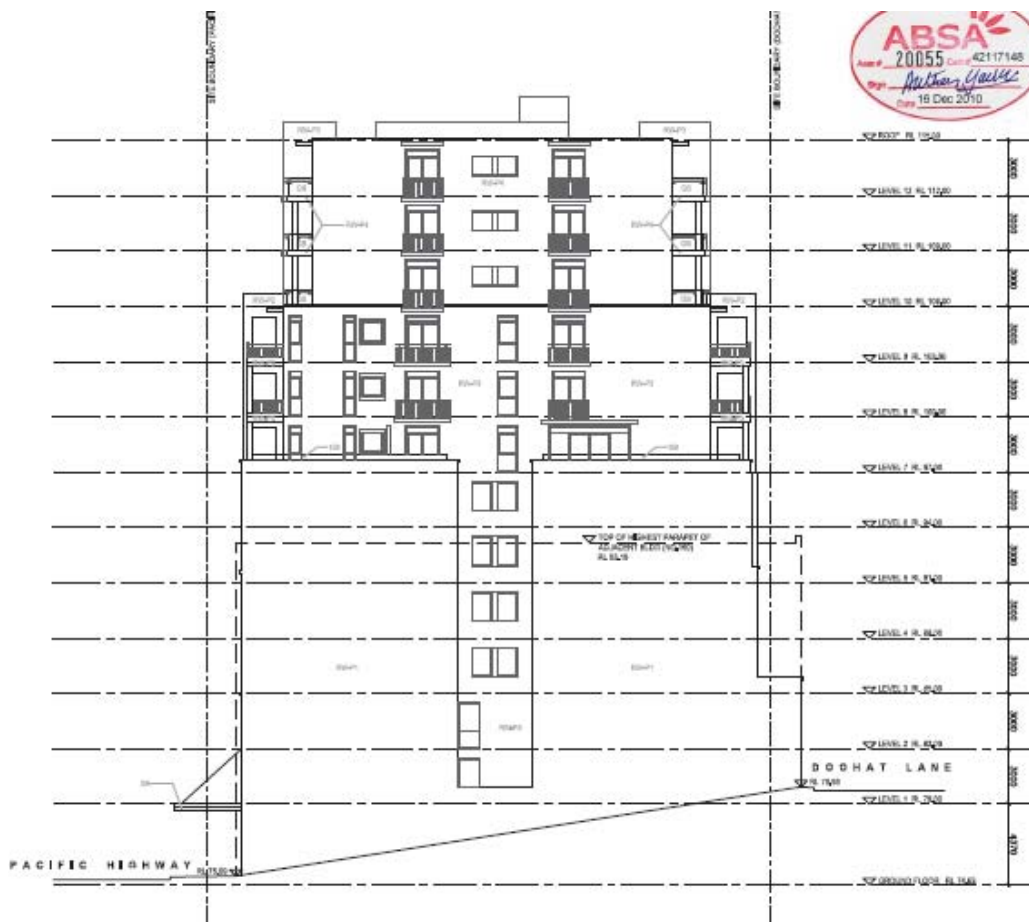
General Features

- Non-residential FSR of 0.4:1
- Building design features a podium up to Level 4, a sub-podium on Levels 5 and 6, and a tower from Levels 7-12.
- 48 units, comprising 16 x 1 bedroom units, 26 x 2 bedroom units and 6 x 3 bedroom units.

- 20 of the podium units on the northern and southern boundaries are serviced by a 6 storey (18m) high light well with dimensions of 4.0m x 3.69m.



East elevation of proposal (Pacific Highway)



North elevation of proposal

Concurrent Planning Proposal

In conjunction with the subject DA, the applicant has submitted a Planning Proposal for the subject site (156-158 Pacific Highway). The Planning Proposal seeks to amend the non-residential FSR controls for the site. Under North Sydney Local Environmental Plan 2001, the site currently requires a range of non-residential FSR between a minimum of 3:1 and a maximum of 4:1. The Planning Proposal seeks to reduce the minimum non-residential FSR from 3:1 to 0.5:1, with no maximum set. It should be noted that the Planning Proposal was amended by the applicant on 17 January 2011 from the originally proposed 0.4:1 minimum to the currently proposed 0.5:1 minimum.

The Planning Proposal contains the same provisions that are proposed for the site in Draft NSLEP 2009 and was forwarded to the Department of Planning for Gateway Determination. The Minister for Planning issued a Gateway Determination and the Planning Proposal was publicly notified for 14 days, until 7 April 2011. No objections were received.

In the event that the Planning Proposal proceeds to gazettal, the subject DA with a non-residential FSR of 0.4:1 will remain non-compliant with the 0.5:1 non-residential FSR development standard.

STATUTORY CONTROLS

North Sydney LEP 2001

- Zoning – Mixed Use

- Item of Heritage - No
- In Vicinity of Item of Heritage – Yes (1 Doohat Avenue)
- Conservation Area - No
- FSBL - No

S94 Contribution

Environmental Planning & Assessment Act 1979

SEPP No. 1 Objection

SEPP No. 55 - Contaminated Lands

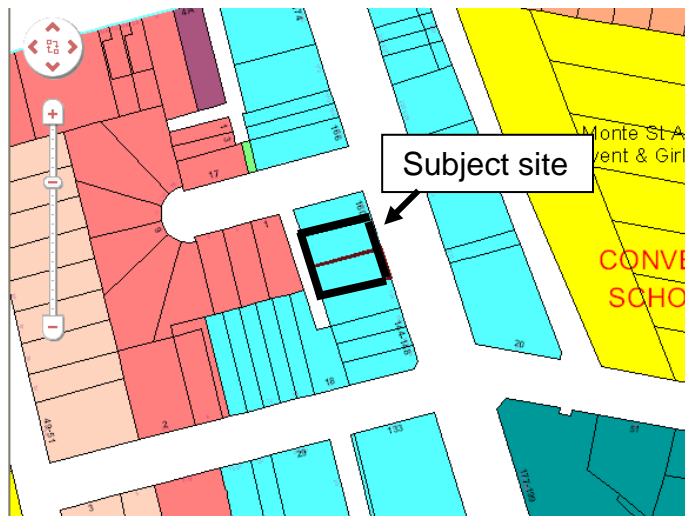
SEPP No. 65 - Design Quality of Residential Flat Developments

SEPP (Building Sustainability Index: BASIX) 2004

SEPP (Infrastructure) 2007

Sydney Harbour Catchment REP and DCP

Draft North Sydney LEP 2009



POLICY CONTROLS

DCP 2002

CONSENT AUTHORITY

As this proposal has a Capital Investment Value (CIV) of greater than \$10 million (\$14m nominated on development application) the consent authority for the development application is the Joint Regional Planning Panel, Sydney East Region (JRPP).

DESCRIPTION OF SITE AND LOCALITY

The site has a legal description of Lot 100 DP 1088503 and Lot 5 DP 8869, and is commonly known as 156-158 Pacific Highway, North Sydney. The site is located on the western side of the Pacific Highway between the intersections of Doohat Avenue and Berry Street. The site is generally rectangular in shape (parallelogram) and has an area of 794.31 m². It has frontages to the Pacific Highway and Doohat Lane of 26.06 metres and side boundaries of 30.48 metres.

The subject site is adjoined by a five (5) storey commercial building to the north at No.160 Pacific Highway and development opposite the site across Doohat Lane comprises townhouses and a heritage listed residential dwelling at No.1 Doohat Avenue. To the south of the site is an existing 7 storey building, at No. 154 Pacific Highway, known as the RTA building. The building is a mixed use building containing

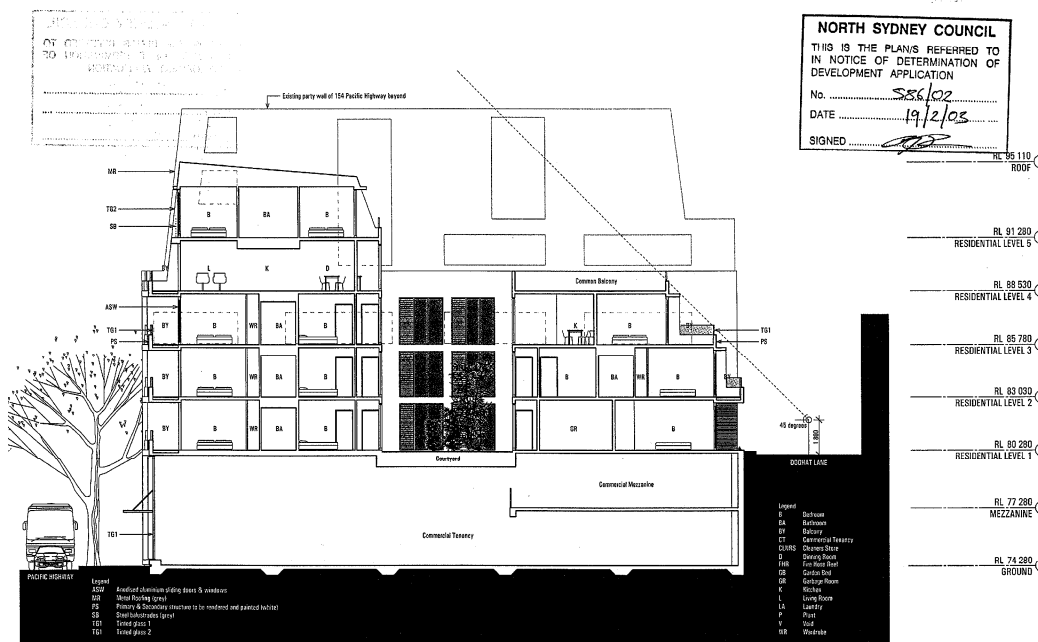
commercial uses within the podium levels and residential units above. The building is built to its northern boundary with recesses to windows at the upper levels.



RELEVANT HISTORY

DA586/02 for the demolition of the apartment building at No.156 Pacific Highway and the erection of a 6 storey mixed use building was approved on 19/2/03.

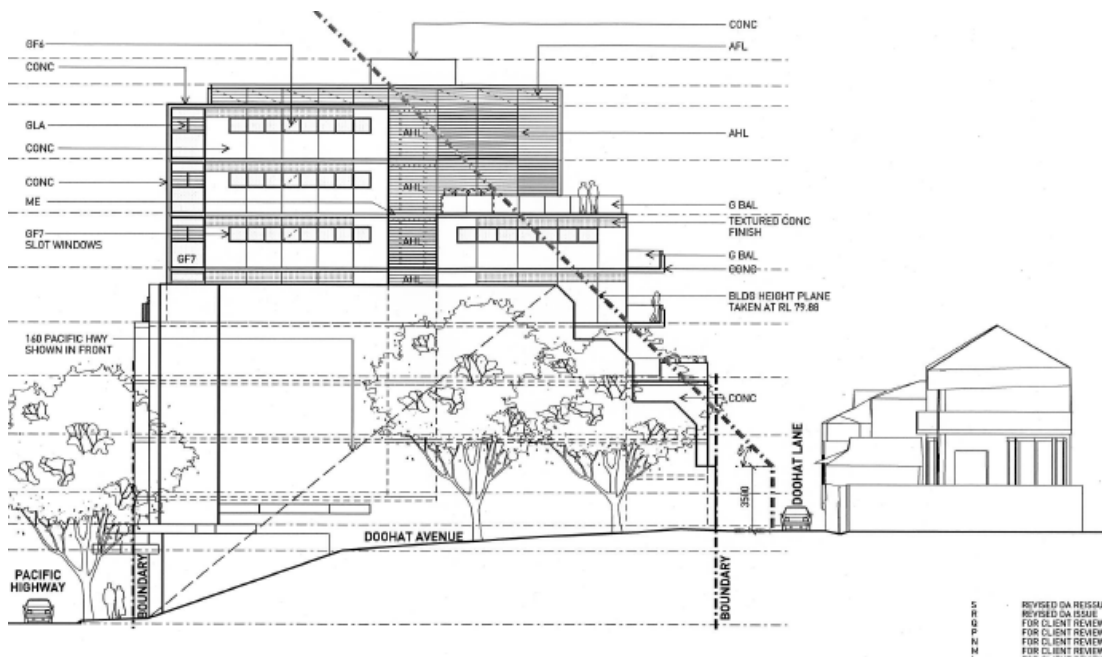
No.156 Pacific Highway is currently vacant but previously housed an apartment building owned by the Department of Housing. A development application (DA586/02) was approved for the demolition of the apartment building at No.156 Pacific Highway and the erection of a 6 storey mixed use building. This development was to be a partnership between Council and the Department of Housing to provide affordable housing. While it is understood that it is currently not intended to pursue this scheme, a review of Council's records indicate that although the consent lapsed on 19 February 2007 (after a 1 year extension under s.95A beyond the original 3 year lapsing date of 19 February 2006) demolition did not occur until May 2007. On this basis, it appears that there is no current consent for development on No.156 Pacific Highway.



Section (Pacific Hwy to Doohat Lane) through approved DA586/02 on No.156 Pacific Highway

DA 47/09 for demolition of the existing commercial building at No.158 Pacific Highway and erection of a 9-storey mixed use development with 3 levels of basement car parking was approved by Council in March 2010.

No.158 Pacific Highway currently contains an existing three (3) storey commercial building, with a ground floor retail use that fronts the Pacific Highway and car parking at the rear of the site, accessed off Doohat Lane. DA 47/09 for demolition of the existing commercial building and erection of a 9-storey mixed use development was approved in March 2010. The approved development includes 5-storeys of retail/commercial floor space (1,476sqm) and 4 residential levels, accommodating 11 apartments.



North elevation of approved DA 47/09 on No.158 Pacific Highway

Pre-Lodgement Advice

A pre-lodgement meeting was held on 21/9/10 (see attached minutes) and a number of issues were raised with the proponents, including the following:

- *The proposal for a 13 storey building on the southern portion of the amalgamated site (Nos. 156 & 158 Pacific Highway) which will step down to 9 stories on the north portion.*
- *Consideration should be given to the appropriate building height for the subject site in relation to the adjoining developments and the context of the locality given the subject site is located at the northwestern edge of the North Sydney CBD and is in proximity of lower scale developments to nearby.*
- *The proposed building height of approx. RL 114 is in excess of the current height guideline of RL 105. The applicant attention was drawn to the Draft LEP Amendment 28 which allowed for a building height of 24m only.*
- *The proposal breaches LEP's building height plane standards significantly. Additional building setback should be provided for the residential development to the west of the subject site in order to provide sufficient separation from these properties.*
- *More consideration needs to be given to the requirements of SEPP 65 as well as substantial modifications to the current proposal to provide additional building setbacks and separation (from the side boundary and between apartments) to provide better access to light and ventilation for the proposed residential apartment units.*
- *It was advised the design of the building on the subject site should give consideration to issues raised at the meeting, particularly in terms of building height, building separation/setback and residential amenity. This would likely to result in a substantially different building design.*

Other Considerations

- *Considerations have to be given to address the issue of site area under 1000sqm and site amalgamation with the adjoining properties particularly the corner property at No. 160 Pacific Highway.*
- *The applicant advised that the amalgamation of this site was not achievable. However, this should be substantiated by appropriate documentary evidence in the DA submission.*
- *Additional Section 94 contribution would be applicable for the provision of new apartment units.*
- *Rail Infrastructure Levy may be applicable should the proposed development would result in additional non-residential floorspace area.*
- *The reduction in floorspace from the approved commercial FSR (approx. 0.5:1) to the proposed FSR of 0.5:1 may require a planning agreement be prepared due to the non-compliance with the FSR standards.*
- *The applicant was advised to consider development application determination for nearby properties including No. 154 Pacific Highway.*
- *Consideration would also be given regarding objections from the local residents/precincts*
- *Application might be referred to JRPP should the cost of development would be in excess of \$10m.*
- *The modified pre DA proposal could be referred to the Design Excellence Panel for initial comments.*

The pre-lodgement advice covered a range of issues, particularly in relation to excessive building height, inadequate setbacks to the west, substantial non-compliance with the building height plane control, improved building design with regard to SEPP 65 requirements and amenity to the north and south elevations, and the provision of documentary evidence of attempts to consolidate with the adjoining site. Further, the proponents were advised that an amended pre-DA proposal could be referred to the Design Excellence Panel for review and comments, however, this offer was not taken up.

DA 519/10 (Current DA)

The subject DA was considered by the Design Excellence Panel on 3 February 2011, with the applicant in attendance. A letter highlighting a number of substantial concerns and recommending a complete redesign of the proposal via a new development application was issued on 15 March 2011. The applicant was offered a refund of part of the DA fees if the application was withdrawn prior to a report being prepared.

On 4 April 2011, the applicant advised that they would reduce the height of the building by the deletion of three storeys, in addition to other amendments including the provision of slots to the rear to enhance the amenity of the units and reduce the number of levels reliant on the light wells, inter alia, as recommended by the Design Excellence Panel.

Given the extent of redesign required which would result in a significantly different proposal requiring a further complete assessment and new referrals/consultation with all relevant internal and external stakeholders, and with regard to the target assessment times for both Council and for JRPP determined applications, Council, consistent with the provisions of clause 55 of the Environmental Planning & Assessment Regulation 2000 declined to accept amended plans under the current DA. The applicant subsequently requested that the original proposal be reported to the JRPP for determination.

REFERRALS

Roads & Traffic Authority

The application was referred to the Roads and Traffic Authority (RTA) on 29 December 2010.

Council received a response from the RTA on 8 April 2011 raising no objections to the proposal subject to conditions.

Traffic

The application was referred to Council's Traffic Engineer who provided the following comments:

Existing Development

The existing site comprises a commercial building and a vacant block.

Proposed Development

The proposed development comprises 48 residential apartments (16 x 1-bed, 26 x 2-bed, 6 x 3-bed) and 401 m² of retail floor space. Three levels of basement parking for 45 cars is proposed with access via a lift.

Parking

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

<i>Development Component</i>	<i>Parking Rate</i>	<i>Maximum Parking</i>
<i>16 x 1 bedroom</i>	<i>0.5</i>	<i>8</i>
<i>32 x 2+ bedroom</i>	<i>1</i>	<i>32</i>
<i>401 m² retail</i>	<i>400</i>	<i>1.0</i>
<i>Total</i>		<i>41</i>

I note that the additional 4 parking spaces are unlikely to have a significant impact on the operation of the wider surrounding traffic network in and of itself.

*However, the greatest concern is that if this developer is permitted to build 45 parking spaces, which is **9.8% more parking than is permitted under the DCP**. Council must take into consideration the development in the context of North Sydney as a whole. Council's LEP and DCP have been prepared in consideration of the overall impact of future development on the local area. Traffic generation is one of the key impacts associated with new developments. North Sydney is a high density area and congestion and traffic generation issues are of particular concern to the community and impact greatly on resident amenity.*

The parking rates as outlined in Council's DCP were a deliberate policy decision of Council to restrict car parking and therefore car ownership in Mixed Use and Commercial areas close to good public transport. Council's strategic plan, the 2020 Vision states, "Public transport and alternative means of transport are the mode of choice for trips to, from and within North Sydney. The community's reliance on the car has reduced. Considerable effort has been made to improve public transport and reduce traffic congestion, particularly through the use of more innovative and environmentally friendly systems."

If Council were to permit all developments to provide 9.8% 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.

Traffic Generation

I generally concur with the traffic generation figures calculated by TTPA and I generally concur that this proposed increase in traffic generation will have a negligible impact on the surrounding road network. I concur with TTPA that the surrounding intersections would continue to operate at their existing levels of service, with similar average delays per vehicle.

Loading Dock

An issue of serious concern with regards to this development is the proposed loading dock which does not adequately provide for furniture removalist vans and delivery vehicles.

I strongly disagree with the applicant's statement, "Occasional servicing requiring larger vehicle, such as furniture removal, will be undertaken by utilising the available on-street parking as is typical for residential development of this nature."

A development of this size with 48 apartments and 401 m² of retail space 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 48 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.

From the plans it appears that the only level or ramped access to the building and lifts, through which a removalist's trolley could be wheeled, is via the main resident pedestrian access from the Pacific Highway. It would be entirely unacceptable to have furniture removalist vans parked on the Pacific Highway, Doohat 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 pedestrians. Given the significant volume of vehicles and pedestrians that utilise the Pacific Highway 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.

The loading dock should be located such that there is flat or ramped access to the lifts providing access to the residential floors of the building. Flat or ramped access should be available to the retail areas of the building.

Queuing Length

Access to the proposed basement is via two car lifts. The Australian standard AS 2890.1 states in relation to access to mechanical parking and the amount of vehicle storage required that, "queue lengths shall be calculated by applying conventional queuing theory to estimated mean arrival rates during normal peak periods, and mean service rates under continuous demand...the storage area shall be designed to accommodate the 98th percentile queue under such conditions."

The applicant has provided information on the mean arrival rates. Information has not been provided on the mean service rates. No proprietary information has been provided on the proposed lifts to determine the likely service rates. The proposed access arrangements cannot therefore be adequately assessed.

Access to Berry Street

It is not entirely clear from TTPA's report, but it appears to be suggesting that vehicular access to the site is available from Berry Street/ Edward Street/ Bay Road.

Doohat Lane, between Doohat Avenue and the rear of 154 Pacific Highway (to the boundary with 150 Pacific Highway) is a public road. The residents/ business tenants of the proposed development at 156-158 Pacific Highway are therefore able to make use of that section of Doohat Lane to access the property.

The land at the rear of 144–150 Pacific Highway is not a public road. It is owned by the same person that owns 18 Berry Street. DP 237104 dated 27 November 1968 shows that this is a right of carriageway. Lot 4 (18 Berry Street) is burdened by the right of carriageway. Lots 1-3 (144–150 Pacific Highway) benefit from the right of carriageway. It is understood that at this stage 156-158 Pacific Highway (as well as 154 Pacific Highway) do not benefit from this right of carriageway. If the developer proposes to access the site via Berry Street/ Edward Street/ Bay Road then they will need to negotiate with the owners of 18 Berry Street for legal access over this right of carriageway.

Conditions of Approval

It is recommended that this development be refused until the following issues are addressed:

- 1. A loading dock which accommodates a Medium Rigid Vehicle which is 8.8 metres long and 4.5 metres high as per Australian Standard 2890.2 is to be provided on-site. The loading dock is to be available for moving/delivery vehicles for the residential component of the development, as well as the retail components of the development. The loading dock should be located such that there is flat or ramped access to the lifts providing access to the residential floors of the building. Flat or ramped access should be available to the retail areas of the building.*
- 2. Information is to be provided on the mean service rates for the proposed car lifts to determine if adequate queue lengths have been provided.*
- 3. The applicant is to demonstrate their legal right to utilise the right of carriageway which forms part of Lot 4 of DP 237104 known as 18 Berry Street.*

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

- 1. That the number of parking spaces in the development be restricted to a maximum of 41 as per the North Sydney DCP 2002.*
- 2. That a Demolition and Construction Management Program be prepared and submitted to Council for approval by the North Sydney Traffic Committee prior to the issue of a Construction Certificate. Any use of Council property shall require appropriate separate permits/ approvals.*
- 3. That an Operational Transport Management Plan for heavy vehicles including garbage vehicles, retail 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.*
4. *That all vehicles, including heavy vehicles, delivery vehicles and garbage vehicles must enter and exit the site in a forwards direction unless under the direct supervision of an RTA accredited traffic controller.*
 5. *That residents will not be entitled to a resident parking permit even if their vehicle does not fit into the proposed car lifts.*
 6. *That all aspects of the carpark comply with the Australian Standard AS2890.1 Off-Street Parking.*
 7. *That all aspects of the loading dock comply with the Australian Standard AS2890.2.*
 8. *That all aspects of parking spaces for people with disabilities comply with the Australian Standard AS 2890.6.*
 9. *That all aspects of the bicycle parking and storage facilities comply with the Australian Standard AS2890.3.*
 10. *That the developer pay to upgrade the street lighting on the Pacific Highway, Doohat Street and Doohat Lane, adjacent to the site, to the appropriate standard and to the satisfaction of Council.*
 11. *That signs be installed at the exit to the driveway and loading dock stating "Stop – Give Way to Pedestrians"*

Development Engineer

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

Conservation Planner

Council's Conservation Planner provided the following comments:

1. Heritage Status and Significance

- The subject properties are not heritage items and are not located in a conservation area.
- No 1 Doohat Avenue is a heritage item in the immediate vicinity. It is a two storey Federation style dwelling that addresses Doohat Ave and is separated from the subject properties by a rear laneway. The setting of the heritage item is primarily a one and two storey residential streetscape. Doohat Lane to the east of the heritage item provides some physical separation to commercial development that is currently two and four storey in the vicinity of the heritage item.

2. Heritage Impact Assessment

a) North Sydney LEP 2001

An assessment of the proposal, with reference to the following Clause of the North Sydney LEP 2001 has been made:

50 Development in the vicinity of heritage items

(1) the specific objective of the development in the vicinity of heritage items control is to ensure that development in the vicinity of a heritage item does not adversely

affect the heritage significance of the item or its curtilage.

It is considered that the monumental bulk and scale of the proposal will adversely impact upon the residential setting of 1 Doohat Ave. This could be ameliorated by some design amendments as described below.

b) North Sydney DCP 2002

An assessment of the proposal, with reference to Section 8.8 of the North Sydney DCP 2002 has been made with the following elements of the DCP being of note with regard to the proposal:

a. *Curtilage* – The original setting of No 1 Doohat Ave when constructed, was that of a one and two-storey residential neighbourhood with garden settings. This has been modified in the late twentieth century by commercial development on the eastern side of Doohat Lane. The proposal of a high residential tower is contrary to (iv) *maintain the relationship between the building or place and its setting* in that the monumental bulk of the development will detract from the remaining residential setting.

c. *Sandstone Features* – The proposal requires the demolition of a sandstone retaining wall on the Pacific Hwy frontage. This is visually removed from the heritage item so no objection is raised. A condition with regard to the salvage of the sandstone blocks is recommended below.

d. *Gardens* – No objection is raised to the proposed planter box along the Doohat Lane frontage.

f. *Setbacks* – The proposal will have a boundary setback on Doohat Lane. This will match that of the adjacent building No 160 Pacific Hwy. Due to the width of the podium level, the proposal will appear very imposing towards the heritage item. A variation in the setback is therefore recommended. The additional setbacks above the podium level assist in reducing the perceived bulk of the building.

h. *Massing, Form and Scale* – The large width and bulk of the podium level addressing Doohat Lane will impact adversely upon the residential setting of the heritage item. In addition, the openings for the Loading Bay and the Car Lift are of a commercial scale. It is recommended that the height of the podium to Level 3 be reduced to be sympathetic to that of the scale of the rear of 160 Pacific Hwy and that it have greater articulation. It is acknowledged that the height has been determined by the height requirements for the Loading Bay, however, consideration should be given to the garbage collection/delivery arrangements to be redesigned for smaller vehicles or the opening be at a grade below street level.

i. *Roof Forms and Materials* – No objection is raised as the roof form is physically separated from the heritage item by height of the tower.

k. *Balconies and Verandahs* – No objection is raised to the proposal balconies that face west towards the heritage item.

l. *Windows and Doors* – No objection is raised.

m. *Palette of Materials* – It is recommended that the composite panels have an appearance of sandstone to reinforce the character of North Sydney.

n. *Colour Scheme* – No objection is raised to the submitted colour palette.

o. *Characteristic Detailing* – The proposal's detailing will sit neutrally in the streetscape.

r. *Car Parking* – No objection is raised to the car parking openings off Doohat

Lane however, the scale of the openings, particularly that of the Loading Bay is considerably out of scale with that of the residential setting of 1 Doohat Ave. The height of the opening for the car lift is also unnecessarily tall, particularly as the height of the vehicle is limited by the car lift itself. It is recommended that the location of the Loading Bay and the Car Lift openings be reversed and the perceived scale of the openings be visually minimised.

3. Conclusion

The proposal is considered to have a monumental scale and does not reinforce the residential setting of the heritage item located at 1 Doohat Avenue. The following amendments are therefore recommended:

- The height of the opening for the car lift to be minimised so that it does not have a commercial scale.
- The location of the Loading Bay and the Car Lift openings to be reversed such that the larger opening is further away from the heritage item, 1 Doohat Ave.
- The perceived scale of the openings to be visually minimised. For example, consideration to be given to the installation of garage doors that are designed to appear as multiple smaller openings rather than one large single opening. Also consideration to be given to have the Loading Bay partially below street level so that the full height of the opening is not visible from the heritage item
- The podium level to be articulated into three elements to reduce its monumental bulk along the street frontage.
- The painted composite panels described as having a masonry appearance, are to appear as sandstone to reinforce the character of North Sydney and the setting of the heritage item. This is to be noted on the drawings.

Design Excellence Panel

Council's Design Excellence Panel (DEP) considered the application at its meeting on 3 February 2011. The minutes of the meeting are as follows:

The Proposal:

The development application is for the demolition of the existing building and erection of a 13 storey mixed use building containing 323m² of retail floor space, 48 residential apartments and three levels of basement carparking for 45 vehicles.

The site is located on the western side of the Highway between Doohat Avenue to the north and Berry Street to the south. The site has frontage to Doohat Lane at the rear.

To the north of the site is an existing 5 storey commercial building. The commercial building known as 160 Pacific Hwy is located at the corner of Pacific Hwy and Doohat Avenue. It also has frontage to Doohat Lane.

To the south of the site is an existing 7 storey building, at 154 Pacific Hwy and known as the RTA building. The building is a mixed use building containing commercial uses on the podium and residential above. The building is built to its northern boundary with recesses to windows at the upper levels.

Doohat Lane which forms the rear boundary of the site contains residential uses opposite the site. At the corner of Doohat Lane and Doohat Avenue is 1 Doohat which is a listed heritage item. This dwelling comprises a 2 storey brick building with a carport and vehicle access off the Lane. The main entry of the dwelling is located to the north on Doohat Avenue. A second smaller dwelling known as 1A Doohat fronts the laneway.

Panel's Comments

The Panel is advised that the subject site, the site to the north and the south are all under the minimum lot requirement under NSLEP 2001 of 1000m². The Panel is advised that consolidation of the site with either neighbour is not practical.

The Panel is also advised that the Draft NSLEP 2009 has a height control of RL 105 for the site which would allow a height of about 25m. The Draft LEP 2009 proposes a stepping down from RL 125 to the south down to the subject site (RL 105) with No.160 having a height of RL 105. The Council's DCP also has requirements for podium heights and setbacks.

The proposal is seeking a height of some 10m above the draft control. The main issues that need to be resolved relate to the height and appropriate setbacks having regard to the immediate surrounding development.

The Panel has a number of concerns with the current proposal with regard to the height, the lack of setbacks and the use of enclosed light wells.

The Panel considers that a nine storey building is the maximum height for a building adjacent to a residential zone. Proper regard needs to be given to SEPP 65 separation distances, however, the Panel concedes that a lesser setback on the side boundaries can be considered due to the dimensions of the site provided adequate setbacks are available to the street and lane.

The Panel cannot support an increase in height where a site is under the minimum site area requirement and the adjoining sites would be isolated.

The Panel considers that a total redesign is required and provides the following guidance for the applicant:

- *The height be limited to at or near RL 105*
- *The podium height to the Highway be at or near RL 94 with a weighted setback of 5m from the Highway above the podium.*
- *The building being setback from the lane by 1.5m*
- *The podium height at the lane be at or near RL 91 with weighted setback of 4m from the lane above the podium*
- *Lightwells on the northern and southern elevation be limited up to RL 91*
- *The building can be built to the northern and southern boundaries to the east of the lightwells above RL 91*

- *The building be setback a minimum of 3m from the northern and southern boundaries to the west of the lightwells above RL 91*
- *No living areas or balconies on the northern or southern boundaries.*
- *The setbacks at the front and rear above the podiums are to the balconies.*

Conclusion

The Panel does not support the proposal as the bulk and scale is excessive for a site that is under the minimum requirements. The Panel would encourage the applicant to submit amended plans in accordance with the above suggestions back to the Panel for further comment.

SUBMISSIONS

The owners of adjoining and nearby properties and all Precinct Committees were notified of the proposed development from 14/1/11 to 28/1/11. A total of 10 submissions were received with the main issues raised being summarised as follows:-

Name & Address of Submitter

Jeff Hudson 11/154 Pacific Highway	<ul style="list-style-type: none"> • Impact of building to the side boundary on the existing windows in wall on boundary at 154 Pacific Highway, particularly to the suite on level 4.
Nathan Keast 4/154 Pacific Highway	<ul style="list-style-type: none"> • Proposal will block in my living area window of my residential unit on level six of 154 Pacific Highway. This would take away both light and ventilation.
Phil Raskall 8/154 Pacific Highway	<ul style="list-style-type: none"> • Excessive podium height • Impact on northern side boundary windows • Loss of all light and ventilation to side boundary windows • Adverse impact on amenity of apartments • Lack of discussion or assessment of impact on dwellings in No.154 in Statement of Environmental Effects. • Development would result in dwellings at No.154 being non-compliant with SEPP 65 and BASIX • Excessive number of parking spaces provided • Geotech report is from 2006 and relates only to 158 Pacific Highway • Proposal is well below the 1000m² minimum site area (>20% below) and has only minimal non-residential floor space.
Kayleen Berry 1A Doohat Lane	<ul style="list-style-type: none"> • Parking and traffic issues • Vehicular access should be from Pacific Highway • Loss of privacy • Loss of all light for majority of the day • Safety concerns due to traffic in Doohat Lane

	<ul style="list-style-type: none"> Noise from garbage trucks accessing the Lane
Joseph and Assimina Vitalis 3 Doohat Avenue	<ul style="list-style-type: none"> Proposal incompatible with adjoining residential development, particularly given its location at the zone interface. Bulk and size need to be reduced due to inadequate site area (below 1000m²) BHP non compliance Does not satisfy the decreasing building height requirement from CBD Privacy impacts Inconsistent with surrounding development, including heritage item Excessive building bulk and unsatisfactory transition to low scale residential zone. Overshadowing and amenity impacts Noise impact from vehicles in the Lane Traffic safety issues, lack of footpath in Lane Vehicle access should be from Pacific Highway
Soon Lim 1 Doohat Ave	<ul style="list-style-type: none"> Bulk and size of the building and compatibility with neighbouring properties Privacy and amenity Overshadowing Traffic and parking issues Noise from lane Waste collection from Lane Location of car park ventilation stack Air conditioning plant
Carolyn Milani 1 Browns Lane	<ul style="list-style-type: none"> Overshadowing of dwellings in Doohat Street Building height and size out of proportion to surrounding No.156 was approved for public housing Parking inadequate Building design is unattractive
Imelda Crimmins 5 Doohat Avenue	<ul style="list-style-type: none"> Inadequate commercial floor space Undersized site area inadequate for proposed building height Incompatible with surrounding development Residential 2C zone unlikely to be redeveloped to 12m Privacy issues BHP not addressed Does not satisfy the decreasing building height requirement from CBD Overshadowing Air conditioning plant and vents not identified Traffic congestion and pedestrian safety Doohat Lane inadequate, has no footpath Garbage collection, traffic noise and fumes Inadequate on-site parking for commercial,

	<ul style="list-style-type: none"> residential and visitors Council's policy for minimal parking is unsustainable
Edward Precinct	<ul style="list-style-type: none"> Bulk and size of the building and compatibility with neighbouring properties Privacy and amenity Overshadowing Traffic and parking issues Noise from lane Waste collection from Lane Car parking inadequate
Colin Low 2/154 Pacific Highway	<ul style="list-style-type: none"> Non-compliance with 3m side setback requirements.

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. 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 – 794.31 m ²	Existing	Proposed	Control	Complies
Mixed Use Zone				
Building heights and massing (Cl. 28D) (max):				
Building Height	3 storeys RL 88.49	13 storeys RL 117.4	Maximum height of RL 195 throughout North Sydney Centre	YES
Overshadowing controls	Complies	Increases overshadowing to No.1 Doohat Avenue	No increase in overshadowing that reduces amenity to any dwelling in composite	NO

			shadow area	
Site area	794.31m ²	794.31m ²	1000m ²	NO
Building Height Plane (Cl. 30):	Complies	Substantial breach of height plane	45° angle commencing at 3.5 metres above ground level at centre of Doohat Lane	NO
Floor Space (Non residential - Cl. 31) (range)	1.88:1	0.4:1	3:1 - 4:1	NO
Design of development (Cl.32) (applicable to new buildings)				
Mix of uses	Non-residential only	Residential and non-residential	Residential and non-residential For new buildings, non-residential at lower levels / no residential at ground level	YES
Location of uses	Non-residential	Non-residential	Residential entry separate	YES
Entry location	N.A.	Residential entry separate 5 and 7 storey podium and sub-podium to Pacific Highway	Building set back above a podium	YES
Podium requirement	N.A.			YES

Draft North Sydney LEP 2009

The application has been assessed against the relevant numeric controls in Draft NSLEP 2009 as indicated in the following compliance table.

Compliance Table

Draft North Sydney Local Environmental Plan 2009				
Site Area – 794.31 m ²	Existing	Proposed	Control	Complies
Mixed Use Zone – B4				
Height of Buildings Cl. 4.3	3 storeys RL 88.49	13 storeys RL 117.4	Site specific maximum height of RL 105	NO

			(9 to 10 storeys)	
Building Heights and Massing Cl.6.4				
Overshadowing controls Cl.6.4	-	Increases overshadowing	No increase in overshadowing that reduces amenity to any dwelling outside North Sydney Centre	NO
Site area Cl.6.4	794.31m ²	794.31m ²	1000m ²	NO
Floor Space (Non residential - Cl. 31) Cl.4.4	1.88:1 (748m ²)	0.4:1	0.5:1 Minimum	NO

DCP 2002 Compliance Table

DEVELOPMENT CONTROL PLAN 2002		
	Complies	Comments
6.1 Function		
Diversity of activities, facilities, opportunities and services	No	The proposed development incorporates a suitable diversity of uses. The proposal includes non-residential uses on the ground floor of the development in accordance with the DCP and also includes a pool, sauna, gym and change rooms. However, the proposal does not include a communal meeting room for future residents within the development.
Mixed residential population	Yes	The proposed dwelling yield of one unit per 146m ² of residential GFA is within the DCP range of one unit per 100m ² -150m ² .
	Yes	The proposal includes 33.3%(16) x 1 bedroom, 54.2%(26) x 2 bedroom and 12.5%(6) x 3 bedroom. The proposed unit mix is considered acceptable with regard to the minor variation to the unit mix requirements.
	Yes	The development incorporates a total of 5 adaptable units in accordance with the requirements of the DCP.

Maximum use of public transport	Yes	Non-residential parking is limited to 2 spaces and the site has excellent access to public transport.
6.2 Environmental Criteria		
Clean Air	Yes	Satisfactory.
Noise	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 (and SEPP Infrastructure) noise mitigation requirements subject to construction recommendations.
Acoustic Privacy	Yes (with conditions)	As noted above, an Acoustic Report prepared by Acoustic Logic was submitted with the application. The report indicates that subject to appropriate glazing and acoustic treatment, the proposal is capable of satisfying the DCP acoustic privacy requirements.
Visual Privacy	No	<p>The proposed 3.69m tower setbacks to the northern and southern elevations are unsatisfactory with regard to any future redevelopment on No.152-154 Pacific Highway (to the south) and No.160 Pacific Highway (to the north). The proposal relies on windows to living areas (kitchen, living/dining rooms) and windows and balconies to bedrooms on the northern and southern elevations to achieve adequate amenity, set back 3.69m from the side boundaries. While the 3.69m side setback to the southern side is a concern, the inadequate northern side setback is of greater concern. Both the development site and No.160 Pacific Highway are subject to a height limit of RL 105 under the Draft LEP. The proposed tower component with a 3.69m side setback would unreasonably constrain future development of No.160 Pacific Highway, as development at Levels 7, 8 and 9 (in any future development on No.160) could not be adequately set back from the subject site to achieve appropriate minimum building separation. A 13 storey building on No.160 would have even greater impact.</p> <p>The application does not consider the impact on the future development of</p>

		<p>adjoining sites, and does not adequately address building separation distances from any future development to the north or south. There is no discussion or consideration in the Statement of Environmental Effects relating to constraining future development on the adjoining sites as a result of the excessive height and inadequate side setbacks.</p> <p>In this regard, the Design Excellence Panel has recommended that the building be reduced in height to no greater than 9 storeys (to Doohat Lane) at approximately RL 105, and that the tower be deleted from the design, with Levels 7, 8 and 9 extending to the side boundaries, and the building being set back a minimum of 3m from the northern and southern boundaries west of the lightwells above RL 91 (from Level 5). (See Design Excellence Panel comments earlier in this report).</p> <p>Visual privacy to the residential dwellings to the west has not been adequately addressed. The proposed west facing balconies would potentially overlook the adjacent dwellings in Doohat Avenue.</p>
Wind Speed	No	A Wind Impact Assessment has not been provided, despite the building being greater than 33m in height.
Awnings	Yes	An appropriate awning is proposed along the Pacific Highway frontage.
Solar access	No	The proposal is unsatisfactory with regard to overshadowing. (See discussion under Cl.28D later in report)
Views	Yes	The proposal does not adversely affect any existing views.
6.3 Quality built form		
Context	No	The proposal does not satisfactorily respond to the characteristics and constraints of the site. The design does not adequately take into consideration the adjoining residential development to the west, the likely future development of the site to the north and the objective

		of achieving a transition of building heights down to the boundaries of the North Sydney Centre.
Public spaces & facilities	Yes	Appropriate integration of the non-residential areas with the public domain is proposed.
Skyline	No	The proposed 7 storey podium with 6 storey tower above is unsatisfactory with regard to the resultant building height and the design of the upper levels of the building.
Streetscape	Yes	Appropriate activation of the Pacific Highway frontage is achieved.
Setbacks	No	The proposed approximately 3m weighted average setback above the podium setback to the Pacific Highway frontage is well below the required 5m weighted average setback.
Entrances and exits	Yes	Satisfactory.
Street frontage podium	No	The proposed 5-7 storey podium/sub-podium does not satisfy the Pacific Highway podium height and setback requirements, however, Council's Design Excellence Panel has recommended redesigning the building with a greater podium height in order to facilitate the deletion of the tower element (see Design Excellence Panel comments).
Building design	No	The proposed building design is considered unsatisfactory as previously discussed in detail.
	Yes	The proposed retail area at ground floor level has a >3.0m ceiling height and would allow a range of retail uses.
6.4 Quality urban environment		
High quality residential accommodation	Yes	All unit sizes are satisfactory.
	Yes	Balconies receive 2hrs solar access
	No	The proposed corridors are below the 2m minimum width (approximately 1.5m, but not dimensioned on plans) and include right angled corners.
	Yes	Up to 7 units are accessed from a single corridor.
	Yes	>60% of units will be cross ventilated.

	No	A number of single aspect units have a depth greater than 8m. In this regard, a bedroom window adjoining a light well is not considered to be a second aspect and as such all podium level units are oriented to either the east or west.
Balconies	Yes	The proposed balcony dimensions are satisfactory.
	No	Balconies extend within the prescribed setback above the podium.
Accessibility	Yes	Although no accessibility report has been submitted with the application, lift access is proposed to all levels and level access is provided from the street entrance of the building, with 5 adaptable apartments provided.
Safety and security	Yes	Satisfactory.
Car parking	Yes	The proposal provides a total of 45 car parking spaces.
	No	Councils' Traffic Engineer has raised concern with the absence of an adequate loading bay with a vertical clearance of 4.5m. (see comments above)
Bicycle parking	Yes	Satisfactory.
Vehicular access	Yes	Access from Doohat Lane is satisfactory.
Garbage storage	Yes	Satisfactory.
Commercial garbage storage	Yes	Satisfactory.
Site facilities	No	Storage facilities do not appear to comply with the DCP requirements – no schedule has been provided in the SEE or Design Verification Statement.
6.5 Efficient use and management of resources		
Energy efficiency	Yes	A BASIX certificate for the residential component of the development has submitted and an appropriate condition can be imposed to ensure compliance with these commitments.

NORTH SYDNEY LEP 2001

1. Permissibility within the zone:

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

2. Objectives of the zone

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

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

The proposed mixed use development is consistent with the objectives of the zone.

3. Building heights and massing

Objectives

The following are the building height and massing objectives pursuant to Clause 28D for the North Sydney Centre:

OBJECTIVE	RESPONSE
(a) <i>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.</i>	The proposal does not achieve a satisfactory transition of building heights as required by both the current and draft LEP controls.
(b) <i>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.</i>	A building with a reduced height and modified form would have a reduced impact on the adjoining heritage item to the west of the site at No 1 Doohat Avenue.
(c) <i>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”.</i>	The proposal would result in some additional overshadowing to the residential zone to the west of the site. This issue is addressed later within the report.
(d) <i>to protect the privacy of residents within and around the North Sydney Centre.</i>	The proposal tower side setbacks and west facing balconies are unsatisfactory with regard to privacy impacts.
(e) <i>to promote scale and massing that provides for pedestrian comfort, in terms of weather protection, solar access and visual dominance.</i>	The proposed design is unsatisfactory with regard to visual dominance.
(f) <i>to encourage consolidation of sites for provision of high grade commercial space and provision of public benefits.</i>	No evidence of negotiations in relation to attempts to consolidate the site with adjacent properties has been provided.

Development Controls

Clause 28D(2) sets out the building height and massing requirements for proposed development within the North Sydney Centre.

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

The proposed building will have a maximum RL117.4 AHD (to the top of the lift overrun), 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 an increase in overshadowing of land between the hours of 9.00am and 3.00pm on June 21st 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 that 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 proposal does overshadow the residential building at No.1 Doohat Avenue which is located within the composite shadow area, in the morning throughout the year.

The applicant has submitted a SEPP No. 1 objection seeking variation to this control due to the minor nature of overshadowing proposed. The SEPP 1 objection argues that the overshadowing of No.1 Doohat Avenue occurs from the podium structure and not from the tower and that to maintain existing levels of solar access to the affected east facing windows would preclude development of the site. Given that the proposed building height and western side setback are considered unsatisfactory, and that the proposal has not been amended to address these issues, amended shadow diagrams will be required and will be assessed at that time. Due to the height and envelope issues, the SEPP 1 objection is not supported.

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

The site has an area of 794.31m², being well below the 1,000m² requirement in NSLEP 2001. A SEPP No. 1 Objection has been submitted to justify this departure. No evidence of attempts by the owner of the property to consolidate with neighbouring properties to achieve a greater site area has been provided. No evidence has been provided illustrating that the adjoining sites (and particularly No.160 Pacific Highway) could be developed satisfactorily under the existing or draft controls. Additionally, the proposed

building is unsatisfactory with regard to excessive height and unsatisfactory form, and on this basis the SEPP No. 1 Objection is not supported.

Building design and public benefits

Clause 28D(5) of NSLEP 2001 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*

The proposed development is unacceptable in scale and form within its context as a peripheral site of the North Sydney CBD, adjoining residential development to the west. There is no stepping of the rear of the building in response to the lower scale residential development to the west of the site.

- (b) *whether the proposed development provides public benefits such as open space, through-site linkages, community facilities and the like, and*

The proposal provides no direct public benefits with the exception of an awning over the footpath and activation of the street frontage on Pacific Highway.

- (c) *whether the proposed development preserves important view lines and vistas, and*

The proposal does not impact on view lines or vistas identified in the character statement.

- (d) *whether the proposed development enhances the streetscape in terms of scale, materials and external treatments, and provides variety and interest.*

It is considered that the proposed development does not enhance the streetscape.

4. Mixed Use Zone

Building Height

There is no numeric building height control stipulated for the subject site pursuant to Clause 29, therefore the height for the site must be assessed pursuant to Clause 28D (above) and against the DCP site specific height control of RL 105. Compliance with both of these planning controls and against the draft height control contained in Draft NSLEP has been assessed as unsatisfactory elsewhere within this report.

Building Height Plane

Pursuant to Clause 30 of NSLEP 2001, a building height plane is only applicable to the rear (western) boundary of the site, which adjoins the Residential C zone. This development standard is not applicable to any other boundaries of the site.

The applicant claims that the decision in *Castle Constructions Pty Ltd v North Sydney Council [2007] NSWCA 164* renders the building height plane control “no longer

applicable” and no SEPP 1 objection has been submitted in relation to the proposed building height plane non-compliance.

Council considers that the particular circumstances considered by the Supreme Court in *Castle Constructions Pty Ltd v North Sydney Council [2007] NSWCA 164*, while similar to the current application, are not identical and that the building height plane control remains an applicable development standard in NSLEP 2001. While it was open to the applicant to provide a “without prejudice” SEPP 1, they chose not to do so. As no SEPP 1 objection has been submitted, in the absence of any other issues, consent could not be granted to the proposal.

5. Floor Space

In conjunction with the subject DA, the applicant has submitted a Planning Proposal for the subject site. The Planning Proposal seeks to amend the non-residential FSR controls for the site. Under North Sydney Local Environmental Plan 2001, the site currently requires a range of non-residential FSR between a minimum of 3:1 and a maximum of 4:1. The Planning Proposal seeks to reduce the minimum non-residential FSR from 3:1 to 0.5:1. The Planning Proposal contains the same provisions that are proposed for the site in Draft NSLEP 2009 and was forwarded to the Department of Planning for Gateway Determination. The Minister for Planning issued a Gateway Determination and the Planning Proposal was publicly notified for 14 days, until 7 April 2011. No objections were received.

However, in the event that the Planning Proposal proceeds to gazettal, the subject DA with a non-residential FSR of 0.4:1 will remain non-compliant with the 0.5:1 non-residential FSR development standard. No SEPP 1 objection has been provided in relation to non-residential FSR. As no SEPP 1 objection has been submitted, in the absence of any other issues, consent could not be granted to the proposal. Given that a Planning Proposal for a 0.5:1 non-residential FSR was submitted concurrently with the DA, a SEPP 1 objection for the proposed 0.4:1 non-residential FSR would be difficult to support.

6. Design of Development

The proposal is consistent with the objectives and design controls of Clause 32 of NSLEP 2001, and the proposal is a mixed use development that incorporates the non-residential component of the proposal at the ground floor of the building.

7. Excavation of Land

Significant excavation to a maximum depth of approximately 15 metres is proposed in order to accommodate car parking and services on the site (over 3-4 levels).

The Statement of Environmental Effects includes a geotechnical report dated 23 May 2006 in relation to a previously proposed development on No.158 Pacific Highway only. The submitted report is considered unsatisfactory as it does not relate to the proposed development and does not include No.156 Pacific Highway.

8. Heritage Conservation

Council’s Conservation Planner has assessed the application with reference to Clause

50 of NSLEP 2001 – development in the vicinity of heritage items and Section 8.8 of the NSDCP 2002 in relation to heritage items and conservation areas. The proposal is considered unsatisfactory with regard to heritage impact, as detailed in the comments by the Conservation Planner.

SEPP 65 – Design Quality of Residential Flat Development

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

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

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

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

The proposed context, bulk and scale and building form are unsatisfactory, as discussed in detail in this report.

Principle 4: Density

There is no density control applicable to the overall development. The proposed residential density is considered satisfactory.

Principle 5: Resource, Energy and Water Efficiency

A BASIX certificate for the proposal is submitted under separate cover which outlines all energy and water saving commitments.

Principle 6: Landscaping

Satisfactory.

Principle 7: Amenity

The proposal relies on north and south facing openings for adequate amenity. A revised design built to the northern and southern boundaries is recommended, as discussed previously in this report.

Principle 8: Safety and Security

Entrance ways and ground level areas are satisfactory.

Principle 9: Social Dimensions

The proposal is satisfactory with regard to social dimensions.

Principle 10: Aesthetics

Modifications to the proposed design, finishes and materials are required, as discussed in this report.

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 assessed above.

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 (Infrastructure) 2007

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

Given the nature of the proposed development, the number of parking spaces proposed and its proximity to Pacific Highway, the proposal was referred to the RTA for comment. As noted previously in this report, the RTA has considered the proposed development and raises no objections subject to conditions.

The proposal is satisfactory with regard to noise attenuation and residential amenity, as required under the SEPP.

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 Catchments) 2005

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

Draft NSLEP 2009

Draft North Sydney Local Environmental Plan 2009 has been publicly exhibited, 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. While at this stage little weight can be given to the plan since the final adoption is neither imminent nor certain, the draft height limit is consistent with the existing LEP and DCP controls and previous approvals on the subject site.

The provisions of the draft plan have been previously considered in this report, 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 proposal is unsatisfactory with regard to Draft NSLEP 2009.

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

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 retail and residential uses. 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 to the Pacific Highway frontage.

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 5-7 storey podium height does not comply, however, Council's Design Excellence Panel has recommended that the tower element be deleted, as previously discussed.

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

Council's Conservation Planner has identified issues which require modification of the finishes and materials. The building will comply with the energy requirements of BASIX.

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

The development is satisfactory with regard to the public domain. There is limited scope for native vegetation at ground level.

SECTION 94 CONTRIBUTIONS

Section 94 Contributions in accordance with Council's S94 plan are applicable should the Panel consider the development application worthy of approval. A suitable condition would be applied.

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 partial demolition of the existing structures are proposed, a suitable condition should be imposed.

DESIGN & MATERIALS

The design and materials of the buildings require substantial modification, as discussed in detail previously in this report.

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 not consistent with the specific aims of the plan and the objectives of the zone and of the controls.

SUBMITTORS CONCERNS

Ten (10) submissions were received in relation to the proposed development raising concerns including building height and bulk, privacy, overshadowing, traffic, parking, visual impact, amenity and other issues. These issues have been mostly addressed within this report. Additional relevant issues raised are addressed as follows:

- Impact on windows on northern façade, and amenity of dwellings within No.154 Pacific Highway.

Planning comment:

A detailed assessment of the impact of the development on the existing openings on the northern façade and the dwellings and commercial suites within No.154 Pacific Highway has not been provided. The required redesign should include 3m side setbacks from the location of the proposed light wells through to the rear boundary, as recommended by the Design Excellence Panel.

- Vehicular access should be from Pacific Highway

Planning comment:

Access from Doohat Lane is the preferred and logical location, subject to resolution of the issues identified by Council's Traffic Engineer.

CONCLUSION

The application has been assessed against the relevant statutory controls and with regard to the existing and approved developments. The SEPP 1 objections are considered to not be well founded and cannot be supported. Additionally, no SEPP 1 objections have been submitted in relation to building height plane and non-residential FSR and in this regard the proposal is inconsistent with the concurrently lodged Planning Proposal. The application was referred to Council's Design Excellence Panel for comment and the Panel has recommended a complete redesign of the building. The applicant has requested the opportunity to submit amended plans but does not wish to do so under a new development application, despite the amended design being substantially different to the original design and effectively requiring the re-commencement of the assessment process from stage 1. In any case, Council was advised that amended plans could not be provided in time to meet the JRPP report timeframes and include the required processing including advertising and assessment.

The application is recommended for refusal by the Joint Regional Planning Panel.

RECOMMENDATION

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

THAT the Joint Regional Planning Panel, as the consent authority, refuse development consent to 2011SYE008 - Development Application No.519/10 to demolish the existing building and erect a 13 storey mixed use building containing 323m² of retail floor space, 48 residential apartments and three levels of basement carparking for 45 vehicles for the following reasons:

1. The height and scale of the building is excessive and is not in context with surrounding development, particularly the residential development to the west, which includes a heritage item at No.1 Doohat Avenue, and the building does not achieve a transition of building heights down towards the boundaries of the North Sydney Centre, as required by Clause 28D of North Sydney Local Environmental Plan 2001.
2. The proposed building height is excessive for the 794.31m² site area with regard to Clause 28D of North Sydney Local Environmental Plan 2001 which requires a minimum site area of 1000m² and the SEPP 1 objection is not well founded and cannot be supported.
3. The proposal substantially breaches the building height plane control pursuant to Clause 30 of North Sydney Local Environmental Plan 2001 and no SEPP 1 objection has been provided.
4. The proposal does not provide a loading dock which accommodates a Medium Rigid Vehicle which is 8.8 metres long and 4.5 metres high as per Australian Standard 2890.2.
5. Inadequate information has been provided on the mean service rates for the proposed car lifts to determine if adequate queue lengths have been provided on site.
6. The proposal is unsatisfactory with regard to heritage impact as the The proposal is considered to have a monumental scale and does not reinforce the residential setting of the heritage item located at 1 Doohat Avenue.
7. The proposed building design is unsatisfactory with regard to height and form, requiring the deletion of the tower element, reconfiguration of the podium element and the introduction of 3m wide side setbacks at the rear of the building, consistent with the advice of the North Sydney Design Excellence Panel.
8. The proposed non-residential FSR of 0.4:1 is substantially non-compliant with Clause 31 of North Sydney Local Environmental Plan 2001 and a SEPP 1 objection (if lodged) could not be supported. Further, the proposed non-residential FSR of 0.4:1 is non-compliant with both the Draft NSLEP and the current Planning Proposal for the subject site, which both provide for a minimum non-residential FSR of 0.5:1.

9. The proposed visual privacy and building separation is unsatisfactory due to the 3.69m tower side setbacks to the northern and southern boundaries, imposing unreasonable constraints on future development of the adjoining sites.
10. The proposal would have an adverse impact on the north facing windows and amenity of the residential dwellings on the upper levels of No.152-154 Pacific Highway.
11. A Wind Impact Assessment has not been provided, despite the building being greater than 33m in height.
12. The proposed corridor widths are below the required 2m minimum (approximately 1.5m) and include right angle corners, providing unsatisfactory internal access.
13. The proposed residential storage facilities do not appear to comply with the DCP requirements of 10m³ per 1 bedroom unit, 15m³ per 2 bedroom unit and 20m³ per 3 bedroom unit, with at least 50% provided within the unit.
14. The submitted geotechnical report does not relate to the proposed development and only relates to half of the subject site (No.158 Pacific Highway), with no geotechnical report submitted for No.156 Pacific Highway.
15. The proposal would have an adverse privacy impact on the residential dwellings to the west in Doohat Avenue, particularly from the west facing balconies.
16. No evidence has been provided to demonstrate any legal right to utilise the right of carriageway which forms part of Lot 4 of DP 237104, known as No.18 Berry Street, in relation to vehicular movements.

George Youhanna
EXECUTIVE PLANNER

Stephen Beattie
MANAGER DEVELOPMENT SERVICES

ATTACHMENT 1 – PRE-LODGEEMENT MEETING MINUTES



PRE-LODGEMENT MEETING MINUTES

Address

156-158 Pacific Highway, North Sydney

Time: **2pm**
Date: **21 September 2010**
Venue: CSC Room 1
North Sydney Council Chambers
200 Miller Street, North Sydney

Attendees: Larissa Brennan –LJB Urban Planning
Paul Buljevic – pbd Architects
Stephen Beattie – Manager – Development Services
Geoff Mossemeneer – Executive Planner
David Hoy – Team Leader -Assessments
Robin Tse – Senior Assessment Officer
Irena Widla – Administration Officer
Hollie Whale – Administration Officer

Discussion Items:

1. Introduction/Overview

Seeking Council's advice regarding a proposed mixed use commercial / residential development with basement car parking. The subject site, comprising No. 156 and No.158, is located on Pacific Highway and has secondary frontage to Browns Lane. No 156 is currently vacant with significant fall of approximately one level from the Lane to the Highway, whilst No 158 contains existing three storey commercial building.

2. Proposal

The proposal is for demolition of existing building, site amalgamation and the erection of a thirteen (13) storey mixed use development comprising fifty-two (52) residential apartments, retail units on ground floor with basement car parking.

3. Advice from Council

Statutory Controls

North Sydney LEP 2001

- Zoning – Mixed Use
- Item of Heritage - No
- In Vicinity of Item of Heritage – Yes - No.1 Doohat Ave
- Conservation Area - No
- FSBL - No

Building Design

- The proposal for a 13 storey building on the southern portion of the amalgamated site (Nos. 156 & 158 Pacific Highway) which will step down to 9 stories on the north portion.
- Consideration should be given to the appropriate building height for the subject site in relation to the adjoining developments and the context of the locality given the subject site is located at the northwestern edge of the North Sydney CBD and is in proximity of lower scale developments to nearby.
- The proposed building height of approx. RL114 is in excess of the current height guideline of RL105. The applicant attention was drawn to the Draft LEP Amendment 28 which allowed for a building height of 24m only.
- The proposal breaches LEP's building height plane standards significantly. Additional building setback should be provided for the residential development to the west of the subject site in order to provide sufficient separation from these properties.
- More consideration needs to be given to the requirements of SEPP 65 as well as substantial modifications to the current proposal to provide additional building setbacks and separation (from the side boundary and between apartments) to provide better access to light and ventilation for the proposed residential apartment units.
- It was advised the design of the building on the subject site should give consideration to issues raised at the meeting, particularly in terms of building height, building separation/setback and residential amenity. This would likely to result in a substantially different building design.

Other Considerations

- Considerations have to be given to address the issue of site area under 1000sqm and site amalgamation with the adjoining properties particularly the corner property at No.160 Pacific Highway.
- The applicant advised that the amalgamation of this site was not achievable. However, this should be substantiated by appropriate documentary evidence in the DA submission.
- Additional Section 94 contribution would be applicable for the provision of new apartment units.
- Rail Infrastructure Levy may be applicable should the proposed development would result in additional non-residential floorspace area.
- The reduction in floorspace from the approved commercial FSR (approx. 0.5:1) to the proposed FSR of 0.5:1 may require a planning agreement be prepared due to the non-compliance with the FSR standards.
- The applicant was advised to consider development application determination for nearby properties including No. 154 Pacific Highway.
- Consideration would also be given regarding objections from the local residents/precincts
- Application might be referred to JRPP should the cost of development would be in excess of \$10m.
- The modified pre DA proposal could be referred to the Design Excellence Panel for initial comments.

Note: **The above notes are an indication of the issues discussed and conclusions reached at the meeting. They do not constitute a determination of Council, forming only part of the development application assessment process.**

Meeting Close