

**JOINT REGIONAL PLANNING PANEL
(Sydney Region East)**

JRPP No	2011SYE013
DA Number	DA 18/2011
Local Government Area	North Sydney
Proposed Development	Demolition of existing building and erection of a 12 storey mixed use development comprising a restaurant, 288m² of commercial floor space and 32 apartments with basement car parking.
Street Address	51-53 Chandos Street, St Leonards
Applicant	Mayoh Architects
Owner	Talish Pty Ltd
Number of Submissions	One (1)
Recommendation	Approval with Conditions
Report by	Ian Pickles, Executive Planner

Assessment Report and Recommendation

DESCRIPTION OF PROPOSAL

The subject application proposes the demolition of the existing 4 storey commercial building on property 51-53 Chandos Street and the erection of a 12 storey mixed development with 2 basement levels for parking, storage and plant, and commercial/retail and residential accommodation above.

The proposal is Stage 2 of a staged development which was the subject of Council's development consent dated 23 May 2003 to DA 105/03 and has the benefit of easements for vehicle access etc through the completed Stage 1 development at 45-49 Chandos Street. An interim occupation certificate and strata plan certificate were issued for Stage 1 in 2010.

The proposed building form comprises a 4/5 level podium with a further 7/8 level tower extending to maximum height above ground of 36 m at the parapet facing Chandos Street and at the roof of the plant room/ lift overrun.

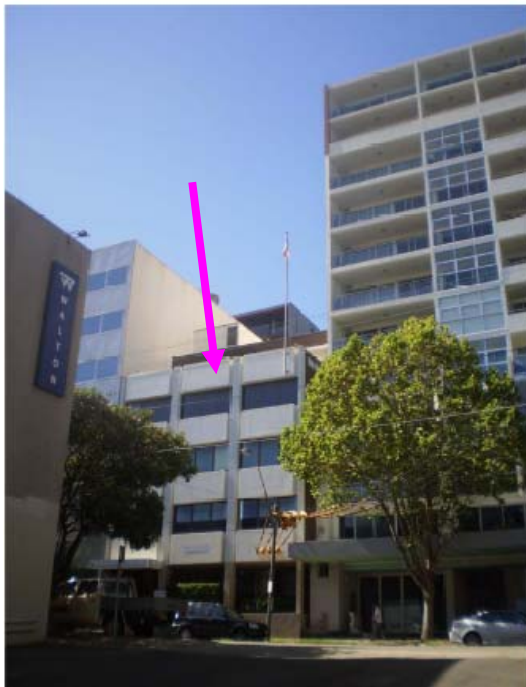


Fig. 1: Existing development on site



Fig. 2: Photomontage of proposal,

View from Chandos Street looking south

(source – applicant's Statement of Environmental Effects).

The proposed development incorporates the following:

- A 171 m² restaurant on the ground level (Chandos Street level), and 288 m² of commercial floor space at the rear of levels 2 and 3;
- 32 apartments, comprising 3 x studio units, 17 x 1 bedroom units and 12 x 2 bedroom units, on levels 1 – 11, with the main residential entry from Chandos Street;
- Basement car parking on 2 levels for 22 vehicles comprising 21 residential spaces including 1 x disabled space and 1 commercial space.
- A loading dock, garbage compactor room and garbage storage, and a residents' common room on level 1.

The design and building envelope is broadly consistent with 'masterplan' building envelope in the consent to DA 105/03 (Stage 1) and includes a 5.7m x 3m light /ventilation well extending 10 storeys on the mid western side of the development to match up with the existing lightwell in the Stage 1 development.

The building design features a podium of 4 to 5 levels and a tower form above. The tower is setback 2.4m-3.0m from the eastern side boundary.

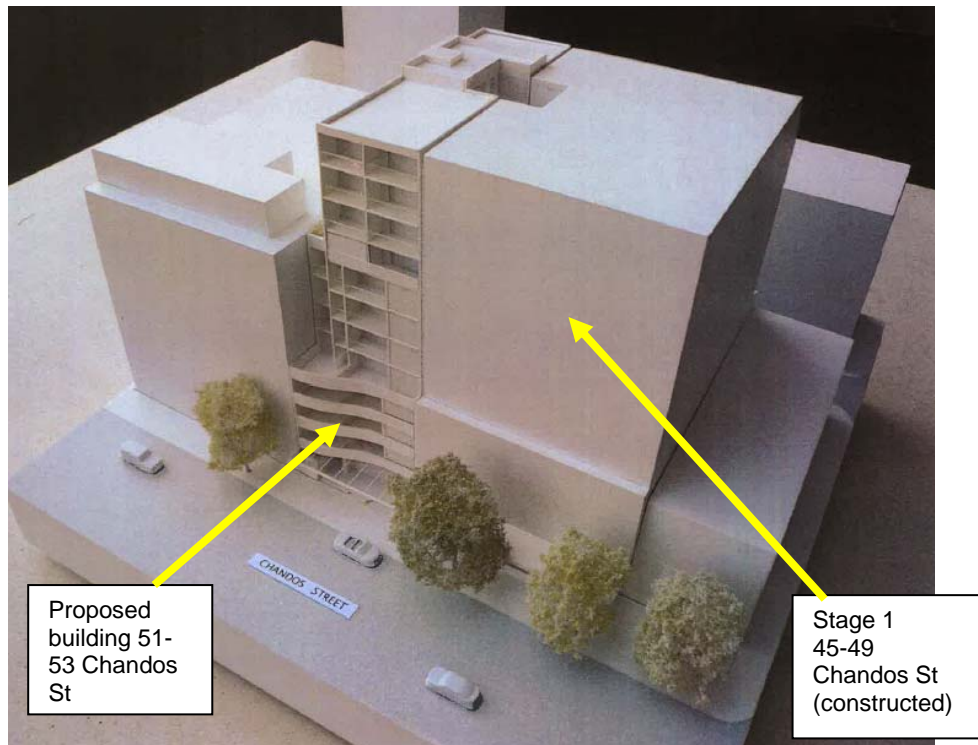


Fig. 3: Applicant's photo of model of proposed development, view to south-east

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)

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 2005

Draft North Sydney LEP 2009

POLICY CONTROLS

DCP 2002

Draft North Sydney DCP 2010

DESCRIPTION OF LOCALITY

The subject site is located on the southern side of Chandos Street, between Mitchell Street and Oxley Street. Atchison Lane adjoins the rear of the site to the south.

The site is rectangular in shape, with a frontage of 12.25m to the southern side of Chandos Street, a depth of 35.815m (ie: side boundaries), a frontage of 12.29 to the northern side of Atchison Lane, and a site area of 436.3 m². The site slopes down from the laneway frontage northwards to Chandos Street, with a total cross-fall of approximately 3.5m.

Existing development on the site comprises a four (4) storey commercial building containing 2,067m² of commercial floor space. Adjoining the site to the west is a 12 storey mixed use development comprising Stage 1 of DA 105/03 (with a total of 70 apartments), and to the east is a seven (7) storey commercial development with a dwelling on the top level. To the south on the opposite side of Atchison Lane is a 15 storey mixed use development under construction (DA250/05) at 32-38 Atchison Street containing 77 apartments. To the north on the opposite side of Chandos Street there are a variety of commercial buildings up to 6 storeys in height, located within Willoughby City Council area.

The site is located in the St Leonards Town Centre, and is within 250 metres of the St Leonards railway station and within 200 metres of bus routes on the Pacific Highway.

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

RELEVANT HISTORY

Relevant history prior to lodgement

On 23 May 2003 Development Application D105/03 was approved by Council for a 2 stage mixed use development at 45-53 Chandos Street, St Leonards:

Stage 1 comprised the demolition of the existing one and two storey buildings on properties Nos 45-49 Chandos Street, and the erection of a twelve (12) storey mixed use building with four (4) basement levels for car parking, storage and plant, and commercial/ retail and residential accommodation above; the construction of stage 1 was recently completed.

Stage 2 comprises the demolition of the existing 4 storey commercial building on property 51-53 Chandos Street and the erection of a 12 storey mixed development with 2 basement levels for parking, storage and plant, and commercial/ retail and residential accommodation above. The approved plans for Stage 2 were outline plans or a 'masterplan' only with no design details of the internal layout of the residential levels. Stage 2 has the benefit of easements for vehicle access etc through Stage 1.

Condition A2 of Council's consent to DA 105/03 makes it clear that the consent was granted in accordance with the Section 80(4) of the *Environmental Planning &*

Assessment Act 1979. **Condition A3** of the consent summarises the elements approved in principle for stage 2 (shown on the approved plans as a building envelope 'masterplan' with internal layout only of the lower levels) and requires the submission and approval of a further development application for stage 2. **Condition A5** sets out a number of specific requirements to be met in the design of stage 2.

The current proposal involves a similar building envelope including the lightwell to that of the approved 'masterplan' for stage 2, that is, 51-53 Chandos Street in the consent to DA105/03, but a different mix of units compared to the requirements specified in condition A3 of the consent, changes to the internal lay-out and setbacks to Chandos Street at the lower levels, sections of trafficable roof for outdoor terraces for units at level 8, and slightly higher lift overrun.

A **pre-lodgement meeting** for redevelopment of the site was held involving the proponents and Council staff on 31 August 2010. The form of development proposed was similar to that sought under the current development application. The key issues identified with the proposal were:

- Height (SEPP No 1 objection required) ;
- Need to achieve SEPP No 65 Flat Code requirements, particularly ventilation and solar access
- Privacy between dwellings (level 8)
- Loading dock and garbage holding area
- Residents' communal room
- Justify any departures from relevant conditions of Stage 1 consent .

History of the subject application

- The subject development application DA18/11 was lodged with Council on 17 January 2011;
- Application notified for 14 days under Council policy – notification period 28/1/11 to 11/2/11;
- Council's Design Excellence Panel considered the proposal on 23 /2/11;
- Applicant was requested by email on 23/2/11 to provide additional information in relation to the proposed BCA fire engineered alternative solutions, details of roof plant, and a section 96 application, and consider amending the plans to provide an adequately sized loading dock and a residential garbage bin holding area adjacent to the laneway;
- Amended plans and additional information were received from the applicant on 23 March 2011; the amended plans contained the following changes to the originally submitted application plans:
 - Provision of 9 bicycle storage lockers and 1 motorcycle space within basement levels in lieu of 4 motorcycle spaces;
 - At ground level, minor changes to design of fire stairs;
 - At the rear of level 1, loading dock width increased to 4.3m and headroom increased to 3.6m, and bin holding area provided for

- residential garbage and recycling bins adjacent to rear lane at rear of proposed communal room;
 - Height of roof plant room and lift overrun specified/ clarified.
- The applicant submitted a Section 96 application (numbered 105/03/4) to Council on 23 March 2011, seeking to modify the relevant conditions A2 and A5 of the original consent DA 105/03 for the staged development 45-53 Chandos Street. This is on the basis that some elements of the current Stage 2 proposal (ie: this application DA18/11) are at variance with the specific design requirements for stage 2 set out in conditions A3 and A5 of the consent to DA105/03.

(Comment: this S.96 modification application was submitted at the request of Council planners for due caution, so that the original consent to DA105/03 and its conditions may be rendered consistent with the determination of this development application for stage 2 by the JRPP. See discussion later in this report)

REFERRALS

Traffic

Council's Traffic Engineer (C Edwards–Davis) has reviewed the original application plans and advised as follows:

"The applicant has stated that an off-street loading area 7.9m long x 3.9m wide and 3.125m high is provided at the rear of the site off Atchison Lane and it can accommodate SRV and courier vans. The applicant has stated that larger delivery vehicles will utilise the numerous on-street Loading Zones in the vicinity of the site. The applicant has stated that waste collection vehicles will continue to park n Atchison Lane. The above is unacceptable.

A development of this size with 32 apartments, 266 m² of commercial space and 171.5 m² for a restaurant in this busy area of St Leonards 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. It is understood that the applicants were advised of this in their pre-lodgement meeting.

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 32 residential apartments, it could be assumed that there will be a substantial number of residents moving in and out of the building on a weekly basis. It would be entirely unacceptable to have furniture removalist vans parked in Chandos Street or Atchison Lane. Further, it is noted that removalist vans often double-park, park in "No Stopping" areas or other undesirable locations if they are unable to obtain a parking space directly in front of the building they wish to service. Furniture would have to be carried from the building

to the kerb, across the footpath that is heavily used by pedestrian. Given the significant volume of vehicles and pedestrians that utilise Chandos Street and Atchison Lane, this type of impact is unacceptable. The developer is essentially trying to push service vehicles associated with this private development onto the public road, thus taking up a valuable community resource.

If the on-street Loading Zones are utilised, as proposed by the applicant, multiple trips of furniture would have to be carried further than 20 metres along the highly utilised footpath along Chandos Street. Given the significant volume of pedestrians that utilise Chandos Street, this type of impact is unacceptable. Further, this parking is zoned "Loading Zone 8.30am - 6pm Mon – Fri". It is highly common for people to move in and out of residential properties on a weekend, when there is no Loading Zone available. Again, this is likely to result in furniture vans parked in No Stopping zones and other inappropriate locations.

It is therefore felt that furniture removalist vans must be accommodated on-site."

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

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

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

Queuing Length

In general, combining the vehicular access for 51-53 Chandos Street with the vehicular access for 45-49 Chandos Street is supported.

It is unclear from the plans as to the location of the security gate/ security access point for 45-49 Chandos Street. There will now be 69 vehicles utilising this driveway access. AS2890.1 outlines that a car park of this size should allow for the queuing of two vehicles.

Recommendations

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

- 1. That 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 be provided on-site.*
- 2. The loading dock is to be available for moving/delivery vehicles for the residential component of the development, as well as the commercial/ restaurant component of the development.*
- 3. The location of any security access point for driveway entry to the car park for 51-53 Chandos Street and 45-49 Chandos Street should be located 12*

metres within the boundary of the property, such that two queued vehicles can be contained wholly within the boundary of the property, as per AS2890.1.

- 4. That all vehicles, including heavy vehicles, delivery vehicles and garbage vehicles, must enter and exit the site in a forwards direction.*
- 5. That a Construction Traffic Management Plan be prepared and submitted to Council for approval by the North Sydney Traffic Committee prior to the issue of the Construction Certificate. Any use of Council property shall require appropriate separate permits/ approvals.*
- 6. That an Operational Transport Management Plan for heavy vehicles including garbage vehicles, commercial/ restaurant 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.*
- 7. That the developer pay to upgrade the lighting levels to the Australian Standard in Chandos Street and Atchison Lane, adjacent to the site.*
- 8. That 11 bicycle lockers and 3 bicycle rails be provided, as per Council's DCP 2002.*
- 9. That all aspects of the carpark comply with the Australian Standard AS2890.1 Off-Street Parking.*
- 10. That all aspects of the loading dock comply with the Australian Standard AS2890.2.*
- 11. That all aspects of parking spaces for people with disabilities comply with the Australian Standard AS 2890.6.*
- 12. That all aspects of the bicycle parking and storage facilities comply with the Australian Standard AS2890.3.*
- 13. That signs be installed at the exit to the driveway stating "Stop – Give Way to Pedestrians"*

Comment: The applicant has redesigned the loading dock in the amended plans to provide for a loading dock with a **minimum 3.6m headroom** (an increase of 475 mm), having regard for the constraints of the 'building envelope' and 'masterplan' approved by the consent to DA 105/03, the advice given at the Pre-lodgement Meeting on 31 August 2010 that a 3.6m headroom in the loading dock would be acceptable, and the relatively small size of the development. The conditions recommended by the Traffic Engineer are incorporated as relevant in the attached condition set. The original approval to DA 105/03 for the staged development did not include any specific driveway entry queuing area (e.g. 12m length for 2 vehicles) in front of any security access point for the combined car park for stages 1 and 2. Therefore it is considered beyond the scope of the determination of this stage 2 application to require works or restrictions on the already constructed stage 1 development.

Building/ Fire Safety

The application and the BCA Capability Report submitted with the application has reviewed by Council's Executive Assessment Officer – Fire Safety (A Hilt), who requested that the applicant be asked to provide written advice from an experienced BCA / fire engineering consultant confirming that fire engineered alternative solutions

for the exits and fire isolated stairs are likely to be acceptable in principle and will not require major modification to the design of the building at CC stage.

The applicant has responded that the previous BCA Capability Report should suffice, as it indicates that BCA compliance may still be achieved on the basis of formulated building solutions that meet the BCA performance requirements, enabling retention of the proposed building design, configuration and the single residential lift.

Development Engineer

Council's Development Engineer (Z Cvetkovic) has reviewed the application and has raised no objection to the proposed development, subject to imposition of detailed standard and site specific engineering conditions being imposed on any consent.

Landscaping

Council's Landscape Development Officer (B Smith) has advised no objection to the proposal subject to imposition of conditions requiring the planting of one street tree (a Plane tree) within the Chandos Street footpath centrally located outside the property, reconstruction of the unpaved verge with Soft Leaved Buffalo turf as part of the roadworks, and provision of an awning with a cut-out for the required street tree.

Waste Management

Preliminary advice from Council's Waste Educator (G Lewis) indicated as follows:

- Noted provision of a residential garbage chute serving residential levels and a garbage compactor on level 1;
- The proposed use of the delivery dock as a temporary garbage bin 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, such that garbage bins could be collected by Council's residential waste collection contractor even when a delivery vehicle is parked in the loading dock.

The amended plans incorporate the required bin holding area for residential garbage and recycling within 2m of the rear lane frontage with access from the residential garbage storage and compactor room via the widened loading dock.

Design Excellence Panel

Council's Design Excellence Panel (DEP) considered the application at its meeting on 23 February 2011, having regard for the *Design Principles* in SEPP No 65 (Design Quality of Residential Flat Development). The minutes of the DEP record as follows:

"The Panel noted that the site was virtually an infill development between stage 1 to the west and a large commercial building to the east that is unlikely to be redeveloped through demolition of the existing building.

The Panel also noted that the master plan was pre SEPP 65 and the building envelope, floor plates and light wells had been approved.

The Panel had no concern with the height of the building or its setbacks and accepted that the amenity of apartments was constrained by the size of the site and the master plan approval.

The following matters were raised by the Panel:

- *Street level frontage – Additional street trees should be provided. The awning should have cut outs to allow the trees to grow, similar to other awnings in the area. The awning needs to link to the adjoining awning for weather protection. The awning should not be glazed as it is north facing.*
- *The fire stairs/booster in the north east corner needs to be set back to allow for a future colonnade when the site to the east is developed.*
- *The communal room at the rear of level 1 is in a poor location and unlikely to be utilised. The Panel would prefer that part of the roof be used as a communal roof garden but notes that Council would have to consider additional breach of the height control. A communal open space would compensate for the lesser amenity of some of the smaller south facing units.*
- *One lift for 32 apartments over 12 storeys is a concern as the lift is likely to break down and require servicing in the future. Access to a second lift in stage 1 could have been an option but it is understood that practical access between the building on the upper levels is not possible.*
- *Amenity and fire separation within the lightwells. It is recommended that glass blocks be built on the boundary between the two light wells on the western boundary.*
- *The hanging screen garden in the secondary light well on the eastern boundary is considered to be unnecessary and should be replaced by a wall that could be translucent.*
- *Roof lights/vents were suggested to improve amenity to internal service rooms in top floor apartments. The southern unit could also be designed to have good solar access and ventilation by way of north-facing roof lights.*
- *To allow for cross ventilation and to maintain security, windows and sliding doors should be fitted with appropriate locks or designed to allow them to be opened whilst locked.*

Conclusion:

The Panel considers that the issues identified in the above comments need to be addressed by the applicant”.

External Referrals: There were no external referrals required.

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 28 January 2011 to 11 February 2011. In response, **one (1) submission** was received. The issues raised in the submission are summarised as follows:

**Name & Address Basis of Submissions
of Submitter**

Holtermann
Precinct

- Capacity of loading dock: concerned that the loading dock is designed for small rigid vehicles only, with potential for blocking of Atchison Lane by larger delivery vehicles having regard for likely high tenant turn-over increasing the demand for removalist vans; the loading dock should be capable of handling large vehicles to protect drive and residential amenity;
- Dual use of loading bay: concerned that the loading dock will be used for residential visitor parking as well as deliveries causing congestion in the lane as at Albany Lane, adversely affecting amenity; the dual use is impractical;
- Inadequate on-site parking: requests that on-site commercial parking be increased as it is significantly below DCP maximum; the absence of viable visitor parking and deficiency in parking with 11 apartments without parking will increase burden on on-street parking in neighbourhood, adversely affecting residential amenity;
- Projected traffic generation: concerned in regard to the cumulative effect of increasing density on public transport services, traffic generation, and availability of on-street parking in residential areas.

The amended plans received by Council on 22 March 2011 were not notified in accordance with Council's policy contained in Section 4 of the North Sydney DCP 2002, since the amended plans do not alter the external appearance, design or height of the proposed development in a way which would be likely to adversely affect the amenity of any adjoining property.

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.

STATUTORY CONTROL – North Sydney Local Environmental Plan 2001				
Site Area – 436.3 m ²	Existing	Proposed	Control	Complies
Mixed Use Zone				
Building Height (Cl. 29) (max)	Existing building 18.5m in height	36 m height at roof parapet to Chandos Street elevation and at roof of lift overrun/ plant room	33m	NO (SEPP 1 provided)
Building Height Plane (Cl. 30)	No applicable	Not applicable	N/A	N/A
Non-Residential Floor Space (Cl. 31) (max)	N/A	1.04:1 (459 m ²)	1:1 – 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
		No residential at ground level, part of residential entry shared with commercial entry (see comments) .	No residential to be at ground level (except access); separate entrance for residential;	YES

		Tower element set back above podium	Building to be set back above podium	YES
--	--	-------------------------------------	--------------------------------------	-----

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 a ground floor restaurant and commercial floor space on levels 2 and 3, thus providing an adequate diversity of non-residential spaces and activities.</p> <p>A communal space of approximately 43m² is provided for residents of the development at the rear of level 1, with a window facing the rear lane. Although this communal room is accessed via a service corridor adjacent to the residential garbage compactor room which diminishes its attractiveness and usefulness, it should be retained to promote social interaction within development. Relocation of the communal room is not considered warranted in the circumstances, noting that a common room on the top level would involve a further breach of the building height control.</p>
Mixed residential population	Yes 	

	Yes	<p>12 x 2 bedrm units (37.5%) Min 40% (non-compliant)</p> <p>However the non-compliant mix does not warrant refusal of the application or amendment, given the relatively small size of the development and relatively minor extent of the non-compliance.</p> <p>Three (3) of the two bedroom dwellings (9.4% of the total number of units) are proposed to be adaptable, close to the DCP 10% minimum requirement.</p>
Maximise public transport use	Yes	<p>The on-site parking does not exceed DCP controls. The site has excellent access to public transport, located within 250m of St Leonards railway station and 200m of bus routes on the Pacific Highway.</p>
6.2 Environmental Criteria		
Clean Air	Yes	Satisfactory.
Noise and acoustic privacy	Yes (with conditions)	<p>Although no acoustic report has been submitted, it is considered unlikely that the design will fail to comply with the DCP noise and acoustic privacy requirements subject to mitigation and construction recommendations. Council's standard condition in this regard is recommended.</p> <p>Concern is raised in relation to the potential for noise nuisance to units with bedrooms backing onto the western lightwell from persons of activities on the proposed terrace at the base of this lightwell. A condition is recommended to require the base of the lightwell to be untrafficable (except for maintenance and cleansing).</p>
Visual Privacy	Yes	<p>The separation distances between habitable rooms/ balconies of the subject development and those of the mixed use development under construction at 32-38 Atchison Street on the opposite side of Atchison Lane are less than the distances sought in the DCP. In this regard for those units up to height of 12m above the laneway level the minimum separation distance is 11.5m and is close to the DCP 12m distance, For level 5 and above (ie: over 12m above ground) the minimum separation distance is 13m, but for most of the</p>

		<p>north-facing units in 32-38 Atchison Street is 17.5m. The separation distance does not comply with the minimum 18m DCP control. However the building envelope for Stage 2 has been approved by Council's consent to DA 105/03, and it would therefore be unreasonable to reject this element of the proposed development.</p> <p>The proposal includes appropriate design and privacy mitigation measures to ensure adequate visual privacy for occupants and neighbours, in respect of bedrooms facing the lightwell. Privacy louvers are provided along the eastern side of the level 8 side terraces to ensure visual privacy between the level 8 dwellings and the dwelling at the same level in the adjacent building to the east.</p>
Wind Speed	Yes	No wind impact assessment was submitted or is not considered necessary having regard to the context, location and size of this stage 2 development.
Awnings	Yes (with conditions)	The proposal incorporates a glazed awning extending out 1.5m from the property alignment at the Chandos Street frontage of the building. While this is less than the 2m specified in the DCP, it is acceptable since it matches the alignment of the existing awning on the adjacent Stage 1 development immediately to the west. A condition is recommended to require the awning to have a cut-out for the street tree, and to be linked to the adjacent Stage 1 awning.
Solar access	Yes	The combination of the existing Stage 1 development at 45-49 Atchison Street and the subject Stage 2 development result in units of the lower levels of the mixed use development at 32-38 Atchison Street (under construction) having less than 2 hours winter sunlight. However the proposed development utilises the 'masterplan' building envelope for Stage 2 approved by Council's consent to the staged development DA 105/03, and it would be therefore be unreasonable to reject the proposal or require amendment to

		<p>achieve greater sunlight penetration to the lower level units on the opposite side of the lane. The design of the building does however include a chamfered setback to the southern boundary at levels 10 and 11 (similar to Stage 1) so as to allow sunlight at the equinox to units in 32-38 Atchison above the podium level.</p> <p>There is no shadowing impact on existing or proposed areas of public open spaces between 11.30am and 2.30pm on the winter solstice as a result of the proposed development. .</p>
Views	Yes	No significant views such as to Middle Harbour from any nearby dwelling will be adversely impacted (see discussion concerning the LEP 'building height' control)
6.3 Quality built form		
Context	Yes	The proposed development represents an appropriate response to the site's context and surrounds and the planning controls, and furthermore is generally consistent with the building envelope established in Council's consent to DA 105/03 for this 2nd stage of the staged development of 45-53 Chandos Street.
Skyline	Yes	The view of the development on the skyline is satisfactory and is generally consistent with the stage 1 development. The 875mm protrusion of the plant room and lift overrun structure above the main roof line is unlikely to adversely impact on the local skyline.
Public spaces & facilities	Yes	Appropriate integration of the restaurant and its open forecourt and the residential/commercial entry with the public domain on Chandos Street is proposed.
Junction & termination of streets	Yes	Not relevant
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 the restaurant with direct frontage to the Chandos Street forecourt or setback area. The narrow frontage to Atchison Lane and the need to accommodate a services and a loading dock makes it

		impracticable to provide an active frontage such as a shop-front to the laneway.
Subdivision	Yes	Although the 12.21m frontage of the subject site is considerably less than the 20m-40m frontage nominated in the DCP character statement, the combined frontage of the stage 1 and 2 developments is considered satisfactory.
Setbacks	Yes	<p>The 3m setback of the building to the Chandos Street alignment at ground level forms a forecourt for the proposed restaurant and is in accordance with the Area Character Statement for the St Leonards Town Centre. However the protrusion of the booster / fire stairs into the 3m setback at the north-eastern corner should be avoided, in order to facilitate a future colonnade in the event that 55 Chandos Street is redeveloped (condition recommended). The protrusion of the basement air intake and planter box at the north-west corner is acceptable since this is directly adjacent to the existing booster within the setback area at the north-east corner of the Stage 1 development.</p> <p>Although the balconies are not fully recessed at levels 1 to 4 behind the required 3m podium setback to Chandos Street, and bedrooms at the north-west corner protrude into the required 3m podium setback, the design is acceptable since it produces a curvilinear form linking the existing podium setback of the Stage 1 building to the west with the front alignment of the adjacent substantial commercial building to the east which is erected to the street alignment. Council's Design Excellence Panel did not oppose this element of the design.</p> <p>The 1.5m setback of the podium to Atchjson Lane is in accordance with the DCP as is the 3m above podium setback to the laneway property boundary.</p> <p>The podium extends to level 7 on the eastern side boundary to match up with the substantial adjacent building at No 55 Chandos Street. On the western side the development extends to the side</p>

		boundary for the full height of the building (except for the lightwell) as envisaged by the approved building envelope for Stage 2 in the consent to DA 105/03. See discussion
Entrances and exits	Yes	Satisfactory, the residential and commercial entries are shared in part, with a separate secure residential lobby adjacent to the residential lift. The shared residential and commercial entry is at grade to the Chandos Street footpath.
Street frontage podium	Yes	The Chandos Street frontage podium is 4 storeys and complies with the DCP Area Character Statement requirement.
Laneway frontage podium	Yes	The Atchison Lane podium height (3 storeys) is consistent with the DCP Area Character Statement requirement.
Building design	Yes	The design of the development incorporates articulation and balconies to create interesting facades, and the development is integrated well with the completed Stage 1 development. The proposed 3.4m floor to ceiling height of the restaurant and the proposed 2.7m floor to ceiling height of the level 3 commercial and all residential accommodation is considered satisfactory. Whilst the 2.4m floor to ceiling height of the level 2 commercial is not desirable, this is required to accommodate the 3.6m headroom in the loading dock.
6.4 Quality urban environment		
High quality residential accommodation	No (acceptable)	Unit sizes:- 12 of the 1 bedroom units have floor areas up to 7m ² less than the 55 m ² specified in the DCP, and 6 of these have areas of 2m ² less than the SEPP 65 Residential Flat Design Code. All units meet the required minimum 4m width. This non-compliance with the minimum area control is acceptable in the circumstances given that all these units have an efficient lay-out and offer good amenity and useability to residents being north facing for solar access and all having natural cross-ventilation.
	Yes	26 of the units (81%) of units will receive at least two hours of solar access in

	<p>Yes</p> <p>Yes</p>	<p>midwinter, which exceeds both the DCP control and the SEPP65 Residential Flat Design Code 'rule of thumb' for a high density urban area.</p> <p>29 of the units (91%) have natural cross-ventilation thus exceeding minimum 75% in the DCP.</p> <p>All units have the required minimum width of 4m.</p>
Lightwells and ventilation	Yes	<p>The development features a 3m x 5.7m lightwell extending 11 floors up from level 1, and matching the similar lightwell in the Stage 1 development to the west. This complies with the DCP and enables an ample combined lightwell of some 35 m² so that a high proportion of the units will have natural ventilation.</p>
Balconies	<p>Yes</p> <p>No (acceptable)</p>	<p>All apartments have balconies, and all have a minimum width of 2m and minimum area of 8 m², with the exception of the balconies of 2 units at levels 10 and 11 which have a width of 1.4m-1.6m. This width is acceptable since the balconies are over 8.0m in length.</p> <p>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.</p>
Accessibility	Yes (with condition)	<p>An Accessibility Report has been submitted with the application to demonstrate that the development would comply with requirements of AS1428 and AS4299 for disabled access and adaptable housing.</p> <p>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.</p>
Safety and security	Yes	<p>Satisfactory, noting that a separate lift serves the commercial accommodation. While the main pedestrian entry is partly shared by commercial users of the building and residents, there is separate secure residential lobby off the shared entry.</p>
Car parking	Yes	The proposal provides a total of 22

		<p>parking spaces, comprising 21 resident spaces and 1 commercial spaces. This represents a shortfall of 4 spaces compared to the maximum envisaged by Section 6 of the DCP, as shown as follows:</p> <p>20 x studio and 1 bedrm units @ 0.5 spaces per unit = 10 spaces 12 x 2 bedrm units @ 1 space per unit = 12 spaces 171 m² restaurant @ 1 space per 50m² = 3.4 spaces 266m² commercial office @ 1 space per 400m² = 0.7 spaces Total 26 spaces</p> <p>This shortfall is not significantly below the DCP maximum and is considered acceptable in this location close to public transport.</p> <p>One motorcycle spaces is also proposed in the basement car park</p>
Bicycle parking	Yes	9 resident bicycle storage lockers are proposed within the basement levels. A consent condition is proposed to require 3 external bicycles rails.
Vehicular access	Yes	<p>Vehicular access is provided between the basement car park and Atchison Lane by way of the existing driveway and rights of carriageway/ easements through the Stage 1 development.</p> <p>The gradients, headroom, swept paths etc appear generally acceptable, and a consent condition is proposed to ensure the car park is designed to meet the design requirements of AS 2890 as relevant.</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 in terms of width and depth but the 3.6m headroom does not comply with the 4.5m height specified in the standard; this height is considered acceptable in the circumstances since the site and development design is constrained by the 'masterplan' building envelope approved by consent D105/03 to the overall staged development.</p>
Garbage Storage	Yes	A compactor and chute for residential

		garbage is provided as well as a garbage holding area adjacent to the loading dock within 2m of the laneway frontage of the building. This is acceptable and meets Council's requirements.
Commercial garbage storage	Yes	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.
Site facilities	Yes	Appears satisfactory.
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 apartments, restaurant and commercial offices are all 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 these objectives for 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 the lower levels of the building with residential above.

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 33 metres is applicable to the subject site.

The maximum height of proposed development is 36 metres at the northern elevation roof parapet and at the roof of the lift overrun/ plant room. Consequently, the height of the proposal would **exceed the maximum 33m building height specified in NSLEP 2001 by 3m (9.1%)**. It is noted that the height of the roof parapet at the Atchison Lane southern elevation of the building complies with the 33m height control.

The applicant has submitted a SEPP No 1 objection in respect of the variation from the building height control. 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 proposed height of the development is similar to that of the Stage 1 development immediately to the west, and is consistent with 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 element of the building in excess of the height control will not result in any significant adverse impact on the amenity of any existing residential premises in terms of unreasonable overshadowing or loss of views or privacy.

- (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 reasonable amenity in terms of solar access, natural ventilation to units, and efficient lay-outs. No existing dwellings near the site are unreasonably impacted by the element in breach of the height control in terms of loss of amenity.

- (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 apartments have been designed generally to satisfy the principles of SEPP 65 and the main ‘rules of thumb’ such as ventilation and solar access to dwellings (see discussion later in this report in this regard).

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

The development conforms generally with the building envelope established by the Council's approval to the staged development DA 105/03.

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

This applicant does not seek to justify the departure for the height control on the basis of transitional heights. The extent of the departure from the height control (9.1%) is not excessive in context.

It is concluded that the applicant's SEPP No 1 objection to the height control is well-founded and strict maintenance of the height control in this case would be unreasonable and unnecessary.

4 Building Height Plane

Since the site is not adjacent to any residential or open space zone, the 'building height plane' provisions of Clause 30 of NSLEP 2001 do not apply.

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 1:1 and 2:1. The proposed development has a non-residential FSR of 1.04:1, 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 apartments, a restaurant and commercial 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 at the street frontage ground level and at the rear of levels 2 and 3, and complies with this control.

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

Comment: The residential component has a separate secure entrance lobby adjacent to the residential lift, although both the residential and commercial components share part of the main pedestrian entry to the building from the Chandos street frontage.

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

Comment: The proposal includes a tower element above a podium, and complies in this regard.

In summary the proposed development is considered satisfactory in relation to the design controls and objectives of Clause 32 of NSLEP 2001.

6. Excavation

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

In this instance, the extent of excavation comprises 2 to 3 levels of basement car parking which is required to satisfy Council parking requirements and associated plant and storage. The back-of-house facilities and toilets for the restaurant are also located in excavated area due the slope of the site. The level of excavation is not considered excessive and the proposal satisfies the objectives of the control, subject to imposition of standard conditions concerning geotechnical and structural engineering certification to protect adjoining properties.

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 from the existing building to be demolished (standard conditions recommended for imposition).

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

The application has been reviewed by Council's **Design Excellence Panel** in terms of the 'design quality principles' set out in SEPP 65 (see the minutes of the Panel meeting in the 'referrals' section of this report). 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 principles are considered as follows:

Principles 1, 2 and 3: Context, Scale and Built Form: The context is set by the development surrounding the site, the development controls for the site, and the building envelope and design criteria established in the consent to DA 105/03 for the overall staged development.. The proposal is in context with existing surrounding development and appropriate in scale and built form, being the same height as, and compatible with, the adjacent Stage 1 building.

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 NS DCP 2002.

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 high density development covers almost the entire site and the only landscaping proposed is appropriate with some planter boxes of ground cover, shrubs and perennials and hanging gardens. A condition requires the planting of a street tree.

Principle 7: Amenity: The proposal achieves better residential solar access (81% of units achieve a minimum 2 hours at the winter solstice) and natural cross ventilation (91% of units) than the minimum required by the North Sydney DCP and the SEPP 65 Residential Flat Design Code 'rules of thumb' for a high density urban area. The layout and design of the proposed units are acceptable

and will ensure a reasonable amenity for future residents. Each unit is provided with a private balcony to function as extension of the living area.

Principle 8: Safety and Security: The proposed development is considered to provide adequately for the safety and security of future residents, with a separate secure lift / entry lobby for the residential component..

Principle 9: Social Dimensions: The development responds satisfactorily to the social context, with a satisfactory mix of dwelling types. A communal room for residents is proposed on level 1 to promote social interaction, although its use is likely to be compromised by its poor access and location.

Principle 10: Aesthetics: The proposed development is a contemporary design, with modulation and articulation through the use of different setbacks, heights and materials and a curvilinear form at the Chandos Street frontage podium. The aesthetics of the building are satisfactory.

Residential Flat Design Code (SEPP 65)

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 30m building depth of the residential component exceeds the 10m-18m depth recommended in the code. This is acceptable due to the overall good performance in terms of amenity, light and ventilation, with 91% of the apartments having natural ventilation, and 81% having a minimum of 2 hours winter sunlight.
- Building separation: The 'rules of thumb' in the Code are similar to those specified in the North Sydney DCP; the development falls short of the recommended separation distance but is acceptable in the circumstances (see discussion concerning 'visual privacy' in DCP compliance table).
- Daylight / sunlight access: 81% of the apartments achieve 2 hours minimum sunlight access in at the winter solstice (thus exceeding the code's 70% minimum). However the remaining 19% 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 and are above the 'rule of thumb' minimum size; no objection is raised to this non-compliance.
- 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.

Consideration of the matters raised by Council's Design Excellence Panel

The matters raised by Council's Design Excellence Panel (see 'referrals' section of this report) concerning this proposal are addressed as follows:

Street level frontage – Additional street trees should be provided. The awning should have cut outs to allow the trees to grow, similar to other awnings in the area. The awning needs to link to the adjoining awning for weather protection. The awning should not be glazed as it is north facing.

Comment: Conditions are recommended to require a street tree, to require the awning to be linked to the adjoining street awning at No 45-49 Chandos Street, and to allow for a cut-out in the awning for the required street tree.

The fire stairs/booster in the north east corner needs to be set back to allow for a future colonnade when the site to the east is developed.

Comment: A condition is recommended to require the booster and fire stairs to be set back a minimum of 2m from the street alignment so as to allow for a future colonnade as suggested by the Panel. A setback of the booster and stairs further than 2m would significantly affect the design of the car park.

The communal room at the rear of level 1 is in a poor location and unlikely to be utilised. The Panel would prefer that part of the roof be used as a communal roof garden but notes that Council would have to consider additional breach of the height control. A communal open space would compensate for the lesser amenity of some of the smaller south facing units.

Comment: Although the location of the communal room is not ideal being accessed via a corridor to the loading dock and garbage compactor room, an alternative location on the top level would further breach the height control and is not recommended. It is noted that the development performs considerably better than the solar access and ventilation criteria for apartments in the SEPP 65 Residential Flat Design Code.

One lift for 32 apartments over 12 storeys is a concern as the lift is likely to break down and require servicing in the future. Access to a second lift in stage 1 could have been an option but it is understood that practical access between the building on the upper levels is not possible.

Comment: The applicant has advised that it is most unlikely that the owners of the Stage 1 development (now strata titled) would agree to use of a lift in Stage 1 for alternative access for Stage 2. The applicant's BCA consultant has advised that BCA compliance may still be able to be achieved by way of a formulated alternative solution to meet the BCA performance requirements. It is agreed that provision of only one lift serving 32 units is potentially problematic and may lead to serious inconvenience for residents during lift breakdowns or maintenance. This concern does not warrant the major redesign of the development.

Amenity and fire separation within the lightwells. It is recommended that glass blocks

be built on the boundary between the two light wells on the western boundary.

Comment: Provision of glass blocks would appear to compromise the ventilation function of the lightwell. The 6m separation between windows together with the proposed privacy screens should be adequate.

The hanging screen garden in the secondary light well on the eastern boundary is considered to be unnecessary and should be replaced by a wall that could be translucent.

Comment: The privacy screens to opposing windows and the lightwell's 6m length appear to give a reasonable level of privacy to bedrooms facing this lightwell, and it is not considered necessary to provide a translucent wall.

Roof lights/vents were suggested to improve amenity to internal service rooms in top floor apartments. The southern unit could also be designed to have good solar access and ventilation by way of north-facing roof lights.

Comment: All habitable rooms in the top floor apartments appear to have access to sunlight / daylight.

To allow for cross ventilation and to maintain security, windows and sliding doors should be fitted with appropriate locks or designed to allow them to be opened whilst locked.

Comment: An appropriate condition is recommended in this regard.

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 are proposed.

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 the same height and floor space controls as those currently applying 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, except in relation to the easements for vehicular access and services through the adjacent Stage 1 development.

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 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."

The proposed building with the same height as Stage 1 immediately to the west is consistent with this scaling down.

The Character Statement for the St Leonards Town Centre also identifies a number of specific additional design controls applying to the subject site, including desired street frontage, podium and tower setbacks, and building design. These have been addressed earlier in this report in the North Sydney DCP compliance table.

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.

How the Proposal is consistent with the Design Requirements of Consent to DA 105/03 for the Overall Staged Development.

The proposed development is Stage 2 of the two stage mixed use development DA 105/03 to which Council granted consent on 23 May 2003. Stage 1 has been constructed on 45-49 Chandos Street. The consent established by **condition A4** that a future development consent was required for Stage 2 over 51-53 Chandos Street. The approved plans for Stage 1 show a 'masterplan' building envelope for a future Stage 2 and the following requirements in **condition A3**:

- (a) a thirteen level mixed use development comprising generally
 - 2 basement parking levels accommodating 22 car parking spaces,
 - ground floor level with retail, loading dock and residential access lobby, stairs and lifts,
 - level 1 commercial area with lift, access lobby and stairs, and toilets/washrooms,
 - 9 residential levels with balconies to north and south elevations only, lightwell, lifts and stairs,
 - The maximum RL of Stage 2 shall be consistent with Stage 1 at RL122.825.
- (b) residential accommodation to comprise a total of 29 apartments consisting of 5 studio apartments, 6 x 1 bedroom apartments, 12 x 2 bedroom apartments and 4 x 3 bedroom apartments,
- (c) building envelope, location of balconies, lift core, stairs and lightwell to be as generally as indicated in the approved plans,

- (d) location of vehicle access points to proposed driveway of stage 1 to be as shown on the approved plans.

The current Stage 2 plans (this application) are consistent with the building envelope and with the above requirements except in the following respects:

- A restaurant is provided in lieu of retail on the ground level with commercial at the rear of levels 2 and 3 in lieu of on level 1;
- Residential accommodation is provided on 10 levels (in lieu of on 9 levels);
- The maximum RL 124.075 is 1.25m higher than the specified RL 122.825. However the new RL is the same as that of the constructed Stage 1 following minor modifications to the original consent;
- 32 apartments are proposed in lieu of 29, with an altered apartment mix.

None of the inconsistencies pose any issues of concern having regard for the controls and merits / impacts of the changes.

Condition A5 of consent to DA 105/03 sets out the following specific design requirements to be incorporated in the Stage 2 development application:

- A non-trafficable area along the roof podium at level 8 to the eastern side of the building. This area shall not be landscaped terrace, shall not incorporate any doors opening onto the non-trafficable area, and any windows to this eastern elevation shall have opaque glass up to a height of 1.6m above floor level.
- Suitable privacy screens shall be provided to the eastern end of all balconies close to the adjoining property No 55 Chandos Street, from level 5 upwards.
- One studio apartment shall be converted to a communal room for residents.
- A minimum length of 4m along the side boundary between stages 1 and 2 shall be kept free of any wall or barrier to maximise shared light and ventilation within the lightwell,
- Adequate residential storage facilities (approximately 300m³) to be provided and indicated on the plans for the apartments; at least half of this to be provided within apartments,
- All spaces within the basement parking areas levels to be residential spaces (lift connecting basement to retail and commercial floors not necessary),
- Provision to be made for 1 motorcycle space and 9 bicycle lockers,
- Design of level 1 (commercial) to be amended to provide a 1.2m wide x 6m long ventilation corridor to connect the lightwell above with the ventilation corridor located on the eastern side of the adjacent stage 1 development at this level,
- Awning to extend to within 2m of the footpath kerb (ie: to extend 1.5m beyond the existing property alignment to Chandos Street)

- A minimum of 75% of apartments to have natural cross-ventilation, and a minimum of 80% of apartments to achieve a 4 star NatHERS energy efficiency rating.

The current Stage 2 plans differ from the above design requirements in the following respects:

- Level 8 now contains trafficable outdoor terraces to serve the adjoining apartments, but with a 2m high privacy wall and louvers on the side boundary to address potential privacy impacts on the neighbouring dwelling in No 55 Chandos Street;
- The communal room is now provided at the rear of level 1 with a window fronting onto the rear lane. This is acceptable although its location is far from ideal being accessed via a passageway adjacent to the garbage compactor room and loading dock (see discussion elsewhere in this report);
- One of 22 car spaces is proposed to be for commercial use, not residential;
- 94% of the apartments achieve natural cross-ventilation, thus exceeding the 75% sought.

None of the above variations from the specific design requirements pose issues of concern which warrant refusal or amendment to the proposal, subject to the recommended conditions.

Note: a S.96 modification application (numbered D105/03/4) was submitted on 22 March 2011 at the request of Council planners for due caution, so that the original consent to DA105/03 and the relevant conditions may be rendered consistent with the determination of this development application for stage 2 by the JRPP. In any event it is considered that the subject development application for Stage 2 may be determined on its merits by the JRPP as the consent authority even if it departs from some of the design requirements specified in conditions of the prior consent. It is intended that S.96 application be determined by Council following the determination of this stage 2 application by the JRPP.

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, 17 x 1 bedroom units, 12 x 2 bedroom units and 459 m² of non-residential floor space, less credit for the 2,067m² of existing non-residential floor space on the site. An appropriate condition is recommended in the event of approval of the application, to ensure the appropriate monies (total \$323,379.73) are paid to satisfy this Section 94 Contributions Plan.

DESIGN AND MATERIALS

The design incorporates appropriate articulation, modulation and setbacks to create interesting facades, with satisfactory materials and colour scheme as shown on the 'materials board' submitted with the application.

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 consistent with the specific aims of the plan and objectives of the zone and the controls as outlined in this report and as such, consent may be granted.

SUBMITTORS' CONCERNS

The concerns raised in the single submission received have been generally addressed within this report, and do not warrant refusal or amendment to the proposal. 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 planning controls, and the site's context, its status as stage 2 of an approved staged development, and the surrounding development.

The applicant's SEPP No 1 objection in respect of the 9.1% departure from the building height control is considered well-founded and is supported. The design of the proposal has merit and results in reasonable amenity for future residents and occupants of the development, and it will make a contribution to the vibrancy of the area. In the context of the approved building envelope 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.

A number of site-specific conditions are recommended to address concerns in relation to some aspects of the design of the development.

The proposed development is therefore recommended for approval subject to appropriate standard and site specific conditions.

RECOMMENDATION

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

- A. **THAT** the Joint Regional Planning Panel (Sydney Region East) grant consent to Development Application No. 18/11 for development comprising demolition of the existing building and the erection of a mixed use development with basement car parking on land at No's 51-53 Chandos Street, St. Leonards, subject to the conditions in the attached conditions set.

(Signed by both the undersigned on 4 May 2011)

IAN PICKLES
EXECUTIVE PLANNER

GEOFF MOSSEMENEAR
ACTING MANAGER DEVELOPMENT SERVICES