

JRPP No:	2011SYE017
DA No:	DA 356/09/2
PROPOSED DEVELOPMENT:	Modification of DA 356/09, including provision of additional floor space at second floor level, modification to setbacks from Sinclair Street, provision of additional car parking and façade/fenestration changes.
PLANS REF:	Drawings numbered SK-14 Revision A, dated September 2009, SK-00 Revision D, dated 26 August 2010, SK-01 Revision D, SK-02 Revision F and SK-03 Revision F, dated 5 November 2010, SK-04 Revision G, SK-05 Revision G, SK-06 Revision F, SK-07 Revision F, SK-08 Revision F, SK-10 Revision F, SK-11 Revision G, SK-12 Revision F, SK-13 Revision G and SK-15 Revision F, all dated 20 December 2010, drawn by Leech Harmon Architects, and all received by Council on 3 February 2011.
APPLICANT:	Trilogy Funds Management Limited
OWNER:	Lot 1 – Trust Company Limited Lots 2 to 6 – Ficata Pty Limited
REPORT BY:	Nicola Reeve, Senior Assessment Officer – North Sydney Council
DATE OF REPORT:	30 March 2011
DATE LODGED:	3 February 2011

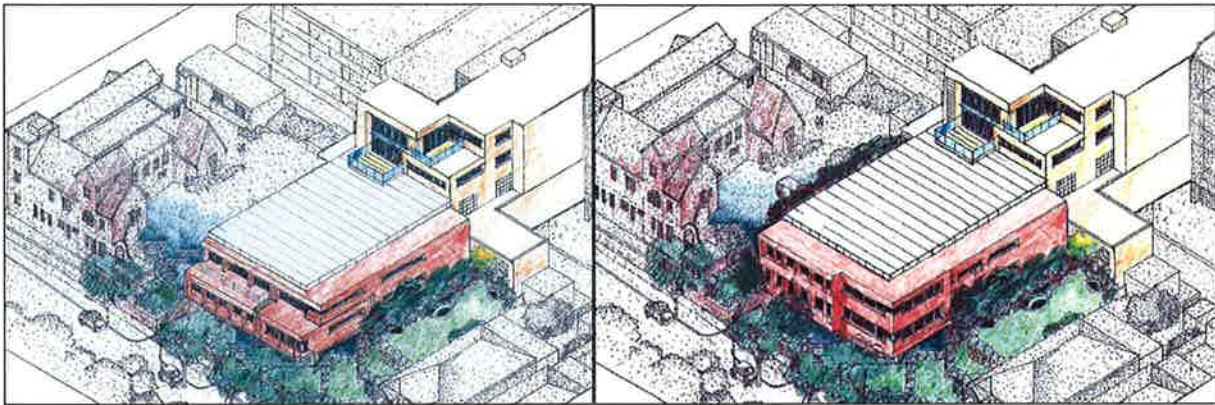
Assessment Report and Recommendation

DESCRIPTION OF PROPOSAL

The subject Section 96 application seeks the consent of the Joint Regional Planning Panel (JRPP) to modify the existing development consent for alterations and additions to the existing commercial building and construction of a new medical centre, with basement car parking at 286-288 Pacific Highway, Crows Nest, which was approved pursuant to DA 356/09 on 29 September 2010.

The subject Section 96 Application seeks the following modifications to the approved scheme:

- Modified setback of the building from the Sinclair Street boundary on all three levels, including the deletion of the upper floor stepped setback required by the JRPP in its determination (including deletion of upper level terrace to Sinclair Street);
- An increase of floor space of 85sqm;
- Provision of an additional 3 car parking spaces (at a pro-rata rate of 3/100sqm of GFA) requiring additional excavation at the Level 2 car park level; and
- Fenestration changes on the Sinclair Street building (on the southwest and southeast elevations).



Figures 1 & 2 – The approved development (left) and the proposed development (right)

STATUTORY CONTROLS

North Sydney LEP 2001

- Zoning – Mixed Use & Residential A2
- Item of Heritage – Yes (Former North Shore Gas Company Office)
- In Vicinity of Item of Heritage – Yes (99 Shirley Road – *Crows Nest Fire Station*, 306 Pacific Highway – *Former Westpac Bank* & 1-3 Willoughby Road – *Crows Nest Hotel*)
- Conservation Area - Yes
- FSBL - No

S94 Contribution

Environmental Planning & Assessment Act 1979

SEPP No. 1 Objection

SEPP No. 55 - Contaminated Lands

SREP (Sydney Harbour Catchment) 2005

Draft NSLEP 2009

POLICY CONTROLS

DCP 2002

Draft NSDCP 2010

DESCRIPTION OF LOCALITY

The site has a legal description of Lot 1 DP 716494 (Pacific Highway allotment) and Lots 2-6 716494 (Sinclair Street allotments), and are commonly known as 286-288 Pacific Highway, Crows Nest. The site is located on the western side of the Pacific Highway, between Bruce Street and Shirley Road, and has dual street frontages to both the Pacific Highway and Sinclair Street.

The site has a frontage to the Pacific Highway of 12.19 metres and a frontage to Sinclair Street of 36.57 metres. The sites have a collective area of 2,232sqm (being 557.87sqm on the Pacific Highway lots and 1,673.8sqm on the Sinclair Street lots).

The site has dual zonings pursuant to North Sydney Local Environmental Plan 2001 (NSLEP 2001), being Mixed Use on the front Pacific Highway section of the site and Residential A2 on the rear Sinclair Street section.

Existing on the site is a three-storey commercial building located predominately within the boundaries of the Pacific Highway allotment. It should be noted that a section of the existing building does extend onto the residential zoned part of the site. Currently, the rear of the site is used as an at-grade car park in association with the medical consulting rooms and specialist medical services provided within the existing building (refer to **Figures 3 to 6**, below).



Figures 3 & 4 – The existing commercial building as viewed from the Pacific Highway



Figures 5 & 6 – The rear of the site as viewed from Sinclair Street and the existing open car park

Generally, development along the Pacific Highway is multi-storey commercial or mixed use buildings (refer to **Figures 3 and 4**, above). Sinclair Street is predominately residential, however, includes the non-residential uses of the Crows Nest Fire Station and the Mater Hospital at either end. The scale of development in Sinclair Street does vary, with the western side of the street being characterised by apartment buildings that are partially obscured from the view at street level. Development on the eastern side of the street transitions from the Fire Station to the north of the site (refer to **Figure 7**) to single-storey dwellings directly to the south (refer to **Figure 8**, below).



Figures 7 & 8 - Development adjacent to the site on Sinclair Street, with the Fire Station to the north (left) and residential dwellings to the south (right)

RELEVANT HISTORY

Development Application 356/09 (JRPP reference: 2009SYE011) was lodged with Council on 12 October 2009 and sought consent for the following:

- Alterations and additions to the existing commercial building on the Pacific Highway allotment to include an additional 2-storeys;
- Redevelopment of the existing car park site (Sinclair Street site) to a new 4-storey commercial building, with 2-storeys of basement car parking accommodating 94 vehicles. This building is to link into the existing commercial building;
- Use of the site for specialist medical consulting rooms, diagnostic equipment, facilities and day surgery. These uses are defined as “hospital” pursuant to NSLEP 2001.

The applicant was advised in correspondence from Council dated 19 November 2009 that the application was not supported, and the proposal required substantive revision to address the below issues or alternatively, should be withdrawn. The following concerns were raised:

- *Floor space and subsequent car parking/traffic generation* – The proposal is numerically non-compliant with the permissible floor space ratio pursuant to Clause 31 of NSLEP 2001 and provides insufficient car parking on the site to accommodate the vehicles associated with this floor space. The undersupply of car parking would result in an exacerbation of on-street car parking demand. The increase in car parking is not recommended for this site due to other environmental and amenity issues that have been identified with the proposal, instead the amount of floor space proposed should be reduced to be reflective of the number of car parking spaces proposed (at 94 spaces);
- *Bulk and scale* – The proposed rear building form is considered to be contrary to the objectives and performance criteria of Clause 18 of NSLEP 2001. The building form in Sinclair Street does not adequately transition the height and scale of the built form from the commercial buildings on the Pacific Highway to the single storey residential dwellings to the south of the site. It is recommended

that the overall bulk of the building be reduced and greater separation be provided between the proposed building and the residential dwellings to the south;

- *Overshadowing* – The proposal results in complete overshadowing of the northern elevation windows of the adjacent dwelling at No. 77 Sinclair Street on the winter solstice, which is contrary to Clause 18 of NSLEP 2001 and Section 7.2 of NSDCP 2002;
- *Landscaping* – A reduction in building footprint and greater setbacks from the southern boundary are recommended. These modifications would result in a numeric improvement in landscaped area in accordance with the provisions of Clause 20 of NSLEP 2001, assist in the transitioning between uses and be more consistent with the low scale residential zoning of the site.
- *Heritage* – Insufficient detailing and information was provided and a list of additional information was provided to the applicant to complete this assessment.

The applicant advised on 30 November 2009 that they would be proceeding with the application. Indicative amended plans were submitted on 21 December 2009, however, were not proceeded with and further amended plans and supporting documentation were submitted to Council on 14 May 2010.

The application was considered by the JRPP at its meeting on 4 August 2010, where it was resolved to approve the application subject to the provision of amended plans that:

- Deleted the uppermost floor (3rd floor) of the development on the Sinclair Street site;
- Set the 2nd floor of the development back a further 5.5 metres from the southwestern (Sinclair Street) boundary;
- Reduce the number of car parking spaces provided within the basement car park proportionally to the deleted floor space.

The applicant submitted amended plans to Council on 31 August 2010 as a response to the aforementioned resolution of the Panel. Draft conditions were formulated by Council's Assessment Officer and submitted to the JRPP on 14 September 2010. The applicant provided comments on these conditions, dated 21 September 2010, and Council provided a further response on 23 September 2010.

The JRPP granted consent to the application, as amended, on 29 September 2010 and the consent became operable on 7 October 2010.

SUBMISSIONS

The owners of adjoining properties and the Wollstonecraft Precinct Committee were notified of the proposed development for a 14-day period commencing on 11 February 2011. The notification resulted in two submissions being received, the content of which is summarised below:

Name & Address of Submitter Basis of Submissions

- | | |
|--|---|
| Delia Schaffer
Ground floor
2 Lyonpark Road
North Ryde 2113 | <ul style="list-style-type: none">• Reduction of setback of second floor of building to Sinclair Street will block more outlook (both greenery and water views) from neighbouring building. The modifications to setbacks of the building at the lower levels do nothing to compensate for this; |
| Owner of apartment in 300 Pacific Highway. | <ul style="list-style-type: none">• The approved building is already large enough and results in a loss of views;• This additional floor space and loss of outlook could be compensated by a reduction in height or length of the 4th floor of the building (approved to RL 114.8), which results in loss of views towards the CBD and Harbour from adjacent apartments. |
| Andrew & Lorna Allen
45 Sinclair Street
Wollstonecraft 2065 | <ul style="list-style-type: none">• The proposed additions will increase the bulk of the building on the Sinclair Street façade, which was an issue raised in our original submission to the original DA. The stepped setback of the upper floor on Sinclair Street did address the impact of bulk significantly;• Increasing the number of car parking spaces will result in an increase in Sinclair Street traffic, which is a significant concern to residents in the street. |

CONSIDERATION

The proposal is required to be assessed having regard to the following matters.

Section 96(2) of the Environmental Planning and Assessment Act 1979 enables a consent authority to modify a development consent upon application being sought by the applicant or any person entitled to act on the consent, provided that the consent authority:

- is satisfied that the development to which the consent as modified relates is substantially the same development;
- has consulted the relevant Minister, public authority or approval body in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent;
- has notified the application in accordance with the regulations and has considered any submissions made concerning the proposed modification; and
- in determining the application for modification, has taken into consideration such matters referred to under Section 79C(1) as are relevant.

Therefore, Council's assessment of the application to modify the subject development consent must consider the following issues:

- 1. Is the proposed development as modified substantially the same development approved by the Court?**

The proposed development is substantially the same as that approved pursuant to DA 356/09.

2. Whether the application required the concurrence of the relevant Minister, public authority or approval body and any comments submitted by these bodies?

The application does not require the concurrence of any other authority or approval body.

3. Whether any submissions were made concerning the proposed modification.

The application was notified for a 14-day period between the 11th and 25th February 2011. There were two submissions received, as detailed in the table above.

4. Any relevant considerations under Section 79C(1) of the Environmental Planning and Assessment Act 1979.

Each of the modifications sought to the approved scheme is addressed below:

(1) Modification in setbacks of building from Sinclair Street

The proposal seeks to alter the approved setbacks of the building from its Sinclair Street boundary, proposing to set the first floor of the building further back from this western boundary of the site by between 1 to 2 metres. The second floor of the building is proposed to then extend between 1.9 and 7.5 metres further westwards to align with the new setback of the floor below (refer to **Figure 3**, below).

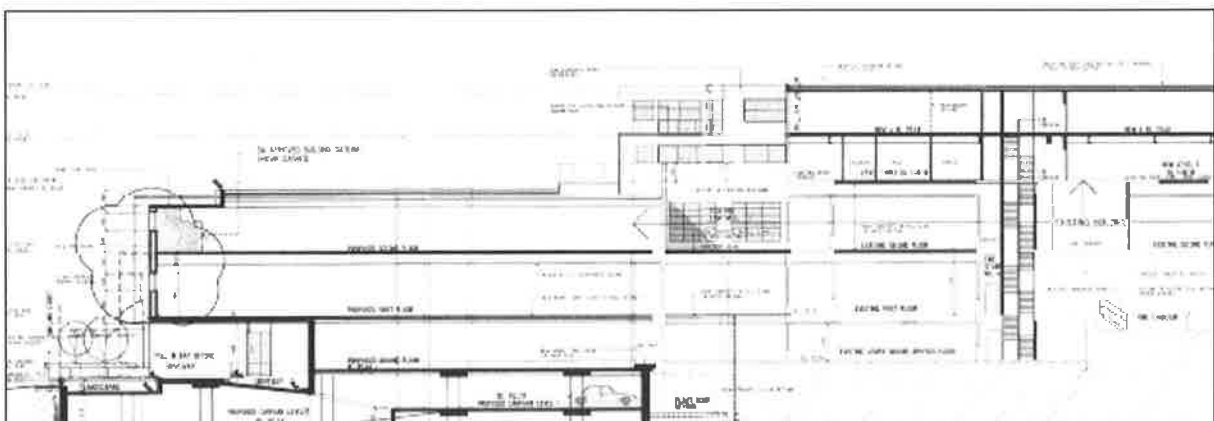


Figure 3 – The proposed realignment of the 1st and 2nd floors of the building on the Sinclair Street site

The modification of the second floor level setback from Sinclair Street is contrary to the resolution of the JRPP at its meeting on 4 August 2010, where it was resolved that the application could be supported subject to the setting back of the uppermost floor to reduce the perceived bulk of the building from street/pedestrian level. Furthermore, the setback of the uppermost floor allowed this second floor to be contained within the building height plane when cast from this western boundary of the site.

As amended the proposed additions would result in both additional breaches to the building height and building height plane development standards applicable to this residentially zoned site pursuant to Clauses 17 and 18 of NSLEP 2001. Whilst the proposal does result in new breaches to these development standards, the addition and variations in setbacks are not considered to result in any greater environmental or amenity impacts beyond that of the approved development, which was assessed as satisfactory by the JRPP.

Whilst the reduction in setback of the second floor will allow greater visibility of this upper floor from street level, the additional floor space/reduction of setback is not considered to give rise to a development of an unreasonable bulk above that already approved by the JRPP.

Lastly, from an urban design perspective, Council's Design Excellence Panel concluded that in its context that the development provided an appropriate transition of scale and supported consistent aligned setbacks to create rectilinear form on Sinclair Street.

Whilst the proposal does seek to vary the development contrary to the resolution of the Panel, the degree of variation sought is not considered to result in any additional unreasonable bulk and scale beyond that assessed as acceptable by the Panel in its consideration of the original development application.

(2) Provision of additional floor space

The proposed modified setbacks across the three levels of the development on the Sinclair Street site will result in a variation to the approved floor space on the site. **Table 1**, below, demonstrates the variation in floor space sought to that approved pursuant to the original development application.

Table 1 – Variation in floor space sought

Ground floor level	-4sqm
First floor level	-16sqm
Second floor level	+105sqm
TOTAL	+85sqm GFA

As the additional floor space is proposed on the portion of the site that is zoned Residential A2, there is no floor space development standard applicable to these modifications. However, the provision of an additional 85sqm of floor space on the site would require the provision of additional car parking to be provided (which is assessed below) and the levying of further Section 94 contributions. As a result of this additional floor space, it is recommended that Condition C37 be modified to increase the contribution payable by \$3,504.98 to a total of **\$141, 518.17**.

(3) Provision of additional car parking spaces within basement

As a consequence of the additional floor space sought within the development, a further three car parking spaces are proposed within the basement car park. The provision of these spaces is consistent with the car parking rate of 3 space/100sqm of GFA as adopted by Council's Traffic Engineer during the assessment of the original

development application. Thus, no objection is raised in this regard.

It is not considered that the provision of three additional car parking spaces and their associated traffic movements would result in a noticeable increase in traffic generation to Sinclair Street and the immediately connected street network, above that assessed as acceptable by the JRPP in its determination of the original development application.

An extension to the footprint of basement parking level 2 is proposed to accommodate the additional three parking spaces. In its extended form, the basement level would match the footprint of the floor above, and thus, will not alter the approved landscaped area of the site. The modified basement footprint, however, will result in further excavation being required. No objection is raised in this regard, as in the context of the extent of approved excavation, the additional excavation is considered to be minor and not resulting in adverse impacts. Detailed geotechnical, structural adequacy and dilapidation conditions were imposed on the original consent and are recommended to remain unaltered as a result of the subject application.

(4) Fenestration and façade modifications

Modifications are proposed to the approved façade and fenestration treatments on the southern and western elevations of the building on the Sinclair Street portion of the site.

No objection is raised to the proposed modifications to the windows on the southern elevation of the building with regard to loss of privacy to adjacent residential properties. Those windows located directly opposite the windows of the principal living rooms and rear open space of the adjacent dwelling at No. 77 Sinclair Street remain highlight windows with a sill height of 1.8 metres and 1.5 metres above finished floor level, on the first and second floor of the building, respectively. It is proposed to lower the sill heights to 1.2 metres above finished floor level to those windows located on the southwestern corner of the building on both first and second floor levels. No objection is raised to this modification as these windows are offset from the living room windows of the adjacent dwelling and are generally oriented towards the street and will not service highly frequented areas within the building (i.e. the proposed uses of the building serviced by these windows are patient recovery and office space).

The proposed modifications to the façade treatment are considered to be satisfactory and generally similar in appearance to the previous approved building. No objection has been raised by Council's Conservation Planner to the proposed setback or façade modifications.

ENVIRONMENTAL APPRAISAL

SATISFACTORY

- | | |
|--|-----|
| 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 |

CONCLUSION

As originally proposed this development was not supported by Council's Assessment Officer. Whilst approval was given in a modified form by the Joint Regional Planning Panel, it is still considered that the overall bulk and scale approved on the rear Sinclair Street site is in contradiction with the anticipated low scale development yield stipulated by the Residential A2 zoning of the site.

Despite this concern, the application was been assessed against the consent given by the Joint Regional Planning Panel, and on this basis the proposed modifications have been assessed as not resulting in any further adverse amenity or environmental impacts above deemed satisfactory by the Panel in their approval of the original application. Subsequently, the subject application is recommended for approval, subject to the modification of the following conditions to reflect the amended plans, parking configuration and Section 94 contributions applicable.

RECOMMENDATION

- A. **THAT** the Joint Regional Planning Panel resolve to modify its consent dated 29 September 2010 in respect of a proposal to alterations and additions to the existing commercial building, construction of a new three storey commercial building with basement car parking and use as a hospital/medical centre at 286-288 Pacific Highway, Crows Nest, under the provisions of Section 96 of the Environmental Planning and Assessment Act only insofar as will provide for the following.

To delete conditions (A1), (C37), (C38) and (H1) of the consent and insert in lieu thereof the following new conditions namely:

Development in Accordance with Plans (S96 Amendments)

- A1. The development being carried out in accordance with plans numbered drawings numbered SK-14, dated September 2009; SK-06 Issue E and SK-07 Issue E, dated 13 August 2010; SK-04 Issue F, SK-05 Issue F and SK-08 Issue E dated 16 August 2010; SK-00 Issue D, dated 26 August 2010; SK-01 Issue C, SK-02 Issue E, SK-03 Issue E, SK-10 Issue E, SK-11 Issue F, SK-12 Issue E, SK-13 Issue F and SK-15 Issue F, dated 27 August 2010, drawn by Leech Harmon Architects, all received by Council

on 31 August 2010, and endorsed with Council's approval stamp, except as modified by highlighting on:

(a) Drawing numbered SK-14 Revision A, dated September 2009, SK-00 Revision D, dated 26 August 2010, SK-01 Revision D, SK-02 Revision F and SK-03 Revision F, dated 5 November 2010, SK-04 Revision G, SK-05 Revision G, SK-06 Revision F, SK-07 Revision F, SK-08 Revision F, SK-10 Revision F, SK-11 Revision G, SK-12 Revision F, SK-13 Revision G and SK-15 Revision F, all dated 20 December 2010, drawn by Leech Harmon Architects, and all received by Council on 3 February 2011.

except as amended by the following conditions.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

Section 94 Contributions

C37. A contribution pursuant to the provisions of Section 94 of the Environmental Planning and Assessment Act 1979, as specified under the North Sydney Section 94 Contribution Plan for the services detailed in column A and, for the amount detailed in column B shall be made to Council.

A	B (\$)
Administration	6,607.97
Child Care Facilities	27,978.01
Community Centres	16,110.15
Library Acquisition	3,285.11
Library Premises & Equipment	9,987.12
Multi Purpose Indoor Sports Facility	3,285.11
Open Space Acquisition	12,044.60
Open Space Increased Capacity	23,874.71
Olympic Pool	12,315.39
Public Domain Improvements	25,538.88
The total contribution is	<u>\$ 141,518.17</u>

The contribution SHALL BE paid prior to determination of the Construction Certificate.

The above amount, if not paid within one calendar year of the date of this consent, shall be adjusted for inflation by reference to the Consumer Price (All Ordinaries) Index applicable at the time of the payment of the contribution.

A copy of the North Sydney Section 94 Contribution Plan can be viewed at North Sydney Council's Customer Service Centre, 200 Miller Street, North Sydney or downloaded via Council's website at www.northsydney.nsw.gov.au

(Reason: To retain a level of service for the existing population and to provide the same level of service to the population resulting from new development)

Security Bond Schedule

C38. All fees and security bonds in accordance with the schedule below must be paid or in place prior to the issue of the required Construction Certificate:

Security Bonds	Amount (\$)
Infrastructure Damage Bond	120,000.00
TOTAL BONDS	\$120,000.00
Fees	
Section 94 contribution	141,518.17
TOTAL FEES	\$141,518.17

(Reason: Compliance with the development consent)

Allocation of Spaces

H1. **One hundred and twenty-one (121)** car parking spaces shall be provided and maintained at all times on the subject site.

Such spaces are to be identified on-site by line-marking and numbering upon the completion of the works and prior to issue of Occupation Certificate. Car parking provided shall only be used in conjunction with the uses contained within the development.

(Reason: To ensure that adequate parking facilities to service the development are provided on site)



NICOLA REEVE
SENIOR ASSESSMENT OFFICER



STEPHEN BEATTIE
MANAGER DEVELOPMENT SERVICES