

JRPP No:	2011SYE019
DA No:	DA.47/11
PROPOSED DEVELOPMENT	Demolition of existing structures, amalgamation of the three allotments and construction of a 22 storey mixed use building above basement car parking comprising commercial tenancies including a restaurant, 193 units, landscaping, a through-site-link and roof level communal facilities including a gym and swimming pool.
APPLICANT:	Winten Developments Pty Ltd
REPORT BY:	Geoff Mossemeneer, Executive Planner, North Sydney Council

Assessment Report and Recommendation

EXECUTIVE SUMMARY

This development application includes demolition of existing structures, amalgamation of the three allotments to make one site and construction of a 22 storey building above basement car parking. Various commercial tenancies including a restaurant are proposed at the Ground and First Floor levels and a total of 193 units are proposed from levels 1 to 21. Associated landscaping, a through-site-link and roof level communal facilities including a gym and swimming pool complete the proposal.

The overall height and form of the tower element is similar to a scheme on the site of 136-140 Walker Street (DA 316/2010) approved by the JRPP in 2010. However Winten Property Group have since exchanged contracts to purchase the adjoining site to the north at 142 Walker Street and as such now have the authority to present a scheme incorporating a site that would otherwise be a small isolated parcel of land surrounded by larger developments.

There is a long history for this site involving a number of appeals to the Land and Environment Court. Many hearing days were spent going through the controls in great detail. The site has been well tested resulting in Council granting a development consent to a development (smaller than the application that was the subject of the appeals) in 2008.

The Council's notification of the proposal has attracted 35 submissions raising particular concerns about view loss, traffic, parking, overshadowing and dwelling sizes. The assessment has considered these concerns as well as the performance of the application against Council's planning requirements.

Following this assessment the development application is recommended for **approval**.

DESCRIPTION OF PROPOSAL

The proposal essentially seeks to retain many of the features of the earlier approved tower development at Nos.136-140 but extends the development to the north incorporating the additional site of No.142.

At RL132.5 and 22 storeys plus roof facilities the overall height of the tower remains the same as the earlier approved scheme. Setbacks to the rear, front and south side boundaries also remain similar to that of the earlier approved buildings; although front setbacks of the podium have been altered to better reflect Council's controls and the adjoining building context.

On the northern side the massing of the tower has been extended to reflect the incorporation of No.142 into the development site. The northern façade of the tower would essentially be built to the current boundary with No.142, although also includes some further cantilevered balconies extending over the boundary. Beyond that boundary line, the massing of the building steps down to the north to 10 storeys in height at northern boundary of the combined sites. The stepped massing largely reflects the new height control of RL 103 that would apply to the site once the draft LEP is gazetted and has been designed to provide a transition to the height of the adjoining building on No.144.

The front setback of the building has been stepped back away from the street on the northern side of the site which also assists in providing a transition between the large scale commercial development with nil setbacks to the south and the residential scale development to the north. The large front setback allows for the provision of a landscaped area which will be accessible to the public and provides a contribution to public and streetscape amenity.

As with earlier approved schemes for the previous site, a through site link from Walker Street to Harnett Street is included. The link is an improvement on the earlier schemes as it is wider, the covered length is reduced and the link adjoins a landscaped area at both ends as a landscaped courtyard is also proposed at the Harnett Street entrance to the site. A café will adjoin the through site link and the proposed landscaped garden area.

Other commercial premises are included on the ground and first floor level and also overlook the link and help ensure an active and attractive public space. Part of the First Floor and the remainder of all the floors above will be used for residential purposes and includes a total of 193 units made up to 35 studio units, 61 one bedroom units, 80 two bedroom units and 17 three bedroom units. Access to the units will be via one of two lobbies and lift cores each with security entrances.

Amenities will be provided common to all residents and occupants of the commercial tenancies. They include a roof terrace with swimming pool, a gym and a function / meeting room.

Vehicular entrance to the site will be from Walker Street and is now proposed at the southern end of the front boundary. This is different from earlier proposals and results from the opportunity afforded by the amalgamation of the sites: the proposed point of access now prevents severing of connectivity both visually and physically across the site. The relocated entrance point allows for retention of a significant street tree that would have been removed under the earlier approvals. An existing rock outcrop on the southern side of the front boundary will be retained and incorporated into the vehicle entry to comply with a site-specific DCP control which relates to the rock outcrop. Four levels of basement parking are proposed, incorporating 140 residential spaces, motor cycle parking and bicycle storage plus ancillary storage for the residential units. A loading dock and service area is proposed to be provided at ground level, accessed from the same vehicle entrance point and also includes additional bicycle storage.

STATUTORY CONTROLS

North Sydney LEP 2001

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

S94 Contribution

Environmental Planning & Assessment Act 1979

SEPP 1 Objection

SEPP 55 - Contaminated Lands

SREP (2005)

Local Development

Draft LEP 2009

POLICY CONTROLS

DCP 2002

CONSENT AUTHORITY

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

DESCRIPTION OF LOCALITY

The property is located on the western side of Walker Street north of Berry Street. The combined site is essentially rectangular in shape excluding a small protrusion at the end of Harnett Street at the rear (north-western corner). It has a frontage to Walker Street of 43.86 metres; and a maximum depth of 40.36 metres resulting in a total site area of 1740.21m².

Existing buildings on the site include three masonry low rise (two storey) residential flat buildings, most likely constructed in the 1930s. There is only one driveway crossover and only one off-street parking space provided at No 136.

The site lies within, but adjacent to the eastern boundary of, the “North Sydney Centre” identified on Sheet 2 of the map forming part of Amendment No. 9 of the LEP.

Directly to the north are four x two-storey residential buildings listed as heritage items (No’s 144- 150 Walker Street). These heritage listed properties are not within the “North Sydney Centre” as defined (but are within the mixed use zone). No’s 144-150 Walker Street are the subject of DA 50/07 for partial demolition of and alterations to the heritage buildings on the site and the construction at their rear of an eight-storey mixed use building.

To the west is No’s 3-11 Ward Street consisting of a vacant excavated site. No’s 3-11 Ward Street have been purchased by Energy Australia for use as a large sub-station. A previous consent for a 20 storey building on this site has been surrendered.

To the north-west is a three-storey car park, the upper levels of which are accessed via Ward Street.

To the south is No. 76 Berry Street consisting of an 11-storey commercial building (“the People Telecom Building”) with an elevated landscaped terrace adjacent to the common boundary with the subject site.

Land to the west and south of the site is within the “North Sydney Centre” as defined in the LEP.

To the east of the site beyond Walker Street are three-storey residential flat buildings (No’s 173- 177 Walker Street). To the south-east is Century Plaza (No.171 Berry Street), a multi-storey residential flat building primarily oriented south-east towards Sydney Harbour with its north western elevation (containing bedrooms, or bedrooms used as studies) facing towards the site, diagonally across Walker Street. (The position of Century Plaza relative to the site results in the potential for afternoon overshadowing from a tall building erected on the subject site.)

Whilst land to the north, south and west of the site is zoned Mixed Use, land on the eastern side of Walker Street, north of Berry Street, is zoned Residential 2C and is outside the “North Sydney Centre” as defined in the LEP.

Land to the north, south and west of the site is zoned Mixed Use.

Location of Subject Site



RELEVANT HISTORY

DA 269/05 and related merits appeals

In June 2005 Castle Constructions Pty Ltd, lodged DA 269/05, to demolish the two existing buildings on the site and erect a 36-storey mixed use building comprising basement parking, a podium of five commercial floors and a tower of 26 residential floors. The proposed building had a maximum height of RL 175m. Council received 75 objections to the DA. In August 2005, Council determined DA 269/05 by refusing consent.

The Applicant appealed on the merits to the Land and Environment Court in Class 1 of the Court's jurisdiction. The appeal was heard by the Senior Commissioner and dismissed: *Castle Constructions v North Sydney Council* [2006] NSWLEC 5.

The Applicant appealed on questions of law from that decision to a Judge of the Court pursuant to s 56A of the *Land and Environment Court Act 1979*. The appeal was upheld by Talbot J (on 8 March 2006) in some respects but not in others, and the proceedings were remitted to a Commissioner for redetermination: *Castle Constructions Pty Ltd v North Sydney Council* [2006] NSWLEC 468.

The Chief Judge directed, pursuant to s 36 of the *Land and Environment Court Act 1979*, that the remitted proceedings be heard by the Senior Commissioner. Pursuant to s 57(1) and 4(c) of the *Land and Environment Court Act 1979*, the Applicant applied to the Court of Appeal for leave to appeal from the decision of Talbot J on what were said to be two questions of law that his Honour had decided in the negative, adversely to the Applicant:-

- whether clause 30 of the LEP is inconsistent with clause 28D so that by virtue of clause 28A, clause 28D must prevail over clause 30; and
- whether when ordering that the proceedings be remitted to a Commissioner for determination in accordance with his Honour's reasons, his Honour ought to have also ordered that they be remitted to a Commissioner other than the Senior Commissioner, because of apprehended bias.

On 27 July 2007, the Court of Appeal by majority decided both questions of law in the affirmative and upheld the appeal: *Castle Constructions Pty Ltd v North Sydney Council* [2007] NSWCA 164. The Court of Appeal ordered that the proceedings be remitted to a Commissioner other than the Senior Commissioner for determination in accordance with the reasons of Talbot J as varied by the reasons of the Court of Appeal to the effect that clause 30 of the LEP was to have no application to that determination (ie. the determination of the first appeal in relation to DA 269/05).

Between July 2007 and December 2007 the Applicant pursued appeals relating to the planning process surrounding Draft LEP Amendment No. 28 and associated amendments to DCP 2002. Because of these planning process appeals, the merit appeal against Council's refusal of DA 269/05 was not heard by a Commissioner (Commissioner Bly) until December 2007. It continued to be heard during January and February 2008. The appeal was dismissed on 7 May 2008, around three weeks after the last of the planning process appeals had been determined by Lloyd J. The Council's contentions in the appeal heard by Commissioner Bly were that:-

(1) The proposed building:-

- was excessive in height and scale;
- did not provide an adequate setback from Walker Street;
- would have an unacceptable impact on heritage items in the vicinity;
- would overshadow the Century Plaza building; and

(2) The proposed building was inconsistent with Draft LEP Amendment No. 28 (the main inconsistency being an exceedance of the height control in Draft LEP Amendment No. 28 by around 60m).

In relation to Contention (2) above, Commissioner Bly in his decision made reference to the decision of Lloyd J in relation to the validity of the process surrounding Draft LEP. As for Contention (1), Commissioner Bly found:-

- that the proposed building was “much too high” (i.e. RL 162.5m);
- that a building with a top of building RL of about 130m “could be acceptable”;
- that the proposed setback of the tower from Walker Street (between 7.2m and 7.9m excluding balconies) was generally satisfactory but for the north-east corner where the removal of the heavy frame around the balcony would be beneficial;
- that with a reduced building height of RL 130m there would be no adverse impact on the heritage items to the north of the site sufficient to warrant refusal; and
- that a SEPP No. 1 objection prepared in relation to Clause 28(2)(d) of the LEP (relating to overshadowing) in support of a development with a height of RL 130m could be considered to be well founded and could be upheld (ie. that it would be possible to conclude that a building with a height of RL 130m would not result in dwellings in the Century Plaza building having their amenity materially affected by further overshadowing). In submissions, the Applicant requested that if Commissioner Bly considered that the proposal could be approved with amendments that he refrains from making final orders so that the Applicant could consider its position. Commissioner Bly concluded that whilst a further lowering of the building could possibly be achieved by removing additional floors from the middle of the building, the removal of 11 floors would be so substantial that, in the context of the development application, it could not be done. Accordingly, the appeal was dismissed.

DA195/08

DA.195/08 for demolition of the two existing residential buildings, consolidation of the site and the construction of a 21-storey mixed use development containing retail/commercial space and 46 apartments with 3 levels of basement parking. The application was lodged with Council on 14 May 2008. Assessment of the application was carried out by an independent Consultant Planner because of the history of the site and the likelihood of an appeal.

The application was also referred to the Design Excellence Panel to ensure that the merits of the proposal are thoroughly assessed by experts that have not been involved with the previous court cases. The Design Excellence Panel recommended a number of modifications that would soften the appearance and perceived scale of the development, enable additional landscaping and street trees to be planted at the street frontage, enhance the streetscape and achieve a reduction in afternoon shadows cast on dwellings in Century Plaza; the elements at the south-west and south-east corners of the building were to be modified to provide additional sunlight on the adjacent open space on private land to the south of the site; and the units in the NW corner were to be redesigned to take into account the likelihood of a future building on the adjoining site to the north.

The Consultant Planner supported the recommendations of the DEP. The Consultant Planner's assessment report was considered by Council at its meeting of 4 August 2008. Council RESOLVED:

- A. **THAT** Council defers consideration of development application No.195/08.
- B. **THAT** the applicant be requested to lodge amended plans addressing the following issues and changes:
 - (i) submit amended plans to address the recommendations of Council's Design Excellence Panel, Council's traffic engineer and Council's conservation planner (other than where inconsistent with the Design Excellence Panel's recommendations);
 - (ii) comply with Council's DCP parking requirements and remove excess parking spaces;
 - (iii) address non-compliance with the required range of non-residential floor space (ie. 3:1 to 4:1) in an SEPP No. 1 objection;
 - (iv) provide landscape details for the required 3.0m setback of the podium from the southern site boundary;
 - (v) provide landscape details of the 3.5m full width setback from the property boundary with Walker Street which is to continue the landscaped setting of buildings along Walker Street;
 - (vi) provide a construction management plan which includes details of how likely significant adverse amenity impacts on residents in No. 142 Walker Street in particular will be mitigated;
 - (vii) submit a geotechnical report providing details of the proposed excavation and construction methodology;
 - (viii) reduce the height of the building to be no higher than Century Plaza at RL120.
- C. **THAT** if amended plans are not submitted, Council pursuant to Section 377 of the Local Government Act 1993, grants delegated authority to the General Manager to resist the appeal to the Land and Environment Court on the grounds of bulk, scale, setbacks and amenity impacts.
- D. **THAT** a further overshadowing analysis be undertaken of the impact of the amended application on Century Plaza.

The applicant lodged an appeal to the Land and Environment Court on 2 July 2008 against Council's deemed refusal.

At its meeting of 8 September 2008, Council considered a report relating to the appeal. Council RESOLVED :

A. THAT the applicant be requested to lodge amended plans addressing the following issues and concerns

- (a) The podium and the tower being set back further from the Walker Street boundary. This would soften the appearance and perceived scale of the development, enable additional landscaping and street trees to be planted at the street frontage, enhance the streetscape and achieve a reduction in afternoon shadows cast on dwellings in Century Plaza;
- (b) The units in the NW corner being redesigned to take into account the likelihood of a future building on the adjoining site to the north

B. THAT subject to the Director General providing certification pursuant to Clause

28C(3) of NSLEP 2001, Council delegates to the General Manager pursuant to Section 377 of the Local Government Act 1993 the following functions in respect of Development Application No: 195/08:

(i) in the event that amended plans are lodged by the applicant, to determine whether or not to notify the amended application in accordance with the North Sydney Development Control Plan 2002; and

(ii) in the event that amended plans are lodged by the applicant, to determine the application having regard for the stated issues and concerns in (A) of this resolution subject to appropriate conditions. Such conditions to include the following:

- car parking
- construction management plan
- geotechnical report
- Section 94 contributions

(iii) In the absence of a discontinuance of appeal proceedings No. 10654 of 2008 in the Land and Environment Court against Council's refusal of Development Application No. 195/08, to deal with the matter by consent orders before the Court.

C. THAT if amended plans are not submitted, Council resist the appeal to the Land and Environment Court on the grounds of bulk, scale, setbacks and amenity impacts.

The applicant submitted amended plans on 12 September 2008 in accordance with the above resolution. The adjoining owners were notified and the plans were referred to Council's Planning Consultant for further assessment. Three submissions were received in response to the notification and have been addressed by the Planning Consultant in his final report recommending approval subject to the conditions prepared by Council's Executive Planner. Certification was received from the Director General on 9 October 2008. Development Consent was granted by the General Manager under delegation on 21 October 2008.

The applicant entered into negotiations to sell the property.

DA.316/10

On 29 July 2010, Winten Developments Pty Ltd lodged a Section 96(2) application with Council seeking consent to modify the above consent for a multi-storey mixed use development with basement parking. The modifications include a substantial increase in the density, an additional storey (within the approved building envelope) and three additional levels of basement parking with substantial increase in car spaces.

The Section 96 application was initially discussed to allow some modification to the development on the lower levels due to the proposed electricity sub station in Ward Street. The reduction in non-residential floor area required a Planning Proposal to alter the relevant control. It was not envisaged that the density would be increased to the degree proposed. The increase in density to over 75 dwellings required referral of the application to the RTA for comment. Council considered that the proposal cannot be considered as substantially the same development as approved by Council which is the basic requirement for a Section 96 application. The applicant was advised to withdraw the application and lodge the proposal as a fresh application. The current application DA.316/10 was lodged on 19 August 2010.

The Proposal as compared to approved DA 195/2008

The proposed amendments primarily include:

- Reduction from 5 levels of commercial floor space to 2 levels with a total proposed non-residential gross floor area of 1609m² equivalent to and FSR of 1.37:1
- Reduction in ceiling height of previous commercial levels to 2.7 metres to meet residential ceiling height requirements and provision therefore of additional floor within the existing approved building envelope;
- Due to proposed adjoining sub station development, change to building massing at the rear lower levels so that up to level 8 of the tower would be partially built to the rear boundary (on the south side); offset by increase in rear setback to north side of rear façade;
- Changes to internal layouts of residential floors to provide a better mix of units in accordance with Council controls;
- Minor associated changes to the building envelope resulting from the internal unit amendments.
- Overall a net reduction to the envelope, especially at the north-east corner resulting in a reduction in overshadowing impacts arising from the proposal;
- Changes to the ground and first floor commercial layouts. The approved through site link retained in modified form.
- The previous pool has been deleted and communal space will be provided in the form of a meeting room and gymnasium at the first floor level and a new large roof terrace is proposed; and
- 3 additional levels of basement parking to account for the change in parking demand arising from the internal layout changes.

There was no change to the overall height of the building or building footprint, and no significant change to external materials or finishes as compared to the approved building.

Development Application No.316/2010 (2010SYE063) for 104 apartments (15 studio, 18 one-bedroom, 42 two-bedroom and 29 three-bedroom) and basement parking for 91 cars was determined by the JRPP on 11 November 2010 and the consent was issued on 20 December 2010 following receipt of the necessary certification from the DG of the Department of Planning.

DA.47/11

Since the date of the submission of that application, the new owners of No.136-140 have exchanged contracts to purchase No.142 Walker Street. A new scheme incorporating all sites has been devised. This scheme allows for a number of improvements as compared to the existing approved scheme for 136-140: most notably it has the benefit of not leaving 142 Walker Street as an isolated site between the two larger developments on either side and is able to provide a more effective transition between those two approved developments.

REFERRALS

Building

The application has not been assessed specifically in terms of compliance with the Building Code of Australia (BCA). It is intended that if approved, Council's standard condition relating to compliance with the BCA be imposed and should amendments be necessary to any approved plans to ensure compliance with the BCA, then a Section 96 application to modify the consent may be required.

Engineering/Traffic

Council's Traffic Engineer (C.Edwards-Davis) provided the following comments in relation to the development application:-

"I refer to your request for comments on the proposed development 136-142 Walker Street, North Sydney (47/11). I have read the Transport Report for Proposed Mixed Use Development 136-142 Walker Street, North Sydney prepared by Colston Budd Hunt Kafes Pty Ltd dated February 2011 (ref: 7907/3).

Existing Development

The site is currently three residential flat buildings. There is a small area of on-site parking.

Part of the site (136-140 Walker Street) has consent for 1,110 m² commercial floor space, 104 apartments (15 studio, 18 one-bedroom, 42 two-bedroom and 29 three-bedroom) and basement parking for 91 cars. Vehicular access is from Walker Street.

Proposed Development

The proposed development includes 715 m² commercial floor space, 193 apartments (39 studio, 65 one-bedroom, 72 two-bedroom and 17 three-bedroom) and basement parking for 140 cars. Vehicular access is proposed from Walker Street.

Parking

The applicant is proposing 140 parking spaces. This generally complies with the North Sydney DCP 2002, for this size and type of development.

The proposed motorbike and bicycle parking generally complies with the North Sydney DCP 2002 and is therefore considered acceptable.

Traffic Generation

I concur with CBHK that the proposed development will generate 40 to 70 vehicles per hour in the peak. The existing residential site, with one parking space would generate approximately 1 vehicle per hour in the peak. There is therefore a net impact of 39 to 69 vehicles per hour in the peak.

I generally concur with CBHK that this development will not significantly impact on the operation of the surrounding road network.

Public Transport

The site has excellent links to public transport.

Loading Dock

The plans demonstrate that the loading dock will accommodate an 8.8 metre long Medium Rigid Vehicle. It is unclear from the plans whether the loading dock will accommodate a MRV that is 4.5 metres high as per the MRV defined in AS2890.2.

Driveway Access

The previous development was for 136-140 Walker Street. The proposed development now also incorporates 142 Walker. Therefore the property now has a frontage to Harnett Street.

Where there are multiple road frontages to a property, it is preferable to have the driveway access from the lower order/ less busy road. The reason for this is that it allows the drivers to more readily enter the road network, without having to wait for through traffic. More importantly, it is preferable from a pedestrian safety perspective. There are significantly more pedestrians located on Walker Street than there are in Harnett Street. It is preferable to reduce the interaction between motorists entering/ leaving the driveway to the site and the pedestrians walking on the footpath in Walker Street.

It is understood that there is a significant difference in levels between Walker Street and Harnett Street, which makes driveway access from Harnett Street difficult.

Disabled Parking

From the plans, it appears that three of the disabled parking spaces marked as 1.20, 2.20 and 3.20 only have access to the lift via a flight of stairs or by utilisation of the car ramps. This is not acceptable and these spaces should be moved such that they have level access to the lifts.

Queuing Length

From the plans, it appears that the roller shutter for the car park is located at approximately 10 metres from the boundary. AS 2890.1 requires queuing length for three vehicles for a car park of this size. There are high pedestrian and vehicle volumes in Walker Street. Therefore it would be unacceptable to have vehicles queuing onto the footpath.

Recommendations

Should Council resolve to approve this development application, 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. That the location of any gate, intercom or security access point for driveway entry to the car park should be located 18 metres within the boundary of the property, such that three queued vehicles can be contained wholly within the boundary of the property, as per AS2890.1.*
- 3. That the location of any gate, intercom or security access point for driveway entry to the loading dock should be located 9 metres within the boundary of the property,*

such that a Medium Rigid Vehicle can be contained wholly within the boundary of the property, as per AS2890.2.

- 4. That all aspects of the car park comply with the Australian Standard AS2890.1.*
- 5. That all aspects of the loading dock comply with the Australian Standard AS2890.2.*
- 6. That all aspects of parking spaces for people with disabilities comply with the Australian Standard AS 2890.6.*
- 7. That all disabled parking spaces have level access to the lifts.*
- 8. That all aspects of the bicycle parking and storage facilities comply with the Australian Standard AS2890.3.*
- 9. That a "Stop" sign and "Give Way to Pedestrians" sign be installed at the exit from the driveway onto Walker Street.*
- 10. That all vehicles, including removalist vehicles, delivery vehicles and garbage collection vehicles must enter and exit the site in a forwards direction.*
- 11. That the driveway to the site must have minimum sight lines for pedestrian safety as per Figure 3.3 of AS 2890.1.*
- 12. That the driveway in Walker Street be designed and installed as per Council's standard Vehicular Access Application and Council's Infrastructure Specification for Roadworks, Drainage and Miscellaneous Works.*
- 13. That there be no net loss of on-street parking in Walker Street.*
- 14. That a Construction Management Program be prepared and submitted to Council for approval by the North Sydney Traffic Committee prior to the issue of the Construction Certificate.*
- 15. That an Operational Transport Management Plan for heavy vehicles including garbage vehicles, retail and commercial deliveries and residential removalists to the site be prepared and submitted to Council for approval by the North Sydney Traffic Committee prior to the issue of an Occupation Certificate.*
- 16. That the developer upgrade the street lighting in Walker Street and Harnett Street, adjacent to the site to the relevant Australian Standard. The design is to be submitted to Council for approval by the Director of Engineering and Property Services prior to the issue of the Occupation Certificate.*

Planning Comment: The above-mentioned conditions could be imposed as conditions of consent should the development application be approved.

Engineering/Stormwater Drainage/Geotechnical

Council's Development Engineer (Z.Cvekovic) assessed the proposed development and advised that the proposed development can be supported subject to imposition of a number of standard and site specific conditions relating to damage bonds, excavation, dilapidation reports of adjoining properties, construction management plan, vehicular crossing requirements and stormwater management. These conditions of consent could be imposed should the development application be approved.

Heritage

Council's Conservation Planner (L Varley) has provided the following comments:

"1. Heritage Status and Significance

- The subject properties are not heritage items and are not located within a conservation area.*
- The properties are located in the vicinity of other items being: the Walker St sandstone retaining wall as well as properties 144, 146, 148 and 150 Walker St that form the Walker Street Houses Group. They are described in the database as; 'This group of late nineteenth century houses display the design of quality housing of the*

period, and are representative of the form of housing which was typically built in this part of North Sydney. They have aesthetic qualities which contribute to the attractive streetscape in this vicinity and relate to their siting and harbour views.'

- No 136 Walker St is a three storey Inter-War apartment building. Nos 140 and 142 Walker St are two-storey Federation style apartment buildings. No 142 has had its first level verandah enclosed.
- The site has consent (DA 195/08 and DA 316/10) for the demolition of the existing buildings at 136 and 140 Walker St and replacement with a mixed use development. This proposal significantly now includes the site at 142 Walker St. It has a landscaped open space addressing Walker St that will also provide a transition area between the development and the adjacent heritage items. The exposed rock outcrop on Walker St is also incorporated into the design.
- The Plane Tree outside the property on Walker Street is also to be retained in this new proposal.

2. Heritage Impact Assessment

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

50 *Development in the vicinity of heritage items*

Retaining Wall - The proposed works will have no impact upon the significance and curtilage of the heritage-listed wall.

Dwellings 144-150 Walker St - The proposed deep front setback of the development with its garden space on the lot of 142 Walker St will provide satisfactory curtilage for the Walker Street Houses. This garden setting will assist in forming a transition area between the podium of the approved development and the one and two-storey heritage items. The side setback of approximately 15m from 142 Walker St at the front of the site is acceptable. The lot boundary setback at the rear of the lot is acceptable as it adequately allows for the majority of the side and front façade of 142 Walker St to be clearly interpreted. The height of the tower on 142 Walker St is considered to be acceptable as it is located approximately 15m from the front building and has the garden forecourt. The lower height of the proposed podium level at RL 68.00 from RL 68.4 is supported as it will be lower than the ridge of the adjacent heritage item.

The relocation of the car park entry adjacent to 76 Berry St is supported as it will retain the Plane Tree on Walker Street. This will also assist in retaining the character of the streetscape setting for the heritage items. The exhaust vent for the car park is considered to be an unattractive streetscape element. It is recommended that it be relocated to the rear of the development to the north-west corner.

3. Conclusion

The proposal is considered to be satisfactory subject to the relocation of the car park exhaust vent. Subject to the resolution of this issue, the following conditions are recommended:

External Finishes and Materials - Landscaped Areas

- A6. *The colour and type of all external materials shall be generally be in accordance with the submitted schedule, dated 1 February 2011, labelled Drawings S10-0022 SK 10 – 14, all Issue C, prepared by Clouston Architects and received at Council on 9 February. 2011*

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, and is sympathetic to the adjacent heritage item)

Boundary Walls to Walker St

Boundary walls to be rock faced sandstone.

(Reason: To be sympathetic to the character of North Sydney and the nearby heritage items.)”

Planning Comment: The above-mentioned conditions could be imposed as conditions of consent should the development application be approved.

DESIGN EXCELLENCE PANEL

The application was referred to Council’s Design Excellence Panel at its meeting of 23 February 2011. The minutes are reproduced as follows:

“PROPERTY: 136-142 Walker Street, North Sydney

DATE: 23 February 2011 @ 4.10pm in the Supper Room

ATTENDANCE: Panel Members: Peter Webber; Philip Graus; Russell Olsson; David Chesterman.
Council staff: Geoff Mossemeneer (chair) George Youhanna
Proponents: Mark Spence (architect), Natasha Harris (planner), Chris Ryan (developer).

A mixed use application was previously before the Panel on 16 September 2010 for 136-140 Walker Street. A site inspection was carried out by the Panel and Council staff prior to the last meeting. A pre application proposal for the current proposal was before the Panel at its meeting of 24 November 2010. The Panel considered the bulk and size of the proposal to be generally acceptable. The Panel identified a number of issues to be addressed.

The development application has been lodged and will be determined by the Joint Regional Planning Panel due to the cost of works involved.

The Proposal:

The proposal includes demolition of existing structures, amalgamation of the three allotments to make one site and construction of a 22 storey building above basement car parking. Various commercial tenancies including a restaurant are proposed at the Ground and First Floor levels and a total of 193 units are proposed from levels 1 to 21. Associated landscaping, a through-site-link and roof level communal facilities including as a gym and swimming pool are also proposed.

The architect Mark Spence outlined the applicant’s response to the issues identified by the Panel at its last meeting and was available for questions and discussion with the Panel.

The applicant has addressed the issues with regard to retention of the rock outcrop; the

front landscaping; amenity of the western units adjoining the new sub station; setting back the balconies at the SE and SW corners to improve solar access to the commercial courtyard to the south; internal amenity of smaller apartments and the location of air conditioning units.

Panel Comments:

Comments on the proposal are under the headings of the ten design quality principles set out in SEPP 65 to cover any issues that arise.

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

Notwithstanding the additional floor space at the lower levels, the development is on a larger site and therefore the context, scale and built form of the majority of the proposal generally remain unchanged from the earlier approved developments on the site. The development has been designed having regard to its context and includes a large front setback to respect the proposed built form of adjacent development and transition in heights between the two adjoining approved buildings.

The Panel has concern about the transition and built form in the north east corner of the site. Too much stepping and excessive height near the boundary should be avoided. It is suggested that level 14 should be the same as level 15; Level 10, 11, 12 and 13 should be the same with the NE corner being modified so that the northern wall of apartment 9 is in line with apartment 10 and the balcony of apartment 9 be setback the same as apartment 10. These minor modifications would result in a more acceptable scale and built form.

Principle 4: Density

The Panel was advised that the dwelling mix was not in accordance with Council's DCP. There is a considerable increase in density from the last proposal with a higher number of one bedroom or smaller apartments (60%). The Panel had concern about apartments being too narrow and under the minimum area required under SEPP 65. The A3 plans provided were not accurate to scale so the exact apartment areas and dimensions were hard to identify. There are a number of apartments that do not satisfy Council's DCP requirements of 55m² for one bedroom and 80m² for two bedroom. It is noted that there are 4 apartments that are under the minimum requirement of 70m² for a two bedroom under RFDC. The minimum under the RFDC is an absolute minimum that allows for housing affordability. The RFDC actually outlines much larger apartment areas for well organised, functional and high quality apartment layouts (single aspect one bedroom apartments are 63.4m²) Apartment widths and layout are also issues under Principle 7 – amenity.

Principle 5: Resource, Energy and Water Efficiency

BASIX certificates for the proposal are submitted which outlines all energy and water saving commitments. Energy efficient appliances and water efficient fixtures are also proposed for each of the units. Rainwater will be collected for landscape irrigation and demolished building materials will be reused and recycled where possible.

Principle 6: Landscaping

The proposal includes large areas of landscaped gardens, for the benefit of both occupants and visitors to the site that will contribute significantly to the ambience of the streetscape.

Principle 7: Amenity

The Panel has concern about the widths of some apartments with regard to the living areas and bedrooms. Concern was raised with the layout of apartment 9 on levels 2 – 9

and the lack of solar access into the living areas. The width of the living room and the access to balconies on apartments A2.06 and A2.07 is a concern and the light well to the commercial space below needs to be reconsidered.

Further attention is needed to screening of corner balconies from excessive wind impacts. Balustrades and screening should be designed to allow for privacy, clothes drying etc.

Principle 8: Safety and Security

Overlooking of public and communal spaces has been provided: Balconies and living areas are oriented to look towards the street. The Panel suggested that 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. The Panel had concern about a single lift servicing nine storeys as the lift is likely to break down and require servicing in the future. Access to a second lift in the main core could be provided at a mid level or every two or three floors by linking the two cores with a suitable corridor. This could also permit alternate access to the main core for residents to access the roof top communal facilities as well as allowing a redesign of the layout of apartment 9. It was noted that it is intended that the through-link from Walker Street to Harnett Street would be secured after business hours, and that details of operation need to be addressed.

Principle 9: Social Dimensions

The proposal will result in significant upgrading of the area. The proposed development provides a through site link and public outdoor spaces will combine to make a positive contribution North Sydney. The proposal also provides for a roof top communal space including meeting room, gym and pool.

Principle 10: Aesthetics

The composition of building elements and use of modern materials and finishes selected should result in a high quality external appearance of the building.

Conclusion:

In summary, the Panel considered the bulk and size of the proposal to be generally acceptable. The Panel is of the view that the issues identified above could be resolved generally without compromising the scheme as presented. The panel believes that some replanning of the apartments is required to achieve reasonable amenity. This may result in a reduced number of apartments within the same building envelope."

Planning Comment: The SEPP 65 issues have been addressed by the DEP. The applicant responded to the DEP comments by submitting amended plans on 22 March 2011. The amendments are in two basic forms, firstly amendments to improve the internal amenity of certain specific units and secondly to review the massing of the north west corner.

Amendments to improve amenity.

Units A2.06 and A2.07 from Level 2 - Level 19.

Increase the width of the apartments to improve room sizes. For Units A2.06 and A2.07 move the light wells away from the unit frontage to improve relationship between inside and outside open space,

Unit A2.01 from Levels 2 - Level 13.

Redesign the apartment to improve privacy and reduce cross viewing whilst retaining access to northern sunlight.

Unit A2.09 from Levels 2 - Level 9.

Redesign apartment layout to open the dining / kitchen spaces more towards the view and light.

Unit B2.02 from Level 2 - Level 9.

Widen the studio to improve amenity

Amendments to Mass

Units A10.10 are modified on Level 10 - Level 13.

The elevations have been amended to reflect the above changes. The proposed amendments do not impact on shadowing of Century Plaza as the north west massing changes lie behind the north west corner of the main tower.

Cross connection Towers A and B

The Panel suggested that an internal connection between the Lift A core and the Lift B core would facilitate easier access for Lift B occupants to the rooftop communal spaces. This is indicated on Drawing 8.1 Level 5 Floor Plan.

External Referrals

Nil required

SUBMISSIONS

The application was notified to the Stanton and CBD precincts and surrounding owners and residents from 18/02/2010 to 4/03/2011. A total of 35 submissions were received with the main issues raised being summarised as follows:-

Name & Address of Submitter	Basis of Submissions
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Stanton Precinct	<ul style="list-style-type: none">• is outside NSC controls;• increases problems with traffic ingress and egress• does not adequately explain the impacts of increased traffic on pedestrian safety and on parking capacity• provides no setbacks from the adjacent buildings which reflect the three heritage listed properties• reduces harbour and district views as well as those out of the CBD• increased the number of apartments and decreased the ratio of parking
11/45 McLaren St	<ul style="list-style-type: none">• compromises pedestrian safety• Northern side should be set back further at level 10 than level 12 to reduce view impacts and be in keeping with development to the north• Increased parking numbers encourage more cars in area• Traffic already gridlocked• Support open space in front of No.142 as it will enhance heritage items
Restaurant 76 Berry Street Owners of 41 McLaren St	<ul style="list-style-type: none">• From ground floor restaurant• Overshadowing of public courtyard used by restaurant• View loss from McLaren St properties• Overshadowing of public space at 76 Berry Street• Precedence from approved non conforming scheme should not form basis to guide future development• Insufficient plans available online – no floor plans

Owners of 76 Berry Street	<ul style="list-style-type: none"> • View loss from McLaren St properties • Overshadowing of public space at 76 Berry Street • Precedence from approved non conforming scheme should not form basis to guide future development
1/45 McLaren St	<ul style="list-style-type: none"> • Insufficient plans available online – no floor plans • Model is misleading as Walker Street incline is more severe • Traffic increase and congestion
702/37-39 McLaren St	<ul style="list-style-type: none"> • Increased density in mixed use is making area less residential friendly • On street parking already problem in area, insufficient parking provided for number of apartments • Increased traffic and congestion
225 Ernest St Cammeray	<ul style="list-style-type: none"> • Insufficient parking provided for number of apartments • Increased traffic and congestion
3 identical letters from 1102/37-39 McLaren St	<ul style="list-style-type: none"> • Development not appropriate and does not enhance community • Insufficient parking provided for number of apartments • Increased traffic and congestion • Overshadowing of eastern side of Walkers Street and Century Plaza • Loss of views • Does not promote character of area • Not compatible with neighbouring development • Impact on heritage buildings • Increased demand for on street parking • Precedence from approved non conforming scheme should not form basis to guide future development
1004/37-39 McLaren St	<ul style="list-style-type: none"> • Increased traffic congestion • Heavy construction vehicles • Local resident and school children safety • Extension onto No.142 creates “palisade” down Walker Street • Exceeds height control • Loss of views • Insufficient gaps between properties • Affect the general amenity of the area
704/37-39 McLaren Street	<ul style="list-style-type: none"> • Increased traffic congestion • Heavy construction vehicles • Local resident and school children safety • Extension onto No.142 creates “palisade” down Walker Street • Exceeds height control • Loss of views • Insufficient gaps between properties • Affect the general amenity of the area
333/3 Holtermann St crows Nest	<ul style="list-style-type: none"> • Increased traffic congestion • Heavy construction vehicles • Local resident and school children safety • Extension onto No.142 creates “palisade” down Walker Street • Exceeds height control • Loss of views • Insufficient gaps between properties • Affect the general amenity of the area
21 pro form letters from residents and owners of 37-39 McLaren Street	<ul style="list-style-type: none"> • It will create much increased traffic congestion on already busy and narrow Walker and McLaren Streets as well as local intersections. • Congestion will be further exacerbated by heavy construction vehicles for a considerable period of time affecting traffic and access to and on Walker and McLaren Streets. • This increase in traffic congestion will potentially affect local pedestrian and school children safety.

- The development will adversely affect the availability of off street parking in the area due to increased number of apartments relative to internal car parks '
- The extension into lot 142 will create a continuous "palisade" down Walker Street between Berry and McLaren Streets in conjunction with other approved developments.
- The extension into lot 142 appears to exceed the current RL height limit for that block.
- The extension into lot 142 will impinge on the existing views of local residents outward from the North Sydney CBD.
- There appears to be an insufficient gap with adjoining properties.
- The development will affect the general amenity of the local area.

Amended plans have been submitted to Council during the assessment period in response to the Design Excellence Panel's comments. The amendments are in two basic forms, firstly amendments to improve the internal amenity of certain specific units and secondly to review the massing of the north west corner.

Section 4.2 of the North Sydney Development Control Plan (NSDCP) 2002 provides that

'if, in Council's opinion, the amendments are considered likely to have a greater adverse effect on or a different adverse effect on adjoining or neighbouring land, then Council will renotify:

- *Those persons who made submissions on the original application;*
- *Any other persons who own adjoining or neighbouring land and in the Council's opinion may be adversely affected by the amended application.*

Where the amendments in the Council's opinion do not increase or lessen the adverse affect on adjoining or neighbouring land, Council may choose not to notify or advertise the amendments.

Where the amendments arise from a Council-sponsored mediation, and it is considered that the amendments reflect the outcome of the mediation and do not otherwise increase the application's environmental impact, the amendments will not be notified or advertised.'

In this instance, it is considered that the amendments would be unlikely to materially affect adjoining or neighbouring land compared to the originally notified development and as such, re-notification is not required. The amended plans have been assessed with regard to the submissions received.

CONSIDERATION

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

The application has been assessed against the relevant numeric controls in NSLEP 2001 and DCP 2002 as indicated in the following compliance tables. More detailed comments with regard to the major issues are provided later in this report.

Compliance Table

STATUTORY CONTROL – North Sydney Local Environmental Plan 2001				
North Sydney Centre	Existing	Proposed	Control	Complies
Height (Cl. 28D(2)(a))	RL 72.53m AHD	RL 132.5m AHD	RL 195m AHD	YES
Overshadowing of land (Cl. 28D(2)(b))	-	YES	Variation permitted	NO
Overshadowing of dwellings (Cl. 28D(2)(d))	-	YES	Variation permitted	NO
Minimum lot size (Cl. 28D(2)(e))	1740.2	1740.2	1000 min.	YES
Mixed Use Zone				
Building Height Plane (Cl.30)				
<ul style="list-style-type: none"> East Elevation 	N/A	N/A	Court of Appeal concluded that the control does not apply to this site. (Castle Constructions v North Sydney Council (2007) NSWCA 164) The control is a 45° height plane from 3.5m above the centre line of Walker Street. Majority of the tower element exceeds this building height plane.	N/A
Floor Space (Cl. 31) (max)	N/A	0.53:1	Within range of 3:1 to 4:1 for No.142 and a minimum of 0.5:1 for No.136-140	NO*

*SEPP 1 objection lodged.

DCP 2002 Compliance Table

DEVELOPMENT CONTROL PLAN 2002		
	<i>complies</i>	<i>Comments</i>
6.1 Function		
Diversity of activities, facilities, opportunities and services	Yes	Different sized commercial units are provided. There is opportunity for a café at the ground floor level. Both outdoor (roof terrace) and indoor (gymnasium / meeting room) community spaces

		<p>are provided.</p> <p>The total floor area for communal space is 442m² and complies with the requirement 1m² per bedroom (as there are 308 bedrooms proposed). All areas will have access to light and ventilation and are not located at basement level. Although less than 75% of the space is provided as indoor space, the mix of communal spaces is considered appropriate due to the high amenity of the proposed roof terrace it is expected that this area will have the highest utility and demand for use by the residents. All common areas (including the principal entrance to the building) are accessible by all persons.</p>
Mixed residential population	Yes	Apartment mix will be: 18% studios; 32% 1 Beds; 41% 2 Beds; and 9% 3+ Beds. The scheme is consistent with the dwelling mix under the controls. Adaptable housing can be dealt with as a condition of consent.
Maximum use of public transport	Yes	No non-residential parking is proposed. Bicycle parking is provided in accordance with the controls. The proposal is consistent with the controls seeking to reduce long stay commuter parking and non residential parking.
6.2 Environmental Criteria		
Clean Air	Yes	A street tree is proposed to be planted in front of the site and the proposal complies with DCP requirements for motorcycle and bicycle parking.
Noise	Yes	All plant and machinery will be enclosed and away from residences.
Acoustic Privacy	Yes	In accordance with the controls, the amended layouts have located bedrooms away from service areas, foyers and all mechanical equipment. As with the conditions of the already approved scheme, a certificate from an Acoustic Engineer will be required with the Construction Certificate certifying that noise levels will comply with Council controls.
Visual Privacy	Yes	To ensure the privacy of the adjoining premises to the north, the approved scheme included privacy screens to the balconies. Those features have been translated to the new scheme. There are no other changes in the new scheme which give rise to any privacy concerns.
Wind Speed	Yes	Wind turbulence should be unchanged from the approved scheme as the building generally retains the same form and has articulated fenestration within its facades.
Reflected light	Yes	Proposed materials and external finishes generally remain the same or similar to that already approved. As with the conditions of the approved development, the proposal shall comply with standard conditions requiring that the reflectivity index does not exceed 20% and that roofing materials are of low-glare properties.
Artificial light	Yes	No rooftop advertising or floodlighting of facades is proposed. Entrances will be well lit but are far enough from adjoining premises that no adverse amenity impacts would arise.
Awnings	Yes	The entrance is setback from the street and an

		awning is not appropriate in this case as there is no awning to the south or the north.
Solar access	Yes	Solar access to adjoining sites is improved as compared to the existing approved scheme. Sun study diagrams demonstrate that the proposed modifications improve solar access to the Century Plaza building, as well as a small net improvement in solar access to the courtyard of the adjoining commercial premises at 76 Berry Street. Floor plans have been designed to minimise south facing units as much as is possible.
Views	Yes	A view analysis has been undertaken with regard to 37-39 McLaren Street. See detailed comments below. Views are not protected by the controls or the objectives for the North Sydney Centre.
6.3 Quality built form		
Context	Yes	The proposed new scheme has been designed to respond to the changing context of the site: in particular, a likely redevelopment of the adjoining site to the rear as an electricity substation.
Public spaces and facilities	Yes	The increased front setback provides a wider footpath and more opportunity for a range of activities in accordance with the controls.
Skyline	Yes	The scheme includes the provision of a roof terrace but the overall height of the roof does not alter. As required by the control, all plant and roof access will be incorporated into a single structure. That structure is similar in form to the already approved structure but is marginally enlarged to allow for lift access for all persons to the roof. As the lift is centrally located and part of the main roof structure, no shadowing or visual impacts arise.
Through-site pedestrian links	Yes	It is proposed to retain a through site link as part of the scheme. Stairs and a lift are included as part of the thru site link.
Streetscape	Yes	Commercial uses are retained at the ground level; floor level alignment remains and clear glazing is retained to the front façade at street level. The restaurant and outdoor seating area will add interest to the streetscape.
Subdivision	Yes	The proposal incorporates consolidation of lots in accordance with the subdivision / amalgamation controls.
Setbacks	Yes	Setbacks of the tower are generally consistent with the earlier approved scheme. The setbacks of the new northern section of the building have been designed having regard to adjacent development. A nil side setback is an appropriate solution and would be expected given that the adjoining development will present a blank façade and will also have a nil setback with the boundary. The front setback of this section has been designed to take into account the form of the adjacent approved development and to respect the heritage values of that site.
Entrances and exits	Yes	All main entrances remain visible from the street, accessible for all persons, and unobstructed by landscaping in accordance with the controls. All

		entrance doors and circulation spaces have been designed to comply with AS142B.2 as required.
Street frontage podium	Yes	The control requires compliance with the character statement. Refer to discussion under the North Sydney CBD Character Statement.
Building design	Yes	<p>The ground floor will have a floor to ceiling height of 4.3 metres, more than complying with DCP requirements of 3.6 metres. All upper floors will have a floor to ceiling height of 2.7 metres, also in compliance with the controls. The first floor will have a ceiling height of 3.0 metres which is considered adequate for the commercial and residential spaces on this level. In accordance with the controls, the podium has been setback to provide public space at the ground level.</p> <p>The building façade incorporates a range of glazed and solid elements, balconies, vertical divisions, stepped and varied massing as well as a wide variety of materials and finishes and façade elements all of which ensure a high quality building design which complements the surrounding urban character.</p>
Nighttime appearance	Yes	Satisfactory

6.4 Quality urban environment

High quality residential accommodation	Yes	<p>In terms of minimum unit sizes, the proposal generally complies with Council controls. The new proposal results in a much greater mix of unit sizes to meet the wide range of family types and individual needs.</p> <p>Balconies have been designed to have access to sunlight for 2 hours a day in accordance with DCP controls.</p> <p>Lobbies on each floor have a width of 2m in accordance with the controls and narrower corridors are limited to no more than 6.5m in length so that no significant amenity impacts arise. No more than 9 units are accessible from one lobby in accordance with the controls.</p> <p>All habitable spaces are less than 10 times the area of the window by which they are serviced. Generally, the maximum depth of a habitable room from a window is less than 10m in accordance with the controls. The areas that exceed the control are limited to circulation spaces, and in some cases a small desk / study area. Primary habitable spaces such as living rooms and bedrooms are all less than 10m in depth.</p> <p>Cross ventilation will be provided to 64% of units. Ceiling fans will be provided to all units which do not benefit from cross-ventilation.</p> <p>Glazing to the eastern and western facades is generally similar to previous schemes and shaded by adjoining balconies.</p> <p>All apartments exceed 4m in width, Most of the proposed single aspect apartments are limited in depth to 8m from a window.</p>
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		<p>However, a few apartments have depths of up to 13m. In those cases, the areas furthest from the windows are generally limited to an entrance hallway, storage cupboard and possible small study / desk area.</p> <p>Primary living spaces and bedrooms are all located in close proximity to windows and openings.</p> <p>Access to residential lifts and parking will be by security access only.</p> <p>Light wells are provided to only one of the proposed 193 units.</p> <p>All balconies achieve a minimum depth of 2 metres and an area of at least 8m² in accordance with the controls. The balconies have been integrated into the overall architectural form of the building, and are incorporated within the building envelope.</p>
Accessibility	Yes	The internal design incorporates continuous paths of travel and will comply with all other aspects of access controls. Habitable units, lift design etc can be conditioned to comply.
Safety and security	Yes	<p>The proposal includes the following safety design features:</p> <ul style="list-style-type: none"> • Access to the parking area will be secure. • All open spaces, entrances, pedestrian areas and lift lobbies will be well lit and all pedestrian routes clearly defined with direct sightlines. • The through site link and access to the rear laneway will be overlooked by the commercial spaces and restaurant • No security grilles are proposed. • Residential balconies will have a good view of the rear laneway to improve security to this area. • Easily identifiable street numbering will be provided at the Walker Street pedestrian entrance.
Car parking	Yes	The proposed development generates a requirement for 150 car parking spaces. 140 spaces are provided in accordance with the controls. All parking will be provided within basement levels. As required, no visitor parking is proposed and the accessible spaces will be designated as common property. Refer to traffic comments
Bicycle storage	Yes	A bicycle storage room is provided in the ground floor level for visitors and commercial users. There will also be some space for residential bicycles in this room. In addition, secure storage areas for most units are provided in the basement and will be large enough to incorporate bicycle storage. The proposal will therefore easily include bicycle parking at the rates required by the controls.
Vehicular access	Yes	Vehicular access to the site is relocated to the southern end of walker Street the approved scheme. Refer to traffic comments.
Garbage Storage	Yes	Garbage storage areas are incorporated in the ground floor loading area and may require private contractors as the pick up area is within the building.
Commercial garbage storage	Yes	Can be conditioned

Site facilities		Storage is incorporated into the units and within the basement levels. All other approved facilities such as clothes dryers provided within units, mailboxes incorporated into foyer design etc have been incorporated into the current design.
6.5 Efficient use and management of resources		
Energy efficiency	Yes	A Basix certificate is submitted with the application and therefore meets energy efficiency requirements.
Passive solar design	Yes	The overall orientation of the building remains the same as the already approved development. The new floor plans for all the residential floors have been designed to maximise solar access to primary living spaces and balconies as far as possible. Shading to windows is provided in accordance with the requirements of BASIX, as is thermal mass for walls and ceilings.
Waste management	Yes	The proposed waste management arrangements can be conditioned to comply with Council controls.
Stormwater and water management	Yes	Stormwater management will be similar to the approved proposal requiring a detailed drainage management plan prior to the issue of a Construction Certificate.

NORTH SYDNEY LEP 2001

The proposal is permissible with consent in the Mixed Use zone.

North Sydney Centre

The site forms part of the North Sydney Centre as identified on Sheet 2 of the map marked "North Sydney LEP 2001 (Amendment No. 9) North Sydney Centre". Division 3 of the LEP applies to the North Sydney Centre. Clause 28A of the LEP provides that Division 3 prevails over all other provisions of the LEP, to the event of any inconsistency, except for Part 4 of the LEP which deals with heritage provisions. It is because of Clause 28A that the Building Height Plane controls in Clause 30 (in Division 5) of the LEP do not apply to the proposed development, as per the decision of the Court of Appeal (*Castle Constructions v North Sydney Council* (2007) NSWCA 164)

CLAUSE 28B - NORTH SYDNEY CENTRE OBJECTIVES

The proposed development responds to the specific objectives for the North Sydney Centre as described in the following table.

OBJECTIVE	RESPONSE
(a) to maintain the status of the North Sydney Centre as a major commercial centre within Australia.	The proposal results in an increase to the commercial floor space within the Centre, promoting its commercial viability. However, the commercial floor space is not within the range required. A SEPP No. 1 objection has been submitted in relation to the non-compliance. A Planning Proposal to reduce the required non residential floor space ratio for most of this site was recently gazetted.
(b) to require arrangements for railway infrastructure to be in place before additional non-residential gross floor area is permissible in relation to any proposed development in the North Sydney Centre.	Council has instigated measures with State Rail to ensure that North Sydney Railway Station is upgraded. The applicant has entered into a developer commitment deed.
(c) to ensure that railway infrastructure, and in particular North Sydney Station, will enable and encourage a greater percentage of people to access the North Sydney Centre by public transport than by private transport and will: (i) be convenient and accessible, and (ii) enable a reduction in dependence on private car travel to the North Sydney Centre, and (iii) be adequate to achieve no increase in car parking, and (iv) have the capacity to service the demands generated by development in the North Sydney Centre.	Council has instigated measures with State Rail to ensure that North Sydney Railway Station is upgraded to improve patronage.
(d) to discourage use of motor vehicles in the North Sydney Centre	The proposed development provides car parking spaces for residents in accordance with the DCP requirement. No non residential parking is proposed.
(e) to encourage access to and within the North Sydney Centre for pedestrians and cyclists.	It is not proposed to obstruct any existing pedestrian or cycle routes through the Centre.
(f) to allow for 250,000m ² (maximum) non residential gross floor area in addition to the estimated existing (as at the commencement of this Division) 700,000m ² non-residential gross floor area.	The proposed development will result in an increase in non-residential gross floor area well within the additional 250,000m ² expected.
(g) to prohibit further residential development in the core of the North Sydney Centre.	The proposed development is not located within the core of the North Sydney Centre (as identified by a "commercial" zoning).
(h) to encourage the provision of high-grade commercial space with a floor plate, where appropriate, of at least 1000m ² .	The proposed commercial floor plate is smaller than the required 1000m ² threshold. However, the site is zoned Mixed Use where the dominant use is generally residential.
(i) to achieve a variety of commercial space	The commercial components of the proposed building have been designed to be flexible in use.
(j) to encourage the refurbishment, recycling and rebuilding of older buildings.	The existing buildings on the site are not identified as having heritage significance.
(k) to encourage a diverse range of employment, living, recreation and social opportunities.	The proposed development provides flexible commercial spaces and a range of apartment types.
(l) to promote high quality urban environments and residential amenity	As per the findings of the Design Excellence Panel, minor design changes were required to ensure a quality design outcome. These changes potentially impact on the amenity of future residents within the development. The amenity of residents in parts of Century Plaza will be impacted by additional overshadowing. The extent of overshadowing

OBJECTIVE	RESPONSE
	associated with a building around 30m higher than that which is proposed has previously been held by the Land and Environment Court to have an acceptable impact on residential amenity.
(m) to provide significant public benefits such as open space, through-site linkages, childcare and the like.	A through-site link is proposed between Walker Street and Harnett Street.
(n) to improve accessibility within and to the North Sydney Centre.	The building will be accessible to all people.
(o) to protect the amenity of residential zones and existing open space within and nearby the North Sydney Centre	The proposal will impact on north-west facing bedrooms and studies in Century Plaza, which is zoned Residential.
(p) to prevent any net increase in overshadowing of any land-zoned residential or public open space or identified as a special area.	The proposal will result in increased overshadowing of land zoned Residential.
(q) to maintain areas of open space on private land and promote the preservation of existing setbacks and landscaped areas, and protect the amenity of these areas.	No existing landscaped area on the site is to be retained except for part of the rock outcrop adjacent to Walker Street in the south-eastern corner of the site. The adjoining landscaped terrace to the south (in the People's Telecom Building) will have its amenity reduced by increased overshadowing, especially at lunchtime, by obstruction of outlook.

CLAUSE 28C - RAILWAY INFRASTRUCTURE

Subclause 28C(2) to the NSLEP states that:

“... Consent must not be granted to the carrying out of development on any land in the North Sydney Centre if the total non-residential gross floor area of buildings on the land after the development is carried out would exceed the total non-residential gross floor area of buildings lawfully existing on the land immediately before the development is carried out”.

The proposed development has a total additional non-residential gross floor area of 921m² and therefore does not comply. However, Subclause 28C(3) states:

“Despite subclause (2) but subject to subclause (5), consent may be granted to the carrying out of development on any land in the North Sydney Centre that would result in an increase in the total non-residential gross floor area of buildings lawfully existing on the land, but only if the Director-General has first certified, in writing to the consent authority, that satisfactory arrangements have been made for railway infrastructure that will provide for the increased demand for railway infrastructure generated by the development”.

The Applicant has submitted a signed commitment deed with bank guarantee. The JRPP is unable to approve the proposal without the certification of the Director General that satisfactory arrangements have been made. Should the Panel favour the application a commitment deed will need to be certified by the Director General before consent can be granted.

CLAUSE 28D - BUILDING HEIGHT AND MASSING

Objectives

The proposed development is assessed below in relation to the objectives set out in subclause 28D(1) of the LEP as follows:

- (a) *to achieve a transition of building heights generally from 100 Miller Street (Northpoint) and 79 - 81 Berry Street (being the location of the tallest buildings) stepping down towards the boundaries of the North Sydney Centre.*

Whilst the proposal is opposite land to the east zoned for residential development that has a maximum height control of 12m and is proximate to a mixed use zone (north of No. 142) having a height control of 16m, the residential zoned land and the mixed use zoned land (north of No. 142) lie outside of the North Sydney Centre. Also, the north-eastern extremity of the North Sydney Centre extends beyond McLaren Street a significant distance further to the north. In May 2008, Commissioner Bly found that the controls anticipated a stepping down from the tallest buildings in the North Sydney Centre towards the boundaries of the Centre, that there is no indicated height limit on Sheet 2 of the map for this site, that the building height plane in Clause 30 does not apply to this site, and that the controls in the LEP are indicative of an abrupt change in building heights at the boundary of the North Sydney Centre (and not a stepping down transition to properties outside of the Centre). Commissioner Bly also found that a building with a height of about RL 130m "might be acceptable". The proposal has a maximum height of RL 132.5m. The height of the building at No.142 is RL 104. On this basis the proposal satisfies this objective.

- (b) *to promote a height and massing that has no adverse impact on land in the public open space zone or land identified as a special area on Sheet 5 of the map marked "North Sydney Local Environmental Plan 2001 (Amendment No. 9) - North Sydney Centre" or on heritage items.*

The proposed development will not result in any overshadowing of public space zones or special areas. It will cause shadow over the forecourt of 79-81 Berry Street during morning periods in mid winter. This area is a deferred area under NSLEP 2001. It is proposed to be zoned commercial with the northernmost part of the property identified as a special area with shadow impacts limited between 12 noon and 2.00pm. The proposed building will not overshadow the proposed special area within these hours.

In relation to the heritage items to the north of the site on No's 144-150 Walker Street, the Land and Environment Court has found that a building with a height of around RL 130m (as now proposed) would not have an adverse impact on the heritage items sufficient to warrant refusal of the application. Council's Conservation Planner has raised no concerns on heritage grounds.

- (c) *to minimise overshadowing of land in the residential and public open space zones or identified as a special area on Sheet 5 of the map marked "North Sydney Local Environmental Plan 2001 (Amendment No. 9) - North Sydney Centre".*

No public open space zones or “special areas” will be overshadowed by the proposed development (see above). Residential zoned land to the south-east (upon which No. 173 Walker Street and No.171 Walker Street, known as Century Plaza, is erected) will be overshadowed by the proposed development.

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

The proposal is separated from residential development to the east by Walker Street. Impacts on the privacy of future residents of No.144-150 Walker Street will be unlikely to arise as the proposal incorporates screening on the balconies along the northern site boundary.

There is no issue with regards to privacy of residents to the west or south.

On the above basis this objective can be satisfied.

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

The scale and massing is similar to the previous approved building which satisfied this objective. The additional building area over No.142 is lower and setback further from the street.

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

The subject site now comprises the consolidation of 3 allotments into a site which exceeds the minimum lot size of 1,000m².

Development Controls

Subclause 28D(2) sets out the building height and massing controls for proposed development within the North Sydney Centre. SEPP No. 1 cannot be used to vary the controls in (a), (b) or (c) below, but can be used to vary the control in (d).

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

The proposed building will have a maximum RL of 132.5m AHD and therefore complies with this control.

(b) There is no net increase in overshadowing of any land between the hours of 9am and 3pm, 21 June outside the composite shadow area, as shown on the map marked “North Sydney Local Environmental Plan 2001 (Amendment No. 9)- North Sydney Centre” (except land that is in the Road or Railways Zone).

Subclause (b) refers to “any land” outside the composite shadow area whilst subclause (d) (see below) refers to “any dwelling” within the composite shadow area. No’s 173 and 171 (Century Plaza) both comprise land partly outside the composite shadow area, although No. 173 only to a very minor and insignificant extent. There will be an increase in over-shadowing of both these properties within the nominated hours.

In relation to No. 171 (Century Plaza), almost all of that part of the land outside the composite shadow area will be overshadowed by the proposal at 3.00pm in mid-winter. Despite this non-compliance, sub-clause 28D(4) enables Council to approve a variation to subclause 28D(b).

Subclause 28D(4) states that a consent authority may make a determination to vary, to a minor extent only, the operation of subclauses (2) (b) or (c), or both, in respect of a particular development application, but only if:

- (a) it is satisfied that the variation is justified due to the merits of the development application and the public benefit to be gained, and
- (b) it is satisfied that any increase in overshadowing will not reduce the amenity of any land, and
- (c) in relation to a variation of the operation of subclause (2) (b), the variation will result in not more than 2 hours net increase in overshadowing of land referred to in that paragraph between the hours of 9am and 3pm, 21 June, and
- (d) in relation to a variation of the operation of subclause (2)(c), the variation will result in not more than 15 minutes net increase in overshadowing of land referred to in that paragraph between the hours of 10am and 12 noon, and no net increase between the hours of 12 noon and 2pm on any day.

The proposed development will not result in any overshadowing of the spaces as specified in Clause 28(2)(c). The extent of overshadowing of land outside the composite shadow area will be limited to about 1.30pm to 3pm. This period of time is less than the maximum permitted by subclause 28D(4)(c). In relation to (a) and (b), these requirements were addressed as follows by Commissioner Bly in his May 2008 decision:-

“The test associated with the merits of the development application raised by (a) above raises the question of whether the proposal is, apart from overshadowing, generally satisfactory and this question is to be answered by reference to the other issues in the case. As for the public benefit test, I am satisfied that this would be met by the proposal itself together with the applicant’s agreement/offer to provide certain benefits. These matters include the provision of commercial floor areas and housing, contributions under s94 of the Environmental Planning and Assessment Act 1979 and other contributions towards the upgrading of the North Sydney railway station and the provision of a pedestrian link through the site. As for the question of reduction of amenity of land in (4)(b) above (leaving aside for the moment the question of amenity impacts on the dwellings (Type D dwellings) in the Century Plaza building) I accept that that part [of] the Century Plaza building’s site will be overshadowed. However this was not raised as a matter of concern and I accept that amenity will not be relevantly reduced. In the circumstances I am satisfied that the variation of clause 28D(2)(b) is justified.”

If the Court was satisfied that these tests were complied with in the case of a building 30m higher than what is now proposed, it can reasonably be concluded that the Court would find that the current proposal also satisfies these tests. My assessment of this

application results in a similar conclusion that these tests are satisfied. No issue is thus raised with (a) and (b) in Clause 28D(4).

- (c) *There is no net increase in overshadowing, between 10am and 2pm, at any time of the year, of any land this is within the North Sydney Centre and is within the public open space zone or within a special area as shown on Sheet 5 of the map marked "North Sydney Local Environmental Plan 2001 (Amendment No 9) - North Sydney Centre",*

The proposed development will not overshadow any open space zone nor identified special areas.

- (d) *There will be no increase in overshadowing that would reduce the amenity of any dwelling that is outside the North Sydney Centre and falls within the composite shadow area referred to in paragraph (b), and*

All dwellings in No. 173 and those dwellings in the western half of No. 171 Walker Street are outside of the North Sydney Centre and within the composite shadow areas.

A significant number of dwellings in the western part of Century Plaza will generally be affected within a period of around 2.25 hours between 12.45pm and 3.00pm during the winter solstice with the affected areas being mainly bedrooms (some of which are used as sunrooms or reading rooms and studies), terraces and bathrooms.

Dwellings on the lower levels are more affected than dwellings on the upper levels. Impacts will generally extend for 60 to 90 minutes on any individual dwelling. At 12.45pm, only units in the western corner of Century Plaza up to the 6th level are affected by overshadowing for the proposed development. At 1.30pm, units up to the 12th level are impacted whilst at 2.30pm, units up to the 14th level are affected. At 3.00pm, units up to the 16th level are impacted. Because of this increased overshadowing, the amenity of each of the affected dwellings could be reduced, contrary to the requirements of sub-clause (d).

Once a conclusion is reached that the amenity of a dwelling is reduced, sub-clause (d) requires that there be no increase in overshadowing which reduces amenity. The proposal fails this test. However, Clause 28D(2)(d) is a development standard and variation to the standard is possible subject to an SEPP No. 1 objection. The submitted SEPP1 is a revised version of the SEPP 1 objection relied upon in the appeal before Commissioner Bly. In that case, the Court concluded that the SEPP No. 1 objection was not well-founded and that it should fail. However, at para [67], Commissioner Bly stated:-

"67 However, having considered the SEPP 1 objection together with the evidence provided by Dr King and Mr. Byrnes, I believe that if the development were to be modified in accordance with the notional arc controls I could conclude that it is well founded and could be upheld. Similarly, I could accept that the underlying objective of the development standard to ensure that the existing dwellings should not have their amenity materially affected by further overshadowing is met. In reaching this conclusion I accept that amenity includes more than just solar access. Hence, taking into account the outlook available from the Type D dwellings, the nature and use of the affected

rooms and terraces, the reduction and remaining availability of solar access, that is of concern to a number of residents, this does not indicate a material affectation of this amenity.”

Taking into account the overshadowing impacts associated with the proposal, the proposal's compliance with the “notional arc” height controls in the DCP, the extent of solar access to be retained, the high level of amenity of the affected units associated with their Harbour views, and that most of the affected rooms are bedrooms, I consider the Applicant's SEPP 1 objection is well-founded.

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

The subject site is 1740.2m² in area.

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

The proposal now incorporates No.142 Walker Street which would have previously been isolated. This control has been met.

Building Design and Public Benefits

Subclause 28D(5) requires the consent authority to consider the following matters:-

- (a) *the impact of the proposed development in terms of scale, form and massing within the context of the locality and landform, the natural environment and neighbouring development and in particular lower scale development adjoining the North Sydney Centre, and*
- (b) *whether the proposed development provides public benefits such as open space, through-site linkages, community facilities and the like, and*
- (c) *whether the proposed development preserves important view lines and vistas, and*
- (d) *whether the proposed development enhances the streetscape in terms of scale, materials and external treatments, and provides variety and interest.*

In relation to (a), it is considered that these requirements are satisfied.

In relation to (b), Both outdoor (roof terrace) and indoor (gymnasium / meeting room) community spaces are provided, as well as a through-site link connecting Harnett Street and Walker Street. The “community” rooms are, however, intended only for residents of the development and are thus “communal” spaces rather than “community” spaces.

In relation to (c), the proposal does not impact on view lines.

In relation to (d), the Applicant has responded to the requirements of Council's Design Excellence Panel and the proposal is considered to be satisfactory .

CLAUSE 29 - BUILDING HEIGHT

Clause 29 of NSLEP forms part of Division 5 of the instrument, and contains objectives and refers to controls on building height in the Mixed Use zone. The control relates to the “height shown on the map”. The relevant map contains no height control for the subject site.

The Court of Appeal has held that the controls in Division 5 relating to the Mixed Use zone do not apply to the site and that the provisions of Division 3 (which relate to the North Sydney Centre) prevail to the extent of any inconsistency.

Mixed Use Zone

CLAUSE 31 – FLOOR SPACE RATIO

Clause 31 establishes floor space objectives and controls for land in the Mixed Use zone. For the subject site, the LEP map sets a non-residential FSR range of 3:1 to 4:1 for No.142 and a recent Planning Proposal amended the minimum non residential FSR threshold to 0.5:1 for No136-140. On a proportion basis the total minimum FSR would be 1.34:1.

The proposed FSR of the non-residential component of the building is 0.53:1 and therefore does not comply with the controls. However, the proposal is consistent with the recommendations of North Sydney Residential Strategy and consistent with the proposed controls to be incorporated into the future draft comprehensive LEP for North Sydney (Draft NSLEP 2009). Therefore, although the proposed scheme does not comply with current controls, it complies with the likely future controls.

A SEPP 1 objection was submitted with this Development Application. Council has supported the planning proposal for No136-140 and it has been gazetted. The minimum non residential FSR for the adjoining properties at No144-150 is 0.5:1. The Draft NSLEP 2009 proposes No.142 to have a minimum non residential FSR of 0.5:1. The draft LEP exhibition ended on 31 March 2011 and there were no submissions objecting to the reduced minimum FSR. It is more than likely that the change to the LEP will proceed and the proposal would soon be fully consistent with the modified controls. Compliance with the standard is unnecessary and unreasonable. The SEPP 1 objection is considered to be well founded and can be supported.

CLAUSE 32 – DESIGN OF DEVELOPMENT

Clause 32 of NSLEP 2001 establishes design objectives and controls for development in the Mixed Use zone.

The proposal is assessed below against the design objectives:-

(a) *promote development containing a mix of residential and non-residential uses*

The proposal satisfies this requirement.

(b) *protect the amenity and safety of residents*

The proposal satisfies this requirement.

- (c) *concentrate the non-residential component of the development in the Mixed Use zone at the lower levels of a building*

The proposal satisfies this design objective.

Design Controls

The proposal satisfies the design controls.

Clause 39 - Excavation of Land

The site will be excavated to accommodate the proposed basement car park. Clause 39 provides that excavation must be consistent with the objectives of the clause:

- a) Retain existing vegetation and allow for new substantial vegetation and trees, and*
- b) Minimise the adverse effects of excavation on the amenity of neighbouring properties, and*
- c) Minimise excavation and site disturbance so as to retain natural landforms, natural rock faces, sandstone retaining walls and the like and to retain natural runoff patterns and underground water table and flow patterns, and*
- d) Ensure the structural integrity of adjoining properties.*

There are no significant trees or vegetation on the site itself however a Cheese Tree which is local to the area is located on Council land at the front of the property towards the south east corner of the site. As with the already approved development, removal of all existing trees on the site is proposed, including the mature Cheese Tree located at the street frontage of the site on the grounds of its potential instability and impracticality of its retention.

The excavation for the basement will occur over most of the site however, with the normal procedures in place during construction, the proposal will have no impact on the amenity or structural integrity of adjoining buildings, This can be confirmed by a Geotechnical Report and dilapidation assessment prior to the issue of a Construction Certificate, and as per conditions similar to those imposed on the existing approval. There is a natural sandstone outcrop on the south-east corner of the site which is to be preserved and integrated into the front facade and entrance of the building. Runoff and underground water flows will not be adversely affected. The proposed excavation is therefore in accordance with the LEP requirements.

Clause 50 - Development in the vicinity of Heritage Items

The subject site does not include any heritage items, nor is it part of a conservation area. It is, however, within the vicinity of heritage items, being the two storey terrace houses at No.144-150 Walker Street.

Clause 50 of the LEP requires that consideration must be given to the likely effect of the proposed development on the heritage significance of the item. Retaining Wall - The proposed works will have no impact upon the significance and curtilage of the heritage-listed wall.

Dwellings 144-150 Walker St - The proposed deep front setback of the development with its garden space on the lot of 142 Walker St will provide satisfactory curtilage for the Walker Street Houses. This garden setting will assist in forming a transition area between the podium of the approved development and the one and two-storey heritage items. The setback of approximately 15m from 142 Walker St at the front of the site is acceptable. The lot boundary setback at the rear of the lot is acceptable as it adequately allows for the majority of the side and front façade of 142 Walker St to be clearly interpreted. The height of the tower on 142 Walker St is considered to be acceptable as it is located approximately 15m from the front building and has the garden forecourt. The lower height of the proposed podium level at RL 68.00 from RL 68.4 is supported as it will be lower than the ridge of the adjacent heritage item.

The relocation of the car park entry adjacent to 76 Berry St is supported as it will retain the Plane Tree on Walker Street. This will also assist in retaining the character of the streetscape setting for the heritage items.

Draft North Sydney Local Environmental Plan 2009

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

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

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

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

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

COMPLIANCE TABLE – DEVELOPMENT STANDARDS			
Development standard	Requirement	Proposed	Complies
Clause 4.3: Height of buildings	RL 103	RL 132.5 main tower, RL104 at No142	NO
Clause 4.4: Floor space ratio	Minimum 0.5:1	0.53:1	YES

Clause 6.4: Building heights and massing	1000m ² site area	1740.2m ²	YES
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The proposed development has been considered against the development standard applicable under the Draft LEP and does not comply with the provisions of Clause 4.3. The applicant has addressed the departures from the draft development standards in the statement of environmental effects as the exhibition commenced just before the development application was lodged with Council. The departure to the height control is supported as the main tower has previously been approved (two current consents).

The part of the building over No.142 is setback from the street to respect the heritage neighbours and this more than compensates for the 1m breach of the draft height control. Having regard to the provisions of section 79C of the Environmental Planning and Assessment Act 1979, the proposed development is considered to satisfactory with regard to the provisions of the Draft North Sydney Local Environmental Plan 2009.

SEPP 55 and Contaminated Land Management Issues

The subject site has been considered in light of the Contaminated Lands Management Act and it is considered that as the site has been used for residential purposes for many years, contamination is unlikely.

SREP (Sydney Harbour Catchment) 2005

The subject site is not within part of North Sydney that is required to be considered pursuant to SREP (Sydney Harbour Catchment) 2005.

SEPP 65 – Design Quality of Residential Flat Development

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

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

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

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

The development is on a larger site and therefore the context, scale and built form of the majority of the proposal generally remain unchanged from the earlier approved developments on the site. The development has been designed having regard to its context and includes a large front setback to respect the proposed built form of adjacent development and transition in heights between the two adjoining approved buildings.

Principle 4: Density

There is no density control applicable to the overall development and compatibility of the built form to its context is probably a more appropriate consideration in this circumstance. The non residential component of the building will result in an FSR of 0.53:1 and this is entirely consistent with the North Sydney Residential Strategy, the likely new comprehensive LEP requirements and the Planning Proposal for part of the site which was recently gazetted.

Principle 5: Resource, Energy and Water Efficiency

A BASIX certificate for the proposal is submitted under separate cover which outlines all energy and water saving commitments. Energy efficient appliances and water efficient fixtures are also proposed for each of the units. Rainwater will be collected for landscape irrigation.

Principle 6: Landscaping

The proposal includes large areas of landscaped gardens, for the benefit of both occupants and visitors to the site that will contribute significantly to the ambience of the streetscape.

Principle 7: Amenity

The scheme has been well designed with regard to room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas.

Principle 8: Safety and Security

Overlooking of public and communal spaces has been provided: Balconies and living areas are oriented to look towards the street front. Entrance ways and ground areas will be well lit and security systems provided to all vehicle and pedestrian entrances.

Principle 9: Social Dimensions

The proposal will result in significant upgrading of a relatively unattractive development. The proposed building will combine to make a positive contribution to the social dimension of North Sydney.

Principle 10: Aesthetics

The composition of building elements and use of modern materials and finishes will result in a high quality external appearance of an attractively modulated residential tower above a well integrated podium that together make an aesthetic contribution to

North Sydney CBD that is of a high urban design standard.

Residential Flat Design Code 2002

The controls and objectives of the code are similar to many of the controls included in Council's Local Environmental Plan and Development Control Plan 2002 that has been thoroughly assessed above.

DEVELOPMENT CONTROL PLAN 2002

NORTH SYDNEY CENTRE PLANNING AREA / CENTRAL BUSINESS DISTRICT

The subject site is within the Central Business District which falls within the North Sydney Centre Planning Area. The proposed development complies with the planning controls for the Central Business District as set out below:

Diversity of activities, facilities, opportunities and services

The new proposal continues to comply with the relevant controls in that:

- A mixed use development is still provided;
- Although the floor plans are changed, different sized commercial units are still provided; and
- Both outdoor (roof terrace) and indoor (gymnasium / meeting room) community spaces are provided.

Public Transport

There are no car parking spaces for the non-residential component of the proposal. Provision is also made for bicycle parking in accordance with the controls.

Awnings

The entrance is setback from the street and an awning is not appropriate in this case as there is no awning to the south or the north.

Solar Access

The proposed development does not result in any overshadowing of public open space or designated special areas and therefore complies with the control.

Views

The controls seek to retain views from Ward Street Plaza. As overall building massing remains generally unchanged as compared to the already approved development, there would be no change to the views that will be available from Ward Street Plaza.

Amalgamation

The site would be amalgamated to include all three lots.

Skyline

As no material change to the building height of the tower is proposed as compared to the earlier approval, and as the tower is only proposed to be made slightly wider, skyline impacts are not materially affected and are consistent with the 'notional arc' and the existing skyline of the North Sydney Centre.

Thru-Site Links

Although not required by the controls, it is proposed to retain a through site link on the site.

Setbacks

Existing approvals for No136 – 140 include front setbacks of 3.6 and 4.0 metres. The control requires a 7 metre front setback. Under the new proposal, the podium of the building would be setback 5.5 metres and then 14.8 metres at the northern end. Overall the 5.5 metre setback represents an improvement on the earlier approved schemes. The vehicle entrance setback can be justified as it appropriately responds to the building

massing of the development immediately adjoining to the south. The 14.8 metre northern setback also appropriately responds to the massing of the approved development on the adjoining site and respects the curtilage of the adjoining heritage item.

Street Frontage Podium Height

Podium height is reduced under the proposal and will now be two storey in scale to reflect the two storeys of commercial use. It will therefore continue to comply with the maximum control of 5 storeys and will better relate to the podium of the adjacent development at 76 Berry Street and the scale of the heritage buildings to the north.

Above Podium Setbacks

The front setback of the main tower element remains unchanged from the approved scheme.

Building Design

It is proposed to retain the rock outcrop located at the southern end of the front boundary and incorporate it into the design of the vehicle entrance. The proposal complies with the remaining controls in that external architectural detailing includes a wide palette of high quality materials and finishes.

Energy Efficiency

A Basix certificate is included with the application to ensure the newly designed dwellings all meet accepted energy efficiency requirements. Passive features such as cross-flow ventilation to most apartments, use of appropriate levels of insulation to for the roofs and walls, external shading or high performance glazing for all north, east and west facing glazed elements and use of high performance glass for large glazed areas such as the Penthouse are proposed for the residential dwellings in the building.

Public Domain

No changes are proposed which affect the public domain. As with the approved proposal, a street tree is proposed to be planted in front of the site as a replacement for the Cheese Tree proposed to be removed.

Landscaping

The proposal incorporates a comprehensive landscape scheme and includes substantial new tree planting as well as the use of native vegetation in accordance with the controls.

SECTION 94 CONTRIBUTIONS

Section 94 Contributions in accordance with Council's S94 plan are warranted should the Panel consider the development application worthy of approval. The contribution is based on 826m² of commercial space plus residential component of 35 x studios; 61 x 1 bed; 80 x 2 bed; 17 x 3 bed apartments with allowance for existing dwellings of 2 x 2 bed and 8 x 3 bed apartments:

Administration	\$20,049.99
Child Care Facilities	\$38,712.23
Community Centres	\$87,688.37
Library Acquisition	\$16,422.94
Library Premises & Equipment	\$50,764.92

Multi Purpose Indoor Sports Facilities	\$14,113.75
Open Space Acquisition	\$530,011.74
Open Space Increased Capacity	\$1,050,573.92
Olympic Pool	\$45,975.09
Public Domain Improvements	\$499,390.10
Traffic improvements	\$54,056.71
The total contribution is:	\$2,407,759.76

APPLICABLE REGULATIONS

Clauses 92-94 of the EPA Regulation 2000 require that Council take into consideration Australian standard AS 2601-1991: *the demolition of structures*, as in force at 1 July 1993. As demolition of the existing structures are proposed, a suitable condition should be imposed.

DESIGN & MATERIALS

The design and materials of the buildings have been assessed as being acceptable.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

ENVIRONMENTAL APPRAISAL

CONSIDERED

- | | |
|---|-----|
| 1. Statutory Controls | Yes |
| 2. Policy Controls | Yes |
| 3. Design in relation to existing building and natural environment | Yes |
| 4. Landscaping/Open Space Provision | Yes |
| 5. Traffic generation and Carparking provision | Yes |
| 6. Loading and Servicing facilities | Yes |
| 7. Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.) | Yes |
| 8. Site Management Issues | Yes |

9. All relevant S79C considerations of Environmental Planning and Assessment (Amendment) Act 1979 Yes

CLAUSE 14 NSLEP 2001

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

The provisions of Clause 14 of NSLEP 2001 have been examined.

It is considered that the development is consistent with the specific aims of the plan and the objectives of the zone and of the controls.

As such, consent to the development may be granted.

SUBMITTORS CONCERNS

Thirty five submissions were received in relation to the proposed development raising concerns which including traffic, parking, size of apartments, loss of views and a number of other issues. These issues have been mostly addressed within this report. Additional issues raised are addressed as follows:

- provides no setbacks from the adjacent buildings which reflect the three heritage listed properties

Planning Comment:

The proposal has been setback 15m from the street behind the heritage items. Council's Conservation Planner has raised no concerns.

- increased the number of apartments and decreased the ratio of parking

Planning Comment:

The objectives of the North Sydney Centre controls are to minimize traffic in the centre. Reduced parking creating a greater reliance on public transport meets this objective. All of the larger apartments will have a car space. Less than half of the smaller apartments will have a car space. Council policy will not provide residents of new developments with parking permits. Having regard to the number of apartments without access to parking, it was considered reasonable to provide for three car share spaces within the development. This has been included in the conditions of consent.

- Northern side should be set back further at level 10 than level 12 to reduce view impacts and be in keeping with development to the north

Planning Comment:

View impacts are addressed below and are not included in the controls for the centre. The height of the smaller tower at No142 is 1m higher than the draft control and appropriately steps down to the adjoining proposed development behind the heritage items.

- Overshadowing of public courtyard used by restaurant

Planning Comment:

The courtyard will be affected by the current consents. Additional setbacks and splaying of the south eastern corner have been incorporated to lessen the impact. The main tower would have to be lowered to about five storeys to allow sunlight into the courtyard. The courtyard has not be designated as a special area under the controls.

- View loss from McLaren St properties

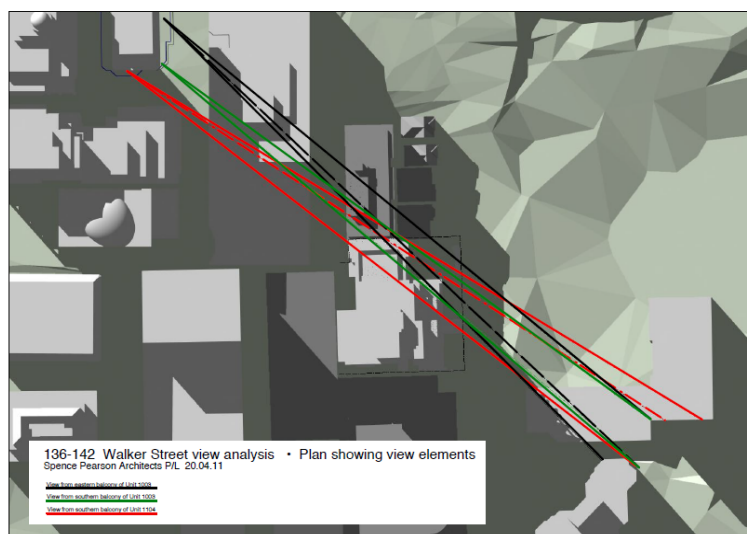
Planning Comment:

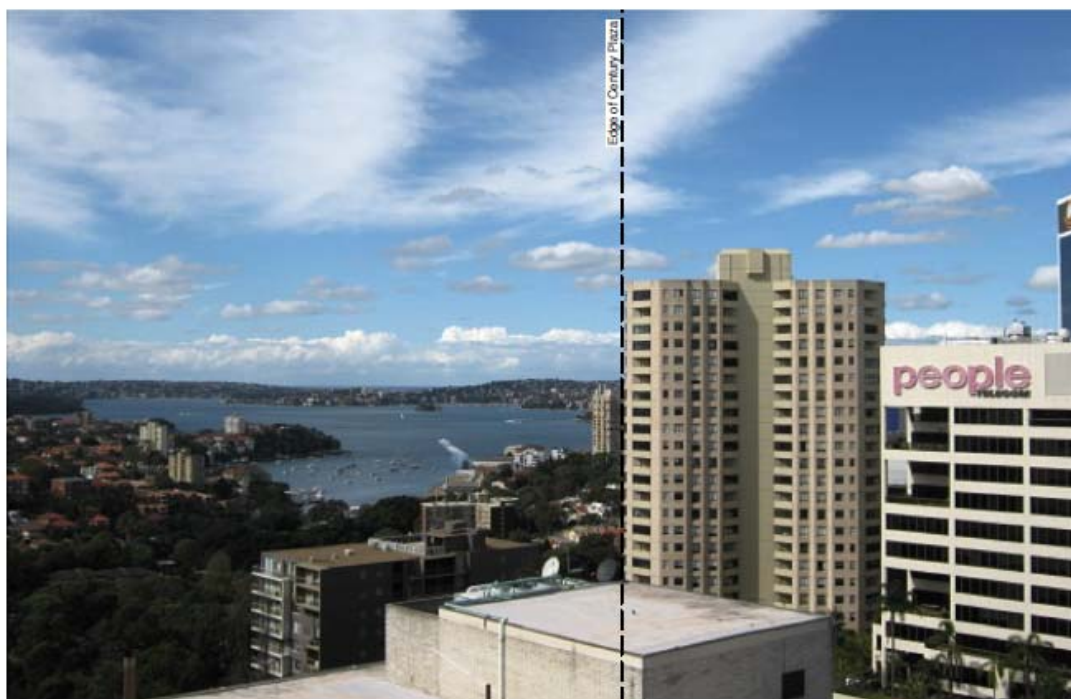
The controls under Division 4 (North Sydney Centre) of NSLEP 2001 do not provide for a consideration of view loss. One of the objectives under Clause 28B relates to protecting the amenity of *residential zones*. The only mention of view loss is under the objectives for the building height plane under Clause 30 that relates to minimising adverse effects on land *zoned residential* in relation to views among a number of other impacts. Pursuant to the Court of Appeal decision, Clause 30 cannot prevail over the Division 4 controls. No.37-39 McLaren Street is zoned Mixed Use and there is no protection of the existing views from the apartments.

Many submissions were received from the residents of 37-39 McLaren Street with concerns about view loss. The owner of apartment 1104 (south facing apartment on level 11) provided Council with a photo of the current view from the balcony. Apartment 1003 represents the east facing apartments on the southern end of the building. A site inspection was carried out by Council's Planner and photos were taken from the northern and southern ends of the large terrace of apartment 1003.

These apartments represent the view lines of all the south and east facing apartments. Any apartments further north than these apartments are unaffected by the proposal with regard to view loss. It was noted from the inspection that Century Plaza currently blocks views of the Harbour, therefore the impact on views was considered to be anything north of Century Plaza.

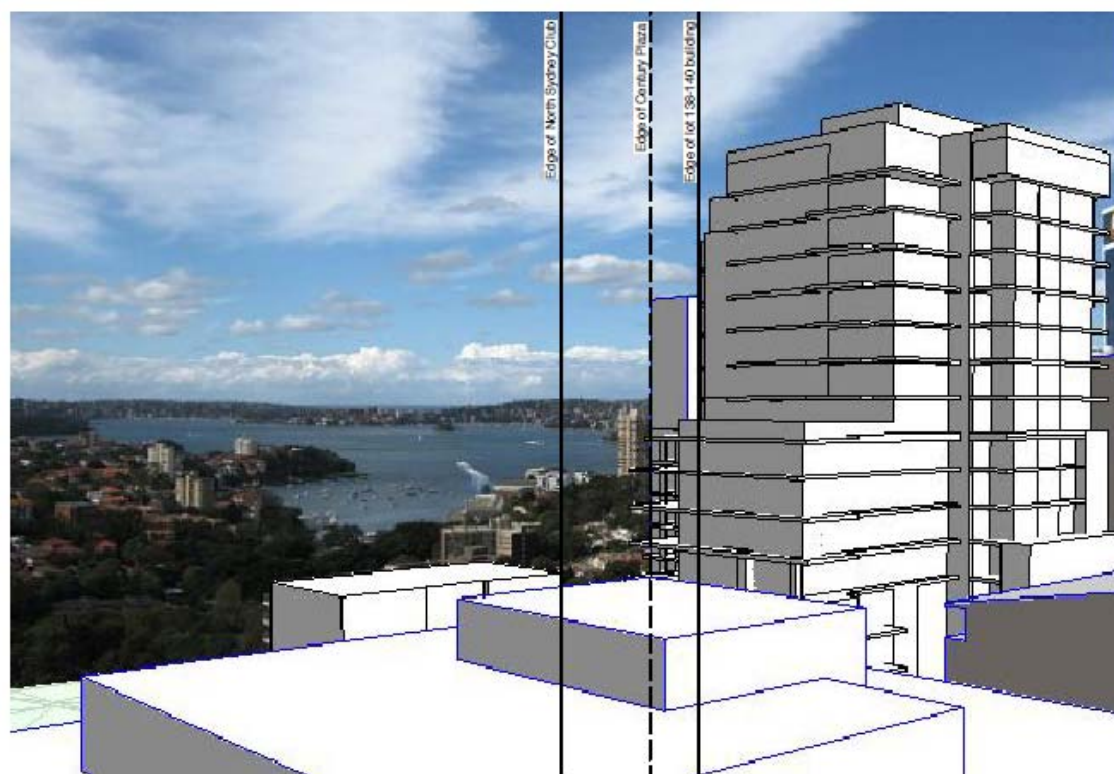
The applicant was provided with copies of the photos and cadastral information on the locations of the surrounding buildings. This allowed the project architects to model the proposal with regard to existing buildings. The information submitted has been checked and the view lines and location of the proposed building appear to be accurate. The impacts on the various apartments will differ. The apartments directly below the apartments where the photos were taken will be worse off in a vertical direction. Conversely the apartments above will be less impacted.





taken from northern end of terrace of apartment No.1003

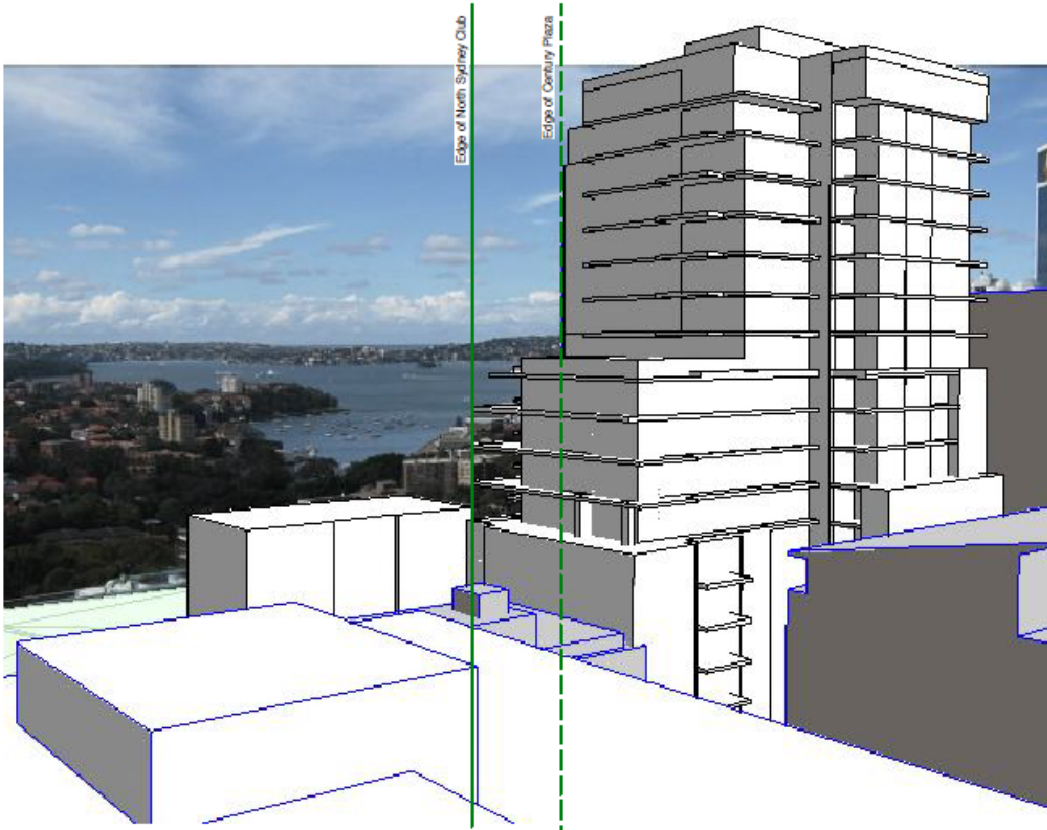
136-142 Walker Street view analysis • Unit 1003 north - existing RL 107.0
Spence Pearson Architects P/L 20.04.11



136-142 Walker Street view analysis • Unit 1003 north - proposed RL 107.0
Spence Pearson Architects P/L 20.04.11



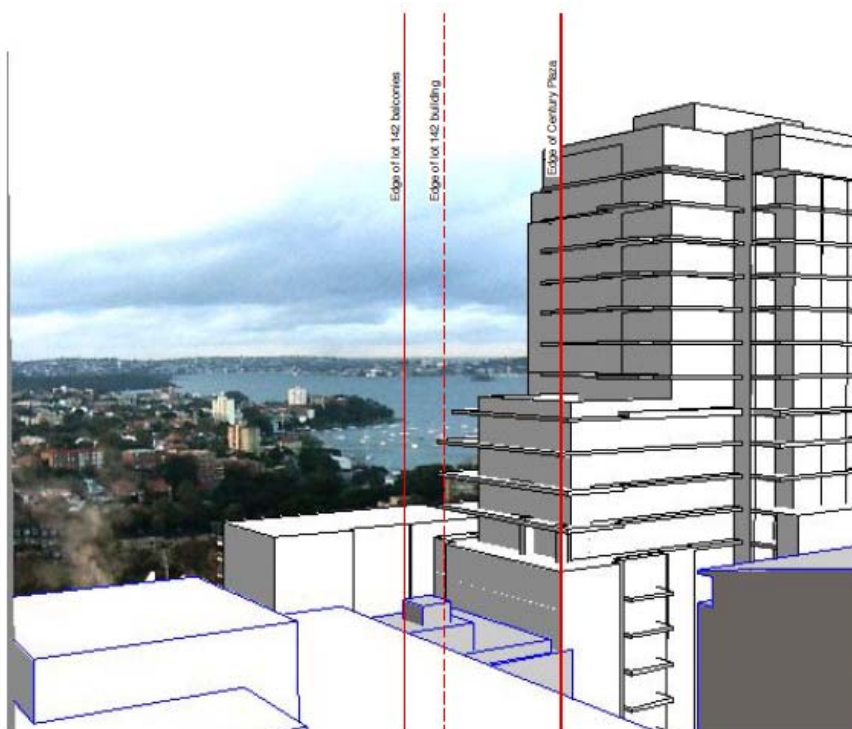
136-142 Walker Street view analysis • Unit 1003 south - existing RL 107.0
Spence Pearson Architects P/L 20.04.11



136-142 Walker Street view analysis • Unit 1003 south - proposed RL 107.0
Spence Pearson Architects P/L 20.04.11



136-142 Walker Street view analysis • Unit 1104 south - existing RL 110.0
Spence Pearson Architects P/L 20.04.11



136-142 Walker Street view analysis • Unit 1104 south - proposed RL 110.0
Spence Pearson Architects P/L 20.04.11

The above photos show that there is minimal impact to the northern end of the terrace for apartment 1003. The impact from the southern end is caused by the lower tower and some of the water view is lost. The majority of the water view is maintained. No iconic views are affected. The water view forms part of a greater district view. The majority of the terrace is affected to a minor degree. The proposal is generally compliant with the existing NSLEP 2001 controls.

The south facing balcony at apartment 1103 is affected to a greater degree. Applying the *Tenacity Planning Principle*, the view is from a standing position from a balcony directly adjoining the living area. The current view is a district view with the harbour forming part of the view. There are no iconic structures in the view. Part of the water view will be impacted by both towers. There are also views from the balcony to the south west. The impact on the view is considered minor. The proposal is generally compliant with the existing NSLEP controls so the impact remains minor. For such a large building with other tall buildings in the area, the impacts on views are minimal. It would not be reasonable to remove two floors of the lower tower to maintain the view. As stated above view retention/sharing is not included in the Centre controls that prevail over other parts of the LEP.

- Precedence from approved non conforming scheme should not form basis to guide future development

Planning Comment:

The envelope of the main tower evolved after many hearing days in the Land and Environment Court to a point where Council (after independent planning assessment) issued an approval. If the two previous applications were assessed under the current controls as acceptable and appropriate, it must stand that that portion of the proposal is still satisfactory. The controls have not changed. The Draft LEP 2009 has not progressed sufficiently to be considered as imminent particularly as the many submissions have not been considered or determined by Council. The current proposal is larger with a higher density and more traffic and these matters have been properly assessed within the report.

- Congestion will be further exacerbated by heavy construction vehicles for a considerable period of time affecting traffic and access to and on Walker and McLaren Streets.

Planning Comment:

This statement is true. A Construction Management Plan is required and conditions are recommended to minimize the impacts as far as practical but there will be congestion and amenity impacts. It is not a reason to warrant refusal of any application.

- This increase in traffic congestion will potentially affect local pedestrian and school children safety.

Planning Comment:

The increased traffic from the proposal will be residential and during the week will be mainly in the morning and late afternoon (after School hours). A number of cars are likely to stay within the car park due to the proximity of the site to the CBD and public transport. Council's Traffic Engineer has agreed with the proposal and traffic generation figures.

- The development will adversely affect the availability of off street parking in the area

due to increased number of apartments relative to internal car parks

Planning Comment:

Council policy is to not provide resident parking permits for new apartment developments. The restricted short term parking in the area will apply to new residents.

- The extension into lot 142 will create a continuous "palisade" down Walker Street between Berry and McLaren Streets in conjunction with other approved developments.

Planning Comment:

The scale of the development is in keeping with surrounding development and steps down from the centre to the north. The proposal incorporates appropriate front setbacks and landscaping that will link the low scale heritage items to the north with the larger commercial tower to the south. The Walker Street streetscape and character will be respected due to the setbacks and the retention and addition of street trees.

- The extension into lot 142 appears to exceed the current RL height limit for that block.

Planning Comment:

There is no current height limit under the NSLEP 2001 (other than RL195). The draft LEP proposes a height of RL 103 and the proposal has a height of RL104. The breach of the draft height by 1m is considered reasonable.

CONCLUSION

There is a long history for this site involving a number of appeals to the Land and Environment Court. Many hearing days were spent going through the controls in great detail. The site has been well tested resulting in Council granting a development consent to a development (smaller than the application that was the subject of the appeals) in 2008.

There was no change to the overall height of the building or building footprint with the 2010 application (DA 316/2010) and no significant change to external materials or finishes as compared to the multi storey mixed use building that Council approved on the site in 2008. The major changes related to an increase in apartment numbers, decrease in commercial space and increase in parking numbers. Shadow impacts remained the same.

The overall height and form of the tower element of the current proposal is similar to a scheme on the site of 136-140 Walker Street (DA 316/2010) approved by the JRPP in 2010. However Winten Property Group have since exchanged contracts to purchase the adjoining site to the north at 142 Walker Street and as such now have the authority to present an improved scheme, incorporating a site that would otherwise be a small isolated parcel of land swamped by larger developments.

The application has been assessed against the relevant statutory controls. The 2 SEPP 1 objections are well founded and can be supported. The application was referred to Council's Design Excellence Panel for comment. Some minor modifications were suggested and there was support for the proposal by the DEP. The applicant responded to the DEP suggestions with amended plans. The application is recommended for favourable consideration by the Panel. As indicated in the report, the JRPP is unable to

approve the proposal without the certification of the Director General that satisfactory arrangements have been made with regard to Railway Infrastructure. Should the Panel favour the application a commitment deed will need to be certified by the Director General before consent can be granted.

RECOMMENDATION

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

THAT upon receipt of certification from the Director General of the Department of Planning Council pursuant to Clause 28C(3) of NSLEP 2001, the Joint Regional Planning Panel, as the consent authority, assume the concurrence of the Director General of the Department of Planning and Infrastructure and invoke the provisions of SEPP 1 with regard to Clause 28D(2)(d) and Clause 31 and grant consent to 2011SYE019 – North Sydney - Development Application No.47/11 subject to the attached conditions.

Geoff Mossemenear
EXECUTIVE PLANNER

Stephen Beattie
MANAGER DEVELOPMENT SERVICES