

JRPP No:	2011SYED26
DA No:	DA67/ 11
PROPOSED DEVELOPMENT	Demolition of existing structures, tree removal, installation of drainage infrastructure and Stage 1 concept approval for an aged care housing development and associated non residential uses at 50-52 McLaren Street, North Sydney
APPLICANT:	Uniting Care Ageing – Northern Sydney Region
REPORT BY:	Geoff Mossenear, Executive Planner, North Sydney Council

Assessment Report and Recommendation

EXECUTIVE SUMMARY

This development application includes demolition of existing structures, tree removal, installation of drainage infrastructure and Stage 1 concept approval for an aged care housing development and associated non residential uses.

The application was notified to surrounding owners and residents as well as all precincts from 4 March until 18 March 2011. Over thirty submissions were received raising the following concerns/issues: bulk, scale, lack of dementia facilities; breach of height controls; traffic; Council should determine heights for its area; out of character; overshadowing; reduced amenity of apartments to south; excessive height; tree removal; loss of views; impact on school; overdevelopment; poor development in the past should not be reason for excessive height; loss of privacy; fire safety for aged residents; inadequate setbacks; excessive parking; negative impacts on hotel guests; wind impacts and heavy vehicle traffic in Elliott Lane.

The issues relate to the direct impacts on neighbours including the hotel, school and residents to the west and south. These impacts relate to overshadowing, privacy loss of views and building separation. The amount of parking proposed is also an issue.

The height of the towers with regards to the surrounding area and the McLaren streetscape is the major issue to be addressed. Tree retention seems to be satisfactory, however landscaping is restricted to perimeter planting only. Adequate open space and gardens with good solar access are essential for aged person accommodation.

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

DESCRIPTION OF PROPOSAL

The DA seeks approval for:

Early site preparation Works, including:

- Demolition of all existing structures on the site;
- Tree removal;
- Installation of drainage infrastructure; and

Stage 1 Concept Approval (pursuant to S83B of the EP&A Act) for the following:

- Building Envelope, including a maximum height of RL127.6 or 15 storeys plus plant;
- Building setbacks;
- Maximum Gross Floor Area - 24,350m²;
- Land Use - aged care housing and associated land uses, including outreach services; and
- maximum number of parking spaces

The indicative land uses are:

Basement

The basement levels will be used for parking, storage and plant.

Lower Ground Floor & Ground Floor

These levels of the building will be occupied by non-residential uses which are available for use by residents of the building and the broader community. Facilities that are likely to be provided within the building include:

- Day care centre for the aged
- Wellness centre & gym
- Hair and beauty rooms
- Multipurpose room, hall, and function room
- Shop
- Meeting rooms
- Office and back of house support services

Upper Floors

The upper floors of the building will provide a mix of accommodating types including Independent Living Units, Serviced Apartments and Green House accommodation (higher care). UCA are still in the process of determining the final mix of each of the accommodation types, however the building has been designed so as to provide flexible floor plates which can accommodate a range of dwelling types.

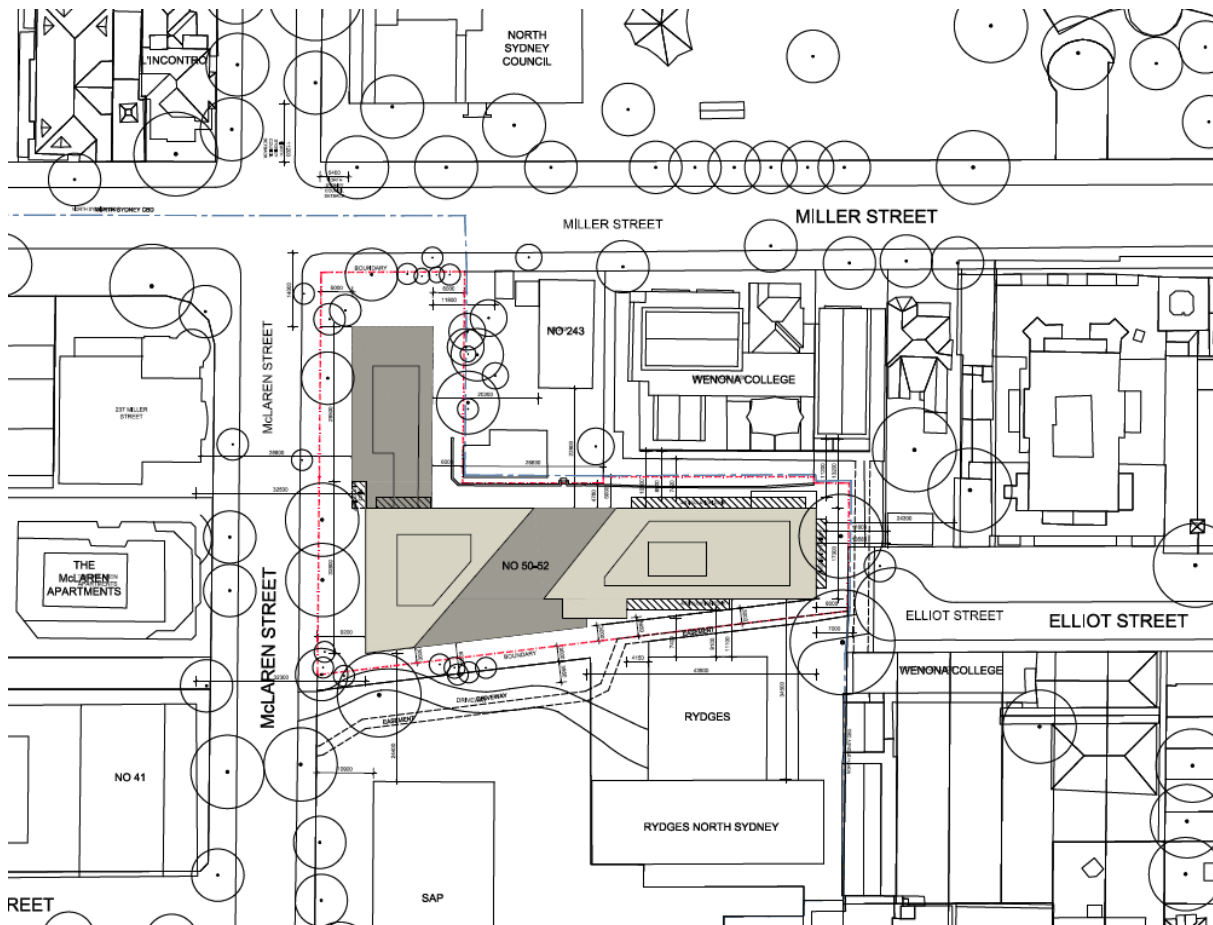
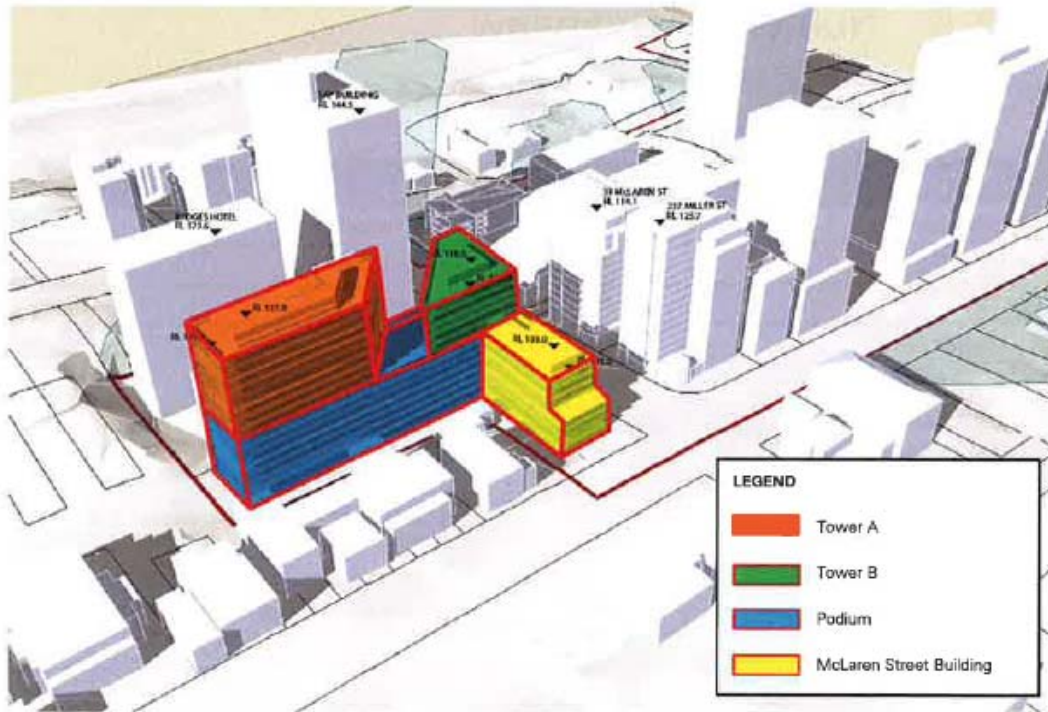
The massing of the proposal is separated into three segments. These include:

- Tower A (levels 6 to 15 at Elliot Street)
- Tower B (levels 6 to 12 at McLaren Street)
- McLaren Street Building (proportion of building predominantly located on 50 McLaren Street)
- Podium (lower ground up to level 5)

The massing of the different elements of the building is the result of the following site constraints:

- The irregular shape of the site;
- Setbacks required to address streetscape appearance, tree retention and privacy levels to and from adjoining sites;

- Setbacks required to address heritage significance;
- Maintenance of solar access to dwellings outside of the North Sydney CBD; and
- Broader transitional height controls contained within the North Sydney Development Control Plan.



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

SEPP – Housing for Seniors

SREP (2005)

Local Development

Draft North Sydney LEP 2009

POLICY CONTROLS

DCP 2002

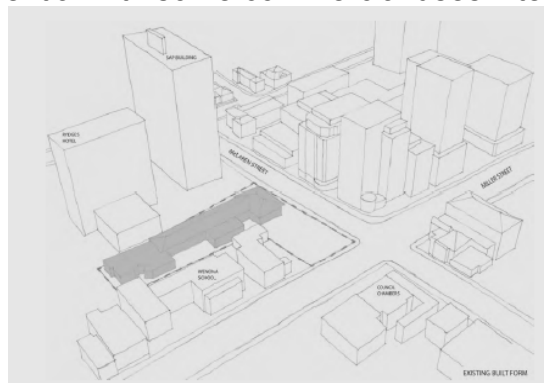
CONSENT AUTHORITY

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

DESCRIPTION OF LOCALITY

The site is located at the northern boundary of the North Sydney Central Business District at the corner of McLaren and Miller Streets. It is known as 50-52 McLaren Street and is owned by Uniting Care Ageing. The site has an area of 4,148m² and is 'L' shaped. The site is currently occupied by a three storey brick building which accommodates 66 aged care beds and an at grade car park. The site is vegetated around its perimeter and contains several trees that are listed on Council's significant tree register.

To the north and east of the site, development comprises non-residential uses including education, hotel and commercial uses. To the south and west of the site development is predominantly residential with some commercial uses interspersed





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.

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 at 50-52 McLaren Street, North Sydney. I have read the Traffic Impact Assessment prepared by Traffix dated 17 February 2011 (ref: 10 291 v4).

Existing Development

The existing site consists of an aged care facility with an area of approximately 4,148 m². There are 66 beds.

The site currently has two driveways to McLaren Street. There are 14 parking spaces for staff and 3 parking spaces for visitors. The site also has a driveway to Elliott Street which is not generally utilised.

Proposed Development

The proposed development includes:

- Demolition of the existing structures

- Construction of a 16 level building, with 3 levels of basement parking
- 115 independent living units (9 one-bedroom units, 106 two-bedroom units)
- 115 high care beds
- Employment of 40 staff (at any one time)
- 120 m² café
- 71 m² shop
- 60 m² hair & beauty
- 60 m² multi-purpose area
- 117 m² meeting rooms
- 235 m² hall
- Loading dock access is proposed via Elliott Street.
- 166 parking spaces are proposed with access from McLaren Street

Parking

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

Development Component	Parking Rate	Maximum Parking
1-bedroom apartments	0.5	4.5
2+ bedroom apartments	1	106
Aged care (115 beds)	1 space / 5 dwellings	23
Refreshment room (120 m ²)	1 space / 50 m ²	2.4
Retail/ non specific uses (543 m ²)	1 space per 400 m ²	1.4

The applicant is proposing to provide 166 parking spaces.

It is of great concern that this developer is proposing to provide **20.3% more parking than is permitted under the DCP**. Council must take into consideration the development in the context of North Sydney as a whole. Council's LEP and DCP have been prepared in consideration of the overall impact of future development on the local area. Traffic generation is one of the key impacts associated with new developments. North Sydney is a high density area and congestion and traffic generation issues are of particular concern to the community and impact greatly on resident amenity.

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

If Council were to permit all developments to provide 20.3% more parking than is permitted under the DCP, the road network in North Sydney, and particularly the North Sydney CBD where this development is located would increasingly reach failure point.

I do not agree with the applicant's statement that the parking rates do not cater for the staff associated with the development. Visitor AND staff parking for the aged care facility should be adequately catered for within the 23 parking spaces as outlined in Council's DCP. Further, as noted by the applicant in Section 6.1, the parking provisions for the independent living units outlined in Council's DCP are 33% more generous than the RTA figures. The applicant appears to be attempting to maximise parking as far as possible by providing additional parking for both the independent living units and the aged care facility. This is not supported and parking should be restricted to the 138 spaces as outlined in Council's DCP.

Traffic Generation

In Section 4, the applicant has stated that the plans are for “illustrative” purposes only and may be subject to further changes. This is acceptable if the development remains a “seniors” development. Significant concern would be raised if this development became a standard apartment block as this would likely have significant impacts on the associated traffic generation. A revised Traffic Impact Assessment would be required.

The existing site generates 18 AM peak hour vehicle trips and 8 PM peak hour vehicle trips.

I generally concur with the applicant’s traffic generation figures. It is noted that the additional traffic generation associated with this particular site is likely to result in minor increases in intersection delay. However, it is noted that the proposed development represents a significant intensification of the site from a parking and traffic generation perspective. It is understood that the proposal does not comply with the draft height controls, which means that the intensification of use of the site is greater still. Again, Council must take into consideration the development in the context of North Sydney as a whole. Council’s LEP and DCP have been prepared in consideration of the overall impact of future development on the local area. If all developments are permitted to breach the height controls and therefore increase yield on the site and increase associated parking and traffic generation, then the road network in North Sydney, and particularly the North Sydney CBD where this development is located will increasingly reach failure point.

Service Vehicles

The applicant has stated that the proposed development incorporates parking for two 8.8m MRV. This is appropriate for a development of this type. It is not entirely clear from the plans how these vehicles will be accommodated.

The entrance to the loading dock is proposed from Elliott Street, close to where there are school and childcare pick-ups/ drop-offs. It is essential therefore that the movement of heavy vehicles to and from the site must be undertaken in a safe manner. All vehicles must enter and exit the site in a forwards direction. It is recommended therefore that the applicant be required to provide an Operational Transport Management Plan for heavy vehicles.

The proposed ambulance parking is appropriate.

Queuing Length

It is not clear from the plans where it is proposed to install a security gate/ security access point to the car park. AS 2890.1 requires queuing length for three vehicles for a car park of this size. There are high pedestrian and vehicle volumes in McLaren Street. Therefore it would be unacceptable to have vehicles queuing onto the footpath.

Recommendation

It is recommended that this development not be approved until the number of parking spaces is reduced to 138 as per the North Sydney DCP 2002.

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

1. That a Construction Traffic Management Program be prepared and submitted to Council for approval by Council’s Traffic Committee prior to the issue of the Construction Certificate. Any use of Council property shall require appropriate separate permits/ approvals.
2. That an operational Transport Management Plan for delivery and garbage vehicles shall be prepared and submitted to Council for approval by Council’s Traffic Committee prior to the issue of the Occupation Certificate.

3. That a green travel plan be developed to highlight to staff, residents and visitors the available public and alternative transport options for travelling to the site. This is to be submitted to Council for approval by the Director of Engineering and Property Services prior to the issue of the Occupation Certificate.
4. The site must accommodate two Medium Rigid Vehicles as defined by Australian Standard AS 2890.2.
5. All vehicles, including delivery vehicles, garbage collection vehicles must enter and exit the site in a forwards direction.
6. The driveways to the site must be modified such that there are minimum sight lines for pedestrian safety as per Figure 3.3 of AS 2890.1.
7. That the developer pay to upgrade the lighting levels to the Australian Standard in McLaren Street and Elliott Street, adjacent to the site.
8. All driveway exits from the site are to have signage which says "Stop – Give Way to Pedestrians"
9. That all aspects of the carpark comply with the Australian Standard AS2890.1.
10. That all aspects of parking spaces for people with disabilities comply with the Australian Standard AS 2890.6.
11. That all aspects of the loading dock comply with the Australian Standard AS2890.2.
12. That all aspects of the bicycle parking and storage facilities comply with the Australian Standard AS2890.3.
13. The location of any 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.
14. The loading dock is to be available for moving/delivery vehicles for the residential/independent living units component of the development, as well as the high care beds and retail components of the development.
15. That there be no net loss of on-street parking associated with the driveway accesses to the proposed site."

Planning Comment: The parking provided on site should be no more than the maximum permitted under the DCP. The additional parking is not supported.

Engineering/ Stormwater Drainage/ Geotechnical

Council's Development Engineer (Z.Cvekovic) assessed the proposed development and raised concern with the access to the site at Elliott Street and impact on existing stormwater pits in the street. Additional details about overland flow also need to be provided. This can be part of a stage 2 application.

Landscaping

Council's landscape development Officer (B Smith) has provided the following comments:

"It is advised that I inspected the subject property with Councils Heritage Officer in early April 2011 in relation to the submitted Development Application, with benefit of the plans, and Statement of Environmental Effects, including the Arborist's Report contained within it.

The following observations were made recommendations provided.

- The existing Council Street Trees growing outside the property, including the Brush Box growing adjacent to the Elliot Street frontage of the property are not threatened by the works, although minor pruning may be necessary to all trees to accommodate the proposed building works.
- The existing vegetative amenities on the site are accented by the presence of 6 mature Moreton Bay Figs within the property. These trees are included in Councils Significant Tree Register.

- The long term future of a number of these trees was very much compromised when the properties current building structures were built, resulting in available areas for root growth and expansion of these trees being extremely compromised.
- The Arborist's Report has provided a detailed hazard assessment report of all trees within the property and has clearly identified concerns with a number of mature trees on the property. Particular attention should be given to concerns regarding the observations in relation to the mature Moreton Bay Figs proposed for removal within the site.
- The mature Port Jackson Fig Tree(no:6 as indicated in the Arborist Report) is growing adjacent to the Miller Street boundary of the property is not threaten by the works due to generous building setbacks from the tree. The two mature Moreton Bay Fig Trees growing along the McLaren Street frontage of the property (trees no's:31 and 32 as indicated in the Arborist's Report) have been shown as retained. The setback appears to be no closer, if not further away than the existing building (the Arborist has indicated that the building set back is even further than the existing building). I am in agreement with the Arborist's assessment that this should be sufficient setback to ensure that significant damage will not occur to the trees root systems, and that the building is sufficiently setback to ensure that only relatively minor pruning will be required to accommodate construction of the building as proposed.
- Many of the existing mature Eucalyptus plantings within the property are mature to over-mature and only fair specimens.
- The proposed building setbacks in McLaren Street will have very minor impact on existing Street Trees in McLaren Street. The proposed building set back of 6 metres has provided a satisfactory minimum setback such that remedial street tree pruning will be necessary to accommodate the construction of the proposed building. However if the setback were to be increased to 7 metres this would both the better protection of these trees as well as a mature London Plane Tree (tree no: 27 as indicated in the Arborist's Report) growing adjacent to the southern boundary of the property. This tree is proposed to be retained, and I support its retention due to its streetscape and screening values. The Arborist in his observations indicated that building works and sewer connections, may compromise the retention of the tree.
- There is a mature London Plane Tree growing along the eastern boundary near the north eastern corner of the property(tree no:44 as indicated in the Arborist's Report), the tree provides quite substantial amenity values to both the subject property and the adjacent property. Given that the existing building is only about 4-5 metres away from the tree, it is quite possible that if the new building were only setback 5 metres from the outside trunk of the tree, its retention may well be successful. It should be noted that the Arborist saw the retention of the tree as desirable. It is my opinion that given the tree's location so close to the boundary a fairly simple redesign may be able to accommodate the tree, however it may impact the basement car parking arrangements. I recommend that the scheme be amended to accommodate this tree.
- There is a mature Moreton Bay Fig Tree (Tree no: 42 as indicated in the Arborist's Report) growing adjacent to the Elliot Street frontage of the property, and it is proposed for retention. However I have grave concerns that this will be successful. The tree has had its root system severely compromised in the past by building activities in the past. The Tree whilst providing an amenity and streetscape value is a poor specimen and given its maturity and constrained root system its vigour is only fair. The Arborist in his report raised similar concerns, about the successful retention of this tree.
- The mature Phoenix Palm (Tree no: 86 as indicated in the Arborist's Report) proposed to be relocated further along the southern boundary will required a substantial amount of work, requiring large mobile cranes and the like. The relocation will necessarily cause significant damage to the two trees growing on the neighbouring property. This is also a large logistical exercise that is not guaranteed of a successful outcome. It is my opinion that the Palm Tree does contribute to the streetscape and given it location in the south –eastern corner of the property, a fairly simple design change could see its successful retention in its current location.

- There are a number of mature Bangalow Palms within the property, that could easily be relocated on-site and the Arborist has made note of such in his report. I support the concept as the transplanting of this species is often quite successful.
- The indicative Landscape Plan is satisfactory, however if amendments are made including the retention, the relocation or removal of trees. A new plan clearly showing all of the above information should be provided to Council.
- The Arborist's Report contains quite comprehensive protection measures for retained as part of the development and should be referred to in the consent if approval is to be recommended.
- I have perused the comments provided by Council's Heritage Officer and generally agree with all her observations and recommendations, other than the retention of the Moreton Bay Fig growing adjacent to the Elliot Street frontage of the property(tree no: 42 as indicated in the Arborist's Report)

I generally support all the recommendations and conclusions drawn contained in the Arborist's Report, including the retention, relocation and removal of trees on the property. The Report is very comprehensive in its assessment of all trees, their current condition and stability and has also included root mapping investigations.

However I would recommend that consideration is given to the following design changes.

1. That consideration is given to amending the design such that the retention of the London Plane (Tree no: 44 in the Arborist's Report) and the Phoenix Palm (Tree no: 86 in the Arborist's Report) for reasons outlined above. Such a design change would require consultation with the appointed Arborist, and a statement from him indicating any specific protection methods required for the two trees.
2. The consideration is given to the removal of the mature Moreton Bay Fig (tree no: 42 in the Arborist's Report) and its replacement with more appropriate species.

In conclusion other than the minor design changes I have recommended I am supportive of the scheme provided the above mentioned design changes are undertaken and that an amended landscape plan is submitted to Council as indicated above. Specific conditions and recommended tree bonds should also be included."

Applicants response:

The referral made by Council's Landscape Development Officer recommends that consideration be given to the following design changes:

- *Retention of the London Plane (Tree No. 44);*
- *Retention of the Phoenix Palm (Tree No. 86); and*
- *Removal of the mature Moreton Bay Fig (Tree No. 42).*

With regard to the London Plane Tree, whilst redesign of the basement would preserve the root system of the tree it is noted that a large limb of the tree would still be required to be removed so as to accommodate the new building. In his report the tree consultant noted that the long term health of the tree would be likely to be poor due to the likelihood that the substantial wound resulting from the removal of the limb would be prone to decay. The development of decay would predispose the whole eastern limb to failure and under these circumstances the arborist recommended that the tree be removed. It is therefore requested that the Council/JRPP reconsider this position and allow the removal of the tree. We note that the removal of this particular tree was not raised as an issue in Rydge's detailed submission.

The application currently proposes relocation of the Phoenix Palm. Council is of the opinion the relocation of the palm will require a substantial amount of work, large mobile cranes and the like and its removal may cause damage to nearby trees. The tree consultant is aware of the work required to relocate the tree and is of the opinion that it can be done without damage to the Palm or nearby trees. It is noted that the Palm is currently located where the proposed vehicular access and through site link will be positioned. Vehicular access to the site is restricted along the McLaren Street elevation due to the sloping nature of the site and also the location of the mature Moreton Bay Figs which are more integral to the character of the area and which are proposed to be retained. It is considered that the proposed relocation of the tree provides the best outcome as it will allow for the tree to be retained on the site whilst also providing a new public benefit in the form of a pedestrian through site link.

Council's tree officer has concerns as to the likely success of the retention of the Moreton Bay Fig at Elliot Street due to its compromised root system. Whilst we are of the opinion that the tree can be retained, the applicant would accept a condition requiring its removal and replacement with a suitable species. The removal and replacement of the tree would not result in any unacceptable impacts on the streetscape

Significant tree removal



The landscape heritage assessment has identified the boundaries of the original garden of the Kedron (also known as Cobham) property as well as trees within the adjacent lot of No 50 McLaren St that now forms part of the Georgian House property. Many of these trees on these two sites are also identified in Council's Significant Tree Register.

No objection is raised to the removal of the two Moreton Bay Figs (numbered 39 and 41). These two trees were probably never planted with the intention of reaching such a large scale in a domestic garden as they are inappropriate for a garden setting and are more appropriate in parks and for large avenue trees. By comparison, the two fig trees located along the McLaren St frontage were most likely specimen trees planted to mark the entrance drive to Kedron and make a large contribution to McLaren St. These are assessed as having high significance and are to be retained.

With regard to the remaining trees, the consultant has appropriately assessed their significance relevant to Kedron and the property's successive planting schemes. The retention of the two large figs nos 31 and 32 that formed the entry to the Kedron property is supported. The retention of the Moreton Bay Fig tree 42 on the northern edge of the

site is also supported as it will assist in retaining the character of the site and has been identified as possibly an original tree from the Kedron plantings. The relocation of the Canary Islands Palm on the McLaren St frontage, a later addition to the site, but characteristic to North Sydney municipality, is acceptable. This transplantation would however, be expensive and difficult due to its proximity to other trees and the overhead power lines. No objection is raised, to the additional tree removals with regard to Council's heritage controls as they have no or little heritage significance."

Heritage

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

"The site of the proposed development is located adjacent to, and in the vicinity of several heritage items and two Conservation Areas.

The form of the proposal was developed with advice from the applicant's heritage consultant, in order to ensure that the impact on the adjacent heritage items, particularly 243 Miller Street, was acceptable. The building has been set 14 metres back from Miller Street and steps back to 45m for the upper levels to ensure the impact on the listed item and Miller Street streetscape is minimised. The building has been set back 6m from its boundary with the listed 243 Miller Street. The height of the building at this point is three storeys, which is consistent with the scale of the heritage item. The proposed building envelope is considered to be appropriate in its context within the North Sydney CBD and is consistent with the adjacent 'Ridges' complex. It will not have a detrimental impact on the significance or character of the nearby heritage items or conservation areas.

The proposal will not have a detrimental impact on the identified significance of the listed item at 243 Miller Street. Given its context within the North Sydney CBD, the building's curtilage is considered to be its lot boundaries. This will remain unaffected by the proposal. The taller sections of the building will be visible at the rear of the listed building. However, the scale of the proposed building is in context with the Rydges Hotel which currently forms a backdrop to the building.

No objections are raised to the demolition of the existing 'Georgian House' aged care building, which is not listed as a heritage item and is not significant and does not demonstrate aesthetic value.

The proposal is for a Stage 1 Concept Approval of the new building, (the building envelope). As discussed above, no objections are raised to the building envelope on heritage grounds, as it is not considered to have an unacceptable detrimental impact on the nearby heritage items or conservation areas, and is compatible with other recent development in the area.

Whilst no objections are raised to this envelope on heritage grounds, it is considered that the design of the building, in particular the Miller Street facade, should be articulated to create a compatible form and scale to the adjacent heritage items, along with careful consideration of details, materials and landscaping."

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:	50-52 McLaren Street, North Sydney - DA.67/11
DATE:	23 February 2011 @ 5.00pm in the Supper Room
ATTENDANCE:	Panel Members: Peter Webber; Russell Olsson; David Chesterman

Council staff: Geoff Mossemeneer (chair) George Youhanna
Proponents: Philip Graus (architect), Rory Brady (architect),
James Harrison (planner), Jennie Buchanan (planner),
Meredith Bennett (UC Ageing), John Dawson (project
manager).

A site inspection was carried out by the Panel and Council staff prior to the meeting. It is noted in these minutes that the proponent's architect is a member of the Design Excellence Panel and that he did not participate in any discussions or deliberations of the Panel before or after the meeting with the proponents. The following minutes represent the consensus of the comments and the opinions of the 3 Panel members. There was a quorum at the meeting.

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 involves demolition of existing buildings, tree removal, drainage works, Stage 1 approval for the building envelope, setbacks, maximum GFA 24,350m², parking for 116 vehicles and land use for aged care housing including outreach services.

Ms Bennet outlined the proposal with regard to the provision of 115 intensive care beds, 116 apartments and a wellness centre.

The architect Philip Graus provided a detailed laptop presentation with the Panel being provided with hard copies before the meeting. The Panel was also provided with a design statement and SEPP 65 compliance table at the end of the meeting but the contents were not discussed at the meeting. The presentation was focussed on the site analysis and a number of specialist studies used to develop an appropriate building envelope for the site. The studies include: an urban design review, a built heritage review, a landscape heritage review, an arborists review and a visual impact review. Photo montages from a number of public viewing points were provided to the Panel as well as the benefit of a detailed scale model.

The Panel was advised that the proposed building envelope complied with the current LEP controls. The proposal however, does not satisfy the proposed controls under the Draft North Sydney Local Environmental Plan 2009 that is currently on exhibition. Under the draft controls, the height for No.50 McLaren Street would be restricted to RL 90 and the height for No.52 McLaren Street would be restricted to RL 115.

Panel Comments:

The Panel noted that the majority of the mature trees around the perimeter of the site were to be retained and the setbacks from the boundaries had been largely dictated by the location of these trees and their roots. It was noted that several large Figs are proposed to be removed on the western edge which is unfortunate but understandable.

The Panel noted the fig tree to the west of the loading dock off Elliott Street would need to be severely cut back and that it may be better to replace it with a more appropriate mature tree.

The Panel supported the through site link from McLaren Street to Elliott Street and felt it was important to ensure that easy access from the various sections of the building to the link is provided. It was noted that resolving levels at the south-east corner of the site may not be easy.

The Panel commented on the need for some articulation to the larger tower to reduce its scale when viewed from the Miller Street properties, perhaps by a podium/setback/facade treatment at the RL101 level.

The Panel concentrated on the context of the proposal when viewed from the north, west and south. The Panel noted that the height of Ridges was similar in height to other existing buildings on the edge of the CBD. The Panel had no concern with the height of the larger tower in context with Ridges (and other existing buildings on the edge of the CBD).

The Panel did have some reservations about the angled slot through the site (to retain solar access to apartments in McLaren Street). The Panel also had concern about the height of the building in the south east corner of the site fronting McLaren Street, in relation to the scale and overshadowing of this part of the street. The Panel felt that this section should be lowered by 4 floors and that the resultant loss of floor space could possibly be compensated by an increase in height elsewhere. The effects of this change should be investigated. Additional height towards the centre of the site would not be of concern, given the height and form of existing buildings to the immediate east.

The Panel noted that the majority of the landscaping was around the perimeter and that large open gardens with solar access would not be available at ground level for residents of the proposal. It was noted that the principal open space for residents would be at the roof at around RL101. The removal of the south east corner building would increase the size of this space. The Panel did not raise an issue with the angled southern wall of the larger tower, the angle would improve light and possibly views/outlook from that elevation.

The courtyard at the Miller Street frontage would be very important as a meeting space and should be set up for outdoor eating.

Conclusion:

The Panel considered the overall height and bulk of the proposed building to be for the most part in scale with the local context and with the CBD. Concerns were raised about the angled "slot" and the height of the south eastern corner of the proposed building. A reduction of four floors at the SE corner would result in a more acceptable scale to McLaren Street, and would be more in tune with the draft LEP height control, which appears to have justification in relation to this frontage. Some articulation of the building is recommended on the western elevation of the tower to reduce its bulk and scale when viewed from the adjacent Miller Street properties.

It was suggested that the contextual analyses in the DA would be improved by the clearer noting of site and surrounding levels, and the addition of information about pedestrian crossings, bus stops, and nearby shops and services and graphic scales."

Applicant's response:

Our response to the comments made by the Panel are provided below.

'The Panel commented on the need for some articulation to the larger tower to reduce its scale when viewed from the Miller Street properties, perhaps by a podium/setback/facade treatment at the RL101 level.'

RL101 of the building occurs at the top of the podium level (level 5). The architect agrees with this statement and it is noted that balcony/articulation zones are proposed from level 6 above which will be further development in the next phase of the design. Articulation of the building will also be achieved by the following design measures:

- Use of high quality materials;*
- Podium expression;*
- Setback or facade treatment.*

The applicant would accept a condition of consent requiring the building to be further articulated in accordance with the above.

'The Panel did have some reservations about the angled slot through the site (to retain solar access to apartments in McLaren Street). The Panel also had concern about the height of the building in the south east corner of the site fronting McLaren Street, in relation to the scale and overshadowing of this part of the street. The Panel felt that this section should be lowered by 4 floors and that the resultant loss of floor space could possibly be compensated by an increase in height elsewhere. The effects of this change should be investigated. Additional height towards the centre of the site would not be of concern, given the height and form of existing buildings to the immediate east.'

With regard to the angled slot we note that its form is dictated by the angle of the sun as its key function is to retain solar access to the apartments at the corner of McLaren Street and Walker Street. Notwithstanding this, we believe the slot is a positive feature in the design as it modulates the massing of the building and allows for better solar access and natural/cross ventilation.

Whilst we disagree that the massing in the south east corner of the site is in appropriate, particularly in the context of the Rydges building and residential flat buildings on the opposite side of McLaren Street, if Council and JRPP agree with the recommendation of lowering the height of that part of the building by four storeys Uniting Care Ageing would accept a condition of consent requiring such an amendment to be reflected in the Stage 2 DA.

The above amendment would result in the loss of approximately 2,200m² of gross floor area. Whilst we note that the panel was supportive of relocating this floor space elsewhere on the site such a design amendment would require a detailed environmental assessment and would most likely require re-notification of the application. As a consequence Uniting Care Ageing has decided not to act upon this recommendation at this time so as to allow the determination of the application to proceed in a timely manner.

External Referrals

There were no external referrals required.

SUMMARY

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

Name & Address of Submitter Basis of Submissions

Stanton precinct	<ul style="list-style-type: none"> Strongly opposes the bulk and height of the building envelope and excessive amount of parking Concerned about increased traffic congestion and removal of trees
Wenona School	<ul style="list-style-type: none"> Aged care facility of this size should incorporate designated dementia unit Excessive height – inconsistent with streetscape in Miller Street Height of northern facade – building at its highest where it should be stepping down – not a sound transition of heights Height at northern end should be setback and lowered Building is not a transition from Ridges down to Miller Street Lack of adequate setbacks from western boundary for such a tall building – impact of overbearing building on School's outdoor piazza area Removal of trees that are in good health Restricted site size should constrain development on site Right of way should be formalised Wind impacts Increased traffic generation Heavy vehicle access from Elliott Street would be dangerous and incompatible with children Excessive parking Impact on views

Rydges Hotel	<ul style="list-style-type: none"> • Excessive height of the proposal in context of existing and draft planning controls • Inappropriate distribution of building bulk across the site resulting in overdevelopment of the site • Inadequate setbacks • Inadequate building separation • Excessive parking • Impacts on hotel guests amenity and consequent negative impacts on amenity • Inadequate view analysis • SEPP – Housing for Seniors is the principal environmental planning instrument • Proposal does not consider desired character of area • No appropriate transition to northern edge of CBD • Draft height controls should be given weight as desired character • Amenity of upper hotel suites affected by proposed height • Inadequate landscaping for a Seniors Living development • Proposal not in accordance with notional arc in DCP character statement • Overshadowing of hotel
Owners/residents from 39 McLaren Street	<ul style="list-style-type: none"> • Overshadowing • Loss of outlook • Loss of trees • Out of character • Increased traffic • Construction impacts • Support for Council's draft height controls as maximum for site • Should not use SAP building as precedent for further poor development • Loss of privacy • Does not enhance the community • Lack of adequate setbacks
Owners/residents from 45 McLaren Street	<ul style="list-style-type: none"> • Unacceptable height and bulk • More for retirement living than aged care • No dementia specific component • Must comply with Council's controls for genuine aged care and not a high rise retirement village • Increased traffic • Loss of sunlight • Parking provision excessive • Wind tunnel • Loss of trees
Owners/residents from 237 Miller Street (Harvard)	<ul style="list-style-type: none"> • Reduced amenity to all surrounding properties, school, hotel and apartments • Loss of views and outlook • Should conform to heights proposed by Council • SAP building should not be used as a reason for increased height • Increased traffic • Overshadowing • Removal of trees • High rise not best solution for aged care in emergency situations • Inconsistent with residents expectations for future of site • Lack of facilities
243 Miller Street	<ul style="list-style-type: none"> • Steep roads to nearest shops • Most affected by proposal • Ridges and SAP buildings were mistakes of the past – do not need to repeat • Loss of privacy • Overshadowing

- Loss of views
- Site is on fringe of CBD not the centre
- Development to north and west are low scale
- Development cannot be seen as transition from Ridges as it is higher

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))	NA	RL 127.6m AHD	RL 195m AHD	YES
Overshadowing of land (Cl. 28D(2)(b))	-	NO	Variation permitted	YES
Overshadowing of dwellings (Cl. 28D(2)(d))	-	NO	Variation permitted	YES
Minimum lot size (Cl. 28D(2)(e))	4148m ²	4148m ²	1000m ² min.	YES

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	The proposed development incorporates a variety of uses on the site including community-integrated uses, retail space, health and wellbeing services, and recreational facilities.
Mixed residential population	Yes	The proposal is for an aged care housing facility that includes low and high care accommodation. The development caters for the ageing population
Maximum use of public transport	No	Proposal seeks excessive on site parking
6.2 Environmental Criteria		
Clean Air	No	Excessive level of parking
Noise	Yes	Acoustic report to be submitted under stage 2, can be conditioned
Acoustic Privacy	Yes	An acoustic report will be prepared in the stage 2 development application which will address the acoustic amenity of the proposed accommodation within the proposal and impact on the existing acoustic environment of surrounding sites.
Visual Privacy	No	separation distances proposed by the building envelope to not satisfy SEPP 65 to mitigate against visual privacy impacts. Details of stage 2 not available

		to assess if screening devices are required
Reflected light	Yes	Materials non reflective and can be conditioned
Solar access	No	Some apartments to south will be affected. See detailed comments
Views	No	District views affected for buildings to south and east.
6.3 Quality built form		
Context	No	Site analysis undertaken, building not in context with desired character for area
Public spaces and facilities	Yes	Through site link proposed
Skyline	No	Insufficient detail in stage 1 application
Through-site pedestrian links	Yes	The proposal incorporates a north/south orientated fully accessible through site link along the eastern boundary of the Site. The link contributes to the pedestrian network of North Sydney and enhances the amenity of the area. The link will complete Council's desired pedestrian connection between North Sydney Centre and North Sydney Oval.
Streetscape	No	Height not supported, In adequate detail in Stage 1 application to provide for articulation
Subdivision	Yes	Site are exceeds minimum requirements
Setbacks	No	Not compliant with character statement
Entrances and exits	Yes	Visible from street
Street frontage podium	No	No podium level established
Building design	No	Insufficient detail in stage 1 application
Nighttime appearance	No	Insufficient detail

6.4 Quality urban environment		
High quality residential accommodation	No	Insufficient detail in stage 1 application
Accessibility	No	Accessibility report to be submitted as part of stage 2
Safety and security	Yes	Satisfactory
Car parking	No	See detailed comments from Traffic Engineer above
Bicycle storage	Yes	Satisfactory
Vehicular access	Yes	Satisfactory
Garbage Storage	Yes	Garbage Storage is proposed to be located at the rear of the Site towards Elliot Street at the lower ground floor. Access for collection and removal will be from Elliot Street at the rear of the site
Site facilities	Yes	Storage areas provided. A detail of the site facilities and location will be provided in a stage 2 development application. Some of the proposed site facilities proposed include: dining room, sun room, library, laundry, kiosk, Hall, meeting room, swimming pool, gymnasium, and theatre.
6.5 Efficient use and management of resources		
Energy efficiency	Yes	Basix certificate to be submitted with stage 2

NORTH SYDNEY LEP 2001

Permissibility within the zone:

The proposal is permissible with consent under the Mixed Use zoning.

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 does not reduce commercial floor space. It does not contribute any additional commercial floor space.
(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.	The proposal will increase the non residential floor area and accordingly arrangements are required as part of the stage 2 application.
(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 for excessive parking on site
(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. Cycle facilities are to be incorporated into the development to promote cycling.
(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 increase existing non residential floor space.
(g) to prohibit further residential development in the core of the North Sydney Centre.	The proposed development incorporates a residential component, however, it 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 .	No commercial floor plates proposed.
(i) to achieve a variety of commercial space	Provides a variety of non residential uses including community-integrated facilities, as well as commercial and retail space at the lower floors.
(j) to encourage the refurbishment, recycling and rebuilding of older buildings.	The existing buildings on the site are to be demolished.
(k) to encourage a diverse range of employment, living, recreation and social opportunities.	The proposed development provides flexible non residential spaces and quality residential apartments.
(l) to promote high quality urban environments and residential amenity	The proposal aims to maximise the amenity to residents internally. Insufficient detail to assess design of building
(m) to provide significant public benefits such as open space, through-site linkages, childcare and the like.	The proposal provides for through site link.
(n) to improve accessibility within and to the North Sydney Centre.	Through site link proposed.

(o) to protect the amenity of residential zones and existing open space within and nearby the North Sydney Centre	The proposal will have a minimal impact on amenity of the residential areas. There are no adjoining residential areas.
(p) to prevent any net increase in overshadowing of any land-zoned residential or public open space or identified as a special area.	The proposed development will result in no additional overshadowing.
(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.	Trees preserved on site where practical, setbacks retained

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 proposal will increase non residential floor space and therefore does not comply. There is insufficient detail in a Stage 1 application to determine the exact amount. 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”.

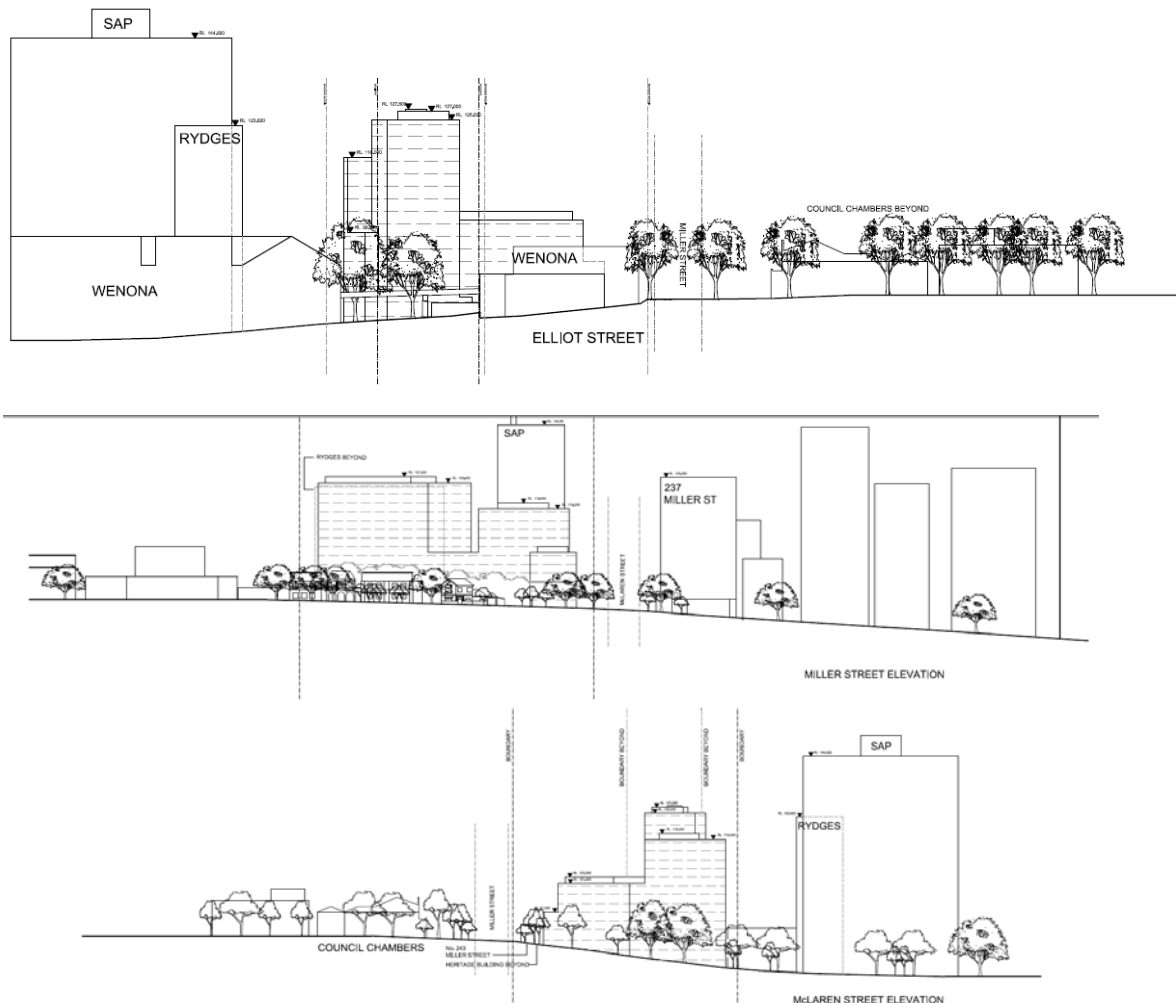
The Stage 2 application will require the applicant to enter into satisfactory arrangements to obtain certification from the DG before any consent can be granted.

CLAUSE 28D - BUILDING HEIGHT AND MASSING

Objectives

- (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.*

The issue is whether the transition is appropriate. It was accepted in the Castle Constructions case that the transition can be an abrupt drop. It is noted that other commercial buildings on the edge of the centre and the freeway are of similar height. However they are not adjacent to heritage buildings and low scale school buildings. On other sites on the northern edge of the CBD where they adjoin residential zones, the appropriate height is around 25m. Having regard to the notional arc in the character statement, the proposal does not fit. The sites to the northwest fronting Miller Street have a height control of 10m. It is not simply a matter of being a height similar to the Rydges building because the Rydges building has greater setbacks from the boundaries. The proposal is 3.4m higher than Rydges.



Having regard to the above elevations, it would appear that the tower A should be below the Rydges building and 237 Miller Street. When considering the height of the building, setbacks and separation must also be considered. The use is important to determine appropriate setbacks. The information accompanying the application indicates the tower to be used as an apartment building therefore SEPP65 must be taken into account. For a building over 25m in height the separation distances vary between 18m and 24m. Half the distance must be provided as adequate setback as it is not good practice to borrow from adjoining sites. The proposal has side setbacks of 6m. The minimum setbacks should be 9m. The site appears to be too narrow to accommodate a residential building of the height proposed.

(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.

- (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.

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

The proposed development does not provide adequate detail of final layouts and screening devices to indicate that the privacy of residents is protected.

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

The proposal would be visually dominant when viewed from adjoining sites, Miller Street, Elliott Street and McLaren Street. The Design Excellence Panel raised concerns with the scale of the south eastern corner (tower B) and Council's Conservation Planner raised concern about the building needing to be articulated to create a compatible form and scale to the adjacent heritage items. The applicant's Heritage Consultant recommended:

....the west and north elevations of the Miller/McLaren Street building at the lower levels/podium be articulated and detailed to complement the scale and character of the heritage items along Miller Street.....

To achieve an appropriate scale, tower B and the western end of the McLaren Street building need to be lowered.

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

Although the site is quite large, the shape and narrowness of the site does not allow for the density proposed as adequate side setbacks (SEPP 65) are not provided. Borrowing separation distances from adjoining properties is not endorsed.

Development Controls

Subclause 28D(2) sets out the building height and massing requirements for proposed development within the North Sydney Centre. Any development which exceeds these standards cannot be consented to.

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

Utilising the LEP definition, the proposed building will have a maximum RL of 127 AHD (to the roof of the rooftop plant room) and therefore complies with this requirement.

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

The proposed development will not result in overshadowing of land outside the composite shadow area.

- (c) *There is no net increase in overshadowing, between 10am and 2pm, at any time of the year, of any land 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", and*

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

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

The proposed development does not overshadow any residential premises outside the North Sydney Centre falling within the composite shadow area.

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

The subject site is 4148m² in area and complies.

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

Adjoining sites are not isolated. The shape of the site does not assist in the optimum site for the proposed scale of development.

Building Design and Public Benefits

Subclause 28D(5) requires the consent authority to consider a number of provisions.

- (a) *the impact of the proposed development in terms of scale, form and massing within the context of the locality and landform, the natural environment and neighbouring development and in particular lower scale development adjoining the North Sydney Centre, and*
- (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.*

The application is unacceptable with regard to its scale within the context of the locality.

The proposal provides public benefits with the proposed through site link and the use as aged persons care and housing.

The proposal will impact on outlooks from surrounding sites although there are no public vistas affected.

There is insufficient detail with regard to materials and external treatments as it is a stage 1 application. Further reduction of scale is considered necessary before the proposal can be seen as enhancing the streetscape of Miller Street and McLaren Street.

CLAUSE 29 - BUILDING HEIGHT

Objectives

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

The height is not considered to be compatible with the development to the north and west which have a height restriction of 10m.

- (b) encourage an appropriate scale and density of development for each neighbourhood that is in accordance with, and promotes the character of, the neighbourhood, and*

The proposed development is not considered to be an appropriate bulk and scale on the northern fringe of the North Sydney Centre. It should at least be lower than the Rydges building and 237 Miller Street to satisfy the transition provisions and fit within the notional arc identified in the character statement.

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

The proposal is not consistent with SEPP 65 separation requirements.

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

The proposal does not meet this objective with regard to setbacks, building separation and impacts on the outlook of surrounding properties

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

The building does not step with regard to the sloping land in both the east and north directions.

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

controls.

Existing development at Rydges and the SAP building should not be used as justification when they are much taller than surrounding development.

Building Height Controls

Subclause 29(2) states that a “building must not be erected in the mixed use zone in excess of the height shown on the map”. The height Map to the North Sydney LEP does not specify a maximum height for the subject site. Height is primarily controlled by the provisions contained within Clause 28D and 29 as discussed above. It is noted that the sites to the west and north have a height restriction of 10m.

CLAUSE 31 - FLOOR SPACE

Subclause 31(2) states:

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

The floor space Map to the North Sydney LEP does not require a range of FSR for the site.

CLAUSE 50 - DEVELOPMENT IN THE VICINITY OF HERITAGE ITEMS

Development in Vicinity Controls

Clause 50 states:

- (2) *When determining a development application relating to land in the vicinity of a heritage item the consent authority must consider the likely effect of the proposed development on the heritage significance of the heritage item and its curtilage.*
- (3) *Before determining a development application relating to land in the vicinity of a heritage item, the consent authority may require the submission of a statement of heritage impact on the heritage item and its curtilage.*

The proposal has been assessed in terms of Clause 50 (Development in the Vicinity of Heritage Items) of the North Sydney LEP 2001 and Section 8.8 (Heritage Items and Conservation Areas) of the North Sydney DCP 2002.

The site of the proposed development is located adjacent to, and in the vicinity of several heritage items and two Conservation Areas. It is considered that the design of the building, in particular the Miller Street facade, should be articulated to create a compatible form and scale to the adjacent heritage items, along with careful consideration of details, materials and landscaping.

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 little weight can be given to the plan since the final adoption of the plan is neither imminent nor certain.

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

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

Council is proposing the following controls for the site within draft LEP 2009:

- Zoning – B4 Mixed Use Zone
- Maximum FSR: No maximum residential FSR, however a minimum of 0.5:1 on 50 McLaren and 0.5: - 1:1 on 52 McLaren Street of non-residential is required to be provided
- Height: Max RL90 on 50 McLaren and RL110 on 52 McLaren Street

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 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 – height of buildings. The applicant has no objection to the proposed zoning and FSR controls. However with regard to the maximum height control it is the applicant's position that what is proposed represents a significant reduction in the development potential of the site

Having regard to the provisions of section 79C of the Environmental Planning and Assessment Act 1979, the proposed development is considered to require several modifications outlined in the report before approval could be recommended.

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, 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.

STATE ENVIRONMENTAL PLANNING POLICY (HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY) 2004

The Housing for Seniors SEPP seeks to improve the design, and increase the supply and diversity of residences that meet the needs of seniors or people with a disability. The SEPP achieves this through setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in this Policy. The SEPP is seen as an enabling planning instrument.

As aged care housing is permissible with development consent and the site is not subject to a maximum floor space ratio control, reliance on the SEPP is not sought by the applicant for this application. Notwithstanding this, the application still must have regard to the following relevant clauses:

33. Neighbourhood amenity and streetscape

The proposed development should:

- (a) recognise the desirable elements of the location's current character (or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area, and*
- (b) retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items that are identified in a local environmental plan, and*
- (c) maintain reasonable neighbourhood amenity and appropriate residential character by:*
 - (i) providing building setbacks to reduce bulk and overshadowing, and*
 - (ii) using building form and siting that relates to the site's land form, and*
 - (iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, and*
 - (iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and*
- (d) be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line, and*
- (e) embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, and*
- (f) retain, wherever reasonable, major existing trees, and*
- (g) be designed so that no building is constructed in a riparian zone.*

Comment: The above matters are already under consideration. Clause a), b), c) and f) are particularly relevant.

34. Visual and acoustic privacy

The proposed development should consider the visual and acoustic privacy of

neighbours in the vicinity and residents by:

(a) appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and

(b) ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.

Comment : This detail is to be provided in the Stage 2 application, however adequate separation distances are required in Stage 1.

35 Solar access and design for climate

The proposed development should:

(a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and

(b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.

Comment : All relevant to the proposal.

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. The amenity principle has to be considered with a Stage 2 application. The context, scale and built form have been assessed above. The height and setbacks require further modification before they can be signed off as satisfactory under SEPP 65. The minimum setbacks for the residential towers should be 6m weighted average up to 25m high and 9m weighted average over 25m in height. Currently tower A has a

setback of 6m from the western boundary (minus 2m in some areas to allow for articulation) and 3m from the eastern boundary. A proposal compliant with the minimum setbacks with reduced heights will have significantly less impacts than the building proposed.

DEVELOPMENT CONTROL PLAN 2002

NORTH SYDNEY CENTRE PLANNING AREA / CENTRAL BUSINESS DISTRICT

The subject site is within the Central Business District which falls within the North Sydney Centre Planning Area. The proposal addresses the character statement as follows:

Provide diverse activities, facilities, opportunities and services

The mixed use development provides for commercial, retail and residential uses, with podium landscaped communal area provided. The new residential accommodation is provided in the fringe of the city centre, and not in the commercial core as per the Development Control Plan

Promote public transport, reduce long stay commuter parking on site and reduce non residential parking on site

The site has excellent access to public transport, however, on site parking in excess of Council's maximum requirement is proposed which is unacceptable.

Required setbacks

Miller Street:

Ground level setback -14m

Podium height

- Maximum of 5 storeys
- Podium height matches or is transitional in height between immediately adjacent buildings
- Podium height matches height of adjacent heritage items

Above podium setback - Weighted average of 5m from edge of podium

McLaren Street:

Ground level setback - Maintain existing landscaped setting and setbacks

Podium height

- Maximum 3 storeys
- Podium height matches or is transitional in height between immediately adjacent buildings
- Podium height matches height of adjacent heritage items

Above podium setback - Weighted average of 3m from edge of podium

Whilst the proposal complies with the ground level setbacks, no above podium setbacks are proposed to the building, with the exception of the McLaren Street building which is setback 5m from Level 3 to Level 5.

The above variations to the setback control are considered justified **by the applicant** for the following reasons:

- The proposed development still achieves adequate separation from adjacent buildings at the upper levels,
- Due to the low scale of the development to the east and north and the greater

separation from buildings to the east the proposal maintains solar access and landscaping between buildings,

- Due to the leafy treed nature of the streetscapes, the setbacks would not be readily visible or perceived from the public domain, and
- The site is long and narrow, providing the required setbacks would significantly reduce the viability of the floorplates proposed.

The above reasons are not supported as separation distances should be shared equally between sites. The height of the building overshadows surrounding development notwithstanding the surrounding development being low scale and setback. The main reason is linked to the shape of the site where providing the required setbacks would significantly reduce the viability of the floor plates proposed.

No objection is raised to the lack of setback above the podium along McLaren Street provided there is articulation above the podium height and the podium height is evident with the architectural design. The main concern is the setbacks from the western and eastern boundaries of the site to satisfy minimum SEPP 65 distances. There would be adequate separation distances across the streets.

Provide architectural detailing, high quality materials and a visually rich pedestrian environment with active street frontages. Buildings are to be energy efficient, minimise stormwater runoff, recycle where possible, and minimise waste consumption
Insufficient detail provided with a Stage 1 application.

Have regard to Public Domain. Continue use of tree planting and use of native vegetation to enhance the urban environment
The development will not hinder the public domain.

Buildings step down in height from the tallest buildings, being Northpoint (100 Miller Street) and Shopping World (79-81 Berry Street) to the boundary and surrounding residential areas (see fig. 1.1)

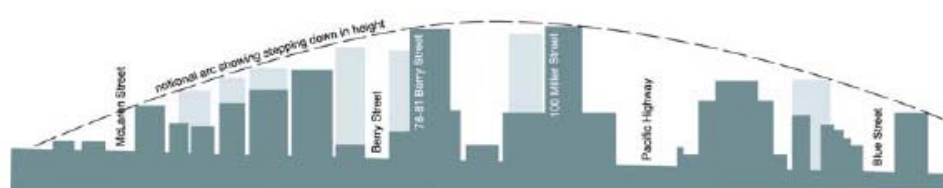


Figure 1.1 Stepping down of building heights along Miller Street. Potential increase in height shown in light grey.

The proposed buildings are clearly well outside the notional arc.

SECTION 94 CONTRIBUTIONS

Section 94 Contributions in accordance with Council's S94 plan are warranted. There is insufficient detail with regard to the various uses and number of apartments to calculate the contribution. Section 94 would be levied on the stage 2 application.

DESIGN & MATERIALS

There is insufficient details of the design and materials of the building to be 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 inconsistent with the objectives of the controls.

As such, consent to the development may not be granted.

CONCERNS RAISED AND RESPONSE FROM APPLICANT

The application seeking consent for a specific maximum floor space when the critical issue is the height bulk scale and siting of the building and the internal uses are not finalised.

UnitingCare Ageing is happy to amend the application such that it no longer seeks approval for a maximum Gross Floor Area (GFA) on the site. In order to effect this amendment we respectfully request that the following condition of consent be imposed if the JRPP are of a mind to approve the development: *'The Gross Floor Area of the development is to be in accordance with the provisions of the relevant Environmental Planning Instrument at the time of lodgement of the Stage 2 Development Application.'*

Shadow impacts on 243 Miller Street

In response to Council's request, Cox Richardson has prepared shadow diagrams for the eastern and northern elevations of the main building at 243 Miller Street, North Sydney. The building has been subdivided with commercial uses located in the western portion of the building and two residential apartments located in the eastern portion of the building. The primary dwelling is located on the middle and topmost floor. Its primary living area faces south, with secondary living areas and internal circulation areas facing east.

The relevant control relating to solar access of this property is Clause 28D(2)(b) of the NSLEP which states that *'there is to be no net increase in overshadowing of any land between the hours of 9am and 3pm, 21 June outside the composite shadow area'*. However Clause 28D(4)(c) permits a variation to that control, provided that *'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'*. The development generates a net increase of half an hour of shadow and as such complies with that control.

In approving a development which proposes a variation to the above clause, the consent authority must be satisfied that:

(a) ... the variation is justified due to the merits of the development application and the public benefit to be gained, and

(b) ... any increase in overshadowing will not reduce the amenity of any land.

With regard to subclause (a) we note that the proposed development will provide a substantial amount of new aged care housing in the North Sydney LGA where such accommodation is in high demand, as acknowledged by Council in their Social Plan 2008 – 2012. It will also provide a new day facilities which will be available to residents which reside elsewhere within the North Sydney LGA. Further public benefit will also be gained from the provision of new activity at street level and the provision of a through site link. With regard to the second issue of consideration, whilst the proposed development will reduce the level of sunlight received to eastern facade of that dwelling by half an hour, the impact is considered to be reasonable for the following reasons:

□ The existing mature evergreen trees within the rear garden of 243 Miller Street and on the application site are likely to cause a similar level of shadowing currently □ The windows on the eastern elevation of the development relate to the internal stairs and secondary living rooms with the primary living space facing due south;

□ The long term occupation of the building for residential purposes is questionable given its close proximity to the North Sydney CBD and also the nature of surrounding land uses which are predominantly non-residential;

□ The built form massing has been concentrated to the north of the site so as to reduce overshadowing impacts on the numerous apartments which are located on the southern side of McLaren Street;

□ The proposed built form massing to the north of the site has been found to be visually acceptable by Council's Design Excellence Panel and also the applicants urban design experts;

□ The amendments required to the built form to retain the half an hour of sunlight would reduce the viability of the development and would result in the loss of a substantial amount of aged care housing; and

□ The benefits of the proposal, including the provision of aged care housing which is in high demand in North Sydney, are considered to outweigh the loss of the half hour of sunlight to the eastern facade of the dwelling.

We draw your attention to the NSW Land and Environment Court Case *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082. The application is similar to that proposed in this case in that it proposes 'Accommodation for Life' where Uniting Care Ageing will act as a facilitator and co-ordinator for the residents to access a range of support services that are able to be delivered to them while they remain in place in their residence rather than moving to a more intensive residential care facility.

It was acknowledged by Senior Commissioner Moore, in his judgement, that the evidence given in the case which outlined that such development was in high demand and socially desirable was relevant to his consideration as it falls within the matters arising from the broad public interest.

As part of his judgement, SC Moore established a new planning principle on solar access which is replicated below in italics. As assessment of the proposal is provided below each point of consideration.

Where guidelines dealing with the hours of sunlight on a window or open space leave open the question what proportion of the window or open space should be in sunlight, and whether the sunlight should be measured at floor, table or a standing person's eye level, assessment of the adequacy of solar access should be undertaken with the following principles in mind, where relevant:

□ *The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*

- In this instance the site is located on the edge of the North Sydney CBD where heights are proposed to increase and the density of development is high.

- Retention of solar access to this particular property is problematic given that the building has been subdivided and the residential uses are located on the eastern side of the property which directly interfaces with the North Sydney CBD as opposed to the western side of the property which has an outlook across to the Council offices and civic park which will not be redeveloped.

□ *The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*

- The proposed development reduces the amount of sunlight to the eastern facade by half an hour on June 21.

- The eastern facade will retain solar access between 9.30am and 11am on the shortest day of the year.

□ *Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.*

- A significant amount of time and effort has been made during the development of the building envelope to ensure that it is appropriate in its context and minimises any impacts on nearby dwellings. In particular specific consideration has been made to reduce the massing from McLaren Street where there are a number of residential dwellings and increase the massing to the north

- To retain the same level of solar access to 243 Miller Street would require a further substantial reduction in the development potential of the site, this would make the development less viable and thus the significant social benefits to be delivered on the site would not be realised.

□ *For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest portions of the glazed area.*

- The shadow diagrams show what proportion of the openings will be in sunlight and what will be in shadow.

□ *For private open space to be assessed as receiving adequate sunlight, regard should be had of the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity. A useable strip adjoining the living area in sunlight usually provides better solar amenity, depending on the size of the space. The amount of sunlight on private open space should ordinarily be measured at ground level but regard should be had to the size of the space as, in a smaller private open space, sunlight falling on seated residents may be adequate.*

- The private open space of the development will retain two or more hours of sunlight on June 21.

□ *Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.*

- As noted above, the rear facade of the building is currently overshadowed by mature trees in the rear yard of the property and also on the subject site and thus it currently receives compromised solar access.

□ *In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development.*

- 243 Miller Street is located on the boundary of the North Sydney CBD. As established in the case of *Castle Constructions Pty Ltd v North Sydney Council* [2008] NSWLEC 1168 Commissioner Bly concluded that '... it is plain that the LEP and the DCP provide for an abrupt edge to the North Sydney Centre. This is supported by the absence of the building height plane controls in cl 30.'

- The proposed development is consistent with the above, providing a definitive edge to the North Sydney but also providing a transition between the taller buildings to Walker Street and the lower density buildings to Miller Street

When considering the context within which 243 Miller Streets sits, the existing vegetation and the density of development expected to be delivered in the North Sydney CBD it can be seen that the ability to retain the current level of solar access to the property is hard to achieve. If the same level of solar access were required to be retained, the consequence would be underdevelopment of the site and a significant number of aged care beds would be lost.

We refer you to *Meriton v Sydney City Council [2004] NSWLEC 313* where a similar situation arose that in order to sustain the same level of amenity as that currently enjoyed by the neighbouring residents, the amenity could only be sustained *'at the cost of the subject site's reasonable development potential'*. It was noted that whilst there would be some loss of amenity, *'it did not justify refusal because the amenity that it reduces is gained from the underdevelopment of the subject site'*. We believe the proposal is of a similar circumstance and that in order to retain the existing level of solar access would see the underdevelopment of the subject site.

In light of this and the social benefit to be delivered as a result of the proposed development the overshadowing impacts caused by the proposal are considered reasonable and do not constitute grounds for refusal of the application or an alteration to the design.

SUBMITTORS CONCERNS

Over thirty submissions were received raising the following concerns/issues: bulk, scale, lack of dementia facilities; breach of height controls; traffic; Council should determine heights for its area; out of character; overshadowing; reduced amenity of apartments to south; excessive height; tree removal; loss of views; impact on school; overdevelopment; poor development in the past should not be reason for excessive height; loss of privacy; fire safety for aged residents; inadequate setbacks; excessive parking; negative impacts on hotel guests; wind impacts and heavy vehicle traffic in Elliott Lane. These issues have been mostly addressed within this report. Additional issues raised are addressed as follows:

- *Height of northern facade – building at its highest where it should be stepping down – not a sound transition of heights*

Planning comment :

Agreed, the height needs to be more in line with Council's draft control say RL 115 to RL 118.

- *Height at northern end should be setback and lowered*

Planning comment :

Agreed, as above.

- *Building is not a transition from Ridges down to Miller Street*

Planning comment :

The proposed building should be several metres lower than Ridges not higher.

- *Lack of adequate setbacks from western boundary for such a tall building – impact of overbearing building on School's outdoor piazza area*

Planning comment :

Agreed, tower A is proposed as apartments and SEPP 65 is relevant. Separation distances should be shared between neighbours. The subject site is borrowing heavily from both neighbours when stating that separation distances are satisfied. Lower the

building by 10m as well as increasing setbacks where the building is over 25m in height would significantly lessen the bulk and scale of the building.

- *Removal of trees that are in good health*

Planning comment :

There are three trees to be removed. Perhaps the two Fig trees and the London Plane tree can be retained with a greater setback around them that would be in keeping with SEPP 65 requirements.

- *Restricted site size should constrain development on site*

Planning comment :

It is obviously the shape more than the size. The applicant has stated ... *The site is long and narrow, providing the required setbacks would significantly reduce the viability of the floorplates proposed*

- *Right of way should be formalised*

Planning comment :

This would be conditioned should approval be granted.

- *Wind impacts*

Planning comment :

The applicant has submitted a wind report indicating that the proposal would be satisfactory in this regard.

- *Increased traffic generation*

Planning comment :

This relates to the amount of development allowed and compliance with Council's DCP requirements for the maximum amount of parking. Traffic would be increased on site compared to the current use. A proposal in keeping with Council's controls would be acceptable with regard to traffic.

- *Heavy vehicle access from Elliott Street would be dangerous and incompatible with children*

Planning comment :

Limited truck movements would be involved. Council's Traffic Engineer has accepted the loading facilities on the basis of trucks turning on site and not reversing in the street. It is recommended that the applicant be required to provide an Operational Transport Management Plan for heavy vehicles.

- *Inadequate view analysis*

Planning comment :

The applicant provided the following view analysis with regard to the surrounding properties:

“With respect to the private views available to neighbouring residents, Council’s planning controls do not contain any provision relating to the principle of view sharing and as such this issue does not appear to be a determinative consideration in the assessment of applications within the North Sydney CBD.

*Notwithstanding the above, an appropriate point of reference to consult when considering the reasonableness of view impacts to residents is the planning principle enunciated by the decision of Senior Commissioner Roseth in *Tenacity Consulting Pty Ltd v Warringah Council* [2004] NSWLEC 140. Commissioner Roseth provides a four step test for assessment to determine whether an impact on views is significant.*

Step 1

The first step is the assessment of views to be affected. Senior Commissioner Roseth cites that water views are valued more highly than land views. Iconic views (eg Opera House, Harbour Bridge and North head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Step 1 Assessment

The proposal will not have any impact on iconic views in the area. The site is located to the north of the existing high rise buildings on Miller and McLaren Streets and therefore does not impact upon the iconic views toward the Sydney Harbour Bridge, city skyline, and Sydney Harbour. The views that are affected from the proposal are predominantly to the north and may restrict some views to North Sydney Oval or St Leonards Park. Rydges Hotel does obtain regional views across the site towards the west. During consultation the owner of 243 Miller Street advised that views towards the harbour are available from the upper level of the building. We have not had access to substantiate this claim or to undertake a view impact analysis.

Step 2

The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is often more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

Step 2 Assessment

The views are obtained from a range of standing and sitting positions across the site from the south and east to the north and west. Views are across the front and side boundaries of the properties.

Step 3

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas. The impact may be assessed quantitatively. However, it is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Step 3 Assessment

Due to the shape of the site and the orientation of the building, the development will obscure the views of most of the units within 37 and 39 McLaren Street towards the north. All of the views to the west across the side boundary from the Rydges hotel will be obscured by the development. All of the views across the side boundary of the site from 243 Miller will be obscured by the development.

Step 4

The fourth step is to assess the reasonableness of the proposal that is causing the impact. Commissioner Roseth states: “development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.”

Step 4 Assessment

The proposed development is considered to be reasonable for the following reasons:

- The proposed development complies with the maximum height and the solar access controls contained within NS LEP 2001;*
- The views obtained are not iconic, in the case of 243 Miller Street if harbour views are obtained they are gained across the side boundary of the site which is acknowledged to be harder to protect. Further the building complies with the maximum height control and setback controls in the location where the view loss occurs and as such the view loss is not unreasonable; and*
- Due to the orientation and constraints of the site, an outcome which preserves the existing views is not possible without significant loss of development potential.”*

The above analysis has been considered. It is agreed that the views from 243 Miller

Street cannot be protected as they are gained across the site from a low viewing point. Views will be affected by the proposal, however, the view impact would be less with a building that is modified by reducing the height some 10m and increasing the side setbacks of the upper levels.

- *SEPP – Housing for Seniors is the principal environmental planning instrument*

Planning comment :

The Housing for Seniors SEPP seeks to improve the design, and increase the supply and diversity of residences that meet the needs of seniors or people with a disability. The SEPP achieves this through setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in this Policy. The SEPP is seen as an enabling planning instrument. As aged care housing is permissible with development consent and the site is not subject to a maximum floor space ratio control, reliance on the SEPP is not sought by the applicant for this application. Notwithstanding this, the application has still been assessed against the relevant clauses.

- *No appropriate transition to northern edge of CBD*

Planning comment :

This has been addressed in the assessment.

- *Draft height controls should be given weight as desired character*

Planning comment :

The draft height controls are in accordance with the current LEP objectives for the centre providing for a transition at the edge. It is noted that the heights still permit an abrupt drop at the edge. The draft heights also are not in accordance with the notional arc but represent a reasonable transition to mixed use development with a 10m height control to the north and west.

- *Inadequate landscaping for a Seniors Living development*

Planning comment :

The landscaping requirements relate to lower scale residential zones more than mixed use with higher site covers. The SEPP is to enable development where the local controls don't allow that form of development. Landscaping requirements are included in a section where Councils cannot refuse the application if they comply with the standard. Council can still have regard to the need for landscaping. The proposed perimeter planting does not provide for open space with good solar access for residents of an aged care facility. The applicant must rely on roof top open space where better solar access and amenity is available. This should be maximised at the podium level.

- *Proposal not in accordance with notional arc in DCP character statement*

Planning comment :



Figure 1.1 Stepping down of building heights along Miller Street. Potential increase in height shown in light grey.

It is evident that the proposed buildings are well outside the above notional arc.

- *Shadow impact on 39 McLaren Street*

Planning comment :

The applicant has commented:

“all of the units except one will receive two or more hours of sunlight on June 21. The exception to this is the unit on the lowest level in the north-east corner of the building.

In order to deliver the required amount of sunlight to this unit, the proposed building would need to be lowered by an additional 2 storeys on the 50 McLaren Street portion of the site. Such an amendment to the building envelope is not warranted in this instance for the following reasons:

- The residential dwelling is located within the North Sydney CBD which is a high density environment, earmarked for increased densities under the Sydney Metropolitan Plan 2036 and the draft Inner North Subregional Strategy;
- June 21 is the worst case scenario and for the majority of the year the unit will receive 2 or more hours of sunlight as shown on the shadow diagrams for March 21st and September 21st;
- The unit would already be subject to a significant amount of overshadowing on June 21 due to height and width of the existing Morton Bay Fig Tree located on the Site; and
- The reduced building form would result in the loss of 40 units and 42 greenhouse beds which are in high demand in North Sydney. The social benefit of the proposal outweighs the limited solar impact on the unit concerned.”

Compliance with Council’s draft height control of RL90 would improve the shadow impact on the lower apartment. Even an increased setback of the western end to have regard to the heritage scale in Miller Street would be an improvement and it certainly won’t drastically reduce unit numbers.

- *Shadow impact on 237 Miller Street*

Planning comment :

Several units have a northerly aspect and front onto McLaren Street. The proposed development overshadows some of the lower level apartments between 9am and 12pm on June 21, however all of the units within this building maintain two or more hours on sunlight between 1pm and 3pm on June 21.

- *Shadow impact on Rydges*

Planning comment :

The proposal will create shadows in mid winter from 2pm. At 3pm just over a third of the western facade will be in shadow. Over two thirds of the facade will receive 2.5 hours of sun in the afternoon.

CONCLUSION

The application has been assessed against the relevant statutory controls. A thorough

analysis of the site and surrounds has been provided along with numerous reports and studies. The applicant considers the height and scale of the proposal to be in context with the surrounding areas. Photomontages were provided showing the proposed building from various locations to demonstrate that the building should have a height equal to the Rydges Hotel.

Council has undertaken extensive studies of the whole of the CBD providing specific heights for each site in the CBD. The heights were based on the objectives of the current controls having regard to sites adjoining the centre with the benefit of Court decisions concerning the controls.

Having regard to the transition requirements in the LEP and the notional arc in the DCP and the existing buildings north south and west east, it would seem that the northern tower should be lower than the Rydges building (not higher than it).

The applicant has advised that the northern building (tower A) is to be used for self contained apartments. Accordingly SEPP 65 is relevant. The applicant claims that separation distances comply but relies heavily on the majority of the separation being on the neighbours' site rather than equal sharing of setbacks. This is of particular concern as the building exceeds 25m in height.

The application was referred to Council's Design Excellence Panel for comment and there was concern raised about the height of tower B being excessive for the McLaren Street building. The Panel commented on the need for some articulation to the larger tower to reduce its scale when viewed from the Miller Street properties, perhaps by a podium/setback/facade treatment at the RL101 level. This would coincide with the SEPP 65 requirement of increased setback for a building in excess of 25m.

The Design Excellence Panel raised concerns with the scale of the south eastern corner (tower B) and Council's Conservation Planner raised concern about the building needing to be articulated to create a compatible form and scale to the adjacent heritage items. The applicant's Heritage Consultant recommended:

....the west and north elevations of the Miller/McLaren Street building at the lower levels/podium be articulated and detailed to complement the scale and character of the heritage items along Miller Street.....

To achieve an appropriate scale, tower B and the western end of the McLaren Street building need to be lowered.

Council's Traffic Engineer raised concern about the increased amount of parking on the site and recommended no more than the maximum permitted under the DCP.

The application is seeking consent for the demolition of existing structures, tree removal, installation of drainage infrastructure and Stage 1 concept approval for an aged care housing development and associated non residential uses. The height and setbacks of various sections of the building are not supported as indicated in the assessment report.

The following changes are considered necessary to provide for a more acceptable envelope for development:

- Reduce height of tower A to no more than RL 118 (to top of plant)
- Provide minimum of 6m setback from side boundaries for building up to RL 101
- Provide minimum of 9m setback from side boundaries for building over RL 101

- Reduce tower B to be one floor higher than RL 101 with 3m setback from podium edge to McLaren Street to provide lift and stair access to podium level (RL 101) with associated facilities.
- Maximise open space terrace at podium level
- Increase setback at western end of McLaren Street building at RL 91 to the rear alignment of the heritage building at 243 Miller Street
- Parking on site to be in accordance with maximum requirements of DCP

It may not be possible to provide for the suggested setbacks having regard to the shape and narrowness of the site. That means that the site is not really suitable for the scale of development proposed. It may mean that the applicant may need to consolidate the site to make it wider. It is noted that the taller buildings to the east have a larger site with more generous setbacks.

The application is recommended for refusal. Should the Panel agree with the suggested modifications above, the applicant could lodge a new application for the complete proposal with full details of use, architectural details, materials and finishes rather than another Stage 1 concept application.

RECOMMENDATION

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

THAT the Joint Regional Planning Panel, as the consent authority, refuse consent to 2011SYE026 – North Sydney - Development Application No.67/11 for the following reasons:

1. The building height and massing do not satisfy the objectives of Clause 28D of North Sydney Environmental Plan 2001.
2. The building height of tower B and the western end of the McLaren Street building are visually dominant with regard to the streetscapes of McLaren Street and Miller Street and inconsistent with Clause 29 of North Sydney Environmental Plan 2001.
3. The side setbacks are inadequate for an apartment building and do not satisfy SEPP 65 minimum requirements.
4. The parking is in excess of the maximum permitted under North Sydney Development Control Plan 2002 and inconsistent with the objectives under Clause 28B of North Sydney Environmental Plan 2001.
5. The height and massing of the building create amenity impacts on surrounding occupants with regard to overshadowing and loss of views.

Geoff Mossener
EXECUTIVE PLANNER

Stephen Beattie
MANAGER DEVELOPMENT SERVICES