

JRPP No:	2011SYE050
DA No:	DA145/11
PROPOSED DEVELOPMENT	Demolition of existing buildings and structures, site amalgamation and the erection of an 11 storey mixed use development with 3 levels of basement parking at 239-247 Pacific Highway North Sydney
APPLICANT:	PD Mayoh Pty Ltd
REPORT BY:	Geoff Mossemeneer, Executive Planner, North Sydney Council

Assessment Report and Recommendation

EXECUTIVE SUMMARY

This development application includes demolition of existing buildings and structures, site amalgamation and the erection of an 11 storey mixed use development with 3 levels of basement parking

The proposal involves a reduction in commercial floor space from existing, below the current control's minimum requirement. The applicant was advised that a SEPP 1 Objection could not be supported and a Planning Proposal was necessary due to the extent of the breach. The applicant lodged a Planning Proposal that is currently being dealt with. The Planning Proposal has been endorsed by Council at its meeting of 16 May 2011 as the proposal was consistent with the FSR intended under Draft NSLEP 2009. As there is no additional commercial floor space proposed, the Railway Infrastructure Clause is not relevant and the applicant does not need to enter into a commitment deed with Council.

The application was referred to Council's Design Excellence Panel at its meeting of 14 April 2011. The Panel considered the proposal to be in keeping with the desired character of the area. The podium and tower height were considered satisfactory. A number of issues were raised by the Panel in their discussion with the architects. The applicant lodged amended plans on 17 May 2011 in response to the suggestions from the Design Excellence Panel. Further amended plans were lodged on 21 June 2011 to make some internal design changes to the apartments.

Council's notification of the proposal has attracted four submissions raising concerns/issues about: height; overshadowing; setbacks; lack of public benefit; noise; light wells; mix of units; privacy; parking; street planting; amenity and construction impacts.

Following assessment of the amended plans, the development application is recommended for **approval**.

DESCRIPTION OF PROPOSAL

This development application includes demolition of existing buildings and structures, site amalgamation and the erection of an 11 storey mixed use development with 3 levels of basement parking. The podium is at 6 levels (including ground floor level) and is to include 791m² of commercial or retail space at ground floor level. A residential tower incorporates a total of 86 residential units. The unit mix comprises 20 studio apartments; 26 x 1 Bedroom units; 32 x 2 Bedroom units and 8 x 3 Bedroom units. Basement parking is provided over 4 levels and includes the provision of 63 residential parking spaces and 7 non-residential parking spaces, together with bicycle and motor bike parking, storage areas, and garbage storage space. A garbage storage area is also provided at the ground floor level, accessible off Angelo Street, with the provision for a garbage truck and delivery truck to park off the street.

STATUTORY CONTROLS

North Sydney LEP 2001

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

S94 Contribution

Environmental Planning & Assessment Act 1979

SEPP 1 Objection

SEPP 55 - Contaminated Lands

SREP (2005)

Local Development

Draft North Sydney LEP 2009

POLICY CONTROLS

DCP 2002

Draft North Sydney DCP 2010

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

No. 239-247 Pacific Highway North Sydney is located on the eastern side of Pacific Highway, between McLaren and Berry Streets. The combined site is rectangular in shape with the primary frontage to Pacific Highway and a rear frontage to Angelo Street. The site has the following boundary dimensions: Pacific Highway 50.995 metres (western boundary); Angelo Street boundary 49.17 metres (eastern boundary); 22.375 metres to the northern boundary; 24.79 metres to the southern boundary. The area of the site is 1173.2m². The land exhibits a cross fall of approximately 3.2 metres from

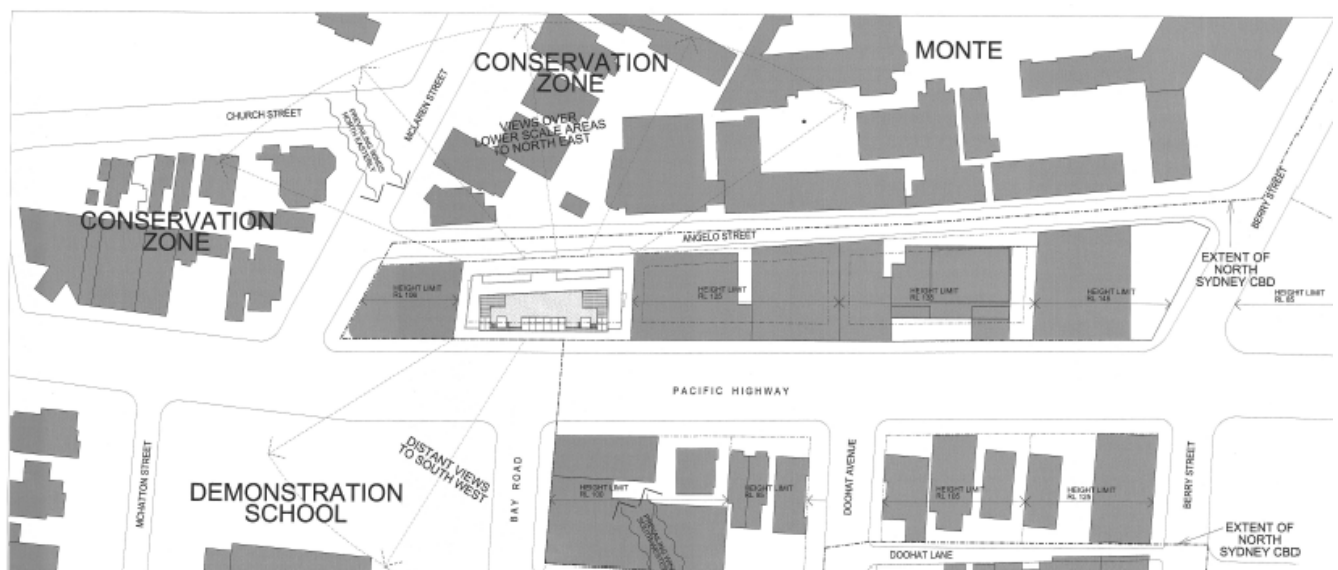
north to south. The existing buildings on the site comprise 3 x 2 storey commercial buildings with ground level parking at the rear, obscured from the street. These existing buildings comprise rendered masonry, bagged brickwork and face-brick, with flat roofs or shallow pitched roofs.

The site is within a mixed residential / commercial neighbourhood which predominantly consists of residential apartments, office buildings and some dwellings houses within a Conservation Zone, which is located along McLaren Street. The residential development in this locality is relatively mixed, ranging from older style one and two storey dwellings to older three and four storey flat buildings.

To the rear of the site is Monte Sant' Angelo Mercy College. Directly to the north of the site at the corner of McLaren Street and Pacific Highway is a five storey commercial brick building which also backs onto Angelo Street.

Immediately to the south of the site is a single storey commercial building with a height limit of RL 125 under the Draft NSLEP 2009. Further towards the corner of Berry Street and Pacific Highway, the height limit increases to RL 135 and RL 145. The JRPP recently granted consent to a mixed use development at 21-223 Pacific Highway.

Location of Subject Site



REFERRALS

Building

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

Engineering/Traffic

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

“Existing Development

The existing site comprises three commercial buildings with a combined total floor area of approximately 2,590 m² with 23 off-street parking spaces.

Proposed Development

The proposed development incorporates 86 residential apartments (20 x studios, 27 x 1-bed, 29 x 2-bed, 10 x 3 bed), 314 m² of refreshment shops and 344 m² of commercial floor space.

Parking

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

Development Component	Parking Rate	Maximum Parking
Studio & 1-bedroom apartments (47)	0.5	23.5
2+ bedroom apartments (39)	1	39
Commercial (344 m ²)	1/400 m ²	0.86
Refreshment room (314 m ²)	1/50 m ²	6.28
Total		70

The applicant is proposing to provide 70 parking spaces which complies with the DCP.

Traffic Generation

I generally concur with Terrafic's traffic generation calculations. I generally concur that the likely traffic generation associated with the proposed development will have a minor impact on the surrounding road network.

Bike Lane in Angelo Street

Long term, Council intends to install a contra-flow bicycle lane in Angelo Street. The current road width and alignments mean this is not possible.

Due to the nature of the existing garages and driveways accesses in Angelo Street, the kerb and gutter will need to be reinstated at the rear of the proposed development. Given this, in order to accommodate a contra-flow bicycle lane in the future, the new kerb and gutter should align with the existing kerb and gutter alignment at 22 Angelo Street (231 Pacific Highway).

I note that a pedestrian footpath and access is provided on the eastern side of Angelo Street. There is no continuing footpath on the western side of Angelo Street, adjacent to 1 McLaren Street.

Loading Dock

Generally the proposed Loading Dock is supported.

The driveway access to the proposed car park and loading dock is not to be constructed as shown in the submitted DA plans. The driveway access to the proposed car park and loading dock is to comply with Council's Infrastructure Specification for Roadworks, Drainage and Miscellaneous Works and Council's Vehicular Access Application.

I note that lift access is provided from the loading dock to the car park below. Furniture removal vans for the residential apartments will therefore need to transfer the furniture from the ground floor to the basement via the goods lift. They will then need to transfer the furniture from the goods lift across the basement to one of the two lifts to the residential floors. Furniture will therefore be handled three-times over. This is not a highly desirable development outcome. However, there is no parking permitted on the Pacific Highway, at the front of the site. Therefore, there will be no opportunity for furniture removalist vans to circumvent this system and cause any parking or safety issues. Therefore the proposed lift arrangements are considered acceptable.

Queuing Length

It is unclear from the plans as to the location of the security gate/ security access point for the car park. AS2890.1 outlines that a car park of this size should allow for the queuing of two vehicles.

Conclusion

Should this development be recommended for approval it is recommended that the following conditions be imposed

Engineering/Stormwater Drainage/Geotechnical

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

Landscaping

Council's Landscape Development Officer (B Smith) has provided the following comments:

"It is advised that I have inspected the subject development application with Councils Arborist in relation to the consolidation of the subject properties and the associated demolition and reconstruction and the following observations and recommendations are provided.

- There are no street trees along the Angelo Street frontage of the property, nor the opportunity for the planting of any directly outside the property due to footpath width constraints. I have had a brief discussion with Councils Traffic Manager in relation to seeing if there are any opportunities for street tree planting on the other side of street. I was advised that due to the limited width of the road and footpath on both sides of the street and the cycle way also being accommodated in Angelo Street, there would be no opportunity for tree planting on the eastern side of Angelo Street either.
- There is only one Street Tree growing outside the property along the Pacific Highway frontage of the property, and it is growing approximately 2 metres to the south of the existing traffic lights. The tree is a mature specimen (20 years-25 years), however its extensive root system has caused significant damage to the integrity of the footpath itself and the kerb and gutter. Furthermore as a result of some injudicious maintenance pruning by Energy provider over the years, the tree has a distinctive lean to the west and all of its branching grows to the west of the power lines as opposed to being "gully cut". In the light of the above information we have determined to support its removal provided that a replacement tree is provided.
- The submitted application proposes to retain the tree and provide a further three new tree plantings, evenly spaced along the building frontage. Whilst we support the planting of new trees outside the Pacific Highway frontage of the property, it is our recommendation that the following occur.

1. That the existing tree should be removed and a replacement tree be planted in a similar location.
 2. That the proposed tree to the north of the existing traffic lights be deleted as it may well pose a visual screen to the traffic lights for oncoming motorists as it matures.
 3. That the tree proposed to be planted to the north of the traffic lights be relocated to replace the existing tree mentioned above and that the other two trees proposed to be planted remain as proposed.
- The submission has included a landscape plan, proposing inclusion of a number of roof garden and internal garden plantings and the species selection is generally quite good with the provision of an assortment of shrubs, groundcovers and succulents. However also shown is a 200 litre Port Jackson Fig Tree to be part of the roof garden plantings. I am supportive of the scheme in principal and all the species selection other than the Port Jackson Fig. Therefore I recommend the approval of the Landscape Plan, noting the deletion of the Port Jackson Fig.

In conclusion, I raise no objections to the submitted development application provided that the existing Street Tree growing along the Pacific Highway is removed and replaced with a new tree along with two other new trees to Councils Specifications, during the course of required footpath, kerb and road works."

DESIGN EXCELLENCE PANEL

The application was referred to Council's Design Excellence Panel at its meeting of 14 April 2011. The minutes are reproduced as follows:

"PROPERTY: 239-247 Pacific Highway North Sydney

DATE: 14 April 2011 @ 3.30 pm

ATTENDANCE: Panel Members: Philip Graus; Russell Olsson; Peter Webber; apologies from David Chesterman
Council staff: Geoff Mossemeneer (chair)
Proponents: Peter Mayoh (architect); Mohammed Chehelnabi

A site inspection was carried out by the Panel and Council Staff prior to the meeting.

The Proposal:

The proposal is for demolition of existing buildings and structures, site amalgamation and the erection of an 11 storey mixed use development with 3 levels of basement parking. The podium is at 6 levels (including ground floor level) and is to include 791m² of commercial or retail space at ground floor level. A residential tower incorporates a total of 86 residential units. The unit mix comprises 20 studio apartments; 27 x 1 Bedroom units; 31 x 2 Bedroom units and 8 x 3 Bedroom units. Basement parking is provided over 4 levels and includes the provision of 63 residential parking spaces and 7 non-residential parking spaces, together with bicycle and motor bike parking, storage areas, and garbage storage space. A garbage storage area is also provided at the ground floor level, accessible off Angelo Street, with the provision for a garbage truck and delivery truck to park off the street.

This proposal is an application to be determined by the Joint Regional Planning Panel.

The architect provided an outline of the lodged application.

Panel Comments:

The Panel considered the proposal to be in keeping with the desired character of the area. The podium and tower height were considered satisfactory. The following issues were raised by the Panel in their discussion with the architects:

- The north west corner of level 9 could be reconsidered to be more in line with level 10 as it would be quite visible from the Highway
- The vertical garden wall needs to be carefully considered as it faces west and is a prominent part of the building. It needs to work and survive. There were concerns that such walls are difficult to maintain and costly. Should the applicant reconsider the design of this wall, the Panel recommends that different finishes be considered to reduce the impact of large areas of blank wall.
- Whether natural light can be provided to the lift lobby on each level.
- The provision of a direct link between the lifts on the roof level. As there is only one lift to service each core, consideration is needed to the possible failure of one of the lifts. A link at one of the mid levels (level 5) should also be considered.
- The residential entries and location of the letterboxes. Consider arranging so there is a meeting point at the ground level, comfortable seating etc..
- Increase awning height at entries to identify the residential entry to the building.
- Commercial lift could be relocated to south to allow apartment 105 bedroom to adjoin the terrace.
- Activation of Anglo Street retail space. Consider through site access. Better amenity to a café fronting Anglo Street. Treatment of façade at lower levels and upgrade footpath.

The Design Principles contained in SEPP 65 are addressed as follows:

Principle 1 — Context

The subject site is located in an area that has been zoned by Council to facilitate mixed use development. The scale and height of the proposed development is appropriate to its context. The existing context of development near the site is of predominately a commercial character along Pacific Highway. However, the block represents a transitional area between the commercial core of the CBD and the residential development to north.

Principle 2 and 3 — Scale and Built Form

The proposal establishes a consistent street setback along the eastern side of Pacific Highway. The podium configuration responds to the scale and bulk of adjacent developments in the streetscape. The podium heights of 5 and 6 storeys respond to the neighbouring building and the sloping site, which has a fall of 3 metres along its main façade along Pacific Highway. The podium steps down from that of No 1 McLaren Street building, which has a 7 storey façade on its boundary, to the proposed development by 2 storeys. The proposed 5 storey podium becomes 6 storeys, 3 metres away from its southern boundary and then stepping to become 5 storeys on its southern boundary, which defines the podium height for future development on the adjacent site.

Principle 4 — Density

The design of the proposed development is consistent with the desired future character of the North Sydney's CBD. The site is located in the mixed use zone which is characterised as a transitional zone between the commercial core of the CBD and the residential development surrounding the development. The density achieved is considered to be appropriate within this mixed use area under transition in which the site is located taking into account the controls, environmental and growing urban context in close proximity to North Sydney Station.

Principle 5 - Resource, Energy and Water Efficiency

A BASIX assessment and report has been submitted with the application. The layout of the unit blocks and units has attempted to maximise solar access and cross ventilation for the maximum number of units. High performance glazing will be provided to reduce heat transfer and external louvres are proposed to control solar access and internal thermal comfort. Because the development has a large frontage facing west, the functionality of glazing, deep balconies and operable external louvres have been considered.

Principle 6 - Landscape

Landscaping is incorporated into the design at Level 5 (southern elevation) and Level 6 (north, east and west elevations), complementing the built form by providing visual relief at the building's vertical midpoint. Other terrace areas throughout the building provide good opportunity for potted planting. The Communal Roof Garden provides significant landscaping and optimizes usability,

privacy and social opportunity. It has equitable access and respect for the neighbour's amenity below. The practicality for the planting to establish and be sustainable is enhanced by the scaled down roof section servicing this area, which provides ample opportunities for sun and rain. Long term management is ensured by the accessibility of this area for maintenance. New street planting and sandstone paving to the footpath are proposed along Pacific Highway to improve the public domain area in front of the site. The lift and fire stairs have been faced with a vertical planting to soften and define the two separate residential entries.

Principle 7 — Amenity

The apartment layouts and services have been laid out based on an open plan format with main living areas opening onto the private balcony. The proposed rooftop garden provides a large communal open space for residents. Balconies are proposed with a solid balustrade to create an acoustic barrier to road noise and provide privacy. The development will achieve 76% solar access and 76% cross ventilation, over the minimum SEPP 65 requirements.

Principle 8 - Safety and Security

The proposed development ensures casual surveillance of Street while maintaining internal privacy, avoiding dark and non visible areas, maximising activity on streets, providing clear, safe access points, providing public space that cater for activity at street level.

Principle 9 - Social Dimensions

The proposal incorporates a broad range of retail space at ground level with flexible floor plates so that it may respond to changing market demand. The mix of apartment types (1, 2, and 3 bedroom), varying in size and position, will support a range of socio-economic groups whilst retaining amenity for all residents. The development is 100% accessible and provides adaptable units. The provision of attractive rooftop communal facilities is commended.

Principle 10 — Aesthetics

The building forms properly address the street frontage through the change of materials and colour and create visual interest through appropriately scaled massing and varying setbacks. The elements break up the mass of the proposed development and provide an articulated facade which will complement the surrounding area. The overall aesthetic is considered to be appropriately modulated and presents varied and visually interesting frontages towards Pacific Highway and Angelo Street. The proposed development incorporates varied building elements, textures, materials and finishes which all contribute to a quality development.

Conclusion:

In summary, the Panel considered the bulk and size of the proposal to be generally acceptable. The Panel would like the applicant to respond to the issues raised above."

The applicant lodged amended plans on 17 May 2011 in response to the above suggestions from the Design Excellence Panel. Through site access is proposed along with activation of the Angelo Street façade.

External Referrals

There were no external referrals required.

SUBMISSIONS

The application was notified to the Stanton, Edward, CBD and Union precincts and surrounding owners and residents from 15/04/2011 to 6/05/2011. A total of four submissions were received with the main issues raised being summarised as follows:-

Name & Address of Submitter Basis of Submissions

Edward Precinct	<ul style="list-style-type: none"> • Exceeds draft height control by 5m • Overshadowing • Zero setbacks to the podium • No public benefit • Roof garden will create noise issues • Light wells are too small, should be 6m x 6m • Mix of units need to be improved to address affordability issue • Privacy impacts • Driveway should be limited to one driveway • Safety signs required • Car share parking should be provided on site • Require street plantings on Angelo Street • Applicant should provide raised crossing at Angelo Street and McLaren Street
3 McLaren Street	<ul style="list-style-type: none"> • Amenity impact during construction and ongoing truck delivery and traffic • A tonnage limit is needed on Angelo Street • Damage to house from vibrations • Loss of privacy
Lavender Bay Precinct	<ul style="list-style-type: none"> • Proportion of building should be available for low cost disabled housing
Resolution of North Sydney Council	<ul style="list-style-type: none"> • Need for a 1.5m setback at ground level only from Angelo Street to provide a contra-flow bike path

Amended plans have been submitted to Council during the assessment period in response to the Design Excellence Panel's comments. Further amended plans were lodged on 21 June 2011 to make some internal design changes to the apartments.

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

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

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

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

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

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

CONSIDERATION

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

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

Compliance Table

STATUTORY CONTROL – North Sydney Local Environmental Plan 2001				
North Sydney Centre	Existing	Proposed	Control	Complies
Height (Cl. 28D(2)(a))	NA	RL 120.30 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))	1173.2	1173.2	1000m ² min.	YES
Mixed Use Zone				
Building Height Plane (Cl.30)				
<ul style="list-style-type: none"> North Elevation 	NA	25m	45° height plane from 1.8m above centre of lane	NO**
Floor Space (Cl. 31) (max)	1.83:1	0.67:1	Within range of 3:1 to 4:1	NO*

* SEPP 1 objection lodged. Applicant has also submitted Planning Proposal to vary the FSR control to be a minimum of 0.5:1. See comments regarding floor space

** SEPP1 objection lodged.

DCP 2002 Compliance Table

DEVELOPMENT CONTROL PLAN 2002		
	<i>complies</i>	<i>Comments</i>
6.1 Function		
Diversity of activities, facilities, opportunities and services	Yes	Ground floor retail spaces provided, roof top communal space provided
Mixed residential population	No	The dwelling yield is in accordance with Council's residential development strategy. The proposed mix of dwellings has more small dwellings than large approx. 54/46 mix. This has been accepted with other recent mixed use developments on the basis of location on the edge of the CBD and excellent public transport facilities.
Maximum use of public transport	Yes	Commercial parking on site decreased; excellent access to public transport
6.2 Environmental Criteria		
Clean Air	Yes	Reduced level of parking, parking to be restricted to maximum under DCP

Noise	Yes	Acoustic report submitted, can be conditioned
Acoustic Privacy	Yes	Acoustic report indicates standards can be met
Visual Privacy	Yes	See comments below. There is only one dwelling at No.3 McLaren Street affected with two windows facing Angelo Street. Lower level apartments facing Angelo Street in close proximity to have screens on bedroom windows with all eastern facing balustrades on the levels below the tower to have obscure glazing
Reflected light	Yes	Materials non reflective and can be conditioned
Artificial light	NA	No roof top advertising proposed
Outdoor lighting	Yes	Can be conditioned
Awnings	Yes	Continuous awning provided across Highway frontage
Solar access	Yes	East west orientation allows for 2 hours to all units. Majority of upper level tower apartments have both east and west orientation.
Views	Yes	No significant view loss
6.3 Quality built form		
Context	Yes	Site analysis undertaken, building generally in context with desired character for area
Public spaces and facilities	NA	Site too small to provide spaces
Skyline	Yes	Upper levels designed to contribute
Through-site pedestrian links	Yes	None required but a through site link is proposed that will link to the existing pedestrian crossing at the Highway and Bay Street
Streetscape	Yes	Satisfactory. Activation of both street facades proposed
Subdivision	Yes	Consolidation of sites is consistent with Council's desired subdivision pattern
Setbacks	Yes	Ground level setbacks not required under controls but proposal has been setback at rear to activate Angelo Street façade. Light wells provided from level 1 to level 5 and 6 – satisfactory size and no internal amenity impacts created. 3m setback from side boundaries to allow separation with future development (mainly to south)
Entrances and exits	Yes	Satisfactory
Street frontage podium	Yes	Satisfactory
Laneway frontage	Yes	Satisfactory
Building design	Yes	Generally satisfactory. Supported by Design Excellence Panel
Nighttime appearance	Yes	Can be conditioned

6.4 Quality urban environment

High quality residential accommodation	Yes	Apartment areas comply
Accessibility	Yes	Satisfactory
Safety and security	Yes	Satisfactory
Car parking	Yes	In accordance with DCP
Bicycle storage	Yes	In basement
Vehicular access	Yes	From Angelo Street
Garbage Storage	No	Separate facilities provided. Garbage can be collected from Angelo Street with service lift provided to transfer bins from basement to street level..
Site facilities	Yes	Storage areas provided within basement and within apartments
6.5 Efficient use and management of resources		
Energy efficiency	Yes	Basix certificate submitted

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 results in a major reduction in the commercial floor space existing on site. The site is too small to provide for high quality/large commercial floor plates
(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 does not increase the non residential floor area and accordingly arrangements are not required.
(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 a reduction in the non residential 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 reduce 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 .	The commercial floor plate upon the site is smaller than the required 1000m ² threshold (the site area is 1173m ² and the restricted commercial floor plate is much smaller).
(i) to achieve a variety of commercial space	The commercial components of the proposed building have been designed to be flexible in use.
(j) to encourage the refurbishment, recycling and rebuilding of older buildings.	The existing buildings on the site is to be demolished.

(k) to encourage a diverse range of employment, living, recreation and social opportunities.	The proposed development provides flexible commercial 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. The design of the building is contemporary in nature.
(m) to provide significant public benefits such as open space, through-site linkages, childcare and the like.	The site provides for a through site link.
(n) to improve accessibility within and to the North Sydney Centre.	The proposed buildings have been designed to be accessible.
(o) to protect the amenity of residential zones and existing open space within and nearby the North Sydney Centre	The proposal will have a limited impact on amenity of the residential area adjoining to the north east
(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 not result in minor overshadowing of residential premises.
(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.	Landscaped areas limited to podium and roof.

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 existing buildings on the site have a total non-residential gross floor area of approximately 2,150m² and the proposal has a non residential floor area of 791m² resulting in a decrease over that which currently exists. The proposal therefore complies with Clause 28C(2).

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 proposed development is considered to have an appropriate overall scale.

- (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.*

There is only one dwelling in close proximity to the site that could be impacted by loss of privacy. No.3 McLaren Street is located opposite the site fronting Angelo Street. The dwelling has two windows without obscure glazing facing the street. The yard area is used for parking. Most of the proposed apartments would be located at a distance and at an angle that would not cause privacy concerns. Some of the lower level bedrooms to the eastern boundary at the northern end of the site may need to have external screening to the window to limit impacts. The glazing of all eastern facing balustrades to balconies on the apartments below level 6 should have obscure glazing to restrict view lines for the living areas to the dwelling and school grounds. This can be conditioned.

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

The architect has attempted to ensure that the streetscape has a comfortable human scale when viewed by passing pedestrians. A continuous awning is to be provided along the entire Highway façade to provide weather protection for pedestrians.

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

The subject site comprises the consolidation of 3 allotments. Adjoining sites will not be isolated.

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 can not 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 120.3 AHD (to the lift over runs) 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 will not overshadow any dwelling.

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

The subject site is 1173.2m² in area.

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

The subject site comprises the consolidation of 3 allotments. Adjoining sites will not be isolated.

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 acceptable with regard to its scale within the context of the locality.

The proposal is well designed and provides quality residential accommodation on the edge of the CBD. The proposal provides direct public benefits with the through site link at ground level from Angelo Street to link with the traffic light pedestrian crossing at the Highway and Bay Street.

There are no view lines or vistas affected by the proposal.

The proposed development will enhance the streetscape with its materials and external treatments and provides variety and interest.

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 proposed development incorporates a suitable mix of commercial and residential uses. The building steps down in height as it approaches its residential interface to the north east of the site and is compatible.

- (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 generally considered to be an appropriate bulk and scale on the northern fringe of the North Sydney Centre.

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

The proposal provides a reasonable amenity and is consistent with SEPP 65 design principles. Any amenity impacts on neighbouring buildings can be resolved with appropriate conditions.

- (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 residential apartments have been designed in accordance with the principles of SEPP 65 and considered satisfactory.

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

Satisfactory with regard to this objective.

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

Pursuant to Clause 28D(2) of the NSLEP, a maximum RL height of 195 AHD applies to the site. The proposed development has a maximum height of RL 120.3 AHD.

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.

CLAUSE 30 - BUILDING HEIGHT PLANE

The objectives to the clause set out in subclause 30(1) are:

- (a) *ensure compatibility between development in the mixed use zone and adjoining residential or open space zones, and*
- (b) *minimise adverse effects on land in adjoining residential or open space zones in relation to ventilation, views, building separation, solar access and light and to avoid overshadowing of windows, landscaped areas, courtyards, roof decks, balconies and the like.*

The proposed development is considered to be compatible with the setbacks of the upper levels above the podium.

Building Height Plane Controls

Subclause 30(2) requires the implementation of a building height plane where a development within the mixed use zone adjoins residential zone. The northern boundary of the site directly adjoins the Residential C Zone. More specifically the clause requires that:

“A building must not be erected in the mixed use zone, on land that adjoins or is adjacent to land within a residential or open space zone, if any part of the building will exceed a building height plane:

(b) commencing 1.8 metres above existing ground level, and projected at an angle of 45 degrees, from the centre of any road which separates the land from land within the residential A1, A2, B, D or F zone or open space zone,”

The proposed development projects through the building height plane at virtually every level.

The Court of Appeal has held that the controls in Division 5 relating to the Mixed Use zone do not apply to land in the North Sydney Centre and that the provisions of Division 4 (which relate to the North Sydney Centre) prevail to the extent of any inconsistency.

Objective a) of Clause 30 is contained within the provisions of Division 4 and needs to be addressed. Objective b) is inconsistent with the provisions of Division 4 and therefore is not relevant to the proposal.

A SEPP 1 objection has been submitted requesting a variation to the development standard. It is a grey area whether a SEPP 1 objection is required if there is doubt about the control being relevant, however, the submitted objection should be considered as a precaution.

The sites that are zoned residential have frontages to McLaren Street. The land to the south is zoned Special Uses – School. The closest property is used a single dwelling with the others used for commercial and school purposes. The rear yards of the closest residential properties are located opposite the site and are used for parking. The proposal is separated by Angelo Street and is setback further above the podium. The proposal causes no overshadowing, loss of views or material loss of privacy. The proposal is consistent with the DCP controls and the desired character for the area. The proposal is considered to be compatible with the nearby residential zone.

The SEPP 1 objection with regard to the building height plane control is considered to be well founded under the circumstances of the subject site and can be supported.

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 illustrates that the non-residential component of a development within the mixed use zone must have an FSR of between 3:1 and 4:1. The existing buildings on the site have a total non-residential gross floor area of approximately 2,150m² or a FSR of 1.83:1. The proposed development has a non residential floor area of 791m² or a FSR of 0.67:1.

The proposal involves a large reduction in commercial floor space from existing, well below the current control's minimum requirement. The applicant was advised that a SEPP 1 Objection could not be supported and a Planning Proposal was necessary due to the extent of the breach.

The applicant lodged a Planning Proposal that is currently being dealt with. It is noted that the Planning Proposal has been endorsed by Council at its meeting of 16 May 2011 as the proposal was consistent with the FSR intended under Draft NSLEP 2009.

A consent cannot be granted until the Planning Proposal is finalised.

Clause 39 - Excavation of Land

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

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

There are no trees or vegetation on the site. The excavation for the basement will occur over most of the site however, with the normal procedures in place during construction,

the proposal will have no impact on the amenity or structural integrity of adjoining buildings, This can be confirmed by a Geotechnical Report and dilapidation assessment prior to the issue of a Construction Certificate, and by conditions. Runoff and underground water flows will not be adversely affected. The proposed excavation is therefore in accordance with the LEP requirements.

CLAUSE 50 - DEVELOPMENT IN THE VICINITY OF HERITAGE ITEMS

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 works to 239-245 Pacific Highway, North Sydney have 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 proposal is considered to be acceptable. It should be noted that the proposal is not located within a conservation area but is in the vicinity of heritage items. There is no physical impact on any of the heritage items in the vicinity.

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. Council has yet to make a determination of the many submissions received from the public exhibition.

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

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

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

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

COMPLIANCE TABLE – DEVELOPMENT STANDARDS			
Development standard	Requirement	Proposed	Complies
Clause 4.3: Height of buildings	RL 115	RL 120.3	NO
Clause 4.4: Floor space ratio	Minimum 0.5:1	0.67:1	YES
Clause 6.4: Building heights and massing	1000m ² site area	1173.2m ²	YES

Note: A building height plane is a requirement under the draft DCP.

The proposed development has been considered against the development standard applicable under the Draft LEP and does not comply with the provisions of Clause 4.3. The applicant has addressed the departures from the draft development standards in the statement of environmental effects. The departure to the height control is also supported in the circumstances. The height to the roof of the apartments is at RL115.1. The edge of the roof garden is at RL 116.1. It is only the communal facility on the roof and the lifts that are over the proposed height control. Those parts of the building are set well back from all boundaries and do not significantly add the bulk and scale of the building.

Having regard to the provisions of section 79C of the Environmental Planning and Assessment Act 1979, the proposed development is considered to satisfactory with regard to the provisions of the Draft North Sydney Local Environmental Plan 2009.

SEPP 55 and Contaminated Land Management Issues

The subject site has been considered in light of the Contaminated Lands Management Act and it is considered that as the site has been used for commercial 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.

SEPP 65 – Design Quality of Residential Flat Development

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

- (a) *to ensure that it contributes to the sustainable development of New South*

Wales:

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

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

Principle 1 — Context

The subject site is located in an area that has been zoned by Council to facilitate mixed use development. The scale and height of the proposed development is appropriate to its context. The existing context of development near the site is of predominately a commercial character along Pacific Highway. However, the block represents a transitional area between the commercial core of the CBD and the residential development to north.

Principle 2 and 3 — Scale and Built Form

The proposal establishes a consistent street setback along the eastern side of Pacific Highway. The podium configuration responds to the scale and bulk of adjacent developments in the streetscape. The podium heights of 5 and 6 storeys respond to the neighbouring building and the sloping site, which has a fall of 3 metres along its main façade along Pacific Highway.

Principle 4 — Density

The design of the proposed development is consistent with the desired future character of the North Sydney's CBD. The site is located in the mixed use zone which is characterised as a transitional zone between the commercial core of the CBD and the residential development surrounding the development. The density achieved is considered to be appropriate within this mixed use area under transition in which the site is located taking into account the controls, environmental and growing urban context in close proximity to North Sydney Station.

Principle 5 - Resource, Energy and Water Efficiency

A BASIX assessment and report has been submitted with the application. The layout of the units has attempted to maximise solar access and cross ventilation for the maximum number of units. High performance glazing will be provided to reduce heat transfer and external louvres are proposed to control solar access and internal thermal comfort. Because the development has a large frontage facing west, the functionality of glazing, deep balconies and operable external louvres have been considered.

Principle 6 - Landscape

Landscaping is incorporated into the design at Level 5 (southern elevation) and Level 6 (north, east and west elevations), complementing the built form by providing visual relief at the building's vertical midpoint. Other terrace areas throughout the building provide good opportunity for potted planting. The Communal Roof Garden provides significant landscaping and optimizes usability, privacy and social opportunity. It has equitable access and respect for the neighbour's amenity below. The practicality for the planting to establish and be sustainable is enhanced by the scaled down roof section servicing this area, which provides ample opportunities for sun and rain. Long term management is ensured by the accessibility of this area for maintenance. New street planting and sandstone paving to the footpath are proposed along Pacific Highway to improve the public domain area in front of the site.

Principle 7 — Amenity

The apartment layouts and services have been laid out based on an open plan format with main living areas opening onto the private balcony. The proposed rooftop garden provides a large communal open space for residents. Balconies are proposed with a solid balustrade to create an acoustic barrier to road noise and provide privacy.

Principle 8 - Safety and Security

The proposed development ensures casual surveillance of Street while maintaining internal privacy, avoiding dark and non visible areas, maximising activity on streets, providing clear, safe access points, providing public space that cater for activity at street level.

Principle 9 - Social Dimensions

The proposal incorporates a broad range of retail space at ground level with flexible floor plates so that it may respond to changing market demand. The mix of apartment types (1, 2, and 3 bedroom), varying in size and position, will support a range of socio-economic groups whilst retaining amenity for all residents. The development is 100% accessible and provides adaptable units.

Principle 10 — Aesthetics

The building forms properly address the street frontage through the change of materials and colour and create visual interest through appropriately scaled massing and varying setbacks. The elements break up the mass of the proposed development and provide an articulated facade which will complement the surrounding area. The proposed development incorporates varied building elements, textures, materials and finishes which all contribute to a quality development.

Residential Flat Design Code 2002

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

DEVELOPMENT CONTROL PLAN 2002

NORTH SYDNEY CENTRE PLANNING AREA / CENTRAL BUSINESS DISTRICT

The subject site is within the Central Business District which falls within the North Sydney Centre Planning Area. The 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 a landscaped communal area provided for residents. The new residential accommodation is provided in the fringe of the city centre, and not in the commercial core as per the Development Control Plan.

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

The site has excellent access to public transport and parking on site is satisfactory subject to the parking being limited to the maximum under the DCP.

Provide continuous awnings to commercial buildings and consider weather protection at entrances

An awning is proposed over the entrance along the Highway frontage, which is consistent with adjoining buildings.

Allow zero setbacks at ground floor and adjacent to heritage items

The building will retain the existing zero setbacks to front and side boundaries

Maximum five storey street frontage podium height along Pacific Highway, or may be reduced to that part of the building used for commercial use. Provide average of 5m street frontage setback above the podium in Pacific Highway

The podium height is five to six storeys to fit with adjoining development. The podium setback varies from 3-5m on the Highway in addition to a 3-5m setback on the Angelo Street side (where there is no requirement under the character statement)

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

The development is of a high quality design, with architectural detailing. The building provides a good relationship to the street frontage. The building will comply with the energy requirements of BASIX, Appropriate stormwater controls will be installed. Waste will be minimised where possible.

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.

SECTION 94 CONTRIBUTIONS

Section 94 Contributions in accordance with Council's S94 plan are warranted and would be based on the total number of apartments with allowance for the reduction in commercial floor space. There are 20 x studio; 26 x one bedroom; 32 x two bedroom

and 8 x three bedroom apartments with an allowance of 1360m² of commercial space.

Administration	\$6,109.72
Child Care Facilities	\$4,033.58
Community Centres	\$33,244.46
Library Acquisition	\$6,089.65
Library Premises & Equipment	\$18,909.08
Multi Purpose Indoor Sports Facilities	\$4,745.57
Open Space Acquisition	\$244,462.22
Open Space Increased Capacity	\$484,565.96
Olympic Pool	\$15,456.76
Public Domain Improvements	\$98,314.20
Traffic improvements	\$17,265.09
Total	\$933,196.29

APPLICABLE REGULATIONS

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

DESIGN & MATERIALS

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

ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

ENVIRONMENTAL APPRAISAL

CONSIDERED

- | | | |
|----|---|-----|
| 1. | Statutory Controls | Yes |
| 2. | Policy Controls | Yes |
| 3. | Design in relation to existing building and natural environment | Yes |

4.	Landscaping/Open Space Provision	Yes
5.	Traffic generation and Carparking provision	Yes
6.	Loading and Servicing facilities	Yes
7.	Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8.	Site Management Issues	Yes
9.	All relevant S79C considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

CLAUSE 14 NSLEP 2001

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

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

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

As such, consent to the development may be granted.

SUBMITTORS CONCERNS

Four submissions were received in relation to the proposed development raising concerns about: height; overshadowing; setbacks; lack of public benefit; noise; light wells; mix of units; privacy; parking; street planting; amenity and construction impacts. These issues have been mostly addressed within this report. Additional issues raised are addressed as follows:

Exceeds draft height control by 5m

The height to the roof of the apartments is at RL115.1. The edge of the roof garden is at RL 116.1. It is only the communal facility on the roof and the lifts that are over the proposed height control. Those parts of the building are set well back from all boundaries and do not significantly add the bulk and scale of the building. The proposal is consistent with the controls under NSLEP 2001.

Overshadowing

The proposed shadow from the development will fall substantially within the composite shadow area. There will be some minor increase in shadow to the Angelo Street roadway and a small portion of the Monte Sant' Angelo frontage to Angelo Street and then only at 3pm. The shadow diagram information confirm that the principal yard areas of the school will not be adversely affected by the development and for the majority of the day, the shadow cast by the development will fall wholly within the composite shadow area.

Zero setbacks to the podium

This is in accordance with the DCP. The applicant has set the ground floor back from Angelo Street to activate the retail spaces at the northern end of the site.

No public benefit

A through site link is proposed and considered as a public benefit. Public Benefits were accepted by the Land & Environment Court as the proposed commercial space, the proposed housing, Section 94 contributions, good urban design and general upgrading of infrastructure.

Roof garden will create noise issues

The roof garden will not create noise to nearby residents due to the distance and setbacks from the edge of the building. Plant noise will be conditioned. The communal facilities are contained within a building.

Light wells are too small, should be 6m x 6m

The light wells are 3m x 6m designed to compliment adjoining development where a light well can be provided of similar dimensions making a 6m x 6m light well.

Mix of units need to be improved to address affordability issue

The proposal has a mix of 54% small apartments compared to the DCP suggested mix of 45%. This has been accepted with other recent mixed use developments on the basis of location on the edge of the CBD and excellent public transport facilities. The applicant states that the smaller apartments are more affordable to the market. This should not be confused with the provision of low cost housing.

Privacy impacts

There is only one dwelling at No.3 McLaren Street affected with two windows facing Angelo Street. Lower level apartments facing Angelo Street in close proximity to have screens on bedroom windows with all eastern facing balustrades on the levels below the tower to have obscure glazing

Driveway should be limited to one driveway

There is only one driveway from Angelo Street.

Safety signs required

Can be conditioned.

Car share parking should be provided on site

This is difficult to provide with basement security parking as car share should be readily available to members in the locality. A space at street level outside the building would have to be provided and there is no suitable space. It is difficult to impose this requirement when it is not part of Council policy in the DCP. Car share parking should be more of an issue for sites that do not provide for the maximum parking under the DCP where car share can be proposed as an alternative to providing a number of spaces. Under the circumstances, the proposal provides the maximum amount of parking.

Require street plantings on Angelo Street

Council's Landscape Development Officer has considered tree plantings and considers there is inadequate space at present.

Applicant should provide raised crossing at Angelo Street and McLaren Street

This has not been recommended by Council's Traffic Engineer. It is a matter for Council's Traffic Committee to consider. The proposal does not generate significant additional pedestrian movements to warrant the applicant to pay for a crossing.

Amenity impact during construction and ongoing truck delivery and traffic

Construction hours are conditioned and the applicant must provide a suitable construction management plan for approval by Council's Traffic Committee.

A tonnage limit is needed on Angelo Street

This is a matter for Council's Traffic Committee to consider that is not related to this application. The limits do not apply for vehicles having a destination in the street. It would only apply to through traffic.

Damage to house from vibrations

The house is on the other side of the street. A dilapidation report can be conditioned.

Proportion of building should be available for low cost disabled housing

The proposal is not low cost housing. The density does not exceed the controls. It is beyond power to require some of the apartments to become low cost housing. At least 10% of the apartments are to be adaptable apartments and all of the apartments will be assessable.

Need for a 1.5m setback at ground level only from Angelo Street to provide a contra-flow bike path

The applicant has set the ground floor tenancies back from Angelo Street. A minor change to walls/structures adjacent to the loading space could allow for no obstacles within a 1.5m setback. Adjoining buildings are built to the street and redevelopment would have to take place for the setback on the subject site to be useful. In the absence of a master plan, it is not clear how this setback could be later utilised. However, a condition could be imposed to ensure the building retains the setback.

Conclusion

The application has been assessed against the relevant statutory controls. The proposal is in breach of two development controls.

The setback from above the podium of the upper levels results in the proposal being compatible with the residential development adjoining across Angelo Street (it being noted that there is only one dwelling remaining in close proximity with other properties being used commercially or for school related purposes). The SEPP 1 objection with regard to building height plane is considered well founded and therefore can be supported.

The proposed development has a non residential floor space ratio of 0.67:1. The proposal involves a large reduction in commercial floor space from existing, well below the current control's minimum requirement of 3:1. The applicant was advised that a SEPP 1 Objection could not be supported and a Planning Proposal was necessary due to the extent of the breach. The applicant lodged a Planning Proposal that is currently

being dealt processed. The Planning Proposal has been endorsed by Council at its meeting of 16 May 2011 as the proposal was consistent with the FSR intended under Draft NSLEP 2009. Consent cannot be granted until the Planning Proposal is finalised.

As indicated in the above report, the applicant has responded to a number of concerns raised with amended plans. The amended plans have fully resolved the previous concerns.

The application is recommended for favourable consideration by the Panel. Should the Panel favour the application, the Planning Proposal will need to be gazetted before consent can be granted.

RECOMMENDATION

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

THAT upon gazettal of the Planning Proposal with regard to Clause 31, the Joint Regional Planning Panel, as the consent authority, assume the concurrence of the Director General of the Department of Planning and Infrastructure and invoke the provisions of SEPP 1 with regard to Clause 30 and grant consent to 2011SYE050 – North Sydney - Development Application No.145/11 subject to the attached conditions.

Geoff Mossemenear
EXECUTIVE PLANNER

Stephen Beattie
MANAGER DEVELOPMENT SERVICES