

<b>JRPP No:</b>	<b>2011SYE062</b>
<b>DA No:</b>	<b>DA205/11</b>
<b>PROPOSED DEVELOPMENT</b>	<b>Demolition of existing buildings and structures, erection of a 31 storey commercial development with 5 levels of basement parking at 177-199 Pacific Highway North Sydney</b>
<b>APPLICANT:</b>	<b>Winten Property Group</b>
<b>REPORT BY:</b>	<b>Geoff Mossemeneer, Executive Planner, North Sydney Council</b>

## Assessment Report and Recommendation

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### EXECUTIVE SUMMARY

This proposal was determined as a Major Project under Part 3A of the Environmental Planning & Assessment Act 1979 with the Minister for Planning as the consent authority. The Minister granted Concept Plan approval for a 31 storey mixed use commercial/retail building on 20 December 2010.

At the time of the approval, the Minister also issued a Direction pursuant to 75P(2)(c1) of the EP&A Act, that select provisions of North Sydney Local Environmental Plan 2001 relating to height, massing, overshadowing and other potential amenity impacts do not have effect to the extent that those provisions would prohibit or restrict the carrying out of the approved project or any stage of the approved project.

The Development Application represents the detailed design stage of the development under the Concept Plan approval. The Development Application seeks approval for:

- demolition of the existing structures on the site;
- excavation and construction of 5 basement levels comprising building plant, loading dock facilities, bicycle storages and amenities, and 112 car parking spaces to service the tenants of the building;
- construction of a 31 storey (plus plant room) building to a maximum height of RL 195 and a maximum GFA of 44,760m<sup>2</sup>;
- use of the building as an office premises with ancillary food and drink premises and a 1,325m<sup>2</sup> publicly accessible garden plaza at ground level;
- pedestrian and vehicle access arrangements; and extension/augmentation of physical infrastructure/utilities as required, including relocation of an existing substation.

Council's notification of the proposal has attracted five submissions raising concerns/issues about: height; overshadowing; traffic; public access to the garden plaza and construction impacts.

Following assessment of the amended plans, the development application is recommended for **approval** upon receipt of certification of the Director General

## DESCRIPTION OF PROPOSAL

The Development Application seeks approval for:

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- excavation and construction of 5 basement levels comprising building plant, loading dock facilities, bicycle storages and amenities, and 112 car parking spaces to service the tenants of the building;
- construction of a 31 storey (plus plant room) building to a maximum height of RL 195 and a maximum GFA of 44,760m<sup>2</sup>;
- use of the building as an office premises with ancillary food and drink premises and a 1,325m<sup>2</sup> publicly accessible garden plaza at ground level;
- pedestrian and vehicle access arrangements; and extension/augmentation of physical infrastructure/utilities as required, including relocation of an existing substation.



## STATUTORY CONTROLS

North Sydney LEP 2001

- Zoning – Commercial
- 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**

The site has a legal description of Lots 1 to 26 in Strata Plan SP 17198, and is commonly known as 177-199 Pacific Highway, North Sydney. The site is located on the western side of the Pacific Highway, at the intersection with Berry Street. The site is irregular in shape, with frontages to the Pacific Highway and Berry Street. The site has an area of 2,418m<sup>2</sup>.

Existing on the site is a series of 3 to 4 storey strata-titled commercial terrace buildings, which contain a total of 26 commercial units of approximately 6,923m<sup>2</sup> of gross floor area. The existing buildings generally are sited around the perimeter of the building, with there being a central internal landscaped courtyard. Basement car parking is provided for a total of 60 vehicles with vehicular access obtained from Berry Street. The existing development on the site is currently known as 'Norberry Terrace'.

The site is located within the northern portion of the North Sydney CBD, and is surrounded by commercial development of varying eras and scales. Predominately development in the immediate surrounds of the site is low to mid scale in height, scaling up to the 34-storey Northpoint development, which is located to the south of the site.

## **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.

### Heritage

Council's Conservation Planner has reviewed the proposal due to the subject site being in the vicinity of the heritage listed buildings. The following advice was provided:

*"The property is not a heritage item, nor is it located within a conservation area. However, it is located in the vicinity of several heritage items. Of these, The Monte Sant Angelo Group is the most likely to be impacted by the proposal, being located diagonally across Berry Street from the subject site.*

*The Statement of Significance for Monte Sant Angelo states:*

*'Important regional private school since the 1880's. Contains a significant early mansion as its central building. Chapel and Mercy Hall are both fine buildings from the turn of the century. O'Regan House is a complementary building to the rest and respectable in its own right. The group, all in sight of each other, form an impressive precinct.'*

*The significant buildings are located at the centre and north of the school precinct, and are separated from the subject site by more recent contemporary buildings. The proposed building will not block views to or from the significant buildings or the other heritage listed buildings in the vicinity. As such, it is considered that the proposed building will not impact on the curtilage or significance of the heritage items in the vicinity.*

*Accordingly, no objections are raised on heritage grounds."*

### 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 177-199 Pacific Highway, North Sydney (DA 205/11). I have read the Transport Report prepared by Colston Budd Hunt & Kafes Pty Ltd dated May 2011 (ref: 8207).*

#### **Existing Development**

*The existing development has 6,923 m<sup>2</sup> commercial floor space. There is parking for 60 vehicles with access from Berry Street.*

#### **Approved Development**

*The site has a Part 3A Concept Plan approval for a commercial development of 44,760 m<sup>2</sup>, including a ground floor café. Approval has been granted for a basement car park for 112 cars, with vehicular access via Berry Street.*

#### **Proposed Development**

*The proposed development comprises 44,760 m<sup>2</sup> commercial floor space. It is proposed to have a basement car park for 112 cars, with vehicular access via Berry Street.*

### **Parking**

*The applicant has proposed the provision of 112 parking spaces. This complies with Council's DCP for a development of this size.*

*The proposed motorbike parking complies with Council's DCP.*

### **Bicycle Facilities**

*The proposed bicycle parking complies with Council's DCP.*

### **Queuing Length**

*It is noted that there is boom gate entry on Basement Level 1, beyond the loading dock, to the car park. This is appropriate as it provides queuing length.*

*It is unclear whether there will be a security gate at the main entrance to the car park and loading dock off Berry Street. AS 2890.1 states that a car park of this size should have a minimum queuing length of 3 cars. Therefore, there should be a minimum of 18 metres at all times between the boundary and any security gate/ security access point. North Sydney has very high volumes of pedestrian activity. This queuing length helps to ensure that vehicles are not queued across the footpath.*

### **Loading Dock**

*The loading dock accommodates medium rigid vehicles, small rigid vehicles and a number of courier parking spaces. This is considered appropriate for a development of this size.*

*Turning templates will be required to ensure that the larger vehicles can access the various loading bays/ docks.*

### **Traffic Generation**

*The applicant has assumed a peak hour traffic generation of 0.25 to 0.4 vehicles per hour per space (two-way). The North Sydney Traffic Committee and Council have accepted in the past a peak hour traffic generation of 0.5 vehicles per hour per space for commercial developments such as this. Using the figure of 0.5 vehicles to be conservative, the proposed development will result in a net increase in traffic of 26 vehicles per hour.*

*Even with this more conservative figure, I concur with CBHK that this proposed increase in traffic generation will have a negligible impact on the surrounding road network.*

### **Sustainable Transport**

*The site has excellent links to public transport and cycling networks.*

### **Pedestrian Activity**

*A commercial site of this size will significantly increase pedestrian activity in the area. The intersection of Berry Street and the Pacific Highway currently has signalised crossings on the southern and eastern sides of the intersection. There is a marked (non-signalised) crossing on the western side of the intersection. There is no pedestrian facility on the northern side of the intersection. Should this development proceed it is recommended that signalised pedestrian crossings be provided by the developer on the northern and western sides of the intersection to assist with pedestrian access to the site.*

### **Work Place Travel Plan**

*I support the proposed Work Place Travel Plan outlined by CBHK to encourage travel by modes other than private vehicle.*

### **Driveway**

*I support the provision of a combined entry/ exit driveway as proposed. I concur with CBHK that the minor variation from the Australian Standard would not have noticeable implications for vehicles entering the car park or through traffic flows on Berry Street. I concur with CBHK that a wider driveway would result in a larger driveway width for pedestrians to cross, which is undesirable.*

### **Recommended Conditions**

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

- 1. That a deferred commencement condition be set that the applicant must demonstrate, through turning templates, that heavy vehicles can access the various loading bays and facilities shown on Basement Level 1.*
- 2. That a Construction Management Program shall be prepared and submitted to Council for approval by the North Sydney Traffic Committee prior to the issue of the Construction Certificate.*
- 3. That all aspects of the carpark comply with the Australian Standard 2890.1.*
- 4. That all aspects of the loading dock comply with the Australian Standard AS2890.2.*
- 5. That all aspects of the bicycle parking and storage facilities comply with the Australian Standard AS2890.3.*
- 6. That all aspects of parking spaces for people with disabilities comply with the Australian Standard AS 2890.6.*
- 7. That all vehicles, including delivery vehicles and garbage collection vehicles must enter and exit the site in a forwards direction.*
- 8. That the driveways to the site must have minimum sight lines for pedestrian safety as per Figure 3.3 of AS 2890.1.*
- 9. That the location of any gate, intercom or security access point for driveway entry to the car park should be located 18 metres within the boundary of the property, such that three queued vehicles can be contained wholly within the boundary of the property, as per AS2890.1.*
- 10. That there be no net loss of on-street parking in Berry Street.*
- 11. That signs be installed at the exit to the driveway and loading dock stating "Stop – Give Way to Pedestrians"*
- 12. That the developer upgrade the street lighting in Berry Street and the Pacific Highway, adjacent to the site. The design is to be submitted to Council for approval by the Director of Engineering and Property Services prior to the issue of the occupation certificate.*
- 13. That a workplace green travel plan be developed to highlight to staff 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.*
- 14. That the applicant, if the RTA concur, modify the signals at the intersection of the Pacific Highway and Berry Street to provide signalised pedestrian crossings on the northern and western sides of the intersection. All works are to be at the expense of the applicant."*

### **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 consolidation of properties and their redevelopment with Councils Arborist.*

*The following observations were made and recommendations are provided.*

*1. The applicant has indicated in the Landscape Statement and Plans an intention to retain all existing Street Trees growing outside the property, and provide a new tree along the Berry Street frontage of the property. There are no objections to the provision of a new tree as it will further embellish the streetscape, and its location poses no threat to visibility to drivers using either Berry Street or The Pacific Highway at their intersection.*

*2. The applicant has also indicated in the Landscape Statement and Plans an intention to undertake quite a variety of plantings including trees shrubs and groundcovers as part of the Public Garden Plaza contained within the building footprint partially at the street level.*

*The area is accessible to the Public, however it is only at street level on one frontage, and whilst the area is accessible and has complete protection from the natural elements, it's appears more like a shopping plaza than a public square.*

*None the less if the area is opened up more in the North Western corner and design changes are made such that it is accessible at street level along both frontages, it may become a more inviting place to the general public for passive recreational use.*

*3. There are two existing Street Trees (London Plane) growing along the Berry Street frontage the most easterly of the trees is a mature tree and quite substantial in its contribution to the streetscape. The most westerly of the trees is only 2 years old and about 2-3 metres tall.*

*4. There are six existing Street Trees (London Plane) growing along the Pacific Highway frontage. The trees vary from 2-3 years old and 2-3 metres tall, to 10-20 years old and 20 metres tall, and they also vary in health and as specimens from poor to good. Unfortunately the best specimen of the trees abovementioned trees root system has grown so much into the kerb and damaged its integrity that when the re-construction of the footpath and kerb is undertaken the tree may require such substantial root pruning as to either threaten its long term health or when its vigour returns, its roots may once again threaten the integrity of the kerb.*

*In terms of retaining the existing street trees given the dimension of the project in terms of necessary building works and necessary hoarding structures, the projected time frame of 18 months to two years, and that the majority of works will probably have to be carried out from the Pacific Highway the following is advised:*

*\*It is our opinion that the smallest of the trees may well suffer damage or grow towards the road itself due to the hoarding structures essentially being built over them.*

*\*It is our opinion that the larger of the trees may require pruning to accommodate the hoarding and enable lifts to be undertaken from the on-site crane or mobile cranes, such that their natural shape and form may suffer considerably.*

*In conclusion having regard to all the above observations it is our opinion that while it may be possible to retain some of the trees throughout the project without to much damage, some will necessarily require quite substantial pruning. The trees growing along the Berry Street frontage have the greatest chance for being able to survive the development as reasonably unaffected. The re- construction of the footpath and kerb and gutter along both frontages may also have a detrimental impact on the trees.*

*The current proposal has indicated the retention of all existing street trees, and as can be seen from the above observations it is seen in some instances ill founded and in other ambitious. However both Councils' Arborist and I believe that the retention of all trees at least through the demolition, excavation and construction process will soften the visual impact the building works will have on the streetscape at least throughout summer, autumn and spring. As the project comes closer to completion it may provide a better opportunity to see what trees should be removed and what trees should be replaced.*

*It is my recommendation that in principle the Landscaping Plan is satisfactory, however given that amendments to it may be required in relation to the "Public Garden Plaza", I will leave*

reference to this plan to you to include as part of the consent. In relation to conditions associated with the protection existing street trees the following is advised:

*\* I have amended them such that it may be possible to replace them with new trees during the course of reconstruction of the footpath, the planting of the new tree and associated kerb and roadworks are undertaken at the final stages of the project. Or if pruning requirements to enable hoarding structures or for available air space for cranes results in the trees being poor specimens, or that necessary road and footpath works require massive root pruning or the like....."*

## **DESIGN EXCELLENCE PANEL**

The application was referred to Council's Design Excellence Panel at its meeting of 29 June 2011:

### **Panel Comments:**

*The Panel accepts that the tower and envelope of the building has concept approval so any previous comments about shadow impacts and the protruding portion of the building to the Highway have been accepted with the Part 3A assessment. The montage views nevertheless demonstrates that this element would be far more assertive than desirable, and detailed design development should aim to minimize its visual impact. The podium component will be critical in creating an acceptable 'human scale' in the development, and its form and scale could be further emphasized in order to reduce the visual impact of the tower on the Highway and northern sides.*

*The Panel's comments relate to the podium area and the proposed publicly accessible space at ground level.*

*The Panel felt that the podium must have sufficient articulation and detail to create a human scale and it was essential that the glass be transparent so that the detail of the design behind the glass is not lost, or that there is sufficient external expression of mullions, louvres etc for the articulation of the structure to be apparent.*

*The Panel felt that the Berry Street footpath should be as wide as possible with stairs and retaining walls being setback from the kerb to the glass line. The need for bicycle rails on Berry Street was questioned.*

*The Panel had concern about the tightness of the street corner of the podium and its acute angle. The Panel suggests a chamfer or splay be provided perhaps at right angles to Pacific Highway to a depth of about 5m that could relate to the 5m protruding element on the tower above. This would also provide for a more comfortable width on the footpath at the corner.*

*The Panel had concern with the large ventilation shaft at the corner within the podium. The shaft needs careful treatment with its finishes so that it does not dominate the internal space or what can be seen from outside. The Panel questioned whether the shaft could be setback further from the intersection (near the NW corner of the tower). It was also suggested that the use of timber elsewhere in the "garden", perhaps on the ceiling, would serve to unify the space, which has quite a few finishes. While it is acknowledged that the space should be rich in character, more cohesiveness would add to the quality of the space.*

*Support for a design which significantly exceeds the planning controls has been strongly influenced by the proposed 'publicly accessible plaza', -as it is termed in the S.E.E., or 'Public Garden Plaza', -as it is named on the drawings. The management arrangements for this space will be critical if it is to fulfil a role as a genuine public space, as distinct from a forecourt to a large private development. The S.E.E. notes that it would be open 7am to 7pm for public use and enjoyment, and the applicant confirmed this in discussion, but noted that it would not be acceptable for example for a member of the public to be playing music in the space. It would be unfortunate if management arrangements were to be excessively restrictive, as this response would tend to suggest. It is strongly recommended that the conditions of approval include clear conditions acceptable to Council covering operation and management of the*



space, with a view to ensuring that its 'public' function is protected.

**Conclusion:**

*In summary, minor changes on the Berry Street frontage and reconsideration of the corner of the podium and ventilation shaft are recommended, and given the approval to its overall form the Panel generally supports the proposal, subject to the detailed recommendations above being satisfactorily resolved, as a well considered concept.*

The applicant responded to the comments of the DEP with amended sketches incorporated amendments to the corner of the podium and ventilation shaft. The preferred sketch is shown below:

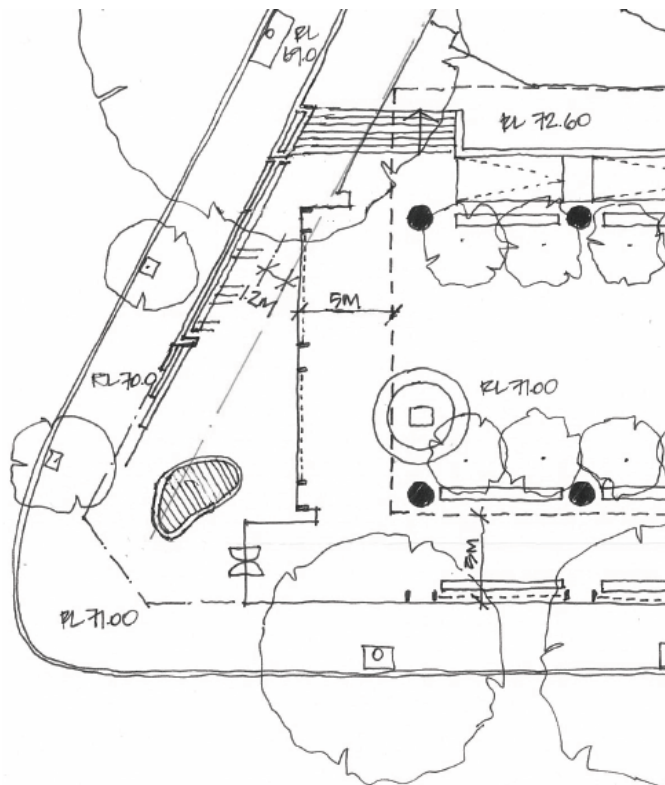
**Justification for the noncompliance of setback**

This proposal does protrude 1.2m into the Special Area setback. Maintaining the consistent 5m atrium on both Berry Street and Pacific Highway provides significant architectural merit through clarity of the scale and proportion of these spaces.

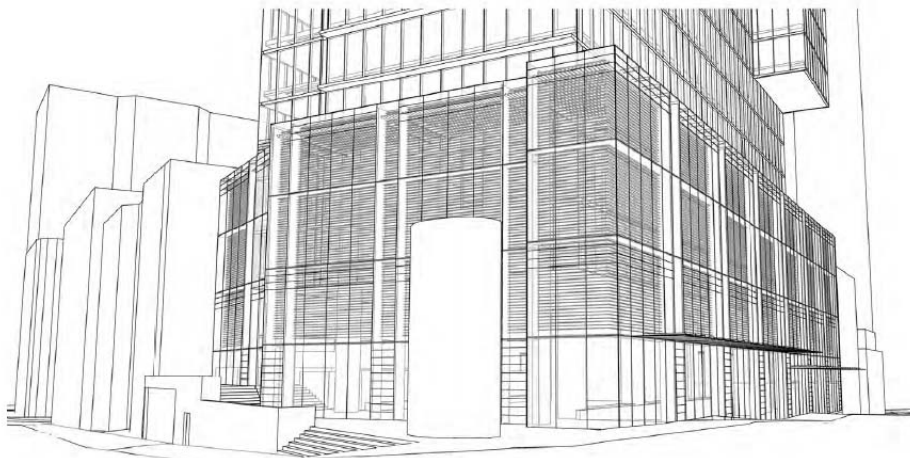
The small protrusion, when averaged against the overall length of the Berry Street frontage, is a minor intrusion considering 50% of the facade is setback significantly more than the required 8m.

The riser location protrudes a similar distance into the setback to create a consistent alignment with the podium and enable sufficient circulation width around the riser.

This scheme is our preferred resolution to the DEP's concerns.



PROPOSED PLAN



PROPOSED PERSPECTIVE OF PODIUM FROM CORNER OF BERRY ST AND PACIFIC HWY

The sketches were considered by the DEP at their meeting of 16 August 2011 and the following comments were made:

*The Panel discussed the response of the applicant with regard to the further setback of the podium at the corner of Berry Street and the Highway. The Panel favoured the option where the glass was 5m from the tower element provided there was no encroachment on the Berry Street special area (the area within 8m of the Berry Street kerb).*

*The Panel considered that the 8m strip should be at grade consistent with the existing footpath level with no retaining walls, level changes or stairs within the strip. Any stairs required to access the garden plaza should be clear of the Berry Street Special Area. The Panel did not support the ventilation shaft being located outside the building.*

*The Panel also discussed a possible 1m setback to the Pacific Highway as concerns had been raised about the existing footpath width on the Highway (about 3.6m with street trees narrowing the footpath). The Panel felt that most of the occupants of the tower would travel south to the train station and the widening was not necessary. It was also considered that the podium should be built to the street to be in keeping with the approved cantilevered section of the tower built to the boundary.*

The DEP comments are supported, the changes are such that they can be addressed by condition without the need for amended plans.

## **External Referrals**

The application was referred to the RTA for Comment. No response was received from the RTA. The conditions recommended by Council's Traffic Engineer and Development Engineer would cover any matters raised by the RTA.

## **SUBMISSIONS**

The owners of adjoining properties and all Precincts were notified of the proposed development on 27 May 2011. The notification resulted in the following submissions.

<b>Name &amp; Address of Submitter</b>	<b>Basis of Submissions</b>
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Precinct: Edward	<ul style="list-style-type: none"><li>• outside of Council's planning controls</li><li>• enclosed space does not meet public domain requirements</li><li>• Berry street setback outside of building should be increased</li><li>• special areas need to be linked</li><li>• should be available longer hours and at weekend</li><li>• vehicles entering car park should not cause traffic conflict in Berry Street</li><li>• wind impacts</li><li>• awning in Berry Street should be lowered to reduce overshadowing to Don Bank and Miller Street Special Area</li></ul>
Jones Lang Lasalle on behalf of 189-197 Miller Street	<ul style="list-style-type: none"><li>• overshadowing of property</li></ul>
C Edmunds 37/7-17 Berry St	<ul style="list-style-type: none"><li>• noise from construction – seeks more restrictive hours than standard hours</li><li>• traffic generation</li><li>• cyclist safety – major increase in numbers from property</li><li>• garden plaza should be open longer than 7am to 7pm</li><li>• cumulative impacts from the large number of recent developments in CBD</li></ul>
S Lim 1 Doohat Ave	<ul style="list-style-type: none"><li>• Public space inadequate</li><li>• Building too tall</li><li>• Overshadowing</li></ul>

- C Thornton  
43 Edward Street
- Traffic movements
  - Too high
  - Visually unfriendly to the public
  - Change to micro climate of the area
  - Insufficient public open space in the design
  - Public access too limited
  - Increased traffic congestion

## CONSIDERATION

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

### NORTH SYDNEY LOCAL ENVIRONMENTAL PLAN 2001

#### Minister's Direction

On 20 December 2010, the Minister for Planning directed under Section 75P(2)(c1) of the EP&A Act 1979 that the following provisions of NSLEP 2001 have no effect to prohibit or restrict the carrying out of the project or any stage of the project:

Clause 28B(o) and (p); Clause 28D(1)(b) and (1)(c) and (1)(e) and (2)(b) and (2)(c)

#### Permissibility within the zone

The site is zoned 'Commercial' pursuant to Clause 14 of NSLEP2001, and the proposed development is permissible with consent of Council.

#### Objectives of the zone

The particular objectives of the Commercial zone as stated in clause 14 are:

- (a) to prevent the loss of commercial floor space to residential use, and*
- (b) to encourage a diverse range of employment opportunities, and*
- (c) to minimise adverse effects of development on residents and occupiers of existing and new development.*

The overall proposed development is considered to be consistent with the objectives (a) and (b) of the zone as it does not include residential use and will encourage a diverse range of employment opportunities. Due to overshadowing impacts, it is not considered that the development minimises adverse effects of development on existing residents and those special areas identified within the LEP as being utilised by both the workforce and residents of North Sydney. It is noted that the Concept approval by the Minister has allowed the height and envelope that causes the overshadowing impacts. At the time of the approval, the Minister also issued a Direction pursuant to 75P(2)(c1) of the EP&A Act, that select provisions of North Sydney Local Environmental Plan 2001 relating to height, massing, overshadowing and other potential amenity impacts do not have effect to the extent that those provisions would prohibit or restrict the carrying out of the approved project or any stage of the approved project.

## LEP Compliance Table

STATUTORY CONTROL – North Sydney Local Environmental Plan 2001				
Site Area – 2,418m <sup>2</sup>	Existing	Proposed	Control	Complies
Commercial Zone				
Building Height (Cl. 28D(2)(a))	Unknown	RL 195	RL195	YES
Site Area (Cl. 28D(2)(e))	2,418sqm	2,418sqm	Min. 1,000sqm	YES

### Division to prevail

The North Sydney Centre objectives and controls are located within Division 4 of NSLEP2001. It is of importance to note in the consideration of this proposal that clause 28A of NSLEP2001 states the following with respect to Division 4:

*‘The provisions of this Division prevail over all other provisions of this plan, to the extent of any inconsistency, except for Part 4 – Heritage provisions.’*

As such, the general aims and objectives of NSLEP2001 as stated in clauses 2 and 3, do not apply if they are inconsistent with the objectives for the North Sydney Centre. The North Sydney Centre objectives do not seek to protect the amenity or views of residential properties located within the commercial zone, only the amenity of nearby residential zones.

As such, the following objective contained in clause 3(c)(ii) of NSLEP2001 is not applicable to the assessment of the application:

*‘ensure that non-residential development does not adversely affect the amenity of residential properties and public places, including adverse affectation by reason of the use, design, bulk, scale or appearance of the development, or the traffic generation and parking associated with the development’.*

### North Sydney Centre Objectives

The proposed development responds to the specific objectives pursuant to Clause 28B of NSLEP 2001 for the North Sydney Centre, as described in the following table.

Objective	Proposal
(a) to maintain the status of the North Sydney Centre as a major commercial centre within Australia.	The proposed development is considered to achieve the objective of maintaining the status of the North Sydney CBD as a major commercial centre. The proposal would provide would a significant development within the North Sydney CBD, capitalising on a currently underutilised site. The proposed development provides A-grade commercial floor plates of a floor area that are commercial viable and marketable in encouraging new tenants to North Sydney.
(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 is capable of complying with this objective, with a Railway Infrastructure contribution

<p><i>(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></p> <p><i>(i) be convenient and accessible, and</i></p> <p><i>(ii) enable a reduction in dependence on private car travel to the North Sydney Centre, and</i></p> <p><i>(iii) be adequate to achieve no increase in car parking, and</i></p> <p><i>(iv) have the capacity to service the demands generated by development within the North Sydney Centre.</i></p>	<p>The subject site is accessible to the station and it is likely that a significant number of the new employees within the CBD will utilise public transport. It therefore remains critical that the proposal requires an appropriate railway infrastructure payment.</p>
<p><i>(d) to discourage use of motor vehicles in the North Sydney Centre</i></p>	<p>The proposed development provides a total of 112 car parking spaces within the basement car parking levels, which is in accordance with the DCP requirements.</p>
<p><i>(e) to encourage access to and within the North Sydney Centre for pedestrians and cyclists.</i></p>	<p>Bicycle storage/parking is provided within the basement car park in accordance with NSDCP 2002.</p>
<p><i>(f) to allow for 250,000m<sup>2</sup> (maximum) non residential gross floor area in addition to the estimated existing (as at the commencement of this Division) 700,000m<sup>2</sup> non-residential gross floor area.</i></p>	<p>The proposed additional GFA would contribute to the provision of non-residential GFA within the North Sydney CBD.</p>
<p><i>(g) to prohibit further residential development in the core of the North Sydney Centre.</i></p>	<p>No residential development is proposed.</p>
<p><i>(h) to encourage the provision of high-grade commercial space with a floor plate, where appropriate, of at least 1000m<sup>2</sup>.</i></p>	<p>The proposed commercial building complies with this requirement.</p>
<p><i>(i) to achieve a variety of commercial space</i></p>	<p>A variety of commercial space is proposed.</p>
<p><i>(j) to encourage the refurbishment, recycling and rebuilding of older buildings.</i></p>	<p>The existing buildings are unsuitable for the site with regard to the current applicable controls and proposed controls and are not considered worthy of retention.</p>
<p><i>(k) to encourage a diverse range of employment, living, recreation and social opportunities.</i></p>	<p>The proposed development provides for a range of employment and social opportunities.</p>
<p><i>(l) to promote high quality urban environments and residential amenity</i></p>	<p>As detailed previously in this report, Council's Design Excellence Panel has raised no objection to the proposed building envelope. The proposed public garden plaza is considered to be a positive attribute to the development and the North Sydney CBD.</p>
<p><i>(m) to provide significant public benefits such as open space, through-site linkages, childcare and the like.</i></p>	<p>The proposal provides a 1,325sqm publicly accessible garden plaza that would provide weather protected public space for office workers of the North Sydney CBD (not only those future workers of the proposed building). The plaza area would be open between the hours of 7.00am to 7.00pm, and should approval be given it should be required to be the subject of a future deed of agreement or restriction on title to ensure that this area remains publicly accessible.</p> <p>The proposed building has also been setback the required 8 metres as stipulated by NSDCP 2002 to</p>

	contribute to the creation of the Berry Street Special Area as is desired pursuant to the strategic direction provided within both NSLEP 2001 and Draft LEP 2009.
<i>(n) to improve accessibility within and to the North Sydney Centre.</i>	Any new development will be required to be accessible and meet the relevant Australian Standards.
<i>(o) to protect the amenity of residential zones and existing open space within and nearby the North Sydney Centre</i>	The proposed envelope would result in additional overshadowing to properties in Oak and Lord Streets in the early morning hours. <b>This objective has no effect by the Minister's Direction</b>
<i>(p) to prevent any net increase in overshadowing of any land-zoned residential or public open space or identified as a special area.</i>	The proposal does result in additional overshadowing to the special areas of Don Bank Museum and the Miller Street setback on the equinox. The proposal is considered to be inconsistent with this objective but now <b>has no effect by the Minister's Direction</b>
<i>(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.</i>	No open space areas exist on the site. Existing setbacks will be maintained or increased to provide improved public domain and pedestrian access outcomes.

## Railway Infrastructure

Pursuant to Clause 28C(2) of NSLEP 2001, Council must not grant consent for development within the North Sydney Centre which exceeds the non-residential gross floor area of the building that lawfully existed on the site before the development is carried out. The proposed development will substantially increase the existing level of non-residential gross floor area currently in existence on the site. The increased gross floor area for the site has been certified at 39,045m<sup>2</sup>.

Subclause (3) of the clause allows for an increase in non-residential gross floor area to occur only if the Director-General has first certified, in writing, to the consent authority, that satisfactory arrangements have been made for the increased demand for railway infrastructure generated by the development. The normal 'satisfactory arrangement' is a Developer Commitment Deed to pay a contribution for railway infrastructure.

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

## Building Heights and Massing

The following are the building height and massing objectives pursuant to Clause 28D for the North Sydney Centre:

Objective	Proposal
<i>(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.</i>	The proposed building form is considered to achieve an appropriate transition in height from the Northpoint development, and fit within the future context of the North Sydney CBD.

b) <i>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.</i>	The height and massing of the proposed development will result in an adverse impact on the special areas of Don Bank Museum and Miller Street on the Spring and Autumn Equinoxes. <b>This objective has no effect by the Minister's direction.</b>
(c) <i>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".</i>	The proposed development is considered to be consistent with this objective, however, it is noted that the proposed envelope does result in additional shadows being cast across residential properties that are sited outside the boundaries of the North Sydney Centre. <b>This objective has no effect by the Minister's direction.</b>
(d) <i>to protect the privacy of residents within and around the North Sydney Centre.</i>	The proposed building will have no unreasonable impact on the privacy of residents within North Sydney Centre.
(e) <i>to promote scale and massing that provides for pedestrian comfort, in terms of weather protection, solar access and visual dominance.</i>	The scale and massing of the proposed building is considered to reflect its location within the centre of the CBD when measured against other relevant controls. The provision of an awning to the highway frontage of the building and the inclusion of the ground floor garden plaza is considered to create a development that is friendly to pedestrians and compliments the public domain. However, as noted above, the proposal will reduce solar access to the special areas of the Don Bank Museum and Miller Street setback, which are actively used by workers and residents of the North Sydney CBD as areas of open space. <b>This objective has no effect by the Minister's direction.</b>
(f) <i>to encourage consolidation of sites for provision of high grade commercial space and provision of public benefits.</i>	The proposal is considered to be able to achieve high grade commercial floor space, the proposed ground level public plaza and setbacks from Berry Street to contribute to the creation of an improved public domain and new "special area" as per the strategic direction of both NSLEP 2001 and Draft LEP 2009, is considered to provide public benefit to the workforce of North Sydney. This is subject to an appropriate mechanism being in place to ensure permanent public access to this garden plaza.

### **Development Controls**

Subclause 28D (2) sets out the building height and massing requirements for proposed development within the North Sydney Centre.

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

The proposed building will have a maximum RL 195 AHD.

(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).*

**This control has no effect by the Minister's direction.**

- (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*

**This control has no effect by the Minister's direction.**

- (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),*

The proposed building envelope would result in additional shadows being cast across the rear of residential properties in Oak Street during the winter solstice and equinoxes between the morning hours of 9.00am to 9.42am. Furthermore, additional shadows would be cast across the rear of the two terraces at the easternmost end of Lord Street between 9.00am and 9.10am on the winter solstice.

The proposed additional shadowing to these residential properties falls predominately across areas of car parking and vehicular access, however, it is noted that some new shadows fall across areas of rear open space of these dwellings. The periods of overshadowing are less than thirty minutes to those properties in Oak Street and 10 minutes to those dwellings in Lord Street. Due to the time of day of the shadowing and the extent and area of impact, it is not considered that the additional shadowing would result in a material shadowing impact to these dwellings.

- (e) *The site area is not less than 1,000m<sup>2</sup>.*

The overall site area is 2,418m<sup>2</sup>, and thus complies with the control.

### **Building Design and Public Benefits**

Clause 28D(5) of NSLEP 2001 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*

Generally, the proposed envelope is considered to be acceptable in scale, form and massing with regard to its context within the North Sydney CBD and the desired future character of the CBD.

- (b) *whether the proposed development provides public benefits such as open space, through-site linkages, community facilities and the like, and*



The proposed development has been assessed as providing public benefit through the incorporation of the 1,325m<sup>2</sup> of publicly accessible ground floor garden plaza. This area is considered to be unique to the North Sydney CBD, and provide a year round weather protected area for use by the public between the hours of 7.00am and 7.00pm. To ensure that this area does remain as a public benefit, the proponent should be required to enter into either an agreement with Council or a restriction be placed on title to ensure public accessibility.

As detailed previously within this report, the proposal would be set back from Berry Street in accordance with the provisions of NSDCP 2002 in order to allow for the creation of the Berry Street Special Area.

(c) *whether the proposed development preserves important view lines and vistas, and*

A view analysis has been undertaken with the Concept Plan to ascertain whether the proposed building envelope would result in a loss of views of vistas. The conclusion of this assessment is that the proposed envelope would be visible from approximately 41 of the apartments within the Beau Monde building located at No. 77 Berry Street, North Sydney. Of these apartments, 10 have only a westerly outlook that would be obstructed by the proposal. The proposed building envelope would result in a loss of district views and outlook from the remaining 31 units, however, the proponent does not consider this as a material view loss as these apartments would have alternative panoramic views to either the north or south.

It should, however, be noted that if view retention from private properties such as the Beau Monde were considered to be of material consequence for the assessment of developments within the CBD, this would be reflected in Council's current or draft planning controls. The fact that it is not reflected indicates that Council has not previously considered that the redevelopment of the North Sydney CBD should not be restricted by the retention of views from private properties. Objection to the proposed development on the basis of view loss is therefore not considered reasonable.

(d) *whether the proposed development enhances the streetscape in terms of scale, materials and external treatments, and provides variety and interest.*

It is considered that the proposal does contribute to the streetscape and the provision of the garden plaza allows interaction and interest at a pedestrian level.

## **Excavation**

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

In this instance, significant excavation is required to create the proposed 5 levels of basement car parking. A Geotechnical and Groundwater Assessment has been submitted with the application, which concludes that the proposed development is feasible. Suitable conditions can be imposed.

## Heritage Conservation

No objection has been raised by Council's Conservation Planner against the relevant provisions of Part 4 of NSLEP 2001, namely clause 50 (*Development in the vicinity of heritage items*), with regards to the impact of the design on the heritage listed buildings on the Monte Sant Angelo School site.

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

As detailed in this report, the provisions of Clause 14 of NSLEP 2001 have been examined and it is considered that the proposed development is consistent with the specific aims of the plan and the objectives of the zone and of the controls (subject to the Minister's direction). As such, consent to the development in its current form may be granted.

## North Sydney DCP 2002 Compliance Table

DEVELOPMENT CONTROL PLAN 2002		
	<i>complies</i>	<i>Comments</i>
<b>20.1 Function</b>		
<b>Diversity of activities, facilities, opportunities and services</b>	Yes	The proposal allows for a range of high grade business accommodation spaces and will encourage uses at ground level that will contribute positively to economic and social vitality.
<b>Maximum use of public transport</b>	Yes	Bicycle storage spaces will be provided in the basement. Non-residential parking is provided in accordance with the maximum specified in Section 9 of the DCP.
<b>20.2 Environmental Criteria</b>		
<b>Noise</b>	Is able to comply	An Acoustic Report has been provided
<b>Wind Speed</b>	Yes	<p>An Environmental Wind Assessment has been submitted. The conclusions of this report are that the wind conditions within and around the site are generally acceptable, subject to the following:</p> <ul style="list-style-type: none"> <li>• provision of trees at the northwestern corner of the development, and these to be an evergreen species;</li> <li>• retention of existing trees along the Pacific Highway and Berry Street frontages;</li> <li>• impermeable balustrades 1.2m in height around the perimeter of the terraces proposed on levels 15 and 16 of the building.</li> </ul> <p>No objection is raised to the proposal, subject to the fulfillment of these commitments.</p>
<b>Awnings</b>	Yes	It is recommended that awnings be provided on the Highway frontage
<b>Solar access</b>	No	The proposal results in additional overshadowing to the special areas of the Don Bank Museum and Miller Street and does result in additional shadowing to residential properties in Oak and Lord Streets. This issue has been addressed previously within this report.

<b>Views</b>	No	The view impacts of the proposal have been considered previously in this report.
<b>20.3 Quality built form</b>		
<b>Context</b>	Yes	The proposal is for a large commercial building within the centre of the CBD. Council's Design Excellence Panel considers that the height of the proposed development is appropriate in its context.
<b>Public spaces and facilities</b>	Yes	The proposed incorporation of the ground floor public garden plaza and setbacks to Berry Street to improve the public domain and streetscape appearance are considered to be positive attributes of the proposal and were commended by Council's Design Excellence Panel.
<b>Skyline</b>	Yes	It is considered that the proposal will contribute positively to the CBD skyline.
<b>Junction and termination of streets</b>	Yes	The proposal emphasises the built form at the intersection of the Pacific Highway and Berry Street and establishes a gateway development when entering the North Sydney CBD from the north. The proposal also includes setbacks from the Berry Street frontage in accordance with the DCP requirements.
<b>Through-site pedestrian links</b>	NA	The subject site is not identified within NSDCP 2002 or the character statement for the North Sydney CBD as needing to provide a through site link, nor is there any benefit in providing one. As demonstrated elsewhere within this report, appropriate public access is provided to the ground floor level of the building.
<b>Streetscape</b>	Yes	The proposed design and public domain works will allow for greater activation of both street frontages.
<b>Setbacks</b>	No	<p>The proposed ground floor level of the building is setback in accordance with the DCP requirements, being 8 metres from the kerb alignment with Berry Street and a zero setback on the Pacific Highway.</p> <p>The character statement specifies a weighted average setback of 5 metres from the edge of the podium for the subject site. The setback of the tower from Berry Street has been designed to achieve the weighted average setback. Whilst the proposed envelope provides the desired setback above podium height for 6-storeys, with the upper levels of the building then adopting a zero setback to the Pacific Highway frontage. This non-compliance results from a transference of floor space from elsewhere on the building, which was removed to achieve no overshadowing on the winter solstice and still allow the achievement of commercially viable floor plates.</p> <p>The proponent has provided justification that the proposed setback on the lower levels up to level 10 is consistent with the scale of smaller buildings, and achieves the desired aim of the setback control. The Minister has approved the tower envelope.</p>

<b>Entrances and exits</b>	Yes	Satisfactory
<b>Street frontage podium</b>	Yes	The proposed podium height is in accordance with the requirements of NSDCP 2002.
<b>Building design</b>	Yes	Appropriate floor to ceiling heights, materials, and articulation are proposed.
<b>20.4 Quality urban environment</b>		
<b>Accessibility</b>	Yes	Refer to earlier comments on accessibility.
<b>Safety and security</b>	Yes	A crime prevention review has been included in the application and no concerns are raised in this regard.
<b>Car parking</b>	Yes	The proposal complies with 112 space maximum permitted pursuant to Section 9 of NSDCP 2002.
<b>Bicycle storage</b>	Yes	The proposal meets the DCP requirements.
<b>Vehicular access</b>	Yes	Appropriate vehicular access is proposed.
<b>Garbage Storage</b>	Yes	Indicative garbage and recycling bin storage areas are provided on Basement Level 1
<b>20.5 Efficient use and management of resources</b>		
<b>Energy efficiency</b>	Yes	The proposal incorporates measures to allow the building to meet 5-Star Green Star requirements.
<b>20.6 Public Domain</b>		
<b>Street furniture, landscaping works, utilities and Equipment</b>	Yes	The proposed public domain and public benefit components of the development have been assessed as acceptable..

### ***North Sydney Centre Planning Area (Central Business District)***

The application has been assessed against the relevant controls of the character statement for the Central Business District contained at Part B of DCP 2002, with consideration given in the either the LEP assessment or DCP compliance table, above.

### **Draft North Sydney LEP 2009**

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

It is noted that this draft instrument stipulates maximum heights for the site RL 85 for the northern portion to Berry Street and RL 190 on the rear portion, which includes and envisages amalgamation with No. 173 Pacific Highway, North Sydney. The proposed height of RL 195 AHD would exceed both maximum heights applicable to the site.

Generally, the height and massing controls contained within Clause 6.4(2) of Draft LEP 2009 are similar to those in the current LEP, and relate to overshadowing, provision of a public benefit and a minimum site area.

Of notable difference from the existing shadowing provisions of Clause 28D of NSLEP 2001 is the variation in the range of hours when there is to be no additional overshadowing to special areas and public open space (i.e. reduced from 10am to 2pm in LEP 2001 to 12 noon to 2pm in Draft LEP 2009), with the exception of the Don Bank Museum Special Area.

In its current form, the Draft LEP 2009 does not provide any time flexibility to strict compliance with the overshadowing controls of Clause 6.4(2)(b) and (c), which differs from the 15 minute variation permitted by NSLEP 2001. Therefore, the proposal would remain as prohibited pursuant to the provisions of Clause 6.4 of Draft LEP 2009 due to the additional shadowing that results to the Special Areas of Miller Street and the Don Bank Museum. These controls are similar to the ones that were to have no effect under the Minister's Direction.

## **SECTION 94 CONTRIBUTIONS**

Section 94 contributions are warranted and based on the increased gross floor area of the proposal being 39,045m<sup>2</sup>.

Administration	<b>\$77,582.42</b>
Child Care Facilities	<b>\$328,481.68</b>
Community Centres	<b>\$189,145.69</b>
Library Acquisition	<b>\$38,572.55</b>
Library Premises & Equipment	<b>\$117,259.94</b>
Multi Purpose Indoor Sports Facilities	<b>\$44,378.55</b>
Open Space Acquisition	<b>\$141,413.18</b>
Open Space Increased Capacity	<b>\$280,307.96</b>
Olympic Pool	<b>\$144,591.44</b>
Public Domain Improvements	<b>\$3,172,183.69</b>
Traffic improvements	<b>\$191,531.34</b>
<b>The total contribution is:</b>	<b>\$4,725,448.44</b>

## **SEPP 55 and Contaminated Land Management Issues**

The proponent has submitted a Phase 1 Environmental Site Assessment, with the assessment concluding that the risk of significant contamination to the soil and/or groundwater is minimal and the site is suitable for the proposed commercial development.

The assessment concludes that soil testing be undertaken during its removal from the site to ensure its quality and lack of contaminants prior to disposal.

## **SUBMITTORS CONCERNS**

Five submissions were received in relation to the proposed development raising concerns about: height; overshadowing; traffic; access to the garden plaza and construction impacts. These issues have been mostly addressed within this report. Additional issues raised are addressed as follows:

*Outside of Council's planning controls*

Comment: The Minister issued a Direction that select provisions of North Sydney Local Environmental Plan 2001 relating to height, massing, overshadowing and other potential amenity impacts do not have effect to the extent that those provisions would prohibit or restrict the carrying out of the approved project or any stage of the approved project.

*Enclosed space does not meet public domain requirements*

Comment: The enclosed space will not be public domain under Council control, however the space is to be made publicly available and will be subject to an appropriate covenant on title.

*Berry street setback outside of building should be increased*

Comment: the applicant has increased the setback at the corner to improve pedestrian space on the footpath.

*Special areas need to be linked*

Comment: The levels of the site do not allow easy access through adjoining sites to Miller Street.

*Should be available longer hours and at weekend*

Comment: The applicant has indicated that if there are uses related to the space that are open longer hours and on the weekend then the space will be available during those hours. The covenant will ensure minimum hours and allow for extended hours.

*Vehicles entering car park should not cause traffic conflict in Berry Street*

Comment: Council Traffic Engineer has addressed this issue and found the traffic generation and access to the site as satisfactory.

*Wind impacts*

Comment: An Environmental Wind Assessment has been submitted. The conclusions of this report are that the wind conditions within and around the site are generally acceptable, subject to the following:

- provision of trees at the northwestern corner of the development, and these to be an evergreen species;
- retention of existing trees along the Pacific Highway and Berry Street frontages;
- impermeable balustrades 1.2m in height around the perimeter of the terraces proposed on levels 15 and 16 of the building.

*Noise from construction – seeks more restrictive hours than standard hours*

Comment: The location of the building is not adjoining residential zones. The standard hours are reasonable for construction. It is noted that access to the site and any work zones will be limited due to clearway requirements. The applicant may seek to extend hours in the afternoon to permit concrete pours for the floors.

*Traffic generation*

Comment: This has been assessed as acceptable.

*Cyclist safety – major increase in numbers from property*

Comment: Alternative transport will be encouraged. Cyclist safety should not be reduced with the development.

*Cumulative impacts from the large number of recent developments in CBD*

Comment: There has been a large number of major developments in the CBD. These developments are generally in accordance with the current controls and Council's Traffic strategy had regard to the controls and the potential development.

*Public space inadequate*

Comment: The space is quite large and would be a useful space in the CBD. It has good solar access and is protected from the weather and noise of the roads. It has potential to be a well utilised space.

*Building too tall*

Comment: The building is in context with the CBD buildings and equal to the tallest. The height was considered as suitable for the site's location by Council's Design Excellence Panel.

*Overshadowing*

Comment: The Minister's Direction removed any controls relating to overshadowing. These impacts were considered reasonable by the Minister in approving the Concept Plan for the site.

## **Conclusion**

The application has been assessed against the relevant statutory controls. At the time of the Concept Plan approval, the Minister also issued a Direction pursuant to 75P(2)(c1) of the EP&A Act, that select provisions of North Sydney Local Environmental Plan 2001 relating to height, massing, overshadowing and other potential amenity impacts do not have effect to the extent that those provisions would prohibit or restrict the carrying out of the approved project or any stage of the approved project.

Accordingly the assessment of the application largely relates to the details and finishes, in particular the public domain and the proposed garden plaza area that is to be accessible to the public. The applicant responded to comments from Council's Design Excellence Panel to modify the podium corner and the Berry Street setback that are considered acceptable provided there are no ground level encroachments within the Berry Street Special Area and the car park exhaust shaft is located within the building instead of the proposed 8m high structure outside the building close to the corner.

The Berry Street Special area requires the building to be setback 8m from the Berry Street Kerb. The Special Area also includes the adjoining site to the east. As the Special area incorporates the existing footpath and part of an adjacent site, the levels need to be at grade consistent with footpath levels. The proposal includes a change in levels with stairs, retaining walls and a balcony/terrace area above the car park entry which is unacceptable. A condition has been included to ensure that the Berry Street special area has consistent levels with the footpath that allows for future expansion to the east

of the site. Any services below the special area need to be designed so that the ground floor levels are not raised above the footpath levels.

The JRPP is unable to approve the proposal without the certification of the Director General that satisfactory arrangements have been made with regard to Railway Infrastructure. The applicant has agreed to enter into a commitment deed with Council. Should the Panel favour the application a commitment deed will need to be certified by the Director General as “satisfactory arrangements” before consent can be granted.

## **RECOMMENDATION**

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

**THAT** upon receipt of certification from the Director General of the Department of Planning Council pursuant to Clause 28C(3) of NSLEP 2001, the Joint Regional Planning Panel, as the consent authority, grant consent to 2011SYE062 – North Sydney - Development Application No.205/11 subject to the attached conditions.

**Geoff Mossemeneer**  
**EXECUTIVE PLANNER**

**Warwick Winn**  
**DIRECTOR PLANNING &  
DEVELOPMENT SERVICES**

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