

JRPP No:	2011SYE078
DA No:	DA 291/11
PROPOSED DEVELOPMENT:	156-158 Pacific Highway, Crows Nest Demolition of the existing building and erection of a 10 storey mixed use building containing 404m ² of retail floor space, 40 residential apartments and three levels of basement carparking for 31 vehicles.
APPLICANT:	LJB Urban Planning Pty Ltd
REPORT BY:	George Youhanna, Executive Planner, North Sydney Council

Assessment Report and Recommendation

Attached: SEPP 1 Objections

EXECUTIVE SUMMARY

The proposal is for demolition of the existing building and erection of a 10 storey mixed use building containing 404m² of retail floor space, 40 residential apartments and three levels of basement carparking for 31 vehicles.

A previous development application, DA519/10 relating to the subject site and proposing demolition of the existing building and erection of a 13 storey mixed use building containing 323m² of retail floor space, 48 residential apartments and three levels of basement carparking for 45 vehicles was refused by the JRPP on 29/4/11 due to unsatisfactory transition to the low-scale residential area to the west, exceedance of the draft LEP height control and inadequate non-residential FSR.

The Panel also advised the applicant of the following:

“...the Joint Regional Planning Panel believes that a new proposal should:

- a) respond to the comments of the Design Excellence Panel on the current proposal;*
- b) meet the height control in draft LEP 2009;*
- c) achieve at least 0.5:1 FSR for non-residential component, as indicated in the applicant’s planning proposal;*
- d) include a loading dock; and*
- e) provide for appropriate transition to the adjoining low-scale residential area, which includes a heritage item at 1 Doohat Avenue.*

The current application has been designed to address the reasons for refusal and the advice from the JRPP.

Council's Design Excellence Panel raised concerns relating to the east and west facades and internal amenity, and the applicant subsequently provided amended plans addressing these concerns.

A Planning Proposal was lodged concurrently with the previous DA, to reduce the minimum non-residential FSR from 3:1 down to 0.5:1. A Gateway Determination was issued and the Planning Proposal was publicly notified with no objections received. The Department of Planning and Infrastructure have indicated that they will now make arrangements for the drafting of a Local Environmental Plan (LEP) to give effect to the Planning Proposal, under section 59(1) of the EP&A Act. Any approval of the subject development application is contingent upon the LEP being gazetted.

In summary, the application has been amended to address all of the identified issues and is recommended for approval subject to conditions of consent.

DESCRIPTION OF PROPOSAL

The proposed 10 storey mixed use development comprises the following elements:

1. Demolition of the existing building on the site.
2. Construction of a new building fronting the Pacific Highway, with rear lane access via Doohat Lane. Details of the building are as follows:

Basement:

- 3 levels of basement parking accessed by 2 car lifts on Level 1 (via Doohat Lane), including lift and stair access to all three levels, parking for 31 cars and 4 motorcycles, bicycle lockers, storage areas, utility and plant rooms.

Ground Floor (Pacific Highway street level)

- 2 retail areas (132m² and 272m² including mezzanine) with a total area of 404m², residential lobby, storage areas, gym, jacuzzi, sauna, change rooms, lift and stair access to all floors, car lift shaft (no access).

Level 1

- 4 units, including 2 x 2 storey units, 2 light wells, residential garbage room and compactor, retail garbage room, loading area, plant rooms, 2 car lifts, goods lift, bicycle storage.

Level 2

- 2 units (in addition to the upper level of the 2 storey units below), residential storage, 2 light wells.

Level 3

- 8 units, including 4 x 2 storey units, 2 light wells.

Level 4

- 4 units (in addition to the upper level of the 2 storey units below), 2 light wells.

Level 5

- 5 units, 2 light wells.

Level 6

- 5 units.

Level 7

- 5 units.

Levels 8

- 4 units.

Levels 9

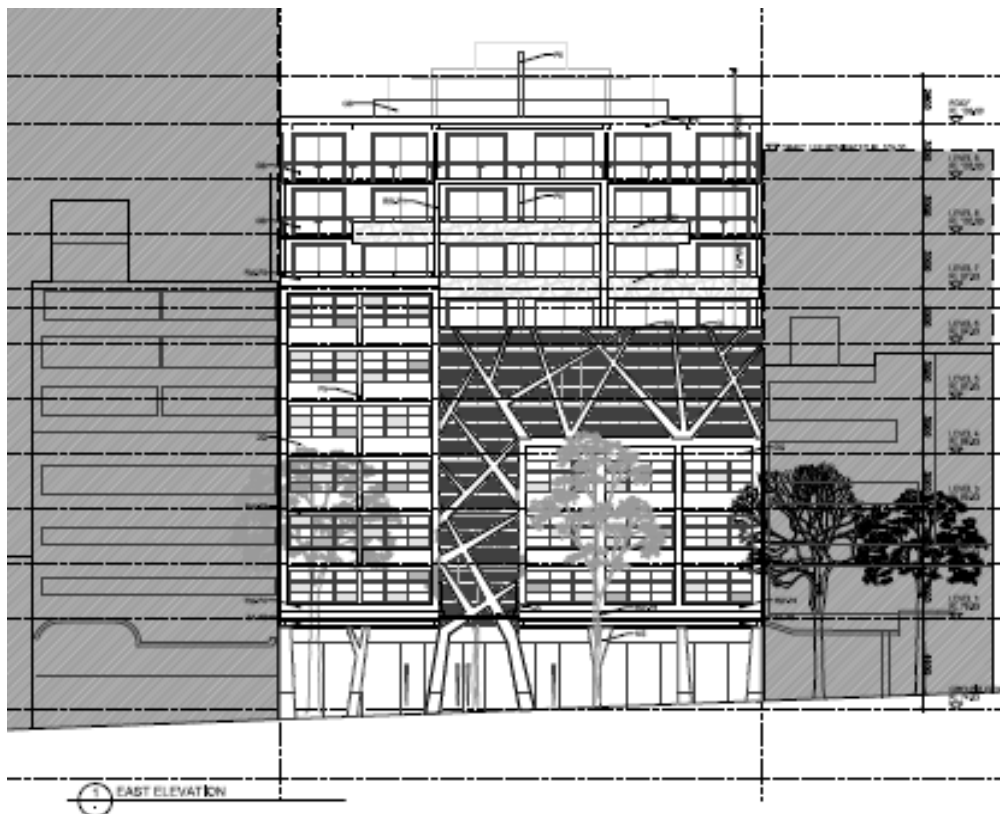
- 3 units.

Roof

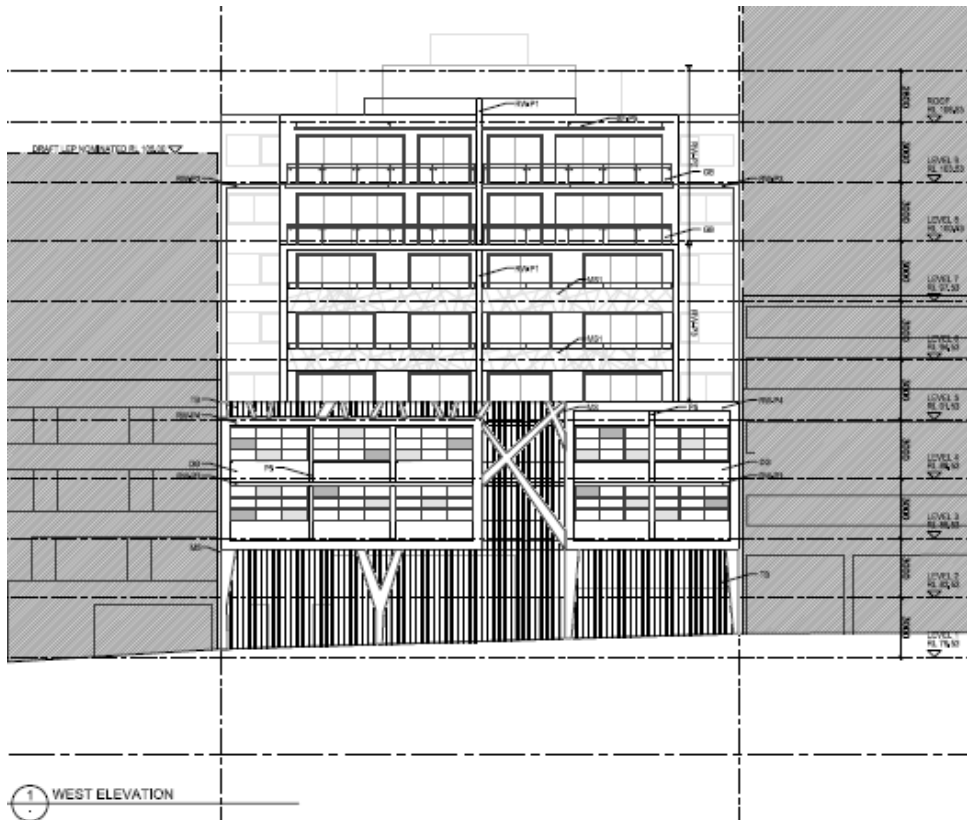
- Enclosed and outdoor communal areas, lift and stair access.

General Features

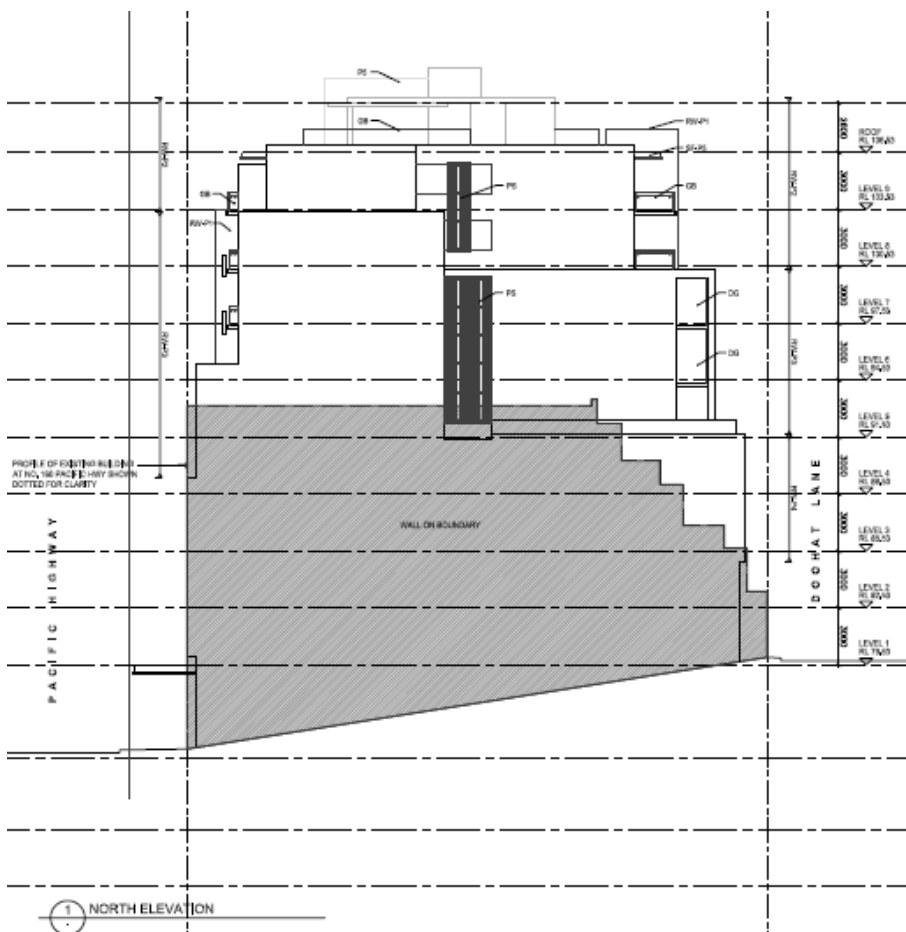
- Non-residential FSR of 0.51:1
- Building façade to Pacific Highway features a stepped podium designed with regard to existing adjoining development.
- 40 units, comprising 19 x 1 bedroom units, 15 x 2 bedroom units and 6 x 3 bedroom units.



East elevation of proposal (Pacific Highway)



West elevation (Doohat Lane)



North elevation of proposal



Photomontage of Pacific Highway elevation

Planning Proposal

In conjunction with the previous DA the applicant submitted a Planning Proposal for the subject site (156-158 Pacific Highway). The Planning Proposal seeks to amend the non-residential FSR controls for the site. Under North Sydney Local Environmental Plan 2001, the site currently requires a range of non-residential FSR between a minimum of 3:1 and a maximum of 4:1. The Planning Proposal seeks to reduce the minimum non-residential FSR from 3:1 to 0.5:1, with no maximum set.

The Planning Proposal contains the same provisions that are proposed for the site in Draft NSLEP 2009 and was forwarded to the Department of Planning for Gateway Determination. The Minister for Planning issued a Gateway Determination and the Planning Proposal was publicly notified for 14 days, until 7 April 2011. No objections were received. The Department of Planning and Infrastructure have indicated that they now intend to make arrangements for the drafting of a LEP to give effect to the Planning Proposal, under section 59(1) of the EP&A Act. Any approval of the subject development application is contingent upon the LEP being gazetted.

STATUTORY CONTROLS

North Sydney LEP 2001

- Zoning – Mixed Use
- Item of Heritage - No
- In Vicinity of Item of Heritage – Yes (1 Doohat Avenue)
- Conservation Area - No
- FSBL - No

S94 Contribution

Environmental Planning & Assessment Act 1979

SEPP No. 1 Objection

SEPP No. 55 - Contaminated Lands

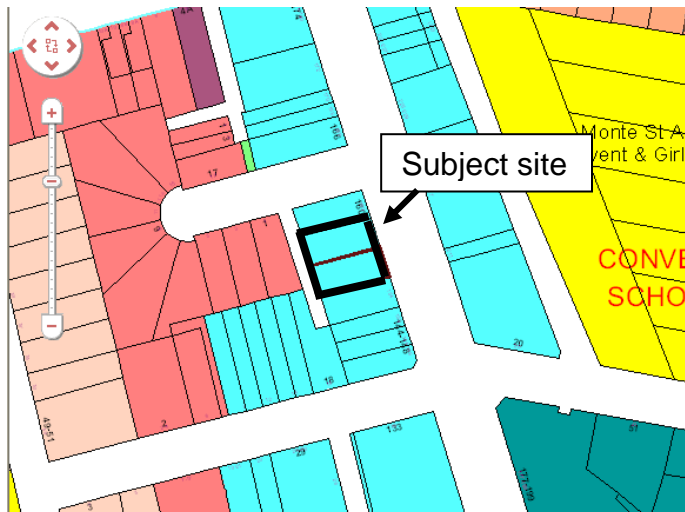
SEPP No. 65 - Design Quality of Residential Flat Developments

SEPP (Building Sustainability Index: BASIX) 2004

SEPP (Infrastructure) 2007

Sydney Harbour Catchment REP and DCP

Draft North Sydney LEP 2009



POLICY CONTROLS

DCP 2002

CONSENT AUTHORITY

As this proposal has a Capital Investment Value (CIV) of greater than \$10 million (\$11m nominated on development application) the consent authority for the development application is the Joint Regional Planning Panel, Sydney East Region (JRPP).

DESCRIPTION OF SITE AND LOCALITY

The site has a legal description of Lot 100 DP 1088503 and Lot 5 DP 8869, and is commonly known as 156-158 Pacific Highway, North Sydney. The site is located on the western side of the Pacific Highway between the intersections of Doohat Avenue and Berry Street. The site is generally rectangular in shape (parallelogram) and has an area of 794.31 m². It has frontages to the Pacific Highway and Doohat Lane of 26.06 metres and side boundaries of 30.48 metres.

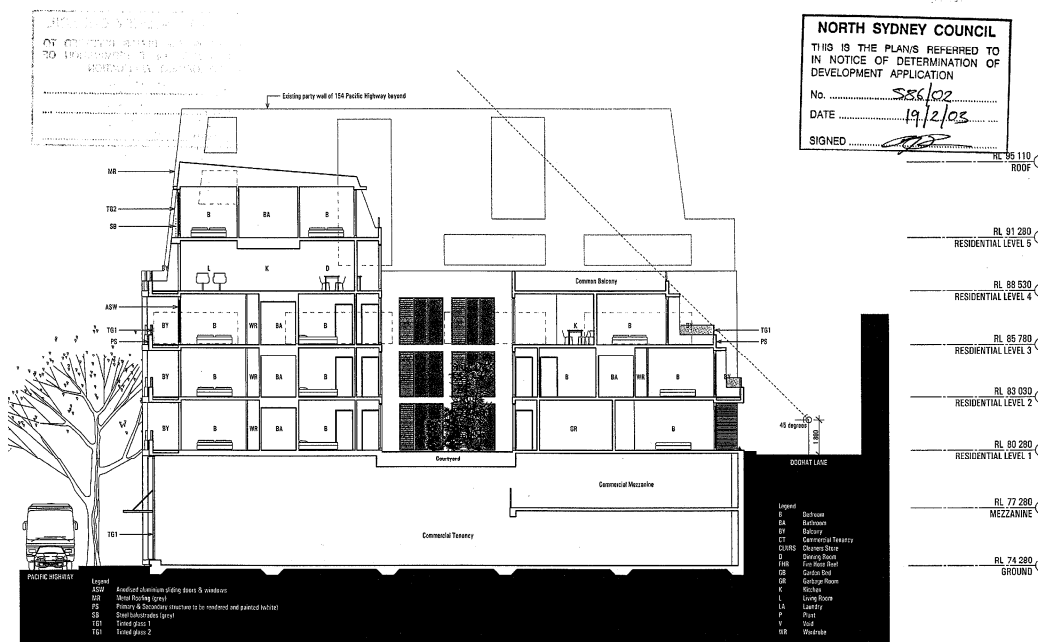
The subject site is adjoined by a five (5) storey commercial building to the north at No.160 Pacific Highway and development opposite the site across Doohat Lane comprises townhouses and a heritage listed residential dwelling at No.1 Doohat Avenue. To the south of the site is an existing 7 storey building, at No. 154 Pacific Highway, known as the RTA building. The building is a mixed use building containing commercial uses within the podium levels and residential units on the upper two levels. The building is built to its northern boundary with recesses to windows at the upper levels.



RELEVANT HISTORY

DA586/02 for the demolition of the apartment building at No.156 Pacific Highway and the erection of a 6 storey mixed use building was approved on 19/2/03.

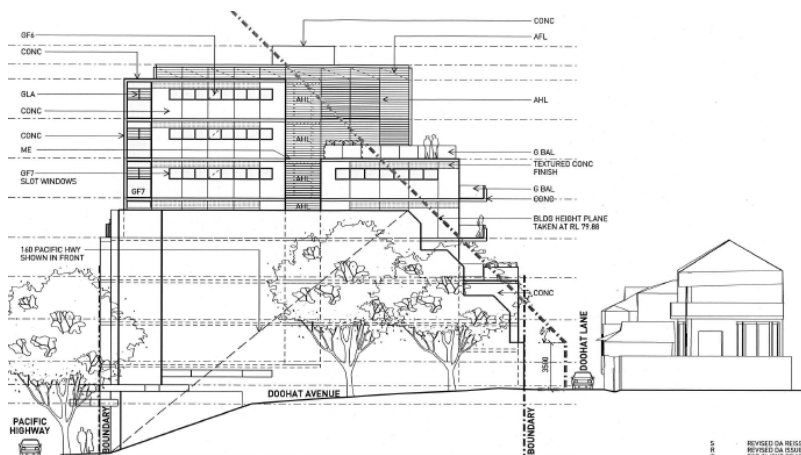
No.156 Pacific Highway is currently vacant but previously housed an apartment building owned by the Department of Housing. A development application (DA586/02) was approved for the demolition of the apartment building at No.156 Pacific Highway and the erection of a 6 storey mixed use building. This development was to be a partnership between Council and the Department of Housing to provide affordable housing. While it is understood that it is currently not intended to pursue this scheme, a review of Council's records indicate that although the consent lapsed on 19 February 2007 (after a 1 year extension under s.95A beyond the original 3 year lapsing date of 19 February 2006) demolition did not occur until May 2007. On this basis, it appears that there is no current consent for development on No.156 Pacific Highway.



Section (Pacific Hwy to Doohat Lane) through approved DA586/02 on No.156 Pacific Highway

DA 47/09 for demolition of the existing commercial building at No.158 Pacific Highway and erection of a 9-storey mixed use development with 3 levels of basement car parking was approved by Council in March 2010.

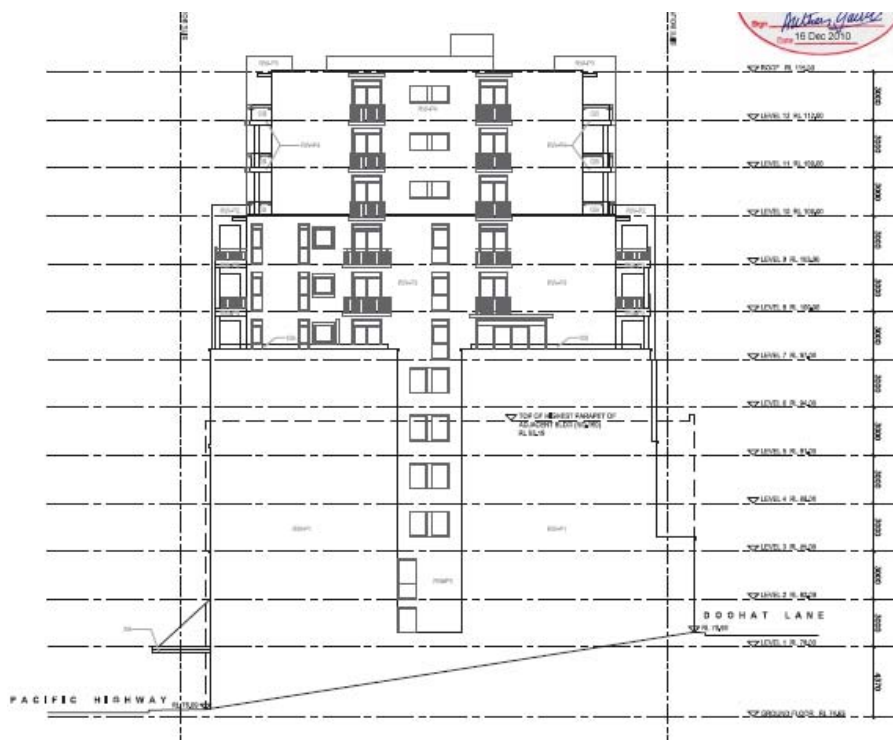
No.158 Pacific Highway currently contains an existing three (3) storey commercial building, with a ground floor retail use that fronts the Pacific Highway and car parking at the rear of the site, accessed off Doohat Lane. DA 47/09 for demolition of the existing commercial building and erection of a 9-storey mixed use development was approved in March 2010. The approved development includes 5-storeys of retail/commercial floor space (1,476sqm) and 4 residential levels, accommodating 11 apartments.



North elevation of approved DA 47/09 on No.158 Pacific Highway

DA519/10 for demolition of the existing building and erection of a 13 storey mixed use building containing 323m2 of retail floor space, 48 residential apartments and three levels of basement carparking for 45 vehicles was refused by the JRPP on 29/4/11 for the following reasons:

1. It does not comply with the Building Height Plane or, alternatively if the Building Height Plane does not apply, it does not provide an appropriate transition to the low-scale residential area.
2. It does not comply with the height control of draft LEP 2009.
3. It does not comply with the FSR requirement for non-residential components; nor with the amended FSR requested in the applicant's planning proposal.



North elevation of refused DA 519/10 on Nos.156-158 Pacific Highway

DA291/11 (Current DA)

16 August 2011 – The Design Excellence Panel considered the proposal and generally supported the scheme, subject to the Pacific Highway façade being refined and internal amenity issues being resolved.

22-24 August 2011 – Amended plans, photomontages and additional information received in response to the comments of the DEP.

REFERRALS

Roads & Traffic Authority

The previous application (DA519/10) was referred to the Roads and Traffic Authority (RTA) on 29 December 2010.

Council received a response from the RTA on 8 April 2011 raising no objections to the proposal subject to conditions. The current DA has reduced the on-site parking provision from 45 spaces (DA519/10) to 31 spaces and the proposal is considered satisfactory with regard to RTA advice.

Traffic

The application was referred to Council's Traffic Engineer who provided the following comments:

Proposed Development

The proposed development comprises demolition of the existing buildings and construction of 40 residential apartments (19 x 1-bed, 15 x 2-bed, 6 x 3-bed) and 404 m² of retail floor space. Three levels of basement parking for 31 cars are proposed with access via two lifts.

Parking

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

<i>Development Component</i>	<i>Parking Rate</i>	<i>Maximum Parking</i>
<i>19 x 1 bedroom</i>	<i>0.5</i>	<i>9.5</i>
<i>21 x 2+ bedroom</i>	<i>1</i>	<i>21</i>
<i>404 m² retail</i>	<i>400</i>	<i>1.0</i>
<i>Total</i>		<i>31.5</i>

The applicant is proposing to provide 31 parking spaces, which complies with the North Sydney DCP 2002 and is therefore considered acceptable.

Traffic Generation

I generally concur with the traffic generation figures calculated by TTPA and I generally concur that this proposed increase in traffic generation will have a negligible impact on the surrounding road network. I concur with TTPA that the surrounding intersections would continue to operate at their existing levels of service, with similar average delays per vehicle.

Car Lifts

The use of a car lift should always be the last alternative for vehicular access. With any vehicular lift, there are concerns that the residents will chose not to use the lift because of the time delay and inconvenience, and this will place demands on the on-street parking. Particularly if residents are returning home for only a short time, it is likely that they will not "bother" with the inconvenience of the vehicle lift. Further, car stackers by their very nature are highly mechanical systems, which therefore makes them highly likely to break down.

TTPA have calculated a peak traffic generation of 11 vehicles per hour. Proprietary service time information has been provided by GoingUp Elevators who have stated that the average round time trip for each of the elevators is 84.5 seconds. If the lift must take one vehicle down and one vehicle up, then the round time trip is 100.0 seconds.

Australian Standard 2890.1 states in relation to mechanical parking installations, "Access to mechanical parking installations such as car stackers, shall be by

means of access driveways and circulation roadways designed in accordance with this Standard, and providing sufficient vehicle storage to ensure that queues of vehicles awaiting service by the installation do not extend beyond the property boundary of the parking facility under normally foreseeable conditions.

“When determining the amount of vehicle storage required, queue lengths shall be calculated by applying conventional queuing theory to estimated mean arrival rates during normal peak periods, and mean service rates under continuous demand, determined as closely as possible from observing the operation of similar facilities. The storage area shall be designed to accommodate the 98th percentile queue under such conditions.”

There are high pedestrian volumes in Doohat Lane surrounds. Therefore it would be unacceptable to have vehicles queuing onto Doohat Lane.

The moment of concern with regard to this development is when there are three or more vehicles which have arrived on-site, as at least one will be queued onto Doohat Lane. An analysis using Poisson distribution and the above arrival and service rates demonstrates that using the “average” round time trip rate there is a 1.7% chance of three or more vehicles arriving on-site. Using the more conservative figure where the lift must take one vehicle down and one vehicle up, there is a 2.9% chance of three or more vehicles arriving on-site. This latter figure is slightly outside the 98th percentile as required by the Australian Standard. However, the “average” figure does meet the Australian Standard requirements and therefore the proposed two car lifts are considered acceptable.

The applicant has stated that the northern lift will automatically revert to the ground level. However, as outlined above, it is essential that there be no vehicles queued into Doohat Lane. Therefore, both lifts should automatically revert to the ground level.

Loading Dock

The applicant has now provided a loading dock for a 4.5m high MRV, which is considered acceptable for a development of this size.

Conditions of Approval

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

That the two car lifts to be installed are to have an average round trip time of 84.5 seconds or less and a one vehicle down-one vehicle up round trip time of 100 seconds or less.

That the car lifts be programmed such that both lifts automatically revert to the ground level when not in use.

- 1. That a Demolition and Construction Management Program be prepared and submitted to Council for approval by the North Sydney Traffic Committee prior to the issue of a Construction Certificate. Any use of Council property shall require appropriate separate permits/ approvals.*
- 2. That an Operational Transport Management Plan for heavy vehicles including garbage vehicles, retail deliveries and residential removalists to the site*

be prepared and submitted to Council for approval by the North Sydney Traffic Committee prior to the issue of an Occupation Certificate.

3. That all vehicles, including heavy vehicles, delivery vehicles and garbage vehicles must enter and exit the site in a forwards direction unless under the direct supervision of an RTA accredited traffic controller.

4. That it be noted that residents will not be entitled to a resident parking permit even if their vehicle does not fit into the car lifts.

5. That all aspects of the carpark comply with the Australian Standard AS2890.1 Off-Street Parking.

6. That all aspects of the loading dock comply with the Australian Standard AS2890.2.

7. That all aspects of parking spaces for people with disabilities comply with the Australian Standard AS 2890.6.

8. That all aspects of the bicycle parking and storage facilities comply with the Australian Standard AS2890.3.

9. That the developer pay to upgrade the street lighting on the Pacific Highway, Doohat Street and Doohat Lane, adjacent to the site, to the appropriate standard and to the satisfaction of Council.

That signs be installed at the exit to the driveway and loading dock stating "Stop – Give Way to Pedestrians"

Development Engineer

Council's Development Engineer has raised no objection to the proposed development, subject to engineering conditions being imposed on any consent.

Conservation Planner

Council's Conservation Planner provided the following comments:

1. Heritage Status and Significance

- The subject properties are not heritage items and are not located in a conservation area.
- No 1 Doohat Avenue is a heritage item in the immediate vicinity. It is a two storey Federation style dwelling that addresses Doohat Ave and is separated from the subject properties by Doohat Lane. The setting of the heritage item is primarily a one and two storey residential streetscape. Doohat Lane to the east of the heritage item provides some physical separation to commercial development that is currently two and four storey in the vicinity of the heritage item.

2. Heritage Impact Assessment

a) North Sydney LEP 2001

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

50 Development in the vicinity of heritage items

(1) the specific objective of the development in the vicinity of heritage items control is to ensure that development in the vicinity of a heritage item does not adversely affect the heritage significance of the item or its curtilage.

It is considered that the monumental bulk and scale of the proposal will adversely impact upon the residential setting of 1 Doohat Ave. The amended proposal for the Doohat Lane elevation will appear more monolithic than the original proposal as the bulk is located closer to the frontage of the laneway. The latest proposal has three articulated setbacks whilst the original is articulated back six times. A setback above the garage level as a podium is preferred as shown in the original proposal.

b) North Sydney DCP 2002

An assessment of the proposal, with reference to Section 8.8 of the North Sydney DCP 2002 has been made with the following elements of the DCP being of note with regard to the proposal:

a. *Curtilage* – The original setting of No 1 Doohat Ave when constructed, was that of a one and two-storey residential neighbourhood with garden settings. This has been modified in the late twentieth century by commercial development on the eastern side of Doohat Lane. The proposal of a high residential tower is contrary to (iv) *maintain the relationship between the building or place and its setting* in that the monumental bulk of the development will detract from the remaining residential setting. The amended proposal has not ameliorated the impact.

c. *Sandstone Features* – The proposal requires the demolition of a sandstone retaining wall on the Pacific Hwy frontage. This is visually removed from the heritage item so no objection is raised. A condition with regard to the salvage of the sandstone blocks is recommended below.

d. *Gardens* – The planter box along the Doohat Lane frontage has been deleted. No objection is raised.

f. *Setbacks* – The proposal will have a boundary setback on Doohat Lane. This will match that of the adjacent building No 160 Pacific Hwy. Due to the width of the podium level, the amended proposal will still appear very imposing towards the heritage item. Greater variation in the setback is still recommended. The reduction in the setbacks above the garage level shown on the amended plans will increase the impact of the bulk to the heritage item.

h. *Massing, Form and Scale* – The previous recommendation that the height of the podium to Level 3 be reduced has been disregarded and has been further increased by two additional levels. The large width and increased bulk of the podium level addressing Doohat Lane will therefore impact adversely upon the residential setting of the heritage item. The redesign of the garage entries with timber panelled screens is supported. No objection is raised to the reduction in height of the amended proposal.

i. *Roof Forms and Materials* – No objection is raised as the roof form is physically separated from the heritage item by height of the tower.

k. *Balconies and Verandahs* – No objection is raised to the proposal balconies that face west towards the heritage item.

l. *Windows and Doors* – No objection is raised.

m. *Palette of Materials* – No objection is raised.

n. *Colour Scheme* – No objection is raised to the amended colour palette subject to the limited use of Dulux Dinosaur. Further detail is required.

o. *Characteristic Detailing* – The proposal's detailing will sit neutrally in the

streetscape.

r. *Car Parking* – The amended car parking and loading bay entries with the screen doors are an improvement to the Doohat Lane streetscape.

3. Conclusion

The amended proposal is still considered to have a monumental scale and does less to reinforce the residential setting of the heritage item located at 1 Doohat Avenue than the original proposal. The following amendments are therefore recommended:

- The podium level on Doohat Lane elevation to be articulated into three elements to reduce its monumental width along the street frontage. The mouldings and the deep reveals around the glazed panels on the Doohat Lane frontage are of a large scale and are not sympathetic to the domestic scale of the openings on the adjacent heritage item.
- Height of the podium on Doohat Lane elevation to be limited to Level 3 at a height of 85.53 and the bulk set back beyond this level a minimum of 3m. The previous proposal with a variable setback of 2.6m to 4.165m is preferred. No objection would be raised to an increase in height to achieve greater articulation and setback at the Doohat Lane elevation.
- Clarification is required to the exact location of the use of the new colour palette as Dulux Dinosaur is an intense colour.

Subject to the resolution of the above issues, the following condition is recommended:

E2. Re-use of Sandstone

Landscape Development Officer

Council's Landscape Development Officer provided the following comments:

- *There is no vegetation on either property other than weed species or self sown undesirable species.*
- *There are three mature London Plane Trees growing in the Council footpath area of the Pacific Highway outside the property. These trees are mature specimens and contribute greatly to the streetscape and provide local amenity values and it is proposed to retain them.*
- *The plans indicate an intention to provide an awning over the footpath, and I am supportive of the scheme as there are awnings attached to the building either side of the subject property. However given the maturity of the trees it may be necessary to provide generous cut-outs to accommodate their existing habits, or possibly an awning with no cut-outs set back 1200 m.m from the face of kerb.*
- *Given the two available street frontages for the property it is my belief that there is a good chance that some or much of the crane lifting of materials to site to the site may be from the Pacific Highway. Consequently there is a chance that one or more of the trees may require significant pruning to accommodate a satisfactory lifting space. It may even be necessary that one of the trees be removed.*

In light of the above information, it may still be possible that the trees can remain relatively unaffected by the works associated with all stages of the project, if only minor pruning is required.

In conclusion I raise no objections to the proposal provided conditions are included in the consent.

Design Excellence Panel

Council's Design Excellence Panel (DEP) considered the application at its meeting on 16 August 2011. The minutes of the meeting are as follows:

The Proposal:

The development application is for the demolition of the existing building and erection of a 10 storey mixed use building containing 404m² of retail floor space, 40 residential apartments and three levels of basement carparking for 31 vehicles.

The site is located on the western side of the Highway between Doohat Avenue to the north and Berry Street to the south. The site has frontage to Doohat Lane at the rear.

To the north of the site is an existing 5 storey commercial building. The commercial building known as 160 Pacific Hwy is located at the corner of Pacific Hwy and Doohat Avenue. It also has frontage to Doohat Lane.

To the south of the site is an existing 7 storey building, at 154 Pacific Hwy and known as the RTA building. The building is a mixed use building containing commercial uses in the podium and residential above. The building is built to its northern boundary with recesses to windows at the upper levels.

Doohat Lane which forms the rear boundary of the site contains residential uses opposite the site. At the corner of Doohat Lane and Doohat Avenue is 1 Doohat which is a listed heritage item. This dwelling comprises a 2 storey brick building with a carport and vehicle access off the Lane. The main entry of the dwelling is located to the north on Doohat Avenue. A second smaller dwelling known as 1A Doohat fronts the laneway.

A previous DA by the same developer was considered by the DEP on 3/2/11 and a number of issues were raised, including the following:

- *The height be limited to at or near RL 105*
- *The podium height to the Highway be at or near RL 94 with a weighted setback of 5m from the Highway above the podium.*
- *The building being setback from the lane by 1.5m*
- *The podium height at the lane be at or near RL 91 with weighted setback of 4m from the lane above the podium*
- *Lightwells on the northern and southern elevation be limited up to RL 91*
- *The building can be built to the northern and southern boundaries to the east of the lightwells above RL 91*
- *The building be setback a minimum of 3m from the northern and southern boundaries to the west of the lightwells above RL 91*

- *No living areas or balconies on the northern or southern boundaries.*
- *The setbacks at the front and rear above the podiums are to the balconies.*

Panel's Comments

The Panel is advised that the subject site, the site to the north and the south are all under the minimum lot requirement under NSLEP 2001 of 1000m². The Panel is advised that consolidation of the site with either neighbour is not practical.

The Panel is also advised that the Draft NSLEP 2009 has a height control of RL 105 for the site which would allow a height of about 25m. The Draft LEP 2009 proposes a stepping down from RL 125 to the south down to the subject site (RL 105) with No.160 having a height of RL 105. The Council's DCP also has requirements for podium heights and setbacks.

It was acknowledged that the current proposal has addressed a number of the previously raised concerns, including the well considered communal facilities, and commends the applicant for these improvements.

The Panel raised the following concerns:

- 1. Unsatisfactory aural and visual privacy to the adjacent bedroom windows of adjoining units facing the lightwells. It was recommended that the window openings be reduced and located away from the internal corner in order to increase separation between the glazing/openings.*
- 2. The front elevation, plans and photomontage do not entirely correlate and require further refinement to do so. Additionally, the form of the façade does not follow the internal function of the building in relation to the bedroom and balcony uses and the selection of window and balcony enclosures. It is recommended that there is an appropriate relationship between the internal planning requirements and the external expression of the building.*
- 3. Detailed drawings including cross-sections at 1:50 scale are to be provided in relation to the front façade, particularly given the proposed use of both glass louvres and perforated metal screening. Concerns were raised in relation to the double layer of glass louvres and a metal screen reducing the feeling of openness that is normally associated with balconies.*
- 4. The perforated metal screen, while differentiating the building from surrounding development, was considered to be unduly assertive and unrelated to the functional requirements of the spaces behind. It was felt to be unnecessary in order to achieve an attractive façade to Pacific Highway, and may reduce internal amenity for occupants.*
- 5. The treatment of the above-podium section of the building was considered to be not as well refined as the remainder of the building. The upper section should be a simple, elegant building form that is visually recessive and the expressed vertical blades not as dominant.*
- 6. The rear façade does not require a double layer due to the different environmental circumstances at the rear of the site. Sliding louvres are suggested as an alternative screening method.*

Conclusion

The Panel commends the applicant for the design improvements undertaken in the current application and is generally supportive of the proposal, subject to the above design issues being satisfactorily resolved and included on amended plans.

Applicant's Response to DEP comments –

The applicant has provided amended plans, elevations and photomontage, and details the modifications as follows:

- *Addition of a small balcony to the bedrooms of unit 16 on level 4 & unit 21 on level 5. The balcony will enable the continuation of the glass louvered facade but achieve a higher internal amenity to the bedrooms. The bedrooms incorporate a setback window that can be opened for ventilation and closed for acoustic privacy.*
- *Additional separation provided between bedroom windows on the northern and southern facade of levels 5, 6 & 7 and the lightwell. A minimum separation of 1m is provided to achieve acoustic privacy. The angled louvers are maintained for visual privacy.*
- *Design refinement to the Pacific Hwy frontage including reduction in height of paired blades creating a new central masonry framed element to upper section which relates to the podium below, addition of metal screens in front of glass balustrades, frameless glass privacy screens between upper level balconies and reduced steel profile at top of building to lighten up the balcony canopies and reduce overall bulk.*
- *Provision of information regarding aluminium screen, 'Maze CO11' and 1:50 details of the main facade.*
- *Design refinement to laneway facade including reduced height of blade, replace upper two levels of masonry balustrade with glass, addition of metal screen as per main facade forward of glass balustrade on levels 6 & 7, increase spacing between timber members at podium, reduce screen width and delete portion of screen to increase sunlight penetration to living areas.*

The following comments have been submitted in relation to the additional information and modifications:

RELATIONSHIP BETWEEN INTERNAL USES & FACADE TREATMENT

1. *The panels raised concern with the bedrooms on levels 4 & 5 (to units 16 & 21) having operable louvers.*
2. *In response small balconies connecting to the main balcony have been added to the bedrooms. The balconies enable a continuation of the glass louvers at the facade which is an integral part of the building's design. By the introduction*

of the balconies, the units are setback from the main facade and can control ventilation and acoustic amenity through opening and closing their bedroom window.

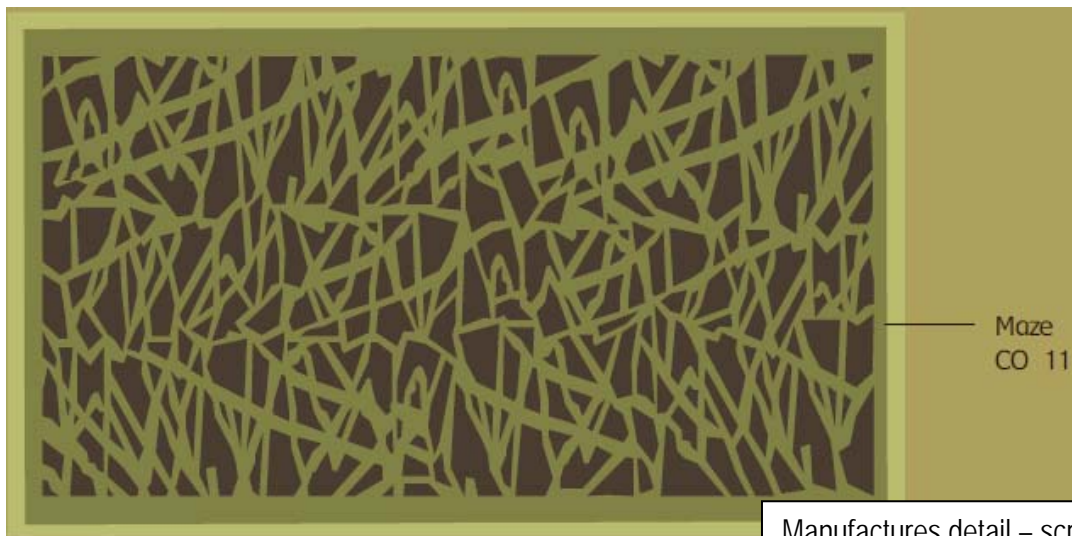
3. *It is considered that this is an appropriate design response as it enables a balance between internal amenity and the integrity of the facade.*

4. *As a result of the addition of the small balconies the internal area of the units has been reduced and a minor re-configuration of units 16, 21 & 23.*

5. *In addition, the panel had concerns with the perforated metal screen and the double layer combined with the louvers behind and whether this resulted in the units being too enclosed. The panel questioned whether the screen was necessary.*

6. *The perforated screen is an integral part of the building's design; it introduces an interesting and different facade treatment. The building's architect feels strongly that the screen should remain and that it does not adversely reduce the amenity of the units. The aluminium screen will allow light to penetrate due to the size of the openings.*

7. *The pattern of the screen is Maze CO11, which includes large and varying openings to allow light penetration as follows:*



8. *The following provides an assessment of each of the relevant units:*

Units 2 & 3, 8 & 9 (levels 1, 2, 3 & 4)

- *These units are all two storey units over levels 1 and 2 (units 2 & 3) and levels 3 & 4 (Units 8 & 9). The lower level of the units contains the kitchen, living, dining and external open space in the form of a loggia. The upper level includes the main bedroom, bathroom and void space.*

- *The units are 4.4 metres wide and limited to 6.5 metres in depth to the kitchen. The width is in excess of the minimum suggested under the residential flat design code to facilitate good design. The combination of the generous width and limited depth will allow high levels of light penetration into the units ensuring sufficient light penetration to the back of the apartments.*

- Due to the two storey design with the living area and external open space on the lower levels, the second storey of the apartment contains a void space over the loggia below. This will reduce the enclosing effect with no overhanging balcony above. Resulting in a 6 metre high void space which will enhance the feeling of space and will counteract any potential 'enclosing of space' by the double layered design feature.
- The amenity of the open space is also enhanced by the incorporation of operable louvers which will enable the residents to control the flow of air and ventilation into the apartments.
- In addition, the layering of the materials on the facade will assist in achieving internal acoustic amenity.
- Refer to detail CD03 Section C and CD04 Section D.

Units 16, 21 (levels 4 & 5)

- Both units are double fronted two bedroom units. They are naturally cross ventilated with openings on the eastern and western facades.
- Juliet balconies are proposed in front of the bedrooms which will enable the continuation of the glass louvered facade but achieve a higher internal amenity to the bedrooms.
- The bedrooms incorporate a setback window that can be opened for ventilation and closed for acoustic privacy.
- As these units are double fronted and cross ventilated, the perforated metal screen will have no adverse impact on the internal amenity.
- Refer to detail CD02. Section B and internal view from unit 21 which clearly shows that sufficient light will penetrate the units notwithstanding the aluminium screen.

Unit 20 (level 5)

- This unit is the final central unit that is positioned behind the perforated screen. The unit is a double fronted unit with a width of 9.2 metres and depth of 8 metres. The generous width and limited depth of the apartment facilitates higher light penetration into the living areas and bedroom.
- The generous size of the external open space which reflects the increased width of the apartment will enhance the internal feeling of space within the apartment.
- In addition, the layering of the materials on the facade will assist in achieving internal acoustic amenity.
- Refer to Detail CD03 Section C & CD04 Section D.

9. On the basis of the above assessment, it is considered that the perforated screen and louvers will have no unreasonable impact on the internal amenity of the units. The units are all of a width and depth that is appropriate to minimise any potential impact.

10. Additional detail is submitted to Council to enable a clear understanding of the relationship between the facade and the internal units.

TOP OF BUILDING DESIGN

11. *The panel raised concerns with the detailing of the top of the facade, they suggested the design be refined requiring a simple, elegant treatment that was visually recessive and less dominant with the blades not expressed as strongly.*

12. *In response to the panels comments, the Pacific Hwy design has been refined as follows:*

- *Reduction in height of paired blades creating a new central masonry framed element to upper section which relates to the podium below*
- *Addition of metal screens in front of glass balustrades*
- *Frameless glass privacy screens between upper level balconies*
- *Reduced steel profile at top of building to lighten up the balcony canopies and reduce overall bulk.*

13. *Overall the design modifications ensure the overall building provides a strong architectural statement and address the concerns raised by the Panel.*

FACADE DETAIL & MATERIAL

14. *The panel requested 1:50 details of the facade.*

15. *Additional details have been prepared as follows:*

- *CD01 Unit 16 Amendment / loggia plan – revised loggia and balcony layout with glass louvers and metal screen*
- *CD 02 Section B – section through units 6, 10, 16, 21 & 26.*
- *CD 03 Section C – section through units 9 & 20.*
- *CD 04 Section D – section through units 8 & 20.*

16. *The perforated metal screen is cut from 3mm thick aluminium sheets housed in a strong 50mm wide structural frame.*

17. *Accordingly to the manufacturer, the screen panels are maintenance free, being aluminium they will not warp, crack or rot over time. The material is coated with a Dulux powder coat finish so are waterproof, highly durable and will not require painting or sealing.*

18. *In addition, a manufacture detail of the proposed louvers / glass system is submitted for Council's information.*

LANEWAY FACADE

19. *The panel raised concerns with the lower level treatment of the facade and whether the continuation of the perforated metal screen was necessary.*

20. *The project architect feels strongly that the screen detail should stay as it provides a consistent theme with the main facade and enhance the treatment to the laneway. We have tried to avoid just a back lane appearance. However, the overall Laneway facade has been further refined to improve the internal amenity and aesthetic appearance.*

21. *Amendments to the laneway facade include:*

- *Reduced height of blade*
- *Replace upper two levels of masonry balustrade with glass*
- *Addition of metal screen as per main facade forward of glass balustrade on levels 6 & 7*
- *Increase spacing between timber members at podium*
- *Reduce screen width and delete portion of screen to increase sunlight penetration to living areas.*

22. *The following provides an assessment of the two units on the laneway facade that are located behind the screen:*

Units 12 & 17 (level 3 & 4)

- *Both units are double fronted and the screen detail is only across half of each unit. The remaining half of the unit contains enclosed balconies with awning windows. The laneway facade is setback 1.5m from the property boundary which enables awning windows to open within the confines of the site.*
- *The units are a minimum width of 8 metres and a maximum depth in the living area of 6.8 metres. The generous width and limited depth facilitates higher light penetration into the living areas and bedroom.*
- *The reduced extent of the screen, increased timber spacing and reduced width of the screen will further enhance the internal amenity of the units.*

ACOUSTIC PRIVACY ADJACENT LIGHTWELL

23. *The panel raised concerns with acoustic privacy between bedrooms to the lightwell on the northern and southern facades on Level 5, 6 & 7.*

24. *The plans have been amended to ensure a minimum separation of 1 metre between the operable windows. Combined with the angled louvers, acoustic and visual privacy will be maintained.*

Planning Comment –

The amended plans have largely addressed the DEP's concerns by providing additional details of the louvre and screen façade treatment, amending the internal room function to more appropriately correlate with the façade expression, refining the architectural treatment of the upper levels of the building and the rear façade, and improving acoustic amenity between the windows of adjoining units facing the light wells. The photomontage also depicts patterned metal screens in front of a number of balcony balustrades on Levels 2-8 on the Pacific Highway elevation and at Levels 6 and 7 on the Doohat Lane elevation. It is considered that the metal screens in front of the balustrades are unnecessary and do not enhance the façade design. The patterned metal balustrade screens to both elevations should be replaced with either translucent glazing or masonry balustrades, matching the proposed colour palette.

The architect has considered the DEP's comments in relation to the perforated screen feature and in light of the additional 1:50 sections and product specifications, and given that internal amenity has been demonstrated to be satisfactory, the

architect strongly believes that the screen feature should be retained as an integral design element. It is considered that the proposed façade treatment is satisfactory, with regard to the additional details provided and the improved relationship between the internal function and external façade treatment, subject to the patterned balustrade screens being amended to either translucent glazing or masonry.

SUBMISSIONS

The owners of adjoining and nearby properties and all Precinct Committees were notified of the proposed development from 22/7/11 to 5/8/11. A total of 9 submissions were received with the main issues raised being summarised as follows:-

Name & Address of Submitter

Inga Kirkman 3/154 Pacific Highway	<ul style="list-style-type: none"> Northern boundary windows in No.154 have “existing use rights” and development should be set back 1m from boundary Overshadowing Natural ventilation View loss
Jeff Hudson 11/154 Pacific Highway	<ul style="list-style-type: none"> Impact of building to the side boundary on the existing windows in wall on boundary at 154 Pacific Highway, particularly to the suite on level 4. Windows were legally constructed. Existing use rights claimed over boundary windows 1m setback required (as provided with the previous Housing Commission approval) SEE fails to address impacts
Phil Raskall 8/154 Pacific Highway	<ul style="list-style-type: none"> Excessive bulk Excessive podium height/tower now lower Overshadowing impact on northern side boundary windows Loss of all light and ventilation to side boundary windows >8m from kitchen to front of building Adverse impact on amenity of apartments Lack of discussion or assessment of impact on dwellings in No.154 in Statement of Environmental Effects. Development would result in dwellings at No.154 being non-compliant with SEPP 65 and BASIX Excessive number of parking spaces provided Geotech report is from 2006 and relates only to 158 Pacific Highway Proposal is well below the 1000m² minimum site area (>20% below) and has only minimal non-residential floor space. RFDC requires separation between habitable rooms

Soon Lim
1 Doohat Ave

- Bulk and size of the building and compatibility with neighbouring properties
- Privacy and amenity
- Overshadowing
- Traffic and parking issues
- Noise from lane
- Location of car park ventilation stack
- Setbacks inadequate

Edward Precinct

- Bulk and size of the building and compatibility with neighbouring properties
- Privacy and amenity
- Overshadowing
- Traffic and parking issues
- Noise from lane
- Waste collection from Lane
- Car parking inadequate

Colin Low
2/154 Pacific Highway

- Proposal contains incorrect and misleading statements.
- Non-compliance with 3m side setback requirements.
- Requires removal of windows in northern elevation of No.154.
- Common law protects against loss of value and amenity
- 1m setback was previously required.
- Traffic
- Excessive/vacant commercial in area
- Height

Rita Meillon
PO Box 1070
Neutral Bay

Malcolm and Anne Sheldon
7/154 Pacific Hwy

- Mass and density
- Loss of sunlight to No.154
- Existing use rights re windows
- 1m setback required

Ervin Mahrer
Lots 13 and 14, 154 Pacific Hwy

- Development will obscure view of rooftop sign which would prevent future leasing
- Approval would result in a breach of sign lease terms
- No consultation has taken place between proponent and No.154
- Noise and vibration during construction leading to RTA closing
- Height
- North facing windows will be blocked, with impact on light and ventilation

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 LEP 2001

The application has been assessed against the relevant numeric controls in NSLEP 2001 as indicated in the following compliance table. 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				
Site Area – 794.31 m ²	Existing	Proposed	Control	Complies
Mixed Use Zone				
Building heights and massing (Cl. 28D) (max):				
Building Height	3 storeys RL 88.49	10 storeys RL 106.53 (roof level) RL 110.97 (top of plant)	Maximum height of RL 195 throughout North Sydney Centre	YES
Overshadowing controls	Complies	Acceptable impact on amenity	No increase in overshadowing that reduces amenity to any dwelling in composite shadow area	NO*
Site area	794.31m ²	794.31m ²	1000m ²	NO*
Building Height Plane (Cl. 30):	Complies	Breach of height plane	45° angle commencing at 3.5 metres above ground level at centre of Doohat Lane	NO*
Floor Space (Non residential - Cl. 31) (range)	1.88:1	0.51:1	0.5:1 (Planning proposal)	YES**
Design of development (Cl.32) (applicable to new buildings)				
Mix of uses	Non-residential only	Residential and non-residential	Residential and non-residential	YES

Location of uses	Non-residential	Non-residential	For new buildings, non-residential at lower levels / no residential at ground level	YES
Entry location	N.A.	Residential entry separate	Residential entry separate	YES
Podium requirement	N.A.	5 and 7 storey podium and sub-podium to Pacific Highway	Building set back above a podium	YES

* SEPP 1 provided

** Subject to Planning Proposal being gazetted

Draft North Sydney LEP 2009

The application has been assessed against the relevant numeric controls in Draft NSLEP 2009 as indicated in the following compliance table.


Compliance Table

Draft North Sydney Local Environmental Plan 2009				
Site Area – 794.31 m ²	Existing	Proposed	Control	Complies
Mixed Use Zone – B4				
Height of Buildings Cl. 4.3	3 storeys RL 88.49	10 storeys RL 106.53	Site specific maximum height of RL 105 (9 to 10 storeys)	NO
Building Heights and Massing Cl.6.4				
Overshadowing controls Cl.6.4	-	Acceptable impact on amenity	No increase in overshadowing that reduces amenity to any dwelling outside North Sydney Centre	YES
Site area Cl.6.4	794.31m ²	794.31m ²	1000m ²	NO
Floor Space (Non residential - Cl. 31) Cl.4.4	1.88:1	0.51:1	0.5:1 Minimum	YES

DCP 2002 Compliance Table

DEVELOPMENT CONTROL PLAN 2002		
	<i>Complies</i>	<i>Comments</i>
6.1 Function		
Diversity of activities, facilities, opportunities and services	Yes	The proposed development incorporates a suitable diversity of uses. The proposal includes non-residential uses on the ground floor of the development in accordance with the DCP and also includes a jacuzzi, sauna, gym and change rooms. The proposal also includes a communal area at roof level.
Mixed residential population	Yes	The proposed dwelling yield of one unit per 137m ² of residential GFA is within the DCP range of one unit per 100m ² -150m ² .
	Yes	The proposal includes 47.5%(19) x 1 bedroom, 37.5%(15) x 2 bedroom and 15%(6) x 3 bedroom. The proposed unit mix is considered acceptable with regard to the minor variation to the unit mix requirements.
	Yes	The development incorporates a total of 4 adaptable units in accordance with the requirements of the DCP.
Maximum use of public transport	Yes	Non-residential parking is limited to 2 spaces and the site has excellent access to public transport.
6.2 Environmental Criteria		
Clean Air	Yes	Satisfactory.
Noise	Yes <i>(with conditions)</i>	An Acoustic Report prepared by Acoustic Logic was submitted with the application. The report indicates that the proposal is capable of satisfying the DCP (and SEPP Infrastructure) noise mitigation requirements subject to construction recommendations.
Acoustic Privacy	Yes <i>(with conditions)</i>	As noted above, an Acoustic Report prepared by Acoustic Logic was submitted with the application. The report indicates that subject to appropriate glazing and acoustic treatment, the proposal is capable of satisfying the DCP acoustic privacy

		requirements. Amendments to the windows facing the light wells have also improved acoustic privacy.
Visual Privacy	Yes	The proposal is satisfactory with regard to visual privacy, with no windows facing the northern and southern elevations Separation to the windows of the residential dwellings to the west is in excess of 12m, and is satisfactory.
Wind Speed	Yes	A Wind Impact Assessment is not required as the building has been reduced to less than 33m in height.
Awnings	Yes	An appropriate awning is proposed along the Pacific Highway frontage.
Solar access	Yes	The proposal is satisfactory with regard to overshadowing. (See discussion under Cl.28D later in report)
Views	Yes	The proposal does not adversely affect any existing views.
6.3 Quality built form		
Context	Yes	The proposal now satisfactorily responds to the characteristics and constraints of the site. The design has adequate regard to surrounding development and achieves a transition of building heights down to the boundaries of the North Sydney Centre.
Public spaces & facilities	Yes	Appropriate integration of the non-residential areas with the public domain is proposed.
Skyline	Yes	The proposed 10 storey building is satisfactory with regard to the resultant building height and the design of the upper levels of the building, as modified in response to the comments of the DEP.
Streetscape	Yes	Appropriate activation of the Pacific Highway frontage is achieved.
Setbacks	Yes	The proposed approximately 5m weighted average setback above the podium to the Pacific Highway frontage is satisfactory. The 4m weighted average lane setback is also satisfactory. The side setbacks are satisfactory with regard to the previous DA design and the advice of the JRPP and DEP, with a nil setback to the front

		<p>part of the building and a 3m setback above RL 91.5 to the rear.</p>  <p><i>North elevation of No.154 Pacific Highway - Approximate outline of proposed building on nil setback.</i></p>
Entrances and exits	Yes	Satisfactory.
Street frontage podium	Yes	The proposed 6-7 storey podium does not satisfy the Pacific Highway podium height requirement, however, Council's Design Excellence Panel are satisfied with the podium design, which adequately responds to the existing development to the north and south.
Building design	Yes	The proposed building design is considered satisfactory.
	Yes	The proposed retail area at ground floor level has a >3.0m ceiling height and would allow a range of retail uses.
6.4 Quality urban environment		
High quality residential accommodation	Yes	All unit sizes are satisfactory.
	Yes	Balconies receive 2hrs solar access
	No	The proposed corridors are below the 2m minimum width (approximately 1.5m, but not dimensioned on plans) and include right angled corners.
	Yes	Up to 8 units are accessed from a single corridor.
	Yes	>60% of units will be cross ventilated.
	No	A number of single aspect units have a depth slightly greater than 8m, however, given the unit layouts and building configuration, the proposal is satisfactory with regard to unit depths.

Balconies	Yes	The proposed balcony dimensions are satisfactory.
	No	Balconies extend within the prescribed setback above the podium.
Accessibility	Yes	Although no accessibility report has been submitted with the application, lift access is proposed to all levels and level access is provided from the street entrance of the building, with 4 adaptable apartments provided.
Safety and security	Yes	Satisfactory.
Car parking	Yes	The proposal provides a total of 31 car parking spaces.
	Yes	An adequate loading bay with a vertical clearance of 4.5m has been provided. (accommodating a medium rigid vehicle)
Bicycle parking	Yes	Satisfactory.
Vehicular access	Yes	Access from Doohat Lane is satisfactory.
Garbage storage	Yes	Satisfactory.
Commercial garbage storage	Yes	Satisfactory.
Site facilities	Yes	Adequate storage has been provided.
6.5 Efficient use and management of resources		
Energy efficiency	Yes	A BASIX certificate for the residential component of the development has submitted and an appropriate condition can be imposed to ensure compliance with these commitments.

NORTH SYDNEY LEP 2001

1. Permissibility within the zone:

The subject site is zoned Mixed Use pursuant to NSLEP 2001. Development for the purposes of the construction of a mixed use building is permissible with the consent of Council. The proposed uses are also permissible under the zoning with Council consent.

2. Objectives of the zone

The particular objectives of the Mixed Use zone, as stated in clause 14 of NSLEP 2001, are:

- “(a) encourage a diverse range of living, employment, recreational and social opportunities, which do not adversely affect the amenity of residential areas, and*
- (b) create interesting and vibrant neighbourhood centres with safe, high quality urban environments with residential amenity, and*
- (c) maintain existing commercial space and allow for residential development in mixed use buildings with non-residential uses at the lower levels and residential above, and*

(d) promote affordable housing.”

The proposed mixed use development is consistent with the objectives of the zone.

3. Building heights and massing

Objectives

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

OBJECTIVE	RESPONSE
<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 proposal achieves a satisfactory transition of building heights as required by both the current and draft LEP controls.
<i>(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.</i>	The proposed building height and massing have an acceptable impact on the adjoining heritage item to the west of the site at No 1 Doohat Avenue.
<i>(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”.</i>	The proposal would result in an acceptable degree of overshadowing of the residential properties to the west of the site. This issue is addressed later within the report.
<i>(d) to protect the privacy of residents within and around the North Sydney Centre.</i>	The proposed privacy impacts are acceptable, as previously discussed.
<i>(e) to promote scale and massing that provides for pedestrian comfort, in terms of weather protection, solar access and visual dominance.</i>	The proposed design is satisfactory with regard to scale, massing and visual dominance.
<i>(f) to encourage consolidation of sites for provision of high grade commercial space and provision of public benefits.</i>	Attempts to consolidate the site with adjacent properties have been unsuccessful.

Development Controls

Clause 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, and

The proposed building will have a maximum RL110.97 AHD (to the top of the lift overrun) and RL 106.53 to the roof level, and therefore complies with the height limit.

(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 an increase in overshadowing of land between the hours of 9.00am and 3.00pm on June 21st 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 that 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 proposal does overshadow the residential building at No.1 Doohat Avenue which is located within the composite shadow area, in the morning throughout the year.

The applicant has submitted a SEPP No. 1 objection seeking variation to this control due to the minor nature of overshadowing proposed. The SEPP 1 objection argues that the overshadowing of No.1 Doohat Avenue occurs from the podium structure and not from the tower and that to maintain existing levels of solar access to the affected east facing windows would preclude development of the site. Detailed shadow diagrams have been provided, including "view from the sun" diagrams and it is considered that the increased overshadowing would not reduce the amenity of the dwellings to the west. The submitted SEPP No.1 objection to clause 28D(2)(d) is considered to be well founded and approval of the development application would be consistent with the aims of SEPP No.1. Additionally, in relation to granting concurrence under clause 8 of SEPP No.1, the proposed non-compliance with the development standard does not raise any matter of significance for State or regional environmental planning, and the public benefit of maintaining the planning controls has been taken into consideration.

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

The site has an area of 794.31m², being well below the 1,000m² requirement in NSLEP 2001. A well-founded SEPP No. 1 Objection has been submitted to justify this departure and is attached to this report. Evidence of attempts by the owner of the property to consolidate with neighbouring properties to achieve a greater site area has been provided and it is apparent that consolidation is unlikely to occur. On this basis the submitted SEPP No.1 objection to clause 28D(2)(e) is considered to be well founded and approval of the development application would be consistent with the aims of SEPP No.1. Additionally, in relation to granting concurrence under clause 8 of SEPP No.1, the proposed non-compliance with the development standard does not raise any matter of significance for State or regional environmental planning, and the public benefit of maintaining the planning controls has been taken into consideration.

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*

The proposed development is satisfactory with regard to scale, form and massing within its context as a peripheral site of the North Sydney CBD, adjoining residential development to the west. The amended design is now considered a satisfactory design response to the lower scale residential development to the west of the site.

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

The proposal provides no direct public benefits with the exception of an awning over the footpath and activation of the street frontage on Pacific Highway.

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

The proposal does not impact on view lines or vistas identified in the character statement.

- (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 proposed development would enhance the streetscape.

4. Mixed Use Zone

Building Height

There is no numeric building height control stipulated for the subject site pursuant to Clause 29, therefore the height for the site must be assessed pursuant to Clause 28D (above) and against the DCP site specific height control of RL 105. Compliance with both of these planning controls and against the draft height control contained in Draft NSLEP has been assessed as satisfactory.

Building Height Plane

Pursuant to Clause 30 of NSLEP 2001, a building height plane is only applicable to the rear (western) boundary of the site, which adjoins the Residential C zone. This development standard is not applicable to any other boundaries of the site.

The decision in *Castle Constructions Pty Ltd v North Sydney Council [2007] NSWCA 164* has been interpreted as rendering the building height plane control “no longer applicable”. However, Council considers that the particular circumstances considered by the Supreme Court in *Castle Constructions Pty Ltd v North Sydney Council [2007] NSWCA 164*, while similar to the current application, are not identical, particularly given

the non-compliance with the 1000m² site area in the subject application (the site in *Castle Constructions Pty Ltd* was in excess of 1000m²) , and that the building height plane control remains an applicable development standard in NSLEP 2001.

A SEPP 1 objection (“without prejudice”) has been submitted with the application and is attached to this report. The SEPP 1 objection discusses in detail how the proposal satisfies the objectives of the building height plane control, despite non-compliance with the standard. The submitted SEPP No.1 objection to clause 30 is considered to be well founded and approval of the development application would be consistent with the aims of SEPP No.1. Additionally, in relation to granting concurrence under clause 8 of SEPP No.1, the proposed non-compliance with the development standard does not raise any matter of significance for State or regional environmental planning, and the public benefit of maintaining the planning controls has been taken into consideration.

5. Floor Space

In conjunction with the previous DA, the applicant has submitted a Planning Proposal for the subject site. The Planning Proposal seeks to amend the non-residential FSR controls for the site. Under North Sydney Local Environmental Plan 2001, the site currently requires a range of non-residential FSR between a minimum of 3:1 and a maximum of 4:1. The Planning Proposal seeks to reduce the minimum non-residential FSR from 3:1 to 0.5:1. The Planning Proposal contains the same provisions that are proposed for the site in Draft NSLEP 2009 and was forwarded to the Department of Planning for Gateway Determination. The Minister for Planning issued a Gateway Determination and the Planning Proposal was publicly notified for 14 days, until 7 April 2011. No objections were received. The Department of Planning and Infrastructure have indicated that they now intend to make arrangements for the drafting of a LEP to give effect to the Planning Proposal, under section 59(1) of the EP&A Act. Any approval of the subject development application is contingent upon the LEP being gazetted.

6. Design of Development

The proposal is consistent with the objectives and design controls of Clause 32 of NSLEP 2001, and the proposal is a mixed use development that incorporates the non-residential component of the proposal at the ground floor of the building.

7. Excavation of Land

Significant excavation to a maximum depth of approximately 15 metres is proposed in order to accommodate car parking and services on the site (over 3-4 levels).

The Statement of Environmental Effects includes a satisfactory geotechnical report which includes recommendations for excavation and construction.

8. Heritage Conservation

Council's Conservation Planner has assessed the application with reference to Clause 50 of NSLEP 2001 – development in the vicinity of heritage items and Section 8.8 of the NSDCP 2002 in relation to heritage items and conservation areas. The proposal is considered unsatisfactory with regard to heritage impact, as detailed in the comments by the Conservation Planner.

The applicant has provided a Heritage Impact Statement which argues that the proposal has an acceptable impact on the significance of the item and its curtilage, partly due to the laneway dividing two distinct “precincts”, and also given that the item will continue to be read as part of residential development in Doohat Avenue.

Given the existing and draft height controls, the previous DA and recommendations of the JRPP and the DEP, and all other relevant circumstances, it is considered that the proposal would not adversely affect the significance of the item or its curtilage.

SEPP 65 – Design Quality of Residential Flat Development

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

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

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

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

The proposed context, bulk and scale and building form are satisfactory, as discussed in detail in this report.

Principle 4: Density

There is no density control applicable to the overall development. The proposed residential density is considered satisfactory.

Principle 5: Resource, Energy and Water Efficiency

A BASIX certificate for the proposal is submitted under separate cover which outlines all energy and water saving commitments.

Principle 6: Landscaping

Satisfactory.

Principle 7: Amenity

The amended design is now satisfactory with regard to amenity.

Principle 8: Safety and Security

Entrance ways and ground level areas are satisfactory.

Principle 9: Social Dimensions

The proposal is satisfactory with regard to social dimensions.

Principle 10: Aesthetics

The proposal is satisfactory with regard to aesthetics.

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 assessed above.

SEPP (Building Sustainability Index: BASIX) 2004

A suitable BASIX Certificate has been submitted with the application. In the event of approval, a condition would be imposed requiring compliance with the commitments contained in the certificate.

SEPP (Infrastructure) 2007

SEPP (Infrastructure) 2007, among other things, establishes a framework for certain types of development to be referred to the Traffic Authority for consideration.

Given the nature of the proposed development, the number of parking spaces proposed and its proximity to Pacific Highway, the previous proposal was referred to the RTA for comment. As noted previously in this report, the RTA has considered the proposed development and raises no objections subject to conditions.

The proposal is satisfactory with regard to noise attenuation and residential amenity, subject to conditions, as required under the SEPP.

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 Catchments) 2005

The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP. The site, however, is not located close to the foreshore and the application is considered acceptable with regard to the aims and objectives of the SREP.

Draft NSLEP 2009

Draft North Sydney Local Environmental Plan 2009 has been publicly exhibited, 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. While at this stage little weight can be given to the plan since the final adoption is neither imminent nor certain, the draft height limit is consistent with the existing LEP and DCP controls and previous approvals on the subject site.

The provisions of the draft plan have been previously considered in this report, 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 proposal is satisfactory with regard to Draft NSLEP 2009.

Suspensions of Covenants, agreements and similar instruments

Council is unaware of any covenants, agreements or the like which may be affected by this application.

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 retail and residential uses. 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.

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

An awning is proposed to the Pacific Highway frontage.

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 Berry Street, 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 Berry Street

The 6-7 storey podium height does not comply, however, Council's Design Excellence Panel considers the podium design appropriate for the site circumstances.

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

Details of the proposed façade treatments have been provided. The building will comply with the energy requirements of BASIX.

Have regard to Public Domain. Continue use of tree planting and use of native vegetation to enhance the urban environment

The development is satisfactory with regard to the public domain. There is limited scope for native vegetation at ground level.

SECTION 94 CONTRIBUTIONS

Section 94 Contributions in accordance with Council's S94 plan are applicable. A suitable condition would be applied if consent is granted.

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 partial demolition of the existing structures are proposed, a suitable condition should be imposed.

DESIGN & MATERIALS

The design and materials of the building are satisfactory, as discussed in detail in this report.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

of this report.

ENVIRONMENTAL APPRAISAL

CONSIDERED

1.	Statutory Controls	Yes
2.	Policy Controls	Yes
3.	Design in relation to existing building and natural environment	Yes
4.	Landscaping/Open Space Provision	Yes
5.	Traffic generation and Carparking provision	Yes
6.	Loading and Servicing facilities	Yes
7.	Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8.	Site Management Issues	Yes
9.	All relevant S79C considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

CLAUSE 14 NSLEP 2001

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

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

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

SUBMITTORS CONCERNS

Nine (9) submissions were received in relation to the proposed development raising concerns including building height and bulk, privacy, overshadowing, traffic, parking, visual impact, amenity and other issues. These issues have been mostly addressed within this report. Additional relevant issues raised are addressed as follows:

- Impact on windows on northern façade, and amenity of dwellings within No.154 Pacific Highway / 1m setback should be provided / “existing use rights” claimed/previous consent included 1m setback

Planning comment:

The redesigned building includes a 3m side setback from the location of the proposed light wells through to the rear boundary, as recommended by the Design Excellence Panel. The proposed nil setback for the remainder of the building would obscure the majority of windows on the northern façade of No.154 as previously discussed, however, providing a 1m setback would not provide any additional solar access beyond the proposed nil setback. The two upper levels of No.154 contain 8 units, all of which also have an east or west orientation, which will provide at least 2 hrs of solar access

and adequate light and ventilation. While it is acknowledged that the proposal will reduce existing levels of light and ventilation, it is considered unreasonable and undesirable to require a 1m side setback from the southern side boundary given the site circumstances. It is noted that “existing use rights”, as defined in s.106 of the Environmental Planning and Assessment Act, 1979 are not relevant to the subject application.

- Vehicular access should be from Pacific Highway

Planning comment:

Access from Doohat Lane is the preferred and logical location and no objections were raised by the RTA or Council's Traffic Engineer.

- RFDC requires separation between habitable rooms

Planning comment:

The proposed nil setback satisfies the privacy objective of the RFDC requirement. Openings in the 3m setback on Levels 5-9 have fixed privacy screens.

- Development will obscure rooftop sign

Planning comment:

It is agreed that the proposal will obscure views of the rooftop sign, however, this does not constitute a reason for refusal of the application.

- Disruption/noise and vibration during construction

Planning comment:

Suitable conditions will be applied to minimise the impact of the development on surrounding properties.

CONCLUSION

This application addresses the issues identified in the previously refused application and is now considered a satisfactory form of development, subject to conditions of consent. The application has been assessed against the relevant statutory controls and with regard to the existing and approved developments. The SEPP 1 objections are considered to be well founded and are supported. . The application was referred to Council's Design Excellence Panel for comment and the Panel supported the application, subject to refinement of the Pacific Highway elevation and other minor amenity issues, as previously detailed. The application has been amended to address the issues raised by the DEP.

The application is recommended for approval by the Joint Regional Planning Panel.

RECOMMENDATION

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

THAT upon gazettal of the Planning Proposal reducing the non-residential FSR to 0.5:1, the Joint Regional Planning Panel, as the consent authority, grant development consent to 2011SYE078 - Development Application No.291/11 to demolish the existing building and erect a 10 storey mixed use building containing 404m² of retail floor space, 40 residential apartments and three levels of basement carparking for 31 vehicles, subject to the attached conditions:

George Youhanna
EXECUTIVE PLANNER

Geoff Mossemeneer
ACTING MANAGER DEVELOPMENT SERVICES
