

**JOINT REGIONAL PLANNING PANEL
(Sydney East Region)**

JRPP No	2011SYE116
DA Number	DA.47/11/2
Local Government Area	North Sydney
Proposed Development	To modify consent for demolition of existing structures, amalgamation of the three allotments and construction of a 22 storey mixed use building above basement car parking comprising commercial tenancies including a restaurant, 193 units, landscaping, a through-site-link and roof level communal facilities including a gym and swimming pool.
Street Address	136-142 Walker Street North Sydney
Applicant/Owner	Winten Developments Pty Ltd
Number of Submissions	One
Recommendation	Approval with Conditions
Report by	Geoff Mossemeneer, Executive Planner, North Sydney Council

Assessment Report and Recommendation

EXECUTIVE SUMMARY

This application is for a Section 96(2) modification of the consent granted by the JRPP at its meeting of 6 July 2011 for the Development Application allowing demolition of existing structures, amalgamation of the three allotments to make one site and construction of a 22 storey mixed use building above basement car parking.

The Council's notification of the proposal has attracted one submission concerning the location of plant on the roof of the lower tower and possible view loss. The assessment has considered the submission and the performance of the application against Council's planning requirements.

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

DESCRIPTION OF PROPOSAL

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

At RL132.5 and 22 storeys plus roof facilities the overall height of the tower remains the same as the earlier approved scheme. Setbacks to the rear, front and south side boundaries also remain similar to that of the earlier approved buildings.

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

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

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

Part of the First Floor and the remainder of all the floors above will be used for residential purposes and includes a total of **193 units made up to 35 studio units, 61 one bedroom units, 80 two bedroom units and 17 three bedroom units**. Access to the units will be via one of two lobbies and lift cores each with security entrances.

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

Vehicular entrance to the site will be from Walker Street and is now proposed at the southern end of the front boundary. An existing rock outcrop on the southern side of the front boundary will be retained and incorporated into the vehicle entry to comply with a site-specific DCP control which relates to the rock outcrop. Four levels of basement parking are proposed, incorporating 140 residential spaces, motor cycle parking and bicycle storage plus ancillary storage for the residential units. A loading dock and service area is proposed to be provided at ground level, accessed from the same vehicle entrance point and also includes additional bicycle storage.

MODIFICATION

In this Section 96(2) application, there are three types of change proposed:

- Those which have resulted from design development towards producing a CC
- Those which are proposed to improve the building architecturally and the amenity for it's future occupants
- Those that have been client driven as a result of the marketing process

The first have resulted from changes to the BCA which have had broad implications with regards to design for accessibility issues, and include increased lift dimensions.

There have been changes that were required as a result of conditions set by the Board of Fire Commissioners, and the requirement by Energy Australia to incorporate a larger sub-station,

The second group includes re-planning some of the apartments to provide a better relationship to the views and balconies, There are additional pergolas, and some balconies on a few west facing apartments have been extended to provide better weather protection, In some cases balconies have been re-designed to better relate to other building elements. These changes do not affect any of the neighbouring properties. It is also proposed to raise the lift over-run by 300mm which will improve the lift speeds.

There are two changes proposed in relation the apartment mix on level 20, At the rear of the building the atypical floor plan has been amended to simplify the structure. On the Walker Street facade, the mix has been changed to improve the number of two bedroom units in the development. The number of apartments has been increased to **195 units made up to 35 studio units, 65 one bedroom units, 82 two bedroom units and 15 three bedroom units.**

The applicant also requests a modification to Condition C39 with regard to the height of removalist vans being lowered from 4.5m to 3.9m. The request is accompanied by a report from Colston Budd Hunt & Kafes Pty Ltd.

Schedule of Changes

- A. Changes to services resulting in minor changes to storage areas and apartments as a result of design development for CC
- B. Relocation of disabled parking spaces
- C. Replanning of fire stair and exit as a result of design development for CC
- D. Re-organisation of garbage areas and bicycle stores and other services
- E. Mailroom added
- F. Energy Australia sub-station increased in size and capacity with subsequent changes to Core B lobby and minor changes to apartments
- G. Re-planning of area around garbage chute resulted in inefficient areas and some space allocated to adjoining apartment
- H. Terrace area modified to achieve required grille area (27m²) stair pressurisation of fire stairs and to reduce the structural depth over the truck entry to achieve the required 3.9m.

- I. Minor re-planning of commercial area to maintain floor area and to improve relationship with building above,
- J. Air conditioning plant room removed from western boundary above the first floor.
- K. Balcony profile amended to relate to colonnade below as a result of design development for CC
- L. Balcony extended to rear of south-west apartments for sun and weather protection, Minor replanning of apartments to improve amenity and accessibility
- M. Plant room required for stair pressurisation of Core B added to roof of L13. Re-organisation of the terrace area and minor changes to adjoining apartment layouts
- N. Re-planning of north west unit to improve amenity
- O. Pergola added to east studio units to improve usability of the terrace
- P. Two x 2 bedroom units on level 20 replaced with typical layout of floors below. (three x 1 bedroom units) and two x 3 bedroom units replaced with three x 2 bedroom units
- Q. Re-planning of pool plant room and services. Minor replanning of apartments
- R. Re-planning of penthouse apartments
- S. Re-planning of recreation terrace and amenity rooms resulting from plant room changes and required separation distances
- T. Lift over-run increased by 300mm to improve lift speeds reduce waiting times. Because of the location there is no additional overshadowing
- U. Translucent screens added to end of balconies for privacy from adjoining apartments
- V. Blast proof canopy added to protect apartments above the Energy Australia sub-station

CHECKING OF PLANS.

This application has been checked to ensure that the changes being sought are the only changes included in the submitted plans.

STATUTORY CONTROLS

North Sydney LEP 2001

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

S94 Contribution

Environmental Planning & Assessment Act 1979

SREP (2005)

Draft LEP 2009

POLICY CONTROLS

DCP 2002

CONSENT AUTHORITY

As this proposal has a Capital Investment Value (CIV) of greater than \$20 million the

consent authority for the development application is the Joint Regional Planning Panel, Sydney East Region (JRPP).

DESCRIPTION OF LOCALITY

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

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

To the west is No's 3-11 Ward Street consisting of a vacant excavated site. No's 3-11 Ward Street have been purchased by Energy Australia for use as a large sub-station.

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

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

To the east of the site beyond Walker Street are three-storey residential flat buildings (No's 173- 177 Walker Street). To the south-east is Century Plaza (No.171 Berry Street), a multi-storey residential flat building primarily oriented south-east towards Sydney Harbour with its north western elevation (containing bedrooms, or bedrooms used as studies) facing towards the site, diagonally across Walker Street.

RELEVANT HISTORY

DA.316/10

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

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

the application and lodge the proposal as a fresh application.

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

DA.47/11

Development Application No.47/2011 (2011SYE019) for 193 units (made up to 35 studio units, 61 one bedroom units, 80 two bedroom units and 17 three bedroom units) and basement parking for 140 cars on 136-142 Walker Street was approved by the JRPP on 6 July 2011. Construction has commenced on 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 remains on the consent and should amendments be necessary to any approved plans to ensure compliance with the BCA, then a further Section 96 application to modify the consent may be required.

Engineering/Stormwater Drainage/Geotechnical

The modifications do not warrant further referral.

Heritage

The modifications do not warrant further referral.

Design Excellence Panel

The modifications do not warrant further referral.

External Referrals

Nil required

SUBMISSIONS

The application was notified to the Stanton and CBD precincts and surrounding owners and residents from 18/11/2011 to 2/12/2011. The following submission was received:

The resident

1104/37-39 McLaren Street

- Object to modification M - which is the positioning of the plant room on the roof of the northern portion (142 block) of the development. This once again raises the height of the development on the 142 Walker Street block past the RL limit for

that block. This further impinges on the views and amenity of premises in 37-39 McLaren street as well as probably the Harvard apartments on the corner of McLaren and Miller street. Please see council report of 16/05/2011 that kindly did a sight line analysis for the building from apartment 1104 at 37/39 McLaren street. Could it be possible to keep the plant room (M) alteration as close to the main tower (south end) of the development on the 142 roof to ensure it doesn't further impinge on views/amenity.

CONSIDERATION

The proposal is required to be assessed having regard to the following matters.

Section 96(2) of the Environmental Planning and Assessment Act 1979 enables a consent authority to modify a development consent upon application being sought by the applicant or any person entitled to act on the consent, provided that the consent authority:

- is satisfied that the development to which the consent as modified relates is substantially the same development;
- has consulted the relevant Minister, public authority or approval body in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent;
- has notified the application in accordance with the regulations and has considered any submissions made concerning the proposed modification; and
- in determining the application for modification, has taken into consideration such matters referred to under Section 79C(1) as are relevant.

Therefore, assessment of the application to modify the subject development consent must consider the following issues:

Is the proposed development as modified substantially the same development approved?

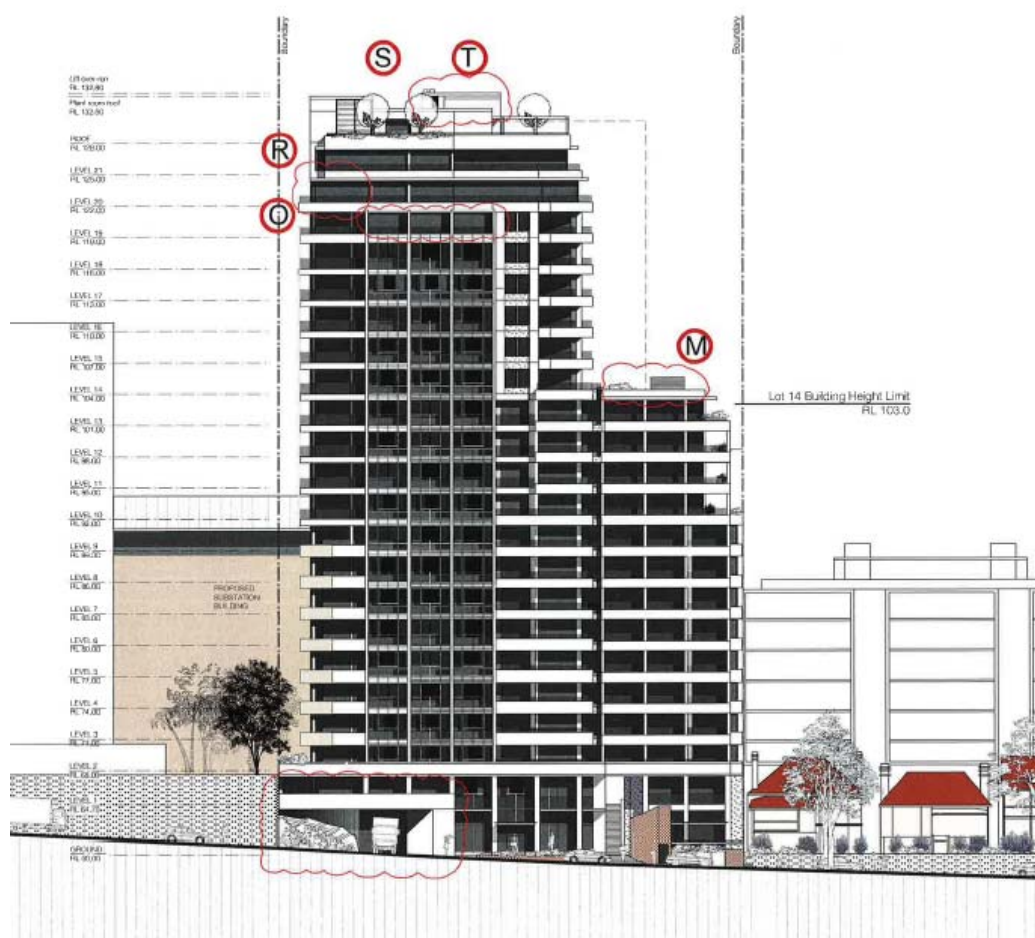
The proposed development as modified is considered to be substantially the same development as approved.

Whether the application required the concurrence of the relevant Minister, public authority or approval body and any comments submitted by these bodies.

The application does not require the concurrence of the Minister, public authority or approval body.

Whether any submissions were made concerning the proposed modification.

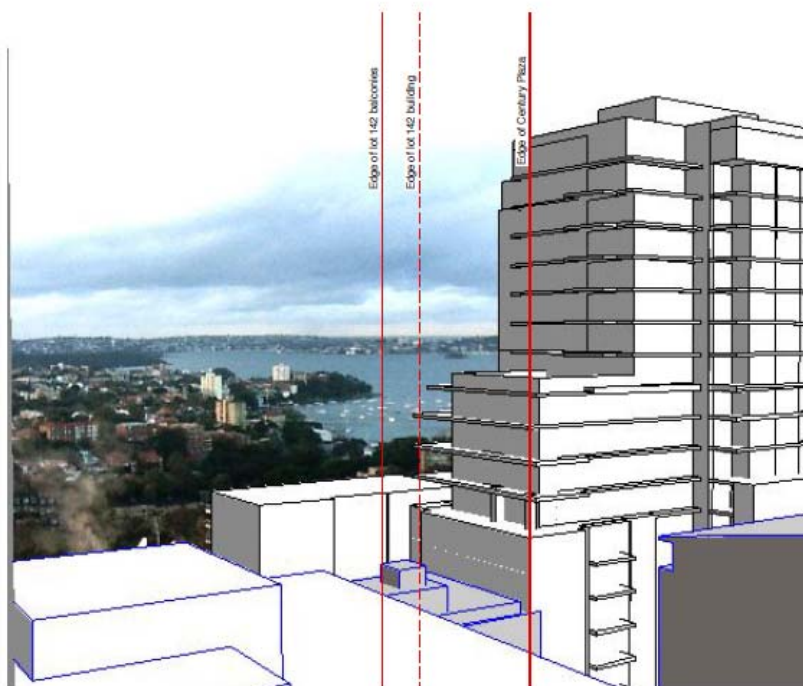
The submission raises concern about the addition of plant on the lower tower and possible view loss. The applicant states that the plant room is required for stair pressurisation of Core B. The plant is required to be located above the stairs and core and would be difficult to move.



The assessment of the application had regard to the impact on views from apartments to the north west of the site. The following photos show the views from the submittor's balcony:



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



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

Having regard to the above plan and elevation and the view photos, the majority of the plant would not cause any further impact. The eastern edge of the plant is likely to block a small amount of the water (not the water/land interface). The impact is considered to be negligible and therefore acceptable.

Any relevant considerations under Section 79C(1) of the Environmental Planning and Assessment Act 1979.

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

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

Compliance Table

STATUTORY CONTROL – North Sydney Local Environmental Plan 2001				
North Sydney Centre	Existing	Proposed	Control	Complies
Height (Cl. 28D(2)(a))	RL 72.53m AHD	RL 132.8m AHD 300mm increase on approved plans	RL 195m AHD	YES
Overshadowing of land (Cl. 28D(2)(b))	-	YES	Variation permitted	NO
Overshadowing of dwellings (Cl. 28D(2)(d))	-	YES	Variation permitted	NO
Minimum lot size (Cl. 28D(2)(e))	1740.2	1740.2	1000 min.	YES
Mixed Use Zone				
Building Height Plane (Cl.30)				
<ul style="list-style-type: none"> East Elevation 	N/A	N/A	Court of Appeal concluded that the control does not apply to this site. (Castle Constructions v North Sydney Council (2007) NSWCA 164)	N/A
Floor Space (Cl. 31) (max)	N/A	0.53:1 No change to that approved with SEPP 1 objection	Within range of 3:1 to 4:1 for No.142 and a minimum of 0.5:1 for No.136-140	NO

DCP 2002 Compliance Table

DEVELOPMENT CONTROL PLAN 2002		
	<i>complies</i>	<i>Comments</i>
6.1 Function		
Diversity of activities, facilities, opportunities and services	Yes	Different sized commercial units are provided. There is opportunity for a café at the ground floor level. Both outdoor (roof terrace) and indoor (gymnasium / meeting room) community spaces are provided.
Mixed residential population	Yes	Apartment mix will be: 18% studios; 32% 1 Beds; 42% 2 Beds; and 8% 3+ Beds. The scheme is consistent with the dwelling mix under the controls
Maximum use of public transport	Yes	No non-residential parking is proposed. Bicycle parking is provided in accordance with the controls. The proposal is consistent with the controls seeking to reduce long stay commuter parking and non residential parking.
6.2 Environmental Criteria		
Clean Air	Yes	A street tree is proposed to be planted in front of the site and the proposal complies with DCP requirements for motorcycle and bicycle parking.
Noise	Yes	All plant and machinery will be enclosed and away from residences.
Acoustic Privacy	Yes	As with the conditions of the already approved scheme, a certificate from an Acoustic Engineer will be required with the Construction Certificate certifying that noise levels will comply with Council controls.
Visual Privacy	Yes	To ensure the privacy of the adjoining premises to the north, the approved scheme included privacy screens to the balconies. Those features have been translated to the new scheme. There are no other changes in the new scheme which give rise to any privacy concerns.
Wind Speed	Yes	Wind turbulence should be unchanged from the approved scheme as the building generally retains the same form and has articulated fenestration within its facades.
Reflected light	Yes	Proposed materials and external finishes generally remain the same or similar to that already approved.
Artificial light	Yes	No rooftop advertising or floodlighting of facades is proposed. Entrances will be well lit but are far enough from adjoining premises that no adverse amenity impacts would arise.
Awnings	Yes	The entrance is setback from the street and an awning is not appropriate in this case as there is no awning to the south or the north.
Solar access	Yes	Solar access to adjoining sites is improved as compared to the existing approved scheme Floor plans have been designed to minimise south facing units as much as is possible.
Views	Yes	A view analysis has been undertaken with regard to 37-39 McLaren Street. Changes do not significantly impact on views (see above). Views are not protected by the controls or the objectives for the North Sydney Centre.
6.3 Quality built form		

Context	Yes	The proposed new scheme has been designed to respond to the changing context of the site: in particular, a likely redevelopment of the adjoining site to the rear as an electricity substation.
Public spaces and facilities	Yes	The increased front setback provides a wider footpath and more opportunity for a range of activities in accordance with the controls.
Skyline	Yes	The scheme includes the provision of a roof terrace but the overall height of the roof does not alter. As required by the control, all plant and roof access will be incorporated into a single structure. That structure is similar in form to the already approved structure but is marginally enlarged to allow for lift access for all persons to the roof. As the lift is centrally located and part of the main roof structure, no shadowing or visual impacts arise.
Through-site pedestrian links	Yes	It is proposed to retain a through site link as part of the scheme.
Streetscape	Yes	Commercial uses are retained at the ground level; floor level alignment remains and clear glazing is retained to the front façade at street level. The restaurant and outdoor seating area will add interest to the streetscape
Subdivision	Yes	The proposal incorporates consolidation of lots in accordance with the subdivision / amalgamation controls.
Setbacks	Yes	Setbacks of the tower are generally consistent with the earlier approved scheme. The setbacks of the new northern section of the building have been designed having regard to adjacent development.
Entrances and exits	Yes	All main entrances remain visible from the street, accessible for all persons, and unobstructed by landscaping in accordance with the controls. All entrance doors and circulation spaces have been designed to comply with AS142B.2 as required.
Street frontage podium	Yes	The control requires compliance with the character statement.
Building design	Yes	The building façade incorporates a range of glazed and solid elements, balconies, vertical divisions, stepped and varied massing as well as a wide variety of materials and finishes and façade elements all of which ensure a high quality building design which complements the surrounding urban character.
Nighttime appearance	Yes	Satisfactory

6.4 Quality urban environment

High quality residential accommodation	Yes	In terms of minimum unit sizes, the proposal generally complies with Council controls. Balconies have been designed to have access to sunlight for 2 hours a day in accordance with DCP controls. Cross ventilation will be provided to 64% of units. Ceiling fans will be provided to all units which do not benefit from cross-ventilation. Glazing to the eastern and western facades is generally similar to previous schemes and shaded
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		<p>by adjoining balconies.</p> <p>All apartments exceed 4m in width, Primary living spaces and bedrooms are all located in close proximity to windows and openings.</p> <p>Access to residential lifts and parking will be by security access only.</p> <p>Light wells are provided to only one of the proposed 195 units.</p> <p>All balconies achieve a minimum depth of 2 metres and an area of at least 8m² in accordance with the controls. The balconies have been integrated into the overall architectural form of the building, and are incorporated within the building envelope.</p>
Accessibility	Yes	The internal design incorporates continuous paths of travel and will comply with all other aspects of access controls. Habitable units, lift design etc can be conditioned to comply.
Safety and security	Yes	<p>The proposal includes the following safety design features:</p> <ul style="list-style-type: none"> • Access to the parking area will be secure. • All open spaces, entrances, pedestrian areas and lift lobbies will be well lit and all pedestrian routes clearly defined with direct sightlines. • The through site link and access to the rear laneway will be overlooked by the commercial spaces and restaurant • No security grilles are proposed. • Residential balconies will have a good view of the rear laneway to improve security to this area. • Easily identifiable street numbering will be provided at the Walker Street pedestrian entrance.
Car parking	Yes	140 spaces are provided in accordance with the controls. All parking will be provided within basement levels. As required, no visitor parking is proposed and the accessible spaces will be designated as common property
Bicycle storage	Yes	A bicycle storage room is provided in the ground floor level for visitors and commercial users. In addition, secure storage areas for most units are provided in the basement and will be large enough to incorporate bicycle storage. The proposal will therefore easily include bicycle parking at the rates required by the controls.
Vehicular access	Yes	Vehicular access to the site is relocated to the southern end of walker Street
Garbage Storage	Yes	Garbage storage areas are incorporated in the ground floor loading area and require private contractors as the pick up area is within the building.
Site facilities		Storage is incorporated into the units and within the basement levels. All other approved facilities such as clothes dryers provided within units, mailboxes incorporated into foyer design etc have been incorporated into the current design.
6.5 Efficient use and management of resources		
Energy efficiency	Yes	A new Basix certificate is submitted with the application and therefore meets energy efficiency requirements.

NORTH SYDNEY LEP 2001

CLAUSE 28B – North Sydney Centre Objectives

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

OBJECTIVE	RESPONSE
(a) to maintain the status of the North Sydney Centre as a major commercial centre within Australia.	The proposal results in an increase to the commercial floor space within the Centre, promoting its commercial viability. However, the commercial floor space is not within the range required. A SEPP No. 1 objection has been submitted in relation to the non-compliance. A Planning Proposal to reduce the required non residential floor space ratio for most of this site was recently gazetted.
(b) to require arrangements for railway infrastructure to be in place before additional non-residential gross floor area is permissible in relation to any proposed development in the North Sydney Centre.	Council has instigated measures with State Rail to ensure that North Sydney Railway Station is upgraded. The applicant has entered into a developer commitment deed.
(c) to ensure that railway infrastructure, and in particular North Sydney Station, will enable and encourage a greater percentage of people to access the North Sydney Centre by public transport than by private transport and will: <ul style="list-style-type: none"> (i) be convenient and accessible, and (ii) enable a reduction in dependence on private car travel to the North Sydney Centre, and (iii) be adequate to achieve no increase in car parking, and (iv) have the capacity to service the demands generated by development in the North Sydney Centre. 	Council has instigated measures with State Rail to ensure that North Sydney Railway Station is upgraded to improve patronage.
(d) to discourage use of motor vehicles in the North Sydney Centre	The proposed development provides car parking spaces for residents in accordance with the DCP requirement. No non residential parking is proposed.
(e) to encourage access to and within the North Sydney Centre for pedestrians and cyclists.	It is not proposed to obstruct any existing pedestrian or cycle routes through the Centre.
(f) to allow for 250,000m ² (maximum) non residential gross floor area in addition to the estimated existing (as at the commencement of this Division) 700,000m ² non-residential gross floor area.	The proposed development will result in an increase in non-residential gross floor area well within the additional 250,000m ² expected.
(g) to prohibit further residential development in the core of the North Sydney Centre.	The proposed development is not located within the core of the North Sydney Centre (as identified by a "commercial" zoning).
(h) to encourage the provision of high-grade commercial space with a floor plate, where appropriate, of at least 1000m ² .	The proposed commercial floor plate is smaller than the required 1000m ² threshold. However, the site is zoned Mixed Use where the dominant use is generally residential.
(i) to achieve a variety of commercial space	The commercial components of the proposed building have been designed to be flexible in use.
(j) to encourage the refurbishment, recycling and rebuilding of older buildings.	The existing buildings on the site are not identified as having heritage significance.
(k) to encourage a diverse range of employment, living, recreation and social opportunities.	The proposed development provides flexible commercial spaces and a range of apartment types.

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

CLAUSE 28C – Railway Infrastructure

The modification does not increase the total non residential floor space already approved.

CLAUSE 28D – Building Height and Massing

The height and massing are not altered by the modifications.

CLAUSE 29 – Building Height

Clause 29 of NSLEP forms part of Division 5 of the instrument, and contains objectives and refers to controls on building height in the Mixed Use zone. The control relates to the “height shown on the map”. The relevant map contains no height control for the subject site. The Court of Appeal has held that the controls in Division 5 relating to the Mixed Use zone do not apply to the site and that the provisions of Division 3 (which relate to the North Sydney Centre) prevail to the extent of any inconsistency.

Mixed Use Zone

CLAUSE 31 – Floor Space Ratio

No change to that approved.

CLAUSE 32 – Design of Development

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

CLAUSE 39 - Excavation of Land

No additional excavation is proposed.

CLAUSE 50 - Development in the vicinity of Heritage Items

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

.Draft North Sydney Local Environmental Plan 2009

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

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

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

The development standards which apply to the proposed development under the DLEP are identified in the following compliance table:

COMPLIANCE TABLE – DEVELOPMENT STANDARDS			
Development standard	Requirement	Proposed	Complies
Clause 4.3: Height of buildings	RL 103	RL 132.8 main tower, RL104 at No142	NO
Clause 4.4: Floor space ratio	Minimum 0.5:1	0.53:1	YES
Clause 6.4: Building heights and massing	1000m ² site area	1740.2m ²	YES

The proposed development has been considered against the development standard applicable under the Draft LEP and does not comply with the provisions of Clause 4.3. The departure to the height control is supported as the main tower has previously been approved (two current consents).

The part of the building over No.142 is setback from the street to respect the heritage neighbours and this more than compensates for the 1m breach of the draft height control. Having regard to the provisions of section 79C of the Environmental Planning

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

SREP (Sydney Harbour Catchment) 2005

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

SEPP 65 – Design Quality of Residential Flat Development

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

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

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

The context, scale and built form of the majority of the proposal generally remain unchanged from the approved developments on the site.

Principle 4: Density

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

Principle 5: Resource, Energy and Water Efficiency

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

Principle 6: Landscaping

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

Principle 7: Amenity

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

Principle 8: Safety and Security

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

Principle 9: Social Dimensions

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

Principle 10: Aesthetics

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

Residential Flat Design Code 2002

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

DEVELOPMENT CONTROL PLAN 2002

NORTH SYDNEY CENTRE PLANNING AREA / CENTRAL BUSINESS DISTRICT

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

Diversity of activities, facilities, opportunities and services

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

- A mixed use development is still provided;
- Different sized commercial units are still provided; and
- Both outdoor (roof terrace) and indoor (gymnasium / meeting room) community spaces are provided.

Public Transport

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

Awnings

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

Solar Access

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

Views

As overall building massing remains generally unchanged as compared to the already approved development, there would be no significant change to the views.

Amalgamation

The site would be amalgamated to include all three lots.

Skyline

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

Thru-Site Links

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

Setbacks

No changes proposed

Street Frontage Podium Height

No changes proposed.

Above Podium Setbacks

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

Building Design

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

Energy Efficiency

A new Basix certificate is included with the application to ensure the newly designed dwellings all meet accepted energy efficiency requirements.

Public Domain

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

Landscaping

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

SECTION 94 CONTRIBUTIONS

Section 94 Contributions in accordance with Council's S94 plan are warranted should the Panel consider the development application worthy of approval.

The contribution is based on 826m² of commercial space plus residential component of 35 x studios; 65 x 1 bed; 82 x 2 bed; 15 x 3 bed apartments with allowance for existing dwellings of 2 x 2 bed and 8 x 3 bed apartments:

Administration	\$20,995.24
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Child Care Facilities	\$40,476.09
Community Centres	\$91,872.19
Library Acquisition	\$17,205.26
Library Premises & Equipment	\$53,184.62
Multi Purpose Indoor Sports Facilities	\$14,781.75
Open Space Acquisition	\$555,635.72
Open Space Increased Capacity	\$1,101,365.20
Olympic Pool	\$48,153.40
Public Domain Improvements	\$522,510.59
Traffic improvements	\$56,582.38
The total contribution is:	\$2,522,762.44

Modification to Condition C39

The applicant also requests a modification to Condition C39 with regard to the height of removalist vans being reduced from 4.5m to 3.9m. The request is accompanied by a report from Colston Budd Hunt & Kafes Pty Ltd.

Condition C39 reads as follows:

Medium Rigid Vehicle

C39. The development be modified such that it can accommodate on-site a medium rigid vehicle (minimum 4.5m height), as defined in Australian Standard 2890.2, for use by the residential and commercial residents and tenants of the building. Details demonstrating compliance with this requirement are to be approved by the Certifying Authority with the Construction Certificate.

(Reason: To ensure that small removal vans can be accommodated on site)

The Australian Standard for Parking Facilities (Part 2: Off-street commercial vehicle facilities), AS 2890.2 - 2002 indicates that a design medium rigid truck is 8.8m long having a height clearance requirement of 4.5m. It indicates that "The MRV represents the common service truck having a load capacity of 8T, and typically having a single rear axle and dual tyres. The MRV should be adopted as the design vehicle where there is significant movement of goods but provision for more than the occasional HRV or AV is not necessary."

The loading dock in the approved development has been designed to accommodate an 8.8m long truck. In practice, trucks have varying height clearance requirements and most medium rigid trucks do not require 4.5m height clearance.

The most common uses of the loading dock in the approved development, for which service vehicles up to 8.8m will be used, will be for garbage collection and for furniture movement when residents are moving into or out of the building. Most contract garbage collection and furniture removal businesses provide a range of different sized vehicles in their fleets, including trucks which will be able to use the loading dock with 3.9m height clearance.

The applicant submitted information from a number of operators demonstrating that removal vans suitable for three bedroom apartments will be accommodated with a height clearance of 3.9m. The loading dock within the development also provides for trucks to conveniently access the lifts. It will therefore not be necessary for service vehicles to park on the street.

The development will also include a manager whose responsibilities will include co-ordinating the use of the loading dock. This will include the requirement for residents to book the use of the dock when moving into or out of the building, reflected in by-laws in the strata plan. The management plan for the loading dock will include the requirement for on-site garbage collection and removal vehicles to require a height clearance of less than 3.9m.

A 4.5m height clearance in the loading dock for the approved development is not considered to be necessary under the circumstances as appropriate removalist vans can be accommodated on site. Larger vans cannot be accommodated on street to easily access the building. The condition is not required and can be deleted.

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 |

CONCLUSION

The proposed development as modified is considered to be substantially the same development as approved. The modifications do not create additional impacts on surrounding development. The envelope of the building remains basically the same as approved other than a minor 300mm increase in the lift height to allow for faster lifts. The change in mix of dwellings is acceptable.

The reduction in the height of the loading dock from 4.5m to 3.9m is considered reasonable. The applicant has submitted information from a number of operators demonstrating that removal vans suitable for three bedroom apartments will be accommodated with a height clearance of 3.9m. The loading dock within the development also provides for trucks to conveniently access the lifts. The development will also include a manager whose responsibilities will include co-ordinating the use of the loading dock. This will include the requirement for residents to book the use of the dock when moving into or out of the building, reflected in by-laws in the strata plan.

The Section 96(2) application is recommended for favourable consideration.

RECOMMENDATION

THAT the Joint Regional Planning Panel, as the consent authority, modify its consent dated 8 July 2011 in respect of a proposal for demolition of existing structures, amalgamation of the three allotments to make one site and construction of a 22 storey mixed use building above basement car parking at 136-142 Walker Street North Sydney under the provisions of Section 96 of the Environmental Planning and Assessment Act with regard to 2011SYE116 – North Sydney - Development Application No.47/11/2, only insofar as will provide for the following.

To delete condition A1, C28, C29 and C39 of the consent and insert in lieu thereof the following new conditions namely:

Development in Accordance with Plans

- A1. The development being carried out in accordance with landscape drawings numbered SK10C to SK14C, all dated 1 February 2011, drawn by Clouston Associates Landscape Architects, received by Council on 9 February 2011, drawings numbered 5A, dated 23 February 2011, 6B to 8B, 8.1B, 9B to 17B, all dated 17 March 2011, drawn by Spence Pearson Architects, received by Council on 22 March 2011, drawings numbered 1C to 4C, 18C to 22C, all dated 5 May 2011, drawn by Spence Pearson Architects, received by Council on 25 May 2011, **as amended shown by clouding on drawings numbered 1D to 8D,**

8.1D to 23D, all dated 1 September 2011, drawn by Spence Pearson Architects, received by Council on 4 November 2011, and endorsed with Council's approval stamp, except where amended by the following conditions.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

S94 Contributions

C28. A contribution pursuant to the provisions of Section 94 of the Environmental Planning and Assessment Act 1979, as specified under the North Sydney Section 94 Contribution Plan for the services detailed in column A and, for the amount detailed in column B shall be made to Council.

A	B (\$)
Administration	\$20,995.24
Child Care Facilities	\$40,476.09
Community Centres	\$91,872.19
Library Acquisition	\$17,205.26
Library Premises & Equipment	\$53,184.62
Multi Purpose Indoor Sports Facilities	\$14,781.75
Open Space Acquisition	\$555,635.72
Open Space Increased Capacity	\$1,101,365.20
Olympic Pool	\$48,153.40
Public Domain Improvements	\$522,510.59
Traffic improvements	\$56,582.38
The total contribution is:	\$2,522,762.44

The contribution SHALL BE paid prior to determination of the application for Construction Certificate for construction of the building excluding demolition, excavation and shoring.

The above amount, if not paid within one calendar year of the date of this consent, shall be adjusted for inflation by reference to the Consumer Price (All Ordinaries) Index applicable at the time of the payment of the contribution.

A copy of the North Sydney Section 94 Contribution Plan can be viewed at North Sydney Council's Customer Service Centre, 200 Miller Street, North Sydney or downloaded via Council's website at www.northsydney.nsw.gov.au.

(Reason: To retain a level of service for the existing population and to provide the same level of service to the population resulting from new development)

Security Bond Schedule

C29. All fees and security bonds in accordance with the schedule below must be paid or in place prior to the issue of the required Construction Certificate:

SECURITY BONDS	AMOUNT (\$)
Completion of required infrastructure works	17,500.00
Damage security	13,500.00

TOTAL BONDS	\$31,000.00
FEES	
Section 94 contribution Railway Contribution – North Sydney CBD (please pay the Railway Contribution in accordance with the Railway Deed of Agreement)	\$2,522,762.44 As per railway commitment deed
TOTAL FEES	\$2,522,762.44

(Reason: Compliance with the development consent)

Geoff Mossemenear
EXECUTIVE PLANNER

Stephen Beattie
MANAGER DEVELOPMENT SERVICES