

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

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| JRPP No | 2011SYE119 |
| DA Number | DA.467/11 |
| Local Government Area | North Sydney |
| Proposed Development | Demolition of existing structures and the construction of a mixed use development comprising 6 basement levels with 96 car parking spaces, 1,405m² of commercial floor space, 41 serviced apartments and 101 residential apartments. |
| Street Address | 144-150 Pacific Highway and 18 Berry Street North Sydney |
| Applicant/Owner | Strand Estates Pty Ltd |
| Number of Submissions | Eight |
| Report by | Geoff Mossemenear, Executive Planner, North Sydney Council |

Assessment Report and Recommendation

EXECUTIVE SUMMARY

This development application seeks approval to demolish the existing structures and the construction of a mixed use development comprising 6 basement levels, 1,405m² of commercial floor space, 41 serviced apartments and 101 residential apartments. A total of 96 car parking spaces are proposed.

The Council's notification of the proposal has attracted eight submissions raising particular concerns about bulk, scale, height, privacy, noise, traffic, parking, garbage collection, excavation and blocking of existing windows. The assessment has considered these concerns as well as the performance of the application against Council's planning requirements.

The proposal will result in the isolation of a site at 154 Pacific Highway which has a site area of only 381m². The applicant has made attempts to amalgamate the site which involves a number of strata owners without success. The amalgamation would provide a more superior site allowing for a larger floor plate and better carpark layout with increased density. To isolate the smaller site would be a constraint on the subject site and severely limit any potential for redevelopment on the smaller site. Approval of a

proposal without amalgamation would result in a number of impacts that would need to be resolved with regard to the isolated site.

The proposal does not have proper regard to Council's controls under the Development Control Plan and the Character Statement detailing the desired future character for the area. The height is excessive when assessed under the current LEP controls. The bulk and scale is not compatible to the nearby low scale residential area.

The height of the building is also substantially over the height under Draft NSLEP 2009.

Council's Design Excellence Panel does not support the proposal and considers that a redesign is necessary to resolve their concerns.

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

DESCRIPTION OF PROPOSAL

The proposal is for the demolition of existing structures and the construction of a mixed use development comprising 6 basement levels, 1,405m² of commercial floor space, 41 serviced apartments and 101 residential apartments. A total of 96 car parking spaces are proposed.

The dwelling mix proposed for the apartment component comprises 29 x studio; 7 x one bedroom; 55 x two bedroom and 10 x three bedroom apartments.

STATUTORY CONTROLS

North Sydney LEP 2001

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

S94 Contribution

Environmental Planning & Assessment Act 1979

SEPP 1 Objection

SEPP 55 - Contaminated Lands

SREP (2005)

Local Development

Draft North Sydney LEP 2009

POLICY CONTROLS

DCP 2002

Draft North Sydney DCP 2010

CONSENT AUTHORITY

As this proposal has a Capital Investment Value (CIV) of greater than \$20 million the consent authority for the development application is the Joint Regional Planning Panel, Sydney East Region (JRPP).

DESCRIPTION OF LOCALITY

The site is on the north-west corner of the intersection of the Pacific Highway and Berry Street. The site has an area of 1,296.3m² and is irregular in shape.

A three storey building is located at 150 Pacific Highway and a three storey commercial building is located at 18 Berry Street. A 7 storey commercial building occupies the site at 144-148 Pacific Highway.

Vehicular access is currently provided to the site via a right of way within 18 Berry Street. The right of way has been provided for the exclusive use of the 144-148 and 150 Pacific Highway properties however it is currently used as an informal public connection

from Berry Street to Doohat Avenue. Vehicular access to the site is also available from Doohat Lane.



144-148 Pacific Highway



Berry Street frontage

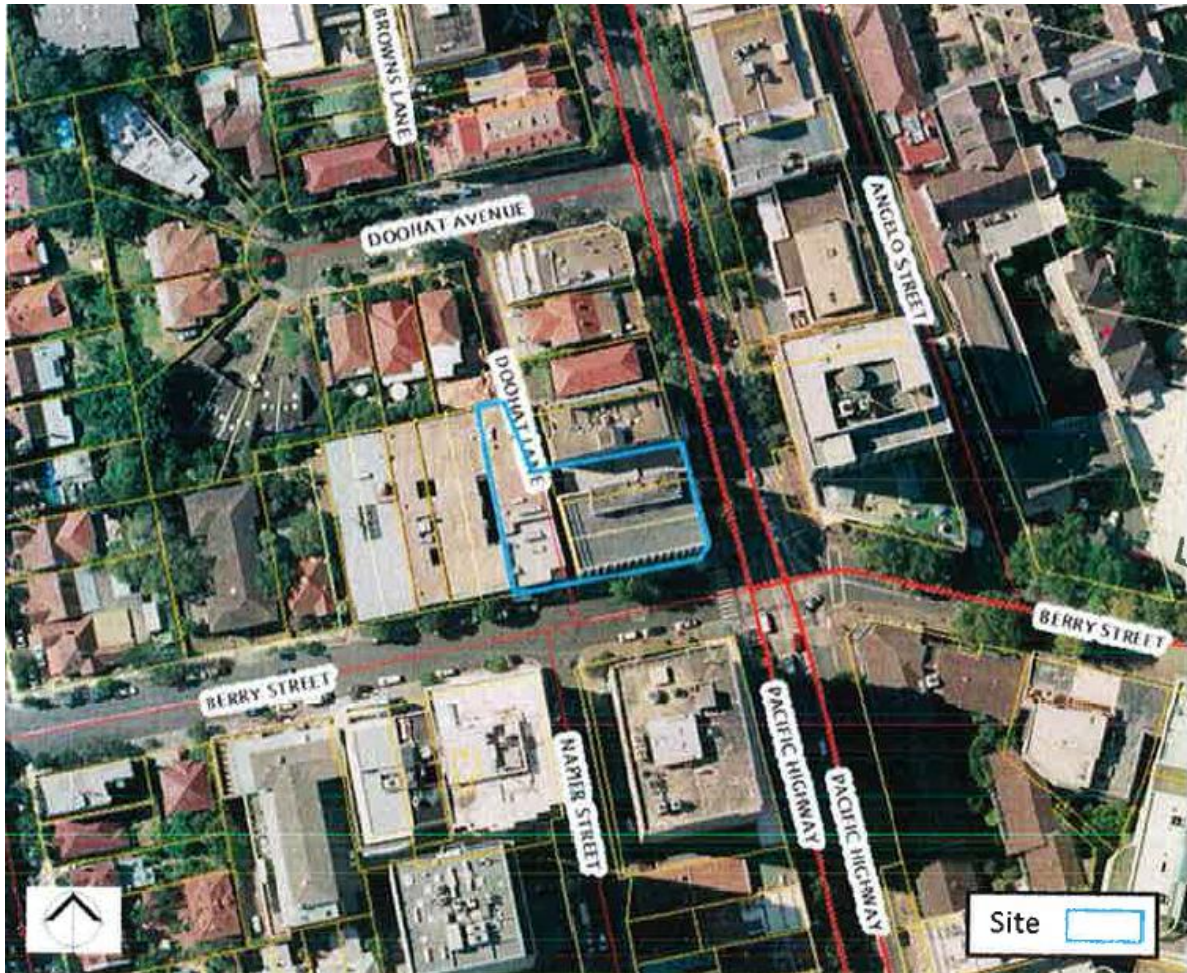
Directly to the north is a 7 storey mixed use building at 154 Pacific Highway. Further north is 156-158 Pacific Highway; the JRPP granted consent on 7 September 2011 (subject to gazettal of a planning proposal) for a 10 storey mixed use building containing 40 apartments with a height at roof level of RL 106.53.

Directly to the west is 12-16 Berry Street; the JRPP granted consent on 18 May 2011 (subject to gazettal of a planning proposal) for 9 storey mixed use building containing 48 apartments with a height at roof level of RL 108.85.

Further to the west lies predominantly residential development in varying densities from single storey detached dwellings to 4 storey apartment buildings. Also to the west is a child care centre and the Australian Catholic University.

To the south east, on the diagonally opposite corner of Berry Street and the Pacific Highway is 177-199 Pacific Highway: the JRPP resolved on 7 September 2011 to grant consent upon receipt of certification from the Director General pursuant to Clause 28C of the NSLEP 2001 to 31 storey commercial building with ground floor plaza. The certification has not been issued and consent has not been granted. The building did have concept approval from the Minister of Planning under Part 3A of the EP&A Act.

Location of Subject Site



REFERRALS

Building

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

Engineering/Stormwater Drainage/Geotechnical/Traffic

Council's Development Engineer (Z.Cvekovic) assessed the proposed development and raised concern about the tight ramps proposed to access the basement car park and the stormwater collection in Doohat Lane. Should the development application be approved, the imposition of a number of standard and site specific conditions relating to damage bonds, excavation, dilapidation reports of adjoining properties, construction management plan, vehicular crossing requirements and stormwater management would be required.

Heritage

- The property is not a heritage item and is not located within a conservation area.
- The property is within the vicinity of several heritage items; 1 Doohat Ave (Federation style house), Donbank at 6 Napier St, and the terraces at 1, 3, 5, and 7 Napier St that form part of the Donbank Group, as well as 168, 170 and 172 Pacific Hwy.

Council's Conservation Planner (L Varley) has provided the following assessment:

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

Woodstock, 172 Pacific Hwy

Woodstock is an 1870 sandstone two storey building currently used for offices. The proposed new development will have no impact upon the curtilage and significance of property as it is physically separated from the proposal.

168 and 170 Pacific Hwy

These are two Federation Queen Anne style terraces currently used for offices. The proposed new tower will have no impact upon the terraces as they are physically separated from the proposal and have lot boundary curtilage.

Donbank, 6 Napier St

Donbank is a State-listed single-storey 1853 slab cottage and is located within a small garden and lies adjacent to a public park that contributes significantly to its landscape setting. The property is not only used as a museum but also has a writer in residence. Whilst the current proposal appears to result in no change to the shadow impacts resulting from existing and development approved impacts, it is strongly recommended that no additional shadow impacts occur should the design be modified.

1, 3, 5 and 7 Napier St

These single-storey terraces in the Victorian Georgian style contribute to the setting of Donbank and provide a streetscape setting picturing early North Sydney township development. Whilst currently used as offices, previous approvals have included residential uses such as DA 75/04. Residential use should not be discounted in the future, particularly as this would be a desirable heritage outcome. Should the design proposal change from the existing, additional shadow impacts upon the terraces would not be supported.

1 Doohat Ave

This property is a two-storey Federation style residence with its primary frontage on Doohat Avenue and a secondary frontage to Doohat Lane. The setting of the property has already been negatively impacted upon by commercial development along Doohat Lane. It is recommended that the bulk and scale of the building as viewed from Doohat Lane be reduced as recommended below.

Pedestrian Link

There is an existing pedestrian link between the North Sydney CBD and the heritage items of Mary McKillop, the Post Office and Court House, through to Wheeler Lane, Donbank, its associated park, Napier Lane, Browns Lane, Doohat Lane and through to North Sydney Demonstration School. The laneways and park link many heritage items as well as the Edward Street Conservation Area and Crows Nest Conservation Area. The retention of the link is requested.

Conclusion

The proposal is considered to require further resolution to ensure that the heritage significance of the nearby heritage item at 1 Doohat Ave is retained. In addition, the existing pedestrian link along Doohat Ave between the CBD heritage items and the Edward Street and Crows Nest Conservation Areas should be retained.

The following amendments are recommended:

- Pedestrian access be maintained from Doohat Ave to Berry St to retain the link between the CBD heritage items and North Sydney Demonstration School as well as to the Edward Street and Crows Nest Conservation Areas.
- Building to be setback a minimum of 5m from laneway boundary from Level 6 and above to achieve a podium that provides a transitional element from the height of the residential development in Doohat Ave. Blade walls to also be setback above Level 6 Podium on the laneway frontage.
- Garage door to be amended to be an architectural element that positively contributes to the streetscape.

Should the design be amended, the following should be ensured:

- No additional shadow impacts to Donbank, the adjacent park or to the Napier St terraces to occur.
- Should 154 Pacific Hwy be amalgamated into the proposal, then a 1.5m setback off the laneway is recommended with a podium level to match that of other developments along the length of Doohat Lane.

External Referral

The application was referred to Roads and Marine Services in accordance with Clause 104 and Column 2 of Schedule 3 of SEPP (Infrastructure) 2007 for comment. In letter dated 14 December 2011, the RMS advised that it would grant concurrence subject to a number of conditions and further detailed information concerning excavation and drainage being provided for assessment.

DESIGN EXCELLENCE PANEL

The applicant had a pre lodgement meeting with Council's Design Excellence Panel on 8 June 2011. The minutes are reproduced as follows:

DATE: 8 June 2011 @ 4.30 pm

ATTENDANCE: Panel Members: Philip Graus; Russell Olsson; Peter Webber; apologies from David Chesterman
Council staff: Geoff Mossemeneer (chair) George Youhanna; Brad Stafford
Proponents: Jeremy Bishop (architect), Gabrielle Morrish (urban designer), David Walker (owner)

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

The site has a total area of approximately 1,296.3m² and is located on the intersection of Pacific Highway and Berry Street. The site is zoned for Mixed Use purposes and the concept provides a residential development with commercial accommodation at ground and first floor levels. The Development Application will be accompanied by a Planning Proposal seeking to reduce the minimum commercial Floor Space Ratio required under the current controls to 0.5:1.

The heights described in the DLEP 2009 are limiting the subject site to RL 125. The southern corner has a potential height of RL 130. The site on the other corner has an RL of 145 and an existing building of approx. 15 storeys. The Norberry Terrace site (diagonally opposite) has a height approved by the Minister of RL 195.

The architect and urban designer were available for questions and discussion with the Panel.

Panel's Comments

Council staff advised that the planning proposal needed to be supported by Council before lodgement of any development application. Council had retained a FSR of 3:1 for non residential floor space in the draft LEP.

The Panel considered the lower level apartments to have poor amenity and would be better suited to non residential floor space. The Panel could not support the increased height of the tower if the non residential floor space was to be reduced to a ratio of 0.5:1.

The Panel raised concern about the isolation of No.154 Pacific Highway to the north. Consolidation would provide a better site area and floor plate for the building as well as better access to Doohat Lane. If the sites cannot be consolidated, the applicant would need to demonstrate how No.154 can be redeveloped in accordance with SEPP 65. Council staff advised that the applicant would have to demonstrate that serious attempts had been made by the applicant to acquire the property.

The Panel supported the through site pedestrian link from the Lane to Berry Street but questioned whether the access could be improved without the need for stairs.

The Panel suggested that the sub station be located away from the dwelling at 1a Doohat Avenue and some car-share parking be considered off the lane. Adequate truck access to the loading dock appears problematic.

The Panel suggested that garbage collection is likely to be an issue and the applicant should have discussions with Council's Waste Officer during the design development phase.

The Panel noted that the building was setback from the residential zone to the north and was not built over the right of way serving No12-16 Berry Street. It was noted that a minimum 4.5m clearance is required over the right of way.

The Panel suggested that the lobby area should have seating and mailbox access to act as a welcoming meeting area, and that the podium roof could be successful communal space with good sunlight access and should have a small enclosed area accessing the landscaped deck.

The Panel queried the height complying with Council's shadow controls with regard to Don Bank and suggested that the shadow information be confirmed with elevational shadows to demonstrate that the shadows strike the fence/wall at Don Bank.

The Panel felt that there was a reasonable case for some exceedence of the height controls, but considered that it should be no higher than the north eastern corner of the intersection -at RL 145 and that the building should be a simple tower form with the lower component dropping down to the height of adjoining sites.

Conclusion

The Panel could not support the increased height of the tower if the non residential floor space was to be reduced to a ratio of 0.5:1. The Panel strongly recommends amalgamation with 154 Pacific Highway to avoid isolation of small sites.

The application was referred to Council's Design Excellence Panel at its meeting of 13 December 2011. The minutes are reproduced as follows:

Background

A mixed use proposal was before the Panel at its meeting of 8 June 2011. A site inspection was carried out by the Panel and Council Staff prior to the June meeting.

The Panel provided comment on: a through site link from Doohat Lane; the height of the building being no higher than the other Mixed Use zoned corners of the intersection; the non residential floor space ratio; garbage collection; isolation of adjacent sites; loading facilities; amenity of residence in

the lane; and that the building should be a simple tower form with the lower component dropping down to the height of adjoining sites.

The site has a total area of approximately 1,296.3m² and is located on the intersection of Pacific Highway and Berry Street. The site is zoned for Mixed Use purposes. Three of the four corners of the intersection are zoned Mixed Use with the diagonal corner being zoned commercial.

Proposal

The proposal is for the demolition of existing structures and the construction of a mixed use development comprising 6 basement levels, 1,405m² of commercial floor space, 41 serviced apartments and 101 residential apartments. A total of 96 car parking spaces are proposed. Architectural drawings including floor plans, elevations, sections and shadow diagrams have been prepared in relation to the proposed development by Nettleton Tribe Architects.

The Development Application is to be determined by the Joint Regional Planning Panel as the cost of development exceeds \$20million.

The owner requested that the minutes be treated as commercial in confidence. The Chair explained that they can be treated as such during the assessment of the proposal but will become public as part of the assessment report presented to the Joint Regional Planning Panel.

The architect and planner were available for questions and discussion with the Panel.

Panel's Comments

The Panel did not accept that the site was a "gateway" site and that the recent consent by the Minister for the commercial tower diagonally opposite could not be used to argue for increased height on the subject site. The Panel reiterated its previous position that the height of the tower should be no higher than the other mixed use zoned corners of the intersection. The Panel noted that the subject site was on the corner that was closest to the low scale residential development that dictated the scale of development for the recent consents at 12-16 Berry Street and 156-158 Pacific Highway. The other corner sites were not located as close to a residential zone.

The Panel also considered that the proposal should have a podium as required by the controls and as provided for other recent approvals in the locality including the commercial building opposite. Regard must be given to the two recent consents to the north and west in relation to podiums, façade detail and setbacks. The Panel noted that the controls stipulate a 5m weighted average above the podium to the edge of the balconies however it is relevant that this had been relaxed on the recent approvals in relation to the extent of the setback dimension.

The Panel raised concern that there was no through site link from Doohat Lane to Berry Street that would be seen as a public benefit and continue the established link commencing to the south as well as making a more secure pedestrian environment.

The Panel recommended a separate access and lifts for the serviced apartments.

The Panel commended the architect on the lobby areas, the lounge areas and roof garden although it was felt that private terraces on level 12 should be reduced to expand the communal terrace.

The Panel had concerns about the amenity to the lower level north facing serviced apartments and considered that the light well/setback along the northern boundary (adjacent to the rear half of No.154) should be increased to minimum dimensions of 6m x 6m. The privacy separation between the residential unit and communal space at the internal corner was inadequate.

The Panel raised concerns about the size and shape of balconies particularly on the corner units, and the amenity of the balconies. All balconies should meet the minimum dimensions of the SEPP 65 RFDC. With increased setbacks from the street of the tower element, the amenity of the balconies could be significantly improved and could provide for screening and enclosure to deal with wind and privacy issues.

The Panel did not support the design of the corner element or the aesthetics of the proposal as it was unduly assertive. A design that responds to the amenity concerns above could potentially result in a far better outcome.

Conclusion

The Panel does not support the proposal for the reasons above. A substantial redesign would be required to adequately respond to the Panel's concerns.

CORRESPONDENCE

Letters dated 16 and 17 January were sent from Council advising that proposal could not be supported having regard to the comments of Design Excellence Panel, the proposed height and the non compliance with DCP and character statement (podium and setbacks). It was recommended that application be withdrawn as the changes required are substantial and a new application would be required.

The following letter dated 13 January 2012, was received from the applicant:

Following our meeting, I have had the opportunity to discuss the project further with our design consultants and of Pikes Lawyers. Without meaning to over simplify the matter, we have attempted to summarise your concerns in the following matter:-

1. Introduce a through site link between Doohat Lane and Berry Street.
2. Provide a separate access for the serviced apartments.
3. Address Council's comments in respect of the balconies to the residential units.
4. The introduction of a podium to both street frontages.
5. The height of the proposed building.
6. The stepped form of the building.

Whilst the views of our experts differ from Council's, in deference to both the concerns raised and the current Development Control Plan, we propose to make a number of amendments to address these issues and will formally amend the Application as follows:-

- We propose to introduce a site link between Doohat Lane and Berry Street.
- We propose to provide a separate access for the serviced apartments.
- We propose to address Council's comments with respect to the balconies of the residential units by conditions.

The serviced apartments represent a commercial use and the provisions of SEPP 65 cannot and should not apply. The serviced apartments are not required to meet the same amenity standards as conventional residential units and we are agreeable to conditioning the consent accordingly.

We make a number of brief comments:-

We will address your comments with respect to the relationship between Unit 301 and the adjoining communal open space. The open space in the centre of the proposed building and the separation from 154 Pacific Highway is 5.4m x 7.6m and provides a larger area than the 36m² suggested by the Design Excellence Panel.

We will endeavour to enhance the amenity of Units 313,414 and 514

On the question of the balcony design, we will provide typical floor layouts to satisfy you and the JRPP of a suitable alternative, subject to the architectural treatment. This can be conditioned by the JRPP and plans provided accordingly.

We make the following brief comments with respect to the latter three matters above. These comments will be supported by comprehensive Urban Design Reports from Gabrielle Morrish of GMU Architects and Urban Designers and Michael Harrison of Architectus. Michael Harrison has recently been appointed to undertake a peer review of the proposed design based on what appears

to us to be the changed position of the Design Excellence Panel from their meeting of June 2011 and the pre-DA Meeting of August 2011.

With respect to the matters 4, 5 and 6, we briefly comment as follows:-

1) 4 - The introduction of a podium to street level.

The advice we have is that, given the nature and location of the site, the introduction of a podium to both street frontages is both unnecessary and inappropriate, despite the provisions of the DCP.

There is a sizeable difference between the levels at this site between Berry Street and Pacific Highway and attempts to match the podium at the different levels will, on advice, appear awkward and unresolved.

We can, however, provide a detail from Nettleton Tribe illustrating a full storey recess to the Pacific Highway frontage with a return to part of Berry Street in order to more clearly delineate the base of the building. This will introduce further articulation to the façade of the proposed building. It is worth noting that the requirement to introduce podiums to both street elevations renders any development of the site unviable (because the overshadowing control for the Don Bank Museum Special Area creates a large setback to the west and combined with a 5m setback to the east results in an unviable floorplate). Whilst not a planning matter, this becomes relevant to achieving a quality redevelopment which the Council desires for the site. However, it is a planning matter where two planning controls conflict and, in our experts' opinion, the overshadowing control should take precedence over the podium setback control.

2) 5 - Height

The concern about the height of the building still seems ill-conceived and seems to reflect a throwback to the previous draft LEP which is currently abandoned and, in our respectful submission, for good reason. There are no height limits constraining the site, subject to urban design and shadowing impacts which are dealt with by the experts. To pre-empt any future draft LEP would be an error and not one which the JRPP has concurred with on recent approvals granted in the locality. It would also inappropriately and unnecessarily constrain the development potential of the site, which, whether it is a gateway or simply an important site in the context of the highway and the locality, needs to reflect both recent approvals and existing built form.

3) 6-SteppedForm

The question of the stepped form of the building is in our view a matter in which like minds might differ. Again, the proposal without the step unnecessarily constrains unit layouts and numbers for no planning or architectural benefit.

CONCLUSION

We will attempt to meet the majority of your concerns.

On the important issues of the podium and the height, we will be providing additional reports from Gabrielle Morrish and Michael Harrison as soon as possible. We would ask you to ensure that the views of our independent experts are properly reflected in the report to the Council and the JRPP.

We appreciate the frank and forthright discussion about the concerns that have been raised. We understand that, in the history of the matter, the proposed changes will not meet with your concerns but should go a long way to minimising the actual and real issues in dispute. Given the overall conclusion is unlikely to change, we would ask that the Council forgo any additional fees associated with the amendments and we will get them to you as quickly as we possibly can. Neither party wishes the matter to be delayed.

We are happy to discuss any of the matters raised here or otherwise in an attempt to remove issues in dispute at your convenience

The applicant submitted a set of sketch plans on 31 January 2012 showing how a site through link and a separate access to the serviced apartments can be achieved. Changes are also shown to improve balcony sizes and internal amenity. The plans are sketch plans only and they do not represent an amendment to the application. To

amend the application properly, full detailed plans are required. It is noted that the numbers of apartments have been reduced in the sketch plans. The sketch plans have not been notified and were not referred to the Design Excellence Panel for comment as the major concerns relating to the bulk and scale remain. The assessment of the application is based on the original plans. *The sketch plans are annexed for the JRPP's information.*

Further submissions were also submitted on 8 February 2012 including:

- Letter dated 6 February 2012 from Boston Blyth Fleming Town Planners relating to building height
- Urban Design Peer Review dated 27 January 2012 from Architectus
- Further commentary dated 25 January 2012 from GM Urban Design & Architecture

The additional submissions are annexed for the JRPP's information. The "Peer Review" is considered in detail below. As the JRPP is aware, Council established a Design Excellence Panel in 2004 comprising 5 independent, well regarded, experienced Architects and Urban Designers to provide professional advice and feedback to Council and applicants. The Panel has been involved in every major proposal in the CBD and St Leonards since 2004. The Panel has a sound knowledge of the area and the desired character of the area. The minutes from the meetings represent a consensus view of all members.

This peer review should be considered as a response to the comments of Council's Design Excellence Panel.

Issue 1 Gateway and building height

In summary, I consider that the tallest height of the proposal at RL 155 provides an appropriate balance between the low scale residential heights to the north west and the higher height of CBD development (existing, approved and planned) in the other directions. The proposal itself steps up from 11 storeys to 23 storeys (i.e. RL 113.55 to RL 156 at topmost point). The 11 storey component at RL 113.55 plus balustrade is similar in height to the adjacent approved development of RL 114.87 at 12-16 Berry St. The 23 storey component (RL 156) on the site at the highway intersection is diagonally opposite an approved development of 31 commercial storeys at RL 195 (on the south eastern corner of Pacific Hwy and Berry St).

It is clear that the proposal plays a key part in making the transition of stepping heights down from the highest heights of the North Sydney CBD to its edge. That is a step down of 40m from across the highway to a further step down within the subject site of 43m to a further step down of 25-28m to the low scale residential development of Doohat St at c.RL 85-88.

Rationale

The site is near the north western edge of the CBD and fronts an important intersection on the highway - so it is an important location and focal point, if not a "gateway".

The site sits between existing low scale (two storey) residential development nearby to the northwest and highrise development (30 storeys) of the North Sydney Centre within a street block to the south and southeast. It is noted that the subject site is offset in plan relative to the low scale residential development. The offset arguably means that there is more scope for height and bulk on the subject site than if the site was directly in front of or behind low scale residential development. The planning controls have an objective for building heights to be within a general "bell' curve" (or the "composite shadow diagram" which is a height control strategy for the CBD adopted by Council prior for the prevailing controls in LEP 2001 and remains as a consistent strategy or objective for the draft controls). The proposal is consistent with this objective as well as the diagram that shows the objective.....

While it is not possible to be precise about the appropriate height given the generalised nature of the objective and its diagram, it is reasonable to review the local context of existing, approved and planned building heights and to come to an appropriate height that balances a transition of heights from the low scale residential area to the highest heights in the North Sydney Centre barely a street block away.

The current planning controls in LEP 2001 don't set RL height limits - rather, new buildings are required to be within the "bell curve" described above - which the proposal complies. The draft LEP 2009 sets RL height limit varying from RL125 to RL 195 at or near each corner of the Pacific Hwy intersection. The majority of tall buildings recently approved in the CBD exceed the draft control RL height limits - some to a substantial degree. These are listed in the GM Urban Design and Architecture report referred to above. Consequently, it is uncertain whether the RL height limits prescribed in the draft LEP will be carried through to gazettal.

Given the context of existing, approved and planned building heights as the uncertain nature of the draft LEP height limits, the appropriate limit on the subject site is a matter of merit. The strategic planning principle of stepping down building heights from the street block diagonally opposite the subject site (which has the highest heights in the CBD) down to the nearby low scale residential area is accepted as appropriate - it has been a longstanding principle and it is consistent with good town planning. It is clear that the transition in building heights will be steep given the short distance between the highest heights approved/planned in the CBD and the Doohat St residential area - the horizontal distance between the closest point of the Doohat Ave residential area and 177-199 Pacific Hwy (the Norberry terraces site/within the street block that includes Northpoint tower) is about 100-120m. The subject site is the only site between these two points. So the subject site needs to mediate between RL 195 and RL 85-88. There are two main options to mediate the building heights:

1. the average height at RL 140, or
2. a stepped form on the subject site - at roughly even steps of 36m, a stepped form would be RL 159 down to RL 123. The proposal is RL 156 down to RL 113. The proposal is reasonably consistent with this option.

I consider that a stepped form (such as Option 2 and the proposal) is the best solution for the following reasons:

the shadow control for Don Bank Museum is consistent with a stepped form.

the stepped form is a better transition to the Doohat Ave residential area

the stepped form enables the expression of a vertical tower element to the street corner which is consistent with the towers of the CBD and a tower is consistent with being located on a prominent intersection.

COMMENT

A detailed assessment of appropriate height for the site is provided below in the assessment report.

The context of the site with regard to the adjoining low scale residential is a major aim of the controls that must be met.

Referral to adjacent sites should relate to the roof height more than the overall height as the uppermost height usually involves a small floor plate plant room/lift over run (about 5-6m).

The building approved at 177-199 Pacific Highway was a Part 3A approval that was in breach of a number of LEP controls. A compliant building would have been half the height. The commercial building should not be used as precedent for approval of a building in a different zone located much closer to low scale residential.

With regard to the stepping down of development, guidance can be provided by the L&E Court in its judgements concerning 136-140 Walker Street (Castle Constructions). *The two relevant decisions are annexed for the JRPP's information.*

Issue 2 Podium

I firmly consider that the podium planning control (ie. the tower required to be set back from a street frontage podium by 5m) is inappropriate in this case and that the shadow line control to the Don Bank Museum should take precedence.

Rationale

There is a conflict in the planning controls - the requirement for a 5m setback tower above a podium fronting the Highway conflicts with the shadow line control to the Don Bank Museum. The podium control means the tower should be towards the west on the site and the shadow control means the tower should be east on the site.

Generally, I am a strong supporter of podium/tower developments for 3 reasons:

Daylight to the street: In a city centre location where there is danger of a canyon effect, such some streets in Central Sydney, it is appropriate to set back towers above podiums to enable reasonable the sky exposure and daylight to the street. This is usually less important for corner sites as well Height where there is daylight sky exposure from multiple directions to the public domain. Consequently, this reason is not applicable to the site.

Wind deflection of tower downdrafts: This is usually an important consideration as tower downdrafts can be quite uncomfortable for pedestrians at street level. However, given the relatively small floor plate area of the tower, the lack of adjacent towers of significant height (now or planned) and the design of the corner balconies (they would tend to break up the down drafts), it is considered that wind down drafts are unlikely to be a significant issue.

Building scale: A podium has the effect of scaling down the bulk of a large development or a tower to the scale of the street and the pedestrian.

In my opinion such a transition is unnecessary because of the small size of the site, the slenderness of the tower design and the scale of the development approved diagonally opposite. Façade design and articulation can assist in moderating building scale and creating visual interest for pedestrians. The proposal and revised proposal show how the lower levels of the building can be articulated successfully.

The combination of the two planning controls on the relatively small subject site would result in an unviable tower floor plate. It is considered that architectural articulation of the building is sufficient to mediate between the lower scale of development approvals fronting Berry St and the highway adjacent to the subject site. The revised proposal makes successful façade articulation changes to address to mediate with the adjacent approved built form.

It is important to note that most, if not all, of the development approvals for tower development in North Sydney in recent years has not included a podium with a set back tower above to the main frontage. For example: The Ark, 177-199 Pacific Hwy (Norberry Terraces site), 12-16 Berry St, and 100 Pacific Hwy (Leighton). The current proposal for 90-100 Mount St which Architectus is involved in has received recent support from Council's Design Excellence Panel without a podium and tower set back above - this is appropriate given the configuration of that site. These examples illustrate the point that there are circumstances where a podium is not warranted.

COMMENT

It is incorrect to say that recent developments do not have a podium. All the recent consents along the Highway (approved by the JRPP) have all had a podium including 177-199 Pacific Highway. 100 Pacific Highway was approved prior to the controls coming into force. 100 Mount Street was a Part 3A approval and it was not supported by the Design Excellence Panel or Council because of the lack of setback on Walker Street (the consent required an increased setback). The controls allow for some variation based on adjoining development, the proposal needs to have regard to the recent consents to the north and west. A full 5m setback may not be necessary.

The applicant claims that the height is appropriate as it complies with the current controls. This is not accurate, the proposal does not provide for setbacks above a podium. Levels 18 and above would not have a viable floor plate with compliance with the setback and the Don Bank shadow control. This was evident in the Council's modelling in determining appropriate height controls under Draft NSLEP 2009 (based on current controls in the LEP and DCP). The modelling demonstrated that a compliant height would be RL 135 including plant room (about 6m high). The development at 177-199 Pacific Highway included a 4 storey podium with varying setbacks from the street and setbacks of 5m from the Highway and in excess of 5m setback from Berry Street.

Issue 3: Through site link (Doohat Lane)

The applicant has decided to provide a pedestrian through site link. I am ambivalent about the merits of the need for the link. Nevertheless, given a link is considered important by the Design Excellence Panel, I recommend the revised proposal provides suitable design for the link.

Discussion

The need for the through site link is questioned given that the lane is so close to Pacific Highway - it is actually more comfortable for people to walk via the Pacific Hwy footpath because of the slight hill in the lane and the steeper gradient of the lane from Berry St. the lane is very short and does not link very far beyond. The lane does link across Berry St to another lane serving the Don Bank Museum and some small buildings adaptively re-used for restaurants/cafe - this is a delightful area. But it is probably not a good idea to encourage pedestrians crossing Berry St between the lanes at this point due to the close proximity to the highway signalised intersection and the gradient of Berry St. the lane will always be more of a service lane (for such a short lane there is a high number of vehicle entries and service areas) which means it will never be a comfortable pedestrian environment. The Traffix report results of a survey found that about 60 pedestrians use the lane during a whole day - a very low count.

COMMENT

Although the current access is a private right of way, it has the appearance to the public as road and part of the lane. Council has established a link through from Mount Street to Berry Street. With inclusion of the subject site the link through to Bay Street and the Primary School would be complete. The link passes through quieter streets and lanes as well as open space areas linking conservation areas. It is considered to be an important public benefit that the proposal could provide. It should be remembered that most of the recent larger developments approved in the vicinity involve a large number of apartments and a substantial increase in the local population. The through site link would be a benefit to the additional population coming into the area.

Issue 4: Separate access/lifts for the serviced apartments

The applicant has decided to provide separate access/lifts for the serviced apartments. While I am ambivalent about the need for this, the revised proposal provides a suitable design.

Discussion

The main reason why such separation is usually requested is to separate short term residents from longer term residents because of security and social concerns. I consider that these concerns can be addressed sufficiently by having the serviced apartments on separate floors and for there to be electronic security for access to the apartment floors. The DA provides for this and is therefore adequate in my view.

COMMENT

Safety is one concern, a common lift with security card does not stop strangers/short stay guests being in the lift at the same time as residents. The main reason is that the serviced apartments are supposed to be the non residential part of the building operating as a hotel. In accordance with Council controls the building space should be adaptable for future uses. If the serviced apartments are not viable, they can be converted to office suites or some other suitable non residential use.

Issue 5: Expand the communal terrace on Level I2

The applicant has decided to expand the communal terrace. I consider the DA proposal appropriate. A larger communal terrace may encourage larger groups of people to use it which may affect the amenity of nearby residents due to noise. Nevertheless, I consider that the revised proposal appropriately addresses this issue raised by the Design Excellence Panel.

COMMENT

This is a matter for further assessment once the main issues are resolved. It is noted that internal communal space is only provided for the service apartments and not the residential apartments. This needs to be addressed.

Issue 6: Amenity of lower level serviced apartment

The applicant has decided to address this in the revised proposal by reconfiguring the plan and I consider has successfully improved the amenity of both the lower level apartment and the common area. It is noted that serviced apartments do not need to be consistent with the rules of thumb in the NSW residential Flat Design Code.

COMMENT

SEPP 65 consideration is brought in as a consideration under the draft LEP 2009. There is a requirement that serviced apartments must have regard to the design principles and the flat design code. Further design is considered necessary of the lower level serviced apartments. Living areas facing a light well cannot be supported. If the setback provisions are adhered to, it is likely that the lift core for the tower would move further west into the area on the site with the worst amenity. The lift core currently has a direct frontage to the highway where an apartment would be better located.

Issue 7: Balcony size, shape and amenity

Many of the balconies are less than the preferred depth of 2m in the proposal. The applicant has appropriately addressed this issue for all of the apartment balconies in the revised proposal. I consider that the revised proposal provides a commendable diversity of balcony solutions from floor to ceiling balustraded windows for many of the serviced apartments, to recessed balconies, partly recessed balconies, long that have varying depth from narrow to wide, and outdoor terraces. The west facing balconies should have operable shade screens.

Rationale

Balcony size: The proposal had too many balconies that were too narrow. The revised proposal has all apartment balconies with at least part of its area being a minimum of 2m depth. This will permit convenient use of a table and chairs.

Generally, it is appropriate that a proportion of balconies have a lesser dimension providing amenity is addressed appropriate to the apartment. For example, not all serviced apartments need to have a balcony. Small apartments/studios can have a balustraded full height window and still achieve good indoor/outdoor amenity while providing variety of apartment types to the market and at different price points. Balconies ought to be able to be enclosed as indoor/outdoor spaces. My experience at the City of Sydney with the NSW Residential Flat Design Code indicates that greater diversity of balcony design is important and that the rule of thumb minimum depth need not be applied to all balconies.

Balcony shapes: The corner balconies are uniquely shaped and are an intrinsic-aspect of the distinctive character of the building as it addresses the intersection. They form an interleaving layered pattern to the verticality of the tower and provide welcome visual interest as seen from the public domain.

Balcony amenity: Amenity is a function of size, degree of recess, relationship to the internal spaces of an apartment main such as direct access to the living space living space, aspect and ability to control direct sunlight. Generally balconies need some degree of recess to enable people to feel protected from the elements. Many of the balconies are recessed or have some recess. However, the SE corner balconies are not recessed - I consider that this issue is compensated by the facts that they are long and have two aspects – so there is an opportunity for protection from the wind. The revised proposal ensures that an appropriate part of all of the apartment balconies do have 2m minimum depth. All balconies relate well to the interior spaces. The western facing balconies should have external operable shade screens.

COMMENT

Detailed comment cannot be provided on balconies until the major issues with setbacks and height are resolved. The balconies should have a minimum dimension of 2m for at least 8m². Balconies on the lower levels and on the Highway need have some form of acoustic screening (sliding louvres) which requires a regular shape. It is noted that

every second balcony on the corner encroaches the splay corner boundary which is unacceptable.

Issue 8: Aesthetics

The Panel comments related to the corner element of the tower and the depth of the balconies. The depth of the balconies has been addressed appropriately in the revised proposal as discussed above and it is considered that this has also resulted in a better aesthetic outcome as anticipated by the Panel.

There is a comment by the Panel that the tower corner element is "unduly assertive". I have carefully considered this view and note that the vertical line of corner balconies both define the tower element and moderate its scale (which is already relatively small in floor plate area compared to other towers in North Sydney). The unique balcony shapes are a relatively minor element but I consider they will provide a good level of visual interest as they will be read together. Also, in the context of the approved much larger and bulkier tower diagonally opposite on the highway intersection, the proposal is much smaller in scale and will be seen as an interesting transitional buildings appropriate to the edge of the North Sydney Centre.

The corner triangulated columns on the ground floor and the splayed balconies above are elegant and distinctive, the street frontage activities at ground level are appropriate.

COMMENT

The aesthetics will no doubt change considerably if adequate balcony space, adequate podium and setbacks are provided for. The Design Excellence Panel has provided their comments and the comments are fully supported.

SUBMISSIONS

The application was notified to the Edward, CBD and Union precincts and surrounding owners and residents from 2/12/2011 to 16/12/2011. A total of eight submissions were received with the main issues raised being summarised as follows:-

K Barnes

1a Doohat Lane

- Inadequate parking provided
- Inadequate on street parking in area
- Shadow impacts
- Lane insufficient to carry traffic
- Garbage should be collected from Berry Street and not lane
- Noise impacts from air conditioners/plant

K Langford

- Will block windows to apartment that serves kitchen and dining room

T Tavella & P Dufaur

6/154 Pacific Highway

- Windows to apartment will be blocked

L Stevanov

- Not compatible with neighbouring development, bulk and scale, height
- 40m+ more in height
- 177 Pacific should not be used as comparison as it is within CBD and zoned commercial
- Not in keeping with heights under draft LEP 2009

- Shadow impact on Don Bank
- Shadow impact on apartments at 26 Napier Street
- Privacy impact on surrounding properties
- Restricting views from apartments at 26 Napier Street
- Exceeds parking allowed for 1 and studio apartments and serviced apartments
- Does not provide for appropriate dwelling mix as per DCP
- Increase in traffic
- Does not meet aims and objectives of plans

Rerham Investments Pty Ltd
154 Pacific Highway

- Should be consolidated with No154, all owners agreed
- Excavation of carpark on southern boundary, geotechnical investigation required
- Noise, dust and vibration from demolition, construction and excavation. Impact on residents and commercial tenants (one being a public office)

Malcolm Sheldon
154 Pacific Highway

- Windows to apartments will be blocked
- Owners are negotiating to sell

Soon Lim
1 Doohat Ave

- Bulk and height
- Too close to low rise residential
- Increase in traffic, Council needs to do own study not developers
- Pedestrian access needs to be maintained on Doohat Lane
- Overcrowding with too many huge developments proposed in area
- Privacy and amenity impacts on neighbours
- Lack of parking in area

Jeff Hudson
154 Pacific Highway

- Prefer consolidation with site
- Proposal will cover windows and windows would need to be removed costing \$100,000
- No offer of compensation for windows or concession by developer
- Request more time to get assistance to prepare submissions
- Excavation of carpark and structural concerns
- Safety of building and residents
- Geotechnical investigation not carried out
- Also commercial windows affected

CONSIDERATION

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

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

Compliance Table

| STATUTORY CONTROL – North Sydney Local Environmental Plan 2001 | | | | |
|---|---|------------|--|----------|
| North Sydney Centre | Existing | Proposed | Control | Complies |
| Height (Cl. 28D(2)(a)) | - | RL 156 AHD | RL 195m AHD | YES |
| Overshadowing of land (Cl. 28D(2)(b)) | - | NO | Variation permitted | YES |
| Overshadowing of dwellings (Cl. 28D(2)(d)) | - | YES | Variation permitted | YES |
| Minimum lot size (Cl. 28D(2)(e)) | 1296.3 | 1296.3 | 1000m ² min. | YES |
| Mixed Use Zone | | | | |
| Building Height Plane (Cl.30) | | | | |
| <ul style="list-style-type: none"> North Elevation | - | 12m | 45° height plane from 3.5m above rear boundary | NO |
| Floor Space (Cl. 31) (max) | Unknown but likely to be in excess of 3.2:1 | 3.2:1 | Within range of 3:1 to 4:1 | 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 | No | No communal space provided for residents other than small roof terrace – communal internal areas provided for serviced apartments; commercial/retail space provided at base of building, other non residential floor space in the form of serviced apartments |
| Mixed residential population | Yes | Unit mix acceptable for apartments |
| Maximum use of public transport | Yes | Commercial parking on site decreased; excellent access to public transport |
| 6.2 Environmental Criteria | | |
| Clean Air | Yes | Reduced level of parking, parking to be restricted to maximum under DCP |
| Noise | Yes | Acoustic report submitted, can be conditioned |
| Acoustic Privacy | Yes | Acoustic report indicates standards can be met |
| Visual Privacy | Yes | Privacy with west facing balconies may cause some concern. |
| Wind Speed | Yes | Wind report submitted |
| Reflected light | Yes | Materials non reflective and can be conditioned |
| Artificial light | NA | No roof top advertising proposed |
| Outdoor lighting | Yes | Can be conditioned |
| Awnings | Yes | Continuous awning provided |
| Solar access | Yes | Satisfactory |
| Views | Yes | Satisfactory |
| 6.3 Quality built form | | |
| Context | No | Site analysis undertaken, building not in context with |

| | | |
|--------------------------------------|-----|--|
| | | desired character for area and development to north and west |
| Public spaces and facilities | NA | Site too small to provide spaces |
| Skyline | Yes | Upper levels designed to contribute |
| Through-site pedestrian links | No | None required under character statement but considered to be desirable as a public benefit |
| Streetscape | No | Unsatisfactory. Excessive height without appropriate setbacks. |
| Subdivision | No | Consolidation of sites not proposed. See comments under site area |
| Setbacks | No | No podium or setbacks proposed |
| Entrances and exits | Yes | Visible from Street |
| Street frontage podium | No | Podium level established by facade treatment for part of Berry Street. No podium provided for Highway or at corner of Berry Street for tower element |
| Laneway frontage | No | No setback at lane frontage |
| Building design | No | See Design Excellence Panel comments |
| Nighttime appearance | Yes | Can be conditioned |

6.4 Quality urban environment

| | | |
|--|-----|---|
| High quality residential accommodation | No | Balconies inadequate generally |
| Accessibility | Yes | Satisfactory |
| Safety and security | Yes | Satisfactory |
| Car parking | Yes | See comments below about provision and dimensions |
| Bicycle storage | Yes | Storage rooms provided |
| Vehicular access | Yes | Cars via Berry Street. Loading via Doohat Lane |
| Garbage Storage | Yes | Separate facilities provided. Garbage can be collected from Doohat Lane. This can be conditioned. |
| Site facilities | Yes | Can be conditioned. Storage areas provided within basement and within apartments |
| 6.5 Efficient use and management of resources | | |
| Energy efficiency | Yes | Basix certificate submitted |

NORTH SYDNEY LEP 2001

Permissibility within the zone:

The proposal is permissible with consent under the Mixed Use zoning. The serviced apartments are only permissible when operated as a hotel which is defined as follows:

hotel means premises that provide accommodation consisting of rooms, self-contained suites or serviced apartments for guests, as well as facilities such as a restaurant or bar.

The applicant needs to identify what part of the commercial space proposed is to be used as a part of the hotel as its facility.

CLAUSE 28B - NORTH SYDNEY CENTRE OBJECTIVES

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

| OBJECTIVE | RESPONSE |
|---|--|
| (a) to maintain the status of the North Sydney Centre as a major commercial centre within Australia. | The proposal results in a major reduction in the commercial office floor space existing on site. The site is too small to provide for high quality/large commercial floor plates. Most of the non residential floor area will be hotel/serviced apartments |
| (b) to require arrangements for railway infrastructure to be in place before additional non-residential gross floor area is permissible in relation to any proposed development in the North Sydney Centre. | The proposal does not increase the non residential floor area and accordingly arrangements are not required. |
| (c) to ensure that railway infrastructure, and in particular North Sydney Station, will enable and encourage a greater percentage of people to access the North Sydney Centre by public transport than by private transport and will: (i) be convenient and accessible, and (ii) enable a reduction in dependence on private car travel to the North Sydney Centre, and (iii) be adequate to achieve no increase in car parking, and (iv) have the capacity to service the demands generated by development in the North Sydney Centre. | Council has instigated measures with State Rail to ensure that North Sydney Railway Station is upgraded to improve patronage. |
| (d) to discourage use of motor vehicles in the North Sydney Centre | The proposed development provides for a reduction in the non residential parking on site |
| (e) to encourage access to and within the North Sydney Centre for pedestrians and cyclists. | It is not proposed to obstruct any existing pedestrian or cycle routes through the Centre. Cycle facilities are to be incorporated into the development to promote cycling. |
| (f) to allow for 250,000m ² (maximum) non residential gross floor area in addition to the estimated existing (as at the commencement of this Division) 700,000m ² non-residential gross floor area. | The proposed development will reduce non residential floor space. |
| (g) to prohibit further residential development in the core of the North Sydney Centre. | The proposed development incorporates a residential component, however, it is not located within the core of the North Sydney Centre (as identified by a "commercial" zoning). |
| (h) to encourage the provision of high-grade commercial space with a floor plate, where appropriate, of at least 1000m ² . | The commercial floor plate upon the site is smaller than the required 1000m ² threshold (the site area is 1296m ² and the restricted commercial floor plate is much smaller). |
| (i) to achieve a variety of commercial space | The commercial components of the proposed building have been designed to be flexible in use. |
| (j) to encourage the refurbishment, recycling and rebuilding of older buildings. | The existing buildings on the site is to be demolished. |
| (k) to encourage a diverse range of employment, living, recreation and social opportunities. | The proposed development provides limited flexible commercial spaces and residential apartments. |
| (l) to promote high quality urban environments and residential amenity | The proposal needs to improve internal amenity The design of the building is not supported. |
| (m) to provide significant public benefits such as open space, through-site linkages, childcare and the like. | The site does not provide real public benefits as suggested. A through site link is feasible and would be a benefit |
| (n) to improve accessibility within and to the North Sydney Centre. | The proposed buildings have been designed to be accessible. |
| (o) to protect the amenity of residential zones and existing open space within and nearby the North Sydney Centre | The proposal will have a limited impact on amenity of the residential area adjoining to the north |

| | |
|---|--|
| (p) to prevent any net increase in overshadowing of any land-zoned residential or public open space or identified as a special area. | The proposed development will result in some minor overshadowing of some residential premises. |
| (q) to maintain areas of open space on private land and promote the preservation of existing setbacks and landscaped areas, and protect the amenity of these areas. | Landscaped areas limited to roof garden only |

CLAUSE 28C - RAILWAY INFRASTRUCTURE

Subclause 28C(2) to the NSLEP states that:

“... consent must not be granted to the carrying out of development on any land in the North Sydney Centre if the total non-residential gross floor area of buildings on the land after the development is carried out would exceed the total non-residential gross floor area of buildings lawfully existing on the land immediately before the development is carried out”.

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

CLAUSE 28D - BUILDING HEIGHT AND MASSING

Objectives

- (a) *to achieve a transition of building heights generally from 100 Miller Street (Northpoint) and 79 - 81 Berry Street (being the location of the tallest buildings) stepping down towards the boundaries of the North Sydney Centre.*

The proposed development is not considered to have an appropriate overall scale and does not provide for a podium or setbacks from the streets and lane.

- (b) *to promote a height and massing that has no adverse impact on land in the public open space zone or land identified as a special area on Sheet 5 of the map marked “North Sydney Local Environmental Plan 2001 (Amendment No. 9) - North Sydney Centre” or on heritage items.*

The proposed development will not result in any overshadowing of public space zones or special areas.

- (c) *to minimise overshadowing of land in the residential and public open space zones or identified as a special area on Sheet 5 of the map marked “North Sydney Local Environmental Plan 2001 (Amendment No. 9) - North Sydney Centre”.*

No public open space zones or “special areas” will be overshadowed by the proposed development.

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

The proposed development has been separated from adjoining residential

development. There will be overlooking from the western balconies on the tower element.

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

A continuous awning is to be provided to provide weather protection for pedestrians. The scale and massing is unsatisfactory with regard to visual dominance from nearby residential areas.

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

The subject site comprises the consolidation of 3 allotments, however, the application results in the isolation of No.154 Pacific Highway which has a site area of 381m². The applicant has made attempts to amalgamate the site which involves a number of strata owners but without success. The amalgamation would provide a more superior site allowing for a larger floor plate and carpark layout with increased density. To isolate the smaller site would be a constraint on the subject site and limit any potential for redevelopment on the smaller site. If negotiations are unsuccessful, then the lack of amalgamation would not warrant refusal of the application in itself. However, approval of a proposal without amalgamation would result in a number of issues that would need to be resolved with regard to the isolated site. Detailed geotechnical investigation would be required as the foundations of the smaller site are well above the proposed 6 levels of excavation. Severe damage could occur without extensive structural investigation and possible rectification works. There are a number of windows on the southern elevation of No.154 close to the common boundary that will be affected/blocked by the proposal. There needs to be some response to some of the windows (mainly residential upper floors to the front) involving creation of small light wells.

Development Controls

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

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

Utilising the LEP definition, the proposed building will have a maximum RL of 156 AHD (to the roof of the rooftop plant room) and therefore complies with this requirement.

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

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

- (c) *There is no net increase in overshadowing, between 10am and 2pm, at any time of the year, of any land this is within the North Sydney Centre and is within the public open space zone or within a special area as shown on Sheet 5 of the map*

marked “North Sydney Local Environmental Plan 2001 (Amendment No 9)- North Sydney Centre”, and

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

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

The proposed development will overshadow some residential premises outside the North Sydney Centre, primarily to the south-west of the site. However, these dwellings will generally only be affected for a short period after 9am during the winter solstice, and therefore will still be able to receive a reasonable level of solar access.

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

The subject site is 1296.3m² in area which satisfies this standard.

Building Design and Public Benefits

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

- (a) the impact of the proposed development in terms of scale, form and massing within the context of the locality and landform, the natural environment and neighbouring development and in particular lower scale development adjoining the North Sydney Centre, and*
- (b) whether the proposed development provides public benefits such as open space, through-site linkages, community facilities and the like, and*
- (c) whether the proposed development preserves important view lines and vistas, and*
- (d) whether the proposed development enhances the streetscape in terms of scale, materials and external treatments, and provides variety and interest.*

The application fails with regard to a), b) and d).

The scale form and massing is not suitable within the context of the locality and in particular the lower scale development adjoining the North Sydney Centre.

The proposal provides no direct public benefits, however this can be addressed with a suitable through site link. The proposal does not provide for a podium or setbacks above the podium as required under the DCP and the character statement outlining the desired future character.

CLAUSE 29 - BUILDING HEIGHT

Objectives

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

The height is not compatible with the adjoining residential areas. Part of the site directly adjoins the residential area while the rest of the site containing the tower element is about 20m away (a normal residential road width). The site that adjoins is 2 floors higher than the development directly adjoining to the west that was recently considered to be a compatible height. The remainder of the site is 14 storeys higher than the western neighbour. The height of the building over No18 Berry Street should no higher than the roof height of No.12-16 Berry Street (not the plant room). The height of the tower located to the south east of the residential area could step a further 25m or 8 storeys making the roof at RL 131.7 a more compatible height. This height also fits in with the setback controls under the character statement and the shadow controls under the LEP with regard to Don Bank. The applicant has agreed that the floors above RL 131.7 are not viable if they have to comply with both controls.

This height is also in keeping with the findings of the Land & Environment Court in **Castle Constructions Pty Ltd v North Sydney Council [2008] NSWLEC 1168** and **Castle Constructions Pty Limited v North Sydney Council [2008] NSWLEC 1456**. *These judgements are annexed for the JRPP's information.* The appeals concerned a site at 136-140 Walker Street and the height of the proposed mixed use building was a major issue that was considered in great detail after many hearing days involving a number of experts. Commissioner Bly found that an appropriate height for development towards the edge of the centre near low scale residential would be around RL 130. Relevant extracts that relate to determining an appropriate height are reproduced:

Castle Constructions Pty Ltd v North Sydney Council [2008] NSWLEC 1168
Excessive height and scale

.....
15 *In relation to the transition and visual dominance aspects of the respondent's height and scale contention, the particulars refer to cl 14(2) of the LEP that requires the consent authority to take into account relevant aims and objectives. This clause also provides that consent must not be granted for any development that is inconsistent with the specific aims of the LEP, the objectives of the zone or the objectives of any applicable controls. (Of course cl 14(2) of the LEP is also generally applicable). The particulars also refer to the aims and objectives and controls in cl 2(b), 3(a), 28D(1) and (5) of the LEP and Cl 8.8b of the DCP including streetscape and topography and the area statement for the Central Business District.*

16 *The general and specific aims of the LEP seek development that is appropriate to its context, is in character with the neighbourhood and is compatible with neighbouring development in terms of bulk, scale and appearance. The Mixed Use Zone objectives provide for a high-quality urban environment and the protection of the amenity of residential areas. The more particular objectives in the LEP that deal with building heights and massing seek to maintain the status of the North Sydney Centre as a major commercial centre and at the same time provide for pedestrian comfort in terms of visual dominance.*

.....
21 *Being a precinct undergoing transition (as distinct from the transition requirements in cl 28D(1)(a)), cl. 9 of SEPP 65 requires consideration of desired future character. The North Sydney Centre Character Statement for the North Sydney Centre Planning Area and the character statement for the Central Business District in s.1.1 of the DCP are matters to be taken into consideration in the light of s.5.1a iv that requires that new development should minimise negative*

impacts on the amenity of adjoining development and reflect the applicable character statement. In this context it is relevant to note that whilst the North Sydney Centre Planning Area incorporates the North Sydney Centre they are not the same, the Planning Area relevantly extending northwards beyond St Leonards Park and extending eastwards to the Warringah Expressway. The North Sydney Centre Planning Area is divided into a number of localities or districts: Central Business District, Hampton, Civic Neighbourhood, Eden Neighbourhood, McLaren Street Conservation Area and Walker Street Conservation Area. The site is included in the Central Business District, the boundaries of which are largely consistent with the boundaries of the North Sydney Centre.

22 Part h. - Skyline in the Quality Built Form section of the DCP essentially repeats cl. 28D(1)(a) of the LEP by referring to a stepping down in height from the tallest buildings to the boundary although it does add to this stepping down by referring to surrounding residential areas. Because the North Sydney Centre Character Statement uses the words North Sydney Centre and the Centre and absent a definition to the contrary, I accept that these are referable to the North Sydney Centre Planning Area. To describe how this stepping down might be achieved, Figure 1.1 and Figure 1.2 are provided in the DCP. These figures depict two notional arcs that describe the stepping down of existing and possible future building heights along Miller and Berry Streets.

.....
25 However, in my opinion the two notional arcs need to be considered and applied together especially because views of built form as a whole within the North Sydney Centre seem to be very important, particularly taking into account the building heights and massing objective in cl 28D(1)(a) of the LEP. They are also relevant when taking into account aspects of visual dominance and streetscape when viewed from residential areas as required by 28D(1)(e). ...

.....
35 Taking into account the building's podium, the setbacks of the tower from Walker Street and from the site's northern boundary together with the 15 m separation (142 Walker Street to the north) from the North Sydney Centre boundary I accept that there would be no determinative difference between the impacts associated with a building at RL 103m (as sought by the draft LEP) and a building that was no taller than the "umbrella" formed by the two notional arcs. Considering the position of the site vis a vis the boundary of the North Sydney Centre this would indicate a building with a top of building RL of about 130m, some six levels lower than that suggested by Mr Byrnes. In this regard I have considered the relevantly applicable objectives dealing with pedestrian comfort, streetscape, character and compatibility particularly in the light of the applicable planning controls, including those directed towards future character. Given what I have concluded in relation to compliance with the height and envelope controls I am satisfied that these objectives would not be infringed by a reduced height building and accept that it is not necessary for the built form of the North Sydney Centre to complement, in the sense of being directly responsive to the nearby low-scale residential development. In these circumstances I also conclude that when viewed from residential areas outside the North Sydney Centre a building with a reduced height as described above would probably not exhibit an unacceptable visual dominance.

.....
Castle Constructions Pty Limited v North Sydney Council [2008] NSWLEC 1456

.....
23 Mr Aspinall and Mr Mills have now produced several computer-derived three-dimensional models (Exhibits 45, 46 and MM) that are based on the now agreed relative levels for the two notional arcs. The shape of the envelopes produced by these models vary depending upon which relative levels are adopted for the top most height of the arcs. They also vary depending upon which boundaries of the North Sydney Centre are utilised in locations that do not fall precisely under the arcs themselves and the adopted relative levels in those locations.

24 The proposed building has been incorporated into these models revealing that it variously projects beyond the envelopes by as much as 7m. Mr Byrnes and Mr Mossemeneer considered the likely margin of error in these models and Mr Byrnes estimated that this might amount to two storeys. It is to be noted however that, as a result of the now proposed additional 1.2 m setback from Walker Street, the projection beyond the envelopes is reduced

25 On this basis the applicant submits that it is prepared to agree to a condition to limit the height of the proposed building to RL 156.8 m (the applicant's plans presently show a top of building RL of 162.5 m) and that this would comply with the envelopes produced by Mr Aspinall and Mr Mills.

26 Despite having previously agreed that five levels could be removed from the proposed building, Mr Byrnes now says that this is unnecessary; particularly taking into account that the technical breach of the latest envelopes generated by the notional arcs is marginal. Also because of the likelihood that the draft LEP that seeks to achieve the necessary non-residential additional floor space in the North Sydney central business district (as required by the Department of Planning) is likely to require taller buildings and possibly rezonings.

27 Mr Mossemeneer has also changed his position in relation to the height of the building, having previously contended that no portion of the building should exceed RL 103 m. He is now prepared to accept: considering an envelope based on the two notional arcs that follows the edge or boundary of the centre, an appropriate height would appear to also be around RL 130 m. In reaching this conclusion I understand that he has taken into account the likely provisions of the proposed draft LEP. He has also taken into account the provisions of the existing DCP that have the dual role of providing a district skyline control within a regional view catchment and what he says is the more important immediate local context.

28 He did not accept that the three-dimensional envelopes generated from the notional arcs by Mr Aspinall and Mr Mills were appropriate for the determination of an appropriate maximum building height for this site. This is because the envelopes have not properly taken into account the local context and the fact that the site is at or very close to the boundaries of the North Sydney Centre. As he said in his report, in relation to a three-dimensional envelope: the edge of the envelope must be the edge of the North Sydney Centre and:

If the data from the edge of the arcs and other existing buildings on the edge of the centre can provide an average height, it might be appropriate to at least consider that height as a maximum height for development particularly where the site adjoins lower scale residential development

29 In this context he refers to a number of relative levels that are not dissimilar to those referred to in Exhibit 43:

- The maximum building height (100 Arthur Street) at the edge of the commercial centre of RL of 130.15 m,
- The southern end of the Miller Street arc that has an RL of 126.34 m,
- The northern end of the Miller Street arc (237 Miller St) that has an RL of 125.56 m

Conclusions

30 It has now become clear that with a relatively small adjustment to the height of the proposed building and taking into account the additional proposed setback from Walker Street, compliance with the three-dimensional envelopes developed by Mr Aspinall and Mr Mills would be achieved.

31 However, I am not convinced that these envelopes as constructed are sufficiently responsive to the boundaries of the North Sydney Centre. In deciding to give little weight such compliance, I have taken into account Dr Lamb's suggestion that whilst such an envelope could be umbrella shaped it would not be symmetrical. This is apparently because the perimeter of the North Sydney Centre is not circular, instead being irregular and rectilinear. Hence, whilst this consideration can be taken into account and given some weight, it does not overcome the concerns regarding visual dominance that I expressed in my earlier judgment at [27] – [28] regarding the location of the site vis-à-vis the North Sydney Centre boundaries.

32 In this reaching this conclusion, I find the evidence of Mr Mossemeneer persuasive. In particular I accept the correctness of his present approach in interpreting and applying the planning controls that deal with building heights at the edge of the North Sydney Centre. As he explained, the data and buildings at the edges of the arcs can be considered as a maximum height for development where the site adjoins lower scale development, as is the case here. I thus agree that such a height can be derived from the heights determined by him and Mr Byrnes when they determined the average relative levels for the arcs at the edges of the North Sydney Centre (Exhibit 43)

33 This approach is also consistent with the conclusion in my previous judgment at [33] (that I continue to adhere to) that the site need not be treated as an area of transition between multi-storey

buildings and small-scale buildings beyond the boundaries of the North Sydney Centre. In this context I do not accept that because the notional arcs project beyond the boundaries of the North Sydney Centre, allowable building heights at the boundaries should be commensurately increased, taking into account the different height controls that apply outside the centre.

34 Whilst the approach of applying an average height to the edges of the North Sydney Centre in locations other than underneath the two notional arcs is not straightforward, I nevertheless agree that this approach should attract significant and determinative weight. I have reached this conclusion notwithstanding that there is nothing in the planning controls other than the arcs themselves that would require a uniform building height around the boundaries. However, it is also important to remember that visual dominance and transition towards the boundaries of the centre are important considerations as are streetscape and topography and the area character statement in the DCP. In this context I accept that a reasonable interpretation of the notional arcs in the light of the planning controls is that there be reasonably uniform building heights around the perimeter of the centre.

35 Finally here, in terms of the North Sydney Centre's skyline it is possible, as conceded by Mr Mossemeneer, that the proposed building may not offend when contemplated from distant viewpoints. I have however been persuaded by his evidence that, taking into account the planning controls, because the site is positioned so close to the boundaries of the North Sydney Centre and giving appropriate weight to the site's context, that the proposed building would be too tall.

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

The proposed development is not considered to be an appropriate bulk and scale on the northern fringe of the North Sydney Centre. It is not in keeping with desired character as detailed in the character statement. The height needs to be reduced as described above. Podiums with regard to the two recent mixed use approvals need to be established and the tower above the podium need to provide for adequate setbacks.

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

There is concern with amenity of the lower level apartments and serviced apartments facing north. The apartments having living areas/balconies facing the northern boundary at levels 8, 10, 13, 14 and 15 are totally unacceptable. Concerns have been raised by neighbours to the north about insufficient setbacks and blocking off of existing windows on or near the boundary. The amenity issues could be easily addressed with a tower being setback from the Highway as required and the location of the lift core away from the street and in the location with the poorest amenity. If the site to the north cannot be consolidated with the subject site, then some measures should be considered to retain the current windows to at least the residential apartments.

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

The setback issue has been addressed previously.

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

The proposal has been designed to accommodate the extensive level changes along Berry Street and the Highway.

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

The applicant seeks to rely on a commercial site diagonally opposite that is within the commercial core of the CBD. The height on that site was approved by the Minister under Part 3A and the proposal was inconsistent with a number of controls that would prohibit the height approved. Accordingly the site should not be used as justification for further breach of the controls.

Building Height Controls

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

CLAUSE 30 - BUILDING HEIGHT PLANE

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

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

The proposed development is not considered to be compatible with the residential zone to the north. Part of the site directly adjoins the residential area while the rest of the site containing the tower element is about 20m away (a normal residential road width). The site that adjoins is 2 floors higher than the development directly adjoining to the west that was recently considered to be compatible. The height of the building over No18 Berry Street should no higher than the roof of No.12-16 Berry Street (not the plant room).

Building Height Plane Controls

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

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

- (c) *commencing 3.5 metres above existing ground level, projected at all points from each of the boundaries of the site which adjoin land within the residential C zone, or ”*

The proposed development projects through the building height plane by 12m. A SEPP

1 objection has not been submitted requesting a variation to the development standard.

Council's practice has been to require the submission of a SEPP 1 objection although the Court has ruled with regard to 136 Walker Street that the BHP control cannot prevail over The North Sydney Centre controls under Division 4 of the LEP. Clause 30.1a) is consistent with Division 4 controls, part b) is not.

If the JRPP is considering approval of the application then it is recommended that the applicant submit a SEPP 1 objection for proper consideration.

CLAUSE 31 - FLOOR SPACE

Subclause 31(2) states:

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

The floor space Map to the North Sydney LEP illustrates that the non-residential component of a development within the mixed use zone must have an FSR of between 3:1 and 4:1. The proposal has a non residential floor space ratio of 3.2:1 and is therefore compliant with the control.

CLAUSE 50 - DEVELOPMENT IN THE VICINITY OF HERITAGE ITEMS

Development in Vicinity Controls

Clause 50 states:

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

This has been assessed by Council's Conservation Planner as detailed above. The following conclusions were reached:

The proposal is considered to require further resolution to ensure that the heritage significance of the nearby heritage item at 1 Doohat Ave is retained. In addition, the existing pedestrian link along Doohat Ave between the CBD heritage items and the Edward Street and Crows Nest Conservation Areas should be retained.

The following amendments are recommended:

- Pedestrian access be maintained from Doohat Ave to Berry St to retain the link between the CBD heritage items and North Sydney Demonstration School as well as to the Edward Street and Crows Nest Conservation Areas.
- Building to be setback a minimum of 5m from laneway boundary from Level 6 and above to achieve a podium that provides a transitional element from the height of the residential

development in Doohat Ave. Blade walls to also be setback above Level 6 Podium on the laneway frontage.

- Garage door to be amended to be an architectural element that positively contributes to the streetscape.

Should the design be amended, the following should be ensured:

- No additional shadow impacts to Donbank, the adjacent park or to the Napier St terraces to occur.
- Should 154 Pacific Hwy be amalgamated into the proposal, then a 1.5m setback off the laneway is recommended with a podium level to match that of other developments along the length of Doohat Lane.

Draft North Sydney Local Environmental Plan 2009

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

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

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

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

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

| COMPLIANCE TABLE – DEVELOPMENT STANDARDS | | | |
|---|--------------------------------|----------------------|-----------------|
| Development standard | Requirement | Proposed | Complies |
| Clause 4.3: Height of buildings | RL 106 at No18 Berry St | RL 116 | NO |
| | RL 125 at 144-150 Pacific H'wy | RL 156 | NO |
| Clause 4.4: Floor space ratio | Minimum 3:1 | 3.2:1 | YES |
| Clause 6.4: Building heights and massing | 1000m ² site area | 1296.3m ² | NO |

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

The proposed development has been considered against the development standard applicable under the Draft LEP and does not comply with the provisions of Clause 4.3.

The heights were based on modeling having regard to the current requirements under both NSLEP 2001 and NSDCP 2002.

The departure to the height control is not supported. The height to the roof of the building should no higher than RL 108.85 over No.18 Berry Street and RL131.7 over 144-150 Pacific Highway. Plant in the order of 6m height would be acceptable over the tower making an overall height of RL 137.7 being acceptable on the basis of compliance with current controls.

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

SEPP 55 and Contaminated Land Management Issues

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

SREP (Sydney Harbour Catchment) 2005

The 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.

SEPP 65 – Design Quality of Residential Flat Development

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

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

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

Principle 1 Context

It is considered that the development does not fit within the context of the area. The proposed building will not fit within with the desired future character of the area as outlined in the DCP and character statement.

Principle 2 Scale

The site is located adjacent to a low scale residential area. A nine storey building adjacent to the residential zone is appropriate subject to adequate separation distances being provided, an additional eight storeys towards the street corner would be appropriate. The proposal is 2 and 6 storeys higher and therefore unacceptable.

Principle 3 Built Form

The built form of the building not supported as it fails to provide for a podium and setbacks that fit with recent approved developments to the north and west. The design is not supported by Council's Design Excellence Panel.

Principle 4 Density

The density exceeds Council's controls as the proposal is well outside the desired building envelope for the site.

Principle 5 Resource, Energy and Water Efficiency

A Basix Certificate was submitted with the application.

Principle 6 Landscape.

The landscaping on the site is limited to a roof garden.

Principle 7 Amenity

The proposed development provides poor amenity to a number of apartments as discussed previously (some north facing No.154 and ones with small balconies). Natural ventilation is available, and visual privacy has been considered as part of the proposed development.

Principle 8 Safety and Security

The proposed development has had regard to the principles of 'Safer by Design'. Aspects such as natural surveillance and controlled access have all been taken into consideration.

Principle 9 Social Dimensions

The proposed development provides additional residential development within an established mixed use area, which is located near public infrastructure. There are no internal communal areas for the apartments only a small communal garden

Principle 10 Aesthetics

The building aesthetics were not favoured by Council's Design Excellence Panel.

Residential Flat Design Code 2002

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

DEVELOPMENT CONTROL PLAN 2002

NORTH SYDNEY CENTRE PLANNING AREA / CENTRAL BUSINESS DISTRICT

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

Provide diverse activities, facilities, opportunities and services

The mixed use development provides for commercial 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 subject to the parking being limited to the maximum under the DCP.

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

An awning is proposed over the street frontage, which is consistent with adjoining buildings.

Allow zero setbacks at ground floor and adjacent to heritage items

The building will retain the existing zero setbacks to front and side boundaries but fails to be setback 1.5m from the lane.

Maximum five storey street frontage podium height along Highway and 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 Highway and Berry Street

The proposal fails to provide any podium or setback above podium as discussed above. Attempt has been made to have regard to 12-16 Berry Street although the proposed height is excessive by 2 floors. Podium treatment similar to that allowed at 12-16 Berry Street would be suitable.

A podium that relates to that approved at 156 Pacific Highway is required for the Pacific Highway part of the site. A similar setback to 156 would be considered instead of the 5m weighted average to the edge of the balcony. 156 has an average setback of 5m to the building with 2m wide balconies within the setback. With articulation of the balconies the average setback would be 4m. The height of the tower needs to be lowered by 6 storeys to that proposed.

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

The development has architectural detailing. The building will comply with the energy requirements of BASIX, Appropriate stormwater controls will be installed. Waste will be

minimised where possible. The aesthetics of the corner of the building is not supported.

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

The development will not hinder the public domain.

SECTION 94 CONTRIBUTIONS

Section 94 Contributions in accordance with Council's S94 plan are warranted and would be based on the total number of apartments with allowance for the reduction in commercial floor space. The contribution has not been assessed as the density of the site will be reduced with any change (as shown with the submitted sketch plans).

APPLICABLE REGULATIONS

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

DESIGN & MATERIALS

The design has not been assessed as being acceptable.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

ENVIRONMENTAL APPRAISAL

CONSIDERED

| | | |
|----|--|-----|
| 1. | Statutory Controls | Yes |
| 2. | Policy Controls | Yes |
| 3. | Design in relation to existing building and natural environment | Yes |
| 4. | Landscaping/Open Space Provision | Yes |
| 5. | Traffic generation and Carparking provision | Yes |
| 6. | Loading and Servicing facilities | Yes |
| 7. | Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.) | Yes |
| 8. | Site Management Issues | Yes |

9. All relevant S79C considerations of Environmental Planning and Assessment (Amendment) Act 1979 Yes

CLAUSE 14 NSLEP 2001

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

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

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

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

SUBMITTORS CONCERNS

Eight submissions were received in relation to the proposed development raising concerns about bulk, scale, height, privacy, noise, traffic, parking, garbage collection, excavation, blocking of existing windows and a number of other issues. These issues have been mostly addressed within this report. Additional issues raised are addressed as follows:

Inadequate parking provided

The proposal meets the requirements of the DCP. There is a shortfall in parking compared to the maximum allowed.

Inadequate on street parking in area

There is considerable demand during the week for on street parking. The proposal provides for adequate on site parking for residential and reduces the traffic generation for commercial vehicles when compared to existing.

Shadow impacts

The shadow impacts are acceptable and comply with the controls.

Lane insufficient to carry traffic

Car access is from Berry Street and not the lane.

Garbage should be collected from Berry Street and not lane

Council's Waste Officer is satisfied with the garbage area and collection from the Lane. It would not be practical to collect from Berry Street where the car entry is.

Noise impacts from air conditioners/plant

This can be conditioned. There is concern about the proposed siting of a substation next to the dwelling in Doohat Lane.

Will block windows to apartment that serves kitchen and dining room

The proposal will block the existing windows on the top two levels for the front apartments. Amalgamation of the site is preferred but if this cannot be achieved, the applicant should try and minimise the impacts on the neighbour by creating a small light well to the windows. The rear apartments with windows are not affected as the proposal is setback 3m adjacent to the windows.

Not compatible with neighbouring development, bulk and scale, height
Agreed as discussed above.

177 Pacific should not be used as comparison as it is within CBD and zoned commercial
Agreed.

Not in keeping with heights under draft LEP 2009
Agreed.

Shadow impact on Don Bank
Satisfactory and does not impact.

Shadow impact on apartments at 26 Napier Street
Will cause shadow between 9am and 12 noon midwinter. 26 Napier Street is mixed use development and retains sunlight after 12 noon for 3 hours.

Privacy impact on surrounding properties
There is adequate separation to apartments opposite in Berry Street. There is some concern on overlooking of side windows towards the rear of 154 Pacific Highway. Also overlooking of Doohat Avenue properties likely from upper levels of tower (part that is non compliant with controls)

Restricting views from apartments at 26 Napier Street
The views would be affected for a compliant building as the height is more than 26 Napier Street.

Does not meet aims and objectives of plans
Agreed.

Should be consolidated with No154, all owners agreed
Agreed, there seems to be a chance for consolidation.

Excavation of carpark on southern boundary, geotechnical investigation required
The excavation of 6 levels would be well under the foundations of No.154. The submitted geotechnical report recommends further testing to determine exact impact and whether underpinning is required. The report states that there is a chance of vibration that could result in damage to the neighbouring building. Should amalgamation not occur and should the JRPP favour this or a further application, it may be wise to issue only a deferred commencement consent because the geotechnical information is incomplete.

Noise, dust and vibration from demolition, construction and excavation. Impact on residents and commercial tenants (one being a public office)

These impacts should be limited with suitable conditions provided the conditions are fully adhered to.

Pedestrian access needs to be maintained on Doohat Lane
Agreed. The applicant is willing to amend the proposal to accommodate a through site pedestrian link.

Proposal will cover windows and windows would need to be removed costing \$100,000. No offer of compensation for windows or concession by developer

Only some apartment windows affected. The applicant could provide a setback of say 1m opposite the windows to create a small light well and the windows will not need to be bricked up. The windows towards the rear on the northern boundary could be protected from overlooking by the provision of a louvred screen at the boundary. Some concession should be provided if the adjoining site is isolated.

Request more time to get assistance to prepare submissions

This relates to the concerns from the neighbours about the extension excavation on the common boundary. It is agreed that the issue needs further resolution should an application be supported.

Also commercial windows affected

Some lower windows of the office space are affected and are harder to protect.

Conclusion

The application has been assessed against the relevant statutory controls and with regard to the existing and approved developments nearby.

No SEPP 1 Objection has been submitted in relation to the building height plane, there is a breach of 12m on the northern elevation and the proposed height and scale is not considered compatible with the adjoining residential zone. If the JRPP is considering approval of the application then it is recommended that the applicant submit a SEPP 1 objection for proper consideration.

The applicant has chosen to ignore the major controls applicable to the site and support the design with an urban design statement. The height is based on the claim that the site is a "Gateway" site and the recent Part 3A approval for a commercial tower at 177 Pacific Highway (which does not comply with the LEP) located within the CBD diagonally opposite sets the precedent for the site. Little regard is given to the fact that the site is on the edge of the centre adjoining low scale residential development.

The relevant controls relating to podium and setbacks have been recently varied with regard to the adjoining developments at 12-16 Berry Street and 156-158 Pacific Highway and the applicant has been advised to pay regard to those decisions when designing the proposal. As indicated above, the applicant has chosen to ignore the setback control above the podium because it will reduce the floor plate of the upper levels so as to be unviable. Having regard to the current LEP controls and the relevant Court decisions relating to height, mass and scale at the edge of the North Sydney Centre, the height of the proposal is excessive by 6 storeys.

The applicant has submitted additional details in the form of sketch plans showing how some issues relating to through site link, separate access, amenity and balconies can be addressed. The application as submitted is not supportable and if the height and setbacks are not properly addressed, any amended proposal that addresses only some of the identified issues (as shown on the sketch plans) will not be supported.

The application was referred to Council's Design Excellence Panel for comment and the Panel has recommended a complete redesign of the building. The application is recommended for refusal by the Joint Regional Planning Panel.

RECOMMENDATION

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

THAT the Joint Regional Planning Panel, as the consent authority, refuse development consent to 2011SYE119 - Development Application No.467/11 to demolish existing structures and the construction of a mixed use development comprising 6 basement levels with 96 car parking spaces, 1,405m² of commercial floor space, 41 serviced apartments and 101 residential apartments at 144-150 Pacific Highway and 18 Berry Street North Sydney for the following reasons:

1. The height and scale of the building is excessive and is not in context with surrounding development, particularly the residential development to the northwest, and the building does not achieve a transition of building heights down towards the boundaries of the North Sydney Centre, as required by Clause 28D of North Sydney Local Environmental Plan 2001.
2. The proposal substantially breaches the building height plane control pursuant to Clause 30 of North Sydney Local Environmental Plan 2001 and no SEPP 1 objection has been provided.
3. The proposed building design is unsatisfactory with regard to setbacks and form in that it does not provide a setback at the lane, podium at the lane and to both streets, and appropriate setbacks above the podiums as required by North Sydney Development Control Plan 2002 and the Character Statement for the Central Business District.
4. The proposal does not provide for a through site link from the lane to Berry Street or sufficient public benefit.
5. The amenity of some apartments are unsatisfactory with regard to balcony orientation and size.
6. Separate access is not provided to the non residential floors of the building to be used as a hotel (serviced apartments).
7. The proposal would have an adverse impact on the south facing window and amenity of the residential dwellings on the upper levels of No. 154 Pacific Highway.
8. The proposal would isolate a site adjoining to the north that is well under the minimum site requirement of 1000m² and constrain its future development potential.

Geoff Mossemeneer
EXECUTIVE PLANNER

Stephen Beattie
MANAGER DEVELOPMENT SERVICES