

## JOINT REGIONAL PLANNING PANEL (Sydney Region East)

<b>JRPP No</b>	<b>2012SYE061</b>
<b>DA Number</b>	<b>161/12</b>
<b>Local Government Area</b>	<b>NORTH SYDNEY COUNCIL</b>
<b>Proposed Development</b>	<b>NEW MIXED USE BUILDING</b>
<b>Street Address</b>	<b>11-19 ALBANY STREET, ST LEONARDS</b>
<b>Applicant/Owner</b>	<b>P. D. MAYOH ARCHITECTS</b>
<b>Number of Submissions</b>	<b>Original Notification – 29; Petition received with 39 signatures; Amended Plans Notification – 36</b>
<b>Recommendation</b>	<b>Approval with Conditions</b>
<b>Report by</b>	<b>Lara Huckstepp, Executive Planner</b>

### Assessment Report and Recommendation

#### EXECUTIVE SUMMARY

The development application is for a mixed use building comprising 10 levels including 79 apartments, 1373sqm of commercial space and three levels of basement car parking. Communal facilities are proposed to be located on the roof.

The site is located on the corner of the Albany and Oxley Streets and adjoins Pole Lane to the south.

Considerable public submission has been received to the development application with determinative concerns being impacts of loss of solar access, privacy and views from north-facing apartments within No.34 Oxley Street. This adjoining building was approved in 2002 and occupants of this building presently enjoy amenity across the subject site, which is currently under developed containing a four storey building and an on-grade car parking area. There have been no change in development controls relating to height, setbacks or podiums since the approval of the adjoining property and as such, a mixed use building was an expected outcome on the site dictated by Council's controls. As such, this amenity enjoyed is considered to be 'borrowed amenity'.

The proposed development results in a breach of the Building Height Control of 5.7m wherein a 26m height control is applicable. It is noted the breach caused by the residential levels is up to 2.2m. The remainder of the breach is caused by rooftop plant and community room. It has been established that those elements in breach of the control result in no material overshadowing, privacy or view loss impacts. Should the development be amended

to numerically comply with the statutory height control, the building would have similar impacts to adjoining properties. The applicant's SEPP 1 objection to this breach is considered to be well-founded and worthy of support in this instance.

The southern setbacks on the site have generally been provided with half of the required SEPP65 setbacks on their site which is considered to be reasonable in the circumstances. Due to the non-complying setbacks to Pole Lane from the existing building at No.34 Oxley Street, the application proposes additional privacy measures to all south-facing apartments below Level 8 to improve privacy impacts including obscure glazing to south-facing bedrooms, adjustable louvers/ blinds to south-facing balconies, and also proposes to provide solid balustrades.

The applicant has demonstrated that solar access impacts caused by the building are the same as would occur from a building complying with Building Height, setbacks and podium controls. Loss of district views generally occurs from complying building elements.

A total of 29 submissions were received in relation to the original development application as well as a petition containing 39 signatures. The amended plans were notified to residents with a further 36 submissions being received. Issues raised within the submissions include privacy, solar access, view loss, building height non-compliance, amenity of the locality, traffic parking and various other issues.

The development application is considered to provide a reasonable response to the site circumstances in this regard and is considered to be an expected outcome on the site dictated by Council's controls.

The development application is recommended for **approval** by the Joint Regional Planning Proposal.

## **DESCRIPTION OF PROPOSAL**

The development application proposes demolition of an existing commercial building and on-grade car parking and the construction of a new mixed use dwelling.

The proposal incorporates the following:

- Provision of cafe / restaurant space on the ground floor level and part first floor level.
- Provision of 79 apartments over levels 1 – 8, with the following composition:
  - 14 x studio apartments
  - 36 x 1 bedroom apartments
  - 25 x 2 bedroom apartments
  - 4 x 3 bedroom apartments
- Provision of communal facilities including a gym, meeting room and terraces on the rooftop.
- Basement over 3 levels to provide car parking for 54 residential vehicles and 17 non-residential vehicles. Also proposed are two additional disabled car parking spaces, 14 motorbike parking spaces, 26 bicycle spaces and 7 visitor bicycle spaces. A loading area is provided on the site adjacent to the Pole Lane frontage.

## Photomontage – Corner of Albany Street and Oxley Street



## STATUTORY CONTROLS

North Sydney LEP 2001

- Zoning – Mixed Use
- Item of Heritage - No
- In Vicinity of Item of Heritage – Yes (No.23 Albany St – Electricity Powerhouse)
- Conservation Area - No
- FSBL - No

S94 Contribution

Environmental Planning & Assessment Act 1979

SEPP No. 1 Objection

SEPP No. 55 - Contaminated Lands

SEPP No.65 – Design Quality of Residential Flat Development

SREP (2005) – Sydney Harbour Catchment

Local Development

Draft LEP 2009

## POLICY CONTROLS

DCP 2002

## DESCRIPTION OF LOCALITY

The subject site is legally described as SP 4213 and is located on the corner of Albany Street and Oxley Street with a rear frontage to Pole Lane. The site has an area of 1373sqm and is generally rectangular in shape with a frontage of approximately 40m to Albany Street and 34m to Oxley Street. The site slopes approximately 2m from the west down to the eastern boundary.

The site contains a commercial building over the western portion of the site and an open car park on its eastern portion.

The surrounding locality comprises mostly mixed use buildings and some existing commercial buildings.

Adjoining the site to the west at No.7-9 Albany Street is a commercial building with an open car parking area at the rear fronting Pole Lane. To the west of this commercial building at No.1-5 Albany Street is a 9 storey mixed use development.

Adjacent to the site on the northern side of Albany Street are a number of mixed use and commercial buildings. Directly opposite are a number of 6 storey mixed use buildings and a commercial building. Further to the west toward the Pacific Highway are a number of taller mixed use buildings, one of which has a height of 60m.

Adjacent to the site to the east is a heritage listed public utility building.

Adjacent to the site to the south at 34 Oxley Street is a 9 storey mixed use development. Of particular relevance to this development application this building's northern facade contains a church over the lowest two levels addressing Pole Lane. Above the church are 8 levels of residential development. The northern elevation of this building contain living areas, bedrooms and balconies all having a primary orientation towards Pole Lane.

## **RELEVANT HISTORY**

The subject development application was lodged on 28 May 2012. Following a preliminary assessment and consideration by the Design Excellence Panel the applicant was requested to undertake a number of amendments including:-

- Increase building separation to 34 Oxley Street
- Improve solar access to 34 Oxley Street
- Various improvements to internal apartment amenity and layout/composition of commercial tenancies
- Amendments to loading dock area
- Allowing for ground floor outdoor cafe seating to Oxley Street
- Various additional information

To address these issues the applicant submitted amended plans which were notified to surrounding properties. These amended plans included the following modifications:-

- Increased the southern setback to Pole Lane setting the building back above the podium by a further 1m for south-facing apartments and removal of protruding louvers, resulting in an additional 3m southern setback about the podium.
- Level 8 apartment has been set back from southern boundary by 3m with an uncovered balcony adjacent to improve overshadowing impacts.
- Removal of the fixed open louvers and replacing these with fixed obscure glass to all south-facing bedroom windows located on the southern building line below Level 8; providing retractable privacy louvers to all balconies on Levels 2 & 3; and providing sliding adjustable privacy shutters on Levels 4 – 7.
- Reduction in the extent of rooftop structures to set these further back from the southern boundary
- Various improvements to internal residential amenity and commercial area circulation
- Amendments to loading dock area to allow the commercial ground floor level to better address Pole Lane

- Provision of bi-fold doors along Oxley Street to allow for future cafe seating
- Various other amendments.

These amended plans were referred back to the Design Excellence Panel on 4 September 2012 wherein it was advised that the Panel supports the proposal subject to the applicant making some recommended changes which included:

- The loading area / southern ground and first floor level facade needs to be of a high quality given that it faces onto the front door of the adjacent church.
- The residential entry lobby to be increased in width
- Introduction of an internal stair connecting the ground and first floor commercial levels
- Solid balustrades should be used within Pole Lane to assist with privacy and screening of air conditioning units.
- Redesign of the corner apartment (south-eastern) to improve overshadowing impacts.

To address these issues, the applicant submitted further amended plans on 18 September 2012 which generally addressed all of the above-mentioned outstanding concerns of the Panel. In detail, the south-eastern Level 8 apartment was set back from the southern boundary, solid balustrades are proposed to all south-facing apartments, internal amendments to the residential lobby and commercial levels have been made and additional details have been provided with regards to the finishes of the loading area/commercial level facade.

## REFERRALS

### Building

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

### Engineering/Traffic

The application was referred to Council's Manager Traffic Planning (A.Lindaya) wherein the following comments were provided:

*'I refer to your request for comments on the proposed development at 11-19 Albany Street, St Leonards (DA 162/12). After reading the Traffic and Parking Assessment Report, dated May 2012, prepared by Terraffix Pty Ltd, I provide the following advice.*

#### **Existing Development**

*The existing site development is a 3 storey commercial building with a total floor area of approximately 1,988m<sup>2</sup>. The existing development includes an at grade car park (22 car parking spaces) and has access from both Albany Street and Pole Lane.*

#### **Proposed Development**

*The proposed development includes a new 10-storey mixed use residential/commercial development. It incorporates 79 residential apartments (10 x studio, 37 x one-bedroom, 26 x two bedroom, 6 x three-bedroom) and 1,210.5m<sup>2</sup> GFA of Non*

*Residential/Commercial space. The proposed development includes a 3 level basement car park.*

### **Parking**

*The applicant is proposing to provide a total of 72 parking spaces which generally complies with the North Sydney DCP 2002.*

*The applicant is proposing to provide a total of 14 motorcycle parking spaces which complies with the North Sydney DCP 2002.*

*Terraffic's traffic report remains silent on bicycle parking although the architectural drawing (A.102B) shows some bicycle parking. The North Sydney DCP 2002 requires Mixed Use Zones to provide 1 bicycle locker per 3 dwellings and 1 bicycle rail per 12 dwellings for visitors. The proposed development should provide a minimum of 26 bicycle lockers for residents/ employees and 7 bicycle rails for visitors.*

### **Loading**

*The applicant is proposing to provide an on-site courier/loading area capable of accommodating the AS2890.2 8.8m long Medium Rigid Vehicle (MRV). It is proposed to locate this loading area in Pole Lane, adjacent to the main driveway, parallel to the Pole Lane. The proposed off-street loading area should be supported as it removes the need to provide an on-street loading zone. This loading area should be made available for the residential component of the development, as well as the commercial and retail components of the development. The location should be clearly delineated as a loading/ unloading area*

### **Traffic Generation**

*Terraffic have utilised a traffic generation methodology taking into account the RMS Guide to Traffic Generating Developments and the parking rates outlined in the North Sydney DCP 2002. No objections are raised with this methodology.*

*Utilising the RMS Guide to Traffic Generating Developments, the site will generate in the order of 68 peak hour vehicle trips.*

*After discounting the traffic generated by the existing site, Terraffic have calculated that the proposed development will generate an additional 40 peak hour vehicle trips.*

*After analysing the traffic impacts on the surrounding road network, I concur with Terraffic that the additional traffic generated by the development can be accommodated on the road network.*

**Planning Comment:** A number of conditions have been recommended including the requirement for the applicant to prepare a Construction Management Plan for approval by the North Sydney Traffic Committee.

### **Engineering/Stormwater Drainage**

The application was referred to Council's Development Engineer (V.Ristic) who raised no objection to the proposed development subject to imposition of conditions of consent. It is noted that proposed condition includes modification to the tree protection structure in Pole Lane to reduce its size and ensure that a truck of at least 10m can easily access the loading area within Pole Lane.

## Landscaping

The application was referred to Council's Landscape Development Officer (B.Smith) who raised no objection to the proposed development subject to imposition of conditions of consent.

Existing street trees within Albany Street and Oxley Street are proposed for retention. It is recommended that an additional London Plane tree be required to be provided within Albany Street. Further, it is recommended that the existing bottle brush street tree in Oxley Street be replaced with a new London Plane Tree.

Trees within Pole Lane located within the applicant's site are proposed for removal. It is recommended that these be replaced within three Manchurian Pear Trees.

These requirements are recommended to be imposed by conditions of consent.

## Design Excellence Panel

The Panel considered the proposal on 3 July 2012 and provided the following comments:-

### ***'Panel's Comments***

*The Panel considers that the building design, including the building height, generally has merit and that the podium treatment is appropriate in the context of surrounding development, however, the Panel also has a number of concerns with the proposal.*

*In relation to building form, the Panel is concerned that that floorplate of the residential tower on each floor is too large with an excessive number of units per floor. As a result, the unit depth of a number of units is over 8m and several units have compromised internal amenity. The slots in the three facades are too narrow to provide adequate amenity for the units they service, and the effectiveness of the slots for cross ventilation purposes should be confirmed by a suitable expert. The hallways to the units in the north-east corner of the building are excessively long and without adequate natural light.*

*The Panel considers that 29% of units (23 out of 79 units) having a single aspect to the south is unsatisfactory and significantly greater than the 10% maximum under the RFDC. Further, the outlook and internal amenity of the south facing units on Levels 4-8 is considered to be compromised due to the fixed vertical louvers and landscaping (Black Bamboo) restricting access to natural light.*

*The Panel considers also that building separation to the adjoining mixed use building at No.34 Oxley Street to the south is inadequate at approximately 12m-14m, with the RFDC requiring 18m. In this regard the Panel notes that the RFDC building separation control relates to ambient light and built form considerations, as well as solar access and privacy, and that there is no conflict in this regard between the RFDC separation controls and the NSDCP setback requirements, as was suggested by the architect. The Panel advises that solar access impacts on No.34 Oxley Street are to be considered at mid-winter (not at equinox) and that excessive overshadowing of No.34 is a further indicator of an excessively large floorplate. In relation to solar access impact, it should be clearly demonstrated that the proposed height and setback has the same impact as that of a complying development.*

*At ground level, the Panel advises that the loading dock area could be reduced in size or redesigned to increase activation to Oxley Lane. Connection from the loading dock to the residential lift is too indirect and requires the use of fire stairs.*

*In response to concerns raised by the Panel, the architect advised that a separate commercial entry could be provided and the Panel considers that the residential lobby should be made larger and more inviting, with room for seating in order to promote social interaction between residents and improve the amenity of the lobby space. In this regard the architect advised that it was intended for the retail areas to open onto the residential lobby area through the use bi-fold doors or the like.*

*The Panel considers that the ground level treatment to Oxley Street could be greatly improved through the introduction of a colonnade with the retail areas being set back from the boundary, allowing the provision of undercover outdoor cafe seating in an area with reduced traffic noise and good solar access in the mornings.*

*At the roof level, the communal spaces should be excellent, but the planter box on the southern edge of the building should be modified to reduce overshadowing, and it was noted that the leading edge at the south east corner of the building would be likely to contribute to overshadowing impacts on No.34 Oxley Street.*

### **Conclusion**

*The Panel does not support the proposal in its current form. The Panel would encourage the applicant to submit amended plans in accordance with the above suggestions back to the Panel for further comment.'*

Amended plans received on 24 August 2012 were considered by the Panel at their meeting held on 4 September 2012. The Panel provided the following comments:

### **Panel's Comments**

*The Panel considers that the building design has merit and notes that the amended plans are a positive response to the majority of concerns raised. The Panel felt that some additional changes are still required to further improve the proposal.*

*The Panel commented on the proposed Pole Lane and facade treatment. Because the loading area faces onto the front door of the church building over the road, the facade to this area needs to be considered as a high quality street facade, not a service facade. Because the garage door is a relatively minor element there is a significant opportunity to consider this facade as a strong element.*

*The landscaping, the design of doors and finishes generally (and within the driveway) need to be considered thoroughly and illustrated in three dimensions: Pole Lane will become more active with pedestrian movement and the site is opposite the entry to the church.*

*The Panel felt that the residential entry lobby as proposed is mean and should be extended to allow for some seating/waiting area. The use of bifold doors between the two Oxley Street tenancies and the residential entry is not supported by the Panel. The residential entry needs to be secure at all times.*

*The Panel suggested that a stair be introduced from the commercial entry to allow for alternate access to the first floor area. The Panel noted the submission of a*



*ventilation report but did not have access to the report in time for consideration at the meeting.*

*The Panel also commented on the proposed street awnings and the impact on street trees. Further detail may be required with regard to the awnings.*

*The Panel raised concern about the finish of the balustrades. The Panel considers that the majority of balustrades should be solid to allow for screening of A/C units etc. and privacy.*

*The Panel noted that the corner apartment on the Lane on level 8 causes shadow on No.34 Oxley Street and is over the height control. The corner needs to be modified by deleting the apartment or a redesign that does not result in any additional shadow than a compliant building at the corner. In other respects the modified profile of the building satisfies concerns about shadow impacts.*

### **Conclusion**

*The Panel supports the proposal subject to the applicant making the recommended changes to the design.'*

Planning Comments: In response to these comments further amended plans were submitted on 18 September 2012 which provided the following modifications:

- Additional details were provided of the loading dock and south-facing commercial level facades which are considered to demonstrate an acceptable visual appearance. It is noted that the access corridor from the lobby was increased in width.
- Width of the residential lobby has been increased and internal bifold doors removed.
- A stair has been introduced to connect the ground and first floor commercial levels.
- Solid balustrades have been provided to all south-facing apartments.
- The south-eastern corner apartment on level 8 has been redesigned and setback from the southern boundary to improve overshadowing. The applicant has demonstrated that the proposed development does result in any additional overshadowing than would be caused by a building complying with Council's Height Control.

It is considered that the concerns of the Design Excellence Panel have been satisfactorily overcome by the amendments.

### **External Referrals**

#### **Augrid**

The application was referred to Ausgrid who raised no objections to the development at this stage. Ausgrid advised this was conditional upon the developer meeting Ausgrid requirements for the supply of electricity to the site.

#### **Roads and Maritime Services**

The application was referred to the Roads and Maritime Services who raised no objection subject to imposition of a number of conditions.

## Submissions

The owners of surrounding properties and the Holtermann Precinct were notified of the proposed development between 8-22 June 2012. A Notice was placed in the Mosman Daily on 7 June 2012 advertising the development application. A total of 29 individual submissions were received and a petition containing 39 signatures was also received. The issues raised in the submissions are summarised as follows:-

- Loss of privacy to all north-facing apartments within No.34 Oxley Street.
- Loss of solar access to north-facing apartments within No.34 Oxley Street.
- Loss of existing northern and eastern views/outlook from No.34 Oxley Street.
- Loss of existing breezes and ventilation to No.34 Oxley Street.
- Non-compliance with Building Height should not be allowed.
- Building separation to No.34 Oxley Street is insufficient.
- Proposal does not comply with SEPP 65.
- Building height would set a precedent.
- Building should be reduced to four storeys.
- Building should be no higher than existing office building.
- No balconies should be provided within Pole Lane.
- Increase need for energy consumption
- Privacy and views from surrounding apartment buildings will be compromised.
- Increased noise nuisance from proposed new apartments for No.34 Oxley Street.
- Detrimental noise and privacy impacts likely from ground floor cafes including deliveries.
- Odours and cooking smells from cafes / restaurants could be detrimental to residents in 34 Oxley Street.
- Loss of stand of living for residents in Oxley Street.
- Increased parking demand will be detrimental to the area.
- Increased traffic will be detrimental to the area.
- Location of Pole Lane driveway raise safety concerns for pedestrians and vehicles.
- Oppose any removal of trees.
- Non-compliance with Floor Space Ratio
- Area is becoming a concrete jungle.
- Inadequate green space in St Leonards to accommodate additional dwellings.
- Loss of property values.
- Shadow diagrams are inadequate.

A Petition was received from 39 residents which stated as follows:

*'We the owners and residents of 34 Oxley Street strongly object to the proposed Development Application DA162/12, 11-19 Albany Street, proposing to build a ten storey multi-use building backing onto Pole Lane.'*

*We demand that the application be stopped due to loss of sunlight to most north facing apartments in our building, noise from proposed cafes, proximity of the proposed building being too close to our residential building, danger from proposed car parking entrance being opposite our car park and increased traffic to an already congested area.'*

Amended plans were received on 24 August 2012 and notified to the owners of surrounding properties and the Holtermann Precinct between 7-21 September 2012, with a notice being placed in the Mosman Daily on 6 September 2012.

It is noted that Council received some submissions following this first notification period which advised they believe the notification area should be wider. For information, Council notified in accordance with all relevant DCP requirements. However, to address this concern a wider notification was undertaken for the notification of the amended plans.

A total of 36 submissions were received. The issues raised in the submissions are summarised as follows:-

- Loss of privacy to north-facing apartments within No.34 Oxley Street.
- Loss of solar access to north-facing apartments within No.34 Oxley Street.
- Loss of existing northern and eastern views/outlook from No.34 Oxley Street.
- Loss of existing breezes and ventilation to No.34 Oxley Street.
- Non-compliance with Building Height should not be allowed.
- Building separation to No.34 Oxley Street is insufficient.
- Proposal does not comply with SEPP 65.
- Building height would set a precedent.
- No balconies should be provided within Pole Lane.
- Increase need for energy consumption
- Privacy and views from surrounding apartment buildings will be compromised.
- Increased noise nuisance from proposed new apartments for No.34 Oxley Street.
- Detrimental noise and privacy impacts likely from ground floor cafes including deliveries.
- Odours and cooking smells from cafes / restaurants could be detrimental to residents in 34 Oxley Street.
- Loss of standard of living for residents in Oxley Street.
- Increased parking demand will be detrimental to the area.
- Increased traffic will be detrimental to the area.
- Location of Pole Lane driveway raises safety concerns for pedestrians and vehicles.
- Oppose any removal of trees.
- Inadequate green space in St Leonards to accommodate additional dwellings.
- Loss of property values.
- Impact upon adjoining church.
- Amended plans do not address concerns previously raised by residents.

**Note:** All submissions have been forwarded in full to the Joint Regional Planning Panel for their review.

## **CONSIDERATION**

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

## Compliance Table

STATUTORY CONTROL – North Sydney Local Environmental Plan 2001				
Site Area – 1373m <sup>2</sup>	Existing	Proposed	Control	Complies
Mixed Use Zone				
Building Height (Cl. 29) (max)	17m (approx)	31.7m	26m	NO
Floor Space (Cl. 31) (max)	1.7:1	1:1	1:1 - 2:1	YES

## DCP 2002 Compliance Table

DEVELOPMENT CONTROL PLAN 2002		
	<i>complies</i>	Comments
<b>6.1 Function</b>		
<b>Diversity of activities, facilities, opportunities and services</b>	Yes	<p>The proposed development incorporates a suitable diversity of uses.</p> <p>Communal roof top facilities containing a meeting room, gym and a terrace are provided.</p>
<b>Mixed residential population</b>	No however assessed as acceptable	<p>Council's DCP sets a yield of one apartment per 100 to 150 sqm of gross floor space. The yield proposed based upon the residential floor space is 80sqm being non-compliant with this expected outcome. Notwithstanding this, the merits of the mix and level of amenity the apartments will provide have been considered throughout this report.</p> <p>The application does not comply with the mix of apartments as required by the DCP as follows:</p> <ul style="list-style-type: none"> <li>• Studios – Max 15% allowed – 17% proposed</li> <li>• 1 Bed – Max 30% allowed – 45% proposed</li> <li>• 2 Bed – Min 40% required – 31% proposed</li> <li>• 3 Bed – Min 15% required – 5% proposed</li> </ul> <p>The above mix is a guide and suitable consideration must be given to locality and access to public transport. The originally submitted proposal sought consent for more 2 and 3 bedroom apartments. These have been reduced to studio and one bedroom apartments in part to accommodate the increased southern building setback.</p> <p>The applicant's justification has been provided as <i>'The dwelling mix has been resolved to respond to a demand for studio and 1 bedroom units in the area. A higher demand for studio and one bedroom units has resulted from the site's accessible location to the St Leonards Commercial Centre and its public transport hub, which allows for an easy</i></p>

		<p><i>commute to the City.'</i></p> <p>On balance, the proposed mix is able to be supported due to the site's location, access to public transport and other available housing choices in the area.</p>
<b>Maximum use of public transport</b>	Yes	The parking provision is generally within the allowable DCP limits. The site is well served by public transport being within 500m of St Leonards Train Station.
<b>6.2 Environmental Criteria</b>		
<b>Noise</b>	Yes (with condition)	Can be dealt with by an appropriate condition.
<b>Acoustic Privacy</b>	Yes (with condition)	No acoustic report was submitted with the application but can be dealt with by an appropriate condition.
<b>Visual Privacy</b>	No however assessed as acceptable	<p>The proposal does not meet the building separation requirements with regards to the southern Pole Lane elevation. <b>However the development will provide half of this setback measured from the centerline of Pole Lane to their southern façade</b> which is in line with expected SEPP65 and DCP outcomes. , being:-</p> <ul style="list-style-type: none"> <li>• 6m setback from ground to level 3 (12m setback required for up to 12m in height)</li> <li>• 9m setback from level 4 – 7 where this adjoins balconies and bedrooms (18m setback required for up to 25m in height).</li> <li>• 6m setback from level 4 – 7 where there are no windows located with façade (eastern end) (13m setback required for up to 25m in height)</li> <li>• 10m setback on Level 8 to balconies and windows;</li> </ul> <p>It is considered reasonable to provide half of this setback on the site. The adjoining property at No.34 Oxley Street had been approved under the then current DCP controls and provided non-complying building setbacks to their northern elevation. To compensate and in anticipation of development to the north, this property was required to provide privacy louvers to all north-facing balconies.</p> <p>Notwithstanding the above, the applicant was requested to further improve privacy to these apartments at No.34 Oxley Street. The amended plans now propose the following amendments to the southern facade:-</p> <ul style="list-style-type: none"> <li>• Frosted glass to all south-facing bedroom windows where these bedrooms are located on the rear building line on level 7 and below.</li> <li>• Louvers or blinds to all south-facing balconies (with the exception of Level 8).</li> <li>• Solid balustrades are now proposed to all balconies.</li> </ul> <p>On balance, given that the application provides half of the</p>

		<p>required setback on their own site, and proposes the above privacy measures to compensate for the limited setback provided on No.34 Oxley Street, the development application is considered to result in an acceptable level of privacy.</p> <p>The application proposes a reasonable privacy outcome in the circumstances.</p>
<b>Reflected light</b>	Yes (with condition)	Can be dealt with by an appropriate condition.
<b>Artificial light</b>	Yes (with condition)	Council's controls impose an 11pm curfew of lighting of rooftop facilities. As such, a condition will be imposed on the rooftop structures accordingly.
<b>Awnings</b>	Yes	The proposal includes continuous awnings to Albany Street and Oxley Street.
<b>Solar access</b>	Yes	<p>There is no shadowing impact on existing or proposed areas of public open spaces between 11.30am and 2.30pm on the winter solstice as a result of the proposed development.</p> <p>The proposal incorporates a communal roof top terrace available for use by residents which receives adequate solar access.</p>
<b>Views</b>	Yes	<p>Dwellings within No.34 Oxley Street currently enjoy district views to the north across the subject site given the site is presently under-developed containing a four storey commercial building and an on-grade car park.</p> <p>These district views will be removed by the proposed development for all north-facing apartments. This view will substantially be removed by elements of the building that comply with Council's height, setback and podium controls.</p> <p>The loss of district views is an expected outcome of the site dictated by Council's planning controls. The area has been zoned to allow high density residential development. Such a zoning will always result in development of lesser amenity than areas of lower density.</p> <p>The proposal is considered to result in reasonable impacts on this basis. This is discussed further within this report.</p>
<b>6.3 Quality built form</b>		
<b>Context</b>	Yes	The site is considered to be contextually appropriate based upon the controls applying to the site and existing surrounding development.
<b>Public spaces and facilities</b>	Yes	Appropriate integration of the non-residential areas within the public domain is proposed.
<b>Skyline</b>	Yes	<p>Notwithstanding the extent of non-compliance with the Building Height Control, it is considered that the resultant building height would be generally consistent with surrounding buildings.</p> <p>The rooftop structures including common area and roof plant are considered to be adequately articulated into the</p>

		overall design of the building. The proposed development will not negatively impact upon the skyline.
<b>Junction and termination of streets</b>	Yes	The intersection of Albany and Oxley Street is considered to have been appropriately addressed.  The building has been set back 3m from Pole Lane and as such no further splay is required.
<b>Streetscape</b>	Yes	Appropriate activation of the Albany Street and Oxley Street frontages would be achieved by the proposed non-residential uses. Bifold doors are proposed across the eastern façade to provide for future café seating.
<b>Subdivision</b>	Yes	The DCP sets a minimum lot frontage of 20-40m for the subject site. The site has a frontage of 40m and complies with this control.  The adjoining building at No.7-9 Albany Street is an existing commercial building with a frontage of approximately 19.5m. This site width allows for future development of the site and the site is not unreasonably isolated by the proposal.
<b>Setbacks</b>	Yes  No (however assessed as acceptable)	Setbacks will be provided in accordance with the Character Statement.  The proposed development will reduce solar access to a number of existing apartments within No.34 Oxley Street. However, these impacts occur from generally complying building elements. Refer to solar access discussion.
<b>Entrances and exits</b>	Yes	Residential and commercial entry areas are separated and defined.
<b>Street frontage podium</b>	Yes	A four storey podium has been provided on Albany Street and Oxley Street. Due to topography its height ranges from 12m – 15m, exceeding the 13m control. However, the resultant podium is considered to be appropriate for the site. Podium setbacks are considered to be acceptable.
<b>Laneway frontage podium</b>	Yes	A 1.5m setback is required to Pole Lane with a further 1.5m setback above the Podium. However, the applicant has generally set back the building on Pole Lane by 3m. A further setback on the western end of the site above a four story podium ranging in height from 12.5m – 13.7m is provided. Podium setbacks are considered to be acceptable.
<b>Building design</b>	No (however assessed as acceptable)	Floor to ceiling heights for the Oxley Street restaurant/cafes will be 3.6m complying with Council's controls.  However, floor to ceiling heights on ground and first floor eastern commercial space ranges from 2.2m – 3.3m. This non-compliance is supported due to their ability to still provide reasonable amenity to commercial uses.  Residential levels above will generally provide 2.7m floor to ceiling heights.  Balconies have been appropriately incorporated into the building design, the building is considered to be appropriately articulated and materials and finishes are

		acceptable.
<b>6.4 Quality urban environment</b>		
<b>High quality residential accommodation</b>	No (however considered acceptable)	<p>The DCP specifies the following minimum unit sizes:</p> <ul style="list-style-type: none"> <li>• Studio apartments – 40sqm</li> <li>• 1 bedroom apartments – 55sqm</li> <li>• 2 bedroom apartments – 80sqm.</li> <li>• 3 bedroom + apartments – 100sqm.</li> </ul> <p>The proposal comprises the following unit sizes:</p> <ul style="list-style-type: none"> <li>• Studio apartments 48 – 55sqm.</li> <li>• 1 bedroom apartments 46.7 – 75sqm</li> <li>• 2 bedroom apartments 80 – 93sqm</li> <li>• 3 bedroom + apartments – 112.7 – 118.5sqm.</li> </ul> <p>The proposal complies with the minimum dwelling size with regards to studio, 2 bedroom and 3 bedroom apartments. With regards to one bedroom apartments, 11 are less than 55sqm. The RFDC sets a minimum of 50sqm, of which 4 of these comply. Of the remaining 7, 3 of these are 49sqm or greater. On balance, the other four apartments with 2 having an area of 46.7sqm and 2 with an area of 48sqm, are each greater than a studio apartment size and are considered to provide appropriate residential amenity. Any requirement to reduce these to a studio size in order to comply with minimum standards would be without merit.</p> <p>All apartments are proposed to have balconies.</p> <p>Primary corridors adjacent to the lift will have a minimum width of 2m. Some north-south corridors are limited to 1.5m however circulation is considered to be acceptable.</p> <p>Two lift cores are provided to each residential level.</p> <p>Habitable rooms will each have a depth no greater than 10m from a window within any apartment.</p> <p>78% of apartments are provided with cross ventilation. The applicant submitted a Ventilation Report in this regard.</p> <p>All apartments have a minimum width of 4m.</p> <p>A number of single aspect apartments are greater than 8m in depth however these are considered to result in an acceptable amenity for the occupants despite this non-compliance.</p> <p>71% of apartments will receive 2 hours of solar access during midwinter which is considered acceptable based upon the locality's density.</p>
<b>Balconies</b>	No (however	All apartments are proposed to be provided with balconies.

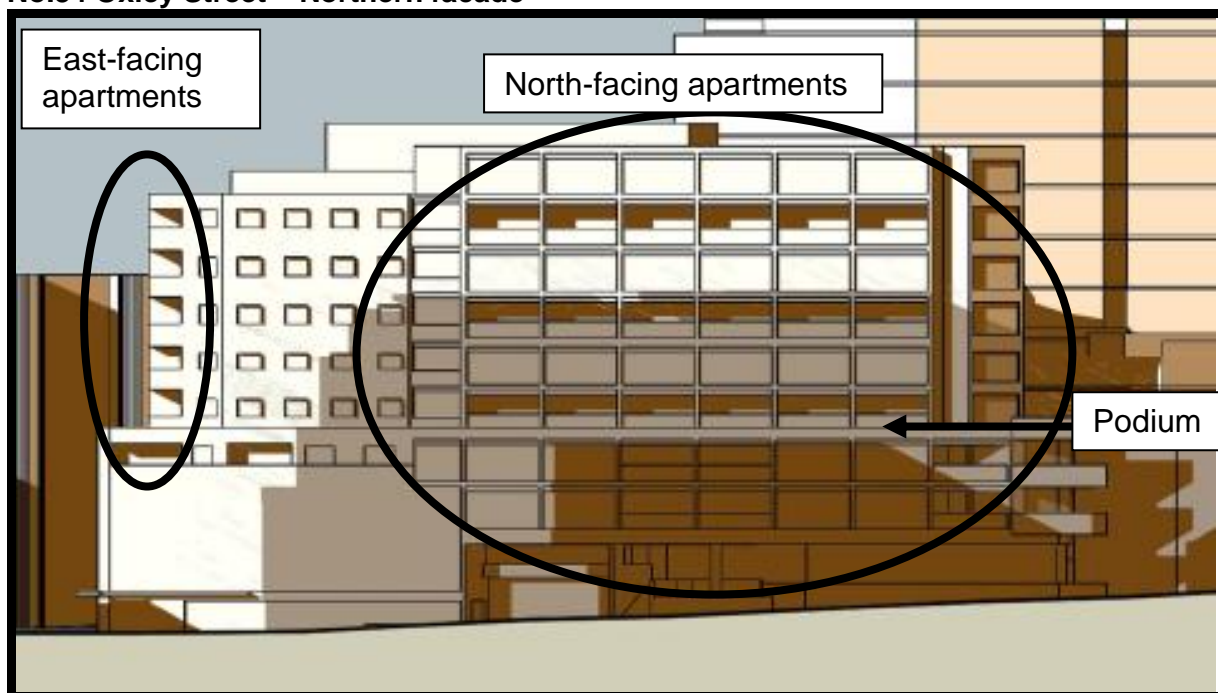


	assessed as acceptable)	10 south-facing balconies over Levels 2 & 3 are proposed at less than the minimum of 8sqm. 6 of these will be over 7sqm and this non-compliance is considered to be minor. 4 of these will have a balcony size of 6.1sqm however these each serve studio apartments which exceed the minimum apartment size. On balance, the development scheme provides all apartments with sufficient open space.
<b>Accessibility</b>	Yes	The applicant has submitted an Access Report to detail that the development satisfies the relevant BCA, Council, SEPP65 and DDA Access Code requirements pertaining to accessible pathways for visitable and adaptable housing for people with disabilities.
<b>Safety and security</b>	Yes	The proposed development raises no known safety and security concerns.
<b>Car parking</b>	Yes	<p>Council's DCP requires 54 residential car parking spaces be provided based upon the proposed mix of apartments and the proposed development complies in this regard.</p> <p>With regards to commercial car parking, 1.2 spaces are required for the first floor commercial and the application proposes to provide 2. With regards to the café/restaurant space 14.2 spaces are required and the applicant proposes to provide 15. Car parking provision will generally comply with DCP controls in this regard.</p> <p>It is proposed to have 14 Motorbike parking spaces which complies with Council's requirement of 6 spaces. No concerns are raised with this over provision.</p> <p>A loading area is proposed within Pole Lane in accordance with Council's controls.</p> <p>Council's Traffic Engineer has assessed the proposed development and concludes it generally complies with DCP requirements. Refer to referral comments.</p> <p>While additional parking provision may be seen to be a desirable outcome by some, it is not envisaged by current parking and transport policies.</p>
<b>Bicycle storage</b>	Yes	Council's DCP requires 26 bicycle lockers and 26 are provided. Council's DCP requires 6.5 visitor bicycle rails and 7 are provided.
<b>Vehicular access</b>	Yes	Council's Development Engineer supports the proposed Pole Lane vehicular access.
<b>Garbage Storage</b>	Yes	Garbage chutes are provided on each level of the development and a store area is located at the rear of the property. The loading area to Pole Lane will be conditioned to ensure it can accommodate a garbage truck.
<b>Commercial garbage storage</b>	Yes	Separate residential and commercial store areas are proposed.
<b>Site facilities</b>	Yes	A storage area is provided for each apartment within the basement.
<b>6.5 Efficient use and management of resources</b>		
<b>Energy</b>	Yes	A BASIX Certificate for the residential component of the

### **Additional Notes: Overshadowing**

The proposed development will result in a loss of solar access for a number of apartments within No.34 Oxley Street. There are 29 apartments having their primary outlook from this property on the northern elevation across the subject site. A further 6 apartments have their outlook to the east, however have a number of kitchen and bedroom windows along this northern elevation, as can be seen below:

#### **No.34 Oxley Street – Northern facade**



East Facing Apartments – The upper three levels of apartments will continue to receive at least 5 hours of sunlight within midwinter and will comply with Council's controls.

The lower three apartments will experience overshadowing. North-facing kitchen windows will receive sunlight between 9am and 10am, however will be overshadowing after this time. Bedroom windows will also be overshadowed during the midwinter period. However, these apartments each have east-facing balconies which all remain unaffected and will receive the required minimum of 3 hours within the morning periods.

#### **North Facing Apartments above podium -**

A total of 29 apartments have their primary orientation to the north mostly across the subject site. The upper 6 levels comprise all two storey apartments, with their bedroom levels located above their living areas. The upper four floors (comprising 12 two storey apartments) will continue to receive four hours of sunlight between 10am and 2pm during the midwinter solstice complying with Council's controls.

With regards to the row of 6 two storey apartments above the podium, three western-most apartments will continue to receive a minimum of two hours sunlight during the midwinter solstice. However the eastern three apartments will be reduced to 1.5 hours; 1 hour; and no sunlight respectively.

Therefore, three of these six apartments will be overshadowed and receive less than Council's minimum standard at this time. It is noted that during the equinox, all six apartments will receive unobstructed sunlight between 9am - 3pm.

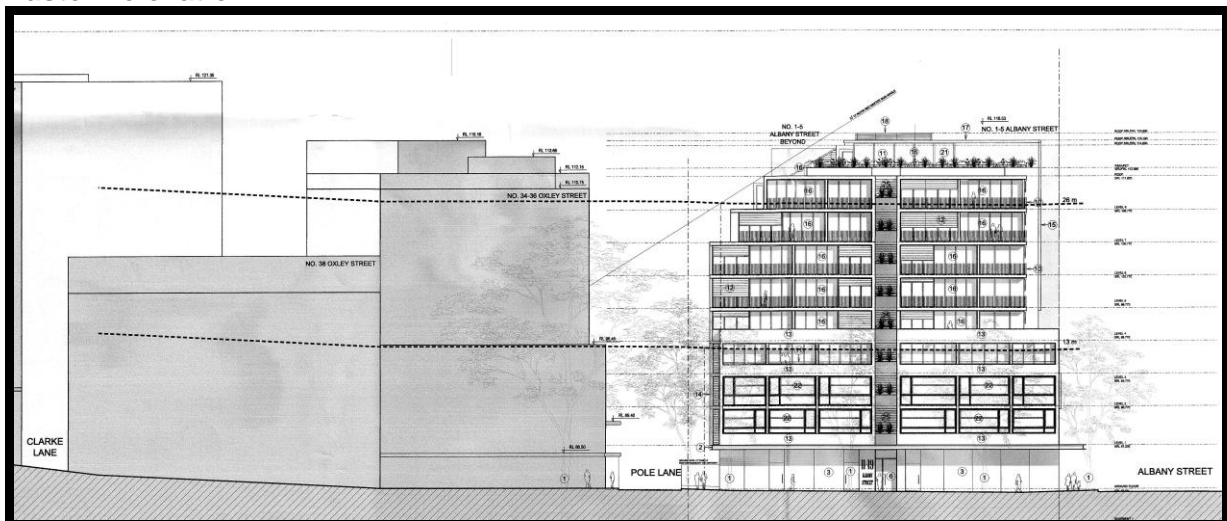
#### North Facing Apartments below podium

A total of 11 single level apartments are located below the podium over Levels 1 and 2. Of these, four apartments would receive a minimum of 2 hours sunlight at this time. A further four apartments would receive 1.5 hours of sunlight at this time. Two remaining apartments would be reduced to receiving no sunlight at this time, with the remaining apartment currently receiving no sunlight to their primary living area in any case.

#### Conclusion

The proposed development results in a total of 10 apartments of the 29 north-facing apartments being non-complaint with the minimum 2 hour solar access requirement. Of these 10 apartments, 5 apartments would receive 1.5 hours of sunlight, 1 apartment would receive 1 hour of sunlight, and the remaining 4 apartments would be reduced to little to no sunlight during this time.

#### **Eastern elevation**



The apartments within No.34 Oxley Street presently receive solar access to their northern facades over the existing generally under-developed subject site. The amended plans increased southern building setbacks to reduce overshadowing to a level that is consistent with a building that complies with Council's building height, setback and podium controls. The proposed impacts are an expected outcome dictated by the site controls and the proposed development is supported in this regard.

#### **Additional Notes: View Impacts**

Existing district views are enjoyed to the north from most existing dwellings within No.34 Oxley Street. These district views currently exist due to the generally under-developed nature of the subject site comprising a four storey commercial building and an on-grade carpark.

Dwellings with an eastern aspect within this adjoining development at 34 Oxley Street will retain these views. However, dwellings within the central northern façade of No.34 Oxley Street will lose these existing district views. Due to the height of the proposed development

being generally consistent with No.34 Oxley Street, this view loss would generally occur from complying development components.

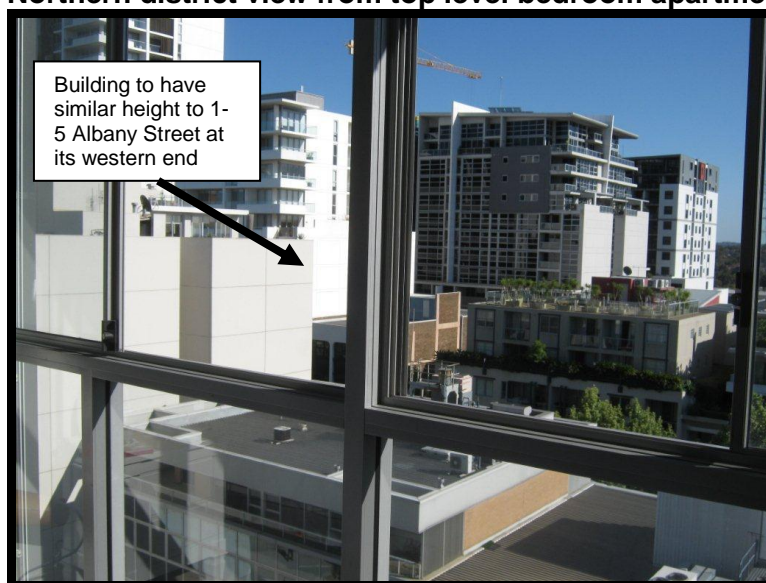
Existing dwellings on all levels below the upper level of bedrooms (Level 7) will lose all district views resulting from complying building elements.

With regards to the level of bedroom windows, the proposed development will remove the district outlook from these windows. Should the building be reduced to be numerically compliant, a strip horizon view would be retained to the north-east of the building above the roof of the new mixed use building from a number of these bedroom windows. However, any amendments to facilitate this would not be reasonable given that:

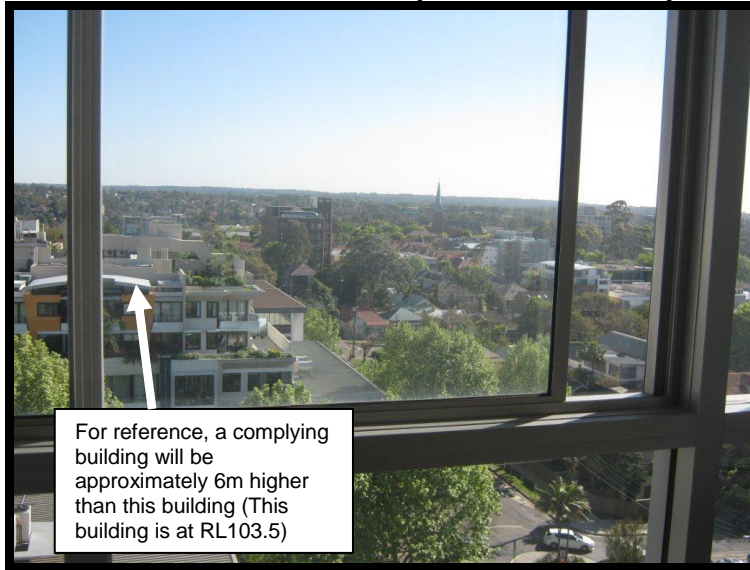
- The view in question is a district outlook and is not an iconic view.
- The quantum of district view available from a fully compliant building would be a strip horizon view and unlikely to be easily read over the top of the proposed mixed use building. The quality of the view is substantially reduced by complying building elements.
- These views are envisaged by bedroom windows. All district views from living areas and balconies will be removed by compliant building elements.
- The bedrooms in question on Level 7 within No.34 Oxley Street were permitted to be constructed at a building height over 26m and are themselves non-complying elements. It is considered unreasonable to require numeric compliance for the subject building in order to retain a strip horizon view from a recently approved non-compliant element on an adjoining property.
- The roof top terrace at No.34 Oxley Street located within their north-east corner was also approved at a height above Council's Building Height Control.

The existing view enjoyed from the top bedroom level of Apartment No.710, 34 Oxley Street can be seen below to demonstrate the existing outlook currently available to these residents.

#### **Northern district view from top level bedroom apartment (Apartment No.710)**



### Northern district view from top level bedroom apartment (Apartment No.710)



Outlook from other buildings to the north and west across the site would not be materially impacted given that the building will be of a height generally consistent with No.34 Oxley Street, thus having minimal impacts on southern views.

There is argument that the development should comply with the current height control. For the most part this would not return quality of outlook / views removed by a compliant development.

### NORTH SYDNEY LEP 2001

#### 1. Permissibility within the zone:

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

#### 2. Objectives of the zone

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

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

The proposed development will provide benefit in terms of increasing the range of living, employment, recreational and social opportunities within the St Leonards area. Impacts of the proposed development are considered to be reasonable given that the development is a generally expected outcome for the site. The proposed development will be consistent with the objectives of the zone.

### 3. Building Height

Clause 29(2) of NSLEP 2001 states that “A building must not be erected in the mixed use zone in excess of the height shown on the map.” Pursuant to Map 2 – ‘Floor Space Ratios, Heights and Reservations’ of NSLEP2001, a maximum height of 26 metres is applicable to the subject site.

The proposed development results in an overall building height of 31.7m. It is noted that the height of the residential level (Level 8) has a maximum height ranging between 26.5m – 28.5m. The additional breach occurs from the roof plant and community facilities. The applicant has submitted a SEPP1 Objection in relation to the breach.

The proposal is considered against the objectives of Clause 29 of NSLEP 2001 below:

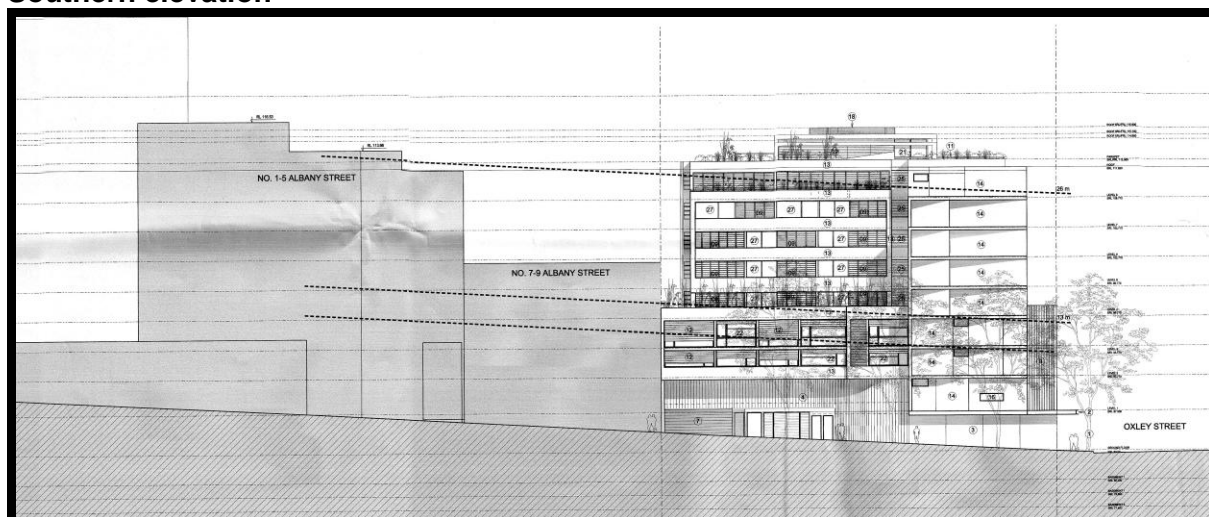
- (a) *Ensure compatibility between development in the mixed use zone and adjoining residential areas and open space zones*

The site does not immediately adjoin residential or open space zones.

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

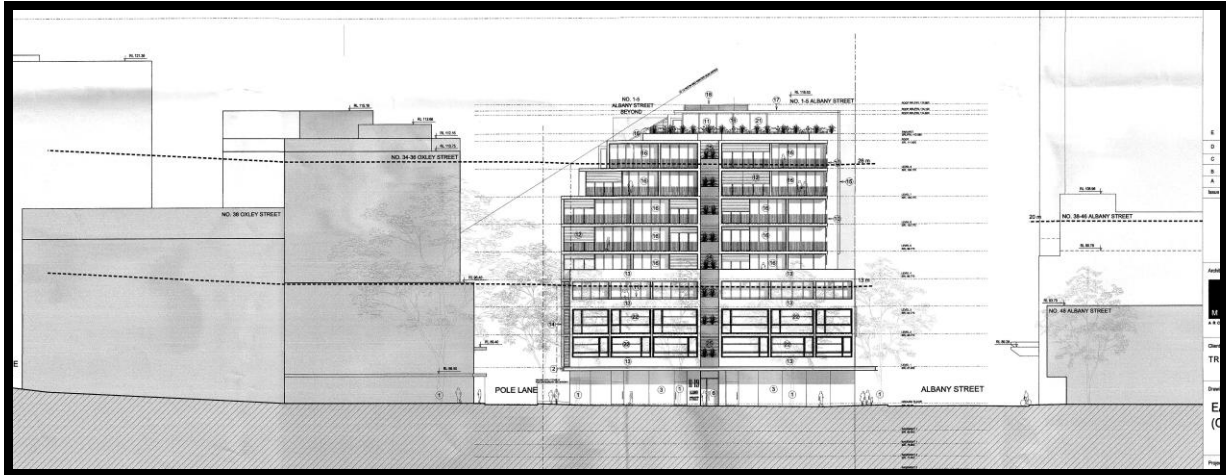
The proposed scale and density of the development promotes the character of the neighbourhood. The louvered rooftop plant will have a height of RL115.76. The adjacent building at No.34 Oxley Street developed under current and comparable controls to the subject site, has a height of RL116.53 which also approved components above these controls. The proposed height is contextual when viewed with surrounding buildings such as No.1-5 Albany Street and No.34 Oxley Street as can be seen below. It is noted that development to the north on Albany Street has a lower height limit of 20m.

#### Southern elevation

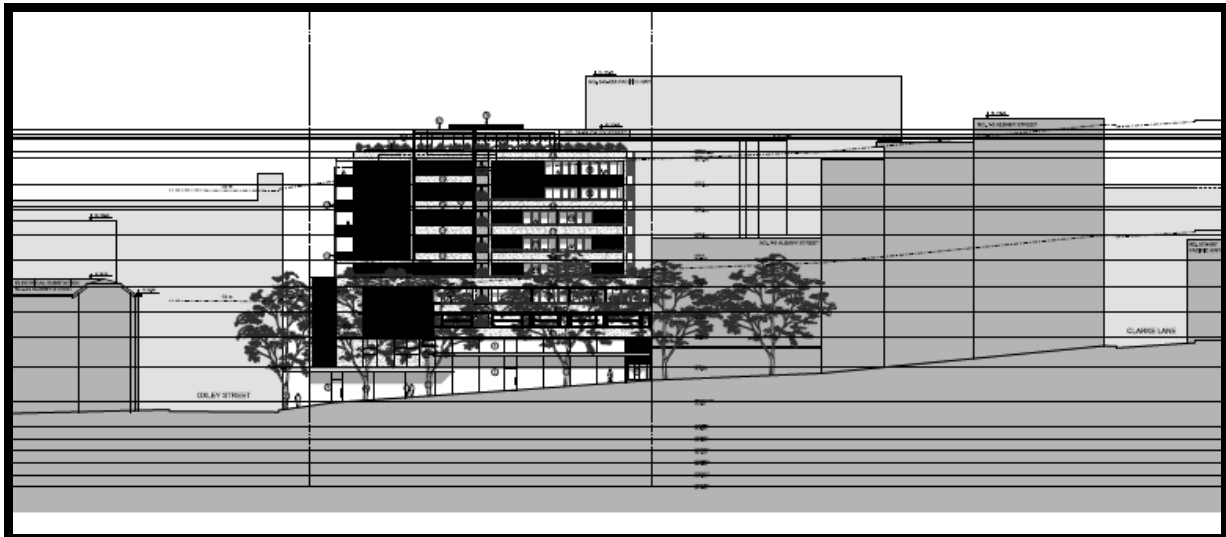




## Eastern elevation



## Northern Elevation



The roof top communal structures are located above the height limit however in this instance are considered to have merit for the following reasons:-

- There are no material overshadowing, privacy or view impacts caused by these structures.
- The site is a substantial size and can accommodate generous setbacks from the boundary to these structures.
- The structures have been set to the north-east corner of the site wherein the least impact to surrounding dwellings would occur.
- The location of community facilities on the roof is a common feature of the locality and provides a communal benefit to the building's occupants. A rooftop terrace is located in the north-east corner of No.34 Oxley Street which has a height that is non-complying with the 26m control.

The resulting height is considered to be contextually appropriate and will promote the desired future character of the locality as dictated by the applicable site controls.

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

The development provides adequate amenity to all proposed dwellings in accordance with this objective as set out within this report.

With regards to neighbouring buildings, as set out within this report, the proposed development does result in a reduction in solar access, privacy and district views for dwellings within No.34 Oxley Street. However, the existing amenity enjoyed by these dwellings is considered to be 'borrowed' amenity given that it is enjoyed across a currently under developed site. The application demonstrates that resulting impacts are consistent with that of a complying building height, despite the numeric breach. In particular:

- The southern building setback has been increased and the applicant has demonstrated that overshadowing impacts resulting from the building would be the same as would result from a building that complied with the height, setbacks and podium controls on the site. Those areas in breach of the Building Height Control therefore cause no more overshadowing than a compliant building.
- With regards to privacy, proposed windows and balconies in breach of this control comprise only the south-facing apartment on Level 8 (Apartment No.806). It is noted the balcony floor level and more than half of the proposed window complies with the Building Height Control. This balcony is set 16m from the southern façade of Oxley Street and the window is set 18m from the southern façade of Oxley Street. Privacy impacts from this breach are considered to be reasonable.
- Loss of district views resulting from those components in breach of the Building Height control is minimal. The extent of impact is a strip of district outlook available from bedroom windows. The primary outlook currently available from dwellings to the north and north-east will be removed by complying building elements.

On the basis of the expected development outcome on this site, impacts are considered to be reasonable. The proposed development has reduced impacts to an acceptable level by way of setbacks and privacy measures provided on the southern façade. For these reasons, the proposed development is considered to ensure reasonable amenity continues to be afforded to neighbouring buildings in the context of the site in accordance with objective (c).

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

An acceptable of amenity is provided to all dwellings within the proposed building.

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

The land falls from west to east by approximately 2m and no additional stepping of the building is considered warranted in this instance.

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

The proposed height has been considered on its merits as acceptable.



## *Conclusion*

The proposed development is considered to satisfy the objectives of the control. The applicant's SEPP 1 Objection is considered to be well-founded and worthy of support. Strict compliance with the numeric standard is considered to be unnecessary and unreasonable in this instance.

### **4. Floor Space**

The proposal is compliant with the non-residential floor space range for the site pursuant to Clause 31 of NSLEP 2001.

### **5. Design of Development**

The proposed development incorporates the non-residential component at the ground and first floor level. Separate entries are provided between the residential and commercial entries. Podium setbacks are considered to be acceptable. The proposal is considered to satisfy the provisions of Clause 32 of NSLEP 2001.

### **6. Excavation of Land**

Significant excavation of up to 12m is proposed to accommodate car parking and services. Conditions recommended by Council's Development Engineer will be imposed that include the requirements for a geotechnical investigation to be undertaken as well as various dilapidation surveys. Subject to these conditions, the proposal is able to comply with the provisions of Clause 39 NSLEP 2001.

### **7. Heritage Conservation**

The adjoining utility building at No.21 Albany Street is a heritage listed building. It is considered that adequate separation is provided to this building and proposed development will not result in any adverse impacts upon the item nor its setting in this regard.

### **8. SEPP No.55 (Remediation of Land) 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 based on the previous uses of the site, contamination is unlikely to be an issue.

### **9. SEPP No.65 (Design Quality of Residential Flat Development)**

The application has been assessed by the Design Excellence Panel having regard for the Design Quality Principles set out in SEPP65. The Panel advised they support the proposal subject to the applicant undertaking some suggested changes. As set out within the referrals section of this report, the submitted changes generally addressed the outstanding concerns raised by the Panel. The proposal is assessed against the principles as follows:-

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

The context, scale and form of the development is considered to be in keeping with the surrounding locality and the future desired character of the locality.

- Principle 4: Density

The dwelling yield of development is greater than that identified within the Residential Development Strategy for North Sydney. However, the mix of apartments, amenity of apartments and building envelope are considered to be acceptable. The Panel's concerns with amenity have been addressed. The proposed density is considered to be generally acceptable.

- Principle 5: Resource, energy and water efficiency

A BASIX Certificate has been provided with the application. Adequate cross ventilation and solar access has been provided.

- Principle 6: Landscape

Limited opportunity exists on the site for planting given the mixed use zone location. However, most of the existing street trees will be retained. Further a roof garden is proposed and additional planters adjacent to some balconies. The level of landscaping proposed is acceptable.

- Principle 7: Amenity

A total of 71% of apartments will receive 2 hours of solar access during midwinter exceeding Council's control of 70%; and 78% of apartments will be provided with cross ventilation exceeding the minimum of 60%. Balconies are provided to each apartment. An acceptable level of amenity is provided to each apartment.

- Principle 8: Safety and Security

There are no known safety and security concerns arising from the proposed development.

- Principle 9: Social Dimensions

The proposed development provides an acceptable mix of dwellings having regard for the site's context. A high quality rooftop communal facility is proposed which will be of significant benefit to the building's occupants.

- Principle 10: Aesthetics

The design of the development is well modulated and articulated. The proposed development will have an acceptable streetscape appearance and will have a positive impact within the locality.

## **10. SEPP (Building Sustainability Index: BASIX) 2004**

A suitable BASIX Certificate has been submitted with the application.

## **11. SEPP 2007 (Infrastructure)**

The application was referred to the RMS who have recommended conditions to be imposed.

## **12. SREP (Sydney Harbour Catchments) 2005**

The site is located within the area covered to the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. However, no primary views to the site exist from the

Harbour. It is considered that the proposed development would be acceptable with regards to this Policy.

### **13. Draft NSLEP 2009**

The Draft North Sydney Local Environmental Plan 2009 is 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 build on the existing planning objectives, strategies and controls in the current NS LEP 2001 in relation to this site. There is no change to Building Height or Floor Space Ratio proposed under the draft controls.

The proposal is considered satisfactory in terms of the Draft LEP 2009. However little weight can be placed on this draft in any case.

### **14. Planning Proposal to restrict the use of SEPP 1**

At its meeting of 25 June 2012 Council considered a planning proposal that seeks to restrict the use of SEPP 1 within the St Leonards / Crows Nest Planning Study area. Under the proposed LEP amendment, the use of SEPP 1 to support a breach of the height control within the subject area would be limited to the approval of breaches of 3m or less, excluding lift overruns and roof plant. This is to enable approval of habitable storeys which the height limit would dissect, as well as lift overruns and roof plant, where full compliance is considered unreasonable or unnecessary. Council endorsed the planning proposal and resolved to send it to the Minister for Planning in order to receive a Gateway determination.

This amendment is not certain or imminent. However, it is noted that the proposed height breach within the current proposal in the residential levels is 2.2m. The additional breach over 3m results from roof plant and common communal facilities.

### **ST LEONARDS / CROWS NEST PLANNING STUDY PRECINCT 1 DRAFT**

The above-mentioned draft plan has been recently publicly exhibited. This study aims to develop new strategies and initiatives that will provide for a number of outcomes including new open space in the locality, rejuvenation of the commercial area and improved urban design outcomes. The study identifies the subject site as having the potential for additional height of up to 40m along the northern end of the site. This study however is neither immanent nor certain and carries no weight at this time. The proposed development can be considered only having regard to current controls.

## **Suspensions of Covenants, agreements and similar instruments**

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

## **DEVELOPMENT CONTROL PLAN 2002**

### ***Relevant Planning Area (St Leonards/Crows Nest Planning Area)***

The application has been assessed against the relevant controls in the DCP 2002 with regards to the St Leonards / Crows Nest Planning Area. All controls including setbacks and podiums have been considered within this report as acceptable. The characteristic height is considered to have been provided by this development. The proposal is considered to be consistent with the future desired character of the area.

## **SECTION 94 CONTRIBUTIONS**

Due to the provision of additional residential dwellings and commercial floorspace, a contribution would be levied in accordance with Council's Section 94 Contributions Plan. A credit will be provided for the existing floor space. The total contribution required is \$910,909.64 and a condition of consent will be imposed accordingly.

## **DESIGN**

The design of the proposed development is unacceptable as detailed previously in this report.

## **MATERIALS**

The application is acceptable in this regard.

## **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<br>Environmental Planning and Assessment (Amendment) Act 1979 | Yes |

## **CLAUSE 14 NSLEP 2001**

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

The provisions of Clause 14 of NSLEP 2001 have been examined. It is considered that the development is consistent with the specific aims of the plan and the objectives of the zone and of the controls. As such, consent to the development may be granted.

## **SUBMITTORS CONCERNS**

Issues raised within submissions relating to views, privacy, solar access, residential amenity, setbacks, building height non-compliances, SEPP 65 compliance, parking, traffic, street trees and general amenity issues have been generally addressed within this report.

It is acknowledged that the proposed development will reduce the level of solar access, privacy and district views enjoyed by No.34 Oxley Street. This existing amenity enjoyed by these properties is considered as 'borrowed' amenity given that it is enjoyed across a generally under-developed site. The proposed development to construct this mixed use building is similar in nature and form to that which was approved on the site at No.34 Oxley Street in 2002 and has since been constructed. The proposed development is considered to be an expected outcome of the site within a mixed use zone as dictated by Council's controls. These impacts have been discussed in detail throughout this report.

Issue of noise and nuisance resulting from the proposed future cafes has been raised. Separate development applications would be required for these uses however such uses are permissible and appropriate within the mixed use zone and can be managed by conditions.

Concerns have been raised with regards to traffic and parking. The proposal is generally code compliant with parking. Council's Development Engineer raises no concerns with regards to traffic generation.

Loss of property values has been raised however this is not a relevant planning issue that can be considered.

## **CONCLUSION**

The proposed development is considered to demonstrate reasonable compliance with Council's controls. The breach of the Building Height Control demonstrates no material impacts with regards to privacy, solar access and view loss, and the resultant height is considered to be contextually appropriate having regard for surrounding development.

The breach in height of the residential levels is limited to no more than 2.2m which has been assessed as being acceptable. It is noted that the roof top community structures are located wholly above the building height control. These structures in this instance and in this locality are not considered to result in any material impacts given their generous setbacks from the south and west boundaries, and the structure has been generally set to the north of the roof plant. The benefit to the occupants of the building provided by the communal space is considered to be significant. For these reasons, this breach in Building Height is supported.

Substantial public concern has been raised in submissions objecting to a loss of amenity with regards to solar access, privacy and loss of district views to the north-facing dwellings located within No.34 Oxley Street. This existing amenity enjoyed by these properties is considered as 'borrowed' amenity given that it is enjoyed across a generally under-developed site. The proposed development to construct this mixed use building is similar in nature and form to that which was approved on the site at No.34 Oxley Street in 2002 and has since been constructed. However, to compensate for the lack of northern setbacks provided by No.34 Oxley Street, the proposed development has provided greater setbacks than this property, providing shadowing impacts that would otherwise occur from a complying building on the site. It can be seen that the loss of district views substantially occurs from complying building elements.

Should the development be amended to numerically comply with all of Council's controls, the building would have a similar impact upon these properties. The proposed development is considered to be an expected outcome for the site under current planning controls.

The option remains open to the JRPP to either by appropriate condition or call for amended plans for removal or reduction of the roof top structures.

The Design Excellence Panel generally considered that setbacks, built form, and residential amenity was acceptable.

For these reasons, having assessed the development application under the provisions of the Environmental Planning and Assessment Act 1979, North Sydney Local Environmental Plan 2001, Development Control Plan 2002 and all other relevant statutory and non-statutory controls, the proposal is recommended for approval subject to the imposition of conditions.

## **RECOMMENDATION**

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

**THAT** the Joint Regional Planning Panel, as the consent authority, grant development consent to 2012SYE061 – Development Application No.205/12 for the construction of a new mixed use building at No.11-19 Albany Street, St Leonards subject to the attached conditions.

**Lara Huckstepp**  
**EXECUTIVE PLANNER**

**Stephen Beattie**  
**MANAGER DEVELOPMENT SERVICES**

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