

JRPP No:	2012SYE062
DA No:	DA.179/12
PROPOSED DEVELOPMENT:	521 Pacific Highway, Crows Nest Demolition of existing structures, excavation and construction of 3.5 levels of basement parking for 113 cars, and construction of a 12 storey mixed use building (43.57m height) comprising: ground level and first floor retail; child care centre on second floor; and 88 residential apartments over Levels 2-11.
APPLICANT:	Creative Resolution (Australia) Pty Ltd
REPORT BY:	Geoff Mossemenear, Executive Planner, North Sydney Council

Assessment Report and Recommendation

EXECUTIVE SUMMARY

The development application is for the demolition of the existing building and site structures, excavation and construction of 3.5 levels of basement parking for 113 cars, and construction of a 12 storey mixed use building (43.57m height) comprising:

- Ground level and first floor retail;
- Child care centre on second floor; and
- 88 residential apartments over Levels 2-11.

The site is located on the corner of Pacific Highway and Oxley Street with a rear frontage to Clarke Lane. The site has an area of 1668m² and is generally rectangular in shape with a frontage of approximately 50m to Pacific Highway and 34m to Oxley Street. The site slopes gently from Pacific Highway down to Clarke Lane at the rear by approximately 2m.

The development application proposes a 23.57 metre breach of the NSLEP2001 height control of 20 metres. Variations to planning controls of the magnitude sought by the subject development application should be the subject of a planning proposal to amend NSLEP2001 planning controls.

The SEPP 1 objection is not considered well founded and the application must fail. The location of the child care centre is also considered inappropriate and setbacks to the lane and the corner tower need to be increased. Parking, dwelling mix and balconies are also issues. There are a number of design issues with the proposal that need to be addressed in any future proposal.

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

DESCRIPTION OF PROPOSAL

The development application is for the demolition of the existing building and site structures, excavation and construction of 3.5 levels of basement parking for 113 cars, and construction of a 12 storey mixed use building (43.57m height) comprising:

- Ground level and first floor retail;
- Child care centre on second floor; and
- 88 residential apartments over Levels 2-11.

The proposal involves a tower sitting above a podium. A two storey podium is proposed, however the continuation of a glazed screen wall element to the Pacific Highway creates the appearance of a 3 story podium to this frontage. The podium is setback 6m from Oxley Street and 3m from the Pacific Highway and an area of public domain is created. The podium is largely glazed to the Pacific Highway and Oxley Street frontages, and is articulated with vertical aluminium blades laminated in natural timber patterns. Continuous awnings are proposed along both the Oxley Street and Pacific Highway frontages.

The tower is divided into sections, with a prominent and taller corner tower at the junction of The Pacific Highway and Oxley Street. The tower elements to the south along the Pacific Highway and the east along Oxley Street step down from this corner. Small residential footplates within the towers are formed with significant setbacks to the Pacific Highway.

A range of materials and finishes are used within the facades of the towers to articulate and give each tower element its own identity. The colour palate is a mix of natural earthy tones and metallic silvers and bronze. Materials include masonry, rendered concrete, powder coated steel, aluminium cladding, aluminium blades laminated in natural timber patterns and glazing.



STATUTORY CONTROLS

North Sydney LEP 2001

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

Section 94 Contributions

Environmental Planning & Assessment Act 1979

SEPP No. 1 – Development Standards:

SEPP No. 55 – Remediation of Land

SEPP No.65 – Design Quality of Residential Flat Development

SEPP (Building Sustainability Index: BASIX) 2004

SEPP (Infrastructure) 2007

Sydney Harbour Catchment REP and DCP

Draft North Sydney LEP 2009

POLICY CONTROLS

DCP 2002

DESCRIPTION OF LOCALITY

The site is located on the corner of Pacific Highway and Oxley Street with a rear frontage to Clarke Lane. The site has an area of 1668m² and is generally rectangular in shape with a frontage of approximately 50m to Pacific Highway and 34m to Oxley Street. The site slopes gently from Pacific Highway down to Clarke Lane at the rear by approximately 2m.

The site is located within the St Leonards Centre. The properties fronting Pacific Highway both north and south from the site are predominantly retail showrooms, medium and high rise commercial and multi storey mixed use residential development.

To the north and north-east of the site are a range of community facilities such as an indoor basketball court, Kelly's Place child care centre and a small public park.

AERIAL PHOTO



RELEVANT HISTORY

Council have had ongoing communications with the applicant's planning consultant since late 2010 regarding the planning framework as it relates to 521 Pacific Highway, Crows Nest. A brief chronology is as follows:

- 29 November 2010 – Council resolved to undertake a planning study of the St Leonards / Crows Nest area.
- 14 December 2010 - A planning proposal was lodged for the subject site seeking an increase in the LEP2001 height control from 20 metres to 42 metres.
- 15 March 2011 - Strategic Planning advised applicant's Planning consultant via formal correspondence that given the considerable changes to planning controls sought by the planning proposal it is difficult to support in isolation. It was suggested that the planning proposal should be put on hold until the St Leonards / Crows Nest Planning Study – Precinct 1 had been undertaken and a more robust position and ultimately a clearer strategic direction for the area had been established.
- 5 December 2011 - Council formally adopted the St Leonards / Crows Nest Planning Study – Precinct 1. The planning study presented a preferred option for the precinct that included an expanded Hume Street Park, ground level setbacks on selected sites and increased building heights along the Pacific Highway. The planning study recommended that changes to LEP2001 be pursued so as to facilitate the three elements of the preferred option. This included a bonus mechanism whereby development sites on the Pacific Highway could be awarded additional development capacity should predetermined public benefits, such as new open space within the precinct, be provided.
- 14 December 2011 - A planning proposal was sent to the Department of Planning and Infrastructure seeking changes to LEP2001 as recommended by the planning study.
- 13 March 2012 – The Department of Planning and Infrastructure informed Council that the proposed bonus mechanism is not an appropriate statutory mechanism to levy contributions towards the provision of new open space and that the planning proposal would not be forwarded for a gateway determination. The Department identified the use of voluntary planning agreements as an appropriate means of raising development contributions.

The applicant was advised on 22/3/2012 that in order to achieve additional height on No.521 consistent with the planning study (40m building height), a Planning Proposal addressing the following would be required:

- An FSR control consistent with the planning study;
- A ground level setback control consistent with the planning study; and
- Satisfactory arrangements for the provision of new open space within Precinct 1 via a Voluntary Planning Agreement (VPA).

The applicant has elected not to submit an amended Planning Proposal and has not followed the advice of Council.

At its meeting of 25 June 2012 Council considered a planning proposal that seeks to restrict the use of SEPP1 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 3 metres 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.

The Joint Regional Planning Panel was briefed on the proposal at its meeting of 18 July 2012.

Council wrote to the applicant on 20 July 2012 advising of the concerns with the proposal and recommending that the application be withdrawn.

The applicant advised Council in letter dated 1 August 2012 that the application will not be withdrawn and that amended plans were underway to address some of the matters raised by Council's Design Excellence Panel. The applicant also requested Council to reactivate the Planning Proposal and that no changes would be made.

Council confirmed in letter dated 13 August 2012 that Council would not accept amended plans under Clause 55 of the Regulations and that the application will be reported to the JRPP for determination.

The applicant attempted to lodge amended plans without agreement or fees on 21 August 2012. The documentation was not accepted and returned to the applicant.

REFERRALS

Traffic

The application was referred to Council's Manager Traffic Planning to assess the acceptability of the proposed development with regards to traffic and parking. Council's Manager Traffic Planning raised concerns as follows:

I refer to your request for comments on the proposed development at 521 Pacific Highway, Crows Nest (DA179/12). After reading the Transport Impact Assessment report, dated June 2012, prepared by Thompson Stanbury Associates (STA), the following comments are made.

Existing Development

The site currently accommodates an active Toyota car dealership. The outdoor display and showroom is accessed via an 18m wide driveway along the Pacific Highway. The basement parking area is accessed via an 8m wide combined access/egress driveway along Oxley Street.

Proposed Development

The proposed development involves the construction of a 12 storey “mixed use” residential, retail and childcare building. It incorporates 88 residential apartments (21 x studio, 41 x one-bedroom, 24 x two-bedroom, 2 three-bedroom), 1990m2 GFA of retail space and 370m2 GFA of childcare centre.

Parking

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

Lane Use	Maximum Parking Rate	Maximum Parking	Proposed Parking Provision
<i>Residential Component</i>	<i>0.5 spaces/ studio 0.5 spaces/ 1 bedroom 1 space/ 2+ bedroom</i>	<i>0.5 x 21 = 10.5 0.5 x 41 = 20.5 1 x 26 = 26 total = 57</i>	66
<i>Retail</i>	<i>1 space/ 60m2</i>	<i>1990/60 = 33 total = 33</i>	42
<i>Childcare</i>	<i>3 spaces for 24 children and above 1 space/ 2 staff</i>	<i>0.5 x 5 = 2.5 3 total = 6</i>	5
	TOTAL	93	113

That maximum parking provision permissible under the NSDCP 2002 is 93 car parking spaces. The proposed development provides 113 parking spaces which exceeds the Council's maximum rate by 21.5%. This is unacceptable to Council's Traffic Planning Section.

I do not accept STA's argument in Section 5.1.2 that “the application of reduced parking requirements for residential development purely due to the mixed use zoning of the land is considered unreasonable”

The parking rates in NSDCP 2002 were a deliberate policy decision of Council to restrict car parking and therefore car ownership and commuting by car in the busy CBD/ retail areas close to good public transport. Council's strategic plan, the 2020 Vision states, “Public transport and alternative means of transport are the mode of choice for trips to, from and within North Sydney. The community's reliance on the car has reduced. Considerable effort has been made to improve public transport and reduce traffic congestion, particularly through the use of more innovative and environmentally friendly systems.”

Council must consider this development in the context of the St Leonards/ Crows Nest area as a whole. Traffic generation is one of the key impacts associated with new developments and traffic congestion and traffic generation issues are of particular concern to the community and impact greatly on resident amenity

Accordingly the proposed development should be restricted to having a maximum of 93 car parking spaces.

Motorcycle Parking

The NSDCP 2002 requires Mixed Use Zones to provide parking for motorcycles at a

minimum rate of 1 space per 10 cars.

The proposed development provides 12 motorcycle spaces which complies with the NSDCP 2002.

Bicycle Parking

The NSDCP 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 provides 34 bicycle lockers and 8 bicycle rails which complies with the NSDCP 2002.

Traffic Generation

No objections are raised with the traffic generation methodology detailed in STA's traffic report.

Residential Component: STA have utilised traffic generation rates provided in the RMS Guide to Traffic Generating Developments. Utilizing the RMS Guide to Traffic Generating Developments, the site will generate approximately (0.29 x 88) 26 peak hour vehicle trips for the residential component.

Retail Component: STA have utilised traffic generation rates from a previous report prepared on behalf of Council. Utilising a traffic generation rate of 2.0 per parking space, the proposed development will generate approximately 84 peak hour vehicle trips for the retail component.

Childcare Component: STA have utilised traffic generation rates provided in the RMS Guide to Traffic Generating Developments. Utilizing the RMS Guide to Traffic Generating Developments, the site will generate approximately (0.7 x 25) 17.5 peak hour vehicle trips.

The proposed development will therefore generate 128 peak hour vehicle trips. The existing development (a vehicle dealership) generates approximately 12 peak hour vehicle trips.

The net additional traffic generation of the proposed development will have an impact on the local road network. However, I generally concur with STA's report that the increased traffic volumes can be accommodated by the road network.

Conclusion

It is recommended that this development not be approved until the following matters have been addressed:

- 1. That the proposed development be restricted to a maximum of 93 parking spaces in accordance with the North Sydney Development Control Plan 2002.*

Development Engineer

Council's Development Engineer has raised no objection to the proposed development, subject to conditions of consent.

Landscaping

Council's Landscape Development Officer has reviewed the proposal and has recommended appropriate conditions.

Design Excellence Panel

The Panel considered a planning proposal and preliminary mixed use proposal for the subject site on 25 May 2011. The following comments were provided in relation to that scheme:

".....The proponent seeks an increase in the maximum allowable height, from 20m to 42m, by way of a Planning Proposal to amend North Sydney Local Environmental Plan (NSLEP) 2001.

The proponent is looking to build a 12 storey mixed use building, comprising:

- o 3 levels of basement car parking*
- o 2 levels of retail*
- o 9 levels of residential (72 apartments of 1,2,3 bedrooms)*

.....The Panel noted that the planning proposal and St Leonards / Crows Nest planning study provided an opportunity to improve the urban environment. As such the Panel recommended that the Planning Proposal incorporate the following setbacks:

- o 3m from Pacific Highway*
- o 6m from Oxley Street*

The Panel supported the provision of a 3m setback on the Pacific Highway as a means of significantly improving pedestrian amenity, improving sight lines and accommodating sufficient space for street tree growth as well as a glazed awning, which would help create a boulevard effect.

The Panel supported a 6m setback on Oxley Street as a means of providing for improved pedestrian amenity and flow as well as potential outdoor dining. Oxley Street was noted as providing an important linkage to Hume Street Park and Crows Nest. Ground floor entrances and outdoor dining should be provided at grade level. This would allow for outdoor dining and would also ensure that setback areas would adequately integrate with the footpath.

The Panel questioned the proponent as to why the residential component was setback so far from the Pacific Highway. At some parts the building was setback 9.8m from the boundary line. The Panel stated that the building could be moved closer towards the Pacific Highway to help create improved building separation to the north and improve the amenity of apartments. This element of the building could still be setback from the podium which would still provide definition along this frontage.

The Panel considered whether podium setbacks should be required in addition to the proposed ground floor setbacks. The Panel generally thought that the building may already be significantly setback from the site boundaries (other than the lane)

and that further above podium setbacks may not be necessary. If no above podium setback is provided, the podium (or bottom 3-4 floors) should be well articulated and differentiated from the residential tower, through the use of different materials and architectural composition.

The Panel recommended that the residential component of the building be setback from Clarke Lane by a minimum of 6m thus allowing for a 9m separation from the centre of Clarke Lane. This would allow for greater separation to those buildings located on Clarke Street. The Panel noted the side setback on the tower element of 6m from the southern boundary. The Panel supported providing some form of setbacks along that boundary to provide adequate separation to allow adjoining buildings to develop in accordance with SEPP 65.

The Panel noted the slope of the land and wanted to ensure that carparking to be provided completely underground, and not visible from the street. It was noted that car parking could be provided underground beyond the building footprint.

The Panel raised questions about whether the setback areas would be dedicated to Council or would remain in private ownership. One implication of this issue relates to underground car parking and whether it would be permitted under the setback area. The Panel considered that if car parks were permitted under the setback area that this should not compromise the provision of the setback area 'at grade'.

It was noted that the proposed amount of car parking was considerably small to support a supermarket. It was also noted that greater ground floor setbacks would reduce the floor plate for commercial development. The proponents stated that this reduction in commercial floor space may hinder their ability to incorporate a supermarket on the site. The Panel noted that the site would still be able to provide some form of supermarket....."

The application was considered by the Design Excellence Panel at its meeting of 3 July 2012. The Panel was concerned that that proposed building height of 43.57m and associated significant increase in residential density and demand for services and open space is not accompanied by arrangements to provide additional open space in Precinct 1. The Panel considered that the 3m setback to the Pacific Highway and 6m to Oxley Street provided considerable pedestrian amenity, but that these setbacks alone do not provide adequate public benefit to justify the significant increase in height and density on the site, beyond that identified in the current and draft LEPs (20m height limit).

The Panel considered that the amenity of the child care centre as proposed is sub-standard, due to its siting on the south-western side of the tower, only receiving solar access for a limited time in the afternoon at midwinter, and also due to excessive noise and reduced air quality from the Pacific Highway. Additional concerns include the need for shade structures and protection from wind impacts. The Panel advised that if the child care centre is intended to replace the Hume Street centre then it would need to be at least equal in terms of amenity.

The Panel noted that its previous advice that the tower could be moved closer to the Pacific Highway to help create improved building separation to the north and improve

the amenity of apartments, while still retaining a setback from the podium to provide definition along this frontage, has not been followed. It was also noted that moving the tower towards the Pacific Highway would allow the child care centre to be located on the north-eastern side of the podium, with substantially greater amenity due to reduced highway noise, improved solar access and orientation, and improved air quality. The Panel noted that the building to the north-east of the site with frontage to Clarke Lane is a heritage item and unlikely to be redeveloped in the near future, however, the provision of a 9m setback from the centre of Clarke Lane would nonetheless improve amenity for the north-east facing units in the tower. The Panel maintained that the tower should be moved towards the Pacific Highway.

The Panel was concerned at the absence of balconies to a number of units in relation to amenity. The applicant advised that those units without balconies would have external walls that could be fully opened, together with a balustrade. The Panel considered that balconies and/or winter garden style spaces should be provided to all units and that the required balcony area should be in addition to the minimum unit sizes. Additionally, no details of the openings have been provided on the architectural plans and a cross section at a scale of 1:50 is necessary in order to ensure that any proposed openable wall treatment/winter garden is carried through to the CC stage. The Panel noted that noise impact from the highway would be reduced through the use of winter garden style balconies with openable external walls/louvres and an internal opening from the unit onto the balcony.

The Panel advised that the external screening to the tower should be movable, and possibly a concertina design, with further details required. Wind impact to the exposed north-west corner balconies needs also to be addressed.

The Panel considered the residential lobby to be well designed and with adequate space for the provision of seating adjacent to the lift lobby. The access to the garbage collection room directly from the residential lobby should be reviewed, possibly adding an airlock or other means of separation. Details of the retail area fitout should be provided.

The Panel considered that a roof level terrace and communal open space should be provided. The applicant advised that as the building is already 43.57m in height it was not considered appropriate to increase the height further for a roof level terrace and structures. In relation to the uppermost units, the Panel suggested the provision of openable skylights for additional light and ventilation.

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. The issue of the height must be addressed before amended plans are further considered.

Council's Community Services Division

The proposed child care centre was commented on as follows:

".....Due to the lack of detail provided in the DA for the whole site, it is expected that there will be a separate DA (or Section 96) submitted for the fit out of the child care

centre at which time another assessment against Council's DCP and the regulatory framework would be undertaken.

At this stage of the development the following points are recommended:

- 1. Consider the evacuation requirements of the child care centre through use of an emergency lift dedicated to the child care centre. As the emergency lift is unlikely to fit all children and staff in it at one time, it is recommended that a safe haven also be provided in the stairs (as long as the stairs have egress to a safe evacuation point).*
- 2. Consider signage to be displayed at the entry point/s particularly within the retail precinct.*
- 3. Provide an Air Quality Assessment Report to enable assessment of the level of pollutants surrounding the proposed child care centre site.*
- 4. Provide 6 car spaces instead of 5 car spaces (1 space/2 employees with max of 3 spaces; 3 spaces/24 places and above).*
- 5. Provide access to a loading space for deliveries to/from the child care centre.*
- 6. Ensure the fencing along the terrace prevents children from scaling over, under or through and that it is safe for young children to play near/against.*
- 7. Provide an Acoustic Report to enable assessment of acoustic and visual impact.*
- 8. Consider if there is a better aspect for the child care centre to face (rather than SW) that will optimise sunlight and natural ventilation taking into account:*
 - a. the solar access of the child care centre in line with the requirement to have a minimum of 2 hours direct sunlight per day.*
 - b. shadowing on the child care centre (as opposed to the shadowing this development will have on other buildings) with the understanding of the need to provide a welcoming and engaging outdoor area and not a cold, damp, dark space.*

Public Benefit:

With reference to the question of public benefit I wish to advise that there is no automatic public benefit to be gained from having a child care centre in this development.

Council's Children's Services Strategic Plan 2010-2012 identifies a range of child care need (including children with special needs), supply of places for 0-2 year olds and affordability as the key public requirement and benefits to be addressed in coming years. These issues are interconnected (for example the supply of new but unaffordable 0-2 places is of no significant public benefit). Another long day care centre unless affordable and with places for 0-2 year olds does little to address these issues. Council is aware of only two models of child care centres that address the issues of affordability, range of options and 0-2 places:

- Council facilitated not-for-profit centres (e.g. operated by KU Children's Services)*
- Parent-run Centres (e.g. Kelly's Place Child Care Centre, Crows Nest)"*

SUBMISSIONS

The owners of adjoining and nearby properties and the Holtermann/Wollstonecraft Precinct Committees were notified of the proposed development, with the notification period being from 22/6/12 to 6/7/12. In response to this notification, a total of twenty (21) submissions were received. The issues raised in the submissions are summarised as follows:

- Block views of Sydney Tower and Anzac Bridge
- Vehicle access point in lane
- Non compliance with Council regulations
- Set undesirable precedence for height breach

- Loss of outlook
- Increased traffic in lane
- Lack of parking in area
- Insufficient separation between buildings
- Mix of dwellings is non compliant
- Child care centre poorly located
- Lack of open space
- Greater demand created for open space
- Loss of views of Harbour Bridge and city
- Notification area should be expanded to include the Abode (599 Pacific)
- Disregard for planning regime
- Construction noise
- 18 apartments between 9th and 12th floors of The Abode will be affected with loss of view of Harbour Bridge
- Use of SEPP 1 to double height control gives no certainty to the public
- Such a substantial variation cannot demonstrate that compliance would be unreasonable or unnecessary
- JRPP rejected 4 storey exceedence at 545 Pacific on the basis of “impact on sunlight and views”
- Proposal does not allow for improved amenity on neighbouring sites
- Oxley Street setback is interfered with by cantilver and grades
- Loading dock inadequate for medium rigid trucks
- Excessive number of small units
- Inadequate parking for child care centre
- Shadow impact
- Balconies inadequate
- Construction traffic
- No step down from No.545
- Nexus building (15 Atchison) not notified and will be impacted through loss of iconic views of Harbour Bridge

CONSIDERATION

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

NORTH SYDNEY LEP 2001

The application has been assessed against the relevant numeric controls in NSLEP 2001 as indicated in the following compliance table. Additional more detailed comments with regard to the major issues are provided later in this report.

Compliance Table

STATUTORY CONTROL – North Sydney Local Environmental Plan 2001

Site Area – 1668m ²	Proposed	Control	Complies
Mixed Use Zone			
Building Height (Cl. 29) (max)	43.57m	20m	NO *
Non-Residential Floor Space (Cl. 31) (max)	1.4:1	0.6:1 to 2:1	YES
Design of Development (Cl. 32)	Building has both residential & non-residential uses, with non-residential (retail and child care) at lower levels;	<i>Building to have residential and non-residential uses, with non-residential at lower levels;</i>	YES
	No residential at ground level;	<i>No residential to be at ground level;</i>	YES
	Separate residential and retail entries;	<i>Separate residential and retail entries</i>	YES
	Tower not set back above podium at corner	<i>Building to be set back above podium</i>	NO

* SEPP No 1 objections received from applicant

DCP 2002 Compliance Table

DEVELOPMENT CONTROL PLAN 2002		
	Complies	Comments
6.1 Function		
Diversity of activities, facilities, opportunities and services	Yes	This mixed use proposal incorporates 2 separate retail spaces on the ground level as well as a child care centre, providing an adequate diversity of non-residential spaces and activities. No communal space is provided for residents of the building.
Mixed residential population	No	The proposed dwelling mix includes 70% small units (studio or 1 bedroom) and 30% two bedroom units, with only 2 x three bedroom units included. This is considered unacceptable and an excessive number of small units. The DCP requirement is for 45% combined studio and 1 bedroom units and 55% combined 2 and 3 bedroom units and the proposal is significantly non-compliant and does not provide a reasonable mix of dwellings.

Maximum use of public transport	No	Non-residential and residential parking exceed DCP controls. The site has excellent access to public transport, located near St Leonards railway station and numerous bus routes on Pacific Highway.
6.2 Environmental Criteria		
Clean Air	Yes	Satisfactory.
Noise and acoustic privacy	Yes (with conditions)	An Acoustic Report, prepared by Renzo Tonin and Associates, was submitted with the application. The report indicates that the proposal is capable of satisfying the DCP noise and acoustic privacy requirements subject to mitigation and construction recommendations.
Visual Privacy	No	The proposal has not adequately addressed separation distance to the units across the lane.
Wind Report	No	No wind impact report was provided with the application.
Awnings	Yes	The proposal includes continuous awnings to Pacific Highway and Oxley Street.
Solar access	Yes	The submitted shadow diagrams indicate that there is no adverse 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. .
Views	No	The view analysis submitted with the application is unsatisfactory as it dismisses any view loss on the basis of expected view loss. This statement does not have regard to the views lost due to the substantial breach of the height control. There were many objections claiming view loss. The applicant needs to provide a detailed analysis of the number of properties affected by the increased height to identify the full impacts.
6.3 Quality built form		
Context	No	The proposed height and scale is considered unsatisfactory and does not adequately respond to the site's context and site constraints. The building height is significantly in excess of the 20m height limit and is not acceptable with regard to the desired future character of the area, as expressed in the North Sydney Local Environmental Plan 2001 and Draft NSLEP 2009. The recent planning study does not override the LEP or DCP controls. A Planning Proposal is necessary to change the controls in place.
Skyline	Yes	The architectural treatment of the upper levels of the proposed building would result in a satisfactory skyline appearance, however, the building height is unsatisfactory as previously discussed.
Public spaces & facilities	Yes	The proposal does introduce additional setbacks at ground level along the Highway and Oxley Street, however the tower element is not adequately setback from Oxley Street
Streetscape	No	The proposal is particularly deficient with regard to Clarke Lane where the frontage is occupied by the fire stairs, loading dock, car parking ramp,

	Yes	substation and utilities. An acceptable degree of activation of the Pacific Highway and Oxley Street frontages is provided.
Setbacks	No	The proposed Pacific Highway and Oxley Street setbacks are compliant with the planning study podium setback. The application does not provide adequate setbacks from the lane at all levels. The Oxley Street setback of the tower of 0.2m is unsatisfactory and effectively disregards the 3m setback requirement under the DCP and the 6m setback under the Planning Study.
Entrances and exits	Yes	Access is satisfactory, with residential entry provided from Oxley Street. Separate retail entries are provided.
Street frontage podium	No	The Oxley Street and Pacific Highway podiums are satisfactory The lane is not. The tower setback from the lane and at the street corner is unsatisfactory.
Building design	Yes	The building does provide satisfactory floor to ceiling heights.
	No	Balconies on the southern elevation do not meet the 3m setback requirement
6.4 Quality urban environment		
High quality residential accommodation	No	The DCP requirements are as follows: <ul style="list-style-type: none"> • Studio 40m² • 1 bedroom 55m² • 2 bedroom 80m² • 3+ bedroom 100m² The apartments comply with the minimum area requirement but not with regard to balconies. A minimum of 8m ² is required per apartment for a balcony and where there is no balcony 8m ² additional floor area is required within the apartment. 18 of the one bed apartments have no balconies with 6 one bedroom have only Juliette balconies, 7 of the studios have no balcony and 2 of the two bedroom apartments only have Juliette balconies
	Yes	72% of units will receive two hours of solar access in midwinter.
	No	Conventional cross-ventilation to 61% of the residential apartments is proposed.
Balconies	No	A number of units do not have balconies and have balconies <8m ²
Accessibility	Yes	An Accessibility Report has been submitted with the application to demonstrate that the development would comply with requirements of AS1428.3 for disabled access.
		Lift access is proposed to all levels and at grade access is provided from Oxley Street. Suitable

		conditions would be applied if consent is granted.
Safety and security	Yes	Separate entries are provided for residential and non-residential uses.
Car parking	No	Council's Manager Traffic Planning has raised concerns with the proposal in relation to excessive provision of parking being 20 spaces over the maximum requirement of 93 spaces
Bicycle parking	Yes	The development complies with regard to bicycle parking
Vehicular access	Yes	The loading dock is adequate and can accommodate a Medium Rigid Vehicle
Garbage Storage	No	The garbage room does not meet the North Sydney DCP 2002 requirements and the loading dock has inadequate dimensions to serve as a temporary holding bay for waste collection.
Commercial garbage storage	No	The proposal includes one central garbage room for the development at ground level, as discussed above.
Site facilities	Yes	Satisfactory.
6.5 Efficient use and management of resources		
Energy efficiency	Yes	A BASIX certificate for the residential component of the development has been submitted and an appropriate condition can be imposed to ensure compliance with these commitments.

NORTH SYDNEY LEP 2001

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 (retail and child care centre) are also permissible under the zoning with Council consent.

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 is not consistent with the objectives of the zone due to the poor residential amenity and unsatisfactory building design.

Building Height

The Clause 29(1) building height objectives for the mixed use zone are as follows:

(1) Building height objectives

The specific objectives of the building height controls in the mixed use zone are to:

- (a) ensure compatibility between development in the mixed use zone and adjoining residential areas and open space zones, and*
- (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*
- (c) provide reasonable amenity for inhabitants of the building and neighbouring buildings, and*
- (d) provide ventilation, views, building separation, setback, solar access, light, and avoid over shadowing of windows, landscaped areas, courtyards, roof decks, balconies and the like, and*
- (e) promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient, and*
- (f) avoid the application of transitional heights as justification for exceeding height controls.*

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 20 metres is applicable to the subject site. The maximum height of the proposed development is 43.57m. As such, the height of the proposal would exceed the maximum 20m building height specified in NSLEP 2001 by 23.57m.

It is a strongly held view that variations to planning controls of the magnitude sought by the subject development application should be the subject of a planning proposal to amend NSLEP2001 planning controls.

It is considered that the process to date regarding the original planning proposal lodged for the site and the St Leonards / Crows Nest Planning Study has constituted a reasonable and necessary process to establish an appropriate outcome for the site and means of achieving that outcome. The recommended lodgement of a new site specific planning proposal is considered part of this reasonable and necessary process and is consistent with objects of the EP&A Act that emphasise the importance of proper management and orderly development (s.5(a)(i) and s.5(a)(ii)). It is considered that the use of SEPP1 to justify such a gross breach of a community endorsed planning control may be in conflict with these objects of the EP&A Act.

Further, on 25 June 2012 Council endorsed a planning proposal that seeks to restrict the use of SEPP1 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 3 metres 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.

The applicant's SEPP 1 objection is not well founded and is not supported. The applicant refers in the SEPP 1 to the JRPP's decision with regard to 545 Pacific Highway that is located on the opposite corner of Oxley Street as setting a precedent. It is noted that the approval resulted in an additional 2 floors over the 26m control. The applicant is proposing an additional 7 floors above the height control of 20m.

The only substantial variation of the height control in St Leonards was a Part 3A proposal where the Planning Assessment Commission was not bound by the controls or the use of SEPP 1. Consent was granted for a 83m high mixed use building with the height control of the site at 49m.

The applicant suggests that the provision of ground level setbacks and a child care centre represent public benefits that help justify the proposed non-compliant building height. The applicant is commended for proposing the 3 metre setback on the Pacific Highway consistent with the St Leonards / Crows Nest Planning Study – Precinct 1. However the proposed 6 metre setback from Oxley Street, being compromised by the colonnade effect of having building elements above as well as not being provided 'at grade', is not consistent with the setback as envisaged by the planning study.

The applicant suggests that the provision of a childcare centre on site would allow Kelly's Place Children's Centre to be relocated thus allowing Hume Street Park to be expanded. However the planning study clearly states that:

Prior to any relocation occurring, and in order to maintain or improve the existing child care service level, any new facility will need to have similar or improved amenity and be capable of accommodating a similar or greater number of child care places.

It is not clear from the information provided that the proposed childcare centre meets this requirement and it is questionable whether the subject site is an appropriate location for child care services. The Design Excellence Panel and Council's Community Services staff do not support the siting of the child care centre.

Such a height should not be considered unless a Planning Proposal is lodged and gazetted. It is evident from the submissions received that for substantial changes to the controls, community consultation is essential.

The proposed height increase also results in adverse amenity impacts through overshadowing and loss of views contrary to the objectives of the control.

Floor Space

Clause 31(2) of NSLEP 2001 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.”

Pursuant to Map 2 – ‘Floor Space Ratios, Heights and Reservations’ of NSLEP 2001, the non-residential component for a development on this site must have a floor space ratio (FSR) of between 0.6:1 and 2:1. The proposed development has a non-residential FSR of 1.4:1, and is therefore compliant with Clause 31 of NSLEP 2001.

Design of Development

Clause 32 of NSLEP 2001 provides a number of objectives and controls with regard to the design of development in the mixed-use zone. The objectives in clause 32(1) seek the following

- (a) promote development containing a mix of residential and non-residential uses, and*
- (b) protect the amenity and safety of residents, and*
- (c) concentrate the non-residential component of development in the mixed use zone at the lower levels of a building.*

The proposed development is unsatisfactory with regard to the amenity of residents as discussed previously.

In relation to the controls for the design of development in Clause 32 (2), the proposal is assessed as follows:

A new building in the mixed use zone must not be erected unless:

- (a) the building contains both residential and non-residential uses,*

Comment: The building complies in this regard with both apartments and non-residential uses within the development.

- (b) the non-residential component of the building is provided at the lower levels of the building and the ground level is not used for residential purposes, except access,*

Comment: The proposed development contains the non-residential component (retail and child care centre) at the ground level and levels 1-2.

- (c) the residential component of the building is provided with an entrance separate from the entrances to the remainder of the building,*

Comment: The residential apartments have a separate entrance to the retail and child care centre.

- (d) the building is set back above a podium.*

Comment: The proposal includes a tower element above a podium, however, the tower has inadequate setbacks as previously discussed.

In summary the proposed development is considered unsatisfactory in relation to a number of the design controls and objectives of Clause 32 of NSLEP 2001.

Excavation

Clause 39 of NSLEP 2001 provides a number of objectives and controls with regard to minimising excavation and ensuring land stability and the structural integrity of neighbouring properties.

In this instance, the extent of excavation comprises a total of three to four levels of basement car parking which exceeds Council parking requirements by 20 spaces. The extent of excavation is considered unacceptable in the circumstances. Council's standard conditions concerning geotechnical and structural engineering certification to protect adjoining properties would be conditioned if consent is granted.

Heritage

The site is not a heritage or contributory item and is not located within a Conservation Area. The property is located in the vicinity of a heritage item, being No. 28 - 34 Clarke Street, Crows Nest (The St Leonards Centre). This property is listed as having local significance with the NSLEP 2001.

It is significant for being: " an unusual example of a six storey, late Twentieth Century commercial building built c. 1972 designed by Kerr and Smith, Architects and Planners, in the late Twentieth Century Brutalist style and is a dominant building in the local streetscape. A building whose domineering presence and intrusive character is barely balanced by its intrinsic architectural interest."

The heritage item is located on the corner of Clarke Street, Oxley Street and Clarke Lane, with its primary facades addressing Clarke Street and Oxley Street. The Clarke Lane facade is the rear facade of the building. The building is a five storey Brutalist building with cylindrical external formwork.

The subject property is located adjacent to the heritage item, but separated from it by Clarke Lane. As such, the curtilage of the heritage item will not be impacted by the proposed new building. The primary views of the building, which are obtained from Oxley Street and Clarke Street, will be retained. While views to the heritage item from the Pacific Highway will be blocked, these views are of the rear of the building and not considered to be significant views.

The proposed works, if approved, would allow the heritage item to remain as a dominant presence in the local streetscape, and retain its architectural statement for which it is significant. It is considered that the proposal would not have a detrimental impact on the significance of the heritage item at 28 - 34 Clarke Road.

Accordingly, no objections to the proposal are raised on heritage grounds.

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 based on the previous uses of the site, contamination is unlikely to be an issue.

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

The application has been assessed by Council's Design Excellence Panel in terms of the Design Quality Principles set out in SEPP 65.

Assessment is summarised as follows:

Principles 1, 2 and 3: Context, Scale and Built Form: The context is set by the development surrounding the site and the development controls for the site. The proposal is not in context with existing surrounding development and inconsistent with building height controls for the precinct containing the subject site. The proposal is not in context with the desired future character of the area and would not be consistent with the predominant scale and built form of surrounding development. The tower setbacks are inadequate.

Principle 4: Density: The density is substantially greater than the dwelling yield envisaged for mixed use development in the Residential Development Strategy for North Sydney, due to the excessive number of small apartments in the dwelling mix.

Principle 5: Resource, energy and water efficiency : A BASIX Certificate has been provided with the application.

Principle 6: Landscape: The proposed building covers almost the entire site and only street tree planting is proposed.

Principle 7: Amenity: An excessive number of units will have particularly poor amenity, balconies (or the lack of) are also unsatisfactory.

Principle 8: Safety and Security: The proposed development is generally considered to provide adequately for the safety and security of future residents. A separate residential entry is provided.

Principle 9: Social Dimensions: The development does not respond adequately to the social context, with a predominance of small units. No communal area for residents is provided.

Principle 10: Aesthetics: Subject to reduced height and increased tower setbacks, the proposed development could provide for an acceptable architectural design with regard to the site constraints.

SEPP (Building Sustainability Index: BASIX) 2004

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

SEPP (Infrastructure) 2007

SEPP (Infrastructure) 2007 establishes a framework for certain types of development to be referred to the RMS for consideration.

The application was not referred to the RMS.

SREP (Sydney Harbour Catchments) 2005

The site is not located within or close to the Foreshore and Waterway Area designated in this SREP.

Draft North Sydney Local Environmental Plan 2009

The Draft North Sydney Local Environmental Plan 2009 was on public exhibition until 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 North Sydney LEP 2001.

The proposed development is not consistent with the draft height control or the minimum floor spaces ratio for non residential uses (1.5:1). Given that the draft plan is neither imminent nor certain, it is not reasonable to refuse the application on the basis of the draft plan, however, the draft height limit reinforces the unsatisfactory nature of the proposed height.

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

The application has been assessed against the relevant controls in DCP 2002 as indicated in the DCP 2002 compliance table provided earlier in this report.

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

The development does not satisfy the provisions of the St Leonards/Crows Nest Area Character Statement with regard to setbacks.

SECTION 94 CONTRIBUTIONS

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

DESIGN

The design is considered to be unsuitable for the proposed site as discussed throughout this report.

MATERIALS

The application is acceptable with regard to materials.

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 Car parking 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 not consistent with the specific aims of the plan and the objectives of the zone and of the controls.

SUBMITTORS' CONCERNS

The concerns raised with regard to the impacts of the proposal have been largely been addressed within this report. A number of existing apartments in the buildings to the north west claim to suffer loss of iconic views of the Harbour Bridge and Anzac Bridge. The applicant has not provided a detailed view analysis and simply dismissed the impacts on views. The substantial increase in height cannot be supported without a thorough assessment of view loss impacts. That is why the issue of substantial increase in the height control should be determined through a planning proposal having regard to other public benefit issues. The application as proposed does not provide enough significant public benefit to warrant the impacts of view loss on a number of nearby residents.

CONCLUSION

This application is unsatisfactory in a number of respects and the most significant issues relate to poor internal amenity for the residential units, inadequate building setback to Oxley Street/Clarke Lane and excessive building height.

In relation to the SEPP 1 objection to the building height development standard, the proposed height is not in keeping with the desired future character of the neighbourhood and is not consistent with the building height objectives. The applicant's SEPP 1 objection is not well founded and is not supported. Variations to planning controls of the magnitude sought by the subject development application should be the subject of a planning proposal to amend NSLEP2001 planning controls.

Excessive parking and excavation is proposed. The location of the child care centre is also considered inappropriate.

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 2012SYE062 - Development Application No.179/12 for the demolition of the existing building and site structures, excavation and construction of 3.5 levels of basement parking for 113 cars, and construction of a 12 storey mixed use building at 521 Pacific Highway Crows Nest, for the following reasons:

1. The height and scale of the building is excessive and is not in context with surrounding development or the existing and desired future character of the area, as expressed through North Sydney Local Environmental Plan 2001 and North Sydney DCP 2002. Further, the 23.57m breach and the submitted SEPP 1 objection to the building height standard would undermine the integrity of the development standard and the SEPP 1 objection to building height is considered

- to not be well founded and is not supported.
2. The proposed building design is unsatisfactory with regard to setbacks and form in that it does not provide a tower setback to Oxley Street and appropriate setbacks at all levels to Clarke Lane and side setbacks as required by North Sydney Development Control Plan 2002 and the Character Statement for the St Leonards Town Centre.
 3. The amenity of the child care centre as proposed is sub-standard, due to its siting on the south-western side of the tower, only receiving solar access for a limited time in the afternoon at midwinter, and also due to excessive noise and reduced air quality from the Pacific Highway.
 4. The amenity of a substantial number of apartments is unsatisfactory with regard to the provision of balconies, balcony size and dimensions.
 5. The proposed unit mix includes an excessive number of studio and one bedroom units with an inadequate number of larger units.
 6. Excessive number of parking spaces above the maximum parking requirement and associated excavation.
 7. The proposal is not in the public interest.

Geoff Mossemeneer
EXECUTIVE PLANNER

Stephen Beattie
MANAGER DEVELOPMENT SERVICES
