

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

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| JRPP No | 2012SYE072 |
| DA Number | DA222/12 |
| Local Government Area | North Sydney |
| Proposed Development | Alterations and additions to Tenison Woods House and change of use to educational establishment (Australian Catholic University) including construction of 2 new lifts and stair access, change of use of Levels 5-9 into library and learning commons, storage at Level 23, circulation and retail spaces at Level 4 (accommodating up to 850 additional students), and associated works |
| Street Address | 8-20 Napier Street, North Sydney |
| Applicant/Owner | Applicant: Australian Catholic University c/- Hassell Owner: Trustees of the Roman Catholic Church for the Archdiocese of Sydney |
| Number of Submissions | Three (original notification) Three (re-notification), including 1 in support |
| Recommendation | Approval with Conditions |
| Report by | Susanna Cheng, Senior Assessment Officer |

Attachments: Draft conditions of consent
Architectural drawings, shadow diagrams, photomontages

EXECUTIVE SUMMARY

This development application seeks approval for change of use and alterations and additions to part of a 23-storey commercial office building. The application is for use of Levels 5 to 9 as an educational establishment associated with the Australian Catholic University, and associated alterations and additions including a new addition within the building forecourt.

The site is owned by the University and the application is Crown development. The DA is referred by Council to the Regional Panel for determination as it recommends the imposition of conditions that the applicant has not agreed to and 70 days have elapsed since lodgement.

Council's notification of the proposal as originally submitted attracted 3 submissions, raising particular concerns about design, FSR, heritage, University masterplanning, traffic and parking, noise and light pollution, and construction management. The notification of the amended proposal generated 3 additional submissions including one in support. The issues raised by the submitters have been addressed in the report.

The site is located in close proximity to the main campus and other buildings associated with the University. The University has indicated that the subject building will be used for educational purposes as office uses are gradually vacated from the building upon expiry of current commercial leases. Council's Strategic Planner has advised that the site is within the proposed boundary of the education precinct as identified by Council, and the DA is consistent with the strategic intent of the area as an emerging education precinct.

The site is located on the western periphery of the North Sydney Centre within a generally dense urban environment; however, is adjoined by a heritage item known as the Don Bank Museum and its garden setting. The North Sydney LEP prohibits development that would cast additional shadows on an adjoining heritage item and special area known as Don Bank Museum & Gardens. The submitted architect-certified shadow diagrams demonstrate that the development will not give rise to any additional overshadowing of that site.

Council's Conservation Planner considers that the proposed development will adversely impact on the heritage significance of Don Bank Museum & Gardens. In particular, concern is raised that the proposal will encroach and diminish the visual curtilage of the item contrary to the Conservation Management Plan and Clause 50(1) of the LEP.

However, having regard to the balance of impacts and the context of the site being highly urbanised, it is considered that, while the development will alter the visual curtilage, in particular the garden setting, of the Museum, the heritage impact will be neutral rather than adverse. The new addition, being predominantly single storey in height, of lightweight glass and concrete construction and visually permeable by virtue of the primarily glazed construction, will allow the streetscape appearance and integrity of the whole of the garden setting to be maintained generally similar in quality and extent to the existing vista. In this regard, the heritage conservation controls are considered to be satisfied.

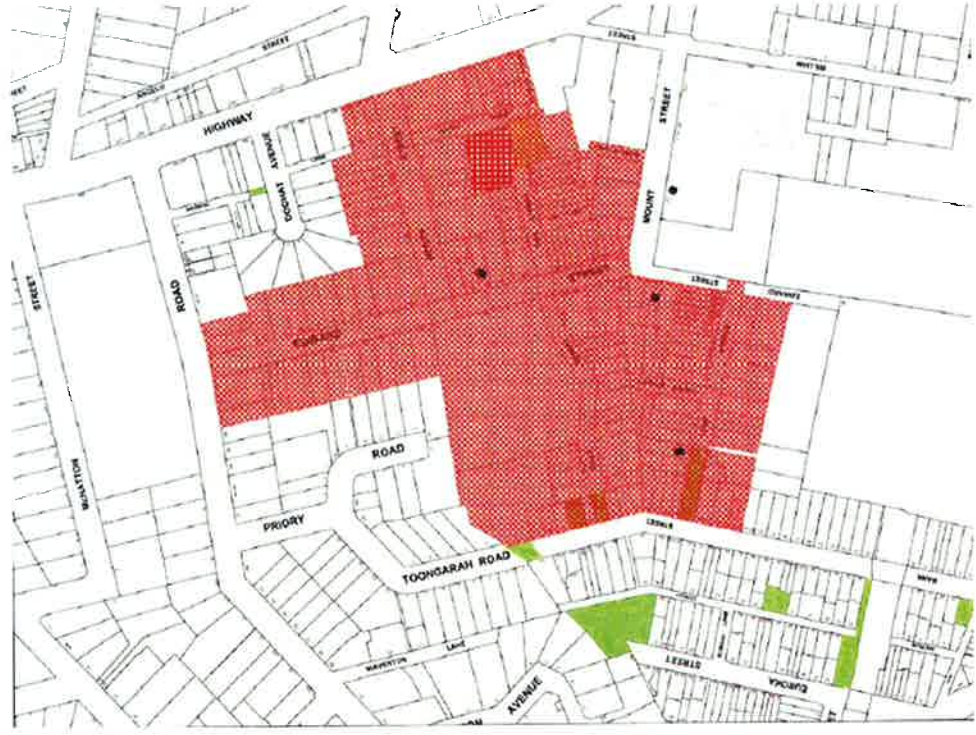
The proposed traffic generation and on-site parking provision will not have any material amenity impacts, subject to conditions, including restricting the use of on-site car spaces by occupants of the building only and excluding students, conversion of car spaces to bicycle and motorcycle parking, and preparation and implementation of a Green Travel Plan to facilitate the use of public and active transport modes.

The height of the building addition adjacent the northern boundary is greater than the height of a podium structure envisaged as potentially appropriate for the site by the Character Statement in the North Sydney DCP. The excessive height and 6m separation from adjoining residential balconies, will give rise to adverse outlook and daylight amenity impacts on the neighbours. However, such impacts could be mitigated by reducing the height of the addition by two levels and below the height of the adjacent residential units. The vertical circulation located therein could reasonably be relocated in the form of internal stairs and platform lift within the existing floorplate.

Following this assessment the development application is considered to be reasonable in the circumstances and is recommended for **approval** subject to conditions.

LOCATION MAP

Property/Applicant ● Submitters - Properties Notified



DESCRIPTION OF PROPOSAL

The application is for change of use of part of an existing commercial building to educational establishment and associated works. The development will add **764.4m²** floor area to the site, in the form of a new structure within the entry forecourt, as shown in **Figure 1**.

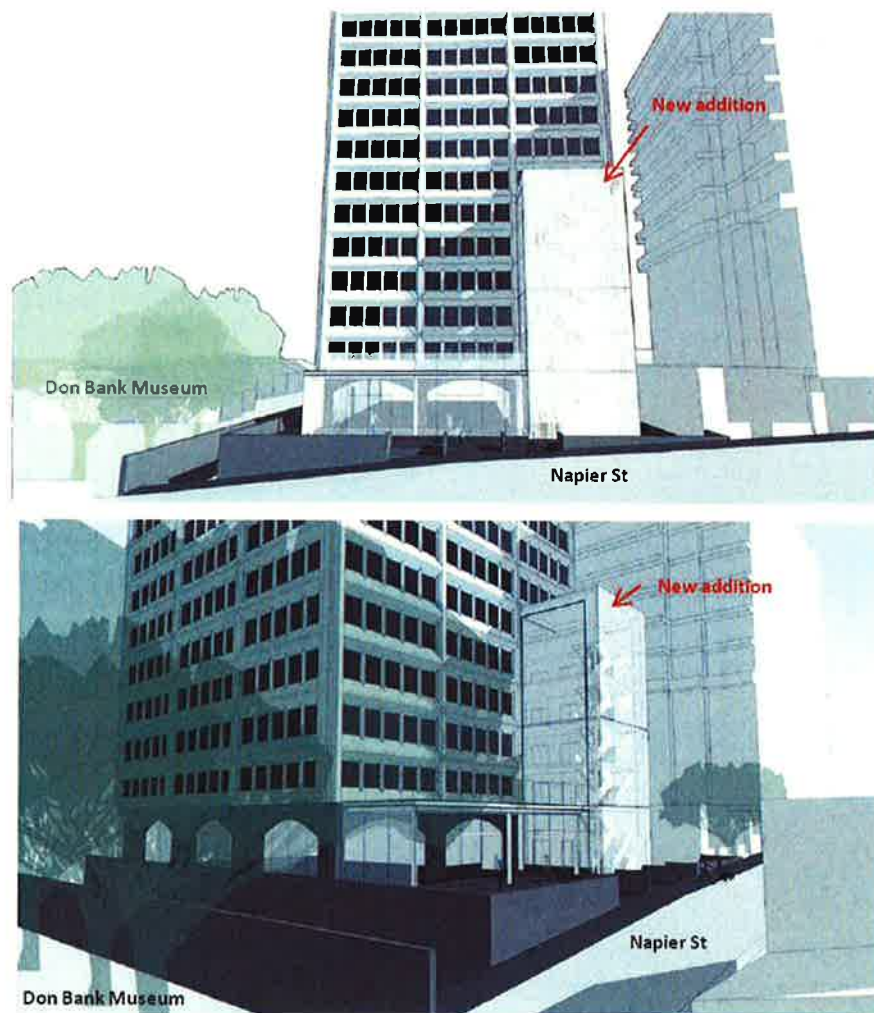


Figure 1 – Perspectives of the proposed addition

The proposed use and associated works include:

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| Level 3 Carpark | <ul style="list-style-type: none">• Demolition and new penetrations to accommodate hydraulics and other new services• Reduction in parking by 8 car spaces (from 140 to 132 bays), including 2 x new accessible spaces |
| Levels 4 Ground / entry level | <ul style="list-style-type: none">• Removal of 1 tree and demolition of concrete planter boxes, entry awning, and partial enclosure of forecourt• New student lift lobby, 2 x new lifts, stairs, accessible toilet, student breakout area and circulation space• Conversion of part of commercial lobby to retail space |

| | |
|-------------------|---|
| Levels 5-9 | <ul style="list-style-type: none"> • Demolition of existing slab and removal of part of the facade to accommodate addition • New student vertical circulation, comprising lift lobby, lift and stairs • Change of use of Levels 5 to 9 from commercial to educational use as a library and learning commons, indicatively: <ul style="list-style-type: none"> - Level 5: Outdoor terrace; library reception and staff base - Levels 5 & 6: PCs and print collection - Level 7-8: Library and individual and group study areas (to replace the library at the Mackillop Campus at No.40 Edward Street) - Level 9: Moot court |
| Level 10 | <ul style="list-style-type: none"> • Lift overrun |
| Level 23 | <ul style="list-style-type: none"> • Demolition of internal wall for new lift access • Change of use of (redundant) plant room as ancillary storage space and (non-habitable) communications room |
| Roof | <ul style="list-style-type: none"> • New mechanical cooling tower |

Detailed layout drawings have not been submitted with the application and may be submitted under separate application, in particular, with regard to the fitout of any food premises.

The proposed **hours of operation** are 7am to 10pm Monday to Friday, and 8am to 6pm on Saturday and Sunday.

The proposed **occupancies** are:

| Level | Persons |
|---|----------------|
| Level 4 | 100 |
| Levels 5-9 (150pp per floor x 5 floors) | 750 |
| No. of students + staff + other | 850* |
| * BCA report (p.5) | |

The application is **Crown development** as it is made on behalf of the Crown by an Australian university within the meaning of prescribed persons under the EP&A and Regulation 2000.

STATUTORY CONTROLS

North Sydney LEP 2001

- Zoning – Mixed Use
- Item of Heritage – No
- In Vicinity of Item of Heritage – Yes (No's. 1-13 and 2-12 Oak Street, and No's. 1-7 Napier Street, and No.6 Napier Street (Don Bank Museum))
- Conservation Area – No
- FSBL – No

S94 Contribution

Environmental Planning & Assessment Act 1979

SEPP No. 1 Objection

SEPP (Infrastructure) 2007

SEPP No. 55 - Contaminated Lands

SREP (Sydney Harbour Catchment) 2005
Draft North Sydney LEP 2012
Local Development

POLICY CONTROLS

DCP 2002

DESCRIPTION OF LOCALITY

The site is located between the Pacific Highway to the east and the main “Mackillop” campus of the Australian Catholic University to the west (**Figure 2**). The site has a primary frontage of 34.6m to Napier Street, a rear frontage of 12.4m at Oak Street, and an area of 1,504m².

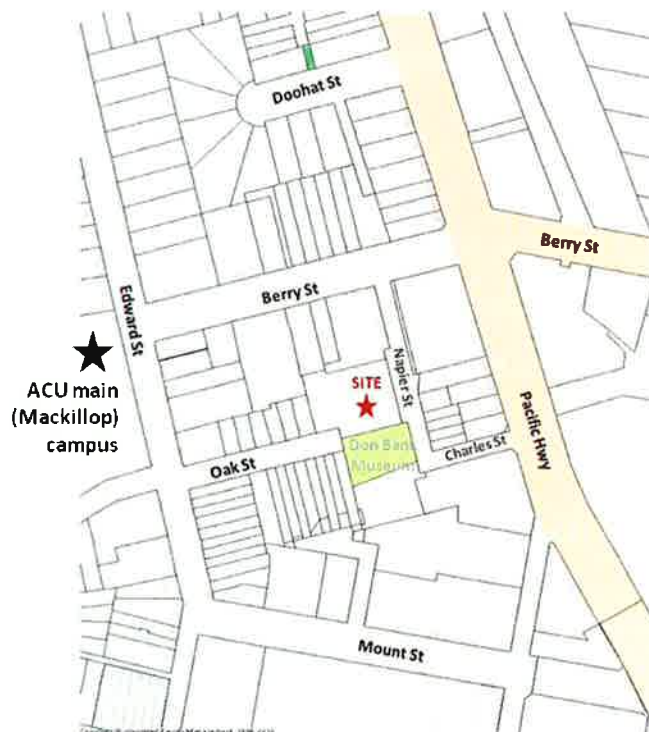


Figure 2 – Site is located between the Pacific Highway and the main ACU campus

The site is located within the western periphery of the North Sydney CBD and is occupied by a multi-storey glass and concrete commercial building, known as Tenison Woods House (**Figure 3**). The building comprises nineteen (19) office levels, two (2) plant room levels (Levels 22 & 23), and three (3) basement parking levels (Levels 1-3). The building has a square footprint and is finished at the upper levels by a large parapet which encloses roof-level plant and machinery. The main entry forecourt at Napier Street features an entry awning canopy and perimeter landscape planters (**Figure 4**). There is through-ramp access to the basement carpark which links Napier and Oak Streets (**Figure 5**).



Figure 3 – Subject 23-storey building



Figure 4 – Main entry forecourt



Figure 5 – Through-ramp between Napier & Oak Streets

The site is approximately 550m from North Sydney railway station via Charles Street and the Highway. From Napier Street, the main (Mackillop) Campus is approximately 200m walking distance via Berry Street, and 85m to the Pacific Highway via Charles Street. The rear of the site is approximately 100m walk to the main campus via Oak Street. The various University campus locations are shown in **Figure 6**. The site is also within an area west of the Pacific Highway that Council has identified as an emerging education precinct.



No. 26 Napier St

SITE

Oak St

Figure 8 – Don Bank Museum adjoining to the south



Figure 9 – Heritage-listed commercial cottages to the east



Figure 10 – Residences on Oak Street

RELEVANT HISTORY

Previous approvals

Various development approvals for office fitouts within the building have previously been approved.

ACU signage DA

On 23/3/12 Council granted approval for the erection of four (4) building identification signs at roof parapet (**DA418/12**). The signs are associated with the existing use of the site by the University which, at the time of assessment of DA418/12, occupied eight floors in the building.

Subject application

The subject DA was lodged on 10/7/12 and additional information and design amendments were requested by Council in August, to address various issues including heritage, overshadowing, separation distance from the north-adjointing residential apartments at No.26 Napier Street, and traffic and parking.

Council received additional and amended information on 21/9/12 and 11/10/12. The key design change in the amended proposal is an increase in the setback of the southern balustrade of the Level 5 terrace. The amended drawings also clarify the location and height of the new lift overrun, and materials selection. A sample board was received by Council on 25/10/12.

REFERRALS

Joint Regional Planning Panel – Sydney East Region (JRPP)

On 5/9/12 Council provided a briefing of the application to the JRPP. The application was identified as Crown development. The JRPP was advised that a number of issues had been raised with the applicant, including impacts on the heritage-listed Don Bank Museum, building separation, traffic and parking, and that the applicant will be submitting amended and additional information to address these concerns.

Roads & Maritime Services (RMS)

The application is identified as traffic-generating development under the SEPP (Infrastructure) 2007 and was accordingly referred to the RMS. The RMS has advised that it raises no objection to the development as the proposal will have minimal impact on the road network.

Building

The application was referred to Council's Building Surveyor (Fire Safety) who advised that a whole-of-building upgrade to comply with the Building Code of Australia would be required. A **condition** can be imposed to ensure compliance. Should significant changes be necessary to facilitate the release of a Construction Certificate, a Section 96 modification may be necessary.

Development Engineer

The application was referred to Council's Development Engineer who raised no objection to the development and recommended **conditions**, including requirements for a construction traffic management plan, and infrastructure works.

Health

The application was referred to Council's Environmental Health Officer who recommended **conditions** in respect of the proposed rooftop plant and equipment, including requirement for acoustic certification of plant operations, and a requirement that separate approvals be obtained for any future food premises.

The Health Officer has also reviewed the submitted acoustic report for the Level 5 outdoor terrace and has identified that the proposed use of the terrace, which is not clearly specified, could give rise to noise complaints if used late at night or for events where bands or alcohol are provided. In addition to the absence of details of an operation management procedure (as referred to in the acoustic report but not provided), **conditions** are recommended to prohibit the sale or consumption of alcohol on the terrace without prior approval of council; permit use of the terrace up to 10.00pm, with any extension subject to separate Council approval; and prohibition of any speakers or music on the terrace.

Strategic

The application was discussed with Council's Strategic Planner who advised that on 13/2/12 Council resolved to undertake a planning study to provide an integrated planning approach to the emerging educational precinct adjoining the North Sydney CBD to develop new strategies, including improved urban design and street level amenity; improved traffic planning underpinned by a detailed traffic study; and creation of a working party including educational institutions and residents. Further, the site is identified as being within the proposed boundary of the education precinct, and the DA is consistent with the strategic intent of the area as an education precinct.

Heritage

Original application

The proposal, as originally submitted, was referred to Council's Conservation Planner who advised that the development would not satisfy Clause 50 (Development in the vicinity of Heritage Items) of NSLEP 2001 in that the glazed addition would detract from the visual curtilage of Don Bank & Gardens, and the proposed additional shadowing of the Don Bank Museum would not be acceptable. Accordingly, an amended design and Heritage Impact Statement and additional shadow analysis were requested.

Amended application

The amended development and Heritage Impact Statement were referred to the Conservation Planner who found the amended proposal unsatisfactory and therefore not supported on heritage grounds, as follows:

HERITAGE STATUS

The subject property is not a heritage item and is not in a conservation area. It is however, immediately adjacent to heritage items 1 to 7 Napier St, 1 to 13 Oak St, 6 Napier St (known as Don Bank Museum and Gardens) as well as the Edward Street Conservation Area.

Don Bank Museum and Gardens are state-listed on the NSW Heritage Register and are the subject of a Conservation Management Plan 2011 (CMP) prepared by City Plan Heritage, adopted by Council in 2011. The original cottage of Don Bank is a rare and endangered example of New South Wales' and North Sydney's cultural history. It is a sophisticated vertical slab cottage designed in the Colonial Regency style believed to date from the 1840s. Examples of slab construction are now rare in the metropolitan area, with the greater majority of examples existing in the outer-ring area. These examples however, do not generally display the level of sophistication of Don Bank, the former being a "town" residence with a Victorian garden setting and other examples more strongly associated with rural settlements.

The Victorian period gardens include plantings from 1854 and are assessed as having 'high significance' in the CMP (page 57). The grounds were restored in the 1980s and are used by office workers as well as by community groups.

Don Bank Museum and Gardens are also heritage listed in NSLEP 2001 for their historic, aesthetic and social significance. The cottage that houses the museum is notable for being the oldest surviving timber dwelling in North Sydney. The property was bought by North Sydney Council in 1979 after community advocacy and on the recommendation of the Heritage Council. It was conserved with assistance from the Heritage Council and opened as a local museum in 1981 and has been managed by North Sydney Council Historical Services staff and by volunteer guides since 1987. It has been home to many exhibitions, public open days and events as well as being home to North Sydney Council's "Writer-in-Residence".

The objectives of Council's purchase of Don Bank were to ensure the property's conservation and to provide a local history museum to the community. North Sydney Council funds the operation and maintenance of the property.

ASSESSMENT

Clause 50 NSLEP 2001

(1) Development in Vicinity objective

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

(2) Development in Vicinity Controls

When determining a development application relating to land in the vicinity of a heritage item the consent authority must consider the likely effect of the proposed development on the heritage significance of the heritage item and its curtilage.

*The proposed works do **not** satisfy NSLEP Clause 50(1) Development in the Vicinity of Heritage Items; in that the proposed glazed addition will detract from the visual curtilage of Don Bank Museum and Gardens. The vista of Don Bank Museum and Gardens will be narrowed by the proposed glazed addition when viewed from the northern end of Napier St. This will further degrade the visual curtilage of Don Bank which originally had a much larger expanded curtilage.*

Figure 1 View of Don Bank from Napier Street



The cottage, according to the Heritage Database, had 'sweeping views across to Neutral Bay' but is now 'hemmed in by adjacent high-rise commercial buildings.' The visual curtilage of the property is also described in the CMP as extending to the north up Napier St and to the east in Charles St. It also states that the visual curtilage must be 'maintained and preserved as much as possible' (page 75).



Figure 2 – Map from page 70 of the CMP showing the visual curtilage with red arrows and physical curtilage defined by the red box.

The proposed works are also contrary to the Policies 17, 37 and 38 in the Conservation Management Plan 2011 (CMP).

Policy 17 – Development in the vicinity of Don Bank Museum should be sensitive to its heritage significance (despite the current existence of encroaching high rise buildings within the North Sydney CBD). Any new development that has further negative impact on Don Bank Museum should not be permitted.

Policy 37 – Maintain the existing setting of the building as well as its relationship with the surrounding historic context on Napier and Charles Streets.

Policy 38 – Maintain the existing views and vistas to and from the building along Napier and Charles Streets.

For these reasons, it is essential that the views to and from the gardens be retained as wide and open, not enclosed by the proposed glazed Student Breakout area. It is also important that the side elevation of the cottage and its garden setting be retained, particularly as the 'overall street presentation' of the cottage has been assessed as having 'high significance in the CMP (page 55).

RECOMMENDATION

The proposal is not supportable with regard to heritage in its current form. The proposal is contrary to Policies 17, 37 and 38 within the Conservation Management Plan (CMP) for Don Bank which was adopted by Council in 2011 and does not satisfy Clause 50 (1) Development in the Vicinity of Heritage Items of NSLEP 2001.

To ensure that the heritage significance of the state-listed property Don Bank is preserved, the following amendment is requested:

- *The southern third of the glazed Student Breakout area on Level 04 (Ground) be deleted, thus taking the bulk away from Don Bank and retaining the existing views and vistas to and from Don Bank Museum and Gardens.*

Should the proposal be given consent despite being contrary to the Conservation Management Plan and Clause 50 of NSLEP 2001, the following condition is recommended:

- *Southern third of the glazed Student Breakout area on Level 04 (Ground) to remain transparent. No awnings, screens, posters and the like are to be applied internally and/ or externally to the glazing.*

(Reason: To minimise the impact of the addition to the views and vistas to and from Don Bank Museum and Gardens.)

The concerns raised are addressed in this report.

Landscaping

The application was referred to Council's Landscape Development Officer who advised that the proposed removal of the Chinese Elm tree and the grassed area represents a loss of amenity to the site as well as the streetscape value. However, it would not be possible to retain the tree unless the proposed scheme is abandoned and the whole of the raised planter box in which it grows is retained, and if retained, the long term future of this tree species in a raised planter box over concrete would be limited.

Having regard to the above, and given that the proposal retains both the London Plane Street Tree and the London Plane Tree on-site, the Landscape Development Officer raises no objection to the development, subject to **conditions**.

Traffic Planning

The submitted traffic report identifies 140 parking spaces in the basement carpark, with 27 currently being used by the University. Following completion of the proposed works, there will be a reduction of 8 parking spaces, leaving 132 parking spaces.

Original application

The original proposal was referred to Council's Traffic Planning Section who identified that the change of use will result in different traffic generation rates with different peak periods to the patterns that currently exist, and advised that the proposed development would need to be assessed with the assistance of an amended traffic report. In particular, the allocation of the 132 available on-site car parking spaces will need to be clarified. Council will not support allocation of car spaces to students as this would encourage use of private motor vehicles thus exacerbating congestion and parking pressures in the area.

Amended application

The amended traffic report was referred to Council's Traffic Planning Section which advised as follows:

Parking & Traffic Generation – Student parking in the basement carpark should not be permitted on the weekends. Student travel patterns on weekends are likely to vary as a result of the development and if off-street parking is made available more students are likely to drive instead of using public transport and alternative transport. This is contrary to Council's DCP objectives to encourage sustainable transport. Furthermore the leasing of car parking spaces to tenants outside of the development is not supported. These tenants are likely to be visitors to the area who do not have access to off-street parking and either park on-street, use public transport, walk or cycle. There is a finite amount of parking in the North Sydney CBD. In the long term, as one vehicle is moved off-street another one will take it's [sic] place thereby increasing the number of people who drive to work rather than decreasing it.

Bicycle Parking – It is unfortunate that the excess parking has not been allocated for other uses. The traffic report does not indicate how much bicycle parking is currently available, however in order to encourage students and staff to cycle it is recommended that some of the excess parking spaces be converted to bicycle parking. Council's DCP does not have specific bicycle provisions for an educational facility, however recommends 1 bicycle locker per 600m² GFA. The proposed development will have a GFA of 13,553.4m² it is therefore recommended that a minimum of a "Facility Class 2" type bicycle parking, as detailed in AS2890.3 capable of accommodating 22 bicycles be provided in place of some of the parking spaces. This bicycle parking could be made available to both students and staff.

In addition "Facility Class 3" type bicycle parking (rails/racks) capable of storing 20 bikes should be provided for students and visitors. The racks/rails should be located in a prominent, safe, accessible and convenient location. In addition, end of trip facilities consisting of change rooms, showers, toilets and lockers should be provided for students and staff.

Sustainable Transport Initiatives – To ensure that the travel demand management mechanisms for the site is appropriate, the development must include a Green Travel Plan (GTP), prepared to the satisfaction of Council's Director Engineering and Property Services. The GTP must be prepared by a suitably qualified person and must encourage the use of non-private vehicle transport modes by the staff, students and visitors of the ACU campuses. The plan must include:

- *A description of the location in context of alternative modes of transport and objectives for the Green Travel Plan.*
- *Provision of a designated 'manager' or 'champion' responsible for co-ordination and implementation of the Green Travel Plan.*
- *Staff and student welcome packs – including provision of Public Transport maps, timetables and/or real time information of nearby services (including train, buses, ferries, cycling and walking routes) to be provided to purchasers and/or occupiers upon occupation of a dwelling.*

- *Staff travel allowances as part of salary packages to encourage public transport use.*
- *Full details of other possible incentives and how they will be implemented.*
- *Details of bicycle parking facilities on the land and bicycle routes.*
- *Details of Green Travel Plan funding and management responsibilities, including ongoing monitoring and review.*
- *Details of annual reporting.*
- *Include provisions to be updated not less than every 2 years.*

Pedestrian Routes – *I generally agree with the comments in section 4.5 in the traffic report with the exception of consideration of a 'No Pedestrian Access' signage [at the Oak Street driveway entrance]. This would be difficult to enforce and could lead to a perception that vehicles have priority at the driveway. I agree that there would be a small number of pedestrians who use Oak Street and appropriate travel information in the green travel plan, ACU website and information packs would highlight the preferred pedestrian routes to discourage use of Oak Street. Rather than the suggested signage, a more suitable approach would be to install "Stop" and "Give Way to Pedestrians" signage at the car park exit and driveway exit on to Oak Street.*

It is difficult to recommend approval without a traffic report that addresses the above concerns. Notwithstanding this, should the development application be approved it is recommended that the following conditions of consent be included:

- 1. That the use of car spaces be restricted to occupants of the development, excluding students.*
- 2. That a minimum of a "Facility Class 2" type bicycle parking, in accordance with AS2890.3 capable of accommodating 22 bicycles be provided in place of some of the basement parking spaces for use by staff and students.*
- 3. That "Facility Class 3" type bicycle parking (rails/racks), in accordance with AS2890.3 capable of storing 20 bikes be provided for students and visitors. The racks/rails should be located in a prominent, safe, accessible and convenient location.*
- 4. That end-of-trip facilities be provided as part of the development for cyclists.*
- 5. That a "Stop" sign and "Give Way to Pedestrians" sign be installed at the car park exit and driveway exit onto Oak Street.*
- 6. A Green Travel Plan, as detailed in the traffic comments above, is to be developed to highlight to staff, students and visitors of the ACU of the available public and alternative transport options for travelling to the site. This is to be submitted to Council for approval by the Director of Engineering and Property Services prior to the issue of the Occupation Certificate.*
- 7. That a Construction Traffic Management Plan be prepared and submitted to Council for approval by the North Sydney Traffic Committee prior to the issue of the Construction Certificate. Any use of Council property shall require appropriate separate permits / approvals.*
- 8. That all aspects of the bicycle parking and storage facilities comply with the Australian Standard AS2890.3.*

SUBMISSIONS

The owners of adjoining properties and the Edward Precinct were notified of the proposed development between 20 July and 3 August 2012. The notification resulted in **three (3) submissions**. The amended application was re-notified for a period of 14 days between 12 & 26 October 2012. The re-notification resulted in **three (3) additional** comments, one in support of the proposal.

Name & Address of Submitter

Basis of Submissions

[Redacted Name and Address]

- Design: glorified external staircase; unnecessary add-on; UDEP should provide comments
- FSR: no need for separate staircase once all commercial tenants are removed; need strong public benefit for increase in FSR, yet no provision of facilities for students (e.g., gym, pool, libraries, open space, make terrace a smoking space); public access to facilities (e.g., close Oak Street ramp to vehicular traffic and provide level outdoor area for students and local access)
- Heritage: Impinges on Don Bank and streetscape; above suggested benefits to offset heritage impacts
- Student numbers & facilities: masterplan required if student numbers are increased, taking into account all related ACU North Sydney sites, bearing in mind Shore School is planning for up to 500 more students over a longer time period; inadequate student facilities (e.g., open space)
- Transport & parking: Support limit of on-site parking to reduce congestion; updated parking statistics should be used; extra 200 street parking spaces needed for the proposal; stop student traffic through Oak Street; walking routes – protect Oak Street access; foot traffic noise on Oak Street – condition or prevent access
- Hours of operation: Conditions requiring same hours as 40 Edward Street, and hours for cleaning and waste management
- Noise and light: Conditions to control noise from additional plant, and restrict light use between 10pm and 6am due to proximity to residents

[Redacted Name and Address]
28 Edward Street
North Sydney

- Traffic impacts are significantly understated in the report, survey sample is small but even if 5% of students drive there will be double the number of students seeking street parking, and information conflicts with information supplied to the Precinct by the University; ACU North Sydney campus will close to double 2,367 to 5,450 students and staff by 2018, putting additional pressure on currently significant parking issues
- Acoustic report indicates a terrace is envisaged for floor 23; large gatherings after office hours will impact on residents
- Operating hours and impacts on residential amenity is unclear
- Lack of information on how the actual building works will be managed without inconvenience to workers and residents

[Redacted Name and Address]
Caroline Thornton
43 Edward Street
North Sydney

- Strain on community infrastructure from additional 850 students; unfair on local ratepayers
- Students will park on Berry and Edward Streets, making it more difficult for residents to park, and resulting in flow-on effect to nearby residential area
- Lack of University masterplan for residents to see long term plans; lack of transparency and community consultation

| Name & Address of Submitter | Basis of Submissions |
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| Re-notification | |
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| Anjula Hudson 22 Lark Street North Sydney | |
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| Anjula Hudson 22 Lark Street North Sydney | <ul style="list-style-type: none">• No problem with the Catholic University increasing student numbers• Concerned about parking strain on neighbouring residential streets, and noting a disproportionate number students with parking disability permits and a large number of students rubbing chalk marks off their tyres; Council should modernise parking monitoring and ACU should provide parking for disabled students at their current campus |
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| Caroline Thornton 43 Edward Street North Sydney | |
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| Caroline Thornton 43 Edward Street North Sydney | <ul style="list-style-type: none">• Strain on community infrastructure from additional 850 students; unfair on local ratepayers• Students will park on Berry and Edward Streets, making it more difficult for residents to park, and resulting in flow-on effect to nearby residential area• Lack of University masterplan for residents to see long term plans; lack of transparency and community consultation |
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| Sisters of Mercy 8 Mount Street North Sydney | |
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| Sisters of Mercy 8 Mount Street North Sydney | <u>Support</u> |
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| Sisters of Mercy 8 Mount Street North Sydney | <ul style="list-style-type: none">• Acknowledge the wonderful work being done by the ACU in this area• Society needs young people well educated who can contribute |
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CROWN DA

The development is within the meaning of Crown Development Application in Section 88 of the *Environmental Planning and Assessment Act 1979*. Pursuant to Section 89 of the Act, the DA is referred by Council to the Regional Panel for determination as it recommends the imposition of conditions that the applicant has not agreed to and 70 days have elapsed since lodgement.

CONSIDERATION

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

SEPP (Infrastructure) 2007

The aims of the SEPP include, relevantly, the provision of greater flexibility in the location of infrastructure and service facilities, the identification of matters to be considered in the assessment of development adjacent to particular types of infrastructure development, and the provision of consultation with relevant public authorities.

Part 3 Division 3 of the SEPP provides development controls for educational establishments. The proposed use falls within the meaning of an "educational establishment" as defined in Clause 27. The development is also identified as traffic-generating development in accordance with Schedule 3 of the SEPP. The development is assessed against the relevant matters for consideration contained in Clause 104(3), as follows:

- (i) **Any submission of the RTA.** The RTA (now Roads & Maritime Services) has advised that it raises no objection to the proposed development as the proposal will have minimal impact on the road network.

(ii) Accessibility of the site, including:

(A) Efficiency of movement of people to and from the site and the extent of multi-purpose trips. The subject site is in close walking distance to the main Mackillop Campus and other University buildings. Students can be expected to travel on foot between the various locations, accessing student services, lectures, and library facilities, on any typical day.

(B) Potential to minimise the need for travel by car. The site is centrally located in relation to existing University buildings and is well-served by public transport. **Conditions** are recommended for the provision of bicycle parking and a Green Travel Plan, in accordance with the advice of Council's Traffic Planning section.

(iii) Potential traffic safety, road congestion or parking implications of the development. Having regard to Council's **Traffic Referral** advice, it is considered that the development will not give rise to any traffic safety, congestion or parking implications, subject to conditions, including requirements for the provision of bicycle parking, a Green Travel Plan, and Construction Traffic Management Plan.

The proposed development is generally consistent with the relevant provisions contained within the SEPP.

SREP (Sydney Harbour Catchment) 2005

The site falls within the Sydney Harbour Catchment Area and is subject to the provisions of the Policy. Clause 25 of the SREP outlines matters to be taken into consideration in relation to the maintenance, protection and enhancement of the scenic quality of foreshores and waterways.

The proposed development, involving works primarily at the lower levels of the building, will not have any impact on primary views of the building from the Harbour. The plant and equipment proposed on the rooftop will be installed behind and below the building parapet and be similar in scale to the existing rooftop installations, and not be visible from the harbour. Accordingly, the proposed development is considered satisfactory with regards to the provisions contained within this policy.

SEPP 55 and Contaminated Land Management Issues

The provisions of SEPP 55 require consideration of the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site. Given the commercial office history of the site, it is unlikely to be any issues of soil contamination that would require remediation.

NORTH SYDNEY LEP 2001

1. Permissibility within the zone

The proposed development for the purpose of an educational establishment and retail use is permissible in the Mixed Use zone.

2. Mixed Use Zone Objectives

The proposed development is generally consistent with the objectives of the zone contained in Clause 14. In particular:-

- (a) ***Encourage a diverse range of living, employment, recreational and social opportunities, which do not adversely affect the amenity of residential areas.***

The development will increase the range of uses within the Mixed Use zone, in particular, adding educational uses in the North Sydney Centre.

The development will not have any adverse impact on residential amenity in respect of traffic, parking, and acoustic privacy, subject to conditions; light spill, which will be minimised by the proposed concrete construction of the wall facing the north-adjointing residential units at No.26 Napier Street; and hours of operation, which are commensurate with the Mixed Use zone and CBD location of the site. No objection is raised in this regard.

However, the development will have **unacceptable** amenity impacts on the north-adjointing residential apartments at No.26 Napier Street as the proposed separation of only 6m between the new building addition and the adjoining balconies will be less than half of the acceptable range of 13 to 18m building separations provided for in Section 6.2(d)v section of NSDCP 2002 and the Residential Flat Design Code under SEPP No.65, respectively. The substantial under-provision of building separation will give rise to amenity impacts in terms of daylight amenity, overbearing bulk and scale, and outlook.

The easternmost balconies of No.26 Napier Street have outlooks across the subject site to the Don Bank Museum. While the view from these apartments is of a local heritage icon that is also State-listed, the side view itself cannot be considered an iconic view; however, the outlook onto the gardens for the south-facing apartments, particularly at the lower building levels, is considered to provide a high level of amenity to the apartments.

The residences impacted by the development are located on the lower levels of the apartment building at No.26 Napier Street, as shown in **Figure 11**. The effective separation will be some 6m between the new building addition and the outer edge of the adjoining balconies; the relationship is illustrated in **Figures 12 & 13**.



Figure 11 – Residential units at No.26 Napier Street that would be most affected by the development

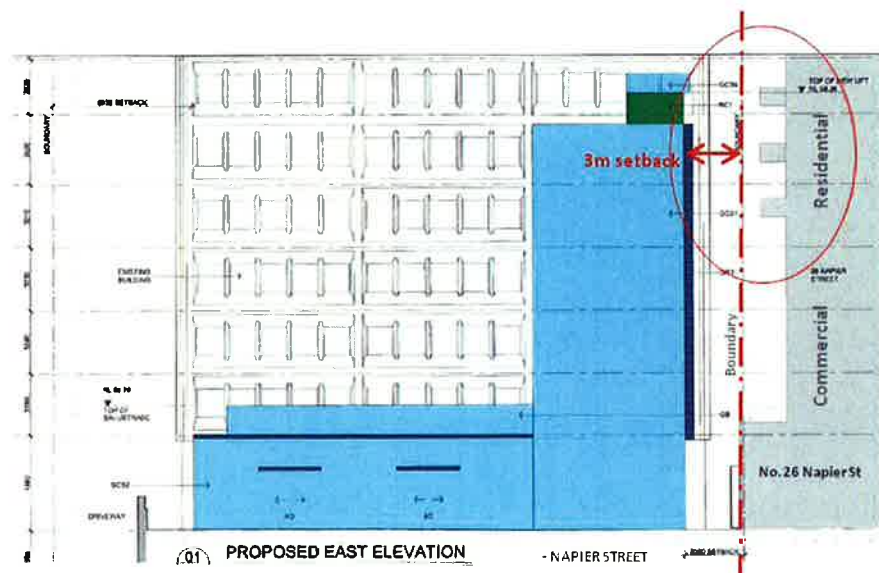


Figure 12 – Proposed addition will have a 6m separation from the adjoining residential balconies



Figure 13 – Indicative envelope of proposed addition adjacent residential units to the north at No.26 Napier Street

It is acknowledged that the setback of No.26 Napier Street of 3m from the southern boundary to the balcony line (as measured on the survey drawing) is minimal for a 37m tall building. Those apartments that gain outlooks to the gardens of Don Bank Museum therefore currently benefit from a high level of “borrowed” amenity from the subject site.

Nevertheless, the proposed impacts on the outlook and daylight amenity of up to six balconies at No.26 Napier Street are significant and material by virtue of the substantial under-provision of building separation compared to minimum requirements for the maintenance of reasonable residential amenity.

Furthermore, while the DCP Character Statement would allow for a 3-storey (7-10m) podium within the site, the new building addition, at 6 storeys and 20.63m in height (including lift overrun) amounts to a significant departure from the acceptable height envisaged for building structure at the lower levels of the subject site.

On balance of the above considerations, the proposed height and setback at the northern boundary, and the consequential negative impacts on residential outlook, overbearing bulk and scale, and daylight access, are considered to be unreasonable, given the height of the additions.

It is recommended that this impact may be mitigated by reducing the height of the addition by two (2) levels so as to extend from Level 4 (ground) to Level 7 only, with the height of the addition reduced to 4 storeys at approximately 14m high (**Figure 14**). This would reduce the extent of non-compliance with the podium height provision and minimise residential amenity impacts to an acceptable level. The relationship between a reduced-height addition and the architecture of the existing building, in terms of proportions and articulation, will be maintained.

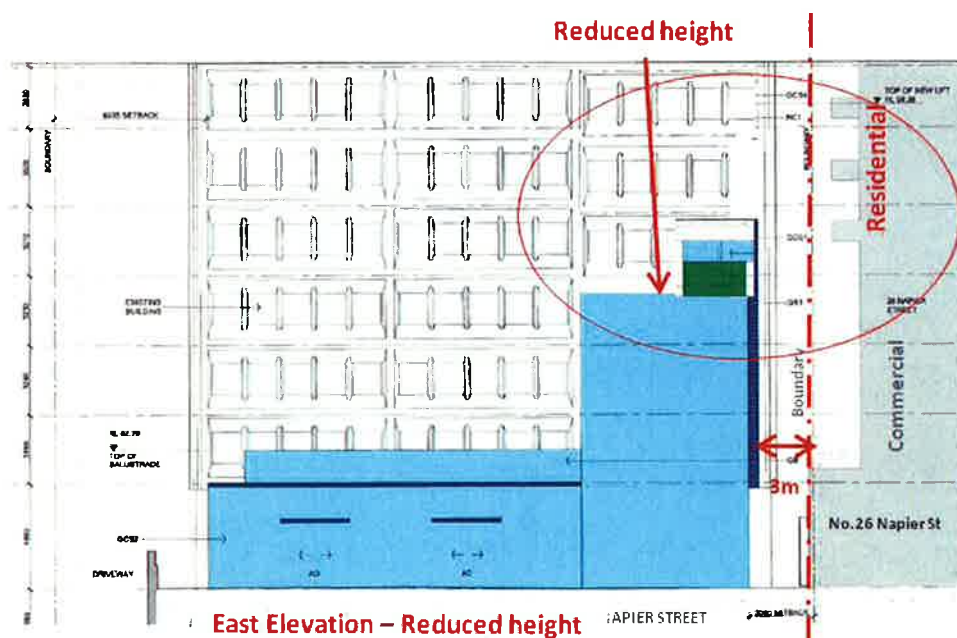


Figure 14 – Reduction in height by 2 levels would achieve satisfactory relationship with the adjoining residential units

One way of compensating for the resulting loss of vertical circulation would be the installation of an internal stair and platform lift between Levels 7, 8 and/or 9, which could work reasonably well for the proposed library/moot court function. **Conditions** are recommended.

- (b) **Create interesting and vibrant neighbourhood centres with safe, high quality urban environments with residential amenity.** The proposed educational use will enliven the neighbourhood, and activate the CBD outside of regular office hours. Amenity will be maintained by the internalisation of student circulation and breakout spaces, and the physical separation between the Level 5 terrace and residential uses.
- (c) **Maintain existing commercial space and allow for residential development in mixed use building with non-residential uses at the lower levels and residential above.** Residential use or accommodation does not currently exist on the site, and none is proposed. Non-residential uses, comprising a commercial lobby, student areas, and retail uses, will be maintained at the lower building levels. The upper levels will continue to accommodate university-related office administration.

- (d) **Promote affordable housing.** Affordable housing does not currently exist on the site and none is proposed. The provision of affordable housing is considered to be beyond the scope of the application.

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

3. North Sydney Centre Objectives

The development satisfactorily responds to the specific objectives for the North Sydney Centre contained in Clause 28B of NSLEP 2001, as discussed in the following table:-

| North Sydney Centre Objective | Response |
|---|---|
| (a) To maintain the status of the North Sydney Centre as a major commercial centre within Australia | The development will maintain an employment use of the site. |
| (b) To require arrangements for railway infrastructure to be in place before additional non-residential GFA is permissible | Non-residential GFA means floor space that is used for the purposes of "commercial premises" for the purpose of gain pursuant to Clause 28(C)(8) of the LEP. |
| (c) To ensure that railway infrastructure, and in particular North Sydney Station, will enable and encourage a greater percentage of people to access the North Sydney Centre by public transport than by private transport | The proposal gives rise to an additional 764.4m² of new floor space for use as an educational establishment, and in the nature of circulation and student breakout areas. As such, the proposed floor area is not characterised as "commercial premises" as would trigger a railway infrastructure contribution. |
| (d) To discourage the use of motor vehicles in the North Sydney Centre | It is proposed to reduce the number of car parking spaces by eight, from 140 to 132 spaces. A further reduction will be required by way of condition requiring conversion of spaces to bicycle parking. |
| (e) To encourage access to and within the North Sydney Centre for pedestrians and cyclists | |
| (f) To allow for 250,000m ² (max.) non-residential GFA in addition to the existing | Council's Strategic Planner advises that 201,284m ² of additional non-residential GFA in the North Sydney Centre has been approved (as at 11/7/12). The proposed addition of 764.4m ² floor space will not result in exceedance of the maximum 250,000m ² provided for in the LEP. |
| (g) To prohibit further residential development in the core | No residential floor space is proposed. |
| (h) To encourage provision of high-grade commercial space with a floor plate, where appropriate, of at least 1,000m ² | The development will maintain the existing commercial floor plate. |
| (i) To achieve a variety of commercial space | The proposal will convert some of the commercial foyer space into retail use. |
| (j) To encourage refurbishment, recycling and rebuilding of older buildings | The application is for an adaptive reuse of an existing commercial building for educational purpose. |

| North Sydney Centre Objective | Response |
|---|---|
| (k) To encourage diverse range of employment, living, recreation and social opportunities | The development will diversify existing commercial office use to include educational establishment uses within the site and on the western periphery of the North Sydney CBD. |
| (l) To promote high quality urban environments and residential amenity | <p>The refurbishment of the forecourt and change of use will activate and enliven the street.</p> <p>The development will not cast any additional shadows on the Don Bank Museum, and thus maintain its heritage and open space amenity. And, despite the Heritage Referral, it is considered that the proposed building height, setbacks, massing and materials selection are such that the building addition in the Napier Street forecourt will not adversely impact on the visual curtilage of the Don Bank Museum and its garden setting. Refer to Building Height and Heritage sections in this report.</p> <p>Residential amenity impacts may be addressed by reducing the height of the building addition adjacent the northern boundary, as discussed in the Mixed Use zone section in this report.</p> |
| (m) To provide significant public benefits such as open space, through-site links, childcare, etc. | The existing building forecourt will be refurbished and remain publicly accessible. Wheelchair accessibility will be maintained. |
| (n) To improve accessibility within and to the North Sydney Centre | |
| (o) To protect the amenity of residential zones and existing open space | <p>The adjoining residential units are within a Mixed Use zone, and the impacts of the proposed development are considered to be reasonable within a mixed use, city centre context.</p> <p>The proposal will not give rise to any additional overshadowing of the Don Bank Museum and its garden.</p> |
| (p) To prevent any net increase in overshadowing of any land zoned residential, public open space, special area | The submitted architect-certified shadow diagrams indicate that the development will not result in any net increase in overshadowing of residential, open space or special areas. |
| (q) To maintain areas of open space, on private land and promote preservation of existing setbacks and landscaped areas | The development will maintain a useable landscaped forecourt area across the entire street frontage, and substantially maintain existing building setbacks. |

4. LEP Compliance

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

| STATUTORY CONTROL – North Sydney Local Environmental Plan 2001 | | | | |
|---|---------------------------------|--|--|-----------------|
| Site Area – 1,504m² | Existing | Proposed | Control | Complies |
| North Sydney Centre | | | | |
| Building Heights & Massing (Cl.28D) | RL 148.9 | Works below existing RL 148.9 | RL195 (AHD) | Yes |
| Overshadowing (Cl.28D(2)(b)-(d)) | Existing | No net increase | No net increase | Yes |
| Site area (Cl.28.D(2)(e)) | 1,504m ² | No change | No less than 1,000m ² | Yes |
| Mixed Use Zone | | | | |
| Building Height (Cl.29) (max) | Existing | No change | None specified | Yes |
| Building Height Plane (Cl.30) | | | | |
| • West Elevation | Up to 63-65m (building parapet) | Up to 46-49m (new roof-top cooling tower behind parapet) | 45° height plane at 1.8m above boundary adjoining Residential A2 zone, and at 3.5m above boundary adjoining Residential C zone | No |
| • South Elevation | Up 63m (building parapet) | Up to 46m (new cooling tower behind parapet) | 45° height plane at 1.8m above road which separates the land from Residential A2 zone | No |
| Non-Residential Floor Space (Cl.31) (max) | 12,789m ² (8.5:1) | 13,553.4m ² (9:1) | 4,512 to 6,016m ² (3:1 – 4:1) | No |

5. Building Height

The proposed development does not breach the maximum building height limit applicable to the site and is generally consistent with the objectives of the height controls contained in Clause 28D(1) of NSLEP 2001.

(a) Achieve a transition of building heights generally from 100 Miller Street (Northpoint) and 79-81 Berry Street (being the location of the tallest buildings) stepping down towards the boundaries of the North Sydney Centre. The development will maintain the existing hierarchy of building heights.

(b) Promote the height and massing that has no adverse impact on land in the public open space zone or land identified as a special area on Sheet 5 of the LEP map or on heritage items. The submitted architect-certified shadow diagrams indicate that the proposed development will not cast any additional shadows on the Don Bank Museum & Gardens. The Level 5 terrace balustrade has been set back from the southern boundary in order to achieve this. No objection is raised in this regard.

The southernmost bay of the proposed building addition will change the visual curtilage of the Don Bank Museum & Gardens, as viewed from Napier Street and as illustrated in **Figures 15 & 16**.

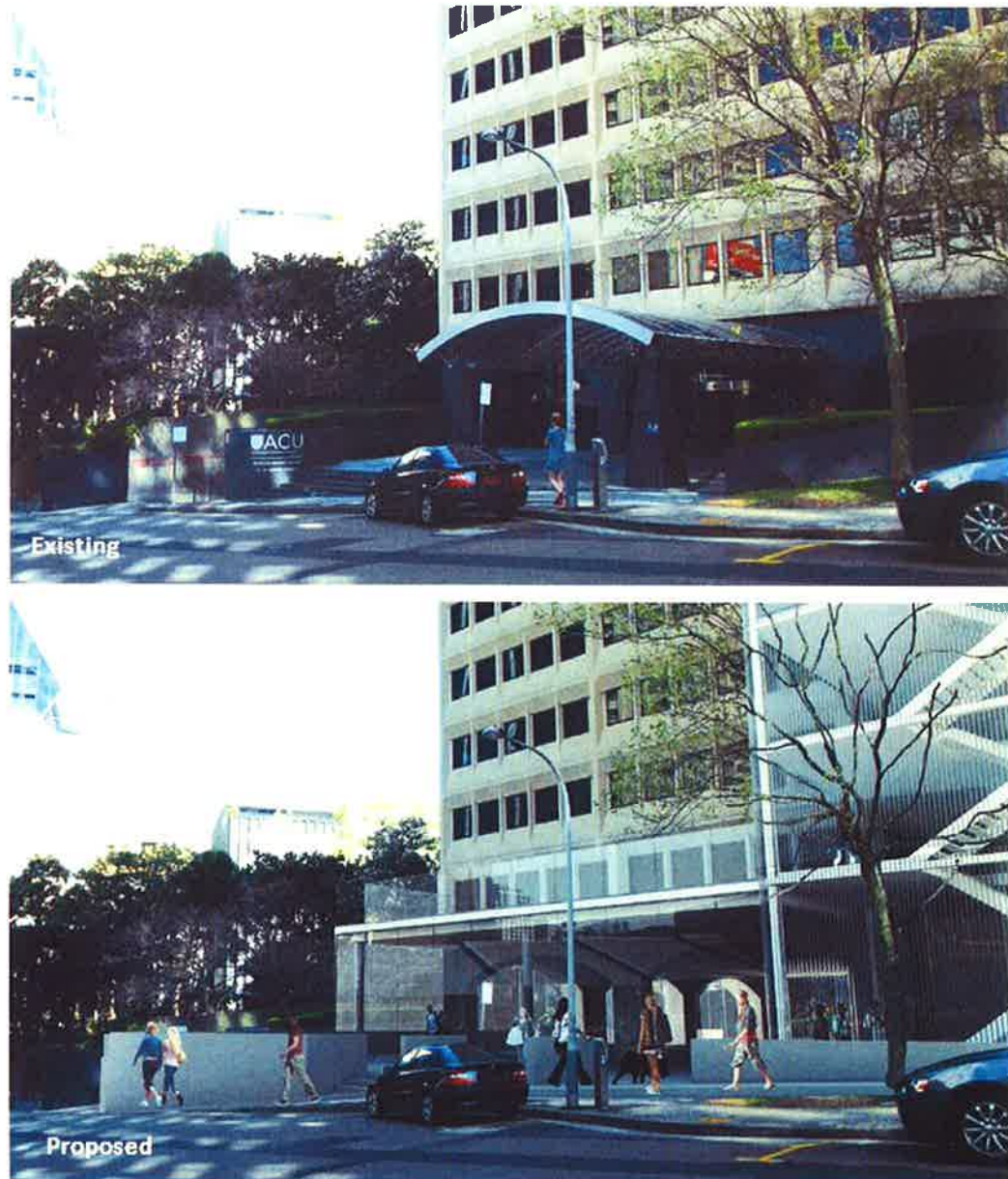


Figure 15 - Existing and proposed visual curtilage of the Don Bank Museum & Gardens from the eastern side of Napier Street



Figure 16 - Existing and proposed visual curtilage of the Don Bank Museum & Gardens from Napier Street in front of the site

While the proposed addition will alter the visual curtilage of the heritage item, the impact is considered to be **neutral** rather than adverse, having regard to the following:

- The garden setting will be maintained as wide and open and would not be enclosed by the proposed addition, or narrowed or constrained, by virtue of the new addition being predominantly a glazed structure permitting visual permeability and the continued expression of the gardens as an integral whole. Views of the side elevation of the cottage and garden setting will be substantially retained such that its overall presentation to the street will remain clearly legible from key vantage points nominated in the CMP. While there will be a change to the visual curtilage of the heritage item, the altered vistas are not considered to be so severe as to amount to a degradation of the visual curtilage of the item.

- There is an existing awning that affects sightlines to the Don Bank Museum & Gardens, and the marginal difference between the proposed development and the existing – from static locations as well as an ambulatory appreciation of the heritage item moving down Napier Street – cannot be said to be so different as to be an adverse impact compared to the existing.
- The CMP for the heritage item (page 75) states that the visual curtilage must be “maintained and preserved as much as possible”. It is noted that the CMP does not prescribe an absolute standard that does not permit for any change to the visual curtilage. The proposed height, setbacks, massing and materials selection are considered satisfactory in terms of the overall altered visual curtilage.
- The massing of the addition is such that the tallest part of the structure will be located furthest most from the heritage item. The height of the addition at the southernmost bay adjacent the heritage item will be single storey and well below the Building Height control for the site, as well as being physically separated from the Don Bank site by a driveway. The structure at this location is also consistent with podium provisions for the site as contained in the DCP Character Statement.

On the balance of the considerations, it is considered that the proposed height and massing will not give rise to any adverse impacts on the heritage item and special area of the Don Bank Museum & Gardens. The impacts of the proposed altered visual curtilage are considered to be neutral, rather than adverse or negative.

(c) Minimise overshadowing of land in the residential or public open space zones or identified as special area on Sheet 5 of the LEP map. The development will not cast any shadows on any residential zones. The Level 5 terrace balustrade, as proposed in the original application, was found to cast additional shadows on the site of the Don Bank Museum & Gardens. The amended proposal has increased the setback of the balustrade by 1.68m, from 7.19m to 8.87m from the southern boundary, to ensure that the development will not cast any additional shadows on the Don Bank site.

(d) Protect the privacy of residents within and around the North Sydney Centre. Both the site and north-adjointing apartment building at No.26 Napier Street are in the Mixed Use zone within a high-density area of the North Sydney Centre. The new building addition will be well below the Building Height limit for the site, and no Building Height Plane development standard is applicable at the northern boundary.

The proposed northern wall of the new addition will be a clad concrete structure and will not have any significant impact on the adjoining apartments by way of overlooking or light spill. Plant and machinery for the lift may be accommodated in the basement and not the lift overrun, via condition. No objection is raised in regard to the visual and acoustic privacy impacts of the development in this regard.

(e) **Promote scale and massing that provides for pedestrian comfort, in terms of weather protection, solar access and visual dominance.** The proposed addition and the forecourt will provide a pedestrian-scale transition to the multi-storey building. The removal of the existing entry awning and partial enclosure of the entry forecourt will result in similar or slightly improved levels of weather protection to users and greater activation at street level.

(f) **Encourage consolidation of sites for provision of high grade commercial space and provision of public benefits.** The existing site area exceeds the minimum requirement of 1,000m² in the North Sydney Centre. Site consolidation is not proposed, and is considered beyond the scope of the application.

The development has been assessed against the building heights and massing controls contained in Clause 28D(2) of NSLEP 2001.

(a) **Height of building will not exceed RL 195 AHD.** The existing height of RL 148.9 complies with the maximum height of RL195 prescribed in Clause 28D(2) of NSLEP 2001. The proposed works are below the maximum height limit, and no change is proposed to the overall height of the building.

(b) **No net increase in overshadowing, between 10am and 3pm, 21 June outside the composite shadow area on the LEP map.** No new shadows will be cast outside of the composite shadow area indicated in the LEP map.

(c) **No net increase in overshadowing between 10am and 2pm, at any time of the year, of any land that is within the North Sydney Centre and is within the public open space zone or within a special area as shown on Sheet 5 of the LEP map.** The architect-certified shadow diagrams indicate that the development, as amended, will not further increase existing overshadowing of the site of the Don Bank Museum.

(d) **No increase in overshadowing that would reduce the amenity of any dwelling that is outside the North Sydney Centre and falls within the composite shadow area on the LEP map.** Dwellings in the vicinity of the site outside of the North Sydney Centre that fall within the composite shadow area are located to the west and southwest, on Oak Street. These dwellings will not be affected by any shadows cast by the proposed building addition which is located toward the eastern (Napier Street) side of the site.

(e) **The site area is not less than 1,000m².** The site area is 1,504m², which complies.

In consideration of the above, it is concluded that the proposed development will not have any material adverse impacts on neighbouring properties arising from the proposed building height, subject to conditions.

6. Building Height Plane

The site is within the Mixed Use zone and has a western boundary adjoining the Residential A2 and Residential C zones, and a southern boundary adjoining a road that separates the site from the Residential A2 zone (**Figure 17**). Building Height Plane (BHP) controls apply at these boundaries pursuant to Clause 30(2) of NSLEP 2001.

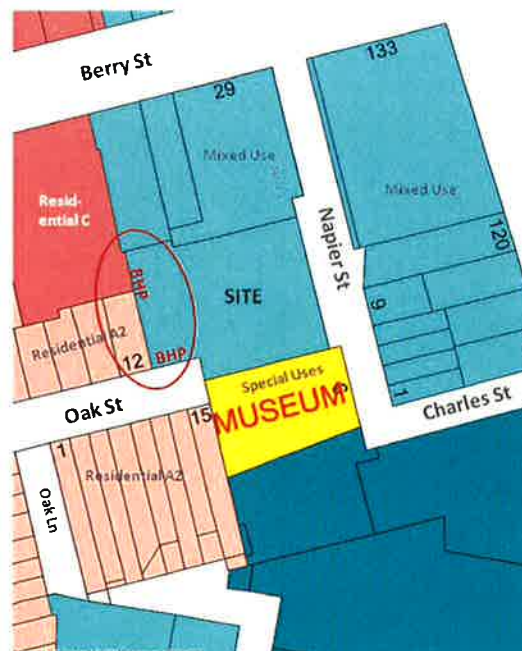


Figure 17 –BHPs apply at the western and southern elevations adjoining Residential A2 and C zones

The LEP Compliance Table shows that the existing development breaches the BHPs at the western and southern elevations. While the installations at roof level will be in breach, the extent of the breaches will be within or no greater than existing breaches. It is also noted that there are no relevant BHP controls that would apply to the proposed new building addition on the Napier Street side of the site.

The applicant has submitted a SEPP No.1 objection seeking to vary the BHP development standard. The impacts of the non-compliance have been examined against the objectives in Clause 30(1) of NSLEP 2001.

(a) Ensure compatibility between development in the mixed use zone and adjoining residential or open space zones. The proposed works and uses that are outside of the BHPs, being internal works at Levels 6 to 9 and the cooling tower installation on the roof, will be contained wholly within the existing building envelope and maintain the existing level of compatibility between the site and adjoining residential zones.

(b) Minimise adverse effects on land in adjoining residential or open space zones in relation to ventilation, views, building separation, solar access, light, and avoid overshadowing of windows, landscaped areas, courtyards, roof decks, balconies and the like. The proposed breaches of the BHPs at the western and southern elevations will be contained within the existing building envelope and will not give rise to any adverse amenity impacts on the residences in Oak Street. The proposed new addition will be located on the eastern (Napier Street) side of the site for which no BHP controls apply.

The SEPP No.1 objection with regard to the building height plane is considered to be well-founded in the circumstances of the subject site, and can be supported.

7. Floor Space

Clause 31(2) of NSLEP 2001 states that a building must not be erected in the Mixed Use zone if the floor space ratio (FSR) of the part of the building to be used for non-residential purposes is not within the range specified in the map.

The LEP Compliance Table in this report shows that the existing non-residential FSR of 8.5:1 does not comply with the range of 3-4:1 specified in the LEP, and that the proposed non-residential FSR of 9:1 also does not comply. The further non-compliance of 0.5:1 is attributable to the addition of **764.4m²** of floor area, being the partial enclosure of the forecourt and the new student lift and stairs at Levels 4 to 9 of the building. It is noted that circulation spaces are included as gross floor area, as defined in the LEP.

The applicant has submitted a SEPP No.1 objection seeking to vary the non-residential FSR development standard. The impacts of the non-compliance are examined as against the specific objectives of the control contained in Clause 31(1) of NSLEP 2001, as follows:

- (a) ***Ensure a diverse mix of uses in each building in the mixed use zone.***
The proposed development will improve the diversity in the mix of uses within the building, by replacing existing office Levels 5 to 9 with educational use, and reconfiguring and expanding the existing ground floor Level 4 to incorporate retail and educational uses.

The additional low-rise vertical circulation will facilitate the proposed dual use of the building for commercial and educational purposes, providing efficient separation between diverse users, and also allowing the building to remain adaptable for a mix of uses in the future.

- (b) ***Minimise traffic generation from commercial development.*** The new floor area, being in the nature of circulation space that is ancillary to the use of existing floor space, will not materially increase the capacity of the existing building floorplates and therefore any additional traffic generation will be minimal. Student parking will not be permitted by way of **condition**, so as to minimise vehicular traffic generation arising from the change of use, and in accordance with the advice of Council's Traffic Planning section.

The SEPP No.1 objection with regard to the floor space ratio is considered to be well-founded in the circumstances of the subject site and its context, and can be supported.

8. Design of Development

Clause 32 of NSLEP 2001 provides specific objectives and controls for the design of new buildings in the mixed use zone, primarily relating to the provision of both residential and non-residential uses. As the proposed development is not for a new building, the provisions are not relevant or applicable. The existing building does not contain any residential floor space, and none is proposed.

9. Contaminated Land

Council is unaware of any contamination affecting the site which would be likely to require remediation resulting from this development proposal.

10. Excavation of Land

Clause 39 of NSLEP 2001 seeks to control the excavation of land in order to minimise adverse effects on the amenity of neighbouring properties, to ensure the structural integrity of adjoining properties, and to minimise site disturbance and allow for substantial vegetation and trees.

The application does not involve any excavation. The refurbishment of the forecourt, including landscape planters, will be wholly above the existing basement car park.

11. Acid Sulphate Soils

The site is not noted on Council's maps as being affected by acid sulphate soils.

12. Suspensions of Covenants, agreements and similar instruments

Council is unaware of any covenants, easements or the like, which may be affected by the proposed development.

13. Heritage Conservation

As discussed earlier in the **Heritage Referral** section in this report, Council's Conservation Planner has advised that the proposal is not supported as the proposal would impact on adjacent heritage items and would not satisfy Clause 50(1) *Development in the Vicinity of Heritage Items* of NSLEP 2001.

The development is nevertheless considered satisfactory on heritage grounds. The proposed single storey addition will be set back from the boundary and permit through-views across a clear-glazed structure such that the soft landscape garden setting will continue to be legible as a whole, with the quality of the vista not greatly different from the existing. While there is a marginal reduction in the visual curtilage arising from the new building addition, predominantly as affected by the glass walls of the new structure, the marginal and overall impacts are considered to be neutral rather than negative or adverse to the heritage significance of the Don Bank Museum, and therefore satisfactory in regard to Clause 50(1) of the LEP.

The development has been assessed against the heritage conservation objectives contained in Clause 44 of NSLEP 2001, relevantly.

(c) Ensure the conservation of heritage items (and their curtilages) and conservation areas. As discussed in the **Building Height** section in this report, the development, in respect of the height, massing and materials selection at the southernmost part of the new building addition, will not result in any material loss of the visual curtilage of the Don Bank Museum and Gardens. While the development will alter sightlines to the gardens from Napier Street across the subject site, the curtilage will nevertheless be conserved in a form that will allow the whole of the soft landscaped setting to be appreciated from key locations within the public domain as nominated in the CMP.

(d) Ensure that development does not adversely affect the heritage significance of heritage items and conservation areas. As discussed in the **Building Height** section in this report, the net impact of the proposed new structure will have a neutral rather than adverse impact on the heritage significance of the Don Bank Museum & Gardens, in particular, having regard to the marginal impact as compared to the existing entry awning. The impact on the vista is minimal and the consequential impacts considered neutral such that the existing streetscape presentation will be comparable to the existing and the development will not degrade or adversely affect the heritage significance of the item.

On the balance of the considerations, it is concluded that the proposal will have a neutral rather than any adverse or negative impact on the heritage significance of the site.

DRAFT NORTH SYDNEY LEP 2012

The Draft NSLEP 2012 is a matter for consideration under Section 79C of the Environmental Planning and Assessment Act 1979. The Draft LEP, as amended, was adopted by Council (with some exceptions not relevant to the subject application) at its meeting on 15 October 2012, whereby it was resolved to place the altered Draft LEP on public exhibition for a period of 28 days in accordance with the Act and Regulations.

The provisions of the altered Draft LEP largely reflect and carry over the provisions of the Draft NSLEP 2009 and existing planning objectives, strategies and controls in the current North Sydney LEP 2001 in relation to this site. The provisions of the Draft LEP have been considered in relation to the subject application; in particular:

- The site is identified as being included within the **B4 Mixed Use** zone. The proposed development is permissible in the draft zone.
- The site is identified in "Area 8" within which is prescribed a draft maximum **non-residential FSR range 3:1 to 4:1**. The existing and proposed developments do not comply. The proposal is nevertheless acceptable, as explained in the Floor Space SEPP No.1 discussion of this report.
- The existing building and the proposed works are below the draft maximum building height limit of **RL 155m**.
- The site is not identified as a draft heritage item, nor located within a draft conservation area; however, is **in the vicinity of draft heritage items**, including Don Bank Museum. The proposed development satisfies the draft heritage provisions, in particular, Clause 5.10(1)(b) which seeks to conserve the heritage significance of heritage items, including associated fabric, settings and views. Further, the development satisfies the **North Sydney Centre** objective contained in Clause 6.1(i) to promote the preservation of existing setbacks and landscaped areas, and to protect the amenity of those areas.

The proposed development is generally consistent with the draft provisions, which generally reflect the existing provisions.

DEVELOPMENT CONTROL PLAN 2002

The application has been assessed against the relevant controls in NSDCP 2002 as indicated in the following compliance table.

DCP 2002 Compliance

| DEVELOPMENT CONTROL PLAN 2002 | | |
|--|-----------------|---|
| <i>Mixed Use Development</i> | <i>Complies</i> | <i>Comments</i> |
| 6.1 Function | | |
| Diversity of activities, facilities, opportunities and services | Yes | The development will add educational and retail uses within an existing commercial context. A variety of internal and external spaces will be provided. |
| Maximum use of public transport | Yes | The development will reduce the number of car spaces on-site and allocate car spaces to staff and visitors. No student parking will be permitted and conversion of car spaces to bicycle parking will be required, via condition . |
| 6.2 Environmental Criteria | | |
| Clean Air Noise | Yes | The development is capable of complying with relevant clean air and noise criteria. |
| Acoustic Privacy | Yes | <p>The cooling tower will be located at rooftop level behind the building parapet and well separated from any sensitive receivers.</p> <p>The outdoor terrace on Level 5 will be set back 5.1m from the front boundary and separated from the north-adjointing residential units by the new building structure. Council's Environmental Health Officer has reviewed the submitted acoustic report and has advised that noise impacts arising from the use of the terrace may be adequately mitigated by way of conditions of consent, as discussed in the Referrals section in this report.</p> <p>Council's Health Officer has also recommended a condition requiring plant and equipment relating to the new lifts to be located in the basement.</p> |

| DEVELOPMENT CONTROL PLAN 2002 | | |
|--|------------------------|---|
| Mixed Use Development | Complies | Comments |
| Visual Privacy | No | <p>The development will not give rise to any visual privacy impacts, in consideration of the following:</p> <ul style="list-style-type: none"> • The northern part of the building addition will be a concrete structure facing the apartments at No.26 Napier Street; • The Level 5 terrace will be one level above the ground level and set back 5.1m from the front boundary, with primary outlook to the street; • No additional window openings are proposed at the west and southern elevations adjoining residential properties, and the change of use from commercial to educational will not give rise to any significant overlooking compared to the existing. |
| Wind Speed | Yes | A wind report is not required to be submitted as the building addition is less than 33m high. |
| Reflected light | Yes | While the new addition will be predominantly glazed, its reflectivity impacts are expected to be minimal by virtue of its location generally in the shadow of existing buildings and away from direct sunlight. A standard condition requiring low-reflectivity glazing is recommended. |
| Artificial light Outdoor lighting | Yes (via condition) | Potential light spill impacts will be minimised or mitigated by virtue of the concrete northern wall and use of colour-backed and fritted glass in appropriate locations. A condition is recommended requiring the entry to be lit appropriately and without causing adverse amenity impacts. |
| Awnings | Yes | The partial enclosure of the forecourt will function as an entry vestibule which will provide similar or improved weather protection compared to the existing awning. |
| Solar access | Yes | The applicant has provided architect-certified shadow diagrams at 15 minute intervals between 10am and 2pm during midwinter demonstrating that the proposed development will not cast any additional shadows on the Special Area of the Don Bank Museum. |

| DEVELOPMENT CONTROL PLAN 2002 | | |
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| Mixed Use Development | Complies | Comments |
| Views | Yes | Distant views and the legibility of the area, in particular from the public domain, will not be adversely impacted by the proposed development. Impacts on private outlooks from north-adjointing residential units may be mitigated by reducing the height of the building addition, as discussed in the Building Height section in this report. |
| 6.3 Quality built form | | |
| Context | No | The proposed building separation to the adjoining apartments at No.26 Napier Street is inadequate, thereby materially impacting on their amenity. Refer to Mixed Use Zone section in this report. A condition recommending a reduction in height is recommended. |
| Public spaces and facilities | Yes | The development will activate the frontage and contribute to external and internal public spaces by bringing forward the building line while maintaining a 5.1m landscaped entry forecourt, providing an entry vestibule and retail uses inside, and introducing a student population to the site. |
| Skyline | Yes | The proposed rooftop plant will be entirely behind and below the existing parapet, and thus have no impact on the skyline. |
| Through-site pedestrian links | Yes | A through-site link between Napier and Oak Streets is not identified in the Character Statement and none is proposed. A condition is recommended, in accordance with the advice of Council's Traffic Planning section, requiring primary access via Napier Street, with limited through-access across the existing driveway, in order to minimise amenity impacts on residents on Oak Street. |
| Streetscape | Yes | The development will activate and enliven the streetscape by introducing a visually interesting façade element, and retail and university campus uses at street level. Level changes at the front boundary will be rationalised in the refurbished forecourt. |
| Subdivision | Yes | No change. |

| DEVELOPMENT CONTROL PLAN 2002 | | |
|--|-----------------|--|
| Mixed Use Development | Complies | Comments |
| Setbacks | Yes | <p><u>Northern setback (adjoining residential units)</u> The northern setback of 3m adjoining residential units is considered inadequate, in particular, at Levels 8 & 9 of the new addition; this part of the addition is also above the permissible podium height that is provided for the site in the Character Statement. Refer to Mixed Use Zone section in this report.</p> <p><u>Southern setback</u> The southern side setback has been stepped at the Level 5 balustrade to ensure that no additional shadows will impact the Don Bank Museum.</p> <p>The DCP Character Statement does not specify any setback requirement for the preservation of views to Don Bank Museum & Gardens. The setback of the new addition of some 7.2m from the boundary with Don Bank, including an intervening driveway, is adequate and effective in the preservation of the visual curtilage of the heritage item.</p> <p><u>Napier Street (eastern) setback</u> A 5.1m setback from the front boundary will be maintained such that an open entry forecourt and views to the commercial cottages to the east at No's. 1 to 7 Napier Street, as identified in the Character Statement, will be maintained.</p> |
| Entrances and exits | Yes | <p>The building addition will reinforce the Napier Street frontage as the main entry to the site and building. Entrances and exits will cater for the disabled and will be clearly visible.</p> |
| Street frontage podium Laneway frontage | No | <p>A reduction in the height of the building addition from 6-storeys (20.6m) to 4 storeys (approximately 14m) will achieve a human-scale entry element to the building and reduce the extent of non-compliance with the 3-storey podium provision in the DCP Character Statement.</p> |

| DEVELOPMENT CONTROL PLAN 2002 | | |
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| Mixed Use Development | Complies | Comments |
| Building design | Yes (via condition) | <p>The architecture of the existing building is defined by a three-bay vertical division of the façades and a deep roof parapet. The recommended deletion of the uppermost two levels of the building addition, for the purpose of reducing amenity impacts on No.26 Napier Street, will improve the human scale of the development while maintaining a relatively balanced building addition that respects the tri-partite façade articulation (refer Figure 14 above).</p> <p>On the other hand, it is considered that the deletion of the southernmost bay of the building addition as recommended by Council's Conservation Planner, would disrupt the balance and proportion of the building addition as relates to the three-part façade articulation (Figure 18), thereby having an adverse impact on the broader streetscape setting of the heritage item.</p> |

Increased setback as recommended by Conservation Planner

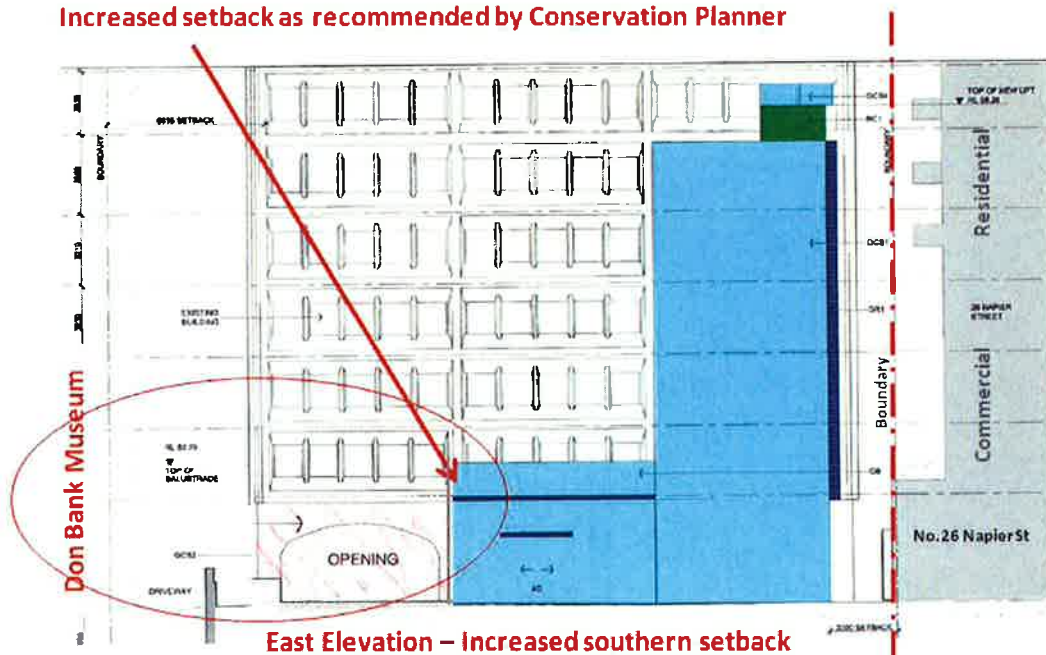


Figure 18 – Effect of deleting the southernmost bay of the building addition as recommended by Council's Conservation Planner

| DEVELOPMENT CONTROL PLAN 2002 | | |
|---|-----------------|--|
| Mixed Use Development | Complies | Comments |
| | | <p>In all other respects, the development, as proposed, will reinforce the urban character of the building and the site, as follows:</p> <ul style="list-style-type: none"> • The new entry foyer will maintain the existing 4.6m floor to ceiling height, thus maintaining the sense of entry; • The building addition will be set back 5.1m to partially retain the publicly accessible open forecourt; • The scale and lightweight and visually permeable design, retention of a building forecourt and the university campus use will improve the activation of Napier Street; • The building alignment, in particular, at Napier Street, will not exceed the alignment of the north-adjointing building at No.26 Napier Street; • The height, setbacks, scale and massing of the building addition will not have any adverse impact on the setting and curtilage of the Don Bank Museum and will not give rise to any overshadowing of that site as explained in the Building Height section in this report; and • The mix of transparent, semi-transparent and solid elements, being distinct from yet compatible with, the existing building, will provide a light element, visual interest particularly at night, and architectural detailing to the concrete building. |
| Nighttime appearance | Yes | The transparent and semi-transparent building addition will read as an internally illuminated lantern that will add visual interest to the street by night. A condition is recommended to regulate the hours and degree of illumination so as to prevent objectionable glare. |
| Temporary structures and streetscape | N/A | No temporary structures, kiosks or mobile carts are proposed as part of the subject application. Any such proposals would require a separate development application. |
| 6.4 Quality urban environment | | |
| High quality residential accommodation | N/A | Sections 6.4(a), (a.a) and (a.b) contain detailed provisions for the design of residential flat buildings, which are not relevant to the subject application. |
| Accessibility | Yes | The development will include accessible continuous paths of travel from the main street frontage, elevators and new disabled toilets. |

| DEVELOPMENT CONTROL PLAN 2002 | | |
|---|---------------------|---|
| Mixed Use Development | Complies | Comments |
| Safety and security | Yes | The development will improve sightlines across the entry forecourt, in particular, by removing alcoves and recesses and relocating fire egress points. |
| Car parking | Yes | Refer to Section 9.2 in this table (below). |
| Bicycle storage | Yes (via condition) | A condition is recommended requiring the conversion of excess on-site car parking spaces for bicycle parking and the provision of end-user facilities to meet the minimum requirements of the DCP and relevant standards. Refer to Traffic Referral section in this report. |
| Vehicular access | Yes | No change is proposed to the existing vehicular access at Napier and Oak Streets. |
| Garbage Storage Commercial garbage storage | Yes | No change is proposed to the existing garbage storage within the uppermost basement level. |
| Site facilities | Yes | The separation of University and office uses within the building is appropriate. |
| 6.5 Efficient use and management of resources | | |
| Energy efficiency | Yes | Adaptive re-use of the building is supported. The glazed addition will achieve good passive solar penetration. |
| 6.6 Public Domain | | |
| Street furniture, landscaping works, utilities and Equipment | Yes | The refurbishment and landscape works at the front forecourt will maintain the public's enjoyment of the open space and accessible entry to the building. |
| Public entertainment and expression / Public art | Yes | The proposal will reinforce the identity of the building as part of the University campus. However, the provision of public entertainment venues and public art is considered to be beyond the scope of the application. |
| Paving | Yes | A condition is recommended for non-slip surfaces and the installation of tactile indicators. |
| 9.2 Car Parking | | |
| Non-residential zones | No | <p><u>Staff parking</u></p> <p>The proposed provision of staff car parking is in excess of the DCP maximum. A condition is recommended for some of the surplus spaces to be converted to bicycle parking, in accordance with the Traffic Referral.</p> |

| DEVELOPMENT CONTROL PLAN 2002 | | |
|--------------------------------------|----------------------------|--|
| Mixed Use Development | Complies | Comments |
| | No | <u>Student parking</u> Limited student parking is proposed only on weekends is not supported as it is contrary to the objective of the DCP to reduce on-site parking due to the proximity of public transport, and to facilitate public and alternative modes of transport to and from the site. The promotion of active and sustainable modes, such as walking and cycling, will also enliven the North Sydney CBD. A condition is recommended prohibiting the provision of student car parking on site, in accordance with the Traffic Referral . |
| | Yes | <u>Accessible parking</u> Accessible parking spaces and building access from the basement are proposed. Use of such spaces by disabled students may be permitted, by condition . |
| | Yes (via condition) | <u>Motorcycle parking</u> The DCP requires parking for motorcycles at the minimum rate of 1 space per 10 cars, or part thereof, with each bay being 1.2m x 3m. No motorcycle parking is indicated on the submitted plans; however, the basement car park is able to accommodate motorcycle parking spaces. A condition is recommended. |
| | Yes | <u>Service vehicles</u> A courier space will be maintained in the basement. No change is proposed to access for service vehicles. |

North Sydney Centre Planning Area (Central Business District)

The proposal is generally consistent with Part B of NSDCP 2002, in particular, the Character Statement in Sections 1 & 1.1 which provide for the CBD in the North Sydney Centre Planning Area. In particular, the development will:

- add to the diversity of non-residential premises and uses within the CBD;
- limit the provision of parking so as to encourage the use of active and public transport;
- not adversely impact on adjoining heritage items in terms of overshadowing or curtilage, with the proposed setbacks preserving view lines to the Don Bank Museum and heritage items on the opposite side of Napier Street;
- provide adequate separation at the northern boundary to maintain residential amenity for the adjoining flat building, subject to a reduction in the height of the northernmost part of the new building addition, as discussed in the **Mixed Use Zone** section in this report; and
- incorporate high quality materials and detailing so as to enhance visual interest and pedestrian amenity.

SECTION 94 CONTRIBUTIONS

Section 94 contributions do not apply to the development. Contributions are levied on additional commercial space; however, the additional floor space proposed is in the nature of additional circulation areas for the purpose of an educational establishment.

APPLICABLE REGULATIONS

Crown DA

ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

ENVIRONMENTAL APPRAISAL CONSIDERED

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

SUBMITTORS CONCERNS

The issues raised in the submissions are addressed below.

(a) *Design*

Comment: The proposed design, in its lightweight construction, will be legible as a contemporary building addition to the existing masonry office building. The proposed massing is pedestrian in scale and respects the existing three-part division of the facade. The provision of vertical circulation at the lower levels and outside of the existing floorplate is required by the University to separate the existing commercial and administrative uses from general student traffic.

(b) **FSR**

Comment: The proposed increase in floor space will be for educational use rather than a commercial use for the purpose of gain. The additional floor space will facilitate efficient use of the site as a mixed use building, and the separation of low-rise and high-rise circulation within the building will improve its adaptability to future uses as they may arise. The development of the site, which is on the western periphery of the North Sydney Centre and in close proximity to public transport, will help to activate the CBD and contribute to its social and economic vitality. The establishment and reinforcement of a university campus in North Sydney is consistent with zone and CBD objectives. These improvements are consistent with the zone and CBD objectives, and thus in the public interest. The provision of publicly accessible recreational facilities is a prerogative of the University that is not currently proposed and considered to be beyond the scope of the application.

(c) **Heritage impacts**

Comment: The proposal will change the visual curtilage of the Don Bank Museum; however, wide and open views to the garden curtilage, similar to existing views and vistas, will be maintained. The new building addition is sensitive to the adjoining heritage item; it has been designed so that the majority of the bulk is located furthest from the heritage item so that no additional shadows will be cast on Don Bank, and its lightweight construction will maximise visual permeability to maintain legibility of the garden setting.

(d) **Masterplan**

Comment: The University has not furnished Council any masterplan for its North Sydney campus, and such an exercise is considered beyond the scope of the subject application. However, it is noted that Council has identified the area in which the site is located as an emerging education precinct, and the subject application is consistent with the strategic intent of the area as such. Council resolved at its meeting on 13/2/12 to undertake an integrated planning approach to the orderly development of the area, including improved traffic planning, and inclusion of stakeholders in a working party.

(e) **Traffic & parking**

Comment: The submitted traffic reports have been reviewed by Council's Traffic Planning section and found the proposal to be supportable, subject to conditions. While there are on-site car parking spaces in excess of the DCP parking rates, the use of these spaces for student parking is not to be encouraged as this will bring more traffic and associated congestion problems into the area. Rather, it is recommended that additional car spaces may be converted to disabled, bicycle and motorcycle parking facilities, in accordance with the objectives of the DCP.

(f) **Hours**

Comment: The proposed hours are considered to be appropriate to and commensurate with the location of the site within a Mixed Use zone within the North Sydney Centre.

(g) Noise and light

Comment: The northern wall of the new building addition will be a cladded concrete structure, thereby minimising light spill to the residential units to the north. Council's Environmental Health Officer has recommended conditions to regulate use of the Level 5 terrace, and in relation to plant and equipment so as to minimise environmental impacts. The proposal is to use Level 23 for storage and communications room; no student terrace is proposed at this level.

(h) Construction management

Comment: A construction and traffic management plan, to the satisfaction of Council's engineers, will be required. Standard conditions regulating building works, including construction hours, will be imposed.

CONCLUSION

The development application has been assessed against the North Sydney Local Environmental Plan 2001 and the North Sydney Development Control Plan 2002. Consideration has also been given to the relevant controls in the Draft North Sydney Local Environmental Plan 2012.

The variations to the building height plane and non-residential FSR development standards are justifiable in the circumstances of the case. The height plane breaches occur entirely within the existing building envelope. The development will improve the diversity of uses in the zone without adverse amenity impacts, subject to conditions.

The development will not cast additional shadows on the heritage-listed Don Bank Museum. The height, setbacks, massing and materials selection of the building addition are such that the building addition will not have any adverse impact on the visual curtilage of the item, in particular, allowing its landscaped setting to be clearly legible and maintaining its streetscape presentation.

The height of the building and its setback adjacent the northern boundary will give rise to adverse residential amenity impacts on the adjoining apartments in terms of outlook, excessive bulk and scale, and daylight access. It is recommended that the height of the addition be reduced so as to satisfy the Mixed Use zone objective in regard to residential amenity.

The issues raised by the submitters have been addressed in the report.

Having regard to the provisions of Section 79C of the Environmental Planning & Assessment Act 1979, the application is considered to be satisfactory and therefore can be approved.

RECOMMENDATION

PURSUANT TO SECTION 89 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

- A. **#THAT** the Joint Regional Planning Panel (East Sydney Region), as the consent authority, assume the concurrence of the Director General of the Department of Planning and invoke the provisions of SEPP 1 for the Building Height Plane and Non-Residential Floor Space development standards and grant consent to Development Application No. **222/12** subject to the attached conditions:

Susanna Cheng
SENIOR ASSESSMENT OFFICER

Stephen Beattie
MANAGER, DEVELOPMENT SERVICES
