

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

<b>JRPP No</b>	<b>2013SYE061</b>
<b>DA Number</b>	<b>DA.239/13</b>
<b>Local Government Area</b>	<b>North Sydney</b>
<b>Proposed Development</b>	<b>Demolition of existing structures and the construction of a mixed use development comprising basement levels, commercial floor space, and 197 residential apartments. A total of 146 car parking spaces are proposed</b>
<b>Street Address</b>	<b>144-154 Pacific Highway and 18 Berry Street North Sydney</b>
<b>Applicant/Owner</b>	<b>Strand Estates Pty Ltd</b>
<b>Number of Submissions</b>	<b>Nine (9)</b>
<b>Report by</b>	<b>Geoff Mossemenear, Executive Planner, North Sydney Council</b>

**Assessment Report and Recommendation**

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**EXECUTIVE SUMMARY**

The proposal is for the demolition of existing structures and the construction of a mixed use development comprising basement levels, 2,285m<sup>2</sup> of commercial floor space, and 197 residential apartments. A total of 146 car parking spaces are proposed plus 17 motorcycle spaces, 94 bike spaces and 129 individual storage spaces. The apartments consist of a mix of 35 x studio; 100 x one bedroom; 60 x 2 bedroom and 2 x three bedroom apartments.

The Council's notification of the proposal has attracted nine (9) submissions raising particular concerns about bulk, height, privacy, traffic, parking, access with some submissions supporting the proposal. The assessment has considered these concerns as well as the performance of the application against Council's planning requirements.

The height is excessive when assessed under the current and new LEP controls. The bulk and scale is not compatible to the nearby low scale residential area. The proposal does not satisfy the floor space ratio requirements for non residential floor area.

The height of the building is substantially over the height control under NSLEP 2013.

The NSLEP 2013 is now imminent and certain and considerable weight must be given to it particularly where the new plan will act in a negative sense to the prospects of an application.

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

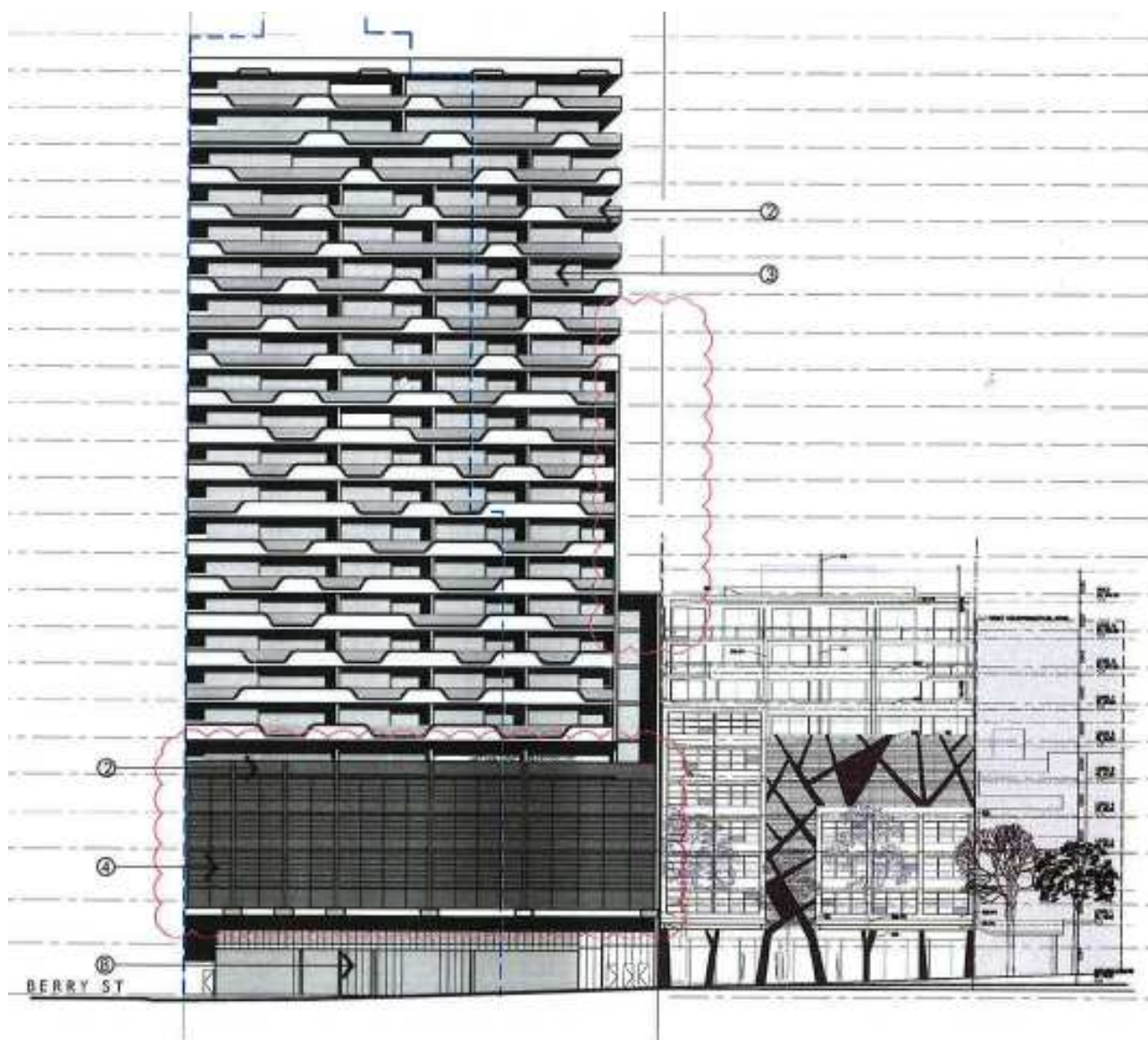
The applicant submitted amended plans in response to some of the concerns raised in the initial assessment of the proposal. However, the main concerns relating to height, FSR, the design of the through site link and amenity of apartments have not been resolved.

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

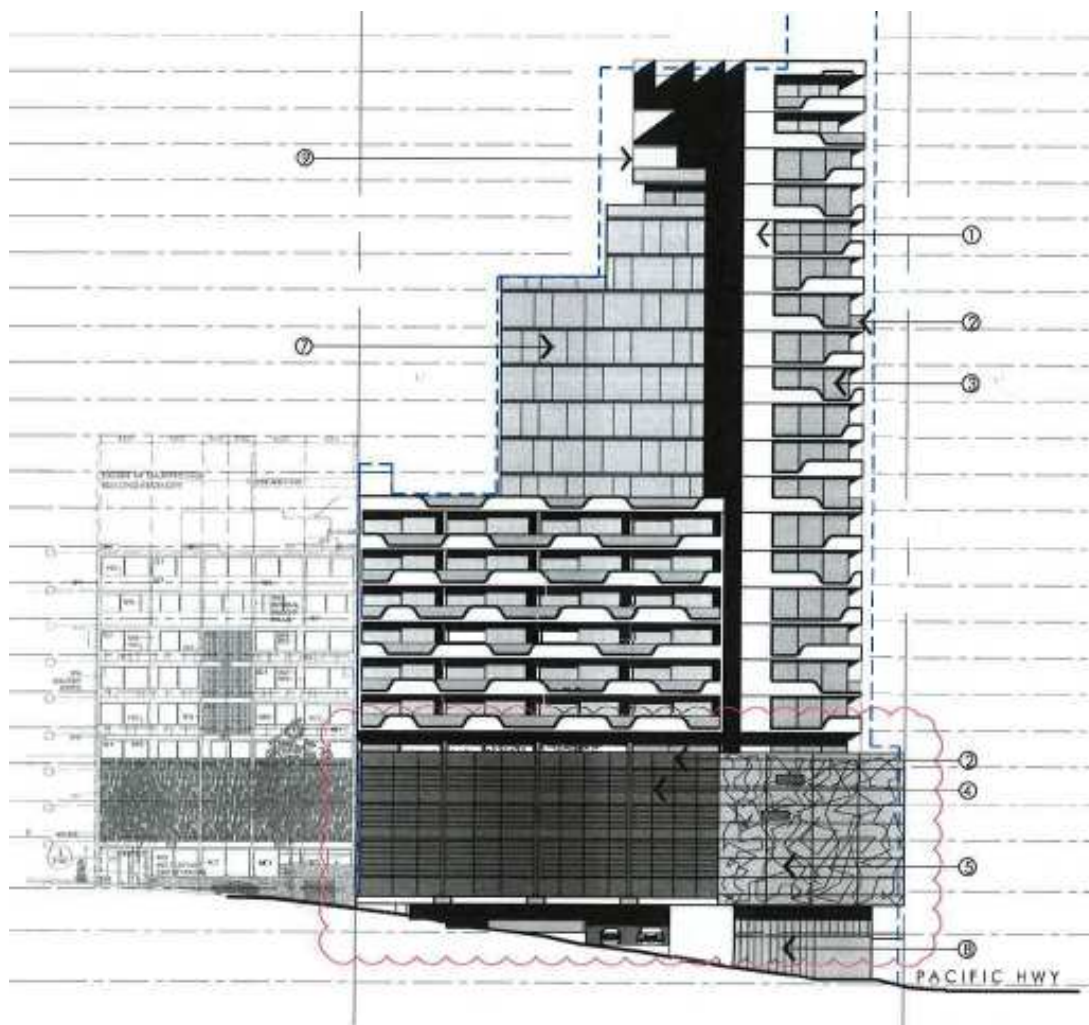
## DESCRIPTION OF PROPOSAL

The amended proposal is for the demolition of existing structures and the construction of a mixed use development comprising basement levels, 2,285m<sup>2</sup> of commercial floor space, and 197 residential apartments. A total of 146 car parking spaces are proposed plus 17 motorcycle spaces, 94 bike spaces and 129 individual storage spaces. The apartments consist of a mix of 35 x studio; 100 x one bedroom; 60 x 2 bedroom and 2 x three bedroom apartments.

This assessment report is based on the amended plans submitted on 12 and 14 November 2013 which purported to address concerns raised by Council during the assessment process.



EAST ELEVATION - FACING PACIFIC HWY



SOUTH ELEVATION - FACING BERRY ST

## STATUTORY CONTROLS

North Sydney LEP 2001

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

S94 Contribution

Environmental Planning & Assessment Act 1979

SEPP 1 Objection

SEPP 55 - Contaminated Lands

SREP (2005)

Local Development

North Sydney LEP 2013 - Zoning – B4 Mixed Use

## POLICY CONTROLS

DCP 2002

North Sydney DCP 2013

## CONSENT AUTHORITY

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

## DESCRIPTION OF LOCALITY

The site is on the north-west corner of the intersection of the Pacific Highway and Berry Street. The inclusion of 154 Pacific Highway increases the site area to a total 1,678.6m<sup>2</sup> and extends the frontage of the site to the Highway by 13.055m to a total 36.755m.

Directly to the north is 156-158 Pacific Highway; the JRPP granted consent on 7 September 2011 for a 10 storey mixed use building containing 40 apartments with a height at roof level of RL 106.53. This building is nearing completion.

Directly to the west is 12-16 Berry Street; the JRPP granted consent on 18 May 2011 for 9 storey mixed use building containing 48 apartments with a height at roof level of RL 108.85. this building is also nearing completion.

Further to the west lies predominantly residential development in varying densities from single storey detached dwellings to 4 storey apartment buildings. Also to the west is a child care centre and the Australian Catholic University. There are no consents in this area that will change to any notable degree existing building heights.

To the south east, on the diagonally opposite corner of Berry Street and the Pacific Highway is 177-199 Pacific Highway: the JRPP resolved on 7 September 2011 to grant consent to 31 storey commercial building with ground floor plaza. The building did have concept approval from the Minister of Planning under Part 3A of the EP&A Act and will have a height of RL195.00.

## BACKGROUND

This application has been preceded by DA.467/11 that proposed a mixed use development involving 6 basement levels of parking for 96 vehicles, 1405m<sup>2</sup> of commercial space, 41 serviced apartments and 101 residential apartments with a unit mix of 29 studio units, 7 x 1 bedroom units, 55 x 2 bedroom units and 10 x 3 bedroom units over 23 storeys (excluding plant) to a maximum height of RL 156.

That development application was confined to 144-150 Pacific Highway and 18 Berry Street. DA.467/11 was determined by the Joint Regional Planning Panel on the 7 March 2012 and refused for reasons associated with excessive building height, lack of a podium to the street elevations and poor internal amenity of the units. The JRPP resolution is reproduced as follows:

- 1. The Panel resolves unanimously to accept the recommendation of the planning assessment report to refuse the application for three principal reasons: excessive height; lack of a podium and poor internal amenity.*
- 2. As concerns the appropriate height, the Panel is aware that the only clear indication of height is in the draft North Sydney LEP 2009, which is neither*

*certain nor imminent. Several other, more qualitative, controls have implications for appropriate height, and there are Court judgments, which have some relevance. On balance, the Panel believes that the appropriate height for this site is around RL 135. This value judgment is based partly on the context of the site, partly on the implications for this site of two judgments (Castle Constructions v North Sydney Council (2008) NSWLEC 1168 and (2008) NSWLEC 1456), and partly on the practical consideration that, if the proposal complied with the podium requirement, then the floor plate above RL 135 would be impractically small.*

*3. In the Panel's opinion, the proposal requires a podium. While a podium has not been consistently required of all buildings in North Sydney, all recent approvals along the western side of the Highway are built over a podium. The podium should be consistent with new development at 156 Pacific Highway (ie carry on the height and setback) and continue along Berry Street, although it does not need to include 18 Berry Street.*

*4. The amenity of the apartments on the northern side is unacceptable. On the assumption that No 154 may redevelop, the orientation of these apartments should be to the east and west.*

*5. The Panel also believes that the serviced apartments should have reasonable amenity. Unlike hotel rooms, they can be easily converted to long-term residential use.*

*6. The Panel notes that the serviced apartments are not a permissible use and need to comply with the definition of a hotel.*

*7. The Panel believes that there should be a through-site link, as indicated by the applicant in proposed amendments.*

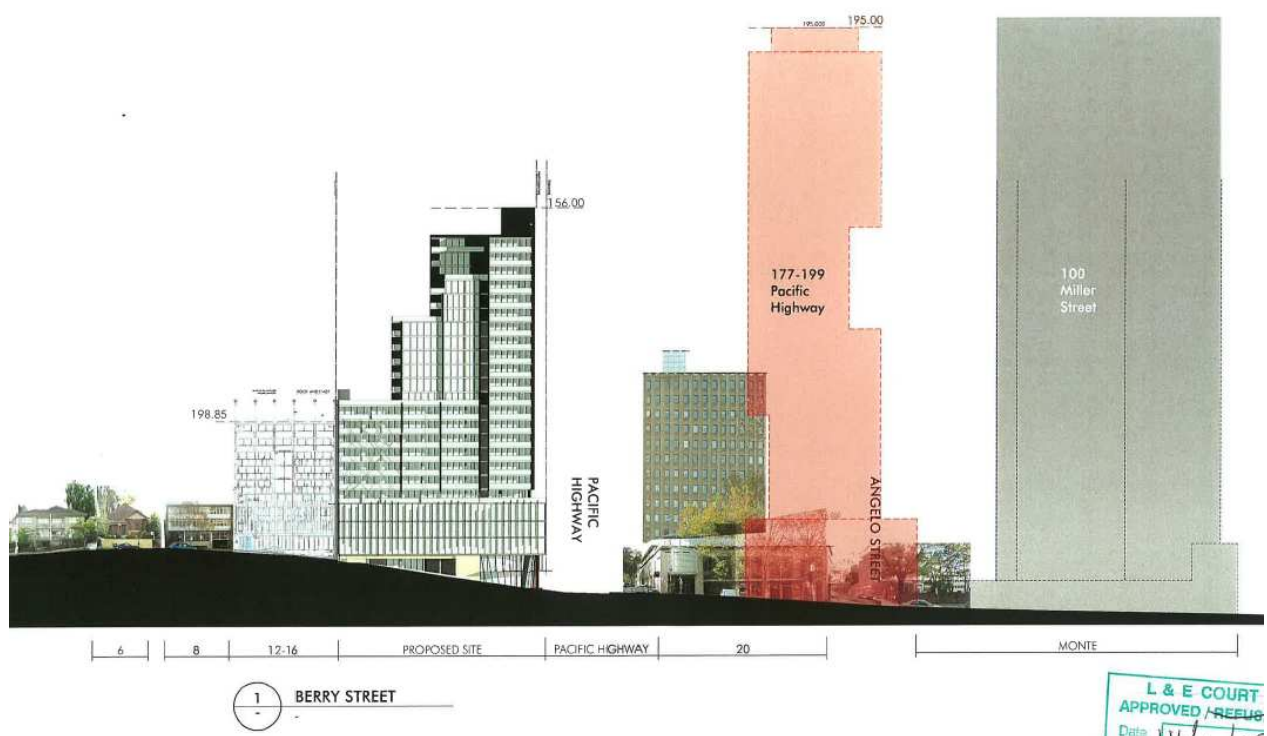
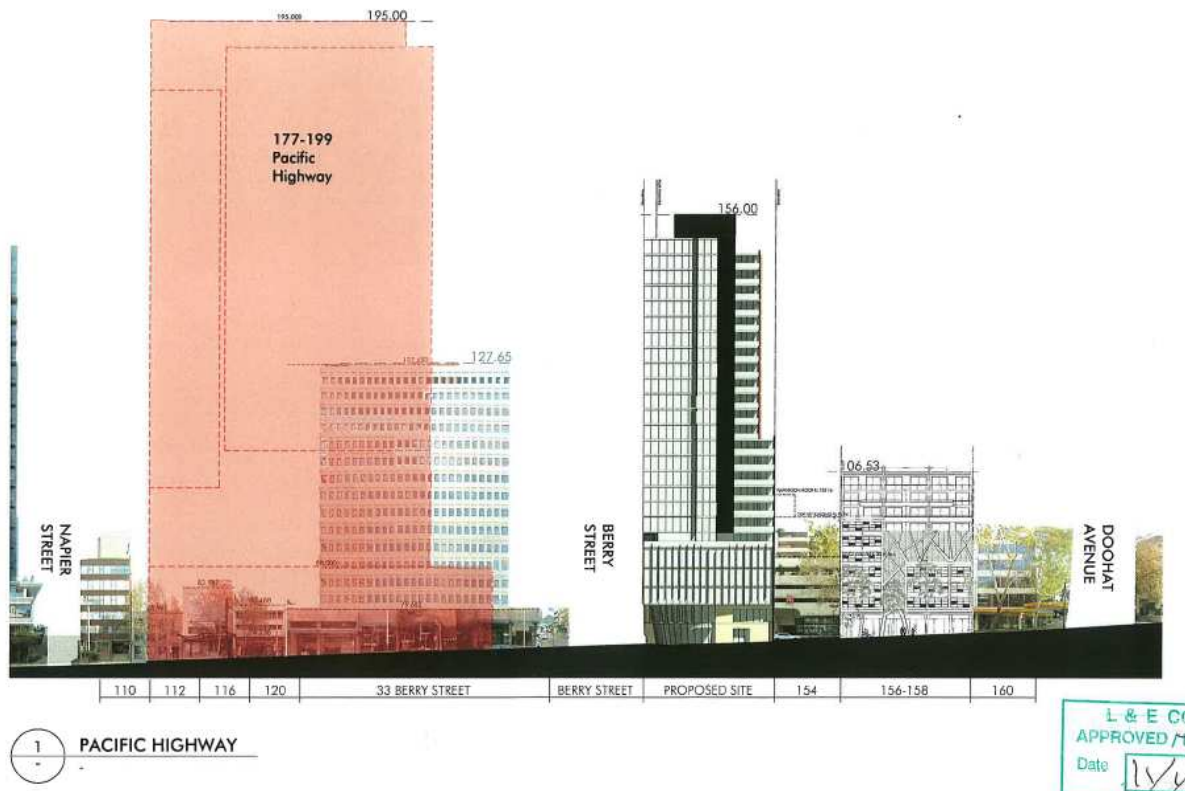
The determination of the DA was appealed to the NSW LEC (10405 of 2012) with the appeal upheld by decision dated 11 January 2013. It is noted that the Court allowed amended plans to be filed that:

- deleted the serviced apartments;
- reduced the density to 84 apartments;
- increased the non residential FSR to 2.65:1 (with commercial floor space in lieu of serviced apartments);
- improved amenity to dwellings;
- provided a podium and setbacks above the podium and
- provided for a public through site link from Berry Street to Doohat Lane.

The only feature similar to the plans refused by the JRPP was the height of the building. The draft LEP was not certain and imminent at the time of the hearing and considerable weight was given to the LEP 2001 objectives and the notional arc diagram contained within the character statement under the DCP (now deleted under the new DCP2013)

The following elevations show the Court approval





## PRE LODGEMENT MEETING

A pre lodgement meeting was held on 23 May 2013 with Senior Council staff. Extracts from the minutes are reproduced as follows:

#### *Advice from Council*

##### *Unit mix*

*As proposed, the new design will include 216 units from level 3 to level 23, approximately 74.5% of which are studios and 1-bedroom/1-bedroom and study. This is far above the allowable 45% as stipulated in Section 6.1 of the DCP and will not be supported by Council. For comparative developments in the immediate area, a unit mix ranging between 54 and 60% of small apartments has been accepted.*

##### *Floor Space Ratio*

*The proposal includes non-residential floor space on the first and second floors that represents a total FSR of approximately 1:1. The existing LEP dictates a minimum FSR of 3:1 and under the draft LEP the average minimum FSR required would be 2.24:1. The applicants advised that this substantial variation to the minimum FSR control will be supported by both a SEPP 1 objection as well as a Planning Proposal.*

*Council is unlikely to support the extent of the non-compliance with a SEPP 1 objection. Council has previously advised that a Planning Proposal to reduce the non-residential FSR will not be supported. This view remains.*

##### *Building Height Control*

*The height of the proposal is RL 149 plus plant and is well in excess of the Draft NSLEP 2012 height limit of RL 125. The height granted by the Court over the existing site is accepted, however the height of the portion of the building at 154 Pacific Highway needs to step down to the adjacent site. The height as shown on the sketch plans for that portion of the building is not acceptable.*

##### *Building Setbacks*

*The setbacks shown to the street elevations are generally similar to those accepted by the Court. Council's character statement requires side setbacks of 3m above the podium and Council considers that the northern elevation should be setback a minimum of 3m above at level 11 and stepped further above RL 125.*

## **REFERRALS**

### **Building**

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

### **Engineering/Stormwater Drainage/Geotechnical**

Council's Development Engineer (Z.Cvekovic) has assessed the proposed development and provided a number of specific conditions. Should the development application be approved, the imposition of a number of standard and site specific conditions relating to damage bonds, excavation, dilapidation reports of adjoining properties, construction management plan, vehicular crossing requirements and stormwater management would be required.

### **Heritage**

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



## **1. Heritage Status and Significance**

- The property is not a heritage item and is not located within a conservation area.
- The property is within the vicinity of several heritage items:
  - 1 Doohat Ave (Federation style house),
  - Terraces at 168 and 170 Pacific Hwy,
  - Sandstone villa at 172 Pacific Hwy.
  - Terraces at 1, 3, 5, and 7 Napier St that form part of the Donbank Group, as well as
  - Council's property Donbank House and Museum located at 6 Napier St. This property is also on the NSW Heritage Register.

## **2. Heritage Impact Assessment**

### **a) North Sydney LEP 2001**

*An assessment of the proposal, with reference to the following Clauses of the North Sydney LEP 2001 has been made:*

#### **i) 28D Building Heights and Massing**

*The proposal does not satisfy NSLEP 2001 Clause 28 D (4) (d) as the increase in over shadowing from the proposed tower will be for 10 minutes between 11:15am and 11:25am as well as an additional 20 minutes between 11:50 am and 12:10pm.*

#### **ii) 50 Development in the vicinity of heritage items**

- **1 Doohat Ave**  
*This property is a two-storey Federation style residence with its primary frontage on Doohat Avenue and a secondary frontage to Doohat Lane. The setting of the property has already been negatively impacted upon by commercial development along Doohat Lane. No objection is made to the proposal as it is considered to be adequately separated from the site by 14-16 Berry St, North Sydney.*
- **168 and 170 Pacific Hwy**  
*These are two Federation Queen Anne style terraces currently used for offices. The proposed new tower will have no impact upon the terraces as they are physically separated from the proposal and have lot boundary curtilage.*
- **Woodstock, 172 Pacific Hwy**  
*Woodstock is an 1870 sandstone two storey building currently used for offices. The proposed new development will have no impact upon the curtilage and significance of property as it is physically separated from the proposal.*
- **1, 3, 5 and 7 Napier St**  
*These single-storey terraces in the Victorian Georgian style contribute to the setting of Donbank and provide a streetscape setting picturing early North Sydney township development. The proposal will have no impact upon their heritage significance.*
- **Donbank House and Museum at 6 Napier St**  
*Donbank is a State-listed single-storey 1853 slab cottage and is located within a small garden that contributes significantly to its landscape setting. The property is owned by North Sydney Council and is not only used as a museum but also has a writer in residence. The proposal will overshadow several square metres of the*

*public gardens at Donbank for an additional 30 minutes mid-winter. This is not acceptable. It is therefore considered that the proposal does not satisfy this Clause as the additional over shadowing will impact negatively upon the heritage significance of the gardens of Donbank.*

*The proposal is also contrary to the following management policies in the Conservation Management Plan adopted by Council as any further over shadowing will place additional stress on the already shaded gardens.*

*Policy 12 - Ensure retention of the existing form, scale and character of the Don Bank Museum, as well as its extensive gardens, within the streetscape of Napier Street.*

*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 82 - Retain the individual plantings and overall composition and layout of the Victorian era gardens in front of the subject site.*

#### **b) Streetscape**

*There is an existing pedestrian link between the North Sydney state-listed Court House and Post Office, the heritage items of Mary McKillop, past Donbank through to the heritage-listed North Sydney Demonstration School. The subject site currently contributes to this link through Doohat Lane. The proposal will satisfactorily retain a link open to the public via a staircase within the proposed development, however, there is inadequate resolution in the documentation for the materials and detailing to ensure that the stairway is adequately lit, ventilated and is sympathetically designed with Council's public domain palette of materials.*

*It is also noted that the detailing at street level on all facades is poorly resolved on the documentation at 1:750 scale. Whilst this has no direct impact upon the significance and curtilage of the nearby heritage items, it will impact negatively upon the streetscape character of North Sydney and the established pedestrian link. The proposed materials and detailing of the openings at street level of the proposed development is not clarified. It is not documented how this will marry with Council's public domain strategy and palette of materials.*

*There is no objection with regard to heritage to the green wall on the on the Berry St frontage. It is considered that it will have a positive impact to minimising the heat load impact of the building, however, there is inadequate information regarding the design of the planters and the plantings with regard to future wind shear and to the maintenance of the plantings.*

### **3. Conclusion**

*The proposal is considered to be unacceptable due to the impact of over shadowing on the gardens of North Sydney Council's property, Donbank House and Museum. The property is already severely affected by overshadowing and any additional loss of solar access will have an adverse impact upon the already stressed plantings. The proposal will therefore negatively impact upon the heritage significance of this state-listed property as well as reducing the amenity of the site to the writer in residence and the public that visit the property.*

*The proposal inadequately details the street level facades of the proposal and the pedestrian link that allows the public to move between the CBD and its various state-listed heritage items, including Donbank, through to the heritage –listed North Sydney Demonstration School.*

*It is recommended that the tower be amended to remove the additional over shadowing to Donbank and that additional documentation be provided to resolve the street level facades and footpath.*

## **Traffic/Parking**

Council's Traffic Manager has provided the following comments:

*"I refer to your request for comments on development application at 144-154 Pacific Highway. I have read the traffic report, dated July 2013, prepared by Traffix. My comments are as follows:*

### **Discrepancies between Traffic Report and Statement of Environmental Effects (SEE)**

*While my comments are based on the traffic report prepared by Traffix, it was noted that there were several differences in what is being proposed when comparing the traffic report and the Statement of Environmental Effects (SEE) report, below is a table of the main discrepancies found when comparing the two.*

	<i>Traffic Report</i>	<i>SEE</i>
<i>Car Parking Supply</i>	<i>138 spaces +14 motorbike spaces</i>	<i>146 spaces +17 motorbike spaces</i>
<i>Studio &amp; 1 Bed Apartments</i>	<i>145</i>	<i>141</i>
<i>2 Bedroom + Apartments</i>	<i>59</i>	<i>63</i>
<i>Commercial Floor Space</i>	<i>2398sqm</i>	<i>2285sqm</i>

### **Traffic Generation**

*While I agree with the report regarding the minimal net traffic generation, no mention has been made of what impact this traffic may have on Edward Street.*

*Additionally no SIDRA analysis has been performed on the intersection of Bay Road and Pacific Highway to show the effect of the additional traffic generation at this intersection as it is the only route to access the site. Sidra Analysis has only been performed showing existing conditions.*

### **Car Parking**

*The proposed development is providing 132 residential and 6 commercial parking spaces, this is the maximum allowed in accordance with Council's 2002 DCP.*

*However there appears to be no separation (or security) between the residential and commercial parking area as per Section 9.2 (xi) of Council's 2002 DCP.*

### **Motorbike Parking**

*The proposed development will provide 14 motorbike parking spaces which meets the 2002 DCP requirement of one (1) space per every 10 car spaces or part thereof.*

**Disabled Parking**

*17 parking spaces are proposed to be dedicated as disabled parking (1.2%) this complies with the 1-2% requirement as per the AS 2890.1*

**Cycling Facilities**

*In accordance with Council's 2002 DCP 72 bicycle lockers and 18 bicycle rails are to be provided. The proposed development exceeds this requirement by providing 74 bicycle lockers and 20 bicycle rails.*

**Pedestrian Access**

*Given the expected increase in pedestrian traffic to and from the proposed development it is recommended that as part of the proposal, the pedestrian crossing on Berry Street be upgraded to a signalised crossing.*

*This is the only unsignalised leg of the intersection of Berry Street and Pacific Highway and given the increase in not only pedestrian traffic but also vehicular traffic the operation of this crossing would benefit from an upgrade to improve pedestrian safety and traffic flow.*

**Conclusion**

*In general I support the proposal subject to the car parking layout meeting the requirement under Section 9.2 (xi) of Council's DCP and the developer to fund the upgrade of the western leg of the Berry Street and Pacific Highway intersection to provide a signalised pedestrian crossing."*

## **Landscaping**

Council's landscape Development Officer has provided the following comments:

*"It is advised that I have inspected the subject properties in relation to their consolidation and re-development and the following observations were made and recommendations provided.*

- The necessary works associated with the erection of the proposed building should not impact on the London Plane Tree growing in the Pacific Hwy outside the south eastern corner of the property. The tree is a mature specimen, in good health and a fine specimen as there are no overhead power lines, and as such had never needed to be pruned. The proposal has indicated that the tree is to be retained.*
- The proposal has indicated the retention of the existing London Plane Tree growing outside the Berry Street frontage of the property. However as there will need to be a B class Hoarding erected for both the demolition of the existing building, the erection of the new building and likelihood there may well be substantial delivery of building materials to site along the Berry Street frontage of the property, the necessary pruning of this tree will be so significant as to result in a disfigured tree.*
- It is noted that the proposed green wall and trough have been designed to overhang Council property. Whilst not necessarily wanting to dissuade the applicant from such a proposal, this is something that should be contained completely within the property itself and it should not overhang Council property.*

*In conclusion I raise no objections to the approval of the submitted development provided the following takes place*

- That the London Plane Tree growing in the Berry Street footpath outside the property be removal and replaced with two new semi-mature trees of the same species, as part of the Civil Works on Council property in Berry Street.*
- That the London Plane Tree growing in the Pacific Highway outside the property be retained and a further semi-mature tree of the same species be planted in the footpath to the northern end of the property.*
- That the green wall and trough occur within the property itself.*

*The following conditions should form part of the consent if approval is to be supported.....”*

## **External Referral**

The application was referred to Roads and Marine Services in accordance with Clause 104 and Column 2 of Schedule 3 of SEPP (Infrastructure) 2007 for comment. In letter dated 10 September 2013, the RMS advised Council of a number of issues that needed to be addressed and that further detailed information concerning excavation and drainage is required for assessment.

The application was referred to Ausgrid for comment. In letter dated 29 August 2013, Ausgrid advised Council of its requirements.

The application was also referred to Sydney Water who responded on 5 September 2013 that there was adequate capacity to service the proposed development.

## **DESIGN EXCELLENCE PANEL**

The application was referred to Council's Design Excellence Panel at its meeting of 1 October 2013. The minutes are reproduced as follows:

### ***“Background:***

*This application has been preceded by DA.467/11 that proposed a mixed use development involving 6 basement levels of parking for 96 vehicles, 1405m<sup>2</sup> of commercial space, 41 serviced apartments and 101 residential apartments with a unit mix of 29 studio units, 7 x 1 bedroom units, 55 x 2 bedroom units and 10 x 3 bedroom units over 23 storeys (excluding plant) to a maximum height of RL 156.*

*That development application was confined to 144-150 Pacific Highway and 18 Berry Street. DA.467/11 was determined by the Joint Regional Planning Panel on the 7 March 2012 and refused for reasons associated with excessive building height, lack of a podium to the street elevations and poor internal amenity of the units.*

*The determination of the DA was appealed to the NSW LEC (10405 of 2012) with the appeal upheld by decision dated 11 January 2013. It is noted that the Court allowed amended plans to be filed that: deleted the serviced apartments; reduced the density to 84 apartments; increased the non residential FSR to 2.65:1 (with commercial floor space in lieu of serviced apartments); improved amenity to dwellings; provided a podium and setbacks above the podium and provided for a public through site link from Berry Street to Dooahat Lane. The only feature similar to the plans refused by the JRPP was the height of the building.*

Two of the three Panel members (present for this meeting) did not attend the Panel meeting of 13 December 2011 when the previous application was discussed. It is noted that this is a fresh application for a larger site and the Panel is open to comment on the overall proposal and not just the perceived additions to any Court approval. The Panel requested a further meeting to discuss aspects of the proposal before these minutes were finalised. A further meeting was held at Council following the Panel meeting of 15 October 2013.

### **The Proposal**

The proposal is for the demolition of existing structures and the construction of a mixed use development comprising basement levels, 2,285m<sup>2</sup> of commercial floor space, and 204 residential apartments. A total of 146 car parking spaces are proposed plus 17 motorcycle spaces, 94 bike spaces and 129 individual storage spaces. The apartments consist of a mix of 50 x studio; 91 x one bedroom; 61 x 2 bedroom and 2 x three bedroom apartments.

The site is on the north-west corner of the intersection of the Pacific Highway and Berry Street. The inclusion of 154 Pacific Highway increases the site area to a total 1,678.6m<sup>2</sup> and extends the frontage of the site to the Highway by 13.055m to a total 36.755m.

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

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

To the south east, on the diagonally opposite corner of Berry Street and the Pacific Highway is 177-199 Pacific Highway; the JRPP resolved on 7 September 2011 to grant consent to 31 storey commercial building with ground floor plaza. The building did have concept approval from the Minister of Planning under Part 3A of the EP&A Act.

The Panel and Council staff inspected the site prior to the meeting.

The architect gave a brief outline of the proposal and the applicant's solicitor gave an overview of the history and the Court approval of the height. A written submission was also handed out to the Panel. A copy of the submission has been registered in Council's records.

The applicant has requested that these minutes are treated as commercial in confidence. These minutes refer to a development application to be assessed by Council and determined by the Joint Regional Planning Panel and accordingly will be on the public record.

### **Panel Comments:**

The comments of Mr Green solicitor for the applicant were noted. The Panel is not bound to support the controls and any previous approval and may comment freely on the



*design, aesthetics and public domain, but does not support non-compliance unless there are very sound reasons.*

*The Panel was made aware by the applicant that a planning proposal had been submitted to reduce the amount of non-residential floor space on the site and the proposal as submitted was well below the minimum requirement under the LEP. The planning proposal is yet to be considered by Council. The Panel acknowledges the commercial argument behind the proposal, but given the relatively poor amenity of the lower level units, many south-facing, lacking cross-ventilation and directly exposed to noise from the street and highway, does not support the proposed change to residential. This part of the site is better suited to commercial use, for which it cannot be accepted that there will not be a market in future with the very significant growth in the area.*

*The primary design principles under SEPP 65 are discussed as follows:*

*Principle 1: Context*

*The development does not fit within the context of the area. The proposed building will not fit within with the desired future character of the area as outlined in the recently gazetted LEP, DCP and character statement.*

*As the most recent planning instruments that have been through the plan making process in accordance with the Act, they must be seen as the desired future character for Council and the community.*

*These controls include podium and setback requirements as well as a maximum height of RL 106 over 18 Berry Street and RL125 over the rest of the site. Variations to the controls could only be supported if there are sound reasons based on urban design and being in context with recent developments in the immediate vicinity.*

*The Panel raised concern about the relationship of the proposal on Berry Street to the adjoining development which is currently under construction. The Panel felt that the height of 12-16 Berry Street at nine storeys was an appropriate height for a block building without a setback podium. If the additional two levels are to be included there should be a sensitive transition, recognizing the parapet line of the neighbouring building, and setting back and articulating the top levels particularly on the western boundary.*

*The Panel had a similar concern with the relationship to the development at 156 Pacific Highway. The proposal is significantly higher and lacks any sensitive transition between developments. The proposal should be setback a minimum of 3m from the northern boundary where the building exceeds the height of N0.156. This also allows more apartments to have north facing openable windows.*

*Principle 2: Scale*

*The site is located almost adjacent to a low scale residential area. A nine storey building adjacent to the residential zone is appropriate subject to adequate separation distances being provided (this was the scale of development at 12-16 Berry Street and 156 Pacific Highway), additional height towards the street corner would generally be appropriate.*

*The problem with the proposed building is that it is not a “block edge” (up to nine storeys typology) or not a tower. The site has been extended towards the north and the lower scale mixed use development and lower scale residential area. The proposed scale is not appropriate for the extended site frontage on The Highway.*

*Principle 3: Built Form*

*The Panel considered that the tower would be best as a simple element over the part of the site known as 144-154 Pacific Highway with the lower elements more in keeping with heights of the adjoining sites. The Panel did not support the shaping of the upper floors of the tower. This “articulation” based on the potential over-shadowing of the Don Banks Museum adds to the apparent bulk of the building.*

*The Panel advised the applicant that any additional overshadowing of Don Bank was not supported and the building should be modified accordingly.*

*The Panel does not accept the argument that because the site is highly visible in the view west up Berry Street that it should be a “landmark” or taller building. Buildings that are of no civic significance and that are located at termination of views should not be unnecessarily accentuated..*

*The Panel felt that to make the tower simpler and the scale more appropriate, the upper levels of the building should be removed. Any “loss” of apartments from the Court consent would be more than compensated by the number of apartments proposed at No.154 above the RL125 height control.*

*The Panel supported the through site link from Doohat Lane to Berry Street in that it provided a public benefit, but does not support the current proposal as the access is narrow, uninviting and provides poor sight lines due to the hilly nature of the topography.*

*The Panel felt that the spatial system should be dictating the alignment and proportions of the connection. The link should be improved and made more welcoming by widening the stairs as a continuation of the alignment of the lane. It was recommended that the commercial floor over the stairs on Level 2 become a void area so that there is a clear visible connection between Berry Street and Doohat Lane. The link should connect directly with the Berry Street levels and it should not require two 90 degree turns to access it from Berry Street. Glazing on the Berry Street facade to an appropriate height at the link would also be recommended. The Panel agreed that after-hours security of this area is important, and that the link should be open at all times. When closed the lane may be more hazardous as a dead-end, than if permanently open.*

*The Panel recommends the use of the spatial alignment of the street pattern as providing the geometry to resolve the building form so that the visual impact is minimised.*

#### *Principle 4: Density*

*The density exceeds Council’s controls as the proposal is well outside the desired building envelope for the site. The level 3 and 4 apartments in lieu of commercial floor space also increase the density on the site.*

#### *Principle 5: Resource, Energy and Water Efficiency*

*A Basix Certificate was submitted with the application. The Panel did not comment further.*

#### *Principle 6: Landscape.*

*The Panel raised concern about the removal of the street trees and supported the retention of the tree on the Highway with desirably others being planted (subject to Council’s Landscape officer assessment) and the replacement of the tree on Berry Street affected by the vehicular access potentially with two new trees. The now mature plane trees in this vicinity have been invaluable in enhancing the character of the area.*

#### *Principle 7: Amenity*

*The Panel noted the report of Steve King in relation to cross ventilation and solar access.*

Overall the amenity levels are poor, and taking into account the location and amenity of the area, the standard is less than desirable. The units in the lower floors in particular suffer from poor amenity, and are located where commercial uses would be more appropriate. It was noted that a large number of apartments in the Court approved plans were cross-over apartments that had north facing living areas and south facing bedrooms and reduced the number of single fronted south facing apartments and greatly improved solar access and cross ventilation. There are none of these apartments and the amenity of apartments in the proposal needs to be significantly improved.

The internal corner units are less than desirable in relation aural and visual privacy because of poor separation distances. Apartment 311 is unacceptable as planned and even if modified to be similar to apartment 411, separation distance between the two 'internal corner' units would be only approximately 3 metres, inadequate to provide aural privacy in a confined urban condition. These internal corner units need to be reconsidered to resolve the concerns that could result in the loss of the smaller apartments. Having a 3m setback on the north boundary for the western apartments from level 5 up would allow for better amenity as demonstrated at level 12.

The balconies generally would benefit from provision of adjustable screens to improve their amenity and useability. Balconies on the corner units in particular would be very exposed to wind.

The small area on the north-west corner of the site nominated as 'Combined hydrant/sprinkler tank and pumps' is located immediately adjacent to one low scale residential property and close to other properties to the west. It is also immediately below many units in the subject development. Information should be provided as to its intended appearance and any potential noise from this plant.

#### *Principle 8: Safety and Security*

After-hours security in the lane is a critical issue and has been discussed above.

The Panel raised the issue of access from the Pacific Highway to the residential apartments bearing in mind that the Pacific Highway is a clearway in the afternoon peak.

#### *Principle 9: Social Dimensions*

The Panel commended the applicant on the provision of communal roof areas but considered that some small enclosed space(s) should be provided so that they are useable in all conditions. These should be equipped with basic service facilities. The Panel noted the common areas on levels 3 to 11 but was concerned that they were internal and uninviting. By moving the core slightly to the south a more welcoming space with outlook and light could be readily provided on the north side of the core. The Panel noted that the core location was constrained by the vehicle access location and geometry of the car park, but was not persuaded that some adjustment could not be made.

#### *Principle 10: Aesthetics*

The use of stained pre cast concrete (coloured white) was not favoured by the Panel. Substantial changes are required to the envelope of the building before further comment on finishes and aesthetics could be made.

#### **Conclusion:**

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

## AMENDED PLANS

Following an initial assessment of the application and consideration by the Design Excellence Panel, the Assessment Planner met with the applicant's design and planning consultants to discuss a number of issues with regard to the height; non residential FSR; overshadowing of Donbank and apartments in Berry Street and the internal amenity of apartments.

In response, the applicant submitted amended plans on 12 and 14 November 2013 as a partial response to the concerns raised. The plans were accompanied by the following letter from the Applicant's Solicitors dated 8 November 2013:

*"Our client has had the opportunity to absorb the minutes of the Design Excellence Panel ("DEP") and the comments made by the assessing officer in conference with our client's consultants on 28 October 2013.*

*Whilst our client maintains that the proposed development can and should be approved in its current form, our client is prepared to accede to some of the matters raised by Council and the DEP and has prepared amended plans responding to a number of those points.*

*The details of these amendments are set out in the enclosed schedule of amendments prepared by Nettleton tribe Architects.*

*We note from earlier correspondence forwarded by the assessing officer to our client, that the JRPP has scheduled a determination meeting for this development application on 17 December 2013. That correspondence also indicated that the report for the JRPP needs to be finalised approximately two weeks prior to that meeting, or around 3 December 2013. That being the case there is ample time for the enclosed amendments, and the other comments made in this correspondence to be considered by Council and included and referred to in the report being prepared for the JRPP.*

*We note in particular that the amendments also respond to matters Council has raised and lead to improved planning and amenity outcomes, no further adverse impacts are generated. That being the case and in accordance with section 4 of Council's Development Control Plan and in particular section 4.5, no notification should be necessary for these amendments, even should Council elect to renotify, it could comfortably do so in time for the report to be finalised and provided to the JRPP.*

*Our client has responded to Council's concerns in relation to the prospect of leaving 154 Pacific Highway as an isolated site. However, it is now facing very strict timeframes with respect to the imminent expiry of options and financing of the development and cannot afford for the JRPP meeting to be in anyway delayed. Given the diverse nature of the ownership of 154 Pacific Highway, it is unlikely the future co-operation of all owners will be secured.*

*It is, in those circumstances, regrettable consideration of the planning proposal, and its potential impact on the proposed development will not be available earlier, as this clearly has the potential to impact upon the consideration of the commercial/residential floor space mix in the proposal.*

*That being acknowledged and, on a strictly without prejudice basis, in order to facilitate the prompt determination of the matter, should the JRPP be minded to otherwise approve the development. but hold a concern as to the floor space ratio mix, despite the*

*planning proposal and despite the SEPP 1 objection accompanying the development application, our client would be prepared to accede to a condition which had the effect of converting the use of level 3 of the proposed development to commercial space, generally in accordance with the enclosed detailed plan. This would have the effect of increasing the commercial FSR of the proposed development considered to be supportable by the assessing officer, absent any comment being provided on the planning proposal. It should be noted that suggested increase in non-residential floor space represents a significant threat to the viability of the expanded site, including 154 Pacific Highway.*

*We would envisage that the condition would read:*

*"Level 3 of the proposed development is to be converted to commercial space to better accord with the floor space ratio controls applicable at the date of determination of this development consent. An amended plan is to be provided to the satisfaction of Council prior to the issue of the construction certificate."*

*Should the planning proposal subsequently move forward to an amendment to the planning controls, our client may then determine what further steps, if any, it may take.*

*A further issue appears to have arisen with respect to a small triangular portion of the development of the southeast corner of the building, between levels 2 and 5 inclusive which overhangs Lot 3 in Deposited Plan 237104 and overhangs what appears to be a portion of Council owned road reserve. The assessing officer has sought an amendment to the proposed development to remove this small triangular portion on the basis that it overhangs Council's land.*

*This does not appear to be consistent with the views of Council's strategic planners, who have advised that on the planning proposal, that portion of the land being incorporated for the purposes of considering the developable area of the site and relevant floor space ratios. A copy of the letter of 30 September 2013 is attached. Council's position appears to be internally inconsistent.*

*The simple resolution to this matter would be for Council to simply grant owner's consent for the portion of the development that is deemed to overhang Council land, and given the finished floor levels of that part of the development, we can see no merit reason to withhold that owner's consent. Consistent with a long line of authority in the Land and Environment Court pertaining to owner's consent for works overhanging Council roadways, we are comfortable that the Court would be prepared to stand in Council's shoes and issue that owner's consent.*

*Nevertheless, our client is hopeful for a positive resolution at the JRPP meeting on 17 December and accordingly if Council is not prepared to give the necessary owner's consent, our client would be prepared to accept a condition showing the necessary chamfer of the southeast corner on levels 2-5 so as to excise that part of the development that overhangs Council's land. This has been reflected in the amended plans prepared by Nettleton Tribe.*

*Again, this could be simply done by way of condition, given the miniscule amount of floor space that is concerned and that condition we would envisage would read:*

*"The plans for levels 2, 3, 4 and 5 are to be amended to bring the southeast corner of the proposed development into alignment with the boundary of Lot 3 in Deposited Plan 237104. The amended plans are to be provided prior to issue of a construction certificate."*

*The concessions outlined above and in the enclosed amended plans are not deemed by our client to be necessary and are made entirely on a without prejudice basis. Should our client's proposal not find support from Council, our client will rely on the original application plans in any Court proceedings."*

### **Comment:**

The applicant's solicitor has mentioned an issue with the south east splay corner of the site. The solicitor is incorrect in saying it is an overhang over Council's land. In fact the land above ground level is part of the site but under NSLEP 2001 the corner is zoned road and the building is not permissible. The issue arises because levels 3 and 4 are now residential (previously it was commercial and Existing Use rights from the current building could be considered). In any case, the amended plans show no encroachment so it is no longer an issue.

The applicant has submitted amended plans to respond to some of the issues raised and requested that the new plans be considered by the JRPP. Under the Regulations, Council can accept the new plans as an amendment to the application and the amended plans then become the application.

The changes are put forward by the applicant on a without prejudice basis. This is unacceptable as any plans considered by the JRPP become the application plans. An applicant cannot then revert to previous plans should the application be refused and the applicant appeals to the Court.

### **DESIGN AMENDMENTS**

The following changes have been made to the original plans and are summarised as follows:

- Combined hydrant sprinkler tank reconfigured to avoid the right of way to the northern end of 18 Berry Street.
- Amenities introduced into commercial areas.
- The Green Wall has been removed from both the Berry Street and Pacific Highway elevations.
- Units 301 and 302 have been transposed to enhance privacy. Former Unit 301 becomes a one bedroom and study apartment and former Unit 302 becomes a studio.
- Additional privacy screens have been introduced.
- A high window has been introduced to the northern elevation of the bedroom in Unit 311.
- The balconies of Units 301 and 302 have been reduced and the extent of landscaping increased to enhance privacy.
- The balcony of Unit 308 has been chamfered to address Council's concerns regarding Lot 10 DP237104
- Units 401 and 402 have been transposed to enhance privacy. Former Unit 401 becomes a one bedroom and study apartment and former Unit 402 becomes a studio.
- Additional privacy screens have been introduced.
- The balcony of Unit 401 has been reconfigured to enhance privacy.
- A high window has been introduced to the northern elevation of the bedroom in Unit 411.
- The balcony of Unit 408 has been chamfered to address Council's concerns regarding Lot 10 DP237104.



- A matching setback of 3m has been introduced to the western end of the boundary with 156-158 Pacific Highway. This results in the loss of one Unit
- Unit 501 becomes a two bedroom apartment.
- Unit 502 is slightly larger than former Unit 503.
- Additional privacy screens have been introduced.
- The balcony of Unit 501 has been reconfigured to enhance privacy.
- A high window has been introduced to the northern elevation of the bedroom in Unit 508.
- The terrace of Unit 505 has been chamfered to address Council's concerns regarding Lot 10 DP237104.
- A matching setback of 3m has been introduced to the western end of the boundary with 156-158 Pacific Highway. This results in the loss of one Unit. Unit 601 becomes a two bedroom apartment.
- Unit 602 is slightly larger than former Unit 603.
- Additional privacy screens have been introduced.
- The balcony of Unit 601 has been reconfigured to enhance privacy.
- A high window has been introduced to the northern elevation of the bedroom in Unit 608.
- A matching setback of 3m has been introduced to the western end of the boundary with 156-158 Pacific Highway. This results in the loss of one Unit.
- Unit 701 becomes a two bedroom apartment.
- Unit 702 is slightly larger than former Unit 703.
- Additional privacy screens have been introduced.
- The balcony of Unit 701 has been reconfigured to enhance privacy.
- A high window has been introduced to the northern elevation of the bedroom in Unit 708.
- A matching setback of 3m has been introduced to the western end of the boundary with 156-158 Pacific Highway. This results in the loss of one Unit.
- Unit 801 becomes a two bedroom apartment.
- Unit 802 is slightly larger than former Unit 803.
- Additional privacy screens have been introduced.
- The balcony of Unit 801 has been reconfigured to enhance privacy.
- A high window has been introduced to the northern elevation of the bedroom in Unit 808.
- A matching setback of 3m has been introduced to the western end of the boundary with 156-158 Pacific Highway. This results in the loss of one Unit.
- Unit 901 becomes a two bedroom apartment.
- Unit 902 is slightly larger than former Unit 903.
- Additional privacy screens have been introduced.
- The balcony of Unit 901 has been reconfigured to enhance privacy.
- A high window has been introduced to the northern elevation of the bedroom in Unit 908.
- A matching setback of 3m has been introduced to the western end of the boundary with 156-158 Pacific Highway. This results in the loss of one Unit.
- The 3m setback has been extended to the Pacific Highway frontage.
- Unit 1001 becomes a two bedroom apartment.
- Unit 1002 is slightly smaller than former Unit 1003.
- Additional privacy screens have been introduced.
- The balcony of Unit 1001 has been reconfigured to enhance privacy.
- A high window has been introduced to the northern elevation of the bedroom in Unit 1008.
- The 3m setback to the northern boundary has been extended to the Pacific Highway frontage.
- Unit 1102 is slightly smaller than former Unit 1102.
- The recess on the northern elevation has been removed and incorporated within Unit 1102.
- Additional privacy screens have been introduced.
- The balcony of Unit 1101 has been reconfigured to enhance privacy.

- A high window has been introduced to the northern elevation of the bedroom in Unit 1108.
- The 3m setback to the northern boundary has been extended to the Pacific Highway frontage.
- Unit 1202 is slightly smaller than former Unit 1202.
- The recess on the northern elevation has been removed and incorporated within Unit 1202.
- Additional privacy screens have been introduced.
- The balcony of Unit 1201 has been reconfigured to enhance privacy.
- The 3m setback to the northern boundary has been extended to the Pacific Highway frontage.
- Unit 1302 is slightly smaller than former Unit 1302.
- The recess on the northern elevation has been removed and incorporated within Unit 1302.
- Additional privacy screens have been introduced.
- The balcony of Unit 1301 has been reconfigured to enhance privacy.
- A window has been introduced into the western elevation of Unit 1305.
- The 3m setback to the northern boundary has been extended to the Pacific Highway frontage.
- Unit 1402 is slightly smaller than former Unit 1402.
- The recess on the northern elevation has been removed and incorporated within Unit 1402.
- Additional privacy screens have been introduced.
- The balcony of Unit 1401 has been reconfigured to enhance privacy.
- A window has been introduced into the western elevation of Unit 1405.
- The 3m setback to the northern boundary has been extended to the Pacific Highway frontage.
- Unit 1502 is slightly smaller than former Unit 1502.
- The recess on the northern elevation has been removed and incorporated within Unit 1502.
- Additional privacy screens have been introduced.
- The balcony of Unit 1501 has been reconfigured to enhance privacy.
- A window has been introduced into the western elevation of Unit 1505.
- Unit 1602 is slightly larger than former Unit 1602.
- The recess on the northern elevation has been removed and incorporated within Unit 1602.
- Additional privacy screens have been introduced.
- The balcony of Unit 1601 has been reconfigured to enhance privacy.
- A window has been introduced into the western elevation of Unit 1605.
- Unit 1702 is slightly larger than former Unit 1702.
- The recess on the northern elevation has been removed and incorporated within Unit 1702.
- Additional privacy screens have been introduced.
- The balcony of Unit 1701 has been reconfigured to enhance privacy.
- A window has been introduced into the western elevation of Unit 1705.
- Unit 1802 is slightly larger than former Unit 1802.
- The recess on the northern elevation has been removed and incorporated within Unit 1802.
- Additional privacy screens have been introduced.
- The balcony of Unit 1801 has been reconfigured to enhance privacy.
- A window has been introduced into the western elevation of Unit 1805.
- Unit 1902 is slightly larger than former Unit 1902.

- The recess on the northern elevation has been removed and incorporated within Unit 1902.
- The balcony of Unit 1901 has been reconfigured to enhance privacy,
- A window has been introduced into the western elevation of Unit 1905.
- Unit 2002 is slightly larger than former Unit 2002.
- The recess on the northern elevation has been removed and incorporated within Unit 2002.
- The balcony of Unit 2001 has been reconfigured to enhance privacy.
- Former Unit 2004 (one bedroom), Unit 2005 (two bedroom) and Unit 2006 (two bedroom) have been reconfigured to provide Unit 2004 (two bedroom) and Unit 2005 (two bedroom and study).
- A window has been introduced into the western elevation of Unit 2005.
- Southern awning of Unit 2005 has been removed.
- Unit 2102 is slightly larger than former Unit 2102
- The recess on the northern elevation has been removed and incorporated within Unit 2102.
- The balcony of Unit 2001 has been reconfigured to enhance privacy.
- A window has been introduced into the western elevation of Unit 2104.
- The terrace to Unit 2104 has been reduced in size.
- Private terrace of Unit 2104 has been reduced in size.
- The balcony of Unit 2201 has been reconfigured.
- The area of Unit 2205 has been reduced.
- A window has been introduced into the western elevation of Unit 2205
- Level 22 serviced by two lifts.
- The balcony of Unit 2201 has been reconfigured.
- The area of Unit 2205 has been reduced.
- A window has been introduced into the western elevation of Unit 2205
- Area of plant room reduced by 16m<sup>2</sup>

### **Comment:**

Although the above list seems extensive, the amendments do not address the comments made by the DEP with regard to:

#### *Height and scale:*

*The Panel felt that to make the tower simpler and the scale more appropriate, the upper levels of the building should be removed. Any “loss” of apartments from the Court consent would be more than compensated by the number of apartments proposed at No.154 above the RL125 height control.*

#### *Through site link:*

*The Panel supported the through site link from Doohat Lane to Berry Street in that it provided a public benefit, but does not support the current proposal as the access is narrow, uninviting and provides poor sight lines due to the hilly nature of the topography.*

*The Panel felt that the spatial system should be dictating the alignment and proportions of the connection. The link should be improved and made more welcoming by widening the stairs as a continuation of the alignment of the lane.*

*It was recommended that the commercial floor over the stairs on Level 2 become a void area so that there is a clear visible connection between Berry Street and Doohat Lane. The link should connect directly with the Berry Street levels and it should not require two 90 degree turns to access it from Berry Street. Glazing on the Berry Street facade to an appropriate height at the link would also be recommended. The Panel agreed that after-hours security of this area is important, and that the link should be open at all times. When closed the lane may be more hazardous as a dead-end, than if permanently open.*

#### **Amenity of apartments:**

*The Panel noted the report of Steve King in relation to cross ventilation and solar access. Overall the amenity levels are poor, and taking into account the location and amenity of the area, the standard is less than desirable. The units in the lower floors in particular suffer from poor amenity, and are located where commercial uses would be more appropriate. It was noted that a large number of apartments in the Court approved plans were cross-over apartments that had north facing living areas and south facing bedrooms and reduced the number of single fronted south facing apartments and greatly improved solar access and cross ventilation. There are none of these apartments and the amenity of apartments in the proposal needs to be significantly improved.*

These issues and the non residential floor space ratio are considered to be the main outstanding matters that need to be addressed before the proposal can be supported.

#### **SUBMISSIONS**

The application was notified to the Edward, CBD and Union precincts and surrounding owners and residents from 16 August 2013 to 30 August 2013. A total of nine (9) submissions were received with the main issues being summarised as follows:-

##### **Milson Precinct**

- Objects to overdevelopment of site as the site is on the lower north eastern side of Berry Street
- Building should have the required setbacks

##### **Bradfield Precinct**

- Concern about inadequate parking provision of only 146 vehicles for 204 apartments

##### **Teresa Wong**

12-16 Berry Street

- Concern about privacy, west facing units will overlook balconies and internal courtyards

##### **Besgate Group**

12-16 Berry Street

- 8 and 12 Berry Street have right of way over 18 Berry Street for all their vehicle parking

- Proposal involves excavation of right of way
- ROW is unlimited in depth and height and consent of owners of 8 and 12 are needed for construction management plan
- ROW access for vehicles and pedestrians must be maintained at all times

H Sands & S Swan

9 Doohat Ave

- Excessive height will be out of proportion with surrounding area
- Should be limited to 10 storeys
- Increase in traffic

M & A Sheldon

7/154 Pacific Highway

- Supports the proposal
- 154 Pacific Highway must be incorporated into site
- Would not like Court approval to proceed that would isolate No154

Tozini Pty Ltd

Level 5 154 Pacific Highway

- Supports the proposal
- 154 Pacific Highway must be incorporated into site
- Would not like Court approval to proceed that would isolate No154

Karen Langford

- Supports proposal
- Considers mix of apartments to be exactly what the area needs

J Hudson

Level 4 154 Pacific Highway

- Supports the proposal
- 154 Pacific Highway must be incorporated into site
- Would not like Court approval to proceed that would isolate No154

## CONSIDERATION

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

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

## Compliance Table

STATUTORY CONTROL – North Sydney Local Environmental Plan 2001				
North Sydney Centre	Existing	Proposed	Control	Complies
Height (Cl. 28D(2)(a))	-	RL 155.76 AHD	RL 195m AHD	YES
Overshadowing of land (Cl. 28D(2)(b))	-	NO	Variation permitted	YES
Overshadowing of land (Cl. 28D(2)(c))		YES	Variation permitted	YES
Overshadowing of dwellings (Cl. 28D(2)(d))	-	YES	Variation permitted	YES
Minimum lot size (Cl. 28D(2)(e))	1678.6	1678.6	1000m <sup>2</sup> min.	YES
Mixed Use Zone				
Floor Space (Cl. 31) (max)	Unknown but likely to be in excess of 3:1	1.47:1	Within range of 3:1 to 4:1	NO

## DCP 2002 Compliance Table

DEVELOPMENT CONTROL PLAN 2002		
	<i>complies</i>	<i>Comments</i>
<b>6.1 Function</b>		
Diversity of activities, facilities, opportunities and services	No	Communal roof spaces provided; commercial/retail space provided at base of building, non residential floor space well below minimum requirement in LEP
Mixed residential population	No	Unit mix unacceptable for apartments, excessive number of smaller apartments. Excessive number of single fronted south facing apartments
Maximum use of public transport	Yes	Commercial parking on site decreased; excellent access to public transport
<b>6.2 Environmental Criteria</b>		
Clean Air	Yes	Reduced level of parking, parking to be restricted to maximum under DCP
Noise	Yes	Acoustic report submitted, can be conditioned
Acoustic Privacy	Yes	Acoustic report indicates standards can be met
Visual Privacy	Yes	Privacy screen required on communal roof garden on level 12
Wind Speed	Yes	Wind report submitted
Reflected light	Yes	Materials non reflective and can be conditioned
Artificial light	NA	No roof top advertising proposed
Outdoor lighting	Yes	Can be conditioned
Awnings	Yes	Continuous awning provided
Solar access	No	Unsatisfactory
Views	Yes	Satisfactory
<b>6.3 Quality built form</b>		
Context	No	Site analysis undertaken, building not in context with desired character for area and development to north and west
Public spaces and facilities	NA	Site too small to provide spaces
Skyline	No	Upper levels designed to minimise overshadowing on special area and nearby dwellings, concern from DEP about shaping of upper levels where a simple tower form is more in line with the DCP controls
Through-site pedestrian links	Yes	None required under character statement but



		considered to be desirable as a public benefit and in keeping with historical access from Doohat lane
<b>Streetscape</b>	No	Unsatisfactory. Excessive height. Refer to DEP comments
<b>Subdivision</b>	Yes	Consolidation of sites now proposed.
<b>Setbacks</b>	Yes	Setbacks based on adjoining approvals and are similar to the recent Court approval. Considered acceptable under the circumstances subject to amenity concerns with apartments being addressed.
<b>Entrances and exits</b>	Yes	Visible from Street
<b>Street frontage podium</b>	Yes	Podium level established with regard to adjoining developments
<b>Building design</b>	No	See Design Excellence Panel comments
<b>Nighttime appearance</b>	Yes	Can be conditioned

#### **6.4 Quality urban environment**

<b>High quality residential accommodation</b>	No	Too many south facing single fronted small apartments, inadequate cross ventilation
<b>Accessibility</b>	Yes	Satisfactory
<b>Safety and security</b>	Yes	Satisfactory
<b>Car parking</b>	Yes	Satisfactory
<b>Bicycle storage</b>	Yes	Storage rooms provided
<b>Vehicular access</b>	Yes	Cars via Berry Street. Loading via Doohat Lane
<b>Garbage Storage</b>	Yes	Separate facilities provided. Garbage can be collected from Doohat Lane. This can be conditioned.
<b>Site facilities</b>	Yes	Can be conditioned. Storage areas provided within basement and within apartments

#### **6.5 Efficient use and management of resources**

<b>Energy efficiency</b>	Yes	Basix certificate submitted
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### **NORTH SYDNEY LEP 2001**

#### **Permissibility within the zone:**

The proposal is permissible with consent under the Mixed Use zoning.

### **CLAUSE 28B - NORTH SYDNEY CENTRE OBJECTIVES**

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

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

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

## CLAUSE 28C - RAILWAY INFRASTRUCTURE

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

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

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

## CLAUSE 28D - BUILDING HEIGHT AND MASSING

### Objectives

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

The proposed development is not considered to have an appropriate overall scale as the tower element is now closer to the lower scale residential zone to the north west.

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

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

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

The amended plans indicate that Donbank will be overshadowed by the proposed development for 5 minutes prior to 12 noon.

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

The proposed development would not impact on the privacy of adjoining residential

development.

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

A continuous awning should be provided to provide weather protection for pedestrians but is not shown on the drawings. The scale and massing is unsatisfactory with regard to visual dominance from nearby residential areas.

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

The subject site comprises the consolidation of 4 allotments including the previously isolated site at No.154 Pacific Highway.

### **Development Controls**

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

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

Utilising the LEP definition, the proposed building will have a maximum RL of 155.76 AHD (to the roof of the rooftop plant room) and therefore complies with this requirement.

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

The proposed development will result in some minor overshadowing of land outside the composite shadow area.

- (c) *There is no net increase in overshadowing, between 10am and 2pm, at any time of the year, of any land this is within the North Sydney Centre and is within the public open space zone or within a special area as shown on Sheet 5 of the map marked "North Sydney Local Environmental Plan 2001 (Amendment No 9)- North Sydney Centre", and*

The proposed development will overshadow the identified special area known as Donbank for 5 minutes before noon in mid winter and therefore compliant.

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

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

- (e) *The site area is not less than 1,000m<sup>2</sup>.*

The subject site is 1678.6m<sup>2</sup> in area which satisfies this standard.

### **Building Design and Public Benefits**

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

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

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

The scale, form and massing is not considered suitable within the context of the locality and in particular the lower scale development adjoining the North Sydney Centre. The site is located almost adjacent to a low scale residential area. A nine storey building adjacent to the residential zone is considered appropriate subject to adequate separation distances being provided (this was the scale of development approved at 12-16 Berry Street and 156 Pacific Highway), some additional height towards the street corner as envisaged under the new LEP controls would generally be appropriate.

The site has been extended towards the north consisting of the lower scale mixed use development and lower scale residential area. The proposed scale is not appropriate for the extended site frontage on the Highway due to the height of the tower.

### **CLAUSE 29 - BUILDING HEIGHT**

#### **Objectives**

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

The height is not compatible with the adjoining residential areas. Part of the site directly adjoins the residential area while the rest of the site containing the tower element is about 15m away. The site that adjoins is 2 floors higher than the development directly adjoining to the west that was recently considered to be a compatible height. The remainder of the site is 14 storeys higher than the western neighbour.

The Court approved the height of the tower (RL.156 to top of plant) at 144-150 Pacific

Highway having regard to its corner location; its distance from the residential zone; lack of shadow impact (being located south) and the fact that future development over No154 was restricted to RL 125 under the new LEP. As the new LEP was a draft at the time of the hearing and was not certain and imminent, it was given no weight. This is no longer the case.

It cannot be assumed that the height considered acceptable by the Court on the corner should be extended further north particularly when it comes closer to the low scale residential area. My recollection of the evidence before the Court was that No154 as an isolated site had the potential to build up to RL125 and this would provide a step in scale down to the recently constructed buildings at No.156-158 that directly adjoin the residential area.

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

The proposed development is not considered to be an appropriate bulk and scale on the northern fringe of the North Sydney Centre. The height needs to be reduced by either stepping the building down over No.154 (the proposal is 8 floors or 14 apartments over the height control of RL125 under NSLEP 2013) or simplifying the tower as suggested by the DEP:

*The Panel considered that the tower would be best as a simple element over the part of the site known as 144-154 Pacific Highway with the lower elements more in keeping with heights of the adjoining sites. The Panel did not support the shaping of the upper floors of the tower. This “articulation” based on the potential over-shadowing of the Don Banks Museum adds to the apparent bulk of the building.*

*The Panel advised the applicant that any additional overshadowing of Don Bank was not supported and the building should be modified accordingly.*

*The Panel does not accept the argument that because the site is highly visible in the view west up Berry Street that it should be a “landmark” or taller building. Buildings that are of no civic significance and that are located at termination of views should not be unnecessarily accentuated..*

*The Panel felt that to make the tower simpler and the scale more appropriate, the upper levels of the building should be removed. Any “loss” of apartments from the Court consent would be more than compensated by the number of apartments proposed at No.154 above the RL125 height control.*

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

The units in the lower floors in particular suffer from poor amenity, and are located where commercial uses would be more appropriate. It was noted that a large number of apartments in the Court approved plans were cross-over apartments that had north facing living areas and south facing bedrooms and reduced the number of single fronted south facing apartments and greatly improved solar access and cross



ventilation. There are none of these apartments and the amenity of apartments in the proposal needs to be significantly improved.

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

Solar access, cross ventilation and the excessive number of south facing apartments are addressed below in regard to SEPP 65 and RFDC.

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

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

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

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

The JRPP has considered a number of mixed use proposals in close proximity to this site. They all have had regard to the height controls under the recently gazetted LEP with the heights not exceeding the height controls by more than two floors and generally the breach involves only a communal roof area and the plant room. It is also noted that the height controls under NSLEP 2013 for the two nearest sites on the eastern side of the Highway (north of Berry Street) are RL135 and RL145.

### **Building Height Controls**

Subclause 29(2) states that a “building must not be erected in the mixed use zone in excess of the height shown on the map”. The height Map to the North Sydney LEP 2001 does not specify a maximum height for the subject site. Height is primarily controlled by the provisions contained within Clause 28D and 29 as discussed above.

### **CLAUSE 30 - BUILDING HEIGHT PLANE**

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

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

The proposed development is not considered to be compatible with the residential zone to the north. Part of the site directly adjoins the residential area while the rest of the site containing the tower element is about 15m away.

### **Building Height Plane Controls**

Subclause 30(2) requires the implementation of a building height plane where a development within the mixed use zone adjoins residential zone. The northern boundary of the site directly adjoins the Residential C Zone. The proposed development would project through the building height plane by 16m.

The Land and Environment Court made a ruling (Castle Constructions with regard to 136-140 Walker Street North Sydney) that the BHP control cannot prevail over the North Sydney Centre controls under Division 4 of the LEP. Recent legal opinion from Council's solicitors is that Clause 30 is therefore not relevant to the proposal.

### **CLAUSE 31 - FLOOR SPACE**

Subclause 31(2) states:

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

The floor space Map to the North Sydney LEP illustrates that the non-residential component of a development within the mixed use zone must have an FSR of between 3:1 and 4:1. The proposal has a non residential floor space ratio of 1.47:1 and therefore is non compliant with the control.

Under the new LEP 2013, part of the site known as 144-154 Pacific Highway has a minimum FSR requirement of 3:1 and the part known as 18 Berry Street has a minimum FSR requirement of 0.5:1. This would average the minimum FSR requirement over the whole site to be 2.24:1.

Council received a Planning Proposal from the applicant seeking to amend the non-residential floor space ratio range requirements of North Sydney Local Environment Plan 2013 (NSLEP 2013) from part 3:1 - 4:1 and part minimum of 0.5:1 to a minimum of 0.5:1 across the entire site, with no maximum imposed.

The planning proposal request was reported to Council at its meeting on 18 November 2013. The report prepared by Council's Executive Strategic Planner, did not support the planning proposal for the following reasons:

- It will result in a reduction of commercial floor space over the site which is inconsistent with Direction 1.1 - *Business and Industrial Zones* to the s.117 Directions under the Environmental Planning and Assessment Act, 1979.
- It is contrary to meeting a number of objectives and actions under the relevant regional and subregional strategies applying to the land. In particular, the proposal does not:
  - contribute to the meeting of employment targets,

- does not protect nor promote lands for commercial development directly adjacent to the commercial core of an important existing Strategic Centre nor allow for future growth,
- does not reinforce and promote existing centres
- lead to improved housing affordability for key workers,
- Sufficient residential capacity is already provided under NSLEP 2013 to meet the State housing targets, without the need to change the land use mix on the subject site.
- Many of the justifications are based on comparing inconsistent data sets.

In the making of NSLEP 2013, the Department of Planning and Infrastructure have been satisfied that Council has adequately demonstrated through its Residential Development Strategy, Local Development Strategy and consideration of regional and subregional plans that the controls applying to the North Sydney Centre will be capable of meeting the future directions set by the State Government. Meeting these directions is now being realised in a number of recent development approvals.

**After consideration of the report and the planning proposal at its meeting of 18 November 2013, Council resolved to refuse the planning proposal.**

The applicant lodged a SEPP 1 objection in support of the current application comprising a number of reports that also formed part of the planning proposal submission.

Council has reviewed this development standard of non residential floor space ratio very recently in its consideration of the planning proposal. A SEPP 1 objection to vary a standard to below the recently gazetted control under NSLEP 2013 cannot be supported and the control must be considered to be reasonable and necessary.

A SEPP 1 objection could only be supported if the minimum FSR was at least equal to the FSR under the recently gazetted LEP. The applicant's solicitor has suggested a condition requiring level 3 to be converted to commercial which would increase the non residential FSR to above the minimum average FSR of 2.24:1. This would result in the loss of 16 apartments from the proposal. Another alternative would be have the southern half of levels 3 and 4 converted to commercial as these areas are south facing and all contain only small apartments with no cross ventilation. Either way, the minimum provision of commercial floor area on the site will result in a reduction in density of 16 apartments.

It should be noted that the Court approval accepted a SEPP 1 objection that allowed a non residential FSR less than 3:1 but still in keeping with the new control (draft LEP at the time) and the proposal considered by the Court included both levels 3 and 4 as totally commercial.

## CLAUSE 50 - DEVELOPMENT IN THE VICINITY OF HERITAGE ITEMS

### Development in Vicinity Controls

Clause 50 states:

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

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

*The proposal is considered to be unacceptable due to the impact of over shadowing on the gardens of North Sydney Council's property, Donbank House and Museum. The property is already severely affected by overshadowing and any additional loss of solar access will have an adverse impact upon the already stressed plantings. The proposal will therefore negatively impact upon the heritage significance of this state-listed property as well as reducing the amenity of the site to the writer in residence and the public that visit the property.*

*The proposal inadequately details the street level facades of the proposal and the pedestrian link that allows the public to move between the CBD and its various state-listed heritage items, including Donbank, through to the heritage – listed North Sydney Demonstration School.*

*It is recommended that the tower be amended to remove the additional over shadowing to Donbank and that additional documentation be provided to resolve the street level facades and footpath.*

The amended plans have reduced the overshadowing to an acceptable 5 minutes prior to noon in mid winter. The through site link has not been resolved to the satisfaction of the DEP.

### North Sydney Local Environmental Plan 2013

The North Sydney Local Environmental Plan 2013 was gazetted on 2 August 2013. NSLEP 2013 came into force on 13 September 2013, 42 days after the gazettal notification.

**For the purposes of this application NSLEP 2013 should be regarded as imminent and certain and considerable weight must be given to it particularly where the new plan will act in a negative sense to the prospects of an application.**

**Any application lodged up to the commencement date must be considered under NSLEP 2001 under the savings provisions.**

The site is identified under LEP 2013 as being included within the B4 mixed use zone as are adjoining sites. The proposed development is permissible in the zone.

The development standards applicable to the site under LEP 2013 generally reflect those which currently apply to the site under the current North Sydney Local Environment Plan 2001 (NSLEP) 2001. The development standards which apply to the proposed development under the new LEP are identified in the following compliance table:

<b>COMPLIANCE TABLE – DEVELOPMENT STANDARDS</b>			
<b>Development standard</b>	<b>Requirement</b>	<b>Proposed</b>	<b>Complies</b>
<b>Clause 4.3: Height of buildings</b>	RL 106 at No18 Berry St	RL 116	NO
	RL 125 at 144-154 Pacific H'wy	RL 155.67	NO
<b>Clause 4.4: Floor space ratio</b>	Minimum average 2.24:1	1.47:1	NO
<b>Clause 6.3: Building heights and massing</b>	1000m <sup>2</sup> site area	1678.6m <sup>2</sup>	YES

The proposed development has been considered against the development standards applicable under the new LEP and does not comply with the provisions of Clause 4.3 and 4.4.

Any material breach of the FSR control cannot be supported. This has recently been considered and rejected by Council with regard to a planning proposal to reduce the FSR control to 0.5:1. Any application must be amended to at least provide for the minimum requirement (averaged over the whole site at 2.24:1). The applicant's solicitor has suggested a condition requiring level 3 to be converted to commercial which would increase the non residential FSR to above the minimum average FSR of 2.24:1. This would result in the loss of 16 apartments from the proposal. A condition is not considered appropriate as a change in the number of apartments would impact on the assessment of the proposal with regard to SEPP 65 and any conditions relating to Section 94 contributions. Should the JRPP agree with the non residential FSR being increased, amended plans should be required prior to determination.

The breach of the height control by the tower element is eight floors (approx. 31m to top of plant). Such a significant departure to the height control cannot be supported. The relevant clauses 4.3 and 6.3 from NSLEP 2013 are reproduced as follows:

#### **4.3 Height of buildings**

*(1) The objectives of this clause are as follows:*

- (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) to promote the retention and, if appropriate, sharing of existing views,*
- (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) to ensure compatibility between development, particularly at zone boundaries,*

- (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.....

### **6.3 Building heights and massing**

- (1) The objectives of this clause are as follows:
  - (a) to achieve a transition of building heights generally from 100 Miller Street and 79–81 Berry Street to the boundaries of the North Sydney Centre,
  - (b) to promote a height and massing that has no adverse impact on land in Zone RE1 Public Recreation or land identified as “Special Area” on the North Sydney Centre Map or on the land known as the Don Bank Museum at 6 Napier Street, North Sydney,
  - (c) to minimise overshadowing of, and loss of solar access to, land in Zone R2 Low Density Residential, Zone R3 Medium Density Residential, Zone R4 High Density Residential, Zone RE1 Public Recreation or land identified as “Special Area” on the North Sydney Centre Map,
  - (d) to promote scale and massing that provides for pedestrian comfort in relation to protection from the weather, solar access, human scale and visual dominance,
  - (e) to encourage the consolidation of sites for the provision of high grade commercial space.
- (2) Development consent must not be granted for the erection of a building on land to which this Division applies if:
  - (a) the development would result in a net increase in overshadowing between 12 pm and 2 pm on land to which this Division applies that is within Zone RE1 Public Recreation or that is identified as “Special Area” on the North Sydney Centre Map, or
  - (b) the development would result in a net increase in overshadowing between 10 am and 2 pm of the Don Bank Museum, or
  - (c) the site area of the development is less than 1,000 square metres.
- (3) Development consent for development on land to which this Division applies may be granted for development that would exceed the maximum height of buildings shown for the land on the Height of Buildings Map if the consent authority is satisfied that any increase in overshadowing between 9 am and 3 pm is not likely to reduce the amenity of any dwelling located on land to which this Division does not apply.
- (4) **Mount Street Plaza**  
 Development consent may be granted to development on land at 105–153 Miller Street, North Sydney, known as the MLC Building, that would result in a net increase in overshadowing of the land known as Mount Street Plaza that is within Zone RE1 Public Recreation.
- (5) In determining whether to grant development consent for development on land to which this Division applies, the consent authority must consider the following:
  - (a) the likely impact of the proposed development on the scale, form and massing of the locality, the natural environment and neighbouring development and, in particular, the lower scale development adjoining North Sydney Centre,
  - (b) whether the proposed development preserves significant view lines and vistas,
  - (c) whether the proposed development enhances the streetscape in relation to scale, materials and external treatments.

In allowing any variation in the height, the Consent Authority must have regard to the above controls and in particular Cl.4.3 (1)(e) and (f); Cl.6.3 (1)(a) and (d) and Cl.6.3 (5)(a) and (c).

The applicant contends that the scale of development approved by the Court has been established and therefore is not a consideration for the Consent Authority. The Court approved a building with a tower having height of RL156 (top of plant) at the corner of the site. That decision had regard to the corner location of the tower; its distance from the residential zone; lack of shadow impact (being located south) and the fact that future development over No154 was restricted to RL 125 under the new LEP. As the new LEP was a draft at the time of the hearing and was not certain and imminent, it was given no weight. This is no longer the case. This is a new application with a substantially different density and mix and must be considered as a new application at the time of its determination.

Should the JRPP agree with the need for a reduction in height, amended plans should be required prior to determination. This is discussed later in this report as part of a suite of changes that would likely find favour.

Having regard to the provisions of section 79C of the Environmental Planning and Assessment Act 1979, the proposed development is considered to be unsatisfactory with regard to the provisions of the North Sydney Local Environmental Plan 2013.

### **SEPP 55 and Contaminated Land Management Issues**

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

### **SREP (Sydney Harbour Catchment) 2005**

The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP. The site, however, is not located close to the foreshore and the application is considered acceptable with regard to the aims and objectives of the SREP.

### **SEPP 65 – Design Quality of Residential Flat Development**

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

- (a) *to ensure that it contributes to the sustainable development of New South Wales:*
  - (i) *by providing sustainable housing in social and environmental terms, and*
  - (ii) *by being a long-term asset to its neighbourhood, and*
  - (iii) *by achieving the urban planning policies for its regional and local contexts, and*
- (b) *to achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define, and*
- (c) *to better satisfy the increasing demand, the changing social and demographic profile of the community, and the needs of the widest range of*

- (d) people from childhood to old age, including those with disabilities, and to maximise amenity, safety and security for the benefit of its occupants and the wider community, and*
- (e) to minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions.*

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

#### *Principle 1 Context*

The development does not fit within the existing context of the area. The proposed building will not fit within with the desired future character of the area as outlined in the recently gazetted LEP, DCP and character statement.

As the most recent planning instruments that have been through the plan making process in accordance with the Act, they must be seen as the desired future character for Council and the community.

These controls include podium and setback requirements as well as a maximum height of RL 106 over 18 Berry Street and RL125 over the rest of the site. Variations to the controls could only be supported if there are sound reasons based on urban design and being in context with recent developments in the immediate vicinity.

#### *Principle 2 Scale*

The site is located almost adjacent to a low scale residential area. A nine storey building adjacent to the residential zone is considered appropriate subject to adequate separation distances being provided (this was the scale of development of the recent JRPP approvals at 12-16 Berry Street and 156 Pacific Highway), additional height towards the street corner could be considered.

The site has been extended towards the north and the lower scale mixed use development and lower scale residential area. The proposed scale is not appropriate for the extended site frontage on the Highway.

#### *Principle 3 Built Form*

The DEP considers that the built form of the tower would be best as a simple element over the part of the site known as 144-154 Pacific Highway with the lower elements more in keeping with heights of the adjoining sites. This would remove the upper level shaping of the tower to maximise the density whilst minimising overshadowing impacts.

To make the tower simpler and the scale more appropriate, the upper levels of the building should be removed.

The through site link from Doohat Lane to Berry Street provided a public benefit, but the current proposal is narrow, uninviting and provides poor sight lines due to the hilly nature of the topography. The link should be improved and made more welcoming by widening the stairs as a continuation of the alignment of the lane. It was recommended that the commercial floor over the stairs on Level 2 become a void area so that there is a clear visible connection between Berry Street and Doohat Lane. The design is not supported by Council's Design Excellence Panel.



#### *Principle 4 Density*

The dwelling density substantially exceeds Council's controls as the proposal is well outside the desired building envelope for the site and the non residential floor area is well under the minimum requirement under the new LEP.

An increase in the non residential FSR to the minimum requirement would result in 16 fewer apartments and a reduction in the scale/height of the building a further 14 apartments (or 42 apartments if the tower complied with the height control under NSLEP 2013).

The lack of cross ventilation, solar access and the high number of south facing single fronted small apartments needs to be addressed to have proper regard to the RFDC and this is likely to result in a further reduction of apartments.

This clearly indicates that the proposal is an over development with at least 30 or more apartments over an acceptable density.

It is noted that proposal even with the suggested changes would have an envelope well outside the new controls being many storeys over the height control with podiums greater than four to five storeys and setbacks above the podium less than the required 5m from the streets.

#### *Principle 5 Resource, Energy and Water Efficiency*

A Basix Certificate was submitted with the application.

#### *Principle 6 Landscape.*

The landscaping on the site is limited to communal roof gardens.. Council's Landscape Development Officer has recommended additional street trees to both Berry Street and the Highway.

#### *Principle 7 Amenity*

Overall the amenity levels are poor, and taking into account the location and amenity of the area, the standard is less than desirable. The units in the lower floors in particular suffer from poor amenity, and are located where commercial uses would be more appropriate. It was noted that a large number of apartments in the Court approved plans were cross-over apartments that had north facing living areas and south facing bedrooms and reduced the number of single fronted south facing apartments and greatly improved solar access and cross ventilation. There are none of these apartments and the amenity of apartments in the proposal needs to be significantly improved.

#### *Principle 8 Safety and Security*

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

#### *Principle 9 Social Dimensions*

The provision of communal roof areas should be provided so that they are useable in all conditions. These should be equipped with basic service facilities. The common areas

on levels 3 to 11 were internal and uninviting. By moving the core slightly to the south a more welcoming space with outlook and light could be readily provided on the north side of the core.

#### *Principle 10 Aesthetics*

The building aesthetics and the use of stained pre cast concrete (coloured white) were not favoured by Council's Design Excellence Panel.

#### *Residential Flat Design Code 2002*

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

#### *Solar Access*

The Residential Flat Design Code (SEPP65) gives the following quantified recommendations:

- Living rooms and private open spaces for at least 70 percent of apartments in a development should receive a minimum of three hours direct sunlight between 9am and 3pm in mid winter
- In dense urban areas a minimum of two hours may be acceptable.
- Limit the number of single-aspect apartments with a southerly aspect (SW-SE) to a maximum of 10 percent of the total units proposed.
- Developments which seek to vary from the minimum standards must demonstrate how site constraints and orientation prohibit the achievement of these standards and how energy efficiency is addressed

The applicant has submitted a report from Steve King with regard to the proposal's compliance with the RFDC.

The following table summarises the projected solar access compliance of the development overall.

Units which achieve 3 hours or more sunlight to living and POS 9am – 3pm	49	24.0%
Units which achieve 2 hours or more sunlight to living and POS 9am – 3pm	80	39.2%
Units which achieve 2 hours or more sunlight to living and POS 8am – 4pm	8	3.9%
<b>Total</b>	<b>137</b>	<b>67.2%</b>

Mr King's considered opinion of the number of units that may be considered to comply with the controls for solar access is 137 units from a total of 204, being 67.2%. This includes 8 units that have 2 hours of sunlight between 8am and 4pm. The RFDC Rules of Thumb nominate as a minimum 70%. Mr King states that the achieved proportion is reasonable "in view of the influence of the long south façade on the achievable proportion of apartments with favourable sun exposure".

The amended plans have resulted in a loss of 7 apartments all having solar access, the proportion of apartments now become 130 units from a total of 197, being 66%.

Mr King's acceptance is based on the design where there are many one bedroom and studio apartments that are south facing. A redesign of the proposal to minimise the

number of south facing apartments as was achieved with the design that the Court approved would vastly improve the solar access for the proposal.

### *Cross Ventilation*

The Rules of Thumb in the Residential Flat Design Code give a quantified recommendation with respect only to cross ventilation, relating to the overall proportion of complying dwellings,

The applicant has submitted a report from Steve King with regard to the proposal's compliance with the RFDC.

Natural ventilation compliance in this development is dominated by the proportion of apartments at higher floors where simple cross ventilation is not required to achieve the desired amenity.

Simple cross ventilation by openings to two or more principal facades is extremely constrained at the lower storeys, by virtue of the double loaded planning, combined with the adjacent buildings built to zero lot lines.

Mr King considers 109 units (53.4%) comply with either elevated or simply cross ventilated AND a further 28 apartments (13.7%) of units, being those higher than the podium (at Level 6 and above) as likely to exhibit enhanced single sided ventilation performance by virtue of suitable design, orientation to breezes and elevation in the building.

The proportion required by the RFDC is a minimum of 60%. There is doubt about acceptance of the 28 single sided apartments that require special design to be deemed as complying.

Once again, a redesign of the proposal to minimise the number of south facing single fronted small apartments as was achieved with the design that the Court approved would vastly improve the cross ventilation for the proposal.

### *South facing apartments*

It is noted that the south facade of the proposed development is generally within the same envelope as the Court approval. The Berry Street frontage to the site has not changed. The only change is the reduction in commercial floor space where residential has replaced commercial on level 3 and 4 and the substantial increase in the number of small single fronted south facing apartments. In the Court's judgement the Court accepted a non compliance with the Rule of Thumb requirement for 10% of units being single aspect and south facing. The Court accepted 16% being 13 of 84 apartments.

The applicant is now proposing 22.3% being 44 out of 197 apartments. This is completely unacceptable. The number of south facing apartments should have remained the same number as the Court approval which would have resulted in a smaller overall percentage with the increase in density due to the amalgamation of No154 with the site.

The Court approved plans included nine x two bedroom cross over apartments. The Court design is far superior with regard to amenity of the apartments. The provision of 9 crossover apartments in the current proposal would result in the loss of about 8 to 9 small apartments and the apartment mix would also be improved with an increase in two bedroom apartments.

### *Apartment Mix*

Council's DCPs recommend that developments provide for a mix of apartments to provide housing choice for different types of households. Although small apartments are in demand by investors and possibly first home buyers, there is still a need for two bedroom apartments. The North Sydney area already has a higher percentage of small apartments and higher percentage of rental apartments when compared to the rest of Sydney. Council has an obligation to try and ensure that there is a reasonable mix in apartments for the future. Market demand is dictating a larger number of small apartments. There is no information provided that there is no demand for two bedroom apartments. They may take more time to sell than the less expensive small apartments but they do sell.

The following table shows a comparison of the proposed dwelling mix with NSDCP 2002 and NSDCP 2013 controls:

<b>Dwelling Type</b>	<b>DCP 2002</b>	<b>DCP 2013</b>	<b>Proposal</b>
studio	15% max	10-20%	17.8%
1 bedroom	30% max	25-35%	50.8%
2 bedroom	40% max	35-45%	26.4%
3 bedroom	15% min	10-20%	1.0%

Council has accepted a higher percentage of smaller apartments for new mixed use buildings in recent years on the basis of the location near a railway station. It has generally been no greater than 60%.

Council has noted that the mix is generally not an issue with developments that have proper regard for SEPP 65 and RFDC. If the proposal provides for cross ventilation and solar access to meet the minimum guidelines and south facing apartments are minimised through design, this leads to the provision of larger two bedroom apartments and not an excess of small single fronted apartments. Trying to maximise the density within the building envelope has lead to non compliances with the basics of the RFDC and poor amenity. Council is confident that if the non compliances with the RFDC are addressed then apartment mix would not be an issue.

## **DEVELOPMENT CONTROL PLAN 2002**

### **NORTH SYDNEY CENTRE PLANNING AREA / CENTRAL BUSINESS DISTRICT**

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

*Provide diverse activities, facilities, opportunities and services*

The mixed use development provides for commercial and residential uses. The new residential accommodation is provided in the fringe of the city centre, and not in the commercial core as per the Development Control Plan. The proposal does not provide for adequate commercial space to meet the minimum controls under both NSLEP 2001 and NSLEP 2013.

*Promote public transport, reduce long stay commuter parking on site and reduce non residential parking on site*

The site has excellent access to public transport and parking on site is satisfactory subject to the parking being limited to the maximum under the DCP.

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

An awning is required over the street frontage consistent with adjoining buildings but is not shown on the drawings.

*Allow zero setbacks at ground floor and adjacent to heritage items*

The building will retain the existing zero setbacks to street and side boundaries other than the corner which is acceptable.

*Maximum five storey street frontage podium height along Highway and Berry Street, or may be reduced to that part of the building used for commercial use. Provide average of 5m street frontage setback above the podium in Highway and Berry Street*

The podiums are consistent with the approvals for adjacent sites as well as the Court approval as are the setbacks that are below the 5m requirement.

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

The development has architectural detailing. The building will comply with the energy requirements of BASIX, Appropriate stormwater controls will be installed. Waste will be minimised where possible. The design of the building is not supported by the DEP.

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

The development will not hinder the public domain. Conditions can be imposed to protect and increase the numbers of street trees as indicated in the comments of Council's Landscape Development Officer. The DEP has raised concern about the proposed through site link which can be improved.

## **SECTION 94 CONTRIBUTIONS**

Section 94 Contributions in accordance with Council's S94 plan are warranted and would be based on the total increased number of apartments with allowance for the reduction in commercial floor space. The contribution has not been assessed as the density of the site would be reduced with any change and the application as submitted and amended cannot be supported.

## APPLICABLE REGULATIONS

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

## DESIGN & MATERIALS

The design has not been assessed as being acceptable.

## ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

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

## CLAUSE 14 NSLEP 2001

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

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

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

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

## SUBMITTORS CONCERNS

The Council's notification of the proposal has attracted nine (9) submissions raising particular concerns about bulk, height, privacy, traffic, parking, access with some submissions supporting the proposal. These issues have been mostly addressed within this report. Additional issues raised are addressed as follows:

*Objects to overdevelopment of site as the site is on the lower north eastern side of Berry Street*

Comment:

It is agreed that the proposal does represent an overdevelopment of the site due to the substantial breach of the height control being much higher than mixed use developments in the surrounding area and the number of apartments with poor amenity.

*Building should have the required setbacks*

Comment:

The setbacks are generally consistent with the setbacks allowed by the Court. The amended plans increased the setbacks from the northern boundary.

*Concern about inadequate parking provision of only 146 vehicles for 204 apartments*

Comment:

The parking generally complies with the DCP controls or can be conditioned to comply.

*Concern about privacy, west facing units will overlook balconies and internal courtyards*

Comment:

This relates to the north facing apartments at 12-16 Berry Street, the only west facing apartments likely to overlook would be on levels 3 and 4 at the northern boundary of the subject site. The view would be to the edge of the balconies and not within the apartments. It is noted that the balconies at 12-16 Berry Street have privacy devices to limit overlooking of the residential properties to the north. It is also noted that level 3 of the proposal could be converted to commercial. The impacts are not considered sufficient to warrant refusal or additional privacy screening.

*No.8 and 12 Berry Street have right of way over 18 Berry Street for all their vehicle parking; Proposal involves excavation of right of way; ROW is unlimited in depth and height and consent of owners of 8 and 12 are needed for construction management plan; ROW access for vehicles and pedestrians must be maintained at all times*

Comment:

The proposal has been amended so that excavation below the right of way is not necessary.

*Excessive height will be out of proportion with surrounding area; Should be limited to 10 storeys*

Comment:

It is agreed that the height is excessive however the controls do allow for 15 storeys.

*Increase in traffic*

Comment:

Council's Traffic Manager has agreed with the traffic report that there would be minimal net traffic generation. A reduction in density on the site to what it should be would lead to less parking and less traffic.

*Supports the proposal; 154 Pacific Highway must be incorporated into site; Would not like Court approval to proceed that would isolate No154*

Comment:

These submissions were received from owners of No.154 that objected to the previous application. Council encourages the consolidation of the sites subject to a reasonable response to the controls and the SEPP 65 guidelines. The applicant will still be able to double the density of the Court approval with the inclusion of No154 and respond to the major concerns raised in this assessment report with regard to height, FSR, amenity and the through site link.

## **Modifications**

The amended plans submitted in response to the concerns raised with the applicant did not address some of the major issues. It is considered that further modifications are essential before the application can be approved. The amendments did not address the following concerns:

*Height:*

There are three possible options if the JRPP considers the proposed height to be excessive. The height of the whole tower could be reduced to comply with the new NSLEP 2013. (resulting in a loss of 8 floors and 42 apartments). If the Panel gives weight to the previous decision of the Court, the height could be reduced by stepping the building down over No.154 to RL125 (resulting in a loss of 8 floors and 14 apartments) or perhaps simplifying the tower as suggested by the DEP and remove the upper floors (resulting in a loss of 4 floors and 14 apartments)

It is my view the height needs to be reduced by stepping the building down over No.154 to RL125 (loss of 8 floors and 14 apartments) which retains basically the Court approved height at the corner (albeit a greater footprint and increase in apartment numbers approved by the Court) and a stepping down in accordance with the objectives of the LEP.

The Panel might prefer simplifying the tower as suggested by the DEP and remove the upper floors, 4 floors (roof at RL137.56) would result in a loss of 14 apartments. Should the JRPP agree with a reduction in height, amended plans should be required prior to determination.



### *Floor Space Ratio:*

The applicant's solicitor has suggested a condition requiring level 3 to be converted to commercial which would increase the non residential FSR to above the minimum average FSR of 2.24:1. This would result in the loss of 16 apartments from the proposal. Another alternative would be have the southern half of levels 3 and 4 converted to commercial as these areas are south facing and all contain only small apartments with no cross ventilation. Either way, the minimum provision of commercial floor area on the site will result in a reduction in density of 16 apartments. A condition is not considered appropriate as a change in the number of apartments would impact on the assessment of the proposal with regard to SEPP 65 and any conditions relating to Section 94 contributions. Should the JRPP agree with the non residential FSR being increased, amended plans should be required prior to determination.

### *Apartment amenity and mix:*

The units in the lower floors in particular suffer from poor amenity, and are located where commercial uses would be more appropriate. It was noted that a large number of apartments in the Court approved plans were cross-over apartments that had north facing living areas and south facing bedrooms and reduced the number of single fronted south facing apartments and greatly improved solar access and cross ventilation. There are none of these apartments and the amenity of apartments in the proposal needs to be significantly improved. Trying to maximise the density within the building envelope has lead to non compliances with the basics of the RFDC (solar access, cross ventilation, minimise south facing units) and poor amenity. Council is confident that if the non compliances with the RFDC are addressed then apartment mix would not be an issue. Should the JRPP agree with the south facing apartments being kept to a minimum similar to that allowed by the Court, amended plans should be required prior to determination.

### *Through site link:*

The link should be improved and made more welcoming by widening the stairs as a continuation of the alignment of the lane. This could be achieved by moving the stairs about 1.5m to the east and having a minimum width of the stairs at 4m. It was recommended that the commercial floor over the stairs on Level 2 become a void area so that there is a clear visible connection between Berry Street and Doohat Lane. The link should connect directly with the Berry Street levels. Glazing on the Berry Street facade to an appropriate height at the link was also be recommended. These changes would have little impact on the commercial floor area and provide greater public benefit.

Given the history of this site the forgoing amendments could be called for by way of amended plans.

## **Conclusion**

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

The relevant controls relating to podium and setbacks have been varied with regard to

the adjoining developments at 12-16 Berry Street and 156-158 Pacific Highway and the applicant has had regard to those decisions when designing the proposal. The proposal is similar to the podiums and setbacks approved by the Court.

The application was referred to Council's Design Excellence Panel for comment and the Panel recommended a redesign of the building. A number of Council's concerns were raised with the applicant. Amended plans were submitted addressing setbacks to the northern elevation and the internal amenity of some apartments within the site which resulted in a reduction in the number of apartments from 204 to 197.

The amended application did not address the major issues with regard to height, non residential floor space ratio, apartment amenity and the through site link. Accordingly the application is recommended for refusal by the Joint Regional Planning Panel.

## **RECOMMENDATION**

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

THAT the Joint Regional Planning Panel, as the consent authority, refuse development consent to 2013SYE061 - Development Application No.239/13 to demolish existing structures and the construction of a mixed use development comprising basement parking, commercial floor space, and 197 residential apartments at 144-154 Pacific Highway and 18 Berry Street North Sydney for the following reasons:

1. The height and scale of the building is excessive and is not in context with surrounding development, particularly the residential development to the northwest.
2. The height of the building substantially breaches the height control under North Sydney Local Environmental Plan 2013 which is now certain and imminent.
3. The proposal does not comply with the minimum floor space ratio requirements for non residential floor space under North Sydney Local Environmental Plan 2001 and North Sydney Local Environmental Plan 2013 and the accompanying SEPP 1 objection is not considered to be well founded.
4. The proposed building design is non compliant with the minimum guidelines under the Residential Flat Design Code with regard to solar access, cross ventilation and south facing apartments.
5. The building contains an excessive number of single fronted south facing small apartments that have unsatisfactory amenity.
6. The proposed through site link from the lane to Berry Street is poorly aligned and narrow and is of limited public benefit.

**Geoff Mossemenear**  
**EXECUTIVE PLANNER**

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