

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

<b>JRPP No</b>	<b>2013SYE062</b>
<b>DA Number</b>	<b>DA.205/11/2</b>
<b>Local Government Area</b>	<b>North Sydney</b>
<b>Proposed Development</b>	<b>Section 96 application to modify consent for demolition of existing buildings and structures, erection of a 31 storey commercial development with 5 levels of basement parking</b>
<b>Street Address</b>	<b>177-199 Pacific Highway North Sydney</b>
<b>Applicant</b>	<b>Winten (No13) Pty Ltd</b>
<b>Number of Submissions</b>	<b>Nil</b>
<b>Recommendation</b>	<b>Approval with Modified Conditions</b>
<b>Report by</b>	<b>Geoff Mossemeneear, Executive Planner, North Sydney Council</b>

**Assessment Report and Recommendation**

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**EXECUTIVE SUMMARY**

This application is for a Section 96(2) modification of the consent granted by the JRPP on 13 April 2012 for demolition of existing buildings and structures, erection of a 31 storey commercial development with 5 levels of basement parking.

The Council's notification of the proposal attracted no submissions.

The building is substantially within the envelope of the approved building other than the building being extended to the Highway on levels 7 to 9 (similar to the levels above). Changes have been made to the ground floor entry and the proposal is generally in accordance with the conditions of the consent. The only minor issue with the amended plans relates to the public domain and public access to the site. The application is recommended for **approval with modified conditions**.

## DESCRIPTION OF LOCALITY

The site has a legal description of Lots 1 to 26 in Strata Plan SP 17198, and is commonly known as 177-199 Pacific Highway, North Sydney. The site is located on the western side of the Pacific Highway, at the intersection with Berry Street. The site is irregular in shape, with frontages to the Pacific Highway and Berry Street. The site has an area of 2,418m<sup>2</sup>.

The site is located within the northern portion of the North Sydney CBD, and is surrounded by commercial development of varying eras and scales. Predominately development in the immediate surrounds of the site is low to mid scale in height, scaling up to the 34 storey Northpoint development, which is located to the south of the site.

## DESCRIPTION OF PROPOSAL

This proposal was determined as a Major Project under Part 3A of the Environmental Planning & Assessment Act 1979 with the Minister for Planning as the consent authority. The Minister granted Concept Plan approval for a 31 storey mixed use commercial/retail building on 20 December 2010.

At the time of the approval, the Minister also issued a Direction pursuant to 75P(2)(c1) of the EP&A Act, that select provisions of North Sydney Local Environmental Plan 2001 relating to height, massing, overshadowing and other potential amenity impacts do not have effect to the extent that those provisions would prohibit or restrict the carrying out of the approved project or any stage of the approved project.

Development consent DA.205/11 was granted by the Joint Regional Planning Panel (JRPP) on 13 April 2012 for construction of a 31 storey commercial office building, known as the North Sydney Commerce Centre.

The design strategy for the approved DA was based on providing a generic office product without the benefit of knowing who the end user or users would be or their specific requirements.

The applicant has now the opportunity to further develop the approved DA design and create a bespoke solution that meets the specific needs of a multinational company wishing to establish a company campus on site that would involve all of its businesses.

Accordingly, this section 96 application seeks approval to modify the approved scheme to meet the specific requirements of the company to allow it to establish its global headquarters in North Sydney.

The proposed modifications to the development consent seek to:

- reconfigure core location and incorporate a void into the commercial floor plates;
- reconfigure basement layout and add end of trip facilities;

- relocate and consolidate the building plant;
- extend the mezzanine to level 1 and incorporate a void into the podium commercial levels;
- reconfigure the entries to the building and the design of the Garden Plaza; and
- lower the height of the podium by 1 storey and extend the level 7-9 commercial floor plates to the Pacific Highway boundary.

## **CHECKING OF PLANS.**

This application has been checked to ensure that the changes being sought are the only changes included in the submitted plans.

## **MODIFICATION IN DETAIL**

The modifications are detailed for each level:

### **Basement 5**

A half level of basement was previously reserved for plant, should the future tenant wish to target a 6 Star Green Star building. This space is now no longer required and as a result, basement level 5 has been deleted.

### **Basement 4**

Minor layout changes; Reduction in extent of excavation

### **Basement 3**

Minor layout changes

### **Basement 2**

Addition of 80 bicycle spaces; Addition of change rooms, lockers and amenities to service end of trip facility; Minor layout changes

### **Basement 1**

Addition of 20 staff and 26 visitor bicycle spaces; Addition of change rooms, lockers and amenities to service end of trip facility; Alterations to loading bay to allow forward exit without the need for a turntable; Minor layout changes

### **Lower Ground (new plan)**

A new lower ground plan has been added to better show the difference in levels between the lower ground and ground floors. The new lower ground plan shows part of the reconfiguration of the Garden Plaza, building entrances and core.

### **Ground**

Reconfiguration of Garden Plaza and entrances; Reconfiguration of core; Deletion of exhaust structure; Addition of 24 visitor bicycle spaces on Berry Street frontage

### **Level 1**

Extension of mezzanine; Reconfiguration of core

### **Level 2-3**

Introduction of void through centre of podium floor; Reconfiguration of core

Level 4

Relocation of plant to level 4 from levels 18 and 19; Reconfiguration of core

Level 5-30

Reconfiguration of core and services

Level 5-24

Introduction of void adjacent lift core

Level 7-9

Extension of level 7-9 floor plates to western boundary

Level 18-20

Deletion of plant; Introduction of void adjacent lift core; Reconfiguration of core and services

Level 31

Reconfiguration of access, plant and BMU location

A number of plans have been introduced, replaced or modified. Specifically:

- the Basement 5 plan has been deleted as it is no longer needed;
- a new lower Ground Level Plan has been added to better illustrate the change in levels;
- the previous Levels 2-3 plan has been split into a Level 2 and Level 3 plan;
- the previous Levels 5-7 plan has been altered to only show Levels 5-6, with the previous levels 8-9 now showing Levels 7-9;
- the previous Levels 18-19 and Level 20 plans have now been combined; and
- Level 28 is now a standalone plan

#### *Reconfiguration of Ground Floor*

The proposed tenant company is concerned that the approved development, which relies on separate entrances to the commercial lobby and Garden Plaza, could result in the Garden Plaza becoming an uninviting space outside of the lunchtime period.

Accordingly, it is proposed to reconfigure the ground floor to increase activation and enhance the quality of the space.

The commercial lobby that was previously located on the Pacific Highway has been relocated to the south east corner of the ground floor. Accordingly access to the commercial building will now occur through the same entrances as the publicly accessible Garden Plaza. This modification will not only activate the Garden Plaza, but also prioritise publicly accessible space along the Pacific Highway frontage through provision of a retail concession.

Within the Garden Plaza the access ramp and bicycle parking have been replaced with an access lift and the visitor bicycle parking has been relocated to the basement levels. These changes increase the area of unencumbered publicly accessible spaces and allow for improved east-west access through the Garden Plaza.

The car park exhaust structure previously located within the Garden Plaza at the prominent corner of Berry Street and Pacific Highway has also been deleted, freeing up further space within the Garden Plaza.

A photomontage of the modified Garden Plaza is shown below:



#### *Berry Street frontage*

To comply with condition C42, the raised outdoor area, stairs and bicycle rack have been deleted along the Berry Street frontage. The area within the 8m Berry Street setback will now be an at grade footpath matching the level of the existing Berry Street footpath. Due to the relatively steep gradient on Berry Street, **the northern entrances are no longer able to be accommodated and have been deleted.** Visitor bicycle parking has also now been provided along the Berry Street frontage,

#### *Pacific Highway frontage*

To comply with condition C44, the Pacific Highway façade of the podium has been **set back 1m across part of the Pacific Highway frontage.** An entrance on the southern part of the western façade will provide access to the new concession area.

#### *Reconfiguration of podium mezzanine and introduction of podium void*

As shown in the photomontage of the Garden Plaza above, the mezzanine has been extended down to level 1 and along the eastern boundary in order to provide activation within the Garden Plaza. A new void within the podium levels and an interconnecting stair has also been added.

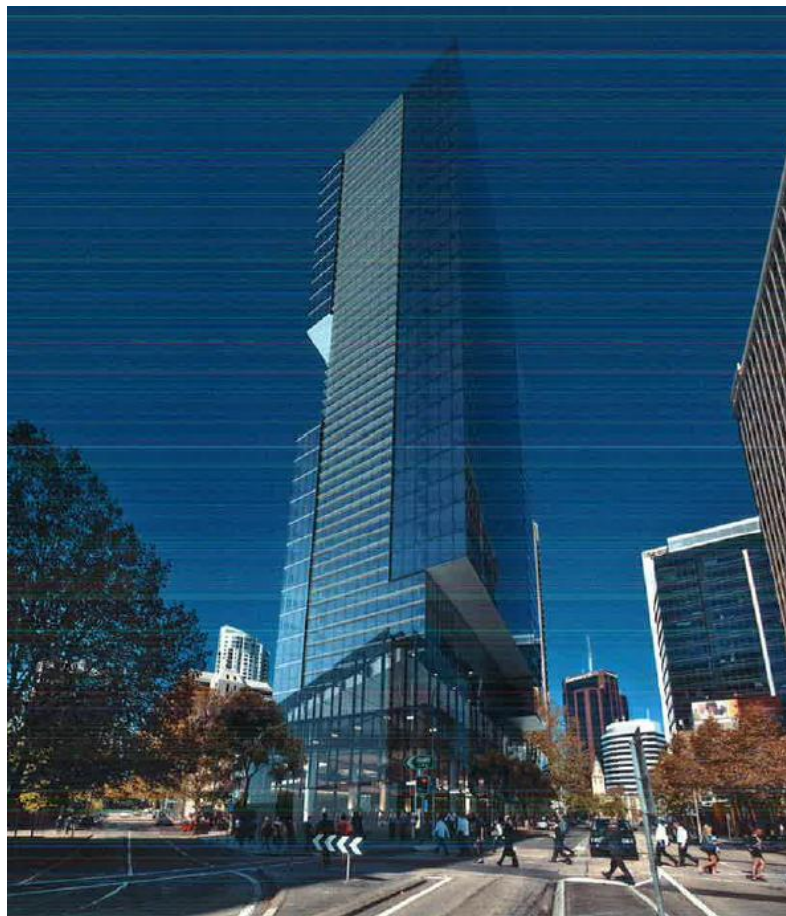
### *External Modifications*

A specific requirement of the tenant is the need to accommodate its businesses across whole levels (i.e. not have staff from different business split across levels). In order to accommodate this requirement the floor plates on Levels 7-9 have been extended 5m towards the Pacific Highway so that they can house the particular businesses that will be located on those levels. It is noted that this additional floor space to the three floor plates compensates for the cut out voids between floors to accommodate stair links. The GFA of the proposal is the same as the approved plans so there is no change to the Railway Contributions or Section 94 contributions.

In order to retain the scale of the western cut-out, the height of the podium has been lowered by approximately 3.5m and will now match the height of the adjoining building at 173 Pacific Highway.

The vertical western articulation has also been narrowed and lowered to match the lowering of the podium and to accommodate the reconfiguration of the core. As a result of the core reconfiguration, the southern façade finish has been changed from glazing to aluminium.

The proposed modifications to the building envelope are shown in the updated photomontage below:



### *Modifications to the Basement*

A number of minor changes have been made to the basement levels. The key changes include:

- reconfiguration to reflect the modified core orientation;
- replacing the mechanical loading dock turntable with a turning bay;
- provision of an additional bicycle spaces, including provision of end of trip facilities; and
- removal of Basement Level 5, a half level of basement that was previously reserved for plant, should the future tenant wish to target a 6-Star Green Star building.

## **REFERRALS**

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

The modifications do not warrant further referral.

### **Design Excellence Panel**

The modifications do not warrant further referral.

### **External Referrals**

Nil required

### **Notification**

The application was notified to surrounding owners and residents and all precincts from 16 August to 30 August 2013. No submissions were received.

## **CONSIDERATION**

The proposal is required to be assessed having regard to the following matters.

Section 96(2) of the Environmental Planning and Assessment Act 1979 enables a consent authority to modify a development consent upon application being sought by the applicant or any person entitled to act on the consent, provided that the consent authority:

- is satisfied that the development to which the consent as modified relates is substantially the same development;
- has consulted the relevant Minister, public authority or approval body in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent;
- has notified the application in accordance with the regulations and has considered any submissions made concerning the proposed modification; and
- in determining the application for modification, has taken into consideration such matters referred to under Section 79C(1) as are relevant.

Therefore, assessment of the application to modify the subject development consent must consider the following issues:

**Is the proposed development as modified substantially the same development approved?**

The proposed development as modified is considered to be substantially the same development as approved for the following reasons:

- The proposal primarily involves minor modifications to refine a generic commercial building to meet the specific requirements of the future tenant;
- there is no change to the use, height or maximum GFA;
- generally retains the same built form, materials and finishes; and
- does not result in any additional adverse environmental impacts.

**Whether the application required the concurrence of the relevant Minister, public authority or approval body and any comments submitted by these bodies.**

The application does not require the concurrence of the Minister, public authority or approval body.

**Whether any submissions were made concerning the proposed modification.**

No submissions were received.

**Any relevant considerations under Section 79C(1) of the Environmental Planning and Assessment Act 1979.**

Section 96(3) of the EP&A Act requires a consent authority to take into consideration such of the matters referred to in Section 79C(1) as are of relevance to the development the subject of the application.

The original DA addressed the environmental impacts and the findings of that assessment generally remain unchanged with respect to the modified development.

The following matters require comment and assessment.

*Minister's Direction*

On 20 December 2010, the Minister for Planning directed under Section 75P(2)(c1) of the EP&A Act 1979 that the following provisions of NSLEP 2001 have no effect to prohibit or restrict the carrying out of the project or any stage of the project:

Clause 28B(o) and (p); Clause 28D(1)(b) and (1)(c) and (1)(e) and (2)(b) and (2)(c)



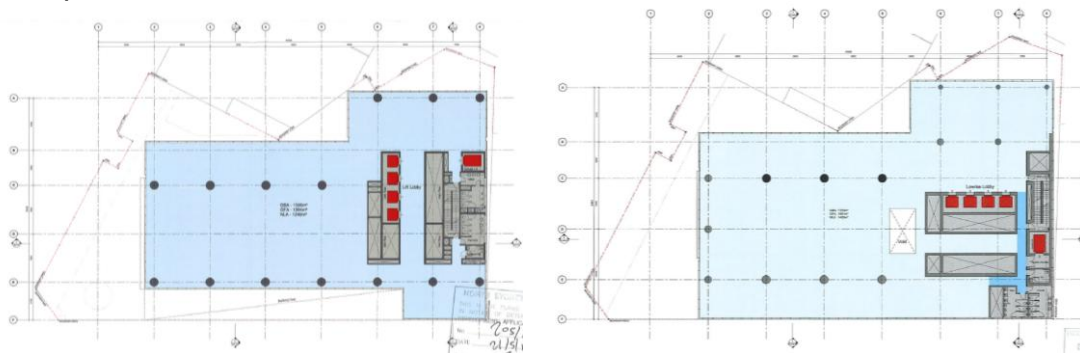
### *Consistency with the Concept Approval*

The proposed modifications do not affect the project's consistency with the Terms of Approval, Future Environmental Assessment Requirements or Statement of Commitments. Specifically it does not affect the key components of the Concept Plan, being the use, maximum building height, maximum GFA, or the area provided for the publicly accessible Garden Plaza.

A GFA Schedule has been prepared by the architect to demonstrate that the amended plans maintain the same GFA as approved. This means that the contributions for the Railway and Section 94 remain unaltered.

### *Western Elevation*

A specific requirement of the tenant is the need to accommodate its businesses across whole levels (i.e. not have staff from different business split across levels). In order to accommodate this requirement the floor plates on Levels 7 -9 have been extended 5m towards the Pacific Highway so that they can house the particular businesses that will be located on those levels. It is noted that this additional floor space to the three floor plates compensates for the cut out voids between floors to accommodate stair links. A comparison of the approved (left) and modified (right) floor plans are shown below:

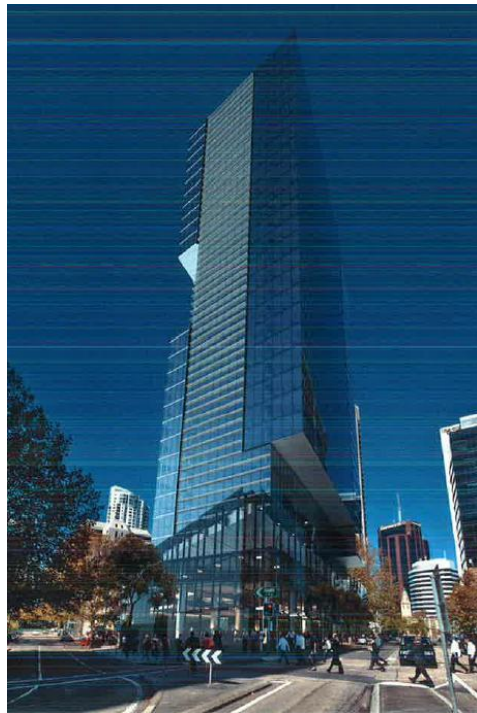


Whilst the extension of the floor plates on those levels will reduce the setback, the height of the podium has been reduced to offset the extension and will result in a more appropriate scale and improved relationship to the streetscape. The proposed height of the podium will now match the height of the adjoining building at 173 Pacific Highway, and therefore be more consistent with Council's DCP which states that "podiums should match the height and setbacks of adjacent buildings".

The vertical articulation on the western elevation is also proposed to be narrowed in order to accommodate the changes to the building core. This change will not impact on the articulation of the western elevation.

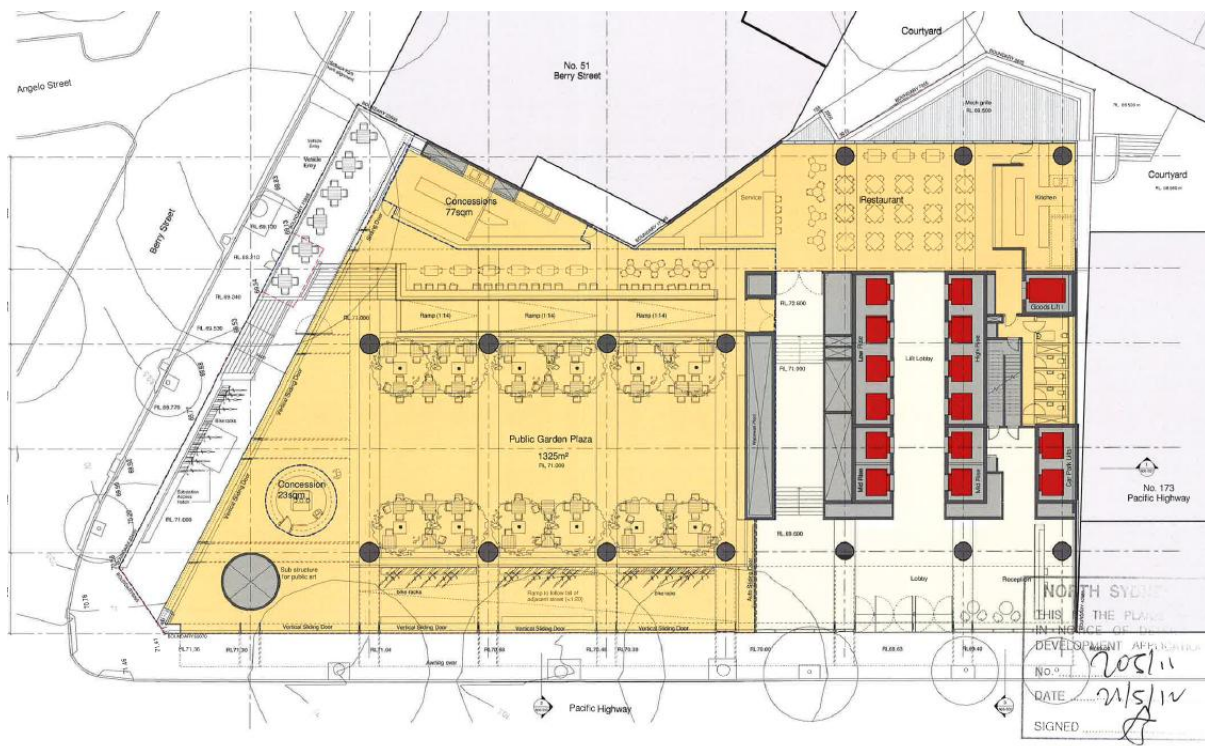
The modifications proposed to the envelope are relatively minor in nature. The modifications will have no material impact on the approved overshadowing impacts, with the only additional shadow falling on the Pacific Highway and surrounding commercial buildings.

The changes to the western elevation are shown on a comparison of the photomontages below with the approved building again on the left.



### *Public Domain*

The public domain and public access was always an issue with the proposal and Council's Design Excellence Panel considered this aspect in detail with the original proposal. The approved ground floor plan is shown below:



The following conditions were recommended and imposed by the JRPP in granting consent:

### **Levels and Setback of Building in Berry Street**

*C42. The levels of the setback of the building in Berry Street within 8m of the kerb shall be at grade to match the levels of the Berry Street footpath with no stairs, retaining walls, structures, awnings or balconies within the setback unless approved in writing by Council's Director of Engineering & Property Services. The glass of the podium facing Berry Street shall be generally 5m from the tower element without encroachment on the Berry Street Special Area. The exhaust ventilation shaft shall be located within the building.*

*(Reason: To ensure that the Berry Street special area has consistent levels with the footpath and future expansion to the east of the site, that there is adequate circulation space at the corner, streetscape)*

### **Pacific Highway Setback**

*C44. The setback of the glass of the podium, from the tower to the corner of Berry Street, facing the Pacific Highway shall be setback one metre from the boundary, with the setback to be finished at grade to match the levels of the Pacific Highway footpath.*

*(Reason: To improve pedestrian comfort)*

To comply with condition C42, the raised outdoor area, stairs and bicycle rack have been deleted along the Berry Street frontage. The area within the 8m Berry Street setback will now be an at grade footpath matching the level of the existing Berry Street footpath. Due to the relatively steep gradient on Berry Street, **the northern entrances are no longer provided and have been deleted.** Visitor bicycle parking has also now been provided along the Berry Street frontage,

To comply with condition C44, the Pacific Highway façade of the podium has been **set back 1m across part of the Pacific Highway frontage.** An entrance on the southern part of the western façade will provide access to the new concession area.

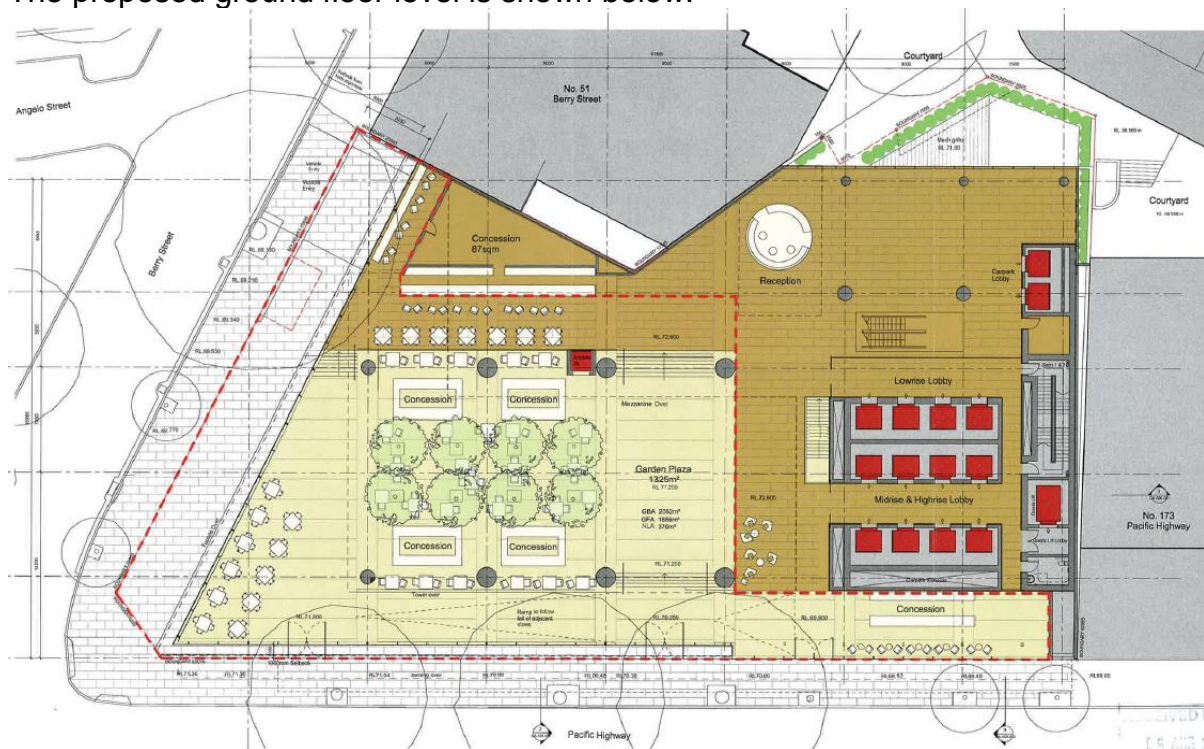
The commercial lobby that was previously located on the Pacific Highway has been relocated to the south east corner of the ground floor. Accordingly access to the commercial building will now occur through the same entrances as the publicly accessible Garden Plaza.

The 1m setback for the original proposal was limited to the Plaza frontage because the entry to the tower was to be separate and located at the south west corner. It is considered that the 1m setback should be extended for the whole of the Pacific Highway frontage to improve pedestrian comfort by widening the footpath particularly as the majority of pedestrian traffic from staff is likely to come along the Highway from the Station to the south and entering the site closer to Berry Street. Any redevelopment of the adjoining site to the south should have a similar setback. This could not happen if only part of the frontage on the subject site is setback. The additional setback will not impact on the upper levels on the proposal.



With regard to Berry Street, it was never intended that public access not be available from the northern frontage to the Garden Plaza. There would be considerable pedestrian movement from visitors to the Plaza from east along Berry Street. A double door entry point is essential to activate this part of the public domain. Although entry is not at grade with the footpath, stairs could be provided (within or partly within) the site to the lower level of the plaza. The bike racks can be relocated and are not necessarily required to be in this location. The setback at Berry Street and the entry needs to be designed the satisfaction of Council's Director of Engineering & Property Services so that there are consistent finishes in the public domain.

The proposed ground floor level is shown below:



The recommended increased widening to Pacific highway and a public entry to Berry Street are considered to be reasonable and practical and can be conditioned.

### Access

An Access Statement has been prepared and confirms that the proposed access arrangements, including use of a lift to provide access to the commercial lobby will meet the relevant Australian Standards.

## CONCLUSION

The proposed development as modified is considered to be substantially the same development as approved. The modifications do not create additional impacts on surrounding development. Several conditions will require modification with regard to the submitted plans. Minor changes to the ground floor plan are recommended to improve public access to the site.

## RECOMMENDATION

**THAT** the Joint Regional Planning Panel, as the consent authority, modify its consent dated 21 May 2012 in respect of a proposal for demolition of existing buildings and structures, erection of a 31 storey commercial development with 5 levels of basement parking at **177-199 Pacific Highway North Sydney** under the provisions of Section 96 of the Environmental Planning and Assessment Act with regard to 2013SYE062 – North Sydney - Development Application No.205/11/2, only insofar as will provide for the following.

To delete condition A1, C19, C41, C42, C44 and G7 of the consent and insert in lieu thereof the following new conditions namely:

### Development in Accordance with Plans

- A1. The development being carried out in accordance with drawings numbered **A01-101C, A02-000C, A02-001C to A02-004C, A02-100C, A02-101C, A02-102B, A02-103A, A02-104C, A02-105C, A02-108C, A02-110C, A02-111B, A02-112C, A02-113C, A02-115C, A02-116C, A02-118C, A02-121C, A02-122C, A02-124A, A02-128A, A02-129C to A02-131C, A04-001C, A05-001C, A05-002C, A05-101C to A05-104C, A06-001C to A06-003C, dated 5 August 2013, drawn by Bates Smart, all received by Council on 5 August 2013, and endorsed with Council's approval stamp, except where amended by the following conditions.**

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

### Bicycle Storage and Parking

- C19. The bicycle storage area shall accommodate a minimum of **314** bicycles, and designed in accordance with AS 2890. Details demonstrating compliance are to be submitted to the Certifying Authority for approval with the Construction Certificate.

(Reason: To promote and provide facilities for alternative forms of transport)

### Motorcycle Parking

- C41. The parking layout shall provide **ten** motorcycle parking spaces, each space being a minimum of 1.2 metres x 2.5 metres. Details are to be provided with the Construction Certificate.

(Reason: Environment, Amenity)

## Levels and Setback of Building in Berry Street and entrance

- C42. The levels of the setback of the building in Berry Street within 8m of the kerb shall be at grade to match the levels of the Berry Street footpath with no stairs, retaining walls, structures, **cycle racks**, awnings or balconies within the setback unless approved in writing by Council's Director of Engineering & Property Services. **A pedestrian entrance (similar width to the entry doors from the Highway) shall be provided from Berry Street to the Garden Plaza.**

(Reason: To ensure that the Berry Street special area has consistent levels with the footpath and future expansion to the east of the site, public access, streetscape)

## Pacific Highway Setback

- C44. The setback of the glass of the podium, facing the Pacific Highway **for the entire frontage** shall be setback one metre from the boundary, with the setback to be finished at grade to match the levels of the Pacific Highway footpath.

(Reason: To improve pedestrian comfort)

## Deed of Agreement – Public Garden Plaza

- G7. Prior to completion and issue of any interim Occupation Certificate, the applicant shall enter into a Deed of Agreement with Council with regard to the proposed ground floor public garden plaza on the corner of Berry Street and Pacific Highway and the land in front of the building in Berry Street **and the Pacific Highway** as shown on **drawing numbered A02-100C, dated 5 August 2013, drawn by Bates Smart** which achieves the objectives of:-

- a) enabling the public to use the public garden plaza for the purpose of public access during operating hours with minimum hours being between the hours of 7am and 7pm Monday to Friday;
- b) enabling the land in front of the building in Berry Street **and the Pacific Highway** within the property boundary at ground level to be used for public access at all times; and
- c) ensure the rights are not subject to change or variation except with the prior consent of Council.

The Deed of Agreement shall be for the life of the building and not in perpetuity.

The applicant shall be responsible for the maintenance of the area and public liability insurance for a policy in the amount of not less than \$20 million in respect of any property damage, personal injury and loss of life caused by or in connection with the provision and use of the area.

The Deed of Agreement shall allow for public access to the public garden plaza at all times the area is open with minimum hours being between 7am and 7pm Monday to Friday and shall include details on the design and finishes of materials, levels of light and security.

The Deed must also make provision for a Covenant on title to be registered with NSW Department of Lands prior to the issue of any Occupation Certificate for the building. The Covenant must note the matters contained in the Deed to ensure that the areas are maintained as public space for the life of the building.

The Deed and any associated documentation shall be prepared, executed and registered at the sole cost of the applicant, including the reasonable costs of Council in obtaining advice, the cost and expense of negotiating the terms and conditions of the agreement, producing documents or otherwise facilitating the preparation, execution and registration of the required documents, shall bind all successors in title and shall only be subject to variation at the discretion of the Council.

(Reason: Public access and amenity)

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

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

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