

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

JRPP No	2014SYE003
DA Number	323/13
Local Government Area	NORTH SYDNEY COUNCIL
Proposed Development	NEW MIXED USE BUILDING
Street Address	7-19 ALBANY STREET, ST LEONARDS
Applicant	P. D. MAYOH ARCHITECTS
Number of Submissions	Original Notification – 2; Amended plans - 6
Recommendation	Approval with Conditions
Report by	Lara Huckstepp, Executive Planner

Assessment Report and Recommendation

EXECUTIVE SUMMARY

The development application is for the demolition of existing structures and construction of a new mixed use development including 119 residential apartments, ground and first floor retail, 2 levels of basement car parking and rooftop communal facilities.

The proposed development results in a breach of the Building Height Control of 5.7m wherein a 26m height control is applicable. It is noted the breach caused by the residential levels is up to 2.5m. The remainder of the breach is caused by rooftop plant and community room. It has been established that those elements in breach of the control result in no material overshadowing, privacy or view loss impacts. Should the development be amended to numerically comply with the statutory height control, the building would have similar impacts to adjoining properties. The applicant's Clause 4.6 Objection to this breach is considered to be well-founded and worthy of support in this instance.

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

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

The Design Excellence Panel have raised concerns regarding the design of development as originally submitted. The proposed amendments to provide a separation of 6m to reduce the length of the building and the amended plans are considered to generally address the concerns.

A total of 2 submissions were received within the original notification and 6 submissions in the notification of amended plans. Issues raised include view loss, solar access, privacy, construction impacts and various other issues addressed within this report.

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

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

DESCRIPTION OF PROPOSAL

The development application proposes demolition of existing commercial buildings and on-grade car parking and the construction of a new mixed use building including 119 residential apartments, retail at ground and first floor levels, and basement car parking. The proposal incorporates the following:

- Ground and first floor level retail / commercial.
 - 27 x studio apartments
 - 48 x 1 bedroom apartments
 - 40 x 2 bedroom apartments
 - 4 x 3 bedroom apartments
- Communal rooftop garden with a meeting room, gym, bathroom and kitchen.
- 2 levels of basement car parking providing 83 residential car parking spaces, 22 commercial car parking spaces, 8 motorbike parking spaces and 138 bicycle parking spaces.
- A loading space is provided in Pole lane.

Photomontage – Corner of Albany Street and Oxley Street



STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning – B4 Mixed Use
- Item of Heritage - No
- In Vicinity of Item of Heritage – Yes (No.23 Albany St – Electricity Powerhouse)
- Conservation Area - No

S94 Contribution

Environmental Planning & Assessment Act 1979

SEPP No. 55 - Contaminated Lands

SEPP No.65 – Design Quality of Residential Flat Development

SREP (2005) – Sydney Harbour Catchment

Local Development

POLICY CONTROLS

DCP 2013

DESCRIPTION OF LOCALITY

The subject site comprises two allotments, being 7-9 Albany Street (SP 44485) and 11-19 Albany Street (SP45213). The site is located on the southern side of Albany Street and the western side of Oxley Street. The site has a rear lane frontage to Pole Lane.

The site has a total area of 2036.5sqm and is generally rectangular in shape. The site has a frontage of approximately 60m to Albany Street and 34m to Oxley Street. The site falls from the west down to the east boundary by approximately 3.9m.

No.7-9 Albany Street contains an existing commercial building, with on-grade car parking at the rear. No.11-19 Albany Street also contains an existing commercial building with an open car park on its eastern portion.

Albany Street Elevation (western end – adjacent to 1-5 Albany Street)



Albany Street Elevation – Cnr of Oxley Street



Albany Street frontage looking west



Pole Lane Elevation



The surrounding locality comprises mostly mixed use buildings and some existing commercial buildings. Adjoining the site to the west at No.1-5 Albany Street is a 9 storey mixed use development. Opposite the site on the northern side of Albany Street is a number of mixed use and commercial buildings. Directly opposite are a number of 6 storey mixed use buildings and a commercial building. Further to the west toward the Pacific Highway are a number of taller mixed use buildings, one of which has a height of 60m. Adjacent to the site to the east is a heritage listed public utility building.

Adjacent to the site to the south at 34 Oxley Street is a 9 storey mixed use development. Of particular relevance to this development application this building's northern facade contains a church over the lowest two levels addressing Pole Lane and 8 levels of residential

development above. The northern elevation of this building contain living areas, bedrooms and balconies all having a primary orientation towards Pole Lane.

Northern side Albany Street



Eastern side of Oxley Street – Heritage listed utility building



Pole Lane



RELEVANT HISTORY

The subject development application was lodged on 25 September 2013. This application originally sought approval for the building works only at No.7-9 Albany Street, and an amending DA to the approved building at No.11-19 Albany Street (DA162/12). The applicant was advised that Council cannot support the proposed amending DA given that there was no nexus with the current DA and DA162/12. The applicant was also advised of the following non-compliances including:

- Dwelling mix – The proposed development is inconsistent with Clause 2.2.3 (Mixed Residential Population) NSDCP2013. Amended plans were requested to ensure the combined number of studio and 1 bedroom apartments does not exceed 55%.
- Podium height and setback to Albany Street – A 13m (four storey) podium with a 3m above podium setback is required to the Albany Street frontage. The proposed western end of this facade provides only a 2m setback and is not supported.
- Western light well – The light well adjacent to the boundary should align with the lightwell on the adjoining property at No.1-5 Albany Street where possible.
- Design Excellence Comments to be addressed (discussed further within the referrals section)
- Clarification of how rooftop access will be provided to all residents in particular from the western building.
- Clarification how lift access will be provided between the commercial and basement levels without the requirement of the use of the residential lifts.

The applicant amended their proposal on 4 December 2013 to clarify that the whole building formed part of the development application, and not only the new and amended components. In addition, amended plans altered the dwelling mix, increased the above-podium setback on the northern facade (western end), removed the lightwell to be replaced by a 6m cut out, and amended various other design elements which are assessed within this report.

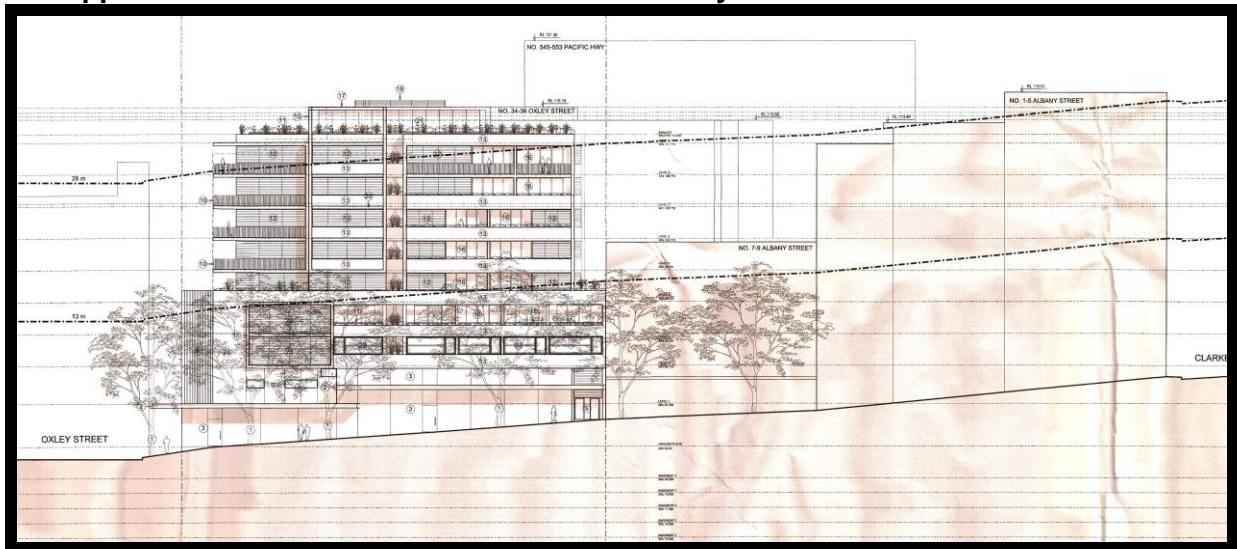
Development Application DA162/12 0 11-19 Albany Street, St Leonards

Development Application DA162/12 was approved by the Joint Regional Planning Panel at its meeting held on 3 December 2012 which allowed the construction of a 10 storey mixed use building incorporating:

- Provision of retail space on the ground floor level and part first floor level.
- Provision of 79 apartments over levels 1-8, with the following composition:
 - 14 x Studio apartments
 - 36 x 1 bedroom apartments
 - 25 x 2 bedroom apartments
 - 4 x 3 bedroom apartments
- Provision of communal facilities including a gym, meeting room and terraces on the rooftop.
- Basement over 3 levels to provide car parking for 54 residential vehicles and 17 non-residential vehicles, 2 disabled car parking spaces, 14 motorbike parking spaces, 26 bicycle spaces and 7 visitor bicycle spaces and a loading dock in Pole Lane.

It is noted that the above-ground structures proposed over that portion of the site at No.11-19 Albany Street are generally consistent with the approved development over that site.

The approved northern elevation at No.11-19 Albany Street



REFERRALS

Building

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

Engineering/Traffic

The application was referred to Council's Traffic and Transport Engineer (Xan Philp) who advised:

I have read the traffic report, dated 13 September 2013, prepared by Terrafic Pty Ltd. My comments are as follows:

'Traffic Generation

The traffic generated from the proposed development will have a negligible effect on the existing road network.

Car Parking – Supply

The proposed development has provided parking for the Residential, Commercial and Restaurant space in accordance with the maximum parking rates specified in the DCP. However please see comment below with respect to supply of parking for the adaptable units and loading facilities.

In accordance with Section 10.2.1(P3) of the DCP a car wash bay is to be provided, looking at the submitted plans the proposal does not appear to include one.

Car Parking – Design / Layout

With the exception of the comments below the design / layout of the proposed carpark meets the requirements set out in the Australian Standards.

Loading Facilities

While the proposed loading facility meets the requirements of the DCP it is suggested that this area be marked accordingly to prevent visitors from parking in this area.

Disabled Parking

While the supply of disabled car parking meets the 1-2% requirements for the non-residential portion of on-site car parking, it appears that the residential portion of car park does not comply with Section 10.2.1(P6) of the DCP by providing at least one accessible parking space per adaptable dwelling, of which there are 19 proposed.

Height clearance is also a concern, while it is stated that headroom of 2.2m is provided throughout, it is not shown clearly on the submitted plans that the headroom above the disabled parking spaces shown on the attached plan meets the minimum 2.5m specified in the standard (AS 2890.6:2009 - Off-street parking for people with disabilities).

Motorbike Parking

11 motorbike parking spaces are proposed which complies with the requirements set out in the DCP.

Cycling Facilities

While the amount of bicycle parking provided meets the requirements set out in the DCP, not enough detail has been provided to assess if the correct type of bicycle parking has been provided in accordance with Section 10.5(P4).

Additionally it appears that the majority of the bicycle parking for residents (including a large number of the personal storage areas) are in the same portion of the car park as the commercial/restaurant spaces. This is not an ideal location for residential facilities to be mixed with non-residential.

It is unclear as to whether the toilet facilities shown for the commercial/restaurant portion of the development include showers in order to comply with Section 10.5(P11) of the DCP.

Traffic Island in Pole Lane

The proposed traffic island on Pole Lane shown on the submitted plans is not supported by Council. This island is on public road and therefore would need approval from the Traffic Committee which is unlikely to support such a proposal. The previous development approval had a similar island but it was contained within the property alignments. The island needs to be removed from the plans.

Conclusion

In its current form I would not support the proposed development. Issues concerning disabled car parking, cycling facilities and the traffic island in Pole Lane need to be rectified.'

Planning comment: Councils Traffic and Transport Engineer considers that traffic impact and parking provision are acceptable. A number of design issues raised above are addressed within Conditions of consent including the requirement for a car wash bay. The applicant's amended plans have deleted the traffic island in Pole Lane. The quantum of adaptable car parking spaces is considered to be acceptable in the circumstances.

Engineering/Stormwater Drainage

The application was referred to Council's Development Engineer (V.Ristic) who raised no objection in principle. However a number of issues relating to the carpark design and stormwater are raised and are considered able to be addressed by conditions of consent.

Landscaping

Existing street trees within Albany and Oxley Streets are proposed for retention save for one Bottle Brush Tree. Council's Landscape Development Officer (B.Smith) raised no concerns with the removal of the existing Bottle Brush Street Tree within Oxley Street. A number of additional trees (*Liriodendron Tulipifera* – 200L) are required as set out in the attached conditions.

Design Excellence Panel

The Panel considered the proposal 12 November 2013 and provided the following comments:-

'Panel Comments:

The Panel raised concerns about the high percentage of small apartments. This is not optimal and has amenity consequences. The Panel felt that having more 2 bedroom apartments would enable a more satisfactory design that resolved many of the issues such as long corridors in the apartments and distance from natural light and ventilation sources.

The Panel considered the overall floor space ratio to be too high resulting in low amenity of many of the apartments. The proposal is not supported having regard to the SEPP 65 principles particularly the excessive depth of the apartments and the use of light wells.

The Panel did not support the use of light wells as they would not provide for adequate ventilation, visual amenity and would result in noise transfer between apartments.

The Panel also had concern with the excessive depth of building between the street and lane and the high number of south facing single fronted apartments.

Cross ventilation was considered by the Panel to be below the RFDC guidelines as the light wells proposed are not acceptable in relation to aural and visual privacy, even if they were demonstrated to provide adequate cross-ventilation

The Panel felt that the 4m minimum width of studio apartments having the kitchen along the wall was unacceptable as it restricts the living area space and circulation.

The lack of adequate articulation to the street and lane resulted in an unsatisfactory long high wall appearance. The Panel suggested a change in shape of the building to a “U” or dumbbell shape to achieve better amenity, articulation and separation within the building. The larger unit types should be located on the Oxley street corners to eliminate the extended corridors within units now indicated on levels 2 & 3. If there are to be “snorkels” – these should be wider and shorter than those proposed.

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

Principle 1: Context

The site is within a mixed use zone and the proposal is generally in context as it is mostly within the allowable building envelope. The Panel felt that the design needs to be modified further to address the concerns raised above to better relate to surrounds and the streetscape.

Principle 2: Scale

The building responds to the height controls for the area with the breach similar to that approved by the JRPP. Further articulation and a revision of the mix of apartments could facilitate improved amenity and a more appropriate scale.

Principle 3: Built Form

The Panel has raised concern about the amenity of apartments, the lack of articulation and separation within the building. The amount and form of the building as proposed is considered excessive for the site.

Principle 4: Density

The density is considered excessive due to high percentage of smaller apartments and the unsatisfactory aspects of the design that have been raised by the Panel. The Panel considers that a reduction in the floor plate and floor space is necessary to resolve the issues.

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 did not comment.

Principle 7: Amenity

The Panel raised concerns with the number of south facing single fronted apartments, the inadequacy of the light wells and the design of the studio apartments.

Principle 8: Safety and Security

There is secure access and entry to the building for residents. The Panel did not comment further.

Principle 9: Social Dimensions

The Panel commended the architect for the provision of the communal space on the roof, however it was noted that no access has been provided for the apartments located on the western side of the site (7-9 Albany Street). This needs to be addressed.

Principle 10: Aesthetics

The Panel did not comment on the materials or finishes.

Conclusion:

The Panel does not support the proposal in its current form. The applicant needs to respond to the above concerns.

Planning comments: In response to these comments, the applicant submitted amended plans on 4 December which included the following amendments:

- Improved compliance with dwelling mix controls.
- Removal of proposed lightwell and proposed a 6m building cut out.
- Reinstatement of apartment layout over the portion of the site on No.11-19 Albany to reflect the approved building layout.

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

External Referrals

Augrid

The application was referred to Ausgrid who raised no objections to the development at DA Stage. Ausgrid advise that supply arrangements to the development will be confirmed upon receipt of a formal Application for connection from the developer.

Roads and Maritime Services

The application was referred to the Roads and Maritime Services wherein no response was received. The original conditions imposed on No.11-19 Albany Street pursuant to DA162/12 continue to be relevant and have been imposed.

Submissions

The owners of surrounding properties and the Holtermann Precinct were notified of the original development proposal between 4-18 October 2013. A Notice was placed in the Mosman Daily on 3 October 2013. Two submissions were received in relation to the application with the main issues summarised as follows:-

- Concerned that the rooftop communal area could be used as a roof top bar / restaurant and the amenity impacts this could have on adjoining residential properties.
- Loss of views, privacy and sunlight to the upper level apartment and terrace at No.1-5 Albany Street, St Leonards.
- Concerned that the height limit for the subject site is 26m, however I am advised this height could be increased. This increase would have a severe impact upon my property.
- The proposed development will result in additional traffic on Pole and increased carparking demand in the locality and should not be approved.

Amended plans received by Council on 4 December 2013 were notified to surrounding properties and the Holtermann Precinct between 13 December 2013 – 10 January 2014. A Notice was placed in the Mosman Daily on 12 December 2013. A total of 6 submissions which includes a response from the Precinct, were received with the main issues summarised as follows:-

- Overshadowing to apartment in 34 Oxley Street.
- The loading bay in Pole Lane is detailed to support a heavy vehicle and the Lane's width is considered to be inadequate to support a truck of this size.
- This is development by stealth.
- I maintained a view with the original development application however with the additional development and rooftop structures I will no longer have that view. I object to the additional height and size of the project.
- Concerns with construction impacts including noise, dust and traffic. Suggest construction hours be restricted to Monday to Friday 9am – 5pm.
- Concerned that there should be no commercial use of the roof top given the likely amenity impacts.
- The building will be abutting our living area. There are 48 apartments in our 8 storey building and we are amazed that 120 apartments can fit into the proposed 10 storey building.
- Can Council guarantee us access to our vehicular entry in Pole during the construction process?
- We feel overshadowed, overlooked and overcrowded by 18 or 19 storey developments. We are being squeezed out by Council's decisions which mean congestion, noise, inconvenience and loss of privacy, all things which a Council should strive to provide.

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

CONSIDERATION

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

Compliance Table

NSLEP 2013 Compliance Table

Principal Development Standards – North Sydney Local Environmental Plan 2013			
Site Area - m ²	Proposed	Control	Complies
Clause 4.3 – Heights of Building	31.7m	26m (maximum)	NO
Clause 4.4a – Non res FSR	1:1	1:1 (minimum)	YES

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 2- Commercial and Mixed Use Development

	Complies	Comments
2.2 Function		

Diversity of Activities	Yes	The proposal incorporates a mix of uses including a rooftop communal space.
Maximise Use of Public Transport	Yes	The site is well located within 500m of St Leonards Train Station.
Mixed Residential Population	No (merit assess)	<p>The proposed mix of dwellings fails to comply with Provision P4 in Section 2.2.3 as follows:-</p> <ul style="list-style-type: none"> • Studios – 10-20% required – 23% proposed • 1 Bed – 25-35% required – 40% proposed • 2 Bed – 35-45% required – 34% proposed • 3 Bed – 10-20% required – 3% proposed <p>The applicant's basis for variation is that there is no change proposed to the unit mix for the development at 11-19 Albany St compared to the approved development which was assessed under DCP2002.</p> <p>With regards to the component at No.7-9 Albany Street, the combined studio and 1 bedroom apartments is 52.5%, being generally in accordance with the required mix. In this instance, the consideration of the mix in this regard is considered acceptable due to the development consent on the adjoining site being current, and due to the change in LEP controls occurring since that time relating to dwelling mix.</p> <p>On balance, the proposal provides an acceptable mix of dwellings, including their configuration.</p>
2.3 Environmental Criteria		
Noise	Yes (condition)	Can be dealt with by appropriate condition.
Artificial Illumination	Yes (condition)	A condition of consent will be imposed to restrict use of the rooftop terrace after 11pm.
Awnings	Yes	The proposal includes continuous awnings to Albany and Oxley Streets.
Solar Access	Yes	There is no material overshadowing to existing or proposed areas of public open space between 11.30am and 2.30pm.
	No (merit assess)	The proposed development will result in overshadowing to existing apartments within No.34 Oxley Street. The impacts are caused by complying building elements in this instance. This is further discussed later within this report.
Views	Yes	<p>Dwellings within No.34 Oxley Street currently enjoy district views to the north across the subject site given the site is presently under-developed containing 4-5 storey commercial buildings and an on-grade car park.</p> <p>Similiarly, upper level apartments within No.1-5 Albany Street currently enjoy district views across the subject site to the east from the roof terraces and eastern façade.</p>

		These district views will be removed by the proposed development. However, the view will be removed by those elements that generally comply with Council's height, setback and podium controls. Refer to discussion at the end of the DCP table.
Acoustic Privacy	Yes (condition)	The proposal is well designed with regards to acoustic privacy given the density of development. The location of the proposed common rooftop facilities remains on the eastern end of the building which is considered to result in the least impact given its generous setbacks to surrounding properties.
Visual Privacy	No (merit assess)	<p>The proposal does not meet the building separation requirements with regards to the southern Pole Lane elevation. However the development will generally provide half of this required setback measured from the centerline of Pole Lane to the southern building line being:</p> <ul style="list-style-type: none"> • 6m setback from ground level to Level 3 (12m setback required for up to 12m) • 9m setback from level 4-7 where this adjoins balconies and bedrooms (18m setback required for up to 25m in height). • 6m setback from level 4-7 where there are no windows located within the façade.(13m separation required) • 10m setback on Level 8 to balconies and windows. (24m required) <p>It is considered reasonable to provide half of this setback on the site. The adjoining property at No.34 Oxley Street had been approved under the then current DCP controls and to allow for the anticipated future redevelopment of No.7-19 Albany Street, was required to provide privacy louvers to all north-facing balconies.</p> <p>In addition, the applicant proposes to provide:</p> <ul style="list-style-type: none"> • Frosted glass to all south-facing bedroom windows where these bedrooms are located on the building line on Level 7 and below. • Louvres to south-facing balconies on Level 7 and below. • Solid balustrades are proposed to all balconies. <p>On balance, given the proposed development provides half of the required setback on their own site and proposes additional privacy measures to compensate for the limited setback provided at No.34 Oxley Street, the proposal is considered to represent a reasonable level of privacy in the context of</p>

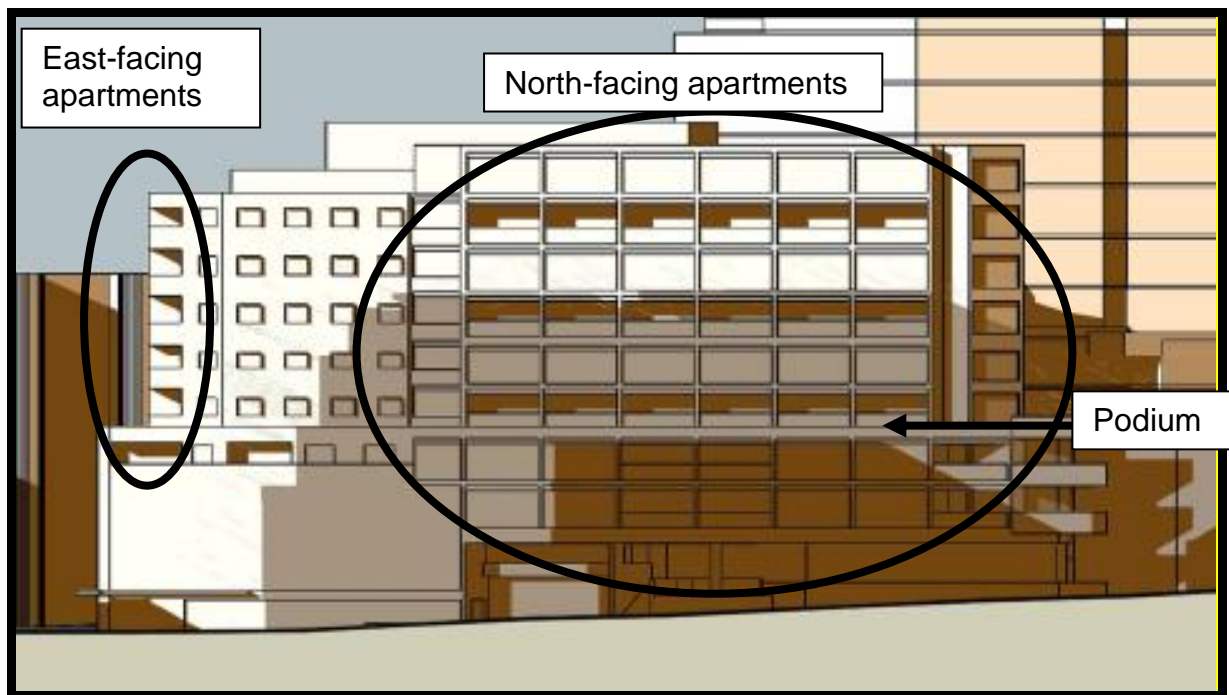
Balconies - Apartments	Yes	Each apartment is provided with a balcony which provides adequate amenity to its occupants.
Streetscape	Yes	Adequate activation of Albany and Oxley Streets is proposed.
Entrances and Exits	Yes	Residential and commercial entrances are adequately separated.
2.5 Quality Urban Environment		
Accessibility	Yes	The applicant's documentation advises the development will comply with all relevant requirements.
Safety and Security	Yes	The proposed development raises no known safety and security concerns.
Illumination	Yes (condition)	Under awning lighting should comply with all relevant controls and can be conditioned accordingly.
High Quality Residential Accommodation	No (merit)	<p>The DCP specifies the following minimum unit sizes:</p> <ul style="list-style-type: none"> • Studio apartments – 40sqm • 1 bedroom apartments -50sqm • 2 bedroom apartments – 80sqm • 3 bedroom apartments – 100sqm <p>The proposal comprises the following unit sizes:</p> <ul style="list-style-type: none"> • Studio apartments – 40 – 62sqm • 1 bedroom apartments – 50 – 60sqm • 2 bedroom apartments – 70 – 99sqm <p>Despite the above non-compliance with the minimum size for a 2 bedroom apartment, the RFDC sets a minimum 70sqm guideline for 2 bedroom apartments as 'affordable' housing. The design and layout of each apartment is considered to provide adequate amenity.</p> <p>It is noted that 1 bedroom plus study apartments are proposed wherein each study has access to a window and is therefore a habitable space. These apartments are proposed at only 60sqm however their flexible design is considered to be acceptable.</p> <p>All apartments will have a balcony.</p> <p>Primary corridors adjacent to a lift will have a minimum width of 2m. Some secondary corridors propose a width of 1.5m however circulation is considered to be acceptable.</p> <p>Three lifts are proposed to each residential level.</p> <p>Habitable rooms will each have a depth no greater than 10m from a window within any apartment.</p> <p>67% of apartments will be provided with cross ventilation complying the minimum 60%.</p>

		<p>All apartments will have a minimum width of 4m.</p> <p>A number of apartments have a depth greater than 8. However, it is considered that each apartment will be provided with an adequate level of amenity and is supported.</p> <p>69.2% of apartments will receive adequate solar access which achieves satisfactory compliance with the minimum control of 70%.</p>
Lightwells	No (merit)	One lightwell is proposed on the western boundary which will be 18sqm. On balance, this light well provides secondary light and ventilation to apartments, and is supported.
Private Open Space	Yes	All balconies will have a minimum of 8sqm which is considered to be acceptable. An adequate communal space is proposed to be located on the rooftop.
Vehicular Access	Yes	The proposed vehicular access within Pole Lane is considered to be acceptable.
Car Parking	Yes	<p>The application proposes 83 residential car parking spaces, 22 commercial car parking spaces which generally complies with this requirement.</p> <p>Motorbike and bicycle parking comply with Council's controls.</p> <p>A loading bay is proposed within Pole Lane which is considered to be acceptable.</p>
Garbage Storage	Yes	Garbage chutes are provided on each level and storage is provided within Pole Lane.
Site Facilities	Yes	Adequate storage is provided for each apartment.
2.6 Efficient Use of Resources		
Energy Efficiency	Yes	A BASIX Certificate has been provided in relation to the development.
Green Roofs	Yes	A green roof is proposed to provide passive open space for the building's occupants including plantings and is considered to meet the objectives of the control.

Additional Notes: Overshadowing

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

No.34 Oxley Street – Northern facade



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

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

North Facing Apartments above podium -

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

With regards to the row of 6 two storey apartments above the podium, the proposed development will result in these apartments receiving no direct sunlight during the midwinter solstice.

North Facing Apartments below podium

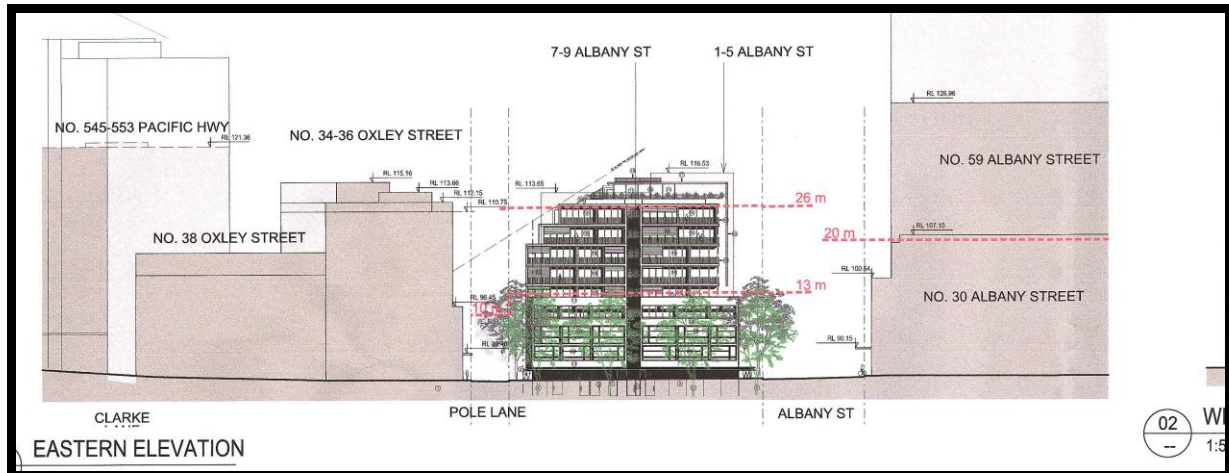
A total of 11 single level apartments are located below the podium over Levels 1 and 2. All of these apartments will be overshadowed such that they receive no sunlight between 9am - 3pm during the midwinter solstice.

Conclusion

The proposed development results in a total of 17 out of the 29 apartments being non-compliant with the minimum 2 hours solar access requirement. The building design however complies with DCP Laneway setbacks, SEPP 65 separation requirements and building

height at this location. The proposed development has been set back to improve the amenity of No.34 Oxley Street as can be seen below:

Eastern elevation



The overshadowing impacts have been demonstrated to be consistent with the impacts resulting from compliant building elements. As such, the built form and resultant overshadowing impacts are considered to be an expected form of development and subsequent level of impact. Any additional requirement to further set back these levels to retain additional solar access would be unreasonable given the level of compliance the building demonstrates and the substantial amendments that would be required in order to retain the minimum complying level of sunlight to this elevation.

The apartments within No.34 Oxley Street presently receive solar access to their northern facades over the existing generally under-developed subject site. The proposed impacts are an expected outcome dictated by the site controls and the proposed development is supported in this regard.

Additional Notes: View Impacts

Views from 34 Oxley Street

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

Dwellings with an eastern aspect at 34 Oxley Street will retain these views. However, dwellings within the central northern façade of No.34 Oxley Street will lose these existing district views. Due to the height of the proposed development being generally consistent with No.34 Oxley Street, this view loss would generally occur from complying development building elements.

Existing dwellings on all levels below the upper level of bedrooms (Level 7) will lose all district views resulting from complying building elements. Amendments to facilitate the retention of this view are not considered to be reasonable given that:

- The view in question is a district outlook and is not an iconic view.
- The quantum of district view available from a fully compliant building would be a strip horizon view and unlikely to be easily read over the top of the proposed mixed use

building. The quality of the view is substantially reduced by complying building elements.

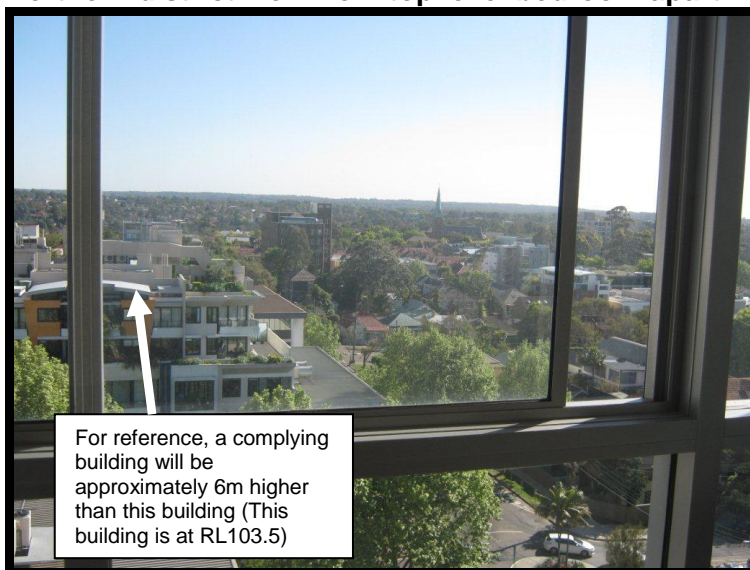
- These views are enjoyed by bedroom windows. All district views from living areas and balconies will be removed by compliant building elements.
- The bedrooms in question on Level 7 within No.34 Oxley Street were permitted to be constructed at a building height over 26m and are themselves non-complying elements. It is considered unreasonable to require numeric compliance for the subject building in order to retain a slot horizon view from a recently approved non-compliant element on an adjoining property.
- The roof top terrace at No.34 Oxley Street located within their north-east corner was also approved at a height above Council's Building Height Control.

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

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



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



Views from 1-5 Albany Street

Primary views and outlook from the apartment building at No.1-5 Albany Street are enjoyed to the north, west and south from this apartment building which remain unaffected by the proposed development. Minimal windows are located within the east-facing façade which is adjacent to the subject building given the likely expectation that a building of similar height to that now proposed would be provided on the subject site. However there are currently four private roof terraces and two apartment facades which enjoy views across the roof top. The

Views to the east from these terraces will be predominantly removed by compliant building elements. Should the building be reduced to numerically comply with the Building Height Control, a strip horizon view would be retained. However, any amendments to facilitate this would not be considered reasonable given that:

- The view in question is a district outlook and is not an iconic view.
- The quantum of district view available from a fully compliant building would be a strip horizon view and unlikely to be easily read over the top of the proposed mixed use building. The quality of this view would be substantially reduced by the complying building elements.
- The extent of view loss is considered to be consistent with the expected outcome on the subject site.

Notwithstanding the above, the three northern roof terraces also enjoy a north-easterly aspect. To ensure this is retained to the lower roof terrace, as part of the amended plans the applicant was requested to lower the height of the western parapet where it adjoins No.1-5 Albany Street to ensure north-eastern views are maintained.

With regards to views from the southern terrace and facade, it is noted that the proposed building where it adjoins this terrace proposes a 6m setback from the laneway at this level, wherein the existing terrace provides only 3m. As such, a view corridor, although much reduced, would be retained to the south / east until it is interrupted by the existing No.34 Oxley Street. A view of the terraces can be seen below:

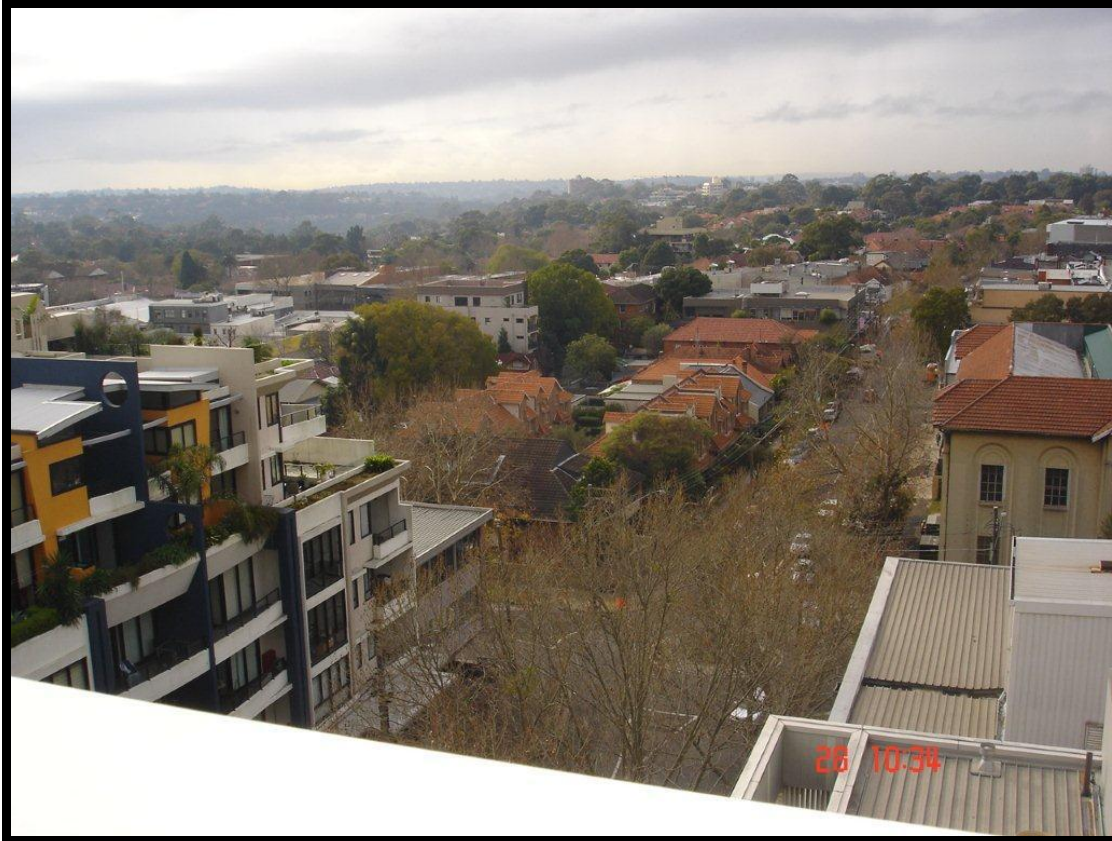
Subject roof terraces at No.1-5 Albany Street



Existing view from roof terrace at 1-5 Albany Street looking east



Existing view from roof terrace of 1-5 Albany St (northern-most) looking north-east



Conclusion

The loss of district views from No.34 Oxley Street and 1-5 Albany Street has been considered as reasonable for reasons set out above.

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

As such, whilst the proposed development will reduce district outlook from a number of surrounding properties, this is considered to be an expected outcome of development on the site and the resultant impacts are acceptable in this regard.

NORTH SYDNEY LEP 2001

1. Permissibility within the zone:

The subject site is zoned B4 Mixed Use pursuant to LEP 2013. Development for the purpose of 'Shop Top' housing is permissible with the consent of Council.

2. Objectives of the zone

The particular objectives of the Mixed Use zone are to:

- To provide a mixture of compatible land uses.

- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.
- To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses on the lower levels and residential uses above those levels.

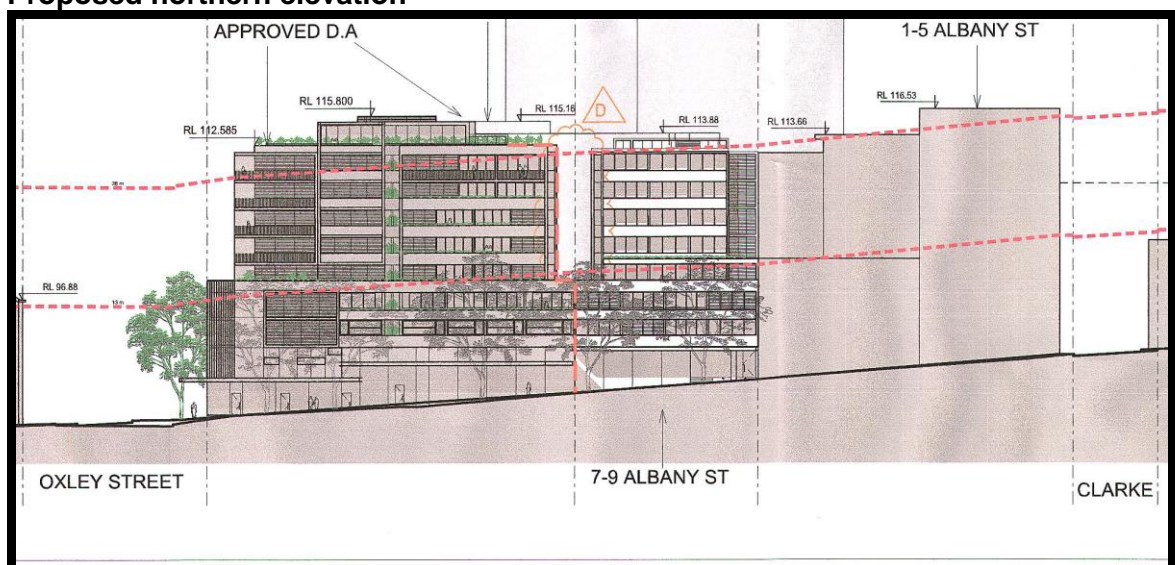
The proposed development will provide benefit in terms of increasing the range of living, employment, recreational and social opportunities within the St Leonards area. Impacts of the proposed development are considered to be reasonable given that the development is a generally expected outcome for the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

3. Building Height

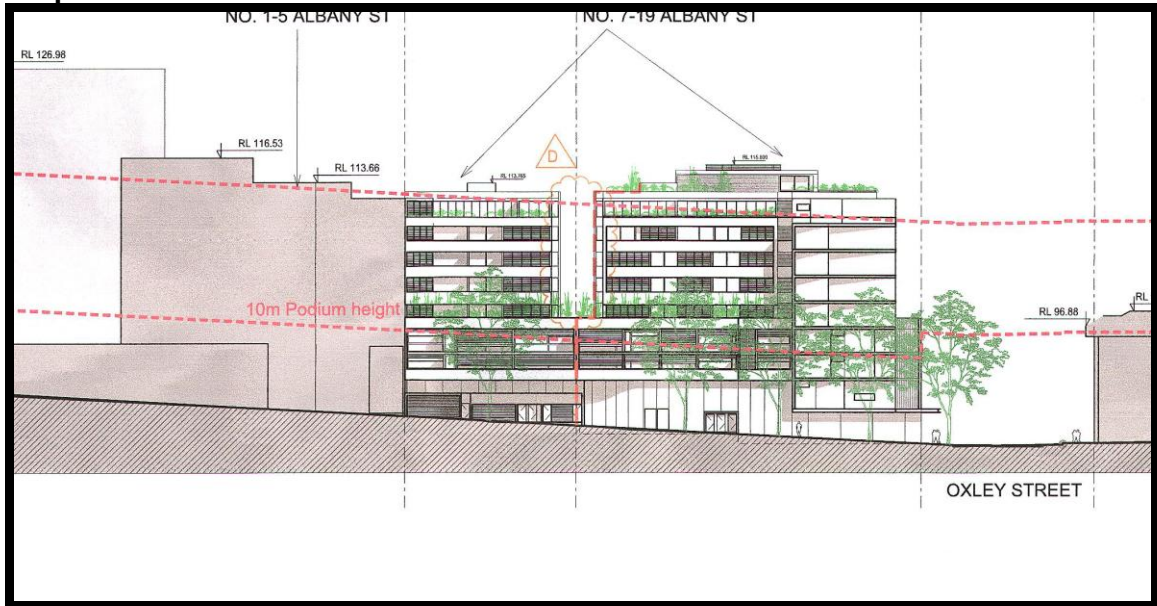
Clause 4.3 NSLEP 2013 sets a maximum building height on the site of 26m. The proposed development results in an overall building height of 31.7m. It is noted that the height of the residential level (Level 8) has a maximum height ranging between 26.5m – 28.5m. The additional breach occurs from the roof plant and community facilities. The applicant has submitted a request for an exemption from this standard pursuant to Clause 4.6 LEP2013. The proposal is considered against the objectives of the control as follows:

- (a) ***to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient*** – The proposed development adequately accounts for the site's topography. Due to the topography, the upper level (eastern end) results in a breach of the Building Height Control by approximately 2.5m. In totality, it is estimated that at least 60% of the upper level would comply with the building height control. Given the location of the breach at its worst being the north-eastern corner of the site, there are negligible impacts caused by this breach. This is demonstrated through the view and solar access considerations outlined within this report. The extent of the breaches are demonstrated below.

Proposed northern elevation



Proposed southern elevation



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

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

The resulting height is considered to be contextually appropriate and will provide a reasonable response to the site's topography.

- (b) **to promote the retention and, if appropriate, sharing of existing views** – As set out within this report, those areas of non-compliance with Council's controls do not result in the material loss of views of any important or iconic structures. The loss of district views is generally caused by the proposed compliant structures.
- (c) **to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development** – As set out within this report, the proposed development results in overshadowing to apartments within No.34 Oxley Street. These elements however are caused by those parts of the building that comply with the building height, podium controls, SEPP65 and other relevant controls. Those elements that are non-compliant with Council's Building Height Control do not result in material overshadowing to adjoining properties or public reserves.

- (d) ***to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings*** – Those components that are non-compliant with the building height control result in no material privacy impacts to surrounding properties. Those elements in breach of the building height control comprise the upper residential level (eastern end) which proposes minimal windows to the south, and generous setbacks to the north and east. The proposed rooftop structures are also well setback from surrounding properties to adequately retain privacy.
- (e) ***to ensure compatibility between development, particularly at zone boundaries*** – The building form is considered to be compatible with surrounding development and is considered to be a generally expected outcome of development on the site. Adjoining sites are also zoned B4 mixed use.
- (f) ***to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area*** – The proposed development is considered to be consistent with the desired character of the area as expressed within Council's controls. The density yield from this variation in height remains consistent with that anticipated by the controls.

Clause 4.3(2C) LEP 2013 sets out that Development Consent must not be granted to development within 'Land in St Leonards' wherein the proposes breaches the building height control by greater than 3m (excluding plant rooms and other similar structures). The subject site is not within the area of St Leonards wherein this restriction applies, however notwithstanding this, It is noted that the proposed breach of the building height control would have a maximum non-compliance of 2.5m at the eastern end, excluding the plant and common rooms.

It is concluded that the applicant's objection pursuant to Clause 4.6 is reasonable and the breach of the building height control can be supported in this instance.

4. Floor Space

The proposal is compliant with the non-residential floor space range for the site pursuant to Clause 4.4 of NSLEP 2013.

5. Heritage Conservation

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

6. SEPP No.55 (Remediation of Land) and Contaminated Land Management Issues

The subject site has been considered in light of the Contaminated Lands Management Act and it is considered that based on the previous uses of the site, contamination is unlikely to be an issue.

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

The application has been assessed by the Design Excellence Panel having regard for the Design Quality Principles set out in SEPP65. The Panel advised that they did not support the proposed development as originally submitted and recommended some design amendments. As set out within the referrals section of this report, the submitted changes generally addressed the outstanding concerns raised by the Panel. The proposal is assessed against the principles as follows:-

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

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

- Principle 4: Density

The density of development, the mix of apartments, amenity of apartments and building envelope are considered to be acceptable. The Panel's concerns with amenity are considered to have been satisfactorily addressed.

- Principle 5: Resource, energy and water efficiency

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

- Principle 6: Landscape

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

- Principle 7: Amenity

A total of 69% of apartments will receive 2 hours of solar access during midwinter which is acceptable on balance that the SEPP requires 70%; and 67% of apartments will be provided with cross ventilation exceeding the minimum of 60%. Balconies are provided to each apartment. An acceptable level of amenity is provided to each apartment.

- Principle 8: Safety and Security

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

- Principle 9: Social Dimensions

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

- Principle 10: Aesthetics

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

8. SEPP (Building Sustainability Index: BASIX) 2004

A suitable BASIX Certificate has been submitted with the application.

9. SEPP 2007 (Infrastructure)

RMS conditions have been imposed. Refer to 'referrals' section for further details.

10. SREP (Sydney Harbour Catchments) 2005

The site is located within the area covered to the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. However, no primary views to the site exist from the Harbour. It is considered that the proposed development would be acceptable with regards to this Policy.

ST LEONARDS / CROWS NEST PLANNING STUDY PRECINCT 1

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

Suspensions of Covenants, agreements and similar instruments

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

DEVELOPMENT CONTROL PLAN 2013

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

The application has been assessed against the relevant controls in the DCP 2013 with regards to the St Leonards / Crows Nest Planning Area. All controls including setbacks and podiums have been considered within this report as acceptable with the exception of the required western building setback required by a recent DCP amendment, that has been addressed within the DCP compliance table. The characteristic height is considered to have been provided by this development. The proposal is considered to be consistent with the future desired character of the area.

SECTION 94 CONTRIBUTIONS

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

DESIGN

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

MATERIALS

The application is acceptable in this regard.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

ENVIRONMENTAL APPRAISAL

CONSIDERED

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

SUBMITTORS CONCERNS

Issues raised within submissions relating to views, privacy, solar access, residential amenity, parking, traffic, street trees and various other issues have been generally addressed within this report.

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

Other concerns raised above include:

- ***Concerned that the rooftop communal area could be used as a roof top bar / restaurant and the amenity impacts this could have on adjoining residential properties.***

Comment: The rooftop area is proposed to be used by the residents and will not be permitted to be used for any commercial use. A condition will be imposed to restrict use of the rooftop after 11pm.

- ***Concerned that the height limit for the subject site is 26m, however I am advised this height could be increased. This increase would have a severe impact upon my property.***

Comment: The subject development application has regard only to the existing maximum height limit within the LEP2013. Any increase in height proposed under a Planning Proposal is a separate matter.

- ***The loading bay in Pole Lane is detailed to support a heavy vehicle and the Lane's width is considered to be inadequate to support a truck of this size.***

Comment: The proposed loading bay is supported by Council's Traffic and Development Engineers subject to imposition of conditions.

- ***This is development by stealth.***

Comment: Each development application is considered on its own merits. In this instance, the proposed development is considered to represent the anticipated development outcome on the site anticipated by the controls.

- ***I maintained a view with the original development application however with the additional development and rooftop structures I will no longer have that view. I object to the additional height and size of the project.***

Comment: The proposed development has been considered on its merits and impacts on district views are considered to be reasonable based upon the anticipated development outcome on the site.

- ***Concerns with construction impacts including noise, dust and traffic. Suggest construction hours be restricted to Monday to Friday 9am – 5pm.***

Comment: It is not considered to be reasonable to restrict construction hours beyond those set out in Council's standard conditions as set out in the attached conditions.

- ***The building will be abutting our living area. There are 48 apartments in our 8 storey building and we are amazed that 120 apartments can fit into the proposed 10 storey building.***

Comment: The proposed development provides a reasonable level of amenity to each proposed apartment and provides an acceptable built form. As such, the density is supported on this basis.

- ***Can Council guarantee us access to our vehicular entry in Pole during the construction process?***

Comment: The development application provides no consent for the closure of any roads during construction. Council's Compliance Department can be contacted in the event this occurs.

- ***We feel overshadowed, overlooked and overcrowded by 18 or 19 storey developments. We are being squeezed out by Council's decisions which mean congestion, noise, inconvenience and loss of privacy, all things which a Council should strive to provide.***

Comment: As above, the proposed building is considered to represent the generally expected outcome of development on the site. Issues have been addressed within this report accordingly.

CONCLUSION

The proposed development is considered to demonstrate reasonable compliance with Council's controls. The breach of the Building Height Control demonstrates impacts with regards to privacy, solar access and view loss considered to be reasonable given the generally compliant nature of the development, and the resultant height is considered to be contextually appropriate having regard for surrounding development.

The breach in height of the residential levels (excluding rooftop plant and communal common area) is limited to no more than 2.5m which has been assessed as being acceptable. It is noted that the roof top community structures are located wholly above the building height control. These structures in this instance and in this locality are not considered to result in any material impacts given their generous setbacks from the south and west boundaries, and the structure has been generally set to the north of the roof plant. The benefit to the occupants of the building provided by the communal space is considered to be significant. For these reasons, this breach in Building Height is supported.

Adjoining properties have raised concern with a loss of amenity with regards to solar access, privacy and loss of district views to the north-facing dwellings located within No.34 Oxley Street and loss of views / outlook from east-facing upper-level apartments within No.1-5 Albany Street. This existing amenity enjoyed by these properties is considered as 'borrowed' amenity given that it is enjoyed across a generally under-developed site. The proposed development to construct this mixed use building is similar in nature and form to that which was approved on the site at No.34 Oxley Street in 2002 and No.1-5 Albany Street in 2002, and has since been constructed. It has been demonstrated that the loss of district views substantially occurs from complying building elements.

However, with particular regard to No.34 Oxley Street to compensate for the lack of northern setbacks provided by No.34 Oxley Street, the proposed development has provided greater setbacks than this property, providing shadowing impacts that would otherwise occur from a complying building on the site.

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

It is noted that the built form and design of the above ground structure over that part of the building over No.11-19 Albany Street remains relatively unchanged to that approved by the JRPP Panel pursuant to Development Application 162/12. The proposed additional above-ground structures which did not form part of this previous Development Application, propose a similar level of compliance to that part of the building previously approved. The non-compliance with the western side setback has been addressed within this report as acceptable given that it matches the adjoining property. **However, notwithstanding this in any case the building has been considered in its entirety as a new development application on its merits having regards to all relevant planning controls as acceptable as set out within this report.**

For these reasons, having assessed the development application under the provisions of the Environmental Planning and Assessment Act 1979, North Sydney Local Environmental Plan 2013, Development Control Plan 2013 and all other relevant statutory and non-statutory controls, the proposal is recommended for approval subject to the imposition of conditions.

RECOMMENDATION

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

THAT the Joint Regional Planning Panel, as the consent authority, grant development consent to 2014SYE003 – Development Application No.323/13 for the construction of a new mixed use building at No.7-19 Albany Street, St Leonards subject to the attached conditions.

Lara Huckstepp
EXECUTIVE PLANNER

Stephen Beattie
A / DIRECTOR
PLANNING & DEVELOPMENT SERVICES
