

- Attachment 1:** Plans and Elevations  
**Attachment 2:** Approved Plans DA187/13 – Envelope Approval  
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**JOINT REGIONAL PLANNING PANEL  
(Sydney East Region)**

<b>JRPP No</b>	<b>2014SYE066</b>
<b>DA Number</b>	<b>DA93/14</b>
<b>LGA</b>	<b>North Sydney Council</b>
<b>Proposed Development</b>	<b>Stage 2 Development: 16 storey mixed use building with basement parking</b>
<b>Street Address</b>	<b>20 Atchison St Leonards</b>
<b>Applicant / Owner</b>	<b>Arkhouse Group Pty Ltd</b>
<b>Submissions</b>	<b>Nil</b>
<b>Recommendation</b>	<b>Approval with Conditions</b>
<b>Report by</b>	<b>Lara Huckstepp, Executive Planner</b>

**EXECUTIVE SUMMARY**

The development application is for the Stage 2 detailed construction of a 16 storey mixed use building with 7 levels of basement car parking at No.20 Atchison Street. A Stage 1 Building Envelope approval for the site was approved by the JRPP under DA187/13 on 17 December 2013.

The Council Notification resulted in no submissions being received.

The proposed development has been considered against all relevant plans and policies, as well as the approved Stage 1 DA. The proposal is considered to be acceptable, with the exception of the proposed quantum of car parking and the use of the Level 15 as a penthouse. These issues are considered to be able to be addressed by Conditions and are discussed further below.

The use and layout of Level 15 was approved as a communal area as part of the Stage 1 DA. The Stage 1 DA now proposes to use the level as a residential level which is not

supported. This level was approved in concept to contain plant and a rooftop garden for communal use. The change of use to this level as a residential level would require the modification of the Stage 1 DA in any case, however would be unlikely to be supported given its exceedence with Building Height. A condition of consent is recommended to be imposed to require Level 15 be used as communal area consistent with the Stage 1 development consent.

The proposal also seeks approval for an additional 20 car parking spaces over and above council's maximum car parking DCP controls. Council consistently applies its car parking controls for new development and the proposed development's provision of a gross overprovision is not supported. A condition of consent is recommended to be imposed that the lower two levels of car parking be deleted to ensure compliance.

Subject to imposition of conditions including those mentioned above to address car parking non-compliances and the use of the rooftop structures, the development application is considered to be satisfactory and an anticipated outcome of the site envisaged by the relevant controls.

## **DESCRIPTION OF PROPOSAL**

The development application is for Stage 2 development (detailed construction) of a 16 storey mixed use building with seven levels of basement car parking at No.20 Atchison Street, St Leonards. The proposal incorporates a total of 25 residential apartments and 8 levels of non-residential uses. The proposal details:

- Ground floor retail and gym
- First floor gym
- Levels 2, 3, 5, 6, & 7 – commercial offices
- Level 4 – child care centre
- Levels 8-15 residential development comprising:
  - 12 x 1 bedroom apartments
  - 13 x 3 bedroom apartments
- Residential Level 15 comprises two habitable rooms, a swimming pool and terrace.
- 7 levels of car parking providing 57 car parking spaces, 65 bicycle spaces, 13 motorcycle spaces.
- A drop off space for the childcare centre on basement Level 1.
- A loading bay from Atchison Lane.
- A through site link from Atchison Street to Atchison Lane.

## **STATUTORY CONTROLS**

North Sydney LEP 2013

- Zoning – B4 Mixed Use
- Item of Heritage - No
- In Vicinity of Item of Heritage - No
- 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 is described as Lot 1 in DP740017 and has a site area of 690sqm. The site is located on the northern side of Atchison Street and has a Laneway frontage on its northern boundary to Atchison Lane.

The site is generally rectangular in shape and has a fall from the Atchison Street frontage down to the northern rear lane frontage of up to 3m. The site also has a cross fall from the east down to the western boundary by approximately 800mm. The site has a frontage to Atchison Street of 20.1m and a site depth of 34.3m. Existing on the site is a three storey commercial building.

### **Existing building 20 Atchison Street**



### Surrounding development

Development on the adjoining site to the east at No.22 Atchison St is presently a 6 storey commercial building. This site has approval for the detailed construction of a 16 storey mixed use development under Development Consent DA187/13. This development approval as set out below also granted consent for the Stage 1 building envelope approval for the subject site at No.20 Atchison Street.

Development to the immediate south at No.601 Pacific Highway is an 18 storey commercial building.

Development to the south-east of the subject site at No.1 Atchison Street comprise a 5 storey commercial building. To the south of this site at No.599 Pacific Highway is a mixed use development having a height of up to 20 storeys (The Abode).

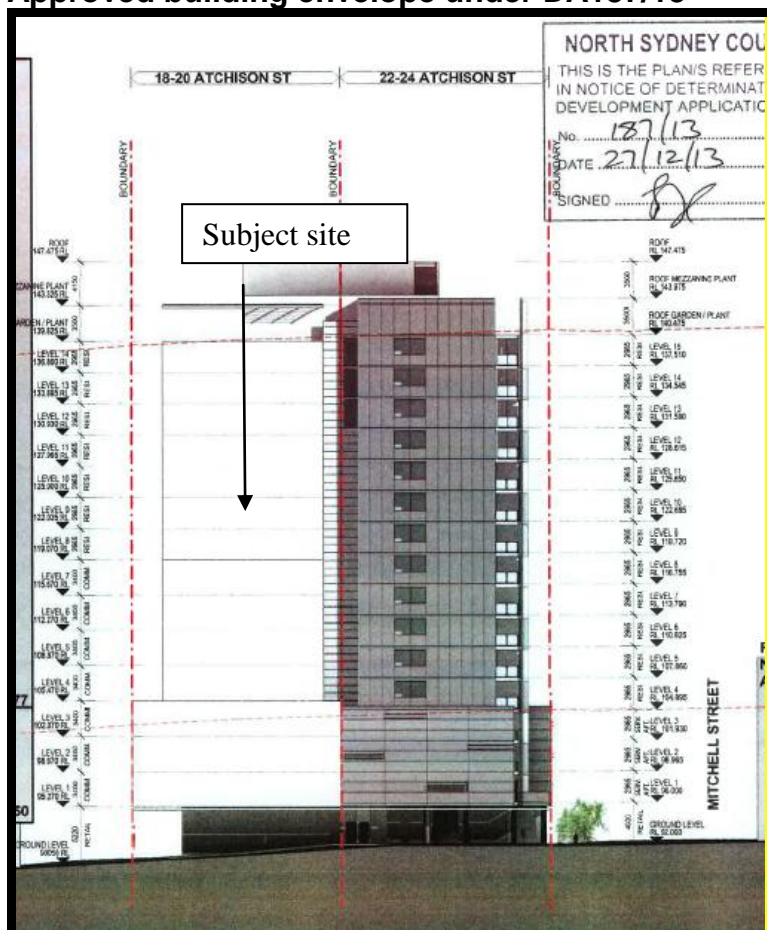
Adjoining development to the west known as 6-16 Atchison Street is an existing building currently under construction that was approved by the now repealed Part 3a process. This building has an approved height of approximately 80m and has submitted a request to modify the consent under Section 75W to increase its height to 95m. The maximum height for this site under NSLEP2013 continues to be 49m.

Development to the north comprises a number of commercial buildings of approximately 6 – 7 storeys in height. The maximum height for these sites under NSLEP 2013 should these properties be redeveloped in the future is 33m.

## RELEVANT HISTORY

On 17 December 2013 the JRPP approved Development Application 187/13 which allowed construction of a 16 storey mixed use building development at No.22 Atchison Street and Stage 2 Building Envelope Concept Approval for No.20 Atchison Street, St Leonards. The subject development application seeks Stage 2 development consent for the detailed design of No.20 Atchison Street. The approved envelope viewed from the northern Atchison Street frontage can be seen below.

### Approved building envelope under DA187/13



The approved plans for the Stage 1 Concept Approval are attached to this report for information. As part of the approval, Condition A3 was imposed to specify the terms of the concept approval:

### **Stage 2 – Building Envelope Approval**

A3. *Approval is granted only for a Stage 2 concept building envelope for a 15 storey mixed use building at No.20 Atchison Street under this development consent as detailed in plans outlined in Condition A1 of this consent. No physical works are approved or implied for this site under this consent. The detailed design of any building to be constructed on this site shall be subject to a further development application. The approved building envelope is based upon the following composition:*

- *Ground level – Retail*
- *Levels 1- 7 Commercial*
- *Levels 8-14 – Residential*

*(Reason: To clarify the terms of this consent)*

As discussed further within this report, residential levels were only proposed and approved over levels 8-14, and not level 15 as now proposed.

### **Subject Development Application**

The subject Development Application was submitted to Council on 3 April 2014. Following a detailed assessment, the applicant was advised of the following non-compliances:

- Rooftop structures were approved under the concept approval as communal facilities and not as additional residential space. It was requested that any structures be nominated as communal facilities.
- The rooftop structures exceed both the LEP control and the Stage 1 concept approval. Consideration was requested having regard to Clause 4.6 NSLEP 2013.
- Car parking provision exceeds the maximum car parking controls set out within Section 10 NSDCP 2013 by 20 parking spaces. The over provision is not supported and it is requested the lower 2 levels of basement car parking be deleted.

- No details have been provided in relation to the proposed childcare facility and any use would be subject to a further Development Application. However, the applicant was advised that the proposed access to the facility fails to comply with Section 5 NSDCP2013 (siting) in that there is no emergency lift dedicated only to the child care centre. The applicant was advised that consideration of these issues should form part of a subsequent DA for the use and fitout of such a facility in any case.
- Additional engineering and stormwater details were requested.

The applicant's response to these issues is attached for information and outstanding issues have been discussed in detail throughout this report. On 25 July 2014 the applicant submitted a Clause 4.6 request for variation.

## REFERRALS

### Engineering/Traffic

The application was referred to Council's Manager Traffic Planning wherein the following comments were provided:

#### ***Existing Site***

*The site is currently occupied by an older style 3-5 level plus basement commercial building of approximately 1,815m<sup>2</sup> GFA and 22 basement parking spaces accessed via Atchison Lane.*

#### ***Proposed Development***

*The proposed development incorporates the demolition of the existing building, excavating and constructing a new 15-level building comprising 25 residential apartments (12 x one-bedroom, 13 x three-bedroom) and 3,613m<sup>2</sup> GFA Retail/Commercial area (commercial – 2362m<sup>2</sup>, retail – 131m<sup>2</sup>, gym – 714m<sup>2</sup>, childcare – 406m<sup>2</sup>).*

#### ***Car Parking***

*The North Sydney DCP 2013 (NSDCP) specifies that a development of this size should have a maximum of 39 parking spaces.*

*The proposed development provides 59 off-street parking spaces (comprising 18 resident spaces (including 1 disabled space) and 1 commercial space) which exceeds Council's maximum rate by 51%. This is unacceptable to Council's Traffic Planning Section.*

*The parking rates in NSDCP 2013 were a deliberate policy decision of Council to restrict car parking and therefore car ownership and commuting by car in the busy CBD/ retail areas close to good public transport. Council's Community Strategic Plan 2013-2023 states, "Public transport and alternative means of transport are the mode of choice for trips to, from and within North Sydney. The*

*community's reliance on the car has reduced. Considerable effort has been made to improve public transport and reduce traffic congestion, particularly through the use of more innovative and environmentally friendly systems."*

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

*Accordingly the proposed development should be restricted to having a maximum of 39 car parking spaces.*

### **Motorcycle Parking**

*The NSDCP specifies that a development of this size should have a minimum of 4 motorcycle spaces.*

*The proposed development makes provision for 13 motorcycle spaces which complies with the NSDCP.*

### **Bicycle Parking**

*The NSDCP specifies that a development of this size should provide a minimum of*

- *A secure bicycle compound (Class 2 as defined in AS2890.3) capable of storing 25 bicycle parking spaces for residents*
- *Bicycle racks/rails (Class 3 as defined in AS2890.3) capable of storing 3 bicycle parking spaces for resident's visitors*
- *28 x bicycle lockers (Class 1 as defined in AS2890.3) for employees/staff to the commercial component to the development (assuming 5 staff are required for the childcare centre)*
- *13 x bicycle rack/rail (Class 3 as defined in AS2890.3) for visitors to the commercial component to the development*

### **Traffic Generation**

*The report's traffic generation methodology (RMS Guide to Traffic Generating Developments) is acceptable to Council's Traffic Planning Section.*

*Application of the RMS Guide to Traffic Generating Developments reveals that a development of this size and land use type will generate approximately 34 vehicle trips in the AM peak hour and 37 vehicle trips in the PM peak hour. .*

*The traffic generation potential of the proposed development and its projected trip distributions can be accommodated on the road network.*

### **Loading Bay**

*The NSDCP states that a development of this size should provide a minimum of*

*1x service delivery space/ waste collection vehicle space capable of accommodating a Medium Rigid Vehicle as defined in AS2890.2.*

*The proposed development has accommodated for a 10.2 refuse vehicle which is compliant with the NSDCP.*

### **Conclusion**

*It is recommended that the development not be approved until the parking spaces provided are reduced to 39 parking spaces.*

*Should the development be approved, the following conditions of consent are recommended.*

- 1. That the development provide a minimum of:*
  - A secure bicycle compound (Class 2 as defined in AS2890.3) capable of storing 25 bicycle parking spaces for residents*
  - Bicycle racks/rails (Class 3 as defined in AS2890.3) capable of storing 3 bicycle parking spaces for resident's visitors*
  - 28 x bicycle lockers (Class 1 as defined in AS2890.3) for employees/staff to the commercial component to the development (assuming 5 staff are required for the childcare centre)*
  - 13 x bicycle rack/rail (Class 3 as defined in AS2890.3) for visitors to the commercial component to the development*
- 2. That a Construction Management Plan be prepared and submitted to Council for approval by Council Engineers prior to the issue of the Construction Certificate. Any use of Council property shall require appropriate separate permits/ approvals.*
- 3. That all vehicles, including furniture removalist vans, delivery vehicles and garbage collection vehicles must enter and exit the site in a forwards direction. If this is not possible than an operational transport management plan indicating how the loading dock will operate safely and effectively – giving priority to pedestrians.*
- 4. That the developer pay to upgrade the lighting levels on Atchison Street and Atchison Lane adjacent to the site, to the satisfaction of Council's Director Engineering and Property Services.*
- 5. That a STOP line and sign be installed at the driveway exit within the property boundary.*
- 6. The location of any intercom/ security access point for driveway entry to the car park should be located a minimum of 12 metres within the boundary of the property, such that two queued vehicles can be contained wholly within the boundary of the property, as per AS2890.1.*
- 7. That all aspects of the carpark comply with the Australian Standard AS2890.1 Off-Street Parking. In particular, headroom is to be a minimum of 2.2 metres.*
- 8. That all aspects of parking spaces for people with disabilities comply with the Australian Standard AS 2890.6.*
- 9. That all aspects of the bicycle parking and storage facilities comply with the Australian Standard AS2890.3.*



10. *The driveway to the site must be designed such that there are minimum sight lines for pedestrian safety as per Figure 3.3 of AS 2890.1.*
11. *That signs be installed at the exit to the driveway stating "Stop – Give Way to Pedestrians"*

**Planning comment:** The applicant has been advised that the proposed over provision of car parking is not supported by Council Officers and provided the following justification:

#### **Car Parking**

The traffic report states that the proposal is exceeding the DCP car parking requirements by 18 spaces, not 20 as identified in Council's letter. Nevertheless, in our opinion the additional car parking is justified for the following reasons:

- **Delivering significant commercial floorspace** – The proposal is seeking approval for some 3,613sqm of commercial floorspace. This equates an FSR of 5.24:1 which constitutes a 42% increase from the minimum non-residential floorspace requirement on the site. In light of the consistent trend of the loss of commercial floorspace in the Centre and redevelopment to residentially dominated developments with the minimum non-residential floorspace, the proposal is a positive step to preserving the important commercial function and Council should encourage this.
- **Additional Commercial floorspace has a car parking penalty** – despite the desire for Council to retain a commercial function for the centre, residential development is becoming the predominant land use. Commercial office space have very restrictive parking controls so quantum of commercial space proposed has reduced the number of car parks allowed in a compliant scheme. In our opinion, Council should considering measures to encourage developments such as this to retain higher commercial ratios and for this project the provision of additional car parking is critical to maintain its attractiveness of the site for a commercial development to the business owner and staff.
- **Overall parking quantum not excessive** – If the proposal sought to provide the minimum non-residential space, the quantum of car parking proposed would be complaint. Thus without any more FSR, and in the absence of Council applying flexibility to its DCP controls, the applicant is in effect being penalised by having a higher ratio of commercial space which in our view is unreasonable as the proposal is highly consistent with the state and local planning policies for land use in the Centre.
- **No additional traffic impacts** - The provision of the additional parking spaces will have no impact on the traffic generation to that assessed.
- **Basement level is consistent with No. 22-24** – the basement level proposed is consistent with adjoining approved development. The intention is that both projects will be developed concurrently and therefore differencing basement levels would add complexity to the construction process.
- **The EP&A Act calls for "flexibility in applying DCP provisions"** - The *Environmental Planning and Assessment Amendment Act 2012*, which commenced on 1 March 2013, clarified the purpose and status of development control plans, being to "provide guidance" to proponents and Councils in achieving land use zone objectives and facilitating permissible development under an environmental planning instrument. Furthermore, to assist in the assessment of DAs, the amended legislation states that where a proposal does not comply with DCP controls, the consent authority is to be "flexible in applying those provisions" and allow for "reasonable alternative solutions" that achieve the objectives of those standards for dealing with that aspect of the development.
- It is important to recall these revisions to the status and application of DCPs in development assessment. Overall the proposal achieves high level of compliance with the North Sydney DCP 2002. However in this instance of a departure from a car parking control, for the reasons outlined above, in our opinion they are justified. We believe Council should be encouraging further commercial office space and seeking to incentivise that occurring. The failure to support the proposed additional car spaces could trigger a future modification to reduce the quantum of commercial space and add more residential apartments to meet the high demand for residential within the Centre.

**Planning comments :** The applicant's justification for the over-provision of car parking is not supported.

Car parking provision must be based upon the proposed development and proposed uses. The applicant's justification that consideration be given to the car parking provision that would have been required should a greater amount of residential development have been provided on the site is without merit.

The applicant is not being penalised as suggested. Rather, Council is requiring the applicant to comply with Council's parking controls which is not considered to be unreasonable. Council consistently applies the car parking control for all new development and there is no reasonable justification for non-compliance in this instance.

The applicant also justifies the over-provision on the basis that the level of excavation would be consistent with the basement levels approved on the adjoining site at No.22 Atchison Street. This could only be a relevant consideration in the event the basement levels were proposed to be amalgamated. The approved basement layout at No.22 Atchison Street and the proposed basement layout on the subject site are both constrained and would benefit from amalgamation. The applicants for both sites were requested to consider amalgamation however declined to do so. Approval of non-complying car parking based upon the level of excavation on an adjoining unrelated site is also without merit.

The applicant's above-mentioned justifications are each considered to set an undesirable precedent should they be accepted.

Whilst the EP&A Act allows for flexibility in applying DCP controls, there is considered to be no reasonable justification for the excessive non-compliance of car parking in this instance. Compliance with Section 10 NSDCP2013 (Car Parking) is not considered to be unreasonable in the circumstances.

It is recommended a condition be imposed to delete the lower 2 levels basement car parking and ensure that a maximum of 39 car parking spaces be provided.

### **Engineering/Stormwater Drainage**

Council's Development Engineer has recommended conditions be imposed relating to vehicular access, roadworks, stormwater and damage bonds.

### **NSW Roads and Maritime Services**

NSW Roads and Maritime Services advised they raise no objection to the proposed development.

### **Design Excellence Panel Comments**

*'The Panel provided the following comments on the Development Application:*

#### ***Background***

*A development application for 20-22 Atchison Street was before the Panel on 5 March 2013. At its meeting of 17 December 2013 the Sydney East Joint Regional Planning Panel (JRPP) approved the Development Application No.187/13 for a Staged Development for:*

*Stage 1 construction of a 16 storey mixed use building with basement carparking at No.22 Atchison Street and Stage 2 Envelope Consent approval for a 15 storey mixed use building with basement carparking at 20 Atchison Street.*

### **Panel comments**

*The Panel notes that the height exceeds the height control of 49m. It is recognised that a breach of the applicable LEP controls is a matter for Council. The architect advised that the height is consistent with the concept approval.*

*The Panel raised concern with the proposed landscaping on the western boundary and felt that the location stops any visual cue about a through site link as well as limiting the view to the entry lobby. The screening of the air intake on the adjoining site can be better handled (particularly as the air intake is not too high).*

*The western link needs to be integrated to the adjoining open space. The levels need to relate – the more that the zone between the two buildings reads as one space the better – that space can have slightly different levels, places within it – but they should tie together.*

*The Panel also recommended that the paving of the 3m setback under the colonnade should be at grade with the footpath and that there are no obstructions in the colonnade between sites.*

*The Panel questioned whether the access and stairs to the lane past the lobbies need to be as wide and suggested that the retail space could be extended or a verandah provided that looked over the open space on the adjacent site.*

*The Panel noted the proposed child care centre on level 4 that would need to be the subject of a separate detailed application. The applicant will need to address concerns about light, ventilation, outdoor space and fire safety as well as meeting the licensing requirements.*

*The Panel raised no concerns with regard to the proposed materials and finishes.*

### **Conclusion**

*The Panel supported the proposal.'*

**Planning Comment:** The applicant provided the following response in relation to the Panel's consideration:

*'At the time of lodgement the proposed design has sought to create a contiguous plaza space off the Atchison Street frontage to maximise its utility in accordance with the Panels' suggestion.*

*In addition, we note the design excellence recommendation and as such our intention is to maximise level connection were possible and work to adjusted levels to create a cohesive open plaza to Atchison and adjoin boundary to the south.'*

In response to the Panel's comments, a condition is recommended to be imposed to require that the paving within the Atchison Street colonnade be generally at grade with the footpath and contain no obstructions to ensure appropriate integration with the footpath.

Further, a condition is recommended to be imposed to delete the plantings within the western side setback to ensure a better visual integration with the approved development on the adjoining site.

### **Community Development**

Council's Community Development Department provided comments in relation to the proposed location of the childcare centre. It has been advised that the location and design of the childcare facility fails to satisfy Council's DCP in that:

- *The proposal fails to provide a safe evacuation from the building in the event of an emergency. Section 5.3, Provision P2 NSDCP 2013 requires above-ground child care centres provide an emergency lift dedicated to the child care centre.*

**Planning Comment:** The applicant has been advised of these non-compliances and acknowledges these issues will be addressed as part of a future development application. In any case the uses outlined within the consent can only be indicative given that no details have been provided relating to any of the uses and each would require a separate development consent in any case.

### **SUBMISSIONS**

The development application was notified to surrounding development and a Notice was placed in the Mosman Daily. No submissions were received in relation to the development application.

### **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 2013 and DCP 2013 as indicated in the following compliance tables. More detailed comments with regard to the major issues are provided later in this report.

## Compliance Table

### NSLEP 2013 Compliance Table

Principal Development Standards – North Sydney Local Environmental Plan 2013			
Site Area - 690m <sup>2</sup>	Proposed	Control	Complies
Clause 4.2 – Heights of Building	58.73m (lift over run / plant)  53.33m (swimming pool balustrade)  51.33m (height of roof terrace level)	49m	No
Clause 4.4a – Non residential FSR	5.24:1	4:1 minimum	Yes

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 2- Commercial and Mixed Use Development		
	Complies	Comments
<b>2.2 Function</b>		
<b>Diversity of Activities</b>	Yes	The proposal incorporates a mix of uses. A condition is recommended to reinstate the rooftop structures as communal uses as approved under the Stage 1 development consent.
<b>Maximise Use of Public Transport</b>	Yes	The site is well located within 300m of St Leonards Train Station.
<b>Mixed Residential Population</b>	No (merit)	<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"> <li>• Studios – 10-20% required – none proposed</li> <li>• 1 Bed – 25-35% required – 52% proposed</li> <li>• 2 Bed – 35-45% required – none proposed</li> <li>• 3 Bed – 10-20% required – 48% proposed</li> </ul> <p>Provision P2 sets out that no more than 55% of all dwellings must comprise a combination of both studio &amp; 1 bedroom apartments. The proposed development will comply with this requirement. In this instance, whilst there are no studio or 2 bedroom apartments proposed, the mix is considered acceptable and provides for a mix of population within the building.</p> <p>A condition will be imposed to require that a minimum of 4 apartments be provided as adaptable apartments.</p>
<b>2.3 Environmental Criteria</b>		
<b>Noise</b>	Yes (condition)	Can be dealt with by appropriate condition.
<b>Artificial Illumination</b>	Yes (condition)	A condition of consent will be imposed to restrict lighting of the rooftop terrace and swimming pool after 11pm.
<b>Awnings</b>	Yes	The proposal includes an awning to Atchison Street

		which is considered to be acceptable.
<b>Solar Access</b>	Yes	<p>The proposed overshadowing impacts have been considered as part of the concept approval and the impacts are generally consistent with those approved under this Development Consent as being acceptable.</p> <p>Those new elements above the approved building envelope would cause overshadowing that generally falls within the approved building envelope, or within the shadowlines of the existing commercial building at No.601 Pacific Highway. There is no material increase in overshadowing to the Mitchell Street Plaza caused by the non-complying elements.</p> <p>The proposed development will result in overshadowing to the approved apartments at No.6-16 Atchison Street. However, this overshadowing would occur between 9am – 11am and is considered to be generally an expected outcome of the development on this site. Given the approved building height and north-facing orientation for the majority of apartments within No.6-16 Atchison Street, the development would likely continue to achieve compliance with solar access requirements set out in SEPP 65.</p> <p>Overshadowing impacts to surrounding commercial buildings are generally consistent with those anticipated from the approved building envelope and a likely outcome of development on the site.</p> <p>The proposed development does not result in any material overshadowing impacts to surrounding residential properties.</p>
<b>Views</b>	Yes	<p>The proposed development would likely remove some views / outlook to Chatswood and district views to the north across the site, including district outlook from No.599 Pacific Highway. The existing outlook from apartment 10/599 Pacific Highway can be seen below:</p>  <p>The loss or reduction of district views to the north, whilst</p>

		<p>being a pleasant and valued view, is not considered to be material on the basis this is considered to be a generally expected outcome of development on the subject site. This view would in part be removed in any case by the approved building at No.22 Atchison Street.</p> <p>In addition, the development would likely remove some existing district, city, harbour and possibly Harbour Bridge views to the south from No.6-16 Atchison St should this development be completed prior to the subject site. Any views / outlook lost would be generally 'borrowed' views, only achieved from levels of the building being located above Council's building height control, and in this regard impacts could not be considered to be unreasonable given they are caused by a generally compliant building envelope.</p> <p>Views lost from any surrounding property in any case are considered to be an expected outcome of the development having regard to Council's controls.</p>
<b>Acoustic Privacy</b>	Yes	The proposal is well designed with regards to acoustic privacy given the density of development.
<b>Visual Privacy</b>	Yes	<p><b>Northern Elevation</b> – The proposed residential levels are on levels 8-14 and generally either align with, or are located at a higher height than the maximum height of the adjoining buildings to the north in Chandos Street which has a 33m building height limit. In this regard, SEPP65 separation is not applicable.</p> <p><b>Western Elevation</b> – The residential levels are considered to be well designed with primary balconies being provided either to the north or south. The western façade will provide minimal windows and also will be provided with bifold metal screens that will assist in privacy mitigation. It is noted that the approved development at No.6-16 Atchison Street provides privacy screens to its eastern elevation. It is considered that privacy between the two developments is adequately addressed. It is noted that separation is not provided in accordance with the requirements of SEPP65, however in the circumstances it is considered unreasonable to request further setbacks for this side elevation given the site circumstances.</p> <p><b>Southern Elevation</b> - Adequate setbacks are provided across Atchison Street to buildings to the south.</p> <p><b>Eastern Elevation</b> – No windows are proposed within this elevation as the boundary will adjoin the recently approved building at No.22 Atchison Street.</p>
<b>2.4 Quality built form</b>		
<b>Context</b>	Yes	The proposed development is considered to be contextually appropriate based upon the controls applicable to the site.
<b>Setback – Side</b>	Yes	A 3m above podium side setback is provided to the western façade in accordance with Council's controls.

		DA 187/13 was approved by the JRPP which granted approval for a mixed use building at No.22 Atchison Street having no side setback where the site adjoins the subject building. Accordingly, the resultant built form has been approved in the stage 1 Building Envelope approval and nil side setback is supported in this instance.
<b>Setback - Rear</b>	Yes	A 1.5m Laneway setback to Pole Lane is provided.
<b>Podiums</b>	Yes	Above podium setbacks comply with Council's controls on the western and southern elevations.
	No (merit)	Council's controls require a 3 storey podium to the Laneway however a 4 storey podium has been approved on the adjoining site at No.22 Atchison Street and was approved for the subject site under the building envelope approval. On balance, in this instance the podium height of the Laneway is considered to be acceptable.
<b>Building Design</b>	Yes	The building design has been assessed as acceptable.  The proposed development has also detailed the proposed design of the eastern wall should the subject development be constructed prior to the construction of the approved No.22 Atchison Street. The façade will be rendered and painted, and alternated with pre-cast concrete panels which are considered to result in an acceptable appearance in the circumstances.
<b>Skyline</b>	Yes	The proposal will present an acceptable skyline appearance.
<b>Balconies - Apartments</b>	Yes	Each apartment is provided with a balcony which provides adequate amenity to its occupants.
<b>Streetscape</b>	Yes	Adequate activation of Atchison Street is proposed.
<b>Entrances and Exits</b>	No (merit)	The ground floor retail uses are proposed to be accessed separately.  Separate lobbies are proposed for the residential and serviced apartment uses. The applicant has agreed to secure access to the residential lobby to only residential occupants and not serviced apartments. However, residential occupants will be able to access both lobbies to ensure 2 lifts are available. On balance, this allows for a separate residential lobby to provide mail boxes, strata information and the like, and ensures that residents have the option of a secure and private entry. Entry / exit through the serviced apartment lobby, whilst available to residents, could be secondary as required. Further, a condition recommends access to use these lifts by the residents are limited to between 6am – 8pm to ensure security of the residential apartments at this time.  Whilst separate lift access would be desirable, the proposed arrangement was accepted on the mirror approval at No.22 Atchison and is considered acceptable based upon the building's floorplate. On balance, the arrangement is considered acceptable.
<b>2.5 Quality Urban Environment</b>		



<b>Accessibility</b>	Yes	The applicant's documentation advises the development will comply with all relevant requirements.
<b>Safety and Security</b>	Yes	The proposed development raises no known safety and security concerns.
<b>Illumination</b>	Yes (condition)	Under awning lighting should comply with all relevant controls and can be conditioned accordingly.
<b>High Quality Residential Accommodation</b>	Yes	<p>The DCP specifies the following minimum unit sizes:</p> <ul style="list-style-type: none"> <li>• Studio apartments – 40sqm</li> <li>• 1 bedroom apartments -50sqm</li> <li>• 2 bedroom apartments – 80sqm</li> <li>• 3 bedroom apartments – 100sqm</li> </ul> <p>The proposal provides complying apartment sizes as follows:</p> <ul style="list-style-type: none"> <li>• 1 bedroom apartments – 53 – 57sqm</li> <li>• 3 bedroom apartments – 108 – 326sqm (note: this is the size of the penthouse)</li> </ul> <p>All apartments will have a balcony having size of at least 11sqm.</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>Lift access is 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>76% of apartments will receive 2 hours of sunlight between 9am – 3pm during the midwinter solstice complying with the minimum 70%.</p> <p>76% of apartments will be provided with cross ventilation complying with the minimum of 60%</p>
<b>Private Open Space</b>	Yes	All balconies will have a minimum of 11sqm which is considered to be acceptable.
<b>Vehicular Access</b>	Yes	The proposed vehicular access to Atchison Lane is considered to be acceptable.
<b>Car Parking</b>	No (not supported)	The application seeks approval for 59 car parking spaces wherein Council's DCP controls allow a maximum of 39 car parking spaces. Refer to the comments of Council's Traffic Manager. This additional provision of car parking is not supported. A condition is recommended to require the deletion of the lower two basement levels which would result in general

		<p>compliance with this control.</p> <p>Motorbike and bicycle parking comply with Council's controls.</p> <p>A loading bay is proposed within Atchison Lane which is considered to be acceptable.</p>
<b>Garbage Storage</b>	Yes	Garbage chutes are provided on each level and storage is provided.
<b>Site Facilities</b>	Yes	Adequate storage is provided for each apartment.
<b>2.6 Efficient Use of Resources</b>		
<b>Energy Efficiency</b>	Yes	A BASIX Certificate has been provided in relation to the development.
<b>Green Roofs</b>	Yes (condition)	<p>The approved concept plan detailed over half of the roof to be provided as a 'roof garden'. The extent of the roof garden now proposed has been reduced in lieu of decking and a swimming pool. However, some plantings continue to be proposed. Council's DCP 2013 has come in to force since approval of the concept plan. In consideration of the roof space against the provisions of Section 2.6.12 (Green Roofs) DCP 2013, the proposal will satisfy the objectives:</p> <ul style="list-style-type: none"> <li>• The design will increase biodiversity by the use of plant material and satisfy Objective O5.</li> <li>• The design will improve the aesthetics and amenity of the urban environment and satisfy Objective O2.</li> <li>• The design will provide an accessible roof space providing increased amenity for the occupants and visitors but only if the space remains as a communal space in line with the approved use of the space in the Stage 1 approval. As set out within this report, a condition is recommended to be imposed that the space continue to be a communal roof space.</li> </ul>

## 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.*

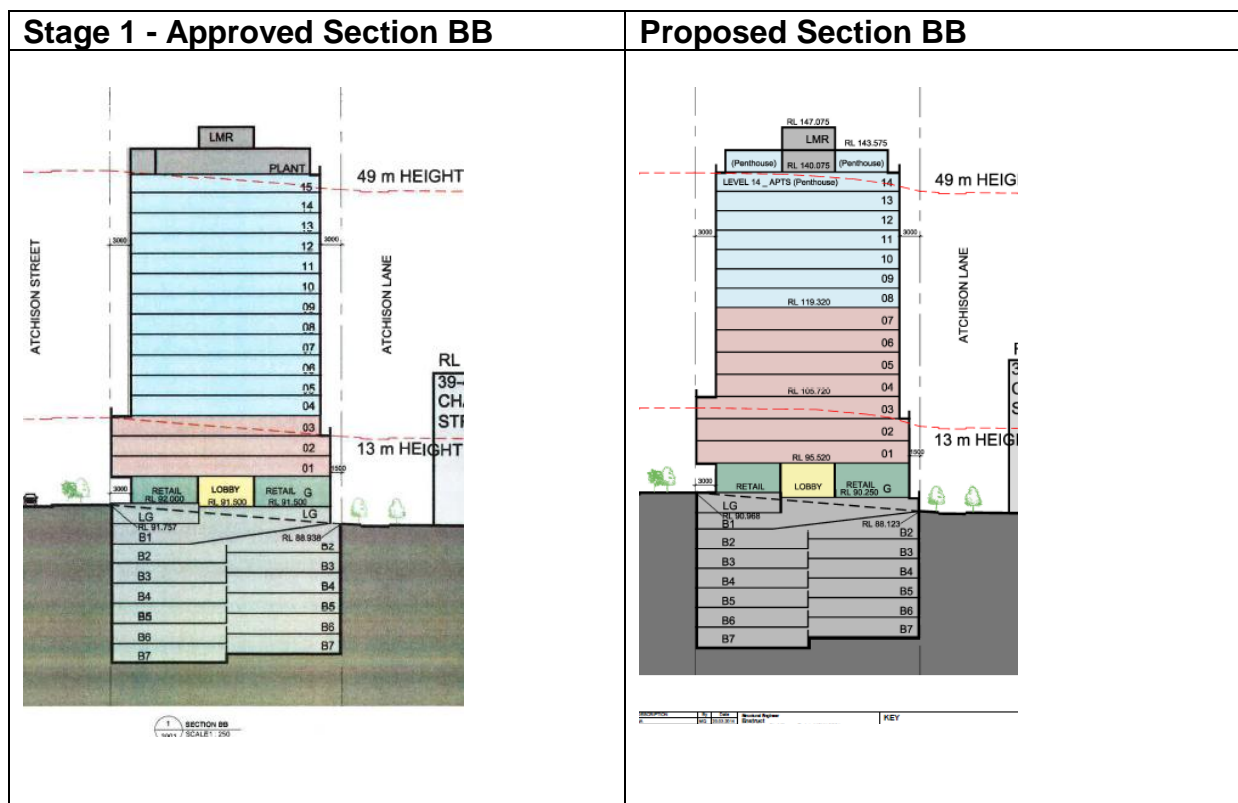
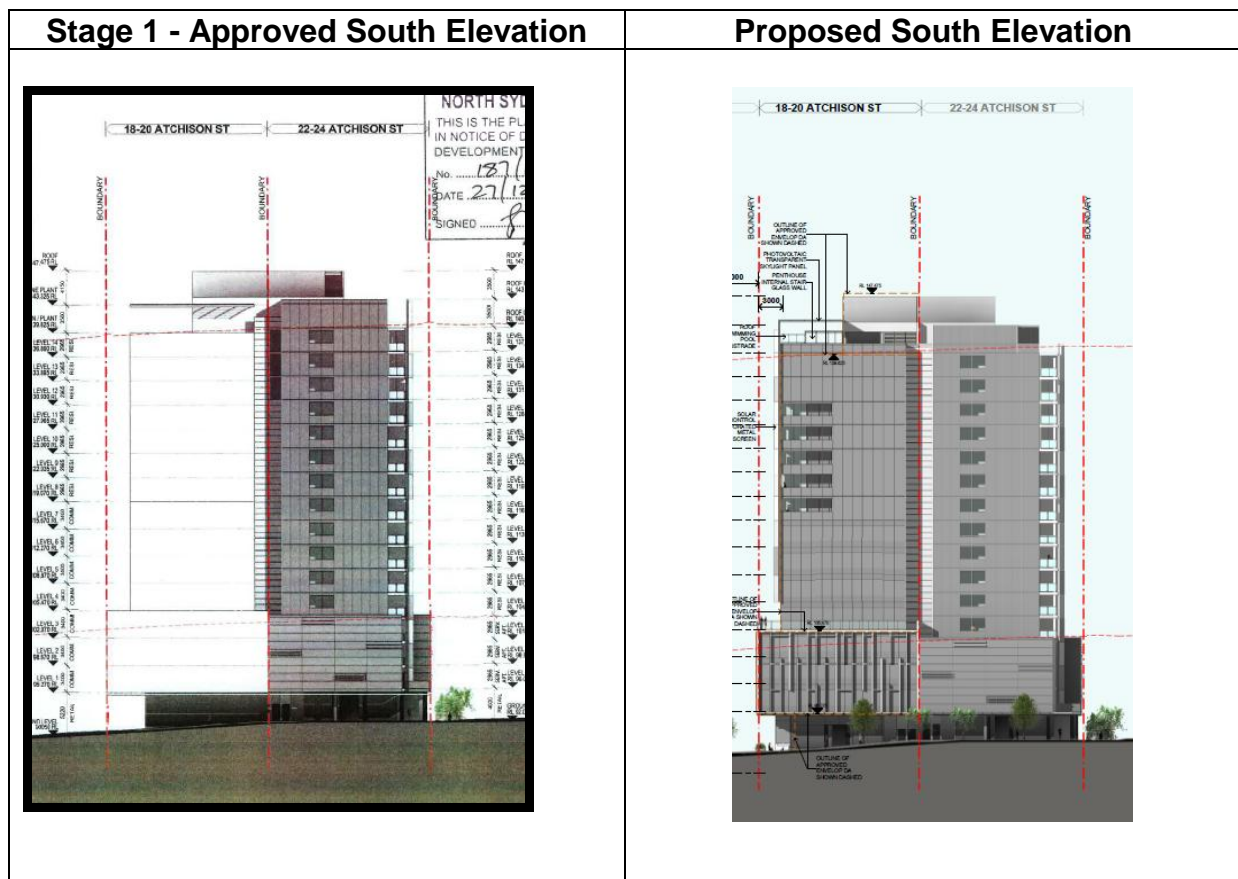
The proposed development will provide benefit in terms of increasing the range of living, employment, recreational and social opportunities within the St Leonards area. Impacts of the proposed development are considered to be reasonable given that the development is a generally expected outcome for the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

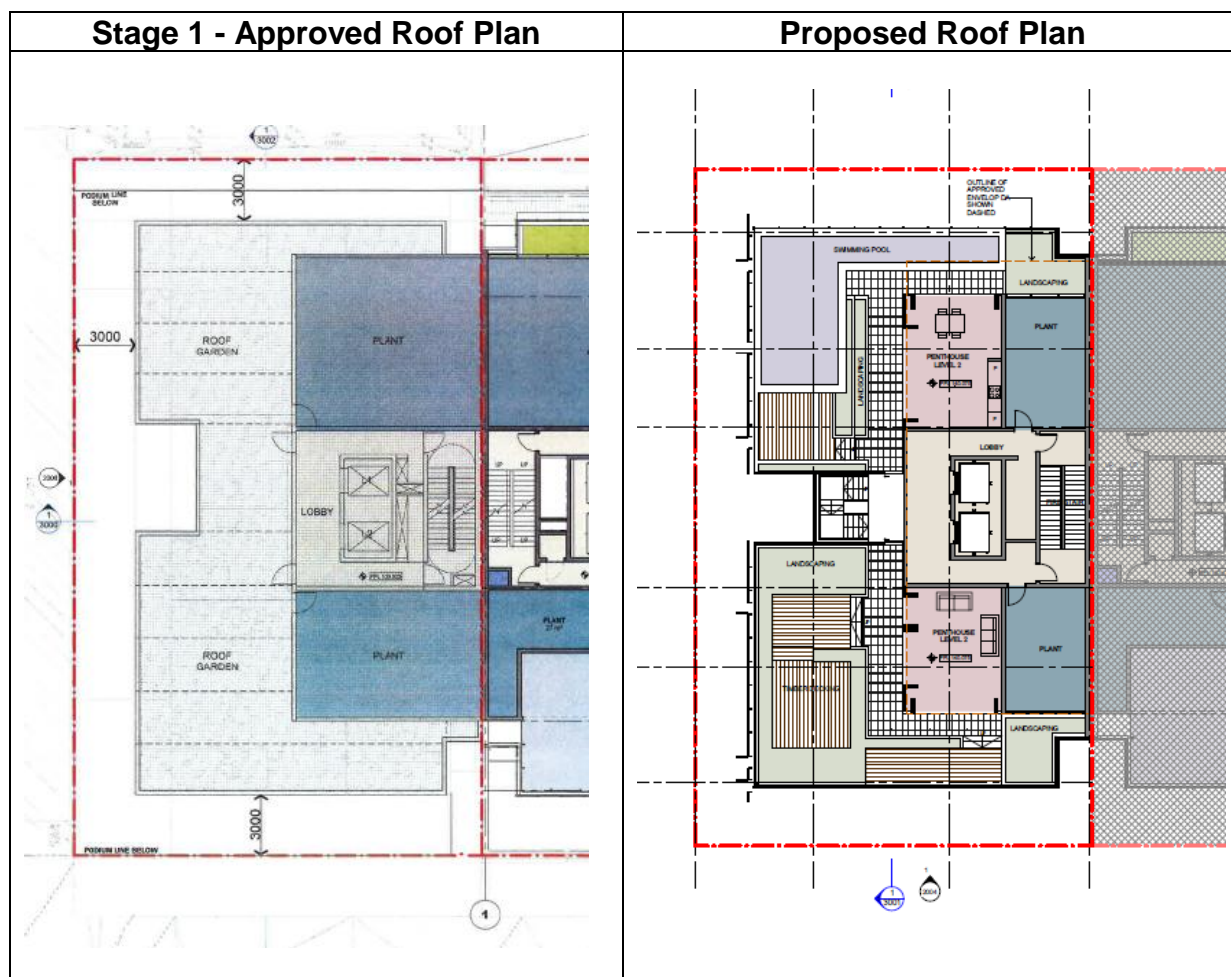
### 3. Building Height / Consistency with Stage 1 Envelope Approval

The Stage 1 Development Consent considered the proposed building height against the provision of NSLEP 2001 which imposes a building height of 49m. Since approval of the Stage 1 Development Consent, NSLEP2013 has come in to force. As set out within the compliance table, NSLEP2013 also imposes a 49m building height on the site. Importantly, at this time it was determined that the upper-most residential level, being Level 14, did not breach the 49m building height control by greater than 3m, in accordance with the LEP amendment No.53, and also newly gazetted LEP2013. Those structures having a building height of greater than 3m above the 49m building height control in the Stage 1 Envelope Concept plan included plant, communal roof terrace and ancillary development, with no residential floor space. This approach has been consistently applied to development within St Leonards.

The Stage 2 DA proposes the use of the roof level (Level 15) structures to form part of the private penthouse, with no communal facilities available to the building's occupants. In detail, part of the approved plant room is proposed to be used as residential living space, and a swimming pool and a terrace will replace the approved communal garden. Photovoltaic skylight panels are proposed over the roof structures. The compliance data and plan comparison are detailed below:

LEP Control	Approved under Stage 1 DA	Proposed under Stage 2	Complies with Stage 1 DA
49m	58.95m (lift over run)	58.73m (lift over run)	Yes
	No swimming pool proposed	53.33m (height of swimming pool balustrade)	No (2.25m increase)
	51.08m (height of roof terrace level)	51.33m (height of roof terrace level)	No (250mm increase)





Council advised the applicant that use of the rooftop structures as a residential level was not supported and also requested a Clause 4.6 request for variation was submitted having regard to the non-compliances. The applicant provided the following response:

***'We contend that the Stage 1 DA did not seek nor did the JRPP grant consent for the use of the rooftop as a communal common space. Therefore the proposal before Council is not inconsistent with the Stage 1 DA in this respect.'***

***The penthouse apartment and associated rooftop space is planned to be used by the land owner as a residence. The landowner will also occupy and run her business within the commercial office floors below. Because the residential apartments are not sought to be strata titled, the use of the rooftop space will be controlled by the owner.***

***In the absence of any Council policy control requiring roof tops to be available for 'active use' and in the absence of any requirement for such a use to be 'only for communal purposes', in our opinion the landowner is within her rights to seek approval for the roof top for exclusive use as sought in the proposal.***

***We remind Council that the proposal does make a contribution to other facilities in the development through the provision of a gymnasium on***

***ground and level 1 and the creation of a ground level open plaza which provides opportunities for residents and the broader community to socialise.'***

However, Council contends that the rooftop structures were approved as communal open space and were supported as such on this basis. The applicant outlined within the Stage 1 DA Concept Plan that this roof level was proposed as a communal open space and outlined within the submitted SEE as follows:

**6.8.4 Communal Open Space**

***Roof gardens are proposed on both 18-20 and 20-24 Atchison Street. These will provide high quality communal open space for residents of the building. The roof gardens will provide a mix of indoor and outdoor recreation spaces and the detailed design at No.22-24 Atchison Street includes the potential for an outdoor cinema facility.***

Further, the applicant's description of development contained within the SEE for the stage 1 concept approval describes the proposed residential use as being Levels 8-14 to exclude the common roof garden (located on Level 15) as:

**18-20 Atchison Street**

**Stage 1 concept approval for a building envelope comprising:**

- ***15 storey building with a maximum RL of 148m and 7 storeys of basement parking;***
- ***7,653sqm of total GFA with a Floor Space ratio of 11.1:1 comprising:***
  - ***Retail uses at ground floor level;***
  - ***Commercial uses at Level 1-7; and***
  - ***Residential uses at Level 8-14 and***
- ***Non-residential floorspace of 4,426sqm.***

It can be clearly seen that the rooftop structures were only proposed and subsequently approved as communal facilities and comprised only a roof garden. Importantly, the development application has been lodged as a Stage 2 DA and Section 83D of the Environmental Planning and Assessment Act relating to staged development applications and consents Clause (2) sets out that:

*(2) While any consent granted on the determination of a staged development application for a site remains in force, the determination of any further development application in respect of that site cannot be inconsistent with that consent.*

*(3) Subsection (2) does not prevent the modification in accordance with this Act of a consent granted on the determination of a staged development application.*

The proposed construction of Level 15 as a residential level is entirely **inconsistent with the development consent** of the Stage 1 Building Envelope Approval. In this regard, it is contended that the additional residential level could not be considered without the amendment of the Stage 1 Concept Approval, to comply with Section 83D(2).

Notwithstanding this, the applicant has submitted a Clause 4.6 variation request for consideration of those elements that exceed the building height limit.

Those elements that include the plant room and the upper level of Level 14 have been considered under the Stage 1 building envelope approval. Those new elements that were not approved as part of the Stage 1 Envelope Approval include the change of use of the plant room to residential use, the swimming pool, terrace as well as photovoltaic panels.

Importantly, in addition to the building height control, Clause 2C LEP 2013 sets out ***‘Despite subclause (2), development consent may be granted to development on land identified as ‘land in St Leonards’ on the Exceptions to Development Standards map if the height of a building (excluding plant rooms and other similar structures) will exceed the maximum height shown for the land on the Height of Buildings map by no more than 3 metres.’***

It is noted that Clause 8A LEP2013 imposes a sunset clause on this restriction until 11 March 2014. However, Council has recently prepared and supported a planning proposal that is awaiting a Gateway Determination in accordance with Section 56 of the EP&A Act seeking to delete Clause 8A and remove any time limitation on the application of the 3m building height restriction within this part of St Leonards.

Whilst the 3m building height breach restriction cannot presently be enforced, some consideration must be given to it as it represents Council’s strategic intent, and to the planning proposal that is currently with the Department.

The proposal is considered against the objectives of Clause 4.3 LEP2013 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 use of the rooftop for a residential level is located wholly above the 49m building height and fails to conform with the site’s topography. The planning proposal under consideration by the Department allows plant rooms, and similar structures to be considered above the height limit where they are ancillary however does not allow for any residential levels. The proposed use of this level for community purposes is not inconsistent with this planning proposal. However, the proposed use of Level 15 as a residential level is contrary to this objective.
- (b) To promote the retention and, if appropriate, sharing of existing views –** As set out within the DCP table, those new elements would not result in the material reduction of views from surrounding properties. Any loss of district, city, harbour views would be a generally expected outcome of the controls.
- (c) To maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development –** As set out within the DCP table, the proposed development does not result in the material reduction of solar access to Mitchell Plaza or other surrounding residential properties.
- (d) To maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings –** Those elements above the building

height control include the rear apartments wherein an adequate setback which has a primary outlook to the north and which is well above the adjacent properties, which have a maximum building height of 33m.

In addition, the plant room now proposed to be a habitable room, and the swimming pool and terrace are all above the building height limit. However, given that development to the north is below the height of these structures, that a dividing wall would provide privacy to the approved development at No.22 Atchison Street, privacy to these structures is considered to be reasonable. Given the much greater height that has been approved on the adjoining site at No.6-16 Atchison Street, the proposed rooftop is overlooked by this property. However in the context is unavoidable and no objection is raised in this regard.

- (e) **To ensure compatibility between development, particularly at zone boundaries** – The surrounding properties are zoned B4 Mixed Use and the proposed development continues to be consistent with surrounding development.
- (f) **To encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area** – The resultant density with residential development proposed to be located wholly above the 49m building height limit is not permitted by the controls and considered to be inequitable. Council consistently applies its building height control.

Approval of the use of the approved plant room to be converted to a residential level would set an undesirable precedent. During the Stage 1 DA process the applicant was requested to provide information as to why the plant room was required to be of the size proposed, and advised it was to ensure the plant room was sufficient given the uses within the building were not yet established.

The JRPP have supported rooftop structures above the building height limit such as on the site for a mixed use development at No.520 Miller Street, Cammeray wherein the Panel's reason for support stated *'The Panel thinks that the roof structures are useful community facilities and cannot be seen from the street'*. Approval of the use of the approved communal level would set an undesirable precedent for the change of use of approved community facilities to penthouse developments. This would also result in the undesirable loss of community facilities.

Approval of Level 15 as a residential level would set an undesirable precedent. It is noted that communal rooftop facilities have been approved on the adjoining building at No.22 Atchison Street. Approval of Level 15 as a residential level would be non-compliant with this approved mirror development and may impact on the usability and amenity of the adjoining communal space.

Accordingly, the use of Level 15 as a residential level being wholly above the 49m building height would result in an inappropriate density, contrary to Council's controls.



The Clause 4.6 Objection is not supported for the use of Level 15 as a residential level. The breach of the proposed residential level would be at least 5m, contrary to the 3m maximum breach currently being considered under the planning proposal with the Department. A condition is recommended to be imposed to require the use of Level 15 to continue to be a communal space. Subject to this condition, the breaches caused by the rooftop structures can be supported. It is noted that the use of any structure is an important consideration together with its built form.

Notwithstanding the above, should the Panel be minded to approve the additional level as a private residential penthouse, the applicant should be required to amend the Stage 1 DA in any case. An additional residential level not approved in the Stage 1 DA is considered to be **inconsistent with that consent** and is contrary to Section 83D(2). In line with Council's 3m building height restriction at the time, the additional level would not have been recommended for approval as part of a residential apartment should it have been proposed.

It is therefore recommended that a condition be imposed to require the rooftop rooms, terrace and swimming pool be allocated as communal space. Only through the imposition of this condition would the development application be able to be considered as consistent with the approved Stage 1 Concept Approval.

#### **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. 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.

#### **6. 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 raised no concerns with the development's compliance with SEPP65 compliance. 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, landscaping is proposed to be provided on the roof.

- **Principle 7: Amenity**

A total of 76% of apartments will receive 2 hours of solar access during midwinter which exceeds minimum SEPP65 requirement of 70%. 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. As set out within this report, the Stage 1 Building Envelope Approval detailed a communal space on the rooftop, however the detailed design now seeks consent to use Level 15 as an extension to the private penthouse. This is not supported as there is no appropriate substitute offered. Accordingly, a condition is recommended to be imposed to reinstate the use of this level as communal space.

- **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.

## **7. SEPP (Building Sustainability Index: BASIX) 2004**

A suitable BASIX Certificate has been submitted with the application.

## **8. 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.

## **COMPLIANCE WITH STAGE 1 BUILDING ENVELOPE**

The proposed buildings are considered to be generally consistent with the building

envelope approved in the Stage 1 DA **with the exception of the rooftop structures which have been discussed within the Building Height Section of this report.** Other non-compliances are outlined below:

- Ground floor western alignment – This elevation has been realigned however continues to provide an appropriate setback and space.
- Realignment of western setback on the residential levels to reduce the size of the western cut out – The proposal continues to provide a 3m side setback in accordance with DCP controls and this variation is considered to be minor and is acceptable.

These minor variations have been considered within the Planning Report as being generally acceptable when assessed against Council's controls and are supported on merit.

### **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. 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**

No submissions have been received in relation to the development application.

## **CONCLUSION**

The proposed development has been considered against all relevant plans and policies, as well as the approved Stage 1 DA. The proposal is considered to be acceptable, with the exception of the proposed quantum of car parking and the use of the Level 15 as a residential level. These issues are considered to be able to be addressed by conditions and are discussed further below.

The use and layout of Level 15 was approved as a communal area as part of the Stage 1 DA. The Stage 2 DA now proposes to use the level as a residential level which is not supported. This level was approved in concept to contain plant and a rooftop garden for communal use. The change of use to this level as a residential level would require the modification of the Stage 1 DA in any case, however would be unlikely to be supported given its exceedence with Building Height. A condition of consent is recommended to be imposed to require Level 15 be used as communal area consistent with the Stage 1 development consent.

The proposal also seeks approval for an additional 20 car parking spaces over and above council's maximum car parking DCP controls. Council consistently applies its car parking controls for new development and the proposed development's provision of a gross overprovision is not supported. A condition of consent is recommended to be imposed that the lower two levels of car parking be deleted to ensure compliance.

Subject to imposition of conditions including those mentioned above to address car parking non-compliances and the use of the rooftop structures, the development application is considered to be satisfactory and an anticipated outcome of the site envisaged by the relevant controls.

## **RECOMMENDATION**

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

- A. **THAT**, the Joint Regional Planning Panel, as the consent authority, grant consent to Development Application No. 93/14 for the construction of shop top housing at No.20 Atchison Street, St Leonards, subject to the attached conditions which include the following site specific conditions:-

#### **Car Parking**

- C1. Basement Levels 6 & 7 are not approved and shall be deleted. The Certifying Authority issuing the Construction Certificate must ensure that the building plans and specifications submitted by the applicant, referenced and issued with the Construction Certificate satisfy the requirements of this condition.

(Reason: To comply with parking provision contained within Section 10 NSDCP 2013 )

#### **Roof top Structures**

- C2. The rooftop Level 15 (labelled rooftop and garden) shall be allocated as communal area available for all residents.

The Certifying Authority issuing the Construction Certificate must ensure that the building plans and specifications submitted by the applicant, referenced and issued with the Construction Certificate satisfy the requirements of this condition.

(Reason: Non-compliance with Stage 1 DA and unacceptable exceedence of Council's Building Height Control)

#### **Use of commercial space**

- C3. The use of the commercial space as a gym, childcare centre and the like, is not approved under this Development Consent. Each use shall be subject to a new Development Application.

The Certifying Authority issuing the Construction Certificate must ensure that the building plans and specifications submitted by the applicant, referenced and issued with the Construction Certificate satisfy the requirements of this condition.

(Reason: To comply with the terms of this development consent and inadequate information submitted in relation to these uses)

**Land levels within Colonnade (Atchison Street)**

- C4. The paving levels within the Atchison Street colonnade shall generally align with the footpath and shall contain no obstructions.

The Certifying Authority issuing the Construction Certificate must ensure that the building plans and specifications submitted by the applicant, referenced and issued with the Construction Certificate satisfy the requirements of this condition.

(Reason: Streetscape, and insufficient information provided)

**Planting within Western setback**

- C5. The plantings within the western setback shall be deleted. The Certifying Authority issuing the Construction Certificate must ensure that the building plans and specifications submitted by the applicant, referenced and issued with the Construction Certificate satisfy the requirements of this condition.

(Reason: To improve the visual connection between the subject site and No.6-16 Atchison Street)

**Lift Access**

- C6. The lift and foyer security shall be configured and implemented as follows:

- 1) Access to the residential lobby and lift shall be secure and access only by residents.
- 2) Residents shall have access to the serviced apartment lobby and lift only between 6am and 8pm daily.

The Certifying Authority issuing the Construction Certificate must ensure that the building plans and specifications submitted by the applicant, referenced and issued with the Construction Certificate satisfy the requirements of this condition.

(Reason: Security)