

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

JRPP No	2014SYE067
DA Number	DA167/14
Local Government Area	North Sydney Council
Proposed Development	Construction of a new mixed use building
Street Address	7-19 Albany Street, St Leonards
Applicant/Owner	Austino St Leonards Pty Ltd
Number of Submissions	3
Regional Development Criteria (Schedule 4A of the Act)	CIV over \$20 million
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none">• Environmental Planning Instruments:<ul style="list-style-type: none">North Sydney LEP 2013SEPP55 – Remediation of LandSEPP65 – Design Quality of Residential Flat DevelopmentSREP (2005) – Sydney Harbour Catchment• Draft Environmental Planning Instruments: Nil• North Sydney Development Control Plan 2013• Voluntary Planning Agreement – Attached
List all documents submitted with this report for the panel's consideration	<ol style="list-style-type: none">1) Plans and Elevations2) Voluntary Planning Agreement
Recommendation	Approval
Report by	Lara Huckstepp, Executive Planner

Assessment Report and Recommendation Cover Sheet

DESCRIPTION OF PROPOSAL

The development application proposes demolition of existing commercial buildings and on-grade car parking and the construction of a part 6 / part 13 storey mixed use development. The proposal incorporates the following:

- Refreshment rooms at ground level;
- Commercial floor area at first floor level;
- Provision of 125 apartments over levels 11 levels with the following composition:
 - 19 x studio apartments
 - 39 x 1 bedroom apartments
 - 60 x 2 bedroom apartments
 - 7 x 3 bedroom apartments
- Common area at Level 6 over the western podium;
- Two levels of basement car parking providing 87 car parking spaces, bicycle parking and storage.
- A loading bay is provided on Pole Lane.



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 substation)
- 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 western portion.

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. Above the church are 8 levels of residential development. The northern elevation of this building contains living areas, bedrooms and balconies all having a primary orientation towards Pole Lane and across the subject site.

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



RELEVANT HISTORY

Prior to the LEP 2013 amendment No.4 coming in to force, the following Development Consents have been issued on the subject site:

Development Application DA162/12 – was approved by the Joint Regional Planning Panel on 3 December 2012 which allowed the construction of a 10 storey mixed use building at No. 11-19 Albany Street, St Leonards.

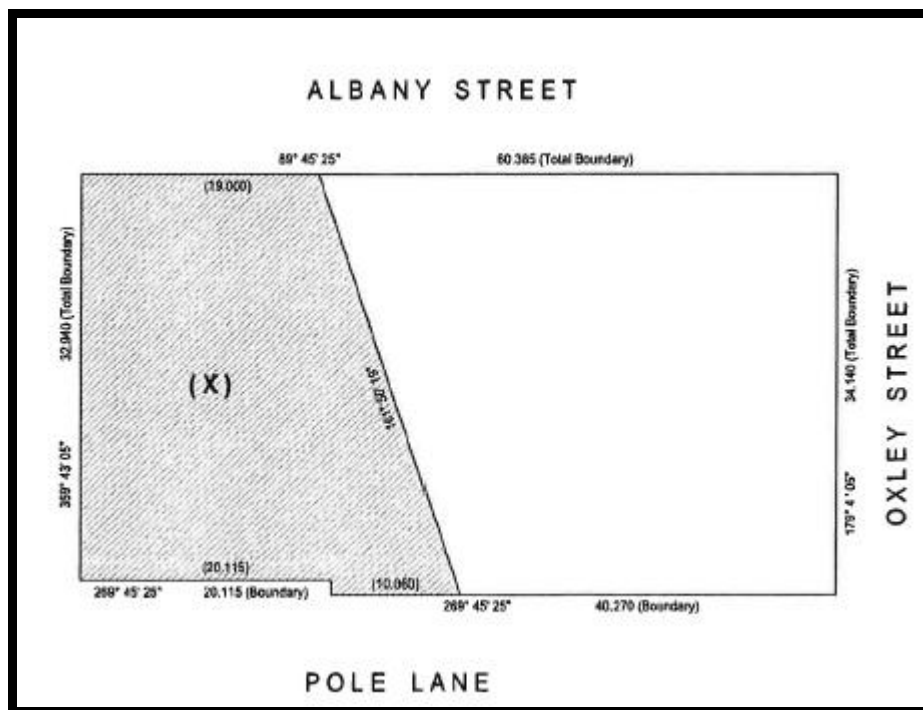
Development Application DA323/13 – was approved by the Joint Regional Planning Panel on 10 March 2014 which allowed the construction of a 10 storey mixed use building at No. 7-19 Albany Street, St Leonards.

Since approval of these development applications, LEP2013 Amendment No.4 was gazetted on 11 July 2014 which applies to the site at No.7-19 Albany Street, St Leonards and amends the controls relating to the site to:

- Increase the maximum building height from 26m to 40m;
- Introduce a maximum floor space ratio (FSR) control of 5.6:1.

In addition, the Planning Proposal was accompanied by a Voluntary Planning Agreement (VPA) which provides significant public benefit through:

- A monetary contribution to Council for the provision of new open space;
- The provision of a 3m building setback from the Oxley Street frontage to allow for a widened footpath and outdoor seating, and
- A restriction on building height below the current permitted height on the western portion of the site to ensure solar access to existing residential units on the southern side of Pole Lane. This restriction is detailed 'x' on the following plan:



The subject **Development Application DA167/14** was submitted to council on 29 May 2014 which seeks to provide a mixed use building having regard to the above LEP amendment. Following a detailed assessment, the applicant was requested to address a number of issues mostly relating to design as follows:

- Podium setback on the northern elevation needs to be increased in accordance with NSDCP 2013;
- The breaches to the LEP Building Height Control 40m should be minimised as far as possible;
- Confirmation the site complies with the minimum non-residential FSR of 1:1;
- Additional information was requested on overshadowing impacts;
- Comments submitted by the Design Excellence Panel to be addressed;
- Privacy to the communal area above the western podium to be improved; and
- Additional information including footpath levels and stormwater details to be submitted.

The applicant submitted amended plans on 15 October 2014 which include a number of amendments including an increase in the above-podium setback to the Albany Street frontage, reduced height of roof plant, and various other amendments that are considered within this report.

REFERRALS

Building

The applicant has submitted a BCA report prepared by Vic Lilli & Partners which provides a number of recommendations and the opinion that on satisfaction of the recommendations, the proposed building is capable of achieving compliance with the requirements of the BCA 2014 and relevant adopted standards without undue modification to the design or appearance of the building.

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

Engineering/Stormwater Drainage

Amended plans received on 27 October 2014 are considered to satisfactorily address outstanding issues relating to footpath levels, provision of on-site OSD and certification with disabled parking provisions. Council's Development Engineer raised no objection to the proposed development subject to imposition of conditions.

Engineering/Traffic

Council's Traffic Engineer has raised no objection to the proposed development. Conditions regarding traffic and parking will be imposed on the development.

Landscaping

The application proposes to retain existing street trees on the Albany and Oxley Street frontages. However, Council's Landscape Development Officer considers that the existing bottlebrush tree on the Oxley Street frontage (northern end) is not worthy of retention. A condition is recommended to be imposed to require the bottlebrush be removed, and replaced with 2 London Plane Trees. A tree bond is recommended to be imposed to protect all other existing street trees on the Albany and Oxley Street frontages. No objection is raised by Council's Landscape Development Officer to the removal of existing vegetation and trees on the applicant's site or to the proposed Landscaping Plan.

Design Excellence Panel

The Design Excellence Panel provided the following comments:

'The Panel commended the architect on the current design, noting that there has been a substantial improvement in the building configuration and amenity. The internal corridors on the residential floors would have excellent daylight and ventilation, and individual units would be of good standard and amenity. Further attention should be given to refinement of design of balconies to maximise their useability. Adjustable screens should be included to ensure that there is adequate privacy especially if

balustrading is clear glass, and protection from wind particularly on the corner balconies is critical.

The Panel noted that the double height awning in Oxley Street, despite having some design merit, would not provide adequate weather protection for pedestrians, and should be lowered. The provision of a verandah (within the limits of the site) instead of an awning to the Oxley Street elevation at first floor level was suggested as a possible alternative. This would provide additional amenity and flexibility in the use of the first floor commercial space and greater weather protection at ground level. As an alternative, given that the solid high level awning has merit in the overall façade composition, a lower recessed glazed awning could be provided in addition to the solid high level awning.

In relation to the ground floor planning, the Panel noted that the northern stairs and entry to the arcade (through site link) could be larger and possibly reconfigured to provide an improved visual connection from Pole Lane to Albany Street. This may require the planters to be repositioned and the northern stairs to be straightened. The Panel questioned the placement of a security shutter mid-arcade, and noted that it would be more appropriately placed closer to Pole Lane.

The Panel noted that the entry to the level 1 commercial area from Albany Street should be widened and made more generous, with greater at-grade activation. The inclusion of a second entrance off Oxley Street was also suggested as this would assist in the subdivision of this floor that may be judicious to allow for future tenancy churn. The Panel views the large first floor commercial area with its on-grade entrance as a positive feature.

Conclusion:

The Panel is generally supportive of the current proposal, subject to the above concerns being addressed. ‘

The applicant provided the following response:

‘We make the following comments with regard to Minutes from the Design Excellence Panel Meeting held on 1 July 2014.

*With regard to the **Panel’s comments**, we generally agree with the **1st paragraph** and the Panel’s positive and unanimous commendation of the new design in relation to the previous approval. All the positive aspects, as described by us with regard to outlook, SEPP 65 with regard to cross ventilation and orientation, relative to the benefits to the residential development on the other side of Pole Lane and the podium top communal area, were all noted and endorsed by the Panel.*

We are unsure of the comment “Further attention should be given to refinement of design of balconies to maximize their useability.” The podium level apartments are all winter gardens and the remainder of the development benefits from the height above the street and has little interface with other properties. We note there was absolutely no discussion about the apartment layouts and we take this as a commendable recommendation by the

Panel. In fact, the only discussion of minor consequence that took place was with regard to the ground floor and first floor and the Panel offered minor improvements.

*With regard to **paragraph 2**, the double height awning to Oxley Street was, in its context as explained by us, an elegant response to the particular location as a gateway site and the slope up Albany Street. The Panel, at the time, had some concern about adequate weather protection for pedestrians; an awning cantilever of 5.5ms and 4.5ms, substantially greater than the standard 1.5ms is proposed. Also the impact of the retained plane trees in Albany Street is quite substantial. This impact was also considered in the design of the awning and will provide further screening. Similar planting proposals are available in Oxley Street. We in fact believe this will be quite a protected area.*

***Paragraph 3** with regard to the arcade, we agree to this positive commentary and the application will benefit by taking on board the Panel Member's comments in particular.*

*With regard to the **final paragraph** this is not considered, in our recollection of the meeting, to be an accurate description. One Panel Member was a lone voice in the inclusion of a second entrance off Oxley Street. We explained to the Panel that rarely in St Leonards is a first floor opportunity efficiently activated as in this circumstance, with a shop front from Albany Street (using the rise in the footpath). Normally this space would only be accessed by a lift. There seemed to be no understanding of the new concept of open markets, where a large footprint such as this can be used in an open plan for wine merchant, delicatessen, butcher, greengrocer, coffee shop, book shop etc. all as one space. The space may also be used for a large footprint restaurant or a series of retail outlets, with a central arcade from the Albany Street frontage. It was clear to us that no-one else on the Panel agreed with the views of the lone Panel Member and we do not consider it reflects the tone of the meeting.'*

Planning Comment: The applicant has amended the ground floor northern stairs and entry to the through site link. The issues of the Oxley Street awning and privacy are dealt with in this planning report.

Road and Maritime Services

The application was referred to the RMS for comment in accordance with Schedule 3 of the State Environmental Planning Policy (Infrastructure) 2007. The RMS raise no objection and recommends imposition of the following condition:

'The layout of the proposed car parking areas associated with the subject development (including driveways, grades, turn paths, sight distance requirements, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS2890.1-2004 and AS2890.2-2002 for heavy vehicle usage.'

Ausgrid

The application was referred to Ausgrid who provided the following submission:

Electrical supply arrangements

The supply arrangements to the development will be confirmed upon receipt of a formal Connection Application from the developer. It is likely that the establishment of a substation on the property will be required in order to provide supply to the development. The DA drawings do not appear to allocate any space within the development for a substation. This may need to be addressed.

Before any excavation or demolition works on or near the existing building line, the developer must locate and identify all high voltage and low voltage cables in the surrounding ground.

Due to the high number of electrical cables in Albany Street, any reduction in surface cover in the street must be discussed with Ausgrid prior to works commencing.

The requirements for substation sites can be found in Ausgrid's Network Standards NS141 and NS113. In particular, I would draw attention to the smoke and fire segregation requirements in these standards. The developer should ensure that adequate separation is achieved from the substation louvers / doors and any building ventilation inlets / outlets. Additionally, consideration should be given to the clearance from the substation of any proposed glass panelling.

General

The issue of this notification is subject to the establishment of all necessary easements pursuant to the provisions of Section 88B of the Conveyancing Act 1919, as amended, and, in the case of Community Land Development, the lodgement of a suitable Management Statement and corresponding working plan in accordance with Section 36 of the Community Land Development Act 1989. It is also subject to Ausgrid's "Requirements for Electricity Supply to Developments" as detailed in publication ES10, available on our website.

Planning Comment: The applicant's amended plans provide a substation within the Pole Lane elevation.

SUBMISSIONS

Adjoining properties and all precincts were notified of the proposed development between 13-27 June 2014. A notice was placed in the Mosman Daily on 12 June 2013. A total of three (3) submissions were received with the main issues summarised below:-

Name & Address of Submitter	Basis of Submissions
David Li 1103/599 Pacific Hwy St Leonards	<ul style="list-style-type: none">• The proposed building will block sunlight to Albany Street in the mornings.• The increase in height from 26-40m will reduce our district views.• The height is unfair to those that bought a property thinking surrounding development would be built to the plan limit of 26m.
Andrew & Aletia Deana 510/34 Oxley	<ul style="list-style-type: none">• I live on the 10th floor in the north west corner of the western tower of our building.• The increase in height will overshadow our apartment.

Street, St Leonards	
Katherine Zandi 39/1-5 Albany Street, St Leonards	<ul style="list-style-type: none"> • The proposal may overshadow my balcony and internal living area. • The proposal will eliminate my views. • The proposal will create a privacy issue. I bought my apartment on the basis that the adjoining building would have a building height limit of 26m. The height will cause the building to tower over and look into my apartment. • The additional cars in Pole Lane will have an unacceptable impact upon traffic. • The additional residents will increase on-street car parking demand.

Amended Plans

Amended plans were submitted to Council on 15 October 2014 and propose an increased above-podium setback, reduced height of the roof plant, and various other amendments that are not considered to result in any additional adverse impacts to surrounding properties and in accordance with NSDCP2013, are not required to be re-notified to surrounding properties.

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 – 2036.5 m ²	Proposed	Control	Complies
Clause 4.3 – Heights of Building	41.57m (parapet) 42.8m (lift over run)	40m	NO
Clause 4.4 – Floor Space Ratio	5.6:1	5.6:1 (maximum)	YES
Clause 4.4a – Non residential FSR	0.937:1	1:1 (minimum)	NO

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 2- Commercial and Mixed Use Development		
	Complies	Comments
2.2 Function		
Diversity of Activities	Yes	The design of the non-residential ground floor uses is a high quality design outcome, including an arcade which allows for the provision of a variety of tenancy floor plates. The design appropriately activates the northern and eastern frontages.

Maximise Use of Public Transport	Yes	Car parking provision will generally meet the provisions of Section 10 DCP2013. The site is well-located with regards to public transport.
Mixed Residential Population	Yes Yes (condition)	<p>The proposed dwelling mix provides a reasonable level of compliance with the P4 Section 2.2.3 as follows:</p> <ul style="list-style-type: none"> • Studios – 10-20% required – 15% proposed • 1 Bed – 25-35% required – 31% proposed • 2 Bed – 35-45% required – 48% proposed • 3 bed – 10-20% required – 6% proposed <p>It is noted that the number of large apartments (2 or more bedrooms) significantly exceeds the minimum requirement, and is considered acceptable.</p> <p>A condition will be imposed to require a minimum of 18 apartments are provided as adaptable dwellings.</p>
2.3 Environmental Criteria		
Clean Air	Yes	The provision of car parking will generally comply with Section 10 DCP2013.
Noise	Yes (condition)	Appropriate conditions are recommended for imposition.
Wind Speed	Yes (condition)	A condition of consent is recommended for imposition to require the applicant submit a wind report to ensure pedestrian comfort is not adversely affected by the proposed development.
Reflectivity	Yes (condition)	A condition of consent is recommended for imposition to ensure any reflectivity of building materials is minimised.
Artificial Illumination	Yes (condition)	A condition is recommended to restrict the use and lighting of the common terrace after 11pm.
Awnings	Yes	Awnings are proposed over the adjacent pedestrian footpaths to north, east and south and are considered acceptable.
Solar Access	Yes	<p>At least 70% of apartments within the subject building will be provided with 2 hours of solar access during the midwinter solstice.</p> <p>The amount of south-facing apartments is considered to have been adequately limited to 17% which is considered to be reasonable in the context of the site.</p> <p>Refer to the discussion following this table for consideration of impacts to surrounding properties and the locality.</p>
Views	Yes	Refer to discussion following this table.
Acoustic Privacy	Yes (condition)	The design and layout result in appropriate acoustic separation between dwellings and uses. Conditions of consent will be imposed to ensure noise from plant is designed and operates within acceptable levels.
Visual Privacy	Yes	North, East and West Facades - The RFDC requires an 18m separation for a building up to 25m in height. Buildings to the immediate east, north and west each have a maximum LEP building height and built height of 26m or less. The separation of both the tower and podium level will provide a setback of at least 18m to

		<p>these buildings in accordance with RFDC guidelines.</p> <p>South Façade - The RFDC requires a 12m separation for a building up to 12m. A separation of approximately 11m is provided to No.34 Oxley Street. This separation on balance, is considered acceptable given that a greater portion of the setback is provided on the subject site compared to the adjoining property.</p> <p>In addition, properties located below the podium within No.34 Oxley Street have privacy screens across their frontage. All proposed south-facing balconies and bedroom windows on Level 2, 3 and 5 shall be provided with sliding privacy screens. Balconies are also proposed to be provided with solid balustrading to improve privacy.</p> <p>Above podium Levels 6, 7, 8 and 9 provide minimal windows with dwellings oriented to the east and west.</p> <p>Level 10 and above is generally above the building height of No.34 Oxley Street. Direct overlooking would generally occur to the common rooftop area, which by its nature is not a material impact. Some down-viewing to lower level apartments may occur and is considered unavoidable.</p> <p>Common Terrace above western podium – Privacy screening has been provided to the eastern lightwell within No.34 Oxley Street and setbacks are acceptable.</p>
2.4 Quality built form		
Context	Yes	The proposed development is considered to be an appropriate response to the context of the site having regard to the recent planning proposal.
Site Consolidation	Yes	The site area allows for a high quality design and adequate commercial floor plates.
Setback – Front	Yes (merit)	<p>The proposed zero setback below podium complies with DCP controls.</p> <p>A 3m podium is required to be provided to the Albany Street frontage. The applicant proposes a weighted average approach above podium setback with the eastern tower end providing a 1m setback and the western tower end providing a 3m setback. A cut out between the two elements proposes a 6m setback. Also, one third of this frontage has no building structure above the podium, effectively representing a further setback.</p> <p>When considered in totality with the building design and context, the development is considered to achieve an appropriate weighted average, satisfying the objectives of the DCP in that:</p> <ul style="list-style-type: none"> • The building design enables a reduction in

		<p>visual scale through its articulation and materials having regard to its context;</p> <ul style="list-style-type: none"> The design results in adequate ventilation, solar access, privacy, views and the like. <p>It is also noted that No.1-5 Albany Street provides no setback above the podium at the western building end which responded to the non-rectangular slope of the site at the corner of Albany Street and Clarke Lane.</p>
Setback – Side	Yes	The whole building has been set back 3m to Oxley Street to comply with DCP requirements. A further 1m setback above the podium is provided, which is considered acceptable on the basis of the 3m building setback that has been provided.
Setback – Rear	Yes	The 1.5m building setback and a 1.5m above podium setback has also been provided in accordance with DCP provisions.
Podiums	Yes (merit)	<p>The DCP sets a 13m (4 storey) podium. Due to the sloping topography, the height of the podium varies between 13 – 16m. However, the height at the western end generally matches the height of the podium at No.1-5 Albany Street, and on this basis is considered to comply with Section 2.4.4 P2 which requires <i>‘Podiums should match the height and setbacks of adjacent buildings or the average of the heights of the adjacent podiums having regard to their existing nature and / or their redevelopment potential’</i> The carrying through of the podium across the Albany and Oxley Street facades is considered acceptable in this instance given that the building will be set back further than No.34 Oxley Street and No.48 Albany Street. The matter is one of design and is considered to be acceptable.</p> <p>The DCP sets a 10m podium to Pole Lane wherein the proposed development carries through the podium from the Oxley Street façade, having a podium of between 13-16m. However as above, the façade is mostly set back a whole of building 3m, therefore the podium becomes one of design rather than built form, which is considered to be acceptable.</p> <p>Despite the non-compliances, the proposed development is considered to satisfy the objectives in the DCP in that:</p> <ul style="list-style-type: none"> The design will appropriately reinforce the human scale in the streetscape; The Laneway design is considered to provide a safe and comfortable pedestrian walkway. <p>Overall, the yield is generally consistent with the anticipated outcome of full compliance with all relevant setback controls.</p>
Building Design	Yes (merit)	The floor to ceiling height at the ground floor level ranges between 3.1m and 4.2m, where DCP controls

		<p>require a minimum of 3.3m. The floor to ceiling height of the first floor level is 3m where DCP controls require a minimum of 3.3m. On balance, the proposed retail and commercial space is well designed, and the ground level arcade is considered to be a design benefit. The space is considered to satisfy the DCP objectives in accordance with Section 2.4.5 P2 in that:</p> <ul style="list-style-type: none"> The non-residential commercial space is capable of receiving satisfactory natural daylight and ventilation, benefiting from the arcade frontages at ground level, and a well designed first floor space.
Skyline	Yes	The building is considered to have an acceptable skyline appearance. Proposed materials to surround the rooftop plant are acceptable.
Junction and Termination of Streets	Yes	The corner site is appropriately emphasized in the context. The building has been set back 3m from Oxley Street negating the need for an additional splay.
Balconies - Apartments	Yes	All apartments are provided with a balcony that is suitably designed and provides adequate amenity.
Through Site Pedestrian Links	Yes	There is no requirement to provide a through site pedestrian link however the proposed arcade will provide pedestrian linkage between Albany Street and Pole Lane, which is supported.
Streetscape	Yes (merit)	The design of the building with the through site arcade results in the ground floor levels being below street level for a portion of the Albany Street frontage, accessed via a ramp or stairs. On balance, this is considered to be an acceptable design solution. The Design Excellence Panel supported this component.
Entrances and Exits	Yes	The entry to the dwellings and commercial premises are separate and well defined.
Nighttime appearance	Yes	The building will have an acceptable night time appearance.
Public Spaces and facilities	Yes	The proposed development will not detrimentally affect the amenity of the locality and is considered to be contextually appropriate having regard to the planning controls to which it relates.
2.5 Quality Urban Environment		
Accessibility	Yes	Lifts and level access are provided to all dwellings and non-residential tenancies. A condition of consent will be imposed to require all relevant BCA provisions.
Safety and Security	Yes	There are no known safety and security concerns arising from the proposed development.
Illumination	Yes (condition)	A condition is recommended to ensure lighting is provided in accordance with all relevant standards.
High Quality Residential Accommodation	No (merit)	Proposed studio, 1 bedroom and 3 bedroom apartments all provide a complying apartment size. Of the proposed 60 two bedroom apartments, 13 of these have an area below 70sqm (recommended by the RFDC) of 63sqm. On balance, these apartments have a high level of amenity, with each bedroom being served by a window

		with natural light and ventilation. The site is also constrained by its generally irregular shaped envelope which was approved under the planning proposal to maximise solar access to the properties to the south. On this basis, any requirement for deletion of a bedroom to meet numeric requirements in this instance, is not considered to be reasonable. 90% of apartments meet the minimum requirements and is considered acceptable in this regard.
	Yes	At least 70% of apartments will receive solar access for at least 2 hours between 9-3pm during the midwinter solstice.
	Yes	Primary corridors will have a width of 2m.
	Yes	No more than 10 dwellings are served by a single lift core.
	Yes	Apartments will have a minimum of 4m.
	No (merit)	A number of apartments have a depth greater than 10m, however the apartment layout for all apartments is considered to provide a reasonable level of amenity.
	Yes	70% of apartments will be provided with cross ventilation which complies with minimum RFDC requirements of 60%.
Lightwells	Yes	Proposed cut outs and light wells are considered to be well designed.
Private Open Space	Yes	All apartments are provided with a balcony. Of the 125 apartments, the size of all balconies exceeds 8sqm with the exception of 16 apartments which have 7sqm. Of these apartments having an undersized balcony, each apartment will exceed the minimum apartment size. On this basis, the non-compliance is supported.
Vehicular Access	Yes	The proposed vehicular access to the site is supported by Council's Development Engineer.
Car Parking	Yes	<p>The DCP allows a maximum of 96 residential car parking spaces. The application proposes 87 car parking spaces. Council's controls are a maximum, and in the context of proximity to public transport, the level of residential car parking is supported.</p> <p>The DCP allows a maximum of 18 non-residential car parking spaces. The application proposes to provide 15 car parking spaces which is considered acceptable. It is noted that of these spaces, two are proposed as car share spaces which is supported.</p> <p>The DCP allows a maximum of 9 motor bike car parking spaces and 9 are provided in accordance with this control.</p>

		A loading bay is proposed on Pole Lane in accordance with the provisions of Section 10 DCP2013. Conditions of consent will be imposed to ensure bicycle parking is adequate, as well as requiring a space capable of being used as a car wash bay to be provided.
Garbage Storage	Yes	Adequate garbage storage provision is provided.
Site Facilities	Yes	Adequate storage is provided for each apartment.
2.6 Efficient Use of Resources		
Energy Efficiency	Yes	A BASIX Certificate has been submitted.
Stormwater Management	Yes	The development proposes to provide a rainwater tank and OSD and will satisfy DCP provisions in this regard.
Green Roofs	Yes	A green roof is provided above the western podium which provides landscaping and open space.

Additional Notes: Solar Access to 34 Oxley Street, St Leonards

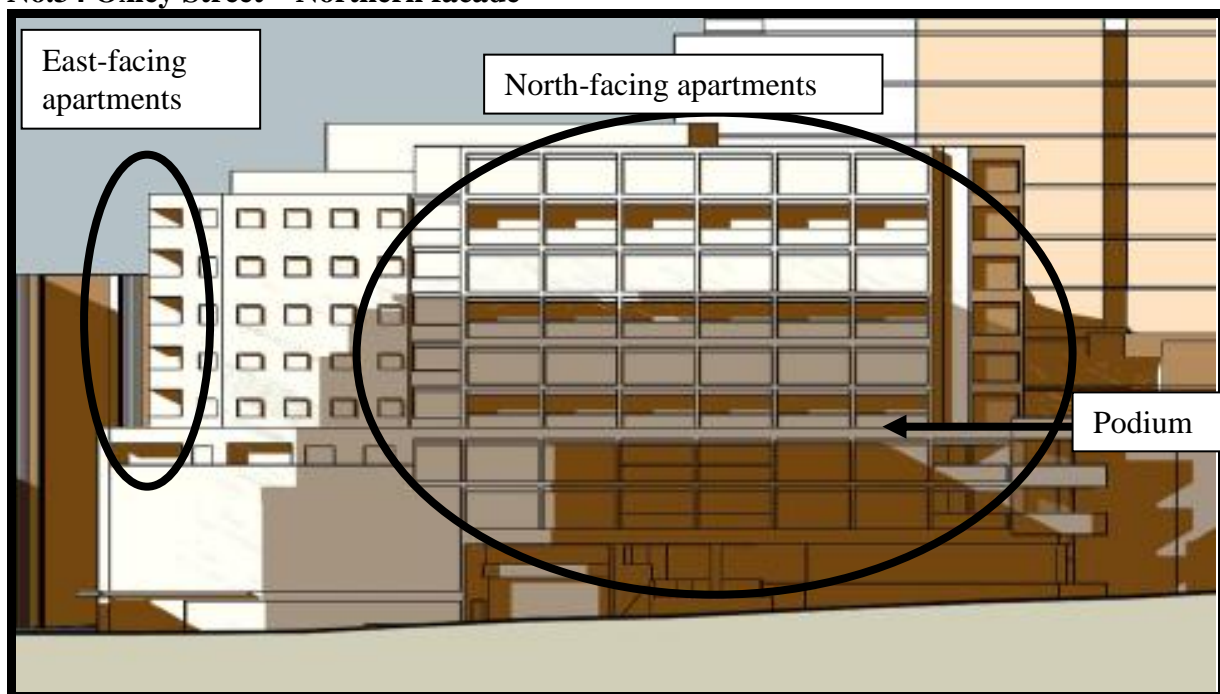
The proposed development is located to the north of an existing mixed use building at No.34 Oxley Street which will be impacted by the proposed development. The north-facing facade can be seen in the photograph below:-

North-facing facade of 34 Oxley Street



The apartment building comprises 29 apartments having their primary outlook to the north across the subject site, with 18 apartments located above the podium. A further 6 apartments have their outlook to the east, however these apartments have a number of kitchen and bedroom windows along this northern elevation.

No.34 Oxley Street – Northern facade



North Facing Apartments below podium – A total of 11 single level apartments are located below the podium level over Levels 1 & 2. These apartments will be overshadowed such that they receive no direct sunlight between 9am – 3pm during the midwinter solstice.

It is noted that all these apartments will receive 2 hours of sunlight between 9am – 3pm during the equinox.

North Facing Apartments above podium – A total of 18 north-facing apartments are located above the podium level. Of these apartments 13 will receive 2 hours of sunlight between 9am – 3pm during the midwinter solstice. Of the remaining 5 apartments during midwinter between 9am – 3pm:

- 2 apartments will receive 1 hour
- 1 apartment will receive 1 ½ hours
- 2 apartments will receive 1 ¾ hours.

It is noted that all apartments which fail to receive 2 hours during the midwinter solstice, each receive 2 hours of sunlight between 9am – 3pm during the equinox.

East-facing Apartments –The proposal will over-shadow north-facing bedroom and kitchen windows serving these apartments during the midwinter solstice. However, balconies and adjacent living room windows to all 6 east-facing apartments will receive 2 hours of sunlight between 9am – 11am during the midwinter solstice, complying with DCP controls.

Conclusion for impacts to 34 Oxley Street – The apartments within No.34 Oxley Street presently receive solar access to their northern facades over the existing generally under-developed subject site, considered to be essentially borrowed amenity. The proposed development has been designed to maximise solar access to these apartments, and on balance, the level of solar access received by the proposed development is considered to be acceptable. The proposed impacts are an expected outcome of the site dictated by the planning controls and is supported in this regard.

Additional Notes: Solar Access to Hume Park

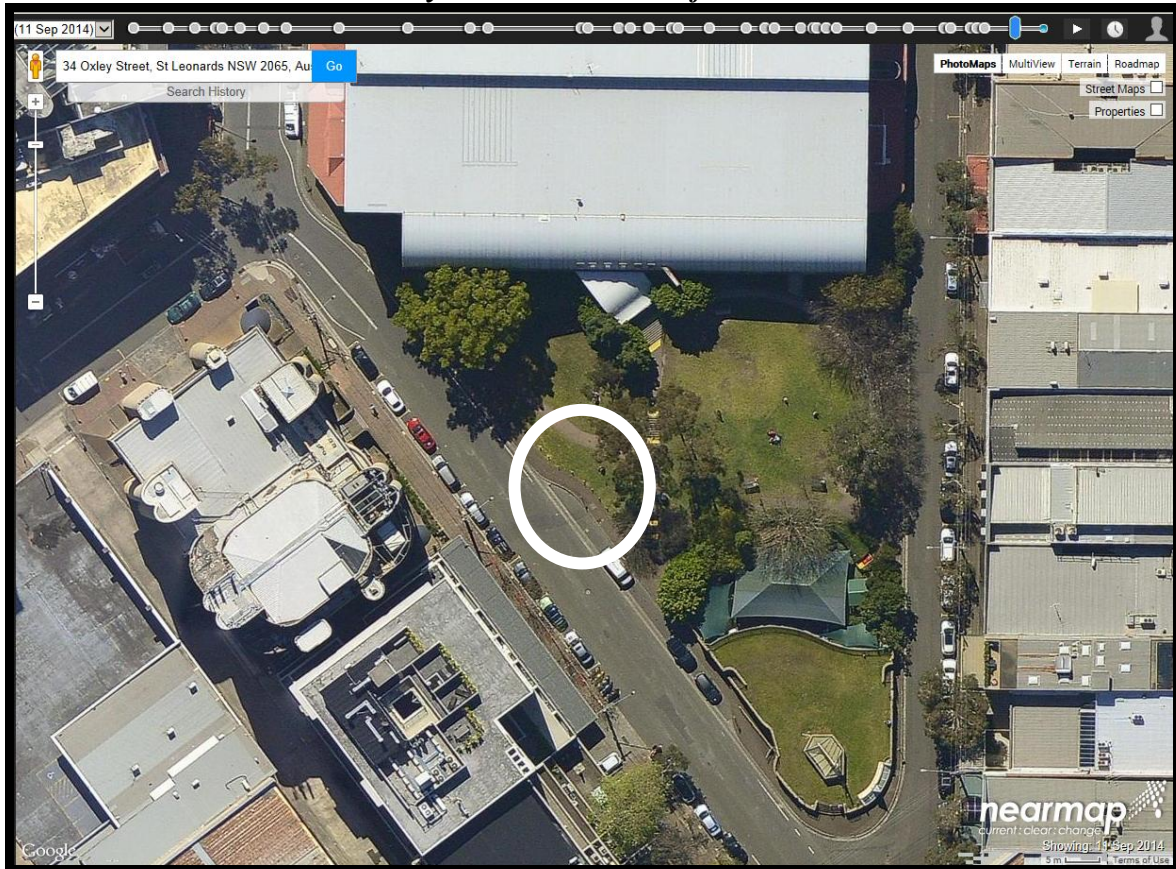
DCP Section 2.3.7 P4 requires that *‘New development should not overshadow existing or proposed public open spaces located outside of the North Sydney Centre between 11.30am and 2.30pm’*.

The submitted shadow diagrams detail that the proposed building results in a minor increase in overshadowing to the road reserve / grass area adjacent to the footpath within Hume Park between 2pm and 3pm. The overshadowing does not occur within the primary useable area of the park, and infills generally an existing slot located between existing overshadowed areas. Longer term plans will see the park form part of a link to the east to Willoughby Road and this will address this minor loss of solar access.

Proposed additional shadow on Hume Park shown in green at 3pm midwinter



Approximate location of proposed additional shadow on Hume Park at 3pm midwinter to demonstrate its context in totality to the remainder of the Park



On balance, the overshadowing is considered to be minor, and given the location of the overshadowing being adjacent to the roadway, is not considered to reduce the useability or material provision of solar access to the space and will comply with the intent of Objective O1 Section 2.3.7 which requires that:

- To ensure that solar access is maintained to Special Areas, open spaces and publicly accessible outdoor places.

Additional Notes: Views

Views to the North and East

Existing district views are enjoyed to the north from properties located within No.34 Oxley Street. The height of the tower element will result in most north-facing dwellings losing their existing district outlook. The photo below indicatively demonstrate the existing outlook enjoyed from dwellings within this building:

Looking from an upper level apartment within No.34 Oxley Street, St Leonards



Also, the dwellings located on the upper levels of No.1-5 Albany Street currently enjoy a district view to the east across the subject site which would mostly be removed by the proposed development. The photo below indicatively demonstrates the existing outlook enjoyed from these apartment buildings:

Looking from upper level east-facing terrace at No.1-5 Albany Street, St Leonards



A number of other surrounding buildings including the mixed use building currently under construction at No.545 Pacific Highway would likely also have their district views removed.

The loss of this outlook / view in this instance is not considered to be a material impact and whilst the loss is clearly undesirable for the occupants of the affected dwellings, is considered acceptable on planning grounds given that:

- The view loss is caused by elements of the building that comply with LEP controls;
- A reasonable level of outlook is maintained from each of these surrounding buildings having regard to the density of the locality.

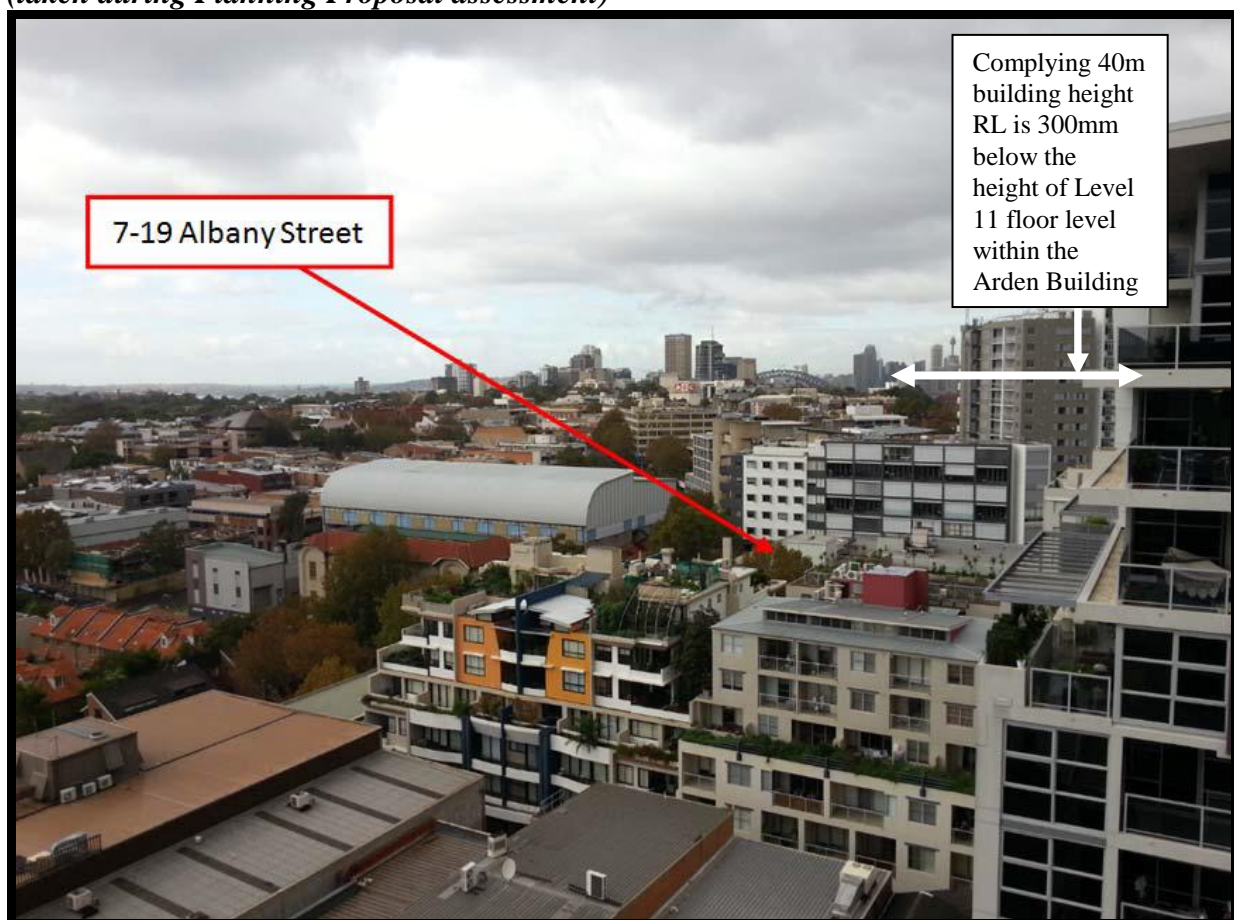
Views to the South

Existing district, city, harbour and harbour bridge views are enjoyed across the subject site from a number of high level apartments in buildings located to the north of the subject site. The height of the tower element will result in the removal of these views from these properties. In particular:

- Views across the site from No.599 Pacific Highway (The Abode Building) to the city skyline, harbour, and district will be removed;
- Views across the site from No.13-19 Atchison Street (The Nexus Building) to the city skyline, harbour, harbour bridge and district outlook will be removed;
- View across the site from No. 40-48 Atchison Street (The Arden Building) to the city skyline, harbour, harbour bridge and district outlook will be removed;
- Various other buildings, although many other buildings to the north of the subject site have a lower building height, and outlook is in any case already removed by existing buildings such as No.34 Oxley Street (The Precision Building).

An indicative view taken from the upper level of an apartment within No.40-48 Atchison Street during the assessment of the planning proposal is seen below to demonstrate the outlook presently enjoyed across the site by a number of properties:

Photo taken from upper level apartment within No.40-48 Atchison Street looking south-east (taken during Planning Proposal assessment)



The LEP building height limit for above-mentioned buildings at the Nexus, Arden and the Abode buildings is 40m. (Note: it is noted that the Abode has been constructed at 60m). As such, with comparable LEP building heights to the height that is now applicable to the subject site, retention of views, particularly distant views to the harbour, harbour bridge and city being over 3km away, is considered to be an unrealistic expectation to retain in the circumstances.

The view impacts have been considered at the Planning Proposal stage whereby a 40m LEP building height was considered to be reasonable and subsequently imposed on the site. The proposal represents a generally acceptable level of compliance with the building height limit, with a building height breach at the eastern building end of approximately 1.6m serving the residential level, and the height exceedance of the plant at 2.4m. Given the generally consistent height of buildings (with the exception of the Abode Building), the views are generally removed by those components that comply with the 40m height limit. Any remaining view toward the city of structures above the 40m building height is considered to be negligible, and this horizon strip view would be unlikely to be easily read over the top of the building. The quality of the view is substantially reduced by complying building elements.

With regards to views from the Abode building, these views from apartments located within the western tower would be more affected. However the impacts are those generally anticipated from the LEP 40m height limit. The rooftop structures exceedance of the building height are not considered to result in a material impact, with the majority of this view being impacted by complying building elements.

There is likely to be other views from surrounding and more distant buildings that are removed by the proposed development. However, it is considered that these impacts have generally been considered through the planning proposal process, and the resultant impacts are generally the expected outcome of development having regard to the controls on the site.

Section 2.3.8 P5 DCP2013 sets out that where a proposal is likely to adversely affect views from public or private land, Council will give consideration to the Land and Environment Court's Planning Principle for view sharing as follows:

- 1) ***Assessment of views to be affected*** – As described above, the views to be affected include all parts of dwellings within the surrounding mixed use developments and comprise many primary outlooks. The views to be affected in many cases are highly valued district, city, and in some cases harbour bridge views.
- 2) ***Consider what part of the property the views are obtained*** – As described above, in many cases the views comprise a primary outlook for many dwellings.
- 3) ***Assess the extent of impact*** – As described above, the extent of the impact for many dwellings will range from being negligible to severe, with a number of dwellings having their primary outlooks removed.
- 4) ***Assess the reasonableness of the proposal that is causing the impact:*** It is the reasonableness of the proposal that must be considered in this case, and the proposal is considered to be reasonable for the following reasons:
 - The impacts described above mostly result from those elements of the building that comply with the LEP building height control and DCP controls.
 - In many cases, the existing outlook is considered to be a borrowed outlook.
 - The proposed development is generally an expected outcome on the site dictated by the relevant planning controls.
 - Despite the loss of views resulting to many properties, the design of the development being a tower element and lower podium, allows slot views for

outlook for many surrounding properties. Whilst a loss distant views results, the proposal has been carefully designed to ensure immediate outlook (ie linked with privacy) to surrounding properties is reasonable in the circumstances.

- A similar loss of views may occur in the future should development located further south on the Pacific Highway including within North Sydney be uptaken to their LEP building heights, or pursue building heights outlined within the Planning Study.

In conclusion, the proposed development is considered to comply with the provisions and objectives of Section 2.3.8 NSDCP 2013 and is considered to result in a reasonable impact with regards to view loss in the context of the density of the mixed use zoning, and applicable building heights.

NORTH SYDNEY LEP 2013

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.

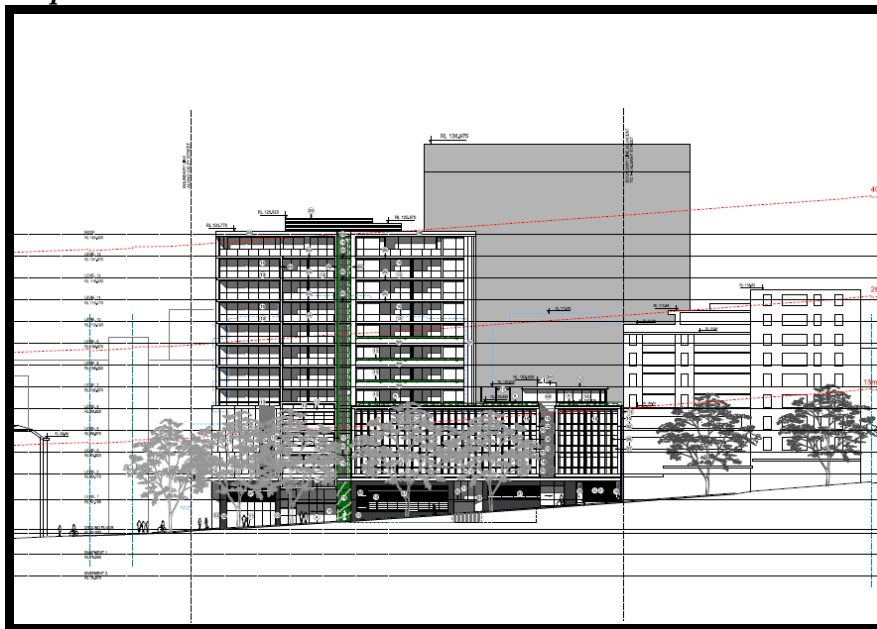
3. Building Height

Clause 4.3 NSLEP 2013 sets a maximum building height on the site of 40m. The proposed development results in an overall building height of 41.57m. The height of the residential level (Level 8) has a maximum height ranging between 39m – 41.57m. A height of 42.8m is proposed over the roof plant.

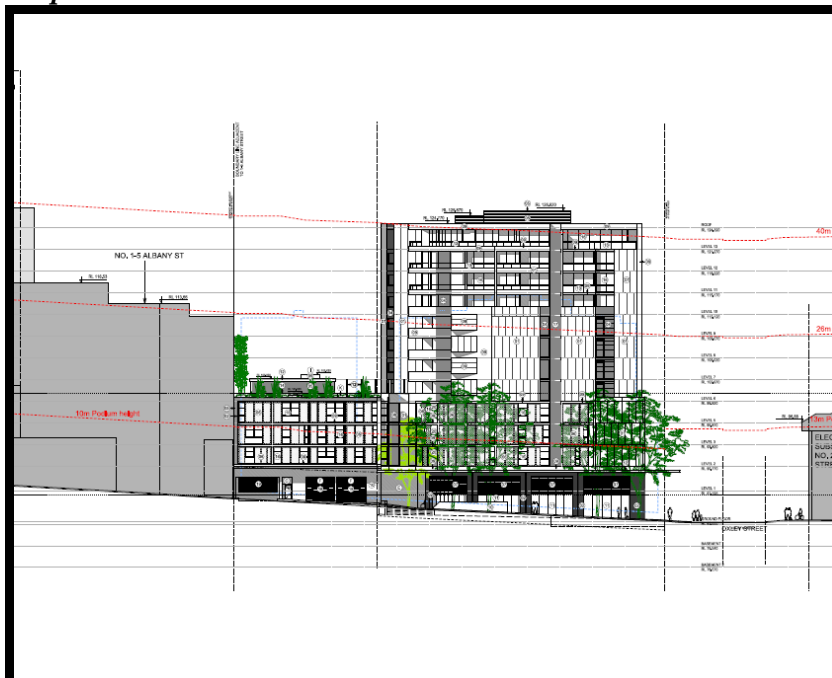
The applicant has submitted a request for an exemption from this standard pursuant to Clause 4.6 LEP2013. The proposal is considered against the objectives of the control as follows:

- (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 habitable level (eastern end) results in a breach of the control by approximately 1.57m. In totality, it is estimated that at least 80% 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 North Elevation



Proposed south elevation



- (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 in the circumstances. The loss of views is generally caused by the proposed compliant structures. **Refer to DCP consideration.**

- (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 however the impacts are considered on balance to be reasonable. The proposed overshadowing impacts to Hume Park is not considered to be a material impact as assessed within this report. **Refer to DCP consideration.**
- (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 given the substantial setback provided to surrounding buildings above the 40m building height.
- (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 1.57m at the eastern end, excluding the plant and would therefore comply with this principle.

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. While strict compliance could be achieved this would not have a material benefit to outlook, amenities or views enjoyed by private or public places.

4. Floor Space Ratio

A proposed development complies with the maximum floor space ratio of 5.6:1 that applies to the site in accordance with Clause 4.4(2) NSLEP 2013.

5. Non-residential floor space ratio ranges

Clause 4.4A LEP 2013 requires a minimum non-residential FSR of 1:1 be provided. The proposal provides a numeric non-compliance being 0.94:1 and has lodged a Clause 4.6 Objection

to this non-compliance.

The area of non-compliance generally results from the proposed ground level through site arcade that is provided. This arcade was commended by the Design Excellence Panel and is considered to provide an acceptable design in that it provides variation in shopfront locations, allows outdoor seating within this arcade, and also provides a link between Pole Lane and Albany Street, all elements which are considered to have positive contribution. The Clause 4.6 objection has been considered against the objectives of the Clause as follows:

- (a) *To provide for development with continuous and active street frontages on certain land in Zone B1 Neighbourhood Centre, Zone B4 Mixed Use and Zone SP2 Infrastructure*** – The proposal results in a positive activation of the street frontages, and in addition the arcade provides increased retail opportunities.
- (b) *To encourage an appropriate mix of residential and non-residential uses*** – An appropriate mix of residential and non-residential uses is provided. Importantly, the proposed development continues to provide 2 levels of non-residential commercial space. The under-provision of enclosed non-residential floor space is due to the provision of the arcade, which also provides for outdoor seating opportunities. There is no offset in residential floorspace benefit from the proposed non-compliance. The variation sought of 11% is considered to be a minor impact on the overall achievement of this objective.
- (c) *To provide a level of flexibility in the mix of land uses to cater for market demands;*** - the two levels of non-residential floor space are considered to provide high quality spaces which will cater for market demands.
- (d) *To ensure that a suitable level of non-residential floor space is provide to reflect the hierarchy of commercial centres*** – The non-residential floor space is considered characteristic of the mixed use locality and is consistent with that envisaged for the area.

For reasons set out above, the Clause 4.6 objection is considered reasonable, and numeric compliance with Clause 4.4A is considered to be unreasonable and unnecessary. The proposed development complies with the objectives and therefore the intent of Clause 4.4A.

6. 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.

7. 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.

8. 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 who generally supported the proposed development subject to some design refinements that have been considered elsewhere in this report. 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 that envisaged by the relevant controls.

Principle 4: Density - The density of development, the mix of apartments, amenity of apartments and building envelope are considered to be acceptable.

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 over the podium.

Principle 7: Amenity - At least 70% of apartments will receive 2 hours of solar access during midwinter and 60% of apartments will be provided with cross ventilation which complies with the RFDC. 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 to the site's context. A high quality communal facility is proposed above the western podium which will benefit 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.

9. 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 and this has been carried through in a Planning Proposal. In addition, the study identifies that a 3m setback to Oxley should be provided and the proposed development complies with this requirement. The proposed development is considered to satisfy the objectives of the Planning Study.

Suspensions of Covenants, agreements and similar instruments

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

Voluntary Planning Agreement

As part of the Voluntary Planning Agreement entered into by the applicant, the developer agreed the following design measures:

- *Any future building on the land will be set back 3m from the Oxley Street frontage of the Land;* - The 3m setback has been provided.
- *Any future Development Application or Modification Application for a building on the Land will not include any building or development above RL100.370 on the hatched portion of the Land shown in Appendix A (other than landscaping, fencing, lift overruns, skylights or non-habitable common room areas forming part of the common property, provided that any lift overrun or skylight does not exceed RL103.62 and any and any common room structure does not exceed RL103.00, is less than 60sqm in area and is offset on the podium towards the western boundary so as not to obstruct views across the eastern part of the podium);* The proposal generally complies with these requirements.

Other agreements including the proposed monetary contribution and required easement over the 3m setback, and a covenant to be provided over the western podium, will form part of this consent by imposed conditions.

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 & MATERIALS

The Design Excellence Panel generally raised no concerns with the design or materials of the proposed development.

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

Three submissions were received. Many of the issues raised including views, privacy and overshadowing have been addressed in detail within this report. Additional issues raised have been considered below:

Concern: **The development will overshadow adjoining properties at No.1-5 Albany Street and No.599 Pacific Highway.**

Response: The proposed development will not overshadow any habitable rooms or balconies within these properties between 9am – 3pm during the midwinter solstice.

Concern: **Privacy to No.1-5 Albany Street.**

Response: SEPP 65 separation distances are met from the proposed development.

Concern: **We object to the increase in height from 26-40m.**

Response: This issue was addressed in the planning proposal consideration.

Concern: **Additional traffic and parking demands in the locality.**

Response: Council's Traffic Engineer raised no concerns in this regard.

CONCLUSION

The proposed development is considered to demonstrate a reasonable level of compliance with Council's controls.

Resultant impacts including overshadowing, privacy and view loss are caused by generally compliant building elements, and the impacts are considered to be generally an expected outcome of development on the site, having regard to the recently gazetted planning proposal which increased the building height on the site to 40m.

Clause 4.6 Objections have been submitted with regards to the building height and non-residential floor space and these breaches are both able to be supported for reasons outlined within this report.

The proposed development is considered to be generally in accordance with the expected development outcomes on the site and is recommended for approval.

RECOMMENDATION

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

- A. **THAT** the Joint Regional Planning Panel grant consent to Development Application No167/14 for the demolition of existing structures and construction of a mixed-use development at No.7-19 Albany Street, St Leonards, subject to the attached conditions.

Lara Huckstepp
EXECUTIVE PLANNER

Stephen Beattie
MANAGER DEVELOPMENT SERVICES
